

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

**IN THE MATTER OF:**

***A.C., Student, G.C. and J.C., Parents,  
Petitioners,***

**v.**

***WILLIAMSON COUNTY SCHOOLS,  
Respondent.***

**DOCKET NO: 07.03-101673J**

**FINAL ORDER**

This matter was heard on August 18, 19 and 20, 2010 before Lynn M. England, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division pursuant to T.C.A. §49-10-606 and Rule 520-1-9-.18. Samuel L. Jackson, of the Davidson County Bar represented the Respondent, Williamson County Schools, (hereinafter referred to as "WCS"). Petitioners were represented by their legal counsel, Marcella G. Derryberry. Proposed Findings of Fact and Conclusions of Law were submitted September 17, 2010. Respondent submitted its Post Hearing Brief on September 20, 2010. By agreement of the parties, the Final Order is due thirty days from the close of the proof, October 20, 2010.

The subject of this proceeding was whether WCS provided a comparable Individualized Educational Program (hereinafter referred to as "IEP") when Petitioner (hereinafter referred to as "A.C.") transferred from Virginia to Tennessee , and if not, whether it resulted in an inappropriate IEP; whether WCS failed to provide a free, appropriate, public education ("FAPE") to A. C. and caused substantial harm to A.C.; whether WCS violated the IDEA; whether WCS complied with the procedures of the Act; whether WCS failed to correctly identify A.C.'s disability; whether A.C.'s IEPs were reasonably calculated to enable him to receive some educational benefit; whether Currey

Ingram is an appropriate placement for A.C.; and whether Petitioners are entitled to the relief sought.

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is DETERMINED that Respondent WCS **failed to provide** A.C. with a free, appropriate, public education; WCS did violate the IDEA by its failure to comply with the procedures contained in the Act; A.C.'s IEP's were not reasonably calculated to enable him to receive some educational benefit; Currey Ingram is an appropriate placement for A.C.; Petitioners are entitled to the relief sought; and, A.C. is the prevailing party in this matter.

This determination is based upon the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. A.C. is currently 16 years old.
2. A.C. transferred to WCS from Fairfax, Virginia<sup>1</sup> in August 2008 with an IEP in place and a recent Re-evaluation.
3. A.C. enrolled in the eighth grade at Grassland Middle School on August 7, 2008.
4. A.C. was identified as Learning Disabled (LD) and Other Health Impaired (OHI) (for his Attention Deficit Hyperactive Disorder "ADHD") in the Virginia Transfer IEP and in the Virginia Re-evaluation.
5. A.C. was admitted to the WCS as an eligible student under the IDEA.
6. Parents provided both the Virginia Transfer IEP and the Virginia Re-evaluation, to the WCS before school started in August 2008.
7. WCS held an Interim Eligibility Meeting on August 7, 2008 in order to prepare an Interim Eligibility and IEP for A.C prior to beginning the eighth grade at Grassland Middle School.

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<sup>1</sup> A.C. attended preschool, kindergarten and first grade in Belgium. Next, A.C. attended school in Ft. Leavenworth, Kansas. From 2003-2005, A.C. attended school in the Clarksville-Montgomery County, Tennessee school system. From 2005-2006, A.C. attended school in the Fairfax County, Virginia school system. At the time of his enrollment in the Fairfax County Virginia School system, A.C. was certified as eligible for special education services under IDEA, with disabilities of Other-Health Impaired, ADHD, and learning disabled. From 2006-20008, A.C. was homeschooled by his mother J.C.

8. Parents were told that A.C. could not receive services unless the Tennessee Interim IEP was completed before school began.
9. WCS's Prior Written Notice of the Interim Eligibility Meeting stated further evaluations were not needed because the most recent comprehensive evaluation had been completed in March 2008.
10. At the meeting, A.C.'s parents objected to not being able to use the Virginia Transfer IEP because it provided more service hours and more accurately reflected A.C.'s needs. However, Parent J.C. signed the interim IEP, as was required, by the threat by WCS not to serve A.C. otherwise, but added her dissatisfaction with the Interim IEP. The dissatisfaction is reflected on the IEP where Parent J.C. wrote "I am concerned about the reduced amount of hours Grassland is offering from the Virginia Transfer IEP. I am also concerned that A.C. has made huge progress in Wilson Language System and he will not be able to continue."
11. Parents provided WCS with the most recent report from Walter Reed Army Medical Center by Dr. Stacy Williams, with a clear diagnosis of Autistic Disorder, at the **beginning of school in 2008**. This report was accepted by WCS.
12. Parents also provided WCS with the Medically-Based Disability Certification for Other Health Impaired for ADD/ADHD on August 12, 2008 from A.C.'s Virginia doctor, Dr. Amelia Garcia.
13. The WCS Interim IEP was to begin August 11, 2008, the beginning of A.C.'s eighth grade at Grassland Middle School.
14. The WCS Interim IEP listed A.C. as having only one (1) disability – Learning Disabled and did not include the OHI eligibility from the Virginia Transfer IEP.
15. On August 22, 2008, Kristina Burns, WCS' psychologist, emailed the Parents two (2) forms, for them to have completed by A.C.'s pediatrician. One was a "Medically Based Disability" form and the other was a "GMS Autism Medical Statement".

