

**XXXX XXXX,**

**STUDENT**

**v.**

**MONTGOMERY COUNTY**

**PUBLIC SCHOOLS**

**\* BEFORE RACHAEL BARNETT,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-MONT-OT-16-18407**

**\* \* \* \* \***

**DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

**STATEMENT OF THE CASE**

On June 15, 2016, XXXX XXXX's (the Student's) parents (Parents) filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

I held a telephone prehearing conference on July 11, 2016. The Parents represented themselves. Emily Rachlin, Esquire, represented the MCPS. By agreement of the parties, the hearing was scheduled for July 27, 2016.

I held the hearing on July 27, 2016. The Parents represented themselves. Emily Rachlin, Esquire, represented the MCPS.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2015); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

1. Should MCPS' Motion for Judgment be granted?
2. Did the Individualized Education Program (IEP) Team properly determine that the Student will participate in Maryland Alternate Assessments (MAA) for the ninth grade?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 1 – Letter from Parents to Psychologist, dated December 15, 2013
- Parents Ex. 2 – Maryland Guidance to IEP Teams on Participation Decisions for the Alternate Assessment (MAA Tool), dated May 19, 2016
- Parents Ex. 3 – Series of E-mails between Parents and School Personnel, various dates
- Parents Ex. 4 – Duplicate Copy of the MAA Tool with Attachments, various dates
- Parents Ex. 5 – Areas of Disagreement on the MAA Tool by Parents, undated
- Parents Ex. 6 – Parents' Version of Areas of Disagreement on the MAA Tool, dated May 19, 2016
- Parents Ex. 7 – Request for Mediation and/or Due Process Hearing, dated June 10, 2016
- Parents Ex. 8 – E-mails Between the Parents and School Personnel, various dates

Parents Ex. 9 – Appendix I Re: IEP Meeting, dated April 29, 2016

Parents Ex. 10 – Report to Parents on Student Progress, dated June 24, 2014

I admitted the following exhibits on behalf of MCPS:

MCPS Ex. 1 – Psychological Evaluation, dated November 21, 2013

MCPS Ex. 2 – Educational Assessment Report, dated November 13, 2013

MCPS Ex. 5 – Letter from Resource Teacher to Parents, dated November 19, 2015

MCPS Ex. 7 – Summary of Parent Conference, dated February 29, 2016

MCPS Ex. 8 – Letter from Resource Teacher to Parents, dated April 12, 2016

MCPS Ex. 9 – Present Level of Academic Achievement and Functional Performance, dated May 19, 2016

MCPS Ex. 10 – Progress Summary, undated

MCPS Ex. 11 – MAA Tool with Attachments, dated May 19, 2016

MCPS Ex. 13 – Secondary Teacher Report for Quarterly Progress, undated

MCPS Ex. 14 – Maryland Guidance for Individualized Education Program (IEP) Teams on Participation Decisions for the Alternate Assessments, dated January 2016

MCPS Ex. 15 – Resume of Principal for Middle School, undated

MCPS Ex. 16 – Resume of Special Education Supervisor for MCPS, undated

MCPS Ex. 18 – Resume of School Psychologist, undated

### Testimony

The Parents testified.

The MCPS presented the following witnesses:

- Principal of Middle School (attended by the Student), admitted as an expert in School Administration and Education
- Special Education Supervisor, MCPS, admitted as an expert in Special Education
- School Psychologist, MCPS, admitted as an expert in School Psychology

## **FINDINGS OF FACT**

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Student is a fifteen-year-old girl who finished the 2015 – 2016 school year in the eighth grade at the Middle School, the Student’s assigned local public school. The Student is transitioning to high school in the Fall of 2016. (Testimony (Test.) Parents).

2. The Student’s current IEP indicates that the Student is participating in a diploma-track curriculum. (MCPS Ex. 6).

3. The Student has a full-scale Intellectual Quotient (IQ) of 41, more than two standard deviations below the mean. (MCPS Ex. 1; Test. School Psychologist).

