

04-0405330

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[REDACTED]

Petitioner,

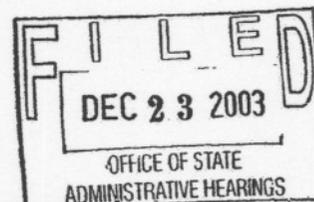
v.

CAMDEN COUNTY SCHOOL
DISTRICT,

Respondent.

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Docket No.:
OSAH-DOE-SE-0405330-20-JBG



FINAL ORDER

Appearances: For Petitioner, [REDACTED]: Pro-Se

For the Respondent, Camden County School District: Sam S. Harben, Jr., Esq., Harben & Hartley, LLP

I. INTRODUCTION

This administrative action comes before the Tribunal pursuant to a complaint filed by [REDACTED]'s parent, [REDACTED], appealing the Camden County School District's placement of [REDACTED] in the [REDACTED] Academy for a period of 60 days while the school district conducted an educational evaluation. This Tribunal has jurisdiction to hear this matter pursuant to Article 2 of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act" and the Official Compilation of Rules and Regulations of the State of Georgia at Chapter 616-1-2 (OSAH Rules). A bench trial was held on November 7, 2003, at 10:00 a.m., in the Camden County Superior Court.¹ For the reasons indicated below, the Respondent's action is **AFFIRMED** and Petitioner's complaint is **DISMISSED**.

¹ [REDACTED] was incarcerated at the time of trial and was not present. [REDACTED] arrived almost 1 hour after the call of the calendar. The school district requested and was granted permission to present its case rather than seeking a dismissal and concluded its case shortly after [REDACTED]'s arrival.

II. FINDINGS OF FACT

1. [REDACTED] currently is a [REDACTED] year old youth whose birthday is [REDACTED] (Exhibit R-1). [REDACTED] is eligible for special education services as a student with disabilities as defined by the Individuals with Disabilities Act (IDEA) and Georgia Board of Education rules. (Exhibits R-1; R-8).
2. [REDACTED]'s parent was a resident of Prince George's County, Maryland, until approximately March, 2003, when she moved to Camden County. (T-6). At that time, [REDACTED] was living in a residential setting, [REDACTED] Education Center, in Langhorne, Pennsylvania, having been placed in that facility by the Prince George's County Public School District (T-7, R-3). At the time Ms. [REDACTED] moved to Camden County, [REDACTED] was [REDACTED] years of age. (T-7).
3. [REDACTED] is a youth with numerous behavioral problems and health issues, including an apparent seizure disorder and a mild intellectual disability. (R-1). [REDACTED] has had episodes of aggressive behavior toward others and has also been charged with criminal offenses at various times. Currently he is confined to the Camden County jail for striking or hitting another individual. [REDACTED] introduced various letters written by [REDACTED] while in jail. (T-17, T-33, T-47, P-3)
4. On August 16, 2003, [REDACTED] was discharged from the [REDACTED] Education Center and moved to his parent's home in Camden County, where he became a resident of Camden County on or about August 19, 2003. (T-10, T-44, R-9).

5. On August 6, 2003, in anticipation of [REDACTED] becoming a resident of Camden County and enrolling in school in Camden County, the School District, at the request of his parent, convened an IEP Team meeting to discuss the appropriate placement for [REDACTED] to enable [REDACTED] to receive a free, appropriate public education (FAPE) in the least restrictive environment. At that time, the School District reviewed the records that were furnished by Ms. [REDACTED] and those records obtained from the [REDACTED] Education Center, as well as information provided by Ms. [REDACTED] (T-11, R-8, R-6)
6. Ms. [REDACTED] made it clear to the IEP Team that she desired [REDACTED] to remain in [REDACTED] Education Center at the School District's expense or another comparable residential facility. The records furnished the School District and received in evidence, reflect that [REDACTED] has been disruptive to Ms. [REDACTED] family, including her other children, and that she has not been able to manage [REDACTED] in her home successfully. (T-9, R-8).
7. The IEP Team proposed that upon his enrollment in the Camden County schools, [REDACTED] would be placed for a period of 60 days in the [REDACTED] Academy, a [REDACTED] facility for public school students who primarily have emotional or behavioral disorders. During that time, the school district would conduct an educational evaluation, consider the information from [REDACTED], consider [REDACTED]'s progress and determine if [REDACTED] Academy would continue to be the appropriate placement for [REDACTED].
- The IEP Team further determined to implement the IEP that had been

developed by ██████████ Education Center for the current school year (T-12, R-10, R-11, R-6).

