

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
OSAH

APR 06 2018

Kevin Westray, Legal Assistant

█ by and through █ and █ :

Petitioners, :

v. :

HENRY COUNTY SCHOOL DISTRICT, :

Respondent. :

Docket No.: 1831284

1831284-OSAH-DOE-CPEXP-75-Walker

AMENDED FINAL DECISION

I. INTRODUCTION

On February 26, 2018, the Petitioners filed a Due Process Hearing Request (“Complaint”), seeking expedited review of a disciplinary removal and manifestation determination made by the Respondent, the Henry County School District (herein “Respondent” or “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 March 20, 2018.² The Petitioners appeared *pro se*. Janet Scott, Esq. and Lajuana Ransaw, Esq. represented the Respondent.

¹ The filed Complaint included one expedited and three non-expedited claims. The parties resolved two of the non-expedited claims prior to the hearing. (Transcript of the March 20, 2018 hearing at p.11 (hereinafter T-)). With the parties’ consent, the undersigned consolidated the remaining two claims for hearing.

² A transcript of the hearing was filed on March 27, 2018.

II. FINDINGS OF FACT

1.

Petitioner [REDACTED] was enrolled as a [REDACTED] grade student at [REDACTED] Middle School for the 2017-2018 school year. He has been diagnosed with an autism spectrum disorder and is eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). (T. 18, 44; Exhibits R-5, R-8 at BS 74). He receives special education services through the District’s program for autism. (Exhibit R-5).

2.

[REDACTED]’s 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”). (Exhibit R-8).³ [REDACTED]’s IEP team includes his teachers, educational consultants, school administrators and his mother. The team meets to evaluate [REDACTED]’s progress and, if necessary, modify the services and supports administered by the District. (Exhibit R-8 at BS 87).

3.

On November 13, 2017, [REDACTED]’s IEP team met to review his IEP (hereinafter the “November 2017 IEP”). (Exhibit R-8 at BS 88). The November 2017 IEP indicates that [REDACTED]’s adaptive functioning was in the average range, with the exception of the skill areas of self-direction (extremely low) and social (below average). (Exhibit R-8 at BS 74). As a result of the social skill deficits related to his disability, [REDACTED] had a high level of problem behavior, including verbal and physical aggression. (Exhibit R-8 at BS 77, 78). Accordingly, the November 2017

³ Although [REDACTED] is being served by the District’s autism program, according to his IEP, dated November 13, 2017, “DSM diagnoses [include] attention deficit hyperactivity disorder, combined presentation and autism spectrum disorder, requiring substantial support.” (Exhibit R-8 at BS 74).

IEP provides that [REDACTED]s “academic, behavioral and social deficits necessitate the support of an autism general curriculum program with a combination, of social skills training, behavior support and mix of small group and co-teaching support in order for [REDACTED] to be successful.” (Exhibit R-8 at BS 77).

4.

[REDACTED]’s IEP contained a Behavioral Intervention Plan (“BIP”). The BIP’s targeted behaviors included Swearing or Verbal Aggression, Physical Aggression and Task Avoidance. (R-8 at BS 78). The November 2017 IEP indicated that, based on teacher interviews and observations from the 2016-2017 school year, [REDACTED]s compliance regarding the targeted behaviors identified in the BIP “had significantly increased in all classroom settings.” (Exhibit R-8 at BS 78).

5.

[REDACTED] M [REDACTED] works at [REDACTED] Middle School as a teacher in the Autism program. (T-164-65). In addition to math and science, she teaches a social skills class. (T-165). Skills taught in the social skills class include learning the difference between a friend and an acquaintance, and recognizing other people’s emotions by interpreting their body language. (T-168).

6.

Ms. M [REDACTED] was [REDACTED]s case manager and also his “safe place;” [REDACTED] could come to her classroom as necessary. (T-165-67). On January 24, 2018, [REDACTED] had been “cursing,” and consequently he was not permitted to eat lunch with his friends. (T-175). [REDACTED] ate lunch with Ms. M [REDACTED] in a school conference room. (T-170). After lunch [REDACTED] appeared calm, and Ms. M [REDACTED] accompanied him to his science class. (T-170-71).

7.

█████ A █████ was a paraprofessional assigned to support █████ (T-33). While in science class on January 24, 2018, █████ made physical contact with Mr. A █████. (T-71; Exhibit R-34 at BS 466). The District commenced an investigation to determine whether █████ had violated the District's Code of Conduct. (Exhibit R-34 at BS 466).

8.

