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**Department of State**  
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RE: In the Matter of: [REDACTED], the Student, and [REDACTED], the Student's Parent, Petitioners  
vs. Sumner County Schools, Respondent.  
Docket Nos. 07.03-143383J and 07.03-144860

Enclosed is an Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

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

**IN THE MATTER OF:**

██████████, the Student, and ██████████,  
the Student's Parent,

**Petitioners,**

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)**Docket Nos. 07.03-143383J**  
)**07.03-144860J**  
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**v.**

**SUMNER COUNTY SCHOOLS,**

**Respondent.**

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**FINAL ORDER**

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These matters were consolidated for hearing and were heard on May 7, 2018 through May 9, 2018 in Gallatin, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Tennessee Secretary of State, Administrative Procedures Division. Attorneys Melinda Jacobs and Deanna Arivett represented the Respondent Sumner County Schools. Attorneys Michael Braun and Cheryl Cheffins represented ██████████ and ██████████ parents, ██████████ and ██████████

The undersigned received testimony over the course of three days and received into evidence 73 exhibits. The deliberative process was also aided by argument of counsel. All upon which, the following Findings of Fact and Conclusions of Law are determined based upon the evidence received and the record as a whole:

**FINDINGS OF FACT**

1. ██████████ is a ██████████ child with autism, mixed language disorder, both receptive and expressive. ██████████ suffers from various food allergies and a sleep disorder that is not otherwise specified. ██████████ is non-verbal.

2. [REDACTED] resides in Sumner County, Tennessee and Sumner County School System is [REDACTED] local education agency (“LEA”). [REDACTED] attended [REDACTED] at [REDACTED] in Portland, Tennessee.
3. [REDACTED] parents, [REDACTED] and [REDACTED] have been very active in the formulation and implementation of [REDACTED] Individualized Education Program (“IEP”).
4. During [REDACTED] school year, [REDACTED] was able to verbalized approximately 50 words and used a PECS book with illustrations as an alternative augmentative communication (“AAC”) device.
5. After [REDACTED], [REDACTED] parents noticed [REDACTED] communication skills were declining and they requested various testing by the LEA. [REDACTED] parents also becoming concerned about [REDACTED] increasing maladaptive behaviors.
6. Maladaptive behaviors limit one’s ability to access one’s environment and utilize tangible and intangible benefits available to them in their environment.
7. In the fall of 2015, [REDACTED] parents requested the LEA complete an Occupational Therapy (“OT”) evaluation and a functional behavioral assessment, (“FBA”).
8. At home, [REDACTED] began treatment with a Board Certified Behavioral Analyst (“BCBA”) paid by [REDACTED] parents' insurance company. The BCBA provided [REDACTED] Behavioral Analysis (“BA”) services to reduce and control maladaptive behaviors so [REDACTED] could access [REDACTED] environment.
9. In the fall of 2016, [REDACTED] started the [REDACTED] grade at [REDACTED]. During this time, the number and intensity of [REDACTED] maladaptive behaviors increased, including hitting, kicking, and biting staff and peers.

10. In the fall of 2016, [REDACTED] school psychologist requested through established channels that the LEA employ or contract with a BCBA to reduce and control [REDACTED] maladaptive behaviors in the school setting.

11. The LEA refused [REDACTED] BA services. At the time, the LEA only had one BCBA on staff. At the time of this hearing, the LEA had hired a second BCBA.

12. The LEA's testimony that it declined the BCBA referral because other modalities were attempted was not credible. Based on the evidence presented, there was a dispute between the special education staff and [REDACTED] school psychologist, and the LEA declined the request for a BCBA for that reason.

13. The parents and [REDACTED] treating BCBA offered to provide the insurance company paid BA services in the school setting. The LEA declined their offer.

14. In the spring of 2017, [REDACTED] behaviors resulted in the fracture of another student's bone.

15. During the 2016-2017 school year, the LEA recorded approximately 700 maladaptive behavioral issues by [REDACTED] at [REDACTED].

16. Instead of treating [REDACTED] maladaptive behaviors so it could provide [REDACTED] FAPE, the LEA chose to simply restrict [REDACTED] physical movement within the school. The LEA placed [REDACTED] in a controlled area within a comprehensive development classroom (CDC). The LEA further restricted [REDACTED] physical movement by placing [REDACTED] within the arch of a U-shaped desk pushed against the wall. This positioning restricted [REDACTED] movement and [REDACTED] interaction with [REDACTED] peers. The LEA located [REDACTED] in a position where [REDACTED] could not even view [REDACTED] peers.

