

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

[REDACTED]

COMPLAINANT

vs.

CASE NO. D01152025-26

Hancock County School District

RESPONDENT

**DECISION AND ORDER**

**INTRODUCTION**

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 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, January 15, 2025.

**PARTIES**

[REDACTED] is an [REDACTED] student who attends the District’s [REDACTED] school and receives services under the *Individuals with Disabilities Education Act* (IDEA) with a primary

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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.

eligibility of Emotional Disability.<sup>2</sup> The respondent is a Mississippi Public School District (District, herein) in which the student is enrolled.

## **ISSUES AND RELIEF REQUESTED**

The Parent filed a REQUEST FOR DUE PROCESS HEARING UNDER PART B of THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 2004 received by the Mississippi Department of Education January 15, 2025. During the course of a teleconferences held January 28, 2025, 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 initiate or change the Child's educational placement.
- 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 initiate or change the Child's educational placement.**

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>3</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.

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<sup>2</sup> SD Exhibit 12a.

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

Based on the evidence submitted, the District followed its Board policies in determining the Student being placed in the alternative school. It is claimed the student would have access to the general curriculum and educational progress can be monitored and assessed.<sup>4</sup>

The District provided 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 (MDR) Forms contained signatures of appropriate personnel including the Parent.<sup>5</sup>

When reviewing the MDR, the IEP team determined the child's behavior was a manifestation of his disability and considered modifications to the IEP and FBA.<sup>6</sup> However, the child's last FBA was conducted in May 2023. Without conducting a new FBA for the purpose of determining the function of his behaviors in unstructured areas and during transition periods would have been an essential assessment for determining appropriate services. Thus, the District did not provide an appropriate BIP that was individualized based on an appropriate updated FBA and did not develop an IEP with appropriate behavioral support and services to address known behavioral issues. These are procedural issues, but procedural issues alone do not constitute a denial of FAPE.

**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

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<sup>4</sup> Testimony from the Special Education Director

<sup>5</sup> SD Exhibits 8, 9, 10, 11, 13

<sup>6</sup> SD Exhibit 7, p 57

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.” The District provided proof of such policies and the implementation therein.

While the District has acted within the scope of IDEA by placing the Child in an alternative environment, no evidence was presented to support the claim the alternative school is strictly educational, not punitive. No evidence was submitted as to other students with disabilities who had been placed in the alternative school with a successful outcome as it relates to behavior. Based on the District’s handbook, the alternative school is clearly one of the final steps in the discipline ladder.<sup>7</sup> Also, the Student was placed in the alternative school because the incident was his “third offense”<sup>8</sup> which demonstrates alternative placement as punishment for violating a handbook policy.

## **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 as has been noted. Procedural deficits alone do not automatically rise to a denial of FAPE unless the procedural

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<sup>7</sup> P Exhibit 18

<sup>8</sup> SD Exhibit 4, p. 26

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 Parent indicated these procedural defects resulted in a loss of educational opportunities for the Student or infringed on the Parent's meaningful participation. Participation was evidenced by signatures provided by the District.<sup>9</sup> 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."<sup>10</sup> Based on the exhibits presented, the District met its obligation.

Regarding placement in the alternative school, as previously stated, the District must ensure that (1) to the maximum extent appropriate, children with disabilities, including children in public and private institutions or other care facilities, are educated with children who are nondisabled; and (2) special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>11</sup> The District testified that placement in the alternative school was not punitive but was necessary to provide additional support by offering

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<sup>9</sup> SD exhibit 3, 4, 12a, 12b, 12c.

<sup>10</sup> *Houston Independent School District v. V.P.*, 582F. 3d at 583.

<sup>11</sup> 34 CFR § 300.114(a)(2)

intensive behavior tracking and embedded therapeutic support through counseling and monitoring social skills.

## **RULING**

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

The Parent **failed** to provide evidence the District had predetermined the outcome. The District provided evidence of records that reflect the Parent attending and contributing to the meetings, alternatives were discussed and documented, and no final decision was made before each IEP meeting.<sup>12</sup>

The District **failed** to provide evidence that serving 45 days in the alternative school was a more appropriate placement than in the general education classroom. No other options were considered.

## **REQUESTED RELIEF**

The District will:

1. Place the Child in the alternative school five (5) days to be completed prior to the end of the 2024-25 academic year. During this time the Child is to be introduced to those who will be working with him and providing support during lunch, recess, transition between classes, etc. There is nothing magical about 45 days being placed in the alternative school that will remedy the Child's behaviors that are manifestations of his disabilities. This distinction will demonstrate the purpose of placement as truly educational and not punitive.

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<sup>12</sup> SD exhibit 3, 4, 12a, 12b, 12c

2. The District will provide an Independent Educational Evaluation (IEE), at the District's expense, for the Child that will be conducted by a qualified professional outside of the school district. The District will provide the Parent a list of qualified professionals to select from or the Parent may choose someone else who meets the District's criteria.
3. The District will provide the Student with social skills training two (2) times a week, 30 minutes per time by a psychologist, social worker, or behavioral specialist the remainder of the 2024-2025 school year and for the 2025-2026 school year.
4. The District will provide the Student with counseling services two (2) times a week, 30 minutes per time by a psychologist, social worker, or school counselor the remainder of 2024-2025 and for the 2025-2026 school year.
5. The District will conduct a new FBA and develop a current BIP as appropriate. The Parent is to be informed of the progress regarding the effectiveness of the behavioral interventions at least once every four (4) weeks.

All other requests are unwarranted or fall outside the purview of this hearing officer and are therefore denied.

#### **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 2nd day of May, 2025.

**David P Daves**

David P. Daves, Ph.D.  
Impartial Due Process Hearing Officer