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RE: [redacted], THE STUDENT, AND [redacted] AND [redacted], THE PARENTS V. WILLIAMSON COUNTY SCHOOLS, APD Case No. 07.03-230316J

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:

[redacted] THE STUDENT,
and [redacted] THE PARENTS,
Petitioners,

v.

WILLIAMSON COUNTY SCHOOLS,
Respondent.

APD Case No. 07.03-230316J

FINAL ORDER

The hearing in this matter came before Richard M. Murrell, Administrative Judge, assigned by the Tennessee Secretary of State's Administrative Procedures Division, on August 29, August 30, August 31, September 20, and September 28, 2023, by videoconference.[1] [redacted], the Student, and [redacted] and [redacted], the Parents (Petitioners), were represented by Michael F. Braun. Williamson County Schools (WCS) was represented by attorneys Deanna Arivett and Angel McCloud.

Petitioners sought relief under the Individuals with Disabilities Education Act (IDEA) for a denial of a free, appropriate, public education (FAPE) based on the following issues :[2] (1) did WCS fail to timely evaluate [redacted] by using summer break as a basis to delay evaluating [redacted]; (2) did WCS fail to determine [redacted] eligible for special education services in their district within a reasonable amount of time; (3) did WCS fail to offer comparable services to [redacted] including, but not limited to, the provision of extended school year (ESY) services required if a child's IEP team determines that such services are necessary under 34 C.F.R. § 300.309; (4) did WCS

[1] Additionally, the parties filed video content as proposed exhibits that included depositions, IEP meetings, and vignettes compiled by [redacted] illustrative of [redacted] interest in video-making. This administrative judge viewed the more than ten hours of video content prior to the hearing.

[2] These issues are distilled from the Petitioner's post hearing brief.

predetermine [redacted] placement and accommodations and fail to use the required continuum of placements by not considering alternatives to [redacted]; and (5) did WCS prohibit [redacted] from getting a regular diploma if [redacted] asserted [redacted] right to an accommodation. The Petitioners sought past and future funding from WCS for a private placement of [redacted] at Currey Ingram Academy based upon the alleged denial of FAPE.

Based upon the pleadings, the evidence at trial, the parties' post-trial briefs, the arguments of the parties, and the record in this case, it is **DETERMINED** that the relief sought by the Petitioners should be **DENIED**. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The student, [redacted], is a [redacted] young [redacted] who moved from Los Angeles, California after the 2020-2021 school year and has been enrolled in and attended Currey Ingram Academy (CIA), a private school located in Williamson County, Tennessee since his arrival in Williamson County in 2021.

2. [redacted] had been served in the Los Angeles Unified School District (LAUSD) through an Individualized Education Program (IEP)[3] pursuant to the Individuals with Disabilities Education Act (IDEA) after having been found eligible under other health impairment (OHI) (ADHD) by the LAUSD.

3. In earlier years, [redacted] was served though special education services provided in a general education environment. [redacted] and [redacted] became concerned about [redacted] progress and certain behaviors which prompted them to obtain a private neuropsychological evaluation which was conducted by Dr. Lev Gottlieb in December of 2017.

[3] In Tennessee, the same special education services agreement is referred to as an Individualized Education Plan. "IEP" will be used to refer to both.

4. As a result of the evaluation, Dr. Gottlieb recommended that [redacted] needed counseling and treatment for [redacted] anxiety related behaviors and needed a small classroom size with individualized teaching provided by specialized staff.

5. Dr. Gottlieb observed that the LAUSD zoned school, while overall a solid public school, was a fully mainstream setting with lots of kids and not much adult supervision. The zoned school was "not resourced enough" to give [redacted] supports to access the intake side of learning efficiently nor the output side.

6. As a result, [redacted], while not disruptive, would be on the periphery, picking at [redacted] arms and face and getting caught up in [redacted] thoughts. The zoned school was not a particularly good environment for [redacted] in terms of accessing [redacted] learning.

7. In considering the result of this evaluation, the LAUSD IEP team determined that [redacted] would be placed at Summit View, a nonpublic school that exclusively served students with disabilities.

8. [redacted] continued at Summit View, at LAUSD expense, upon entering the [redacted] grade through the end of the 2020-2021 school year, [redacted] [redacted]-grade year.

9. In January of 2021, the Petitioners contacted Currie Ingram Academy (CIA) to obtain information regarding enrolling [redacted] for the 2021-2022 school year. CIA staff told the Petitioners by January 20, 2021, that [redacted] appeared to be a good fit for CIA.

10. CIA is a private school located within Williamson County, Tennessee. CIA restricts enrollment to person with learning disabilities or learning differences and rarely has a nondisabled student.[4] CIA does not accept federal or state funding, is not accredited by the Tennessee Department of Education, does not conform to the IDEA and does not contract with

[4] Dr. Jared Clodfelter stated that the sibling of student with a learning disability may be admitted or occasionally where a parent desires a small school with a personalized or individualized type of education.

LEAs to provide IEP services for students on behalf of the LEA. CIA uses a privately accredited curriculum and reports a very high rate of acceptance of its graduates by various colleges. CIA does not provide counseling services to students in the [redacted] grade and above. CIA administrators prepare Individual Learning Plans (ILP) without parental input that in large part describe services that apply to all of the enrolled students.

11. On February 2, 2021, [redacted] emailed CIA and scheduled a tour of the school for [redacted] and [redacted] on February 22, 2021.[5]

12. On February 24, 2021, [redacted] and [redacted] called and then toured [redacted] School ([redacted]).

13. [redacted] is a public school in Williamson County, Tennessee. It is part of the Williamson County School District (WCS). [redacted] is a highly reputed public school that is accredited by and subject to the regulation of the Tennessee Department of Education. [redacted] and WCS, generally, are known as having a robust special education program within the state of Tennessee.

14. Also, on February 24, 2021, [redacted] and [redacted] signed a contract to purchase a house in [redacted], an area for which [redacted] would be the zoned school.

15. On February 25, 2021, [redacted] and [redacted] applied to CIA for [redacted] to be admitted for the 2021-2022 school year.

16. The LAUSD IEP was reviewed and revised by the LAUSD IEP team in a March 15, 2021, meeting[6] prior to the Petitioners' move to Tennessee. This was a scheduled triennial review. Included in the IEP at various sections were similar supports and services as had been

[5] [redacted] and [redacted] also visited Benton Hall, a second private school they had contacted privately, but had no further contact there.

[6] Most of the attendees of this IEP Team meeting, including [redacted] and [redacted], participated by videoconference. [redacted] did not participate.

provided such as small class size, text to speech, speech to text, math step cards ESY, and counseling.

