

2005, Gwinnett County began its own evaluation of Petitioner. (Transcript, at 28, 79-80, 113-114; Exhibit R-4).

2.

A May 2005 psychological evaluation showed that Petitioner has average intelligence and is capable, from a cognitive standpoint, of performing "on grade level." The evaluation further found, however, that Petitioner has poor emotional control and coping skills, characteristics that interfere with classroom functioning and interpersonal relationships. School psychologist Claudia Dickerson testified that, based on the results of the evaluation, she would expect that Petitioner would fall behind academically in a regular classroom. (Transcript, at 61-64; Exhibit R-3).

3.

Following the evaluation, Gwinnett County deemed Petitioner eligible for special education services in the emotional/behavioral disorder program, and Petitioner's mother consented to his placement in the special education program. Petitioner began receiving special education services in August 2005, when he entered the third grade. He currently attends four special education "segments" or classes. (Transcript, at 49-52, 88, 93, 184; Exhibits R-1, R-2, R-10, R-12).

4.

Special education teacher Mary Ballard worked with him four days a week during the 2005-2006 school year, providing reading instruction. Ballard now serves Petitioner for one-on-one reading instruction. (Transcript, at 75, 93-94, 98).

5.

Ballard testified that Petitioner can be very friendly and engaging, but has trouble following a routine, can be disruptive, and has "meltdowns." As described by Ballard, when Petitioner has a "meltdown," he "completely shut[s] down" and does not interact verbally. On occasion, Ballard has asked an administrator for help calming Petitioner down after he became agitated. At one point in the

spring of 2006, Ballard and an administrator had to carry Petitioner to the school office, with Petitioner thrashing against them and crying. (Transcript, at 95-97, 112).

6.

According to Ballard, Petitioner performs best in a one-on-one setting. Ballard has observed Petitioner in his regular classroom and noted that he is disruptive and has difficulty focusing on assignments. (Transcript, at 99-100).

7.

Stephanie Jones, Petitioner's fourth grade regular education teacher at ██████████, currently teaches Petitioner social studies, science, and spelling. Jones testified that Petitioner at times puts forth effort in class and particularly enjoys science, but he works below grade level on a modified curriculum. (Transcript, at 113-116)

8.

Petitioner attends class with Jones for at least part of every school day. According to Jones, Petitioner can be distracting in class, talking to other students while they are trying to work or removing things from their desks. He has difficulty focusing and completing his assignments, requiring Jones to redirect his behavior at least four times a week. Jones testified that some of this behavior is typical of a fourth grade student. The frequency of Petitioner's behavior, as well as the times he chooses to act out, however, are not typical. (Transcript, at 116-119, 121)

9.

While a student in Jones' class, Petitioner has had several "out of control" emotional outbursts. On one occasion, Jones observed him fighting with another student on the playground. Once the students were separated, Jones attempted to speak with Petitioner, but he refused to communicate with her. He walked around the school with Jones following, then went back to the playground and started hitting the other student again. Another teacher grabbed Petitioner, and two assistant principals

removed him from the playground. On another occasion, Petitioner became angry when Jones asked him to perform a task in the classroom. Petitioner hit her desk and walked around the classroom, refusing to sit down. Jones called an administrator, who removed Petitioner from her class. (Transcript, at 121-127, 129).

10.

Jones testified that Petitioner's current educational program is not working from him. Although Petitioner has the ability to progress academically, his behavior prevents him from receiving an appropriate education. According to Jones, Petitioner would benefit from a classroom that offers a small number of students and a teacher specially trained to handle the behaviors that Petitioner exhibits. (Transcript, at 129, 132-133).

11.

Christa Davis, another special education teacher at ██████████ currently instructs Petitioner in math, reading, writing, and "affective skills training," which is a behavior management class. Davis also serves as Petitioner's special education case manager. As case manager, Davis is responsible for drafting Petitioner's Individualized Education Program ("IEP"), reevaluating the IEP if necessary during the year, and tracking Petitioner's behavior. (Transcript, at 94, 144).

12.

