

02-0202386

BEFORE THE OFFICE OF SPECIAL ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

██████████,

Petitioner,

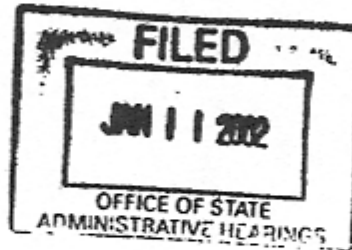
v.

GWINNETT COUNTY SCHOOL  
DISTRICT,

Respondent.

DOCKET NUMBER:

OSAH-DOE-SE-02-02386-67-MMM



For Petitioner:

Dawn R. Smith, Esquire  
Jonathan A. Zimring, Esquire  
Zimring, Smith & Billips, P.C.  
Atlanta, Georgia

For Respondent:

Victoria Sweeny, Esquire  
Melissa K. Stewart, Esquire  
Elizabeth F. Klinsinger, Esquire  
Thompson & Sweeny, P.C.  
Lawrenceville, Georgia

FINAL DECISION

This case involves the challenge by the Petitioner to the proposed Individual Educational Program and placement by the Respondent.

I.

FINDINGS OF FACT<sup>1</sup>

1.

The Petitioner is a ████████-year-old student. He was born on ██████████. DT Cindy P. at 3; HE

14. He is a resident of Gwinnett County, Georgia.

<sup>1</sup> Citations are indicated as follows:

- DT: Direct Testimony
- E: Exhibit
- HE: Hearing Exhibit
- HT: Hearing Transcript

2.

The Petitioner is diagnosed with an autism spectrum disorder and with a pervasive developmental disorder. HE 7, 8, 9, 10. It is undisputed that the Petitioner is eligible for special education services.

3.<sup>2</sup>

Autism is a developmental disorder of neurobiological origin, which is present from birth and very early in development. It attacks essential human behaviors such as social interaction, the ability to communicate ideas and feelings, imagination and the establishment of relationships with others. Autism is best characterized as a spectrum of disorders that varies in severity of systems, age, onset and association with other disorders. DT of Dr. Gail McGee at ¶ 9. As a neurological impairment, autism affects the brain function of autistic children so that they do not think, learn, understand, or process information the same way as their normally developing peers. DT of Dr. Gary Mesibov at ¶ 6.

4.

Children with autism do not develop natural and spontaneous peer interaction skills if they do not receive direct social instruction at very young ages. DT of Dr. Gail McGee at ¶ 26. When children with autism do not develop the ability to learn from other children, their future social development is extremely limited. When children cannot interact well with, and learn from, other children, not only is their participation in education impeded, but they are likely to have tremendous difficulty in participating in work and other community activities in their adult lives.

*Id.*

---

<sup>2</sup> There is nearly no dispute as to the nature and origin of Autism. Paragraphs 3 and 4, with some minor editing, were submitted by the Petitioner in his Proposed Findings of Fact and Conclusions of Law.

5.

Various methodologies have been developed for assisting children with autism. It is generally agreed that autistic children benefit from social inclusion and social interaction with typical peers, and that intervention at a very young age is critical. See DT of Dr. Gail McGee and DT of Dr. Gary Mesibov.

6.

The Petitioner began interventions through the Babies Can't Wait Program (BCW) at the age of 14 months. HT., p. 919. The Petitioner received therapies at home including speech and language therapy, occupational therapy, and music therapy. He also received the services of a special instruction teacher. DT of Cindy P., hereinafter referred to as "HE 14," ¶ 7-13.

7.

When he was approximately two years and three months old, in August 2000, the Petitioner enrolled at the ██████ School which is part of the Emory Autism Research Center. HE 14, ¶ 31.

8.

The Petitioner desires continued placement at the ██████ School while the Respondent recommends placement at the ██████ Center. HT., p. 1010.

9.

On October 26, 2000, the GCSD social worker, Laura Greenberg met with Ms. ██████ and a BCW representative, Amy Corbin to discuss transition from the ██████ program to the GCSD. HT., p. 926.

10.

An Individual Educational Program (IEP) meeting was held on May 24 and 25, 2001. HE B. Prior to the IEP meeting, Ms. [REDACTED] was provided with a tour of the [REDACTED] Center where she observed a six-hour autism class, an integrated class, and other classes. HT., pp. 981-982.

