

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

IN THE MATTER OF:

**[REDACTED] the Student,
the Student,
the Student, and
the Students' parent,
Petitioners,**

v.

**MARYVILLE CITY SCHOOLS,
Respondent.**

**DOCKET NO: [REDACTED]
DOCKET NO: [REDACTED]
DOCKET NO: [REDACTED]**

FINAL ORDER

This contested case was heard before Kim Summers, Administrative Judge, on [REDACTED]

[REDACTED] The Petitioners represented themselves in the hearing. Maryville City Schools (MCS) was represented by [REDACTED] Esq.

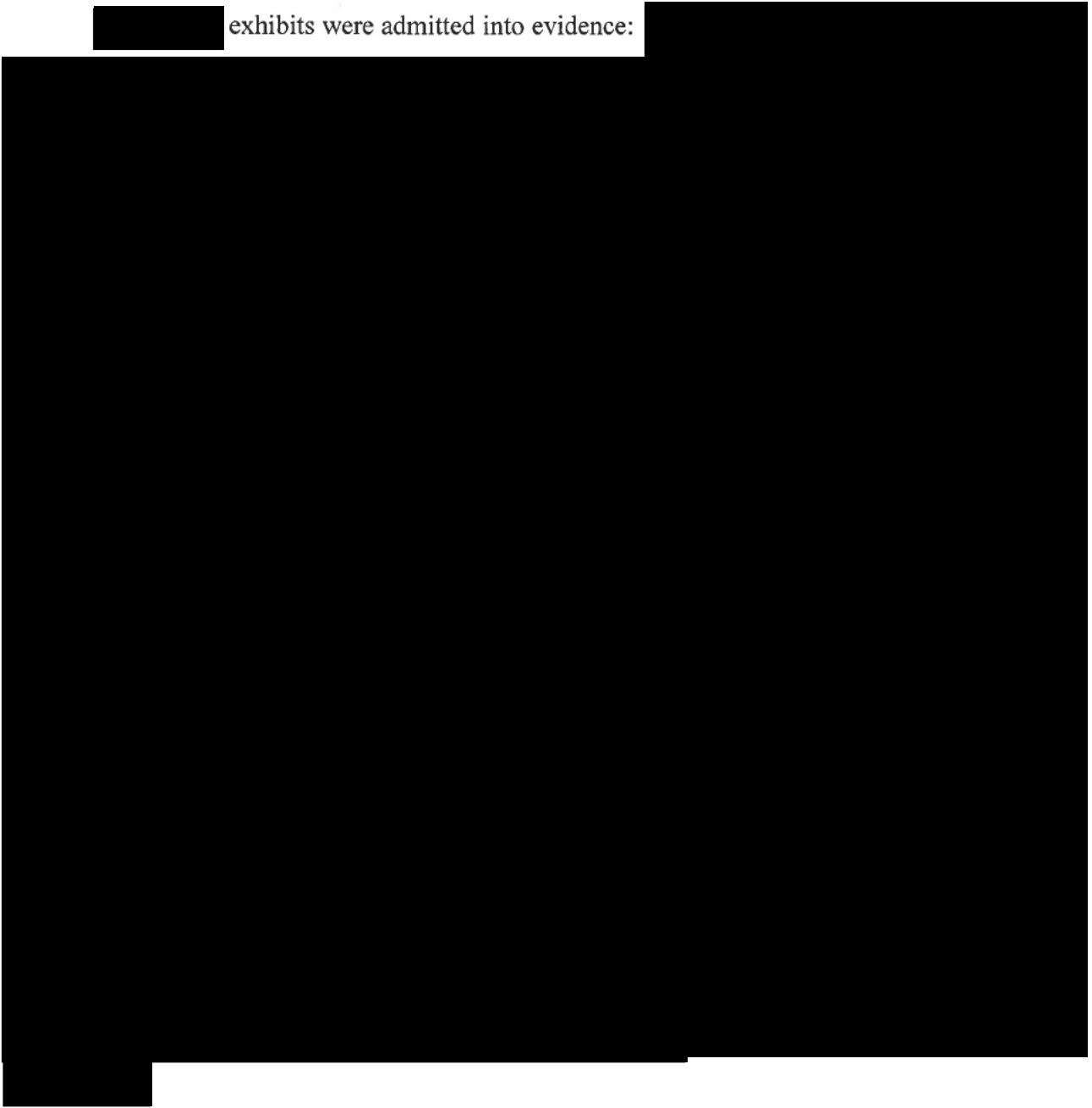
The purpose of the hearing was to determine whether MCS has complied with its obligations to provide a free and appropriate public education to [REDACTED] pursuant to the Individuals with Disabilities Education Act (IDEA) and to [REDACTED] pursuant to Section 504 of the Rehabilitation Act. After consideration of the entire record and the arguments of the parties, it is determined that MCS has satisfied its legal obligations. This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF THE EVIDENCE

