

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

IN THE MATTER OF:

██████ *the Student, and
the Student's Parent/Guardian,
Petitioners,*

DOCKET NO: ██████████

v.

**MEMPHIS CITY SCHOOLS,
*Respondent.***

FINAL ORDER

This matter was heard in ██████████ Tennessee on ██████████ before Steve R. Darnell, Administrative Law Judge, assigned to hear this case by the Secretary of State, Administrative Procedures Division pursuant to T.C.A. §49-10-606 and Rule 520-1-9-.18. Attorneys ██████████ and ██████████ represented Memphis City Schools. Petitioner ██████████ was represented by his mother ██████████. The record in this matter closed on ██████████
██████████

ISSUE FOR DETERMINATION

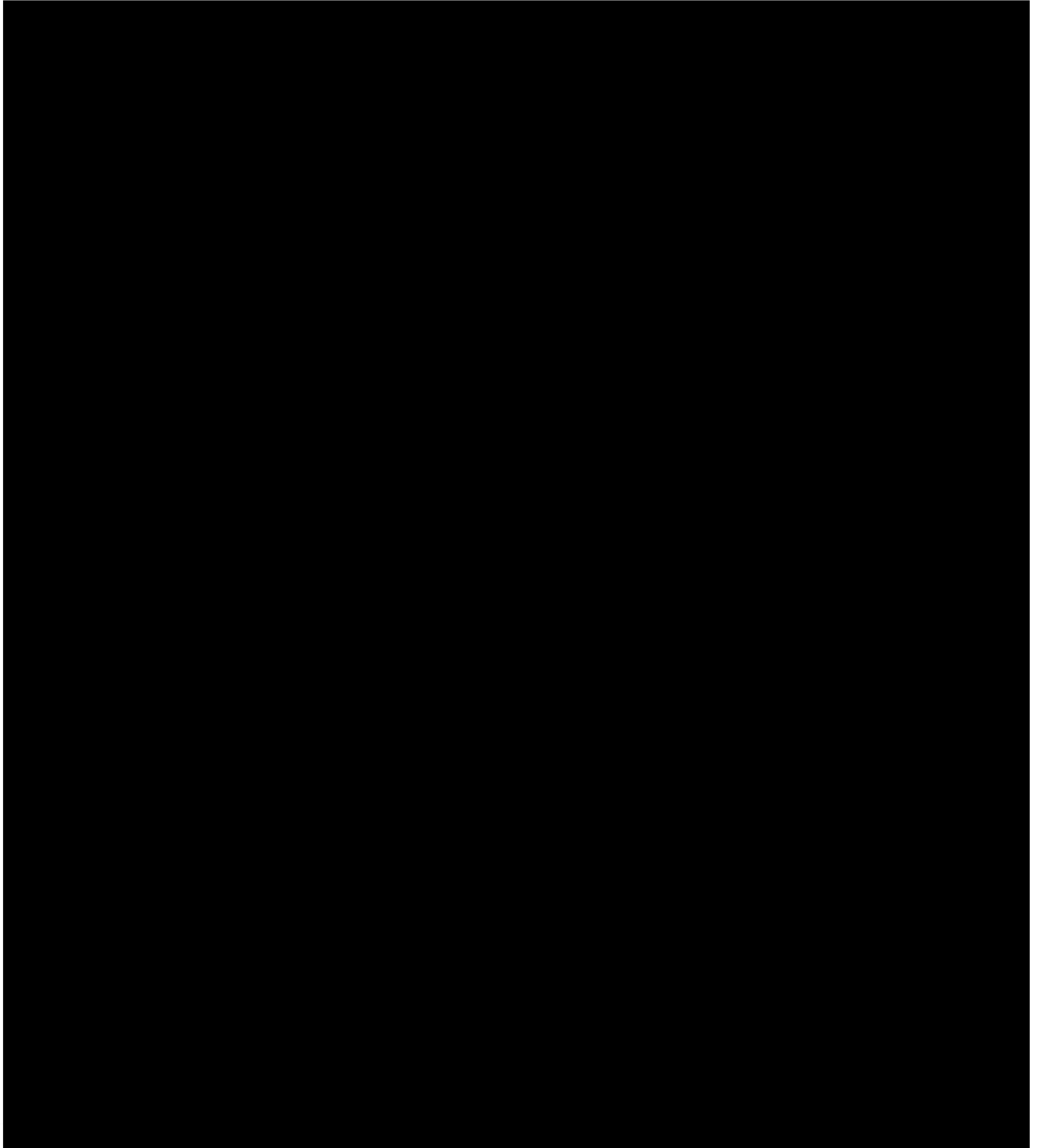
Did MCS fail to provide ██████████ with a free and appropriate public education (FAPE)?

