

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

000,

Plaintiff,

v.

FAYETTE COUNTY SCHOOL DISTRICT,
Defendant.

:
: Docket No.:
: OSAH-DOE-SE-0828452-56-Schroer

:
: 08-087687
:
:
:

CORRECTED¹ FINAL DECISION

I. INTRODUCTION

On May 7, 2008, Plaintiff 000, through her parents, filed a due process complaint pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). The due process hearing was held before the Office of State Administrative Hearings (“OSAH”), on January 12, 13, 14, and 16, 2009.² Heidi A. Honis, Esq. represented Plaintiff and Phillip L. Hartley, Esq. represented Defendant Fayette County School District. The record remained open until February 16, 2009, in order for the parties to review the transcript and file post-hearing briefs. The deadline for the issuance of this decision was extended pursuant to 34 C.F.R. § 300.515(c).

II. FINDINGS OF FACT

1.

000 was born in Romania in 000. For the first two years of her life, 000 lived in an orphanage under deplorable conditions. The deprivation experienced by 000 while in Romania was so severe that it had a lasting effect on her neurological development and

¹ The year of adoption on page 3 is corrected. Otherwise, the decision is unchanged.

² By agreement of the parties, this case was stayed on the Court’s calendar for several months to allow Plaintiff’s mother to care for Plaintiff’s sibling, who was diagnosed and treated for a serious medical condition after the due process complaint was filed.

led to a condition known as Reactive Attachment Disorder or "RAD."

2.

In 1993, [REDACTED] and [REDACTED] adopted [REDACTED] and brought her to the United States. A little over one year later, [REDACTED] began to receive special education services through the Fayette County School District ("School District"). [REDACTED] was served by the School District as a child with a disability from 1994 until 2007, when her parents withdrew her from the School District and enrolled her at Chaddock, a private, residential program for children with severe attachment disorders located in Illinois. [REDACTED]'s parents seek reimbursement for the tuition and fees from Chaddock, as well as expenses related to a six-week multi-disciplinary evaluation obtained at the Aspen Institute in Utah.

A. Early History

3.

[REDACTED] and [REDACTED] moved their family of three young sons from Oklahoma to Peachtree City in 1990. By all accounts, they had a loving and stable home and their sons have grown up to be productive, successful adults. (Tr. 17-20; Ex. D-4)

4.

Shortly after moving to Fayette County, [REDACTED] made several trips to Romania for humanitarian purposes, bringing medical supplies and clothing from her Peachtree City community and visiting children institutionalized in State-run orphanages. During a number of these trips, [REDACTED] visited the [REDACTED] orphanage in [REDACTED], Romania. The orphanage was home to 60 babies, but had only three attendants on staff to care for them. The living conditions were sterile, cramped, and devoid of stimulation. The children were rarely touched, bathed, or given personal attention, were fed primarily

potato-water in baby bottles, and were kept penned in their cribs in crowded rooms with little color or variety. (Tr. 19-33)

5.

④④ was abandoned in a maternity hospital in Romania and transferred to ④④④④ at age three months. After a time-consuming and sometimes arduous journey through the Romanian adoption process, ④④④④ and ④④④ adopted ④④ in July 1993 and brought her home to live with their family in Peachtree City. At age two, ④④ weighed only 17 pounds, had not learned to walk or talk, and could not eat solid food. ④④ did not like to be cuddled and was not calmed by being held or stroked. (Tr. 37-41; Ex. D-5.2)

B. Educational Background

1. Peachtree City Elementary

6.

In 1995, ④④ began attending a special needs pre-school at Peachtree City Elementary School. During her pre-school years, the School District provided special education services to ④④ for a speech and language impairment, as well as instruction designed to address other developmental delays. In 1997, ④④ began to receive occupational therapy services through a private provider to address sensory-motor integration problems. In 1998, when ④④ was in first grade, the School District conducted a psycho-educational evaluation of ④④. Despite conflicting test results, the evaluation concluded that ④④' s current functioning placed her in the "mildly intellectually delayed" range of intelligence and that academically ④④ was performing within or above expectations. Her adaptive functioning, however, was significantly

delayed compared to her peers.³ (Tr. 46-50, 602-03; Exs. D-1, D-2)

7.

In 1999, at age eight, [REDACTED] was evaluated privately through the International Adoption Evaluation Center at the Marcus Institute in Atlanta. At that time, [REDACTED] was receiving occupational therapy and speech therapy through the School District and was placed in a self-contained resource classroom at Peachtree Elementary. The developmental pediatricians at the Marcus Institute noted [REDACTED]'s "unique cognitive profile" and agreed that the School District's placement was appropriate for [REDACTED]. However, due to her history of significant psycho-social stressors, [REDACTED] was diagnosed for the first time with a Reactive Attachment Disorder. (Tr. 51-53, 608; Ex. D-3)

8.

Reactive Attachment Disorder is a complex neuro-developmental disorder that occurs when an infant or very young child does not form an attachment to a reliable, nurturing caregiver in the first years of life. Because much of early development is dependent on stimulation, a baby who does not receive nurture and human contact at an early age may not learn how to form loving, healthy attachments with other people. Typically, Reactive Attachment Disorders develop in situations of acute deprivation, abuse or neglect. Among other symptoms of the disorder, a child with a reactive attachment disorder may be "disinhibited" in forming personal relationships; that is, the

³ Although the label did not fit perfectly [REDACTED]'s unique set of characteristics, the School District decided that [REDACTED] was eligible for special education services under the "Other Health Impaired" category, in addition to the "speech or language impairment" category. In fact, throughout [REDACTED]'s elementary school years, the School District wrestled with the proper eligibility label for [REDACTED]. Regardless of the label, however, the School District understood its obligation to provide appropriate, personalized services to meet [REDACTED]'s educational needs. (Tr. 66-67; 603-07, 629; 740, 745)

child may form indiscriminate, superficial relationships with strangers, but will begin to lash out or withdraw from people as they become more familiar. In fact, an intimate relationship, such as one that would normally develop between a nurturing caregiver and a child, may trigger a very anxious, almost primal “fight or flight” response in children with reactive attachment disorder, causing them to act out violently and aggressively against their primary caregivers. (Tr. 436-38, 440-42, 450-51, 478, 489)

9.

