

06-005718

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

█.,

Petitioner,

v.

DECATUR CITY SCHOOL SYSTEM,  
Respondent.

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Docket No.:  
OSAH-DOE-SE-0600767-44-Walker-Russell

**FILED**  
DEC 13 2005  
OFFICE OF STATE  
ADMINISTRATIVE HEARINGS

FINAL DECISION

Appearances: For Petitioner: Jonathan A. Zimring, Esquire  
For Respondent: Sam S. Harben, Jr., Esquire

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I. INTRODUCTION

This matter comes before the Office of Administrative Hearings ("OSAH") pursuant to a June 24, 2005, due process hearing request filed by Petitioner ("█.") alleging that the Decatur City School System ("DCSS") failed to provide him with a free appropriate public education ("FAPE") as required under the Individual with Disabilities Education Act ("IDEA"), Section 504 of the Vocational Rehabilitation Act, and the American with Disabilities Act. OSAH has jurisdiction to hear this matter pursuant to Article 2 of the Georgia Administrative Procedures Act. After having carefully reviewed the testimony and documentary evidence presented in this matter, and for the reasons indicated below, J.M.'s appeal is **HEREBY GRANTED**.<sup>1</sup>

II. FINDINGS OF FACT

A. PETITIONER'S DUE PROCESS REQUEST:

█. contends that DCSS has failed to identify his disabilities; structure a program to meet his independent educational needs; and develop an adequate Individual Education Program ("IEP")

<sup>1</sup> Procedural History: █. filed his due process hearing request with the Georgia Department of Education on June 24, 2005, and the matter was initially set for a hearing on July 26, 2005. (P-1). At the request of both parties, the hearing was continued on a joint motion to seek mediation. After unsuccessful mediation, the hearing was continued to the first available two (2) consecutive days on October 11 and 12, 2005. The parties also submitted deposition testimony, taken on October 20, 2005. At the request of the parties, the record was held open until November 10, 2005, for the parties to file post-hearing briefs. On November 10, 2005, Respondent moved for an extension of two (2) additional days, which was unopposed and granted. Since November 12, 2005, was a Saturday, the record closed on Monday, November 14, 2005, with the filing of post-hearing briefs by both parties.

that contains appropriate goals, objectives, and support services. [REDACTED] further alleges that DCSS failed to hold a requested IEP meeting and inappropriately placed him at [REDACTED] Psycho-educational Center ("Eagle Woods") given his disabilities. [REDACTED] contests the procedural appropriateness of the current IEP and alleges that DCSS' actions have caused him harm. [REDACTED] seeks an order requiring DCSS to place him in an appropriate residential facility with continuing supportive services; a year of compensatory services extending beyond his twenty-second (22) birthday; full development of an adequate transition plan; and vocational assessment and services. (*Petitioner's June 24, 2005 Due Process Hearing Request, (P-1 and P-89)*.)<sup>2</sup>

## B. BACKGROUND AND DISABILITY

1.

[REDACTED] is a [REDACTED] year-old [REDACTED] student, born on [REDACTED] [REDACTED] residing with his mother in Decatur City, Georgia. His parents are divorced. [REDACTED] is entitled to special education services under the provisions of the IDEA and currently receives services from DCSS. (*Stipulation of Parties; TR, October 11, 2005, at page. 287*).

2.

[REDACTED] enrolled in DCSS in the second grade. At that time, [REDACTED]'s parents informed DCSS that [REDACTED] has an "acquired brain injury" that was diagnosed at age 26 months when he suffered a hypoxic ischemic event, resulting in injury to his brain. Initially, [REDACTED]'s motor skills were delayed. As he continued to grow, [REDACTED] developed cognitive issues, facial ticks and obsessive-compulsive tendencies. (*R-8, R-40, R-56, R-135, P-18, P-24, P-83, and P-153 (Savage Report); (TR, 10/11/05, p. 197, 204, 221)*). His current "cognitive and behavioral problems have a neurological etiology; that is, they are organic as a result of his trauma to his brain." (*TR, October 11, 2005, p. 273-4*). Based on [REDACTED]'s medical history, DCSS has provided [REDACTED] with special education services under the eligibility category of "Other Health Impaired" ("OHI") served by an Emotional Behavioral Disorder ("EBD") self contained class. (*P-14, P-60, P-62; R-14, R-135, and R-163, and R-165*). The overwhelming evidence in this case indicates that J.M. suffers from acquired brain injury.

3.

[REDACTED] struggles with temporal concepts, especially those related to time. He has short-term memory problems, has varying ability in his motor abilities, can be cognitively overwhelmed, and has limited learning skills caused by his brain injury. [REDACTED] is highly intelligent, but can be immature and child-like in his thinking and choice making. He is impulsive, immature, and will try to escape or run away when demands are placed upon him. His behavior in school, at home,

<sup>2</sup> [REDACTED] proposes that the [REDACTED] Mentor Program in Illinois is the appropriate residential placement.

and in the community has regressed over time. ■■■'s neurological problems have caused him to have a history of refusal to attend school. (TR, October 11, 2005, p. 214-15). Like other children who suffer brain injuries at a young age, ■■■ will not grow out of his brain injuries, but into them. In addition, the increased demands as he becomes an adolescent can cause more significant functional impairment. (T1, 200-204; P-83. See, R-135).

4.

■■■ was referred to a treating neurologist for an independent neuropsychological evaluation in 2003. The evaluation noted that ■■■'s recall of information is extremely low, demonstrating difficulty with retention, processing, and retrieval of information. (R-40, p. 5). The neuropsychological evaluation recommended addressing ■■■'s behavioral difficulties in school. *Id.*

#### C. J.M.'s BEHAVIORAL DIFFICULTIES IN SCHOOL

5.

■■■ enrolled in ■■■ Middle School in 2001 and his behavior began to change significantly. During the 2002-2003 school year, ■■■ was involved in a number of misbehaviors, including using profanity, constant disturbance in class, excessive talking in class, fighting, lack of control, throwing food, disrespect of classmates, inappropriate gestures, references to drugs, killings and bombs, and communications to other students that he knew how to make a bomb. (Respondent's Exhibits 17-18, 20-27, 30-31, 36, 39, 41, 43, 45, and 98). ■■■ was suspended from DCSS in May 2003 for improper conduct in telling other students that he knew how to make a bomb. (R-43). ■■■'s school year Discipline Report for 2002-2003 includes twelve (12) serious behavioral incidents that resulted in either in-school or out-of-school suspensions. (R-98).

6.

