

**No. M2022-01610-COA-R3-CV**

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**IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE**

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STACY JACOBSON,

*Petitioner – Appellant,*

v.

TENNESSEE DEPARTMENT OF CHILDREN’S SERVICES,

*Respondent – Appellee.*

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On Appeal from the Davidson County Chancery Court  
Case No. 22-0662-I

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**PETITIONER-APPELLANT’S REPLY BRIEF**

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## INTRODUCTION

The Department of Children’s Services (“DCS”) fails to recognize a core feature of the laws governing its records: that while DCS files on children and families are generally confidential unless otherwise stated, everything changes in the tragic event of a child’s death or near death. In such cases, the General Assembly has required DCS to de-identify and release its full case files pertaining to the child. Tenn. Code Ann. § 37-5-107(c)(4)(C). This disclosure requirement permits the public to learn about the circumstances surrounding a child’s death and provides essential public oversight of DCS, while maintaining the privacy of the child, family, and person who reported harm. This transparency is also consistent with the federal Child Abuse Prevention and Treatment Act (“CAPTA”), which the General Assembly references in Tenn. Code Ann. § 37-5-107, and with state policy and confidentiality laws generally.

DCS now seeks to upset this important balance by withholding significant portions of the case file at issue, Case File No. 2020-008, pursuant to Tennessee Rule of Criminal Procedure 16 (“Rule 16”). Yet DCS, and the trial court below, improperly overlook the fact that while Rule 16 is a general requirement permitting the withholding of records in criminal cases, it conflicts with the specific disclosure mandate of Tenn. Code Ann. § 37-5-107(c)(4)(C). When, as here, a specific law conflicts with a general law, the specific must control. *Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010).

Further, DCS must release its records of the four prior investigations related to the deceased child in Case File No. 2020-008,

because these records are part of the “full case file.” DCS’s attempt to duck this issue by claiming, for the first time on appeal, that Ms. Jacobson’s Tennessee Public Records Act (“TPRA”) request failed to encompass those records is both waived and meritless. The record makes clear she requested them, and DCS erroneously denied her request. Prior investigative records that relate to the deceased child—as these records do—inherently form part of the full case file to be disclosed pursuant to Tenn. Code Ann. § 37-5-107(c)(4)(C). Any other reading of the statute would improperly erase the word “full” from its command and would prevent the public from learning about the state’s actions and inactions in the years leading to the child’s tragic death.

## ARGUMENT

**I. Only the grounds set forth in Tenn. Code Ann. § 37-5-107, not Rule 16, are a proper basis for redacting Case File No. 2020-008.**

**A. There is a conflict between Rule 16 and Tenn. Code Ann. § 37-5-107(c)(4)(C), requiring the Court to apply the more specific provision.**

It is a well-settled maxim of statutory interpretation that “a more specific statutory provision takes precedence over a more general provision” when the two conflict—a matter DCS does not dispute. *Graham*, 325 S.W.3d at 582 (citing *Arnwine v. Union Cnty. Bd. of Educ.*, 120 S.W.3d 804, 809 (Tenn. 2003)); *cf.* DCS Br. at 17 (citing *id.*). Instead, DCS attempts to avoid the disclosure mandates of Tenn. Code Ann. § 37-5-107(c)(4)(C) by arguing that this statute does not conflict with Rule 16 at all. But these two statutes *do* directly conflict.



Tenn. Code Ann. § 37-5-107(c)(4)(C) requires DCS to release its full case file on a child who has died or nearly died after DCS has concluded its investigation, with only the redactions listed in “this section.” “This section,” in turn, limits redactions to information that would “directly or indirectly identify a child or family receiving services from the department or [] identify the person who made a report of harm.” Tenn. Code Ann. § 37-5-107(a). As discussed in Ms. Jacobson’s opening brief, “this section” is an established way of cross-referencing within the code, limiting the reach of a provision. R. v. 2 at 247, R. v. 3 at 308. No other bases for redacting DCS case files are listed in “this section.” Tenn. Code Ann. § 37-5-107(c)(4)(C).

