

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

**IN THE MATTER OF:**

**J.M., the Student, and  
Jm.M. and Je.M., the Student's  
Parents/Guardians,  
Petitioners,**

**DOCKET NO: 07.03-148080J**

**v.**

**WILSON COUNTY SCHOOLS,  
Respondent.**

**FINAL ORDER**

This matter was heard in Lebanon, Tennessee on June 11-13 and August 23, 2018, 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. Petitioner J.M., student, and Jm. M. and Je. M. (Mrs. M.), parents, were represented by attorneys Michael Braun and Cheryl Cheffins. Attorney Michael Jennings represented Respondent Wilson County Schools (WCS). This matter became ready for consideration upon the filing of proposed findings of fact and conclusions of law on November 9, 2018.

Petitioners initiated this due process hearing on October 18, 2017, alleging that WCS violated the child find provisions of the IDEA and failed to provide a free and appropriate public education to J.M in violation of the IDEA. Petitioners have requested that J.M. be deemed eligible for special education services and be provided compensatory education.

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is determined that Respondent is not in compliance with the IDEA and has committed

procedural and substantive violations of the IDEA. This determination is based upon the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

1. J.M. is the daughter of Mrs. M. She has been attending Wilson County Schools since pre-K at Rutland Elementary.

2. Midway through J.M.'s Kindergarten year, her teacher, Jennifer Buttrey notified Mrs. M. that J.M. was having problems focusing in class and was unable to complete her assignments. Ms. Buttrey expressed her concern that J.M. was in trouble of failing kindergarten.

3. Mrs. M. subsequently relayed these concerns to J.M.'s pediatrician, Dr. Neil Kirshner. Dr. Kirshner provided Mrs. M. with a questionnaire for both herself and Ms. Buttrey to complete. Ultimately, Dr. Kirshner diagnosed J.M. (on April 16, 2014) with attention-deficit/hyperactivity disorder (ADHD) and prescribed medication for J.M.

4. Mrs. M. told Ms. Buttrey of J.M.'s diagnosis. After J.M. got use to the medication, she seemed to sustain attention better in class, her school work was completed more efficiently and she passed kindergarten that year.

5. J.M.'s first grade teacher was Paula Hodge. J.M. continued to have issues with her focus, staying on task, and being able to complete her work. Ms. Hodge met with Mrs. M. to discuss some of J.M.'s focus and attention problems in class. Ms. Hodge provided needed assistance to J.M. such as seating her closer to her and doing check-ins on her schoolwork to ensure that she was understanding the material.

6. Ms. Hodge mentioned to Mrs. M. that J.M. could benefit from a 504 plan since it would give J.M. more accommodations in the classroom. In May of 2015, Mrs. M. provided Ms. Hodge with a letter from Dr. Kirshner documenting J.M.'s ADHD diagnosis.

7. During the summer, Ms. Hodge sent an email to Mrs. M. advising that “.... Probably the first week or so of school, we will all have a meeting to go over her 504 plan.” Ms. Hodge conferred with the new second grade teacher about transitioning and made suggestions on how J.M. might best be able to access her education.

8. Chelsea Sircy was J.M.’s second grade teacher. She also provided accommodations to J.M. by sitting her closer to her and checking in with her to make sure she understood assignments. Emails between Ms. Sircy and Mrs. M. in September of 2015 describe how J.M. continued to struggle with organization. According to Ms. Sircy, J.M. did struggle in certain areas of the second grade until her 504 plan was put into place and then she thrived. Ms. Sircy considered J.M. one of her success stories that year and thinks that J.M. grew quite a bit in her class.

9. A meeting to develop a 504 plan for J.M. was held in March of 2016. It was determined that J.M. had a physical or mental impairment that significantly impacted a major life activity and met the eligibility standards to be identified as having a Section 504 disability. WCS did not conduct any evaluations at that time. The 504 plan provided for some of the same accommodations already being provided and focused on the areas of physical environment (seating J.M. near the teacher in an area free from distractions; reduce classroom distractions; seating J.M. out of main traffic areas; modify instructional materials as needed; allow extra time between classes; and noise cancelling headphones as needed), instructional methods/materials, assignments/homework (extra grading opportunities, redo assignments below 70 percent, break assignments into Parts, have a homework/assignment notebook to communicate with parents, teacher check homework/ assignment notebook, repeat homework assignment, lengthy outside reading assignments, and no penalty for her handwriting), behavior and testing.

