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**RE: [REDACTED], THE STUDENT AND [REDACTED], THE PARENT/GUARDIAN V. WILLIAMSON
COUNTY SCHOOLS, APD Case No. 07.03-190251J**

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**
█, **THE PARENT,**
Petitioners,

v.

WILLIAMSON COUNTY SCHOOLS,
Respondent.

APD Case No. 07.03-190251J

FINAL ORDER ON REMAND

This contested case pursuant to the Individuals with Disabilities Educational Act (IDEA), Title II of the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act (Section 504) was heard on January 11 through 15, February 2 through 4, April 15, 16, and 23, and May 10, 2021, by Administrative Judge Elizabeth Cambron. The Petitioners, student █ and █ mother, █, are represented by attorneys Justin Gilbert, Michael Braun, and Cheryl Cheffins. The Respondent, Williamson County Schools (WCS), is represented by attorneys Deanna Arivett and Angel McCloud.

On July 12, 2021, a Final Order was issued in this case. That order was appealed to the Middle District of Tennessee Federal District Court. By order issued on March 31, 2023, this matter was remanded. On April 3, 2023, the Petitioners filed a Notice of Remand with the Administrative Procedures Division. This Final Order is issued on remand.

The issues in this case are: (1) whether WCS failed in its child find obligations to identify and evaluate █ as a student who might have a disability, (2) whether █ is eligible for special education services under the IDEA, (3) whether █ was denied access to services in violation of the ADA and/or Section 504, and, if so, (4), what relief is appropriate. Based on

review of all of the evidence in this case, it is determined that WCS did not violate its child find obligation to [REDACTED], [REDACTED] was not a student eligible for special education services under the IDEA while attending WCS, [REDACTED] has not been denied access to services in violation of the ADA or Section 504, and thus, the Petitioners are not entitled to any requested relief, including compensatory education or reimbursement for [REDACTED]'s private placement.

The following witnesses¹ testified in the due process hearing: (1) Jessica Keezer Rumsey, the school psychologist who evaluated [REDACTED]; (2) Dr. Patrick Boyd, the principal at [REDACTED]; (3) Brian Riefenberg, [REDACTED]'s [REDACTED] math teacher; (4) Dr. Charles Ihrig,² a licensed clinical psychologist who evaluated [REDACTED] in 2020; (5) Deana Stepanic, [REDACTED]'s [REDACTED] and [REDACTED]-grade counselor; (6) Jordan Gilliland, [REDACTED]'s [REDACTED]-grade teacher for English Language Arts (ELA); (7) Katherine Fall, [REDACTED]'s [REDACTED]-grade social studies teacher; (8) Megan McCullough, [REDACTED]'s [REDACTED]-grade science teacher; (9) Elise Tepner, [REDACTED]'s [REDACTED]-grade homebound teacher; (10) Sharon Stewart, a retired social worker for WCS; (11) Jennifer Randolph, [REDACTED]'s [REDACTED]-grade counselor at [REDACTED]; (12) Lesley Ford, [REDACTED]'s [REDACTED]-grade math teacher; (13) Paula Burnette, [REDACTED]'s [REDACTED]-grade English and Language Arts (ELA) teacher; (14) Terry Weingartner, the school nurse at [REDACTED]; (15) Allison Nunley, the planning and zoning supervisor for WCS; (16) Jill Merritt, assistant director for student support services within WCS; (17) Maria Griego, executive director for student support services in WCS; (18) Petitioner [REDACTED], [REDACTED]'s mother; (19) Barbara Thompson, the school nurse at [REDACTED]; (20) Bronwyn Rector, the principal of [REDACTED]; (21) Nancy Tate, a planning and zoning specialist for WCS; (22) Callie Hughes,

¹ Witnesses are listed in the order they first appeared in the hearing. Some witnesses testified for both parties.

² Dr. Ihrig testified for the Petitioners and was qualified as an expert in clinical psychology.

█'s tutor at the Learning Lab; (23) Dr. Vance Sherwood,³ a license clinical psychologist who evaluated █; and (24) Dr. David Rostetter, the WCS' expert.⁴

In addition to these live witnesses, testimony was presented on behalf of the Petitioners through the depositions of: (1) Dr. Brittany Paul, a licensed clinical psychologist who evaluated █, (2) Dr. Scot McKay, █'s treating psychiatrist; and (3) Mary Ragsdale, the head of the middle school at █. In addition to the three depositions, 145 other exhibits were admitted during the hearing.

FINDINGS OF FACT

1. In 2021, at the time of hearing in this matter, █ was a █-year-old █-grade student at █ a private school that serves both disabled and non-disabled students. █ mother is Petitioner █, hereinafter █.

2. Prior to attending █ █ attended █ (█ and █ (█ Schools within WCS for █ █ █ and the first part of █-grade school years.

3. In the fall of █'s █-grade year, 2017, █ filled out a Student Health History form, on which she noted "█ has anxiety." EXHIBIT 130. The school nurse, Barbara Thompson, then input that information into Skyward, WCS' computer database.

4. Knowing this information, Nurse Thompson did not perceive █ as a chronically anxious child.

³ Dr. Sherwood testified for the Petitioners and was qualified as an expert in the areas of psychology, the diagnosis of mental health disorders, assessments, and as an evaluator in the area of emotional disturbance.

⁴ Dr. Rostetter testified for WCS and was qualified as an expert on the IDEA, Section 504, and the provision of special education and related services to students with disabilities.

5. In the fall of 2017, [REDACTED] visited Nurse Thompson's office a few times for a variety of issues ranging from bug bites to back pain, with one visit for an upset stomach on September 25, 2017.

6. [REDACTED] was absent on August 30, 31, and September 1, 2017. [REDACTED] wrote a note explaining that [REDACTED] had what she thought was a stomach virus that turned out to be strep throat.

7. On September 12, 2017, [REDACTED] emailed [REDACTED]'s math teacher, Ms. Lesley Ford, seeking recommendations for a math tutor for [REDACTED]. Ms. Ford recommended three possible math tutors to [REDACTED] on September 15, 2017.

8. Ms. Ford remembered [REDACTED] as a respectful, kind, and quiet young man. She noted that [REDACTED] had numerous absences.

9. At some point during the year, Ms. Ford received an email referencing a visit to a psychiatrist; that was the first time that she became aware that [REDACTED] might have mental health issues. She did not see any indication of mental health problems from [REDACTED] in school.

10. As it relates to looking for children who should be assessed due to a potential disability, Ms. Ford saw her role as being on the lookout for behavior of a child that was out of the ordinary from his or her peers. [REDACTED] was one of the children she kept in the back of mind as one she was paying attention to, but she never saw behavior that was significantly different from that of his peers.

11. On October 9, 2017, [REDACTED] visited a walk-in clinic for a "medical visit." The note excusing this absence had no indication that the visit was related to mental health treatment.

12. On October 18, 2017, [REDACTED] visited the Vanderbilt Outpatient Center. Again, the note provided by [REDACTED] had no indication this visit was related to mental health treatment.

13. On November 1, 2017, Ms. Jessica Konemann, [REDACTED]'s [REDACTED] grade ELA teacher, wrote [REDACTED] requesting to set up a conference with [REDACTED], herself, and the other [REDACTED] grade teachers. In response, [REDACTED] notes that [REDACTED], "has been trying very hard, but is having emotional issues/anxiety and trouble with a child in the bus." EXHIBIT 104. They arranged a meeting for the following Monday, but there is no evidence as to whether that meeting occurred or the outcome.

14. On November 7, 2017, a Vanderbilt clinic provided another doctor's excuse for [REDACTED]. Again, this note bears no indication that the visit was related to a mental health concern.

15. Although not identified in the note, [REDACTED] had an initial consultation with Anthony Clausi, L.P.C., at Vanderbilt Behavioral Health on November 7, 2017. Mr. Clausi diagnosed [REDACTED] with generalized anxiety disorder, panic attacks, and unspecified depression. The consultation recommended medication management, individual therapy, and family therapy. EXHIBIT 93, p. 112.

16. On November 9, 2017, the Vanderbilt psychiatry clinic wrote a note that [REDACTED] was seen by Mr. Clausi.⁵

17. On December 15, 2017, [REDACTED] was seen by Heather Sturgeon, A.C.P.N., at Vanderbilt Behavioral Health for medication management, and Prozac was prescribed. While [REDACTED] returned for some medication management appointments, [REDACTED] was inconsistent in making appointments, resulting in running out of his medication at least twice.

18. On November 29, 2017, [REDACTED] visited the nurse's office complaining of chest pain and coughing. Nurse Thompson spoke with [REDACTED] who told her that [REDACTED] had already had a workup and that [REDACTED] had had strep throat and bronchitis the previous week. EXHIBIT 10.

⁵ The records submitted from Vanderbilt do not document any visit on November 9, 2017 (EXHIBIT 93), but school records indicate that [REDACTED] arrived at school at 11:11 a.m. EXHIBIT 133.

Curiously, ██████'s most recent absence prior to this was November 10, 2017. ██████ was subsequently absent on November 30, December 1, and December 4. EXHIBIT 133.

