

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

IN THE MATTER OF:

**██████, Student, ██████, Parents,
Petitioners,**

DOCKET NO: ██████

v.

**WILLIAMSON COUNTY SCHOOLS,
Respondent.**

FINAL ORDER

This matter was heard on ██████ and ██████ before Lynn M. England, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division pursuant to T.C.A. §49-10-606 and Rule 520-1-9-.18. ██████ of the Davidson County Bar represented the Respondent, Williamson County Schools, (hereinafter referred to as "WCS"). Petitioners were represented by their legal counsel, ██████. Proposed Findings of Fact and Conclusions of Law were submitted ██████. Respondent submitted its Post Hearing Brief on ██████. By agreement of the parties, the Final Order is due thirty days from the close of the proof, ██████.

The subject of this proceeding was whether WCS provided a comparable Individualized Educational Program (hereinafter referred to as "IEP") when Petitioner (hereinafter referred to as "██████") transferred from ██████ to Tennessee, and if not, whether it resulted in an inappropriate IEP; whether WCS failed to provide a free, appropriate, public education ("FAPE") to ██████ and caused substantial harm to ██████; whether WCS violated the IDEA; whether WCS complied with the procedures of the Act; whether WCS failed to correctly identify ██████ disability; whether ██████ IEPs were reasonably calculated to enable him to receive some educational benefit; whether ██████

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is DETERMINED that Respondent WCS **failed to provide** [REDACTED] with a free, appropriate, public education; WCS did violate the IDEA by its failure to comply with the procedures contained in the Act; [REDACTED] IEP's were not reasonably calculated to enable him to receive some educational benefit; [REDACTED] is an appropriate placement for [REDACTED]; Petitioners are entitled to the relief sought; and, [REDACTED] is the prevailing party in this matter.

FINDINGS OF FACT

1. [REDACTED] attended [REDACTED] grade in [REDACTED]. Next, [REDACTED] attended school in [REDACTED]. From [REDACTED], [REDACTED] attended school in the [REDACTED] Tennessee school system. From [REDACTED], [REDACTED] attended school in the [REDACTED] school system. At the time of his enrollment in the [REDACTED] School system, [REDACTED] was certified as eligible for special education services under IDEA, with disabilities of Other-Health Impaired, ADHD, and learning disabled. From [REDACTED] was homeschooled by his mother [REDACTED].

8. Parents were told that [REDACTED] could not receive services unless the Tennessee Interim IEP was completed before school began.
9. WCS's Prior Written Notice of the Interim Eligibility Meeting stated further evaluations were not needed because the most recent comprehensive evaluation had been completed in [REDACTED].
10. At the meeting, [REDACTED] parents objected to not being able to use the [REDACTED] Transfer IEP because it provided more service hours and more accurately reflected [REDACTED] needs. However, Parent [REDACTED] signed the interim IEP, as was required, by the threat by WCS not to serve [REDACTED] otherwise, but added her dissatisfaction with the Interim IEP. The dissatisfaction is reflected on the IEP where Parent [REDACTED] wrote "I am concerned about the reduced amount of hours [REDACTED] is offering from the [REDACTED] Transfer IEP. I am also concerned that [REDACTED] has made huge progress in [REDACTED] [REDACTED] and he will not be able to continue."
11. [REDACTED]
12. [REDACTED]
13. The WCS Interim IEP was to begin [REDACTED], the beginning of [REDACTED] grade at [REDACTED] Middle School.
14. [REDACTED]
15. On [REDACTED], [REDACTED], WCS' psychologist, emailed the Parents two (2) forms, for them to have completed by [REDACTED] pediatrician. One was a "Medically Based Disability" form and the other was a "[REDACTED]".

