

03-0330456

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



~~000~~,)
Petitioner,)
v.)
COBB COUNTY SCHOOL DISTRICT,)
Respondent.)

DOCKET NO.
OSAH-DOE-SE-0330456-33-JBG

FINAL ORDER

Appearances: For Petitioner, ~~000~~: Rick Bradley, Esq., Garcia & Bradley, P.C.
For the Respondent, Cobb County School District: Neeru Gupta, Esq., Brock, Clay,
Calhoun, Wilson & Rogers, P.C.

I. INTRODUCTION

~~000~~, by and through her mother, brought this administrative action before the Tribunal to determine whether the Cobb County School District provided ~~000~~ with a Free and Appropriate Public Education (FAPE) as required under the Individuals with Disabilities in Education Act (IDEA), whether ~~000~~ is entitled to reimbursement for a private school placement form the District, and whether ~~000~~ is entitled to an ongoing compensatory education at the expense of the District.

This Tribunal had 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 at Chapter 616-1-2 (OSAH Rules). A bench trial was held on May 20, 2003 and May 21, 2003. The record was closed after the parties filed proposed orders on June 19, 2003. For the reasons indicated below, it is the

decision of this Tribunal that [REDACTED] did receive a FAPE and she is therefore not entitled to any remedy under IDEA.

II. FINDINGS OF FACT

1.

[REDACTED] is [REDACTED] years of age. (Joint Exhibit 1; May 20, 2003 Transcript, Page 17, Line 10.)

2.

In January 1999, [REDACTED] was a second grade student at [REDACTED] Elementary School, a school in the Cobb County School District. [REDACTED]'s teacher, Ms. Donna Meyers, noted difficulties [REDACTED] was having in class. (Joint Exhibit 1.) On January 21, 1999, in response to Ms. Meyers' concerns, Ms. [REDACTED] ([REDACTED]'s mother) gave permission for the [REDACTED] School Wide Assistance Group to assist [REDACTED]. (Joint Exhibit 1.)

3.

On January 26, 1999, Ms. Meyers completed a Student Support Team (SST) Speech/Language Referral. (Joint Exhibit 2.) On this same day, the District administered the Woodcock-McGrew-Werder Mini-Battery of Achievement to [REDACTED]. The results of this test showed [REDACTED]'s performance in reading and mathematics to be low average, when compared to other students at her then age level ([REDACTED] years, [REDACTED] months). (Joint Exhibit 1.) The Kaufman Brief Intelligence Test (K-BIT), also administered by the District that same day, showed [REDACTED]'s vocabulary, matrices, and composite scores to be well below average. (Joint Exhibit 1.) Ms. Meyers completed a Language Checklist for Student Support Team on April 30, 1999. This checklist reflected [REDACTED]'s difficulties with language comprehension and expression. (Joint Exhibit 2.)

4.

On August 23, 1999, at the beginning of [REDACTED]'s third-grade year, Ms. [REDACTED] gave the District permission to evaluate [REDACTED] for speech and/or language difficulties. (Joint Exhibit 3.)

5.

In September 1999, [REDACTED]'s third grade teacher completed a Language Functioning Checklist, Checklist for Oral Expression, and Pragmatic Language Checklist. These checklists also reflected [REDACTED]'s speech and language difficulties. (Joint Exhibit 2.)

6.

[REDACTED]'s evaluation and eligibility report revealed a mild language disorder related to her receptive and expressive language skills. As a result, [REDACTED] was determined eligible for speech and language services under the Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* (Joint Exhibit 6.)

7.

Due to [REDACTED]'s eligibility, the District held a meeting on October 14, 1999 to create an Individualized Education Program (IEP) for her. Ms. [REDACTED] attended and participated in this meeting. The IEP committee developed goals and objectives for [REDACTED]. These goals were designed to improve [REDACTED]'s expressive language skills, specifically in the areas of vocabulary, expressing ideas, predicting, and drawing conclusions, and to improve [REDACTED]'s auditory processing skills. The committee recommended she remain in a regular education setting and receive one hour of speech and language therapy per week in a small group setting. The IEP was to be in effect for one calendar year. Ms. [REDACTED]

consented to this placement and IEP. (Joint Exhibit 6; May 20, 2003 Transcript, Page 23, Lines 5-6.)

8.

On October 16, 2000, near the beginning of [REDACTED]'s fourth grade year, the District developed another yearly IEP for [REDACTED]. Ms. [REDACTED] attended and participated in this meeting. (Joint Exhibit 9.)

