

XXXX XXXX,

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

\* BEFORE NEILE S. FRIEDMAN,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-PGEO-OT-16-28351

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**DECISION**

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

**STATEMENT OF THE CASE**

On September 15, 2016, XXXX XXXX (Parent), on behalf of her child, XXXX XXXX (Student), 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 the Prince George's County Public Schools (PGCPS) 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 October 25, 2016. The Parent represented herself. Gail Viens, Esquire, represented PGCPS. At the prehearing conference, the parties and I discussed the time requirements for issuing a decision. 34 C.F.R. § 300.515 (2015) states the following, in part:

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day [resolution] period under § 300.510(b) . . .

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.

In accordance with these regulations, the decision in this case is due on November 28, 2016, which is forty-five days after October 14, 2016, the end of the resolution period.<sup>1</sup> 34 C.F.R. §300.515(a) (2015).

By agreement of the parties, the hearing was scheduled for November 16 and 17, 2016. I held the hearing on November 16, 2016<sup>2</sup> at the Prince George's County Board of Education in Upper Marlboro, Maryland. The Parent represented herself. Gail Viens, Esquire, represented PGCPs.

At the close of the Parent's case, PGCPs moved for judgment pursuant to Code of Maryland Regulations (COMAR) 28.02.01.12. The Parent opposed the motion. I deferred a ruling on the motion until the close of all evidence in the case. COMAR 28.02.01.12E (2)(b).

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 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 & Supp. 2016); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

The issues are:

1. Did PGCPs take some action to prevent the Student from attending [School 1]?

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<sup>1</sup> Actually, the resolution period extended for one more day, until October 15, 2016. I am using the October 14th date as the date to begin the 45-day deadline countdown because that is the date the PGCPs notified OAH of the outcome of the resolution session.

<sup>2</sup> Although the hearing was scheduled for two days, it completed in one.

2. Is [School 2] an appropriate placement to implement the Student's Individualized Education Program (IEP)?

**SUMMARY OF THE EVIDENCE**

Exhibits

The Parent offered the following exhibits into the record, nine of which I admitted as follows:

- Exhibit 1: Not admitted.
- Exhibit 2: Notice of Outcome of Resolution Session, July 7, 2016.
- Exhibit 3: Permission to Release Information form, August 9, 2016.
- Exhibit 4: Request for Mediation and Due Process Complaint, September 15, 2016.
- Exhibit 5: Email from Parent to XXXX XXXX, September 9, 2016.
- Exhibit 6: Email from Parent to XXXX XXXX, September 7, 2016.
- Exhibit 7: Emails between Parent and XXXX XXXX, September 20, 2016.
- Exhibit 8: Email from XXXX XXXX to Parent, October 4, 2016.
- Exhibit 9: Email from XXXX XXXX to Parent, October 10, 2016.
- Exhibit 10: Not admitted.
- Exhibit 11: Emails between Parent and XXXX XXXX, September 7, 2016.

I admitted the following exhibits on behalf of PGCPS:

- PGCPS 1: Resolution Agreement, July 7, 2016.
- PGCPS 2: Assessment Report, July 25, 2016.
- PGCPS 3: Assessment Report, July 28, 2016.
- PGCPS 4: Confidential Psychological Report, August 10, 2016.
- PGCPS 5: Assistive Technology Consultation Report, December 17, 2015.
- PGCPS 6: IEP, August 18, 2016.

PGCPS 7: Letter from XXXX XXXX, Assistant Principal at [School 2], to Parent, August 29, 2016.

Testimony

The Parent testified and presented the following witnesses:

- XXXX XXXX
- XXXX XXXX
- XXXX XXXX

PGCPS presented the following witnesses:

- XXXX XXXX, Special Education Instructional Specialist, PGCPS, accepted as an expert in Occupational Therapy and Special Education Placement
- XXXX XXXX, Special Education teacher, accepted as an expert in Special Education
- XXXX XXXX, Speech/ Language Pathologist, PGCPS, admitted as an expert in Speech/ Language Pathology

**FINDINGS OF FACT**

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

1. The Student is thirteen years old and, as of August 2016, he was in the eighth grade at [School 3]. He is currently attending [School 4].
2. The Student has been diagnosed with Autism and Intellectual Disability.
3. He requires extensive and substantial modification of the general education curriculum. He has significant difficulties with both verbal and nonverbal reasoning.
4. The Student requires speech/language therapy as a related service.
5. The Student needs assistive technologies and other accommodations to support his learning processes, such as the use of manipulative and calculating devices; the use of picture

communication symbols and visual supports; repetition of instructions and directions; extended time to complete assigned tasks, breaks in between tasks; and a structured small group setting.

