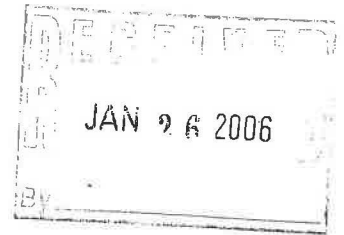


STATE OF MISSISSIPPI
DEPARTMENT OF EDUCATION



IN RE: DUE PROCESS HEARING
REQUEST FOR _____

DECISION

The Individuals with Disabilities Education Act (IDEA or the Act) is designed “to ensure that all children with disabilities have available to them a free appropriate public education.”¹ The “cornerstone” of the Act is the “individualized education program” that a school district must develop for each disabled child it educates.² In an amended due process complaint filed under the Act, Ms. _____ alleged that the Lamar County School District (the District) violated the Act by failing to provide her son _____ with a free appropriate public education (FAPE). Specifically, _____ contends that _____’s individualized education program (IEP) was flawed and precluded him from being able to receive a regular high school diploma.

Based on the applicable case law and the evidence presented at the due process hearing, Ms. _____ has failed to carry the burden of proving that the District violated the Act.

I. FACTS

During the Spring of 2004, the District conducted an Initial Evaluation Child Study of _____, who at the time was in the _____ grade.³ _____’s math teacher, Mr. Randy Robinett, referred him for _____

¹ 20 U.S.C. § 1400(d)(1)(A).

² *White vs. Ascension Parish Sch. Bd.*, 343 F.3d 373, 378 (5th Cir. 2003); see 20 U.S.C. § 1414(d).

³ S-1. Record references are to the Hearing transcript (Tr. ___), the Stipulations (S-___), and the Exhibits (Ex. S-___ [Stipulated], Ex. P-___ [____], and Ex. D-___ [District]).

the evaluation because of his “[f]ailure in math.” The District contacted Ms. [redacted] regarding the Child Study, and she expressed concern about her son.⁴

This Child Study reflected that [redacted] struggled in math, which was noted as his predominant area of weakness. Among the problems identified were that [redacted] failed to turn in homework, failed to complete assignments, and refused to complete work. In addition, [redacted] had difficulty staying on task and paying attention.⁵

As a result of the Child Study, the District conducted a comprehensive evaluation of [redacted]. The May 26, 2004, summary report generated by the evaluation noted that [redacted] was failing math for the third time.⁷ This evaluation, which included assessments by a speech-language pathologist and by the District’s psychometrist, Ms. Angela French, noted [redacted]’s general weakness in math.⁸ These documents were provided to Ms. [redacted].

[redacted] was ruled eligible on May 24, 2004, for special education services under the disability category of “other health impaired” for attention deficit hyperactivity disorder (ADHD).¹⁰ During the eligibility meeting, Ms. French, the District psychometrist, reviewed with Ms. [redacted] the testing on [redacted]

⁴ Ex. S-1.

⁵ Ex. S-1 at pp. G-17 to G-24.

⁶ Tr. 37.

⁷ Ex. S-2, part A.3.

⁸ Ex. S-2.

⁹ Tr. 37.

¹⁰ S-2; Tr. 24-25.

conducted by the District.¹¹

On August 6, 2004, the District convened an committee meeting to develop [redacted] s first IEP.¹² Dr. Brenda Thomas, the District's Director of Special Services & District 504 Coordinator, noted that the "purpose of an IEP is to enable the child to receive specialized instruction ... to meet their unique educational needs."¹³ [redacted] s special education teacher, Ms. Amy Garaway, explained that the IEP lists the student's "goals and objectives" and focuses on "when they will be met, where they will be met and how they will be met."¹⁴ Her role as [redacted] s special education teacher is to "facilitate and make sure that his teachers knew that he could have allowable accommodations."¹⁵ She sent out frequent progress reports to [redacted] s teachers to determine how he was doing, provided individual help in his classes, and talked with him about what he needed, "even if the teachers didn't suggest it."¹⁶

The IEP committee for [redacted] consisted of M [redacted] Ms. French, Ms. Adelia Webb, a regular education teacher, Ms. Lea Ann Arcement, a District official, and Ms. [redacted] and each of them participated in the meeting.¹⁷ During the meeting, they discussed [redacted] s problems in math. Ms.

