

██████████,

STUDENT

v.

FREDERICK COUNTY

PUBLIC SCHOOLS

BEFORE BRIAN ZLOTNICK,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-FRED-OT-20-10289

**DECISION**

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

**STATEMENT OF THE CASE**

On April 27, 2020, ██████████ and ██████████, the Student's Parents, filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) on the Student's behalf, requesting a hearing to review the identification, evaluation, or placement of the Student by the Frederick County Public School System (FCPS and Respondent) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2019);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). The applicable regulations in the Code of Federal Regulations (C.F.R.) afford the local educational agency, in this case the FCPS, up to thirty days from April 27, 2020, to try and resolve any issues found in the Complaint. 34 C.F.R.

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<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated. Unless otherwise noted, all citations of 20 U.S.C.A. hereinafter refer to the 2017 bound volume.

<sup>2</sup> C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations to 34 C.F.R. hereinafter refer to the 2019 volume.

§§ 300.510(b). Generally, if no resolution can be reached within thirty days, a forty-five-day timeline for holding a due process hearing and issuing a final decision begins. *Id.*

§§ 300.510(b)(2), 300.515(a).

This case is unfolding against a backdrop of COVID-19-related issues. On March 12, 2020, Governor Lawrence Hogan ordered Maryland Public Schools, which includes FCPS, to close from March 16 through March 27, 2020, to protect public health by limiting the spread of COVID-19. On March 30, 2019, Governor Hogan issued a Stay at Home Order only allowing travel within the State for essential purposes. After that, Governor Hogan and the Maryland State Department of Education extended the school closure through the end of the 2019-2020 school year, and the OAH suspended all in-person proceedings through July 2, 2020, holding emergency and special proceedings remotely.

Because of these unusual circumstances, the parties participated in a telephone conference with Administrative Law Judge (ALJ) [REDACTED] on June 15, 2020. At that time, the parties informed ALJ [REDACTED] that the resolution session concluded without resolving the dispute. The parties discussed their availability and the number of days required to complete this hearing with ALJ [REDACTED] and ultimately agreed to the following hearing dates: August 3, 4, 5, 6, and 10, 2020. Considering that these hearing dates would fall well past the 45-day timeline, the parties requested that the timelines for conducting a due process hearing, and issuing a final decision be extended. ALJ [REDACTED] granted the motion for an extension of the timeline, finding good cause based on the COVID-19 pandemic, the closure of FCPS, and the partial suspension of proceedings at the OAH. 34 C.F.R. § 300.515(c).

On July 1, 2020, I conducted a telephone pre-hearing conference for this case. Paula A. Rosenstock, Esquire, participated on behalf of [REDACTED] (Student). Lisa Y. Settles, Esquire, participated on behalf of the FCPS.

During ALJ ██████'s June 15<sup>th</sup> telephone pre-hearing conference and the July 1<sup>st</sup> telephone pre-hearing conference the FCPS raised an objection to conducting this hearing remotely if an in-person option was available. Ms. Rosenstock indicated that Michael Eig, Esquire, would also be representing the Parents in this proceeding and that he requested a remote hearing due to his underlying health conditions. Thus, on July 6, 2020, I requested a signed letter from Mr. Eig documenting his medical issues. On July 7, 2020, Mr. Eig submitted a letter detailing a number of risk factors associated with his age and existing health conditions that have forced him to refrain from any inside meetings consisting of more than a few individuals. Considering Mr. Eig's risk factors I decided to conduct this entire proceeding remotely through the Google Meet platform in accordance with COMAR 28.02.01.20B.

I held the due process hearing remotely via video utilizing the Google Meet platform on August 3-6, 2020 and August 10, 2020. Ms. Rosenstock and Mr. Eig represented the Student. Ms. Settles represented the FCPS.

Under the applicable law, a decision in this case normally would be due by July 11, 2020, forty-five days after the expiration of the thirty-day resolution period, May 27, 2020. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a). In this case, counsel for the parties reviewed their calendars during the June 15, 2020 pre-hearing conference and indicated the dates that the parties were mutually available would be August 3-6 and 10, 2020. During the July 1, 2020 pre-hearing conference the parties again jointly requested that the timeline for issuing the decision be extended, noting the pandemic, the closure of FCPS, the partial suspension of proceedings at the OAH and their availability. For those reasons, I concurred with ALJ ██████'s earlier decision and found good cause to extend the regulatory timeframe as requested. *Id.* § 300.515(c). I also agreed to issue a decision no later than thirty days after the last day of the hearing.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2018); State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

### ISSUES<sup>3</sup>

1. Did the FCPS delay its evaluation of the Student for special education eligibility resulting in a violation of the IDEA?
2. Did the FCPS' placement and programing proposed in the January 22, 2020 IEP fail to provide the Student with a FAPE in the least restrictive environment for the 2019-2020 and 2020-2021 school years?
3. If the FCPS did not provide the Student with a FAPE, was the Parents' placement of the Student at [REDACTED], [REDACTED] and [REDACTED] ([REDACTED]) during the 2019-2020 school year and at [REDACTED] for the 2020-2021 school year appropriate?
4. If the placement by the Parents of the Student at [REDACTED], [REDACTED] [REDACTED] and [REDACTED] are determined to be appropriate placements, should the FCPS reimburse the Parents for tuition and related expenses associated with the placement of the Student at those locations for the school years identified above?

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<sup>3</sup> Without substantive changes, I restated the issues originally defined by the parties during the July 1, 2020 telephone pre-hearing conference.

5. If the FCPS violated the IDEA when it delayed its evaluation of the Student, should the FCPS reimburse the Parents for the private psychological assessment performed by Dr. [REDACTED]?

### **SUMMARY OF THE EVIDENCE**

#### ***Exhibits***

I admitted the following exhibits on behalf of the Parents:

- P-1 - Request for Due Process, April 24, 2020
- P-2 - Letter from Dr. [REDACTED] regarding ADHD diagnosis, September 10, 2013
- P-3 - Letter from Dr. [REDACTED] regarding treatment, February 27, 2014
- P-4 - Letter from Dr. [REDACTED] regarding treatment, August 7, 2015
- P-5 - FCPS Section 504 Committee Summary Report and Section 504 Plan, May 17, 2016
- P-6 - Emails between the Parents and the FCPS regarding lunch group, June 6, 2016
- P-7 - Emails between the Parents and the FCPS, November 21, 2016
- P-8 - FCPS Final Report Card, June 9, 2017
- P-9 - Emails between the Parents and the FCSP, March 27, 2018
- P-10 - FCPS Section 504 Plan, April 26, 2018
- P-11 - FCPS Final Report Card, June 15, 2018
- P-12 - Emails between the Parents and [REDACTED], August 9, 2018
- P-13 - Letter from [REDACTED] August 30, 2018
- P-14 - [REDACTED] Documents Review Report, September 18, 2018
- P-15 - Emails between the Parents and the FCPS, September 18, 2018
- P-16 - FCSP Classwork/Test grades for the Student, September 2018
- P-17 - Email to the FCPS from the Parents, November 1, 2018
- P-18 - Emails between the Parents and the FCPS, December 5, 2018
- P-19 - FCSP Interim Progress Report, December 13, 2018
- P-20 - Email between the Parents and the FCPS, December 14, 2018
- P-21 - FCPS Student Discipline Referrals, December 2018
- P-22 - Parent Notes of Meeting with Dr. [REDACTED], January 11, 2019
- P-23 - Letter from [REDACTED], Physician's Assistant – Certified, February 7, 2019
- P-24 - Letters from [REDACTED] High School to the Parents, February 6, 21, and 27, 2019 and March 13, 2019
- P-25 - Medical Recommendation for Home and Hospital Teaching (HHT), March 14, 2019
- P-26 - FCPS IEP Meeting Notes and Prior Written Notice, April 4, 2019
- P-27 - Local Care Team Referral Form, undated
- P-28 - FCPS Interim Progress Report, May 10, 2019
- P-29 - [REDACTED] Discharge Summary, [REDACTED], 2019
- P-30 - FCPS Final Report Card, June 19, 2019

- P-31 - Letter from Michael Eig to [REDACTED], Principal, [REDACTED] High School, August 21, 2019
- P-32 - Letter from [REDACTED], Director of Special Education Compliance and Student Support, FCPS, to Michael Eig, August 26, 2019
- P-33 - Letter from Michael Eig to [REDACTED] September 3, 2019
- P-34 - Student's Psychological Evaluation by [REDACTED], September 16, 2019
- P-35 - [REDACTED] Invoice, September 25, 2019
- P-36 - Student's Discharge Summary from [REDACTED], 2019
- P-37 - Student's Discharge Summary from [REDACTED], 2019
- P-38 - FCPS IEP Meeting Notes, November 20, 2019
- P-39 - FCPS Psychological Assessment, December 13, 2019
- P-40 - Letter from Paula Rosenstock to Rochelle Eisenberg, Esquire, December 19, 2019
- P-41 - FCPS Amended Psychological Assessment, December 20, 2019
- P-42 - FCPS IEP Meeting Notes, December 20, 2019
- P-43 - Letter from Rochelle Eisenberg to Paula Rosenstock, January 6, 2020
- P-44 - Letter from Paula Rosenstock to Rochelle Eisenberg, January 21, 2020
- P-45 - FCPS IEP, January 22, 2020
- P-46 - Parental Input Statement for FCPS IEP, January 31, 2020
- P-47 - Parental Reactions to the FCPS proposed placement, February 14, 2020
- P-48 - [REDACTED] Integral Program Treatment Plan, March 16, 2020
- P-49 - Neuropsychological Consultation by Dr. [REDACTED], April 6, 2020
- P-50 - Email from [REDACTED] to Paula Rosenstock regarding Student's grades, May 27, 2020
- P-51 - Resume of Dr. [REDACTED]
- P-52 - Resume of [REDACTED]
- P-53 - Resume of [REDACTED]
- P-54 - [REDACTED] Academy Educational Report, July 23, 2020
- P-55 - Student Transcript, undated
- P-56 - Information regarding [REDACTED] Program, undated

I admitted the following exhibits on behalf of the FCPS:

- R-1 - FCPS Draft IEP, sent to the Parents after December 20, 2019 IEP meeting and prior to January 22, 2020 IEP meeting
- R-2 - FCPS IEP, January 22, 2020
- R-3 - FCPS IEP, February 14, 2020
- R-4 - FCPS IEP, February 14, 2020
- R-5 - FCPS IEP Team Meeting Notes, March 26, 2014
- R-6 - FCPS Psychological Evaluation, April 30, 2014
- R-7 - FCPS Educational Assessment, April 23, 2014
- R-8 - [REDACTED] System Meeting, May 20, 2014
- R-9 - FCPS IEP Team Eligibility Report for Other Health Impairment (OHI), May 21, 2014
- R-10 - Parental Consent for Evaluation, March 26, 2014
- R-11 - FCPS IEP Team Meeting Notes, May 21, 2014
- R-12 - FCPS IEP Team Eligibility Report for OHI, May 21, 2014

