

01-0102114

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

STATE OF GEORGIA

[REDACTED]

Petitioner,

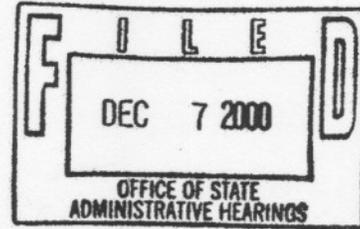
vs.

SEMINOLE COUNTY SCHOOL SYSTEM,

Respondent.

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Docket No:
OSAH-DOE-SE-0102114-125-LDS



FINAL DECISION

This matter involves a dispute between [REDACTED], the Petitioner and Seminole County School System, the Respondent, over Respondent's proposed placement of Petitioner in the Georgia School for the Deaf at Cave Spring, Georgia, (hereinafter referred to as "Cave Spring"). Cave Spring is a residential facility which serves the hearing impaired located many miles from Petitioner's home. Petitioner argues that Respondent has a duty to provide her with services in a less restrictive setting and is therefore failing to comply with the provisions of the Individual with Disabilities Education Act and/or Section 504 of the Vocational Rehabilitation Act. Respondent argues that the proposed placement is necessary to meet Petitioner's unique needs and is being provided within the boundaries and guidelines of all applicable statutes. Having heard the evidence and reviewed the record in this case, this hearing officer finds in favor of Respondent.

INTRODUCTION

A. Issue Presented

Is the placement proposed for [REDACTED], (hereinafter referred to as "Petitioner"), at The Georgia School for the Deaf at Cave Spring, Georgia, by

Seminole County School System, (hereinafter referred to as "Respondent"), appropriate and in compliance with the terms and provisions of the Individual with Disabilities Education Act (hereinafter "IDEA") and /or Section 504 of the Vocational Rehabilitation Act (hereinafter "Section 504"), or can Petitioner receive educational benefit from a less restrictive placement in her own or neighboring school district?

B. Procedural History

On July 24, 2000, Petitioner requested a due process hearing to determine whether she was improperly denied services under the Individual with Disabilities Education Act and its implementing federal and state regulations. That request was received by the Division for Exceptional Students of the Georgia Department of Education on August 2, 2000. On August 3, 2000, the undersigned Administrative Law Judge (ALJ) was appointed to hear the matter. During this process, Petitioner was represented by her grandmother, Ms. [REDACTED], (hereinafter "Ms. [REDACTED]"), and her mother, [REDACTED], (hereinafter "Ms. [REDACTED]"). Attorney Kenneth L. Hornsby Esquire, (hereinafter "Mr. Hornsby"), represented Respondent. A Notice of Hearing was sent to the parties on August 4, 2000. A pre-hearing telephonic conference was held on August 18th, 2000, and Ms. [REDACTED] and Mr. Hornsby both participated and had opportunity to ask questions, establish dates for the exchange of documents pursuant to the five (5) day rule and clarify the issues to be presented at the hearing. A Pre-Hearing Order was issued on August 18, 2000. The hearing in this matter occurred on September 11, 2000, in Donalsonville, Georgia, where Petitioner resides.

C. The Hearing

1.

The Due Process Hearing was convened at the Donalsonville, Georgia Courthouse on September 11, 2000 at 9:30 o'clock a.m.. Ms. [REDACTED] and Ms. [REDACTED] appeared on behalf of Petitioner. Mr. Hornsby appeared on behalf of Respondent

and was assisted during the hearing by Mr. Michael Cutchen, Director of Operations for Seminole County Schools and Ms. Sandy Malone, Special Education director for Seminole County Schools.

2.

Respondent presented evidence first and testifying on its behalf were: Mr. Michael Cutchen (Director of Operations for Seminole County Schools); Ms. [REDACTED] [REDACTED] (teacher of the hearing impaired for the Decatur County School System); Ms. I [REDACTED] (school psychologist at Cave Spring); and Ms. J [REDACTED] (speech/language pathologist at Cave Spring) testified on behalf of Respondent. Ms. [REDACTED] testified on behalf of Petitioner. No other witnesses were called for Petitioner.

