



State of Tennessee
Department of State

Administrative Procedures Division
312 Rosa L. Parks Avenue
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

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Perry A. Craft, Esq.
Law Office of Perry A. Craft, PLLC
402 BNA Drive, Suite 402
Nashville, TN 37217
Sent via email also to:
perrycraft@craftlegal.com

Ashley Dumat, Esq.
Rutherford County Schools
2240 Southpark Drive
Murfreesboro, TN 37128-5507
Sent via email only to: dumata@rcschools.net

Tricia Craig
Tennessee Department of Education
Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Sent via email only to: Address on File

**RE: [REDACTED], THE STUDENT AND [REDACTED] AND [REDACTED], THE PARENTS V. RUTHERFORD
COUNTY SCHOOLS, APD Case No. 07.03-236527J**

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 STUDENT, and
AND ██████████ THE PARENTS,
*Petitioners,***

v.

**RUTHERFORD COUNTY SCHOOLS,
*Respondent.***

APD Case No. 07.03-236527J

FINAL ORDER

This case comes before Administrative Judge Claudia Padfield¹ to determine whether Respondent, Rutherford County Schools (RCS), denied ██████████ a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). The issue is whether Petitioners, ██████████ the student, and ██████████ parents, ██████████² and ██████████ have proven the alleged violations contained in the Due Process Hearing Request Form and, if so, the appropriate remedy.

This contested case was heard *de novo* on March 11-12, 2024, in a closed hearing in Murfreesboro, Tennessee. Petitioners were represented by attorney Perry Craft.³ Respondent was represented by attorney Ashley Dumat.⁴

¹ Judge Padfield is an independent and neutral administrative judge assigned by the Tennessee Secretary of State's Administrative Procedures Division to preside over the case and to issue a final order under TENN. CODE. ANN. § 4-5-314.

² The Due Process Hearing Request Form and the majority of all previous filings refer to ██████████ as ██████████ which are the names ██████████ commonly uses. Petitioner's pre-hearing brief identified the ██████████ as ██████████ for the first time. For the sake of clarity, ██████████ will be referred to by all three of ██████████ initials, ██████████

³ Mr. Craft was assisted by recent law school graduate Bishoy Fam. Because Mr. Fam was not a licensed member of any Bar association, Mr. Fam was not permitted to sit at counsel table but was permitted to stay in the closed proceedings without objection from RCS.

⁴ Britton Yoder, a law school student and intern with RCS, was permitted to observe the proceedings without objection from Petitioners. Mr. Yoder did not assist Ms. Dumat or participate in the hearing.

At the close of the proof, the parties were reminded of the following post-hearing schedule as previously agreed upon by the parties and delineated in prior orders – the transcript with hearing exhibits was due and filed on March 19, 2024; post-hearing briefs, including proposed findings of fact and conclusions of law, with citations to the record, were due and filed on March 26, 2024; and this FINAL ORDER is due to be issued on or before April 8, 2024.

Based upon a review of the evidence, it is determined that RCS did not provide [REDACTED] with FAPE after June 8, 2023, because RCS violated its obligation to provide [REDACTED] with appropriate evaluations in order to determine the necessary services and the least restrictive environment for [REDACTED]. Therefore, Petitioners are the prevailing party on that claim. [REDACTED] is awarded a new updated Functional Behavior Assessment by a clinical school psychologist or psychiatrist, development of a new Behavior Intervention Plan, development of a safety plan, a complete re-evaluation using the Tennessee Department of Education Autism Evaluation Guidance, and a psychoeducational assessment (educational functional assessment).

SUMMARY OF THE EVIDENCE

The following witnesses testified on behalf of Petitioners: 1) [REDACTED], [REDACTED] 2) [REDACTED]; 3) Dr. Larry Crismon, RCS Behavior Specialist; 4) Dr. Annie Ralston, RCS Director of Special Education; 5) Dr. Howard Knoff, school psychologist;⁵ [REDACTED] the student;⁶ and 7) Maryellen Bucci, [REDACTED] Principal.⁷ The following witnesses testified on behalf of Respondent: 1) Angela Shofner, RCS Lead Speech Pathologist; 2) Katie Grandowicz, RCS Occupational Therapist; and 3) Dr. Ralston.

⁵ Dr. Knoff was qualified as an expert in Individual Education Programs and appropriate placement.

⁶ Due to [REDACTED] limited speech, the court reporter was instructed to mark “inaudible” for the portions of [REDACTED] testimony that could not be understood.

⁷ Ms. Bucci was accompanied by her attorney, Rebecca Wells Demaree. Ms. Demaree did not participate in the hearing or otherwise assist Ms. Bucci.

Four exhibits were entered into evidence during the hearing:

- 1) June 8, 2023 settlement agreement
- 2) Dr. Knoff curriculum vitae
- 3) Dr. Knoff's report
- 4) February 22, 2023 Individualized Education Program (IEP)

FINDINGS OF FACT

1. [REDACTED] is a [REDACTED]-year-old [REDACTED]. [REDACTED] is [REDACTED], and [REDACTED] is [REDACTED]. [REDACTED] and [REDACTED] have joint conservatorship of [REDACTED]. [REDACTED] resides with [REDACTED] parents in Murfreesboro, Tennessee. [REDACTED] is zoned to receive educational services with RCS. After exiting high school, [REDACTED] parents will enter [REDACTED] into a residential facility.