17. [redacted] and [redacted] retained Dr. Gottlieb to update testing and assessment for [redacted] because CIA required the updated testing and the updates would be useful for the March 15, 2021, LAUSD IEP team meeting.

18. On March 24, 2021, [redacted] and [redacted] closed on the contract to purchase a house in [redacted]. They simultaneously entered a lease back to the sellers that left the sellers in possession of the house through May 2021.

19. On April 5 and 6, 2021, [redacted] arranged for [redacted] to attend CIA for shadowing classes as part of the application process. This gave [redacted] the opportunity on the first day to meet peers [redacted] would have in the [redacted] grade, and, on the second day to see the environment where [redacted] grade classes are held.

20. On April 8, 2021, the Petitioners attended a zoom meeting with Dr. Jared Clodfelter, Head of Upper School at CIA, shortly after which the Petitioners were informed that [redacted] had been accepted for the 2021-2022 school year at CIA.

21. On April 22, 2021, the Petitioners signed an enrollment contract with CIA agreeing to pay the costs by monthly installment payments that were non-cancellable after June 1, 2021.

22. On May 7, 2021, [redacted] emailed Kevin Keidel, the Principal of [redacted], stating that the Petitioners were moving to Williamson County and had completed the parent registration for [redacted], further stating that [redacted] would be entering the [redacted] grade in the Fall for the 2021-2022 school year.

23. The Petitioners did not seek enrollment of [redacted] for any portion of the 2020-2021 school year with any school in Tennessee.

24. On May 14, 2021, [redacted] provided to [redacted] staff the LAUSD March 15, 2021, IEP.

25. Also on May 14, 2021, the registrar for [redacted] emailed the Petitioners to inform them they would need to submit two current utility bills as proof of residency in the school district to complete enrollment for [redacted]

26. The Petitioners advised that they did not have utility bills because they had leased the house back to the sellers. The Petitioners took possession from the original sellers on May 24, 2021, and provided the requested utility bills July 9, 2021.

27. The Petitioners transitioned to Tennessee in June of 2021, completing their move by June 25, 2021, although [redacted] and [redacted] returned at least twice to Los Angeles during July 2021.

28. On July 9, 2021, [redacted] provided to [redacted] staff the remaining documents requested to complete [redacted] enrollment in [redacted]. The Petitioners provided Dr. Gottlieb's 2021 evaluation of [redacted] on the same date.

29. [redacted] confirmed [redacted] enrollment on July 13, 2021.

30. [redacted] staff member, Kari Sulcer, Professional School Counselor, emailed the Petitioners on July 28, 2021, indicating that the Petitioners could begin selecting courses for [redacted] [redacted]-grade year and requesting verification through a transcript of any course work in [redacted] school that was taken for [redacted] school credit.

31. [redacted] replied to the July 28, 2021, email the following evening, July 29, 2021, at 5:05 p.m., expressing confusion and concern regarding the process of developing a Tennessee IEP. [redacted] acknowledged that [redacted] had been informed on July 14, 2021, that Wendy Melson, a [redacted] school psychologist, had the LAUSD IEP and the updated neuropsych evaluation and a meeting was contemplated with Ms. Melson the week of August 2, 2021 "to discuss all of [redacted] IEP considerations including placement."

32. Ms. Melson replied to [redacted] at 6:49 p.m. on July 29, 2021,[7] and addressed the confusion and concern [redacted] had expressed. Ms. Melson acknowledged awareness of the Petitioner's expressed intentions of enrolling [redacted] at [redacted]. Ms. Melson explained that matching as much as possible the services in [redacted] active IEP was the first step and gave assurances that [redacted] would have the necessary supports and services to meet [redacted] needs. Ms. Melson clarified that, while continuing to provide services that align as closely as possible with the incoming IEP, eligibility in Tennessee would have to be documented followed by one or two meetings to produce a full annual IEP in Tennessee.

33. Stacy Poynter of [redacted] emailed [redacted] the morning of Monday, August 2, 2021, to set the time for a meeting with Ms. Melson and herself with the Petitioners.

34. [redacted] replied that the Petitioners would not be available that day and requested a later date. Ms. Poynter offered Thursday, August 5, 2021, at 10:00 to 10:30 a.m., which the Petitioners accepted.

35. During the August 5, 2021, meeting between Petitioners and [redacted] staff including Ms. Poynter, Ms. Melson, and Teresa Ashcraft (as special education teacher at [redacted]), the staff members explained that [redacted] could provide comparable services to the LAUSD IEP utilizing placement in a special education classroom with a small class size until the Tennessee IEP team could meet to develop a Tennessee IEP.

36. On August 6, 2021, Ms. Poynter invited the Petitioners to bring [redacted] to [redacted] for a period of time. The Petitioners declined, stating that they were "unsure of [redacted] ultimate placement" and that the Petitioners did not see a point in bringing [redacted] to the school.

[7] Ms. Melson was not part of the email chain to which [redacted] responded. Kari Sulcer, [redacted] School Counselor, included Ms. Melson in her reply to [redacted] at 6:31 p.m. on July 29, 2021.

37. On August 9, 2021, Stacey Robertson, a student support specialist, requested that [redacted] complete release of information forms to authorize [redacted] to release information to two private schools (Genesis and High Road of Nashville) so that they could be considered as placements for [redacted] at the upcoming IEP team meeting. Ms. Robertson reiterated that [redacted] could receive services at [redacted] in the interim but that she would work as quickly as possible to share the information necessary. These actions were in response to an earlier phone conversation with [redacted] wherein [redacted] expressed concern about the size of [redacted] and the fact that [redacted] had a non-public school placement in Los Angeles.

38. Ultimately, Petitioners did not sign the release of information forms, and the Petitioners rejected consideration of either of the private schools based on telephone conversations they had privately with representatives of each school.

39. On August 9, 2021, Ms. Poynter also emailed Petitioners asking if they would waive their ten-day notice to schedule an IEP meeting sooner. Petitioners declined.

40. On August 10, 2021, [redacted] corresponded with Stacey Robertson about [redacted] understanding of [redacted] eligibility status. [redacted] also informed Ms. Robertson that [redacted] had been enrolled in a non-public school, CIA. [redacted] stated that [redacted] would participate in the eligibility and IEP process with [redacted]\WCS regarding funding.

41. On August 20, 2021, the WCS IEP team met after the expiration of the ten-day notice that the Petitioner declined to waive.[8] The team, which included [redacted] and [redacted], confirmed that [redacted] would continue to be eligible for special education services in Tennessee under the category of other health impairment (OHI). The team also determined that additional

[8] This meeting was technically a reevaluation based on the LAUSD IEP and additional available information to determine eligibility in Tennessee and to delineate how comparable services would be provided.

assessments were needed to consider eligibility under emotional disturbance because that category in California is subsumed under OHI.

