

BEFORE THE MISSISSIPPI DEPARTMENT OF EDUCATION
SPECIAL EDUCATION CASE NO. D05162019-27

HEARING DECISION AND FINAL ORDER

I. PROCEDURAL HISTORY

This matter was filed by Complainant (Petitioner), [REDACTED] on behalf of [REDACTED], Student, against Aberdeen Separate School District (Respondent) on May 16, 2019 and was assigned to this Hearing Officer by the Mississippi Department of Education. Mediation was convened in lieu of a resolution meeting on June 12, 2019. An Order to Extend Timeline for Good Cause was entered on July 30, 2019. The due process hearing convened on August 28, 2019. Petitioner proceeded *pro se*, and Respondent was represented by Hon. Nathaniel Armistad.

II. EXHIBITS ADMITTED INTO EVIDENCE

Exhibits were submitted by the parties and accepted by this Hearing Officer. These exhibits have been examined by this Hearing Officer subject to the issues presented in the due process complaint. The documents and materials have been in the constant possession of this Hearing Officer until the rendering of this decision. Hereafter, they will be delivered to the Mississippi Department of Education. The documents were examined and the weight given to each was based upon the contents of the document which was submitted and not on which party introduced said document. This Hearing Officer has examined the exhibits based upon the substantive nature contained therein for the purpose of making a decision in this matter.

III. BURDEN OF PROOF

The burden of proof in this matter is upon Petitioner as the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005).

IV. ISSUE PRESENTED

The sole issue presented in Petitioner's Complaint¹ was: "I am filing Due Process for Complaint No. 02072019-55 Findings for Allegation No. 2: Compliant"².

V. DISCUSSION OF THE ISSUE

The sole issue presented in Petitioner's Complaint was: "I am filing Due Process for Complaint No. 02072019-55 Findings for Allegation No. 2: Compliant". The following facts were asserted in Petitioner's Complaint: "[Student] did not verbally admit being bullied. [Student] stated that [Student] was not being bullied at the present time because [Student] was in alternative school." The following proposed resolution was requested in Petitioner's Complaint: "The school district be held accountable for not addressing the bullying issue according to school policy."

Student was in the [REDACTED] grade during the 2018-2019 school year and [REDACTED] years of age. Student was involved in the purchase of drugs with at least one other student in a car in the parking lot of the school where Student attended. Student testified at the hearing that another student pulled out a gun during the exchange. Student took the purchased drugs home that evening. Student then brought the drugs back to school the next day and distributed said drugs to at least one other student. Student testified at the hearing that Student lied to the school principal when initially questioned but later admitted distributing the drugs.

¹ Petitioner's Complaint was insufficient as a matter of law because Petitioner did not indicate on the complaint how the problems complained of resulted from a proposed or refused initiation or change as required. *See* 34 C.F.R. § 300.508(b)(5); *Miss. Admin. Code* 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.508(b)(5). However, Petitioner's Complaint was deemed sufficient because Respondent did not notify both this Hearing Officer and Petitioner in writing within 15 days of receipt of the due process complaint that said complaint was insufficient. *See* 34 C.F.R. § 300.508(d)(1); *Miss. Admin. Code* 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.508(d)(1).

² Petitioner filed a Formal State Complaint with the Mississippi Department of Education Office of Special Education on February 7, 2019. Issue No. 2, as ascertained by the Mississippi Department of Education Office of Special Education, was whether "[t]he [Aberdeen Separate School District] failed to address allegations of bullying that was impacting [Student's] FAPE." The Mississippi Department of Education Office of Special Education issued its findings in a written decision on April 5, 2019, finding the Aberdeen Separate School District compliant with Issue No. 2.

The request for due process hearing alleges that Student was bullied into buying the drugs in the school parking lot because another student pulled out a gun during the exchange. The Aberdeen Separate School District's Bullying Policy defines bullying as:

any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication, or any act reasonably perceived as being motivated by any actual or perceived differentiating characteristic that:

- (a) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property, or
- (b) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's education, including but not limited to educational performance, opportunities, or benefits.

Whether the Aberdeen Separate School District complied with its bullying policy is outside the scope of this Hearing Officer's jurisdiction, as this Hearing Officer only has authority to determine whether the Aberdeen Separate School District complied with the *Individuals with Disabilities in Education Act of 2004*, its implementing regulations, and the implementing state code. However, even if bullying did occur, it does not rise to the denial of a Free, Appropriate Public Education guaranteed to Student by the *Individuals with Disabilities in Education Act of 2004*. The *Individuals with Disabilities in Education Act of 2004* "requires an educational program reasonably calculated to enable a child to make progress in light of a child's circumstances". *Andrew F., etc. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988, 1000 (2017). Furthermore,

. . . [T]he IDEA requires that children with disabilities receive education in the regular classroom "whenever possible." . . . (citing §1412(a)(5)). When this preference is met, "the system itself monitors the educational progress of the child." . . . "Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material." Progress through this system is what our society generally means by an "education." And access to an "education" is what the IDEA promises. *Ibid*. Accordingly, for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be "reasonably

calculated to enable the child to achieve passing marks and advance from grade to grade.”

Id. at 999, citing and quoting *Board of Educ., etc. v. Rowley*, 458 U.S. 176 (1982). None of the testimony at the hearing demonstrated that Student’s ability to progress from grade to grade was impacted. The exhibits show that Student did progress from grade to grade during the applicable statute of limitations. Therefore, this Hearing Officer finds that Student was not denied a Free, Appropriate Public Education pursuant to the *Individuals with Disabilities in Education Act of 2004*.

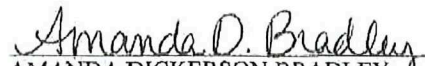
VI. SPECIFIC RULINGS AND CONCLUSIONS

- A. This Hearing Officer finds that, based upon the preponderance of the evidence, Respondent did not deny Student a Free, Appropriate Public Education mandated by the *Individuals with Disabilities Education Act of 2004*.
- B. This Hearing Officer finds that, based upon the preponderance of the evidence, no form of relief is warranted.

VII. FINAL ORDER AND NOTICE OF APPEAL RIGHTS

This Decision constitutes a Final Order in this matter. Any party dissatisfied with the decision may bring an appeal pursuant to 20 U.S.C. §1415(i)(2).

SO ORDERED this the 13th day of September, 2019.


AMANDA DICKERSON BRADLEY
HEARING OFFICER

cc: Ms. [REDACTED]
[REDACTED]
[REDACTED]
Hon. Nathaniel Armistad