On May 8, 2003, DCSS held a Manifestation Meeting to address ■■■'s communication to students regarding how to make a bomb. ■■■'s parents were present at the meeting. The Manifestation Committee ("Committee") determined that ■■■'s behavior was a manifestation of his disability. At the Manifestation Meeting, it was noted that, although ■■■ had a *private* evaluation in the fall of 2000, DCSS had not evaluated ■■■ since 1998. It was further noted that the last IEP meeting held on April 1, 2003, addressed ■■■'s behavior of leaving the building. However, the modifications made to the IEP actually *escalated* his disruptive behaviors in the classroom. The Committee also determined that the IEP was *not* appropriate and recommended and expressed concerns that the disability of OHI is not correct.

The Committee discussed an alternative placement change for [REDACTED] and considered resource, homebound, modified school day, and a change in his school schedule. The Committee decided to gather information to help the IEP team develop an appropriate IEP and decided that [REDACTED] could return to school with a revised school schedule to be considered as an interim placement until the IEP was finalized. [REDACTED]'s mother expressed concerns that she was undecided about the Committee's placement decision and also stated that the IEP was not being followed, which creates a vicious cycle that exacerbates the issues and creates a hostile environment. (R-45). The Committee did not discuss providing [REDACTED] with any additional special education services, related services, or counseling. *Id.*

7.

[REDACTED]'s behavioral problems continued to escalate as he engaged in more serious and alarming conduct during October through December 2003. During this period of time, [REDACTED] wrapped a window-blinds cord around his neck and pretended to choke himself after class; told another student that he would stab him if he had a real knife; claimed to have a bomb in his locker; brought a pill to school in a baggie; started a food fight in the cafeteria; was found in possession of a knife with a blade greater than three inches on two occasions; brought a book of matches and a lighter to school; and set his hair on fire with a lighter during class. (*Respondents Exhibits 62, 88; 89, 93, 97, and 98*).

#### OCTOBER 3, 2003 IEP

8.

On October 3, 2003, the IEP team performed a Functional Behavior Assessment ("FBA") to address three-targeted behaviors: Work completion, bringing appropriate materials to class, and negative interchanges. A *draft* FBA was completed, which identified descriptions of [REDACTED]'s behavior, including comments about bombs, guns, plans, violence, seeking revenge, possession of weapons and other items not allowed in school, throwing food, fighting, inappropriate touching, inappropriate gestures and drawings, his failure to comply with adult requests, fleeing from school, self-injurious behaviors, blurting out in class, profanity and verbal confrontations. It was hypothesized that these arose from [REDACTED]'s desire to gain power and peer approval and attention. (J-65).<sup>3</sup>

9.

The IEP team also discussed consideration of [REDACTED]'s needs and placement options. [REDACTED]'s mother

<sup>3</sup> The *draft* FBA was not a part of the 2004-2005 IEP. *Compare, R-153.*

was present at the meeting.<sup>4</sup> ■■■'s increasing negative behaviors and refusal to cooperate and participate in testing were also at issue. The IEP team noted that, even with modifications, ■■■ refused to do class work or take dictation. At the meeting, DCSS staff expressed concern about how difficult ■■■'s program was in an inclusion setting and reported that ■■■ knew the information, but would not participate; had a hard time keeping up with papers; and required a lot of proximity from staff. (R-66). The team devised a proposed class schedule for ■■■. However, the team did not propose any actions to address the three-targeted behaviors of work completion, bringing appropriate materials to class, and negative interchanges as listed in the *draft* October 3, 2003 FBA. (J-65 and R-66). Moreover, the IEP team did not discuss or consider whether ■■■ needed mental health counseling, or provide ■■■ with any additional special education services, related services, or counseling. *Id.*

#### OCTOBER 10, 2003 BIP

10.

The IEP team convened on October 10, 2003, to develop a Behavior Intervention Plan ("BIP"). ■■■'s mother was present at the meeting. The BIP addressed the three-targeted behaviors of work completion, bringing appropriate materials to class, and negative interchanges, and listed positive behavioral intervention strategies. The IEP team determined the proper placement for ■■■ was a weekly Special Education Support Program at twenty five- (25) hours, and five (5) hours of General Education. The October 10, 2003 BIP indicates that the IEP team did not discuss or consider whether ■■■ needed mental health counseling, and the BIP did not provide ■■■ with any additional special education services, related services, or counseling. (R-72).

11.

By November 2003, ■■■'s adverse behaviors had continued to accelerate. He disrupted classes, used vulgarity, and would leave the classrooms and locations where he was assigned. (R-81 and R-82). School records reflect that ■■■ walked into classes, disrupting them, and saying that he liked to choose classes to disrupt. *Id.* He was rude to staff, and acted out when placed in "In-School Suspension" (ISS). (R-84). DCSS staff believed ■■■ was misbehaving purposely to get out of his class work. (R-85; TR, October 11, 2005, pp. 541-542, 543).

12.

On January 7, 2004, DCSS held a Manifestation Meeting to address ■■■'s possession of a knife greater than three inches and a lighter with matches.<sup>5</sup> ■■■'s parents were present at the meeting.

<sup>4</sup> ■■■'s mother was present at the meeting, but had to leave. She agreed for the team to devise a proposal, which she would discuss with the team later.

<sup>5</sup> Noticeably absent from the January 7, 2004 Manifestation Meeting notes was any discussion regarding ■■■'s conduct in setting his hair on fire during class on October 2, 2003.

The Manifestation Committee noted that there had been several incidents since the last amendment to [REDACTED]'s IEP in October 2003. The Committee determined that [REDACTED]'s behavior was a manifestation of his disability and recommended that [REDACTED] receive a verbal reprimand and be placed in a more restrictive environment, outside of [REDACTED] Middle School during his suspension or expulsion. The Committee also determined that the IEP was appropriate and recommended an IEP meeting to review the current IEP and placement options to determine specific consequences for [REDACTED]'s behaviors. The Committee did not discuss providing [REDACTED] with any additional special education services, related services, or counseling. (R-97).

#### JANUARY 13, 2004 IEP

13.

The IEP team convened on January 13, 2004, to discuss the escalation of [REDACTED]'s behavioral problems. [REDACTED]'s mother was present at the meeting. The team acknowledged that it had tried many strategies, but needed help. The IEP Team assigned [REDACTED] to a self-contained EBD special education class at [REDACTED] High School for a forty-five (45) day interim placement and initiated the process of referring him to [REDACTED] Academy ("[REDACTED]"), formerly [REDACTED] Academy), which provides psycho-educational services to students in DeKalb County, Decatur City, and Rockdale County. During his placement at [REDACTED] High School, [REDACTED] was to be searched upon his arrival, escorted to his class room, supervised at all times by an adult, and either escorted to the special education bus, or picked up by his parents at the end of the day. (TR, October 11, 2005, p. 436; Respondent's Exhibits 99, 101, and 105).

14.

