

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

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████████████████████

COMPLAINANT

vs.

CASE NO. D10092020-05

Hinds County School District

RESPONDENT

**DECISION AND ORDER**

**INTRODUCTION**

1. This is a proceeding pursuant to the Mississippi “*State Policies<sup>1</sup> 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 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, October 09, 2020.

**PARTIES**

2. The student is a ██████████ homeschool student living within the Hinds County School District. His eligibility categories include language/speech impaired-articulation, and specific learning disability (SLD)-basic reading. The respondent is a Mississippi Public School District

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<sup>1</sup> 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.

(District, herein) in which the student was enrolled during the 2018-2019 and 2019-2020 school years.

### **ISSUES AND RELIEF REQUESTED**

3. 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 October 09, 2020. During the course of four (4) prehearing teleconferences held June 30, September 1, October 9, and November 5, 2020, the parties agreed that the issues 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, failure to systematically and consistently monitor and document key portions of progress to determine program effectiveness, and, inappropriate IEP development issues.
- B. The Child's Educational Placement – The District has refused to change the Child's educational placement and provide the transportation to and from the school within the Hinds County School District.

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

6. In determining if a child is receiving a free appropriate public education (FAPE), the Fifth Circuit Court of Appeals established standards to be considered.<sup>2</sup> The court held that FAPE is provided if: (1) the program is individualized on the basis of the student's assessment and 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.

7. In considering the program being individualized based on assessment, the District provided sufficient evidence concerning assessments used in developing an appropriate IEP for the Child.<sup>3</sup>

8. Based on the evidence submitted by the District, the IEP was appropriate and reasonably calculated to ensure the Child to make educational progress in the general curriculum *C.G. v. Waller Independent School District, 70 IDELR (5<sup>th</sup> Cir. 2017)*, and the services were provided in the least restrictive environment. It is to be noted the Parent declined speech/language related services, a functional behavior assessment (FBA), and counseling services when the IEP committee met January 10, 2020 upon the Child's return to school after a one-year suspension.<sup>4</sup>

9. The District provided substantial evidence that supported a coordinated and collaborative effort on the part of the teachers, assistant teachers, and administrative personnel. IEPs, Permission for Additional Testing, MET Document Forms, Re-evaluation Reports, Assessment Team Reports, and Manifestation Determination Review Forms contained signatures of appropriate personnel including the Parent.<sup>5</sup>

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<sup>2</sup> *Cypress-Fairbanks Independent School District v. Michael F.* (5<sup>th</sup> Cir. 1997)

<sup>3</sup> District Exhibit 4, p 1; pp 3-5; pp. 6-17

<sup>4</sup> District Exhibit 6, p. 1

<sup>5</sup> District Exhibits 3, 4, 5, 6, 7, 15, 16

**ISSUE B: The Child’s Educational Placement – The District has refused to change the Child’s educational placement and provide the transportation to and from the school within the Hinds County School District.**

10. §300.114 of the *State Policies Regarding Children with Disabilities under the Individuals with Disabilities Education Act Amendments of 2004* 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 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.”

11. While part of the resolution request submitted by the Parent was to have the Child moved to a different school and promoted to a different grade, no evidence was presented to support that least restrictive environment standards were not being met in the Child’s current placement. Grade placement and promotion/retention are administrative decisions, and not decisions reserved for the IEP Committee and are not appropriate for a due process complaint under IDEA.

**CONCLUSION**

12. It is to be noted that both parties were to have submitted to me and the opposing side all documents, including Form 5 and Form 7 identifying those who may be called as witnesses, by the end of the business day Friday, December 11, 2020. The District submitted sixteen (16) exhibits as well as Form 5 that included twelve (12) potential witnesses. The Complainant failed to provide any documentation or potential witness list. A document entitled “The Nature of the Complaint” had been sent to me December 1, 2020 that included six (6) resolution requests. Three (3) of the requests/allegations<sup>6</sup> fail to include an appropriate objection of matters described in 34 C.F.R. §300.507 (“A parent or public agency may file a due process complaint on any of the matters described in 300.503(a)(1) and (2) (relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child’’)). Evidence of the additional three requests<sup>7</sup> were already being satisfied by the District and supported in Exhibits 1-16.

13. While there are limited substantive problems regarding the District’s responsibilities related to the claims brought forth by the hearing request, a few procedural issues are noted. (1) the District should develop a more systematic and comprehensive delivery of services to students

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<sup>66</sup> #1. I am requesting that the [REDACTED] submit a Corrective Action Plan (“CAP”) that adequately addresses the violations noted in this complaint. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as t Student and all other students with disabilities for whom [REDACTED] is responsible.

#3. Provide workshops and seminars concerning developing IEP (Goals, transitional goals...) for [REDACTED] School students based upon assessment data as well as cultural relevance.

#6. Change of [REDACTED] school placement within the Hinds County School District and that transportation is provided to and from the school by Hinds County School District.

<sup>7</sup> #2. Design an [REDACTED]’s IEP to address his needs in a coherent and connected manner.

#4. Provide access to [REDACTED]’s work samples quizzes, district assessments, progress monitoring documentation, grade aligned with work samples weekly.

#5. Comply with Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. 300.613(a) that require school districts to permit parents to inspect and review any education records relating to their child that are collected, maintained, or used by the agency without necessary delay, but in no case more than 45 days after the request has been made.

homebound and/or homeschooled, as appropriate and to the greatest extent practical. COVID-19 has raised the bar to this challenge, but IDEA does not make any provisions for pandemics, natural disasters, war, etc. Specialized instruction, accommodations, and related services must be delivered as specified in the IEP. (2) Develop a Progress Monitoring System that ensure students with IEP and their parent(s) receive the appropriate review and feedback stipulated in the IEP.

14. 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.<sup>8</sup> No evidence presented by the Parent indicated these procedural defects resulted in a loss of educational opportunities for the Child or infringed on the Parent’s meaningful participation. 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 minimus; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement.<sup>9</sup> Based on the exhibits presented, the District met its obligation.

15. Based on the evidence presented by the District, and the Parent’s refusal to submit documentation supporting the claim, the Parent **failed** to sustain the burden of proof in the claim the Child had been denied FAPE. To the contrary, the evidence presented by the District indicated appropriate, timely evaluations that had been conducted, communication with the

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<sup>8</sup> *Renee J. v. Houston Independent School District*, 2019 US App. LEXIS 1454, 13-14 (5<sup>th</sup> Cir. 2019) (quoting *E.R. v. Spring Branch Independent School District* 2018 US App. LEXIS 33407, 2018 WL 6187765 (5<sup>th</sup> Cir. 2018)).

<sup>9</sup> *Houston Independent School District v. VP.*, 582F. 3d at 583.

Parent throughout the evaluation process, records of minutes from the Multidisciplinary Education, Team, and the IEP Committee.

16. The Parent **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*.

17. In addition to the lack of evidence to support the claims, the Child has been withdrawn from the Hinds County School District making it impossible for the District to take any corrective actions concerning any procedural issues. Therefore, because no violations have been identified regarding FAPE, and no justifiable reason for a change of placement, the Parent's request for relief is denied and the complaint is **dismissed**.

## **RIGHT TO APPEAL**

18. 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 15<sup>th</sup> day of December, 2020.

**David P Daves**

David P. Daves, Ph.D.  
Hearing Officer