6. The Student requires extensive support to perform and participate meaningfully and productively in daily activities in school, home, community and work environments. He needs to learn adaptive skills and functional life skills, such as how to prepare food, to maintain hygiene, to be safe in the community, and otherwise to take care of his activities of daily living.

7. The Student requires social/behavioral supports to encourage and reinforce behavior in academic and non-academic settings. He requires a behavioral management program.

8. The Student requires transition services designed to facilitate his movement from school to postsecondary activities.

9. Because of his significant intellectual disabilities and his adaptive skills needs, the Student is pursuing a Maryland High School Certificate of Program Completion, not a High School Diploma.

10. On July 7, 2016, at a resolution conference in connection with a complaint filed by the Parent, PGCPS agreed to fund a nonpublic placement for the Student for the 2016-2017 and 2017-2018 school years.

11. Once PGCPS agrees to fund a nonpublic placement for a student, the Chair of the central IEP team, XXXX XXXX, prepares a packet to present to nonpublic schools that are appropriate placements for the student, consisting of a cover letter indicating that PGCPS is funding the placement, demographic information, the Student's IEP and any Behavioral Improvement Plan (BIP), recent progress reports, and any test results.

12. On August 16, 2016, Ms. XXXX sent, on behalf of the Student, her usual packet, consisting of a cover letter indicating that PGCPS is funding the placement, demographic information, the Student's IEP and his BIP, his recent progress reports, and his recent

psychological, educational, assistive technology and speech/language testing results, to the [School 1] and to [School 2] ([School 2]).

13. These schools were selected because they are MSDE and PGCPs-approved schools that are private, separate day schools, with small class sizes, serving students with Autism and significant intellectual disabilities.

14. On August 23, 2016, the [School 1] sent a letter to Ms. XXXX indicating that the Student was not accepted because [School 1] was not the ideal program to meet his needs.

15. Ms. XXXX felt the language in the [School 1] letter was ambiguous, so she called Mr. XXXX, the administrator at [School 1], with whom she regularly works on placing students, and asked him why the Student was not accepted. Mr. XXXX explained that there was no space available for the Student at that time.

16. On August 29, 2016, [School 2] approved the Student's admission to its program.

17. At the end of August 2016, at the Parent's request, Ms. XXXX sent an application packet to the [School 6], in XXXX, Maryland. The Student was not admitted to [School 6].

18. On September 20, 2016, Ms. XXXX resent the package to the [School 1], requesting that it reconsider the Student's application. At this point a space had become available at [School 1], and so a [School 1] staff member came to observe the Student at [School 4].

19. On October 3, 2016, [School 1] sent to the Parent and to Ms. XXXX an email indicating that [School 1] was unable to implement the Student's IEP, and therefore it could not accept him for admission.

20. PGCPs has no influence over decision making at private schools such as [School 1], and cannot force a private school to accept a student.

21. [School 2] is a unique school in that it is both a XXXX public charter school and a private day school. All students at [School 2] have IEPs and require full-time services.

Students in the school have significant cognitive disabilities, like the Student, and, also like the Student, require a modified curriculum. There is a large population of students at [School 2] who, like the Student, have diagnoses of both Autism and Intellectual Disability. All students are working, as is the Student, to complete their Maryland High School Certificate of Program Completion, and not a High School Diploma.

22. At [School 2], Autism interventions are available. All teachers participate in online training in Applied Behavioral Analysis. In the classrooms for students with Autism and cognitive disabilities, teachers use teaching strategies such as prompt hierarchies, errorless teaching and discrete trial training. Teachers also use principles from the TEACCH model, which is widely accepted as the best practice program for students with Autism.

