

OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

██████████ : DOCKET NO.  
 : OSAH-DOE-SE-1229927-75-Baxter  
Plaintiff, :  
 :  
v. :  
 :  
HENRY COUNTY SCHOOL DISTRICT, :  
 :  
Defendant. :



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JUN 19 2012

Kevin Westray, Legal Assistant

**FINAL ORDER**

The above-styled case, consisting of a Due Process Hearing Request (the “Complaint”), in which the Plaintiff made multiple allegations that the Defendant had violated the provisions of the Individuals with Disabilities Education Act (“IDEA”) and other laws, came before this Tribunal for a Due Process hearing in accordance with IDEA on May 21 and 22, 2012. Present on behalf of the Plaintiff was ██████████ mother, ██████████ and present on behalf of the Defendant was David Waldroup, attorney for the Henry County School District, and Deborah Keane, the Executive Director of Special Education for the Henry County School District.

██████████ presented her case concerning the allegations raised by the Plaintiff in the above-said Complaint. After the Plaintiff completed the presentation of Plaintiff’s case, the Defendant’s counsel made a motion to dismiss the Plaintiff’s Complaint and motion for judgment in favor of the Henry County School District due to the Plaintiff’s failure to carry the burden of persuasion with regard to the above-said Complaint and further requested that the Tribunal find that the evidence had in fact shown that the Defendant had complied with all applicable laws and had provided a free appropriate public education to ██████████ This Tribunal stated that it would grant

said motion from the bench and in accordance with said ruling from the bench, this Tribunal hereby makes the following findings of fact and ruling of law.

**GENERAL STANDARDS OF LAW UNDER IDEA**

In due process hearing requests, the Plaintiff bringing such action bears the burden of proof. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(n). Under IDEA, school districts normally have the obligation to provide a free, appropriate, public education (“FAPE”) to disabled students enrolled in that school district, subject to certain exceptions as set forth in IDEA. In order to have provided a disabled student with a FAPE, a school district has the obligation under IDEA to provide the disabled student with a basic floor of opportunity and provide appropriate educational services that will allow the disabled student to benefit from instruction. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982); Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309 (11th Cir. 2003); K.C. v. Fulton Cnty. Sch. Dist., 2006 U.S. Dist. LEXIS 47652 (N. Dist. Ga. June, 28, 2006). While the educational benefits offered by a school district to a disabled student must be adequate, a school district is not required to guarantee any particular educational outcome or to maximize the educational improvements attained by the disabled student. Id. In determining whether a student has received an appropriate education as required under IDEA, the Eleventh Circuit has indicated that “great deference” should be given to the educators who developed the child’s IEP. JSK v. Hendry Cnty. Sch. Bd., 941 F. 2d 1563, 1573 (11th Cir. 1991). Additionally, both the Supreme Court and the 11th Circuit have clearly held that courts should not simply impose their own views of what educational methods are preferable when analyzing whether a FAPE has been provided to a student. Id.; Rowley, 458 U.S. 176 (1982).

## **PLAINTIFF'S ALLEGATIONS OF PROCEDURAL VIOLATIONS OF IDEA**

Plaintiff raised multiple allegations that the Defendant had violated various procedural provisions of IDEA. When a plaintiff raises allegations of procedural violations under IDEA, this Tribunal must “consider the impact of the procedural defect, and not merely the defect per se”. Weiss v. Sch. Bd., 141 F.3d 990, 994 (11th Cir. 1998). As such, if the alleged procedural defect did not cause an actual denial of a FAPE to the Plaintiff or significantly impair the parent’s right to participate in the decision making process regarding the provision of FAPE to the child, the Plaintiff would not be entitled to relief even if Plaintiff were successful in proving that a procedural violation of IDEA had occurred. Id.; K.C., 2006 U.S. Dist. LEXIS 47652; Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(p). Bearing the above legal standards in mind, this Tribunal hereby finds and rules on Plaintiff’s allegations of procedural violations of IDEA as set forth below.

