

03-0332091

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

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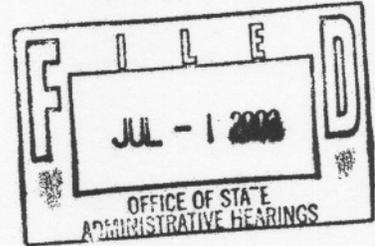
Petitioner,

v.

MCDUFFIE COUNTY SCHOOL SYSTEM,  
Respondent.

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Docket No.:  
OSAH-DOE-SE-0332091-97-MSF



Final Decision

This matter is the administrative review at Petitioner's request of whether the school system has provided FAPE to Petitioner for the 2002-2003 school year. For the reasons stated below it is determined that the school system has provided FAPE to Petitioner. <sup>1</sup>

Findings of Fact

1.

Parent for Petitioner requested a hearing in this matter by written request to Respondent. By court order issued June 18, 2003, issues for hearing were listed based upon a review of the parent's hearing request. (Record)

2.

Petitioner and parent of Petitioner were not represented by counsel in this matter. (Record)

3.

On June 23, 2003, a telephone pre-hearing conference was conducted with the parties. At that time the court's order issued on June 18, 2003, was reviewed. It was determined that as follows: (1) all issues surrounding the parent for Petitioner's formal complaint were not to be the issue for

<sup>1</sup>  
Parent of Petitioner requested a continuance in the matter or in the alternative to withdrawal her hearing request on Saturday, June 28, 2003, by fax. This motion of the parent of Petitioner is denied. No document will be considered filed when transmitted by fax except when expressly authorized by the administrative law judge. OSAH Rule 616-1-2-.04(1).

the hearing; (2) that the school system would pay for the independent evaluation and recommendations of a party designated by the parent to be Dr. [REDACTED]; (3) that following the completion of the independent evaluation and recommendations an IEP would be completed for Petitioner; and (4) that parent for Petitioner has been co-operative in discussions concerning mediation. (Record)

4.

The sole remaining issue for the scheduled June 30, 2003, hearing was whether Petitioner was in need of remediation and whether Respondent would be required to provide such. (Record)

5.

Parent for Petitioner was ordered to contact the court by Friday, June 27, 2003, to inform the court whether she wished to proceed with the scheduled hearing on Monday, June 30, 2003. It was specifically noted in the order that "As parent for Petitioner may not timely receive this order, the matter will proceed to hearing as scheduled until and unless the court is informed differently by the parties." (Record)<sup>2</sup>

6.

In the pre-hearing telephone conference of June 23, 2003, the parties reviewed the issues for hearing and the sole issue for hearing was determined. Parent for Petitioner was advised that as the order memorializing the pre-hearing conference would be placed in the mail and might therefore not be received by her until after Friday, June 27, 2003, that she could contact the court's assistant from a public library where she had access to a fax and obtain the order prior to the mailed copy if she so chose. (Record)

7.

Petitioner and parent for Petitioner failed to notify the court by Friday, June 27, 2003, whether she wished to proceed with a hearing in this matter.

8.

Petitioner and parent for Petitioner failed to comply with the court's pre-hearing order that among other items included the requirement that there be an exchange of parties exhibits, witness lists and statement of legal issue. (Record)

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Respondent's motion to dismiss the matter arguing that the issue for hearing was not ripe is denied as the court holds that parent for Petitioner may proceed with this issued despite the Petitioner not having the benefit of the proposed complete independent evaluation and recommendations.

9.

Respondent timely complied with the court's issued pre-hearing order. (Record)

10.

At the call of the matter for hearing on June 30, 2003, Petitioner and parent for the Petitioner failed to appear. Respondent offered to and was allowed to present evidence. <sup>3</sup>(Record)

11.

Petitioner is a ~~6/10/03~~ year old child currently registered for high school. For the past school year Petitioner attended ~~0/0/03~~ Middle School and was served through the Specific Learning Disability (SLD) program. The previous school year Petitioner received home schooling from his parent. (Testimony of Janis Hammar, Respondent Exhibit 19)

12.

Respondent provided Petitioner with text book and the web sites of the school district where the CRCT testing information could be accessed and where lessons for home school were provided. (Testimony of Janis Hammar)

13.