8. The School District also informed Petitioner's parent that there were community agencies available, such as the ██████████ Children's Home and the local mental health agency, to assist the family in managing ██████████'s disruptive behavior at home. (T13-15).
9. Ms. ██████████ disagreed with this placement but would have agreed to it if the School District had developed a backup plan which it did not. (T-29).
10. Ms. ██████████ requested this due process hearing. However, ██████████ himself has not joined in that request nor has he independently sought any relief from the District. ██████████ has not enrolled in the Camden County Schools and has not ██████████ requested directly from the District that he be provided special education services. (T-15-17, T-45).
11. Ms. ██████████ contended during the hearing that ██████████ was not competent and presented an opinion from a psychologist, Dr. Stephen F. Curran, who apparently had evaluated ██████████ on July 20, 2000, at the request of a juvenile court to determine ██████████'s competency to stand trial for second degree burglary. The opinion of Dr. Curran, as reflected in his amended report, was to the effect that ██████████, at that time ██████████ years old, had limited intellectual abilities and that Dr. Curran's prior opinion should be amended "in favor of finding this youth not competent." (T-34, R-1). However, Ms. ██████████ did not present any evidence that a court in any state had determined that ██████████ was

incompetent to manage his affairs as a matter of law and that he required a guardian to represent him in any legal proceeding.

III. CONCLUSIONS OF LAW

IDEA and the Georgia State Board of Education rules implementing the IDEA provide that when a child with a disability reaches the age of majority, all rights, other than the right to notice, accorded to the parents transfer to the child. GBOE Rule 160-4-7-.13, 20 U.S.C. 1415(m). Although Ms. [REDACTED] contends that [REDACTED] is incompetent, she has not carried the burden of proof necessary to establish that [REDACTED] has been adjudicated incompetent by any court. Therefore, it is [REDACTED] who is entitled to the rights accorded under IDEA and not his mother. For this reason, Ms. [REDACTED] does not have the authority to seek any relief from the School District.

Assuming, *arguendo*, that Ms. [REDACTED] were entitled to represent the interests of [REDACTED], because he is incompetent to represent his own interest, the burden of proof would be with the school district to "establish that the proposed IEP is appropriate and provides FAPE. If the parents propose a placement that is more restrictive than provided by an existing, agreed upon IEP, the parents shall bear the burden of establishing that the more restrictive environment is appropriate." DOE Rule 160-4-7-.18 (1)(g)(8); (IDDF)(18). Therefore, the school district has the burden of proof to establish that the proposed placement of [REDACTED] is appropriate and provides FAPE. [REDACTED] or his mother has the burden to establish that a residential placement is the appropriate placement and is the least restrictive environment for [REDACTED].

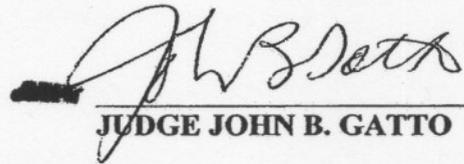
The school district has carried its burden of proof to establish that the proposed placement of [REDACTED] for 60 days is an appropriate placement and provides FAPE for [REDACTED] in the least restrictive environment.

[REDACTED] has failed to carry the burden of proof required that placement in a residential facility, a more restrictive placement than the placement proposed by the District, is necessary in order for [REDACTED] to receive FAPE. Accordingly,

IV. DISPOSITION

IT IS HEREBY ORDERED THAT Respondent's action is **AFFIRMED** and Petitioner's complaint is **DISMISSED**.

SO ORDERED THE [REDACTED]th day of November, 2003.



JUDGE JOHN B. GATTO