

STATE OF SOUTH CAROLINA	)	INDIVIDUALS WITH DISABILITIES
	)	
COUNTY OF FLORENCE	)	EDUCATION ACT
	)	
R.C.R. And K.F. On behalf of minor child)		LOCAL DUE PROCESS HEARING
A.R.,	)	
Petitioners,	)	
	)	
vs.	)	DECISION
<u>Florence County School District One</u>		

This matter comes before this Hearing Officer pursuant to a Due Process Hearing Request (DPHR) submitted on May 24, 2023. On June 1, 2023 a letter was sent to the Petitioners advising them of their rights and responsibilities in a Due Process Hearing. On June 2, 2023, the Respondent School District submitted its Response to the filing and on June 6, 2023 the parties held a Resolution Session as required by the Individuals with Disabilities Education Act (IDEA).

On July 17, 2023

an Interim Order was issued setting the Hearing for August 22 and 23, 2023. Pursuant to a subsequent conversation with counsel for both parties and the entry of legal counsel for the Petitioners, a revised Interim Order was issued resetting the Hearing dates to August 30 and 31, 2023.

Prior to convening the Hearing, a Pre-Hearing conference was held to discuss procedural matters and the Petitioners specified that they wished the Hearing to be closed. The parties presented opening statements and witnesses began testimony. During the night of August 30, 2023, Hurricane Idalia found its way to South Carolina causing testimony to end early. On the second day it became clear that the Hearing would continue for an additional day, September 1, 2023. At the end of the third day testimony concluded but closing statements were not given. Rather than continue the hearing, the parties were given until the end of the day on September 9, 2023, to provide closing arguments in letter form. Legal Counsel for both parties submitted their closings in a timely manner.

ISSUES

This is basically a one issue case. While other matters must be discussed during the preparation of this decision, the issue under the IDEA is whether the Petitioners are entitled to reimbursement for for tuition paid to a private school.

BACKGROUND

A.R. is a sixteen year old former student at Wilson High School who is diagnosed as having Intellectual Disability (mild), being on the Autism Spectrum, and having attention deficit hyperactivity disorder (ADHD). She was adopted from Russia at the age of two and has been determine to have a composite IQ of 74. She has been a student of the Respondent School District on two occasions with the most recent stint including Middle and High School. She is pleasant, happy, eager to engage others, even being described as being a social butterfly who is infatuated with Capt. Jack Sparrow of Pirates of the Caribbean, artistic, and someone who enjoys crafts and finding hidden items. She also has been described as periodically being unwilling to do her school work, somewhat intellectually lazy and not comfortable with large crowds or changing classes alone. All of this information presents a rather diverse picture of this teenager.

DISCUSSION

On the surface this appears to be a straight forward case. The Petitioners apparently became frustrated dealing with the School District, alleging a failure to provide an appropriate education for their child. They subsequently withdrew their child from school, placing her in a private boarding school in Massachusetts, and are now seeking reimbursement for private school tuition. However, after receiving and reviewing the testimony and evidence I find as many questions as answers. Counsel for each party presented information which tends to support their side of the case, which is their job, but neither provided much in the way of independent information from which a decision can be more clearly formulated. For example, neither party provided a current psycho-educational evaluation, and even though the school psychologist was on the witness list, offered no expert witnesses.

Both parties have acknowledged that this case falls within the parameters of *Florence County*

School District Four v. Carter, 510 U.S. 7 (1993). That case and the IDEA regulations formulated to determine cases of this type, 34 CFR 300.148, set up a three pronged test for determining whether a school district must pay for tuition to a private school for a former student with disabilities now enrolled in a private school. 1) Did the school district provide the child with a free appropriate public education (FAPE)?; 2) Does the private school provide the student a FAPE?; and 3) Did the parents provide appropriate notice of their intent to withdraw their child?.

With regard to the Third Prong of the test, the parents notified the Respondent that the student was going to participate in a summer camp at Riverview School in Massachusetts and they were considering placing her there in the fall of 2023, but had not made a final decision. The District attempted to prove the Petitioners had, in fact, already made the decision by making application to the private school, which would qualify the student for both the summer and fall programs and paying deposits for both. The Petitioners contend they had not made a final decision and did provide appropriate notice of their intent to withdraw the student from school. Neither party's evidence was particularly clear or conclusive. It does appear that the Petitioners were not totally candid with the Respondent, but the final result is that notice was provided in a manner that would generally comply with the notice requirements of 34 CFR 300.148 (d)(1)(ii).

