

04-0401886

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



**[REDACTED]** )  
 )  
 ) **Petitioner,** )  
 )  
 ) **v.** )  
 )  
 ) **COBB COUNTY SCHOOL DISTRICT,** )  
 )  
 ) **Respondent.** )

**DOCKET NO.**  
**OSAH-DOE-SE-0401886-33-JRA**

**FINAL DECISION**

**Introduction**

The above matter came before the Office of State Administrative Hearings (OSAH) for evidentiary hearing on September 30-October 3, 2003 in Atlanta, Georgia 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.* and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 *et seq.*

Petitioner alleged a violation of his right to a free and appropriate public education ("FAPE") under IDEA in the IEP proposed by Respondent Cobb County School district for the 2003-2004 school year and for services provided to him in previous school years. Petitioner sought compensatory services as well as placement at a private school at Respondent's expense.

Based on the evidence presented at the hearing,<sup>1</sup> which showed that although Petitioner's progress on his nonacademic, behavioral goals was less clear, Petitioner made consistent, adequate academic progress, and that there was no discrepancy between his cognitive abilities and achievement on independent measurements of academic performance, it is determined that past placements, as well as the placement proposed for the 2003-2004 school year, provided to **[REDACTED]** by Respondent, provided FAPE in the least restrictive environment. Additionally Petitioner failed to show that the private placement requested is appropriate. Consequently, Petitioner's request for relief is denied.

**Procedural History**

Petitioner filed his due process request on July 30, 2003. The matter was heard September 30-October 3, 2003. The record remained open until November 21, 2003 for receipt of the transcript and post-hearing pleadings.

<sup>1</sup> The undersigned Administrative Law Judge ("ALJ") agrees with Respondent's counsel that many obvious errors exist on the transcript, primarily clarification of acronyms and educational phrases. The ALJ intends to maintain her notes taken during the hearing.

## Findings of Fact

1.

Petitioner is an [REDACTED] currently diagnosed with Asperger's Syndrome, attention deficit hyperactivity disorder (ADHD), and episodic dyscontrol syndrome.<sup>2</sup> He is a resident of the Cobb County School District ("the School District") and has received special education services from the School District since he entered pre-school through July 2003. (Respondent Exhibits 1, 2,3 and 40; Petitioner's Exhibits 70,113, 137; testimony of Golden, transcript ("T") at pp. 96-99)

### History of Placements prior to Fourth Grade (2001-2002 School Year)

2.

Petitioner was referred for special education services while in pre-kindergarten because of significant behavioral difficulties. Subsequent to an evaluation conducted by the School District in late 1996 and early 1997, Petitioner was determined eligible to receive special education services under the eligibility category of emotional/behavior disorder (EBD). (Petitioner's Exhibits 2,3 and 5; Respondent's Exhibits R-1 and R-32)

3.

Petitioner's cognitive abilities have consistently been evaluated to be within the average range. (Petitioner's Exhibits 2, 46, and 137.)

4.

Following the first IEP meeting conducted February 1997, the IEP committee determined that Petitioner would be placed in self-contained classroom (in [REDACTED] Elementary) due to his EBD eligibility and individual needs. (Petitioner's Exhibit 7; Respondent's Exhibits R-1 and R-32)

5.

The IEP committee met again on March 10, 1997, to discuss Petitioner's behavior problems. As a result of this meeting, the IEP committee decided to slightly alter Petitioner's school day and to request the assistance of a behavior interventionist to develop a behavior intervention plan. (Petitioner's Exhibit 9)

### Kindergarten (1997-1998)

6.

On May 15, 1997, the School District convened its annual IEP meeting to review the IEP developed for the previous year and to develop another IEP for the upcoming academic year.

<sup>2</sup> Episodic dyscontrol syndrome is also referred to as "intermittent explosive disorder." (Page 731, lines 11-13.)

The IEP committee reviewed Petitioner's progress on his goals and objectives from the previous year. He had mastered the majority of his goals and had made progress on the remaining goals. The committee then developed goals and objectives for the following year, with increased criteria for mastery. The committee also discussed Petitioner's educational placement for the 1997-1998 school year and determined that a self-contained kindergarten classroom at [REDACTED] Elementary school, designed to address behavior problems, was appropriate for him. No extended school services were provided. (Petitioner's Exhibit 13; Respondent's Exhibit R-34)

#### **First Grade (1998-1999)**

7.

On April 20, 1998, the School District convened its annual IEP meeting to review Petitioner's IEP for the 1997-1998 school year and to develop an IEP for the 1998-1999 school year, his first grade year. The committee determined that a self-contained first grade classroom at [REDACTED] Elementary School, designed to address behavior problems, was the appropriate placement. Petitioner would participate in regular education classes for music, art and P.E. Finally, the committee determined that he did not need ESY services. (Petitioner's Exhibit 21)

8.

In March 1999, toward the end of the first grade, Petitioner took the Iowa Test of Basic Skills, a standardized test. His grade equivalent scores on the various subparts of the test ranged from 1.5 to 2.3. His core total grade equivalent was at a 1.7 level, placing him at the 47<sup>th</sup> percentile nationally, within the average range. (Petitioner's Exhibit 32.)

#### **Second Grade (1999-2000)**

9.

On April 16, 1999, the School District convened its annual IEP meeting for Petitioner to review his progress during the 1998-1999 school year and plan for the 1999-2000 school year, his second grade year. The committee noted that he had performed well academically and was even above grade level in reading and math. The committee reviewed Petitioner's progress on his goals and objectives. He had mastered some goals and partially mastered others. The committee then developed new goals. In addition, it developed a behavior intervention plan. The committee discussed placement options for Petitioner and determined that he should be appropriately placed in a self-contained second grade classroom at [REDACTED] Elementary School, designed to address behavior problems. He would participate in regular education classes for music, art, P.E., and lunch. The committee determined that he did not need ESY services. (Petitioner's Exhibits 33 and 34; Respondent's Exhibit R-36; testimony of Wiedner, T. at p. 42)

10.

During the first semester of the 1999-2000 school year, Petitioner began to display increasingly disruptive and violent behaviors. He threw furniture, threw pencils at classmates, tried to turn a file cabinet over on top of other students, and punched and head-butted his teacher in the arm. On another occasion, he tried to push a classroom paraprofessional and threw an object at his

teacher. On another occasion, he again head-butted his teacher, threw objects at her, and screamed profanities at her and his classmates. (Petitioner's Exhibits 37,38 and 42; testimony of Weidner, T. at pp. 42-43)

11.

Recognizing Petitioner's increased aggression and the need for more information to assist in educational planning, the School District recommended that he receive another comprehensive evaluation to assist in educational planning. The School District requested and received Petitioner's mother's permission to evaluate him. The School District also completed a referral form to refer Petitioner to its psychoeducational program, known as [REDACTED] Academy, designed to address especially severe emotional and/or behavior problems in students. (Petitioner's Exhibits 39 and 45; Respondent's Exhibit R-11)

12.

The School District completed its comprehensive evaluation of Petitioner in October 1999. Based on the information in that evaluation, the School District convened an IEP meeting on November 8, 1999 to review his educational program and eligibility. During this meeting, the IEP committee reviewed the results of the School District's evaluation and determined that, given the severity of Petitioner's behavior problems, his eligibility for special education services should be changed from emotional/behavior disorder to severe emotional/behavior disorder (SEBD). After discussing his needs, the committee agreed that Petitioner would be appropriately served in the School District's psychoeducational program, known as [REDACTED]. (Petitioner's Exhibits 46 and 49; Respondent's Exhibit 37)

[REDACTED] Academy

13.

[REDACTED] serves approximately 400 students per year. The academy uses the principles of applied behavior analysis to guide the instruction and treatment of its students. It was initially based on the Boys Town Educational Model. [REDACTED] no longer has any affiliation with Boys Town, however. [REDACTED] has modified and adapted that model to better fit its students' needs. [REDACTED] has incorporated the latest research to modify its program, but still relies on the principles of applied behavior analysis. The [REDACTED] program is primarily based on the research-based principles of applied behavioral analysis. The principles of applied behavior analysis have been shown to be effective in treating and education children with autism spectrum disorders, as evidenced by many years of empirical data. Various independent studies, conducted by the state of Maine, the state of New York's Health Department, and the U.S. Surgeon General, respectively, each identified applied behavioral analysis as the treatment of choice for autism spectrum disorders. (Testimony of [REDACTED], T. at pp. 625-629; testimony of Weidner, t. at p.89)

14.

When students first enter the [REDACTED] program, they enter the in-center portion of the program. At the time Petitioner entered the [REDACTED] program, the in-center portion was located at the [REDACTED] School. At the in-center program, students receive intensive services

and instruction to teach them and help them acquire improved social and behavioral skills. (Testimony of Weidner, T. at p.43)

15.

Once they achieve a level of fluency in those skills, the students have the opportunity to generalize those skills to other environments. Specifically, they move to the [REDACTED] transition classrooms, or merit classrooms, located in regular schools so they can practice their newly learned skills. These merit classrooms are located within regular schools so that students can practice their improved skills in an environment that more closely approximates a regular education environment. While in the merit classrooms, students have the opportunity to access regular education classrooms at these schools, as appropriate. (Testimony of Weidner, T. at 43-44; 57)

16.

Once students achieve a higher level of mastery of appropriate social and behavioral skills in the merit classrooms, they have the opportunity to return to their home schools. The type of classes accessed by the students at the home school is variable and depends entirely on the students' individual needs. ( Testimony of Weidner, T. at pp. 43-44)

17.

Throughout their participation in the [REDACTED] program, students are on a token economy system, where they earn points for positive behavior and lose points for negative behavior. The token economy system is individualized to each student and tied to the particular goals and objectives in each student's IEP. Students can choose to use the points they earn to buy items of interest from the school store or to buy special privileges, depending on their preference. This token economy system is consistent throughout the [REDACTED] program and across the in-center and merit classrooms. (Testimony of Hudacko, T. at pp. 149;153)

18.