23. [School 2] has on its permanent staff a Behavioral Support Team, with three Board Certified Behavioral Analysts and one assistant, as well as two Registered Behavioral Technicians. These staff members work mostly with students with Autism, collecting data, developing Behavioral Functional Assessments (BFAs) and BIPs, participating in IEP team meetings, developing goals and objectives, and monitoring students' progress.

24. [School 2] provides individualized instruction for students with Autism. The curriculum is modified depending on the student's needs as reflected in his/her IEP.

25. The ratio of students to staff is two to one. For students ages thirteen and over, there are thirteen students assigned to a class, but there are usually only seven or eight students in a classroom at any one time because students regularly rotate out of the classroom to do in-house activities or to participate in off-site community-based instruction and occupational training, which is embedded into the program at [School 2]. These seven or eight students who are in the classroom at any one time are accompanied by a minimum of four adults.

26. Embedded in the curriculum at [School 2] is functional academics; the program teaches communication skills and personal and social functional skills, and uses self-help activities.

27. Transition planning for post-high school years is embedded in the [School 2] curriculum. Students learn office tasks and kitchen skills, and engage in horticulture activities. Students may participate in internships in the building.

28. Related services are provided to students at [School 2]. The Student will have the services of a speech/language pathologist and a licensed social worker, if necessary. In addition, on staff are four full-time nurses and an adaptive technology specialist, which not all private schools utilize.

29. There is no aspect of the Student's IEP that [School 2] cannot implement.

## **DISCUSSION**

### **Introduction**

As framed by the Parent in her Due Process Complaint, during the prehearing conference, and immediately prior to the commencement of the hearing, this case is solely about the suitability of the Student's present placement at [School 2], a non-public placement. Further, there was no dispute that the Student's IEP was reasonably calculated to provide a free appropriate public education (FAPE). The Parent contends that PGCPs has failed to provide the Student with the FAPE to which he is entitled because his proposed placement at [School 2] does not meet his needs. The Parent would like the Student to be placed at [School 1], and she contends that PGCPs blocked the Student's admission there.

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent has the burden of proving that the Student's proposed placement at [School 2] is inappropriate and is not



reasonably calculated to provide educational benefit to him, and that placement at another non-public school, specifically [School 1], is appropriate. The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2009).

To prove her case by a preponderance of the evidence, the Parent must convince me that it is more likely than not that PGCPS failed to provide the Student a FAPE. Merely raising doubt does not constitute proof by a preponderance of the evidence. For the reasons discussed below, I find in favor of PGCPS.

### **Legal Framework**

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1487 (2010); 34 C.F.R. Part 300; Md. Code Ann., Educ. §§ 8-401 through 8-417 (2008); and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412. Courts have defined the word “appropriate” to mean personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. 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 were reasonably calculated to enable him to receive appropriate educational benefit. *See In Re Conklin*, 946 F.2d 306, 316 (4<sup>th</sup> Cir. 1991).

The requirement to provide a FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Board of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined a FAPE as follows:

Implicit in the congressional purpose of providing access to a “free appropriate public education” is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.... We therefore conclude that the basic floor

of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to give educational benefit to the handicapped child.

*Rowley*, 458 U.S. at 200-201. In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide a FAPE to a student with disabilities. First, a determination must be made as to whether there has been compliance with the procedures set forth in the IDEA, and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefit. *Id.* at 206-207. See also *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 319 (4th Cir. 2004).

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “the best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ.*, 700 F.2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. at 176. Instead, a FAPE entitles a student to an IEP that is reasonably calculated to enable that student to receive educational benefit. Recently, the United States Court of Appeals for the Fourth Circuit declined to interpret IDEA to require “meaningful” benefit, rather than “some” benefit, reiterating that “a school provides a FAPE so long as a child receives some educational benefit, meaning a benefit that is more than minimal or trivial, from special instruction and services.” *O.S. v. Fairfax Cty. School Bd.*, 804 F.3d 354, 360 (4th Cir. 2015).