- R-13 - FCPS IEP Team Eligibility Report for Emotional Disability (ED), May 21, 2014
- R-14 - Student's Test Summary, printed May 7, 2014
- R-15 - Receipt of Parental Rights Document, March 26, 2014
- R-16 - FCPS Student Observation, May 19, 2014
- R-17 - FCPS Enrollment Form, February 17, 2012
- R-18 - Student Transfer Card, March 14, 2012
- R-19 - Screening Referrals, March 8, 2019
- R-20 - Required Assessments for Graduation Report, March 29, 2019
- R-21 - FCPS IEP Team Meeting Notes, April 4, 2019
- R-22 - Student's Disciplinary Record for 2018 and 2019
- R-23 - Section 504 Summary Report, September 11, 2013
- R-24 - Letter from [REDACTED] to [REDACTED] Elementary School, September 10, 2013
- R-25 - Section 504 Summary Report, September 11, 2013
- R-26 - Section 504 Summary Report, September 18, 2013
- R-27 - Section 504 Student Plan, October 9, 2013
- R-28 - Section 504 Summary Report, March 26, 2014
- R-29 - Section 504 Student Plan, June 4, 2014
- R-30 - Section 504 Summary Report, September 9, 2014
- R-31 - FCPS Parent Notification of Section 504 Meeting, April 17, 2015
- R-32 - Receipt of Summary of Parental Rights, May 22, 2015
- R-33 - Section 504 Summary Report, April 22, 2015
- R-34 - Section 504 Student Plan, May 17, 2016
- R-35 - Section 504 Summary Report, May 17, 2016
- R-36 - Email from [REDACTED] to [REDACTED], November 22, 2016
- R-37 - Section 504 Student Plan, April 11, 2017
- R-38 - Section 504 Summary Meeting Participants; Summary of Parental Rights; 504 Teacher Input Form; and Section 504 Summary Report, April 11, 2017
- R-39 - Section 504 Receipt of Summary of Parental Rights; Meeting Participants; Parent Notification; Section 504 Eligibility Data Form; Section 504 Student Plan; and Section 504 Summary Report, April 26, 2018
- R-40 - Student's 4<sup>th</sup> term 5<sup>th</sup> Grade Report Card, undated
- R-41 - Letters from the FCPS to the Parents, May 6, 2013 and June 10, 2013
- R-42 - The Student's Report Cards from 2012-2017 and the Student's Attendance Data for 2016-2017 academic year
- R-43 - Email exchanges between the Parents and FCPS, 2018-2019
- R-44 - [REDACTED] Documents Review Report, September 18, 2018
- R-45 - [REDACTED] Discharge Summary, [REDACTED] 2019
- R-46 - [REDACTED] Discharge Summary, [REDACTED] 2019
- R-47 - [REDACTED] Discharge Summary, [REDACTED] 2019
- R-48 - [REDACTED] Psychological Evaluation, September 16, 2019
- R-49 - Typed Statement from the Parents, January 31, 2020
- R-50 - FCPS IEP Transition Meeting, January 22, 2020
- R-51 - FCPS Notice of the IEP Team Meeting, December 20, 2019
- R-52 - FCPS IEP Team Meeting Notes, December 20, 2019
- R-53 - FCPS Psychological Assessment, December 13, 2019

R-54 - FCPS Amended Psychological Assessment, December 20, 2019

R-55 - Letter from Paula Rosenstock to Rochelle Eisenberg, December 19, 2019

R-56 - Letter from Rochelle Eisenberg to Paula Rosenstock and Michael Eig, January 6, 2020

R-57 - Resume of [REDACTED]

R-58 - Resume of [REDACTED]

R-59 - Resume of [REDACTED]

R-60 - Resume of [REDACTED]

R-61 - Emails between the Student's mother ([REDACTED].) and Ms. [REDACTED], June 4,5, 2020

### *Testimony*

[REDACTED] testified on behalf of the Parents and presented the testimony of the following

witnesses:

- [REDACTED], P.H.D, was accepted as an expert in Neuro Psychology
- [REDACTED], Principal, [REDACTED], was accepted as an expert in Secondary Education Administration
- [REDACTED], PSY.D., Clinical Director, [REDACTED], was accepted as an expert in Clinical Psychology

FCPS offered the testimony of the following witnesses:

- [REDACTED], Assistant Principal, [REDACTED] High School, was accepted as an expert in School Administration
- [REDACTED], Special Education Teacher, FCPS, was accepted as an expert in Special Education
- [REDACTED], School Psychologist, FCPS, was accepted as an expert in School Psychology
- [REDACTED], Supervisor of Secondary Special Education, FCPS, was accepted as an expert in Special Education

### **FINDINGS OF FACT BY STIPULATION**

Based upon the stipulated agreement of the parties, I find the following facts by a preponderance of the evidence:



1. The Student began her education in [REDACTED], where she attended school from kindergarten through mid-3<sup>rd</sup> grade.
2. The Student's family moved from [REDACTED] to Frederick County, and the Student was enrolled in Frederick County Public Schools in the 3<sup>rd</sup> grade.
3. A 504 team met on September 11, 2013 to discuss the Student, found her eligible for a 504 Plan, and developed a 504 Plan on October 13, 2013.
4. During the 2013-2014 school year, the Student was in the 5<sup>th</sup> grade.
5. During the 2014-2015 school year, the Student was in the 6<sup>th</sup> grade.
6. During the 2015-2016 school year, the Student was in the 7<sup>th</sup> grade.
7. During the 2016-2017 school year, the Student was in the 8<sup>th</sup> grade.
8. During the 2017-2018 school year, the Student was in the 9<sup>th</sup> grade.
9. During the 2018-2019 school year, the Student was in the 10<sup>th</sup> grade.
10. During the 2019-2020 school year, the Student was in the 11<sup>th</sup> grade.
11. During the 2020-2021 school year, the Student will be in the 12<sup>th</sup> grade.
12. The Student's home school is [REDACTED] High School, a public high school within the Frederick County Public School system.
13. The Student was parentally placed at [REDACTED] in [REDACTED] in late June 2019.
14. The Parents secured a private psychological evaluation of the Student from [REDACTED] in September 2019.
15. On [REDACTED] 2019, following the Student's discharge from [REDACTED] [REDACTED], the Parents placed her at [REDACTED] in [REDACTED], where she remains.

### ADDITIONAL FINDINGS OF FACT

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

16. The Student was born on [REDACTED], 2002 [REDACTED] weeks premature and spent the first two to three months of her life hospitalized in a Neonatal Intensive Care Unit. (Testimony of [REDACTED]).

17. On September 10, 2013, the Student's treating psychiatrist notified her FCPS elementary school that she is diagnosed with Attention Deficit Hyperactive Disorder (ADHD) and Anxiety Disorder Not Otherwise Specified. (P-2).

18. On September 11, 2013 a 504 Team agreed that the Student was eligible for a Section 504 plan which was developed on October 9, 2013. This plan provided the following accommodations:

- Preferential Seating
- Notetaking support
- Scheduled breaks
- Repetition of directions by teacher and students
- Student will participate in a Social Skills Group focusing on building friendships, self-esteem and developing and/or practicing social skills

The Student's notetaking and social skills accommodations were based on her attentional issues and anxiety disorder. (R-25 & R-27).

19. [REDACTED] submitted a February 27, 2014 psychiatric report from Dr. [REDACTED] to the FCPS resulting in the FCPS testing the Student for special education eligibility. FCPS did not find the Student eligible for special education services at that time. (P-3 and Testimony of [REDACTED]).

20. The Student performed well academically during her 5<sup>th</sup> grade year (2013-2014) achieving an "A" grade during the fourth term in Math, English and Science and a "B" in Social Studies. She also consistently interacted appropriately with her peers, showed initiative and self-

direction, exhibited self-control, followed oral and written directions, and engaged and maintained attention to learning tasks. (P- 40).

21. The Student performed well academically during her 6<sup>th</sup> grade year (2014-2015) at [REDACTED] Middle School achieving an “A” grade during the second semester in Health, History, Life Skills, Physical Education, Science, and Visual Arts and a “B” grade in Math and Language Arts. (Testimony of [REDACTED] and P-42).

22. The Student began to struggle during her 7<sup>th</sup> grade year (2015-2016) at [REDACTED] Middle School. Her second semester grades included a “D” in Honors Math and a “C” in History. She did receive a “A” in Creative Arts, Health, Physical Education and Visual Arts. She also received a “B” in Language Arts and Science. (Testimony of [REDACTED] and P-42).

23. During the Student’s 7<sup>th</sup> grade year her Section 504 plan remained in effect with the following accommodations:

- Preferential Seating
- Provide a copy of teacher notes
- Reduce distractions to the Student
- Extended time (Time + one half)

(Respondent Ex. 31).

24. The Student’s Section 504 plan was reinstated for her 8<sup>th</sup> grade year with the following accommodations:

- Reduce distractions (testing accommodation)
- Extended time (Time + one half) for testing
- Preferential seating
- Chunking lengthy assignments
- Redirect to stay on task with verbal and non-verbal cues
- Notes and Outlines (testing accommodation)
- Closely monitor progress during assignments

(R-37).

25. The Student performed well academically during her 8<sup>th</sup> grade year (2016-2017) at ██████ Middle School, achieving a final grade of “A” in American Studies, Visual Arts, Physical Education and Health. She achieved a final grade of “B” in Science, Language Arts, and Spanish and final grade of “C” in Math. (Testimony of ██████ and P-8).

26. The Student’s Section 504 plan remained in place for her 9<sup>th</sup> grade year (2017-2018) at ██████ High School but she declined her accommodations for fear of being stigmatized by her peers. (Testimony of ██████ and R-37 and 39).

27. In late March of 2018 the Student’s Government Teacher, Ms. ██████, noted a drop in the Student’s grades and her behavior. Ms. ██████ indicated that the Student used to complete assignments before her classmates but was now on her phone instead of reading and answering questions. (Testimony of ██████ and P-9).

28. A Section 504 team meeting was held on April 26, 2018 at which ██████ participated with ██████, 504 Coordinator, ██████, Student Support Person, and ██████, School Counselor. ██████ presented the team with suicide notes written by the Student. Ms. ██████ offered to have the Student come to her office at any time during the school day if she felt anxious. (Testimony of ██████ and R-39).

29. During the summer before her 10<sup>th</sup> grade year the Student attended a three-week academic program held at ██████ where she resided in a dorm setting with roommates. After her first week in this program the Parents received a call that the Student may have an eating disorder. (Testimony of ██████).

30. On July 23, 2018, the Student was admitted for inpatient treatment at the Center for Eating Disorders at ██████. On August 20, 2018, the Student was transitioned to ██████ Partial Hospitalization Program. On August 30, 2018, ██████, Family Therapist, Center for Eating Disorders at ██████, drafted a letter outlining

the Student's inpatient and partial hospitalization treatment for an eating disorder and made various recommendations regarding the Student's return to school. The August 30, 2018 letter from Ms. [REDACTED] was shared with [REDACTED] High School. (Testimony of [REDACTED] and P-13).

31. The Student was discharged from [REDACTED] on September 18, 2018 with the following diagnoses:

- ADHD
- Major Depressive Disorder
- Anorexia Nervosa, restricting type

While in the Partial Hospitalization Program the Student revealed that she had no intention of letting go of her eating disorder at that time because it was one of the goals in life she feels she can accomplish. (P-14).

32. After her discharge from [REDACTED] the Student was enrolled in intensive outpatient therapy from September 2018 to February 2019 with [REDACTED]. (Testimony of [REDACTED]).

33. During the second week of September 2018, [REDACTED], Assistant Principal at [REDACTED] High School, received the August 30, 2018 letter from Ms. [REDACTED] and she reviewed its recommendations for the Student's return to [REDACTED] High School. (Testimony of Ms. [REDACTED]).

34. In late September 2018, a transition meeting was held with Ms. [REDACTED], [REDACTED] Guidance Counselor, [REDACTED] and the Student to discuss her reintegration to [REDACTED] High School from [REDACTED]. During this meeting [REDACTED] stated that the Student could not return to school because her eating disorder was not in control. Home and Hospital Teaching (HHT) was offered to the Student as an option from the FCPS. (Testimony of Ms. [REDACTED]).

35. On or about the first week of October 2018, the Student was approved for HHT for thirty days. The Student received instruction at home in Geometry and English by [REDACTED], HHT Teacher. (Testimony of Ms. [REDACTED]).

36. The Student returned to [REDACTED] High School on or about October 28, 2018, approximately ten days before her HHT period was scheduled to end. (Testimony of Ms. [REDACTED] and [REDACTED]).

37. During the Student's first two weeks back at [REDACTED] High School the administration and teachers did not observe any signs of her struggling to make friends in the cafeteria during lunch. (Testimony of Ms. [REDACTED]).

38. In early December 2018, the Student began skipping class by remaining in a restroom during class resulting in her being placed on pass restriction. The Student was cited for cutting class on December 3, 4, 5, and 11, 2018. The Student did not cut class after these incidents. (Testimony of Ms. [REDACTED] and R-22).

39. On December 5, 2018, the Student was assigned to attend Saturday School on December 8, 2018, December 15, 2018, and January 5, 2019 to make up for the classes that she cut. (P-21).

