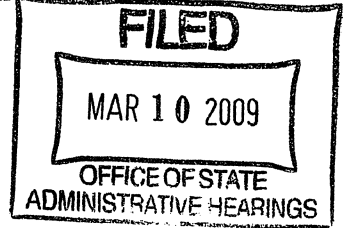


BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



~~000,~~

Plaintiff,

v.

RICHMOND COUNTY SCHOOL DISTRICT,

Defendant.

: 09-124931
:
:
:
:
:
:
:
:
:
:
:
:
:

Docket No.:
OSAH-DOE-SE-0914762-121-Miller

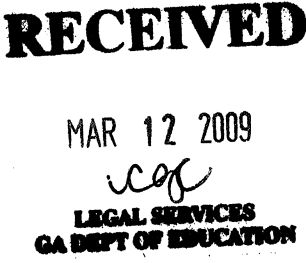
FINAL DECISION

For Plaintiff:

~~0000000000~~
Parent, *pro se*

For Defendant:

Leonard O. Fletcher, Jr., Esq.
Fletcher, Harley & Fletcher, LLP



I. Introduction and Procedural Background

On December 3, 2008, Plaintiff ~~000~~ filed a due process hearing request (“Complaint”) pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On February 10, 2009, this Court granted summary determination in favor of the Defendant Richmond County School District with respect to Paragraphs 1, 4, 7, and 9 of the Complaint.

On February 11, 2009, the Defendant moved to dismiss the remainder of the Complaint on the grounds that the Plaintiff’s mother had failed to comply with the December 24, 2008, Prehearing Order and with this Court’s directive to communicate with the Defendant’s counsel in order to facilitate the hearing process and serve the best interests of ~~000~~. A prehearing telephone conference was held on February 13, 2009, and the Defendant’s Motion was denied. However,

the Court noted that the Plaintiff's mother had not complied with the Prehearing Order, the requirements of which were specifically reviewed during a prior telephone conference on January 6, 2009. Therefore, at the hearing, she was permitted to present only her own testimony and to introduce into evidence the documents that she had identified to the Defendant's counsel in accordance with the deadlines contained in the Prehearing Order. See 34 C.F.R. § 300.512; Ga. Comp. R. & Regs. r. 616-1-2-.22. She did not seek to offer any additional witness testimony or exhibits.

The evidentiary hearing was held on February 17, 2009, and addressed the allegations contained in Paragraphs 2, 3, 5, 6, and 8 of the Complaint.¹ The hearing record closed on February 26, 2009, following the submission of the parties' written closing arguments and

¹ The Complaint utilized a pre-printed form provided by the Georgia Department of Education. The allegations that remain for determination following the hearing are as follows:

Briefly describe the facts and details related to the concerns you have checked above . . .

...

- [2] Not providing crucial resource services to my son.
- [3] Questionable staff qualifications – absence of teacher in my son's [special education] classroom for weeks after the start of the 2007/2008 school year.

...

How would you like this problem or these problems solved? In other words, what do you want for the child that you feel she or he needs? . . .

- [5] Although adjusting, my son would benefit in an autism class if available for future reference[].
- [6] More outside resource services and school services to deal with the autism challenges of my son.

...

- [8] A hearing for the whole truth to address major concerns (questionable criminal activity).

....

Complaint, at 2.

receipt of the transcript. The deadline for issuance of this Final Decision was therefore extended to March 26, 2009, pursuant to 34 C.F.R. § 300.515(c) and Ga. Comp. R. & Regs. r. 616-1-2-.27.

II. Findings of Fact

1.

█████ was born on ██████████ ██████████. He is currently fourteen years old. At the beginning of the 2007-2008 school year, he resided with his family in Richmond County, Georgia, and attended ██████████ Middle School (“██████████”) in the Richmond County School District (“School District”). (T. 16, 36.)

2.

█████ is a disabled student who receives special education services through the School District. Although he is eligible for special education in the category of Severe Intellectual Disability (“SID”), he is also autistic. ██████ is very sensitive to noise, prefers strict routines, and has difficulty making transitions. His communications skills are limited, and he communicates with others primarily through the use of a limited number of signs. At ██████████, he was placed in a class designed for students with severe or profound intellectual disabilities (“SID/PID”). (T. 29-36, 74-75, 153-155.)

