

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

█, by and through his parent, █, and :
:
:
Petitioners, :
:
v. :
HENRY COUNTY SCHOOL DISTRICT, :
:
Respondent. :

Docket No.: 1828386
1828386-OSAH-DOE-CPEXP-75-Walker



APR 25 2018

Kevin Westray
Kevin Westray, Legal Assistant

FINAL DECISION

I. INTRODUCTION

On February 8, 2018, the Petitioners filed a Due Process Hearing Request (“Complaint”), seeking expedited review of a manifestation determination and disciplinary removal made by the Respondent, the Henry County School District. The Petitioners’ Complaint also alleged that the School District had failed to provide █ with a Free Appropriate Public Education (“FAPE”).¹ A due process hearing was held before the Office of State Administrative Hearings (“OSAH”) on April 12, 2018.² The Petitioners appeared *pro se*. David Waldroup, Esq., Janet Scott, Esq. and Lajauna Ransaw, Esq. represented the Respondent, Henry County School District (or the “District”).

¹ The hearing originally was to take place on March 6, 2018. After the parties agreed to mediation, it was determined that March 6, 2018, the scheduled hearing date, was the only date that all of the parties and the mediator were available. Accordingly, the undersigned continued the case to March 28, 2018. Following this continuance, the District filed an emergency motion to continue because one of the attorneys representing the district had passed away unexpectedly and his funeral was scheduled for March 28, 2018. The undersigned granted the District’s emergency motion, and reset this matter for hearing to April 12, 2018. The parties consented to joining both the expedited and non-expedited claims for hearing.

² A transcript of the hearing was filed on April 20, 2018.

II. FINDINGS OF FACT

1.

The Petitioner [REDACTED]³ was enrolled as an [REDACTED] grade student at [REDACTED] Middle School for the 2017-2018 academic year. He has been diagnosed with emotional/behavioral disorder (“EBD”) and an autism spectrum disorder (“autism”), and is eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) under these two categories. He also has been diagnosed with Oppositional Defiant Disorder (“ODD”). ODD is not recognized as a disability under IDEA. (T-91; Exhibits R-2 at BS 15 and R-16 at BS 171-172).

2.

On or about October 19-20, 2016, [REDACTED] underwent a psycho-educational evaluation (also “the evaluation”). The evaluation reflected deficits in his adaptive and behavioral functioning. (Exhibit R-2 at BS 17).

3.

[REDACTED] present levels of academic achievement and functional performance, as well as the services the District provides, are set forth in an Individualized Education Program (“IEP”), and include the results of the 2016 evaluation. (Exhibits R-1, R-2). [REDACTED] IEP team includes his teachers, school administrators and his mother, [REDACTED]. The team meets to evaluate [REDACTED] progress and, if necessary, modify the services and supports administered by the District. (Exhibits R-1, R-2).

4.

On October 25, 2017, J.R.’s IEP team met for an annual review of his IEP. (Exhibit R-1). The October 25, 2017 IEP reflects the team’s conclusion that “[w]hen engaged in his work,

³ To protect their privacy, the Petitioners and minor children are referred to herein only by their initials.

■■■■ learns quickly and doesn't have trouble completing his assignments." (R-2 at BS 18). However, the team expressed concern in the target areas of "physical aggression, elopement, work refusal and following directions." (Exhibit R-2 at BS 18). Accordingly, ■■■■'s IEP included a Behavioral Intervention Plan ("BIP").⁴

5.

The BIP's targeted behaviors included the refusal to comply with adult directives, complete schoolwork, or remain in the designated classroom area. ■■■■ noncompliance often led to verbal or physical aggression. (R-2 at BS 19).

6.

During the October 2017 IEP meeting, ■■■■ inquired as to whether the school should perform a new Functional Behavioral Assessment ("FBA"), and also asked the District to provide ■■■■ with additional academic support. (T-288; Exhibit R-20). The IEP team responded that given that ■■■■'s target behaviors had not changed, they would be able to adjust ■■■■ "BIP" without performing a new FBA. (T-288-292). ■■■■ did not specify that any conditions be added or deleted to ■■■■ IEP. (T-36).

7.

