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[REDACTED]

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[REDACTED]

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[REDACTED]

Chattanooga, TN 37402

**RE: D.S., THE STUDENT, AND E.S. AND R.S., THE PARENTS V. KNOX COUNTY SCHOOLS, APD Case No. [REDACTED]**

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

Administrative Procedures Division  
Tennessee Department of State

cc: Scott Indermuehle, Senior IDEA Complaints Investigator, TN Department of Education

/aem

Enclosure(s)

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

**IN THE MATTER OF:**

**D.S. THE STUDENT,  
E.S. THE PARENT,  
*Petitioner,***

**v.**

**KNOX COUNTY SCHOOLS,  
*Respondent.***

APD Case No. [REDACTED]

**FINAL ORDER**

This matter was heard on [REDACTED] before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of the State, Administrative Procedures Division pursuant to Tenn. Code. Ann. § 49-10-606 and Tenn. Regs. and Rules 520-1-9-.18. Attorney [REDACTED], Deputy Law Director with the Knox County Law Director's Office represented Respondent, Knox County Schools (KCS). Attorneys [REDACTED] and [REDACTED] represented Petitioners, D.S. and her parent E.S. Petitioners are collectively referred to as D.S. herein or as D.S.'s advocates.

**ISSUES FOR DETERMINATION**

1. Did KCS comply with the procedural safeguards of the IDEA?
2. Did KCS fail to develop an IEP that would provide D.S. with FAPE in the LRE?
3. Are Petitioners entitled to reimbursement for D.S.'s unilateral private school placement?

**SUMMARY OF DETERMINATION**

It is **DETERMINED** that Petitioner has shown, by a preponderance of the evidence, that KCS failed to comply with the procedural safeguards of the IDEA by predetermining D.S.'s placement and failing to provide D.S.'s advocates necessary information to allow them meaningful participation in developing her IEP. KCS's determination to remove D.S. from the

regular education classroom and provide her special education instruction in a special education classroom failed to provide D.S. FAPE in the least restrictive environment. D.S.'s parents were justified in enrolling D.S. in a private school that provided D.S. an appropriate education under the IDEA and are entitled to reimbursement for their costs. This determination is based upon the following Findings of Fact and Conclusions of Law.

### **I. FINDINGS OF FACT**

1. D.S. lives in Knox County, Tennessee with her parents and [REDACTED] non-disabled younger siblings.
2. D.S. is a [REDACTED] female child with [REDACTED]. Knox County Schools (KCS) is D.S.'s Local Educational Agency (LEA).
3. D.S. is an eligible student under the IDEA with an educational disability of developmental delay. It is undisputed that D.S. has significant skill deficits both academically and from a pre-vocational and social emotional standpoint.
4. D.S. has attended KCS for [REDACTED] since [REDACTED]. D.S.'s zoned elementary school is [REDACTED] Elementary School. KCS offers several preschool education programs including one at [REDACTED] that was appropriate for D.S.
5. D.S.'s mother enrolled her in the [REDACTED] process when she turned [REDACTED] years old and became eligible. During the [REDACTED]-year, D.S. attended a 50/50 "blended" program (at least 50% of peers are non-disabled) for two days per week, increasing to three days per week halfway through. In the [REDACTED] school year, D.S. attended a blended program four days per week. For the [REDACTED] school year, D.S. attended a co-taught [REDACTED] classroom for 5.25 hours a day, 5 days a week at [REDACTED]. Due to the make-up of the students, the co-taught [REDACTED] classroom is deemed by KCS to be a regular education setting.

6. [REDACTED] uses a research based early childhood program called Connect 4 Learning..

7. Connect 4 Learning has strong early literacy and science components but focuses on assisting students in developing pre-vocational skills such as pre-writing, fine motor skills, teamwork, socializing, attending to a lesson through child-driven play-based instruction. Child driven means that each student leads their own learning with minimal time spent in teacher driven instruction.

8. [REDACTED], a special education teacher and [REDACTED] a regular education teacher staffed D.S.'s co-taught classroom. [REDACTED] was responsible for 8-10 special education students (depending on the day) and [REDACTED] was responsible for 19-20 typically developing peers.

9. [REDACTED] has a bachelor's degree in science from Milligan College. She is also certified by the Tennessee Department of Education to teach regular education students kindergarten through 6<sup>th</sup> grade, prekindergarten through 3<sup>rd</sup> grade, and special education students prekindergarten through 3<sup>rd</sup> grade.

10. [REDACTED] had just over a year of teaching experience at the time D.S. was in her class. At the time of the hearing, [REDACTED] (1) had never taught [REDACTED] herself; (2) had never actually taught a student with [REDACTED] before D.S.; (3) had not been provided any training specific to [REDACTED] by KCS; (4) did not have an understanding of any studies addressing the benefits of regular education classrooms over separate special education classrooms; and (5) she had never actually seen a child with [REDACTED] fully included in [REDACTED].

11. At all times relevant hereto, [REDACTED] operated under the mistaken belief that "least restrictive environment" (LRE) as used by the IDEA meant the environment with the least

amount of supports for a child. She came to understand LRE's correct meaning during this due process procedure.

12. [REDACTED] has a bachelor's degree in early childhood education. She is certified by the Tennessee Department of Education to teach regular education students prekindergarten through 3<sup>rd</sup> grade. She has taught preschool for eight years. The first four years were spent in a typical regular education preschool classroom in Hamble County, Tennessee and the remaining four years have been in the co-taught preschool program at [REDACTED].

13. Neither teacher has received training specific to [REDACTED], but both receive yearly training on a variety of topics including educating students with disabilities, classroom management, special education regulations, and specific curriculum.

14. In addition to two teachers, the classroom was staffed by two to three teaching assistants and frequently has extra support from speech language and occupational therapy staff who pushed into the preschool program to provide services.

15. The classroom has imbedded supports for students including visual supports, OT fidgets, specialized seating and related strategies that are part of the curriculum. KCS altered the classroom light because it was too distracting for D.S.

16. D.S. was well-liked by other students in the co-taught classroom. She smiled when they came near, she played with them, and they with her, and they occasionally held hands during peer model assistance. [REDACTED] described D.S. as "a kind, and sweet, and well-behaved child in [the] classroom."

17. D.S. had no behavioral challenges that would prohibit her from being in a regular education classroom.

18. [REDACTED] had a good and cooperative working relationship with D.S.'s mother.