3.

In August 2007, when the school year began, the School District had not employed a certified teacher to teach ██████’s class. Pending the hiring of a permanent teacher, the class was staffed with two experienced paraprofessionals and a substitute teacher. (T. 17-18, 153-154, 211; Exhibit D-16.)

4.

On September 9, 2007, the School District hired a long-term substitute teacher, Madeline Huffman Manning. Although Ms. Manning is not a certified teacher, she has had extensive training to care for individuals with severe disabilities.² Ms. Manning was the substitute teacher in [REDACTED]'s class until November 26, 2007, when the School District hired a certified teacher. (T. 150-151, 153-154; Exhibit D-16.)

5.

The School District provided [REDACTED] with bus transportation to school. Both the bus driver and the driver's assistant were trained to handle children with disabilities. Prior to October 2007, [REDACTED] experienced no difficulty with the bus transportation. (T. 18-19, 40-41, 75-76; Exhibit D-28.)

6.

[REDACTED] experienced several changes to his routine in the Fall of 2007, in addition to having substitute teachers in his classroom. [REDACTED]'s family moved to a new home in September 2007, and although he continued to receive bus transportation, his bus driver changed. As a likely result of these changes, and shortly after an Individualized Education Program ("IEP") meeting on October 9, 2007, [REDACTED] began to resist getting on the school bus in the morning. (T. 18, 40-41, 213-214, 291-292; Exhibit D-16.)

7.

[REDACTED]'s mother, Ms. [REDACTED], began transporting him to school in her car. However, because he also resisted transitioning from the car to the school, he often required the assistance of several

² Her training has included an exceptional child course, a "Handle With Care" course, Judevine training, and management and association courses. She also has personal experience caring for individuals with disabilities, as her son experienced a traumatic brain injury in 2000. (T. 150-151.)

adults to get into the school. This process, which took up to twenty minutes, consisted of comforting him and providing positive reinforcement for entering the school. In an effort to assist the teaching staff, Ms. [REDACTED] remained at the school until [REDACTED] was inside his classroom; however, her presence may have made it more difficult for him to transition to the school environment. Once [REDACTED] was settled in his classroom, he was comfortable and proceeded through the school day without further difficulty. (T. 40-41, 155-162, 210-211.)

8.

In late October through November 2007, a number of School District employees became aware that [REDACTED]'s behaviors were interfering with his transportation to school. These employees included [REDACTED]'s classroom staff, the bus driver, the bus assistant, Sharon McAlevy, [REDACTED]'s principal, and Jeffrey Alston, the special education liaison for [REDACTED].³ No steps were taken at that time to assist [REDACTED] with transitioning from his home to the bus, and Ms. [REDACTED] continued to drive him to school in her car. (T. 18, 156-158, 213.)

9.

On November 28, 2007, Ms. [REDACTED] contacted Sharon Diver, the School District's special education consultant for [REDACTED], to express her concerns regarding the bus. On the same day, Ms. Diver spoke with Mr. Alston and asked him to investigate the issue. (T. 197-198, 211-212; Exhibits D-7, D-19.)

10.

Over the course of the next few days, Mr. Alston spoke with Ms. [REDACTED], Ms. Manning, the paraprofessionals, the bus driver, and the bus assistant. Mr. Alston also visited [REDACTED]'s class and

³ It also appears that Kellie Laird, the occupational therapist, attempted to refer [REDACTED] to Doris Casey, the school social worker, on November 15, 2007. However, according to the referral, Ms. Casey did not receive the referral until December 12, 2007. (Exhibit D-15.)

observed him in the classroom. Mr. Alston was unable to ascertain the source of [REDACTED]'s reluctance to ride the bus, but he did determine that [REDACTED] did not have trouble getting on the bus in the afternoon and that he did not appear to be bothered by any other students on the bus. Mr. Alston reported his findings to Ms. Diver and Ms. McAlevy. After discussing the situation with them, he sought further assistance and suggestions from [REDACTED]'s former teacher and the School District's autism consultant, Melinda Lott, who was on maternity leave. Mr. Alston also reported his findings to Ms. [REDACTED]. (T. 212-215; Exhibit D-19.)

