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**May 28, 2024**

[REDACTED]

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[REDACTED]

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Sent via email only to: Address on File

**RE: [REDACTED], THE STUDENT AND [REDACTED] AND [REDACTED], THE PARENTS V. MEMPHIS-SHELBY  
COUNTY SCHOOLS, APD Case No. 07.03-240500J**

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 PARENTS,**  
*Petitioner,*

v.

**MEMPHIS-SHELBY COUNTY  
SCHOOLS,**  
*Respondent.*

**APD Case No. 07.03-240500J**

**FINAL ORDER**

The hearing in this matter came before Richard M. Murrell, Administrative Judge, assigned by the Tennessee Secretary of State's Administrative Procedures Division, on May 1 and 2, 2024, by videoconference. █, the Student, was represented by █ and █, the Parents<sup>1</sup> (Petitioners). Memphis-Shelby County Schools (MSCS) was represented by attorney Laura Bailey.

Petitioners filed this Due Process Complaint under the Individuals with Disabilities Education Act (IDEA) on January 16, 2024, asserting a denial of a free, appropriate, public education (FAPE) during the school year that began approximately August 7, 2023, when █ entered █. based on the following issues:<sup>2</sup>

1. Whether the school district engaged in discriminatory practices against the child and the child's parents based on the child's disability, retaliating against the parents after advocating for the child's educational rights, violating their civil rights under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA).
2. Whether the school district failed to provide appropriate services and accommodations to meet the child's educational needs in a timely manner, resulting in a denial of a Free Appropriate Public Education (FAPE) for the child, or violated its obligation to provide

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<sup>1</sup> The Parents' last names are phonetically similar but spelled differently. Both parents fully participate in █ education and parenting. The unredacted records made exhibits will reflect the correct spelling of each parent's name.

<sup>2</sup> These issues are distilled from the Petitioner's pre-hearing filings by this administrative judge and were distributed by email to the Petitioners and counsel for the LEA. This was not an order. Rather, it was an attempt by the administrative judge to help the self-represented Petitioners focus their presentation because the Petitioners' Statement of Issues in the pre-hearing filings was not closely aligned with the Due Process Hearing Request.

child with an appropriate and ambitious Individual Education Plan (IEP) reasonably calculated to enable the child to make progress appropriate in light of circumstances which include evidence-based interventions.

3. Whether the school district failed to provide a safe and inclusive educational environment for the child due to the actions of the [REDACTED] former colleagues, resulting in emotional distress or educational harm to the child.
4. Whether the school district, through inaction, inappropriate disciplinary practices, ignoring parents' concerns and requests, ignoring child's doctor referrals and recommendations, and inadequately addressing the child's specific needs in a timely manner, violated the rights of a child with autism and the rights of the child's parents by retaliating against the child and [REDACTED], who is a former employee of the child's school, through falsifying a General Choice Transfer rescission and inputting false statements in the child's IEP.

At the outset of the hearing, [REDACTED] announced that the only relief the Petitioners sought is a declaration that MSCS had failed in some respects to provide [REDACTED] procedural and substantive benefits due under IDEA.<sup>3</sup> Based upon the pleadings, the evidence at trial, the parties' post-trial briefs, the oral arguments of the parties, and the record in this case, it is **DETERMINED** that any procedural deficiencies failed to result in substantive harm. This decision is based upon the following findings of fact and conclusions of law.

#### **FINDINGS OF FACT**

1. The student, [REDACTED], is a [REDACTED] who is diagnosed with autism spectrum disorder (ASD).
2. [REDACTED] attended [REDACTED] ([REDACTED]) as a [REDACTED] student in the 2022-2023 school year and was identified by the school district as a student with ASD which is noted in [REDACTED] February 10, 2023 (IEP).

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<sup>3</sup> The Petitioners' oral amendment, by limiting the relief sought, seemed at odds with the expanded statement of issues as well as the number of proposed exhibits that were shared with the LEA after the deadline for production. However, the Petitioner, [REDACTED], was firm on this limitation. Trans. Vol. 1, p. 42.

