

BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION

IN THE MATTER OF:

K.M.H., *by and through*  
D.B., *Guardian,*  
*Petitioner,*

v.

METRO NASHVILLE PUBLIC  
SCHOOLS,  
*Respondent.*

DOCKET NO: 07.03-098927J

FINAL ORDER

This matter was heard on September 15, 2008, before Leonard Pogue, 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, Rules of State Board of Education. Attorneys Mary Johnston and Christy Feldman, Metro Nashville Department of Law, represented the Respondent. Petitioner was not present for the hearing. K.M.H.'s mother was present and K.M.H. was represented by his grandmother, D.B.

The subject of this proceeding, in general terms, is whether Respondent has provided a free appropriate public education (FAPE) to K.M.H. The specific issue, however, is limited to whether Petitioner should immediately transfer to his zoned school with a one-on- one teacher.

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is **DETERMINED** that Respondent is in compliance with K.M.H.'s IEP and providing K.M.H. FAPE and Respondent does not have to transfer him

to his zoned school with a one-on-one teacher. This determination is based upon the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. K.M.H. is a 12 year old student enrolled in the 7<sup>th</sup> grade at Developmental Learning Center (DLC) in Nashville, Tennessee. He is in a classroom of approximately 6-8 boys with a certified teacher. K.M.H. has a one-on-one educational assistant, Mr. Kenneth Brown. Mr. Brown helps K.M.H. understand assignments and instruction from the teacher and works with K.M.H. in dealing with his behavior issues.

2. K.M.H. meets the criteria of a student with the educational disability of emotionally disturbed and ADHD. Respondent diagnosed K.M.H. as mildly mentally retarded in 2006; however, Respondent performed testing in 2008 that showed he no longer had this diagnosis.

3. At the time of hearing, K.M.H. was being educated in accordance with an IEP developed in November, 2007, with an addendum developed in April, 2008. D.B. was involved with the development of this plan and signed in agreement. The IEP included goals for K.M.H.'s reading, written expression, math computation, and social/behavior skills. K.M.H.'s educators at DLC have indicated on the IEP that he is making progress toward the goals of the IEP and that they anticipated meeting those goals by the end of the IEP year, which would end in November of 2008.<sup>1</sup> K.M.H. took the TCAP test for 6<sup>th</sup> grade last academic year. His scores show that he is nearly proficient in Reading and Math. His Science and Social Studies scores were slightly lower, but his educators were impressed with his progress.

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<sup>1</sup> A new IEP was developed for K.M.H. on October 3, 2008. Implementation of the goals included in this new IEP will look toward completion of the goals by October 2, 2009.

4. K.M.H. has made improvements in his behavior while at DLC. This improvement is such that staff has begun planning his transition back to his zoned school. Both Mr. Brown and Mr. Paul Lawrence, a counselor at DLC, described this improvement and cited examples of K.M.H.'s increased self-control. D.B. acknowledged this improvement in behavior.

5. D.B. and K.M.H.'s mother desire that K.M.H. attend his zoned "regular" school and for Mr. Brown to attend with him as a one on one teacher for the next four years. Mr. Brown does not have a teaching degree and there was no evidence presented at the hearing that K.M.H. needs one-to-one instruction from a certified teacher to receive an educational benefit. To the extent that D.B. is requesting a one-on-one educational assistant, counselors in K.M.H.'s classroom agree that a one-on-one educational assistant for K.M.H. is currently necessary for him to continue progress in his behavior. IEPs are developed on a yearly basis, so supports like a one-on-one educational assistant would normally not be assigned for more than one year at a time.

6. D.B. objects to K.M.H. continuing the school year at DLC and wants him to transfer immediately to his zoned school, as does his mother and other grandmother. Ms. Peggy Davis, MNPS Consulting Special Education Teacher, testified that it is better to transition a child than to simply move from one school to another. Likewise, Dr. Linda DePriest, MNPS Director of Special Education, testified that a transition plan is important. Dr. DePriest described all of the supports Respondent tries to have in place before a child is finally moved to his school of zone: a part-day program, have the staffs of the different schools meet to discuss the IEP, meet with the parents, take data, make adjustments according to that data, and make sure the student feels comfortable.

7. Mr. Lawrence testified that as of the time of the hearing K.M.H. was not ready to be transitioned. Mr. Brown stated that he didn't know if K.M.H. was far enough along to be transferred at the time of the hearing. Mr. Brown further stated that with transitioning that K.M.H. may be ready to transfer in January, 2009. Mr. Willie Godfrey, assistant program administrator at DLC, testified that there had been discussions about transitioning K.M.H. in January, 2009 at the natural break in the school year.

### CONCLUSIONS OF LAW

1. The Petitioner in this case has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in Petitioner's favor. Rule 1360-4-1-.02, Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies.

2. The Supreme Court has held that the inquiry of the courts regarding the provision of FAPE is twofold: 1) has the State complied with the procedures set forth in the Act? and, 2) is the individualized educational program developed through the Act's procedures reasonable calculated to enable the child to receive education benefits? Bd. of Educ. of the Hendric Hudson Cent. Sch. Dist., Westchester County v. Rowley, 458 U.S. 176, 206-207 (1982).

3. The timing of the transfer or transition from DLC to K.M.H.'s regular school is a question of methodology, or the way the IEP team chooses to implement the agreed-upon IEP. Parents of disabled children are not entitled to require that a specific methodology be used. Renner v. Board of Education, 185 F. 3d 635, 645 (6<sup>th</sup> Cir. 1999).

4. The evidence presented at the hearing shows that Respondent has been following IDEA procedures and is implementing an IEP designed to provide Petitioner with an

educational benefit. It is apparent that K.M.H. has made progress, both academically and behaviorally since he has been at DLC. However, the proof showed that he should not transfer immediately to his zoned school as requested by D.B and that a transition process should be implemented.

5. Petitioner has failed to prove that K.M.H. should have one-on-one teaching for the next four years. It should be noted that providing a one-on-one teacher for K.M.H. would be restrictive and seemingly in direct conflict with the mandates of the IDEA. To the extent that D.B. is requesting an educational assistant, Respondent has not taken the position that an educational assistant will not be provided but that one could not be guaranteed for four years because IEPs are developed one year at a time. Moreover, since it has been determined that a transfer should not occur immediately, then it is not known if or should K.M.H. should have an educational assistant at the future date of transfer.

It is **ORDERED** that Respondent is in compliance with K.M.H.'s IEP and is providing K.M.H. FAPE and Respondent does not have to transfer him to his zoned school with a one-on-one teacher. Respondent is the prevailing party in this matter.

Entered this 12<sup>th</sup> day of November, 2008.



**LEONARD POGUE**  
**ADMINISTRATIVE JUDGE**

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 12<sup>th</sup> day of November, 2008.



Thomas G. Stovall, Director *aeb*  
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.