

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

█ by and through his parents █ and █
and █
Petitioners,

v.

**BALDWIN COUNTY SCHOOL
DISTRICT,**
Respondent.

Docket No.:
OSAH-DOE-SE-1705130-05-Teate



MAR 06 2017


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For Petitioners:

Jean M. Estes, Esq.

For Respondent:

Jeffery O. Monroe, Esq.
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Jones, Cork, & Miller, LLP

FINAL DECISION

I. SUMMARY OF PROCEEDINGS

Petitioners filed a due process hearing request pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) on August 15, 2016, alleging numerous violations of the IDEA on the part of the Respondent, Baldwin County School District (hereinafter “the District”).

The evidentiary hearing took place over the course of four days in December 2016. The record closed on January 25, 2017, when the parties filed their proposed findings of fact and conclusions of law.

After consideration of the evidence and for the reasons explained below, the Court finds that Petitioners failed to meet their burden to demonstrate that they are entitled to relief under the IDEA.

II. FINDINGS OF FACT

█'s Background and Early Education

1. █ is fifteen years old. (Exhibit P-28). When he was four months old, he was removed from his biological mother's custody and placed into foster care. He was subsequently placed with foster parents, █ and █ who adopted him when he was two years old.
2. █ attended the first half of his kindergarten year in the District. He and his family moved to Oconee County in the middle of his kindergarten year. █'s initial individualized education program (IEP) was developed in Oconee County after he was found eligible for special education services as a student with other health impairment due to his diagnosis of ADHD.
3. █ and his family returned to Baldwin County after he completed the first grade. He attended school in the District until August 2015.
4. The District conducted a functional behavior assessment of █ in the spring of 2015. (Exhibit P-7). Based on this assessment, the District developed a behavior intervention plan for █ (Exhibit P-28). This behavior intervention plan focused on three target behaviors exhibited by █ Verbal aggression/confrontation, physical aggression, and non-compliance. (Id.).
5. The District conducted an eligibility redetermination on June 9, 2015. (Exhibit P-9). The eligibility team concluded that █'s "primary area of eligibility [was] other health impaired which manifest[ed] through emotional and behavior disorders with speech and language being a secondary area of eligibility." (Id.).
6. At the beginning of █'s ninth grade year, his parents removed him from the District and notified the district of their intent to educate █ at home. █ was home-schooled from August to December 2015, the first half of ninth grade.

7. Dr. [REDACTED], Ph.D, a clinical neuropsychologist, conducted a patient evaluation of [REDACTED] on March 11 and March 26, 2015 utilizing the Wechsler Intelligence Scale for Children – Fifth Edition, the Wechsler Individual Achievement Test – Third Edition, the California Verbal Learning Test – Children’s Version, NEPSY Battery of Neuropsychological Tests, Behavior Assessment System for Children – 2, and the Behavior Rating inventory of Executive Function. (Exhibit R-19, p. 150). Based on the results of the evaluation, Dr. [REDACTED] concluded that [REDACTED] met criteria for “Other Health Impairment” eligibility based on a diagnosis of chronic frontal lobe/dysexecutive syndrome, which “adversely affect[ed] his performance in and out of the classroom.” (*Id.* at 152). According to Dr. [REDACTED], [REDACTED]’s attention deficit problems were likely secondary to the diagnosis of frontal lobe/dysexecutive syndrome. (*Id.*). While Dr. [REDACTED] noted that [REDACTED] might benefit from a comprehensive speech and language assessment “to uncover any potentially hidden speech and language weaknesses not uncovered” by his or other assessments, he did not conclude that [REDACTED] had a need for speech language therapy. (Exhibit R-19). Dr. [REDACTED] posited that “a residential program may be best suited for addressing [REDACTED]’s neuropsychiatric needs” and that “the ideal residential facility would provide a unique combination of educational, medical, and psychological interventions on an ongoing basis tailored to [REDACTED]’s specific needs.” (*Id.* at 153).

[REDACTED]’s Enrollment in [REDACTED] Treatment Program

8. On December 2, 2015, [REDACTED]’s parents enrolled [REDACTED] in the [REDACTED] Treatment Program (hereinafter “[REDACTED]” a residential treatment facility for adolescents located in Elkmont, Alabama. (Exhibits P-11, P-24).

9. In selecting ██████ as appropriate placement for ██████'s parents retained the services of Donna Faulkner, an educational consultant. (Tr. 91: 8-10). ██████'s parents have retained Ms. Faulkner as an educational consultant since 2014. (Tr. 427: 16-20).