4. The Student is performing on a kindergarten to first grade level in her various academic subjects. (MCPS Ex. 5).

5. On October 21 and 24, 2013, a school psychologist<sup>1</sup> for MCPS evaluated the Student using the following tests: The Wechsler Intelligence Scales for Children- Fourth Edition (WISC-IV); Wide Range Assessment of Memory and Learning – Second Edition (WRAML – 2); and Test of Visual Perceptual Skills, Second Edition (TVPS-2). (MCPS Ex. 1).

6. The school psychologist’s 2013 evaluation revealed the following deficits regarding the Student:

- a. extremely low (under first percentile) for: verbal comprehension, perceptual reasoning, working memory, processing speed, and full scale IQ;

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<sup>1</sup> The psychologist who conducted the 2013 evaluation is not the same psychologist who testified at the hearing.

- b. weak skills in the areas of visual discrimination, visual memory, sequencing, spatial relations and visual closure; and
- c. poor attention and executive functioning skills.

(MCPS Ex. 1).

7. On November 13, 2013, an employee of MCPS with a Masters Degree in Education (M.Ed.) authored an educational assessment report concerning the Student. The report includes the results of the Woodcock-Johnson III- Tests of Achievement (WJ-III). The Student scored in the “very low range of achievement” in all areas of the WJ-III, which included: reading, mathematics, and written expression. (MCPS Ex. 2).

8. During the Student’s time in the Middle School, she has struggled academically. Her abilities in math and reading have stagnated, as evidenced by her scores on the Measure of Academic Progress (MAP), which remained in the first percentile of achievement for both math and reading from Fall 2013 through Spring 2016. (Test. Principal; MCPS Exs. 9, 10, 11).

9. From sixth through eighth grade, the Student participated in the Partnership for Assessment of Readiness for College and Careers (PARCC) testing, which is a standardized national test. (Test. Parents).

10. From sixth through eighth grade, the Student was included in a general education classroom setting for academic classes; however, she received significant supports in that setting. (Test. Parents; MCPS Ex. 5).

11. On December 10, 2015, MCPS developed an IEP that includes the following supplementary aids, services, and program modifications and supports: manipulatives, organizational aids, checks for understanding, frequent or immediate feedback, have student repeat and/or paraphrase information, limit amount to be copied from the board, monitor independent work, assistance with organization, proofreading, copy of student/teacher notes,

repetition of directions, use of word bank to reinforce vocabulary, completed examples to work from, direct adult support in all academic classes, mathematical reference sheets, altered assignments, break down assignments into smaller units, chunking of text, deleting extraneous information on assignments and assessments, limited required reading, reduced number of answer choices, revised test formats, and using pictures to support reading passages. (MCPS Ex. 5).

12. The Student requires significant prompting from para-educators to complete tasks. (Test. Principal of the Middle School (Principal)).

13. The Student struggles to answer questions in class. (Test. Principal).

14. During the 2015 – 2016 school year, personnel from the Middle School requested that the Parents consent to updated testing of the Student. The Parents declined. (Test. Principal).

15. The Parents have pursued private testing for the Student; however, they have elected not to share the results with MCPS. (Test. Parents).

16. On April 28, 2016, MCPS prepared an IEP in which it identified the Student's primary disability as "Other Health Impairment." (MCPS Ex. 8).

17. On May 19, 2016, the Student's IEP Team (including the Parents) met to review, revise, and develop the Student's IEP, and to make a recommendation for high school placement. The MCPS Special Education Supervisor chaired the meeting. (Test. Special Education Supervisor; MCPS Ex. 11).