Davis testified that Petitioner has difficulty with his behavior during class and has problems staying "on task," as well as following directions. According to Davis, Petitioner's behaviors are much more frequent and severe than behaviors exhibited by other special education students she has observed. Petitioner causes disruption in class, at times refuses to do his work, and is often verbally disrespectful when he does not get what he wants. On average, Davis must redirect his behavior at least seven times a day, and she has had him removed from class once during this school year. (Transcript, at 145-147).

13.

Davis asserted that Petitioner's current setting at ██████████ is not appropriate. His behaviors interfere with his academic progress and have caused him to fall behind. Although Davis has worked with Petitioner on his behavior, she has not been able to intervene to the extent necessary to allow him to succeed academically. Petitioner works below grade level, and he is receiving failing grades in writing, social studies, math, and affective skills studies. He also has not made progress on the behavioral goals and objective in his IEP. According to Davis, if Petitioner remains in his current placement at ██████████, he will not succeed academically and his safety and the safety of other students is at risk. Davis believes that Petitioner must learn how to control his behavior and calm himself down. (Transcript, at 148-154; Exhibit R-12).

14.

Beverley Evans is the assistant principal in charge of disciplinary issues at ██████████. She also serves as the school's special education contact with Gwinnett County. Evans testified that the school, which has 560 students, has had twenty five disciplinary referrals since August 2006. Seven of those referrals involved Petitioner. (Transcript, at 175-176).

15.

Evans has known Petitioner since he began attending ██████████ in January 2005. She has noticed some improvement in his conduct since that time, but asserts that he struggles on a daily basis with his behavior. According to Evans, he has difficulty getting along with others and focusing on school work, and his behavior interrupts the instructional environment. Evans has had to physically remove Petitioner from the classroom because of his behavior. On these occasions, Petitioner is acting out, will not listen to anyone in authority, has difficulty following directions or discussing the problem, and will lash out physically, kicking walls. (Transcript, at 176-177, 179).

16.

Evans testified that she has informed Petitioner's mother of his behavioral problems and, on occasion, has put Petitioner on the telephone with his mother during the school day so that she could calm him down. (Transcript, at 177-179).

17.

According to Evans, Petitioner is not succeeding academically and is at risk of failing. In addition, Petitioner is not making progress on his IEP's behavioral goals and objectives, and the Behavioral Intervention Plan developed in conjunction with his IEP for the 2006-2007 school year has not been successful. His disruptive behaviors are pervasive, consistent, and raise safety concerns for Petitioner and other students, as he lashes out, throwing pencils, slamming furniture, and hitting others. His behavioral problems also place him at risk of being removed from school. Because efforts to address these behaviors through the special education program at ██████████ have not been successful, school officials began to consider a more structured, safe environment where Petitioner could focus on learning to manage his own behavior. (Transcript, at 180-185, 190; Exhibit R-13).

18.

Evans testified that school officials tried to find a way to adequately educate Petitioner using the four available special education "segments" or classes at ██████████. The officials concluded, however, that the school and staff could not offer Petitioner an appropriate education, given his behavioral challenges. The educators thus determined that the least restrictive environment for Petitioner to receive a free and appropriate public education would be in the self-contained classroom for emotional and behavioral disorders at ██████████ Elementary School ("████████"). In October 2006, Petitioner's IEP team recommended that he be placed in ██████████'s self-contained classroom, and a new IEP was created reflecting that placement. (Transcript, at 100-101, 154, 184-185).

19.

The objective of [REDACTED]'s self-contained classroom is to teach students with emotional and behavioral problems the skills they need to function in the regular education setting. Students receive all instruction in the classroom, except for special subjects such as art, music, health, and physical education, and thus do not have to transition throughout the day between special education and regular education classes. Classroom instruction includes the regular education curriculum, allowing students to remain "on target" academically. They also receive instruction on social skills and controlling their behavior. Once students achieve those skills, they transition back to the regular education classroom. (Transcript, at 160-164, 169-170).

20.

