

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

IN THE MATTER OF:

██████ *the Student, and*
██████ *the Student's parent,*
Petitioners,

v.

MURFREESBORO CITY SCHOOLS,
Respondent.

DOCKET NO: ██████████

FINAL ORDER

This matter was heard before Joyce Carter-Ball, 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. Attorney ██████████ represented the Respondent, Murfreesboro City Schools (hereinafter referred to as "MCS"). The Petitioners were represented by Attorney ██████████ and Attorney ██████████

The subject of this proceeding is whether MCS provided a Free Appropriate Public Education ("FAPE") to '██████' (hereinafter referred to as "Petitioner"); whether MCS violated the IDEA; whether MCS complied with the procedures of the Act; whether ██████████ IEPs were reasonably calculated to enable him to receive some educational benefit; and whether Petitioners are entitled to the relief sought or to any relief.

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is DETERMINED that MCS provided Petitioner a Free Appropriate Public Education; MCS did not violate the IDEA; MCS complied with the procedures of the Act; Petitioner's IEPs were reasonably calculated to enable Petitioner to receive some educational benefit, and

Petitioners are not entitled to the relief sought or to any relief. Murfreesboro City Schools is the prevailing party in this matter.

This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Petitioner is a [REDACTED] year old student currently enrolled at [REDACTED] in [REDACTED]
[REDACTED] Petitioner attended MCS, both at [REDACTED] Elementary and [REDACTED]
Elementary.

[REDACTED]

9. Although there was concern from school personnel that the proposed new classroom at [REDACTED] was not appropriate for Petitioner, Petitioner made academic progress after the transition to [REDACTED] Elementary. Dr. [REDACTED] acknowledged that Petitioner's grades at both [REDACTED] and [REDACTED] Elementary were commensurate with his intellectual ability.

[REDACTED]

11. According to [REDACTED] the principal at [REDACTED] Elementary, Petitioner did well academically at [REDACTED] although he was not there very long. She did not believe the [REDACTED] Elementary program could be fairly judged because of the short time that Petitioner was enrolled there.

[REDACTED]

13. On [REDACTED] a few days after the IEP for [REDACTED] Elementary was signed, Dr. [REDACTED] sent an e-mail to [REDACTED] the school psychologist, stating in pertinent part, "[REDACTED]"

14. On [REDACTED] Dr. [REDACTED] sent an e-mail to his health care insurer, stating in pertinent part, "[REDACTED]"

15. As a result of this Petitioner was hospitalized from [REDACTED] through [REDACTED] at [REDACTED] Hospital on emergency admission by his father.

16. After seven days at [REDACTED] Hospital, Petitioner was transferred to [REDACTED] in [REDACTED]. On [REDACTED] Counsel for Petitioners sent a letter to MCS regarding this placement, and that Dr. [REDACTED] would seek reimbursement for [REDACTED]. The letter made no mention of any other facility.

17. Petitioner was sent to [REDACTED] on [REDACTED]. Then, on [REDACTED] Dr. [REDACTED] sent an e-mail to MCS Director of Schools and the Principal of [REDACTED] Elementary to inform them that he was disenrolling Petitioner from MCS and that he had enrolled Petitioner in [REDACTED].

18. Dr. [REDACTED] testified that Petitioner's academic performance and presumably his educational progress had nothing to do with the decision to remove Petitioner from [REDACTED] Elementary.

19. Less than one month after sending Petitioner to [REDACTED] Dr. [REDACTED] moved his fiancé into his home.

20. Dr. [REDACTED] was displeased with [REDACTED] because Petitioner's behaviors did not improve there. On [REDACTED] Dr. [REDACTED] committed to place Petitioner at [REDACTED] in [REDACTED] [REDACTED]. He signed an intake form with [REDACTED] on that date, and on [REDACTED] Dr. [REDACTED] entered into an agreement with [REDACTED]. In the **agreement with [REDACTED]** the **focus was all on treatment.**

21. Petitioner was discharged from [REDACTED] on [REDACTED], and was admitted to Intermountain the next day, [REDACTED]. Counsel for MCS received notice of the proposed placement at [REDACTED] in mid to late [REDACTED] from Petitioners' counsel.

22. The Initial Treatment Plan at [REDACTED] focused **primarily on treatment**; only minor references were made in regard to Petitioner's education.

23. The Initial Treatment Plan at [REDACTED] estimated the length of the stay to be through [REDACTED]; the stay has now ballooned to an estimated date for Petitioner to return home as late as [REDACTED].

24. The educators at [REDACTED] used the MCS's IEP until [REDACTED] from [REDACTED] to [REDACTED] there was no IEP in place.

25. [REDACTED] did not contact MCS about Petitioner in doing their planning.

CONCLUSIONS OF LAW

1. The Petitioners have the burden of proof in this matter, to show by a preponderance of the evidence, that the relief they seek is warranted under state and federal law. *Schaffer v. Weast*, 546 U.S. 49 (2005).