11.

Ms. [REDACTED] stopped driving [REDACTED] to school during the first week of December 2007. She felt that the School District should send someone to her home to help her son get on the bus in the morning, and she was no longer willing to transport him to school. (T. 19-21, 41, Exhibit D-15.)

12.

On December 5, 2007, Ms. [REDACTED] contacted Ms. Diver again. In the days following their conversation, Ms. Diver issued referrals to Doris Casey, the school social worker, and Kellie Laird, the occupational therapist. She also emailed a suggestion she had received from [REDACTED]'s previous teacher to Ms. Lott on December 19, 2007. (T. 202, 205-207; Exhibits D-7, D-15.)

13.

Ms. [REDACTED] contacted Sharon Harkrider, the School District's Director of Special Education, on December 6, 2007. After speaking with Ms. [REDACTED], Ms. Harkrider discussed the situation with Ms. Diver. Ms. Harkrider asked Ms. Diver, Ms. Laird, Ms. Casey, and Ms. Lott to follow up with Ms. [REDACTED]. At that time, Ms. Lott was expected to return to work the following week, prior to the winter break that started on December 19, 2007, and her coworkers evidently assumed that she would coordinate the necessary assistance at [REDACTED]'s home. However, Ms. Lott was unable to

return to work prior to the winter break due to an unexpected medical issue. (T. 41, 193-194, 256-258.)

14.

On December 10, 2007, Ms. [REDACTED] wrote a letter to Dr. Dana Bedden, the Superintendent of the School District. In her letter, Ms. [REDACTED] expressed her concerns that the School District had not provided the necessary assistance to enable [REDACTED] to ride the bus and that his class had been without a teacher for several weeks at the beginning of the school year. The letter was received by the School District on December 12, 2007, and by Ms. Harkrider on December 17, 2007. The School District took no action during the winter break. (T. 21, 257-258; Exhibit D-6.)

15.

When school resumed, on January 3, 2008, Ms. Lott returned to work and made immediate efforts to contact Ms. [REDACTED]. After making several attempts to call her on January 3 and 4, she mailed a letter to Ms. [REDACTED] on January 4, 2008. However, the letter was sent to the wrong address, evidently because the School District had not properly updated its records when Ms. [REDACTED] provided notification of her new address. Ms. Lott finally made contact with Ms. [REDACTED] on January 29 and 30, 2008. By this time, Ms. [REDACTED] refused to accept Ms. Lott's assistance and insisted on a different placement for [REDACTED].⁴ (T. 21-22, 175-178, 285-286, 291-293; Exhibit D-8.)

16.

Ms. Lott arranged a meeting on February 13, 2008, and Ms. [REDACTED] agreed to attend. Ms. [REDACTED] expected that she would be meeting only with Dr. Virginia Bradshaw, the Executive Director of

⁴ Ms. [REDACTED] was willing to work with the School District in December 2007 to get [REDACTED] back in school. However, when the School District did not take action before January 2008, she was no longer willing to cooperate. Ms. [REDACTED] also testified that she was concerned that [REDACTED]'s avoidance behavior was precipitated by something that happened in his classroom at [REDACTED]. However, there is no evidence that [REDACTED]'s reluctance to ride the bus resulted from any negative experiences at school. (T. 42, 285.)

Middle Schools for the School District. However, many additional participants attended the meeting, including Ms. Harkrider, Ms. Lott, and Mr. Alston, as well as [REDACTED]'s special education teacher, paraprofessional, regular education teacher, and the school's assistant principal. These additional participants were invited to the meeting to ensure that all necessary information was available to plan for [REDACTED]'s return to school and to resolve the transportation issues. (T. 21-22, 178-179, 215-216, 224-225, 259-260; Exhibits D-5, D-23.)

17.

During the meeting, Ms. Harkrider suggested that the meeting be considered an IEP meeting, in order to ensure that the plan they were developing would be in writing and incorporated into [REDACTED]'s IEP. Ms. [REDACTED] did not object, and the meeting was converted to an IEP meeting.⁵ Later, Ms. [REDACTED] became upset and left the meeting abruptly. Because her cooperation was integral to the plan's success, the meeting was tabled at that time. (T. 179-180, 216-217, 225-226, 259-261.)