40. The Student's December 13, 2018 Interim Progress Report indicated the following:

- Law and Society – “A” grade
- Biology Honors – “D” grade – Absences affecting her grade
- Modern World History – “A” grade
- Geometry – “F” grade – low test scores/needs to complete assignments

(P-19).

41. [REDACTED], the Student's 10<sup>th</sup> grade Geometry Teacher, notified the Parents that her grade as of December 14, 2018 was a 17% which is reflective of her lackadaisical approach to class work. When Ms. [REDACTED] sits with the Student and works individually with her, she has a grasp on the material but when Ms. [REDACTED] is not by the Student's side she does not complete her assignments. (P-20).

42. The Student was unlawfully absent from school the following days:

- November 21, 2018
- January 3, 2019
- January 4, 2019
- January 7, 2019
- January 8, 2019
- January 9, 2019
- January 10, 2019
- January 11, 2019
- February 4, 2019
- February 5, 2019
- February 6, 2019
- February 7, 2019
- February 26, 2019
- February 27, 2019
- February 28, 2019
- March 1, 2019
- March 4, 2019
- March 5, 2019
- March 6, 2019
- March 7, 2019
- March 8, 2019
- March 11, 2019
- March 12, 2019
- March 13, 2019

(P-24).

43. On January 6, 2019, the Student's father, [REDACTED], emailed Ms [REDACTED] to inform her that the Student did not go to Saturday School and has indicated that she would not be going to school on Monday, January 7, 2019. Ms. [REDACTED] responded that she and the pupil personal worker, Ms. [REDACTED], would go to Parents' house on Tuesday morning. Ms [REDACTED] learned from their visit with the Student on January 7<sup>th</sup> that she was still struggling with an eating disorder.

(Testimony of Ms. [REDACTED] and R-43).

44. On or about February 14, 2019, the Parents moved the Student to the [REDACTED] [REDACTED] ([REDACTED]) in [REDACTED], [REDACTED] to treat her eating disorder where

she remained for two to three weeks before being discharged home. After her return home the Student continued to refuse to attend school. (Testimony of [REDACTED]).

45. On February 14, 2019, Ms. [REDACTED] reached out to the Student's teachers regarding collecting her class assignments to forward to her during her stay at [REDACTED]. (Respondent Ex. 43 and Testimony of Ms. [REDACTED]).

46. The Parents made [REDACTED] High School aware of their difficulty in getting the Student to attend school. Ms. [REDACTED] suggested HHT to the Parents and they were eager to pursue that avenue. On March 19, 2019, the Student's Psychiatrist, [REDACTED], CRNC-PMH, signed an HHT form with a start date of March 2019 and an end date of June 2019. Nurse [REDACTED] indicated that the Student cannot function in the regular school environment and requires HHT due to school refusal because of major depression and anorexia. The Student remained on HHT from March 19, 2019 through the rest of the academic year in June 2019. (P-25 and Testimony of [REDACTED]).

47. In March 2019, the Parents requested the FCPS to start an evaluation process to determine if the Student was eligible for special education services when [REDACTED] contacted [REDACTED], Special Education Teacher, regarding getting the Student tested. On March 8, 2019, Ms. [REDACTED] distributed IEP Screening Referrals to the Student's teachers and Ms. [REDACTED] to collect information about her progress. The Screening Referrals would be utilized at an IEP Screening Meeting to review the Student's educational status and determine if testing for special education services was necessary. The IEP Screening Meeting was held on April 4, 2019. (Testimony of [REDACTED]; Testimony of Ms. [REDACTED]; Testimony of Ms. [REDACTED]; and R-19).

48. The Student's Biology teacher, Ms. [REDACTED], indicated in her Screening Referral that when the Student is present in class she is attentive and willing to participate by completing



assignments and working with her lab partners appropriately. Ms. [REDACTED] noted that the Student has attended her class four out of twenty-four school days. (R-19).

49. The Student's Algebra 2 teacher, [REDACTED], indicated in her Screening Referral that the Student has difficulty in the following areas:

- Beginning a task
- Maintaining attention
- Completing tasks/assignments
- Making and keeping friends

Ms. [REDACTED] noted that the days that the Student attended class she was extremely shy, withdrawn, and indifferent to both the lessons and other students. (R-19).

50. The Student's Law and Society Teacher, Ms. [REDACTED], indicated in her Screening Referral that the Student is very social before class and completes assignments the majority of classes. She also noted that the Student is inconsistent in her performance socially and emotionally. (R-19).

51. The Student's World History Teacher, Mr. [REDACTED], indicated in his Screening Referral that the Student was easily distracted and had difficulty beginning a task. He also noted that the Student is inconsistent in her performance socially and emotionally. (R- 19).

52. Ms. [REDACTED] indicated in her Screening Referral that the Student lacks motivation, has sudden changes in mood throughout the day, is unusually shy or withdrawn and has difficulty making and keeping friends. Ms. [REDACTED] noted that the Student lacks motivation to attend school and when she did attend teachers reported that she slept in class or refused to participate. Ms. [REDACTED]'s observations on this Referral were based on discussion she had with [REDACTED]. (R-19 and Testimony of Ms. [REDACTED]).

53. The Student's Honors Biology Teacher, Ms. [REDACTED], indicated in her Screening Referral that the Student lacks motivation, is easily frustrated, has sudden changes in mood throughout the day, and was inconsistent in her performance. This portion of the Screening

Referral was not shared with the April 4, 2019 IEP Screening Team meeting. Ms. [REDACTED] also indicated that the IEP team should consider the Student's social/emotional health concerns. Ms. [REDACTED]'s notations regarding the Student's social/emotional health concerns was shared with the April 4<sup>th</sup> IEP meeting. (R-19 and Testimony of Ms [REDACTED]).

54. The Student's 2014 diagnosis of Mood Disorder and her September 2018 discharge summary from [REDACTED] in which she was diagnosed with Major Depressive Disorder were made prior to April 2019. (Testimony of Ms [REDACTED]).

55. At the April 4, 2019 IEP meeting the following individuals participated:

- [REDACTED] – IEP Chairperson
- [REDACTED] – Special Educator
- [REDACTED] – Student's mother
- [REDACTED] – Student's father
- The Student
- [REDACTED] – School Counselor
- [REDACTED] – FCPS Mental Health Coordinator
- [REDACTED] – Guidance Counselor
- [REDACTED] – Pupil Personal Worker

A General Education teacher was excused from the IEP meeting because the Student was on HHT. (Respondent Ex. 21).

56. The focus of the April 4, 2019 IEP meeting was to discuss the Student's attendance issues and determine if testing for special education eligibility was necessary. (Testimony of Ms. [REDACTED] and Ms. [REDACTED]).

57. During the April 4, 2019 IEP team meeting Ms. [REDACTED] shared feedback from the Student's HHT who indicated that the Student did what was asked of her but was not overly motivated. The HHT instructor also indicated that the Student was performing "C" level work. (Testimony of Ms. [REDACTED]).

58. The April 4, 2019 IEP Team determined that testing of the Student for special education eligibility was not needed because her teachers indicated that when she was present in

class she was able to access the curriculum without specialized instruction. The Team also considered that the Student was beginning a new type of therapy and that a decision to test for eligibility should be done after that new course of therapy is completed. The team decided to meet again on June 6, 2019 to review the Student's progress in her current therapy and to revisit whether to test the Student. (Testimony of Ms. [REDACTED] and R-21).

59. [REDACTED]. objected to the April 4, 2019 IEP team decision to decline testing of the Student. (Testimony of Ms. [REDACTED] and [REDACTED].).

60. Refusing to attend school can be considered as a basis for special education eligibility. (Testimony of Ms. [REDACTED]).

61. At the April 4, 2019 Team meeting the team did not find that the Student exhibited a general mood of unhappiness or depression that warranted testing for eligibility of special education services. (Testimony of Ms. [REDACTED]).

62. At the April 4, 2019 IEP meeting the team did suspect that the Student had pervasive unhappiness but did not suspect any inappropriate types of behavior by the Student. (Testimony of Ms. [REDACTED]).

63. Refusing to attend school is an inappropriate behavior. (Testimony of Ms. [REDACTED]).

64. On May 28, 2019, the Parents learned of the Student's suicide note and admitted her to the adolescent psychiatric ward at [REDACTED] where she remained until she was discharged on [REDACTED] 2019. (P-29 and Testimony of [REDACTED]).

65. Ms. [REDACTED]1 emailed [REDACTED] on June 4, 2019 to confirm that the June 6, 2019 IEP was still going forward while the Student was hospitalized or if she wanted to wait until after the Student's discharge. On June 5, 2019, [REDACTED]. replied that they were not in a position to discuss the Student's educational needs and will be unable to attend the June 6, 2019 IEP meeting. (R- 61 and Testimony of Ms. [REDACTED]).

66. Upon the Student's return home on [REDACTED] 2019, the Parents began making arrangements for her to go to a residential treatment center to treat her anxiety, depression, and eating disorder. On [REDACTED] 2019, the Parents placed the Student at [REDACTED], a residential treatment center in [REDACTED] (Testimony of [REDACTED] and P-36).

67. The Student's final grades for her 10<sup>th</sup> grade year (2018-2019) were:

- English – “D”
- Modern World History Honors – “A”
- Law and Society – “F”
- Biology Honors – “C”
- Common Core Geometry – “D”
- Common Core Algebra 2 – “D”

68. On August 21, 2019, the Parents, through their attorney Michael Eig, notified the FCPS that the Student was parentally placed at [REDACTED] for the 2019-2020 school year. (Testimony of [REDACTED] and P-31).

69. The Parents and the Student's therapist at [REDACTED], [REDACTED], referred her to [REDACTED] for a psychological evaluation ([REDACTED] Evaluation). On September 16, 2019, [REDACTED], PhD, LP, performed a psychological evaluation of the Student. (P-34).

70. Dr [REDACTED] tested the Student's cognitive and educational functioning in addition to numerous behavioral assessments and made the following conclusions regarding the Student:

- Verbal reasoning in the superior range
- Nonverbal reasoning in low average range
- Attention and concentration ability are in the borderline range
- Major Depressive Disorder with severe symptoms of sadness, apathy, anhedonia<sup>4</sup>, and withdrawal
- Depression is chronic and inconsistently responsive to treatment
- Severe symptoms of Anorexia Nervosa
- Low self-esteem and distorted body image

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<sup>4</sup> An inability to feel pleasure.

Dr. [REDACTED] recommended that the Student remain in residential treatment that is specifically designed to focus on her depression and eating disorder. Dr. [REDACTED] also made the following academic recommendations for the Student:

- Due to her ADHD and anxiety, she should be allowed to take exams in a quiet, distraction-free environment
- Due to her executive dysfunction and anxiety, she should be given time and a half when taking exams
- De-escalation opportunities should be available for her
- Group projects may be particularly triggering for her and should be monitored carefully. Extra teacher and parental support could be beneficial.

(P-34).

71. The Parents paid \$2,640.00 for the [REDACTED] Evaluation and submitted it to the FCPS. (Testimony of [REDACTED] and P-35).

72. The Student remained at [REDACTED] until her discharge on [REDACTED] 2019. The Student was discharged because she had been resistant to treatment for two months, was not responding to pressure to engage in treatment, and was restricting food intake. [REDACTED] suggested that the Student transfer to the [REDACTED] program to get her to be more cooperative with treatment. (Testimony of [REDACTED] and P-36).

73. The Student was unable to complete the [REDACTED] because of medical safety reasons. [REDACTED] would not take the Student back because of her eating disorder. The Parents hired an educational consultant to locate a residential treatment facility for depression and eating disorders and the consultant identified the [REDACTED] ([REDACTED]) in [REDACTED]. The Student transferred directly from the [REDACTED] to [REDACTED] on [REDACTED] 2019. (Testimony of [REDACTED]; Principal [REDACTED] and P-Ex. 48).

74. The Parents provided the FCPS with all assessments and program information along with their permission to contact the Student's placements and evaluators. (Testimony of [REDACTED]).

75. [REDACTED] has approximately 80 residents who are placed into either the Adolescent Program (under 18) or the Young Adult Program (18 and older). There are three tiers at [REDACTED] with the first one being the Stabilization Program which is the most structured tier. Once a resident is stabilized, they move onto the Intensive Program Tier where residents learn the goals of their individual program. The final stage is the Transition Program Tier where a resident's main goal is working on skills to apply to life after discharge from [REDACTED]. (Testimony of Principal [REDACTED]).

