

BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION

PLAINTIFF

vs.

No. M-4

JONES COUNTY SCHOOL DISTRICT

DEFENDANT

OPINION

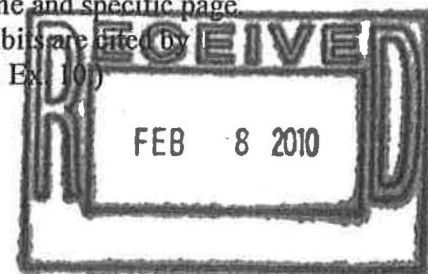
_____ is an elementary age student eligible to receive services under the Individuals with Disabilities in Education Act (IDEA). _____'s parents rejected the Individualized Education Plan (IEP) developed by the Jones County School District (School District) for the 2008-2009 school year and unilaterally enrolled him in a private school. The parents now request reimbursement under IDEA for the private school tuition, other costs, and attorney's fees. The parents failed to prove that the School District's IEP for _____ was inappropriate under IDEA. As a result, the School District is not required to reimburse the parents.

I. Facts

A. _____'s educational background

At the time of the administrative hearing, _____ was _____ years old. (Tr. I/15).¹ He attended the School District for pre-kindergarten (2004-05), kindergarten (2005-06), and part of the first grade (2006). His parents withdrew him from the first grade in early October 2006. He was _____ for the remainder of the 2006-07 school year and for the entire 2007-08 school year, which was _____'s second grade year. _____ attended the Dynamic Dyslexia Design; The 3-D School (3-D School) in Petal, Mississippi, for the 2008-09 school year and was attending that

¹ References to the three-volume transcript of the testimony are to the volume and specific page. For example, a reference to page 15 in Volume I is cited as (Tr. I/15). Exhibits are cited by reference to either the plaintiff's (P) or defendant's (D) exhibits, such as (P. Ex. 10)



school during the 2009-10 school year when the administrative hearing was conducted. (Tr. I/16-18, 20, 29, 71). The parents seek reimbursement for the 2008-09 and 2009-10 school years.

[redacted] had been found eligible for special education services as a kindergarten student in the School District. At that time his IEP focused on speech and language. (Tr. I/17). While being home-schooled in 2006-07, [redacted] continued to be served by the School District with speech therapy. (Tr. I/26). During the 2007-08 school year, the parents did not have [redacted] in speech therapy at the School District because "he was doing fine" in his articulation. (Tr. I/30, 77). He was not, however, making progress in reading. (Tr. I/31).

B. [redacted]'s diagnosis and assessment

In late 2007, the parents' family doctor recommended that they contact Connections, the Hattiesburg Clinic (Connections), in Hattiesburg, Mississippi. The first meeting at Connections took place in late January 2008. (Tr. I/31). During March, April, and May of 2008, [redacted] met with a pediatrician and Martha Woodall, a dyslexia specialist. (Tr. I/89, 92). There, [redacted] received a diagnosis of Mixed Receptive Expressive Language Disorder, Dyslexia, and Attention Deficit Hyperactivity Disorder (ADHD). (Tr. I/15; P. Ex. 10).

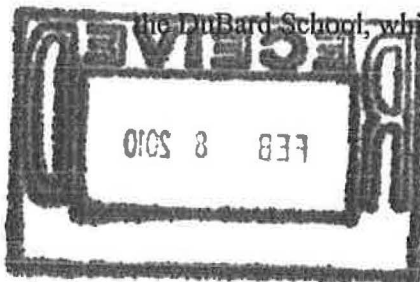
The results of the tests conducted by Connections are summarized by Ms. Woodall's May 22, 2008, report (Woodall Report):

[redacted]'s genetic, developmental, and educational history contains the majority of the classic warning signs of dyslexia and language disorder. These warning signs were identified earlier in this report. [redacted]'s areas of academic weaknesses are also very consistent with a diagnosis of dyslexia and language disorder.

(P. Ex. 10, p. 6 of Report).

Based on the testing by Connections, Ms. Woodall recommended that the parents contact

the DuBard School, which is housed at the University of Southern Mississippi in Hattiesburg,



Mississippi, and serves children with severe language-speech disorders. (Tr. I/34). Ms. Woodall also recommended that [redacted]'s parents contact The 3-D School in Petal. Focused exclusively on serving children with dyslexia, The 3-D School was established by Cena Holifield in 2008. Ms. Holifield earned a master's degree in 2009 in Dyslexia Therapy from Mississippi College in Clinton, Mississippi. (Tr. I/36; P. Ex. 1).

