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RE: In the Matter of: J.B., the Student, and M.B. and J.B., the Student's Parents/Guardians,
Petitioners v. Wilson County Schools, Respondent.
Docket No. [REDACTED]

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

cc: Shaundraya Hersey, Staff Attorney, Tennessee Department of Education

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

IN THE MATTER OF:

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

v.

***WILSON COUNTY SCHOOLS,
Respondent.***

DOCKET NO: [REDACTED]

FINAL ORDER

This contested case was heard before Kim Summers, Administrative Judge, on [REDACTED]

[REDACTED] The Petitioners were represented by [REDACTED] Esq. The Wilson County School System (WCS) was represented by [REDACTED] Esq. and [REDACTED] Esq.

The purpose of the hearing was to determine whether WCS has complied with its obligations to provide a free and appropriate public education (FAPE) to JB pursuant to the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. After consideration of the entire record and the arguments of the parties, it is determined that WCS has satisfied its legal obligations. This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF THE EVIDENCE

The following fact witnesses provided testimony at the hearing: MB and JB, the student's parents; Dr. [REDACTED] Dr. [REDACTED] [REDACTED] Psychologist with WCS; [REDACTED] former Principal with [REDACTED] Middle School ([REDACTED]); [REDACTED] teacher with WCS; [REDACTED] School Counselor with [REDACTED]; [REDACTED] Founder and Director with [REDACTED] (now [REDACTED]); [REDACTED]; [REDACTED] former Special Education Director with WCS; [REDACTED] Assistant

Principal with [REDACTED], [REDACTED], [REDACTED] Grade Assistant Principal; [REDACTED] 504 Coordinator with WCS; and [REDACTED], Behavior Analyst, WCS.

The following expert witnesses provided testimony at the hearing – [REDACTED] Exceptional Education Supervisor, WCS (previously with Rutherford County); Dr. [REDACTED] Supervisor of Psychological Services for Knox County Schools; and [REDACTED] Board Certified Behavioral Analyst. Expert testimony included the following – an IEP is about education and needs only to address behaviors to the extent necessary to assist with education; nothing in the records from Illinois suggested the need for Special Education services; there should not be a rush to evaluate a new student for services, and it should not be assumed that behaviors are a result of a disability rather than a transition; a child needs time after a disruption to determine if he will return to the prior normal; it is not unusual for a child’s behavior to be worse at home than at school; eligibility for services requires an adverse educational impact; the behaviors suggested the need for interventions but not an evaluation for Special Education services; a mental health diagnosis does not require an eligibility determination for Special Education services or a Functional Behavioral Assessment; 38 school days would not be adequate to make a referral for an evaluation, especially when the student had never previously received Special Education services or had a Behavior Intervention Plan (BIP); neither the records from [REDACTED] nor JB’s behavior at the start of school suggested the need for a BIP; assessments are only based on behaviors occurring in the school setting; appropriate accommodations can be accomplished with a 504 Plan.

Fifty-two exhibits were admitted into evidence: EXHIBIT 1, [REDACTED] Note to School Personnel; EXHIBIT 2, [REDACTED] Letter to School Personnel; EXHIBIT 3, [REDACTED] Email from [REDACTED] to School Personnel; EXHIBIT 4, [REDACTED] Email from [REDACTED]; EXHIBIT 5, [REDACTED] Email from [REDACTED]; EXHIBIT 6, CV for [REDACTED]; EXHIBIT 7, [REDACTED] Opinion / Recommendation Letter by [REDACTED] PsyD; EXHIBIT 8, [REDACTED] Letter by [REDACTED] PsyD ; EXHIBIT 9, Article - Intergenerational Transfer of Perinatal Trauma; EXHIBIT 10, [REDACTED] Emails

