



State of Tennessee
Department of State
Administrative Procedures Division
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March 4, 2022

[REDACTED]

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**RE: [REDACTED], THE STUDENT, AND [REDACTED] AND [REDACTED], THE STUDENT'S PARENTS V.
CHEATHAM COUNTY SCHOOLS, APD Case No. 07.03-212870J**

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

Administrative Procedures Division
Tennessee Department of State

Enclosure(s)

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

IN THE MATTER OF:

■ **THE PARENT,
THE STUDENT,**
Petitioner,

v.

CHEATHAM COUNTY SCHOOLS,
Respondent.

APD Case No. 07.03-212870J

FINAL ORDER

This matter comes for consideration upon Respondent Cheatham County Schools' motion, filed of record on February 2, 2022, to dismiss this special education Due Process case on the pleadings. Attorney Alan D. Hall represents Respondent. Petitioners ■ and ■ are *pro se*. Also pending is Respondent's second motion to dismiss the case and for attorney fees as a discovery sanction for Petitioners failing to attend their noticed depositions. Pursuant to *Tenn. Comp. Rules and Regs.* 1360-04-01-.09, Petitioners are permitted seven days to respond to a motion unless extended by the Administrative Law Judge.

On February 14, 2022, an order issued *sua sponte* extending Petitioners' time to respond to the first motion to dismiss until February 18, 2022. Petitioners were notified of this extension via email correspondence. Additionally, the Administrative Procedures Division served Petitioners with a copy of the order by both email and first-class U.S.P.S mail. Petitioners did not file their response by February 18, 2022, but instead filed a motion on February 22, 2022, requesting that their time to respond be extended until February 24, 2022. An order entered on February 24, 2022, extending Petitioner's time to respond until February 24, 2022. Petitioners did not file a response by February 24, 2022, and on February 28, 2022, via email correspondence, Respondent's counsel Alan D. Hall requested that its motion be disposed of, and

a status conference held to discuss the matter. Eleven minutes after Mr. Hall's email, [REDACTED] responded via email stating [REDACTED] needed yet more time to file Petitioners' response.

A status conference was scheduled for March 1, 2022 @ 1:00 p.m. via WebEx to discuss the pending motions. Attorney Alan D. Hall appeared at the appointed time on behalf of Respondent. When no one appeared for Petitioners, Mr. Hall attempted unsuccessfully to contact [REDACTED] by telephone. Mr. Hall was able to contact [REDACTED] by telephone, but [REDACTED] stated [REDACTED] was handling the matter and hung up. Several minutes after the call to [REDACTED], [REDACTED] appeared for the status conference.

After consideration of the papers filed by the parties and their respective oral argument(s), the following findings of fact and conclusions of law determined:

1. On June 14, 2021, Petitioners provided the Respondent with a due process complaint under the Individuals with Disabilities Education Improvement Act (IDEA), the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.
2. At the time of the filing of the due process complaint, Petitioners were represented by attorneys Jessica Salonus and Justin Gilbert. Attorney Allen Woods represented Respondent at that point.
3. By order issued July 8, 2021, this case was referred to mediation and stayed pending the outcome of the mediation. The parties subsequently held two mediation sessions; however, they reached an impasse on September 7, 2021.
4. A pre-hearing conference was then held on September 17, 2021, at which time the stay was lifted and the matter set for final hearing on November 1, 2021 and November 2 and 3, 2021, if necessary. Deadlines for discovery and pre-trial disclosures were also ordered.

5. Following the pre-hearing conference of September 17, 2021, Alan D. Hall was substituted as counsel for Respondent. Following the substitution of counsel for Respondent, the November hearing date was reset to take place on December 20, 2021, continuing to December 21 and 22, 2021, if necessary. Pre-hearing deadlines were extended to reflect the new hearing date.
6. On November 11, 2021, the parties reached a purported settlement agreement.
7. The Agreement was reduced to writing, approved by a vote of the Cheatham County Board of Education on November 18, 2021, and executed for Respondent by its superintendent, Dr. Cathy Beck on December 1, 2021.
8. Petitioners refused to execute the Settlement Agreement.
9. A status conference was held on Tuesday December 14, 2021, wherein then-counsel for the Petitioner student and parents acknowledged the settlement agreement was in their view in the best interest of the student. During the status conference, Petitioners' counsel indicated they would likely have to withdraw their representation of Petitioners.
10. On December 15, 2021, Respondent filed a Motion to Enforce the Settlement Agreement.
11. On December 16, 2021, Petitioners responded to the Motion to Enforce the Settlement Agreement by filing a *pro se* document seeking to dismiss their attorneys of record and appearing to repudiate the settlement agreement reached on November 11, 2021.
12. On December 17, 2021, attorneys Justin Gilbert and Jessica Salonus filed an agreed order signed by Alan D. Hall permitting their withdraw as counsel for

Petitioners. Due to inadvertence, this agreed order was not entered until December 28, 2021.

