

**BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION**

**IN THE MATTER OF:**

**D.S.,**  
*Petitioner,*  
v.

**METRO NASHVILLE PUBLIC  
SCHOOLS**  
*Respondent.*

**DOCKET NO: 07.03-097852J**

**FINAL ORDER**

This matter was heard on March 3, 2008, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division pursuant to T.C.A. §49-10-606 and Rule 520-1-9-.18. Attorney Mary Johnston with Metro Nashville, Department of Law, represented the Respondent. Petitioner was not present for the hearing. D.S.'s mother was present and represented D.S.

The subject of this proceeding, in general terms, is whether Respondent has provided a free appropriate public education (FAPE) to D.S. The specific issue, however, is limited to whether Respondent is providing services comparable to those required in D.S.'s individualized education program (IEP) developed at Smyrna High School concerning D.S.'s reading instruction.

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is **DETERMINED** that Respondent is providing comparable services to those D.S. received at Smyrna High School, and is therefore, in compliance with D.S.'s IEP and providing D.S. FAPE.

This determination is based upon the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. D.S. is a 16 year old student enrolled in the 10<sup>th</sup> grade at Glencliff High School in Nashville, Tennessee. D.S. has been diagnosed with mild mental retardation having an I.Q. of 60. She was also diagnosed with “significantly limited intellectual capacity” while enrolled in school in Colorado. D.S. reads on a 1.7 to 2.0 grade level. D.S.’s mother is not satisfied with these diagnoses and has sought to have her evaluated by experts at Vanderbilt University. This evaluation is not complete at this time. D.S.’s mother believes D.S. has some level of autism and dyslexia.
2. D.S. has received special education from school systems in Pennsylvania, Colorado, and Tennessee. D.S. moved to Rutherford County, Tennessee and she was enrolled in the 9<sup>th</sup> grade at Smyrna High School. While at Smyrna, a very lengthy and detailed IEP was formulated for D.S. The Smyrna IEP required one class period per day, five days per week of reading instruction to assist her with her reading skills.
3. At Smyrna, D.S. was enrolled in a course called “Resource Reading” that met daily and concentrated on D.S.’s reading skills. Smyrna attempted several programs before it settled on a computer based program it felt was most appropriate for D.S. According to D.S.’s mother, D.S. requires the use of multiple modalities to improve her reading skills, such as books on tape, graphs, computer programs, etc.
4. D.S. and D.S.’s mother desire that D.S. graduate from high school with a regular education diploma. In order for D.S. to achieve this goal, D.S. must learn sufficient reading skills to successfully complete all other courses and pass the Gateway Exam.

5. On January 8, 2008, while D.S. was beginning the second half of her 10<sup>th</sup> grade year, D.S. moved from Rutherford County to Davidson County. D.S. was enrolled at Glencliff High School in the 10<sup>th</sup> grade. Glencliff received and implemented D.S.'s IEP from Smyrna. In order to provide D.S. the five hours per week of special education services in reading, Glencliff enrolled D.S. in a course named "Learning Strategies." Learning Strategies is a resource course with objectives of providing "academic support, compensatory services, and/or study skills."

6. D.S.'s mother objected to D.S. being placed in the Learning Strategies class and six school days later filed a request for a due process hearing on January 16, 2008. This hearing ensued to resolve the due process complaint.

7. D.S. is taught in the Learning Strategies class by Ms. Townsend-Christian who holds a Bachelors Degree in Social Work, a Masters Degree in Special Education, an Ed.S (education specialist) in Administration and Supervision, and is in the process of completing her Doctorate Degree also in education.

8. Students in the Learning Strategies class need assistance with either reading or math skills. One-half of the class period is dedicated to vocabulary exercises with the entire class. These vocabulary exercises qualify as reading instruction, and since D.S. participates, D.S. is receiving instruction in reading during this time.

9. The second half of the Learning Strategies class is dedicated to individual instruction in either reading or math depending on the student's IEP. D.S. receives reading instruction during the second half of the class because that is what D.S.'s IEP requires. D.S. receives instruction in reading during this time which also satisfies D.S.'s IEP requirements.

10. In the Learning Strategies class, D.S. is taught using vocabulary and writing packets. D.S. is also taught using games, peer group sessions, overhead projector, power point, etc. A

computer based system is available for use after regular work is completed. All of D.S.'s instruction in the Learning Strategies class is related to reading and improving D.S.'s reading skills. This class is a comparable service to D.S.'s reading resource class at Smyrna.

