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February 1, 2024

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**RE: [REDACTED], THE STUDENT AND [REDACTED], THE PARENT V. CLARKSVILLE-
MONTGOMERY COUNTY SCHOOL SYSTEM, APD Case No. 07.03-235841J**

Enclosed is a *Final Order*, including a *Notice of Appeal Procedures*, rendered in this case.

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:

█, THE PARENT,
█, THE STUDENT,
Petitioner,

v.

**CLARKSVILLE-MONTGOMERY
COUNTY SCHOOL SYSTEM,**
Respondent.

APD Case No. 07.03-235841J

FINAL ORDER

On October 24, 2023, the Petitioners provided the Respondent with an expedited due process complaint under the Individuals with Disabilities Education Act (IDEA). The Petitioners are represented by attorney Perry Craft. Attorneys John D. Kitch and Rebecca Demaree represent the Respondent, Clarksville-Montgomery County School System (CMCSS), which is the school system or local education agency (LEA). A hearing was held by Zoom videoconference before the undersigned on January 18, 2024. The Final Order in this matter is due by February 1, 2024.

Petitioners allege that CMCSS incorrectly determined that Respondent's behavior, resulting in █ being placed in an alternative school setting, was not a manifestation of █ disability. Thus, the issue to be determined in this case is whether █ conduct of possessing THC on █ high school campus was a manifestation of █ disability. After review of the testimony, exhibits, arguments of the parties, and the record in this matter, it is determined that the Petitioners have failed to meet their burden of proving by a preponderance of the evidence that █ conduct was not a manifestation of █ disability.

WITNESSES

█, the mother of █, testified on behalf of █ and █

Dr. Sarah McAfee, Ed.D. testified as an expert behavioral specialist on behalf of Petitioners. Dr. McAfee holds two bachelor's degrees, one in social work and one in political science and Spanish. She also has a master's degree in social work, an educational specialist degree in education, and an Ed.D. Dr. McAfee has assisted Petitioners in Individualized Education Plan (IEP) meetings and in developing IEPs as an advocate for the family.

Deputy Michael Spencer testified on behalf of CMCSS. Deputy Spencer was the school resource officer (SRO) at █ at the time of the incident.

Dr. Mandy Frost, Ed.D. testified as an expert in educational leadership and discipline on behalf of CMCSS. Dr. Frost is an administrator at █ working primarily with the special education department. She holds a bachelor's degree in science, a master's in teaching, an Ed.S. in educational leadership, and an Ed.D. in educational leadership. She is licensed as an administrator K-12 and as a teacher 7-12.

Amanda Stamp testified as an expert in special education on behalf of CMCSS. She is a special education teacher at █ and is █ case manager. She holds a bachelor's degree in Christian ministries and is in a master's program for special education. She is licensed in special education K-12.

Dr. Ryann King, Ed.D. testified as an expert in school psychology on behalf of CMCSS. Dr. King holds a bachelor's degree in psychology, a master's degree in psychology, an Ed.S., and an Ed.D. in leadership and professional practice. She is licensed as a school psychologist and is a nationally certified school psychologist.

EXHIBITS

1. IEP dated 05/05/23 to 11/15/2023 for [REDACTED]
2. 9/26/2023 Manifestation Determination Review Form
3. 3/25/2019 Evaluation Summary from Department of Special Education Vanderbilt University Peabody College
4. 4/5/2022 Psychological Evaluation from Townsend Psychological Services, PLLC
5. 1/3/2019 Progress Notes by Sheryl Lynn Rimrodt-Frierson, M.D., with a PowerPoint
6. 2/26/2021 Occupational Therapy Evaluation by CMCSS
7. Blanchfield ACH Medical Records re: [REDACTED]
8. 9/21/2023 Vape Test Results
9. CMCSS 2023-2024 School Year Student