16. The Parents submitted the forms to [REDACTED] pediatrician, Dr. [REDACTED], for completion. Dr. [REDACTED] office was to return the forms by fax to [REDACTED]. Dr. [REDACTED] office faxed the forms to [REDACTED] at the number listed on the form. Parent, [REDACTED] received a copy as well. WCS staff and WCS' psychologist, [REDACTED] claim to have never received the GMS Autism Medical Statement.
17. Despite numerous IEP meetings and many discussions relative to [REDACTED] autism diagnosis, neither WCS nor [REDACTED] ever notified [REDACTED] parents they had not received the [REDACTED] Medical Statement from Dr. [REDACTED]. [REDACTED] parents were under the impression the form had been received and was a part of his school record since they had received a copy.
18. On [REDACTED] an Eligibility Meeting was held and eligibility was determined by WCS to be "Language Impaired" and "Other Health Impaired" based on [REDACTED] diagnosis of [REDACTED].
19. [REDACTED]
20. The only testing information in the eligibility packet was taken from tests performed in [REDACTED] and [REDACTED] in [REDACTED].
21. On [REDACTED] Parent [REDACTED] signed a "Consent for Supplemental Testing" but no testing was performed. [REDACTED], the school psychologist based her findings on data provided in the [REDACTED] Transfer IEP.
22. The only other information in the WCS eligibility packet were observations made by [REDACTED], [REDACTED] science teacher and [REDACTED] his Special Education teacher².

² [REDACTED] had been a special education teacher at [REDACTED] Middle School for [REDACTED] years but had not taught another [REDACTED] in those [REDACTED] years.

23. [REDACTED] observation, on [REDACTED] identified [REDACTED] weaknesses as "learning disabilities, comprehension difficulties, processing difficulties".
24. [REDACTED] observation on [REDACTED], under other concerns, was "overprotective family/home environment may contribute to [REDACTED]"
25. The IEP Team Reevaluation decision also noted, at Number 4, that there was no team agreement the previously determined disability was accurate and current and that further review of records was needed.
26. Also noted in the [REDACTED] minutes was the statement, "a prior mention of [REDACTED] in records from other schools was decided against as a diagnostic criteria. Mom expressed a concern about not using all criteria [REDACTED] in his records, she wants to be sure he receives appropriate services in future years." The meeting was continued until [REDACTED].
27. Parent [REDACTED] continued to request that WCS consider [REDACTED] as eligible based on the [REDACTED] diagnosis. Despite these repeated requests, WCS never informed [REDACTED] parents that they had not received the required medical form from [REDACTED] physician.
28. WCS Occupational therapist (OT) [REDACTED] was present at the IEP meeting when [REDACTED] was discussed on [REDACTED]. Even though it had only been two weeks into the school year, she stated they were seeing more signs of language impairment than [REDACTED]. As to [REDACTED] she stated, that "we didn't see it".
29. [REDACTED] also had difficulty writing that caused him fatigue and difficulty keeping up in the classroom. [REDACTED] completed an assistive technology form for [REDACTED] on [REDACTED] to assess his needs but the report was never shared with the IEP team or the Parents.
30. Parents continued to communicate their concerns to WCS during numerous IEP meetings. The [REDACTED] IEP meeting minutes detail at length parent

³ [REDACTED] also was of the opinion that since [REDACTED] father pending deployment to [REDACTED] was a stressor for [REDACTED]. This was completely unfounded, in that this was a career military family where deployment was not unusual.

concern regarding medical diagnosis of . The IEP minutes state, "Additionally, the parent felt that the and minutes did not reflect the discussion that took place regarding medical diagnosis of . The team discussed this information and determined that the diagnosed independently did not meet the eligibility standards for Tennessee. Parent did not agree with the opinion of the team, in that she felt the criterion for eligibility was not followed for .

31. Six IEP meetings were held during the Fall of . Parent was present and parent participated by telephone from . At each IEP meeting the parents were allowed to propose goals and strategies to be integrated in IEP. But these goals were silently ignored.
32. Furthermore, the WCS IEP was not comparable to the Transfer IEP.
33. The Transfer IEP had four (4) hours per week scheduled for to receive services. The WCS IEP had none.
34. The Transfer IEP had 20 hours of direct services in a special education setting to accommodate Learning Disability (LD).
35. The WCS IEP provided for 15 hours and 50 minutes in direct services with 30 minutes a week in speech/language. The WCS IEP decreased his direct services to 14 hours and 10 minutes with 1 hour a week in speech/language.
36. The Transfer IEP had 2 hours per month to address social and emotional needs (ED). The WCS IEP provided for no social skills group.
37. The Transfer IEP stated: "requires accommodations and a modified curriculum to successfully access grade level content."
38. The Transfer IEP also stated that needs to receive his instruction in "small group/special education setting: Math (reduced teacher to student ratio, low incidence program), English (LD), Civics (LD), Science (LD),

Developmental Reading and Basic Skills Resource (LD). [REDACTED] will be participating in a social skills group to address his social emotional goal."

