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[REDACTED]

[REDACTED]

[REDACTED]

RE: In the Matter of: [REDACTED] vs. Tipton Co. Schools Docket No. [REDACTED]

Enclosed is an Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/abh
Enclosure

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

IN THE MATTER OF:

██████████

Petitioner,

v.

TIPTON COUNTY SCHOOLS,
Respondent.

DOCKET NO: ██████████

FINAL ORDER

This matter was heard on ██████████ before Rob Wilson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division. ██████████ Esq., represented the Respondent, Tipton County School System. The Petitioner was represented by ██████████ Esq.

At the conclusion of the hearing, the matter was taken under advisement, pending the parties filing Proposed Findings of Fact and Conclusions of Law.

The subject of this proceeding is whether the Respondent has provided Petitioner ██████████ a free appropriate public education (FAPE). After consideration of the entire record, testimony of witnesses, and argument of the parties, it is DETERMINED that the Respondent is in compliance with the Individuals with Disabilities Act (IDEA) procedures and is providing T.R. a FAPE.

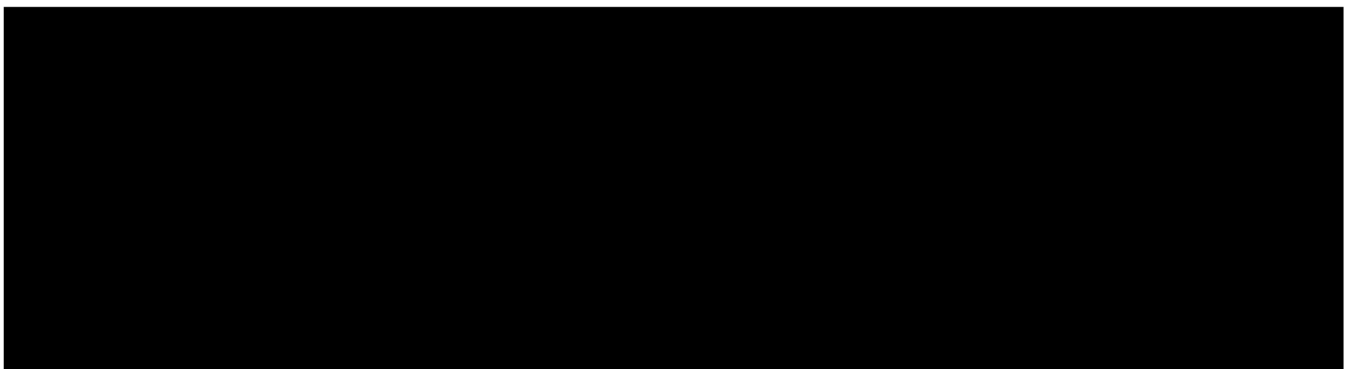
This determination is based on the following findings of fact and conclusions of law:

PROCEDURAL BACKGROUND

This due process hearing was initiated by the mother of [REDACTED] a [REDACTED]-year-old young man who is identified as [REDACTED] pursuant to State law. Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11). Petitioner claimed that the School District has failed to provide [REDACTED] with a free appropriate public education as required by the Individuals with Disabilities Education Act (hereinafter "IDEA") and related Tennessee laws and regulations and, on that basis, seeks compensatory education and future educational services. The School District claimed that it has, at all times relevant to these proceedings, provided [REDACTED] with a "free appropriate public education" in the "least restrictive environment" as required by the IDEA and applicable Tennessee laws and regulations and, therefore, it is not liable to [REDACTED] for the relief sought.

FINDINGS OF FACT

1. [REDACTED] is a [REDACTED]-year-old young man who, at various times during his school career, has been identified as an [REDACTED] student pursuant to State law and regulations. Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11).



3. On [REDACTED], [REDACTED] was found to meet state eligibility criteria for "intellectually gifted," but was determined to be "not eligible" for special education and related services

because his educational needs could be met in the regular education program. [REDACTED] mother participated in the eligibility meeting and agreed with this decision.

4. During the [REDACTED] and [REDACTED] grades, [REDACTED] received [REDACTED] formal disciplinary referrals for teacher defiance, violation of classroom rules, and fighting. On [REDACTED] [REDACTED] was referred to the School District's Student Disciplinary Hearing Authority ("SDHA") for "repeated, willful and persistent violation of school rules." The SDHA assigned [REDACTED] to the [REDACTED] for the remainder of the [REDACTED] school year. The [REDACTED] is an alternative school operated by the School District. Both general education and special education students are placed at the ALC.

5. While assigned to the [REDACTED] [REDACTED] passed all of his courses for the [REDACTED] school year, and was promoted to the [REDACTED] grade. [REDACTED] attended the [REDACTED] for the [REDACTED] grade. In [REDACTED], [REDACTED] was withdrawn from school by his mother and moved to live with his father in [REDACTED] Tennessee.

7. On [REDACTED] [REDACTED] mother gave notice that she would appeal the decision of the SDHA and requested a "504 hearing." On [REDACTED], Director of Schools, Dr. [REDACTED]

affirmed the decision of the SDHA. Subsequently, [REDACTED] mother provided a letter written by [REDACTED], a family counselor in [REDACTED] Tennessee, recommending that [REDACTED] be placed in a “class with gifted students.”

8. A “Student Referral for Special Education” was signed by [REDACTED] mother on [REDACTED] [REDACTED] indicating a need for additional assessments. In response to [REDACTED] mother’s concerns, a 504/IDEA eligibility meeting was convened by the School District on [REDACTED] [REDACTED] mother attended and participated in this meeting. At this meeting, [REDACTED] possible eligibility under both Section 504 and IDEA was discussed. The team determined that [REDACTED] did not meet eligibility criteria for Section 504, but agreed to reconsider [REDACTED] eligibility as an “intellectually gifted” student under State law. [REDACTED] explained to [REDACTED] mother the “gifted exemption” for disciplinary procedures, meaning that [REDACTED] would not be protected from expulsion or a termination of his educational services during a disciplinary removal from school. On [REDACTED] the School District conducted further psychological testing to determine whether [REDACTED] met the eligibility criteria for “intellectually gifted.” This evaluation found [REDACTED] IQ to be [REDACTED]

9. On [REDACTED] the eligibility team reconvened and determined that [REDACTED] was eligible for special education and related services pursuant to State law as an [REDACTED] student. No other possible disabilities were discussed by the team, and [REDACTED] mother agreed that no “educationally relevant medical findings” were indicated. An IEP was drafted at this meeting, identifying [REDACTED] need for “higher order thinking skills.” The IEP provided objectives for [REDACTED] to “read, interpret, and discuss high level reading novels,” “develop spelling and vocabulary skills for ACT/SAT words,” “develop cooperative learning skills,” and “develop expository and creative works, written and oral.” To receive these services, [REDACTED] was placed in

the regular education program for all classes except reading. [REDACTED] was placed in "Challenge Reading" class. [REDACTED] mother participated in the development of this IEP and agreed with its contents. A "Behavior Plan" was also drafted at this IEP meeting, providing [REDACTED] with a "cooling down period" with designated staff and weekly meetings with the school guidance counselor. [REDACTED] mother agreed with this Behavior Plan, to be implemented at [REDACTED]. At the IEP meeting, a formal Prior Written Notice was provided to [REDACTED] mother.

10. [REDACTED] began his [REDACTED] grade school year at [REDACTED] in [REDACTED] of [REDACTED], and almost immediately began exhibiting behavior problems. On [REDACTED], an IEP meeting was convened by the School District for the purpose of reviewing [REDACTED] Behavior Plan and discussing his behavior problems at school. At this meeting, various strategies for motivating [REDACTED] to complete class work and improve his behavior were discussed. Even with these efforts, [REDACTED] continued to exhibit behavior problems at [REDACTED]

[REDACTED] A School Resource Officer ("SRO") had to be called to pick [REDACTED] up and return him to [REDACTED]. [REDACTED] was suspended pending an SDHA hearing.

