

residential facility, full and comprehensive testing, reimbursement for private placement at ██████ School in the amount of \$8,250, and an order finding that ██████ was bullied and discriminated against on the basis of his disability. (*Petitioner's January 21, 2005 Due Process Hearing Request*).

B. BACKGROUND AND EVALUATIONS

1.

█████ is a ██████ ██████ year-old student in the eleventh grade residing in the DeKalb County School District ("DCSD"). ██████ has emotional behavioral disorder ("EBD"), is entitled to special education services under the provisions of the IDEA, and currently receives services from DCSD. (*Stipulation of Parties; Exs. J- 27(A), and J-40*).

2.

During Spring of 2002, ██████ was referred for a psycho-educational evaluation ("DCSD evaluation") by his parents because of behavioral concerns arising out of a series of interpersonal conflicts between ██████ and his peers during that school year. (*Ex. J-20, at Page A*).

3.

The DCSD evaluation determined ██████ to be "bright, sensitive, and eager to learn, rigid, explosive and socially hindered. ██████ also displays signs of aggressive behavior such as being argumentative and defiant. He demands attention and is disobedient at school. He disturbs others, is jealous, fights with others and talks out in class. ██████ has physically attacked others, disrupts class, screams, and tends to show-off. He is explosive, is demanding, stubborn, has sudden mood changes and tends to talk too much. ██████ has temper tantrums and is often loud." (*Ex. J-20, at Pages B, and K - L*).

4.

At the time of the evaluation, ██████ took three (3) different medications to stabilize his mood and reduce depression (Effexor), anxiety (Risperidol) and aggression (Triptol). ██████ does not handle disruption or social bantering well. In addition, ██████ can be rigid and righteous when viewing others. ██████' previous psychiatrist, Dr. ██████, MD, diagnosed ██████ with a Bipolar Disorder and an Attention Deficit Hyperactivity Disorder (ADHD). His present psychologist, Dr. ██████ has diagnosed ██████ with ADHD, Adjustment Disorder with Anxiety and Adjustment Disorder with Depressed Mode. (*Ex. J-20, at Page B*).

5.

█████ has an inability to understand how his behavior causes or exacerbates problems in social situations. This has continued throughout the relevant period despite significant efforts by both DCSD and his private therapist, Dr. ██████, whom he has seen on a regular basis during the relevant time period. ██████ experiences difficulty with peer interaction, on task behaviors, response to corrections, and completion of class assignments and homework. (*TR, Jun 28, 2005, at p. 140*).

There is evidence in the record that [REDACTED] may have been teased at school and that his reactions to being teased have gotten him in trouble (*Ex. J-52, pp. f-g; TR., September 19, 2005, p. 253*). Also, during sessions with Dr. [REDACTED], [REDACTED] alleged that he was teased at school. However, Dr. [REDACTED] testified that [REDACTED] lacks recognition that *his* behavior plays a crucial role both in starting problems and in prolonging them. Dr. [REDACTED] never contacted the DCSD to confirm the accuracy of [REDACTED]'s statements of teasing, and *assumed* that [REDACTED]'s statements *were not* completely accurate. (*TR, Jun. 28, 2005, at pp. 293-294; TR., Jun. 29, 2005, at pp. 354, 372-373, 376-377, 441*). Dr. [REDACTED] acknowledges that he is not in a position to comment on [REDACTED] educational program at the DCSD, since he has not observed the program or discussed [REDACTED]'s performance with the DCSD staff. (*Id. at p. 414-415*). Dr. [REDACTED] also recognized that [REDACTED]'s problems are not limited to the school environment as evidenced by his statement that "Family conflict and self-destructive impulses are an extension of [REDACTED]' view of himself as an innocent victim combined with a sense of self-righteousness that magnifies the severity of both real and imagined affronts." (*Id.*). Dr. [REDACTED] notes that [REDACTED] misperceives reality and believes that others act toward him with malevolent intent and that this paranoia, combined with his depression and emotional immaturity, has further exacerbated [REDACTED]'s problems with social interactions. (*TR., Jun. 28, 2005 at pp. 204, 268; TR, Jun. 29, 2005 at p. 697*).

B. K.S.' ELIGIBILITY

Based on the DCSD Evaluation, [REDACTED] was found eligible for special education services under the category of Emotional and Behavioral Disorder ("EBD") pursuant to 20 U.S.C. §1400 *et seq.* (*See e.g., Exs. J-26, J-27(A) J-30*). During the relevant period, [REDACTED] has not been eligible under Other Health Impaired ("OHI") for any educational impacts arising from any alleged ADHD. (*Id.*). [REDACTED]'s physical and medical limitations are: Bipolar, OCD (obsessive compulsive disorder), and ADHD. (*Exs. J-30, 35 at p. A*). His primary area of disability is EBD. (*Exs. J 27 A, J-30, 35 at p. A*).

C. April 2003 IEP

During the Spring Semester of 2003, [REDACTED] did not have any discipline referrals or other reports of confrontations or altercations with peers. (*Ex. J-52 at p. W*). On April 4, 2003, [REDACTED]'s IEP team convened to review [REDACTED]'s current IEP, develop an IEP for the next school year (2003-2004), develop or revise a Behavior Intervention Plan ("BIP"), develop a Transition Plan, and review his progress. (*Ex. J-24, 25, 26, 27*). The IEP Team reviewed [REDACTED]'s progress and noted that, during the first semester, [REDACTED]-made excellent progress on his behaviors and passed all of his classes, except Citizenship. When the IEP met in April 2003, [REDACTED] was passing all of his classes, except his first period class, Gifted World Geography, in which

he tended to sleep. (Ex. J-25). The IEP team agreed upon goals and objectives relating to homework, grades, conduct, and social interactions. (TR Apr. 29, 2005, at p. 53; Ex. J-27, at p. E). The Team also decided that [REDACTED] would continue in the same placement at [REDACTED] High School for the tenth grade. (Ex. J-27, at p. H). A "Parent Notification" of the April 4, 2003 IEP meeting was provided to [REDACTED]' mother, [REDACTED], which she signed. (Ex. J-24). [REDACTED] attended and participated at the April 4, 2003 IEP meeting. (Testimony of [REDACTED]; Ex. J-27, at pp. C, D, and H). There was no regular education teacher present at the IEP meeting. (Ex. J-27 H).

9.

