

XXXX XXXX,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

* BEFORE D. HARRISON PRATT,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH CASE No.: MSDE-MONT-OT-13-24095

* * * * *

DECISION

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STATEMENT OF THE CASE

On June 21, 2013, XXXX and XXXX XXXX (“Father” and “Mother,” together, the “Parents”), on behalf of their daughter, [Student] (the “Student” or “[Student]”), filed a Due Process Complaint with the Office of Administrative Hearings (the “OAH”) requesting a hearing to review the services and 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) (2010).

By notice dated July 10, 2013, the parties waived the otherwise required prehearing resolution meeting. 34 C.F.R. §300.510(a)(3)(i) (2012).

I convened a telephone prehearing conference on July 29, 2013. The Parents did not participate, but Michael J. Eig, Esquire, who represents the Parents, did participate. Jeffrey A. Krew, Esquire, was present at the hearing and represented MCPS. I issued a prehearing order on August 1, 2013.

Based on the availability of the attorneys and their witnesses, I convened the hearing on September 30, October 1, 2, 3 and 7, 2013. I closed the record on October 7, 2013. The hearing was held at the MCPS offices in Rockville, Maryland. The Parents were present at the hearing and represented by Michael J. Eig, Esq. Jeffrey Krew, Esq., represented the MCPS.

The legal authority for the hearing is provided by the IDEA, associated federal regulations, implementing State law, and associated State regulations. 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2012); Md. Code Ann., Educ. § 8-413(e)(1) (2008); and Code of Maryland Regulations (COMAR) 13A.05.01.15C. Procedure is governed by the Administrative Procedure Act; the Maryland State Department of Education's procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); COMAR 13A .05.01.15, 28.02.01.

Under the federal regulations, a hearing must be conducted and a decision issued within forty-five days of certain triggering events. 34 C.F.R. 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2012). The parties' requested hearing dates fell outside of the forty-five-day timeframe; therefore, they waived their right to have the hearing within the forty-five-day period. I granted the parties' request for an extension of time for the decision to thirty days after the record closed. 34 C.F.R. § 300.515; Md. Code Ann., Educ. § 8-413(h) (2008). The record closed on October 7, 2013; thirty days hence is Wednesday, November 6, 2013.

ISSUES

1. Did MCPS offer [Student] a free appropriate public education in the least restrictive environment for the 2012-2013 and 2013-2014 school years?
2. If not, was [Student]'s unilateral placement at the [School 1] ([School 1]) for the 2012-2013 and the 2013-2014 school years appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following documents into evidence on behalf of the Parents:

1. Request for Due Process Hearing, 6/21/13
2. Limited Evaluation summary Report, 10/3/05
3. MCPS Educational Management Team Summary, 11/3/05
4. MCPS Educational Management Team Summary, 11/16/05
5. Psychiatric Evaluation by Dr. XXXX XXXX, 1/2/07
6. Occupational therapy (OT) Evaluation Summary by XXXX XXXX, 1/15/07
7. Neuropsychological Evaluation by Dr. XXXX XXXX, 2/7/07
8. Section 504 Plan, 6/11/07
9. Auditory Information Processing Assessment by Dr. XXXX XXXX, 11/28/07
10. [School 2] Report, 4/2008
11. [School 2] Classroom Accommodations, 9/2008
12. [School 2] Report, 6/2009
13. [School 2] Intensive Summer Math Program Report, 8/14/09
14. Letter to Dr. XXXX from Dr. XXXX, 9/8/09
15. [Hospital 1] Discharge Instructions-Psych, 10/8/09
16. [Hospital 2] Patient Care Plan, 11/2/09
17. [School 2] Progress Report, 6/14/10
18. [School 2] Intensive Summer Writing Program, 7/6/10
19. Letter to XXXX XXXX and XXXX XXXX from XXXX XXXX, 11/12/10
20. Letter from Dr. XXXX XXXX, 11/13/10
21. Letter to XXXX XXXX and XXXX XXXX from XXXX XXXX, 11/15/10

