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**March 4, 2024**

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**RE: [REDACTED] THE STUDENT AND [REDACTED] THE PARENT V. WILLIAMSON COUNTY  
SCHOOLS, APD Case No. 07.03-236314J**

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 PARENT,**  
*Petitioners,*

v.

**WILLIAMSON COUNTY SCHOOLS,**  
*Respondent.*

**APD Case No. 07.03-236314J**

**FINAL ORDER**

This contested case was heard *de novo* on February 8, 2024, via videoconference before Administrative Judge Claudia Padfield, assigned by the Tennessee Secretary of State, Administrative Procedures Division, to sit on behalf of the Tennessee Department of Education. The hearing addressed the allegations contained in the Due Process Hearing Request Form filed on November 8, 2023, with the Tennessee Department of Education and in the AMENDED COMPLAINT filed on November 14, 2023, by Petitioners, ■ the student, and ■ the parent. Petitioners were represented by attorney Michael Braun. Respondent, Williamson County Schools (“WCS”), was represented by attorneys Deanna Arivett and Angel McCloud.

At the close of the proof on February 8, 2024, the parties were reminded of the following post-hearing schedule as previously agreed upon by the parties and delineated in prior orders – the transcript with hearing exhibits was due and was filed on February 14, 2024; post-hearing briefs, including proposed findings of fact and conclusions of law, with citations to the RECORD, were due on February 22, 2024; and this FINAL ORDER is due to be issued on or before March 5, 2024. WCS filed WILLIAMSON COUNTY SCHOOLS’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW on February 22, 2024. No post-hearing filing was received by Petitioners.

The issues in the AMENDED COMPLAINT are whether (1) WCS “failed to identify and evaluate” [REDACTED] (2) whether WCS “failed to design an IEP that provides [REDACTED] a FAPE [Free Appropriate Public Education],” (3) whether WCS “intentionally interfered with the parent’s procedural safeguards provided by the IDEA [Individuals with Disabilities Educational Act],” and (4) if so, what relief is appropriate. Based upon a thorough review of the evidence in this case, it is determined that WCS did not violate its obligations to [REDACTED] at any time relevant to this case and, thus, Petitioners are not entitled to any requested relief.

### **SUMMARY OF THE EVIDENCE**

The following witnesses testified on behalf of Petitioners: 1) Geoffrey J. Ferris, a Board Certified Behavior Analyst (BCBA)<sup>1</sup> and 2) [REDACTED] the parent. The following witnesses testified on behalf of Respondent: 1) Maggie Plunkett Lonsway, [REDACTED] grade teacher; 2) Shannon Meadows, [REDACTED] (“[REDACTED] 504 Coordinator; 3) Hannah Beigel, [REDACTED] grade teacher; 4) Amanda Dupre, [REDACTED] current teacher; 5) Robin Anglim, [REDACTED] previous teacher at [REDACTED] (“[REDACTED] 6) Dr. Sandra Stokes, [REDACTED] Department Chair for Special Education; and 7) Dr. Bill Harlin, [REDACTED] Principal.

Seventy-two exhibits were entered into evidence during the hearing. One proffered exhibit by Petitioners was not accepted but is included as part of the RECORD as an offer of proof.

### **FINDINGS OF FACT**

1. [REDACTED] is a [REDACTED] grade student at [REDACTED] which is within the larger WCS system. Petitioner, [REDACTED] is [REDACTED].
2. [REDACTED] has attended [REDACTED] since the fall of 2021 when [REDACTED] matriculated for [REDACTED] grade school year. [REDACTED] has attended [REDACTED] for [REDACTED] and [REDACTED] grades.

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<sup>1</sup> Mr. Ferris was qualified as an expert in applied behavioral analysis.

3. Prior to attending ██████ ██████ attended ██████ which is also in the WCS system.
4. Robin Anglim earned a Bachelor's degree in elementary education, a Master's degree in reading, and a national certification in literacy. Ms. Anglim provided ██████ Response to Intervention ("RTI") services at ██████
5. ██████ was tested for dyslexia while attending ██████ and did not qualify for those services. ██████ achieved progress with ██████ reading skills under Ms. Anglim's teaching but did not reach grade level reading.
6. Because ██████ was reading below grade level, ██████ received RTI services at ██████ upon ██████ enrollment.
7. ██████ was placed in the Tier II RTI program to address ██████ reading fluency, vocabulary, and reading comprehension.
8. In determining what level of services were needed, WCS looked at written expression, the dyslexia screener, and other data.
9. Shannon Meadows, the current 504 Coordinator at ██████ was the RTI reading interventionist who worked with ██████ during ██████ grade.
10. Ms. Meadows worked with ██████ for 90 minutes per week.
11. Ms. Meadows sometimes sat with ██████ while ██████ was taking a state-mandated test, STAR, but did not assist ██████ with the test.
12. While ██████ was to have RTI for a minimum of six weeks, ██████ continued in those services throughout ██████ and into ██████ grade school years.
13. ██████ was given RTI Tier II services in the ██████ grade, where ██████ met with a reading intervention teacher for 100 minutes per week.
14. ██████ did well in reading when ██████ chose to do so. ██████ had the skills to read and comprehend but often rushed through assignments and tests by not reading the material.