Determining whether a student has received educational benefit is not solely dependent on a finding that a student has advanced from grade to grade, or receipt of passing marks, since it is quite possible that a student can advance in grade from year to year, yet not gain educational benefit. See *In Re Conklin*, 946 F.2d 306, 316 (4th Cir. 1991) (finding that a student’s passing grades and advancement does not resolve the inquiry as to whether a FAPE has been afforded to the student). Similarly, a finding that a student is not progressing at the same speed as his or her

peers does not shed light on whether a student has failed to gain educational benefit. As discussed in *Rowley*, educational benefits that can be obtained by one student may differ dramatically from those obtained by another student, depending on the needs that are present in each student. *Rowley*, 458 U.S. at 202.

In addition to the IDEA's requirement that a disabled child receive some educational benefit, the child must be placed in the "least restrictive environment" to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5) (2010); 34 C.F.R. §§ 300.114(a)(2)(i); 300.117 (2014). Indeed, mainstreaming children with disabilities with nondisabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty Sch. Bd.*, 882 F.2d 876 (4th Cir. 1989). Placing disabled children into regular school programs may not be appropriate for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. Nonetheless, the issue is not whether another school is better or even as appropriate as the school offered by the school district but whether the school district has offered a FAPE.

With regard to the appropriateness of the Student's program, in order to prevail, the Parent must prove that the placement determined by the public agency will amount to a denial of a FAPE and that the identified, alternative private school is an appropriate placement. *See Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993). In *Carter*, the Supreme Court upheld a lower court's decision to order reimbursement to the parents for private tuition, after the court's determination that the IEP was inappropriate and that the private school selected by the parents would offer the child an appropriate education. Specifically, the Supreme Court concluded that parents are "entitled to reimbursement *only* if a federal court concludes both that

the public placement violated IDEA and that the private school placement was proper under the Act.” *Carter*, 510 U.S. at 15 (emphasis added). Here, although PGCPs has determined that the Student’s needs would be met through private school placement, the Parent must show that the private school selected by PGCPs is not appropriate to meet the Student’s needs that result from his disability and that prevent him from progressing in the general curriculum.

### **The Parent’s Argument**

The Parent points to four concerns about [School 2] as a placement for the Student: that it is a public school, not a private one; that students with IEPs share classes with non-IEP Students; that the class sizes are too large, and that it is too far from the Student’s home. The Parent bitterly contests what she claims was the PGCPs’s determination to “block” the Student’s admission to [School 1] in favor of another student’s admission. The Parent contends that [School 1] is a more appropriate school for her son because it has small class sizes and is located near her home.

In support of her argument, the Parent called three witnesses. The first, XXXX XXXX, identified himself as the Student’s Sunday school teacher. Mr. XXXX testified that the Student does well in a small classroom. He contended that when the Student is in a classroom at Sunday school with more than eight to ten students, he becomes aggressive. XXXX XXXX, the Parent’s sister, testified that she accompanied the Parent to [School 2] and observed the room where the Student would be learning. She claimed that there were twenty students in the room. She also claimed that students with IEPs and those without them, and public and private students, were all being educated in the classroom together, with “no distinction.”

XXXX XXXX, the Parent’s third witness, testified that he also accompanied the Parent on visits to [School 2] and to [School 1]. While he found [School 2] to be a “beautiful school,” he testified that it took over an hour to get there. He also testified that while it “looked like they

knew what they were doing,” he could not tell how the school would help the Student because it had the “vibe” of having large classroom sizes.

Mr. XXXX also testified that he visited [School 1] with the Parent. He stated that [School 1]’s representative, Dr. XXXX, told them that a space was available for the Student. He further testified about a subsequent meeting he participated in, along with the Parent, with XXXX XXXX, from the PGCPs’s Office of Due Process and Compliance, in which Ms. XXXX insisted that there was no space at [School 1], and that he and the Parent had to “put Dr. XXXX on the phone with her” to convince her that there was indeed a space for the Student at [School 1]. He testified that later, he and the Parent together had called [School 1] and spoken with Dr. XXXX. Mr. XXXX suggested that Dr. XXXX had informed them that the space reserved for the Student had been given to another PGCPs student.