¹¹ Tr. 23, 37.

¹² S-3.

¹³ Tr. 57. Ms. French's report (Ex. S-2, summary) notes that [redacted] "has had a 504 plan for a number of years and is continuing to experience significant academic problems in the classroom setting." See 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1990). Dr. Thomas pointed out that IDEA provides broader services than a 504 plan. (Tr. 56-57).

¹⁴ Tr. 65-66.

¹⁵ Tr. 91.

¹⁶ Tr. 91-92.

¹⁷ Ex. S-3; Tr. 37, 81.

French, the psychometrist, told the committee there was “no indication of a learning disability and that [redacted] score in numerical operations in math reasoning was within average range on this test of ... children his age.”¹⁸

The accommodations listed in [redacted] s 2004-05 IEP were: (1) Test in a different setting; (2) Test read orally and paraphrased; (3) Use calculator; (4) Copy of student notes; (5) Non verbal cues to stay on task; and (6) Extra book at home.¹⁹ [redacted] s graduation option in the IEP was a regular high school diploma. Ms. [redacted] participated in the IEP meeting and signed the IEP.²⁰ The District employees on the committee said that they were not aware of any accommodations suggested by Ms. [redacted] that were not included in the IEP and that she did not object to any of the accommodations.²¹

On December 14, 2004, the District convened another committee meeting to consider revising [redacted] s original IEP.²² Ms. [redacted] participated in this meeting and did not suggest or request any new accommodations for [redacted].²³ Although no changes were made in the accommodations from original IEP, the committee revised the IEP by changing [redacted] s graduation option from a regular diploma to an occupational diploma.²⁴

¹⁸ Tr. 40.

¹⁹ Ex. S-3.

²⁰ Ex. S-3; Tr. 37.

²¹ Tr. 37, 81, 87.

²² S-4.

²³ Tr. 84-85.

²⁴ Ex. S-4.

Ms. Garaway, [REDACTED] special education teacher, explained that an occupational diploma “is designed for students who are ... more interested in going to work straight from school or into a vocation. [I]t is also designed for those students who are not quite capable of getting all the requirements necessary for a regular diploma.”²⁵ [REDACTED] was not passing Algebra at that time and it did not appear that he would be successful in the second half of that course. The committee decided to change to the occupational diploma based on [REDACTED]’s past and current lack of success in math.²⁶

Ms. Garaway said she and [REDACTED] talked about his future and his interests; as a result, she concluded the occupational diploma was the “best choice for him.”²⁷ This change would still allow [REDACTED] to graduate with his peers.²⁸ Ms. [REDACTED] participated in the committee meeting that revised [REDACTED]’s IEP and, although she did not favor the occupational diploma route, she did agree to the revision.²⁹

The District officials on the IEP committee advised Ms. [REDACTED] that [REDACTED] could continue to attend classes after receiving an occupational diploma.³⁰ Ms. Garaway observed that “[a]ny of our students who receive an occupational diploma have the option to come back and work toward their

²⁵ Tr. 73.

²⁶ Tr. 83. State Department of Education regulations require three Carnegie units in math for graduation. (Ex. S-13) At the time the committee revised [REDACTED]’s IEP in December 2004, he had no units in math. (Tr. 84)

²⁷ Tr. 79-80.

²⁸ *Id.*

²⁹ Tr. 84.

