

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

IN THE MATTER OF:

**J.M., *the student, and*
D.M., *the student's mother,*
Petitioners,
v.**

**Rutherford County Board
Of Education,
*Respondent.***

DOCKET NO: 07.03-100570J

FINAL ORDER

This matter was heard on November 19, 2008, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, pursuant to T.C.A. §49-10-606 and Rule 520-1-9-.18, Rules of the State Board of Education. Attorney Angel McCloud represented the Respondent. Petitioner was represented by his mother, D.M.

The subject of the proceeding, in general terms, is whether Respondent has provided a free and appropriate public education (FAPE) to Petitioner J.M. The specific issue, however, is limited to whether Petitioner should receive a new educational placement outside of Rutherford County.

A Motion for Summary Judgment was filed by counsel for Respondent on November 13, 2008. Since Petitioner's representative did not have ample opportunity to file a response, the motion was taken under advisement. Both sides presented proof at

the hearing on November 19th, and the Order is the result of a decision based on the testimony, exhibits, and legal arguments of each side. Accordingly, the Motion for Summary Judgment is **DISMISSED**.

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is **DETERMINED** that Respondent is in compliance with J.M.'s IEP, is ready to provide a free and appropriate public education to J.M., and is not required to arrange for an alternative educational placement outside of Rutherford County. This determination is based on the following Findings of Fact and Conclusion of Law.

FINDINGS OF FACT

1. J. M. is a 17 year old student who is currently home schooled.
2. J.M. had enrolled in the Rutherford County School System in February of 2006, but was withdrawn by his mother, D.M., in October of 2006. J.M. was re-enrolled in December of 2006 and remained enrolled until December of 2007 at which time his mother again withdrew him.
3. J.M. meets the standards to be identified as mentally retarded. This determination was made by the IEP team after reviewing records and a psychological report from J.M.'s previous school system. The IEP team, including J.M.'s mother, agreed with mental retardation identification. An IEP was written and all team members signed and agreed to it. Since J.M.'s eligibility determination was made in May of 2006 the Rutherford County School System established a re-evaluation date for September of 2009.

4. Although J.M. is not currently enrolled in any school within the Rutherford County School System, the IEP which had been written for the 2008-2009 school year contains present levels of performance, information regarding how J.M.'s disability affects his participation in the general education classroom, transition planning, measurable annual goals and benchmarks, and all other elements required under the IDEA.

5. Petitioner's mother D.M. testified regarding J.M.'s multiple educational placements throughout his life, all of which were eventually terminated by D.M. either because she wasn't pleased with the program, or J.M. was getting sick too often, or she disliked one or more educators in the program.

6. Special Education teacher Marcella Fox testified regarding J.M.'s IEP and stated that J.M.'s IEP was appropriate and contained goals and benchmarks. Ms. Fox also stated that each and every time J.M.'s mother voiced a concern, the school arranged for an IEP team meeting and was willing to consider all of D.M.'s requests.

7. School Psychologist Crystal McGee testified that J.M. met the criteria to be identified as mentally retarded according to his significantly below average IQ, and stated that his IEP was appropriate. Ms. McGee also stated that J.M. was due to be re-evaluated in 2009.

CONCLUSIONS OF LAW

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

favor. Rule 1360-4-1-.02, Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies.

2. The Supreme Court has held that the inquiry of the courts regarding the provision of FAPE is twofold: First, has the State complied with the procedures set forth in the Act, and second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive education benefits? Bd. Of Education of the Hendric Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, 206-207 (1982).

3. The evidence presented at the hearing shows that the Respondent has been following the IDEA procedures and has implemented an IEP designed to provide J.M. with well-rounded educational benefits in conformance with the individualized education program under section 614(d) 20 U.S.C. 602(9). The evidence further proves that J.M. did make progress toward the educational goals contained in his IEP during the limited time he was enrolled in the Rutherford County Public School System.

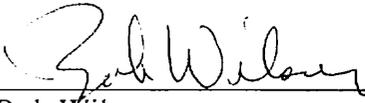
As J.M.'s parent, D.M. has a constitutional right to educate her child as she sees fit. Clearly, as is evidenced by the fact that she has withdrawn him from each and every educational program in which he has ever enrolled, D.M. chooses to home school her child. That however does not negate the fact that the Rutherford County School System has an appropriate IEP in place and stands ready to provide the services contained in the IEP upon J.M.'s re-enrollment in the School System.

It is **CONCLUDED** that Petitioner has failed to prove that the Rutherford County Public School System has not provided J.M. with a free and appropriate public education.

It is **CONCLUDED** that Respondent was in compliance with J.M.'s IEP during the time he was enrolled in the Rutherford County Public Schools, and Respondent does not have to provide an educational placement outside of Rutherford County.

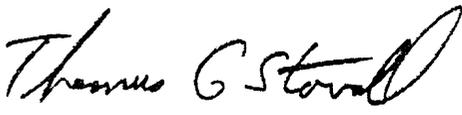
D.M. is free to continue home-schooling her child, or she can re-enroll him in the Rutherford County School System with the IEP previously written for the 2008-2009 school year. Respondent is the prevailing party in this matter.

This Initial Order entered and effective this 8th day of December 2008.



Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State.
this 8th day of December 2008.



Thomas G. Stovall, Director
Administrative Procedures Division

Notice

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

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