

MISSISSIPPI DEPARTMENT OF EDUCATION

DUE PROCESS HEARING REQUEST BY [REDACTED]

I. INTRODUCTION

The Individuals with Disabilities Education Act¹ (the “IDEA” or the “Act”) (as amended December 2004) provides federal funds to help States educate disabled children. The IDEA “is designed to ensure that all children with disabilities have available to them a free appropriate public education” or a FAPE.² The FAPE requirements are delivered through the Individual Education Program (“IEP”).³ The Supreme Court recently noted that the “core of [the IDEA] is the cooperative process that it establishes between parents and schools,” and that the “central vehicle for this collaboration is the IEP process.”⁴

[REDACTED], a [REDACTED] student at Shaw High School in Shaw, Mississippi, has been in the special needs program of the Shaw School District (the “District”) since the third grade.

[REDACTED] is eligible for special education and related services under the IDEA and Mississippi law implementing the IDEA.⁵ Ms. [REDACTED], [REDACTED]’s mother (the “Parent”), submitted a due process hearing request to the Mississippi Department of Education (MDE), alleging violations of the IDEA by the District.

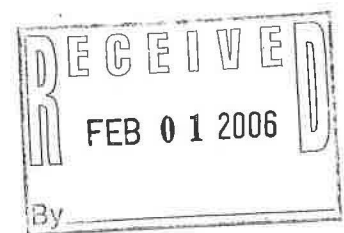
¹ 20 U.S.C § 1400 *et seq.* (Supp. 2005).

² 20 U.S.C. § 1400(d)(1)(A).

³ The IEP is defined in 20 U.S.C. § 1414(d).

⁴ *Schaffer v. Weast*, 126 S.Ct. 528, 532 (2005).

⁵ See Miss. Code Ann. § 37-23-1 *et seq.* (Supp. 2005).



The due process hearing was conducted over a four day period. Based on the applicable case law and the testimony and evidence presented at the hearing, the Parent failed to carry her burden of proving that the District's implementation of the IDEA denied [REDACTED] FAPE.

Procedural Background

The Parent submitted a due process hearing request dated July 30, 2005.⁶ The Superintendent of the District, Mr. Charles Barron, (the "Superintendent") submitted a response in opposition to the Parent's position.⁷ The parties' resolution meeting was unsuccessful.⁸ A pre-hearing teleconference was held with Ms. [REDACTED] the Superintendent and the parties' counsel participating in the conference.⁹ Mrs. [REDACTED], Ms. [REDACTED]'s sister, also participated in the conference.¹⁰ Mrs. [REDACTED] (the "Advocate") has served as a parent advocate or representative for a number of years.

At the pre-hearing conference, the parties identified the issues to be addressed at the due process hearing. The Parent asserted that the District failed (1) to provide transition services (Conf.

⁶ A copy of the Due Process Hearing Request form is attached to the Appendix as Tab A. The request had a "received" stamp of August 4, 2005.

⁷ A copy of the District's letter is attached to the Appendix as Tab B.

⁸ A copy of the District's minutes from the Resolution Meeting are attached to the Appendix as Tab as C.

⁹ Record references are to the Pre-hearing conference transcript (Conf. Tr. __), the October 20-21, 2005 transcript (Oct. Tr. __), the November 28, 2005 transcript (Tr. I __), and the November 29, 2005, transcript (Tr. II __). Exhibits are cited as (Ex. __), and as (D. Supp. Ex. __) and (P. Supp. Ex. __) for the parties' supplemental exhibits. The supplemental exhibits have been forwarded with the original exhibits to the Transcript for the November proceedings.

¹⁰ A resident of Rochester, New York, Mrs. [REDACTED] is the special education department chair for the Honeoye Falls-Lima Central School District. (Tr II 216). Mrs. [REDACTED] has a master's degree in special education and has worked as a "special educator" for approximately 14 years. (Tr. II 218).

Tr.12-13), (2) to provide [redacted] s education in the Least Restrictive Environment, as required by the IEP (Conf. Tr.12), and (3) to create or to operate under a proper IEP (Conf. Tr.14).¹¹ The Advocate summarized the issues: “We are talking about providing a free and appropriate education for [redacted] and making sure that she has equal access to all educational opportunities.” (Conf. Tr. 31). Counsel for the Parent stated the issues would be focused on the 2005-2006 school year. (Conf. Tr. 28-29). The District reiterated its response to the hearing request, asserting that the Parent’s accusations were frivolous, without merit and that the due process hearing request was a “pretext to obtain evidence to pursue a claim against the School District.”¹² (Conf. Tr. 18, 25-26).

The due process hearing began on October 20, 2005¹³ with the Parent specifically contending that the District failed:

- (1) to provide transition services for the 2005-2006 school year, as set forth in [redacted] s IEP (Oct. Tr. 12-13);
- (2) to have a valid IEP for the current school year (Oct. Tr. 3); and
- (3) to follow the current IEP and Stipulation and Agreement (Oct. Tr. 3, 8-9, 13).

The District claimed that the parent was attempting to interject “new issues” into the due process hearing because the Stipulation and Agreement (the “Agreement”) had not been addressed at the pre-

¹¹ The Parent later dropped two other issues identified at the pre-hearing conference, which related to school records and summer school. (Conf. Tr. 15-17).

¹² On August 8, 2005, Ms. [redacted] filed a notice of claim with the Shaw School District, pursuant to the Mississippi Torts Claims Act. *See* Ex. 17.

¹³ The hearing officer scheduled the due process hearing for September 27, 2005. After Mrs. [redacted] indicated she could not attend on that date (Conf. Tr. 42), the hearing was rescheduled by counsel and the 45-day rule was waived by agreement. The waiver was confirmed by a letter to the parties’ counsel from the hearing officer on October 6, 2005.

hearing conference.¹⁴ (Oct. Tr. 6-7). The District's objections were taken under advisement.

Testimony relating to the Agreement was later admitted. However, as discussed below, the Agreement has no effect on this decision.

At the parties' request, the proceedings were recessed on the first day to address an evidentiary dispute. The second day of the proceedings began, but the hearing was continued after an incident allegedly occurred with _____.¹⁵ The parties' counsel rescheduled the hearing, which reconvened on November 28, 2005.