In 1999, information about Reactive Attachment Disorder (“RAD”) in post-institutionalized children was sparse and the diagnosis was rare. The School District was not very familiar with RAD at that time and [REDACTED] was one of the first students in the School District to receive this clinical diagnosis.⁴ The Marcus Institute recommended a number of interventions and further evaluations and the School District and [REDACTED]’s parents worked in a “cohesive” manner to identify and provide appropriate services for [REDACTED]. (Tr. 53-56, 625-26, 728; Exs. D-3, D-4.2) See 34 C.F.R. § 300.8(c).

10.

In 2001, when [REDACTED] entered fourth grade, the School District re-evaluated [REDACTED] and her eligibility category was changed to specific learning disability (“SLD”). Based on the re-evaluation and [REDACTED]’s academic performance in school, the School District concluded that [REDACTED]’s academic struggles stemmed mainly from her language deficits and thus the focus of her Individualized Education Program (“IEP”) should be on developing

⁴ The School District quickly began to gather information about RAD through its school psychologists and occupational therapists when [REDACTED] and other students began to present with RAD symptoms. When [REDACTED] was first diagnosed with RAD, she was not exhibiting severe behavior problems in school as were some students with this diagnosis. (Tr. 632-33)

language skills. In addition, the School District moved [REDACTED] into a fourth grade resource classroom with higher-functioning peers. [REDACTED] appeared to make academic strides in this setting, although socially she continued to exhibit odd behaviors and had difficulties forming genuine friendships and reading social cues. (Tr. 57-64, 607-12, 621; Exs. D-4, D-5.2)

11.

In September 2002, when [REDACTED] began fifth grade, her parents arranged for a private, comprehensive neuropsychological evaluation with Dr. [REDACTED]. According to Dr. [REDACTED]'s report, [REDACTED]'s parents described her as "very sweet and congenial, follows all rules and wants to please others." However, she was often restless, impulsive, and distracted in the home environment and was unable to play on her own or learn from her past experiences. [REDACTED]'s special education teacher at that time observed that [REDACTED] got along well with other children and did not misbehave, but that [REDACTED] was not socially confident and did not adapt well to change. Both her parents and her teacher reported that [REDACTED] had difficulties in learning situations. (Tr. 65, 613-14; Ex. D-5)

12.

Dr. [REDACTED] concluded that it was "highly likely" that the early deprivation in the orphanage had significant effects on [REDACTED]'s "neurological development, most notably auditory processing, auditory memory, and language areas." In addition, as a result of the limitations placed on her mobility and her freedom to engage in exploratory behavior as an infant and toddler, it is likely that [REDACTED]'s ability to problem-solve and manage novel situations has been compromised. Dr. [REDACTED]'s testing did not suggest "significant

problems with anxiety,” however [REDACTED] often worried about pleasing adults. The results of the intelligence testing indicated that [REDACTED] was functioning in the “low average” range of intelligence, a measure the School District found important because it suggested an enhanced ability to learn.⁵ (Tr. 614-15; Ex. D-5.10)

13.

For [REDACTED]’s fifth grade year, the School District reduced the hours [REDACTED] spent in the special education resource classroom and placed her in a regular education class with special education support for science and social studies. Midway through fifth grade, in January 2003, the IEP Team referred [REDACTED] for further psycho-educational evaluation. The results of this evaluation indicated that [REDACTED] was functioning very differently at home than at school, which is not unusual for a child with RAD. For example, her adaptive behavior skills were rated significantly higher by her teachers than by her parents. She also exhibited “autistic-like behaviors,” such as rocking back and forth and hand flapping, to a greater degree at home than at school. In fact, the discrepancy between the teacher ratings and the parent ratings was so great that the evaluator concluded that neither set provided an accurate estimate of [REDACTED]’s overall adaptive behavior skills. It did appear, however, that [REDACTED] was much more independent at school and that she enjoyed the routine and structure of the school day. (Tr. 612, 623-27; Ex. D-6)

⁵ [REDACTED]’s two previous intelligence tests had yielded lower scores, in the “mild intellectually delayed” range. The School District was encouraged by the higher level of functioning indicated by the 2002 testing and considered it an indication that the impact of the early neglect was diminishing and [REDACTED]’s ability to learn was blossoming. (Tr. 614-15)

14. -

At the end of fifth grade, in May 2003, the IEP Team met to discuss [REDACTED]'s transition to middle school. Her records and test scores indicated that [REDACTED] had made educational progress through her fifth grade year and her teachers reported that she had improved socially and seemed to have friends. [REDACTED]'s parents shared a report on "institutional autism" with the IEP Team and described autistic-like behaviors that occurred at home when [REDACTED] was anxious. Her parents also reported other concerning behaviors, such as [REDACTED] digging into her skin until it bleeds and being non-compliant, but her teachers had not observed the same problems in the school setting. (Tr. 67-71, 269; Ex. D-21)

15.