9.

During this meeting, the IEP committee evaluated [REDACTED]'s progress on the goals and objectives from her October 14, 1999 IEP. Progress on goals and objectives is measured by collecting data in various forms throughout the school year and evaluating that data in reference to the criteria for mastery. Measurements regarding progress are recorded on the page listing each goal and short-term objective. (May 21, 2003 Transcript, Page 8, Lines 11-25.) [REDACTED] mastered five of eight objectives. She made good, measurable progress on the remaining three. (Joint Exhibit 9.)

10.

After evaluating [REDACTED]'s progress and present levels of functioning, the IEP committee developed new goals and objectives. These goals and objectives continued to target [REDACTED]'s language skills by further improving her vocabulary and further increasing her ability to develop sufficiently detailed conversations, predict outcomes, and ask questions about story elements. The goals and objectives also targeted [REDACTED]'s auditory processing by further improving her ability follow multi-step directions and answer story questions. The IEP committee once again recommended [REDACTED] remain in a regular education setting and receive one hour per week of speech and language therapy in a

small group setting. (Joint Exhibit 9.) Ms. [REDACTED] agreed with this IEP. (May 20, 2003 Transcript, Page 29, Lines 9-11.)

11.

[REDACTED] finished her fourth grade year with the following grades: one A, three B's, two C's and one D. (Joint Exhibit 20.)

12.

On October 16, 2001, near the beginning of [REDACTED] fifth grade year, the District developed another yearly IEP for [REDACTED]. Ms. [REDACTED] attended and participated in this meeting. This IEP was in effect for most of [REDACTED]'s fifth grade year and the beginning of her sixth grade year. Ms. [REDACTED] withdrew [REDACTED] from the District before this IEP expired. It is this October 16, 2001 IEP that is the focus of this proceeding. (Joint Exhibits 11, 19.)

13.

Ms. Jennifer Stewart, Speech Language Pathologist, provided speech and language therapy to [REDACTED] during the 2001-2002 school year, [REDACTED]'s fifth grade year. Ms. Stewart was a member of the IEP committee that developed the October 16, 2001 IEP. She reviewed [REDACTED]'s progress on the goals and objectives from the October 16, 2000 IEP at the meeting. [REDACTED] either mastered or was near mastery on all of these goals. (Joint Exhibit 11; May 21, 2003 Transcript, Page 9, Lines 20-21.)

14.

The IEP committee also developed new goals and objectives for [REDACTED]. Ms. [REDACTED] was active in the goal writing process and made specific suggestions. For example, Ms. [REDACTED] expressed concern regarding [REDACTED]'s vocabulary skills and liked the Wordly Wise

3000 vocabulary program. Because of Ms. [REDACTED]'s concerns, the IEP committee wrote a long-term goal for [REDACTED] regarding semantic, expressive, and receptive skills utilizing the Wordly Wise series as the textbook designed to further improve [REDACTED]'s vocabulary and language skills. Additionally, goals and objectives were developed to teach [REDACTED] not just how to comprehend stories but to create stories with appropriate plot, character, and detail. (Joint Exhibit 11; May 21, 2003 Transcript, Page 10, lines 3-24.)

15.

The IEP committee then recommended that [REDACTED] remain in a regular education setting and receive one hour per week of speech and language therapy in a small group setting. This small group setting provided [REDACTED] with the appropriate intensity of instruction. (Joint Exhibit 11; May 21, 2003 Transcript, Page 14, Lines 5-17.) Speech and language services were set at one hour per week because mandating additional time would have been too restrictive for [REDACTED]. [REDACTED] needed ample time in a regular education setting to practice language strategies and to experience typical peers as appropriate language models. (Joint Exhibit 11, May 21, 2003 Transcript, Page 15, Lines, 6-9, Page 17, Lines 5-11.) No part of M.T.'s October 16, 2001 IEP was required to be implemented by any regular education teachers. (Joint Exhibit 11; May 21, 2003 Transcript, Page 20, Lines 15-18.)

16.

Ms. Stewart provided speech and language services to [REDACTED] until May 2001, the end of [REDACTED]'s fifth grade year. At the end of her fifth grade year, [REDACTED] had made steady progress and was near mastery on all of her goals and objectives. (May 21, 2003 Transcript, Page 16, Lines 22-25.) Ms. Stewart notified the speech language pathologist

at ██████ Middle School, where ██████ was to begin sixth grade, of ██████'s IEP and language difficulties. (May 21, 2003 Transcript, Page 20, Lines 1-2.)

