

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

**IN THE MATTER OF:**

**M.G., *Student,*  
*Petitioner,***

**DOCKET NO: 07.03-122986J**

**v.**

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

**FINAL ORDER**

This contested case was heard in Franklin, Tennessee, on August 11, 2014, August 12, 2014, August 13, 2014, August 14, 2014, August 15, 2014, September 17, 2014, September 18, 2014, and September 19, 2014. Presiding was Ann M. Johnson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, pursuant to Tenn. Code Ann § 49-10-606 and Tennessee State Board of Education Rule No. 0520-1-9-.08. The Petitioner M.G. was represented by attorneys Justin S. Gilbert and Jessica F. Salonus. The Respondent Williams County Schools (WCS), which is the local education agency (LEA), was represented by attorneys Melinda Jacobs and William E. Squires.

The primary issue in this matter concerns the Petitioner's assertion that WCS failed to locate, identify, and evaluate M.G. in accordance with the mandates of the IDEA and related state laws. After consideration of the record and the arguments of the parties, it is determined that the Respondent WCS has complied with applicable state and federal

law, and therefore the request for relief must be **denied**. This determination is based upon the following.

### **FINDINGS OF FACT**

1. The Petitioner M.G. is an eight-year-old girl who has been diagnosed with various health issues and has developmental delays.

2. On September 10, 2010, M.G.'s parents referred her for Early Childhood Developmental Screening due to concerns with her hearing, also noting that developmental concerns were "not significant." Subsequent audiological testing showed normal hearing.

3. WCS conducted preschool screening in October of 2010 that showed significant delays in language, articulation, motor skills, cognitive abilities, and social/self-help skills.

4. Within two months following the preschool screening, WCS conducted a comprehensive evaluation to determine M.G.'s eligibility for special education and related services pursuant to the IDEA. The comprehensive evaluation concluded that M.G. had average abilities in all areas, including cognitive, adaptive behavior, social, and communication skills. The evaluation also examined M.G.'s educational need for occupational therapy (O.T.), physical therapy (P.T.), and speech/language therapy (S/L therapy), concluding that M.G. was not in need of services in any of these areas.

5. An IDEA eligibility meeting was conducted on January 20, 2011, with M.G.'s father in attendance. Also present were relevant members of the WCS staff, including a school administrator, school psychologist, special education teacher, speech/language therapist, physical therapist, and occupational therapist. This team

determined that, based upon the evaluation results, M.G. did not meet the federal and State requirements for eligibility for special education and related services. M.G.'s father signed in agreement with the team's determination.

6. Subsequently, M.G.'s parents contacted WCS by letter, expressing disagreement with the eligibility determination.

7. In response, on April 8, 2011, WCS staff sent an Invitation to a Meeting and a Prior Written Notice to M.G.'s parents, agreeing to schedule a follow-up IDEA eligibility meeting on April 15, 2011. The eligibility team convened the meeting on this date, with M.G.'s father and grandmother in attendance.

8. At the April 15, 2011, eligibility team meeting, M.G.'s father and grandmother reported that Dr. Barbara Olson, a pediatric neurologist, had ordered an MRI that Dr. Olson believed would show M.G. suffered from a leaking cyst in her brain. The family also reported that there was no medical documentation available at that time, although the family provided photocopies of prescriptions written by Dr. Olson and a nurse practitioner requesting evaluation for OT, PT, and S/L services.

9. At the meeting the WCS staff discussed the fact that these same evaluations had just been conducted and showed no educational need for any of the services. At the team's request, the parents agreed to provide the MRI report when available.

10. An IEP Follow-Up Action Plan was also drafted during meeting which contained the following items:

Family should provide reports of previous developmental evaluations, audiological reports, speech/language. Parents should provide reports

from Dr. Olson regarding medical/neurological concerns/findings. Parent will contact Melissa Trace if [M.G.] has a return of the noticeable articulation/speech problems, as reported, at this time speech testing will be considered. After receipt of this information WCS team will reconvene to consider this information.