The IEP team performed a Functional Behavior Assessment ("FBA") to address two-targeted behaviors: "sleeping in classes" and "inappropriate response to peer provocation" at the April 4, 2004 IEP meeting. The team determined that the "function", or reason, for [REDACTED]' "sleeping in class" was "avoidance/escape" and developed a Behavior Intervention Plan ("BIP") that listed the following interventions to address this behavior: "awaken student" and "regular bedtime & exercise." The consequences for such behavior were to "contact parent" and, if necessary "detention." The team determined that the "function", or reason, for [REDACTED]' "inappropriate response to peer provocation" was "control" of his environment and developed a BIP that listed the following interventions to address this behavior: "adult intervention/correction, and time out of the room." The consequences were "student conference, parent contact, counselor contact, and administrative referral." (Ex. J-27, at p. C). K.S.' parents, [REDACTED] and [REDACTED], signed the BIP. (Exs. J-25 and J-27, at pp. B and C).

10.

In recognition of [REDACTED]' disability, the IEP team determined that [REDACTED] would see the school psychologist as needed and, at the Parents' request, DCSD agreed not to hold absences against [REDACTED]² (Exs. J-25 and J-27, at p. F). The team determined that the appropriate placement for [REDACTED] was to continue in a study skills class and to continue his college prep coursework in the regular/general curriculum classrooms. (Exs. J-25 and J-27, at pp. D and H) (Option 5: General education setting with direct special education half day or less)). [REDACTED] would take his End of Course Tests (EOCT) in a small setting. (Ex. J-27, at p. G). [REDACTED]' parents, [REDACTED] and [REDACTED], signed that they attended the IEP meeting, were invited to participate in the development of the IEP, understood its contents, were explained their due process rights and procedures,

² [REDACTED] argues that DCSD should have insisted, or made him, go to school when he was absent during the 2004 – 2005 school year. (TR., Apr. 30, 2005 at pp. 123-124). This discussion, documented in the minutes of the April 4, 2003 IEP meeting, represents [REDACTED]' parents' view of how the School District should treat his absences. However, to the extent that [REDACTED] argues that he unfairly was reported for school truancy, O.C.G.A. § 20-2-690.1 and State Board of Education Rule 160-5-1-.10 address the local School District's obligations to report students who have been truant from school. Compulsory attendance issues are not governed by the IDEA or its accompanying regulations, nor is the special education department responsible for reporting student truancy. (TR., Apr. 30, 2005 at pp. 123-124, Testimony of D. Gay).

and obtained a copy of "Your Rights as Parents Regarding Special Education," the IEP, and the Eligibility Report. (Ex. J-27 at p. D, J).

11.

█ passed all of his classes during the Spring Semester of 2003, including advanced Literature/Composition, Gifted/Accelerated Biology, Gifted Geometry, Gifted World Geography (the class that he was failing at the time of the April 2003 IEP meeting), and Japanese. (Ex. J-52 at A). █' academic issues at school were the result of his inconsistency in completing homework. (TR., Sept. 19, 2005, at pp. 290, 331, 334, 383; TR., Sept. 20, 2005, at p. 147). In fact, the undisputed testimony is that █ could and did demonstrate knowledge of his academic subjects as evidenced by his high scores on achievement testing. If █ could just have been graded on tests, he would have received a 100. (TR., Apr. 29, 2005 at p. 195). Moreover, █ was able to perform academically even with his behavioral problems, and the evaluations do not indicate that █ has a problem listening to or understanding information. (TR., Sept. 20, 2005, at pp. 194-223).

12.

█ had no discipline problems at school until March 9, 2004, when he entered his regular education classroom upset about his grade. The teacher attempted to discuss the issue with █, but █ responded, "F*** it," and walked out of the classroom. (Ex. J-52 at W; J-53 at pp. A, KK, TT, GG; TR., Apr. 29, 2005, at p. 143). █ was assigned three days of in-school suspension (ISS) for this incident. (Ex. J-52 at W; J-53 at p. A, KK, TT, GGG; TR Apr. 29, 2005 at p. 143). There is no evidence that █' response to the teacher was caused by any teasing known by DCSD. To the contrary, the incident was consistent with █' inability to control his anger. (Ex. J-53 at p. tt; TR Apr. 29, 2005, at p. 140).

13.

On March 16, 2004, █ had another disciplinary problem in which he approached another student, and hit her on the head. Additionally, █ kicked a second student multiple times. (Ex. J-53 at pp. UU, XX; WW; TR Apr. 29, 2005, at pp. 50, 96). There is no evidence that █' actions against these students were caused by teasing known by DCSD. As a result of this incident, █ was charged under the School District's Student Code of Conduct with (1) intimidation/threatening staff or students; (2) physical contact with students of an insulting nature; (3) disrespect to school personnel; (4) use of profanity; and (5) repeated violation of school rules. (Ex. J-53 at pp. UU, VV; TR Apr. 29, 2005, at pp. 141-142).

D. MARCH 2004 IEP

14.

On March 22, 2004, █' IEP team convened to review his IEP and determine the appropriate placement for █ (Ex. J-30; TR Apr. 29, 2005, at p. 143, 147-149). █' parents attended and participated in the IEP Meeting. (Id.). The IEP Team reviewed █' progress on his IEP Goals and Objectives. (Ex. J-35

at p. C). Despite the two recent incidents, the data showed that [REDACTED] made progress on his goals and objectives. (Ex. J-31). The IEP Team and [REDACTED]' parents discussed his recent disciplinary incidents and behavior. (Exs. J-30, 35 at p. A). There was no regular education teacher present at the IEP meeting. (Ex. J-35 -G).

15.

At the March 22, 2004, IEP meeting, the team identified [REDACTED]' physical and medical limitations as Bipolar, OCD, and ADHD. (Exs. J-30, 35 at p. A). His primary area of disability was EBD. (Exs. J-30, 35 at p. A). The team noted that [REDACTED] was bright, but preferred to work alone, continued to have problems with social interactions, had difficulty completing homework and class work, even though he had progressed in this objective during the 2003-2004 school year, is easily frustrated, and had gotten into trouble by reacting to teasing by other students. [REDACTED] was able to function in classes where he was able to isolate himself from tense situations. (Exs. J-30, 35 at p. A). The team determined that [REDACTED]' behavior impeded his learning and possibly the learning of others. (Ex. J-35 at p. B). As a result of his recent problems, the IEP team performed another FBA to address the reasons for his behaviors and updated his BIP. (Ex. J-35 at pp. B, J). [REDACTED]' interfering behaviors were noted to be caused by "inappropriate response to peer provocation." (Ex. J-35 at p. J). The function of his behavior was to control his environment. (Ex. J-35 at p. J). The BIP listed adult intervention and correction, time out of the room, permanent pass to go to a safe space, and use of discussion to mediate and solve problems as appropriate interventions. (Ex. J-35 at pp. E, J).