In contrast, Rule 16 is general, broadly covering all government records related to pending or contemplated criminal prosecutions. Tenn. R. Crim. P. 16(a)(2); *see also* Tenn. R. Crim. P. 1(a) (providing that the rules cover “all criminal proceedings”). As is evident from the online version of Case File No. 2020-008, redactions made pursuant to Rule 16 can cover entire pages of information. R. v. 1 at 4–5, 24–150, R. v. 2 at 151–69. Conversely, if the identifying information listed in Tenn. Code Ann. § 37-5-107 were the only permissible grounds for redaction, the public would have significantly greater access to DCS’s anonymized case files on child fatalities and near fatalities. The conflict between these two statutes, then, is plain—either broad swaths of case files may be withheld under Rule 16, or they must be released under Tenn. Code Ann. § 37-5-107. The result is equally clear: the specific Tenn. Code Ann. § 37-5-107(c)(4)(C) must control over the general Rule 16.

This conflict is akin to the one before the court in *Graham*, contrary to DCS’s assertions. *Cf.* DCS Br. at 17 (citing *Graham*, 325 S.W.3d at 582). In *Graham*, the court considered two statutes governing the commencement of a civil suit. 325 S.W.3d at 582. The court found the statutes presented a clear conflict, since one would render the plaintiff’s suit untimely and the other would not. *Id.* Accordingly, the court applied “the rule that a specific statutory provision shall be given effect over a conflicting general provision” and held that the general provision “must bow to the” specific, in that case rendering the suit time-barred. *Id.*

Here, there is a conflict between a general statute that permits broader withholdings and a specific statute requiring disclosure with limited redactions, so the generalized Rule 16 “must bow to” the specific Tenn. Code Ann. § 37-5-107(c)(4)(C). *Id.*; *see also Arnwine*, 120 S.W.3d at 809 (finding conflict between statutes on school board contracts, one of which would render the teacher’s contract at issue invalid and one which would not, and applying the specific statute).<sup>1</sup>

**B. Tenn. Code Ann. § 37-5-107(c)(4)(C) operates in concert with the rest of the Code by requiring disclosure of de-identified case files in the limited circumstance of a child fatality or near fatality.**

In an effort to muddy the waters, DCS next cites a grab-bag of confidentiality rules that apply to records *other* than de-identified case

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<sup>1</sup> While Ms. Jacobson does not dispute that Rule 16 is a TPRA exemption generally, it simply does not apply to the DCS case file at issue here, which is governed by the specific and conflicting disclosure mandate of Tenn. Code Ann. § 37-5-107(c)(4)(C). *Cf.* DCS Br. at 17.

files pertaining to DCS's investigation of a child's death or near death. DCS Br. at 18–24. The parties agree that DCS's records on children and families are generally confidential unless otherwise stated. But what DCS fails to grasp is that everything changes in the distinct and tragic event of a child's death or near death. *Cf.* R. v. 4 at 465 (trial court recognizing that while DCS records have “general confidentiality,” “disclosure” is required “under limited circumstances” including “cases resulting in a child fatality or near fatality”). Then—and only then—DCS must release its de-identified full case file so that the public can evaluate what happened to the child and work to prevent it from happening again. These laws work in concert. They are “harmonious,” avoiding any “absurd result.” *Cf.* DCS Br. at 24 (quoting *Martin v. Powers*, 505 S.W.3d 512, 525 (Tenn. 2016)). It is DCS's interpretation that would create an absurd result, by reading this disclosure requirement out of the statute entirely. *Young v. Frist Cardiology, PLLC*, 599 S.W.3d 568, 571 (Tenn. 2020) (courts must “construe a statute so that no part will be inoperative, superfluous, void or insignificant” (citation omitted)).

None of the statutes DCS cites are to the contrary. First, Tenn. Code Ann. § 37-5-107(d) grants members of the General Assembly access to DCS records to evaluate “whether the laws of this state are being complied with” or should be amended. Tenn. Code Ann. § 37-5-107(d); *see* DCS Br. at 19–20. “The member's request shall state the name of the child whose case file is to be reviewed[.]” Tenn. Code Ann. § 37-5-107(d)(1). The member must also sign a form outlining applicable confidentiality laws. *Id.* § 37-5-107(d)(2). This provision is in harmony

with Tenn. Code Ann. § 37-5-107(c)(4)(C). Legislators with special access to non-public records, such as children’s names and files on living children, must keep them confidential. But when a child dies and the case file has been anonymized, that file is public. Tenn. Code Ann. § 37-5-107(c)(4)(C).