[REDACTED]'s parents urged the IEP Team to look more closely at [REDACTED]'s eligibility category and the Team concluded that an autism or "pervasive developmental delay" label more closely reflected [REDACTED]'s disability than the SLD label. Looking forward to middle school, the IEP Team developed specific goals and objectives for [REDACTED] in reading and math, as well as social, language, and adaptive skills. The Team agreed on a placement for [REDACTED] in an autism cooperative class for science and social studies and an autism resource class for language arts, reading and math. [REDACTED] would continue to receive speech therapy and occupational therapy services through the School District. (Tr. 70-71, 799-800; Ex. D-21)

16.

[REDACTED]'s parents prepared a description of [REDACTED] to be included with her IEP as she transitioned to middle school. Among other things, the description notes that [REDACTED] goes

through a “honeymoon” phase when meeting unfamiliar adults, initially appearing cooperative and compliant but becoming more manipulative, uncooperative, and even dishonest as the relationship develops. [REDACTED]’s parents also stated that school, because of its routine and predictability, was [REDACTED]’s favorite place and activity. (Tr. 254-55; Ex. D-21)

2. Booth Middle School

17.

[REDACTED]’s transition to Booth Middle School began smoothly. [REDACTED] and her parents were familiar with her teacher, Edie Brewer, who had taught one of [REDACTED]’s brothers in the past. As the year progressed, however, [REDACTED] began to write inappropriately personal letters to Ms. Brewer and refused to stop doing so despite direction from her parents. Around this same time, she began to run away to neighbors’ homes, saying she wanted to move in with them, and was exhibiting “obsessive” behaviors toward a peer. Because her parents saw these inappropriate actions as manifestations of RAD, they sought out private attachment therapy through the Attachment Bonding Center of Atlanta. (Tr. 73-78)

18.

The attachment therapy was intensive and required [REDACTED] to be away from school for an extended period of time beginning in December 2003. [REDACTED] did not have any academic instruction for approximately two months while she participated in attachment therapy and other RAD-related treatments. During this time, [REDACTED] became a patient of Dr. [REDACTED] a psychiatrist, who prescribed certain anti-psychotic medications to try to regulate [REDACTED]’s increasing anxiety and mood swings. (Tr. 82-83; Ex. D-21.33)

§§ did not return to Booth Middle School during the 2003-04 school year.⁶ Rather, in early February 2004, based on Dr. §§§§' recommendation and §§§'s parents' request, §§§ received Hospital/Homebound services from the School District, which consisted of academic instruction in the home three hours per week. §§§'s parents declined further services, such as speech therapy, for the rest of §§§'s sixth grade school year so that the family could focus on attachment therapy. In the home during this time, §§§ was exhibiting extreme and dangerous behaviors, such as jumping out of moving cars, running away, and other acts of violence and aggression toward her parents, particularly her mother.⁷ (Tr. 80-85, 96-97; Ex. D-21.33 to -21.43.)

In May 2004, at the end of §§§'s sixth grade year, the IEP Team met to plan for §§§'s transition back to a school setting. The IEP Team agreed to place §§§ in a new self-contained "transitional" classroom at Booth Middle School for students with autism. The class was small, only 6 to 7 students, with a teacher and a para-professional. Most of the other students in the classroom were non-verbal and were lower-functioning academically than §§§. Nevertheless, §§§'s parents preferred this placement for §§§.

⁶ Although it is not clear when and under what circumstances the testing occurred, the record contains Criterion-Referenced Competency Test ("CRCT") results for 6th grade, which indicate that §§§ took the test in Spring 2004 and came closer to meeting expectations for the 6th grade curriculum than she did for 4th grade. In fact, notwithstanding missing almost half the school year, §§§ met expectations in science and scored just below the "meets expectation" minimum for reading, language arts, and social studies. (Tr. 666-67; Exs. D-19.3, D-26.3)

⁷ §§§ would hit, kick, pinch, bite, and choke her mother and her father, leaving noticeable bruises, welts, and scars. Children with RAD tend to act out more with their parents, particularly their mothers. (Tr. 97-98; 440-41, 518)

because they believed that she needed a small, self-contained environment.⁸ (Tr. 298, 360-61, 636-40, 803-07)

21.

██████'s parents were pleased with the transitional autism class and ████████ testified at the hearing that the program offered by the School District for seventh grade and the first part of eighth grade was appropriate for ██████. ██████ worked particularly well with ██████'s new teacher, Mandy Gunter, who was willing to communicate frequently with ██████'s parents and to employ many of the strategies they recommended for dealing with children with RAD. Some of the other members of the IEP Team were concerned that the transitional autism class was not the most appropriate or least restrictive environment for ██████ because of the low functioning of the other students. However, for ██████'s parents, ██████'s RAD issues "took precedence over everything else" at that time, even "over education." (Tr. 87-88, 304, 360-61, 365, 372, 639-41, 810-11)

22.

The IEP Team met again midway through ██████'s seventh grade year, in January 2005, and agreed to move ██████ into resource classes for math and reading in order to provide a higher level of academic instruction. The evidence in the record shows that ██████ made academic progress in this placement, which continued essentially unchanged through the rest of seventh grade and the beginning of eighth grade. (Tr. 399, 402, 642-

⁸ ██████ prepared another attachment for the May 2004 IEP to help new teachers understand ██████ and RAD. She again explained that ██████ will appear superficially charming to strangers during the "honeymoon" phase, but as these people become more familiar and attempt to form an attachment to her, she can become "aggressive, verbally abusive, defiant, lying, manipulative, and destructive with those people who are their main caregivers." In addition, ██████ stressed that good communication between ██████'s teachers and her parents was imperative, as ██████ may try to play the two against each other. (Ex. D-21.59)

43, 646, 777, 811-13, 830; Exs. D-22.7, D-26)

23.