17.

██████ finished her fifth grade year with the following grades: one A, three B's, two C's, and one D. ██████ worked with a modified curriculum in several subjects. (Joint Exhibit 20.)

18.

On August 12, 2002, ██████ entered her sixth grade year at ██████ Middle School. ██████ was enrolled in the following classes: Math (an inclusion class in which both special education and regular education students enrolled and both a regular education and special education teacher instruct the class), Reading, Literacy, Science, Social Studies, Language Arts, Orchestra, and Math Connections (a class offered to students who need extra help in math). (Joint Exhibit 19; May 20, 2003 Transcript, Page 175, Lines 12-14, Page 176, Lines 11-15.)

19.

██████ was enrolled in the Math Connections class on the recommendation of Ms. Julie Gunn, ██████'s math and homeroom teacher. While ██████ followed directions well and successfully completed warm-up activities at the beginning of her math class, Ms. Gunn noticed that ██████ struggled in other areas of her math class. As a result, she recommended the Math Connections class and tutored ██████ once or twice during the beginning of the school year. In addition, Ms. Gunn gave ██████ her classroom notes before quizzes and occasionally offered her one-on-one assistance during class. (May 20,

2003 Transcript, Page 176, Lines 16-17; Page 178, Lines 3-4; Page 179, Lines 7-16; Page 185, Lines 6-15.)

20.

In addition, Ms. [REDACTED] was invited by [REDACTED] Middle School to enroll [REDACTED] in before- and after-school tutoring. (Joint Exhibit 15.) Ms. [REDACTED] withdrew [REDACTED] from the School District before the tutoring sessions began. (May 20, 2003 Transcript, Page 60, Lines 4-7.)

21.

At some point during [REDACTED]'s enrollment at [REDACTED] Middle School, Ms. [REDACTED] became concerned about [REDACTED]'s emotional state. Ms. [REDACTED] met with [REDACTED]'s teachers on Friday, September 20, 2002. (May 20, 2003 Transcript, Page 36, Lines 9-14; Page 178, Lines 12-15.) At that meeting, Ms. [REDACTED] and [REDACTED]'s teachers discussed specific strategies to help [REDACTED] be successful academically. (May 20, 2003 Transcript, Page 39, Lines 16-24; Page 40, Lines 11-13; Page 178, Lines 17-23.) Ms. [REDACTED] expressed concerns regarding [REDACTED]'s social adjustment at this meeting, including that [REDACTED] was being teased by another student (May 20, 2003 Transcript. Page 40, Lines 1-10). This meeting was the first instance Ms. Gunn had heard these concerns. She had not noticed any teasing in her class. (May 20, 2003 Transcript, Page 180, Lines 17-21.) Additionally, Ms. Gunn had observed [REDACTED] interacting with other students and had not seen any problems. (May 20, 2003 Transcript, Page 179, Lines 17-23.)

22.

Despite this conference, and despite receiving specific recommendations to help [REDACTED] be successful and assurances that any problems with teasing would be remedied,

Ms. [REDACTED] decided on Monday, September 23, 2002 (the very next school day) that [REDACTED] would not return to [REDACTED] Middle School. [REDACTED] was officially withdrawn on October 11, 2002. (Joint Exhibit 19.)

23.

[REDACTED] was getting all services mandated by her IEP. Ms. [REDACTED] never requested any changes be made to her IEP. (May 20, 2003 Transcript, Page 60, Lines 24-25; Page 61, Line 1.)

24.

At the time of her withdrawal, [REDACTED] had the following numerical grades: 71 in Math; 40 in Reading; 95 in Literacy, 93 in Science, 50 in Social Studies, 40 in Language Arts, 88 in Math Connections, and 95 in Orchestra. (Joint Exhibit 19.) [REDACTED] was therefore passing and even excelling in the majority of her classes upon withdrawal. Although [REDACTED] was failing three classes, [REDACTED] also had a history of performing poorly at the beginning of a school year and improving her performance as the year progressed. (Joint Exhibit 20.)

25.