15. [REDACTED] made progress such that [REDACTED] met the goal of scoring at least 26 (the standard goal for any student) or above on at least three STAR tests. [REDACTED] made this progress without special accommodations. [REDACTED] was removed from RTI due to the improvement in [REDACTED] test scores.

16. [REDACTED] was screened for dyslexia on January 13, 2023. [REDACTED]'s fluency was low, but [REDACTED] passed the decoding test. In following WCS's guidance, [REDACTED] was initially referred to RTI. WCS determined [REDACTED] could benefit from further RTI after the winter screening and that service resumed.

17. [REDACTED] expressed [REDACTED] belief that [REDACTED] has dyslexia to Ms. Anglim via email on January 7, 2023. Ms. Anglim passed [REDACTED] concern to [REDACTED] personnel. Ms. Anglim discussed with [REDACTED] that [REDACTED] would not qualify for guidance for RTI for dyslexia but that WCS would bring a team together to address testing and data.

18. Acting upon [REDACTED] request for additional testing to determine if [REDACTED] had dyslexia, [REDACTED] requested that [REDACTED] approve for [REDACTED] to be evaluated to determine the possible eligibility and need of special education services. [REDACTED] granted [REDACTED] consent for the evaluation on February 15, 2023.

19. Dr. Sandra Stokes is the [REDACTED] Department Chair for Special Education and a school psychologist. Dr. Stokes set up [REDACTED] IEP meetings and worked with the initial referrals.

20. [REDACTED] was referred for a psychoeducational evaluation which was conducted on March 9 and 23, 2023. The purpose of the comprehensive evaluation was "to assist the team in determining whether [REDACTED] met the TN state standards to be identified as a special education student." EXHIBIT 2.

21. Connor East, a WCS school psychologist, performed the psychoeducational evaluation. Ms. East reviewed records, administered tests, and made observations of [REDACTED] in the school setting. Part of the observation included observing [REDACTED] in the Tier II RTI instruction.

22. On April 12, 2023, the written psychoeducational evaluation was issued which recommended that the Individual Education Program (“IEP”) team consider the educational disability of a Specific Learning Disability for [REDACTED]

23. Based upon the psychoeducational evaluation and other data, the IEP team met on April 12, 2023. [REDACTED] attended the meeting. The IEP team determined that [REDACTED] was eligible to receive special education services under the suggested category of Specific Learning Disability in the area of Reading Comprehension. It was discussed that [REDACTED] passed the basic dyslexia screener.

24. [REDACTED] signed the eligibility report indicating [REDACTED] agreement with the eligibility determination on April 12, 2023.

25. WCS gave [REDACTED] the Prior Written Notice on April 12, 2023, which explained the decision made by the team at the meeting. The notice provided [REDACTED] with the necessary information for what to do if [REDACTED] disagreed the decision.

26. The IEP team determined further testing was needed to create an IEP that best addressed [REDACTED] needs. [REDACTED] gave WCS permission for [REDACTED] to undergo additional reading assessments.

27. Ms. East further evaluated [REDACTED] on April 27, May 3, and May 4, 2023, and had [REDACTED] take additional tests. A confidential report for supplemental testing was completed on May 5, 2023.

28. The IEP team met and developed an initial proposed IEP on May 8, 2023. The IEP addressed and developed goals in the areas of exceptionality in basic reading, reading comprehension, and transition-vocational behaviors.

29. The proposed IEP included the following services:

- Directed study hall for transition-vocation intervention in a special education setting, 45 minutes, five times a week
- Reading intervention (basic and comp) in a special education setting, 40 minutes, three times a week
- Support in English Language Arts (ELA) for reading and transition-vocation in a general education setting, 45 minutes, five times a week
- Support in social studies for reading and transition-vocation in a general education setting, 45 minutes, five times a week
- Support in science for reading and transition-vocation in a general education setting, 45 minutes, five times a week
- Transition-vocation intervention check-in with a special education teacher every month
- Reading intervention (basic and comp) with a special education teacher every month

30. The proposed IEP included the accommodations of preferential seating, small group testing, extended time, and read aloud/text to speech assistance.

31. [REDACTED] signed the proposed IEP on May 8, 2023, indicating [REDACTED] agreement to the plan.

32. From September 6, 2021, to September 22, 2023, [REDACTED] had 21 reports of disciplinary violations. Some of the disciplinary violations resulted in demerits only. The other infractions led to the following disciplinary actions taken by WCS:

- In-school suspension, September 23, 2021
- In-school suspension, September 24, 2021
- Saturday school, November 10, 2021
- Saturday school, February 22, 2022
- Saturday school, March 3, 2022
- Saturday school, April 28, 2022
- [REDACTED] (“[REDACTED]”), August 19, 2022
- Saturday school, October 3, 2022
- In-school suspension, November 16, 2022
- Out of school suspension and in-school suspension, December 14, 2022
- In-school suspension, March 6, 2023
- In-school suspension, May 3, 2023
- In-school suspension, August 25, 2023
- In-school suspension, September 22, 2023

33. ■■■ did not have any disciplinary violations or behavioral issues while at the ■■■ in August 2022.