This kind of token economy system is effective with students with autism spectrum disorders. A token economy system is effective because it is able to be generalized. Students can use this token economy to access privileges and items specifically meaningful to that individual student and that serve as incentives to that individual student. Petitioner understood this token economy system. (Testimony of Hudacko, T. at p. 150; testimony of [REDACTED], T. at pp. 1015)

19.

Parents are notified each time their children move between the in-center classrooms, the merit classrooms, and their home schools. Prior to the 2003-2004 school year (when an official form was developed), this notification occurred in the form of a phone call home or in writing if the parent was not able to be contacted. Petitioner's mother was notified each time Petitioner transitioned between schools. (Testimony of Weidner, T. at p. 88; testimony of Petitioner's mother, [REDACTED] at pp. 777;792)

20.

The [REDACTED] program has been successful in transitioning its students to less restrictive environments. Over the past three years, 150 students have exited the program. Of these, very few have returned. (Testimony of [REDACTED], T. at p. 632)

21.

All of [REDACTED] staff undergo a five-day workshop to become familiar with the program. [REDACTED] teachers are certified (some provisionally) teachers. (Testimony of [REDACTED], T. at p. 626; Petitioner's Exhibits 146 and 147)

22.

The [REDACTED] program uses a technique called "intensive intervention" to respond to particularly problematic and disruptive behaviors. A student's classroom teacher may attempt to address problematic behavior, but if the behavior increases in severity or intensity, an intensive intervention is begun. Essentially, intensive intervention allows for another person to continue the teaching interaction in a one-on-one setting with the student. It allows both the student to receive one-on-one attention, while allowing the classroom teacher to continue attending to other students. Intensive interventions also allow students more opportunities to choose appropriate behavior and practice making that choice. In order to conduct intensive interventions, teachers go through a specific and certificated training course with an instructional textbook. (Testimony of Hudacko, T. at p.25; testimony of Miller, T. at pp.389-390;401; testimony of [REDACTED], T. at p. 685)

23.

Ms. Leigh Miller, a teacher within the School District, conducted intensive interventions. Ms. Miller has an undergraduate degree in education and a masters degree is related special education. She holds two teaching certifications from the Georgia Professional Standards Commission, for middle school education and related special education, grades K through 12. (Testimony of Miller, T. at p.387)

24.

Ms. Miller described how a typical intensive intervention would occur. She would receive information from the student's teacher regarding the problematic behavior. She would then meet with the student alone, usually in her office. She and the student would discuss what had happened and allow the student time to de-escalate. In addition, she would role play with the student the appropriate replacement behaviors. When the students had regained control, they would draft a "contract" that described what had occurred, what the student would do differently in the future, and write an apology for the behavior. She and the student would then practice giving an apology. When the student returned to the classroom, the teacher would meet with the student privately, accept the student's apology, and welcome the student back into the classroom. (Testimony of Miller, T. at pp. 391-392)

25.

The length of these intensive interventions depended entirely on the student. They were not time-based procedures. Rather, the teacher conducting the intervention allowed the student as much or as little time as he needed to de-escalate and regain control of himself. (Testimony of Miller, T. at p. 392)

26.

In accordance with the November 8, 1999 IEP, Petitioner would spend full days at the School District's ██████ School until he displayed more consistent appropriate behavior. He would then have the opportunity to access the merit classroom at ██████ Elementary School. While at ██████ Elementary School, he would have the opportunity to access both general education and special education classes, as appropriate. Petitioner could access more and more general education classes, as his behavior improved. If his behavior deteriorated, however, his placement in the ██████ program would allow him to return to the ██████ School to receive more intensive services, as appropriate. (Petitioner's Exhibit 49; Respondent's Exhibit R-37)

27.

Finally, the IEP committee discussed ESY services and determined that, at that time ESY was unnecessary, but would be readdressed at the end of the school year. (Petitioner's Exhibit 49; Respondent's Exhibit R-37)

28.

While in second grade, Petitioner was not able to access any regular education while at the merit center classroom. (Testimony of Petitioner's mother, ██████ at p.767)

*Academic Progress: End of Second Grade*

29.

In March 2000 near the end of his second grade year, Petitioner took the Iowa Test of Basic Skills. His scores on the various subparts of the test ranged from a grade equivalent of 2.1 to 4.3. His core total grade equivalent was at the 3.1 level, placing him at the 59<sup>th</sup> percentile nationally, within the average range. (Petitioner's Exhibit 56.)

**Third Grade (2000-2001)**

30.

On April 20, 2000, the School District convened its annual IEP meeting to discuss Petitioner's progress during the 1999-2000 school year, his second grade year, and to develop his IEP for the 2000-2001 school year, his third grade year. During this meeting, the committee (which included Petitioner's mother) noted that Petitioner had made enough progress to leave the ██████ School and access the merit classroom at ██████ Elementary School. While he had not mastered all of his goals, he had demonstrated progress on them. (Petitioner's Exhibit 58; Respondent's Exhibit R-38)

31.

The IEP committee also developed a behavior intervention plan to both proactively prevent inappropriate behaviors and to effectively respond to them. (Petitioner's Exhibit 58, Respondent's Exhibit R-38)

32.

The IEP committee determined that Petitioner should continue to be served through the ██████ program, with access to both the merit classroom and the opportunity for more intensive services at the ██████ School, if necessary. (Petitioner's Exhibit 58; Respondent's Exhibit R-38)

33.

Finally, the IEP committee discussed ESY services. Because Petitioner had shown regression over the summer in his behaviors (but not his academics), the IEP committee determined that he would receive ESY services through the [REDACTED] program for three hours per week, for six weeks. (Petitioner's Exhibit 58; Respondent's Exhibit R-38)

34.

Petitioner attended twenty-seven of twenty-eight days of his ESY program in Summer 2000. Although he did display some inappropriate behaviors, overall he displayed mastery of his ESY goals during that period. (Petitioner's Exhibit 61)

35.

The School District also conducted an evaluation to determine whether Petitioner required adaptive physical education services. He consistently displayed the ability to perform the vast majority of skills at an age-appropriate level. This evaluation determined that Petitioner was not eligible for and did not require adaptive physical education services. (Petitioner's Exhibit 62)

36.

Petitioner began the 2000-2001 school year in the merit classroom at [REDACTED] Elementary School. During this school year, Petitioner transitioned about four times between the [REDACTED] centered based program and the Merit classroom at [REDACTED] Elementary. Additionally, Petitioner had seventeen intensive interventions during the year. (Testimony of Weidner, T. at p. 45; Petitioner's Exhibit 148; testimony of Sammons, t. at p. 896)

*Academic Progress: End of Third Grade*

37.

During his third grade year, Petitioner did well academically. He finished the year making "good" progress in English and spelling, with the equivalent of B's in both areas. He was making "excellent" progress in reading and mathematics, with the equivalent of A's in both areas. (Petitioner's Exhibit 60.)

**Fourth Grade (2001-2002)**

38.

In February 2001, the School District convened an IEP meeting to review Petitioner's progress during the 2000-2001 school year, his third grade year, and to develop an IEP for the 2001-2002 school year, his fourth grade year. The IEP committee (which included Petitioner's mother) discussed his current functioning. The classroom teacher recognized his difficulties with social skills and noted that Petitioner continually received social skills instruction in the classroom (Petitioner's Exhibit 64; Respondent's Exhibit R-39)

39.

The committee also noted that Petitioner's behavior had somewhat deteriorated in the previous month. Petitioner's mother stated that he was on at least four different medications, some of

which had side effects that affected his behavior in the classroom. She stated that these medications would need further adjustment, given that he was growing. Petitioner had, however, made progress on four of seven of his goals and short-term objectives overall. (Petitioner's Exhibit 64; Respondent's Exhibit R-39)

40.

The IEP committee then developed new goals and objectives. The committee continued Petitioner's goal to refrain from instigating his peers. The committee also continued his goal of using self-control strategies, but raised the criteria for mastery from 70% to 100%. Similarly, his goal of accepting feedback was continued, with the criteria for mastery raised from 80% to 90%. The committee also continued Petitioner's goal of following directions, but raised expectations. Rather than receiving two prompts before following directions regarding a nonpreferred activity, he would now be expected to follow directions right away. Further, the criteria for mastery was raised from 80% to 90%. (Petitioner's Exhibit 64; Respondent's Exhibit R-39)

41.

The IEP committee also developed new goals for Petitioner to stay on task for 15 minutes and to develop his ability to appropriately request clarification from peers and others when he felt offended. Examples of this type of appropriate behavior, such as using appropriate voice tone, were also listed. Finally, the committee developed goals to improve his written expression skills. (Petitioner's Exhibit 64; Respondent's Exhibit R-39)

42.

The committee also developed a behavior intervention plan that identified target behaviors to be prevented and interventions to shape and improve Petitioner's behavior. (Petitioner's Exhibit 64; Respondent's Exhibit R-39)

43.

The committee agreed that, given Petitioner's emotional behavior difficulties and need for small group instruction to address these difficulties, he should continue to receive services in the [REDACTED] program. Finally, the committee determined that he did not require ESY services. (Petitioner's Exhibit 64; Respondent's Exhibit R-39)

#### March, 2001: Asperger's Syndrome Diagnosis

44.

In March 2001, shortly after this IEP meeting, Petitioner's treating psychiatrist, Dr. [REDACTED] wrote the School District a letter indicating that he had diagnosed Petitioner with Asperger's Syndrome, a mild form of autism. This letter was the first such diagnosis the School District had received from Dr. [REDACTED], or from anyone else. At the time of the letter, Dr. [REDACTED] had been seeing Petitioner as a patient for approximately five years. Dr. [REDACTED] also diagnosed him with episodic dyscontrol syndrome (or intermittent explosive disorder) and ADHD. At this time, Dr. [REDACTED] had Petitioner on five different medications.

