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RE: In the Matter of: T. R. vs. Tipton Co. Schools Docket No. 07.03-105355J

Enclosed is an Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/abh
Enclosure

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

IN THE MATTER OF:

T.R.,
Petitioner,

v.

TIPTON COUNTY SCHOOLS,
Respondent.

DOCKET NO: 07.03-105355J

FINAL ORDER

This matter was heard on June 21-24, 2010, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division. Melinda Jacobs, Esq., represented the Respondent, Tipton County School System. The Petitioner was represented by Tyrus B. Sturgis, Esq.

At the conclusion of the hearing, the matter was taken under advisement, pending the parties filing Proposed Findings of Fact and Conclusions of Law.

The subject of this proceeding is whether the Respondent has provided Petitioner T.R. a free appropriate public education (FAPE). After consideration of the entire record, testimony of witnesses, and argument of the parties, it is DETERMINED that the Respondent is in compliance with the Individuals with Disabilities Act (IDEA) procedures and is providing T.R. a FAPE.

This determination is based on the following findings of fact and conclusions of law:

PROCEDURAL BACKGROUND

This due process hearing was initiated by the mother of T.R., a 17-year-old young man who is identified as “intellectually gifted” pursuant to State law. Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11). Petitioner claimed that the School District has failed to provide T.R. with a free appropriate public education as required by the Individuals with Disabilities Education Act (hereinafter “IDEA”) and related Tennessee laws and regulations and, on that basis, seeks compensatory education and future educational services. The School District claimed that it has, at all times relevant to these proceedings, provided T.R. with a “free appropriate public education” in the “least restrictive environment” as required by the IDEA and applicable Tennessee laws and regulations and, therefore, it is not liable to T.R. for the relief sought.

FINDINGS OF FACT

1. T.R. is a seventeen-year-old young man who, at various times during his school career, has been identified as an “intellectually gifted” student pursuant to State law and regulations. Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11).
2. T.R. has a history of behavior problems at school involving violations of school dress code, refusal to comply with adult requests, profanity, physical assaults, and threats of violence towards school personnel. Since the third grade, T.R. has received more than one hundred (100) formal disciplinary referrals for defiance, disrespect, use of profanity, physical aggression, dress code violations, and threats of violence.
3. On January 13, 2003, T.R. was found to meet state eligibility criteria for “intellectually gifted,” but was determined to be “not eligible” for special education and related services

because his educational needs could be met in the regular education program. T.R.'s mother participated in the eligibility meeting and agreed with this decision.

4. During the 3rd (2003-2004) and 4th (2004-2005) grades, T.R. received 28 formal disciplinary referrals for teacher defiance, violation of classroom rules, and fighting. On February 15, 2005, T.R. was referred to the School District's Student Disciplinary Hearing Authority ("SDHA") for "repeated, willful and persistent violation of school rules." The SDHA assigned T.R. to the Alternative Learning Center ("ALC") for the remainder of the 2004-2005 school year. The ALC is an alternative school operated by the School District. Both general education and special education students are placed at the ALC.

5. While assigned to the ALC, T.R. passed all of his courses for the 2003-2004 school year, and was promoted to the fifth grade. T.R. attended the Covington Integrated Arts Academy for the sixth grade. In February of 2005, T.R. was withdrawn from school by his mother and moved to live with his father in Lauderdale County, Tennessee.

6. T.R. began the 2005-2006 school year as a general education student in the seventh grade at Brighton Middle School ("BMS"). On September 15, 2005, T.R. was suspended and referred to the SDHA after he attacked an administrator and teacher at BMS and had to be physically restrained. The SDHA referred T.R. to the ALC for the remainder of the first semester of the school year. While at the ALC, T.R. continued to exhibit defiant and aggressive behavior, culminating in his threat to kill a teacher. T.R. was suspended from the ALC on February 23, 2006 pending a hearing by the SDHA. The SDHA conducted a formal hearing, finding T.R. guilty of the offenses charged and initiated a Juvenile Court petition against T.R.

7. On March 6, 2006, T.R.'s mother gave notice that she would appeal the decision of the SDHA and requested a "504 hearing." On March 21, 2006, Director of Schools, Dr. Tim Fite

affirmed the decision of the SDHA. Subsequently, T.R.'s mother provided a letter written by Douglas Gaus, a family counselor in Millington, Tennessee, recommending that T.R. be placed in a "class with gifted students."

8. A "Student Referral for Special Education" was signed by T.R.'s mother on March 20, 2006, indicating a need for additional assessments. In response to T.R.'s mother's concerns, a 504/IDEA eligibility meeting was convened by the School District on March 24, 2006. T.R.'s mother attended and participated in this meeting. At this meeting, T.R.'s possible eligibility under both Section 504 and IDEA was discussed. The team determined that T.R. did not meet eligibility criteria for Section 504, but agreed to reconsider T.R.'s eligibility as an "intellectually gifted" student under State law. Ms. Charlotte Fisher explained to T.R.'s mother the "gifted exemption" for disciplinary procedures, meaning that T.R. would not be protected from expulsion or a termination of his educational services during a disciplinary removal from school. On March 27, 2006, the School District conducted further psychological testing to determine whether T.R. met the eligibility criteria for "intellectually gifted." This evaluation found T.R.'s IQ to be 130.

9. On April 12, 2006, the eligibility team reconvened and determined that T.R. was eligible for special education and related services pursuant to State law as an "intellectually gifted" student. No other possible disabilities were discussed by the team, and T.R.'s mother agreed that no "educationally relevant medical findings" were indicated. An IEP was drafted at this meeting, identifying T.R.'s need for "higher order thinking skills." The IEP provided objectives for T.R. to "read, interpret, and discuss high level reading novels," "develop spelling and vocabulary skills for ACT/SAT words," "develop cooperative learning skills," and "develop expository and creative works, written and oral." To receive these services, T.R. was placed in

the regular education program for all classes except reading. T.R. was placed in "Challenge Reading" class. T.R.'s mother participated in the development of this IEP and agreed with its contents. A "Behavior Plan" was also drafted at this IEP meeting, providing T.R. with a "cooling down period" with designated staff and weekly meetings with the school guidance counselor. T.R.'s mother agreed with this Behavior Plan, to be implemented at BMS. At the IEP meeting, a formal Prior Written Notice was provided to T.R.'s mother.