The Petitioners presented testimony from the following witnesses: [REDACTED]
parents; [REDACTED] personal care assistant; Dr. [REDACTED] Dr. [REDACTED]; [REDACTED]
[REDACTED] family friend; and [REDACTED] personal care assistant.

MCS presented testimony from the following witnesses: Dr. [REDACTED]; Dr. [REDACTED]; [REDACTED]; [REDACTED], school nurse; [REDACTED] Assistant Principal at [REDACTED] School; [REDACTED], Psychologist for [REDACTED] Elementary and [REDACTED]; [REDACTED], Principle at [REDACTED] Elementary; and Dr. [REDACTED] Director of Special Education.

[REDACTED] exhibits were admitted into evidence:



The Parties were given an opportunity to submit Findings of Fact and Conclusions of Law after completion of the hearing. The initial deadline for submission of these pleadings was set for [REDACTED]. Due to several requests for an extension of time from the Petitioners, the deadline was ultimately extended to [REDACTED]. The Parties agreed that the Final Order would be due ninety days thereafter.

FINDINGS OF FACT with respect to [REDACTED] and the IDEA

1. [REDACTED] has been receiving special education services from other school districts pursuant to the IDEA based upon a diagnosis of [REDACTED].
2. The Petitioners began the enrollment process for [REDACTED] at [REDACTED] School during the last week of [REDACTED].
3. The Petitioners' first meeting with MCS to prepare [REDACTED] Individualized Education Program (IEP) occurred on [REDACTED] and resulted in a draft IEP that did not include medical information.
4. The Petitioners requested additional accommodations from the school system on account of food and environmental allergies, as follows¹ –
 - a. All persons entering the classroom must wash their hands with soap and water upon (BEFORE) entering the room, after eating within the classroom or after handling art supplies. Tables will be cleaned with "Parent's Choice – Sensitive" wipes after food has been eaten (or art supplies used) on them. And prior to [REDACTED] utilizing them.
 - b. [REDACTED] will only eat foods and drink water provided by his parents. He will eat lunch on house to avoid allergens in cafeteria. Prior to any eating, enzymes need to be administered. Physicians orders for enzyme administration will be on file in the health office. Enzymes will be stored with the case manager and the staff administering the enzymes will record on the Medication Record.

¹ Although [REDACTED] had also been previously diagnosed with [REDACTED], the accommodations requested have no apparent connection to this diagnosis.