11.

Prior to the IEP meeting, Ms. [REDACTED] was provided with a handbook about the Early Childhood Program which described each placement along the continuum from community-based to self-contained. It also described what each placement typically offered in regard to parent communication and training, staffing patterns, number of students in the respective classes, and the general intensity of the program as represented by the number of objectives in a typical IEP. HT., pp. 983-989; HE. 116.

12.

Also prior to the IEP meeting, Trisha Gallagher, lead teacher for the GCSD Early Childhood autism program drafted proposed IEP objectives and sent advance copies to Ms. [REDACTED]. HT., p. 947.

13.

Ms. [REDACTED] drafted proposed objectives as well and provided a copy to GCSD which Trisha Gallagher copied and shared with those attending the IEP meeting. HT., p. 947.

14.

On May 24, 2001, the Petitioner's parents attended the IEP meeting; the Petitioner's music therapist, Beth Hampshire; speech and language therapist, Brenda Troupe; and occupational therapist, Janet Tackett attended; from [REDACTED] School, Melissa Koehn, the Toddler Program

Coordinator and Michael Morrier, the Program coordinator attended; from BCW, Amy Corbin attended the IEP meeting. HE A, pp. 5-6.

15.

From GCSD on May 24, 2001, Terri McClemmons, school psychologist; Trisha Gallagher and Debbie Betourney, lead teachers for autism; Heather Cannon, teacher; Christi Stout, teacher, Allison Lumpkin, speech and language therapist, and Sandy Scoggins, occupational therapist, attended the IEP meeting. HE A, pp. 5-6.

16.

Trisha Gallagher had drafted proposed levels of performance taken from the parents' documents as well as the arena assessment. All participants agreed to the present levels of performance.

Ms. ████████ added information that she felt was pertinent. HE A, p. 9; HT., p. 945.

17.

The information provided to the GCSD staff prior to the IEP meeting was reviewed, considered, and incorporated into the present levels of performance on the IEP. HT., p. 87-100.

18.

All participants agreed with the strengths and weaknesses which included specific input from the school psychologist, Terri McClemmons, and the private occupational therapist, Janet Tackett. HE B, pp. 27-28.

19.

All participants collaborated on the development of the goals and objectives. HT., p. 949; HE A, 1, pp. 8-23.

20.

Ms. ██████ agreed with the long term goals and, generally, all of the objectives. She wanted "typical" inserted whenever the word "peer" was used and she desired that several of the objectives be task analyzed; otherwise there was agreement to the objectives. HT., p. 107; HE B, pp. 29, 43.

21.

All participants agreed that the Petitioner needed speech and language services in the amount of two (2) hours per week. HE A, p. 4.

22.

All participants agreed that the Petitioner required occupational therapy services in the amount of two (2) hours per month. HE A, p. 4.

23.

The following placements along the continuum were reviewed:

- (1) community based;
- (2) integrated class (head start class which includes up to eighteen (18) children with three to four (3-4) children with disabilities);
- (3) cross-categorical class for two and one half (2 ½) hours per day;
- (4) cross categorical class for six (6) hours per day; and
- (5) self-contained autism class for six (6) hours per day.  
HE A, pp. 8-24; HE 14, ¶s 64-74; HT. p. 987.

24.

Placement at the ██████ School was discussed but there was uncertainty as to where it fit along the continuum. HT., pp. 990-992.

25.

Both the GCSD and the parents agreed that placement in an intensive program that provides personnel trained in autism and specialized instruction is important. HT., pp. 995-996; HE A, p.11, 17.

26.

At the end of the first day of the IEP meeting after almost eight hours of meeting, a recess was called for the evening with agreement on all aspects of the Petitioner's program at that point except the location for services. GCSD recommended the six hour self-contained autism class with three and one half hours of instruction with typical peers daily. Also included was two hours of speech and language therapy per week and two hours of occupational therapy per month. HE A, B.

27.

On May 25, 2001, the meeting reconvened with the following people present: the parents, Debbie Betourney, Sandy Scoggins, Allison Lumpkin and Dorothy Edwards. HE B.

28.

After confirming with the parents that the goals and objectives were agreeable, Ms. Edwards and Ms. Betourney discussed a summer program with the parents. HE B., p. 49-53.

29.

