

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE NANCY E. PAIGE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-19-29458

**DECISION**

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

**STATEMENT OF THE CASE**

On September 19, 2019, ██████████ (Parent), on behalf of her daughter, ██████████ (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 Montgomery County Public Schools (MCPS) 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) (2018);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held a telephone prehearing conference on October 7, 2019. The Parent participated. Leslie Turner Percival, Esquire, represented MCPS. By agreement of the parties, the hearing was scheduled for November 18 and 19, 2019. No extensions of time were requested or granted and the decision is due December 3, 2019. 34 C.F.R. §§ 300.510(b)(1), 300.515(a).

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<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated.

<sup>2</sup> C.F.R. is an abbreviation for Code of Federal Regulations.

On November 18, 2019, I convened the hearing as scheduled. At that time, the Parent requested a postponement to allow her to retain a lawyer and because the Student's therapist was ill and could not attend. At the prehearing conference, the Parent mentioned that she intended to retain a lawyer and I advised her that it was important for her to do so promptly because the hearing dates were scheduled and it would be difficult to change them. I did not hear from her with respect to scheduling until the morning of the hearing.

OAH Rules require that postponements be requested five days in advance of the hearing, absent an emergency. COMAR 28.02.01.16A and D. There was no emergency mentioned with respect to the lawyer. As to the therapist, the prehearing order required the parties to exchange witness lists no later than November 11, 2019. The Parent did not submit a witness list and did not advise opposing counsel that she intended to call the therapist as a witness. MCPS objected to a postponement and I denied the request. The hearing concluded on November 19, 2019, as scheduled.

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**

1. Is the Individualized Education Program (IEP) and placement for the 2019-2020 school year developed by MCPS reasonably calculated to provide the Student with a free appropriate public education (FAPE) in the least restrictive environment (LRE)?
2. Is MCPS required to duplicate at [REDACTED] Middle School ([REDACTED]) the services and supports available in the [REDACTED]

██████ Program (██████) at ████████ Middle School (██████) in order to  
 ████████  
 implement the EIP at ████████?

**SUMMARY OF THE EVIDENCE**

**Exhibits**

I admitted the following exhibits on behalf of MCPS:

MCPS-1	Educational Management Team (EMT) Summary, dated May 2011 and April 2012, and EMT Referral Letter to the Student's parents, dated 8/14/2015
MCPS-2	MCPS Progress Report Cards, School Years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2107
MCPS-3	Letters from ████████ Middle School to Parent, dated 10/4/2017, 10/20/2017, 10/26/2017, 12/8/2017
MCPS-4	Notice of IEP Meeting, dated 10/31/2017
MCPS-5	Not offered
MCPS-6	MCPS Report to parents on Student Progress, dated 11/30/2017
MCPS-7	EMT Summary and EMT Meeting Documents, dated 1/29/2018, and Teacher Referrals, dated 1/25/2018
MCPS-8	MCPS Regulation IOI-RA - Placement Procedures for Alternative Programs
MCPS-9	Intake Documents for the Student at ████████ Alternative Program, dated 4/4/2018 and 5/30/2018
MCPS-10	Kickboard Student Weekly Progress Report, 9/4/2018 – 3/24/2018
MCPS-11	Not offered
MCPS-12	Attendance Letter from ████████ to Parent, dated 11/1/2018
MCPS-13	Letter from ████████ to Student's parents, dated 1/18/2019
MCPS-14	Not offered
MCPS-15	IEP Meeting Documents, dated 3/12/2019, 3/15/2019, 3/19/2019, 3/20/2019, 3/26/2019, 3/27/2019
MCPS-16	MCPS Educational Assessment Report by ████████, dated 4/22/2019
MCPS-17	Not offered

