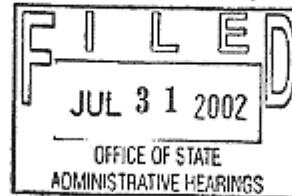


02-0231017

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DOE,)	
Petitioner,)	DOCKET NO.:
)	OSAH-DOE-SE-02-31017-60-JRA
v.)	
)	
ATLANTA PUBLIC SCHOOL)	
SYSTEM,)	
Respondent.)	



FINAL DECISION

I. Introduction

The above matter came before the Office of State Administrative Hearings (OSAH) on June 19, 2002 in Atlanta, Georgia, as a result of the Petitioner's request for a due process hearing under the Individuals with Disabilities Education Act, ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*¹ The primary issue presented at the hearing was whether Petitioner should continue to 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) and in Georgia Department of Education regulations, 160-4-7-.02. The child's parent, who initiated the hearing, was seeking placement of her child in a regular classroom setting. The Atlanta Public School System (hereinafter the "Local School System" or "LSS") was seeking a continuation of eligibility under the category of "emotional and behavioral disorder" or "EBD" and seeking a continuation of placement for the child at the highly structured and restrictive environment of a psychoeducational center. Both the Petitioner's parent and the LSS ultimately want the same goal, to transition the child, if possible, back to a regular school setting.

Based on the evidence presented at the hearing, the following findings of fact and conclusions of law are made. In summary, the LSS's decision to continue eligibility under the category of EBD and continue placement at a psychoeducational center, ~~OSAH-DOE-SE-02-31017-60-JRA~~, is affirmed. In light of the severity of behavioral problems in the child's recent history and the most recent psychological evaluation, the progress seen in the last few months of the 2001-2002 school year is not sufficient to transition the child into a regular school placement.

II. Procedural History

¹ At the hearing Petitioner was represented by his mother without the assistance of counsel and Respondent was represented by counsel, Kevin W. Pendley. Respondent's representative/designee was Dr. Icey Johnson.

A due process request was made by the Petitioner's representative on May 8, 2002 and received at OSAH on the same day via fax. A hearing was scheduled for and conducted on June 19, 2002 in Atlanta, Georgia. The record was held open for receipt of the transcript with the understanding that a decision would issue (regardless of receipt) by end of July.

III. Findings of Fact

1.

001 is a child, currently 010 years old, who entered the LSS in the second grade for the school year, 2000-2001. He had been determined eligible for and received special education services under the category of "emotional and behavior disorder" or "EBD" in his former school system, Fulton County. Staff at Fulton County had referred him for placement in a psychoeducational center. However, when first entering the LSS he was placed in a self-contained EBD classroom at 000 Elementary. (Testimony of Goodson, Transcript ("T") at pp. 21-23)

2.

Fulton County School System had identified 001 as disabled under "EBD" based on frequent disciplinary referrals, difficulty in staying on tasks and in following directions and school rules, for running away from adults and exposing his genitals in public.

(Testimony of Goodson, T. at pp. 23-24; Respondent's Exhibit 1, Tab 2)

2000-2001 School Year

3.

001 had difficulties during his 2000-2001 school year. He had frequent tantrums, exposed his genitals to peers and school staff, publicly urinated in sinks and on mirrors and fought with his peers. Within the classroom, 001 would crawl under the table and not come out. He regularly used profanity and talked about killing himself. In addition, he had problems on the bus, throwing objects out the window and attempting to open the emergency door. (Testimony of Goodson, T. at pp. 25-28)

4.

The results of a behavior evaluation scale indicated that 001 had difficulty attending to academic tests, spoke of suicide, constantly lied, and used obscene and profane language with his peers. In light of the frequency and severity of his behavior in a self-contained EBD classroom, LSS staff recommended a referral to the 00000000 Psychoeducational Center. (Testimony of Goodson, T. at pp. 29-32; Respondent's Exhibit 1, tab 8)

5.

All students accepted at the 00000000 Psychoeducational Center are students who have severe behavioral disorders. The program is a highly structured, therapeutic school environment with thirteen classrooms limited generally to nine students. All activities are constantly supervised by staff. Students are taught academics and ways to control their behavior or react appropriately to situations. The goal is to return the child ultimately to the larger, less structured and more stressful school environment. A psychologist and social worker are available on site and teachers

are taught therapeutic intervention techniques. This is the most restrictive public school environment; if a child is not successful here, residential placement or hospitalization may be necessary. (Testimony of Healey, T. at pp. 35-43)

Psychological Evaluation

6.

