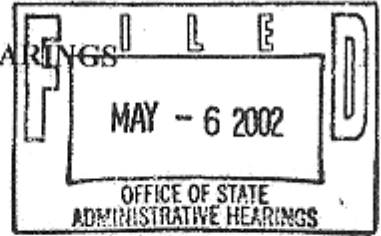


02-0226662

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



DOE,
Petitioner,

v.

WHEELER COUNTY SCHOOL
SYSTEM,
Respondent.

DOCKET NUMBER:
OSAH-DOE-SE-0226662-153-SWT

FINAL DECISION

I. Introduction

Pursuant to a request for a hearing filed by Petitioner, a hearing was held on April 12, 2002. **DOE**, Petitioner's mother, represented Petitioner. Phillip L. Hartley, Esq. represented Respondent. The issue presented is whether or not the school system has provided a free appropriate public education in the least restrictive environment in accordance with the Individualized Education Plan (IEP) for school year 2001-2002 specifically with regard to the Spanish and Chemistry classes in which the student is enrolled. For reasons indicated, it is determined that the school system has provided a free and appropriate public education to the student with regards to the Spanish and Chemistry classes in which the student is enrolled and that no further special accommodations in these courses are indicated.

II. Findings of Fact

1.

DOE is a **DOE**-year-old female who attends **DOE** High School where she pursues a college preparatory course. **DOE** first entered Wheeler County School System in 1996 when she attended the sixth grade at **DOE** Middle School. She had transferred from a school in the State of Virginia where she had been receiving special education services under the Other Health Impaired category with a diagnosis of Attention Deficit Disorder (ADD) and a learning disability in written expression. When she enrolled in Wheeler County School System, Renee Garrett, the system's Director of Special Education, and the school psychologist evaluated her on September 13, and 27, 1996 respectively. The results of the evaluation indicated that **DOE** was functioning within the average range of intelligence, at or slightly below age and grade level; however, it further indicated that results in the area of written expression suggest a severe discrepancy between the student's ability and achievement with significant behaviors exhibited frequently enough to warrant concern in areas of inattention, impulsiveness, and hyperactivity.

Subsequently, an evaluation of the student took place on August 18, 2000 at which time the Woodcox-Johnson Test of Achievement and the Bender-Gestalt Test were utilized with a conclusion that the student was of average intelligence with exceptional reading abilities, good writing skills and written expression; however, difficulty was indicated in basic writing, punctuation and grammar with math scores difficult to assess due to the student's lack of effort. Subsequently, the student was evaluated with a determination that she should be diagnosed as having Attention-Deficit /Hyperactivity Disorder, predominantly Inattentive Type with impulsive features and restlessness and with low self-esteem symptoms of depression and mild anxiety. The parents declined a recommendation of medical intervention. Pursuant to the development of an Individualized Education Program (IEP) in October 2000, [redacted] received evaluation for assistive technology under the Georgia Project for Assistive Technology (GPTA) in November 2000 that indicated [redacted] would benefit from the use of assistive technology tools in the area of academic and learning aids-written communication to supplement the classroom tools, teaching strategies and accommodations already being employed. (Respondent Exhibits J-1 and J-28)

2.

Incident to a meeting on October 22, 2001 attended by [redacted]'s parents, an Individualized Education Program (IEP) was implemented on October 23, 2001. Subsequently, [redacted]'s mother filed a due process hearing request, the third such request in a two year period, that she later withdrew in accordance with a settlement reached by the parties to provide one on one instruction in Algebra II through use of a self-paced computer curriculum. Incident to the settlement, an IEP was developed on November 12, 2001 that was implemented on that date and ends on May 17, 2002. It is the current IEP that [redacted]'s mother challenges as it regards Spanish and Chemistry, two subjects that [redacted] is currently failing. (Respondent Exhibits J-13 and J-28)

3.