34. Upon returning to ■■■ after the ■■■, ■■■ worked with ■■■ to address ■■■ behaviors. ■■■ met weekly with Dr. Bill Harlin, ■■■ Principal. ■■■ met with a small group of ■■■ three times a week.

35. ■■■ staff reported some of ■■■ positive behaviors or characteristics to ■■■

- Good behavior, a good friend, and showed persistence in an unenjoyable task, April 13, 2022
- Doing well at ■■■, September 15, 2022
- Doing well socially, September 30, 2022
- More responsible, taking time to think, feeling more comfortable at school, November 10, 2022
- Responded appropriately when confronted by another student, November 16, 2022
- Done much better that quarter, December 13, 2022
- Behavioral improvement, respectful, and focused in class, March 9, 2023
- Respectful, participates in class, August 10, 2023

36. Maggie Lonsway was ■■■ ■■ grade ELA teacher at ■■■ Ms. Lonsway observed ■■■ to exhibit typical ■■ grade ■■■ behavior. ■■■ was not disruptive and was chatty. Ms. Lonsway found ■■■ to be capable with reading when ■■ wanted to be but that ■■ often did not put in any effort.

37. Hannah Beigel was ■■■ ■■ grade support service teacher. Ms. Beigel earned a Bachelor's degree in child and family psychology and is licensed as a special education teacher. Ms. Beigel taught children for ten years in Maryland with extreme emotional and behavioral disabilities. Ms. Beigel found ■■■ to be a typical ■■ grade ■■■ student. Ms. Beigel noted ■■■ to be well-behaved, responsive, and typically rose above bad behaviors. Ms. Beigel did not witness any behaviors that raised concerns about ■■■ behaviors interfering with ■■ academic



ability. Ms. Beigel did not witness any behavior from [REDACTED] that indicated [REDACTED] needed behavior intervention.

38. Amanda Dupre earned a Bachelor's degree in psychology and is certified as a special education teacher. Ms. Dupre is [REDACTED] "file holder." In this role, Ms. Dupre runs [REDACTED] IEP meetings and helps keep track of [REDACTED] paperwork. Ms. Dupre teaches [REDACTED] reading intervention in [REDACTED] grade. Since meeting [REDACTED] in August 2023, Ms. Dupre has not witnessed any behavior concerns.

39. On October 3, 2023, a parent meeting was held where [REDACTED] and WCS personnel discussed concerns and steps forward.

40. It was determined the following action items would occur: 1) weekly meetings with Dr. Harlin; 2) weekly meetings with Ms. Abby Fletcher, [REDACTED] Assistant Principal; 3) weekly meetings with Ms. Venessa Jeris until a [REDACTED] group could be launched; 4) a referral to Ms. Becky Dodson – Enhanced Student Assistance Program therapist on [REDACTED] campus; 5) twice weekly check-ins with Coach Harrison with specified time for [REDACTED] to attend during study hall; and 6) Dr. Stokes would schedule the next team meeting.

41. [REDACTED] requested a behavior plan or assessment at the October 3, 2023, meeting. It was explained to [REDACTED] that data would need to be gathered, after the implementation of the plan, to determine what further steps or adjustments would be required.

42. At [REDACTED] request, Dr. Stokes collaborated with teachers and drafted a Tier II behavior support plan which is the first step in supporting students in a general education setting.

43. An IEP meeting was held on October 27, 2023, which [REDACTED] attended. The team discussed the proposed behavior support plan. The team decided no changes were needed to the IEP.

44. [REDACTED] met with a STARS therapist<sup>2</sup> but told [REDACTED] that [REDACTED] did not want to go back since [REDACTED] was not suicidal.<sup>3</sup>

45. The Prior Written Notice was provided to [REDACTED] on November 2, 2023, which gave [REDACTED] official notice of the implementation of the Tier II general education behavior support plan which was agreed upon by the team at the October 27, 2023, meeting. The notice provided [REDACTED] with the necessary information for what to do if [REDACTED] disagreed the decision.

46. On October 31, 2023, [REDACTED] spit on another student in [REDACTED] cafeteria.

47. A manifestation determination review meeting was held on November 2, 2023. It was determined that spitting on another student is not a manifestation of [REDACTED] disability of Specific Learning Disability.

48. As a result of the incident, [REDACTED] was sent to the [REDACTED] for 20 days.<sup>4</sup> [REDACTED] did not have any behavioral issues at the [REDACTED]. [REDACTED] returned to [REDACTED] on December 11, 2023.

49. On November 8, 2023, Petitioners filed the initial Due Process Hearing Form alleging that [REDACTED] had been talking to [REDACTED] since February 2022 regarding a behavior assessment.

50. On November 9, 2023, [REDACTED] underwent a psychological evaluation by a provider of [REDACTED]s choosing. The evaluation was not conducted by WCS or with WCS involvement.<sup>5</sup>

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<sup>2</sup> STARS is an independent agency which receives government funds and is contracted to provide services to WCS students.

<sup>3</sup> The date of [REDACTED] meeting with the therapist was not provided. The information was relayed by [REDACTED] to the IEP team at the October 27, 2023, IEP meeting.