II. FACTS

_____, who is _____ years old, has been in the high school's program since the eighth grade. (Tr. II 73-75). _____ has a Slow Learning Disability ("SLD") in Math Calculation, but Ms. _____ testified that "[_____] is weak in all of her spots." (Tr. II 143). _____ also needs "modifications and accommodations to help her with her work, assist her in some of her work, most

¹⁴ By letter dated October 10, 2005, the Parent's counsel had identified the hearing issues, adding that the District had also failed to follow a "Stipulation and Agreement" (the "Agreement") entered in connection with a due process hearing conducted in the 2003-2004 school year. The Parent did not mention the Agreement in the due process request in this matter or during the pre-hearing conference. Significantly, the Agreement formed the basis for a State Complaint submitted to the MDE by the Parent on August 16, 2005. In a September 1, 2005, letter to the hearing officer, the Advocate asserted that the present hearing request was "filed on new issues" and did not involve the issues related to the Agreement and the State Complaint. A copy of the Advocate's letter is attached to the Appendix as Tab D. The IDEA and Mississippi law provide that a complaint alleging a public agency's failure to implement a due process decision must be resolved by the State Department of Education. 34 C.F.R. § 300.661(c). As a result, the Hearing Officer in this case lacks jurisdiction to address the Parent's claims that the District is not implementing the Stipulation and Agreement.

¹⁵ Counsel for the District moved to dismiss the proceeding, claiming the District was prejudiced by the failure to prosecute and the costs accruing to the District because of the parent's failure to proceed. Counsel also asserted that "the other reason is because the education process needs to go forward with respect to this child as well as the total school population." (Oct. Tr. 44-45). The Hearing Officer's letter to the parties, which summarized the October proceedings, is attached to the Appendix as Tab E. Neither party objected to the summary.

of her work.” (Tr. I 80). [REDACTED] is on the diploma track and is scheduled to graduate with her class at the end of the current school year. (Tr. I 9).

Mrs. Florida Burton, [REDACTED]’s resource teacher, has worked with [REDACTED] since the tenth grade.¹⁶ (Tr. I 62). Mrs. Burton’s role is to assist [REDACTED] on her class work and go over material from [REDACTED]’s classes that she does not understand. (Tr. I 62). Mrs. Burton is charged with making sure [REDACTED] understands her assignments and tests. (Tr. I 127-28). If Mrs. Burton does not understand a test or an assignment, she checks with the regular teacher for clarification. *Id.*

Mr. Barron explained that as Superintendent, he is responsible for the District’s special education program. Ms. Jerrilyn Anderson served as the district’s special education supervisor during the 2004-2005 school year. Ms. Sheila Brown assumed that position in September 2005. (Tr. I 147-48; Tr. II 9).

[REDACTED]’s Individualized Education Program

When a parent submits a request for a due process hearing, the IDEA provides that the student shall remain in the “then-current educational placement” unless the school and the parent agree otherwise. 20 U.C.S § 1415(j); Miss. Code Ann. § 37-23-11(4). The term “educational placement” means the child’s educational program. *White v. Ascension Parish School Bd.*, 343 F.3d 373, 379 (5th Cir. 2003).

The Parent and the District disagree on the exact form of [REDACTED]’s current IEP. At the end of the October proceedings, the hearing officer asked the parties to submit the IEP they considered to be in effect. (Oct. Tr. 53). Both parties submitted IEPs. *See* Oct. Tr. Ex. P-1 (Parent) and Ex.

¹⁶ Mrs. Burton has a master’s in social studies and was certified in special education five or six years ago. (Tr. I 61). Mrs. Burton is also certified to teach History, (Tr. I 107), and Mr. Barron testified that she was “highly qualified to teach” in that area. (Tr. II 224).

D-1 (District). The exhibits were later reintroduced as Exhibit 1 (P-1) and Exhibit 2 (D-1) at the due process hearing.

Both Exhibit 1 and Exhibit 2 arose from an IEP meeting convened by the District on July 13, 2004. The Advocate later described Exhibit 1 as a draft with handwritten notes made at the meeting (the "Draft IEP"). (Tr. I 221). The Parent and the Advocate both testified that Exhibit 2 contained current IEP, as it was developed by the IEP committee on July 13, 2004 (the "July 2004 IEP"). The District introduced Exhibit 4, a handwritten IEP, which served as the District's draft at the IEP meeting scheduled for August 4, 2005 (the "2005 IEP"). The Superintendent testified that District personnel took the substance of the 2005 IEP from the July 2004 IEP (Tr. I 16) and changed the courses _____ would be taking. (Tr. I 12). Because the IDEA contains a "stay put" provision, the Parent's claims against the District will be determined according to the July 2004 IEP.

The Terms of the July 2004 IEP

The Parent, the Advocate, Mrs. Burton and several school representatives attended an IEP meeting on July 13, 2004. Dr. Howze-Campbell substituted for Ms. Anderson, who was on medical leave. The IEP committee members were provided a draft IEP created by the District. (Tr. I 101, 220). The Advocate took notes on the IEP draft for herself, Ms. _____ and a regular education teacher. (Tr. I, 221; Ex. 1). Mrs. Burton also took notes during the committee meeting. (Tr. I, 146-147). The Advocate testified that she and the District each received a copy of the Draft IEP with the attendees' handwritten notes attached to the final version.¹⁷ (Tr. I 244). After the meeting, Mrs. _____

¹⁷ Exhibit 1 had a signature page labeled 1 of 6, which the Advocate testified was a photocopy of the original signature page. Counsel for the Parent forwarded the original signature page on January 5, 2005. See P. Supp. Ex. "1". The supplemental signature page, however, was not attached to any document, so it is unclear where the original signature page was actually attached to the document the Advocate testified she took from the meeting (Exhibit 1). Moreover, the numbering on the signature page does not support the conclusion that the original signature page was attached to the Draft IEP. The explanation provided by the Advocate did not illuminate the matter.

Burton typed a final version of the IEP from notes on the draft pages (Ex. 1). (Tr. I 156). Mrs. Burton testified that when she typed Exhibit 2, she inadvertently omitted some things from the handwritten notes on the IEP committee's draft. (Tr. I 146-147). Specifically, she stated that she omitted items relating to [redacted]'s transitional goals and services. (Tr. I 146-147).

Exhibit 2 also contains three versions of the page titled, "Supplementary Aids and Services, Personnel Supports in Regular Education and Special Services".¹⁸ The third page of Exhibit 2 (Bates No. D3-42) is Mrs. Burton's typed version, but that page also contains handwritten notes that Mrs. Burton testified Dr. Howze-Campbell told her to add. (Tr. I 65). The Parent and her Advocate both testified that they agreed to the typewritten portion, but not to the handwritten additions on the third page (D3-42). (Tr. I 101-103; Tr. II 13-14). A comparison of Exhibit 1 and page D3-42, shows that several of Dr. Howze-Campbell's notes involved matters Mrs. Burton added to her typed version (Ex. 2), but which were not addressed in any of the handwritten notes on Exhibit 1.¹⁹

The 2004-2005 School Year

The 2004-2005 school year proved to be a contentious one for the Parent, the Advocate and the District. In August of the 2004-2005 school year, the Parent filed a request for a due process

¹⁸ The third page, Bates No. D3-40, is dated January 14, 2005. Bates No. D3-41 is the same at D3-42, but with Dr. Howze-Campbell's revisions in a typed form. (Tr. I 64-65).

