

**XXXX XXXX**

**STUDENT**

**v.**

**PRINCE GEORGE’S COUNTY**

**PUBLIC SCHOOLS**

**\* BEFORE MICHAEL J. WALLACE,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No. MSDE-PGEO-OT-17-31192**

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

**DECISION**

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

**STATEMENT OF THE CASE**

September 29, 2017, XXXX XXXX, the Student’s legal guardian (Parent) filed a Due Process Complaint (Complaint) on the Student’s behalf with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Prince George’s County Public Schools (PGPS) under the Individuals with Disabilities Education Act (IDEA). 20 United States Code Annotated (U.S.C.A.) § 1415(f)(1)(A) (2017).

On October 11, 2017, the Parent and PGPS participated in a resolution meeting, but were unable to resolve their dispute. I held a telephone prehearing conference on November 20, 2017. The Parent was represented by Jaime E. Ember, Esquire, and Andrew Nussbaum, Esquire, represented PGPS. By agreement of the parties, the hearing was scheduled for December 15, 19, and 21, 2017, and January 3, 4, and 5, 2018, at locations secured by PGPS.

The due process hearing began on December 15, 2017, and continued on December 19, 2017, at the Largo Government Center in Landover, Maryland; it then continued on December 21, 2017, and after the holiday break on January 3, 2018 at XXXX Elementary School. The hearing was postponed on January 4, 2018, because of weather-related school closings and concluded on January 5, 2018, at XXXX Elementary School. Ms. Ember represented the Student and Mr. Nussbaum represented PGPS.

The hearing date requested by the parties fell more than forty-five days after October 27, 2017, the day the resolution meeting was held and the parties failed to resolve the dispute. At the pre-hearing conference the parties and I reviewed every date, allowing for a brief period for preparation and selection of witnesses and the ten-day subpoena request period, and the earliest available date for the hearing was December 15, 2017. The parties submitted written verification of their conflicts, which are contained in the record, and requested an extension of the forty-five-day due date for the decision in this case. The law allows for specific extensions of time at the request of either party. 34 Code of Federal Regulations (C.F.R.) § 300.515(c) (2017). As detailed above, I find that there is good cause to extend the due date to thirty days from the close of the record on January 5, 2018, or until February 4, 2018. Because February 4, 2018, falls on a Sunday, the decision is due by the last previous business day, which is February 2, 2018. *Id.* §§ 300.510(b)-(c), 300.515(a).

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2017); Md. Code Ann., Educ. § 8-413(e)(1) (Supp. 2017); 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; the 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. 2017); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

The issues are as follows:

1. Is the Individualized Education Program (IEP) developed for the Student by the IEP team at PGPS for the 2017-2018 school year (SY), which recommends that the Student be placed in the Autism Program at \* Middle School (MS),<sup>1</sup> reasonably calculated to provide the Student with a free appropriate public education (FAPE) in the least restrictive environment (LRE)?; and
2. Was the IEP team's determination that the Student attend and receive his educational program for the 2017-2018 SY at MS, the Student's neighborhood school, an appropriate educational placement decision for the Student?
3. If there was a denial of FAPE, what is the appropriate remedy?

### **SUMMARY OF THE EVIDENCE**

#### Exhibits

The Parent offered the following exhibits for admission into evidence.

- Parent Ex. 1. Not submitted
- Parent Ex. 2. Settlement Agreement between PGPS and Parent, dated February 10, 2017
- Parent Ex. 3. Not submitted
- Parent Ex. 4. Not submitted
- Parent Ex. 5. Speech-Language Assessment, dated March 10, 2010
- Parent Ex. 6. Evaluation Report and Determination of Initial Eligibility, dated September 3, 2010
- Parent Ex. 7. Not submitted
- Parent Ex. 8. Not submitted
- Parent Ex. 9. Not submitted
- Parent Ex. 10. Confidential Psychological Report, dated October 1, 2010

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<sup>1</sup> The names of the Student's schools are omitted, and initials are utilized rather than the names of certain individuals, in order to maintain confidentiality.

Parent Ex. 11. Not submitted  
Parent Ex. 12. Not submitted  
Parent Ex. 13. Not submitted  
Parent Ex. 14. Not submitted  
Parent Ex. 15. Psychological Assessment Report, dated February 26, 2016  
Parent Ex. 16. Educational Assessment Report, dated August 29, 2016  
Parent Ex. 17. IEP, dated September 8, 2016  
Parent Ex. 18. Not submitted  
Parent Ex. 19. Educational and Clinical Psychological Report, dated March 30, 2017  
Parent Ex. 20. Speech and Language Assessment, date March 10, 2017  
Parent Ex. 21. Occupational Therapy Assessment Report, dated April 6, 2017  
Parent Ex. 22. Confidential Comprehensive Psychological Evaluation, dated May 11, 2017  
Parent Ex. 23. Not submitted  
Parent Ex. 24. Occupational Therapy Assessment Report, dated June 9, 2017  
Parent Ex. 25. Prior Written Notice, dated June 2, 2017  
Parent Ex. 26. Prior Written Notice, dated June 2, 2017  
Parent Ex. 27. Draft IEP, dated June 5, 2017  
Parent Ex. 28. Speech and Language Assessment, dated June 12, 2017  
Parent Ex. 29. Not submitted  
Parent Ex. 30. IEP, dated June 12, 2017  
Parent Ex. 31. Not submitted  
Parent Ex. 32. Not submitted  
Parent Ex. 33. Prior Written Notice, dated June 14, 2017  
Parent Ex. 34. Not submitted  
Parent Ex. 35. IEP, dated June 26, 2017  
Parent Ex. 36. Progress Report on IEP Goals, dated November 29, 2017  
Parent Ex. 37. Not submitted  
Parent Ex. 38. IEP, amended July 20, 2017  
Parent Ex. 39. Email between Parent and XXXX XXXX, dated July 14, 2017  
Parent Ex. 40. Not submitted  
Parent Ex. 41. Not submitted  
Parent Ex. 42. Not submitted  
Parent Ex. 43. Not submitted  
Parent Ex. 44. Email between Parent and XXXX XXXX, dated August 23, 2017  
Parent Ex. 45. IEP, amended August 24, 2017  
Parent Ex. 46. Email between Parent and XXXX XXXX, dated September 12, 2017  
Parent Ex. 47. Not submitted  
Parent Ex. 48. Not submitted  
Parent Ex. 49. Not submitted  
Parent Ex. 50. Prior Written Notice, dated September 29, 2017  
Parent Ex. 51. Email from XXXX XXXX, dated September 29, 2017  
Parent Ex. 52. Email from XXXX XXXX, dated October 30, 2017  
Parent Ex. 53. Mathematics Instructional Plan, undated  
Parent Ex. 54. Not submitted  
Parent Ex. 55. Parent Notice of Head Injury, dated October 10, 2017

- Parent Ex. 56. Email from Parent, dated November 15, 2017
- Parent Ex. 57. Email from Parent, dated November 15, 2017
- Parent Ex. 58. Email from XXXX XXXX, dated November 28, 2017
- Parent Ex. 59. Not submitted
- Parent Ex. 60. Classwork of Student, dated September 13, 2017
- Parent Ex. 61. Student's Agenda Book for SY 2017-2018
- Parent Ex. 62. Copy of Student's writing sample, undated
- Parent Ex. 63. Classwork of Student, dated October 13, 2017
- Parent Ex. 64. Math Pre-test Analysis, undated
- Parent Ex. 65. English Language Arts/Literacy Assessment Report 2016-2017
- Parent Ex. 66. Mathematics Assessment Report 2016-2017
- Parent Ex. 67. Student's Period 1 Progress Report for Academic Year 2018
- Parent Ex. 68. Not submitted
- Parent Ex. 69. Not submitted
- Parent Ex. 70. Not submitted
- Parent Ex. 71. PGPS Administrative procedure 0500, dated August 8, 2017
- Parent Ex. 72. Not submitted
- Parent Ex. 73. Not submitted
- Parent Ex. 74. Not submitted
- Parent Ex. 75. Not submitted
- Parent Ex. 76. Professional Vita of XXXX XXXX, Ph.D
- Parent Ex. 77. Not submitted
- Parent Ex. 78. Vita of XXXX XXXX, Ph.D.
- Parent Ex. 79. Student's quarterly progress report for second semester of SY 2017-2018

I admitted the following documents on behalf of PGPS:<sup>2</sup>

- PGPS Ex. 1. Student's IEP for 2017-2018 SY, dated June 13, 2017
- PGPS Ex. 2. IEP Invitation Letter from PGPS to Parents, dated June 12, 2017, with attached Parent Report form and IEP Team Meeting Response Form
- PGPS Ex. 3. Continued Eligibility Data and IEP Meeting Notes, dated May 5, 2017
- PGPS Ex. 4. Prior Written Notice, dated June 26, 2017
- PGPS Ex. 15. Samples of Student's Math classwork with instructor feedback
- PGPS Ex. 16. Reading/English/Language Arts work samples
- PGPS Ex. 17. Social Studies work samples
- PGPS Ex. 22. Resume of XXXX XXXX
- PGPS Ex. 23. Resume of XXXX XXXX, Ph.D.
- PGPS Ex. 24. Resume of XXXX XXXX
- PGPS Ex. 25. Resume of XXXX XXXX
- PGPS Ex. 26. Resume of XXXX XXXX, OTD, OTR/L
- PGPS Ex. 27. Resume of XXXX XXXX.

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<sup>2</sup> Counsel for PGPS stated that many of the exhibits that he intended to submit were already offered and accepted into the record as Parent Exhibits. He stated that where his documents were duplicative of the Parent's documents, he would rely on the Parent's documents and not submit a duplicate as a PGPS Exhibit. Counsel for the Parent did not object.

PGPS Ex. 28 Resume of XXXX XXXX, Ed.D  
PGPS Ex. 29. Resume of XXXX XXXX

Testimony

The Parent testified on behalf of the Student and presented the testimony of the following witnesses:

XXXX XXXX, Ph.D. School Psychologist. Expert in school psychology

XXXX XXXX, Ph.D. Speech and Language pathologist. Expert in speech and language pathology. Testified by telephone

XXXX XXXX Educational Consultant/Advocate

PGPS presented the following witnesses:

XXXX XXXX Instructional Specialist, Speech and Language Pathologist. Expert in speech and language pathology

XXXX XXXX,  
OTD, OTR/L Occupational Therapist. Expert in occupational therapy

XXXX XXXX, Ed.D. Instructional Specialist, Elementary Math and Special Education. Expert in special education and mathematics

XXXX XXXX School Psychologist. Expert in school psychology

XXXX XXXX Compliance Specialist with PGPS. Expert in special education

XXXX XXXX Autism Support Teacher at MS. Expert in special education

XXXX XXXX Principal at MS

XXXX XXXX Autism Instructional Specialist at MS. Expert in special education and Autism

**FINDINGS OF FACT**

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

Background

1. The Student is eleven years old and has been found eligible for special education services as a student with autism.
2. In July 2011, when the Student was five years-old, his father was incarcerated and the father's cousin and his wife, the Parent, were granted legal custody of the Student.
3. Since that time, the Student has been living with the Parent and her family, which consists of the Parent's husband and their two minor children.
4. Currently, the Student is in the sixth grade at MS and is receiving special education services.
5. During his pre-school years the Student was found eligible for specialized educational services because of developmental delays, possibly due to exposure in utero.
6. He received developmental services at the [Center] and continued there until he was five years old.
7. At age five, the Student was enrolled in kindergarten at \* Elementary School (ES).
8. In second grade, his IEP disability was changed to Autism Spectrum Disorder (ASD).
9. In third grade, the student was enrolled at ES and was receiving instruction in the [Program] ([PROGRAM]). He displayed atypicality, social withdrawal, attention difficulties, and poor overall adaptive skills.
10. By fourth grade, the Student was still in the [PROGRAM] class in a self-contained classroom as a student with ASD. At that time he began to show improvement socially. He also began to take more of a leadership role in his class and was elected XXXX by his peers.