10. Mrs. M. described J.M.'s grades as good in the second grade and that where a couple of times she made the AD Honor Roll. Ms. Sircy believes J.M. didn't have any more redos than other students.

11. The 504 plan for J.M. was in effect at the beginning of J.M.'s third grade year. J.M.'s third grade teacher was Jessica Smotherman. Ms. Smotherman allowed J.M. to redo any assignment where she scored 75 or less. However, she could not earn more than a 75 on a redo. Even with the ability to redo assignments, J.M. still failed to earn a passing grade on some assignments. However, Ms. Smotherman would never record less than a 60 in her grade book regardless of the actual grade J.M. earned. Ms. Smotherman noted that a 504 plan doesn't guarantee passing grades; J.M. still had to earn the right to pass from third grade to fourth grade and she did.

12. According to Mrs. M, J.M.'s anxiety increased during third grade and she began scratching her arms and became withdrawn. Ms. Smotherman explained in an email to Mrs. M. that she believed J.M. was scratching her arm to gain attention.

13. In March of 2017, Mrs. M. made a formal written request to have a full evaluation done by the school psychologist to determine if in addition to ADHD J.M. had a specific learning disability. Shortly thereafter, Mrs. M. met with Julie Spies, school psychologist, to discuss the requested evaluation. Ms. Spies advised Mrs. M. that J.M. didn't need an evaluation because her scores on her tests were above average and her STAR 360 test was above benchmark.

14. Mrs. M. subsequently sent an email to Dawn Bradley, Special Education Director for WCS, asking for assistance in having J.M. evaluated. Ms. Spies evaluated J.M. in April of 2017.

15. Ms. Spies administered the Reynolds Intellectual Assessment Scales (RIAS) but did not administer the component that assesses processing speed. The results of the RIAS indicated that J.M. had a full scale IQ of 114 which falls in the above average range. Ms. Spies report stated that “behavior rating scales suggest that J.M.'s ADHD affects her attention, organization, task completion and school performance. This report is submitted to the IEP team for consideration of eligibility in the area of Other Health Impairment based on this examiner's professional judgment.” Ms. Spies' evaluation concluded that J.M. did not have a specific learning disability.

16. The IEP eligibility meeting was held on June 2, 2017. The IEP team unanimously determined that J.M. was eligible for special education under the category of Other Health Impairment. Mrs. M. declined services with the handwritten statement “I am disagreeing today with services due to lack of complete data to make an informed decision. I am requesting an IEE to collect more data before a decision can be made.” Mrs. M. testified that in the eligibility meeting there was no discussion about an IEP and simply a suggestion about an incentive plan for J.M. to reward her for doing well. She felt that a behavioral incentive plan would not help and that J.M. needed academic help.

17. The Prior Written Notice (PWN) for the June 2, 2017 meeting stated that the “we discussed eligibility requirements and discussed [j's] school performance. Parents requested an IEE to have more information before making any educational decisions.....”

18. J.M. was evaluated by Currey Ingram Academy over the summer. Based on the testing, the Currey Ingram evaluator determined that J.M. had a full scale IQ of 104. The evaluator also determined that J.M. had a processing speed index of 92 and a verbal comprehension index of 118, a difference that is “uncommon in the normative sample for her.” The evaluator also found

that “overall, J.M. seems to struggle with the speed with which she completes cognitive tasks.” The Currey Ingram evaluation determined that J.M. met the criteria for a diagnosis of ADHD and made recommends to help J.M. in the classroom. Some of the recommendations were similar to what was already being included under her 504 plan.