18.

Thereafter, on February 25, 2008, Ms. Harkrider sent a letter to Ms. [REDACTED] outlining a three-week plan, developed with Ms. Lott's assistance, for transitioning [REDACTED] back to school. The letter proposed that during the first week, [REDACTED]'s teachers for the current and prior school year would work with him in the home setting, providing positive reinforcement for simple tasks and reviewing a social story about going to school. During the second week, the teachers would help him transition gradually to the bus by watching the bus as it drove by, walking to the porch, walking to the mailbox, etc. During the third week, the teachers would help him board the bus and ride the bus with him to school. A teacher would accompany him to school until he was able

⁵ Because IEP paperwork had not been prepared in advance of the meeting, the participants used [REDACTED]'s October 9, 2007 IEP as a starting point for the new IEP. (T. 225-226, 260-261.)

to ride the bus for two consecutive days without any adverse behaviors. (T. 180-181; 277-278; Exhibit D-10.)

19.

Ms. [REDACTED] did not respond to Ms. Harkrider's letter. Ms. Lott attempted to follow up with Ms. [REDACTED] by telephone on several occasions and finally reached her on March 7, 2008. At that time, Ms. [REDACTED] indicated that she did not wish to make plans for [REDACTED] and that she had spoken to "someone else" who would be contacting the School District. (T. 180-181, 278.)

20.

Cassandra Stone, a special education parent mentor for the School District, was also in contact with Ms. [REDACTED] several times during March 2008. However, Ms. [REDACTED] did not accept the School District's offer to help [REDACTED] transition back to school with the proposed support services, and she continued to keep him at home. (T. 277-279; Exhibits D-11, D-12.)

21.

At some point during March 2008, Ms. Harkrider received a telephone call from a representative of the Georgia Department of Education ("GaDOE") regarding [REDACTED]. The representative did not inform Ms. Harkrider that GaDOE had received a formal written complaint from Ms. [REDACTED] and did not provide the School District with written notification of the complaint. Therefore, Ms. Harkrider believed that Ms. [REDACTED] had made an informal telephone complaint to GaDOE and that no written response was necessary.⁶ (T. 262-263.)

22.

Ms. Harkrider wrote a letter to Ms. [REDACTED] on April 4, 2008, to follow up on her letter of February 25, 2008. The letter indicated that the School District was awaiting Ms. [REDACTED]'s approval

⁶ It is not uncommon for GaDOE to contact Ms. Harkrider by telephone to discuss a parent's concern. (T. 262-263.)

to begin providing transition support services to [REDACTED]. However, Ms. [REDACTED] did not accept the offered services and chose not to allow [REDACTED] to return to school before the end of the school year. (T. 41, 278; Exhibit D-13.)

23.

On April 14, 2008, Ms. McAlevy prepared a Deprivation Petition for filing in the Richmond County Juvenile Court, alleging that [REDACTED] had been absent from school without a valid excuse. However, the Petition was never docketed.⁷ (Exhibit P-12.)

24.

On June 6, 2008, GaDOE notified the School District that it had received a Formal Complaint regarding [REDACTED] and asked the School District to provide a written response within ten business days. Ms. Harkrider responded to the Formal Complaint on June 19, 2008, with a letter and supporting documentation. Investigators for GaDOE visited the School District and interviewed its staff as part of the investigation. (T. 263-264; Exhibits D-14, D-15, D-16.)

25.

On August 5, 2008, GaDOE issued a decision finding that the School District had failed to provide a FAPE to [REDACTED], in violation of 34 C.F.R. § 300.17. GaDOE ordered the following resolution of the Formal Complaint:

The system shall convene an IEP Team meeting and plan to conduct a functional behavior assessment and establish a behavior intervention plan [“BIP”] addressing the behaviors interfering with transportation to and from school. Additionally, the IEP Team will develop an IEP for the 2008-2009 school year. Parental input regarding appropriateness of the setting including the location [of] services shall be considered. A copy of the new IEP shall be forwarded to the GaDOE.

⁷ Ms. McAlevy is no longer employed by the School District and did not testify at the hearing. Therefore, it is not known why she prepared the Petition at that time or why it was not filed. It is undisputed, however, that Ms. [REDACTED] was not required to appear in Juvenile Court and that she was not aware of the existence of the draft Petition until she received documents from GaDOE in connection with her Formal Complaint. (T. 56-57, 233-234, 240-242.)