10. ██████ is approximately 350 miles from ██████'s family home in Baldwin County. The facility is situated on 125 acres, in a rural, forested area outside Elkmont. (Tr. 162: 9-10). Penny Baker, a licensed professional counselor, and leader of ██████ clinical team, testified that the facility was "purposefully and therapeutically set in a very rustic atmosphere to reduce any sort of externalized stimulus that could interfere with a kid's treatment. . . ." (Tr. 162: 10-13). Currently, ██████ is one of twenty-three students at ██████ all of whom were enrolled at the facility to address behavioral or mental health issues. (Tr. 157:6).

11. Like the other students enrolled in ██████ ██████ is not permitted to leave the facility. Nor is he allowed to visit his home in Baldwin County. However, he and other students are given leave to visit the general vicinity of ██████ with their family members on "town passes." (Tr. 122: 1-7). Additionally, ██████ hosts a "family day" at the facility once per month, during which residents' parents and siblings visit the facility and engage in group activities. (Tr. 256-57).

12. At ██████ ██████ completes computer-based instruction four hours per day using the "PLATO" software program, which allows him to complete each subject at his own pace. (Tr. 228:17-19; Tr. 525-26). According to ██████'s mother, ██████ shows more progress with, and prefers, computer-based instruction. (Tr. 104: 2). This computer-based instruction takes place in a large room with three to four other students. The students are monitored by two to four ██████ "front-line" staff members. General educators are also available to the students should they need assistance. (Tr. 89: 14-19). The educators do not provide proactively instruct the

students in typical classroom style, but are available to assist the students in each subject as needed. (Tr. 89-90). Alethia Howie, a certified special education teacher, also meets with [REDACTED] two to three times per week at [REDACTED] for approximately three hours per week. (Tr. 517-18; P-30, pg. 304). All [REDACTED] staff members are trained in "SAMA" a technique that emphasizes verbal de-escalation in response to problematic behavior. (Tr. 172:17 to 173:14). Clinical staff members are also available on a twenty-four hour per day basis to respond to exigencies.

13. [REDACTED] is not provided speech therapy from a licensed professional at [REDACTED] (Tr. 93: 8-11).

14. Penny Baker, leader of the clinical team at [REDACTED] testified that she has witnessed [REDACTED] exhibit several "maladaptive behaviors," including posturing, verbal aggression, storming away from group activities, cursing, and slamming books down. (Tr. 215:9-14). All of these behaviors, according to Ms. Baker, can be managed in the classroom setting at [REDACTED] (Tr. 215: 16-18). However, Ms. Baker recalled that, in multiple instances, [REDACTED] was removed from the classroom setting from anywhere between "a few minutes" to "a couple of hours" to "de-escalate." (Tr. 215:19 to 216:10). Ms. Baker further testified that [REDACTED]'s misbehavior has escalated to the point that he has been subject to physical restraint, or "therapeutic holds" (Tr. 217: 6-12). Though Ms. Baker testified that such incidents must be documented in "risk identification reports," Petitioners produced no documentation to support Ms. Baker's indication that [REDACTED] had been subject to therapeutic holds at [REDACTED] (Tr. 217). The facility has never had to contact law enforcement in response to [REDACTED]'s behavior. (Tr. 228:11-16).

15. Dr. [REDACTED], M.D., [REDACTED]'s treating psychiatrist at [REDACTED] referred [REDACTED] to Dr. [REDACTED], Ph.D., for a psychological evaluation to assess [REDACTED] for a mood disorder. (Exhibit P-17). Dr. [REDACTED] conducted this evaluation on March 11, 2016 utilizing the Bell

Relationship Inventory for Adolescents, Minnesota Multiphasic Personality Inventory – Adolescent (MMPI-A), Thematic Apperception Test, and Rorschach Inkblot Test. Dr. [REDACTED] listed persistent depressive disorder (dysthymia), oppositional defiant disorder, and schizoid personality traits under his diagnostic impressions of [REDACTED] and noted that [REDACTED] had “significant behavioral problems” based on his responses on the MMPI-A. (Id.). Overall, Dr. [REDACTED] concluded that [REDACTED] exhibited “significant problems with interpersonal relationships and authority,” “little ability to relate to others,” and that [REDACTED] was “a challenging candidate for treatment given his distrust of, and disregard for, authority figures.” He opined that [REDACTED] required “a highly structured environment with a very well-defined behavioral program and integrated pharmacological treatment to learn to control his anger and aggression in more appropriate ways, as well as have any chance to learn to interact effectively with others and work toward his long-term career and life goals.” (Id.).