Following the District's investigation, █████ received a Notice of Suspension and Disciplinary Hearing (also "Notice"). (Exhibit R-3 at BS 45). The Notice stated that █████ had violated the rules and regulations of the Henry County Board of Education, Section: 4 / Rule 2, forbidding intentional physical contact or action of an insulting or provoking nature with school personnel. (Exhibit R-3 at BS 45). Specifically, the Notice alleged that after a paraprofessional directed █████ to stay on task, █████ jumped on the paraprofessional's back, causing him to fall backwards towards a science table. After the paraprofessional was able to catch himself and utilize mindset procedures, █████ "tackled" the paraprofessional. The general education teacher called out █████'s name and asked him to stop; █████ complied and began walking towards the door. The paraprofessional escorted █████ to his designated safe classroom. (Exhibit R-3 at BS 45-46).

9.

A disciplinary hearing was scheduled for February 2, 2018. (T-71: Exhibit R-3 at BS 46). Prior to holding the disciplinary hearing, the District convened a manifestation determination meeting, where four members of █████'s IEP Team, █████ C █████, █████

Ms. [REDACTED], [REDACTED] S. [REDACTED] and [REDACTED]'s mother, met to determine whether [REDACTED]'s misconduct was either a manifestation of [REDACTED]'s disability or the direct result of the District's failure to implement the IEP. According to the Manifestation Determination Form, dated February 2, 2018, "the IEP team reviewed all relevant educational records including grades, attendance and disciplinary records as well as any additional information shared by the parent(s) and other IEP team members prior to answering the questions of a manifestation." (Exhibit R-5 at BS 51).

10.

With the exception of [REDACTED]'s mother, the members [REDACTED]'s IEP team concluded that the misconduct was not a manifestation of [REDACTED]'s disability because: 1) the misconduct was not caused by or bear a direct and substantial relationship to [REDACTED]'s disability, and 2) the alleged misconduct was not a direct result of the District's failure to implement [REDACTED]'s IEP. Other than [REDACTED]'s mother, no member of [REDACTED]'s IEP team that participated in the manifestation determination testified at the hearing. (T-84; Exhibit R-6 at BS 52).

11.

Following the manifestation determination, the District conducted a disciplinary hearing on February 2, 2018. (Exhibit R-4 at BS 49). The District suspended [REDACTED] from [REDACTED] Middle School beginning February 2, 2018 and concluding after May 25, 2018. [REDACTED] could serve his term of suspension by enrolling at [REDACTED] Academy, an alternative school. (Exhibit R-4 at 49). Should [REDACTED] enroll in [REDACTED] Academy, the District would convene an IEP meeting to determine appropriate services. (Exhibit R-5 at BS 51).

12.

The Petitioners contests the manifestation determination, arguing that the misconduct was caused by or bears a direct and substantial relationship to [REDACTED]'s disability, autism. The

Petitioners maintain that [REDACTED] should not have been removed from [REDACTED] Middle School. See Petitioners' Complaint filed on February 26, 2018.

13.

Autism spectrum disorder can cause a child to be physically aggressive. (T-214). [REDACTED]'s November 2017 IEP reflected that he had deficient social skills resulting in a high level of problem behaviors, including verbal and physical aggression. (Exhibit R-8 at BS 77, 78). The November 2017 IEP's BIP sought to diminish targeted behaviors, such as verbal and physical aggression, by providing teachers with appropriate interventional strategies. (Exhibit R-8 at BS 90).

14.

During the 2017-2018 academic year, [REDACTED] Middle School's Vice Principal, [REDACTED] H [REDACTED] and [REDACTED]'s mother had been in frequent communication regarding [REDACTED]'s physical aggression and the District's responses. See Exhibit R-34 at BS 416 ("We are continuing to work with [REDACTED] to use strategies to avoid physical confrontation through using his support system within the building"); Exhibit R-34 at BS 435, 438 and 450 (noting strategies used by District employees relating to [REDACTED]'s physically aggressive behavior).

15.

[REDACTED]'s mother testified that her son's disability and deficient social skills prevented him from knowing "the difference between horseplay with his paraprofessional that he sees all the time and an actual incident, like physical contact incident." (T-106). Additionally, [REDACTED] C [REDACTED], a member of [REDACTED]'s November 2017 IEP team and Behavioral Specialist from the

Marcus Autism Center, noted that [REDACTED] “has a great relationships with the staff, his (negative) behavior has to do with his current social deficits.” (Exhibit R-8 at BS 86, 87).

16.

