

02-0203186

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



PIERCE COUNTY SCHOOL SYSTEM, )  
Petitioner, )  
v. )  
[Redacted] )  
Respondent. )

DOCKET NO.:  
OSAH-DOE-SE-02-03186-113-JRA

FINAL DECISION

I. Introduction

The above matter came before the Office of State Administrative Hearings (OSAH) on September 7, 2001 as a result Petitioner's, Pierce County School System's ("Local School System" or "LSS") request for a due process hearing under the Individuals with Disabilities Education Act, ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*<sup>1</sup> The sole issue presented at the hearing was whether Respondent should be identified as a "disabled child" eligible to receive services under IDEA, as that term is defined under the act at 20 U.S.C. § 1401(3)(A)(i). Based on the evidence presented at the hearing, the following findings of fact and conclusions of law are made. It is determined that the evidence currently supports a finding of disability under the category of menta retardation/intellectual disability; that the child has made minimal to almost no educational progress in the curriculum offered by the LSS over the last approximately three years. This decision will affirm that the child is disabled and entitled to services under IDEA. Additionally the Petitioner is ordered to develop as soon as practical an Individualized Education Plan ("IEP") and for reasons more thoroughly discussed in the decision, Petitioner is ordered to supplement, within 60 days, the current evaluation with an evaluation of a physician and/or clinician familiar with treating children with Attention Deficit Disorder (ADD).<sup>2</sup> The results of this supplemental evaluation will be considered in a subsequently convened IEP meeting.

II. Procedural History

A due process request for expedited hearing was made by the LSS on August 22, 2001 and

<sup>1</sup> At the hearing Petitioner was represented by Deen Strickland; Respondent was represented by his mother, Ms. [Redacted]. Petitioner's representative/designee was Brenda Whitted.

<sup>2</sup> Although I indicated at the hearing that I would leave this matter to the LSS to request, I have reconsidered and conclude that based on the evidence presented, the evaluation needs to be supplemented in the manner identified by the LSS's school psychologist.

received in the offices of Office of State administrative Hearings (OSAH) on the same day via fax. A hearing was scheduled for and conducted on September 7, 2001 in the Pierce County Courthouse, Blackshear, Georgia. The evidentiary record was closed the same day.

### III. Findings of Fact

1.

██████████ is a child, currently ████████ years old, who entered kindergarten in the ██████████ Elementary School, Pierce County School System in the school year, 1998-1999. His readiness for kindergarten was initially assessed on the kindergarten readiness test and language screening instrument but was inconclusive. (Testimony of Whitted, Transcript ("T") at p. 15; testimony of Ingram, T. At pp. 97-98; Petitioner's Exhibit 33)

#### 1998-1999 School Year

2.

Throughout the kindergarten year, ██████████ made almost no progress. He was not achieving letter recognition or letter sounds; he could only recognize the letter "O" by the end of the year. ██████████ received one-on-one assistance with the classroom paraprofessional. During the year he was referred to the Student Support Team (SST) in order to solicit the help of other teachers. (Testimony of Clough, T. At 25-26; Petitioner's Exhibit 12)

3.

At the end of the kindergarten year, ██████████ was evaluated for promotion to the first grade by reviewing his report cards, the results on the standardized Georgia Kindergarten Assessment Test (GKAP), and on the Basic Literacy Test (BLT). On the GKAP, ██████████ was able to perform only 4 out of 28 items on the test. This year he was given the Iowa Basic Skills Test (ITBS) to assess how much he achieved in letter recognition, sounds and printing. The results of this test showed no positive progress. (Testimony of Clough, T. at pp. 28-33; Petitioner's Exhibits 16, 32 and 39)

4.

In spite of ██████████'s failure to meet promotion criteria, he was promoted to the first grade; his mother agreed to work with him during the summer. (Testimony of Clough, T. at p. 33)

#### 1999-2000 School Year

5.