19. ██████ was seen by a Vanderbilt clinic on December 15, 2017. Again, this note contains no indication that it was a visit related to a mental health concern.

20. ██████ was seen by a different Vanderbilt clinic on December 18, 2017. Again, this note contains no indication that it was a visit related to a mental health concern. On the same day, Ms. Konemann emailed ██████ to check on ██████ since ██████ had been absent that day. ██████ responded that ██████ had been sick all weekend and was seen at Vanderbilt because ██████ was having trouble breathing in addition to having strep throat. EXHIBIT 119.

21. ██████ was seen by a Vanderbilt clinic on January 26, 2018. Again, this note contains no indication that it was a visit related to a mental health concern.

22. ██████ visited the nurse's office several times in early February 2018. On February 5, 2018, ██████ was bullied by a peer and visited the nurse's office complaining of an upset stomach. Ms. Bronwyn Rector, the principal at Crockett, checked on ██████ that day and ██████ reported to her that ██████ had hit the wall in the bathroom. ██████ called his mother and then returned to class.

23. On February 6, 2018, ██████ reported to Nurse Thompson that ██████ had thrown up in the bathroom. Ms. Rector checked on ██████ again this day, and they discussed that ██████ did not have many friends but had one good friend. Ms. Rector also talked with ██████ about the bullying and encouraged ██████ to tell an adult if that happened again. Ms. Rector talked with Ms. Randolph, the counselor, that afternoon to bring ██████ to Ms. Randolph's attention. ██████ eventually called ██████ mother and went home early on this day.

24. On the morning of February 8, 2018, [REDACTED] again reported to Nurse Thompson that [REDACTED] had thrown up in the bathroom. [REDACTED] mentioned to Nurse Thompson that [REDACTED] was stressed about a test [REDACTED] had to take. [REDACTED] returned to class and took [REDACTED] test.

25. Given these successive visits to her office and [REDACTED] reference to being stressed about a test, Nurse Thompson also mentioned [REDACTED] to Ms. Randolph. This was the first time that Nurse Thompson had noticed stress in [REDACTED], and she felt that [REDACTED] might need more support.

26. Since [REDACTED] had had two visits within three days to her office, Nurse Thompson asked [REDACTED] to provide a doctor's note to determine whether this was caused by a physical illness or whether there might be some other cause. Nurse Thompson never received a doctor's note.

27. While Nurse Thompson was aware of a note, [REDACTED] provided a note from a Vanderbilt walk-in clinic excusing [REDACTED]'s absences from February 9 through 19, 2018, as [REDACTED] had excused absences on those dates. EXHIBIT 133. This note also referenced a clinic visit on February 15, 2018. No reason for the visit or the absences is given. EXHIBIT 100.

28. In a series of emails between [REDACTED] and [REDACTED]'s teachers on February 12, 13, 14, and 15, [REDACTED] relates that [REDACTED] had the flu with a temperature around 100 degrees. EXHIBITS 121, 122, 123.

29. On March 7, 2018, [REDACTED] became upset when a peer made fun of [REDACTED] drawing. [REDACTED] punched a wall and was sent to Nurse Thompson's office for her to check [REDACTED] wrist and hand for injuries. After confirming that there was no serious injury and providing ice for the hand, Ms. Thomson sent [REDACTED] to the counselor, Ms. Randolph, given this outburst, which was very out of the ordinary for [REDACTED]

30. When [REDACTED] sat down with Ms. Randolph that day, she first began by discussing the confidentiality and limits to confidentiality of their visit. Something that she said upset [REDACTED] and [REDACTED] got up and walked out of Ms. Randolph's office. [REDACTED] teacher sent him back to Ms. Randolph's office, and they talked more.

31. In an email that evening, [REDACTED] informed Ms. Randolph that [REDACTED] was under psychiatric care, had been on medication for about two months, and was about to begin occupational therapy and counseling to help [REDACTED] with anxiety.⁶ She went on to state that [REDACTED] struggled with depression, anxiety, and low self-esteem.

32. The following morning, Ms. Randolph responded, explaining her conversation with [REDACTED] to [REDACTED] and concluding:

Teachers have been very concerned with how much [REDACTED] has been absent this year. After looking into his attendance, [REDACTED] has missed an unusual amount of school and that was before [REDACTED] got hit with the awful flu. Being a new student, going through all that you just shared and then missing so much school is a lot to manage. Please let me know how I can support [REDACTED] on this end. I want to help out however I can.

EXHIBIT 50.

33. Ms. Randolph never had any further follow up from [REDACTED] regarding what she could do to support [REDACTED]

34. Also on March 8, 2018, [REDACTED] and [REDACTED] met with Ms. Rector. Ms. Rector's notes reflect that [REDACTED] did not want to come to school and that [REDACTED] struggled with anxiety, depression, sensory issues, and self-image. Ms. Rector took the comments about [REDACTED] not wanting to come to school as related to that particular day.

⁶ [REDACTED] never actually received any occupational therapy or participated in individual counseling during this time period.

35. Vanderbilt's records reflect that [REDACTED] would have been out of Prozac at this time. EXHIBIT 93, pp. 69-71.

36. While Ms. Rector had experience with children who did not want to attend school, [REDACTED] did not appear to be such a child to her. She regularly saw [REDACTED] at drop off in the morning and while waiting to be picked up in the afternoon. In the mornings, [REDACTED] behaved as a typical student who hopped out of the car. Ms. Rector never saw [REDACTED] tearful or upset in those interactions.

37. On March 16, 2018, [REDACTED] visited Nurse Thompson's office twice in the morning complaining of diarrhea. While [REDACTED] returned to class after the first visit, [REDACTED] was sent home after returning to the nurse's office a second time.

38. Ms. Randolph submitted a social work referral on March 22, 2018, based on the number of absences [REDACTED] had:

[REDACTED] has missed 30 days of school and has early dismissals and tardies on top of that. Teachers are concerned about lack of contact from mom. Please call me to discuss further, but do go ahead and try to reach out to mom to ask if any assistance could help get [REDACTED] to school.

EXHIBIT 49.

39. This social work referral was assigned to Ms. Sherry Stewart. Under the Interventions section of Social Work Record of Intervention, Ms. Stewart checked boxes for staff consultation/team meeting and counseling/consultation with parents/family. The form also contains a handwritten comment under recommendations that she "suggest[s] court intervention."

40. While Ms. Stewart could not recall a conversation with [REDACTED], she felt confident she would not have checked the form indicating consultation with the family unless she had

spoken to someone. [REDACTED] denied ever receiving a call from a social worker. Ms. Stewart would not have suggested court intervention if she had any indication from a parent that absences were related to a mental health issue.

41. On March 30, 2018, Heather Sturgeon, increased [REDACTED]'s dose of Prozac from 10 mg to 20 mg. EXHIBIT 93, p. 58.

42. On April 2, 2018, [REDACTED] emailed [REDACTED]'s science and social studies teacher, Ms. Rachel Smith, to let her know that [REDACTED]'s medication had been increased, which had disrupted [REDACTED] sleep and caused increased anxiety.

43. That same day, [REDACTED] fell in the hallway and hit [REDACTED] head on the wall which resulted in [REDACTED] losing consciousness. Nurse Thompson assessed [REDACTED] and called [REDACTED] mother to let her know that [REDACTED] needed to be picked up. [REDACTED]'s older brother and a friend picked [REDACTED] up.

44. Later in the afternoon, Nurse Thompson reviewed the security tape of the fall and noted that [REDACTED] had lost consciousness for about two minutes. Given the seriousness of this and the fact that she had been unable to speak to [REDACTED] face to face, she again called [REDACTED] to reinforce the seriousness of the incident and ensure that [REDACTED] was aware that she needed to seek medical treatment for [REDACTED]. In their conversation, [REDACTED] informed Nurse Thompson that [REDACTED]'s dose of Prozac had been doubled four days earlier.

45. Nurse Thompson also asked [REDACTED] to provide a post-concussion plan. On April 6, 2018, Nurse Thompson emailed [REDACTED] to again ask her to provide a post-concussion plan but, Nurse Thompson never received one. In Nurse Thompson's estimation, it took [REDACTED] two weeks to get back to normal after [REDACTED] fall.

46. [REDACTED] was diagnosed with a concussion and missed four days of school related to the concussion.

47. As a result of this fall and other negative side effects, ■■■'s Prozac was reduced back to 10 mg by Vanderbilt on April 4, 2018. EXHIBIT 93, p. 53.

48. ■■■ visited the Nurse Thompson's nurse's office again on April 12, April 19, April 25, May 2, and May 3, 2018, for headaches or an upset stomach. ■■■ returned to class on all of these dates except the last one. On May 10, 2018, ■■■ last visit to the nurse's office for the year, ■■■ had a cut.

49. Despite Vanderbilt's recommendation of individual counseling for ■■■, ■■■ did not attend a single therapy appoint with Mr. Clausi after the initial intake appointment on November 7, 2017.

50. ■■■ did well academically in ■■■ grade, with one key piece of data, his STARs scores, reflecting good progress. In reading, ■■■ percentile ranking ranged from 68% to 87% compared to children across the country. In math, ■■■ ranking was similarly strong with the exception of the STARs assessment conducted on April 30, 2018, which was 33%. For the other STARs math assessments administered that year, ■■■ ranking ranged from 65% to 82%.