16.

The IEP team determined that the appropriate placement for [REDACTED] for the 2004-2005 school year was the "General education setting with direct special education half-day, or less." (Ex. J-35 at p. G). Specifically, [REDACTED] would attend class at DCSD's "Open Campus" where he would be able to take classes to pursue a college-prep diploma, attain Carnegie units, and pursue technology/vocational credits. (Ex. J-35 at I, J-52 at p. E). He would also take a Study Skills (special education) class for 7.5 hours per week and receive technology services for a quarter hour per week. (Ex. J-35 at H, J-52 at p. E).

17.

[REDACTED]' Parents reported to the IEP team that [REDACTED] was experiencing excessive mood swings, had been hospitalized previously due to emotional/behavioral difficulties, and that his physician was working to modify his medications. [REDACTED]' parents also indicated that, after the previous incidents, [REDACTED] was too embarrassed to return to [REDACTED] High School. (TR., Apr. 29, 2005, at p. 165; Ex. J-35 at p. L). The parents then requested that [REDACTED] receive "Hospital Homebound Instruction", and the IEP team agreed. (Id.). The parents were given information to request Homebound Instruction. (Id.). However, DCSD has no record of the Parents returning the forms requesting Homebound Instruction. (TR., Apr. 29, 2005, at

56, 102-103). On March 22, 2004, the same day as the IEP meeting, [REDACTED]' parents informed DCSD that he would not be returning to [REDACTED] High School, but would be in "home school" for the remainder of the year and, consistent with the discussions and agreement at the IEP meeting, would be attending another DCSD school the following year. (Ex. J-53 at p. PPP), referring to notes of the IEP Meeting, Ex. J-35 at p. L). However, [REDACTED] had an episode at home that required his involuntary hospitalization in a psychiatric unit at [REDACTED] before services could be arranged by DCSD. (TR Apr. 28, 2005, at p. 141). After his hospitalization, it was concluded that [REDACTED] needed a more structured environment than Hospital Homebound, and [REDACTED] was referred to DCSD's psycho-educational program. (TR., Apr. 28, 2005, at 141; Ex. J-21 at p. A).

E. APRIL 2004 IEP

18.

[REDACTED] was accepted into DCSD's psycho-education program. The IEP team reconvened on April 20, 2004 to consider an appropriate educational placement for [REDACTED] outside of the home environment. (Ex. J-33, 34, 35 at A) (revisions in pencil); Ex. J-37. At the April 20, 2004 meeting, the team noted that [REDACTED] had been hospitalized recently and was taking the following medications: Celexa, Lamictal, Trileptal, and Seroquil. (Ex. J-35 at p. A). Instead of the previously agreed upon placement at the DCSD Open Campus, the IEP team and [REDACTED]' parents agreed to place [REDACTED] in the Severe Emotionally and Behaviorally Disturbed (SEBD) "Outpost" program at [REDACTED] High School. (Ex. J-34, J- 52 at pp. F-G, and H-M). There was no regular education teacher present at the IEP meeting. (Ex. J-34).

19.

At the April 20, 2004 IEP meeting, [REDACTED]' mother gave DCSD permission/releases to contact Dr. [REDACTED], [REDACTED] Hospital, and Dr. [REDACTED] if it needed additional information for [REDACTED]' placement. (Ex. J-36). However, DCSD concluded that it did not need additional records at that time and did not seek to obtain [REDACTED]' medical records. DCSD did not believe that the releases were unlimited as to time. When DCSD needed to speak with Dr. [REDACTED] in the fall, it obtained a new release from the parents. (TR., Apr. 29, 2005, at pp. 24-25). (Testimony of Dr. Anne Van Buskirk, June 2, 2005).

20.

For the remainder of his 2003-2004 school year (tenth grade), [REDACTED] was scheduled to take two classes in the general education environment (Algebra II, Advanced Chemistry) at the Outpost program. (Ex. J-37). He was also scheduled to take four classes in the SEBD classroom. (Id.). The IEP Team also agreed that the following year, [REDACTED] would take Pre-Calculus and Physics in the general education environment and American Literature, American History, Study Skills, and Decision Making in the SEBD classroom. (Ex. J-37). [REDACTED]' mother would take [REDACTED] to school in the morning, and [REDACTED] would ride the gifted students' magnet bus home in the afternoon. (Ex. J-37). [REDACTED]' mother signed the staffing notes (minutes). (Ex. J-

37). Despite his emotional problems and hospitalization during Spring Semester of 2004, [REDACTED] passed his classes, including Advanced Chemistry I, Japanese II, World Literature/Composition B, Algebra II B, Decision Making, and Study Skills. His only failing grade was in Advanced World History. (Ex. J-52 at p. A).

21.

[REDACTED] had another disciplinary problem, in the Fall Semester of 2004, in which he asked his teacher, in front of his classmates, why "blacks look like gorillas?" (TR., Apr. 29, 2005, at p. 262). Concerned about [REDACTED]'s comments, the teacher attempted on several occasions to engage in a discussion of tolerance. (Id.) During these discussions, [REDACTED] stated that he disliked people who "acted ghetto." (Id. at pp 262-264). The teacher suggested to [REDACTED] that he did not mean this as a comment about black people in general. (Id., at p. 264). [REDACTED] replied "No", but more of them act ghetto than white people. (Id.). When the paraprofessional told [REDACTED] that this was a racist comment, he responded angrily with curse words. (Id.). [REDACTED] was then suspended from [REDACTED] High School. (Id.; Ex. J-53 at pp. A, KK). After this incident, [REDACTED]'s attention, participation, and interest in school at [REDACTED] decreased and his attendance became sporadic. (TR., Apr. 29, 2005, at p. 265; TR., June 2, 2005, at p. 123).

22.