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 within the autism spectrum but without many of the spoken languages deficits. People with Asperger's syndrome have difficulties with transitions, a preference for sameness and difficulties with non-verbal communications. (Petitioner's Exhibits 67 and 70; testimony of [REDACTED] at p.708)

45.

Given this new information, in May 2001, the School District conducted an evaluation by the school psychologist and drafted an addendum to Petitioner's psychological evaluation conducted in October 1999. This evaluation found that Petitioner exhibited "characteristics associated with the diagnosis of Asperger's Syndrome (Petitioner's Exhibit 67; Respondent's Exhibit R-3)

46.

The evaluation also found some weakness in Petitioner's adaptive behavior skills as they related to receptive language, placing him at the age equivalent of a three-year-old. However, the two areas in which he scored lowest, and which brought down his scores, were in the areas of listening and attending. His low performance in these areas was attributable to his ADHD, rather than language deficiencies. (Testimony of Golden, T. at p. 100)

47.

Petitioner had received an assessment of his language skills about one-and-a-half years earlier. This assessment found that his language skills were in the average range. His language skills were consistent with his cognitive abilities. (Testimony of Golden, T. at pp. 100;120)

48

Recommendations were made by the school psychologist to modify Petitioner's home and educational setting to address his needs. She recommended that the School District continue to provide a "strong, consistent behavior intervention plan" to be carried over to the home setting. She also recommended, among other things, that the school teach him to use self-control strategies to avoid outbursts and tantrums and to incorporate social skills training to teach the "hidden curriculum." The "hidden curriculum" refers to the "hidden rules of society" that are readily apparent to most people but which children with Asperger's Syndrome may not notice. (Petitioner's Exhibit 67; Respondent's Exhibit R-3; testimony of Golden, T. at p.101)

49.

The School District was already providing much of what the school psychologist had recommended in the form of a using a consistent token economy, specifically addressed to improve Petitioner's self-control, and social skills training in the classroom. (Petitioner's Exhibits 49, 58, 64, 75; Respondent's Exhibits R-37, R-38, R-39)

50.

As a result of this evaluation, the School District convened a meeting to discuss whether it was appropriate to give Petitioner an autism eligibility for special education services and to draft an

addendum to his IEP. Petitioner's mother received prior notice of this meeting. In addition to Petitioner's mother, Petitioner's treating psychiatrist, Dr. [REDACTED] also attended. (Petitioner's Exhibit 70; Respondent's Exhibit R-40)

51.

At this meeting to discuss Petitioner's autism eligibility, the committee again reviewed parental rights. The school psychologist discussed her evaluation with Petitioner's mother and the other individuals present. She also reviewed some recommendations for his classroom, such as the use of a behavior plan, using behavior momentum strategies (like leaving a situation to get some water when he felt frustrated), and using only one sensory mode at a time (such as being allowed to listen or speak to a person and not having to look at the person at the same time). (Petitioner's Exhibit 70; Respondent's Exhibit R-40)

52.

During this meeting, the committee assembled agreed that Petitioner's IEP was appropriate. (Petitioner's Exhibit 70; Respondent's Exhibit R-40)

53.

Neither Petitioner's mother nor his treating psychiatrist had any questions or comments during this meeting. Neither expressed any disagreements with any part of the evaluation addendum. (Testimony of Golden, T. at p.102)

54.

The committee determined that Petitioner met the criteria to have an autism eligibility, along with his SEBD eligibility. Both Petitioner's mother and the treating psychiatrist signed this eligibility report. In addition, Petitioner signed the addendum to Petitioner's IEP, indicating her agreement with it. (Petitioner's Exhibits 68 and 70; Respondent's Exhibit R-40)

55.

During the 2001-2002 school year, Petitioner's fourth grade year, he continued to attend the School District's [REDACTED] program, as specified by his IEP developed in February 2001. While he had previously attended the [REDACTED] School to receive intensive in-center services, he now attended the [REDACTED] School for that purpose, as the [REDACTED] program had added a second in-center location to serve elementary students. In accordance with his IEP, Petitioner accessed the merit classroom at [REDACTED] Elementary School. (Petitioner's Exhibits 64 and 127; Respondent's Exhibit R-39)

56.

Petitioner began the 2001-2002 school year at the merit classroom at [REDACTED] Elementary School. His teacher in his merit classroom was Ms. Kerri Hudacko. Ms. Hudacko had also known Petitioner for the two school years prior to the 2001-2002 school year as a student in the [REDACTED] program. Ms. Hudacko has a masters degree in special education and has professional teaching experience in other psychoeducational programs. She holds two teaching certifications from the Georgia Professional Standards Commission, for behavior disorders and as a teacher support specialist. (Testimony of Hudacko, T. at pp. 145-146)

57.

During the fall of that year, Petitioner displayed behaviors that warranted two returns to the [REDACTED] School. Before returning to [REDACTED], the merit classroom teacher spoke with Petitioner's mother who indicated that Petitioner typically had a harder time in the fall. By

December, Petitioner had returned to the merit classroom at ██████████ Elementary school and stayed there for the remainder of the school year. (Petitioner's Exhibits 49 and 75; Respondent's Exhibit R-37; testimony of Weidner, T. at p. 64; testimony of Hudacko, T. at p. 170)

58.

Petitioner used daily point sheets to identify daily goals to work on during the day. Each morning, he and other students would set a daily goal on their point sheets. His teacher conferenced individually with him and the other students at the end of each day and determined and explained the amount of points each student earned each day. This was based on their specific goals. The students took home a daily note reflecting this. (Testimony of Hudacko, T. at pp.151-152)

59.

Petitioner (along with some other students) would sometimes set daily goals that could be ambiguous. In that case, the teacher would discuss in detail what meeting the goal would look like. For example, if Petitioner's self-identified goal was to "stay on task," the teacher would ask him what that would require, and he would respond that he would have his book open and reading, or listening if she was giving instruction. (Testimony of Hudacko, T. at p. 159)

60.

As students progressed in this classroom, they earned the opportunity to negotiate for points at the end of each day. Petitioner did progress enough to earn this privilege and was very accurate in assessing his behavior daily and estimating the points he thought he should earn. (Testimony of Hudacko, T. at p.152)

61.

Petitioner's merit classroom had between one to ten students, never had ten students for more than two or three days. In addition, there was a paraprofessional in the classroom at all times. This made the staff/student ratio never higher than one to five, and usually closer to one to four or lower. (Testimony of Hudacko, T. at p. 154)

62.

The students received academic instruction in the merit classroom and accessed regular education classrooms for their "specials," such as art and P.E. Petitioner regularly attended a general education P.E. class that included both fourth and fifth graders. That class was fairly large and noisy, with approximately 24 fifth graders and additional fourth graders. Petitioner did have trouble with noise. However, he did "extremely well" in his P.E. class. (Testimony of Hudacko, T. at pp. 154 and 174)

63.

Petitioner also had some trouble with the noise in the cafeteria. The School District made accommodations for him, by allowing to watch television in the lunchroom or to eat in his classroom. He was also allowed to eat outside in the picnic area if he wanted. (Testimony of Hudacko, t. at pp. 174-175)

64.

The classroom teacher made additional accommodations for Petitioner to address his issues with noise by not playing any background music in the classroom and preparing Petitioner in advance for a fire drill. The teacher sought and received special permission from ██████████

principal to get advance notice of these fire drills so she could accommodate Petitioner. (Testimony of Hudacko, T. at pp. 175-176)

65.

The merit classroom teacher ran her classroom in a structured and predictable manner. The schedules for the students were posted, with daily assignments written in a designated space on the board. The daily schedules were predictable and consistent, with expectations very clear. (Testimony of Hudacko, T. at pp. 154-155)

66.

The teacher taught different grade levels in her classroom. As a result, she made systematic efforts to organize appropriate instruction to the different grade levels and tailored instruction to the academic levels of each child. For example, if the students were learning the place values of decimals, the younger students might learn the first to tenth place, while the older students might learn the hundredth through billionth place. Further, she would alternate between direct instruction and independent work, so she could address all levels appropriately. All the students in her classroom used the same textbooks as regular education students in the School District. (Testimony of Hudacko, T. at pp. 155-156)

67.

Petitioner was expected to do the same level of academic work as regular education students. His work was guided by the Georgia Quality Core Curriculum, applicable to all regular education students. However, the merit classroom teacher modified assignments to meet his individual needs. The outcome of the assignments was the same, however. For example, the teacher took an assignment to write a research paper and divided it into several shorter assignments, with a complete research paper resulting. (Testimony of Hudacko, T. at pp. 156-157;158)

68.

Petitioner also participated in a weekly social skills group to improve his social skills. A social worker would lead this group. The students watched videos, had discussions, received instruction, and participated in role playing exercises to improve their social skills. This social skill instruction specifically addressed Petitioner's deficits in this area and was related to his goals and objectives. This social skills instruction specifically helped him understand explicit social cues and learn the "hidden curriculum", an important skill for Petitioner, given his Asperger's diagnosis and individual needs. (Testimony of Hudacko, T. at pp. 159-161)

69.

In addition to the social skills group, the teacher made additional efforts to help Petitioner improve his social skills. For instance, he could use a computer program to match emotions with facial expressions. The teacher also explicitly taught appropriate behaviors and reinforced positive behaviors by awarding points and giving frequent praise. (Testimony of Hudacko, T. at p. 162)

70.

When Petitioner displayed some negative behaviors, he would lose points. Before the teacher took away points, she would talk individually with him to discuss the inappropriate behavior. He would also have the opportunity to earn those points back by practicing an appropriate replacement behavior. This allowed him the opportunity to practice appropriate behaviors and learn appropriate replacement skills. The ultimate goal of these strategies was to help him make

progress on his goals and objectives so he could access more regular education classes in the least restrictive environment. (Testimony of Hudacko, T. at pp. 163-164)

71.