Notwithstanding her academic progress during this time period, [REDACTED] continued to exhibit extreme and violent behaviors at home, and to a much lesser extent, at school.⁹ In addition, she used many aspects of daily living, including hygiene, homework, and food, to manipulate her parents and attempt to gain control. Even simple self-help tasks, such as taking a shower, wearing clean clothes, and using feminine protection products, became a battleground for [REDACTED]. She also continued the self-injurious behavior of digging into her skin until it bled and she frequently destroyed property around the home. (Tr. 88-95, 104-09, 375-76, 813-18)

24.

In August 2005, after receiving extended school year services in the summer, [REDACTED] began her eighth grade year at Booth Middle School in Ms. Gunter's class. The IEP Team met in September to consider other placements for [REDACTED], particularly ones where she would be grouped with higher-functioning peers. Around this time, her behavior in the classroom was deteriorating and her mood was depressed. The IEP Team agreed to postpone the placement decision and reconvene after [REDACTED]'s parents visited the other possible placements. However, before the Team could meet again, [REDACTED] was hospitalized at Ridgeview Institute ("Ridgeview"), a private psychiatric hospital, from December 14, 2005 through January 13, 2006, for suicidal ideations, manic behavior at home, and

⁹ Although Ms. Gunter testified about a few instances of physical aggression over the year and a half that [REDACTED] was in her classroom, [REDACTED] was the least aggressive student in Ms. Gunter's class and could be easily redirected. (Tr. 369-72, 409)

running away.¹⁰ While at Ridgeview, [REDACTED] was stabilized through medication, but she continued to exhibit violent and out-of-control behavior at home after her discharge. (Tr. 136-38; Ex. D-23.23; Ex. D-23.54; Ex. D-24.4; Ex. P-3)

25.

Once discharged from Ridgeview, [REDACTED] returned to Ms. Gunter's class at Booth Middle School. However, following two lengthy meetings of the IEP Team on January 20, 2006 and February 6, 2006,¹¹ [REDACTED] was transferred to Rising Starr Middle School, where she was placed in the self-contained special education classroom of Kim Corbin. This classroom had only five students and the teacher and para-professional provided individualized instruction designed to help the students catch up academically. This class also provided community-based instruction, which [REDACTED]'s parents believed was essential for [REDACTED]. The IEP Team, including [REDACTED]'s parents, agreed that although [REDACTED] had made academic progress while at Booth Middle, she would benefit from another year of middle school in the small, self-contained setting offered at Rising Starr. The IEP Team agreed that [REDACTED] would finish out the school year at Rising Starr Middle and then repeat eighth grade in Ms. Corbin's class. (Tr. 147, 248-50, 723, 744-45; Ex. D-23.22 to -23.40)

¹⁰ The records from Ridgeview indicate that [REDACTED] had been diagnosed with bi-polar disorder in the past and that she was admitted to Ridgeview for increasing depression and violent behavior. Ridgeview's final diagnoses of [REDACTED] were reactive attachment disorder, bipolar disorder, developmental delays, ADHD, and anxiety disorder. The records indicated that [REDACTED]'s parents wished to explore long-term residential care and that Ridgeview supported that placement for [REDACTED]. (Ex. P-3)

¹¹ Around this time, the School District requested and [REDACTED]'s parents agreed to a re-evaluation of [REDACTED]. However, her parents subsequently withdrew their consent. Later, in early 2007, the School District sought consent for a neuropsychological evaluation and the parents again refused. (Tr. 681-83; Exs. D-20.2, 23.32, 24.47, 24.52)

3. Rising Starr Middle School

26.

§§§ transitioned well to Ms. Corbin's class for the remainder of the school year. She did not display violent or defiant behavior and made progress on her IEP goals and objectives. In addition, §§§ made academic progress as reflected in her test scores and teacher reports. At home, however, homework and other issues continued to present considerable struggles for the family¹² and §§§ continued to exhibit dangerous and defiant behaviors while in the home environment. For example, in May 2006, §§§ ran away from home in the evening, wearing only underwear and a bra, and was found lying under a bush several hours later by the police. (Tr. 311, 330; 662-67; 748; Ex. D-15; D-23.63, D-23.72, D-23.77, D-23.82; Ex. D-26.2)

27.

At the hearing, §§§§§ testified that she would have been satisfied with Rising Starr Middle as §§§'s placement for the 2006-07 school year if Ms. Corbin had remained §§§'s teacher as planned. However, Ms. Corbin resigned from Rising Starr just days before the beginning of the new school year and it was three weeks before the

¹² These struggles are reflected in a collection of emails between the parents and §§§'s teachers at both Booth Middle and Rising Starr Middle. Exs. D-13 to D-16. It is evident from this correspondence that §§§'s parents were growing more frustrated during §§§'s turbulent middle school years. Although it is possible to read some of this correspondence and regard it as sarcastic and callous, it is clear that §§§'s parents were trying to do what they believed was best for §§§ under the circumstances. Further, the Court is aware of the enormous emotional toll on parents raising a child with RAD. As Karen Buckwalter, the Director of Treatment Services at Chaddock, explained, after years of trying to parent a severely traumatized child – one who does not reciprocate love but rather rejects it and often attacks in response – caregivers may experience what amounts to “secondary traumatization. It’s often like they themselves have been living in a war zone.... And under those kinds of circumstances, it becomes difficult to be able to have the emotional energy and wherewithal to provide nurturing to the child.” (Tr. 532-33)

School District found a replacement for her. (Tr. 148-50, 305, 641, 646-49, 733, 951)

28.

Elizabeth Vinson replaced Ms. Corbin in [REDACTED]'s self-contained classroom at Rising Starr. During the few months that Ms. Vinson taught [REDACTED],¹³ she observed [REDACTED] make progress in both reading and math. [REDACTED] also functioned well in a collaborative, less restrictive eighth grade science class and presented no behavior problems in school during this time. (Tr. 296, 951-53; Ex. D-16)

29.

