

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

PARENT,¹ ON BEHALF OF HER CHILD

COMPLAINANT

v.

Case No. D10112024-12

CLEVELAND SCHOOL DISTRICT

RESPONDENT

DECISION AND ORDER

1. This matter having come before the undersigned upon the Complaint for Due Process of the Complainant herein, the undersigned, having considered the pleadings and the evidence submitted at the hearing of this matter, the arguments and statements of the parties, and the applicable law, finds as follows:

2. This is a proceeding pursuant to the Mississippi “State Policies Regarding Children with Disabilities Under ‘The Individuals with Disabilities Education Act Amendments of 2004’”² (collectively referred to as the Policies or the IDEA, herein), and involving a Student (referred to as the Student or Child, herein) of a public school district of the State of Mississippi situation in Bolivar County, Mississippi.

¹Because the Student is a minor the Parent's name and the name of the Student on whose behalf the Parent filed the Complaint for Due Process are set forth on a cover sheet to this Order that is to be a part of the original of this Order maintained in the administrative record for this case by the Mississippi Department of Education but is not to be reproduced or disseminated outside that administrative record.

²Which Policies were adopted under the authority of “The Individuals with Disabilities Education Act (IDEA),” Public Law 101476, reauthorized as “The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA),” Public Law 108-446 and 20 U.S.C. Sections 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 proceeding pursuant to the statutes and code sections cited. The record, left open at the conclusion of the presentation by the parties of their respective cases, is now closed.

PARTIES

3. The Complainant, the Parent of the Student, instituted these proceedings by filing a Complaint for Due Process with the Mississippi Department of Education on or about October 11, 2024, in the interest of Complainant's child, a [REDACTED] minor, born on [REDACTED]. The Child resides with the Complainant and is a student at the District High School.³ The School District is a public school district situated in Bolivar County, Mississippi, and organized under the laws of the State of Mississippi, and in which that minor child on whose behalf Complainant filed the Complaint in this matter is enrolled. The Complaint was received by the District on October 16, 2024.

PREHEARING

4. The Complaint in this matter is some 14 pages long and largely alleges claims and violations of laws over which I, the undersigned hearing officer, have no jurisdiction (e. g., Civil Rights claims, defamation, violations of the Americans with Disabilities Act and the federal Rehabilitation Act). A prehearing conference was set in this matter for November 7, 2024, one purpose of which was to identify specifically every issue to be presented at the hearing.

5. Prior to that conference, by letter dated November 5, 2024, I summarized the allegations of the Complaint on an item by item basis and identified for purposes of the prehearing conference what issues alleged in the complaint appeared to fall within my jurisdiction as hearing officer. I identified the following three issues I found to be within that jurisdiction:

A. Whether the District violated procedural requirements of the IDEA by failing to follow required timelines, failing to provide procedural safeguards, and failing to provide notice of IEP [Individualized Education Program] meetings to Parent resulting

³The [REDACTED] school is identified on the cover sheet hereto.

in a denial of a Free Appropriate Public Education (FAPE) to the Student;

B. Whether the District denied FAPE by failing to provide assistive technologies or appropriate services including denying access to communication devices, educational software, or other assistive technologies required by the Student's IEP; and

C. Whether the Student District denied FAPE by denying the Parent's request that the Student be retested when the Student first entered the District.

6. In my letter of November 5, 2024, I noted that my delineation of those three issues was in no way a finding of fact or conclusion of law binding on the parties but my effort to simply matters for the prehearing conference. I further stated that I would reconsider my delineation of the issues at the prehearing conference should the parent believe I had omitted any issues in the complaint over which I had jurisdiction.

7. A Prehearing Conference was held on November 7, 2024, at which time the Parent said she had no disagreement with my summary of the issues for hearing as set out in my letter to the parties of November 5, 2024, and agreed that the issues to be decided in this matter were those as stated above.

8. Following the prehearing conference I, the undersigned hearing officer, confirmed with the parties by letter dated November 8, 2024, that the parties agreed that those three issues were the sole issues to be considered at the hearing.