The Parent testified that PGCPs “restrained” the Student from going to [School 1] and “suppressed” his admission there. She stated that, in the past, two “bad” schools caused the Student to become aggressive, and that, as a result, she is anxious to have PGCPs help him have an opportunity to be better in life. She claimed that [School 2], which she maintained never observed her son, is not appropriate for the Student because the school is a public school, it is too large, and the commute is “horrifying,” particularly in light of certain unspecified “problems” the Student had with the bus at his previous schools. By contrast, [School 1] has all the things she is asking for: small class sizes and it is right behind her house. She contends that the school would be a “miracle” for the Student. She echoed Mr. XXXX’s suggestion that an opening at [School 1] was given to another student at PGCPs’s request. She maintained that this process, by which there were openings and then no openings at [School 1], amounted to “playing games.” She is upset that even though she is a part of the IEP team, PGCPs does not communicate with her, and

also that “they don’t listen to me.” By the end of her testimony, the Parent was highly emotional; her voice was raised and she was crying.

The Parent has failed to prove that the process by which PGCPs chose [School 2] as the Student’s placement for the 2016-2017 school year was inappropriate. The Parent’s and her witness’s bald allegations of game playing and that PGCPs somehow colluded with [School 1] to place another student in the Student’s place, were unsupported by any credible corroborating evidence. The Parent and her witness gave no dates in their accounts of what happened, and their testimony was very confusing as to what allegedly happened and when.

Moreover, one of the documents submitted into evidence by the Parent suggest the opposite of what the Parent is alleging—that the Student was denied a space at [School 1] due to PGCPs colluding with [School 1] to place another student in the Student’s spot. This document, a September 7, 2016 email from Ms. XXXX to the Parent, shows that when [School 1] sent *another student* a rejection letter, it opened up an opportunity for *the Student* to be reconsidered for admission, not the other way around, as the Parent claimed. Parent’s Exhibit #11.

As to the Parent’s suggestion that PGCPs failed to communicate with her, again, that allegation is also belied by documents that the Parent placed into the record which show numerous emails sent to the Parent by PGCPs staff to keep her informed about what was happening with the Student’s private placement, including on September 7 (two emails), October 4, October 10, September 20, and on November 3, 2016 (two emails). Parent’s Exhibits 6, 7, 8, 9 and 11.

On the other hand, Ms. XXXX, who qualified as an expert in, among other things, Special Education Placement, testified credibly and professionally about the events that triggered PGCPs’s decision to place the Student at [School 2]. She explained that, once PGCPs agreed to fund a nonpublic placement for the Student, Ms. XXXX sent, on August 16, 2016, her usual

packet, consisting of a cover letter indicating that PGCPS is funding the placement, demographic information, the Student's IEP and his BIP, his recent progress reports, and his recent psychological, educational, assistive technology and speech/language testing results, to [School 1] and to [School 2]. And later, at the Parent's request, a packet was sent to the [School 6] in XXXX. Ms. XXXX explained that these schools were selected because they are MSDE and PGCPS-approved schools that are private, separate day schools, with small class sizes, serving students with Autism and significant intellectual disabilities.

According to Ms. XXXX, on August 23, 2016, [School 1] sent a letter to Ms. XXXX indicating that the Student was not accepted because [School 1] was not the ideal program to meet his needs. Ms. XXXX felt the language in the [School 1] letter was ambiguous, so she called Mr. XXXX, the [School 1] administrator with whom she regularly works on placing students, and asked him why the Student was not accepted. Mr. XXXX explained that there was no space available for the Student at that time.

Contrary to the Parent's suggestion that PGCPS colluded to keep the Student out of [School 1], on September 20, 2016, apparently because of the Parent's desire for the Student to attend [School 1], Ms. XXXX resent the package to the [School 1], and requested that it reconsider the Student's application. At this point a space had become available at [School 1], and so a [School 1] staff member came to observe the Student at [School 4]. However, on October 3, 2016 [School 1] rejected the Student's application. This time the rejection was not because of a lack of space—it was because [School 1]'s staff felt that that [School 1] was unable to implement the Student's IEP.

Contrary to the Parent's suggestion that PGCPS has the ability to influence admission decisions of private schools, Ms. XXXX, who is involved in 500 non-public school placements, explained that PGCPS has no influence over decision making at private schools such as [School

1], and cannot force a private school to accept a student. As to the two other schools to which Ms. XXXX sent packets on behalf of the Student, the Student was not admitted to [School 6], but, on August 29, 2016, [School 2] approved the Student's admission to its program.