After his suspension, [REDACTED] lost his temper and made comments about being suicidal and threatened to bring a gun to school. (Ex. J-68, at p. D). DCSD then requested a release from [REDACTED]'s parents to speak with Dr. [REDACTED]. (TR., June 2, 2005, at p.108). Based on [REDACTED]'s version of events, Dr. [REDACTED] told DCSD that it needed to be more "sensitive" to [REDACTED] and assured DCSD that [REDACTED] "did not have a gun, nor did he have a plan to harm himself or others." (TR., June 2, 2005, at pp. 108-112). However, Dr. [REDACTED] testified that [REDACTED] had not fully informed him of the events surrounding his suspension and that, had he understood what [REDACTED] had actually said, his advice to [REDACTED] would have been different. (TR., June 29, 2005, at pp. 664-665). Dr. [REDACTED] did not recommend [REDACTED] School as "interim placement" pending residential placement for [REDACTED]. (TR., June 29, 2005, at p. 449). In fact, at the time of his evaluation of [REDACTED], Dr. [REDACTED] did not recommend residential placement for [REDACTED]. (TR., June 29, 2005, at p. 450).

23.

[REDACTED] had another disciplinary problem on November 3, 2004. While riding on the school bus, [REDACTED] became abusive and aggressive, struck the bus driver and other students, and vandalized the bus before leaving the scene. (Ex. J-38, 39, 53, at pp. A, C-D, E, F, G, H, I-L, M-O, P, Q, R, S-CC, EE-JJ, KK, LL). As a result, DCSD charged [REDACTED] with violating the Student Code of Conduct (Id.). The police subsequently charged [REDACTED] with destruction of property. (Ex. J-53 at pp. MM-PP).

NOVEMBER 2004 IEP

24.

On November 22, 2004, [REDACTED]' IEP team met to determine whether his conduct on the bus was a manifestation of his disability, which the IEP Team members assumed. (TR., June 2, 2005 at pp. 120-121). The IEP team discussed whether [REDACTED] required a more therapeutic and structured setting than the SEBD outpost program at [REDACTED] High School. (Ex. J-40, 41, 42). [REDACTED]' mother was present at the meeting and reported that, following the bus incident on November 3, 2004, [REDACTED] was hospitalized at [REDACTED]. (Ex. J-41). After being discharged from the hospital, [REDACTED] told his parents that he did not want to attend school. (Ex. J-41). [REDACTED]' mother reported to the IEP team that [REDACTED] had suicidal ideations and was emotionally fragile. (Ex. J-41). She also indicated that the parents were investigating the availability of MATCH funding for residential placement. However, she did not provide any details or ask DCSD to consider residential placement for [REDACTED] at the IEP meeting. (TR., Sept. 20, 2005, at p. 50).

25.

The IEP team and [REDACTED]' mother discussed the [REDACTED] Center ("[REDACTED]"), including its behavior management program, social skills program, and its incentive program at the November 22, 2004 meeting. (Ex. J-41). [REDACTED] is a therapeutic special education program within the continuum of services provided by the DCSD. (Ex. J-54). The students at [REDACTED] Academy have a wide range of emotional and behavioral difficulties and are unable to function successfully in other public school environments. The program is different from the special educational services available in other DCSD schools because a multi disciplinary team of educators, clinicians and administrators work together to assist students in understanding their feelings and behaviors, teach students to behave in more socially acceptable ways, and help students discover self-worth and respect for others. [REDACTED] operates on a levels system in which students earn the right to certain privileges and consideration by the IEP team for return to the regular education environment. (TR., Apr. 28, 2005, at pp. 108, 110, 123-129; TR., Apr. 29, 2005 at pp. 12-14; TR., June 28, 2005, at pp. 177; Exs. R-54, R-54, and J-55). The IEP team and [REDACTED]' mother agreed to amend his IEP to place [REDACTED] at [REDACTED], located at [REDACTED]. There was no regular education teacher present at the IEP meeting. (Exs. J-40 and 41).

26.

[REDACTED] began school at [REDACTED] on a modified day schedule two weeks prior to winter break during December 2004. (TR., Apr. 28, 2005, at p. 183). DCSD introduced [REDACTED] to [REDACTED] before he began the new semester in January 2005, because he needed structure and an opportunity to get acclimated to the school, its environment, structure, and expectations. [REDACTED] was not required to either make up missed class assignments or take final exams. However, he did not receive credit for the time he spent at [REDACTED]

█████ prior to winter break, since he had missed extensive time from school. (TR., Apr. 29, 2005, at pp. 65, 92). ██████ offered ██████ courses that he needed to fulfill Carnegie units required for graduation. (TR., April 29, 2005, at pp. 10-11). In addition to the classes ██████ could take during his modified day at ██████, DCSD provided his parents with information about additional courses that he could take through the Dekalb On-Line Academy ("DOLA"). (Id.) However, ██████ indicated that he did not want to attend ██████ before anything could be worked out regarding DOLA for the Spring 2005 semester. (TR., June 2, 2005 at 127; TR., June 28, 2005, at p. 286).

27.

█████ attended a portion of only approximately six (6) days at ██████ before refusing to return to the facility. (TR., June 2, 2005, at p. 127). ██████' final day of school was on or about January 10, 2005. On January 18, 2005, ██████' mother sent an e-mail requesting an "emergency IEP meeting" because she felt that ██████ was not working for ██████. (Ex. J-56, at p. B). Her e-mail did not state that the parents would bring an attorney to the IEP meeting. (Id.).

JANUARY 2005 IEP

28.

On January 20, 2005, ██████' parents and their attorney arrived for the IEP meeting. A call was placed to inform Debbie Gay that legal counsel represented ██████. (TR., Apr. 28, 2005 at pp. 186-192). While waiting to hear from Ms. Gay, the meeting commenced. (TR., Apr. 28, 2005 at pp. 186-192). ██████' attorney discussed concerns with his current placement and indicated that professionals believed that ██████ needed residential placement. (TR., June 2, 2005 at pp. 8-9). The attorney also indicated that the parents wanted to place him at ██████ School. (TR., June 2, 2005 at p. 38). There was no regular education teacher present at the IEP meeting. (Ex. J-43-44).

29.

DCSD adjourned the IEP Team meeting because ██████ had an attorney at the meeting, but its attorney was not present. The IEP team meeting was subject to being reconvened when DCSD's attorney could attend. (TR., Apr. 28, 2005 at p. 192; TR., June 2, 2005 at p. 131; Ex. J-43). During the meeting, the IEP Team neither recommended nor decided on a placement for ██████, and did not reject any placement proposed by ██████' parents or his attorney.

30.

█████' parents and attorney chose not to reconvene another IEP Team meeting. Instead, on the day after the IEP meeting, ██████ filed a due process request, asserting that his placement at ██████ was not appropriate, and that DCSD had failed to identify his disabilities. The parents requested placement at ██████ School for the rest of the semester for social skills training, after which he would return to DCSD. (Jan. 21, 2005 Due Process Request, at p. 2). ██████ due process request did not demand

residential placement. Rather, it contemplated placement at ██████████ School for the remainder of the semester to allow ██████ to return to gifted classes at DCSD. (*Id.*; *See also TR., Apr. 29, 2005, at p. 133*).