42. WCS provided the Petitioners with the reevaluation summary report and a prior written notice (PWN) following the August 20, 2021, meeting.

43. The Petitioners disagreed with WCS's assertion that services comparable to the LAUSD IEP could be provided at [redacted]. Petitioners stated that, based on their February 2021 tour of [redacted], they believed that [redacted] could not provide "a small learning environment."

44. The Petitioners also disagreed with the statement included in the Prior Written Notice that the Petitioners had unilaterally placed [redacted] in a private school placement and that the Petitioners were requesting a private school placement. Petitioners stated their opposition by writing "[w]e disagree with Williamson County's representation that we are requesting a private school placement. We were open to a discussion with Williamson about an appropriate placement for [redacted]; however, Williamson County did not see fit to engage us and left us on our own to find an appropriate placement."

45. The Petitioners also disagreed with the characterization by WCS that it had requested a release of information from the Petitioners to coordinate with local non-public schools known to provide therapeutic day treatment services. The Petitioners wrote that they considered a joint tour with WCS to be intrusive and unnecessary.

46. Further, the Petitioners wrote that, after a phone interview, they determined "that Genesis[9] was not comparable to [redacted] non-public school."[10] The Petitioners referenced the IEP

[9] Genesis was one of two schools that WCS requested from the Petitioners a release of information.

[10] It is unclear from the testimony whether the Petitioners were referencing Summit View or CIA as [redacted] non-public school.

post-secondary goal that [redacted] "will enroll in and attend a two to four-year college" as a basis of their assessment because Genesis did not track data on college attendance by its graduates.

47. Further, the Petitioners wrote that "Unfortunately, we believe Williamson County Schools have failed [redacted] and forced us to then unilaterally make decisions that we believe are in [redacted] best interest."

48. On September 7 and 13, 2021, [redacted] was observed at CIA by Ms. Melson and Ms. Poynter during [redacted] history and algebra classes.

49. On September 15, 2021, the IEP team met. In addition to [redacted] and [redacted] and WCS members, Trudy Baker, an administrator from Summit View, participated by telephone.

50. The team discussed at length the available information which included the LAUSD IEP, Dr. Gottlieb's report, and the observations made at CIA. The team began developing, section by section, a new IEP. The IEP team determined that [redacted] had exceptionalities in reading comprehension, math problem solving, written expression, social emotional behavior, and transitional-vocational.

51. On September 24, 2021, Ms. Melson completed the WCS psychoeducational evaluation which incorporated feedback on rating forms. The Petitioners delivered and received the rating forms to and from raters at CIA and [redacted] former school rather than permit Ms. Melson to send and receive the forms. The Petitioners completed and returned their own rating forms as well.

52. On October 4, 2021, the IEP team meeting reconvened, and this time included Pam Chinelli who had been [redacted] [redacted] grade teacher.

53. The meeting included robust discussion that culminated in the completion of the proposed IEP. While some sections of the IEP were agreed upon by the team, there were other sections where no agreement was reached. One area of disagreement centered on whether the

benefit of a small class size could be delivered at [redacted] which has a large campus with more than 1,700 students. Members of the team also disagreed whether an e-reader or math step cards would be considered a modification of the curriculum and testing environment or an accommodation to permit access to the curriculum or testing environment.

54. The Petitioners were concerned that [redacted] would not continue [redacted] present level of academic success or would not be awarded a general education diploma if [redacted] attended [redacted] and that either outcome could be detrimental to [redacted] goal of entering and attending college after high school.[11]

55. The Petitioners disagreed with the proposed IEP.

56. On March 28, 2022, the Petitioners contracted with CIA for [redacted] to enroll for the 2022-2023 school year.

57. The Petitioners did not request an updated assessment or any special education services from WCS after the October 4, 2021, IEP team meeting.

58. On January 13, 2023, the Petitioners filed their due process hearing request.[12]

59. The claims set forth in Petitioners' complaint in this matter revolve around the IEP proposed for [redacted] for the 2021-2022 school year following multiple sessions of the IEP team meeting at WCS when [redacted] was entering the [redacted] grade. The Petitioners assert that WCS denied [redacted] FAPE for the 2021-2022 school year and the 2022-2023 school year.

60. WCS provided information to demonstrate the high degree of education, training and experience of all of the staff members who participated in [redacted] IEP process.

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[11] As an example, the use of an e-reader or math step cards would be viewed as a modification at WCS and would not lead to a general education diploma needed for most college admission. The Petitioners protested that CIA would allow the use of both and would provide the same general education diploma. CIA clarified that its diploma is issued by the school, not the State of Tennessee, so that the modification standard does not apply.

[12] The Petitioners filed a due process hearing request regarding their disagreement with the proposed IEP on January 5, 2022, but voluntarily dismissed that action on July 25, 2022.

61. [redacted] received a grade of 97 in an algebra class at CIA. [redacted] year-end math achievement scores were at the seventh-grade level.

CONCLUSIONS OF LAW

1. When enacting IDEA, Congress conferred jurisdiction of a student's IDEA claims upon hearing officers, also known as administrative law judges. *See* 20 U.C.A. § 1415(f)(3)(A). Administrative judges are bestowed the jurisdiction to determine whether a student received an appropriate education under the IDEA. 20 U.C.A. § 1415(f)(3)(E).

2. In Tennessee, the Office of the Secretary of State, Division of Administrative Procedures, has jurisdiction over the subject matter and the parties of this proceeding and the undersigned Administrative Law Judge has the authority to issue final orders. *See* TENN. COMP. R. & REGS. 0520-01-09-.18; TENN. CODE ANN. § 49-10-101.

3. 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). When a parent files a request for a due process hearing, the parent bears the burden of proof, or burden of persuasion in the due process hearing. *Id.* at 56 (citing 2 J. Strong, McCormick on Evidence § 337, p. 412 (5th Ed. 1999)) (referencing the "default rule that [Petitioners] bear the risk…" and "[t]he burdens of pleading and proof…should be assigned to the [Petitioner] who generally seeks to change the present state of affairs…"); *see also*, *Cordrey v. Euckert*, 917 F.2d 1460, 1469 (6th Cir. 1990) (the party challenging the IEP bears the burden of proof in an IDEA action).