THE HEARING AND WITNESSES

9. A hearing was held in this matter on November 19, 2024, in the Board Room of the Respondent School District in Cleveland, Bolivar County, Mississippi. The Complainant called fourteen witnesses.⁴

10. Contract consultant and school psychologist for the District, Ms. Emily Phillips, testified that the Student became a student in the District in October 2023. The Student [not a

⁴The record in this matter, left open pending completion of the transcript, is closed.

special education student when the Student entered the District] was first referred to Ms. Phillips on January 8, 2024, for a functional behavioral assessment (FBA) and a behavior intervention plan (BIP) based on that FBA. Ms. Phillips also testified that the Parent requested testing for emotional and behavioral services sometime in February 2024. Ms. Phillips testified that School staff believed Social Emotional Learning [SEL] sessions would be beneficial to the Student. SEL sessions focus on “social skills, anxiety, [and] anger management with regular ed[ucation] students” in an effort to curb undesirable behaviors in school. Ms. Phillips began Social Emotional Learning Sessions with the Student and continued them until April 2024. Ms. Phillips further testified that after a comprehensive evaluation of the Student was conducted the Student was identified on April 9, 2024, as having an emotional disability making the Student eligible for special education services. The evaluation found – and the IEP team decided – that the student had no problem communicating and did not require any assistive technology or software for facilitating communication, so none was included in the Student’s IEP. The student was provided with a personal computer (Chromebook) when the parent requested it.

11. District world history and U. S. history teacher Tasha Robinson testified that she had no behavior issues with the student, but that the Student “did not turn in any assignments [the Student] was supposed to turn in,” despite the fact that the Student was given accommodations, including more time to complete the assignments.

12. Witness Mary Washington, a secondary inclusion teacher with the District, testified that she attended one IEP meeting for the Student in April 2024 before leaving the District on medical leave in May 2024. She returned to the District in October 2024 but did not take part in the writing of any IEP for the Student in September or October 2024.

13. Lashundreya Townsend, [REDACTED] grade counselor for the Cleveland School District,

testified that she attended only one IEP meeting for the Student and that was during the 2024-2025 school year. She testified that she provided no counseling services for the Student and had not seen the Student during the 2024-2025 school year.

14. Legarious Jefferson testified that he is the counselor for the [REDACTED] grade at the School, but that he had been “dismissed from having any contact with” the Student in January 2024. He was given that instruction by the school administration. He did not remember the specific person who so instructed him nor did he know the reason for the instruction. He did not attend any IEP meetings for the Student.

15. Nakita Goins, a [REDACTED] grade counselor and lead counselor for the school, testified that she recalled attending an IEP meeting for the Student but did not remember the date and did not remember whether she attended more than one IEP meeting. She did not provide counseling services for the Student. She did not remember why she attended the Student's IEP meeting she attended.

16. Joe Davis, assistant principal, also testified. The Parent asked the witness if he was assistant principal for the entire school, to which he replied, “No”; that he was assistant principal for the [REDACTED] grade. The Parent had no further questions; neither did the District. The witness was excused.

17. Frederick Ford, assistant principal for the school's [REDACTED] and [REDACTED] grades, testified that he attended the Student's April 26, 2024, IEP meeting as an administrator and in place of Ms. Johnson because the Parent “had issues with Ms. Johnson” and didn't want Ms. Johnson to attend that meeting. He also testified that the Parent did not want Mr. Davis or Mr. Jefferson “on the IEP.” He further testified that the Student was not completing assignments and not logging in to the computer software used as a homebound student so he suggested eliminating some of

the standards to give the student “fewer standards so that [the student could] complete” assignments. On examination by the District, the witness identified an acknowledgement of the receipt of the IDEA procedural safeguards on September 16, 2024, by the parent. He agreed that the procedural safeguards were sent to the Parent several times and that the Parent signed the document (acknowledging receipt). He testified that assistive technology was not included in the IEP, was not requested and wasn't denied.

18. Ashondra Johnson, in her third year as principal of Cleveland Central High School, testified that at the request of District special services director Markeita Brinkley she was not a member of the Student’s IEP committee. She was aware that the Student was signed up for special education services. She was notified of the Parent's request to have the Student tested. She was not aware the student began the 2024-2025 school year as a virtual student.

