05-0520585

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted]
Petitioner,

v.

CLARKE COUNTY SCHOOL DISTRICT
Respondent.

DOCKET NO.:
OSAH-DOE-SE-0520585-29-Foster

FINAL DECISION

I. INTRODUCTION

This matter came before the Office of State Administrative Hearings ("OSAH") pursuant to Petitioner [redacted] request for a due process hearing filed on March 16, 2005.[1] The request, filed pursuant to the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C. § 1401, et seq.), alleges that the Petitioner, a child with autism, was denied a free appropriate public education ("FAPE") in the least restrictive environment ("LRE") during the 2004-2005 school year. The Petitioner, who was born on [redacted] and is eligible to receive special education services under the IDEA (20 U.S.C. § 1401 et seq.), is seeking compensatory special education and related services, reimbursement for testing, special education and associated costs incurred by his parents, an IEE and an appropriate education designed to meet his individual needs "free from discrimination and based upon replicable scientifically based and researchable programs."

The Petitioner was in an intensive direct services classroom for pre-school students with autism at [redacted] School [redacted], a school in the Clarke County School District

[1] The Petitioner had filed a due process request on January 30, 2005, regarding the same subject matter, but dismissed the action during the first day of the hearing, March 8, 2005, after testimony had been taken.

(hereinafter "CCSD" or "District"), from on or about November 12, 2004, until April 20, 2005, when his parents (hereinafter individually referred to as "Dr. [redacted] and "Ms. [redacted] respectively), unilaterally, withdrew him from the school and placed him in a private "mainstream" school.

An evidentiary hearing was conducted in Athens, Clarke County, Georgia, on May 24-26, 2005, and, after the granting of continuances to counsel for both parties for good causes shown, resumed on September 26, 2005 and concluded on September 30, 2005, after eight days of hearings. The record was closed on December 8, 2005, with the filing of Proposed Findings of Fact and Conclusions of Law.

Based on the evidence presented at the hearing, and for the reasons described below, this Court finds (1) that the IEPs and services provided by the CCSD during the 2004-2005 school year offered and provided a FAPE in the LRE in compliance with the applicable federal laws and state regulations, and (2) that [redacted] parents are not entitled to reimbursement for payment for any privately obtained educational services, therapies, or testing. Accordingly, Petitioner's requests for relief are denied.

II. FINDINGS OF FACT

1.

In September 2004, due to their concerns regarding [redacted] lack of social skills, his parents [2], who had an older child with autism, enrolled their son in an English-speaking preschool operated by [redacted] in Athens, Georgia. [redacted] whose primary language was Mandarin Chinese ("Mandarin"), had not been identified as a child with autism and his mother, at the time, did not believe that he needed to be referred for consideration of services. [Dr. [redacted] Tr. 1133, 1135, 1452-1453, Ms. [redacted] Tr.1757-1760; Exhibit R-35]

2.

Although both English and Mandarin were spoken in the home, while at [redacted] and before his referral to CCSD, [redacted] exhibited significant behavioral and social problems, such as failing to

follow directions, knocking over things, banging on glass, trying to run away, and failing to interact with teachers or other students. [redacted] also had social and behavioral problems at home, including not playing with others, hitting himself with his hands, and throwing his body on the floor. All of these problems were reported by the parents and by the [redacted] staff during subsequent meetings with the CCSD in October and November 2004. [[redacted], Tr. 125, 130-134; [redacted], Tr. 1759; Exs. R-16, R-27, R-35]

3.

On or about September 24, 2004, [redacted] parents contacted CCSD for the purpose of having the District conduct a screening, which is used to determine whether a child needs a full psycho-educational evaluation. In meetings conducted by the CCSD in October 2004 and November 2004 for that purpose, his parents and the [redacted] staff reported [redacted] behavioral problems both at [redacted] and at home. [[redacted], Tr. 123-126, 130-134, Ms. [redacted], Tr. 1759, Exs. R-27, R-35]

4.

On October 6, 2004, the CCSD began conducting an "intake screening" for [redacted] and, based on the results which included parent interviews and observation of [redacted], the CCSD recommended further evaluation for determination of possible special education eligibility. [T[redacted], Tr. 124-128, [redacted], Tr. 830-831; Ex. R-26, Ex. R-28, R-33, Ex. R-34, Ex. R-35]

5.

With the parents' written consent, a School District psychologist, Patrick Kennedy, performed a psychological evaluation of [redacted]. on October 27, 2004. [[redacted], Tr. 134-135; Ex. R-21; R-23]. Mr. Kennedy undertook significant efforts to determine [redacted] level of functioning, including allowing his parent to be present during psychological testing to assist with his behaviors and to serve as interpreters where (and if) necessary. [redacted] "showed comprehension of both Chinese (Mandarin, from his parents)

[2] Witness testimony citations shall be by the witnesses' last names, followed by applicable transcript pages.

and English" during the testing at this time, but his behaviors and inattentiveness posed an impediment to the testing. [Ex. R-21, pp. 1-247, 248]

6.

Mr. Kennedy could not determine an accurate measure of [redacted] true capabilities "due to [redacted] lack of sustained interest and attention, and interference associated with his suspected autistic characteristics" and concluded that "the present intellectual estimate is very likely a gross underestimate of [redacted] true capabilities" and that he exhibited characteristics of autism. (Ex. R-21, p. 1-252, 1-253) On November 3, 2004, Kennedy met with [redacted] father to review Mr. Kennedy's report and, after exchanging e-mails and receiving input from the father, agreed to make certain revisions to the report. [Ex. R-48, pp. 63, 68]

7.

On November 5, 2004, after written notice to the parents, the CCSD convened a meeting of appropriate staff, [redacted] parents, and others to discuss the results of [redacted] evaluation and other pertinent information, for the purpose of considering [redacted] eligibility for special education services and, if he were found to be eligible, to develop an Individual Education Program (IEP) for [redacted] (Ex. R-17) At the meeting all participants required by IDEA were in attendance, as well as others, including his regular education teacher from [redacted], a special education teacher, a speech-language pathologist, a school district representative, and the school psychologist. [[redacted], Tr. 131-138; Ex. R-16]

8.

The team determined that [redacted] met the criteria and was eligible to receive special education services as a student with autism and that he also met eligibility criteria for services under the category of speech/language impaired. [redacted] parents did not disagree with the CCSD's eligibility determination. [[redacted], Tr. 135-141; Ex. R-20, R-16]

9.

The IEP team then proceeded to address [redacted] current levels of performance and to complete his IEP, which included preparing initial special education goals and objectives. After a lengthy meeting, which included significant parental input, an IEP was developed. The IEP recommended that [redacted] receive total services of 30 hours per week in a pre-school special education classroom serving children with autism. The services under the IEP included direct special education services in the classroom, plus three segments per week of speech therapy services (two 15-minute individual therapy segments and one 30-minute group segment). [redacted] parents did not express any concerns that the goals and objectives set out in the IEF were too low, but did request that the CCSD have an occupational therapy ("OT") evaluation performed to address the child's possible need for OT services and the CCSD agreed to do so. [[redacted], Tr. 138-141; 11/04/05 IEP; Ex. R-16]

10.

In the November IEP meeting, the team determined, and [redacted] parents agreed, that a regular education setting, such as the one at [redacted] in which [redacted] was experiencing extensive difficulties, was not appropriate for [redacted]. At that meeting, [redacted] parents did not request that [redacted] be placed in a regular education classroom. [[redacted], Tr. 141-144; Ex. R-16]

11.

Neither the eligibility determination nor the IEP services or program recommended at the November 5, 2004, IEP meeting was based on the cognitive testing scores reported in Mr. Kennedy's psychological evaluation, since those scores understated [redacted] true capabilities. [Ex. R-21, p. 1-252]. Rather, because [redacted]. was new to the CCSD and because the District was unable to get a true cognitive measure, the District's IEP members recommended, and the IEP team determined, that he should be assessed on an ongoing basis in the classroom environment after his placement commenced, with the

expectation was that the IEP team would meet again to consider any appropriate modifications to the goals and objectives based on [redacted] performance. [[redacted], Tr. 144-145; Ex. R-16]

12.

At the conclusion of the November 5, 2004 IEP meeting, [redacted] parents executed a Consent for Placement form agreeing with the placement recommended by the IEP team. [Sims, Tr. 141-144; Ex. R-15]

13.

In accordance with the November 5, 2004 IEP, on or about November 12, 2004, [redacted] began attending Ms. Joy Sims' direct services classroom which was serving pre-school students with autism at [redacted] continued attending the class until April 20, 2005, when he was unilaterally withdrawn from the CCSD by his parents. With the exception of several days or periods of time during which he was absent or otherwise not in school, [redacted] attended the classroom for approximately 75 days. [Sims, Tr. 171, 175-176]

14.

Other than Ms. Sims, the special education teacher, the classroom consisted of: (a) no more than 6 students; (b) two full-time paraprofessionals; and (c) one part-time paraprofessional. Additionally, speech/language pathologists ("SLPs") and occupational therapists ("OTs") were in the classroom frequently for the purpose of delivering services to all the students. [Sims, Tr. 145-154]

15.

Ms. Sims' educational background includes a Bachelor's degree in Education (certified in Elementary and Special Education), a Master's degree in Behavioral Disorders and Autism, and a pre-school certification from the University of Georgia. She has taught both regular education and special education students, has served as the director of a private regular education pre-school before being

employed by CCSD and has had ten years of experience, both at the high school and pre-school levels, teaching children with autism. Ms. Sims has received training in methodologies known as Verbal Applied Behavioral Analysis ("Verbal ABA'), Lovass and TEACCH. [Sims, Tr. 116-122]

16.