22. Letter from Dr. XXXX XXXX, 11/15/10
23. Application for Home and Hospital Teaching, 11/2010
24. Memo to [School 3] from Parents, 11/2010
25. [School 3] Report to Parents on Student Progress, 1/25/11 (Not offered into evidence, not admitted, part of the file)
26. Email to XXXX XXXX from Parents, 2/3/11
27. Letter to Dr. XXXX XXXX from Dr. XXXX XXXX, 2/15/11
28. Dr. XXXX Progress Notes, 3/29/11 to 6/30/11
29. Psychological Evaluation by Dr. XXXX XXXX, 9/24/12
30. Letter from Dr. XXXX XXXX and XXXX XXXX, 11/14/12
31. MCPS Teacher Referral, 11/20/12
32. [Hospital 3] Discharge Summary, 11/27/12
33. Letter to Parents from XXXX XXXX, 11/29/12
34. MCPS Secondary Teacher Report, 12/5/12
35. Psychiatric Evaluation by Dr. XXXX XXXX, 12/5/12
36. MCPA Referral for Special Education Screening, 12/6/12
37. MCPS individual education plan (IEP), 12/11/12
38. Letter to Zvi Greismann, Esq., from Michael Eig, Esq., 12/10/12
39. MCPS Team Consideration of External Report, 12/11/12
40. [School 1] Social Skills Assessment, 12/28/12
41. [School 1] Initial Report, 1/2013
42. [School 1] IEP, 1/14/13
43. [School 1] Meeting Summary, 1/14/13
44. Letter to Zvi Griesmann, Esq., from Michael Eig, Esq., 1/24/2013

45. MCPS Report of School Psychologist b y XXXX XXXX, 1/30/13
46. MCPS IEP, 2/6/13
47. MCPS Emotional Disability Multidisciplinary Evaluation Form, 2/6/13
48. [School 1] Second Quarter Academics Report, 2/10/13
49. Letter to Emily Rachlin, Esq., from Michael Eig, 2/14/12, enclosing XXXX XXXX's Clinical Summary and the [School 1]'s Treatment Plan and Proposed Social/Emotional Goals
50. [School 1] Concern Report, 2/19/13
51. Transition Interview Questions, 2/19/13
52. MCPS Secondary Teacher Re[port, 2/21/13
53. MCPS IEP, 2/25/13
54. [School 1] Social Skills Assessment, 3/5/13
55. [School 1] Functional Behavior Assessment (FBA), 3/11/13
56. Clinical Review by XXXX XXXX, 3/13/13
57. MCPS Secondary Teacher Report, 4/24/13
58. MCP IEP, 5/7/13
59. Memo to XXXX XXXX from XXXX XXXX, 5/18/13
60. Letter to the Parents from XXXX XXXX, 5/14/13
61. MCPS Placement and Assessment Services Unit Report, 5/16/13
62. MCPS Placement and Assessment Services Unit Report, 5/17/13
63. Letter to XXXX XXXX from Michael Eig, Esq., 5/28/13, with letter from Dr. XXXX XXXX and emails between XXXX, attorney Eig, and XXXX XXXX enclosed
64. Letter from XXXX XXXX from Attorney Eig, 6/3/13
65. Letter to Attorney Eig from Dr. XXXX, 6/5/13
66. Memo to XXXX XXXX from XXXX XXXX, 6/7/13

67. [School 4] Educational Review Summary Sheet, for student Referrals, 6/7/13
68. Letter to Attorney Eig from Emily Rachlin, Esq., 6/11/13
69. Letter to Attorney Rachlin from Attorney Eig, 6/17/13
70. MCPS Placement and Assessment Services Unit Report, 6/19/13
71. Letter to OAH from Attorney Eig, 6/21/13
72. Letter to Attorney Eig from Dr. XXXX, 6/26/13
73. Letter to XXXX XXXX from XXXX XXXX, 6/26/13
74. Letter to XXXX XXXX from Attorney Eig, 6/27/13, with letters from Dr. XXXX and Dr. XXXX, emails between the Parents, Dr. XXXX, Attorney Eig, and XXXX XXXX, and documents from [School 4] enclosed
75. Letter to the Parents from XXXX XXXX, 7/1/13
76. Memo to XXXX XXXX from the [School 3], 7/1/13
77. Letter to XXXX XXXX from XXXX XXXX, 7/2/13
78. MCPS Due Process Resolution Meeting Tracking Form, 7/9/13
79. [School 1] Second Quarter Academics Report, 7/21/13
80. Letter to Attorney Eig from the Parents, 7/22/13
81. Emails between XXXX XXXX and XXXX XXXX, 7/29/13
82. Emails between XXXX XXXX and XXXX XXXX, 7/30/13
83. Letter to Attorney Eig from Attorney Krew, 7/30/13
84. Letter to Attorney Griesmann from Attorney Eig, 8/5/13
85. Letter to XXXX XXXX from Attorney Eig, 8/6/13
86. Letter to OAH from Attorney Eig, 8/7/13
87. Second letter to OAH from Attorney Eig, 8/7/13
88. Letter to attorney Eig from Attorney Griesmann, 8/12/13
89. Letter to Attorney Krew from Attorney Eig, 8/12/13

