

[REDACTED],

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE KATHLEEN A. CHAPMAN,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-20-27295

**DECISION**

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ORDER

**STATEMENT OF THE CASE**

On December 14, 2020, [REDACTED] (Parent), on behalf of her son, [REDACTED] (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Baltimore County Public Schools (BCPS) 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) (2020);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2018);<sup>3</sup> Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

The parties waived their obligation to attend a resolution session and agreed instead to attend mediation. 20 U.S.C.A. § 1415(e). The mediation was held on January 6, 2021 and, on

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<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated. All citations to 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. All citations to 34 C.F.R. hereinafter refer to the 2020 volume.

<sup>3</sup> Unless otherwise noted, all citations to the Education Article hereinafter refer to the 2018 Replacement Volume of the Maryland Annotated Code.

the same date, the parties notified the OAH that they did not resolve their dispute.

On January 6, 2021, I conducted a telephone pre-hearing conference. Pamela Foresman, Esquire, participated on behalf of the BCPS. The Parent participated *pro se*<sup>4</sup> on behalf of the Student. During the conference, the Parent expressed concern that she might need to hire an attorney but was unsure how she might afford one. I asked Ms. Foresman to provide the Parent with a listing of legal resources so that she could investigate the availability and costs of hiring an attorney.<sup>5</sup> The parties agreed to hold a five-day hearing during the week of March 8 through 12, 2021. Since the due process hearing was scheduled two months in advance, I informed the parties that I would not agree to a delay of the hearing in order for the Parent to obtain counsel. A Pre-Hearing Conference Report and Order (Report) was mailed to the parties on January 19, 2021.<sup>6</sup>

I held the hearing on March 8 through 10, 2021.<sup>7</sup> Ms. Foresman, Esquire, participated on behalf of the BCPS. The Parent participated on behalf of the Student. At the close of the Parent's case, the BCPS made an oral Motion for Judgment (Motion). COMAR 28.02.01.12E. I

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<sup>4</sup> Advocating on one's own behalf.

<sup>5</sup> At the hearing, counsel confirmed that she provided the Parent with this information.

<sup>6</sup> The Pre-Hearing Conference Report and Order was inadvertently mailed to the wrong address for the Parent (██████████). Although the correct spelling of the street address, according to the Due Process Complaint form, is ██████████, the United States Postal Service did not return the mailing as undeliverable.

<sup>7</sup> The Parent did not appear for the hearing scheduled for Tuesday, March 9, 2021, complaining the day before at the close of hearing, that she did not feel well. On March 9, 2021, I cautioned the Parent that should she fail to appear without first submitting proper documentation to support an emergency postponement, I could find her in default or I could proceed with the hearing in her absence. COMAR 28.02.01.16D; COMAR 28.02.01.23A. At 8:30 a.m., on March 9, the Parent called and spoke to OAH docket clerk ██████████ saying that she was not going to attend the hearing that morning. At 9:45 a.m., the Parent faxed a note to the OAH, writing:

My name is ██████████, am here to notify you that I won't be able to make it to hearing today because I don't feel well and cannot be able to drive. I have nobody to drive me there. So please excuse me today. I will try to be there tomorrow.

*See* COMAR 28.02.01.22B(1) (OAH Official Case Record). At 10:00 a.m., I explained to counsel for the BCPS that despite the Parent's failure to appear, I would reconvene on Wednesday, March 10, 2021 out of an abundance of caution since it appeared to me that the Parent did not grasp the gravity of her choice to not appear and the hearing could conclude in her absence. As promised, the Parent appeared for the hearing scheduled for March 10, 2021.

did not issue a ruling on the record and advised the parties that I would hold the Motion *sub curia*.<sup>8</sup> In the interest of judicial economy, I asked the BCPS to present its case. COMAR 28.02.01.12E(2)(b).

Under the applicable law, a decision in this case normally would be due by February 19, 2021,<sup>9</sup> forty-five days after mediation was held and the matter did not settle. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(11)(d)(ii), (14)(b). However, the parties requested that the timelines for conducting a due process hearing and issuing a final decision be extended. An extension of the timeline is permitted under the due process procedural safeguards for the reasons expressed. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

While a five-day hearing was possible in January and February based on Ms. Foresman's schedule, the Parent strenuously objected to holding a hearing in either January or February due to financial concerns arising out of taking five days off of work to participate in a hearing. After much discussion, the Parent agreed to March hearing dates.<sup>10</sup>

Thus, pursuant to the parties' request and agreement, I granted the motion for an extension of the timeline, finding good cause based on the parties' reasons detailed in the

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<sup>8</sup> *Sub curia* is defined as "[u]nder law." *Black's Law Dictionary* 1722 (11th ed. 2019).

<sup>9</sup> The forty-fifth day falls on Saturday, February 20, 2021.

<sup>10</sup> A great deal of discussion occurred over whether I should hold the hearing and issue a decision by Friday, February 19, 2021. I explained to the Parent that in order for me to meet the statutory deadline, the hearing must be heard in either January or February. The Parent's response was noncommittal over whether she would request an extension of the regulatory timeline while remaining true to her challenge against holding the hearing in January or February 2021. After I indicated that I would hold the hearing in January, the Parent complained that I was not listening to her concerns that she could not afford to take five days off of work in January; it would negatively impact her ability to support her family due to the loss of income because she does not have paid leave. Thereafter, I indicated that I would hold the hearing in February (Counsel indicated that she was available February 8-12, 2021); again, the Parent said I was not listening to her concerns that she could not afford to take five days off of work in February for the same reason. I told the Parent that I would require a letter from her employer supporting her contention that she could not take time off in February. The Parent then asked that I hold the hearing in March. After explaining that a hearing in March would result in the forty-five-day timeline being extended, the Parent acknowledged that I would not be able to meet the regulatory timeframe and requested that the hearing be held in March. The BCPS did not object to holding the hearing beyond the regulatory timeframe.

paragraph above and footnote 9. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). The timeline to issue the decision was thirty days after the completion of the hearing. In this case, the hearing did not take five days to hear; I concluded the hearing on Wednesday, March 10, 2021. Therefore, the decision is due no later than Friday, April 9, 2021, which is thirty days from the conclusion 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. Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 13A.05.01.15C; and COMAR 28.02.01.

### **ISSUE<sup>11</sup>**

Should the BCPS's Motion for Judgment be granted?

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted no exhibits on behalf of the Parent.

I admitted a binder of exhibits on behalf of the BCPS, numbered 1 through 37, with several subparts bringing the total number of individual documents to 120. A full listing of the exhibits is appended to this Decision.

#### **Testimony**

The Parent testified and presented no additional witness testimony.

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<sup>11</sup> In the January 19, 2021 Pre-Hearing Conference Report and Order, I identified the issues to be decided at the hearing, as follows:

1. Whether placement at [REDACTED] ([REDACTED]) is appropriate?
2. Whether the use of a harness during bus transportation is appropriate?

The BCPS presented the following witnesses, each of whom were admitted as an expert in the field of special education:

- [REDACTED], Resource Teacher, Placement, Office of Special Education, BCPS;
- [REDACTED], Special Education Teacher, [REDACTED]; and
- [REDACTED], Diagnostic & Prescriptive Specialist, [REDACTED].