18. The MAA are assessments based on alternative academic achievement standards that differ from standardized assessments, such as PARCC. The administration of these alternative assessments ensures that students, including individuals with severe cognitive disabilities, are able to participate in an assessment that is a measure of what they know and can

do in relation to the student's grade level, Maryland College and Career-Ready Standards (MCCRS), Maryland Standards State Curriculum (SC), and the National Center and State Collaborative (NCSC) Core Content Connectors (CCC). The MAA is part of a system of curriculum, instructional, and assessment tools for students with significant cognitive disabilities who cannot participate in general assessments even with accommodations. (MCPS Ex. 14).

19. The MAA tool is a document, partially comprised of a chart, which provides a set of standard criteria by which an IEP Team in Maryland evaluates the appropriateness of having a student with an IEP participate in alternative testing. (MCPS Ex. 11).

20. At the May 19, 2016 meeting, the IEP Team, over the Parents' objections, completed the MAA tool by answering each question in the affirmative. (MCPS Ex. 11; Test. Special Education Supervisor).

21. This result meant that the Student would be eligible in the ninth grade to participate in the MAA, in lieu of national testing, and would be eligible to participate in a certificate-track high school curriculum for ninth grade,<sup>2</sup> rather than a diploma-track high school curriculum. (MCPS Ex. 11, Test. Parents, Test. Special Education Supervisor).

22. The IEP Team based its decision to have the Student complete the MAA on a set of criteria provided by the MAA tool. Each criterion includes specific "sources of evidence" for the IEP Team to consider as they review each criterion. One such source of evidence was academic performance. (MCPS Ex. 11).

23. On May 31, 2016, the Special Education Supervisor reconvened the IEP Team with the anticipated goal of completing the Student's IEP; however, the Parents expressed their concerns about how the IEP Team completed the MAA tool at the previous meeting. The IEP Team spent approximately two hours discussing the Parents' concerns. The Special Education

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<sup>2</sup> An IEP Team's decision that a Student shall participate in the MAA and be enrolled in a certificate-based program is reviewed annually. (Special Education Supervisor Test.).

Supervisor documented the Parents' concerns. The IEP Team was unable to make an IEP placement decision for the Student. (Test. Special Education Supervisor).

24. On June 8, 2016, the IEP Team reconvened once again. The Parents halted the IEP process, because they contested the results of the MAA. The meeting adjourned without the IEP Team reviewing the IEP or making a placement decision. (Test. Special Education Supervisor).

## **DISCUSSION**

### **Motion for Judgment**

The Parents argue that the IEP Team's completion of the MAA tool was inappropriate. At the close of the Parents' case, MCPS made a Motion for Judgment (Motion), pursuant to COMAR 28.02.01.12E. MCPS argued that the Parents failed to meet their burden to prove that the IEP Team's completion of the MAA tool, which led to the IEP Team's decision for the Student to participate in the MAA, was inappropriate. I reserved ruling on the Motion until I issued my decision. Under the OAH Rules of Procedure at COMAR 28.02.01.12E, a party may move for judgment at the close of the evidence offered by an opposing party:

#### E. Motion for Judgment

(1) A party may move for judgment on any or all issues in any action at the close of the evidence offered by an opposing party. The moving party shall state with particularity all reasons that the motion should be granted. Objection to the motion is not necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.

(2) When a party moves for judgment at the close of the evidence offered by the opposing party, the judge may:

(a) Proceed to determine the facts and render judgment against an opposing party; or

(b) Decline to render judgment until the close of all evidence.

The OAH rule on motions for judgment is patterned after Maryland Circuit Court Rule 2-519. When it adopted this rule in 1984, the Maryland Court of Appeals made a significant change in practice when such a motion is made by party B at the close of party A's case in a non-jury action. In that situation, "the Rule no longer requires the court to view the evidence in a light most favorable to A and to consider only the legal sufficiency of the evidence, so viewed, but allows the court to proceed as the trier of fact to make credibility determinations, to weigh the evidence, and to make ultimate findings of fact." *The Driggs Corp. v. Maryland Aviation Admin.*, 348 Md. 389, 402, n.4 (1998). Similarly, under the OAH rule, an Administrative Law Judge considering a Motion for Judgment is not required to view the evidence in a light most favorable to the non-moving party.<sup>3</sup>