4. In this case, Petitioners bear the burden of proof. Petitioners filed the request for due process hearing claiming that WCS failed to offer [redacted] a free appropriate public education pursuant to the IDEA. Thus, regardless of the way the Petitioners describe the issues, the Petitioners bear the burden to prove the specific violations alleged in the due process complaint: (1) WCS failed to fully and timely identify [redacted] disabilities and present levels of performance;

(2) WCS failed to offer an IEP that was reasonably calculated to enable [redacted] to make progress appropriate in light of his circumstances; (3) WCS predetermined [redacted] placement at [redacted] by developing the IEP based on [redacted] instead of [redacted] individual needs; (4) WCS failed to offer an appropriate placement, and (5) WCS prohibited the parent from meaningfully participating. *See Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017). Finally, Petitioners bear the burden of proving that CIA, the private school where Petitioners unilaterally placed [redacted], is appropriate within the meaning of the IDEA. *See Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993).

5. The IDEA requires WCS to provide FAPE in the least restrictive environment (LRE) to all students with disabilities who are in need of special education and related services. 20 U.S.C. §1400 *et. seq.* The requirements of the IDEA have been adopted, with some additional requirements, by the Tennessee State Board of Education. TENN. COMP. R. & REGS. 0520-01-09, *et seq*.

6. An IEP is a written document that contains "a specific statement of the child's current performance levels, the child's short-term and long-term goals, the educational and other services to be provided, and criteria for evaluating the child's progress," among other things. *Knable ex rel. Knable v. Bexley City Sch. Dist*., 238 F.3d 755, 762 (6th Cir. 2001); *see also* 20 U.S.C. § 1414.

7. School districts are required to identify students suspected of having a disability who are "in need of" special education and related services. *See* 20 U.S.C. §1401 (3)(A). Students who are eligible for special education and related services are entitled to an IEP. *Bd. of Educ. of the Hendrick Hudson School Dist. v. Rowley*, 458 U.S. 176, 181 (1982). In developing educational programs and determining appropriate services for those students through an IEP, school districts must comply with the substantive and procedural requirements of the IDEA and

related state law. *See Rowley* at 182. However, parents are not entitled to relief for minor procedural violations alone. Technical procedural violations do not render an IEP invalid. *Dong v. Board of Educ. of Rochester Community Schs*., 197 F.3d 793, 800 (6th Cir. 1999). A determination of whether a student received FAPE must be based on substantive grounds. 34 C.F.R. § 300.513(1). When a procedural violation is alleged, an administrative law judge can only find a FAPE violation if a procedural violation "(1) impeded the child's right to FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or (3) caused a deprivation of educational benefit." 34 C.F.R. § 300.513(2). Only procedural violations that result in substantive harm constitute a denial of FAPE and justify relief. *Knable v. Bexley City Sch. Dist*., 238 F.3d 755, 764 (6th Cir. 2001) (procedural violations must cause substantive harm and constitute denial of FAPE to be actionable); *see also Bd. of Educ. of Fayette County, Ky. v. L.M*., 478 F.3d 307, 313 (6th Cir. 2007).

8. Predetermination occurs where a school district makes premature placement decisions to which it adheres "regardless of any evidence concerning [the child's] individual needs." *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 857 (6th Cir. 2004). It also occurs "when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team." *R.L. v. Miami- Dade Cty. Sch. Bd*., 757 F.3d 1173, 1188 (11th Cir. 2014); *Nack ex rel. Nack v. Orange City Sch. Dist.,* 454 F.3d 604, 610 (6th Cir. 2006) (discussing predetermination). "This is not to say that a state may not have any pre-formed opinions about what is appropriate for a child's education." *R.L.,* 757 F.3d at 1188. "But any pre-formed opinion the state might have must not obstruct the parents' participation in the planning process." *Id*.

9. Some statements made in email by various persons employed by WCS do indicate WCS developed a pre-formed opinion that [redacted] would be an appropriate placement for [redacted] However, that pre-formed opinion did not obstruct Petitioner's participation in the planning process. *R.L.,* 757 F.3d at 1188. To the contrary, it appears WCS was attempting to respect [redacted] wishes. [redacted] first contacted WCS by emailing the principal of [redacted] on May 7, 2021, to inform him that [redacted] had an IEP and would be entering the [redacted] grade in the fall for the 2021-2022 school year. WCS made the logical inference that [redacted] wanted to enroll [redacted] in [redacted] and prepared some of its IEP documents with that inference in mind. That is acceptable, so long as WCS' officials came to the IEP meeting with "open minds" and were "willing to listen" to the Petitioner's preferences. *Deal*, 392 F.3d at 858 (citation and quotation omitted); *see also Nack*, 454 F.3d at 610 ("[P]redetermination is not synonymous with preparation."). The record shows that WCS officials were indeed willing to listen with open minds. In fact, after the first proposed IEP session, the IEP team sent two staff members to observe [redacted] during classes at CIA.

10. [redacted] and [redacted] were not deprived of their ability to meaningfully participate in developing [redacted] educational program.

11. WCS had access to reports from outside providers, including Dr. Lev Gottlieb. WCS has discretion to accept or reject the recommendations of such providers. *See Hupp v. Switzerland of Ohio Loe. Sch. Dist.,* 912 F. Supp. 2d 572, 596 (S.D. Ohio 2012)

12. It is **CONCLUDED** that WCS properly evaluated and identified [redacted] as a student with a disability entitled to special education and related services and WCS properly and timely evaluated [redacted] in all suspected areas of disability.

13. Some members of the IEP team met on August 5, 2021, to determine what would be needed to provide [redacted] comparable services to the LAUSD IEP. Because [redacted] had previously

been found eligible as a student with OHI in 2021 in the out-of-state district, the request for an evaluation in Tennessee was a request for a reevaluation.

14. A reevaluation is distinguishable from a request for an initial evaluation which is required to be conducted within sixty (60) calendar days. 34 C.F.R. § 300.301(c)(1).

15. The IDEA does not provide an evaluation timeline for reevaluations other than the 3-year reevaluation timeline which was completed by the LAUSD.

16. The team collected numerous records from the Petitioners, including assessment information and Individual Learning Plans (ILPs) from CIA, and records including reports from outside providers such as Dr. Lev Gottlieb. After reviewing all the records provided by Petitioners and the result of the evaluations that [redacted] conducted, the IEP team determined that [redacted] was eligible under the category of other health impairment. Petitioners agreed with the eligibility determination.

17. The Petitioners rely on *Gellert v. District of Columbia Public Schools*, 435 F. Supp.2d 18 (2006), to support their assertion that WCS inappropriately rejected their insistence that [redacted] could not provide a small class setting for [redacted] and that only a placement at CIA would be appropriate. The student in *Gellert*, Jesse, had substantially different needs than [redacted] Jesse was emotionally disturbed with significant sensory integration difficulties that made it impossible for him to ignore extraneous noise and he had a history of noise bringing out strong emotions. Further, Jesse's school district did not propose supports or services to accommodate a small class size; they ignored the need. Here, [redacted] is not emotionally disturbed and, while [redacted] has learning differences and needs, accommodations and supports have been proposed and can be offered by [redacted]. Significantly, Dr. Lev Gottlieb noted that LAUSD was a fully mainstream setting with lots of kids, not much adult supervision, and was "not resourced enough" to give

[redacted] supports to access the intake side of learning efficiently nor the output side. In contrast, [redacted] is resourced enough to provide supports reasonably calculated to meet [redacted] needs.

