

05-0503808

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

D.C,

Petitioner,

Docket No.:

OSAH-DOE-SE-0503808-60-Gatto

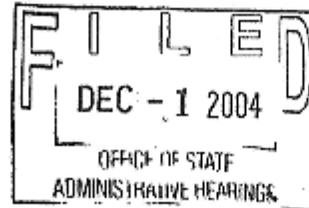
v.

ATLANTA PUBLIC SCHOOLS,
Respondent,

INC., d/b/a

, AN ATLANTA CHARTER
SCHOOL, INC.,

Respondent.



AMENDED FINAL ORDER

COUNSEL: Craig Goodmark, Esq., Atlanta Legal Aid Society, for Petitioner.

Kevin W. Pendley, Esq., for Respondent Atlanta Public Schools.

Glenn A. Delk, Esq. Lightmas & Delk, for Respondent

GATTO, Judge.

I. INTRODUCTION

This matter came before the administrative court pursuant to [redacted]'s complaint under the Individuals with Disabilities Education Act alleging that Atlanta Public Schools (APS) and [redacted], Inc., d/b/a [redacted] an Atlanta Charter School, Inc. [redacted]¹ failed to provide her with a free appropriate public education (FAPE) as required under the Individuals with Disabilities Education Act (IDEA), §504 of the vocational Rehabilitation Act, the Americans with Disabilities Act, and under Georgia Law. [redacted] seeks compensatory services, reimbursement for all private services her family has provided, reimbursement for evaluations, and other

¹ [redacted] was joined as a party Respondent by APS and was required to interplead.

appropriate relief. The administrative court has jurisdiction to hear this matter pursuant to Article 2 of the Georgia Administrative Procedure Act. For the reasons indicated below, [REDACTED]'s requests for relief are **GRANTED** against UCA and APS.

II. FINDINGS OF FACT ²

[REDACTED] is a student with a disability residing in Atlanta, Georgia. *Stipulations*, ¶1; Pet. Exh. 20. [REDACTED] was born twenty weeks premature as a result of her mother's drug abuse during pregnancy. *Stipulations*, ¶2, 3; Pet. Exh. 12. In addition to being underweight, [REDACTED] suffered a mild stroke in the womb that resulted in the incapacitation of her left arm. *Id.* Moreover, [REDACTED] suffers from hydrocephalus, an abnormal accumulation of cerebrospinal fluid (CSF) within cavities called ventricles inside the brain. *Id.* In addition to these medical conditions, [REDACTED] is cognitively impaired and has significant academic weaknesses. *Stipulations*, ¶5; Pet. Exhs. 12, 21, 22. [REDACTED] reads significantly below grade level. *Id.* She requires speech and language therapy, as well as occupational therapy. *Id.*

Prior to [REDACTED]'s enrollment in [REDACTED], APS had identified her as a student with disabilities. In August 2002, [REDACTED] enrolled at [REDACTED]. *Stipulations*, ¶1; Resp. Exhs. 5-6. At that time, [REDACTED] made a request to APS for special education services for [REDACTED]. Tr., p. 39. That request was denied by APS since [REDACTED] was obligated to provide the special education services pursuant to the charter agreement and since APS had appropriated IDEA funds to [REDACTED]. Tr., pp. 32, 34, 35.

[REDACTED] failed to confer eligibility upon [REDACTED] until seventeen months after enrolling at [REDACTED]. *Stipulations*, ¶9. During this time, [REDACTED]'s guardian was not informed of her rights under IDEA. *Stipulations*, ¶10; Tr. p. 40-41. No IEP was created for [REDACTED] from

August 2002 to January 2004. *Stipulations*, ¶13. Without an IEP, no goals and objectives were created to allow ██████ to make meaningful educational progress. *Stipulations*, ¶14. As a result, ██████'s levels of performance in the January 2004 IEP indicated that she had not made any meaningful educational progress since being evaluated by Dr. Hazzard in October 2003. *Stipulations*, ¶15; Pet. Exh. 12, 22. .