During the first grade, ██████████ was struggling in the academic areas of reading, math, spelling and English. By the end of the year he had made very little progress; he recognized a few letters and letter sounds. Additionally he would show learning regression; he would know something one day but not the next. (Testimony of Dixon, T. at pp. 38-39)

6.

To assist ██████████ in learning to read, he was placed in the Reading Readiness program. This program is designed to teach children reading strategies and is aimed at assisting the lower 20% of children in the class struggling to learn to read. The Reading Recovery teacher spends thirty minutes individually with the student each day. This is a twenty week program; ██████████ completed six weeks when he was removed due to lack of progress. In addition, ██████████ participated in a literacy program but was removed at the request of his mother.

(Testimony of Dixon, T. at 41-42; testimony of Graham, T. At pp. 79-86; Petitioners' Exhibits 37,38;44)

7.

Additional services provided to [REDACTED] included one-on-one assistance with language from the classroom paraprofessional through the SLA (Student Instructional Assessment) program. His teacher attempted management techniques such as changing his desk location. (Testimony of Dixon, T. at pp. 49; 51-52; Petitioner's Exhibit 34;40)

8.

At the end of the first grade, [REDACTED] was still having problems with his ABCs, with beginning sounds and blending sounds together. He was a non-reader. His teacher had observed some attention deficit and behavior problems and referred him for a psychological evaluation on February, 4, 2000; referred him for the behavior disorder and early intervention program (EIP). (Testimony of Dixon, T. at pp. 43-50; Petitioners' Exhibits 4; 6;7;8;9;30)

9.

[REDACTED] was evaluated for promotion to the second grade based on his report card, ITBS scores, and the Basic Literacy Test. He did not meet the criteria for promotion and with the agreement of his mother, he was retained in the first grade. ( Testimony of Dixon, T. at pp. 40; 53-54; Petitioner's Exhibits 35;36)

#### 2000-2001 School Year

10.

During the second year in first grade, [REDACTED] continued to fail to make academic progress. He continued to show progression and then regression in learning. He was given a modified second grade curriculum, i.e., two spelling words instead of twenty, but remained unsuccessful. For the entire year he could not grasp the concept of a capital letter beginning a sentence and a period punctuating the end. Testing on letter sounds showed he could identify 5 out of 19. His ITBS scores this year indicated he was performing below grade level. (Testimony of Johnson, T. at pp. 57-66; Petitioner's Exhibit 23;31)

11.

[REDACTED] Continued to receive services through the SST and one-on-one assistance from the paraprofessional. When assessed for promotion to the second grade, he failed to meet promotion criteria but was administratively promoted. (Testimony of Johnson, T. at pp. 61-62; Petitioner's Exhibits 24;28;29)

#### Psychological Evaluation

12.

Although initially refusing permission for an evaluation, permission was obtained from [REDACTED]'s mother in mid-October, 2000 and a psychological evaluation completed by the school system psychologist on November 4, 2000. The school psychologist had been contacted by teachers about [REDACTED]'s performance as early as the kindergarten year. (Testimony of Engram, T. at pp. 88-89; testimony of Walker, T. at ; Petitioner's Exhibits 14;18;20;21)

13.

Subsequent to obtaining background information and conducting numerous standardized tests designed to identify intellectual functioning, the psychologist concluded based on these tests that [REDACTED]'s intellectual/cognitive ability fell within the mild mental retardation classification of abilities. Test results on various tests showed IQ results below 70. [REDACTED]. Showed adaptive weaknesses in receptive and expressive language skills, weak interpersonal skills, and poor use of his play and leisure skills. Severe attention deficit was observed during the testing which may have affected the performance on the tests. It is possible [REDACTED] is a slow learner. These observations led the psychologist to recommend a medical evaluation for ADD. Additionally he completed the intellectual disability report which the state requires completed on each child the LSS considers disabled. These results were discussed with the child's mother. His parents have consistently opposed identifying [REDACTED] as a disabled child and have refused services under IDEA. (Testimony of Walker, T. at pp. 111-133; Petitioner's Exhibit 2;20)

2001-2002 School Year

14.