#### **FINDINGS OF FACT**<sup>12</sup>

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

1. The Student is thirteen-years old with Autism Spectrum Disorder, resulting in language and intellectual impairments as well as social/emotional behavioral issues.
2. The following academic areas are affected by the Student's disability: math calculation, reading comprehension, reading fluency, speech and language articulation, speech and language expressive language, speech and language receptive language, and written language expression.
3. The Student's social/emotional behavioral issues negatively impact every aspect of his learning.

#### ***Relevant background and history***

4. The Student received an initial Individualized Education Program (IEP) through Child Find<sup>13</sup> on July 10, 2010, at the age of three.

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<sup>12</sup> The Parent's testimony was not helpful in formulating the Findings of Fact; instead, I incorporated information from the BCPS' exhibits to establish the facts.

<sup>13</sup> Child Find requires school districts to identify, locate, and evaluate all children with disabilities, including children who are home schooled, homeless, wards of the state, and children who attend private schools who are in need of special education and related services. 20 U.S.C.A. § 1412(a)(3)(A).

5. The Student was placed at [REDACTED] and [REDACTED] [REDACTED] in preschool programs for students with communication disorders to address social/emotional/behavior, communication, academic, and self-help/adaptive skills.

6. By the time the Student started kindergarten, he received a Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) to address noncompliant behavior including elopement and aggressive behaviors, such as hitting, kicking, pushing, and shoving.

7. In November 2013, at the age of six, the Student was referred for placement at the [REDACTED], a separate non-public day school, because his behaviors were interfering with his learning. He required two-to-one support for safety, transitions, and academic involvement.

8. On April 24, 2017, at the age of nine, the Student transitioned to the [REDACTED] [REDACTED] Program at [REDACTED], a public school placement. This program offered a highly structured learning environment, low student to teacher ratio, visually-based strategies, instruction in the development of language and social skills, and individual behavior strategies.

9. The Student, however, had challenges in this environment due to his need for additional sensory supports as well as safety concerns stemming from his behavior (crawling under furniture, kicking chairs and bookshelves, tipping over furniture, and causing the evacuation of a classroom). The Student continued to have two-to-one support during this time.

10. On October 6, 2017, [REDACTED] updated the BIP to address the Student's noncompliance (not following staff direction), dropping (lowering body to the floor), self-injurious behavior, tantrums, tossing, and climbing on furniture.

11. Due to the recommendations on the BIP, including two-levels of service in the classroom consisting of a [REDACTED] therapist primarily working with the Student on his behavior

goals and another [REDACTED] therapist to support the classroom who was impacted by the Student's behavior, it was determined that the plan was not conducive for a public school academic structure.

12. On October 25, 2017, at the age of ten, the Student was accepted at [REDACTED] [REDACTED] for middle school, a non-public day school, and his current placement.

[REDACTED]

13. [REDACTED] offers a full-day special education program which services students with IEPs that identifies the educational disability as autism as well as other comorbidities.

14. It is a twelve-month program.

15. The staff at [REDACTED] includes, among other professionals, special educators, assistant teachers, licensed clinicians, speech-language pathologists, occupational therapists, and behavior specialists.

16. [REDACTED] utilizes applied behavior analysis (ABA), which is a method of implementing goals and objectives to improve behaviors.

17. [REDACTED] serves students from grades 3-12, and up to age 21.

18. [REDACTED] offers small class sizes – typically four to six students, but no more than eight students, per classroom depending on enrollment.

19. [REDACTED] provides students with one-on-one aides across all settings.

### *Assessments*

20. On November 14, 2018, the Student underwent an educational assessment to update his educational progress. BCPS Ex. 25.

- a. The assessment involved a behavioral observation and administering the Woodcock-Johnson IV Test of Achievement IV (W-J) which measures the development of academic skills application in the areas of reading, written language, and mathematics.
- b. The Student's brief achievement score was less than 40 on the W-J placing him in the extremely limited range according to his age level expectations.
- c. The Student required frequent verbal and gestural prompts to complete each task for every subtest. He was relatively unfocused on the tasks and required repetition of direction to insure his understanding of each task. He also required verbal and physical prompts by a one-on-one adult support, to remain seated.
- d. The following academic recommendations were made for the Student to access curriculum:
  - Orally present material, supplemented with visual materials;
  - Modelling;
  - Word bank and vocabulary pre-teaching;
  - Extended time for processing;
  - Highlighting key words and information;
  - Clarification, repetition, and paraphrasing of directions, as needed;
  - Constant redirection and prompting;
  - Reduced work load in all subject areas;
  - Positive behavioral feedback;
  - Cues to focus and pay attention; and
  - Small group instruction to reduce distractions.

21. On November 27, 2018, the Student underwent a psychological assessment for the purpose of assessing his cognitive and adaptive functioning as contributing factors on his continued need for special education and related services. BCPS Ex. 24.

- a. The assessment involved a record review, a behavioral observation, and administering the Adaptive Behavior Assessment System – Third Edition (ABAS-

3) (which measures daily functioning in communication, self-direction, functional pre-academics, community use school and/or home living, health and safety, self-care, leisure, and social skills) and the Leiter International Performance Scale – Third Edition (Leiter-3) (which measures nonverbal intelligence in fluid reasoning and visualization, visual spatial memory, and attention).

- b. During the behavioral observation, the Student required significant redirection and behavioral supports, both verbal and physical prompts, as well as an additional adult in the testing room in order to complete the assessment. The psychologist also offered “edibles” to the Student for his responses and for reminders to stay on task.
- c. The record review consisting of the Student’s educational records, outlined above in Findings of Fact Nos. 4 through 12.
- d. While the Student’s self-care skills were relatively strong, in all other areas, he performed well below age expectation.
- e. The Student’s cognitive functioning fell within the moderate to mild delay range for non-verbal skills; however, he had weaknesses in attention to task, functional and social communication, motivation, and perseverance.
- f. The Student’s overall performance on both assessments demonstrated that he was globally low functioning. In addition, the symptoms associated with the Student’s Autism Spectrum Disorder were negatively impacting his ability to function at age and grade level expectations without substantial support, modifications, and accommodations.

***BIPs***

22. January 14, 2018 BIP<sup>14</sup>

- a. The BIP targeted three problematic behaviors by the Student, including:  
elopement (running away from or attempting to run away from staff by moving out of arms reach or from designated seat to leave the area without being instructed to do so), dropping (lowering his body to the floor from a seated or standing position without being instructed to do so, and noncompliance (not following a staff direction within five seconds of the initial prompt and one additional prompt).
- b. During this period, the Student was eloping twenty-three times per day, dropping twenty times per day, and being noncompliant twenty-seven times per day.
- c. The school team believed that the Student exhibited these behaviors as a way of (a) escaping the demands of a task, (b) serving as a sensory function, (c) gaining attention, or (d) obtaining access to a preferred item or activity because the behaviors appeared to occur across all environments or when the Student was not engaged in an activity.
- d. The goal was to reduce the number of incidents of behavior throughout the school day by utilizing different strategies and preventive measures.
- e. The school team tracked the behavior daily and provided the Parent with copies of the daily behavior documentation page.

23. August 2, 2018 BIP<sup>15</sup>

- a. The BIP targeted the same three problematic behaviors from the prior BIP.

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<sup>14</sup> BCPS Ex. 31.

<sup>15</sup> BCPS Ex. 28.