39. [REDACTED] had great difficulty learning from just hearing information. According to the testing he brought from [REDACTED] he had a receptive language score of [REDACTED] and expressive language score of [REDACTED]. The testing results were accepted by WCS. No further testing was performed.
40. [REDACTED] regular education science teacher, [REDACTED] could not recall reading [REDACTED] language assessment. In her class, he was only tested on the material that he was present in the classroom to hear. No accommodations were made with regard to his receptive language impairment.
41. [REDACTED] parents also continued to voice concern that he was not being taught on grade level, to which [REDACTED] would respond, "he can't do it".
42. The IEP accommodations for [REDACTED] such as visual supports and study guides were not used in [REDACTED] Language Arts class, because in her opinion they were not needed. Instead, she presented material to [REDACTED] that was well below [REDACTED] grade level.
43. [REDACTED] prior testing showed he had a writing speed at [REDACTED] grade level, but [REDACTED] his special education teacher, could not recall his writing speed.
44. Visual testing was performed on [REDACTED] and [REDACTED] Dr. [REDACTED] identified [REDACTED] as having weaknesses in vision, visuo-motor integration and vision perceptual skills. No testing was ever performed by WCS regarding [REDACTED] visual needs or impairments.
45. WCS's failure to address [REDACTED] individual needs and failure to implement appropriate accommodations resulted in his functional and educational regression while at [REDACTED] Middle School.

46. As the year progressed [REDACTED] became more and more frustrated. He began having meltdowns almost daily at home that would last for hours. His repetitive behaviors began to escalate.
47. As a last ditch effort, on [REDACTED] Parent [REDACTED] contacted [REDACTED] Student Support Services Supervisor for WCS regarding the IEP team's unwillingness to consider [REDACTED] diagnosis and his unique needs. [REDACTED] agreed to have the school psychologist review his eligibility information, but a review was never performed.
48. On [REDACTED], [REDACTED] Parents provided proper notice to the WCS that as a result of the denial of FAPE and the substantial harm suffered by [REDACTED], they were placing him in a private placement at [REDACTED] after the Christmas break.
49. Prior written notice was provided to [REDACTED] parents and an IEP meeting was held [REDACTED] at which time the actions proposed by WCS were: identification/eligibility; review/revise IEP, and educational placement.
50. The description of the action proposed was an evaluation for [REDACTED]. Further WCS proposed further testing and evaluations to examine and confirm his possible [REDACTED] diagnosis. WCS went so far as to offer [REDACTED] a laptop, an accommodation that had been requested previously.
51. Parent [REDACTED] rejected the request and removed [REDACTED] from WCS and enrolled him in [REDACTED]
52. [REDACTED] is a college preparatory school for children with special learning needs. The criteria for admission is that students have to be cognitively within the average range of proficiency in enough areas to qualify them for college admission. [REDACTED] met the criteria.
53. Upon graduation [REDACTED] students receive a regular high school diploma and the school has a 100% college acceptance rate.