51. ■■■'s achievement test scores also did not indicate any concerns – ■■■ ranked as “on track” in social studies, “proficient” in science, and “approaching” in math and ELA.

52. ■■■'s grades at the end of the year were all As and Bs except in math. In ELA, ■■■ had an 82 in reading and a 90 in English; in social studies, ■■■ had an 87; in math, ■■■ had a 75; and in science ■■■ had a 95.

53. ■■■'s TCAP score (which is in comparison to all students across the state) in Reading/Language Arts was 52 and in math ■■■ score was 50, both of which are categorized as “approaching;” in social studies, ■■■ score was 64, which is categorized as “on track.”

54. In █ grade, █ did not exhibit signs of depression or anxiety at school outside of the norm when compared to █ peers.

55. █ finished █ grade at █ in May 2018 and transitioned to █ for █ -grade year in the fall of 2018. While teachers sometimes have conferences with previous teachers about incoming students, none of █'s teachers at █ raised any concerns to any of the teachers at █ about █

56. On the Student Health History form for █ grade, █ noted that █ had diagnoses of anxiety and depression, and that █ was on Prozac.

57. On August 14, 2018, at the very beginning of █ grade, █ had an intake appointment for counseling with Wesley Hinton at Lifecare Family Services. █ had one subsequent session with Mr. Hinton on September 4, 2018, after which Mr. Hinton had a stroke and passed away. █ did not have any further counseling/therapy for the remainder of █ -grade year.

58. In the █ grade, █'s teachers universally recognized █ as a sweet young █ who wanted to do well. Although █ had far fewer absences in █ grade than █ had in █ grade, █ teachers were all concerned about the number of absences and the work █ missed when █ was absent.

59. Ms. Terry Weingartner was the school nurse at █ for █'s █ and █ grade years. On August 31, 2018, █ visited her office for the first time complaining of pain in █ chest. Nurse Weingartner assessed █ and gave █ a peppermint; █ called █ mother and then returned to class. Nurse Weingartner tried to call the guidance counselor, Ms. Deana Stepanic, but was unable to reach her.

60. On September 5, 2018, [REDACTED] visited Nurse Weingartner again, apparently related to exercise induced asthma.

61. On September 19, 2018, [REDACTED] visited the nurse due to having diarrhea. Nurse Weingartner spoke with [REDACTED], who mentioned anxiety, but felt that this was unrelated to anxiety because [REDACTED]'s aunt was staying with them, and she had a stomach bug.

62. As the end of the first nine-week period neared, [REDACTED]'s teachers reviewed students for whom they wanted to request a parent conference. [REDACTED] was among these, with social studies teacher, Ms. Fall, writing to the team that [REDACTED] was "on her radar."

63. The other teachers agreed. Therefore, on October 23, 2018, Ms. Fall contacted Ms. Stepanic to request that Ms. Stepanic check in with [REDACTED]

64. On October 28, 2018, Ms. Fall sent an email to [REDACTED] requesting to set a conference with her on November 6, 2018.

65. On November 2, 2018, [REDACTED] responded that she could not meet on November 6 because she was in the process of relocating her mother from out of state. Therefore, [REDACTED] requested that they have a phone conference instead of an in-person meeting.

66. On November 6, 2018, Ms. Fall responded and suggested a telephone conference on November 8 at 1:15 p.m. and asked [REDACTED] to let her know if that time would work.

67. When [REDACTED] did not receive a phone call at that time, she checked her email and realized that she had never responded to confirm that date and time with Ms. Fall. Therefore, [REDACTED] and [REDACTED]'s teachers did not have a conference.

68. On November 12, 2018, [REDACTED] visited Nurse Weingartner with a sore throat and upset stomach. [REDACTED] was contacted; she attributed this to illness as [REDACTED]'s brothers were not feeling well, but she wanted [REDACTED] to stay at school so [REDACTED] returned to class.

69. On November 16, 2018, Ms. Fall emailed [REDACTED] because [REDACTED] was absent again. [REDACTED] reported that [REDACTED] was sick with strep throat and a virus.

70. Ms. Fall noted that [REDACTED]'s teachers were seeing improvement in [REDACTED]'s test scores and suggested trying again to schedule a conference after Thanksgiving.

71. After Thanksgiving, [REDACTED]'s improvement continued; neither [REDACTED]'s teachers nor [REDACTED] pursued rescheduling the conference.

72. In [REDACTED] grade, all of [REDACTED]'s teachers allowed [REDACTED] or any student, to retake tests and quizzes. In math, Mr. Riefenberg allowed as many retakes as a student wanted. Ms. Fall limited students to one retake per test or quiz. Ms. McCullough required that students correct the questions they had missed and then gave a test with different questions but covering the same content. Ms. Gilliland had a sign-up sheet posted outside her classroom where students could sign up to retake a test. She allowed one retake but would make exceptions on a case-by-case basis. The teachers made their students aware of the process for requesting a retake of a test or quiz.

73. [REDACTED] corresponded with [REDACTED]'s teachers by email regularly. On September 26, 2018, Mr. Riefenberg wrote [REDACTED] to alert her to the fact that [REDACTED] had scored a 21 on a quiz. He encouraged [REDACTED] to talk with [REDACTED] about retaking the quiz to improve [REDACTED] grade.

74. [REDACTED] responded that [REDACTED] had been home sick for two days and asked whether [REDACTED] could retake the quiz online at home. From [REDACTED]'s grade report in math, it doesn't appear that [REDACTED] retook the quiz.

75. On October 14, 2018, Mr. Riefenberg again solicited [REDACTED]'s assistance in getting [REDACTED] to complete work and retake quizzes. [REDACTED] requested that Mr. Riefenberg assist [REDACTED] during the focus study period the following day.

76. Mr. Riefenberg worked with [REDACTED] outside of class several times during the year to help [REDACTED] catch up on work. Mr. Riefenberg described these sessions as fantastic because [REDACTED] was able to pick up the information that [REDACTED] missed.

77. Mr. Riefenberg continued to work with [REDACTED] and [REDACTED] throughout the year to improve grades and get work completed. Mr. Riefenberg also noticed that [REDACTED] had fewer absences after November.

78. At [REDACTED]'s request, Mr. Riefenberg recommended a math tutor through The Tutoring Club, a tutoring business that Mr. Riefenberg had worked for in the past.

79. Mr. Riefenberg felt that he had a very good rapport with [REDACTED]. Because Mr. Riefenberg's class was immediately after lunch, students would drop off their books and backpacks in his classroom and then go to the cafeteria. [REDACTED] and Mr. Riefenberg developed a routine of wishing each other a good lunch and checking in again after lunch every day.

80. Ms. Jordan Gilliland was [REDACTED]'s [REDACTED] grade ELA teacher. Ms. Gilliland learned through the Skyward computer system that [REDACTED] had a diagnosis of anxiety, but she was unaware of a history of absenteeism.

81. Ms. Gilliland recognized that [REDACTED]'s grades were not reflective of what [REDACTED] was capable of achieving because of [REDACTED] numerous absences. She noted that when [REDACTED] was at school [REDACTED] did well.

82. While Ms. Gilliland corresponded with [REDACTED] several times about [REDACTED]'s absences, [REDACTED] never indicated that [REDACTED] absences were due to mental health issues.

83. [REDACTED] visited the nurse's office a number of times over the spring semester of [REDACTED] -grade year, mostly for headaches or stomach aches. Nurse Weingartner spoke to [REDACTED] on

several of those dates, but there was no indication by either Nurse Weingartner or [REDACTED] that anxiety or depression might be an underlying cause of [REDACTED] ailments.

84. In May 2019, about five days before the end of the school year, [REDACTED] emailed Ms. Gilliland asking what could be done to improve [REDACTED]'s grade after [REDACTED] came to her concerned that [REDACTED] might not pass ELA. In her email, [REDACTED] referenced [REDACTED] being sick with headaches, which she attributed to [REDACTED] possibly having mono since [REDACTED] brother recently had it.

85. Ms. Gilliland responded that [REDACTED] could improve [REDACTED] grade by turning in work that was missing and promised that she would check in with [REDACTED] the following day.

86. About the same time, [REDACTED] emailed Ms. Meagan McCullough, [REDACTED]'s science teacher, concerned that [REDACTED] might not pass science. Again, [REDACTED] blamed headaches that she suspected might be caused by mono. Ms. McCullough responded that she had talked with [REDACTED] about [REDACTED] missing work, updated [REDACTED] on what had been turned in and what was still outstanding, and explained an option for [REDACTED] to earn extra credit.

87. Ms. Deana Stepanic was [REDACTED]'s school counselor at [REDACTED] for both [REDACTED] and [REDACTED] grades. Ms. Stepanic runs weekly reports from Skyward that let her know of students who have grades below 75 or who are missing assignments, and she does an “academic check-in” with those students. In [REDACTED] grade, Ms. Stepanic held two such check-ins with [REDACTED] – one on December 1, 2018, and one on April 29, 2019.