90. Letter to Attorney Eig from XXXX XXXX, 8/12/13
91. Letter to Attorney Eig from Attorney Griesmann, 8/12/13
92. Letter to XXXX XXXX from Attorney Eig, 8/15/13
93. Letter to Attorney Eig from Attorney Krew, 8/21/13
94. Letter to XXXX XXXX from Attorney Eig, 8/22/13
95. Letter to XXXX XXXX from Attorney Eig, 8/22/13
96. Letter to Attorney Eig from Dr. XXXX, 9/16/13
97. [School 1] Progress Update by XXXX XXXX, 9/12/13
98. Letter from XXXX XXXX, 9/13/13
99. XXXX XXXX's Thoughts on [Student]'s Placement, 9/2013
100. [School 4] School Survey Results, 2011-2012
101. [School 1] Program Description, 2012
102. What Every Psychiatrist Should Know About XXXXXXXX: A Review, 5/21/08
103. The XXXXXXXX Subgroup of XXX Disorders and Childhood-Onset Obsessive-Compulsive Disorder, 7/9/09
104. The Immunobiology of Tourette's Disorder, Pediatric Autoimmune Neuropsychiatric Disorders Associated with *Streptococcus*, and Related Disorders; A Way Forward, 2010
105. Resume of Dr. XXXX XXXX
106. Resume of XXXX XXXX
107. Resume of XXXX XXXX
108. Emails between XXXX XXXX, XXXX XXXX, and XXXX XXXX
109. [School 1] [State 1] license
110. Re-approval of the [School 1] by the State of [State 1]
111. Membership in and accreditation of the [School 1] by the XXXX Association of Schools & Colleges, Inc.

112. [School 1]'s in vivo skills coaching and progress reports
113. [Student]'s progress report from [School 1], January 14, 2013

The following documents were admitted into evidence on behalf of MCPS:

1. Psychological Evaluation by Dr. XXXX XXXX, 9/18/12 – 9/24/12
2. Addendum to Dr. XXXX's evaluation, undated
3. Referral for Special Education, 11/1/12
- 3-A [School 1] Application for Admission, 11/18/12
4. New Student Information, 11/20/12
5. Eligibility Screening Parent Interview/Questionnaire completed by XXXX XXXX, School Counselor, MCPS, 11/20/12
6. Teacher Referral by XXXX XXXX, [Hospital 3], 11/20/12
- 6-A [School 1] Student Overview, 11/29/13
- 6-B [School 1] Report of Achievement Testing on the Woodcock-McGrew-Werder Mini-Battery of Achievement, 11/29/13
7. Medical Treatment Plan, [School 1], 11/30/12
- 7-A [School 1] Financial Information Confirmation, 11/30/12
8. Psychiatric Evaluation by Dr. XXXX, [School 1], 12/5/12
9. Secondary Teacher Report by XXXX XXXX, [Hospital 3], 12/5/12
10. Educational History by XXXX XXXX, MCPS, 12/6/12
11. Letter to Z. Griesman from M. Eig, 12/10/12
12. IEP Team Meeting documentation, 12/11/12
13. Social Skills Assessment, [School 1], 12/28/12
14. Meeting Summary, [School 1], 1/14/13
15. IEP from [School 1], 1/14/13
16. Report from XXXX XXXX, School Psychologist, MCPS, 1/30/13

17. Initial Report, from XXXX XXXX, social worker at [School 1], 1/2013
18. IEP Team Meeting Documentation, MCPS, 2/6/13
19. Letter to Emily Rachlin from M. Eig, 2/14/13
20. Clinical Review by XXXX XXXX, Social Worker at [School 1], undated
21. [School 1] Residential Treatment Plan, undated
22. Secondary Teacher Report from XXXX XXXX of [School 1], 2/20/13
23. Transition Interview Questions completed by the Student, 2/19/13
24. Functional Behavior Assessment (FBA) by XXXX XXXX of [School 1], 3/11/13
25. Residential Treatment Plan from [School 1], undated
26. Clinical Review by XXXX XXXX of [School 1], undated
27. Letter to M. Eig from E. Rachlin, 4/3/13
28. Secondary Teacher Reports from [School 1], 4/24/13
29. Clinical Review by XXXX XXXX of [School 1], 4/20/13
30. IEP Team Meeting Documentation, MCPS, 2/25/13 and 5/7/13
31. Memo from XXXX XXXX to XXXX XXXX Admission Coordinator for [School 4], 5/8/13
32. Letter to XXXX XXXX from M. Eig, 5/28/13
33. Letter from Dr. XXXX to M. Eig, undated
34. Letter to XXXX XXXX from M. Eig, 6/3/13
35. Email to XXXX XXXX from XXXX XXXX, 6/4/13
36. Memo to XXXX XXXX from XXXX XXXX, Admissions Coordinator of [School 4], 6/7/13
37. Letter to M. Eig from Emily Rachlin, 6/11/13
38. Letter to E. Rachlin from M. Eig, 6/17/13
39. Letter to OAH from M. Eig, 6/21/13