The rules permit a judge in a bench trial to decide such a matter on the sufficiency of the evidence or to find facts at the end of a plaintiff's case. *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 352-53 (1986). Thus, an Administrative Law Judge can properly grant a motion for judgment on the grounds of insufficient evidence (when evidence is not produced to satisfy the elements of proof in an administrative action) or, assuming that the party bearing the burden of proof has offered *some* evidence to satisfy the elements, an Administrative Law Judge can take the next step in the analysis and grant the motion by deciding that evidence was produced to satisfy the elements, but that the evidence was not credible or persuasive. In this case, MCPS argued that the Parents had failed to establish a *prima facie* case on the issue they raised in the due process hearing request.

I find that the Parents offered some evidence of what appeared to be procedural improprieties in the completion of the MAA tool during their case; however, it was essential for me to hear the testimony of the MCPS' expert witnesses, who were also present at the May 19,

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<sup>3</sup> In *Driggs*, the Board of Contract of Appeals treated the motion as if it was a Motion for Summary Decision, but the OAH rule for each of those motions is different. COMAR 28.02.01.12D.

2016 IEP meeting, in order to understand whether the Parents, who are not experts in special education, had provided credible evidence that the IEP Team considered impermissible factors when it completed the MAA tool.

The Parents' most persuasive evidence of impropriety in the MAA tool was their testimony that they were present at the May 19, 2016 IEP meeting where the IEP Team used three criteria that the Maryland Guidance for IEP Teams on Participation Decisions for Alternate Assessments (MCPS Ex. 14) specifically prohibits from consideration: (1) expected poor performance on the general education assessment, (2) impact of test scores on accountability system, and (3) low reading and mathematics achievement level. MCPS Exhibit 14 indeed lists these three items under the heading, "What Not to Use as Criteria for Participation Decisions." The Parents testified that the IEP Team discussed these concerns at the meeting where the IEP Team completed the MAA tool. On its face, this evidence raises serious concerns about the IEP Team's use of the MAA tool.

The Parents, however, failed to explain that the IEP Team did not use these factors as independent criteria for reaching their determination, but rather considered the Student's performance in subject areas including mathematics and reading as part of the overall data used to evaluate the Student's academic performance, which is a source of information specifically listed for consideration on the MAA tool. (Test. Special Education Supervisor; MCPS Ex. 14). Additionally, while the IEP Team listed on the MAA tool the Student's ranking in the first percentile on standardized testing from Fall 2015 and Spring 2016, the Special Education Supervisor clarified in her testimony that the IEP Team did not consider expectations for future poor performance on general assessments. It was for this reason that the IEP Team specifically checked off on the MAA tool that the decision for the Student to participate in the MAA was not based on "expected poor performance on the general education assessment" or "the impact of

test scores on accountability system.” It was only possible to understand the role that the student data played in the completion of the MAA tool after hearing the testimony from both the Parents and MCPS witnesses. It was not possible to accurately assess the credibility or persuasiveness of the Parents’ evidence without comparing it to the evidence presented by the MCPS, especially because the Parents did not present the testimony of any expert witnesses who could explain how the tool was utilized in this case. For this reason, I deny the motion for judgment and instead will rule on the merits of the Parents’ complaint.

### **The Burden of Proof and the Parents’ Position**

The burden of proof in an administrative hearing under IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 60-61 (2005). Accordingly, the Parents have the burden of proving that the results of the MAA tool should be struck and, therefore, the IEP Team should not use the completed MAA tool to make a recommendation for the Student’s special education placement into a certificate-track program. The Parents argue that the IEP Team should recommend placement into a diploma-track program. The Parents maintain that keeping the Student in a diploma-track program is the least restrictive environment in which to implement the Student’s IEP. Least restrictive environment, however, refers to the continuum of alternative placements for a student with disabilities or who receives special education and related services. 34 C.F.R. § 300.115 (2015). However, since the Parents stopped the IEP Team from making a placement decision for the Student, placement of the Student in the least restrictive environment is not at issue in this matter.