At home, however, [REDACTED]'s behaviors were deteriorating. By October 2006, due to explosive aggression at home, continued self-injury, running away, and manic behaviors, Dr. [REDACTED] referred [REDACTED] for admission at Inner Harbour, a long-term residential treatment facility in Douglasville, Georgia. [REDACTED] remained at Inner Harbor for six weeks and responded well to the highly structured residential setting.¹⁴ She was not aggressive and did well at school and with her peers, despite being weaned off of most of her medications. At the end of [REDACTED]'s stay at Inner Harbour, Dr. [REDACTED] and [REDACTED]'s parents observed what they believed might be a possible "breakthrough." [REDACTED]'s behavior at home dramatically improved and she suddenly appeared receptive to bonding with her mother. Dr. [REDACTED] regarded this as a unique opportunity for [REDACTED] to learn to attach to her parents and thus recommended that [REDACTED] remain in the home to work on attachment

¹³ In October 2006, [REDACTED] was placed in the first of three different private residential facilities and she never returned to the School District.

¹⁴ Initially, it appears that her parents intended Inner Harbour to be a long-term placement for [REDACTED]. However, they did not "see eye to eye" with her therapist and they decided it was not the right form of treatment for [REDACTED] at that time. (Ex. D-12, pp. 10-11)

issues rather than return to Rising Starr Middle.¹⁵ (Tr. 156-58, 250, 316-19, 453-54, 473-74; Exs. P-4, D-9.1, D-24.26 to 24.27)

30.

In January 2007, the IEP Team met with [REDACTED]'s parents, who requested Hospital/Homebound instruction for [REDACTED]. Her parents specifically requested a homebound instructor whom [REDACTED] knew well, such as Mandy Gunter from Booth Middle. The School District requested confirmation that Hospital/Homebound instruction was medically necessary and on January 19, 2007, Dr. [REDACTED] attended an IEP meeting to explain her recommendation for home-based instruction. Dr. [REDACTED] opined that [REDACTED]'s negative behaviors in the home would reemerge if she returned to school too quickly and that it was important for [REDACTED] to stay at home with her mother and work on attachment issues. Based on this recommendation, the IEP Team agreed to change [REDACTED]'s placement to home-based instruction for three to six hours per week. (Tr. 160-62, 321; Ex. 24.47 - 24.64)

31.

Contrary to [REDACTED]'s parents' wishes, however, the School District did not assign Ms. Gunter as the home-based instructor. Instead, they assigned a teacher unknown to [REDACTED]. Her parents filed a due process complaint under IDEA to contest this action and contracted privately with Ms. Gunter to provide academic instruction in their home while the complaint was pending. A short time later, the parents and the School District agreed

¹⁵ This assessment appears somewhat unrealistic given Dr. [REDACTED]' testimony regarding the underlying neurological etiology of reactive attachment disorder. However, due to the complexity of the disorder, it was not unreasonable for [REDACTED]'s parents to hope that [REDACTED]'s sudden improved behavior was an actual breakthrough and not just a honeymoon period following her extended stay at Inner Harbour.

that Sheila Autry, [REDACTED]'s former fourth grade teacher, would provide home-based instruction and [REDACTED]'s parents subsequently withdrew their first request for a due process hearing.¹⁶ (Tr. 164-67, 322-23)

32.

Unfortunately, [REDACTED]'s improved behaviors at home were short-lived and her aggressive behaviors returned in late February or early March. In addition to the old violent behaviors, [REDACTED] began exhibiting new psychotic symptoms, such as hearing voices and delusional thinking, and despite an increase in her psychotropic medications, [REDACTED] tried to jump out of a second-story window, attempted to cause a car she was riding in to crash, and threatened her mother. [REDACTED] was re-admitted to Ridgeview in April 2007. (Tr. 169-74, 251, 311, 327; Ex. P-6)

33.

During this time, the School District attempted to schedule a new IEP meeting with [REDACTED]'s parents because her current IEP was expiring on March 27, 2007. However, [REDACTED]'s parents, through their attorney, advised the School District that "until [REDACTED]'s condition improves, we believe that it is impractical to make any recommendations or adjustments to her current Plan." Nevertheless, the School District scheduled an IEP Team meeting for March 26, 2007, the day before [REDACTED]'s IEP was set to expire, and provided prior written notice of the meeting to [REDACTED]'s attorney. (Tr. 688; Exs. D-24.80, D-20.1 to -20.4)

¹⁶ In March 2007, [REDACTED] left a telephone message for Ms. Autry, stating that she could not introduce her into [REDACTED]'s life at that moment because things were too "edgy" and they were trying to stabilize the home environment. [REDACTED]'s parents continued to pay for private instruction by Ms. Gunter, but Ms. Autry never began home-based visits with [REDACTED]. (Tr. 323-25; D-18.12)

The IEP Team met on March 26, 2007, but [REDACTED]'s parents did not attend. In addition to Ms. Autry and Ms. Vinson, a number of other educators from the School District were present, including a representative from [REDACTED]'s home high school, a representative from the School District's psycho-educational program,¹⁷ and other special education personnel who had received specific training on RAD. The School District members believed that [REDACTED] was capable of making educational progress in the school setting and they were concerned that she was missing out on academic instruction. After substantial discussion, the IEP Team recommended that [REDACTED] transition back to her former Rising Starr Middle School placement for the remainder of the school year and then begin ninth grade in her home high school in small, special education resource classes, accompanied by a para-professional. (Tr. 688-703; Ex. D-24.82 to -24.99)

