

**BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION**



COMPLAINANT

vs.

CASE NO. D03182024-24

Greenville Public School District

RESPONDENT

**DECISION AND ORDER**

**INTRODUCTION**

This is a proceeding pursuant to the Mississippi “*State Policies Regarding Children With Disabilities Under the Disabilities Education Act Amendment of 2004*”<sup>1</sup> (collectively referred to as the State Policies or the IDEA, herein), and involving a minor child (the Student or Child, herein), initiated by the mother (the Mother or Parent, herein) of the student by the filing of a Complaint for Due Process received by the school district and the Mississippi Department of Education on, or about, March 18, 2024.

**PARTIES**

The Student is a [REDACTED] attending an elementary school in the District. The current eligibility date is November 3, 2023 with the primary eligibility categories of Specific Learning Disability: Basic Reading, Math Calculation, Math Problem Solving, Reading Comprehension, and Reading Fluency<sup>2</sup>. The respondent is a Mississippi Public School District (District, herein) in which the student was enrolled during the 2023-2024 school year.

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<sup>1</sup> Policies were adopted under the authority of the “The Individuals with Disabilities Act” (IDEA), Public Law 101-476, reauthorized as “The Individuals with Disabilities Education Improvement Act of 2004” (IDEIA), Public Law 101-476 and 20 U.S.C. §1400 et. Seq., Title 34 of the Code of Federal Regulations, Part 300, and the Mississippi Standards and Procedures for the Education of Exceptional Children, Mississippi Code §§37-23-133 through 150. The hearing officer and the Mississippi Department of Education have jurisdiction over these proceedings pursuant to the statute and code sections cited.

<sup>2</sup> The complainant’s primary argument throughout the procedure was the child being denied a ruling of “DYSLEXIA” even after numerous attempts to explain the eligibility categories identified in IDEA.

## ISSUES AND RELIEF REQUESTED

The Parent filed a REQUEST FOR DUE PROCESS HEARING UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES ACT 2004 AMENDMENTS received by the Mississippi Department of Education March 18, 2024. The initial complaint identified two (2) issues to be considered:

- A. A Free Appropriate Public Education (FAPE) has not been provided due to the District's failure to provide appropriate services, failure to provide appropriately trained staff, and inappropriate IEP development issues.
- B. The Child's Education Placement – the District refused to initiate or change the Child's identification, evaluation, and/or educational placement in regards to the Child's dyslexia diagnosis.

An attachment to the initial complaint listed additional problems that included the District's failure to properly interpret and apply federal and state law, illegal and discriminatory IEP development process, concerted and intentional acts against the parents, and breach of a previous settlement agreement.<sup>3</sup> In December, 2023 an agreement was reached where the complainant "dismissed and released the District from all causes of action, suits, controversies, claims, and demands which arose out of this particular matter or the transactions, events, occurrences, acts, omissions, or failure to act." The dismissal of the previous request for due process was done with prejudice on January 16, 2024. Three months later a new complaint was issued.

In March, 2024 a new complaint was filed by the Mother to the Mississippi Department of Education. It is to be noted the Mother has total and complete custody of the Child and has not been involved in any communications with the District or the hearing officer since the most recent complaint was filed. All communication including teleconferences, IEP meetings, etc. have been conducted by the stepfather who claims he has Power of Attorney regarding educational decision pertaining to the Child. The stepfather submitted a Power of Attorney document that he had provided to a higher court regarding a discrimination suit he had filed against the school district that was only applicable to that court. The hearing officer asked the stepfather to submit a Power of Attorney form signed by a notary where the mother is authorizing him to act on her behalf in this case specifically. The hearing officer instructed the stepfather that a Power of Attorney or any court order granting him guardianship or custody would be acceptable to establish his standing in the case. The District raised issues with the lack of participation from the Mother and submitted a Motion to Dismiss claiming the stepfather does not have standing. The hearing officer was reluctant to grant the Motion to Dismiss waiting on the appropriate actions to be taken by the complainants. The stepfather insisted the law did not require him to provide such evidence. Also, the complainants did not have legal representation

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<sup>3</sup> A Settlement Agreement between the Parent and the District was entered into December 20, 2023. At that time the issues were settled and the Parent withdrew the complaint.

because the stepfather felt he had the ability and knowledge to represent the family without the expense of an attorney. The hearing officer strongly encouraged him to use some of the free resources available, but he continually refused.

