

**ROGER CLIFFORD CLAPP**  
**Mediator, Arbitrator, Attorney and Counselor at Law**  
 Retired Judge, 20<sup>th</sup> Chancery Court District of Mississippi  
*"Dedicated to Peaceful Dispute Resolution"*

Alternative Dispute Resolution  
 ADR Support and Assistance  
 Legal Representation  
 Consultations by Appointment

Post Office Box 521  
 Florence, Mississippi 39073-0521  
 Telephone/fax: 601-845-2529  
 Cellphone : 601-940-3128

January 30, 2008



(Sent by U. S. Postal Service)

JAMES A. KEITH, ESQ.  
 P. O. Box 24297  
 Jackson MS 39225

(Sent only by FAX to 601-355-9708)

MS. JENNA ESCUDERO, Director, Special Education  
 Forrest County School District  
 17304 Highway 603  
 Hattiesburg, Mississippi 39403-1977

(Sent only by FAX to 601-545-6121)

Re: Due Process Hearing request for  
**REPORT AND DECISION OF DUE PROCESS HEARING OFFICER**

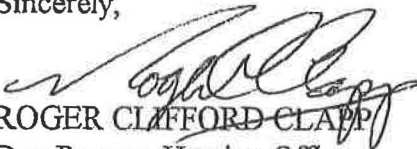
Greetings:

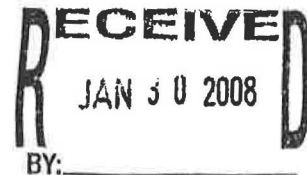
Thank you for your cooperation throughout this matter.

I especially appreciate your patience and the courtesies extended to me at the hearing.

My report and decision is enclosed.

Sincerely,

  
 ROGER CLIFFORD CLAPP  
 Due Process Hearing Officer



Enclosure: Report and Decision of Due Process Hearing Officer

CC w/encl.: Ms. Jean Bounds, Due Process/Mediation Consultant, Ofc. of Sp. Ed., MDE (FAX to 601-359-2198)

---

VS.

**FORREST COUNTY SCHOOL DISTRICT**

**REPORT OF DUE PROCESS HEARING**

**January 24 & 25, 2008**

**Forrest County School District Headquarters**

**Hattiesburg, Mississippi**

**and**

**DECISION OF DUE PROCESS HEARING OFFICER**

**Submitted by: Roger Clifford Clapp, Due Process Hearing Officer  
January 30, 2008**

\_\_\_\_\_  
VS.  
FORREST COUNTY SCHOOL DISTRICT

REPORT OF DUE PROCESS HEARING  
January 24 & 25, 2008  
Forrest County School District Headquarters  
Hattiesburg, Mississippi

and

DECISION OF DUE PROCESS HEARING OFFICER

I. Procedural History

A. On October 31, 2007 the Mississippi Department of Education ("MDE") received from the Forrest County School District (hereinafter sometimes "the district") a fax of a handwritten letter by Ms. \_\_\_\_\_ (hereinafter sometimes "\_\_\_\_\_" or "parent"), mother of \_\_\_\_\_ (hereinafter "\_\_\_\_\_"), a \_\_\_\_\_-year old girl, requesting a due process hearing. The letter was dated October 26, 2007 but was also dated and faxed to the District on October 29, 2007. *Inter alia*, it alleged continuous discrimination, denial of an age-appropriate program for \_\_\_\_\_, and harassment. MDE assigned the undersigned Due Process Hearing Officer (HO) on October 31, 2007.

B. By letter dated November 2, 2007, via telefax and U. S. Postal Service, the HO informed the parties that a pre-hearing telephone conference was set for December 19, 2007 and the due process hearing January 8, 2008. The communication furnished a two-page detailed explanation of the purposes and expectations for the telephone conference, and it encouraged the parties to obtain representation and attempt to reach an agreement at the statutorily required resolution meeting or to participate in voluntary mediation.

