

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

**IN THE MATTER OF:**

**C.T., *the Student, and*  
O.T., *the Student's Parent/Guardian,*  
*Petitioners,***

**DOCKET NO: 07.03-113163J**

**v.**

**MEMPHIS CITY SCHOOLS,  
*Respondent.***

**FINAL ORDER**

This matter was heard in Memphis, Tennessee on January 4, 5, and 6, 2012 before Steve R. Darnell, Administrative Law Judge, assigned to hear this case by the Secretary of State, Administrative Procedures Division pursuant to T.C.A. §49-10-606 and Rule 520-1-9-.18. Attorneys Christopher Campbell and Chandra Madison represented Memphis City Schools. Petitioner C.T. was represented by his mother O.T. The record in this matter closed on February 15, 2012.

**ISSUE FOR DETERMINATION**

Did MCS fail to provide C.T. with a free and appropriate public education (FAPE)?

**SUMMARY OF DETERMINATION**

It is **DETERMINED** that Petitioners have failed to show, by a preponderance of the evidence, that MCS failed to provide C.T. with FAPE. Petitioners are not entitled to reimbursement for tuition paid to Faith Christian Academy or for ABA therapy. The record supports a finding that MCS has made all reasonable efforts to provide FAPE to C.T.

Petitioners' action is dismissed. This determination is based upon the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. C.T. is an 11 year old student who resides in the Memphis City Schools (MCS) district, but is currently enrolled in an online public school.
2. Between August, 2004 and May, 2011, C.T. was a student in MCS. In 2005, C.T. was diagnosed with Asperger's syndrome, and MCS created an Individualized Education Plan (IEP) for him.
3. C.T.'s IEP was reviewed on October 6, 2005, because he was exhibiting behaviors interfering with his and his classmates' learning. The IEP team determined that C.T.'s least restrictive environment was the general education classroom with a one-on-one assistant.
4. A one-on-one assistant is a teacher's assistant that helps children with disabilities function better in the classroom. A one-on-one is not an educator and is not responsible for creating lesson plans, methodology for classroom instruction, or behavior intervention plans.
5. MCS also assigned the BEST Team to C.T. The BEST Team is a group of education specialists who observe students with disabilities, consult with and train teachers and one-on-one assistants, and provide recommendations and behavioral modification plans.
6. A highly qualified member of the BEST team observed C.T. in the classroom during his 2<sup>nd</sup> grade year, the spring of his 4<sup>th</sup> grade year, and his 5<sup>th</sup> grade year.
7. To address C.T.'s behavioral issues, MCS produced a functional behavior assessment (FBA). A FBA is a detailed report that includes observations, assessments, interviews, and behavior recommendations. It also provides information regarding some mechanisms that were being implemented to modify C.T.'s behavior. A FBA is a precursor for a behavior intervention plan (BIP). A BIP is an action plan of how staff is to address a student's behavioral issues. MCS produced and implemented a BIP for C.T. on February 13, 2006.
8. C.T. was evaluated for extended school year (ESY) eligibility in 2008. ESY extends the school year beyond 180 days for students who have issues with "skill regression" and "limited recoupment." The IEP team determined that C.T. did not qualify for ESY because his academic achievement was on or above grade level.
9. Related services were extended to C.T. at the March 11, 2008 IEP meeting. At this meeting it was agreed that C.T. had progressed academically and behaviorally. Another IEP meeting was held on September 24, 2008. At this meeting, it was noted that C.T. had all "A's" in the classroom and has only had two behavioral "melt-downs" that year. The IEP team decided to decrease the hours his one-on-one would be present with him in the classroom.

