

**BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION**

██████████ in the interest  
of the minor child, ██████████

COMPLAINANT

v.

CASE NO. D04162018-13

Natchez-Adams School District

RESPONDENT

**DECISION AND ORDER**

**INTRODUCTION**

1. This is a proceeding pursuant to the Mississippi “*State Policies<sup>1</sup> Regarding Children with Disabilities Under the Individuals with Disabilities Education Act Amendment of 2004*” (collectively referred to as the State Policies or the IDEA, herein), and involves a minor child (the Student or Child, herein), initiated by the mother<sup>2</sup> (the Mother or Parent, herein) of the Student by the filing of a Complaint for Due Process received by the school district and the Mississippi Department of Education on April 16, 2018.

**PARTIES**

2. The Student is a 12-year-old male in the School District with a Section 504 ruling and accompanying “504 Plan.” The respondent is a Mississippi Public School District (District, herein) in which the Student is enrolled in the 6<sup>th</sup> grade.

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<sup>1</sup> Policies were adopted under the authority of “*The Individuals with Disabilities Act (IDEA)*, Public Law 101-476, reauthorized as “*The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)*, Public Law 101-476 and 20 U.S.C. §1400 et. seq., *Title 34 of the Code of Federal Regulations, Part 300, and the Mississippi Standards and Procedures for the Education of Exceptional Children, Mississippi Code §§37-23-133 through 150*. The hearing officer and the Mississippi Department of Education have jurisdiction over these proceedings pursuant to the statues and code sections cited.

<sup>2</sup> Names of the Parties, the witnesses, and the School District are stated on a cover sheet to this document filed with the original of this document with the Mississippi Department of Education and are not stated within this document in order to protect the privacy of the minor child involved.

## **ISSUES AND RELIEF REQUESTED**

3. The Mother initially filed a REQUEST FOR DUE PROCESS HEARING UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004 AMENDMENTS received by the Mississippi Department of Education April 16, 2018. During the course of the final prehearing conference held August 14, 2018, the parties agreed that the issues in the Complaint appropriate for consideration requested in the due process hearing were:

- A. Child Find – the District has failed to take appropriate steps in identifying the Child who is suspected of having a disability under §300.8 and in need of special education services.
- B. The Child’s Educational Placement – Because the Child does not have an IEP, the District has failed to ensure the educational placement is appropriate and conforms to the Least Restrictive Environment (LRE) provisions of the *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004*.
- C. A Free Appropriate Public Education (FAPE) has not been provided due to the failure to implement an IEP that addresses placement and accommodations required.

4. In connection to the “Child Find” issues presented during the Hearing, a legitimate concern was voiced regarding a statement on the District’s website. The Hearing Officer, with no objection from either party, agreed to take the statement into consideration for review. Accordingly, these are the only issues that will be addressed in this opinion and order.

## **PROCEEDINGS**

5. The due process hearing convened August 28 & 29, September 5, 19, and 24, 2018 in the District Board Room. The Complainant called two witnesses that included herself and an Independent Expert/Consultant. Witnesses identified on the Complainant’s witness list who did not attend the hearing were the District’s Special Education Director and an Independent Speech

Pathologist. The District called nine witnesses that included a 5<sup>th</sup> grade Language Arts Teacher, the District's 504 Coordinator, a 5<sup>th</sup> grade science teacher, the Principal, School Counselor, Speech Pathologist, the District employed School Psychometrist, an Independent School Psychologist for the District, and an Eligibility Expert for the District.

## **APPLICABLE LAW**

6. The IDEA requires each public-school district in Mississippi to have in effect policies and procedures to ensure that all children with disabilities residing in Mississippi in need of special education and related services are identified, located, and evaluated. §300.111(a)(1).<sup>3</sup> The District provided evidence of such policies and procedures. However, the Mississippi Department of Education issued an order February 8, 2018 whereby

“Within thirty (30) days, the District shall provide the MDE OSE its written (revised) procedures to ensure appropriate Child Find and Initial Evaluation services are provided for all students suspected of having a disability. Within thirty (30) days of MDE’s approval of the District’s procedures, the District shall provide training to all District staff on the written procedures ensuring appropriate Child Find and Initial Evaluation services are provided for all students suspected of having a disability...Once approved, within 48 hours of the training’s completion, the District shall document and submit evidence of the training.”<sup>4</sup>

No evidence was presented to indicate the procedures had been revised, nor was there evidence the District had taken any action on this mandate.

