



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

January 27, 2023

Jessica F. Salonus, Esq.
The Salonus Firm, PLC
139 Stonebridge Blvd.
Jackson, TN 38305

Amanda Morse, Esq.
Knox County Schools
400 Main Street, Ste 612
Knoxville, TN 37902

Justin S. Gilbert, Esq.
Gilbert Law, PLC
100 W. Martin Luther King Blvd
Suite 501
Chattanooga, TN 37402

David Oldham, Esq.
Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243

RE: M.D., THE STUDENT, AND M.D. AND F.D., THE PARENTS V. KNOX COUNTY SCHOOLS, APD Case No. 07.03-225516J

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)	
MARY DOE, THE STUDENT,)	
BY AND THROUGH)	
HER PARENTS, MOTHER DOE)	
AND FATHER DOE)	
)	
)	ADMINISTRATIVE LAW JUDGE
PLAINTIFFS.)	MARY COLLIER
)	
VS.)	No. 07.03-225516J
)	
)	
KNOX COUNTY BOARD OF EDUCATION)	
)	
DEFENDANT.)	

ORDER ON MOTION TO DETERMINE JURISDICTION

The Petitioner’s Motion to Determine Jurisdiction under the Individuals with Disabilities Education Act (IDEA) was heard on January 13, 2023. Petitioner was represented by Justin Gilbert and the Respondent was represented by Amanda Morse. The motion was briefed with a Response and a Reply filed.

As background, Petitioner filed the Due Process Complaint in this Tribunal due to a recent decision from the Eastern District of Tennessee: *Jane Doe v. Knox Cty. Bd. of Educ.*, No. 3:22-cv-63-KAC-DCP, 2022 U.S. Dist. LEXIS 69921 (E.D. Tenn. Apr. 15, 2022). Both *Jane Doe*, and *Mary Doe* in this case, allege they have misophonia and they require a reasonable accommodation forbidding the chewing of gum and food in their academic classrooms absent a medical necessity.

On January 4, 2023, after the Due Process Complaint was filed, the Sixth Circuit reversed the District Court’s decision about administrative exhaustion. *Jane Doe v. Knox Cty. Bd. of Educ.*, 2023 U.S. App. LEXIS 114, *5 (6th Cir. Jan. 4, 2023). The Sixth Circuit found that “[p]arents seek ‘relief’ that is ‘available’ under the IDEA only if a child needs an *instructional change*, not just a *non-instructional accommodation* to some school rule or policy.” Because an “an eating and chewing ban” is non-instructional, resort to the IDEA was not appropriate.

In light of the Sixth Circuit’s decision, Petitioners filed a Motion to Determine Jurisdiction, arguing that Mary Doe, like Jane Doe, is not seeking specialized instruction and that the IDEA is not the gravamen of Petitioner’s claims. This Tribunal agrees. Mary Doe’s Due Process Complaint specifically alleges:

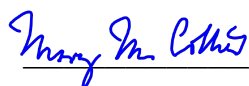
- a. Mary Doe has *never even had an IEP* under the IDEA.
- b. Nor is Mary seeking an IEP.
- c. Nor does Mary utilize or require “specialized instruction” under the IDEA. The *regular* education instruction, without any modifications, meets her academic and functional needs perfectly well.
- d. Rather, Mary is seeking a *reasonable accommodation*—one that is available under Section 504 and the ADA—of her fellow students refraining from chewing gum and eating food in her academic classes, absent a medical necessity (e.g. diabetes). In other words, Mary just needs a rule that students must throw out gum and not eat during academic classes like math, science, English, etc., absent a medical need.

(Due Process Complaint, ¶3).

Having reviewed all materials filed and the arguments of counsel, this Tribunal finds, as in *Jane Doe*, that Mary Doe is not seeking special education as understood by the IDEA and that the IDEA is not the gravamen of her claims. The Sixth Circuit's decision in *Jane Doe* is controlling and this Tribunal is without jurisdiction to proceed under the IDEA.

Mary Doe's Due Process Complaint is dismissed *without prejudice* to its refiling. Respondent's Motion for a Mental Health Evaluation is denied as moot.

SO ORDERED.



ADMINISTRATIVE LAW JUDGE COLLIER

DATE OF ENTRY: January 26, 2023

NOTICE OF APPEAL PROCEDURES

REVIEW OF FINAL ORDER

The Administrative Judge's decision in your case in front of the **Tennessee Department of Education**, called a Final Order, was entered on **January 27, 2023**. If you disagree with this decision, you may take the following actions:

1. **File a Petition for Reconsideration:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration with the Administrative Procedures Division (APD). A Petition for Reconsideration should include your name and the above APD case number and should state the specific reasons why you think the decision is incorrect. APD must **receive** your written Petition no later than 15 days after entry of the Final Order, which is no later than **February 13, 2023**.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal no later than **March 28, 2023**. See TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **File an Appeal:** You may file an appeal the decision in federal or state court within 60 days of the date of entry of the Final Order, which is no later than **March 28, 2023**, by:

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

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

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

STAY

In addition to the above actions, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Final Order. A Petition for Stay must be **received** by APD within 7 days of the date of entry of the Final Order, which is no later than **February 3, 2023**. See TENN. CODE ANN. § 4-5-316. A reviewing court also may order a stay of the Final Order upon appropriate terms. See TENN. CODE ANN. §§ 4-5-322 and 4-5-317.

NOTICE OF APPEAL PROCEDURES

FILING

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

Email: APD.Filings@tn.gov

Fax: 615-741-4472

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

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