

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



000,

Plaintiff,

: 09-119796

: Docket No.:  
: OSAH-DOE-SE-0910243-67-Baxter

v.

**RECEIVED**

GWINNETT COUNTY SCHOOL  
DISTRICT,

Defendant.

MAR 12 2009

LEG SERVICES  
GA DEPT OF EDUCATION

FINAL DECISION

Plaintiff, 000, by and through his parents, filed a due process request pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), 20 U.S.C. §§ 1400 to 1482, against Defendant Gwinnett County School District (“School District”) alleging a denial of a free appropriate public education (“FAPE”). Specifically, 000 alleges he was denied a FAPE because (a) the School District failed to comply with a 2007 Mediated Agreement; (b) the School District failed to teach adequate test-taking skills; and (c) he was not provided an equal opportunity to participate on the Varsity football team. 000’s parents were self-represented. Attorney Victoria Sweeny represented the School District. For the reasons stated below, 000’s request for relief is DENIED.

**I. FINDINGS OF FACT**

1.

000 is a senior at 000000000000 High School in Gwinnett County, Georgia (the “School”). He is diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”). For the 2008-2009 school year, 000 met the eligibility requirements for Autism Spectrum Disorder, Other Health Impairment, and Speech/Language Impairment. For the 2007-2008 school year, 000 met the eligibility criteria for Other Health Impairment. (T-78; Exhibit (“Ex.”) D-2, Ex. D-41.)

**A. Mediated Agreement**

2.

At the end of his tenth grade year, 000 filed a due process hearing request (Docket Number OSAH-DOE-SE-0732881-67-Howells). The parties reached a settlement prior to the hearing and entered

into a Mediated Agreement. Dated August 10, 2007, the Mediated Agreement set forth several tasks to be implemented by the School District during the 2007-2008 school year (●●●'s eleventh grade). Those responsibilities included that:<sup>1</sup>

1. The District would complete a comprehensive evaluation of ●●●.

2. The District would perform a comprehensive speech evaluation as soon as possible once school reconvened.

3. ●●● would remain on the college seal diploma track ("college prep") with conditions and accommodations.

4. For math classes, ●●● would receive the opportunity to have peer tutoring and tutoring from his teacher.

5. Accommodations from ●●●'s Individual Education Plan ("IEP") would be incorporated into the classroom, and reviewed with ●●●'s teachers by his case manager, Steve Deraney. In addition, the High School Coordinator for Special Education ("High School Coordinator") would consult with ●●●'s teachers "in developing appropriate strategies."

6. ●●● would receive a new caseworker and have a discipline charge expunged.

7. Teachers would provide his parents with weekly updates by e-mail.

8. ●●● would have certain services provided during a one block class, which included (a) individual explanation of materials, (b) completion of homework, (c) test review, (d) "coordination of one on one support by a content-certified teacher, as needed."

9. Interventions would be implemented at the beginning of each term by a special education certified teacher whose responsibility would be to evaluate the "effectiveness and implementation of interventions, recognize need for intervention for that particular class." The High School Coordinator would also evaluate the effectiveness of the IEP on an ongoing basis.

10. The District would reconsider reimbursement of \$3,400 for a 2007 summer program once his parents provided documentation of the program substance.

11. ●●● would be on a check-list system. His Geometry grade would be changed to audit if certain conditions were met.

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<sup>1</sup> Because of duplicative numbering in the original Mediated Agreement, the Court has assigned its own numbering to the conditions in the Mediated Agreement.

(Ex. P-43 to P-50.)

3.

The School District completed the comprehensive evaluation and speech evaluation required by Conditions One and Two. (T-33.)

4.

In compliance with Condition Three, [REDACTED] is currently on track to graduate with a college prep diploma and he has passed the required Georgia High School Graduation tests. (T-34, T-88, T-89.)

5.

Pursuant to Condition Four, [REDACTED] received an opportunity for tutoring from his math teacher, Mathew Oberstein, several times each week. Even though [REDACTED] scheduled several tutoring sessions, he only attended thirty percent of the scheduled sessions. No evidence was provided regarding peer tutoring. (T-332, T-335.)

6.