7. The State Procedures requires a school district, prior to the initiation of special education and related services, to conduct a full and individual initial evaluation, in accordance with §300.305 (Additional Requirements for Evaluations and Reevaluations) and §300.306

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<sup>3</sup> All sections (§) referenced are to the Mississippi *“State Policies Regarding Children with Disabilities Under The Individuals with Disabilities Education Act Amendments of 2004* unless otherwise noted.

<sup>4</sup> Exhibit P-11

(Determination of Eligibility) of the Procedures. Those evaluation procedures must include assessments addressing “specific areas of educational need.” §300.304(c)(2);

8. If, based on that evaluation, “...a determination is made that a child has a disability and needs special education and related services, an Individualized Education Program (IEP) must be developed for the child in accordance with §§300.320 through 300.324 and §300.306(c)(2). The IEP is drafted by the school’s IEP committee which is to include those persons specified in §300.321(a) and must contain those items specified in §300.320.”

## **FACTS**

9. The student is 12-years-old, enrolled in the District since kindergarten, had repeated the 4<sup>th</sup> grade, and has a Behavioral Intervention Plan based on a Functional Behavioral Assessment (FBA) conducted October 18, 2016. It is to be noted that the Behavioral Intervention Plan was not implemented until October 23, 2017, more than a year after the FBA had been conducted. The Student has a history of medical conditions that include asthma and a heart disorder diagnosed in 2014 for which a “504 Plan” was developed. Unrelated to the 504 Plan, and at the Mother’s expense, the Student receives private Speech Therapy, Occupational Therapy twice weekly for thirty (30) minutes per session, and participates in private counseling once a week for sixty (60) minutes per session. The Student has also been diagnosed with ADHD and observed tic disorders associated with Tourette’s Syndrome. During the 2017-18 academic year, the student missed 79 total days, with 9 days suspensions from the District.

10. According to her testimony, the Mother requested a comprehensive evaluation at the beginning of the 2014-15 school year (Student’s 3<sup>rd</sup> grade year), but the District denied the request because the Student was progressing from grade to grade. It is to be noted achievement

tests scores for that year indicate the Student functioning at a Very Low Level in Language Arts, mathematics, and science. There were no scores provided in the area(s) of reading.

11. The Mother made a second request for a comprehensive evaluation at the beginning of the 2017-18 school year on August 23, 2017. The District Multidisciplinary Evaluation Team (MET) determined a comprehensive evaluation was required on August 28, 2017, at which time the Mother signed the *Informed Parental Consent*.<sup>5</sup> The comprehensive evaluation was completed December 11, 2017, – 105 days after the initial consent to evaluate had been signed by the Mother. The District’s contention was the Mother had failed to select areas to be assessed on the *Informed Parental Consent* form, and that the Mother had failed to provide medical documentation that had been requested by the District.

## **DISCUSSION OF ISSUES**

12. A hearing officer’s role is not to second guess state and local policy decisions, but to determine whether school officials have complied with applicable law, and if not, decide a proper remedy. *Flour Bluff Independent School Dist. v. Katherine M.* 91 F.3d 689, 693 (5<sup>th</sup> Cir. 1996). The law does not require that a school district provide the best education possible. Rather, the law requires only that a district provide access to public education “sufficient to confer some educational benefit upon the handicapped child.” *Houston Independent School District v. Bobby R.*, 200 F. 3<sup>rd</sup> 341, ¶28, 31 IDELR 185 (5<sup>th</sup> Cir. 2000). That benefit must not be of a mere de minimis nature, but likely to result in progress, rather than “regression or trivial educational advancement.” *Cyprus Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245, ¶4 (5<sup>th</sup> Cir. 1997).

