

04-0402614

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

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Petitioner,

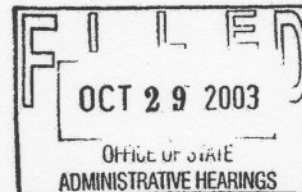
v.

COBB COUNTY SCHOOL DISTRICT,

Respondent.

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DOCKET NUMBER:
OSAH-DOE-SE-0402614-33-SWT



FINAL DECISION

I. Introduction

Pursuant to a request for a hearing filed by Petitioner, a hearing was held on September 15, 2003, with the time for issuance of a Final Decision being extended to October 30, 2003, in light of parties needs to review transcripts that were not received until October 20, 2003. ☐☐☐'s parent and grandmother represented ☐☐☐, a minor student. Sylvia Eaves, Esq. represented the Cobb County School District. The issue presented is whether the school system has provided ☐☐ a free appropriate public education (FAPE) in accordance with the interim Individualized Education Plan (IEP) developed upon the arrival ☐☐ in the school district in March 2003, and the proposed IEP for school year 2003-2004.

Although a decision was contemplated by October 2, 2003, the transcript was not received before October 20, 2003. Accordingly, this decision is issued at a date later than previously contemplated.

For reasons indicated, it is determined that the interim IEP and the current IEP meet FAPE and that private placement at public expense is not authorized.

II. Findings of Fact

1.

In March 2003, ☐☐, a ☐☐ year old female child, entered the Cobb County School District at ☐☐☐☐ Middle School (☐☐☐☐) as a 6th grader after transferring from Ohio where she formerly resided with her grandmother. ☐☐☐'s parent resides in the Cobb County School District. While in Ohio, ☐☐ last attended a private school offering a developmentally handicapped program. Prior to that private school, ☐☐ received home schooling from her grandmother. Upon arrival in Georgia, ☐☐ had no current IEP from the public system in which she resided. She had an individualized learning plan that her former private school referred to as her education plan. (Transcript, pages 9-10; Exhibit R-1).

2.

● is eligible for special education services pursuant to the Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1400, *et. seq.* for learning disability. (Testimony of Susan Christiansen, transcript, p. 23).

3.

The first interim Individual Education Plan (IEP) meeting for ● occurred on March 13, 2003, resulting in an interim IEP plan that provided special education services in a small group for all subject categories except connections, which was provided in a generalized setting. Modifications included small group instructions, peer assistance, assistance with teacher and paraprofessional response, and reading instructions to students. (Testimony of Susan Christiansen, Respondent Exhibit R-5).

4.

During the IEP meeting on March 13, 2003, ●'s mother expressed concern about bad language at ● that ● heard in connections classes that upset her. ●'s mother indicated that she thought another placement might be appropriate or possibly home instruction. On March 14, 2003, the day after the IEP meeting, ●'s mother repeated these concerns by calling Ms. Christensen and leaving a message reiterating her concern and conclusion that ● was not the right placement. Ms. Christensen was out of the office on March 14, 2003, and called her back the following Monday morning (March 17, 2003). Since Ms. Christensen had learned that ● had not attended school on March 14, 2003, she urged ●'s mother to bring ● to school in order that she could complete CRCT, criteria and referencing testing, that would assist Respondent in determining more information about ●'s functioning. She also scheduled a subsequent IEP meeting for March 24th. The next day, ●'s mother sent ● to school for the testing; however she immediately took her out of school following each day of testing and then did not bring her to school at all for the week after testing prior to the second IEP meeting. (Testimony of Susan Christiansen, transcript, p. 36-38).

5.

At the second IEP meeting, ●'s mother and grandmother repeated the same objections about bad language and the program at ●. Modifications to the IEP included a career connections class rather than a physical education class, a peer buddy system, one-on one instructions to allow ● to clearly know classroom expectations, and allowance of the use of a calculator in math. (Testimony of Susan Christensen, transcript pp. 38 through 41).

6.

Subsequently, to develop an IEP for the prospective school year, Ms. McLaughlin, [redacted]'s lead special education teacher, contacted [redacted]'s mother on May 15, 2003, to notify of her of an IEP meeting on May 22, 2003. [redacted]'s mother called on May 20th indicating a need to reschedule to an unspecified date. With no subsequent date provided, Ms. McLaughlin called [redacted]'s mother again on May 28th at which time she spoke to [redacted]'s grandmother who indicated that KG's mother was out-of-State. Ms. McLaughlin asked her to have [redacted]'s mother call Susan Christiansen to reschedule since it was summer break and Ms. McLaughlin might not be there when she called. Neither Ms. McLaughlin or Ms. Christiansen hear from [redacted]'s mother so Ms. McLaughlin called again in June at which time the request for scheduling an IEP was repeated. With no communication returned, Ms. McLaughlin called again around July 11th to indicate a July 16th IEP meeting date. [redacted]'s mother indicated availability on that date unless she was required to work that day. On July 16th, [redacted]'s mother failed to attend the meeting. Ms. McLaughlin called her after the meeting and learned that she had been unable to attend due to [redacted]'s grandmother's heart attack (Testimony of Kim Biggee-McLaughlin, Transcript, pp. 93-95; Respondent Exhibit R-19).

7.

