IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

08-056535

[redacted]., by and through his parent, [redacted].,

Plaintiff,

v.

GWINNETT COUNTY SCHOOL DISTRICT,

Defendant.

DOCKET NO.:
OSAH-DOE-SE-0804178-67-Gatto

FINAL ORDER

COUNSEL: [redacted]., by and through his parent, [redacted]., *Pro se*, for Plaintiff.

Victoria Sweeny, for Defendant.

GATTO, Judge

I. INTRODUCTION

Plaintiff [redacted] ("Plaintiff,") by and through his parent [redacted], filed a due process Complaint pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, against Defendant Gwinnett County School District ("Defendant.") alleging that Plaintiff's IEP did not provide him with an appropriate education in the least restrictive environment and seeking a private placement at public expense. For the reasons indicated below, the relief requested by Plaintiff is **DENIED**.

II. FINDINGS OF FACT

Plaintiff is a [redacted] year old autistic student who has been educated progressively along the continuum of placements including in moderate autism classes in the public school setting and in a one-to-one clinical setting at a private facility, the [redacted] Institute. Plaintiff's autism is in the severe range and developmentally Plaintiff functions as a two to three year old.

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He does not have a consistent form of communication and typically uses one or two word phrases.

Plaintiff stands over six (6) feet tall and weighs in excess of 300 hundred pounds. He exhibits infrequent but high intensity behaviors that are dangerous to himself and others, in part due to his size. Plaintiff's behaviors include elopement, inappropriate touching, self-biting, inappropriate sexual behavior (including masturbation), and aggressive behaviors. Plaintiff has injured others both in the public school setting and at the [redacted]s Institute during tantruming by charging others, picking up individuals, throwing them to the floor and lying on top of them, choking them, and head-butting. Although extensive data has been collected on Plaintiff's behaviors, those working with Plaintiff have not determined any antecedents to his aggressive outbursts thereby making it difficult to extinguish the behaviors.

At an Individualized Education Program ("IEP") committee meeting on March 20, 2007, Defendant recommended changing Plaintiff's placement from the Language and Learning Institute at the [redacted] Institute to placement at Defendant's psychoeducational school, [redacted]. [redacted] is a school designed to address severe behaviors. Plaintiff's parent objected to the Defendant's placement and filed a due process complaint.

Kris Keeney[1], a behavioral specialist employed by Defendant, first became involved in Plaintiff's education in the fall of 2005 while Plaintiff was attending a self-contained autism class at [redacted] High School ("[redacted]"), a high school operated by Defendant. Plaintiff's classroom teacher at [redacted] Bob Poynter contacted Mr. Keeney regarding aggressive behaviors Plaintiff was exhibiting including self-biting, elopement, and charging. Mr. Poynter had trained

[1] Mr. Keeney has substantial training and experience as a behavior specialist having trained at Kennedy Kreiger Institute under Dr. Wayne Fisher. Mr. Keeney came to the [redacted] Institute with Dr. Fisher to open the Severe Behavior Institute and has published in the field of behavior interventions. Mr. Keeney was qualified as an expert in the area of behavior interventions.

and worked at the [redacted] Institute as a behavior therapist, thus providing optimum circumstances for the [redacted] placement. Mr. Poynter was competent and experienced as a data collector and behavior interventionist.

With Plaintiff's parent's written permission, Mr. Keeney began a functional behavior assessment in the fall of 2005. After he collected and analyzed Plaintiff's behavior, Mr. Keeney determined that Plaintiff's aggressive behaviors were low frequency but high intensity, and the data showed that he exhibited aggression, charging, self-biting, elopement, inappropriate sexual behavior and inappropriate touching while at [redacted].

During the fall of 2005 following several incidents where Plaintiff's aggression caused injury to others, it became apparent that [redacted] was no longer the appropriate setting for Plaintiff as that setting could not contain his behaviors. In November of 2005, the IEP committee recommended placement at [redacted]. Plaintiff's mother initially agreed but changed her mind and refused to send Plaintiff there. Thereafter, Defendant provided homebound services to Plaintiff until his mother placed him in the Severe Behavior Program at the [redacted] Institute in February of 2006.