¹⁹ The typed version of items 11-14 added information that is not written on the draft pages of Exhibit 1. For instance, the 12th entry on Exhibit 2, "Cue student to stay on task" is not listed in any of the handwritten notes on Exhibit 1 and by 13th entry, "access to summer school", Mrs. Burton typed in "(with resource support)". The 14th entry adds "access to word processor" even though it is not addressed in the handwritten draft notes. The district did, however, provide [redacted] with access to a word processor pursuant to the terms of the Stipulation and Agreement. Dr. Howze-Campbell's notes indicate that the additions to Items 11-14 by Mrs. Burton were not "discussed at meeting". In the "Location of Services" column of the Supplementary Aids page (BB-2), Mrs. Burton's typed version deleted Regular Classroom and replaced it with Resource room, even though only one of the draft pages indicated that change should be made.

hearing. Because the issues had previously been heard by another hearing officer on an earlier request, the MDE chose instead to make an unannounced visit to the District to review [redacted]'s educational program. (Ex. 26). The MDE noted a number of inadequacies, including the District's failure to follow [redacted]'s IEP and the Stipulation and Agreement. (Ex. 26, pp2-3).²⁰

During the fall of 2004, the Parent became concerned with [redacted]'s classes and discussed her concerns with Ms. Anderson and Mrs. Burton. (Tr. II 105-06). On November 23, 2004, Ms. Anderson sent out a Written Prior Notice (WPN), by certified mail, to Ms. [redacted] for an IEP meeting. (Ex. 25). The purpose of the meeting was to discuss the Parent's concerns and to add some items that had been left off the July 13, 2004 IEP. (Tr. II 149-50). The Parent did not show up for the meeting, so another attempt was made to reschedule a meeting. The November WPN was returned as unclaimed on December 9, 2004. (Tr. II 148-49). Although the Advocate took issue with whether the District had given notice of the meeting (Ex. 23), the Parent later admitted that several different persons used the same mail box, implying that the notice may not have been received by her. (Tr. II 107).

On October 29, 2004, the Advocate filed a Complaint with the Office for Civil Rights ("OCR") of the United States Department of Education. (Ex. 16) (letter from OCR). The Complaint alleged that the High School History Teacher and the High School Principal failed to take

²⁰ During the 2003-2004 school year, Ms. [redacted] filed a request for a due process hearing. The Parent did not introduce a copy of the request or provide any background as to the basis for the request. In any event, the District and the Parent, entered into the "Stipulation and Agreement" (the "Agreement") after the due process hearing. See Ex. 3. Although the purpose of the Agreement is not altogether clear, it appears from the testimony that the due process request and the hearing related primarily to State testing. For instance, the Superintendent testified that the Agreement and some of the stipulated items related to State testing. (Tr. I 29-33). [redacted]'s resource teacher, Mrs. Burton agreed that there were some problems with retesting that resulted in the Agreement. (Tr. I 92). The Advocate also testified that during the 2003-2004 school year, before entry of the Agreement, a four-month period elapsed before [redacted] was retested. (Tr. I 298).

appropriate action following several incidents of disability discrimination. (Ex. 16, p1). The OCR conducted an investigation and interviewed the staff, the teacher and other students and could not establish that the incidents had occurred. (Ex. 16, p4). The OCR also found that the District had taken steps to investigate the incident when it was reported. As a result, the OCR closed the case. (Ex. 16, p4).

In November of 2004, the District made the decision to place Mrs. Burton in charge of working exclusively with [REDACTED] (Tr. II 215). In addition to providing additional remedial services, Mrs. Burton began attending each of [REDACTED] classes for the purpose of taking notes for [REDACTED]. (Tr. II 218). The July 2004 IEP did not require Mrs. Burton to attend all of [REDACTED] s classes with her. Ms. [REDACTED] was still concerned about the provision of services and she filed a State Complaint and the MDE made another unannounced visit. The MDE noted a number of deficiencies and put the District on notice of its intent to withhold Part B funds. (Ex. 27, p2). (December 15, 2004, letter from MDE). After the District's due process hearing on the withdrawal of funds, the hearing officer concluded that, while the District had not previously been in compliance, [REDACTED] s IEP was now being implemented according to its terms and the Stipulation and Agreement. (Ex. 12, p2).

January 27, 2005 Reevaluation

The July 13, 2004 IEP lists the "Date of Current Eligibility Certification" as February 7, 2002. (Ex. 2, p1). As a result, under the IDEA and Mississippi law, the District was required to conduct a reevaluation within 3 years.²¹ On January 27, 2005, the District convened a meeting for

²¹ The IDEA requires a reevaluation at least once every three years. 20 U.S.C. § 1414(a). See also 34 C.F.R. § 300.536 (b).

reevaluation of [REDACTED] eligibility. The Parent, the Advocate and school representatives attended the meeting. As discussed below, the Parent's position relating to the reevaluation meeting expressly contradicts the position that she is now asserting against the District that the District failed to create an IEP for the 2005-2006 school year.

On February 3, 2005, the Advocate wrote the District requesting that [REDACTED] be removed from her U.S. History class. (Ex. 12). The letter alleged harassment, retaliation and discriminatory treatment by the History teacher, Mrs. Jessie Williams. Mrs. Williams, the first African-American teacher at the District (Tr. II 229), was the only History teacher at the High School. (Tr. II 229). The Superintendent acceded to the Advocate's request and created a class for [REDACTED] to be taught by Mrs. Burton. *See* Ex. 13. Mrs. [REDACTED] later pressed criminal charges against Mrs. Williams, but those charges were dismissed. (Tr. II 121-123).

The Parent and the Advocate also filed a Complaint with the Office of Student Assessment claiming the District had not implemented [REDACTED]'s testing accommodations under her IEP and the Stipulation and Agreement. (Ex. 29, p1). The Office found a failure to provide certain testing accommodations and issued a warning to the District. (Ex. 29, p1-2).