88. Ms. Stepanic did not recall any other meetings with [REDACTED], any interactions with [REDACTED], or [REDACTED]'s teachers raising any other concerns with her after trying to set up the conference with [REDACTED] in the fall.

89. Despite numerous emails with [REDACTED]'s [REDACTED] grade teachers, [REDACTED] never mentioned [REDACTED]'s anxiety or depression as a reason for absences or being late to school.

90. In [REDACTED] grade, [REDACTED]'s STAR scores remained solid – in math ranging in percentile rankings from 47% to 64% and in ELA ranging from 53% to 80%.

91. [REDACTED]'s TCAP scores in the [REDACTED] grade were: 57 in Reading/Language Arts, which is classified as approaching; 65 in math, which is classified as on track; and 52 in social studies, which is classified as approaching.

92. [REDACTED] ended the [REDACTED] grade with a C in ELA and in math, and a B in science and in social studies. Thus, [REDACTED] passed the [REDACTED] grade.

93. Toward the end of [REDACTED]'s [REDACTED] grade year, on April 23, 2019, [REDACTED] submitted an out-of-zone request for [REDACTED] to stay at [REDACTED] for [REDACTED] [REDACTED]-grade year. [REDACTED] had apparently been living outside of the [REDACTED] zone during [REDACTED] [REDACTED]-grade year, but it is not clear from the evidence that anyone was aware of that until very late in the academic year.

94. The April out-of-zone request was based on the fact that [REDACTED]'s older brothers had attended [REDACTED], and [REDACTED] wanted [REDACTED] to stay at [REDACTED] and continue on to [REDACTED] as [REDACTED] brothers had done. This request was denied as it did not fit within WCS' policy for approving an out-of-zone request.

95. [REDACTED] appealed the denial of the out-of-zone application through an attorney and attached documentation of [REDACTED]'s diagnoses from Lifecare Family Services. EXHIBIT 77. This was the first time that [REDACTED] had shared documentation regarding [REDACTED]'s mental health diagnoses with the school system. On appeal, the out-of-zone request was upheld because it still did not meet WCS' policy to grant an exemption.

96. [REDACTED] submitted a second out-of-zone application on August 8, 2019, based on the fact that they would be moving into the [REDACTED] zone in October 2019, during [REDACTED]'s

█████ grade year. This second out-of-zone application was approved as it fell within WCS' policy for such exemptions.

97. On July 4, 2019, the Petitioners sent the Due Process Complaint to WCS.⁷

98. Based on the Due Process Complaint, WCS sought and received consent to evaluate █████ for eligibility under the IDEA and Section 504.

99. On July 10, 2019, █████ submitted a Student Health History form, apparently through Skyward. On the form, she notes that “█████ has had depression and anxiety in the past but with █████ current medication and since attending █████ █████ █████ anxiety has improved.” EXHIBIT 74. The form also includes information that █████ is taking Prozac.

100. On August 7, 2019, █████ filled out a second Student Health History form and noted that █████ had “severe anxiety and depression.” This form does not indicate that █████ is taking Prozac although it lists other medications. EXHIBIT 75

101. On August 5, 2019, █████ re-initiated treatment at Lifecare Family Services, where █████ began individual counseling with Ashley Knight, M.A. At Lifecare, █████ was diagnosed with generalized anxiety disorder; moderate major depression, recurrent episode; post-traumatic stress disorder; and disruptive mood dysregulation disorder. █████ consistently participated in therapy and medication management at Lifecare for the next two months until █████ admission to a partial hospitalization program.

102. On August 15 and 20, 2019, █████ participated in a neuropsychological evaluation by Brittany Paul, Ph.D. Dr. Paul diagnosed █████ with neurocognitive disorder; attention deficit hyperactivity disorder, predominately inattentive type (provisional); developmental coordination disorder; specific learning disorder in math; persistent depressive disorder; major depressive

⁷ An amended complaint was filed on April 15, 2020.

disorder, recurrent, moderate, with psychotic features (previously diagnosed); generalized anxiety disorder (previously diagnosed); obsessive-compulsive disorder, tic-related; persistent motor tic disorder; and panic disorder. She ruled out autism spectrum disorder and ruled out but suggested continuing monitoring for post-traumatic stress disorder and disruptive mood dysregulation disorder. EXHIBIT 2.

103. Dr. Paul's evaluation includes recommendations for school such as (1) ■ be considered for special education services; (2) small group or individualized instruction in math; (3) in class accommodations such as preferential seating, prompting and redirection, repetition, and frequent breaks; (3) additional time to complete assignments; (4) that ■ undergo an occupational therapy evaluation; (5) that ■ have contact with the school counselor or other designated individual with whom ■ feels comfortable; (6) that ■ be allowed to call ■ mother when necessary; (7) a consistent school schedule; (8) consultation between ■ private psychotherapist and school counselor; (9) allowance for being tardy in the morning and making ■ first class a less rigorous one; (10) social skills support; and (11) that ■ reading comprehension skills be monitored. EXHIBIT 2.

104. All of Dr. Paul's recommendations could be implemented with general education supports.

105. Dr. Paul's original report did not consider input from any of ■'s teachers. While teachers later provided written input, and Dr. Paul updated her report, the school recommendations and diagnoses were identical in both reports. EXHIBIT 2; EXHIBIT 18.

106. Because Dr. Paul's report did not consider attendance history or teacher input, it did not include all assessment areas required to be assessed for other health impairment (OHI), emotional disturbance (ED), or autism.

107. On August 22, 2019, [REDACTED] visited the office of Nurse Weingartner, the school nurse, for the first time that school year. [REDACTED] relayed that [REDACTED] was having a panic attack and that [REDACTED] had a bad dream the night before about zombies. Nurse Weingartner noted that [REDACTED] “calmed easily and [was] talkative.” EXHIBIT 73. Nurse Weingartner contacted Ms. Stepanic, who took [REDACTED] to her office to talk.

108. Ms. Stepanic coached [REDACTED] on deep breathing techniques and let [REDACTED] call [REDACTED] mother. [REDACTED] suggested that a cold compress often worked well to calm [REDACTED], so Ms. Stepanic used that strategy. Ms. Stepanic also gave [REDACTED] a pass that day that [REDACTED] could show to a teacher to allow [REDACTED] to leave class to go to the nurse or come to Ms. Stepanic’s office. [REDACTED] went back to class after spending some time with Ms. Stepanic.

109. On the evening of August 22, Ms. Stepanic followed up with [REDACTED] by email. Specifically, Ms. Stepanic requested that [REDACTED] sign a release of information so that Ms. Stepanic could communicate with [REDACTED]’s private therapist, which had been one of Dr. Paul’s recommendations. Ms. Stepanic concluded her email saying, “[p]lease keep the lines of communication open and let me know if you would like me to check in on [REDACTED] or even keep a watchful eye if [REDACTED] had a rough morning.” EXHIBIT 32. Ms. Stepanic never received a signed release from [REDACTED]

110. Around September 4, 2019, Ms. Burnette, [REDACTED]’s ELA teacher, conducted a dyslexia screening exercise with her students in which the students were read a story starter script, given a set amount of time to think, and then given a set amount of time to write a story based on the script that was read to them.

111. [REDACTED] wrote some words but then erased all of them. When Ms. Burnette asked [REDACTED] about it, [REDACTED] said he could not think of anything to write.

112. On September 12, 2019, █████ visited Nurse Weingartner's office again. █████ stated █████ stomach was hurting and that █████ was anxious. Nurse Weingartner had █████ do some deep breathing and calmed █████ down. █████ called █████ mother who came to pick █████ up.

113. Ms. Jessica Keezer, a WCS school psychologist, evaluated █████ in the fall of 2019, █████'s █████-grade year, to assess █████ for IDEA eligibility in the categories of OHI, ED, and autism. Her evaluation also incorporated findings of a speech pathologist and occupational therapist, Dr. Paul's evaluation, numerous psychological tests, ratings scales by █████'s █████ teachers, classroom observation of █████, comprehensive review of all of █████'s WCS records including absences and nurses' visit notes, and interviews with █████, █████, and █████'s █████ grade teachers. WCS also requested a clinical psychological evaluation, for which █████ refused consent.⁸

114. Ms. Keezer's report documented positive social interactions with classmates which was confirmed by her interviews with █████ █████-grade teachers. The only weakness noted by █████ teachers was █████'s excessive absenteeism.

115. Ms. Keezer's report noted the significant number of absences that █████ incurred over the years, collectively, more than an entire school year by the █████ grade. In addition, the report documented █████ displaying tics during █████ first session with Ms. Keezer and that █████ had difficult moving quickly through some of the testing due to erasing █████ mistakes and being cautious in █████ answers.

116. Ms. Keezer provided her report to █████ and Ms. Keezer's supervisor before the eligibility meeting. Copies of both Ms. Keezer's report and Dr. Paul's report were placed in the

⁸ After an interlocutory appeal, █████ was interviewed by Dr. Vance Sherwood in August 2020.

middle of the table during the eligibility meeting for anyone to have access to during the meeting.

