

02-0229648

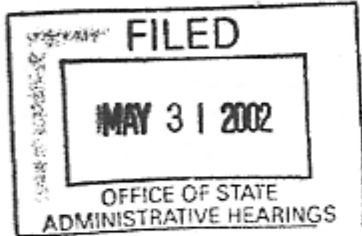
IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

_____,
Petitioner,

v.

COBB COUNTY SCHOOL SYSTEM,
Respondent.

)
)
) DOCKET NO.
) OSAH-DOE-SE-0229648-33-JBG
)
)



FINAL DECISION

Appearances: For Petitioner, _____.: Pro se

For the Respondent, Cobb County School System: Sylvia G. Eaves, Esq.

I. INTRODUCTION

This administrative action comes before the Tribunal pursuant to a request for hearing pursuant to the Individuals with Disabilities Act (20 U.S.C. § 1400 *et seq.*) filed by the parent of Petitioner appealing the decision of Respondent to place Petitioner at _____ Academy. The Tribunal has jurisdiction to hear this matter pursuant to Article 2 of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act" and the *Official Compilation of Rules and Regulations of the State of Georgia* (hereinafter "*Ga. Comp. R. & Regs.*") at Chapter 616-1-2 (OSAH Rules). The parties were provided the opportunity to present sworn testimony and documentary evidence at a hearing in Courtroom J, Cobb County Superior Court, Marietta, Georgia, at 10:00 a.m., on May 21, 2002. The record was closed on May 28, 2002. For the reasons indicated below, Respondent's placement of Petitioner at _____ is **AFFIRMED**.

II. FINDINGS OF FACT

This Tribunal has considered the entire evidence in this case, and based upon a preponderance of the credible evidence makes the following specific findings of fact:

1.

Petitioner is 10 years of age and in the 7th grade at Respondent's [REDACTED] Middle School ("the School"). (Testimony of Pickelsimer; Respondent's Exhibit 19.)

2.

Petitioner entered the School as a 6th grader on August 23, 1999. (Respondent's Exhibit 19.)

3.

Petitioner was retained in the 6th grade for the 2000-2001 school year because he failed his academic classes. (Respondent's Exhibit 19.)

4.

At the end of the 1999-2000 school year, the School referred Petitioner to [REDACTED] School, the Respondent's alternative school for students with significant behavior problems. He was referred for continual disruptive behaviors in the classroom that interfered with the education of other students, defiance of authority, profanity and fighting. He was extremely negative towards the School and refused to do school work. He expressed no remorse when corrected, and interventions used from positive reinforcement to suspension were unsuccessful in changing his behavior. (Respondent's Exhibit 1).

5.

Petitioner attended [REDACTED] School for the 2000-2001 school year. His defiant and disruptive behaviors continued. He was confrontational with adults and peers, threatened to physically harm students, and was in several fights. He was out of school for 59 days as a result of suspensions. He was referred to special education and provided crisis intervention services in a special education class at [REDACTED] School. (Respondent's Exhibit 1.)

6.

Dr. Barbara Wideman, Respondent's school psychologist, conducted a psychoeducational evaluation of Petitioner. Testing indicated that Petitioner was functioning in the low-to-average range of intellect. Emotionally, Petitioner presented as a very angry young man. Dr. Wideman found that his pattern of negativistic, hostile, and defiant behaviors significantly impacted both his social and academic functioning. Dr. Wideman determined that Petitioner met the diagnostic criteria for oppositional defiant disorder (ODD). (Testimony of Wideman; Respondent's Exhibit 2.)

7.

Dr. Wideman recommended that Petitioner be considered for eligibility within a special education program designed for the emotionally and behaviorally disordered (EBD) student. She also stated that Petitioner could benefit from a behavior intervention plan where reteaching and retraining of inappropriate skills are used. (Testimony of Wideman; Respondent's Exhibit 2.)

8.