19. The IEP team met to review the evaluation in September 2017. After reviewing the report, the school personnel determined that J.M. was no longer eligible for special education. No other reports or assessments were reviewed at the meeting. Mrs. M. was told that the Currey Ingram recommendations could be implemented into the 504 plan. Mrs. M. disagreed with the finding that J.M. was not eligible for special education services. WCS did not issue a PWN that documented their determination that J.M. was not eligible for special education services.

20. Ashley Hargrove is a Special Education teacher at Rutland Elementary. She was not present for the IEP meeting in June of 2017 but did participate in the IEP team meeting convened in September 2017. Ms. Hargrove agreed with the decision in September 2017 but did think that J.M. needed accommodations which could be provided through a 504 Plan.

21. Mrs. M. feels some of the 504 accommodations worked during the fourth grade but that J.M. continued to struggle with the same issues from prior years: careless mistakes, focus, errors. Mrs. M. signed off on all of the 504 plans for J.M.

22. Shawna Blue was J.M.’s fourth grade teacher for social studies and English Language Arts. Ms. Blue testified that writing was one of J.M.’s weaknesses but that J.M. was always very confident in her classwork. Ms. Blue believes that J.M. was not frequently anxious in

her class and described J.M. as a great student who was eager to learn and excited to be at school every day.

23. Ms. Blue adhered to J.M.'s 504 plan and believes that J.M. made progress under her 504 plan, even exceeding Ms. Blue's expectations for J.M. Ms. Blue stated that under the STARs Assessment, the growth expectation for a student in a year is 50 and J.M. was at 56. According to Ms. Blue, J.M. did not have a higher rate of redos than other students.

24. J.M. and other students would occasionally work in the work area that was set up between Ms. Blue's classroom and Lori Sharp's classroom (J.M.'s fourth grade math teacher). Ms. Blue testified that she sometimes worked one on one with J.M. and other students in this area and felt that J.M. as well as all her students benefited from the one on one instruction. Ms. Blue further testified that she did not believe J.M. needed one on one instruction as part of any service that she may require.

25. Ms. Sharp thinks that J.M. struggled more during actual testing of math skills, not during the actual teaching of the math skill. Ms. Sharp attended the September 2017 IEP meeting and agreed at the meeting that J.M. did not require specialized instruction based on Ms. Sharp's opinion of J.M.'s ability in the classroom to do math. At the time of the September IEP meeting, J.M. had earned three Cs and three Ds in math, three Cs and three Bs in reading, one A and one C in science, three Cs, two Bs and one A in writing, and two Cs and one F in social studies. Ms. Sharp feels that J.M. made significant improvement and met the expectations of Ms. Sharp during her fourth grade year.

26. On the Star360 testing in both Reading and Math, J.M. did not reach the level she ended the third grade until the last month of fourth grade on the scaled scores. In terms of grade

equivalency, she began the year in reading at the 4.9 grade level and ended at the 6.1 level; in math she began the year at the 3.3 level and ended at the 5.5 level. As to percentile ranking, J.M. began the year in reading with a 71 percentile ranking and ended the year with an 80 percentile ranking; in math she began the year at the 69 percentile ranking and ended at the 84 percentile ranking.

27. In February of 2018, J.M. was evaluated by Dr. Paul Cates and Dr. Kirk Cates. They evaluated J.M. in a hotel suite and Dr. Kirk Cates testified that they chose that environment rather than an office location because the hotel suite was more similar to a child's home environment.

28. Dr. Kirk Cates earned his Ph.D. in Cognitive Psychology and has evaluated over 800 children. He administered the following assessments: the Wechsler Intelligence Scale for Children IV, the Wechsler Abbreviated Intelligence Test, the Woodcock Reading Memory Test, the Kaufman Test of Educational Achievement and the Peabody Picture Vocabulary; however, he did not use the most recent revisions of several of these tests. Dr. Kirk Cates testified that he did not always prefer to use the most current version of some tests because they do not provide the diagnostic information that he and Dr. Paul Cates seek.