MCPS-18	Not offered
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MCPS-1	Educational Management Team (EMT) Summary, dated May 2011 and April 2012, and EMT Referral Letter to the Student's parents, dated 8/14/2015
MCPS-19	Not offered
MCPS-20	Student Absences Report School Year 2018-2019, dated 5/24/2019
MCPS-21	MCPS Report of School Psychologist by [REDACTED], dated 5/28/2019
MCPS-22	Functional Behavioral Assessment, dated 6/20/2019
MCPS-23	IEP Meeting Documents, dated 7/22/2019
MCPS-24	IEP Meeting Documents, dated 8/19/2019
MCPS-25	IEP, dated 8/19/2019
MCPS-26	Not offered
MCPS-27	Facsimile Transmittal from Parent to [REDACTED], transmitting Student's IEP documents, dated 8/29/2019
MCPS-28	IEP Meeting Documents, dated 8/28/2019 and Prior Written Notice, dated 9/4/2019
MCPS-29	IEP, amended 9/4/2019
MCPS-30	Student's Grade Level 8 Attendance Summary, dated 9/12/2019
MCPS-31	IEP Meeting Documents, dated 9/13/2019 and Prior Written Notice, dated 9/13/2019
MCPS-32	IEP Meeting Documents, dated 9/18/2019 and Prior Written Notice, dated 9/18/2019
MCPS-33	IEP, Amended 9/18/2019 [REDACTED]
MCPS-34	Student's Communication Logs Gr [REDACTED] Middle School
MCPS-35	Classroom Observation Re [REDACTED] [REDACTED] 9/6/ [REDACTED] 11/4/2019

MCPS-36 Email chain among Parent, [REDACTED], [REDACTED], and [REDACTED] dated 9/9/2019, 9/16/2019, 9/17/2019, 9/18/2019

MCPS-37	Email from [REDACTED] to [REDACTED], dated 9/26/2019 Email from [REDACTED] to [REDACTED], dated 10/8/2019 Email from [REDACTED] to [REDACTED], dated 10/15/2019 Email from [REDACTED] to Parent, dated 10/29/2019 Email from [REDACTED] to [REDACTED], dated 11/4/2019 Email from [REDACTED] to Parent, dated 11/4/2019
MCPS-38	Student Detail Report, dated 11/5/2019
MCPS-39	Student Assignment Scores, [REDACTED] Middle School, dated 11/1/2019
MCPS-40	Not offered
MCPS-41	Resume of [REDACTED], Supervisor, [REDACTED], MCPS
MCPS-42	Resume of [REDACTED], Principal, [REDACTED] Middle School
MCPS-43	Resume of [REDACTED], School Psychologist, MCPS
MCPS-44	Not offered
MCPS-45	Resume of [REDACTED], Science Teacher, Alternative Education Programs at [REDACTED]
MCPS-46	Not offered
MCPS-47	Not offered
MCPS-48	Resume of [REDACTED], Special Education Teacher, [REDACTED] Middle School
MCPS-49	Not offered
MCPS-50	Resume of [REDACTED], Assistant Principal, Alternative Education Programs at [REDACTED]

I admitted the August 19, 2019 IEP, as amended on September 18, 2019, on behalf of the Parent, as P #1.

## **Testimony**

The Parent testified.

MCPS offered the testimony of the following witnesses:

Dr. [REDACTED], Assistant Principal, Alternative Education Programs at [REDACTED], accepted as an expert in education with a focus on effective instructional practices and strategies

[REDACTED], Science Teacher, Alternative Education Programs at [REDACTED], qualified as an expert in special education

Dr. [REDACTED], School Psychologist, accepted as an expert in psychology

[REDACTED], Special Education Teacher, [REDACTED] qualified as an expert in special education

[REDACTED], Principal, [REDACTED] qualified as an expert in special education and administration

Dr. [REDACTED], Supervisor, [REDACTED], qualified as an expert in special education with a focus on social/emotional needs

## **FINDINGS OF FACT**

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

1. The Student is fourteen years old. She is in the eighth grade, currently attending [REDACTED]
2. The Student experienced behavioral and academic difficulties as early as kindergarten. She repeated her kindergarten year.
3. In the fifth grade, the Student was hospitalized for 11 days upon the recommendation of her private therapist, because of emotional stress.

4. The Student entered the sixth grade at [REDACTED] Middle School ([REDACTED]) in September 2017.
5. In October 2017, the Student was placed in a Level 1 Alternative (Alt 1) program at [REDACTED].
6. When the Student started the Alt 1 program, she was the only student in her section. She responded well to 1:1 instruction. When another student was added to her class, her performance deteriorated.
7. On October 31, 2017, the Student's parents were invited to attend an IEP team meeting. They declined.
8. In November 2017, the Student underwent a Functional Behavioral Assessment (FBA) leading to a Behavioral Intervention Plan (BIP). Her FBA was updated on June 20, 2019.
9. In January 2018, the Student's academic achievement was below grade level in reading, writing and math. She was enrolled in a reading comprehension program (READ 180) and a math support class.
10. The Student was suspended seven times while at [REDACTED], for a total of 25 days, for aggressive, inappropriate, and disruptive behavior.
11. In April 2018, the Student was voluntarily placed in a Level 2 Alternative program at the [REDACTED] ([REDACTED]).
12. At [REDACTED], the Student had a case manager to whom she reported daily and had access as needed. The case manager escorted her to the bus at the end of the day to be sure she boarded the bus. There were three or four students in her class and a paraprofessional, in addition to the teacher. Teachers recorded behavior on a behavior management system called, "Kickboard."