Due to a variety of circumstances, including illness and a period of detention at Georgia's Juvenile Justice Center, ■■■■ was frequently absent from school; correspondingly, his academic performance suffered. (T-34-35, 196). In response to ■■■■ requests, teachers at ■■■■ Middle School offered ■■■■ tutoring before or after school, three to four times a week, in every subject area. Nonetheless, ■■■■ rarely attended tutoring sessions. (T-159-160).

⁴ According to Ga. Comp. R. & Regs. 160-4-7-.21(7), a BIP is a plan for a child with disabilities, included in the IEP when appropriate, which uses positive behavior interventions, supports and other strategies to address challenging behaviors and enables the child to learn socially appropriate and responsible behavior in school and/or educational settings.

8.

On December 19, 2017, ██████'s IEP team met to review and amend the October 2017 IEP. (Exhibit R-2 at BS 15-26). At the December 2017 IEP, ██████ asked that ██████ be assigned to a different classroom, and for changes regarding positive reinforcements. (T-37-38). The District consented, and implemented these modifications. (T-38-39).⁵

9.

At the December 19, 2017 IEP meeting, the BIP identified interventional strategies to be employed by school staff and provided, in relevant part:

Step 1: When ██████ is compliant and following adult directives, he will receive verbal praise and points. The verbal praise should be specific to what he is doing. If ██████ is not being compliant, move to step 2;

Step 2: If ██████ continues to refuse to comply with directives, he will be verbally reminded/redirected with clear directives. Remind him that if he is compliant then he will gain access to a desirable item. Remind him what he needs to do if he feels he needs a break. Do not verbally acknowledge the undesired behavior; only tell him what the expectation is in order not to give attention to negative behaviors, but only to positive behaviors. If ██████ is not being compliant move to step 3;

Step 3: If ██████ continues to be non-compliant, offer him a choice. The choice should be done with minimal verbal interaction. Deliver the choice one time and walk away. ██████ may need to feel that he has some control over his environment and the things he does not like doing. If ██████ is not being compliant, move to step 4;

Step 4: If ██████ continues to refuse to comply with directives, he will be directed to cool down time. Give him the opportunity to discuss his behavior with an adult. Continue with the original demand. When he complies and catches up with the task or a new segment has started, allow him to earn tokens/points again. Continue with steps 1-4 throughout the day as many times as necessary to let ██████ know that he will be expected to comply with directives and will not receive desired item(s) and will not be allowed to escape undesired task/situations unless he asks for a break by letting the adult know.

Step 5: If non-compliance escalates into physical aggression where ██████ becomes a harm to [him]self, harm to others, or harm is imminent, staff will use the

⁵ Although the District acceded to her requests, ██████ noted that the changes had only been implemented for a short period of time prior to the incident. (T-38-39).

appropriate procedures outlined in the Mindset curriculum to help him deescalate and keep him and all others safe. Administration will be called. (Exhibit R-2 at BS 20-21).

10.

J [REDACTED] F [REDACTED] is the principal of [REDACTED] Middle School. She has known [REDACTED] since he was in the sixth grade. (T-215-216). She had had a good relationship with [REDACTED], noting that in the sixth grade he was a “pretty mellow” student. (T-216).

11.

Ms. F [REDACTED] noticed a change in [REDACTED] during the 2017-2018 academic year. For example, at the beginning of the academic year, Ms. F [REDACTED] approached [REDACTED] to discuss the fact that he was wearing a hoodie and a hat in the school building; [REDACTED] responded by telling her that “I can do what I want.” (T-216). When [REDACTED] returned to school after the winter break, Ms. F [REDACTED] noticed that he looked upset, and asked him how he was feeling. (T-217). He told Ms. F [REDACTED] that “you thought you saw crazy, you ain’t seen crazy yet.” (T-217). It seemed to her that [REDACTED] “was wanting to do something and I didn’t know what.” (T-217).

12.

On January 11, 2018, shortly after [REDACTED] returned to school, [REDACTED] punched another student. He was counseled by school staff to “keep his hands to himself,” and received a warning. (T-219; Exhibit R-13 at BS 66-67).⁶

13.

On January 12, 2018, at around 12:30 p.m., [REDACTED] was scheduled to attend a “connections” class, typically an elective such as physical education. (T-58, 99). Instead, he came to H [REDACTED] T [REDACTED] classroom. (T-59). Ms. T [REDACTED] is an EBD paraprofessional at [REDACTED] Middle School. (T-57).