Plaintiff’s first allegation of a procedural violation was that the Defendant allegedly wanted or tried to place [REDACTED] in a self-contained classroom. There is no provision of IDEA that expressly prohibits children from being placed in a self-contained classroom if such placement is appropriate for the child and meets the other requirements of IDEA, such as the requirement that the placement be the least restrictive environment (as defined under IDEA) for the child. 34 C.F.R. § 300.114. Additionally, IDEA requires school districts to ensure that a continuum of alternative placements is available to special education students, and the Defendant’s making such a continuum of placements available and considering various placements on that continuum is in keeping with the requirements of IDEA. 34 C.F.R. § 300.115. Additionally, Plaintiff admitted that [REDACTED] was never actually served in a self-contained classroom and that the Defendant agreed to amend [REDACTED] IEP so that [REDACTED] would not be served in a self-contained

classroom at the express request of [REDACTED] mother. As such, this Tribunal finds and rules that Plaintiff failed to carry the burden of proof in showing that any violation of IDEA occurred with respect to these allegations and that Defendant's actions in this matter were in compliance with the requirements of IDEA.

The next procedural allegation raised by Plaintiff is that the Defendant allegedly denied the Plaintiff the opportunity to meet at an IEP Meeting via a conference call one time during the 2010-2011 school year. While the evidence on this matter was disputed, after weighing all the evidence presented to the Tribunal at the hearing, this Tribunal finds that the Defendant did not require the Plaintiff's mother to attend any IEP Meeting in person, but simply requested that Plaintiff's mother attend one particular IEP Meeting in person. The evidence showed that the Defendant has a repeated history of allowing [REDACTED] mother and her attorney to attend IEP Meetings by phone conference. This Tribunal further finds that the School District would not have caused a violation of IDEA even if it had required Plaintiff's mother to attend the IEP Meeting in person, as Plaintiff's mother was in fact able to attend the IEP Meeting in person and Plaintiff failed to prove that any harm was caused as a result of Plaintiff's mother attending that meeting in person. Furthermore, IDEA specifically states that attending an IEP Meeting by alternate means, such as by video conference or conference calls, is permitted only when the parent of the child with the disability and the public agency may agree. 34 C.F.R. § 300.328. As such, the School District had a right under the law to refuse its consent to allow participation by conference call and if it had, such refusal would have been consistent with the provisions of IDEA. As such, Plaintiff failed to carry the burden of proof with respect to these allegations and this Tribunal finds that the Defendant was in compliance with IDEA.

Plaintiff next alleges that the School District failed to collect background information concerning [REDACTED] strength, needs, learning styles and interests, among other things. However, the evidence on the record shows that the School District had collected information concerning [REDACTED] strengths, weaknesses, needs, learning styles and interests via a variety of assessment tools, including those assessment tools set forth in a Psychoeducational Report conducted by the School District, multiple in-class assessments, the observations of multiple teachers and staff and large amounts of data reflecting the academic and behavioral performance of [REDACTED] while in school. Plaintiff failed to show any evidence that the data and testing conducted by the School District was in any way inappropriate or lacking. Plaintiff failed to carry the burden of proof with respect to this allegation. This Tribunal further finds that the extensive amount of data collected and testing done on [REDACTED] was appropriate and in compliance with the requirements of IDEA.

Plaintiff alleges that at one or more IEP Meetings, the needs of [REDACTED] were not addressed at said IEP Meetings. This Tribunal finds that [REDACTED] mother has been a consistent advocate for [REDACTED] and his educational needs, that she has usually participated in his IEP Meetings and educational process, and that the School District has consistently considered, and frequently granted, her requests with respect to [REDACTED]'s education. Additionally, this Tribunal finds that the evidence on the record, including, but not limited to [REDACTED]'s IEPs, indicates that the School District has in fact considered and addressed the needs [REDACTED] and there was no evidence on the record that any IEP Meeting or IEP that was adopted by the School District failed to address any requirements set forth under IDEA. Plaintiff failed to carry the burden of proof with respect to this allegation, and this Tribunal rules that the Defendant met the requirement of IDEA concerning this allegation.

The Plaintiff alleges that the School District violated IDEA by failing to allow the Plaintiff's mother to visit and observe [REDACTED] classroom at any time she so desired and without giving any prior notice to the School District. The evidence showed that the School District has in place certain rules with respect to planning for parental visits to classrooms, and that said rules are consistently applied to students including [REDACTED] and were reasonable under the circumstances. This Tribunal finds that said parental visitation rules did not in any way violate IDEA. This Tribunal further finds that the Plaintiff failed to prove that any harm occurred as a result of the Defendant's having reasonable rules with respect to adult visitors to the classroom; the rules were designed to ensure that the educational environment is safe for children, and that the education of children is not unduly interrupted. Furthermore, Plaintiff fails to cite to any provision of IDEA that was allegedly violated by virtue of being required to comply with the school's rules concerning scheduling an appointment to visit [REDACTED] classroom. Plaintiff therefore failed to carry the burden of proof with respect to this allegation, and this Tribunal finds that the Defendant did not violate the requirements of IDEA concerning this allegation.