The School District mailed a copy of the new IEP to [REDACTED]'s parents the following day. However, due in large part because of the escalating problems at home with [REDACTED], her parents did not respond, either directly or through their attorney. A short time later, on April 16, 2007, [REDACTED] was re-admitted to Ridgeview, where she remained until April 30, 2007. Upon discharge, Ridgeview recommended a "long-term residential program to meet [REDACTED]'s educational needs and to address behavioral issues." [REDACTED] came home for a few weeks, until May 17, 2007, when her parents placed her at the Aspen Institute for Behavioral Assessment in Syracuse, Utah. (Tr. 176; Exs. D-24.81, P-6, P-7, P-8)

¹⁷ The School District's G-NETS ("Georgia Network for Educational and Therapeutic Support") psychoeducational program provides an intense therapeutic day program and a representative was present at [REDACTED]'s IEP meeting due to the reports of anxiety and emotional disturbances in the home. (Tr. 691-92)

C. Private Placements

1. Aspen

36.

0001, now fifteen years old, remained at the Aspen Institute (“Aspen”) for almost two months, during which time she underwent a comprehensive, multi-disciplinary evaluation. 0001’s parents chose Aspen’s residential assessment program because they believed that 0001 needed to be evaluated over a longer period of time in order to factor out 0001’s tendency to “honeymoon” with unfamiliar evaluators. The neuropsychological evaluation from Aspen placed 0001 in the borderline to below average intellectual and academic abilities range. In addition, based on past accounts of her behaviors, the evaluation stated that 0001 appeared to be displaying characteristics of an emerging bipolar disorder and may also have displayed symptoms of a dissociative identity disorder. 0001’s diagnoses were reactive attachment disorder, bipolar disorder, anxiety disorder, expressive language disorder and (rule out) dissociative identity disorder. (Tr. 176; Ex. P-7)

37.

Christopher Horton, the Director of Exceptional Children’s Service for the School District, noted that the neuropsychological evaluation conducted at Aspen appeared to be somewhat cursory despite the length of 0001’s stay there. The court agrees. The evaluating psychologist appears to have interviewed and tested 0001 on only one occasion, on June 4, 2007. Much of her evaluation appears to be a restatement and review of 0001’s history from a 55-page narrative prepared by 0001’s parents. Moreover, the neuropsychological evaluation did not include any specific speech and language

testing often found in such evaluations. The adaptive behavior scales were based solely on the parent rating form and did not include any ratings from [REDACTED]'s prior teachers. In fact, it does not appear that Aspen had any education records from the School District, but relied instead on information from the parent narrative, some of which was not completely accurate.¹⁸ Finally, the DSM-IV diagnoses, with the exception of the Axis I diagnosis to rule-out dissociative identity disorder, were very similar to those found in the discharge summary from Ridgeview in January 2006. Accordingly, the court finds that, while not necessarily inaccurate, the Aspen Institute's neuropsychological evaluation did not add considerable value or insight to [REDACTED]'s current level of functioning. (Tr. 709-11; Exs. P-4, P-7)

38.

With respect to specific academic recommendations, both the neuropsychological evaluation and the broader Multidisciplinary Report of Function from Aspen concluded that [REDACTED] will continue to require special education services in a small classroom, with individualized instruction and similarly-functioning peers. Her teachers will also need to be skilled in behavior management techniques, well-schooled in the adolescent manifestation of RAD, and willing to coordinate with behavior strategies that are used in the home. Aspen also recommended continuing speech and language services and making accommodations in testing and assignments due to [REDACTED]'s attention deficit issues. (Exs. P-7 at 12-13, P-8 at 35)

¹⁸ For example, the Aspen records describe [REDACTED]'s recent educational history as [REDACTED] having "changed to a new school situation and a new bus as well as a new teacher in February of 2007, and this is associated with an escalation in her aggressions and difficulties at home, according to the parents' report." This account is not accurate based on the evidence in the record in this case. (Ex. P-8 at 17)

39.

The court finds, based on the record, that prior to her removal, the School District offered [REDACTED] substantially all of the academic services recommended by Aspen. Moreover, it is clear that Aspen's academic recommendations could have been implemented by the School District if [REDACTED] had returned to the School District. Aspen's recommendation that [REDACTED] be placed in a highly structured, therapeutic residential placement was not based on her academic needs, but rather on the concern that "if she were to return home too soon, she [would be] at high risk for regression because of her emotional needs and dependence on others." (Tr. 711-13; Ex. P-8, p. 33 of 41)

40.

The total cost of [REDACTED]'s residential treatment and evaluations at Aspen was \$25,590.00. (Ex. P-9)

2. Chaddock

41.

On July 2, 2007, [REDACTED] was enrolled by her parents at Chaddock, a private residential program located in Quincy, Illinois. [REDACTED]'s attorney notified the School District of this placement on July 12, 2007, ten days after she was admitted to the program. (Tr. 700-01; Exs. P-12, D-20.9)

42.

[REDACTED] entered the Integrated Attachment Therapy ("IAT") program at Chaddock, which is a residential program for children with complex development trauma disorders, such as RAD. It is a "very specialized niche program," intended to provide a "holistic" approach to treating children with severe attachment problems. The children live

together in small cottages and they attend small classes at Chaddock's school, where all the teachers are certified and have advanced knowledge regarding trauma and attachment issues. All the components of the IAT program – therapeutic, residential and educational – are coordinated by a team of Chaddock personnel who meet weekly to discuss the child's progress. (Tr. 494-500, 566)

43.