Due to his disability, [REDACTED] also has difficulty adjusting to changes in his daily routine. (T-124). When he has a substitute teacher, [REDACTED]s current case manager has observed that [REDACTED] will leave the classroom and go to a safe place where he is more comfortable. (T-195-96). On the day of the incident [REDACTED]s homeroom teacher was “out” serving jury duty. (T-173).⁴ Prior to the January 24, 2018 incident, [REDACTED]s mother advised the District that having a substitute teacher for more than two days would trigger his behaviors. (T-124; Exhibit R-8 at BS 86).⁵

17.

[REDACTED] also contends that his misconduct was caused by the District’s failure to implement his IEP because it failed to adopt the BIP prepared by the Marcus Autism Center. The Marcus Autism Center BIP sought to diminish targeted behaviors such as verbal and physical aggression by providing teachers with appropriate interventional strategies. (Exhibit R-8 at BS 90). Although substantially similar, the BIP contained in [REDACTED]s IEP does not “word for word” track the BIP prepared by the Marcus Autism Center. [REDACTED] asserts that the alleged misconduct was a direct result of the school district’s failure to adopt the Marcus Autism Center BIP. (T-38-39, 88, 100).⁶

⁴ It is unclear how many days [REDACTED]s homeroom teacher had been absent from class.

⁵ In response to her concerns, Mr. H [REDACTED] had assured [REDACTED]s mother that the IEP team had a plan in place “whenever any of his classes has a sub.” (Exhibit R-8 at BS 86). There was no testimony offered at the hearing regarding the District’s plan.

⁶ [REDACTED] also maintains that Mr. A [REDACTED] was aware that [REDACTED] had “shoved” a student before the altercation took place, but failed to redirect his behavior or ask [REDACTED] if he wanted to go his safe classroom as required by the IEP. [REDACTED] did not present reliable evidence that Mr. A [REDACTED] had observed [REDACTED] “shoving” another student prior to their altercation and the undersigned declines to evaluate this claim.

18.

On or about November 10, 2017, the District scheduled an IEP meeting for November 13, 2017. (Exhibit R-8 at BS 88). The purpose of the IEP meeting was to review the BIP developed by the Marcus Autism Center for [REDACTED]. At the meeting, [REDACTED] C [REDACTED], a Behavioral Specialist from the Marcus Autism Center, went over the BIP developed by the Center with [REDACTED]'s IEP team. (Exhibit R-8 at BS 87). According to the IEP meeting notes, “[Ms. C [REDACTED]] changed the BIP to include levels of responding to [REDACTED]'s behaviors. The levels will be added to his BIP to reflect the change.” (Exhibit R-8 at BS 88).

19.

The BIP contained in the November 2017 IEP included consequences and interventional strategies for targeted behavior as follows:

Step 1: Redirection/prompt to engage in an appropriate bid for attention.

(behaviors including: angry facial expression, putting head down on desk, vocally refusing to complete work, raising voice and the use of profanity are behaviors that often precede more severe problem behavior such as aggression.)

*If behavior escalates into aggressive or disruptive behaviors, move to Step 2:

20.

Step 2: [REDACTED] should be escorted to a “safe classroom.”

Once [REDACTED] has been successfully transitioned into this classroom then follow classroom emergency plan.

Reincorporate/Re-direction when calm: Once [REDACTED] is calm for 5 minutes and becomes responsive and communicative with staff, he should be re-directed back to the ongoing activity in his assigned class and/or to complete the activity he was assigned (depends on timing). No discussion of the behaviors should occur (either toward [REDACTED] or in earshot of him) at any time. Provide specific praise for effort to re-join activities or to complete work in neutral tone. Return to earlier levels of praise/attention and tokens for appropriate behaviors after approx. 5 minutes.

*If behavior escalates into physical aggression towards peers or adults (defined as: any forceful hit, kick, punch bit[e] or use of objects towards another student or adult) move to Step 3:

21.

Step 3: Trained adult should utilize Mindset techniques until he can be removed from the area to ensure the safety of both [REDACTED] and others.

* Following Step 3, staff will notify building administration and parents of incident and details (time of incident, activity, possible trigger, specific behaviors and school consequences that are implemented[]).

(Exhibit R-8 at BS 79-80).

22.

[REDACTED] maintains that there are material differences between the Marcus Autism Center BIP and the BIP included in his IEP, and that the District's failure to adopt the Marcus Autism Center BIP and failure to implement the IEP properly, led to the misconduct.

23.