- [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 11, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 12, [REDACTED] Emails - [REDACTED], [REDACTED]; EXHIBIT 13, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 14, [REDACTED] Emails - [REDACTED] to School Personnel; EXHIBIT 15, [REDACTED] Email - [REDACTED] to [REDACTED]; EXHIBIT 16, [REDACTED] Email - [REDACTED] to [REDACTED]; EXHIBIT 17, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 18, [REDACTED] Emails - [REDACTED], [REDACTED]; EXHIBIT 19, [REDACTED] ([REDACTED]) Email - [REDACTED] to School Personnel; EXHIBIT 20, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 21, [REDACTED] Emails - [REDACTED], [REDACTED] School Personnel, [REDACTED]; EXHIBIT 22, [REDACTED], [REDACTED] Absence Note; EXHIBIT 23, [REDACTED] Emails - [REDACTED], [REDACTED]; EXHIBIT 24, [REDACTED], [REDACTED] Discharge Letter; EXHIBIT 25, [REDACTED] JB letter to [REDACTED]; EXHIBIT 26, [REDACTED] JB letter to [REDACTED]; EXHIBIT 27, [REDACTED] JB letter to [REDACTED]; EXHIBIT 28, Home and Private School Costs; EXHIBIT 29, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED] School Personnel; EXHIBIT 30, [REDACTED], [REDACTED] Educational Recommendation #2; EXHIBIT 31, [REDACTED], [REDACTED] Weekly Schedule; EXHIBIT 32, [REDACTED], [REDACTED] Weekly Schedule; EXHIBIT 33, Stipulations; EXHIBIT 34, [REDACTED] Email - [REDACTED] to [REDACTED] w / attachment; EXHIBIT 35, [REDACTED] Email - [REDACTED] to School Personnel; EXHIBIT 36, [REDACTED] Student Discipline Report & Day Summary (Attendance); EXHIBIT 37, [REDACTED] Email - [REDACTED] to [REDACTED]; EXHIBIT 38, For ID Only, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 39, [REDACTED] Section 504 Plan and Notice of Rights; EXHIBIT 40, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 41, [REDACTED] Emails - [REDACTED], [REDACTED]; EXHIBIT 42, Email regarding therapist referral; EXHIBIT 43, [REDACTED], [REDACTED] MD ([REDACTED]) Diagnosis Letter; EXHIBIT 44, Deposition of [REDACTED] - 2/20/2020; EXHIBIT 45, Deposition of [REDACTED] - [REDACTED]; EXHIBIT 46, [REDACTED] Emails - [REDACTED], [REDACTED], [REDACTED], [REDACTED]; EXHIBIT 47, [REDACTED] Emails - [REDACTED], [REDACTED]; EXHIBIT 48, SDHA Hearing Packet; EXHIBIT 49, [REDACTED] Emails - [REDACTED], [REDACTED]; EXHIBIT 50, Expert Disclosures; EXHIBIT 51, [REDACTED] transcripts; EXHIBIT 52, [REDACTED] Emails - [REDACTED], [REDACTED].

The Parties were given an opportunity to submit Findings of Fact and Conclusions of Law after completion of the hearing.

FINDINGS OF FACT

1. JB was adopted at birth and presently lives in Wilson County with his parents and [REDACTED]. Both of JB's parents have training and experience in education, and JB's father is presently employed at [REDACTED].

2. JB was enrolled by his parents in [REDACTED] in [REDACTED] when he was [REDACTED] years old. [REDACTED] is part of the WCS system.

3. Prior to his enrollment at [REDACTED] JB lived with his family in [REDACTED] where he attended the same school from Kindergarten through the [REDACTED] Grade.

[REDACTED]

[REDACTED]

8. JB's academic performance was not a concern while in [REDACTED], and neither an IEP nor a 504 Plan had been requested or provided to JB in [REDACTED].

9. The family moved to Wilson County, Tennessee, and JB began [redacted] grade at [redacted] in

[redacted] JB did not transfer from [redacted] to Tennessee with either an IEP or 504 Plan.