The MDE made another unannounced visit on May 12, 2005 in connection with a Complaint by Ms. [REDACTED] as to whether the District was adhering to the Stipulation and Agreement. (Ex. 15, p1). The MDE found the District to be in compliance with the Agreement "in that memory aids, fact charts, and/or resource sheets were provided to [REDACTED] for her use on classroom assessments. (Ex. 15, p2). The MDE observed that Ms. [REDACTED] had stated that she could not be available for an IEP meeting until July, but the MDE nevertheless instructed the District at the May visit to immediately send out a WPN for a meeting to develop of an IEP for the 2005-2006 school year. (Ex. 15, p 2).

Ms. Anderson sent out a WPN attempting to schedule an IEP meeting. The Parent returned the response form on May 20, 2005 stating that a meeting was not necessary and that the annual review would be in January 2006. (Ex. 21). Another WPN was sent out in June in an attempt to set up a June IEP meeting to revise the IEP. (Tr. II 159). The Parent responded that she could not attend, but that she would be available on July 19, 2005. (Ex. 14).

The Parent filed another a due process hearing complaint in June 2005, but she later withdrew the request.

The 2005-2006 School Year

On August 16, 2005, Ms. [REDACTED] filed a Complaint with the MDE²² asserting, among other things, that an IEP meeting was held without inviting the parent to attend and that Memory aids and fact sheets as specified in the IEP and Stipulation and Agreement were not being provided to [REDACTED] (D. Supp. Ex. 1).

In her request for a due process hearing, Ms. [REDACTED] asserted that the District changed [REDACTED]'s IEP without her knowledge or consent. The request, which was filed on August 4, 2005 (but dated July 30, 2005) did not state that the IEP to which she was referring and the testimony at the due process hearing did not specifically address which matters were changed or how the changes, deletions or additions affected the provision of a FAPE to [REDACTED].

III. LAW

In *Houston Indep. Sch. Dist v. Bobby R.*,²³ the Fifth Circuit stated the standard for reviewing an IEP:

²² A copy of the Complaint is attached to the Appendix as Tab F.

²³ 200 F.3d 341 (5th Cir. 2000).

An IEP need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit." Nevertheless, the educational benefit to which the Act 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." In short, the educational benefit that an IEP is designed to achieve must be "meaningful."²⁴

The Fifth Circuit identified four factors "that serve as an indication of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. These factors are whether

- (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 the key 'stakeholders'; and
- (4) positive academic and non-academic benefits are demonstrated."²⁵

The Parent's Claims

The Parent's challenge has three parts. The first is whether the District has failed to provide transition services for the 2005-2006 school year, as set forth in § ____ s IEP. The second is whether the District failed to have a valid IEP for the current school year. The third is whether the District is denying § ____ a FAPE because the District is not following or implement' § ____'s 2004-2005 IEP. In connection with the FAPE, the parent also contends that the District has not and

²⁴ *Id.* at 347 (quoting *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997), *cert. denied*, 522 U.S. 1047 (1998)).

²⁵ *Bobby R.*, 200 F.3d at 347-48 (citing *Cypress-Fairbanks.*, 118 F.3d at 253).

currently is not following the terms of the Stipulation and Agreement. Each position will be addressed in turn.

The Failure to Provide Transitional Goals and Services

Transition goals and related services are designed to assist a disabled student to prepare for the transition from secondary education to post-secondary life. The IDEA requires a student's IEP to include post-secondary goals and transition services to assist the student in reaching those goals.

20 U.S.C. § 1414(d)(1)(A)(i)(VIII). The term "Transition Services" means a coordinated set of activities that

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

The Parent does not challenge the sufficiency of the transitional goals set forth in the IEP. Rather, the Parent claims that the District is failing to implement the transition services during the 2005-2006 school year. [redacted] July 2004 IEP provides the following statement for "Individual Transition Plan":

[redacted] wants to pursue college degree. [redacted] is interested in computers, child care, and cosmetology. [redacted] would like to live independently. [redacted] would like to seek employment in area of interest.

(Ex. 2, BB-11, Bates No. D3-42). Under the "Transition Services Statement", the IEP provides that the District will provide:

- (1) Instruction by use of Choices Software, Career Day and college visits;
- (2) Community experiences through "Job Shadowing, Internship"; and
- (3) Adult living/employment skills through "Job training, volunteering, class visits, career workshops.

(Ex. 2, BB-11). The Advocate contends that [redacted]'s July 2004 IEP Transition Plan should have included references to job shadowing and class visits at a cosmetology school. The July 2004 IEP does not contain such an entry. Mrs. Burton testified that her handwritten notes on the "Transition Plan" (BB-11) on the Draft IEP included the word "Beauty Salon", but she failed to include that entry on her typed version. (Tr. I 146-147). Her testimony, however, did not support the conclusion that the IEP team agreed to an internship or transitional services relating to a beauty salon. At one point Mrs. Burton testified:

Q. Can you explain to Your Honor how you managed to miss putting the information that you had before you on Exhibit Number 1 on Exhibit Number 2?

A. Thinking back over it, more than likely somebody in the group said internship or somebody said beauty salon, and this is what I wrote here and I just didn't write it there.

(Tr I 147). She later testified differently:

Q. (By [redacted]) Let's talk about what occurred during the '04-'05 school year regarding these transitional services.

A. Okay.

Q. The draft said there was supposed to be a beauty salon shadowing, correct? Or visit a beauty salon.

A. If the draft said it, then it could have been that, that wasn't said, you know. The draft may have been -- since I was writing things that were being said.

Q. So you were imagining they were saying beauty salon.

A. No. It might have been said that somebody in the meeting had said no and I had written the word beauty salon down, and I didn't strike it off or something.

(Tr. I 157). The Advocate admitted that she did not include internship or the words beauty salon on her notes. (Tr. I 270-271).

Mrs. Burton testified that reference to "Choices Software" in the July 2004 IEP is to the District's software system "where a student can get on the computer and look at jobs and things of that nature." (Tr. I 86). Although Mrs. Burton has not yet worked with [REDACTED], and the software, the software is available and a word processor is available in the resource room for [REDACTED]'s use. (Tr. I 86). In connection with the job shadowing and internship components, Mrs. Burton testified that [REDACTED] was presently enrolled in the class "Jobs for Mississippi Graduates." (Tr. I 88). The class teaches interviewing skills and creating resumes. (Tr. I 88). Job shadowing occurs in the class during the second semester and at that time the students are taken to different businesses. (Tr. I 89). Mrs. Burton has made the teacher in "Jobs for Mississippi Graduates" aware of [REDACTED]'s interests and when job shadowing begins [REDACTED] interests will be further addressed at that time. (Tr. I 89). [REDACTED] has also participated in several career day or college placement trips. (Tr. I 134).