29. Dr. Paul Cates earned a master's degree in reading and learning disabilities and a PhD in nine areas including curriculum and instruction. He taught special education in Illinois and currently holds public school credentials from kindergarten through 12th grade. He was recognized as an expert in the areas of psycho-educational testing, specific learning disabilities including ADHD/ADD, anxiety and stress disorders.

30. Dr. Paul Cates interpreted the scores for the tests administered by Dr. Kirk Cates by using a computer program developed by Pearson. He testified that the program is based on norm referenced data from the evaluations of thousands of children. He then used the computer



interpretation to develop an educational plan for J.M. Dr. Paul Cates administered the Test of Variable Attention (TOVA) to J.M. He explained that TOVA measures processing abilities in both the left and right hemispheres. Specifically, it measures omission or inattention. Dr. Paul Cates testified that J.M. had difficulty with auditory and visual processing which causes stress and frustration.

31. According to Dr. Paul Cates, based on the results of the WISC-IV, J.M.'s verbal comprehension index was at the 95th percentile and her processing speed at the 16th percentile. He considers this difference to be significant and an indication that she is not processing. He explained that this may be manifest by impulsivity or what looks like an inability to focus when the problem is that the person is not processing as fast as the information is coming into them. This results in the person not being able to keep up and having to interrupt or just kind of going to sleep. He testified that unless J.M. gets a chance to repeat or a chance to ask questions, she's going to get lost in the shuffle of what's going on in the regular classroom.

32. Based on his testing and observations, Dr. Paul Cates opined that J.M. needs one on one education (classes of four to six students would be overwhelming for J.M.), cognitive/memory/reading therapy, immediate reinforcement during teaching, as well as frequent breaks. He further opined that she has academic ability commensurate with her grade level but cannot produce the work because of time and volume factors.

33. Neither Drs. Paul nor Kirk Cates observed J.M. in the classroom. Prior to issuing his report on February 8, 2018, Dr. Paul Cates did not review the Currey Ingram Report, Ms. Spies report of her testing, J.M.'s 504 plans, nor J.M.'s achievement tests although he indicated it would have been beneficial to have had this information.

34. Dr. Denise Gibbs has a doctorate in Special Education and is licensed as a Speech-Language Pathologist in several states including Tennessee. She is the Director of the Alabama Scottish Rite Foundation Learning Centers and has been an educator for 43 years. She was recognized as an expert in the areas of special education with particular emphasis in eligibility and assessment, learning disabilities and dyslexia.

35. Dr. Gibbs observed J.M. in her classroom setting on May 7, 2018, at Rutland Elementary. Dr. Gibbs testified that she did not see any indication that J.M. had difficulty that day attending to any of the instruction, following any of the directions, or completing any of the activities. Dr. Gibbs opined that J.M. was engaged in all learning activities throughout the school day and J.M.'s attention and focus were consistent with the attention and focus of typical fourth grade students.

36. Based on her day of observation, Star testing, and the testing/reports that had been done for J.M., Dr. Gibbs believes that J.M. would not be better off with an IEP and that there is no need for J.M. to have special education services available to her. She further opined that J.M.'s 504 plan is allowing J.M. to make educational growth in math and reading, that it met J.M.'s needs, and that the plan incorporated many of the Currey Ingram recommendations. According to Dr. Gibbs, J.M. showed very positive growth on the Star testing for reading and math in the fourth grade. She did not interview J.M.'s parents as part of her retention as an expert by WCS.

37. Dr. Gibbs noted that many of the tests administered by Drs. Paul and Kirk Cates were grossly out of date and the TOVA was given too late in the day. She also believes it was inappropriate for Drs. Paul and Kirk Cates to give eight tests all in the same day to a nine year old. Dr. Gibbs does not feel that the Cates testing results indicate that J.M. needs special education

services to make educational progress. She opined that J.M.'s current 504 plan is appropriate for her and that J.M. did not need specialized instruction or an IEP.

### CONCLUSIONS OF LAW

1. 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, Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies; Schaffer v. Weast, 546 U.S. 49 (2005).

