

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



_____, BY AND THROUGH HIS NEXT
FRIEND AND GUARDIAN, _____

Plaintiff,

v.

GWINNETT COUNTY SCHOOL
DISTRICT

Defendant.

OSAH Docket No.:

OSAH-DOE-SE-0926279-67-Malihi

09-135214

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I. INTRODUCTION

This action came before the Court pursuant to a complaint filed by _____, by and through his mother, _____, against Gwinnett County School District (“GCSD”), alleging that GCSD failed to provide _____ with a free appropriate public education (“FAPE”) as required under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300.

GCSD provides _____ with special education services under the IDEA eligibility categories of “Autism Spectrum Disorder” and “Speech/Language Impairment.” _____ claims that his disability is auditory processing disorder (“APD”), and denies that he has autism spectrum disorder (“ASD”). _____ argues that the individualized education program (“IEP”) developed in March 2009 is inappropriate because it does not address his educational needs under his disability. _____ further argues that GCSD did not fairly consider the suggestions and recommendations of _____’s parent and advocates. As such, _____ claims that GCSD is denying him a FAPE as required under the IDEA.

The issue is whether GCSD provided _____ with a free appropriate public education, namely (1) whether GCSD properly identified _____’s IDEA eligibility; (2) whether _____’s IEP was reasonably calculated to provide meaningful educational benefit; and (3) whether _____’s parent and advocates were afforded the opportunity to meaningfully participate in _____’s educational planning process. For the

reasons presented below, this Court finds that GCSD properly identified [REDACTED]'s eligibility, and that [REDACTED] was not denied FAPE because [REDACTED]'s parent and advocates meaningfully participated in his educational planning and that [REDACTED]'s IEP was reasonably calculated to provide [REDACTED] with meaningful educational benefit.

II. FINDINGS OF FACT

Background

1. [REDACTED] was born on [REDACTED], [REDACTED]. He is a [REDACTED]-year-old young man, and he lives at home with his mother, [REDACTED], grandmother, [REDACTED], grandfather, and younger brother. Tr. 1737:7-8.
2. [REDACTED] attends South Gwinnett High School ("South Gwinnett"). Tr. 2119:17-19.
3. In 1995, [REDACTED] was referred to Michael Levin, M.D. to be evaluated because of developmental, behavioral, and social problems. Dr. Levin diagnosed [REDACTED] with attention deficit hyperactive disorder ("ADHD"), a developmental expressive and receptive language disorder, and a neurodevelopmental delay. Dr. Levin made recommendations to [REDACTED]'s school, and explained that [REDACTED] had a receptive and expressive language disability, which affected his behavior. Dr. Levin "defer[red] any definite conclusions [of autism] and suggested concentrating instead on remediation of immediate problems."¹ Def.'s Ex. 553.
4. [REDACTED] has received special education services pursuant to the IDEA for his entire educational career. Tr. 1717:14-17.
5. In February 2008, [REDACTED] was placed at Lindamood Bell ("LMB"), "a company that works specifically with students with learning disabilities," Tr. 2714:25-2715:1, by agreement of the parties. Tr. 2714:25-2715:5.

¹ [REDACTED] has since been tested, evaluated, assessed, and observed myriad times. Reports from these tests are often reviewed in subsequent evaluations. Many of these reports are discussed infra.

6. At LMB, [REDACTED] receives one-on-one instruction for four hours per day in courses to develop reading and spelling skills, build up concept imagery for reading comprehension and vocabulary development, and math.² Tr. 2732:2-2733:5.
7. [REDACTED] and [REDACTED] believe that [REDACTED] has made progress at LMB. See generally Tr. 1909:1-1919:25.
8. After one-on-one instruction at LMB, [REDACTED] attends a regular education class at South Gwinnett with a dedicated paraprofessional (“parapro”).³ In fall 2008, [REDACTED] took ninth-grade physical education (“PE”); in spring 2009, [REDACTED] took ninth-grade health. Tr. 1808:5-7; 1707:24-1708:3.
9. After regular education, [REDACTED] receives one-on-one speech-language therapy in an after-school session at South Gwinnett. Tr. 2535:2-24.
10. Each school day, a GCSD school bus picks [REDACTED] up at around 7 am and takes him to LMB. At noon, the bus takes [REDACTED] to South Gwinnett, where [REDACTED]’s grandmother, [REDACTED], meets [REDACTED] and has lunch with him. After lunch, a parapro meets [REDACTED] at [REDACTED]’s car and escorts him to his regular education class. The parapro usually stays in class to assist [REDACTED] whenever he does not understand or has difficulty in class. After class, the parapro escorts [REDACTED] to his speech-language therapy class, a one-on-one session with a speech-language pathologist (“SLP”). When [REDACTED]’s speech-language therapy session concludes, the SLP walks with [REDACTED] to meet [REDACTED]. Tr. 1806:9-1808:24.
11. On February 27, 2008, [REDACTED] was prescribed a personal FM system for his APD.⁴ Def.’s Ex. 706.

² Lindamood Bell (“LMB”) instructors are not necessarily certified teachers; they are “specifically trained within the [LMB] programs . . .” Tr. 2733:17-22.

³ A paraprofessional (“parapro”) provides classroom support to assist teachers as needed.

⁴ A personal FM system is a device that includes a microphone and an earpiece. It helps with signal-to-noise ratio, allowing the listener to hear the speaker as though the speaker is close to the listener. In a school setting, the teacher wears the microphone close to her mouth, and the student wears a receiver on or near the ear. “So wherever the teacher is, and no matter how much background noise there is in the classroom theoretically, the child is hearing the teacher . . . And there’s . . . very little impact of background noise.” Tr. 3235:4-25. The term “personal FM system” is often used interchangeably with the terms “auditory trainer” or “assistive listening device,” although these terms technically mean different things.

Eligibility

12. Since 2000, [REDACTED] has received special education services under the “Autism Spectrum Disorder” and “Speech/Language Impairment” eligibilities. Tr. 1937:10-15; 1941:8-18.
13. [REDACTED] and [REDACTED] agree that [REDACTED] has APD, and disagree that [REDACTED] has autism. Tr. 1579:12-19.

Auditory Processing Disorder

14. Auditory processing disorder (“APD”) “is a deficit in the neural processing of auditory information. It’s characterized by impaired performance on sets of tests that tap into similar skills.” There are different models that classify types and subtypes of APD. Experts do not always agree on the proper therapy for addressing the various APD types and subtypes.⁵ Tr. 3315:1-7.
15. [REDACTED] was first diagnosed with APD in or about 1995. Def.’s Ex. 553; Tr. 1934:6-12.
16. [REDACTED] hired James W. Hall III, Ph.D. to assess [REDACTED]’s auditory processing abilities and provide recommendations that properly address [REDACTED]’s educational needs. Def.’s Ex. 705.
17. Dr. Hall is a prominent expert in audiology. He has been involved in dozens of IEPs either as a meeting participant or by way of his reports. He has provided recommendations to schools to ensure that students with APD or other audiological disabilities receive proper special education services. Tr. 3209:24-3210:9. He received his Ph.D. in Audiology from Baylor College of Medicine in 1979. He is licensed in both audiology and speech pathology. He has made numerous contributions to the field of APD, including 68 published articles and over 1000 international presentations. Dr. Hall has advised doctoral students. He also evaluates children for audiological disabilities at the University of Florida’s Speech and Hearing Center. Pl.’s Ex. 1, Sep. 3, 2009.
18. The Court admitted Dr. Hall as an expert in audiology. Tr. 3201:11-14.

⁵ For example, while some experts find personal FM systems help students with APD, other experts find that a personal FM system does not address the actual problem. See, e.g., Tr. 3350:4-3351:3.