It was determined that the Petitioner would remain at ████████ for the summer and be served at home by GCSD personnel so that they could get to know the Petitioner and provide a smooth transition to GCSD in August. HE B., p. 49-53.

30.

The parents agreed to this component of the IEP but withheld approval of the remainder of the IEP indicating that they wanted to think about it. HE B., p. 52-53.

31.

Without any further follow-up, Ms. [REDACTED] left the IEP meeting and filed for due process on July 13, 2001. HT, p. 1018; HE 1.

### The Buice Center and Walden School

32.

The GCSD's recommended placement is located at the [REDACTED] Center in Gwinnett County.

33.

The [REDACTED] Center is physically a natural school setting. It is located in an elementary school building. The [REDACTED] Center enrolls two hundred regular education students in the Head Start and Governor's pre-K program located on the premises. It also enrolls sixty special education students. HT., p. 1176. The special education students represent a wide array of special needs so that a wide variety of staff with special expertise is present in the facility. HE 1, p. 17. All students eat in the same cafeteria, use the same bathrooms, visit the media center together, pass in the hallways, and play on the playground together. In addition there are school wide assemblies monthly and weekly programs for star students in which all students participate regardless of disability. HE 2, pp. 26-27, 29; HT., p. 315.



34.

The ██████ Center was specifically established to educate preschool children with disabilities. The entire continuum of placements for children with disabilities is represented at the ██████ Center, from regular education classes to self-contained classes. HE 1, p. 17.

35.

The GCSD program offers teachers who are licensed by the State of Georgia and who are masters degree level graduates of university and college training in special education. HE 2, p. 1; HE 3, p. 1.

36.

The Petitioner's proposed GCSD teacher, Ms. Ciatta-Mac Harris, holds a masters degree in special education with a focus on autism from the University of North Carolina at Chapel Hill. She has three years of experience teaching in the autism program at the ██████ Center. She has had a variety of courses in different methodologies used for teaching children with autism including direct instruction, play, and incidental teaching. HE 2, pp. 1-2. She refers to her class as eclectic because she uses the teaching methodology to which the student responds rather than any single methodology. HE 2, p. 3. Ms. Harris, along with the team of individuals that work with the child, determine which methodologies fit the unique needs of the individual child. HT., p. 68-69. Not all children need the same interventions and strategies; therefore, a variety of different types are used in the classroom to meet the needs of the children. Hearing Ex. 2, pp. 1-2.

37.

Ms. Harris's approach to language instruction is multimodal which involves all of a child's senses in an effort to maximize the likelihood that the child will speak. She uses verbalizations,

gestures, pictures, objects, and touch to teach communication and encourage language. HE 2, pp. 5-7, pp. 17-19.

38.

Ms. Harris individualizes the activities for each of her students and they respond and participate at their individual levels of ability. HE 2, p. 30.

39.

In addition to a certified special education teacher, the Petitioner's proposed class also has two para-professionals and five other students. HE 2, p. 30.

40.

The recommended GCSD program would include time in the integrated classroom taught by Ms. Heather Smith. The integrated classroom consists of eighteen children, three or four of whom are children with disabilities. HE 3, p. 2. It is decorated to be developmentally appropriate for three year olds, and all areas of the room are open to the children at all times. The environment is not altered for special needs students. HE 3, p. 4-5.

41.

Had the Petitioner attended GCSD, as is the case for all students, a daily schedule would have been developed during pre-planning, the week before students would have arrived for classes. Scheduling is done at this time due to the need to coordinate with the cafeteria and other school wide assignments. The schedule would have been shared with the parents who could have input to the extent they desired. HT. p., 295-296, 298-302.

42.

The GCSD program also provides for integration of speech and language therapy and occupational therapy into the classroom with the speech and language therapist and occupational therapist coming into the classroom to work with the students. HE 2, p. 8.

43.

The GCSD program provides for individualization, is designed to address the Petitioner's goals and objectives and offers opportunities to receive instruction with typical peers in a structured play group, a movement group, and in the Head Start classroom. At all times the Petitioner would have the benefit of a teacher trained and experienced in teaching students with autism as well as individualized instruction that compliments the Petitioner's learning style. Instruction would take place in 1:1 settings, small group, and in a classroom with seventeen other students. HE 1, p. 17; HE 2, p. 24.

44.