During the spring and summer of 2008, [redacted]'s parents took steps toward securing a place for him at the DuBard School and The 3-D School for the 2008-09 school year. [redacted]'s father called the DuBard School on March 17, 2008, and placed [redacted] on a waiting list for the 2008-09 school year. (Tr. I/34-36, 221). The parents attended a meeting at the DuBard School in June 2008 and provided that School with the Woodall Report. On June 18, 2008, [redacted]'s parents signed a contract for him to attend The 3-D School for the 2008-09 school year. (Tr. I/98; P. Ex. 11). If the parents had decided to enroll [redacted] elsewhere for the 2008-09 school year, The 3-D School would have released them from this contractual obligation. (Tr. I/147-48).

In late July 2008, the parents met with the superintendent of the School District, Steve Thrash. They have known him "very well" for a long time; [redacted] (Tr. I/103). The parents gave Superintendent Thrash the Woodall Report, and he in turn gave it to School District's special education director. (Tr. I/50, 103, 271).²

A short time later, School District personnel contacted [redacted]'s mother about attending a pre-IEP meeting. (Tr. I/51). Before the meeting took place, the School District's psychometrist, Adonna McGill, began preparing an assessment of [redacted] to determine his eligibility for services under IDEA. (Tr. II/187, 193; D. Ex. 5, p.19). Ms. McGill relied on the tests conducted by

² Although the evidence is conflict (Tr. I/42-43, 124, 222, 226; III/12) regarding contacts between the parents and Fran Hall Miner, the School District's co-special education director, during the summer of 2008, the resolution of that conflict is not material to the question whether the 2008-09 IEP is appropriate under IDEA.

Connections, including the Woodall Report, and concluded J.D. met IDEA eligibility criteria. (Tr. II/193, 204-12; D. Ex. 5, p.30).

Two meetings were held in August 2008 regarding [redacted]'s education. On August 11, an eligibility meeting was held. (Tr. II/223; D. Ex. 5, p.31). [redacted]'s mother attended the meeting and signed the re-evaluation document, which stated that the data provided by [redacted]'s parents supported his eligibility in the category of "Other Health Impaired-Attention Deficit Hyperactivity Disorder" (OHI/ADHD) and "Speech Language, Language Impaired" (SL-LI). (D. Ex. 5, p.31). A follow-up meeting was held on August 14, 2008, at which time the proposed IEP was presented to the parents. (Tr. II/224-25).

[redacted]'s mother responded to the IEP by noting two concerns on the face of the IEP. The first notation said, "change to severe dyslexia as in evaluation." (D. Ex. 9, Tab D, p.29). She wanted the IEP to say [redacted] had severe dyslexia, as stated in the Woodall Report, rather than that [redacted], "presents dyslexic characteristics". (Tr. I/52-54).

The second notation said, "using more than one method is confusing to a child with dyslexia. He needs an Orton Gillingham based method." (D. Ex. 9, Tab D, p.29). In other words, the School District needed to use this particular multisensory teaching method to teach [redacted] rather than use several methods together. (Tr. I/55).

C. [redacted]'s IEP for 2008-09

The proposed IEP for [redacted] included background information provided by his mother and the results of the tests conducted by Connections. The IEP states: "Based on information from Connections, [redacted] presents dyslexic characteristics." In addition, the IEP set forth how the School District planned to meet his needs:

Because of [redacted]'s] need for intense tutoring in reading, writing and language, the IEP Committee recommends five hours of reading, writing, spelling, and

language instruction using several multisensory teaching methods. The Lindamood phoneme sequencing program for reading, spelling, and speech (LIPS program) will be used to help [redacted] develop an oral-motor, visual and auditory feedback system. This program is more extensive than traditional phonics programs. The Seeing Stars program, which uses symbol imagery for phonemic awareness, sight words and spelling, will also be implemented. In addition to the Lindamood Bell programs, portions of the Association Method, developed by the Dubard School at [the University of Southern Mississippi], will provide another approach to remediate [redacted]'s deficits in reading, writing and language. The committee recommends [redacted] receive math instruction in the general education classroom for math with inclusive services and possible general ed tutorial for math. He will participate in all non-academic activities in the general education classroom.