Next, DCS makes much of Tenn. Code Ann. § 37-5-107(e), which states that “[a]ny person or entity, including the commission on children and youth, that is provided access to records under this section” must follow “state and federal laws and regulations regarding confidentiality” or else face a misdemeanor charge. DCS Br. at 18–19. Yet this subsection, too, is generalized, governing circumstances well beyond a child fatality or near fatality. For example, the commission on children and youth can access “any and all records” it requests on children and families receiving DCS services, including unredacted records on living children. Tenn. Code Ann. § 37-5-107(c)(6). These records remain confidential, under both parties’ reading of the law. There is no disharmony between this requirement and the requirement that, when a child dies and DCS completes its investigation, the de-identified case file becomes public. Tenn. Code Ann. § 37-5-107(c)(4)(C).

Next, Tenn. Code Ann. § 37-5-107(f) provides that “[u]pon placement of a child in the custody of” DCS, the Department can access the child’s records to assess how to help the child and may not disclose “[a]ny records that are confidential by law.” *See also* DCS Br. at 16 (citing *id.*). Here, too, no absurd result comes from having one provision that says DCS may access records on children entering its custody but must

keep them confidential, and another provision that says DCS must release de-identified case files when a child dies or nearly dies.

DCS also cites Tenn. Code Ann. § 37-5-107(h), which requires it to “comply with federal and state laws and regulations” regarding the “[r]elease of drug and alcohol records.” *See also* DCS Br. at 16 (citing *id.*). This subsection, too, governs records revealing the names of children and families and records of children who have not died or nearly died, so is fully compatible with the separate disclosure requirements of Tenn. Code Ann. § 37-5-107(c)(4)(C).

Next, DCS cites Tenn. Code Ann. § 37-1-409(b) and § 37-1-612(b), which were among its grounds for denying Ms. Jacobson’s TPRA request. DCS Br. at 19; R. v. 1 at 6. Yet both statutes specifically exclude disclosures required under Tenn. Code Ann. § 37-5-107—such as the disclosure of Case File No. 2020-008—from their dictates.

DCS also details the confidentiality rules for child fatality review teams and the Tennessee Second Look Commission. DCS Br. at 20–23. These statutes are likewise not at odds with Tenn. Code Ann. § 37-5-107(c)(4)(C); they simply govern different records and scenarios. Child fatality review teams may access “any . . . records from any source” in order to investigate child deaths and evaluate potential reforms, including not only DCS records, but also records from police, health care facilities, and more. Tenn. Code Ann. § 68-142-108(a). The teams may not disclose “otherwise confidential information and records.” *Id.* § 68-142-108(e). Similarly, the Tennessee Second Look Commission reviews “cases involving a second or subsequent incident of severe child abuse,” including confidential records, which it may not release. Tenn. Code Ann.

§§ 37-3-803, 810. These entities review records that are not de-identified, that are available before DCS has completed its investigation, that may not be DCS records, and, for the commission, that do not involve a death or near death. Conversely, de-identified DCS case files on a completed investigation of a child fatality or near fatality are not “otherwise confidential”—they are public, and their release is required under Tenn. Code Ann. § 37-5-107(c)(4)(C), consistent with other sections of the Code.

Nor would the disclosure of case files with only the redactions outlined in Tenn. Code Ann. § 37-5-107(c)(4)(C) be inconsistent with federal law. DCS raises the specters of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Family Educational Rights and Privacy Act (FERPA), but both are inapposite. DCS Br. at 26. HIPAA’s privacy provisions expressly exempt disclosures “required by law.” 45 C.F.R. § 164.512(a)(1); *see also* Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82462, 82597 (Dec. 28, 2000) (authorizing “disclosures that are required by state Freedom of Information Act (FOIA) laws under § 164.512(a)”). The Tennessee Attorney General has likewise found that where the TPRA requires disclosure, such disclosure is not a HIPAA violation. Tenn. Op. Att’y Gen. No. 15-48, at 4 (June 5, 2015).