Tina Thrower, the special education teacher in charge of [REDACTED]'s self-contained classroom, testified that, given what she has learned about Petitioner, the classroom would be an appropriate placement for him. According to Thrower, a child who is consistently disruptive in a regular education environment needs more structure in a small group setting to be successful. Thrower has five children in her classroom. All have similar behavioral issues, allowing her to focus on those issues and frequently monitor behavior throughout the day. The behavior management plan used in the classroom is structured, consistent, and successful. The children receive behavior checks every thirty minutes, and they are able to "see for themselves" if their behavior is appropriate. Thrower employs a reward system, through which children earn points and, ultimately, privileges if they behave appropriately. The system encourages children to internalize good behavior and to learn how it feels to behave in an acceptable manner. As children earn privileges, they slowly transition back into the regular education setting. Thrower testified that many of her students have moved back into the regular education classroom as they learned to monitor and control their own behavior. (Transcript, at 160-161, 163-168, 170-171, 174).

21.

Mary Ballard supports the recommended placement at [redacted]. She testified that although Petitioner has the ability to achieve academically, he is not currently working on grade level because his behavior interferes with his progress. Noting that the pressures in elementary school are much less than in middle school, Ballard asserted that Petitioner requires a program that can teach him how to control his behavior and cope before he enters middle school. Ballard admitted that Petitioner's behavior and academic progress have improved to a certain extent, but testified that he needs to attend the self-contained classroom to reach his educational goals. Christa Davis similarly testified that Petitioner would benefit from the recommended placement, which would allow him to work throughout the day on his behaviors and social skills, as well as the regular curriculum. Stephanie Jones also agrees that placement in the self-contained classroom would help Petitioner develop behavioral and social skills and prevent him from falling further behind academically. (Transcript, at 102-105, 109, 132, 148-149).

22.

Petitioner's mother objects to the suggested placement in [redacted]'s self-contained classroom. She does not believe that Petitioner belongs in a special education setting, although she agreed to his participation in the special education program at [redacted] Elementary. She testified that Petitioner is a normal [redacted]-year-old boy with typical behavioral issues who has been "labeled" by the school as a disciplinary problem. She has never seen Petitioner act in the manner described by school officials, and she has not received many calls regarding his behavior from the school. She further testified that Petitioner's [redacted] teachers reported to her that Petitioner is doing well and has improved academically. (Transcript, at 28-30, 32-33, 37, 42, 50).

23.

Petitioner's mother offered evidence of his standardized test scores from spring of 2006. The scorers show that Petitioner met the standard for third grade students in mathematics, science, and social studies. He did not meet expectations in reading and language arts, although his scores were close to the "meets expectations" level. (Transcript, at 39-41; Exhibit P-1).

24.

Petitioner does not like to attend special education classes at ██████████ because other children make fun of him, calling him "retarded." His mother does not object to him attending the ██████████ program because it helps his behavior. She does not believe, however, that he needs a self-contained classroom program, and she fears that the program would further stigmatize him. (Transcript, at 35, 44).

25.

Petitioner's grandmother, who is a special education paraprofessional with the Dekalb County School System, also testified. The grandmother asserted that Petitioner does not require special education, and she objected to his placement in the special education program at ██████████. Because Petitioner's mother travels for work, the grandmother often takes care of Petitioner and communicates with the school. She recalls receiving reports of two disciplinary problems, both of which occurred the day after Petitioner's mother left town for work. Other than those two incidents, the school has not advised her of any disciplinary problems involving Petitioner. According to the grandmother, Petitioner is a normal ████████-year-old boy who would be harmed by placement in the self-contained classroom. She testified that "[w]hat [Petitioner] needs is a good spank[ing]." (Transcript, at 17-18, 19, 21-24, 25).

III. Conclusions of Law

Based on the foregoing facts, the Court makes the following conclusions of law:

1.

The IDEA “ensure[s] that all children with disabilities have available to them a free appropriate public education [“FAPE”] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400 (d) (1) (A). The statutory scheme contains a “least restrictive environment” component, which requires that, “to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412 (a) (5) (A). *See also* 34 CFR 300.114 (a) (2) (“Each public agency must ensure that . . . (ii) [s]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”)

2.

At issue in this case is whether Gwinnett County’s recommended placement of Petitioner in ██████’s self-contained classroom setting comports with IDEA’s least restrictive environment mandate. Petitioner does not question the type of special education services provided by his IEP or contend that he needs additional services to receive FAPE. Rather, he objects to placement in the self-contained classroom, asserting that he should be allowed to remain in the general education setting at ██████. *See* Petitioner’s Due Process Complaint.

3.