3.

The transcript of this hearing consists of one volume, is comprised of 100 pages, and is incorporated, along with the Exhibits attached, by reference herein. Exhibits "R-1" through "R-5" were admitted without objection and in accordance with the five-day rule.

FINDINGS OF FACT

1.

Petitioner, born on [REDACTED], is a ten (10) year old girl with a substantial hearing impairment. She has worn a hearing aid since she was approximately one (1) year old. She lives with her maternal grandmother, who serves as her legal guardian, in Donalsonville, Seminole County, Georgia.

2.

Petitioner moved to Seminole County from Alabama around 1995. She began pre-school in Seminole County in 1996, where she received special services. (Transcript, page 21). After her initial year in Seminole County School System, Respondent determined that it could not produce a program that would provide Petitioner with educational benefit and she was placed in [REDACTED]

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School, located in Decatur County, Georgia,¹ for the following academic year.

Petitioner remains a resident of Seminole County.

3.

At ██████████ School in Decatur County Petitioner was placed in a classroom serving other children with hearing impairments, under the direction of a teacher trained to work with hearing impaired children. A para-professional was assigned to work with her exclusively during the school day. (Transcript, page 39). This para-professional assisted Petitioner academically and provided communication for her when Petitioner was in the regular classroom. (Transcript, page 38).

4.

Ms. ██████ observed that Petitioner functions well at home and is able to communicate effectively with her, even though signing is not generally used. (Transcript, page 89-91). Her ability to function in the home supports the conclusion that Petitioner could be performing at a higher social and academic level at school.

5.

Petitioner rides a school bus from her home to the Decatur County School and back each day. The time that Petitioner spends in transportation between her home and her school placement in Decatur County, as well as the time spent traveling from school to school on occasion while in Decatur County, interrupts her academic day and most probably contributes to Petitioner's academic and social difficulties. The para-professional assigned to Petitioner does not ride the school bus with Petitioner, but meets her at school each morning. (Transcript, p. 39).

¹ Decatur County is adjacent to Seminole County where Petitioner resides.

6.

Petitioner has attended school in Decatur County for four (4) years, from the 1996-1997 school year through the 1999-2000 school year. (Transcript, page 38). In August of 1999, during her third year of attendance, her grandmother, Ms. [REDACTED] disputed the out-of-County placement and requested a Due Process Hearing to resolve the issue of placement. Thereafter, the parties engaged in mediation and reached accord. Ms. [REDACTED] withdrew the request for a due process hearing.

7.

The agreement reached during the 1999 mediation included a commitment by Respondent to seek an additional evaluation to determine the "depth and the breath of the severity of" Petitioner's hearing impairment. (Transcript, page 23). That included a complete psycho-educational evaluation to be conducted at Cave Spring. (Id., page 23).

8.

On September 13, 1999, Petitioner underwent a Psycho-educational Evaluation at Cave Spring. Based upon her history, the staff administering the test expected Petitioner to "...have sufficient language to be able to function fairly well, certainly in the hearing-impaired classroom, if not in the regular classroom with auditory trainer and interpreter." However, this is not what they found. (Transcript, p. 59). The evaluation produced results contrary to reports by the family concerning Petitioner's performance at home, and was not consistent with what was expected of a child with her reported ability and history. The Psycho-educational Evaluation summary states that Petitioner "...is functioning well below expected levels....her communication is severely limited through both speech and signs. Her present level of communicative functioning has a negative impact upon academic achievement...." (Record, R-1, Psycho-educational Evaluation.)

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9.

The Psycho-educational Evaluation found that Petitioner's primary problem is that she "...does not have an adequate communication system...."(Transcript, p.60). As a child who is "...eight or nine years old that has been aided² since the age of one...." is expected to have more "speech production" than Petitioner at the time of the evaluation. (Transcript, page 72). Petitioner "...had approximately 14 words that she uttered...." (Id.) In addition she was not putting two or more words together and she demonstrated a severe articulation problem which interfered with her word production. (Id.) She should have been signing two-or-three word phrases but was only signing at the one-word level. (Transcript, page 72).