19. Ms. Markeita Brinkley, special services director for the District, testified that her job duties included “special education, health services director, and dyslexia.” She testified that the Student was not a special education student when the Student first came into the District. She recalled the parent requesting services for the Student in January 2024. She did not recall the request being in writing. The student had infractions in the school in February 2024 and was going before the disciplinary committee. Because the Complainant requested it, Ms. Brinkley went to her supervisor and requested that services be provided to the Student as if the Student was a student with a disability. That request resulted in the virtual student option being made available to the Student. The District did not send the Student to the alternative school. Instead, the Student began as a virtual student in February 2024, before the Student was ruled a student with a disability under IDEA. The District received a request for an assessment from the Complainant on March 4, 2024, and the student received an eligibility decision on April 9, 2024.

and became a special education student April 9, 2024. She testified that the student received the Student's first IEP April 26, 2024. The IEP team found no need for assistive technologies or software and the IEP required none because the student had no communication issues. No communication devices, educational software, or other assistive technologies were required by the Student's IEP. The Parent did request a Chromebook computer which was provided to the Student the same day it was requested. She further testified that there has never been a request to retest the student. She testified that the District only has to provide procedural safeguards one time per academic year. However, she said that the District tries to do it more often than that. She further testified that Ms. Washington was the Student's designated special education teacher. Ms. Washington left on medical leave on May 1, 2024. The District believed that Ms. Washington would return shortly so no IEP meeting was held in May 2024. Ms. Washington returned to school August 5, 2024.

20. Kim Wardlaw, assistant principal at the Student's school, testified that he is responsible for [REDACTED] grade discipline and curriculum and instruction for the entire school and that he oversees Edgenuity, the computer platform used by the student for virtual work. He set up Edgenuity for the Student's use. He did not attend any of the Student's IEP meetings because he was "not on the list."

21. Inclusion teacher Lynn Rush testified that she works with students being mainstreamed, as opposed to those in self contained classrooms separated from the general education track. She believed she became part of the Student's IEP team "sometime in August [2024]." She believed she was included because she was supposed to provide inclusion services to the Student via Google Meet.

22. The testimony of witness Charles Johnson, Deputy Superintendent for the

District, consisted primarily of recalling that the Parent spoke to him and the Superintendent about the Student's "special education services and progress" earlier in the fall 2024 school term and introducing the Parent to Edgenuity in February 2024.

23. Joni Hernandez-Speck, Department Chair and Lead Special Education Teacher, who also serves as a resource and inclusion teacher, testified that she holds meetings with her team once or twice a month. She worked with the Parent on the use of Edgenuity (a virtual education platform) for extended year services (ESY) for the Student in June 2024. Extended School Year services are offered to any student with an IEP. ESY is "mainly for extra help," she said. Ms. Hernandez-Speck testified that the Parent told her that her services were not needed because the student worked better with persons with whom she was familiar. Ms. Hernandez-Speck said she attended three IEP meetings for the 2024-2025 and participated in the writing of the Student's IEP. She said that typically IEP meetings begin with introductions and then a discussion of the procedural safeguards, which are signed to show they were received. She discussed the procedural safeguards with the Parent at the September 15, 2024, meeting and presented the Receipt of Procedural Safeguards, which the Parent signed. The Parent was given a full procedural safeguards packet at that time. She discussed the procedural safeguards at the October 1, 2024, meeting but did not give the parent another copy at that time. She further testified that the full procedural safeguard packet typically is given once a school year or upon parent request. The full packet was given September 16, 2024, and the procedural safeguards were discussed at the October 1, 2024, meeting. Ms. Hernandez-Speck further testified that, typically, assistive technologies are "those that help with communication, such as sound boards, switches, devices in which our students can – if they're nonverbal, they can type in what they would like to say, and it will read it aloud." She testified that the Student did not require

assistive technologies. She also testified that she has not received a request to retest the student.

24. After the Parent finished calling the foregoing witnesses, the hearing officer asked her if she wanted to testify, and she declined the opportunity. The District did not call any additional witnesses.

25. I found all the witnesses to be credible.

DISCUSSION

26. The purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living ... [and] that the rights of children with disabilities and parents of such children are protected.” 20 U.S.C.A. § 1400(d)(1)(A)-(B). States receiving federal funds must make a free appropriate public education [FAPE] available to all children with disabilities living within the state. *Forest Grove Sch. Dist, v. T.A.*, 129 S. Ct. 2484, 2487 (2009). Each child with a disability must be evaluated by the local or state educational authority in order to develop a written “individualized education program” (IEP) including special education and related services. 20 U.S.C.A. § 1414(d).

27. In Mississippi, an IEP committee (sometimes called an IEP team) at the local education agency [LEA], in this case, the District, develops the student’s IEP [Individualized Education Plan]. Policies, §§ 300.320-300.321. IEP committees are composed of various teachers and related service providers from institution in which the student is placed at the time. The student’s parents also are members of the IEP committee. Policies, § 300.321. If the parents disagree with an IEP committee decision, they may file a due process complaint specifying the grounds of their disagreement. Policies, § 300.507.