11. An MRI conducted at Vanderbilt University Medical Center on April 28, 2011, revealed that M.G. had no Chiari malformation or hydrocephalus, and concluded that M.G. had a “normal MRI of the brain.”

12. In spite of the agreement in the Action Plan, this MRI report was not shared with WCS.

13. At the meeting on April 15, 2011, the team also discussed whether M.G. should be enrolled in kindergarten for the 2011-2012 school year, particularly in light of her very young age and the family’s concerns about her health problems.

14. In a letter from Dr. Barbara Olson, M.G.’s treating neurologist at that time, to the Petitioner’s pediatrician, Dr. Olson reported that the family had decided to send M.G. to kindergarten, “realizing that she will probably have to repeat.” The parents did not disclose this information to WCS.

15. M.G.’s parents enrolled her in kindergarten at Lipscomb Elementary School (LES) for the 2011-2012 school year. M.G.’s pediatrician completed a School Entry Medical Examination form, dated June 3, 2011, which states that “there were no apparent medical findings which restrict participation in routine school activities.”

16. M.G. was assigned to Elizabeth Johnson’s kindergarten class. M.G. was the youngest child in the class, the only four-year old. Most of the students in the class would turn six years old before the end of 2011.

17. On the first day of school, M.G.'s mother emailed Ms. Johnson, M.G.'s kindergarten teacher, and told her that M.G. had been diagnosed with Chiari Malformation, a brain issue that could result in serious injury if the student suffered a fall. Ms. Johnson was very concerned and reported the information to the school nurse and the school principal.

18. Ms. Johnson asked the parent for medical documentation of Chiari Malformation, but never received it.

19. An MRI report from Vanderbilt University Medical Center dated April 29, 2011, concluded that M.G. did not have a Chiari Malformation. These results were not communicated to WCS.

20. The first week of kindergarten is devoted to testing to determine the level of each child's knowledge of such matters as letters, colors, environmental signs, and numbers. The age of a kindergarten child is relevant to that child's fine motor skills (such as use of a pencil or crayon), attention span, and ability to work independently. M.G. scored lower than any of her classmates and had limited background knowledge.

21. Because of these deficits, Ms. Johnson began working with M.G. both in small groups and one-on-one at least three (3) times a week. M.G. was also assigned a fifth grade "peer mentor" who came to the kindergarten class five (5) times a week to work directly with M.G. on phonemic awareness.

22. During the fall of 2011, Ms. Johnson also sought the assistance of the LES occupational therapist, who observed M.G. in the classroom and made recommendations.

23. Additionally, M.G. received one-on-one reading instruction for twenty minutes, three (3) times each week, through the RTI program.

24. RTI is not a part of the special education process, but is provided exclusively through the general education program. It was used to identify students with reading deficiencies and to provide them with appropriate interventions.

25. M.G. was identified as a student needing this type of intervention, which she began receiving in the fall of 2011. By March, 2012, M.G. had made substantial progress in the subject of reading.

26. The student was also placed in the "General Education Intervention Team" (GEIT) program after a referral from her kindergarten teacher Ms. Johnson. This process was used to address difficulties in academic and developmental areas, including fine and gross motor activities.

27. On January 11, 2012, M.G.'s mother sent correspondence to the school principal requesting clarification "to help clear our confusion over GEIT versus IEP." The principal responded the following day, explaining the purpose of GEIT and the difference between GEIT and the IEP/special education eligibility process.

28. WCS convened a GEIT meeting on February 8, 2012. In addition to M.G.'s father and grandmother, several relevant WCS personnel attended the team meeting: Ms. Johnson, the kindergarten teacher; Michelle Contich, LES principal; Diane Wauford, GEIT Coordinator; Theresa Nicholls, school psychologist; and Jennifer Curran, occupational therapist.