The Advocate expressed concern because she believes that the transition services should have already been provided. (Tr. II 41, 44). Yet, there was no evidence presented that the Parent addressed this concern in any of the earlier due process hearing requests or State complaints. There is similarly no evidence that the Parent requested the District to convene an IEP meeting on this matter. Moreover, the Parent's handwritten notes on Exhibit 14 imply that she believed the transition goals were in place.

The Advocate stated her understanding of the “Jobs for Mississippi Graduates” class content, but she did not provide any basis for her opinion. The Advocate also expressed her desire and belief that [REDACTED]’s job shadowing and class visits for her interests in cosmetology should be carried out at the Mississippi or Delta Beauty College or perhaps at Coahoma Community College. (Tr. I 65-66). While her rationale for this position makes sense, the position was not spelled out in [REDACTED]’s July 2004 IEP. The Parent did not present evidence that either she or the Advocate asked for the July 2004 IEP to be revised to include a mandate for such transition services. The testimony does reveal that the District sent out WPNs after the July meeting (when Mrs. Burton thought she had omitted some material), but the testimony supports the conclusion that the Parent did not respond until after the scheduled meeting. (Tr. II 149-50). After that point, the Parent was focusing her efforts on other concerns by filing hearing requests and complaints with the MDE and the OCR. Moreover, a Parent does not have a right to compel a school to provide a particular, specific program or the use of a particular methodology. *See White*, 343 F.3d at 380 (5th Cir. 1983) (citing *Lachman v. Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988)).

The provision of a FAPE, through the IDEA, does not require the District to provide the maximum educational experience. *See Bobby R.*, 200 F.3d at 347-48. The evidence, including the testimony of [REDACTED]’s resource teacher, establishes that the District’s activities to date and the transitional goals and services for [REDACTED] are individualized and based on her interests. The IEP, in this respect, is designed to achieve the meaningful educational benefit required by *Rowley*. The Parent failed to meet her burden of establishing that the District is not implementing the Transitional Services listed on the July 2004 IEP.

The Lack of an IEP for the 2005-2006 School Year

The IEP is the “cornerstone” of the IDEA.²⁶ The IDEA contains numerous, specific procedural requirements to ensure a disabled child receives a FAPE and an IEP “developed through the Act’s procedures [is] reasonably calculated to enable the child to receive educational benefits.”²⁷ If a school district meets the procedural requirements, “the State has complied with the obligations imposed by Congress and the courts can require no more.”²⁸ Procedural irregularities, however, amount to a denial of a FAPE only when the irregularities result in substantive harm.

“Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide.”²⁹ The team that produces an IEP includes the child’s parent(s) or guardian(s) and school officials knowledgeable about special education, as well as a regular education teacher; as a result, the “written IEP specifies the program of benefits to which the student is entitled in order to receive a FAPE.”³⁰

An IEP must be reviewed annually and an IEP must be in place at the start of a new school. A school district is responsible for initiating and conducting the annual IEP meeting,³¹ and it must

²⁶ *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 378 (5th Cir. 2003); see 20 U.S.C. § 1414(d).

²⁷ *White*, 343 F.3d at 378 (quoting *Board of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982)).

²⁸ *Rowley*, 458 U.S. at 207.

²⁹ *Id.*; see 20 U.S.C. § 1414(d)(1)(A).

³⁰ *White*, 343 F.3d at 378 (citing 20 U.S.C. § 1414(d)(1)(B)).

³¹ 20 U.S.C. § 1414(d)(4)(a)

take steps to ensure that the parent(s) or guardian(s) “are present at each IEP meeting” or “are afforded the opportunity to participate.”³²

Written prior notice shall be provided to the parents of the child . . . whenever the local educational agency - - (A) proposes to initiate or change; or (B) refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to that child.

20 U.S.C. § 1415 (b)(3); *see also* Miss. Code Ann. § 37-23-137(3). In notifying a parent about an IEP meeting, the agency must provide the names of the individuals, who will be in attendance.”³⁴ C.F.R. § 300.345(b).

Attempts to Schedule an IEP Meeting Before the 2005-2006 School Year

The record establishes that the District began attempts to schedule its annual IEP meeting as early as May 2005. (*See* Ex. 21). In fact, the District informed the MDE that the parent or the Advocate had stated they could not be available until July 2005 for an IEP meeting. (Ex. 15, p1). The MDE nevertheless instructed the District “to send a WPN immediately to set a date for the IEP development for the 2005-2006 school year.” *Id.* The District complied with this mandate and the MDE staff received receipts showing the Parent had received the WPN. (Ex. 15, p2).

The Parent responded to the District’s WPN in May, stating that an IEP meeting was unnecessary and that the July 2004 IEP was intended to carry [REDACTED] through her senior year. (Ex. 21). The Parent based her position on the reevaluation that occurred on January 27, 2005. Both the Parent and her Advocate contend that the IEP Committee agreed at the reevaluation that [REDACTED] would not need a new IEP for the 2005-2006 school year. (Tr. I 96). The Advocate testified that the Committee agreed that only the list of courses [REDACTED] would be taking needed to be changed. The

³² 20 U.S.C. § 1414(d)(1)(B)(I); 34 C.F.R. § 300.345(a).

Advocate claimed she instructed the District to do just that. (Tr. II 70-72). The Advocate testified that she and Ms. [REDACTED] told the District to follow the July 2004 IEP with the exception of changing the courses. (Tr. II 27-28).

The Parent introduced the "Reevaluation Summary Report/Eligibility Determination" form to support the position that [REDACTED] did not need an IEP for the 2005-2006 school year. (See Ex. "18"). Under the heading "Review/Revision of the IEP was needed," a handwritten entry states, "Not needed [:] follow current IEP." The Advocate admitted, however, that the document did not say that the IEP should be carried over to 2005-2006. (Tr. II 72). The Parent testified that Ms. Anderson told her the July 2004 IEP would take [REDACTED] through her senior. (Tr. I. 98).

Ms. Anderson testified otherwise, stating that an IEP Reevaluation was not a substitute for the annual IEP meeting. She stated that the IEP committee "discussed the child's reevaluation and determined that no additional data was made and the child still had a disability in the same category." (Tr. II 157). Ms. Anderson said the Committee did not discuss the 2005-2006 IEP "[b]ecause [the meeting] was done to conduct the reevaluation, not the IEP, annual IEP not to revise." (Tr. II 159). Ms. Anderson concluded that the three-year reevaluation had no effect on an IEP unless the eligibility changed and that, in any event, you "still got to have your IEP meeting . . . because the law says you do an annual [review]." (Tr. II 159).