13. The Student's behavior at [REDACTED] was erratic, sometimes very pleasant, then irritable, upset, tired; at other times, very animated, with difficulty focusing. The Student engaged in altercations with staff and peers. She struggled academically.
14. On January 18, 2019, the Student was suspended for five days for inappropriate sexual behavior.
15. Between September 2018 and May 2019, the Student eloped from school five times and attempted to elope once more. The school required daily parental surveillance in school for a period of time to prevent elopement. The last time the Student eloped, she was gone for two days.
16. Between September 2018 and May 2019, the Student had 48 unexcused absences. She missed 315 classes as a result of unexcused absences or tardiness.
17. On April 1, 2019, the Student achieved the following scores on the Woodcock-

Johnson IV Tests of Achievement:

Letter Word Identification	82	Low Average
Passage Comprehension	65	Very Low
Word Attack	93	Average
Oral Reading	93	Average
Sentence Reading Fluency	63	Very Low
Reading Recall	71	Very Low
Applied Problems	56	Very Low
Calculation	53	Very Low
Math Facts Fluency	46	Very Low
Number Matrices	78	Low
Spelling	82	Low Average
Writing Samples	82	Low Average
Sentence Writing Fluency	78	Low
Spelling of Sounds	86	Low Average

18. Dr. [REDACTED] School Psychologist, performed a comprehensive evaluation of the Student on April 10, 2019. Dr. [REDACTED] administered the Wechsler Intelligence Scale for Children, 5<sup>th</sup> Edition (WISC-V), including seven subtests. The Student scored in the extremely low range on the General Ability Index. As reflected on the tests, her

“verbal comprehension skills, visual spatial skills and working memory skills fell well below expected for a child her age.” MCPS Ex. 21 at 9. Dr. [REDACTED] evaluated the Student’s social, emotion, and behavioral functioning based upon interviews, classroom observation, the “incomplete sentences task,” and structured rating scales. These sources indicated that the Student “demonstrates a pattern of aggressive and defiant behavior.” MCPS Ex. 21 at 10.

19. At an IEP meeting on July 22, 2019, the IEP team found that the Student met the criteria for [REDACTED]. The Student’s mother agreed with this decision.
20. The Student’s initial IEP was proposed on August 19, 2019. It provided for continued placement at [REDACTED]. The Parent signed the IEP on August 19, 2019.
21. The Student’s parents withdrew her from [REDACTED] before the end of the 2018-2019 school year and home-schooled her. They enrolled her at [REDACTED] in September 2019. Her IEP was amended on September 4, 2019 to reflect the change in service school.
22. The Student has eloped at least twice since starting [REDACTED]. She failed all of her academic classes and was absent from 60 classes (not counting home room) during the first quarter.
23. The IEP team met on September 12, 2019 and recommended placement in the [REDACTED] program at [REDACTED]. The Parent reserved approval pending a visit to the program. She participated in a tour of [REDACTED] on or about September 16, 2019 and subsequently disagreed with the placement.
24. The [REDACTED] program at [REDACTED] is a comprehensive program within a general education middle school. Class sizes are 8-12 students, with three teachers and three

- para-educators. The full time coordinator oversees 30 students, as opposed to 115 students at [REDACTED], and there is a full time psychological social worker onsite.
25. At an IEP meeting on September 18, 2019, the Student’s IEP was amended to reflect placement at [REDACTED]. Other amendments included addition of counseling and an increase in the number of hours outside of general education from 8 hours and 45 minutes per week to 11 hours and 25 minutes per week.
26. The September 18, 2019 IEP includes restriction on hall passes with a requirement that security and others be notified if the Student is not present; a procedure for the Student to eat lunch in a quiet room, rather than the cafeteria; and escort to the bus in the afternoon.

## **DISCUSSION**

### **The 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* 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. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017).