[redacted] is passing four of her six classes (five of six at the end of the first semester) in a college preparatory curriculum and has successfully passed the writing portion of the state graduation exam. One of [redacted]'s current IEP goals is to earn credits required to obtain a college prep diploma that include Spanish and Chemistry, two courses that she is currently failing. [redacted]'s parents insist that one on one instruction is necessary for [redacted] to accomplish this goal; however, one on one instruction is often made available in both subjects before or after school and [redacted] has often chosen not to avail herself of the opportunities for such instruction either by not attending or not being attentive when she does so. Such courses are often difficult for students with no disabilities. While [redacted] wants to continue in a college preparatory curriculum, the two courses are not required in the alternative general or tech diploma option. Such an option has been discussed with [redacted] and [redacted]'s parents as an opportunity to graduate on schedule; however, it has been declined. Such a degree would preclude admission to a four year degree program; but not to a two year junior college degree program which if obtained would allow opportunity for admission to a four year degree program. (Testimony of William Black; Respondent Exhibits 52 and 53).

4.

As part of special accommodations for [REDACTED], all of teachers on a daily form notify [REDACTED] and her parents of her homework, missed assignments and upcoming assignments. The teacher's coordinate by passing the daily forms to the next teacher with the last teacher of the day insuring that the assignment sheets are placed in [REDACTED]'s book bag so they get home for the parent's information. Further special accommodations include test and grading accommodations such as makeup tests, additional time on tests, oral test in Spanish, and not counting zeros as would be done with other students, study assistance including use of a tape recorder, providing peer tutors, checking notes for accuracy and being available before and after school. (Testimony of William Black; testimony of Jane Futral; testimony of Cathryn Barker; Respondent's Exhibits J-17, J-18, J-19, J-20, J-21, J-22, J-29, J-30, J-31, J-32, J-39, J-42, and J-43).

5.

Both Jane Futral, who teaches [REDACTED] Spanish and Journalism, and Cathryn Barker, who teaches [REDACTED] Chemistry have many years of experience as educators and are well qualified to teach their respective subjects. Although Ms. Futral opines that [REDACTED] needs practice and would benefit from one on one instruction in Spanish, [REDACTED] has not routinely availed herself of such opportunities either before or after school and has routinely not completed homework assignments carefully placed in her book bag at the end of each day. Ms. Barker opines that chemistry is a tough subject that builds on itself and takes a lot of outside work to keep up. While [REDACTED] has often come in for early morning assistance, she has consistently failed to complete homework assignments. Both teachers opine that [REDACTED] is capable of passing their respective courses if she would focus on the tasks and complete homework assignments and avail herself of tutoring opportunities made available either before, during or after school. Even though she is not currently passing, she has made educational progress. (Testimony of Jane Futral and Cathryn Barker).

6.

[REDACTED]'s parents opine that since [REDACTED]'s grades improved with one on one instruction in Algebra, that [REDACTED] would likewise benefit from such instruction in Spanish and Chemistry. Such a conclusion is unsupported by expert testimony and the testimony of Ms. Futral and Ms. Cathryn Barker, both of whom are qualified educators, is contrary on the point. (Testimony of [REDACTED]; testimony of Jane Futral; and testimony of Cathryn Barker).

7.

Renee Garrett, who has an Education Specialist Degree in School Psychology, a Master's Degree in Learning Disabilities and a Bachelor's Degree in Mental Retardation, opines that [REDACTED] needs structure, organization, extended time to complete assignments, and reminders. All of these

things are being done by [redacted]'s teachers, not only in Spanish and Chemistry, but in all her other classes as well. (Testimony of Renee Garrett).

III. Conclusions of Law

1.

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, *et seq.*; 34 C.F.R. § 300 *et seq.* and *Ga. Comp. R. & Regs.* at Chapter 160-4-7(DOE Rules). It is required 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. § 1412(l); 34 C.F.R. § 300.4 in the least restrictive environment. Georgia regulations require that a due process hearing must relate to issues of identification, evaluation, placement or the provision of a free appropriate public education (FAPE). DOE Rule 160-4-7-.02(7)(b)(1).

2.