The system shall provide 30 hours of compensatory service to address progress on the IEP goals and objectives identified in the current IEP. This compensatory service shall be delivered to the student through extended school day service or at a time and location agreed upon with the parent and provided during the 2008-2009 school year. The system shall be responsible for providing transportation needed to access compensatory services. The system shall make behavior management training available to the parent to ensure consistent implementation of behavior management protocols established as a part of the BIP. The plan for providing these services shall be forwarded to the GaDOE. The required documentation shall be submitted to the GaDOE by September 15, 2008.

(T. 264-269; Exhibit D-16.)

26.

After receiving the decision from GaDOE, the School District scheduled a meeting on August 15, 2008, to discuss amendments to [REDACTED]'s IEP.⁸ However, Ms. [REDACTED] did not attend the meeting, and it was rescheduled for August 18, 2008, at Langford Middle School. On that date, Ms. [REDACTED] was unable to make child care arrangements for her two sons, including [REDACTED]. As a result, she brought them to the school in her car, and they remained in the car while the meeting was held in the parking lot. (T. 139-140, 229-230.)

27.

During the August 18 meeting, Ms. [REDACTED] reiterated her concerns regarding the prior school year. The School District proposed that [REDACTED] be placed in the SID class at Langford Middle School for the 2008-2009 school year, and the team developed a Functional Behavior Assessment and a BIP.⁹ However, Ms. [REDACTED] declined to reenroll [REDACTED] until she was able to visit the classroom and talk to the teachers. (T. 229-231, 266-267; Exhibit D-3.)

⁸ The school year began on August 11, 2008. (T. 46, 228.)

⁹ The team elected to wait until [REDACTED]'s IEP expired in October 2008 to develop a new IEP, in order to allow his new teacher time to work with him before the new IEP was written. (T. 267-268.)

28.

Over the course of the next two weeks, Ms. Lott and Leann Boyd, a Special Education Instructional Coach for the School District, worked with Debbie Whitson, the SID teacher at Langford, and Ms. [REDACTED] to develop a social story booklet to assist with [REDACTED]'s transition to the school bus. Ms. [REDACTED] attended a parent conference and visited Ms. Whitson's classroom on September 4, 2008, and she agreed to reenroll [REDACTED] at that time. After the meeting, arrangements were made to resume [REDACTED]'s bus transportation. (T. 44-45, 187-189; Exhibits P-1, D-29.)

29.

Beginning the following week, the bus driver attempted to pick up [REDACTED] at his home and transport him to school. However, [REDACTED] remained unable to board the bus, and as a result, he did not attend school on those days. On September 15, 2008, Ms. [REDACTED] drove [REDACTED] to school in her car, but he did not leave the vehicle. Although Ms. Lott and Ms. Boyd were called to provide assistance, Ms. [REDACTED] departed prior to their arrival because [REDACTED] had become agitated by construction noise at the school. (T. 29-30, 129-134, 184-186.)

30.

On September 17, 2008, Ms. Lott and Ms. Boyd began visiting [REDACTED]'s home to help him access bus transportation to school.¹⁰ On the first day, it took several hours to get him on the bus, but the process became much easier over the following days. Ms. Lott and Ms. Boyd continued to provide assistance through October 3, 2008, until [REDACTED] was able to board the bus and ride to school without difficulty. (T. 118-120, 170-172; Exhibits P-1, D-29.)

¹⁰ No reasonable explanation was offered for the School District's failure to arrange for Ms. Lott and Ms. Boyd to provide assistance on the first day the bus attempted to transport [REDACTED] to school. (T. 168-170.)

31.

On September 22, 2008, a meeting was held to discuss further amendments to [REDACTED]'s IEP, including arrangements for the compensatory services that had been ordered by GaDOE. At the meeting, the team decided that Keena Reeves, a certified special education teacher with experience working with autistic children, would work individually with [REDACTED] after school for one hour twice per week. Although GaDOE ordered thirty hours of compensatory services, the School District elected to provide forty-five hours because [REDACTED] also missed the first five weeks of the 2008-2009 school year. [REDACTED] has shown good progress and is on track to complete the forty-five hours of compensatory services by the end of the 2008-2009 school year. (T. 64-67, 102-109; Exhibits D-2, D-16, D-30.)