11. A "manifestation determination" meeting was convened on [REDACTED]. At this meeting, the IEP team determined that [REDACTED] misbehavior was not caused by his intellectual giftedness. For the first time, [REDACTED] mother raised the possibility that [REDACTED] may be suffering from [REDACTED]. In response, the school personnel agreed to conduct further evaluations to determine whether [REDACTED]. In addition, the team decided to impose "consequences" rather than refer [REDACTED]. The team also decided to conduct a "functional behavior assessment," or FBA. [REDACTED] refers to the [REDACTED] which is an alternative school operated under the jurisdiction of the

Juvenile Court (“[REDACTED]”). [REDACTED] mother signed in agreement with this decision. The “consequences” imposed upon [REDACTED] included out-of-school suspension for ten days, in-school suspension, and Saturday school. The agreement also provided that non-compliance by [REDACTED] would result in a referral to Juvenile Court.

12. [REDACTED] again began to exhibit behavior problems, including refusal to complete class work and defiance of authority, in violation of the terms of the [REDACTED] agreement. As a result, [REDACTED] was referred to Juvenile Court for refusal to follow in-school placement guidelines and procedures. The Juvenile Court placed [REDACTED] at the Court School.

13. On [REDACTED], [REDACTED] mother signed consent for [REDACTED] testing via the Connors Rating Scales.

14. On [REDACTED], [REDACTED] mother requested a due process hearing and filed an administrative complaint with the Tennessee Department of Education alleging a denial of FAPE and a failure to identify [REDACTED] as a student [REDACTED]

15. On [REDACTED], an IEP meeting was convened to discuss the due process issues, including [REDACTED] possible eligibility as other health impaired (OHI) due to [REDACTED]. At this meeting, [REDACTED] mother informed the team that she had taken her son to Dr. [REDACTED] (neurologist) on [REDACTED] and produced a note on a “script” page stating “showed signs [REDACTED]”. School officials informed [REDACTED] mother that they needed more information from a physician before they could consider whether [REDACTED] met eligibility criteria for OHI. The participants decided to reconvene on [REDACTED] to consider eligibility.

16. On [REDACTED] the IEP team meeting was reconvened as planned. At this meeting, results from the Connors Rating Scales were reviewed by [REDACTED], a school

psychologist. [REDACTED] explained that the results of the Connors showed that [REDACTED] was exhibiting no signs of [REDACTED]. Further, the team noted that the documentation from Dr. [REDACTED], a psychiatrist chosen by [REDACTED] mother, had opined that it was “unclear if [REDACTED] had [REDACTED] and had diagnosed [REDACTED] with [REDACTED]. Of significance is the fact that Dr. [REDACTED] had specifically refused to complete the [REDACTED] forms provided to him by [REDACTED] mother. [REDACTED] an IEP team member, shared her conversation with Dr. [REDACTED] on [REDACTED]. According to [REDACTED], Dr. [REDACTED] stated that “she did not feel [REDACTED] had [REDACTED]. To date, [REDACTED] mother has not presented or returned any completed medical forms documenting a diagnosis of [REDACTED].

17. A formal mediation was convened by agreement of the parties on [REDACTED], by [REDACTED]. An agreement was reached, and a written agreement was produced and signed by the parties. The School District agreed to (1) write a letter to the [REDACTED] recommending [REDACTED] release on [REDACTED] provided that [REDACTED] complied with attendance and behavior rules and passed drug tests; (2) conduct a Functional Behavior Assessment, beginning on [REDACTED] and develop a Behavior Plan on or before [REDACTED]; (3) convene a meeting with teachers and administrators from [REDACTED] High School during the week of [REDACTED] to discuss implementation of the Behavior Plan; (4) recommend [REDACTED] promotion to the next grade level with his continued, successful progress in the academic curriculum; (5) exclude [REDACTED] (juvenile court liaison) from future IEP meetings for [REDACTED].

18. The School District complied with all of the terms of the [REDACTED] mediation agreement and [REDACTED] mother withdrew her due process hearing complaint.

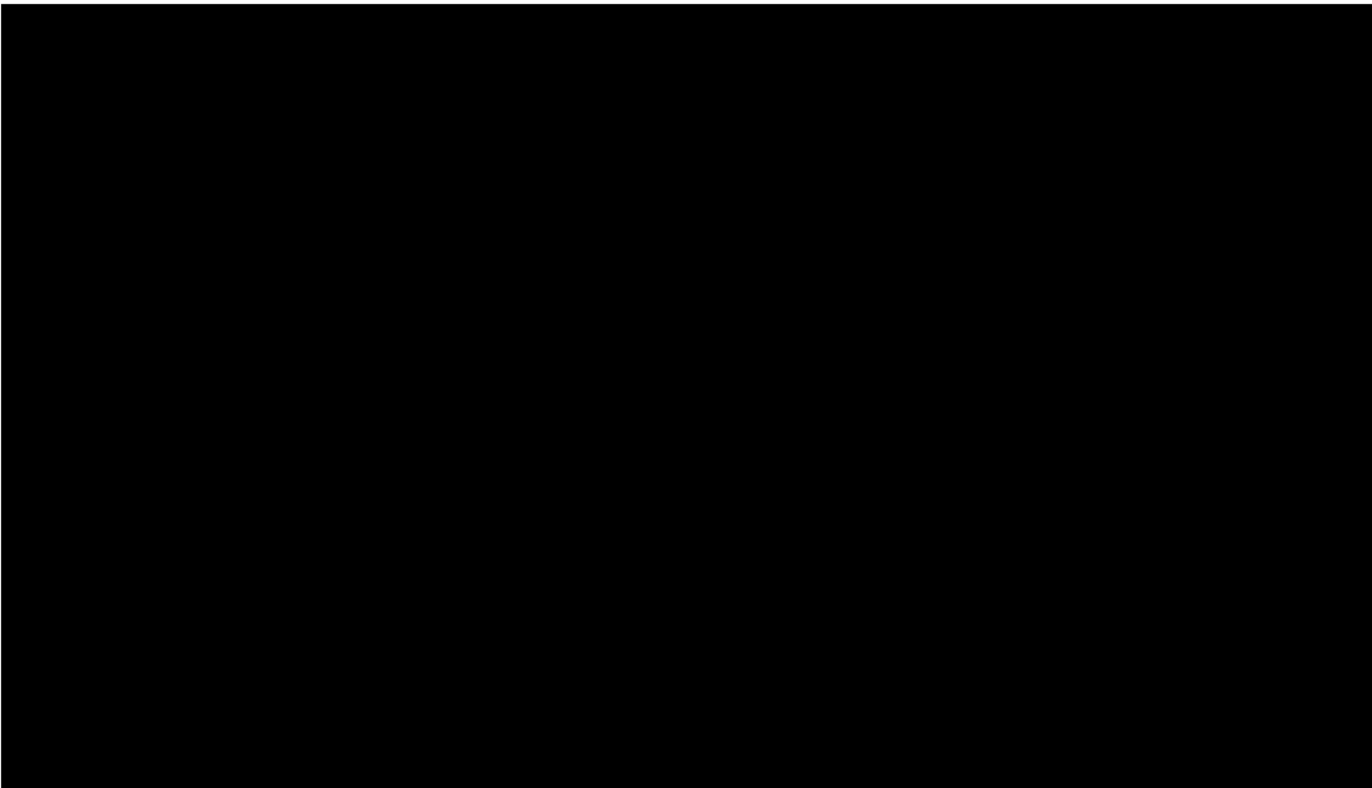
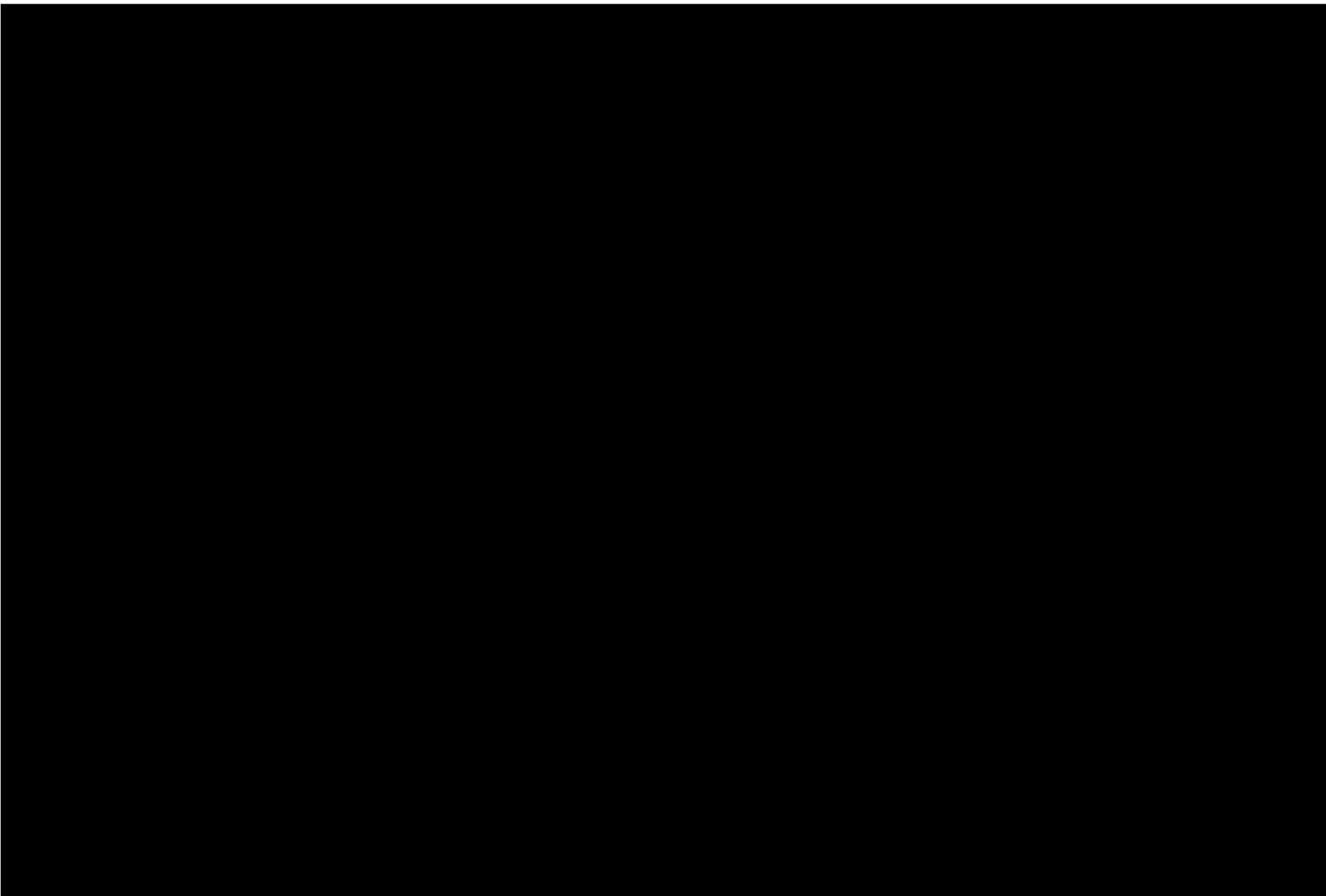
19. On [REDACTED], [REDACTED] IEP team convened and drafted an IEP to operate through [REDACTED] while [REDACTED] attended the [REDACTED]. The transition services plan included in

