



**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
312 Rosa L. Parks Avenue  
8<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

August 21, 2017

Cheryl Cheffins, Esq.  
Special Needs Law Group  
50 Vantage Way, Suite #202  
Nashville, Tennessee 37228

Melinda Jacobs, Esq.  
The Law Office of Melinda Jacobs  
163 Kelly Ridge Road  
Townsend, TN 37882

Michael F. Braun, Esq.  
P.O. Box 364  
Brentwood, TN 37024

Deanna Arivett, Esq.  
The Law Office of Melinda Jacobs  
321 Billingsly Court, Suite #16  
Franklin, TN 37607

RE: In the Matter of: [REDACTED] Docket No. 07.03-144972J

Enclosed is a Final Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

arb  
Enclosure

### 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.

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>SUMNER COUNTY SCHOOLS</b>	)	
	)	<b>Honorable Michael Begley</b>
<b>Petitioner,</b>	)	
	)	<b>Docket No. 07.03-144972J</b>
<b>v.</b>	)	
	)	
<b>█████, the Student, and █████ and █████</b>	)	
<b>the Student's Parents/Guardians</b>	)	
	)	
<b>Respondents.</b>	)	

**FINAL ORDER**

---

This matter was heard in Gallatin, Tennessee, on July 31, 2017, before Michael Begley, 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, Rules of State Board of Education. Respondent (L.D.) was represented by attorney Michael Braun. Attorneys Melinda Jacobs and Deanna Arivett represented Petitioner Sumner County Schools (SCS).

This matter came before the undersigned Administrative Judge to address SCS's due process complaint filed on June 23, 2017, seeking a proposed change of placement due to █████ aggressive behavior during █████ █████ grade (2016-2017) school year. █████ parents had filed a due process hearing complaint against SCS on March 30,

2017<sup>1</sup>, disputing SCS's proposed change of placement to a therapeutic behavioral comprehensive development classroom ("TBCDC") at [REDACTED] a Sumner County School. At the time of the filing of the complaint, [REDACTED] was being served in a CDC program at [REDACTED] a Sumner County School. SCS is required to maintain [REDACTED] "stay-put" placement at [REDACTED] through the duration of the due process hearing. 34 C.F.R. § 300.518. It is hereby determined that SCS has met its burden of proof and shown that [REDACTED] continued placement at [REDACTED] [REDACTED] presents a substantial likelihood of injuries to [REDACTED] SCS staff, and students in the CDC. Therefore, it is ORDERED that SCS is permitted to alter [REDACTED] "stay-put" placement to the therapeutic behavioral CDC at [REDACTED] [REDACTED] for forty-five school days.

After the close of the proof in this matter, it was learned that [REDACTED] parents have chosen to remove [REDACTED] from SCS and privately place [REDACTED] in an independent learning environment. Respondent's Motion to Dismiss that was subsequently filed is hereby denied. This Final Order relieves SCS of its "stay put" obligation during the pendency of the companion due process cases.

#### **FINDINGS OF FACT**

1. [REDACTED] is an upcoming [REDACTED] grade student at [REDACTED]
2. [REDACTED] has been identified as a student with Autism and receives special

---

<sup>1</sup> Due process hearing complaint numbers 07.03-143383J and 07.03-144860J remain pending and are currently set for hearing on November 13, 2017, and following as necessary.

education instruction in the comprehensive development classroom (hereinafter "CDC") at [REDACTED] (hereinafter [REDACTED]).

3. CDC programs are for students with severe cognitive and adaptive needs.

4. The CDC program at [REDACTED] is comprised of students that require a high level of adult assistance and support. Some of these students are medically fragile, nonambulatory, and/or have physical delays.

5. Ms. Sarah Chandler Hammonds has been [REDACTED] teacher in the CDC at [REDACTED] since December of 2015.

6. Throughout the 2016-2017 school year, [REDACTED] has exhibited significant aggressive behavior and elopement.

7. [REDACTED] aggressive behaviors included biting, hitting, kicking, scratching, head butting, pinching, choking, and pushing other students and/or staff, throwing items (books, communication device), turning over and kicking over tables and other classroom furniture, climbing on furniture, hitting his head on the wall, floor, and inside a cubby, kicking the wall, door, furniture, or other objects, and eloping from the playground, from [REDACTED] area, and from staff into the parking lot with cars.

8. While [REDACTED] did have some days in which [REDACTED] did not exhibit a high frequency of aggressive behaviors, the frequency of [REDACTED] aggressive behaviors for slaps, scratches, and bites were documented to have occurred as many as fourteen, nineteen, and twenty-one times on various days.

9. [REDACTED] aggressive behaviors posed safety concerns to other children when [REDACTED] would rapidly become upset and then quickly elope from [REDACTED] area.

