



**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

**April 16, 2021**

Cheryl Cheffins, Esq.  
Cheffins & Nguyen Law Group, PLLC  
P.O. Box 90857  
Nashville, TN 37209

John D. Kitch, Esq.  
Cornelius & Collins, LLP  
P.O. Box 190695  
511 Union Street, Suite 1500  
Nashville, TN 37219

Michael F. Braun, Esq.  
Law Office of Michael Braun  
5016 Centennial Blvd., Ste. 200  
Nashville, TN 37209

Shaundraya Hersey, Esq.  
Tennessee Department of Education  
710 James Robertson Parkway  
Nashville, TN 37323

**RE: [REDACTED] THE STUDENT AND [REDACTED] THE STUDENT'S PARENT V. CLARKSVILLE  
MONTGOMERY COUNTY SCHOOL SYSTEM, APD Case No. 07.03-200717J**

Enclosed is a *Final Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division  
Tennessee Department of State

Enclosure(s)

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

**IN THE MATTER OF:**

██████ **THE STUDENT,**  
██████ **and** ██████ **THE PARENTS,**  
*Petitioners,*

*v.*

**CLARKSVILLE MONTGOMERY  
COUNTY SCHOOL SYSTEM,**  
*Respondent.*

**APD Case No. 07.03-200717J**

**FINAL ORDER**

The hearing in this matter came before Shannon Barnhill, Administrative Judge, assigned by the Tennessee Secretary of State's Administrative Procedures Division, on November 17, 19-20, 2020. The record closed on March 10, 2021, following submission of post-hearing briefs, proposed findings of fact and conclusions of law and a motion and response.

The Petitioners were represented by Attorneys Cheryl Cheffins and Michael F. Braun. Clarksville Montgomery County School System (CMCSS) was represented by Attorney John D. Kitch.

Petitioners alleged the following: failure to provide a free and appropriate public education (FAPE) to ██████ as required by the Individuals with Disabilities Act, 34 U.S.C. 1401 et seq. (IDEA) by (1) failing to design Individualized Education Programs (IEP) for the 2018-2019 and 2019-2020 school years that were reasonably calculated to enable ██████ to make progress in light of ██████ circumstances and (2) failing to fully and thoroughly evaluate ██████ in all areas of suspected disability for the purposes of educational planning, IEP development, establishing reliable baselines and understanding ██████ learning style and service needs. Petitioners further

allege that CMCSS violated Section 504, 29 U.S.C. § 794 and the Americans with Disabilities Act by failing to provide [REDACTED] with proper accommodations and services.

Petitioners sought the following relief: (1) Provide compensatory education for the failure to provide FAPE during the 2018-2019 and first semester of the 2019-2020 school years to be paid in the form of funding for placement at [REDACTED] [REDACTED] for the 2021-2022 school year and any other years required to place [REDACTED] at the academic level [REDACTED] would have been if CMCSS had provided FAPE ; (2) Fund [REDACTED] placement at [REDACTED] for the second semester of the 2019-2020 school year and the 2020-2021 school year; and (3) Attorney's fees and costs associated with the due process case.

Based upon the pleadings, the evidence at trial, the parties' post-trial briefs, the oral arguments of the parties, and the record in this case, it is **DETERMINED** that the relief sought by the Petitioners should be **DENIED**.

This decision is based upon the following findings of fact and conclusions of law:

### BACKGROUND

1. The student, [REDACTED] is a [REDACTED]-year-old (DOB [REDACTED]) [REDACTED] who enrolled at [REDACTED] in [REDACTED], Tennessee, in February 2020.

2. Prior to attending [REDACTED] [REDACTED] attended two schools in the CMCSS District. The first being [REDACTED] and the second being [REDACTED]

[REDACTED]

3. [REDACTED] attended [REDACTED] grades.

4. [REDACTED] began attending [REDACTED] in August of 2019.

5. [REDACTED] was initially evaluated for eligibility for special education in 2015, at [REDACTED] previous school located outside the CMCSS district.

6. The claims set forth in Petitioners' Complaint in this matter revolve around the 2018-2019 school year when [REDACTED] was in [REDACTED] grade at [REDACTED] and the first semester of the 2019-2020 school year when [REDACTED] was a [REDACTED] grader at [REDACTED]

#### WITNESSES

7. Dr. Patti Wilson, Ph.D., is a nationally certified and licensed school psychologist and health services provider. She has a bachelor's and master's degree in psychology and a Ph.D. in school psychology. She was employed by the district at [REDACTED] as the school psychologist and Response to Intervention (RTI) coordinator in 2016 when [REDACTED] enrolled in CMCSS and is currently a full-time RTI coordinator at [REDACTED]. Dr. Wilson was qualified as an expert in school psychology.

8. Christina Campbell is a special education teacher at [REDACTED]. Ms. Campbell has a bachelor's degree in criminal justice and a master's degree in learning and behavior disorders. She has more than twenty years teaching experience in a special education setting. She is a licensed special education interventionist for grades K-12. Ms. Campbell was qualified as an expert in special education.

9. Miranda Morris is a school psychologist with CMCSS. During the 2018-2019 school year she was the school psychologist at [REDACTED]. Ms. Morris has a bachelor's degree in psychology, a master's degree in school psychology and an Ed.S. in school psychology. Ms. Morris was qualified as an expert in school psychology.

10. Taylia Griffith is the Director of Special Populations at CMCSS.

11. Donna Cooper is a general education teacher with CMCSS. During the 2018-2019 school year she taught [REDACTED] grade at [REDACTED]. Ms. Cooper has bachelor's degrees in chemistry

and biochemistry and a master's degree in education. She has approximately twenty years of experience teaching and is licensed K-6. Ms. Cooper was qualified as an expert in general education.

12. Sandy Parus is a dyslexia practitioner in private practice in Murfreesboro, Tennessee. Ms. Parus has a bachelor's degree in journalism, a master's degree in education with an emphasis in reading specialist and a master's degree in education with an emphasis in teaching English language learners. She is a certified level one Wilson Dyslexia Practitioner. She has approximately sixteen years of experience as a teacher, half of which were as a reading specialist, in Illinois public schools and in 2018 opened Middle Tennessee Educational Therapy. Ms. Parus was qualified as an expert reading specialist.

13. Mary Ragsdale is the [REDACTED] School Division Head at [REDACTED]

14. Angelica Encinas is the academic transition teacher for reading fluency at [REDACTED]. Ms. Encinas has a bachelor's degree in special education and a master's degree in education with an emphasis in reading. Ms. Encinas has approximately six years of experience as a special education teacher and reading intervention teacher. She has training in Orton-Gillingham techniques dealing with dyslexia. Ms. Encinas holds certifications in modified special education K-12 and comprehensive special education K-12. Ms. Encinas was qualified as an expert in reading intervention techniques.

15. Amanda Economos is a special education teacher at [REDACTED]. Ms. Economos has a bachelor's degree in history, a master's degree in special education and her Ed.S. with a concentration in instructional technology. She has more than eight years of experience teaching in special education. Ms Economos was qualified as an expert in the area of IEPs.