³⁰ Tr. 85.

regular diploma. Special ed students are allowed to attend school through the age of 21. Therefore, they can come back at any time and resume classes to work toward a regular diploma.”³¹ Ms. [redacted] and [redacted] were both advised at that time of this option, although Ms. [redacted] was already aware of the occupational diploma option.³²

The occupational diploma issue created a problem for Ms. [redacted] because the District discussed it with [redacted] before talking with her.³³ The District explains this option to all of its students, including regular education students. Ms. Garaway stated: “When [students are] struggling with school we make them aware of the different choices. By the time they are in high school they are somewhat responsible for what they are doing so they're made aware of what is available for them.”³⁴ Ms. [redacted] said that [redacted] was “more deserving of a regular high school diploma than an occupational diploma.”³⁵

As required by IDEA, the District convened a meeting on May 12, 2005, for the annual review of [redacted]'s IEP.³⁶ The summary of [redacted]'s level of performance at that time stated that he “has been successful in most of his classes this year” but “really has trouble with multi-step math problems. It was

³¹ *Id.*

³² *Id.* As of the due process hearing held on December 16, 2005, [redacted] is on track to receive an occupational diploma. As noted, he can graduate with his peers with an occupational diploma and continue to attend school to complete the math units necessary for a regular high school diploma. (Tr. 95-96).

³³ Tr. 97.

³⁴ Tr. 97-98.

³⁵ Tr. 157.

³⁶ S-6.

decided to change him to an Occupational Diploma as the math was going to hold him back from graduating.”³⁷ The accommodations in the new IEP were: (1) Extended time on tests; (2) Repeating and/or paraphrasing test directions and/or items; (3) Test with familiar teacher in a familiar room; (4) Preferential seating (away from distractions); and (5) Use a calculator.³⁸ In the section of the IEP titled “Desired Post-School Outcome Statement,” the following appears: “Would like to work in the area of Forrestry [sic]. Not really interested in college. He would rather work.”³⁹ Ms. [REDACTED] signed the revised IEP.⁴⁰

II. PROCEDURAL BACKGROUND

Ms. [REDACTED] filed a complaint on August 18, 2005, requesting a due process hearing under IDEA.⁴¹ The District responded to the complaint on October 10, 2005, and raised several jurisdictional issues.⁴² During the pre-hearing conference on October 14, 2005, the parties agreed to waive the 45-day period for a decision,⁴³ pending a decision on the issues raised by the District. The waiver was confirmed in an October 18, 2005, letter from the Hearing Officer to the parties. As a result of the Hearing Officer’s decision on October 31, 2005, Ms. [REDACTED], was permitted to file an

³⁷ Ex. S-6.

³⁸ Ex. S-6, p.2 of 7.

³⁹ Ex. S-6, p.6 of 7.

⁴⁰ Ex. S-6, p.7 of 7.

⁴¹ S-7. The complaint is Ex. S-7. The Resolution meeting between Ms. [REDACTED] and the District was not successful.

⁴² S-8. The District’s response is Ex. S-8.

⁴³ 34 C.F.R. § 300.511(a).

amended complaint for a due process hearing.⁴⁴

On November 7, 2005, Ms. [redacted] filed an amended due process complaint.⁴⁵ She said that the “[f]ailure to provide a FAPE is the result of failure by the district to properly implement the proper accommodations needed for [redacted] to be successful in attaining a regular high school diploma.” She also claimed that “[f]our months after drawing up an IEP the district convened another IEP meeting [and] informed me a regular diploma was not possible due to [redacted]’s] continued academic failure. No other options were offered or discussed.” Ms. [redacted]’s proposed resolution of the problem was “[a]dherence to appropriate and recommended accommodations as reflected in the IEP to enable [redacted] to secure a regular high school diploma.”⁴⁶

The District responded to the complaint on November 29, 2005, and denied that it violated IDEA.⁴⁷ On December 7, 2005, a pre-hearing conference was held by telephone. The District reasserted a motion to dismiss Ms. [redacted]’s amended complaint based on Ms. [redacted]’s alleged failure to state a meaningful resolution. The Hearing Officer denied the motion and informed the parties by telephone on December 8, 2005.

The due process hearing was held on December 16, 2005, at the Oak Grove High School in the Lamar County School District.

⁴⁴ Ex. S-9.

⁴⁵ S-10.

⁴⁶ Ex. S-10.

⁴⁷ S-11. The response is Ex. S-11.