10. At the time of his enrollment at [redacted], [redacted] was the School Counselor assigned to the [redacted] grade class, [redacted] was the Assistant Principal assigned to the [redacted] grade class, and [redacted] was the School Principal.



12. On [redacted] JB's mother, MB, emailed a letter to several individuals at [redacted] to provide some background information about JB's education and behaviors. The letter included the following information –

- JB has experienced some struggles, related to his adoption, that have not been easily identifiable, and he has not received an official diagnosis
- [redacted] are accurate / helpful descriptions
- JB has not had an IEP and has not received school services
- His behaviors have occasionally been severe but do seem to be improving with age
- Although extreme behaviors are still occurring at home, they do not anticipate any major problems at school
- The behaviors that most frequently occur at school can be characterized as “shenanigans”
- JB is capable and intelligent but is often apathetic and fails to make the effort consistent with his abilities

13. JB's parents were initially hesitant to send this letter because they did not want to create any preconceptions about JB.

14. Both of JB's parents have had prior exposure to the requirements for IEPs and 504 Plans as educators.

15. The letter also provided some strategies for preventing or dealing with behaviors – building rapport and relationship, providing structure and consistent limits, using humor, providing

time and space for good decisions, giving him responsibility for tasks, and communicating home when necessary.

16. Throughout [REDACTED] and [REDACTED], MB continued to communicate with [REDACTED] about behaviors and situations occurring in the home setting.

17. On the morning of [REDACTED] MB sent an email to [REDACTED] and [REDACTED] [REDACTED] about an encounter that occurred over the weekend between JB and several other [REDACTED] graders from [REDACTED]. Later that day, MB sent another email to inform the school about JB's "severe, negative spiral" which was determined to have been caused by the move to Tennessee. It was also disclosed that JB admitted to making threats just to make his parents angry.

18. On [REDACTED] MB sent an email to [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (collectively "Teaching Team") to let them know that JB had "a significant, positive shift" and they had located a promising counseling resource.

19. On [REDACTED] MB emailed [REDACTED] and said that JB is still struggling and requested some intervention from the school. She specifically mentioned that JB's grades were failing because he continued to refuse to do his homework.

20. [REDACTED] one of JB's [REDACTED] grade teachers, found JB to be a disciplinary challenge but did not believe that a 504 Plan or other interventions were needed because his parents were cooperative and her relationship with JB was not volatile.

21. Although school personnel were made aware of behaviors occurring in the home setting, similar behaviors were not occurring in school. Generally, JB's behaviors at school were not considered atypical for an [REDACTED] grade boy and did not justify a safety plan.

22. On [REDACTED], [REDACTED] emailed JB's parents about his disruptive and defiant behavior in the classroom. She also mentioned that JB's failure to do his work is affecting his grades, and a referral to the office may be needed. Later in the day, [REDACTED] responded to MB's

[REDACTED] email, as well as the earlier email from [REDACTED], and provided some suggestions to address JB's work refusal.

23. On [REDACTED], JB's parents met at the school with his teachers.

[REDACTED]

25. On [REDACTED], MB emailed the Teaching Team to let them know that, due to escalating behaviors in the home the night before, JB had been admitted to [REDACTED]. JB remained at [REDACTED] until [REDACTED].

26. On [REDACTED], JB's parents sent two email, one to the Teaching Team inquiring about homework assignments, at JB's request, and one to [REDACTED] stating that JB may be discharged from [REDACTED] with a diagnosis that would facilitate a 504 Plan for him at school.

27. JB's Discharge Letter from [REDACTED] specified the following diagnoses – Unspecified Disruptive, Impulse-Control, and Conduct Disorders, and Generalized Anxiety Disorder.

28. In an email exchange on [REDACTED], JB's parents arranged to meet with [REDACTED] the next day to discuss JB's return to school following his discharge from [REDACTED].