As the party filing the due process complaint and seeking relief, Petitioner bears the burden of coming forward with the evidence and proving that the placement proposed by Gwinnett County is inappropriate under IDEA. *See* Ga. Comp. R. & Regs. r. 160-4-7-.18 (1) (g) (8).

4.

In determining compliance with the least restrictive environment or “mainstreaming” requirement, the Court considers whether (1) education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily; and (2) if it cannot be achieved satisfactorily and the school intends to remove the child from regular education, whether the school has mainstreamed the child to the maximum extent appropriate. *See Greer v. Rome City School District*, 950 F.2d 688, 696 (11th Cir. 1991), *opinion withdrawn*, 956 F.2d 1025 (11th Cir. 1992), *opinion reinstated in pertinent part*, 967 F.2d 470 (11th Cir. 1992); *Daniel v. R.R. v. State Board of Education*, 874 F.2d 1036, 1048 (5th Cir. 1991); *T.W. v. Unified School District No. 259*, 136 Fed Appx. 122, 127 (10th Cir. 2005).

5.

Since August 2005, Petitioner has received special education services at ██████████ in conjunction with instruction in his regular education classroom. His IEP has included behavioral goals and objectives, and the IEP team developed a Behavioral Intervention Plan to help address his behavioral issues. The evidence demonstrates that these efforts have failed. Petitioner’s behavior has shown only slight improvement, and he continues to be disruptive in class. He lacks the skills to control his behavior and cope in the regular classroom setting, impeding his ability to succeed academically. Although he has at least average intelligence and is capable of staying on grade level with his peers, he currently works below grade level, is failing several subjects in his modified curriculum, and risks falling farther behind if his behavior does not improve. Special education

teachers at ██████████ have attempted to address his behavioral issues, but given their resources, have not succeeded.

6.

Gwinnett County presented evidence that the curriculum and special services offered in ██████████'s self-contained classroom would benefit Petitioner. The goal of the classroom is not to separate children with behavioral problems from peers, but to teach those children how to cope and succeed in the regular education setting. To this end, the program focuses on helping students learn to control their behavior and develop social skills, while providing instruction in the regular education curriculum.

7.

Petitioner's mother and grandmother testified that Petitioner is a normal ██████████-year-old with typical behavioral problems. The evidence shows, however, that Petitioner's behavior is not typical of a fourth grader. He consistently behaves in a manner that prevents him from succeeding academically and interferes with the academic instruction for all students in his class. Moreover, the behavior witnessed by ██████████ officials comports with the results of Petitioner's May 2005 psychological evaluation, which revealed his poor emotional control and lack of coping skills.

8.

Given the evidence presented, the Court finds that Petitioner cannot currently be satisfactorily educated in the regular classroom, even with use of supplemental aids and services.

9.

The Court further concludes that his proposed placement in ██████████'s self-contained classroom meets the requirement that Petitioner be mainstreamed to the maximum extent possible. At ██████████, Petitioner will attend certain regular education classes, such as music and art, and he will transition back to the regular education setting as his behavioral skills improve in the self-contained classroom.

10.

The Court recognizes that the recommended placement will remove Petitioner to a great degree from the regular education setting. Gwinnett County, however, offered evidence that, after considering and looking for other alternatives, educators determined that the self-contained classroom presents the least restrictive alternative for providing Petitioner with FAPE. The Court, which generally pays great deference to decisions made by the educators who develop IEPs, finds this evidence persuasive. *See JSK v. Hendry County School Bd.*, 941 F.2d 1563, 1573 (11th Cir. 1991). Furthermore, Petitioner has not shown that the educators' recommended placement is inappropriate in this case.

11.

As noted by Mary Ballard, Petitioner is at a critical juncture, nearing the end of the nurturing elementary school years and approaching the more difficult challenges presented by middle school. The Court will not second guess Gwinnett County's determination that the self-contained classroom offers Petitioner the best chance of ultimately succeeding in the general classroom setting.

IV. Decision

Accordingly, Petitioner's challenge to his placement in the self-contained classroom at ~~Shiloh~~ Elementary School is **DENIED**. The self-contained classroom offers Petitioner FAPE in the least restrictive environment in accordance with the IDEA.

SO ORDERED, this 2th day of January, 2007.



SARA B. O'DEA
Administrative Law Judge