

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



COMPLAINANT

vs.

CASE NO. D04282022-11

Jackson Pubic 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 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, April 28, 2022.

PARTIES

The student is an eleven-year-old fifth grader who is a student in the academic performance arts class at the District’s APAC school. The student’s initial comprehensive evaluation was conducted on June 29, 2016. The preponderance of data supported a disability of

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.

Autism. The three-year reevaluation conducted March 31, 2020 continued to support the disability of Autism with a secondary ruling of Language/Speech-Articulation.

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 April 28, 2022. During the course of two (2) prehearing teleconferences the parties agreed that the issue in the Complaint appropriate for consideration requested were:

Due to staff and student bullying, a Free Appropriate Public Education (FAPE) has not been provided.

CONCLUSION

Case No. D04282022-11 is DISMISSED on the grounds of FAILURE TO MEET IDEA CONTENT REQUIREMENTS stipulated in 34 C.F.R. §300.508(d)(1).

Based on the information provided by the parent and the District during two (2) lengthy teleconferences, the Request for Due Process Hearing filed with the Mississippi Department of Education April 28, 2022 is insufficient in providing a description of the nature of the problem, details regarding the complaint, and any proposed or refused request made to the District. The complaint must be clear and specific as to the identified concerns and should be stated in a manner that allows the District the opportunity to address the issues. *The Individuals with*

Disabilities Education Act requires both parties be afforded the opportunity to “...have an awareness and understanding of the issues forming the basis of the complaint.” As presented in the request for a hearing, the District has been denied adequate notice and understanding of the issues, the opportunity to defend their actions, or attempt to resolve the dispute prior to conducting a hearing.

Upon receipt of the Complaint, the District held a resolution meeting attended by the parent during which time the ²“...Parent did not identify the victim or perpetrators in the complaint or the detailed facts relating to the problem.” The Parent was unable to answer these same questions during the pre-hearing teleconference asked by the hearing officer. The District submitted evidence that the IEP Committee convened numerous times during the 2021-22 SY to review/revise the IEP to address parent concerns, bullying allegations, and support for the student and her classroom teachers. The District provided evidence of the following actions taken:

May 12, 2022 – Resolution meeting

April 25, 2022 – IEP Committee convened to develop student’s annual IEP and review and revise if necessary.

March 25, 2022 – IEP Committee convened to review and revise student’s behavior support.

February 2, 2022 – The IEP Committee convened to discuss Extended School Year (ESY) and review and revise the IEP if necessary.

December 16, 2021 – The IEP Committee met to revise to reflect the correct tests for which to receive accommodations.

² EXPLANATION OF WHY THE DISTRICT PROPOSE OR REFUSED TO TAKE ACTION RAISED IN THE COMPLAINT, dated May13, 2022, Larrissa Moore, General Counsel for the District.

October 29, 2022 – The IEP Committee convened to review and revise the behavior support plan.

October 14, 2021 – The IEP Committee convened to review and revise the behavior support plan.

Since the parent did not identify a specific problem, I am asking the District to reconvene the IEP Committee within 10 days to again discuss and address the Parent's concerns. After which, if the Parent is not satisfied with the results of the meeting, she can file a more detailed complaint that meets the requirements of U.S.C. §141(b)(7)(A). I am also asking the District to ensure a list of organizations providing low-cost and/or free legal advice and counsel be included in the Procedural Safeguards given at the IEP Team meeting. I encourage the Parent to use the assistance of one of these groups if she feels the need to move forward with a specific complaint.

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 17th day of August, 2022.

David P Daves

David P. Daves, Ph.D.
Hearing Officer