2. [REDACTED] has been diagnosed with autism spectrum disorder, intellectual disability, verbal apraxia, seizure disorder, delayed speech, and short-term memory loss. While [REDACTED] can speak, [REDACTED] speech is extremely limited and very difficult to understand. [REDACTED] cannot read or write at any significant level.

3. While [REDACTED] does not require assistance with every activity of daily living (as an example, [REDACTED] can feed [REDACTED] when the food is placed in front of [REDACTED]), [REDACTED] disabilities are such that [REDACTED] will never drive a car, manage [REDACTED] finances, or live independently.

4. [REDACTED] requires preventative safety measures such as locked doors. Despite these efforts, [REDACTED] has eloped from [REDACTED] parents' care while riding in a vehicle.

5. [REDACTED] diagnoses qualify [REDACTED] to receive special education services under the IDEA. For special education purposes, [REDACTED] has a primary disability of autism and a secondary disability of intellectual disability.

6. [REDACTED] entered RCS as a student at [REDACTED] ([REDACTED]) in January 2023. Prior to the re-entry to [REDACTED], [REDACTED] had not received any educational services through RCS since approximately March 2022 due to the unilateral decision of [REDACTED] parents.

7. Upon returning to [REDACTED], [REDACTED] was assisted by two education professionals or RCS staff at the parents' request. On occasion, [REDACTED] had three education individuals or RCS staff working with [REDACTED] at one time. [REDACTED] did not attempt to elope while attending [REDACTED] or any school in RCS' system.

8. [REDACTED] attempted to engage [REDACTED] in peer-to-peer interactions. These attempts were unsuccessful, as [REDACTED] would act out and throw objects.

9. RCS scheduled a transition meeting for January 4, 2023, as [REDACTED] [REDACTED] birthday was approaching in February 2023. At the transition meeting, Petitioners notified RCS that they only wanted to discuss [REDACTED] placement and did not want to discuss services, evaluations, or any plan for [REDACTED]

10. The meeting was reconvened to January 11, 2023, so that RCS and the parents could look at placement options. Placement was discussed at the meeting and again at a meeting held on February 9, 2023.

11. Both parties looked at multiple placement options for [REDACTED]. Between RCS and the parents, the parties contacted or researched approximately 30 different school options.

12. The Individual Education Plan (IEP) was completed for [REDACTED] on February 22, 2023, which is [REDACTED] most recent IEP. [REDACTED] agreed that the IEP was a good representation of [REDACTED]

13. Over [REDACTED] parents' objections, the IEP team determined that [REDACTED] placement was changed from [REDACTED] to [REDACTED]

14. The IEP noted that [REDACTED] had a Functional Behavior Assessment (FBA), a Behavior Intervention Plan (BIP), and therapeutic physical intervention.

15. In preparation for [REDACTED] to transition back to RCS, RCS conducted the following assessments: 1) basic reading skills, January 23, 2023; 2) math calculation, January 19, 2023; and 3) communication, January 20, 2023.

16. While the IEP notes that [REDACTED] was assessed for fine motor skills on January 23, 2023, this was limited to consultation with [REDACTED] classroom teachers and case manager. No independent testing or assessment was completed at that time.

17. In developing the new IEP, RCS utilized an FBA that was completed on May 24, 2021. [REDACTED] was observed on January 20, 2023 and was noted to need a small instructional setting with few other students present.

18. The IEP established that [REDACTED] would receive occupational therapy six times a year for a 15-minute consultation. [REDACTED] was not evaluated for occupational therapy at that time. The consultation was for the occupational therapist to determine how [REDACTED] teachers and staff could work with [REDACTED] daily to meet [REDACTED] goals.

19. The IEP established that [REDACTED] would receive language therapy services four times a year for a 15-minute consultation. [REDACTED] speech and language needs were evaluated on January 20, 2023 using a progress monitoring tool. The evaluation result confirmed that [REDACTED] has a total communication challenge. The consultation was for the speech language pathologist to determine how [REDACTED] teachers and staff could work with [REDACTED] daily to meet [REDACTED] goals.

20. The IEP directed that [REDACTED] would receive social work services for 60 minutes a week; counseling services for 30 minutes a week; and one-on-one ancillary services with a paraprofessional for 33 hours and 30 minutes a week.

21. All the described services, including occupational and speech language therapy, would have followed [REDACTED] to [REDACTED]

22. [REDACTED] is a small, private, non-profit day school that contracts with RCS and other schools to have children placed at the school. [REDACTED] does not accept private-pay students. RCS has successfully placed students with intellectual disabilities at [REDACTED]

23. The school serves students from first through twelfth grade. [REDACTED] serves students with a variety of disabilities; every student who attends [REDACTED] has an IEP. The school has a Board Certified Behavior Analyst (BCBA) and a social worker on staff. Once a student enrolls in the high school autistic room, [REDACTED] utilizes the student's current IEP and BIP. The on-staff BCBA then observes the student and recommends any changes to the IEP or BIP if necessary.