54. Upon arrival at [REDACTED], [REDACTED] was evaluated immediately. As a result of the testing, he received occupational therapy multiple times a week for his sensory integration difficulty. He received speech and language therapy daily to address his language difficulties. He also received social coaching and pragmatic coaching daily.
55. Even though an IEP is not required in a private school setting, [REDACTED] provided an IEP with substantially the same accommodations that were reflected in his [REDACTED] Transfer IEP.
56. Initially, [REDACTED] had difficulty distinguishing figurative language and difficulty with social judgment. He was also very reserved.
57. On the first day of school at [REDACTED] [REDACTED] was provided with a laptop as well as assistive technology classes for his learning disabilities.
58. [REDACTED] began to show educational and functional progress. His grades improved and he began to develop socially.
59. The placement of [REDACTED] at [REDACTED] was educationally appropriate. He received grade level instruction which placed him on the path to graduate from high school and be accepted to college.
60. [REDACTED] expert witness for WCS, determined the [REDACTED] Transfer IEP could not be implemented in Tennessee because it was based on a model not used in Tennessee. However, she also determined the [REDACTED] Transfer IEP was appropriate in light of the requirements of the IDEA.
61. [REDACTED] specific disabilities including his [REDACTED] diagnosis were recognized and addressed by [REDACTED] in such an educational setting as to provide him with the appropriate education he had been denied at [REDACTED] Middle School. . He has made academic, social, behavioral and functional progress.
62. The disregard by WCS for [REDACTED] diagnosis, their refusal to even complete the requirements for determining whether he had [REDACTED], coupled with the unjustified

change in his IEP eligibility diagnosis from learning disabled to language impaired, resulted in [REDACTED] educational and functional regression.

CONCLUSIONS OF LAW

1. The burden of proof in an administrative hearing, under the *Individuals with Disabilities Education Act (IDEA)*, is placed upon the party seeking the relief. Schaffer v Weast, 546 U. S. 49 (2005). Accordingly, [REDACTED] has the burden of proof.
2. The Individuals with Disabilities Education Act ("IDEA"), 84 Stat. 175, as amended, 20 U.S.C. § 1400 et.seq. requires States receiving federal funding to make a "free appropriate public education" (FAPE") available to all children with disabilities residing in the State, § 1412(a)(1)(A)). We have previously held that when a public school fails to provide a FAPE and a child's parents place the child in an appropriate private school without the school district's consent, a court may require the district to reimburse the parents for the cost of the private education. See School Comm. Of Burlington v. Department of Ed. Of Mass., 471 U.S. 359, 370(1985). Forest Grove School District v. T.A., 675 F. Supp. 2d 1063(D. Or. Dec. 8, 2009), 129 S.Ct. 2484.
3. Transfer outside State.

In the case of a child with a disability who transfers school districts within the same academic year, enrolls in a new school, and who had an IEP that was in effect in another state, the local education agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law. 20 U.S.C. § 1414(c)(II).

4. The IDEA was amended in 1997 "to place greater emphasis on improving student performance and ensuring that children with disabilities received a quality education." Forest Grove School Dist. V. T.A. 239 S. Ct. 2484, 2491, 174 L.Ed.2d 168 (2009) quoting S. Rep. No. 105-17, p. 3 (1997).
5. "If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. 20 U.S.C. §1412(a)(10)(C)(ii).
6. "The cost of reimbursement described in clause (ii) may be reduced or denied—
 - (II) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation... 20 U.S.C. §1412(a)(10)(C)(iii).
7. "The appropriateness of a private placement does not depend on whether the institution satisfies the state educational requirements for the particular handicap but whether the education given to the child "is reasonably calculated to enable the child to receive educational benefits." Florence County School Dist. No. Four, 114 S. Ct.361, 364 (quoting Rowley, 458 U.S. at 207).
8. A procedural violation of the IDEA is not a per se denial of a [free and appropriate public education ("FAPE")]. Rather, a procedural violation will constitute a denial of FAPE only if it causes substantive harm to the child or [her] parents; such as seriously infringing on the parents' opportunity to participate in the IEP process, depriving an

eligible student of an IEP, or causing the loss of educational opportunity. Berger v. Medina City Sch. Dist., 348 F.3d 513, 520 (6th Cir. 2003) (citing Knable v. Bexley City Sch. Dist., 238 F.3d 755, 765-66 (6th Cir. 2001)).