Pursuant to Condition Five, Kathy Davis, a special education certified teacher, worked with Steve Deraney, the School's Department Chair for Special Education and [REDACTED]'s case manager, to provide [REDACTED]'s teachers with necessary information regarding [REDACTED]'s accommodations and confirm that such accommodations and interventions were being followed. Each semester Davis sent [REDACTED]'s teachers a one-page summary explaining [REDACTED]'s IEP requirements. Mathew Oberstein, [REDACTED]'s junior year math teacher, received the information from Davis and Deraney prior to the semester and implemented the accommodations in his class. Deraney followed up weekly with [REDACTED]'s teachers to confirm [REDACTED]'s progress and evaluate the effectiveness of the accommodations and interventions. (T-250, T-266, T-271, T-275, T-328-329, T-352, T-356; Ex. D-189.)

7.

Beginning in the eleventh grade, [REDACTED] received a new caseworker, Deraney, as required by Condition Six. Further, the School District removed a discipline charge and expunged [REDACTED]'s discipline record. (T-104-105, T-354, T-368; Ex. D-136 to D-137.)

8.

Most of [REDACTED]'s teachers provided weekly to bi-weekly reports via email to [REDACTED]'s parents as required by Condition Seven. (T-48-49, T-334.)

9.

Per Condition Eight, [REDACTED] attended the one block class, Affective Skills, with teacher Kathy Davis in both eleventh and twelfth grade. In that class, [REDACTED] received individual explanation of work assignments, completed homework and class work, and received help reviewing upcoming tests and quizzes. Given [REDACTED]'s difficulties in math, Davis specifically worked with [REDACTED]'s math teachers to confirm that he was completing his math homework. If [REDACTED] did not understand the homework, [REDACTED] had the opportunity for individual tutoring with his teachers. (T-261, T-265, T-375.)

10.

In compliance with Condition Nine, Davis implemented the required interventions at the beginning of each term in his Affective Skills class. Davis also worked with [REDACTED]'s teachers to implement applicable interventions in their classes. Some of these interventions included teaching him test-taking strategies and helping him with work completion. Davis also worked on organization, communication, and socialization. These interventions were considered successful by Davis and Deraney because [REDACTED] received passing grades in his classes and on the state standardized tests. In addition, [REDACTED] improved his verbal skills as well as his ability to complete his work, a significant problem prior to the interventions. As part of their compliance with Conditions Five and Nine, Davis and Deraney provided Dr. Vicki Husby, the High School Coordinator, feedback regarding the effectiveness of [REDACTED]'s interventions. During Husby's maternity leave in the winter of 2008, Deraney spoke with Husby's replacement, Dr. Gary Glenn. For the 2008-2009 school year, Deraney communicated monthly with the new High School Coordinator for Special Education, Jara Parea, regarding [REDACTED]'s progress. To Davis and Deraney, the 2007-2008 and 2008-2009 IEPs were appropriate. (T-190, T-258, T-261, T-267, T-285, T-318, T-320, T-358 to T-361, T-365 to T-367.)

11.

As required by Condition Ten, [REDACTED]'s parents submitted additional documentation regarding the

camp that [REDACTED] had attended during the summer of 2007 so that the School District could reconsider its prior denial to reimburse [REDACTED]'s expenses. The School District reviewed the materials and again declined to reimburse [REDACTED]'s parents for the costs. The District provided several reasons for declining the reimbursement, including that while it believed the camp to be helpful to [REDACTED], the camp "was not necessary for him to have a free appropriate public education in [the] school district." (Ex. P-55.)

12.

In compliance with Condition Eleven, [REDACTED]'s geometry grade was changed to an audit. Davis also implemented a check-list system with the help of Plaintiffs' parents and Husby. This check-list system was a specially designed self-monitoring system for [REDACTED] to confirm that he understood his assignments and had the necessary materials to complete assignments. The system also tracked when [REDACTED] completed assignments and when he turned them in. [REDACTED]'s teachers and parents signed off daily on the tracking sheets. (T-95, T-269, T-272; Ex. D-134 to D-135.)

**B. Test-Taking Skills**

13.

In February 2008, [REDACTED]'s father met with Steve Deraney, Margaret Crook, and Kathy Davis regarding [REDACTED]'s test-taking abilities. [REDACTED]'s parents were concerned at that time and continue to believe that the School has not adequately taught [REDACTED] test-taking skills. Specifically, [REDACTED]'s father was concerned that [REDACTED] was ill-prepared to take tests outside of school. As proof of this lack of preparation, his parents point to [REDACTED]'s failure to pass his driving test on several occasions. The driving test, however, is independent from school activities and [REDACTED] did not elect to take driving education at the school. (T-144 to T-146, T-362; Ex. D-62.)