10. T.R. began his eighth grade school year at BMS in August of 2006, and almost immediately began exhibiting behavior problems. On August 30, 2006, an IEP meeting was convened by the School District for the purpose of reviewing T.R.'s Behavior Plan and discussing his behavior problems at school. At this meeting, various strategies for motivating T.R. to complete class work and improve his behavior were discussed. Even with these efforts, T.R. continued to exhibit behavior problems at BMS. On October 31, 2006, T.R. left school grounds without permission and walked to a nearby bank. A School Resource Officer ("SRO") had to be called to pick T.R. up and return him to BMS. T.R. was suspended pending an SDHA hearing.

11. A "manifestation determination" meeting was convened on November 7, 2006. At this meeting, the IEP team determined that T.R.'s misbehavior was not caused by his intellectual giftedness. For the first time, T.R.'s mother raised the possibility that T.R. may be suffering from Attention Deficit Hyperactivity Disorder ("ADHD"). In response, the school personnel agreed to conduct further evaluations to determine whether T.R. had ADHD. In addition, the team decided to impose "consequences" rather than refer T.R. to Court School. The team also decided to conduct a "functional behavior assessment," or FBA. "Court School" refers to the "Teen Learning Center," which is an alternative school operated under the jurisdiction of the

Juvenile Court (“Court School”). T.R.’s mother signed in agreement with this decision. The “consequences” imposed upon T.R. included out-of-school suspension for ten days, in-school suspension, and Saturday school. The agreement also provided that non-compliance by T.R. would result in a referral to Juvenile Court.

12. T.R. again began to exhibit behavior problems, including refusal to complete class work and defiance of authority, in violation of the terms of the November 7, 2006 agreement. As a result, T.R. was referred to Juvenile Court for refusal to follow in-school placement guidelines and procedures. The Juvenile Court placed T.R. at the Court School.

13. On December 11, 2006, T.R.’s mother signed consent for ADHD testing via the Connors Rating Scales.

14. On January 9, 2007, T.R.’s mother requested a due process hearing and filed an administrative complaint with the Tennessee Department of Education alleging a denial of FAPE and a failure to identify T.R. as a student with ADHD.

15. On January 24, 2007, an IEP meeting was convened to discuss the due process issues, including T.R.’s possible eligibility as other health impaired (OHI) due to ADHD. At this meeting, T.R.’s mother informed the team that she had taken her son to Dr. Admad Al-Hamda (neurologist) on January 18, 2007, and produced a note on a “script” page stating “showed signs for mild ADHD – and severe ODD.” School officials informed T.R.’s mother that they needed more information from a physician before they could consider whether T.R. met eligibility criteria for OHI. The participants decided to reconvene on February 8, 2007 to consider eligibility.

16. On February 8, 2007 the IEP team meeting was reconvened as planned. At this meeting, results from the Connors Rating Scales were reviewed by Faye Trumbo Beckett, a school

psychologist. Ms. Beckett explained that the results of the Connors showed that T.R. was exhibiting no signs of ADHD or ADD. Further, the team noted that the documentation from Dr. Audria Black, a psychiatrist chosen by T.R.'s mother, had opined that it was "unclear if [T.R.] had ADHD", and had diagnosed T.R. with Oppositional Defiant Disorder ("ODD"). Of significance is the fact that Dr. Black had specifically refused to complete the ADHD forms provided to him by T.R.'s mother. Ms. Erickson, an IEP team member, shared her conversation with Dr. Black on February 8, 2007. According to Ms. Erickson, Dr. Black stated that "she did not feel [T.R.] had ADHD." To date, T.R.'s mother has not presented or returned any completed medical forms documenting a diagnosis of ADHD for her son.

17. A formal mediation was convened by agreement of the parties on March 30, 2007, by Jay Reynolds. An agreement was reached, and a written agreement was produced and signed by the parties. The School District agreed to (1) write a letter to the Court School recommending T.R.'s release on May 23, 2007, provided that T.R. complied with attendance and behavior rules and passed drug tests; (2) conduct a Functional Behavior Assessment, beginning on April 12, 2007, and develop a Behavior Plan on or before May 23, 2007; (3) convene a meeting with teachers and administrators from Brighton High School during the week of August 6-10, 2007 to discuss implementation of the Behavior Plan; (4) recommend T.R.'s promotion to the next grade level with his continued, successful progress in the academic curriculum; (5) exclude Ms. Octavia Crawford (juvenile court liaison) from future IEP meetings for T.R.

18. The School District complied with all of the terms of the March 30, 2007 mediation agreement and T.R.'s mother withdrew her due process hearing complaint.

19. On April 19, 2007, T.R.'s IEP team convened and drafted an IEP to operate through August 3, 2007 while T.R. attended the Court School. The transition services plan included in

the IEP listed the high school courses that T.R. would be enrolled in to provide “courses that are higher level thinking – challenging.” These courses included college prep English I, Algebra I, World Geography, and Life Science. The IEP also included objectives for implementation in the regular education program, including learning to analyze plots, interpret and discuss literary works with complex plots; producing expository and creative works, written and oral; and expanding his knowledge of ACT/SAT words in spelling and vocabulary. T.R.’s mother signed in agreement with this IEP. Additionally, T.R.’s Behavior Plan from BMS was amended to include names of staff working at the Court School. Finally, the IEP team agreed to reconvene on September 5, 2007 at Brighton High School (“BHS”) “to determine need at that time for a Behavior Plan.”

20. On May 31, 2007, at the end of T.R.’s term at the Court School, his IEP team convened to review and discuss the results of the “FAST,” referring to the “Functional Analysis Screening Tool,” a document used to gather information relative to a student’s behavior and which is a part of a comprehensive functional analysis. The FAST was completed by a school psychologist providing counseling to T.R., an administrator from the Court School, T.R.’s former principal at BMS, and seven of T.R.’s teachers.

21. At the beginning of the 2007-2008 school year, Special Education Consulting Teacher Betty Grant sent a Prior Written Notice and Invitation to an IEP Meeting to T.R.’s mother, asking for her participation in an IEP meeting on September 5, 2007 as agreed on May 31, 2007.