~~Emory University~~ Early Childhood Program enrolls both non-disabled children and children with autism, beginning as young as 15 months of age and continuing until the age of kindergarten entry. The school was set up to test a comprehensive incidental teaching approach to early intervention for children with autism, and is now, as testified by Dr. Gail G. McGhee, Program Director of the Emory Autism Research Center and Project Director of ~~Emory University~~ Early Childhood Program, internationally recognized for a unique, research-derived incidental teaching approach to early treatment of autism. HE 13, DT of Dr. Gail McGee, ¶ 8.

45.

In the ██████ program, there are two non-disabled children for every autistic child. The program operates five days a week, for six hours per day, year round. The model uses typical peers as intervention agents for children with autism through incidental teaching which focuses on child initiated activities. The program also focuses on high levels of engagement, verbalization, interpersonal skills, adaptive behavior and living skills. It has been funded, in part, by the United States Department of Education as a laboratory school to study the social development of typical children, in an effort to identify the behaviors and sequence of social development needed to be socially successful for a child with autism. *Id.* at 31, 37.

46.

At ██████, several one-to-one incidental teaching sessions are provided daily to every child with autism while in the integrated setting. HE 13, DT of Dr. Gail McGee at ¶ 42. These sessions are used when a child with autism has a challenging skill to learn, when massed teaching opportunities to practice are needed, and when it is awkward to blend these teaching opportunities into the ongoing classroom curriculum. Sessions that restrict a child's opportunities for social learning from the presence of typical peers are kept at a minimum. *Id.*

47.

At ██████, activities are interspersed throughout the preschool day to offer numerous sessions of direct instruction in peer interactions. During peer incidental teaching, a typical child learns to use requests about preferred toys to get a response from a peer with autism. Dramatic play sessions take place in centers with thematic materials that support pretend activities, such as visits to McDonald's or a beauty parlor, and interactions are directly prompted among two typical children and one child with autism. *Id.* ¶ 44.

48.

Typical children are directly trained as peer tutors and in the use of modified incidental teaching procedures. Typical peers initially receive a lot of teacher praise for their efforts, and they are rewarded with special "breaks" with a friend or teacher at the snack table. When the typical child is able to get a response from a child with autism, and to maintain the interaction, the teacher backs their chair up approximately three feet and stays out of the interaction unless needed to restore the activity. The teacher will eventually fade to a role of setting up the session and then watching from across the room. *Id.* at ¶ 46; HT. at 899-900.

## II.

### CONCLUSIONS OF LAW

1.

The Petitioner is a child who is eligible for services under the Individuals with Disabilities Education Act ("IDEA"). Upon turning three years of age, the Petitioner was entitled to receive a free appropriate public education. 20 U.S.C.A. §1401(3).

2.

The term "free appropriate public education" means special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program.

20 U.S.C.A. §1401(8).

3.

The free appropriate public education (FAPE) must be provided in the least restrictive environment. 20 U.S.C.A. §14129(a)(5) defines the term "least restrictive environment," in part, as follows:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or 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 such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

4.

School districts are entrusted with the responsibility of providing students with a FAPE. This includes the provision of special education and related services to those who are eligible pursuant to the IDEA. 20 U.S.C. § 1400 et seq.

5.

"The 'free appropriate public education' required by the Act [should be] tailored to the unique needs of the handicapped child by means of an 'individual educational program' (IEP)." Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982).

6.

School districts, in collaboration with parents of students with disabilities, must determine the educational needs of the student through the IEP process and develop an appropriate educational plan for the student based upon the student's individual needs. 20 U.S.C. § 1414. 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. *Id.*; *Doe v. Alabama State Dep't of Educ.*, 915 F.2d at 665. . . . 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).

7.

As set forth by the United States Supreme Court in *Rowley*, the consideration of whether an IEP is appropriate is a two-prong test: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." *Id.* at 206-207.

8.

The Respondent has recommended a placement for the Petitioner within the Gwinnett County School District at the [REDACTED] Center. The Petitioner desires continued placement in a private setting at the [REDACTED] program where the Petitioner is currently enrolled.

9.

The Petitioner's preference for the [REDACTED] program is mainly based on the methodology used by the program. The Petitioner deems the [REDACTED] program to be most beneficial during this critical developmental stage in his life.

10.