THE COTTAGE SCHOOL

31.

On or about February 12, 2005, ██████' attorney gave notice to DCSD of the parents' intent to remove ██████ from DCSD, unilaterally place him at ██████████ School, and seek reimbursement for the private placement. (*Ex. R-58, at p. A; TR., Sept. 20, 2005, at p. 133*). ██████ began attending ██████████ School near the end of February 2005. (*TR., Sept. 19, 2005, at p. 132*). As with ██████████ Academy, the children at ██████████ School are also all "special needs children". However, unlike ██████████, the majority are not minority students. When ██████ began attending ██████████ School, his attendance, participation and performance were acceptable. (*TR., June 2, 2005 at pp. 291-293; TR., Sept 19, 2005 at pp. 132-138; Ex. 75- S*). However, his attendance and behavior quickly deteriorated. In April 2005, ██████ was suspended after grabbing the hand of a teacher who took his cell phone away. After this incident, ██████ refused to return to ██████████ School. (*TR., Sept. 19, 2005, at pp. 132-138*). The total cost for ██████ to attend ██████████ School was \$8,250. *TR., August 30, 2005 at p.246; September 20, 2005 at p. 137*).

32.

After attending ██████████ School, ██████' condition was worse than it had been at ██████████ and the parents believed that he needed immediate residential placement. (*Testimony of D.S. Testimony, June 2, 2005*). The parents agreed to release ██████' psychological records to DCSD. The parties held an IEP meeting and agreed on a 90-day diagnostic placement for ██████, at a place to be determined. Upon receipt of information from ██████' psychiatrist, the parties were able to agree upon and place ██████ in a residential facility for the above-referenced diagnostic placement. (*Exs. R-65, 66, 67*).

33.

During Fall 2004, ██████' psychiatrist, Dr. ██████████, informed ██████' mother that ██████ was a danger to himself or others. (*TR., Sept. 30, 2005, at p. 34-42*). However, ██████ mother did not report this information to DCSD because she believed that this was "too weighty a diagnosis." (*Testimony of ██████, TR., Sept. 30, 2005, at pp. 34-42*). ██████' father also admits that, for two years, Dr. ██████ had been indicating to the parents that ██████ needed residential placement. However, he did not share this information with DCSD prior to placing ██████ at ██████████ School, which is not a residential facility. (*TR., Sept. 20, 2005, at 40-42; TR., Aug. 30, 2005 at pp. 277-281*).

34.

█████ was accepted into ██████ School based on representations made by the parents and the psychological report provided by Dr. ██████. (TR., Aug. 30, 2005 at pp. 285-287). The founder of ██████ School, Dr. Digieso, did not speak to either ██████'s psychiatrist, Dr. ██████ or a representative of DCSD, and did not attend an IEP meeting for ██████ prior to accepting him as a student. (TR., Aug. 30, 2005 at pp. 277-281, 288-294; TR., Sept. 19, 2005 at pp. 218-220). There is no evidence in the record that the parents shared Dr. ██████'s concerns about ██████'s emotional condition with Dr. Digieso during the admission process, including any concerns about his potential for violence. In fact, Dr. Digieso testified that, had she been aware of Dr. ██████'s recommendation that ██████ was a danger to himself or others and should be admitted to a residential treatment facility, she would not have accepted ██████ at ██████ School. (TR., Sept. 19, 2005 at 218-220). Dr. Digieso admits that ██████ School ultimately was an unsuccessful placement for ██████ since he attended for less than two months and received no academic credit. (TR., Sept. 19, 2005, at pp. 136-138).

35.

Residential Placement is a very restrictive placement option. It is more restrictive than ██████s. The student is removed from his family and school environment. (TR., Apr. 28, 2005, at pp. 203-205). Residential placement would not be appropriate simply because a child has attendance problems. (TR., Apr. 29, 2005, at p. 87). Common features of residential placements include: (1) locked portions of the facility for students who are a danger to themselves or others; (2) restrictions on clothing, sometimes including limitations on the use of shoestrings, belts, etc.; and (3) sparse living quarters. (TR., Apr. 29, 2005, at pp. 84-85). Residential facilities are not quiet and calm places. (Id. at 88). They typically involve students who have aggressive outbursts, are in crisis and require substantial interventions such as mechanical restraints. (Id.). Residential placement is only appropriate where a child is a danger to himself or others, or where a child, even when stabilized, cannot function in the regular environment. (TR., June 2, 2005, at pp. 130 and 214).

III. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Act (IDEA or "the Act"), 20 U.S.C. § 1400 *et seq.*; 34 CFR Part 300, the Georgia Board of Education Rules 160-4-7, *et seq.* 20 U.S.C. § 1415 (b) and 34 CFR § 507 (b) directs that this hearing must be conducted by the State Education Agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State Education Agency.

BURDEN OF PROOF

2.

Petitioner bears the burden of proof on all issues in this hearing since he is challenging an IEP, or seeks to change an existing agreed-upon placement. *Schaffer v. West*, No. 04-698, 546 U.S. ___ (November 14, 2005); *Devine v. Indian River Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001) (citing *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1290 (5th Cir. 1991)); see also *Weast v. Schaffer*, 377 F.3d 449, 456 (4th Cir. 2004) (Petitioners in IDEA case have burden of proof at administrative hearing), cert. granted, 125 S.C.T. 1300 (2005). Georgia's Board of Education Rules governing the IDEA hearing process are consistent with *Devine*. Here, it is undisputed that [REDACTED]' parents agreed to the placement at [REDACTED] under the IEP and amendments through which [REDACTED] was being served when they withdrew him from DCSD and enrolled him at [REDACTED] School.

Petitioner also bears the burden of proof regarding the appropriateness of private services for which he now seeks reimbursement because his parents unilaterally elected to enroll him in a private program. 20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.403(c); *School Committee of the Town of Burlington, Massachusetts v. Department of Education of the Commonwealth of Massachusetts*, 471 U.S. 359, 105 S. Ct. 1996 (1985); see also *M. S. v. Yonkers Board of Educ.*, 231 F.3d 96 (2^d Cir. 2000) (when seeking reimbursement for private placement or services, the parent has the burden of proof). Moreover, [REDACTED]' parents are now seeking a 24-hour per day residential placement for [REDACTED], even though they did not make such a request in their due process complaint. Since [REDACTED]' parents are advocating a more restrictive placement, Petitioner bears the burden of establishing that the more restrictive environment is appropriate." Ga. Bd. of Educ. Rule 160-4-7-.18(1)(g)8.