16. Since May 22, 2016, [REDACTED]’s parents have paid [REDACTED] approximately \$70,000 for [REDACTED]’s continued treatment. (Tr. 76: 15-17). They have also incurred travel and lodging expenses; the trip to Elkmont takes approximately five and a half hours each way and, due to the considerably lengthy drive, the family stays the night in a hotel in Elkmont whenever they visit [REDACTED] (Id.).

17. [REDACTED]’s current medications include: [REDACTED] a [REDACTED]; [REDACTED] a hormone used to regulate sleep; a [REDACTED]-[REDACTED] [REDACTED] an [REDACTED] and [REDACTED] an [REDACTED]-[REDACTED] (Exhibit R-8; Tr. 630: 12).

May 17, 2016 IEP Meeting

18. On or about May 11, 2016, the District sent Petitioners notice of an IEP meeting scheduled for May 17, 2016. On the notification form, the District indicated that the purpose of the meeting was to “transition ██████ back to BCSD.” (Exhibit P-25; Tr. 38-40).

19. Prior to the IEP meeting, ██████’s parents requested that staff members of ██████ prepare a summary of ██████’s progress at the facility. In response, ██████ staff members generated a document entitled “Assessment Summary.” (Exhibit P-24). This document was sent to counsel for the District on May 16, 2016, the night before the IEP meeting. (Tr. 112:12-17).

20. The IEP meeting commenced as scheduled on May 17, 2016. (Exhibit P-28). Part of the IEP team—specifically, Traci White, Special Education Director; Leigh Ann Sowell, special education lead; Sarah Ulm, general education teacher; Phillip Edwards, special education teacher; Vickie Grable, behavior specialist; and counsel for the District—participated in the IEP meeting from a conference room in Baldwin High School. (*Id.*, pg. 268; Tr. 702–03). The rest of the IEP team—namely, ██████’s parents; counsel for Petitioners; Zach Turner, program director at ██████ Alethia Howie, ██████’s special education teacher at ██████ and Jane Baker, ██████ ██████ lead clinician¹—participated in the meeting via telephone conference from ██████² (*Id.*; Tr. 359).

21. During the IEP meeting, Petitioners and staff members of ██████ described the services ██████ received at ██████ to the representatives of the District. (Exhibit P-30). ██████ ██████ staff members indicated that ██████ received approximately four hours of daily computer-based instruction, spent approximately three hours per week with a special education teacher, and had access to counseling services at ██████ (*Id.*). They further indicated that ██████’s

¹ Jane Baker’s name was omitted from the IEP attendance form due to a scrivener’s error. (Tr. 359).

² Penny Baker did not participate in the IEP meeting.

most problematic area was language, and that he liked math, which could potentially be used as a motivator. (Exhibit P-30, pp. 279, 304; Tr. 676, 687). The IEP team formed the consensus that [REDACTED] should continue to receive computer-based instruction and that data collection should start at baseline. (Exhibit P-30, p. 288, 295, 299; Tr. 620: 21-24).

22. The IEP team also discussed [REDACTED]'s behavioral needs during the May 17, 2016 IEP meeting. [REDACTED] staff members mentioned [REDACTED]'s aggressive behaviors, posturing, and outbursts. (Exhibit P-30, p. 280). However, they did not indicate that [REDACTED] had ever engaged in physical aggression or violence. Jane Baker also indicated that [REDACTED] "target[ed] females" by "moving . . . from one female to the next," writing them notes, and attempting to avoid supervision. (Exhibit P-30, p. 287–88). From Ms. Baker's description, it did not appear that the content of these notes was threatening or sexual, but rather an attempt by [REDACTED] to initiate a boyfriend-girlfriend relationship with the recipient. (*Id.* at 288).

23. When asked if they had conducted a functional behavior assessment of [REDACTED] [REDACTED] staff members indicated that they had been using the functional behavior assessment developed by the District in 2015 because they felt it was sufficient. (Exhibit P-30, p. 303; Tr. 583:1-8). The District proposed that [REDACTED]'s 2015 behavior intervention plan be utilized until a new functional behavior assessment could be conducted following [REDACTED]'s return to school in the District. (Exhibit P-30, pp. 290–91). However, Mr. Turner voiced concerns over [REDACTED]'s behavior goals as expressed in the 2015 behavior intervention plan. (Exhibit P-30, p. 293). Jane Baker also opined that an updated behavior intervention plan should be in place before [REDACTED] started school at the District. (Exhibit P-30, pg. 308). At the close of the meeting, counsel for the District asked Mr. Turner to submit his suggested changes to [REDACTED]'s behavioral intervention

plan, but, as of the date of the hearing, no such information was submitted to the District. (Tr. 572: 12 to 573:19; Exhibit P-30, pp. 293, 329).