In February 2004, [REDACTED]'s parents admitted him to [REDACTED] Health System ("[REDACTED]") of Atlanta for fighting with his father, threatening to burn down the house, and not taking medications. [REDACTED]'s admitting diagnoses included depression; conduct disorder; and inhalant dependence to be ruled out, with a question of a neonatal brain injury affecting performance IQ. The initial plan of care included a need for individual, family and milieu therapy. *Id.* [REDACTED] was discharged from [REDACTED] on March 2, 2004. The discharge summary indicated final diagnoses of depressive disorder, not otherwise specified, and relational discord with his mother. (P-35 and P-37).

#### MARCH 2004 IEPs

15.

The IEP Team convened on March 3, 2004 to discuss [REDACTED]'s placement. [REDACTED]'s parents were concerned because he was running away from school and had begun talking about drugs after his placement in [REDACTED] High School EBD class. (J-110). The Team discussed the cause of [REDACTED]'s

running away and made suggestions for what J.M. could do after school. However, the Team did not alter the existing IEP. *Id.*

16.

School officials found [REDACTED] in possession of five (5) bags of marijuana at [REDACTED] High School on March 11, 2004. [REDACTED] swallowed the contents of three (3) of the bags of marijuana while in the office. Decatur City Police took [REDACTED] into custody. DCSS suspended [REDACTED] for four (4) days after the marijuana incident and began providing [REDACTED] with homebound services shortly thereafter. (*Respondent's Exhibits 113 and 115*).

17.

On March 25, 2004, the IEP Team convened to discuss whether possession of marijuana was a manifestation of [REDACTED]'s disability. The Team decided that it needed a full psychological evaluation of [REDACTED] before it could make a determination. In addition, the parents did not want the manifestation decision to delay services for [REDACTED]. DCSS had been providing [REDACTED] with three (3) hours of homebound instruction per week. The parents requested more homebound instruction hours, including more one-on-one instruction to teach social skills. The parents agreed to provide DCSS with the results of an independent psychological evaluation from Dr. Orme, a private psychologist, when it became available. In the interim, DCSS provided [REDACTED] with ten (10) hours of homebound services a week beginning March 29, 2004. (*J-Resp. 115*).

#### PSYCHOLOGICAL EVALUATION BY DR. ORME

18.

On April 2, 2004, Dr. Orme provided his narrative psychological summary of [REDACTED]. Dr. Orme concluded that there was no evidence to suggest that [REDACTED] had a "good understanding of the consequences of behavior" and did not understand the linkage between his actions and behavioral consequences. Dr. Orme reported that [REDACTED]'s behavior seemed to be "a reflection of clear *neurological* difficulties associated with the frontal lobe and may be structural in nature, specifically with regard to the neurological developmental of [REDACTED]'s brain. He concluded that the school placement in the EBD class was not appropriate and recommended an additional neuro-developmental and neuropsychological evaluation. Dr. Orme further concluded that residential placement *may* be needed if [REDACTED]'s condition continues to decline. (*J-Resp. 118*).

19.

On April 14, 2004, the IEP Team continued the Manifestation meeting that it began on March 25. (*J-119, J-120*). [REDACTED]'s *primary and only* disability listed was OHI. (*J-120, p. 4 of 5*). The Team noted that the January Manifestation meeting identified that [REDACTED]'s behaviors had escalated, and

raised questions about the appropriateness of his IEP. (*Id. at p. 4*). There was discussion that [REDACTED] did not think consequences applied to him. [REDACTED]'s parents sought supplemental services to the ten (10) hours homebound instruction. The Team added two (2) hours of social work services through a counselor to the ten (10) hours already provided in the IEP. These services were to continue only through the 2002-2003 school year. These services were not continued into the 2004-2005 school year, and were not listed in the 2004-2005 IEP. (*TR, October 11, 2005, p. 78; R-156*).

#### AUGUST 2004 IEP

20.

The IEP Team convened on August 4, 2004, to discuss the reports of Dr. Orme and Dr. O'Toole, to review [REDACTED]'s goals and objectives. (*J-Resp. 118 and R-135*). [REDACTED]'s primary disability was listed as OHI, with the secondary disability of EBD. The parents were present and informed the Team that the family had a private male mentor working with [REDACTED] in the home. The IEP Team discussed the appropriate placement for [REDACTED] and proposed providing support through the [REDACTED] Psycho-educational Program at [REDACTED] including three (3) hours of morning instruction, and two (2) hours of homebound instruction per day, for a six (6) week period. (*J-Resp. 155-156*). The Team noted that there was *no EBD eligibility* in place, which is necessary to obtain services through [REDACTED]' Program.

21.

Janet Montgomery, an expert educational consultant on children with brain injury, attended the IEP meeting. Ms. Montgomery stated, "she was struck by the obviousness of [REDACTED]'s brain injury" and explained the differences between how students with acquired brain injury and those with EBD use the school environment. She described how students suffering from brain injuries could be like a "brick wall" and need to be taught alternative behaviors. Thus, teaching them in a regular school environment is difficult. Ms. Montgomery recommended residential placement for [REDACTED] and noted that the levels of the placements being discussed by the IEP Team had been tried in the past, failed, and should be rejected. (*R-155*). She also noted that [REDACTED] had developed very "unhealthy coping strategies", was regressing, and needed residential placement to change his patterns to make a real difference in his brain development. The Team discussed Ms. Montgomery's recommendation of residential placement and Team member, Ms. Mann, stated that "going to residential placement without trying the psycho-educational placement would be skipping a level of intervention and not give [REDACTED] a chance to succeed in a less restrictive

environment.” (*Id.* at page 7).

22.

The parents disagreed with the proposed placement at [REDACTED] [REDACTED]s, the EBD eligibility, and the placement process. The parents were allowed an opportunity to visit [REDACTED] [REDACTED]s to observe the environment and confirm that the staff is trained on brain injury before the IEP Team made a final placement decision of [REDACTED] [REDACTED]. (*J-R-155*). The Team discussed whether to provide [REDACTED] with occupational therapy, physical therapy, speech therapy and language services, but decided that there was no need for those services. (*TR, October 12, 2005, p. 597*). The IEP team did not discuss or consider whether [REDACTED] needed mental health counseling. Although the August 4, 2004, IEP and October 23, 2003, Georgia Project for Assistive Technology (“GPAT”) report indicate that [REDACTED] needs assistive technology, the IEP did not provide [REDACTED] with assistive technology, additional special education services, related services, or counseling, (*R-75 and R-156*).

#### AUGUST 18, 2004 IEP MEETING

23.