The Plaintiff alleges in her Due Process Hearing Request that an Assistant Principal would lie to her over the phone and unfairly discipline [REDACTED] however, the Plaintiff failed to present any evidence of said lying or unfair discipline at the hearing, and therefore, said allegations are deemed to have been abandoned. Additionally, Plaintiff failed to show that any harm was allegedly caused to [REDACTED] or his education as a result of said alleged lies or allegedly unfair discipline. Plaintiff has therefore failed to carry her burden of proof with respect to any alleged violation of IDEA concerning these matters, and this Tribunal finds and rules that no such violation of IDEA occurred.

The Plaintiff further alleged that the School District violated IDEA by failing to allow [REDACTED] to ride a bus home on one particular day. The evidence showed that [REDACTED] was highly emotional and crying at the time, and that the School District's refusal to allow [REDACTED] to ride the bus on that one particular day did not in any way impact his educational performance or the provision of FAPE to the Plaintiff.

The Plaintiff alleges in her Due Process Hearing Request that [REDACTED] IEP's failed to state how his annual goals will be measured. [REDACTED] IEPs were introduced into evidence as joint exhibits at the Due Process Hearing, and upon review of those IEPs, this Tribunal finds that all of [REDACTED] IEP's describe in detail how [REDACTED] annual goals will be measured in compliance with IDEA. The IEP's also included numerous pages of data kept by the School District, which was used to determine if the measurable goals in the IEPs had been mastered. As such, Plaintiff failed to carry the burden of proof with respect to proving such claim, and this Tribunal finds that the Defendant is in compliance with IDEA concerning this claim.

In summary, this Tribunal finds the Plaintiff failed to carry her burden of proof in showing that any procedural violation of IDEA occurred at all, and the evidence shows that the Defendant is fully in compliance with the procedural requirements of IDEA. Additionally, even if the evidence had otherwise showed that the Defendant had committed any purported procedural violation of IDEA, any such purported violation did not cause a denial of FAPE to [REDACTED] as [REDACTED] has made consistent and appropriate educational progress. Furthermore, the Defendant did not engage in any actions that significantly impeded the right of [REDACTED] parent to participate in the decision making process concerning provision of a FAPE to [REDACTED]. As such, even if there had been a procedural violation of IDEA, Plaintiff would not have been entitled to

any remedies for any such purported procedural violation under the law. Weiss, 141 F.3d 990 (1998); K.C., 2006 U.S. Dist. LEXIS 47652; Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(p).

### **PLAINTIFF'S ALLEGATIONS OF SUBSTANTIVE IDEA VIOLATIONS**

Plaintiff's Due Process Hearing Request alleges multiple times and in a variety of ways that the School District allegedly did not provide educational services to [REDACTED] that were appropriate and were not otherwise designed to meet [REDACTED] needs to the extent required by law. This Tribunal rules that the claims of Plaintiff alleging that the Defendant failed to provide a FAPE to the Defendant are limited to the two year time period immediately prior to the filing of Plaintiff's Due Process Complaint which was filed on April 9, 2012. Therefore, the applicable time period of review spans from April 9, 2010 to the present. 20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507(a)(2). Plaintiff did not contest the two year time limit applicable to these claims and did not introduce any evidence relating to any purported violations outside of the two year statute of limitations. As of April 9, 2010, [REDACTED] was in the second semester of his pre-kindergarten school year. Plaintiff did not introduce any evidence alleging that the Defendant failed to provide an appropriate education to [REDACTED] during the regular portion of [REDACTED] pre-kindergarten year, and the evidence on the record indicates that the education provided by the Defendant to [REDACTED] during his pre-kindergarten year was appropriate and that [REDACTED] was making appropriate and adequate progress in his education at that time. Therefore, this Tribunal finds that Plaintiff failed to carry her burden of proof with respect to any allegations that the Defendant did not provide a FAPE to [REDACTED] during the regular pre-kindergarten year on or after April 9, 2010.