24. ██████'s parents and the staff members of ██████ were of the opinion that ██████ should remain in a residential treatment facility such as ██████ (Tr. 638: 3-10; Exhibit P-30, pg. 320–23). However, representatives of the District asserted that the services and accommodations ██████ received at ██████ could be replicated at one of its alternative programs, such as the Ombudsman program, GNETS, or ██████ Charter school. (*Id.*, pp. 316, 317, 323; Tr. 635:11-19).

The District's Proposed IEP

25. Based on the information shared during, and prior to, the IEP meeting, the District developed a proposed IEP for ██████ and provided it to Petitioners on or about May 27, 2016. The IEP listed ██████'s eligibility category as "Other Health Impairment served through EBD [emotional behavior disorder]." (Exhibit P-28). Under the IEP proposed by the District, ██████ would return to Baldwin County and be placed in the District's Ombudsman Center. (*Id.* at 266; Tr. 643). At Ombudsman, ██████ would complete computer-based instruction in a small group setting. (Exhibit P-28, pg. 278; Tr. 229:1-3). This computer-based instruction would not utilize the PLATO system, but a similar program that also allowed ██████ to complete each subject at his own pace. Per the IEP, ██████ would also receive instruction from a special education teacher one hour per day, three days per week, as well as thirty hours per week of assistance from a one-to-one paraprofessional, who would be with ██████ throughout the school day. (Exhibit P-28, pg. 264). The paraprofessional and special education teacher would assist ██████ in the subjects of English/Language Arts, Math, Social Studies, Science, and an Elective. (Exhibit P-28, pg. 266).

26. The IEP also called for [REDACTED] to receive individualized counseling from a behavior specialist for one and a half hours per week. (P-28, pg. 266). This individualized counseling would focus on social skills. (Id.). At the hearing, Vickie Grable, the District's behavior specialist, testified that she would be responsible for providing [REDACTED]'s weekly individualized counseling. (Tr. 574: 10-14, 575:2-3). She testified that the topics she would address in counseling included "[s]ocial skills, decision-making skills, problem-solving skills, . . . teaching him how to respond appropriately to others, effective communication, . . . expression of feelings and emotions . . . [and] anger management" (Tr. 574:17 to 575:1).

27. With regard to a behavior intervention plan, the proposed IEP called for the District to perform a transition assessment upon [REDACTED]'s return to school. (Exhibit P-30). The District would thereafter develop a transition plan based on the results of this assessment. (Id.)

28. The District's proposed IEP called for a functional behavior assessment to be performed upon [REDACTED]'s return to school and for an updated behavior intervention plan to be developed based on the results of this assessment. (Exhibit P-30, pg. 258) Until the new behavior intervention plan was developed, the District planned to utilize [REDACTED]'s 2015 behavior intervention plan. (Id.)

29. The proposed IEP did not call for [REDACTED] to receive extended school year services. (Exhibit P-30).

30. The proposed IEP listed the following "measurable annual goals" for [REDACTED]

- a. "[REDACTED] will determine analyze a text and cite textual evidence from reading selection with 80% accuracy. This goal will be mastered upon completion of 3 of 4 objectives."

- b. “[REDACTED] will be able to solve word problems using rational numbers with 75% accuracy. This goal will be mastered upon completion of the 3 of 4 objectives.”
- c. “[REDACTED] will demonstrate self control [sic]. This goal will be mastered upon completion of 3 of 4 objectives.”

(Exhibit P-28, pg. 262). The IEP lists short term objectives/benchmarks, such as “Given a text or passage [REDACTED] will determine the main idea of the text and cite evidence from the text verbally or in writing,” under each measurable annual goal. The criteria for mastery for each short term objective reads “establish baseline.” (*Id.*). The method of evaluation for each objective read “teacher observation work sample pre/post test unit testing [sic].” (*Id.*).

The Due Process Hearing Request

31. On June 14, 2017, Petitioners, through counsel, sent the District a letter indicating that they were rejecting the proposed IEP and that they intended to place [REDACTED] in a private school during the summer of 2016 and the 2016-2017 school year. (Exhibit R-1). Petitioners requested that the District pay for [REDACTED]’s private education and related expenses. (*Id.*).