Respondent's records indicate that [redacted] made progress during her school year prior to the development of the IEP on July 16th and that [redacted] met two-thirds of her interim IEP goals and objectives. The IEP team focused on [redacted]'s strengths and weaknesses and her current functioning and looked at the least restrictive environment. It was determined that academics would continue in a small group setting and that two connections classes would provide age peer exposure. The IEP developed was consistent with the school psychologist's psycho educational report completed on April 30, and was utilized in the development of the IEP. Assessment techniques included Beery Developmental Test of Visual-Motor Integration (VMI); Behavior Assessment System for Children (BASC)- Teacher Report Form; Behavior Assessment System for Children (BASC)-Self-Report Form; Differential Ability Scales (DAS); Review of Records; Vineland Adaptive Behavior Scales-Interview Edition 9VABS); Wechsler Individual Achievement Test - II (WIAT-II); and Wechsler Intelligence Scale for Children - Third Edition (WISC-III). Consultations for the assessment included Ms. Helen Story and Ms. Kim Biggee-McLaughlin, [redacted]'s teachers at [redacted], and [redacted]'s mother and grandmother. (Testimony of Kim Biggee-McLaughlin, transcript pp. 85-101 ; testimony of Debbie Buchman, transcript pp. 56-84; Respondent Exhibits R10, R-11, R-12, R-13, R-14, R-16, R-18, R-20, and R-21)

8.

Per the IEP developed, [redacted] would have been initially placed in a mildly intellectually disabled class for math, science, social studies and reading. For connection in a general class setting, [redacted] would have been placed in a music class and physical education class. For the special education academics, the student-teacher ration was one teacher and a paraprofessional for eight students. Connection class size would range from 25 students in the music class to 40 students in the

physical education class. (Testimony of Susan Christiansen, transcript, p. 39; Respondent Exhibit 5).

9.

☐'s mother refused to consent to the July 16th IEP placement recommendation and requested reimbursement for private placement at the ☐ School. (Testimony of ☐'s mother; Respondent's Exhibit R-22)

10.

While ☐'s mother and grandmother opined that the ☐ School was a better placement for ☐; however, they offered no expert testimony or documentation in support of their position. (Testimony of ☐'s mother and grandmother).

III. 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.* and *Ga. Comp. R. & Regs.* at Chapter 160-4-7(DOE Rules). It is required that a free and appropriate education (FAPE) be provided to any student who is identified as having a disability as defined by the Act, 20 U.S.C. § 1412(l); 34 C.F.R. § 300.4 in the least restrictive environment. Georgia regulations require that a due process hearing must relate to issues of identification, evaluation, placement or the provision of a free appropriate public education (FAPE). DOE Rule 160-4-7-.02(7)(b)(1). As asserted by Respondent, IDEA does not require a school district to pay for the cost of education, including special education and related services, of a child with a disability at a private school if the school district made FAPE available to the student and the parent unilaterally elected to place the student at the private school. 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.403(c).

FAPE is satisfied when Respondent provides "personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction." **Hendrik Hudson Central School District v. Rowley**, 458 U.S. 176 (1982).

"Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate grade levels used in the State's regular education, and must comport with the child's IEP, as formulated in accordance with the Act's requirements. If the child is being educated in regular classrooms, as here, the IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id.*

A two-pronged test was established to determine whether a local school district is providing a disabled student with an appropriate IEP, the first prong being a determination whether the school district has complied with the administrative procedures set forth in the act and the second prong being a determination whether the IEP is reasonably calculated to allow the child to achieve educational benefit. *Id.* An appropriate public education does not mean absolutely the best or "potential maximizing" education for the individual child, but rather the states are obliged to provide a "basic floor of opportunity" through a program individually designed to provide educational benefit to the handicapped child. *Id.* There is no universal measure of "some educational benefit" and each case must be reviewed upon its merits rather than attempting to articulate any particular formula for determining the adequacy of educational benefits conferred by any given IEP. **JSK by and through JK v. Hendry County School Bd.**, 941 F. 2d 1563 (11 Circuit 1991).

2.

The initial burden of persuasion in these matters to show that the Individualized Education Program (IEP) is appropriate and that it provides free appropriate public education (FAPE) in the least restrictive environment. This burden is placed on the school district. Only after such a burden is met, does it shift the burden to the other party challenging the terms of the IEP. **Devine v. Indian River County School Board**, 249 F.2d 1289 (11th Cir. 2001).

As applied in this case, Respondent clearly met its burden of establishing FAPE. Petitioner has failed to effectively challenge the placement proposed by Respondent.

The FAPE required is "tailored to the unique needs of the handicapped child by means of an "individualized educational program" (IEP) which is prepared at a meeting between a qualified representative of the local educational agency, the child's teacher, the child parents or guardian, and where appropriate, the child." *Id.*

The IEP includes "(A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved."

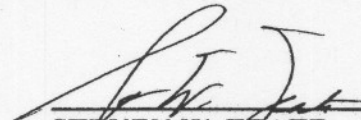
The interim IEP developed upon [redacted]'s arrival and the proposed IEP for the 2003-2004 year meet all IEP criteria. A parent's right to reimbursement for a private placement occurs only when it is established that a school district failed to meet FAPE and that an alternate private placement could meet FAPE in the least restricted environment.

IV. Decision

The interim IEP and the IEP for 2003-4 are reasonably calculated to allow [redacted] to achieve educational benefit and free and appropriate education (FAPE) in the least restrictive environment. Accordingly, Respondent is not required to provide public funds to Petitioner for reimbursement of private school tuition and related expenses.

In light of the delay in the receipt of transcript and time necessary for reviewing and drafting a decision thereafter, there is good cause to extend the date for issuance of this decision to the date here indicated.

SO ORDERED, this 29th day of October 2003.



STEVEN W. TEATE
Administrative Law Judge