



DEPT. OF COMMERCE AND CONSUMER AFFAIRS

OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

2003 APR 29 A 8:24

HEARINGS OFFICE

In the Matter of	)	DOE-2002-009
	)	
by and through	)	HEARINGS OFFICER'S
his parents,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Petitioners,	)	AND DECISION
	)	
vs.	)	
	)	
DEPARTMENT OF EDUCATION,	)	
STATE OF HAWAII,	)	
	)	
Respondent.	)	

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECISION

I. BACKGROUND

On November 20, 2002, a Request for Impartial Hearing was filed by [redacted], by and through his parents, [redacted] ("Petitioners"). On November 21, 2002, a Notice of Hearing and Pre-Hearing Conference was duly served on the parties. The hearing was scheduled to commence on December 3, 2002. The hearing was subsequently rescheduled to commence on December 19, 2002.

On December 19, 2002, March 10, 2003 and March 20, 2003, this matter came before the undersigned Hearings Officer with Petitioners represented by their attorney, [redacted] Esq. and with Respondent Department of Education ("Respondent") represented by its attorney, [redacted] Esq. At the conclusion of the hearing, the parties were provided with the opportunity to submit written closing briefs and proposed findings of fact and conclusions of law. Petitioners and Respondent submitted their briefs on

March 31, 2003. The Hearings Officer, having reviewed and considered the evidence presented by the parties, together with the exhibits, records and files herein, hereby renders the following findings of fact, conclusions of law, and decision.

II. FINDINGS OF FACT

1. [redacted] suffers from Aspergers Disorder and as such, has been deemed to be and remains eligible for Special Education Services under the Individuals with Disabilities Education Act ("IDEA").

2. In or about August 2001, Petitioners requested a due process hearing whereupon Petitioners and Respondent entered into settlement discussions. On February 28, 2002, the parties entered into a settlement agreement wherein Respondent agreed to pay for tuition at the [redacted] for the 2001-2002 school year.

3. Concurrent with the settlement, the parties worked to develop an Individualized Education Plan ("IEP") for [redacted] along with a Transition Plan ("Transition Plan") for the purpose of reenrolling [redacted] in his home school, [redacted] High School ([redacted]), for the 2002-2003 school year.

4. In IEP meetings held through January 9, 2002, the IEP team developed an IEP and a Transition Plan.

5. The Transition Plan provided:

Transition Plan for [redacted]

Based on current information, it is recommended that [redacted] be provided the following accommodations for transition into [redacted]. At the onset of the 2002-2003 school year, with cooperation from Mr. and Mrs. [redacted]

1. [redacted] will be given an orientation of the [redacted] campus. He will be taken to each of his scheduled classes, the cafeteria, counselors' offices, administrators' offices, health room, and other relevant areas. In addition to the above areas he will also be instructed to where the off-limit areas are located.

2. [redacted] will be introduced to his scheduled teachers and be instructed about classroom and

school expectations, rules, consequence, and behavioral interventions.

3. During the first two weeks of school, parent, student, teachers, mental health providers, conferences will be set up to discuss parents concerns and teachers expectations.

4. During the first two weeks of school, scheduled teachers will be given an inservice by an autism consultant on autism. Teachers will also meet with mental health providers. Consultation will be provided when necessary.

5. Implement behavior plan (with DOE input) by Dr. [REDACTED]

6. A student binder will be issued to [REDACTED]. The binder will include:

- Student schedule
- High School bell schedule
- School map
- School calendar
- School and classroom rules consequences, and rewards
- Contact personnel with room and phone numbers
- Rating sheet (self-monitoring) check list

6. By letter dated August 1, 2002, Petitioners notified Respondent that they "are not comfortable with [REDACTED] s IEP and are reenrolling [REDACTED] the [REDACTED]"

We believe that the transition plan was not appropriate and his mental health services not complete."<sup>1</sup>

**III. CONCLUSIONS OF LAW**

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

<sup>1</sup> By letter dated September 17, 2002, Petitioners informed Respondent of their belief that academic goals were necessary for

Petitioners allege that Respondent failed to provide a Free Appropriate Public Education ("FAPE") to [redacted] because the IEP failed to address his academic and mental health needs and included an insufficient transition plan. The IDEA requires that all students with disabilities be provided with a FAPE. 20 U.S.C. §§1400(c) and 1421 et. seq. Chapter 56 of the Hawaii Administrative Rules ("HAR") provides:

§8-56-3 Free appropriate public education.