10.

While the Cave Spring evaluation found Petitioner's hearing loss to be her primary disabling factor, it was noted that there were other possible unidentified factors contributing to her inability to make significant progress. Something besides the hearing impairment was impacting Petitioner's performance. Accordingly, the evaluators expressed the need for "additional testing" to try and identify those factors. (Transcript, page 59).

11.

The evaluation also noted that it was problematic that Petitioner's family does not communicate with her through sign language. Neither Ms. (b) nor Ms. (b) has learned how to sign despite Respondent's emphasis on the importance of continuing this process of communication in the home, and despite the school's offer to teach Ms. (b) and other family members, how to sign. (Transcript, pages 47-48). Petitioner's inability to sign at the level expected of a child of her age and level of

² "Aided" in this context refers to the fact that Petitioner uses a hearing aid.

intelligence is, to a large degree, due to the absence of signing in her home environment.³

12.

Several sources also noted that Petitioner also lacks "life-skills" commensurate with her age and ability. She needs to acquire more of these daily living skills, like tying her shoes, in order to survive in a regular classroom, or to function adequately in the world. (Transcript, pages 47, 49-50). Her [REDACTED] Elementary School Teacher is more academically focused and not equipped or able to adequately teach her those skills within the time and setting available to her. (Transcript, pages 47, 50).

13.

In January of 2000, an Individual Evaluation Plan (hereinafter "IEP") team met to review the results of the Cave Spring Psycho-educational Evaluation with Ms. [REDACTED]. At that time it was recommended that additional testing be completed to determine whether Petitioner was experiencing seizures, suffered from attention deficit disorder, or had some other disabling condition that interfered with her ability to learn. Respondent recommended that Ms. [REDACTED] consult a particular pediatrician competent to perform this additional evaluation. This recommendation was made in writing on January 10, 2000. (Id., page 26; Exhibit- R-1).

14.

Ms. [REDACTED] contends that she did seek additional medical information on Petitioner, however, if Petitioner did undergo additional testing to identify possible

³ While Ms. [REDACTED] tried to learn how to sign under the tutelage of Respondent, she only came to one or two sessions before discontinuing her efforts to learn how to sign. The attempt to learn the communication method seemed to have been too overwhelming. (Transcript, page 48). However, Ms. [REDACTED] testified that Ms. [REDACTED], Petitioner's mother, has taken a course in signing and that have purchased instruction books from the school system. She indicated that they are continuing their attempts to learn how to sign.

disabling factors contributing to her ability to function, no information was provided to Respondent. (Transcript of testimony of ██████████, page 25). There is no current data concerning whether or not Petitioner suffers from any disabling conditions in addition to her primary hearing-impairment.

15.

No changes were made in Petitioner's program during the remainder of the 1999-2000 school year following the January IEP meeting.

16.

On May 17, 2000, the annual IEP review team met to discuss Petitioner's placement for the 2000-2001 school year. (Transcript, p. 29). Petitioner's classroom teacher and para-professional were present, along with the Decatur County School's Principal, the Special Education District Director and the District Speech and Language Pathologist. (Id.) Notice of the meeting was sent to Ms. ██████████, and Mr. Cutchen and Ms. Malone visited Ms. ██████████ at her home a few days prior to the meeting to personally invite her to attend. (Id.). Ms. ██████████ did not attend the meeting.

17.

At the IEP meeting held on May 17, 2000, three primary placement possibilities were explored as options for Petitioner's placement for the 2000-2001 academic year. First, Petitioner could continue at ██████████ School in Decatur County where she received resources on an average of three periods a day, with Speech and Language Services for one and one-half hours per week. This first Option, was rejected by the team because under that program Petitioner had not mastered the previous IEP objectives, she was not able to adequately access the curriculum and, in general, she was not making the progress her teachers believe she is capable of. (Transcript, page 41). Although Petitioner had made "tremendous progress" (Transcript, page 52), the progress was not relative to "the amount of time" her teacher had "spent working with her. (Transcript, page 53). It was also

determined that Petitioner continued to require "life-skills" training which the current classroom teachers could not provide to her. (Transcript, pages 30, 43, 46-47; Exhibit R-2, R-4).