Digital correspondence between [REDACTED] and D.S.'s mother through "Remind App"

reflects a positive relationship existed.

19. [REDACTED] believed that D.S. knew more than she could actually express, however, the only assistive technology KCS provided D.S. was an obsolete “GoTalk” device and an attempt at using an iPad. KCS never undertook an Assistive Technology evaluation for D.S.

20. Neither a functional behavioral assessment (FBA) or behavior intervention plan (BIP) was performed or developed for D.S. because her teachers managed any misbehaviors through IEP goals and accommodations in the classroom.

21. D.S.’s annual IEP is due in mid to late [REDACTED] of each year. The IEP team met on [REDACTED] to develop an annual IEP for D.S. All parties agreed to that IEP and noted that D.S. had failed to meet half of her IEP goals from the prior year and developed new goals in the areas of communication social/emotional behavior, pre-vocational, and adaptive behavior.

22. The [REDACTED] IEP included the following five goals:

- a. A communication goal requiring D.S. to increase her expressive vocabulary by labeling common objects, pictures, people and actions and will be using to use this vocabulary in 2-word phrases 5 times per day across 3 data collection days.
- b. Given faded prompting, modeling and supports, D.S. will manage her body appropriately (examples: feet on the floor, head up, eyes on the speaker or subject) in a learning situation with one to two peers for five minutes once per day across four data days.
- c. Given faded modeling, adaptive tools, and hand over hand assistance as needed, D.S. will use a functional fingertip grasp to imitate pre-writing strokes two times per day across four data days.
- d. Given faded modeling, wait time, and support, D.S. will transition independently during her daily routines in 75% of opportunities per day across four data days.
- e. Given faded modeling and prompting, D.S. will independently manage self-care opportunities such as toileting, managing belongings, and self-advocating needs five times per day across four data days.

23. [REDACTED] collected data on D.S.'s progress towards her IEP goals. KCS did not provide [REDACTED] any training on how to collect data on whether a child was progressing toward IEP goals except a one-day regular training that had some data training in it. [REDACTED] was unable to recall anything from that training.

24. [REDACTED] created her own system of data collection using Google Forms. For each goal, [REDACTED] created a spread sheet and noted whether goal tasks required no prompting, partial prompting, or full prompts to complete the tasks.

25. No Prompting (+) meant no further physical, verbal or visual prompts beyond the 2-3 already embedded in the program (such as the visual schedule, the bell to signal a table change, and a prompt from the teacher. Partial Prompting (PP) meant several more verbal prompts, gestures, and maybe minor physical direction such as a pat on the back, or hand on the elbow to encourage movement. A Full Prompt (-) meant that the teacher had to physically place her hand over D.S.'s and do the activity/component with D.S.

26. At a minimum, [REDACTED] collected and recorded this data twice per week.

27. [REDACTED] summarized and transferred her data to formal Progress Reports utilizing a rating scale to assess D.S.'s progress towards her IEP goals. [REDACTED] completed these Progress Reports every 4 ½ weeks of the school year. Without considering summer school time, there were a total of eight Progress Reports in the [REDACTED] school year.

28. These Progress Reports themselves utilize a state-wide rating scale of 4, 5, or 6 for each goal, a "4" indicating the student has met that IEP goal; a "5" indicating the student is expected to meet that goal by the calendar year end; and a "6" indicating the student is not expected to meet that goal by the calendar year end.

29. Progress Reporting Period No. 2 represented the beginning of D.S.'s [REDACTED] IEP goals with [REDACTED] [REDACTED] gave D.S. a score of "5"—meaning that she was

expected to meet IEP goals by the annual IEP's calendar year end in [REDACTED] of [REDACTED]—on every single Progress Report thereafter. A narrative accompanied the Progress Reports and it gave further information on D.S.'s progress towards her goals.

30. [REDACTED] also provided a detailed narrative with each Progress Report. For example, for Goal 4—regarding the pre-vocational skill of transitioning—during each relevant reporting period, [REDACTED] stated that D.S. was only meeting expectations 36%, 29%, 20.78%, 45%, 40% and 20% of the time, when the goal called for D.S. to meet the expectation 75% of the time. Likewise, for Goal 2—regarding the social/emotional skill of attending to a learning activity—during each relevant reporting period, [REDACTED] stated that D.S. was able to attend to a learning activity for 1 minute, 3 minutes, 2.5 minutes, and 50 seconds at a time versus a desired attending time of 5 consecutive minutes.

31. [REDACTED] observations and data indicated that D.S. struggled with “transitions.” [REDACTED] collected extensive data on this issue, including breaking down the types of transitions D.S. participated in during the school day. Transitions could be from either when D.S. changed her physical location (e.g. classroom to bathroom) or changed from activity to activity. Transitions could result in D.S.'s avoidant behavior or a complete shut down by D.S. (sitting and hiding to avoid the next activity) resulting in a significant delay in D.S.'s education as well as requiring intervention from staff members. These transition struggles were more prominent for D.S. when it was a transition to a “non-preferred” activity, but those were assisted by using things like peer modeling, snacks, or toys to help motivate D.S.

32. D.S. also had difficulty participating in staff presented lessons. D.S. was occasionally capable of being engaged in a self-chosen task, such as going to the

Comment [SD1]:



playground or puppets but when directed by a teacher to do a task like match colors, or shapes, or work on letter recognition D.S. did not participate in the activity. D.S.'s IEP addressed this particular area of need with a goal of D.S. being able to attend to a small group activity for up to 5 minutes.

33. ██████████ concluded from her data (the 8 formal IEP Progress Reports) that D.S. was progressing, albeit at a slower but steady pace, across all goals in her ██████████ IEP and was expected to meet all of her goals in the regular education environment.