The Plaintiff made allegations that the Defendant should have provided extended school year (ESY) services to [REDACTED]. This Tribunal finds that the evidence on the record shows that [REDACTED] was making appropriate progress at the end of the normal 2009-2010 school year, that he

had not shown any evidence of regression, that he did not appear to be at a critical point in his education, and that there is no other evidence on the record indicating that the School District was required to provide ESY services to [REDACTED] at that time. While 34 C.F.R. § 300.106 requires that ESY services be provided if the IEP team determines they are necessary to provide a FAPE, ESY services are the exception and not the norm and are required only when the educational gains of the disabled child will be significantly jeopardized if ESY is not provided. N.B. v. Hellgate Elementary Sch. Dist., 541 F.3d 1202 (9th Cir. 2008); M.M. v. Sch. Dist. of Greenville Cnty., 303 F.3d 523 (4th Cir. 2002). Plaintiff failed to carry the burden of proof in showing that [REDACTED] educational gains were significantly jeopardized by the lack of ESY services or that ESY services were otherwise required to provide [REDACTED] a FAPE. This Tribunal further finds that the Defendant was not required under the law to provide ESY services to [REDACTED] during the summer of 2010.

With respect to the 2010-2011 school year, this Tribunal finds that [REDACTED] was enrolled in the School District from the beginning of the school year beginning August 2, 2010 until January 18, 2011 when [REDACTED] mother withdrew [REDACTED] from enrollment with the School District. During the time when [REDACTED] was enrolled with the School District, this Tribunal finds that [REDACTED] had an appropriate IEP in place that was reasonably calculated to provide an adequate and appropriate educational benefit to [REDACTED] that the School District implemented said IEP, that [REDACTED] was making appropriate progress on all the IEP goals he had not mastered, and that [REDACTED] had mastered two of his IEP goals as of December 6, 2010 even though said goals were designed to be goals that would require one year to complete. This Tribunal finds that while [REDACTED] was enrolled with the School District in the 2010-2011 school year, [REDACTED] made progress in letter recognition, sound identification, sight words, counting, writing letters and numerals,

recognizing shapes, and in his communication skills, among other things, and that [REDACTED]'s educational progress was appropriate. [REDACTED] educational progress was substantiated by detailed documentation showing data that was collected and by the testimony of multiple witnesses. This Tribunal finds that [REDACTED] only psychoeducational evaluation indicated that [REDACTED] has an I.Q. of 58 (which is lower than the first percentile), and [REDACTED] disabilities have been categorized as Significant Developmental Delay and Speech Impairment. This Tribunal finds that said disabilities have significantly impacted [REDACTED] ability to perform educationally, and the progress demonstrated by [REDACTED] during his time of enrollment in the 2010-2011 school year was appropriate, especially upon considering the nature and severity of his disabilities. This Tribunal further finds that the evidence shows that to the extent that [REDACTED] may be performing academically behind his same age peers, that such performance results from his disability and is not the result of the Defendant failing to provide FAPE to [REDACTED]. Furthermore, IDEA does not require the Defendant to cause [REDACTED] to perform on grade level or require the Defendant to guarantee any particular educational outcome to [REDACTED] but only to provide an education that is appropriate for [REDACTED]. Rowley, 458 U.S. 176 (1982); Loren F., 349 F.3d 1309 (11th Cir. 2003); K.C., 2006 U.S. Dist. LEXIS 47652. This Tribunal finds that [REDACTED] made appropriate educational progress in the 2010-2011 school year and that the Defendant did provide FAPE to [REDACTED] during said school year.

Plaintiff also alleges, with respect to the 2010-2011 school year, that the Defendant's education of [REDACTED] was not appropriate due to an incident of a sexual nature in which [REDACTED] was involved in December of 2010. The evidence indicates that [REDACTED] and another student each alleged that the other had placed their penis in the other child's buttocks while being unsupervised in the restroom. As such, it is unclear whether [REDACTED] was the victim or the

perpetrator in this sexual incident. The evidence further shows that [REDACTED] mother did not report this incident to the School District in December 2010 when it occurred, or at any point before the first IEP meeting in January 2011. This Tribunal finds that the School District immediately began an investigation of the matter upon receiving information of said allegations from [REDACTED] mother, that the Defendant took appropriate steps to protect each of the children from being unsupervised together in the bathroom, and that there have been no known additional incidences of a similar nature involving [REDACTED] and the other student since the time of the initial incident. There was no evidence on the record that the School District's actions with respect to this sexual incident were inappropriate in any way or otherwise deprived [REDACTED] of a FAPE or in any way violated IDEA. Contrary to Plaintiff's allegations, there was also no evidence that the number of hours [REDACTED] received in co-teaching services in any way caused the sexual incident to occur. As such, this Tribunal rules that the Plaintiff failed to carry the burden of proof with respect to showing that any of the Defendant's alleged actions or inactions in any way violated IDEA or denied [REDACTED] a FAPE.