Ms. [REDACTED] did not provide the District with the required ten (10) business days notice of her intention to place [REDACTED] in a private school and seek reimbursement from the District as required by Federal regulations. Ms. [REDACTED] is literate and can write in English. (Joint Exhibit 12.) Further, there is no evidence that the District prevented Ms. [REDACTED] from providing notice. Additionally, Ms. [REDACTED] received notice of the notice requirement, as she had received the District's Parental Rights Regarding Special Education brochure, describing the notice requirements. (Joint Exhibit 21; May 20, 2003

Transcript, Page 58, Lines 22-24.) Finally, there is no evidence that providing the required notice would not have likely resulted in physical or serious emotional harm to [REDACTED]. Ms. [REDACTED] never sought out any psychological counseling or psychological evaluations for [REDACTED]. (May 20, 2003 Transcript, Page 63, Lines 2-4.)

26.

Ms. [REDACTED] never requested any service beyond one hour of speech and language therapy for [REDACTED] during her enrollment in the District. (May 20, 2003 Transcript, Page 68, Lines 20-22.)

27.

Ms. [REDACTED] never requested that the District conduct any additional evaluations for [REDACTED]. (May 20, 2003 Transcript, Page 57, Lines 7-11.)

28.

Ms. [REDACTED] obtained a private speech and language evaluation from Greater Atlanta Speech and Language Clinic in March 2003. This evaluation recommended one hour of speech and language services per week, as [REDACTED] had been receiving while enrolled in the District. ([REDACTED]'s Exhibit 2.)

29.

After withdrawing [REDACTED] from the District, Ms. [REDACTED] enrolled [REDACTED] in [REDACTED] Academy, a private school. (May 20, 2003 Transcript, Page 44, Lines 4-22.) Ms. [REDACTED] signed [REDACTED] Academy's Enrollment Agreement on October 15, 2002. ([REDACTED]'s Exhibit 3.)

30.

Academy did not do any testing to determine if [REDACTED] had a disability and never administered a psychological evaluation. (May 20, 2003 Transcript, Page 130, Lines 3-5; Page 136, Lines 3-8.)

31.

Although [REDACTED] Academy administered a Brigance test in April 2003, after [REDACTED] had attended the school for approximately six months, to determine [REDACTED]'s grade levels in various subjects, it neglected to administer a pre-test, or any other tests, when [REDACTED] enrolled, thereby making it impossible to determine whether [REDACTED] made any academic progress while enrolled at [REDACTED] Academy, as measured by standardized tests. (May 20, 2003 Transcript, Page 129, Lines 22-25; Page 130, Lines 1-2.)

32.

[REDACTED] began using a seventh grade textbook when she entered [REDACTED] Academy. She was using that same textbook at the time of this proceeding. (May 20, 2003 Transcript, Page 130, Line 25; Page 131, Lines 4-7.)

33.

Ms. Bridget Eaton-Partalis, President and Owner of [REDACTED] Academy, acknowledged that [REDACTED] has a language processing problem. Despite this acknowledgement, [REDACTED] Academy did not provide any speech and language therapy by a speech language pathologist for [REDACTED]. (May 20, 2003 Transcript, Page 56, Lines 13-15; Page 130, Lines 9-11.)

34.

Ms. Eaton-Partalis compared [REDACTED]'s standardized test scores on the Stanford-9 achievement test, taken in March 2000 when [REDACTED] was in the third grade in the District, and her standardized test scores on the Iowa Test of Basic Skills, taken in March 2003 when [REDACTED] was enrolled as a sixth grade student at [REDACTED] Academy. Ms. Eaton-Partalis acknowledged that it was a possibility, and perhaps a probability, that the progress [REDACTED] showed on standardized tests between 2000 and 2003 was made during her enrollment in the District, rather than [REDACTED] Academy. (Joint Exhibit 20; [REDACTED]'s Exhibit 4; May 20, 2003 Transcript, Page 131, Lines 23-25; Page 132, Lines 1-2; Page 137, Lines 10-22.)

35.

Ms. [REDACTED] has an outstanding unpaid balance at [REDACTED] Academy. (May 20, 2003 Transcript, Page 66, Lines 9-11.) This balance became unpaid in April 2003. (May 20, 2003 Transcript, Page 66, Lines 12-13.) Ms. [REDACTED] requested this due process hearing on April 7, 2003. ([REDACTED]'s Exhibit 3; Joint Exhibit 22; May 20, 2003 Transcript, Page 66, Line 19-22.)

III. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include the 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.*)

Appeals before this Tribunal are *de novo* proceedings and the standard of proof is the preponderance of the evidence. See OSAH Rule 616-1-2-21.