19. On February 27, 2008, Dr. Hall inspected [REDACTED]'s ear, and conducted basic hearing tests and a central auditory battery on [REDACTED].⁶ Def.'s Ex. 705-06; Tr. 3211:13-14.
20. In his final report, Dr. Hall diagnosed [REDACTED] with APD characterized by difficulty with language-based binaural integration and listening in the presence of background noise. The report listed three (3) recommendations for [REDACTED]'s educational needs. Def.'s Ex. 706. One (1) additional recommendation was made in a response to e-mail inquiries from [REDACTED]. Def.'s Ex. 725.
21. In summary, Dr. Hall's recommendations are:⁷
- a. Continue the Earobics program with quality headphones
 - b. Receive preferential seating in classrooms as well as other supplements, such as written instructions
 - c. Begin using a personal FM system for listening in the classroom setting
 - d. Strongly recommended the LMB program until sufficient progress was documented⁸
22. Earobics "repetitively drills or works on very fundamental auditory skills, like the ability to process auditory information quickly, the ability to hear in background noise, the ability to identify speech sounds and integrate them and separate them from words." Tr. 3231:2-9.
23. Dr. Hall would expect to see changes in [REDACTED]'s performance based on consistent use of Earobics or FastForward from February to October 2008. Tr. 3297:14-3298:7.
24. Dr. Hall said that [REDACTED] did not need LMB for APD unless [REDACTED] also had a reading disability. "[LMB is] not going to address the auditory processing directly, but it's more to improve reading skills." Tr. 3299:11-3300:15.

⁶ Dr. Hall used the following in conducting the central auditory battery: Screening Test for Auditory Processing Disorders in Adolescents and Adults (SCAN-A); Phonemic Synthesis Test (PST); Staggered Spondaic Word Test (SSW); Dichotic Digits (DD); Pitch Pattern Sequence Test (PPS); and the Synthetic Sentence Identification – Ipsilateral Competing Message Test (SSI-ICM). Def.'s Ex. 705-06; Tr. 3211:13-14.

⁷ Dr. Hall's recommendations are listed on two documents: Dr. Hall's report and a subsequent e-mail to [REDACTED]. Def.'s Ex. 705-06, 725.

⁸ Def.'s Ex. 725.

25. On October 7, 2008, Dr. Hall conducted a follow-up evaluation. The follow-up revealed that [REDACTED]'s performance regressed or did not improve even after use of Earobics and FastForward. Tr. 3256:16-3269:15.
26. Based on the follow-up evaluation, Dr. Hall recommended that [REDACTED] continue using the personal FM system and that [REDACTED] continue the LMB program to develop language, reading comprehension, and vocabulary until his goals are met. Def.'s Ex. 730-31.
27. GCSD consulted with Jeanane Ferre, Ph.D. to review [REDACTED]'s auditory evaluations and to make recommendations that properly address [REDACTED]'s educational needs. Tr. 3317:22-3319:22.
28. Dr. Ferre is a prominent expert in audiology. Dr. Ferre obtained her Ph.D. in Audiology and Hearing Impairment from Northwestern University in 1984. She is a private practice audiologist. She teaches graduate-level courses in assessment and management of central auditory processing disorders at both Northwestern University and Rush University. Dr. Ferre has made numerous contributions to the field of APD, including extensive research on the diagnosis and treatment of auditory processing disorders in school-age children,⁹ several hundred presentations, and over twenty (20) published articles. Ex. D-1, Sep. 3, 2009.
29. The Court admitted Dr. Ferre as an expert in audiology. Tr. 3309:19-3310:6.
30. Dr. Ferre reviewed [REDACTED]'s evaluations and diagnosed [REDACTED] with a subtype of APD known as "auditory associative deficit."¹⁰ Tr. 3317:22-3318:5; 3341:7-9.
31. Dr. Ferre explained that [REDACTED] must be taught explicitly the rules of language and must be given "an opportunity to be able to practice those rules across several settings." Tr. 3322:17-3323:8.
32. GCSD incorporated the personal FM system and supplements recommendations from Dr. Hall's recommendations into [REDACTED]'s IEP. Def.'s Ex. 18-19, 27, 29-30, 34, 37.

⁹ Dr. Ferre's extensive research that led to the Bellis/Ferre Model, "a model [to] interpret[] central auditory test results that relies on not only . . . neuroaudiological findings[. It] also then takes the test results and speaks to the nature of the deficit from a neuropsychological perspective in order to come up with functional intervention strategies to improve the skill set." Tr. 3315:8-3317:21.

¹⁰ This subtype of APD means that, for [REDACTED], "[i]t isn't the noise that's the problem. It's the language competency that's the problem." Tr. 3317:22-3318:5; 3341:7-9.

33. GCSD found that the APD diagnosis alone did not explain all of [redacted]'s behaviors and educational needs. Tr. 770:2-14, 1073:7-1074:6, 2490:23-2492:25, 2497:8-18, 2914:7-2915:15, 3325:8-3326:3.

Autism Spectrum Disorder

34. Autism spectrum disorder (“ASD”) “is a behavioral manifestation of a disruption in brain development that results in social communication impairments. It’s diagnosed by the presence or absence of behaviors or constellation of behaviors in three areas. The first is called qualitative impairment in social interaction. The second is qualitative impairment in communication. And the third is what we call restricted range of interest. In order to make the diagnosis, you look for examples of behaviors in those areas which are specified.”¹¹ Tr. 3403:20-3404:7.
35. “[T]o answer the question about whether or not a . . . young adult meets criteria for autism . . . [o]ne could select and use specific diagnostic instruments and sort of leave out the rest The reason we don’t leave out the rest of that stuff is because it seems to be important in things like educational programming, describing what an individual’s strengths and weaknesses are. So [psychologists] include information such as cognitive ability, academic achievement and performance, behavioral adjustment within home and school settings.” Tr. 2290:2-2291:13.
36. Because the range of characteristics identified on the autism spectrum varies by person, educational support services must be individualized to provide educational benefit.¹²
37. [redacted]'s first autism diagnosis is not clear; however autism has been considered by evaluators since 1995.¹³

¹¹ Betty Jo Freeman, Ph.D. testified as an autism expert for GCSD. She did not personally evaluate [redacted] for autism. This Court relies on her testimony primarily for general information about ASD.

¹² According to Dr. Freeman, “The hallmark of autism is what we call inconsistency[, s]o you have children who are very, very good at some skills but have difficulty with others. You may have a child who has normal onset of development in some areas but delays in speech or social skills.” Tr. 3406:14-24; Tr. 3405:10-3407:17; See also Testimony of Lysanne Matthews, Tr. 470:9-10 (“There’s such a wide variation in ability and behavior that it’s not a cookie cutter disorder.”); Testimony of Jonathan Campbell, Ph.D., Tr. 2404:19-2407:7 (explaining how some children with autism may have difficulties with generalization, while others do not).

38. GCSD hired Jonathan Campbell, Ph.D. to perform a comprehensive evaluation of [REDACTED]'s disabilities and provide recommendations that address [REDACTED]'s educational needs. Tr. 2282:19-2283:5.
39. Dr. Campbell is a prominent expert in autism. He earned his Ph.D. in Philosophy at the University of Memphis. Dr. Campbell is an Associate Professor of School Psychology at the University of Georgia teaching doctoral-level courses in autism spectrum disorder, intellectual and developmental assessments, and social emotional assessments. Dr. Campbell supervises doctoral dissertations and master's theses. He has some experience with IEPs, namely providing recommendations to schools to ensure that students with ASD receive proper special education services for their disability, but he is not typically involved with IEPs. Dr. Campbell completed his pre-doctoral internship training and post-doctoral fellowship at Yale University. He has made numerous contributions to the field of ASD, including more than thirty-seven (37) published chapters and articles, and presentations at national conferences. He serves on the editorial board of professional journals. He has been director and co-director of the School Psychology Clinic, supervising graduate students and providing administrative support.¹⁴ Def.'s Ex. 233-34; Tr. 2266:13-23.
40. The Court admitted Dr. Campbell as an expert in autism.¹⁵ Tr. 2252:8-15; 2282:3-5.
41. In December 2008, Dr. Campbell conducted a battery of tests on [REDACTED] for several hours over two days.¹⁶ Dr. Campbell interviewed [REDACTED]'s family, educators, and the family's evaluators

¹³ See Levin Rep. Def.'s Ex. 553-55 (Dec. 18 & 22, 1995) (“[D]efer[ring] any definite conclusions on [autism] diagnosis and suggest[ing] concentrating instead on remediation of immediate problems.”); Dixon Rep. Def.'s Ex. 556-63 (Feb. 1996) (finding [REDACTED] exhibited autistic-like behaviors); Eswara Rep. Def.'s Ex. 564-67 (Apr. 11, 1997) (finding pervasive developmental disorder (“PDD”), which could fall under autism); Yawd Rep. Def.'s Ex. 585-87 (May 22, 2000) (finding [REDACTED] had difficulty interacting and initiating with others, expressive and receptive language delays, limited topics of interest, sensitivity to noise, but that [REDACTED] can handle changes in routine with some complaining); Guy Rep. Def.'s Ex. 588-93 (Oct. 17, 2000) (“A diagnosis of autism is an appropriate description of [REDACTED]'s language and behavioral differences.”).