After the IEP Team proposed [REDACTED] [REDACTED] as the appropriate placement for [REDACTED] on August 4, 2004, it reconvened on August 18, 2004, to discuss [REDACTED]’s eligibility. The Team determined that EBD is a *secondary* disability and OHI relating to the brain injury is [REDACTED]’s primary disability. (*J-Resp.162; R-163, p.1; J-164; and TR October 11, 2005, at pages 84 and 91*). The parents disagreed that the “EBD” eligibility is appropriate for [REDACTED]. (*Id.* at p. 2; *TR, October 11, 2005, p. 307*). The Team agreed on placement at [REDACTED] [REDACTED]s and training of the staff on [REDACTED]’s specific need areas (brain injury). The IEP Team did not recommend “related services”. (*R-162, p.4*). The IEP Team noted that [REDACTED] would need specialized academic instruction. However, the IEP does not specify what specialized academic instruction [REDACTED] would receive at [REDACTED] [REDACTED]. (*J-Resp.162, p.3*).

#### October 18, 2004 IEP

24.

On October 18, 2004, the IEP Team convened to discuss [REDACTED]’s placement. [REDACTED] was receiving homebound services. (*R-204*). The Family reiterated that they had rejected [REDACTED] [REDACTED] as an inappropriate placement and inquired about outpost placement, which classes are held in regular schools, not centers. DCSS informed the parents that DCSS did not have a contract for outpost classes, and such programs were not available to [REDACTED]. After a series of e-mail communications addressing the mother’s request for outpost placement, and objection to placement at [REDACTED] [REDACTED]s, DCSS informed [REDACTED]’s mother that, “the IEP will need to stand as it has been written.”

In addition, DCSS refused the mother's request to hold another IEP meeting to discuss [REDACTED]'s current level of performance. (*Testimony of C.F.; Respondent's Exhibits R-205, 207, 208, 209, 210, 212, R-212, 216, 217, and 218*).

25.

[REDACTED]'s parents arranged for him to attend private therapy. However, [REDACTED] only attended six (6) out of twenty four (24) sessions. He would run or avoid these sessions. The parents also hired aides for [REDACTED] at home. These aides were necessary in the absence of any support from the school. (*Testimony of C.F.*).

#### DECEMBER 2004 IEP

26.

The IEP Team convened on December 5, 2004 and again determined that [REDACTED] was the appropriate placement For [REDACTED]. The IEP minutes indicate that [REDACTED]'s Program was discussed. However, the IEP did not indicate the amount, duration, location, and frequency of services to be provided [REDACTED] at [REDACTED]. (*J-224*). The IEP Team determined that [REDACTED] would receive six (6) weeks of half a day at [REDACTED] and ten (10) hours of home based services beginning on December 6, 2004, and ending January 28, 2005. Following this split program of home and facility services, [REDACTED] would start a full day program at [REDACTED] on January 31, 2005. The IEP did not offer any related services. Debbie Gay, Director of Exceptional Education, reminded the Team that an IEP meeting could be called at any point if [REDACTED]'s progress suggested that changes were needed. The parents stated that they wanted an opportunity to consider these changes to the IEP. (*Id. at p. 4*).

27.

On December 7, 2005, [REDACTED]'s mother provided DCSS with written notice that the parents had rejected the IEP; did not agree with the "SEBD" eligibility; did not consider [REDACTED] to be an appropriate placement; and informed DCSS that [REDACTED] refused to attend [REDACTED]. The notice requested that the homebound services listed in the IEP be implemented through January 30, 2005, and states that the parents might seek private services and request public reimbursement. (*R-226*). In response, DCSS informed the parents that the school District had placed [REDACTED] at [REDACTED] for the remainder of the school year and he was to begin on December 6, 2004. Furthermore, since the parents did not enroll [REDACTED] in [REDACTED], DCSS would provide "no additional services". (*J-Resp.*).

28.

[REDACTED] received no services from DCSS after the December 2004 IEP meeting from December 2004 through February 2005. On February 17, 2005, [REDACTED]'s mother wrote DCSS asking for assistance.

She indicated that [REDACTED] had gotten worse, and needed to go to school. (TR, October 11, 2004, at pages 330-331; R-233). Although the parents still objected to the appropriateness of the IEP and placement at [REDACTED], she indicated that they had no other choices or options than the [REDACTED] program because [REDACTED] needed instruction and direct counseling. She requested that instruction, direct counseling, and services resume immediately. In addition, she requested that DCSS recommend a specific process to assist in getting [REDACTED] to attend school. (Id.). DCSS provided [REDACTED]'s mother with a "Parent Permission to Transport" form, which provides for transportation. DCSS did not provide [REDACTED] with "Other IEP transportation services." (R-241).

#### MARCH 8, 2005 IEP MEETING

29.

At the direction of the Office of Civil Rights ("OCR"), the IEP Team met on March 8, 2005 to discuss [REDACTED]'s function in the 8<sup>th</sup> grade and whether counseling services should have been included on the 2003-2004 IEP. (R-197).<sup>6</sup> [REDACTED] was in the 9<sup>th</sup> grade on March 8, 2005. The IEP Team also discussed steps needed to transition [REDACTED] to [REDACTED]. The Team concluded that DCSS provided counseling during the 2003-2004 school year. However, the parents disagreed that DCSS had provided [REDACTED] with counseling. The IEP minutes do not specify what counseling services DCSS provided [REDACTED] as alleged by the IEP Team.<sup>7</sup>

At the IEP meeting, the parents also discussed their concern that [REDACTED] would not get on the school bus to attend [REDACTED]. The Team discussed "natural consequences" for students who do not go to school and removed out-of-school suspension from [REDACTED]'s BIP. The team agreed that physical restraint would be used if [REDACTED] fled from [REDACTED].

30.

[REDACTED] repeatedly refused to go to school. His mother sought assistance from both DCSS and [REDACTED], and was given the web site to a mental health related community support program.

<sup>6</sup> On October 7, 2004, OCR determined that DCSS believed that [REDACTED] may have needed mental health services when it urged the parents to seek mental health services and referred them to a private counselor for the same behaviors that it determined were related to his disability as shown in [REDACTED]'s October 10, 2003, BIP. (R-197 at page 6; R-72). OCR also concluded that the IEP Team did not consider or discuss whether [REDACTED] needed mental health counseling as a related aid or service in violation of the requirements of Section 504 at 34 C.F.R. Section 104.33. Id.

<sup>7</sup> On February 18, 2005, the United States Department of Education required DCSS to amend its procedures to assure that mental health counseling was considered as a related service at IEP meetings. R-235; and R-239. The memorandum attached to the letter to the United States on behalf of DCSS states that in the area of related services, DCSS was to "emphasize that the determination of whether a student with a disability may need a related service, including counseling service, would be made by the student's IEP team."

(Respondent's Exhibits R-247, 250, 251 252, 253, 254, 255, and 258,268, 270). However, this program was not added to the IEP. *Id.* [REDACTED]'s mother again asked for "immediate hands-on" assistance due to [REDACTED]'s hospitalizations, refusal to attend school, and regression. She requested that DCSS schedule an IEP meeting to discuss the range of potential related services, support services, and placement for [REDACTED]. (R-270).