16. Tanya Streeter is the school psychologist at [REDACTED]

17. [REDACTED] is the [REDACTED] of [REDACTED]

## FINDING OF FACTS

18. At the time of [REDACTED] transfer, [REDACTED] was in the [REDACTED] grade and had been found eligible for special education services under the eligibility category of Specific Learning Disability (“SLD”) with a deficit in Basic Reading Skills. (Exhibit 1).

19. An SLD in Basic Reading Skills indicates a deficit in the foundational skills within the reading progression, e.g. sound symbol association and nonsense word decoding. (Hr. Transcript, Vol. I, p. 10, 12-16).

20. On September 2, 2016, the IEP team met and determined that [REDACTED] continued to be eligible for special education under the eligibility category of SLD with a deficit area in Basic Reading Skills. (Exhibit 2).

21. According to the initial CMCSS eligibility report of September 2, 2016, [REDACTED] also had the following diagnoses: Adjustment Disorder with Anxiety and Expressive Language Disorder. The parent information section also noted that [REDACTED] was dyslexic. (Exhibit 1, 2).

22. Dyslexia is a neurobiological condition that presents itself in struggles with processing language. (Hr. Transcript, Vol. II, p. 240, 16-19).

23. Dyslexia is not a visual disorder, but rather a language-based disorder. The primary struggling factor or symptom of dyslexia is that students have difficulty applying the sounds of language to the written word. (Hr. Transcript, Vol. II, p. 241, 4-9).

24. According to Dr. Patti Wilson, a psychologist with CMCSS, [REDACTED] scores on the Wechsler Preschool and Primary Scale of Intelligence placed [REDACTED] in the average range for intelligence. (Hr. Transcript, Vol. I, p. 12, Lines 21-25, p. 13, Lines 1-9).

25. Additionally, Dr. Wilson noted that [REDACTED] entered the CMCSS on the lower end of the progression scale and based on [REDACTED] disability [REDACTED] progress would have been slow and it could

have taken years to see an impact on [REDACTED] grade level ability. (Hr. Tr. Vol. I, p. 31, lines 17-25, p. 32, lines 1-6).

26. Per the Prior Written Notice (“PWN”) generated after the meeting, the IEP team determined that the eligibility category of SLD in Reading Fluency would not be appropriate since [REDACTED] fluency is impacted by [REDACTED] underlying decoding deficits. (Exhibit 2).

27. The IEP created at the meeting included Present Levels of Performance (“PLOPs”) and goals in the area of Basic Reading Skills. Specifically, goals addressed vowel sounds, vowel diagraphs, vowel diphthongs and r-controlled vowels. (Exhibit 3).

28. The IEP created for [REDACTED] [REDACTED] grade year also included PLOPs and goals to address [REDACTED] deficits in Basic Reading Skills. Specifically, the goals addressed vowel sounds and consonant diagraphs. (Exhibit 4).

29. In August of 2018, the beginning of [REDACTED] [REDACTED] grade year, the IEP team met to create [REDACTED] annual IEP. (Exhibit 6).

30. The IEP noted [REDACTED] primary disability was SLD with a deficit area of basic reading skills. [REDACTED] was noted to have strong listening comprehension skills, strong mental computation skills and strong social skills. [REDACTED] parents were pleased with the interventions and expressed that [REDACTED] acting out behaviors were likely the result of [REDACTED] frustration caused by [REDACTED] difficulty with reading. [REDACTED] parents wanted the interventions to be guided by [REDACTED] dyslexia diagnosis. [REDACTED] parents also expressed concern about [REDACTED] performance in math. (Exhibit 6).

31. The IEP team determined that [REDACTED] did not require assistive technology in order to implement [REDACTED] IEP. (Exhibit 6).

32. The data included in the PLOP for Basic Reading Skills is from August of 2016 and indicates that [REDACTED] is reading at the 1st percentile. The PLOP does not include any detailed information as to what pre-foundational reading skills [REDACTED] has mastered but states that “[REDACTED] is

able to segment a word into sounds and is able to recite phonemic rules and syllabication. However, ■■■ has difficulty with using and fluently reading text at times if not focusing.” (Exhibit 6).

33. The annual pre-vocational goal was given one large group objective from a teacher or staff member ■■■ would independently begin and complete the assigned task for 85% of applicable situations for one session per day as measured by teacher collection. (Exhibit 6).

34. The Basic Reading Skills goal states that ‘given a reading passage, ■■■ will read the words using known rules with 90% accuracy on 4 out of 5 opportunities, as measured by data collection.’ (Exhibit 6).

35. Kim Tardelli, a private reading tutor hired by ■■■ parents, also attended the meeting. (Exhibit 6).

36. At the meeting, ■■■ signed a CMCSS provided Release of Information form that would allow Ms. Campbell to share information related to ■■■ reading instruction with Ms. Tardelli. (Exhibit 8).

37. Ms. Campbell testified at the hearing that she did not attempt to contact or collaborate with Ms. Tardelli because she didn’t see a need to do so. (Hr. Transcript, Vol. I, p. 61, Lines 10-16).

38. According to prior written notice sent August 8, 2018, ■■■ was making gains in ■■■ current least restrictive environment (LRE) and the data indicated that more intensive services were not necessary. The IEP offered appropriate support based on ■■■ needs and LRE. A review of the records, parent and teacher input, previous evaluation and IEP documents and the current IEP formed the basis of the proposal. (Exhibit 7).

39. According to Ms. Campbell, the progress monitoring showed that ■■■ was making progress with both behavioral goals and reading goals. Although, ■■■ was impulsive at



times ■ did well with redirection and there was no need for a behavior plan outside the IEP which addressed behavior in the pre-vocational section. (Hr. Tr. Vol. I, p. 118, lines 15-25, p. 119, lines 1-25, p. 120, lines 1-15).

40. At the meeting, Ms. Campbell told ■ and ■ that she believed ■ had ADHD and that ■ reading would improve if ■ were medicated. (Hr. Transcript, Vol. III, p. 522, Lines 22-25, p. 526, Lines 3-6).

41. Based on Ms. Campbell's comments, ■ and ■ followed up with ■ pediatrician as well as another Vanderbilt doctor. Neither doctor diagnosed ■ with ADHD. (Hr. Transcript, Vol. III, p. 527, Lines 19-25, p. 528, Lines 1-7).

42. It is noted that ■ parents meaningfully participated in the IEP development and approved implementation at the annual IEP Team meeting in 2018.

43. According to a notice sent to ■ in October of 2018, Ms. Campbell was providing additional reading intervention to ■. The notice stated that ■ was making progress and the intervention would continue. At the time the interventions used were Read Well and Orton-Gillingham. (Exhibit 59).

44. At the hearing, Ms. Campbell testified that at some point during the school year, she began using the Read Live program which provided a more individualized approach to interventions. Ms. Campbell shared the progress that ■ made with ■ parents. (Hr. Transcript, Vol. I, p. 41, Lines 15-19, p. 43, lines 18-25, p.44, lines 1-25).

45. ■ testified that ■ and ■ did not receive a notification that ■ reading intervention had been changed. (Hr. Transcript, Vol. III, p. 535, Lines 2-11).