An eligibility and IEP meeting was held on October 4, 2001. Petitioner was determined eligible for special education under the category of emotional and behavioral disorders. (Respondent's Exhibit 3.)

9.

The goals and objectives in the October 4 IEP addressed Petitioner's difficulties in following directions, maintaining verbal control with adults and peers, accepting consequences without arguing or blaming others, maintaining physical control in frustrating situations, remaining in assigned areas, and moving appropriately to specified areas during transitions. The committee determined that Petitioner should be placed in a self-contained EBD class at the

School, his home school. Petitioner would attend health and exploratory courses in regular education classes. Petitioner's mother consented to the placement. (Respondent's Exhibit 3.)

10.

The self-contained EBD class at the School had a student/teacher ratio of 10:1 with a paraprofessional. (Testimony of Sheila Pickelsimer.)

11.

Instruction in the self-contained EBD class included social skills as well as academic subjects. Students were taught replacement behaviors, life skills, and anger management. The Prevention/Intervention Center of the Respondent also provided an anger management group every Thursday. (Testimony of Pickelsimer.)

12.

Behavior management in the class included a token economy system in addition to individual contracts. Interventions and consequences such as verbal/nonverbal redirection, one-on-one teacher/student conferences, and loss of privileges were implemented when a misbehavior occurred. If a misbehavior intensified, intervention by or referral to a school administrator might be required. (Testimony of Pickelsimer.)

13.

When Petitioner first came to the EBD class, he exhibited appropriate behaviors and met his IEP objectives mainly during the morning classes. His behavior began to deteriorate after lunch. He used profanity, left the classroom without permission, was tardy for class, failed to follow directions, and exhibited verbal and physical aggression. Ms. Sheila Pickelsimer, the classroom teacher, tried to redirect Petitioner and teach replacement behaviors. (Testimony of Pickelsimer.)

14.

During an emergency evacuation of the school on November 28, 2001, because of a fire in the building, Petitioner intimidated and bullied boys from another class and threatened to fight them. When the class returned, Petitioner refused to come into the class even with teacher and school administrator intervention. Petitioner used profanity and threatened the administrator by stating, "back the fuck off unless you want to be slapped." He became more agitated, pounded his fist into the door, and walked around the classroom saying he was going to "hurt somebody, anyone." He continually pounded his fist into his hand. Ms. Pickelsimer had to relocate the rest of the class to ensure the students' safety. Petitioner refused to comply with the campus police officer and physically resisted his requests. He was arrested and removed from the school by the Cobb County Police. The duration of the episode was about an hour, and its intensity was severe. (Testimony of Pickelsimer.)

15.

A manifestation determination review meeting was held regarding the November 28 incident, as ~~OOB~~ administration recommended out-of-school suspension. The manifestation determination review committee determined that Petitioner's misconduct was related to his disability. The committee completed a functional behavior assessment, revised Petitioner's behavior intervention plan (BIP), developed new goals and objectives, and agreed to obtain the assistance of Respondent's behavior intervention specialist. (Testimony of Pickelsimer; Respondent's Exhibit 7.)

16.

The revised goals and objectives addressed Petitioner's difficulty in using respectful language at school, maintaining physical control without demonstrating aggressive behaviors,

following directions, remaining in assigned areas, and moving appropriately to specified areas during transitions. (Testimony of Pickelsimer; Respondent's Exhibit 7.)

17.

During a fire drill on January 29, 2002, Petitioner refused to comply with directions, used profanity toward the teacher, and refused to enter the classroom. Once staff succeeding in getting him into the room, he did not remain. All school administrators were involved in trying to locate him in the building, and the principal finally found him and returned him to class. (Testimony of Pickelsimer; Testimony of Williams; Respondent's Exhibit 9.)

18.

A manifestation determination review meeting was held on January 30, 2002, regarding this incident. The manifestation determination review committee determined that Petitioner's misconduct was related to his disability. The committee recommended one-on-one services for Petitioner at school and with special education support to work on behavior replacement strategies for a 5-day period. The committee also recommended a referral to ~~_____~~ Academy, the Respondent's psychoeducational program, as the severity, frequency, and duration of Petitioner's misconduct was escalating. (Testimony of Pickelsimer; Respondent's Exhibit 9.)