24. [REDACTED] only accepts referred students whose needs can be met at the school. While the goal is for the students to improve and to advance such that placement and return in their regular school district is appropriate, not every student is able to advance enough for placement back at their regularly assigned school.

25. There is no fence that completely surrounds [REDACTED]. No conduct or behavior has occurred at [REDACTED] that necessitated the intervention of law enforcement. The properties adjacent to [REDACTED] have not caused any trouble or posed any danger to the students or staff.

26. [REDACTED] has security measures in place, including cameras inside the classrooms and shared areas. All exterior doors have magnetic locks which require a badge for ingress or egress.

27. [REDACTED] divides the students between two areas: cognitive disabilities and behavior disabilities. [REDACTED] would have been placed in the high school classroom for autistic or intellectual disabilities students.

28. No disciplinary issues, such as hitting, kicking, or inappropriate touching, have occurred in the high school autistic room. Students are never left alone, either by themselves or with another student.

29. [REDACTED] and [REDACTED] visited [REDACTED] one time in early 2023. At that time, there were five students in the high school autistic classroom where [REDACTED] would be placed.

30. While the classroom is open to all genders, in early 2023, all of the students in [REDACTED] potential classroom were [REDACTED]. There are always [REDACTED] students enrolled at [REDACTED] [REDACTED]

31. Upon arrival at [REDACTED] the parents observed that a window was open in the classroom.

32. [REDACTED] continued to receive educational services at [REDACTED] for the 14-day period following the completion of the IEP while the appeal period ran. After the conclusion of the appeal period, the IEP became final and [REDACTED] official school placement was [REDACTED] [REDACTED]

33. [REDACTED] and [REDACTED] refused to send [REDACTED] to [REDACTED] and instead took [REDACTED] to [REDACTED] after the IEP became final. Petitioners knew the placement had changed yet chose to take [REDACTED] to [REDACTED]. Because [REDACTED] placement had changed, [REDACTED] was not permitted to attend any classes.

34. [REDACTED] and [REDACTED] did not raise any concerns regarding the educational aspects of [REDACTED]. Instead, the parents raised concerns with RCS regarding the open window, the [REDACTED] ratio, and the school's proximity to a hotel. These concerns were not addressed with [REDACTED]

35. Since the parents refused to take [REDACTED] to [REDACTED] RCS offered [REDACTED] homebound services. Those services included the continuation of occupational therapy, speech

therapy, and at least 60 minutes of instruction in the home at least three times. RCS offered more homebound services hours if the IEP team felt the additional hours were needed. [REDACTED] and [REDACTED] refused every offer of homebound services.

36. Petitioners filed a previous due process case. The parties reached a settlement on June 8, 2023; Petitioners voluntarily withdrew the prior due process appeal as they agreed that all prior issues and claims were fully resolved.

37. At the time of the mediation, [REDACTED] was attending a summer camp at Illuminate Academy (Illuminate). Illuminate is a private tutorial organization in Nashville, Tennessee, for students with autism and developmental disabilities. The parties agreed that [REDACTED] would continue to attend the summer program, and the six-week tuition, enrollment fee, and application fee would be paid by RCS.

38. The parties agreed that Illuminate would be [REDACTED] education placement starting in the fall semester of 2023. RCS would be responsible for paying Illuminate directly for [REDACTED] tuition as long as [REDACTED] attended the school until [REDACTED] 22nd birthday.

39. [REDACTED] and [REDACTED] opted not to have [REDACTED] receive a one-on-one assistant at Illuminate. Rather, the parties agreed that RCS would be responsible for expenses related to a one-on-one educational assistant if one was necessary in the future.

40. The parties agreed that RCS would provide [REDACTED] with transportation to Illuminate via a method chosen by the parents. The parents could have chosen reimbursement for mileage, an RCS-contracted automobile transportation service, or an RCS-provided bus service.

41. Petitioners received monetary funds as compensatory services and a payment for attorney fees.

42. As the summer camp progressed, Illuminate determined that [REDACTED] needed a one-on-one assistant to attend the school during the fall semester. Dr. Anna Ralston, RCS's Coordinator of Special Education, was notified by Illuminate of its decision.

43. RCS offered homebound services again while Illuminate went through the hiring process to obtain the necessary educational assistant. [REDACTED] and [REDACTED] continued to refuse all homebound services for [REDACTED]

44. RCS offered [REDACTED] and [REDACTED] compensatory services to offer [REDACTED] FAPE while the educational assistant was secured. The compensatory services were declined.

45. Dr. Ralston contacted Illuminate at least weekly to check on the status of hiring the one-on-one assistant for [REDACTED]. Illuminate listed the position directly. Dr. Ralston requested that RCS hire the educational assistant on Illuminate's behalf; Illuminate did not provide permission for RCS to do so. Dr. Ralston told Illuminate that RCS would increase whatever Illuminate had listed as the salary in an attempt to hire the educational assistant.