(D. Ex. 9, Tab D, p.30). The IEP also contained modifications and accommodations the general education teacher could make in the classroom. (D. Ex. 9, Tab D, p.31). In addition, the IEP included short-term objectives based on the Mississippi Curriculum Framework. (D. Ex. 9, Tab D, p.32-39; Tr. II/24-25).

As Chair of the Local Survey Committee (LCS), Judy Chambliss wrote the IEP. (Tr. II/5, 12). The LCS Chair is responsible for ensuring that appropriate steps are taken before an assessment is made and for understanding the services that are available for special education students. (Tr. II/10-12). Ms. Chambliss has 19 years teaching experience, with 12 of those years as a special education teacher in the School District. She has training in using different multisensory methods to teach reading. (Tr. II/7-9). Ms. Chambliss would collaborate daily with [redacted]'s general education teacher, his speech pathologist (Cindy Wilcher), and his dyslexia specialist (Donna Powell). (Tr. II/23, 28).

Ms. Powell, who was trained in the same methodology at Mississippi College that is used at The 3-D School, was hired by the School District in August 2008 as a dyslexic therapist for the 2008-09 school year. (Tr. I/154; II/106, 108, 112-13). She was committed to and able to provide services to [redacted], as well as other students at the beginning of August 2008. (Tr. I/181,

277; II/67-68, 84-85, 106, 181). She also knew her services would be needed for an extended period of time. (Tr. II/121-22).

Ms. Powell planned to teach [redacted] using an Orton-Gillingham based method. (Tr. II/130). [redacted]'s mother knew that Donna Powell would use the Orton-Gillingham method in teaching [redacted] (Tr. I/115, 168; II/130).

In August 2008, at the time the IEP was developed, [redacted]'s mother believed that Ms. Powell was not yet hired. (Tr. I/55-56, 58, 62, 116). As a result, [redacted]'s parents enrolled him in The 3-D School in Petal for the 2008-09 school year. Although [redacted]'s mother knew in July 2008 that the School District was hiring Ms. Powell and working to obtain for her an emergency certificate, she never followed up to ask if in fact Ms. Powell had been hired. (Tr. I/48, 55; III/163, 173-74).

II. Law

The question presented is whether [redacted]'s parents are entitled to reimbursement under IDEA for placing [redacted] at The 3-D School. See 20 U.S.C. § 1412(10)(C)(ii) (permitting reimbursement in some circumstances). The burden of proof is on [redacted]. See *Schaffer vs. Weast*, 546 U.S. 49, 62 (2005) (“At the administrative level, it is clear that the party challenging the IEP bears the burden of proof.”)

“When parents unilaterally remove their child from public school and place them in a private facility, they do so at their own financial risk. That is, the parents bear the risk that a hearing officer or court might later determine . . . that the child’s existing IEP was appropriate.” *Richardson Indep. Sch. Dist. vs. Michael Z.*, 580 F.3d 286, 295 (5th Cir. 2009) (citations omitted). “Reimbursement may be ordered only if it is shown that (1) an IEP calling for placement in a public school was inappropriate under the IDEA, and (2) the private school

placement was proper under the Act.” *Houston Indep. Sch. Dist. vs. V.P.*, 582 F.3d 576, 584 (5th Cir. 2009) (citations and quotations omitted); *see also Forest Grove Sch. Dist. vs. T.A.*, 129 S. Ct. 2484, 2496 (2009).

In an IEP, a school district is required to provide a “basic floor of opportunity” that “consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the [disabled] child.” *Board of Educ. vs. Rowley*, 458 U.S. 176, 201 (1982). The school district “need not provide its disabled students with the best possible education, nor one that will maximize the student’s educational potential.” *Houston Indep. School Dist. vs. V.P.*, 582 F.3d at 583 (citing *Cypress-Fairbanks Indep. Sch. Dist. vs. Michael F.*, 118 F.3d 245, 247 (5th Cir. 1997)). “Nevertheless, the educational benefit to which [IDEA] refers and to which an IEP must be geared cannot be a mere modicum or *de minimis*; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement.” *Michael F.*, 118 F.3d at 248. “In short, [a school district] must provide its students with ‘meaningful’ educational benefit.” *Houston Indep. Sch. Dist. vs. V.P.*, 582 F.3d at 583.