32. The District, through counsel, responded to Petitioners’ letter on June 15, 2016. In its reply letter, the District indicated that it was willing to discuss any changes that Petitioners would like to make to the IEP in the context of an IEP meeting, but that it would not pay for [REDACTED]’s private education and related expenses. (Exhibit R-2).

33. In summary, Petitioners alleged the following violations of the IDEA on the part of the District in their August 15, 2016 due process hearing request:

- (1) The District failed to find [REDACTED] eligible for special education services with emotional behavior disabilities and speech language impairment;
- (2) The District included only three annual goals in the proposed IEP;
- (3) The District placed [REDACTED] at Ombudsman, which would not allow him to have contact with his peers;

- (4) The District's proposed IEP would allow [REDACTED] to have the support of a special education teacher for only half the time he was in school;
- (5) The District's proposed computer-based instruction utilized a computer program with which [REDACTED] was unfamiliar;
- (6) The District proposed IEP did not include speech/language instruction/services;
- (7) The District's proposed IEP did not include behavioral support;
- (8) The District failed to develop an appropriate transition plan for [REDACTED];
- (9) The District failed to develop a crisis plan for [REDACTED] and [REDACTED];
- (10) The District's proposed IEP did not include extended school year services.

(Petitioners' Due Process Hearing Request dated August 15, 2016). Petitioners further alleged that the District unlawfully predetermined to place [REDACTED] at Ombudsman, and that its indication on the notice of the IEP meeting that the purpose of the meeting was to transition [REDACTED] back to Baldwin county schools evidenced that fact. Id.

34. Petitioners requested the following relief:

- (1) Payment for enrollment, treatment, education, and any necessary evaluations at [REDACTED] or in another mutually agreed-upon educational residential treatment program from May 21, 2016 until he attains a high school diploma or until his family and treating professionals agreed that such intensive services in this restrictive setting are no longer necessary to safely and effectively educate [REDACTED];
- (2) Reimbursement/Payment for travel to [REDACTED] or another mutually agreed-upon residential treatment facility; and
- (3) Attorney's fees.

(Petitioners' Due Process Hearing Request dated August 15, 2016).

Expert Witness Testimony

35. At the evidentiary hearing, Petitioners presented the expert testimony of Donna Faulkner and Penny Baker.

36. Penny Baker is a licensed professional counselor and leader of the clinical team at [REDACTED] [REDACTED] (Tr. 148, 151). She received a bachelor's degree in sociology from Auburn University in 1992 and a master's degree in counseling from Liberty University in 1998. (Tr. 150; Exhibit P-

39). At the hearing, she was qualified as an expert in appropriate treatments and placements for students with mental illness and/or emotional behavior disorders, as well as parenting efficacy. (Tr. 156).

37. Ms. Baker opined that ██████ should remain at ██████. According to Ms. Baker, “█████ has experienced more success since he’s been at ██████ than he has any time during his educational experience[,]” and “is showing progress not only in being able to manage his behaviors but to have success in school.” (Tr. 186: 1-5). She further testified that the proposed IEP was insufficient to allow him to help ██████ progress academically and behaviorally because “█████’s needs [were] far more encompassing than what [the IEP] could address.” (Tr. 191: 18-25). Specifically, she criticized the IEP’s lack of clinical counseling and its lack of specificity with regard to the paraprofessional’s training in the areas of trauma, attachment, and personality disorder. (Tr. 192). She asserted that a team of professionals was necessary to address ██████’s behavioral issues. (Tr. 193).

38. Ms. Baker took place in the behavior intervention plan in place for ██████ in that it took a “reactive approach.” (Tr. 195). However, she acknowledged that the target behaviors outlined in the behavior intervention plan remained accurate. (Tr. 196).

39. Ms. Baker acknowledged in her testimony that ██████ had never had to contact law enforcement in response to ██████’s behavioral problems and that his behavior was managed in a classroom setting at ██████ (Tr. 228).

40. As discussed above, Donna Faulkner is an educational consultant. She earned a bachelor’s degree in special education from the University of Florida in 1976, and a master’s of education from Georgia State University in 1986. (Tr. 410; Exhibit P-39, pg. 472). Prior to becoming an educational consultant, she worked in various capacities for public school districts,

including a twenty-five-year tenure as a special education administrator for the Fulton County School District. (Tr. 411). At the hearing, she was qualified as an expert in the areas of special education, behavioral management, IEP development, residential treatment, data analysis and file review, emotional behavior disorders, conduct disorders, and crisis prevention. (Tr. 435–36).