But that is not the determinant issue in this case. The real issue is whether or not the Respondent offered the student a FAPE when it developed individualized education programs (IEPs) and did those IEPs provide the student an opportunity to make meaningful educational progress. To make that determination we must look to U.S. Supreme Court decisions *Board of Educ. v. Rowley*, 458 U.S. 176 (1982) and *Endrew Fv. Douglas County School District RE-1*. 580 U.S. 386 (2017), in addition to the *Carter* case cited above, and other case law for legal guidance and the testimony and evidence presented for the facts necessary to decide this case.

Under the *Rowley* decision the Court required School Districts to develop IEPs for children with disabilities which are designed to provide meaningful educational progress. The elements that

must be considered during the process of the development of an IEP include; the child's ability, the least restrictive environment (LRE) for providing the education, parental concerns or input, special education programs and resources, accommodations and modifications to curriculum, and methods to measure progress. The Court, while imposing this process on school districts, also points out the District was only required to offer an IEP which would provide the child with the opportunity to learn and it did not have to be the best program possible, only one that would work. In its discussion it utilized the analogy that it did not have to be the Cadillac of a plan but it had to be a good Chevrolet.

In 2017, the Court expanded the *Rowley* ruling in the *Endrew F.* case, emphasizing that an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." This case is perceived to mean that the program offered must be designed to create the opportunity for real educational gains taking into account the child's abilities, not just "*de minimus*" progress. This case reinforces and solidifies the standards set in *Rowley*.

In the current case, both sides seem to agree the student did pretty well in the relatively comfortable confines of her two years in middle school and the transitional IEP was a good one which continued to November 2021 and was designed to provide an opportunity to make meaningful educational progress. The problems began when the student began high school where students are expected to take initiative and responsibility for their actions and education. Although, students with disabilities are provided accommodations and assistance with this effort, it is a different atmosphere and less forgiving. High School is a tough transition for many students but particularly for children with disabilities who have difficulty with their education, social interaction, and dealing with a more "real world" environment. Social pressures are substantial, competition is real, expectations are much higher, and the school work is harder. In this case, A.R. clearly hit an educational wall when confronted with this new environment.

To get a better picture of the student as she transitioned to high school, we should look on page 3

of the IEP that was in place at that time. It states:

"Impact of Student's Disability

(the child's) lack of understanding of basic grad-level concepts interferes with her acquisition of higher level skills content taught in the general educational curriculum. She also has difficulty retaining some of the information that was previously taught to her, which has to be reviewed and re-taught frequently until mastery has occurred. Therefore, ***(the child)*** learns at a slower rate than her peers in the general curriculum. She requires a modified curriculum and assignments that are tailored to her academic functioning level. ***(the child)*** requires a small group setting with direct instruction, repetition, feedback, redirection, and skill practice which she cannot receive in the general curriculum." ***(modifications made to protect the child's identity)***

The IEP provided the best setting for the delivery of the student's core educational services was a class for students with disabilities in the category of ID-mild who received their special education services through a self-contained service delivery model, at her school of residence with removal for her core educational class and for other general educational classes and nonacademic activities. It also provided a list of accommodations and modifications to assist her in class. Finally, it was determined that she would be placed in the South Carolina High School Credentials Program, which provides a certificate instead of a diploma upon successful completion. Although primarily designed to assist students develop employment and life skills, it does have a core academic element, i.e., it requires completion of classes in math, reading, writing, science and social studies.

Upon arrival at Wilson High School, the student was assigned to a class to receive special education services from a teacher and two teacher assistants. The class size was 8-10 children and the teacher was an experienced special education teacher who previously taught in the Credentials program and happens to be the parent of a child with Autism. The 9th grade special education teacher testified that he read the transitional IEP and felt it was not appropriate for high school, so he administered an assessment that he often used to see where the child stood academically, and geared his instruction to the results. He sent her out to core classes required by the Credentials program but testified she had difficulty with the class material requiring him to help her with her work. He further testified that he concentrated his efforts on improving her reading, which was her weakest skill, and an activity which she did not like. On cross examination, he detailed his good relationship with the student, which

continued after she was no longer his student. He testified that she often sought his help and advice and he felt that he needed another year with her to help her make progress.