11. Glenclyff evaluated D.S. for inclusion in its Language! course. Language! is a specialized reading course offered to all students at Glenclyff. D.S. did not qualify for Language! because her reading skills were below the minimum required by the program creator to participate.

12. Glenclyff also offered after school tutoring and transportation to D.S., but D.S.'s mother never received the letter with this information. The letter was sent home with D.S. Glenclyff is still willing to offer additional tutoring in reading to D.S.

13. Glenclyff also sought to place D.S. in the "Life Skills" class, but D.S.'s mother objected to this placement. If enrolled in the Life Skills class, D.S. would be placed in a small group of pupils with an emphasis on academics such as reading, money skills, time clock reading, and organizational skills. This option is also still available to D.S.

### CONCLUSIONS OF LAW

1. The Petitioner in this case has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in Petitioner's favor. Rule 1360-4-1-.02.

2. Nothing in federal law requires that a special education student have particular classes identified in their IEP. The IEP only requires that the specific services be identified that will move the student toward the stated goals in the IEP. This is controlled by 34 C.F.R. § 300.320

(a) (4) which reads as follows:

(4) A statement of the **special education and related services and supplementary aids and services**, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section; (emphasis added)

3. Further, nothing is found in Tennessee law that would require a specific class be identified in the IEP. Tennessee has adopted Rule 0520-1-9-.12 which provides:

The IEP for each child must include:

(1) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:

- (a) **Meeting the child's needs** that result from the child's disability to enable the child to be involved in and progress in the general curriculum (the same curriculum as for children without disabilities), or for preschool children to participate in appropriate activities; and
- (b) Meeting each of the child's other educational needs that result from the child's disability.

(2) **Strategies that are effective in realizing the child's goals** and either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs.

(3) Short-term objectives or benchmarks for each annual goal. Short-term **instructional objectives** generally break the skills described in the annual goal down into discrete components. As an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short-term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child.

(4) Prior to the 9th grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all students will develop an initial four (4)-year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the students IEP after approval by the IEP team.

(5) For each student beginning at age sixteen (16) (or younger, if determined appropriate by the IEP team), **the plan of study** will be revised to ensure the completion of the child's high school program of study and a smooth transition from high school. The plan must include a statement of needed transition services, including, if appropriate, a statement of the interagency responsibilities and any needed linkages. This plan may be developed through a process in general education but a copy must be in the students IEP after approval by the IEP team.

(6) A statement of how the child's progress toward the annual goals will be measured and how the child's parents will be informed of the child's progress. Progress reports must be provided at least equivalent to those provided to non-disabled children. (emphasis added)

4. When a student transfers from one school district to another in the same state, the IEP from the transferring jurisdiction controls until it develops adopts and implements a new IEP.

These circumstances are governed by 34 C.F.R. §300.323(e) which reads as follows:

(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child **(including services comparable to those described in the child's IEP from the previous public agency)**, until the new public agency either--

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §300.320 through 300.324. (emphasis added).

It is clear that a conflict quickly surfaced between these parties. While not relevant to this due process hearing, it is equally clear that D.S.'s mother has concerns about other aspects of D.S.'s education at Glencliff. A new IEP can not be developed for D.S. until this instant case is resolved, and as stated earlier, this case is limited to the issue of Glencliff's compliance with the Smyrna IEP concerning D.S.'s reading instruction.

The resolution of this matter turns on a factual determination of whether the Learning Strategies class at Glencliff is a comparable service to the Resource Reading class offered at Smyrna. As noted above, the IEP does not mandate that a student be enrolled in a specific class, but only requires specific services be identified to achieve the student's stated goals in the IEP.

The out come of this case is decided then by a determination of whether Glencliff is offering five hours per week of special education services in reading instruction. It is clear that the Learning Strategies class does provide this level of service. In fact, Glencliff has offered additional instruction in reading that D.S. through tutoring and placement in the Life Skills class.

**IT IS THEREFORE ORDERED** that Respondent has provided the necessary services concerning reading instruction to D.S. as required in D.S.'s IEP developed at Smyrna High School. Respondent is in compliance with D.S.'s IEP. Respondent is the prevailing party in this matter.

Entered this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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**STEVE R. DARNELL**  
**ADMINISTRATIVE LAW JUDGE**  
**ADMINISTRATIVE PROCEDURES DIVISION**  
**OFFICE OF THE SECRETARY OF STATE**