29. The GEIT team developed an Action Plan which included the following: (1) a “slant board” on M.G.’s desk to aid development of fine motor skills; (2) OT and PT observations; (3) parental assistance in obtaining medical documentation for a possible Section 504 Plan; (4) improvement of M.G.’s self-awareness of daily needs; (5) consultation with a speech pathologist regarding poor communication skills; (6) monitoring of “triggers” by parents and teachers; (7) neurology results supplied to the school by the parents; (8) continuation of Tier 2 reading intervention; and (9) sensory input techniques.

30. The school implemented the plan, but M.G.’s parents failed to provide neurological medical documentation, even though the team continued to seek this information.

31. An additional MRI was performed on May 24, 2012. The report indicated no brain abnormalities: “MRI read as completely normal, no further follow up necessary.” This information was never provided to WCS.

32. According to the assessment of her teacher, M.G. made “tremendous” gains academically, socially, and emotionally during her first year in kindergarten.

33. In spite of M.G.’s progress, she was still behind others in the class because of her very young age and immaturity. For this reason she was recommended for retention in kindergarten at the end of the school year. However, because of the parent’s objections, M.G. was enrolled in first grade for the 2012-2013 school year.

34. M.G. was not successful in first grade. On August 30, 2012, a GEIT meeting was convened to review available information and discuss M.G.'s placement. It was determined that M.G. should repeat kindergarten.

35. Based upon the family's representation that M.G. suffered from a Chiari Malformation, WCS agreed to the development of a Section 504 Plan. Neither the family nor school personnel were able to offer concrete suggestions to include in a 504 plan, but an "Action Plan" was developed. M.G.'s parent also signed a release to enable WCS officials to obtain medical information directly from M.G.'s neurologist.

36. During the fall of M.G.'s second year in kindergarten, she performed well.

37. In response to a parental request, a second Section 504 team meeting was convened on October 17, 2012. In an effort to appease the family, WCS agreed to develop a Section 504 Plan even though there was no medical documentation to support such a plan. The school team offered to provide any services or accommodations requested by the parents.

38. The 504 Plan contained the following: "(1) OT consultation; (2) Extra time on test when possible; (3) Oral testing as needed; and (4) If she bumps her head, call family, ensure she is observed by nurse." The first three items were suggested by the mother and grandmother; no other services were requested by the family.

39. On October 5, 2012, WCS received information from one of M.G.'s neurologists. This documentation consisted of the MRI report dated May 24, 2012, showing no evidence of a Chiari Malformation and a normal MRI result. This is the first

time the school received any medical documentation related to the parent's claim that M.G. had a Chiari Malformation.

40. Although this medical information directly contradicted the representations of the parents regarding M.G.'s medical condition, the WCS team did not revoke or change the Section 504 Plan already in place.

41. On October 31, 2012, M.G.'s parent revoked the prior consent allowing school officials to communicate directly with M.G.'s physicians.

42. In late November of 2012, M.G. was prescribed medications that can cause side effects, including behavior problems and irritability. At this same time she began exhibiting significant behavior changes at school, including refusal to complete work, crying, crawling under her desk, and asking to see the school nurse.

43. None of the visits to the school nurse were because of drooling, garbled speech, unsteady gait, or frequent falling.

44. M.G. never exhibited behavior issues or aberrant behaviors before the end of November, 2012.

45. M.G. often came to school with dirty clothes and uncombed hair; one student complained about her odor. M.G. frequently wore a pair of boots that did not fit properly, causing her to trip over her own feet.

46. At the request of Dr. Marcos Cruz, one of a series of neurologists who treated this student, M.G. received homebound education services in December of 2012 and January of 2013. In recommending homebound services, Dr. Cruz relied solely upon the parent's representation of M.G.'s symptoms and behaviors.

47. Dr. Cruz was not aware that three other neurologists had treated M.G. during the two years before she became his patient. He also was not aware of the previous MRI studies that indicated M.G. had no brain disorder.