31.

[REDACTED]'s mother arranged with DCSS for Dr. Hardigan and Ms. Patrick, from [REDACTED] [REDACTED], to visit [REDACTED] at home to discuss getting him to attend school. (R-264). Dr. Hardigan and Ms. Patrick met with [REDACTED] for one (1) hour on March 25, 2005. However, they did not provide a specific plan to assist in getting [REDACTED] to attend school. (R-268).

32.

In an e-mail to [REDACTED]'s mother on April 19, 2005, DCSS employee, Marty Avant, terminated the scheduling of the requested IEP meeting. Her message stated that she knew they needed to discuss hands-on assistance to get [REDACTED] to school and residential alternatives, but that there would be no meeting until [REDACTED] attended [REDACTED] [REDACTED] for sufficient time to determine what progress he was making. She stated that "[REDACTED] has chosen not to come to school and an annual review for a student who, for all practical purposes, has withdrawn from school seems futile". In addressing the expiration of his IEP, she stated that they would plan an IEP for the end of the year "if [REDACTED] would begin to attend school now and continue until May 20<sup>th</sup>, otherwise we will treat [REDACTED] as having withdrawn from school and refusing to attend despite the law compelling him to do so." She then stated that [REDACTED] was truant and the responsibility fell on the parents to get him to attend school. She identified that Ms. Patrick and Dr. Hardigan would make another visit, and again characterized this visit as providing support in developing a "plan" for the parent to use. (R-273). Ms. Patrick and Dr. Hardigan visited [REDACTED] again on April 26, 2005. (R-274).

33.

[REDACTED]'s mother informed DCSS that, although the visits by Ms. Patrick and Dr. Hardigan were helpful, this was not enough support because they did not come with any new program, plans, or new ideas. She identified her concerns that it would be more difficult for [REDACTED] as each day goes forward and stated that she did not see [REDACTED] as truant. *Id.* After this exchange, [REDACTED]'s mother received a number of contacts identifying [REDACTED] as truant. She received no further support from [REDACTED] [REDACTED] or DCSS. [REDACTED]'s IEP expired on May 20, 2005. (R-273). DCSS did not hold another IEP meeting and provided no summer services. [REDACTED] has no program for the 2005-2006 school year. (TR, October 11, 2005, at pages 338-340).

## J.M.'s NEED FOR RESIDENTIAL PLACEMENT

34.

At the August 4, 2004 IEP meeting, Ms. Janet Montgomery, educational consultant, identified that residential placement was necessary for [REDACTED] because he had regressed and "developed very unhealthy coping strategies." (*R-155, at page 7*). She opined that a "more comprehensive, residential program to break his patterns and make a real difference in his brain development" is required. Ms. Montgomery discussed [REDACTED]'s situation with Dr. O'Toole, reviewed the IEP program, and was utilized as an expert by Respondent during the 2003-2004 school year. *Id.*

35.

[REDACTED]'s long time treating physician, Dr. Edward M. Gottlieb, M.D., FAAP, wrote a report with Kathleen Allen, a licensed counselor. After reviewing [REDACTED]'s history, both concluded that "[REDACTED]'s complex, educational and behavioral needs would be best met in a residential educational setting that serves adolescents with brain injuries. Moreover, residential placement would provide [REDACTED] with an individualized academic instructional program to address *his* unique needs; resistance to traditional programs; specific neurologically based deficits; and provide integrated medical rehabilitation and behavioral care. (*Testimony of Kathleen Allen; October 11, 2005, P- 66*).

36.

Dr. Ronald Savage, Ed.D. is an expert on special education in brain injury, including assessment, analysis, and placement recommendations. (*TR. October 11, 1002, at page 189; P-80*). Dr. Savage reviewed the medical, psychological, neuropsychological, psychiatric, and educational records of [REDACTED] and concluded that [REDACTED]'s cognitive and behavioral problems are complex and pervasive, arising from his brain injury. Dr. Savage emphasized that [REDACTED] is not an emotional or behaviorally disabled student, that his behavior arose from and was indicative of his neurological disorder and brain functioning, particularly interference with his frontal lobe. (*Id. at pages, 200, 203-204; and P-83*). Dr Savage opines that [REDACTED] needs a specialized brain injury program that offers both educational and residential services.

37.

Dr. Savage is familiar with the [REDACTED] Program ("Mentor Program") in [REDACTED], Illinois. He has visited the facility and worked with the staff on preparing a proposed treatment plan for J.M. Dr. Savage recommended three (3) programs to [REDACTED]'s parents and opines that the Mentor Program can serve [REDACTED]'s needs. *Id. at pages 196-199*). In addition, he recommends evaluations by Dr. Carl Wilson, M.D., a pediatric psychiatrist, and concurs that [REDACTED] needs additional occupational therapy. (*Id. at page 285*). Upon careful review, I find Dr. Savage's testimony to

be both credible and persuasive.

38.

Petitioner seeks reimbursement for the costs of aides provided in the absence of services by DCSS. The amounts were not challenged in the hearing and the Court finds these are accurate and caused by the absence of FAPE. In addition, Petitioner seeks reimbursement for the costs for evaluation of OT, which the evidence indicates was necessary. The OT evaluation costs were not challenged in the hearing and the Court finds these are accurate and an appropriate reimbursement caused by the absence of FAPE. (*Testimony of C.F., October 11, 2005; P-89*).

### III. CONCLUSIONS OF LAW

1.

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

#### BURDEN OF PROOF

2.

Petitioner bears the burden of proof on all issues in this hearing since he is challenging an IEP, or seeks to change an existing agreed-upon placement. *Schaffer v. West*, No. 04-698, 546 U.S. \_\_\_ (November 14, 2005); *Devine v. Indian River Sch. Bd.*, 249 F.3d 1289, 1291 (11<sup>th</sup> Cir. 2001) (citing *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1290 (5<sup>th</sup> Cir. 1991)); see also *Weast v. Schaffer*, 377 F.3d 449, 456 (4<sup>th</sup> Cir. 2004) (Petitioners in IDEA case have burden of proof at administrative hearing), *cert. granted*, 125 S.C.T. 1300 (2005). Georgia's Board of Education Rules governing the IDEA hearing process are consistent with *Devine*. Here, it is undisputed that [REDACTED]'s parents challenge the appropriateness of the August 4, 2004 IEP. Petitioner also bears the burden of proof regarding the appropriateness of residential placement for which he now seeks. Since [REDACTED]'s parents are advocating a more restrictive placement, Petitioner bears the burden of establishing that the more restrictive environment is appropriate. Ga. Bd. of Educ. Rule 160-4-7-.18(1)(g)8.