When the appropriateness of an IEP is challenged, a two-prong analysis applies. The first prong is whether the school district has complied with the procedural requirements of IDEA.) does not contest this point.

The second prong is whether the IEP was “reasonably calculated to enable the child to receive educational benefits.” *Id.* at 583-84. The Fifth Circuit has “set out four factors that serve as “indicators of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA.” *Id.* at 584. “[T]hese factors are whether (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." *Id.*

Typically, these four factors are applied to an IEP *after* it has been implemented. Here, of course, [redacted]'s IEP was never carried out because he did not enroll in the School District. Nevertheless, these factors guide the analysis.

First, the IEP was individualized for [redacted]'s specific needs. The IEP was not a "form" or "cookie cutter" IEP. The analysis of [redacted]'s background, the proposed modifications and the suggested benchmarks were expressly related to [redacted]'s disabilities and were designed to improve his academic performance. The IEP specifically addressed [redacted]'s dyslexia. (Tr. II/229).

In preparing the IEP, Ms. Chambliss relied on the diagnosis and testing by Connections, the School District's extensive assessment of [redacted] and the information provided by [redacted]'s mother. In addition, Ms. Chambliss, an experienced special education teacher, included in the IEP what she "knew worked for a child with dyslexia." (Tr. II/12, 15). [redacted] had been home-schooled for almost two full years. Therefore, the IEP Committee lacked recent academic results.

Having been trained in using multisensory methods to teach, Ms. Chambliss planned to use parts of those methods to teach [redacted] (Tr. II/48-51). "But if at any time I needed to change, if it was not successful for the child, then I would change." (Tr. II/20). If the program became too intense, she would alter it. (Tr. II/ 29). "Modifications to an IEP legally can and likely often must be made in response to the experiences of a child in the classroom." *Houston Indep. Sch. Dist. vs. V.P.*, 582 F.3d at 590.

Ms. Chambliss has used these methods successfully in the past to teach children to read. (Tr. II/21). Her overriding consideration is to meet the child's educational needs. (Tr. II/21). "I

teach according to the strengths and weaknesses of my children.” (Tr. II/34, 53). She has been successful in teaching special education students how to read. (Tr. II/38).

Ms. Powell explained that although she would use the Orton-Gillingham based method to teach reading therapy, the use by other teachers of parts of other multisensory methods would complement what she did. (Tr. II/131-32). She has been able to implement the Mississippi College program in the School District. (Tr. II/139).

_____ raises two challenges to the IEP’s requirement that it be individualized. The first is that the IEP does not say he had severe dyslexia, although _____’s mother acknowledged that this objection did not affect the services _____ would have received under the IEP. (Tr. I/115). The IEP says _____ “presents dyslexic characteristics.” This challenge has no merit because the wording – “has dyslexia” or “presents dyslexic characteristics” – did not have a material effect on how the School District addressed _____’s needs in the IEP. Ms. Chambliss said “it’s the same thing.” (Tr. II/48). The School District’s psychometrist echoed that statement: “When we say that [a student] has dyslexic characteristics, [we] treat them as dyslexic.” (Tr. II/222).

Moreover, dyslexia is not a ruling under IDEA. The eligibility ruling does not determine the services a student receives; the needs of the student determine the services that are provided. (Tr. II/54).

_____’s primary challenge to the IEP is that it refers to several multisensory methods of teaching a dyslexic student. On the IEP, _____’s mother wrote that using more than one method would be confusing and that a particular method (Orton Gillingham) should be used to teach _____. _____’s mother testified that during the IEP meeting in August 2008 the School District personnel said that all multisensory methods would be used together to teach _____, regardless of the effect on _____. (Tr. III/169-70).

In support of [redacted]'s position, the founder of The 3-D School said the IEP failed to present a "clear and coherent plan" and reflected a "clear lack of understanding of what a true dyslexic child needs [by] comb[ing] those two [multisensory teaching] methodologies." (Tr. I/142). It was the equivalent, she said, of teaching French and Spanish in the same class. (Tr. I/142). Her view, however, is based solely on how the IEP is written. (Tr. I/153/201). She has never actually implemented an IEP. (Tr. I/197).

This challenge fails because the methods listed in the IEP were options for teaching. (Tr. II/20). Ms. Chambliss has had success using parts of different methods to teach students. (Tr. II/48). Moreover, it would be problematic if the School District were limited to teaching only one multisensory method. (Tr. II/69).