- b. On average, the Student was eloping twenty-three times per day, dropping nineteen times per day, and being noncompliant eleven times per day.
  - c. The school team believed that the most common predictors of these behaviors occurred during waiting/down time, denial of a request, transitions, and presentation of non-preferred tasks/demands.
  - d. The goal was to reduce the number of incidents of behavior by twenty-five percent throughout the school day by utilizing different strategies and preventive measures.
24. September 10, 2019 BIP<sup>16</sup>
- a. The BIP targeted the same three problematic behaviors by the Student, but modified the description of noncompliance to include “[a]ny instance where he does not comply with a direction requiring the use of the 3<sup>rd</sup> step of guided compliance (physical prompting).”<sup>17</sup> BCPS Ex. 19.
  - b. For data collected from July 1, 2019 to September 6, 2019, on average, the Student was eloping twenty-four times per day, dropping twenty-one times per day, and being noncompliant twenty-four times per day.

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<sup>16</sup> BCPS Ex. 19.

<sup>17</sup> The Three-Step Guided Compliance is described as:

Staff will follow through on all demands once they have been presented without modifying them based on the presentation of target behaviors. If [the Student] does not respond to a demand, staff will state a clear direction and allow 3 to 5 seconds to process. If [the Student] complies, staff will provide him with verbal praise. If [the Student] does not comply, staff will model the completion of the task and allow 3 to 5 seconds to process. If [the Student] complies, staff will provide him with verbal praise. If [the Student] does not comply, staff will use hand-over-hand assistance. (This may include physical assistance for transitioning from one activity to the next. Staff will not provide verbal praise but may make a statement that affirms he is demonstrating the correct behavior. (i.e., “This is matching.” “This is walking.”).) For transitions where dropping occurs, staff will utilize 3 step guided compliance once, and then if another dropping behavior occurs in a short time later staff will go directly to step 3.

BCPS Ex. 19.

- c. The goals remained the same – reduce the number of incidents of behavior throughout the school day by utilizing different strategies and preventive measures.
25. September 25, 2020 BIP<sup>18</sup>
- a. The BIP targeted the same three problematic behaviors from the prior BIP.
  - b. For data collected from October 1, 2019 to March 13, 2020, the Student decreased the number of times he eloped to seven times per day (down from twenty-four), dropped to seven times per day (down from twenty-one), and noncompliance to twelve times per day (down from twenty-four). The Student also exhibited tantrums (crying that lasts minutes or hours), occurring .13 intervals per day.
  - c. Due to the COVID-19 pandemic, data collection had not been reliably maintained since March 2020. During this time, the Student was provided with a behavioral consult for the occurrence of maladaptive behaviors; however, the Parent reported no significant behavioral issues at home during remote learning.
  - d. Without new baseline data, the school team recommended that the interventions and goals from the BIP remain in effect until the Student can return to the “brick and mortar school building.” BCPS Ex. 11.
26. Each year, the BCPS reviews the data supporting the BIP with the Parent during the annual IEP Team meetings.

***1:1 Justification and Fade Plan***<sup>19</sup>

27. Each year, [REDACTED] staff evaluates the Student’s need for a one-on-one aide.

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<sup>18</sup> BCPS Ex. 11.

<sup>19</sup> BCPS Exs. 13, 20, and 29.

28. The primary purpose for the aide is to provide consistent individual assistance throughout the school day due to the Student's disability and the frequency and intensity of his maladaptive behaviors.

29. The aide's responsibilities include:

- a. monitor Student's behaviors and provide immediate, specific, and direct praise for positive behavior or close approximations;
- b. provide constant supervision and model appropriate responding in academic, community, and social settings;
- c. provide consistent, positively-based feedback regarding the appropriateness of the Student's behavior in a variety of settings;
- d. implement all preventative, reinforcement, and response strategies in the Student's BIP;
- e. provide direct supervision in times of transition throughout the school;
- f. model and support communication
- g. model appropriate social cues and responses;
- h. prompt use of functional replacement behaviors and functional communication;
- i. prompt and support the use of self-regulation strategies;
- j. collect academic and behavioral data relevant to the Student's programming, as necessary;
- k. intervene in problem behaviors as outlined in the BIP; and
- l. other duties pertinent to the Student's programming, as they arise.

30. The plan consists of four steps.

Step One: Dedicated aide to remain in close proximity (within arm's reach) of the Student at all times. To progress to Step Two, the Student must demonstrate a decrease in the percentage of intervals of elopement, dropping, and noncompliance by 25% from baseline over one academic quarter.

Step Two: Dedicated aide to remain within five feet of the Student during all instructional times and within the line of sight during down-time. To progress to Step Three, the Student must demonstrate a decrease in the percentage of intervals of elopement, dropping, and noncompliance by 50% from baseline over one academic quarter.

Step Three: Dedicated aide to remain within ten feet of the Student during all instructional times and within the line of sight during down-time. To progress to Step Four, the Student must demonstrate a decrease in the percentage of intervals of elopement, dropping, and noncompliance by 75% from baseline over one academic quarter.

Step Four: Dedicated aide to remain within ten feet of the Student during all instructional times (with the exception of group instruction) and within the line of sight during down-time. Teach the Student how to provide instruction during groups. To complete Step Four, the Student must demonstrate a decrease in the percentage of intervals of elopement and dropping to zero incidents over one academic quarter, and 90% below basement for noncompliance over one academic quarter.

31. The Student is currently on Step One and has been since 2018.

***School bus harness***

32. [REDACTED] provides bus transportation for the Student.

33. The bus does not have seat belts.

34. The Student's one-on-one aide does not accompany him on the bus.

35. There is a single aide on the bus for all students.

36. A safety harness keeps the Student in his seat, preventing him from eloping, dropping, or becoming noncompliant while riding the bus.

***New placement request***<sup>20</sup>

37. On or about January 2019, the Parent expressed concern about the Student's continued enrollment at [REDACTED] to the Resource Teacher.

38. The Parent asked that a referral be made to a program named [REDACTED].

39. The Resource Teacher declined to make the referral to [REDACTED] because the Student was not an appropriate candidate for the program. [REDACTED] serves a student population with emotional disabilities as well as students who have been involved in juvenile services referrals due to legal issues. The students who attend [REDACTED] [REDACTED] also do not have the same level of intense educational needs as the Student.

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<sup>20</sup> BCPS Exs. 21 and 22; Test. of [REDACTED] (Resource Teacher) and Parent.

40. Instead, the Resource Teacher made a referral to [REDACTED] at [REDACTED], a non-public special education day school that serves a student population with autism and behavioral issues. The Parent declined to visit the school or consider the referral.

***2020 – 2021 IEP<sup>21</sup>***

41. The IEP Team<sup>22</sup> patterned the goals and objectives based on the Student's performance during the 2018 assessments.

42. This IEP covers pre-COVID-19 instruction in school (at the brick and mortar school) as well as virtual learning (from home) since March 2020.

43. Beginning September/October 2020, [REDACTED] opened its doors to provide students with a hybrid learning model of attending the brick and mortar school one week on and one week off, with virtual learning from home the following week.

44. Students returned to school in groups based on their feeder school systems, like BCPS, etc. Based on the current student body, the Student would be in a class by himself.

45. The Parent, however, refuses to allow the Student to return to the brick and mortar school. Instead, the Student is attending virtual learning every day.

