



State of Tennessee
Department of State
Administrative Procedures Division
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July 7, 2022

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RE: [REDACTED], THE STUDENT AND [REDACTED] AND [REDACTED], THE STUDENT'S PARENTS V. KNOX COUNTY SCHOOLS, APD Case No. 07.03-221408J

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:

█ and █, the Parents,
█, the Student,
Petitioners,

v.

KNOX COUNTY SCHOOLS,
Respondent.

APD Case No. 07.03-221408J

FINAL ORDER of DISMISSAL

On April 6, 2022, the Petitioners provided the Respondent with a due process complaint under the Individuals with Disabilities Education Improvement Act (IDEA). The case is currently assigned to Administrative Judge Kim Summers. The Petitioners are representing themselves. Amanda Morse represents the Respondent Knox County Schools, which is the school system or local education agency (LEA).

On April 21, 2022, the Respondent filed a Motion to Dismiss to which the Petitioners filed a Response on April 22, 2022. During the pre-hearing conference held with the Parties on April 25, 2022, it was agreed that the legal issues raised in the Motion by the Respondents and the Response from the Petitioners would be determinative of the issues raised in the Complaint. To this end, each Party filed a memorandum of law (Memorandum) on the legal issues raised in the Complaint, which were addressed during a pre-hearing conference held with the Parties on June 24, 2022. It has been agreed that an evidentiary hearing is not required.

Based on the Memorandums and the additional argument from the Parties, it is determined that the Respondent's Motion to Dismiss is appropriately granted for the reasons specified below.

The question asked in the Petitioners' Memorandum is "whether an intellectually gifted student is *entitled* to access college coursework without exhaustion of lesser courses." Based on the governing law, the better question is whether an intellectually gifted student is *entitled* to access college coursework at all. As discussed in the Respondent's Memorandum, services for the intellectually gifted are solely a creation of state law since "intellectually gifted" is not a disability category under federal law. In Tennessee, the dual enrollment classes at issue are made available pursuant to Tenn. Code Ann. § 49-6-3111 to high school students meeting specified grade requirements *if* also recommended by the high school principal and the higher education institution and included in the student's IEP.¹ Accordingly, Tennessee state law makes dual enrollment classes available to students satisfying the requirements but does not create an entitlement to these classes.²

Under federal law, and under Tennessee state law for the intellectually gifted, a school system is only required to provide a free appropriate public education (FAPE) as determined by the school system. The requirement to provide an appropriate education does not mandate the use of specific curriculum or methodologies that may be preferred by the student, including the dual enrollment classes at issue in this matter. Should a student successfully challenge the curriculum offered by the school system as failing to provide a FAPE, alternatives to the offered curriculum can be explored. At this point, dual enrollment classes may be considered as a possibility but would still not be required by the law should other appropriate alternatives also be available.

In the case at hand, the Student is presently enrolled at [REDACTED] in Knox County. [REDACTED] is a rising [REDACTED] who has taken dual enrollment classes at Pellissippi State Community College but has been denied dual enrollment classes at the University of Tennessee (UT) for reasons outside the evidentiary record. The school system has offered other high-school level classes in lieu of the

¹ The law says that gifted students "may enroll." It does not say "the school system shall offer."

² Although Tennessee state law does not provide an entitlement to dual enrollment classes, the denial of access to these classes should have a rational basis and should not be arbitrary or capricious.

requested dual enrollment classes at UT that it believes will provide a FAPE and also satisfy Tennessee's general high school graduation requirements. The alternative classes offered by the school system have been rejected by the Petitioners as not adequately challenging for the Student and likely to cause regression in ■ learning.

It is possible that an evidentiary hearing contesting the curriculum offered by the school system would, ultimately, find a denial of FAPE. In only such circumstances would the school system be required to offer a different curriculum, which need not include dual enrollment classes if other appropriate alternatives are available and offered by the school system. Because neither state nor federal law require a school system to offer dual enrollment classes to the intellectually gifted, denial of access to such classes cannot be deemed a denial of FAPE based solely on the limited evidentiary record to which the Parties have agreed.

In the absence of an entitlement to the requested dual enrollment classes, the Petitioners have failed to establish a denial of FAPE on these grounds; therefore, this request for due process is appropriately **DISMISSED**. Future challenges to the curriculum offered in the Student's IEP shall not be barred by this dismissal.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **7th day of July, 2022**.


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 **7th day of July, 2022**.

■■■■, THE STUDENT AND ■■■■ AND ■■■■, THE
STUDENT'S PARENTS V. KNOX 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 **July 7, 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 **July 22, 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 **September 6, 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 **September 6, 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 **July 14, 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.

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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
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