In *Devine v. Indian River County Sch. Bd.*, 249 F.3d 1289 (11th Cir. 2001), the Eleventh Circuit held that when “the parents . . . are seeking to attack a program they once deemed appropriate, the burden rests on the parents in the IEP challenge.” *Id.* at 1292. ~~000~~, as the party attacking the IEP, bears the burden of proof in this matter. ~~000~~, therefore, has to establish by a preponderance of the evidence that the District has failed to provide FAPE.

IDEA, 20 U.S.C. § 1400 *et seq.*, requires that the District provide FAPE 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 IDEA’s requirement of a FAPE and held that an appropriate education is one which is provided pursuant to an Individualized Education Plan (IEP) that has been developed in compliance with the procedural requirements of IDEA, is designed to meet the student’s specific needs, and is calculated to enable the student to receive educational benefit.

In determining whether an IEP provides an opportunity for a student to receive educational benefit, the Supreme Court in *Rowley* specifically held that the Act does *not* require that the education services provided to the disabled student “be sufficient to maximize each child’s potential.” *Id.* at 3046. The Court further stated: “to require . . . the furnishing of every special service necessary to maximize each handicapped child’s

potential is, we think, further than Congress intended to go.” *Id.* at 3047. The Court held that the IDEA requires a school district to provide a “basic floor of opportunity” for the disabled child. *Id.* at 3048.

The Eleventh Circuit Court of Appeals in *J.S.K v. Hendry County Sch. Bd.*, 941 F.2d 1563 (11th Cir. 1991), addressed the issue of the level of educational benefit required under EAHCA (now IDEA). Following *Rowley*, the Eleventh Circuit held:

[W]hen 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. *Todd D. v. Andrews*, 933 F.2d 1576, 1580 (11th Cir. 1991). This opportunity provides significant value to the handicapped child who, before EAHCA might otherwise have been excluded from any educational 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. If the educational benefits are adequate based on surrounding and supporting facts, EAHCA requirements have been satisfied. While a trifle might not represent “adequate” benefits, *see, e.g., Doe. V. Alabama State Dep’t of Educ.*, 915 F.2d at 655, maximum improvement is never required. Adequacy must be determined on a case-by-case basis in the light of the child’s individual needs.

Id. at 1572-73. The Eleventh Circuit also noted that in determining whether an IEP provided adequate educational benefit, courts must pay great deference to the educators who develop the IEP. *Id.* at 1573. The *J.S.K.* decision continues to be the standard in the Eleventh Circuit for determining the educational benefit required under IDEA. *E.g., Devine.*, 249 F.2d 1289 (11th Cir. 2001).

██████ has failed to prove by a preponderance of the evidence that the District did not comply with every procedural requirement of IDEA. Noting ██████’s academic difficulties in the second grade, the District initiated the involvement of the Student Support Team process. It promptly evaluated ██████ in all suspected areas of disability, determined that ██████ qualified for speech and language services, and created an IEP that

provided the required level of service, while still providing [REDACTED] with maximum access to the general education curriculum. Even [REDACTED]'s parent admits that at no time did she request additional services or evaluations from the District.

[REDACTED] has also failed to show by a preponderance of the evidence that the District failed to provide FAPE. Under the standard described in *Rowley* and *J.S.K.*, [REDACTED] made adequate, measurable educational progress while enrolled in the District. Each year, [REDACTED] either mastered or made good, measurable progress on all goals and objectives developed for her in her IEPs. The IEP under attack in this proceeding, dated October 16, 2001 and covering almost all of [REDACTED]'s fifth grade year and a few weeks of her sixth grade year, likewise provided [REDACTED] FAPE. At the end of her fifth grade year, she had passed all of her classes and had mastered or was near mastery on all of her goals and objectives. Further, [REDACTED] had made enough progress while attending school in the District for [REDACTED] Academy to place her, as an incoming sixth grader, in a seventh grade textbook when she enrolled there. Therefore, the District has satisfied the standard set out in *Rowley* and *J.S.K.*, as [REDACTED] made adequate educational progress and received educational benefit while enrolled in the District.

