02-0202172

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted]	)	Docket No.: OSAH-DOE-SE
Petitioner,	)	02-02172-106-MPW
	)	
v.	)	
	)	
M.C.S.D.,	)	
Respondent.	)	

FILED
APR 16 2002
OFFICE OF STATE ADMINISTRATIVE HEARINGS

FINAL DECISION

I. INTRODUCTION AND PROCEDURAL HISTORY

This Final Decision is issued pursuant to OSAH Published Rule 616-1-2-.27. This matter was brought before the Office of State Administrative Hearings ("OSAH"), State of Georgia, pursuant to a hearing request filed by the Petitioner's parents.

On February 27, 2002, the undersigned Administrative Law Judge (ALJ) issued an Order Granting Petitioner's Motion for Involuntary Dismissal on Issues of Procedural and Substantive Free Appropriate Public Education, or "FAPE." The issue of the appropriate remedy for the Petitioner, [redacted], was reserved. Further evidentiary hearings regarding the issue of remedy were conducted on March 25 and March 26, 2002. On April 2, 2002, [redacted]. filed a "Proposed Findings of Fact: Remedy Hearing", and M.C.S.D. filed its response to the ALJ's request for proposed findings and conclusions. Both post-hearing submissions were carefully considered by the ALJ, along with the entire evidentiary record.

As indicated in the ALJ's Order issued April 12, 2002, the Petitioner, his parents, and all employees of the Respondent school district are identified only by their initials. Any witness or other person who is not a party or an employee of the school district is identified by their full name.

Although the hearing request was initially filed on July 31, 2001, a number of factors contributed to the lengthy process of gathering evidence and issuing this Final Decision.

First, the parties jointly requested an amendment of the ALJ's Prehearing Order, which included an Order for the Presentation of Direct Testimony in Written Form. This Order provided specific procedures for the presentation of direct testimony in writing prior to the hearing, while still allowing the parties to provide additional oral direct testimony at the hearing when needed and providing the opposing party with the opportunity for a thorough cross-examination. Such orders are commonly issued in special education cases by OSAH ALJs, and are effective tools for the orderly and expeditious conduct of the Due Process hearing. The amendment of the requirement for filing direct written testimony prior to the hearing led to protracted direct and cross-examination of both parties' witnesses and greatly extended the length of the hearing.

Second, due to the lengthy testimony of witnesses, the difficulty of scheduling courtroom space on consecutive days, and scheduling considerations for expert witnesses, the attorneys and the ALJ, the six days of hearings during the initial phase of these proceedings could not be held over consecutive days. The interruption in the hearing process caused not only a delay in finishing the proceedings, but also caused a delay in the decision making process as the ALJ found it necessary to re-review the evidence produced on previous hearing dates prior to the next-scheduled date.

Third, the Petitioner asserted many legal issues for the ALJ to consider, as shown in its Initial Statement of Legal Issues, Supplemental Statement of Legal Issues, Third Supplemental Statement of Legal Issues, and Prehearing Memorandum. These covered nearly all aspects of FAPE, LRE, and the IEP development and implementation process. The broad scope of legal issues lengthened the hearing, as the Petitioner delved into almost every aspect of special education, and required the ALJ to expend time and effort to sift through and separate out the truly relevant issues and corresponding evidence.

Fourth, the transcript of testimony in this case covers eleven volumes. The first six days of testimony produced a transcript of approximately 1,750 pages. This transcript was not completed until January, 2002, three months after the final hearing date for the initial phase of these

proceedings. This delay, in turn, significantly delayed the ALJ in his efforts to properly and completely address the issues of FAPE raised by the Petitioner in his Motion for Involuntary Dismissal. The testimony for the last two days of the hearing addressing the appropriate remedies for the school district's violations of procedural and substantive FAPE was not as lengthy, but still brought the total transcript to more than 2,000 pages.

Fifth, the documentary evidence considered by the ALJ is also extensive. The Petitioner's exhibits occupy more than two large notebooks, and include well over a thousand pages The Respondent actually submitted more exhibits than the Petitioner during the initial phase of the hearing, with a total of 185 exhibits in two bound volumes. During the remedies phase of the hearing, the Respondent submitted an additional package of exhibits, including a new IEP prepared in December, 2001 after the initial phase of this hearing was completed. (an additional exhibit produced in the remedies phase of the hearing by witness A.K. pushed the total even higher).