22. On or about September 3, 2007, Ms. Grant had a telephone conversation with T.R.’s mother. During that conversation, T.R.’s mother stated that she did not want the IEP team to convene because she wanted T.R. to have a “fresh start” at BHS without an IEP or Behavior

Plan. Ms. Grant asked T.R.'s mother to put this request in writing and send it to the BHS special education office for documentation.

23. On September 4, 2007, Ms. Grant received a Parent/Student Response Form from T.R.'s mother, with her handwritten note, "Will wait on meeting until further notice or as needed." Ms. Grant understood from her telephone conversation and receipt of this handwritten note that T.R.'s mother would initiate a request for an IEP meeting at such time that she wanted T.R.'s special education and related services, including his Behavior Plan, to be reinstated.

24. T.R. began exhibiting behavior problems at BHS soon after the beginning of the 2007-2008 school year. On September 13, 2007, T.R. was stopped by a teacher for wearing "sagging pants" in violation of the school dress code. School documents reflect that when the teacher attempted to assist T.R. in pulling up his pants, T.R. stated, "Get your hands off my ass you mother fucker."

25. On November 8, 2007, T.R. became aggressive and violent when an administrator attempted to break up a verbal confrontation between T.R. and another student. Court documents reflect that T.R. "repeatedly pushed and shoved Mr. Nute in an attempt to leave the office. He was aggressive and rebellious toward the school officer and shouted profanities at the officer and principal." This episode was concluded when the police officer was forced to handcuff T.R. "for his own protection and the safety of himself and the Administrators." These charges were dismissed when the School District advised the Court that T.R. would be placed at the ALC through the end of the 2007-2008 school year. It is undisputed that at no time during T.R.'s freshman year did his mother request an IEP meeting or implementation of his Behavior Plan or previous IEP.

26. For his tenth grade year (2008-2009), T.R. returned to BHS. T.R. received a total of thirty-two (32) formal disciplinary referrals for dress code violations, violation of classroom rules, bus misconduct, defacing school property, skipping class, and tardiness. At no time during T.R.'s tenth grade school year did his mother request an IEP meeting, implementation of an IEP, or a Behavior Plan.

27. T.R. began his eleventh grade school year (2009-2010) enrolled at BHS in the general curriculum. On the morning of August 31, 2009, T.R. got into an altercation with another student on the bus who was occupying a seat in the back of the bus preferred by T.R. After the bus arrived at school, T.R. was observed by a teacher confronting the other student with profanity and physical force. Assistant Principal Cetrice Bounds interviewed both students and determined that T.R. was guilty of bullying and intimidation. Since T.R. had missed the previous week of school, Mr. Bounds decided to refer T.R. to in-school suspension for the day rather than suspend him. At first, T.R. refused to go to in-school suspension. After speaking on the telephone with his mother, T.R. went to in-school suspension and the day continued without incident. However, that afternoon when the bus driver (Mr. Grandberry) arrived at the other student's bus stop T.R. was waiting. When the other student started down the bus steps to disembark, T.R. leaned into the bus and started physically attacking the other student.

28. The next morning, on September 1, 2009, Mr. Bounds was summoned from an administrator's meeting to talk with Mr. Grandberry. Mr. Bounds arrived outside to observe Mr. Grandberry standing beside his bus with T.R.'s brother and the other student. Mr. Bounds observed Mr. Granberry calling for T.R. to join them, but T.R. continued walking towards the school building. Mr. Bounds then called for T.R., who then stopped and walked back "with his fists clenched." Mr. Bounds, who was standing approximately five feet away, observed T.R. say

to Mr. Grandberry, "You know I don't like you, right? You know I don't like you. When I catch you off this bus your face is going to be done with." As a result of this incident, T.R. was suspended from riding the bus (but not from attending BHS). Id.

29. The next day, on September 2, 2009, Mr. Bounds called T.R. into his office and asked him why he had threatened the bus driver. T.R. insisted that he did not make the statements alleged, but admitted that he had said to Mr. Grandberry, "If I catch you outside this bus your head and shoulders are going to be over with." When Mr. Bounds asked T.R. to clarify what this statement meant, T.R. responded, "Oh I don't know...I could have put him in a head lock and put him in somebody's trunk and drove in a garage and left him there or I could have put him in a head lock and punched him in his face or I could have just beat his face up really bad." As a result of this threat, Mr. Bounds referred T.R. to the SDHA for violation of school rules.

30. An SDHA hearing was convened for T.R. on September 10, 2009, with T.R. and his mother in attendance. The SDHA found T.R. guilty of the offenses charged and referred him to the Juvenile Court for placement at Court School.

31. On October 19, 2009, T.R.'s mother and T.R.'s attorney, Mr. Tyrus Sturgis, appeared at the School District central offices without an appointment. Mr. Sturgis asked to meet with the special education administrators to discuss T.R.'s case. Ms. Ann Burlison and Dr. Tom Barton, Co-directors of Special Education for the School District, agreed to meet with them. Mr. Sturgis asked the School District officials to recognize that T.R. had a "dual diagnosis" of intellectual giftedness and ADHD/OHI. Ms. Burlison explained that T.R.'s mother had failed to provide any medical documentation of T.R.'s ADHD, and that his IEP team had previously considered the issue and found no evidence that T.R. was eligible for special education as an "OHI" student. Ms. Burlison provided to Mr. Sturgis and T.R.'s mother the forms for obtaining medical

documentation for ADHD/OHI, and a copy of the state eligibility criteria for OHI. These forms were never completed by a physician and returned to the School District.

32. On November 16, 2009, T.R.'s mother filed a complaint for a due process hearing.

33. On November 17, 2009, the School District convened an IEP meeting at the request of T.R.'s mother. T.R.'s mother and her attorney failed to appear for this scheduled meeting. The meeting was rescheduled by agreement of the parties for December 1, 2009.