the IEP listed the high school courses that [REDACTED] would be enrolled in to provide “courses that are higher level thinking – challenging.” These courses included college prep English I, Algebra I, World Geography, and Life Science. The IEP also included objectives for implementation in the regular education program, including learning to analyze plots, interpret and discuss literary works with complex plots; producing expository and creative works, written and oral; and expanding his knowledge of ACT/SAT words in spelling and vocabulary. [REDACTED] mother signed in agreement with this IEP. Additionally, [REDACTED] Behavior Plan from [REDACTED] was amended to include names of staff working at the [REDACTED]. Finally, the IEP team agreed to reconvene on [REDACTED] at [REDACTED] High School (“[REDACTED]”) “to determine need at that time for a Behavior Plan.”

20. [REDACTED] at the end of [REDACTED] term at the [REDACTED] his IEP team convened to review and discuss the results of the “FAST,” referring to the “Functional Analysis Screening Tool,” a document used to gather information relative to a student’s behavior and which is a part of a comprehensive functional analysis. The FAST was completed by a school psychologist providing counseling to [REDACTED] an administrator from the [REDACTED], [REDACTED] former principal at [REDACTED], and seven of [REDACTED] teachers.

21. At the beginning of the [REDACTED] school year, Special Education Consulting Teacher [REDACTED] sent a Prior Written Notice and Invitation to an IEP Meeting to [REDACTED] mother, asking for her participation in an IEP meeting on [REDACTED] as agreed on [REDACTED]

22. On or about [REDACTED], [REDACTED] had a telephone conversation with [REDACTED] mother. During that conversation, [REDACTED] mother stated that she did not want the IEP team to convene because she wanted [REDACTED] to have a “fresh start” at [REDACTED] without an IEP or Behavior



[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

32. On [REDACTED] [REDACTED] mother filed a complaint for a due process hearing.

33. On [REDACTED] the School District convened an IEP meeting at the request of [REDACTED] mother. [REDACTED] mother and her attorney failed to appear for this scheduled meeting. The meeting was rescheduled by agreement of the parties for [REDACTED]

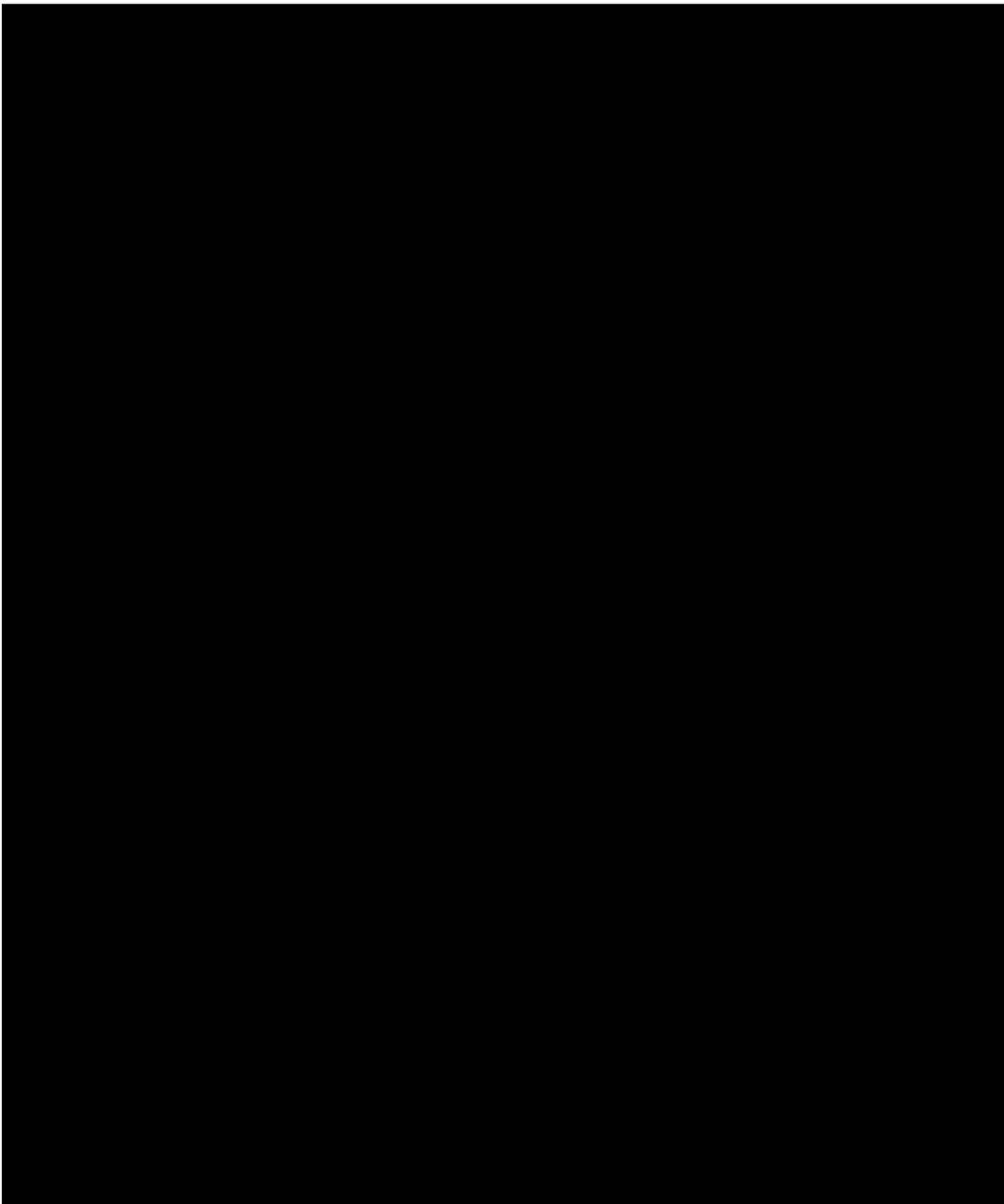
34. A resolution session meeting was convened on [REDACTED] with both parties represented by legal counsel. At this meeting, the School District considered the parent's request that [REDACTED] be identified as a special education student as [REDACTED]. The School District representatives at the meeting agreed to make [REDACTED] eligible as "gifted," but did not agree to make [REDACTED] due to a lack of required medical documentation. The School District agreed to proceed with another evaluation to determine whether [REDACTED] met state eligibility criteria as OHI. The School District also agreed to make [REDACTED] eligible as "gifted" and to develop a new IEP for him at [REDACTED]. An IEP was drafted providing that [REDACTED] would receive "consultation" services consisting of "bi-monthly contact between the regular and special education teacher." The IEP also provided that [REDACTED] would "foster positive relationships with teachers and administrators to establish trust that will improve compliance with school rules, "initiate one-on-one conversation with teachers to establish positive rapport," "have an area to go with permission to give him the opportunity to calm down when becoming upset," "access to one of his mentors ([REDACTED])," and "rewards: good calls/emails home to parent, drawing time, painting a mural." [REDACTED] IEP did not contain any direct special education or related services. In fact, the level of special education services