[REDACTED] has likewise failed to show that [REDACTED] Academy has provided [REDACTED] an appropriate education. The parties all agree that [REDACTED] has a language disorder and should receive speech and language therapy. [REDACTED] admits, however, that [REDACTED] Academy has provided absolutely no speech and language service from a speech language pathologist to [REDACTED]. Further, [REDACTED] has failed to show that [REDACTED] made academic progress during her enrollment at [REDACTED] Academy. [REDACTED] Academy failed to conduct any standardized testing when [REDACTED] first enrolled. Therefore, any gains [REDACTED] has made, as shown on

standardized tests taken in 2000 and 2003, are possibly, and perhaps probably, due to her extended enrollment in the District, rather than her brief enrollment at [REDACTED] Academy, as acknowledged by [REDACTED] Academy's president. (May 20, 2003 Transcript, Page 131, Lines 23-25; Page 132, Lines 1-2; Page 137, Lines 10-22.)

A parent has the right to unilaterally withdraw her child from a public school and enroll her in a private school. However, in order to seek reimbursement from the District for expenses when the parent elected to place the child in a private school or facility, the parent must prove that the public school failed to make a free appropriate public education available to the child in a timely manner prior to the private enrollment and that the private placement is appropriate. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.403(c); *School Committee of the Town of Burlington v. Dep't of Educ. of the Commonwealth of Mass.*, 471 U.S. 359, 105 S. Ct. 1996 (1985).

Even if [REDACTED] had shown that the District did not provide FAPE and that [REDACTED] Academy provided an appropriate education, [REDACTED] is still not entitled to reimbursement from the District. If a parent intends to seek reimbursement from the District for expenses related to enrollment in a private institution, the parent must provide written notice of her intention to withdraw the student and enroll her in a private institution and seek reimbursement from the District at least ten (10) business days before withdrawing the student. 20 U.S.C. § 1412(a)(10)(C)(iii)(I)(bb); 34 C.F.R. § 300.403(d)(1)(i). This 10-day written notice is not required if compliance with the requirement "would likely result in physical or serious emotional harm to the child." 20 U.S.C. § 1412(a)(10)(C)(iv)(II); 34 C.F.R. § 300.403(e)(2).

§§§§§. concedes she did not provide the District with the required written notice. §§§§§ has failed to show that providing such notice “would likely result in physical or serious emotional harm.” §§§§§ does not contend that she was in any physical danger while enrolled in the District. §§§§§ has also failed to show that continued enrollment in the District would have likely resulted in serious emotional harm. The phrase “serious emotional harm” implies that a child faces an immediate threat that requires immediate removal and placement in a therapeutic environment to address emotional issues. It is this immediacy of the threat that excuses the required ten business days’ notice. §§§§§ has failed to show the likelihood of any such harm. §§§§§’s parent never sought any psychological counseling services for §§§§§ and never requested any psychological evaluations from either the District, §§§§§ Academy, or any other entity. Further, §§§§§’s math and homeroom teacher never observed §§§§§ having any unusual social or emotional problems. §§§§§’s behavior while enrolled at §§§§§ Middle School, while possibly withdrawn, does not rise to the level of “serious emotional harm.”

§§§§§ has therefore failed to show that the District denied §§§§§ FAPE under the October 16, 2001 IEP. She has further failed to show that §§§§§ Academy did provide an appropriate education. §§§§§ concedes she failed to give the District the required written notice before seeking reimbursement for §§§§§ Academy from the District. §§§§§ has failed to show that giving such notice would likely have resulted in physical or serious emotional harm. Therefore, §§§§§ is not entitled to reimbursement for tuition expenses at §§§§§ Academy for the 2002-2003 school year. Further, §§§§§ is not entitled to have the District fund her possible enrollment at §§§§§ Academy (or any other private institution)

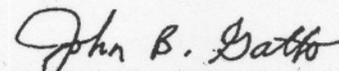
for the 2003-2004 school year. Additionally, [REDACTED] is also not entitled to receive after school tutoring at District expense.

[REDACTED] is not entitled under IDEA to an independent educational evaluation at the District's expense. In order to request such an evaluation, the District must have the opportunity to first conduct its own evaluation. [REDACTED] has not requested the District conduct any evaluation and is therefore not entitled to a private evaluation at public expense. 34 C.F.R. § 300.502(b). Accordingly,

IV. DECISION

IT IS HEREBY ORDERED THAT all relief requested by [REDACTED] is **DENIED** since the District provided [REDACTED] with a Free and Appropriate Public Education as required under the Individuals with Disabilities in Education Act.

SO ORDERED this 7th day of July, 2003.



JOHN B. GATTO
Administrative Law Judge