

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

IN THE MATTER OF:

█, *the Student, and*
█, *the Student's Parent,*
Petitioners,

v.

SHELBY COUNTY SCHOOLS,
Respondent.

DOCKET NO: 07.03-137335J

FINAL ORDER

This contested case was heard before Administrative Judge Kim Summers on December 7, 2016. The Petitioners were not represented by legal counsel. The Respondent was represented by Kenneth Walker, Esq. and Stephanie Denzel, Esq. Following the presentation of the Petitioners' proof, the Respondent moved that the cause of action be dismissed. The Motion was granted as specified below.

The issue to be decided in this contested case is whether the Respondent denied █ a Free and Appropriate Public Education (FAPE) by failing to include in █ Individualized Education Program (IEP) for the 2015 – 2016 school year an alternative assessment, in lieu of the regular TN Ready assessment. On this question, the Petitioners provided testimony from the following witnesses – █, the student's parent; █ the student's █ grade math teacher; Katie Aristorenas, the student's █ grade reading teacher; and Melanie Nelson, Principal at █. Five exhibits were entered into evidence – EXHIBIT NO. 1, IEP for the 2015 – 2016 school year; EXHIBIT NO 2, Prevocational Skills Checklist; EXHIBIT NO. 3, █ Student Progress Report; EXHIBIT NO. 4, TCAP Individual Profile Report; EXHIBIT NO. 5, IEP from the 2014 – 2105 school year.

FINDINGS OF FACT

1. ■ has been diagnosed with autism.
2. ■ participates in ■ regular grade-level curriculum with the accommodations specified in ■ IEP.
3. ■ IEP for the 2015 – 2016 school year did not include a recommendation for an alternative assessment, in lieu of the TN Ready assessment.
4. An alternative assessment was not requested or recommended during ■ IEP meetings, which ■ ■ attended.
5. Neither ■ classwork nor ■ previous test scores alerted SCS that an assessment tool other than TN Ready would be more appropriate for ■. ■ was deemed capable by SCS to participate in the regular TN Ready assessment.
6. Students in SCS participated in only one day of the TN Ready assessment and no scores were generated.

RELEVANT LAW

1. The IDEA, 20 USC § 1400, *et seq.*, requires public school systems to provide to disabled children a free appropriate public education (FAPE).

2. 34 C.F.R. § 300.8(a)(1) defines “child with a disability” as follows –

Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, **another health impairment**, a specific learning disability, deaf-blindness, or multiple disabilities, **and who, by reason thereof, needs special education and related services.** (Emphasis added).

3. The burden is on the party requesting relief to establish whether or not there has been a violation of the IDEA.¹

4. Pursuant to Rule 41.02 of the Tennessee Rules of Civil Procedure, dismissal of a cause of action is appropriate under the following circumstances –

(2) After the plaintiff in an action tried by the court without a jury has completed the presentation of plaintiffs evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court shall reserve ruling until all parties alleging fault against any other party have presented their respective proof-in-chief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court grants the motion for involuntary dismissal, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.

(3) Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule 41, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

ANALYSIS and CONCLUSIONS of LAW

1. There is no evidence in the record that an alternative assessment was ever requested by the Petitioners.

2. There is no evidence in the record, other than the concerns of ██████████, that the TN Ready assessment was not the appropriate tool for determining ██████ abilities and scholastic progress.

3. The evidence in the record does not show that the decision to not recommend an alternative assessment in any way denied FAPE to ██████ in violation of the IDEA.

4. There is no evidence in the record of a denial of FAPE even if the alternative assessment should have been offered to ██████ since the 2015 – 2016 assessments were not completed.

¹ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56, (2005).

For these reasons, the Respondent's Motion to Dismiss is hereby **GRANTED**, and all of the Petitioners' claims and requests for relief are hereby **DENIED**. Since the Respondent is the prevailing party, no attorney fees shall be awarded.²

The policy reasons for this decision are to uphold state and federal laws pertaining to the education of children with special needs.

This FINAL ORDER entered and effective this the 21ST day of DEC, 2016.



KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 21ST day of DECEMBER 2016.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

² The Petitioners were represented by legal counsel for the filing of the Amended Complaint.

Notice

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.