48. At the time Dr. Cruz “diagnosed” M.G. with Chiari Malformation, he had not yet conducted any testing and relied solely on the parents’ report.

49. Dr. Cruz ordered a repeat brain MRI that was conducted at Vanderbilt University Medical Center on February 28, 2013. Once again, the results indicated a “normal study” of M.G.’s brain, essentially ruling out the presence of a Chiari Malformation.

50. After a two-day EEG to assess seizure activity, M.G. showed no seizure activity.

51. Dr. Cruz never observed any mobility problems or seizures in M.G.

52. Dr. Cruz admitted that he felt pressured by M.G.’s mother to request homebound educational services, even though he felt the child should be in school.

53. From November of 2012 through May of 2013, M.G. missed more than 60 school days.

54. Due to staff concerns about the number and frequency of absences during the 2012-2013 school year, on April 4, 2013, WCS initiated a referral for M.G. to receive a comprehensive IDEA eligibility assessment.

55. The comprehensive evaluation was not completed since the family withdrew M.G. from enrollment in WCS in June of 2013.

## RELEVANT LAW

1. The Petitioner M.G. has the burden of proof in this matter, to show by a preponderance of the evidence that the relief sought is warranted under state and federal law. *Schaffer v. Weast*, 546 U.S. 49, 62 126 S.Ct. 428, 163 L.Ed.2d 387 (2005) (the party seeking relief and seeking to change the present state of affairs bears the burden of proof). See also Rule 1360-04-01-.02(3) and (7), TENN. COMP. R. & REGS.

2. Each Local Education Agency (LEA) is required to provide a “free appropriate public education (FAPE)” to “all children with disabilities.” 20 U.S.C. (a) (1), 34 CFR § 300.101, Rule 0520-01-09-.05, TENN. COMP. R. & REGS.

3. The IDEA states: A “child with a disability means a child –

(i) With mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotion disturbance, (...), orthopedic impairment, autism, traumatic brain injury, other health impairments, or specific learning disability: and

(ii) who, **by reason thereof needs special education** and related services.

20 U.S.C. §1401(3)(A), emphasis added.

4. The SEA through the LEA is obligated to under the IDEA’s “Child Find” provisions to identify children with disabilities who are in need of special education and related services. 20 U.S.C. (a) (3).

5. Section 504 of the Rehabilitation Act of 1973 provides as follows:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service ... 29 U.S.C. §797(a)

6. Generally, under Section 504 a student with a disability is an individual who: (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

### **ANALYSIS and CONCLUSIONS OF LAW**

In this case, the evidence shows that WCS was in full compliance with the requirements of the IDEA and Section 504 by conducting a comprehensive IDEA evaluation in pre-school, identifying M.G. through the GEIT and RTI processes, providing general education classroom interventions, monitoring her progress throughout the 2011-2012 and 2012-2013 school years, and referring her for a follow-up IDEA eligibility evaluation in the spring of 2013.

M.G. was first suspected of having a disability in the fall of 2010. When screening evaluation showed significant delays, WCS promptly obtained parental consent for a comprehensive IDEA eligibility evaluation. A battery of evaluations was completed, including an occupation therapy evaluation, a physical therapy evaluation, speech/language evaluation, and psycho-educational evaluation. These evaluations showed that M.G.'s skills were average in all areas. An IDEA eligibility team was convened, and M.G.'s father was present at the meeting. The entire team agreed that M.G. did not qualify for IDEA eligibility: she was not "in need of" special education and related services to benefit from general education.

M.G.'s parents chose to enroll her in kindergarten in August of 2011, in spite of reservations of the child's pediatric neurologist and school

staff. During the first week in kindergarten, WCS identified M.G. as an at-risk student and then implemented classroom interventions and individualized instruction, including RTI and the GEIT programs. Progress monitoring data shows that M.G. did well, exceeding her goals.