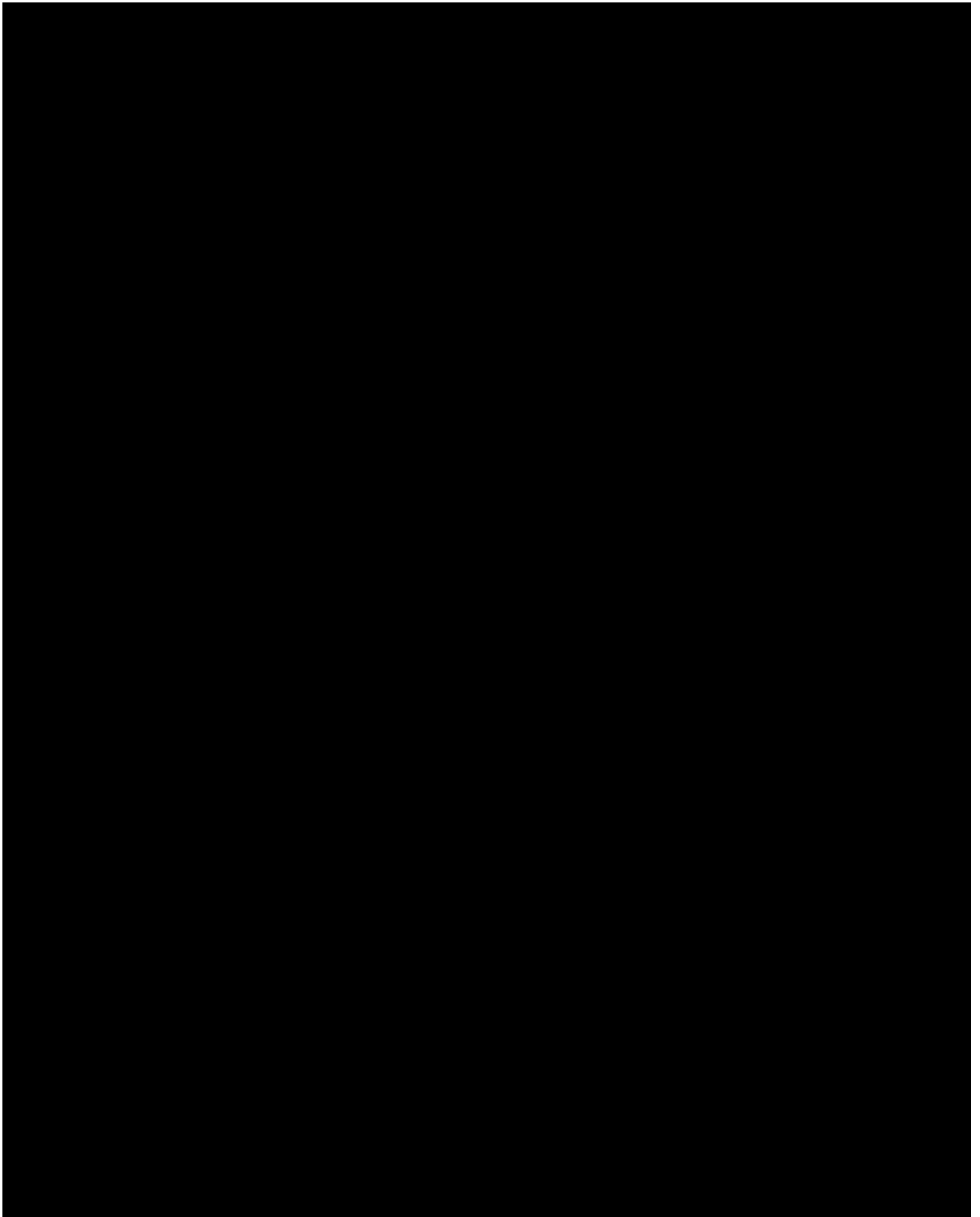
SUMMARY OF DETERMINATION

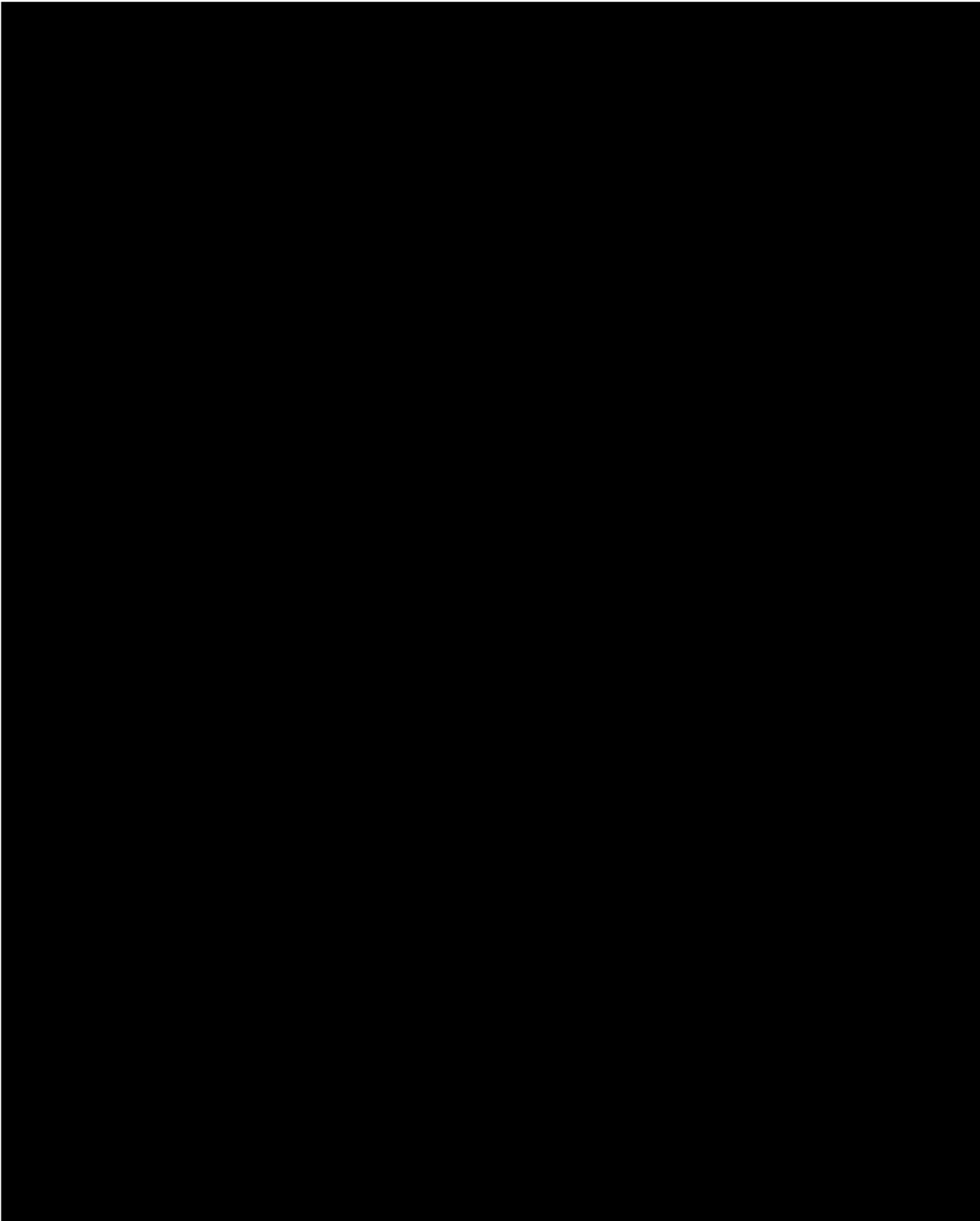
It is **DETERMINED** that Petitioners have failed to show, by a preponderance of the evidence, that MCS failed to provide ██████████ with FAPE. Petitioners are not entitled to reimbursement for tuition paid to ██████████ or for ABA therapy. The record supports a finding that MCS has made all reasonable efforts to provide FAPE to ██████████