32.

Also at the meeting on September 22, 2008, the team offered additional training to Ms. [REDACTED] in behavioral management, as directed by GaDOE. Ms. [REDACTED], along with Ms. Whitson, attended Judevine training in behavioral techniques for children with autism on October 27 through 31, 2008. (T. 49, 66-67; Exhibits D-16, D-32.)

33.

[REDACTED]'s annual IEP meeting was held on October 3, 2008. Ms. [REDACTED] provided input regarding the IEP and some of her suggestions were adopted by the IEP team. Following the meeting, [REDACTED] was referred for an occupational therapy evaluation, to determine if occupational therapy support would help him with his sensory issues. (T. 70-72; Exhibit D-1.)

34.

During the month of October 2008, Talithia Newsome, the School District's special education coordinator, helped Ms. [REDACTED] prepare a document for the School District's

Superintendent, Dr. Dana Bedden, outlining her concerns. Ms. Newsome spent two or more hours several times per week working with Ms. [REDACTED] to prepare the ten-page document, which Ms. Newsome presented to Dr. Bedden on October 28, 2008. Dr. Bedden responded to Ms. [REDACTED]'s concerns in a letter dated November 3, 2008, and Dr. Bradshaw provided additional information in a letter dated November 6, 2008. (T. 76-77, 2354-236; Exhibits D-25, D-26.)

35.

On October 21, 2008, the School District sent copies of [REDACTED]'s October 3 annual IEP and the September 22 amendments to his previous IEP to GaDOE. On November 13, 2008, GaDOE notified the School District that it was in compliance and that the Formal Complaint had been closed. On December 3, 2008, Ms. [REDACTED] filed the present Due Process Complaint, alleging many of the same issues raised in her original Formal Complaint to GaDOE. (T. 236, 269; Exhibits D-22, D-27.)

36.

An occupational therapy evaluation was performed on December 9, 2008. Thereafter, on January 22, 2009, a meeting was held to discuss amendments to [REDACTED]'s IEP. Ms. [REDACTED] did not attend. During the meeting, the IEP team determined that occupational therapy was not necessary, but that [REDACTED] would continue to be monitored by the occupational therapist when she provided services to other children in his class. (T. 79-83; Exhibit D-4.)

37.

At present, [REDACTED] is making good progress toward his IEP goals. At the beginning of the school year, he was reluctant to visit all areas of his classroom or to go outside his classroom, and he did not interact with other students. [REDACTED] now goes to all areas of his classroom, and he sometimes transitions to the adjoining PID classroom for activities and goes outside to walk or

ride a bicycle. [REDACTED] interacts with other students and is a visibly happy child in class. He has also made significant progress in his communication skills. He has learned several universal signs, whereas when he began the school year he used only one sign, which was not universal. (T. 141-146, 248-249.)

38.

On January 29, 2009, Jerry Evans, an autism consultant for the School District, observed [REDACTED] in his classroom setting. Based on his observation, Mr. Evans recommended that the School District perform a detailed review of [REDACTED]'s current program, to be followed by a comprehensive functional skills and behavioral assessment if deemed appropriate based on the program review. The results of the program review and the comprehensive assessment would then guide the provision of further services to [REDACTED]. (T. 244-252, 254.)

39.

At the hearing, Ms. [REDACTED] did not express dissatisfaction with the services [REDACTED] is currently receiving from the School District, although she feels he would benefit from an autism setting and participation in community-based instruction trips. She continues to be upset by the transportation issues that occurred during the 2007-2008 school year. However, she does not seek specific compensatory relief. (T. 39-40; Plaintiff's Closing Argument, filed Feb. 23, 2009.)

III. Conclusions of Law

1.

The Plaintiff bears the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(1); Ga. Comp. R. & Regs. r. 616-1-2-.21(4). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

The purpose of IDEA 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.” 20 U.S.C. § 1400(d)(1)(A). The statute provides the following definition of FAPE:

Free appropriate public education. The term "free appropriate public education" means special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 614(d) [20 USCS § 1414(d)].