46. Read Live is a structured literacy program. (Hr. Transcript, Vol. I, p. 41, Lines 18-19).

47. Each school within the CMCSS selects which reading programs they will use. (Hr. Transcript, Vol. I, p. 169, Lines 10-18).

48. In October of 2018, the IEP team met to create an addendum to [REDACTED] IEP. (Exhibit 11).

49. The IEP was changed to indicate that [REDACTED] behavior impeded [REDACTED] learning or the learning of others. (Exhibit 11).

50. The PLOP data listed for Basic Reading Skills included the same information that had been listed on the August 2018 IEP. (Exhibit 11).

51. At the meeting, [REDACTED] and [REDACTED] requested a comprehensive evaluation be completed for [REDACTED] in order to obtain updated data. The PWN also indicates that school personnel were concerned about [REDACTED] inattention and off-task behavior and were interested in administering assessments that addressed behavior. (Exhibit 12).

52. The annual pre-vocational goal was modified to state that given a directive [REDACTED] would comply with the given directive throughout the duration of the task or assignment with no more than two prompts for 80% of documented observations over 4 of 5 data points as determined by data collection. (Exhibit 11).

53. The Basic Reading Skills goal was modified to state that given an unfamiliar reading passage at [REDACTED] instructional level, [REDACTED] would increase [REDACTED] words read per minute to 75 with 90% accuracy over 4 of 5 data points as determined by data collection. (Exhibit 11).

54. According to Ms. Campbell, [REDACTED] made steady progress in [REDACTED] grade with the reading program. (Hr. Tr. Vol. I, p. 87, lines 9-16).

55. Ms. Campbell testified that after staff set goals and expectations for [REDACTED] and continued to be consistent, [REDACTED] behavior improved and so did [REDACTED] scores in the classroom. [REDACTED] repeated reading scores improved. [REDACTED] [REDACTED] to [REDACTED] grade state NCE scores almost doubled in

the [REDACTED] grade, and [REDACTED] rose from a level 1 in [REDACTED] grade to a level 2 in [REDACTED] grade for reading/language arts. (Hr. Tr. Vol. I, p. 195, lines 22-25, p. 196, lines 1-6).

56. According to Ms. Campbell, [REDACTED] was provided the services [REDACTED] needed to make educational progress by CMCSS and [REDACTED] made educational progress. (Hr. Tr. Vol. I, p. 126, lines 8-15).

57. According to Ms. Campbell dyslexia is a neural condition that takes years to remediate reading deficits for students who have dyslexia. (Hr. Tr. Vol. I, p. 132, lines 22-24).

58. With regard to Petitioner's argument that [REDACTED] wasn't mastering goals timely, Ms. Campbell testified that if she had continued to progress-monitor on the level that [REDACTED] was at when she initially began to work with [REDACTED], then [REDACTED] would have mastered the goal within the ISP period, but she increased the rigor of the text to continue to challenge the student to grow. (Hr. Ex. Vol. I, p. 133, lines 11-15).

59. Miranda Morris completed the psychoeducational evaluation. (Exhibit 19).

60. Ms. Morris testified at the hearing that 'the two things that were brought to the table were [REDACTED] academic achievement skills and then [REDACTED] social/emotional skills relating to [REDACTED] attention and distractibility.' (Hr. Transcript, Vol. I, p. 142, Lines 16-19).

61. Ms. Morris did not consider conducting any assessments that specifically addressed [REDACTED] reading skills. (Hr. Transcript, Vol. I, p. 143, Lines 3-7).

62. [REDACTED] was noted to have mastered [REDACTED] reading goal but was not making adequate progress on pre-vocational goals. This was the reason for the comprehensive evaluation. (Exhibit 12).

63. Although the reevaluation pointed to issues with inattention and hyperactivity, [REDACTED] did not have a medical diagnosis of ADHD and the IEP team was not able to add Other Health Impairment as an additional eligibility category for [REDACTED] (Exhibit 13, 19).

64. No changes were made to the IEP based on the reevaluation results. (Exhibit 13).

65. It is noted that [REDACTED] parents meaningfully participated in the IEP development and approved implementation of the addendum to the IEP. (Exhibit 11).

66. Ms. Morris testified at the hearing that if [REDACTED] had been found eligible under the eligibility category of OHI, then [REDACTED] math deficits could be addressed through [REDACTED] IEP. (Hr. Transcript, Vol. I, p. 157, Lines 6-23).

67. In April of 2019, the IEP team met to develop [REDACTED] annual IEP. (Exhibit 14).

68. The PLOPs for Basic Reading Skills were updated to indicate that [REDACTED] was being progress monitored at the [REDACTED] grade level and reading approximately 65 wcpm at 95% or better accuracy. This was an improvement from being at the [REDACTED] grade level at the beginning of [REDACTED] grade year. [REDACTED] trend line indicated that [REDACTED] would meet [REDACTED] IEP goal by the end of the year. On Fastbridge Reading CBM [REDACTED] 59 wcpm with 98% accuracy on [REDACTED] grade passages. The IEP includes two fluency goals but does not include any goals addressing Basic Reading Skills. (Exhibit 14).

69. Ms. Campbell testified at the hearing that ‘it’s accepted to measure basic reading skills --or basic reading progression, utilizing fluency as a measure.’ (Hr. Transcript, Vol. I, p. 101, Lines 21-25).

70. The IEP indicates that [REDACTED] behavior continues to impede [REDACTED] learning or the learning of others. (Exhibit 14).

71. The following pre-vocational goal was added to the IEP: ‘[REDACTED] will display behaviors appropriate for [REDACTED] school and [REDACTED] age 75 percent of the time as measured by daily teacher observation.’ (Exhibit 14).

72. It is noted that [REDACTED] parents meaningfully participated in this IEP as well and agreed to its implementation. (Exhibit 14).

73. No fidelity checks were completed for [REDACTED] reading intervention for the 2018-2019 school year. Fidelity checks were completed for math. (Exhibit 22).

74. [REDACTED] received math intervention through the RTI program in the spring of 2019. (Hr. Transcript, Vol. I, p. 178, Lines 2-3, Exhibit 24).

75. On April 25, 2019, [REDACTED] scored at the 2nd percentile on the aMath universal screener placing [REDACTED] at a Risk Level of highRisk. (Exhibit 48, Tab labeled aMath).

76. [REDACTED] report card for the 2018-2019 school year included four C's and one B. (Exhibit 61).

77. In August of 2019, [REDACTED] and [REDACTED] began exploring private school options. It was their opinion that [REDACTED] progress in reading was lacking and were concerned that the district had begun to focus on [REDACTED] behavior rather than [REDACTED] reading. They also saw the impact that [REDACTED] failure to make progress in reading had on [REDACTED] self-esteem. (Hr. Transcript, Vol. III, p. 582, Lines 7-25, p. 583, Lines 1-25, p. 584, Lines 2-7, p. 585, Lines 7-10).

78. [REDACTED] testified at the hearing that even though they were researching private schools, they had not yet decided to remove [REDACTED] from CMCSS. They were still hoping to be able to work with the team to provide a program that would enable [REDACTED] to close the gap. (Hr. Transcript, Vol. III, p. 584, Lines 2-7).