28. The Parent, as challenger of the District's actions in this case, has the burden of proof as to all issues presented in this matter. *See, Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 808 (5th Cir. 2003).

29. In deciding whether the requirements of the IDEA have been met and FAPE provided, the first question to consider is whether the school district complied with the procedures of the IDEA. *Buser v. Corpus Christi Independent. School District*, 51 F.3d 490, 492 (5th Cir. 1995). Procedural violations, in and of themselves, do not amount to a denial of a free appropriate public education [FAPE] unless the violations result in the loss of educational opportunity to the student or seriously infringe upon the parents' opportunity to participate in the provision of FAPE to the student. *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003); State Policies, § 300.513. Second, the hearing officer asks a substantive question: was the IEP "reasonably calculated to enable the child to receive educational benefits." *Buser v. Corpus Christi Independent. School District*, 51 F.3d 490, 492 (5th Cir. 1995), citing *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982).

30. In this case, as noted above, the Complainant's issues were three. The first and third issues were procedural ones. The first was whether the District violated procedural requirements of the IDEA by failing to follow required timelines, failing to provide procedural safeguards, and failing to provide notice of IEP meetings to Parent resulting in a denial of a Free Appropriate Public Education (FAPE) to the Student. The Complainant provided no evidence to support this issue. To the contrary, witnesses and documentary evidence established that the procedural requirements of the IDEA were met, the required notices of procedural safeguards were provided to the Parent. I find that the Complainant failed to meet her burden of proof as to

this issue. It is unnecessary to enter into an analysis to determine whether the alleged procedural violations deprived the Student of FAPE because the testimony and documentary evidence established that no such violations occurred.

31. The Complainant's other procedural issue was the contention that District denied FAPE by denying the Parent's request that the Student be retested when the Student first entered the District. I find no evidence that the District denied any request by the Parent to test or retest the Student or that the District failed in any legal obligation to test the Student. I find that the Complainant has not met her burden of proof as to this issue.

32. The Complainant's sole substantive issue alleged that the District denied FAPE by failing to provide assistive technologies or appropriate services including denying access to communication devices, educational software, or other assistive technologies required by the Student's IEP. This issue does not question the appropriateness of the IEP itself. Rather, it alleges that provisions of the IEP were not followed. The witness testimony as summarized above, as well as documentary evidence in the form of IEPs and draft IEPs presented in the course of the hearing established that the Student's comprehensive evaluation did not find any communication devices, educational software, or other assistive technologies to be needed by the Student because the Student did not have communication difficulties and, accordingly, that there were no requirements in the Student's IEP(s) for any communication devices, educational software, or other assistive technologies. Moreover, while the Complainant declined to be a witness, she did state in the course of her examination of witness Fredrick Ford that the Student "didn't need assistive technology, now that I know what it means. . . ." It appearing that this issue was the result of a misunderstanding by the Complainant of what "assistive technology" meant and/or that the Complainant was mistaken as to the contents of the IEP in that regard, I

find that no further analysis of this issue is needed and that the Complainant has failed to meet her burden of proof as to this issue.

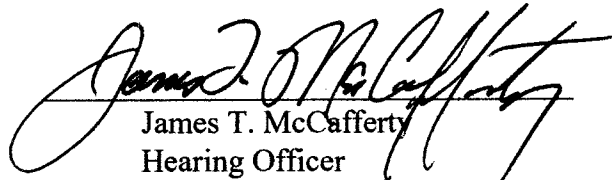
CONCLUSION

33. The evidence established that the Student entered the District in October 2024 as an ordinary education student. When discipline problems arose that semester and at the beginning of the next, the District responded, first seeking the least punitive means of dealing with the misbehavior and then conducting a comprehensive evaluation of the Student resulting in the Student being identified as eligible for special education because of an emotional disability. An IEP was created at that time for the Student based upon that Comprehensive Evaluation.

34. The foregoing considered, I find and conclude that the Complainant failed to meet her burden of proof as to the issues presented and that the evidence establishes no denial of FAPE by the Respondent District. Accordingly, the Complaint is dismissed and the relief requested therein denied. Any pending motions and/or other requests for relief are denied.

35. A party aggrieved by this Decision and Order has the right to appeal by initiating a civil action in a court of competent jurisdiction as set forth in the State Policies, § 300.516.

37. So ordered, this the 30th day of December 2024.


James T. McCafferty
Hearing Officer