After [redacted]. was enrolled and placed in Ms. Sims' classroom, Ms. Sims and the CCSD staff began addressing those behaviors which had created significant impediments to his performance at [redacted]. Those negative behaviors almost immediately subsided as [redacted] responded positively to the staff and the instructional approach employed in Ms. Sims' classroom. [redacted] began being actively engaged in direct instruction with the teacher, paraprofessionals and SLPs in the classroom and several of his previously reported negative behaviors, such as throwing himself on the floor and banging on doors, did not occur in Ms. Sims' classroom. [Sims, Tr. 164-165, 231-232, 306-307]

17.

The instructors and staff in Ms. Sims' classroom employed Verbal ABA methodology, which includes intensive interventions using a behavioral intervention approach which can be applied individually and in group settings and which involves repeated direct and active engagement with students to encourage and reward appropriate learning behaviors while discouraging inappropriate behaviors. Although this technique is also used with students without autism, it is used particularly often and effectively to educate students with autism. Effective application of Verbal ABA in the classroom usually involves (a) regular and extensive data collection documenting students' performance on educational goals being addressed by the teachers and other service providers; and (b) active and intensive engagement with the students in either an individual or group setting, sometimes employing discrete trial training/teaching ("DTT") techniques involving one-on-one or small group "drill and practice" sessions with students. [redacted] Tr. 621-622; Sims, Tr. 147-154; Ex. R-51, R-52]

18.

Although Ms. Sims already had significant experience working with children with autism, she and several other teachers/administrators received extensive training, both in-state and out-of- state, regarding Verbal ABA before it was implemented by the CCSD. [Blake, Tr. 806-808, 818-819]

19.

After the out-of-state training session, the CCSD retained Dr. [redacted] firm, [redacted], to advise the CCSD regarding implementation of the program and to oversee the program. [Blake, Tr. 819-820; Sims, Tr. 147-148]

20.

Through his firm Dr. [redacted] a Board Certified Behavioral Analyst who has extensive education and training in the application of ABA to the education of children with autism, provided behavioral services to approximately 12 school systems in Georgia and Tennessee and worked privately as a consultant with families in their homes to direct in-home therapies for children with autism. [redacted], Tr. 510-525]

21.

Dr. [redacted] provided assistance and advice to the CCSD in setting up instructional settings, such as in Ms. Sims' classroom, employing a Verbal ABA model, and conducted a workshop for many CCSD staff, including the full-time staff assigned to Ms. Sims' classroom. Dr. [redacted] and his associate, [redacted], also visited Ms. Sims' classroom regularly and provided continuing advice and evaluation. [Blake, Tr. 819-821; Sims, Tr. 147-149; [redacted], Tr. 550-551]

22.

In accordance with the discussions at the November 5, 2004, IEP meeting, Ms. Sims and the other CCSD staff began the process of conducting the Assessment of Basic Language and Learning

Skills ("ABLLS") on [redacted]. ABLLS is a non-standardized, but recognized, instrument which serves as a curricular tool by systemically assessing where a young child, especially one with autism or other communication or language-based disorder, is functioning. Among other purposes, the assessment is used for identifying communication and language skills and for targeting and tracking skills as they develop. [Sims, Tr. 144-145; Montgomery, Tr. 1942-1946; [redacted], Tr. 534-537]

23.

ABLLS is also designed to help identify what learning and language skills a student currently has, including "splinter skills," i.e. isolated, relatively advanced skills that a student may possess, and to assist in instructional planning and tracking of the development of particular skills. The ABLLS was administered not only to [redacted], but also to other CCSD students with autism or other communication-related disorders. [[redacted], Tr. 534; Sims, Tr. 144-145, 156-158, Ex. R-8]

24.

A thorough and comprehensive ABLLS was administered to [redacted] over the course of approximately six weeks in November and December 2004 so as to ensure that the results accurately reflected his abilities in the educational environment. [Sims, Tr. 156-158] The ABLLS was administered because: (1) he was able to respond to questions presented in English; (2) it was essential to determine where he was functioning in English since his functioning skills in Mandarin were not directly relevant to his skills or deficits in English, which would be addressed in his educational programming); and (3) even if the CCSD had desired to conduct an ABLLS in Mandarin, no such instrument was, or is, available. [[redacted], Tr. 569; Montgomery, Tr. 1943-1946]

25.

The ABLLS assessment resulted in an accumulation of data showing where [redacted] was functioning in a number of skill areas. The ABLLS results, presented at an IEP meeting on January 28, 2005, showed

that [redacted], had mastered approximately 37% of all the skills listed on the ABLLS in this initial administration. He showed relative strengths (in terms of skills mastered) in the areas of receptive language and imitation and showed relative difficulties with social interaction, classroom routine and intra-verbal skills. [[redacted], Tr. 600-601; Ex. R-8]. The ABLLS is not a psychological evaluation, is not "normed," and is not used to determine [redacted] eligibility for special education services. [Montgomery, Tr. 1946-1947]

26.

[redacted] parents had written a letter to the CCSD on October 23, 2004, requesting an occupational therapy ("OT") evaluation. [Dr. [redacted] Tr. 1141] During the November 5, 2005, IEP meeting, the CCSD agreed to have an OT evaluation which was subsequently conducted on December 2, 2004, and January 5, 2005, respectively, by [redacted] an OT employed by CCSD. [Ex. R-13] Following the November IEP meeting, [redacted] parents requested that an independent OT evaluation be conducted by a therapist trained to administer the Sensory Integration Praxis Test ("SIPT"). The CCSD agreed to this request and, on January 4, 2005, the evaluation was conducted by [redacted], an independent OT therapist. [Blake, Tr. 837-839; 1094-1997;Sims, Tr. 141; Ex. R-12]

27.

The two OT evaluations, provided by the CCSD, were concluded in January 2005. [Dr. [redacted] Tr. 1141; Blake, Tr. 837-839] However, prior to the January 28, 2005, meeting and to the presentation of the evaluations, [redacted]'s parents removed their child from school for a period of approximately two weeks in January during which time [redacted] received services, at the parents' expense, through a program known as [redacted] ("SLP") in Newnan, Georgia. [Sims, Tr. 224, 1508]

28.

[redacted]'s father acknowledged that the methodology and approach employed by SLP are supported only by anecdotal data, not by any peer-reviewed research. [Dr. [redacted] Tr. 1508-1509] No evidence was presented which described these services in any detail or which could cause one to conclude that [redacted] required the SLP services in order to receive FAPE or that those services were appropriate for him. Ms. [redacted] and Ms. [redacted] OT evaluations did not recommend services in the nature of these provided by SLP and Ms. Sims did not observe any positive impact on [redacted]'s classroom performance as a result of the SLP. The IEP team, at the January 28, 2005 IEP meeting, recommended that [redacted]. receive one hour per week of OT services, but did not recommend use of methodologies employed by SLP. [Sims, Tr. 161-162; Ex. R-12, R-13]

29.

Notwithstanding the fact that [redacted]. had been exposed to considerable spoken English prior to his enrollment in the GCSD, both at his residence and elsewhere, his parents, in their reports, deemed that he had Limited English Proficiency ("LEP"). [[redacted], Tr. 1770-1772; Ex. P-4, parent entry to Journal dated 11/15/04] [redacted]. was able to participate in conversation, instruction, and testing in English from the time of his first contact with CCSD and, before then, had been instructed solely in English at [redacted]. At no time had [redacted] exhibited an inability to learn in Ms. Sims' English-speaking classroom; nor had his parents requested instruction in any language other than English. [Sims, Tr. 303-304; Dr. [redacted], Tr. 1483-1489; Ex. R-2, p. 28]

30.

Although the parents had not objected to the CCSD's psychological evaluation ("psychological") being given in English when they attended the November 4, 2004, IEP meeting, [redacted]'s father, in a November 8, 2004, letter, requested another psychological as an Independent Educational Evaluation ("IEE") since he believed that the District's psychological was not representative of his son's ability, a

conclusion that was consistent with the conclusions of Patrick Kennedy, contained in the CCSD's psychological. [Dr. [redacted], Tr. 1485-1487; Ex. R-48, p. 2-90; Ex. R-21]. At the time that [redacted]'s father was requesting the psychological, the CCSD was performing the ABLLS to assess [redacted]'s true level of functioning in the English-speaking educational environment. In his letter, Dr. [redacted] did not indicate that Petitioner was seeking to have an IEE performed in Mandarin Chinese nor did it indicate that alleged limited English Proficiency was a reason why the District's psychological was inappropriate. [Dr. [redacted] Tr. 1485-1487; Ex. R-48, p. 2-90]

31.

Dr. Mike Blake, Director of Student Services for the CCSD, responded to Petitioner's father's letter by requesting, in writing, an explanation of the purpose of the IEE, and for the areas of alleged disagreement with the School District. [R-48, p. 2-88]. Dr. [redacted] never responded; and, without notice, unilaterally arranged for Dr. [redacted] at the University of Georgia to conduct a psychological evaluation, which, according to Dr. [redacted], constituted the IEE he was requesting from the CCSD. [Dr. [redacted] Tr. 1485]

32.

Although Dr. [redacted] did not perform the evaluation in Mandarin, there is no Mandarin psychological test that is "normed" to a U.S. population. [Montgomery, Tr. 1920-22]. Additionally, administering an English language psychological by reading the questions in English with a translator, then repeating them in Mandarin and then, after the child answers in Mandarin, translating a Mandarin response back to English, would not meet the standards for validity of psychological testing. [Montgomery, Tr. 1922-1928]Dr. [redacted] evaluation and report was presented to [redacted]'s parents and a copy of the report was provided to the CCSD. [Ex. R-46]

33.