46. During virtual learning, the Student participates in group lessons. His parents (mother or father) generally monitor his participation at home.

47. The Student participates in his lessons by using a thumbs up/down gesture to answer questions. He will not verbally answer questions, even when prompted to do so.

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<sup>21</sup> BCPS Ex. 9.

<sup>22</sup> The IEP Team consists of a group of individuals composed of (a) the child's parents, (b) not less than one regular education teacher, (c) not less than one special education teacher, (d) a representative of school educational agency (such as the BCPS), (e) an individual who can interpret data from evaluation results if not a regular or special education teacher, (f) other individuals with knowledge or special expertise regarding the child; and (g) the child with disability, whenever appropriate. 20 U.S.C.A. § 1414(d)(1)(B).

48. It is difficult for the BCPS to track the Student’s progress or control the IEP goals while virtual learning because they are not sure what prompts are occurring behind the scenes by the parents. Instead, the BCPS relies on feedback from parents to measure progress.

49. The Parent failed to report any data to [REDACTED] to measure the Student’s progress during virtual learning.

50. The goals and progress outlined in the current IEP shows:

	<b>GOAL</b>	<b>PROGRESS</b>
Reading fluency	<p>Given a word list and prompts for attention, the Student will identify beginning and ending sounds, and read from a pre-primer word list with 80% accuracy.</p> <p><b>Objective 1:</b> identify the beginning or ending sound with 80% accuracy.  <b>Objective 2:</b> read the word in isolation with 80% accuracy.  <b>Objective 3:</b> read the word in context with 80% accuracy.</p>	<p><b>Pre-COVID-19:</b>  Objective 1: 72% accuracy  Objective 2: 27% accuracy  Objective 3: 29% accuracy</p> <p><b>Post-COVID-19 (virtual learning):</b>  Objective 1: 0% accuracy  Objective 2: no data  Objective 3: no data</p>
Reading comprehension	<p>Given prompts for attention, the Student will be able to demonstrate comprehension by answering questions about a text with 80% accuracy.</p> <p><b>Objective 1:</b> demonstrate comprehension by answering WH<sup>23</sup> questions about a text with 80% accuracy.  <b>Objective 2:</b> demonstrate comprehension by identifying parts of a story (character, setting, problem, solution, main idea) with 80% accuracy.</p>	<p><b>Pre-COVID-19:</b>  Objective 1: 72% accuracy  Objective 2: 65% accuracy</p> <p><b>Post-COVID-19 (virtual learning):</b>  Objective 1: 60% accuracy  Objective 2: 0% accuracy</p>
Math calculation	<p>Given a variety of instructional supports and prompts for attention, the Student will represent and solve problems involving addition and</p>	<p><b>Pre-COVID-19:</b>  Objective 1: 54% accuracy  Objective 2: 76% accuracy  Objective 3: 75% accuracy</p>

<sup>23</sup> WH refers to questions beginning with “who, what, where, when, and why”.

	<p>subtraction without regrouping, and determine place value with 80% accuracy.</p> <p><b>Objective 1:</b> demonstrate an understanding that the two digits of a two-digit number represents the amount of tens and ones with 70% accuracy.</p> <p><b>Objective 2:</b> solve a given addition problem involving numbers without regrouping with 80% accuracy.</p> <p><b>Objective 3:</b> solve a given subtraction problem involving numbers without regrouping with 80% accuracy.</p>	<p><b>Post-COVID-19 (virtual learning):</b>  Objective 1: no data  Objective 2: 25% accuracy  Objective 3: 33% accuracy</p>
Written language expression	<p>Given prompts for attention, a picture, and writing materials, the Student will use a word box to complete a cloze-procedure<sup>24</sup> sentence about the picture with the missing noun or verb, as well as generate a noun or verb to complete a cloze-procedure sentence about the picture with 80% accuracy.</p> <p><b>Objective 1:</b> complete a sentence about the picture with the missing noun with 80% accuracy.</p> <p><b>Objective 2:</b> generate a noun to complete a sentence about the picture with 80% accuracy.</p> <p><b>Objective 3:</b> complete a sentence about the picture with the missing verb with 80% accuracy.</p> <p><b>Objective 4:</b> generate a verb to complete a sentence about the picture with 80% accuracy.</p>	<p><b>Pre-COVID-19:</b>  Objective 1: 63% accuracy  Objective 2: 61% accuracy  Objective 3: 73% accuracy  Objective 4: 37% accuracy</p> <p><b>Post-COVID-19 (virtual learning):</b>  Objective 1: no data  Objective 2: no data  Objective 3: no data  Objective 4: no data</p>
Speech and language articulation	<p>The Student will increase his overall intelligibility during academic, functional and social interactions speech by using an appropriate rate of speech, repeating his message for clarity, and using an appropriate vocal volume with 75% frequency given visual supports and pacing strategies.</p>	<p>Objective 1: 67% accuracy  Objective 2: 50% accuracy  Objective 3: 38.25% accuracy</p>

<sup>24</sup> Neither party explained what the cloze-procedure is.

	<p><b>Objective 1:</b> adjust rate of speech with 75% frequency given a prompt that his message was not understood and visual pacing strategies.</p> <p><b>Objective 2:</b> repeat his message to a communication partner for clarity with 75% frequency when provided one prompt that his message was not understood.</p> <p><b>Objective 3:</b> use an appropriate vocal volume related to his environment given visual supports and one prompt with 75% frequency.</p>	<p><b>Post-COVID-19 (virtual learning):</b> Objective 1: no data Objective 2: no data Objective 3: no data</p>
Speech and language receptive language	<p>The Student will demonstrate understanding of targeted language skills by identifying the tool needed for a task, matching/identifying a description to a picture, and answering a variety of WH questions with 80% accuracy, given verbal prompts as needed and a field of choices.</p> <p><b>Objective 1:</b> match or identify a tool needed to complete a specific task (i.e. a pencil to write, toothpaste with toothbrush) independently with 80% accuracy.</p> <p><b>Objective 2:</b> match or identify a written or verbal description to a picture in a field of 3, independently with 80% accuracy.</p> <p><b>Objective 3:</b> answer a variety of WH questions with 80% accuracy, given a field of 3 choices and a verbal prompt as needed.</p>	<p><b>Pre-COVID-19:</b> Objective 1: 72.1% accuracy Objective 2: 90% accuracy Objective 3: 62.75% accuracy</p> <p><b>Post-COVID-19 (virtual learning):*</b> Objective 1: 75.5% accuracy Objective 2: 63.5% accuracy Objective 3: 68% accuracy</p> <p>*due to limited quantitative data, these numbers may not be considered reliable</p>
Speech and language expressive language	<p>The Student will increase his expressive language skills by using SVO<sup>25</sup> sentence form, prepositions, and adjectives to expand utterances to include 3-5 words with 75% frequency when provided visual supports and an initial verbal model.</p> <p><b>Objective 1:</b> use 3-5 word utterances</p>	<p><b>Pre-COVID-19:</b> Objective 1: 65.25% accuracy Objective 2: 42.5% accuracy Objective 3: 71% accuracy</p> <p><b>Post-COVID-19 (virtual learning):*</b> Objective 1: 69.5% accuracy</p>

<sup>25</sup> SVO refers to a sentence structure containing a “subject-verb-object”.

