

**BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF ALABAMA**

J.B.,)	
)	
PETITIONER,)	
)	
v.)	SPECIAL EDUCATION NO. 22-110
)	
BESSEMER CITY)	
BOARD OF EDUCATION,)	
)	
RESPONDENT.)	

HEARING DECISION AND FINAL ORDER

I. PROCEDURAL HISTORY

This matter was filed by Petitioner on July 20, 2022 and was assigned to this Hearing Officer by the Alabama State Department of Education on the same day. Resolution was waived by the parties effective August 4, 2022. A due process hearing convened in the instant matter September 1, 2022. The parties submitted closing briefs after the testimony concluded.

II. EXHIBITS ADMITTED INTO EVIDENCE

At the hearing, exhibits were submitted by the parties in Exhibit Binders and accepted by this Hearing Officer. These exhibits have been examined by this Hearing Officer subject to the issues heard at the due process hearing and in light of the testimony presented at said hearing. The documents and materials have been in the constant possession of this Hearing Officer until the rendering of this decision. Hereafter, they will be delivered to the Alabama State Department of Education. The documents were examined and the weight given to each was based upon the contents of the document which was submitted and not on which party introduced said document. This Hearing Officer has examined the exhibits based upon the substantive nature contained therein for the purpose of making a decision in this matter.

A. PETITIONER'S EXHIBITS¹

1. Petitioner's Exhibit 4: Initial Referral and IEP
2. Petitioner's Exhibit 5: 2018-2019 IEP
3. Petitioner's Exhibit 6: 2019-2020 IEP
4. Petitioner's Exhibit 7: 2020-2021 IEP
5. Petitioner's Exhibit 8: 2021 Reevaluation
6. Petitioner's Exhibit 9: 2021-2022 IEP
7. Petitioner's Exhibit 10: 2022-2023 IEP
8. Petitioner's Exhibit 11: Service Log

B. RESPONDENT'S EXHIBITS

1. Respondent's Exhibit 1: 2017 Initial Referral and IEP Documents
2. Respondent's Exhibit 2: 2018-2019 IEP Documents
3. Respondent's Exhibit 3: 2019-2020 IEP Documents
4. Respondent's Exhibit 4: 2020-2021 IEP Documents
5. Respondent's Exhibit 5: 2020-2021 Reevaluation Documents
6. Respondent's Exhibit 6: 2021-2022 IEP Documents
7. Respondent's Exhibit 7: 2022-2023 IEP Documents
8. Respondent's Exhibit 8: Service Logs
9. Respondent's Exhibit 9: Respondent to Petitioner Correspondence

III. BURDEN OF PROOF

The burden of proof in this matter is upon Petitioner as the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005); Ala. Admin. Code § 290-8-9.08(9)(c).

IV. STATEMENT OF FACTS AND SUMMARY OF THE TESTIMONY

This section is a summary of pertinent facts presented to this Hearing Officer. This decision is based on all testimony presented at the hearing as well as exhibits admitted into evidence during the hearing. Both parties were permitted to offer testimony by way of witnesses sworn under oath. The testimony has been recorded and transcripts will be delivered to the Alabama State Department of Education. This Hearing Officer placed no weight on the fact that any particular testimony was offered by either party since the purpose was to provide all of the appropriate and admissible

¹ Petitioner's Table of Contents for Exhibits begins with Exhibit 4 and ends with Exhibit 11. There were no Petitioner's Exhibits 1, 2, or 3.

testimony. The witnesses were examined and the weight given to each was based upon the substantive nature contained therein for the purpose of making a decision in this matter.

Testimony:

A. [REDACTED] Student's Mother ("Mother"). Student is currently [REDACTED] years old and [REDACTED] at the [REDACTED] in the Bessemer City School District. For the two years prior to the filing of the instant request for due process, Student was in the [REDACTED] and [REDACTED] grades at the [REDACTED] school in the Bessemer City School District. Student has never had any disciplinary action and has never been retained in a grade level since beginning school in [REDACTED] in the Bessemer City School District. In the [REDACTED] and [REDACTED] grades, Student had low grades. Student was found eligible to receive special education services in the [REDACTED] grade in the category of [REDACTED]. Student's IEPs address deficits in math and reading deficiencies. Student's initial evaluation report in the [REDACTED] grade shows an IQ score of [REDACTED]. Student's reevaluation in the [REDACTED] grade shows an IQ score of [REDACTED]. Mother does not believe that other disabilities exist.

Mother did not graduate from high school and has no formal training in education. Mother testified that other team members did not explain anything to her in IEP meetings but felt able to ask other IEP team members for information. Mother chose not to ask questions in IEP meetings but did question school personnel "[w]hen it was necessary".