29. A safety plan is usually implemented at the school when a student returns from a mental health hospitalization.¹ A safety plan is used when a student engages in unsafe behaviors. A hospitalization does not convey automatic eligibility for either an IEP or a 504 Plan without further evaluation.

30. During the meeting, JB's diagnosis and medications were discussed as well as an evaluation for a 504 Plan which would require two weeks of in-school observation. The observation was necessary because the diagnosis provided by VUMC, by itself, was not considered adequate justification for a 504 Plan.

¹ There are on average 5 to 7 Safety Plans per month resulting from mental health hospitalizations.

31. The evaluation was scheduled to commence when school resumed after Fall Break, and the meeting to discuss the evaluation was scheduled for [REDACTED]. Because interventions to address behaviors were being requested, it was deemed more appropriate to begin with a 504 Plan and evaluate for an IEP only if interventions through the 504 Plan were not successful.

32. On [REDACTED], JB was involved in an incident at school which resulted in his arrest and a 7-day suspension. The criminal charges were dismissed since the issues were deemed to be related to JB's mental health.

33. The possible repercussions from the [REDACTED] incident were discussed during the scheduled meeting with the school on [REDACTED]. JB's parents were informed that the matter would be referred for a hearing to the School Disciplinary Hearing Authority (SDHA) and could result into JB's transfer to the MAP Academy with the school district.

34. With the understanding that a suspension and transfer to MAP would make acceptance to a private school difficult, if not impossible, JB's parents chose to remove him from the school district on [REDACTED] prior to the hearing.

35. The 504 Plan for JB was completed on [REDACTED] for the purpose of a future placement with the School District. The 504 Plan included accommodations to help with JB's education and behaviors.

36. Had JB remained in the school district with the 504 Plan in place, [REDACTED] would have contemplated other interventions, including an IEP, if the 504 Plan did not successfully resolve JB's behavioral issues.

37. JB was homeschooled by his parents for several months while his parents investigated various private school alternatives.

38. In [REDACTED], [REDACTED] met with JB's father. He requested that the suspension be removed from JB's record since the criminal charges had been dismissed. This request was denied. He also mentioned the neuropsychology evaluation that had resulted in a new diagnosis.

39. JB's parents met with [REDACTED], 504 Coordinator, and another individual with the School District in [REDACTED] to discuss their frustration and disappointment with JB's experience at [REDACTED]. There was no offer, request, or discussion of an evaluation for Special Education services.

40. In [REDACTED] JB's parents learned about [REDACTED]. He was enrolled and started school at [REDACTED] in the Fall of [REDACTED]. [REDACTED] has recently changed its name to [REDACTED].

41. While at [REDACTED] JB was admitted to the hospital in [REDACTED] and, again, in [REDACTED]. In the [REDACTED], JB spent [REDACTED] months in residential treatment at [REDACTED] in [REDACTED]. Upon his return from [REDACTED] JB completed the school year at [REDACTED] and was reenrolled for the [REDACTED] school year.

42. On [REDACTED] a request for due process was made on behalf of JB. On [REDACTED] [REDACTED] a modified complaint was filed with the following allegations – Respondent failed to offer Petitioner a free, appropriate public education by failing to – (a) Identify and evaluate him for special education services prior to his withdrawal in [REDACTED] including but not limited to the time he was enrolled at [REDACTED]; (b) Design and implement an appropriate IEP, including BIP and Related Services, for the [REDACTED] school year; (c) Design and implement an appropriate IEP, including BIP and Related Services, for the [REDACTED] school year; (d) Design and implement an appropriate IEP, including BIP and Related Services, for the [REDACTED] school year; (e) Complete an eligibility determination; (f) Make an offer of FAPE.²

43. Based on these allegations, the following relief was requested – a finding that Petitioner should have been identified as a Student in need of specialized instruction and eligible for special education services; reimbursement for expenses related to placement at Cates Academy and Meridell; continued payment for the Petitioner's placement at Cates Academy; and attorney fees.