	<p>in “subject-verb-object” sentence form with 75% frequency given visual supports and an initial verbal model as needed.</p> <p><b>Objective 2:</b> use 3-5 word utterances containing prepositions with 75% frequency given visual supports (e.g., manipulatives) and an initial verbal model as needed.</p> <p><b>Objective 3:</b> expand his utterances by using adjectives to describe an object or picture with 75% frequency, given visual supports and an initial verbal model as needed.</p>	<p>Objective 2: 56.5% accuracy Objective 3: 53.6% accuracy</p> <p>*due to limited quantitative data, these numbers may not be considered reliable</p>
Social/emotional	<p>Given rules and reminders of expected behavior, the Student will demonstrate the ability to appropriately engage in a small or whole group activity by reducing his elopement, dropping and noncompliance 25% below current rates. The Student is engaging in elopement an average of 24.11 times per day, dropping 21.43 times per day, and noncompliance 24.69 times per day.</p> <p><b>Objective 1:</b> reduce the demonstration of dropping 25% below baseline to 16.1 instances per day.</p> <p><b>Objective 2:</b> reduce the demonstration of elopement 25% baseline to 18.1 instances per day.</p> <p><b>Objective 3:</b> reduce the demonstration of noncompliance 25% below baseline to 18.52 instances per day.</p>	<p><b>Pre-COVID-19 (averages):</b> Objective 1: 7.2 instances per day Objective 2: 6.98 instances per day Objective 3: 12.93 instances per day</p> <p>Tantrums: .13 intervals per day</p> <p><b>Post-COVID-19 (virtual learning):</b> Objective 1: no data Objective 2: no data Objective 3: no data</p>

51. Based on the Student’s present levels of performance, his instructional grade level performance for the following academic areas is as follows:

Pre-kindergarten (pre-k) to kindergarten

- reading fluency
- reading comprehension
- math calculation

### Kindergarten to first-grade

- written language expression

### Below age or grade level

- speech and language articulation
- speech and language receptive language
- speech and language expressive language
- social/emotional behavioral

52. The Student is currently receiving two 30-minute virtual speech sessions via Zoom per week. The Student also receives speech and language work packets. His parents participate in semi-regular phone conferences with the speech therapist.

53. Since COVID-19, the occupational therapist has not been able to interact with the Student or his parents despite her best efforts to reach out to the family by telephone or email.

54. The IEP identifies a wide range of accommodations for the Student to access the curriculum, including: prompts, data tracking, follow through on demands, incorporation of motivational topics and materials, mixing and varying of instructional demands, extended time, maintenance system for mastered skills, generalization of skills, allow use of manipulatives, use of task analysis to provide intermediate steps toward goals, low staff to student ratio, monitor independent work, redirection to task, crisis intervention, use of positive/concrete reinforcers, specific reinforcement for certain tasks, visuals, sensory strategies, occupational therapy, adult supports, and home/school communication. These strategies are implemented daily by a number of school personnel.

55. The Child requires sensory prompts throughout the school day to remain focused on tasks.

56. Without new baseline data, the IEP Team is recommending that the interventions and goals from the BIP remain in effect until the Student can return to the “brick and mortar school building.” BCPS Ex. 9.

57. The IEP Team will evaluate whether additional assessments are appropriate given that the last assessments took place in 2018; generally, assessments are updated every three years unless otherwise warranted to be conducted sooner.<sup>26</sup>

58. The Parent was provided with all notices and procedural safeguards in advance of the November 9, 2020 IEP Team meeting, and subsequently received IEP Team meeting notes.

***Parent visits to*** [REDACTED]

59. The Parent observed the Student in his classroom perhaps once or twice since admission.

60. The last time the Parent observed the Student in the classroom was 2018.<sup>27</sup>

## **DISCUSSION**

### ***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 to -408, -410-419 (2018 & Supp. 2020); and COMAR 13A.05.01. The IDEA guarantees the right to a free appropriate public education (FAPE) for children with disabilities. 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403. The IDEA provides that special education is “a service for such children rather than a place where such children are sent.” 20 U.S.C.A. § 1400(c)(5)(C). If a child is not able to learn in a regular education classroom, then this is not an appropriate placement for that child.

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<sup>26</sup> *See* 20 U.S.C.A. § 1414(a)(2)(B).

<sup>27</sup> Test. of Parent.

A FAPE is specifically designed to meet the unique needs of a disabled child, supported by such services as are necessary to permit the child to benefit from instruction. 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403. The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that FAPE 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 Supreme Court revisited the meaning of a FAPE in a recent case, 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). The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education is fact intensive, informed not only by the expertise of school officials but also by the input of the child’s parents or guardians. *See id.* at 993.

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the child must be placed in the “least restrictive environment (LRE)” to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible (to “the maximum extent appropriate”), be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the LRE consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular

school programs may not be appropriate, even with supplementary aids and services, for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. 34 C.F.R. § 300.114(a)(2)(ii); COMAR 13A.05.01.10A(2). Consideration is given to “any potential harmful effect on the child or on the quality of services that he or she needs . . . .” 34 C.F.R. § 300.116(d). Moreover, a child with a disability will not be “removed from education in age-appropriate regular classrooms solely because of needed modifications . . . .” *Id.* § 300.116(e).

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like BCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. *Id.* § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

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

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov’t § 10-217 (2014); COMAR 28.02.01.21K. To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so” when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Civil Pattern Jury Instructions* 1:7 (3d ed. 2000)); *see also Mathis v. Hargrove*, 166

Md. App. 286, 310 n.5 (2005). In this case, the Parent is challenging the continued placement of her son at [REDACTED], a non-public school, at the BCPS' expense. The Parent and Student bear the burden of challenging the sufficiency of an IEP and whether that IEP provided a FAPE by a preponderance of the evidence. COMAR 28.02.01.21K(1)-(2)(a); *see also Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

### ***Parent's Presentation***

In the Due Process Complaint, the Parent expressed her disagreement with the placement of her son at [REDACTED]; she wrote:

My son's placement is not meeting ... his academic welfare. His placement is not given him opportunity to grow and demonstrate his developmental milestone. The school and the case worker is not working in the interest of my son to grow. They want him to remain at this level. They are always holding on him will not let him to exercise his developmental achievement. Each time they do their evaluation they still place him at the same level. I requested for him to move to another school since that environment ...did not meet his need. The case work[er] [REDACTED] refuse to give me a referral to visit other school where he can be transferred to. She even refused to give him a trial period, to see how he will perform.

The proposed resolution to this is to move him out of that atmosphere, because it did not met his needs, and he is learning a lot of deviate behavior. Evidence by his first week in that school which I brought to the school attention. Moreover, the student in his classroom cannot do things for themselves, people are still feeding them, cleaning their nose, etc. My son been placed in such classroom is putting him down and slowing his developmental growth instead of him progress – he is retrogressing. In the class the students are always making noise, even while the lesson is going on. I don't see how he can learn in that kind of environment. Each time I call meeting regarding this issue they always referred me back his action the [not discernible]. Since the time my son was in that school, they have not sent any crisis report or bad report what he did in that school. Why is he not giving opportunity to exercise his developmental [not discernible]. They always holding him by hand like a small baby. My son has grown all those hyperactivity. Behavior has decrease drastically that was the reason he was sent that school in the first place. I want him out of that school, is not helping at lot.