¹⁴ [REDACTED] contested the validity of Dr. Campbell's assessment based on the fact that Dr. Campbell is unlicensed and that Dr. Campbell signed his report for his supervising licensed psychologist, Dr. A. Michele Lease. Dr. Lease testified that she reviewed the report, agreed with Dr. Campbell's findings based on all of the test results and evaluations, and authorized Dr. Campbell to sign her name to the report.

¹⁵ GCSD tendered two experts in autism. For purposes of this hearing, the Court relied predominantly on the testimony of Dr. Campbell. Dr. Campbell testified that “[REDACTED] was a young man with autism.” Tr. 2320:2.

who provided diagnoses on [REDACTED]'s APD and ASD.¹⁷ Dr. Campbell reviewed prior evaluations.¹⁸ Def.'s Ex. 65-66.

42. Dr. Campbell then consulted with Dr. Hall regarding his APD diagnosis. Def.'s Ex. 68, 82-83.

43. Dr. Campbell also consulted with Dr. Holly Kaplan, an audiologist at the University of Georgia, to determine whether [REDACTED] needed additional testing done for APD. Def.'s Ex. 65-66.

44. After reviewing the tests performed by Dr. Hall, Dr. Kaplan concluded that [REDACTED] required no additional testing because the results support Dr. Hall's diagnosis. GCSD does not dispute the results. Def.'s Ex. 68.

45. In his final report, Dr. Campbell diagnosed [REDACTED] with ASD and co-morbid APD. Dr. Campbell's report listed twenty-two (22) recommendations for both the school and the parents. Def.'s Ex. 83-88.

46. In summary, Dr. Campbell's recommendations are:¹⁹

- a. continue instruction through LMB because LMB's instructional targets and strategies match well with [REDACTED]'s language and reading difficulties and provided individualized instruction;
- b. receive frequent and ongoing evaluations so that [REDACTED]'s participation at LMB can be guided by clearly documented academic and language progress;
- c. continue speech-language services for receptive and expressive language delays and coordinate his lessons with the LMB program;
- d. receive speech-language therapy focused on improving [REDACTED]'s pragmatic language problems in dyadic or small groups settings focusing on reducing repetitive speech during social interchanges, initiating and maintaining conversations on topics of interest to a communication partner, and monitoring voice volume;

¹⁶ Dr. Campbell's test battery included: Autism Diagnostic Observation Schedule, Module 4(ADOS); Behavior Assessment System or Children, Second Ed., Adolescent Form (BASC-2); Childhood Autism Rating Scale (CARS); Comprehensive Test of Nonverbal Intelligence (CTONI); Kaufman Test of Educational Achievement, Second Ed. (KTEA-II); Social Responsiveness Scale (SRS); Vineland Adaptive Behavior Scales-2, and Woodcock-Johnson III Normative Update (WJ III-NU). See Def.'s Ex. 65-66.

¹⁷ Dr. Campbell conducted the following interviews: Karen Davis, Speech-Language Pathologist (Nov. 21, 2008); Dr. Marc Einhorn, Psychologist (Nov. 3, 2008); Lisa Genereux, Director of Lindamood Bell (Nov. 17, 2008); Dr. James Hall, Audiologist at the University of Florida (Dec. 3, 2008); Nona Hodges, Home-Based Instructor (Nov. 21, 2008); Andie McDaniel, Prior Special Education Teacher (Nov. 21, 2008); Alicia Thomas, Prior Special Education Teacher (Nov. 21, 2008); and a parent interview with [REDACTED] and [REDACTED]. See Def.'s Ex. 65.

¹⁸ The prior evaluations Dr. Campbell reviewed were provided by either GCSD or [REDACTED]: Dr. Michael Levin; DeeAnne Dixon; Dr. Marthand Eswara; Nancy Goad; Dr. Lisa Guy; M.I.N.D. Institute Clinic Evaluation; Dr. Marc Einhorn; Dr. Lowery Mayo, Central Auditory Processing and BioMAP Evaluation; Dr. Yazan Houssami; Dr. James Hall III, Auditory Processing Assessment; Diane Wertz, Speech/Language Evaluation; Dr. Marc Einhorn. See Def.'s Ex. 65-66.

¹⁹ Def.'s Ex. 83-88.

- e. social skills therapy (small group or dyadic) teaching appropriate social behaviors through behavior modification techniques; component social skills practiced in therapy setting; structured opportunities to begin generalizing skills with peers; rely heavily on behavior techniques;
- f. extended school year (“ESY”) to target generalization of speech-language and academic skills to home;
- g. team should reconsider decision to eliminate community-based instruction particularly for vocation skills; incorporate video self-monitoring into transition plans;
- h. wear FM system during academic instruction and speech-language therapy;
- i. instruction should be visually based or supplemented with visual aids whenever possible;
- j. shorten academic lessons (25-30 minutes);
- k. incorporate interests into lessons;
- l. vary task difficulty;
- m. laptop for producing written work; access to SOLO software;
- n. use Power Cards to assist with initiating work independently, staying on task, using appropriate voice volume, reducing inappropriate verbal behavior during academic tasks;
- o. use Incredible 5-Point Scale method to increase self-awareness of behavioral functioning within instructional setting;
- p. assistance of peer buddy or mentor;
- q. parents and school should identify a mutually acceptable educational consultant to monitor implementation of [REDACTED]’s educational program;
- r. for parents: share findings with [REDACTED]’s pediatrician and psychologist to discuss intervention planning for depressive symptoms; referral to psychiatrist with expertise in working with ASD and co-morbid depressive symptoms; and
- s. enroll [REDACTED] in social skills programming to help increase social communication skills.

47. Based on Dr. Campbell’s diagnosis, speech-language services for expressive and receptive language delays, and pragmatic language problems, social skills therapy, extended school year, video self-monitoring into transition plans, FM system, visually based or supplemented visual aids, and peer interaction recommendations were incorporated into [REDACTED]’s IEP. Depressive symptoms were noted as an area of need. Def.’s Ex. 17-43.

48. Marc Einhorn, Psy.D. first met [REDACTED] in May 2007 to provide a disability diagnosis for the Social Security Administration; Dr. Einhorn’s diagnosis determined whether [REDACTED] was eligible for Social Security benefits. Tr. 65:18-66:21.

49. Dr. Einhorn is a forensic neuropsychologist. His practice is predominantly diagnostic. Tr. 73:11-16. He conducts forensic analyses of psychological examinations to determine whether

- the examinations conformed to established protocol for proper examination results and subsequent diagnosis.²⁰ He has been hired to testify as an expert witness in several hundred cases. Tr. 68:5-9. He has participated in IEP meetings. He earned his Psy.D. in clinical psychology at Nova Southeastern University. He interned in forensic psychology, and had additional supervision in neuropsychology. Tr. 60:20-61:4.
50. The Court admitted Dr. Einhorn as an expert in psychology, forensic psychology, and neurological psychology.²¹ Tr. 109:14-110:1.
51. In May 2007, Dr. Einhorn performed a test battery on [REDACTED] for over three hours.²² Tr. 124:15-125:9. Due to Dr. Einhorn's difficulty understanding [REDACTED], [REDACTED] interpreted for most or all of the evaluation. Tr. 77:13-78:5.
52. In his final report, Dr. Einhorn specifically concluded that [REDACTED] did not have autism, but that he had prominent language problem. Tr. 66:7-16, 77:13-14.
53. Dr. Einhorn treated [REDACTED] for anxiety for a total of eight hours. Tr. 79:4-12.
54. At [REDACTED]'s IEP meetings, Dr. Einhorn said that [REDACTED] was not depressed and that [REDACTED] did not need related services for depression or anxiety. Tr. 99:24-100:11.
55. In August 2008, [REDACTED] asked Dr. Einhorn to evaluate [REDACTED]'s cognitive level. Dr. Einhorn used the Test of Non-verbal Intelligence (TONI-3) and concluded that [REDACTED]'s IQ was 130.²³
56. Dr. Einhorn did not make specific recommendations for [REDACTED]'s educational needs through his reports.