Instruction at the [redacted] Institute was provided on a one-to-one basis in a padded room with a one way mirror and two means of egress. Plaintiff exhibited several behavior outbursts while at the [redacted] Institute including an incident in which he pushed a therapist's right shoulder and then fell on top of the therapist and another incident in which he picked up a therapist, dropped the therapist to the floor twice, and choked the therapist.

Following that placement and in light of Plaintiff's mother's desire that Plaintiff's communication skills be improved upon, Defendant placed Plaintiff in the Language and Learning Program during the summer of 2006. Again, instruction was provided on a one-to-one

basis in a padded room with two means of egress so that the individual working with Plaintiff could safely exit the room if Plaintiff had an outburst. With the expectation that Plaintiff would be able to generalize some of the skills he had learned at the [redacted] Institute, the IEP team recommended returning Plaintiff to a self-contained autism class at a regular education high school operated by Defendant for a second time beginning in August of 2006. Mr. Keeney and a staff member from the [redacted] Institute trained Plaintiff's teachers at [redacted] High School ("[redacted]") in August of 2006 for Plaintiff's transition from the [redacted] Institute to [redacted].

Plaintiff exhibited self-biting and masturbation at [redacted] and was involved in a serious incident of aggression in August of 2006 in which he physically attacked two female staff members, sending them both to the hospital. Following the attack at DHS, the IEP committee again recommended placement at the psychoeducational school, [redacted], as the appropriate placement. All staff members at [redacted] are trained to handle the types of behavior Plaintiff has exhibited. The staff to student ratio is much higher than at [redacted]; the facility has many fewer students than the 2000-plus students who attended [redacted] and the facility is designed to address the severe behaviors that Plaintiff exhibited.

When the parent did not agree to placement at [redacted] in the fall of 2006, the Defendant placed Plaintiff in the Language and Learning Program at the [redacted] Institute with a one-to-one paraprofessional. Plaintiff was again educated in a padded room on a one-to-one basis. Plaintiff continued to exhibit infrequent but severe behaviors at the [redacted] Institute. While Plaintiff was in the Language and Learning Program he charged a female employee, pushed her into a table and onto the ground; he charged a female employee during a transition; he grabbed a therapist's arm and pulled her down; and he bumped a therapist's head with his head, squeezed the therapist's head to this chest, and bent the therapist's neck.

The Language and Learning Program was unable to fully implement Plaintiff's IEP and address all of his goals and objectives due to the nature of the setting. Plaintiff did not receive his instruction with other students at the [redacted] Institute. He did not have community skills or functional academics at the [redacted] Institute. Consequently, Defendant sought to return Plaintiff to a public school setting where his IEP could be fully implemented. At the IEP committee meeting on March 20, 2007, the Defendant again recommended placement at [redacted].

At [redacted], Plaintiff would receive opportunities for community skills training and functional academics. Moreover, he would have the opportunity to be with other students and be able to work on generalizing skills he has learned across environments. Plaintiff also would have the potential to return to a regular high school at such time as a lesser restrictive environment would be appropriate.

Plaintiff's parent, [redacted], does not believe that Plaintiff exhibits the type of behavior that warrants placement at [redacted]. [redacted] claims not to have been offered any other placement options by Defendant other than [redacted].[2] [redacted] does not agree with placement at [redacted] because she did not see any instruction taking place when she visited even though she testified about instruction being provided to Plaintiff during the visit. [redacted] also rejects the placement because she does not believe Plaintiff wants to go school there.

The only expert testimony presented supported the placement at [redacted] as appropriate and the least restrictive environment for Plaintiff. Plaintiff failed to present any evidence that [redacted] was not appropriate or the least restrictive environment.

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[2] [redacted] will not agree to allow Plaintiff to be transported to school on a bus with a locked seatbelt because Plaintiff has never injured anyone on the bus and might be unable to exit the bus if there were a fire. At the close of the trial, Defendant's representatives agreed to transport Plaintiff without a locking seatbelt restraint.

In sum, Plaintiff has had numerous interventions during the last two years in an effort to extinguish his extreme albeit infrequent behaviors that have caused injuries to others in his educational placement. Defendant has twice implemented placements in a self-contained classroom in a regular high school setting, most recently in the fall of 2006; Plaintiff has three times been placed at the Marcus Institute for intensive 1:1 intervention for behavior and language disorders. Plaintiff's dangerous behaviors have not been extinguished and have caused and could cause injury to him and others.