11. On December 4, 2015, the Student had an educational assessment performed by his special education teacher. This evaluation revealed that the Student's oral language skills were low, his fluency with academic tasks was in the average range, his academic skills were in the low-average range, and his ability to apply academic skills was in the low range. His standard scores in broad reading and brief reading were average, his broad written language and written expression scores were in the low-average range, and his standard scores in broad mathematics, math calculation skills, brief mathematics, and brief writing were low.

12. On February 11, 2016, the Student had a comprehensive psychological assessment performed by school psychologist XXXX XXXX.

13. At that time, the psychological evaluation revealed that the Student's cognitive potential fell within the below-average range. His nonverbal abilities were more advanced than his verbal abilities, and his full-scale IQ was within the low-average range. There continued to be concerns over his socialization skills with his peers and adults, his atypical language and his tendency to perseverate on specific topics.

14. The Student's fifth grade IEP provided for approximately twenty-four hours of special education services outside of general education per week. His inclusion in general education classes was to begin gradually throughout the school year.

15. The Parent was not happy with the Student's progress in the fifth grade at ES and felt that the curriculum was not challenging enough for the Student.

16. On February 10, 2017, PGPS met with the Parent for a resolution session and during that meeting entered into a Settlement Agreement (Agreement) with the Parent within which PGPS agreed to:

- Fund independent psychological, educational, speech and language and occupational therapy evaluations within sixty days of the agreement;
- Conduct an assistive technology (AT) consultation with an AT specialist and share the results at an IEP meeting;
- Convene an IEP meeting to review the results of the independent evaluations and to consider these evaluations/results in drafting an IEP for SY 2017-2018;
- Refer the Student to a Central IEP (CIEP) team to determine the appropriate, least restrictive (LRE) placement for the Student;
- Discuss the need for a functional behavior assessment (FBA) and a behavior intervention plan (BIP) once the LRE is determined;
- Determine the need for compensatory education after the CIEP LRE determination; and,
- Agree to a record review for the Parent after the beginning of the SY.

17. On February 26, 2017, an independent educational and clinical psychological evaluation was conducted by XXXX XXXX, Ph.D. The evaluation included testing as well as Student, Parent and teacher input.

18. The evaluation revealed that the combination of the Student's scores in all subsets placed his overall achievement in the average range but there was significant variability across the subjects. He was in the average range in reading and written language, showing strong reading comprehension and writing skills, but in the low or very low range in mathematics, particularly in calculations and math fluency.

19. The evaluation further revealed low self-esteem, feelings of insecurity, and concerns about rejection.

20. Dr. XXXX concluded that the results of the testing indicated ASD and a Specific Learning Disorder as well as Emotional Distress, and that the complexities of these multiple disorders warrant a separate, full-day specialized special education program. She conceded that her evaluation was done in a clinical setting, not an educational setting, and that her conclusions should not be the sole basis for any educational and placement decisions. She noted that her evaluation should only be considered by the IEP team after review of all evaluations and other information including the Student's classroom performance.

21. On March 3, 2017, an independent speech and language evaluation was performed by XXXX XXXX, Ph.D.

22. Dr. XXXX concluded that the Student's core language score and receptive vocabulary skills fell within the below-average range, his expressive vocabulary skills were in the average range, and his articulation, oral motor, fluency and vocal skills were within normal limits for his age and gender.

23. Dr. XXXX, in her evaluation report, suggested the Student receive direct speech-language services addressing deficits in receptive and expressive language skills as well as receptive vocabulary for one hour per week outside of general education, but during her testimony she conceded that a half hour per week was sufficient to address the Student's needs.

24. Dr. XXXX's assessment did not assess pragmatics, and did not include an item analysis with a profile of strengths and weaknesses or a statement regarding the educational impact of her findings on the Student.

25. On March 26, 2017, an independent occupational therapy (OT) evaluation was performed by XXXX XXXX, M.S., OTR/L. Ms. XXXX's evaluation consisted of informal

writing samples, clinical observations and testing of the Student, and a telephonic interview with the Parent.

26. The evaluation revealed that the Student possessed age-appropriate gross motor skills, visual motor/perception, and some areas of sensory processing skills. He showed deficits with fine motor skills, particularly with writing mechanics. Specifically, he showed deficits with his pencil grip, which impacted his writing speed and the size of his letters. This assessment did not provide scores for visual or auditory components, and was a clinical assessment as opposed to a school-based assessment to determine if school-based OT services were appropriate.

27. In her assessment, Ms. XXXX suggested that the Student be given options to use a computer to complete his written work if handwriting becomes too difficult or fatiguing. She further suggested OT services twice monthly along with additional OT monthly on a consultative basis to address the deficits in his fine motor skills.

28. On May 6, 2017, an independent clinical comprehensive psychological evaluation was performed by Dr. XXXX XXXX, Ph.D., of XXXX Group, under the supervision of XXXX XXXX, Psy.D., to assess the Student's current level of cognition.

29. The evaluation showed the Student's overall IQ as well as his score on the General Ability Index to be in the average range for children his age. His fluid reasoning was relatively strong compared to working memory and processing speed, which were weaker but still within the average-to-low-average range, with some deficits in the areas of verbal comprehension skills, visual spatial skills, fluid reasoning, working memory and processing speed.

30. Dr. XXXX conceded that his evaluation was done in a clinical setting and that his evaluation is only one part of the evaluation process. He noted that his conclusions should not be

the sole basis for any educational or placement decision. He noted that his evaluation should only be considered by the IEP team after review of all other evaluations and information including the Student's classroom performance.

31. On May 24, 2017, the IEP team met at ES to consider the independent evaluations. In attendance were ten team members including the Parent, her educational advocate Ms. XXXX, an occupational therapist, special education and general education teachers, a compliance specialist, and a school psychologist.

32. At the May 24, 2017 meeting the team reviewed and discussed the independent assessments and conclusions in order to determine the Student's educational needs as well as his strengths and weaknesses. The Team considered the Parent's input and determined that additional assessments were needed in the areas of speech and language as well as OT and a classroom observation of the Student to determine the most appropriate LRE.

33. At this meeting, the Parent requested that the Student's disability code be changed to Multiple Disabilities but the Team declined because the Student did not have more than one disability from any of the three categories of disabling conditions (cognitive, sensory or physical) that together cause problems that render the Student unable to be accommodated in a program solely because of one of the impairments.

34. On May 31, 2017, an OT assessment was performed by Dr. XXXX XXXX for PGPS to gather additional data from within the Student's educational environment to determine his current level of functional performance, particularly in the area of written language (handwriting) and to see if he needed OT support services to access the school environment and curriculum.

35. The May 31, 2017 evaluation consisted of a record review, an informal handwriting assessment, interviews with and questionnaires from the Student's teachers and Parent, interview and observation of the Student, clinical testing, observations in the school setting, and functional testing, including typing tests.

36. The Dr. XXXX's OT assessment showed that the Student possessed fine motor skills for classroom tool usage and foundational gross motor skills that would allow him to physically access his educational environment. He was able to self-advocate on things that bother him, and was eager to learn new skills and technologies such as typing and computer based tools. The Student required constant reminders to stay on task with certain topics, however, and had difficulty transitioning from a more preferred task to a less preferred task. At times the Student was fidgety, disorganized, and impulsive, and he sometimes had trouble following the classroom routine and rules. He showed some overt sensitivities to sensory information and/or overload, particularly in loud environments. These factors impact his ability to participate in social interactions, cooperative learning, and functional tasks with his peers in the general education setting and affect his availability for learning and accessing the curriculum throughout the day.

37. Dr. XXXX suggested additional strategies and modifications to assist the Student in meeting his educational requirements. She did not feel that the Student required education services outside of the general education setting.

38. On May 31, 2017 a speech and language assessment was performed for PGPS by XXXX XXXX, a Speech and Language Pathologist, to identify the Student's social language needs, to describe the extent and effectiveness of the Student's use of receptive and expressive language in the classroom and how it impacts his access to his curriculum, and to identify any

other instructional implications of the Student's disability. The assessment consisted of clinical testing, interviews with the Student, and input from his teachers. In addition, a classroom observation was done by an autism specialist.

39. The speech and language assessment revealed that the Student displayed age-appropriate ability to apply societal rules and expectations during a conversation with respect to greetings, initiation, topic maintenance, and turn taking, was able to evaluate nonverbal cues, and was able to make adjustments to content and delivery as the situation dictated. Some weaknesses were noted in his ability to make polite interruptions and in discerning between essential information as opposed to non-essential information among other things. The Student had trouble making eye contact when speaking or listening in class, and although he sometimes required repetition of multi-step oral instructions he followed written instructions well.

40. During the classroom observation XXXX XXXX, the school autism specialist, observed that the Student needed to be redirected when off task. When he was redirected, he responded. XXXX XXXX determined that the Student needs visual cues and prompts, general education peer modeling, and the opportunity to monitor himself.

41. The Student's disability impacts his processing, attention, focus and expressive/receptive skills, and without accommodations or modifications will affect his involvement in the general education curriculum.

42. The Student requires small group instruction, close proximity to his teacher, and additional adult support to remain focused. He also needs repetition, accommodations, and modifications to be successful in the general education curriculum.

43. The IEP team met again on June 12, 2017, to evaluate and discuss the assessments and to review and revise an IEP drafted on June 5, 2017. The Parent and Ms. XXXX fully

participated. The Parent shared her concerns regarding the Student's educational progress in the [PROGRAM], stated her desire that he have more opportunities to participate in general education classes, and requested extended school year services (ESY) services. At that time additional goals were added for applied problems in mathematics, OT services were added, ESY were discussed and added, LRE suggestions were made, and supplementary aids, services, social/behavioral and instructional supports were put in place.