² Three additional allegations denoted as (g), (h), and (i) included in the Amended Complaint were withdrawn during the hearing.

44. JB's grades at [REDACTED] were three Cs, a B, an A, and an Incomplete. JB's academic issues encountered at [REDACTED] were largely resulting from his behaviors and absence from instruction. His grades did not suggest the need for Special Education services, and there has never been a finding that JB is intellectually disabled.

45. The school personnel at [REDACTED] with whom JB interacted had all been trained on child find requirements and making appropriate referrals for evaluations for Special Education and 504 services.

46. JB's current placement at [REDACTED] resulted from his parent's decision to prioritize his mental health over his education.

47. During JB's time at [REDACTED] the school had implemented some behavioral interventions with JB although not officially through an IEP or 504 Plan.

RELEVANT LAW

1. The IDEA, 20 USC § 1400, *et seq.*, requires public school systems to provide to disabled children a free appropriate public education (FAPE).

2. To this end, 34 C.F.R. § 34 C.F.R. § 300.111(a) requires the following with respect to "Child Find" –

- (1) The State must have in effect policies and procedures to ensure that—
 - (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, **and** who are in need of special education and related services, are identified, located, and evaluated; and

3. 34 C.F.R. § 300.8(a)(1) defines "child with a disability" as follows –

Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, **another health impairment**, a specific learning disability, deaf-blindness, or multiple disabilities, **and who, by reason thereof, needs special education and related services.** (Emphasis added).

4. Pursuant to 20 USC § 1401(9), The term “free appropriate public education” means special education and related services that –

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

5. Pursuant to 34 C.F.R. § 300.148 of the IDEA regulations,

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§ 300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§ 300.504 through 300.520.

(c) Reimbursement for private school placement. 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 preschool, 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 FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

6. The burden is on the party requesting relief to establish whether or not there has been a failure to provide a FAPE in violation of the IDEA.³

7. Section 504 of the Rehabilitation Act of 1973, codified at 29 USC § 794, specifies –

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) “Program or activity” defined

For the purposes of this section, the term “program or activity” means all of the operations of--

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of Title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56, (2005).

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 to 12204 and 12210), as such sections relate to employment.

8. A violation of Section 504 of the Rehabilitation Act requires proof of the following⁴ –

(1) The plaintiff is a “handicapped person” under the Act;

(2) The plaintiff is “otherwise qualified” for participation in the program;

(3) The plaintiff is being excluded from participation in, or being denied the benefits of, or being subjected to discrimination under the program solely by reason of his handicap; and

(4) The relevant program or activity is receiving Federal financial assistance.

9. A violation of Section 504 of the Rehabilitation Act requires proof that the failure to provide a free appropriate public education was *discriminatory*, which requires the Petitioners to prove either bad faith or gross misjudgment.⁵

10. Pursuant to 34 C.F.R. § 300.500 of the IDEA regulations, Petitioners may only raise at the hearing the issues that were previously alleged in the complaint for due process, absent consent.

⁴ *G.C. v. Owensboro Public Schools*, 711 F.3d 623, 635 (6th Cir. 2013).

⁵ *Id.*

ANALYSIS and CONCLUSIONS of LAW

1. The IDEA applies to children with disabilities who require Special Education services *as a result of* a diagnosed disability. Accordingly, eligibility for Special Education services requires a diagnosed disability that impacts a child's ability to access his / her education and necessitates specialized instruction as well as other possible services such as behavioral interventions in order for the child to receive a FAPE.

2. A student may be eligible for relief pursuant to Section 504 of the Rehabilitation Act, notwithstanding eligibility for services under the IDEA, if accommodations or services, other than specialized instruction, are needed due to a disability in order for the student to access his / her education and receive a FAPE.