As part of the intake process at ██████████, a psychological evaluation was conducted on November 7, 2001. The intake was delayed when ████ and a sister had been removed from the home while an abuse investigation took place regarding ████'s sister. The parent had indicated that ████ suffered sexual abuse from her boyfriend while ████ was between the ages of two and three. The parent also expressed a concern that ████ had a history of setting fires since he was two years old. She was concerned with his aggression toward other children, his public urination and exposure, his sexual talk, obscene language and untruthfulness. The school psychologist determined that ████ shows average verbal intelligence with deficits in the perceptual-motor areas. Current testing showed that ████ has lower academic achievement than grade level. ████ was determined to be experiencing a psychotic disorder characterized by impaired perceptual accuracy, disordered thinking, probable auditory hallucinations, poor social relationships and illogical reasoning. Hyperactivity is likely to be a related condition rather than a symptom of Attention Deficit/Hyperactivity Disorder. (Testimony of Healey, T. at pp.43-53 ; Respondent's Exhibit 1, tab 22)

7.

Subsequent to the evaluation by the school psychologist, and after notice to ████'s parent, a meeting was held to develop the Individualized Education Plan (IEP) for the 2001-2002 school year. Many of the goals and objectives were geared to change behavior. ████'s parent agreed with the goals identified on the IEP. (Testimony of Healey, T. at pp. 54-57; Respondent's Exhibit 1, tab 37)

8.

During the 2001-2002 school year, ████'s progress was sporadic until after April, 2002. ████ had mastered behavioral and socialization goals on his IEP but not the academic goals. He continued to have problems with peer relationships in the cafeteria and on the bus. He was still exhibiting the exaggerated story telling. The program at ██████████ uses a point system to measure progress, looking for consistency in behavior over time. ████ had not yet maintained the third level for the 45 days expected by staff. In February, 2002, ████ began taking Ritalin. He is currently on a dose of 36 milligrams a day. ████'s parent attributes his progress for the last couple of months of school to his medication. (Testimony of Healey, t. at pp. 56-70; Respondent's Exhibit 1, tab 58; testimony of Hartman, T. at p. 74)

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 placement . In light of the LSS's responsibility under federal and state law to locate children with disabilities (DOE regulation 160-4-7-.03) as well as state regulations which place the burden of proof on the LSS (DOE regulation 160-4-7-.18(1)(g)(8)), Respondent bears the burden of persuasion and going forward with the evidence. 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 defined under federal law under the category of serious emotional disturbance, further defined under state regulations as EBD. Federal law defines disability as follows:

(3) Child with a disability.

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

- (I) 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).

State regulations further define the category of serious emotional disturbance as follows:

- (1) Definitions. A student or youth from three through 21 years of age is considered to have a disability under the Individuals with Disabilities Education Act (IDEA) if the student or youth meets the eligibility criteria in any of the following areas.

.....
(d) Emotional and behavioral disorder. (Appendix D)

Appendix D--- Emotional and Behavior Disorder (EBD)
Definition.

An emotional and behavioral disorder is an emotional disability characterized by the following:

- (i) An inability to build or maintain satisfactory interpersonal relationship with peers and/or teachers.
(ii) An inability to learn which cannot be adequately explained by intellectual, sensory or health factors.
(iii) Consistent or chronic inappropriate type behavior or feelings under normal

- conditions.
- (iv) Displayed pervasive mood of unhappiness or depression.
 - (v) Displayed tendency to develop physical symptoms, pains or unreasonable fears associated with personal or school problems. DOE Regulation 160-4-7-.02.

Based on the evidence presented at the hearing, the LSS properly determined that [REDACTED] meets the definition of a disabled child under the category of EBD. The school psychologist administered a variety of tests which showed an indication of severe emotional problems. In addition, the behavioral history has shown severe and chronic behavior problems with sexual acting out, expressions of suicidal intent, admission of auditory hallucinations and a skewed perception of reality.

4.

The LSS has properly identified the least restrictive placement. This child has shown progress in the highly structured environment of a psychoeducational center. However, the progress shown is of a very short time duration. There is no evidence to support a placement in a regular classroom setting in light of the child's severe problems. Ultimately the parent and the LSS want the same goal of returning the child to a regular classroom, if possible.

V. Decision

- (1) The LSS acted in compliance with IDEA in determining that [REDACTED] did meet the definition of a disabled child under the category of EBD;
- (2) The LSS properly placed [REDACTED] in a highly structured setting of a psychoeducational center from which he has not yet made sufficient progress to transition into a less restrictive environment.

SO ORDERED this 31st day of July, 2002.


JESSIE R. ALTMAN
ADMINISTRATIVE LAW JUDGE