76. Educational services are available during the Stabilization Program. The Student started in the Stabilization Program but quickly moved into the Intensive Program. The Student was in the Adolescent Program from her admission on [REDACTED] 2019 through May 2020 when she aged out and entered the Young Adult Program. In the Adolescent Program all residents must attend classes with 15-20 residents taking classes at [REDACTED] and 2-5 residents taking classes at a local high school. (Testimony of Principal [REDACTED]).

77. A typical day at Innercept consists of the following:

- 7:00 a.m. – [REDACTED] – recreational exercise for one hour
- 8:00 a.m. – 9:00 a.m. – Math
- 9:00 a.m. - Breakfast
- 10:00 a.m. – 12:00 p.m. – education classes
- 12:00 p.m. – Lunch
- 1:00 p.m. – 2:00 p.m. – Therapeutic Groups
- 2:00 p.m. – 3:00 p.m. – Therapeutic Groups
- 3:00 p.m. – 5:00 p.m. – Active Time/Study Hall
- 6:00 p.m. – Dinner

(Testimony of Principal [REDACTED]).

78. At [REDACTED], during the November 2019 through May 2020 period the Student received direct instruction in English, Biology, and U.S. History in a group setting and individualized instruction in Algebra-2. None of the Student's teachers are certified special educators. The Student does not receive special education instruction at [REDACTED] (Testimony of Principal [REDACTED]).

79. The Student's attendance at [REDACTED]:

- November 2019 – attended class 5-8 days out of 20.
- December 2019 - attended class 8-12 days out of 20
- January 2020 - attended class 15 days out of 20
- February 2020 - attended class 10 days out of 20
- March 2020 - attended class 10-12 days out of 20
- April 2020 - attended class 10-12 days out of 20

(Testimony of Principal [REDACTED]).

80. When the Student first arrived at [REDACTED] she struggled with restrictive eating, was body dysmorphic and her self-goal was to starve herself to death. She also struggled socially and was not engaging in anything, including school. As of July and August 2020 the Student has been attending classes regularly and her social skills have improved. When she started in the Young Adult Program in June 2020 she initially struggled to engage but is now fully engaged in her therapy groups. Dr. [REDACTED] provides the Student with individual therapy two times per week for forty-five minutes to one hour per session. Dr. [REDACTED] also provides the Student with extra therapy when she is struggling. (Testimony of Dr. [REDACTED]).

81. When the Student attends class at [REDACTED] she does well but the challenge at [REDACTED] has been getting her to class. The Student performs as an above-average student when she attends class but when she is depressed and having anxiety it is difficult to get her to the classroom. (Testimony of Principal [REDACTED]).

82. The Behavior portion of the Student's [REDACTED] Treatment Plan is administered in consultation with her teachers. (P-48 and Testimony of Dr. [REDACTED]).

83. A FCPS IEP Team meeting was held on November 20, 2019 to determine if the Student was eligible for special education services. The IEP team reviewed outside assessments provided by the Parents at this meeting. [REDACTED], School Psychologist, participated in this IEP meeting. Ms. [REDACTED] reviewed the [REDACTED] Evaluation summarized it for the IEP team and noted that she was concerned that the adult version of the psychological assessment was performed instead of the children's version. The IEP Team decided to reconvene after Ms. [REDACTED] confirmed whether the appropriate evaluation was performed. (Testimony of Ms. [REDACTED] and Ms. [REDACTED] and P-38).

84. The FCPS IEP Team reconvened on December 20, 2019 after Ms. [REDACTED] confirmed that the [REDACTED] Evaluation utilized age appropriate assessments for the Student. At this meeting Ms. [REDACTED] discussed information she gleaned from her discussions with Dr. [REDACTED], [REDACTED], and [REDACTED]. The Academic Director at [REDACTED] indicated that it struggled to provide information regarding the Student's academic performance because she was infrequently engaged in academics and showed distress during school hours. [REDACTED] reported that when the Student was in the classroom, she performed at grade level. (Testimony of Ms. [REDACTED] and R-52).

85. The December 20, 2019 IEP Team determined that the [REDACTED] Evaluation documented the Student's diagnosis of major depressive disorder. The Team found that the Student exhibits a general pervasive mood of unhappiness or depression. The Team also indicated that the Student displays inappropriate types of behavior under normal circumstances. Ms. [REDACTED] considers school refusal to be inappropriate behavior. The IEP Team agreed that Emotional Disability is the Student's primary disability. (Testimony of Ms. [REDACTED] and R-52).

86. After the December 20, 2019 IEP Team determined that the Student was eligible for special education services due to Emotional Disability, the team scheduled an IEP meeting



for January 22, 2020 to produce the Student's IEP. The Team found that the Student needed emotional and not academic goals to address her self-image issues. (Testimony of Ms. [REDACTED] and Ms. [REDACTED]).

87. A draft IEP was provided to the Parents on or about January 15, 2020. (Testimony of Ms. [REDACTED] and R-4).

88. An IEP Team meeting was held by the FCPS on January 22, 2020 at which the following individuals participated:

- [REDACTED] and [REDACTED] (the Parents)
- Ms. Rosenstock (the Parents' attorney)
- [REDACTED] (Special Education Supervisor)
- [REDACTED] (General Education Teacher)
- [REDACTED] (School Counselor)
- [REDACTED] (IEP Chairperson)
- Rochelle Eisenberg (FCPS attorney)

89. The January 22, 2020 IEP Team determined that the Student would benefit if placed in a therapeutic environment. The IEP's accommodations were pulled from the Student's Section 504 plan which included extended test taking time (1.5X); small class setting; reduction of distractions to the Student; providing a study guide prior to a test; copies of student/teacher notes; redirection to stay on task; checking the Student's understanding of instruction; breaking down assignments into smaller units. (Testimony of Ms. [REDACTED] and R-2).

90. The January 22, 2020 IEP's social/behavioral supports included the following:

- Pre-conferencing with the Student prior to group assignments (Teachers will work with the Student to create groups that will not provide anxiety)
- Crisis Intervention (The Student will have a crisis pass to use when she is overwhelmed to allow her to go the guidance office to meet with her counselor or case manager.

(R-2).

The January 22, 2020 IEP listed the following Social Emotional/Behavioral goals:

- When presented with a situation known by the Student to be anxiety or frustration producing (non-preferred tasks, unexpected social situations, unfamiliar peers), she will identify her emotions
- When presented with a situation known to cause the Student anxiety or be frustration producing, she will identify and implement a coping strategy
- When the Student is struggling in an educational environment, with adult support, she will advocate for her needs (emotional, social and educational)

(R-2).

91. The January 22, 2020 IEP specified 29 hours of classroom instruction outside of general education in a special education setting with a small group environment with a low student to teacher ratio. It also provides for two thirty-minute pull out sessions per week with a psychologist. (R-2).

92. The IEP Team determined that the Student's goals and objectives can be served at a public comprehensive high school with a therapeutic specialized program which it identified could be implemented in a least restrictive environment (LRE) at the [REDACTED]. This program would allow the Student two hours and thirty minutes per week in the general education setting. The IEP found that the Student needs a small classroom environment and access to therapy. (R-1).

93. The Student needs a small classroom environment with a high staff to student ratio, access to counseling services and crisis intervention and such a setting is available through the [REDACTED] at [REDACTED] High School ([REDACTED] HS). (Testimony of Ms. [REDACTED] and R-2).

94. [REDACTED]. indicated during the January 22, 2020 IEP Team meeting that the Student should stay at [REDACTED] and that she would not be discharged until the 2020-2021 academic year. (Testimony of Ms [REDACTED]).

95. On January 31, 2020, the Parents prepared a typed response to the FCPS January 22, 2020 proposed placement of the Student in which they disagreed with the FCSP recommendation of services and accommodations. The Parents indicated that the Student continued to require the level of services that she was currently receiving at [REDACTED] and that she cannot be properly served in the proposed public-school environment. (Testimony of [REDACTED] and P-46).

96. The [REDACTED] is an intensive therapeutic program with integrated behavioral supports. Its Program Administrator is a certified special educator and its Math, English and Social Studies teachers are certified special educators and certified in their field of instruction. The [REDACTED] also staffs two full time therapists who are Licensed Clinical Social Workers, who provide individual therapy, and are available throughout the school day. Students at the [REDACTED] can use a crisis pass to access therapy. (Testimony of Ms. [REDACTED]).

97. [REDACTED] students can access any classes that are offered at [REDACTED] HS. If a class is only taught in the general education section of [REDACTED] HS then a special education student can be co-taught in that class with a special education instructor who ensures that all modifications and accommodations are in place. (Testimony of Ms. [REDACTED]).

98. Students who transfer from general education programs to the [REDACTED] often experience an increase in school attendance. The relationship that students develop in the program with their therapist and support coordinator often deters school refusal. The program's therapist, program coordinator, and behavioral specialist can implement behavioral contracts and even pick up students at their homes to address school refusal. (Testimony of Ms. [REDACTED]).

99. The Student could have enrolled in the [REDACTED] after the January 22, 2020 IEP determined her placement. (Testimony of Ms. [REDACTED]).

100. The Parents visited the [REDACTED] on February 14, 2020 but were concerned that the Student would still refuse to attend school and the Parents also indicated that Innercept noted that the Student was not ready for discharge in February 2020. The Parents feared the Student would attempt suicide if she returned home to attend the [REDACTED]. (Testimony of [REDACTED]).

101. All the classes in the [REDACTED] have less than 10 students with one to three staff persons assigned to each class. All students at the [REDACTED] receive individualized instruction based on their IEPs. (Testimony of Ms. [REDACTED]).

102. The Parents paid the following tuition for the Student:

- \$45,465.00 to [REDACTED]
- \$14,854.00 to the [REDACTED]
- \$18,749.70 per month to [REDACTED]

(Testimony of [REDACTED])

103. [REDACTED], Ph.D., Clinical Psychologist, interviewed the Student via video conference on Zoom on April 6, 2020. Dr. [REDACTED] was unable to conduct a cognitive assessment of the Student because he could not meet with her in-person due to the COVID-19 pandemic. Dr. [REDACTED] reviewed the [REDACTED] Assessment and many of the exhibits disclosed in this case prior to drafting a Neuropsychological Consultation. In this Consultation Dr. [REDACTED] made the following recommendations for the Student:

- Requires placement at a residential treatment center such as [REDACTED] given the severity of her disorders, safety concerns, health concerns, and academic concerns
- Requires small class size
- Special Education Instruction
- Access to a math resource book with formulations and definitions
- Access to movement breaks

- Chunking of material
- Breakdown of longer assignments into smaller assignments with more frequent feedback
- Integrated behavioral and psychological services within her academic program
- Maintenance of behavioral management protocols
- Evidence based interventions to support social skills in both peer and adult relationships
- Access to a flash pass as an anxiety management tool
- Access to an academic environment which provides a therapeutic milieu
- Maintenance of reliable home school communication strategy

(Testimony of Dr. [REDACTED] and P-49).

104. All of Dr. [REDACTED]'s recommendations for the Student, except for integrated behavioral and psychological services, could be performed in a public-school setting. Dr. [REDACTED] did not speak to anyone from the [REDACTED]. (Testimony of Dr. [REDACTED]).

105. Due to the COVID-19 pandemic, students in the FCPS system finished their 2019-2020 academic year through on-line classes. FCPS students will attend class on-line for the beginning of the 2020-2021 academic year. (Testimony of Ms. [REDACTED]).

106. The Student remains at [REDACTED] as of August 2020. (Testimony of Principal [REDACTED]).

## DISCUSSION

### ***Burden of Proof***

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16

(2002). The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case, the Parents are seeking relief and therefore bear the burden of proof in this matter.

### ***Legal Framework***

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01. The IDEA requires “that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Md. Code Ann., Educ. § 8-403 (2018 & Supp. 2019).<sup>5</sup> The IDEA defines a FAPE as special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9); *see also* Md. Code Ann., Educ. § 8-401(a)(3).