18.

The second Option considered at the May 17th, 2000, IEP meeting provided placement for Petitioner in a Seminole County School. This is the option that Ms. [REDACTED] requests be instituted. Under this placement plan, Petitioner would be served in a regular classroom with auditory trainers available and with a para-professional assigned to her to assist in signing and other means of communication. (Transcript, pages 30 and 42). This Option was rejected based upon the conclusion that because the more supportive and intensive program provided to Petitioner at [REDACTED] Elementary School in Decatur County had failed to provide her with the means to access the curriculum, then the less supportive and less intensive placement occasioned by Option 2 could not possibly provide her with educational benefit. (Transcript, page 42).

19.

The third Option considered by the IEP team on May 17, 2000, placed Petitioner in the Georgia School for the Deaf at Cave Spring, Georgia. The team recommended that this Option be instituted, expressing the collective opinion that Petitioner could be best served in a setting which concentrated on the development of communication skills as well as life-skills. It was the consensus of the IEP team that unless Petitioner learned to communicate more effectively she could not begin to adequately access the curriculum and therefore would not receive educational benefit. (Transcript, page 31). Additionally, Petitioner would have the benefit of a hearing impaired peer group of children of her own approximate age and thus be able to grow socially and personally as well.

20.

As part of the third Option, it was determined that once Petitioner learned to communicate more effectively, and acquired more age appropriate life-skills she could be served through academic placement in either Seminole or Decatur County. Approximately two years was considered to be the length of time Petitioner would be in the residential setting at Cave Spring, although it is possible that she would return to her home school sooner if she was not making adequate progress, or that she might require a longer placement at Cave Spring if needed to give her greater benefit from the program. (Transcript, page 60-61).

21.

Placement at Cave Spring would allow Petitioner to be "...immersed in some type of a setting where she can get a fully-functional communication system, even though it may be with sign language, before she can access the general curriculum in another place." (Transcript, page 60). Petitioner would benefit from the in-house signing which she would receive at Cave Spring. "Children who have in-house signing are exposed to adults who sign, other children who sign, and they also have an opportunity to sign in social situations, academic situations, and their language skills after signing tend to leap. They tend to have receptive and expressive language abilities that show a greater growth than someone who is in a nonsigning environment." (Transcript, page 73).

22.

Enrollment at Cave Spring was considered by those evaluators to be essential to Petitioner's success. (Id.) Without a significant change in her educational process, Petitioner would not likely have "...a communication mode which would allow her to access the general curriculum..." (Transcript, page 62).

23.

Petitioner would also receive life-skills training at Cave Spring, and would further benefit from social interaction with her peers. Her self confidence would improve as she becomes able to communicate more effectively with others and learns appropriate social interaction methods.⁴ (Transcript, pages 74-75).

24.

The support of Petitioner's family is essential to her success at Cave Spring. (Transcript, page 63). The distance between Cave Spring and Donalsonville⁵ would make it very difficult for the family to visit with her there without assistance. Transportation is provided by the Cave Spring, usually along with the assistance of the local school system. (Transcript, page 65). Transportation for the children is arranged through the school system. Typically, a bus from Cave Spring takes the children to a central location in or near their home county and then the local school system would be responsible for meeting the children and taking them to their home.⁶ Transportation to the facility would most likely occur in a similar manner. Children at Cave Spring are "currently mandated to go home at least every....two to three weeks..." along with holidays like Thanksgiving and Christmas. (Transcript, page 64-65). Parents and extended family members are encouraged to visit the school during the school session as well. The school does provide places for the

⁴ Cave Spring has an equine therapy program available for its students. This program has been especially effective with children who lack self-confidence as well as with those do not have well developed signing skills. The children become more self assured as they learn to take care of and communicate with the horses. Many who have not made progress in other programs begin to "flower and bloom when they; get involved with the animals there." (Transcript, page 80).

