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[REDACTED]

[REDACTED]

Nashville, Tennessee 37203

[REDACTED]

Nashville, TN 37209

RE: In the Matter of: K.H., the Student, and D.H., the Student's Parent, Petitioner
v. Sumner County Schools, Respondent.
Docket No. [REDACTED]

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

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

**IN THE TENNESSEE STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DIVISION**

K. H.
Petitioner,

v.

Sumner County Public School System,
Respondent.

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Case Number: [REDACTED]

FINAL ORDER

This matter comes for consideration before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division pursuant to Rule 0520-01-09-.18. Attorney [REDACTED] represents Petitioner K.H. Sumner County Public School System (Respondent) was Petitioner’s Local Education Agency (LEA) at all times relevant to this case. Attorney [REDACTED] represents Respondent.

This is Petitioner’s action alleging the LEA violated his rights under the Individuals with Disabilities Education Act (IDEA). The parties stipulated to the facts of this case and agreed to submit the matter to the undersigned for adjudication on the record. The stipulation of facts is attached hereto and incorporated by reference.

ISSUE PRESENTED

Did Respondent violate Petitioner’s rights under the IDEA entitling Petitioner to eight hours of compensatory education?

SUMMARY OF DETERMINATION

It is determined that Respondent violated Petitioner's rights under the IDEA and Petitioner is entitled to eight hours of compensatory education. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACTS

As noted above, the parties stipulated to the relevant facts which are not recited here in totality. In summary, Petitioner is an elementary school student with [REDACTED] and served by an Individual Education Plan (IEP). Petitioner is a qualified party to bring an action under the IDEA. At times relevant to this case, Petitioner was homeless and afforded certain protections by the McKinney-Vento Homeless Education Assistance Improvements Act (2006), 14 U.S.C. 11431 (McKinney-Vento). Pursuant to McKinney-Vento, Petitioner was entitled to continue attending his school of origin where he was last enrolled before he became homeless. Petitioner's parent completed the necessary McKinney-Vento forms to remain at his school of origin and provided them to Respondent's staff. Respondent's staff misplaced Petitioner's McKinney-Vento forms.

On [REDACTED] Respondent's staff noticed the address provided by the Petitioner's parent meant that Petitioner was zoned to attend a different school. Respondent's staff sent Petitioner's parent a letter stating that Petitioner could no longer attend his school of origin. Upon receipt, Petitioner's parent filed this IDEA Due Process complaint. After receiving the complaint, Respondent investigated and discovered its oversight in misplacing Petitioner's McKinney-Vento documentation. Respondent then notified Petitioner that he could return to his school of origin. Petitioner missed one day or eight hours of education due to Respondent's actions.

CONCLUSIONS OF LAW

The IDEA affords Petitioner the legal remedy of filing a Due Process complaint to preserve his rights under the act. The IDEA states in § 1415(l), “except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.” This provision requires Petitioner to exhaust his rights under the IDEA’s statutory scheme prior to invoking any other legal remedies. This is the exhaustion requirement of the IDEA.

McKinney-Vento works in conjunction with the IDEA in so far as it is administered by the U.S. Department of Education’s Office of Elementary and Secondary Education and requires state educational agencies to ensure that homeless children have equal access to the same free, appropriate public education (FAPE), as is provided to other children and youths. § 721 of the McKinney-Vento Act. McKinney-Vento has a statutory presumption that it is in Petitioner’s ‘best interest’ to remain in his school of origin. § 722(g)(3)(B)(i). McKinney-Vento entitled Petitioner to remain at his school of origin. Additionally, IDEA placement is mandated to be where Petitioner would be educated if non-disabled and “as close as possible to the child’s home.” 34 C.F.R. 300.116

Petitioner’s IEP was the collective effort of an IEP team that included his parent and had among its concerns that given K.H.’s circumstances he would benefit greatly with consistency at school. Petitioner was progressing at his school of origin and scheduled to have the same teacher for the upcoming school year. Petitioner’s placement and location are intertwined because the particular school setting and location where instruction is given were part of the appropriateness of his IEP. Additionally, Petitioner put forward evidence that location and consistency were

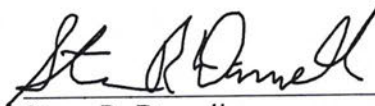
taken into account in developing Petitioner's IEP. Reassignment to a different school would not only have changed Petitioner's physical location but also changed his familiarity with his school, instructors, and instruction. Continuation of Petitioner's education at his school of origin was part of his educational placement and its change, at a minimum, would have required a ten-day prior written notice by the district. 34 CFR 300.503(a).

As a result of the foregoing facts and conclusions of law, it is determined that Respondent's actions denied Petitioner FAPE for the school day he missed. The Petitioner is thereby entitled to compensatory education for that time-period.

Compensatory education is an equitable remedy granted by a court as it finds appropriate. Bd. of Educ. of Fayette Cty. Ky. v. L.M., 478 F.3d 307 (6th Cir.2007). Courts have broad discretion under the IDEA to fashion appropriate relief to remedy a denial of FAPE. Sch. Comm. of Burlington v. Mass. Dep't of Educ., 471 U.S. 359, 369 (1985). "Under the theory of compensatory education, courts ... may award education services ... to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 522 (D.C.Cir.2005). Compensatory education is meant to "place children in the position they would have been in but for the violation of the Act." Draper v. Atlanta Indep. School Sys., 480 F.Supp.2d 1331 (N.D.Ga.2007), aff'd 518 F.3d 1275 (11th Cir.2008).

In light of the discretion to order relief, and at Petitioner's request and recommendation, the Respondent is therefore, **ORDERED** to provide compensatory education for the day of school missed in the form of reimbursement of eight hours of parent directed services by a Board Certified Behavior Analyst (BCBA). The selected BCBA shall bill Respondent directly at prevailing market rates and the Respondent shall make reimbursement promptly.

SO ORDERED, this 15th day of October 2020.



Steve R. Darnell
Administrative Law Judge

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.