Petitioner also had the opportunity to practice these skills in the community. Once a month, the class would participate in a community based instruction, in which they would take field trips into the community. These community based instructions related to what the students were learning in the classroom. For example, the class went to a grocery store and learned about measurements. On another occasion, they went to a bookstore and learned about reference materials. On another occasion, they went to a pet store and learned about exotic fish. (Testimony of Hudacko, T. at pp. 164-165)

72.

Given that the students all had behavior issues to some degree, the classroom teacher prepared the students well in advance of these community based instructions to prepare for them. She talked about them in the classroom and gave explicit instructions about behavioral expectations. The students also did role playing to practice appropriate behaviors. On the day of the community based instructions, the teacher and her students would review the behavioral expectations. (Testimony of Hudacko, T. at pp. 165-166)

73.

Petitioner did continue to have some behavior problems, but he was learning to use strategies to control them. He learned to use several strategies to calm himself when he felt himself becoming upset. Sometimes he walked the track at the school. The track was nearby and circled the portable classroom that housed the class. When he felt upset, he would sometimes walk the track outside the classroom as a calming strategy. He would also sometimes walk the track in the mornings to wake himself up. He was on several medications, and these medications often made him tired. (Testimony of Hudacko, T. at p. 167)

74.

Petitioner used other calming strategies, as well. For instance, he liked dictionaries and almanacs and he would calm down by sitting on the couch in the classroom and looking through those reference materials. (Testimony of Hudacko, T. at p.169)

75.

Further, the specific de-escalation techniques also depend on the individual child. The techniques were modified to fit the individual needs of the student. (Testimony of Miller, T. at p. 398 )

76.

One such intensive intervention with Petitioner during his fourth grade year when he had not been on task and had refused to follow directions. The interventionist attempted to use de-escalation strategies that had been successful for him in the past, but he did not respond. Once she discovered Petitioner's interest in maps, she was able to finish the intervention within five or ten minutes. (Testimony of Miller, T. at pp. 397-398)

77.

The interventionist then told Petitioner she would put the map in the school store so he could buy it with his accumulated points. He successfully reintegrated into the classroom after this intensive intervention. (Testimony of Miller, T. at pp. 397-399)

78.

As Petitioner progressed year to year in the School District, he required fewer intensive interventions per year. However, this year he had fourteen intensive interventions. (Testimony of Sammons, T. at p. 685, Petitioner's Exhibit 100.)

*Academic Progress: End of Fourth Grade*

79.

In Spring 2002, near the end of his fourth grade year, Petitioner took the Georgia Criterion Referenced Test, a test mandated by the State of Georgia. The test measured competency in the areas of reading, English/language arts, mathematics, science, and social studies. He met expectations in each and every one of these areas and exceeded expectations in some subcategories of testing, such as problem solving and geography. He finished his fourth grade year with the following grades: B in English; B+ in both reading and spelling, and A's in mathematics, social studies, science, and health. (Petitioner's Exhibit 79; Respondent's Exhibit R-4)

**Fifth Grade: 2002-2003 School Year**

80.

The School District met in January 2002 to review Petitioner's IEP and to plan for the remaining of that school year and the first part of the 2002-2003 school year, Petitioner's fifth grade year. Petitioner's mother received prior notice of this meeting. (Petitioner's Exhibit 75; Respondent's Exhibit R-41)

81.

Petitioner's mother was an active participant in the IEP meeting. The IEP committee discussed Petitioner's current levels of functioning. He was doing well academically. In fact, he was on grade level in all areas. He was also making progress on his behavior goals. He did display some behavior difficulties which were also exhibited at home. However, the interventions used by the School District, including his behavior intervention plan and daily monitoring sheets, had proven effective. (Petitioner's Exhibit 75; Respondent's Exhibit R-41; testimony of Hudacko, T. at p.194; testimony of Miller, T. at p. 399)

82.

The IEP committee reviewed Petitioner's progress on his goals and objectives. He had mastered each of his three goals regarding written expression. He had also made good progress on his behavioral goals. He had mastered his goal of staying on task for 15 minutes and showed good progress in his ability to follow directions regarding a nonpreferred activity, accepting feedback, using his self-control strategies, refraining from instigating peers, and using appropriate voice tones with others. (Petitioner's Exhibit 75; Respondent's Exhibit R-41)

83.

Petitioner began the year with significant difficulty in following directions. When he received a direction to a nonpreferred activity, he would sometimes fall to the ground and yell "It's not fair. I am not doing it. I don't have to follow those directions." By the time of the IEP meeting, he was complaining and acting out much less often. (Testimony of Hudacko, t. at p. 184)

84.

Petitioner's goal of using self-control strategies targeted both verbal and physical self-control. He had made especially good progress in maintaining physical control, and he was much less aggressive than he was previously. He still had some verbal control issues, however, and made what his mother referred to as "bird calls." While Petitioner exhibited very good progress on maintaining physical control, his verbal control issues reduced his percentages on that goal. (Testimony of Hudacko, T. at p. 187)

85.

The IEP committee then developed new goals and objectives. The committee continued Petitioner's goal to follow directions right away, but now added the requirement that he not complain. The committee also continued the goals for accepting feedback, refraining from instigating peers, and using appropriate voice tone. Because Petitioner had already shown progress on these goals, they were continued with higher expectations and raised criteria for mastery. (Petitioner's Exhibit 75; Respondent's Exhibit R-41)

86.

The IEP committee also added new goals to help Petitioner maintain verbal and physical control, to raise his hand to get the teacher's attention (rather than simply calling out), refrain from picking scabs, and to stay on task for 30 minutes. (Petitioner's Exhibit 75; Respondent's Exhibit R-41; testimony of Hudacko, T. at p.191)

87.

In drafting these goals, the IEP committee sought to improve Petitioner's ability to generalize his skills and to display appropriate behavior across settings. (Testimony of Hudacko, T. at p.191)

88.

The IEP committee then discussed Petitioner's educational placement and agreed that he continued to need the support provided by the [REDACTED] program. He would be able to once again attend [REDACTED] Elementary School and be in Ms. Hudacko's class. The committee believed that attending the same school two years in a row would be beneficial. He would have access to the merit classroom and general education classrooms at [REDACTED] Elementary School as appropriate, with the opportunity to receive more intensive support at the [REDACTED] School, if necessary. Petitioner would also receive group counseling once per week. (Petitioner's Exhibit 75; Respondent's Exhibit R-41; testimony of Hudacko, t. at p.193)

89.

The IEP committee discussed ESY services and determined that, given Petitioner's progress, he did not require any such services. (Petitioner's Exhibit 75; Respondent's Exhibit R-41)

90.

Petitioner's mother signed this IEP, indicating her agreement with it. This IEP was to be in effect from January 31, 2001 to January 31, 2002. (Petitioner's Exhibit 75; Respondent's Exhibit R-41; testimony of Hudacko, T. at p. 194)

91.

Petitioner began the 2002-2003 school year, his fifth grade year, at the merit classroom at ██████████ Elementary School. Once again, his teacher was Ms. Hudacko. He had difficulty adjusting to school in the fall of 2002. The teacher noted that Petitioner was having particular difficulty and was informed by his mother that he was going through puberty and his treating psychiatrist was adjusting his medications. (Testimony of Hudacko, T. at p. 274)

92.

Petitioner displayed behaviors that warranted his return to the ██████████ School three or four times in the fall of 2002. His final return to ██████████ occurred in December 2002. He remained at ██████████ until the end of the 2002-2003 school year, at his mother's request. (Testimony of Weidner, T. at p.65)

93.

While in the merit classroom, the teacher taught using the concept of thematic units. Using this technique, she would teach a particular topic and teach it throughout all subjects throughout the day. (Testimony of Hudacko, T. at pp. 170-171)

94.

Petitioner spent his day in the merit classroom as he had in fourth grade and accessed regular education classes for "specials," such as art, music, P.E. computer instruction, and counseling. The merit classroom teacher would prepare the regular education teachers for his presence. Each teacher would receive a copy of the accommodations and modifications necessary for Petitioner. Further, either the merit classroom teacher or her paraprofessional would be nearby during the class period, if their input was ever required. Petitioner did "extremely well" in these regular education classes, and the teachers liked him. (Testimony of Hudacko, T. at pp. 171-173)

95.

On occasion, Petitioner would have some difficulties in these general education classes. On these occasions, the merit classroom teacher took additional steps to help him. Once he was reluctant to participate in a square dancing unit in P.E.. The merit classroom teacher partnered with him. After that, he was able to participate well without the teacher's presence. (Testimony of Hudacko, T. at pp. 172-173)

96.

The merit classroom teacher made specific efforts to help Petitioner make progress on his goals and objectives. One of his goals was to maintain verbal control. One area of difficulty was that he made what his mother referred to as "bird calls." He was taught replacement skills to avoid making these noises. (Testimony of Hudacko, T. at p.275)

97.

The merit classroom teacher also took Petitioner's individual interests into account when shopping for items for the "school store," items (such as maps) which he could "buy" with points he earned for positive behavior. (Testimony of Hudacko, T. at p.307)

98.

The merit classroom teacher also helped Petitioner interact appropriately with others. He received direct instruction about appropriate interactions, and he also participated in a social skills group and practiced appropriate behaviors through role playing. (Testimony of Hudacko, T. at p.275)

99.

The merit classroom teacher observed Petitioner applying some of the appropriate behaviors he learned. After role play to help him take turns with other students at the class computer, the teacher observed he was using what he learned in this role play with other students while at the computer. When the teacher observed [REDACTED] using these appropriate skills, she would praise him, and he would smile. (Testimony of Hudacko, T. at pp. 276-277)

100.

The merit classroom teacher also noted that Petitioner's ability to maintain physical control had improved. He was not throwing things as often as in fourth grade. He also had a tendency to throw tantrums when he perceived a situation to be unfair. The teacher worked with him to identify replacement skills and self-control strategies. (Testimony of Hudacko, T. at pp. 277-278)

101.