II. FINDINGS OF FACT

The following Findings of Fact are based solely on a preponderance of the credible evidence produced at the evidentiary hearings in this matter. The Findings of Fact in the Order Granting Petitioner's Motion for Involuntary Dismissal on Issues of Procedural and Substantive FAPE issued February 27, 2002 are incorporated by reference herein.

(1) C.G'S EDUCATIONAL BACKGROUND

1. C.G. is an 8 year old child who has been enrolled as a student in M.C.S.D., the local public school system, since he was in preschool. C.G. suffers from Autism, a life-long neurological disorder (Testimony of Dr. Carol Weber and C.G.'s parents). M.C.S.D. determined that he was eligible for special education and related services under IDEA and state law while he was in preschool (Respondent's Exhibit 66).

2. [redacted]. exhibits a severe language disorder, characterized by difficulty in understanding and responding to instructions, turn-taking, social interaction with peers, and regulating self-stimulatory behaviors (Testimony of Parents, CL).

3. M.C.S.D. has been attempting to serve [redacted].'s educational needs in a variety of settings, including in self-contained Autism classrooms with some inclusion in the regular-education class. During the 1999-2000 school year, the IEP Committee recommended placement at [redacted]. Elementary School in a self-contained class with 5 hours of inclusion in the regular education class (Respondent's Exhibits 15 and 21). [redacted]. appeared to be progressing educationally as evidenced by his limited, but documented, successes in reading and writing. Further, during the 1999-2000 school year, [redacted].'s behavior did not impede his learning or the learning of his peers in the autistic inclusion class, although he did have some behavioral problems during his time in the regular education room (Testimony of J.L.; Petitioner's Exhibits 12, 13, 14).

4. Because of [redacted].'s educational and behavioral successes during the 1999-2000 school year, the IEP Committee continued [redacted].'s placement at [redacted]. Elementary School in an autistic classroom for 2000-2001. The IEP Committee actually increased the regular education classroom time from 5 to 10 hours per week for the 2000-2001 school year (Testimony of N.J. and K.W.).

5. Unfortunately, J.L., the Autism inclusion class teacher who taught [redacted]. since the 1998-1999 school year, left the school district before the beginning of the 2000-2001 school year. J.L. had used a team collaborative approach to teaching autistic children in which the entire class would go as a group into a regular classroom setting (Testimony of J.L.). This approach did not appear to be followed after she left the school district (Testimony of N.J., K.W.) [redacted]. Elementary also changed the physical location of the Autism classroom, and a new speech language pathologist began providing services to [redacted]. (Testimony of K.W.)..

6. [redacted].'s performance in both academics and behavior worsened during the first weeks of the 2000-2001 school year. [redacted].'s parents soon began to receive telephone calls from the school reporting serious behavior problems and asking them to take [redacted]. home (Respondent's Exhibits 148, 149; Testimony of K.W.). The school rarely if ever called in the past to report such severe problems (Testimony of Parents).

7. The Autism class teachers were not given specialized and intensive training on how to adapt their classroom techniques to specifically address [redacted].'s behavior problems, such as positive reinforcement rather than negative consequences for inappropriate behavior. His teacher, K.W., attended conferences and seminars, including presentations by Shelia Walker of Emory University. However, the paraprofessional assigned to his room has not been trained in dealing with the educational needs of an autistic child. One paraprofessional testified that she had never seen [redacted].'s IEP, and did not know what services M.C.S.D. was required to provide (Testimony of P.C.).

8. [redacted]. has been required to adapt himself to the class behavior rules that all other children must follow. [redacted]. is rarely able to comply with these rules. A significant example of his inability to conform to classroom behavior rules is found in videotape produced by M.C.S.D., which shows [redacted].'s teacher constantly giving him verbal instructions to keep his feet on the floor. This obviously took much of her time away from teaching [redacted]. and the other children. Often, the teacher used gentle yet firm physical effort to make [redacted]. sit in his seat or put his feet on the floor. The teacher only used positive verbal reinforcement a few times during the classroom session shown on videotapes (Petitioner's Exhibit 41).