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) and the applicable federal regulations. The statute provides as follows:

#### **(A) In General**

The term “child with a disability” means a child –

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

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<sup>5</sup> All citation to the Education Article are to the 2018 Replacement Volume and 2019 Supplement.

20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8; Md. Code Ann., Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78).

The Supreme Court was first called upon to address the requirement of a FAPE in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that the requirement is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Id.* at 201 (footnote omitted). The Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07.

The *Rowley* Court held, because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade on grade level. *Id.* at 204; 20 U.S.C.A. § 1401(9). Further the Court found “if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a ‘free appropriate public education’ as defined by the [IDEA].” *Id.* at 189. The Court explicitly rejected the petitioner’s argument that the IDEA requires the provision of services “sufficient to maximize each child’s potential commensurate with the opportunity provided other children.” *Id.* at 198 (internal quotation marks omitted). Instead, the Court concluded that the “‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the . . . child.” *Id.* at 201 (footnote omitted). The Court did not seek to define

educational benefit, but held that an IEP “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 203-04 (footnote omitted).

Additionally, to the maximum extent possible, the IDEA seeks to mainstream, or include, the child into regular public schools; at a minimum, the statute calls for school systems to place children in the “least restrictive environment” (LRE) consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A).

The nature of the LRE necessarily differs for each child but could range from a regular public school to a residential school where twenty-four-hour supervision is provided. COMAR 13A.05.01.10B. The IDEA requires specialized and individualized instruction for a learning or educationally-disabled child. Nonetheless, “[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities,” must be “educated with children who are not disabled . . . .” 20 U.S.C.A. § 1412(a)(5)(A). It follows that the State and federal regulations that have been promulgated to implement the requirements of the IDEA also require such inclusion. 34 C.F.R. §§ 300.114 through 300.120; COMAR 13A.05.01.10A(1).

The IDEA mandates that the school system segregate disabled children from their non-disabled peers only when the nature and severity of their disability is such that education in general classrooms cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A); *Rowley*, 458 U.S. at 181 n.4; *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997); *see also Honig v. Doe*, 484 U.S. 305 (1988).

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). Consideration



of the student’s particular circumstances is key to this analysis; the Court emphasized in *Andrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001.

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).

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3)(A).

IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must 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 non-disabled children) . . . .” 34 C.F.R. § 300.320(a)(1)(i).

To comply with the IDEA, an IEP must, among other things, allow a student with a disability to advance toward measurable annual academic and functional goals that meet the needs resulting from the 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).

Thirty-five years after *Rowley*, the parties in *Andrew F.* asked the Supreme Court to go further than it did in *Rowley* and set forth a test for measuring whether a disabled student had attained sufficient educational benefit. The framework for the decision was the Tenth Circuit’s

interpretation of the meaning of *Rowley*'s "some educational benefit," which construed the level of benefit as "merely . . . 'more than *de minimis*.'" *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10th Cir. 2015).

The Supreme Court set forth the following "general approach" to determining whether a school has met its obligation under the IDEA:

While *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an "ambitious" piece of legislation enacted in response to Congress' perception that a majority of handicapped children in the United States 'were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to "drop out." A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child's circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be "*pecially designed*" to meet a child's "*unique needs*" through an "*[i]ndividualized* education program."

*Andrew F.*, 137 S. Ct. at 998-99 (citations omitted; emphasis in original).

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 instructs 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.” *Id.* (quoting *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.” *Id.* at 1002.

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* at 1000. Moreover, the IEP must be reasonably calculated to allow a child to advance from grade to grade, if that is a “reasonable prospect.” *Id.*

At the beginning of each school year, each local education agency is required to have in effect an IEP for each child with a disability in the agency’s jurisdiction. 20 U.S.C.A. § 1414(d)(2)(A). At least annually, the IEP team is required to review a child’s IEP to determine whether the goals are being met. *Id.* § 1414(d)(4)(A)(i); 34 C.F.R. § 300.324(b)(1).

The development of an IEP is a prospective process. *See Andrew F.*, 137 S. Ct. at 999. The test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir.1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved. While outcomes may shed some light on appropriateness, the proper question is whether the IEP was objectively reasonable at the time it was drafted.” (Citation omitted). Thus, a judge in a due process hearing must look to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive educational

benefit. An IEP is essentially a “snapshot” in time and “cannot be judged exclusively in hindsight.” See *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). However, evidence of actual progress during the period of an IEP may also be a factor in determining whether a challenged IEP was reasonably calculated to confer educational benefit. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009); see also *M.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002).

**Did the FCPS delay its evaluation of the Student for special education eligibility resulting in a violation of the IDEA?**

Local education agencies are mandated under the IDEA Child Find provisions to ensure that “[a]ll children with disabilities residing in the State . . . and who are in need of special education and related services are identified, located, and evaluated . . . .” 20 U.S.C.A. § 1412(a)(3); 34 C.F.R. § 300.111(a)(1)(i). Locating children in need of special education and related services may occur as a result of various circumstances. For instance, a student’s teacher may observe that a child’s academic performance continuously falls below grade level or that the student’s behaviors are consistently unusual or unexpected. Similarly, a parent may suspect that a student has a disability based upon the child’s academic or behavioral performance at home or notice the student’s grades have significantly decreased without explanation.

In this instance, the FCPS did not suspect the Student had a disability and it did not pursue assessment of the Student on its own accord. Rather, the Parent suspected the Student had a disability that was impacting the Student’s academic performance and contributing to the Student’s attendance issues.

A request for an initial evaluation may be initiated by either the parent of a child or by the public agency. 34 C.F.R. § 300.301(b). Once the public agency receives parental consent for

evaluation, the public agency must conduct the evaluation within sixty days. COMAR 13A.05.01.06.

Under 34 C.F.R. § 300.301 before a local education agency may begin providing special education services to a child with a disability, it “must conduct a full and individual initial evaluation” to establish whether a disability exists and the nature of the suspected disability. *See also* 20 U.S.C.A. § 1414(a)(1)(A). Once the local education agency determines that it is appropriate to evaluate a student, it must use

a variety of assessment tools and strategies . . . to gather sufficient relevant functional, cognitive, developmental, behavioral, academic, and physical information, and information provided by the parent to enable [an] IEP team to determine:

- (a) If the student is a student with a disability;
- (b) The student's educational needs;
- (c) The content of a student's IEP, including information related to enabling the student to be involved in and progress in the general curriculum . . . ; and
- (d) Each special education and related service needed by a student, regardless of whether the need is commonly linked to the student's disability.

COMAR 13A.05.01.05B(2). Upon conclusion of the assessments, the local education agency must provide the student’s parent(s) with a written report of the procedures and assessments it used to determine whether the student has a disability and the “[i]nstructional implications for the student’s participation in the general curriculum.” COMAR 13A.05.01.05D. Furthermore, once the local education agency has conducted the appropriate and relevant assessments and identified a student as eligible for special education and related services, an IEP team must convene and develop an IEP designed to address the student’s identified disability, including goals and objectives and services and accommodations designed for the student to make meaningful educational progress.

The IEP is the tool for providing necessary services to the disabled child. 20 U.S.C.A.

§ 1414(d). Congress instructed each public school system to review such a child's IEP

periodically . . . to determine whether the annual goals for the child are being "achieved" and to revise the IEP as appropriate to address –

- (I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
- (II) the results of any reevaluation . . . ;
- (III) information about the child provided to, or by, the parents . . . ;
- (IV) the child's anticipated needs; or
- (V) other matters.

20 U.S.C.A. § 1414(d)(4)(A)(i) & (ii).

The Parents argued that the FCPS denied the Student a FAPE when it failed to evaluate the Student for eligibility for special education services in April 2019. They asserted that the FCPS delay in evaluating the Student for Special Education Services until November 2019 instead of April 2019 denied the Student a FAPE. The Parents requested the FCPS to start an evaluation process in March 2019 which prompted Ms. [REDACTED] on March 8, 2019 to distribute IEP Screening Referrals to the Student's teachers and Ms. [REDACTED] to assess her progress. The purpose of the Screening Referrals was to have them utilized at the IEP Screening Meeting on April 4, 2019 where the team would determine if testing for special education services was necessary.

The FCPS argued that the Student's primary difficulty in her classes in 2019 was the result of her failure to consistently attend class. Ms. [REDACTED] testified that the Student's teachers reported during the April 9, 2019 IEP meeting that when she attended class she was able to access the coursework without specialized instruction. I find, however, that the evidence painted a more nuanced picture of the Student's issues. Her Biology teacher, Ms. [REDACTED], indicated in her screening referral that when the Student is present she is attentive and willing to participate by completing her assignments and working with lab partners appropriately. Yet, her Algebra-2 teacher, Ms. [REDACTED], found that the Student has difficulty beginning a task, maintaining attention,

completing assignments, and making and keeping friends. The Student's World History Teacher, Mr. [REDACTED], indicated in his Screening Referral that she was easily distracted and had difficulty beginning a task. Ms. [REDACTED], the Student's Honors Biology teacher, noted that the Student lacks motivation, is easily frustrated, has sudden changes in mood throughout the day and is inconsistent in her performance.

The Student and the IEP Team did not enter the April 4, 2019 meeting without any history of services and diagnosis. On September 10, 2013, the Student's treating psychiatrist notified her FCPS elementary school of her diagnoses of ADHD and Anxiety Disorder resulting in a September 11, 2013 Section 504 Team meeting which found her eligible for a 504 plan. The Student was tested for special education services in February 2014 but was not found eligible at that time. On July 23, 2018 the Student was admitted for inpatient treatment at the Center for Eating Disorders at [REDACTED] and on August 30, 2018 [REDACTED] drafted a letter outlining the Student's treatment for an eating disorder and made recommendations for her return to school. [REDACTED] testified that the August 30<sup>th</sup> letter was shared with [REDACTED] High School and Ms. [REDACTED] acknowledged receipt of this letter during the second week of September 2018. The FCPS was also aware of the Student's refusal to attend school both through her attendance records and through the Parents making staff at [REDACTED] aware of their difficulty in getting her to attend school. On March 19, 2019, the Student's Clinical Psychiatric Nurse, [REDACTED], signed an HHT form for the period of March 2019 through June 2019 due to the Student's school refusal because of her diagnoses of major depression and anorexia. So when the Screening IEP Team met in April 2019 it was well aware of the Student's diagnoses of major depression, ADHD, anxiety, anorexia, and her school refusal issues.

The April 4, 2019 IEP team also decided to table any testing at that time because the Student was starting a new course of therapy so it wanted to see her progress in this new therapy

and revisit whether to test her at a later IEP meeting. The IEP team decided to schedule a follow-up meeting for June 6, 2019.

When a student is suspected of having a disability rendering her eligible for special education and related services, the nature and educational impact of that disability is not immediately known. Although the road to special education services *begins* with the suspected disability, that suspicion marks only the start of the journey to the provision of special education and related services and the road includes stops at various important and mandatory checkpoints. The first checkpoint is assessment. That is, the local education agency must evaluate the Student using measures aimed at comprehensively assessing the breadth of the Student's disability and the impact on that student's ability to access the academic curriculum. The FCPS had ample reason to suspect the Student's disability. The FCPS argued that the Student's poor performance was due to her attendance issues, yet it failed to recognize that her refusal to attend school could be a symptom of an emotional disability warranting an evaluation for eligibility. The April 4<sup>th</sup> IEP Team simply failed to acknowledge that the Student's school refusal was reason enough to suspect a disability. In fact, Ms. [REDACTED] during cross examination conceded that school refusal can be considered as a basis for special education eligibility. Further, when the IEP Team reconvened in December 2020, it found that the Student met the definition of emotionally disabled by completing an emotional disability worksheet. That worksheet held that if a student exhibited a general pervasive mood of unhappiness or depression and displayed inappropriate types of behavior under normal circumstances, he/she meets the definition of emotionally disabled. Ms. [REDACTED] accepted as an expert in special education, also testified that refusing to attend school is an inappropriate behavior. Ms. [REDACTED] and Ms. [REDACTED] participated in the April 4, 2019 IEP Team meeting and each had sufficient suspicion at that time of the Student's possible emotional disability that warranted the testing requested by the Parents.