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<sup>5</sup> Exhibit P-7

13. The Parent(s), as challenger of the District's actions in this case, has the burden of proof as to all issues presented in this matter. *Adams J. v. Keller Independent School District*, 328 F. 3d 804, 808 (5<sup>th</sup> Cir. 2003).

14. In deciding whether the requirements of the IDEA have been met, the first question to consider is whether the school District complied with the procedures of the IDEA. *Buster v. Corpus Christi Independent School District*, 51 F. 3d 490, 492 (5<sup>th</sup> Cir. 1995). Procedural violations, in and of themselves, do not amount to a denial of free appropriate public education (FAPE) unless the violations result in the loss of educational opportunity to the student or seriously infringe upon the Parent's opportunity to participate in the provision of FAPE to the student. *Adams J. v. Keller Independent School District*, 328 F. 3d 804, 808 (5<sup>th</sup> Cir. 2003); *State Policies*, §300.513.

15. Second, the substantive issues are addressed by the answers to a two-prong test to determine eligibility for special education services. The first prong is to establish whether the student has a qualifying disability under *IDEA* and *State Policies* (IDEA §§300.304 – 300.312). If the first prong is met, the second prong focuses on whether "...the student having...a qualifying disability...and who by reason thereof, needs special education and related services." (IDEA §300.8).

ISSUE ONE: Child Find – the District has failed to take appropriate steps in identifying the Child who is suspected of having a disability under §300.8 and in need of special education services.

16. The Parent(s) complaint poses both procedural and substantive issues as related to Child Find. *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004* places the burden of identifying "...children

who are suspected of having a disability under §300.8 and in need of special education, even though they are advancing from grade to grade...”<sup>6</sup> clearly in the hands of the school district. Testimony throughout the Hearing indicated a lack of action on the part of the District when presented with information that would support the “suspicion” of a disability.<sup>7</sup> From 2014 to the present, the Mother provided medical information, as well as reports from speech pathologists and occupational therapists that the District acknowledged but chose to ignore. In the opinion of this Hearing Officer, the District used the Response to Intervention (RTI) process more as a delay tactic than an opportunity to identify possible learning disorder(s). No evidence was presented as to how the critical information provided by the Mother from outside, independent evaluations showing deficits in multiple areas<sup>8</sup> was properly used as part of a comprehensive evaluation.

17. The District was insistent throughout the Hearing that the Child’s 504 Plan was appropriate and sufficient because the Child was passing from grade to grade and reaching milestone growth markers on annual achievement tests. It is noted the Child had to attend summer school at the end of the 3<sup>rd</sup> grade, and repeated the 4<sup>th</sup> grade,<sup>9</sup> the year after the Mother requested a comprehensive evaluation in 2014 when the Child was in the 3<sup>rd</sup> grade. Even with IQ scores ranging from 65-85, and Language Arts, mathematics, and science scores ranging from 66, 54, and 68 respectively,<sup>10</sup> the District denied the request on the basis of classroom performance. However, it is noted that some of the grades received over the past two years were highly questionable (see Exhibit SD-14, page 11). For example, the Child received a 93 average for the

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<sup>6</sup> §300.111(c)(1)

<sup>7</sup> Exhibits P-6; P-16; P-17; P-22; P-23; P-26; P-27; P-38

<sup>8</sup> Exhibits P-35

<sup>9</sup> The Student failed the 4<sup>th</sup> grade twice, but was retained only once.

<sup>10</sup> Exhibit SD-14 pages 10 & 11

3<sup>rd</sup> term of 2017-18 but had an average in the 70s for the terms prior to the complaint being filed. The same is true in social studies where the Child received a 100 average for the 3<sup>rd</sup> term but had an average in the high 60s for the previous grading periods. The District employed School Psychometrist testified the '100' simply represented "a snapshot" of the grading period. However, further testimony indicated that "Term Grades" are only posted at the end of the grading period, and were not subject to change on a daily basis.