16. The Parents submitted the forms to A.C.'s pediatrician, Dr. Cynthia Seeman, for completion. Dr. Seeman's office was to return the forms by fax to Kristina Burns. Dr. Seeman's office faxed the forms to Ms. Burns at the number listed on the form. Parent, J.C. received a copy as well. WCS staff and WCS' psychologist, Kristina Burns claim to have never received the GMS Autism Medical Statement.
17. Despite numerous IEP meetings and many discussions relative to A.C.'s autism diagnosis, neither WCS nor Kristina Burns ever notified A.C.'s parents they had not received the GMS Autism Medical Statement from Dr. Seeman. A.C.'s parents were under the impression the form had been received and was a part of his school record since they had received a copy.
18. On August 27, 2008 an Eligibility Meeting was held and eligibility was determined by WCS to be "Language Impaired" and "Other Health Impaired" based on A.C.'s diagnosis of ADHD.
19. No evidence or testimony was presented by WCS as to how they changed A.C.'s eligibility from "Learning Disabled" to "Language Impaired" without any supporting evaluations or testing performed between August 8, 2008 and August 27, 2008.
20. The only testing information in the eligibility packet was taken from tests performed in 2007 and 2008 in Virginia.
21. On August 27, 2008, Parent J.C. signed a "Consent for Supplemental Testing" but no testing was performed. Ms. Farber, the school psychologist based her findings on data provided in the Virginia Transfer IEP.
22. The only other information in the WCS eligibility packet were observations made by Sherry Worsham, A.C.'s science teacher and Mary Keith, his Special Education teacher<sup>2</sup>.

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<sup>2</sup> Ms. Keith had been a special education teacher at Grassland Middle School for four (4) years but had not taught another autistic child in those four years.

23. Ms. Worsham's observation, on August 27, 2008, identified A.C.'s weaknesses as "learning disabilities, comprehension difficulties, processing difficulties".
24. Mary Keith's observation on August 22, 2008, under other concerns, was "overprotective family/home environment may contribute to student anxiety".<sup>3</sup>
25. The IEP Team Reevaluation decision also noted, at Number 4, that there was no team agreement the previously determined disability was accurate and current and that further review of records was needed.
26. Also noted in the August 27, 2008 minutes was the statement, "a prior mention of autism in records from other schools was decided against as a diagnostic criteria. Mom expressed a concern about not using all criteria (autism) in his records, she wants to be sure he receives appropriate services in future years." The meeting was continued until September 17, 2008.
27. Parent J.C. continued to request that WCS consider A.C. as eligible based on the Autism diagnosis. Despite these repeated requests, WCS never informed A.C.'s parents that they had not received the required medical form from A.C.'s physician.
28. WCS Occupational therapist (OT) Jill Farber, was present at the IEP meeting when autism was discussed on August 27, 2008. Even though it had only been two weeks into the school year, she stated they were seeing more signs of language impairment than autism. As to autism, she stated, that "we didn't see it".
29. A.C. also had difficulty writing that caused him fatigue and difficulty keeping up in the classroom. Ms. Farber completed an assistive technology form for A.C. on September 18, 2008, to assess his needs but the report was never shared with the IEP team or the Parents.
30. Parents continued to communicate their concerns to WCS during numerous IEP meetings. The September 30, 2008 IEP meeting minutes detail at length parent

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<sup>3</sup> Ms. Keith also was of the opinion that since A.C.'s father pending deployment to Iraq was a stressor for A.C. This was completely unfounded, in that this was a career military family where deployment was not unusual.