In addition to the IDEA's requirement that a disabled child receive educational benefit, the child must be placed in the "least restrictive environment" to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 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 "least restrictive environment" 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 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. COMAR 13A.05.01.10A(2).

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 MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 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).

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, in this matter the Parent has

the burden of proving that MCPS failed to provide the Student with FAPE for the 2019-2020 school year in the least restrictive environment.

### **The Dispute**

The dispute in this case involves the placement of the Student in the [REDACTED] program. The Parent does not disagree with the provisions of the Student's IEP but claims that the supports and services identified in the IEP can and should be provided at [REDACTED], where the Student is currently enrolled. The Parent characterized [REDACTED] as "too intensive" for her daughter. Although not framed in those terms by the Parent, the legal substance of the dispute is that [REDACTED] is not the least restrictive environment for providing the Student a FAPE.

The Parent disagrees that her daughter had emotional difficulties beginning in kindergarten and claims that her daughter repeated kindergarten at her request (she did not explain the reasons for her request). The Parent attributes her daughter's hospitalization in the fifth grade and subsequent emotional and behavioral problems to bullying by other students in the fourth and fifth grades. The Parent testified that her daughter's behavior deteriorated at [REDACTED]; that she never eloped before going to [REDACTED], and that the students at [REDACTED] were "extremely bad." She claims that her daughter "picked up" behaviors from them and started eloping.

The Parent agrees that her daughter needs extra services in her classes, but contends that she does not need a social worker or other behavioral support in school because she gets that at home. The Parent testified that she agrees with the final IEP, but that [REDACTED] can implement the IEP and meet her daughter's needs. She objects to the [REDACTED] program because the students in the program are "mentally challenged" and her daughter is not. She said her daughter does not need the level of services offered by the [REDACTED] Program.

At the pre-hearing conference, after discussion, the parties agreed that the issues were as follows:

1. Is transfer of the Student to [REDACTED] Middle School necessary to implement the Student's Individualized Education Plan (IEP)?
2. Is MCPS required to provide a social worker or other social-emotional support at [REDACTED] Middle School, the Student's current school?

After hearing the arguments and evidence presented at the hearing, I reframed the issues to more accurately encompass the concerns of the Parent within the framework of the relevant law. Much of the evidence presented by MCPS came in over objection of the Parent that it was irrelevant to the issues identified at the prehearing conference. I overruled the objections because I believe it was necessary for me to understand the educational history of the Student in order to properly consider the issues raised by the Parent.

### **The Merits**

The evidence in this case shows a history of deteriorating behavior, with consequent decline in educational performance and achievement. Unfortunately, it was not until the seventh grade that the Student was identified as eligible for special education services and provided an IEP.<sup>3</sup>

It is clear that the effort to address the Student's needs by placing her in the Alt 1 program at [REDACTED] was not successful. The Student eloped five times from that program and missed 315 classes without excuse. There is some evidence that the Student's performance initially improved [REDACTED] when she had 1:1 instruction. Her seventh grade science teacher, [REDACTED], testified that there were only two students in the class for the first and second quarter and, while the Student was not compliant at first, with Ms. [REDACTED] behavioral interventions and modification of instruction, the Student's behavior improved and she passed the course. The

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<sup>3</sup> The reasons for this delay are not fully developed on the record and are not the subject of this case.

Student was not able to answer follow-up questions after reading material independently, so Ms. ██████████ read the material aloud and reformatted questions. The Student's writing ability was limited, but she liked art, so Ms. ██████████ asked her to draw her answers. Ms. ██████████ also used rewards, such as access to videos, to modify behavior.

The Student's attendance deteriorated in the second quarter, however, with a commensurate deterioration in her performance. In Ms. ██████████'s opinion, the Student's IEP for the 2019-2020 school year, as amended on September 18, 2019, is reasonably calculated to provide the Student a FAPE. Ms. ██████████ agreed that the Student requires a more restrictive placement and that ██████████ "may be" a better placement than ██████████.

It is also clear that the Student is not succeeding since her enrollment in ██████████. She missed eight classes without excuse in the first seven days of school. She missed 60 classes during the first quarter and did not pass any of her academic classes. ██████████, the Student's case manager and home room teacher at ██████████, testified that the Student's home room, with 15 Students, is smaller than the general education home room. The Student checks in and Ms. ██████████ assesses her mood. The students eat breakfast and hear announcements. In the approximately fifteen minutes allotted, Ms. ██████████ looks at the Student's grades, checks homework, and talks about peer interactions and strategies for managing stress and conflict.