44. No FBA or a BIP was deemed necessary by the Team.

45. The evaluations and assessments revealed that the Student's disability negatively affects him in the areas of mathematics, social/emotional behaviors, speech articulation, and expressive and receptive language. In math, he does not understand calculations and his math facts fluency is below average compared to his peers. This in turn impacts his participation in the general education curriculum.

46. Based on this negative impact, the Student needs special education support inside the general education classroom in the areas of reading, written language and math, and he needs support outside of the general education classroom with social skills functioning, executive functioning, and weaknesses in math.

47. At the June 12, 2017, IEP meeting, the Team suggested MS as a possible placement to be considered because it has supports and services that could meet the Student's needs in a comprehensive autism program. The Parent did not suggest any alternative placement. No decision was made on placement at that time.

48. After the June 12, 2017, meeting, XXXX XXXX, the PGPS Compliance Specialist, contacted Ms. XXXX,<sup>3</sup> who was a member of the PGPS CIEP team, to discuss the

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<sup>3</sup> No first name for Ms. XXXX was provided.

appropriateness of placing the Student at MS as opposed to another placement. After reviewing the Student's circumstances, Ms. XXXX agreed that MS was an appropriate placement for consideration by the team.

49. On June 12, 2017, XXXX XXXX, the school Autism Support teacher, met the Parent for a tour of MS. After the tour, the Parent felt that the school building was too big and would overwhelm the Student.

50. The IEP modified after the June 12, 2017, meeting called for twenty hours per week of instruction in a co-taught general education classroom, consisting of one hour each day in English, Math, Social Studies, and Science. The IEP also called for special education services to be provided in a full-day special education classroom with a special educator. The Student was to receive autism-specific Academic Resource Support for ten one-hour sessions per month of social skills instruction, executive functioning instruction, and academic support. He was also to receive OT services twice per month to address written work production and technology needs in the classroom as well as organizational strategies and sensory behavior-based strategy needs. These OT services were to be provided both inside and outside of general education.

51. Sometime in June 2017, Dr. XXXX XXXX was consulted to develop a Mathematics Instructional Plan (Math Plan). Dr. XXXX subsequently developed the Math Plan after reviewing the Student's educational history, testing results, and the draft 2017 IEP.

52. The IEP team met again on June 26, 2017. The Parent and Ms. XXXX fully participated. At that meeting, the discussion from the June 12, 2017 meeting continued. Math goals and objectives were modified, home-school communication was added as a supplemental aid and service, and a reading goal was added. Prior to the updated assessments, the IEP team

considered placement in a regular middle school with a resource environment but after considering all of the assessments, it recommended a LRE with autism supports.

53. In addition, the team considered the Parent's request for an AT consultation that was also included the February 10, 2017, Agreement. After discussion, however, the Team decided that the Student's AT needs were considered and incorporated in the OT assessment, and that if the Parent still wanted the AT consultation in the fall of 2017 it would be reconsidered in light of the Student's progress.

54. During the June 26, 2017, meeting the Parent stated that she was willing to allow the Student to attend the autism program at MS with the understanding that an IEP meeting would be reconvened within forty-five days of the beginning of the school year to review the Student's progress and make any adjustments that needed to be made. If meaningful progress was not made, the Parent requested referral to the CIEP team to consider a full-time special education placement.

55. No final determination was made at the June 26, 2017 meeting regarding placement for the 2017-2018 SY.

56. On August 24, 2017, the IEP was revised and finalized and the Student's LRE placement was determined by the Team to be MS. He was to receive instruction in a supported inclusion setting with a general education and special education teacher inside general education for English, Math, and Science for three hours and thirty-five minutes per day, five times per week, and Social Studies in a supported inclusion setting with a general education teacher and a special education teacher for one hour and ten minutes, three times per week.

57. In addition, the Student was to receive autism-specific Academic Resource Support outside general education for social skills and executive support instruction and academic support for ten one-hour sessions per month.

58. The Student was also to receive OT services twice per month to address written work production and technology needs in the classroom, as well as organizational strategies and sensory behavior-based strategy needs. These OT services were to be provided both inside and outside of general education.

59. Finally, the Student was to receive fifteen minutes of counseling per week as a safe check-in with staff to reinforce coping skills, self-advocacy and social skills necessary to the class and school setting.

60. In drafting this IEP, the Team considered and rejected full-time placement in a special education program because it determined that the Student required interaction with non-disabled peers and his disability did not require—and he would not receive appropriate instruction and services in—a restrictive setting such as the [PROGRAM] program at ES.

61. The Team also considered full-time placement in general education with no special education support, placement in general education with special education supports, and placement in a special education classroom to address deficits in social skills, executive functioning, reading comprehension and mathematics. The team determined that the Student required participation with non-disabled peers in the general classroom with special education support for all academic classes except the Academic Resource Support class. He also needed to participate in all non-academic and extracurricular activities with typically-developing peers.

62. Throughout the IEP development process, the Parent, her advocate Ms. XXXX, and the IEP team communicated extensively, both by email and in person, to provide input into

the development and content of the draft IEPs. They attended all meetings and had the opportunity to fully participate and to provide extensive feedback throughout the process. They had the opportunity to make visits at MS and to observe classes as well.

63. The Parent and Student visited MS for a tour on August 24, 2017, so that the Student could familiarize himself with the school and surroundings.

64. The Student attended orientation at MS on September 5, 2017, prior to the first day of classes.

65. On September 5, 2017, the Student's aftercare program offered by the Prince George's County department of XXXX, in which the Parent enrolled the Student, did not operate and the Parent was not aware of this. At the end of orientation, the Student went to the cafeteria to wait for transportation to the aftercare program but after not being picked up, he went to the school office and was sent home on the school bus. The Student did not have any difficulties with this and arrived home safely.

66. The IEP team met on September 21, 2017, to review Dr. XXXX's Math Plan. The Parent and Ms. XXXX were present and participated fully. The Team approved the Math Plan and its implementation in a supported inclusion setting, rather than a co-taught classroom, so that the Student would receive these services in a smaller setting. In addition, math services would also be provided in the Academic Resource Support class.

67. At this meeting, the Parent requested one hundred hours of compensatory tutoring to be provided by XXXX Math Center as opposed to the Math Plan. Because XXXX does not provide this type of support, PGPS proposed thirty-six hours of one-on-one academic tutoring in mathematics with a PGPS teacher under the Math Plan through the end of the fall semester and

then revisit this issue at that time and, depending on the Student's progress, to adjust the amount of hours if necessary. The Parent rejected this offer.

68. On September 21, 2017, Ms. XXXX observed the Student at MS. She saw him in a classroom eating lunch. Ms. XXXX requested another date for a classroom observation.

69. On September 22, 2017, the Parent requested a classroom visit, via email from Ms. XXXX to Principal XXXX XXXX, to observe the Student in his math, reading and Academic Resource Support classes. There was no response so on September 25, 2017, Ms. XXXX sent another request to XXXX XXXX.

70. Because he was on leave, XXXX XXXX did not immediately receive the initial request. He responded on September 26, 2017, and ultimately dates were offered and the parties agreed to a visit and observation on October 2, 2017.

71. The Parent filed her due process complaint on September 29, 2017, citing issues over the reduction of special education hours from the previous year at ES, the September 5, 2017, transportation issue after orientation, the size of the school and number of students causing the Student to be overwhelmed, and asserting that the Math Plan was not adequate and not a satisfactory alternative for compensatory education.

72. On October 2, 2017, Ms. XXXX was not able to observe the Student in Math but observed the Student in Physical Education class, in the Academic Resource Support class, and in the hallway during transition.

73. On or about October 10, 2017, the Student went to the nurse after he bumped his head on a door. He sustained a knot on his head.

74. The IEP team met on October 11, 2017, to discuss the Due Process complaint filed by the Parent. The Parent requested one hundred fifty hours of one-on-one tutoring in

math. The Parent also requested a non-public placement at [School 1] or [School 2]. These requests were denied by PGPS.

75. After the first semester at MS, the Student received the following grades:

Art	A
Physical Education	A
Academic Resource Support	A
Science	B
Math	A
Social Studies	B
Reading/Language Arts	C

76. By November 29, 2017, the Student was making sufficient progress to meet his reading comprehension goal of increasing his reading comprehension skills using a variety of printed material to determine an author's point of view or purpose, and to explain how the point of view or purpose is conveyed, over three consecutive sessions with 80% accuracy. He scored 60% on a worksheet and received a C in the class.

77. By November 29, 2017, the Student was making sufficient progress towards his math calculations goal of selecting and using a strategy to solve addition, subtraction, multiplication, and division word problems with at least 80% accuracy in three-out-of-four trials over three consecutive sessions. He had an A in the class for the fall semester, could determine the correct operation with at least 70% accuracy, and could draw a picture after determining the proper operation with at least 75% accuracy.

78. By November 29, 2017, the Student was making sufficient progress in his writing skills goal of increasing his writing skills to sixth grade proficiency over three consecutive sessions with 90% accuracy. He earned a C in Language Arts, and received guidance from peers and adults to develop writing skills using punctuation with 60% accuracy. When given the

chance to correct, he increased to 100% accuracy. In addition, he demonstrated writing skills with the use of sentence organization with 70% accuracy.

79. By November 29, 2017, the Student was making sufficient progress with his math problem-solving goal of increasing his ability to design, use and communicate a variety of mathematical strategies to solve problems over three consecutive sessions with 80% accuracy. He earned an A in the class and could solve one step/multiple step problems using manipulative and drawing models with 65% accuracy.

80. The Student is making excellent progress with his social/emotional goal of learning coping strategies to apply to four-out-of-five uncomfortable social settings. He checks in with the autism support teacher daily and rates how he is feeling. He consistently rates himself as feeling fine or good and manages his emotions and peer interactions well. He is able to transition through the hallways without difficulty and gets to class on time. He initiates and reciprocates communication with peers. With peer modeling and supports, he can apply learned strategies to four-out-of-five situations consistently.

81. As the Student's autism support teacher and case manager, XXXX XXXX ensured that the IEP was properly implemented and that the recommendations of the various assessment reports were incorporated into the Student's 2017-2018 IEP. XXXX XXXX provided the Student with problem-solving supports by having him check in with her regularly to reduce stress, observing him in the classroom setting and communicating with the Parent and his teachers constantly. If issues are observed, modifications will be made to address the Student's needs.

82. The IEP team determined that the Autism Program at MS will provide the Student with the LRE to address his social, emotional and academic needs with appropriate supports.

83. The IEP team determined that the services provided through the Autism Program are necessary to enable the Student to access the general education grade-level curriculum and opportunities for instruction. The team also determined that the Autism Program would meet the Student's needs for an educational setting with reduced distractions, a reduced number of students in class, reduced noise, and adult support.

84. The IEP also provides that the Student receive special education supports in a general education setting, as well as in a small self-contained setting across the areas of math, executive functioning and social skills.

