

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

████ on Behalf of ██████

COMPLAINANT

vs.

CASE NO. D08212024-06

Lamar County School District

RESPONDENT

DECISION AND ORDER

INTRODUCTION

This is a proceeding pursuant to the Mississippi “*State Policies¹ Regarding Children with Disabilities Under the Individuals with Disabilities Education Act Amendment of 2004*” (collectively referred to as the State Policies or the IDEA, herein), and involving a child (the Student or Child, herein), initiated by the mother (the 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, August 21, 2024.

PARTIES

████ is an ██████-year-old high school ██████ who receives services under the *Individuals with Disabilities Education Act* (IDEA) with a primary eligibility of Specific Learning Disability (Reading Recognition, Reading Comprehension). The respondent is a Mississippi Public School District (District, herein) in which the student is enrolled.

¹ Policies were adopted under the authority of “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.

ISSUES AND RELIEF REQUESTED

The Parent filed a REQUEST FOR DUE PROCESS HEARING UNDER PART B of THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004 AMENDMENTS received by the Mississippi Department of Education August 21, 2024. During the course of a teleconferences held August 29, 2024, the parties agreed that the issues² in the Complaint appropriate for consideration requested were:

- A. A Free Appropriate Public Education (FAPE) has not been provided due to the District's failure to provide appropriate services while the student is enrolled in the alternative school, failure to systematically and consistently monitor and document key portions of progress to determine program effectiveness, and, inappropriate IEP development issues.
- B. Least Restrictive Environment – The District has refused to change the Child's educational placement from an alternative school located within the District.

ISSUE A: A Free Appropriate Public Education (FAPE) has not been provided due to the District's failure to provide appropriate services while the student is in the alternative school; failure to systematically and consistently monitor and document key portions of progress to determine program effectiveness; and, inappropriate IEP development.

In determining if a child is receiving a free appropriate public education (FAPE), the Fifth Circuit Court of Appeals established standards to be considered.³ The court held that FAPE is provided if: (1) the program is individualized on the basis of the student's assessment and

² It is to be noted the Parent claimed the District had unlawfully taken her phone and her vape she used for medical purposes. She also claimed the District was discriminating against her because of previous claims made with a different child. These issues were outside the purview of the hearing officer and were not considered.

³ *Cypress-Fairbanks Independent School District v. Michael F.* (5th Cir. 1997)

performance: (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative manner by key ‘stakeholders’; and, (4) positive academic and non-academic benefits are demonstrated.

Based on the evidence submitted, the District followed its Board policies in determining the Student being placed in the alternative school. The Student has access to the general curriculum and educational progress can be monitored and assessed. While the alternative school is not the same as the general classroom, the District provided evidence of a coordinated and collaborative manner in which additional academic assistance will be provided fulfilling the requirements of services specified on the IEP.⁴

The District provided substantial evidence that supported a coordinated and collaborative effort on the part of the teachers, assistant teachers, and administrative personnel from both the District and the school where the student was placed. IEPs, MET Document Forms, Re-evaluation Reports, Assessment Team Reports, and Manifestation Determination Review Forms contained signatures of appropriate personnel including the Guardian.

ISSUE B: Least Restrictive Environment – The District has refused to change the Child’s educational placement from the alternative school located within the District.

State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004 (§300.114) addresses educational placement in the Least Restrictive Environment (LRE) and in general states “(1) Each public agency in Mississippi must have in effect policies and procedures to ensure the LRE requirements as stated below are being met. (2) Each public agency must ensure that – (i) To the maximum extent

⁴ Testimony from special education teacher, behavior specialist, and Special Education Director.

appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

While part of the resolution request submitted by the Guardian was to have the Child moved to back to the school located within the District, no evidence was presented to support that least restrictive environment standards were not being met in the Child’s current placement in the alternative school. Evidence was also submitted that supported the testimony that the IEP Committee had appropriately considered and discussed least restrictive environment regarding the Child’s placement.⁵

CONCLUSION

There are limited substantive problems regarding the District’s responsibilities related to the claims brought forth by the hearing request, with a few procedural issues to be noted. (1) The District should develop a systematic and comprehensive delivery of services to the Student while in the alternative school as appropriate and to the greatest extent practical. No evidence was presented that any services were provided because the Student has refused to attend. (2) Develop a monitoring system that ensures the Student will have access and is making progress in the general curriculum as soon as possible. This system should include bi-weekly meetings between the District, the alternative school, and the Guardian including any representative she wishes

⁵ Testimony from Assistant Superintendent, Assistant Principal, Lead Teachers, Behavior Specialist, and Special Education Teacher.

with the purpose of setting specific goals/dates for the Student to return to the general education setting. (3) A Functional Behavior Assessment (FBA) should be conducted by the Student's current school, with a Behavioral Intervention Plan (BIP) developed if needed. While this is the only behavioral issue recorded for over a year, there was testimony of other concerns that are worth investigating and addressing.

Procedural deficits alone do not automatically rise to a denial of FAPE unless the procedural violation results in the loss of educational opportunities to the student or seriously infringes on the parent's meaningful participation. No evidence presented by the Guardian indicated these procedural defects resulted in a loss of educational opportunities for the Student or infringed on the Guardian's meaningful participation. Participation was evidenced by signatures provided by the District. IDEA requires that a school district provide a disabled student a "basic floor of opportunity whereby specialized instruction and related services which are individually designed to provide education benefit" are bestowed upon the disabled child. The District "need not provide its disabled students with the best possible education, nor one that will maximize the student's educational potential. Nevertheless, the educational benefit to which IDEA 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."⁶ Based on the exhibits presented, the District met its obligation.

RULING

The Guardian **failed** to sustain the burden of proof in the claim the Child had been denied FAPE based on the evidence presented.

⁶ Houston Independent School District v. V.P., 582F. 3d at 583.

The Guardian **failed** to provide any documentation supporting the request to move the Child because the current educational placement violated the Least Restrictive Environment (LRE) provisions of the *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004*.

Therefore, because no violations have been identified regarding FAPE, and no justifiable reason for a change of placement, the Guardian's request for relief is denied and the complaint is **dismissed**.

RIGHT TO APPEAL

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

So ordered, this the 11th day of September, 2024.

David P Daves

David P. Daves, Ph.D.
Hearing Officer