Ms. ██████████ also co-teaches the Student's math class. She said the Student struggles with math and completed only one assignment during the first quarter of this year. The Student avoids work; she leaves class or puts her head on her desk (possibly sleeps), changes her seat and talks to a peer. She was absent from math class ten times and received a grade of 6% in math for the first quarter.<sup>4</sup>

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<sup>4</sup> Ms. ██████████ testified that the Student's grade was 6%, but the Student's Detailed Report for the first quarter ,

MCPS Ex. 38, shows a grade of 3.30%.



Ms. [REDACTED] attended the September 12, 2019 IEP meeting at which additional counseling was added and the [REDACTED] program at [REDACTED] was recommended. Transportation to [REDACTED] was also added. Ms. [REDACTED] noted that the Student was not making progress in the co-taught environment at [REDACTED]; that she did not pass any class and her interaction with peers was “fraught.” She said the Student required a more restrictive environment and [REDACTED] was an appropriate environment.

[REDACTED], the principal of [REDACTED] explained that [REDACTED] is one of three schools available to the Student in her district. She said the Parent chose [REDACTED] because of its [REDACTED] program, which is something the Student enjoys. Ms. [REDACTED] formerly taught in the [REDACTED] program and went with the Student and her parents on the tour of the [REDACTED] facility. She described the program in detail, particularly the low student-to-adult ratio, facilities for students to deescalate, an onsite psychologist and adults present in different spaces in the building to process incidents “in the moment” and replace negative behaviors. Ms. [REDACTED] said she and the Student’s parents visited a sheltered math class and “peeked in” a co-taught class. The Student made what Ms. [REDACTED] described as “honest observations.” While they did not see students in transition during the tour, Ms. [REDACTED] said she has been to [REDACTED] many times and seen students in transition, but never observed “extreme” behavior.

Ms. [REDACTED] subsequently received a text saying that the parents did not agree with the placement at [REDACTED]. They expressed concern about the size of the building and that it was near woods, so it would be difficult to find the Student if she eloped. However, Ms. [REDACTED] chaired the September 18, 2019 IEP meeting and reported that the Student’s father said, about [REDACTED] “Give it a try. What do we have to lose?” Ms. [REDACTED] said the parents agreed with

the goals and objectives of the IEP. It was her opinion that [REDACTED] was an appropriate placement to implement the IEP, that the supports provided at [REDACTED] were not successful either

academically or behaviorally and that [REDACTED] was the least restrictive environment to implement the IEP.

Dr. [REDACTED], supervisor of social and emotional special education services for grades K-12, also spoke to the appropriateness of the [REDACTED] program. She reiterated that there are only thirty students in the program, with three teachers and three para-educators, which is a very low student/adult ratio, and there is also a full time psychological social worker. The goal for the Student is to gain regulatory strategies to succeed in school, and specifically to replace elopement as a coping strategy so that she will be in class to learn. Dr. [REDACTED] noted that the Student responds to 1:1 relationships and needs more opportunities for such relationships, which are not available at [REDACTED] but are available at [REDACTED]. She said that [REDACTED] is the least restrictive environment to meet the Student's needs.

In response to the Parent's questions, Dr. [REDACTED] admitted that she has never met the Student, but was familiar with her record. Based upon her expertise, her interviews with staff, and her knowledge of the [REDACTED] program, Dr. [REDACTED] was confident that the Student's behavioral profile was very similar to other students in the program. She said the Student is receiving everything that [REDACTED] has to offer and it is not working. There are not enough services available at [REDACTED] to meet the Student's needs. The psychological social worker is only one piece of the [REDACTED] program. The Student needs small classes all day. What [REDACTED] offers is ten students in a class with three adults.

The Parent's aversion to the [REDACTED] program, and her conclusion that it was an inappropriate placement, is based largely upon her observations during a visit to [REDACTED] Middle School, which has an [REDACTED] program. She said it was like a jail, with locked doors, and inferred that it was the same program as offered at [REDACTED]. Her opinion respecting the type of students

enrolled in the program is also based upon her observations at [REDACTED] Middle School.

Since the student body of any school is not constant, nor is it the same from school to school, the composition of the student body cannot be a basis for rejecting the Student's IEP placement. As to the Parent's observation that ██████ Middle School was like a jail, there is nothing in the record to suggest that she found the same objectionable conditions at ██████. Moreover, one of the principal concerns expressed by all parties, but particularly the parents, was the Student's practice of eloping from school. While there is nothing in the record about the physical security arrangements of ██████, it may be that locked doors are appropriate to prevent elopement.