STATUTE OF LIMITATIONS

3.

It is undisputed that the applicable statute of limitation in this action is two years as established in *Mandy S. v. Fulton County School District*, 205 F. Supp. 2d 1358 (N.D. Ga. 2000), *aff'd without opinion*, 273 F.3d 1114 (11th Cir. 2001). Further, "IDEA claims accrue when the parents know or have reason to know of the injury or event that is the basis for their claim, whether or not they know that the injury is actionable." *Mandy S.*, 205 F. Supp. at 1365. Therefore, in this case, the only IEPs at issue are those prepared on or after January 21, 2003, or two years before Petitioner filed the instant due process hearing request.

RIPENESS

4.

Before addressing the substantive issues in this case, it must first be determined whether there is a dispute that is ripe for determination. The Georgia Board of Education Rule 160-4-7-.18 provides that the impartial due process hearing is designed to provide concerned parties with an avenue for *resolving differences* in the event the mediation process fails to do so. An impartial due process hearing must be provided when the parents or the local school system requests it with regard to the identification, evaluation, placement or provision of a free appropriate public education (FAPE) to a student with a disability. *See, 34 CFR 300.507(a).*

In this matter, the IEP team, including [REDACTED]'s mother, agreed upon his placement at [REDACTED]. The IEP team did not refuse any proposed placement by the parents at the January 20, 2005 IEP meeting. Rather, the meeting recessed for DCSD to have legal representation present at the meeting. However, before the team could reconvene, Petitioner filed a due process request, seeking placement at [REDACTED] School. Petitioner then changed his due process request to include residential placement prior to the commencement of this hearing. Under these facts, Petitioner has failed to establish evidence that DCSD rejected any placement proposed by the parents. Since DCSD did not reject a demand made by Petitioner during the January 20, 2005 IEP meeting or subsequently, the basic requirement for obtaining a due process hearing to "resolve differences" was not met by Petitioner. Georgia Board of Education Rule 160-4-7-.18. For these reasons, Petitioner's due process request was premature when filed. Notwithstanding this fact, however, the Tribunal will nevertheless address and dispose of Petitioner's substantive claims as if they were properly presented.

WHETHER PLACEMENT AT EAGLE WOODS OFFERED K.S. A FREE, APPROPRIATE EDUCATION

5.

The first substantive issue to decide is whether the 2004/05 IEP that placed [REDACTED] at [REDACTED] offered [REDACTED] a free, appropriate public education (FAPE) in the least restrictive environment (LRE). At the time that [REDACTED] filed for a due process hearing, and when he was unilaterally placed at [REDACTED] School, the existing placement under IDEA was the [REDACTED] Psycho-Educational Center. Therefore, the issue of whether DCSD was providing a program reasonably calculated to provide [REDACTED] with FAPE relates to his November 22, 2004 placement at [REDACTED] and the approximately six (6) days that he actually attended .

6.

In order to determine whether special education and related services are "appropriate," the United States Supreme Court has established a two-prong test. First, the court must inquire whether the School District has complied with the procedures set forth in the Act. Second, the court must inquire whether the IEP is "reasonably calculated to enable the child to receive educational benefits." *Board of Education of Henrik Hudson School District v. Rowley*, 458 U.S. 176, 206-207 (1982). If these requirements are met, the School District has provided an appropriate education under IDEA .

WHETHER THE SCHOOL DISTRICT COMPLIED WITH
PROCEDURAL REQUIREMENTS OF IDEA

7.

The United States Court of Appeals for the Eleventh Circuit has rejected the proposition that any and all procedural errors, no matter how minor or inconsequential, under IDEA and its supporting regulations are *per se* violations of the Act. Procedural defects are only actionable if the defect is found to have deprived the student of FAPE. *Weiss v. School Bd. of Hillsborough County*, 141 F.3d 990, 994 (11th Cir. 1998). In evaluating whether a procedural defect has deprived a student of FAPE, the Court must consider the impact of the procedural defect, not merely the defect *per se*, and the procedural violations must cause actual educational harm. *School Bd. of Collier County v. K.C.*, 285 F.3d 977, 982 (11th Cir. 2002) (concluding that even a "procedurally flawed" IEP does not automatically entitle a party to relief unless it also failed to provide the student with any "educational benefit"); *Weiss v. School Bd. of Hillsborough County*, 141 F.3d 990, 996 (11th Cir. 1998) (concluding that, in order to prove that the student was denied FAPE, the family "must show harm as a result of the alleged procedural violations"); and *Doe v. Alabama Dep't of Educ.*, 915 F.2d 651, 662 (11th Cir. 1990) (concluding that the procedural deficiencies in the case had no impact on the full and effective participation in the IEP process because the purpose of the procedural requirement was "fully realized" and there was no violation that warranted relief).

8.

In this matter, [REDACTED] alleges several procedural errors. Specifically, [REDACTED] alleges that a general education teacher was not present at the "emergency" IEP meeting, held on January 20, 2005, or at the previous IEP meetings held in March 2003, April 2004, and November 2004. 34 C.F.R. § 300.344 provides that an IEP team is to include "at least one regular [general] education teacher of the child (if the child is, or may be, participating in the regular education environment)" 34 CFR § 300.344 (a)(2). When the IEP meetings were held in March 2003, April 2004, November 2004, and January 2005, a general education teacher was not present at the IEP meetings, which is a deviation from the procedural requirements of the IDEA. However, Petitioner has failed to present any evidence to establish harm to [REDACTED] as a result of

DCSD's failure to have a regular education teacher present at the IEP meetings. The parents fully participated in the IEP process, and there is no evidence that the impact of the failure to have a regular teacher present at the IEP meetings failed to provide [REDACTED] with any "educational benefit" under IDEA. Moreover, since the Act contemplates the party's inviting "other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate," the parents could have invited any of [REDACTED]' regular education teachers that they felt were necessary to the meeting, or requested that the meeting be adjourned so that a regular education teacher could be added to the team. (34 CFR § 300.344 (a)(6). Accordingly, even assuming, that the lack of a regular education teacher at the IEP meetings were procedural violations of the IDEA, Petitioner has failed to establish a violation of FAPE.

9.