18. The Petitioners assert that those proposed supports are not comparable to a class that is physically small and has a limited number of people in the environment. Petitioners cite *Wake Cnty. Bd. of Educ. v. S.K.*, 541 F. Supp. 3d 652, 666 (E.D.N.C. 2021) as further support of their insistence that a non-public school placement is necessary to provide a small class size. However, that case indicates that instead of a particular school or class-size cap, "a small-class setting could be achieved in a number of different ways, including lowering the teacher-student ratio with the inclusion of teacher's aides or co-teachers, using fewer students in particular sections, and providing certain training to regular education teachers, not just special education teachers." This aligns with the WCS IEP proposal for [redacted]

19. The fact that WCS was closed for the 2021 summer break was inconsequential for several reasons. The Petitioners assert that WCS should have provided [redacted] with the ESY contained in the LAUSD IEP. Their testimony established that their move to Williamson County was not completed until late June of 2021, and, thereafter, [redacted] traveled back to Los Angeles where the Petitioners maintained their home on at least two occasions. The ESY was for counseling services only. The Petitioners did not make a request for counseling services from any school district and, less than a month after the March 15, 2021, development of LAUSD IEP, on April 8, 2021, the Petitioners enrolled [redacted] at CIA which does not provide counseling services to students after the [redacted] grade.

20. It is **CONCLUDED** that the Petitioners have failed to prove any substantive harm and thus are not entitled to relief.

21. [redacted] did not begin school at [redacted] on the first day of the 2021-2022 school year. Instead, Petitioners unilaterally placed [redacted] at CIA. [redacted] never attended or even visited [redacted].

22. In January of 2021, [redacted] and [redacted] contacted CIA to obtain information regarding enrolling [redacted] for the 2021-2022 school year. By January 20, 2021, the Petitioners received CIA confirmation that [redacted] appeared to be a good fit for CIA. On February 2, 2021, [redacted] emailed CIA and scheduled a tour of the school which [redacted] and [redacted] attended on February 22, 2021. On February 25, 2021, [redacted] and [redacted] applied to CIA for [redacted] to be admitted for the 2021-2022 school year. The Petitioners had Dr. Gottlieb perform an updated assessment required by CIA (and which was used for the updated LAUSD IEP on March 15, 2021). On April 5 and 6, 2021, [redacted] arranged for [redacted] to attend CIA for shadowing classes. On April 8, 2021, the Petitioners attended a zoom meeting with Dr. Jared Clodfelter, Head of Upper School at CIA, shortly after which the Petitioners were informed that [redacted] had been accepted for the 2021-2022 school year at CIA. On April 22, 2021, the Petitioners signed an enrollment contract with CIA. It was only after the completed enrollment at CIA that the Petitioners contacted WCS. On May 7, 2021, [redacted] emailed Kevin Keidel, the Principal of [redacted], stating that the Petitioners were moving to Williamson County and had completed the parent registration for [redacted] further stating that [redacted] would be entering the [redacted] grade in the fall for the 2021-2022 school year.

23. It was not until August 10, 2021, that [redacted] informed WCS that [redacted] was enrolled at CIA. When the Petitioners wrote expressing their disagreement with the Prior Written Notice (PWN) of August 20, 2021, they claimed that they "were open to a discussion with Williamson about an appropriate placement for [[redacted]]; however, Williamson County did not see fit to engage us and left us on our own to find an appropriate placement." This statement is disingenuous. Rather, [redacted] and [redacted] sought out placement at CIA that they predetermined would provide them the best opportunity to control the educational environment for [redacted], to avoid required standardized testing as they had done in California, and to obtain a diploma and a transcript for college admission. The only reason [redacted] and [redacted] applied for enrollment for [redacted] in WCS was to

engage in the IEP process for funding purposes. [redacted] and [redacted] were already financially committed to pay CIA for the 2021-2022 school year before engaging in the IEP process with WCS. They were never free to consider the opportunities and resources at [redacted]. They were not open-minded about the perspectives of the WCS professionals in the IEP meetings. They had only one objective — to obtain funding for their predetermined, unilateral, non-public school placement.

24. Assuming, *arguendo,* that there were any procedural violations with WCS's evaluation or identification of [redacted], it is **CONCLUDED** that such failure did not result in substantive harm. Only procedural violations that result in substantive harm constitute a denial of FAPE that justify relief. *Knable v. Bexley City Sch. Dist*., 238 F.3d 755, 764-69 (6th Cir. 2001).

25. There was no substantive harm since (1) [redacted] was found eligible to receive special education and related services as a student with a disability in Tennessee during the August 5, 2021, meeting and (2) the IEP proposed on October 5, 2021, addressed all areas of need regardless of disability category.

26. Eligibility categories act as a gate keeper for special education services, but they do not dictate what special education services are received. At least one district court in the Sixth Circuit has held that a district's determination that a student did not qualify under a specific disability category did not amount to a substantive violation when the child remained eligible under other disability categories and was provided FAPE. *Shafer v. Whitehall Dist. Sch*., No. 1:10-CV-1170, 2013 WL 1304920, at *8-11 (W.D. Mich. March 28, 2013). "The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education." *Id.* at 30 (citing *Heather S. v. State of Wis*., 125 F.3d 1045, 1055 (7th Cir. 1997). Even more importantly, regardless of [redacted] identification, the IEP proposed by WCS included goals, services, and accommodations for all of [redacted] deficit areas. As such, even if there was a

procedural violation under the IDEA, it is **CONCLUDED** that the Petitioners have failed to prove substantive harm and are not entitled to relief.

27. WCS proposed IEPs that were reasonably calculated to enable [redacted]. to make progress appropriate in light of his circumstances. At all times relevant to Petitioners' complaint, WCS offered [redacted] an IEP that provided FAPE. The IDEA requires that an IEP include, among other things: (1) a statement of the child's present levels of performance; (2) a statement of measurable annual goals; (3) a statement of the special education and related services and supplementary aids and services to be provided to the child that, to the extent practicable, are based on peer-reviewed research; (4) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in nonacademic and extracurricular activities; (5) a statement of how the child's parents will be regularly informed of their child's progress. 20 U.C.A. § 1414(d)(1)(A). These "are requirements by which the adequacy of an IEP is to be judged, although minor technical violations may be excused." *Cleveland Heights-University Heights City Sch. Dist. v. Boss*, 144 F.3d 391, 398 (6th Cir. 1998).