85. The IEP team also determined that the Student requires services in a setting conducive to his learning needs, behavioral supports to facilitate access to instruction, and coping skills. The Autism Program is located at MS, the Student's home school.

86. The IEP also provides for the Student to receive transportation as a related service so he can attend the Autism Program at MS.

## **DISCUSSION**

### **Legal Principles**

The identification, evaluation, and educational placement of students in special education is governed by the IDEA. 20 U.S.C.A. §§ 1400-1482 (2017); 34 C.F.R. Part 300 (2017); Md. Code Ann., Educ. §§ 8-401 through 8-419 (2014 and Supp. 2017); COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412(a)(1) (2017).

FAPE is statutorily defined as “special education and related services” that are provided “in conformity with the individualized education program required under section 1414(d)” of the IDEA. *Id.* § 1401(9). In 2017, the United States Supreme Court ruled that FAPE “requires an

educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017). Rejecting the “merely more than *de minimis*” test applied by the Tenth Circuit, *id.* at 1000-01, the Court reiterated and clarified principles originally set forth in the *Rowley* decision. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).<sup>4</sup>

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Andrew F.* Court instructed that the “absence of a bright-line rule ... should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Andrew F.*, 137 S.Ct. at 1001 (citing *Rowley*, 458 U.S. at 206). At the same time, the *Andrew F.* Court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “a reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” 137 S. Ct. at 1002.

An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE. *M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F. 3d 315, 319 (4th Cir. 2009). To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the

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<sup>4</sup> In *Andrew F.*, the Court observed that it remains “[m]indful that Congress [despite several intervening amendments to the IDEA] has not materially changed the statutory definition of a FAPE since *Rowley* was decided.” *Id.* (comparing 20 U.S.C.A. § 1401(18) (1976 ed.) with 20 U.S.C.A. § 1401(9) (2012 ed.)).

child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI) (2017).

An IEP shall include “[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).” 34 C.F.R. § 300.320(a)(1)(i) (2017). If a child's behavior impedes his or her learning or that of others, the IEP team, in developing the child's IEP, must consider, if appropriate, development of strategies, including positive behavioral interventions, strategies and supports to address that behavior. *Id.* § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. § 300.324(b)(i).

The Code of Federal Regulations provides, in pertinent part, the following language relevant to the issues in this case:

The State must ensure the following:

- (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

§ 300.107.

- (a) General.

- (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies meet the LRE requirements of this section and §§ 300.115 through 300.120.
- (2) Each public agency must ensure that—
  - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
  - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

§ 300.114(a)(1)-(2).

- (a) The placement decision-
  - (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
  - (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;
- (b) The child's placement-
  - (1) Is determined at least annually;
  - (2) Is based on the child's IEP; and
  - (3) Is as close as possible to the child's home;
- (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

§ 300.116.

Burden of Proof

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Shaffer ex rel. Shaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent has the burden of proving that the Student's IEP was not reasonably calculated to provide him with a FAPE and educational benefit in the LRE, and that the IEP team's decision to place the

Student in an educational program in his neighborhood school was inappropriate.

### Arguments of the Parties

The Parent contends that PGPS failed to follow the Agreement drafted and executed in February 2017 and, as a result, failed to provide an appropriate IEP for SY 2017-2018. She asserts that PGPS pushed the Student into the Autism Program at MS, which the Parent contends is not appropriate for the Student. The Parent further contends that PGPS failed to allow her to meaningfully participate in the IEP process. The Parent argues that the Student needs a full-time, full-inclusion special education program and that placing the Student in general education with only ten hours of special education services per month fails to provide him with a FAPE.

PGPS asserts that the Autism Program at MS is the appropriate educational placement for the Student and that it is not only his home school and the LRE for the Student but is also reasonably calculated to address the Student's continuing academic and behavioral issues and provides the Student with a FAPE.

PGPS contends that it followed proper procedures in drafting the Student's IEP for SY 2017-2018. It convened several IEP meetings and provided the Parent and her education advocate ample opportunities to participate in the creation of the IEP. PGPS further asserts that the Autism Program at MS is appropriate because it is consistent with the Student's goals and objectives on his IEP and will provide the Student with the educational and behavioral supports that he needs. The evidence established that the Student requires small group instruction, close proximity to his teacher and additional adult support to remain focused. He also needs repetition, accommodations and modifications as well as counseling services in order for him to be successful in the general education curriculum. PGPS further contends that no other placements, particularly full time placements, as the Parent requests, are appropriate because the

LRE, which is the Student's home school, can adequately provide the Student with the services and supports he needs in small classes with extensive behavioral supports, in the least restrictive setting. In addition, PGPS asserts that the Student is making satisfactory progress in the Autism program at MS. His grades are good and he is making satisfactory progress in meeting his goals and objectives under the current IEP. PGPS argued that the Student does not need a full-time full inclusion special education program and that to place him in such a restrictive program, as the Parent suggests, would hamper the Student's educational progress. PGPS contends that the Student needs interaction with non-disabled peers and his disability does not require, and he would not receive appropriate instruction and services in a restrictive setting similar to the [PROGRAM] program at ES or any other full-time special education program.

#### Analysis

After the June 26, 2017 IEP meeting, the IEP team recommended that the Student attend the Autism Program at MS. It determined, after considering the Student's history, all of his current evaluations and assessments, standardized testing, parental input and teacher interviews, that the Student could receive educational benefit in the least restrictive setting by being in the general education classroom with special education support. It determined that his disability negatively affects him in the areas of mathematics, social/emotional behaviors, speech articulation and expressive and receptive language. In math, he does not understand calculations and his math facts fluency is below average compared to his peers. This in turn impacts his participation in the general education curriculum. Based on this negative impact, the Student needs special education support inside the general education classroom in the areas of reading, written language and math and he needs support outside of the general education classroom with social skills functioning, executive functioning and weaknesses in math.

This recommendation was based on the IEP team's familiarity with the Student and his individual academic and behavioral needs along with the nature of the Autism Program at MS. The Parent and her education consultant, Ms. XXXX, participated in all of the Student's IEP meetings at issue here, which include the meetings conducted on May 24, 2017, June 12, 2017, June 26, 2017, September 21, 2017 and October 11, 2017.

The Parent testified that the Student continues to exhibit problematic social behavior at home and that his ASD negatively affects his academic performance as well as his social behavior. She stated that he is at times destructive, isolative, does not like being in crowds, displays behaviors related to PICA and anxiety and for these reasons has historically needed a [Program] offering a significant amount of supervision. The Parent, however, stated that she became somewhat concerned about the [PROGRAM] program at ES, feeling that it was too restrictive and became too easy for the Student and felt that he needed a more challenging curriculum. She also expressed interest in having the Student participate in general education with more frequency, feeling that he needed non-disabled role models to assist in the Student's social development. During the June 26, 2017 IEP meeting, the Parent, agreed to try the Autism Program at MS but stated at the hearing that the current IEP provides too abrupt a change for the Student because his special education hours were cut from twenty-four hours per week to ten hours per month. She feels that MS is too large for the Student and that he would be overwhelmed academically and socially. The Parent maintained that the Student's previous IEPs were appropriate and consistent with his previous evaluations and assessments but feels that the current IEP was created without any consideration of her independent evaluations. The Parent asserted that the decision to place the Student at MS was made at an early stage before all data was considered and felt that the decision was made without her input and that she was forced to

agree to it. Additionally, the Parent testified that PGPS failed to provide an appropriate IEP for SY 2017-2018 because it failed to honor the Agreement that was executed in February 2017.

In support of her arguments the Parent presented the testimony of XXXX XXXX who testified as an expert in school psychology, stated that he is a school psychologist who became involved in this case after Ms. XXXX, the Parent's Educational Advocate, contacted him just prior to when the February 2017 Agreement was drafted. He stated that he reviewed the Student's history and commented on the previous assessments that were performed while the Student was a student in the fourth grade. He further commented that historically, the Student's grades were good but that he was not progressing on his previous IEP goals. With regard to the February Agreement, he contended that the PGPS failed to honor the Agreement. He stated that there was no CIEP involvement, and no FBA/BIP. Dr. XXXX stated that the IEP for SY 2016-2017 was appropriate and was consistent with the assessments that were performed in December 2015 and February 2016 and felt that the Student was properly enrolled in the [PROGRAM] at ES. He stated that Dr. XXXX's March 2017 educational assessment results were similar to the result from the previous year's assessment in that it indicated deficits in math and social skills and believed it indicated that a student with such a profile was susceptible to being bullied and needed a [Program] and psychological counseling. He stated his belief that the Student should not be in the general education classroom but needs a full time [PROGRAM] and felt that the current IEP does not address the concerns noted in Dr. XXXX's assessment. He further opined that the placement at MS is not appropriate because it too big and the Student would not be able to tolerate the noise level from so many other children present. He felt that the Student was used to the [PROGRAM] environment, would be overwhelmed in the general education classroom at MS and would not be able to access the curriculum. He believed that the increase in hours in the

general education classroom was too sudden and needed to be increased more gradually. Dr. XXXX stated that the Student needs at least thirty minutes of counseling twice per week and that only fifteen minutes twice per week is insufficient. In addition, Dr. XXXX opined that the Student needs a dedicated aide to help with organization and navigating the hall in such a big school.

While Dr. XXXX did interview the Student for the first time in May 2017, he stated that he did not observe the Student at any time in the classroom at either MS or ES. While he stated that he would have preferred to observe the Student in the classroom instead of only in a clinical setting or at home, he suggested that he was not allowed to observe the Student in the classroom because of the PGPS policy allegedly prohibiting anyone other than the legal guardian from observing a child in a classroom. PGPS, however, allowed Ms. XXXX and the Parent to observe the Student in the classroom but Dr. XXXX did not attend only because his schedule did not allow. In addition, Dr. XXXX did not speak with any of the Student's teachers at ES or MS and his only information relative to the Student's academic performance came from Ms. XXXX, the Parent and the Student's report cards.

I noted that Dr. XXXX is not licensed in Maryland as a Psychologist but he indicated that his certification is pending. He did state that he is licensed in the District of Columbia. He also testified that his business in Maryland forfeited its corporate charter and stated on cross-examination that he received a percentage of the fees paid to Dr. XXXX and Dr. XXXX for their assessments as they were members of his group. It is not clear if this impacted the credibility of Dr. XXXX's testimony but certainly raised concerns over his objectivity and his motivation to testify favorably on behalf of the Parent.

The Parent also presented the telephonic testimony of Dr. XXXX, Speech and Language Pathologist, who testified as an expert in speech and language pathology consistently with the results of her assessment. Dr. XXXX stated that she performed a speech and language assessment on March 3, 2017, at the request of Ms. XXXX. Dr. XXXX stated that the Student's core language score and receptive vocabulary skills fell within the below-average range, his expressive vocabulary skills were in the average range, and his articulation, oral motor, fluency and vocal skills were within normal limits for his age and gender. She felt that the Student would benefit from direct speech and language services outside of general education that addressed his deficits in receptive and expressive language skills as well as receptive vocabulary. She indicated in her report that these services should be for one hour per week, but during her testimony she conceded that a half hour per week was sufficient to address the Student's needs.