46. Illuminate was unable to hire a one-on-one assistant to work with [REDACTED] after the summer camp ended. As the educational assistant was a requirement by Illuminate for [REDACTED] attendance during the school year, [REDACTED] did not attend Illuminate after the summer camp ended.

47. Once it was known that [REDACTED] could not attend Illuminate due to Illuminate's inability to hire an educational assistant, RCS scheduled an IEP meeting for September 6, 2023. The meeting was canceled by Petitioners.

48. RCS made multiple attempts to reschedule the IEP meeting. Petitioners eventually agreed to have an IEP at the end of November 2023. Because the Due Process Hearing Request Form was filed on November 22, 2023, the IEP meeting was canceled.

49. At the outset of the closed due process hearing, Respondent requested sequestration of any potential witnesses, including rebuttal witnesses. The motion was granted.

Over the objection of Respondent, the presence of Petitioners' third-party hired advocate was permitted to stay in the hearing as this individual was not expected to testify at the hearing.

50. In violation of the tribunal's ruling and unbeknownst to the tribunal or Respondent, the advocate called Petitioners' expert witnesses, Dr. Howard Knoff, such that Dr. Knoff listened to other witnesses' testimony. Dr. Knoff was also "briefed" on other witnesses' testimony during a hearing break.

51. Dr. Knoff testified that he worked as a consultant for Magnolia School, DeSoto County, Tennessee.

52. Contrary to Dr. Knoff's testimony, there is neither a Magnolia School nor a DeSoto County in Tennessee.

53. In preparation for trial, Dr. Knoff reviewed approximately 1,500 pages of [REDACTED] records that went as far back as [REDACTED] birth. The majority of these documents are not relevant to the issues in this appeal.

54. Dr. Knoff testified there were four objections to [REDACTED] as a placement for [REDACTED] 1) [REDACTED] was not listed as a Tennessee approved non-public school; 2) [REDACTED] was next to a hotel with a history of police involvement; 3) the high school autistic classroom for [REDACTED] only had [REDACTED] students when the parents visited in early 2023; and 4) [REDACTED] would be the only student with a cognitive disability.⁸

55. Contrary to Dr. Knoff's testimony and opinion, every student in the high school autistic classroom has a cognitive disability that entitles them to receive special educational services through an IEP.

⁸ Only upon cross-examination did Dr. Knoff present other objections when his initial opinion was challenged. In Dr. Knoff's report, Dr. Knoff only parroted the safety concerns as provided to Dr. Knoff by the parents. Any additional objections to [REDACTED] are not considered as credible.

56. Contrary to Dr. Knoff's testimony and opinion, [REDACTED] is listed as an approved non-public school through the Tennessee Department of Education.

57. Dr. Knoff testified and opined that [REDACTED] needs the following assessments to properly develop an IEP: 1) a new FBA by a clinical school psychologist or psychiatrist, 2) a "true" BIP under the IDEA, 3) a safety plan, 4) a complete re-evaluation under the Tennessee Department of Education Autism Evaluation Guidance, and 5) a psychoeducational assessment (educational functional assessment).

APPLICABLE LAW and ANALYSIS

The U.S. Supreme Court held in *Schaffer v. Weast* that the burden of proof is on the party "seeking relief." 546 U.S. 49, 51 (2005). Thus, when a parent files a request for a due process hearing, the parent bears the burden of proof in the due process hearing. *Id.* at 56; *see also*, *Cordrey v. Euckert*, 917 F.2d 1460, 1469 (6th Cir. 1990). In this case, Petitioners bear the burden of proof. Petitioners must prove, by a preponderance of the evidence, that the allegation in the Due Process Hearing Request Form should be resolved in their favor and that they are entitled to the relief sought therein.

When enacting the IDEA, Congress conferred jurisdiction of a student's IDEA claim upon administrative judges. *See* 20 U.C.A. § 1415(f)(3)(A). Administrative judges are vested with the jurisdiction to determine whether a student received FAPE under the IDEA. 20 U.C.A. § 1415(f)(3)(E). In Tennessee, the Office of the Secretary of State, Administrative Procedures Division, has jurisdiction over the subject matter and the parties of this proceeding; the undersigned administrative judge has the authority to issue final orders. *See* TENN. COMP. R. & REGS. 0520-01-09-.18; TENN. CODE ANN. § 49-10-101.

The IDEA requires that FAPE be made available to all children between the ages of 3 and 21. 34 C.F.R. § 300.101. The IDEA ensures that "all children with disabilities have available to

them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

The IEP need not be ideal but must “aim to enable the child to make progress” both academically and functionally. *Endrew F.*, 580 U.S. at 399-400. “The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’ through an “[i]ndividualized education program.” *Id.* at 400 (citing §§1401(29), (14)). The IEP is to be constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv). Having considered the disability, achievements to date, and potential for growth, the IEP should aspire to be an “appropriately ambitious” educational program. *Endrew F.*, 580 U.S. at 402.