19.

During January 2002, Ms. Stacy Cihak, Respondent's behavior intervention specialist, began working with Petitioner and his classroom teachers. She observed Petitioner on January 18, 23, and 25 and February 4 and 7 in different classroom settings. She also interviewed school staff who interacted with Petitioner as well as individuals and community agencies who were providing services to Petitioner. She worked with Ms. Pickelsimer and Petitioner in the

classroom. Through this process, she collected information to determine the perceived function of Petitioner' behavior in order to recommend intervention strategies specific to that function.

(Testimony of Stacy Cihak.)

20.

Ms. Cihak determined that the function of Petitioner' misconduct was to gain access to peers or activities and attention from adults. She recommended teaching Petitioner appropriate ways to gain what he desired in order to decrease the misconduct. She also determined that unsupervised time such as coming from and going to the bus, bathroom, and water breaks was a antecedent to Petitioner' misconduct. She recommended a contract in which Petitioner agreed to specific behaviors for a set period of time with rewards and penalties. Petitioner helped identify the rewards for this contract. She also developed a self-monitoring form for Petitioner to use to teach self-assessment skills. She wanted Petitioner to learned these skills because he has difficulty accepting responsibility for his behavior and does not seem to understand personal cause and effect. She also recommended adult supervision during transitions and transportation by special education bus. Ms. Cihak and Ms. Pickelsimer discussed these interventions with Petitioner on February 4, 2002. At first his reaction was positive. (Testimony of Cihak.)

21.

On February 6, Petitioner was out of his assigned area during a homeroom period and refused to comply with teacher directions to return to his assigned area. He interrupted Ms. Pickelsimer's first-period class and said in front of the class, "I ain't riding the fucking special education bus." In the school office, he continued his disruptive and disrespectful manner to Ms. Pickelsimer and Administrative Assistant Paul West. He called his mother and was disrespectful

to her and ended the conversation by hanging up on her. (Testimony of Pickelsimer; Testimony of West; Respondent's Exhibit 10.)

22.

A manifestation determination review meeting was held on February 7, 2002. The review committee determined that Petitioner's misconduct was related to his disability and recommended one-on-one services for 5 days for intensive academic work and to continue teaching behavior replacement strategies. Petitioner ate lunch in the one-on-one classroom. Petitioner was provided adult escort from and to the school bus at the beginning and end of the school day. (Testimony of Pickelsimer; Respondent's Exhibit 10.)

23.

On February 7, Ms. Cihak provided a written report of her observations and recommendations. In addition to a contract, the self-monitoring activity, and the adult supervision during transitions, Ms. Cihak provided the following recommendations to school staff: identify disruptive behaviors as soon as they occur; teach replacement behaviors immediately and give Petitioner the opportunity to demonstrate the replacement behaviors; utilize the escalation procedures as a preventive strategy and to avoid intensifying behaviors; provide a location for a time out such as a study carrel or the school counselor's office; provide Petitioner with the opportunity to process his feelings after he has calmed down by utilizing a journal or scrapbook, presenting choices in a "if . . . , then . . ." format; provide natural and logical consequences; and review rules and procedures before an activity begins to prompt expected behavior. (Testimony of Cihak; Respondent's Exhibit 11.)

24.

With the implementations of interventions developed by the committee on February 7 and the interventions developed by Ms. Cihak, Petitioner' behavior began to stabilize and improve for about one month. (Testimony of Cihak.)

25.

Then they began to deteriorate and escalate in March. (Testimony of Pickelsimer; Testimony of Cihak.)

26.