<sup>4</sup> The provided documents do not specify when [REDACTED] went to the [REDACTED]

<sup>5</sup> The only evidence of the evaluation from a psychiatric nurse practitioner was a single page that was included as part of EXHIBIT 3. The single page provides various diagnoses but no credible basis for how the diagnoses were determined.

51. An IEP meeting was held on November 14, 2023, to revise the IEP to reflect [REDACTED] attendance at the [REDACTED] and the possible need to change the IEP.

52. On November 14, 2023, Petitioners filed the AMENDED COMPLAINT which asserted that WCB failed to identify and evaluate [REDACTED] failed to design an IEP which provided [REDACTED] a FAPE, and intentionally interfered with [REDACTED] procedural safeguards under the IDEA.

53. The IEP team met on November 27, 2023. A new IEP was drafted at the November 27, 2023, IEP team meeting to address [REDACTED] behaviors that necessitated [REDACTED] attendance at the [REDACTED]. The primary disability remained Specific Learning Disability – Reading Comprehension.

54. The IEP team agreed that [REDACTED] now exhibited a pattern of behaviors that impeded [REDACTED] learning. WCS requested [REDACTED] to provide consent to have [REDACTED] undergo a Functional Behavior Assessment.<sup>6</sup>

55. Dr. Harlin met with [REDACTED] prior to [REDACTED]'s return to [REDACTED] from the [REDACTED]. At that time, [REDACTED] withdrew [REDACTED] consent to allow [REDACTED] to have weekly meetings with Dr. Harlin and Ms. Fletcher. [REDACTED] also declined WCS's offer to have [REDACTED] meet with the STARS therapist.

56. Mr. Geoffrey Ferris was recognized as an expert in applied behavior analysis.

57. Mr. Ferris did not meet with or talk to [REDACTED]. Mr. Ferris did not perform any independent tests or evaluations of [REDACTED]. Mr. Ferris did not interview any WCS professionals who had worked with [REDACTED].

### **APPLICABLE LAW and ANALYSIS**

Mr. Geoffrey Ferris was hired by Petitioners and presented as an expert witness in the area of applied behavior analysis. Mr. Ferris has testified as an expert witness in approximately 12-15 hearings. Of those 12-15 cases, Mr. Ferris was hired in 90% of those cases by Petitioners'

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<sup>6</sup> No evidence was submitted as to if and when [REDACTED] provided the requested consent.

legal counsel. Mr. Ferris has only testified in cases for the parent. “[T]he trier of fact is not bound to accept an expert witness’s testimony as true.” *Roach v. Dixie Gas co.*, 371 S.W.3d 127, 150 (Tenn. Ct. App. 2011). A tribunal is entitled to disregard the evidence from an expert witness if the evidence is not found to be helpful. *See England v. Burns Stone Co.*, 874 S.W.3d 32, 38 (Tenn. Ct. App. 1993) (explaining that “the trier of fact may place whatever weight it chooses upon expert testimony” as cited in *Buckley v. Carlock*, 652 S.W.3d, 432, 444 (Tenn. Ct. App. 2022)).

Mr. Ferris is not a clinical psychologist, a school psychologist, or qualified in any area of psychology. Mr. Ferris has no expertise in the field of IDEA or IDEA compliance. Mr. Ferris has no expertise to qualify him to give an opinion as to whether a local education agency (“LEA”) did or did not provide a student with FAPE. Mr. Ferris did not meet with [REDACTED] or conduct any evaluation of [REDACTED]

Mr. Ferris testified that [REDACTED] conducted a statistical analysis based on the information provided to him. Mr. Ferris seemed to imply that the number of events of conduct violations was enough to put WCS on notice that [REDACTED] should be evaluated for a disability. However, disciplinary history does not trigger a school district’s obligation to evaluate. “Behavioral issues do not *ipso facto* signify a disability. ... [D]elinquency does not necessarily give rise to a reasonable suspicion of emotional disturbance that would require evaluation under IDEA and its regulatory framework.” *Leigh Ann H. v. Riesel Indep. Sch. Dist.*, 18 F.4<sup>th</sup> 788, 797 (C.A.5 Tex., 2021). Mr. Ferris did not seem to differentiate the level of behaviors or resulting disciplinary action taken. Mr. Ferris’ testimony and report seem to indicate that [REDACTED] placed equal weight upon an action that resulted in [REDACTED] receiving a demerit as to an action that resulted in [REDACTED] receiving an in-school suspension. As Mr. Ferris did not meet with or observe [REDACTED] [REDACTED] reliance upon statistical data alone is insufficient to be of assistance to this tribunal.

The purpose of an expert witness is to provide “specialized knowledge [that] will substantially assist the trier of fact to understand the evidence or to determine a fact in issue[.]” TENN. R. EVIDENCE 702. Mr. Ferris’ testimony and preliminary expert report neither provide any specialized knowledge as to any area of IDEA caselaw or statutes nor additional assistance to understand the evidence or to determine a factual issue. Mr. Ferris’ testimony was of little assistance to this tribunal in making the ultimate decision. As such, ■■■ testimony is given no weight.

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 in the due process hearing. *Id.* at 56; *see also*, *Cordrey v. Euckert*, 917 F.2d 1460, 1469 (6<sup>th</sup> Cir. 1990). In this case, Petitioners bear the burden of proof. Petitioners must prove, by a preponderance of the evidence, that the allegations in the Due Process Hearing Request Form and the AMENDED COMPLAINT should be resolved in their favor and that they are entitled to the relief sought therein.