In November of 2021 a new IEP was developed with the 9th grade special education teacher as part of the IEP team. The goals developed by the team recognized the student's struggles to keep up and make progress even with life skills. Her disdain for reading was beginning to take its toll on her progress. When she left middle school, she was reading at a grade level equivalent of 1.8. During her 9th grade year that measure didn't improve significantly. In addition, her reading difficulties impacted her Daily Living Skills and Written Expression progress as well. However, she continued to show progress in her math and Social/Emotional goals.

The Petitioners became concerned and began emailing the special education teacher seeking answers as to why the student was only making minimum progress in certain areas. One of their concerns centered around a perceived lack of homework, part of which was explained by the fact that apparently the student was putting homework in her desk and not taking it home.

In addition, the Petitioners were further concerned by a lack of information and repetition found in Progress Report notes. While these reports contained minimal information and were admittedly poorly drafted, they did reflect the student's reading deficit and lack of interest in improving that skill.

The programs put in place to help the student with life and employment skills are impressive. The District's Transition Coordinator is an amazing, positive force who has helped develop and manage several programs to help students have opportunities for real world experiences, which will serve them well in life, i.e., the Pepsi Market, school jobs, school-based enterprises, and Project Search. In addition to providing life skill experiences, these programs help students gain confidence and apply their academic skills to real world situations. According to the Transition Coordinator's testimony, and that of other witnesses, A.R. really enjoyed participating in these opportunities and

because of her outgoing nature, she did well.

Tenth Grade began where 9th grade left off. Reading skills were running behind math skills and were impacting progress with several goals in her IEP. The Petitioners were concerned that in the 9th grade the student's High School Objective changed from the Credentials Program to the District Attendance (non-diploma) category. No real explanation for the change was revealed in the testimony but in her 2022-2023 IEP the designation of the Credentials program was renewed.

Comparing the annual goals in the 2021-2022 IEP with the 2022-2023 IEP they are different and seek to develop additional skills. For example, Goal 2 (reading) on the 9th grade IEP dealt with word identification while the same Goal on the 10th grade IEP dealt with determining main ideas and comprehension of the material. Clearly an increase in skill levels. The other goals show similar progressions from basic level skills to more complex skills. Thus, the 10th grade IEP appears to show an expected increase in skill levels, which would indicate progress on the previous goals.

The student's 10th grade special education teacher's testimony was taken virtually because she had moved to the Marlboro County School District as a Vice Principal. Due to demands of her new job and a fire drill, her testimony was disjointed but provided good information. She taught using a self-contained special education service delivery model with pull outs for other subjects and interaction with non-disabled students. Similar to the 9th grade special education teacher's class, she had 8 to 10 students, 2 teacher assistants, and a lot of one-on-one work with A.R. From her testimony it appears that she felt the student began the year well, but as the year moved forward progress slowed. She too found the student often resistant to reading and doing class work. But she provided one-on-one instruction and used other techniques to help her progress. During the year, A.R. attended classes in biology and social studies, both of which are required under the Credentials Program. She struggled in both leading the special education teacher to believe the Credentials program was too challenging for the student.

During these two years, the Petitioners complained to school officials about numerous activities of the teachers and aspects of the student¹'s education that they found inappropriate. Many of their concerns centered around teaching methods and efforts of the teachers to use unique activities to reward their students or make learning fun. By way of example, they objected to the 10th grade special education teacher's use of "Fun Friday" where the children played games or engaged in crafts as a reward for the week's work. They felt biology class was not challenging enough because the teacher used visual clips for his students, all of whom read at the 2nd grade level, causing him to discontinue using them and other visual aides to the possible detriment of the student and the other students who seemed to respond to visual stimulus better than reading.

They felt the social studies class provided materials that were too difficult and wanted the student removed. They had previously complained that the 9th grade special education teacher had not followed the IEP and the student was not doing well. By contrast they requested that the 10th grade special education teacher, who was experiencing difficulties similar to those the 9th grade special education teacher faced with A.R., to be a source to interview by the Riverview School, where they eventually placed the student.