10. Shortly after reducing C.T.'s hours with his one-on-one, C.T. began to have behavioral issues both at home and in school. MCS held an IEP meeting on December 5, 2008 to address these concerns. Changes were incorporated into C.T.'s IEP to redirect his behaviors including: 1) a picture system; 2) math in another classroom with a teacher C.T. was comfortable with; 3) a behavior intervention plan for computer work; 4) recess with a teacher; and, 5) computer time to reward good behavior. MCS also completed a BIP on December 3, 2008 to further assist C.T. in his behavioral development.
11. C.T.'s annual IEP meeting was held on February 11, 2009. It was noted that C.T. was doing well academically, but continued to have behavioral issues and problems handling his frustration and was showing aggression. At this meeting, C.T.'s mother requested private school placement for half of each school day. MCS denied this request. Petitioners now request reimbursement for this tuition.
12. C.T.'s parents paid the private school tuition and enrolled him at Faith Christian Academy (FCA) for approximately three and a half months. C.T. attended FCA during the mornings and attended Kate Bond Elementary School in the afternoon.
13. Another IEP meeting was held on February 18, 2009 to address C.T.'s mother's concerns about C.T. being sent to ISS to "cool down" after he experienced a behavioral problem. MCS implemented this process as a consequence for C.T.'s inappropriate and sometimes violent behavior. The IEP team attempted to explain the purpose and need for the cool down room to C.T.'s mother.
14. In fall 2009, C.T. was assigned a new one-on-one assistant, Jocelyn Lurry. Ms. Lurry has been employed with MCS for 17 years. Ms. Lurry served as C.T.'s one-on-one during C.T.'s 4<sup>th</sup> and 5<sup>th</sup> grade years.
15. Ms. Lurry was adequately trained as a one-on-one by MCS. She received necessary training in Applied Behavioral Analysis (ABA) techniques. Ms. Lurry's efforts with C.T. were successful.
16. Ms. Lurry's trial testimony was not credible.
17. Due to C.T.'s behavioral issues, an IEP meeting was held on October 8, 2009. The minutes from this meeting state that "skills are becoming more difficult for C.T. as he gets older" and that "homework is too much sometimes." The team discussed the current behavior plan and made plans to change the BIP.
18. Another IEP meeting was held on February 10, 2010 and it was noted that C.T.'s behavior had improved. Several new IEP goals and objectives were developed to address C.T. behaviorally and socially. First, a new positive reinforcement and rewards system was introduced. Second, C.T. was given a goal of following a sensory diet with assistance from school personnel. Finally, Mr. Terrell was assigned to work with C.T. in addition to Ms. Lurry.

19. In April, 2010, C.T.'s 4<sup>th</sup> grade teacher, Ms. Burns, did not allow C.T. to participate in a classroom activity involving a cup of seeds and dirt because C.T. did not complete his math assignment. C.T. became upset and asked Ms. Burns repeatedly if he could participate in the activity. Ms. Burns acted consistent with a "planned ignorance" behavior strategy; and did not comply with C.T.'s requests. C.T.'s mother learned of the incident and requested an IEP meeting.

20. At this IEP meeting, C.T.'s mother requested a change in placement. The IEP team acquiesced by placing C.T. in the 5<sup>th</sup> grade for the remaining month of the school year. It was also agreed that C.T. would attend ESY for five weeks over the summer.

21. C.T. began the summer ESY program, but his mother withdrew C.T. after two weeks because she did not think the program was effective.

22. C.T. started the 5<sup>th</sup> grade well and was progressing academically and socially. On September 7, 2010, the IEP team met for C.T.'s annual IEP meeting. The IEP team again proposed that C.T. receive social skills group at school, but his mother refused these services because C.T. was already participating in a similar non-school program. Petitioners now request reimbursement of this program.

23. On December 2, 2010, C.T. physically assaulted his teacher, Mr. Horton. Mr. Horton reacted by pulling C.T. out of the classroom and indicated to C.T. that if C.T. were to hit him there would be consequences. Mr. Horton's words to C.T. were inappropriate. Mr. Horton was apologetic about the incident.

24. C.T.'s mother learned of the incident and removed C.T. from school. She then filed a police report against Mr. Horton. No action was taken on the complaint by law enforcement. C.T.'s mother requested another IEP meeting.

25. An IEP meeting was held on December 10, 2010. C.T.'s mother requested that C.T. be placed in a different classroom that would better accommodate C.T.'s behavioral issues. It was noted that C.T.'s behaviors were improving and the rest of the IEP team felt a classroom change would be detrimental. C.T.'s mother agreed.

26. A few days later, C.T.'s mother came to the school and went directly to Mr. Horton's classroom. Mr. Horton and C.T.'s mother had an encounter that prompted the administration to take C.T. out of Mr. Horton's classroom and place him in Dr. Mouzon's classroom.

27. Shortly after being placed in Dr. Mouzon's classroom, C.T. assaulted Dr. Mouzon by kicking him. Administration decided to place C.T. in Dr. Kelly's homeroom. Dr. Kelly was already one of C.T.'s teachers.

28. C.T. received in school suspension (ISS) for assaulting Dr. Mouzon. In response, C.T.'s mother removed C.T. from school and requested another IEP meeting. An IEP meeting was held on December 10, 2010 to discuss the matter.

29. Another IEP meeting was held on January 4, 2011. C.T. had not attended school since the ISS issue noted above. At this IEP meeting, C.T.'s mother requested C.T. be placed in a smaller classroom setting. To accommodate her request, MCS offered several small classroom options, but C.T.'s mother again requested that MCS pay for private school placement. Since the IEP team did not have authority to approve a private school placement, C.T.'s mother requested homebound services until the issue was resolved.