3. The Petitioners have the burden of proving eligibility for services through the IDEA or accommodations / services through Section 504. Because JB was not receiving services at the time of his withdrawal from the school system, Petitioners must show that [REDACTED] has violated the IDEA by failing to evaluate JB's eligibility for such services due to the behaviors which resulted from his mental health conditions.

4. Although JB displayed some behaviors while in Illinois and was receiving some mental health services in the home environment, his behaviors were mostly limited to the home setting and did have an impact on his grades or necessitate either Special Education services or a 504 plan in the school setting.

5. After the relocation to Tennessee, the concerns expressed to [REDACTED] by JB's parents were about his behaviors which primarily occurred in the home setting. JB's parents did not express a concern about his grades or mention behaviors or any other impediments that may have an impact on his education.

6. JB's school records from ██████ confirmed the information provided by his parents. After many years educating JB, the school system in ██████ never concluded that he was in need of either a 504 Plan or Special Education services in order to access his education.

7. In the letter sent to ██████ on ██████ JB's mother informed school personnel that JB is capable and intelligent; he has no official diagnosis; he has not had an IEP or received any other special school services; and his extreme behaviors that occur at home are not expected to occur at school. JB's mother characterized his previous in-school behaviors as "shenanigans" – behaviors which are not atypical for many boys his age.

8. MB's initial reticence to send the ██████ in order to avoid creating preconceptions, was a tacit recognition that the school personnel at ██████ should have the opportunity to make their own independent evaluation of JB's abilities and needs.

9. According to the content of the ██████ letter, his parents anticipated JB's behaviors in the school to be similar to his behaviors in ██████. It is apparent that JB's parents did not anticipate the disruption that the relocation to Tennessee would cause to JB.

10. In light of the information from JB's prior school, the additional information provided by his parents, the absence of an official diagnosis, and their own observations, ██████ had no reason to evaluate JB for Special Education services. Nothing in JB's records from ██████ or the information provided by his parents suggested that JB had a disability which warranted an evaluation for Special Education services.

11. As JB's behaviors escalated, the more extreme behaviors were still occurring in the home setting. Accordingly, while JB's parents were becoming alarmed, school personnel experienced behaviors not inconsistent with other boys JB's age.

12. Moreover, in her communications with the school about JB's in-home behaviors, MB disclosed that JB's rage was primarily directed at his parents for the move to Tennessee, and she held out hope that the matter would be resolved and equilibrium would be restored.

13. Accordingly, the information initially communicated to ██████ about JB's behaviors did not put the school on notice of a need for a 504 Plan much less Special Education services.

14. Although JB's behaviors in Tennessee were, ultimately, more severe than his behaviors in Illinois and resulted in disciplinary action in the school setting and hospitalization in the home setting, ██████ still did not have adequate time or opportunity to make an independent and thorough assessment and determine any educational impact or the need for services.

15. Even after receipt of the diagnoses, the school needed time to determine JB's educational needs since a diagnosis does not equate to an educational disability. To have immediately concluded that JB was in need of an evaluation for Special Education services would have been irrational, if not irresponsible, in the absence of more information or even a request from his parents.

16. In order to violate the "Child Find" requirements of the IDEA, the student must have a diagnosed disability **and** be in need of Special Education services as a result. In fact, the definition of "child with a disability" in the context of the IDEA includes the requirement that the child have a related need for Special Education services. Accordingly, a mere diagnosis unrelated to educational deficiencies would be an insufficient basis on which to conclude that a student is "a child with a disability" and should, therefore, be evaluated for Special Education services.

17. In the Sixth Circuit case cited by the Petitioners, after several years of observation, the school system concluded that the student's "behavioral and learning problems were not atypical of immature young boys."⁶ The Court found no violation of the Child Find requirements.

18. In another case cited by the Petitioners from the District of D.C., the Court determined that the school system was on notice that the student's education had been impacted by emotional disturbance, including psychiatric hospitalizations and suicidal ideations and attempts that occurred over several school years. The Court also found that the school system had been explicitly informed of

⁶ *Board of Educ. of Fayette County, Ky. v. L.M.*, 478 F.3d 307, 314 (2007).

the student's diagnoses on multiple occasions and were aware of the resulting impact on educational performance.