### **FAPE Requirements**

The identification, assessment, and placement of students in special education are governed by the IDEA. U.S.C.A. §§ 1400-1487 (2010), 34 C.F.R. Part 300, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2015) and COMAR 13A.05.01. The IDEA provides that all

students with disabilities have the right to a free appropriate public education (FAPE). 20 U.S.C.A. § 1412 (2016). Courts have defined the word appropriate to mean personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. See *In Re Conklin*, 946 F.2d 306, 312-313 (4<sup>th</sup> Cir. 1991). Clearly, no bright line test can be created to establish whether a student is progressing or could progress educationally. Rather, the decision-maker must assess the evidence to determine whether the Student's IEP and placement was reasonably calculated to enable him to receive some educational benefit. See *In Re Conklin*, 946 F.2d 306, 312-313 (4<sup>th</sup> Cir. 1991).

In this case, the Parents halted the IEP process when the IEP Team completed the MAA tool, so the IEP Team has not yet made a placement decision for the Student. Therefore, I cannot assess whether such a decision would provide the student with a FAPE.

#### **How an IEP Team Determines Appropriate Testing**

Under IDEA, each public agency must ensure that all students with disabilities are included in all standard State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as specified in each student's IEP. 34 CFR § 300.160. (2015). The IDEA requires that the IEP Team determine the assessments in which a student with a disability will participate. 34 CFR § 300.320 (2015). The IDEA further requires each state to develop and implement alternative assessments and guidelines for the participation of students with disabilities who are unable to participate in standard assessments, even with accommodations. 34 CFR § 300.160 (2015).

The MSDE developed guidelines, consisting of criteria and a checklist, to assist IEP Teams in identifying students who will participate in the MAA. (MCPS Ex. 4). To be eligible for the MAA, a student must have an IEP and meet the following three criteria:

- The student has a “significant cognitive disability”;<sup>4</sup>
- The student is learning content derived from the Maryland College and Career-Ready Standards (MCCRS) in English, Language Arts, and mathematics and the Maryland Standards State Curriculum and Core Learning Goals in Science;<sup>5</sup>
- The student requires extensive, direct, individualized, and repeated instruction and substantial supports to achieve measurable gains in adapted and modified curriculum aligned with grade level content standards.<sup>6</sup>

(MCPS Ex. 4, pp. 4 – 5).

The guideline directs IEP Teams to use the Participation Criteria and Checklist (MAA tool),<sup>7</sup> which asks the IEP Team to check “agree” or “disagree” to the above-mentioned three questions and to verify that the student has an IEP. (MCPS Ex. 4). Additionally, the MAA tool includes the additional three criteria:

- [T]he student is learning a sample of content that is linked to grade-level content standards, which does not fully represent grade level content as assessed on the MSA, HAS, or PARCC assessments. Therefore, the student cannot participate in general assessments even with the provision of accommodations.
- The IEP Team agreed that the student met all criteria listed on this eligibility tool; therefore, the IEP Team determined the student eligible to participate in the Maryland Alternate Assessments.

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<sup>4</sup> This item in the MAA tool includes seven possible “sources of evidence [check if used]” for the IEP Team to identify. They include: (1) results of individual cognitive ability test, (2) results of adaptive behavior skills assessment, (3) results of individual and group administered achievement tests, (4) results of informal assessments, (5) results of individual English Language Arts, Science and Mathematics Assessments, (6) results of district-wide alternate assessments, (7) results of language assessments including English Language Learner (ELL) language assessments if applicable.

<sup>5</sup> This item in the MAA tool includes four possible sources of evidence for the IEP Team to identify. They include: (1) examples of curriculum, instructional objectives and materials, including work samples, (2) present levels of academic and functional performance, goals and objectives from the IEP, (3) data from scientific research-based interventions, and (4) progress monitoring data.