30. Another IEP meeting was held on January 14, 2011. C.T.'s mother provided the necessary paperwork to place C.T. on homebound services.

31. The IEP team met again on February 4, 2011. C.T.'s mother brought an advocate to this IEP meeting. C.T.'s mother again requested that MCS pay for private school placement. Her request was again denied. The team proposed the ED classroom at Richland Elementary School. This is a small classroom environment consisting of children with behavioral and social disabilities, including Asperger's. The ED class has trained professionals to handle C.T.'s behavioral needs. C.T. would continue to have Ms. Lurry as his one-on-one. C.T.'s mother did not sign in agreement to this IEP, but did agree to visit the ED classroom.

32. Prior to the February 4, 2011 IEP meeting noted above, C.T.'s mother signed **all** IEP's, amended IEP's, and IEP notes indicating she agreed with C.T.'s educational plan developed by MCS.

33. To ensure MCS' compliance with the IDEA, Teri Graber, MCS's Education Compliance Monitor, attended C.T.'s February 4, 2011 IEP meeting. Ms. Graber has over thirty years of experience in the field of special education. Ms. Graber holds a Bachelor's and Master's Degree in Special Education. Both degrees have an emphasis on behavior management. Ms. Graber also has 45 credit hours above her Master's Degree in the field of Special Education. Ms. Graber is trained in behavior management including the Lovaas and TEACHH methods. Ms. Graber taught special education children with Autism and Asperger's for several years. Additionally, Ms. Graber holds a Juris Doctorate and is licensed to practice law in Tennessee. Ms. Graber's main role with MCS is to help resolve issues that cannot be resolved in IEP meetings.

34. The IEP team met again on February 28, 2011 to plan for C.T.'s successful transition to the ED classroom at Richland Elementary. The IEP team planned for C.T. to be taught on grade level in the ED class; but the ED class would only be temporary until C.T. could modify his behavior to an acceptable standard. Thereafter, C.T. would be gradually mainstreamed into the general education curriculum, but the ED class would be available if he had challenges.

35. C.T. started at Richland Elementary School in late February, 2011. C.T.'s mother came to the ED classroom a couple of weeks later and observed the teacher physically moving another student. Petitioner complained about the event to the principal and removed C.T. from the ED classroom.

36. The school investigated the ED teacher's conduct and determined he had properly implemented Crisis Prevention and Intervention (CPI) techniques. CPI is a de-escalation

technique and it requires specialized training and certification. The ED classroom teacher was CPI trained. The teacher's actions were according to CPI techniques.

37. C.T.'s mother refused to return C.T. to the ED classroom and requested another IEP meeting. An IEP meeting was held on March 24, 2011. C.T.'s mother again requested a private school placement for C.T. At the conclusion of this IEP meeting, C.T.'s mother requested this due process hearing.

38. Another IEP meeting was held on May 02, 2011. The IEP team discussed C.T.'s behavior plan and a plan for the upcoming school year.

39. MCS had a new, detailed FBA prepared for C.T. in the spring of 2011.

40. The FBA concluded C.T. uses aggression to get his way. For example, the report included observations of C.T.'s physical aggression including: 1) attacking another student because he was on C.T.'s preferred computer; 2) attacking a small, female classmate because she was looking at him; and, 3) verbally and physically threatening a teacher repeatedly when the teacher asked C.T. to complete an assignment before he could use the computer.

41. The FBA also found that: 1) C.T.'s overall school attendance was an issue; 2) C.T. did not participate in ESY services offered the previous summer; 3) and C.T. had been given ISS numerous times in the past.

42. C.T.'s mother did not like him being sent to ISS, and when this would happen, she would usually come to school and take him home. The FBA concluded that C.T.'s increases in inappropriate behavior might be an attempt to get to go home with his mother.

43. The FBA recommended 16 new behavior modification strategies for C.T.

44. Before the FBA could be used to develop and implement a BIP, C.T.'s mother withdrew him from MCS.

45. For the 2011/2012 school year, C.T. was to attend Kate Bond Middle School. C.T.'s mother did register him at the middle school, but on her first visit there she was inadvertently sent to the wrong classroom. C.T.'s mother deemed this classroom inappropriate for C.T. and would not allow him to return to middle school. MCS never intended to place C.T. in this classroom. C.T.'s mother refuses to accept that C.T. was mistakenly sent to this classroom on the first day of school.

46. If C.T. returns to the MCS district, he will attend Kate Bond Middle School, not Kate Bond Elementary School. He will have new teachers and a new IEP team.