When enacting the IDEA, Congress conferred jurisdiction of a student’s IDEA claim upon administrative judges. *See* 20 U.C.A. § 1415(f)(3)(A). Administrative judges are vested with the jurisdiction to determine whether a student received a FAPE under the IDEA. 20 U.C.A. § 1415(f)(3)(E). In Tennessee, the Office of the Secretary of State, Administrative Procedures Division, has jurisdiction over the subject matter and the parties of this proceeding; the undersigned administrative judge has the authority to issue final orders. *See* State Board of Education Rules, Special Education Programs and Services, 0520-01-09-.18; *see* TENN. CODE ANN. § 49-10-101.

Federal funds are provided to public educational institutions to establish procedural safeguards which ensure that the educational needs of a student with disabilities are met. The

Tennessee Department of Education, *Other Health Impairment Evaluation Guidance* (“OHI Guidance”) states that a child is “other health impaired who has chronic or acute health problems that require specifically designated instruction.” TENN. DEPT. OF ED., OTHER HEALTH IMPAIRMENT EVALUATION GUIDANCE, at 5 (Revised November 2018). OHI Guidance also states that OHI is an education disability that includes virtually any health problem *diagnosed* by a licensed practitioner.

The Tennessee Department of Education, *Emotional Disturbance Evaluation Guidelines* (“ED Guidelines”), provide nine behavior characteristics to be considered when determining if a child should be evaluated for an emotional disturbance: 1) to a marked degree; 2) adversely affects educational performance; 3) long period of time; 4) inability to learn that cannot be explained by intellectual, sensory, or health factors; 5) inability to build or maintain satisfactory interpersonal relationships with peer and teachers; 6) inappropriate types of behavior or feelings under normal circumstances; 7) a tendency to develop physical symptoms or fears associated with personal or school problems; 8) a general pervasive mood of unhappiness or depression; and 9) social maladjustment. TENN. DEPT. OF ED., OTHER HEALTH IMPAIRMENT EVALUATION GUIDANCE, at 5-6 (Revised November 2018).

The Tennessee Literacy Success Act, as codified in TENN. CODE ANN. § 49-1-905, mandates practices for LEAs to perform, including universal reading screener tools and data reporting, in an effort to improve literacy. TENN. CODE ANN. § 49-1-229 sets forth the requirements for LEAs regarding identification and service of students with characteristics of dyslexia.

## **CHILD FIND**

The IDEA exists “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to

meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). To that end, the IDEA requires that all LEAs identify, locate, and evaluate all children with disabilities residing in the state who need special education and related services, including children who are suspected of being a child with a disability and in need of special education, even though they are advancing year to year. 34 C.F.R. §300.111(a)(1)(i) and (c)(1). This requirement is commonly referred to as the “child find” mandate. To demonstrate a child find violation, “the claimant must show that school officials overlooked clear signs of a disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” *Ja.B. v. Wilson County Board of Education*, 61 F. 4<sup>th</sup> 494, 502 (6<sup>th</sup> Cir. 2023). “Child [f]ind does not demand that schools conduct a formal evaluation of every struggling student.” *D.K. v. Abington School District*, 696 F. 3d 233, 249 (3<sup>rd</sup> Cir. 2012). Further, “[a] school’s failure to diagnose a disability at the earliest possible moment is not *per se* actionable, in part because some disabilities ‘are notoriously difficult to diagnose and even experts disagree about whether [some] should be considered a disability at all.’” *D.K.*, at 249 (citing *A.P. ex re. Powers v. Woodstock Bd. of Educ.*, 572 F.Supp. 221, 226 (D. Conn 2008)). Determining whether a child qualifies to be identified as a special education student is not a decision that is made by any one person. Rather, it is a team decision, consisting of parents, school professionals, and any other professionals as needed, that is data driven.

While Petitioners claim that WCS “failed in March of 2023 to evaluate the student for eligibility for OHI, Emotional Disturbance or perhaps other categories of eligibility which were suspected areas of disability,”<sup>7</sup> Petitioners have failed to identify any actions by WCS which apply to this claim. More importantly, the evidence does not support that, prior to the filing of

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<sup>7</sup> AMENDED COMPLAINT, pp. 2-3.

the due process complaint, ■■■ showed any of the characteristics meeting the definition of ED “over a long period of time and to a marked degree that adversely affects a child’s educational performance” as required. TENN. COMP. R. & REGS. 0520-01-09-.03(5)(a).

■■■ had inappropriate behaviors which were conduct violations. Only two of the behaviors could reasonably be identified as “to a marked degree” – the two incidents which led to ■■■ placement in the ■■■. Those incidents occurred in two separate school years and were approximately 14 months apart. Two incidents over a 14-month period cannot reasonably be called “a long period of time.” ■■■ responded in much the same way that many ■■■ ■■■ and ■■■ grade ■■■ respond under similar circumstances as testified to by WCS personnel. As Dr. Harlin, ■■■ principal testified, “We work in middle school, so we spend a pretty good amount of time on discipline.” ■■■ actions pointed to non-disability related reasons for the inappropriate behaviors.