[REDACTED] first points to the Marcus Autism Center's BIP use of the terms Levels 1, 2, and 3, to distinguish Operational Definitions of the Behaviors and Planned Responses; [REDACTED]'s BIP identifies these "Levels" as Steps 1, 2, and 3. The terms "Steps" or "Levels" are used interchangeably by District employees. (T-139, 143).⁷ The undersigned does not conclude that this is a material difference between the two documents.

24.

Additionally, the content in each "Level," or "Step" is substantially the same. The Operational Definitions of the Behaviors and Planned Responses in the IEP BIP and the Marcus Autism Center BIP for Step 1/Level 1 are virtually identical, although the Marcus Autism Center BIP also includes a brief explanation of the strategies to be employed. (Exhibit R-8 at BS 79-80,

⁷ At the November 2017 IEP meeting, the IEP notes also reflect that [REDACTED] Middle School preferred that the BIP "be laid out in steps so that it can be followed by all teachers." (Exhibit R-8 at BS 86).

90-92). As the Behaviors and Responses are identical, the undersigned does not find a material difference in the two documents.

25.

Comparing the Operational Definitions in IEP BIP's Step 2 with the Marcus Autism Center BIP Level 2, the undersigned finds that they are virtually identical. Although both the Step 2 and Level 2 and Planned Responses to the Problem Behavior provide that a staff member should escort ██████ to his safe classroom, Level 2 notes that ██████ might request to go to his "safe" classroom. However, this distinction is not significant: whether ██████ requests or is directed to go to the safe classroom, the BIPs both provide that a staff member should escort him to the safe classroom. Both BIPs include a safety plan. While the Marcus Autism Center BIP adds an explanation of the safety plan to be implemented, it does not essentially change the course of action to be taken. (Exhibit R-8 at BS 79-80, 90-92).

26.

The Operational Definitions and Planned Responses relating to the IEP BIP's Step 3 and the Marcus Autism Center Level 3 contain essentially the same information. The Marcus Autism Center BIP only substitutes the word "blocking" for "Mindset." (Exhibit R-8 at BS 79-80, 90-92).

27.

Following the disciplinary hearing, ██████ enrolled as a student in ██████ Academy. (T-102-104). On February 13, 2018, an IEP meeting was held at ██████ Academy. (T-111; Exhibit R-1). IEP members worked to "tweak" and integrate the Marcus Autism Center BIP into ██████'s IEP. (T-112). ██████ C█████ from the Marcus Autism Center agreed to train Excel staff

regarding implementation of the BIP. (T-118). Additional supports and services have been implemented. (T-144-47, 185-89).

28.

While the Petitioners agree that the District has put services and supports in place at ██████ Academy, ██████ Academy does not offer the sports or other extracurricular activities available at ██████ Middle School. ██████'s mother testified that these types of extracurricular activities assist ██████ in developing his social skills. (T-217). Accordingly, the Petitioners maintain that ██████ Academy does not provide FAPE in the least restrictive environment. (T-21, 121, 123).

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);⁸ 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).⁹

⁸ The Schaffer Court held that an IDEA Petitioner has the burden of persuasion, noting that that "[t]he term 'burden of proof' is one of the 'slipperiest member[s] of the family of legal terms.'" 546 U.S. 49, 56, (2005) (quoting 2 John W. Strong et al., McCormick on Evidence § 342, at 433 (5th ed. 1999)). The term "burden of production" refers to "which party bears the obligation to come forward with the evidence at different points in the proceeding," whereas "burden of persuasion" refers to "which party loses if the evidence is closely balanced." *Id.* (citations omitted).

⁹ At the close of the Petitioner's case, the District moved for a directed verdict, stating that the Petitioners had failed to meet their burden of proof. (T-125). As the party seeking relief, the Petitioners' carry the burden of proof in this matter. Schaffer ex rel Schaffer v. Weast, 546 U.S. 49, 57-58, 62 (2005); Ga. Comp. R. & Regs. r. 160-4-7-

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. & 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 (1) if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or (2) if the conduct in question 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)(1).

.12(3)(k)(1). At the close of the Petitioners’ case, there was sufficient evidence in the record to support their claims regarding the manifestation determination and FAPE. See, e.g., (T-71, 106, 124; Exhibits P-1, R-1, R-3, R-4, R-5, R-6, R-7, R-8, R-9, R-34). The undersigned finds that the Petitioners carried their burden.

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)(2), 300.536. 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)(4), 300.531. If the administrative law judge finds that the child's misconduct was a manifestation of his or her disability, the administrative law judge can return the child to placement from which the child was removed. 34 C.F.R. § 300.532(b)(2)(i).