3. With parental consent, [REDACTED] was evaluated and determined to be eligible for IDEA services on January 26, 2023, by [REDACTED] eligibility determination team, which included [REDACTED] parents.

4. [REDACTED] February 10, 2023 IEP timely followed the eligibility determination. The IEP Team included participation and input from [REDACTED] parents. This IEP was effective from February 10, 2023, through February 9, 2024.

5. The IEP was fully complete including each required element to support progress appropriate to [REDACTED] individual circumstances.

6. The IEP noted that [REDACTED] deficits caused “externalizing problems, internalizing problems, behavioral symptoms of attention, adaptive skills (overall) with adaptability, social skills, leadership, and functional communication [deficits] that impact [REDACTED] classroom performance.”

7. [REDACTED] made reasonable progress and entered [REDACTED] for the 2023-2024 school year at [REDACTED]. Coincidentally, [REDACTED] [REDACTED] general education teacher, Natashaia Gaither, began teaching [REDACTED] for the 2023-2024 school year, and [REDACTED] was placed in her class.

8. The IEP was inclusion focused with [REDACTED] participating with non-disabled peers except for resource classes and speech therapy for the 2023-2024 school year.

9. Ms. Gaither was familiar with [REDACTED] exhibited behaviors such as tantrums and throwing things like [REDACTED] shoes during [REDACTED].<sup>4</sup> Those behaviors were managed with general education behavioral supports and reduced in frequency during [REDACTED] [REDACTED] year.

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<sup>4</sup> The [REDACTED] program functions separately from [REDACTED] but is housed in the same school building.

10. The IEP in effect at the beginning of the 2023-2024 school year gave general education and special education teachers flexibility in where ■ was seated; it did not explicitly require ■ teachers to seat ■ separately or apart from other students.

11. On September 11, 2023, ■ IEP Team met to develop an IEP addendum because of observed behaviors.

12. While ■ was showing progress academically, ■ was exhibiting behaviors described as having “difficulty with compliance, observed refusal, kicking, screaming, hitting at times (teachers and students)...at times pushes and hits other students (specific students at times) ■ refuses, says “no” and yells.”

13. ■ was not ■ zoned school. ■ enrollment at ■ was permitted under the MSCS district-of-choice transfer program. That program requires student compliance with certain criteria, including a code of conduct, or be subject to the possible rescission of the transfer which would, in turn, require attendance in the student’s zoned school. The program facially applies to all students without regard to special education eligibility.<sup>5</sup>

14. ■ behaviors violated the code of conduct, and ■ administrators responded with disciplinary in-school suspension (ISS) on two occasions and an out-of-school suspension (OSS) on one occasion. The OSS was imposed on October 3, 2023.

15. The Parents were aware of the behaviors and were seeking to be actively involved in mitigating the behaviors.<sup>6</sup> The Parents asked to be called at the onset of behaviors and allowed to speak to ■ by phone to calm ■ and restore focus. This channel was used effectively at times.

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<sup>5</sup> The LEA explained all special education services are available at all the school system’s schools.

<sup>6</sup> The Parents made offers of active participation during various meetings and by text and email.

16. The Parents also wanted to shadow [REDACTED] during the school day to be available to intervene when the behaviors began to calm [REDACTED] and demonstrate to school staff the way the Parents can manage [REDACTED] behaviors and re-direct [REDACTED]. This channel was not utilized except that [REDACTED] was present one day without prior approval and permitted to be in [REDACTED] special education classroom for a time.<sup>7</sup>

17. Also in October 2023, the [REDACTED] Principal, Brandye Williams, submitted a recission request to the Student Equity Enrollment & Discipline office (SEED). Ms. Williams submitted the request for recission based on the behaviors that prompted the ISS and OSS disciplinary suspensions.

18. Ms. Williams perceived [REDACTED] behaviors at the beginning of the 2023-2024 school year to be a pattern placing [REDACTED] at risk of disciplinary removal.