⁵ Cave Spring, Georgia is approximately two hours below Tennessee, (Transcript, page 64), and Donalsonville, Georgia is close to the Florida-Georgia border.

⁶ A parent or other family member would most certainly be permitted to meet the school bus if they chose to do so.

families to stay when visiting their children or when on campus for meetings or testing sessions. (Transcript, pages 67-68.)

25.

Extended Year School Program opportunities for which Petitioner may be eligible would be provided in her home county.⁷ (Transcript, page 77).

26.

Ms. [REDACTED] is concerned that placement at Cave Spring will cause Petitioner to lose the spoken language that she has mastered and will prevent her from acquiring any additional language. (Transcript, page 96). Ms. [REDACTED] is opposed to any program that neglects that aspect of Petitioner's development.

27.

Petitioner is currently attending [REDACTED] ary School under the Stay-Put provisions of IDEA. If allowed to do so, Respondent would make application to the Georgia School for the Deaf at Cave Spring so that Petitioner could begin the program there as soon as a space became available. (Transcript, pages 31, 32).

CONCLUSIONS OF LAW

The Individuals with Disabilities Act (hereinafter "the Act"), and its Regulations provide that a free and appropriate education (FAPE) must be provided to any student who is identified as having a disability as defined by the Act, 20 U.S.C. §1412 (1); 34 C.F.R. Reg. 300.4. In accordance with the provisions of 20 U.S.C. §1412(5)(A), the FAPE must be provided "to the maximum extent appropriate" in the least restrictive environment so that "...special classes, separate schooling, other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is

⁷ There is also a one week summer camp session that Petitioner might attend. It is not part of an Extended Year Program. (Transcript, page 80).

such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." If a more restrictive environment is recommended for a student, then there must be ample evidence that without the additional restricting factors, the student would be denied a minimum of educational benefit.

In this case there is ample evidence that a more restrictive environment is necessary to provide Petitioner, [REDACTED], with minimal educational benefit. Petitioner is capable of a level of academic and social performance that she is somehow failing to achieve through her current placement. She has not made the progress expected of a child of her abilities, and in her current placement has failed to meet the goals and objectives outlined in her IEPs. She has failed to develop an adequate method of communication and her failure in this area directly interferes with her ability to succeed academically. She does not have a method of communication that carries over from her school day to her home environment. Absence of a developed communication system also appears to have adversely effected her self confidence and most likely inhibits her ability to participate in activities outside of her home and her school. Her self-help skills are not commensurate with her intelligence and age and her current teacher does not have the capability or program time to provide the level of instruction required to allow Petitioner to progress.

The United States Supreme Court in *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 458 U.S. 176, 207,208, 73 L. Ed. 2d 690, 102 S. Ct. 3034 (1982), found that the Act requires that the educational program provided for a child educated in the regular classrooms of the public education system be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." The *Rowley* Court tells us that "...a school meets its obligation if the disabled student's IEP is 'reasonably calculated to enable the child to receive educational benefits.'" (*Id.*

page 207). See also: *E.S. v. Independent School district No. 196, Rosemont-Apple Valley-Eagan*, 135 F.3d 566, 569 (1998). Petitioner has failed to progress from year to year and grade to grade in her current placement in the Decatur County school system. That placement provided instruction primarily in a self-contained setting with other hearing impaired students and provides a para-professional assigned to Petitioner exclusively to help with communication and academics when Petitioner is mainstreamed or otherwise not in a self contained setting. If this more restrictive setting has failed her, then placement in the less restrictive setting in Seminole County, where she would be mainstreamed in regular classes with the assistance of a full time para-professional and with the help of auditory trainers, cannot be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” A more restrictive placement is therefore in order.