7.

Federal regulations define autism as "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated

with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.” 34 C.F.R. § 300.8(c)(1)(i).

8.

█ has been diagnosed as having an autism spectrum disorder,¹⁰ and is eligible for services under the IDEA. Ga. Comp. R. & Regs. 160-4-7-.05(1)(a). █ maintains that his misconduct is a manifestation of his disability, and the direct result of the school district’s failure to implement his IEP.

9.

The Petitioners’ proved, by a preponderance of the evidence, that █’s misconduct was caused by or had a direct and substantial relationship to his disability. The incident involved unwanted physical contact/aggression with another individual. █’s IEP indicates that he has a high level of problem behavior, including verbal and physical aggression, as a result of social skill deficits related to his disability. See also 34 C.F.R. § 300.8(c)(1)(i) (noting that autism significantly affects social interaction). The IEP’s Behavioral Intervention Plan explicitly seeks to diminish targeted behaviors, such as verbal and physical aggression, by providing teachers with appropriate interventional strategies. █ C█, a member of the November 2017 IEP team and Behavioral Specialist from the Marcus Autism Center, concurred with this assessment, observing that █ “has great relationships with the staff, his (negative) behavior has to do with his current social deficits.” (Exhibit R-8 at BS 86, 87).

¹⁰ The term autism spectrum disorder “includes all subtypes of Pervasive Developmental Disorder (such as Autistic Disorder; Rett’s Disorder; Childhood Disintegrative Disorder; Asperger Syndrome; and Pervasive 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).

10.

An autism spectrum disorder is also characterized by resistance to a change in daily routines. 34 C.F.R. § 300.8(c)(1)(i). On the day of the incident, ██████'s usual homeroom teacher was absent. Prior to the incident with Mr. A ██████, ██████'s mother specifically identified substitute teachers as an antecedent trigger to his problem behaviors. Moreover, ██████'s case manager testified that ██████ will leave the classroom because he is uncomfortable with substitute teachers.

11.

The only evidence offered by the District to support the IEP team's determination is the language included in the manifestation determination that states "the IEP team reviewed all relevant educational records including grades, attendance and disciplinary records as well as any additional information shared by the parent(s) and other IEP team members prior to answering the questions of a manifestation." The IEP team's cursory explanation is unpersuasive. Other than ██████'s mother, no one from the IEP team that performed the manifestation determination testified at the hearing. There is not the slightest indication as to what information led to the conclusion that ██████'s behavior was not caused by, or had a direct and substantial relationship to, the child's disability. To the contrary, the overwhelming weight of the evidence demonstrates that ██████'s disability caused or had a direct and substantial relationship to his behavior.¹¹ Cf. Fitzgerald v. Fairfax Co. Sch. Bd., 556 F. Supp. 2d 543 (E.D. Va. 2008) (Child's role planning and executing incident does not reflect disability which causes child to behave impulsively); Danny K. v. Dep't of Educ., No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS 111066, at *50 (D. Haw. Sep. 27, 2011) (Conduct not a manifestation of child's ADHD diagnosis because

¹¹ As testified to by his mother, ██████'s social skills deficits would impact his ability to distinguish between "horseplay" and intentional physical aggression.

conduct required planning and sustained attention).

12.

Although the undersigned finds that [REDACTED]'s misconduct was caused by or had a direct and substantial relationship to his disability, based on the evidence presented at the hearing the Petitioners did not demonstrate that the misconduct was the direct result of the school district's failure to implement the child's IEP.

13.

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. r 160-4-7-.07(1).

14.


[REDACTED]'s removal from [REDACTED] Middle School to [REDACTED] Academy, a more restrictive

environment, was for disciplinary reasons -- not because of the severity of his disability. Additionally, [REDACTED]'s November 2017 IEP indicated that, based on teacher interviews and observations from the 2016-2017 school year, [REDACTED]'s compliance regarding targeted behaviors identified by his BIP had increased. The evidence demonstrates he is able to function at [REDACTED] Middle School. Accordingly, the District is not providing [REDACTED] with FAPE in the least restrictive environment.

IV. DECISION

Having determined that [REDACTED]'s misconduct was caused by, or had a direct and substantial relationship to his disability the undersigned **ORDERS** [REDACTED] returned to the [REDACTED] Middle School, the placement from which the child was removed. 34 C.F.R. § 300.532(b)(2)(i).

SO ORDERED, this 6th day of April



RONIT WALKER
Administrative Law Judge