By the time of Dr. [redacted] evaluation, [redacted] was able to attend during testing and, with the increased attentiveness and improved behavior, Dr. [redacted] report concluded that his cognitive scores were higher than those shown in Mr. [redacted] report. At least part of the higher IQ score, however, may be attributable to Dr. [redacted] repeating questions in Mandarin whenever [redacted] did not correctly answer in English. [Montgomery, Tr. 1937-39] This form of administration increases the likelihood that the child will ultimately be credited with a correct response and may overstate his ability. [Id., at 1937-42] Dr. [redacted] report made several recommendations and suggestions regarding [redacted] educational programming that were entirely consistent with the CCSD's program and IEP. Notwithstanding the fact that [redacted]'s parents had made no prior request that the CCSD agree to an evaluation by Dr. [redacted], the CCSD nevertheless agreed to, and did, reimburse the parents for the cost of Dr. [redacted] evaluation and agreed to consider and welcome his input into the educational planning process. [Blake, Tr. 841-45] Shortly after [redacted]'s parents received Dr. [redacted] report, they withdrew their consent to CCSD to communicate with Dr. [redacted] about his evaluation and [redacted] father attempted to persuade Dr. [redacted] to change certain contents of his report, but he refused to do so. [Dr. [redacted] Tr. 1478-79; Sims, Tr. 229-30; Ex. R-46, p. 1-389]

34.

Despite any differences in methodology, Dr. [redacted] evaluation supports the conclusion that [redacted]'s behaviors and attentiveness had improved significantly during the period between his enrollment with the CCSD under the November 5, 2004 IEP and January 5, 2005, the date Dr. [redacted] concluded his evaluation. [Ex. R-11, R-46] During Dr. [redacted]'s first testing session on December 14, 2004, [redacted] responded appropriately to questions for a period of approximately 30 minutes. During the second testing session on January 5, 2005, he responded appropriately for about two hours. [Ex. R-

46, p. 1-392] Based on the responses, Dr. [redacted] concluded that [redacted] was functioning within the normal range of overall intelligence with adaptive skills such as socialization and expressive communication below expectations for a child of his age. [Ex. R-46, p. 1-395]

35.

The report, confirming the eligibility decision of [redacted]'s IEP team, concluded that, based on the Childhood Autism Rating Scale ("CARS"), [redacted] falls in the mildly-moderately Autistic range. [Ex. R-46, p. 1-396]. Dr. [redacted]'s report made educational recommendations which were similar to, and in some cases virtually identical with, the CCSD program being provided, including that [redacted] "would benefit from enrollment in a special education pre-school program appropriate for a pre-school child diagnosed with Autistic Disorder." [Ex. R-46, p. 1-397] The report suggested, among other things, the use of ABA techniques to teach social behaviors, expressive speech, and adaptive skills, some of which should include DDT. The report also recommended consultation with a behavioral specialist and an autism specialist employed by the District, and speech and language therapy emphasizing social and pragmatic language. [Ex. R-46]. Dr. [redacted]'s recommendations are consistent with the program offered and provided to [redacted] under the November 5, 2004 and January 28, 2005 IEPs. Shortly after receiving Dr. [redacted] report, [redacted]'s parents withdrew their previously granted consent to the CCSD to communicate with Dr. [redacted] [Dr. [redacted] Tr. 1478-1479]

36.

From November 5, 2004 through January 28, 2005, [redacted] made educational progress in several areas, including pre-academics, social skills, communication, and behavior, and showed measurable progress on most of his IEP goals. [Sims, Tr.164-168, 170-173; Ex. R-1, R-2]. At the January 28, 2005 IEP meeting, new goal and objectives were developed based on the ABLLS assessment and the progress

[redacted] had shown to date. Ms. Sims discussed having [redacted] increase group activities since he had learned to sit and attend in small group settings for 10 to 15 minutes. [Sims, Tr. 164-165]

37.

[redacted]'s father, Dr. [redacted], Ms. Sims and all required participants. attended the January 28, 2005, IEP meeting. [Sims, Tr. 158-164; [redacted] Tr. 565; Dr. [redacted] Tr. 1410; Ex. R-1, R-2]

38.

At the meeting, the participants discussed [redacted]'s progress on his IEP goals and objectives, his current levels of functioning, including the results of the ABLLS assessment, and appropriate goals and objectives. Throughout the discussion and IEP development process, [redacted]'s father was extensively involved and had significant input into the drafting of goals. [Sims, Tr.158-164; Dr. [redacted] Tr. 1410, 1447-1448; Ex. R-1, R-2]

39.

Prior to and during the January 28, 2005, IEP meeting, Dr. [redacted] communicated with the CCSD and shared with staff several articles about educating students with autism, including articles regarding research conducted by Dr. [redacted], who is regarded as an autism expert. In January 2005, Dr. [redacted] requested that [redacted] be provided with 35 to 40 hours per week of one-on-one DTT instruction and one-on-one or one-on-two speech therapy. [Dr. [redacted] Tr. 1443-44; Ex. R-48, p. 2-42] DTT is a method that employs Verbal ABA principles in a series of "trials," usually questions by the teacher and responses by a student, with consequences or reinforcement upon each response, conducted in a one-on-one or small group setting. [redacted] Tr. 528-529]

40.

Dr. [redacted] who believed that his son needed at least 20 to 25 hours per week of DTT in the home environment, rather than at school, rejected the appropriateness of his son being served in a regular

classroom and asserted that his son be served in a school setting with only one other regular education student and a teacher. He also expressed the view that Ms. Sims' classroom was not appropriate because of his belief that [redacted] was imitating inappropriate behaviors of students in the classroom. [Dr. [redacted] Tr. 1443; Ex. R-2, pp. 89-91, Sims, Tr. 225-229; Ex. R-2, pp. 48-49, 72]

41.

The IEP, completed at the January 28, 2005, meeting, contained revised goals and objectives in the areas of communication, social skills, and cognitive ability based on results of the ABLLS assessment as well as classroom observations and parent input. [Ex. R-1]. The recommended IEP included 32 segments per week of services; including 24 segments of direct special education services, 4 segments of speech/language, two segments of OT, and two segments of in-home services. The IEP also recommended that [redacted] continue his placement in Ms. Sims' pre-school direct services special education classroom and that he have opportunities for contact with regular education students through interaction with the collaborative [redacted] pre-K classroom. As written and implemented, the IEP services included 30 hours per week of intensive intervention, which is consistent with recommendations of the National Academy of Science in its report, Educating Children with Autism, In addition to the revised goals and objectives, the January 28, 2005, IEP provided additional services not included in the original November 5, 2004, IEP. [Sims, Tr. 158-164; Ex. R-1, p. 1]

42.

On January 30, 2005, two days after the IEP meeting, [redacted]'s parents served the CCSD with their first request for a due process hearing under IDEA. (Referred to herein as the "First Request') On that same date, [redacted]'s parents also requested, by e-mail, that the District conduct what they characterized as an "Independent Educational Evaluation" of [redacted] by providing an ABLLS assessment. [Dr. [redacted] Tr. 1490-1492; Ex. R-48, p. 2-36]. As part of their issues statement in the First Request,

[redacted]'s parents asserted that the ABLLS conducted by CCSD was inappropriate because it was not administered in Mandarin. [Dr. [redacted], Tr. 1494]

43.

Since ABLLS does not exist as an instrument in Mandarin and, therefore, is not available, if one were to assume *arguendo*, that it did exist, it would be invalid and inappropriate to administer the test using an interpreter. [Montgomery, Tr. 1943-1945; see also [redacted], Tr. 569-70] No appropriate purpose would have been served by administering the ABLLS in Mandarin because [redacted]'s instruction was occurring *only* in English and, thus, his current levels of performance in English, not Mandarin, were determinative and relevant with regard to the planning of curriculum and instruction. In addition, for a child with autism, even knowing a particular concept in one language does not eliminate the necessity of having to re-learn that concept in another language in which the child will be functioning since children with autism have a difficult time generalizing across environments. [Montgomery, Tr. 1985-1987; [redacted], Tr. 263] A child who knows how to do something in one environment needs to relearn a skill in another environment. [Montgomery, Tr. 1986-1987]

44.

[redacted]'s parents' First Request, served on January 30, 2005, did not contain a request that their son be served in a regular education classroom, but instead sought intensive 1:1 or 1:2 DTT for at least 35 hours per week, plus five hours per week of speech therapy. [Ex. 48, p. 2-42]

45.

[redacted]'s parents' second due process hearing request (referred to as the "Second Request"), served on March 16, 2005, initiated the instant hearing proceeding since the First Request had been withdrawn. The allegations of this Second Request differed significantly from the First Request in that they now allege that [redacted]'s classroom placement was not the least restrictive environment, that he was

learning inappropriate behaviors, that they had been excluded from participating in the IEP process and that Ms. Sims' classroom had been "witnessed by an independent professional" not to be designed to meet his needs. The Second Request also alleged that the CCSD'S psychological evaluation was inappropriate because it was not conducted with an "independent Chinese interpreter ... not a parent" present. However, the Second Request's proposed resolution was actually for a more restrictive placement, namely, additional 1:1 instruction. In fact, Petitioner claims that "experts will testify [redacted] requires 40 hours a week of intensive 1:1 ABA, both in a 1:1 setting in school and home. The parents also requested reimbursement for the cost of services of a "sensory learning" program in Newnan, Georgia, and independent educational evaluations of [redacted]. [March 16, 2005 Due Process Request]

46.