41. According to Ms. Faulkner, the District should have found ██████ eligible for special education in the areas of speech and language impairment, emotional behavior disorders, and other health impairment. (Tr. 453). She criticized the proposed IEP for its purported lack of measurable goals and objectives matching ██████'s identified weaknesses in executive functioning, working memory, short-term memory, word completion, and transitions. (Tr. 462–64). She further criticized the proposed IEP's lack of services designed to address weaknesses in pragmatic language and semantics or social skills goals. Ms. Faulkner found the proposed IEP deficient in that it purportedly did not include research-based methodologies. With regard to the behavior intervention plan, Ms. Faulkner asserted that the District inappropriately included the expectation that ██████ would follow the school's Code of Conduct and was devoid of specific, measurable target behaviors. According to Ms. Faulkner, the goals expressed in the proposed IEP were likewise not specific and measurable, and only one goal was aligned with tenth-grade curriculum. (Tr. 473–74). She further testified that three hours per week with a special education teacher, one and a half hours with a behavior specialist, and thirty hours per week with a paraprofessional provided for under the IEP was insufficient to meet ██████'s needs. (Tr. 475–78).

42. Ms. Faulkner disapproved of the District's proposal to place ██████ in Ombudsman, and opined that ██████'s needs could not be met in an alternative setting. (Tr. 480). According to Ms. Faulkner, ██████ requires "a setting that has therapeutic supports and services, 24 hours a day, seven days a week" (Id.).

43. The District introduced the expert testimony of Traci White, Leigh Ann Sowell, and Dr. Robert Montgomery.

44. Traci White is the Special Education Director for the District. She has a bachelor's degree in psychology from the University of Georgia, master's degrees in education and psychology from Georgia College and State University, and an education specialist degree, also from Georgia College and State University. (Tr. 335–36). She has worked in the field of special education since 1989, and is certified to teach in the area of emotional and behavioral disorders. (Tr. 336, 337). At the hearing, she was qualified as an expert in special education and the placement of special needs children. (Tr. 339). Ms. White toured ██████ on February 23, 2016. (Tr. 345).

45. Ms. White opined that ██████'s academic and behavioral needs could be met by the District in the Ombudsman setting. (Tr. 366, 370–71). Specifically, she testified that, at Ombudsman, ██████ would receive computer-based instruction, a one-on-one staff member who specialized in serving special needs students, and counseling from a behavior specialist. (Tr. 367–69). Ms. White further testified that all staff members who interacted with ██████ at Ombudsman would receive training in crisis management and a de-escalation technique called “Mindset training.” (Tr. 368–69).

46. According to Ms. White, the District did not conduct transition or functional behavior assessments of ██████ because such assessments must be conducted in a District classroom and administered by a District teacher or case manager. (Tr. 362–63). Regarding the IEP's listing of ██████'s eligibility as other health impairment, Ms. White testified that this was so because his most recent determination of eligibility was based on the evaluation conducted by Dr. ██████ in 2015. (Tr. 370).

47. Ms. White opined that [REDACTED] or similar residential treatment facilities, were not the least restrictive environments for [REDACTED] and that Ombudsman was a more appropriate setting in that it was located closer to [REDACTED]'s home and allowed him to interact with "nondisabled peers." (Tr. 372-73).

48. Leigh Ann Sowell is a coordinator for Baldwin County High School. (Tr. 589). She has a bachelor's degree in psychology from Brewton-Parker College, a master's degree in psychology from the University of West Georgia, and an education specialist degree from Kennesaw State University. (Exhibit R-30; Tr. 590). At the hearing, she was qualified as an expert in the fields of special education and preparation of IEPs. (Tr. 599-600).

49. At the hearing, Ms. Sowell described what [REDACTED]'s education at Ombudsman would look like. (Tr. 636-50). According to Ms. Sowell, the Districts proposed placement "mirror[ed]" the academic setting at [REDACTED] if it did not offer "a greater level of instruction in a greater amount of time. . . ." (Tr. 651:20-24). She further testified that the proposed placement at Ombudsman was preferable to continued placement at [REDACTED] because it offered [REDACTED] more access to a special education teacher on a regimented basis, gave him one-to-one on a regular basis with a dedicated paraprofessional. (Tr. 651-52). She concluded that the proposed IEP was "completely appropriate" and that it "offer[ed] a greater level of service than he[] receiv[ed] at [REDACTED]" (Tr. 652: 7-11).