34. A resolution session meeting was convened on December 1, 2009, with both parties represented by legal counsel. At this meeting, the School District considered the parent's request that T.R. be identified as a special education student as gifted and OHI/ADHD. The School District representatives at the meeting agreed to make T.R. eligible as "gifted," but did not agree to make T.R. eligible as OHI/ADHD due to a lack of required medical documentation. The School District agreed to proceed with another evaluation to determine whether T.R. met state eligibility criteria as OHI. The School District also agreed to make T.R. eligible as "gifted" and to develop a new IEP for him at BHS. An IEP was drafted providing that T.R. would receive "consultation" services consisting of "bi-monthly contact between the regular and special education teacher." The IEP also provided that T.R. would "foster positive relationships with teachers and administrators to establish trust that will improve compliance with school rules, "initiate one-on-one conversation with teachers to establish positive rapport," "have an area to go with permission to give him the opportunity to calm down when becoming upset," "access to one of his mentors (Betty Grant, Coach Wolfe, Beth Munoz, and/or Tiffany Taylor)," and "rewards: good calls/emails home to parent, drawing time, painting a mural." T.R.'s IEP did not contain any direct special education or related services. In fact, the level of special education services

provided to T.R. through this IEP was “the minimum possible” according to state law. Both T.R. and his mother signed in agreement with this IEP.

35. At the December 1, 2009 IEP meeting, T.R.’s mother informed the IEP team that T.R. is deaf in his left ear and has asthma. However, at no time prior to the due process hearing did T.R.’s mother suggest that her son’s behavior problems may be caused by either of these conditions.

36. In an effort to ensure that T.R. had an opportunity to make-up class work missed during the first semester, the School District also provided tutoring in English and Spanish for T.R. As a result of this tutoring, at the time of the due process hearing T.R. had completed all coursework necessary for his junior year at BHS and was “on track” to graduate with his senior class in the spring of 2011. In addition, T.R. took the ACT examination in the spring of 2010 and scored a “23,” making him eligible to receive \$4,000 per year toward any private or public college tuition in the State of Tennessee.

37. Although an IEP was developed on December 1, 2009, the parties still proceeded towards a due process hearing. Meanwhile, T.R. returned to BHS in January of 2010 and began to attend classes with the consultation services included in his IEP. During the second semester of the 2009-2010 school year, Ms. Betty Grant, Special Education Consulting Teacher at BHS, was responsible for the implementation of T.R.’s IEP. Ms. Grant estimated that she spent “five or six hours a month” consulting with T.R.’s teachers, communicating with T.R.’s mother, and personally checking with T.R. to monitor his progress at BHS.

38. On March 3, 2010, T.R. became involved in an altercation with BHS administrators and a School Resource Officer (“SRO”) that led to his referral back to the SDHA and a Juvenile Court petition for unruly conduct. On that day, Assistant Principal Robin Jacobs observed T.R. in the

ninth grade hallway at BHS. Mr. Jacobs asked T.R. if he had a class in that part of the school building. T.R. began to walk away from the ninth grade wing and was using profanity saying, "Motherfucker! Fuck these folks! They can't tell me I can't walk down these fucking halls! Fuck this shit!" Another teacher observed T.R. walking down the hallway, saying "Get that Mother Fucker off me," pointing to Mr. Jacobs and saying, "That Mother Fucker right there." Mr. Jacobs followed T.R. to his classroom and asked T.R. to step out into the hall. T.R. refused to leave the classroom. To avoid an escalation in front of the other students, Mr. Jacobs used his radio to call the School Resource Officer for assistance. Mr. Jacobs also called Ms. Betty Grant because he was aware of T.R.'s behavior goals that provided for T.R. to have access to Ms. Grant as a mentor. SRO Robinson responded to the radio call, and observed T.R. in the class. Officer Robinson asked T.R. to leave class and come into the hallway, whereupon T.R. began using "vulgar language," telling Mr. Jacobs "get the fuck out of my face." T.R. also told Officer Robinson to "get your fucking hands off me." Ms. Grant did not hear the radio call because she had turned down the volume on her radio during a meeting with a parent. However, she was notified by another administrator that she was needed to deal with a situation involving T.R. Ms. Grant left her meeting and proceeded to the hallway where she met T.R., Mr. Jacobs, and Officer Robinson. It took Ms. Grant approximately five minutes to arrive at the scene after Mr. Jacobs initially called for her on his radio. Ms. Grant observed T.R. saying to Officer Robinson, "Don't put your mother fucking hands on me." She also witnessed T.R. saying to Mr. Jacobs, "That Bitch, trying to tell me where I can walk in this school and I said, 'I paid my \$20.00 at the first of the year and I pay taxes and I can go anywhere I want.'" Ms. Grant also testified that T.R. "pointed with his index finger out and thumbs up like a gun to Coach Jacobs and said, "That

Bitch. He can't tell me where I can fucking go and not go. My brother is down there and I can go if I want to."

39. As a result of the incident at BHS on March 3, 2010, T.R. was suspended and referred to the SHDA. The SDHA referred T.R. to the Juvenile Court, where he was assigned to the Court School for 200 days. At the time of the due process hearing, T.R. was expected to return to BHS in the fall of 2010 to complete his senior year and graduate with his class in May of 2011.

40. T.R. has passed each of the three Gateway examinations required for his graduation with a regular high school diploma. On each of these examinations, T.R. achieved an "Advanced" score.

CONCLUSIONS OF LAW

1. The Office of the Secretary of State, Division of Administrative Hearings, has jurisdiction over the subject matter and the parties of this proceeding pursuant to Tennessee Code Annotated §4-5-101 et seq, and the assigned Administrative Law Judge has the authority to issue final orders. See, Rules of the Tennessee Department of State, Administrative Procedures Division, Chapter 1360-4-1 et seq.

2. The Individuals with Disabilities Education Act (hereinafter "IDEA") requires the School District to provide a "free appropriate public education" in the "least restrictive environment" to all students with disabilities who are in need of special education and related services. IDEA, 20 U.S.C. §1400 et seq. The requirements of the IDEA have been adopted, with some additional state requirements, by the State Board of Education. TN State Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9.

3. The disability classification of "intellectually gifted" is not covered by the IDEA. Rather, this category is a creation of state law. Students who meet the eligibility criteria and whose

educational needs cannot be met in the general education curriculum are considered “disabled” and eligible for an IEP. Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11). However, State regulations specifically exempt students who are “gifted” from the discipline protections of the law. Therefore, gifted students who violate the School District’s Code of Conduct are subject to suspension, expulsion, or referral to the SDHA, and are in all ways treated as general education students for disciplinary purposes. Importantly, gifted students do not have a right to a continuation of their special education and related services during periods of removal from the regular education environment due to misbehavior.