C. A Resolution Meeting was held on November 13, 2007, and on that date the district offered a proposed agreement in writing to \_\_\_\_\_. On or about November 14, 2007 \_\_\_\_\_ contacted the HO to report that there had been no resolution and to seek procedural advice, and when urged to obtain representation, she indicated that she had previously had an advocate and was currently seeking legal counsel. On November 19, 2007 the HO received a copy of the district's Resolution Agreement proposal on which \_\_\_\_\_ had indicated her rejection of the same, and this was forwarded to the district.

D. The Pre-Hearing Conference was held by telephone as scheduled on December 19, 2007. Participating were Ms. \_\_\_\_\_, \_\_\_\_\_ Esq. as attorney for \_\_\_\_\_, \_\_\_\_\_ Ms. Jenna Escudero as district Director of Special Services for the district, and James A. Keith, Esq. as counsel for the district, along with his assistants. The parties requested and agreed to change the Due Process Hearing date to January 24, 2008 in view

of the intervening holidays and other scheduling problems, and upon good cause shown the HO extended the forty-five day deadline to February 1, 2008. Various issues were discussed at great length, and allegations of discrimination, harassment, and intimidation were identified as issues that are not within the jurisdiction of the HO. After clarifying the absence of jurisdiction over Section 504 matters, attorney fees, and allegations such as harassment and discrimination, the HO allowed the parties to agree to an expansive list of issues so as to give the child the benefit of any doubt:

1. Whether placement at Dixie School was required under the IEP.
2. Whether the District violated the IEP by its selection of personnel for classroom aid.
3. Whether the District should provide auditory training to address hypersensitivity to sounds.
4. Whether the District should provide music therapy under Dr. Paul Cotton for social interaction.
5. Whether the District should provide speech therapy at Wesley Medical.
6. Whether the District should provide occupational therapy at Wesley for attention span.
7. Whether the IEP was reasonably calculated to benefit the child.
8. Whether the self-contained setting was appropriate under the IEP.

E. In a letter mailed to the participating parties dated January 8, 2008, the HO summarized the telephone conference, including the granting of an extension of time, the date and arrangements for a Due Process Hearing open to the public by parent's request, the requirement for a transcript and a written decision at the request of the parent, the specific issues to which the parties would be limited at the hearing, the format of the hearing, the burden of proof borne by the parent, the subpoena requirements, and the deadline for sharing documents and witness lists. A copy was sent to MDE and to named counsel for both parties.

F. On January 11, 2008 the district requested and the HO issued several subpoenas. On January 14, 2008 attorney \_\_\_\_\_ announced that he no longer represented Ms. \_\_\_\_\_. District counsel arranged a telephone conference during which Ms. \_\_\_\_\_ requested that the Due Process Hearing be postponed again. The district objected under the particular circumstances of this case, and the HO denied the request. The HO mailed Ms. \_\_\_\_\_ a Subpoena Duces Tecum that she requested and a list of advocacy groups because she indicated she would seek representation again but had not received such a list or had mislaid it. Another list was left for Ms. \_\_\_\_\_ to pick up at the district office the next day.

G. The district made timely distribution of a large notebook of approximately 340 pages of proposed documentary evidence and a list of twenty possible witnesses, in accordance with statutory procedures and the agreements made in the Prehearing Conference. Ms. \_\_\_\_\_ distributed a set of approximately 100 pages of proposed documentary evidence and her witness list after expiration of the five-day period, without formal objection to timeliness by the district.