These credible facts do not support the Parent's argument that PGCPs inappropriately handled the Student's application process. To the contrary, Ms. XXXX handled the Student's application process in a professional way, and attempted, multiple times, to pursue the Student's admission to [School 1], the school preferred by the Parent, but that school denied him admission. I find that the Parent has failed to prove that that PGCPs took action to prevent the Student from attending [School 1]. *Schaffer v. Weast*, 546 U.S. 49 (2005).

### **[School 2] is an Appropriate Placement**

Ms. XXXX, as well as XXXX XXXX, the Student's Special Education teacher at [School 4], and XXXX XXXX, his Speech/Language Pathologist at [School 4], testified that they were familiar with [School 2]. Ms. XXXX and Ms. XXXX were familiar with [School 2]'s program because they heard Ms. XXXX discuss it in her testimony, which preceded theirs, and also because they studied its website. Ms. XXXX was recognized as an expert in Special Education; Ms. XXXX in Speech/Language Pathology. Both Ms. XXXX and Ms. XXXX know the student well because they work with him regularly at [School 4], where the Student attends school. Ms. XXXX sees him every day; Ms. XXXX sees him three times a week for thirty-minute therapy sessions. All three witnesses testified that, in their expert opinions, [School 2] is an appropriate placement to implement the Student's IEP. In fact, Ms. XXXX testified that there is no aspect of the Student's IEP that [School 2] cannot implement. The Parent presented no expert witness who disagreed.

### *The Student's Needs and Requirements*

The Student, diagnosed with Autism and Intellectual Disability, has significant



difficulties with both verbal and nonverbal reasoning. He requires extensive and substantial modification of the general education curriculum. The Student also requires speech/language therapy as a related service, and he needs assistive technologies and other accommodations to support his learning processes. He requires small group settings and close-proximity staff supervision to minimize distractions.

The Student requires extensive support to perform and participate meaningfully and productively in activities of daily living in school, home, community, and work environments. He needs to learn adaptive skills and functional life skills, such as how to prepare food, to maintain hygiene, to be safe in the community, and otherwise to take care of his activities of daily living.

The Student also requires social/behavioral supports to encourage and reinforce behavior in academic and non-academic settings. He requires a behavioral management program. The Student requires transition services designed to facilitate his transition from school to postsecondary activities. Because of his significant intellectual disabilities and his adaptive skills needs, the Student is pursuing a Maryland High School Certificate of Program Completion, not a High School Diploma.

*[School 2]'s Program*

Ms. XXXX testified extensively about the program at [School 2]. I accept her testimony as credible, in that it was highly detailed and thorough, as would be expected of a special education placement expert whose job involves placing hundreds of students in private placements in the area. Ms. XXXX testified that [School 2] is a unique school in that it is both a XXXX public charter school as well as a private day school. Contrary to the Parent's and her sister's observation from their single visit to the school that the school educates students with IEPs in the same classroom as students without IEPs, Ms. XXXX explained that all students at

[School 2] have IEPs and require full-time special education services. All students in the school have significant cognitive disabilities, like the Student, and, also like the Student, all require a modified curriculum. There is a large population of students at [School 2] who, like the Student, have diagnoses of both Autism and Intellectual Disability. All students are working, as is the Student, to complete their Maryland High School Certificate of Program Completion, and not a High School Diploma.

At [School 2], leading Autism interventions and strategies are available for students with Autism. All teachers participate in online training in Applied Behavioral Analysis, critical in treating Individuals with Autism. Teachers also use principles from the TEACCH model, which is widely accepted as the best practice program for students with Autism. In the classrooms for students with both Autism and cognitive disabilities, like the Student, teachers use important teaching strategies such as prompt hierarchies, errorless teaching and discrete trial training.

[School 2] addresses the Student's needs with regard to curriculum modification as well. At [School 2], the curriculum is modified depending on the student's needs as reflected in his/her IEP. In addition, despite the classroom size that the Parent and her sister may have observed on the day they visited [School 2], the school satisfies the Student's requirement for a small, structured classroom environment with close-proximity staff supervision to minimize distractions. Ms. XXXX explained that the ratio of students to staff at [School 2] is two to one. For students ages thirteen and over, there are thirteen students in a class, but there are usually only seven or eight students in a classroom at any one time because students regularly rotate out of the classroom to do in-house activities or to participate in off-site community-based instruction and occupational training, which is embedded into the program at [School 2]. These seven or eight students who are in the classroom at any one time are accompanied by a minimum of four adults.