18. The District failed to comply with IDEA regulations regarding the completion of a comprehensive evaluation within sixty (60) days of the *Informed Parental Consent* signed by the Mother. The District insisted the evaluation could not be completed because the Mother would not provide medical records and other information requested by the District. Other circumstances pointed out by the District as to the delay included: (1) an attempt to evaluate the Student on November 2 and 3, 2017, but Student did not have his glasses; (2) District sent a faxed request to Key Rehab, Batson Children Clinic, SW Mississippi Mental Health Services, and Eye Doctor Doherty Vision but received no response from any of those medical centers; (3) the Mother did not return the Parent Rating Form until November 28, 2017, ninety-two (92) days after the *Informed Parental Consent* was signed. However, 34 C.F.R. §300.301(d); *Mississippi Administrative Code 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, §300.301(d)* provides for no extenuating circumstances whereby the sixty (60) day timeline can be extended. The eligibility team met on December 11, 2017, to review the results of the comprehensive evaluation and determine the need of Special Education services provided under IDEA – 105-days after the initial consent was signed.

19. In addition to failing to meet the required timeline, the District neglected to evaluate



the Student for a language disorder. The comprehensive evaluation stated “The Student’s very low performance in the area of oral expression is not likely related to inattention.<sup>11</sup> Thus, evaluation of his expressive language is recommended...oral language skills (receptive and expressive) should be evaluated to rule out a language disorder.” The speech/language assessment report is dated February 23, 2018, – 181 days after the *Informed Parental Consent* was signed. The assessment indicated the Student functioning VERY LOW in the area of Oral Language Expression with additional data needed to determine eligibility for special education services. As of the hearing date(s), no attempt to gather additional data regarding a language disorder was presented as evidence.

20. The District failed to adequately investigate how reported health impairments could possibly adversely affect the Child’s educational performance. The Mother had reported the Child being diagnosed with attention deficit hyperactivity disorder (ADHD), a heart condition, and symptoms associated with Tourette’s Syndrome.<sup>12</sup> Also, the Student suffered a head injury one year ago, but is no longer being treated for that wound. These diagnoses were conducted by independent examiners at the Parent(s) expense and reported to the District for their consideration. The District contended that all of these areas of concern were addressed in the Student’s 504 Plan. However, based on testimony from district personnel and the contents of the document, the 504 Plan does not adequately address the health issues identified. The 504 Plan gives a cursory consideration to a heart condition, and calls for teachers to “Monitor for breathing difficulties and/or chest pains.”<sup>13</sup> When asked, the 5<sup>th</sup> grade science teacher and the District’s 504 Coordinator indicated breathing and chest pain monitoring was done from a

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<sup>11</sup> Exhibit P-16

<sup>12</sup> Exhibits P-2 & P-3

<sup>13</sup> Exhibit P-14, page 4

distance with no direct contact with the student. It is the opinion of this Hearing Officer that breathing and/or chest pains cannot be monitored from across a room. And, no evidence was presented verifying that any of the district personnel responsible for implementing the Plan had received proper training nor did they possess the credentials to conduct such medical examinations. Multiple witnesses testified to observances of the Student making inappropriate noises, involuntary head-twitching, involuntary excessive eye-blinking, and other symptoms associated with Tourette's,<sup>14</sup> but the 504 Plan makes no accommodations for such behaviors. It is noted the Behavioral Intervention Plan (BIP) clearly identifies actions that could possibly be manifestations of Tourette's: "Student engages in inappropriate noises and sounds which prohibit a structural learning environment for himself and his peers."<sup>15</sup> However, no evidence was presented from the District indicating any manifestation determination had been conducted regarding those identified behaviors that led to numerous in-school and out-of-school suspensions.