In summer 2002, following his home schooling, Petitioner enrolled in and received summer instruction from Respondent. Petitioner received instruction in reading and English, two areas important to his special education goals. While summer school is not part of the IEP process, Respondent provided it in an attempt to remedy any deficits. (Testimony of Janis Hammar, Respondent's Exhibits 7, 11 & 12)

14.

Respondent's witness, Janis Hammar, is the McDuffie County School's Special Education Director. She has the overall responsibility for student's IEP. In Petitioner's case, Respondent checked with his teachers to ensure that he was receiving services required by his IEP. (Testimony of Janis Hammer, Respondent's Exhibits 1, 13 & 18)

15.

Petitioner made reasonable progress during the 2002-2003 school year in accordance with

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The hearing was held on June 30, 2003. Neither Petitioner nor his parent were present. Respondent was represented by Sam Harben, Jr. and Janis Hammar was a witness for Respondent. Marvene Brooks was present for Respondent but did not testify.

the IEP requirements. (Testimony of Janis Hammar, Respondent's Exhibits 5, 6, 8, 9, 10, 13, 15, 16 & 18)

16.

Respondent attempted to test Petitioner in the spring to enable an IEP to be formulated for the 2003- 2004 school year. This was not done for reasons that included parent for Petitioner's filing of a formal complaint with the Department of Education, Petitioner's request for a due process hearing, and the Petitioner's parent's specific refusal to allow the school to preform the testing. Respondent wrote parent of Petitioner a letter requesting that it be allowed to administer Petitioner the Woodcock Johnson test. Respondent did not perform that evaluation as it did not receive a response from Petitioner's parent. (Testimony of Janis Hammar, Respondent's Exhibit 17, record)

17.

Respondent has agreed to pay the costs for Petitioner to be independently evaluated and recommendations made by an evaluator of the parent's choosing, Dr. [REDACTED] (Record)

18.

Upon the receipt of the evaluation and recommendations of the parent's chosen independent evaluator, Respondent will develop an IEP for Petitioner. (Record)

#### Conclusions of Law

1.

This matter is governed by the Individual's with Disabilities Act and its regulations that require a free and appropriate education (FAPE) must be provided to any student who is identified as having a disability as defined by the Act, 20 U.S.C. § 1412 (1); 34 C.F.R. § 300.4, in the least restrictive environment. 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. The court established a two prong test to determine the appropriateness of an Individualized Education Plan (IEP): first, had the State complied with the procedures set forth in the Act and secondly, is the individualized educational program reasonably calculated to enable the child to receive educational benefits.

2.

The above matter is Petitioner's request for a due process hearing under IDEA. The burden of proof rests initially with Respondent to establish that the IEP is appropriate and provides FAPE. Department of Education (DOE) Rule 160-4-7-.18 (1) (g) (8).

3.

Respondent has met this burden by showing that during the 2002-2003 it complied with the procedures set forth in the Act and provided Petitioner with an individualized educational program reasonably calculated to enable him to receive educational benefits. Specifically Respondent developed and implemented an appropriate IEP for Petitioner. Respondent provided Petitioner with FAPE during the 2002-2003 school year. *See* Finding of Fact, Nos. 12, 13, 14, 15, & 16

4.

Once Respondent met its burden of persuasion, Petitioner and parent failed to offer any evidence to establish that remediation was needed and should be provided by Respondent.

#### Decision

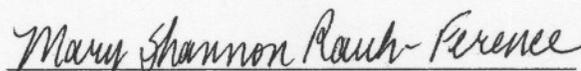
It has been determined that Respondent provided FAPE to Petitioner for the 2002-2003 school year. The following concerns Petitioner's 2003-2004 school year and is ordered:

(1) Respondent will pay the costs necessitated by an independent evaluation of Petitioner, by an evaluator chosen by Petitioner's parent.

(2) Upon the receipt of the independent evaluation and recommendations, Respondent will develop and IEP for Petitioner.

(3) Petitioner may not file a due process hearing request concerning any issues surrounding the IEP until items (1) and (2) above have been completed.

SO ORDERED, this 1<sup>st</sup> day of July, 2003.

  
Mary Shannon Rauh-Ference  
Administrative Law Judge