14.

In addition to tests outside of school, [REDACTED]'s parents believe that [REDACTED] knows the information from a class, but fails to demonstrate that knowledge in his test grades. [REDACTED]'s grade reports indicate that [REDACTED] does very well in some classes, and struggles in areas such as math. His Fall 2008 grade point average ("GPA") was a 2.9 and he is ranked 453 out of 750 students. [REDACTED]'s parents believe his GPA does not accurately represent his abilities because of a failure by the School District to teach

adequate test-taking skills. (T-89, T-99 to T-102, T-118, T-148, T-152.)

15.

The IEP committee was aware of Plaintiff's test-taking issues, though test-taking skills are not specifically a part of the 2007-2008 or 2008-2009 IEPs. Instead, the IEPs included attendance in Davis's Affective Skills case. In that class, Davis implemented several strategies to improve Plaintiff's test-taking abilities. Beginning in tenth grade, Davis taught [REDACTED] the PIRATES test-taking method for multiple choice tests and continued to rely on that method with improvements through [REDACTED]'s senior year. [REDACTED] continues to have test-taking issues, but Davis opined that the strategies implemented by the School has helped [REDACTED] and improved his abilities. (T-253-255, T-260, T-307, T-318 to T-321.)

16.

[REDACTED] has passed all of the Georgia High School Graduation tests and Gwinnett County's Gateway tests. In addition, the School District's interventions and accommodations helped [REDACTED] manage the anxiety he once faced before tests. Now, instead of blowing up or withdrawing into himself because of stress, [REDACTED] is better able to manage stressful situations such as tests. Even [REDACTED]'s mother noticed the improvements in [REDACTED]'s test-taking abilities his senior year. (T-88, T-102, T-152, T-320 to T-321.)

### C. Athletic Opportunities

17.

In Spring 2007, [REDACTED] joined the Varsity Football team. He paid the football fees of \$800, which included \$300 worth of clothing. (T-59 to T-60, T-69.)

18.

Immediately prior to spring practice, [REDACTED] injured his collarbone and could not participate in Spring 2007 football training. Because he had not participated in spring training, [REDACTED] served as a manager for the 2007 season. His parents requested, and received, a reimbursement of a portion of the football fees related to playing football that year. (T-62, T-199, T-229, T-240, T-245.)

19.

For the 2008 team, [REDACTED] again joined the team, and this time, participated in spring football training. [REDACTED] decided not to attend the summer camp offered by the school during the 2008 Summer. [REDACTED] had no football experience prior to joining the team. (T-135, T-136, T-213.)

20.

[REDACTED] High School is a Division AAAAA ("5-A") football team. In 2008, the team played, but lost in the Division's championship game. Playing time for the Varsity team is determined by athletic abilities and a skill ranking based on height, weight, and strength. Out of the 75 members of the team, [REDACTED] was ranked 71st based on skills. Given the strength of the team, joining the team senior year without any prior football experience made it difficult for Head Coach Bill Ballard to provide [REDACTED] with playing time. (T-71 to T-72, T-204, T-205, T-215 to T-216, T-226.)

21.

In addition, Ballard called [REDACTED]'s father to discuss his concerns regarding [REDACTED] playing football. Coach Ballard requested a doctor's letter before allowing [REDACTED] to play football because, as [REDACTED]'s teacher, Ballard had witnessed [REDACTED] "seize up" and put his head down in stressful situations. Such physical characteristics concerned Ballard given the violent nature of football. In a letter to the coach, [REDACTED]'s parents agreed with the Coach's concern that [REDACTED] "may get hurt due to the inattention or 'freeze up' that he occasionally displays." Once Ballard received the doctor's note, Ballard allowed [REDACTED] to join the 2008 team. (T-221, T-225 to T-226; Ex. P-3.)

22.

The only time [REDACTED] played his senior year was during a portion of one play-off game. Other members of the team received no playing time during the 2008 season. No evidence was presented that Plaintiff received any different treatment than other members of the team. (T- 215, T-218.)

## II. CONCLUSIONS OF LAW

1.

Plaintiff bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(1); Ga.

Comp. R. & Regs. r. 616-1-2-.07. The standard of proof on all issues is a preponderance of the evidence.

2.