II. LAW

The Supreme Court recently noted that the “core of [the IDEA] is the cooperative process that it establishes between parents and schools,” and that the “central vehicle for this collaboration is the IEP process.”⁴⁸ The FAPE requirement is delivered through the IEP. “Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide.”⁴⁹ The team that produces an IEP includes the child’s parents or guardians and school officials knowledgeable about special education; as a result, the “written IEP specifies the program of benefits to which the student is entitled in order to receive a FAPE.”⁵⁰

Here, Ms. █████ challenges the appropriateness of her son’s IEP. As such, the review of her claim has two parts. The first is whether the District has complied with the procedural requirements of the Act. The second is whether “the [IEP] developed through the Act’s procedures [is] reasonably calculated to enable the child to receive educational benefits.”⁵¹ “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.”⁵²

⁴⁸ *Schaffer vs. Weast*, 126 S. Ct. 528, 532 (2005).

⁴⁹ *Id.*; see 20 U.S.C. §1414(d)(1)(A).

⁵⁰ *White vs. Ascension Parish Sch. Bd.*, 343 F.3d at 378 (citing 20 U.S.C. § 1414(d)(1)(B)). The IEP is defined in 20 U.S.C. § 1414(d).

⁵¹ *White*, 343 F.3d at 378 (quoting *Board of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982)).

⁵² *Rowley*, 458 U.S. at 207.

In *Houston Indep. Sch. Dist vs. Bobby R.*,⁵³ the court set forth the standard for reviewing an

IEP:

An IEP need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit." Nevertheless, the educational benefit to which the Act 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." In short, the educational benefit that an IEP is designed to achieve must be "meaningful."⁵⁴

"The crafting of an IEP is subject to extensive procedural and substantive requirements."⁵⁵ Ms.

_____ does not contend that the District failed to comply with the procedural requirements the Act. .

Rather, her contention is that the District failed to implement properly the accommodations listed in the IEP. She also contends the IEP failed to include accommodations that would have enabled her son to be on tract to receive a regular high school diploma.

The Fifth Circuit has identified four factors "that serve as an indication of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. "These 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;

⁵³ 200 F.3d 341 (5th Cir. 2000).

⁵⁴ *Id.* at 347 (quoting *Cypress-Fairbanks Indep. Sch. Dist. vs. Michael F.*, 118 F.3d 245 (5th Cir. 1997), *cert. denied*, 522 U.S. 1047 (1998)).

⁵⁵ *Bobby R.*, 200 F.3d at 345.

(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."⁵⁶

The first three factors are not in dispute. The crux of Ms. [redacted]'s complaint centers on the fourth factor.

In challenging the IEP, Ms. [redacted] makes two arguments. First, she contends that "had the recommended accommodations been implemented ... [redacted] would have been successful in math."⁵⁷

Specifically, she says "there's no evidence to show that the IEP functioned as it should because he still failed math again after I obtained the special ed ruling. It didn't help in him securing a math credit."⁵⁸

Ms. [redacted]'s position essentially is that because her son had an IEP and because he failed math, then the accommodations in the IEP must not have been carried out. Otherwise, her son would have passed math. Her position reflects a standard that the courts have rejected.

Ms. [redacted] failed to carry her burden on this issue because the evidence demonstrates that [redacted]'s IEP was (and is still today) designed to achieve meaningful educational benefits. An IEP is not required to be "the best possible one" or "one that will maximize the child's educational potential."⁵⁹

The accommodations in the IEP were provided to [redacted]⁶⁰ Ms. Webb and Ms. Doss, two of [redacted]'s teachers during the Spring of 2005, had a copy of the accommodations, considered them

⁵⁶ *Bobby R.*, 200 F.3d at 347-48 (citing *Cypress-Fairbanks Indep. Sch. Dist. vs. Michael F.*, 118 F.3d at 253).

⁵⁷ Tr. 153.

⁵⁸ Tr. 169.

⁵⁹ See *supra* n.54.

