

04-0402029

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

~~██████████~~,

Petitioner,

GWINNETT COUNTY
SCHOOL SYSTEM,

Respondent.

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DOCKET NO.:
OSAH-DOE-SE-0402029-67-JRA



FINAL DECISION
I. Introduction

The above matter came before the Office of State Administrative Hearings (OSAH) on September 22, 2003¹ 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.* Specifically, Petitioner's custodial parent is appealing the determination by Respondent at the July, 2003 Individualized Education Plan (IEP) meeting to place Petitioner in a self-contained classroom for individuals with an emotional and behavioral disorder or an EBD classroom, a more restrictive educational environment. There is no disagreement that Petitioner's eligibility is under the category of Other Health Impaired (OHI), based on his diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).

Having considered the preponderance of the evidence presented at the hearing, Respondent's placement of Petitioner in an EBD self-contained classroom is **affirmed**.

II. Findings of Fact

1.

Petitioner is a ~~██████~~ year old first grader currently enrolled in ~~██████████~~ Elementary School, Gwinnett County, Georgia. He first entered the Gwinnett County School District in kindergarten at the same school. (Testimony of Martin, Transcript, "T." at p. 18; Respondent's records inter alia)

2002-2003 School Year

2.

Throughout the kindergarten year, Petitioner exhibited extremely defiant and disruptive behaviors. When his regular classroom teacher could not accomplish compliance with instructions through redirection and Petitioner's behavior became too disruptive, he was referred for disciplinary reasons to the Occupational Room (OR). Subsequent to two referrals within a three week period, i.e., on August 21, 2002 and August 27, 2002, a

¹ The hearing was conducted in Lawrenceville, Georgia. The Petitioner was represented by ~~██████████~~, grandmother and custodial parent; the Respondent was represented by Victoria Sweeney with the assistance of her designated representative, John Shaw.

referral was made to the Student Support Team (SST). (Testimony of Martin, T. at pp. 18-19;; Respondent's Exhibits at pp. R002;R003; R006; R007; R008)

3.

The SST held a meeting on October 15, 2002 and discussed interventions and reviewed the behavior plan. Additionally, because of problems in the family, a referral was made to family changes group. (Testimony of Martin, T. at pp. 22-23; testimony of Williams, T. at pp. 125-132; Respondent's Exhibit R006;R007)

4.

Petitioner continued to exhibit disruptive, physically and verbally aggressive behaviors and was referred to the OR on October 3; October 27; November 7; November 12, 2002. Specific behaviors included, but were not limited to, pushing, hitting and kicking other children, refusing to follow teacher's instructions, eating food from a plate like a dog; yelling; and choking himself. (Testimony of Martin, T. at pp. 23-29; Respondent's Exhibits at pp. R00-18;R019;R023;R024; R027;R28;R030and R033.)

5.

As Petitioner's behaviors worsened, a second referral to the SST was made. After school personnel became aware that the Petitioner was on medication for ADHD, a referral was made on December 10, 2002 for a determination of eligibility for special educational services. A psychological evaluation was conducted on January 10, 2003, at which time Petitioner was evaluated to be performing in the low average range largely due to the behavioral problems which interfered with his education. (Testimony of Martin, T. at pp. 29-36; testimony of Williams, T. at pp. 125-132; Respondent's Exhibits at pp. R035;R038;R039;R040;R042;R044;R047;R048;R51-56)

6.

Petitioner continued to have disciplinary referrals to the OR leading ultimately to suspensions from school. A review of Petitioner's disciplinary records shows a total of 32 referrals to OR and eight suspensions during the 2002-2003 school year. (Testimony of Martin, T. at p. 45; Respondent's Exhibits inter alia)

7.

An IEP meeting was conducted on February 18, 2003, at which time the IEP committee determined that Petitioner was eligible for special education services under the OHI category. He was placed for specialized instruction for two hours a day in a resource room. A second IEP meeting held on March 31, 2003 during which this time was increased to three hours. (Testimony of Martin, T. at pp. 44-50; Respondent's Exhibits at pp. R085; R94-114; R124)

8.