40. Request for Due Process Hearing, 6/21/13
41. Letter to XXXX XXXX, Principal of the [School 3], from XXXX XXXX, 6/26/13
42. Memo to XXXX XXXX from XXXX XXXX, Admissions Coordinator of the [School 3], 7/1/13
43. Letter to Parents from XXXX XXXX of the [School 3], 7/1/13
44. Letter to XXXX XXXX from XXXX XXXX of the [School 3], 7/2/13
45. Webpage from [School 1]
46. Letter to M. Eig from J. Krew, 7/2/13
47. Email to XXXX XXXX from Dr. XXXX of the [School 4], 7/29/13
48. Letter to M. Eig from J. Krew, 7/30/13
49. Second letter to M. Eig from J. Krew, 7/30/13
50. Letter to M. Eig from Z. Greismann, 8/12/13
51. Letter to J. Krew from M. Eig, 8/12/13
52. Letter to XXXX XXXX, Safety Officer, [Hospital 4], from the Parents, 9/6/13
53. Letter from XXXX XXXX to the Parents, 9/9/13
54. XXXX XXXX Curriculum Vitae
55. XXXX XXXX Curriculum Vitae
56. XXXX XXXX Curriculum Vitae
57. XXXX XXXX Curriculum Vitae
58. XXXX XXXX Curriculum Vitae
59. XXXX XXXX Curriculum Vitae
60. Eligibility Criteria for Acceptance into the [School 3]
61. Webpage for [School 4]

Testimony

The following persons testified on behalf of the Parents and [Student]:

1. Dr. XXXX XXXX, Psychotherapist, accepted as an expert witness in counseling
2. XXXX XXXX, Social Worker at the [School 1], accepted as an expert witness in social work
3. XXXX XXXX, Special Education Teacher at the [School 1], accepted as an expert witness in Special Education
4. [Student]'s Mother

The following persons testified on behalf of the MCPS:

1. XXXX XXXX, Coordinator of the MCPS Placement and Assessments Unit and Case Manager for MCPS students in out-of-state residential schools, accepted as an expert witness in special education and placement of students in special education
2. XXXX XXXX, Principal at the [School 4]

FINDINGS OF FACT

List of persons mentioned in the evidence in this case:

1. Dr. XXXX XXXX, psychotherapist for the Parents
2. XXXX XXXX, social worker at [School 1]
3. XXXX XXXX, Special Education Teacher at [School 1]
4. Dr. XXXX XXXX, neurologist for the Parents
5. XXXX XXXX, Director of the [School 3]
6. XXXX XXXX, Principal at the [School 4] ([School 4])
7. XXXX XXXX, MCPS Placement Specialist
8. XXXX XXXX, Coordinator of the MCPS Placement and Assessments Unit and Case Manager for MCPS students in out-of-state residential schools
9. XXXX XXXX, School Counselor, MCPS
10. XXXX XXXX, Resource Teacher for Special Education at the [School 3]
11. XXXX XXXX, Education Specialist at the Child Center at [Hospital 3]
12. Emily Rachlin, Attorney for MCPS
13. XXXX XXXX, Admissions Counselor for [School 4]
14. XXXX XXXX, Supervisor, MCPS Placement and Assessment Services Unit

15. Dr. XXXX XXXX, Director of Clinical Services for [School 4]
16. XXXX XXXX, Safety Officer, [Hospital 4]
17. XXXX XXXX, Supervisor, MCPS Placement and Assessment Unit
18. XXXX XXXX, Director of Admissions at the [School 1]
19. Dr. XXXX XXXX, Child & Adolescent Psychiatrist/Pediatrician, Medical Director of the Child Center at [Hospital 3]
20. Dr. XXXX XXXX, Psychologist, [Hospital 3]
21. Dr. XXXX XXXX
22. Dr. XXXX XXXX, Child, Adolescent, and Adult Psychiatrist at the [School 1]
23. XXXX XXXX
24. XXXX XXXX, Clinical Social Worker at [School 4]
25. XXXX XXXX, MS, Learning Specialist at the [School 2]
26. XXXX XXXX, Principal at the [School 4]
27. Dr. XXXX XXXX, private psychologist for [Student]

I find the following facts by a preponderance of the evidence:

1. [Student]'s date of birth is XXXX, 1999 and she is currently 14 years old. Beginning in pre-school, [Student] had problems with attention deficit hyperactive disorder (ADHD), various ticks, and behavioral meltdowns. The XXXX included blinking of the eyes, shrugging her shoulders and hopping. At about the fifth grade she developed separation anxiety and her other behaviors worsened. Her difficulties have caused her to be depressed. Her symptoms include: ADHD, XXXX, hyperactivity, hypersensitivity, meltdowns/tantrums, obsessive compulsive disorder (OCD), and anxiety. In 2005, she was diagnosed as having ADHD. In 2009, while a patient at [Hospital 1], she was diagnosed as having ADHD, anxiety disorder, mood disorder, auditory processing disorder, and Tourette syndrome. (MCPS #1, 5, Parents' #2 & 15).
2. In October 2009, [Student] was admitted to the [Hospital 1] in the Pediatric Psychiatric unit. She was discharged on October 24, 2009 with a referral to [Hospital 2] in [City 1], [State 2]. While a patient at [Hospital 2], hospital staff worked on the following issues: mood instability and potential for self harm. (Parents' #15 & 16).
3. In 2011, she was diagnosed by Dr. XXXX XXXX as having Pediatric

Autoimmune Neuropsychiatric Disorders Associated with Streptococcus infections

(XXXXXXX). XXXXXXX describes a subset of childhood obsessive-compulsive disorders and tic disorders believed to be caused by streptococcus infection. [Student] was born with congenital hip-dysplasia and underwent three surgical procedures to correct this problem. She developed several streptococcal infections in preschool thought to have been caused by the surgical procedures. Her treatment for XXXXXXX has included intravenous immunoglobulin on several occasions, plasmapheresis, and various antibiotics, with little or no positive impact. She has also been prescribed various medicines for her mood disorder and depression all with little success. (MCPS #5, Parents' 102 & 32).

4. [Student]'s school attendance is as follows (MCPS #10, Parents' #32):

- a. Pre-K at XXXX
- b. Kindergarten through 2nd grade at [School 5]
- c. 3rd grade through 6th grade at the [School 2], withdrew in October 2010 (private school)
- d. October 2010 through December 10, home and hospital schooling provided by MCPS
- e. XXXX February 11, 2011 through February 28, 2011, private school
- f. March 2011 through August 2012, home schooled with tutor from the [School 2]
- g. Schooling at [Hospital 3]
- h. [School 1] from November 29, 2012 to the present

5. On August 8, 2012, [Student] was admitted to [Hospital 3] ([Hospital 3]) in [City 2], [State 3]. She was referred to the hospital by Dr. XXXX XXXX for residential treatment due to separation anxiety, mood lability, and symptoms of ADHD. Immediately

before admission to [Hospital 3], [Student] had a serious meltdown, was hitting herself, and was hypersensitive to sounds, and argumentative. Her actions caused her Parents to cancel her birthday party. Treatment goals at [Hospital 3] were: reduction of XXXX, medicine management, and improvement in mood lability. [Student] was a patient at [Hospital 3] from August 8, 2012 until November 27, 2012. Her treating Psychiatrist was Dr. XXXX XXXX. Upon discharge, Dr. XXXX recommended that [Student] attend a “therapeutic boarding school.” Dr. XXXX told the Parents emphatically that [Student] should be in a residential treatment school. The Parents and staff at [Hospital 3] discussed the possibility of [Student] attending the [School 1]. (Parents’ #32, Parent’s testimony, Vol. #2, 448, lines 4-6).

6. While [Student] was a patient at [Hospital 3], Dr. XXXX XXXX, a Psychologist, conducted a psychological evaluation of [Student]. The evaluation occurred from September 8, 2012 through September 24, 2012. The evaluation was ordered by Dr. XXXX, [Student]’s treating Psychiatrist at [Hospital 3]. Dr. XXXX diagnosed [Student] as having: ADHD, generalized anxiety disorder, Tourette disorder, OCD, separation anxiety (by history), XXXXXXXX, and severe problems in the academic and social environments. Dr. XXXX made several recommendations: medications as a possibility, a very individualized education program, social milieu therapy, independent reading assignments, debriefing after melt downs, positive role models, verbalizing expected behaviors, frequent breaks, shortened assignments, an opportunity and place to retreat as needed, as much individual instruction in math as possible, organizational check lists, and advance notice of changes in routine. In an addendum to her evaluation, Dr. XXXX stated that because of [Student]’s “severe OCD and XXXXXXXX” her condition was too severe for her to function in a regular school setting. Dr. XXXX concluded that her clinical “impression is that the best setting for [Student] would be a therapeutically oriented school where she receives constant individual attention from someone trained in both

therapeutics and educational strategies.” Dr. XXXX did not specifically recommend a residential school for [Student]. (MCPS #1 & #2).

7. On November 1, 2012, while [Student] was a patient at [Hospital 3], her Parents requested the MCPS to evaluate [Student] for special education services. (MCPS #3).