Petitioner became able to independently use learned self-control strategies when necessary. For instance, with the teacher, he practiced how he could remove himself from a situation (if he began to feel frustrated) by walking around the track or getting a drink of water. Initially, the teacher would prompt Petitioner to use these strategies. Eventually, he would request to take a break and walk around the track. Walking around the track appeared to be an effective self-control strategy. (Testimony of Hudacko, t. at p.280)

102.

The merit classroom teacher also implemented strategies to help Petitioner improve his interpersonal skills. He received help through his social skills group. He also completed a merit project in which he read to regular education kindergarten students and he practiced having and maintaining conversations with various adults, including the teacher and the paraprofessional in her classroom. (Testimony of Hudacko, T. at pp. 281-283)

103.

Petitioner did have some instances of inappropriate physical behavior. One such incident occurred in October 2002. He was with his class in the school library. The students had an assignment as part of their curriculum to select a fiction novel to read. The students had 30 minutes to select a book. When Petitioner would not choose a book within the allowed time he

became frustrated and threw a book in the library toward other students. The teacher led him back to her classroom but left him outside to calm down since his agitation had escalated. In trying to get back into the classroom, Petitioner pushed the teacher with the door and she fell down.

Since neither the behavior interventionist nor the social worker were available, campus security was called. This led to a charge filed in Juvenile Court which was dropped next February, 2003. (Testimony of Hudacko, T. at pp. 281-284)

104.

After the incident in October 2002, Petitioner was sent to [REDACTED]. He returned to [REDACTED] once more. At this point, Petitioner's mother indicated that she no longer wanted him to transition between [REDACTED] and the merit classroom at [REDACTED] Elementary School but to remain at [REDACTED]. Petitioner's mother wanted the School District to enter into a contract that he could not be transitioned due to "medication changes." She was also having trouble with Petitioner's behavior which she believed were due to medication changes and the onset of puberty. (Testimony of Hudacko, T. at pp. 376, 378)

105.

Ms. Hudacko favored having Petitioner remain in the same classroom, but disagreed that he should remain at [REDACTED] because he had shown physical aggression. She believed that he should remain at [REDACTED] so he would have more staff and support immediately available to him as needed. (Testimony of Hudacko, T. at p. 377)

106.

Petitioner's mother notified the School District that she and Petitioner's treating psychiatrist did not want Petitioner to return to the merit classroom at [REDACTED]. The mother attributed her request to Petitioner's medication changes, his maturation issues, the fact that there had recently been a death in the family, and the possibility that his father would have to leave for military duty. In response to the Mother's request, Petitioner remained at [REDACTED] in Ms. Logan's classroom. (Testimony of Sammons, T. at p. 905)

107.

Ms. Logan has a masters degree in education, with a focus in special education. She holds a current teaching certification from the Georgia Professional Standards Commission in the areas of interrelated special education and social services. (Testimony of Logan, T. at p.466)

108.

Similar to the merit classroom, the in-center classroom has approximately ten students in it and the instruction is structured focusing on thematic units. The classroom was divided into three sections. In one section, there were individual desks for the students to receive direct instruction. In another section, she has study carells for independent work. In the third section were tables set up to do group activities. (Testimony of Logan, T. at pp. 485-486, 519)

109.

The in-center teacher also took her students out into the community for community-based instructions. One such instruction occurred at a bookstore. The teacher was focusing on

periodicals and showed the students the magazine section. Petitioner wanted to buy a particular magazine, but the teacher instructed him that she was not going to buy it for the class. He successfully accepted her feedback and did not misbehave. (Testimony of Logan, T. at pp. 476-477)

110.

While at ██████████, Petitioner had expressed concerns about maturation. He told the teacher and to her paraprofessional that "he was afraid of growing up." In response, the teacher made sure that he could attend a regular fifth grade class in human growth and development at ██████████ Elementary School to address his concerns. (Testimony of Logan, T. at pp. 479, 481)

111.

The in-center teacher also noted Petitioner's difficulties with social interactions. In response the teacher made specific efforts to teach him. For example, she practiced with him on how to maintain personal body space by practicing maintaining an arm's length distance. (Testimony of Logan, T. at p.484)

112.

The in-center teacher also addressed Petitioner's difficulties with tolerating frustration beginning gradually. She would initially praise him for simply identifying that something was bothering him. Once he was better able at identifying these situations, she would then proceed to the next step and have him identify exactly what was bothering him. Initially, he expressed his frustration with a "grunt," but became able to verbalize specifically what upset him. Eventually, he was able to independently seek out his teacher and tell her if something was bothering him. This was an improvement. (Testimony of Logan, T. at pp. 490-492)

113.

The in-center teacher took Petitioner's Asperger's Syndrome into account and modified her interactions with him accordingly. For example, most interaction skills first require the student to look at the other person in the eye. The teacher knew that Petitioner had difficulty doing this. She did not require him to make direct eye contact. (Testimony of Logan, T. at pp. 494-495)

114.

By the end of his fifth grade year, Petitioner's behavior had improved so much that he had become responsible enough to deliver attendance for his classroom to the attendance office. He had earned the privilege of being able to travel around the building independently to deliver the attendance folder, go to the fax room, and retrieve messages for his teacher. He also helped other students when there were group activities, sometimes helping younger students as well. (Testimony of Weidner, T. at p. 47; testimony of Logan, T. at p. 498)

115.

Petitioner continued, however, to display behaviors that warranted intensive interventions. All together in the fifth grade, he had fourteen intensive interventions. After February, though, his behavior had improved and he did not earn any intensive interventions for the remainder of the year. He had internalized the self-control strategies he learned in the ██████████ program so that he could better control his behavior. (Petitioner's Exhibit 100; testimony of Sammons, T. at pp. 895-896, 909)

*Academic Progress: End of Fifth Grade*

116.

In March 2003 toward the end of his fifth grade year, Petitioner once again took the Iowa Test of Basic Skills. His grade equivalent scores on the various subparts of the test ranged from grade level 3.7 to 7.2. His overall composite grade equivalent score was a grade level 5.7, placing him on the 50<sup>th</sup> percentile nationally, within the average range. (Respondent's Exhibit 50.)

Additionally, he finished the fifth grade with an A in each subject on his report card. (Petitioner's Exhibit 86; Respondent's Exhibit R-24)

Throughout his enrollment in the School District, Petitioner had taken the Brigance Inventory to test his academic skills. At each and every administration of the Brigance, he tested at or above grade level in every category measured. (Petitioner's Exhibit 116)

**Proposed Sixth Grade Placement (2003-2004)**

117.

During the fifth grade year, the in-center teacher, Petitioner and his mother, visited Mr. Jay Parson's sixth grade classroom at ~~Wesley~~ School as a possible placement for ~~the~~ sixth grade year. (Testimony of Logan, T. at p.502)

118.

Mr. Parsons' classroom is part of the dual diagnosis portion of ~~Wesley~~ Academy. The dual diagnosis program is overseen by Ms. Pauline Terrell, Assistant Director. Ms. Terrell has held this position for twenty years. She has received formal education in the education of children on the autism spectrum and has attended numerous conferences and workshops on the subject. Children within the dual diagnosis portion are typically on the autism spectrum but also show significant behavior problems that interfere with learning. (Testimony of Terrell, T. at pp. 579-581)

119.

The dual diagnosis program uses a treatment team model. In that model, a student's teacher, paraprofessionals, and social worker assigned to each of the classes meet regularly to assess a student's performance and efficacy of any educational plans. The team reviews the data taken by the individuals who work with the student. This data is taken daily. Social workers maintain contact with parents to maintain current information, along with communications between parents and teachers. Parents are invited to attend these meetings and often have. (Testimony of Terrell, T. at pp. 582-583)

120.

Mr. Parsons' class has typically about eight students and at least two paraprofessionals. At the time of the hearing, there were three students in Mr. Parsons' class, with one teacher and two paraprofessionals. Therefore, the student-staff ratio was one-to-one. (Testimony of Terrell, T. at pp. 583-584)

121.

As students make progress in Mr. Parsons' classroom, they are given the opportunity to access regular education classrooms with typical peers. Once a student's behaviors improve in Mr. Parsons' classroom, the student's treatment team identifies a regular education class where they believe the student will be successful. Typically, students first access "connections" classes, such as drama, art, or P.E., for regular education. The regular education teacher is consulted and given background on the student to prepare for his arrival and to discuss successful strategies for the student. Initially, the student attends the class with a support person, usually once per week. As the student becomes more successful, support is faded and he attends the class more frequently. (Testimony of Terrell, T. at pp. 584-585; testimony of Parsons, T. at p.979)

122.

Mr. Parsons' class is structured around normal grade level activities. He determines each student's schedule by what grade the student is in. It is a predictable schedule, consistent and the same every week. (Testimony of Parsons, T. at p.976)

123.

Some students in Mr. Parsons' classroom have been able to attend regular education classes for most or all of the instructional day. Within the last two years, Mr. Parsons has taught between 15 and 20 students. Of those, four students were able to attend all regular education classes. Each and every one of these students has been able to access at least some regular education classes with typical peers. (Testimony of Terrell, T. at p.585-586; testimony of Parsons, T. at p.972.)

124.

The classroom also allows many opportunities for ongoing teaching of appropriate social skills, which many students in Mr. Parsons' classroom require. Mr. Parsons engages in this teaching throughout the day every day. Further, the program's social worker visits the class weekly and conducts social skills training specifically for Mr. Parsons' students. (Testimony of Terrell, T. at p. 584; testimony of Parsons, T. at p. 962)

125.

The students in Mr. Parsons' classroom are on a point system, or token economy system. The point system is individualized to address each student's particular needs and target behaviors. (Testimony of Terrell, T. at p. 601)

126.

Students placed in Mr. Parsons' classroom do not go to the ~~Davidson~~ School or to ~~McLester~~ as part of the same placement. Instead, an IEP is required to move a student out of ~~McLester~~ ~~Davidson~~ School. (Testimony of Terrell, T. at pp. 619-620)

127.