10. [REDACTED] aggressive behaviors resulted in multiple injuries to SCS staff.
11. On several occasions, [REDACTED] attacked other students and/or pushed over large furniture to the point of causing SCS staff to fear that other students were going to sustain significant injuries.
12. [REDACTED] pushed another disabled student to the floor, causing [REDACTED] to break [REDACTED] wrist.
13. [REDACTED] aggressive behaviors sometimes required the teacher to protect other students by removing them from the classroom.
14. Throughout the 2016-17 school year, [REDACTED] had a behavior intervention plan (hereinafter "BIP") in place to address [REDACTED] aggressive behaviors and elopement. [REDACTED] parents participated in and signed off on these BIPs.
15. [REDACTED] behavior plan for the 2016-2017 school year included the following behavioral supports and services: checking schedule at transitions; directions provided visually; prompting (verbal, visual, gestural, and/or physical); sensory activities (e.g., Play-Doh, compression vest, trampoline); penny board/star board; positive reinforcement; teaching communication skills; identifying feelings such as happy or sad; reinforcers (e.g., food, books, electronics, flavored water, food, verbal praise, Play-Doh); designated area where [REDACTED] received 1 on 1 instruction, which was later tweaked to become [REDACTED] individualized works space using a TEACH approach; visuals; visual timer; structured activities; clear expectations; limited wait time; visual book at each work location; and staff member in close proximity.
16. [REDACTED] has had access to and used a communication book and communication

device to express [REDACTED]

17. Ms. Cooper, SCS's lead autism consultant, provided continued behavioral support to Ms. Hammonds and her staff throughout the 2016-2017 school year. Ms. Cooper recommended behavioral strategies [through her consultation with the district's board certified behavior analyst (hereinafter "BCBA")] to support [REDACTED] BIP and continued to work with Ms. Hammonds to tweak those behavioral strategies in an effort to improve [REDACTED] behavior.

18. Ms. Hammonds developed a checklist for her assistants to use when working with [REDACTED] in [REDACTED] area. The checklist data was kept from September 2016 to February 2017. The data showed that one of the assistants, on several occasions, neglected to prepare [REDACTED] area for the next assistant. [REDACTED] aggressive behaviors would sometimes coincide with these dates, but other times [REDACTED] had difficult behavioral days when [REDACTED] area was properly prepared.

19. Around February 22, 2017, [REDACTED] aggressive behaviors began to increase in intensity, resulting in more injuries to staff and other students. Ms. Hammonds wore chest and arm protective gear to protect herself from injury from being bitten and scratched. [REDACTED] began to attack her in places on her body without protective gear, such as under her arms or on her face. On multiple occasions, [REDACTED] bit or scratched Ms. Hammonds to the point of drawing blood.

20. Ms. Hammonds required medical treatment after [REDACTED] bit her breast, breaking skin and causing bleeding and bruising.

21. Due to [REDACTED] increase in aggressive behaviors, SCS sent additional staff,

including autism trainers, an autism consultant, and a special education coordinator, into Ms. Hammonds' CDC classroom to support Ms. Hammonds, her staff, [REDACTED] and the other students in the classroom.

22. Expert testimony by Dr. David Rostetter indicated that there is no guarantee a specific program will work to change behavior in autistic individuals. In addition, Dr. Rostetter found that SCS acted in a reasonable way to try to accommodate and adjust their program so that it might be effective. Dr. Rostetter also opined that, based on [REDACTED] past behavior, [REDACTED] would be likely to continue [REDACTED] aggressive behavior in the future at [REDACTED] current placement. Dr. Rostetter also stated that SCS can individually address [REDACTED] behavioral and academic needs in the therapeutic behavioral CDC at [REDACTED] [REDACTED] without risk of harm to medically fragile students.

23. [REDACTED] aggressive behaviors presented a substantial safety risk to [REDACTED] [REDACTED] teacher, and other disabled students in the CDC program at [REDACTED]

### CONCLUSIONS OF LAW

The Office of the Secretary of State, Administrative Procedures Division, has jurisdiction over the subject matter and the parties of this proceeding pursuant to Tenn. Code Ann. §4-5-101 *et seq.*, and the assigned Administrative Law Judge has the authority to issue final orders. See, Rules of the Tenn. Dept. of State, Admin. Procedures Division, Chapter 1360-4-1 *et seq.* The IDEA gives the Administrative Judge the direct authority to issue a *Honig* injunction. See 34 C.F.R. § 300.532(b); See also *Honig v. Doe*, 108 S. Ct. 592 (1988).



SCS has the burden of proof in seeking this injunctive relief. *Schaffer v. Weast*, 546 U.S. 49, 51 (2005). The Department of Education commented that the local education agency (hereinafter “LEA”) has the burden of persuasion when requesting that a hearing officer remove a child to an interim alternative educational setting. 71 Fed. Reg. 46,723 (2006). In a memorandum on the 1997 IDEA amendments, the Office of Special Education Programs (hereinafter “OSEP”) commented on the burden of proof required of school districts who petition a hearing officer to place a student who is a danger to self or others in an alternative educational placement. Specifically, OSEP stated that the district must “demonstrate by more than a preponderance of the evidence” that maintaining the student in the current placement is substantially likely to result in injury to the student or others. OSEP Memorandum 97-7, *Office of Special Education Programs*, Sept. 19, 1997.