47. C.T. is academically at or above grade level. C.T. does not like math and has some deficiencies in this subject. If C.T. does not like an assigned task he will either not perform it or intentionally underperform the task.

48. In the 2010-2011 school year, C.T.'s 5<sup>th</sup> grade, C.T. earned four "A" grades, three "B" grades, one "satisfactory," and four "excellent" grades.

49. During the 5<sup>th</sup> grade, C.T. missed zero days the first quarter; fifteen days, ten of which were unexcused, the second quarter; eight, all unexcused, the third quarter; and fifteen, two to which were unexcused, the fourth quarter. Even with this poor attendance, there was no regression in C.T.'s grades during this time.

50. C.T.'s Tennessee Comprehensive Assessment Program (TCAP) test scores have remained constant throughout his time at MCS. His scores are in the proficient or advanced range. C.T.'s grades and standardized test scores indicate C.T.'s behaviors have not affected his ability to learn and C.T. continues to make academic gains.

51. All the professionals designated by MCS to provide educational and related services to C.T. are highly qualified in their fields of expertise.

52. MCS has gone above and beyond what is necessary to ensure C.T. is provided a free and appropriate public education (FAPE).

### CONCLUSIONS OF LAW

1. The Petitioners have the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in their favor. Rule 1360-4-1-.02. The burden of proof in an administrative hearing, under the Individuals with Disabilities Education Act (IDEA), is placed upon the party seeking the relief. Schaffer v Weast, 546 U. S. 49 (2005).

2. The U.S. Supreme Court, in Schaffer v. Weast, 546 U. S. 49 (2005), summarized the IDEA as follows:

The Individuals with Disabilities Education Act (IDEA) is a Spending Clause statute that seeks to ensure that all children with disabilities have available to them a free appropriate public education. Under IDEA, school districts must create an individualized education program (IEP) for each disabled child. If parents believe their child's IEP is inappropriate, they may request an impartial due process hearing. ...

Congress first passed IDEA as part of the Education of the Handicapped Act in 1970, ..., and amended it substantially in the Education for All Handicapped Children Act of 1975.... At the time the majority of disabled children in America were either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.' ... IDEA was intended to reverse this history of neglect.

As of 2003, the Act governed the provision of special education services to nearly 7 million children across the country.

...

The core of the statute, however, is the cooperative process that it establishes between parents and schools. The central vehicle for this collaboration is the IEP process. State educational authorities must identify and evaluate disabled children, develop an IEP for each one, and review every IEP at least once a year. Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide.

Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child under the Act. Parents are included as members of IEP teams. They have the right to examine any records relating to their child, and to obtain an independent educational evaluation of their child. They must be given written prior notice of any changes in an IEP, and be notified in writing of the procedural safeguards available to them under the Act. If parents believe that an IEP is not appropriate, they may seek an administrative impartial due process hearing. (internal citations omitted).

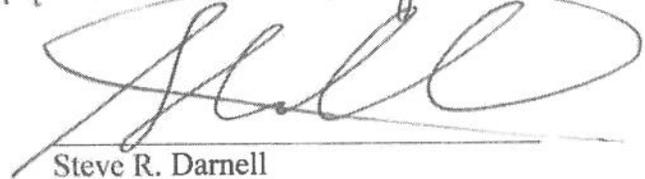
3. The requirement to provide a Free Appropriate Public Education (FAPE) is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Board. of Education. v. Rowley, 458 U.S. 176, 206-207 (1982). The inquiry of whether FAPE was provided is twofold: 1) has the LEA complied with the procedures set forth in the Act, and, 2) is the individualized educational program (IEP) developed through the Act's procedures reasonably calculated to enable the child to receive education benefits? Id.

**IT IS CONCLUDED THAT** Petitioners have failed to carry the burden of proof, and show by a preponderance of the evidence, that C.T. was not provided FAPE by MCS. While Petitioners take personal issue with the methods and services MCS provided C.T., they offer no expert proof that the methodologies used by MCS or MCS' staff were deficient. The proof is really to the contrary. From the record it is clear MCS has made every reasonable effort to

ascertain and meet C.T.'s educational needs. The record supports a finding that MCS provided C.T. with FAPE.

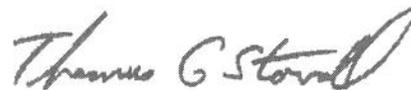
**IT IS THEREFORE ORDERED** that Petitioners' action is dismissed.

This Order entered and effective this 17<sup>th</sup> day of February, 2012.



Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 17<sup>th</sup> day of February, 2012.



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.