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April 30, 2009

MS. [REDACTED], Superintendent
P. O. Box 544 (Sent by U.S. Postal Service and to jhall@lefloreschools.org)
Greenwood, Mississippi 38930
MR. [REDACTED], Director, Special Education
1901 Highway 82 West (Sent by U.S. Postal Service and to fmmorris@lefloreschools.org)
Greenwood, Mississippi 38930
[REDACTED], Parent
[REDACTED] (Sent only by U. S. Postal Service)
Greenwood, Mississippi 38930

Re: HEARING OFFICER DECISION on Due Process Hearing request for [REDACTED]

Greetings:

With reference to my letters of April 1, 2009 and April 6, 2009, this is to report on the Prehearing Conference held today by telephone and to announce my ruling on all issues within my jurisdiction.

Mr. Frank Morris identified himself as the representative of the District. Ms. [REDACTED] identified herself as the representative of the parents, as also reflected by a letter dated April 2, 2009 showing a signature of [REDACTED] and [REDACTED]. Mr. Morris requested permission to record the conference, which was granted by Ms. [REDACTED] and approved by the Hearing Officer on the condition that a copy of the recording be provided to Mr. [REDACTED]. The parties confirmed that they had available for ready reference the document entitled "Pre-Hearing Conference Purposes" that was attached to my April 1 letter, the agenda for our scheduled telephone conference.

Regarding the first item, potential conflicts of interest or concerns over my appointment as Hearing Officer, Ms. [REDACTED] recited a series of objections to process. She appeared to object to my willingness or predisposition to proceed with this matter in the face of an alleged failure of the district to timely provide appropriate procedural safeguards, but upon invitation she raised no particular reason why I should recuse myself. The objections included repeated allegations of district failure to provide appropriate documentation to the parent, Mississippi Department of Education (MDE), and hearing officer. When asked if any other hearing officer could ever properly be qualified to hear the case under the alleged circumstances, Ms. [REDACTED] did not provide any reason that supported the inferred motion to recuse, so I ruled and hereby rule that recusal was not appropriate and that I should proceed.

Regarding the second agenda item, the resolution meeting and my inquiry into possible settlement, Ms. [REDACTED] had several vehement objections inferring that the district habitually had not followed legal procedure, again repeatedly stating that procedural safeguards under IDEIA had not been provided. There was no indication that any agreeable settlement of any issue was desired or expected by the parent's representative, who indicated strongly that the parents felt unfairly forced into a defensive posture and expected to seek relief in federal court. Understanding that I would be unable to help the parties resolve the complex disputes Ms. [REDACTED] was attempting to describe, I then proceeded to address the third agenda item in an attempt to identify issues for the scheduled due process hearing.

It was apparent that, aside from repeated complaints about a continuing lack of any and all documentation, the primary issue voiced on behalf of the parent surrounded an alleged failure to provide procedural safeguards to the parents, allegations directly denied by the district. There were confusing allegations concerning the difference

between IDEA and IDEIA requirements and rampant violation of these by the district. When questioned repeatedly about any failure of the district regarding the education of, _____, involving anything related to the planned or actual special education of the child, Ms. _____ eventually made it very clear that there was no such allegation of any effect on the child's education attributable to any failure of the district. Ms. _____ repeatedly conferred with someone understood to be Mr. _____, who she said had taken off work to be present for the conference. After repeated opportunities to offer some allegation of some detrimental effect on the child's education attributable to the district, including my explanation that I might lack jurisdiction to proceed further without some such allegation, Ms. _____ provided none. The effect of her responses to my carefully repeated inquiries was that there had never been any problem with his education, and that the problem was with inappropriate and incomplete procedural safeguards and a general denial of the parent's legal rights by the district. Mr. Morris offered no issues for identification. The parent and representative had more than ample opportunity and were encouraged to present adjudicable issues to the hearing officer, but nothing further was provided.

Ms. _____ did energetically deliver numerous and various additional statements to the effect, if I understood her, that actually there was no request for due process pending at this time, or that there was a February 12, 2009 request that was not properly handled and that should be or should not be heard, or that there was no such February 12 request suspended verbally by Mr. _____, or demanding to see any March 24, 2009 due process request, and denying that there was any March 25, 2009 reopening and re-dating of the earlier request at Mr. _____'s instance, or that there was a pending due process request but it had been delayed improperly, and that there was no documentation available for the parents to respond to, and that as hearing officer I should not allow the district to get away with such behavior, and that the parents were put to a disadvantage and forced unfairly to respond to district allegations and various violations of their rights, etc.. As parent's representative, she did not relate any of these many serious accusations and spirited allegations to issues that I am able to resolve.

If, as alleged and denied, the district were to have failed to timely provide to the parent appropriate procedural safeguards, and if such a failure were to have resulted in denial of a Free Appropriate Public Education or other correctable substantial violation of the educational requirements of IDEA or IDEIA, which was apparently never alleged, then relief for _____ might be available under the jurisdiction of this hearing officer. Having been provided with no indication of any such violation, and hearing the parent's representative imply that relief for various wrongs would be sought in federal court, I suggested that it might be helpful if I were to dismiss this matter with prejudice so as to allow it to be appealed to federal court to review my opinion that there was no need for a due process hearing. After providing ample and extensive opportunity, I heard no offer of any issue over which I found further jurisdiction would exist with this hearing officer beyond this point.

It is my considered opinion, and I hereby find and rule, that without some complaint or allegation of some failure on the part of the district that affects or has affected the child's education adversely and needs or needed to be corrected by the district, I have no issue on which to rule in a due process hearing, and that there would be no relief available for me to properly grant under the circumstances. It follows, therefore, that no such hearing is needed and none should be held.

IT IS, THEREFORE, ORDERED that the due process request of _____, originally dated February 12 and suspended and revived at his request and re-dated March 25, 2009, should be and is hereby dismissed with prejudice. The DUE PROCESS HEARING previously scheduled for 8:30 A.M. Monday May 18, 2009 (through Thursday, if necessary), should be and is hereby cancelled.

Respectfully submitted,

ROGER CLIFFORD CLAPP
Due Process Hearing Officer

CC: Ms. Jean Bounds, Due Process/Mediation Coordinator, MDE (sent by email and U.S. Postal Service)