J.C.'s concern regarding A.C.'s medical diagnosis of autism. The IEP minutes state, "Additionally, the parent felt that the 8/11, 8/27 and 9/17 minutes did not reflect the discussion that took place regarding A.C.'s medical diagnosis of autism. The team discussed this information and determined that the autism diagnosed independently did not meet the eligibility standards for Tennessee. Parent J.C. did not agree with the opinion of the team, in that she felt the criterion for eligibility was not followed for autism."

31. Six IEP meetings were held during the Fall of 2008. Parent J.C. was present and parent R.C. participated by telephone from Iraq. At each IEP meeting the parents were allowed to propose goals and strategies to be integrated in A.C.'s IEP. But these goals were silently ignored.
32. Furthermore, the WCS IEP was not comparable to the Virginia Transfer IEP.
33. The Virginia Transfer IEP had four (4) hours per week scheduled for A.C. to receive Autistic services. The WCS IEP had none.
34. The Virginia Transfer IEP had 20 hours of direct services in a special education setting to accommodate A.C.'s Learning Disability (LD).
35. The August 27, 2008, WCS IEP provided for 15 hours and 50 minutes in direct services with 30 minutes a week in speech/language. The October 29, 2008, WCS IEP decreased his direct services to 14 hours and 10 minutes with 1 hour a week in speech/language.
36. The Virginia Transfer IEP had 2 hours per month to address A.C.'s social and emotional needs (ED). The WCS IEP provided for no social skills group.
37. The Virginia Transfer IEP stated: "A.C. requires accommodations and a modified curriculum to successfully access grade level content."
38. The Virginia Transfer IEP also stated that A.C. needs to receive his instruction in "small group/special education setting: Math (AUT - reduced teacher to student ratio, low incidence program), English (LD), Civics (LD), Science (LD),

Developmental Reading and Basic Skills Resource (LD). A.C. will be participating in a social skills group to address his social emotional goal.”

39. A.C. had great difficulty learning from just hearing information. According to the testing he brought from Virginia he had a receptive language score of 58 and expressive language score of 93. The testing results were accepted by WCS. No further testing was performed.
40. A.C.'s regular education science teacher, Ms. Worsham, could not recall reading A.C.'s language assessment. In her class, he was only tested on the material that he was present in the classroom to hear. No accommodations were made with regard to his receptive language impairment.
41. A.C.'s parents also continued to voice concern that he was not being taught on grade level, to which Ms. Keith would respond, "he can't do it".
42. The IEP accommodations for A.C. such as visual supports and study guides were not used in Ms. Keith's Language Arts class, because in her opinion they were not needed. Instead, she presented material to A.C. that was well below eighth grade level.
43. A.C.'s prior testing showed he had a writing speed at fourth-grade level, but Ms. Keith, his special education teacher, could not recall his writing speed.
44. Visual testing was performed on December 18, 2008 and February 16, 2009. Dr. Marie Kelly identified A.C. as having weaknesses in vision, visuo-motor integration and vision perceptual skills. No testing was ever performed by WCS regarding A.C.'s visual needs or impairments.
45. WCS's failure to address A.C.'s individual needs and failure to implement appropriate accommodations resulted in his functional and educational regression while at Grassland Middle School.

46. As the year progressed A.C. became more and more frustrated. He began having meltdowns almost daily at home that would last for hours. His repetitive behaviors began to escalate.
47. As a last ditch effort, on November 21, 2008, Parent J.C. contacted Carol Hendlmyer, Student Support Services Supervisor for WCS regarding the IEP team's unwillingness to consider A.C.'s autism diagnosis and his unique needs. Ms. Hendlmyer agreed to have the school psychologist review his eligibility information, but a review was never performed.
48. On December 8, 2008, A.C.'s Parents provided proper notice to the WCS that as a result of the denial of FAPE and the substantial harm suffered by A.C., they were placing him in a private placement at Currey Ingram Academy after the Christmas break.
49. Prior written notice was provided to A.C.'s parents and an IEP meeting was held December 19, 2008 at which time the actions proposed by WCS were: identification/eligibility; review/revise IEP, and educational placement.
50. The description of the action proposed was an evaluation for autism. Further WCS proposed further testing and evaluations to examine and confirm his possible autism diagnosis. WCS went so far as to offer A.C. a laptop, an accommodation that had been requested previously.
51. Parent J.C. rejected the request and removed A.C. from WCS and enrolled him in Currey Ingram Academy.
52. Currey Ingram Academy is a college preparatory school for children with special learning needs. The criteria for admission is that students have to be cognitively within the average range of proficiency in enough areas to qualify them for college admission. A.C. met the criteria.
53. Upon graduation Currey Ingram students receive a regular high school diploma and the school has a 100% college acceptance rate.