21. In an attempt to consider the educational impact of ADHD, a Functional Behavioral Assessment Profiler was completed by two of the Student's teachers on September 9, 2016. The Profiler identified eight (8) behaviors as Clinically Significant.<sup>16</sup> A Functional Behavioral Assessment (FBA) was completed October 18, 2016, with three (3) targeted behaviors identified and three (3) replacement behaviors suggested. The targeted areas included (1) Defiance, (2) Disruption, and (3) Social Withdrawn. The Behavioral Intervention Plan (BIP), based on the findings of the FBA, provided little connection between what had been identified as medical issues that could possibly impact educational performance, and/or the three targeted behaviors.<sup>17</sup>

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<sup>14</sup> Exhibits P-13; SD-7

<sup>15</sup> Exhibit P 15

<sup>16</sup> Exhibit P-28

<sup>17</sup> Exhibit P-30

22. The District was negligent in securing legitimate Informed Parental Consent.

Two different Informed Parental Consent forms were submitted as evidence. On the first form,<sup>18</sup> the District failed to identify areas to be assessed and methods by which those areas would be measured. The District placed the blame on the Parent for not identifying the assessed areas. IDEA holds the District, not the Parent, responsible for understanding and/or implementing the law. The second form was dated August 28, 2017, but was signed by the Parent ten-days earlier, August 18, 2017.<sup>19</sup>

23. The District contracted with the Eligibility Expert to conduct a comprehensive evaluation in 2016. But, no evidence was presented where the District provided a written report to the Parent documenting the findings of that evaluation, or its impact on the Child's eligibility. "...any observations conducted for a specific student in order to determine eligibility..." (State Policy 300.305 2(iv)).

24. On the Prior Written Notice dated December 11, 2017, nothing is indicated as to the Action Proposed or the Action Refused.<sup>20</sup> Under Reason/Justification of that same Prior Written Notice, the District identifies Medical History as a relevant factor in the IEP Committee's decision, yet under oath the testimony was that the Mother would not provide medical records or information concerning the Student.

ISSUE TWO: The Child's Educational Placement – Because the Child does not have an IEP, the District has failed to ensure the educational placement is appropriate and conforms to the Least Restrictive Environment (LRE) provisions of the *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004*.

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<sup>18</sup> Exhibit P-32

<sup>19</sup> Exhibit P-7

<sup>20</sup> Exhibit P-31

25. Section 300.114 of the *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004* addresses educational placement in the Least Restrictive Environment in general and states “(1) Each public agency in Mississippi must have in effect policies and procedures to ensure the LRE requirements as stated below are being met. (2) Each public agency must ensure that – (i) 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 nondisabled...” The District provided evidence of policies in effect addressing placement and least restrictive environment. The District provided sufficient evidence the Child is educated with age-appropriate peers to the maximum extent suitable. Because there is no IEP in place specifying an alternate educational setting, the issues of educational placement and LRE are moot.

ISSUE THREE: A Free Appropriate Public Education (FAPE) has not been provided due to failure to implement an IEP that addresses placement and accommodations required.

Subpart B – State Eligibility §300.101 (a) states “FAPE must be available to all children with disabilities residing in Mississippi between the ages of three (3) and twenty (20)...). In determining whether a student receives a FAPE, the Courts apply four factors that serve as indicators used in calculating program/plans intended to provide meaningful educational benefits related to students identified with disabilities. These are: (1) the program is individualized on the basis of the student’s assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative manner by the key “stakeholders”; and, (4) positive academic and non-academic benefits are demonstrated. *Cypress-Fairbanks Independent School District v. Michael F.*, 26 IDELR 303, 118 F.3d 245 (United States Court of Appeals, Fifth Circuit (1997)).

26. Of the four indicators mentioned above, the 504 Plan implemented satisfied all but one of these points. No evidence was presented that would support a coordinated and collaborative effort between the District and the Parent. However, procedural violations such as failure to notify parents of progress through report cards or failure to notice parents of evaluation results do not constitute a loss of educational opportunity. *Adam J. v. Keller Independent School District*, 328 F.3d 804, 39 IDELR 1 (United States Court of Appeals, 5<sup>th</sup> Circuit (2003)). Although the Child continues to exhibit severe behavior problems, he has made progress affording an educational benefit. Therefore, FAPE has been provided.