<sup>6</sup> This criteria item in the MAA tool includes three possible sources of evidence for the IEP Team to identify: (1) examples of curriculum, instructional objectives, and materials including work samples from both school and community-based instruction, (2) teacher collected data and checklists, and (3) present levels of academic and functional performance, goals and objectives, and post school outcomes from the IEP and the Transition Plan for students age fourteen and older unless State policy or the IEP Team determines a younger age is appropriate.

<sup>7</sup> During the course of the hearing, the participants referred to this document as the MAA tool or “the tool.”

- Do the historical data (current and longitudinal across multiple settings) justify the IEP Team’s decision for the student to participate in the MAA?

The MAA tool also includes designated spaces for the IEP Team to include the following information:

- Individual cognitive ability assessment
- Educational assessment
- Adaptive skills assessment

First, the Parents argued that the IEP Team failed to document why the general assessment was inappropriate for the Student, even with accommodations, as required under MCPS Exhibit 14; COMAR 13A.05.01.09. An examination of the MAA tool reveals that the IEP Team documented the results of the Student’s cognitive, educational, and adaptive assessment; the IEP Team listed and explained the low numerical results of the Student’s various assessments. The Special Education Supervisor testified that the IEP Team discussed most of the suggested “sources of evidence” on the MAA tool and checked off the following suggested sources of evidence: results of individual cognitive ability test, results of adaptive behavior skills assessment, present levels of academic and functional performance, and goals and objectives from the IEP. Additionally, the IEP Team agreed that the “student requires extensive, direct, repeated and individualized instruction and substantial supports to achieve measurable gains in the grade and age-appropriate curriculum.” All of these factors contributed to the IEP Team’s ultimate decision to find the Student eligible for the MAA. (Test. Special Education Supervisor). Lastly, the IEP Team checked “agree” in response to following Eligibility Criteria:

As documented through the eligibility criteria and additional requirements listed above, it has been determined that the student is learning a sample of content that is linked to grade-level content standards, which does not fully represent grade level content as assessed on the MSA, HSA, or PARCC assessments. Therefore, the student cannot participate in general assessments even with the provision of accommodations.

(MCPS Ex. 11).

I find that the IEP Team appropriately used the MAA tool to document why the Student cannot participate in the general assessments even with accommodations.

Second, the Parents argued that the IEP Team should have stopped using the MAA tool as soon as the Parents disagreed with the answers that the Special Education Supervisor was marking on the MAA tool. The MAA tool states, “If the IEP Team disagrees, responding with a DISAGREE for one or more questions, the IEP Team should stop using this form and consider the student eligible for participation in the general PARCC Assessment with or without accommodations.” The Parents testified that their first disagreement with the IEP Team was in response to Item Two on the MAA tool: “The student has a significant cognitive disability.” The Parents argued that as soon as they, as members of the IEP Team, disagreed with this item on the tool, that the IEP Team should have stopped using this tool. However, this is not accurate. Under IDEA, parents must have a “meaningful opportunity” to participate in the IEP process; however, when an IEP Team makes a decision that is in contradiction to the parents’ wishes, that decision does not necessarily deprive the parents of a meaningful opportunity to participate in the process. *Hjortness ex rel. Hjortness v. Neenah Joint School Dist.*, 507 F.3d 1060, 1065 (7<sup>th</sup> Cir. 2007). Hence, the consensus of an IEP Team does not require parental agreement under the IDEA.

The Special Education Supervisor testified that the IEP Team listened carefully to the Parents’ concerns and ultimately agreed to all elements of the MAA tool over their objections. The Special Education Supervisor went to great lengths to understand the Parents’ opinions, including spending two hours documenting their concerns and then sending them a written summary of the areas of disagreement. (Test. Special Education Supervisor; MCPS Ex. 11). The IEP Team did not need to stop using the MAA tool as soon as the Parents disagreed with the answers being marked on the MAA tool.