54. Upon arrival at Currey Ingram, A.C. was evaluated immediately. As a result of the testing, he received occupational therapy multiple times a week for his sensory integration difficulty. He received speech and language therapy daily to address his language difficulties. He also received social coaching and pragmatic coaching daily.
55. Even though an IEP is not required in a private school setting, Currey Ingram provided an IEP with substantially the same accommodations that were reflected in his Virginia Transfer IEP.
56. Initially, A.C. had difficulty distinguishing figurative language and difficulty with social judgment. He was also very reserved.
57. On the first day of school at Currey Ingram A.C. was provided with a laptop as well as assistive technology classes for his learning disabilities.
58. A.C. began to show educational and functional progress. His grades improved and he began to develop socially.
59. The placement of A.C. at Currey Ingram was educationally appropriate. He received grade level instruction which placed him on the path to graduate from high school and be accepted to college
60. Donna Parker, expert witness for WCS, determined the Virginia Transfer IEP could not be implemented in Tennessee because it was based on a model not used in Tennessee. However, she also determined the Virginia Transfer IEP was appropriate in light of the requirements of the IDEA.
61. A.C.'s specific disabilities including his autism diagnosis were recognized and addressed by Currey Ingram in such an educational setting as to provide him with the appropriate education he had been denied at Grassland Middle School. . He has made academic, social, behavioral and functional progress.
62. The disregard by WCS for A.C.'s autism diagnosis, their refusal to even complete the requirements for determining whether he had autism, coupled with the unjustified

change in his IEP eligibility diagnosis from learning disabled to language impaired, resulted in A.C.'s educational and functional regression.

### **CONCLUSIONS OF LAW**

1. 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)*. Accordingly, A.C. has the burden of proof.
2. The Individuals with Disabilities Education Act ("IDEA"), 84 Stat. 175, as amended, 20 U.S.C. § 1400 et.seq. requires States receiving federal funding to make a "free appropriate public education" (FAPE") available to all children with disabilities residing in the State, § 1412(a)(1)(A)). We have previously held that when a public school fails to provide a FAPE and a child's parents place the child in an appropriate private school without the school district's consent, a court may require the district to reimburse the parents for the cost of the private education. See *School Comm. Of Burlington v. Department of Ed. Of Mass., 471 U.S. 359, 370(1985)*. *Forest Grove School District v. T.A., 675 F. Supp. 2d 1063(D. Or. Dec. 8, 2009), 129 S.Ct. 2484.*
3. Transfer outside State.  
  
In the case of a child with a disability who transfers school districts within the same academic year, enrolls in a new school, and who had an IEP that was in effect in another state, the local education agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law. 20 U.S.C. § 1414(c)(II).

4. The IDEA was amended in 1997 "to place greater emphasis on improving student performance and ensuring that children with disabilities received a quality education." Forest Grove School Dist. V. T.A. 239 S. Ct. 2484, 2491, 174 L.Ed.2d 168 (2009) quoting S. Rep. No. 105-17, p. 3 (1997).
5. "If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. 20 U.S.C. §1412(a)(10)(C)(ii).
6. "The cost of reimbursement described in clause (ii) may be reduced or denied—
  - (II) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation... 20 U.S.C. §1412(a)(10)(C)(iii).
7. "The appropriateness of a private placement does not depend on whether the institution satisfies the state educational requirements for the particular handicap but whether the education given to the child "is reasonably calculated to enable the child to receive educational benefits." Florence County School Dist. No. Four, 114 S. Ct.361, 364 (quoting Rowley, 458 U.S. at 207).
8. A procedural violation of the IDEA is not a per se denial of a [free and appropriate public education ("FAPE")]. Rather, a procedural violation will constitute a denial of FAPE only if it causes substantive harm to the child or [her] parents; such as seriously infringing on the parents' opportunity to participate in the IEP process, depriving an

eligible student of an IEP, or causing the loss of educational opportunity. Berger v. Medina City Sch. Dist., 348 F.3d 513, 520 (6th Cir. 2003) (citing Knable v. Bexley City Sch. Dist., 238 F.3d 755, 765-66 (6th Cir. 2001)).