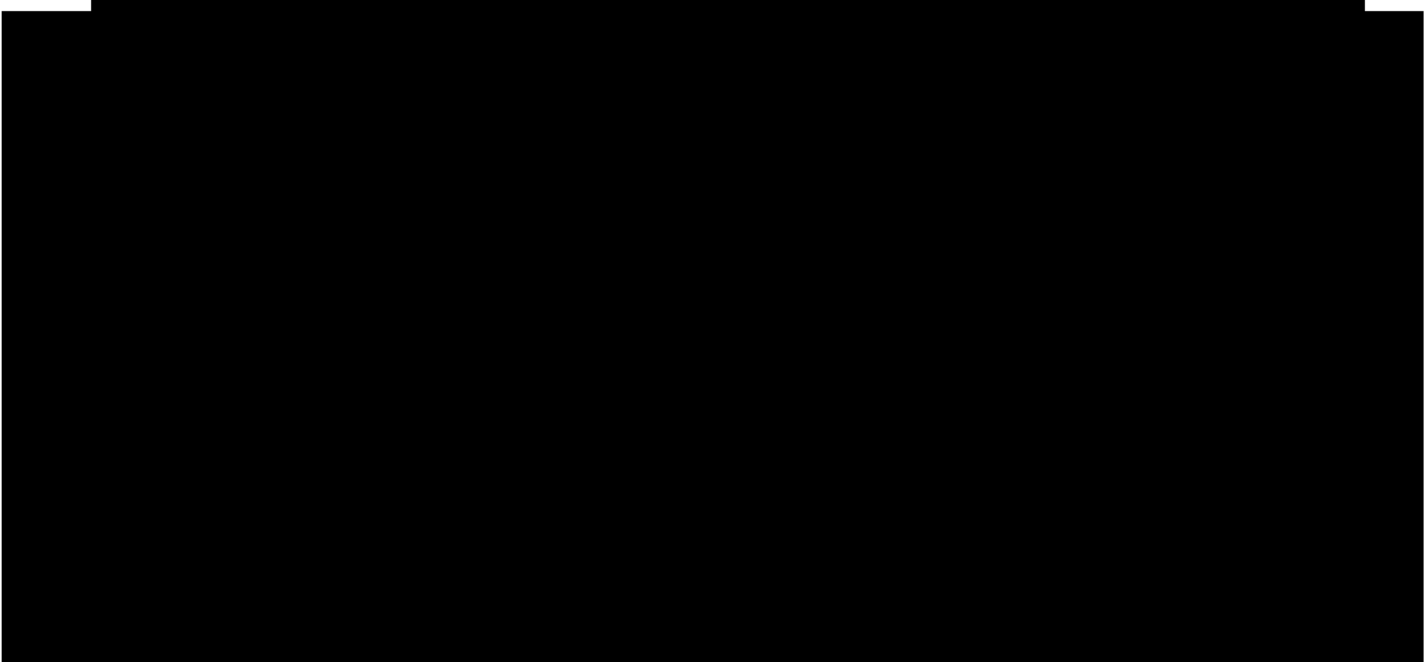
provided to [REDACTED] through this IEP was “the minimum possible” according to state law. Both [REDACTED] and his mother signed in agreement with this IEP.

35. At the [REDACTED] IEP meeting, [REDACTED] mother informed the IEP team that [REDACTED] is [REDACTED]. However, at no time prior to the due process hearing did [REDACTED] mother suggest that her son’s behavior problems may be caused by either of these conditions.

36. In an effort to ensure that [REDACTED] had an opportunity to make-up class work missed during the first semester, the School District also provided tutoring in English and Spanish for [REDACTED]. As a result of this tutoring, at the time of the due process hearing [REDACTED] had completed all coursework necessary for his [REDACTED] year at [REDACTED] and was “on track” [REDACTED].

37. Although an IEP was developed on [REDACTED], the parties still proceeded towards a due process hearing. Meanwhile, [REDACTED] returned to [REDACTED] in [REDACTED] and began to attend classes with the consultation services included in his IEP. During the second semester of the [REDACTED] school year, [REDACTED], Special Education Consulting Teacher at [REDACTED] was responsible for the implementation of [REDACTED] IEP. [REDACTED] estimated that she spent “five or six hours a month” consulting with [REDACTED] teachers, communicating with [REDACTED] mother, and personally checking with [REDACTED] to monitor his progress at [REDACTED].





CONCLUSIONS OF LAW

1. The Office of the Secretary of State, Division of Administrative Hearings, has jurisdiction over the subject matter and the parties of this proceeding pursuant to Tennessee Code Annotated §4-5-101 et seq, and the assigned Administrative Law Judge has the authority to issue final orders. See, Rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-4-1 et seq.
2. The Individuals with Disabilities Education Act (hereinafter “IDEA”) requires the School District to provide a “free appropriate public education” in the “least restrictive environment” to all students with disabilities who are in need of special education and related services. IDEA, 20 U.S.C. §1400 et seq. The requirements of the IDEA have been adopted, with some additional state requirements, by the State Board of Education. TN State Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9.
3. The disability classification of [REDACTED] is not covered by the IDEA. Rather, this category is a creation of state law. Students who meet the eligibility criteria and whose

educational needs cannot be met in the general education curriculum are considered “disabled” and eligible for an IEP. Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11). However, State regulations specifically exempt students who are “gifted” from the discipline protections of the law. Therefore, gifted students who violate the School District’s Code of Conduct are subject to suspension, expulsion, or referral to the SDHA, and are in all ways treated as general education students for disciplinary purposes. Importantly, gifted students do not have a right to a continuation of their special education and related services during periods of removal from the regular education environment due to misbehavior.