The evidence is compelling that the Student has struggled both academically and behaviorally at ██████, then at ██████, and currently at ██████. As discussed above, MCPS is required to provide a continuum of alternative placements to meet the needs of children with disabilities. 34 C.F.R. § 300.115. ██████ is more restrictive than the Student's previous placement, but is still within a comprehensive middle school with opportunities to interact with non-disabled peers. The Student was not successful in the less restrictive environment of ██████ and is not doing well at ██████. Her experience at ██████ was clearly unsatisfactory, to the point that the parents removed her and home-schooled her until she was re-enrolled at ██████. Under these circumstances, MCPS has reasonably concluded that ██████ is the least restrictive environment in which to meet the Student's needs.

It is well-established that, in enacting the IDEA, and its predecessor, the Education of the Handicapped Act, Congress deliberately left the selection of education policy and methods to state and local officials. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. at 207–08, 102 S.Ct. at 3051–52 (1982), *Barnett v. Fairfax County*, 927 F.2d 146, 152 (4th Cir. 1991), *cert. denied*, 502 U.S., 859 (1991). The IDEA is not intended to deprive educators of the right to

apply their “professional judgment.” *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996,

1001 (4th Cir. 1997). Based upon these principles, the Fourth Circuit Court of Appeals rejected the parents' contention in *Barnett* that the local school system is required to duplicate a specialized program (in that case, a program for the hearing impaired) in the student's home school, when it was available in another school a few miles further from the student's home.

The court said,

Adopting plaintiffs' position would require us to intrude upon the educational policy choices that Congress deliberately left to state and local school officials. Whether a particular service or method can feasibly be provided in a specific special education setting is an administrative determination that state and local school officials are far better qualified and situated than are we to make. Moreover, we believe that when devising an appropriate program for individual students, a school system may consider the feasibility of such a program.

*Barnett, supra*, at 152. Similarly, in this case, while the Parent agrees that the services and supports provided for in the Student's IEP are necessary to allow her to succeed educationally, she seeks to have those services, available at [REDACTED], duplicated at [REDACTED]. Such a result is not required under the law.

Moreover, while I am sympathetic to the Parent's concern that transferring the Student for the third time in the last three school years is disruptive and may be traumatic, I am mindful of the fact that the Student's experience in the prior two schools has been palpably unhappy. If the currently proposed transfer is successful in improving her academic and behavioral performance, the benefits will far outweigh the short-term trauma of yet another transfer.

I find the record amply demonstrates that the Student's 2019-2020 IEP, including placement in the [REDACTED] program at [REDACTED], is reasonably calculated to provide the Student a FAPE. I also find that MCPS properly provided for the placement of the Student in that program in order to implement the IEP, and is not required to duplicate at [REDACTED] the services and supports available at [REDACTED].

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Student's IEP for the 2019-2020 school year is reasonably calculated to provide the Student a free, appropriate public education in the least restrictive environment. 20 U.S.C.A. § 1400(d)(1)(A), 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

I further conclude that MCPS is not required by law to duplicate at [REDACTED] Middle School the services and supports available in the [REDACTED] Program at [REDACTED] Middle School. *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. at 207–08, 102 S.Ct. at 3051–52 (1982), *Barnett v. Fairfax County*, 927 F.2d 146, 152 (4th Cir. 1991), *cert. denied*, 502 U.S., 859 (1991).

## ORDER

**I ORDER** that the Parent's request that the Student's 2019-2020 IEP be implemented at [REDACTED] Middle School is **DENIED**.

December 3, 2019  
Date Decision Mailed

Nancy E. Paige  
Administrative Law Judge

NEP/emh  
#183153



**REVIEW RIGHTS**

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or with the Federal District Court of Maryland, within 120 days of the issuance of this decision. 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.