9. As the 2000-2001 school year progressed, [redacted] appeared to make little or no academic progress in the autistic inclusion program at R.R. Elementary. His academic work continued to

fall far behind that of his peers (Testimony of Respondent's witnesses S.E., K.W., P.C. and N.J.; Respondent's Exhibits 162 and 163).

10. The IEP Committee met in November 2000 and recommended that [redacted]. be removed from the regular education classroom, and that his speech and language services be terminated (Respondent's Exhibit 9). The IEP Committee also recommended that [redacted]. be removed from [redacted]. Elementary School and placed in a psychoeducational center operated by M.C.S.D. This center does not include a regular education classroom, and thus [redacted]. could not be "mainstreamed." The November 2000 IEP did not include one-on-one instruction, social skills instruction, assistive technology to address communication deficits, or supplemental aids and services (Respondent's Exhibit 9; Testimony of K.W. and others).

11. [redacted].'s parents disagreed with the November, 2000 IEP and requested a Due Process Hearing. This initial hearing request was withdrawn in May, 2001 (OSAH Docket No. DOE-SE-01-19120-106-SWT), but renewed by the parents on July 31, 2001 and assigned to the undersigned ALJ with the docket number shown in the caption. The procedures for the conduct of the evidentiary hearing on this hearing request are stated in the Order Granting Petitioner's Motion for Involuntary Dismissal on Procedural and Substantive FAPE, and are not repeated here.

12. While the instant appeal was pending, the Respondent held another IEP meeting in December 2001. The issues raised in that IEP meeting are contested and are before Administrative Law Judge Michael M. Malihi in *M.C.S.S. v. [redacted]., OSAH-DOE-SE-02-11379-106-MMM*, and [redacted] *v. M.C.S.D., OSAH-DOE-SE-02-11616-106-MMM*. No decision has been rendered in either appeal.

13. According to M.C.S.D., an Intellectual Disability Eligibility Report prepared on December 14, 2001 established that [redacted]. could be properly placed in Moderate Intellectual Disabilities (MOID) program (Respondent's Exhibit 1003). The IEP Committee then determined that [redacted].'s needs could be served in a MOID class with a small number of students (Respondent's Exhibit 1004). This proposal was included in the IEP approved by the Committee on December 14, 2001 (Respondent's Exhibit 1005). Per Order of the undersigned ALJ, the IEP Meeting itself was not stayed, but implementation of the December 14 IEP was precluded while the instant appeal was pending.[1]

14. In November, 2000, [redacted].'s parents hired A.K. to provide [redacted]. with private reading tutoring. A.K. has a bachelor's degree as a reading specialist and a master's degree in education. She is employed by M.C.S.D. as a kindergarten teacher, but tutors [redacted] through her own privately owned reading center. Since A.K. has been tutoring [redacted]., his reading has progressed to the point that he is able to read over 35 Dolce sight words. Although this is a significant advancement, [redacted]. still reads only at a pre-primer reading level. A.K. uses many approaches to teaching reading to [redacted]., all of which involve intensive one-on-one specialized instruction in a room secluded from other students. She was skeptical that [redacted]. could receive any academic benefit from inclusion in a regular education classroom.

15. [redacted].'s parents retained Dr. Carol Weber of Emory University to conduct an independent evaluation to determine his appropriate educational program. Dr. Weber was qualified as an expert by the ALJ in the areas of diagnosis, treatment and education of autistic children. She conducted a review of [redacted].'s school file and reviewed the videotape prepared by M.C.S.D. However, she was restricted from completing an in-person evaluation at [redacted].'s school. Dr. Weber testified that among the minimal requirements in an educational program for an autistic

[1] During the course of the hearing in the instant case, the Petitioner argued that evidence regarding any IEP meetings subsequent to November 2000 were not properly before this ALJ, and therefore should be excluded. The ALJ consistently allowed references to all services and programs utilized by both [redacted].'s parents and M.C.S.D. after November 2000 as such evidence directly addressed the issue of the appropriate remedy that might be granted.

child is a comprehensive functional assessment of their learning and behavioral characteristics. She testified further that program components should include social skills development, communication training, a sensory integration component, behavior management and the opportunity to interact with typical children (Testimony of Weber).