⁶⁰ Tr. 82, 85, 90.

appropriate, and either provided them or allowed Ms. Garaway to provide them.⁶¹ For example, Ms. Garaway was in Ms. Webb's room on a daily basis to provide "individualized assistance" to [redacted] as necessary. Although Ms. Garaway was not in Ms. Doss's class with [redacted], he came to Ms. Garaway's room "quite frequently" so she could work with him.⁶² [redacted] did not fail Ms. Webb's Transition to Algebra class because the accommodations were not implemented.⁶³ Significantly, [redacted] experienced success in most of his classes under the 2004-05 IEP.⁶⁴

In addition to the implementation of the accommodations, other factors affect a student's success, such as a student's refusal to complete the assigned work.⁶⁵ A recurring problem was [redacted]'s failure to complete assignments. Ms. Doss, [redacted]'s teacher in Resource Management, called Ms. [redacted] because [redacted] was failing to turn in assignments.⁶⁶

[redacted], a special education teacher, Ms. Garaway, recalled that on occasion [redacted] refused an accommodation, although they were always available to him. "He did not like to be singled out during class time ... to receive extra help when there were classmates around." At times, he chose not to leave the classroom, and at other times, he was not given a choice.⁶⁷

⁶¹ Tr. 93-94; 127, 130.

⁶² Tr. 93-95.

⁶³ Tr. 130. Ms. [redacted]'s conclusory suggestion (Tr. 164) that the District's teachers did not fully understand the importance of the accommodations in the IEP is refuted by the evidence. (Tr. 59, 72).

⁶⁴ Ex. S-6.

⁶⁵ Tr. 61.

⁶⁶ Tr. 101-02, 104, 114.

⁶⁷ Tr. 92, 130.

Ms. [redacted] has failed to prove that [redacted]'s IEP did not provide “meaningful” educational benefits.

Her second argument is that the IEP omitted accommodations both that the committee discussed and that the District should have included even if they were not discussed. She states that “the accommodations we spoke of in the very first IEP didn't come out on paper like we discussed them,” and that “assistive technology would have been the key for [redacted] having success.”⁶⁸ This argument fails because Ms. [redacted] signed both IEPs, and the other committee members indicated she did not object to the accommodations listed in the IEPs.⁶⁹

Ms. [redacted]'s position is that the District should have raised the use of assistive technology because she was not aware of it.⁷⁰ Ms. Garaway noted that assistive technology included “computers, tape recorders, [and] things of that nature that would be pertinent to help a student to learn” and is most often used with hearing impaired children. She is not aware of any assistive technology for ADHD children.⁷¹ Moreover, Ms. [redacted] never requested or suggested that assistive technology should be used for [redacted]'s education.⁷² Nor did she explain at the due process hearing, either through testimony or

⁶⁸ Tr. 160. The IDEA defines assistive technology as “any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.” 20 U.S.C. § 1401(01).

⁶⁹ Exs. S-3, S-6; Tr. 37, 81, 84-85, 87, 160.

⁷⁰ Tr. 160.

⁷¹ Tr. 77-78.

⁷² Tr. 79.

documentary evidence, any example of assistive technology that could have been included in IEP. Ms. [redacted] fails to carry her burden on this argument as well.

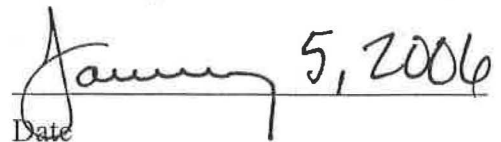
IV. CONCLUSION

Ms. [redacted] did not meet burden of proving that the District violated IDEA. The evidence demonstrated that the District fulfilled its obligations under IDEA both to Ms. [redacted] and to [redacted]

Under IDEA, Ms. [redacted] has the right to bring a civil action in any state court or in a federal district court without regard to the amount in controversy. She has 90 days from the date of the decision of the hearing officer to bring such an action, or, "if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows."⁷³

Ms. [redacted] clearly cares for her son and is committed to helping him succeed. She capably presented her case at the due process hearing. Likewise, the District's teachers and administrators are dedicated to student success, and its case was ably presented by counsel at the hearing.


Hearing Officer


Date

⁷³ The procedure for filing an appeal is set forth in 20 U.S.C. § 1415(i)(2) and should be reviewed carefully.