The Supreme Court in Rowley held that a state school system satisfies the FAPE requirements when it provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Id. at 203.

11.

Based on the evidence presented at the hearing, I conclude that the Respondent meets the requirements of the IDEA and the requirements outlined by the Supreme Court in Rowley. The Respondent has shown that the placement offered to the Petitioner is appropriate. The school recommended by the Respondent offers the Petitioner: (1) close proximity to his home, (2) a natural school setting, (3) an opportunity for interaction with typical peers, (4) specialized educational programs for children with disabilities, (5) regular classes and self-contained classes, (6) licensed teachers with masters degrees in special education, (7) a lead teacher with a masters degree in special education with a focus on autism, (8) two para-professionals, (9) time in an integrated classroom, (10) integration of speech and language therapy, (11) integration of occupational therapy, (12) instructions in 1:1 settings, small group settings, and instructions in classrooms with seventeen other students, and (13) programs to address the communication, social, cognitive, adaptive, and motor needs of the Petitioner.

12.

The Respondent scheduled and held a two day IEP meeting where the Petitioner's parents, several educators from Gwinnett County, and representatives of the ~~XXXXXX~~ program participated in the discussions. During the IEP meeting, it was agreed that the Petitioner requires: (1) a center-based program, and (2) teachers trained in autism. The ~~XXXXXX~~ Center provides for both of these requirements.



13.

Had the Petitioner agreed to attend the ██████ Center, he would have had the opportunity to remain at ██████ during a transition period. The Petitioner's parents, meanwhile, would have had the opportunity to work closely with the Petitioner's teachers to prepare a daily schedule for him based on the IEP that had been prepared.

14.

The evidence presented shows that all information provided to the IEP committee as well as the parents' suggestions were considered by the committee. The evidence further shows that the teachers at the ██████ center welcome input from the parents of the Petitioner and are eager to work with them to implement the IEP.

15.

Much of the hearing in this matter centered around the question of methodologies used by the ██████ Center and the ██████ program. "[O]nce a court determines [whether] the requirements of the [IDEA] have been met, questions of methodology are for resolution by the States." Rowley, 458 U.S. at 208. It is not the intent of the IDEA to overturn an educational agency's choice of educational methodologies, as long as they are appropriate to meet a child's educational needs." Northwest Indep. Sch. Dist., 4 ECLPR ¶ 281 (SEA Tex. February 26, 2001). Even if a particular methodology could be shown to maximize a student's learning, the IDEA does not require that that methodology be utilized. Prince George's Co. Pub. Schs., 3 ECLRP ¶ 224 (SEA Md. 1998). Instead, "methodology decisions are appropriately within the domain of the educational agencies with respect to their choices on which methodologies to use in school programs." Id., at 16. "Parents cannot compel these choices, no matter how strong their preference." In re: Student with a Disability, 34 IDELR 22 (SEA Mich. May 12, 2000).

16.

The educational program developed by the Respondent is individualized for the Petitioner's specific needs and is reasonably calculated to provide educational benefit in a least restrictive environment. The recommended placement is reasonably calculated to make certain that the Petitioner makes sufficient progress toward the goals and objectives in the IEP.

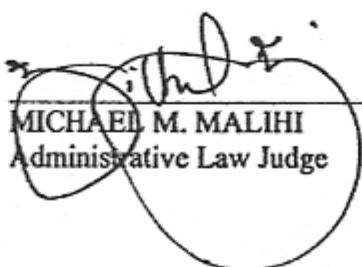
17.

Therefore, it is Ordered that the recommendations of the IEP committee be implemented. However, this Tribunal recognizes that a hasty change from the ~~Center~~ program to the ~~Center~~ Center may perhaps prove harmful to the Petitioner's progress. Therefore, it is Ordered that the Petitioner may remain at the ~~Center~~ program for the next three months at the expense of the Respondent. During this transition period, the Petitioner's parents will have an opportunity to work with the Petitioner's teachers to finalize a daily schedule for the Petitioner. The transition period will also provide the Petitioner with the opportunity to become more familiar with the new teachers and the new school.

18.

The Petitioner's challenge to the Respondent's proposed IEP and placement is **DENIED**.

SO ORDERED, this the 11th day of January, 2002.

  
MICHAEL M. MALIHI  
Administrative Law Judge