(1) FINDINGS REGARDING APPROPRIATE REMEDIES

(A) REIMBURSEMENT FOR EXPENSES INCURRED BY C.G.

16. Harold Smith was qualified as an expert in the evaluation, planning and administration of individualized education programs for autistic children. According to Smith, [redacted] required one-on-one reading instruction, but his review of his records showed that M.C.S.D. had not provided such instruction. This was a required element of [redacted].'s educational plan. A.K. admitted during her testimony that the techniques she used with [redacted] and the results she had obtained were not previously shared with M.C.S.D., primarily due to her belief that this information should be kept confidential. Even though M.C.S.D. had no opportunity to review and possibly implement A.K.'s methods or a similar program prior to the hearing on March 25, 2002, M.C.S.D. did not make a specific objection to reimbursing the parents for her services. Further, the evidentiary record shows that [redacted] is in fact making significant reading progress under A.K.'s tutelage.

17. Smith testified that [redacted].'s needs should have been fully evaluated by an independent evaluator so that an appropriate IEP could be developed. [redacted]'s parents hired Dr. [redacted] to complete such an evaluation, and Smith concluded that her expenses and related travel costs should be reimbursed by M.C.S.D. Further, M.C.S.D. incorporated Dr. [redacted]'s partially-completed evaluation in its most recent eligibility determination process.

(B) COMPENSATORY SERVICES

18. Smith testified that a new IEP had to be prepared to address [redacted].'s ongoing needs and to provide compensatory services in those areas where he was previously denied FAPE. He testified that compensatory services were needed to help [redacted] catch-up to the educational point he would have reached if M.C.S.D. had provided appropriate services. Smith testified that [redacted] would require two years of specialized one-to-one reading tutoring to compensate for the lack of such

instruction. During the hearing, M.C.S.D. did not object to incorporating A.K.'s services into [redacted]'s educational plan in the future, and A.K. testified that she would be willing to work with M.C.S.D. to develop a specialized reading program.

19. In the February 27, 2002 Order, the ALJ found that one area in which M.C.S.D. denied Procedural FAPE was by not following the "Stay Put" provisions of IDEA and State law. Stay Put was violated because M.C.S.D. did not continue inclusion at the rate of 10 hours per week as provided in [redacted]'s IEP prior to November 2000. Smith concluded that as a result of M.C.S.D.'s violation of the Stay-put provision, [redacted] was denied the right to participate with typical children who were his chronological age over an extended period of time. Smith recommended that M.C.S.D. provide for [redacted]'s participation Extended Day Services in an after school program with typical, regular-education peers and that the supplemental service of a trained aide be provided to support his inclusion. There was evidence from other witnesses, however, that [redacted] might not benefit from such inclusion due to his serious behavioral problems and past inability to cope in the regular education setting (Testimony of N.J., K.W., [redacted], and J.L.).

20. Smith also recommended that once an appropriate IEP was in place, M.C.S.D. should provide [redacted] with an Extended School Year (ESY) to implement the IEP for all 12 months. At the time of Smith's recommendation during the hearing on March 25, 2002, however, he did not find that an "appropriate" IEP was in place that could be implemented for the entire year. Smith stated that in his opinion, appropriate services could be provided within a MOID placement.

(C) PROGRAM DEVELOPMENT

21. According to Smith, the key to appropriate program development in a new IEP was the completion of specialized evaluations in all areas of need. The first step was for Dr. [redacted] to complete her evaluation. He also recommended that additional evaluations be provided by individuals trained in sensory issues and pragmatic speech. M.C.S.D. did not object to Dr. [redacted] completing her evaluation. In fact, evidence produced at the hearing indicated that M.C.S.D. considered Dr. [redacted]'s partially completed evaluation when the IEP Committee drafted the most recent IEP in December, 2001.