Mother believed that Student is embarrassed because Student is struggling and cannot complete assignments. Student tells Mother that Student does nothing in class. Mother believed that Student has not made progress in the five years Student has received special education services and has not mastered the goals in Student's IEPs. Student has low grades, but Mother believed that Student's passing grades were truly earned since Student has been receiving special education

services in the [REDACTED] grade. No one has ever told Mother that Student has mastered any goals and no progress reports are sent home. Mother believed that no tangible evidence has been provided to show that Student is making progress because of special education.

Mother declined to send Student to the District's summer programming or [REDACTED] Center offered as compensatory education by Director because Mother did not believe that the hours offered were enough and was against the advice of Mother's attorney. Mother believed three to four hours weekly from an outside tutor would be sufficient rather than the one to two hours per week offered, but Mother did not tell Director this. Outside of representations that were made to Mother by Mother's attorney, Mother had no other basis for saying that one to two hours would not be sufficient to address Mother's concerns. Mother believed tutoring should go on as long as Student needs it, and Student might need tutoring until graduation because the work becomes more difficult.

B. [REDACTED] Bessemer City School District Special Education Director ("Director"). Director began serving as the Director of Special Education for the Bessemer City School District in March 2020. Director has never met Student. Mother brought concerns to Director on November 6, 2020, and told Director that Mother was ready to get legal help. Director then scheduled an IEP meeting on November 9, 2020 to address Mother's concerns. Director believed the IEP provided FAPE and that Student had been appropriately identified and evaluated. Director believed that Student's IQ score most likely fell in the reevaluation because Student is expected to know more as Student ages.

Director had reviewed Student's records provided to Petitioner's counsel and believed those records to be complete. The sole progress report, dated January 7, 2020, was completed outside the two year period prior to the filing of the instant request for due process. Goals for the

second nine weeks period on this progress report rated progress at level two, meaning some progress was made. Report cards and progress reports regarding annual goals are to be sent home every nine weeks, and Director has spoken to teachers in the district about the importance of documentation. Dates of mastery of goals are blank on Student's IEPs beginning in 2017, but Director believed that is not the same as receiving no benefit from special education. Mastery dates may not be on IEPs because IEP teams may meet for annual meetings before the ending dates on IEPs. Director believed FAPE had been offered to Student.

Mother brought concerns to Director again in May 2022. On May 9, 2022 Director sent Mother a letter offering compensatory education for Student in the amount of six and one-half hours per day in district-provided services from June 6, 2022 to July 1, 2022, for a total of 130 hours. On May 19, 2022 Director sent a second letter to Mother offering additional compensatory education services in the amount of two hours per week from [REDACTED] Center from June 6, 2022 to December 16, 2022, for a total of 56 hours over 28 weeks. Director testified that the amount offered was in consideration of Student's attention span and schedule. [REDACTED] Center was to administer diagnostic tests to determine how to structure the program. The number of hours provided to Student would have been adjusted based on [REDACTED] Center's recommendation, if needed.

V. ISSUES PRESENTED

The following issues were presented at the due process hearing in accordance with Petitioner's stated issues in Petitioner's Prehearing Brief. Petitioner alleges that Respondent denied Student a Free Appropriate Public Education ("FAPE") in the following ways:

- A. Failing to identify and evaluate Petitioner in all areas of suspected disability.

- B. Failing to develop and implement an IEP that complies with state and federal laws and regulations that address all of Petitioner’s disabilities; failing to provide Petitioner special education services that were specifically designed to show meaningful gains in reading and math; and failing to identify and provide Petitioner special education services that were based upon peer reviewed research.
- C. Failing to ensure the IEP team had accurate records and current information; failing to provide progress reports; failing to write appropriately ambitious goals; and failing to conduct comprehensive/appropriate assessments to identify Petitioner’s other disabilities.

VI. DISCUSSION OF THE ISSUES

Issue A:

Petitioner alleges that Respondent denied Student a Free Appropriate Public Education (“FAPE”) by failing to identify and evaluate Petitioner in all areas of suspected disability. Both Mother and Director testified that they believed that Student had been identified and evaluated in all areas of suspected disability. This Hearing Officer finds by a preponderance of the evidence that no violation has occurred.

Issue B:

First, Petitioner alleges that Respondent denied Student a Free Appropriate Public Education (“FAPE”) by failing to develop and implement an IEP that complies with state and federal laws and regulations that address all of Petitioner’s disabilities. This issue is vague and overbroad. Both Mother and Director testified that they believed that Student had been identified and evaluated in all areas of suspected disability. Student was found eligible to receive special

education services in the [REDACTED] grade in the category of [REDACTED] Student's IEPs address deficits in math and reading deficiencies.