The evidence does not support the claim that ■■■ behaviors adversely affected ■■■ educational performance. Data showed that ■■■ continued at the same academic level prior to and after ■■■ first visit to the ■■■. Petitioners seemed to argue that merely attending the ■■■ was an adverse effect on ■■■ education. Petitioners do not present any caselaw or cite any statute to support the possible assertion that a student’s short time in an ■■■ is automatic grounds or notification that a student must be evaluated for a behavioral disability. “Emotional Disturbance does not apply to children who are socially maladjusted.” TENN. COMP. R. & REGS. 0520-01-09-.03(5). As noted in *Springer v. Fairfax Cnty. Sch. Bd.*, 134 F.3d 659, 664 (C.A.4 Va., 1998), “Adolescence is, almost by definition, a time of social maladjustment for many people. Thus a ‘bad conduct’ definition of serious emotional disturbance might include almost as many people in special education as it excluded.”



There is no question that [REDACTED] did not have a diagnosis from a licensed professional to qualify [REDACTED] as being eligible for special education services for OHI. [REDACTED] did not have “limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the education environment” due to the chronic or acute health problems “that adversely affect[] a child’s educational performance” as required. TENN. COMP. R. & REGS. 0520-01-09-.03(12). When the IEP was completed in the spring of [REDACTED] [REDACTED] grade year, the IEP team did not note any relevant medical information. When the IEP team met on November 27, 2023, [REDACTED] had not been diagnosed with any type of disorder or mental or medical condition that was behavioral in nature. [REDACTED] did not provide any information to WCS regarding [REDACTED] appointment with a psychiatric nurse practitioner.

While the AMENDED COMPLAINT alleged that [REDACTED] “attempted to alert the Respondent multiple times to the student’s need for evaluation prior to the eventual evaluation near the end of [REDACTED] [REDACTED] grade year,”<sup>8</sup> there is no proof that Petitioners ever requested an evaluation. “A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency ... .” 34 C.F.R. § 300.502(b)(1). As previously determined in the ORDER DENYING MOTIONS issued on December 21, 2023, Petitioners did not present any proof that the LEA completed an evaluation with which they disagreed. An LEA must give written notice to a parent if it refuses to initiate or change the identification or evaluation of a child. 20 U.S.C. § 1415(b)(3). Therefore, a request must first be made to the LEA in order for the LEA to deny the request. Petitioners have not offered any proof that an evaluation or identification for behavior concerns was requested prior to October 3, 2023. WCS acted timely in responding to the request by obtaining [REDACTED] permission to have [REDACTED] evaluated. [REDACTED] then withdrew that permission and proceeded to have [REDACTED] evaluated

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<sup>8</sup> AMENDED COMPLAINT, p. 2.

privately. Even if previously requested, “an LEA may deny a parent request for an initial evaluation if the LEA does not suspect that the child has a disability requiring special education under the LEA and can instead be accommodated outside the special education process.” *Ja.B.*, at 12. WCS was working with █████ in the general education setting and through the RTI process to address █████ issues.

Petitioners asserted that WCS “erred when it ruled out dyslexia.”<sup>9</sup> Petitioner presented no evidence as to WCS’s alleged failure to properly diagnose █████ with dyslexia. WCS administered the appropriate tests as directed by the Department of Education. *See* TENN. DEPT. OF ED., DYSLEXIA RESOURCE GUIDE (July 2023). WCS recognized that █████ had difficulties with reading. WCS made data-based decisions by placing █████ in RTI, notified █████ accordingly, and monitored █████ progress as required. █████ made improvements such that █████ scores no longer reflected a need for the service.

For Petitioners to prevail on the child find issue, they “must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” *Bd. of Educ. of Fayette Cnty, Ky., v. L.M.*, 478 F.3d 307, 313(6<sup>th</sup> Cir. 2007). WCS did not suspect a specific learning disability because █████ was making substantial progress when █████ was provided general education interventions through RTI. After returning from the █████ in █████ █████ grade year, █████ implemented weekly meetings with Dr. Harlin and thrice weekly meetings with a small group to address █████ behavior concerns. While there were minor conduct violations after █████ return from the █████ the implementation of these non-special education services was successful in that █████ did not have any other major incidents for the school year.

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<sup>9</sup> AMENDED COMPLAINT, p. 3.

█ did not show clear signs of disability. Rather than rushing to evaluate a child for a possible disability upon the first sign of trouble (such as being sent to the █ or a lowered test score in reading), an LEA must “seek ways to meet the unique educational needs of the children within the general education program prior to referring a child to special education. Tennessee’s approach to teaching and learning is called RTI.” TENN. DEPT. OF ED., SPECIAL EDUCATION FRAMEWORK, at 19 (Revised August 2018). WCS responded exactly as the Tennessee Department of Education directed in responding to █ After █ raised behavioral concerns at the October 3, 2023, meeting, WCS implemented general education interventions to address conduct violations. These interventions were delineated in the implementation of a behavior support plan. Some of the steps █ professionals thought would be helpful for █ such as weekly meetings with Dr. Harlin and Ms. Fletcher, were declined by █ The use of interventions demonstrated that WCS was addressing █ problems. The fact that those interventions were successful obviated a finding of a disability or proves there was a “rational justification for not referring [the student] for an evaluation immediately upon suspicion of disability.” *Hopp v. Switzerland of Ohio Local Sch. Dist.*, 912 F.Supp.2d 572, 591 (S.D. Ohio 2012).