⁶ At the hearing, [REDACTED]. noted that she had not received any notice regarding this incident. (T-43-44, 238-239).

14.

When ■ came to her room, Ms. T ■ asked him if everything was all right, and he said “yes.” (T-59). She told ■ to come inside the classroom, observing that he seemed to be happy. (T-59, 72).

15.

There were two students in the classroom, a boy, ■ and a girl, ■ (T-59). ■ spoke with ■ and then began chasing him. (T-59). Ms. T ■ asked ■ to stop chasing ■ (T-59, 72). ■ stopped and Ms. T ■ thanked him for stopping. (T-59, 72-73).

16.

After a few minutes, ■ began to chase ■ again. Ms. T ■ told ■ “to stop, just relax, just calm down, cool down.” (T-59).

17.

■ ran out of the classroom, and ■ chased him down a hallway. (T-59). Ms. T ■ followed the boys into the hallway, directing ■ to stop chasing ■ because someone was going to get hurt. (T-59). ■ accompanied Ms. T ■ into the hallway.

18.

The situation quickly escalated. (T-73). ■ tried to throw ■ to the floor, while ■ attempted to maintain his balance. (T-59). Eventually, ■ responded to Ms. T ■ directions, stopped chasing ■ and began to return to the classroom. (T-60). Ms. T ■ thanked ■ for stopping his behavior. (T-73). He seemed to be in a “good mood.” (T-191).

19.

As he walked back to the classroom, ■ hesitated. (T-93, 139). It appeared as if ■ was checking to see if anyone was watching him. (T-183). When Ms. T ■ turned her back

on the students to walk into the classroom, ■ picked up ■ who was still in the hallway, and threw her to the floor. (T-60, 91). Ms. T ■ again told him to stop, “[b]ut he didn’t stop . . . he picked her up and he just body-slammed her to the floor.” (T-60). She observed that ■ was calm, not agitated, when he “body-slammed” ■ (T-62-63). She also noticed that he was smiling. (T-63).

20.

The entire incident took place over a matter of seconds – it was “fast.” (T-61, 104).

21.

After helping ■ Ms. T ■ returned to her classroom to use the intercom to call for assistance. (T-60-61). An administrator arrived and began to use “Mindset,” techniques employed to deescalate conflict and physical aggression. (T-63).

22.

On or about January 23, 2018, the District prepared a Notice of Suspension and Disciplinary Hearing (“Notice of Suspension”) charging that on January 12, 2018 at 12:30 p.m., ■ violated the rules and regulations of the Henry County Board of Education, specifically: Section 3/Rule 6: Excessive Physical Contact, and Section 1/Rule 20: Being in an Authorized Area without Permission. The Notice of Suspension alleged as follows:

■ went to Ms. M ■ room when he was supposed to be in connections.⁷ He went into the room and began horseplaying with ■ ■ ran out of the room and was chased by ■ picked him up and threw him on the floor. When Ms. T ■ stepped out of the classroom, ■ stepped out of the room with her. Ms. T ■ called the boys back. They started to come back to the room. On the way back, ■ picked up ■ when she looked like she was walking back into the classroom and threw her to the floor. ■ laid there for a little while after.

⁷ Ms. T ■ is the paraprofessional assigned to Ms. M ■ room.

(Exhibit R-3 at BS 27). A disciplinary hearing was scheduled for January 30, 2018.⁸

23.

Prior to the disciplinary hearing, a subset of [REDACTED] IEP team was convened to determine whether or not [REDACTED] behavior was either a manifestation of his disability, or the direct result of the District's failure to implement his IEP. The team consisted of [REDACTED], Dr. T [REDACTED] H [REDACTED], who holds a doctorate in educational leadership and has worked with disabled children for thirty years, S [REDACTED] H [REDACTED], a special education teacher, and A [REDACTED] J [REDACTED], a regular education teacher. (T-87-88; Exhibit R-35 at BS 437).

24.

In determining whether [REDACTED] conduct was a manifestation of his disability, the IEP team considered [REDACTED] IEP and school records, a video recording of the hallway, and statements or reports concerning the incident. (T-87, 102).⁹ Aside from [REDACTED], the team found that [REDACTED] conduct was not caused by or have a direct and substantial relationship to his disability. It also concluded that the alleged misconduct was not a direct result of the school district's failure to implement the IEP. (T-105; Exhibit R-6 at BS 45, R-7 at BS 46).