#### STATUTE OF LIMITATIONS

3.

It is undisputed that the applicable statute of limitation in this action is two years as established in *Mandy S. v. Fulton County School District*, 205 F. Supp. 2d 1358 (N.D. Ga. 2000), *aff'd without*

*opinion*, 273 F.3d 1114 (11th Cir. 2001). Therefore, the only IEPs at issue are those prepared on or after June 24, 2003, or two years before Petitioner filed the instant due process hearing request.

#### WHETHER DCSS OFFERED J.M. A FREE, APPROPRIATE EDUCATION

4.

█ is entitled to a free appropriate public education ("FAPE"). 20 U.S.C. §1401(a)(18)(1997); GDOE Rule § 160-4-7-.04(a)(2000); *Hendrick Hudson School District v. Rowley*, 458 U.S. 176, 203 (1982). "The fundamental objective of the IDEA is to empower disabled children to reach their fullest potential by providing a free education tailored to meet their individual needs." *Cory D. v. Burke County Sch. Dist.*, 285 F. 3d. 1294 (11<sup>th</sup> Cir. 2002). FAPE is accomplished through the implementation of an individualized education program ("IEP") tailored to meet the needs of each particular child. *Loren F. v. Atlanta Independent Sch. Sys.*, 349 F.3d 1309 1312-13 (11<sup>th</sup> Cir. 2003); *Doe v. Alabama State Dept. of Educ.*, 915 F.2d 651, 654 (11<sup>th</sup> Cir. 1990)

5.

In order to determine whether special education and related services are "appropriate," the United States Supreme Court has established a two-prong test. First, the court must inquire whether the School District has complied with the procedures set forth in the Act. Second, the court must inquire whether the IEP is "reasonably calculated to enable the child to receive educational benefits." *Board of Education of Henrik Hudson School District v. Rowley*, 458 U.S. 176, 206-207 (1982). If both requirements are met, the School District has provided an appropriate education under IDEA. *Rowley*, 458 U.S. at 206-07; *Loren F.* at 1312, *citing*, *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 378 (5<sup>th</sup> Cir.2003). A 'no' determination on either issue results in a failure of FAPE." *Id.*

#### PROCEDURAL REQUIREMENTS OF THE IDEA

6.

The IDEA contains detailed procedural safeguards from which a substantively appropriate education results. *Rowley*, at 205-06; *Manecke v. Sch. Bd. of Pinellas Cty, Fla.*, 762 F.2d 912, 917 (11<sup>th</sup> Cir. 1985). Procedural requirements are designed to insure both full parental participation and thorough analysis of the various educational approaches available to meet the unique educational needs of the handicapped student. Procedural compliance with IDEA "is critical to the efficient operation of the Act, and serious procedural noncompliance can by itself support a finding that the child has not been provided . . . FAPE." *Hudson by and through Tyree v. Wilson*, 828 F.2d 1059, 1063 (4<sup>th</sup> Cir. 1987).

## The IEP and Eligibility Must be Developed Before Placement

7.

State and federal law have a specific process for the evaluation of a child suspected of having a disability that includes determination of eligibility for special education services, developing an IEP based on the child's individualized needs, and making a placement determination based on the IEP. *E.g.*, 34 C.F.R. §§ 300.12, 300.13, 300.15, 300.26, 300.300, 300.340-300.347 (1999). Thus, for a child just entering the system, the School District "must conduct a full and individual evaluation before the initial provision of special education and related services." 34 C.F.R. § 300.531. Upon completion of the evaluation, "a group of qualified professionals and the parent" must meet to determine if the child is eligible for special education services under IDEA. 34 C.F.R. §§ 300.534-535. *See*, TR., October 12, pages 421-423.

8.

After eligibility, an IEP team composed of designated individuals must meet to develop an IEP for the child. 34 C.F.R. §300.343(b). An IEP must be "in effect before special education and related services are provided to the disabled child." 34 C.F.R. § 300.342(b). After the IEP is completed, the team must make a decision regarding the appropriate educational placement of the child "based on the child's IEP." 34 C.F.R. § 300.552(a)(2). In making the placement determination, the team must consider "a continuum of alternative placements" including instruction in the regular classroom, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.551(b)(1). This specifically includes the right to residential placement. *Id.* *See also*, *Breen v. Jefferson Cty. Bd. of Ed.*, 853 F.2d 853 (11<sup>th</sup> Cir. 1988); *See*, TR. October 11, 205, pages 39-40).

9.

DCSS committed numerous procedural violations in [redacted]'s educational programming, which have resulted in demonstrable harm to [redacted]. The harm is established by predetermination of the IEP, delay on the delivery of services, and interference in actual services, decision-making, and parental participation. *See*, *Doe v. Alabama State Department of Education*, 915 F.2d 651, 662 - 663. (11<sup>th</sup> Cir. 1990).

### PREDETERMINATION OF IEP

10.

Predetermination of the IEP is a serious breach of the IEP process. The school district must come to an IEP with an open mind willing to make individualized decisions based upon the child's specific and individual needs. *See*, *Deal v. Hamilton County School District*, 392 F.3d. 840 (6th

Cir. 2004), *cert. Denied*, \_\_\_ S.Ct. \_\_\_ 2005). DCSS sought parental consent to the [REDACTED] program at the August 4, 2004 IEP meeting before the IEP was developed and before the necessary eligibility had been established. [REDACTED] was not eligible as EBD, or as SEBD at that time. DCSS made a placement determination prior to completing eligibility and then, over the parent's objection, sought to change eligibility at the next IEP meeting (August 18, 2004) solely to support the prior placement decision. (R-156).

In addition, the IEP minutes indicate that when residential services were raised by the family, and supported by Janet Montgomery and Dr. O'Toole's recommendations, DCSS rejected the residential program stating that [REDACTED] was the appropriate placement. However, the IEP minutes do not reflect adequate reasons for rejecting the recommended residential services, and the actions of DCSS do not reflect a willingness to alter its standing program, or to sufficiently individualize it as part of this IEP process. (R-155). These facts demonstrate that DCSS predetermined the [REDACTED] placement based on its next most restrictive available option, regardless of [REDACTED]'s needs, and then inappropriately refused to alter it as the school year began, which is a serious procedural violation of IDEA.

11.

The school district has the duty to convene the IEP meeting and develop the IEP. 34 C.F.R. §§ 300.341 *et. Seq.* If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the child or the educational placement of the child, and the agency refuses to convene an IEP meeting to determine whether such a change is needed, the agency must provide written notice to the parents of the refusal, including an explanation about why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. Appendix A, 34 C.F.R. Part 300, Question No. 20.

12.