34. Valid data collection is necessary when selecting a student's placement. Using invalid data can lead to inappropriate placement of a child. Collecting valid data requires the use of "task analysis" to break down the task into discrete steps. KCS's data collection of D.S.'s progressions towards her IEP goals included too many elements and/or task to render the data fully reliable by others. KCS staff relied on ██████████ questionable data in making their decisions that D.S. required pull-out time to a special education room.<sup>1</sup>

35. During the ██████████ school year, D.S. required extensive support from the ██████████ staff. She required visual supports created for every single task in the classroom, special seating, special timing devices, classroom breaks, task break down, special seating and a heavy level of prompting for all level of tasks. Unlike other students, including other students with disabilities, D.S. was unable to complete tasks independently. She required adult assistance with all tasks from opening her backpack and getting out a folder, washing her hands, to stacking blocks. This included hand over hand assistance for simple pre-vocational tasks such as rolling a large (color coded die)

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<sup>1</sup> ██████████ "reliance" on the data is unique from other KCS staff. Not only did she collect the data, but she also had personal observations and interaction with D.S. that influenced her thought process. Other KCS staff did not have this experience. They were required to rely solely on the data.

and placing stickers.

36. D.S. had difficulty self-regulating in the classroom at times and would become overwhelmed by the presence of the other students. She did best in small group instruction but was distracted by all the other events happening in the room at the same time. At times, D.S. would not play with or participate in small group activities with other students.

37. D.S. was still being potty-trained and struggled with self-care tasks like bath-rooming, hand washing, and keeping track of her belongings in the classroom.

38. D.S. has difficulty coping with disable children who exhibit behavioral challenges. D.S.'s mother teaches Sunday School in the "Buddy Room" which is composed of autistic children. She has observed that loud shrieking, outbursts, and unpredictable fits sometimes exhibited by autistic children frighten D.S. and cause her to shut down.

39. In order to prepare D.S. for [REDACTED], staff began reducing their level of physical prompting for D.S. in the classroom towards the end of the [REDACTED] year. This resulted in a temporary increase in negative behaviors until good balance of prompting was determined.

40. At the end of the [REDACTED] school year, KCS began planning what is called a "bump up" meeting. A bump up meeting is an IEP team meeting that is held when a student is about to transition to a different grade level, in this case the transition for [REDACTED] to [REDACTED]. KCS invited D.S.'s parents, staff from her future school, and other KCS staff with knowledge of all the program options.

41. The transition from [REDACTED] to [REDACTED] is of particular importance because it is where all the pre-vocational skills a student has will be necessary to access the [REDACTED] curriculum. The [REDACTED] curriculum is directed by the Tennessee Department of Education standards of education. It changes from a largely play based program of [REDACTED] to a teacher

directed academic program. [REDACTED] teachers must teach certain standards and topics in specific order and assist students in meeting those standards in the allotted time frame.

42. On [REDACTED], KCS cancelled a scheduled IEP meeting about an hour before it was to begin when it learned D.S.'s mother was bringing an education advocate. The IEP meeting was rescheduled to [REDACTED]. D.S.'s mother cancelled this IEP meeting when she learned KCS would have legal counsel and staff from [REDACTED] Elementary School in attendance.

43. The IEP team finally met on [REDACTED], and again on [REDACTED]. Several of D.S.'s current teachers and anticipated future teachers from [REDACTED] Elementary School attended this meeting. In addition, [REDACTED] principal, two KCS special education supervisors, a speech pathologist, an occupational therapist, D.S.'s mother, D.S.'s family advocate, D.S.'s family attorney, and KCS's attorney were also in attendance.

44. The IEP team met for several hours on both days. The IEP team discussed each area of the IEP including a detailed discussion of D.S.'s mother's concerns, D.S.'s present levels, the progress she made during the past school year, D.S.'s goals, and accommodations D.S. would need to further progress. The team agreed to add goals and increase the difficulty of already proposed goals in order to encourage ambitious progress for D.S.

45. KCS staff reviewed D.S.'s [REDACTED] progress, [REDACTED] classroom data, and observed her in the classroom setting prior to the IEP meetings. D.S.'s mother was not made aware of these personal observations of D.S. Based upon its evaluation of D.S., KCS determined that D.S. required "pull out" instruction to a special education room so she could receive "explicit instruction" and "direct instruction" in a "smaller environment" that was less "stimulating."

46. KCS staff was aware that this would be the recommendation of D.S.'s current and

proposed future teaching staff at the IEP meetings. KCS never considered placing D.S. in a regular education [REDACTED] classroom for the entirety of the school day.

47. The record shows, by a preponderance of the evidence, that KCS through its staff predetermined that D.S. would be provided special education instruction by removing her from the regular education classroom and placing her in a special education classroom.

48. At the IEP meetings, KCS proposed that D.S. be placed in a regular education classroom for 4.5 hours (64%) of the school day. D.S. would have a paraprofessional aide 3.5 hours of this time providing one-to-one assistance. KCS also proposed that a special education teacher “push-in” to D.S.’s regular education classroom for 30 minutes of math and 30 minutes of English language each day.

49. KCS proposed that D.S. be removed to a special education classroom for 2.5 hours of the day (36%). KCS proposed this pull-out time to allow a special education teacher to provide D.S. with direct instruction, in the regular education curriculum, at a slower pace, in a calmer environment with less students allowing for greater repetition of the subject matter and more explicit task break down than it believed could be done in the regular education classroom. During those 2.5 hours, D.S. would be pulled for English language, math, and 30 minutes each of intense instruction adaptive behavior and pre-vocational skills.

50. KCS believed that it would be difficult for the regular education teacher to instruct D.S. and the non-disabled students for the full day. This would lead to the paraprofessional providing most of D.S.’s instruction and not the teacher. This would also lead to D.S. becoming more dependent on the paraprofessional and a reliance on adult assistance rather than increasing D.S.’s independence. KCS also believed that placing a special education teacher in the classroom for the entire day would not alleviate the need for pull-out instruction due to D.S. distractibility, sensitivity issues, and issues with internal transitions in large groups.

51. At the time of the IEP meetings, KCS did not know how many students would actually be in the proposed special education room, the types of behaviors or disabilities of the other children, the ages of the other children, the curriculum to be used, or where in relationship to the regular education classroom the proposed special education classroom would be in order to determine how long it would take D.S. to go between the different classrooms. None of this information would be available until the beginning of the school year.

52. At [REDACTED], new kindergarten students attend staggered days for the first two weeks of school rotating between the different [REDACTED] teachers. Each [REDACTED] teacher then collects data on each student in different skill areas such as reading, writing, math, social skills, etc. This data is then turned into a spread sheet that administration uses to create [REDACTED] classes that are heterogenous with a variety of different skill levels in each classroom. This process is the same for all students, with or without disabilities. Likewise, during this time, the special education teachers are collecting data, analyzing prior IEPs and looking at all of their special education students and areas of need and creating groups.