4. The IDEA contains a two-year statute of limitations which bars claims brought more than two years after parents “knew or should have known” of an alleged IDEA violation. IDEA, 20 U.S.C. 1415(f)(3)(c). The record is replete with testimony from [REDACTED] mother establishing her knowledge of, and active participation in, the development of [REDACTED] educational program since his enrollment in the School District. This matter was filed on or about [REDACTED]. Therefore, allegations of educational deprivation based on events occurring before [REDACTED] [REDACTED] are barred by the IDEA’s statute of limitations provisions.

5. [REDACTED] has the burden of proving by a preponderance of the evidence that his IEP was inadequate. The U.S. Supreme Court held in Schaffer v. Weast, 126 S.Ct. 528, 546 U.S. 49, 44 IDELR 150 (2005), that the burden of proof is on the party “seeking relief.” In the underlying case, the parents of a middle school student contested the proposed IEP developed by the school district and initiated a due process hearing seeking compensation for a unilateral private school placement. The Supreme Court held that the parents bore the burden of proof, or burden of persuasion, in the due process hearing, referencing the “default rule that Petitioners bear the risk....,” and citing *McCormick* §337, at 412, “The burdens of pleading and proof....should be

assigned to the Petitioner who generally seeks to change the present state of affairs....” See also, Renner v. Bd. of Educ. of Public Schools of the City of Ann Arbor, 185 F.3d 635, 642 (6th Cir. 1999). In the instant case, [REDACTED] challenges the proposed IEP and the School District’s actions pertaining to the education and discipline of [REDACTED]. Therefore, it is clear that Petitioner bears the burden of proof in this matter, and is required to prove, by a preponderance of the evidence, that (1) the IEP proposed by the School District fails to offer a “free appropriate public education” in the “least restrictive environment” for [REDACTED] (2) the School District has failed to identify [REDACTED] as a student with [REDACTED] and (3) the School District has failed to implement [REDACTED] IEP and Behavior Plan. The overwhelming evidence in this case clearly establishes that Petitioners have failed to meet their burden of proof on all three counts. Petitioners have made various allegations, without any legal or factual substantiation, and have failed to produce a single factual or expert witness to corroborate their claims.

6. The IDEA and Tennessee law require the School District to provide a free appropriate public education (“FAPE”) to [REDACTED] by developing an Individualized Education Plan (hereinafter “IEP”) that is “reasonably calculated to confer educational benefit” to him. See Bd. of Educ. of the Hendrick Hudson School Dist. v. Rowley, 458 U.S. 176 (1982). As the Supreme Court concluded in Rowley, “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” 458 U.S. at 207. The law does not require the School System to maximize [REDACTED] educational benefits, or to guarantee that he reach a specific level of academic achievement. Rowley, at 197. The Sixth Circuit has held that this means “[t]he statute may not require public schools to maximize the potential of disabled students commensurate with the opportunities provided to other children.” Renner v. Board of Educ. v. Public Schools of City of Ann Arbor, 185 F.3d 635, 644 (6th Cir. 1999). See also, Doe

v. Tullahoma City Schools, 9 F.3d 455 (6th Cir. 1993)(School district must provide the educational equivalent of a serviceable Chevrolet, not a Cadillac).

7. The IDEA, at 20 U.S.C. §1414(d)(1)(A) requires that an IEP include, among other things, (1) a statement of the child's present levels of educational performance; (2) a statement of measurable annual goals, (3) a statement of the special education and related services and supplementary aids and services to be provided to the child that, to the extent practicable, are based on peer-reviewed research, (4) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the nonacademic and extracurricular activities, (5) a statement of how the child's progress toward the annual goals will be measured, and (6) a statement of how the child's parents will be regularly informed of their child's progress. These "are requirements by which the adequacy of an IEP is to be judged, although minor technical violations may be excused." Cleveland Heights-University Heights City Sch. Dist. v. Boss, 144 F.3d 391, 398 (6th Cir. 1998).

8. The U.S. Supreme Court has developed a two-prong test for determining the appropriateness of a proposed IEP. Rowley, *supra*. First, the IEP must be substantively appropriate by offering goals and objectives that are "reasonably calculated to provide educational benefit" to the child. Second, the procedural safeguards of the Act must be provided to the parents, including the right to participate in the development of the IEP and to receive notification and explanation of their rights. *See also*, Thomas v. Cincinnati Board of Education, 918 F.2d 618, 624 (6th Cir. 1990).

9. The U.S. Supreme Court has interpreted the IDEA's "free appropriate public education" obligation to require local school systems to develop IEPs that are "reasonably calculated" to provide educational benefit to a child. Rowley at 203-204. While the educational benefits

accruing to the child must be “meaningful,” there is no requirement that the program provide the maximum benefit or the best available program. Rowley at 200-201.

10. The U.S. Supreme Court held that school districts satisfy the FAPE requirement “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley at 203. Moreover, the Court opined that the “IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. Rowley at 203-204. See also, J.S.K. v. Hendry County Sch. Bd., 941 F.2d 1563 (11th Cir. 1991)(state must provide to the disabled child personalized instruction and services that meet state educational standards and that comport with child’s IEP; when measuring whether a student with a disability has received educational benefits from an IEP, courts must only determine whether the child has received a basic floor of opportunity); Doe v. Alabama State Dept. of Educ., 915 F.2d 651 (11th Cir. 1990) (IEP and IEP’s educational outcome need not maximize the child’s education).

11. The evidence presented in this matter clearly supports the School District’s contention that it has, at all times relevant to these proceedings, provided [REDACTED] with a “free appropriate public education” in the “least restrictive environment.” Furthermore, the evidence shows that [REDACTED] willful actions have led to his repeated removal from the regular education environment. [REDACTED] does not have a “disability” that impacts his behavior at school. It is [REDACTED] behavior that has interfered with his academic performance, not any deprivation of educational benefits.

12. [REDACTED] has made consistent academic progress and is “on track” to graduate with his senior class in [REDACTED]. He has passed all three of the required “Gateway” examinations. In

addition, he scored a "[REDACTED]" on the ACT and [REDACTED]

[REDACTED] These facts prove that the School District has provided [REDACTED] with educational services that fulfill the mandate of the IDEA and related State laws. See, Lathrop R-II School District v. Gray, 53 IDELR 77 (W.D. Mo. 2009)(student's consistent academic progress proves that the school district appropriately addressed his behavior problems). The School District is not required to ensure that [REDACTED] is working to his academic potential.

13. An important issue in this case is whether the School District violated the IDEA and State law by failing to develop a new IEP upon [REDACTED] enrollment at [REDACTED] in the fall of [REDACTED]. The evidence shows that [REDACTED] Special Education Consulting Teacher at [REDACTED] sent [REDACTED] mother an Invitation to an IEP Meeting and scheduled the IEP meeting for [REDACTED]. It is also undisputed that [REDACTED] mother wrote a note back on the Parent Response Form stating, "Will wait on meeting until further notice or as needed." At the hearing, [REDACTED] mother explained,

[REDACTED]

Importantly, [REDACTED] mother did not request an IEP meeting at any time during [REDACTED] [REDACTED] grade ([REDACTED]) or [REDACTED] grade ([REDACTED]) school years, despite the fact that [REDACTED] continued to receive numerous formal behavior referrals and was removed from [REDACTED] and placed in the [REDACTED] for most of his [REDACTED] grade year. It can therefore be concluded that at no time after [REDACTED] enrollment at [REDACTED] did his mother feel he "needed" an IEP or Behavior Plan. Only now, in retrospect, does [REDACTED] mother complain about his lack of an IEP