On March 28, 2002, Petitioner failed to comply with teacher directions, was out of his assigned area when the class went to lunch, and was argumentative with his teachers. Petitioner never entered the lunchroom. He approached another student who was unknown to him and tried to initiate a fight. He verbally harassed the student. According to Mr. Pickelsimer, the student said nothing in response but made eye contact with her. It was clear to her that the student was frightened and unsure how to react, and she directed the student to return to his area. (Testimony of Pickelsimer.)

27.

A manifestation determination review meeting was held on April 2, 2002, regarding the March 28 incident. Prior to the meeting, Petitioner directed profanity toward Ms. Pickelsimer. The committee determined that Petitioner' behavior on March 28 and the morning of April 2 was related to his disability. The committee recommended again one-on-one services, including lunch, with special education support and adult escort from the school bus to the classroom. Petitioner attended the meeting and stated to the committee that he didn't care and wanted to quit school. (Testimony of Pickelsimer; Respondent's Exhibit 12.)

28.

Ms. Lisa Williams, Principal of the School, and Administrative Assistant Paul West have attempted to work with Petitioner regarding his behaviors throughout the school year. In responding to incidents of misconduct, Mr. West has counseled Petitioner by using short and specific nonconfrontational directions. He gave Petitioner an opportunity to make choices to comply, allowed him time to cool down, and then talked incidents through with him and the consequences related to his behavior. Mr. West is trained as a special education teacher and has classroom experience teaching emotional and behavioral disordered students. Ms. Williams has made a conscious effort to have as many positive interactions with Petitioner as possible in the hallway, in one-to-one settings, and in her office. She greets Petitioner almost every morning. She testified that she has a very good rapport with Petitioner and that he is always responsive to her. Once she becomes personally involved, Petitioner is remorseful and accepts responsibility for his actions. He usually makes a commitment to her that he is trying hard and will do better, but he does not follow through with his commitment.

29.

On April 5, 2002, an eligibility and IEP committee meeting was held for Petitioner. His mother was present. The committee determined that Petitioner met the criteria for severe emotional and behavioral disorder eligibility. Petitioner has an inability to build or maintain satisfactory interpersonal relationships with peers and authority figures, has consistent inappropriate behaviors or feelings under normal circumstances, and displays a pervasive mood of unhappiness or depression. (Testimony of Pickelsimer; Testimony of Christopher; Respondent's Exhibit 13.)

30.

Petitioner has not made progress on his goals and objectives. His behaviors continue to be violent and threatening and are increasing in frequency and severity. The IEP committee developed new goals and objectives which continued to address Petitioner's difficulty in maintaining physical and verbal control, using appropriate language, following directions, remaining in assigned areas, and moving appropriately to specified locations during transitions. (Testimony of Sheila Pickelsimer; Respondent's Exhibits 13 and 18.)

31.

The IEP committee recommended placement at ██████████ Academy, the Respondent's psychoeducational program. ██████████ Academy provides a combination of a structured and highly specialized social skills curriculum, parental and student support, and a therapeutic approach. Students work on specific behaviors according to their IEPs. Social skills lessons are provided daily which include modeling and roleplaying. Inappropriate behaviors are redirected immediately, and there are opportunities for reteaching which promote positive behavioral changes. Protocols are developed for specific behaviors, including anger and aggression, and daily positive feedback ensures the student's success in meeting those protocols. (Testimony of Christopher; Testimony of Williams.)

32.

Staffing at ██████████ Academy includes psychologists, social workers, intensive interventionists, psychoeducational classroom technicians, teachers, administrators, and support staff. The staff are specifically trained in behavioral interventions. The student/teacher ratio in classrooms is 6-10:1 with one psychoeducational classroom technician. There is

intensive intermediate intervention to help a student when emotional or behavioral levels require one-to-one assistance and/or when a student is out of control. Social work and/or psychological crisis intervention is available. As students progress on their goals and objectives and through the point level system, they are transitioned back to their home schools. Parent support is also available to equip parents with skills to deal with their child's inappropriate behavior. The parent support includes parent groups, parent training, and counseling. (Testimony of Christopher; Testimony of Williams.)