17. The LEA's physical treatment of [REDACTED] referenced above, failed to educate [REDACTED] in the least restrictive environment.

18. ██████ maladaptive behaviors became so numerous and intense during the 2016-2017 school year, ██████ was unable to access the education provided by the LEA.

19. The LEA failed to provide ██████ FAPE during the 2016-2017 school year.

20. In March of 2017, there was an IEP meeting to change ██████ placement to ██████ ██████ in Gallatin, Tennessee (██████). Prior to the IEP meeting, LEA staff had decided to place ██████ in the even more restrictive environment of the Therapeutic Behavior – Comprehensive Development Classroom (TB-CDC room) at ██████.

21. The LEA’s pre-determination thwarted ██████ parents’ and ██████ advocate’s meaningful participation in his March 2017, IEP meeting.

22. ██████ parents visited the TB-CDC room at ██████. They described the building housing the TB-CDC as a “shack.” A portable building on R.T. Fisher’s campus housed the TB-CDC. The physical facility was not well kept and not comparable to the LEA’s regular educational facilities.

23. ██████ serves as Sumner County’s ██████ school. All students at ██████ must wear uniforms. Placement at ██████ would have required ██████ to wear a uniform. ██████ condition causes ██████ to have extreme reservations about ██████ clothing. ██████ normally will only wear sweat pants. ██████ students are not permitted to travel to or from the campus by means other than the LEA’s buses. ██████ parents always transported ██████ to school by personal car. ██████ had never ridden the school bus. The LEA expected ██████ to conform to these requirements at ██████.

24. There were no related activities such as music at ██████. There is no playground and the LEA does not permit outdoor activities on the campus.

25. ██████████ is not a comparable facility to where the LEA educates non-disabled children. The LEA's proposed placement of ██████████ at ██████████ was inappropriate.

26. When the IEP team decided to place ██████████ at ██████████, the parents filed the first due process complaint, which required ██████████ to "stay-put" at ██████████.

27. After the filing of this due process complaint, the LEA finally referred ██████████ to a BCBA contracted by the school system.

28. The LEA moved the TB-CDC program from ██████████ to an appropriate physical location at ██████████ (██████████) in Gallatin, Tennessee. ██████████ is one of the LEA's newer schools. At a subsequent IEP meeting, the LEA again proposed to place ██████████ in the relocated TB-CDC. The parents filed a second due process complaint in response.

29. On July 31, 2017, an different ALJ held a *Honig*<sup>1</sup> hearing and found that ██████████ maladaptive behaviors placed ██████████ and others at risk. The ALJ's order relieved the LEA of its "stay put" obligation and authorized ██████████ placement in the TB-CDC at ██████████ for 45 school days.

30. ██████████ maladaptive behaviors in the school setting escalated because the LEA previously failed to provide appropriate interventions such as BA services. ██████████ maladaptive behaviors were so extensive that the LEA could not provide ██████████ FAPE until ██████████ maladaptive behaviors were controlled. By seeking to place ██████████ in the TB-CDC at ██████████ during the 2017-2018 school year, the LEA decided to continue its policy of physically controlling ██████████ and not addressing ██████████ underlying maladaptive behaviors.

31. The LEA's proposed placement of ██████████ in the TB-CDC at ██████████ for the 2017-2018 school year would have again failed to provide ██████████ FAPE.

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<sup>1</sup> This hearing is so-named after the case of *Honig v. Doe*, 484 U.S. 305 (1988).