Plaintiff further claimed that, with respect to both the 2010-2011 school year and the 2011-2012 school year, the Defendant allegedly failed to provide FAPE to [REDACTED] because it did not provide additional supplemental services or technology to [REDACTED] other than what was set forth in [REDACTED] IEP. This Tribunal finds that Plaintiff specifically admitted that Plaintiff had no evidence of what technology or other services [REDACTED] allegedly needed to provide a FAPE, and had no evidence of what those services or technologies would have provided that was specifically necessary for [REDACTED] to receive a FAPE. This Tribunal finds that the Plaintiff failed to carry the burden of proof with respect to showing that any additional technology, supplemental or other services were required to provide [REDACTED] a FAPE, and additionally, that the evidence

shows that [REDACTED] was making appropriate progress and was receiving a FAPE in accordance with the requirements of IDEA.

This Tribunal finds that contrary to the Plaintiff's allegations, [REDACTED] was not wrongfully isolated from his peers during the 2010-2011 school year by Ms. Nisoff or other staff, and Plaintiff failed to carry the burden of proof with respect to said allegations. This Tribunal finds that Ms. Nisoff and Ms. Newton ([REDACTED] kindergarten teachers) did not intentionally fail to educate [REDACTED] and that their actions did not result in [REDACTED] being severely behind his peers in education as alleged by Plaintiff. To the contrary, the actions of the School District have allowed [REDACTED] to make appropriate progress in his education and the Tribunal finds that, to the extent [REDACTED] is not performing academically at the same level as his other peers, it is a result of [REDACTED] disability and is not a result of the School District's alleged failure to provide FAPE.

This Tribunal finds that the number of hours of special education services provided to [REDACTED] (including, but not limited to the hours of co-teaching services) during the 2010-2011 school year provided special education services during the large majority of the academic portions of [REDACTED] school day, were appropriate services, allowed [REDACTED] to make appropriate progress on his IEP goals, and provided FAPE to [REDACTED]. Plaintiff also failed to carry the burden of proof in showing that any of these services did not provide FAPE to [REDACTED].

This Tribunal finds that after [REDACTED] withdrawal from the School District on January 18, 2011, he was not re-enrolled in the School District until August 2011 at the beginning of the 2011-2012 school year. With respect to the time period from January 18, 2011 until his re-enrollment in the School District in August 2011, this Tribunal rules that the Plaintiff had elected to reject all offers of special education services of the School District as is Plaintiff's right

pursuant to IDEA. 34 C.F.R. § 300.300(b)(4); 20 U.S.C. § 1414(a)(1)(D). IDEA is clear that school districts do not have the legal requirement to make a FAPE available to a child when the parent has refused to provide consent to special education services, and as such, the School District has no liability to Plaintiff with respect to the time period while [REDACTED] was withdrawn from the School District during 2011. *Id.*

This Tribunal finds that the education provided to [REDACTED] during the 2011-2012 school year also provided a FAPE to [REDACTED] and met the requirements of IDEA. This Tribunal finds that during the 2011-2012 school year, the Defendant implemented [REDACTED] IEP, that [REDACTED] mastered 11 out of 16 of his IEP goals, that [REDACTED] made progress with respect to the remainder of the IEP goals, and that his IEP goals were appropriate and reasonably calculated to provide an adequate and appropriate educational benefit to [REDACTED]. This Tribunal finds that [REDACTED] has demonstrated a significant number of behavioral issues and that the School District implemented a Behavior Intervention Plan (“BIP”) which was successful in allowing [REDACTED] to access his educational curriculum and to make progress with respect to his IEP goals. This Tribunal finds that [REDACTED]’s teachers did not fail to implement [REDACTED]’s BIP and finds that the joint exhibits included detailed logs of when the BIP was implemented by the Defendant. This Tribunal further finds that [REDACTED] made progress in decreasing certain inappropriate behaviors, although his overall behavior still remains a matter of on-going concern. This Tribunal finds that [REDACTED] made significant and appropriate progress in a number of areas, including but not limited to his sight word recognition, reading skills, counting and labeling skills, rote counting skills and other math skills, skills in answering “wh” questions, [REDACTED] ability to sequence steps in a story, describe objects, produce sounds, write, and verbalize frustrations, among other things. This Tribunal finds that the progress that [REDACTED] made on his IEP goals and his other academic and behavioral progress

was substantiated by a very significant amount of documentary evidence, as well as the testimony of multiple witnesses.