53. KCS could not confirm the number of physical transitions D.S. would have each day between the proposed classes because schedules were not yet prepared. Based on the number of subjects to be taught in the special education classroom, D.S. would likely have eight or more transitions each day. These transitions would be in addition to typical transitions in a regular education class such as to and from recess, encore, lunch, dismissal, etc.

54. The record shows, by a preponderance of the evidence, that this foregoing lack of information prohibited D.S.'s mother and advocates from having meaningful

participation in developing D.S.'s IEP.

55. D.S.'s advocates proposed that she be placed in a regular education classroom for the entirety of the day. D.S.'s advocates believe it is necessary for D.S. to learn proper social skills by modeling non-disabled peers. D.S.'s advocates also sought no pull-out services in order to minimize her "transitions" and maximize her mainstreaming with non-disabled peers.

56. D.S.'s advocates proposed a co-taught type classroom similar to D.S.'s [REDACTED] classroom. This classroom would feature a one-to-one paraprofessional and a break area or alternative workspace for D.S. to utilize if she became overwhelmed. Special education instruction could be "pushed in" to the regular education classroom by special education teachers.

57. When KCS and D.S.'s family could not reach an agreement on D.S.'s placement, KCS sent D.S.'s parents a Prior Written Notice that D.S. would be placed in a separate special education classroom for 2.5 hours of her kindergarten school day.

58. Upon learning of KCS's decision, D.S.'s parents removed D.S. from KCS schools, enrolled D.S. in a private [REDACTED] school and filed this due process proceeding.

59. The method of educating [REDACTED] children has changed over the years. In the early 1980s, when children were first being included, the primary model was a "repair" model whereby educators believed they needed to focus on the child's deficits and then return them to the regular education setting. This "fix it," or "repair model," proved unsuccessful because [REDACTED] cannot be "fixed"—it is permanent, and to some degree, these children will struggle their whole lives.

60. In the late 1980s and early 1990s, educators gravitated to a "functional" approach where children were taught mostly *functional* skills—how to use the bathroom, cross a

street, dress themselves, but not much about academics. That thinking changed, too, in the late 1990s and early 2000s with the “social integration” model. Under this model, schools began delivering education in partially segregated environments, often delivering the academics in a separate classroom and “specials” like recess, music, and lunch in the regular education setting. This, too, turned out to be inaccurate because those environments like recess and lunch are the most difficult for integration because they are the least predictable.

61. The current best practices for inclusion are consistent with the IDEA: keep children in their regular education classrooms, deliver supports to them in that environment, and only remove them if one cannot educate the child in the regular education setting. This is also consistent with the research on outcomes of children with [REDACTED]—being included in regular classrooms results in superior outcomes to segregated environments, up to 2.5 years advancement in language and 3.5 years in literacy.

62. D.S.’s IEP goals included communication, academic readiness<sup>1</sup>, academic readiness<sup>2</sup>, Pre-vocational<sup>1</sup>, Pre-vocational<sup>2</sup>, Adaptive behavior, Social emotional behavior, and academic readiness<sup>3</sup>. Each of these goals individually and all the goals cumulatively, could be taught to and performed by D.S. in the regular education classroom with the one-to-one aide and accommodations listed in the proposed IEP.

63. There was no need to remove D.S. to a special education classroom for either “direct instruction” or “explicit instruction.” Regular education [REDACTED] classrooms teach through these methods already. This is also true with pre-teaching and re-teaching; these can be delivered in regular education kindergarten, including assistance from the one-to-one aide.

64. It is not necessary to remove D.S. to a special education classroom to received small group instruction. Regular education kindergarten classes use both large group and small group instruction. At times, small group instruction may be more beneficial than large group and vice versa. It is not necessary to remove D.S. to a separate special education classroom with a different teacher and peer group to provide her small group instructions since small group instruction is already available in the regular education classroom.

65. D.S. may require a smaller space at times. Her proposed IEP provided for an “alternative workspace” in the regular education classroom that can meet this need.

66. D.S. does not have to be removed from the regular education setting to benefit from KCS’s “learning to learn” concept. This concept can begin in the regular education setting. Additionally, there are various educational modalities designed for children with [REDACTED]. These include the literacy program SPIRE that can be taught completely in the regular education setting.

67. Children with [REDACTED], like D.S., have [REDACTED] and they learn by watching and interacting with non-disabled peers. KCS philosophy of placing disabled children who have the same challenges in the same classroom at the same time inhibits this learning modality.

68. Removing D.S. daily to a special education classroom likely adds eight and perhaps more physical transitions to those transitions that already exist in [REDACTED]. These additional transitions are difficult for D.S. in themselves, but also results in a loss of educational time as D.S. moves between two separate learning environments eight or more additional times daily. These transitions add up to approximately two weeks of lost educational time, using the estimates of adults transitioning between the classes, not



D.S.'s.

69. These transitions also disrupt the flow of educational instruction such as the scientifically based English language program.

70. Removing D.S. from the regular education classroom multiple times a day affects how D.S. and the other students view her. She will not consider herself as a part of the regular education classroom and her regular education classmates will likely view her as a visitor and not a real part of the classroom community.

71. A full-time co-taught classroom/arrangement is appropriate for D.S. because it offers the expertise of the regular education and special education teachers together or, alternatively, a regular education teacher with a one-to-one aide.

72. The record shows, by a preponderance of the evidence, that KCS proposed an individualized education program (IEP) for D.S. that would not provide D.S. FAPE in the least restrictive environment.

73. D.S.'s parents enrolled D.S. in [REDACTED] School ([REDACTED]) in Knoxville. It was chosen because it allowed D.S. to be with non-disabled peers full time. This setting also eliminated D.S.'s transitions between classrooms and transitions between different peer environments. D.S.'s family paid for a one-to-one aide for her at [REDACTED] along with speech language and ABA therapy.

74. D.S.'s classroom at [REDACTED] is regular education and D.S. is the only child with a disability. Each child receives an individualized lesson plan based on the [REDACTED] method, a method of instruction that was originally created for children with special needs.

75. D.S.'s teacher at [REDACTED], [REDACTED], prepared for D.S. by reading a book on teaching children with [REDACTED]. She is assisted by a co-teacher along with the

one-to-one aide. D.S., as with all students, began with Practical Life and Sensorial lessons, and then progressed to higher skills.