25.

Instead, the IEP team, save [REDACTED] determined that [REDACTED] behavior related to his ODD diagnosis. (T-92, 150). Children with ODD are able to make choices regarding their conduct. (T-90, 248). ODD is not recognized as a disability under the IDEA. (T-91).

⁸ [REDACTED] was suspended on January 23, 2018. (Exhibit R-3). At the hearing, [REDACTED] asserted that she had not received proper notice regarding the manifestation determination/disciplinary hearing. As [REDACTED] did not raise this issue in her Complaint, the undersigned declines to review the matter.

⁹ A video camera in the hallway filmed what had happened after [REDACTED] left Ms. T [REDACTED] class to chase [REDACTED] (T-91).

26.

Although children with EBD and autism sometimes engage in violent behaviors related to their disabilities, these children tend to be highly emotional and “appear as they are in a rage or unable to control [their] behaviors” (T-95-96). In contrast, children with ODD “usually display behaviors that are just basically oppositional, not wanting to comply with any adult authoritative figure, demands, or requests.” (T-90).

27.

When children with EBT and autism become aggressive, an observer can see “their agitation amping up,” and they usually have a “meltdown.” (T-250). The video did not reflect the “out-of-control” behavior or emotional arousal typically related to a disability. (T-97, 142). To the contrary, it appeared that ■■■ and ■■■ were engaging in “horseplay.” (T-97). ■■■ appeared to be smiling and calm when he returned to the classroom. (T-97). The team determined that he was in control of his actions, and had made a choice to engage in the misconduct. (T-91).

28.

Further, the team noted that the time of the incident suggested that it was not related to ■■■’s disability. The instant incident took place around 12:30 p.m. (T-58). On December 5, 2017, ■■■ Middle School initiated a Functional Behavioral Assessment (“FBA”) to document ■■■’s target behaviors and reactions to staff interventions. (Exhibit R-28). Over a period of eight days, there were a total of 77 incidents documented. (Exhibit R-28). None of the incidents recorded in the FBA took place between 12:00 p.m. to 1:00 p.m., typically the lunch or “connections” period, during which fewer demands were placed on a student. (T-99; Exhibit R-28). The team also concluded that the alleged misconduct was not a direct result of the school district’s failure to implement the IEP. (T-105).

29.

After the team made its manifestation determination, the disciplinary hearing officer found that ■■■ had violated the Henry County Schools Code of Conduct for engaging in excessive physical contact, and being in an unauthorized area without permission.¹⁰ A long-term suspension commencing on January 30, 2018, until May 25, 2018, was imposed. (Exhibit R-5 at BS 43). The suspension may only be served at Excel Academy. (Exhibit R-5 at BS 43).

30.

Following the disciplinary hearing, the IEP team met to determine what services could be obtained at Excel Academy. (T-108).¹¹ It concluded that Excel Academy has the resources to implement ■■■ IEP as drafted, and is an appropriate place for him to be receiving services. (T-110, 256-257). Additionally, Excel Academy teachers are available before or after school to provide additional tutoring. (T-110).

31.

■■■ IEP identifies noncompliance and aggression as target behaviors. (T-22). Maintaining that ■■■'s disabilities caused his behavior, the Petitioners note that ■■■ was noncompliant by leaving his classroom, and behaved aggressively. (T. 22). Moreover, they maintain that Ms. T■■■■ response to his behaviors did not comply with the BIP; she only told him to "stop" the behavior. (T-26). The Petitioners assert that if Ms. T■■■■ had complied with the BIP, ■■■ would not have engaged in any misconduct. (T-23).

¹⁰ The Section 1 violation for being in an unauthorized area without permission would not warrant suspension or expulsion. (R-3 at BS 27; R-27 at pp. 26-28).

¹¹ The record reflects that ■■■ left the IEP meeting. (T-107).

The Petitioners filed a Complaint contesting the manifestation determination. The Complaint also alleged that the District had failed to provide [REDACTED] with FAPE, in that it had not complied with the Petitioner's requests for appropriate supports and services, including tutoring, to meet [REDACTED] IEP goals. The Petitioners also maintain that [REDACTED] placement at Excel Academy would not provide him with the appropriate supports and services to comply with FAPE. (Exhibit P-1, Exhibit R-20 at BS 211-212).¹²

III. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 et seq.; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 et seq.; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. 160-4-7-.01. -.21.