²⁰ Forensic psychology "is the specialized application of psychological principles to the legal judicial system." It "means that there is a higher standard for [psychological] testing and other procedures that [psychologists] do that would be required in clinical psychology. The bar is higher." Tr. 61:16-22. For example, according to Dr. Einhorn, most psychologists rely on self-reporting when diagnosing patients, which is not sufficiently comprehensive. Additionally, Dr. Einhorn said that most psychologists do not conduct the evaluations, relying instead on the results gathered by graduate students. Tr. 62:17-64:12. Dr. Einhorn believes that autism tests are flawed, but admits that there are no better alternatives.

²¹ Dr. Einhorn testified that, although he does not believe that [REDACTED] has autism, he did not administer any formal assessments to determine the presence of autism despite the availability of such diagnostic instruments. Tr. 109:14-110:20; 3201:11-12.

²² Dr. Einhorn performed the Wechsler Intelligence Scale for Children (WISC-III), Kaufman Functional Academic Skills Test (K-FAST), and the Bender Gestalt Test. Def.'s Ex. 667-70.

²³ Dr. Einhorn used the Test of Non-verbal Intelligence, Third Edition (TONI-3) to assess [REDACTED]'s IQ because it is not language-weighted. Tr. 99:21-101:8.

Individual Educational Program

57. [REDACTED]'s IEP team consisted of [REDACTED]'s mother and grandmother, [REDACTED]'s advocates,²⁴ [REDACTED]'s educational team at GCSD, and representatives from LMB. Def.'s Notebook 2 of 2, IEP Meeting Trs. tab 1 at 2-4 (Dec. 16, 2008), and tab 2 at 7-10 (Mar. 25, 2009).
58. The IEP team did not always contain the same individuals present; however, the team consistently had the same parties represented for most of the meetings. Def.'s Notebook 2 of 2, IEP Meeting Trs. tab 1 at 2-4 (Dec. 16, 2008), and tab 2 at 7-10 (Mar. 25, 2009).
59. For the IEP in question, three meetings occurred: a re-evaluation conference on December 16, 2008, an IEP meeting on December 16, 2008, and an IEP meeting on March 25, 2009. These meetings were memorialized through minutes and recordings that were later transcribed. Def.'s Ex. 8-15, 52-64. See generally Def.'s Notebook 2 of 2, IEP Meeting Trs.
60. The minutes and transcripts reflect the contentious relationship between the parties.²⁵
61. The minutes and transcripts show that [REDACTED]'s parent, grandparent, and advocates were substantially involved in the discussions and in the final verbiage used for each of the annual goals and objectives. See generally Def.'s Notebook 2 of 2, IEP Meeting Trs.; Def.'s Ex. 4.
62. At the eligibility conference, [REDACTED]'s IEP team met to determine whether [REDACTED]'s disabilities continued to qualify him for special education services under the IDEA. Def.'s Ex. 1-15.
63. The consensus was that [REDACTED] needed continued special education services in order to achieve his goal of graduating. Def.'s Ex. 8-15.
64. The educational team determined that [REDACTED] was eligible for special education services under "Autism Spectrum Disorder" and "Hearing/Language Impairment". Def.'s Ex. 1-15.

²⁴ [REDACTED]'s advocates at the Dec. 16, 2008 IEP meeting were Dr. Einhorn, neuropsychologist, Dr. Greenberg, educational advocate, and Chris Vance, attorney. For the Mar. 25, 2009 IEP meeting, [REDACTED]'s advocates included Dr. Einhorn, neuropsychologist, Dr. Greenberg, educational advocate, and Dr. Schmidt, President of the Citizens' Commission for Human Rights. Def.'s Notebook 2 of 2, IEP Meeting Trs. tab 1 at 2-4 (Dec. 16, 2008), and tab 2 at 7-10 (Mar. 25, 2009).

²⁵ To fully appreciate the contentious relationship, the Court reviewed several hundred pages of transcripts from the re-evaluation conference and the IEP meetings. See generally Def.'s Ex. Notebook 2 of 2, IEP Meetings Trs.

65. [REDACTED], [REDACTED], and [REDACTED]'s advocates disagreed with the ASD eligibility category. Def.'s Ex. 8-15.
66. The IEP meeting began immediately following the eligibility meeting. The IEP team reviewed [REDACTED]'s present levels of performance and secondary transition components of the IEP. Def.'s Ex. 1-15.
67. The present levels of performance were detailed and included in the IEP. Def.'s Ex. 17-18. Also included were the results of recent assessments demonstrating Plaintiff's intellectual level of functioning; his actual grade equivalencies on academic subjects; behavioral skills and needs; and adaptive skills and needs. Def.'s Ex. 17.
68. Under "Present Levels of Performance: Description of needs," the IEP says that [REDACTED]'s weaknesses include verbal reasoning (such as defining words and analogies), processing speed and short-term memory, and reading comprehension and math reasoning skills; that [REDACTED] has social interaction and communication impairments, restrictive interests, and symptoms of depression; and that [REDACTED] continues to present a severe language disorder with poor inferencing and critical thinking skills, as well as poor auditory memory, comprehension, and vocabulary. Def.'s Ex. 18.
69. Under "Special Considerations," the IEP says, "All teachers and staff working with [REDACTED] will be provided training on the use of the FM system by a professional with experience using the equipment/device," and "All teachers and staff will be trained in the use of prompts and other communication systems used during instruction and social settings." Def.'s Ex. 18-19.
70. The secondary transition plan contains a statement of Plaintiff's present levels of performance and age appropriate transition assessments including Plaintiff's preferences, strengths, and interests. Def.'s Ex. 24-26.

71. After meeting for approximately six hours, the IEP was not complete.²⁶ The IEP team agreed to reconvene in January. Def.'s Ex. 8-14.
72. At the conclusion of the meeting, the educational team, [REDACTED]'s parent and advocates, and LMB agreed to outline the goals and objectives they each found necessary for [REDACTED]. Def.'s Ex. 14; Tr. 293-96.
73. The educational team agreed to provide its specific questions regarding [REDACTED]'s personal FM system to the parent, who would in turn submit them to Dr. Hall.²⁷ Def.'s Ex. 176.
74. After several attempts to reconvene, the meeting was finally set for March 25, 2009. Def.'s Ex. 170-95.
75. The minutes and transcripts of the March meeting reflect even more tension between the parties. Def.'s Ex. 52-64.
76. The March IEP meeting started with a review of present levels of performance, taking into account [REDACTED]'s current performance at both LMB and South Gwinnett in light of modifications and accommodations provided since the December IEP meeting.²⁸ Def.'s Ex. 52.
77. [REDACTED], [REDACTED], and [REDACTED]'s advocates agreed to almost any goals and objectives drafted by LMB.²⁹ Def.'s Ex. 78-79.
78. Many of LMB's proposed goals and objectives were incorporated into the educational team's proposed goals and objectives on the draft IEP. Def.'s Ex. 76, 78.
79. Specific items in the goals and objectives were also changed at [REDACTED]'s request.³⁰

²⁶ The re-evaluation conference started at 9 am, and the IEP meeting started immediately following the re-evaluation conference. The IEP meeting was continued at 4:15 pm. It is noted in the minutes that the re-evaluation conference actually started at 9:40 am because [REDACTED]'s neuropsychologist arrived late. Def.'s Ex. 8-15.

²⁷ [REDACTED]'s parent proposed the goals and objectives drafted by LMB. Def.'s Ex. 176.

²⁸ The IEP meeting started at 8:34 am. [REDACTED] requested that it be noted in the minutes that the meeting started late because GCSD was not prepared. Def.'s Ex. 52.

²⁹ LMB representatives had to leave for part of the meeting but rejoined in the afternoon. In the time that LMB representatives were absent, GCSD incorporated some of LMB's proposed goals and objectives. Def.'s Ex. 176; see IEP Meeting Tr. tab 2 at 99 & 196 (Mar. 25, 2009).