Moreover, ██████ was not provided any related services necessary to assist her to benefit from special education as defined at GDOE Rule §160-4-7.01(2) from August 2002 to January 2004. *Stipulations*, ¶17; Tr. pp. 5-6. ██████ was also denied extended school year services during the summer of 2004. *Stipulations*, ¶20; Tr., p. 5-6.

██████ submitted a due process request letter on July 27, 2004. *Stipulations*, ¶22. ██████ failed to forward that due process letter onto the state pursuant to GDOE Rule §160-4-7-.18. *Id.*

III. CONCLUSIONS OF LAW

██████ has a right to free appropriate public education. 20 U.S.C. §1401(a)(18); GDOE Rule 160-4-7-.04(a)(2000); *Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 203 (1982). FAPE requires the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction." *Id.* at 201. FAPE is accomplished through the implementation of an individualized education program (IEP) tailored to meet the unique needs of each child. *Doe v. Alabama State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).³

To determine whether a student has been denied FAPE the United States Supreme Court developed a two-part test:

² See the Joint Stipulations filed by ██████ and ██████.

First, has the state complied with the procedures set forth in the Act? And second, is the individual education program developed through the Act procedures reasonably calculated to enable the child to receive educational benefits? The court relies on procedures as the mechanism from which a substantively appropriate education should result.

Rowley, 458 U.S. at 206-07. In the present case, █████ and █████ have stipulated that she was denied both procedural and substantive FAPE.

Students that attend charter schools are entitled to equal protections under IDEA, and failures by charter schools to provide FAPE entitle those students to compensatory education. *Seashore Learning Center*, 32 IDELR 224 (TX SEA 1999). Failure to provide FAPE in charter schools effectively limits the "parental choice" that charter school policies seek to achieve. *Pottstown School District*, 34 IDELR 135 (PA SEA 2001), citing *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

A charter school may be established under State law as its own local education agency (LEA), as a school within a LEA, or an educational program within a LEA. 34 C.F.R. § 300.18(b)(2). If the charter school is established as a LEA receiving IDEA funds directly from the state educational agency (SEA), the charter school itself is responsible for complying with IDEA unless State law assigns that responsibility to some other entity. 34 C.F.R. § 300.312(b). Conversely, if the charter school is treated under State law as if it were a public school operating within a designated LEA, the LEA is responsible for ensuring compliance with IDEA *unless State law assigns that responsibility to some other entity*. 34 C.F.R. § 300.312(c).⁴

³ In a matter where Petitioner alleges a denial of FAPE, the burden of proof rests squarely on the local school system to show that FAPE was provided. GDOE Rule 160-4-7-.18(g)(8).

⁴ IDEA requires the LEA to provide funds to charter schools within the LEA "in the same manner as it provides those funds to its other schools." 34 C.F.R. § 300.241.

Georgia law states that a charter school is considered a local school of its district rather than a separate LEA, and is "subject to the control and management of the local board of the local school system in which the charter school is located..." O.C.G.A. §20-2-2065(a)(2). Therefore, Georgia law does not release the LEA from its responsibility for ensuring the requirements of the special education laws are met in charter schools. In the present case, APS was responsible for ensuring the requirements of the special education laws were met by █████. APS failed in its responsibility to control and manage █████ to ensure that █████ provided █████ with FAPE.

In the instant case, █████ stipulated that it denied █████ FAPE when it failed to provide any special education services from August 2002 to January 2004. *Stipulations*, ¶16; Tr., pp. 5-6. █████ stipulated that it denied █████ FAPE when it failed to confer eligibility upon █████ until seventeen months after her enrollment. *Stipulations*, ¶9; Tr., pp. 5-6. █████ stipulated that it denied █████ FAPE when █████'s guardian was not informed of her procedural rights under IDEA. *Stipulations*, ¶10; Tr., pp. 40-41. UCA stipulated that it denied █████ FAPE when no IEP was created for █████ from August 2002 to January 2004. *Stipulations*, ¶13. █████ stipulated that it denied █████ FAPE when no goals and objectives were created to allow █████ to make meaningful educational progress. *Stipulations*, ¶14.

