

SPECIAL EDUCATION DUE PROCESS HEARING

██████████ v. Rankin County School District

Representing the parent: ██████████ and ██████████
Esqs.

Representing the Rankin County School District: James A. Keith and
T. Michael Cronin Esqs.

Individuals in full attendance:

James A. Keith	Attorney - S
T. Michael Cronin	Attorney - S
Ann Box	Legal asst. - S
Gretchen Cagle	Asst. Director of Special Ed. - S
██████████	Attorney - P
██████████	Attorney - P
██████████	Parent
S. John Obringer	Hearing Officer

Scheduled Witnesses:

Tonya Brackett
██████████

Patricia Powers
Betty Kibble
Pamela Harris
Carolyn Benson
Alvin Martin
James McIntyre
Melissa Spears
Kelly Coker
Robin Carlisle
Homer Burns
Jacob McEwen
Dawns Jones
Gretchen Cagle

RECEIVED
DEC 27 2007

DIVISION OF
TECHNICAL ASSISTANCE

Evidence: Please refer to District (D) Exhibits &
Parent (P) Exhibits (enclosed under separate cover).

A request for a Due Process hearing under Part B of the Individuals with Disabilities Education Act 2007 Amendment (IDEA) was received by the Rankin County School District on April 27, 2007. It was forwarded to the Mississippi Department of Education for processing. The hearing officer, Dr. S. John Obringer, was appointed by this agency and was forwarded the complaint. The

hearing officer read the complaint from the mother of [REDACTED], Mrs. [REDACTED]. The hearing officer then contacted Mrs. [REDACTED] to discuss the complaint and explain the procedures for a due process hearing. The hearing officer also contacted the Director of Special Education, Ms. Pamela Hopkins with the same agenda. On July 17, 2007, the hearing officer received an addendum/amendment to the request for a Due Process Hearing from [REDACTED], Esq., attorney for the parent. Because of summer vacations and schedule conflicts with the attorneys, the due process hearing was conducted on Sept. 26, October 5, October 22, and November 9, 2007 at the central office of the Rankin County School District. All parties agreed to this delayed date.

Background

[REDACTED] is a [REDACTED] year old student who resides within the Rankin County School District. He has been reported to have a double chromosome translocation causing mild to moderate mental retardation. The subject also has an orthopedic disorder in the form of poor arch development as well as significantly restricted language. [REDACTED] has the eligibility ruling of "EMR." [REDACTED] lives with his biological mother and stepfather in Brandon, Ms. The subject has received special education and related services for a number of years. His most recent public school placement was in a self-contained class with mainstreaming in a number of nonacademic subjects and school activities at Northwest Rankin Middle School. [REDACTED] transferred to St. Richard's Catholic School in February, 2007; he is presently attending this school.

The Issue/Complaint

The mother of [REDACTED] is requesting that the Rankin School District pay the tuition and associated fees for the "Special Kids" class at St. Richard's Catholic School.

The rationale for payment of tuition at St. Richard's Catholic School is summarized in general as follows:

- * The refusal to initiate a free appropriate public education due to the classroom teacher being placed on administrative leave with no qualified replacement
- * The refusal to initiate a free appropriate public education due to the student being traumatized by physical and emotional abuse by the classroom teacher and the use of IEP's that did not reflect accurate goals, progress, or attention
- * The failure to properly initiate the student's educational placement and evaluation and failure to provide a free and appropriate education.

Summary of testimony

The testimony in this case can only be generally summarized due to the length of the hearing (4 days) and the number of witnesses. Please refer to the 1,289 page complete transcript for detailed information.

The hearing began with a full description of the special education class at St. Richard's Catholic School, where _____ is currently attending. The mother next testified to the reason for the transfer of her child to St. Richard's school. She stated that her son _____ had been involved in a few incidents that were of great concern to her. Abbreviated examples include: an incident where _____ was "dragged" by the teacher, an episode in which _____ had a crick in his neck and had vomited more than once during the day before the mother was called; an episode where _____ had a pants-wetting incident and remained in the restroom for an hour or more partially naked and was significantly traumatized by this incident.

Both teacher assistants testified that the special education teacher, Dawn Jones, was generally disorganized, did not prepare lesson plans, and was rather rude and insensitive. They also both commented on the vomiting and pants-wetting episodes (referred to above). They reported speaking to the school administrators about the problems within the classroom.