DCSS terminated the scheduling of the parents' request for an IEP meeting in the spring of 2005 based on [REDACTED]'s hospitalizations, refusal to attend school, and regression. This demonstrates that DCSS required attendance and failure at [REDACTED] before providing or consideration of additional services which caused harm to [REDACTED] and led to delay and a substantively inappropriate IEP, which is a denial of FAPE. DCSS also required [REDACTED] to fail at the psycho-educational placement before it was willing to consider more restrictive or residential placements. (R-156).

#### EBD ELIGIBILITY DETERMINATION

13.

Petitioner challenges DCSS' determination that [REDACTED]'s secondary disability is EBD to allow

admission into ██████████ Psycho-educational program. GDOE Rule § 160-4-7-21, on "Psycho-educational Programs for Students with Severe Emotional and Behavior Disorders or Autism", provides that students "with severe emotional behavior disorders or autism may be served by such programs." Specifically, the regulation then provides that:

The major admission requirement shall be the presence of an emotional and behavior disorder or autism severe enough to require this special treatment program. Students with secondary disabilities, such as, but not limited to, an intellectual disability, learning disability, neurological disability, hearing loss or developmental disability, shall be accepted if the primary disability is a severe emotional and behavioral disorder or autism. *Id.*, Section 160-4-7-21(1)(p). A student may then be considered based upon "a comprehensive case study." *Id.*, 160-4-7-21(2)(1).

A careful review of the record in this case contains no documentation that DCSS ever conducted a comprehensive case study to make a determination that ██████'s primary disability is severe emotional and behavioral disorder. Moreover, the records of DCSS indicate that DCSS determined EBD as ██████'s "secondary" disability at the August 18, 2004 IEP meeting. (*J-Resp.162*). Accordingly, the evidence fails to establish that DCSS has made a proper eligibility determination of EBD for admission into the Psycho-educational program.

#### SUBSTANTIVE VIOLATIONS OF THE IEP

##### 14.

The statutory definition of 'free appropriate public education', in addition to requiring that states provide each child 'specially designed instruction' expressly requires the provision of 'such . . . supportive services . . . as may be required to assist a handicapped child to benefit from special education.' *Rowley*, 458 U.S. at 200-201. (emphasis in original); GDOE Rule §160-4-7-.04(b). "Special education" under the IDEA means "specifically designed instruction to meet the unique needs of a child with disabilities." 20 U.S.C. § 1401(a)(16), 34 C.F.R. § 300.17. The term "unique needs" is broadly construed to include a child's academic, social, health, emotional, communicative, physical, and vocational needs. *Georgia Ass'n of Retarded Citizens v. McDaniel*, 716 F.2d 1565, 1569-70 (11th Cir. 1983), *vacated and remanded on other grounds*, 468 U.S. 1213, (1984), *reinstated*, 740 F.2d 902 (11th Cir. 1984), *cert. Denied*, 469 U.S. 1229 (1985); 34 C.F.R. § 300.26(a)(3).

##### 15.

The IEP must contain a specific statement of the supplementary aides and services to be provided the child and all program modifications or supports for the child to advance toward attainment of goals and participate with non-disabled peers. 20 U.S.C. §1414(d)(1)(A)(iii). Other essential parts of the IEP include statements of the frequency, scope and duration of services, and on

indication of how a child's parents will be informed of progress toward attainment of goals. 20 U.S.C. § 1414(d)(1)(A)(vii) & (viii); GDOE Rule § 616-4-7-.09(6)7.

16.

The August 2004 IEP was defective on a number of independent substantive grounds and collectively failed to provide FAPE. [REDACTED] requires specialized instruction, which the IEP failed to provide. DCSS terminated home services; counseling services were not provided in the 2004-2005 school year; the transition plan, promised in December 2004 and in the March, 2005 IEP, was never developed; there was no planned or considered effort to address [REDACTED]'s attendance, and no visits until March 2005. These substantive violations not only caused [REDACTED] harm, but also delayed and contributed to DCSS' failure to implement necessary services. Therefore, an individualized IEP was not provided to meet [REDACTED]'s unique needs.

17.

In addition, the IEP was devoid of appropriate supplemental services and related services as required by law. Although DCSS referred [REDACTED] to [REDACTED] Wood, a more therapeutic program, he was provided no therapeutic related services in his IEP. Such services were necessary and appropriate for [REDACTED]. In this regard, the IEP was inadequate.<sup>8</sup>

18.

Related services are part of the school's obligation to offer FAPE and includes such developmental, corrective physical, occupational, and other supportive services as may be required to assist a child with a disability to benefit from special education. 20 U.S.C. § 1401(a)(17). Related services are "an integral part of what Congress intended by 'appropriate education' as defined in IDEA, and it is an essential part of the student's education." *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 182 (3<sup>rd</sup> Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). Failure to provide related services can delay FAPE and can support a reimbursement claim. *E.g., Polk*, 853 F.2d at 182-184; *Rapid City School Dist. v. Vahle*, 922 F.2d 476 (8<sup>th</sup> Cir. 1990).

In this matter, DCSS is aware that there were recommendations indicating that occupational therapy (OT) was necessary for [REDACTED]. However, the August 2004 IEP does not provide for occupational therapy (OT) to address [REDACTED]'s fine-motor and sensory needs. Thus, the IEP offered by DCSS is inappropriate as it fails to provide for this related service

<sup>8</sup>. The testimony by Ms. Gay that these *could be* available, do not substitute for the provision of such support services in an adequate IEP.

19.

The IEP fails to provide for rehabilitative counseling, parent counseling and training, and psychological services. 34 C.F.R. § 300.24(b). These are important components to programs for brain-injured children generally, and specifically for [REDACTED]

20.

The IEP does not provide for mental health services, social work support, including integration of community resources, individual or group counseling, and family therapy. At the March 8, 2005 IEP meeting, DCSS, having been ordered to consider this need, and having failed to do so throughout the previous IEP meetings, determined that DCSS had provided [REDACTED] with counseling services. (See, R-242). However, the evidence indicates that DCSS has failed to provide [REDACTED] with these services.

21.

Based on the foregoing findings of fact, it is concluded that the August 2004 IEP is not individualized to meet [REDACTED]'s needs and does not provide FAPE. DCSS' placement of [REDACTED] in the psycho-educational program, without the proper eligibility and determination of the necessary related services, is not an adequately individualized IEP. In addition, the IEP is devoid of any cognitive rehabilitation or appropriate specialized instruction for J.M.

#### LEAST RESTRICTIVE ENVIRONMENT

22.