19. The request for recission was reviewed, and Ms. Williams was notified by email that the recission would be approved. Ms. Williams advised [REDACTED] and [REDACTED] before the SEED office issued a notice to the Parents.

20. The SEED office process included a further review<sup>8</sup> of the request during which it was determined that the request for recission would be denied and that [REDACTED] enrollment would continue at [REDACTED]. This determination came during the fall break and while no students were in school. As a result, [REDACTED] enrollment at [REDACTED] was never disrupted.

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<sup>7</sup> Ms. Brandye Williams, the Principal, testified that she received more than five parent visitation forms but did not approve any during the time the behaviors occurred that resulted in the ISS or OSS decisions. Ms. Williams testified that she did not have a reason but did not approve any request until April 2024 which was outside the time under consideration of this Due Process Hearing Request. Ms. Williams also testified that she had learned that, during the unapproved class observation, [REDACTED] held a wooden stick or paint stirrer. This fact alarmed Ms. Williams although there was no use that implicated safety of any student.

<sup>8</sup> Ms. Williams testified that the Department of Exceptional Children notified her that approval of the recission request would not be appropriate.

21. Thereafter, the Parents objected to Ms. Williams' participation in the November 1, 2023 IEP meeting. Ms. Williams complied with the Parents' request and removed herself from that IEP meeting.

22. Ms. Williams attended at least a portion of one other IEP meeting before having her assistant principal attend the balance of the meeting.

23. In the IEP meeting convened on November 1, 2023, Ms. Gaither learned that the Parents' request that ■■■ be seated apart from other students at a distance that ■■■ could not easily spit or hit another student was not considered "isolation" from ■■■ non-disabled peers. Previously, Ms. Gaither believed<sup>9</sup> the extent of preferential seating was limited to permitting changes from table to table within the class structure. Thereafter, a single student desk was made available and utilized.

24. None of the behaviors for which ISS or OSS discipline was imposed occurred in the classroom setting.

25. ■■■ disciplinary consequences did not result in more than six days of exclusionary consequences.<sup>10</sup>

26. During transitions with groups including non-disabled peers, Ms. Gaither would frequently walk near ■■■ or between ■■■ and other students.

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<sup>9</sup> Ms. Gaither indicated that she had not been trained on the implementation of the IEP as it applied to preferential seating. Ms. Gaither did acknowledge that she had read the IEP.

<sup>10</sup> Ms. Thomas addressed the gap in the implementation of the preferential seating modification as having been a misunderstanding on Ms. Gaither's part and not a lack of training. Further, Ms. Thomas testified about the basis for each behavioral consequence to confirm no ISS or OSS was related to classroom seating issues.

27. Ms. Williams was not trained on [REDACTED] behavior intervention plan (BIP) although she had read the document.<sup>11</sup>

28. Richara Thomas is the [REDACTED] special education teacher for [REDACTED] grades [REDACTED] through [REDACTED] grade; [REDACTED] was one of her students.

29. Part of her intervention and de-escalation plans with [REDACTED] included calls to [REDACTED] or [REDACTED] during behaviors so the Parents could speak to [REDACTED] to calm [REDACTED]. This was done at the Parents' request and was done 20 or more times during Quarter 1 and 2 of school year 2023-2024.

30. Ms. Thomas reported that [REDACTED] made great progress academically, picking up sight words and basic math calculations by the end of Quarter 2.

31. Ms. Thomas reported that [REDACTED] exhibited less frequent behaviors and became more social around peers although some hitting still occurred by the end of Quarter 2.

32. [REDACTED] is [REDACTED] [REDACTED] and the [REDACTED] of [REDACTED] the student.

33. [REDACTED] noted that [REDACTED] saw enormous improvement in [REDACTED] behavior even at home after supports discussed in IEP meetings were implemented. [REDACTED] testified that the improvements included the way [REDACTED] spoke, followed instructions and having less frequent and severe tantrum. [REDACTED] believed these improvements made it easier for [REDACTED] to have an appropriate educational experience, noting that [REDACTED] is good at math and reading.