Placement in the residential setting at Cave Spring is certainly more restrictive than the other options discussed at Petitioner’s last IEP. However, it appears to be the only placement that is reasonably calculated to provide Petitioner with educational benefit. Respondent School System has reasonably concluded from a combination of past and current evaluations, IEPs and other available information that Petitioner requires immersion in a program that provides a communication method she can use, similarly aged peers to relate to, and a full time program that will be able to provide her with self-help skills. Respondent’s conclusion that Petitioner cannot access education, and will be denied a minimum of educational benefit appears to be reasonably based upon the evidence available.

Further, without this residential placement, it is less likely that Petitioner will develop the skills and self-confidence needed to provide her with the possibility that she might eventually achieve some sort of independence and ability to function in the community as a whole. In promulgating the Act, Congress found: “[I]mproving educational results for children with disabilities is an essential element of our national

policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.” 20 U.S.C. §1400(c)(1).

In order for Petitioner to access social, educational and vocational opportunities, she must have a more effective communication method available to her, otherwise the likelihood that she will every acquire independent living skills and gain economic self sufficiency is remote.

Evidence further shows that it is essential for the student’s family to be a part of the educational experience at Cave Spring. The distance between her home County and the location of Cave Spring is considerable and transportation and housing can be costly and difficult for the family to manage. Provision of FAPE means that access to educational benefit is not dependent on the student’s ability to pay. Therefore, “free” means that trips to and from the school for both Petitioner and her family should be financially covered, and telephone calls, meals while in transit and while on campus in Cave Spring, and other related costs should be covered. (See: *34 CFR § 300.302*)

Finally, Petitioner’s family fears that concentration on signing, or other alternative forms of communication, will decrease her ability to use spoken language. The form of instruction used in by the school system comes under the purview of “methodology” and it is clear that courts will not be permitted to impose their view of preferable educational methods upon the states. “Once a court determines that the Act’s requirements have been met, questions of methodology are for resolution by the States. (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, Id. At 208. Petitioner and her family do have the right to participate fully in the formation of a placement plan, and questions as to methodology should be raised during IEP’s and other meetings between the family and the local school system. This record shows that Ms. [REDACTED] was notified of the last IEP meeting and failed to attend.

DECISION

The evidence supports a finding that the placement proposed for Petitioner provides FAPE in the least restrictive manner possible to meet her needs and to enable her to receive educational benefit. Petitioner has not made progress in her current placement, and the less restrictive placement available in Seminole County is not reasonably calculated to provide Petitioner with educational benefit. The more restrictive placement at the residential facility at Cave Spring is necessary to meet Petitioner's individual needs and Respondent shall complete the process of application to the Georgia School for the Deaf at Cave Spring for the first available spot for Petitioner.

An IEP team composed of Petitioner's representatives, (most likely her mother and maternal grandmother), relevant staff members from Cave Spring and members of Respondent School System shall meet as soon as possible to develop an IEP for Petitioner for the remainder of this academic school year. Included in that IEP shall be a plan for the payment to cover all travel expenses for Petitioner and family members to and from the facility at Cave Spring. Respondent School System and Cave Spring shall work together to provide guidelines in the IEP which insure that transportation is provided for Petitioner so that she can return home for weekend visits as often as permitted or recommended by the school. The IEP shall also consider a transportation plan for Petitioner's family members, specifically Petitioner's maternal grandmother and her mother, as well as any other family members for whom visits considered important to Petitioner's success while in school at Cave Spring. Transportation, meals and housing while on campus, shall be provided to these family members at no cost to them.

The IEP committee shall convene an annual review at the end of this academic year to develop a plan for Petitioner's placement next year. The IEP shall contain an evaluation of her communication progress in the short time that she will have spent

at Cave Spring. Provision of Extended Year Services shall be considered at that time and shall be provided, if appropriate, in or near Petitioner's home County of Seminole.

SO ORDERED this 4th day of December, 2000.

Lois D. Shingler
LOIS D. SHINGLER
Special Assistant Administrative Law Judge