## CONCLUSION

27. There were six (6) different categories presented as possible disabilities for which the Student would be eligible. Those categories included: (1) Specific Learning Disabilities, (2) Other Health Impairment, (3) Emotional Disability, (4) Speech/Language – Oral Expression, (5) Traumatic Brain Injury, and (6) Intellectual Disability.

28. Of the different categories presented for which the Student would qualify for special education services, Specific Learning Disability, Traumatic Brain Injury, and Intellectual Disability are **dismissed**. There is no significant discrepancy between the Child's IQ and achievement tests scores to qualify for a Specific Learning Disability ruling. These scores stayed relatively stable from the evaluations conducted in 2016 and those considered in 2018. Additionally, excessive absences would prevent the Child as being identified with a Specific Learning Disability. Regarding Traumatic Brain Injury - the Child no longer suffers from any side effects from the injury incurred when he hit a pole on his bicycle. And, the Child is no longer taking medications or under a doctor's care from that head injury. Concerning Intellectual

Disability - the Child's IQ and achievement tests, regardless of the scores considered, are above the threshold set by *IDEA* and *State Policy* to qualify for an Intellectual Disability ruling.

29. Based on medical records documenting the existence of a heart condition and asthma, both for which the Child has been hospitalized and continues to take medications, **the Child qualifies for Special Education and Related Services under the category of Other Health Impairment.** Both of these medical conditions were recognized by the District when the 504 Plan was developed. It was the District's position that these medical conditions had no adverse educational impact because the Child was passing from grade to grade and making expected progress on curriculum-based assessments with emphasis being placed on the Child's progression from grade to grade. Under the existing 504 Plan, the Student is functioning on a 3<sup>rd</sup> grade level in some academic categories while the Child should be in the 7<sup>th</sup> grade. Therefore, benefits made by implementing the accommodations designated in the 504 Plan are of a mere de minimis nature and not likely to result in progress as the Child is promoted to the next grade. Conversely, the traditional and commonly-used accommodations outlined in the Student's 504 Plan will likely result in "regression or trivial educational advancement." The 504 Plan fails to address excessive absences and frequent office referrals that can be directly connected to these health issues. It is the opinion of this Hearing Officer the existing medical conditions presented have an adverse educational impact on the Child. Furthermore, because of procedural violation and additional evaluations needed, eligibility in the category of Emotional Disability remains in question.

30. Other health impairment issues adversely impacting the Child's education are the considerations regarding ADHD and Tourette's Syndrome. Evidence was presented as to where the Child demonstrated behaviors associated in both categories. In order to meet *IDEA* and *State*

criteria for qualifying ADHD under the category of Other Health Impairment, four (4) benchmarks must be met: (1) The student must be diagnosed with ADHD by the school district, OR is diagnosed by another qualified professional; (2) ADHD must result in limited alertness to academic tasks due to heightened alertness to environmental stimuli; (3) The effects of ADHD must be chronic (long-lasting) or acute (have a substantial impact); and, (4) The diagnosis of ADHD must result in an adverse effect on educational performance. It is the opinion of this Hearing Officer that all four of these criteria have been met. According to District testimony, ADHD had been considered and eliminated as a special education ruling under Other Health Impairment because district personnel had not observed such actions. However, the Independent School Psychologist (also referred to as the Expert Witness for the District) who conducted the Independent Educational Evaluation noted “Red Flags” regarding the behavioral assessment that had been conducted prior to the July 10, 2018 testing date. The Expert Witness voiced concerns that only one teacher had been asked to provide information about the Child’s behavior.<sup>21</sup>

31. In the area of Tourette’s, the Eligibility Expert Witness for the District testified as to how the Student did not meet the criteria because a medical diagnosis of Tourette’s is required, and the medical personnel would need to provide information with regard to limitations or precautions needed in the school setting.<sup>22</sup> However, A hand-written note from the Child’s pediatrician dated April 20, 2018 was presented as evidence that states “...has a history of ADHD. He has developed vocal and motor tics for which he has been evaluated for by neurology. The sounds and movements cannot be controlled...he should not be sent to the office or suspended for this.”<sup>23</sup> The Independent School Psychologist agreed with the pediatrician’s