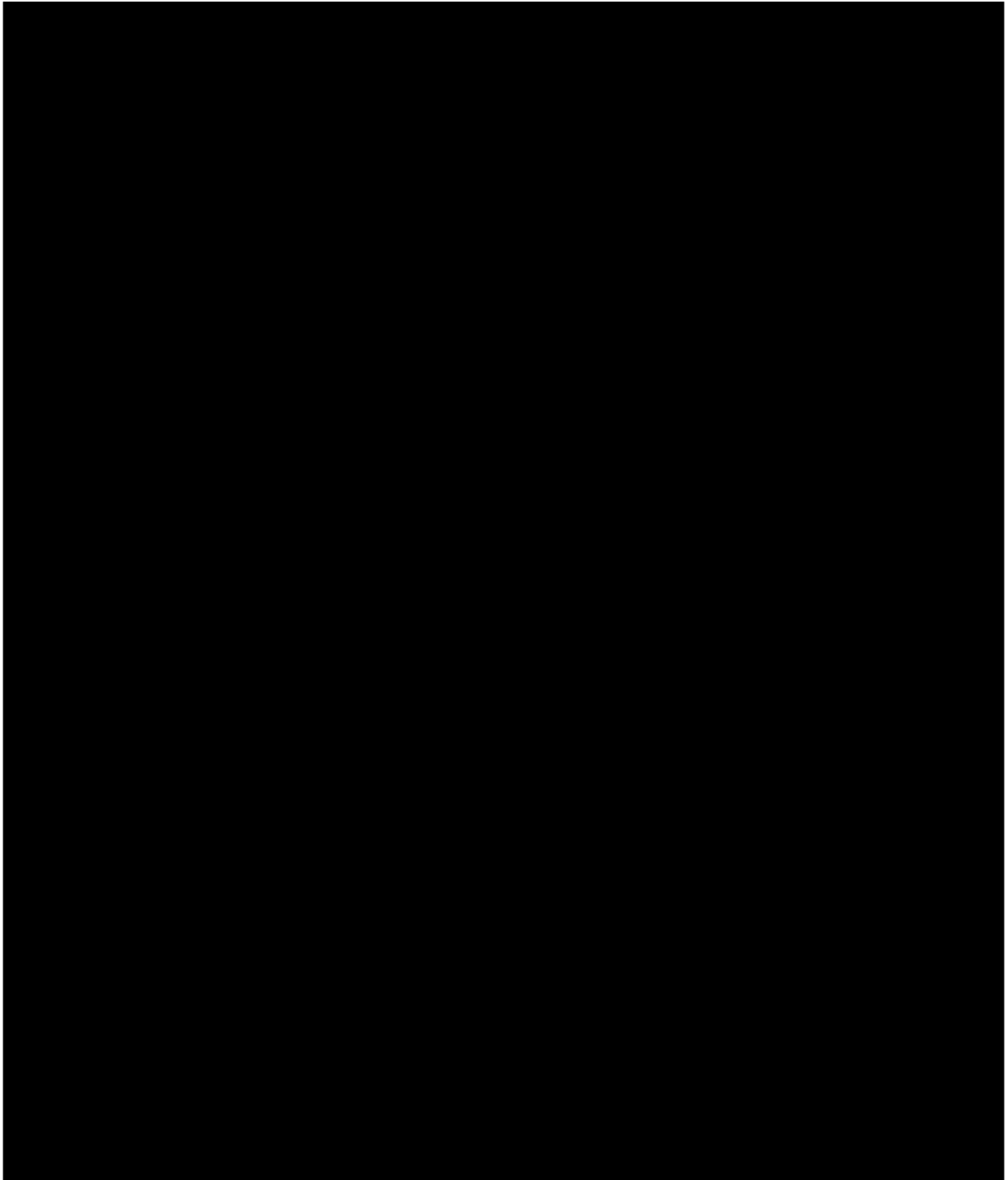
at [REDACTED] Only after [REDACTED] was referred to Juvenile Court in the fall of [REDACTED] did his mother seek to have his IEP reinstated.

14. It is apparent from the testimony from [REDACTED] mother during the due process hearing that she is demanding from the School District far more than is required by either the IDEA or State law and regulations. Note the following exchange between counsel for the School District and [REDACTED] mother at the due process hearing:

[REDACTED]

The U. S. Court of Appeals for the Sixth Circuit has explained that the IDEA's FAPE standard means that the School District is obligated to provide an educational program that is the functional equivalent of "not a Cadillac, but a serviceable Chevrolet." Doe v. Board of Education of Tullahoma City Schools, 20 IDELR 617 (6th Cir. 1993). The Sixth Circuit has also specifically rejected parental attempts to enforce a "maximizing" standard for the provision of FAPE. Tucker v. Calloway County Board of Education, 136 F.3d 495, 27 IDELR 599 (6th Cir. 1998). In Tucker, the Sixth Circuit held Since "[a]n 'appropriate' public education does not mean the absolutely best or 'potential-maximizing' education for the individual child," Gregory K. v. Longview School Dist., 811 F.2d 1307, 1314 (9th Cir. 1987) (Emphasis added), (citing Rowley, 458 U.S. at 197 n.21), a court's review "must focus primarily on the District's proposed placement, not on the alternative that the family preferred." Id. That proposed placement must be upheld "if it was reasonably calculated to provide [the disabled child] with educational benefits." Id.

It is also apparent from the testimony at the hearing that [REDACTED] mother places the blame for her son's discipline referrals and poor grades solely on school administrators, and not at all on [REDACTED] as can be deduced by the following dialog from the hearing:



15. To accept [REDACTED] mother's theory would require the Court to ignore the plain language of the IDEA and relevant State law, the unanimous interpretation of the FAPE standard by the federal courts, the educational records compiled by more than a dozen teachers and administrators, and the sworn testimony of school personnel who had daily contact with [REDACTED] at [REDACTED]. This is clearly an attempt to make excuses for her son's unacceptable behavior. The fact remains that [REDACTED] mother failed to produce a single witness to corroborate her beliefs, while witnesses for the School District were consistent in their accounts of [REDACTED] behavior and language. The central mission of the public schools is to produce young adults who are ready to assume the role of responsible and productive adults in our society. Ignoring [REDACTED] disrespectful, profane, and aggressive behavior would be equivalent to a dereliction of this duty. By choosing to proceed with this litigation and thereby incurring the financial, staffing, and emotional costs, the Tipton County School System has shown its dedication to this duty and to fighting to ensure that [REDACTED] is adequately prepared for the rest of his life.

16. The School District asserts that it has fully complied with the IDEA's procedural and substantive mandates. When [REDACTED] mother referred him for special education assessment in the spring of [REDACTED], the School District responded and determined that [REDACTED] was eligible as an "intellectually gifted" student. [REDACTED] was provided an IEP at [REDACTED] until he was placed at the [REDACTED] in [REDACTED] after he left the school campus without permission [REDACTED]. [REDACTED] was not provided "gifted" services while at the [REDACTED]. However, [REDACTED] last IEP did not offer him any type of direct specialized instruction, and he was placed in regular education classes. Therefore, [REDACTED] suffered no educational deprivation while at the [REDACTED], and he continued to earn academic credits. [REDACTED] remained at the [REDACTED] through the end of his [REDACTED] grade year,

successfully matriculating to [REDACTED] High School ("[REDACTED]") at the beginning of his [REDACTED] grade year ([REDACTED]). An IEP that was developed on [REDACTED] expired on [REDACTED]. [REDACTED] mother was invited to an IEP meeting on [REDACTED], as previously agreed upon by the parties. However, it is undisputed that she informed the School District verbally and in writing that she wanted to wait "until further notice or as needed" to address [REDACTED] need for an IEP/Behavior Plan at [REDACTED]. Therefore, the School District cannot be held liable for failing to convene [REDACTED] IEP team when he entered [REDACTED]. Furthermore, it is clear that the absence of special education "consultation" services and a Behavior Plan did not cause the actions which led to [REDACTED] removal from [REDACTED] in the fall of [REDACTED]. [REDACTED] threat [REDACTED]

[REDACTED]

[REDACTED] In addition, [REDACTED] was given multiple opportunities to deescalate and to avoid further confrontation while talking in private with administrators at the school. Instead, [REDACTED]

[REDACTED]

17. Dr. [REDACTED], Ph.D. is a clinical psychologist with a twenty-five year career as an adolescent psychologist. Testifying as the only expert witness at the due process hearing, Dr. [REDACTED] opined, "If somebody is frustrated and misbehaves, we call them a brat, we don't call them a genius, and if a person who's got a 100 IQ gets frustrated and misbehaves, we certainly don't excuse it on the grounds of IDEA. So no, I don't see any correlation between somebody being frustrated and them having the right to misbehave no matter what their IQ is.... I don't

know of any research anywhere that says that geniuses or people with superior intellects can't control themselves at a rate higher than the normal population. As a matter of fact, generally people with high IQ's tend to be abstracted and cerebral, and tend to get in less troubled behavior." Dr. [REDACTED] also explained that, in his opinion, much of [REDACTED] defiant behaviors at school were due to the fact that "he felt that [administrators] were beneath contempt."