33.

Ms. Kathryn Christopher, a social worker at ██████████ Academy who has experienced working with SEB students, testified that at the April 5 IEP meeting which she attended, Petitioner repeatedly addressed his teacher with profane language. Ms. Christopher felt that Petitioner was at risk of losing further verbal control and possibly physical control, making him a risk to others. (Testimony of Christopher.)

34.

Ms. Williams testified that the School staff had used a variety of strategies and interventions with Petitioner without success. Petitioner's violent and threatening actions have a negative impact on his education and on the education of other students at the school. (Testimony of Williams.)

35.

Prior to the April 5 IEP meeting, Ms. Christopher offered to meet with Petitioner's mother at ██████████ Academy for an informational intake meeting, including an explanation of the program and a tour of the school and classes. When Petitioner's mother declined, Ms. Christopher offered other options of meeting with her, including at or near her work, to explain

the program. Petitioner's mother has refused all offers to learn about the program. (Testimony of Christopher.)

36.

On or about April 15, 2002, Petitioner's mother orally requested a due process hearing regarding the recommendation of the IEP committee that Petitioner be placed at ██████████ Academy.

37.

Petitioner has remained at the School under the stay-put requirements of the IDEA during the pendency of this matter. Since the IEP meeting Petitioner's conduct has continued to escalate. On April 18, he was in a physical altercation with another student. On April 22, he cursed and threatened two 6th-grade students in the school hallway. In a manifestation determination meeting regarding these two incidents, the committee found this conduct to be related to his disability and assigned a personal paraprofessional to Petitioner to help him with transitions and to monitor him when he loses control. On April 30, he threatened to beat up another student and his classroom teacher. On May 1, he threatened to beat up the same student with whom he had had the physical altercation on April 18. (Testimony of Pickelsimer; Testimony of West; Testimony of Biggee; Respondent's Exhibits 15 and 16.)

III. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Tribunal concludes as a matter of law that:

1.

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1400 *et seq.*, 34 C.F.R. § 300 *et seq.*, O.C.G.A. § 20-2-152,

and *Ga. Comp. R. & Regs.* at Chapter 160-4-7 *et seq.* (DOE Rules). Other statutes and rules that may apply, include but are not limited to, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), the Rehabilitation Act (29 U.S.C. § 700 *et seq.*), the Georgia Quality Basic Education Act (O.C.G.A. § 20-2-130 *et seq.*), the compulsory attendance provisions of O.C.G.A. § 20-2-690 *et seq.*, and the Public School Disciplinary Tribunal Act (O.C.G.A. § 20-2-750 *et seq.*)

2.

Respondent has the burden of proof in this matter since Respondent seeks a more restrictive placement for Petitioner. DOE Rule 160-4-7-.18(g)(8); OSAH Rule 616-1-2-.07(1). The standard of proof on all issues is the preponderance of evidence standard. OSAH Rule 616-1-2-.21(4). Respondent, therefore, must establish by a preponderance of the evidence that the H.A.V.E.N. Academy placement provides Petitioner with a free appropriate public education (FAPE) in the least restrictive environment for Petitioner. Tracy T. v. McDaniel, 610 F.Supp. 947 (N.D. Ga. 1985); Burger v. Murray County School District, 612 F.Supp. 434 (N.D. Ga. 1984).

3.

The IDEA requires that Respondent provide a free appropriate public education to children with disabilities. 20 U.S.C. § 1412(a)(1). The United States Supreme Court in Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982), considered the meaning of the Act's requirement of a free appropriate public education and held that an appropriate education is one which is provided pursuant to an IEP that has been developed in compliance with the procedural requirements of the IDEA, is designed to meet the student's specific needs, and is calculated to enable the student to receive educational benefit.

The Eleventh Circuit Court of Appeals in J.S.K. by and through J.K. v. Hendrey County School Board, 941 F.2d 1563 (11th Cir. 1991), held that in determining whether an IEP provided adequate educational benefit, courts must pay great deference to the educators who developed the IEP.