4. The IDEA contains a two-year statute of limitations which bars claims brought more than two years after parents “knew or should have known” of an alleged IDEA violation. IDEA, 20 U.S.C. 1415(f)(3)(c). The record is replete with testimony from T.R.’s mother establishing her knowledge of, and active participation in, the development of T.R.’s educational program since his enrollment in the School District. This matter was filed on or about November 16, 2009. Therefore, allegations of educational deprivation based on events occurring before November 16, 2007 are barred by the IDEA’s statute of limitations provisions.

5. T.R. has the burden of proving by a preponderance of the evidence that his IEP was inadequate. The U.S. Supreme Court held in Schaffer v. Weast, 126 S.Ct. 528, 546 U.S. 49, 44 IDELR 150 (2005), that the burden of proof is on the party “seeking relief.” In the underlying case, the parents of a middle school student contested the proposed IEP developed by the school district and initiated a due process hearing seeking compensation for a unilateral private school placement. The Supreme Court held that the parents bore the burden of proof, or burden of persuasion, in the due process hearing, referencing the “default rule that Petitioners bear the risk....,” and citing McCormick §337, at 412, “The burdens of pleading and proof....should be

assigned to the Petitioner who generally seeks to change the present state of affairs....” See also, Renner v. Bd. of Educ. of Public Schools of the City of Ann Arbor, 185 F.3d 635, 642 (6th Cir. 1999). In the instant case, T.R. challenges the proposed IEP and the School District’s actions pertaining to the education and discipline of T.R. Therefore, it is clear that Petitioner bears the burden of proof in this matter, and is required to prove, by a preponderance of the evidence, that (1) the IEP proposed by the School District fails to offer a “free appropriate public education” in the “least restrictive environment” for T.R; (2) the School District has failed to identify T.R. as a student with OHI/ADHD, and (3) the School District has failed to implement T.R.’s IEP and Behavior Plan. The overwhelming evidence in this case clearly establishes that Petitioners have failed to meet their burden of proof on all three counts. Petitioners have made various allegations, without any legal or factual substantiation, and have failed to produce a single factual or expert witness to corroborate their claims.

6. The IDEA and Tennessee law require the School District to provide a free appropriate public education (“FAPE”) to T.R. by developing an Individualized Education Plan (hereinafter “IEP”) that is “reasonably calculated to confer educational benefit” to him. See Bd. of Educ. of the Hendrick Hudson School Dist. v. Rowley, 458 U.S. 176 (1982). As the Supreme Court concluded in Rowley, “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” 458 U.S. at 207. The law does not require the School System to maximize T.R.’s educational benefits, or to guarantee that he reach a specific level of academic achievement. Rowley, at 197. The Sixth Circuit has held that this means “[t]he statute may not require public schools to maximize the potential of disabled students commensurate with the opportunities provided to other children.” Renner v. Board of Educ. v. Public Schools of City of Ann Arbor, 185 F.3d 635, 644 (6th Cir. 1999). See also, Doe

v. Tullahoma City Schools, 9 F.3d 455 (6th Cir. 1993)(School district must provide the educational equivalent of a serviceable Chevrolet, not a Cadillac).

7. The IDEA, at 20 U.S.C. §1414(d)(1)(A) requires that an IEP include, among other things, (1) a statement of the child's present levels of educational 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 the nonacademic and extracurricular activities, (5) a statement of how the child's progress toward the annual goals will be measured, and (6) a statement of how the child's parents will be regularly informed of their child's progress. 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).

8. The U.S. Supreme Court has developed a two-prong test for determining the appropriateness of a proposed IEP. Rowley, *supra*. First, the IEP must be substantively appropriate by offering goals and objectives that are "reasonably calculated to provide educational benefit" to the child. Second, the procedural safeguards of the Act must be provided to the parents, including the right to participate in the development of the IEP and to receive notification and explanation of their rights. *See also*, Thomas v. Cincinnati Board of Education, 918 F.2d 618, 624 (6th Cir. 1990).

9. The U.S. Supreme Court has interpreted the IDEA's "free appropriate public education" obligation to require local school systems to develop IEPs that are "reasonably calculated" to provide educational benefit to a child. Rowley at 203-204. While the educational benefits

accruing to the child must be “meaningful,” there is no requirement that the program provide the maximum benefit or the best available program. Rowley at 200-201.

10. The U.S. Supreme Court held that school districts satisfy the FAPE requirement “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Rowley at 203. Moreover, the Court opined that the “IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. Rowley at 203-204. See also, J.S.K. v. Hendry County Sch. Bd., 941 F.2d 1563 (11th Cir. 1991)(state must provide to the disabled child personalized instruction and services that meet state educational standards and that comport with child’s IEP; when measuring whether a student with a disability has received educational benefits from an IEP, courts must only determine whether the child has received a basic floor of opportunity); Doe v. Alabama State Dept. of Educ., 915 F.2d 651 (11th Cir. 1990) (IEP and IEP’s educational outcome need not maximize the child’s education).

11. The evidence presented in this matter clearly supports the School District’s contention that it has, at all times relevant to these proceedings, provided T.R. with a “free appropriate public education” in the “least restrictive environment.” Furthermore, the evidence shows that T.R.’s willful actions have led to his repeated removal from the regular education environment. T.R. does not have a “disability” that impacts his behavior at school. It is T.R.’s behavior that has interfered with his academic performance, not any deprivation of educational benefits.

12. T.R. has made consistent academic progress and is “on track” to graduate with his senior class in May of 2011. He has passed all three of the required “Gateway” examinations. In

addition, he scored a “23” on the ACT and will receive \$4,000 per year in scholarship money for tuition at any public or private college. These facts prove that the School District has provided T.R. with educational services that fulfill the mandate of the IDEA and related State laws. See, Lathrop R-II School District v. Gray, 53 IDELR 77 (W.D. Mo. 2009)(student’s consistent academic progress proves that the school district appropriately addressed his behavior problems). The School District is not required to ensure that T.R. is working to his academic potential.