On [REDACTED] 2019 the Student was admitted to the adolescent psychiatric ward at [REDACTED] for suicidal ideations where she remained until discharge on [REDACTED] 2019. On June 4, 2019 Ms. [REDACTED] emailed [REDACTED] to confirm the June 6<sup>th</sup> IEP meeting was still proceeding while the Student was hospitalized or if she wanted to reschedule to a date post discharge. [REDACTED]. [REDACTED] replied on June 5<sup>th</sup> that they were not in a position to discuss the Student's educational needs and would not attend the June 6, 2019 IEP meeting. The FCPS argued that it had the "gift of time" to determine if testing was needed during the April to June 2019 period because any educational programming would be for the 2019-2020 academic year. It further asserted that the Parents abandoned the IEP process and therefore testing of the Student could not occur. I disagree. If the FCPS had suspicion to believe that the Student had an emotional disability, then it was obligated to test and evaluate the Student. The FCPS could have filed suit against the Parents seeking to evaluate the Student for eligibility, yet after the early June 2019 exchange between the [REDACTED] and the FCPS, no further contact between the parties occurred until August 21, 2019 when the Parents notified the FCPS that they placed the Student at [REDACTED] for 2019-2020 school year. As the FCPS eventually found, at the December 20, 2019 IEP Team meeting, the Student eligible for special education services due to being emotionally disabled, I find that the FCPS failed to initiate the eligibility determination journey in April 2019, when it had sufficient reason to suspect a disability. The delay from April 2019 until December 2019 resulted in the Student being denied special education and related services during that gap. Consequently, I find that the Parents have met their burden that the Student was denied FAPE from April 2019 through December 2019, as that period represents the time during which the FCPS failed to identify the student as needing special education services, in violation of the IDEA. Further, since the FCPS did not finalize an IEP with placement for the Student until January 22, 2020, its delay in identifying her disability resulted in a denial of FAPE from April 2019 to January 22, 2020.

**Did the FCPS' placement and programing proposed in the January 22, 2020 IEP fail to provide the Student with a FAPE in the least restrictive environment for the 2019-2020 and 2020-2021 school years?**

The Parents contend that placement at the [REDACTED] as specified in the January 22, 2020 IEP does not provide the Student with a FAPE because she requires an integrated behavioral program that can only be provided in a residential setting. The Parents are concerned that if the Student returns home from [REDACTED] she will regress and revert to cutting herself and restricting her eating. The Parents also argued that the [REDACTED] is not equipped to address the Student's school refusal issues.

The FCPS asserted that the January 22, 2020 IEP provides the Student with a FAPE in the least restrictive environment. It argued that the [REDACTED] can meet all of the Student's IEP goals and objectives.

There is no disagreement regarding the appropriateness of the January 22, 2020 IEP, the Parents' only contention is that it cannot be implemented in a non-residential setting. I disagree. The IEP Team determined that due to the Student's Emotional Disability she required emotional instead of educational goals to address her self-image issues. Clearly, the Student's self-image issues were impacting her ability to attend school and therefore denying her access to educational benefit. So the January 22, 2020 IEP Team found that the Student would benefit if placed in a therapeutic environment. The IEP utilized accommodations taken from the Student's 504 plan which included extended test taking time, small class setting, reduction of distractions, providing copies of student/teacher notes, redirecting the student to stay on task, checking her understanding of instruction and breaking down her assignments into smaller units. The IEP's behavioral supports included pre-conferencing with the Student prior to group assignments and providing her with the use of a crisis pass to meet with her counselor or case manager during school when she is overwhelmed. The IEP's goals sought to have the Student identify her

emotions when presented with an anxious or frustrating situation and, when in such situations, identify and implement coping strategies. Another behavioral goal for the Student, was for her, with adult support, to advocate for her needs when struggling in an educational environment. The IEP Team found that the Student's IEP could be implemented at a public high school with a therapeutic specialized program and identified the [REDACTED] at [REDACTED] High School as an appropriate placement.

The Parents argued that the Student requires the level of services she is receiving at [REDACTED] which cannot be provided in a public school environment. The Parents' expert witness, Dr. [REDACTED], reviewed the [REDACTED] Assessment, interviewed the Student via Zoom, and reviewed many of the exhibits in this case prior to drafting the Student's Neuropsychological Consultation. Dr. [REDACTED] recommended the following for the Student:

- Placement at a residential treatment center
- Small class size
- Special Education Instruction
- Access to a math resource book with formulations and definitions
- Access to movement breaks
- Chunking of material
- Breakdown of longer assignments into smaller assignments with more frequent feedback
- Integrated behavioral and psychological services within her academic program
- Maintenance of behavioral management protocols
- Evidence based interventions to support social skills in both peer and adult relationships
- Access to a flash pass as an anxiety management tool
- Access to an environment which provides a therapeutic milieu
- Maintenance of reliable home school communication strategy

Dr. [REDACTED] testified that all of his recommendations, outside of integrated behavioral and psychological services, could be performed in a public school setting. Regarding integrated behavioral and psychological services, I found Ms. [REDACTED]'s testimony particularly convincing considering her role as an FCPS Supervisor of Secondary Special Education in overseeing instructional programming for disabled secondary students. Ms. [REDACTED] explained that the [REDACTED] is an intensive therapeutic program that integrates behavioral supports. She

also noted that the [REDACTED] employs three certified special education instructors as well as two full-time licensed clinical social workers who are able to provide individual therapy throughout the school day. It should be noted that Dr. [REDACTED] did not speak to anyone from the [REDACTED] to evaluate the scope of services it offers. I therefore found her testimony regarding the [REDACTED] carried more weight than that of Dr. [REDACTED] who has never visited it. I find that the Parents have failed to show that the January 22, 2020 IEP could not be implemented at the [REDACTED].

The Parents visited the [REDACTED] in February 2020 but left with many concerns regarding its ability to meet the Student's needs. The Parents argued that the [REDACTED] would be no better equipped to address the Student's school refusal issue than [REDACTED] High School. Ms. [REDACTED], however, countered that students who transfer from general education programs to the [REDACTED] often experience an increase in school attendance due to the relationship those students develop with their therapist and support coordinator. Ms. [REDACTED] noted that the [REDACTED] therapists, program coordinator, and behavioral specialist can implement behavioral contracts to address school refusal and can even pick up students at their homes if necessary. Again, I found Ms. [REDACTED]'s knowledge of the [REDACTED] convincing regarding its ability to address the Student's school refusal issue. Further, even at the highly restrictive setting of [REDACTED]'s residential program, the Student was still absent from class approximately 50% of the school days during the months of November, December 2019 and February through April 2020. January 2020 was her best month, yet she was still absent five days that month. I find that the Parents have not established that the [REDACTED] could not address the Student's school refusal issue, nor that [REDACTED] is better suited to address it.

The Parents were also concerned after their visit to the [REDACTED] that the Student would be restricted in the variety of classes she could take because some classes such as science

with labs were taught in the mainstream portion of the school. Ms [REDACTED] allayed that concern by indicating that any mainstream classes would be co-taught with a special education instructor who would follow the Student to those classes to ensure that all modifications and accommodations are followed.

The Parents further maintained that [REDACTED] is the only appropriate placement for the Student and that if she returned home to enroll in the [REDACTED] they feared that she would regress to restrictive eating and harming herself as she did during her prior placement at [REDACTED] High School.

As stated above in *Andrew F*, the Student's educational program must be appropriately ambitious in light of her circumstances. The Student's circumstances are that her emotional disability prevents her from attending school and that if her behavioral issues are not properly addressed she will continue to refuse to attend and, thus, fail to obtain any educational benefit.

In determining whether a student has received appropriate educational benefit, the courts have reminded the decision-maker that an "appropriate" education does not mean that a student is able to maximize her potential or to receive optimal services. *Rowley*, 458 U.S. at 200; *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990). Instead, the courts have held, in *Rowley* and subsequent cases, that a public school authority complies with the IDEA when it devises an IEP that is "reasonably calculated to enable the student to receive educational benefits" and when it places a student in a program that "provides opportunity for some educational progress." *Rowley*, 102 S.Ct. at 3051; *Abrahamson v. Hershman*, 701 F.2d 223, 227 (1<sup>st</sup> Cir. 1983). The IDEA requires an IEP to provide a "basic floor of opportunity that access to special education and related services provides." *Tice v. Botetcourt*, 908 F.2d 1200, 1207 (4<sup>th</sup> Cir. 1992). However, the benefit conferred by an IEP and placement must be "meaningful" and not merely "trivial" or "*de minimis*." *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir.

1988), cert. denied, 109 S.Ct. 838 (1989); *Board of Education v. Diamond*, 808 F. 2d 987, 991 (3rd Cir. 1986). Further, providing a student with access to specialized instruction and related services does not mean that a student is entitled to “[t]he best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4<sup>th</sup> Cir. 1983), citing *Rowley*, 458 U.S. at 176.

In addition to the IDEA’s requirement that a disabled student receive some educational benefit, the student must be placed in the least restrictive environment to achieve a FAPE. Specifically, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C. § 1412(a)(5). Yet, including disabled students in the regular school curriculum may not be appropriate for every disabled student. Consequently, a removal of a student from a regular educational environment may be necessary when the nature or severity of a student’s disability is such that education in a regular classroom cannot be achieved. 20 U.S.C.A. § 1412(a)(5)(A); *Rowley*, 458 U.S. at 181 n.4; *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4<sup>th</sup> Cir. 1997); *see also Honig v. Doe*, 484 U.S. 305 (1988). Accordingly, in such a case a FAPE might require placement of a student in a private school setting that would be fully funded by the student’s public school district. 34 C.F.R. § 300.115 and COMAR 13A.05.01.10B.

The determination as to whether a student needs services beyond the regular school day to receive any educational benefit is dependent on the particular facts of a case. *Burke County Board of Educ. v. Denton*, 895 F.2d 973 (4<sup>th</sup> Cir. 1990). Generally, if services provided in a residential facility are necessary for a student to make educational progress then residential placement is required to provide the student with FAPE; however, residential placement is not warranted when the residential placement merely “enhances an *otherwise sufficient* day

program.” *Burke*, 895 F.2d at 895, quoting *Abrahamson v. Hershman*, 701 F.2d 223, 227 (3<sup>rd</sup> Cir. 1983) (emphasis in the original).

Dr. [REDACTED] testified that all of his recommendations for the educational programming for the Student, with the exception of integrated behavioral programming, could be met in a public school setting. Indeed, the evidence in this matter shows that the IEP and proposed placement at the [REDACTED] addresses the Student’s emotional disability by moving her from the general education setting at [REDACTED] High School to a self-contained special education classroom setting at the [REDACTED]. Further, the [REDACTED] has a history of success in improving a student’s attendance issues through an integrated behavioral plan implemented by its therapists and program coordinators. Additionally, there is no evidence that [REDACTED] has been able to address the Student’s attendance issues as she continued to miss approximately half of her school days during most of her time there. Although her providers at [REDACTED] are reporting that her attendance issues are improving, case law cited above provides that FCPS is not required to fund the best possible program but merely a program that provides the Student with a reasonable educational benefit in light of her particular circumstances.

In addition, the FCPS argued that the Parents have not presented evidence to show that [REDACTED] can offer the Student educationally more than what can be offered in a highly restrictive special education program in the public school setting with a therapeutic component. Moreover, the FCPS asserted that placement at [REDACTED] is not the least restrictive educational environment for the Student to learn. Although I sympathize with the Parents’ concerns for the Student, I find that the evidence in this case does not support their contention that the Student requires a residential placement for educational purposes.

The law is clear regarding placement decisions. A student’s placement must be based upon a student’s IEP. When determining the educational placement for a student with a

disability, the public agency must ensure that the placement decision is made by an IEP team and is made in conformity with the least restrictive environment provisions of the of the regulations. COMAR 13A.05.01.10C.