117. On September 18, 2019, the IEP team met to discuss [REDACTED]'s eligibility pursuant to the IDEA and Section 504.⁹

118. [REDACTED] discussed the impact of [REDACTED]'s sensory issues, and attributed [REDACTED] being absent and late to school to [REDACTED] sensory issues and anxiety. She also described [REDACTED] as overwhelmed by homework and the repetitive behavior of [REDACTED] writing and erasing over and over until [REDACTED] got what [REDACTED] was writing just right.

119. In addition, other team members discussed their observations and added input. While all present agreed that [REDACTED]'s absenteeism was having an impact on [REDACTED] educational performance, only [REDACTED] felt that [REDACTED]'s anxiety was the primary cause of [REDACTED] absences.

120. The IEP team, including [REDACTED], agreed that [REDACTED] did not meet the classification criteria for autism.

121. The team members, with the exception of [REDACTED], concluded that [REDACTED]'s anxiety was not having an adverse effect on [REDACTED] educational performance to a marked degree. To the extent it was having any impact, that impact was ameliorated by general education supports.

122. Further, the team, except for [REDACTED], concluded that [REDACTED]'s anxiety had not been noticed over an extended period of time. Thus, the team concluded, again with the exception of [REDACTED], that [REDACTED] was not eligible for special education services pursuant to the IDEA.

⁹ After a 3-and-a-half-hour IDEA eligibility meeting, the parties had intended to discuss eligibility under Section 504. However, the Petitioners requested that the Section 504 portion of the meeting be rescheduled due to scheduling conflicts. As explained below, no Section 504 eligibility meeting ever occurred.

123. Two days after the IDEA eligibility meeting, on September 20, 2019, [REDACTED] wrote to [REDACTED]'s teachers and Ms. Stepanic to update them on [REDACTED]'s continuing struggles, writing “[REDACTED] has been struggling all week with anxiety, panic attacks, OCD rituals, stomach pain, diarrhea and nausea.” She asked them to keep [REDACTED] heightened anxiety in mind and to gather [REDACTED] missing assignments for them to work on at home.

124. When [REDACTED] arrived at school that morning, [REDACTED] went into a classroom period that Ms. Stepanic was covering. She noticed that [REDACTED] greeted and smiled at a friend across the room in a very typical [REDACTED]-grade interaction.

125. A little later, [REDACTED] visited Nurse Weingartner's office with an upset stomach. Ms. Stepanic also met with [REDACTED] that day and discussed [REDACTED] feelings of being overwhelmed trying to catch up from [REDACTED] recent absences. Ms. Stepanic worked through some strategies with [REDACTED] came up with a plan, and [REDACTED] was smiling and laughing by the end of their conversation.

126. Ms. Stepanic walked with [REDACTED] to the front office to call [REDACTED] mother. Ms. Stepanic explained the plan to [REDACTED] who agreed with it.

127. Despite the fact that [REDACTED] was feeling better, [REDACTED]'s stepfather picked [REDACTED] up early.

128. Also on September 20, 2019, Ms. Stepanic wrote to a number of school personnel, including all of [REDACTED]'s current teachers, to let them know that [REDACTED] had a pass to her office or the nurse to provide [REDACTED] a timed break to de-escalate or to provide [REDACTED] a quiet place to get work done. This email also informed them that Ms. Stepanic was planning to meet with [REDACTED] on Monday, September 23, to help [REDACTED] come up with a plan for missed work and to let her know if there were specific things that she could do help get [REDACTED] caught up in a particular class.

EXHIBIT 34.

129. On September 23, 2019, Ms. Stepanic met with [REDACTED] when she dropped [REDACTED] off at school that morning. [REDACTED] was very upset with the school attendance secretary. Ms. Stepanic listened to [REDACTED] and reassured her that school personnel were going to support and help take care of [REDACTED]. [REDACTED] reported the anxiety that [REDACTED] had over the past weekend, including [REDACTED] behavior of erasing and re-writing multiple times, to Ms. Stepanic and let Ms. Stepanic know that [REDACTED] was going to be assessed by Rogers Behavioral Health (Rogers).

130. [REDACTED] was hoping that Ms. Stepanic could help provide support to [REDACTED] until she could get [REDACTED] admitted to Rogers' program.

131. On September 25, 2019, Ms. Stepanic introduced [REDACTED] to some of the other support personnel who were in the building in case [REDACTED] needed a counselor at a time that Ms. Stepanic was not available. The following day, [REDACTED] took advantage of this and found Ms. Annikki Merritt, another counselor. Ms. Merritt worked with [REDACTED] and coordinated with [REDACTED] teachers to come up with a plan to make up the work that [REDACTED] was missing.

132. On September 30, 2019, in ELA, [REDACTED] completed a personal narrative assignment in which [REDACTED] had to choose from a list of topics, write a personal narrative relating to that topic, and then present it as a speech.

133. Despite his increasing anxiety, [REDACTED] not only successfully gave a speech, but [REDACTED] also went to the front of the class to present it, which Ms. Burnette had not required.

134. Ms. Burnette remembered [REDACTED] as a child who was polite, bright, and got along well with [REDACTED] peers.

135. During his [REDACTED]-grade year, [REDACTED] did not stand out to Ms. Stepanic as a child who had any needs due to [REDACTED] absences. However, she saw a very different child as the [REDACTED]-grade

year began to progress. Even with [REDACTED] rising anxiety, Ms. Stepanic never saw it get to the point that it could not be managed with the supports available to [REDACTED] in the building.

136. [REDACTED] last attended [REDACTED] on October 2, 2019. [REDACTED] began a partial hospitalization treatment program at Rogers on October 7, 2019, which [REDACTED] attended from 8:00 a.m. to 2:30 p.m., five days a week. EXHIBIT 57.

137. Given [REDACTED] participation in the partial hospitalization program at Rogers, [REDACTED] was approved to receive homebound instruction on October 16, 2019. Homebound teacher Elise Tepner began working with [REDACTED] in November 2019.

138. Homebound instruction is generally provided for three hours per week. The amount of homebound instruction can be extended beyond three hours a week for special education students when their IEP directs that more instruction be provided.

139. Because [REDACTED] was in treatment during school hours, Ms. Tepner was scheduled to meet with [REDACTED] two days a week from 3:15 to 4:45 p.m. [REDACTED] frequently had not gotten home from Rogers by 3:15 p.m.; therefore, the time that Ms. Tepner had with [REDACTED] was further curtailed. There were also a few times that Ms. Tepner was late arriving for her sessions with [REDACTED]

140. While it was very difficult to teach all of a student's subjects in just three hours per week, it helped that Ms. Tepner was working one-on-one with the student and that they only covered academic topics, whereas the school day would have enrichment periods and other breaks planned into the day.

141. Homebound services are not meant to be a long-term solution. They are provided to keep children for whom a physical or mental health issue must take priority afloat

academically until the child can return to school. Thus, homebound services are only approved in 30-day increments.

142. From November 2019 to March 2020, Ms. Tepner met with [REDACTED] at home. Once [REDACTED] stepped down from partial hospitalization to intensive outpatient therapy at Rogers, [REDACTED] arranged tutoring through the Learning Lab in addition to the instruction that Ms. Tepner was providing.

143. On March 5, 2020, WCS closed school for the year due to the COVID-19 pandemic. WCS made the remaining work available to students through packets that could be picked up at school and through the online Google classroom. However, finishing the work was not required.

144. Nonetheless, [REDACTED] completed the work and finished [REDACTED] [REDACTED]-grade year with an 82 in ELA, a 95 in math, an 85 in science, and a 97 in social studies.

145. Dr. Charles Ihrig, Ph.D. evaluated [REDACTED] in March 2020. Dr. Ihrig diagnosed [REDACTED] with obsessive compulsive disorder; generalized anxiety disorder; major depressive disorder, single episode, severe; and tic disorder. Dr. Ihrig ruled out attention deficit hyperactivity disorder.

146. [REDACTED] began seeing a psychiatrist, Dr. Scot McKay, in January 2020 as [REDACTED] neared completion of Rogers' intensive outpatient program and continued seeing [REDACTED] up through the time of the hearing. Dr. McKay diagnosed [REDACTED] with major depressive disorder, recurrent, mild; obsessive compulsive disorder; generalized anxiety disorder; attention deficit hyperactivity disorder, predominately inattentive type; and tic disorder.

147. In February 2020, Dr. McKay participated in a telephone conference with Ms. Jill Merritt, the Assistant Director of Student Support Services at WCS, who was part of the team

that approved homebound requests, to discuss the continuing requests for homebound services and the possibility of transitioning ██████ back to ██████

148. Dr. McKay agreed, both during that conversation and at the time of ██████ deposition on June 3, 2020, that ██████ could be transitioned back into school. According to Dr. McKay, ██████ did not have school avoidance anxiety, rather ██████ feared looking stupid in front of ██████ friends.

149. To successfully transition ██████ back into the school setting, Dr. McKay recommended a safe person for ██████ to go to when ██████ had anxiety, being allowed breaks when ██████ needed to leave a classroom, extended deadlines on projects, and potentially preferential seating. EXHIBIT 47. p. 51.

150. WCS expected ██████ to reenroll for ██████ ██████-grade year at ██████ but ██████ enrolled ██████ at ██████ in August 2020.