The IEP Team's decision to find that the Student has a significant cognitive disability is well-supported. The School Psychologist testified that the Student meets the criteria for a significant cognitive disability because her IQ is more than two standard deviations below the mean and her adaptive<sup>8</sup> scores are low. Additionally, the School Psychologist opined that possible attention issues cannot account for the Student's low scores, because attention issues can cause a deficit of up to one standard deviation from the mean in IQ testing, whereas the Student has an IQ of 41, more than two standard deviations below the mean. Additionally, the School Psychologist declined to rely upon the testing that the Parents said they had done, because the Parents did not share the testing report with MCPS.

Third, the Parents argued that the IEP Team's decision to have the Student take the MAA, in lieu of standard testing, places the Student on track to receive a Maryland High School Certificate of Completion rather than a Maryland High School Diploma, and this places her at an economic disadvantage by depriving her of the opportunities that she might otherwise have if she were to gain a high school diploma. Based on the assessments normally required of students in order to obtain a Maryland High School Diploma, MCPS recommended that the Student participate in alternative assessments for the ninth grade. If the Student continues on this trajectory, the Parents are correct that it is unlikely that the Student will meet the requirements for a Maryland High School Diploma. 34 CFR §§ 300.160 (2015) and 300.320 (2015), COMAR 13A.03.02.09, and MCPS Ex. 14.<sup>9</sup> However, the IEP Team utilized the MAA tool to consider the appropriate criteria when deciding that the Student should participate in the MAA in the ninth grade. It is understandable that the Parents are concerned that their daughter will have fewer earning opportunities if she does not graduate high school with a diploma. The Parents'

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<sup>8</sup> Adaptive behavior is a collection of behaviors, including conceptual, social, interpersonal, and practical skills, defined as essential for someone to live independently and to function safely in daily life. Glossary for Maryland Guidance to IEP Teams on Participation Decisions for the Alternate Assessment.

<sup>9</sup> The IEP Team has not yet made a placement recommendation for the Student, because the process paused when the Parents disagreed with the results of the MAA tool.

concern for their daughter is sincere, heart-felt, and adamant. However, their vision for their daughter's academic success is inconsistent with her scholastic performance and native intellectual abilities. Even with extensive supports and coursework modification, the Student's academic progress has been extremely limited. The IEP Team appropriately redirected the Student towards MAA testing beginning in the ninth grade. For the last three years, standardized testing has not captured any notable academic progress for the Student. It is important for MCPS to evaluate the actual progress she is making. For the upcoming school year, the MAA testing is the best measure of her projected academic growth. I find that the IEP Team properly completed the MAA Tool and concluded that the Student is suited for the MAA.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that that the MCPS' Motion should not be granted. COMAR 28.02.01.12E; *The Driggs Corp. v. Maryland Aviation Admin.*, 348 Md. 389, 402, n.4 (1998); *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342 (1986).

I further conclude that the Parents have failed to establish that the IEP Team erred when it completed the MAA Tool and concluded that the Student will participate in the MAA during the ninth grade. 34 CFR §§ 300.160 (2015), 300.320 (2015), 300.160 (2015); COMAR 13A.05.01.09; *Hjortness ex rel. Hjortness v. Neenah Joint School Dist.*, 507 F.3d 1060, 1065 (7<sup>th</sup> Cir. 2007).

**ORDER**

I **ORDER** that the MCPS' Motion is **DENIED**.

I further **ORDER** that the Parents' request to have the MAA tool invalidated and to have the IEP Team proceed with making a placement recommendation without considering the MAA tool is **DENIED**.

August 11, 2016  
Date Decision Mailed

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Rachael Barnett  
Administrative Law Judge

RAB/sm

**REVIEW RIGHTS**

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or to the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (2014). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

Should a party file an appeal of the hearing decision, that party must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing, of the filing of the court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

The Office of Administrative Hearings is not a party to any review process.