Under both the IDEA and Georgia law, students with disabilities have the right to a free appropriate public education (“FAPE”). See 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.101; Ga. Comp. R. & Regs. r. 160-4-7-.01(1)(a). The Supreme Court has developed a two-part inquiry to determine whether the 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. v. Rowley, 458 U.S. 176, 206-07 (1982). This standard is generally referred to as the Rowley “basic floor of opportunity” standard. See C.P. v. Leon County Sch. Bd., 483 F.3d 1151, 1153 (11th Cir. 2007).

3.

The IDEA does not require the School District to provide an education that maximizes a child’s potential. Rowley, 458 U.S. at 198. The Act speaks in terms of an “appropriate” education, which the Supreme Court has interpreted as an education that is “sufficient to confer some educational benefit upon the . . . child.” Id. at 200.

4.

☹☹☹ raises three areas in which the School District allegedly denied him a free appropriate public education. First, ☹☹☹ alleges that the School District failed to implement several requirements of a 2007 Mediated Agreement. Second, ☹☹☹ alleges that the School District failed to teach him adequate test-taking skills. Third, ☹☹☹ alleges that the School District failed to provide him an opportunity to truly participate on the Varsity football team because of a mistaken belief that he is autistic. Based on the evidence presented at the hearing, ☹☹☹ has failed to satisfy his burden of demonstrating that the School District denied him FAPE with respect to each of these issues.



**A. Mediated Agreement**

5.

At the hearing, the parties agreed that the School District complied with Conditions One through Four, Condition Six, and Condition Eleven of the Mediated Agreement. [REDACTED] disputes that the School District complied with Condition Five and Conditions Seven through Ten. The evidence demonstrates that, in fact, the District complied with all of the requirements of the Mediated Agreement.<sup>2</sup>

6.

[REDACTED] alleges that there was no High School Coordinator for either Husby's January 2008 maternity leave or for the 2008-2009 school year in violation of Conditions Five and Nine. The evidence demonstrates that the School District always had on staff a High School Coordinator that was aware of and an active participant in evaluating [REDACTED]'s progress under the 2007-2008 and 2008-2009 IEPs. During Husby's leave, Glenn served as acting coordinator and spoke with [REDACTED]'s case manager, Deraney, regarding [REDACTED]'s progress. For the 2008-2009 School Year, Pree is the High School Coordinator for Special Education, and Deraney followed up monthly to discuss [REDACTED]'s progress. Accordingly, the evidence does not support [REDACTED]'s position.

7.

Further, [REDACTED] alleges that his math teacher was unaware of [REDACTED]'s IEP in violation of Condition Five, and yet the evidence contradicts this allegation. Oberstein received information about [REDACTED]'s IEP prior to the semester beginning, understood [REDACTED]'s IEP, and implemented the accommodations.

8.

For Condition Seven, the evidence presented demonstrates that the School District substantially complied with the requirement to provide [REDACTED]'s parents with weekly updates by e-mail. Certain teachers, such as his math teacher, always provided updates while some of [REDACTED]'s teachers did not. For [REDACTED] to prevail, he must show that the School District "failed to implement substantial or

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<sup>2</sup> The parties dispute the term of the Mediated Agreement. The School District argues that the Mediated Agreement applied until the implementation of the 2008-2009 IEP whereas [REDACTED] argues that the terms of the Mediated Agreement apply until he graduates. Because the Court finds that the District complied and continues to comply with the Mediated Agreement, it is unnecessary for the Court to determine the term of the Agreement.

significant provisions of the IEP.” Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000). [REDACTED] failed to demonstrate how these email updates, while helpful, constitute a significant provision of [REDACTED]’s IEP or Mediated Agreement. Thus, the failure of some of [REDACTED]’s teachers to provide weekly updates by email to his parents does not constitute a material failure to implement [REDACTED]’s IEP and Mediated Agreement.

9.

[REDACTED] also alleges that there was no coordination of one-on-one support by a content-certified teacher in violation of Condition Eight. At the hearing, [REDACTED]’s mother interpreted this requirement as meaning a content-certified teacher would be available in [REDACTED]’s Affective Skills class if [REDACTED] needed additional help in a specific subject. Given his struggle with math, [REDACTED] alleges that the Defendant violated this requirement when it did not provide him with tutoring by a math teacher during Affective Skills. In contrast, the School District interpreted this statement as requiring his Affective Skills teacher, Davis, to coordinate additional tutoring opportunities for [REDACTED]. Davis worked with [REDACTED] on his math assignments, prepped [REDACTED] for his math tests, and coordinated with [REDACTED]’s math teachers to provide the required accommodations. [REDACTED]’s math teacher made himself available for tutoring several times a week. From the plain terms of the Agreement, the coordination, not the actual tutoring, was required to occur as part of [REDACTED]’s Affective Skills Class. [REDACTED] failed to demonstrate how the School District failed to meet this requirement.