After several months of negotiating, a hearing was scheduled for June 18, 2024. When the District submitted their documents for evidence five days prior to the hearing, the volume and complexity of the reports and evaluations caused the stepfather to ask for an extension so he would have time to prepare and respond. Because the stepfather is not an attorney and was representing himself and his family, an extension was granted with a new hearing date set for August 14, 2024. During the time between the initial hearing date and the date in August, the complainants turned their attention away from the Child and solely directed their efforts to the stepfather who insisted he had total control over decisions regarding the Child. The hearing officer gave two options that would settle the question of standing in this case. The stepfather could print out, free of charge, a Power of Attorney Form, fill it out with the Mother saying she grants him authority to make educational decisions for the Child and they both would have the form signed in front of a notary. Option two was to provide proof a judge had granted him guardianship or custody of the Child. The stepfather vehemently insisted the law did not require such proof. And, even if it did, the principle of *in loco parentis*<sup>4</sup> gave him these rights without any legal action.

July 31, 2024, the complainant once again asked for the hearing to be postponed in order to get a federal judge to make the decision regarding the stepfather's standing in the case. Instead of granting a Stay and the time it would take for a decision to be rendered, the hearing officer dismissed the case. The complainants have rejected numerous offers for resolution and continue to make arguments unrelated to the initial filing. One of the main issues that cannot be resolved is the creation of a new IDEA category of DYSLEXIA.

## CONCLUSION

The IDEA expressly allows a student's parents to request and participate in a due process hearing about the child's identification, evaluation, or placement, or question the district's provision of FAPE to the students<sup>5</sup>. The IDEA specifies who qualifies as a "parent" for the purposes of bringing due process complaint, which includes biological parents, adoptive parents, foster parents, guardians, or individuals legally responsible for a disabled child's welfare. However, the IDEA does not extend the definition of "parent" to include individuals holding power of attorney unless they are otherwise considered legally responsible for the child's welfare under the Act's provisions<sup>6</sup>.

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<sup>4</sup> *In loco parentis* involves care that is temporary and not to be likened to adoption. *Griego v. Hogan*, 377 P.2D 935, 955-56; *Coons v. Anderson*, 104 S.W. 3d 630, 636.

<sup>5</sup> 34 CFR §300.507(a)(1)

<sup>6</sup> *J.S. v New Your State Department of Corrections and Community Supervision*, 76 F 4<sup>th</sup> 32 (2<sup>nd</sup> Cir. 2023).

The District provided evidence that the Student's Multidisciplinary Evaluation Team (MET) and the IEP Committee met within the appropriate timeline of the Mother's initial request. The IEP Committee considered the appropriate evaluations and attempted to include the Mother in the development of the IEP. The District remains concerned as to why the Mother will not show up for the meetings, only the stepfather.<sup>7</sup>

One of the complaints is that the District does not have faculty trained in the Orton-Gillingham Method used to assist students with dyslexia. The IDEA does not require the use of a specific method and the District is not obligated to use only that method. Most dyslexia therapy programs include training in several methods, so any certified dyslexia therapist would qualify to teach those students. However, it is the District's responsibility to find the most highly qualified teachers as it relates to students with disabilities.

## **RULING**

Case Number D030182024-24 is **DISMISSED WITH PREJUDICE.**

## **RIGHT TO APPEAL**

Either party may make an appeal of this decision to the appropriate court within 30 days of receipt of the Final Decision and Order. If no appeal is made, the decision is final and binding on both parties.

So ordered, this the 5<sup>th</sup> day of August, 2024.

**David P Daves**

David P Daves, Ph.D.

Due Process Hearing Officer

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<sup>7</sup> MOTION TO DISMISS T.G. AS A PARTY IN THIS MATTER ON THE GROUNDS OF LACK OF STANDING AND TO LIMIT THE SCOPE OF HIS PARTICIPATION IN THE IDEA DUE PROCESS HEARING