79. On August 23, 2019, [REDACTED] scored at the 9th percentile on the MathAutomaticity universal screener placing [REDACTED] at a Risk Level of highRisk. (Exhibit 48, Tab labeled MathAutomaticity).

80. Angelica Encinas taught [REDACTED] reading intervention class during the 2019-2020 school year. (Hr. Transcript, Vol. II, p. 353, Lines 3-16).

81. Ms. Encinas testified at the hearing that she had been trained in the following reading programs: FastBridge, Easy CBM and the Jen Jones program. (Hr. Transcript, Vol. II, p. 354, Lines 11-19).

82. There were 12 students in [REDACTED] reading intervention class. (Hr. Transcript, Vol. II, p. 354, Lines 20-23).

83. Ms. Encinas did not continue to use the Read Live program for [REDACTED] instruction. Instead she used a variety of structured literacy programs. (Hr. Transcript, Vol. II, p. 363, Lines 18-25, p. 364, Lines 1-3).

84. Ms. Encinas also used a variety of sensory drills and interacted kinesthetically to actively engage [REDACTED] in learning and according to Ms. Encinas [REDACTED] enjoyed it and made educational progress in reading. It was Ms. Encinas' opinion that [REDACTED] was afforded every opportunity and provided with all necessary services in order to make educational progress in reading and that [REDACTED] did make progress. An added benefit was that it helped [REDACTED] engage in class. (Hr. Transcript, Vol. II, 386, lines 13-25, p.387, lines 387, lines 1-25, p. 388, lines 1-25, p. 389, lines 1-25, p. 390, lines 1-6).

85. Amanda Economos was [REDACTED] case manager the 2019-2020 school year. (Hr. Transcript, Vol. II, p. 392, Lines 13-14, p. 425, Lines 20-21).

86. According to Ms. Economos reading skills were monitored through the Quick Phonics Screener program (QPS). Hr. Transcript, Vol. II, p. 401, lines 18-22).

87. According to Ms. Economos the pre-vocational goal did not list any specific behaviors but monitored behavior appropriate for [REDACTED] school students as directed in the IEP. (Hr. Transcript, Vol. II, p. 405, Lines 16-19).

88. In September of 2019, [REDACTED] and [REDACTED] contacted Sandy Parus, a dyslexia practitioner in private practice, and asked her to complete a reading assessment for [REDACTED] (Exhibit 28).

89. [REDACTED] testified at the hearing that [REDACTED] had reached out to Ms. Parus because [REDACTED] had not been getting progress reports from the school on where [REDACTED] was progressing in terms of the actual program the school was using. (Hr. Transcript, Vol. III, p. 576, Lines 7-19).

90. The results of the assessment showed that [REDACTED] had mastered 52% of the total sounds (including consonants, vowels, welded, digraphs, & trigraphs). (Exhibit 28).

91. [REDACTED] results on the Word Identification and Spelling Test (“WIST”) indicated that [REDACTED] fell below the 1st percentile in Word Identification, Sound Symbol Knowledge and the Fundamental Literacy Index. [REDACTED] fell at the 2nd percentile in Spelling. (Exhibit 28).

92. [REDACTED] results on the Woodcock Reading Mastery Tests (WRMT-III) indicated that [REDACTED] fell below the 1st percentile in Word Identification and at the 1st percentile in Word Attack and Oral Reading Fluency. (Exhibit 28).

93. Ms. Parus recommended that [REDACTED] be provided intensive intervention using a multi-sensory, structured literacy approach. Ms. Parus also provided a list of accommodations that would allow [REDACTED] to access the curriculum. (Exhibit 28).

94. It is noted that multi-sensory structured literacy approach was the approach used by Ms. Encinas. (Hr. Transcript, Vol. II, 386, lines 13-25, p.387, lines 387, lines 1-25, p. 388, lines 1-25, p. 389, lines 1-25, p. 390, lines 1-6).

95. [REDACTED] emailed Ms. Parus’ report to Ms. Ecomonos. (Hr. Transcript, Vol. II, p. 415, Lines 1-11).

96. Ms. Economos testified at the hearing that she had no reason to doubt the validity of Ms. Parus’ scores. (Hr. Transcript, Vol. II, p. 415, Lines 23-25, p. 416, Line 1).

97. On September 13, 2019, Ms. Economos requested that Brittany Henderson, a behavior consultant with the district, conduct an observation of [REDACTED] (Hr. Transcript, Vol. II, p. 423, Lines 10-14, Exhibit 41, 42).

98. Ms. Economos testified at the hearing that Ms. Henderson produced a report, but the report was not shared with [REDACTED] parents or the other members of the IEP team. (Hr. Transcript, Vol. II, p. 424, Lines 1-20).

99. In September of 2019, [REDACTED] and [REDACTED] had [REDACTED] evaluated by the Diagnostic Center at [REDACTED] (Hr. Transcript, Vol. III, p. 592, Lines 23-25).

100. [REDACTED] testified at the hearing that [REDACTED] had requested the [REDACTED] evaluation because the evaluation that CMCSS had completed the prior December was not comprehensive enough. [REDACTED] had hoped that the district would use the information obtained from the evaluation to update [REDACTED] IEP. (Hr. Transcript, Vol. III, p. 575, Lines 6-19).

101. On September 20, 2019, [REDACTED] and [REDACTED] received a high-level summary of the results of [REDACTED] evaluation from [REDACTED] (Hr. Transcript, Vol. III, p. 593, Lines 15-24).

102. [REDACTED] did not share the summary with [REDACTED] IEP team, despite the fact that it was prepared for the upcoming IEP meeting, because in [REDACTED] opinion it was too broad and did not contain any specific recommendations. (Hr. Transcript, Vol. III, p. 594, Lines 3-19, p. 598, lines 13-17).

103. In September of 2019, [REDACTED] and [REDACTED] requested an IEP meeting. The meeting was held on September 24, 2019. (Exhibit 33).

104. The PLOPs on the IEP were updated to include basic reading skills data. The IEP team also added a nonsense word goal. (Exhibit 33).



105. The pre-vocational goal was also modified to read: [REDACTED] will work on undesired tasks given (group work, individual assignment, etc.) during each class period for a minimum of 75% of the class period as monitored by daily teacher observation. (Exhibit 33).

106. Ms. Economos worked with [REDACTED] on organization but did not add any related goals to [REDACTED] IEP. (Hr. Transcript, Vol. II, p. 413, Lines 24-25, p. 414, Lines 1-10).

107. After the meeting [REDACTED] requested that Ms. Economos add the following narrative to the parental concerns section of the IEP: “[REDACTED] parents are utterly and thoroughly dismayed at [REDACTED] progress since entering the Montgomery Clarksville School District. [REDACTED] has shown little to no progress in almost all areas and in fact, has actually declined in several areas. [REDACTED] is currently reading at low [REDACTED] grade level. According to the school system testing, the only area where [REDACTED] has shown some progress is in [REDACTED] phonological awareness skills. However, this is due to the private tutoring [REDACTED] parents have [REDACTED] in, twice a week utilizing the Wilson Reading System. This is proven by [REDACTED] higher scores on phonological awareness and very low scores on the r-controlled syllables, which [REDACTED] has not yet reached in [REDACTED] tutoring sessions. The parents have continually requested that [REDACTED] education be enhanced by a multi-sensory, structured literacy approach such as Orton-Gillingham or Wilson Reading with a certified instructor. As [REDACTED] academic needs are not being met, [REDACTED] frustration as well as the parents, are growing. It is the parent's opinion that [REDACTED] is now being targeted as a behavioral problem. This is further reinforced by [REDACTED] new pre-vocational goals. The parents firmly believe that if [REDACTED] was getting the instruction and support, without negativity, [REDACTED] academics and behavior would improve as [REDACTED] is being engaged.” (Exhibit 33).