22. Smith recommended that [redacted].'s IEP include one-to-one instruction for 30 minutes per day, 2 to 3 times per day. He also recommended that [redacted] receive small group work on functional academics by instructors trained in the needs of children with autism and inclusion in a regular education component on a daily basis. He stated that inclusion during P.E. and lunch alone would not be sufficient to meet [redacted].'s need to be educated in the Least Restrictive Environment. Concerns were strongly voiced by [redacted].'s present and former teachers with M.C.S.D that if [redacted] was mainstreamed in the regular education classroom he would become agitated and distracted to the point that he could not learn, and that other children would suffer disruption as well. It is noted that A.K. would not attempt to teach [redacted] with other children present, even in a small-group setting.

23. Smith testified that based on his review of [redacted].'s records, M.C.S.D. did not have people in place with the specialized knowledge needed to implement strategies for autistic children. He therefore recommended that a new IEP must provide specialized training conducted by experts for M.C.S.D. staff. He testified that merely having in-service training for teachers would not meet [redacted].'s needs. There was no objection voiced by M.C.S.D. to providing more intensive and specific training in dealing with autistic children, and additional training certainly appears to be a logical course that an IEP Committee should contemplate in drafting a new IEP.

(D) APPOINTMENT OF A MONITOR OR SPECIAL MASTER

24. The final and most far-reaching proposal Smith made for a remedy to provide FAPE to [redacted]. was for the appointment of a monitor or special master to oversee the entire IEP development and implementation process. Smith identified three areas that the monitor could address: (1) intensive training of M.C.S.D. staff, including administration; (2) development of an action plan for [redacted]. and his program; and (3) participation in and oversight of the IEP process. Smith based his recommendation for the appointment of a monitor or special master on his review of state monitoring reports, which he said showed a large number of violations by M.C.S.D. However, these reports are not in evidence in this hearing.

III. CONCLUSIONS OF LAW

(A) AUTHORITY OF THE ADMINISTRATIVE LAW JUDGE TO GRANT APPROPRIATE RELIEF

1. IDEA is largely silent concerning the scope of the authority of an impartial hearing officer[2] to grant remedies in Special Education cases. However, in *Letter to Kohn,* 17 EHLR 522 (1990), the U.S. Department of Education, Office of Special Education Programs (OSEP) states as follows regarding the impartial hearing officer's authority:

> Although Part B does not address the specific remedies an impartial hearing officer may order upon a finding that a child has been denied FAPE, OSEP's position is that, based upon the facts and circumstances of each individual case, an individual hearing officer has the authority to grant any relief he/she deems necessary.

2. In an administrative proceeding, the impartial hearing officer's ability to award relief is coextensive with that of the appellate court to assure the administrative machinery detailed in IDEA is operational. *See Cocores v. Portsmouth, N.H. Sch. Dist.*, 779 F.Supp. 203, 205-06 (D.N.H.1991) (finding that hearing officer has authority to award compensatory education and that a "hearing officer's ability to award relief must be coextensive with that of the court"). Accordingly, the administrative tribunal is vested with the authority to award, among other things, compensatory services and reimbursement, to order specific services and programs for an individual child, to insure the implementation of its orders, and, where necessary, to interpret and direct the implementation of stay put. *Letter to Kohn* (compensatory services, reimbursement); *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999) (necessary related services included in a disabled child's educational program); *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985)(implementation of an individualized education program placing a child in a private school); *Osceloa Co. v. M.L.,* 30 IDELR 655, U.S.D.C. Fla. 1999 (school system order to provide services of expert in functional behavioral analysis); and

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[2] Federal guidelines call the judicial officer in a Due Process Hearing an "impartial hearing officer." 20 U.S.C. §1415. This function is performed in Georgia by an Administrative Law Judge for the Office of State Administrative Hearings. O.C.G.A. 50-13-41; *Ga. Comp. R. & Reg.* 616-1-1 *et seq.*

Conecuh Co. Bd. Of Educ., 25 IDELR 1260, SEA Ala. 1997 (school district ordered to provide expert in psychology). Federal courts consistently have recognized the power of the hearing officer to "order any educational program for the child." *Department of Education, State of Hawaii, v. Katherine D.*, 727 F.2d 809, (9th Cir. 1983); *citing,* 42 Fed. Reg. 42,476, 42,512 (1977).