- c. [REDACTED] will have and only use classroom supplies from his labeled box. This includes, but is not limited to: writing utensils, crayons, markers, books, tissues and wipes.
 - d. No bandages, ointment/lotions, tape, stickers, art supplies (play dough, oil paints, finger paints, paper mache, markers, dry erase markers, crayons, glue, eggs, recycled materials) "non-food" allergens, unless they have been approved as safe and labeled as such by a school official, should be used on [REDACTED]
 - e. [REDACTED] will avoid rooms that have had cooking, pets, paper mache, or airborne gluten within them in the last 72 hours. This includes the cafeteria and the Family and Consumer Science rooms. (rooms with the previously mentioned items will need to be thoroughly wiped down, non porous [sic] items, porous [sic] that can't be wiped down will need to be avoided, and carpets cleaned prior to his reuse of the rooms to be safe).
 - f. [REDACTED] designated bathroom(s) will be equipped with his soap and other supplies as needed.
 - g. Related Arts teachers will wipe down surfaces that [REDACTED] will be using, prior to class, with aforementioned wipes, and will only allow [REDACTED] to use approved supplies.
 - h. [REDACTED] will have his own designated portable computer and mouse.
5. In making an assessment on appropriate services to provide to [REDACTED] MCS reviewed two boxes of records provided by [REDACTED] former school in [REDACTED]. Although [REDACTED] had been diagnosed with [REDACTED] MCS determined that a current assessment [REDACTED] was necessary.
6. A second IEP meeting was held on [REDACTED] at which time the Parties agreed on an IEP to provide services to [REDACTED] for his diagnosis of [REDACTED]. The IEP included some medical information but was deemed interim as MCS was awaiting the results from the new medical assessment.
7. To address parental concerns regarding food and environmental allergies, a proposed health plan was prepared by MCS and provided to the Petitioners during the [REDACTED] meeting. The following proposed health plan was not accepted by the Petitioners –

[REDACTED]

9. MCS offered home bound services for [REDACTED] after the Petitioners agreed to the second appointment with Dr. [REDACTED]. Home bound services began on [REDACTED] and were continued by a subsequent IEP on [REDACTED] agreed to by the Petitioners.

[REDACTED]

11. On [REDACTED] MCS proposed an IEP without the accommodations requested by the Petitioners, based on the evaluation provided by Dr. [REDACTED].

12. MCS relied on the assessment from Dr. [REDACTED] because his tests were the most recent and he provided the only assessment from a board certified allergist.

13. MCS sent the Petitioners a letter indicating that the home bound services would end, and LK was expected to commence his education at [REDACTED]

14. The Petitioners submitted a request for a due process hearing on [REDACTED] in which they sought an IEP that includes a one-on-one aid and the requested safety measures and classroom modifications and procedures specified in their proposed health plan which was based upon prior medical documentation. The Petitioners also requested "stay put" until final resolution of the due process proceedings.

15. On [REDACTED], the Petitioners submitted a Notice of Intent to Home School for [REDACTED]

16. A due process hearing request was initiated by MCS on [REDACTED], on account of the Petitioner's request for an independent education evaluation for [REDACTED]

17. In [REDACTED], [REDACTED] moved out of the jurisdiction of MCS.

FINDINGS OF FACT with respect to [REDACTED] and SECTION 504

1. The Petitioners began the enrollment process for [REDACTED] and [REDACTED] at [REDACTED] Elementary in [REDACTED]

2. The Petitioners requested extensive accommodations for [REDACTED] pursuant to Section 504 of the Rehabilitation Act on account of [REDACTED]

[REDACTED]

[REDACTED]

10. On [REDACTED], the Petitioners submitted a Notice of Intent to Home School for [REDACTED]

11. A due process hearing request was initiated by MCS on [REDACTED], on account of the Petitioner's request for an independent education evaluation for [REDACTED]

12. In [REDACTED], [REDACTED] moved out of the jurisdiction of MCS.

13. The following relief was requested in these proceedings – reimbursement for homeschool expenses, refund for mileage to [REDACTED] evaluation, refund for independent

evaluation for [REDACTED] court and legal costs, cost for related services not provided, and reimbursement for free meal program.

RELEVANT LAW

1. The IDEA, 20 USC § 1400, *et seq.*, requires public school systems to provide to disabled children a free appropriate public education (FAPE).

2. 34 C.F.R. § 300.8(a)(1) defines “child with a disability” as follows –

Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, **another health impairment**, a specific learning disability, deaf-blindness, or multiple disabilities, **and who, by reason thereof, needs special education and related services.** (Emphasis added).