8. Upon discharge from [Hospital 3], [Student] and her Parents flew to [City 3], [State 1] to be interviewed for admission to the [School 1]. After the interview, [Student] was accepted at [School 1] on November 29, 2012 and she began attendance on November 30, 2012. There were no problems during or as a result of the interview.

9. On December 5, 2012, after her admission to [School 1], Dr. XXXX XXXX, a Psychiatrist at [School 1], conducted a psychiatric evaluation of [Student]. Dr. XXXX diagnosed [Student] as having anxiety disorder, Tourette’s syndrome, OCD, ADHD (by history), XXXXXXXX, and psychosocial stressors of chronically impaired social skills and poor academic performance. Dr. XXXX indicated that the level of care [Student] required for safety reasons was “residential placement” such as [School 1], which provides education for students with special needs focusing primarily on academic, social, and emotional development; psychotherapies for behavioral issues, cognitive behavioral therapies, counseling, guidance, and social skills training, and medication management.

10. On December 11, 2012, MCPS convened an IEP meeting, the purpose of which was to conduct a screening of [Student]’s application for special education services. The Parents, the Parents’ attorney, Mr. Eig, Dr. XXXX XXXX, [Student]’s therapist, Guidance Counselor XXXX XXXX, and School Psychologist XXXX XXXX were among those in attendance. At this screening IEP, the Mother reported that [Student] was in the process of being discharged from [Hospital 3] and that she was going immediately to the [School 1] residential school and this school is the only school that can meet [Student]’s needs. She also indicated that

[Student] could not attend a MCPS because of her XXXXXXXX. The team determined that educational and psychological evaluations were needed. No other decisions were made at this meeting. (MCPS #12).

11. On January 17 & 18, 2013, XXXX XXXX, a School Psychologist for MCPS, conducted an interview and psychological evaluation of [Student] at the [School 1]. Ms. XXXX interviewed [Student] and her Parents, and reviewed [Student]'s comprehensive educational file. She also reviewed reports from various Psychologists, Psychiatrists, and medical doctors. The purpose of Ms. XXXX's evaluation was to determine whether [Student] qualified for special education services. Ms. XXXX concluded that [Student] meets the criteria for a disability pursuant to the IDEA, *i.e.* other health impaired (OHI).¹ She suggested further that the IEP team should consider whether [Student] also has an emotional disability.² She made no recommendation concerning a day school placement versus a residential placement. She made the following recommendations:

- a. The IEP team should consider a functional behavior assessment FBA for [Student]
- b. A behavior intervention plan (BIP) based on the FBA
- c. School based mental health support
- d. Social skills training and interventions
- e. Educating [Student] about her disabilities and help her develop self coping/advocacy skills

¹ Pursuant to IDEA 2004 guidelines for identification of students having OHI, such a student has limited strength, or alertness, due to chronic or acute health problems including but not limited to a heart condition, cancer, leukemia, diabetes, Rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, tuberculosis and other communicable or infectious diseases, and hematological disorders such as sickle cell anemia and hemophilia which adversely affects a pupil's educational performance.

² The IDEA defines emotional disability (ED) as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a child's educational performance:

- a. An inability to learn that cannot be explained by intellectual, sensory, or other health factors;
- b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- c. Inappropriate types of behavior or feelings under normal circumstance.
- d. A general, pervasive mood of unhappiness or depression.
- e. A tendency to develop physical symptoms or fears associated with personal or school problems.

- f. A calm educational setting with external supports for emotional and behavior regulation
- g. Educational settings that allow for [Student]'s XXXX and consideration of the surrounding student body for monitoring bullying and identifying supportive peers
- h. Placement where staff is experienced and trained in working with students like [Student]
- i. Re-evaluation in less than the three year requirement
- j. Include [Student] in planning her education
- k. Communication between home and school is essential
- l. Identify an appropriate point person to detect depression and despondency, for which [Student] is at high risk
- m. Creation of opportunities when [Student] can participate in activities that she enjoys, *e.g.* physical education and reading
- n. Encourage [Student] in activities that will allow her to learn more about her disabilities, *e.g.* starting an advocacy group
- o. Encourage [Student] to read stories about other students who have struggled with disabilities
- p. Activities that keep [Student] connected to the community
- q. Giving [Student] additional time for class work and testing
- r. Implementing accommodations for organizational struggles and instruction for strategies and compensatory skills.