28. It is **CONCLUDED** that [redacted] IEPs met or exceeded the procedural requirements of the IDEA. WCS's IEPs were also substantively appropriate.

29. The United States Supreme Court modified the test to determine whether an IEP substantively provided FAPE under the IDEA in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988 (2017). For a district to substantively offer FAPE, an IEP must be reasonably calculated to enable a child to make progress appropriate in light of his circumstances. *Id.* at 999. An IEP should be "construed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.* "For a child fully integrated into the regular classroom, an IEP typically should…be 'reasonably calculated to enable a child to achieve passing marks and advance from grade to grade.'" *Id.*, citing *Bd. of Ed. Of Hendrick Hudson Central Sch. Dist.,*

Westchester Cty. v. Rowley, 458 U.S. 176, 203-04 (1982); ("providing a level of instruction reasonably calculated to permit advancement through the general curriculum").

30. In this case, WCS proposed enrolling [redacted] in general education with special education supports. [redacted] was to attend [redacted] and be a child fully integrated in the regular classroom pursuant to *Rowley* and *Endrew F.,* receiving FAPE through an IEP that is reasonably calculated to enable [redacted] to achieve passing marks and advance from grade to grade.

31. When determining the appropriateness of an IEP, "[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017). Furthermore, an IEP is a snapshot in time. *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3rd Cir. 1993). Thus, the appropriateness of an IEP must be viewed by "what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." *Id*. An IEP is a fundamental document and a process that should be used to inform the district's work over a student's school year. Here, [redacted] WCS IEP addressed [redacted] educational needs through goals, services, and accommodations to address [redacted] identified deficit areas, provided accommodations to access [redacted] learning, and provided special education services in the LRE.

32. WCS thoroughly considered [redacted] individual circumstances in developing an IEP that was reasonably calculated to enable [redacted] to make appropriate progress. It is **CONCLUDED** that the evidence shows that [redacted] IEP was substantively appropriate and was designed with [redacted] unique needs in mind for the purpose of providing [redacted] with access to educational services that were reasonably calculated to enable [redacted] to achieve passing marks and advance from grade to grade. Further, [redacted] was offered supports and services comparable to the LAUSD IEP in the context of resources available at [redacted] while the WCS IEP was developed.

33. The starting point for determining the appropriateness of an IEP is determining the child's unique needs. To determine his unique needs, [redacted] IEP team considered multiple sources of data from multiple informants and in multiple environments to determine his present levels of performance for the development of the IEP to replace the out-of-state IEP. The IEP team members obtained and reviewed information from CIA observations, outside expert reports, and completed its own comprehensive evaluation. WCS provided an appropriate road map for [redacted] school year by accepting responsibility to match as closely as possible the active LAUSD IEP, address Tennessee eligibility, and consider all areas of exceptionality with an updated IEP. It is **CONCLUDED** that WCS was set up for [redacted] to start in the school year 2021-2022

34. It is **CONCLUDED** that WCS thoroughly considered [redacted] individual circumstances related to his needs in developing the 2021-2022 IEP. Although [redacted] was determined not eligible as emotionally disturbed at the October IEP meeting, the IEP included specific accommodations for his anxiety. The accommodations were based on information provided and parent input.

35. It is **CONCLUDED** that the comparable services and the IEP that were proposed by WCS were reasonably calculated to enable [redacted] to make appropriate progress in light of [redacted] circumstances. The team updated present levels of performance based on updated information and current observation at CIA. Ultimately, the totality of information regarding [redacted] individual circumstances and current needs was considered when developing the IEP to replace the LAUSD IEP. Thus, all the evidence supports the conclusion that [redacted] was offered FAPE through an IEP process that was reasonably calculated to allow [redacted] to make passing grades and advance from grade to grade.

36. It is **CONCLUDED** that [redacted] placement at [redacted] was the LRE appropriate for him. The IDEA requires that students receive special education services in the LRE with nondisabled children to the maximum extent appropriate and "special classes, special schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2). The IDEA further provides the rebuttable presumption that a "child be educated in the school that he or she would attend if not disabled…unless the IEP of a child with a disability requires some other arrangement." 34 C.F.R. § 300.114(c). Thus, the IDEA mandates that the IEP's starting point is the child's home school and presuming so does not constitute predetermination. *See Deal v. Hamilton Co. Bd. of Education*, 392 F.3d 840, 857 (6th Cir. 2004). Only when a child cannot receive FAPE in his or her home school would a school district be required to consider a restrictive special school placement such as CIA.

37. Even absent such a presumption, after developing [redacted] present levels of performance, goals, services, and accommodations during the September and October 2021 IEP meetings, the IEP team discussed [redacted] placement and determined the IEP could be implemented primarily in the general education setting with special education support services in all core academic areas at [redacted]. It is **CONCLUDED** that there is nothing in the record that precludes [redacted] from being at [redacted] with appropriate supports. There is nothing in the record that would require the school district to deprive [redacted] of the liberty of going to school with his nondisabled peers in the general education environment. There is nothing that indicates WCS cannot provide appropriate services for [redacted] [redacted] could be served at his home school.

38. The team also had a lengthy discussion regarding the requirements for placement in the LRE and presented the obligations of districts to place students in the school that the child

would attend if the child did not have a disability. The team also had a thorough discussion about the continuum of services that were available, reiterating the obligation under federal and state law, to consider placement in the general education setting first. During the discussions, [redacted] and [redacted] indicated they wanted [redacted] to be segregated with "like-minded" peers in an environment that included only 8 to 12 students. Ultimately, the team determined that placement in the general education setting for core academics at [redacted] was [redacted] LRE. However, the Petitioners disagreed with the IEP and continued [redacted] enrollment and attendance at CIA.

39. WCS met or exceeded all the procedural requirements of the IDEA. WCS made FAPE available.

40. It is specifically **CONCLUDED** that there were no procedural violations in the instant matter.

41. Petitioners presented no expert testimony regarding the appropriateness of CIA.

42. Dr. Lev Gottlieb had no knowledge about what resources and services were included in the proposed IEPs. Therefore, his recommendation regarding small class size is less informative than had he been able to correlate those resources and services in the context of this case and the objectives of special education.

43. It is **CONCLUDED** that [redacted] and [redacted] were afforded the opportunity to meaningfully participate in the development of the IEP for [redacted]. [redacted] and [redacted] attended all IEP meetings, were provided with procedural safeguards, and were active participants.

