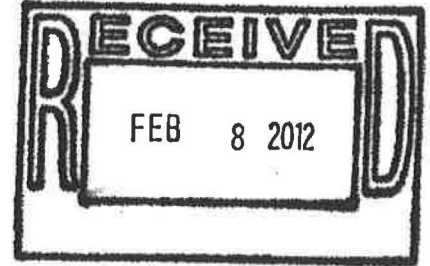


**IDEA DUE PROCESS HEARING REPORT**  
v LeFlore County School District

CHILD'S NAME: \_\_\_\_\_  
PARENTS: \_\_\_\_\_  
LOCAL SCHOOL DISTRICT: LeFlore County School District  
CASE NUMBER: **11292011-32**  
ADDRESS OF SCHOOL DISTRICT: LeFlore County School District  
1901 Hwy. 82 West  
Greenwood, MS 38930  
DATE(S) OF HEARING: January 27, 2012  
DATE OF REPORT: February 6, 2012  
HEARING OFFICER: David W. Walker, Ed.D  
33 Paul Watkins Drive  
Petal, MS 39465



**INTRODUCTION**

This is the due process hearing report for the case of \_\_\_\_\_ LeFlore  
County School District. The following substantive issues were before this hearing officer.

1. Alleged failure of the school district to conduct an evaluation and determine eligibility in a timely manner, and that this evaluation should include the following:
  - a. Evaluation of behavior (i.e., functional behavioral assessment)
  - b. Achievement testing
  - c. Speech/Language Assessment
2. Failed to provide procedural safeguards to the parent.

**FINDINGS and RULINGS**

**Issue 1**

Alleged failure of the school district to conduct an evaluation to determine eligibility in a timely manner, and that this evaluation should include the following:

- a. Evaluation of behavior (i.e., functional behavioral assessment)
- b. Achievement testing

## c. Speech/Language Assessment

**Requirements**

## THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004

P.L. 108-446

SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

(a) EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS-

(1) INITIAL EVALUATIONS-

(A) IN GENERAL- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

(B) REQUEST FOR INITIAL EVALUATION- Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) PROCEDURES-

(i) IN GENERAL- Such initial evaluation shall consist of procedures--

(I) to determine whether a child is a child with a disability (as defined in section 602) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(D) PARENTAL CONSENT-

(i) IN GENERAL-

(I) CONSENT FOR INITIAL EVALUATION- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

*Mississippi Code 1972, Annotated*

*§ 37-23-137. Parental consent, involvement, and participation in educational decisions; procedures for evaluations and testing; rights of parents to receive copies of child's educational records.*

*(1) Consent shall be obtained:*

*(a) Prior to initial evaluation;*

*(3) Written prior notice shall be provided to the parents of the child whenever a local educational agency proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to that child.*

*(5) Written prior notice shall include:*

*(a) A description of the action proposed or refused by the local educational agency;*

*(b) An explanation of why the local educational agency proposes or refuses to take the*

*action;*

(c) A description of any other options that the local educational agency considered and the reasons why those options were rejected;

(d) description of any other factors that are relevant to the local educational agency's proposal or refusal;

(e) A description of each evaluation procedure, test, record, or report the local educational agency used as a basis for the proposed or refused action;

(f) A description of any factors that are relevant to the local educational agency's proposal or refusal;

(g) A statement that the parents of a child with a disability have protection under the procedural safeguards under IDEA and, if the notice is not an initial referral for evaluation, notification of an individualized educational program meeting or notice for reevaluation, the means by which a copy of a description of procedural safeguards can be obtained; and

(h) Sources for parents to contact to obtain assistance in understanding the provisions under IDEA.

### Facts

1. [REDACTED] testified that he met with [REDACTED] of East Greenwood Elementary, on November 8, 2011. During this meeting he informed [REDACTED] that he was requesting that LeFlore County School District conduct an educational evaluation of his [REDACTED].
2. [REDACTED] testified that on November 8, 2011 he gave [REDACTED] of East Greenwood Elementary, a letter requesting that LeFlore County School District conduct an educational evaluation of his [REDACTED]. (see Exhibits P.3.1, and D.6.1).
3. [REDACTED] testified that he on November 21, 2011 he notified the school district in writing (see Exhibit 3.2) that he was requesting a due process hearing on the issue of failure to evaluate in a timely manner.
4. [REDACTED] testified that between the dates of November 9, 2011 when he requested an educational evaluation and November 21, 2011 when he requested a due process hearing he never received a Written Prior Notice from the school district, nor did he receive in writing a statement as why the district was denying his request for an educational evaluation.