(MCPS #16 and Parents' #45)

12. On February 6, 2013, the IEP Team met again. The Parents, School Psychologist XXXX, XXXX XXXX, and Attorney Eig (by speaker phone), were among those who attended this meeting. Mr. XXXX chaired the meeting. Ms. XXXX reported on her interview with [Student] and her Parents and shared her evaluation and recommendations. The team determined that [Student] qualified for special education services with a disability of OHI. Ms. XXXX also

stated that [Student] exhibited four out of five criteria for an emotional disability.³ However, the team also determined that [Student] did not meet the criteria for an ED disability because she did not exhibit behaviors directly related to the emotional condition documented and because the emotional condition was not primarily the result of physical, sensory, or intellectual disability. (MCPS #18).

13. On February 25, 2013 and May 7, 2013, the IEP team met again. The Parents, Attorney Eig, XXXX XXXX, School Psychologist XXXX, Dr. XXXX, and Emily Rachlin, attorney for MCPS, were among those who attended the meeting on February 25, 2013. The team noted [Student]'s present levels of achievement and performance, the need for special considerations and accommodations, and it developed goals and objectives. The team determined that [Student] required small structured classes throughout the school day with on-site mental health supports. The team also determined that [Student] would receive 30 hours per week of special education services *i.e.* zero hours in the general education program. The team discussed the following placement possibilities: the [School 3], the ED Cluster services at [School 6], Bridge Services at the [School 7], public separate day school, and residential schools. The IEP team determined that the appropriate placement for [Student] was in a separate day school with placement at the [School 4]. The Parents, who were of course members of the team, disagreed with this decision, insisting that [Student] had to remain at the [School 1]. The team specifically rejected the [School 1] stating:

MCPS staff feels that [Student]'s special education and related services needs can be met in a separate day school with therapeutic support. Therefore, she does not require a residential school for educational purposes. The team felt that the [School 4] program could deliver the MCPS curriculum, mental health support and the opportunity for [Student] to mainstream back into a general education setting as she makes progress. (MCPS #30).

³ See footnote 2 above.

14. On May 14, 2013, Mr. XXXX wrote to the Parents, with a copy to Attorney Eig, indicating that the [School 4] had to be investigated first. He stated further that an appointment for a pre-admissions interview was scheduled for [Student] for May 23, 2013 and that the interview with [Student] could be conducted by telephone. He indicated that the Parents were already aware of this appointment. He also mentioned that [School 4] might recommend [Student] be placed in [School 4]'s residential program based on clinical recommendations made by the XXXX; the team, however, was recommending the day school at [School 4]. (MCPS #30).

15. The Parents and Dr. XXXX visited the [School 4] and afterward rejected it as an appropriate placement for their daughter.

16. On June 26, 2013, XXXX XXXX of the Placement and Assessment Unit of MCPS notified the [School 3] that MCPS was considering placement of [Student] at [School 3].

17. The Parents and Dr. XXXX visited the [School 3] and rejected it as an appropriate placement for their daughter.

18. [School 1] is licensed by the state of [State 1] as a Child Care Facility to provide Residential Educational services. (Parents #109). [School 1] is also a member of and accredited by the XXXX Association of Schools & Colleges, Inc. (Parents #111).

DISCUSSION

Burden of Proof

Because the Parents have challenged MCPS' placement decisions for the 2011-2012 and 2012-2013 school years, they bear the burdens of proof and persuasion. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Mr. Eig acknowledges that the Parents have the burden of proof in this matter.

Legal Framework

The identification, assessment, and placement of students in special education are governed by the IDEA. 20 U.S.C. §§ 1400-1482 (2010); 34 C.F.R. Part 300 (2010); *see also* Md. Code Ann., Educ. §§ 8-401 through 8-417 (2008) and COMAR 13A.05.01. The IDEA provides federal assistance to state and local education agencies for the education of disabled students, provided that states comply with the extensive goals and procedures of the IDEA. 20 U.S.C. §§ 1412-14; 34 C.F.R. § 300.2.

As a condition of receiving federal assistance, state and local public educational agencies must have in effect policies and procedures which assure that children with disabilities residing in the state have access to a FAPE “that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. §§ 1400(d)(1)(A) and 1412(a)(1)(A); *see* Md. Code Ann., Educ. §§ 8-401 through 8-417; COMAR 13A.05.01.

To comply with the IDEA an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child’s disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.S. § 1414(d)(1)(A)(i)(II), (IV), (VI). The child’s disability or disabilities and resulting needs are determined by using a variety of relevant functional, developmental, and academic information, including assessments and other evaluative materials. 20 U.S.C.S. § 1414 (a)(1)(C)(i), (b)(2)-(3).

An educational program offered to a student must be tailored to the particular needs of a child with disabilities through the development and implementation of an IEP, taking into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;

- (iii) the results of the initial evaluation or most recent evaluation of the child;
and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3) (2010).

The IEP identifies a student's present levels of academic and functional performance, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those goals and objectives, and indicates the extent to which the child will be able to participate with children without disabilities in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A).