³⁰ For example, under "Final Placement Recommendation," [REDACTED] did not agree with the rationale that [REDACTED] needed community and vocational skills, and pointed out that GCSD had no test to support the need for such skills training. The

80. Various placement options were considered but rejected. Regular education classes with additional supports, and direct services within regular education were rejected because they did not provide the amount of individual or small group instruction to address [REDACTED]'s educational needs. A separate day school or program was rejected because it did not provide the appropriate educational services in the least restrictive environment. Def.'s Ex. 20.
81. The IEP called for twenty hours per week of direct instruction in special education; five hours per week of direct instruction in speech-language therapy; and five hours per week of regular education with supports.
82. [REDACTED]'s instructional accommodations or modifications included: extra time to respond in all settings; breaking material into manageable parts in regular education settings; presenting information visually in all settings; reducing the length of assignments in regular education settings; reading material/tests to [REDACTED] in resource/small group settings; providing a copy of the notes/study guides for all classes; allowing for extended time during tests; explain or paraphrase directions for clarity in all testing settings; all tests should be given in small group; and repetition of directions for all tests. Def.'s Ex. 37.
83. The IEP also calls for parapro assistance in most of this annual goals and objectives. Def.'s Ex. 27-36. Parapro support would be one-on-one, as needed. Tr. 2814:22-2815:25; 2818:6-9; 3515:16-19.
84. At the end of the IEP meeting, the IEP resulted in the following annual goals and objectives:³¹
- a. Annual Goal: "By 04/12/2010: Given manipulatives and visual cues, [REDACTED] will increase the ability to select and apply mathematical operations in a variety of contexts to 80% accuracy as measured by teacher of record." Def.'s Ex. 27.
 - i. Objective: "By 04/12/2010: [REDACTED] will review math problems, select from 4 basic operations, and use relevant information (math vocabulary words) in a problem to solve it in 4 out of 5 trials in a math class as measured by the math teacher." Def.'s Ex. 27.

community and vocational skills was then removed from the IEP. IEP Meeting Tr. 222. Additionally, [REDACTED] wanted [REDACTED]'s achievement measures to be 80%, which was changed for almost all of the annual goals. Def.'s Ex. 27-36.

³¹ Def.'s Ex. 27-36. The verbiage contained in the IEP is replicated here without correction.

- ii. Objective: "By 04/12/2010: When given math assignments, [REDACTED] will write, evaluate, and perform operations with real numbers, decimals, fractions, and negative numbers as measured by the Special Education Math Teacher and/or paraprofessional." Def.'s Ex. 27.
- b. Annual Goal: "By 04/12/2010: Given a passage written on his instructional level, [REDACTED] will increase comprehension of a variety of printed materials to 80% as measured by the special education teacher/paraprofessional in the Language Arts classroom, in 3 out of 4 opportunities." Def.'s Ex. 28.
 - i. Objective: "By 04/12/2010: [REDACTED] will read a passage on his instructional level, read the relevant question, return to text, locate information, and answer questions as measured by the teacher." Def.'s Ex. 28.
 - ii. Objective: "By 04/12/2010: Given a reading passage, [REDACTED] will recall the main idea and two supporting details after reading a selection (written or verbal) with one teacher prompt as measured by the teacher of record." Def.'s Ex. 28.
- c. Annual Goal: "By 04/12/2010: Given a teacher prompt, [REDACTED] will improve self-advocacy skills by explaining needed accommodations, and requesting assistance as needed as measured by teacher of record using teacher made data forms for 4 out of 5 opportunities over a 6 week period." Def.'s Ex. 29.
 - i. Objective: "By 04/12/2010: [REDACTED] will explain orally and/or use visuals to express to teachers or paraprofessionals when assistance is needed (ie auditory trainer) that enables him to be successful with class activities and assignments across content areas to be measured by teachers and paraprofessionals." Def.'s Ex. 29.
 - ii. Objective: "By 04/12/2010: [REDACTED] will follow task analysis to use his FM system across all settings settings (including lunch, bathroom breaks, and transitions in the hallways), as measured by teacher of record." Def.'s Ex. 29.
- d. Annual Goal: "By 04/12/2010: [REDACTED] will improve transitioning skills by alternating tasks across settings and moving from class to class during a regular school day with minimal assistance as measured by teacher/paraprofessional across class settings using teacher made data forms and attendance data." Def.'s Ex. 30.
 - i. Objective: "By 04/12/2010: When given a one minute warning/prompt (verbal or non-verbal), [REDACTED] will transition from one task to another and between activities as measured by the teacher/paraprofessional using data collection." Def.'s Ex. 30.
- e. Annual Goal: "By 04/12/2010: [REDACTED] will improve his social/emotional functioning by performing 80% of the task analysis in 4 out of 5 assigned tasks as measured by the teacher of record." Def.'s Ex. 30.
 - i. Objective: "By 04/12/2010: Given redirection, [REDACTED] will limit his verbal outbursts and gestures during an assigned task to no more than 2 incidents in a 20-minute segment as observed and documented by the teacher of record." Def.'s Ex. 31.
 - ii. Objective: "By 04/12/2010: [REDACTED] will engage in conversations with peers on topics of shared interest during designated time periods (by speaking in a natural tone of voice, maintaining upright posture, answering questions with multiple-word answers, and asking related questions to keep the conversation going) in special and general education settings as measured by teacher of record using a task analysis." Def.'s Ex. 31.

- f. Annual Goal: "By 04/12/2010: [REDACTED] will expand the quantity and quality of his written expression by attempting essay assignments using pre-writing and drafting techniques in 4 out of 5 opportunities as measured by the classroom teacher." Def.'s Ex. 31.
- i. Objective: "By 04/12/2010: Given a graphic organizer, [REDACTED] will write a paragraph (3-4 sentences) in relation to a given topic by teacher with a main idea sentence and 3 supporting detail sentences with 75% accuracy as measured by the teacher/paraprofessional/SLP across setting." Def.'s Ex. 32.
- g. Annual Goal: "By 04/12/2010: Following instruction, [REDACTED] will demonstrate an understanding of curriculum-related vocabulary at his instructional level, by responding to specific questions with verbal and/or written response with 80% accuracy with no more than 2 prompts." Def.'s Ex. 32.
- i. Objective: "By 04/12/2010: [REDACTED] will demonstrate understanding of learned vocabulary words by producing one novel sentences using the target word." Def.'s Ex. 32.
 - ii. Objective: "By 04/12/2010: [REDACTED] will use context clues to identify unknown words in instructional level narratives as indicated by correctly generating the word's meaning." Def.'s Ex. 33.
 - iii. Objective: "By 04/12/2010: Given an open-ended question, [REDACTED] will orally supply the correct correct vocabulary word to answer the question." Def.'s Ex. 33.
 - iv. Objective: "By 04/12/2010: [REDACTED] will expressive the antonym for 5 previously learned vocabulary words (adjective/adverb) per week. Def.'s Ex. 33.
- h. Annual Goal: "By 04/12/2010: [REDACTED] will demonstrate story comprehension from instructional level story presented oral/written with 70% accuracy with no more than 2 prompts measured by SLP, teacher, and/or paraprofessional." Def.'s Ex. 34.
- i. Objective: "By 04/12/2010: given an instructional level narrative (oral/written), student will verbally recall details by answering wh-questions with visual cues (i.e, color cubes, manual signs, picture cues)." Def.'s Ex. 34.
 - ii. Objective: "By 04/12/2010: Given a target word and its written definition, [REDACTED] will identify the best sentence out of choice of two sentences that states the same meaning." Def.'s Ex. 34.
- i. Annual Goal: "By 04/12/2010: Following instruction, student will follow multi-step directions independently (oral/written) with 80% accuracy with no more than 2 prompts, as measured by data collection." Def.'s Ex. 35.
- i. Objective: "By 04/12/2010: Given 3 step oral directions student will restate in his own words and complete the directions." Def.'s Ex. 35.
- j. Annual Goal: "By 04/12/2010: Given a structured social activity, [REDACTED] will use social language in an age appropriate manner to communicate with peers and teachers without conflict and with the opportunity to have all ideas conveyed accurately in class and/or therapy settings as measured by teachers, SLP and Paraprofessionals." Def.'s Ex. 35.
- i. Objective: "By 04/12/2010: Following a viewing of an educational movie, television show, social skills video or social pictures, [REDACTED] will label feelings and moods of others by making inferences about a person's nonverbal language." Def.'s Ex. 36.

- ii. Objective: "By 04/12/2010: [REDACTED] will maintain a conversation on a non-preferred topic for 3 exchanges with a conversation partner." Def.'s Ex. 36.