As to FERPA, there is no conflict with public records laws when, as here, students’ personally identifiable information is redacted. *See* 20 U.S.C. § 1232g; 34 C.F.R. Part 99; 121 Cong. Rec. 13,990–91 (1975); *DTH Media Corp. v. Folt*, 841 S.E.2d 251, 259 (N.C. 2020) (holding release of de-identified education records was required under state public-records law and consistent with FERPA); *Univ. of Kentucky v. Kernel Press, Inc.*,

620 S.W.3d 43, 57 (Ky. 2021) (same); *Champa v. Weston Pub. Schs.*, 39 N.E.3d 435 (Mass. 2015) (same).<sup>2</sup>

In sum, these laws operate in concert, with each applying different disclosure rules to different records and circumstances. Whereas individuals afforded special access to otherwise confidential DCS records must maintain their confidentiality, de-identified DCS case files on a completed investigation of a child’s fatality or near fatality must be released. DCS’s arguments to the contrary would wipe Tenn. Code Ann. § 37-5-107(c)(4)(C) from the statute, permitting DCS to withhold case files despite the plain-text disclosure requirement. **Only** Ms. Jacobson’s reading of the law ensures that “its component parts are consistent and reasonable,” with no “section of the act repugnant to another” and none rendered superfluous. *Cf.* DCS Br. at 19 (quoting *Bearing Distribs., Inc. v. Gerregano*, No. M2020-01075-COA-R3-CV, 2022 WL 40008, at \*5 (Tenn. Ct. App. Jan. 5, 2022)); *see also Young*, 599 S.W.3d at 571 (“[T]he court must give effect to every word, phrase, clause and sentence[.]” (citation and internal quotation marks omitted)).

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<sup>2</sup> The same is true of the state statutes on medical records, mental health records, photographs, and the identities of those who report abuse, which DCS cites in passing. DCS Br. at 26 (citing Tenn. Code Ann. §§ 10-7-504(a)(1), 10-7-504(t), 33-3-103, 33-3-108, 63-2-101(b)). To the extent relevant case files included such records, these statutes would not apply because the case files are de-identified so as to conceal the identity of the child, family, and person reporting harm under Tenn. Code Ann. § 37-5-107(c)(4)(C). For example, a photograph of a minor victim would identify the minor victim and would thus be redacted pursuant to Tenn. Code Ann. § 37-5-107(c)(4)(C).

**C. The General Assembly referenced CAPTA to show it intends to follow federal disclosure requirements, which DCS now seeks to avoid.**

The disclosure requirements of Tenn. Code Ann. § 37-5-107(c)(4)(C) are also fully consistent with—and reinforced by—CAPTA, which requires disclosure in the event of a child’s death or near death. The trial court erred in ignoring CAPTA’s disclosure mandate and permitting DCS to improperly redact Case File No. 2020-008. DCS’s argument to the contrary disregards CAPTA’s transparency mandate, contrary to the General Assembly’s stated intent.

DCS acknowledges that CAPTA requires states receiving federal funds to adopt procedures to prevent the unauthorized disclosure of confidential records, and that states report annually to the federal government. DCS Br. at 25–26 (citing 42 U.S.C. § 5106a; 45 C.F.R. § 1340.14(i)(1)). DCS ignores the fact that CAPTA *also* requires states to adopt “provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.” 42 U.S.C. § 5106a(b)(2)(B)(x). Specifically, states must release, at a minimum,

the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.



R. v. 3 at 449–50.

It is *this* provision of CAPTA that the General Assembly specifically references in Tenn. Code Ann. § 37-5-107(c). The statute’s prefatory reference to CAPTA’s disclosure requirement evidences the General Assembly’s intent to follow that pro-transparency law. See *Green v. Green*, 293 S.W.3d 493, 507 (Tenn. 2009) (courts “begin with the words of the state statutes” and “enforce [them] as written”). This clearly stated intent reinforces the conclusion that any redactions to DCS’s full case files related to a child fatality should be limited to the grounds listed in that section of the Code.