20 U.S.C. § 1401(9).

3.

An inquiry into whether a school system has provided a disabled student a FAPE requires a determination of: (1) whether the school system complied with the procedures required by IDEA; and (2) whether the IEP developed through these procedures is “reasonably calculated to enable the child to receive educational benefits.” Board of Educ. v. Rowley, 458 U.S. 176, 206 (U.S. 1982). “A “no” answer means no FAPE was provided” Loren F. v. Atlanta Ind. Sch. Sys., 349 F.3d 1309, 1312 (11th Cir. 2003). Thus, a school system provides FAPE to a student if it complies with IDEA’s procedural requirements and “provides personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Draper v. Atlanta Indep. Sch. Sys., 480 F. Supp. 2d 1331, 1345 (N.D. Ga. 2007).

4.

IDEA requires a School District to provide special education and “related services,” which have been defined as “transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a child with a disability to benefit from special education” 20 U.S.C. § 1401(26)(A). See also 34 C.F.R. § 300.34(a).

“Transportation” includes the following:

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation to a child with a disability.

34 C.F.R. § 300.34(c)(16).

5.

In this case, [REDACTED] proved, by a preponderance of the evidence, that the School District deprived him of a FAPE by failing to provide necessary transportation and other supportive services, pursuant to paragraphs 2 and 6 of the Complaint. Because [REDACTED]’s disability prevented him from boarding the bus, and because the School District failed to provide the necessary transportation and supportive services by school district personnel trained in working with autistic children, he was unable to access his education in December 2007 and the first part of January 2008 (excluding the winter break), as well as approximately one week in September 2008, as set forth in the Findings of Fact, above.

6.

However, beginning in the latter part of January 2008 and extending through the first week of September 2008, [REDACTED] was unable to access his education because Ms. [REDACTED] refused to accept the services offered by the School District. When Ms. Lott returned from maternity leave

in January 2008, the School District was able, willing, and ready to provide the necessary transportation and support services to enable [REDACTED] to access his education. Regrettably, Ms. [REDACTED] chose to keep him out of school, despite a multitude of efforts by the School District to obtain her cooperation with a transition plan. During this period of time, the School District offered a FAPE to [REDACTED], and it was his mother's failure to cooperate with the School District that prevented him from accessing his education.¹¹

7.

[REDACTED] is entitled to compensatory services based on the School District's failure to provide him with a FAPE. As the Eleventh Circuit Court of Appeals has noted:

Compensatory education, like retroactive reimbursement, is necessary to preserve a handicapped child's right to a free education. Without it, the child's right would depend upon his or her parent's ability to fund the education during the years of administrative proceedings and federal court litigation. (Citation omitted.) Also, providing a compensatory education should serve as a deterrent against states unnecessarily prolonging litigation in order to decrease their potential liability.

Jefferson County Bd. of Educ. v. Breen, 853 F.2d853, 857-858 (11th Cir. 1988).

8.

[REDACTED] is not, however, entitled to compensatory education for the entire period of time that he did not attend school, because Ms. [REDACTED]'s decision to keep him at home during much of that period was unreasonable. Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309 (11th Cir. 2003) (equitable relief may be reduced or denied where parents acted unreasonably, thereby diminishing district's ability to provide FAPE); see 34 C.F.R. § 300.148(d)(3). Instead, [REDACTED] is only entitled to compensatory education for the period of time he was deprived of a FAPE due to

¹¹ Although Ms. [REDACTED] was concerned, in part, with [REDACTED]'s placement at [REDACTED], her own testimony established that she was willing to send him back to [REDACTED] during, but not after, December 2007. See Findings of Fact, ¶ 15, above.

the School District's failure to provide appropriate transportation and support services. The Third Circuit Court of Appeals has explained that:

a school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a *de minimis* educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.

M.C. ex rel. J.C. v. Central Regional Sch. Dist., 81 F.3d 389 (3rd Cir. 1996). In this case, although the School District failed to act in a timely manner, it did ultimately offer ~~the~~ the transportation and support services that he needed to access his education.

9.