Dr. XXXX conceded that her assessment did not address pragmatics, include an item analysis with a profile of strengths and weaknesses or a statement regarding the educational impact of her findings on the Student. She stated that she did not do a classroom type assessment because the school would perform that. She said that she did the clinical part of the Student's overall assessment and that the School did the classroom component. She further stated that she was not familiar with the Autism Program at MS, did not consider any performance data from ES and did not consider any of the Student's educational history other than what was provided by the Parent.

XXXX XXXX testified that she was contacted by the Parent in November 2016 after the Parent had concerns with the Student's progress at ES. She stated that the Parent was not satisfied with the [PROGRAM] and wanted the Student to have general education inclusion with non-disabled and higher-functioning children. They requested a record review from PGPS and

stated that PGPS did not respond immediately. Ms. XXXX stated that by February 2017, PGPS scheduled a resolution session which ultimately culminated in the Agreement of February 10, 2017. Ms. XXXX stated that they attended the May 24, 2017, IEP meeting and the Team wanted more information beyond the independent assessments because these evaluations did not address how the Student performed in the academic setting. She discussed the subsequent IEP meetings in June 2017 and stated that no AT consultation was performed pursuant to the Agreement, there was no CIEP involvement nor was a BIP or the social/emotional issues of the Student considered. She stated that she went for a classroom observation of the Student on September 21, 2017, but was only able to see him in a classroom eating lunch. She theorized that he was there and not in the cafeteria because the cafeteria was too large and he was overwhelmed. She testified that she wanted another classroom observation but that PGPS did not allow it per school policy prohibiting anyone other than a legal guardian to schedule a classroom observation/visit. In fact, however, the PGPS offered four dates for the Parent and Ms. XXXX to attend. She chose October 2, 2017, because it was the only day she had available. Dr. XXXX was not available for any of the dates.

After that observation, sometime in November, Ms. XXXX met in her office with the Student and the Parent and after speaking with the Student, felt that he had regressed, was overwhelmed and was anxious over being late to class after transition. She stated that he had a bruise on his chin but could not say how he sustained it. In December 2017, Ms. XXXX again visited the school and stated that she observed the Student in physical education, that he was playing by himself in street clothes, and that at the end of the period he had a verbal altercation with another student. She further stated that the Student had to crawl through the halls to get

around other students during transition between classes because it was so crowded. No one from PGPS observed the Student crawling in the halls at any time.

PGPS presented the testimony of XXXX XXXX, an Instructional Specialist for Speech and Language who testified as an expert in speech and language pathology. She stated that she did not attend any of the IEP meetings but reviewed the evaluations including Dr. XXXX's. She testified that she helps tailor programs involving speech and language instruction and therapy to students showing deficits in these areas. She testified that Dr. XXXX's evaluation was appropriate in the clinical setting but that there were no pragmatic impressions or in other words, any indication of how he would perform in the classroom or how his deficits would affect him educationally. She explained that Dr. XXXX indicated that the Student was below average in specific areas but did not explain why. She stated that there was no observational data evaluated to ascertain how the Student's disability would manifest in the classroom. She explained that a clinical observation is done in a vacuum but the educational setting provides a multitude of stimuli for the student to contend with. She stated that social and pragmatic language must be evaluated and confidence levels in data shown to eliminate any bias but Dr. XXXX did not do this. For instance, Dr. XXXX failed to perform an item analysis in order to see if patterns of errors existed to determine where the Student's particular educational issues lie so it is not clear from her evaluation what type of intervention he needs.

Ms. XXXX also reviewed XXXX XXXX's evaluation and opined that this evaluation was classroom and educationally based and provided more insight into the Student's educational needs. Ms. XXXX opined that there was no evidence to show that the Student needs direct speech and language services in the school setting. She stated her belief that the Student can be educated in the general education classroom with supports. He has a good language foundation

but just needs social skills training to learn how and when to use his verbal skills. She felt that the IEP and placement at MS was appropriate.

XXXX XXXX, Occupational Therapist, testified as an expert in occupational therapy and stated that she performed an OT assessment on May 31, 2017, to gather additional data from within the Student's educational environment to determine his current level of functional performance, particularly in the area of written language (handwriting) and to see to see if he needed OT support services to access the school environment and curriculum. She described how the evaluation was performed and what it entailed including an informal handwriting assessment, input from his teachers, the Parent and the Student, clinical testing, observations in the school setting, and functional testing. She explained the results consistently with what is contained in her report and noted that she also reviewed the independent OT assessment performed by XXXX XXXX on March 26, 2017. Dr. XXXX stated that Ms. XXXX's assessment provided a good foundation of the Student's strengths and weaknesses in this area but did not consider the school component as it was conducted in a clinical setting. Dr. XXXX further stated that Ms. XXXX's assessment was not thorough enough to be used for the development of an IEP because it was not a school-based assessment to determine school-based needs. Dr. XXXX's assessment considered the fact that the Student is autistic and showed that the Student possessed fine motor skills for classroom tool usage and foundational gross motor skills that would allow him to physically access his educational environment. She noted that the Student showed sensitivities to sensory information and/or overload particularly in loud environments which she felt would impact his ability to participate in social interactions, cooperative learning and functional tasks with his peers in the general education setting and affect his availability for learning and accessing the curriculum throughout the day. She found

however, that he was easily redirected when he wandered off task. With these considerations, she suggested additional strategies and modifications to assist the Student in meeting his educational requirements. She stated that she did not feel that the Student required education services outside of the general education setting. She further noted that consideration was also given to whether the Student had any AT needs as this was a component of her OT assessment and that the Student did not show any AT needs at that time. She further stated that the Team ultimately decided that in the fall of 2017, if the Parent still wanted an AT consultation, it would be revisited in light of the Student's progress.

Dr. XXXX XXXX, Instructional Specialist in Elementary Math and Special Education, testified as an expert in math and special education stated that she was contacted by PGPS in June 2017, during the IEP process, to develop an individualized Math Plan for the Student. Dr. XXXX stated she developed the Math Plan after reviewing the Student's educational history, testing results and the draft 2017 IEP. She further stated that she then met with the teachers at MS to decide how they would implement the Math Plan. She intended to make adjustments to the Math Plan as the needs dictated depending on the Student's performance.

XXXX XXXX, School Psychologist, testified as an expert in school psychology and stated that she performed the Student's triannual assessment in February 2016. She noted that he was in fourth grade and was doing well in school at that time; he was XXXX and appeared to be handling social situations adequately. Ms. XXXX stated that she interviewed the Student as well as the Parent. The Student told her that he was bored with school because it was not challenging enough and she further stated that the Parent was concerned that the curriculum at ES was too easy for him.

Dr. XXXX testified that she reviewed Dr. XXXX's independent evaluation and felt that the evaluation was subjective, used projective testing, included no teacher input, was done in a clinical environment, included no autism-related scales and did not necessarily project how the Student would perform in an academic setting. Ms. XXXX explained that projective testing is not relevant to the school environment and that Dr. XXXX's report did not explain how the Student's behaviors were affecting his ability to access instruction in the school setting.

Ms. XXXX also reviewed Dr. XXXX's psychological assessment and noted that the Student's overall IQ and his score on the General Ability Index were in the average range for children his age. The Student's fluid reasoning, working memory and processing speed were within the "average-to-low-average" range. She further noted that the Student showed deficits in the areas of verbal comprehension skills, visual spatial skills, fluid reasoning, working memory and processing speed. Ms. XXXX agreed with Dr. XXXX in that his evaluation was done in a clinical setting and that his evaluation is only one part of the evaluation process. She stated that development of the IEP should consider all evaluations and information including the Student's classroom performance. She opined that any educational disability must affect a child's ability to learn before special education services are needed. In some instances, she explained, a child's emotional issues may not affect the ability to learn.

Ms. XXXX testified that she participated in the IEP meetings in May and June 2017 and stated that no placement decisions were made at that time even though MS was suggested as a possible option for the Student. After considering all of the available information regarding the Student, she felt that a full-time special education program was not appropriate for the Student. She noted that while the Student is in the average range cognitively, he has ASD, which could impact his ability to access instruction in several areas. However, she felt that he needs only

accommodations and assistance in order to access his curriculum, which could be done in a general education classroom with special education services. Because MS can provide these specialized services and supports, she felt that it is an appropriate placement.

XXXX XXXX, Compliance Specialist with PGPS, testified as an expert in special education and stated that she became involved in this case in January 2017 and drafted the February 10, 2017 Agreement. She detailed the provisions of the Agreement and stated that each of the items in the Agreement were considered and completed by PGPS. Ms. XXXX further stated that she participated in the IEP Team meetings and detailed what took place at each. She testified that all input from the independent evaluators as well as the PGPS assessments were considered and discussed fully and that no final placement decisions were made until after the June 26, 2017, IEP team meeting. She noted that that the Parent consistently stated that she wanted more general education inclusion for the Student than ES provided, and testified that MS was presented as a possible option for placement only at that point. Ms. XXXX stated that after the June 12, 2017, meeting she contacted the Chairman of the PGPS CIEP team, Ms. XXXX, to discuss the appropriateness of placing the Student at MS as opposed to other placements. Ms. XXXX testified that the CIEP Team consists of special educators who review private placements or public placements where extra funding is needed. She stated that the CIEP Team is basically charged with allocating extra resources if a particular placement requires it. After considering the Student's circumstances, Ms. XXXX agreed that MS would be an appropriate placement and that additional funds were not needed if indeed MS was ultimately determined to be the placement decision. As such, a CIEP referral was not necessary.