The in-center teacher, Petitioner and his mother visited and stayed in Mr. Parsons' classroom for approximately one hour. During this visit, Petitioner saw a student whom he had previously seen at ~~Davidson~~ during the fall, but who was now in Mr. Parsons' class. That student was folding origami, and Petitioner initiated a conversation with her about it. This was unusual, as Petitioner typically did not approach people. Mr. Parsons observed ~~her~~ engaging this other student and noted the immediate connection he appeared to make. Mr. Parsons felt this was a

very positive visit. (Testimony of Terrell, T. at pp. 502-503; testimony of Petitioner's mother, at p. 835; testimony of Parsons, T. at p.978)

128.

During this visit, Mr. Parsons spoke with Petitioner's mother about the details of his classroom. He reviewed the point system used in his classroom and how it operated. He described the kinds of target behaviors, explained that students earned privileges by earning points, and reviewed examples of how the point system would work. (Testimony of Parsons, T. at pp. 952-953)

129.

The in-center teacher also spoke with Mr. Parsons about his classroom. She wanted to be certain that, if the IEP committee agreed that Petitioner should attend Mr. Parsons' class, that she could begin to prepare him for the particulars of this class. (T page 504, lines 14-19.)

130.

The School District attempted to convene its annual IEP meeting for Petitioner in February 2003. This IEP would plan for the remainder of ~~2003~~ fifth grade year and the first half of the 2003-2004 school year, his sixth grade year. Petitioner's mother requested a postponement, however. Consequently, the meeting was not held until April 29, 2003. Petitioner's mother attended this meeting and once again received a copy of her parental rights. (Petitioner's Exhibits 106 and 107; Respondnet's Exhibits R-42, R-43, R-44 and R-45)

131.

The IEP committee reviewed Petitioner's academic performance and found that both his math and reading readiness skills were "at the same level as students his age." His written expression, however, was below grade level. (Petitioner's Exhibit 107; Respondnet's Exhibit R-45)

132.

The committee also discussed Petitioner's behavior. While he had made progress towards his behavioral goals and objectives, he had had some difficulties during the year. At least some of these difficulties were due to maturation issues and the beginning of adolescence. Petitioner's also agreed at this IEP meeting that he was having issues associated with maturation, and that the treating psychiatrist had been adjusting his medications accordingly. In fact, "major adjustments" had been made to Petitioner's medication regime. Petitioner was now able, however, to recognize when his frustration level rose and to choose a de-escalation strategy himself to avoid outbursts. He also had begun initiating conversations with his peers and adults. (Petitioner's Exhibit 107; Respondent's Exhibit R-45)

133.

The IEP committee reviewed Petitioner's progress on his goals and objectives. He had mastered two of his goals to stop picking at scabs and to use appropriate voice tone. He had also made "solid progress" on the others. The IEP committee continued these goals, many with higher expectations and criteria for mastery. In addition, to address Petitioner's needs regarding written expression, the committee developed written expression goals. (Petitioner's Exhibit 107; Respondent's Exhibit R-45)

134.

The written expression goals developed at this IEP were different from the written expression goals written in the February 15, 2001 IEP. In the earlier IEP, the goals were written for a younger student "who is beginning to use written expression as a means of expressing himself." The written expression goals in the April 2003 IEP, however, were "more sophisticated" and reflected "what will be required of Petitioner in the middle school years." (Testimony of Sammons, T. at pp. 943-944)

135.

The committee discussed Petitioner's educational placement for the upcoming year. Mr. Parsons, who attended the IEP meeting, described his classroom and the daily schedule of his class. After discussion, the committee placed Petitioner in Mr. Parsons' classroom at ~~the~~ ~~middle~~ ~~school~~ School. This placement allowed Petitioner to stay at ~~the~~ ~~middle~~ ~~school~~ School the entire school year, with access to general education classrooms as appropriate. (Petitioner's Exhibit 107; Respondent's Exhibit R-45; testimony of Parsons, T. at p. 950)

136.

While Petitioner's placement and education with conduct disordered children was appropriate at the elementary school level, placement and education with dual diagnosis students like himself (with both autism and EBD eligibilities) would be appropriate at the middle school level. At the elementary school level, students stay within one classroom in a very structured program. The class sizes are smaller, and more adult support is available. Further, elementary school age children do not display nearly as much physical aggression as middle school age children do. In middle school, on the other hand behavioral issues tend to increase and become more aggressive among conduct disordered children. This increased aggression would negatively impact Petitioner, whose behavior is the result of surrounding influences, rather than a conduct disorder. (Testimony of Sammons, T. at pp. 918, 941)

137.

Petitioner's mother also specifically requested that the School District provide Petitioner with ESY services. The committee agreed that he would receive ESY services during Summer 2003 through the ~~ESY~~ program. (Petitioner's Exhibit 107; Respondent's Exhibit R-45)

138.

Nearly one month later, on May 23, 2003, Petitioner's mother notified the School District that she would not sign this IEP. She had two objections. First, she did not want law enforcement to be contacted under any circumstance. Second, she did not want Petitioner to transition at all between schools. (Petitioner's Exhibit 109; Respondent's Exhibit R-46; testimony of Petitioner's mother, T. at p. 864)

139.

In May 2003, the School District conducted an evaluation, at Petitioner's mother's request, to determine whether he required speech language therapy. His receptive and expressive language skills were within normal limits, as were his articulation, phonology, voice and fluency. He did show some instances of dysfluency (such as occasional stuttering), and it was recommended that he be monitored for increase and severity. No speech language services were warranted. (Petitioner's Exhibit 111; Respondent's Exhibit R-26)

140.

Petitioner received ESY services during Summer 2003 for five weeks with Ms. Logan, his fifth grade teacher at [REDACTED]. During these ESY sessions, he worked on his goals to maintain verbal and physical control, to stay on task for 30 minutes, and to write three paragraphs on a given topic. During ESY, he made progress on all of these goals. In fact, he did not display a single instance of physical aggression, aside from crumpling up a piece of paper in frustration. (Petitioner's Exhibit 113; Respondent's Exhibit R-48)

#### Private School Placement

141.

Petitioner now attends The [REDACTED] School ([REDACTED]), the private placement for which he seeks public reimbursement from the School District. The director of the Middle-Upper School Program at [REDACTED] is also teacher in the program. The Middle-Upper School Program has been in existence for only one full year. (Testimony of Nelson, T. at pp. 417, 427)

142.

The Director has no educational background regarding teaching. He has an MBA and Master's in counseling. He holds no teaching certifications. There are no certified teachers at [REDACTED] in the Middle-Upper School Program, where Petitioner is currently enrolled. (Testimony of Nelson, T. at pp. 415, 445-446)

143.

[REDACTED] uses a technique called "floor time" with its students. The Director specifically uses this technique and references it in brochures regarding his private counseling practice. This methodology, developed by Dr. [REDACTED] and also known as the Developmental Individual Difference Relationship model (or DIR), is markedly different for applied behavior analysis, used in [REDACTED] Academy. Studies conducted by the states of Maine and New York do not recommend use of the floor time technique with autism spectrum students, as there are no empirical studies supporting its use. (Testimony of Nelson, T. at p. 457; testimony of Powell, T. at pp. 633-634)

144.

There appears to be no academic preparation available for Dr. [REDACTED] methods. Instead, it appears that individuals learn Dr. [REDACTED] methods by buying videotapes and books from Dr. [REDACTED] website. (Testimony of Whitmarsh, T. at pp. 1002-1003)

145.

The students in the Middle-Upper School Program go on weekly hikes. No content area instruction can occur during these hikes because there are too many behavioral problems among the students. (Testimony of Nelson, T. at pp. 436-437)

146.

There are no typical, nondisabled children at [REDACTED]. [REDACTED] has not attempted to transition any of its Middle-Upper School Program students into a less restrictive educational environment. (Testimony of Nelson, T. at pp. 449, 459)

147.

██████████ does not have a high school program. It is unable to award Petitioner a high school diploma. In fact, ██████████, makes no distinction between its middle school and high school students, instead combining the two into its Middle-Upper School Program. (Testimony of Nelson, T. at p. 458)

148.

██████████ has asked students to leave the school and not return. (Testimony of Nelson, T. at p. 461)

149.

On July 30, 2003, Petitioner filed a due process hearing request. In that request, he alleged that the placement provided by the School District in the past has been inappropriate since 2000-2001 and further alleges that the placement proposed for him for the 2003-2004 school year is identical to his previous programs, save for the change to a middle school environment. Petitioner further alleged that the School District has made "no provision for research validated programming" for him. He demanded that the School District fund his placement at ██████████ for the 2003-2004 school year. (Petitioner's Exhibit 1)

#### Conclusions of Law

1.

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 *et seq.*), 34 C.F.R. § 300 *et seq.*, the Family Educational Rights Privacy Act (FERPA) (20 U.S.C. § 1232g), O.C.G.A. § 20-2-152, and Ga. Comp. & 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.*), and the compulsory attendance provisions of O.C.G.A. § 20-2-690 *et seq.*

2.

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.

3.

Claims brought under IDEA are subject to a two year statute of limitations. *Mandy S. v. Fulton County Sch. Dist.*, 205 F. Supp. 2d 1358 (N.D. Ga. 2000), *aff'd without opinion*, 273 F.3d 1114 (11<sup>th</sup> Cir. 2001). Claims under IDEA begin to accrue "when the parents know or have reason to know of the injury or event that is the basis for the claim . . . The cause of action accrues when the plaintiff learns (or should have learned) of the injury, whether or not they know that the injury is actionable." *Mandy S.*, 205 F. Supp. 2d at 1365.

4.

Petitioner's mother attended each and every IEP and eligibility meeting for ██████████ and received notice of her parental rights and each and every meeting. She was an active participant in the

process of developing the educational program for her son, offering her opinions and suggestions, and asking substantive questions of School District staff. At these meetings, she received notice of the frequency, location and duration of services to be provided to [REDACTED]

5.