Due Process Complaint (syntax errors contained in the original). *See* COMAR 28.02.01.22B(1) (OAH Official Case Record).

The Parent elaborated on her claims during her testimony. She indicated that the only reason her son was referred to ██████████ in 2017 was because of hyperactivity. According to the Parent, the Student was not able to sit still in class. Yet, the Parent felt “pressured” to go along with the BCPS’ recommendation that her son attend the non-public day school placement.

The Parent testified that she has been unhappy ever since her son’s admission to ██████████ ██████████ because she believes he has learned “deviant behavior” from the other students who attend the school. For instance, the Parent contends that, after the first week of school, the Student mimicked having sex through gestures and body movement on the floor. The Parent asserted that it was at that “moment I hated the school.” In addition, she observed her son develop other newly learned behaviors such as picking up items from the floor and putting them in his mouth. He would put his hands to his ears and scream. Overall, she saw his behavior receding. The Parent also described the school setting as “so noisy” with children running around and jumping up and down to the point that she cannot understand how her son is able to learn in that environment.

The Parent described trying to find another placement in 2019 that would be a better fit for her son, but felt stymied by the BCPS because they would not provide her with a referral to the school of her choice. While the Parent agreed that she refused the alternative referral offered by the BCPS because, according to her, it was a school similar to ██████████.

The Parent further took issue with how the staff at ██████████ interacted with her son. She complained that they are always holding onto him and not allowing him the freedom to move. This, the Parent said, resulted in the “dehumanization of a full-grown boy” and it was “not appropriate” to treat her son in this fashion.

The Parent further contends that the school did not send her any documentation to support the continued use of a school bus restraint or other behavior intervention measures. According to the Parent, her son is no longer hyperactive. She also stated that there have been no reports of problems with her son riding the bus. As such, she believes the data supporting the BIP and the use of a harness is “a fabrication of lies.”

When asked about the 2020-2021 school year and whether she would have her son return to [REDACTED] in person during the hybrid learning model, the Parent said absolutely not because she does not want him to resume any of those maladaptive behaviors he had previously learned. Now that he has been away from [REDACTED] for approximately one year, the Parent indicated that her son’s behavior has improved for the better. The Parent testified that she will only agree to send him to school for in-person learning if it is in a public school setting.

Accordingly, as relief, the Parent requests that the Student be removed from [REDACTED] and be placed elsewhere, with supports. She believes all he needs at this moment is abstract comprehensive reading so that he can learn to read, math, occupational therapy, as well as speech therapy. On the latter point, the Parent stated “once he is able to better communicate, then he will be okay.” Therefore, the Parent testified that the “best thing [for her son] is to let him leave [REDACTED].”

In closing remarks, after listening to the BCPS’ presentation, the Parent exclaimed that the Student was not making any progress since his admission because his present levels of performance in several academic areas remained at pre-kindergarten -- kindergarten. She further iterated her claim that the BCPS was not working with her and her son to improve his skills. She finally alleged that the BCPS spun a web of lies about her throughout the hearing and further lied

in the documentation (BCPS exhibits) about her son's progress. She wants her son out of [REDACTED] [REDACTED] now.

### ***Motion for Judgment***

At the close of the Parent's presentation and, again, after closing remarks, the BCPS moved for judgment on the basis that the Parent's claims lacked any legal sufficient basis to grant the remedy sought. On this point, the BCPS stressed that, without corroborative testimony or documentation to support any of her contentions, the Parent's presentation was merely based on her personal opinion or conjecture. In challenging the motion, the Parent exclaimed that she knows what is best for her son.

The OAH's Rules of Procedure regarding a Motion for Judgment state as follows:

#### **E. Motion for Judgment.**

(1) A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party. The moving party shall state all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of any opposing party's case.

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

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

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

(3) A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence if the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made.

COMAR 28.02.01.12E.

A motion for judgment under COMAR 28.02.01.12E is analogous to motion for judgment under Maryland Rule 2-519. In *Driggs Corporation v. Maryland Aviation Administration*, 348 Md. 389 (1998), the Maryland Court of Appeals explained how a motion for

judgment under Rule 2-519 is considered, which is instructive on how to consider a motion made under COMAR 28.02.01.12E. The *Driggs* Court explained:

In Maryland court proceedings, such a motion is now termed a motion for judgment (Md. Rule 2-519); formerly, it was known as a motion to dismiss, if made in a non-jury case, or a motion for directed verdict, if made in a jury case. The purpose of such a motion, whatever its denomination, is “to allow a party to test the legal sufficiency of his opponent’s evidence before submitting evidence of his own.”

The issue traditionally presented by such a motion is a purely legal one—whether, as a matter of law, the evidence produced during A’s case, viewed in a light most favorable to A, is legally sufficient to permit a trier of fact to find that the elements required to be proved by A in order to recover have been established by whatever standard of proof is applicable. To frame the legal issue, the court must accept the evidence, and all inferences fairly deducible from that evidence, in a light most favorable to A; it is not permitted to make credibility determinations, to weigh evidence that is in dispute, or to resolve conflicts in the evidence.

It has always been understood and recognized, however, that a party who makes and loses such a motion has an option. The party (B) may proceed to present additional evidence in an effort to controvert, or further controvert, the evidence produced in A’s case, in which event B effectively withdraws the motion for judgment . . . .

*Id.* at 402-03 (citations and footnote omitted).

### ***Analysis***

The powers and duties of an Administrative Law Judge are outlined in COMAR 28.02.01.11, and state, in relevant part, as follows:

#### **.11 Powers and Duties of ALJs.**

A. An ALJ shall:

....

(2) Take action to avoid unnecessary delay in the disposition of the proceedings . . . .

B. An ALJ has the power to regulate the course of the hearing and the conduct of the parties and authorized representatives, including the power to:

....

(4) Consider and rule upon motions in accordance with this chapter;

....

(12) Issue such orders as are necessary to procure procedural simplicity and administrative fairness and to eliminate unjustifiable expense and delay . . . .

Based on my review of the Due Process Complaint and the testimony presented, I am persuaded that the Parent failed to challenge either (1) the personalized instruction and support services developed by the IEP Team that are contained in the Student's IEP or (2) whether the IEP was reasonably calculated to provide the Student a FAPE. The Parent's chief contention appears to be that the Student's IEP should be implemented elsewhere.<sup>28</sup> Simply stated, she does not want her son at [REDACTED] any longer. Without more, I find that the Parent did not meet her burden of proof to show that the IEP developed by the IEP Team was not reasonably calculated to provide the Student a FAPE.

I also agree with the BCPS that the Parent made no reference in the Due Process Complaint, or during her testimony, how the non-public educational placement violated the IDEA, its implementing regulations, any State law or regulation, or any State or federal education policies. The Parent also did not allege any deficiency in the Student's IEP or assert that due to the failure of the BCPS to develop and implement an appropriate IEP, the Student was denied FAPE. The Parent also did not refer to any statute, regulation, policy, or case law that supports the relief requested.