The director of special education, Pamela Harris, testified that she had corresponded with Mrs. _____ concerning her dissatisfaction with _____'s placement and programming. She explained the job duties of her office as that of being a support staff, but not an individual in charge of hiring and other personnel issues. She indicated that the district was willing to reasonably modify any part of the IEP and respected Mrs. _____ as a concerned and supportive parent. Ms. Harris also indicated that her office had no authority in the withdrawal process or transferring of student records to a student's designated school. This process remains with the home school. Ms. Harris testified that the investigation into the alleged neglect and abuse was under the direct supervision of the school principal and her office was minimally involved.

A parent of an autistic student, who is also a teacher in the Rankin County School district, testified that his son made significant progress with Dawn Jones and he considered her a very good teacher.

The physical education teacher testified that _____ was able to participate in the physical education program. He was shown a paper with his name signed at the bottom stating the _____ was "dragged" from the gym in a forceful manner. He firmly denied that he wrote this document, did not sign it, and never saw it before. He was asked to produce his driver's license containing his

signature for comparison. The attorney for the parent stated that the signature on the driver's license was more of a printed signature; the physical education teacher testified that he always signs his name in that form (more printed than cursive). He also testified that if he had witnessed any abuse, he would have immediately reported this to the school administration.

The functional living skills teacher gave an overall summary of the goals and methods of implementation for the program. This type of class is where ___ would have been educated the following year, if he had not transferred. The speech/language pathologist testified that ___ received language therapy from her twice per week within the classroom. She stated that she did not witness anything out of the ordinary when she was conducting therapy within the class. She stated that the students seemed engaged. The therapist also stated that ___ carried out her suggestions to further promote language development in the everyday classroom setting.

The assistant principal testified that he was not directly responsible for this particular class, but did assist the principal when necessary and occasionally dropped by the class. He stated that after the reported restroom incident, he immediately came to the room to see if there was a lock on the restroom door; he stated that there was no lock.

The principal testified that he conducted the investigation into the alleged neglect and abuse of ___. He stated that he talked to other staff members and found no substance to the allegations and informed Mrs. _____ of this fact. He further stated that when criminal charges were filed, he placed Dawn Jones on administrative leave. At that point, after using interim substitutes, he hired a retired, certified special education teacher to finish out the year.

The classroom teacher, Dawn Jones, testified that ___, was a very social and likeable student. Her testimony centered around three main issues (revised IEP's, work relations with the aides, and the incident that brought about the neglect/abuse charge).

Ms. Jones stated that the advocate desired more specifics to be written into the revised IEP, which she thought had been accomplished. Ms. Jones stated that the relationship with the aides had not been positive for much of the year. She stated that the principal made an effort to clarify the specific duties of an aide and a teacher, but tension remained. Ms. Jones related an incident where ___ had vomited during his art class and the aide had called the parents to have him picked up. Ms. Jones went on to state that she told the aide that she needed to be informed when a call to a parent is made. She described the pants-wetting incident as rather routine; that is, that the mother was called, although a slight delay occurred in locating the correct phone number. Ms. Jones stated that the mother had arrived with clean clothes within twenty minute of the phone call. While waiting, she stated that she put a stake inside the restroom door to leave it slightly opened, so that ___ would not feel confined. Further testimony

reported that after _____'s mother arrived, she changed him and let him finish out the remainder of the day before he went to an after school program.

The final witness was the assistant director of special education. She testified that she assisted Dawn Jones in instituting a different routine for the class: that being a "station" approach where students move from one center to another for their areas of instruction. She further stated that lesson plans were being developed by the teacher, but with assistance from the two teacher aides, especially for the one student with a visual impairment. When directly asked about this process, she stated that there was "room for improvement" in the lesson plans, and that having teacher aides assisting in writing the plans is not something we recommend. The assistant director went on to say that the students were typically engaged in their assigned tasks. Further discussion centered upon the final revised IEP for _____. She stated that an advocate from Protection and Advocacy was present and after all the revisions had been made, the advocate and parent appeared satisfied with the revised IEP.

Discussion

The charge of neglect and abuse is a disturbing allegation with any child. The court decisions on this issue and how it affects IDEA are extremely sparse. This issue is undoubtedly better handled under criminal proceedings than under an IDEA due process hearing. Complaints of placement, evaluation, and professional qualification of special education professionals can be dealt with appropriately utilizing a due process hearing.