After the January 28 IEP meeting, [redacted] continued as a student in Ms. Sims' classroom until April 21, 2005, when he was unilaterally withdrawn by his parents and, once again, enrolled in [redacted], where he remained from the first of May through May 16, 2005, when the school year ended. [Dr. [redacted] Tr. 1388-1389, 1401-1402, 1437-1438; Ding, Tr. 1530]

47.

From January 28 through April 20, 2005, when he was removed from the CCSD, [redacted] received education and related services under the January 28, 2005, IEP, including intensive direct services from teachers, paraprofessionals, and related services providers, as well as daily scheduled and structured opportunities to interact with regular education students in the "collaborative" pre-K classroom, which is a regular education classroom. The collaborative classroom, a regular education classroom designed to serve both regular education students and students with disabilities, is co-taught by both a regular education teacher and a special education teacher. [redacted] also continued to make educational progress and to move toward being ready to be served full-time in a regular education environment. The services

provided by the CCSD under the January 28 IEP were effectively geared toward providing appropriate services to [redacted] in view of his autism, including a focus on pragmatic language and social skills deficits that he encounters because of his autism. The IEP and the intensive program offered by the CCSD and its staff was particularly successful and effective in addressing [redacted]s educational needs. [Sims, Tr. 171-175]

48.

[redacted]'s parents have alleged that his placement in Ms. Sims' classroom was inappropriate because (1) the classroom environment was too noisy and dangerous; and (2) he was exposed to too many non-typical peers whose negative behaviors he, allegedly, imitated. [Petitioner's Second Request, 3/16/05]

49.

Petitioner introduced at the hearing several audio recordings made secretly by [redacted]'s parents during visits to Ms. Sims' classroom between January 31, 2005, and April 20, 2005, and after the parents had filed their First Request. [redacted], Tr. 1751-1752, Ex. P-6]

50.

While [redacted]'s parents contend that these recordings prove that the classroom was so noisy that appropriate services could not be provided and learning could not occur, this Court finds that no such conclusion can be drawn by listening to these selective recordings since they do not accurately or comprehensively depict the classroom during the days observed. [Dr. [redacted], Tr. 1423-1424]. For example, out of approximately six hours per day of observation, Petitioner submitted considerably less than one hour of audio recording for each day and those portions were recorded early in the school day, including times of transition, during which there would be more noise and activity in the classroom. Also, several of the recordings were made on atypical and unrepresentative days. For example, one

recording was made during a school-wide tornado drill when the normal pattern is not followed and two recordings were made on days immediately following spring break when a substitute teacher, and not Ms. Sims, was present. [Sims, Tr. 1842-1850; Dr. [redacted], Tr. 1418-1432] The fact that [redacted] was able to make exceptional progress in Ms. Sims' classroom during the limited period of his attendance belies any contention that noise levels in the classroom adversely impacted or impaired his education during the period of his enrollment in the class.

51.

The Petitioner also contends that the classroom presented a dangerous school environment based on his parents' testimony that: (a) another student in the classroom struck or kicked a paraprofessional; (b) their son had nosebleeds at school on two separate days; (c) their son came home from school with a scratch or cut on his back; and (d) their son was taking scheduled naps while lying next to several stacked chairs, which, purportedly, represented a danger. As with the prior allegations pertaining to the noise levels, this Court also finds that these allegations are unsupported by the evidence. The Court finds, based on Ms. Sims' testimony, that: (1) [redacted] never suffered any injury in her classroom, either self-inflicted or inflicted by another student; (2) the nosebleeds at school occurred after [redacted] had been rubbing his nose very hard and that his mother had reported to Ms. Sims that he had sometimes suffered nosebleeds due to allergies; (3) the stacked chairs did not present a hazard, but Ms. Sims moved them to another location after [redacted]'s mother complained; and (4) due to the high ratio of adults to students in her classroom (at least three adults in a classroom of no more than six students), her classroom, if dangerous at all, was probably less dangerous for a three year-old student than would be a typical regular education pre-school or pre-K classroom setting. Ms. Sims could not speculate as to how [redacted] received the scratch or cut to his neck. [Sims, Tr. 173-81, 316, 476-79]

52.

[redacted]'s parents also allege that [redacted] exhibited inappropriate behaviors at home and contend that these behaviors, which include inappropriate echolalia, e.g., repeating what is spoken or repeating questions he hears before giving answers, were learned from other autistic children in Ms. Sims' classroom. However, Ms. Sims' testimony, which this Court finds convincing, was that neither mimicking of behaviors nor inappropriate levels of echolalia were problems in the school environment, and that no such behaviors created any impediment to his learning or to his educational progress in the school setting. [Sims, Tr. 182-183, 220, 298-299] Thus, the Court finds that any negative behaviors exhibited by [redacted]. at home did not interfere with or impede his learning or his educational progress in the classroom or at school while he was enrolled as a student in the CCSD.

53.

[redacted]'s parents also contend that the January 28 IEP was inappropriate in that, while it does call for 2 hours per week of home service which was provided by a trained ABA therapist, it did not provide sufficient home services or parent training. With regard to the need for parent training, not only did Dr. [redacted] meet and consult with [redacted]'s parents, an ABA-trained in-home service provider also worked with his parents. [redacted], Tr. 587-589]. The amount of parent training that the CCSD authorized Dr. [redacted] to provide was, in fact, greater than that provided by most school systems. [redacted], Tr. 595-596]. By the time [redacted] was withdrawn from the CCSD in April 2005, Dr. [redacted] had become sufficiently trained and well-versed in ABA techniques and the needs of children with autism and he was able to provide adequate training to a totally untrained person who was privately hired by [redacted]'s parents to accompany [redacted]. to school. [Dr. [redacted] Tr. 1440-1442]. This Court finds that the CCSD met or exceeded any responsibilities it may have had to provide in-home services and parent training.

54.

On May 6, 2005, the CCSD convened another IEP meeting to address [redacted].'s educational needs, to recommend services for the 2005-2006 school year, and to consider services for the summer of 2005 (extended school year, or "ESY"). The May 6 IEP team's recommendations for ESY and for services during the 2005-2006 year are not at issue in this proceeding. One of the recommendations made at the May 6 meeting, which was attended by all participants required under IDEA and counsel for both parties, was for [redacted]. to finish out the remaining two weeks of the 2004-2005 school year in Ms. Sims' classroom, with the anticipation of transitioning into the "collaborative" regular education classroom setting at the beginning of the 2005-2006 school year. The IEP team also recommended Extended School Year ("ESY") placement and services for the summer of 2005. [redacted].'s parents did not agree to the placement and services recommendations at the May 6 IEP meeting, and he did not return or re-enroll with the CCSD. [Sims, Tr. 183-198; Blake, Tr.859-61, 864-65; Exs. R-57 and R-62] At the end of the IEP meeting, the parents delivered a request for due process for ESY 2005, which request was not consolidated with this due process action and which remains pending.

55.

[redacted].'s Second Request purports to raise an issue relative to the appropriateness of the psychological evaluation conducted in October 2004 by Mr. the CCSD school psychologist, prior to [redacted]'s attending any classes in the CCSD. To the extent that the parents objected to or disagreed with this report, and in particular to the cognitive scores contained in the report, the Court finds that those concerns were adequately and appropriately addressed by the CCSD. Due to [redacted].'s distractibility and inability to attend during the testing on October 27, 2004, which was before he enrolled with the CCSD, all testing could not be completed. Therefore, Mr. [redacted] concluded that the cognitive scores reported, almost certainly, understated [redacted].'s true ability. [Ex. R-21]

56.

In the hearing request in the instant action, [redacted]. alleges that Mr. [redacted]'s evaluation was inappropriate because it was not administered with an independent Mandarin interpreter (the parents served as interpreters for Mr. [redacted]), whereas Dr. [redacted]'s evaluation did make use of an "independent" interpreter who was not one of the parents. Given that CCSD agreed to, and did, fully reimburse [redacted].'s parents for Dr. [redacted]'s evaluation and used his report as part of the process for developing [redacted]'s program, this complaint is moot. Nevertheless, the Court notes that, prior to Dr. [redacted] being hired to evaluate [redacted]., his parents had not expressed any objection to Mr. [redacted]'s evaluation based on a failure to administer testing with a Mandarin interpreter. In fact, Dr. [redacted]'s written request for an independent educational evaluation by Dr. [redacted] did not identify any language issues as a basis for contesting Mr. [redacted]'s evaluation or requesting an evaluation by Dr. [redacted] [Dr. [redacted] Tr. 1485-87; Ex. R-48, p.2-90]

57.

Dr. [redacted], a licensed clinical psychologist and board-certified behavior analyst, has extensive experience educating children with autism as well as in psychological testing and standards relating to such testing. [redacted] Tr. 1900-17] Dr. [redacted] investigated the availability of Mandarin psychological tests in Georgia, but was unable to find anyone who could administer such a test. [redacted], Tr. 1926-30] Assuming that such a test were available in Mandarin, there would be a fundamental problem with administering it since it would normed to a Chinese population in the Far East, not to an American population. [redacted] Tr. 1928] As to English language psychological tests, it is not consistent with the standards for administration of such testing to ask a question first in English, have the question repeated in Mandarin Chinese and then accept an answer given by the child in Mandarin which has been translated into English. [redacted]

Tr. 1928-42] One reason that this procedure would lack validity is that a child would hear the question two times and, therefore, have an additional opportunity to answer correctly. [redacted] Tr. 1928-42] Another reason is that IQ tests, by their nature, are very specific instruments with specific instructions as to how they are administered. The questions must be asked at a certain speed, in a certain format, with a certain amount of time given for answers. Perhaps most importantly, the language of the question is carefully devised and must be given in a standardized manner. [redacted] Tr. 1928-41] Since there is not a direct correlation between English and Chinese, there is no way to know whether: (a) the question as translated into Chinese is exactly the same as the question in English; (b) the question calls for an answer in Chinese that is of the same level of difficulty as in English; or (c) the translator is giving the answer exactly as provided by the student. If any of these variables differ from the testing in English, the result cannot be normed to determine a child's IQ. [Id.]