2.

Petitioners bear the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs 160-4-7-.12(3)(1); Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

3.

Under IDEA, students with disabilities have the right to a free appropriate public education ("FAPE"). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. Comp. R. &

¹² In the original Due Process Hearing Request, the Petitioners also had asked for structural changes to manifestation determination meetings "corrective actions such as retraining, restructuring of assignments, reteaching and/or fines designated to the needs of [REDACTED] and the future provisions of services for all students with disabilities, should be implemented and executed to its fullest potential." (R-20 at BS 213). They did not pursue these claims at the hearing. (Exhibit P-1).

Regs. 160-4-7-.02(1)(a). “The purpose of the IDEA generally is ‘to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living’” C.P. v. Leon County Sch. Bd., 483 F.3d 1151 (11th Cir. 2007), quoting 20 U.S.C. § 1400(d)(1)(A).

4.

If a student with a disability commits a violation of a school district’s code of conduct, and the school district seeks the child’s removal for more than ten consecutive school days, the district must conduct a manifestation determination to determine whether the misconduct is a manifestation of the child’s disability. See 34 C.F.R. § 300.536. As part of the manifestation determination, the local educational agency, the parents, and relevant members of the child's IEP team must "review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents" to determine if the conduct in question (1) was caused by, or had a direct and substantial relationship to, the child's disability, or (2) was the direct result of the local educational agency's failure to implement the child's IEP. 20 U.S.C. § 1415(k)(1)(E)(i). A manifestation determination review must be conducted within ten days of any decision to change the placement of a child with a disability as a result of a code of conduct violation. 34 C.F.R. § 300.530(e)(5).

5.

If after a manifestation determination the misconduct is determined to have been caused by or have a direct and substantial relationship to the student's disability, or is the direct result of the school district’s failure to implement the child’s IEP, then the school must return the

student to the original placement unless the parents and the school district agree otherwise. See 34 C.F.R. §§ 300.530(e) & (f). However, if the student's conduct is determined not to be a manifestation of the disability, then "school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. . . ." 34 C.F.R. § 300.530(c).

6.

Additionally, if the removal constitutes a change of placement, the regulations provide that the child's IEP Team determines both the interim alternative educational setting for services and the appropriate educational services "to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." 34 C.F.R. §§ 300.530(d)(1), 300.530(d)(5), 300.531.

7.

█ has been diagnosed as having EBD¹³ and autism,¹⁴ and he is eligible for services

¹³ An emotional and behavioral disorder is an emotional disability characterized by the following:

(i) An inability to build or maintain satisfactory interpersonal relationships with peers and/or teachers. For preschool-age children, this would include other care providers.

(ii) An inability to learn which cannot be adequately explained by intellectual, sensory or health factors.

(iii) A consistent or chronic inappropriate type of behavior or feelings under normal conditions.

(iv) A displayed pervasive mood of unhappiness or depression.

(v) A displayed tendency to develop physical symptoms, pains or unreasonable fears associated with personal or school problems. Ga. Comp. R. & Regs. 160-4-7-.05(Appendix d) citing 34 C.F.R. § 300.8(c)(4)(i) (A - E).

¹⁴ The term of autism spectrum disorder includes all subtypes of Pervasive Developmental Disorder (such as Autistic Disorder; Rett's Disorder; Childhood Disintegrative Disorder; Asperger Syndrome; and Pervasive

under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). Ga. Comp. R. & Regs. 160-4-7-.05(a). He maintains that his misconduct was a manifestation of these disabilities.

8.

Although children with EBD and autism will engage in violent behaviors related to their disabilities, these children tend to be highly emotional and appear unable to control their behavior. In contrast, children with ODD are able to make choices regarding their conduct.

9.

Multiple factors suggest that [REDACTED] misconduct related to his ODD diagnosis, and was not a manifestation of his disabilities. [REDACTED] statement to Ms. F [REDACTED] the day before the incident that “you thought you saw crazy, you ain’t seen crazy yet” suggest that he was contemplating future misconduct. During the incident, [REDACTED] demonstrated the ability to stop his aggressive behavior in response to Ms. T [REDACTED] redirection. He appeared to be smiling and calm, and not highly emotional. Before throwing [REDACTED] to the ground, [REDACTED] paused and looked around.

10.