I find their prolonged and persistent criticism curious in light of the fact that they revealed practically nothing about how the child was at home, nor did they testify as to any personal knowledge about what really went on in the student's classrooms. Finally, they offered limited testimony as to why a boarding school some 800 miles away from her home would be a better educational environment than her home school or a private school in North or South Carolina even though there are numerous day and residential schools that specialize in educating children with Autism and other disabilities closer to home and allowing the child to be home.

With regard to the Riverview placement, the director of education for Riverview testified about the school and its programs. According to the evidence and testimony tuition for the boarding school was \$104,000 per year but no information was provided regarding how much of that is for education and how much is for room and board. She testified that each student had a IEP, school personnel

were trained in special education, and the school had some life skills and vocational programs. A progress report from the Riverview summer program was provided indicating the child made limited progress academically.

DECISION

When a child is struggling at school, it is natural for engaged parents to be concerned. The Petitioners have been involved with the student's education for many years and have strong feelings as to what is best for their child. They are to be commended for their advocacy. However, that is not the issue here. The issue is whether, as part of their advocacy, by placing their child in a special education residential placement, are they entitled to reimbursement for the tuition by the District.

That determination requires the application of the legal test set forth in the *Carter* decision specified above.

Test 1: Did the Respondent School District offer the student an appropriate educational opportunity from which she can make meaningful educational progress or FAPE?

There is no doubt that the student's educational progress slowed once she reached high school. While she made satisfactory progress on her educational goals in middle school, she had a more difficult time in high school. I find not one but several reasons for that:

1. The educational coursework and expectations in high school were more challenging.
2. The atmosphere in high school is full of distractions and can be somewhat overwhelming.
3. The student's intellectual disability, Autism, and ADHD caused limitations in the her ability to learn.
4. The student was exposed to several different teaching techniques which could cause confusion.
5. The student had a propensity to refuse to do work that she did not like or felt was too difficult.
6. The student's IQ is reported to be 74, meaning her ability to overcome her disabilities is limited.

What I don't find is a lack of effort on the part of the District or its staff to work with the student or a lack of opportunities for her to improve educationally. Her teachers are well qualified. Her IEPs included ample parental participation and were designed to offer appropriate educational opportunities, given the student's circumstances. She was educated in a specialized class with small

groups; received-one-on-one assistance from the teachers and assistants utilizing accepted testing, techniques and evaluations; she was offered substantial life skills development opportunities; teachers utilized modifications and accommodations specified in her IEP; and her education was provided in the LRE appropriate for her.

I also find documentation of educational progress found on the progress reports submitted into evidence was minimal and rather uninformative. In addition, I don't believe they were particularly reflective of the student's actual work or abilities, both positively and in the negative. However, the inattention to detail on these reports and lack of expanded dialogue does not mean that appropriate educational opportunities and teaching strategies were not being provided.

Therefore, I find the Respondent provided the student with appropriate IEPs which offered the opportunity for real educational progress given the student's circumstances and limitations or a FAPE.

Test 2: Did Riverview School offer the student a FAPE?

The information from Riverview School is limited, but based on what was provided it appears that the student will be given an opportunity to progress educationally. She may actually do well in a more sheltered structured environment. However, having found that the Respondent School District did offer a FAPE, there is no need to investigate the Riverview program further.

Test 3: Did the Petitioners provide the required notice of their intent to withdraw the student from public school?

Even though the Petitioners were somewhat evasive and not specifically forthcoming with their notice to the District, it did occur in sufficient time for the District not to be surprised or put to any disadvantage.

THEREFORE, IT IS HEREBY ORDERED THAT:

- 1. The Respondent District offered the student FAPE and is not obligated to reimburse the Petitioners for private school tuition.**
- 2. This matter is adjudicated with prejudice.**

IT IS SO ORDERED.

s/Douglas F. Dent
Douglas F. Dent
Local Hearing Officer

September 11, 2023
Greenville, South Carolina

APPEAL

Should either party wish to Appeal this Decision, they must contact the Office of General Counsel, South Carolina Department of Education, 1429 Senate Street, Columbia, SC 29201 (803) 734-3393 within 10 days of receipt of this Order.