58.

Dr. [redacted]'s evaluation also failed to comply with the requirements set forth in the testing procedures. [Id.] His report indicates that he asked questions in English and then, if [redacted] could not give a correct response, those questions were repeated in Mandarin Chinese. This procedure gave [redacted] two opportunities to get the correct answer and, just as importantly, to ascertain from the fact that the question was being asked a second time that his initial response was incorrect. [Id.] Notably, even under these testing conditions, the majority of responses given by [redacted] during Dr. [redacted]'s evaluation were in English. Moreover, even though [redacted] was given a second opportunity to hear the same questions in Mandarin, Dr. [redacted] reports that correct responses in Chinese were few. [Dr. [redacted]' report, Ex. R-46, p. 1-392] As such, not only may the results overstate [redacted]'s performance, but they also suggest that his grasp of English was much greater than his parents have been willing to acknowledge.

59.

The attempted use of a Mandarin interpreter by Dr. [redacted] during testing necessarily resulted in a non-standardized assessment, rendering the resulting scores invalid. [redacted], Tr. 1929-42]. [redacted]'s performance on Dr. [redacted]'s psychological evaluation demonstrated that he had an understanding of English in that he answered most questions in English, rather than in Chinese, thereby reflecting his ability to function in the English language to which he had been exposed. [redacted] Tr. 1934-42, Ex. R-46; p. 1-392].

60.

After objecting to the appropriateness of their son's ABLLS assessment conducted by the CCSD in November and December 2004, [redacted]'s parents retained the services of [redacted], Inc. to assess [redacted] and conduct its own ABLLS, apparently in Mandarin Chinese. [redacted], a [redacted] employee, visited and observed Ms. Sims' classroom in April 2005, as part of conducting her evaluation. Both during and after her observation, not only did Ms. [redacted] commend Ms. Sims and the CCSD for the high quality of the service being provided to [redacted], she also advised Ms. Sims that she found his placement to be very appropriate and the structure and elements of Ms. Sims' classroom to be to [redacted]'s benefit. She also noted that [redacted]'s observed performance in Ms. Sims' classroom was higher than she had seen in working with him in the home environment and that the performance and the elements of the self-contained classroom were vital pieces. [Sims, Tr. 486-92]. [redacted] prepared a report, which was provided to [redacted]'s parents and his attorney, but the report was never provided to the CCSD, even when specifically requested at the May 6, 2005 IEP meeting. No report by [redacted] either in draft or final form, has ever been produced or provided to the CCSD. [Sims, Tr. 222-23; 491-92]

61.

In support of their claim that the CCSD testing was inappropriate because [redacted] was not tested in Mandarin, the Petitioner presented the testimony of Ms. [redacted] of [redacted], Inc. ("[redacted]"), the company which conducted its own speech/language evaluation. [[redacted], Tr. 1601-02]. Neither Ms. [redacted] nor any other witness called at the hearing, however, actually tested [redacted] in Mandarin; rather, they had an interpreter present during the testing. [[redacted], Tr. 1592-93]. Neither Ms. [redacted] nor any other witness testified that it was even feasible to have this or any other testing of [redacted] administered in Mandarin in accordance with proper testing standards.

62.

[redacted] performed a series of examinations of [redacted] relating to his speech and language proficiency in Mandarin, but did not perform any testing of his receptive language ability in English, which would be necessary for [redacted], to participate in a regular education environment. [[redacted], Tr. 1704]. Ms. [redacted] did not do the testing herself and only saw [redacted] as he went from office to office during the testing and for a period of time that he was in the waiting room prior to testing. Ms. [redacted] first saw [redacted] in either the spring or early fall of 2004, when he came to her office with his brother, prior to the date that [redacted], was first enrolled in the CCSD. She did not see him again until April or May 2005. [[redacted], Tr. 1661-64]. Ms. [redacted] observed that [redacted]'s behavior had improved dramatically during the time he was enrolled in the CCSD. [Id.] While Ms. [redacted] did not perform the testing, she did review the results with a person who actually did perform the testing. [[redacted], Tr. 1671]. However, the versions of the Preschool Language Scale ("PLS") and the Functional Communication Profile which [redacted] used to evaluate [redacted] were both earlier versions, i.e., out-of- date and are not to be used when new versions have been released. [[redacted] Tr. 1947-49; [redacted] Tr. 1678-80].

63.

For several reasons, the testing procedures used by [redacted] were not consistent with the testing requirements set forth in the applicable manuals. For example, the [redacted] representative who administered the test first read the question in English, the question then was repeated by an interpreter in Mandarin, [redacted]. then would answer the question in Mandarin and his answer would be translated back into English by the interpreter and then the representative would give [redacted]. credit for the answer as translated by the interpreter into English. [[redacted], Tr. 1592-93]. This testing procedure was inappropriate and renders the results invalid. [[redacted], Tr. 1928-42].

64.

Despite all of the additional supports given to [redacted]. during the [redacted] testing, the results were not substantially different from the testing performed by the CCSD, i.e., both tests indicated that [redacted] has problems with pragmatic language, as is typical of children with autism. [Exs. R-18 and 19; P. 1, p. 34-37]. Pragmatic language is defined as the practical use of language to express oneself or to understand what others are saying. [[redacted], Tr. 1708]. Nothing in [redacted]'s testing demonstrated that [redacted]. lacked the ability to understand or answer questions in English. Moreover, the testing was not designed to calculate or differentiate between [redacted].'s ability to perform in English and in Chinese. [redacted]'s conclusion, that [redacted]. has issues with pragmatic language, is consistent with the CCSD's evaluation and its resulting determination, in November 2004, that [redacted] was eligible for speech/language services.

65.

[redacted]. made significant and substantial progress in the CCSD educational environment. Because he is a child with autism, he has deficit areas in which his progress will be slow (e.g., social skills and communications), but even in these areas he has made real progress. When [redacted] entered the CCSD in

November 2004 he would throw tantrums, would not sit and attend, would not use eating utensils correctly, would throw things on the floor, would seldom greet or acknowledge people, and could not work successfully on pre-writing skills. His improvement in all of these areas during subsequent weeks enabled the CCSD staff to increase his opportunities to engage with regular education students in the collaborative pre-K classroom. [redacted] learned to engage in activities with others, including through direct one-on-one instruction, to engage directly with another student and sometimes even to engage in spontaneous play. [Sims, Tr., 167-68] With these improvements, the CCSD speech/language pathologist was able to increase [redacted]'s opportunities to work on communication skills with students in the collaborative pre-K class. [Sims, Tr. 170-71] When the ABLLS was re-administered in April 2005, the data confirmed the extent of [redacted]'s progress. [Sims, Tr. 171-72; [redacted], Tr. 600-01]. The number of skills mastered on the ABLLS had, in fact, increased by approximately twenty (20%) percent. [[redacted], Tr. 600-01]. [redacted] had also made significant cognitive gains in areas such as counting, number and letter labeling, and sets. [Sims, Tr. 172-73]. The evidence conclusively established that [redacted]'s educational progress in the CCSD program was consistent and, in some cases, dramatic.

III. CONCLUSIONS OF LAW

Governing Laws and Regulations

66.

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*; 34 CFR Part 300 and Georgia Board of Education Rules 160-4-7 *et seq.*

67.

20 U.S.C. § 1415 (b) and 34 CFR § 507 (b) direct 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

68.

When a parent requests a due process hearing, the local school system "shall bear the burden of coming forward with the evidence and burden of proof at any administrative hearing to establish that the proposed IEP is appropriate and provides FAPE." Georgia Education Rule 160-4-7-.18 (1) (g) (8) The recent Supreme Court decision in **Shaffer v. Weast**, 2005 U.S. Lexis 8554, 74 U.S. L. W. 4009 (November 24, 2005) cited by the Respondent as shifting the burden to the Petitioner, is not applicable in this matter since the shifting of the burden was limited to situations in which the state had not assigned the burden of proof.

69.

However, in Georgia, parents advocating a more restrictive placement "shall bear the burden of establishing that the more restrictive environment is appropriate." Ga. Bd. of Educ. Rule 160-4-7-.18(1)(g)8. In this case, the Parents requested that the CCSD provide [redacted]. with at least 35 hours of one-on-one ABA services, including at least 20 hours per week of discrete trial teaching ("DTT") services in the home, rather than the school environment. Such a program clearly constitutes a more restrictive placement than the one proposed by the IEP team; accordingly, Petitioner bears the burden of proof in this matter.

70.