13. An important issue in this case is whether the School District violated the IDEA and State law by failing to develop a new IEP upon T.R.’s enrollment at BHS in the fall of 2007. The evidence shows that Ms. Betty Grant, Special Education Consulting Teacher at BHS, sent T.R.’s mother an Invitation to an IEP Meeting and scheduled the IEP meeting for September 5, 2007. It is also undisputed that T.R.’s mother wrote a note back on the Parent Response Form stating, “Will wait on meeting until further notice or as needed.” At the hearing, T.R.’s mother explained,

“[A]t the time I wanted to give [T.R.] time to get acclimated to high school and I signed that saying that at that time I didn’t feel that it was necessary or that – but that I wanted to reserve the right so whenever it was needed we could reconvene.... As needed would mean that anything that was going to – any problems that they had with [T.R.], anything that was going to lead to that, I wanted to avoid that, I wanted to avoid these issues that we were having at school. So when I signed the thing, I signed, as needed.”

Importantly, T.R.’s mother did not request an IEP meeting at any time during T.R.’s ninth grade (2007-2008) or tenth grade (2008-2009) school years, despite the fact that T.R. continued to receive numerous formal behavior referrals and was removed from BHS and placed in the Alternative Learning Center (“ALC”) for most of his ninth grade year. It can therefore be concluded that at no time after T.R.’s enrollment at BHS did his mother feel he “needed” an IEP or Behavior Plan. Only now, in retrospect, does T.R.’s mother complain about his lack of an IEP

at BHS. Only after T.R. was referred to Juvenile Court in the fall of 2009 did his mother seek to have his IEP reinstated.

14. It is apparent from the testimony from T.R.'s mother during the due process hearing that she is demanding from the School District far more than is required by either the IDEA or State law and regulations. Note the following exchange between counsel for the School District and T.R.'s mother at the due process hearing:

Counsel: You think due to [T.R.'s] IQ that the School System should provide an education that maximizes his potential?

T.R.'s mother: Exactly.....that you're going – you know, challenge him....challenge him, challenge him.

The U. S. Court of Appeals for the Sixth Circuit has explained that the IDEA's FAPE standard means that the School District is obligated to provide an educational program that is the functional equivalent of "not a Cadillac, but a serviceable Chevrolet." Doe v. Board of Education of Tullahoma City Schools, 20 IDELR 617 (6th Cir. 1993). The Sixth Circuit has also specifically rejected parental attempts to enforce a "maximizing" standard for the provision of FAPE. Tucker v. Calloway County Board of Education, 136 F.3d 495, 27 IDELR 599 (6th Cir. 1998). In Tucker, the Sixth Circuit held Since "[a]n 'appropriate' public education does not mean the absolutely best or 'potential-maximizing' education for the individual child," Gregory K. v. Longview School Dist., 811 F.2d 1307, 1314 (9th Cir. 1987) (Emphasis added), (citing Rowley, 458 U.S. at 197 n.21), a court's review "must focus primarily on the District's proposed placement, not on the alternative that the family preferred." Id. That proposed placement must be upheld "if it was reasonably calculated to provide [the disabled child] with educational benefits." Id.

It is also apparent from the testimony at the hearing that T.R.'s mother places the blame for her son's discipline referrals and poor grades solely on school administrators, and not at all on T.R., as can be deduced by the following dialog from the hearing:

Counsel: Isn't it true that you believe that the punishment that [T.R.] has received far exceeds the infractions?

T.R.'s mother: "I definitely believe that the punishment my son has received far exceed, and I'll repeat, far exceed the infractions, yes, they do."

Counsel: Would you agree with me that there are records to indicate that your son has on many occasions used profane language with administrators at the School?

T.R.'s mother: I will agree that there are records to say that. Have I witnessed it? No.

Counsel: So what you're telling me is that you believe the part of the administrator's statement about what they said to [T.R.], but you don't believe the part about what [T.R.] said to them?"

T.R.'s mother: I believe there is some fabrication in their statement.

Counsel: So you believe him?

T.R.'s mother: I do believe what occurred.

Counsel: Meaning you believe [T.R.'s] versions of what occurred?

T.R.'s mother: Yes. I do believe [T.R.'s] version.

Counsel: Are you telling me that you believe Coach Jacobs set up –

T.R.'s mother: I definitely do, I definitely do believe that.

Counsel: For what purpose?

T.R.'s mother: Maybe to get me to drop this due process hearing. I have no idea.

15. To accept T.R.'s mother's theory would require the Court to ignore the plain language of the IDEA and relevant State law, the unanimous interpretation of the FAPE standard by the federal courts, the educational records compiled by more than a dozen teachers and administrators, and the sworn testimony of school personnel who had daily contact with T.R. at BHS. This is clearly an attempt to make excuses for her son's unacceptable behavior. The fact remains that T.R.'s mother failed to produce a single witness to corroborate her beliefs, while witnesses for the School District were consistent in their accounts of T.R.'s behavior and language. The central mission of the public schools is to produce young adults who are ready to assume the role of responsible and productive adults in our society. Ignoring T.R.'s disrespectful, profane, and aggressive behavior would be equivalent to a dereliction of this duty. By choosing to proceed with this litigation and thereby incurring the financial, staffing, and emotional costs, the Tipton County School System has shown its dedication to this duty and to fighting to ensure that T.R. is adequately prepared for the rest of his life.

16. The School District asserts that it has fully complied with the IDEA's procedural and substantive mandates. When T.R.'s mother referred him for special education assessment in the spring of 2006, the School District responded and determined that T.R. was eligible as an "intellectually gifted" student. T.R. was provided an IEP at BMS until he was placed at the Alternative Learning Center ("ALC") in November of 2006 after he left the school campus without permission and had to be apprehended by a School Resource Officer at a nearby bank. T.R. was not provided "gifted" services while at the ALC. However, T.R.'s last IEP did not offer him any type of direct specialized instruction, and he was placed in regular education classes. Therefore, T.R. suffered no educational deprivation while at the ALC, and he continued to earn academic credits. T.R. remained at the ALC through the end of his eighth grade year,

successfully matriculating to Brighton High School (“BHS”) at the beginning of his ninth grade year (2007-2008). An IEP that was developed on April 19, 2007 expired on August 3, 2007. T.R.’s mother was invited to an IEP meeting on September 5, 2007, as previously agreed upon by the parties. However, it is undisputed that she informed the School District verbally and in writing that she wanted to wait “until further notice or as needed” to address T.R.’s need for an IEP/Behavior Plan at BHS. Therefore, the School District cannot be held liable for failing to convene T.R.’s IEP team when he entered BHS. Furthermore, it is clear that the absence of special education “consultation” services and a Behavior Plan did not cause the actions which led to T.R.’s removal from BHS in the fall of 2007. T.R.’s threat to harm his bus driver and physical aggression towards another student were the result of T.R.’s willful decision, not the fact that he has a superior IQ. In addition, T.R. was given multiple opportunities to deescalate and to avoid further confrontation while talking in private with administrators at the school. Instead, T.R. chose to confront the other student and to threaten the bus driver the following day. It is ridiculous to suggest that T.R. would have chosen not to engage in threats and physical aggression if his regular and special education teachers had been in regular communication about his academic performance. It is clear that T.R.’s behavior problems are not caused by his “intellectual giftedness.”