76. D.S. is exposed to the same classroom as the other students, attending Monday, Wednesday, Friday from 8:15 to 2:45, and Tuesday, Thursday, from 7:30-12:30, then being released for therapies.

77. After the first week of adjustments, D.S. never engaged in any misbehaviors at [REDACTED]. She is currently working on math and science, along with sciences and other studies including geography, history, and language. She is working a lot in the area of language to acquire all of the sounds. The teaching method includes both whole group and small group.

78. [REDACTED] is very pleased with D.S.'s progress so far this school year and has found that D.S. "finds a lot of joy and fulfillment in her work with materials," which has promoted independence in D.S. D.S. has been accepted by her non-disabled peers and contributes to their educational experience.

79. Socially, when D.S. leaves early on the days she has afternoon therapies, the other children all tell her goodbye and give her hugs, which D.S. reciprocates with her peers. D.S. has modeled the behavior of the other children. For example, D.S. has learned to push others on the swings which she learned to do by peer modeling. She has made friends and is labeled a "best friend" by one of her peers.

80. Since D.S. was always with her non-disabled peers, there are no physical classroom transitions or different peer group transitions to contend with. D.S. does have transitions within the classroom (i.e. from different activities or "work cycles") to outside the classroom (i.e. going to recess or coming to lunch), but her peer group does not change during these transitions and she is able to model her peers.

81. These transitions are handled by consistency in routine with the children always knowing what to expect and with the use of many verbal and visual cues. After the first week, D.S. understood what to expect and adopted the routines such that transitions have not been an issue for her or her teachers.

82. [REDACTED] program is appropriate for D.S.'s learning profile because (a) the curriculum is sequential which is good for D.S.; (b) there is preteaching before the lesson so it is not learned incorrectly; (c) it is organized; and (d) the [REDACTED] teaching method was first developed for children with intellectual disabilities.

83. [REDACTED] environment was correct for D.S., D.S.'s teacher provided proper instruction to D.S., and the lessons were appropriately targeted to D.S. Additionally, [REDACTED] eliminated the need for transitions because it does not require any transitions between two physical classrooms or between different peer groups.

84. D.S.'s [REDACTED] aide is skilled and highly skilled in behavior management.

85. The level of academic rigor at [REDACTED] was highly appropriate for D.S. D.S. program at [REDACTED] was organized and controlled despite the size of the group.

86. Tuition and fees for [REDACTED] School are \$ [REDACTED].00 per year.

87. The record shows, by a preponderance of the evidence, that D.S. made academic progress at [REDACTED] and the [REDACTED] program provided her with the educational services she requires that would be provided under the IDEA.

## **II. CONCLUSIONS OF LAW**

### **A. THE FAPE CLAIMS**

Petitioners' denial of FAPE claim involves three related contentions to be considered cumulatively: (1) the IEP was *predetermined* to remove D.S. from the regular education classroom for 2.5 hours per day; (2) not enough information about this separate

classroom was given to the parents' side to satisfy "meaningful parental participation," as defined by *Andrew F.*; and (3) a separate classroom every day is harmful because it would require *increased* daily transitions (up to 8 per day), contrary to D.S.'s well known need to avoid unnecessary transitions.

### **1. Predetermination**

"Pre-deciding," or "not having open minds," has been held to be both a procedural and substantive violation of FAPE. In *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840 (6<sup>th</sup> Cir. 2005), the LEA would not offer a child with autism the service of Applied Behavioral Analysis. The "School System had an unofficial policy of refusing to provide one-on-one ABA programs and ... thus did not have open minds and were not willing to consider the provision of such a program." *Deal*, at 858. This violated the IDEA:

This predetermination amounted to a procedural violation of the IDEA. Because it effectively deprived Zachary's parents of meaningful participation in the IEP process, the predetermination caused substantive harm and therefore deprived Zachary of a FAPE. *Id.* at 857.

Here, in a similar though not identical vein, the 2.5 hours in a separate classroom was formulated by [REDACTED] *prior to the IEP meeting*. Additionally, personnel and administration from [REDACTED] Elementary visited to observe D.S. in her [REDACTED] classroom prior to the [REDACTED] IEP team meeting, with no notice to the parents. After these observations, KCS abruptly cancelled the [REDACTED] IEP meeting. Moreover, [REDACTED] attempted to support the predetermined proposal by gathering additional transition "data" she took from a period of three weeks following the cancelled [REDACTED] IEP meeting, the same time frame during which KCS had reduced (or removed) D.S.'s verbal and physical prompting that assists her with transitions. Once the

IEP meeting was rescheduled for [REDACTED], KCS staff on the IEP team steadfastly *refused* to alter that 2.5 hours in a separate classroom, or to even consider alternative arrangements that would avoid a separate classroom. In fact, a co-taught arrangement was not brought to the table for parental consideration, nor were D.S.'s prior year of consistently good progress reports considered, nor was KCS willing to discuss lesser restrictive alternatives than removal from regular education. This is sufficient to support a finding of predetermination by KCS.

## **2. Denial of Meaningful Participation**

“A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Andrew, at. Andrew F. v. Douglas Cnty. Sch. Dist. Re-1*, 137 S. Ct. 988, 1001-02 (2017). KCS was unable to provide D.S.'s advocate information concerning the number of additional transitions each day, location of the proposed special education classroom, the student make up of the proposed special education classroom, etc. Without this information, D.S.'s advocates could not give meaningful consideration to the proposal.

Similarly, KCS steadfast refusal to consider opportunities for D.S.'s inclusion denied her advocates meaningful participation in the IEP process. The parent's opinion matters, too, as the parent is an expert on her child. *L.H. v. Hamilton Cty. Dep't of Educ.*, 900 F.3d 779, 794 (6th Cir. 2018). However, there is no indication that adjustments were considered to allow more inclusion time, whether through co-teaching, an aide, or otherwise.

### 3. More Transitions Are Harmful

KCS' proposal of two classrooms, including the separate classroom, served to create more transitions for D.S. in addition to those already experienced by [REDACTED]. KCS's proposal required D.S. to go in and out of her regular education classroom eight times per day and potentially more. KCS's proposal would have increased a known impediment to D.S.'s education rather than relieving it. D.S.'s IEP should alleviate impediments to her education, not exacerbate them. KCS's proposed IEP with these additional transitions failed to provide D.S. with an *appropriate* education.

