

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

[REDACTED]

COMPLAINANT

v.

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BY: \_\_\_\_\_

CASE NO. D09282021-02

Clarksdale Municipal 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 September 28, 2021.

**PARTIES**

2. The Student is an 11-year-old male in the School District who has been diagnosed prior to entering kindergarten with Autism, ADHD, and a brain disorder that affects his vision and equilibrium. The Respondent is a Mississippi Public School District (District, herein) in which

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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 statutes and code section 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 Mississippi Department of Education and are not stated within this document in order to protect the privacy of the minor child involved.

the student has been enrolled since entering kindergarten. It is to be noted the Parent moved the Student to a charter school located in the same city in September, 2021. The charter school is not affiliated with the District in question.

### **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 September 28, 2021. During the course of the final prehearing conference held October 28, 2021, the parties agreed that the issues in the Complaint appropriate for consideration requested in the due process hearing were:

- A. The Child's Educational Placement – Because the Child did not have an IEP while in kindergarten, 1<sup>st</sup>, and 2<sup>nd</sup> grades, 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*.
- B. Child Find – while this issue was not identified in the initial complaint, legitimate concerns were raised regarding the District's application of the "Good Cause Exemption" found in the *Mississippi Literacy-Based Promotion Act*.

4. 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 November 11, 2021 in the District Board Room. The Complainant served as her only witness, but had an expert witness available on Skype if needed. The District identified three (3) witness that included the Special Education Director, the elementary school principal, and a former teacher of the Student. The Special Education Director was the only witness to testify 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 and 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.

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 Evaluation and Reevaluations) and §300.306 (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 to be 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.”

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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.

## FACTS

9. The Student is 11-years-old, enrolled in the District since kindergarten, had repeated kindergarten and the 1<sup>st</sup> grade, and had a Behavioral Intervention Plan (BIP) based on a Functional Behavioral Assessment (FBA) conducted in October, 2016. No evidence was presented as to when/if the BIP was implemented or any attempt to monitor the Child's behavior. The Student has a history of medical conditions that include a diagnosis of Autism, ADHD, and a brain disorder that affects his vision.<sup>4</sup> Because the Parent was dissatisfied with the District's efforts, the Child was moved in September, 2021 to a charter school located in the same city.

10. According to her testimony, the Mother requested a comprehensive evaluation at the beginning of the 2016-17 school year (Student second year in kindergarten), but the District denied the request because the student had missed 22 days.<sup>5</sup> The Mother made a second request for a comprehensive evaluation at the beginning of the 2017-18 school year (Students first year in the 1<sup>st</sup> grade), but again the District Multidisciplinary Evaluation Team determined a comprehensive evaluation was not required because the Student had missed 26 days. The District's contention was the Mother refused to sign the *Informed Parental Consent* form giving the District permission to move forward with the evaluations.<sup>6</sup>

## DISCUSSION OF ISSUES

11. A hearing officer's role is not to second guess state and local policy decisions, but to determine whether the school officials have complied with applicable law, and if not, decide a proper remedy (*Flour Bluff Independent School District v. Katherine M.* 91 F.3d 689.693 (5<sup>th</sup>

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<sup>4</sup> Transcript 09282021, pp. 19, 20, 25, 26

<sup>5</sup> Transcript 09282021, pp. 81, 88, 89

<sup>6</sup> Transcript 09282021, pp. 112, 140

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, 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, 5<sup>th</sup> Cir. 1997).

12. The Parent, 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).

13. 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. 3dn490, 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.<sup>7</sup>

14. 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.<sup>8</sup> If the first prong is met, the

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<sup>7</sup> State Policies, §300.513

<sup>8</sup> IDEA §§300.304-300.312.

second prong focuses on whether "...the student having a qualifying disability...and who by reason thereof, needs special education and related services."<sup>9</sup>

ISSUE ONE: The Child's Educational Placement – Because the Child did not have an IEP while in the 1<sup>st</sup>, and 2<sup>nd</sup> grades, 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*.

15. The *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004*<sup>10</sup> addresses educational placement in the Least Restrictive Environment (LRE) in general and states "(1) Each public agency in Mississippi must have in effect policies and procedures to ensure the LRE requirements as stated are being met. (2) Each public agency must ensure that – (i) To the maximum extent appropriate, children with disabilities, are educated with children who are nondisabled. *Procedures for State Board Policy 74.19* addresses the issue of age-appropriate peers. In summary, it states a child with a disability should be educated with age-appropriate peers to the maximum extent appropriate."<sup>11</sup> The District provided evidence of policies in effect addressing placement and least restrictive environment. However, no evidence was presented to support the claim the child is educated with age-appropriate peers to the maximum extent suitable.