34. Lavica Winfield served as a school counselor at [REDACTED]. Among her duties was to perform behavior check-ins for [REDACTED] to provide documentation of observations for use at IEP meetings.

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<sup>11</sup> Ms. Williams testified on direct that she had not been trained on [REDACTED] BIP. On cross she agreed that she had read the document. On re-direct, Ms. Williams equated reading the document with training. Failure to have operational definitions of terms appearing in the IEP documents leads to confusion and misunderstanding and fuels frustration.



35. Ms. Winfield provided a book containing observation reports for use in a November IEP meeting. Several of the observation reports were dated during the fall break period when no students were in classes.

36. Ms. Winfield explained that she would prefill several report forms with dates and common observations marked and would add handwritten notes during actual observations. Ms. Winfield had no explanation as to why the prefilled reports that were not representative of actual observations remained in the book delivered for use at the IEP meeting.

37. The preponderance of the evidence shows that [REDACTED] made progress under each of [REDACTED] operative IEPs.

### CONCLUSIONS OF LAW

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

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

3. The U.S. Supreme Court held in *Schaffer v. Weast*, that the burden of proof is on the party "seeking relief." 546 U.S. 49, 51 (2005). When a parent files a request for a due process hearing, the parent bears the burden of proof, or burden of persuasion

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

4. In this case, Petitioners bear the burden of proof. Petitioners filed the request for due process hearing, claiming that MSCS failed to offer ■■■ FAPE pursuant to the IDEA. Thus, regardless of the way the Petitioners describe the issues, the Petitioners bear the burden to prove the specific violations alleged in the due process complaint. *See Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017).

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

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

7. School districts are required to identify students suspected of having a disability who are “in need of” special education and related services. *See* 20 U.S.C. §1401 (3)(A). Students who are eligible for special education and related services are

entitled to an IEP. *Bd. of Educ. of the Hendrick Hudson School Dist. v. Rowley*, 458 U.S. 176, 181 (1982). In developing educational programs and determining appropriate services for those students through an IEP, school districts must comply with the substantive and procedural requirements of the IDEA and related state law. *See Rowley* at 182. However, parents are not entitled to relief for minor procedural violations alone. Technical procedural violations do not render an IEP invalid. *Dong v. Board of Educ. of Rochester Community Schs.*, 197 F.3d 793, 800 (6<sup>th</sup> Cir. 1999). A determination of whether a student received FAPE must be based on substantive grounds. 34 C.F.R. § 300.513(1). When a procedural violation is alleged, an administrative law judge can only find a FAPE violation if a procedural violation “(1) impeded the child’s right to FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(2). Only procedural violations that result in substantive harm constitute a denial of FAPE and justify relief. *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 764 (6<sup>th</sup> Cir. 2001) (procedural violations must cause substantive harm and constitute denial of FAPE to be actionable); *see also Bd. of Educ. of Fayette County, Ky. v. L.M.*, 478 F.3d 307, 313 (6<sup>th</sup> Cir. 2007).

8. The Parents were not deprived of their ability to meaningfully participate in developing [REDACTED] educational program.

9. The Parents were dissatisfied with Ms. Williams approach to discipline for [REDACTED] behaviors as [REDACTED] entered [REDACTED]. The process followed by Ms. Williams did not appear to account for [REDACTED] autism. Ms. Williams used the behaviors as a basis to request rescission of the school choice placement of [REDACTED] at [REDACTED] in October 2023. The

Department of Exceptional Children communicated that reissuance would not be appropriate, and [REDACTED] remained enrolled at [REDACTED].

10. In November 2023, greater clarity of amendments to the February 2023 IEP and the institution of an appropriately developed BIP paved the way for [REDACTED] to make improvement in [REDACTED] behaviors and progress in [REDACTED] educational goals. Ms. Winfield was careless in allowing prefilled observation pages for days when no observations were made on the dates indicated to remain as part of the record used in the November IEP meeting. However, no substantive educational harm resulted.