The Georgia Department of Education defines "frequency" as "the number of segments or hours (per day, per week, or per month). "Location" is defined as "the environment in which the services will be provided (i.e., special education environment, general education environment)." "Duration" is defined as "beginning and ending dates for each service, modification, and support." The frequency, location, and duration of services provided to Petitioner by the School District is clearly explained in each and every IEP.

6.

In his due process hearing request, Petitioner primarily objects to the movements between the in-center programs and the merit classrooms in the [REDACTED] program, and further contends that the School District never obtained his parent's consent. The facts show otherwise. The [REDACTED] program, with its system of progressive access to less restrictive environments, was fully explained to Petitioner's mother and she understood the program. She was notified each and every time [REDACTED] moved from one facility to another. Further, when she asked that these transitions no longer occurred, the School District complied with her request.

7.

Petitioner's mother received notice and was aware of the education program developed and implemented for Petitioner. She was an active participant in developing this programming. Because she had full and actual knowledge of the events surrounding Petitioner's education, the two year statute of limitations mandated by *Mandy S.* applies. Petitioner filed this due process hearing request on July 30, 2003. Given the applicable two year statute of limitations, only events occurring on or after July 30, 2001 are at issue in this proceeding. Accordingly, any and all claims relating to any events occurring prior to July 30, 2001 are barred.

8.

Further, Petitioner bears the burden of proof in this matter. In *Devine v. Indian River County Sch. Bd.*, 249 F.3d 1289 (11<sup>th</sup> 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; *see also Tracey T. v. McDaniel*, 610 F. Supp. 947 (N.D. Ga. 1985); *Burger v. Murray County Sch. Dist.*, 612 F. Supp. 434 (N.D. Ga. 1984); *M.T. v. Cobb County Sch. System* (J. Gatto presiding, 2003, page 13.) (attached hereto as Attachment 2.). Petitioner, through his parent, signed and agreed to each and every IEP that was developed and implemented by the School District. Petitioner, as the party now attacking these same IEPs, bears the burden of proof in this matter. He, therefore, has to establish by a preponderance of the evidence that the District has failed to provide him a free appropriate public education (FAPE). *Devine*, 249 F.3d 1289 (11<sup>th</sup> Cir. 2001).

9.

The Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, requires that the District 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 IDEA'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 IDEA, is designed to meet the student's specific needs, and is calculated to enable the student to receive educational benefit.

10.

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 198. The Court further stated that "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 199. The Court held that the IDEA requires a school district to provide a "basic floor of opportunity" for the disabled child. *Id.* at 201.

11.

The Eleventh Circuit Court of Appeals in *J.S.K. v. Hendry County Sch. Bd.*, 941 F.2d 1563 (11<sup>th</sup> 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 (11<sup>th</sup> 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 (emphasis added). 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. *See, e.g., Devine.*, 249 F.2d 1289 (11<sup>th</sup> Cir. 2001).

12.

In determining whether a student has received adequate educational benefit, and therefore received a FAPE under the standard outlined by both the United States Supreme Court and the 11<sup>th</sup> Circuit, a student's academic progress and his ability to advance from grade to grade are important factors for consideration. *See, e.g., Rowley*, 458 U.S. at 203-204. For instance, in *C.J.N. v. Minneapolis Public Schools*, 323 F.3d 630 (8<sup>th</sup> Cir. 2003), *cert. denied*, 2003 U.S. LEXIS 8045, the court considered the educational programming for a child with a long history of psychiatric illness and behavioral difficulties, but without any stated cognitive impairments. The school developed an IEP for the student that placed him in a special education classroom with a token economy system to reinforce positive behavior. *C.J.N.*, 323 F.3d at 635.

13.

The student continued to have frequent behavioral difficulties, however, that led to him being given "time-outs" and being physically restrained when he assaulted others and banged his head against the wall. On one occasion, the student had a behavioral outburst that led to police intervention and a period of hospitalization. The school district then placed the student at another elementary school, with attendance in a day treatment program. The student remained in this placement for only seven days, as he had a behavioral outburst that required him to be taken to a local crisis center. At that point, the student's parent unilaterally withdrew the student and enrolled him in a private day school for disabled children. *Id.* Throughout his enrollment in the public school system, however, the student progressed at an average rate academically. *Id.* at 639.

14.

The parent sued the school district, alleging that the student had not received a FAPE. While the parent partially prevailed at the initial hearing, the school appealed the decision and prevailed at the second level of the state's two-level hearing system. The U.S. District Court likewise determined that the school had provided the student a FAPE. On appeal to the U.S. circuit court, the Eighth Circuit affirmed the findings of the district court and also determined that the school had provided the student a FAPE.

15.

In reaching its decision, the Eighth Circuit emphasized the academic progress the student had made while enrolled in the school. The parent contended that "because academic progress [had] not been identified as among [redacted] educational needs, evidence of academic progress is particularly irrelevant." *Id.* at 638. The court specifically and explicitly rejected this argument. Instead, the court found the student's academic progress even *more* relevant, given the student's behavior difficulties. Such academic progress, the court held, "demonstrates that [the student's] IEPs were not only reasonably calculated to provide educational benefit, but, at least in part, did so as well." *Id.* at 638. Further, the court held that the student's academic progress demonstrated that his behavioral problems had effectively been addressed. *Id.* at 642.

16.

Similarly, in *Adam J. v. Keller Independent Sch. Dist.*, 328 F.3d 804 (5<sup>th</sup> Cir. 2003), the court evaluated the educational services provided to a student with Asperger's Syndrome and ADHD.<sup>3</sup> All parties agreed that the student, while bright, had serious behavioral problems. The student had an IEP that placed him in a highly structured classroom designed for behavior modification. After approximately three years of enrollment in the public schools, the parents filed a due process hearing request in May 2001 and demanded a publicly-funded private placement for the student, citing the student's continued behavioral problems. The school district prevailed at both the administrative level and before the U.S. District Court. The Fifth Circuit affirmed the district court's decision and found that the school had provided the student a FAPE.

17.

In support of their appeal, the student's parents cited his "severe behavioral problems" that continued through 2001 "as evidence that he actually regressed while enrolled in the school district." *Adam J.*, 328 F.3d at 810. The Fifth Circuit rejected this argument and relied on the

<sup>3</sup> Interestingly, [redacted] has the same diagnoses.

student's demonstrated academic progress to determine that the school had provided a FAPE: "Clearly, evidence of an academic benefit militates in favor of a finding that Adam's IEPs were appropriate."<sup>4</sup> *Id.*

18.

Indeed, courts in several jurisdictions have consistently held that academic progress, even when a student's IEP primarily addresses behavioral difficulties, is strong evidence that the IEP is appropriate and that the school district has provided the student a FAPE in accordance with IDEA. *See, e.g., Kings Local Sch. Dist. v. Zelazny*, 325 F.3d 724 (6<sup>th</sup> Cir. 2003) (child with Asperger's Syndrome, obsessive compulsive disorder, and Tourette's Syndrome received a FAPE, as he received good grades and advanced from grade to grade); *Cypress-Fairbanks Independent Sch. Dist.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997) (student with ADHD and Tourette's Syndrome received FAPE, as he earned passing grades and was making progress towards goals); *Nygren v. Minneapolis Public Schools*, 2001 U.S. Dist. LEXIS 21980, \* 9 (D.C. Minn. 2001), *aff'd*, 323 F.3d 630, *cert. denied*, 2003 U.S. LEXIS 8045 (student with emotional and behavioral problems who was "learning with the average range in his academic subjects" had made "educational progress"); *Hall v. Shawnee Mission Sch. Dist.*, 856 F. Supp. 1521 (D.C. Kans. 1994) (academic progress made by student with behavior difficulties was evidence he had received a FAPE).

19.

In this case, it is undisputed that Petitioner had made adequate academic progress throughout his enrollment in the Cobb County School District. He has consistently earned passing, and often superior, grades. He has appropriately advanced from grade to grade. Further, independent sources, such as standardized testing and the Georgia CRCT, show that Petitioner is functioning on grade level and meeting academic expectations. Even Dr. [REDACTED], the independent evaluator retained by Petitioner, determined that his academic functioning is consistent with his cognitive abilities. Indeed, Petitioner's due process hearing request raised no complaints about the academic instruction he received and the academic progress it enabled to him to achieve.

20.

Petitioner made demonstrable academic progress. The evidence presented on his progress on nonacademic, behavioral goals is not as easy to assess. This was a maturing child. Although the behavioral goals were similar between IEP's, sometimes the standards set for mastery were more sophisticated. Even though it is true he had less intensive interventions from the fourth grade to the fifth grade, he had 17 in the fourth grade and 14 in the fifth grade. This is approximately one pre month. Additionally, he could not remain in the merit classroom but experienced numerous transitions. The proposed placement in the dual diagnosis classroom should address the behavioral problems associated with transitioning.

However, the teachers' assessments of his progress on his goals showed some progress, if not mastery.

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<sup>4</sup> The Fifth Circuit uses a four-factor test that considers individualization, manner of delivery of services, and benefit received by the student to determine whether a student has received a FAPE in accordance with IDEA. *See, e.g., Cypress-Fairbanks Independent Sch. Dist.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997). This test is "at least as stringent as any standard" articulated by the Eleventh Circuit. *See Sch. Bd. of Collier County v. K.C.*, 285 F.3d 977, 982 n.6 (11<sup>th</sup> Cir. 2002).

21.

Petitioner argues that, because he sometimes did not achieve the criteria for mastery listed in his goals and objectives, that he did not make adequate progress and therefore did not receive a FAPE. This argument is contrary to the law. IDEA does not require that a school district guarantee "to produce any particular outcome." *Rowley*, 458 U.S. at 192 (internal quotations omitted). In fact, IDEA's implementing federal regulations specifically provide that a school district shall not "be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives." 34 C.F.R. § 300.150(b).

22.

