

03-0326333

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



Petitioner,

v.

LAMAR COUNTY SCHOOL SYSTEM, THE
GEORGIA DEPARTMENT OF
EDUCATION, and THE GEORGIA
DEPARTMENT OF LABOR,
Respondent.

: Docket No.: OSAH-DOE-SE-0326333-85-JRA
: Docket No.: OSAH-DOL-VR-0328449-85-JRA

FINAL DECISION

I. Introduction

The above matter came before the office of State Administrative Hearing (OSAH) for an evidentiary hearing on August 12, 2003 and August 13, 2003 in Atlanta, Georgia¹ as a result of Petitioner's request for a due process hearing under the Individuals with Disabilities Act (IDEA), 20 U.S.C. §§ 1400 *et seq.* In addition to Respondent, Lamar County School System, joined in the action were the Respondents, the Georgia Department of Education and the Georgia Department of Labor (as discussed in the procedural history below).

Specifically, Petitioner is alleging violations of IDEA which arose primarily out of the termination of services (identified for Petitioner in his most recent Individualized Education Program ("IEP")) which Petitioner had been receiving through the vocational rehabilitation program offered at the Roosevelt Warm Springs Institute for Rehabilitation ("Warm Springs"). This program is administered by the Department of Labor.

Based on the evidence presented at the hearing, the following findings of fact and conclusions of law are made. As will be discussed in the conclusions of law, it is determined that significant procedural and substantive violations of IDEA took place requiring compensatory and other services for Petitioner.

II. Procedural History

Petitioner filed his due process hearing request on February 10, 2003 and the matter was referred to OSAH on February 18, 2003. During a prehearing telephone conference, conducted on February 19, the parties alerted this tribunal that prehearing motions to join additional parties would be filed. Respondent, Lamar County School System, filed a Motion to add the Department of Education and Department of Labor on February 28, 2003. After reviewing responses, an Order was issued on March 31, 2003, granting this Motion and setting the hearing date for April 17, 2003.

On March 18, 2003, Petitioner also appealed the most recent adverse action of the Department of Labor and that appeal was consolidated with the IDEA appeal and docketed as OSAH-DOL-VR-0328449-85-JRA. This latter appeal was dismissed on August 6, 2003 when Respondent, Department of Labor, withdrew its most recent adverse action to terminate Petitioner from the day program.

¹Present at the hearing were Petitioner, [REDACTED], Petitioner's mother, Petitioner's counsel, Daryl Morton, Respondent (Lamar County School System)'s counsel, Sam Harben, and its designated representatives, Jane Goodwin and Craig Wheaton, Respondent (Georgia Department of Education)'s counsel, Alfred Evans, and its designated representative, Phil Pickens, Respondent (Department of Labor)'s counsel, Terri Rushing and its designated representatives, Anne Heath and Cathy Yates.

The hearing was continued to May 1, 2003 on Motion from the Respondent's, Department of Labor, counsel. All parties moved for an additional 30 day continuance to pursue settlement which was granted on April 29, 2003. The matter was reset for hearing on June 27, 2003, after a status report showed a lack of settlement, but continued to August 12, 2003 on Petitioner's Motion to Continue. Evidence was taken on August 12 & 13, 2003. The record remained open until September 17, 2003, for receipt of transcript and written closing argument of counsel.

III. Findings of Fact

1.

Petitioner is a ~~20~~ year old individual diagnosed with Asperger's syndrome, attention deficit disorder (ADD), major depressive disorder and post-traumatic stress syndrome (PTSS). (Testimony of Fier, Transcript, "T.", at pp. 69-71)

2.

Individuals with Asperger's syndrome suffer from a neurological disorder which (due to a brain deficiency) results in the inability to process information relevant to social interactions. This diagnosis is considered part of the autism spectrum, however, individuals with Asperger's do not show the classic speech and language developmental impairments of most autistic individuals although they are highly obsessional in behavior. Individuals with Asperger's syndrome, however, have a better prognosis to be able to become self-sufficient (Testimony of Fier, T. at pp. 67-68; testimony of Suh, T. at pp. 124-125; testimony of Babcock, T. at pp. 161-162; 166-169)

3.