50. Dr. Robert Montgomery is a licensed clinical psychologist and board-certified behavior analyst. (Tr. 713-14). He holds a bachelor's degree in psychology and master's degrees in psychology and philosophy from Georgia State University. (Tr. 715). He has practiced as a psychologist for the past twenty-two years. (Tr. 714). At the hearing, he was qualified as an expert in the fields of child psychology and behavior analysis. (Tr. 729-30).

51. Based on the available data, Dr. Montgomery opined that [REDACTED]'s continued placement in a residential treatment facility was unnecessary. (Tr. 789–90, 793–94). He disputed testimony that [REDACTED] required “constant supervision” as there was no documentation that [REDACTED] posed a threat to himself or others. (*Id.*). Dr. Montgomery testified that [REDACTED]'s academic weaknesses could be dealt with in a public school setting. (Tr. 803). He further testified that the [REDACTED]'s diagnoses, medications, and maladaptive behaviors could be managed on an outpatient basis, and did not necessitate institutionalization. (Tr. 820–25).

III. CONCLUSIONS OF LAW

1. The case at bar is governed by the IDEA, 20 U.S.C. § 1400, *et seq.*; its implementing federal regulations, 34 C.F.R. § 300.01, *et seq.*; and the Rules of the Georgia Department of Education, Ga. Comp. R. & Regs. 160-4-7-.01, *et seq.*

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)(n); 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

3. The overriding purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education [“FAPE”] that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400(d)(1)(A).

The statute offers the following definition of FAPE:

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

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 614(d) [20 USCS § 1414(d)].

20 U.S.C. § 1401(9). Related services include “transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.” 20 U.S.C. § 1401(26).

4. The United States Supreme Court has developed a two-part test for determining whether FAPE has been provided. Board of Educ. v. Rowley, 458 U.S. 176, 206 (1982). The first inquiry is whether the school district complied with the procedures set forth in IDEA. Id. The second prong of the test is whether the IEP developed through these procedures is “reasonably calculated to enable the child to receive educational benefits.” Id.

5. A procedural violation under the first prong of the Rowley test is not a *per se* denial of a FAPE. Weiss v. School Bd., 141 F.3d 990, 996 (11th Cir. 1998). Pursuant to 20 U.S.C. § 1415(f)(3)(E)(ii), this Court is authorized to find that ██████ was deprived of a FAPE based on a procedural violation “only if the procedural inadequacies--

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.”

20 U.S.C. § 1415(f)(3)(E)(ii); see also 34 C.F.R. § 300.513(2).

6. Under the second prong of the Rowley test, known as the “basic floor of opportunity” standard, a school district is not required to provide an education that will “maximize” a disabled student’s potential. Instead, IDEA mandates only “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." Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1312 n.1 (11th Cir. 2003) (internal citations omitted); see J.S.K. v. Hendry Cty. Sch. Bd., 941 F.2d 1563, 1573 (11th Cir. 1991).

7. Petitioners have failed to demonstrate that the alleged insufficiencies with regard to the District's proposed IEP amount to a denial of a free and appropriate public education. From the record, it is clear that the proposed IEP was developed based on information shared by [REDACTED]'s parents and the staff members of [REDACTED]. The services, supports, and accommodations [REDACTED] would receive under the proposed IEP—specifically, one-on-one support from a paraprofessional, computer-based instruction, individual counseling, and one-on-one instruction from a special education teacher—are comparable to those he is currently receiving at [REDACTED] which his caregivers acknowledge have been successful.

8. Petitioners did not demonstrate that the computer-based instruction proffered by the District is so dissimilar from that with which [REDACTED] is familiar that the District's proposed instruction in such a program amounts to a denial of FAPE. Rather, the evidence presented at the hearing demonstrates that the program offered by the District substantially identical to the PLATO instruction he is currently receiving at [REDACTED].

9. Petitioners' claim that [REDACTED] requires the level of care provided in a residential treatment facility such as [REDACTED] is unsupported. The Court finds Dr. Montgomery's testimony that [REDACTED] does not require such care to be persuasive. Petitioners introduced evidence that [REDACTED] engages in maladaptive behaviors that include posturing, verbal aggression, storming away from group activities, cursing, and slamming books down. Petitioners introduced no evidence that [REDACTED] has engaged in physically violent behavior or shown a tendency toward self-harm. From

the testimony of the expert witnesses presented by the District, the Court concludes that behaviors such as those exhibited by [REDACTED] can be, and regularly are, managed in a classroom setting.