85. During the March 25, 2009 IEP meeting, GCSD representatives asked [REDACTED]'s parent and advocates to tell them what was missing in the IEP.³²
86. [REDACTED] understood that the IEP minutes would be considered if any dispute arose.³³
87. On April 3, 2009, the principal and special education department head at Brookwood High School ("Brookwood") sent [REDACTED] a letter proposing a transition plan for [REDACTED], should he begin attending Brookwood. Def.'s Ex. 209-10.
88. The proposed plan recommended twenty hours per week in a mild autism class. The proposed plan also called for a gradual introduction to each classroom, and the assistance of a parapro to help [REDACTED] transition from class to class. Def.'s Ex. 209-10.
89. [REDACTED], by and through his mother, [REDACTED], filed a due process complaint on April 3, 2009. Compl. Apr. 3, 2009.

III. CONCLUSIONS OF LAW

The issue before this Court is whether [REDACTED] was provided a free appropriate public education. Again, [REDACTED] claims that the final IEP developed on March 25, 2009 is inappropriate because GCSD confers IDEA eligibility under an incorrect classification, thereby not addressing his educational needs. [REDACTED] also claims that his parent and advocates were not afforded the opportunity to meaningfully participate in developing [REDACTED]'s IEP. In disputed IDEA matters, "[t]he party seeking relief shall bear the burden of coming forward with the evidence and the burden of proof at the administrative hearing." Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528 (2005). Therefore, [REDACTED] bears the burden of proving that the IEP at issue was not appropriate under the IDEA.

³² Tina Duncan said to [REDACTED]'s parent, grandparent, and advocates: "We need to go forward and have an IEP in place for [REDACTED]. What specifically do we need to address that is not addressed in these goals and objectives?" IEP Meeting Tr. tab 2 at 147 (Mar. 25, 2009).

³³ During the March 25, 2009 IEP meeting, [REDACTED] said that "[t]he minutes of the IEP meeting are part of the federal document here." IEP Meeting Tr. tab 2 at 245 (Mar. 25, 2009).

IDEA

Under the Individuals with Disabilities in Education Act (“IDEA”), schools are required to provide a free appropriate public education (“FAPE”) to all children with disabilities. 20 U.S.C. §§ 1400 *et seq.*, A FAPE³⁴ gives a child with a disability a “basic floor of opportunity” through access to specialized instruction and related services which are individually designed to provide educational benefit to the [] child.” Rowley, 458 U.S. 176, 201 (1982). The Supreme Court issued a two-part test to determine whether a school district meets the requirements set forth in the IDEA:

First, has the [school district] complied with the procedures set forth in the Act? And second, is the [IEP] developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the [school district] has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, 458 U.S. at 206-07; see also J.S.K. v. Hendry County Sch. Bd., 941 F.2d 1563, 1571 (11th Cir. 1991).

School districts must first identify and evaluate a child with a disability to ensure the child’s disability qualifies for special education and related services under the IDEA (“IDEA services”). If the child’s disability is eligible for IDEA services as enumerated in the statute, then an individualized education program (“IEP”) is created for the child through an IEP team.³⁵ 20 U.S.C. § 1411; Mandy. S. v. Fulton County Sch. Dist., 205 F. Supp. 2d 1358, 1366 (N.D. Ga. 2000). An IEP is “a written statement for each child with a disability that is developed, reviewed, and revised in accordance with [the IDEA, Georgia law, and the rules promulgated by the Georgia Department of Education.]” 20 U.S.C. § 1414(d)(1)(A); Ga. Comp. R. & Regs. 160-4-7-.01(2) (2007); see also Gwinnett County Sch. Dist. v. J.B., 398 F. Supp. 2d 1245, 1248 (N.D. Ga. 2005). Once finalized, school districts must

³⁴ FAPE is defined as special education and related services that: (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standard and direction, and without charge; (C) include an appropriate preschool, elementary, or secondary education in the State involved; and (D) are provided in conformity with the individualized education program under section 1414(d)(9). 20 U.S.C. § 1401(9); Ga. Comp. R. & Regs. 160-4-7-.02 (2007).

³⁵ An IEP team normally includes the parents, at least one regular education teacher, at least one special education teacher, an individual who can interpret the instructional implications of evaluation results, a school board representative, other individuals with relevant expertise (at the discretion of the parent or school), and the child (if appropriate). 20 U.S.C. § 1414(d)(1)(B). See also Gwinnett County Sch. Dist. v. J.B., 398 F. Supp. 2d 1245, 1248 (N.D. Ga. 2005).

implement the IEP “as soon as possible.” 34 C.F.R. § 300.342(b)(1)(ii); see also J.B., 398 F. Supp. 2d at 1248. If the parents are dissatisfied with the IEP, they are entitled to an impartial due process hearing. 20 U.S.C. § 1415(f).

Eligibility

After a school district is on notice that a child may require special education services, the child’s disability is identified and the child is evaluated to determine his educational needs.³⁶ School districts must ensure that a child who is eligible to receive services is properly identified and evaluated.³⁷ 20 U.S.C. § 1412; 34 C.F.R. § 300.111; Ga. Comp. R. & Regs. 160-4-7-.04(4)(b) & -.05(2) (2007). Only certain disabilities qualify for IDEA services based on specific criteria.³⁸ 20 U.S.C. § 1402(3). In Georgia, autism spectrum disorder (“ASD”) is an eligible disability; auditory processing disorder (“APD”) is not. Ga. Comp. R. & Regs. 160-4-7-.05(1) (2007). ASD eligibility is based on the assessment of five characteristic areas associated with autism.³⁹ Ga. Comp. R. & Regs. 160-4-7-.05 app. (a) (2007).

The purpose of the identification and evaluation is to determine whether the child has an eligible disability, and the related content of the child’s IEP. 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.532(b). To determine eligibility, the school district must (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child; (2)

³⁶ The Eleventh Circuit discussed how the IEP process is initiated:

[A] parent is required to notify the school board . . . that it wishes to place a child in special education services. The parent then consents to have the child evaluated to determine whether the child is ‘a child with a disability’ under the IDEA. See 34 C.F.R. §§ 300.320, 300.343.

...

Once a child is evaluated and determined to be a “child with a disability” under the IDEA, an “IEP team” is formed. See 34 C.F.R. § 300.344(a).

C.M. v. Sch. Bd. of Miami-Dade County, 437 F.3d 1085, 1095 (11th Cir. 2006) (footnote omitted).

³⁷ Schools may consider proper evaluations that are parent- or school-initiated. However, school-initiated evaluations require parental consent. See 34 C.F.R. § 300.502(c)(1); Ga. Comp. R. & Regs. 160-4-7-.04 (2007).

³⁸ The eligible disabilities listed under the IDEA include: mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism spectrum disorder, traumatic brain injury, other health impairments, and specific learning disabilities. 20 U.S.C. § 1402.

³⁹ The five characteristic areas of autism are: (1) development rates and sequences; (2) social interaction and participation; (3) communication (verbal and/or non-verbal); (4) sensory processing; and (5) repertoire of activities and interests. Ga. Comp. R & Regs. 160-4-7-.05 app. (a) (2007).

not use any single measure or assessment as the sole criterion; and (3) use technically sound instruments. 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b)(1)-(3). Evaluations must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.532(h).

In this case, there is no dispute that [REDACTED]'s disability entitles him to IDEA services. However, [REDACTED] claims that GCSD refuses to acknowledge that he has APD and improperly characterizes his disability as ASD, which, he alleges, results in an inappropriate IEP for [REDACTED]'s educational needs. The record does not support [REDACTED]'s claim. First, GCSD does not deny that [REDACTED] has APD. However, GCSD does not believe that APD accounts for all of [REDACTED]'s disabilities. With [REDACTED]'s consent,⁴⁰ GCSD initiated a comprehensive evaluation with Dr. Campbell at the University of Georgia.⁴¹ Although Dr. Campbell lacked expertise in APD, he interviewed Dr. Hall and consulted with Dr. Kaplan (both audiologists) about the APD testing. Dr. Kaplan concluded that [REDACTED] was sufficiently tested and properly diagnosed. Based on these discussions with Dr. Hall and Dr. Kaplan, Dr. Campbell diagnosed [REDACTED] with autism and co-morbid APD. Dr. Campbell's final report including twenty-two (22) recommendations was reviewed by his supervising practitioner. Dr. Campbell provided a thorough and independent evaluation. He relied on seven (7) tests, nine (9) interviews, eleven (11) reports, and consulted with two (2) experts in APD. His diagnosis is consistent with prior reports. Moreover, [REDACTED] presented no credible evidence to refute Dr. Campbell's ASD diagnosis. [REDACTED]'s expert, Dr. Einhorn, is not an autism expert, and none of the tests he administered evaluated [REDACTED] for ASD or APD. Therefore, this Court concludes that GCSD properly relied on Dr. Campbell's evaluation and properly classified [REDACTED]'s eligibility under "Autism Spectrum Disorder" in the IEP.