Throughout the spring, the Petitioner's behavior continued to worsen and he verbalized suicidal and homicidal thoughts. An additional IEP meeting held on April 2, 2003. At this meeting the IEP committee recommended that Petitioner be placed in a self-contained EBD classroom. Because Petitioner's custodial parent objected, this placement

recommendation was not implemented. (Testimony of Martin, T. at pp. 48-49; Respondent's Exhibits at pp. R153;R154; R157-162)

9.

Petitioner's custodial parent consented to a psychiatric evaluation of Petitioner. This was conducted on May 23, 2003 by Dr. [REDACTED]. Dr. [REDACTED] is a psychiatrist with over 40 years experience specializing in child and adolescent treatment. Additionally, he taught at Emory University for approximately 30 years. He interviewed Petitioner's teachers, Petitioner, and Petitioner's custodial parent, reviewed Petitioner's records and observed Petitioner in his school setting.

He opined that Petitioner was a severely emotionally disturbed child who should receive educational services at a Psychoeducational Center. At the time of the hearing, Dr. [REDACTED] expressed the opinion that the less restrictive EBD classroom would be appropriate. Specifically, Petitioner was diagnosed with oppositional defiant disorder; generalized anxiety disorder and possible ADHD. (Testimony of Martin, T. at pp. 52-58; testimony of Turner, T. at pp. 109-121; Respondent's Exhibits at pp. R173;R213-219)

10.

An IEP meeting was held on July 24, 2003 at which time the IEP committee recommended that Petitioner be placed in a self-contained EBD classroom. Petitioner's custodial parent disagrees with this decision and initiated this due process appeal to contest this placement. (Testimony of Martin, T. at pp. 58-60; Respondent's Exhibits at pp. 224-229;testimony of Williams)

2003-2004 School Year

11.

Petitioner's score on the Georgia Kindergarten Assessment Program (test used to evaluate readiness for first grade was 162, marginally passing the minimum of 161. As a result of the due process request, Petitioner, as a first grader, continues to receive the three hours of instruction in a resource room. Petitioner's behavior has improved somewhat, but he did attempt to run away from the classroom during the first two weeks of school. If he continues to have only three hours of instruction a day, he will not adequately progress educationally. There is insufficient time to cover all the curricula he needs to learn. In addition, unlike in the EBD classroom, he does not receive affective learning to develop relational skills. (Testimony of Martin, T. at pp. 61-66; testimony of Robinson, T. at pp. 80-94; testimony of Carruth, T. at pp. 99-107)

III. Conclusions of Law

1.

This matter is governed by IDEA and the state and federal regulations promulgated to enact it. IDEA requires that a free and appropriate education must be provided to any student who is identified as having a disability as defined by the Act, 20 U.S.C. § 1412(1); 34 CFR § 300.4, in the least restrictive environment. The FAPE requirement has been interpreted to mean that "the education to which access is provided is sufficient

to confer some educational benefit upon the handicapped child" *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) at 200.

2.

The burden of proof rests on the Respondent to establish that the IEP is appropriate and provides FAPE. Respondent additionally must show that services are provided in the least restrictive environment.

3.

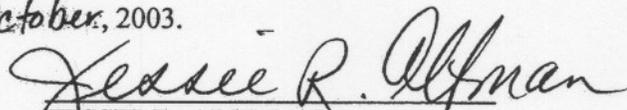
Based on the preponderance of the evidence, the services as identified under the July 24, 2003 IEP meet the requirements of IDEA. The overwhelming consensus of the persons with specialized knowledge and training, i.e., administrative staff, teachers and the psychiatric consultant, supports placement of Petitioner in the self-contained EBD classroom. Here he can receive education in a highly structured environment for the entire day in a classroom designed not only to provide academics but affective education geared to teaching Petitioner appropriate behavior.

Although the Respondent is not seeking a determination of eligibility under the "Emotional and Behavioral Disorder" ("EBD") category, the services identified in the IEP are more relevant to that category than under the OHI category. The evidence presented meets the criteria for services under EBD, DOE Rule 160-4-7-.02(d).

Decision

Respondent's proposed July 24, 2003 IEP is in compliance with IDEA and is **affirmed**.

SO ORDERED this 6th day of October, 2003.


JESSIE R. ALTMAN
ADMINISTRATIVE LAW JUDGE