Pursuant to GaDOE's decision on the Formal Complaint, the School District has already performed a functional behavior assessment, developed a BIP and a new IEP, and begun providing forty-five hours (fifteen hours more than required by GaDOE) of compensatory education to ~~the~~. This relief adequately compensates ~~the~~ for the deprivation of FAPE that resulted from the School District's failure to provide appropriate transportation and support services during the month of December 2007, the beginning of January 2008, and one week in September 2008.

10.

~~the~~ failed to prove, by a preponderance of the evidence, that the School District failed to provide other necessary services or that ~~the~~ currently requires additional special education services as alleged in paragraphs 2, 5, and 6 of the Complaint. As set forth in the Findings of Fact, above, the evidence demonstrates that ~~the~~ is making appropriate progress toward his IEP goals and that his ability to transition between activities is improving. His placement in a SID classroom is appropriate, and he receives sufficient services related to his autism in that setting.

Therefore, the Court concludes that [REDACTED]'s IEP is reasonably calculated to enable him to receive educational benefits and provides him with a FAPE in the least restrictive environment under 34 C.F.R. § 300.114. See Board of Educ. v. Rowley, 458 U.S. at 206.

11.

[REDACTED] failed to prove, by a preponderance of the evidence, that no teacher was present in his classroom at the beginning of the 2007-2008 school year, as alleged in paragraph 3 of the Complaint. Instead, as set forth in the Findings of Fact, above, [REDACTED]'s classroom was staffed with a substitute teacher until November 26, 2007, when a certified teacher was hired.

12.

To the extent the Complaint can be read to allege that the School District's failure to provide him with a highly qualified teacher deprived him of a FAPE,¹² IDEA does not provide a cause of action on this ground. With respect to highly qualified special education teachers, IDEA provides as follows:

Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

20 U.S.C. § 1401(10)(E). See 34 C.F.R. 300.18(f). Therefore, a claim that a teacher is not highly qualified does not serve as a basis for relief for a disabled student in a due process hearing.¹³

¹² Although the Complaint alleges the absence of a teacher in [REDACTED]'s classroom, the only evidence presented at the hearing to support this allegation was that Ms. Manning, the long-term substitute teacher, was not certified. Construing the Complaint broadly, it is presumed that [REDACTED] has challenged the School District's refusal to provide a "highly qualified" teacher as that term is defined under IDEA.

¹³ A parent who is concerned about the qualifications of a particular teacher may instead file a complaint regarding that teacher's qualifications with the state's educational agency. See 34 CFR § 300.18(f); 34 C.F.R. §§ 300.151-.153 (complaint review procedure); MARK C. WEBER, SPECIAL EDUCATION LAW AND LITIGATION TREATISE § 19.5 at n.61 (LRP, 2nd Ed. 2008).

13.

Even assuming, for the purpose of argument, that the School District's failure to provide a certified teacher in [REDACTED]'s classroom is a proper basis for an IDEA claim, "[v]iolation of any of the procedures of IDEA is not a *per se* violation of the Act." Weiss v. Sch. Bd., 141 F.3d 990, 996 (11th Cir. 1998). Therefore, to support this allegation, [REDACTED] would be required to prove not only that he was taught by a substitute teacher, but that the substitute teacher failed to provide him with a FAPE. Id. No such evidence was presented in this case.

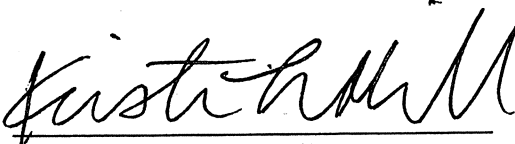
14.

[REDACTED] failed to prove, by a preponderance of the evidence, that the School District engaged in any criminal activity as alleged in paragraph 8 of the Complaint. There was simply no evidence at the hearing to support this allegation.

IV. Order

For the foregoing reasons, [REDACTED] is entitled to no additional relief beyond that which was ordered by GaDOE in conjunction with the Formal Complaint; provided, however, that the School District shall fulfill its agreement to provide [REDACTED] with a total of forty-five hours of compensatory education and shall continue to comply fully with the GaDOE decision issued on August 5, 2008. Furthermore, both parties are directed to communicate and cooperate with each other regarding any issues that may arise in the future in a manner that is calculated to serve the best interests of the child, [REDACTED].

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


KRISTIN L. MILLER
Administrative Law Judge