151. Vance Sherwood, Ph.D., interviewed ██████ on August 14, 2020, by video conference. ██████ presented to Dr. Sherwood as a very different child than seen even in ██████'s last days at ██████ when ██████ anxiety had begun to increase. As opposed to every other person to testify who had met ██████, Dr. Sherwood was not able to establish any rapport with ██████ in the hour-and-a-half interview they had together.

152. Dr. Sherwood described ██████ as withdrawn and locked down. Dr. Sherwood diagnosed ██████ with separation anxiety and drew two conclusions: (1) ██████ had regressed emotionally since August 2019 and (2) as of the time of Dr. Sherwood's assessment in August 2020, ██████ met the criteria for emotional disturbance. Dr. Sherwood did not opine on whether that condition had existed for an extended period of time or whether it affected ██████ educationally to a marked degree.

153. Based on Dr. Sherwood's assessment, WCS again asked [REDACTED] through counsel to reconvene an eligibility meeting to consider whether [REDACTED] was eligible for services under the IDEA or Section 504. Through counsel, on August 23, 2020, [REDACTED] declined to participate in an eligibility meeting.

154. In all, WCS requested to have another IDEA and/or 504 eligibility meeting with [REDACTED] three times – an offer to reconvene at the end of the September 19, 2019, meeting to consider 504 eligibility and re-consider IDEA eligibility once Dr. Paul had updated her report with teacher input, and twice after that. All of these meetings were refused by [REDACTED], opting instead to pursue eligibility through this due process proceeding.

APPLICABLE LAW and ANALYSIS

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). To that end, the IDEA requires that all local education agencies (LEAs) identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services, including children who are suspected of being a child with a disability and in need of special education, even though they are advancing year to year. 34 C.F.R. §300.111(a)(1)(i) and (c)(1). This requirement is commonly referred to as the “child find” mandate. In order to demonstrate a child find violation, “the claimant must show that school officials overlooked clear signs of a disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” *Ja.B. v. Wilson County Board of Education*, 61 F. 4th 494, 502 (6th Cir. 2023). “Child [f]ind does not demand that schools conduct a formal evaluation of every struggling student.” *D.K. v.*

Abington School District, 696 F. 3d 233, 249 (3rd Cir. 2012). Further, “[a] school’s failure to diagnose a disability at the earliest possible moment is not *per se* actionable, in part because some disabilities “are notoriously difficult to diagnose and even experts disagree about whether [some] should be considered a disability at all.” *D.K.*, at 249. Determining whether a child find violation has occurred is a fact-intensive inquiry. *Ja.B.*, at 501. The Petitioners, as the party seeking relief, have the burden of proof to establish whether there has a been a violation of the IDEA. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56, (2005).

Section 504 of the Rehabilitation Act of 1973 provides:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

29 U.S.C. § 794. Similarly, Title II of the Americans with Disabilities Act states:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Given the similarity in the statutes, courts analyze the two statutes together, finding that apart from Section 504’s limitation to denial of benefits “solely” by reason of disability and its reach of only federally funded – as opposed to “public” – entities, the reach and requirements of the statutes are precisely the same. *S.S. v. Eastern Kentucky University*, 532 F. 3d 445 (6th Cir.

2008). In order to prevail, the Petitioners must show that [REDACTED] is (1) a “handicapped person” under the Rehabilitation Act, (2) otherwise qualified for participation in the program, (3) being excluded from participation in, or being denied the benefits of, or being subjected to discrimination under the program solely by reason of his handicap, and (4) that WCS is receiving federal financial assistance. *G.C. v. Owensboro Public Schools*, 711 F. 3d 623, 635 (6th Cir. 2013). As with the IDEA, Section 504 requires school systems to identify, locate, and evaluate qualified children who need or may need special education or related services. 34 C.F.R. § 104.32; 34 C.F.R. § 104.35.

The primary difference between the IDEA and Section 504 is the children that are covered by each statute. *B.H. v. Portage Public School Board of Education*, No. 1:08-cv-293, 2009 WL 277051, at *6 (W.D. Mich. February 2, 2009). While Section 504 applies to children with a disability, the IDEA limits its protection to children who have one or more specific disabilities listed in the statute who need special education and related services as a result of that disability. Thus, students eligible for services under the IDEA are a subset of those eligible under Section 504. *B.H.*, at * 6. Additionally, while both Section 504 and the IDEA require schools to provide students with a free appropriate education, the requirements are not identical. The regulations implementing Section 504 provide that adopting an IEP sufficient to satisfy the IDEA will also satisfy the FAPE requirements of Section 504. It is against this legal framework that [REDACTED]’s and [REDACTED]’s claims must be evaluated.

ADA and Section 504 Claims

The Petitioners’ claims under the ADA and Section 504 fail because the Petitioners have failed to show that [REDACTED] was excluded from participation in, denied the benefits of, or subjected to discrimination solely by reason of [REDACTED] handicap. Under Sixth Circuit precedent, a plaintiff

alleging discrimination in the context of an education of a handicapped student's case must present evidence of either bad faith or gross misjudgment. *G.C.*, at 635; *Campbell v. Board of Education of Centerline School District*, 58 Fed. Appx. 162 (6th Cir. 2003). As the Eighth Circuit has explained:

The language of the statute is instructive. It prohibits exclusion, denial of benefits, and discrimination "solely by reason of ... handicap." Manifestly, in order to show a violation of the Rehabilitation Act, something more than a mere failure to provide the "free appropriate education" required by EAHCA [the predecessor statute to the IDEA] must be shown. The reference in the Rehabilitation Act to "discrimination" must require, we think, something more than an incorrect evaluation, or a substantively faulty individualized education plan, in order for liability to exist. Experts often disagree on what the special needs of a handicapped child are, and the educational placement of such children is often necessarily an arguable matter. That a court may, after hearing evidence and argument, come to the conclusion that an incorrect evaluation has been made, and that a different placement must be required under EAHCA, is not necessarily the same thing as a holding that a handicapped child has been discriminated against solely by reason of his or her handicap. An evaluation, in other words, is not discriminatory merely because a court would have evaluated the child differently.

We think, rather, that either bad faith or gross misjudgment should be shown before a § 504 violation can be made out, at least in the context of education of handicapped children. It is our duty to harmonize the Rehabilitation Act and the EAHCA to the fullest extent possible, and to give each of these statutes the full play intended by Congress. The standard of liability we suggest here accomplishes this result and also reflects what we believe to be a proper balance between the rights of handicapped children, the responsibilities of state educational officials, and the competence of courts to make judgments in technical fields. So long as the state officials involved have exercised professional judgment, in such a way as not to depart grossly from accepted standards among educational professionals, we cannot believe that Congress intended to create liability under § 504.

Monahan v. Nebraska, 687 F. 2d 1164, 1170-1171 (8th Cir. 1982) (emphasis added). The record in this case does not contain a scintilla of evidence of bad faith, gross misjudgment, or deviation from accepted educational standards. School personnel never saw ██████'s anxiety manifest itself at school prior to his ██████-grade year. Consistently, when ██████ displayed behavior out of the norm, school personnel reached out to ██████ and talked with ██████. For example, in February of ██████-grade year, Ms. Rector met with ██████ when ██████ was struggling due to bullying by a peer and counseled ██████ to involve an adult if that happened again. In March, Ms. Rector, ██████, and ██████ met again after ██████ hit a wall. ██████ mentioned to Ms. Rector that ██████ was struggling with anxiety and poor self-image, yet Ms. Rector saw no signs of it when she interacted with ██████. When ██████ brought ██████'s mental health to Ms. Randolph's attention, Ms. Randolph promptly responded, "[p]lease let me know how I can support ██████ on this end. I want to help out however I can." These were entirely reasonable responses given that ██████ was not showing any outward signs of anxiety at school during the ██████ grade.

In the ██████ grade, the number of ██████'s absences dropped dramatically. Still, ██████'s teachers were concerned enough that they tried to schedule a conference with ██████ in the late fall of that year. Due to miscommunication, that conference did not happen, and ██████'s teachers saw more consistent attendance after that and did not request to reschedule the conference. Ms. Stepanic held two academic check-ins with ██████ that year but never saw indications of ██████ depression or anxiety. In ██████ grade, when Ms. Stepanic could tell that ██████ anxiety was increasing, she implemented many of the exact same items that Dr. Paul recommended – she gave ██████ a pass ██████ could show to ██████ teacher when ██████ needed a break to go to the nurse or come see her, she acted as a safe adult ██████ could turn to when feeling anxious, ██████ was allowed to call ██████ mother whenever ██████ requested, ██████ had a designated space of the nurse's or Ms. Stepanic's

offices ■ could go to calm down, and Ms. Stepanic requested a release from ■ so that she could coordinate with ■ private therapist.

Moreover, the Petitioners completely frustrated the process by refusing to convene a Section 504 eligibility meeting. WCS offered to hold a Section 504 eligibility meeting three times during this case. While one was supposed to occur immediately on September 18, 2019, when it did not, the Petitioners refused WCS' attempts to reschedule the meeting or hold one when offered much later in the process. Navigating the eligibility process is a two-way street between the school system and a student's family. The Petitioners cannot refuse to participate in the process, as they did here after September 18, 2019, and then seek relief claiming that the LEA discriminated against them in violation of Section 504. There is no evidence in this case of bad faith, gross misjudgment, or deviation from accepted educational standards. Thus, the Petitioners have failed to meet their burden of proof to establish a violation of the ADA or Section 504.