XXXX XXXX, the Autism Support Teacher at MS, testified as an expert in special education and stated that she is the Student's case manager and she described the comprehensive

Autism Program at MS. She stated that she has a caseload of twelve students and provides emotional, social and executive functioning support to the students in her program. She stated that she has her students check in with her first thing every school day and has them rate their own moods on a scale of one to five: one being the best, with the student being in a very good mood and everything being manageable, and five the worst, meaning that the student is completely overwhelmed. XXXX XXXX stated that the Student generally checks in at a one or two. She further explained that her role is to identify struggling students, observe them in the classroom setting and communicate with parents and teachers constantly. If issues are observed, modifications will be made to address an individual student's needs. She stated that the school has a sensory room with soft lighting and bean bag chairs for autistic students to use when they feel anxious as a way to get away from the stressors of the school that could overwhelm them. She explained that students can use flash cards to alert teachers that the sensory room is needed at any time during the day. She stated that the Student has never needed to use the sensory room. XXXX XXXX further testified that she became involved with the Student's case on June 12, 2017, at the IEP meeting when she met the Parent. She described the tour at MS with the Parent on that date and stated that another tour was done with the Parent and Student on August 24, 2017, before school started to acclimate the Student to the School so he would know what to expect on the first day. XXXX XXXX testified about the incident on September 5, 2017, when the Student went home on the bus after he thought that he was going to the after school program but was unaware that that it was not scheduled for that day. XXXX XXXX stated that there was just a mistake in communications and that the situation was quickly rectified. She testified that she communicated with the Parent two-to-three times per week until the Parent filed for this due process hearing and stated that there was always meaningful communication. XXXX XXXX

described the Student's schedule, stating that it rotates on an "A" day/"B" day format with his academic classes, particularly math, reading/language arts and science meeting five times per week. She further stated that the Student is taught in a supported inclusion setting with seven general education students and nine special education students as opposed to a co-taught classroom because the class size will be smaller and more manageable for the Student. She explained that supported inclusion and co-taught are just two different methods of delivering special education services and do not affect the number of hours or intensity of special education services. She stated that co-taught classrooms are generally larger and noisier with more distractions than a supported inclusion setting. XXXX XXXX stated that she has a "lunch bunch" group that her students can utilize to allow them to eat lunch in a smaller setting as opposed to the cafeteria, which tends to be very crowded and noisy, possibly causing anxiety for her students. She stated that her students are free to eat in the cafeteria if they so desire but are not forced to. This way, she stated, the students have an option at lunchtime.

XXXX XXXX addressed the fact that the school is bigger than the Student was used to at ES and noted that during transition between classes, the Student moves quickly, sometimes runs, because he is competitive and likes to be first. She noted that he does not display any anxiety over transition and kiddingly referred to the halls as a jungle. She noted that the Student likes to get attention from his peers and jokes frequently to do so. She noted that he is easily redirected when off task however. She asserted that she has never witnessed the Student crawling in the halls and has never heard any reports of such behavior, even from the Parent. She further noted that she has not observed any PICA behavior or anxiety and stated that the Student does not withdraw or internalize. She stated that the Student is outgoing, gets along well with his peers and self-advocates well if he has any concerns. She noted that bullying is not an issue, that her

students know how to address such situations and is confident that her students would report any bullying issues pertaining to themselves or others if it was observed. XXXX XXXX stated that she was not made aware of the Student sustaining any type of head injury in October.

XXXX XXXX testified that the Student and his academics are constantly monitored to see if there are any trends developing that need to be addressed. The Student checks in at the beginning of the day, is taught and counseled during the day by XXXX XXXX, and checks in at the end of the day. She conceded that she provides the social skills training that the IEP specifies is to be provided, under social/behavioral support services, by a guidance counselor or a psychologist, but noted that the IEP also calls for these services to be provided by a special educator as well. There was no distinction made in the IEP regarding what type of counseling services were to be provided by a guidance counselor/psychologist and a special education teacher. I must also note that the IEP also specifies that a home/school communication system is to be administered by a special education teacher as part of the social/behavioral support services as well. This role is filled by XXXX XXXX. In addition, the Student's classwork and homework are monitored and XXXX XXXX communicates with the Parent and teachers several times per week. If there is a change in grades or performance, the reasons behind the change are examined as a matter of course. She concluded by stating that the Student is thriving at MS. He is accessing the curriculum, receiving good, passing grades and he is progressing well socially and academically. She opined that a designated aide for the Student is not needed, and in fact would be detrimental to his progress.

XXXX XXXX, Principal at MS, testified that he has observed the Student in physical education class as well as in math and science. He stated that he generally has a significant amount of interaction with parents but that the Parent has not requested any meetings with him.

He has noted no behavioral issues with the Student, has not heard any reports of him crawling in the halls and is unaware of any bullying issues. With regard to the alleged confrontation in physical education class mentioned by Ms. XXXX, he noted that the Student is in middle school where boys the Student's age frequently engage in horseplay. He noted that it is not uncommon for students in middle school to occasionally have confrontations. He stated that if any frequent issues of aggression arise, it is reported and stated that that there is a mechanism in place to deal with such issues. He stated that no such issues involving the Student have occurred.

Finally, PGPS presented the expert testimony of XXXX XXXX, Autism Instructional Specialist at MS. She was qualified as an expert in special education and Autism. She stated that she has vast experience in dealing with autistic children and trains PGPS staff to deal with autistic children at the secondary school level. She testified that a main objective is to place autistic as well as any child in their neighborhood school if possible because autistic children with familiar peers tend to perform better. She stated that she became involved in this case in May 2017 and frequently participates on the IEP team. She testified that she observed the Student in class at ES in the spring of 2017 as well as at MS in December 2017. She observed that the Student liked to garner attention, is very likeable and funny and got along well with his peers. She characterized him as a leader. She agreed that the Student can be easily distracted but is easily redirected and noted that he is doing well at MS both academically and socially. XXXX XXXX stated that she was involved in the IEP process and noted that the Parent wanted more general education inclusion. XXXX XXXX agreed with XXXX XXXX and other members of the IEP team that MS was only suggested as an option in June but that the placement decision was not made until much later. She stated that she has been in constant communication with XXXX XXXX and noted that when any student goes from elementary school to middle school, it

is a big and sometimes difficult transition. She stated that through her communications with school staff and through her own observations, the Student is doing well at MS. He is engaged and well-adjusted and progressing socially as well as academically. She noted that he is being appropriately challenged at MS but was capable of doing well and is making meaningful progress. She testified that most importantly, the Student has more appropriate role models at MS than he had in the [PROGRAM] program at ES and agreed that the supported inclusion model of delivering special education services to the Student was most appropriate because of the smaller classroom size and limited number of distractions. XXXX XXXX also opined that a dedicated aide was not necessary and would in fact be detrimental. The Student does not exhibit the severe behavior typically displayed by children with designated aides. If he had a designated aide, or was not in the general education setting, he would not develop the self-reliance and social skills that he will need by the time he transitions to high school and life beyond high school.

While the Parent complained that PGPS failed to provide an appropriate IEP for SY 2017-2018 and that the decision to place the Student at MS was inappropriate, she failed to support her argument with any evidence to this effect. In fact, PGPS refuted the Parent's arguments with a significant amount of evidence to establish that MS is an appropriate placement and that the current IEP is reasonably calculated to meet the individualized needs of the Student.

Specifically, the Parent asserted that PGPS failed to follow a the Agreement drafted and executed on February 10, 2017, and as a result PGPS pushed the Student into the Autism Program at MS, which the Parent contends is not appropriate for the Student. The Parent further contended that PGPS reduced the Student's number of hours in special education without allowing her to meaningfully participate in the IEP process. The Parent argued that the Student

needs a full time, full inclusion special education program and that placing the Student in general education with only ten hours of special education services per month fails to provide him with a FAPE.

The Parent was not satisfied with the progress that the Student was making at ES, feeling that the curriculum was not challenging enough and that there was not enough inclusion for the Student in the general education classroom. She requested a record review and on February 10, 2017, during a resolution session entered into the Agreement with PGPS within which PGPS agreed to:

- Fund independent psychological, educational, speech and language and occupational therapy evaluations within sixty days of the agreement;
- Conduct an assistive technology (AT) consultation with an AT specialist and share the results at an IEP meeting;
- Convene an IEP meeting to review the results of the independent evaluations and to consider these evaluations/results in drafting an IEP for SY 2017-2018;
- Refer the Student to a Central IEP (CIEP) team to determine the appropriate, least restrictive (LRE) placement for the Student;
- Discuss the need for a functional behavior assessment (FBA) and a behavior intervention plan (BIP) once the LRE is determined;
- Determine the need for compensatory education after the CIEP LRE determination; and,
- Agree to a record review for the Parent after the beginning of the SY.

In addressing whether a failure to comply with the IDEA's procedural requirements can result in a finding that a local school board has failed to provide a free appropriate public education, the Court in *DiBuo v. Board of Education* determined as follows:

[I]n *Hall v. Vance County Board of Education*, 774 F.2d 629 (4th Cir.1985), we “held that the failure to comply with [the] IDEA's procedural requirements, such as the [parental] notice provision, can be a sufficient basis for holding that a government entity has failed to provide a free appropriate public education.” *Gadsby*, 109 F.3d at 956. But our holding in *Hall* does not mean that violation of a procedural requirement of the IDEA (or one of its implementing regulations), in the absence of a showing that the violation actually interfered with the provision of a FAPE to the disabled child, constitutes a sufficient basis for holding that a government entity failed to provide that child a FAPE. We took the opportunity in *Gadsby* to clarify our holding in *Hall* as follows: “However, to the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide a free appropriate public education.” *Id.* *Accord Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir.1990) (no relief granted where the procedural violations complained of had no impact on whether plaintiff-student's IEP adequately assured him of a FAPE); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir.1990) (“the procedural faults committed by the Board in this case did not cause Chris to lose any educational opportunity”). Thus, under our circuit precedent, a violation of a procedural requirement of the IDEA (or one of its implementing regulations) must actually interfere with the provision of a FAPE before the child and/or his parents would be entitled to reimbursement relief of the type sought by the DiBuos.

*DiBuo ex rel. DiBuo v. Bd. of Educ.*, 309 F.3d 184, 190–91 (4th Cir. 2002). See also 20 U.S.C.A. § 1415(f)(3)(E)(ii) (2017).

The Parent asserted that PGPS failed to abide by the terms of the Agreement and as such failed to provide a FAPE to the Student.

There is no dispute that PGPS funded and had independent psychological, educational, speech and language and occupational therapy evaluations done. The Parent claims that not all were performed within sixty days of the agreement, however. An independent educational assessment was performed by Dr. XXXX on February 26, 2017, an independent speech and language assessment was performed by Dr. XXXX on March 3, 2017, an independent OT

assessment was performed by Ms. XXXX on March 26, 2017, and on May 6, 2017, an independent psychological assessment was performed by Dr. XXXX. Of all of the assessments, only the one by Dr. XXXX was performed more than sixty days from the February Agreement. The evidence established, however, that this was only because of scheduling conflicts and not because of any failure on the part of PGPS. In addition, there was no showing that the lateness of this evaluation had any negative impact on the IEP process.

The Parent argued that PGPS failed to conduct an AT consultation with an AT specialist and share the results at an IEP meeting. The evidence showed, however, that neither Ms. XXXX's independent OT assessment nor the May 31, 2017, OT assessment by Dr. XXXX XXXX revealed any need for a separate AT consultation or AT services. Dr. XXXX stated during her testimony that consideration of AT needs are a component of her OT assessments. She testified that the Student had no AT needs at that time and stated that after considering the Student's progress at the beginning of the school year, if the Parent still wanted an AT consultation, it would be revisited in light of the Student's progress.