Based on the opposition of the parents to receipt of services under IDEA and their communication to the school system that the child would not be returning to the LSS, no action was taken during the 2000-2001 school year. Once the child returned for his second grade, a decision was made after a review of [REDACTED]'s academic performance since kindergarten, performance on numerous tests, the results of the psychological evaluation, to request a due process hearing to identify [REDACTED] as a disabled child entitled to services under IDEA. (Testimony of Whitted, T. at pp. 15-24; Petitioner's Exhibit 1)

IV. Conclusions of Law

1.

This matter is governed by the Individuals with Disabilities Act (IDEA) and the regulations implemented under IDEA which require that a free and appropriate education (FAPE) be provided to any student who is identified as having a disability as defined by the Act, 20 U.S.C. § 1401(3); in the least restrictive environment 20 U.S.C. § 1412 (1); 34 C.F.R. § 300.4. The FAPE requirement has been interpreted to mean that "the education to which access is provided is sufficient to confer some educational benefit upon the handicapped child". *Board of Education of the Hendrick Hudson Central School District v Rowley*, 458 U.S. 176(1982) at 200.

2.

The above matter is Petitioner's request for a due process hearing under IDEA. Consequently, Petitioner bears the burden of persuasion and going forward with the evidence. OSAH Rule 616-1-2-.07(1). The standard of proof is preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

3.

Based on the above findings of fact, the preponderance of the evidence supports the determination that [REDACTED] is a disabled child as that term is defined under federal law:

(3) Child with a disability.

(A) In general. The term "child with a disability means a child--

(1) with mental retardation, hearing impairments (including deafness), visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities. 20 U.S.C. § 1401(3)(A)(I).

Under state regulations, [REDACTED] meets the requirements under the category of having an intellectual disability. This is defined under state regulations as "Intellectual disabilities refers to significantly subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior that adversely affect educational performance and is manifested during the developmental period." Department of Education Rule 160-4-7-.02(e) Significant subaverage general intellectual functioning is defined as 70 IQ or below. *Id.*

Further evaluation may result in his disability under the category of other health impaired if ADD is established. Department of Education Rule 160-4-7-.02(g).

The parents are obviously concerned that identifying their child as disabled will ultimately be detrimental to his education. They may be reassured by the state's policy statement on special education: "It is the policy of the State Board of Education that the term special education shall not be used to label students; rather, it is the policy of the State Board of Education that special education is a service for such students and not a place where they are sent or a label they wear." Policy of the State Board.

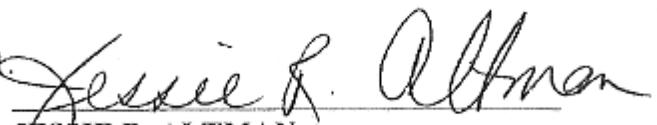
4.

Based on the school psychologist's observation of severe attention problem and the uncertainty of its effect on the intellectual functioning test results as well as the need to know if ADD is present to ultimately provide FAPE, the evaluation should be supplemented with a medical/clinical evaluation for ADD.

**Decision**

- (1) [REDACTED] is determined to meet the definition of a disabled child and is entitled to services under IDEA;
- (2) Petitioner shall convene as soon as practical a meeting to develop an IEP following the appropriate procedures under the law;
- (3) Within 60 days, Petitioner shall arrange for a supplemental medical/clinical evaluation with a physician/clinician specializing in ADD;
- (4) Subsequent to receipt of the supplemental evaluation, another meeting shall be scheduled as soon as practical to determine if changes to the services identified under the initial IEP should be made.

SO ORDERED this 21<sup>st</sup> day of September, 2001.

  
JESSIE R. ALTMAN  
ADMINISTRATIVE LAW JUDGE