The District made another attempt in June to reschedule the IEP meeting, but the Parent responded that she could not come at the scheduled time. (Ex. 14). The Parent submitted another request for a due process hearing in June 2005, but the request was later withdrawn and the case was closed.

In responding to one WPN, the Parent and the Advocate also asked the District to forego the IEP meeting until after the State assessment results were obtained. (Tr. II 30). The Parent suggested

that she was available for July 19, 2005. (Ex. 14). The District convened a meeting on July 19, 2005, which the Parent attended in person and the Advocate attended by phone. (Tr. II 33). The meeting was eventually cancelled on that day. (Tr. II 33). It is unclear from the record why the meeting was cancelled.

The August 4, 2005 IEP Meeting

The District sent out WPNs for an August IEP meeting. The parties disagree about what occurred on the day of that meeting. The Advocate claims that she and the Parent were not allowed to participate in the IEP meeting. (Tr. I 241). She testified that when she and the Parent arrived at the IEP meeting, she did not recognize a number of the people sitting around the table and asked, "Who are all these people?" (Tr. I 241). The Advocate then left the room to wait, with the Parent, for the Superintendent to arrive. Mr. Sullivan, the Shaw High School principal, testified that Mrs. [REDACTED] was given the opportunity to participate and that she came into the meeting but did not participate. (Tr. II 209-210). He further stated that Mrs. [REDACTED] did not enter the room and that he did not prevent Ms. [REDACTED] from doing so. Mr. Sullivan testified that he walked out and said we are trying to have an IEP meeting, I would like for ya'll to come in. (Tr. II 211).

Instead of waiting on the arrival of the Superintendent, the Advocate and the Parent went to the Superintendent's office. (Tr. I 241-242). The Advocate stated that the Superintendent told her that there would not be an IEP meeting because they were now in litigation. The Parent also testified that she did not attend "[B]ecause Mr. Barron said once you in litigation you don't go into an IEP meeting." (Tr. II 95). The Advocate stated that she returned to the school later that afternoon and found that the meeting was still in session. She entered the meeting room and then left. When the Advocate questioned Mr. Barron about the meeting she testified that Mr. Barron "said that he

had contacted sources, and he never did tell me who, and said he thought it was okay to have [an IEP meeting] and he could go forward to have one.” (Tr. I 242). The Superintendent testified that he made unsuccessful attempts to contact the Parent. (Tr. II 232)

Mr. Barron testified that the District’s opinion is that the current IEP for [REDACTED] was created at the August 4, 2005 IEP meeting. (Tr. I 21). The District’s personnel took the substance of the 2005-2006 IEP from [REDACTED]’s 2004-2005 IEP. (Tr. I 16). Nothing was changed except for the personnel (teachers) and the courses [REDACTED] would be taking. (Tr. I 12). The District drafted the 2005-2006 IEP after the Parent and the advocate refused to attend the earlier scheduled IEP meetings. (Tr. I 12). After Mrs. Burton later realized that she had left off some accommodations, the State Department representative told Mrs. Burton to send a WPN so that the omitted information could be added. (Tr. I 172-173). Mrs. Burton sent WPNs to the Parent for meetings on September 12 and 19, 2005 and again on October 3, 2005, but the Parent did not show up for the meetings. (Tr. I 168).

It is troubling that an IEP meeting continued on August 4, 2005, after the Parent left. And, it is also troubling that the Superintendent allowed the IEP meeting to continue after he had told the Parent that an IEP meeting should not be held when the parties were in litigation. Nevertheless, because the “stay put” requirement applies as of July 30, 2005, the August 4 IEP meeting could not have prejudiced the Parent’s procedural rights or the provision of a FAPE to [REDACTED] since the July 2004 IEP remained in effect. As Mr. Barron testified, the District is still providing [REDACTED] the modifications and accommodations from the July 2004 IEP.

Moreover, before August 4, 2005, the District had fulfilled the essence of its procedural obligations in trying to schedule an annual IEP meeting. Alternatively, even if the District erred by

failing to develop an IEP specifically directed to the 2005-2006 school year, the Parent did not establish that [redacted] suffered substantive harm because of the procedural irregularities. *See Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1129 (9th Cir. 2003) (only procedural inadequacies that result in the loss of educational opportunity, or that seriously infringe the parents' opportunity to participate in the IEP formulation process, or that caused a deprivation of educational benefits violate the IDEA).

Failure to Implement the IEP

The Parent contends that the District has failed to implement [redacted]'s July 2004 IEP during the current school year. As a part of this claim, the Parent also asserts that the District violated the Least Restrictive Environment ("LRE") requirement of the IDEA, which requires schools to mainstream disabled students, to the extent possible, in the LRE. 20 U.S.C. § 1412(5).

The IDEA "requires the IEP team to determine, and the public agency to provide, the accommodations, modifications, supports, and supplementary aids and services, needed by each child with a disability to successfully be involved in and progress in the general curriculum achieve the goals of the IEP." 34 C.F.R. Part 300, appendix A. The IDEA defines "supplementary aids and services" as "aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5)." 20 U.S.C. § 1401 (33); *see also* Miss. Code Ann. § 37-23-133 (j). States must provide supplementary aids and services and modify "the regular education program when they mainstream handicapped children." *See Cody v. Bryan Indep. Sch. Dist.*, No. CA H-03-5589, 2005 WL 1515389 *6 (S.D. Tex., June 24, 2005) (citing *Daniel R.R.* 874 F.2d 1036, 1048 (5th Cir. 1989)).

A school, however, “need not provide every conceivable supplementary aid or service.” *Cody*, 2005 WL 1515389 *6. Parents rights to give meaningful input at an IEP meeting does not grant them the right dictate the accommodations and modifications that will be provided for their children. *White*, 343 F.3d at 380; *Lachman.*, 852 F.2d at 297 (“No matter how well-motivated,” parents do not have a right to compel a school district “to provide a specific program or employ a specific methodology in providing for the education of their handicapped child.”) (citing *Rowley*, 102 S.Ct. at 3051). Similarly, a school or a student’s individual teacher does not have the discretion to decide whether a disabled student should be provided the modifications and accommodations in a student’s IEP. Modifications and accommodations should have been included in a child’s IEP after consideration by the IEP team as to what the particular student needs in order to receive a FAPE in the LRE. A District should ensure that its teachers provide modifications and accommodations. The IDEA does not require strict compliance.