II. Due Process Hearing January 24 and 25, 2008

A. The hearing was attended by the following, in addition to witnesses named later:

- Ms. [redacted], mother of [redacted], appearing alone
- Ms. Jenna Escudero, district Director of Special Services
- James A. Keith, Esq., legal counsel for the district
- T. Michael Cronin, Esq., assistant counsel for the district
- Ann Box, legal assistant to district counsel
- Ms. Demetrica as observer for The Hattiesburg American newspaper

B. At the beginning of the hearing on January 24, 2008, the HO reviewed on record the parent's January 14, 2008 telephone conference request for a continuance, the objections thereto posed by the district, and the ruling denying the same. Ms. [redacted] proceeded without benefit of representation, beginning with a comprehensive opening statement that was allowed to expand into testimony, for which she was put under oath by the HO. Ms. [redacted] eliminated issues number 4, 5, and 6 concerning therapy at district expense, summarized her complaints against the district, and clarified that she sought occupational therapy (OT) at home where [redacted] was being schooled. Mr. James A. Keith, Esq. (Mr. Keith) eventually made a statement for the district, after Ms. [redacted] had begun the statement that constituted part of her testimony. Throughout the hearing, both parties were also allowed to present intervening argument from time to time for convenience and clarification.

C. Mr. Keith pointed out that [redacted] was currently in a home schooled program, not a home bound program, making the district's obligations under IDEIA limited to what are referred to as Private School Services, not necessarily to FAPE standards. He committed the district to either a renewed IEP upon re-enrollment of the child or a specific OT schedule for [redacted] at home. He offered written assurance that the district had no reason to and would not interfere with her admission to Dubard. Ms. [redacted] stated unequivocally that she saw no circumstances under which she would re-enroll the child in the district, which eventually led to a narrowing of the issues to be decided.

D. Continuing her testimony, Ms. [redacted] presented a DVD without objection, after district review during a break, showing pictures of [redacted] at various stages of her development in home and other family settings, and demonstrating some of the home schooling techniques being used in her education. The district reserved further cross-examination. Over the district's objection to relevance, Ph.D. psychologist Autheman from Pine Belt center was permitted to testify under oath concerning his observations of [redacted], his advice to Ms. [redacted] particularly with respect to the child's need for a behavior plan, and the child's social skill development. On cross-examination he noted his participation in the resolution meeting and his agreement with the plan outlined as a result. After an off-record opportunity for District representatives to review and categorize documents offered by the parent, objections to several categories based upon timeliness of production, relevance, or readability were sustained, and other documents

were admitted into evidence without objection. The previously viewed DVD was later admitted into evidence as another exhibit for the parent. Two witnesses who had waited outside the room for several hours without the HO knowing about them, whom Ms. \_\_\_\_\_ said she had intended to call as witnesses but did not subpoena, were discovered to have left the premises. The district denied any action contributing to their leaving, and the HO was not asked to rule on any assertion based upon their absence. Several other persons, all but one of whose names were on the witness list provided by the parent to the district, were also not available to testify. Ms. \_\_\_\_\_ summarized her current requests of the district, stating that she had wanted to present evidence of the need for behavior intervention, would not re-enroll her child, and wanted OT at home. The hearing was recessed until the following morning after approximately eight hours of recorded proceedings.

E. The hearing resumed on January 25, 2008 and continued for approximately seven hours of recorded proceedings. Ms. \_\_\_\_\_ addressed each issue again in summary. Mr. Keith responded briefly, and the parent rested her case for the child. Mr. Keith moved to dismiss the case for failure of the parent's proof to show violation or failure of the district under any of the eight listed issues. The HO ruled that only two issues remained: Issue 2 (Whether the district violated the IEP by its selection of personnel for classroom aid) and Issue 8 (Whether the self-contained setting was appropriate under the IEP).

F. The district then began its case in defense. Mr. Keith called Ms. Dana Smith, special education teacher, as the district's first witness. She testified to her education and certification credentials, her experience in special education, her observations of and relationship with the parent and child and the others in her classroom, the reasons for and the effects of Ms. \_\_\_\_\_' initial and extended presence in the classroom, and her feelings about no longer having \_\_\_\_\_ in her class. She responded to lengthy cross-examination by Ms. \_\_\_\_\_, a few questions by the HO, and substantial redirect by Mr. Keith. The witness was excused after about two hours of testimony.

