

**IN THE ALABAMA DEPART OF EDUCATION  
SPECIAL EDUCATION DIVISION**

<b>C. M., JR.</b>	<b>██████</b>	)	
		)	
<b>Petitioner,</b>		)	
		)	
<b>v.</b>		)	<b>CASE NO.: 18-123</b>
		)	<b>(ON REMAND)</b>
<b>JEFFERSON COUNTY BOARD OF EDUCATION,</b>		)	
		)	
<b>Respondent.</b>		)	

**DUE PROCESS DECISION**

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**I.  
PROCEDURAL BACKGROUND**

Petitioner initiated this action under the Individuals with Disabilities Education Act, as amended, and, after a due process hearing was held, the undersigned entered findings on June 5, 2019 in favor of the Petitioner and against Respondent Jefferson County Board of Education. The Board appealed to the U.S. District Court for the Northern District of Alabama and moved to stay implementation of the June 5th decision pending that appeal. The Board’s appeal was docketed as Case No. 2:19-cv-01136-RDP. On appeal, the court received and reviewed the administrative record under seal, entered certain findings based on that record, granted the Board’s motion, remanded the matter to the undersigned with instructions for implementation of its remand order, and directed the Clerk to close the federal action. (Docs. 18; 19.)

In the memorandum decision that accompanied its remand order, the court concluded that the undersigned applied an incorrect legal standard in identifying and applying the criteria that a student must meet to qualify as “a child with a disability” under the IDEA (and thus to be eligible to receive “special education” in the form of specially designed instruction). (Doc. 18, p.

8.) In particular, the court concluded that eligibility for special education services requires separate but concurrent findings that (1) the student in question has a disability that meets the criteria set forth in the Alabama Administrative Code; that (2) the disability must adversely affect the student’s educational performance; and that (3) the student needs “special education” (specially designed instruction) by reason of his or her disability. (Id.) Additionally, the undersigned had addressed the question of need in the alternative in the June 5, 2019 Due Process Decision, and the court, in its memorandum decision, made factual findings that impacted that alternative analysis.

## **II. DISCUSSION**

The court determined that the “need” component of the eligibility analysis is, as a matter of law, a separate standard that must be evaluated and met as a precondition to eligibility. The court also found that the student did not require special education, and that the student’s needs could be adequately met by other means. (Doc. 18, pp. 9-12.) By way of example, the court indicated, in pertinent part, that use of a calculator is not special education, and thus that any need to use a calculator cannot serve as the basis for IDEA eligibility in this case. (Doc. 18, pp. 10-11.) Additionally, the court found “the record certainly indicates the conclusion that the Student could access and comprehend the ‘general curriculum’ if [redacted] applied [redacted]” and that “[i]f the student *needs* anything, it would likely be a behavior plan under [redacted] Section 504 plan \* \* \*.” (Doc. 18, pp. 12) (emphasis in original). Those findings were not challenged by an appeal or through a request for reconsideration, are due appropriate deference, and, when considered with the court’s directives, are dispositive of the Petitioner’s case as a whole.

### III. SPECIFIC FINDINGS

In conformity with the remand order and memorandum opinion issued by the district court in case no. 2:19-cv-1136-RDP, the following order is issued.<sup>1</sup>

1. The conclusions of law and findings of fact made by the court in the aforementioned civil action are hereby adopted as the findings and conclusions of this administrative tribunal;

2. Based on the administrative record and the court's findings adopted in paragraph 1 above, the Petitioner did not prove that ■ met all three IDEA eligibility criteria—specifically, that ■ needed “special education” in the form of “specially designed instruction”—and thus that the determination of the school representatives on the eligibility determination team was incorrect;

3. The Petitioner's failure to establish that ■ was eligible for special education services negates the Petitioner's IDEA child-find claim as a matter of law. *See Durbrow v. Cobb Cnty Sch. Dist.*, 887 F.3d 1182, 1193 (11th Cir. 2018); *D.G. Flour Bluff Indep. Sch. Dist.*, 481 Fed. Appx. 887, 893 (5th Cir. 2012); *C.A. v. Jefferson Cnty Bd. of Edu.*, Case No. 2:19-cv-00291, 2019 WL 2103100 (N.D. Ala. 2019).

4. All claims for relief asserted by or on behalf of Petitioner or ■ parent and next friend in the above entitled administrative proceeding are denied.


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<sup>1</sup> The district court's remand order required nothing more than the undersigned's review and revision of the June 5, 2019 Due Process Decision and entry of specific findings in light of the court's order. But, to the extent a resolution period is arguably required on remand, that requirement is mooted by the specific findings entered in this Decision.

**IV.  
APPEAL RIGHTS**

Any party dissatisfied with the decision may bring an appeal pursuant to 20 U.S.C. §1415(i)(2). The party dissatisfied with this decision must file a notice of intent to file a civil action with all other parties within thirty (30) calendar days of the receipt of this decision. Thereafter, a civil action must be initiated within thirty (30) days of the filing of the notice of intent to file a civil action. Ala. Admin. Code 290-8-9-.8(9)(c)16.

DONE and ORDERED this 30<sup>th</sup> day of January, 2020.

  
Wesley Romine  
Hearing Officer  
3131 LeBron Road  
Montgomery, Alabama 36106  
T: (334) 676-1368

cc: James D. Sears, Esq.  
Shane T. Sears, Esq.  
Carl Johnson, Esq.  
Andrew E. Rudloff, Esq.  
Dr. Melissa Card