When the proponent of a residential placement can demonstrate that the student requires a therapeutic milieu twenty-four hours a day in order to make educational progress, then a residential placement is necessary. When such a placement is necessary for the student to make educational progress, then the public agency must consider whether the student's educational needs are inseparable from her emotional, social or medical needs. *Shaw v. Weast*, 364 Fed.Appx. 47, (4<sup>th</sup> Cir. 2010)

In this case, consistent concerns have been raised by the Parents regarding the Student's hospitalizations in the past two years due to anorexia and suicidal ideations related to her mental illness. [REDACTED] testified that she is fearful that if the Student returns home from [REDACTED] to attend the [REDACTED] before she is ready for discharge, she will regress to injurious and destructive behavior. I find the evidence presented by the Parents demonstrates that the primary demand for residential placement in this case, is to address the safety needs of the Student as a result of her mental health issues, and not her educational needs. After the Student was discharged from [REDACTED] in June 2019 for treatment of her suicidal ideations she was unilaterally placed at [REDACTED], a residential program to treat her depression. Although I agree that those mental health issues led to school refusal, which impacts her ability to learn, and that her placement in a general education setting at [REDACTED] High School was not appropriate, it is also evident that the Parents never allowed the FCPS placement in a self-contained special education classroom with a therapeutic component a chance to succeed.

If a residential placement is a response to medical, social, or emotional problems that is separate from the learning process, then such a placement is not an educational placement for



purposes of the IDEA. Moreover, the IDEA does not require reimbursement for a residential placement that addresses the student's medical, social or emotional disabilities apart from their special education needs.

The [REDACTED] provides the Student with a small classroom setting, low student to teacher ratios, instruction by certified special education instructors, and the availability of crisis intervention to assist the Student when she is overwhelmed. The Student's expert witness, Dr. [REDACTED], indicated that his recommendations, outside of an integrated behavioral intervention program, could be met in a public-school setting. Further, Ms. [REDACTED] credibly testified that the components of the [REDACTED] would meet Dr. [REDACTED]'s recommendation of an integrated behavioral program. For all of these reasons the Student's IEP can be appropriately met at the [REDACTED].

When FAPE has been offered that meets the special education and related services needs of a student with a disability, and the parents elect not to accept the program offered to their child by the public agency and, instead, choose to enroll their child in a private school facility or residential setting, then the public agency is not required to pay for that student's education. In *Burlington School Comm. v. Dept. of Education*, 471 U.S. 359 (1985), the Supreme Court established a two-part test that must be satisfied before a court will order reimbursement for private placement. First, it must be determined that services provided under an IEP at a public school are inappropriate. Second, the private placement sought by the parents must be appropriate under the IDEA.

In conclusion, after carefully reviewing all of the evidence presented by the Parents, in conjunction with the evidence presented by the FCPS, I conclude that the Parents have not met their burden of proof to show that the FCPS-proposed placement of the Student at the [REDACTED] [REDACTED] in accordance with the January 22, 2020 IEP was inappropriate. Accordingly, I find

that the Parents have not established that the FCPS has failed to provide the Student with a FAPE once it offered placement at the [REDACTED] on January 22, 2020. However, as noted above, I determined that the FCPS failed to provide the Student with a FAPE due to its delay of testing and evaluation of disability with an accompanying IEP from April 2019 until January 22, 2020. Therefore, the FCPS placement and programming in its January 22, 2020 IEP failed to provide the Student with a FAPE from April 2019 to January 22, 2020.

**If the FCPS did not provide the Student with a FAPE, was the Parents' placement of the Student at [REDACTED], [REDACTED], and [REDACTED] during the 2019-2020 school year and at Innercept for the 2020-2021 school year appropriate?**

I have determined that the FCPS did not provide the Student with a FAPE when it delayed its evaluation and identification of the Student from April 2019 to January 22, 2020 when it presented the IEP with placement at the [REDACTED]. So now I will determine if the Parents' unilateral placement of the Student at [REDACTED], [REDACTED], and [REDACTED] was appropriate.

The Parents placed the Student at [REDACTED] on [REDACTED] 2019. [REDACTED] is a residential treatment center in [REDACTED] which treated the Student's anxiety, depression, and eating disorder. The Student remained at [REDACTED] until her discharge on [REDACTED] 2019 due to her resistance to treatment for two months and her restriction of food intake. The Parents provided little to no information at the hearing regarding the [REDACTED] program. The only evidence that this program had an educational component came during Ms. [REDACTED]'s testimony, which referenced her participation in the December 20, 2019 IEP Team meeting. Ms. [REDACTED] indicated at that meeting that the Academic Director at [REDACTED] struggled to provide the FCPS with information regarding the Student's academic performance because she was infrequently engaged in academics and showed distress during school hours. [REDACTED] did

indicate that when the Student was in the classroom she performed at grade level. The record is devoid of any description of the academic program at [REDACTED], therefore I find that the Parents have failed to meet their burden to show that [REDACTED] was an appropriate placement to reasonably meet the Student's academic needs. So even though the Student was denied a FAPE by the FCPS during the period in which she was unilaterally placed at [REDACTED], she did not meet her burden for reimbursement because she failed to demonstrate the appropriateness of her placement at [REDACTED].

[REDACTED]

On [REDACTED] 2019, the Student was discharged from [REDACTED] and transferred to the [REDACTED] in an effort to get her to be more cooperative with treatment. She was unable to complete the [REDACTED] due to medical issues and therefore was discharged on [REDACTED], 2019 directly to [REDACTED]. There is no evidence that the [REDACTED] had any educational component. Again, the Parents failed to meet their burden to show that this program was a reasonably appropriate placement and as such I find that the Parents are not entitled to reimbursement of costs associated with the [REDACTED].

[REDACTED]

The Student transferred to [REDACTED] on [REDACTED] 2019. Principal [REDACTED], [REDACTED] testified extensively regarding the educational component of its program. He explained that the Student was placed in the Adolescent Program from her admission through May 2020 when she turned 18 and entered the Young Adult Program. Principal [REDACTED] noted that the Student during the November 2019 through May 2020 period received direct instruction in English, Biology and U.S. History in a group setting and individualized instruction in Algebra-2. Principal [REDACTED] stated that none of the Student's teachers were certified special educators and that she did not

receive any special education instruction. The Student performed well when she attended class but the challenge was getting her to those classes.

Principal [REDACTED] explained that the Student receives an individualized treatment plan at Innercept. Dr. [REDACTED], Clinical Director at [REDACTED], stated that the behavioral portion of the Student's treatment plan is administered in consultation with her teachers. Dr. [REDACTED] provides the Student with individual therapy twice a week for forty-five minutes to an hour for each session and additional therapy when she is struggling. Dr. [REDACTED] testified that when the Student arrived at [REDACTED] she struggled socially and would not engage in school. However, Dr. [REDACTED] noted that as of July and August 2020 the Student has been attending classes regularly and her social skills have improved.

Although the teachers at [REDACTED] are not certified special educators, I still find that the Parents met their burden to show that placement at [REDACTED] was reasonably appropriate for the Student. [REDACTED] is a highly restrictive environment, but parental placements need not meet the least restrictive environment requirement of the IDEA, which exists to prevent public school systems from segregating disabled students away from their non-disabled peers. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009). The Fourth Circuit's *Carter* decision provided the following about the appropriateness of a parental placement.

Second, we do not believe that the Supreme Court, by requiring that the private school placement be "proper under the Act," intended to impose on private schools chosen by parents the whole panoply of duties that the Act imposes on the state. Rather, when a public school system has defaulted on its obligations under the Act, a private school placement is "proper under the Act" if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits," *Rowley*, 458 U.S. at 207, 102 S.Ct. at 3051—the same standard by which the appropriateness of a public school's IEP is assessed.

*Carter By & Through Carter v. Florence Cty. Sch. Dist. Four*, 950 F.2d 156, 163 (4th Cir. 1991), *aff'd*, 510 U.S. 7, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993).

Taking into account the equitable considerations mentioned in *Burlington* and the Supreme Court's *Carter* decision, I find that the Parent's placement of the Student at [REDACTED] is reasonably calculated to enable the Student to receive educational benefits.

**Should the FCPS reimburse the Parents for tuition and related expenses associated with the Student's placement at [REDACTED] during the 2019-2020 and 2020-2021 school years?**

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). The issue of reimbursement for unilateral placement was expanded in *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Under *Burlington*, parents may recover the cost of private education only if (1) the school system failed to provide a free appropriate public education; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

As I ruled earlier in this decision, that the FCPS placement and programming proposed in the January 22, 2020 IEP provided the Student with a FAPE in the least restrictive environment I now will determine if the Parents are entitled to reimbursement for their costs associated with their unilateral placement of the Student at [REDACTED]. Again, I ruled above that the FCPS denied the Student a FAPE when it delayed its evaluation and identification of the Student's eligibility for special education services from April 2019 to January 22, 2020. Because the FCPS ultimately approved the Student for special education services to be implemented at the [REDACTED]

██████████ in its January 22, 2020 IEP, I find that the FCPS cured its IDEA violation at that point. If a school district fails to offer a student a FAPE, it must fund private placement if the placement is appropriate. *Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359, 369. (1985). Because the FCPS denied the Student a FAPE from April 2019 to January 22, 2020 and her placement at ██████████ was appropriate, the Parents are entitled to reimbursement of the costs incurred for its unilateral placement of the Student at ██████████ for the period of November 1, 2019 through January 31, 2020. I took equitable considerations in deciding to allow for the reimbursement for all of January because Innercept takes payment on a month to month basis. The Parents did not provide an invoice from ██████████ but ██████████ testified that they paid \$187,497.00 to ██████████ from November 2019 through the month of August 2020 which equates to a monthly charge of \$18,749.70. So the Parents are entitled to \$56,249.10 from the FCPS for the costs of the Student's attendance at ██████████ for the period of November 1, 2019 through January 31, 2020.

**Should the FCPS reimburse the Parents for the costs of the private psychological assessment performed by Dr. ██████████?**

The Parents obtained, without the FCPS' approval, an independent neuropsychological evaluation of the Student from Dr. ██████████ and requested that it be funded at public expense.

When a parent is not satisfied with the evaluation or assessment process on which an IEP team relies, a parent can request an independent educational evaluation (IEE) under the procedural safeguard provisions of the federal statute. 20 U.S.C.A. §1415(d)(2). That code section, however, is the only one that mentions an IEE, and it does not specify who is responsible to pay. An IEE, at public expense, is not specifically authorized by the federal statute. *A.C. v. Jefferson Co. Bd. of Educ.*, 701 F.3d 691, 695 (11<sup>th</sup> Cir. 2012).

The U.S. Department of Education regulations and Maryland State Department of Education regulations authorize an IEE, “at public expense,” under certain circumstances. 34 C.F.R. §300.502 and COMAR 13A.05.01.14. The federal rule defines an IEE as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child.” 34 C.F.R. §300.502(a)(3)(i). The federal regulatory scheme contemplates that the IEE will be paid for by the school system if the evaluation being challenged is not “appropriate.” 34 C.F.R. §300.502(b). The regulation provides the following:

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense[.]

34 C.F.R. §300.502(b); *see also* COMAR 13A.05.01.14B(2) (virtually identical State regulation).

In this matter there is no dispute that no evaluation was performed by the FCPS when the Parents requested it in March 2019. Further, the IEE obtained by the Parents was utilized by the FCPS IEP team in its IEP Team meetings in November and December 2019 to determine eligibility. In fact, the FCPS witnesses admitted that Dr. [REDACTED]’ IEE was the type of evaluation it would have ordered to determine the Student’s eligibility. Therefore, since the FCPS failed to order an evaluation and the Parents were forced to obtain an IEE, I find that they are eligible for reimbursement of its cost. The Parents presented an invoice for the IEE into evidence which indicated a cost of \$2,640.00, so the FCPS shall pay the Parents \$2,640.00 for the IEE.

## CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law as follows:

1. The FCPS unduly delayed its evaluation and identification of the Student for special education eligibility when it failed to initiate testing in April 2019, resulting in a denial of a FAPE for the Student for the period of April 1, 2019 through January 22, 2020. COMAR 13A.05.01.06 and 34 C.F.R. § 300.111(a)(1)(i).
2. The FCPS' January 22, 2020 IEP provided the Student with a FAPE in the LRE with placement at the [REDACTED] effective January 22, 2020 through the end of the 2019-2020 school year as well as for the 2020-2021 school year. *Board of Educ. of the Hendrick Hudson Central School Distr. v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017); *Sch. Committee of the Town of Burlington, MA v. Dept. of Education*, 471 U.S. 359 (1985); *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156 (4<sup>th</sup> Cir. 1991), *aff'd*, 510 U.S. 7 (1993) *Burke County Board of Educ. v. Denton*, 895 F.2d 973 (4<sup>th</sup> Cir. 1990).
3. The Parents' placement of the Student at [REDACTED] from [REDACTED] 2019 to [REDACTED], 2019 and at [REDACTED] from [REDACTED], 2019 to [REDACTED] 2019 was not appropriate because the record was devoid of educational programming offered to the Student in those programs.
4. The Parents' placement of the Student at [REDACTED] from [REDACTED] 2019 through January 31, 2020 was appropriate because reasonable education programming was provided during that time period in which the FCPS denied the Student a FAPE. *Sch. Committee of the Town of Burlington, MA v. Dept. of Education*, 471 U.S. 359 (1985); *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315 (4<sup>th</sup> Cir. 2009) and *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156 (4<sup>th</sup> Cir. 1991), *aff'd*, 510 U.S. 7 (1993).



5. The Parents are entitled to reimbursement for their unilateral placement of the Student at [REDACTED] during the period of [REDACTED], 2019 through January 31, 2020 because: (a) the FCPS unduly delayed its evaluation, identification, and placement of Student until January 22, 2020 and [REDACTED] was an appropriate placement from [REDACTED] 2019 through January 31, 2020. *Sch. Committee of the Town of Burlington, MA v. Dept. of Educ.*, 471 U.S. 359 (1985).
6. The FCPS shall reimburse the Parents for the costs of the [REDACTED] Evaluation performed by Dr [REDACTED]. 34 C.F.R. § 300.502 and COMAR 13A.05.01.14.

### **ORDER**

I **ORDER** that the Frederick County Public Schools shall reimburse the Parents for their costs associated with their placement of the Student at [REDACTED] for the period of [REDACTED] 2019 through January 31, 2020, in the amount of \$56,249.10.; I further

**ORDER** that the Frederick County Public Schools shall reimburse the Parents \$2,640.00 for the amount paid for the Neuropsychological evaluation performed by Dr. [REDACTED] s in September 2019 [REDACTED] in March and April 2019, I further

**ORDER** that the Parents' request for reimbursement for its unilateral placement at [REDACTED] and [REDACTED] is **DENIED**; I further

**ORDER** that the Parents' request for reimbursement for its unilateral placement at [REDACTED] from February 1, 2020 through the remainder of the 2020-2021 school year is **DENIED**; and I further

**ORDER** that the Frederick County Public Schools shall, within thirty days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due

Process Branch, Division of Special Education and Early Intervention Services, the Maryland  
State Department of Education.

September 9, 2020  
Date Decision Mailed

Brian Zlotnick  
Administrative Law Judge

BMZ/da  
#187502

### **REVIEW RIGHTS**

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision 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 appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

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

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

FREDERICK COUNTY

PUBLIC SCHOOLS

BEFORE BRIAN ZLOTNICK,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-FRED-OT-20-10289

**FILE EXHIBIT LIST**

I admitted the following exhibits on behalf of the Parents:

- P-1 - Request for Due Process, April 24, 2020
- P-2 - Letter from Dr. ██████████ regarding ADHD diagnosis, September 10, 2013
- P-3 - Letter from Dr. ██████████ regarding treatment, February 27, 2014
- P-4 - Letter from Dr. ██████████ regarding treatment, August 7, 2015
- P-5 - FCPS Section 504 Committee Summary Report and Section 504 Plan, May 17, 2016
- P-6 - Emails between the Parents and the FCPS regarding lunch group, June 6, 2016
- P-7 - Emails between the Parents and the FCPS, November 21, 2016
- P-8 - FCPS Final Report Card, June 9, 2017
- P-9 - Emails between the Parents and the FCSP, March 27, 2018
- P-10 - FCPS Section 504 Plan, April 26, 2018
- P-11 - FCPS Final Report Card, June 15, 2018
- P-12 - Emails between the Parents and ██████████, August 9, 2018
- P-13 - Letter from ██████████, August 30, 2018
- P-14 - ██████████ Documents Review Report, September 18, 2018
- P-15 - Emails between the Parents and the FCPS, September 18, 2018
- P-16 - FCSP Classwork/Test grades for the Student, September 2018
- P-17 - Email to the FCPS from the Parents, November 1, 2018
- P-18 - Emails between the Parents and the FCPS, December 5, 2018
- P-19 - FCSP Interim Progress Report, December 13, 2018
- P-20 - Email between the Parents and the FCPS, December 14, 2018
- P-21 - FCPS Student Discipline Referrals, December 2018
- P-22 - Parent Notes of Meeting with Dr. ██████████, January 11, 2019
- P-23 - Letter from ██████████, Physician's Assistant – Certified, February 7, 2019
- P-24 - Letters from ██████████ High School to the Parents, February 6, 21, and 27, 2019 and March 13, 2019
- P-25 - Medical Recommendation for Home and Hospital Teaching (HHT), March 14, 2019
- P-26 - FCPS IEP Meeting Notes and Prior Written Notice, April 4, 2019
- P-27 - Local Care Team Referral Form, undated
- P-28 - FCPS Interim Progress Report, May 10, 2019
- P-29 - ██████████ Discharge Summary, ██████████ 2019

- P-30 - FCPS Final Report Card, June 19, 2019
- P-31 - Letter from Michael Eig to [REDACTED] Principal, [REDACTED] High School, August 21, 2019
- P-32 - Letter from [REDACTED], Director of Special Education Compliance and Student Support, FCPS, to Michael Eig, August 26, 2019
- P-33 - Letter from Michael Eig to [REDACTED], September 3, 2019
- P-34 - Student's Psychological Evaluation by [REDACTED], September 16, 2019
- P-35 - [REDACTED] Invoice, September 25, 2019
- P-36 - Student's Discharge Summary from [REDACTED], [REDACTED] 2019
- P-37 - Student's Discharge Summary from [REDACTED], [REDACTED] 2019
- P-38 - FCPS IEP Meeting Notes, November 20, 2019
- P-39 - FCPS Psychological Assessment, December 13, 2019
- P-40 - Letter from Paula Rosenstock to Rochelle Eisenberg, Esquire, December 19, 2019
- P-41 - FCPS Amended Psychological Assessment, December 20, 2019
- P-42 - FCPS IEP Meeting Notes, December 20, 2019
- P-43 - Letter from Rochelle Eisenberg to Paula Rosenstock, January 6, 2020
- P-44 - Letter from Paula Rosenstock to Rochelle Eisenberg, January 21, 2020
- P-45 - FCPS IEP, January 22, 2020
- P-46 - Parental Input Statement for FCPS IEP, January 31, 2020
- P-47 - Parental Reactions to the FCPS proposed placement, February 14, 2020
- P-48 - [REDACTED] Integral Program Treatment Plan, March 16, 2020
- P-49 - Neuropsychological Consultation by Dr. [REDACTED], April 6, 2020
- P-50 - Email from [REDACTED] to Paula Rosenstock regarding Student's grades, May 27, 2020
- P-51 - Resume of Dr. [REDACTED]
- P-52 - Resume of [REDACTED]
- P-53 - Resume of [REDACTED]
- P-54 - [REDACTED] Academy Educational Report, July 23, 2020
- P-55 - Student Transcript, undated
- P-56 - Information regarding [REDACTED] Program, undated

I admitted the following exhibits on behalf of the FCPS:

- R-1 - FCPS Draft IEP, sent to the Parents after December 20, 2019 IEP meeting and prior to January 22, 2020 IEP meeting
- R-2 - FCPS IEP, January 22, 2020
- R-3 - FCPS IEP, February 14, 2020
- R-4 - FCPS IEP, February 14, 2020
- R-5 - FCPS IEP Team Meeting Notes, March 26, 2014
- R-6 - FCPS Psychological Evaluation, April 30, 2014
- R-7 - FCPS Educational Assessment, April 23, 2014
- R-8 - [REDACTED] Meeting, May 20, 2014
- R-9 - FCPS IEP Team Eligibility Report for Other Health Impairment (OHI), May 21, 2014
- R-10 - Parental Consent for Evaluation, March 26, 2014
- R-11 - FCPS IEP Team Meeting Notes, May 21, 2014

- R-12 - FCPS IEP Team Eligibility Report for OHI, May 21, 2014
- R-13 - FCPS IEP Team Eligibility Report for Emotional Disability (ED), May 21, 2014
- R-14 - Student's Test Summary, printed May 7, 2014
- R-15 - Receipt of Parental Rights Document, March 26, 2014
- R-16 - FCPS Student Observation, May 19, 2014
- R-17 - FCPS Enrollment Form, February 17, 2012
- R-18 - Student Transfer Card, March 14, 2012
- R-19 - Screening Referrals, March 8, 2019
- R-20 - Required Assessments for Graduation Report, March 29, 2019
- R-21 - FCPS IEP Team Meeting Notes, April 4, 2019
- R-22 - Student's Disciplinary Record for 2018 and 2019
- R-23 - Section 504 Summary Report, September 11, 2013
- R-24 - Letter from [REDACTED] to [REDACTED] Elementary School, September 10, 2013
- R-25 - Section 504 Summary Report, September 11, 2013
- R-26 - Section 504 Summary Report, September 18, 2013
- R-27 - Section 504 Student Plan, October 9, 2013
- R-28 - Section 504 Summary Report, March 26, 2014
- R-29 - Section 504 Student Plan, June 4, 2014
- R-30 - Section 504 Summary Report, September 9, 2014
- R-31 - FCPS Parent Notification of Section 504 Meeting, April 17, 2015
- R-32 - Receipt of Summary of Parental Rights, May 22, 2015
- R-33 - Section 504 Summary Report, April 22, 2015
- R-34 - Section 504 Student Plan, May 17, 2016
- R-35 - Section 504 Summary Report, May 17, 2016
- R-36 - Email from [REDACTED] to [REDACTED], November 22, 2016
- R-37 - Section 504 Student Plan, April 11, 2017
- R-38 - Section 504 Summary Meeting Participants; Summary of Parental Rights; 504 Teacher Input Form; and Section 504 Summary Report, April 11, 2017
- R-39 - Section 504 Receipt of Summary of Parental Rights; Meeting Participants; Parent Notification; Section 504 Eligibility Data Form; Section 504 Student Plan; and Section 504 Summary Report, April 26, 2018
- R-40 - Student's 4<sup>th</sup> term 5<sup>th</sup> Grade Report Card, undated
- R-41 - Letters from the FCPS to the Parents, May 6, 2013 and June 10, 2013
- R-42 - The Student's Report Cards from 2012-2017 and the Student's Attendance Data for 2016-2017 academic year
- R-43 - Email exchanges between the Parents and FCPS, 2018-2019
- R-44 - [REDACTED] Documents Review Report, September 18, 2018
- R-45 - [REDACTED] Discharge Summary, [REDACTED], 2019
- R-46 - [REDACTED] Discharge Summary, [REDACTED] 2019
- R-47 - [REDACTED] Discharge Summary, [REDACTED] 2019
- R-48 - [REDACTED] Psychological Evaluation, September 16, 2019
- R-49 - Typed Statement from the Parents, January 31, 2020
- R-50 - FCPS IEP Transition Meeting, January 22, 2020
- R-51 - FCPS Notice of the IEP Team Meeting, December 20, 2019
- R-52 - FCPS IEP Team Meeting Notes, December 20, 2019
- R-53 - FCPS Psychological Assessment, December 13, 2019
- R-54 - FCPS Amended Psychological Assessment, December 20, 2019

- R-55 - Letter from Paula Rosenstock to Rochelle Eisenberg, December 19, 2019
- R-56 - Letter from Rochelle Eisenberg to Paula Rosenstock and Michael Eig, January 6, 2020
- R-57 - Resume of [REDACTED]
- R-58 - Resume of [REDACTED]
- R-59 -20-08127- [REDACTED] Resume of [REDACTED]
- R-60 - Resume of [REDACTED]
- R-61 - Emails between the Student's mother ([REDACTED]) and Ms. [REDACTED] June 4,5, 2020