9. In determining whether the public placement violated the IDEA, the reviewing court must undertake a twofold inquiry: First, has the State complied with 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 educational benefits? Berger v. Medina City Sch. Dist., *Id.* at 515 (citing Bd. Of Educ. v. Rowley, 458 U.S. 176, 206-207, 73 L. Ed. 2d 690, 102 S. Ct 3034 (1982)).

ANALYSIS

██████ transferred from ██████ with a valid IEP and recent re-evaluations. Williamson County Schools required ██████ parents sign an Interim IEP prior to his admission to their school system. WCS accepted ██████ eligibility diagnosis as ██████. The Interim IEP was not comparable to the ██████ Transfer IEP.

Along with the recent evaluations, ██████ parents also presented WCS with another recent evaluation, performed by a psychologist at ██████ that diagnosed ██████ with ██████. The ██████ accommodations were present in the ██████ Transfer IEP. Two weeks into the school year, WCS changed ██████ eligibility criteria to language impaired and retained the other health impairment as ██████. No reason was ever provided as to how or why ██████ primary diagnosis was changed. There were still no accommodations present for his ██████ diagnosis.

A few weeks later in ██████ WCS requested ██████ parents have his physician complete two documents regarding his medical diagnoses of ██████. The ██████ form was completed and returned by the physician but not the ██████ form. However,

██████ parents received copies of both forms from his physician thereby leaving the parents under the impression the school system had received them as well.

As the school year progressed, ██████ parents continued to express their frustration with his lack of educational and functional progress as well as the lack of accommodations for his impairments. Also, the material being presented to him was below grade level. They also expressed deep concern regarding the lack of recognition by WCS of his ██████ diagnosis. These concerns are well documented throughout his IEP's. Despite the many requests by ██████ parents for WCS to accept the ██████ diagnosis, WCS continued to ignore them.⁴ In fact, WCS never even requested to perform any evaluations relative to his ██████ diagnosis until the parents gave their ten-day notice of their intent to remove ██████ and place him in a private school.

Once at ██████ began to make substantial progress and he began to recover both academically and functionally.

While the statute allows the school system to request an evaluation of a child prior to his removal to a private setting, a failure to do so **may** result in the cost or reimbursement being reduced or denied. This statute is permissive rather than directive.

It is determined that WCS failure to implement an IEP comparable to ██████ Transfer IEP, their failure to allow the parents meaningful participation by refusing to recognize the ██████ diagnosis and by failure to provide him an educational benefit is a violation of both procedural and substantive due process rights afforded under the IDEA. As such, WCS has failed to provide the Petitioner, ██████ with a free appropriate public education in a timely manner, and the parents were justified in placing him in an appropriate private setting.

⁴ Had WCS merely informed the parents they had not received the required medical form from ██████ physician this entire process may have been resolved. But it is the opinion of this judge that WCS didn't think that he had ██████ so they chose to just ignore the pleas of the parents.

It is therefore determined that [REDACTED] is an appropriate setting for [REDACTED] and it has provided him with educational benefits. [REDACTED] is on track to graduate on time with a regular diploma. He has

"Where a school fails to provide a free appropriate public education through a proposed IEP that is inadequate to meet the unique educational needs of the child, the IDEA authorizes a court to "grant such relief as the court determine is appropriate, "include reimbursement for the cost of a private education when a parent or guardian unilaterally enrolls a child in a private school." School of Burlington v. Dept. of Ed. Of Mass., 471 U.S. 359, 370, 105 S.Ct. 1996, 85, L.Ed.2d, 385 (1985).

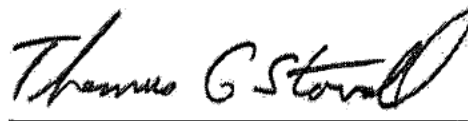
It is therefore ORDERED that the Williamson County School System shall reimburse the Parents for the cost of **tuition only** at [REDACTED] for the second semester of the [REDACTED] grade, ([REDACTED] school year); the [REDACTED] academic year and the first semester of the [REDACTED] academic year to conclude at the end of the semester in [REDACTED]

It is further ORDERED that the Petitioners are the Prevailing Party.

This Order entered and effective this 20th day of October 2010.


Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 20th day of October, 2010.


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.