Since Petitioner's parents unilaterally elected to withdraw [redacted]. and to enroll him in a private pre-school program, Petitioner bears the burden of proof regarding the appropriateness of private services for which the parents seek reimbursement from the CCSD. *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. Board of Educ.*, 231 F.3d 96 (2d Cir. 2000) (when seeking reimbursement for private placement or services, parent has burden of proof). To meet this burden, Petitioner must demonstrate both that the School System's IEP did not provide FAPE and that the Parents' unilateral private placement does provide an educational benefit. *School Committee of the Town of Burlington, Massachusetts*, 471 U.S. at 370. As the United States Supreme Court stated in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), "parents who, like Shannon's, 'unilaterally change their child's placement during the pendency of review proceedings, without the consent of state or local school officials, do so at their own financial risk.' *Burlington, supra,* at 373-374, 105 S.Ct., at 2004-2005. They are entitled to reimbursement only if a federal court concludes both that the public placement violated IDEA and that the private school placement was proper under the Act." *Id.*, 510 U.S. at 15.

Special Education and Related Services Provided in the November 5, 2004 and January 28, 2005 IEPs

71.

The first substantive issue this Court must decide is whether the 2004-2005 IEP, as amended on January 28, 2005, which resulted in [redacted]'s placement at [redacted] offered [redacted] a free appropriate public education (FAPE) in the least restrictive environment (LRE).

72.

IDEA, 20 U.S.C. § 1401(8), defines "free appropriate public education" (FAPE) as special education and related services that (1) have been provided at public expense, under public supervision and direction, and without charge, (2) meet the standards of the State educational agency, (3) include an appropriate education in the state involved, and (4) are provided in conformity with the IEP prepared as prescribed in § 1414 (c) of the Act." ***Id.; see also 34 C.F.R. § 300.13; Ga. Bd. of Educ. Rules 160-4-7-.01; 160-4-7-.04.*** An issue in this case is whether the 2004-2005 IEP, as amended at the January 28, 2005 IEP meeting, was appropriate to address [redacted]'s educational deficits associated with his disability.

73.

In order to determine whether special education and related services are "appropriate," the United States Supreme Court, in the seminal case of ***Board of Education of Hendrick Hudson Central School District, Westchester County v. Rowley,*** 458 U.S. 176, (1982), 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." ***Id.*** at 206-207. If these requirements are met, the School District has provided an appropriate education under IDEA and ***Rowley*** holds that the School District is not required to do more.

74.

Rowley **Test – Part One: Compliance with Procedural Requirements of IDEA.**

First and foremost, 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 IDEA. Procedural defects are actionable as part of a FAPE case only 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 ("[i]n evaluating whether a procedural defect has deprived a student of FAPE, the Court must consider the impact of the procedural defect, and not merely the defect *per se*."). In at least three cases, the Eleventh Circuit has held that procedural violations of IDEA 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 to [the student] as a result of the alleged procedural violations"); ***Doe v. Alabama Dep't of Educ.,*** 915 F.2d 651, 662 (11th Cir. 1990) (holding that the procedural deficiencies in the case "had no impact on the Does' 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).

Testing in Native Language

75. Petitioner lists no alleged procedural errors in his January 30, 2005 due process request. In his March 16, 2005 due process request, Petitioner alleges that the System "violate[d] his important safeguards" by not testing [redacted]. in Mandarin Chinese, which the Parents allege is [redacted]'s native tongue. [March 16, 2005 due process request, at 3-4]. Petitioner's claim is without merit for each of the following reasons: (1) the actual conduct of Petitioner's own purported "IEEs," including the psychological and the ABLLS, demonstrates that it was not feasible for the CCSD – or anyone else – to perform evaluations in Mandarin Chinese; (2) the purpose underlying the requirement that testing be in a student's native language was met in this case because the testing was reasonably calculated to determine [redacted].'s need for special education services, not his level of English proficiency; (3) the

CCSD properly noted that its psychological testing was not conducted under standard conditions and that the results were not a true indication of [redacted].'s ability; and (4) the CCSD properly considered all relevant information, including [redacted].'s performance in the classroom environment in developing his educational program.

76.

34 CFR § 300.532(a)(1)(ii) provides that evaluations are to be "provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so." In this case, it is undisputed that it was not feasible to conduct evaluations of [redacted]. in Mandarin Chinese. Dr. [redacted]'s IEE of [redacted] was conducted in English, with questions repeated in Mandarin Chinese if [redacted]. gave an incorrect answer. Administering evaluations in this manner does not constitute testing in the child's native tongue. [[redacted], Tr. 1928-42]. Even Petitioner's expert, Ms. [redacted], testified that it would not have been feasible to test [redacted] in Mandarin Chinese. [[redacted], Tr. 1592-93]

77.

The due process request asserts that "all that was needed was an independent Chinese interpreter (not a parent, because the results are not accurate due to interfering behavior)," and that "the system test was invalid, was partially administered in English, was partially administered with parents present, which interfered with [redacted] testing." ***March 16th Due Process Request, at p. 4.***

78.

The purpose of IDEA's native language testing regulation is to "ensure that [the testing materials] measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills." *34 CFR § 300.532(a)(2).* In this case, there is no allegation or evidence that the School District's testing resulted in an inappropriate determination of eligibility, nor does Petitioner even contest the eligibility determination. The CCSD's evaluation

indicates the measures the evaluator took to consider [redacted]'s language skills, and specifically states that his inattentiveness and behavior so interfered with his testing that the results do not accurately reflect his functioning. [Ex. R-21, p. 1-252]. The CCSD's evaluation does conclude, though, that [redacted] has autism. Far from undermining the CCSD'S conduct, the evaluation by Dr. [redacted], which was privately obtained by the parents, confirmed the School District's conclusion that [redacted]. was a child with autism and noted his improved behavior, which allowed for a more accurate IQ score. [redacted]'s speech language evaluation also confirmed the CCSD's conclusion that [redacted]. was eligible for speech language services because of deficits in pragmatic language.

79.

The undisputed evidence is that the CCSD did not merely accept the results of the evaluation in developing the educational program for [redacted]. Rather, consistent with *34 CFR* Id.; see also 34 C.F.R. § 300.13 *300.532(f)*, which provides that "[n]o single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child," the CCSD properly considered the results of the evaluation in conjunction with other information, including input from the parents and the teacher at [redacted], as well the ABLLS, in developing [redacted]'s educational program. *34 CFR § 300.532(f)*. The remedy proposed by Petitioner for this allegedly inappropriately administered evaluation was "[t]he school system must reimburse [redacted]' parents for this evaluation." ***March 16th Due Process Request, at p. 4.*** It is undisputed that, at the January 28, 2005, IEP meeting, the School District offered to reimburse [redacted]'s parents for the [redacted] IEE and that it did so upon [redacted]'s father providing an invoice for Dr. [redacted]'s IEE. [Blake, Tr. 841-845].

Alleged Lack of Regular Education Teacher at IEP Meeting

80.

Throughout the course of this case, but not in either of the due process requests, the Petitioner has raised the allegation that a regular education teacher was not present at the November 5, 2004 or January 28, 2005 IEP meetings.

81.

34 C.F.R. § 300.344 does state that an IEP team is to include "[a]t 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).*** In this case, the CCSD did have a regular education representative at the November 5, 2004 IEP meeting, namely Janet Dicker, [redacted]'s teacher at [redacted], who was the person most knowledgeable about his functioning with typically developing peers. [11/05/04 IEP, Ex. R-16, p.1]. The CCSD also had present at the January 28, 2005, IEP meeting, Ms. Eden Gillespie, a regular education representative. Ms. Gillespie is dually certified in regular and special education and teaches at [redacted] in the collaborative (regular education) pre-kindergarten classroom that is made up of mostly typical four year-olds. [Blake, Tr. 858, 859; Sims, Tr. 159-160, 1883-1884; Ex. R-1, p.1]. Ms. Gillespie's dual certification and knowledge of the children in the classroom where [redacted]. might spend some portion of his day, qualifies her to provide insight from both a regular and special education standpoint.

82.

[redacted]. was three years old at the time of both relevant IEP meetings, and there is no requirement under IDEA that the CCSD operate its own regular education program for three year-olds. 20 U.S.C. § 1415(a)(5); 34 C.F.R. § 300.552, Note (1999). In addition, as soon as [redacted] demonstrated that he was able to benefit from exposure to typically developing peers in an educational environment, the CCSD

provided opportunities for him to spend time with four year-old students in Ms. Gillespie's collaborative pre-K classroom. [Sims, Tr. 164-168].

83.

Although 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, who could have invited any of [redacted].'s former regular education private teachers whom they felt were necessary to the meeting (34 CFR § 300.344 (a)(6)), failed to do so. For all of these reasons, the CCSD did not commit any procedural violation in connection with the participation of regular education teachers at the November 2004 and January 2005 IEP meetings.

84.

Even assuming, *arguendo*, that the [redacted] teacher and Ms. Gillespie somehow failed to satisfy the CCSD's obligation to have a regular education teacher present at the IEP meetings, such a procedural violation of the IDEA does not amount to a denial of FAPE in this case. Just as in *Collier County*, *Weiss*, and *Doe*, *supra*, [redacted]'s parents were assured of full participation throughout the development of the IEP. [redacted]'s father, a very intelligent, highly educated individual who has another son with autism, has conducted extensive research on educational issues for children with autism. [Dr. [redacted], Tr. 1124-25, 1172-74, 1502-03]. The IEP meetings were thorough and took place over many hours. At the January 28, 2005 IEP meeting, Dr. [redacted] presented, and the CCSD considered, a summary of Dr. [redacted]'s independent psychological report which had been obtained by [redacted].'s parents. [Exs. R-11 and R-2]. The recommendations of that report were considered and the services and placement decisions of the IEP team were consistent with almost all of Dr. [redacted]'s recommendations. The CCSD's actions were reasonable in that all that the law requires is that the IEP "consider" the IEE, not

that it obligates the CCSD to accept the IEE or its recommendations. *T.S. ex rel. S. S. v. Board of Education of the Town of Ridgefield,* 60 F3d 87, 89-90 (2nd Circ. 1993).