The IDEA exists “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). Determining a child’s educational placement is not a decision that is made by any one person. Rather, it is a decision by a team consisting of parents, school professionals, and any other professionals as needed that is data driven.

Dr. Howard Knoff was hired by Petitioners and presented as an expert witness in the area of IEPs and placement. As noted in the facts, Dr. Knoff’s testimony on multiple topics that was incorrect. More problematic, Dr. Knoff based his opinions on data that was irrelevant and outside the scope of the hearing. “[T]he trier of fact is not bound to accept an expert witness’s testimony as true.” *Roach v. Dixie Gas co.*, 371 S.W.3d 127, 150 (Tenn. Ct. App. 2011). A

tribunal is entitled to disregard the evidence from an expert witness if the evidence is not found to be helpful. *See England v. Burns Stone Co.*, 874 S.W.3d 32, 38 (Tenn. Ct. App. 1993) (explaining that “the trier of fact may place whatever weight it chooses upon expert testimony” as cited in *Buckley v. Carlock*, 652 S.W.3d, 432, 444 (Tenn. Ct. App. 2022)). “A finder of fact may consider an expert’s bias or financial interest in the litigation when determining the weight to be given to his or her opinions.” *GSB Contractors, Inc. v. Hess*, 179 S.W.3d 535, 547 (Tenn. Ct. App. 2005) (internal citation omitted).

While opining that [REDACTED] is not a suitable placement for [REDACTED] Dr. Knoff only utilized the information about [REDACTED] that was provided by Petitioners. Dr. Knoff did not contact anyone at [REDACTED] nor visit the school. Dr. Knoff did such a poor job of independently evaluating [REDACTED] that he was insistent at the hearing that [REDACTED] was not an approved non-public school by the Tennessee Department of Education, which it is. In direct opposition to the ruling at the hearing which granted Respondent’s motion for the rule of sequestration, Dr. Knoff listened to at least one witness’s testimony and was briefed about the testimony at a break. The report prepared by Dr. Knoff does not indicate that he met with [REDACTED] or conducted any evaluation of [REDACTED]. Further, the majority of Dr. Knoff’s report is not admissible, as the parties previously reached a settlement which resolved all prior claims and issues before June 8, 2023. As such, the only applicable timeframe for any alleged violations and applicable remedies are from June 8, 2023 to the present.

The purpose of an expert witness is to provide “specialized knowledge [that] will substantially assist the trier of fact to understand the evidence or to determine a fact in issue[.]” TENN. R. EVIDENCE 702. Dr. Knoff’s testimony and expert report must be evaluated for their usefulness in light of the bias, inappropriately reviewed information relied upon, and inaccurate testimony when determining if the opinions provide additional assistance to understand the

evidence or to determine a factual issue. While Dr. Knoff's opinions are not disregarded, they have provided limited assistance to this tribunal in making the ultimate decision. As such, the opinions are given reduced weight.

█████ exclusion from school and any services offered by RCS was at the sole decision of █████ and █████ █████ parents did not raise educational concerns to RCS as to why █████ █████ was an inappropriate placement. Rather, they manufactured safety concerns that are not supported by any data or evidence. These concerns are not based in fact but rather hypothesis and speculation. █████ parents were concerned that █████ would be the only █████ in the class and that this, alone and without any supporting information or data, would pose a possibility of █████ being █████ assaulted by another student. At the time of the hearing, there was a █████ in the high school autistic room. The gender makeup of the classroom is fluid, as students advance and return to their regularly assigned school. Students are never left alone at █████ either by themselves or with other students. It is pure speculation, both by the parents and by Dr. Knoff, that █████ is at a higher risk of being assaulted at █████ █████ than at any other placement.

█████ and █████ also assert that the classroom at █████ would not be safe because they observed the classroom window was open. The school has security cameras throughout the school and locked doors. There is no indication that the classroom would have an open window at the time when █████ would attend the classroom or that doing so would pose a security risk to █████ has eloped while in the care of █████ parents. No evidence was presented that █████ would be at a higher risk of elopement if █████ attended █████ than █████ is at any other time.

The parents further objected to the fact that a hotel is next to █████
Despite the information regarding police activity at the hotel, there is no indication that any of

this activity occurred while students were at [REDACTED] More importantly, the data reflects that absolutely *none* of the activity at the hotel impacted or involved [REDACTED] [REDACTED] has never had to engage the police for any activity involving the hotel or any other surrounding businesses.

[REDACTED] parents have been clear that they want [REDACTED] to be placed in a residential facility. The fact that [REDACTED] parents will place [REDACTED] in such a facility after [REDACTED] ages out of the public education system does not equate to the necessity of the school system paying for such a placement now. Dr. Knoff opined that [REDACTED] should go to a residential facility now to help [REDACTED] prepare for this later placement. This is not a factor to be considered under the IDEA.