- (a) The department shall ensure that each student with a disability who resides in the State . . . is provided a free appropriate public education in accordance with this chapter.
- (b) The services provided to a student under this chapter shall address all of the student's identified special education and related services needs.
- (c) The services and placement needed by each student with a disability to receive a free appropriate public education shall be based on the student's unique needs and not on the disability.

FAPE is defined by the IDEA as special education and related services that (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the IEP. 20 U.S.C.S. §1401(8). "Special education" means specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a child with a disability. 20 U.S.C.S. § 1401(25). Thus, a FAPE must be tailored to the unique needs of the handicapped child. In this regard, Respondent bears the burden of proving compliance with the IDEA at the administrative hearing. *Seattle School Dist. No. 1 v. B.S.*, 82 F.3d 1493 (9<sup>th</sup> Cir. 1996).

The inquiry in determining whether a child received a FAPE is twofold. The first inquiry is whether the State complied with the procedures set forth in the IDEA. The second inquiry is whether the IEP developed through the IDEA's procedures was reasonably calculated to enable the child to receive educational benefits. The substantive requirements of the IDEA are met when the State provides educational instruction specifically designed to

meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. *Board of Ed. of Hendrick Hudson Cent. School Dist. v. Rowley, 458 U.S. 176 (1982).*

At the outset, Petitioners charge that although [redacted] has academic needs due to his disability, the IEP contains no academic goals or objectives and as such, fails to address those needs. Respondent, on the other hand, denies that [redacted] has any academic needs.

In support of its position, Respondent presented the testimony of special education teacher [redacted] testified that based upon [redacted]'s academic record at [redacted]'s observations, the results of the Stanford Diagnostic Reading Test, and input from [redacted]'s therapist, the IEP team concluded that [redacted] had no academic needs.

On the other hand, [redacted] clinical psychologist, [redacted] testified that [redacted] had some difficulties with cause-and-effect relationships. "He can be overly concrete, has difficulty interpreting especially internal causation. So if he's you know reading a story, for instance, he would have a very difficult time explaining a character's motive for behavior in the sort of situation in which the cause of the behavior wasn't obviously evident."

On balance, the Hearings Officer finds that the preponderance of the evidence was sufficient to establish that [redacted] had no discernable academic needs. Indeed, performance at [redacted] and his teachers' comments in that regard, as reflected in [redacted] school records in evidence, confirm this. Moreover, this conclusion appears to be consistent with Dr. [redacted] opinion that "[a]cademically, he's ballpark of average and above average" but that "[he] has a hard time understanding social rules and social relationships".<sup>2</sup>

Accordingly, the Hearings Officer concludes that Respondent's failure to include academic goals and objectives in the IEP did not amount to a denial of a FAPE.

<sup>2</sup> Although [redacted] also testified that "there are some characteristics of his thinking which are autistic, which do affect his learning and his ability to function, you know, independently, so that, you know, there's this long range impact on his, you know, vocational potential and that type of thing," his testimony was conclusory in nature and as such, was unpersuasive.

Petitioners also take issue with the Transition Plan offered by Respondent. The thrust of Petitioners' complaint appears to be that the plan is too "generic" and "pro forma" and not sufficiently individualized to meet [redacted] needs.

Dr. [redacted] opined that the Transition Plan offered to [redacted] was inadequate. Dr. [redacted] explained that the plan did not provide a way of checking to see whether [redacted] is adversely affected by the transition to [redacted]. Respondent, on the other hand, points to the fact that during the summer of 2002, [redacted] attended a class at [redacted] without the benefit of any transition plan and with no apparent academic or behavioral problems. [redacted] is a school with a larger student body than [redacted] - [redacted] home school.