17. Dr. Vance Sherwood, Ph.D. is a clinical psychologist with a twenty-five year career as an adolescent psychologist. Testifying as the only expert witness at the due process hearing, Dr. Sherwood opined, “If somebody is frustrated and misbehaves, we call them a brat, we don’t call them a genius, and if a person who’s got a 100 IQ gets frustrated and misbehaves, we certainly don’t excuse it on the grounds of IDEA. So no, I don’t see any correlation between somebody being frustrated and them having the right to misbehave no matter what their IQ is.... I don’t

know of any research anywhere that says that geniuses or people with superior intellects can't control themselves at a rate higher than the normal population. As a matter of fact, generally people with high IQ's tend to be abstracted and cerebral, and tend to get in less troubled behavior." Dr. Sherwood also explained that, in his opinion, much of T.R.'s defiant behaviors at school were due to the fact that "he felt that [administrators] were beneath contempt."

18. One of the central questions in this matter is whether T.R. has been appropriately classified as a "student with a disability" pursuant to State law and/or the IDEA. The evidence shows clearly that, since his enrollment in the School District, T.R. has met the State guidelines for "intellectually gifted." However, T.R. has not consistently been found to be "eligible for special education and related services." There is a fundamental distinction between a student being "gifted" and being "eligible." A student may be "gifted" by having a full scale IQ score of at least 125. But this score alone does not render a student "eligible" to receive an IEP. In order for a student to be "eligible" for special education and related services his "intellectual abilities and potential for achievement are so outstanding that the child's educational performance is adversely affected." Board of Education Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11). "Adverse affect" means the general curriculum alone is inadequate to appropriately meet the student's educational needs.

19. The evidence shows that in 2003 it was determined that T.R. did not qualify for special education as a "gifted" student. T.R.'s mother agreed with this decision. In fact, T.R.'s mother did not raise the issue again until the spring of 2006, after T.R. made a threat to kill a teacher and was placed in the Court School by the Tipton County Juvenile Court. On April 12, 2006, the School District determined that T.R. was "eligible" as a gifted student. His initial IEP provided placement in "Challenge Reading," an accelerated class at Brighton Middle School ("BMS") for

his eighth grade school year. T.R.'s mother participated in the development of, and agreed with, this IEP. A Behavior Plan was also developed that provided T.R. with a "cooling down" period and weekly counseling sessions. T.R.'s IEP was not continued when he matriculated to BHS for his ninth grade year. The IEP was reinstated in December of 2009, in an effort to resolve the issues underlying this due process hearing.

20. A consistent theme throughout T.R.'s educational career has been his pattern of defiance, use of profanity, and physical/verbal aggression toward staff and other students. T.R.'s mother has alleged that her son's misbehavior at school is due to "ADHD." At the hearing, T.R.'s mother, for the first time, also suggested that her son's asthma medications may be the cause of his misbehavior at school. The evidence overwhelmingly supports the School District's position that T.R. does not suffer from ADHD or any other condition which would qualify him as "Other Health Impaired" pursuant to the IDEA or State law.

21. Dr. Vance Sherwood, Ph.D. conducted a comprehensive clinical psychological evaluation of T.R. two months prior to the hearing. Dr. Sherwood found no evidence that T.R. has ADHD. In fact, Dr. Sherwood testified, "He showed characteristics that were flatly incompatible with ADHD.... He did not meet any ADHD criteria and the diagnosis just flatly could not be made except in fantasy." Dr. Sherwood concluded that T.R.'s behavior problems at school are attributable solely to "oppositional defiant disorder," or "social maladjustment." Importantly, and crucial to this case, T.R.'s misbehavior "is in the individual's control....this is free choice." T.R. is capable of complying with the student code of conduct - he simply chooses not to do so. As Dr. Sherwood opined, "[T.R.] doesn't qualify for any disabling condition. He's not disabled. He's a very capable individual." In addition, there is no correlation between intellectual giftedness and oppositional defiant disorder.

22. At the hearing, T.R.'s mother stated that T.R. has asthma and that he takes prescription medication to control this condition. However, Petitioner has failed to produce any evidence in support of her suggestion that T.R.'s asthma medication could be causing his chronic pattern of misbehavior at school. Furthermore, Dr. Sherwood considered and rejected the possibility that T.R.'s misbehavior could be caused by prescription medications. The evidence overwhelmingly supports a finding that T.R. is not "Other Health Impaired" due to ADHD, asthma, or any other condition or disease. Petitioner's efforts to have T.R. determined eligible for special education due to an "Other Health Impairment" are merely a transparent effort to excuse his chronic pattern of profanity, disrespect for authority, defiance, and aggression. The evidence shows that T.R.'s behavior is willful and within his control – a classic case of "oppositional defiant disorder," a condition which is expressly excluded as a disability by the IDEA. IDEA, 34 C.F.R. 300.8(c)(4)(ii)("Emotional disturbance...does not apply to children who are socially maladjusted). As Dr. Sherwood explained, "[T.R.] is not disabled.... [ODD] is a persistent pattern of behavior that's characterized by oppositionality, defiance, rebelliousness, tendency to make everybody angry and a tendency to be angry with himself, in the face of rules, rule-makers, and authorities." Petitioner's efforts to excuse T.R.'s behavior and the lengths to which she will seemingly go to ensure that her son experiences no consequences for his actions speak volumes about her real motivation in filing this lawsuit. It is plainly obvious that this lawsuit is not about T.R.'s academic program – it is solely about getting T.R. "off the hook" for his misbehavior at school.