III. CONCLUSIONS OF LAW

Congress enacted IDEA "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for future education, employment, and independent living." 20 U.S.C. § 1400 (d) (1) (A); 34 C.F.R. § 300.1. In disputed matters, "[t]he party seeking relief shall bear the burden of coming forward with the evidence and the burden of proof at the administrative hearing." DOE Rule 160-4-7-.12(3) (l.) *See also Schaffer v. Weast*, 126 S.Ct. 528 (2005.) Therefore, as to the placement issue, Plaintiff bears the burden of proof that the Defendant's proposed placement is inappropriate and that his proposed placement is appropriate. The Court concludes that Plaintiff has set forth no persuasive evidence demonstrating that the Defendant's proposed Hooper Renwick placement is inappropriate or that his proposed placement is appropriate.

The Court recognizes that parents and school personnel are expected to be equal participants in formulating a child's educational plan; nonetheless, deference must be given to the educational professionals who developed the IEP and who are responsible for providing FAPE. *J.S.K v. Hendry County Sch. Bd.*, 941 F.2d 1563, 1573 (11th Cir. 1991). However, "courts 'lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy ... and [ ] great deference must be paid to the educators who developed the IEP." *Id.* (citations omitted.)

The IDEA requires that students with disabilities be educated to the maximum extent appropriate with children who are not disabled. 20 U.S.C. § 1412(a) (5) (A); 34 CFR § 300.114(a) (2) (i); *see also* Ga. Comp. R. & Regs. r. 160- 4-7-.07(1) (a). IDEA regulations also require that schools make available a continuum of alternative placements to students with disabilities. *See* 34 CFR § 300.115(a); *see also* Ga. Comp. R. & Regs. r. 160-4-7-.07(3) (a). The continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. *See* 34 CFR § 300.115(b); *see also* Ga. Comp. R. & Regs. r. 160- 4-7-.07(1) (b).

Here, Plaintiff's dissatisfaction lies not with the proposed program but rather with the proposed placement at [redacted][3] However, [redacted]'s testimony that Plaintiff did not want to be left at [redacted] when they visited or that she did not observe instruction does not constitute sufficient evidence to support the contention that that the placement was inappropriate. Furthermore, Plaintiff has been provided with educational services in many of the enumerated placements across the continuum. Trial testimony established that Plaintiff requires very specialized instruction. As indicated *supra*, Plaintiff has had numerous interventions during the last two years in an effort to extinguish his extreme albeit infrequent behaviors that have caused injuries to others in his educational placement. Defendant has twice implemented placements in

[3] Plaintiff also raised issues of private placement and evaluation accuracy. However, private placement may only be ordered by this Court if it determines that FAPE has not been offered and that Plaintiff's private placement request is determined to be appropriate. *See* 20 U.S.C. § 1412(a) (10); 34 CFR § 300.148; *Florence Co. Sch. Dist. v. Carter*, 114 S. Ct. 361 (1993.) The appropriateness of a private placement is not reached in this matter since the Court concludes that the proposed IEP provides Plaintiff with FAPE. As to the evaluation issue, it is not properly before this Court since Plaintiff has not first requested an independent educational evaluation at public expense as required by 34 § CFR 300.502.

a self-contained classroom in a regular high school setting, most recently in the fall of 2006; Plaintiff has three times been placed at the [redacted] Institute for intensive 1:1 intervention for behavior and language disorders. Plaintiff's dangerous behaviors have not been extinguished and have caused and could cause injury to him and others.

Therefore, the Court concludes that Despite Plaintiff's parent's dissatisfaction with [redacted], the evidence presented by Plaintiff failed to establish that [redacted] is not an appropriate placement; instead, the evidence, including the testimony of the educational experts, established that Defendant made available a continuum of alternative placements and that [redacted] is the least restrictive placement appropriate for Plaintiff. Accordingly, **IT IS HEREBY ORDERED THAT** the relief requested by Plaintiff is **DENIED.**

SO ORDERED THIS 14th day of November, 2007.

John B. Gatto

JOHN B. GATTO, Judge

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