Courts have consistently held that mastery of goals and objectives is not required to provide a FAPE. Rather, progress alone, even when that progress falls short of the mastery levels contained in an IEP, constitutes "adequate progress" and the provision of a FAPE in accordance with IDEA. See, e.g., *C.J.N.*, 323 F.3d at 638 ("specific results are not required" by IDEA); *O'Toole v. Olathe Dist. Schools Unified Sch. Dist.*, 144 F.3d 692, 707 (10<sup>th</sup> Cir. 1998) (progress short of mastery on goals and objectives was evidence of adequate educational progress); *Slama v. Independent Sch. Dist. No. 2580*, 259 F. Supp.2d 880, 883 (D. C. Minn. 2003) (IDEA does not require specific results); *McGovern v. Howard County Public Schools*, 2001 U.S. Dist. LEXIS 13910, \* 45 (U.S. Md. 2001) (student who had only mastered math goals and no others made "meaningful educational progress"); *Mandy S.*, 205 F. Supp. 2d at 1366 ("guaranteed outcome" standard is inapplicable to IDEA); *Cavanaugh v. Grasmick*, 75 F. Supp. 2d 446, 475-476 (D. C. Md. 1999) (even though child had not mastered a single goal or objective, he had made adequate progress).

23.

By arguing that his lack of mastery of his goals and objectives constitutes a denial of FAPE, Petitioner is advocating the exact "guaranteed outcome" standard specifically disavowed by IDEA, its implementing regulations, and well-settled caselaw. Petitioner has made progress, both academically and on the specific goals and objectives contained in his IEPs. These same IEPs allowed him to receive adequate educational benefit, as evidenced by this progress. The School District has, therefore, provided Petitioner a FAPE in accordance with IDEA, and he has failed to show otherwise.

24.

Petitioner has failed to show that the School District's proposed placement for the 2003-2004 school year, in Mr. Parsons' dual diagnosis classroom at ██████████ Middle School, is inappropriate. The classroom is specifically designed for students like Petitioner, who have an autism spectrum disorder combined with behavioral difficulties. It has a proven track record of success, with each and every student who has ever been placed there being able to access at least some general education classes. Petitioner's mother's chief objection to his past ██████████ placements, specifically the transitions between the in-center location and merit classroom, is inapplicable to this proposed placement. Students in Mr. Parsons classroom stay at ██████████ Middle School throughout the year and do not leave the school without holding an IEP meeting. Petitioner's mother was aware of this fact.

### Discussion of expert testimony

Dr. [REDACTED] testified at this hearing on behalf of the School District. He is director of [REDACTED] and has been for twenty years. (T. at p.622.) Dr. [REDACTED] was previously a behavioral therapist in a treatment program. In addition, he has taught and continues to teach classes in various universities in education, learning psychologies, and applied behavior analysis. (T. at p. 623, ) He has received formal education regarding autism spectrum disorders and participated in independent studies regarding autism disabilities. He has also attended numerous conferences and workshops on the subject. (T. at p. 624.) Dr. [REDACTED] had never encountered Dr. [REDACTED] work in any of his educational or professional career. Dr. [REDACTED] work has not been featured in any workshop or presentation attended by Dr. [REDACTED] (T. at p. 694)

Dr. [REDACTED] an expert witness in the field of behavior analysis, testified on behalf of the School District. Dr. [REDACTED] earned his Ph.D. from a school accredited by the American Psychological Association. (T. at p. 1003) He further completed an internship also accredited by the American Psychological Association with the Marcus Institute, an Atlanta-area affiliate of the Kennedy Krieger Institute of Johns Hopkins University. (T. at p. 984.) Dr. [REDACTED] had not encountered Dr. [REDACTED] or his methodologies during his studies or his professional experience. (T. at p.1002)

Petitioner's expert, Dr. [REDACTED], was eminently qualified as a clinical psychologist. She had consulted with school systems on educational programs regarding children with autism. (T. at pp. 194, 204) However, limited weight could be given to her assessment of Petitioner's educational program. It was unclear what educational records she had reviewed other than records of intensive interventions (T. at pp. 208, 245-247); she did not speak with any of Petitioner's current teachers or receive written input from current teachers in conducting her evaluations; she had not observed the [REDACTED] program for the last few years or observe Petitioner in his classroom setting (T. at pp. 238-244). Her psychological evaluation confirmed that Petitioner's cognitive abilities were in the average range and his academic performance was consistent with this (T. at pp. 209-210). Her assistance to this tribunal would have been very valuable had her opportunity to evaluate Petitioner's educational progress been more extensive.

Petitioner's expert, Dr. [REDACTED], additionally was very well qualified as a psychiatrist. Again, however, his assistance in assessing Petitioner's educational program was limited. He treated Petitioner for five years before diagnosing his Asperger's syndrome. Shortly after the diagnosis he participated in the next IEP but did not at that time make suggestions other than what was proposed by the school evaluator. His understanding of the [REDACTED] Academy appeared anecdotal (based on other patients experience) and based on viewing their website. (T. at pp. 703-704, 713-714)

### 25.

Even if Petitioner had shown that the School District denied him a FAPE, in order to obtain a private placement at public expense, Petitioner bears the burden of proving that the private placement is appropriate. 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). The private placement proposed by Petitioner is [redacted] which Petitioner has failed to show is an appropriate placement.

As an initial matter, [redacted] represents a more restrictive environment than the appropriate placements that the School District has provided and proposed for Petitioner. It is undisputed that [redacted] has no disabled students. At [redacted] Petitioner has no opportunity at all for any interactions or learning experiences with nondisabled students, as there are no such students at [redacted]. The School District, meanwhile, has successfully implemented IEPs that allow Petitioner to receive instruction with nondisabled peers.

The placement proposed by the School District for the 2003-2004 school year specifically contemplates education with nondisabled peers. Each and every student that has been placed in the class proposed for Petitioner has been able to access general education classes to some extent; some students have even been able to access virtually a full school day of general education classes.

IDEA expresses a strong preference for "mainstreaming" and requires that children be educated in the least restrictive environment, with nondisabled peers to the maximum extent possible. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.550(b); *see also, e.g., Rowley*, 458 U.S. at 194. It is clear that Petitioner's proposed placement at [redacted] is not the least restrictive environment for him. Indeed, it would allow him no education with nondisabled peers at all. Further, there is no evidence that placement at [redacted] would ever lead to a less restrictive placement for Petitioner, as [redacted] has never attempted to transition any of its middle/high school students<sup>5</sup> to a less restrictive environment. These undisputed facts alone strongly suggest that [redacted] is not an appropriate placement.

Moreover, Petitioner has failed to show how [redacted] would meet his educational needs. None of his teachers at [redacted] holds any current teaching certifications. Mr. [redacted], who directs the middle school program at [redacted] that Petitioner attends, has no known training regarding education or the education of disabled children at all. Further, the program has only been in existence for one school year, with no demonstrable history of success. Moreover, Petitioner presented no documentary evidence of his program at [redacted]. Mr. [redacted] testified that [redacted] creates IEPs, develops goals and objectives, takes data on goals and objectives (albeit anecdotal, as [redacted] do not yet have the capacity to take systematic data), and generates documentation reflecting this. No such documentation at this hearing.

Finally, [redacted] educational methodology remains untested and unvalidated by any empirical research. The federal government has elsewhere expressed a strong and specific preference for using research-validated methodologies when educating children. Elementary and Secondary Education Act, 20 U.S.C. § 6301 *et. seq.* Petitioner's due process hearing request specifically complains (incorrectly) that the School District had failed to provide a FAPE, in part because it had made "no provision for research validated programming."

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<sup>5</sup> [redacted] makes no distinction between its middle and high school students, instead enrolling them in the same program.

[redacted]'s chosen methodology, Dr. [redacted] DIR (or "floor time") method is itself unproven and unsupported by any known empirical evidence. In fact, two independent studies, from the states of Maine and New York, specifically do not recommend the use of these methods for children with autism spectrum disorders, as there are no empirical studies supporting their use. There is no evidence that these methods are accepted, even academically. Neither Dr. [redacted] nor Dr. [redacted] had ever encountered this methodology in their academic preparation. Instead, it appears that one learns these methods by purchasing books and videotapes from Dr. [redacted]'s website.

The School District's [redacted] program, meanwhile, relies on applied behavioral analysis for its programming. Contrary to the allegations in Petitioner's hearing request, applied behavioral analysis has extensive empirical support. At least three studies, from the states of Maine and New York, and from the United States Surgeon General, all specifically identify the use of applied behavioral analysis as the treatment of choice for children with autism spectrum disorders. Even Petitioner's own expert witness, Dr. [redacted] specifically cited his training, use, and support of applied behavioral analysis in the treatment of children with autism spectrum disorders.

26.

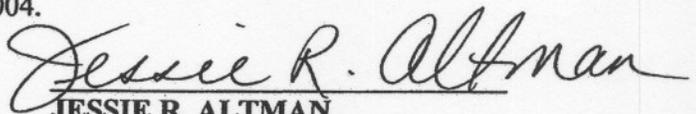
As a general matter, courts should not impose their own "view of preferable educational methods," as they "lack the specialized knowledge and experience" to do so. *Rowley*, 458 U.S. at 207-208. In the instant case, however, it appears clear that the methodologies chosen by the School District appear appropriate, as they have been well-researched and are well supported by extensive empirical evidence.

Given Petitioner's progress, evidenced both by his academic achievement and progress made on his IEP goals and objectives, Petitioner has achieved adequate educational progress. Accordingly, the School District has provided Petitioner a FAPE in accordance with IDEA. Further, Petitioner has failed to show that the private placement for which he seeks reimbursement is appropriate.

**Decision**

Based on the foregoing, Respondent is determined to have provided FAPE and Petitioner's request for compensatory services and reimbursement for private school placement is denied.

SO ORDERED this 27<sup>th</sup> day of January, 2004.

  
JESSIE R. ALTMAN  
ADMINISTRATIVE LAW JUDGE