FINDINGS OF FACT

1. [REDACTED] is a [REDACTED]-year-old [REDACTED] grade student who currently attends [REDACTED] school within the CMCSS.
2. [REDACTED] is zoned for [REDACTED], a CMCSS [REDACTED] school.
3. The incident at issue which resulted in a change of placement occurred at [REDACTED].
4. [REDACTED] has a disability as defined by the IDEA. [REDACTED] primary disability is labeled “Other – Health Impairments.” [REDACTED] has been “diagnosed with Neurofibromatosis Type 1 (NF1), ADHD, Dyslexia, Dysgraphia, Anxiety, Major Depressive Disorder (minor). [REDACTED] also has a liver enzyme that breaks down medication too quickly which results in behavior changes necessitating adjustments to [REDACTED] medication. [REDACTED] medications listed on the IEP were Vyvanse, Abilify, and Prozac. Moreover, [REDACTED] has secondary disabilities and suffers from gastroparesis.
5. At the time of the incident at issue [REDACTED] had an Individualized Education Plan (IEP) effective May 5, 2023, through November 15, 2023.
6. On September 21, 2023, [REDACTED] was found in possession of three vape pens, two of which tested positive for tetrahydrocannabinol (THC).

7. Prior to being found in possession of the vape pens ██████ asked Dr. Frost for permission to go to the restroom to throw something away acknowledging that ██████ possessed something ██████ knew ██████ shouldn't have.

8. ██████ told Deputy Spencer, the SRO, that two of the pens contained THC.

9. ██████ told Dr. Frost that two of the pens contained THC and ██████ acknowledged that possession was a violation of school rules and that ██████ understood the consequences without any prompting from Dr. Frost.

10. According to ██████, ██████ found the three vape pens on the bathroom floor and impulsively picked them up and put them in ██████ pocket. Since ██████ didn't want to be late for class ██████ kept the pens on ██████ person instead of throwing them away or turning them in to school personnel.

11. Dr. McAfee opined that ██████ actions were a direct result of ██████ impulsivity and poor decision making which manifested from ██████ disability. It is Dr. McAfee's opinion that the difficulty ██████ has with medication management directly contributed to this manifestation.

12. Dr. King participated in ██████ manifestation determination meeting. She reviewed ██████ school records, latest IEP and most recent psychological evaluation. At the meeting, she listened to ██████ explanation of how NH1 affected ██████ Dr. King considered all of ██████ disabilities and ██████ opinion and opined that while ██████ disabilities, specifically NH1, can impact ██████ executive functioning skills it had no impact on ██████ decision to possess the vape pens at issue.

13. Possession of marijuana or THC violated CMCSS's Code of Conduct, and a manifestation meeting was held on September 26, 2023, at which it was determined that the possession of THC was not a manifestation of ██████ disabling condition.

14. Possession of THC is a zero-tolerance offense and carries with it an automatic 180-day suspension or expulsion. In the case of a student with disabilities an alternative school placement is also an option.

APPLICABLE LAW

1. 34 CFR § 300.530 States the following regarding a manifestation determination:

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must -

(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine -

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must -

(1) Either -

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child -

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law...

2. The implementing regulations of the IDEA regarding a manifestation determination review provide:

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

(b) Authority of hearing officer.

(1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child’s behavior was a manifestation of the child’s disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in § 300.506—

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with § 300.514.

3. TENN. CODE ANN. § 49-6-3401 provides:

(a) Any principal, principal-teacher or assistant principal of any public school in this state is authorized to suspend a pupil from attendance at the school, including its sponsored activities, or from riding a school bus, for good and sufficient reasons. Good and sufficient reasons for suspension include, but are not limited to:

(10) Unlawful use or possession of barbitol or legend drugs, as defined in § 53-10-101;

(g) Notwithstanding this section or any other law to the contrary, a pupil determined to have brought to school or to be in unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921, shall be expelled for a period of not less than one (1) calendar year, except that the director may modify this expulsion on a case-by-case basis. In addition to the other provisions of this part, a student committing aggravated assault as defined in § 39-13-102 upon any teacher, principal, administrator, any other employee of an LEA or school resource officer, **or unlawfully possessing any drug including any controlled substance, as defined in §§ 39-17-403 – 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101, shall be expelled for a period of not less than one (1) calendar year, except that the director may modify this expulsion on a case-by-case basis.** For purposes of this subsection (g), “expelled” means removed from the pupil’s regular school program at the location where the violation occurred or removed from school attendance altogether, as determined by the school official. Nothing in this section shall be construed to prohibit the assignment of such students to an alternative school. Disciplinary policies and procedures for all other student offenses,

including terms of suspensions and expulsions, shall be determined by local board of education policy.