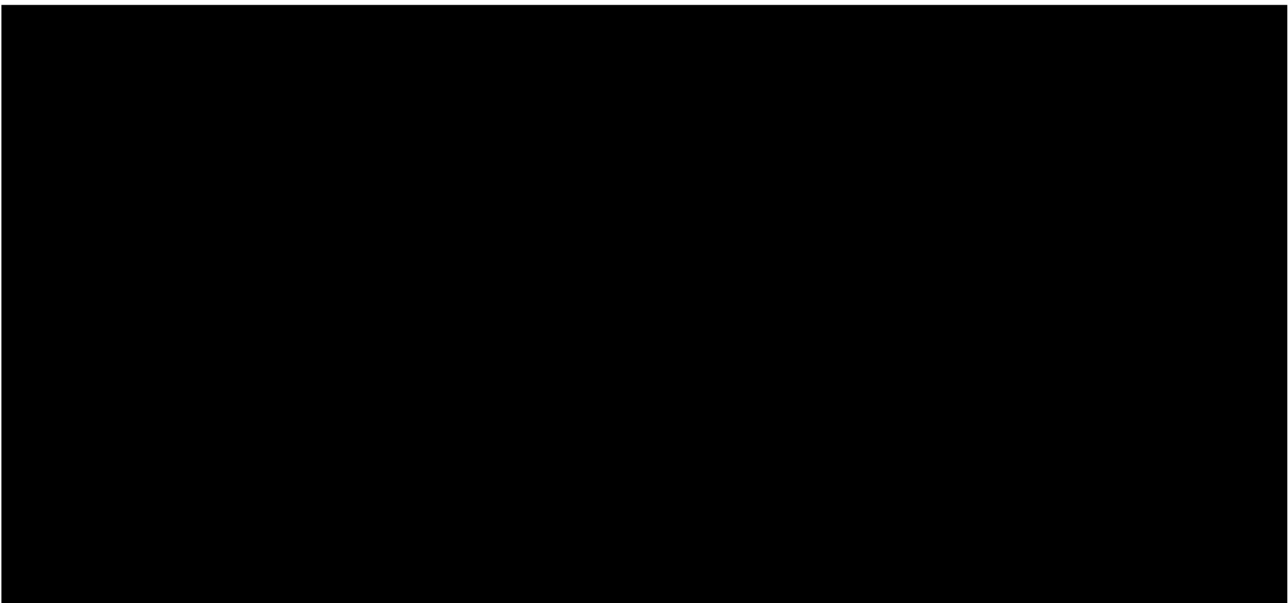
18. One of the central questions in this matter is whether [REDACTED] has been appropriately classified as a "student with a disability" pursuant to State law and/or the IDEA. The evidence shows clearly that, since his enrollment in the School District, [REDACTED] has met the State guidelines for "intellectually gifted." However, [REDACTED] has not consistently been found to be "eligible for special education and related services." There is a fundamental distinction between a student being "gifted" and being "eligible." A student may be "gifted" by having a full scale IQ score of at least 125. But this score alone does not render a student "eligible" to receive an IEP. In order for a student to be "eligible" for special education and related services his "intellectual abilities and potential for achievement are so outstanding that the child's educational performance is adversely affected." Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11). "Adverse affect" means the general curriculum alone is inadequate to appropriately meet the student's educational needs.

19. The evidence shows that in [REDACTED] it was determined that [REDACTED] did not qualify for special education as a "gifted" student. [REDACTED] mother agreed with this decision. In fact, [REDACTED] mother did not raise the issue again until the spring of [REDACTED], after [REDACTED] made a threat [REDACTED] and [REDACTED]. On [REDACTED], the School District determined that [REDACTED] was "eligible" as a gifted student. His initial IEP provided placement in "Challenge Reading," an accelerated class at [REDACTED] ("[REDACTED]") for

his [REDACTED] grade school year. [REDACTED] mother participated in the development of, and agreed with, this IEP. A Behavior Plan was also developed that provided [REDACTED] with a “cooling down” period and weekly counseling sessions. [REDACTED] IEP was not continued when he matriculated to [REDACTED] for his [REDACTED] grade year. The IEP was reinstituted in [REDACTED] in an effort to resolve the issues underlying this due process hearing.

20. A consistent theme throughout [REDACTED] educational career has been his pattern of defiance, use of profanity, and physical/verbal aggression toward staff and other students. [REDACTED] mother has alleged that her son’s misbehavior at school is due to ‘[REDACTED]’. At the hearing, [REDACTED] mother, for the first time, also suggested that her son’s [REDACTED] medications may be the cause of his misbehavior at school. The evidence overwhelmingly supports the School District’s position that [REDACTED] does not suffer from [REDACTED] or any other condition which would qualify him as “Other Health Impaired” pursuant to the IDEA or State law.