#### Child Find

2. The Individuals with Disabilities Education Act (IDEA) requires WCS to provide a "free appropriate public education" (FAPE) in the least restrictive environment to all students with disabilities who are in need of special education and related services. Under IDEA's "child find" provisions, school districts have an obligation to identify, locate, and evaluate all children with disabilities who are in need of special education and related services. 34 C.F.R. § 300.111. The child find requirement is an affirmative obligation and a parent is not required to request that a school district identify and evaluate a child. E.M. ex rel. E.M. v. Pajaro Valley Unified Sch. Dist., 2008 WL 4615436 (N.D. Cal. 2008).

3. A school district's child find obligation applies to all children who are suspected of having a disability under §300.8 and in need of special education, even though they may be advancing from grade level to grade level. 34 C.F.R. §300.111(c) (1). If a school district fails to satisfy its child find duty or fails to offer a disabled student an appropriate IEP, and if that failure affects the student's education, then the district has necessarily denied the student a FAPE. Boose v. District of Columbia, 786 F.3d 1054, 1056 (D.C. Cir. 2015).

4. To prove that a delayed evaluation for a student was a procedural violation of IDEA's child find, a petitioner "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." Bd. of Educ. of Fayette County, Ky. v. L.M., 478 F.3d 307 (6th Cir. 2007). The law does not require that schools evaluate and identify as disabled every student that is having academic difficulties. D.K. v. Abington Sch. Dist., 696 F.3d 233 (3d Cir. 2012). The mere fact that a school district decides not to evaluate a student is not a child find violation. E.g., A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221, 225 (D. Conn. 2008), *aff'd*, 370 Fed. Appx. 202 (2nd Cir. 2010).

5. The Sixth Circuit Court of Appeals has found that a school district did not overlook clear signs of a disability when a student was moderately successful with interventions over approximately a two-year period. Bd. of Educ. of Fayette County, Ky. v. L.M., 478 F.3d at 307.

6. Petitioners argue that WCS violated child find by failing to assess J.M. for special education prior to 2017. WCS instituted accommodations for J.M. during the first grade. Ms. M. provided WCS J.M.'s ADHD diagnosis at the end of the first grade school year. During second grade, accommodations for J.M. continued and the 504 plan was put into place in March 2016. Although there were times that J.M. struggled, the second grade teacher considered J.M. to have had a successful year, and Ms. M. noted that her grades were good that year. With the accommodations in place and the academic progress that J.M. was making, WCS did not violate the child find provision by failing to do an evaluation prior to 2017.

September 2017 IEP Meeting

7. A student is eligible for special education and related services pursuant to the IDEA if she has an "other health impairment" and "who, by reason thereof needs special education and related services." 20 U.S.C. § 1401(3)(A). Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in a limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as...attention deficit disorder or attention deficit hyperactivity disorder...and adversely affects a child's educational performance. 34 C.F.R. §300.8 (c) (9).

8. Section 504 of the Rehabilitation Act of 1973 does not require school districts to provide an educational program that is individualized to meet the needs of a disabled child, nor provide a program for further education, employment and independent living, and does not include procedural safeguards that the IDEA contains such as prior written notice and the right to an independent educational evaluation.

9. Absent graduation from secondary school or exceeding the age eligibility, a school district shall evaluate a child with a disability, in accordance with § 1414, before determining that the child is no longer a child with a disability. 20 U.S.C. § 1414 (c) (5).

10. Written notice must be given by the school district to a parent if the school district proposes to or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 34 CFR §300.503.

11. A procedural violation of the IDEA constitutes a denial of FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f) (3) (E) (ii).

12. The IEP team that met in June 2017 agreed that based on teacher observations, Ms. Spies' evaluation and parent input that J.M. met the eligibility criteria for special education under Other Health Impairment. Ms. M. felt that the services offered at the meeting were of a behavioral nature and would not assist J. M. academically; she therefore requested additional testing. J. M. was tested by Currey Ingram over the summer and its report was provided to WCS. The Currey Ingram report determined that J.M. met the criteria for a diagnosis of ADHD and generalized anxiety disorder and, like the Spies report, no specific learning disability in math or reading was found. There was no proof presented at the hearing suggesting that the Currey Ingram report invalidated, was in contradiction to, or in any way called into question the findings of the Spies report.