Moreover, the requirement in Tenn. Code Ann. § 37-5-107(c)(4)(C) to release the full case file with only limited de-identifying redactions is fully consistent with CAPTA’s confidentiality requirements and Tennessee’s. As discussed above, the records DCS and its counterparts in other states keep on children and families are generally confidential unless otherwise provided. But when a child dies, the calculus changes, and disclosure is the rule under state and federal law alike.

**D. Public policy supports the release of full case files with limited redactions, as evidenced by the General Assembly’s adoption of a disclosure requirement.**

DCS is correct in stating that “[t]he determination of this state’s public policy is primarily the prerogative of the General Assembly.” DCS Br. at 27 (quoting *Hodge v. Craig*, 382 S.W.3d 325, 337 (Tenn. 2012)). In the limited circumstance of a child fatality or near fatality, the General Assembly has provided that the state’s public policy is one of de-identified

disclosure. In 2014, the General Assembly enacted specific, mandatory disclosure requirements in such cases. 2014 Tenn. Laws Pub. Ch. 771 (H.B. 1505). Whereas the previous version of Tenn. Code Ann. § 37-5-107 required the “public disclosure of information about any case that results in a child fatality or near fatality” without providing additional detail, the current statute requires DCS to “release the final disposition of the case, whether the case meets criteria for a child death review and the full case file,” redacted only under “this section.” *Id.*; Tenn. Code Ann. § 37-5-107(c)(4)(A). This text—like the aforementioned citation to CAPTA—is clear evidence of the General Assembly’s judgment that state policy is to disclose anonymized full case files with only the limited redactions set forth in the statute.

DCS erroneously contends that such disclosures undermine children’s and families’ privacy rights and risk deterring people from reporting harm for fear of exposure. DCS Br. at 27–28. This statute does exactly the opposite. It safeguards the privacy rights of children, families, and people reporting harm by providing for the redaction of their identifying information from public case files. Tenn. Code Ann. § 37-5-107(a), (c)(4)(C). At the same time, the statute recognizes that public access to information about child fatalities and near fatalities is essential to holding state actors accountable and evaluating whether reforms are needed to protect children in the future. These laws strike an important balance between privacy and transparency, which DCS now seeks to upset. While DCS, and the trial court, may dislike this balance, courts “decline[] ‘to make a public policy exception’” to the TPRA based on generalized privacy concerns, as “‘it is within the prerogative of the

legislature,” not the courts, “to do so.” *Schneider v. City of Jackson*, 226 S.W.3d 332, 344 (Tenn. 2007) (quoting *State v. Cawood*, 134 S.W.3d 159, 167 (Tenn. 2004)).

Here, if the trial court had ordered the prompt disclosure of Case File No. 2020-008 with limited redactions pursuant to Tenn. Code Ann. § 37-5-107(c)(4)(C), it would have provided the public with the timely information it needed to examine the tragedy and advocate for any required reforms, while keeping the child’s and family’s name redacted. Adopting DCS’s position, conversely, prevents the public from learning more about the child’s death and from taking informed action to protect other children.

DCS and the trial court also point to concerns that such disclosures would undermine defendants’ fair trial rights and criminal discovery. DCS Br. at 23–24; *R. v. 4* at 468. These concerns are misplaced. Records released pursuant to Tenn. Code Ann. § 37-5-107(c)(4)(C) are de-identified, so criminal defendants remain anonymous.<sup>3</sup> Further, defendants regularly receive fair trials consistent with the Sixth Amendment and Article 1, Section 9 of the Tennessee Constitution even when there is a great deal of pretrial publicity. As the Tennessee Supreme Court has recognized, “jurors do not live in a vacuum.” *State v. Mann*, 959 S.W.2d 503, 531 (Tenn. 1997). Therefore, “prejudice will not be presumed on the mere showing of extensive pretrial publicity,” and “jurors may possess knowledge of the facts of the case and may still be

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<sup>3</sup> Here, the only part of the record naming individuals whose names are redacted in Case File No. 2020-008 is DCS’s *own* affidavit, submitted to the trial court. *R. v. 3* at 437–38.

qualified to serve on the panel.” *State v. Rogers*, 188 S.W.3d 593, 621 (Tenn. 2006). Courts also have various tools to seat an impartial jury, such as *voir dire*. *Warger v. Shauers*, 574 U.S. 40, 50 (2014).