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

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

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE NANCY E. PAIGE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-19-29458

**FILE EXHIBIT LIST**

I admitted the following exhibits on behalf of MCPS:

MCPS-1	Educational Management Team (EMT) Summary, dated May 2011 and April 2012, and EMT Referral Letter to the Student's parents, dated 8/14/2015
MCPS-2	MCPS Progress Report Cards, School Years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2107
MCPS-3	Letters from ██████████ Middle School to Parent, dated 10/4/2017, 10/20/2017, 10/26/2017, 12/8/2017
MCPS-4	Notice of IEP Meeting, dated 10/31/2017
MCPS-5	Not offered
MCPS-6	MCPS Report to parents on Student Progress, dated 11/30/2017
MCPS-7	EMT Summary and EMT Meeting Documents, dated 1/29/2018, and Teacher Referrals, dated 1/25/2018
MCPS-8	MCPS Regulation IOI-RA - Placement Procedures for Alternative Programs
MCPS-9	Intake Documents for the Student at ██████████, dated 4/4/2018 and 5/30/2018
MCPS-10	Kickboard Student Weekly Progress Report, 9/4/2018 – 3/24/2018
MCPS-11	Not offered
MCPS-12	Attendance Letter from ██████████ to Parent, dated 11/1/2018
MCPS-13	Letter from ██████████ to Student's parents, dated 1/18/2019
MCPS-14	Not offered

MCPS-15	IEP Meeting Documents, dated 3/12/2019, 3/15/2019, 3/19/2019, 3/20/2019, 3/26/2019, 3/27/2019
MCPS-16	MCPS Educational Assessment Report by [REDACTED], dated 4/22/2019
MCPS-17	Not offered
MCPS-18	Not offered
MCPS-19	Not offered
MCPS-20	Student Absences Report School Year 2018-2019, dated 5/24/2019
MCPS-21	MCPS Report of School Psychologist by [REDACTED], dated 5/28/2019
MCPS-22	Functional Behavioral Assessment, dated 6/20/2019
MCPS-23	IEP Meeting Documents, dated 7/22/2019
MCPS-24	IEP Meeting Documents, dated 8/19/2019
MCPS-25	IEP, dated 8/19/2019
MCPS-26	Not offered [REDACTED]
MCPS-27	Facsimile Transmittal from Parent to [REDACTED], transmitting Student's IEP documents, dated 8/29/2019
MCPS-28	IEP Meeting Documents, dated 8/28/2019 and Prior Written Notice, dated 9/4/2019
MCPS-29	IEP, amended 9/4/2019
MCPS-30	Student's Grade Level 8 Attendance Summary, dated 9/12/2019
MCPS-31	IEP Meeting Documents, dated 9/13/2019 and Prior Written Notice, dated 9/13/2019
MCPS-32	IEP Meeting Documents, dated 9/18/2019 and Prior Written Notice, dated 9/18/2019
MCPS-33	IEP, Amended 9/18/2019 [REDACTED]
MCPS-34	Student's Communication Logs Grade 8 [REDACTED] Middle School
MCPS-35	Classroom Observation Reports by [REDACTED], [REDACTED], [REDACTED], dated 9/6/2019, 11/1/2019, 11/4/2019

MCPS-36 Email chain among Parent, [REDACTED], [REDACTED], and [REDACTED], dated 9/9/2019, 9/16/2019, 9/17/2019, 9/18/2019

MCPS-37	Email from [REDACTED] to [REDACTED] dated 9/26/2019 Email from [REDACTED] to [REDACTED], dated 10/8/2019 Email from [REDACTED] to [REDACTED], dated 10/15/2019 Email from [REDACTED] to Parent, dated 10/29/2019 Email from [REDACTED] to [REDACTED], dated 11/4/2019 Email from [REDACTED] to Parent, dated 11/4/2019
MCPS-38	Student Detail Report, dated 11/5/2019
MCPS-39	Student Assignment Scores [REDACTED] Middle School, dated 11/1/2019
MCPS-40	Not offered
MCPS-41	Resume of [REDACTED] Supervisor, [REDACTED], MCPS
MCPS-42	Resume of [REDACTED], Principal, [REDACTED] MS, MCPS
MCPS-43	Resume of [REDACTED], School Psychologist, MCPS
MCPS-44	Not offered
MCPS-45	Resume of [REDACTED] Science Teacher, Alternative Education Programs at [REDACTED], MCPS
MCPS-46	Not offered
MCPS-47	Not offered
MCPS-48	Resume of [REDACTED], Special Education Teacher, [REDACTED] MS, MCPS
MCPS-49	Not offered
MCPS-50	Resume of [REDACTED], Assistant Principal, Alternative Education Programs at [REDACTED], MCPS

I admitted the August 19, 2019 IEP, as amended on September 18, 2019, on behalf of the Parent, as P #1.