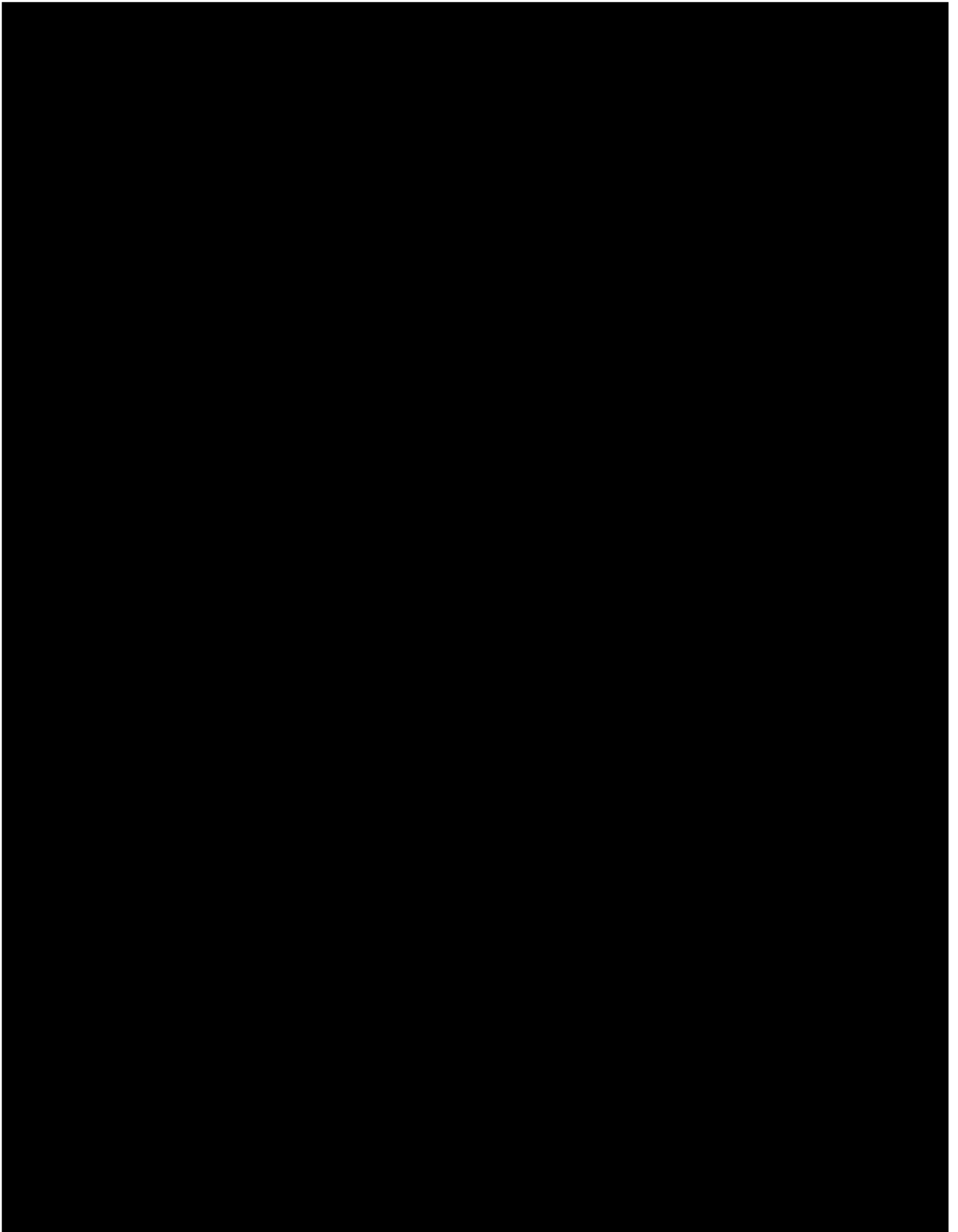
Petitioners' action is dismissed. This determination is based upon the following Findings of Fact and Conclusions of Law.