3. Administrative tribunals in Georgia have broadly interpreted their power to fashion appropriate remedies in IDEA due process hearings. In *Cobb County Bd. of Educ.*, 16 EHLR 844 (SEA Ga. 1990), the court found that a state administrative hearing officer was within his jurisdiction to order reimbursement. *Id. See also, Cobb County Sch. Dist., 26* IDELR 229 (SEA GA 1997) (awarding reimbursement for physical therapy sessions three times a week, daily occupational therapy sessions of at least 30 minutes, and daily speech/language therapy sessions and reimbursement for the costs of the student's residential placement); *Clifford B. v. Gwinnett Co.* (SEA GA, 2000).

4. As administrative tribunals have basically the same authority as the reviewing appellate court to grant relief, impartial hearing officers have the authority to appoint a special master or monitor to ensure that the educational rights of the child are protected. However, in cases where a special master or monitor has been appointed by a court, the facts usually show that the special master or monitor oversaw the initial development of a school system's special education program; the violations of IDEA or state policy regarding special education were numerous or pervasive; or the school system intentionally denied special education services in violation of a court order. *Somerville Public School,* 22 IDELR 764 (SEA Mass. 1995); *Osceola Co. v. M.L, supra; Emma C. v. Eastin,* 2001 U.S.Dist. LEXIS 16099 (N.D.Cal. 2001).

(B) "LEAST RESTRICTIVE ENVIRONMENT"

5. In *Greer v. Rome City School District,* 950 F. 2d 688 (11th Cir. 1991), the court held that a local school system is required to mainstream a child "to the maximum extent appropriate." *Id.*

at 696 (other cites omitted here). The Petitioner cites several studies which indicate that a child receiving special education should be included in the regular education classroom even if such inclusion does not result in academic benefit (*See* Petitioner's Proposed Findings of Fact, Paragraph 47).

6. The *Greer* decision, however, does not state that all children receiving special education should be included in regular education classrooms in all instances. *Greer* allows the local school district:

> (1) To "compare the educational benefits that the handicapped child will receive in a regular classroom, supplemented by appropriate aids and services, with the benefits he or she will receive in a self-contained special education environment." *Id.* at 697.
>
> (2) To "consider what effect the presence of the handicapped child in a regular classroom would have on the education of other children in that classroom...'{W}here a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs.' " *Id.* at 697, *Quoting* 34 C.F.R. § 300.552 Comment (Further cites omitted).
>
> (3) To "balance the needs of each handicapped child against the needs of other children in the district. If the cost of educating a handicapped child in a regular classroom is so great that it would significantly impact upon the education of other children in the district, then education in a regular classroom is not appropriate." *Id.*

The Eleventh Circuit has held that "when measuring whether a handicapped child has received educational benefits from an IEP and related instructions and services, courts must only determine whether the child has received the basic floor of opportunity... the IEP and the IEP's educational outcome need not maximize the child's education." *Doe v. Alabama State Dep't of Educ.*, 915 F.2d at 665 [1990]...While a trifle might not represent "adequate" benefits, *see, e.g., Doe v. Alabama State Dep't of Educ.*, 915 F. 2d at 665, maximum improvement is never required." *JSK v. Hendry County Sch. Bd.*, 941 F.2d 1563 (11th Cir. 1991).

(C) CONCLUSIONS REGARDING APPROPRIATE REMEDY

7. The ALJ agrees with the Petitioner's position that an impartial hearing officer has broad authority to craft a remedy following a Due Process hearing.[3]

8. Based on the evidence presented at this hearing, the ALJ concludes that reimbursement for reading tutorial services provided by A.K. and the partial evaluation by Dr. [redacted] is appropriate.

9. The evidence supports [redacted]'s eligibility for some but not all requested compensatory services. The ALJ concludes that in order to provide the "basic floor" of educational opportunity required by the Eleventh Circuit for FAPE, M.C.S.D. should provide ongoing reading tutorials by A.K., at the rate of 2 sessions per week.

10. The evidence strongly supports [redacted].'s position that Dr. [redacted] should be allowed to complete her independent evaluation. Until she finishes this evaluation and issues a report, it would be premature for the ALJ to order M.C.S.D. to provide one-to-one instruction for any specific program area (other than to provide A.K. as a reading tutor), or to order Extended Day Services or Extended Year Services. The IEP Committee shall implement Dr. [redacted]'s conclusions regarding one-to-one instruction, EDS and EYS in the new IEP.