2. Petitioners in this case have the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in Petitioners' favor. Rule 1360-4-1-.02.
3. The parents bear the burden of proving by a preponderance of the evidence that the IEP is inappropriate. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Kings Local School District v. Zelazny*, 325 F.3d 724 (6th Cir. 724, 2003). The United States Supreme Court has held that an IEP comports with the standards of the IDEA if it is reasonably calculated to enable the child to receive some educational benefits. *Board of Educ. v. Rowley*, 458 U.S. 200 (1982).
4. The proposed program need not be the best one available, so long as it is appropriate. *Age v. Bullitt County Public Schools*, 673 F. 2d 141. 143 (6th Cir. 1982).
5. The 6th Circuit has held that parents are only entitled to reimbursement for private placement if: "a federal court concludes both that the public placement violated the IDEA and that the private school placement was proper under the Act." *Berger v. Medina City School District*, 348 F.3d 513 (6th Cir. 2003).
6. In determining whether the public placement violated the IDEA, the reviewing court must undertake a twofold inquiry: "First, has the State complied with the 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* @ 520.
7. The 6th Circuit has held that:

"A procedural violation of the IDEA is not a *per se* denial of FAPE. Rather a procedural violation will constitute a denial of a FAPE only if it causes substantive harm to the child or his 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 @ 520.

8. As part of providing a FAPE, school districts receiving funds under the IDEA are required to establish an IEP for each child with a disability. *Deal v. Hamilton County Bd. Of Educ.*, 392 F. 3d 840, 853 (6th Cir. 2004).

9. There are two parts – procedural and substantive – to a court’s inquiry in IDEA suits. *Deal*, 392 F. 3d at 853. “First, the court must determine whether the school system has complied with the procedures set forth in the IDEA. Second, the court must assess whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefits.” *Deal*, 392 F. 3d at 853-54.

10. “A procedural violation of the IDEA is not a per se denial of a FAPE; rather, a school district’s failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents.” *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001). Substantive harm occurs when the procedural violations in question either “seriously infringe upon the parents’ opportunity to participate in the IEP process” or “deprive an eligible student of an individualized education program or result in the loss of educational opportunity.” *Knable*, 238 F.3d at 765-66.

11. In *Rowley*, the Supreme court developed a two-prong test for determining the sufficiency of a proposed IEP. First, it must be substantively appropriate by offering goals and objectives that are “reasonably calculated to provide education benefit” to the child. Second, the procedural safeguards of the IDEA must be provided to parents, including the right to participate in the development of the IEP and to receive notification and explanation of their rights.

12. In *Ashland School District v. E.H.*, 587 F. 3d 1175, the Ninth Circuit Court of Appeals held that **“the child’s residential placement was necessitated by medical, rather than**

educational concerns.” The Court of Appeals affirmed the district court’s denial of the parents’ request for reimbursement for the residential placement. Further, the Court of Appeals held that **the IDEA does not require a school district to address all of a student’s medical concerns.**

ANALYSIS AND CONCLUSIONS OF LAW

1. The evidence presented at the hearing shows that MCS followed IDEA procedures and implemented and complied with IEPs designed to provide Petitioner with an educational benefit.

2. The evidence shows that Dr. [REDACTED] was actively involved in planning Petitioner’s IEPs, and that he approved of and signed the IEPs that were prepared for Petitioner.

3. Dr. [REDACTED] testified that he believed the goals in MCS’s IEPs were adequate. Petitioner made good educational progress at [REDACTED] Elementary and at [REDACTED] Elementary. Academically, he was a good student in spite of his behavioral difficulties.

4. Dr. [REDACTED] testified that Petitioner’s academic performance was not a relevant issue in his decision to remove Petitioner from [REDACTED] Elementary.

5. [REDACTED] personnel did not contact MCS about Petitioner’s needs in doing their planning. Not all children at [REDACTED] have IEPs, and if a child comes to [REDACTED] without an IEP, they don’t create one. They do not conduct child find.

6. [REDACTED], the educational director at [REDACTED] and [REDACTED], the classroom teacher at [REDACTED] testified that MCS’s IEP was appropriate. [REDACTED] used the MCS IEP until developing its own.

7. [REDACTED] is a residential treatment facility which treats children with psychological, psychiatric and emotional disorders. **It is not an educational placement within the meaning of the IDEA.** [REDACTED] is a residential treatment facility for children, which happens to have a school attached to it. It only secondarily educates children.

8. The resolution of this matter turns on a factual determination of whether Petitioner made educational progress while he was enrolled in MCS, whether the school district provided a Free Appropriate Public Education for Petitioner and whether Intermountain is an appropriate placement for Petitioner.

9. The evidence presented at the hearing shows that MCS followed IDEA procedures and implemented IEPs designed to provide Petitioner with an educational benefit. It is determined that Petitioner made academic progress while enrolled at [REDACTED] Elementary and [REDACTED] Elementary.

10. It is concluded that MCS provided the services that were outlined in Petitioner's IEPs. Petitioner's father approved and signed each IEP. MCS complied with Petitioner's IEPs.

11. It is concluded that Petitioner was placed at [REDACTED] because of his psychiatric problems, not because he did not receive educational benefits while enrolled at MCS.

12. It is concluded that the [REDACTED] program is inappropriate because it did not operate under an IEP for Petitioner for at least three months. The treatment plan was the document guiding Petitioner's education rather than an IEP. [REDACTED] does not perform child-find. The record does not indicate whether [REDACTED] is accredited by the State of [REDACTED] where it is located.

13. Petitioner did not require a residential placement for any educational reason.

14. Based on the foregoing proof, it is **CONCLUDED** that MCS provided Petitioner a Free Appropriate Public Education; MCS did not violate the IDEA; MCS did comply with Petitioner's IEPs; Petitioner's IEPs were reasonably calculated to enable him to receive some educational benefit; and, placement at [REDACTED] was for medical, not educational reasons.

It is therefore **ORDERED** that MCS is the prevailing party in this matter. Petitioners are not entitled to the relief sought or to any relief.

This Order entered and effective this 15TH day of DEC., 2014.



Joyce Carter-Ball
Administrative Judge