#### B. Petitioners' LRE Claims

The Sixth Circuit's decision in *L.H. v. Hamilton Cty. Dep't of Educ.*, 900 F.3d 779 (6th Cir. 2018) is the dispositive law for this case. In *L.H.*, the Sixth Circuit set forth the legal framework for assessing the least restrictive environment (LRE). It provided important reminders. First, the LRE is not a decision about educational "methodology" and, therefore, it does not require school district expertise. Second, "a placement which may be considered better for academic reasons may not be appropriate because of the failure to provide for mainstreaming. *Id.* at 789.

The LRE determination begins with a strong Congressional presumption in favor of less restrictions:

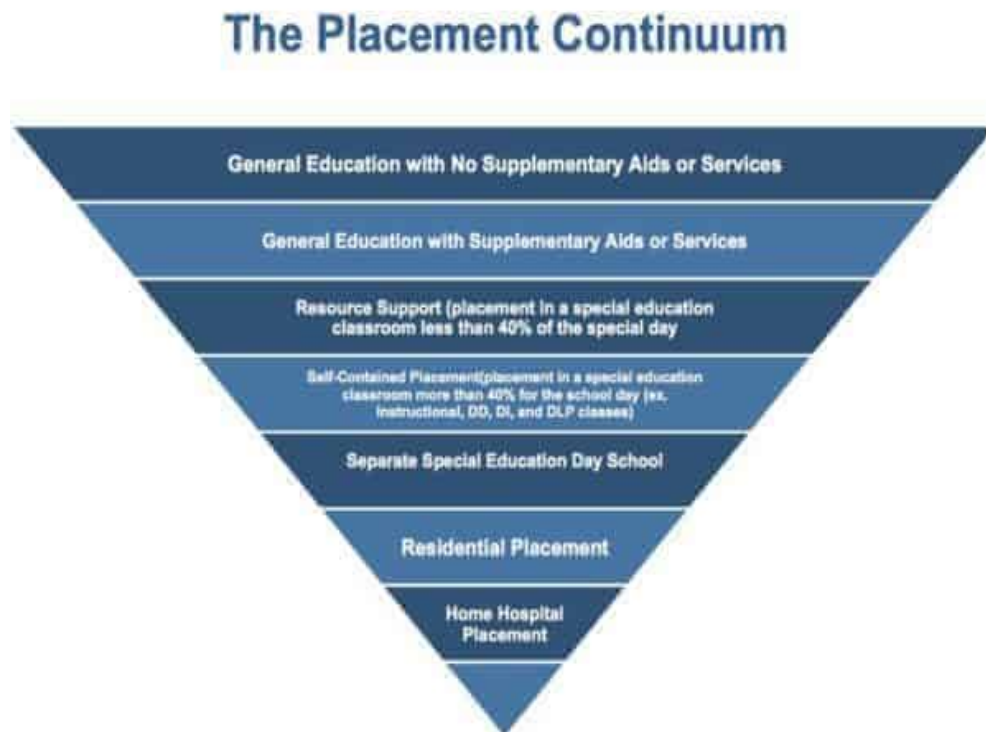
"To the maximum extent appropriate, children with disabilities, . . . [must be] educated with children who are not disabled," and separated "only when the nature or severity of the disability . . . is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." § 1412(a)(5)(A). *Id.*

It is not absolute, however. Three considerations exist for separating a disabled student from his regular class: "(1) the student would **not** benefit from regular education; (2) any regular-class benefits would be **far outweighed** by the benefits of special education; or

(3) the student would be a **disruptive force** in the regular class.” *Id.* at 789 (emphasis added).

When reviewing D.S.’s placement, there is a strong presumption that a regular education [REDACTED] class is appropriate. Then one must consider to what degree any of the three considerations might weigh against that presumption being mindful that a better “academic” environment may be *inappropriate* for a child with a disability because it lacks the power of mainstreaming.

While *L.H.* speaks of regular education classrooms and special education classrooms, it should be noted that the “continuum” involves more than just those. From least to most restrictive, the continuum includes regular classes with and without supports, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. §300.115(a). Graphically, this may be represented as follows:



The role of supplementary aids or services is critical. *Before moving away from regular class placement*, the law requires that “supplementary services” first must be delivered “*in conjunction with regular class placement.*” *Id.* at §300.115(b) (emphasis added). That is because the supports are often what makes the regular class placement possible. In other words, the child is not left to “sink or swim” without supports:

**Supplementary aids and services.** Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, *to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.* 34 C.F.R. § 300.42.

Alternative placements are not appropriate if these supports have not been considered. 34 C.F.R. §300.550(b)(2).

There is no question that [REDACTED] was a critical member of the IEP team—she was the only teacher of D.S., her case manager. Unfortunately, she misunderstood the key relationship between supports and placement. She believed the least restrictive environment was an environment with the *least amount of supports*. Of course, it is the precise opposite of that. A child can be “separated only when the nature or severity of the disability . . . 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). In other words, the Student is to be considered *with the supports, not without them*. That simple understanding can make all the difference because supports can include an aide, push-in supports, or even resource time with non-disabled peers.



With this in mind, *L.H.*, requires the following considerations:

**1. Can D.S. Benefit from Mainstreaming (Regular Education Classroom)?**

The record clearly demonstrates that D.S. can—and certainly did—benefit from a regular education classroom. First, D.S. did, in fact, benefit from the regular education [REDACTED] classroom when she was *not* removed to a separate classroom. There is no dispute that every Progress Report from [REDACTED] indicates she was making progress on her unique IEP goals *in that environment*. Consistently, the teachers believed she would meet her IEP goals by IEP year end. This type of proof establishes the first element.

Second, for [REDACTED], the IEP goals were changed and *increased*. Again, this indicates that D.S. was making progress because, if she were not, the goals could have been repeated or diminished. One does not advance the goals if the learning is not being advanced.

Third, Dr. [REDACTED] provided credible expert testimony that all of the [REDACTED] IEP goals can be performed by D.S. within the [REDACTED] environment.

Fourth, D.S.'s [REDACTED] teachers, [REDACTED] and [REDACTED] being the only two teachers with consistent hands-on *teaching* experience with D.S. testified that all of the proposed [REDACTED] IEP goals could be worked on by D.S. in regular [REDACTED] classroom.