When █ specifically questioned WCS as to █ possibility of having dyslexia on January 7, 2023, the evidence supports the finding that WCS acted timely. █ testified that █ had not requested any evaluation prior to reaching out to Ms. Anglim. Pursuant to TENN. COMP. R. & REGS. 0520-01-09-.05(1)(f), “[e]ligibility determinations shall be completed within sixty (60) calendar days of receipt of parental consent for an initial evaluation.” WCS obtained █ consent on February 15, 2023, to have █ evaluated for any possibility learning disability. The written psychoeducational evaluation was submitted on April 12, 2023. WCS acted appropriately based on the data and in the timeframe required by the law.

## FAPE

The IDEA requires that a FAPE be made available to all children between the ages of 3 and 21. 34 C.F.R. § 300.101. The IDEA ensures that “all children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

The IEP need not be ideal but must “aim to enable the child to make progress” both academically and functionally. *Endrew F.*, 580 U.S. at 399-400. “The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’ through an “[i]ndividualized education program.” *Id.* at 400 (citing §§1401(29), (14)). The IEP is to be constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv). Having considered the disability, achievements to date, and potential for growth, the IEP should aspire to be an “appropriately ambitious” educational program. *Endrew F.*, 580 U.S. at 402.

Petitioners allege that the IEP team’s failure to address [REDACTED] behaviors in the IEP was “wantonness (sic) and gross negligence as the student had a history of atypical behavior and discipline.”<sup>10</sup> As previously delineated, Petitioners did not establish that [REDACTED] behaviors were atypical from other [REDACTED] [REDACTED] and [REDACTED] grade [REDACTED]. Credible testimony was proffered by [REDACTED] professionals, who are familiar with and trained in special education, that [REDACTED] was a typical student. The testimony of Ms. Beigel was particularly compelling. Ms. Beigel had previously worked for ten years with students who had extreme emotional and behavioral disabilities. Ms.

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<sup>10</sup> AMENDED COMPLAINT, p. 3.

Beigel did not observe any behavior from [REDACTED] that would have led [REDACTED] to believe that [REDACTED] should be placed in that same category.

Petitioners assert that WCS should have included a functional assessment or behavior intervention plan in the initial IEP. “But the IDEA and its implementing regulations do not require that a school use a functional behavior assessment when initially testing students for suspected disabilities.” *D.K.*, at 251. In Tennessee, a Functional Behavior Assessment (FBA) is required under the following circumstances:

- a) When a student receiving Special Education and Related Services engages in conduct that results in a change of placement as defined by 34 C.F.R. 300.536 and the LEA, the Parent, and relevant members of the IEP team determine that the student’s conduct that gave rise to the change in placement was a manifestation of the child’s disability;
- b) When an IEP provides for the use of restraint or isolation, as required by T.C.A. 49-10-1304(b);
- c) When the student exhibits a pattern of behaviors that impede their learning or that of others;
- d) When the student exhibits a pattern of behavior that places the student or others at risk of harm or injury;
- e) When the student’s IEP team is considering a more restrictive placement as a result of the student’s behavior; or
- f) When determined appropriate by the student’s IEP team.

TENN. COMP. R. & REGS. 0520-01-09-.24(3). When the IEP team met in the spring of [REDACTED] [REDACTED] grade school year, the team determined that none of the above mandates applied to [REDACTED] at that time. When the IEP team met after the October 31, 2023, incident, the team determined an FBA was appropriate to pursue. WCS acted accordingly by requesting [REDACTED] permission to have [REDACTED] undergo the assessment.

It is not reported that [REDACTED] had any major conduct infractions in [REDACTED] [REDACTED] grade school year. After the major conduct infraction at the beginning of [REDACTED] [REDACTED] grade school year, as discussed previously, WCS implemented general education interventions to address [REDACTED] behaviors. Those interventions were successful in that [REDACTED] did not have any additional major conduct

infractions for 14 months. Upon the second major conduct infraction, WCS acted timely in requesting consent to conduct the FBA.

Accordingly, there was no requirement that WCS consider conducting an FBA until [REDACTED] was already identified as a student with a disability, was receiving services pursuant to an IEP, and was removed from [REDACTED] for more than 10 days for a conduct violation that was determined not to be a manifestation of [REDACTED] SLD. Petitioners presented no evidence to support the assertion that the failure to conduct an FBA during the initial evaluation resulted in a denial of FAPE for [REDACTED]. Petitioners have failed to prove by a preponderance of the evidence that [REDACTED] was denied a FAPE.