In *AW v. Fairfax County School Board*, 372 F.3d 674 (4th Cir. 2004), the Fourth Circuit Court of Appeals addressed the term "educational placement" thusly:

Consideration of the structure and the goals of the IDEA as a whole, in addition to its implementing regulations, reinforces our conclusion that the touchstone of the term "educational placement" is not the location to which the

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<sup>28</sup> When referring to a placement elsewhere, the Parent claimed that she never told the BCPS that she wanted the Student returned to the public school setting, as opposed to locating another non-public placement. Notes taken during the last IEP Team meeting, however, suggests otherwise. See BCPS Ex. 15a. When confronted at the hearing regarding the IEP Team meeting notes, the Parent declared that it was a lie conjured up by the BCPS and that the IEP meeting notes contained this information in error. In any event, the Parent confirmed that she never contacted the IEP Team to alert them to this alleged error.

student is assigned but rather the environment in which educational services are provided. To the extent that a new setting replicates the educational program contemplated by the student's original assignment and is consistent with the principles of "mainstreaming" and affording access to a FAPE, the goal of protecting the student's "educational placement" served by the "stay-put" provision appears to be met. Likewise, where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs.

*Id.* at 682 (footnote omitted).

The IDEA provides that special education is "a service for such children rather than a place where such children are sent." 20 U.S.C.A. § 1400(c)(5)(C). As such, there is a distinction between "placement" and the physical location of the educational environment. In 1994, the Office of Special Education Programs (OSEP), of the U.S. Department of Education, issued an opinion letter on the subject of determining when a "change in educational placement" had occurred. With regard to the indicator of a change in placement, the opinion letter stated, "the public agency responsible for educating the child must determine whether the proposed change would substantially or materially alter the child's educational program." Letter from OSEP to Joseph Fisher, Assistant Comm'r, Tenn. State Dep't of Educ. (July 6, 1994), *published in* 21 IDELR 992, 995.

By and large, the Parent's testimony reflected the frustrations of a concerned parent who believes that the BCPS' placement of the Student at [REDACTED] is not in her son's best interest; however, her opinion and obvious dissatisfaction with the BCPS is not sufficient, alone, to sustain her burden. The Parent did not present evidence legally sufficient to demonstrate that the BCPS ever failed to offer the Student a FAPE. The Parent's opinion is that [REDACTED] is not the right school setting (brick and mortar) for the Student. Even if I were to accept this as being true, this fact alone does not demonstrate that the BCPS failed to provide the Student with a FAPE. Moreover, the Parent did not contend that the IEP could not be implemented at the

██████████ or that the IEP could be implemented in a public setting. Similarly, the Parent presented no credible evidence that the use of a harness during bus transportation was inappropriate. Thus, based on the evidentiary record in this case, the BCPS is entitled to prevail on its Motion as a matter of law. Accordingly, the Motion for Judgment will be granted and the Complaint is dismissed.

### CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the Motion for Judgment should be granted in favor of the BCPS at the conclusion of the Student's case, and that the Due Process Complaint of December 14, 2020 should, therefore, be dismissed. COMAR 28.02.01.11 and COMAR 28.02.01.12E; *AW v. Fairfax Cty. Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Schaffer v. Weast*, 546 U.S. 49 (2005); *Driggs Corp. v. Md. Aviation Admin.*, 348 Md. 389 (1998).

### ORDER

I **ORDER** that the Baltimore County Public School's Motion for Judgment is **GRANTED** and the Student's Due Process Complaint of December 14, 2020 is hereby **DISMISSED**.

April 8, 2021  
Date Decision Mailed

Kathleen A. Chapman  
Administrative Law Judge

KAC/kdp  
Doc #190955v1A

**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],

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE KATHLEEN A. CHAPMAN,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-20-27295

**FILE EXHIBIT LIST**

I admitted no exhibits on behalf of the Parent.

I admitted the following exhibits on behalf of the BCPS:

- BCPS #1 Email Communication with the Parent regarding Speech session, dated February 11, 2021
- BCPS #2 Email Communication with the Parent regarding new Related Services scheduled, dated January 28, 2021
- BCPS #3a Email Communication with the Parent regarding Occupational Therapy services, dated February 16, 2021
- BCPS #3b Email Communication with the Parent regarding Occupational Therapy services, dated February 13, 2021
- BCPS #3c Email Communication with the Parent regarding Occupational Therapy services, dated January 12, 2021
- BCPS #3d Email Communication with the Parent regarding Occupational Therapy services, dated January 6, 2021
- BCPS #3e Text Message Communication, dated January 6, 2021 to January 25, 2021
- BCPS #3f Email Communication with the Parent regarding Occupational Therapy services, dated December 22, 2020
- BCPS #4a Email Communication with [REDACTED] to the Parent, dated September 23, 2020
- BCPS #4b Email Communication with [REDACTED] to the Parent, September 16, 2020

- BCPS #4c Email Communication from [REDACTED] to [REDACTED], dated September 8, 2020
- BCPS #4d Email Communication with [REDACTED] to the Parent, dated September 8, 2020
- BCPS #4e Email Communication with [REDACTED] to the Parent, dated September 3, 2020
- BCPS #4f Email Communication with [REDACTED] to the Parent, dated August 28, 2020
- BCPS #4g Email Communication with [REDACTED] to the Parent, dated August 26, 2020
- BCPS #5a Email Communication with the Parent regarding Speech services, dated January 15, 2021
- BCPS #5b Email Communication with the Parent regarding Speech services, dated November 13, 2020
- BCPS #5c Email Communication with the Parent regarding Speech services, dated November 4, 2020
- BCPS #5d Email Communication with the Parent regarding Speech services, dated October 30, 2020
- BCPS #5e Email Communication with the Parent regarding Speech services, dated October 29, 2020
- BCPS #5f Email Communication with the Parent regarding Speech services, dated October 23, 2020
- BCPS #5g Email Communication with the Parent regarding Speech services, dated October 22, 2020
- BCPS #5h Email Communication with the Parent regarding Speech services, dated October 22, 2020
- BCPS #5i Email Communication with the Parent regarding Speech services, dated October 15, 2020
- BCPS #5j Email Communication with the Parent regarding Speech services, dated October 8, 2020
- BCPS #5k Email Communication with the Parent regarding Speech services, dated October 2, 2020
- BCPS #5l Email Communication with the Parent regarding Speech services, dated October 1, 2020

- BCPS #5m Email Communication with the Parent regarding Speech services, dated September 25, 2020
- BCPS #5n Email Communication with the Parent regarding Speech services, dated September 24, 2020
- BCPS #5o Email Communication with the Parent regarding Speech services, dated September 23, 2020
- BCPS #5p Email Communication with the Parent regarding Speech services, September 22, 2020
- BCPS #5q Email Communication with the Parent regarding Speech services, dated September 17, 2020
- BCPS #5r Email Communication with the Parent regarding Speech services, dated September 16, 2020
- BCPS #5s Email Communication with the Parent regarding Speech services, dated September 16, 2020
- BCPS #5t Email Communication with the Parent regarding Speech services, dated September 11, 2020
- BCPS #5u Email Communication with the Parent regarding Speech services, dated September 1, 2020
- BCPS #6a Email Communication between [REDACTED] and the Parent, dated August 11, 2020
- BCPS #6b Email Communication between [REDACTED] and the Parent, dated July 30, 2020
- BCPS #6c Email Communication between [REDACTED] and the Parent, dated July 13, 2020
- BCPS #6d Email Communication between [REDACTED] and the Parent, dated June 1, 2020
- BCPS #6e Email Communication between [REDACTED] and the Parent, dated May 22, 2020
- BCPS #6f Email Communication between [REDACTED] and the Parent, dated May 15, 2020
- BCPS #6g Email Communication between [REDACTED] and the Parent, dated May 8, 2020