During the hearing, but not in his due process hearing complaint, Petitioner alleged that the Behavior Intervention Plan (BIP) for [REDACTED] was insufficient and inappropriate because it did not contain a *written* Functional Behavioral Assessment (FBA) for [REDACTED]. However, there is no evidence that the DCSD failed to complete or implement a BIP, or that it failed to complete an FBA, or analysis of the functions of [REDACTED]' behaviors. In fact, the BIP form specifically notes the functions of those addressed behaviors. [REDACTED] argues that the FBA should have been *in writing*. However, there is no requirement that the FBA be in writing. See 34 § 300.520 (b)(1) ("*conducting* a functional behavioral assessment" and "*implementing* a behavioral intervention plan"); 34 § 300.520 (b)(2) ("*completing* the assessments required by the behavioral intervention plan"). Accordingly, Petitioner has failed to establish that DCSD violated IDEA by not generating a separate writing entitled "Functional Behavioral Assessment".

10.

During the hearing, but not in the due process hearing complaint, Petitioner also alleged that DCSD's alleged reporting of the bus incident to the police for destruction of property "criminalized" his disability and his behavior. (TR., Apr. 30, 2005, at p. 88-90, 97). However, 20 U.S.C. § 1415 (k)(9) and 34 CFR § 300.529 provide that "nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability." Therefore, based on the undisputed facts that [REDACTED] at the very least, destroyed public school property on November 3, 2004, the IDEA explicitly allowed the School District, or the police, to report [REDACTED] or charge him with a crime.

11.

During the hearings, but not in the due process hearing request, Petitioner alleged several procedural- type errors (and some mixed procedural/substantive errors) that are not properly before this Tribunal. First, Petitioner alleges that he requested educational records from DCSD that would have dated from his entry into the School District (approximately 1996) through the present. Petitioner contends that, because he did not receive all of the requested documents from these years, DCSD must have destroyed records without notifying him in violation of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, 34 C.F.R. § 99.22 (discussed, in relevant part, in IDEA at 20 U.S.C. §§ 1412 (a)(8), 1417 (c) and its supporting regulations at 34 C.F.R. §§ 300.568, 300.570, 300.573). However, IDEA's supporting regulation 34 C.F.R. § 300.570, "Hearing procedures" regarding FERPA complaints, provides that, "A hearing held under [34 C.F.R. §] 300.568 must be conducted according to the procedures under 34 C.F.R. [§] 99.22. (Authority: 20 U.S.C. 1412(a)(8), 1417(c)." Therefore, charged with deciding issues relating to "the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child" (34 C.F.R. § 300.507), this Tribunal has neither explicit nor implicit jurisdiction to decide the issue of document provision or destruction pursuant to FERPA.

12.

During the hearings, but not in the due process hearing request, Petitioner alleged that DCSD inconsistently reported his truancy pursuant to Georgia law during the 2003-2004 school year and the beginning of the 2004 school year, while reporting it in January 2005. As stated above, under IDEA, this Tribunal is charged with deciding issues relating to "the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child." 34 C.F.R. § 300.507. Therefore, the compulsory attendance issue is not governed by the IDEA or its accompanying regulations.

For all of the foregoing reasons, the School District has (1) complied with the procedural requirements of the IDEA in accordance with the first part of the *Rowley* test. 458 U.S. 176 (1982); and (2) no procedural violations alleged by K.S. denied him FAPE.

WHETHER THE IEPs WERE REASONABLY CALCULATED
TO ENABLE K.S. TO RECEIVE EDUCATIONAL BENEFITS

13.

The second part of the *Rowley* analysis requires the court to determine whether the School District provided [redacted] with an IEP "reasonably calculated to enable him to receive educational benefits" in the least restrictive environment. School districts are not required to "maximize" a disabled child's educational potential. *Rowley*, 458 U.S. at 206-207. Children must, however, be provided with a "basic

floor of opportunity.” *Drew P. v. Clarke County Sch. Dist.*, 877 F.2d 927 (11th Cir. 1989), and *Todd D. v. Andrews*, 933 F.2d 1576 (11th Cir. 1991). While a trifle might not represent ‘adequate’ benefits, maximum improvement is never required. Adequacy must be determined on a case by case basis in light of the child’s individual needs.” See, e.g., *Doe v. State Department of Education*, 915 F.2d at 665.

14.

An IEP is a snapshot, not a retrospective. In striving for “appropriateness” an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, or at the time that the IEP was promulgated.” *Frank S. v. School Comm. of the Dennis-Yarmouth Reg’l Sch. Dist.*, 26 F.Supp.2d 219, 226 n. 15 (quoting *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir.1990); *Mandy S. v. Fulton County School District*, 205 F. Supp. 2d 1358, 1367 (N.D. Ga. 2000), *aff’d* 273 F.3d 1114 (11th Cir. 2001).

15.

Academic progress, even when a student’s IEP primarily addresses behavioral difficulties, is strong evidence that the IEP is appropriate and that the school district has provided the student FAPE in accordance with IDEA. See, e.g., *Kings Local Sch. Dist. v. Zelazny*, 325 F.3d 724 (6th Cir. 2003); *Hall v. Shawnee Mission Sch. Dist.*, 856 F. Supp.1521 (D.C.Kan. 1994); see also *Doe v. Alabama State Dept. of Educ.*, 915 F.2d 651, 666 (1990) (where the student received passing grades in subject matter areas, the IEP afforded substantial educational benefits).

16.

In this matter, the 2004/05 IEP, as amended on November 22, 2004 to change placement to [REDACTED] was reasonably calculated to provide adequate educational benefits to Petitioner. The IEP team convened within three weeks of [REDACTED]’ bus incident. His parents were present and were available to give relevant medical and psychiatric or psychological information. [REDACTED] formerly had been placed in a less restrictive environment, including placement in gifted and advanced classes and transportation on the “magnet” bus for the DCSD’s gifted and talented students (where the bus incident took place). [REDACTED] was passing his classes despite his emotional problems. However, by November 22, 2004, Petitioner required a structured environment that would enable him to concentrate on building his social skills and changing his behaviors before he could re-enter the regular education environment.

17.