TENN. CODE ANN. § 49-6-3401(a)(10), (g) (emphasis added).

ANALYSIS

As an initial matter, [REDACTED] was in possession of THC on school property. [REDACTED] statements to school personnel show by a preponderance of the evidence that [REDACTED] knowingly possessed THC. The participants in the manifestation determination meeting considered [REDACTED] disability in reviewing [REDACTED] conduct and concluded that [REDACTED] behavior was not a manifestation of [REDACTED] disability.

It is clear from the record that [REDACTED] has a disability and that [REDACTED] disability can lead to impulsivity. It is the Petitioner's position that the incident in question was an impulsive one, a manifestation of [REDACTED] disability which also rendered [REDACTED] incapable of understanding the consequences.

Based on the facts of this case, it is clear that Petitioner's account regarding how [REDACTED] came to be in possession of three vape pens is not credible. Petitioner knew exactly what was contained in the vape pens, which would not have been possible if [REDACTED], in fact, impulsively picked them up from the bathroom floor. It is also clear from [REDACTED] statements to school personnel that [REDACTED] knew that possession of the vape pens containing THC was a violation of the code of conduct and that [REDACTED] knew the penalty for such a violation contradicting [REDACTED] and Dr. McAfee's assertions that [REDACTED] was unable to understand the consequences of [REDACTED] actions because of [REDACTED] disability.

Although Dr. McAfee testified that in her opinion additional safeguards could have been included in the IEP, no proof was submitted alleging that the conduct in question was the direct result of the LEA's failure to implement the IEP.

CONCLUSIONS OF LAW

1. [REDACTED] is an individual entitled to protection under the Individuals with Disabilities Education Act due to [REDACTED] disability.

2. CMCSS is an LEA and is subject to the requirements of the IDEA.

3. [REDACTED] was in possession of THC on school property.

4. [REDACTED] possession of THC was not a manifestation of [REDACTED] disability.

5. The attendees at the manifestation determination meeting correctly determined that [REDACTED] conduct was not a manifestation of [REDACTED] disability.

6. [REDACTED] was appropriately assigned to an alternative school in accordance with TENN. CODE ANN. § 49-6-3401.

7. It is **CONCLUDED** that Petitioners have failed to prove that [REDACTED] violation was a manifestation of [REDACTED] disability.

8. It is further **CONCLUDED** that Petitioners have failed to carry their burden of proof.


9. It is **CONCLUDED** that CMCSS is the prevailing party on all issues.

IT IS THEREFORE ORDERED that Petitioner's request for relief is **DENIED** and the appeal is **DISMISSED**.

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 **1st day of February, 2024.**



J. SHANNON BARNHILL
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
1st day of February, 2024.

█, THE STUDENT AND █, THE PARENT V.

CLARKSVILLE-MONTGOMERY COUNTY

SCHOOL SYSTEM

NOTICE OF APPEAL PROCEDURES**REVIEW OF FINAL ORDER**

The Administrative Judge's decision in your case in front of the **Tennessee Department of Education**, called a Final Order, was entered on **February 1, 2024**. If you disagree with this decision, you may take the following actions:

1. **File a Petition for Reconsideration:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Final Order, which is no later than **February 16, 2024**.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal no later than **April 1, 2024**. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may file an appeal the decision in federal or state court within 60 days of the date of entry of the Final Order, which is no later than **April 1, 2024**, by:
 - (a) filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," TENN. CODE ANN. § 4-5-322; or
 - (b) bringing a civil action in the United States District Court for the district in which the school system is located, 20 U.S.C. § 1415.

The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

STAY

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Final Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Final Order, which is no later than **February 8, 2024**. *See* TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

IN THE MATTER OF:
■■■■■, THE STUDENT AND ■■■■■, THE PARENT V.
CLARKSVILLE-MONTGOMERY COUNTY
SCHOOL SYSTEM

APD CASE No. 07.03-235841J

NOTICE OF APPEAL PROCEDURES

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

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