IDEA Claims Prior to September 18, 2019

Child Find in ■ Grade (2017-2018 School Year)

WCS met its child find obligation as to ■ during his ■-grade year at ■ as it had no reason to suspect that ■ was a child with a disability who might need special education services. The Petitioners premise their case on the idea that because ■ had 40 absences and 24 instances of being late to school, coupled with mental health diagnoses of anxiety and depression, that WCS should have evaluated him for special education services. Taking the record as a whole, there is not a preponderance of evidence showing that WCS should have suspected that ■ needed special education services.

The Petitioners rely on (1) ██████'s testimony; (2) the August 15, 2017 Health History Form noting "anxiety;" (3) one email to a teacher in November 2017, mentioning therapy at Vanderbilt and stating that ██████ was "having emotional issues/anxiety and trouble with a child on the bus;" (4) an incident in March 2018 where ██████ punched a wall after a classmate made fun of ██████ and the communications and a meeting with the principal about that incident; (5) a social work referral in March 2018 by the school counselor due to concerns about absences brought to her by ██████'s teachers; and (6) an email in April 2018 to one of ██████'s teachers informing her that ██████'s medication had been increased leading ██████ to have increased anxiety and ██████ sleep being interrupted.

However, school personnel saw a child who was gentle and kind, who "hopped out" of the car at drop off in the morning, interacted appropriately with ██████ peers, and did not exhibit any outward signs of anxiousness. In an email the morning of March 8, 2018, the day after ██████ hit the wall, Ms. Randolph, the school counselor, asked ██████ to "[p]lease let me know how I can support [██████] on this end. I want to help out however I can." EXHIBIT 50. She never received any follow up from ██████. That same day, ██████ and ██████ sat down with ██████ principal, Ms. Rector. Ms. Rector's notes reflect that ██████ mentioned that ██████ was struggling with anxiety, depression, and self-image; was seeing a psychiatrist at Vanderbilt; and did not want to come to school. Ms. Rector interpreted the comment about not wanting to come to school as pertaining to that specific day. ██████ also did fine academically during ██████ grade. With one exception, his math and reading STAR scores placed ██████ at 65% or above compared to ██████ peers across the country. ██████ achievement test scores also indicated that ██████ was on track, proficient, or approaching in all of ██████ subjects. ██████ grades at the end of the year were all As and Bs except for math, in which ██████ got a C.

For the overwhelming majority of [REDACTED]'s absences, [REDACTED] attributed the absence to a physical illness such as strep throat or bronchitis. At trial, she presented nine doctors' notes for appointments during [REDACTED]'s [REDACTED] grade year, only one of which bore any indication that it was related to a visit to a mental health professional. Moreover, the record is not clear as to which of these notes were presented to WCS during [REDACTED]'s [REDACTED] grade year. [REDACTED] regularly communicated by email with [REDACTED]'s teachers and her emails *never* linked [REDACTED]'s absences or tardiness to [REDACTED] depression or anxiety. A single reference to Ms. Rector in their March 8, 2019, meeting, which may or may not have linked [REDACTED]'s anxiety to not wanting to go to school that day, does not come close to giving WCS a reasonable suspicion that [REDACTED] might be a child in need of special education services due to [REDACTED] anxiety causing absences. Thus, the Petitioners have failed to show that WCS violated its child find obligation as to [REDACTED] in [REDACTED] [REDACTED]-grade year.

Child Find in [REDACTED] Grade (2018-2019 School Year)

In the [REDACTED] grade, by all appearances, [REDACTED] was performing better both academically and with [REDACTED] mental health. [REDACTED] had only 18 absences that year, again all of which [REDACTED] attributed to physical illness. Still, [REDACTED] teachers were concerned enough to contact [REDACTED] to request a parent-teacher conference in late October 2018. [REDACTED] understandably could not attend an in-person conference as she was in the midst of relocating her mother from out of state. Therefore, [REDACTED] requested to do a phone conference. While Ms. Fall suggested a date and time for a phone conference, [REDACTED] did not confirm, and therefore the conference did not happen. [REDACTED]'s teachers did not follow up to reschedule a conference since they began to see improvement in [REDACTED] attendance and therefore, [REDACTED] grades.

Again, [REDACTED]'s teachers saw in [REDACTED] a sweet young [REDACTED] who wanted to do well. [REDACTED] got along well with others, both peers and adults, and was easy to build rapport with. Again, [REDACTED]

corresponded regularly with ██████'s teachers and spoke on the phone several times with Nurse Weingartner. In these interactions, ██████ never linked ██████'s absences with ██████ anxiety or depression. Likewise, ██████'s academic performance remained steady – ██████ achievement test scores were “approaching” or “on track” in all subjects; ██████ ended the year with a B or high C in all of ██████ academic classes; ██████ math STAR scores ranged from 47% to 64%; ██████ STAR reading scores ranged from 53% to 80%.

While it is WCS' responsibility to proactively identify students who may need special education services, when a student is suffering from a mental health condition that manifests itself at home significantly more than at school, as was the case here, it is incumbent on the parent to communicate the impact it is having on the child's education to school personnel. Tellingly here, ██████ apparently does communicate that to ██████ in a way that she never did with WCS. If ██████ is having a meltdown over ██████ clothes in the morning, she calls CIA and gets the response to just get ██████ there and they will meet ██████ where he is. TRANSCRIPT, Vol. XV, p. 1746. However, she never gave WCS that opportunity. When she met with ██████'s ██████ grade teachers to discuss ██████ anxiety and feeling overwhelmed, they said to “just get ██████ to school.” TRANSCRIPT, Vol. XVI, p. 1872. This is exactly what ██████ staff told her, yet somehow in ██████'s estimation, it is helpful when coming from ██████ staff but not when coming from WCS staff. ██████ was simply not manifesting anxiety at school in the way ██████ apparently was at home. WCS personnel are not omniscient. To the extent that ██████'s anxiety was preventing ██████ from getting to school, there was no way for WCS to know that prior to ██████'s ██████-grade year without ██████ communicating it to them which she did not do in any substantial manner. The Petitioners have failed to meet their burden of proof that WCS overlooked clear signs of a disability, was negligent in failing to order testing, or had no rational justification for not

evaluating prior to the filing of the due process complaint. Once the complaint was filed, WCS promptly evaluated [REDACTED]. There was no child find violation during [REDACTED]'s [REDACTED] or [REDACTED] grade years.

Eligibility as of September 18, 2019

Based on the allegations in the due process complaint filed in July 2019, WCS requested and was granted consent to evaluate [REDACTED] for IDEA and/or Section 504 eligibility. As to the IDEA, [REDACTED] was evaluated under the categories of (1) ED, (2) OHI, and (3) autism.¹⁰ While it was apparent that [REDACTED]'s anxiety, which was much more significant at home than at school, was beginning to appear on occasion at school, at the time of the eligibility meeting, [REDACTED] did not meet the criteria for either ED or OHI.

WCS, through school psychologist Jessica Keezer, conducted an extremely thorough and comprehensive evaluation. The evaluation considered [REDACTED]'s input, Dr. Paul's evaluation, classroom observations, psychological tests, ratings scales, input from [REDACTED]'s [REDACTED] grade teachers, a comprehensive review of [REDACTED]'s records for [REDACTED] entire time in the school district (back to second grade), [REDACTED] grades, test scores, nurses' visits, and attendance reports. Ms. Keezer's evaluation clearly and comprehensively laid out all of the information available at the time and more than met WCS' obligation to conduct a thorough evaluation of [REDACTED]. While the Petitioners do not believe enough weight was given to [REDACTED]'s input and Dr. Paul's evaluation, [REDACTED] was an active participant in the eligibility meeting and Dr. Paul's evaluation was explicitly incorporated into Ms. Keezer's report, all of which was appropriately considered by the team. The Petitioners' arguments to the contrary are meritless.

¹⁰ The IEP team, including [REDACTED], all agreed that [REDACTED] was not eligible under the category of autism. Therefore, it will not be discussed further.

ED is defined as:

(i) [A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

34 C.F.R. § 300.8(c)(4).

As of September 18, 2019, ■■■ may have met the condition of having an “[i]nappropriate ... feeling under normal circumstances” given his irrational fear of zombies. If ■■■ did, ■■■ had not shown that condition to a marked degree, ■■■ had not shown it over a long period of time, and it had not affected ■■■ educational performance. In ■■■ grade and prior to September 18, ■■■’s anxiety had manifested itself at school in (1) a panic attack on August 22, 2019, (2) ■■■ inability to complete the dyslexia screening in Ms. Burnette’s class, (3) demonstrating tics during ■■■ evaluation with Ms. Keezer, and (4) repeatedly erasing and re-writing during ■■■ testing with Ms. Keezer. Still, there were instances of ■■■ doing well. For example, ■■■ completed and did well on ■■■ First Day Essay assignment, and two days after the meeting, Ms. Stepanic noted very appropriate, positive peer interactions. Further, at this point,

school had been in session for less than two months. The evidence does not show that these characteristics had existed over a long period of time.