Second, Petitioner alleges that Respondent denied Student a Free Appropriate Public Education ("FAPE") by failing to provide Petitioner special education services that were specifically designed to show meaningful gains in reading and math.

The IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District Re-1*, 137 S.Ct. 988, 1001 (2017). "Accordingly, for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" *Id.* at 999, citing *Board of Educ., etc. v. Rowley*, 458 U.S. 176 (1982). Student has never been held back in a grade level. Mother testified that Student had low grades, but Mother believed that Student's passing grades were truly earned since Student has been receiving special education services in the [REDACTED] grade. Student's IEPs address deficits in math and reading. Director testified that FAPE was provided. The testimony does not demonstrate that Student's special education services were not specifically designed to show meaningful gains in reading and math.

Third, Petitioner alleges that Respondent denied Student a Free Appropriate Public Education ("FAPE") by failing to identify and provide Petitioner special education services that were based upon peer reviewed research. None of the testimony demonstrates that Student's IEPs were not designed based upon peer research.

This Hearing Officer finds by a preponderance of the evidence that no violation has occurred.

Issue C:

First, Petitioner alleges that Respondent denied Student a Free Appropriate Public Education (“FAPE”) by failing to ensure the IEP team had accurate records and current information. Failure to document mastery of goals on Student’s IEPs is a procedural violation. However, in the instant matter, this procedural violation does not rise to a level of denial of FAPE. “A reviewing court may fairly expect those [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress in light of his circumstances.” *Endrew F.*, 137 S.Ct. at 1002 (2017).

Director offered a cogent and responsive explanation of why dates of mastery might be missing on IEPs because IEP teams may meet for annual meetings before the ending dates on IEPs. Also, Director explained that failure to master goals is not the same as receiving no benefit from special education. However, Director offered compensatory education to address deficiencies that may have occurred due to this procedural violation. Director’s explanation of the rationale behind the offers of compensatory education, how the services would be tailored to remedy deficits, and how the number of hours offered might change due to Student’s identified needs was cogent and responsive.

Second, Petitioner alleges that Respondent denied Student a Free Appropriate Public Education (“FAPE”) by failing to provide progress reports. This is a procedural violation. However, in the instant matter, this violation does not rise to a level of denial of FAPE. Mother testified that other team members did not explain anything to her in IEP meetings, but Mother felt able to ask other IEP team members for information. Mother chose not to ask questions in IEP meetings but did question school personnel “[w]hen it was necessary”. In the instant matter, the

testimony reflects that the District's failure to send the required progress reports to Mother did not significantly impede her ability to participate in IEP teams.

Third, Petitioner alleges that Respondent denied Student a Free Appropriate Public Education ("FAPE") by failing to write appropriately ambitious goals. None of the testimony reflects that the goals were not designed for Student to make progress based upon present levels of performance. The exhibits reflect that Student's goals were not the same from year to year and written based upon Student's deficits identified from evaluations.

Fourth, Petitioner alleges that Respondent denied Student a Free Appropriate Public Education ("FAPE") by and failing to conduct comprehensive/appropriate assessments to identify Petitioner's other disabilities. The testimony does not demonstrate that the District failed to conduct comprehensive/appropriate assessments to identify Student's other disabilities. Both Mother and Director testified that they believed that Student had been identified and evaluated in all areas of suspected disability.

This Hearing Officer finds by a preponderance of the evidence that no violation has occurred.

The appropriate relief, if any:

This Hearing Officer finds that the Bessemer City Board of Education provided Student a Free, Appropriate Public Education. Accordingly, this Hearing Officer finds by a preponderance of the evidence that no relief is warranted. However, nothing in this Hearing Decision shall preclude Petitioner from accepting the District's offers of compensatory education.

VII. SPECIFIC RULINGS AND CONCLUSIONS

- A. This Hearing Officer finds that, based upon the preponderance of the evidence, the School District provided Student a Free, Appropriate Public Education.

B. This Hearing Officer finds that, based upon the preponderance of the evidence, no relief is warranted.

VIII. FINAL ORDER AND NOTICE OF APPEAL RIGHTS

This Hearing Decision constitutes a Final Order in this case. 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-.08(9)(c)(16).

SO ORDERED this the 30th day of September, 2022.


AMANDA DICKERSON BRADLEY
HEARING OFFICER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been sent via certified mail and electronic mail to:

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SO CERTIFIED, this the 30th day of September, 2022.


AMANDA DICKERSON BRADLEY
HEARING OFFICER