The Petitioners failed to prove that [REDACTED] misconduct was caused by or had a direct and substantial relationship to his disabilities. Although the incident involved unwanted physical contact/aggression, and [REDACTED] IEP indicates that he struggles with physical aggression, elopement, work refusal and following directions, the evidence demonstrated that [REDACTED] deliberate choice to engage in the misconduct is consistent with ODD, rather than his other diagnoses. Although the Petitioners correctly note that ODD is a recognized psychological

Developmental Disorder, Not Otherwise Specified) provided the child's educational performance is adversely affected and the child meets the eligibility criteria. Autism spectrum disorder may exist concurrently with other areas of disability. Ga. Comp. R. & Regs. 160-4-7-.05(Appendix a).

disorder, ODD is not recognized as a disability under the IDEA.

11.

Additionally, the Petitioners did not demonstrate that the misconduct was the direct result of the District's failure to implement [REDACTED] IEP. The incident took place within a matter of seconds. During this brief period of time, Ms. T [REDACTED] followed the BIP by directing [REDACTED] to stop chasing [REDACTED] in the classroom. [REDACTED] stopped his behavior and Ms. T [REDACTED] praised him. When he began chasing and engaging in horseplay with [REDACTED] she again complied with the BIP by offering [REDACTED] a choice to return to the classroom, and attempting to get him to "cool down." When his behavior escalated into physical aggression, after ensuring [REDACTED]'s condition, she called the administration. The administration began using the procedures outlined in the Mindset curriculum to deescalate the situation. Even if, as Petitioners claim, Ms. T [REDACTED] failed to strictly adhere to sequence of interventional responses outlined in the BIP, given that this incident took place in a matter of seconds, there is no indication that [REDACTED] behavior was a result of this failure.

12.

The United States Supreme Court has developed a two-part inquiry to determine whether a school district has provided FAPE: "(1) whether the school district complied with the procedures set forth in the act; and (2) whether the IEP was reasonably calculated to enable the child to receive educational benefit in the least restrictive environment (LRE)." A.K. v. Gwinnett County Sch. Dist., 556 Fed. Appx. 790, 2014 U.S. App. LEXIS 2774, *4 (11th Cir. 2014), citing Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 (1982). Georgia Department of Education ("Georgia DOE") regulations require school districts to educate children with disabilities in the least restrictive environment ("LRE"). 20 U.S.C.

§ 1412(a)(5).

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A); Ga. Comp. R. & Regs. 160-4-7-.07(1).

13.

Under IDEA, students with disabilities have the right to a free appropriate public education (“FAPE”). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. Comp. R. & Regs. 160-4-7-.01(1)(a). “The purpose of the IDEA generally is ‘to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living’” C.P. v. Leon County Sch. Bd., 483 F.3d 1151 (11th Cir. 2007), quoting 20 U.S.C. § 1400(d)(1)(A).

14.

The Petitioners did not offer any probative evidence that the District was not or could not provide FAPE to ■■■. When ■■■ attended class he was able to complete his work; deficits in his academic performance were due to his frequent absences. The District acceded to ■■■ requests during the academic year regarding tutoring, class changes and behavioral interventions; however, ■■■ only attended tutoring sessions sporadically, if at all.

15.


FAPE during a disciplinary placement means that the student is able to participate in the general educational curriculum, although in a different setting, and that the student can progress

toward meeting the goals in the child's IEP. 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300-530(d)(i). It is not the District's burden to prove that the placement offered satisfies FAPE pursuant to 20 U.S.C. § 1415(k)(1)(E): it is the Petitioners' burden to prove that it does not. Schaffer ex rel Schaffer v. Weast, 546 U.S. 49, 57-58, 62 (2005). The Petitioners failed to prove that the placement at Excel Academy offered by the District was inappropriate or would result in the denial of FAPE. In any event, the IEP team concluded that [REDACTED] IEP could be implemented at Excel Academy.

IV. DECISION

Having determined that [REDACTED] misconduct was not caused by, or have a direct and substantial relationship to his disabilities, and that the District did not deny [REDACTED] FAPE, the Petitioners have failed to prove that the District does not offer [REDACTED] a free appropriate public education in the least restrictive environment. Accordingly, the Petitioners' request for relief is **DENIED**.

SO ORDERED, this 25th day of April, 2018.



RONIT WALKER
Administrative Law Judge