000 is now seventeen years old and has been at Chaddock for over a year and a half. She has not been home since May 2007. Although 000 started in the IAT program, she transitioned to Chaddock's group home program in August 2008. At that time, the goal of 000's program was changed from return home, which no longer appeared realistic, to independent living. 000 has adjusted fairly well to life at Chaddock. Her behaviors have stabilized, she has been weaned off of many of her medications, and she is on track, with accommodations, to earn an Illinois general high school diploma. She continues to work on her initial treatment goals, which include relationships, self-esteem, transitions, family and behavior concerns, and psychiatric issues.¹⁹ (Tr. 334, 340, 501, 509, 516-17, 520, 560; Exs. P-14, P-18, P-20, P-22)

¹⁹ 000 has not been "cured" of RAD and continues to demonstrate manipulative behaviors, such as lying and stealing, problems with peers, poor boundaries, lack of empathy, and numerous other issues relating to her attachment disorder and her lower intellectual functioning. Chaddock's quarterly report for May 2008 concluded that 000 will probably never function above the age of ten. In addition, although she has made some academic progress since enrolling in Chaddock, in some areas, such as reading fluency, applied problems and math fluency, either she has made no appreciable progress or her scores have actually declined. Nevertheless, in terms of the severe aggression and self-harming behaviors she was exhibiting in the home environment, she has made great strides while at Chaddock. (Ex. P-18, P-20)

The cost of Chaddock's IAT program was over \$10,000 per month and the group home program is approximately \$7,000 per month. The educational services provided at Chaddock were an additional \$1,000 to \$3,000 per month, depending on how many days ~~CCC~~ attended school. As of December 2008, ~~CCC~~'s parents had incurred a total of \$222,343.87 – \$172,532 for the residential treatment component and \$49,811.20 for educational component – in tuition and expenses at Chaddock. (Ex. P-28)

III. CONCLUSIONS OF LAW

A. General Law

1.

The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 *et seq.*; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 *et seq.*; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. (“Ga. DOE Rules”), Ch. 16-4-7.

2.

Plaintiff bears the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. DOE Rule 160-4-7-.12(3)(l); OSAH Rule 616-1-2-.07. The standard of proof on all issues is a preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

3.

Under IDEA, students with disabilities have the right to a free appropriate public education (“FAPE”). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. DOE Rule 160-4-7-.01(1)(a). “The purpose of the IDEA generally is ‘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 further education, employment and independent living” C.P. v. Leon County Sch. Bd., 483 F.3d 1151 (11th Cir. 2007), *quoting* 20 U.S.C. § 1400(d)(1)(A).

4.

The United States Supreme Court developed a two-part inquiry to determine whether a school district has provided FAPE: “First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 (1982). “This standard, . . . has become know as the Rowley ‘basic floor of opportunity’ standard.” C.P., 483 F.3d at 1153, *citing* JSK v. Hendry County Sch. Bd., 941 F.2d 1563, 1572-73 (11th Cir. 1991). *See also* Draper v. Altanta Indep. Sch. Sys., 518 F.3d 1275, 1280 (2008).

5.

Under Rowley, a disabled student “is only entitled to *some* educational benefit; the benefit need not be maximized to be adequate.” Devine v. Indian River County Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001)(emphasis added). *See* Rowley, 458 U.S. at 197 n.21. Moreover, the Eleventh Circuit has held that an “appropriate education” under IDEA “means ‘making measurable and adequate gains *in the classroom.*’” L.G. ex. rel. B.G. v. Sch. Bd. of Palm Beach County, 255 Fed. Appx. 360 (11th Cir. 2007), *quoting* JSK, 941 F.2d at 1573 (emphasis added). The Eleventh Circuit “has specifically held that generalization across settings is not required to show an educational benefit. ‘If

“meaningful gains” across settings means more than making measurable and adequate gains in the classroom, they are not required by IDEA or *Rowley*.” Devine, 249 F.3d at 1293, quoting JSK, 941 F.2d at 1573. See also M.W. v. Clarke County Sch. Dist., 2008 U.S. Dist. LEXIS 75278 (M.D. Ga. 2008) (parent training and home behavioral plan only required as “related services” under IDEA to the extent necessary to allow the child to progress *in the classroom*)(emphasis in original).

B. Reimbursement for Private Placement

6.

The Supreme Court established a two-part test for plaintiffs seeking reimbursement for the costs of a unilateral private placement under IDEA. L.G. ex. rel. B.G., 255 Fed. Appx. at 365-66. “First, the parents seeking reimbursement must show by a preponderance of the evidence that the school district has failed to offer a free appropriate public education to the student.” Id., citing Schaffer v. Weast, 546 U.S. at 62; Sch. Comm. Of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 370 (1985). If the parents prove that a school district denied FAPE, they must then prove that their alternative private school placement was proper under IDEA. Id.

7.

In cases where the alternative private placement is a residential facility, Eleventh Circuit courts have held that a plaintiff must prove that residential treatment is necessary to afford the student the basic floor of educational benefit. See generally, C.P. v. Leon County Sch. Bd., 2005 U.S. Dist. LEXIS 46271 (N.D. Fla. 2005) (reviewing Eleventh Circuit case law on reimbursement for inpatient treatment under IDEA). For example, in *Devine*, the Eleventh Circuit affirmed the denial of parental reimbursement for a severely

impaired autistic student, where the child was placed in a residential facility because of serious behavior problems in the home. 249 F.3d at 1292. See L.G. ex. rel. B.G., 255 Fed. Appx. at 366. The evidence in *Devine* showed that the student was making adequate educational progress in the day school selected by the school district, and the Eleventh Circuit held that IDEA did not require that “a child’s progress in a school setting [be] carried over to the home setting.” *Id.*

8.