To address the Student's behavioral issues, Ms. XXXX explained [School 2] has on its permanent staff a Behavioral Support Team, with three Board Certified Behavioral Analysts and one assistant, as well as two Registered Behavioral Technicians. These staff members work mostly with the students with Autism, collecting data, developing BFAs and BIPs, participating in IEP team meetings, developing goals and objectives and monitoring students' progress.

In addition, embedded in the curriculum at [School 2] is functional academics, which serves the Student's need for extensive support to learn adaptive skills and functional life skills. The program teaches skills in communication and personal and social functional skills, and uses self-help activities. Transition planning for the Student's post-high school years is also included in the curriculum at [School 2]. Students learn office tasks and kitchen skills and engage in horticulture activities. Students may participate in internships in the building.

Also, related services are provided to students at [School 2]. The Student will have the services of the school's in-house speech/language pathologist to implement the requirements in his IEP for such services. He also has access to a licensed social worker, if necessary. In addition, on staff are four full time nurses and an assistive technology specialist, which will satisfy the Student's needs, and which not all private schools utilize.

The Parent expressed concern about what she claimed is the long bus ride from the Student's home to [School 2]. She claimed that the Student has had problems with bus rides in the past. However, she failed to provide any credible evidence as to how long the bus ride would be, or what problems the Student has on bus rides. Mr. XXXX testified that it took him more than one hour to travel to [School 2] when he visited the school with the Parent, but he did not specify his starting point. For example, he did not specify whether he calculated the start of the ride from when he left his own home or from when he left the Student's home. Without more specificity, I cannot judge the accuracy of this claim. Accordingly the Parent has failed to show

that the distance between the Student's home and [School 2] makes his placement there inappropriate.

I am sympathetic to the Parent's concerns about the Student's future. Nonetheless, on the record before me, I am unpersuaded that the Student was denied a FAPE by PGCPs. As aptly described by the Fourth Circuit in *A.B. v. Lawson*,

IDEA's FAPE standards are far more modest than to require that a child excel or thrive. The requirement is satisfied when the state provides the disabled child with "personalized instruction with sufficient support services to permit the child to benefit educationally from the instruction." *Rowley*, 458 U.S. at 203; *accord MM*, 303 F.3d at 526-27; *Hartmann*, 118 F.3d at 1001.

*A.B.*, 354 F.3d at 330. Here, PGCPs offered a FAPE to the Student by implementing his agreed-upon IEP in a private day school setting such that the Student would benefit educationally. Indeed, all of the parties agree that the IEP was reasonably calculated to confer some educational benefit. *Id.* at 330-31.

As I have already found that the PGCPs placement was reasonably calculated to provide the Student with a FAPE, I need not address the issue of whether a different private placement is appropriate. Accordingly, I find that PGCPs provided the Student with a FAPE for the 2016-2017 school year, and placement at [School 1] or any other alternative private placement is not appropriate in this case.<sup>3</sup>

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

1. The Parent failed to prove that PGCPs took action to prevent the Student from attending [School 1]. *Schaffer v. Weast*, 546 U.S. 49 (2005).

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<sup>3</sup> Because I am finding in favor of the PGCPs on the merits, its motion for judgment is hereby DENIED.

2. The placement by PGCPS for the 2016-2017 school year at [School 2] was an appropriate placement to implement the Student's IEP in that it was reasonably calculated to offer the Student a FAPE. 20 U.S.C.A. § 1412(a)(5) (2010); 34 C.F.R. §§ 300.114(a)(2)(i); 300.117 (2014). *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993).

### **ORDER**

I **ORDER** that the September 15, 2016 Due Process Complaint filed by the Parent on behalf of the Student is hereby **DISMISSED**.

November 23, 2016  
Date Decision Mailed

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Neile S. Friedman  
Administrative Law Judge

NSF/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.