Nor would disclosure upend criminal discovery. DCS, like the trial court below, cites *Tennessean v. Metropolitan Government of Nashville* to claim permitting redactions under Rule 16 would preserve criminal discovery. R. v. 4 at 468; DCS Br. at 23 (citing 485 S.W.3d 857, 871 (Tenn. 2016)). The *Tennessean* Court, however, was concerned that requesters could “obtain the *entire* police investigative file, which could include more information than the defendant could obtain under Rule 16.” 485 S.W.3d at 871 (emphasis in original). Here, the required disclosure under Tenn. Code Ann. § 37-5-107(c)(4)(C) is one de-identified file: the full case file of a child who died or nearly died due to abuse or neglect. If the General Assembly had believed such disclosures would undermine criminal discovery, it would not have mandated them. Moreover, DCS already posts child-death case files online, albeit in heavily redacted form—they are not hidden away within police files or available only to criminal defendants. Mandating the disclosure of child death and near-death case files with only the redactions permitted under “this section” is both required by state law and would not harm fair trial rights or criminal discovery.

**II. There is no question that Ms. Jacobson requested the full case file, including records of prior investigations, which DCS must disclose.**

Ms. Jacobson undoubtedly requested DCS's records of its prior investigations related to the deceased child in Case File No. 2020-008—records which this Court should order DCS to disclose.

**A. Ms. Jacobson undoubtedly requested DCS's prior investigation files.**

DCS's argument that Ms. Jacobson's TPRA request did not encompass its files on prior investigations related to the deceased child is belied by the record before this Court. But to start, the Court need not address this new argument, raised for the first time on appeal, because "issues raised for the first time on appeal are waived." *Dye v. Witco Corp.*, 216 S.W.3d 317, 321 (Tenn. 2007) (citation omitted). Nor is there any merit to the contention.

Ms. Jacobson submitted a TPRA request to DCS, through its General Counsel Douglas Dimond, for "the full case file for Case No. 2020-008." R. v. 1 at 5, 20. The undersigned counsel for Ms. Jacobson then asked Mr. Dimond whether "DCS has reconsidered whether to include the prior investigations in the released case file for Case No. 2020-008." R. v. 1 at 5, 17, 20–21; R. v. 2 at 170, 177. Mr. Dimond replied that he believed the online redacted version of Case File No. 2020-008 was sufficient and said he "d[id] not anticipate adding to that file." R. v. 1 at 5; R. v. 2 at 170–71, 176. Mr. Dimond's response makes clear that he was not "mak[ing] guesses as to which records are being requested,"

contrary to DCS's contentions; he knew which records Ms. Jacobson requested and (incorrectly) denied that request. DCS Br. at 29.

The trial court, too, understood the subject of the TPRA request. It correctly stated that “[t]he issue presented in this case is whether an unredacted version of DCS’s Case File No. 2020-008, *and the related prior investigation files*, are excepted from disclosure under the TPRA.” R. v. 4 at 467 (emphasis added). Although the trial court’s holding on this issue was erroneous, it correctly recognized the scope of Ms. Jacobson’s request.

**B. DCS must produce its pertinent files on prior investigations pursuant to Tenn. Code Ann. § 37-5-107.**

DCS must disclose these requested records of prior investigations. Its bid to continue withholding them rests on two faulty claims: that it may withhold the records under Rule 16, and that they are not part of the full case file.

First, as discussed above, Rule 16 is not a permissible basis for withholding records under Tenn. Code Ann. § 37-5-107(c)(4)(C)—redactions may only be made to conceal the identity of the child, family, and person reporting harm. This is true of the online version of Case File No. 2020-008 as well as the prior investigation records.<sup>4</sup>

Second, the prior investigation records must be considered, and released, as part of DCS’s “full case file.” Tenn. Code Ann. § 37-5-

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<sup>4</sup> Conversely, Ms. Jacobson acknowledges that if this Court finds Rule 16 is a permissible basis to redact the online version of Case File No. 2020-008, it would also be a permissible basis to redact records of related prior investigations.