For approximately three years prior to 2002, Petitioner had received home-based services as a disabled child through the Lamar County School System. In 2002, ~~2000~~'s treating psychologist believed that a residential program was needed to help ~~2000~~ develop social and vocational skills. One of the placements explored was the vocational rehabilitation program at Warm Springs. (Testimony of Suh, T. at p. 112; 124-125)

4.

The Department of Education has an interagency agreement with the Department of Human Resources to provide related vocational rehabilitation services for disabled children through the Warm Springs facility. Both state and federal funds are transmitted through the Department of Education for this purpose. In 2001, Warm Springs operations were transferred under the auspices of the Department of Labor. A new interagency agreement has not been fully executed. (Testimony of Pickens, T. at pp. 226-239)

5.

In February, 2002, ~~2000~~'s mother initiated the application process for ~~2000~~ to enter Warm Springs. School personnel met on March 26, 2002 to discuss the possibility of the placement. As part of the application process, ~~2000~~'s mother toured the facility; school records were provided to Warm Springs personnel; a review of the application was made by the Warm Springs' psychologist, a preapplication interview was conducted with ~~2000~~ and input received from ~~2000~~'s treating psychiatrist and two psychologists. (Testimony of ~~2000~~'s mother, T. at pp. 33-39; 47-49; testimony of Suh, T. at pp. 112-114; testimony of Babcock, T. at pp. 163-164; testimony of Miller, T. at pp. 272-274; 275-277; testimony of Yates, t. at pp. 307-316; Exhibits P-3; R-2 & R-5)

6.

Petitioner entered the residential vocational rehabilitation program at Warm Springs in June, 2002. At this time, he was highly motivated to succeed. Prior to his admission, Petitioner's treating psychologist, Dr. Babcock, met with the Warm Springs staff to provide in-service training. This placement was identified in the April, 2002 IEP which provided continuing consultative supportive services by Dr. Babcock. That IEP was provided to the Warm Springs

staff. (Testimony of Babcock, T. at pp. 163-164; Exhibits R-7; R-8)

7.

Prior to his termination from the residential program, Petitioner had made significant progress. He exhibited more independent skills regarding caring for his room and clothing. He became more self confident and entered into peer relationships. Academically, his reading improved from a third grade to an eighth grade level and he improved in math. (Testimony of [REDACTED]'s mother, T. at pp. 36-37)

8.

While at Warm Springs, Petitioner exhibited many behaviors which were a manifestation of his disability. He interrupted and talked excessively in groups. He would repeatedly tap other students. He was argumentative.¹ (Testimony of R.W.'s mother, T. at pp. 38-40; testimony of Babcock, T. at pp. 193-197)

9.

Prior to, and during, his placement at Warm Springs, Dr. Babcock sought modifications to the disciplinary model used by Warm Springs staff, which although effective for conduct-disordered individuals, was not effective for individuals with Asperger's and specifically not effective with [REDACTED]. Unlike individuals with conduct disorder, [REDACTED] had difficulty following rules primarily due to his disability which prevented him from always understanding why his behavior was wrong. Dr. Babcock agreed with the disciplinary goals, i.e., the good behavior sought, but not the sanctions. Warm Springs staff would not modify its disciplinary approach. (Testimony of Babcock, T. at pp. 163-179)

10.

On October, 2002 Petitioner was expelled from the residential program at Warm Springs without prior notice to [REDACTED], his parents, or school personnel. The decision was made through an informal process among members of the Warm Spring staff without convening a meeting to include [REDACTED], his parents, and members of his IEP team. (Testimony of Miller, T. at pp. 290-297; testimony of Yates, t. at pp. 334-343; Exhibit R-29)

11.