10.

In addition, [REDACTED] alleges that the School District failed to evaluate the effectiveness of the interventions as required by Condition Nine. Throughout [REDACTED]’s junior and senior year, the School and the School District evaluated the effectiveness of the interventions. Based on [REDACTED] passing classes, and more importantly, passing the Georgia High School Graduation tests, the School District determined that the interventions were effective and believed [REDACTED] was making progress toward graduating. In addition, [REDACTED]’s verbal skills and socialization improved as a result of the District’s interventions. Thus, based on the evidence presented, the interventions were effective.

11.

[REDACTED] claims that the School District failed to comply with Condition Ten of the Mediated

Agreement, which required the District to reconsider reimbursement for [REDACTED]'s summer program. [REDACTED]'s parents provided the additional documentation regarding the program's curriculum as required by the Mediated Agreement, and based on that information as well as other considerations, the School District decided to uphold its decision to deny the reimbursement request. [REDACTED]'s parents argue that the School District did not truly evaluate the program, but the evidence contradicts their position.

**B. Test-Taking Skills**

12.

Next, [REDACTED] contends that his "testing ability deficiency issue has been unaddressed for 5 1/2 years." This contention has no merit.

13.

First, the School District addressed this deficiency even though it was not required to by either the 2007-2008 or the 2008-2009 IEP. Since at least [REDACTED]'s tenth grade year, the School worked daily with [REDACTED] in his Affective Skills class to address his test-taking issues, teaching him test-taking strategies to help him handle test situations better. As evidence of this progress, [REDACTED] has passed all the necessary standardized tests to receive a college prep diploma. The evidence does not support [REDACTED]'s contention that this deficiency has been "unaddressed."

14.

Second, Defendant's efforts met the standard required under IDEA. [REDACTED]'s parents point to [REDACTED]'s failure several times to pass his driving test as evidence that the school's techniques were ineffective. His parents also presented [REDACTED]'s grades, which they argue demonstrate that [REDACTED] scores higher on assignments than tests. Under IDEA, the School District is not required to maximize [REDACTED]'s educational potential or eliminate his test-taking deficiencies, but rather it is required to demonstrate that [REDACTED] is making measurable gains. Here, [REDACTED]'s passing grades in classes and on standardized tests plus his imminent graduation with a college prep diploma all indicate that [REDACTED] has made measurable gains. Rowley, 458 U.S. at 204 (The IEP "should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."); Devine v. Indian River County Sch. Bd., 249 F.3d 1289 (11th Cir. 2001) (holding student only entitled to educational benefit, which

“need not be maximized to be adequate”). Accordingly, Plaintiffs failed to show any legitimate deficiency in the school’s strategy towards [REDACTED]’s test-taking deficiencies.

C. Athletic Opportunities


15.

Finally, [REDACTED]’s claim that he was denied an equal opportunity to participate on the football team based on an incorrect diagnosis of autism is also unfounded. For his junior year, [REDACTED] did not participate in spring practice or summer camp and joined the team in the fall as a manager. Beginning in the spring of his junior year, [REDACTED] joined the football team, participated in spring practice, did not attend summer camp, and was ranked by the coaching staff. Based on the skill assessments and his complete lack of football experience, [REDACTED] had little playing time his senior year on a Division 5-A team that played in the state championship. [REDACTED], however, was not the only student with little playing time and the school provided [REDACTED] with an opportunity to earn playing time. As such, [REDACTED] provided no evidence that the school denied [REDACTED] FAPE by denying him an equal opportunity to participate on the team. 34 C.F.R. § 300.107(a). The fact that the head football coach may have mistakenly believed that [REDACTED] was autistic ultimately had no bearing on [REDACTED]’s athletic opportunities.

III. DECISION

For the reasons stated above, [REDACTED]’s requested relief is **DENIED**.

**SO ORDERED**, this 10th day of March, 2009.

  
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**AMANDA C. BAXTER**  
**Administrative Law Judge**