44. WCS timely responded to all of the Petitioners' correspondence and considered their input. WCS had an open line of communication with the Petitioners, responding promptly to their requests. The record is replete with email exchanges between Petitioners and WCS personnel at all times relevant to this case demonstrating WCS's continuous and persistent attempts to include Petitioners as equal team members. It is **CONCLUDED** that there is no

evidence to support an allegation that the district failed to fulfill its obligation to communicate with the parent or interfered with the parent's right to ask questions, be heard, and receive a response.

45. Although WCS asserts it was diligent in maintaining correspondence with Petitioner, Courts have declined to find violations of the IDEA's parental participation requirements even when districts have failed to respond to parents. *L.M.H. v. Arizona Dep't of Educ*., No. CV-02212-PHX-JJT, 2016 WL 3910940, at *304 (D. Ariz. July 19, 2016) (holding that parent's opportunity to participate was not seriously infringed by a misstatement or by a failure to provide records because a parent attended both IEP meetings where she had the opportunity to be heard and ask questions, which was significant parental involvement.); *J.B. v Kyrene Elementary District No. 28*, No. CV-17-03316-PHX-SMB, 2019 WL 4187515, at *10 (D. Ariz. Sept. 4, 2019), appeal dismissed sub nom. *J.B. v. Kyrene Elementary District No. 28*, No. 19-16971, 2020 WL 1550669 (9th Cir. Feb. 12, 2020) (holding that "a parent only has a right to a response to reasonable requests for explanations of the records" and "even if the district fails to respond…[it would] be a harmless procedural error that does not constitute a denial of FAPE." (referencing *L.M. v. Capistrano Unified Sch. Dist*., 556 F.3d 900, 910 (9th Cir. 2008). WCS's diligence in maintaining communication with Petitioner not only establishes compliance with the IDEA's requirements for parent participation but also shows its commitment in protecting their procedural rights.

48. WCS never prohibited or limited Petitioners' input, rather they were given the same, if not more opportunities, to speak in the meetings, make recommendations, and ask questions prior to, during, and after the meetings than other team members. Based upon the foregoing, it is **CONCLUDED** that there is no substantial evidence to support Petitioners' claims that they were denied meaningful participation during the assessment and IEP process.

The evidence shows the IEP team considered all the information that Petitioners provided and had meaningful discussion regarding their concerns. In fact, the evidence demonstrates the team revised the IEP to include suggestions from Petitioners.

49. It is **CONCLUDED** that WCS permitted and encouraged Petitioners to participate to the fullest extent of the law and, therefore, did not prevent them from meaningful participation in the IEP process.

50. WCS had no obligation to accept the recommendations of [redacted] private providers. Petitioners appear to confuse neuropsychological assessment with special education and related services. Neuropsychological assessment services are typically not informed of resources related to special education in a specific district.[13] Therefore, while the information is of importance for a special education service provider to know to understand the child, it is not information that in any way establishes an obligation on the part of the district to incorporate specific recommendations.

51. It is **CONCLUDED** that WCS appropriately considered the recommendations of [redacted] private providers. A school district has the right to evaluate a child's special education needs and cannot be forced to use the independent evaluations obtained by a parent. When a parent obtains an independent evaluation, it must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. § 300.502(c)(1). While the "district must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations," such independent evaluations are not dispositive. *K.W. v. Tuscaloosa Cty. Sch. System*, No. 7:17-cv-01243-LSC, 2018 WL 4539501, at *6 (N.D. Ala. Sept. 21, 2018) (quoting *Dubrow v. Cobb*

[13] Dr. Gottlieb had information regarding the lack of resources and staffing in the LAUSD and mentioned that fact in his report. He testified that he did not have similar information regarding WCS and had not been provided the IEP developed by WSC nor asked to review that IEP.

County Sch. Dist., 887 F.3d 1182 at 1193 (quoting 34 C.F.R. § 300.306(c)). A district court in the Sixth Circuit agreed, explaining that the district did provide for some of the physician's recommendations, but "to the extent [the parent] complains that the District did not indulge every one of her requests in the IEP development process, the IDEA does not require such deference to parents. *K.B. by McFarland v. Racine Unified School Dist*., No. 19-CV-28-JPS, 2019 WL 6219485, at *3 (E.D. Wis. Nov. 21, 2019).

52. According to the Sixth Circuit, school districts are not required to "include an expert in the particular teaching method preferred by the parents in order to satisfy the requirement that [the district] include persons knowledgeable about placement options." *Dong v. Bd. of Ed*., 197 F.3d 793, 801 (6th Cir. 1999); *see also Renner v. Board of Ed.,* 185 F.3d 635, 644 (6th Cir. 1999) ("We cannot find from the record that the failure of the team to consult with plaintiffs' expert…constituted a serious deficiency in the IEP.").

53. In this case, the WCS team members were well qualified to address [redacted] needs. *See Dong v. Bd. of Ed.,* 197 F.3d 793, 801(6th Cir. 1999) (finding that the school staff members were "extremely well qualified" to address the student's programming needs); *see also Renner v. Board of Ed*., 185 F.3d 635 (6th Cir. 1999) (finding that the school's team did have "adequate background, experience, and training to assess the child's needs and develop a program; thus, the failure to consult with the child's expert did not create a serious deficiency in the IEP"). [redacted] private providers were not required team members under the IDEA. At most, the private providers were allowable team members with knowledge or special expertise regarding [redacted] *See* 34 C.F.R. § 300.321(a).

54. A district court in the Sixth Circuit agreed, explaining that the district did follow some of the physician's recommendations, but "to the extent [the parent] complains that the District did not indulge every one of her requests in the IEP development process, the IDEA does

not require such deference to parents." *K.B. by McFarland v. Racine Unified School Dist.*, No. 19-CV-28-JPS, 2019 WL 6219485, at *3 (E.D. Wis. Nov. 21, 2019) (upholding the ALJ's decision that the parent failed to show a denial of parental participation because the IDEA does not require the district to provide every service or accommodation the parent might request).

55. It is **CONCLUDED** that Petitioners' unilateral private placement at CIA is not an appropriate program under the IDEA. The IEPs developed and proposed for [redacted] by WCS met or exceeded the procedural and substantive requirements under the IDEA.