In Tennessee, an FBA is required under the following circumstances:

- a) When a student receiving Special Education and Related Services engages in conduct that results in a change of placement as defined by 34 C.F.R. 300.536 and the LEA, the Parent, and relevant members of the IEP team determine that the student's conduct that gave rise to the change in placement was a manifestation of the child's disability;
- b) When an IEP provides for the use of restraint or isolation, as required by T.C.A. 49-10-1304(b);
- c) When the student exhibits a pattern of behaviors that impede their learning or that of others;
- d) When the student exhibits a pattern of behavior that places the student or others at risk of harm or injury;
- e) When the student's IEP team is considering a more restrictive placement as a result of the student's behavior; or
- f) When determined appropriate by the student's IEP team.

TENN. COMP. R. & REGS. 0520-01-09-.24(3).

When [REDACTED] returned to RCS for educational services in January 2023, [REDACTED] FBA was almost two years old, having previously been completed on May 24, 2021. Upon reentering RCS, RCS should have focused on assessing [REDACTED] needs and current skills, and how those needs and skills potentially changed from age [REDACTED] to almost [REDACTED], over almost two years, and with a change of placement. In redeveloping the IEP, [REDACTED] present level of achievement and disability

were to be considered. RCS was considering a more restrictive placement for [REDACTED] by placing [REDACTED] at [REDACTED]. [REDACTED] was not able to interact with [REDACTED] peers at [REDACTED] due to [REDACTED] pattern of behaviors that placed others at risk of harm or injury when [REDACTED] acted out. As such, a new FBA was required under the applicable rule.

Instead, RCS capitulated to [REDACTED] and [REDACTED] insistence to only focus on [REDACTED] placement. [REDACTED] parents refused to even discuss what services RCS could offer [REDACTED]. As such, no conversations regarding reevaluation of any kind were addressed by the IEP team due to the parents' demands.

The Tennessee Department of Education, *Autism Evaluation Guidance* ("Autism Guidance"), provide nine areas to include when performing a comprehensive evaluation for a student. The areas are:

- 1) Parental interviews including developmental history;
- 2) Behavioral observations in two (2) or more settings (can be two settings within the school) addressing characteristics related to autism;
- 3) Health history;
- 4) Pragmatic communication skills (further language evaluation if identified as an area of concern);
- 5) Cognitive/developmental skills;
- 6) Social-emotional and behavior functioning (to include social skills and adaptive behaviors) that includes at least one (1) standard or normed instrument specific to autism and one (1) normative measure of general behavior/social-emotional functioning;
- 7) Sensory;
- 8) Academic skills; and
- 9) Documentation, including observation and/or assessment, of how autism adversely affects the child's educational performance in his/her learning environment and the need for specialized instruction and related services (i.e., to include academic and/or nonacademic areas).

TENN. DEPT. OF ED., *AUTISM EVALUATION GUIDANCE*, at 19-20 (Revised November 2018).

The Autism Guidance provides that a child should be reevaluated at least every three years. *Id.* at 30. While RCS utilized a multisource process as recommended in that various school professionals were consulted, any reevaluation of [REDACTED] in January 2023 by RCS was

cursory. Again, this was due to the lack of cooperation by [REDACTED] parents and their insistence that the only area open for discussion was placement. As [REDACTED] was a returning student to RCS's educational system, it appears RCS did not consider that a complete reevaluation was required. However, it was impossible for RCS and the parents to make a data-based decision as to placement without this updated information.

RCS made every reasonable effort to assist Illuminate Academy with securing a one-on-one educational assistant to work with [REDACTED]. RCS did not have authority to hire a staff member to work in a completely different private school. Under the June 8, 2023 settlement agreement, RCS was responsible for the expenses of the educational assistant, not for hiring said assistant. RCS was ready and willing to pay for the educational assistant and even encouraged Illuminate Academy to increase the salary for such a staff member. However, Illuminate Academy failed to secure the staff member such that [REDACTED] could stay for the school year. [REDACTED] inability to attend the regular school year at Illuminate Academy was not due to any fault of RCS.

Petitioners correctly pointed out that [REDACTED] had a change of placement after the June 8, 2023 agreement. [REDACTED] placement was no longer [REDACTED] as indicated on the February 22, 2023 IEP, but was Illuminate Academy. However, it is solely Petitioners' fault that the IEP was not updated to reflect this change of placement. When it became clear that Illuminate Academy was not able to hire a one-on-one educational assistant for [REDACTED] such that [REDACTED] could attend the school for the regular school year, RCS timely scheduled an IEP meeting. Petitioners canceled the meeting. Petitioners would not agree to reschedule the meeting for months. When Petitioners agreed to the rescheduled date, they filed the current due process case prior to the meeting. As such, RCS has not violated the IDEA by failing to update the IEP or update [REDACTED] placement. When the agreed-upon placement of Illuminate Academy fell through, [REDACTED] placement defaulted to the placement on [REDACTED] IEP, which was [REDACTED]

RCS does not utilize a standardized evaluation assessment when determining speech and language issues. RCS evaluated [REDACTED] using a progress monitoring tool with an assistive technology device. It was determined that [REDACTED] has a total communication challenge. While [REDACTED] received occupational therapy, no reevaluation was completed upon [REDACTED] return to [REDACTED]. Of the possible assessments in the eight possible categories for assessment, it appears that only one category – language/communication/social language - was considered.⁹ While the Autism Guidance does not provide exactly what needs to be completed when reevaluating a student, RCS did not do an adequate job in documenting any reevaluation. Without these formal assessments, the IEP did not properly identify [REDACTED] needs and how those needs would be addressed.