A careful review of the Transition Plan in light of the evidence presented leads the Hearings Officer to conclude that the plan was sufficient to meet [redacted] needs. Contrary to Petitioners' assertions, the Transition Plan was adequately detailed and individualized. Among other things, the plan included an orientation of the campus, an opportunity for Petitioners to discuss their concerns with Respondent, and an opportunity for teachers to consult with autism providers. The plan also provided for a method by which [redacted] would receive instructions and other information regarding the school's expectations and his attendance at Roosevelt, and contemplated a self-monitoring rating sheet. Moreover, although Dr. [redacted] seemed to indicate that the plan was deficient, his testimony did not describe, identify or otherwise explain those deficiencies with sufficient particularity<sup>3</sup>. Based upon these considerations, the Hearings Officer concludes that the Transition Plan did address [redacted] unique needs and was reasonably calculated to provide [redacted] with educational benefits.

Petitioners also allege that [redacted] mental health plan was never completed. Apparently, it is Petitioners' position that the IEP was deficient because it does not contain a statement of the special education and related services to be provided to [redacted] with regard to his mental health needs. Petitioners complain that the extent and frequency of these services were never determined and included in the IEP. Indeed, the current IEP does not reflect

<sup>3</sup> According to [redacted] the Student Services Coordinator at [redacted] team including [redacted] at the May 29, 2001 IEP meeting. objections to the plan.

[redacted], the Transition Plan was prepared by the IEP [redacted] also testified that [redacted] did not have any

when mental health services would begin and the frequency of those services. However, because the alleged violation is one of procedure, the inquiry does not end here.<sup>4</sup>

It has been established that procedural flaws do not automatically require a finding of a denial of FAPE. However, procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the individualized education program formulation process, clearly result in the denial of FAPE. *W.G., et al. v. Board of Trustees of Target Range School Dist. No. 23, 960 F.2d 1479 (9<sup>th</sup> Cir. 1992).*

Here, the evidence established that Dr. [REDACTED] continued to treat [REDACTED] from at least October 2001 to October 2002 when he moved his practice to the mainland. During that time, Dr. [REDACTED] treated [REDACTED] pursuant to a mental health treatment plan he prepared. [REDACTED], a therapist who also worked with [REDACTED], testified that she has provided mental health services to [REDACTED] for approximately two years pursuant to Dr. [REDACTED] recommendations and treatment plan. Ms. [REDACTED] also testified that although the treatment plan expired, she did not stop treating [REDACTED]. Moreover, even though Ms. [REDACTED] believed that the plan should be updated, she acknowledged that she continued to meet with Dr. [REDACTED] and that she did not consider any of the services she was currently providing to [REDACTED] to be inappropriate<sup>6</sup>.

Based on the weight of the evidence presented, the Hearings Officer concludes that the alleged violations regarding [REDACTED] mental health needs did not result in the loss of any educational opportunity<sup>7</sup>.

#### IV. DECISION

Based on the foregoing findings and conclusions, the Hearings Officer concludes that Respondent has proven by a preponderance of the evidence that it provided

<sup>4</sup> Notwithstanding Petitioners' assertion that this alleged violation is a *substantive* one, their underlying complaint that the IEP was incomplete establishes this allegation as a matter of procedure.

<sup>6</sup> Ms. [REDACTED] testified that she provided behavioral services to [REDACTED].

<sup>6</sup> Furthermore, according to her testimony, Ms. [REDACTED] stopped working on certain behaviors when [REDACTED] achieved his goal and instead worked on other areas of his behavior: "Yeah. I'm working on body posture, voice and tone, some other behaviors that I'm not sure whether the parents would want to share."

<sup>7</sup> These reasons also lead the Hearings Officer to reject Petitioners' assertion that [REDACTED] was denied a FAPE because "the IEP was untimely".

FAPE to and consequently finds in favor of Respondent. Accordingly, it is ordered that Petitioners' due process hearing request be and is hereby dismissed.

V. RIGHT TO APPEAL

This is a final administrative decision and shall be binding on all parties hereto. Any person/party aggrieved by this decision is entitled to file a notice of appeal to a court of competent jurisdiction within thirty (30) days of the issuance of this decision.

DATED at Honolulu, Hawaii: APR 29 2003



CRAIG H. UYEHARA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

In re . DOE-2002-009; Hearings Officer's Finding of Fact, Conclusions of Law and Decision.