An analysis of a child’s educational program must consider the nature of a child’s disability. *Rowley*, 102 S. Ct. at 3048-49. The IDEA does not require a school to maximize a student’s potential or provide the best possible education. *Id.* at 3049. The IDEA requires that a school district provide sufficient specialized services so that the child benefits from the educational program. *Id.* at 3045. _____ has a Slow Learning Disability (“SLD”) in Math Calculation. (Tr. II 143). There is no evidence in the record that _____ has a learning disability in other areas. The Parent testified that she is weak in other areas. (Tr. II 143). The District did provide other additional services or modifications for _____ outside the area of her specified learning disability. The Parent acknowledged that the District “put Mrs. Burton into play for _____” (Tr. II 143). The Superintendent affirmed this position in his testimony. (Tr. II 218).

Exhibit 2 is titled, "Supplementary Aids and Services, Personnel Supports in Regular Education and Special Education." The Parent and the Advocate testified that the typewritten portions of this page of the July 2004 IEP contain the modification and accommodations the District is required to provide . The "Modification/Accommodation" section of that page has 15 entries:

1. Calculator
2. In a small group to accommodate disability (individually or no more than 5 students) for all test in the resource room
3. Extended time for test/exams including standardized test for all test in the resource room
4. Read test directions and test items to student/group repeating and Paraphrasing all directions/ as long as it does not invalidate tests. for all test in the resource room
5. Testing to be done in sections for all test in the resource room
6. Copies of teachers' class notes or peer note-taker's notes, daily in the regular education classroom
7. Additional time to complete test and assignments in "reg/resource room"
8. Use of memory aids, fact charts, and/or resource sheets in the resource room
9. Allow opportunity to retest (orally and written) missed test items for failed tests, in the resource room
10. Check for exam completion prior to leaving test site for all tests, in the resource room
11. With a familiar teacher (resource teacher) for all tests, in the resource room
12. Cue student to stay on task daily in "reg/resource room"
13. Access to Summer School (with resource support) at Shaw high School or other location

14. Read directions, check for understanding provide examples, access to Word Processor, "daily, assignments" in "reg/resource room"

15. Provide study guide 3 days prior to testing in the regular education classroom

See Exhibit 2 (Bates No. D3-42)

Items 1, 14 and 15 (as it applies to the word processor) have either been provided during the 2005-2006 school year or the item is no longer applicable.

Items 2, 3, 4, 5, 7, 11 and 12 all specifically relate to testing accommodations or modifications for _____. The Parent and Mrs. Burton both gave credible testimony relating to the implementation of testing as it relates to _____ during the 2005-2006 school year. The Parent testified that there have been instances in Algebra II and Biology where _____'s regular classroom teacher gave the test or had _____ go to the library during testing. In a few instances, the regular teachers gave the test because Mrs. Burton was teaching her History class or was out of town. (Tr. II 79-80). Mrs. Burton testified, however, that in some instances, she has left her History class in the resource room and take _____ to another room for testing. (Tr. I 79). Mrs. Burton testified that _____ as given extended time to finish tests and assignments, since she works at a slower pace. (Tr. I 117). If _____ was unable to finish the test, she would continue the test during her resource period or possibly after school. (Tr. I 117). Mrs. Burton also stated that she paraphrases the directions for _____ when she gives _____ her tests. (Tr. I 118). Mrs. Burton testified to one instance when the testing provisions may not have been met. She testified that Mr. Pennington, the Biology II teacher gave _____ the test in his room, but she did not know the size of the class or whether he paraphrased the directions for _____ (Tr. I 118-119). Mrs. Burton's testimony established that she sometimes had other individuals cover her History class, so she could give _____ her tests. (Tr. 74, 80).

The Advocate also provided testimony relating to the testing accommodations. She claimed that since Mrs. Burton has to teach History classes this year, that she has not been available to test [redacted] at the same time as the other students or test [redacted] in the resource room. (Tr. I 227-228). The Advocate gave a broad statement claiming that Mrs. Burton did not give [redacted] tests in Math, English, Government or Biology. (Tr. I 228). This generalization lacks specifics and does not take into account that Mrs. Burton attended English with [redacted], so she would be available at that time. The Advocate testified that she had records showing that requirements were not met, but she did not introduce them at the hearing. (Tr. 278-292). During redirect, counsel for the Parent attempted to introduce partial records the Advocate located when the hearing was recessed. When the District's counsel interposed an objection, the records were not admitted because the Parent had the opportunity to produce the records with the appropriate time-frame, but did not do so and the document contained only partial records.

Item 10 provides for retesting. The Parent testified that sometimes retesting is done and sometimes it is not. (Tr. I 83-84). One specific instance was noted in [redacted] English class and a reference was made to the retesting in the Algebra II class. (Tr. 83-84). Mrs. Burton testified that [redacted] resource teacher, she checks for understanding on [redacted] tests and assignments. (Tr. I 127-128).

The Parent also challenges the implementation of Items 6, 8 and 15. Item 6 requires that [redacted] be provided either with "copies of teachers class notes or peer notetaker notes". Item 7 involves the use of "memory aids, fact charts, and/or resource sheets". Item 15 deals with the provision of study guides prior to tests. The testimony establishes that these accommodations are all provided in [redacted]'s Government class (Tr. II 86-87, 91) and that Mrs. Burton attends and takes

notes for _____ in her English class (Tr. I 119, 212). The Parent testified that she does not receive notes and study guides for _____ in Biology, Algebra II and the Jobs for Mississippi Graduates class. (Tr. II 86-87). Mrs. Burton testified that she had received a study guide from the Biology II teacher. (Tr. I 126). In connection with the Jobs for Mississippi Graduates class, Mrs. Burton said _____ did not have any notes for _____ (Tr. I 120). The Parent did not come forward with proof to show that the teaching methodologies for the Algebra II and the Jobs for Mississippi Graduates class lend themselves to teacher class notes or peer notes. _____, Algebra teacher sometimes tutors _____.

The District has substantially implemented the accommodations and modifications. The Parent emphasized the fact that Mrs. Burton is sometimes unavailable to test because she is teaching one of her History classes.³³ Item 11 states that the testing should be done in the resource room with a familiar teacher.³⁴ The Parent has also complained that the Principal has not been available for weekly meetings. The evidence established, however, that for the first few weeks of school, the Parent did not come for the weekly meeting. Instead, the Parent sent someone else to pick up

³³ The IEP does not require Mrs. Burton to be available for all of _____'s classes. The Parent focused upon item 15 of the Stipulation and Agreement as requiring Mrs. Burton's presence in all of _____ classes. While this Hearing Officer is without jurisdiction to enforce the terms of the Agreement, there is nothing in the 2004 IEP incorporating this provision. Moreover, item 15 only discusses Mrs. Burton's presence when "instructions are being provided to _____." and does not state that Mrs. Burton's presence is required in all instances. Item 13 also grants the parties flexibility to modify the IEP, if supplementation would be more helpful or beneficial to _____. That paragraph only requires a meeting and discussion before implementation.