The Decision

The Rankin County Public School district has satisfied the hearing officer that the district has offered to provide _____ with a free appropriate public education (FAPE) through a reasonably calculated program by way of an initial IEP and, more so, through a revised IEP developed with an advocate from the Office of Mississippi Protection and Advocacy. The testimony of the administration of the Rankin County School District stated that a properly certified teacher was employed to complete the school year after the dismissal of the classroom teacher by way of administrative leave. Finally, the placement of a student in a private school, without any prior negotiation, due to the alleged actions of a single individual is an extreme remedy to correct an undesirable situation.

Therefore, the school district is not responsible for the cost of private placement at St. Richard's Catholic School. In summary, the hearing officer rules in favor of the Rankin School District with the following conditions:

If the parents decide to move their son, _____, back to the Rankin County School, they will be allowed to choose a school with an appropriate secondary curriculum in a different "zone," preferably a neighboring zone (the Rankin county schools are divided into separate zones or sectors).

Because of the contagion between the parents and Ms. Dawn Jones, _____ will not be taught or supervised in any situation by Ms. Jones.

Legal analysis

The following are the most relevant case law(s) and IDEA regulations used in this decision:

CITED:

This section of IDEA has been cited in cases involving private school placement. It has precluded the reimbursement for private school placement as the parents had arranged to enroll the child at a private school before requesting due process hearing or advising the school district of their specific objections to the IEP and intent to remove the child.

IDEA Section(a) (10) (C) (iii) (I) (aa), as amended, 20 U.S.C.A. Section 1412 (a) (10) (C) (iii) (I) (aa).

Comment:

_____ was enrolled at St. Richard's Catholic School before a due process hearing was requested and the student's IEP had been recently revised with the assistance of an advocate.

CITED:

The case of *Wise V. Ohio Dept. of Education*: The court ruled that parents were required to complain to the public school to afford the school a chance to remedy the IEP before removing their disabled child from the school. *Wise V. Ohio Dept. of Educ.*, 80 F.3d 177, 185 (6th Cir. 1996)

COMMENT:

The Rankin County Schools showed good faith in revising the student's IEP and wished to seek a reasonable remedy to accommodate the needs of the student.

CITED:

The case of *Berger V. Medina City School District*: The court denied private school placement due to the parent's failure to give adequate notice of their intention to withdraw the student from public school. *Berger v. Medina City School Dist.* 348 F.3d 513

COMMENT:

Mrs. (_____) withdrew her son from the public schools with little to no advanced notice.

CITED:

The case of DeFries V. Fairfax County School Board: Mainstreaming of handicapped children into regular school programs where they might have opportunities to study and to socialize with non-handicapped children is not only a laudable goal but is a requirement of the act. DeFries V. Fairfax County School Board, 882 F 2d 876,878 (4 Cir. 1989)

CITED:

Fairfax County Public Schools: The hearing officer denied placement in a private school as he determined that the public school placement was a less restrictive environment and offered the student greater opportunities for interaction with nondisabled peers. 20 IDELR 585; 20 LRP 2558

COMMENT on the above two cites:

While St. Richard's Catholic School is a well respected educational institution, it does not offer the mainstreaming and inclusion opportunities as do the Rankin County Schools.

CITED:

Berger V. Medina City School District: The court ruled that parents were not entitled to reimbursement for private school placement unless it offers their disabled child an education otherwise "proper" under IDEA.

Berger v. Medina City School Dist. 348 F.3d 513

COMMENT:

While St. Richard's Catholic School is generally highly respected in the community, it does not offer an array of related services or education in the least restrictive setting (LRE) which are both "proper" or mandated under IDEA. IDEA Section 601 et seq., as amended, 20 U.S.C.A. Section 1400 et seq.

CITE:

This section of the IDEA has been cited in cases involving private school placement: It provides that reimbursement for a private school placement may be reduced or denied if parents did not provide notice, either at the most recent IEP meeting prior to removal or in writing 10 business days prior to removal.

20 U.S.C. Section 1412(a)(10)(C)(iii)(I)(aa)

COMMENT:

According to testimony, the parents did neither of the above.

CITED:

The case of Burlington V. Dept. of Education: The court ruled that parents who "unilaterally" change their child's placement without the consent of state or local school officials do so at their own financial risk. Burlington, 471 U.S. at 373-74, 105 S.Ct. 1996

COMMENT: .

Self explanatory.

Right to Appeal:

Either party may make an appeal of this hearing officer's decision to the appropriate court of jurisdiction within forty-five (45) days of receipt of the written decision of the hearing officer. If no appeal is made, the decision is binding on both parties.

Signed this 26 day of December, 2007

S. J. Obring

S. J. Obring, Ed.D
IDEA Due Process Hearing officer
State of Mississippi