85.

As of January 28, 2005, [redacted]'s parents did not anticipate or desire that [redacted]. be placed in a regular education setting, but, rather, expressed an opinion that [redacted]. was not able to participate in the general education environment and that he that he should not be placed in such an environment. Dr. [redacted] requested that his son participate in a 1:1 ABA program with some time spent on a 1:1 or 1:2 basis with selected typically developing peers and requested 20 to 25 hours per week of discrete trial training in the home rather than at school.

Alleged Violation of the 60-Day Rule for OT Evaluation

86.

The Petitioner contends that the CCSD failed to perform the requested Occupational Therapy evaluation in compliance with the time requirements of Ga. Bd. of Educ. Rule 160-4-7-.07(1)(b)(2.), which provides, in relevant part, for completion of the evaluation and placement process "[w]ithin 60 calendar days from receipt of parent's (s')/guardian's (s')/surrogate's (s') consent for initial evaluation to the development of the IEP. The winter and spring holiday period, when students are not in attendance for at least five consecutive days, shall not be counted toward the 60 calendar day timeline . . . . If extenuating circumstances, e.g., illness, unusual evaluation needs, revocation of parent's (s') / guardian's (s') / surrogate's (s') consent for evaluation, affect this time line, the LSS/SOP shall document the exceptions." The express terms of this provision only establish a timeline between consent for initial evaluation and development of an IEP. In this case, the initial IEP was developed on November 5, 2004, well within 60 days of initial referral on September 24, 2004. The request for an

Occupational Therapy evaluation was made at a later date for a potential related service and was considered appropriately.

87.

Even if the 60-day timeline provision should apply for the conduct of both of the OT evaluations by the CCSD, there is no basis for a claim by Petitioner of breach of that timeline or of educational deprivation. Petitioner requested an OT evaluation by an e-mail dated October 23, 2004 and the IEP team agreed to provide the evaluation at the November 5, 2004 IEP meeting. Petitioner presented no evidence of when the parents signed the consent for OT evaluation, but, using the November 5, 2004 date, there would have been 42 days until the winter holiday. Then, beginning with the return to school for the spring semester of 2005, the remaining 18 days would not have expired at the earliest until Friday, January 21, 2005, after the date that [redacted]'s parents had already removed him from school for several days to obtain private services from [redacted]

88.

Rule 160-4-7-.07(1)(b)(2.) also provides for extension for "extenuating circumstances." In this case, [redacted].'s parents removed him from school to send him to [redacted] beginning on January 14, 2005. Also, the Parents requested, and the CCSD agreed, to contract with an occupational therapist certified in Sensory Integration Praxis Therapy ("SIPT") to perform an SIPT Occupational Therapy evaluation. This qualified as an "unusual evaluation need" that would extend the 60 time-line.

89.

Therefore, the Court finds that the CCSD acted reasonably and in compliance with applicable laws in performing the OT evaluations. Most importantly, however, there is no evidence from which the Court could conclude that [redacted]. has suffered any educational detriment or injury from any delay in the

evaluation, or any conceivable need for compensatory education. As such, Petitioner's request with respect to the Occupational Therapy evaluation is denied.

90.

This Court concludes (1) that the CCSD complied with the procedural requirements of the IDEA in accordance with part one of the *Rowley* test (458 U.S. 176 (1982)); and (2) that, in any event, no procedural violation alleged by [redacted]. denied him the provision of FAPE.

<u>*Rowley* Test – Part Two:</u>

<u>Provision of Educational Benefits in the Least Restrictive Environment.</u>

91.

Part Two of the *Rowley* analysis requires the Court to determine whether the CCSD provided [redacted]. with an IEP "reasonably calculated to enable him to receive educational benefits" in the least restrictive environment. *Rowley,* 458 U.S. at 206-207. The *Rowley* Court held that school districts are required to provide a "floor of opportunity," not to "maximize" a disabled child's educational potential.

92.

Least Restrictive Environment. The "least restrictive environment" (LRE) provision of IDEA provides that students should be educated with 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 in which "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 case, since the CCSD does not have its own public school

program for non-disabled three year-old students, within the continuum of services provided directly by the CCSD, [redacted]. was in the least restrictive environment. Likewise, the IDEA regulations do not require that the CCSD develop a program for non-disabled three year-olds. 20 U.S.C. § 1415(a)[5]; 34 C.F.R. § 300.552, Note (1999). In ***Letter to Neveldine,*** 16 IDELR 739 (1990), the U.S. Department of Education's Office of Special Education Programs noted that a school district may meet its LRE obligation by "locating its preschool program for disabled children within a regular elementary school." In this case, not only was [redacted].'s program in a regular elementary school, but the CCSD provided him with regular opportunities to participate on a daily basis with typically developing peers in the collaborative pre-K classroom.

93.

As of the January 28, 2005, IEP meeting, [redacted].'s father believed that [redacted]. who had received no more than eight weeks of services in Ms. Sims' classroom following his removal from a "regular education" placement at [redacted], was not prepared to be in a regular education classroom. [Sims, Tr. 225-229; Ex. R-2, pp. 48-49, 74]. Had he been placed in a regular education setting, [redacted]. would not have had the level of attention and engagement available in Ms. Sims' classroom. Although [redacted] was making great progress and was receiving more opportunities to interact with non-disabled peers, he was not ready, by early spring, to transition full-time into a regular education setting but continued to need the support and structure of Ms. Sims' direct services classroom. [Sims, Tr. 165-66, 231-32, 377-78]. Given the parents' desire for intensive one-on-one services and the CCSD's reasonable belief that he was not ready to function all day in a general education classroom (even with supports), this Court finds that the IEP team correctly determined that Ms. Sims' classroom provided FAPE in the LRE. In considering claims about placement, the Court is required to remember that "'[a]n 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, that is, 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)

[redacted].'s IEP Was Reasonably Calculated to Enable [redacted]. to Receive Educational Benefits.

94.

As noted above, the second part of the *Rowley* test is that the IEP must be "reasonably calculated" to enable the student to receive "educational benefits." *Rowley,* 458 U.S. at 206-207. A school district is not required to "maximize" a disabled child's educational potential. *Id.*

95.

In *JSK v. Hendry County Sch. Bd.,* 941 F2d 1563 (11th Cir. 1991), the 11th Circuit rejected the argument that the IDEA obligates schools to provide "meaningful" educational benefits. The court held that school districts need only provide "some" or "adequate" benefits, and to the extent that "meaningful" meant anything more than "some" or "adequate," then school districts were not required to provide "meaningful" benefits. *Id.* at 1572. The *JSK* court cited its decisions in *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), in which it held that children must be provided only with a "basic floor of opportunity." *Id.* The *JSK* court confirmed that the decision in *Drew P.* was "based on whether [the student] was receiving *any* educational benefits." *Id.* (italics in original).

The *JSK* court set the benchmark for measuring "educational benefits" at the "basic floor of opportunity," which was discussed in *Rowley. Id.* Finally, the court held that if "the educational

benefits are adequate based on surrounding and supporting facts, [IDEA] requirements have been satisfied." *Id.* It continued, "While a trifle might not represent 'adequate' benefits, *see, e.g., Doe v. State Department of Education,* 915 F.2d at 665, maximum improvement is never required. Adequacy must be determined on a case by case basis in light of the child's individual needs." *Id.*

Even if the Court determined that the Respondent had the burden of proof on this issue, this Court would find that [redacted]'s 2004-2005 IEP, as amended on January 28, 2005, was reasonably calculated to provide adequate educational benefits to Petitioner. The CCSD provided significant special education services to [redacted], set appropriate and measurable goals and demonstrated that [redacted] made academic and behavior gains in the placement in Ms. Sims' classroom.

96.

In light of the information available to the CCSD at the time, as to [redacted]'s level of functioning and his needs, including information provided by [redacted]'s parents, this Court finds that the IEP and the placement in Ms. Sims' classroom were both reasonably calculated to provide FAPE in the LRE and, in fact, did provide significant educational benefits.

[redacted]'s Requests for Independent Educational Evaluation

97.

Petitioner contends that the CCSD refused to provide requested Independent Educational Evaluations (IEE) relating to the CCSD's psychological and ABLLS. In order to trigger a parent's right to request an IEE, the parent must identify an evaluation conducted by the school system with which the parent disagrees. *34 C.F.R. § 300.502.* Once a parent makes such a request, the school system must either ensure that the IEE is provided at public expense or initiate a due process hearing to prove that its own evaluation was appropriate. *34 C.F.R. § 300.502(b)(2).* Clearly implicit in this language is the assumption that the school system is informed as to what evaluation is in dispute and what is nature of

the disagreement with the evaluation. As a procedural matter, Petitioner suggests that the CCSD failed to comply with the applicable regulations because it did not either fund the requested IEEs or initiate a due process hearing.

The record in this case does not support a claim that the CCSD was unreasonable in the timing of its responses to Petitioner's requests for IEEs. The parents requested the CCSD's psychological evaluation on November 8, 2004, but failed to explain why they disagreed with the CCSD's evaluation. [Dr. [redacted] Tr. 1484-85, Ex. R-48, p.2-90]. When the CCSD System responded with a request for clarification and additional information, the parents, rather than responding, elected to hire Dr. [redacted] to perform a psychological evaluation, a summary of which they then delivered to the CCSD at the January 28, 2005 IEP meeting. Upon presentation of Dr. [redacted]'s evaluation, the CCSD reimbursed the parents for its cost.

98.