10. Further, the undersigned concludes that a residential treatment program is not the least restrictive environment for [REDACTED]. Under the IDEA's implementing regulations, public agencies must ensure that

- (i) 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 nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.114 (a)(2)(i)-(ii). In determining the appropriate placement, the public agency must ensure that the child's placement "(1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home." 34 C.F.R. § 300.116(b)(1)-(3).

The preponderance of the evidence in this matter demonstrates that [REDACTED]'s behaviors can be readily addressed in the setting proposed by the District. [REDACTED] is approximately 350 miles from his home in Baldwin county and affords him no opportunity to be educated with his nondisabled peers.

11. Petitioners' claim that the District improperly denied [REDACTED] speech language services is unsupported. Petitioners introduced insufficient evidence to demonstrate [REDACTED] requires such services. Notably, [REDACTED] receives no speech language services from a licensed professional at [REDACTED]. Moreover, the evaluations on record do not include definitive recommendations that [REDACTED] receive speech language therapy.

12. Petitioners' claim that the District improperly denied [REDACTED] extended school year services is unsupported. According to regulations implementing the IDEA, "extended school year services means special education and related services that

- (1) Are provided to a child with a disability—
 - (i) Beyond the normal school year of the public agency;
 - (ii) In accordance with the child's IEP;
 - (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the [State educational agency].

34 C.F.R. § 300.106(b).

The implementing regulations further provide that such services must be provided "only if a child's IEP Team determines, on an individual basis . . . that the services are necessary for the provision of FAPE to the child." 34 C.F.R. § 300.106(a)(2).

13. Extended school year services are necessary for the provision of FAPE "when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months." MM v. Sch. Dist., 303 F.3d 523, 537–38 (4th Cir. 2002). The mere fact that the child will likely regress absent such services is insufficient; rather extended school year services are necessary "only when such regression will substantially thwart the goal of 'meaningful progress.'" Id. at 538 (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 184 (3d. Cir. 1988)).

14. Petitioners introduced insufficient evidence to demonstrate that extended school year services were necessary for [REDACTED] to receive a free and appropriate public education. Petitioners introduced no evidence that [REDACTED] would regress absent such services, let alone that such regression would impede [REDACTED]'s progress.

15. Petitioners have not demonstrated that they are entitled to relief for any of the claimed procedural lapses on the part of the District, as they introduced no evidence of harm stemming from such lapses.

16. The District's proposed IEP contained sufficient annual and measurable goals. Under the IDEA, an IEP must contain

(i) A statement of measurable annual goals, including academic benchmarks and functional goals designed to

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

34 C.F.R. § 300.320(a)(2)(i); see also 20 U.S.C. § 1414(d)(1)(A)(ii); Leticia H. v. Ysleta Ind. Sch. Dist., 502 F. Supp. 2d 512, 517–18. The IEP must also contain “A description of . . . [h]ow the child’s progress toward meeting the annual goals . . . will be measured” 34 C.F.R. § 300.320(a)(3).

17. In the present case, the District presented an education plan for [REDACTED] with measurable annual goals, each of which had short-term objectives and benchmarks. The IEP provided a broad method by which [REDACTED]'s progress would be measured. This is sufficient to evince that the IEP was “reasonably calculated to enable [REDACTED] to receive educational benefits.” See Rowley, 458 U.S. at 207. Furthermore, from the transcript of the IEP meeting and the testimony presented at the hearing, it is clear that the consensus was to gauge [REDACTED]'s requirements, i.e. to establish a “baseline” for [REDACTED] and thereafter develop more specific goals and criteria for mastery.

18. The District did not conduct a transition assessment or develop a transition plan as is required under the IDEA. See 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43. However, Petitioners

introduced no evidence of how they were harmed due to the District's failure to develop a transition plan. See, e.g., J.M. v. N.Y. City Dep't of Educ., 171 F. Supp. 236, 247 (S.D.N.Y. 2016). Moreover, the appropriate remedy for such failure is to order the District to perform the assessment and develop the plan. However, the District's proposed IEP already calls for the transition assessment and plan to be developed upon [REDACTED]'s return to school.

19. Even if the undersigned were to conclude that the District failed to provide [REDACTED] with FAPE, Petitioners have by no means shown that their requested remedy is appropriate.

IV. DECISION

Based on the foregoing findings of fact and conclusions of law, the undersigned concludes that Petitioners failed to demonstrate that they are entitled to relief under the IDEA.

SO ORDERED, this 6th day of March, 2017.



Steven W. Teate
Administrative Law Judge