G. After a lunch break, the district called Ms. Jenna Escudero, director of special services. She identified eighteen exhibits offered for the district, all of which were admitted into evidence except one to which the parent's objection to incompleteness was sustained. Ms Escudero testified to her education and certification credentials, her experience in special education, her participation in the formulation of \_\_\_\_\_'s IEP and the schedule changes thereto instigated by the parent, the effects of Ms. \_\_\_\_\_ presence in the classroom beyond a normal transition period, the qualification of personnel involved in \_\_\_\_\_'s schooling, and the circumstances of the child's last day at school. She was intensely cross-examined by Ms. \_\_\_\_\_ and Mr. Keith re-directed a number of questions to the witness. Ms. Escudero was excused after about three hours of testimony.

H. Mr. Keith announced that further witnesses were available for the district but would be repetitive, and the district rested its case. The HO gave the parties opportunity to offer anything further, and as they declined, the evidentiary hearing was declared closed after clarification that the HO ruling would be as to only Issues 2 and 8, the others having been dismissed as previously discussed.

### III. Findings of Fact and Conclusions of Law

A. Manifestly, the central theme of Ms. [redacted]'s evidence and her cross-examination of district witnesses was her fundamental mistrust of district personnel, which eventually led to her decision to withdraw [redacted] from the district school and to accuse the district of reprehensible conduct with respect to her and her child. First, it is fair to say that she sincerely believed that early in the enrollment process, as she completed her move into the district, a direct promise was made to put her child in the Dixie School for developmentally delayed children, based upon a previous assessment that [redacted] met the criteria for the disability category of Autism. This parent considered the placement of her child in special education at Earl Travillion Attendance Center to be a betrayal of that promise. Secondly, she interpreted the unusual length of time she was allowed by Mrs. Dana Smith, Special Education Teacher, to stay with her child in classes there as assurance that she would be [redacted]'s personal assistant indefinitely, which actually was against school policy. Ms. [redacted] consistently asserted that her own presence, or that of a qualified behavior specialist, was essential to protect the child from what she saw as a dangerously age-inappropriate placement with three children several years older than [redacted]. Having developed a good working relationship with classroom personnel during the first few weeks of school, she spoke eloquently and passionately of [redacted]'s particular skills, inhibitions, and fears that as a mother she had studied and that she was obliged to show to Ms. Smith and her classroom aids. She never accepted the proposition that the child could progress without her or that [redacted] was better off there than at Dixie. Then Ms. [redacted] characteristically misinterpreted the absence of IEP Team discussion and agreement concerning her self-designated role, as deceit on the part of the team and Mrs. Smith in particular. The trust issue also surfaced when she took literally comments by the teacher's assistant, Mrs. Marie Hibler, who reportedly remarked on at least one occasion that she felt incompetent to handle the disabled children in Mrs. Smith's class, which reinforced Ms. [redacted]'s own harsh assessment of Ms. Hibler.

B. Another element of Ms. [redacted]'s mistrust of the district showed in her concern about [redacted]'s eligibility determination for eventual admission into Dubard School, particularly the potential for rejection based on certain disputed observations about the child contained in the report of Dr. Robert Sevier. He had examined the little [redacted] for the district and essentially verified the reported earlier diagnosis of autism. Ms. [redacted] suspected that the report and district negative attitudes about her and her child would undermine the chances of admission by Dubard, and she perceived district actions as indications that those chances would be unfairly jeopardized on purpose. Ms. [redacted] eventually began to see Mrs. Smith as part of a district pattern of discriminatory action, perceived as a threat to [redacted]'s child's best interests, and she noted with alarm that she was being observed during the school day by various school personnel. After several unsuccessful efforts by Ms. Smith to gradually reduce the mother's involvement and the child's dependence upon her mother, finally one day Mrs. [redacted] was invited out of the classroom by the principal, Chris Furdge. She was terribly offended and felt harassed by this good faith district effort to advance [redacted]'s progress, and she abruptly withdrew the child from the school approximately five weeks after enrollment. Ms. [redacted]

confidently chose to rely upon her own significant training and experience to formulate an intense home school program for the child.