Fifth, there is not any data showing that D.S. *cannot* succeed in the regular education environment. [REDACTED] data merged multiple tasks, without breaking the tasks into elements; even if D.S. was slower or had some struggles, the data does not show she is unable. See, *J.A. v. Smith Cty. Sch. Dist.*, 364 F. Supp. 3d 813, 838 (M.D. Tenn. 2018) (Smith County was “without data showing he was unable to perform in the regular education classroom with appropriate supports.”).

Sixth, none of the school personnel at D.S.'s IEP meetings have any experience at all with actually including a child with [REDACTED] in the regular [REDACTED] classroom. But they all agree that direct instruction, explicit instruction, re-teaching, pre-teaching, and small group time *can be* delivered within the regular education setting.

Seventh, even if some *supplemental* time were needed for D.S. in [REDACTED], that can be accomplished through “Hawkeye” time or resource room time—a small space where *any child*, disabled or not, can receive supplemental help such as in reading or math. By law, on the “continuum,” a resource room is defined as a *supplementary* service in conjunction with regular education:

**“§ 300.115 Continuum of alternative placements.**

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must -

(1) Include the alternative placements listed in the definition of special education under § 300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

**(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.** 34 C.F.R. §300.115 (emphasis added); *Oberti v. Board of Educ.*, 995 F.2d 1204 (3rd Cir. 1993).

The Third Circuit’s *Oberti* case involving a child with [REDACTED]—referenced by Dr. [REDACTED]—is instructive here, too, because it establishes that the continuum is not an “all or nothing educational system” with a chasm between regular education classroom and a separate classroom. *Oberti*, 995 F. 2d 1204, 1218 (3rd Cir. 1993). The school district failed to utilize a resource room to help the child with [REDACTED] [REDACTED] remain in regular education. This was a failure to consider “the whole range of

supplemental aids and services, *including resource rooms and itinerant instruction.*” *Id.* at 1216.

A resource room is not the same thing as a separate classroom. A resource room is a *supplemental service* where D.S. can remain *with non-disabled peers*, whereas a separate self-contained classroom for 2.5 hours required D.S. to be educated solely with children with IEPs, many of whom, herself included, as [REDACTED] testified, could be utilizing an alternative curriculum. That explains why a self-contained special education classroom is more restrictive—in contrast to a resource room, it takes her away from non-disabled peers and the regular education curriculum.

Seventh, [REDACTED] experience at the [REDACTED], like D.S.’s [REDACTED] classroom, shows that D.S. *can* engage in instruction and make progress within a regular education classroom setting.

For all these reasons, the benefits of the regular education classroom for those 2.5 hours are only presumptive, but substantial as to D.S. herself.

## **2. Would the CDC-A Classroom “Far Outweigh” the Regular Education Classroom?**

The second L.H. consideration is whether a separate classroom for 2.5 hours every day would “far outweigh” the regular education classroom with appropriate supports.

First, there is nothing to suggest that D.S.’s learning abilities, and her learning profile as a child with [REDACTED], deviates from the research. As Dr. [REDACTED] explained, *all* of the research shows that children with [REDACTED] learn *better* in the regular education classroom, not a separate classroom, including a substantial increase in language and social development.

Second, none of the KCS educators actually drew from any experience on whether a separate classroom is, in fact, far better for teaching a child with [REDACTED] like D.S. KCS's beliefs that using a self-contained separate special education classroom for "explicit" instruction, "direct" instruction, "small group" instruction, or "pre-teaching" or "re-teaching" boil down to biases in favor of this type of classroom, *not* D.S.'s need for removal. The record is clear that all of these can be performed in the regular education classroom.

Third, for the same reason KCS's proposed [REDACTED] IEP did not deliver FAPE, neither does the 2.5 hours in a separate classroom "far outweigh" regular education. That is, it *adds* at least eight (8) more daily physical transitions to a different classroom and different cohort group for a child who *already* struggles with transitions. In other words, far from "far outweighing" the regular education classroom, it would likely *harms* D.S..

Fourth, the recommendation of D.S.'s [REDACTED] teacher, [REDACTED], for 2.5 hours of pull-out special education instruction was made upon a basic misunderstanding of "least restrictive environment." It is not the "least" amount of supports to succeed. Rather, LRE is the necessary supports to deliver education among one's non-disabled peers to the maximum extent appropriate.

For all these reasons, removing D.S. to a special education classroom 2.5 hours per day cannot be said to far outweigh the regular education classroom.

### **3. Would D.S. be Too Much of a "Disruptive Force?"**

No one argues that D.S. is too disruptive for regular education, and the facts belie this both in [REDACTED] and at [REDACTED]. During [REDACTED] D.S.'s misbehaviors were managed without a functional behavior analysis and, at [REDACTED] no such behaviors exist. Moreover, to even *argue* that the child is a disruptive force first requires behavioral

supports be in place. Where a functional behavior assessment or behavior intervention plan was denied, the third L.H. factor “is inapplicable.” *J.A. v. Smith Cty. Sch. Dist.*, 364 F. Supp. 3d 813, 838 (M.D. Tenn. 2018).

Accordingly, the third consideration does not weigh in favor of a separate special education classroom either.

**C. [REDACTED] Reimbursement**

Petitioners seeks the same remedy as in *L.H.*, reimbursement for private placement at a [REDACTED] school based upon the public school’s failure to provide a least restrictive environment to their child with [REDACTED]. Notably, “the private school need not meet the full public-school standards.” *L.H.*, 900 F.3d at 791; 34 C.F.R. §300.148.