56. However, assuming, *arguendo,* that WCS failed to provide FAPE to [redacted], Petitioners would still be barred from obtaining reimbursement for the cost of unilaterally placing [redacted] at CIA. It is not disputed that "IDEA's grant of equitable authority empowers a court to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act." *Carter*, 510 U.S. at 12. However, the Sixth Circuit has held that a private placement is not appropriate under the IDEA "when it does not, at a minimum, provide some element of special education services in which the public school was deficient." *Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 523 (6th Cir. 2003); s*ee also Indianapolis Pub. Sch. v. M.B.*, 771 F.Supp.2d 928, 930-31 (S.D. Ind. 2011) (holding that a private placement was inappropriate when it only offered tutoring services, as opposed to special education services, and did not address the student's emotional needs). Thus, evidence that a child is "doing well" in a private placement is not enough to support a claim for reimbursement when the placement fails to provide the special education services the public-school district was found to be lacking. *Indianapolis Public Schools v. M.B.,* 771 F.Supp.2d 928 at 930-31 (S.D. Indiana 2011). Furthermore, a parent's concerns and fears do not justify a private placement at public expense. *See John M. v. Brentwood Union Free Sch. Dist.*, No. 11-CV-3634 PKS SIL,

2015 WL 5695648, at *7-10 (E.D.N.Y. Sept. 28, 2015) (holding reimbursement for a unilateral private placement was inappropriate despite feelings of security and safety at the private school and concerns of returning the child who suffered from anxiety and depression to an environment where he had been harassed).

57. Moreover, "parents who unilaterally change their child's placement during the pendency of review proceedings, without the consent of state or local school officials, do so at their own financial risk." *Sch. Comm. of Burlington v. Dept. of Educ*., 471 U.S. 359, 373-374. In such a situation, under the *Carter* standard, parents are "entitled to reimbursement ***only*** if a federal court concludes both that the public placement violated the IDEA ***and*** that the private school placement was appropriate under the Act." *Carter,* 510 U.S. at 15. Here, Petitioners unilaterally placed [redacted] at CIA before engaging in the IEP process with WCS and are therefore not entitled to reimbursement for the cost of their unilateral placement of [redacted] at CIA.

58. CIA is not an appropriate placement because it lacks the fundamental and essential characteristics that define a free appropriate public education. In general, the very nature of CIA's program is inappropriate to meet [redacted] needs under the IDEA. CIA does not require its teachers to hold an educator's license, is a one size fits all program where services are not IEP driven, it has exclusionary admission criteria, and does not provide inclusion with nondisabled peers.

59. Although Petitioners contend that CIA provides supports for [redacted] through an ILP, an ILP holds no weight. The administrative staff and teachersdevelop the ILPs without parent input. Many of the items listed in ILPs are included for all students and are not based on individual student needs. Furthermore, there is no requirement, legal or otherwise, that CIA follow through with the implementation of the ILP.

60. The difference that Petitioners claim between the program at CIA and the program at [redacted] is the typical class size. However, the IEP team discussed the typical class size for inclusion classes at [redacted] as having similar teacher-student ratio as the classes at CIA because there was an additional teacher in each class. Further, the IEP provided that [redacted] could access the core courses in the smaller special education classroom, with fewer students. [redacted] has capabilities to Zoom in to the general education class.

61. CIA is a highly restrictive placement. CIA serves students with unique learning needs and rarely has admitted a student who is nondisabled. The CIA ILP did not include counseling as a program component. Thus, it is impossible for [redacted] to participate with nondisabled peers at all, much less to the maximum extent appropriate as required under the IDEA. Furthermore, a program in which [redacted] is only receiving instruction with other students with special education needs in a separate school is not less restrictive than the setting in [redacted] home school proposed by WCS. Thus, it is **CONCLUDED** that CIA is not the least restrictive environment for [redacted] as required by the IDEA. 20 U.C.A. § 1421(a)(5).

62. Petitioners contend that [redacted] academic success is directly correlated with attending CIA. However, the evidence to support this correlation is mixed at best. At CIA, [redacted] has been awarded grades that are much higher than would be expected when compared to the standardized testing that reflects a level of achievement two grades lower than [redacted] current class. This points toward grade inflation. Petitioners declined such standardized tests when living in California and did not want a Tennessee public school placement where the standardized testing was mandatory and would be reflected on [redacted] permanent grade report. Petitioners' expert, Dr. Lev Gottlieb, agreed that mainstreaming with scaffolding supports being weaned is an appropriate goal. That is not the Petitioner's goal. If Petitioners' logic prevailed, no child would ever be removed from a restrictive placement.

63. A district must base a student's LRE on the student's needs at the time the IEP is developed. Even when a student has been successful in a more restrictive setting, the IEP team would work to move back down the continuum of services to determine if they could be successful in a lesser restrictive setting with typical peers to the maximum extent possible.

64. One of the primary purposes of the IDEA is to prepare students for further education, employment, and independent living. 20 U.C.A. § 1400(d)(1)(A). Although a placement that segregates [redacted] may be desirable to Petitioners, such a placement does not align with the primary purposes set out by the IDEA.

65. [redacted] is a student with disabilities who is entitled to receive special education and related services from qualified teachers and service providers in [redacted] least restrictive environment with [redacted] neighborhood peers. Petitioners may choose to place [redacted]. in any private school of their choosing, including CIA, but they are not entitled to receive public funds to reimburse them for such a placement when it is not appropriate under the IDEA. CIA does not provide the services and supports that WCS proposed; thus, it could not possibly provide something that was lacking from WCS' proposed program for [redacted] It is **CONCLUDED** that because CIA does not provide the special education and related services which WCS offered, it cannot be "proper" under the IDEA.

66. One focus of Petitioners' claims in this case is whether WCS properly evaluated [redacted], identified all suspected areas of disability, and then timely offered [redacted] an IEP that was reasonably calculated to enable [redacted] to make progress appropriate in light of [redacted] circumstances. The evidence demonstrates that WCS conducted a timely and proper evaluation and spent hours with meaningful participation of Petitioners developing an IEP for the 2021-2022 school year. The IEP was developed considering information provided by Petitioners, observations at CIA, and information from [redacted] private providers. The IEP team took into consideration all input

from Petitioners in the development of the IEP. Ultimately, WCS provided an IEP that was reasonably calculated to enable [redacted] to make progress appropriate in light of [redacted] circumstances.

67. It is **CONCLUDED** that the evidence does not support Petitioners' allegations against WCS or support the assertion that CIA is an appropriate placement under the IDEA. WCS has offered to provide FAPE and is not obligated to provide reimbursement for a unilateral private placement under the facts of this case.

68. It is **CONCLUDED** that Petitioners have failed to prove that WCS denied [redacted] FAPE and have failed to prove that CIA was an appropriate placement.

69. It is further **CONCLUDED** that Petitioners have failed to carry their burden of proof.

70. It is **CONCLUDED** that WCS is the prevailing party on all issues.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **21st day of November, 2023.**

RICHARD M. MURRELL
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 November, 2023.**

IN THE MATTER OF: **APD CASE No. 07.03-230316J**

[redacted], THE STUDENT, AND [redacted] AND [redacted], THE PARENTS V. WILLIAMSON 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 **November 21, 2023**. 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 **December 6, 2023.**

   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 **January 22, 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 **January 22, 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 **November 28, 2023**. *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.

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