

04-0414853

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



_____,
Petitioner,
v.
BEN HILL COUNTY
SCHOOL SYSTEM,
Respondent.

Case No:
OSAH-DOE-SE-0414853-09-JRA/WJB

FINAL DECISION

I. Introduction and Procedural History

Petitioner _____ was a tenth grade student in the _____ School System (BHSS) during the 2001-2002 school year. _____'s grandmother, as his legal guardian, requested that _____ be evaluated for eligibility for special education and related services under the Individuals with Disabilities Education Act, 20 U.S.C. § § 1401 et seq. (IDEA). After BHSS had an evaluation performed on _____ and convened a Special Education Placement committee which determined that _____ was not eligible to receive services under IDEA, _____'s grandmother requested an independent evaluation be done of _____. BHSS refused this request and then initiated this present hearing to be given an opportunity to demonstrate that its evaluation was appropriate so that an independent evaluation, if desired by the grandmother, should be at the grandmother's, not the BHSS's, expense.

A hearing was held on this case on April 21, 2004 in Fitzgerald, Georgia. [REDACTED] was present for the hearing. [REDACTED]'s grandmother served as his representative. BHSS was represented by John T. Croley, Attorney at Law.

In early May, 2004, the undersigned assumed responsibility for issuing a decision on this matter based on the transcript and the exhibits.¹ On May 18, 2004, the undersigned issued an order informing the parties of the change in Administrative Law Judges and reopening the record in this case until June 2, 2004 to allow the parties to supplement the oral closing arguments they made at the hearing by written closing arguments as well as proposed findings of fact and/or conclusions of law.

Pursuant to the May 18, 2004, Order, Mr. Croley submitted a letter brief on behalf of BHSS. The grandmother only submitted a packet of documents. Because the grandmother is not a lawyer, the undersigned accepted this submission as a Motion to Submit New Evidence. Most of the documents relate to disciplinary write-ups which [REDACTED] received while in school. During the hearing, the BHSS did not really dispute the fact that [REDACTED] has had multiple such incidents, thus this evidence is cumulative in nature. The Motion to Submit New Evidence is denied on this ground. Even if they had not been cumulative, the exhibits would have to be excluded absent a "good cause" showing by the grandmother as to why they were not produced at trial.

¹ Judge Jessie Altman, who conducted the hearing, has left the employment of the Office of State Administrative Hearings.

II. FINDINGS OF FACT

1.

In March of 2004, [REDACTED] was a tenth grade student at the [REDACTED] [REDACTED] which is the Alternative School at the BHSS. On March 11, 2004, [REDACTED] allegedly disobeyed a teacher, threw chewing gum, and used profanity. On the following day, [REDACTED]'s grandmother was notified by the BHSS that her grandson was being suspended from school due to the above-described misbehavior pending the convening of a disciplinary tribunal. (Testimony of Howard Duvall, T. 23)

2.

On March 15, 2004, the grandmother telephoned the offices of Howard Duvall, the Principal of [REDACTED] [REDACTED] and requested that [REDACTED] be evaluated for possible special education services. Mr. Duvall called the grandmother back the next day and set up an appointment for her to appear at the Board of Education office on March 17, 2004, to begin the evaluation process. As a result of the grandmother's request, [REDACTED] was tested by the school psychologist, Gina Wiggins, on March 18, 2004. (Testimony of Duvall, T. 23-25)

3.

On March 19, 2004, a Special Education Placement committee meeting was held to decide whether [REDACTED] was eligible to receive special education services. Present at the meeting were two teachers at the [REDACTED] [REDACTED] [REDACTED] [REDACTED] Principal Howard Duvall, Special Education Director Wanda Kimbrell, Gina Wiggins, and the grandmother. At the meeting the test results from the testing performed the previous day by Ms. Wiggins were evaluated as well as

§ 87(2)(b)'s entire school record. It was the conclusion of everyone on the committee, except for the grandmother, that § 87(2)(b) did not qualify for special education services because he did not exhibit any of the characteristics for Emotional and Behavioral Disorders (EBD) which are listed below in Conclusion of Law Two. It was the opinion of the committee that, while § 87(2)(b) has had many behavior problems at school, he behaves well most of the time in the classroom and seems to be able to control his actions when he so desires. The guardian objected to this finding and requested that § 87(2)(b) be provided an independent evaluation at the expense of BHSS. When this request was denied, a hearing was initiated by the BHSS to establish that their evaluation was appropriate. (Testimony of Duvall, T. 28-30)

4.

A disciplinary tribunal hearing was held on March 22, 2004. As a result of this hearing, the Petitioner was expelled from the § 87(2)(b) § 87(2)(b) (Testimony of Duvall, T. 29)

5.