108. Under student strengths it is noted that [REDACTED] has adjusted well to [REDACTED] school and [REDACTED] wcpr have increased. (Exhibit 33).

109. [REDACTED] and [REDACTED] also shared their concerns about [REDACTED] math deficits. (Hr. Transcript, Vol. III, p. 558, Lines 8-22).

110. The September 24, 2019, IEP includes math inclusion under direct special education services for five sessions per week at fifty-five minutes per session. (Exhibit 33).

111. [REDACTED] testified at the hearing that while [REDACTED] did not completely agree with the IEP, [REDACTED] signed it because [REDACTED] wanted [REDACTED] to have some support. (Hr. Transcript, Vol. III, p. 551, Lines 17-24).

112. It is noted that [REDACTED] was represented by counsel at the IEP meeting and could have chosen not to sign the IEP agreeing to implementation. The prior IEP was in place and services would have continued. (Hr. Transcript, Vol. III, p. 590, lines 5-7).

113. Ms. Economos testified at the hearing that the nonsense words presented to [REDACTED] were pre-generated by FastBridge. School personnel are not able to actually see what nonsense words have been generated so it is unclear whether the nonsense words targeted the specific pre-foundational reading skills that [REDACTED] was working on in [REDACTED] reading intervention class. The QPS was used to determine whether targeted areas were progressing. (Hr. Transcript, Vol. II, p. 398, Lines 21-25, p. 399, Line 1, p. 401, Lines 12-22).

114. [REDACTED] testified that [REDACTED] did not receive any additional progress monitoring data related to PASS or QTS monitoring after the September 24, 2019 IEP meeting. (Hr. Transcript, Vol. III, p. 566, Lines 19-25, p. 567, Lines 1-2).

115. After the IEP meeting, [REDACTED] continued to work with [REDACTED] teachers in determining supports that could assist [REDACTED] at school. (Exhibits 63, 64, 65, 66, 69, 70, 71, 73, 74, 75, 78).

116. On November 6, 2019, [REDACTED] received the completed report from the Diagnostic Center at [REDACTED]. On November 11th, [REDACTED] emailed the report to Ms. [REDACTED].

Economos and asked that Ms. Economos share the report with the IEP team. [REDACTED] also expressed [REDACTED] concerns about [REDACTED] progress in math and inquired about the plan to complete a positive behavior plan for [REDACTED] (Exhibit 46).

117. Ms. Economos shared the report with Ms. Encinas and Tanya Streeter, a CMCSS school psychologist. (Hr. Transcript, Vol. II, p. 431, Lines 18-21).

118. [REDACTED] testified that [REDACTED] was not informed that an IEP team meeting would be scheduled to discuss the [REDACTED] evaluation. (Hr. Transcript, Vol. III, p. 587, Lines 4-7).

119. On November 25, 2019, Ms. Economos emailed [REDACTED] to update [REDACTED] on the school's response to the issues raised in the [REDACTED] report. One of the changes under discussion was moving [REDACTED] out of [REDACTED] special education reading intervention class to a general education RTI class. Ms. Economos also stated that she had begun working on a positive behavior plan for [REDACTED] (Exhibit 54).

120. On November 27, 2019, [REDACTED] and [REDACTED] lawyer emailed counsel for CMCSS to inform him that [REDACTED] would be withdrawn from CMCSS. (Hr. Transcript, Vol. III, p. 600, lines 22-25, p. 301, lines 1-9).

121. Despite the notice to CMCSS regarding the withdrawal on November 27, 2019, [REDACTED] continued to work with CMCSS on programming options with the school for [REDACTED]. [REDACTED] did not request an IEP meeting but did explore options with Ms. Economos on December 10, 2019. One of the options [REDACTED] agreed to was to move [REDACTED] into RTI math while other options were under consideration. (Hr. Transcript, Vol. III, p. 601, lines 15-25, p. 602, lines 1-24).

122. [REDACTED] never responded to CMCSS regarding the options presented and instead withdrew [REDACTED] from CMCSS two days later on December 12, 2019. (Hr. Transcript, Vol. III, p. 602, line 25, p. 603, lines 1-4).

123. [REDACTED] never gave CMCSS a chance to hold an IEP meeting to discuss the options discussed on December 10, 2019, or any other options before withdrawing [REDACTED] from CMCSS on December 12, 2019. (Hr. Transcript, p. 603, lines 5-23).

124. According to Ms. Streeter the [REDACTED] report would have been considered at the IEP meeting but CMCSS never had the opportunity to consider the evaluation. (Hr. Transcript, Vol. III, p. 513, lines 11-18).

125. Ms. Economos testified at the hearing that prior to receiving the December 12, 2019, email removing [REDACTED] from CMCSS, [REDACTED] and [REDACTED] had not expressed any dissatisfaction with [REDACTED] current IEP and that she was surprised by the email. (Hr. Transcript, Vol. III, p. 480, Lines 23-25, p. 481, Lines 1-2).

126. [REDACTED] began attending [REDACTED] [REDACTED] in February of 2020. (Hr. Transcript, Vol. III, p. 581, Lines 1-5).

127. Mary Ragsdale, the [REDACTED] School Division Head at [REDACTED] testified at the hearing that the mission of [REDACTED] is to provide an exemplary K-12 day school program that empowers students with learning differences to achieve their fullest potential. (Hr. Transcript, Vol. II, p. 314, Lines 4-7).

128. [REDACTED] is accredited through the Southern Association of Independent Schools. (Hr. Transcript, Vol. II, p. 314, Lines 23-24).

129. Although teachers at [REDACTED] are not required to be licensed, [REDACTED] ELA teacher has a certification in special education. (Hr. Transcript, Vol. II, p. 316, Lines 16-18, p. 317, Lines 9-14).

130. [REDACTED] provides dyslexia specific training to its teachers. (Hr. Transcript, Vol. II, p. 318, Lines 1-8).

131. The student-teacher ratio at [REDACTED] is approximately 4 to 1. (Hr. Transcript, Vol. II, p. 322, Lines 5-7).

132. Each student at [REDACTED] has an Individualized Learning Plan (“ILP”). Academic accommodations included in the plan are based on the student’s most recent psychoeducational testing. (Hr. Transcript, Vol. II, p. 324, Lines 8-10, p. 325, Lines 13-17).

133. [REDACTED] ILP includes small group occupational therapy and speech-language therapy. Both components were added based on the results of [REDACTED] most recent psychoeducational testing. (Hr. Transcript, Vol. II, p. 329, Lines 14-17, Exhibit 29).