This Tribunal further finds that, notwithstanding the fact that [REDACTED] I.Q. showed an age equivalency of functioning as being more than two years behind his chronological age, [REDACTED] demonstrated approximately one year's worth of academic progress during the 2011-2012 school year, which meets, if not exceeds, the requirement of IDEA with respect to the Defendant's obligation to provide an appropriate education to [REDACTED]. This Tribunal further finds that [REDACTED] mother testified that she had home schooled [REDACTED] while [REDACTED] was withdrawn for multiple months during 2011, and the evidence indicated that [REDACTED] had made very little progress during said time period academically. Yet, [REDACTED] mother indicated she believed her education of [REDACTED] during that time period was appropriate. In contrast, the School District was able to achieve significantly more educational progress in comparable time periods when educating [REDACTED]. As such, Plaintiff failed to carry the burden of proof with respect to the claims that FAPE was denied to [REDACTED].

Plaintiff also failed to carry the burden of proof in showing that the classroom location in which [REDACTED] has been taught at any time was inappropriate for [REDACTED]. In actuality, the evidence indicated and this Tribunal finds that the classroom locations where [REDACTED] has been taught were appropriate for [REDACTED] and allowed [REDACTED] to make appropriate educational progress.

The Plaintiff has also failed to carry the burden of proof with respect to Plaintiff's allegations that [REDACTED] is required to be educated with the regular education curriculum, as there was no evidence introduced that the curriculum used with [REDACTED] was not a part of the regular education curriculum used by the School District. Additionally, there is no requirement under

the law that the School District only use one particular curriculum when educating its special education students. The evidence in this case indicates that the curriculum used with [REDACTED] was appropriate for [REDACTED] and this Tribunal will not impose its own view of what curriculum or educational methods are preferable so long as the curriculum and method(s) actually used were appropriate for the student. Rowley, 458 U.S. 176, 207 (1982); JSK, 941 F. 2d 1563, 1573 (1991).

Plaintiff further alleged that [REDACTED] was denied FAPE because of actions by his teachers, including Lindsey Brantley and Lori Bachelor, who allegedly called [REDACTED] names such as “freak” or “ugly thief” and otherwise allegedly ostracized or ridiculed [REDACTED]. Plaintiff also alleged that Ms. Wade pushed [REDACTED] and shut a bathroom door on [REDACTED]. This Tribunal finds that the evidence did not support any of these allegations against any of [REDACTED] teachers. Much of Plaintiff’s evidence with respect to these allegations was inadmissible hearsay, which has no probative value and the only direct evidence of any said allegations came from [REDACTED] testimony. Roebuck v. State, 277 Ga. 200, 204 (Ga. 2003); Waldrip v. Head, 279 Ga. 826, 828 (Ga. 2005).

This tribunal finds that [REDACTED] was not a reliable witness in that he either did not understand or simply refused to answer questions asked by Defendant’s counsel on cross-examination, as well as a number of questions asked by his own mother. [REDACTED] admitted he normally does what his mother says. [REDACTED] refused to answer whether his mother had told him what he was supposed to say at the hearing, and admitted that at least one of his teachers, Ms. Brantley, was nice to him most of the time and that he gives her hugs. These responses such as these do not tend to indicate a combative or hostile environment towards [REDACTED] as was alleged by Plaintiff. Furthermore, this Tribunal finds that Ms. Bachelor and Ms. Brantley were credible witnesses. They denied ever engaging in name calling or other inappropriate behavior towards

█ Ms. Nisoff testified that she and Ms. Wade normally attended restroom duties together and that she never saw Ms. Wade engage in any inappropriate actions toward █ The Plaintiff presented insufficient evidence to establish teacher misconduct that denied █ FAPE.