13. The IEP team that met in September 2017 determined that J.M. was no longer eligible for special education services. The members of the IEP teams were essentially the same except for the general education teachers who had changed because of the new school year. The only explanation offered as to why J.M. was suddenly ineligible was that WCS believed that J.M.'s needs could continue to be met with a 504 plan. The only new information the IEP team had was the Currey Ingram report, J.M.'s initial 4th grade Star360 scores (which showed a decrease from the previous year) and the fourth grade classwork that had been completed prior to the September meeting (which was not much different from the prior year's work). There were no new evaluations done by WCS between June and September. Essentially, the information available to evaluate in September was very similar to what was available in June but, inexplicably, the eligibility decision in September reversed the June eligibility determination. WCS did not issue a PWN following the September 2017 meeting that documented its determination that J.M. was no longer eligible for special education services.

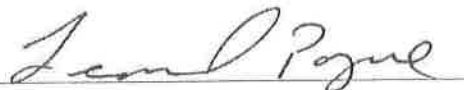
14. Having found that J.M. was eligible for special education services in June 2017, WCS had to comply with 20 U.S.C. § 1414 (c) (5) by evaluating J.M. if it were to decide that she was no longer a child with a disability. The only new information the IEP team possessed (the Currey Ingram report, J.M.'s initial 4th grade Star360 scores and the fourth grade classwork) was similar to what it knew in June and does not constitute a basis for WCS to make the determination in September 2017 that J.M. was no longer a child with a disability; thus WCS failed to comply with 20 U.S.C. § 1414 (c) (5). Further, WCS was required to give written notice of its decision pursuant to 34 CFR §300.503 and did not do so.

15. Instead of having an IEP, J.M. was accorded a 504 plan. As a result, J. M. no longer had available to her the goals, procedures, and protections of the IDEA which are quite distinctive from the 504 Act. The lack of written notice and improper evaluation are procedural and substantive violations that impeded J.M.'s right to a FAPE and caused a deprivation of educational benefit.

It is **Determined** that Respondent committed procedural and substantive violations of the IDEA by failing to determine that J.M. was still eligible for special education in September 2017, resulting in a denial of FAPE for the 2017-2018 school year.


It is **ORDERED** that Respondent again qualify J.M. as a student who is eligible for special education services under the category of Other Health Impairment and hold an IEP meeting within 30 days of this order, and provide compensatory education for the denial of FAPE for the 2017-2018 school year. Petitioners are the prevailing party in this matter.

Entered this the 4TH day of January, 2019.



LEONARD POGUE  
ADMINISTRATIVE JUDGE

4TH Filed in the Administrative Procedures Division, Office of the Secretary of State, this day of January, 2019.



Richard C. Collier, Director  
Administrative Procedures Division



IN THE MATTER OF:  
J.M., the Student, and Jm.M. and Je.M., the  
Student's Parents/Guardians, Petitioners  
vs. Wilson County Schools, Respondent

APD CASE No. 07.03-148080J

**NOTICE OF APPEAL PROCEDURES**

**REVIEW OF FINAL ORDER**

Attached is the Administrative Judge's decision in your case in front of the **Tennessee Department of Education**, called a Final Order, with an entry date of **January 4, 2019**. 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. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Final Order, which is **January 21, 2019**.

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 **March 5, 2019**. See TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may 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 **March 5, 2019** 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. 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.

**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 the APD within 7 days of the date of entry of the Final Order, which is no later than **January 11, 2019**. See TENN. CODE ANN. § 4-5-316.

**FILING**

To file documents with the Administrative Procedures Division, use this address:

Secretary of State  
Administrative Procedures Division  
William R. Snodgrass Tower  
312 Rosa L. Parks Avenue, 8<sup>th</sup> Floor  
Nashville, TN 37243-1102  
Fax: (615) 741-4472