⁴⁰ Consent was granted pursuant to a settlement agreement.

⁴¹ This Court found Dr. Campbell to be very credible. Despite his lack of APD expertise, Dr. Campbell collaborated with others to effect a comprehensive evaluation.

§ 87(2)(b) further claims that GCSD did not fairly consider Dr. Hall's report in developing the IEP. This Court does not agree. The transcript of the re-evaluation and IEP meetings show that Dr. Hall's diagnosis, report, and recommendations were discussed, GCSD posed questions about specific recommendations to Dr. Hall by way of § 87(2)(b), and the IEP includes Dr. Hall's global recommendations that § 87(2)(b) use a personal FM system and that § 87(2)(b) receive supplements in classrooms. Additionally, Dr. Hall's diagnosis and recommendations were incorporated into Dr. Campbell's report and recommendations. Therefore, this Court finds that GCSD considered Dr. Hall's evaluation and recommendations in developing § 87(2)(b)'s IEP.

Regarding eligibility, this Court concludes that GCSD properly classified § 87(2)(b)'s disability as ASD, under which § 87(2)(b) was eligible for IDEA services. § 87(2)(b) presented no qualified expert testimony to the contrary. This Court concludes that the uncontradicted expert evidence compels the finding that § 87(2)(b) is eligible for IDEA services under the ASD classification.⁴² Again, GCSD does not dispute the APD diagnosis.

IEP Requirements

§ 87(2)(b) claims that his IEP was defective. To prove that the IEP was defective, § 87(2)(b) must show that GCSD did not comply with the procedures set forth in the IDEA—the first part of the Rowley test. Once it is determined that a child is eligible for IDEA services, “[a]n IEP is created “during a meeting between the student’s parents and school officials.” Loren F. v. Atlanta Independent School System, 349 F.3d 1309, 1312 (11th Cir. 2003) (citing 20 U.S.C. § 1414(d)(1)(A)-(B), and N.L. v. Knox County Schools, 315 F. 3d 688, 689 (6th Cir. 2003)). The IDEA does not mandate parental participation in every aspect of the educational process. Weiss v. Sch. Bd. of Hillborough County, 141 F.3d 990, 997 (11th Cir. 1998).

⁴² Neither of § 87(2)(b)'s experts are autism experts.

In general terms, the IEP must include: a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals; a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on progress will be provided; a statement of special education and related services and supplementary aids and services, as well as a statement of program modifications or supports for school personnel; an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education class; the projected date services and modifications will start, and the anticipated frequency, location, and duration of those services and modifications; and post-secondary transition goals for a child each year once the child over sixteen years old.⁴³ 20 U.S.C. § 1414(d)(1)(A)(i). No other information is *required* to be included in the IEP. 20 U.S.C. § 1414(d)(1)(A)(ii) (emphasis added). School districts are required to have an IEP in effect as soon as possible. 20 U.S.C. § 1415(d)(2)(A); 34 C.F.R. § 300.342(a); Ga. Comp. R. & Regs. 160-4-7-.06 (2007).

⁴³ The IDEA specifically enumerates the components to be included in a student's IEP:

- (1) a statement of the child's present levels of academic achievement and functional performance;
- (2) (a) a statement of measurable annual goals, including academic and functional goals designed to
 - (i) meet the child's needs that result from the disability and
 - (ii) meet each of the child's other educational needs and
 (b) if the child requires alternate assessments, benchmarks or short-term objectives;
- (3) a description of
 - (a) how the child's progress toward meeting the annual goals will be measured and
 - (b) when periodic reports of the progress will be provided;
- (4) a statement of the special education and related services and supplementary aids and services to be provided to the child and a statement of the program modifications or supports for school personnel that will be provided to enable the child
 - (a) to advance appropriately toward attaining the annual goals and
 - (b) to be involved in and make progress in the general curriculum and to participate in extracurricular and nonacademic activities and
 - (c) to be educated and participate with other children with disabilities and nondisabled children in the activities described;
- (5) an explanation of the extent to which the child will not participate with nondisabled children;
- (6) (a) a statement of accommodations necessary to measure academic achievement and functional performance on state and district-wide assessments and
 - (b) if the team determines that the child needs alternative assessments, a statement of why the child cannot participate in the regular assessment and the particular alternative assessment selected; and
- (7) the projected date for the beginning of the services and the anticipated frequency, location, and duration of those services and modifications. In addition, the first IEP to be in effect when a child turns 16 must include
 - (a) appropriate measurable postsecondary goals; and
 - (b) the transition services needed to assist the child in reaching those goals. Also, not later than one year before the child reaches the age of majority, the IEP must include a statement that the child has been informed of his rights that will transfer to him on reaching the age of majority.

20 U.S.C. § 1414(d); 34 C.F.R. 300.320.

The services and placement the school district provides to the child must address all of the student's identified special education and related services needs, and must be based on the student's unique needs—not on the student's category of disability. 34 C.F.R. § 300.300(a)(3); Ga. Comp. R. & Regs. 160-4-7-.02 (2007). In addition, while the IDEA and its implementing regulations require the IEP team to consider, if appropriate, strategies and supports to address behavior in the IEP, there is no mandate for such interventions. 20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.346(a)(2)(i); Ga. Comp. R. & Regs. 160-4-7-.06(18) (2007).

In this case, after GCSD determined that [REDACTED] was eligible for IDEA services, the IEP team met to develop [REDACTED]'s IEP. The IEP team consisted of [REDACTED]'s parent, grandparent, neuropsychologist, educational advocate, attorney, special education teacher, regular education teacher, speech-language pathologist, paraprofessional, private school representatives, proposed school representatives, and other GCSD teachers and staff who had provided services to [REDACTED] in the past. The IEP team met from 9 am to 4:15 pm on December 16, 2008. GCSD attempted to schedule a follow-up meeting with [REDACTED] and [REDACTED] from January to March to complete the IEP. More than three months after the re-evaluation conference and initial IEP meeting, the IEP team finally met on March 25, 2009 from 8:30 am to 4 pm to finalize [REDACTED]'s IEP. As required, the parent was given sufficient notice about when and where the meeting would take place, and who would attend.

The final IEP contained [REDACTED]'s then-present levels of educational performance based on Dr. Campbell's report;⁴⁴ annual goals and objectives with methodology of measurement identified; special education and related services of direct speech-language therapy; supplementary aids and services including [REDACTED]'s personal FM system, training for GCSD personnel to properly work with [REDACTED]'s personal FM system, and paraprofessional support; modifications and accommodations; the amount of time [REDACTED] was in regular education; the reasons why [REDACTED] had limited regular education; how [REDACTED]'s parents

⁴⁴ Under "Present Levels Of Performance: Description of strengths," auditory processing abilities are listed as age-appropriate. This statement directly contradicts Dr. Hall's report. However, this statement came from Dr. Campbell's report. Additionally, Dr. Jan Calkins stated this in the IEP meeting, and no one contested it. Def.'s Notebook 2 of 2, IEP Meeting Tr. tab 1 at 206 (Dec. 16, 2008); see also Def.'s Ex. 17.

would be informed of his progress on his goals; the frequency, location, and duration of his services and modifications; and the date his IEP would begin, which was April 13, 2009—two and a half weeks after the IEP was finalized. The verbiage of the IEP was general and, at times, vague.⁴⁵ However, on its face, the final IEP contained the components required under the IDEA.

More than 1000 pages of transcripts from the IEP meetings reflect the extensive discussions that took place about [REDACTED]'s special education and related services needs as identified by Dr. Hall and Dr. Campbell, as well as discussions with [REDACTED]'s teachers and paraprofessionals at both LMB and South Gwinnett about their observations and experiences with [REDACTED]. The transcripts also reveal that, in developing the IEP, the IEP team focused on addressing [REDACTED]'s unique educational needs, and did not attribute any of his educational needs to a particular disability. Throughout the extensive discussions, the IEP team considered strategies and supports for all of [REDACTED]'s identified educational needs.