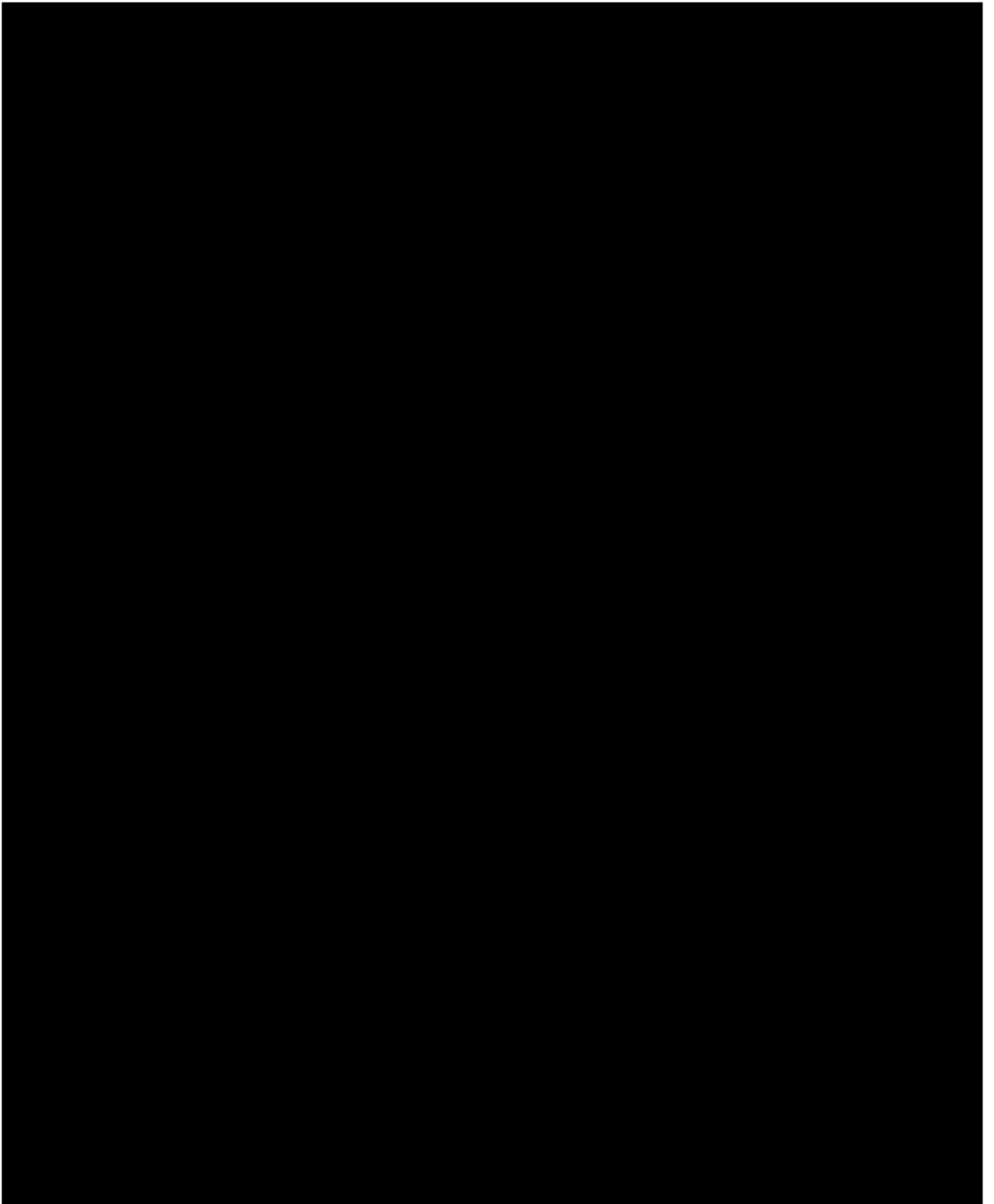
FINDINGS OF FACT

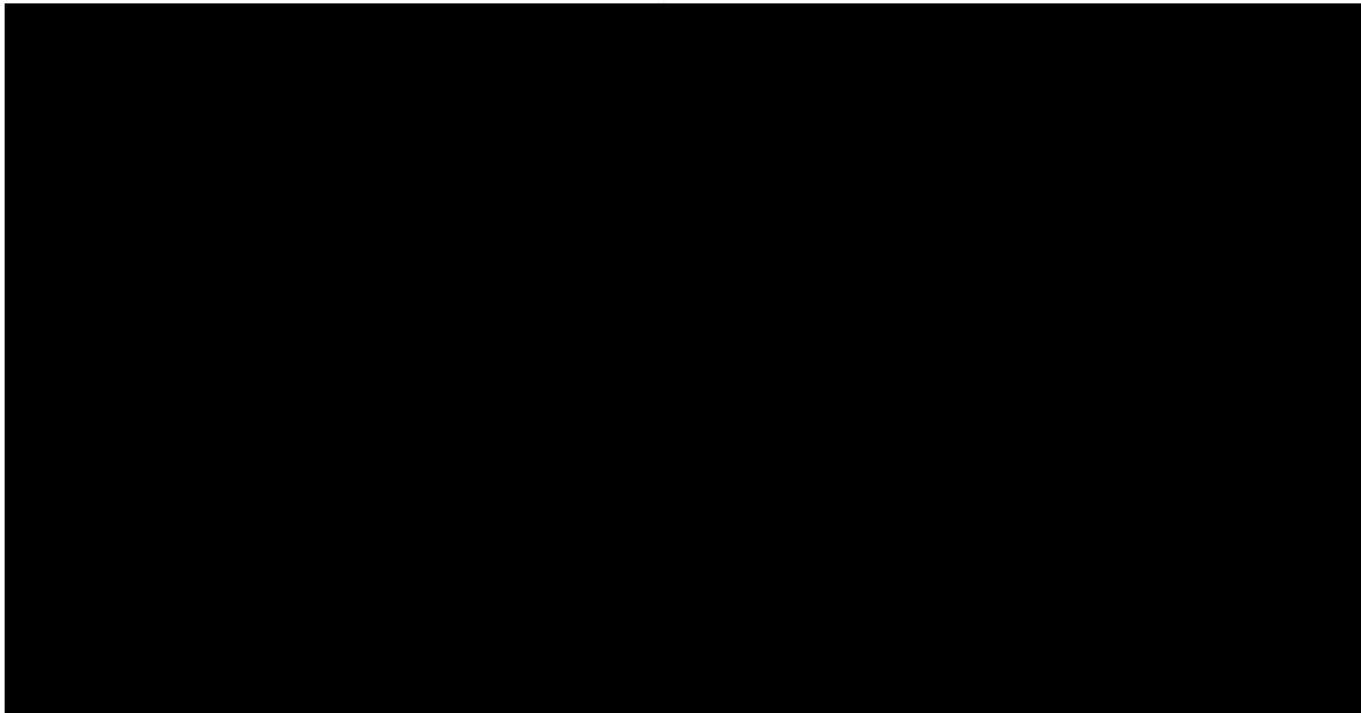












CONCLUSIONS OF LAW

1. The Petitioners have the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in their favor. Rule 1360-4-1-.02. 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).

2. The U.S. Supreme Court, in Schaffer v. Weast, 546 U. S. 49 (2005), summarized the IDEA as follows:

The Individuals with Disabilities Education Act (IDEA) is a Spending Clause statute that seeks to ensure that all children with disabilities have available to them a free appropriate public education. Under IDEA, school districts must create an individualized education program (IEP) for each disabled child. If parents believe their child's IEP is inappropriate, they may request an impartial due process hearing. ...

Congress first passed IDEA as part of the Education of the Handicapped Act in 1970, ..., and amended it substantially in the Education for All Handicapped Children Act of 1975.... At the time the majority of disabled children in America were either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.' ... IDEA was intended to reverse this history of neglect.