³⁴ When Mrs. Burton typed the 11th entry in July 2004, she added ("resource teacher") by the words familiar teacher, even though resource teacher was not listed on any of the draft IEP pages. This entry was one of the items Dr. Howze-Campbell told Mrs. Burton to delete, indicating it was not discussed at the IEP meeting. (Ex. 2). Implementation of the accommodation does not require the resource teacher to be the only "familiar teacher" in _____'s educational program. Such an interpretation would place an undue and unwieldy result for both _____ and the District.

information for _____ (Tr. I 81; Tr. II 200). The Principal testified that he left a packet for the Parent, and that she had only recently inquired what the packet contained. (Tr. II 199). Mr. Sullivan stated that the packets have contained different materials each time, but he has seen fact sheets, teacher's notes and study guides. (Tr. II 202).

School districts are not held to strict compliance on every element of an IEP. *See Slama v. Independent School District*, 259 F.Supp.2d 880, 889 (D. Minn. 2003) (citing *Bobby R.*, 200 F.3d at 349). Parent's counsel relied on *Manalasan v. Board of Educ.*, No. 01-312, 2001 WL 939699 (D.Md., Aug. 14, 2001). *Manalasan* involved a child with balance problems whose IEP required an aid to prevent falls. *Id.* at *2. When the child was transferred to another school, the assignment was inconsistent and the child suffered a serious injury from a fall. *Id.* at *3. The court found that the requirement of a full-time aide was a substantial and material part of the IEP. *Id.* at *12. As a result, the failure to provide a full-time aide materially altered the child's IEP. *Id.* at *16. Here, the District's implementation of _____ ; IEP is distinguishable from *Manalasan*. Isolated and insignificant failures do not deny FAPE.

The District made reasonable efforts to accommodate _____ in the regular classroom and has provided _____ one-on-one instruction with her resource teacher for any remedial instruction _____ needs. The MDE made an unannounced visit to the District on August 24, 2005. In findings issued on September 27, 2005, the MDE also found that memory aids were being developed and that "individual teachers have been meeting with Mrs. Burton to provide notes, review test question, and review material to be sent home for study." (D. Supp. Ex. 1).

The District proposed three different class schedules that would have allowed Mrs. Burton to be available on different days or at times directly before or after _____'s classes. (Tr. I 50). But,

Mr. Barron testified that the Parent and the Advocate rejected the District's approach. (Tr. I 50-51). The Parent did not refute this testimony. Specifically, a schedule was developed "that would give the child an opportunity to get all of her classes for graduation." (Tr. I 209). _____ only needed three additional classes to graduate and they arranged for Mrs. Burton to attend _____'s English IV class and to be available for _____ all of her other classes through Learning Strategies (the resource class). (Tr. I 234). The District has made repeated, reasonable attempts to satisfy the Parent and the Advocate. Some courts have recognized that parents, in their zealous and admirable advocacy for their children, fail to engage in the collaborative effort envisioned by the IDEA. *See MM v. School Dist. of Greenville*, 303 F.3d 523, 535 (4th Cir. 2002) ("[T]here is not evidence that MM's parents would have accepted any FAPE offered by the District In these circumstances, MM suffered no prejudice from the District's failure to agree to her parents' demands.").

The evidence establishes that the District has substantially implemented _____'s IEP. _____'s supplementary aids and services, which include individual instruction from her resource teacher, tutorials in Math, study guides in Government, Mrs. Burton's inclusion in her English classroom have been and are more than "mere token gestures". _____ is provided one-on-one instruction in the resource setting.

The evidence shows that _____ is experiencing a meaningful educational benefit from the District's implementation of the IEP. Mrs. Burton, who had been very active with _____'s education, states that _____ has done very well and continues to do very well. (Tr. I 123). The Parent agreed that _____ has made passing grades and that her record reflects an improvement within the past 2 years. (Tr. 136-144). In noting that there had been improvement, the Parent stressed that the improvement was also a result of the work she had done with _____.

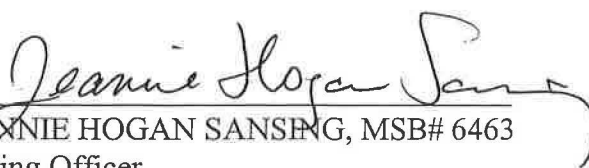
_____ has passed all of her State tests in Mississippi's Subject Area Testing Program. *See* Ex. 9 and is no longer in the state cycle. (Tr. I 19). At the end of the 1st grading period for the 2005-2006 school year, _____ received the following grades: English IV (86); Algebra II (73); U.S. Government (87); Biology (75); Employability Skills (80); Learning Strategy (80). *See* Ex. 7. In fact _____, through the individual instruction provided by the school and the resource services, passed when "a lot of the students – regular students . . . didn't pass." (Tr. I 91).

The Parent did not come forward with sufficient evidence to show that _____ is not achieving the goals and objectives on the July 2004 IEP and advancing toward graduation on the diploma track. There is no qualitative or quantitative data demonstrating a lack of meaningful progress or the absence of any educational benefit. When the IEP's implementation is viewed in context, the District has implemented the substantial and significant portions of the IEP. *See Bobby R.*, 200 F.3d at 349; *Van Duyn v. Baker Sch. Dist.*, No. 02-1060-MO, 2005 WL 50130 (C.D. Or., Jan. 11, 2005). In short, reasonable measures were taken by the Shaw School District to provide _____ with a FAPE.

CONCLUSION

The IDEA calls for collaboration between parents and schools as those parties create an education plan for disabled children. The Parent has been a zealous advocate for her child and is commended for efforts. Both parties were well represented by their counsel in the presentation of their positions and the difficult issues of this matter. Federal law does not require a school district to maximize a student's potential or provide the best possible education. Federal law requires that a school district provide a disabled child with a FAPE. The Parent has failed to bear her burden of showing the District violated the provisions of the IDEA in its implementation of the July 2004 IEP.

SO ORDERED, this the 31st day of January, 2006.


JEANNIE HOGAN SANSING, MSB# 6463
Hearing Officer