This Court finds that [REDACTED]'s IEP, although vague at times, contained all the components required under the IDEA, and it was scheduled to begin soon after the IEP meeting. GCSD complied with the procedures set forth in the IDEA, meeting the first part of the Rowley test. As no other information is *required* to be in the IEP, this Court concludes that [REDACTED]'s IEP was complete.

⁴⁵ See O'Toole v. Olathe Dist. Schools Unified Sch. Dist. No. 233, 144 F.3d 692 (10th Cir. 1998).

FAPE

In matters alleging a procedural violation, this Court may find that [REDACTED] did not receive FAPE only if the procedural inadequacies—

- (I) impeded his right to FAPE;
- (II) significantly impeded his parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Libby; or
- (III) caused a deprivation of educational benefits.

20 U.S.C. § 1415 (f)(3)(E)(ii). Here, [REDACTED] claims that he was denied FAPE because his parent and advocates were not afforded the opportunity to meaningfully participate in his educational planning process, and because the IEP was not reasonably calculated to provide meaningful educational benefit.

Procedural violations to parental involvement do not show the requisite actual harm if the parent is still involved in the process. See J.B., 398 F. Supp. 2d at 1268 (finding that procedural violations did not preclude parental participation where parent “was an active and vocal participant in every step of the IEP process, and the minutes and transcripts of the IEP meetings, along with the extensive correspondences between the School District and [the parent], bear this out”).

In the present case, [REDACTED] argues that his parent was not afforded the opportunity to meaningfully participate in developing his IEP. [REDACTED] claims that data was never shared with [REDACTED] or [REDACTED], that [REDACTED] and [REDACTED] were not permitted to make a classroom observation at the proposed placement, that [REDACTED] and [REDACTED] received no prior written notice, and that [REDACTED] and [REDACTED]'s concerns were not adequately reflected in the minutes. This Court does not agree. After a thorough review of the re-evaluation conference and IEP meetings minutes and transcripts, it is evident that [REDACTED] and [REDACTED] fully participated in developing [REDACTED]'s IEP and that many of [REDACTED] and [REDACTED]'s concerns were addressed in the meeting, incorporated into the goals, or omitted from the IEP at [REDACTED]'s or her advocates' demands. There was correspondence between GCSD and [REDACTED] and [REDACTED] regarding reports, questions, and concerns prior to and in between the IEP meetings. [REDACTED] presented no evidence to support the claim that data was never shared with [REDACTED]'s parent. [REDACTED] and [REDACTED] were invited to make classroom observations if they made an

appointment. [REDACTED] and [REDACTED] received prior notice because both were present at the IEP meetings. Finally, [REDACTED] and [REDACTED]'s concerns are adequately reflected in the minutes. [REDACTED], [REDACTED], and their chosen advocates were active and vocal participants throughout the IEP process. While parents are entitled to participate in the process, a parent does not have the right to dictate the outcome. See Rowley, 458 U.S. 176. This Court can only conclude from the evidence that [REDACTED]'s parent and advocates fully and meaningfully participated in developing [REDACTED]'s IEP.

“Educational benefit” is a “basic floor of opportunity” and does not require a school to provide maximum benefit. Rowley, 458 U.S. at 198; see also Loren F., 349 F.3d 1309, 1312 n.1 (11th Cir. 2003) (“The FAPE described in an IEP need not be the best possible one . . . rather, it need only be an education that is specifically designed to meet the child’s unique needs, supported by services that will permit him to benefit from the instruction.”); J.S.K., 941 F.2d at 1572-73 (citing Doe v. Ala. State Dep’t of Educ., 915 F.2d 651, 655 (11th Cir. 1990)) (“If the educational benefits are adequate based on surrounding and supporting facts, [IDEA] requirements have been satisfied. While a trifle might not represent ‘adequate’ benefits, maximum improvement is never required. Adequacy must be determined on a case-by-case basis in the light of the child’s individual needs.”). In determining whether an IEP provides adequate educational benefit, the Eleventh Circuit grants “great deference” to the educators who develop IEPs. J.S.K., 941 F.2d at 1573. The choices regarding the implementation of an IEP, including the teaching methodology, are left to the professional educators who are best equipped to make them. Rowley, 458 U.S. at 208.

[REDACTED] contends that the final IEP was not reasonably calculated to provide meaningful educational benefit. [REDACTED] argues that there were no baselines by which his progress could be measured, that the IEP contained no one-on-one services or Behavioral Intervention Program (“BIP”), that depression and occupational therapy (“OT”) were not addressed in the IEP, that placement was predetermined, and that the transition services to properly transition [REDACTED] from private placement back to the public school setting at another school were not in the IEP. After reviewing the evidence, this

Court again does not agree. First, [REDACTED]'s present levels of performance were on the IEP, which serve as a starting point. Additionally, [REDACTED] had not yet started his program, so no baselines were available for his specific annual goals. The IEP did not include one-on-one services, but teachers testified that one-on-one services would be available to [REDACTED] as needed. Additionally, one-on-one services were not recommended as the only way [REDACTED] could benefit educationally.⁴⁶ Depression was listed as a concern in the IEP, but [REDACTED]'s parent and advocates adamantly contested that [REDACTED] was depressed, so depression was not addressed further in the IEP. Placement was not predetermined. Up until the final moments of the March IEP meeting, GCSD told [REDACTED]'s parents and advocates that placement had not yet been determined. No other evidence was presented to show that GCSD predetermined placement. Finally, transition services, a BIP, and OT were not required to be in the IEP under the IDEA unless [REDACTED] needed these services to benefit educationally.⁴⁷ The evidence presented does not support [REDACTED]'s argument. As such, the Court finds that [REDACTED] did not show that his IEP was not reasonably calculated to provide him with adequate educational benefit.

The primary disagreement at the time the IEP was developed appears to be [REDACTED]'s insistence on placement at LMB because of their one-on-one instruction methodology. No provision of state or federal special education law gives parents the authority to dictate methodology, location of service, or identity of personnel to work with the child—the choice of methodology is left to the educators, to whom deference must be given. Rowley, 458 U.S. at 208; Todd D. v. Andrews, 933 F.2d 1576 (11th Cir. 1991); J.S.K., 941 F.2d at 1573.

In conclusion, [REDACTED] failed to prove that GCSD denied him a FAPE. [REDACTED]'s IEP was properly developed as required by the IDEA. Although vague, the IEP contains the minimum requirements required under the IDEA. [REDACTED] was not denied a FAPE, as the IEP was reasonably calculated to provide

⁴⁶ Some experts testified that one-on-one instruction was appropriate for [REDACTED]'s educational needs. However, no expert testified that one-on-one instruction was the only method for T.M. to benefit educationally. Further, methodology is not an IEP requirement.

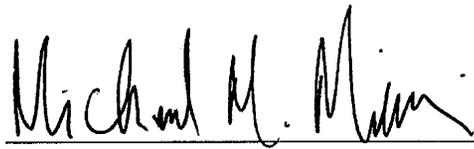
⁴⁷ GCSD offered [REDACTED] transition services shortly after the March 25, 2009 IEP meeting in a letter to [REDACTED] dated April 3, 2009. The letter outlined how [REDACTED] would transition into the proposed placement and included parapro support.

with adequate educational benefit, and [redacted]'s parent and advocates were not precluded from meaningfully participating in the developing the IEP. 20 U.S.C. § 1400(d)(1)(A); Rowley, 458 U.S. 176; J.S.K., 941 F.2d 1563. Accordingly,

IV. DECISION

IT IS HEREBY ORDERED THAT [redacted] was not denied a free appropriate public education. Therefore, [redacted]'s claim for a new individualized education program is DENIED.⁴⁸

So ordered this 2nd day of November, 2009.



Michael M. Malihi
Administrative Law Judge

⁴⁸ Although [redacted]'s IEP meets the minimum requirements of the IDEA, the Court is not impressed with the IEP as it is written. The Court understands the inherent frustration of developing a sound IEP that addresses the concerns of numerous parties and issues. However, more care should be exercised in writing IEPs so that educators, parents, and courts do not have to rummage around for relevant information and unnecessarily expend time analyzing vague provisions. Care should be particularly given to ensure that as much of the germane information is included in the body of the IEP instead of incorporating this information by way of other documents, such as the IEP meeting minutes and transcripts. The Court recognizes that IEPs do not have to be perfect to meet the IDEA requirements; however, every attempt should be made to strive for an excellent IEP, whether it is required by law or not.