3. Pursuant to 20 USC § 1401(9), The term “free appropriate public education” means special education and related services that –

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

4. 20 USC § 1414(d)(1)(A) provides the following requirements with respect to the Individualized Education Program (IEP) for a disabled child –

(i) In general

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes –

(I) a statement of the child's present levels of academic achievement and functional performance, including –

- (aa) how the child's disability affects the child's involvement and progress in the general education curriculum;
- (bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
- (cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
- (II) a statement of measurable annual goals, including academic and functional goals, designed to –
 - (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (bb) meet each of the child's other educational needs that result from the child's disability;
- (III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child –
 - (aa) to advance appropriately toward attaining the annual goals;
 - (bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and
 - (cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;
- (V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);
- (VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and
 - (bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why –
 - (AA) the child cannot participate in the regular assessment; and
 - (BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter –

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

(ii) Rule of construction

Nothing in this section shall be construed to require –

(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

5. Pursuant to 34 C.F.R. § 300.148 of the IDEA regulations,

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.

(c) Reimbursement for private school placement. 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 preschool, 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 FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) 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 § 300.503(a)(1), 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 the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

6. 20 U.S.C. § 1415(j) specifies the following with respect to maintaining a child's educational placement --

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

7. The burden is on the party requesting relief to establish whether or not there has been a violation of the IDEA.³

8. Section 504 of the Rehabilitation Act of 1973, codified at 29 USC § 794, specifies the following --

³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56, (2005).

(a) Promulgation of rules and regulations

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. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of--

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of Title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if

alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 to 12204 and 12210), as such sections relate to employment.

9. A violation of Section 504 of the Rehabilitation Act requires proof of the following⁴ –

- (1) The plaintiff is a “handicapped person” under the Act;
- (2) The plaintiff is “otherwise qualified” for participation in the program;
- (3) The plaintiff is being excluded from participation in, or being denied the benefits of, or being subjected to discrimination under the program solely by reason of his handicap; and
- (4) The relevant program or activity is receiving Federal financial assistance.

10. A violation of Section 504 of the Rehabilitation Act requires proof that the failure to provide a free appropriate public education was *discriminatory*, which requires the Petitioners to prove either bad faith or gross misjudgment.⁵

ANALYSIS and CONCLUSIONS of LAW regarding [REDACTED]

1. The IDEA applies to disabled children who require special education services *as a result of* the diagnosed disability.

2. MCS and the Petitioners agreed upon [REDACTED] diagnosis of [REDACTED] and the special education services to be provided to [REDACTED] in his IEP based upon this diagnosis but did not agree that [REDACTED] is accurately diagnosed with [REDACTED]

3. The Petitioners appealed the IEP proposed by the school system because the IEP did not include safety measures that were believed necessary to address [REDACTED]

⁴ *G.C. v. Owensboro Public Schools*, 711 F.3d 623, 635 (6th Cir. 2013).

⁵ *Id.*

however, the Petitioners did not request special education services on account of either of these medical conditions.

5. The Petitioners did not present evidence pertaining to the requests for a one-on-one aide and an independent evaluation and, therefore, have failed to satisfy their burden of proof on these issues.

6. Accordingly, the Petitioners have failed to show that the IEP offered by MCS did not comply with requirements of the law or would deny to [REDACTED] a free and appropriate public education. Accordingly, the Petitioners are not entitled to any of the relief requested on [REDACTED] behalf related to the alternative educational placement⁶ made without the approval of the school system.

7. The request for “stay put” was rendered moot when the Petitioners submitted a Notice of Intent to Home School three days after requesting a due process hearing.

ANALYSIS and CONCLUSIONS of LAW regarding [REDACTED]

1. MCS made a good faith effort to determine whether [REDACTED] actually suffer from [REDACTED] and, as a result, would require a 504 accommodation.

2. Although the [REDACTED] results from Dr. [REDACTED] differed significantly from prior medical evaluations, MCS legitimately relied on the information provided by the board certified [REDACTED] that was specifically hired for this purpose.

⁶ Home Schooling.

3. The Petitioners have failed to show any bad faith or gross misjudgment by MCS in denying the request for a 504 accommodation request for [REDACTED] thus, the Petitioners are not entitled to any of the relief requested on behalf of [REDACTED]

For the reasons specified above, all of the Petitioners' claims and requests for relief are hereby **DENIED**.

The policy reasons for this decision are to uphold state and federal laws pertaining to the education of children with special needs.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the 24th day of November 2014.



KIM SUMMERS
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 24th day of November 2014.



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.