### **PROCEDURAL SAFEGUARDS**

Petitioners allege that WCS “intentionally interfered with the parent’s procedural safeguards provided by the IDEA.”<sup>11</sup> Petitioners allege that WCS staff told [REDACTED] on at least one occasion that a due process complaint or appeal was futile. This allegation appears to arise from the manifestation determination after the October 31, 2023, incident. After the implementation of the initial IEP, [REDACTED] inquired what possible future disciplinary actions might be taken with [REDACTED]. Credible testimony proved that [REDACTED] was told that it depended on the type of behavior [REDACTED] exhibited and whether that possible behavior was a result of [REDACTED] recognized disability. This information was not a threat of possible future action by WCS. All evidence supports that [REDACTED] was informed at every stage of any proceedings beginning in the spring semester of [REDACTED] [REDACTED] grade year. [REDACTED] was given appropriate Prior Written Notices with the necessary information of what to do if [REDACTED] disagreed with the actions recommended. [REDACTED] was a very engaged parent who meaningfully participated in the meetings regarding the IEPs and behavior plans.

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<sup>11</sup> AMENDED COMPLAINT, p. 4.

████ acknowledged that █████ was provided with copies of the procedural safeguards. █████ was directed to the appropriate person when █████ had questions about the disciplinary process. █████ without an attorney, filed the Due Process Hearing Request Form. There was no testimony or evidence specifically related to █████ or █████ alleged violations of their due process rights. Petitioners have failed to prove by a preponderance of the evidence that WCS interfered in any of Petitioners' due process rights.

### **RELIEF SOUGHT**

Petitioners sought nine forms of relief. Petitioners sought to have the manifestation determination overruled and █████ restored to the general education setting at █████. These two forms of relief were previously addressed in the ORDER OF CONTINUANCE issued on January 8, 2024, and shall not be addressed again.

Petitioners requested, in two separate requests, that WCS “immediately commence a functional behavior assessment by an outside evaluator.” WCS requested █████ permission on November 27, 2023, to begin the FBA process. Petitioners did not present any proof that WCS failed to proceed with the IEP team's recommendation of have the FBA completed.

Petitioners requested that WCS “commence a psychological evaluation to determine whether the student has other disabilities that demonstrate █████ would be eligible for IEP goals and related services ... .” Petitioners have failed to present any data that was overlooked by WCS to indicate █████ needed to be evaluated for another disability prior to November 2023. As previously addressed, █████ has not proven to have a need to be evaluated for an OHI or an ED.

Petitioners requested WCS fund an independent education evaluation for █████ by an evaluator chosen by █████. This request for relief was previously addressed in the ORDER DENYING MOTIONS issued on December 21, 2023. As Petitioners have not presented any

testimony or evidence that is different from what was previously addressed, this relief will not be addressed again.

Petitioners request that WCS design an IEP offering [REDACTED] a FAPE and that the IEP include reading instruction by a particular method. As no testimony or evidence was presented as to this reading method at the hearing, the request is deemed waived by Petitioners. WCS worked with Petitioners and updated the IEP after the filing of the instant due process complaint. After it was drafted, the most recent IEP was provided to [REDACTED] on December 1, 2023, as it was not drafted prior to the IEP team meeting. The most recent IEP is now in effect and remains in effect until May 7, 2024. Petitioners have not presented any proof that WCS is not complying with the provisions as agreed to by the IEP team in the most recent IEP.

Lastly, Petitioners request that they be deemed the prevailing party and be given any entitled relief. No further relief was specifically sought as to the last request, and no testimony or evidence was presented to support this request.

### **CONCLUSIONS OF LAW**

1. Petitioners have failed to meet their burden of proof that WCS committed a child find violation for the 2021-2022, 2022-2023, or 2023-2024 school years.
2. Petitioners have failed to meet their burden of proof that [REDACTED] was eligible for special education services under the IDEA prior to the spring semester of the 2022-2023 school year.
3. Petitioners have failed to meet their burden of proof that [REDACTED] was denied a FAPE for the 2021-2022, 2022-2023, or 2023-2024 school years.
4. Petitioners have failed to meet their burden of proof that WCS intentionally interfered with their procedural due process rights.




5. Petitioners have failed to meet their burden of proof that they are entitled to any requested relief.

6. WCS is the prevailing party on all claims.

The policy reasons for this decision are to uphold the laws of the State of Tennessee, to facilitate the fair and efficient management of the Tennessee Department of Education rules and statutes, and to ensure adequate due process is provided for the education of children with disabilities to parents, students, and Local Education Agencies.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **4th day of March, 2024**.

  
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CLAUDIA PADFIELD  
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 **4th day of March, 2024**.

THE STUDENT AND THE PARENT V.  
WILLIAMSON COUNTY SCHOOLS

**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 **March 4, 2024**. 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 with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Final Order, which is no later than **March 19, 2024**.

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 **May 3, 2024**. See TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may file an 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 **May 3, 2024**, 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.

**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 APD within 7 days of the date of entry of the Final Order, which is no later than **March 11, 2024**. See TENN. CODE ANN. § 4-5-316. 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.

THE STUDENT AND THE PARENT V.  
WILLIAMSON COUNTY SCHOOLS

**NOTICE OF APPEAL PROCEDURES**

**FILING**

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: [APD.Filings@tn.gov](mailto:APD.Filings@tn.gov)

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State  
Administrative Procedures Division  
William R. Snodgrass Tower  
312 Rosa L. Parks Avenue, 6<sup>th</sup> Floor  
Nashville, TN 37243-1102