M.G.'s parents consistently asserted that M.G. had a diagnosis of Chiari Malformation, even though they were well aware of medical testing, including three MRIs ordered by three different neurologists, that ruled out the presence of a Chiari Malformation. They refused to share this medical information with school officials, claiming M.G. had a serious brain malformation when, in fact, they were well aware that she did not. Even without medical documentation, WCS developed a Section 504 Plan in an attempt to satisfy the concerns of the parents. WCS agreed to provide any accommodations requested by the parents. Even after WCS learned of the subterfuge regarding a diagnosis of Chiari Malformation, the school did not change or rescind the 504 Plan.

The Petitioner claims WCS used the GEIT process to delay or deny the identification of M.G. as an eligible special education student. The evidence in this case shows otherwise. The use of a pre-referral intervention process is supported by the federal courts<sup>1</sup> and Tennessee state law and regulations. In fact, an RTI or GEIT type process is mandated by state law. The Tennessee State Board of Education has promulgated regulations requiring local school districts to develop and implement pre-referral intervention programs, such as the GEIT process in WCS.<sup>2</sup>

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<sup>1</sup> See, e.g. *A.P. v. Woodstock Bd. of Education*, 50 IDELR 275 (D. Conn. 2008), *aff'd*, 55 IDELR 61 (2<sup>nd</sup> Cir. 2010).

<sup>2</sup> See Rule 0520-1-9-.09(3)(c), TENN. COMP. R. & REGS.

Both parties presented the testimony of expert witnesses who predictably expressed differing opinions. Dr. James Tucker opined that WCS failed to properly identify M.G. as a “child with a disability” pursuant to the IDEA. Although Dr. Tucker is no doubt very knowledgeable in some areas, his familiarity with this particular case is questionable. Dr. Tucker admitted that he reviewed only 200-300 pages of documentation, provided by the Petitioner’s counsel, out of over 8,000 pages available. He had not spoken with any of M.G.’s teachers or other WCS staff and he had not spoken with any of her physicians. Dr. Tucker had never met M.G. or her parents.

On the other hand, Dr. David Rostetter, expert witness for WCS, spent approximately 45 hours in face-to-face interviews with M.G.’s teachers and other relevant staff, in addition to reviewing all of more than 8,000 pages of documentation. Dr. Rostetter opined that WCS had complied with the IDEA and Section 504: “[T]his District’s behavior procedurally is exemplary. I found no real deficiencies in how [WCS staff] made decisions, and the standards they applied in regards to this child.” Because of his greater familiarity with the specifics of this particular case, his opinion is deemed to be more credible and is accorded greater weight.

Based upon the entire record and the arguments of the parties, **IT IS THEREFORE CONCLUDED and ORDERED:**

The Petitioner has failed to show, by a preponderance of the evidence, that she is an individual who requires special education services pursuant to IDEA.

The Petitioner has failed to show, by a preponderance of the evidence, that WCS failed to comply with the “Child Find” provisions of the IDEA. To the contrary, the

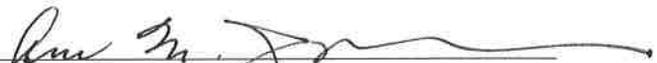
record supports a finding that WCS identified Petitioner as an individual with needs, and provided all evaluations, accommodations, and services required.

The Petitioner has failed to show, by a preponderance of the evidence, that she now or in the past met the requirements for specialized educational services under the IDEA or that the services provided Petitioner under Section 504 were deficient.

WCS has complied with substantive and procedural requirements of Section 504 and the IDEA in providing educational accommodations and services to the Petitioner.

WCS is the prevailing party on all issues brought in this case.

This Final Order entered and effective this 25<sup>TH</sup> day of AUGUST 2015.

  
ANN M. JOHNSON  
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 25<sup>TH</sup> day of AUGUST 2015.

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

### 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.