The purpose of the IDEA is not just to identify students who need specialized instruction and related services. The IDEA is also meant to help IEP teams identify the special education and related services the child requires. 34 C.F.R. § 300.301. The IDEA requires a local education agency (LEA) to reevaluate a child with disabilities when warranted. 34 C.F.R. § 300.303. Assessments and reassessments require parental consent. 34 C.F.R. 300.300. While an LEA may conduct the reassessments over the parents' objections, the LEA must first make "reasonable efforts to obtain such consent." 34 C.F.R. 300.300(c)(2). However, an LEA is excused from conducting evaluations or reevaluations when a parent repeatedly fails or refuses to cooperate in the evaluation or reevaluation process. 20 U.S.C. § 1414(a)(1)(D)(ii)(II).

The instant appeal is analogous to *Cone v. Randolph Cnty. Sch. Bd. of Educ.*, 657 F.Supp.2d 667 (M.D. N.C. 2009). In *Cone*, the parents unilaterally enrolled the child in a residential placement. The residential placement in *Cone* was the same residential placement

⁹ The other possible categories are cognitive, behavior/emotional/social, autism specific behavior, adaptive behavior, articulation/phonology, communication/language/social skills, and sensory processing/regulation.

that [REDACTED] and [REDACTED] wish to enroll [REDACTED]. Over the objection of the parents, the school district amended the IEP to change the placement of the child. The court concluded the parents intentionally delayed the application to the new placement and refused to cooperate with the implementation of the placement in hopes that the child would remain, at the expense of the school district, at the residential placement of their choice. “When parents refuse to consent to such services, the school district no longer has an obligation to provide FAPE to the child.” *Cone v. Randolph Cnty. Sch. Bd. of Educ.*, 2006 WL 3000445 at 5 (M.D. N.C. 2006). It is improper to hold a school district “liable for the procedural violation of failing to have the IEP completed and signed, when that failure” is the result of the parents’ lack of cooperation. *MM v. Sch. Dist. Of Greenville Cty.*, 303 F.3d 523, 535 (4th Cir. 2002).

The difference in *Cone* and the instant case is that RCS did not provide the necessary requests to [REDACTED] and [REDACTED] to conduct the reevaluations of [REDACTED]. RCS is staffed with dedicated educational professionals who are experts in the field of education and special education. Here, these professionals set aside their professional judgment of trying to determine what services were best for [REDACTED] and instead surrendered to [REDACTED] and [REDACTED] insistence to only look at placements. RCS did not provide the necessary documentation to demonstrate that all reasonable efforts were made to obtain the consent of the parents to properly evaluate [REDACTED] when [REDACTED] reentered the RCS system.

RCS argued that it would be a violation of the IDEA if it had unilaterally created a new IEP with an appropriate placement without the parent. To the contrary, the law permits an IEP meeting and the development of an IEP without parental involvement. While parental involvement is ideal, not all parents will engage with the LEA in the process. “A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.” 34 C.F.R. 300.322(d). If a parent refuses to engage in the

process by failing to respond to a request to develop an IEP or for evaluation, an LEA shall not be in violation of the requirement to provide FAPE. 20 U.S.C. § 1414(a)(1)(D)(ii)(III)(aa) and (bb). In order to be excused from pursuing any possible evaluations, RCS must prove that it made reasonable efforts to obtain the consent for the evaluations. 34 C.F.R. 300.300(c)(2)(i). As RCS did not seek to reevaluate the child, RCS did not make reasonable efforts to obtain the consent from the parents.

In seeking the least restrictive environment for [REDACTED] [REDACTED] and [REDACTED] seemed to have objected to placement at [REDACTED] because [REDACTED] was not in a general education classroom. This was why they refused homebound services for [REDACTED] claiming [REDACTED] would not have received any interaction with peers such that [REDACTED] could advance [REDACTED] social skills. Instead, [REDACTED] parents now advocate for [REDACTED] to be placed in a residential setting that only caters to individuals with extreme cognitive disabilities such as [REDACTED] has. At such a placement, [REDACTED] is ensured never to have any contact with general education peers. If [REDACTED] is easily adoptive of the behavior that other students model, as claimed by Dr. Knoff, then a placement in a facility where [REDACTED] has no opportunity to observe said behavior is not the least restrictive environment for [REDACTED]. On this point, Dr. Knoff provided conflicting information. Dr. Knoff testified that it did not make sense to place [REDACTED] in a day-school such as [REDACTED] when [REDACTED] would be in a classroom with other autistic and cognitive behavior disabled students. Dr. Knoff opined that seeing students with cognitive disabilities would then “trigger” [REDACTED] own behavior problems. However, Dr. Knoff also testified that [REDACTED] would model behavior regardless of the setting, including that of being in a residential setting with only other cognitively impaired students to model. While objecting to [REDACTED] Dr. Knoff testified that the private, residential placement – surrounded only by students with autistic and cognitive behaviors – was the least restrictive environment for [REDACTED].