The Parent argued that the IEP team failed to consider any of the independent assessments in drafting the IEP for SY 2017-2018. As support, she offered the testimony of Dr. XXXX XXXX. He stated that he reviewed Dr. XXXX's March 2017 educational assessment and felt that the results indicated deficits in math and social skills and believed it indicated that a student with a similar profile was susceptible to being bullied and needed a [Program] and psychological counseling. He felt that the Student should not be in the general education classroom but needs a full-time [PROGRAM] and that the current IEP does not address the concerns noted in Dr. XXXX's assessment. He contended that the placement at MS is not appropriate because it too big and the Student would not be able to tolerate the noise level from

so many other children present. He felt that the Student was used to the [PROGRAM] environment, would be overwhelmed in the general education classroom at MS and would not be able to access the curriculum. It must be noted however, that Dr. XXXX did not observe the Student in the classroom either at ES or at MS and he did not speak with any of the Student's teachers. His only information relative to the Student's school performance came from Ms. XXXX, the Parent and the Student's report card.

On the other hand, there was a vast amount of testimony presented to establish that there was extensive discussion during IEP meetings on May 24, June 12, and June 26, 2017, regarding the Student's assessments and academic history. At the May 24 meeting, the IEP team met specifically to review and discuss the Parent's independent assessments and conclusions to determine the Student's educational needs as well as his strengths and weaknesses. At that meeting, the Team considered the Parent's input and determined that additional assessments were needed in the areas of speech and language as well as OT and a classroom observation of the Student was needed to determine the most appropriate LRE. The evidence further showed that Dr. XXXX performed an OT assessment on May 31, 2017, and on the same day Ms. XXXX performed a speech and language assessment. In addition, XXXX XXXX did a classroom observation. The Team met again on June 12, 2017, to evaluate and discuss the assessments and to review and revise the IEP drafted on June 5, 2017. The Parent and Ms. XXXX fully participated. The Parent shared her concerns regarding the Student's educational progress, stated her desire that he have more opportunities to participate in general education classes and requested ESY services. At that time additional goals were added for applied problems in mathematics, OT services were added, ESY services were discussed and added, LRE suggestions were made and supplementary aids, services, social/behavioral and instructional supports were

put in place. Ultimately, an IEP was drafted with the full participation of the Parent, her advocate, the PGPS staff, teachers, and independent evaluators. There was extensive testimony from Ms. XXXX, Dr. XXXX, and Dr. XXXX who all consistently testified that the independent assessments, while providing a good foundation of the Student's strengths and weaknesses, were subjective, included no teacher input, were done in a clinical environment, included no autism-related information and did not necessarily project how the Student would perform in an academic setting. The evidence strongly established that the independent assessments and evaluations that were performed were considered by the IEP team but these assessments did not provide a full educational picture of the Student and the team determined that more, educational-based information was needed before the IEP could be developed. The Team felt that the independent assessments did not consider the school component as they were all conducted in a clinical setting. The educational setting provides a multitude of stimuli for the student to contend with which results in a more accurate indicator as to how a given student will perform in the classroom. Even Dr. XXXX and Dr. XXXX, stated in their reports that their evaluations were done in a clinical setting and were only one component of the evaluation process and suggested that their assessments should only be considered by the IEP team after review of all other evaluations and information including the Student's classroom performance.

While the Parent contended that the IEP team failed to consider her independent assessments, she offered no evidence to refute the evidence provided by PGPS.

The Parent argued PGPS failed to refer the Student to a CIEP team to determine the appropriate LRE placement for the Student. The evidence presented showed that there was, in fact, no referral to a CIEP team to consider the Student's placement. After the June 12, 2017 meeting, XXXX XXXX, the PGPS Compliance Specialist, contacted Ms. XXXX, the Chairman

of the PGPS CIEP Team, to discuss the appropriateness of placing the Student at MS as opposed to another placement. The evidence presented established that the CIEP Team consists of special educators who review private placements or public placements where extra funding is needed. The CIEP Team is charged with allocating extra resources if a particular placement requires it. After considering the Student's circumstances, Ms. XXXX agreed that MS would be an appropriate placement and that additional funds were not needed if indeed MS was ultimately determined to be the placement decision. As such, there was no CIEP team referral, but the Chairman of the CIEP team was consulted. A CIEP team referral was not necessary. While PGPS technically failed to meet this provision of the Agreement, the evidence does show that a CIEP member was consulted. This technical violation did not interfere with the provision of a FAPE.

The Parent argued that PGPS failed to discuss the need for a FBA and the need for a BIP. There was an abundant amount of testimony provided regarding the Student's behavior. The Parent testified that the Student exhibited problematic social behavior at home and that his ASD negatively affects his academic performance as well as his social behavior. She stated that he is at times destructive, isolative, does not like being in crowds, and displays behaviors related to PICA and anxiety. In addition, the Parent offered the testimony of Ms. XXXX, the Parent's Education advocate, who stated that during an observation she observed the Student in Physical Education class and that he was playing by himself in street clothes and that at the end of the period, he had a verbal altercation with another student. She further stated that the Student had to crawl through the halls to get around other students during transition between classes because it was so crowded, and stated that on one occasion the Student came home with a bruise on his chin but could not say how he sustained it and on another occasion in October 2017 the Student

sustained a head injury.

In addition, the Parent presented the testimony of Dr. XXXX who, as discussed above, felt that the Student was susceptible to being bullied and needed a [Program] and psychological counseling and should not be in the general education classroom. Dr. XXXX's base of information is extremely limited and possibly biased as it came mostly from the Parent and Ms. XXXX.

The evidence presented by PGPS, however, is in stark contrast to the Parent's contentions regarding the Student's behavioral issues. In fact, none of the issues noted by the Parent and her advocate were observed by anyone in the school environment. No one who performed any of the Student's assessments observed any problematic behavior and all of his teachers noted that the Student is well adjusted and doing well socially. XXXX XXXX observed the Student at ES and at MS and observed that the Student likes to garner attention, is very likeable and funny and gets along with his peers. She noted that the Student can be easily distracted because of his ASD but is easily redirected. She observed no behavioral issues. Similarly, XXXX XXXX, the Autism Support Teacher at MS, testified that she interacts with the Student daily. She observed that the Student does not display any anxiety over transition between classes but just likes to move quickly, sometimes runs, to his next class only because he is competitive and likes to be first. She stated that he kiddingly referred to the halls as a jungle and noted that he likes to get attention from his peers and jokes frequently to do so. She observed that he is easily redirected when off task and has never witnessed the Student crawling in the halls and has never heard any reports of such behavior, even from the Parent. She did not observe any PICA behavior or anxiety and noted that the Student does not withdraw or internalize. She further observed that the Student is outgoing, gets along well with his peers and self-advocates well if he has any

concerns and further noted that bullying is not an issue. These witnesses see the Student daily and are in a position to know his behavior in school better than Ms. XXXX.

The evidence further established that the Student and his academics are constantly monitored to see if there are any trends developing that need to be addressed. The Student checks in at the beginning of the day, is taught and counseled during the day by XXXX XXXX, and checks in at the end of the day. The evidence also showed that the Student is accessing the curriculum, receiving good, passing grades and is progressing well socially and academically. The IEP Team, therefore, clearly considered the Student's behavior particularly in the school setting and reasonably determined that no FBA was necessary nor was a BIP.

The agreement contained a requirement that PGPS determine the need for compensatory education after the CIEP LRE determination. The Parent contended that she requested compensatory education initially in the amount of one hundred hours of private tutoring in math but that PGPS countered with the development of Dr. XXXX's Math Plan. The Parent contended that the Math Plan was not sufficient and that IEP team failed to take the results and findings of her independent assessments into consideration. During the hearing, the Parent presented no evidence in support of compensatory education and in fact, no need for compensatory education was shown by her to exist. Additionally, the IEP team, as discussed above, determined that no CIEP involvement was necessary as the Student's home school was being considered as the LRE.

Finally, with regard to the Agreement, the last provision was that a record review be done after the beginning of the SY to assess the Student's progress and to make any adjustments to the IEP as needed. At the June 26, 2017, IEP meeting, the Parent expressed that she was willing to allow the Student to attend the Autism program at MS with the understanding that there would

be a reconvened IEP meeting within forty-five days of the beginning of the school to review the Student's progress and to make any adjustments that needed to be made. If meaningful progress was not made, the Parent wanted a referral to the CIEP team to consider a full-time special education placement. In fact, the final IEP of August 24, 2017, provided for a forty-five-day review, but the Parent filed her request for a due process hearing on September 29, 2017, before the end of the forty-five-day period.

The Parent argued that the Student's IEP was drafted and the reduction in special education hours was done without her input but the evidence strongly shows otherwise. As noted above, the Parent and Ms. XXXX were present at every IEP meeting and they were afforded every opportunity to participate in the development of the IEP. In addition, as discussed above, their independent assessments and recommendations were considered and for the most part implemented. The Parent, however, asserted that her input was not considered and the special education hours were reduced without her participation. This argument is without merit. The evidence established that the Student is receiving special education support services in the classroom as well as outside of the general education classroom. He is, therefore receiving more than the ten hours of special education services per month as the Parent contends. Because the Parent's wishes for additional special education services, similar to what he had at ES, was not granted, however, this does not mean that she was not given the opportunity to meaningfully participate. To the contrary, the evidence established that she and her advocate were present throughout the IEP development process. The IEP team also considered the input from the special educators and general educators who were present at the meetings and the fact that many of these individuals had vast amount of experience in dealing with children with ASD and educating them. The IEP team not only considered the findings of the experts hired by the

Parent but also considered the findings of its own experts and the Student's history at ES. Throughout the hearing, the reasons for the IEP Team's determinations were expressed and I found their reasoning for the decisions to be sound. There is no evidence to show that the Parent was not afforded the opportunity to meaningfully participate in the process.

As addressed above, the evidence presented by PGPS clearly refutes or distinguishes the testimony of the Parent and her experts. The Parent attended each of the relevant IEP meetings and indicated her desire that the Student be educated in the LRE and be included in the general education classroom. She indicated her agreement with many of the decisions made by the IEP team at those meetings, including her agreement that the Student be placed in the Autism Program at MS so long as there was a review after forty-five days from the beginning of the school year. The Parent and Ms. XXXX attended IEP meetings on May 24, 2017, June 12, 2017, June 26, 2017, September 21, 2017 and October 11, 2017, and provided input at each. She was able to express her concerns at every step. The Parent also expressed her desire to modify the Student's IEP and placement that had been almost entirely within the special education setting, and to include the Student in general education to the fullest extent possible. The Team considered the Student's needs and history as well as the assessments and determined that he needed small classes, fewer distractions, and less noise, as well as additional supports to address his needs in the areas of mathematics, social/emotional behaviors, speech articulation and expressive and receptive language. At each successive meeting, the IEP draft was modified and adjusted. At the June 26, 2017 meeting, the Parent and Ms. XXXX fully participated and discussion from the June 12, 2017 meeting continued. Math goals and objectives were modified, home-school communication was added as a supplemental aid and service and a reading goal was added.