Petitioner was then placed in the day program which had significant differences from residential placement. Here Petitioner's social interactions in living and recreating were curtailed. Warm Springs staff in February, 2003 terminated these services by an informal process of discussion among Warm Springs staff without prior notice to [REDACTED], his parents, or other members of his IEP team. (Testimony of R.W.'s mother, T. at p. 42; testimony of Miller, T. at pp. 297-300; testimony of Yates, T. at pp. 334-343; Exhibit R-29)

12.

With modifications, the placement at Warm Springs would continue to be appropriate for [REDACTED]. Warm Springs offers the appropriate mix of supervision and autonomy. Residential placement in a psychiatric facility with severely emotionally disturbed children would be inappropriate. Since leaving the program [REDACTED] has regressed, become depressed and gained weight. Before entering the program, he would need counseling. Additionally, Warm Springs staff would need additional training and modifications in Warm Springs staff's disciplinary approach would be needed. (Testimony of Fier, T. at p. 71; 82-85; 95-100; testimony of Suh, T. at pp. 125-134; testimony of Babcock, T. at pp. 182-193)

¹ There was some hearsay evidence in Yates' testimony that he was physically aggressive. It's unclear what may have occurred. Aggressive acts were not discussed with [REDACTED]'s mother nor with the consultative psychologist.

IV. Conclusions of Law

1.

This matter is governed by IDEA and the state and federal regulations promulgated to enact it. IDEA requires that a free and appropriate education 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 CFR § 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.

2.

The burden of proof rests on the Respondent, Lamar County School System, to establish that the IEP is appropriate and provides FAPE. Petitioner stipulated that the April 24, 2003 IEP provided FAPE.

3.

Once Petitioner was accepted into the Warm Springs Program, Respondent Department of Labor was required to comply with the procedural and substantive provisions of IDEA. By unilaterally terminating services for Petitioner without convening a meeting of his IEP team, Respondent, Department of Labor, violated the provisions of 20 U.S.C. §§ 1415(a)-(d).

Essentially, the requirements of IDEA were completely disregarded. Although Petitioner seeks relief from the Respondent, Lamar County School System, and Department of Education, this due process hearing request was filed immediately after Petitioner's termination from the day program. The violations were primarily those of the Department of Labor.

Additionally, there was much discussion of whether an interagency agreement exists. Although the prior agreement with the Department of Human Resources was not made part of the evidence, by operation of law this agreement remains in effect. See O.C.G.A. § 34-15-2(g). There's no dispute that state and federal funds are received by the Department of Labor to fund this program.

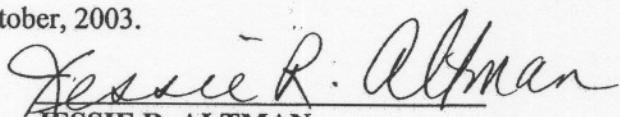
Decision

Procedural and substantive violations of IDEA occurred as discussed above requiring the following compensatory services:

- (1) Petitioner shall receive counseling services to prepare him for re-entry into the residential program at Warm Springs to be paid for by the Respondent, Department of Labor;
- (2) Prior to reentry into the residential treatment program at Warm Springs, a meeting of the IEP team shall convene to identify the services and modifications (including discipline and oversight) to the Warm Springs program to be provided to R.W.; appropriate Warm Springs staff shall be involved in this team;
- (3) As identified by the IEP team, appropriate training shall be provided to the Warm Springs staff to deal with R.W.'s disability;

- (4) No change in Petitioner's placement shall be made without convening the appropriate IEP team;
- (5) ~~_____~~ shall be entitled to an extension of services, as identified through the IEP process, eight months beyond his 22nd birthday.

SO ORDERED this 14 day of October, 2003.


JESSIE R. ALTMAN
ADMINISTRATIVE LAW JUDGE