19. Unlike these cases, ██████ did not have several school years to evaluate JB and his need for services. Moreover, they had no prior information which put them on notice of a need for services and had only a few months to determine an educational impact as JB's behaviors began to escalate and he received an official diagnosis.

20. Importantly, when JB was released from the hospital at the end of ██████, it was a 504 Plan, not an IEP, that was requested by JB's parents, who are, themselves, trained educators. They were requesting assistance with JB's behaviors, not with his education.

21. Although ██████ still did not believe that JB's behaviors warranted a 504 Plan, they agreed to the evaluation. Certainly, without the additional information that would be obtained from the evaluation and then implementation of the 504 Plan, any discussion of an IEP would have been premature.

22. Based on the 3 months available to ██████ and the information about JB that had already been provided, ██████ did not deny JB a FAPE or otherwise violate the IDEA by failing to evaluate JB for Special Education services prior to his disenrollment.

23. Neither did ██████ violate the IDEA by choosing not to evaluate JB for Special Education services following his disenrollment. The record does not show any additional information about JB provided to ██████ following his disenrollment that would have suggested the need for specialized instruction through an IEP in order to access his education and receive a FAPE.

24. The facts alleged by the Petitioners have not shown a violation of the IDEA. For this reason, and because JB had not "previously received special education and related services under the authority of a public agency," he is not eligible for reimbursement of his private school tuition.⁷

⁷ *District of Columbia v. Abramson*, 493 F.Supp.2d 80, 87 (2007).

25. Neither does a claim pursuant to Section 504 entitle the Petitioners to any relief. Although behavioral interventions through a 504 Plan may have been beneficial to JB, ██████ did not have adequate time to complete and implement a Plan after JB's escalating behaviors suggested that a Plan may be needed.

26. ██████ agreed to evaluate JB for a 504 Plan when he had been enrolled in the school system for only two months and his in-school behaviors had just begun to escalate. The Plan was completed shortly after JB's disenrollment, and only three months after the start of the school year, due to delays caused by Fall Break and the impending seven-day suspension.

27. The evidence in the record does not substantiate any negligence by ██████ in undertaking the evaluation for a 504 Plan, much less any bad faith or gross misjudgment that is required in order to recover under Section 504.

28. Moreover, claims pursuant to Section 504 are appropriately dismissed when associated IDEA claims based on the denial of a FAPE have been dismissed.⁸

29. It is clear that JB's parents are both kind-hearted people who want what is best for their son, but who themselves struggled to find the appropriate solution to JB's behaviors. While the behaviors were occurring primarily in the home, ██████ was unable to propose a remedy. When the behaviors began to manifest in the school setting, ██████ needed adequate time to assess the behaviors and any impact on JB's education before offering interventions. Although the delay may have been frustrating for JB's parents, a less thoughtful approach would have, itself, been irresponsible and may have been detrimental.

30. As clearly specified in the IDEA and its implementing regulations⁹, no issues shall be addressed in this Order that were not properly alleged in either due process complaint or at any time during the hearing.¹⁰

⁸ *N.L. ex rel. Mrs. C. v. Knox County Schools*, 315 F.3d 688 (2003).

⁹ § 34 C.F.R. § 300.511(d).

For the reasons specified above, all of the Petitioners' claims and requests for relief are hereby

DENIED.

The policy reasons for this decision are to uphold state and federal laws pertaining to the education of children with special needs.

It is so **ORDERED.**

This FINAL ORDER entered and effective this the 21ST day of SEPT., 2020.



D. KIM SUMMERS
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 21ST day of SEPTEMBER, 2020.



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

¹⁰ The issue of a manifestation determination was raised for the very first time in the Petitioner's Proposed Findings of Fact.

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.