ISSUE TWO: Child Find

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<sup>9</sup> IDEA §300.8

<sup>10</sup> §300.114

<sup>11</sup> Section 2(i) – *State Policies Regarding Children with Disabilities Under the Individuals with Disabilities Education Act Amendments of 2009*.

16. After hearing testimony from the Parent and the District, glaring procedural and substantive issues were apparent regarding the District's approach 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..." 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. When the Child was in kindergarten, the Mother provided medical information regarding the Child's diagnosis with autism, ADHD, and visual impairment caused by a brain disorder. In the opinion of this Hearing Officer, the District used Response to Intervention (RTI) and the Multi-tier Intervention process more as a delay tactic than an opportunity to identify possible learning disorders. The District failed to adequately investigate how reported health impairments could possibly adversely affect the Child's educational performance. The District contended the Child did not qualify for special services because of excessive absences, yet no effort was made to develop a 504 Plan to address the known diagnoses.<sup>12</sup>

17. After the Child failed kindergarten and 1<sup>st</sup> grade, the Parent requested the Child be promoted in order to be in a class with his age-appropriate peers. The Parent attended a school board meeting asking that the Child be promoted under the "good cause exemption" clause of the *Mississippi Literacy-Based Promotion Act*.<sup>13</sup> In a letter dated September 23, 2021<sup>14</sup> from the District school board attorney, the Parent was informed "...the Board took no action" on the

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<sup>12</sup> Transcript 09282021, pp. 81, 88, 89

<sup>13</sup> Mississippi Literacy-Based Promotion Act – Beginning in the 2014-15 school year, a student scoring at the lowest achievement level in reading on the established statewide assessment for 3<sup>rd</sup> grade will not be promoted to 4<sup>th</sup> grade unless the student qualifies for a good cause exemption.

<sup>14</sup> Exhibit SD 1, p 1

request. The letter also states "...a good cause exemption does not exist for your son." The letter also informs the Parent that the district does not have a "social promotion" policy.

## CONCLUSION

18. The District insisted that the Student was denied special education services because of excessive absences. The District provided attendance records generated through the Districts data collecting software showing the Student was absent 22 days in 2016, 39 days in 2017, and 26 days in 2018.<sup>15</sup> The Mother strongly disagreed with the District report and produced hand-written report cards that indicated the Student had missed only one (1) day in 2017, and zero (0) days in 2018. Because it is the District's responsibility to identify a child who is suspected of having a disability, the District should have made some effort to correct the attendance issue. The District should have taken some action when the Parent pointed out the difference in the computer-generated report card compared to the hand-written teacher issued report card. The Multidisciplinary Eligibility Team should have made some recommendations to assist a child who is suspected of having a disability until the attendance issue was resolved.

19. The Child clearly qualified for special education and related services at least two year before being ruled eligible in September, 2021. These are two academic years when he was retained because of denied access to assistance and programs designed to help him progress with his age-appropriate peers.

20. The District misused the "good cause exemption" clause of the *Mississippi Literacy-Promotion Act* by stating the clause "does not exist for your son."<sup>16</sup> Part C of the exemption clause states: "Students with a disability who participate in the state annual accountability

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<sup>15</sup> Transcript 09282021, pp. 118, 119

<sup>16</sup> Exhibit SD 1, p 1



assessment and who has an IEP or Section 504 Plan that reflects the individual student has received intensive remediation in reading for two (2) years but still demonstrates a deficiency or was previously retained in Kindergarten, First, Second, or Third Grade.” The Student meets all criteria in this statement and could have been promoted without question.

21. Also, in an effort to deny the request that the Child be placed with his age-appropriate peers, the District school board attorney informed the Parent that the school district does not have a “social promotion” policy. The letter states “In other words, the District does not have an established process of promoting a student to the next grade during the current school year, regardless of whether he/she possessed the required minimum grades to pass to the next grade level, learned the necessary material for the initial grade level, or were often absent during the previous school year.”<sup>17</sup> It is the opinion of this Hearing Officer that this policy has the potential of discriminating against students with disabilities and the freedom for the IEP Committee to make appropriate decisions regarding grade placement. The policy would especially be discriminating if there are students at the high school level without disabilities who cannot read on a fifth-grade level but have somehow been promoted to the high school.

22. Because the Student is currently enrolled in a charter school that is not affiliated with the District, placement decisions have been made at charter school. The charter school implemented the Student’s IEP developed by the District without exception, and the Mother seems pleased with the accommodations being made there. But, because of the failures to identify and serve the Child in the earlier grades, it is recommended the IEP Committee consider academic year 2021-22 as the Student’s fourth grade year.


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<sup>17</sup> Exhibit SD 1, p 2

## **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 16<sup>th</sup> day of November, 2021.



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David P Daves, Ph.D.  
Hearing Officer