The Parent failed to prove that any procedural violation impeded the Student's right to a FAPE, significantly impeded the Parent's opportunity to participate in the decisionmaking process, or caused a deprivation of education benefits. 20 U.S.C.A. § 1415(f)(3)(E)(ii).

The IEP team has recommended that the Student be placed in the Autism Program at MS for the 2017-2018 SY, and PGPS contends this placement is reasonably calculated to provide the Student with a FAPE in the LRE. PGPS further contends that placement of the Student at a comprehensive special education setting like the [PROGRAM] would not be appropriate for the Student's educational and social needs as it is too restrictive. The Team determined that the Student would be appropriately challenged at MS and was capable of making meaningful progress. The team also determined that the Student would have more appropriate role models at MS than he had in the [PROGRAM] program at ES and agreed that the supported inclusion model of delivering special education services to the Student would be most appropriate. The Team determined that a dedicated aide, as proposed by Dr. XXXX, was not necessary and would in fact be detrimental since the Student did not exhibit the severe behavior typically displayed by children with designated aides. If the Student had a designated aide, or was not in the general education setting, he would not develop the self-reliance and social skills that he will need by the time he transitions to high school and beyond high school.

The evidence and documentation offered by the Parent fell short of establishing that the Student needs a full-time inclusive special education program. The Parent testified that the Student has a host of behavioral issues but these issues were not observed by any of the school staff at ES or at MS. Even the Parent conceded that she became concerned about the [PROGRAM] program at ES, feeling that it was too restrictive and became too easy for the Student. She felt that he needed a more challenging curriculum and during the IEP process, she

expressed interest in having the Student participate in general education with more frequency, feeling that he needed non-disabled role models to assist in the Student's social development. At the hearing, she stated that she wanted it to be a more gradual progression, however.

Dr. XXXX felt that a student with the Student's profile was susceptible to being bullied and needed a [Program] and psychological counseling. He did not base this opinion specifically on the Student, however. He also stated his belief that the Student should not be in the general education classroom and needs a full time [PROGRAM]. He also believed that the current IEP does not address the concerns noted in Dr. XXXX's educational assessment. He expressed his opinion that the placement at MS is not appropriate because the school too big and the Student would not be able to tolerate the noise level from so many other children present. He felt that the Student was used to the [PROGRAM] environment, would be overwhelmed in the general education classroom at MS, would not be able to access the curriculum and needs a dedicated aide. Dr. XXXX did not observe the Student at any time in the classroom at either MS or ES and did not speak with any of the Student's teachers at ES or MS and his only information relative to the Student's academic performance came from Ms. XXXX, the Parent and the Student's report cards.

The evaluations by Dr. XXXX, Dr. XXXX, Dr. XXXX and Ms. XXXX, while felt by the IEP team to be accurate evaluations, were all done in a clinical setting without considering the educational component and environment. All were felt by the PGPS experts to provide good baseline information but from an educational standpoint, were done in a vacuum. Even the independent evaluators in their reports indicated that their assessments were only one tool in the process of evaluating the Student for the development of an IEP. They noted that the other information gathered by the IEP team needed to be considered as well.

Conversely, the testimony presented by PGPS's expert witnesses and the accompanying documents demonstrate that the Autism Program at MS will provide the Student with the most appropriate services and supports as opposed to a full-time inclusive program such as the [PROGRAM] as requested by the Parent. The Autism Program at MS will provide the Student with the LRE to address his social, emotional and academic needs with appropriate supports and the services provided through the Autism Program will enable the Student to access the general education grade-level curriculum and opportunities for instruction. Additionally, the Autism Program will meet the Student's needs for an educational setting with reduced distractions, a reduced number of students in class, reduced noise, and adult support.

Ms. XXXX expressed her opinion that the Student does not need direct speech and language services in the school setting and that he can be educated in the general education classroom with supports. She testified that he has a good language foundation but just needs social skills training to learn how and when to use his verbal skills. She felt that the IEP and placement at MS was appropriate.

Dr. XXXX felt that the Student possesses fine motor skills for classroom tool usage and foundational gross motor skill that would allow him to physically access his educational environment. While he showed sensitivities to sensory information and/or overload particularly in loud environments, he was easily redirected when he wandered off task. She suggested additional strategies and modifications to assist the Student in meeting his educational requirements and felt that the Student did not require education services outside of the general education setting.

After considering all of the available information regarding the Student, Dr. XXXX felt that a full-time special education program was not appropriate for the Student. While she noted

that the Student is in the average range cognitively, he has ASD, which would likely impact his ability to access instruction in several areas. However, she felt that he needs only accommodations and assistance in order to access his curriculum, which could be done in a general education classroom with special education services. Because MS can provide these specialized services and supports, she felt that it is an appropriate placement.

For the foregoing reasons, PGPS concluded that the Autism Program at MS is reasonably calculated to provide the Student with a FAPE in the LRE. PGPS also concluded that a full time special education placement would not provide the Student with a FAPE because it would be too restrictive.

I found the testimony of the expert witnesses presented by PGPS to be clear, detailed, logical, and persuasive. All except XXXX XXXX were accepted as experts in their respective educational and clinical fields based on their education and years of experience. I found their conclusions to be sound and supported by other evidence in the record. In addition, the educators and staff at MS demonstrated substantial knowledge of the Student's history and educational programming at MS based on their continuous involvement with the Student and his educational and social issues.

I accept as credible and convincing the testimony and opinions of XXXX XXXX, Dr. XXXX XXXX, XXXX XXXX, XXXX XXXX, and XXXX XXXX regarding the Student's social and academic issues and his educational needs. Therefore, I conclude that the Autism Program at MS is reasonably calculated to provide the Student with a FAPE in the LRE.

The Parent's claims that the Student needs a full time special education program were clearly refuted for the reasons addressed above. While the Parent disputed the reduction in

special education hours from SY 2016-2017 to SY 2017-2018, The Parent has not challenged any particular aspects of the services and supports provided in the Autism Program.

The Student receives instruction in a supported inclusion setting with a general education and special education teacher inside general education for English, math and science for three hours and thirty-five minutes per day, five times per week, then social studies in a supported inclusion setting with a general education teacher and a special education teacher, for one hour and ten minutes, three times per week. The Parent disputed the supported inclusion model of service delivery but the evidence clearly established that this would be most appropriate for the Student. In addition, the Student is receiving autism-specific Academic Resource Support in order to receive social skills and executive support instruction and academic support for ten one-hour sessions per month, and is also receiving OT services twice per month to address written work production and technology needs in the classroom as well as organizational strategies and sensory behavior-based strategy needs. These OT services were to be provided both inside and outside of general education. Finally, the Student is to receive fifteen minutes of counseling per week as a safe/check in with staff to reinforce coping skills, self-advocacy and social skills necessary to the class and school setting.

With the Student's academic and social issues related to his ASD clearly established in this record, it is evident that the educational placement decisions made by the Student's IEP team were thoughtful, reasonable, clearly appropriate, and necessary to address the critical interaction between the Student's academic needs and the challenges created by his ASD-related academic and social issues.

The IDEA and accompanying regulations provide that a student shall be educated "as close as possible to the child's home." 34 C.F.R. § 300.116(b)(3) (2017). The federal

regulations also require that “[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled,” and when selecting the LRE, “consideration is given to any harmful effect on the child or on the quality of services that he or she needs[.]” *Id.* § 300.116(c)-(d). However, 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 with the use of supplementary aids and services cannot be achieved satisfactorily. § 300.114(a)(2)(ii).

In addition to mandating a FAPE, the IDEA directs that children be placed in the LRE to achieve a FAPE, meaning that children with disabilities must be educated with children without disabilities in the regular education environment to the maximum extent appropriate; separate schooling or other removal from the regular educational environment should occur only when the nature or severity of the child’s disability prevents satisfactory education in regular classes with the use of supplementary aids and services. 20 U.S.C.A. § 1412(a)(5)(A) (2017); 34 C.F.R. §§ 300.114(a)(2)(ii), 300.117. It is thus clear that PGPS is obligated to provide the Student with a placement that affords him at least an opportunity to interact with nondisabled peers, if he will receive educational benefit in that placement. As indicated above, in determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team in conformity with the LRE provisions. *Id.* § 300.116(a)(2).

Although the term “placement” is often used informally to refer to the school which a student will attend, “placement” and “location” are not synonymous. A student’s placement is the totality of the services, accommodations, and so on, specified in the student’s IEP; it is not the geographical location where those services are provided. Educational placement, as used in

the IDEA, means the educational program—not the particular institution where the program is implemented. *A.W. ex rel Wilson v. Fairfax Cty. Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004).

I conclude that the evidence in this record clearly demonstrates that the Student does not “require some . . . arrangement” other than placement in the child’s neighborhood school. 34 C.F.R. § 300.116(c) (2017). The evidence demonstrates that the Autism Program at MS not only provides the services and supports the Student requires to carefully balance the interaction between the Student’s ASD driven academic and social needs, the Student’s neighborhood school offers an appropriate program with sufficient academic and behavioral supports to address the Student’s needs. Therefore, I conclude that the Autism Program at MS provides the Student with a FAPE, and is the LRE. § 300.116(b)(3), (c)-(d).

It is understandable that the Parent seeks to have what she feels is the best program for the Student. She is clearly a caring and involved Parent and wants the Student to be educated in an environment that she feels will best suit his needs for a variety of logistical and social reasons. The Parent, however, has failed to prove that the placement in the Autism Program at MS is inappropriate based on the Student’s individual circumstances. Therefore, absent any evidence in this record to persuasively dispute the well-reasoned judgment of the PGPS witnesses, I agree with PGPS that the IEP and placement developed by the Student’s IEP team is appropriate and reasonably calculated to meet the individualized needs of the Student. In conclusion, after carefully reviewing all of the evidence presented by the Parent and PGPS, I find that PGPS developed an appropriate IEP and placement for the Student for the 2017-2018 SY.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the IEP and placement developed for the Student by the Prince George’s County Public

Schools for the 2017-2018 school year is reasonably calculated to offer the Student a free appropriate public education in the least restrictive environment in light of the Student's circumstances. Furthermore, PGPS did not deny the Student a free appropriate public education when it placed him in the Autism Program at MS, his neighborhood school, for the 2017-2018 school year and did not commit any procedural violations in developing his IEP for SY 2017-2018. 20 U.S.C.A. §§ 1400 - 1482 (2017); 34 C.F.R. §§ 300.107, 300.114, 300.116 (2017); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *A.W. ex rel Wilson v. Fairfax Cty. Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004).

### **ORDER**

I **ORDER** that the due process request filed by the Parent is hereby **DENIED** and **DISMISSED**.

January 25, 2018  
Date Decision Mailed

\_\_\_\_\_  
Michael J. Wallace  
Administrative Law Judge

MJW/da

### **REVIEW RIGHTS**

Any party aggrieved by this 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 with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (Supp. 2016). 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.