9. In determining whether the public placement violated the IDEA, the reviewing court must undertake a twofold inquiry: First, has the State complied with procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? Berger v. Medina City Sch. Dist., *Id* at 515 (citing Bd. Of Educ. v. Rowley, 458 U.S. 176, 206-207, 73 L. Ed. 2d 690, 102 S. Ct 3034 (1982)).

### **ANALYSIS**

A.C. transferred from Virginia with a valid IEP and recent re-evaluations. Williamson County Schools required A.C.'s parents sign an Interim IEP prior to his admission to their school system. WCS accepted A.C.'s eligibility diagnosis as learning disabled and other health impairment (ADHD). The Interim IEP was not comparable to the Virginia Transfer IEP.

Along with the recent evaluations, A.C.'s parents also presented WCS with another recent evaluation, performed by a psychologist at Walter Reed Medical Center, that diagnosed A.C. with autism. The autism accommodations were present in the Virginia Transfer IEP. Two weeks into the school year, WCS changed A.C.'s eligibility criteria to language impaired and retained the other health impairment as ADHD. No reason was ever provided as to how or why A.C.'s primary diagnosis was changed. There were still no accommodations present for his autism diagnosis.

A few weeks later in August, WCS requested A.C.'s parents have his physician complete two documents regarding his medical diagnoses of autism and ADHD. The ADHD form was completed and returned by the physician but not the autism form. However,

A.C.'s parents received copies of both forms from his physician thereby leaving the parents under the impression the school system had received them as well.

As the school year progressed, A.C.'s parents continued to express their frustration with his lack of educational and functional progress as well as the lack of accommodations for his impairments. Also, the material being presented to him was below grade level. They also expressed deep concern regarding the lack of recognition by WCS of his autism diagnosis. These concerns are well documented throughout his IEP's. Despite the many requests by A.C.'s parents for WCS to accept the autism diagnosis, WCS continued to ignore them.<sup>4</sup> In fact, WCS never even requested to perform any evaluations relative to his autism diagnosis until the parents gave their ten-day notice of their intent to remove A.C. and place him in a private school.

Once at Currey Ingram, A.C. began to make substantial progress and he began to recover both academically and functionally.

While the statute allows the school system to request an evaluation of a child prior to his removal to a private setting, a failure to do so **may** result in the cost or reimbursement being reduced or denied. This statute is permissive rather than directive.

It is determined that WCS failure to implement an IEP comparable to A.C.'s Virginia Transfer IEP, their failure to allow the parents meaningful participation by refusing to recognize the autism diagnosis and by failure to provide him an educational benefit is a violation of both procedural and substantive due process rights afforded under the IDEA. As such, WCS has failed to provide the Petitioner, A.C., with a free appropriate public education in a timely manner, and the parents were justified in placing him in an appropriate private setting.

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<sup>4</sup> Had WCS merely informed the parents they had not received the required medical form from A.C.'s physician this entire process may have been resolved. But it is the opinion of this judge that WCS didn't think that he had autism so they chose to just ignore the pleas of the parents.

It is therefore determined that Currey Ingram Academy is an appropriate setting for A.C. and it has provided him with educational benefits. A.C. is on track to graduate on time with a regular diploma. He has

"Where a school fails to provide a free appropriate public education through a proposed IEP that is inadequate to meet the unique educational needs of the child, the IDEA authorizes a court to "grant such relief as the court determine is appropriate, "include reimbursement for the cost of a private education when a parent or guardian unilaterally enrolls a child in a private school." School of Burlington v. Dept. of Ed. Of Mass., 471 U.S. 359, 370, 105 S.Ct. 1996, 85, L.Ed.2d, 385 (1985).

It is therefore ORDERED that the Williamson County School System shall reimburse the Parents for the cost of **tuition only** at Currey Ingram Academy for the second semester of the 8<sup>th</sup> grade, (2008-2009 school year); the 2009-2010 academic year and the first semester of the 2010-2011 academic year to conclude at the end of the semester in December 2010.

It is further ORDERED that the Petitioners are the Prevailing Party.

This Order entered and effective this 20<sup>th</sup> day of October 2010.

  
Lynn M. England  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 20<sup>th</sup> day of October, 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.