134. The ILP also includes areas of focus that are progress monitored throughout the year. (Hr. Transcript, Vol. II, p. 332, Lines 19-25, p.333, Lines 1-10).

135. [REDACTED] provides [REDACTED] reading instruction through the Take Flight program. Take Flight is a structured literacy program. (Hr. Transcript, Vol. II, p. 334, Lines 20-25, Exhibit 29, 30).

136. Take Flight is an evidence-based program based on years of research. It includes explicit instruction where concepts are directly taught with guided practice. It is very systematic and cumulative. It is hands-on and multisensory. It is also diagnostic and responsive, similar to Orton-Gillingham and the other kinds of approaches that have been proven effective for students with specific learning needs, language learning needs. (Hr. Transcript, Vol. II, p. 335, Lines 10-20).

137. Take Flight also includes interim progress monitoring data that is shared with the parents. (Exhibit 31, Hr. Transcript, Vol. II, p. 335, Lines 10-20).

138. In October of 2020, Ms. Parus completed a second assessment for [REDACTED] (Exhibit 80).

139. ■■■ testified at the hearing that ■■■ had requested an updated assessment to confirm that ■■■ was making progress due to the reading instruction ■■■ was receiving at ■■■ (Hr. Transcript, Vol. III, p. 576, Lines 20-25).

140. The results of the assessment showed that ■■■ had improved in nearly all areas. (Exhibit 80).

141. Ms. Parus testified that fluency is a higher skill than basic reading. Basic reading begins by looking at things at the letter and the word level first and knowing how to apply the concepts of those sounds into word reading. Fluency is separate from automaticity because automaticity works at that word level. Fluency would work more at a sentence reading or a story level. (Hr. Transcript, Vol. II, p. 260, Lines 18-25, Exhibit 27).

142. A nonsense word is comprised of letters within the English language that when put together does not construct a real word. (Hr. Transcript, Vol. II, p. 262, Lines 12-15).

143. Ms. Parus testified that nonsense word practice and assessment is ‘very telling’ for the practitioner because when working with students, especially students who have already received literacy training, it is unclear whether the student has memorized the word or if they have applied the rules of phonics. (Hr. Transcript, Vol. II, p. 262, Lines 16-25, p. 263, Line 1).

144. Nonsense words are vital to structured literacy lessons and actually seeing what the student knows, what can they use automatically and what have they mastered. (Hr. Transcript, Vol. II, p. 263, Lines 7-10).

145. Ms. Parus testified that measuring fluency is not a good indicator of a student’s basic reading skills. (Hr. Transcript, Vol. II, p. 265, Lines 22-25).

146. Ms. Parus explained that fluency passages are often stories and a student can use their background knowledge to guess at the words. (Hr. Transcript, Vol. II, p. 265, Lines 13-17, p. 266, Lines 11-15).

147. Ms. Parus confirmed that in Tennessee schools are able to determine which branded program they use in managing students with dyslexia and that she did not know whether CMCSS offered dyslexia-specific interventions to [REDACTED] (Hr. Transcript, Vol. II, p. 309, lines 5-15).

### CONCLUSIONS OF LAW

1. When enacting IDEA, Congress clearly conferred jurisdiction of a student's IDEA claims upon hearing officers, also known as administrative law judges. *See* 20 U.C.A. § 1415(f)(3)(A). Administrative judges are bestowed the jurisdiction to determine whether a student received an appropriate education under the IDEA. 20 U.C.A. § 1415(f)(3)(E).

2. In Tennessee, the Office of the Secretary of State, Division of Administrative Procedures, has jurisdiction over the subject matter and the parties of this proceeding and the undersigned Administrative Law Judge has the authority to issue final orders. *See* State Board of Education Rules, Special Education Programs and Services, 0520-01-09-.18; *see* T.C.A. § 49-10-101.

3. The U.S. Supreme Court held in *Schaffer v. Weast*, that the burden of proof is on the party “seeking relief”. 546 U.S. 49, 51 (2005). Thus, when a parent files a request for a due process hearing, the parent bears the burden of proof, or burden of persuasion in the due process hearing. *Id.* At 56 (citing 2 J. Strong, McCormick on Evidence § 337, p. 412 (5<sup>th</sup> Ed. 199)) (referencing the “default rule that [Petitioners] bear the risk...” and “[t]he burdens of pleading and proof...should be assigned to the [Petitioner] who generally seeks to change the present state of affairs...”); *see also*, *Cordrey v. Euckert*, 917 F.2d 1460, 1469 (6<sup>th</sup> Cir. 1990) (the party challenging the IEP bears the burden of proof in an IDEA action).

4. In the instant case, Petitioners clearly bear the burden of persuasion. [REDACTED] and [REDACTED] the parents of [REDACTED] filed the request for due process hearing claiming that CMCSS failed to

offer [REDACTED] a free appropriate public education pursuant to the IDEA. Thus, [REDACTED] and [REDACTED] bear the burden to prove the specific violations alleged in the due process complaint that CMCSS failed to provide a free and appropriate public education (FAPE) to [REDACTED] as required by the Individuals with Disabilities Act, 34 U.S.C. 1401 et seq. (IDEA) by (1) failing to design Individualized Education Programs (IEP) for the 2018-2019 and 2019-2020 school years that were reasonably calculated to enable [REDACTED] to make progress in light of [REDACTED] circumstances and (2) failing to fully and thoroughly evaluate [REDACTED] in all areas of suspected disability for the purposes of educational planning, IEP development, establishing reliable baselines and understanding [REDACTED] learning style and service needs. Petitioners further allege that CMCSS violated Section 504, 29 U.S.C. § 794 and the Americans with Disabilities Act by failing to provide [REDACTED] with proper accommodations and services. See *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017). Finally, [REDACTED] and [REDACTED] bear the burden of proving that [REDACTED], the private school where they unilaterally placed [REDACTED] is appropriate within the meaning of the IDEA. See *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993).

5. The IDEA requires CMCSS to provide FAPE in the LRE (Least Restrictive Environment) to all students with disabilities who are in need of special education and related services. IDEA, 20 U.C.A. §1400 et. seq. The requirements of the IDEA have been adopted, with some additional requirements, by the Tennessee State Board of Education. Tenn. State Bd. of Educ. Rules, Regulations, and Minimum Standards Chapter 0520-01-09.

6. School districts are required to identify students suspected of having a disability who are “in need of” special education and related services. See IDEA U.C.A. §1401 (3)(A). Students who are eligible for special education and related services are entitled to an IEP. *Bd. of Educ. of the Hendrick Hudson School Dist. V. Rowley*, 458 U.S. 176, 181 (1982). In developing educational programs and determining appropriate services for those students through an IEP,



school districts must comply with the substantive and procedural requirements of the IDEA and related state law. *See Rowley* at 182. However, parents are not entitled to relief for minor procedural violations alone. Technical procedural violations do not render an IEP invalid. *Dong v. Board of Educ. of Rochester Community Schs.*, 197 F.3d 793, 800 (6<sup>th</sup> Cir. 1999). A determination of whether a student received FAPE must be based on substantive grounds. 34 C.F.R. § 300.513(1). When a procedural violation is alleged, an administrative law judge can only find a FAPE violation if a procedural violation “(2) impeded the child’s right to FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(2). Only procedural violations that result in substantive harm constitute a denial of FAPE and justify relief. *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 764 (6<sup>th</sup> Cir. 2001) (procedural violations must cause substantive harm and constitute denial of FAPE to be actionable); see also *Bd. of Educ. of Fayette County, Ky. V. L.M.*, 478 F.3d 307, 313 (6<sup>th</sup> Cir. 2007).