Despite an obvious need for special education, these procedural and substantive errors caused significant delay in the implementation of an educational program for █████. This two-year delay constitutes actual harm, and was a denial of FAPE. *Rowley*, 458 U.S. at 207; 34 C.F.R. §300.346(a)(1)(ii)(1999); GDOE Rule §160-4-7-.09. As a result of this failure, █████ made no significant progress during this time and was denied the "basic

floor of opportunity” for an educational benefit from August 2002 to January 2004. *Stipulations*, ¶15; *JSK v. Hendry County School Board*, 941 F.2d 1563, 1573 (1991).

Moreover, █████ stipulated that it denied █████ FAPE when she was not provided required related services to allow her to benefit from the special education. *Stipulations*, ¶5, 17, ¶18; Pet. Exhs. 13,15,16,17; Tr., p. 5-6. Therefore, █████’s guardian was required to arrange for private related service providers.

Finally, █████ stipulated that it denied █████ FAPE when she was not provided with necessary extended school year services. *Stipulations*, ¶20. █████’s disability severely impacts her ability to learn new concepts or retain information. Pet. Doc. Tab. 12. In May 2004, █████’s IEP team agreed that she required extended school year services during the summer of 2004. *Stipulations*, ¶19. As a result, █████’s was unable to make progress during the school year. *Stipulations*, ¶ 15.

Where a child has been denied FAPE, the remedy is an award of compensatory education to cure the deprivation. *Todd v. Andrews I.S.D.*, 933 F.2d 1576 (11th Cir. 1991); *Jefferson County Bd. of Educ. v. Breen*, 853 F.2d 853, 857 (11th Cir. 1988); see also *Lester H. By. Octavia P. v. Gilhool*, 916 F.2d 865, 872 (3d Cir. 1990) (explaining relief of compensatory education), *cert. denied*, 111 S. Ct. 1317 (1991). Thus, █████ is entitled to compensatory educational services from for this denial of FAPE. Since APS is ultimately responsible under both federal and Georgia law for ensuring compliance with IDEA, █████ is entitled to compensatory educational services from APS for this denial of FAPE. Accordingly,

IV. ORDER⁵

IT IS HEREBY ORDERED THAT [REDACTED] is entitled to:

- 1) two years of compensatory education in the form of two one-hour sessions per week of one-to-one reading instruction to work on her reading skills not to exceed fifty dollars per hour (\$50.00);
- 2) compensatory education for five weeks of extended school year services to be provided at a community based program to address her existing academic goals and objectives at a rate not to exceed \$1,500.00;
- 3) reimbursement for an independent educational evaluation to determine her current levels of functioning and identify any further disabilities that may adversely impact her educational progress;
- 4) reimbursement for an independent evaluator to attend an IEP meeting at a total cost of no more than \$1,800.00;
- 5) reimbursement for all related services provided to her by both the speech therapist and the occupational therapist for the 2002-2003 and 2003-2004 school year;⁶
- 6) an IEP meeting no later than ten days following the presentation of the independent evaluators report to the [REDACTED] special education teacher with the participation of all service providers currently working with her;
- ~~7) appropriate related services; and~~
- 8) a referral for an assistive technology evaluation to determine the appropriateness of such services.

⁵ [REDACTED] and [REDACTED] stipulated that these remedies were appropriate based upon [REDACTED]'s failure to provide FAPE to [REDACTED].

SO ORDERED THIS 1st day of December, 2004.

John B. Gatto

HON. JOHN B. GATTO, JUDGE

⁶ Although the administrative court does not have the authority under IDEA to award attorney's fees and costs to D.C., as the prevailing party, D.C. is entitled to statutory attorneys' fees and costs. *Mitten v. Muscogee County School District*, 877 F.2d 932 (11th Cir. 1989).