11. The evidence does not support the Petitioner's argument that [redacted].'s right to be educated in the Least Restrictive Environment has been violated. The Eleventh Circuit does not require the local school system to take Herculean action to mainstream a child in the regular education classroom, especially when the evidence shows that the child not only is disruptive of other students but also that he learns better in a one-to-one situation.

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[3] As correctly stated in Petitioner's Proposed Findings of Fact, the ALJ does not have authority to award attorneys fees in any Special Education Due Process hearing.

12. The evidence does support M.C.S.D.'s conclusion reached in the December, 2001 IEP that [redacted].'s educational needs can be adequately met if he is placed in a MOID classroom. Since the evidence strongly shows that inclusion is an important facet of the special education student's needs, the new IEP will place [redacted]. in the MOID class with appropriate support services to allow him the appropriate degree of inclusion. This issue should be addressed by Dr. [redacted] in her evaluation.

13. The evidence does not support the appointment of a special master or monitor. Although [redacted].'s parents have disagreed with M.C.S.D. over the contents and implementation of his IEP, the factors considered by the courts to appoint a special master or monitor, such as the pervasiveness of the school system's violation of special education law or intentional denial of services, are not present in this case.

FINAL DECISION

It is the Final Decision of the Administrative Law Judge that M.C.S.D. has violated [redacted]'s right to Procedural and Substantive FAPE, and that the Order Granting Petitioner's Motion for Involuntary Dismissal as to Procedural and Substantive FAPE issued February 27, 2002 is incorporated herein.

In order to address [redacted].'s immediate educational needs, and to address how his needs will be met in the future, it is hereby ORDERED that the M.C.S.D. shall take the following action in this matter:

(1) [redacted].'s parents shall be compensated for all costs and expenses they have incurred to date for reading tutorials provided by A.K. The parents shall submit all invoices and receipts to M.C.S.D. within 10 days of entry of this Final Decision, and M.C.S.D. is instructed to make payment within 30 days thereafter.

(2) [redacted]'s parents shall be compensated for all costs and expenses they have incurred to date for evaluation services provided by Dr. [redacted] The parents shall submit all invoices and receipts to M.C.S.D. within 10 days of the date of entry of this Final Decision, and M.C.S.D. is instructed to make payment within 30 days thereafter.

(3) M.C.S.D. shall provide for Dr. [redacted] to complete her evaluation of [redacted], and shall take steps to ensure her access to his classrooms and records. Her evaluation shall include but is not limited to the proper instruction that M.C.S.D. teachers and staff require, provision for ESD and/or ESY, and the appropriate methods and procedures for inclusion of [redacted] in a regular education classroom while he is placed in the MOID program, including support services. M.C.S.D. shall be responsible for payment for her professional services and any reasonable related costs. She shall provide a copy of her evaluation to M.C.S.D.'s Director of Special Education, to M.C.S.D.'s attorney, [redacted]'s parents, and [redacted]'s attorney.

(4) Within 15 days after receipt of Dr. [redacted]'s evaluation, M.C.S.D. shall schedule an IEP meeting to develop a new IEP. The IEP Committee is specifically instructed to include one-to-one reading tutorials provided two times per week by A.K. and placement in the MOID program in the IEP. The IEP Committee shall implement Dr. [redacted]'s conclusion's regarding appropriate one-to-one instruction, EDS and EYS in the new IEP.

(5) The participants in the IEP Committee shall include all those persons listed in DOE Rule 160-4-7.09(4). Dr. [redacted] is specifically included in the IEP Committee as the Independent Evaluator. Dr. Gail McGhee is specifically included in the IEP Committee as an expert in the development and implementation of programs for autistic children.

(6) Until the completion of the IEP ordered in Paragraph 4, the Stay Put provision under IDEA and DOE Rules will be implemented by M.C.S.D. The provisions of the IEP in place at the time of the IEP meeting in November 2000, including [redacted]'s inclusion in the regular education classroom for 10 hours per week.

This 16th day of April 2002.

M. Patrick Woodard, Jr.
Administrative Law Judge
Office of State Administrative Hearings
State of Georgia