7. It is **CONCLUDED** that the Petitioners, here, have failed to prove any substantive harm and thus are not entitled to relief.

8. Rather, it is **CONCLUDED** that based on the totality of the evidence, CMCSS designed Individualized Education Programs (IEPs) for the 2018-2019 and 2019-2020 school years that were reasonably calculated to enable ■■■ to make progress in light of ■■■ circumstances and (2) CMCSS fully and thoroughly evaluated ■■■ in all areas of suspected disability for the purposes of educational planning, IEP development, establishing reliable baselines and understanding ■■■ learning style and service needs.

9. It was not clear what, if any, violations of Section 504, 29 U.S.C. § 794 and the Americans with Disabilities Act occurred as alleged by Petitioners. Accommodations were

provided when necessary according to the proof. [REDACTED] accommodations included: special accommodations on [REDACTED] computer that other students didn't have, preferential seating, working directly with [REDACTED] general education teacher or an educational assistant, using a behavior clip system, notes copied for [REDACTED], [REDACTED] was read to and had read-aloud software, audio programs for reading, study guides, additional time, breaks, chunking assignments, oral testing, extra grading opportunities, and retesting when necessary. The Petitioner's proposed no other accommodations.

10. CMCSS proposed IEPs that were reasonably calculated to enable [REDACTED] to make progress appropriate in light of [REDACTED] circumstances. At all times relevant to Petitioners' Complaint, CMCSS offered [REDACTED] an IEP that provided FAPE. The IDEA, at 20 U.C.A. § 1414(d)(1)(A), requires that an IEP include, among other things: (1) a statement of the child's present levels of performance; (2) a statement of measurable annual goals; (3) a statement of the special education and related services and supplementary aids and services to be provided to the child that, to the extent practicable, are based on peer-reviewed research; (4) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in nonacademic and extracurricular activities; (5) a statement of how the child's parents will be regularly informed of their child's progress. These "are requirements by which the adequacy of an IEP is to be judged, although minor technical violations may be excused." *Cleveland Heights-University Heights City Sch. Dist. V. Boss*, 144 F.3d 391, 398 (6<sup>th</sup> Cir. 1998).

11. It is **CONCLUDED** that [REDACTED] IEPs met or exceeded the procedural requirements of the IDEA. CMCSS's IEPs were also substantively appropriate.

12. The United States Supreme Court modified the test to determine whether an IEP substantively provided FAPE under the IDEA in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988 (2017). For a district to substantively offer FAPE, an IEP must be reasonably calculated

to enable a child to make progress appropriate in light of his circumstances. *Id.* At 999. An IEP should be “construed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Id.* “For a child fully integrated into the regular classroom, an IEP typically should...be ‘reasonably calculated to enable a child to achieve passing marks and advance from grade to grade.’” *Id.*, citing *Bd. of Ed. Of Hendrick Hudson Central Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 203-04 (1982); see also *Rowley*, 137 S.Ct. at 1000 (“providing a level of instruction reasonably calculated to permit advancement through the general curriculum”).

13. In this case, [REDACTED] was enrolled in regular education classroom with the special education support. [REDACTED] was to receive special education support so that [REDACTED] could derive benefit from [REDACTED] regular education program. Thus, [REDACTED] was to attend [REDACTED] then [REDACTED] and be a child fully integrated in the regular classroom pursuant to *Rowley and Andrew F.*, receiving FAPE through an IEP that is reasonably calculated to enable [REDACTED] to achieve passing marks and advance from grade to grade.

14. When determining the appropriateness of an IEP, “[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017). Furthermore, an IEP is a snapshot in time. *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3<sup>rd</sup> Cir. 1993). Thus, the appropriateness of an IEP must be viewed by “what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.” *Id.*

15. CMCSS thoroughly considered [REDACTED] individual circumstances in developing an IEP that was reasonably calculated to enable [REDACTED] to make appropriate progress. It is **CONCLUDED** that the evidence shows that [REDACTED] IEPs were substantively appropriate and were designed with [REDACTED] unique needs in mind for the purpose of providing [REDACTED] with access to

educational services that were reasonably calculated to enable ■■■ to achieve passing marks and advance from grade to grade.

16. It is **CONCLUDED** that ■■■ and ■■■ was afforded the opportunity to meaningfully participate in the development of the IEPs for ■■■. One or both parents attended all IEP meetings and were active participants.

17. In general, the IDEA requires a district to ensure that at least one parent of a child with a disability is afforded the opportunity to participate in the IEP process and is informed enough to provide consent to implement an IEP. 34 C.F.R. § 300.322. The IDEA allows parent participation and involvement in meetings and in placement discussions. 34 C.F.R. § 300.501. At all times relevant to this case, CMCSS not only allowed, but encouraged the parents to meaningfully participate in the development of the IEP. During ■■■ time in CMCSS, there were at least seven IEPs created for ■■■ all of which the parents signed as present and participating and granting permission to implement them. For the purpose of the instant appeal the only relevant IEPs are the August 14, 2017, August 10, 2018, October 26, 2018, April 2, 2019, and September 24, 2019, IEPs. ■■■ and ■■■ received procedural safeguards at each of the IEP meetings. At the September 24, 2019 IEP, the last one before ■■■ was withdrawn, the parents were represented by counsel, but the parents chose not to inquire of the lawyer about the option of disagreeing with the IEP.

18. It is **CONCLUDED** that CMCSS permitted and encouraged ■■■ and ■■■ to participate to the fullest extent of the law and, therefore, did not prevent them from meaningful participation in the IEP process.

19. The only competent expert evidence introduced at trial came from the CMCSS personnel actually involved with creating and implementing the IEPs under discussion, and that evidence establishes that CMCSS provided ■■■ a free appropriate public education. The sole

expert offered by the Petitioners was Sandra Parus, and neither her reports nor her testimony challenged in any way the appropriateness of the CMCSS IEPs, their implementation, or █████ progress under them.

20. It is **CONCLUDED** that Petitioners' unilateral private placement at █████ is not an appropriate program under the IDEA. The IEPs developed and proposed for █████ met or exceeded the procedural and substantive requirements under the IDEA.