4.

The IDEA also requires that the free appropriate public education be provided in the least-restrictive environment. 20 U.S.C. § 1412(a)(5)(A) states:

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 class with the use of supplementary aids and services cannot be achieved satisfactorily.

5.

The sole issue raised by the parent and Respondent is one of appropriate placement for Petitioner. There is no contention that Respondent has committed a procedural violation in developing the proposed IEP and placement at ██████████ Academy, and there is no evidence to suggest a violation. Therefore, the issue before the Tribunal is whether the proposed placement of Petitioner at ██████████ Academy provides Petitioner a free appropriate public education in the least restrictive environment.

6.

The evidence is without dispute that Petitioner is not making the requisite progress toward his goals and objectives required by the IDEA in the self-contained emotional and behavioral disorder classroom at the School. Petitioner' goals and objectives address his difficulties in using respectful language at school, maintaining physical control without

demonstrating aggressive behaviors, following directions, remaining in assigned areas, and moving appropriately to specific areas during transitions. In the self-contained class, Petitioner received instruction in social skills as well as academics. The curriculum included teaching of replacement behaviors and anger management. The classroom had a small student/teacher ratio and a paraprofessional. A token economy behavior management system was also an integral part of the classroom structure. Despite these services, the behaviors for which Petitioner was receiving special education services escalated. Petitioner repeatedly defied authority figures. He left his assigned areas. He used language toward adults and other students that was not only inappropriate and disrespectful but profane. He intimidated, threatened, and bullied other students, as well as threatened physical harm to his teacher and school administrator.

7.

Respondent attempted numerous strategies and supplementary aids and services at the School with Petitioner to deal with his behaviors. It conducted a functional behavior assessment and provided one of its behavior intervention specialist to work with the teacher and Petitioner. The School implemented the recommendations of the behavior intervention specialist, including a contract and a self-assessment program. Respondent provided an adult escort from and to the bus at the beginning and ending of school and to and from the bathroom and water fountains. As his behaviors continued to escalate, it provided a personal paraprofessional. The principal and administrative assistant worked personally with Petitioner, with no success. None of the interventions or services alleviated the misconduct or enabled Petitioner to satisfactorily progress on his objectives. The School has attempted and exhausted every possible option which would provide Petitioner educational benefit in his current placement. Respondent has therefore carried its burden of proof in establishing that Petitioner' current placement is no longer appropriate.

8.

Respondent has also established by a preponderance of the evidence that Petitioner requires intensive interventions in order to enable him to receive educational benefit.

██████████ Academy offers the services and staff support as well as the structured environment Petitioner requires. ██████████ Academy staff include psychologists, social workers, intensive interventionalists, psychoeducational classroom technicians, teachers, administrators, and support staff who are specifically trained in behavioral interventions. They are also trained and experienced in dealing with severe emotional problems. There is a low student/teacher ratio and a rapid response to inappropriate behaviors. ██████████ Academy has a highly specialized social skills training program that teaches alternative responses to misconduct. Protocols are developed for specific behaviors, including anger and aggression, and daily positive feedback ensures the student's success in meeting those protocols. ██████████ Academy also provides family support including parent support groups, parent training, and counseling. These services will assist Petitioner's mother in managing his behaviors.

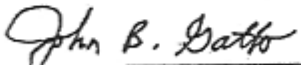
9.

██████████ Academy is reasonably calculated to enable Petitioner to receive educational benefit. ██████████ Academy is the least restrictive placement for Petitioner, in that the evidence is conclusive that Petitioner has not been successful in the less restrictive placements made available to him in Respondent. Accordingly,

IV. ORDER

IT IS HEREBY ORDERED THAT Respondent's placement of Petitioner at ~~XXXXXXXXXX~~
Academy is AFFIRMED.

SO ORDERED this 31st day of May, 2002.



JOHN B. GATTO
Administrative Law Judge