23. The fact is that the only educational "disability" for which T.R. has been determined to be eligible is "intellectually gifted." Tennessee law on the subject is instructive of the intent of the State Board of Education for responding to discipline problems and gifted students. Gifted

students are specifically exempted from the protections afforded to other students with disabilities in the area of discipline. Rules, Regulations, and Minimum Standards, Chapter 0520-1-9-.02(11). The reasons are clear – students with superior intellect are not excused from misbehavior. At the hearing, T.R.’s mother and attorney were overtly “grasping at straws” to infer that T.R. has some type of “disability” that could, and would, excuse his willful misbehavior at school. From the absurd assertion that T.R.’s use of allergy medications could cause him to use profanity, make threats, and become physically aggressive, to the ridiculous assertion that T.R.’s repeated violations of the dress code for “sagging pants” are due to the inability to obtain pants in his size, T.R.’s mother has stopped at nothing to find some legal loophole that will rescue her son from facing the consequences of his actions. T.R. is a seventeen-year-old young man with a superior intellect who will soon become a legal adult. It is the School District’s duty to prepare this young man for adulthood and the responsibility that accompanies it.

24. Over the course of his enrollment in the School District, T.R. has had at least one hundred (100) formal disciplinary referrals. He has been removed from school and placed in an alternative school setting on multiple occasions, both by the decisions of the School District and the Tipton County Juvenile Court. T.R. was identified as eligible for special education as a “gifted” student and provided with an IEP/Behavior Plan during his eighth grade year (2006-2007) and since December of 2009 (spring semester of his eleventh grade year, 2009-2010). Therefore, T.R. was not identified as a “student with a disability,” nor was he provided with an IEP/Behavior Plan during the fifth grade, sixth grade, seventh grade, ninth grade, tenth grade, or the first semester of his eleventh grade year. T.R.’s mother did not complain during any of these time periods about her son’s status as a general education student.

25. A careful review of T.R.'s educational record reveals that his disciplinary referrals continued unabated whether or not he had an IEP/Behavior Plan in place. In fact, the IEP which was so favored by T.R.'s mother at the due process hearing was in place for his eighth grade year less than three months before T.R. left campus without permission and had to be apprehended by a School Resource Officer at a local bank. A "manifestation determination" meeting concluded that T.R.'s actions were not caused by his intellectual giftedness. This episode resulted in T.R.'s removal to the Alternative Learning Center for the remainder of the 2006-2007 school year. It is clear that the provision of a "gifted" IEP and a Behavior Plan had little effect on T.R.'s willful misbehavior at school. Moreover, T.R.'s mother did not complain about the lack of an IEP during T.R.'s ninth or tenth grade school years despite a continuing pattern of disciplinary referrals. What is obvious from a close examination of the record is that T.R.'s mother was not concerned about whether or not her son had an IEP – she was only concerned about his removal to the ALC or Court School.

26. The School District developed T.R.'s current IEP on December 2, 2009. Ms. Ann Burlison, Special Education Supervisor, testified that the development of this IEP was motivated primarily by the School District's desire to resolve its differences with T.R.'s mother and avoid litigation. T.R. returned to BHS in January of 2010 to begin the spring semester of his junior year. T.R.'s IEP provided for an hour per month of "consultation" between his regular and special education teachers, and behavior goals including the opportunity for T.R. to speak with specific school staff if needed for him to avoid behavioral melt-downs. This IEP represents the minimum level of special education and related services that can be provided to an eligible student.

27. From January through the beginning of March, 2010, T.R.'s current IEP was in place at BHS, including his Behavior Goals. The IEP and Behavior Goals were implemented by the staff at BHS. Ms. Betty Grant, Special Education Consulting Teacher at BHS, was responsible for providing the consultation services and also served as one of T.R.'s "mentors" mentioned in his Behavior Goals. Under the terms of the IEP, Ms. Grant was required to spend at least one hour per month consulting with T.R.'s teachers and overseeing his progress at BHS. In actuality, Ms. Grant "probably spent four to five hours a month" performing these duties. Ms. Grant documented her contacts with T.R., his teachers, and his mother in a written log she maintained in her office. Despite the provision of these IEP services, T.R. was again referred to Juvenile Court in the spring of 2010. T.R.'s Behavior Plan was fully complied with and had no effect on mitigating the events of March 3, 2010.

This case involves a young man with unlimited potential who, throughout the course of his school career, has chosen to be defiant, aggressive, and threatening to school officials and other students. His mother has consistently stood in the path of school administrators, teachers, and counselors who have made every effort to provide T.R. with a quality education and have also tried to make him realize that there are consequences for defiant, rude, and disrespectful behavior. By minimizing his actions, and by choosing to blame the School District, T.R.'s mother has refused to allow him to face the natural consequences of his willful actions. The purpose of the IDEA and State special education laws is not to provide a "get out of jail free card" for intellectually gifted students who violate rules of conduct. Rather, these laws establish

procedures to ensure that these students are not removed from school for offenses that are caused by a “disability.” As has been clearly shown, T.R. does not have any qualifying “disability” other than “intellectual giftedness.” State regulations clearly exempt gifted students from the disciplinary procedures in place for all other disability categories. As a “gifted” student, T.R. may be subjected to suspension and/or expulsion, including placement at the ALC or Court School, at the discretion of school and juvenile court officials. During these periods of removal, T.R. is not entitled to receive special education and related services. It is clear from the evidence and testimony at the hearing that T.R.’s mother is trying to shield her son from the disciplinary consequences of his willful actions by raising complaints about his academic program.

T.R. is expected to graduate from high school with his senior class in May of 2011. The Tipton County School System is ready and willing to provide T.R. with a free appropriate public education upon his completion of his Juvenile Court ordered Court School Assignment. The School District’s actions towards T.R. and his mother have been with this goal in mind, and with T.R.’s best interests paramount.

It is DETERMINED that Respondent is in compliance with IDEA procedures, has not committed any procedural or substantive violations of the IDEA, and Respondent is providing Petitioner a FAPE. It is ORDERED that the remedies and relief sought by Petitioner is DENIED. Respondent Tipton County School System is the prevailing party in this matter.

This Order entered and effective this 30th day of August, 2010.



Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 30th day of August, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division

Notice

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.