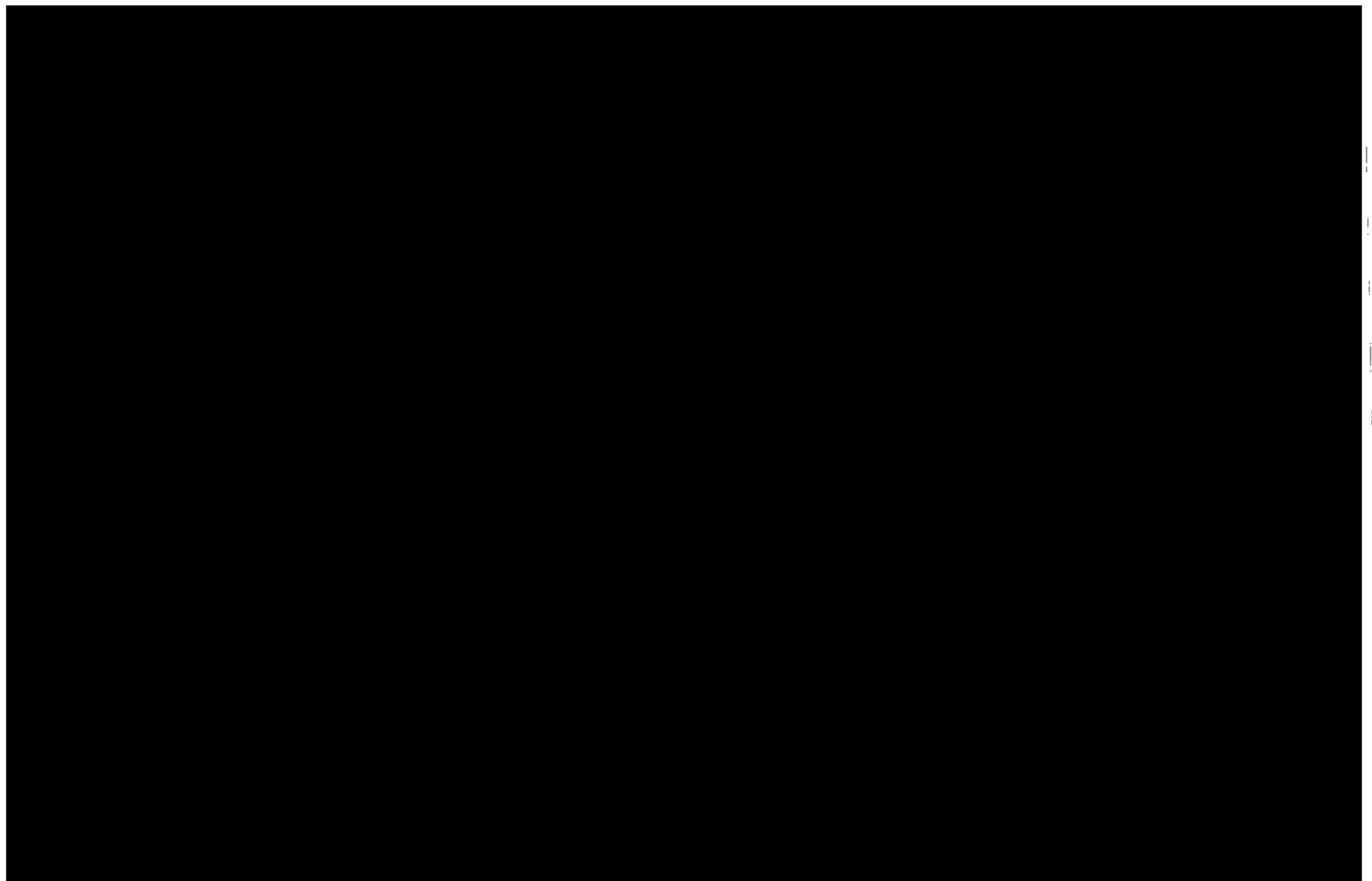
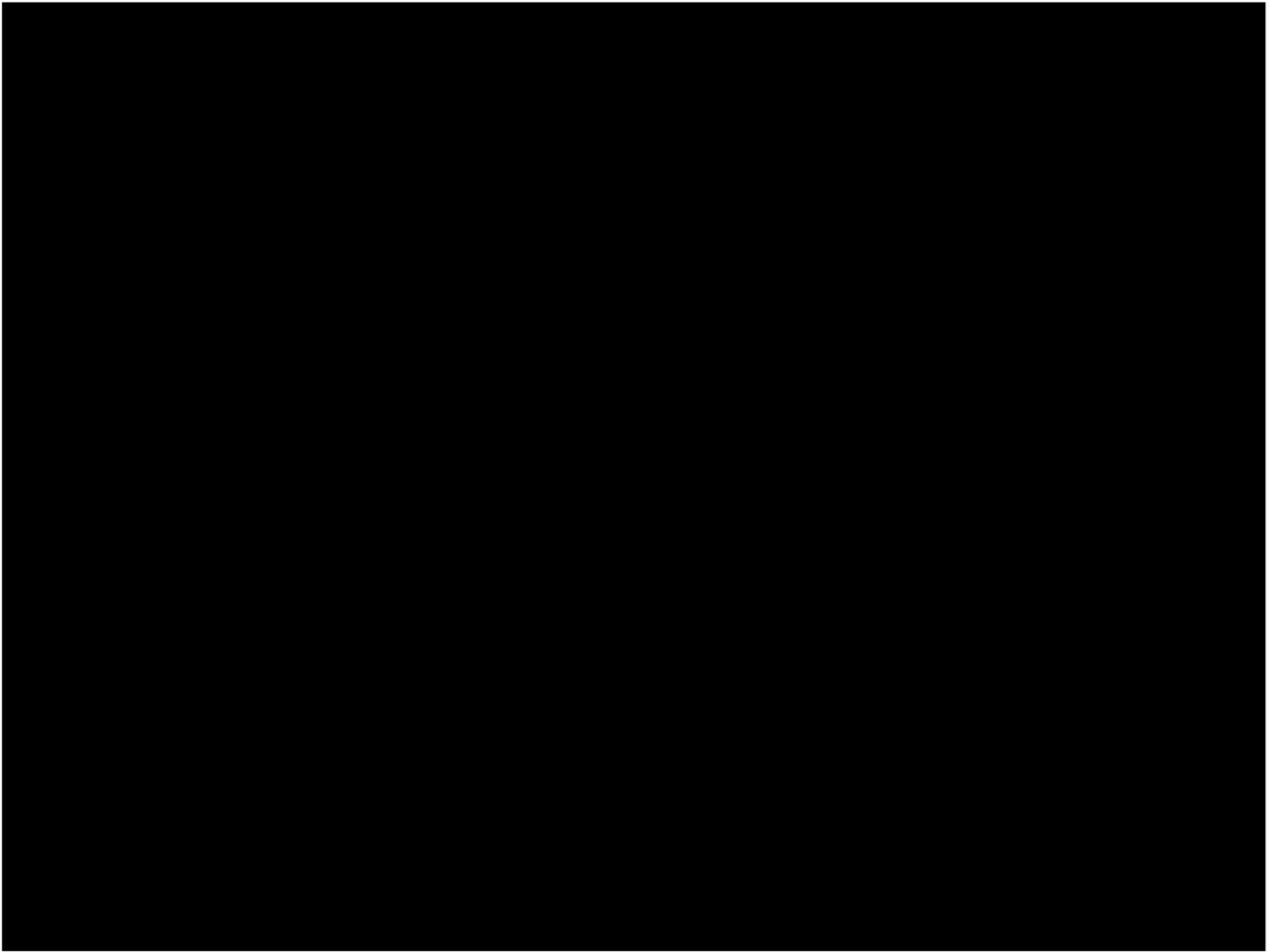
21. Dr. [REDACTED] Ph.D. conducted a comprehensive clinical psychological evaluation of [REDACTED] prior to the hearing. Dr. [REDACTED] found no evidence that [REDACTED] has [REDACTED]. In fact, Dr. [REDACTED] testified, “He showed characteristics that were flatly incompatible with



22. At the hearing, [REDACTED]

The evidence shows that [REDACTED]

behavior is willful and within his control – a classic case of “oppositional defiant disorder,” a condition which is expressly excluded as a disability by the IDEA. IDEA, 34 C.F.R. 300.8(c)(4)(ii) (“Emotional disturbance...does not apply to children who are socially maladjusted). As Dr. [REDACTED] explained, “[REDACTED] is not disabled.... [REDACTED]



[REDACTED]

26. The School District developed [REDACTED] current IEP on [REDACTED]. [REDACTED] [REDACTED] Special Education Supervisor, testified that the development of this IEP was motivated primarily by the School District's desire to resolve its differences with [REDACTED] mother and avoid litigation. [REDACTED]

[REDACTED]

specific school staff if needed for him to avoid behavioral melt-downs. This IEP represents the minimum level of special education and related services that can be provided to an eligible student.

27. From [REDACTED] through the beginning of [REDACTED], [REDACTED] current IEP was in place at [REDACTED] including his Behavior Goals. The IEP and Behavior Goals were implemented by the staff at [REDACTED]. [REDACTED] Special Education Consulting Teacher at [REDACTED] was responsible for providing the consultation services and also served as one of [REDACTED] "mentors" mentioned in his Behavior Goals. Under the terms of the IEP, [REDACTED] was required to spend at least one hour per month consulting with [REDACTED] teachers and overseeing his progress at [REDACTED]. In actuality, [REDACTED] "probably spent four to five hours a month" performing these duties. [REDACTED]

[REDACTED] Despite the provision of these IEP services, [REDACTED] was again referred to Juvenile Court in the [REDACTED]. [REDACTED] Behavior Plan was fully complied with and had no effect on mitigating the events of [REDACTED]



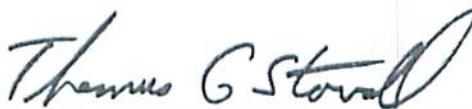
It is DETERMINED that Respondent is in compliance with IDEA procedures, has not committed any procedural or substantive violations of the IDEA, and Respondent is providing Petitioner a FAPE. It is ORDERED that the remedies and relief sought by Petitioner is DENIED. Respondent Tipton County School System is the prevailing party in this matter.

This Order entered and effective this 30th day of August, 2010.



Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 30th day of August, 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.