As of 2003, the Act governed the provision of special education services to nearly 7 million children across the country.

...

The core of the statute, however, is the cooperative process that it establishes between parents and schools. The central vehicle for this collaboration is the IEP process. State educational authorities must identify and evaluate disabled children, develop an IEP for each one, and review every IEP at least once a year. Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide.

Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child under the Act. Parents are included as members of IEP teams. They have the right to examine any records relating to their child, and to obtain an independent educational evaluation of their child. They must be given written prior notice of any changes in an IEP, and be notified in writing of the procedural safeguards available to them under the Act. If parents believe that an IEP is not appropriate, they may seek an administrative impartial due process hearing. (internal citations omitted).

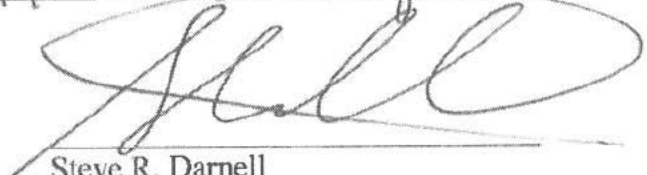
3. The requirement to provide a Free Appropriate Public Education (FAPE) is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Board. of Education. v. Rowley, 458 U.S. 176, 206-207 (1982). The inquiry of whether FAPE was provided is twofold: 1) has the LEA complied with the procedures set forth in the Act, and, 2) is the individualized educational program (IEP) developed through the Act's procedures reasonably calculated to enable the child to receive education benefits? Id.

IT IS CONCLUDED THAT Petitioners have failed to carry the burden of proof, and show by a preponderance of the evidence, that [REDACTED] was not provided FAPE by MCS. While Petitioners take personal issue with the methods and services MCS provided [REDACTED] they offer no expert proof that the methodologies used by MCS or MCS' staff were deficient. The proof is really to the contrary. From the record it is clear MCS has made every reasonable effort to

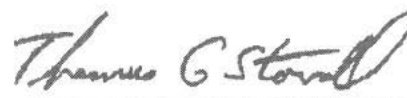
ascertain and meet [REDACTED] educational needs. The record supports a finding that MCS provided [REDACTED] with FAPE.

IT IS THEREFORE ORDERED that Petitioners' action is dismissed.

This Order entered and effective this 17th day of February, 2012.


Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 17th day of February, 2012.


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.