The Petitioners argue that his absences and being late to school were being caused by anxiety at home. However, contrary to this argument, the evidence shows that [REDACTED] provided alternate reasons for [REDACTED] absences and tardiness over, and over, and over again. In retrospect, she now says that she was uncomfortable writing the real reason for being late because the sign in sheet was on the counter in the school office and available for anyone to see. This excuse is not credible given that she never mentioned it to anyone prior to the hearing and because the record is devoid of any evidence that she made any attempt to inform school personnel in a more private manner of the reasons for his tardiness. She regularly communicated with school personnel by email; during the [REDACTED]-grade year she referenced the fact that [REDACTED] had anxiety and was struggling. However, [REDACTED] never hinted at a link between [REDACTED] tardiness and [REDACTED] anxiety.

Moreover, none of the evidence relied on by the Petitioners of [REDACTED]'s anxiety or absences demonstrates an adverse impact on [REDACTED] education. [REDACTED] performed at or above grade level, never failed a class, and was successful socially. As of the September 18, 2019, eligibility meeting, [REDACTED] did not qualify for services from WCS under the IDEA in the category of ED.

OHI is defined as:

[H]aving limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

34 C.F.R. § 300.8(c)(9).

There is virtually no evidence in the record of ■■■ having “limited strength, vitality, or alertness, or heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment;” much less, that any such condition was adversely affecting ■■■’s educational performance. In retrospect, ■■■’s mental health did continue to decline, apparently very rapidly as ■■■ was admitted to Rogers’ partial hospitalization program less than a month later. Second guessing the decision in retrospect does not establish proof of eligibility. Moreover, the proof does not support that conclusion. Both Ms. Griego and Ms. Stepanic testified, even knowing that ■■■’s decline continued, that the correct decision was made at the eligibility meeting based on the information that was available to the team at the time. The Petitioners have failed to meet their burden of proof to show that ■■■ was eligible to receive special education services under the disability category of OHI.

It is abundantly clear that ■■■ had not been suffering anxiety at school for an extended period of time given that school had only been in session a few weeks at the time of the eligibility meeting. It is equally clear that ■■■ condition did not adversely affect ■■■ educational performance to a marked degree. Even with ■■■ history of absences, ■■■ scored at or above grade level on standardized tests, ■■■ never failed a class, and ■■■ demonstrated appropriate and positive interactions with peers and adults. Moreover, WCS took appropriate steps to help ■■■ cope with ■■■ anxiety. Ms. Stepanic met with ■■■ regularly, coached ■■■ on techniques like deep breathing to calm himself, gave ■■■ a pass to leave class when ■■■ needed a break, and worked with ■■■ to develop a plan to catch up on work. The Petitioners have failed to prove by a preponderance of the evidence that ■■■ was eligible for special education services under the IDEA.

IDEA Claims After September 18, 2019 (remainder of 2019-2020 School Year)

█ last attended █ on October 2, 2019; █ was admitted into Rogers' partial hospitalization program on October 7, 2019. On October 16, 2019, █ was approved to receive homebound services. Ms. Tepner, █'s homebound teacher, provided homebound instruction to █ consistently until WCS closed schools due to the COVID-19 pandemic on March 5, 2020. While both sides were sometimes late to sessions, thus cutting into the already limited time allotted to the homebound teacher, homebound services are not meant to be a long-term solution but are a stop gap measure to keep students afloat academically until the student can return to school. It is unfortunate that Ms. Tepner and █ had such limited time to work together, but that does not establish a violation of child find or FAPE.

During the time that she provided homebound services, Ms. Tepner worked diligently and creatively with █ to make the most of their time together. The Petitioners further argue that in working with █, Ms. Tepner used special education techniques. To the contrary, the proof shows that the methods she used are best practice techniques that can be used with either general education or special education students.

At the point that WCS shut down because of the pandemic, school was closed and no WCS students were receiving educational instruction. Still, in order help █ complete █-grade year, Ms. Tepner remained in communication with █, offered suggestions, and offered to arrange a video conference with █ and one of █ classroom teachers. No such conference ever happened. Ms. Tepner fulfilled WCS' obligation to provide educational instruction to █ while █ was approved for homebound services.

The Petitioners make much of Dr. Sherwood's conclusion that at some point between September 18, 2019, and Dr. Sherwood's evaluation in August 2020, █ began to meet some

of the criteria for ED. However, the Petitioners are incorrect that Dr. Sherwood's conclusion established [REDACTED]'s IDEA *eligibility*. For a student to be eligible under the ED category, a student must meet BOTH one of the ED criteria AND that condition must have existed over a long period of time and adversely affected the child's educational performance. 34 C.F.R. § 300.8(4). Dr. Sherwood reached NO conclusion as to the length of time the condition had existed OR whether it had adversely impacted [REDACTED]'s educational performance.¹¹ Thus, neither Dr. Sherwood's testimony nor his report provides proof of [REDACTED]'s IDEA eligibility.

Moreover, WCS requested at least twice that the Petitioners attend another meeting with WCS personnel to consider Section 504 eligibility, reconsider IDEA eligibility, and establish a transition plan to reintegrate [REDACTED] back into school. These requests were declined. A parent has an obligation to participate in the eligibility determination process. *See, C.H. v. Cape Henlopen School District*, 606 F. 3d 59, 69-70 (3rd Cir. 2010). [REDACTED]'s continued refusals to reconvene an eligibility meeting after September 18, 2019, thwarted the cooperative process necessary to reintegrate [REDACTED] into WCS schools and to potentially establish IDEA or Section 504 eligibility. The Petitioners have failed to prove by a preponderance of the evidence that [REDACTED] was eligible under the IDEA or that WCS failed in its child find obligation at any point between September 18, 2019, and the hearing.

Miscellaneous Arguments

Out-of-Zone Request

The Petitioners also argue that WCS' denial of the April 23, 2019, out-of-zone request was wrongful. WCS has policies governing the approval and denial of requests to attend a

¹¹ As to the length of time this condition might have existed for [REDACTED], Dr. Sherwood testified that late summer of August 2019 was the earliest point at which the question of whether [REDACTED] was emotionally disturbed could have been considered, NOT that the condition had existed since then. WCS comprehensively considered that question in August and September 2019 through Ms. Keezer's report and a considered discussion at the September 18, 2019, eligibility meeting.

school other than a student's zoned school. Here, those policies were followed. Under WCS policy, a sibling having attended the requested school is not a basis to approve an out-of-zone request. Nor is a mental health diagnosis. All schools within WCS must provide FAPE to the students enrolled there. Thus, there would be no reason to have an out-of-zone policy based on a mental health diagnosis. The Petitioners have cited no authority supporting this argument. The April 23, 2019, request was properly denied. Once the Petitioners provided documentation that they would be moving into the district, which is a valid basis for an out-of-zone approval under WCS policy, the out-of-zone request for [REDACTED] to attend [REDACTED] in [REDACTED] grade was promptly approved. Accordingly, there is no merit to the Petitioners' argument that denial of the April 2019 out-of-zone request was inappropriate.

Truancy Statute

Lastly, the Petitioners imply that somehow Tennessee's truancy statute, specifically the tiered interventions outlined at Tenn. Code Ann. § 49-6-3009, should have been pursued in this case. It is unclear exactly how this might have helped [REDACTED] in [REDACTED] struggles with the mental health issues that were occurring at home. Nothing in the Petitioners' arguments on this point establishes a preponderance of the evidence that WCS committed a child find violation or that [REDACTED] was eligible for special education under the IDEA or accommodations under the ADA or Section 504.

CONCLUSIONS OF LAW

1. The Petitioners have failed to meet their burden of proof that WCS committed a child find violation for the 2017-2018 school year.
2. The Petitioners have failed to meet their burden of proof that WCS committed a child find violation for the 2018-2019 school year.

3. The Petitioners have failed to meet their burden of proof that WCS committed a child find violation for the 2019-2020 school year.

4. The Petitioners have failed to meet their burden of proof that [REDACTED] was eligible for special education services under the IDEA during the 2017-2018, 2018-2019, or 2019-2020, school years.


5. The Petitioners have failed to meet their burden of proof that [REDACTED] was denied access to programs or services in violation of the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act.

6. The Petitioners have failed to meet their burden of proof that [REDACTED] is entitled to compensatory education, reimbursement for placement at [REDACTED], or any other requested relief.

7. WCS is the prevailing party on all claims.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **31st day of May, 2023**.


ELIZABETH D. CAMBRON
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 **31st day of May, 2023**.

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 **May 31, 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 **June 15, 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 **July 31, 2023**. *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 **July 31, 2023**, 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 **June 7, 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.

**IN THE MATTER OF:
[REDACTED], THE STUDENT AND [REDACTED], THE
PARENT/GUARDIAN V. WILLIAMSON
COUNTY SCHOOLS**

APD CASE No. 07.03-190251J

NOTICE OF APPEAL PROCEDURES

FILING

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

Email: APD.Filings@tn.gov

Fax: 615-741-4472

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

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