**Maintaining [REDACTED] “stay-put” placement is substantially likely to result in injury to [REDACTED] or others.**

Pursuant to the IDEA, a hearing officer may “[o]rder a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.” 34 C.F.R. § 300.532(2)(ii). In a memorandum on the 1997 IDEA amendments, OSEP stated the following: “The hearing officer must consider the appropriateness of the child’s placement, whether the school district has made reasonable efforts to minimize the risk of

harm in the child's current placement, including the use of supplementary aids and services, and determine that the interim alternative educational setting meets the requirements of section 615(k)(3) of the Act." OSEP Memorandum 97-7, *Office of Special Education Programs*, Sept. 19, 1997.

Throughout the 2016-2017 school year, [REDACTED] exhibited aggressive behaviors that was dangerous to [REDACTED], other disabled students in [REDACTED] CDC classroom, and SCS staff. Furthermore, the SCS staff were concerned for the safety of the other students in [REDACTED] classroom. On several occasions, [REDACTED] attacked other students and/or pushed over large furniture to the point of causing SCS staff to fear that other students were going to sustain significant injuries. [REDACTED] forcefully pushed a child causing [REDACTED] to break [REDACTED] wrist and resulted in significant injury. Due to the intensity of [REDACTED] aggression, SCS's efforts to keep staff and students safe were unsuccessful. Throughout the 2016-2017 school year, [REDACTED] exhibited aggressive behavior resulting in multiple injuries to SCS staff and students. Respondent did not contest that [REDACTED] has caused injuries to [REDACTED] and others.

**SCS has made reasonable efforts to minimize the risk of harm in the current educational setting.**

The CDC classroom is comprised of students with significant cognitive and developmental delays, some of whom are medically fragile and/or non-ambulatory. Many of the students in [REDACTED] class are at-risk for physical injury and are unable to protect themselves from harm. In the fall of 2016, SCS tried to prevent injury to staff and [REDACTED] classmates by implementing an individualized workspace for [REDACTED] where an adult

worked 1 on 1 with [REDACTED] in a part of the classroom away from other students. Additionally, with support from the Autism consultant, the SCS staff implemented a multitude of behavioral strategies to support [REDACTED] BIP, such as checking schedule at transitions, providing directions visually, prompting, providing sensory activities, providing penny board/star board, providing positive reinforcement, teaching communication skills, identifying feelings such as happy or sad, providing reinforcers (e.g., food, books, electronics, flavored water, food, verbal praise, Play-Doh), designating an area where [REDACTED] received 1 on 1 instruction, which was later tweaked to become [REDACTED] individualized works space using a TEACH approach; providing visuals; providing a visual timer; providing structured activities; providing clear expectations; limiting wait time; providing visual book at each work location; and having staff member in close proximity.

According to expert testimony in this matter, there is no intervention or method that is guaranteed to produce a particular behavioral result in children with autism such as [REDACTED]. Furthermore, [REDACTED] increase in physical aggression does not mean that the school district failed to appropriately address [REDACTED] behavior. Dr. Rostetter testified that SCS has acted in a reasonable way to try to accommodate and adjust their program so that it might be effective. For purposes of analysis under the IDEA, the issue is the reasonableness of the efforts of SCS rather than whether the attempts were successful in addressing [REDACTED] behavior. Under this analysis, SCS has done all that it reasonably can within the current “stay-put” placement to reduce the risk of injury to [REDACTED] and others.

The IDEA requires an interim alternative educational setting to provide the student the ability to “continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.” 20 U.S.C. § 1415(k)(1)(C)(i). The student must also have the opportunity to “receive, as appropriate, a functional behavior assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.” 20 U.S.C. § 1415(k)(1)(C)(i).

SCS has chosen to provide [REDACTED] educational services in an interim alternative educational setting in the therapeutic behavior CDC program at [REDACTED]. SCS can individually address [REDACTED] needs in the therapeutic behavioral CDC at [REDACTED] without risk of harm to medically fragile students.


It is therefore **Determined** that that SCS has proven by more than a preponderance of the evidence that maintaining [REDACTED] current “stay-put” placement is substantially likely to result in serious injury to [REDACTED] or others. It is also **Determined** that SCS has made reasonable efforts to minimize the risk of harm in [REDACTED] current placement. Therefore, it is **ORDERED** that SCS is relieved of its obligation to maintain [REDACTED] current “stay-put” placement at [REDACTED] during the pendency of the companion due process hearings 07.03-143383J and 07.03-144860J, and that [REDACTED] SCS placement be changed to the therapeutic behavioral CDC program at [REDACTED] for forty-five school days. Under the circumstances, it is also **ORDERED** that [REDACTED] shall not be required to enroll in school with SCS if [REDACTED] has secured

a suitable private placement. The remaining issues will be resolved at the full hearing, which is currently set to begin November 13, 2017.

This Final Order entered and effective this 18th day of August 2017.

  
\_\_\_\_\_  
Michael Begley  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 18th day of August 2017.

  
\_\_\_\_\_  
J. Richard Collier, Director  
Administrative Procedures Division