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<sup>21</sup> Transcript 09192018, p. 183

<sup>22</sup> Transcript 09192018, p. 268

<sup>23</sup> Exhibit SD 7

opinion that the Child demonstrates a history of symptoms related to ADHD and Tourette's Syndrome.<sup>24</sup> It is to be noted during the 2017-18 academic year, the Child spent fifteen (15) days in Out of School Suspension (OSS) and twenty-four (24) days In-School Suspension (ISS) with the vast majority of discipline referrals<sup>25</sup> being reactions to behaviors typically associated with ADHD and/or Tourette's Syndrome. These excessive days out of the general education classroom denies the child appropriate instruction and has a direct adverse educational impact.

32. Prior to the hearing, the District had requested the Independent School Psychologist to prepare an observation instrument regarding behaviors associated with Tourette's Syndrome. The instrument had been developed and sent to the District, but no data had been gathered as of the hearing date.<sup>26</sup> Because of the lack of action on behalf of the District, and varying opinions expressed by the teachers compared to independent experts concerning these observed behaviors,<sup>27</sup> the District is to contract with an independent school psychologist to observe the Student for three (3) full school days using the instrument that has been designed for that purpose as requested by the District. The observation will include behaviors observed when the Student arrives at school, behaviors during typical classroom activities, and behaviors during break and lunch. The independent school psychologist is to gather and analyze the data and report the results to the Multidisciplinary Eligibility Team (MET). The team is to use those data in reconsidering health impairments associated with Tourette's Syndrome. The team is also to gather data from three (3) teachers who will conduct comprehensive behavioral assessments on the Student at question. These data are to be used in reconsidering ADHD as a possible health impairment. Because of the inconsistency in assigning grades at the school level, the team is to

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<sup>24</sup> Transcript 09192018, p. 233

<sup>25</sup> Exhibit P 21

<sup>26</sup> Transcript 09192018, p. 234

<sup>27</sup> Transcript 09192018, p. 235



measure progress using curriculum-based assessments (e.g. iReady, STAR) in determining the adverse educational impact of the possible disabilities. The Team is to consider not only that progress is/is not being made, but where that progress puts the Student in relation to other students his age and/or grade. In other words, is the student getting farther behind the longer he is in school without the assistance of special education and related services?

### **OTHER ISSUES**

33. In addition to the three (3) stated issues filed in the original complaint, both parties agreed to a review of the description of the identification process for students suspected of having a disability found on the District's website. The statement in question is located in the second paragraph which states "The State of Mississippi requires that all students referred for Special Education Services must go through the Teacher Support Team process. This means that strategies in the regular education setting must be documented before referral to Special Education." The contention by the Complainant is the statement is misleading and gives the District grounds to refuse access to students with disabilities who have not first gone through TST interventions. The Eligibility Expert for the District agreed the statement "...could be misread..." and misinterpreted by parents.<sup>28</sup> Therefore, the District is to make the correction and restate the procedures by which a student can be referred for special services as is specified in *IDEA* and *State Policy*. The statement should include, but not be limited to, how the District implements procedural safeguards that meet the requirements of §§300.500 through 300.536, who has the right/authority to request a comprehensive evaluation, what constitutes a

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<sup>28</sup> Transcript 09242018, p. 192

comprehensive evaluation, the appropriate timeline for which the evaluation will be conducted, and contact information for those who suspect their child as having a disability.

### **RIGHT TO APPEAL**

Either party may make an appeal of this Hearing Officer's decision to the appropriate court within 30 days of receipt of the Written Decision and Order. If no appeal is made, the decision is binding on both parties. If the decision of this Order is not fully implemented, the aggrieved party may enforce it through a proceeding in the appropriate court.

So ordered, this the 14<sup>th</sup> day of October, 2018.



David P. Daves, Ph.D.  
Hearing Officer