In addition, [REDACTED]’ mother actively participated at the IEP meeting and reported to the IEP team that [REDACTED] was emotionally fragile and had suicidal ideations. Based on this information, the IEP team reasonably concluded that [REDACTED] needed to be in an environment where he could develop social skills and individual responsibility in a setting with highly trained staff, as well as licensed clinical psychologists who, along with providing him services, had the authority to have him admitted to a psychiatric hospital if it was

medically necessary. It is also important to note that [REDACTED] only attended [REDACTED] for approximately six (6) partial days. This short period of time deprived DCSD of an opportunity to conduct a case study evaluation to determine whether the placement at [REDACTED] was less appropriate than the IEP team concluded it to be on November 22, 2004, when the parents agreed to it. See, *Patricia P. v. Board of Educ. of Oak Park and River Forest High Sch. Dist.*, 203 F.3d 462 (7th Cir. 2000); and *Schoenfeld v. Parkway Sch. Dist.*, 138 F.3d 379 (8th Cir. 1998). Since [REDACTED] attended so few days at [REDACTED], and the IEP provided FAPE as written, [REDACTED] was an appropriate placement reasonably calculated to confer educational benefits to [REDACTED] based on all the information that the IEP team had before them at that time.

LEAST RESTRICTIVE ENVIRONMENT

18.

The "least restrictive environment" (LRE) requires that the student be educated with his non-disabled peers to the maximum extent appropriate. Georgia Board of Education Rule 160-4-7-.01(i) defines "least restrictive environment" as the setting when "students with disabilities . . . are educated, to the maximum extent appropriate, with students who are not disabled, and that special classes, special schooling or other removal of students with disabilities from the regular education environment occurs only if the nature and severity of the disability are such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id.*, citing 34 C.F.R. § 300.550(b)(1)-(2); see also Georgia Bd. of Educ. Rule 160-4-7-.08 (1)(a). In this matter, the 2004/05 IEP, as amended on November 22, 2004, with the approval of his parents and other IEP team members, provided a placement for [REDACTED] at [REDACTED] Center in the least restrictive environment appropriate for Petitioner at that time.

19.

Prior to placement at [REDACTED], Petitioner was served through a continuum of placement options (34 C.F.R. § 300.551; Ga. Bd. of Educ. Rule 160-4-7-.08 (a)(2)(i)), based on his individual needs that were appropriate at the time of the IEPs' development (see *Letter to Anonymous*, 24 IDELR 962, 24 LRP 3819 (Apr. 25, 1996)). The IEPs were altered when the IEP teams determined that [REDACTED]'s needs demanded changes in placement in accordance with 34 C.F.R. § 300.343(c) and Ga. Bd. of Educ. Rule 160-4-7-.09(6)(a)(9). [REDACTED] placements prior to [REDACTED] included full service in regular classes with a range of supplemental aids and services (Tucker High School, 2003 – March 16, 2004) and part-time service in regular classes with a range of supplemental aids and services (Chamblee Outpost program, March 16, 2004 – November 3, 2004). However, by November 22, 2004, the nature and severity of [REDACTED]'s disability was such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily.

20.

At the November 22, 2004 IEP meeting, the IEP team properly considered [REDACTED]'s academic, social, language, behavior during the "bus incident" of November 3, 2004, subsequent psychiatric hospitalization, and its impact on the abilities of [REDACTED] and other students in his classroom to receive educational benefit. See Ga. Bd. of Educ. Rule 160-4-7-.08 (1)(a)(1)(v); and Ga. Bd. of Educ. Rule 160-4-7-.08 (1)(a)(1)(iv). Based on this information, [REDACTED] Psycho-educational Center was the least restrictive environment appropriate for [REDACTED] at the time of the November 22, 2004 IEP meeting.

REIMBURSEMENT FOR PRIVATE PLACEMENT

21.

If the parents a student with a disability, who previously received special education and related services in a LSS/SOP, enroll the student in a private school without the consent of or referral by the LSS/SOP, a court or administrative law judge (ALJ) may require the LSS/SOP to reimburse the parent(s)/ guardian(s)/ surrogate(s) for the cost of the enrollment if the court or ALJ determines that: (i) the LSS/SOP had not made a FAPE available to the student in a timely manner prior to that enrollment, and (ii) the private placement is appropriate. Georgia Bd. of Educ. Rule 160-4-7-.15 (2)(a). In this matter, [REDACTED]'s parents seek reimbursement for the money spent on his attendance at [REDACTED] School after unilaterally withdrawing him from [REDACTED]s. However, in order to be reimbursed for [REDACTED]'s unilateral private placement, the parents must prove *both* that DCSD did not offer [REDACTED] with FAPE and that the parent's proposed placement was appropriate. *Burlington School Committee v. Department of Education*, 471 U.S. 359, 105 S. Ct. 1996 (1985); See also, 34 C.F.R. 300.403(c).

22.

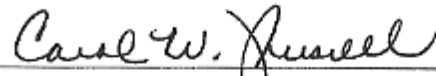
Because it has already been concluded that DCSD did, in fact, offer FAPE to [REDACTED] it is *unnecessary* to reach the issue of reimbursement or compensatory services. However, *Burlington*, as codified by IDEA and its supporting regulations, places the obligation on parents to demonstrate that the unilateral removal of the child from school, and placement of him at home or in any other setting, was appropriate. Only if they succeed in proving that the services they chose provided an "appropriate" education in the least restrictive environment are they entitled to reimbursement for expenses incurred. In addition, private placement reimbursement may be denied if the parents have acted unreasonably. Georgia Bd. of Educ. Rule 160-4-7-.15 (4); 34 CFR 300.403(d)(3). In this case, it is undisputed that the parents did not share with DCSD, or [REDACTED] School, the opinion of Dr. [REDACTED] that [REDACTED] was a danger to himself or others. In fact, Dr. Digieso testified that, had she known of Dr. [REDACTED]'s opinion, [REDACTED] School would not have accepted [REDACTED]. Moreover, [REDACTED]'s grabbing of a teacher at [REDACTED] School during a dispute over his cell phone demonstrates that this was not the appropriate placement for him. Finally, the fact that [REDACTED] spent

less than two months attending [REDACTED] School before refusing to return, received no academic credit for his time there, and Dr. [REDACTED]'s testimony that [REDACTED] needs to be placed in a 24 hour a day facility to learn limits, demonstrate that [REDACTED] School was not an appropriate placement for [REDACTED]. Therefore, the parents are not entitled to reimbursement.

IV. DECISION

Based upon the foregoing, it is concluded that [REDACTED] received a free, appropriate public education from the DeKalb County School District during the relevant period. Accordingly, any relief or remedy sought by Petitioner is unwarranted and **HEREBY DENIED**.

SO ORDERED, this 22nd day of November, 2005.



CAROL WALKER-RUSSELL
Administrative Law Judge