32. Prior to the commencement of the 2017-2018 school year, the parents placed [REDACTED] at [REDACTED] ([REDACTED]) in Nashville, Tennessee.
33. [REDACTED] is a tutorial program that serves the needs of home-school students.
34. [REDACTED] serves children in grades K through 12. The programming at [REDACTED] includes music therapy, academics using the Unique Learning System, adaptive physical education and social-emotional learning using the SCERTS curriculum.
35. [REDACTED] teacher at [REDACTED] is not a certified teacher but has a master's degree in speech-language pathology.
36. [REDACTED] allows outside providers to work with students during the school day.
37. [REDACTED] insurance paid BCBA has collaborated with [REDACTED] staff in recommending strategies for working with [REDACTED]
38. While at [REDACTED], [REDACTED] maladaptive behaviors have decreased and [REDACTED] has received appropriate educational benefit with [REDACTED] peers from [REDACTED] during the 2017-2018 school year.
39. The record shows, by a preponderance of the evidence, that [REDACTED] parents acted appropriately in removing [REDACTED] from the LEA and placing [REDACTED] at [REDACTED] during the 2017-2018.
40. [REDACTED] parents are entitled to reimbursement for the cost of [REDACTED] education during the 2017-2018 school year.

#### **CONCLUSIONS OF LAW**

1. The Petitioners bear the burden of proof in this case by a preponderance of the evidence. Tenn. Comp. R. & Regs. 1360-4-1-.02(7).
2. The purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services

designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C. § 1400 (d) (1).

3. In adopting the IDEA, Congress found that educating special needs children requires “incentives for whole-school approaches, scientifically based early reading programs, **positive behavioral interventions and supports**, and early intervening services to reduce the need to label children as disabled in order to address the learning and **behavioral needs** of such children.” 20 U.S.C. § 1400 (a) (c) (2) (F). (emphasis added).

4. The IDEA requires states to provide disabled children a free appropriate public education (FAPE). 20 U.S.C. §1412 (a). An LEA provides FAPE when it provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate grade levels used in the State's regular education, and must comport with the child's IEP, as formulated in accordance with the Act's requirements. If the child is being educated in regular classrooms, as here, the IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Board of Education vs. Rowley, 458 U.S. 176, 177 (1982).

5. “To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412 (a) (5) (A).



6. “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 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 a free appropriate public education available to the child in a timely manner prior to that enrollment.” 20 U.S.C. 1423 (a) (10) (C).

### DISCUSSION

The record shows, by a preponderance of the evidence, that if the LEA had provided [REDACTED] appropriate behavioral interventions, [REDACTED] maladaptive behaviors could have been reduced and/or controlled. [REDACTED] parents were not speculating when they requested the LEA provide [REDACTED] BA services. At that point, [REDACTED] was receiving BA services in the home setting and [REDACTED] BCBA advised [REDACTED] parents of the need for BA services in the classroom. The record is not clear why the LEA declined the request for BA services, but there is sufficient proof that the LEA did not deny the request based on [REDACTED] educational needs. The need for BA services during this time is further bolstered by the fact that since [REDACTED] has attended [REDACTED] BA services and other interventions have significantly decreased [REDACTED] maladaptive behaviors and [REDACTED] is able to interact with [REDACTED] peers.

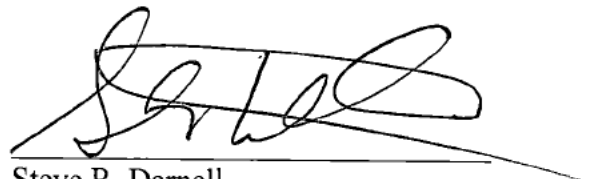
The LEA’s unwillingness to provide appropriate behavioral interventions caused [REDACTED] behaviors to escalate to the point that [REDACTED] was unable to benefit from the educational services the LEA offered. Unfortunately, the LEA reverted to a default position of restricting [REDACTED] movement rather than addressing the underlying maladaptive behaviors. At the beginning of the 2018-2019 school year, [REDACTED] can be placed in the TB-CDC at [REDACTED] long enough for the LEA to

secure a FBA and appropriate behavioral interventions implemented designed to move [REDACTED] to a less restrictive environment with [REDACTED] peers. The LEA cannot demonstrate that the TB-CDC is the appropriate long-term placement for [REDACTED] until it has attempted appropriate behavioral interventions with [REDACTED] without success.

**ORDER**

**IT IS THEREFORE ORDERED** that Respondent is obligated to reimburse the Petitioners for the expenses incurred on behalf of [REDACTED] for [REDACTED] placement at [REDACTED] for the 2017-2018 school year.

Entered and effective this the 28<sup>th</sup> day of June, 2018.



Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 28<sup>th</sup> day of June 2018.



J. Richard Collier, Director  
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.