11. Similarly, Ms. Gaither's delay in understanding that preferential seating for [REDACTED] should have included a single-person desk, set out of arms reach from other children, would be an appropriate accommodation and not prohibited isolation was not ideal. However, no substantive educational harm resulted. [REDACTED] and [REDACTED] believed that properly implemented preferential seating would have prevented the behaviors that resulted in the ISS and OSS discipline decisions. But those incidents did not occur in class but while [REDACTED] was transitioning or while [REDACTED] was in the cafeteria.

12. Together, the actions or inactions of Ms. Williams, Ms. Winfield, and Ms. Gaither indicate a lack of complete understanding of their roles in response to [REDACTED] and [REDACTED] individual circumstances. The evidence falls far short of discrimination, retaliation, or violation of any educational rights under the IDEA. MSCS and DOE is urged to audit training materials considering the facts of this case to ensure that future misapprehension of roles and responses is minimized.

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

14. ■ was determined eligible under the category of ASD. Petitioners agreed with the eligibility determination.

15. Assuming, *arguendo*, that there were any procedural violations with MSCS's evaluation of ■ or implementation of services and supports for ■, it is **CONCLUDED** that such failure did not result in substantive harm. Only procedural violations that result in substantive harm constitute a denial of FAPE that justify relief. *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 764-69 (6<sup>th</sup> Cir. 2001).

16. It is **CONCLUDED** that Petitioners have failed to prove that MSCS denied ■ FAPE. To the contrary, the evidence was that ■ has made appropriate progress in ■ education goals.

17. It is **CONCLUDED** that Petitioners have failed to properly plead any violations under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). Even if such violations had been properly pled, there was no evidence to support any violation having occurred.

18. It is **CONCLUDED** that Petitioners have failed to prove that MSCS failed to provide for ■ a safe and inclusive educational environment. To the contrary, the evidence showed that ■ was only removed from a setting with ■ non-disabled peers for the specific periods of special education services and resource classes agreed to as necessary in the IEP.

19. It is **CONCLUDED** that the evidence does not support Petitioners' claims that they suffered any procedural violation of the IDEA resulting in the denial of an educational benefit or substantive violation of the IDEA.

20. Therefore, it is determined that the Due Process Complaint be **DISMISSED**

12.

It is so **ORDERED**.

This FINAL ORDER entered and effective this the **28th day of May, 2024**.



**RICHARD M. MURRELL**  
**ADMINISTRATIVE JUDGE**  
**ADMINISTRATIVE PROCEDURES DIVISION**  
**OFFICE OF THE SECRETARY OF STATE**

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the **28th day of May, 2024**.

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<sup>12</sup> MSCS moved for involuntary dismissal at the conclusion of the Parent's proof. Given the result, the motion is moot and therefore dismissed.

■, THE STUDENT AND ■ AND ■, THE  
PARENTS V. MEMPHIS-SHELBY COUNTY  
SCHOOLS

**NOTICE OF APPEAL PROCEDURES**

**REVIEW OF FINAL ORDER**

The Administrative Judge's decision in your case in front of the **Tennessee Department of Education**, called a Final Order, was entered on **May 28, 2024**. 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 12, 2024**.

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 29, 2024**. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may file an appeal the decision in federal or state court within 60 days of the date of entry of the Final Order, which is no later than **July 29, 2024**, by:

(a) filing a Petition for Review "in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County," TENN. CODE ANN. § 4-5-322; or

(b) bringing a civil action in the United States District Court for the district in which the school system is located, 20 U.S.C. § 1415.

The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.

**STAY**

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Final Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Final Order, which is no later than **June 4, 2024**. *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.

█, THE STUDENT AND █. AND █, THE  
PARENTS V. MEMPHIS-SHELBY COUNTY  
SCHOOLS

**NOTICE OF APPEAL PROCEDURES**

**FILING**

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

Email: [APD.filings@tnsos.gov](mailto:APD.filings@tnsos.gov)

Fax: 615-741-4472

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

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