21. However, assuming, *arguendo*, that CMCSS failed to provide FAPE to █████ Petitioners would still be barred from obtaining reimbursement for the cost of unilaterally placing █████ at █████ CMCSS does not dispute that "IDEA's grant of equitable authority empowers a court to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act." *Carter*, 510 U.S. at 12. However, the Sixth Circuit Court of Appeals has held that a private placement is not appropriate under the IDEA "when it does not, at a minimum, provide some element of special education services in which the public school was deficient." *Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 523 (6<sup>th</sup> Cir. 2003); see also *Indianapolis Pub. Sch. v. M.B.*, 771 F.Supp.2d 928, 930-31 (S.D. Ind. 2011) (holding that a private placement was inappropriate when it only offered tutoring services, as opposed to special education services, and did not address the student's emotional needs). Thus, evidence that a child is "doing well" in a private placement is not enough to support a claim for reimbursement when the placement fails to provide the special education services the public-school district was found to be lacking. *Indianapolis Public Schools v. M.B.*, 771 F.Supp.2d 928 at 930-31 (S.D. Indiana 2011). Furthermore, a parent's concerns and fears do not justify a private placement at public expense. See *John M. v. Brentwood Union Free Sch. Dist.*, No. 11-CV-3634 PKS SIL, 2015 WL 5695648, at \*7-10 (E.D.N.Y. Sept. 28, 2015) (holding reimbursement for a unilateral

Page 28 of 32

private placement was inappropriate despite feelings of security and safety at the private school and concerns of returning the child, who suffered from anxiety and depression, to an environment where he had been harassed).

22. Moreover, “parents who unilaterally change their child’s placement during the pendency of review proceedings, without the consent of state or local school officials, do so at their own financial risk.” *Sch. Comm. of Burlington v. Dept. of Educ.*, 471 U.S. 359, 373-374. In such a situation, under the *Carter* standard, parents are “entitled to reimbursement *only* if a federal court concludes both that the public placement violated the IDEA *and* that the private school placement was appropriate under the Act.” *Carter*, 510 U.S. at 15. Petitioners have failed to prove that [REDACTED] provided “appropriate” educational services pursuant to the IDEA and are therefore not entitled to recover tuition costs of their unilateral placement of [REDACTED] at [REDACTED]

23. As Petitioners point out; the IDEA directs that an award of private school tuition “may be reduced or denied” under a variety of circumstances, including “upon a judicial finding of unreasonableness with respect to actions taken by the parents.” 20 U.S.C. § 1412(a)(10)(C)(iii)(III). Two other enumerated grounds for reduction or denial of reimbursement concern notice: (aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa). 20 U.S.C. § 1412(a)(10)(C)(iii)(I).

24. It is **CONCLUDED** that Petitioners actions in unilaterally placing █████ in a private school setting and seeking public reimbursement were not reasonable. Further, the Petitioners failed to notify the IEP Team at the last IEP meeting or notify CMCSS with at least 10 business days' notice that █████ would be removed from CMCSS and placed in a private school and that they would be seeking public funds to cover the cost of the private placement.

25. █████ is a student with disabilities who is entitled to receive special education and related services from qualified teachers and service providers in █████ least restrictive environment. █████ and █████ may choose to place █████ in any private school of █████ choosing, including █████ but █████ is not entitled to receive public funds to reimburse █████ for such a placement when it is not appropriate under the IDEA. A unilateral private placement does not satisfy the IDEA unless it “at a minimum, provide[s] some element of special education services in which the public school placement was deficient”; for example, specific special-education programs, speech or language therapy courses, or pre-tutoring services.” *L.H. v. Hamilton County Dept. of Educ.* 900 F.3d 779, 791 (6th Cir. 2018), quoting *Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 523 (6th Cir. 2003) (emphasis added). Thus, there must be proof of the specific areas in which the public school was deficient and that the private school specifically addressed those deficiencies; in the absence of such proof the private setting is not appropriate and reimbursement cannot be had.

26. The IDEA defines related services as transportation, and such developmental, corrective, and other supportive services...as may be required to assist a child with a disability to benefit from special education and related services. *Butler v. Evans*, 225 F.3d 887 (7<sup>th</sup> Cir. 2000). The analysis for what constitutes education and related services must focus on whether [the disabled child's] placement may be necessary for educational purposes, or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart

from the learning process. *Doe v. Shorewood School District*, 2005 WL 2387717 (E.D. Wisconsin 2005).

27. This case turns on a determination of whether CMCSS provided IEPs that were reasonably calculated to enable [REDACTED] to make progress appropriate in light of [REDACTED] circumstances.

28. It is **CONCLUDED** that the evidence does not support Petitioners' allegations against CMCSS or support the assertion that [REDACTED] is an appropriate placement under the IDEA. CMCSS has offered to provide FAPE and is not obligated to provide reimbursement for an inappropriate private placement.


29. It is **CONCLUDED** that Petitioners have failed to prove that CMCSS denied [REDACTED] FAPE and have failed to prove that [REDACTED] was an appropriate placement.

30. It is further **CONCLUDED** that the Petitioners have failed to carry their burden of proof.

31. It is **CONCLUDED** that CMCSS is the prevailing party on all issues.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **16th day of April, 2021**.

  
\_\_\_\_\_  
J. SHANNON BARNHILL  
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 **16th day of April, 2021**.





**STEPHANIE SHACKELFORD, DIRECTOR  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE**

## **NOTICE OF FILING PROCEDURES**

Due to the COVID-19 pandemic, APD has changed its filing procedures. Until further notice, filings should be made by **email** to [APD.Filings@tn.gov](mailto:APD.Filings@tn.gov) or by **facsimile** to 615-741-4472. Paper filings should only be made by mail if a litigant has no access to either email or facsimile. If you are filing by email, documents should be saved in PDF format prior to filing. Each document to be filed must be a separate PDF. Only one filing method should be used. Please name PDFs for filing in the following format:

“**APD CASE NUMBER YOUR NAME ABBREVIATED NAME OF DOCUMENT BEING FILED AGENCY NAME**”

■ THE STUDENT AND ■ THE STUDENT'S  
 PARENT V. CLARKSVILLE MONTGOMERY  
 COUNTY SCHOOL SYSTEM

**NOTICE OF APPEAL PROCEDURES**

**REVIEW OF FINAL ORDER**

The Administrative Judge's decision in your case in front of the **Tennessee Department of Education**, called a Final Order, was entered on **April 16, 2021**. If you disagree with this decision, you may take the following actions:

1. **File a Petition for Reconsideration:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Final Order, which is **May 3, 2021**.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal no later than **June 15, 2021**. See TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may appeal the decision in federal or state court within 60 days of the date of entry of the Final Order, which is no later than **June 15, 2021**, by:

(a) filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," TENN. CODE ANN. § 4-5-322; or

(b) bringing a civil action in the United States District Court for the district in which the school system is located, 20 U.S.C. § 1415.

The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

**STAY**

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Final Order. A Petition for stay must be **received** by the APD within 7 days of the date of entry of the Final Order, which is no later than **April 23, 2021**. See TENN. CODE ANN. § 4-5-316.

**FILING**

To file documents with the Administrative Procedures Division, use this address:

Secretary of State  
 Administrative Procedures Division  
 William R. Snodgrass Tower  
 312 Rosa L. Parks Avenue, 8<sup>th</sup> Floor  
 Nashville, TN 37243-1102

**IN THE MATTER OF:**

**APD CASE No. 07.03-200717J**

**████ THE STUDENT AND █████ THE STUDENT'S  
PARENT V. CLARKSVILLE MONTGOMERY  
COUNTY SCHOOL SYSTEM**

**NOTICE OF APPEAL PROCEDURES**

Fax: (615) 741-4472