13. In response to Petitioners' December 16, 2021, filing, Respondent filed a motion to withdraw its Motion to Enforce the settlement agreement and sought a continuance.
14. On December 21, 2021, Petitioners filed another *pro se* motion seeking to remove their attorneys and opposing the Motion to Enforce the Settlement Agreement.
15. On December 28, 2021, an order issued continuing the hearing of this matter without a date certain to give Petitioners adequate time to seek new counsel.
16. Ultimately, the hearing on Petitioner's due process hearing request was reset for final hearing on March 7, 2022, continuing to March 8 and 9, 2022 if necessary.
17. On February 8, 2022, Respondent filed a Motion to Dismiss, citing Petitioners' December 21, 2021, filing appearing to amend the pleadings to alter the requested relief.
18. On February 8, 2022, Respondent's counsel properly noticed the Depositions of the Petitioners to take place on February 22, 2022. ■■■ did not appear for the deposition because ■■■ deemed service by U.S.P.S. mail to be insufficient. Mr. Hall attended the deposition in Ashland City in person and his court reporter attended virtually. The court reporter prepared a record of the unattended deposition.

19. On February 15, 2022, Petitioners requested additional time to respond to Respondent's Motion to Dismiss, which was granted, giving Petitioners through February 24, 2022, to respond.
20. When Petitioners failed to appear at their depositions on February 22, 2022, Respondent's counsel held the depositions open and properly noticed them again to take place on February 28, 2022, in Ashland City. Again, Mr. Hall travel in-person to Ashland City and his court reporter attended virtually.
21. Petitioners did not respond to the Respondent's Motion to Dismiss on or before February 24, 2022, and had not responded as of the date of the pre-hearing conference on March 1, 2022.
22. Petitioners failed to appear at their properly noticed depositions on February 28, 2022. When neither appeared, the court reporter prepared a record of the unattended depositions. Again, [REDACTED] intentionally did not attend because [REDACTED] deemed U.S.P.S. mailed notice of the deposition to be inadequate.
23. The technical record reveals an email thread between [REDACTED] and Mr. Hall wherein [REDACTED] requested and agreed that Petitioners would give their depositions on February 28, 2022.
24. The pleadings filed by [REDACTED] and [REDACTED] after the discharge of their attorneys, indicate that they seek monetary damages for alleged discrimination of their child by Respondent and other relief that is not cognizable under the special education provisions of the IDEA, the ADA, or Section 504 of the Rehabilitation Act.
25. The pleadings filed by [REDACTED] and [REDACTED] after the discharge of their attorneys, indicate that they refused to execute the settlement agreement because they

did not hire Justin Gilbert and Jessica Salonus to pursue a special education due process, but rather wanted them to pursue monetary damages for discrimination to their child.

26. Based on the pleadings, [REDACTED] email correspondences, and [REDACTED] arguments presented at the status conference, it is clear that this case does not concern the provision of special education services under the IDEA, the ADA, or Section 504 of the Rehabilitation Act. Accordingly, it should be dismissed on the pleadings.

WHEREFORE, in consideration of the foregoing, the following Conclusions of Law are applicable:

- 1) Respondent's February 8, 2022, Motion to Dismiss is well-taken and should be **GRANTED**.
- 2) Following the dismissal of their original counsel of record, Petitioners were granted ample time to find and engage new attorney representation in this matter.
- 3) As grounds for the Dismissal of Petitioner's due process hearing request, Petitioners failed to respond to Respondent's February 8, 2022, Motion to Dismiss, despite multiple extensions of time within which to do so.
- 4) It is further noted that Petitioners have failed to participate in discovery by failing to appear at their properly noticed depositions on two occasions.
- 5) Given these facts, dismissal of Petitioner's due process hearing request is appropriate.
- 6) It is further determined that Respondent, Cheatham County Schools, the LEA in this matter, is the prevailing party in this case.

WHEREFORE, it is ordered that this matter be and is hereby
DISMISSED with prejudice.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **4th day of March, 2022**.



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
4th day of March, 2022.



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

■, THE STUDENT, AND ■ AND ■, THE
STUDENT'S PARENTS V. CHEATHAM COUNTY
SCHOOLS

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 **March 4, 2022**. 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 with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Final Order, which is no later than **March 21, 2022**.

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 **May 3, 2022**. See TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may file an 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 **May 3, 2022**, 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.

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 APD within 7 days of the date of entry of the Final Order, which is no later than **March 11, 2022**. See TENN. CODE ANN. § 4-5-316. 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.

█, THE STUDENT, AND █ AND █, THE
STUDENT'S PARENTS V. CHEATHAM COUNTY
SCHOOLS

NOTICE OF APPEAL PROCEDURES

FILING

Documents should be filed with the Administrative Procedures Division by email *or* fax:

Email: APD.Filings@tn.gov

Fax: 615-741-4472

In the event you do not have access to email or fax, you may mail or deliver documents to:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, TN 37243-1102