- BCPS #6h Email Communication between [REDACTED] and the Parent, dated May 4, 2020
- BCPS #6i Email Communication between [REDACTED] and the Parent, dated May 1, 2020
- BCPS #6j Email Communication between [REDACTED] and the Parent, dated April 23, 2020
- BCPS #6k Email Communication between [REDACTED] and the Parent, dated April 20, 2020
- BCPS #6l Email Communication between [REDACTED] and the Parent, dated April 17, 2020
- BCPS #7a Email Communication to the Parent from [REDACTED] regarding work, dated August 14, 2020
- BCPS #7b Email Communication to the Parent from [REDACTED] regarding work, dated August 7, 2020
- BCPS #7c Email Communication to the Parent from [REDACTED] regarding work, dated July 31, 2020
- BCPS #7d Email Communication to the Parent from [REDACTED] regarding work, dated July 24, 2020
- BCPS #7e Email Communication to the Parent from [REDACTED] regarding work, dated July 17, 2020
- BCPS #7f Email Communication to the Parent from [REDACTED] regarding work, dated July 10, 2020
- BCPS #7g Email Communication to the Parent from [REDACTED] regarding work, dated June 19, 2020
- BCPS #7h Email Communication to the Parent from [REDACTED] regarding work, dated June 12, 2020
- BCPS #7i Email Communication to the Parent from [REDACTED] regarding work, dated June 5, 2020
- BCPS #7j Email Communication to the Parent from [REDACTED] regarding work, dated May 29, 2020
- BCPS #7k Email Communication to the Parent from [REDACTED] regarding work, dated May 22, 2020

- BCPS #7l Email Communication to the Parent from [REDACTED] regarding work, dated May 15, 2020
- BCPS #7m Email Communication to the Parent from [REDACTED] regarding work, dated May 14, 2020
- BCPS #7n Email Communication to the Parent from [REDACTED] regarding work, dated May 8, 2020
- BCPS #7o Email Communication to the Parent from [REDACTED] regarding work, dated May 1, 2020
- BCPS #7p Email Communication to the Parent from [REDACTED] regarding work, dated April 24, 2020
- BCPS #7q Email Communication to the Parent from [REDACTED] regarding work, dated April 17, 2020
- BCPS #7r Email Communication to the Parent from [REDACTED] regarding work, dated April 9, 2020
- BCPS #7s Email Communication to the Parent from [REDACTED] regarding work, dated April 7, 2020
- BCPS #8 Email Communication from [REDACTED] to the Parent, dated April 1, 2020
- BCPS #9 Individualized Education Program (IEP), dated November 9, 2020
- BCPS #10a IEP Team Summary, dated November 9, 2020
- BCPS #10b [REDACTED] Report for the IEP Team, dated September 23, 2020
- BCPS #10c [REDACTED] Speech and Language Annual Report, dated September 25, 2020
- BCPS #10d [REDACTED] Occupational Therapy Annual Report, dated September 28, 2020
- BCPS #11 Behavior Invention Plan (BIP), dated November 10, 2020
- BCPS #12 Email Communication from [REDACTED] to the Parent, dated October 27, 2020
- BCPS #13 [REDACTED] 1:1 Justification and Fade Plan, dated October 6, 2020
- BCPS #14 BCPS Referral to Pupil Personnel Services, dated September 13, 2020
- BCPS #15a IEP Team Summary, dated September 10, 2020

- BCPS #15b Invitation to the IEP Team meeting, dated September 2, 2020
- BCPS #16 IEP Team Summary, dated January 9, 2020, Procedural Safeguards signed document, and meeting report
- BCPS #17 IEP, dated October 11, 2019
- BCPS #18a IEP Team Summary, dated October 11, 2019, IEP Team Participant Signature Page, Procedural Safeguards signed documents
- BCPS #18b ██████████ Occupational Therapy Annual Review, dated October 4, 2019
- BCPS #18c ██████████ Speech and Language Report, dated September 5, 2019
- BCPS #18d ██████████ Teacher Report for IEP Team, dated October 1, 2019
- BCPS #19 BIP, dated September 10, 2019
- BCPS #20 ██████████ 1:1 Justification and Fade Plan, dated September 10, 2019
- BCPS #21 Email regarding referral to ██████████, dated February 4, 2019
- BCPS #22 Non-public Placement Referral Packet to ██████████, dated January 10, 2019
- BCPS #23 IEP Team Summary, dated December 19, 2018, Meeting Report, Team Participant Signature Page, and Procedural Safeguards signed documents
- BCPS #24 Psychological Assessment, dated December 3, 2018
- BCPS #25 Educational Assessment, dated December 3, 2018
- BCPS #26 Memo from ██████████ to ██████████ regarding assessments, dated October 9, 2018
- BCPS #27a IEP Team Summary, dated October 5, 2018, Meeting Report, Team Participant Signature Page, and Procedural Safeguards signed documents
- BCPS #27b Parent Permission for Assessment, dated October 5, 2018
- BCPS #27c Parental Consent Form, dated October 5, 2018
- BCPS #27d ██████████ Teacher Report for the IEP Team, dated October 5, 2018
- BCPS #27e ██████████ Speech and Language Summary, dated September 5, 2018

- BCPS #27f ██████████ Occupational Therapy Annual Report, dated September 18, 2018
- BCPS #28 BIP, dated August 2, 2018
- BCPS #29 ██████████ 1:1 Justification and Fade Plan, dated September 7, 2018
- BCPS #30a IEP Team Summary, dated February 14, 2018, Meeting Report, Team Participant Signature Page, and Procedural Safeguards signed documents
- BCPS #30b Invitation for IEP Team, dated January 31, 2018
- BCPS #30c ██████████ Occupational Therapy Progress Report, dated February 14, 2018
- BCPS #30d ██████████ Teacher Report for IEP Team, dated February 1, 2018
- BCPS #30e ██████████ Speech and Language Progress Review, dated February 1, 2018
- BCPS #31 BIP, dated January 14, 2018
- BCPS #32 ██████████ Acceptance Letter, dated October 25, 2017
- BCPS #33 Non-public Referral Packet to ██████████, dated October 23, 2017
- BCPS #34 IEP, dated May 12, 2017
- BCPS #35a IEP Team Summary, dated May 12, 2017, Meeting Report, Team Participant Signature Page, and Procedural Safeguards signed documents
- BCPS #35b ██████████ Occupational Therapy Progress Report, dated May 12, 2017
- BCPS #35c Partnership for Assessment of Readiness for College and Careers (PARCC), completed May 12, 2017
- BCPS #35d BCPS Speech and Language Report, dated May 12, 2017; Speech and Language Report, dated May 5, 2017
- BCPS #35e ██████████ IEP Summary, dated May 12, 2017
- BCPS #35f ██████████ Teacher Report, dated May 11, 2017
- BCPS #35g BCPS Occupational/Physical Therapy Report, dated May 11, 2017
- BCPS #35h ██████████ Behavior Intervention Teacher Report, dated May 11, 2017

BCPS #36 [REDACTED] BIP, dated May 2, 2017

BCPS #37 Resumes