The second prong of the *Rowley* analysis requires the court to determine whether [REDACTED] has been provided with an IEP "reasonably calculated to enable him to receive educational benefits" in the least restrictive environment. *Rowley*, 458 U.S. 176, 206-207. The "least restrictive environment" ("LRE") requirement dictates that a student be educated with his non-disabled peers to the maximum extent appropriate. 20 U.S.C. § 1412 (a)(5). The issue of least restrictive environment only arises after a determination of appropriateness has been made and Courts need not reach the question of least restrictive environment or LRE unless there are appropriate programs before it. See, *Cleveland Heights University City Sch. Dist. v. Boss*, 144 F.3d 391, 399-40 (6<sup>th</sup> Cir. 1998); *Knable v. Bexley Sch. Dist.*, 238 F.3d 755, 770 (6<sup>th</sup> Cir. 2001)(use of LRE improper on private placement as "We would vitiate the right of parental placement recognized in *Burlington* and *Florence County* were we to find that such private school placements automatically violated the IDEA's mainstreaming requirement."); *Warren G. v. Cumberland Co. Sch. Dist.*, 190 F.3d 80, 84 (3<sup>rd</sup> Cir. 1999)(LRE does not apply as a criteria if the school's program is not otherwise appropriate). Because the August 2004 IEP was not reasonably

calculated to provide J.M. educational benefit, or FAPE, I need not address the issue of LRE as it pertains to Eagle Woods.

WHETHER J.M. IS ENTITLED TO RESIDENTIAL PLACEMENT  
AT PUBLIC EXPENSE

23.

A parent may object to FAPE and later seek public financial responsibility for private placement under GDOE Rule Section 160-4-7-.03 (referencing 34 C.F.R. § 300.403(b)) and Section 160-4-7-.15(2). The administrative law judge (ALJ) may require the LSS/SOP to reimburse the parent for the cost of the enrollment if . . . the ALJ determines that the LSS/SOP had not made FAPE available to the student in a timely manner, and the private placement is appropriate. Section 160-4-7-.15(2)(a)(2). The "private placement may be found to be appropriate by an ALJ . . . even if it does not meet the state standards of education provided by the state or LSS." Section 160-4-7-.15(2)(a)(3).

24.

Residential placement should only be selected when it is necessary for educational purposes, and not primarily due to medical problems or home problems, which are segregable from educational needs. Burke County Bd. of Educ. v. Denton, 895 F.2d 973 (4<sup>th</sup> Cir. 1990); Rome Sch. Comm. v. Mrs. B., 2000 U.S. Dist. LEXIS 2949 (D. Me. 2000); Bd. of Educ. Of the Avon Lake Sch. Dist. v. Patrick M., 9 F. Supp. 2d 811 (N.D. Ohio 1998).

25.

Petitioner has provided overwhelming and substantiated evidence that private placement is appropriate in this matter. The evidence demonstrates that ■■■'s behavioral problems have continued to escalate by increasingly serious and alarming conduct. He wrapped a window-blinds cord around his neck and pretended to choke himself after class; told another student that he would stab him if he had a real knife; claimed to have a bomb in his locker; brought a pill to school in a baggie; was found in possession of a knife with a blade greater than three inches on two occasions; brought a book of matches and a lighter to school; swallowed marijuana; and set his hair on fire with a lighter during class. ■■■ has clearly proven and demonstrated the need for residential services based upon his behavior, ineffective multiple psychiatric hospitalizations, requirement for cognitive rehabilitation in a specialized program with security and support, school refusal, and regression.

Moreover, Petitioner presented credible evidence from Dr. Orme, Janet Montgomery, Dr. Edward M. Gottlieb, Kathleen Allen, and Dr. Ronald Savage that ■■■ requires residential placement.

Thus, I conclude that, based on his individualized needs, [REDACTED] cannot succeed in a less restrictive educational environment. Accordingly, Petitioner requires residential placement in order to obtain an educational benefit under the IDEA, and such residential placement is the least restrictive environment for him.

#### ABI MENTOR PROGRAM IN CARBONDALE, ILLINOIS

26.

Petitioner requests residential placement at [REDACTED] Mentor in [REDACTED], Illinois. Dr. Savage testified that he recommended *three* (3) residential programs for [REDACTED], including the program sought by Petitioner. Although Petitioner presented documentation describing the program sought, no one from [REDACTED] Mentor in [REDACTED], Illinois appeared at the hearing to testify as to the appropriateness of the program for [REDACTED]. In addition, Petitioner has failed to present evidence regarding the other two (2) programs recommended by Dr. Savage, and why residential placement facilities in Georgia cannot serve [REDACTED]'s educational needs. Accordingly, although Petitioner has established that he requires residential placement, he has failed to establish that the residential facility that he seeks is the most appropriate placement for him. Therefore, the parties shall convene an IEP meeting to discuss and select the appropriate residential placement for [REDACTED].

27.

Compensatory services may be awarded for past educational deficiencies as "appropriate relief" under IDEA. Compensatory education involves discretionary, prospective injunctive relief crafted by a Court to remedy an educational deficit created by a school district's failure to provide FAPE over time. *Jefferson County Bd. of Educ. v. Breen*, 853 F.3d 853, 857-58 (11<sup>th</sup> Cir. 1988). See also, *G. v. Fort Bragg Dep. Schools*, 324 F.3d 240 (4<sup>th</sup> Cir. 2003); *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238 (3<sup>rd</sup> Cir. 1999); *Bd. of Ed. of Oak Park v. Ill. St. Bd. of Ed.*, 79 F.3d 654 (7<sup>th</sup> Cir. 1996). Damages and attorney fees are not available before this tribunal and need not be pled or proved.

#### IV. DECISION

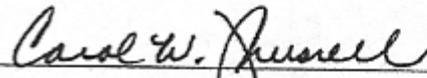
Based upon the foregoing findings of fact and conclusions of law, it is **HEREBY ORDERED** that [REDACTED] was not offered and did not receive a free, appropriate public education from the Decatur City School System; and the relief sought is **GRANTED** in part, and **DENIED** in part.

1. Petitioner's request for residential placement is **GRANTED**. However, Petitioner's request for placement at [REDACTED] Mentor in [REDACTED] Illinois is **DENIED**. Within ten (10) days of the issuance of this order, the parties shall convene an IEP meeting to decide residential placement and develop an appropriate program for the 2005-2006 school year

that identifies and addresses all areas of [REDACTED]'s disabilities and includes all necessary and appropriate related services;

2. Petitioner's request for reimbursement for the costs of aides provided in the absence of services by DCSS is unchallenged and GRANTED;
3. Petitioner's request for reimbursement for the evaluation costs of OT is unchallenged and GRANTED;
4. Petitioner's request for a year of compensatory services extending beyond his twenty-second (22) birthday; full development of an adequate transition plan; and vocational assessment and services is unchallenged and GRANTED. All other relief not specifically granted herein is hereby DENIED.

SO ORDERED, this 13<sup>th</sup> day of December, 2005.



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CAROL WALKER-RUSSELL  
Administrative Law Judge