Gina Wiggins has been the school psychologist for BHSS since 1997. She holds a Bachelor of Science Degree in Special Education from Valdosta State, a Master's Degree in working with emotionally disturbed students, and a Specialist Degree in School Psychology. As part of her duties as school psychologist for BHSS, Ms. Wiggins tests students to help the Special Education Placement Committees at BHSS decide if particular students are qualified for special education services. Ms. Wiggins had previously tested § 87(2)(b) in 1999 and early 2000 at the request of the grandmother who was concerned that he might have a learning disability because he was not doing well in school. During this testing, § 87(2)(b) received a broad cognitive score on

the Woodcock-Johnson of 86, which is within the very low average range. It was the decision of the Placement Committee that [REDACTED] did not qualify at that time for special education services. (Testimony of Gina Wiggins, T. 57-61, Exhibit R-3)

6.

Ms. Wiggins tested [REDACTED] again on March 19, 2004. In contrast to the earlier testing which had focused exclusively on possible learning disorders, the 2004 testing was designed to determine eligibility for any form of special education needs including both learning and behavioral disorders. [REDACTED] was not, however, tested for visual or hearing impairments because he had previously passed tests in these areas. (Testimony of Wiggins, T. 61-63)

7.

In the 2004 testing, Ms. Wiggins administered to [REDACTED] the third edition of the Woodstock-Johnson (WJ III) to test his cognitive abilities. In addition, Ms. Wiggins had his two teachers at the [REDACTED] and his grandmother fill out behavior assessment checklists. [REDACTED] also filled out a behavior assessment on himself. The assessment checklists were part of a Behavior Assessment for Children testing program used to provide diagnoses for a variety of emotional and behavioral disorders in children. (Testimony of Wiggins, T. 63-64, Exhibit R-4).

8.

In the 2004 testing [REDACTED]'s overall intellectual ability, as measured on the WJ III, was in the average range. He scored in the average range in thinking ability, phonemic awareness and cognitive efficiency. He scored in the low range in verbal ability and ability to apply academic

skills. He scored low average in broad reading skills, but was in the high average range in working memory. (Exhibit R-4)

9.

On the behavior checklists, while the grandmother reported behavior problems in all areas, the teachers reported only conduct and externalizing problems. [REDACTED] did not indicate that he thought he had any significant emotional indicators. (Exhibit R-4)

10.

The Petitioner did not present any evidence as to any specific deficiency in the evaluation testing given to [REDACTED] in 2004. The grandmother testified that she feels he needs special education services because of his long history of behavioral problems at school. (Testimony of grandmother, T. 69-72)

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 20 U.S.C. § 1412(l) and 34 C.F.R. § 300.4, in the least restrictive environment.

2.

Under DOE Rule 160-4-7-.02, a student is considered to have a disability under IDEA if the student meets the eligibility criteria in one or more listed disability areas. The pertinent disability area in the present case is that of EBD. The criteria for this disability is found in Appendix D of DOE Rule 160-4-7-02 . In this Appendix, an EBD is defined as an emotional disability characterized by the following:

- “(i) An inability to build or maintain satisfactory interpersonal relationships with peers and/or teachers....
- (ii) An inability to learn which cannot be adequately explained by intellectual, sensory, or other health factors.
- (iii) Consistent or chronic inappropriate type of behavior or feelings under normal conditions.
- (iv) Displayed pervasive mood of unhappiness or depression.
- (v) Displayed tendency to develop physical symptoms, pains or unreasonable fears associated with personal or school problems.”

“A student with EBD is a student who exhibits one or more of the above emotionally based characteristics of sufficient duration, frequency and intensity that it/they interfere(s) significantly with educational performance.” This appendix section further states that “classroom behavior problems and social problems ... do not automatically fulfill the requirements of eligibility for placement.”

3.

The procedures for having a child evaluated for eligibility under IDEA are set out in DOE Rule 160-4-7-.07. It is required that the child be given a thorough psychoeducational assessment by a

qualified psychological examiner. The qualifications of the examiner are set forth in DOE Rule 160-4-7-.07(1) (c)1. The evaluation procedures are set forth in DOE Rule 160-4-7-.07(3).

4.

Under DOE Rule 160-4-7-.03(2), it is provided that a parent or guardian has a right to an independent evaluation at public expense if the parent or guardian disagrees with the evaluation obtained by the local school system. However the local school system, under said rule, may initiate a hearing to demonstrate that its evaluation was appropriate. If the school system's evaluation was appropriate, the parent or guardian still has the right to an independent educational evaluation, but not at the expense of the local board.

5.

It is the opinion of the undersigned that the BHSS has met its burden of demonstrating that its evaluation of the [REDACTED] was appropriate. The BHSS's school psychologist, Gina Wiggins, possesses the required qualifications to be a "Qualified Psychological Examiner" under DOE Rule 160-4-7-.07 (1) (c) 1. In its testing of [REDACTED] the BHSS followed all the required procedures outlined in DOE Rule 160-4-7-.07 (3). Also in the opinion of the undersigned the facts in the record support the finding of the Placement Committee that based on this evaluation and other data in [REDACTED]'s school record, that [REDACTED] did not have an EBD, which would qualify him to receive special education services.

IV. DECISION

It is the decision of the undersigned that the evaluation of [REDACTED] performed in March of 2004, was appropriate and that [REDACTED] is not entitled to an independent evaluation at public expense.

This the 14th day of June, 2004



W. JOSEPH BAIRD
ADMINISTRATIVE LAW JUDGE