As to the request for an IEE for the ABLLS, the parents made a written request for an ABLLS IEE on January 30, 2005, simultaneous with the filing of their First Request. In that action, the parents alleged that they were seeking to contest the appropriateness of the CCSD's ABLLS, but they subsequently dismissed that action and then filed this action. Under the circumstances, once the parents had placed reimbursement for the ABLLS at issue, the CCSD had no reason to file a separate due process request.

Petitioner's claim for an IEE for the ABLLS assessment must be denied for the following additional reasons: (a) the ABLLS is not an "evaluation" under the IDEA, but an assessment used in the preparation of a curriculum; (b) there was no evidence of any disagreement as to [redacted]'s level of functioning in English in the educational environment, and thus the ABLLS conducted by the School System was appropriate; and (c) his parents have not produced the report from the "independent"

ABLLS conducted by [redacted] and thus have no basis for claiming reimbursement for this assessment from the CCSD. [Blake, Tr. 849-850, [redacted], Tr. 1945-47] The parents' purpose in having [redacted] conduct an ABLLS as an IEE was apparently to try to demonstrate that [redacted] could do certain things at home in Mandarin that he could not do in school in English. Petitioner has failed to demonstrate how this attempted assessment, even if it had been completed, would be relevant to [redacted]'s eligibility under the IDEA or to programming in the school environment. Even assuming that an IEE in Mandarin would have been appropriate for developing a curriculum, Petitioner has failed to demonstrate that such an ABLLS would be relevant to the education [redacted] needed in the CCSD because, due to his autism, regardless of whether he knows a concept in Mandarin, he will need to relearn the concept in English. [[redacted], Tr. 1986-87] Since the ABLLS was not even available as a testing instrument in Mandarin, an ABLLS assessment in Mandarin is not required. [[redacted], Tr. 1943]

Education with other students with Autism

99

Petitioner further contends that [redacted] should not have been placed in a classroom with other children with autism because he allegedly learned to imitate negative behavior and he was exposed to a dangerous environment. The evidence does not support such a conclusion. Many of [redacted]'s described negative behaviors pre-dated [redacted]'s placement in Ms. Sims' classroom and, in fact, his negative behaviors at home and at [redacted] were the catalyst for the parents' referring [redacted] to the CCSD for consideration of special education eligibility. [redacted]'s behaviors improved while in Ms. Sims' classroom. [Sims, Tr. 164-166] As to specific behaviors allegedly learned by [redacted] in Ms. Sims' classroom, the testimony established that he did not exhibit those behaviors in the school environment. [Sims, Tr. 182-183, 220, 298-299]. While [redacted] may have exhibited certain negative behaviors at home, as testified to by his parents, one cannot reach the conclusion, based on the evidence, that those

behaviors were learned at school. One typical characteristic of children with autism is that the behaviors do not generalize across environments. The consensus of the experts is that it would be unlikely that [redacted] would observe behavior at school, not engage in it there, and then engage in the behavior at home. [[redacted]; Tr. 578-79]. Dr. [redacted], who served as the interpreter when [redacted] was administering the ABLLS to [redacted]. in the home environment, saw [redacted] every two weeks and the only time she saw the described negative behaviors was during the ABLLS testing conducted by [redacted]. [[redacted], Tr. 1552-54, 1562-63]. This strongly suggests that [redacted] was responding to the stress of testing by an unfamiliar person, not that he was engaging in imitative behaviors.

100.

The Petitioner's claims that [redacted]. was in a dangerous environment in Ms. Sims' classroom and cited stacked chairs as an example of the danger. The Petitioner's claim is deemed to be unfounded. The classroom had an extremely small teacher/paraprofessional to student ratio and the teachers were well trained. Although Ms. Sims found the stacked chairs posed no danger to the children, she moved the chairs at the parents' request. [Sims, Tr. 175-176, 179-182]

Progress in the Home Environment is Not Required for FAPE

101.

It is undisputed that [redacted] was not functioning successfully in the educational environment at [redacted] prior to his enrollment in the CCSD. Indeed, it was largely his inappropriate behaviors that prompted the parents' referral of [redacted] for special education services. [redacted]'s parents contend that [redacted] continued to have problems at home and that the CCSD was required to correct these behaviors outside the school environment. In ***Devine v. Indian River County School Bd.***, 249 F.3d 1289 (11th Cir. 2001), the parents' expert suggested that progress outside of the school environment was necessary for FAPE. The Court rejected this position, noting that "this circuit has specifically held that generalization

across settings is not required to show an educational benefit. 'If "meaningful" gains across settings means more than making measurable and adequate gains in the classroom, they are not required by [IDEA] or Rowley.' *JSK*, 941 F.2d at 1573." *Id.*, 249 F.3d at 1293.

Parent Training

102.

Petitioner contends that the CCSD did not provide sufficient parental training, but this claim fails for several reasons. Dr. [redacted] provided more parent training to [redacted]'s parents than was typical. [[redacted] Tr. 595-96]. Parental training is not an absolute requirement for every child, but a related service offered by an IEP team. Under the standard set forth in *Devine* and *JSK*, the CCSD is not required to provide a benefit outside the educational environment. Thus, parental training is required only if, and to the extent, necessary for a child to make progress at school. The Court finds, not only that [redacted], made progress on his goals and objectives and received FAPE, but also finds that the CCSD has met its obligations, if any, with respect to parent training. By April 20, 2005, when the parents withdrew [redacted] from the CCSD, [redacted]'s father had sufficient training in ABA so that he was able to train, as an aide, an otherwise untrained person, who accompanied [redacted] to [redacted] [Dr. [redacted] Tr. 1440-1442]. Accordingly, there is no basis for concluding that [redacted]'s parents required any training beyond what they received.

Parents' Request for Reimbursement for [redacted]

103.

As discussed in *Burlington* and *City of Florence*, reimbursement for a unilateral private placement is appropriate only where the trier of fact determines both (1) that the School District has not provided the child with FAPE; and (2) that the unilateral private placement provided the child with academic benefit. This Court has already determined that the School District's IEP provided [redacted] with

FAPE, so the parents' request for reimbursement is denied on that basis alone. Even if the Court were to reach the question of the appropriateness of the unilateral placement at [redacted], the Petitioner's request for reimbursement would be denied since the program was not reasonably calculated to address [redacted]'s needs as a child with autism. [redacted]'s aide at [redacted] had no formal training in autism and she only received training from [redacted]'s father. Her primary duty was to serve as an interpreter. [Dr. [redacted] Tr. 1439-1440] Nor was there any evidence that any of [redacted] staff had any training in educating students with autism.

Parents' Request for Reimbursement for [redacted]

104.

Petitioner claims that [redacted] benefited from services privately provided by [redacted] in Newnan, Georgia, in January 2005 and that the District should be required to reimburse the parents for the cost of such services. First, it is undisputed that [redacted]'s parents unilaterally chose to send [redacted] to [redacted] in January 2005 at a time when the District had been conducting and was preparing to meet to discuss its own O.T. evaluations. The District's evaluations, including one by an independent O.T. trained to administer the Sensory Integration Praxis Test ("SIPT"), did not suggest significant sensory issues or recommend the [redacted] program. [Ex. R-12, R-13]. Likewise, [redacted]'s parents presented no any scientific evidence in support of the effectiveness of the [redacted] program. The undisputed evidence is that there is no scientific support or a research basis for such therapy. [Dr. [redacted] Tr. 1508-1509].

105.

In addition, Ms. [redacted] reported behavioral problems in the home environment after [redacted] went to Sensory Learning Program ("SLP"). [Sims, Tr. 501-03]. By contrast, [redacted] was performing well at school. His behaviors had improved greatly as evidenced not only by testimony of Ms. Sims, but also

by the fact that he was able to attend and successfully complete Dr. [redacted] psychological evaluation, [redacted] was not exhibiting interfering behaviors in the school environment that would justify a need for the SLP. Finally, to the extent that the SLP arguably resulted in benefits in the home environment, such benefits were not required to provide FAPE and, as such, reimbursement is not recoverable under ***JSK and Devine.***

No Evidence Supporting a Claim for Compensatory Education Services

106.

The Court finds that the CCSD provided [redacted] with FAPE during the relevant period. However, even if it had not, Petitioner has neither quantified any alleged educational harm from any of the School System's alleged failures to provide FAPE, nor provided any evidence as to the nature of compensatory services that would be appropriate. As the United States District Court for the District of Columbia recently stated in ***Reid v. District of Columbia, 401 F. 3d 516 (D.C. Circ. 2005)***, compensatory services cannot be awarded absent such information. In ***Reid***, the Court rejected, as "mechanical," an award of one hour of services for each hour the child had not received FAPE, stating that, "the ultimate [compensatory] award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the School District should have supplied in the first place." Id, at 524. The court made clear that the "inquiry must be qualitative, fact intensive, and above all tailored to the unique needs of the disabled student." ***Braham v. District of Columbia, 427 F. 3d 7, 9 (2005), citing Reid, 401 F. 3d at 524.***

It is not sufficient for a Petitioner to present a series of purported technical violations, but the Petitioner must demonstrate that these alleged violations denied Petitioner of FAPE and that the proposed compensatory services are actually designed to compensate Petitioner for the denial of FAPE,

not merely to provide "some benefit." ***Reid, 401 F. 3d at 525.*** There is no evidence to support an award of compensatory education services.

IV. DECISION

For the foregoing reasons, the Petitioner's request for relief, as to all issues, is DENIED.

SO ORDERED, this 6th day of March 2006.

CHRIS A. FOSTER
ADMINISTRATIVE LAW JUDGE