Petitioners assert that residential placement is the only viable option, in part, because all other less restrictive options on the placement continuum have been exhausted. To the contrary, RCS has presented a viable day-school option in the form of ██████████ which was unilaterally rejected by ██████ and ██████. RCS made reasonable efforts to place ██████ at ██████████. The necessary referral was made, and ██████ would have been accepted at ██████████ but for ██████ and ██████ refusal to enroll ██████ at the school. Much like in *Cone*, the unilateral decision of the parents to delay enrollment of ██████ in a day-school does not now entitle them to reimbursement at the residential placement of their choice.

Dr. Knoff testified that he based his opinion in the absence of recent data. An opinion that is based on outdated, irrelevant data is not helpful to this tribunal. Rather, as suggested by Dr. Knoff, RCS needs updated, quality evaluations to adequately determine what ██████ needs. RCS did not adequately update ██████ IEP when ██████ returned to ██████ in January 2023 because they did not gather the necessary data to do so. RCS did not gather this necessary data because the parents refused to discuss or explore services and educational goals with RCS. Rather, Petitioners focused all of their efforts, and forced RCS to focus all of its efforts, upon finding an alternative placement that was acceptable to ██████ and ██████.

In the Due Process Hearing Request Form, Petitioners allege one violation by RCS – a violation to provide ██████ with FAPE for failing to ensure ██████ had a one-on-one assistant at Illuminate Academy.¹⁰ Due to the failure, ██████ was unable to attend Illuminate Academy. For the violation, Petitioners seek one form of relief – residential placement. Petitioners have failed to prove that a violation of FAPE entitles ██████ to the relief sought. As correctly asserted by

¹⁰ Petitioners' efforts to expand the scope of the due process hearing, prior to the hearing through the pre-trial memorandum and again through the post-hearing proposed order, are rejected and not considered. *See* 34 C.F.R. § 300.511(d); *Ja.B. v. Wilson Cnty. Bd. of Educ.*, 2022 WL 32673 at 10 (M.D. Tenn. 2022).

Petitioners, “[m]aking a placement decision without adequate data fails the student.”¹¹ Yet that is the exact relief sought by Petitioners. Petitioners are entitled to the relief that ■■■ needs as was proven at the hearing, not what is wanted by ■■■ parents.

As noted above, ■■■ and ■■■ have the right to refuse any reevaluation of ■■■. As noted in *Cone* and the other cited cases, the failure of the parents to cooperate with the reevaluation process, the drafting of an IEP, and the implementation of an IEP will result in the waiver of all due process relief by the parents.

CONCLUSIONS OF LAW

1. Petitioners have met their burden of proof that RCS did not provide ■■■ with FAPE from June 2023 to March 2024, because RCS violated its obligation to adequately evaluate ■■■ to properly develop an IEP to enable ■■■ to make progress appropriate in light of ■■■ circumstances. Petitioners are the prevailing party on this claim.

2. The remedy for the prevailing claim is that ■■■ is entitled to a new Functional Behavior Assessment by a clinical school psychologist or psychiatrist, a new Behavior Improvement Plan, a safety plan, and a psychoeducational assessment (educational functional assessment).

3. Petitioners have failed to meet their burden of proof that ■■■ is entitled to the requested relief of any compensatory services.

4. Petitioners have failed to meet their burden of proof that they are entitled to the requested relief of residential placement at this time.

¹¹ Petitioners’ Proposed Findings and Fact and Conclusions of Law, p. 9.

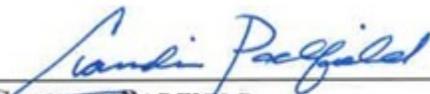
REMEDY

█ is awarded a new Functional Behavior Assessment by a clinical school psychologist or psychiatrist, a new Behavior Improvement Plan, a safety plan, and a psychoeducational assessment (educational functional assessment).¹²

The policy reasons for this decision are to uphold the laws of the State of Tennessee, to facilitate the fair and efficient management of the Tennessee Department of Education rules and statutes, and to ensure adequate due process is provided for the education of children with disabilities to parents, students, and local education agencies.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **8th day of April, 2024**.



CLAUDIA PADFIELD
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 **8th day of April, 2024**.

¹² While Petitioners also seek attorneys' fees and expenses, including expert fees, such fees may not be awarded as part of the administrative process and must be sought from a court on appeal. See 42 U.S.C. § 1415(i)(3)(B); 34 C.F.R. 300.517.

THE STUDENT AND AND THE
PARENTS V. RUTHERFORD 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 **April 8, 2024**. 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 **April 23, 2024**.

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 **June 7, 2024**. 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 **June 7, 2024**, 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 **April 15, 2024**. 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
PARENTS V. RUTHERFORD 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, 6th Floor
Nashville, TN 37243-1102