5. [REDACTED] Special Education Director for LeFlore County School District during the time of the alleged violation, stated that he received [REDACTED] letter (Exhibit 3.1) two days after it was given to [REDACTED]. At that time he had district personnel begin to gather behavioral data on [REDACTED] behavior in the form of behavioral logs. However, he never sent a Written Prior Notice to [REDACTED], nor did he ever notify [REDACTED] in writing that their request for an educational evaluation was being denied by the district.

6. [REDACTED], Special Education Teacher, testified that she was unaware of whether LeFlore County School District ever sent a Written Prior Notice to [REDACTED]. She was also unaware of whether LeFlore County School District ever notified [REDACTED] that the district was denying their request for an evaluation.

**Finding**

Based on the above facts LeFlore County School District failed to conduct an evaluation to determine eligibility in a timely manner, or inform the parents in writing that the district was refusing to initiate an evaluation and the reasons for this refusal.

**Issue 2**

Alleged failure of LeFlore County School District to provide procedural safeguards to the parent.

**Requirements**

THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004

P.L. 108-446

SEC. 615. PROCEDURAL SAFEGUARDS.

(d) PROCEDURAL SAFEGUARDS NOTICE-

(1) IN GENERAL-

(A) COPY TO PARENTS- A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents--

- `(i) upon initial referral or parental request for evaluation;
- `(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6);
- and
- `(iii) upon request by a parent.

*Mississippi Code 1972, Annotated*

**§ 37-23-137. Parental consent, involvement, and participation in educational decisions; procedures for evaluations and testing; rights of parents to receive copies of child's educational records.**

**(6) A copy of the procedural safeguards established by the State Department of Education shall be given to the parents upon:**

- (a) Initial referral for evaluation;**
- (b) Each notification of an individualized education program meeting;**
- (c) Reevaluation; and**
- (d) Registration of a complaint under IDEA to the State Department of Education.**

**Facts**

1. [REDACTED] testified that when he met with [REDACTED] of East Greenwood Elementary, on November 8, 2011 to request an educational evaluation [REDACTED] did not give him a copy of the procedural safeguards, nor did he receive a copy after he notified the district that he was requesting a due process hearing.
2. [REDACTED] for LeFlore County School District during the time of the alleged violation, stated that he was unaware of whether [REDACTED] received a copy of the procedural safeguards at the November 8, 2011 meeting between [REDACTED] during which [REDACTED] requested an educational evaluation.
3. [REDACTED] Special Education Teacher, testified that she was unaware of whether [REDACTED] received a copy of the procedural safeguards at the November 8, 2011 meeting between [REDACTED] during which [REDACTED] requested an educational evaluation.

**Finding**

1. Based on the above facts LeFlore County School District failed to provide procedural

safeguards to the parents.

### SUMMARY OF DECISION and ORDERS

The federal regulations governing the implementation of the Individuals with Disabilities Education Improvement Act, and the Mississippi rules governing the implementation of this law are quite clear as to what actions are required by a school district when a parent has requested an educational evaluation. The rules and regulations state that the school district must obtain written prior notice from the parent(s) prior to beginning the evaluation. This notice must *include*:

*(a) A description of the action proposed or refused by the local educational agency;*

*(b) An explanation of why the local educational agency proposes or refuses to take the action;*

*(c) A description of any other options that the local educational agency considered and the reasons why those options were rejected;*

*(d) description of any other factors that are relevant to the local educational agency's proposal or refusal;*

*(e) A description of each evaluation procedure, test, record, or report the local educational agency used as a basis for the proposed or refused action;*

*(f) A description of any factors that are relevant to the local educational agency's proposal or refusal.*

In addition, the school district must provide the parent(s) with a copy of the procedural safeguards when a parent makes a *referral for evaluation*. In the case before this hearing officer it is clear that LeFlore County School District did not fulfill its obligations. Therefore, based upon the evidence presented, I hereby decide the following with regard to the issues:

1. LeFlore County School District failed to conduct an evaluation to determine eligibility in a timely manner, and
2. LeFlore County School District failed to provide procedural safeguards to the parents.

I hereby order, LeFlore County School District initiate an evaluation to determine eligibility and that they provide \_\_\_\_\_ with copies of the procedural safeguards.

### **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 of the Hearing Officer. If no appeal is made, the decision is binding on both parties. If the decision of the Hearing Officer is not fully implemented, the aggrieved party may enforce it through a proceeding in the appropriate court.

### **TRANSCRIPTIONS**

Copies of the official hearing transcriptions used in this hearing may be obtained from:

Susan Davis, Director  
Special Disabilities and Due Process  
Department of Special Student Services  
Mississippi State Department of Education  
P.O. Box 771  
Jackson, Mississippi 39205-0771

Respectfully submitted,



David W. Walker, Ed.D.  
IDEA Due Process Hearing Officer  
State of Mississippi