107(c)(4)(C). The trial court found that these records are pertinent to the child's death, and DCS does not disagree. *See* DCS Br. at 28 (describing the prior investigative records as “relevant to the ongoing criminal prosecution” of the child's family members); R. v. 4 at 502 (noting that trial court reviewed these records *in camera*); R. v. 4 at 467–69 (trial court calling prior investigation records “related”); *see also* Tenn. R. App. P. 13(d) (trial court's factual findings are reviewed *de novo* but presumed correct). And DCS correctly quotes the federal government's “specific guidance about what information *must* be disclosed” under CAPTA; that “information concerning prior investigations should be disclosed as part of the case file if it is ‘pertinent to the child abuse or neglect that led to the fatality or near fatality.’” DCS Br. at 32–33 (quoting R. v. 3 at 449–50). To implement this federal disclosure requirement, state law mandates DCS to release its “*full* case file” on its investigation of a child fatality or near fatality. Tenn. Code Ann. § 37-5-107(c)(4)(C) (emphasis added).

Here, the online version of Case File No. 2020-008 is not “full” because it fails to include any of DCS's records from its four related prior investigations. R. v. 1 at 5–6, 25. In withholding these records, DCS and the trial court erase the word “full” from the statute, contrary to state and federal disclosure requirements. This goes against the well-settled rule that, when reading a statute, courts must “presume that the General Assembly intended that each word be given full effect.” *Green*, 293 S.W.3d at 507; *see also* Opening Br. at 28 (defining “full”). The trial court's decision to the contrary bars the public from accessing pertinent

information about the child and his history with DCS and, as a result, from learning about what happened and whether it could have been prevented.

Even as DCS admits its prior investigation records are pertinent to the child's death, the Department makes a last-ditch effort to avoid disclosure by claiming that they are not part of the "full case file" because they bear separate case numbers and are tracked separately. DCS Br. at 29–30. DCS fails to cite support for these assertions in the record before this Court, and none exists. In any event, DCS cannot use its internal record-keeping system to circumvent clear state-law disclosure mandates. If its records of prior investigations are pertinent to the child's death, and if DCS has completed its investigation and redacted the identifying information, DCS must disclose those prior investigation records as part of the "full case file." Tenn. Code Ann. § 37-5-107(c)(4)(C). And it is the courts, not DCS, that have the ultimate authority to interpret what the General Assembly meant by "full case file." *Id.* Here, because the prior investigation records *are* pertinent to the child's death, this Court should reverse and remand with instructions that DCS disclose them—once de-identified pursuant to Tenn. Code Ann. § 37-5-107(c)(4)(C)—as part of its "full case file."

## CONCLUSION

For the foregoing reasons and those set forth in her opening brief, Petitioner-Appellant respectfully requests that this Court reverse the decision below and (i) order DCS to release Case File No. 2020-008 without redactions other than those found in Tenn. Code Ann. § 37-5-107;



(ii) order DCS to release records of its prior investigations related to the deceased child with redactions limited to those found in Tenn. Code Ann. § 37-5-107; and (iii) award Petitioner-Appellant reasonable costs, including reasonable attorneys' fees, for both trial court and appellate proceedings in this case.

Dated: July 31, 2023

Respectfully submitted,

*/s/ Paul McAdoo*

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Paul McAdoo

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## CERTIFICATE OF SERVICE

The undersigned certifies that on July 31, 2023, a true and correct copy of the foregoing was served through the court's e-filing system on:

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Dated: July 31, 2023

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## CERTIFICATE OF COMPLIANCE

The undersigned certifies that this filing complies with the word-count limit set forth in Tennessee Rule of Appellate Procedure 30(e). Based on the word-count function of Microsoft Word, the total word count for all printed text in the body of the brief exclusive of the material omitted under Tennessee Rule of Appellate Procedure 30(e) is 4,919 words. This brief complies with the requirements of Tenn. Sup. Ct. R. 46, § 3.02(a). The text of the brief is 14-point Century Schoolbook font with 1.5 line spacing and 1-inch margins.

Dated: July 31, 2023

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