More important, Ms. Powell was not concerned that [redacted] would become confused because she "would be the one doing the dyslexia therapy." (Tr. II/130). In addition, Ms. Powell does employ the Orton-Gillingham method, which was the focus of the Mississippi College program both she and the founder of The 3-D school attended. (Tr. II/129-30, 162). Ms. Powell was clear that the multisensory methods would not be implemented in a way that would impede [redacted]'s ability to achieve progress.

In short, the School District had the resources and personnel to implement successfully [redacted]'s IEP. (Tr. II/66-67). As noted, the school district "need not provide its disabled students with the best possible education, nor one that will maximize the student's educational potential." *Houston Indep. Sch. Dist. vs. V.P.*, 582 F.3d at 583. The testimony by [redacted]'s mother that the School District's teachers planned to use all multisensory methods together, regardless whether [redacted] received any benefit is simply not credible. The weight of the evidence clearly shows that

would more likely than not have received a meaningful educational benefit under the IEP developed for him had he remained in the School District.

Second, the IEP would have been administered in the least restrictive environment. In his brief, [redacted] argues that the IEP would have placed him “in special education and thus fails to meet” this requirement. (Tr. III/163; Brief, at pp. 11-12). This concern was raised only in rebuttal testimony by [redacted]’s mother. On cross-examination, [redacted]’s mother acknowledged that the multisensory methods, including the one she preferred, would be provided in a special education setting. (Tr. III/168). In fact, the IEP also provided that [redacted] would spend a portion of his time at school in the general education setting with non-disabled peers. (Tr. II/25-27, 41-42, 184-86, 250; D. Ex. 9, Tab D, p. 30). The evidence demonstrates that [redacted]’s IEP would have been administered in the least restrictive environment

Third, the services for [redacted] were developed and would have been implemented in a coordinated and collaborative manner by the key stakeholders. The personnel in the School, including teachers and administrators, explained how they collaborate to help students succeed. (Tr. I/23-24). Ms. Wilcher said there is daily collaboration among teachers. (Tr. III/111). In addition, Ms. Powell said that other teachers come to her and ask, “Now explain to me what’s going on with this child and how do I need to teach to this child in the classroom.” (Tr. 127-28). The collaboration is, according to Ms. Powell, getting “better and better” among the teachers. (Tr. II/127).

[redacted]’s position on this point appears to be that a conflict between Ms. Powell’s husband and [redacted]’s father would have precluded Ms. Powell from working effectively to carry out [redacted]’s IEP and that this conflict defeated collaboration. (Brief at pp. 10, 12). Actually, the testimony of [redacted]’s mother is contrary to the assertion in [redacted]’s Brief. In explaining the purported conflict,

's mother dismissed it out of hand, saying "everybody thinks it's like some big thing, but it is not." (Tr. III/170-71). 's mother said: "[T]here was nothing . . . that would have hindered [Ms. Powell] from working with [] and us being happy with her, [and] being able to work with her. There was nothing, you know, that would have hindered that." (Tr. III/171). The IEP was developed and would have been implemented in a coordinated and collaborative manner by the key stakeholders.

The final factor in determining whether the IEP was appropriate is that positive academic and non-academic benefits were demonstrated. Of course, the IEP was not implemented because 's parents enrolled him in The 3-D School rather than in the School District. Therefore, no actual results can be analyzed.³

III. Conclusion

In the light of the applicable law, the evidence supports the conclusion that the IEP developed by the School District for the 2008-09 school year was reasonably calculated to enable to receive meaningful educational benefits. Therefore, reimbursement is not granted.

Counsel for both parties presented their client's positions competently and professionally. 's parents are obviously devoted to him and to his achieving an education. Similarly, the teachers and administrators in the Jones County School are dedicated to providing disabled students the services they need to succeed.

Dated: February 8, 2010

/s/ Perry Sansing
Hearing Officer

³ In the light of the ruling in favor of the School District on the appropriateness of the IEP, the second issue -- whether the private school placement was proper -- will not be addressed. See *Cyrpress-Fairbanks Indep. Sch. Dist.*, 118 F.3d at 248 ("If the reviewing court determines that the school district's IEP was appropriate, it need not reach the issue of the appropriateness of the private placement by the parents.").