C. Lengthy writings submitted to the district convey fairly clearly Ms. [redacted] vehement rejection of school decisions and recommendations, and her feelings of mistrust. Her request for due process, submitted by this parent *pro se*, after releasing earlier advocates, was laced with grave accusations against school personnel, revealing a fervent parental concern over the treatment she and her child had suffered. As it turns out, she ultimately sought only limited district assistance for her home schooled child through due process. After considering carefully all of the evidence, the HO finds that Ms. [redacted] perceptions and actions, while obviously founded upon solid parental responsibility and admirably directed toward [redacted]'s optimum development, seem in retrospect to have been driven by unreasonable suspicion and fear with respect to her child's safety and education under district control. The documents and convincing testimony presented by the district and allowed into the record in this case prove by a preponderance of the evidence that Ms. [redacted] suspicions were unfounded.

D. The evidence establishes that, contrary to perceptions of Ms. [redacted], (a) no promises were made by district personnel to mislead her into thinking [redacted] would be placed at Dixie, (b) the only reason [redacted] was evaluated at Dixie school was that personnel were at that location on the agreed date, not in confirmation of any promise, and an evaluation had to be done and an eligibility determination made even though the school had received a previous diagnosis of [redacted], (c) no negative district influence was ever going to be inserted to keep the child from being released to Dubard school in the future, and the placement of a child in a particular school does not affect selection for Dubard, (d) Mrs. Smith extended the transition period for the child to become acclimated to absence of the parent well beyond the norm because she feared that Ms. [redacted] would take [redacted] out of public school, where Mrs. Smith believed a child with her afflictions could best be helped, (e) the reason there was no formal behavior intervention plan in place was that [redacted] never had a chance to become acclimated to not depend on her mother, a necessary step before a behavior intervention plan mentioned in the IEP would be developed if necessary, (f) Ms. Hibler's education, training, experience, and performance with autistic children were all exemplary, and her remarks about not feeling qualified to handle children in Mrs. Smith's class could not reasonably be seized upon as a confession of actual incompetence, (g) Ms. [redacted]'s presence in Mrs. Smith class and in the regular kindergarten classroom became a hindrance to school personnel and a detriment to [redacted]'s progress after the first few days, and it was for the child's sake that school officials worked toward getting Ms. [redacted] to leave the child without her mother, (h) [redacted] was more aggressive than the larger and older children in her special education class, and she was not in danger of injury because qualified personnel were always there, and (i) Mrs. Smith's allowing for Ms. [redacted] extending [redacted]'s time in the regular Kindergarten classroom and reducing her time in the self-contained class, were unauthorized violations of the IEP that had been agreed to by the team and Ms. [redacted].

E. Based on the preponderance of the credible evidence in this case, the HO finds that



1. the District did not violate the IEP by its selection of personnel for classroom aid,
2. The self-contained setting was appropriate under the IEP.


IV. Decision and Order

IT IS, THEREFORE, ORDERED AND ADJUDGED that the relief sought from the district in the parent's request for due process for [redacted] should be and is hereby denied, and this matter is hereby dismissed.

V. Rights of Appeal

Within 45 calendar days of this date, either party may appeal this decision to a state court of competent jurisdiction or to a United States District Court pursuant to 34 C.F.R. 300.512 and 20 U.S.C. 1415(i)(2), 1415(i)(3)(A), and 1415(l).

SO ORDERED AND ADJUDGED this 30<sup>th</sup> day of January 2008.

  
 ROGER CLIFFORD CLAPP  
 DUE PROCESS HEARING OFFICER

ForrestCoSD vs [redacted] Decision