In *L.H.*, the [REDACTED] reimbursement for a child with [REDACTED] was appropriate because, while [REDACTED] is a differently structured education, L.H. “had a personalized curriculum at TMS and a paraprofessional aide dedicated just to him, such that he was working at his own pace with frequent repetition, intense one-on-one instruction, and repeated prompting and reinforcement.” *L.H. v. Hamilton Cty. Dep’t of Educ.*, 900 F.3d 779, 797 (6th Cir. 2018). “Dr. [REDACTED], testified that the [REDACTED] approach is ‘a curriculum that is well-suited for children with [REDACTED] in many respects,’ and good for L.H. in particular.” *Id.* Moreover, numerous factors distinguished it from the segregated setting the school was proposing. *Id.*

While the parent in *L.H.* could have forced “stay put” in the regular education classroom, the Sixth Circuit explained that the parent has a choice. It is reasonable for the parents to opt for private placement where the public school was “unwilling or unable

to properly engage in the process of mainstreaming.” *Id.* at 798. The parent’s satisfaction with the private placement is a relevant factor too. *Id.*

D.S.’s case is on all fours with *L.H.* here. Full mainstreaming is being provided to D.S. by the [REDACTED] School. The classroom is regular education, with D.S. being the only known child with a disability. D.S. receives co-teaching with a one-to-one aide who, like *L.H.*’s family, paid for the aide. D.S. is exposed to exactly the *same* classroom and curriculum as the other students without interruptions of being sent to a separate class with a separate group of students. According to the classroom teacher, D.S. is performing exceedingly well and making educational progress. Dr. [REDACTED] echoed these sentiments. In fact, she said it was one of the best overall school environments she had ever *seen*. And the parents are pleased with this placement too.

Moreover, at the [REDACTED], there is a substantial contrast with what the public school was offering (or failing to offer). Among other things, the education at [REDACTED] avoids all of the unnecessary *transitions* between two entirely different environmental structures that KCS demanded.

Such environmental transitions—among two entirely different peer groups every single day for 36% of the time—are not only difficult and confusing but would educationally set D.S. back. She avoids that at [REDACTED]. As in *L.H.*, reimbursement is appropriate, and it includes *both* the school tuition and the private costs of the aide being borne by the parents. *L.H. v. Hamilton Cty. Dep’t of Educ.*, 2018 U.S. Dist. LEXIS 197705, at \*2 (E.D. Tenn. Nov. 20, 2018) (Appx. 5).

## **II. Claims Under Section 504 and Title II of the ADA**

Section 504 has a least restrictive environment regulation like the IDEA's:

“A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 104.34(a); *S.P. v. Knox Cty. Bd. of Educ.*, 329 F. Supp. 3d 584, 592 (E.D. Tenn. 2018).

Title II is part of the ADA's “clear and comprehensive national mandate” to end discrimination against and ensure equality of opportunity for persons with disabilities. 42 U.S.C. § 12101(b)(1), (7). At the time of the ADA's enactment, Congress found that such discrimination persisted in virtually all aspects of American life, including in “education ... and access to public services.” See *Id.* at § 12101(a)(3). Congress further found that the isolation and segregation of individuals with disabilities “continue[d] to be a serious and pervasive social problem.” *Id.* at § 12101(a)(2).

Under Title II, “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *Sophie G. v. Wilson Cty. Schs.*, 742 F. App'x 73, 77 (6th Cir. 2018) (Appx. 6). In *Sophie G.*, the denial of admission to a child to an after-school program due to toileting needs violates the ADA. *Id.*

In *L.H.*, the student also presented these 504 and Title II claims. The Sixth Circuit found these claims were “pretermitted” because the claims are “redundant” when full relief is given under the IDEA. *L.H.*, 900 F.3d 779, 784, n.1. Judge Hilliard in *M.Q.* did likewise. However, *L.H.* did not address expert witness fees that cannot be recovered under IDEA.

In the present case, D.S. has extensive fees to Dr. [REDACTED] including for observation, trial testimony, and travel (for deposition and trial). Unlike Section 504 and ADA, the IDEA does *not* allow recovery for expert witness fees. *Arlington Cent. Sch. Dist. Bd. v. Murphy*, 548 U.S. 291, 297 (2006); *Neena S. v. Sch. Dist.*, No. 05-5404, 2009 U.S. Dist. LEXIS 65185, at \*34 (E.D. Pa. July 27, 2009) (Appx 7) (expert fees come through 504, not IDEA). For that, resort must be made to ADA.

Thus, a corresponding judgment should be entered under section 504 and the ADA. The *finding* of a violation of 504 and ADA allows Petitioner to recoup the expert costs in federal court. The claims are not redundant for this reason.

### **III. REMEDY**

Petitioners have sustained their burden of proving KCS's proposed IEP for [REDACTED] [REDACTED] would have denied D.S. FAPE and was more restrictive than necessary under IDEA, Section 504, and Title II of the ADA.



Moreover, the placement at [REDACTED] School offers D.S. not only an inclusive education with non-disabled peers, but it avoided the eight daily physical transitions that KCS's IEP demanded. Accordingly, the private placement is appropriate and tuition reimbursement is sustained. *L.H. v. Hamilton Cty. Dep't of Educ.*, 2018 U.S. Dist. LEXIS 197705, at \*2 (E.D. Tenn. Nov. 20, 2018) (awarding costs of private placement after remand).

Petitioners are the prevailing parties.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **7th day of May, 2020**.



**STEVE R. DARNELL**  
**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 **7th day of May, 2020**.



**STEPHANIE SHACKELFORD, DIRECTOR**  
**ADMINISTRATIVE PROCEDURES DIVISION**  
**OFFICE OF THE SECRETARY OF STATE**

## **EXTENSION OF NOTICE OF APPEAL DEADLINES**

You have certain appeal rights if you disagree with the Administrative Judge's decision. The deadlines for those appeal rights are usually listed in the automatically generated Notice of Appeal Procedures, which is included in this Order packet. However, due to the COVID-19 pandemic, the Tennessee Supreme Court has ordered that any such deadlines that fall between March 13, 2020, through May 31, 2020, are extended to June 5, 2020. Therefore, the due dates falling between March 13, 2020, and May 31, 2020, for this case, identified in the Notice of Appeal Procedures, are extended to June 5, 2020. The Administrative Procedures Division has already announced this extension of appeal rights to the state agency involved in this case but is hereby making all parties to this case aware of this extension.

## **FILING**

Until further notice, filings should be made by email, to [APD.Filings@tn.gov](mailto:APD.Filings@tn.gov), or by facsimile, to 615-741-4472. Paper filings should only be made by mail or in-person if a litigant has no access to either email or facsimile. Only one filing method should be used.

**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 **May 7, 2020**. 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 **May 22, 2020**.

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 **July 6, 2020**. 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 **July 6, 2020**, 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 **May 14, 2020**. 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

**IN THE MATTER OF:  
D.S., THE STUDENT, AND E.S. AND R.S., THE  
PARENTS V. KNOX COUNTY SCHOOLS**

**APD CASE No.** 

**NOTICE OF APPEAL PROCEDURES**