

05-0510009

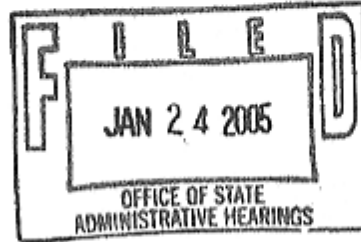
IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

█
Petitioner,

v.

FULTON COUNTY SCHOOL DISTRICT,
Respondent.

:
: Docket No:
: OSAH-DOE-SE-0510009-60-Foster



FINAL DECISION

I. Introduction

1.

This matter comes before the Office of State Administrative Hearings based on an appeal filed by the Petitioner who alleges that the Respondent did not provide the Petitioner with a free appropriate public education (FAPE) in compliance with the Individuals with Disabilities Education Act (IDEA), that the current Individual Education Plan (IEP) does not provide adequate modification and accommodations to address the Petitioner's needs and that the Respondent should bear the cost of the Petitioner's attending a private school.

2.

The legal issues to be determined at the hearing were whether the:

- (a) Respondent provided the Petitioner with a FAPE in a timely manner prior to the Petitioner's enrollment in a private school;
- (b) the Respondent's proposed IEP for the 2004-2005 school year was calculated to provide the Petitioner with FAPE in the least restrictive environment; and
- (c) Petitioner's placement in a private school was appropriate and, if so, whether the Respondent was responsible for bearing the cost of the placement.

3.

After having carefully reviewing the testimony and the documentary evidence presented in this matter, the Petitioner's appeal is being denied for the reasons set forth below.¹

II. Findings of Facts

1.

The Petitioner's parent (hereinafter "parent") has participated in, and signed, all IEPs. (T. 43, 115)

¹ Although Respondent's counsel moved for a motion for summary determination at the conclusion of this case and the ALJ stated that the motion would be granted, the ALJ, after further consideration, deemed that a decision should be issued since both parties were allowed to present their respective cases in their entirety.

2.

The parent was a member of the IEP team, which met on March 12, 2004. (T. 120, 121 and Exhibit R-29)

3.

Prior to the March 12, 2004, IEP meeting, the parent, at her behest, had obtained a psychological assessment for the Petitioner. (T. 120 and Exhibit R-22)

4.

All of the Petitioner's IEPs have resulted in end-of-the-year grades being average or above average. (T. 115, 116)

5.

On May 19, 2004, the parent was a member of the "Other Health Impairment" eligibility team which agreed that the Petitioner continues to be eligible for special education services. (T. 120 and Exhibit R-34)

6.

In a November 1, 2004, e-mail, the parent was informed that, in response to correspondence between her and Karen Lysak, an Instructional Support Teacher at ██████████ High School, an IEP meeting would convene on November 3, 2004. (Exhibit R-50)

7.

In a November 2, 2004, e-mail, the parent asked for a postponement of the IEP meeting and informed the representative that the Petitioner had been accepted in a therapy intervention program in Maine, that the Petitioner would begin her participation in the program on November 3, 2004, and that she would not be attending school between November 3, 2004, and January 3, 2005. (Exhibit R-52)

8.

The parent was notified, in a November 8, 2004, letter, that the IEP meeting would be rescheduled for November 15, 2004. (Exhibit R-54)

9.

The IEP meeting, by mutual agreement, was rescheduled for December 8, 2004, but later rescheduled for November 29, 2004. (Exhibits R-59-63)

10.

The parent participated in a conference at the Petitioner's school on November 29, 2004, during which the parties, including the parent, agreed that the Petitioner "was doing quite well academically." (T. 125, 126 and Exhibit R-65)

11.

In a letter dated November 29, 2004, the parent informed the Petitioner's high school principal that it was her "intent to enroll [the Petitioner] in a therapeutic boarding school around January 3, 2005, at public expense," and that she had "identified two excellent schools which address [the Petitioner's] learning difficulties." (Exhibit R-66)

12.

On or about December 1, 2004 or December 2, 2004, the parent decided on the private school that the Petitioner would be attending, but it was not until December 14, 2004, the day of the hearing, that the Petitioner's parent provided the Fulton County School District any information regarding the private school. (T. 123, 124)

13.

As of December 14, 2004, the parent had not spoken with any of the teachers at the private school that her child would be attending and neither the Petitioner nor her parent had been to the selected private school. (T. 123, 124)

III. Conclusions of Law

1.

The Petitioner, who contested the appropriateness of the IEP, which she once had deemed to be appropriate, bears the burden of proof in this matter. Devine v. Indian River County Sch. Bd., 249 F.3d 1289 (11th Cir.2001); Tracey T. v. McDaniel, 610 F. Supp. 947 (N.D. Ga. 1985); Burger v. Murray County Sch. Dist., 612 F.Supp. 434 (N.D. Ga. 1984)

2.

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing office may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing office finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. 34 C.F.R. 300.403 (c)

3.

The Respondent has made FAPE available to the Petitioner and did so in a timely manner prior to the Petitioner's being placed in a private school.

4.

The parent had not, in a timely manner prior to the enrollment of her child in a private placement, provided any information to the school, which would allow the school district to determine whether the placement of her child in the private school was appropriate.

5.

The cost of reimbursement described in paragraph (c) of this section may be reduced or denied (1) if:

(i) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
(ii) at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from public school, the parents did not give written notice to the public agency of the information described in paragraph (d) (1) (i) of this section. 20 U.S.C. § 1412 (a) (10) (C) (iii) (I) (aa); 20 U.S.C. § 1412 (a) (10) (C) (iii) (I) (bb); 34 C.F.R. 300.403 (d) (1) (i) and (ii)

6.

At the most recent IEP meeting that the parent attended prior to the removal of the Petitioner from the public school, the parent did not inform the IEP team that she was rejecting the placement proposed by the school to provide FAPE to the Petitioner.

7.

At least ten (10) business days prior to the removal of the child from public school, the parent did not give written notice to the school that she was rejecting the placement proposed by the school to provide FAPE to her child.

IV. Decision

Having found that the Petitioner failed to carry the burden of proof, as required by 20 U.S.C. § 1412 (a) (10) (C), 34 CFR 300.403 (c) and (d), State Board of Education Rule 160-4-7-.15(2) (a), in that the Petitioner failed to show that the Respondent has not provided the Petitioner with a free appropriate public education in compliance with the Individuals with Disabilities Education Act, that the current Individual Education Plan does not provide adequate modification and accommodations to address the Petitioner's needs and that the Respondent should bear the cost of the Petitioner's attending a private school, the Petitioner's appeal is DENIED.

SO ORDERED, this 24th day of January 2005.



CHRIS A. FOSTER
Administrative Law Judge