The initial burden of persuasion in these matters to show that the Individualized Education Program (IEP) is appropriate and that it provides free appropriate public education (FAPE) in the least restrictive environment. After such a burden is met, it shifts the burden to the other party. Under well-established practice, a party challenging the terms of an IEP bears the burden to present evidence to challenge the terms of an IEP or the proposed placement. See *Tatro v. Texas*, 703 F.2d 823, 830 (5th Cir.), *aff'd in part and rev'd in part sub nom., Irving Indep. School Dist. v. Tatro*, 468 U.S. 883 (1984) ("because the IEP is jointly developed by the school district and parents, fairness requires that the party attacking its terms should bear the burden of showing why the educational setting established by the IEP is not appropriate"); also *Renner v. Board of Educ. of Pub. Schs. of Ann Arbor*, 185 F.3d 635, 642 (6th Cir. 1999); *Doe v. Board of Educ. of Tullahoma City Schs.*, 9 F.3d 455 (6th Cir. 1993); *Cordrey v. Euckert*, 917 F.2d 1460, 1466, 1469 (6th Cir. 1990); *Doe v. Defendant I*, 898 F.2d 1186, 1191 (6th Cir. 1990).

The parents allege procedural violations of IDEA; however, their only basis for showing that the IEP is not appropriate is that [redacted] is failing and that in their opinion one on one tutoring in Spanish and Chemistry is indicated as it was in the Algebra course. Evidence indicates that one on one tutoring is available and that [redacted] does not always avail herself of such opportunities. Evidence also indicates that [redacted] routinely fails to complete homework assignments. In light of [redacted]'s failure to avail herself of existing one on one tutoring, it is not reasonable to assume that additional such tutoring would be utilized. Contrary to the parents' assertion, the testimony and documents in evidence show that Respondent has substantially complied with the procedural requirements of IDEA. The procedural prong of a FAPE analysis requires an assessment of whether the local school system complied with the procedures set forth in IDEA. *Weiss v. School Board of Hillsborough County*, 141 F.3d 990 (11th Cir. 1998).

The Individuals with Disabilities Act (IDEA) requires that a school district provide free, appropriate education to children with disabilities. 20 USC § 1400, *et seq.* A free appropriate public education (FAPE) includes special education and related services which have been provided at public expense under public supervision and direction without charge, meets the standards of a state educational agency, includes an appropriate elementary or secondary education in the state involved; and are provided in conformity with an Individualized Education Program. **Burlington School Committee v. Dept. Of Ed. Of Massachusetts**, 471 U.S. 359 (1980) For a school district to meet its duty of providing a free, appropriate public education, it is required that the education provided confers educational benefit upon the disabled child. **Hendrick Hudson Cent. School v. Rowley**, 458 U.S. 176 (1982). A two-pronged test was established to determine whether a local school district is providing a disabled student with an appropriate IEP, the first prong being a determination whether the school district has complied with the administrative procedures set forth in the act and the second prong being a determination whether or not the IEP is reasonably calculated to allow the child to achieve educational benefit. *Id.* An appropriate public education does not mean absolutely the best or "potential maximizing" education for the individual child, but rather the states are obliged to provide a "basic floor of opportunity" through a program individually designed to provide educational benefit to the handicapped child. *Id.* There is no universal measure of "some educational benefit" and each case must be reviewed upon its merits rather than attempting to articulate any particular formula for determining the adequacy of educational benefits conferred by any given IEP. **JSK by and through JK v. Hendry County School Bd.**, 941 F. 2d 1563 (11 Circuit 1991). A review of the record in its entirety support a conclusion that Respondent provides a program designed to afford the student "adequate" educational benefits and that the IEP developed is reasonably calculated to allow the child to achieve educational benefit.

IV. Decision

The IEP implemented on November 12, 2001 with an ending date of May 17, 2002, is reasonably calculated to allow (C) to achieve educational benefit and free and appropriate education (FAPE) in the least restrictive environment is met. Respondent will continue to provide service indicated in said IEP and not required to provide any more one on one tutoring in Spanish and Chemistry than is currently available to Petitioner.

SO ORDERED, this 6th day of May, 2002.


 Steven W. Teate
 Administrative Law Judge