Similarly, in *L.G. ex. rel. B.G.*, a severely emotionally disturbed student, adopted at birth, had been through many inpatient psychiatric institutions by the age of eight. 255 Fed. Appx. at 362. Although the student was making educational progress in the therapeutic day school where he was placed by the school district, his parents placed him in a private residential facility after a violent episode in the home. *Id.* The Eleventh Circuit held that, “because all of the plaintiffs’ evidence relates to B.G.’s behavior at home, and none of it shows that he was not making progress inside the classroom, the plaintiffs failed to raise a genuine issue of material fact” about whether the school district provided FAPE. *Id.* at 367. Accord Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143 (10th Cir. 2008).²⁰

²⁰ The Tenth Circuit held that the parents of an autistic child who exhibited severe behavior problems in the home, but who had made progress in his public school environment, had failed to prove a denial of FAPE and were not entitled to reimbursement for private residential placement. *Id.* The Tenth Circuit noted that its reading of the scope of IDEA was in keeping with the Eleventh Circuit’s holdings in *Devine*, *JSK*, and *L.G. ex. rel. B.G.* and the First Circuit’s holding in *Gonzales*. *Id.* at 1152. See Gonzales v. Puerto Rico Dep’t of Educ., 254 F.3d 350 (1st Cir. 2001) (IDEA was not designed “to remedy a poor home setting or to make up for some other deficit not covered by the Act” and private residential program was not required to provide FAPE for autistic student who had made modest academic progress at school but who had tantrums at home that made him a potential safety threat). “Though IDEA is certainly

9.

Although the court sympathizes with [REDACTED]'s parents and appreciates the enormous sacrifices that [REDACTED]'s parents have made and the heavy burdens that they have borne on behalf of their daughter, the court is obligated to apply the law as Congress has written it and the courts in this circuit have interpreted it. *Id.* at 1155. In so doing, the court concludes that Plaintiff did not prove that the School District failed to offer [REDACTED] a free appropriate public education. The evidence in the record showed that while in the school setting, [REDACTED] made adequate gains in the classroom, both in meeting her IEP goals and in making measurable educational progress. Moreover, the March 2007 IEP, which offered placement back in the self-contained classroom at Rising Starr Middle, was reasonably calculated to enable [REDACTED] to receive some educational benefit.

10.

[REDACTED]'s placement at Chaddock in 2007 was precipitated by alarming and dangerous behaviors in the home. With the exception of a few, easily-controlled aggressive episodes in Ms. Gunter's classroom in 2005, [REDACTED] did not exhibit violent or aggressive behavior in the school setting. Rather, the evidence showed that while at school, [REDACTED]'s behavior did not impede her ability to learn and she was able to make academic progress. Although the court does not dispute that Chaddock offers an impressive program for children with severe attachment issues, the evidence does not show that a private residential placement is necessary for [REDACTED] to receive educational benefit. In fact, there is no evidence that the educational services provided at Chaddock's

evidence that Congress intends that States, acting through local school districts, provide assistance to disabled students and their families, the assistance that IDEA mandates is limited in scope." *Thompson R-2J Sch. Dist.*, 540 F.3d at 1155.

school could not be provided to [REDACTED] by the School District. Rather, the evidence shows that [REDACTED]'s academic progress at Chaddock has been similar to, if not more modest than, her academic progress while a student in the School District.

11.

The court concludes that the School District offered FAPE to [REDACTED]. Accordingly, it is not necessary to decide whether the placement at Chaddock was proper under IDEA or whether [REDACTED]'s parents' failure to comply with the statutory notice provisions prior to removing [REDACTED] from the School District should prevent or reduce reimbursement. See 20 U.S.C. § 1412(a)(10)(C)(iii)(I). See generally Lewis M. Wasserman, *Reimbursement to Parents of Tuition and Other Costs Under the Individuals with Disabilities Education Improvement Act of 2004*, 21 St. John's J.L. Comm. 171, 188 n.93 (2006) ("Where the tribunal determines that a FAPE was offered the parents' case is effectively over and analysis of the merits of the unilateral placement and the equities will not ordinarily be required...").

C. Reimbursement for Private Evaluation

12.

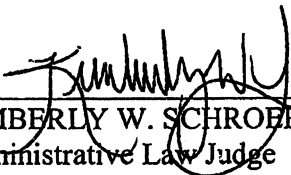
[REDACTED]'s parents are not entitled to reimbursement for the residential assessment from Aspen. First, to the extent that Aspen is considered a private residential placement, reimbursement is not warranted because Plaintiff failed to prove that the School District denied [REDACTED] a FAPE. Second, if the expenses from Aspen are considered solely as relating to an evaluation, there is no evidence in the record that [REDACTED]'s parents ever requested an independent evaluation ("IEE") pursuant to 34 C.F.R. § 300.502(a). Moreover, [REDACTED] would not be entitled to an IEE even if one had been requested. Federal

regulations provide that “a parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency...” 34 C.F.R. § 300.502(b)(1). As [REDACTED]’s parents never consented to a reevaluation, despite two different requests by the School District, there is no evaluation by the School District with which [REDACTED]’s parents could disagree. Finally, the evidence in the record shows that Aspen’s evaluation did not provide any significant, new information regarding [REDACTED]’s current functioning. Accordingly, the School District is not obligated under IDEA to reimburse [REDACTED]’s parents for the cost of the Aspen evaluation.

IV. DECISION

Defendant Fayette County School District offered Plaintiff [REDACTED] a free appropriate public education under IDEA. Accordingly, Petitioner is not entitled to reimbursement for an alternative private placement or an independent evaluation. Petitioner’s request for relief is **DENIED**.

SO ORDERED, this 20th day of March, 2009.


KIMBERLY W. SCHROER
Administrative Law Judge