The Plaintiff alleged that the fact that █ was not placed in normal social studies and science classes during the 2011-2012 was a denial of FAPE to █ This Tribunal finds that the IEP team determined that █ needed additional time to focus on his reading and math during the 2011-2012 school year. █ IEP team, including █ mother, agreed that this was the best course of action for █ As of a result of the School District's implementation of █ IEP (which included said extra time focusing on math and reading in lieu of formal social studies and science classes), █ was able to make significant and appropriate academic progress during the 2011-2012 school year, and this decision by the IEP team did not deny FAPE to █ Additionally, Plaintiff failed to carry her burden of proof in showing this decision by the IEP team in anyway denied FAPE to █

For all the reasons set forth above, this Tribunal finds that the relief requested by Plaintiff under IDEA including, but not limited to, additional supplemental or related services, the expunging of a discipline record or any other compensatory education or private education, are not required to be given by the Defendant to █ under IDEA, and that the Plaintiff failed to carry the burden of proof with respect to proving the right to any such relief.

#### **OTHER CLAIMS OF PLAINTIFF**

In addition to making claims under IDEA, Plaintiff also attempted to make claims in her Due Process Hearing Request for other relief including, but not limited to, claims for punitive damages, claims for relief under the Americans with Disabilities Act ("ADA"), Section 1983,

and Section 504 and under other laws, which do not exist. This Tribunal finds that the Plaintiff failed to carry the burden of proof with respect to all of these other claims and that this Tribunal does not have jurisdiction to grant relief under any of the other above-said laws, as this Tribunal is a forum solely for bringing claims under IDEA with respect to [REDACTED] education. 34 C.F.R. § 300.511; O.C.G.A. § 50-13-41.

IDEA does not grant the right to punitive damages. Additionally, the Plaintiff failed to introduce any evidence concerning any alleged right to punitive damages and therefore waived said claim and failed to carry the burden of proof with respect to said claim. As such, the Plaintiff's claims for punitive damages are barred as a matter of law.

With regard to the Plaintiff's claim that the Defendant violated the provisions of Section 504, this Tribunal holds that that under Section 504:

“No otherwise qualified individual with a disability ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”

29 U.S.C. § 794(a); K.C., 2006 U.S. Dist. LEXIS 47652. The ADA is very similar and states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132 (2012); K.C., 2006 U.S. Dist. LEXIS 47652. Because the ADA and Section 504 are virtually identical anti-discrimination statutes, both of which prohibit federally funded entities from denying disabled individuals access to benefits, the interpretations of one act can reasonably apply to the other. K.C., 2006 U.S. Dist. LEXIS 47652; Waddell v. Valley Forge Dental Assocs., Inc., 276 F.3d 1275, 1280 (11th Cir. 2001). “Moreover, in the Eleventh Circuit, a disparate treatment claim for

compensatory damages under *Section 504* must fail in the absence of intentional discrimination or bad faith.” K.C., 2006 U.S. Dist. LEXIS 47652; Wood v. President & Trs. of Spring Hill Coll. in City of Mobile, 978 F.2d 1214, 1219 (11th Cir. 1992). “To make a claim under *Section 504* in the education context, something more than an IDEA violation for failure to provide a free appropriate public education in the least restrictive environment must be shown.” K.C., 2006 U.S. Dist. LEXIS 47652; N.L. v. Knox Cnty. Schs., 315 F.3d 688, 695 (6th Cir. 2003); Sellers v. Sch. Bd. of City of Manassas, 141 F.3d 524, 529 (4th Cir. 1998). Therefore, under both *Section 504* and the ADA, the Plaintiff must show intentional discrimination or bad faith, and the Plaintiff has failed to carry the burden of proof in this regard; the Plaintiff failed to present sufficient evidence, and therefore, the Plaintiff’s claims under the ADA and *Section 504* are therefore denied.

With respect to the Plaintiff’s *Section 1983* claims, the Plaintiff failed to introduce any evidence in support of the *Section 1983* claims; therefore, these claims are deemed to have been abandoned.

For the reasons set forth above, this Tribunal finds that the Plaintiff has failed to carry the burden of proof with respect to all of the Plaintiff’s claims, and that the School District has provided a free appropriate public education to [REDACTED] and has complied with the provisions of IDEA and all other applicable laws. Therefore, all relief requested by the Plaintiff is denied and judgment is entered in favor of the Defendant.

**SO ORDERED** this 19th day of June, 2012.

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