In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court stated that the congressional purpose in enacting the IDEA is the provision of a free appropriate public education ("FAPE") to children with disabilities. Implicit in this purpose is a requirement that the education to which access is provided is sufficient to "confer some educational benefit upon the handicapped child." 458 U.S. at 204.

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to "the best education, public or non-public that money can buy" or to "all services necessary to maximize his or her potential." *Hessler v. State Bd. of Educ.*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. 176). "[T]he issue is not whether [the placement advocated by the parents] is better, or even appropriate, but whether [the school system] has offered...an appropriate program for the Child at [the placement which it recommended]." *A.B. ex rel D.B. v. Lawson*, 354 F.3d 315, 324 (4th Cir. 2004). In *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993), the Court found:

The [IDEA] requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the

proposed IEP is reasonably calculated to provide educational benefits to the appellant, and is therefore in compliance with the requirements of the IDEA.

Id. at 459-460.

Although the law in special education has undergone a significant evolution in the past few decades, the *Rowley* case still sets the standard for determining whether a child is being accorded a FAPE under the IDEA. In *Rowley*, the Supreme Court set forth a two-part analysis for determining whether a school district has offered FAPE. First, a determination must be made as to whether there has been compliance with the procedures set forth the IDEA. *Rowley*, 458 U.S. at 207. Under appropriate circumstances, a procedural error may justify reimbursement of tuition paid to a private institution in which a student is enrolled. *Tice v. Botetourt* 908 F. 2d 1200, 1207-08 (4th Cir. 1990). *Cf., Sch. Comm. of Burlington v. Dep't of Ed.*, 471 U.S. 359, 369 (1985).

Second, it must be determined whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefit. *Rowley*, 458 U.S. at 207. Once an IEP is shown to be procedurally proper, the judgment of the school system's educators regarding the child's placement should be questioned only with great reluctance by the reviewing authority. *Tice*, 908 F.2d at 1207. There are many cases that support the proposition that substantial deference must be given to educators and school officials to allocate scarce resources as they see fit, as long as there are sufficient options available to provide reasonable opportunities for the disabled child. *A.B. by D.B. v. Lawson, supra*, 354 F.3d at 325-329; *M.M. ex rel. D.M. v. School Dist. Of Greenville Co.*, 303 F.3d 523, 532-533 (4th Cir. 2002). Courts have held that "[l]ocal educators deserve latitude in determining the individualized education program most appropriate for a disabled child. The IDEA does not deprive these educators of the right to apply their professional judgment." *Hartman v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997).

The Parents argue that MCPS never proposed or offered any placement for [Student], or that the placement offered was late, that MCPS failed to work with the Parents, and that the placement offered would not provide [Student] with a free appropriate education.

A. Procedural Issues

1. The Placement

The Parents claim that MCPS never offered [Student] a placement. I disagree and find otherwise.

The IEP team met on February 25, 2013 and again on May 7, 2013. At the meeting on May 7, 2013, during which an IEP was finalized, the IEP team discussed various possible schools that would be appropriate for [Student]. The IEP shows clearly, and the Parents do not contest, that the team considered the following options for placement: general education classes at [School 3], emotional disability cluster at [School 6], Bridge Services at [School 7], a public separate day school, and a residential school including [School 4]. The IEP also indicated that “services for [Student] cannot be delivered in a comprehensive middle/high school because the size of buildings is overwhelming to her,” and that she requires a “small structured setting with small classes and onsite (sic) mental health supports.” [Student] was to have 30 hours of special education services, *i.e.* 100% of her education would be outside of the general education program. Special education placement was made for a “Public Separate Day School.” The IEP further indicates that:

MCPS staff feels that [Student]’s special education and related services needs can be met in a separate day school with a therapeutic supports, therefore, she does not require a residential school for educational purposes. The team felt that the [School 4] program could deliver the MCPS curriculum, mental health supports and the opportunity for [Student] to mainstream back to a general education setting as she makes progress. (Parents’ 58-40).

Finally, the IEP report shows clearly that the team considered and rejected the Parents’ recommendation that [Student] be provided residential school services at the [School 1].

The decision of the IEP team was memorialized in Mr. XXXX's letter of May 14, 2013.

In the letter, Mr. XXXX indicates that:

The team considered information provided by you during the meeting and reviewed all available evaluations and assessments. The team also developed goals and objectives and created an IEP. The team further determined that [Student] requires a separate day school in order to make educational progress.

The [School 4] ([School 4]) is the public separate day school that must be investigated first.

...

Please note that the IEP team decision was for an educational placement in a separate education day program at [School 4]. (Parents' #60, MCPS #30).

Certainly the Parents were aware of the IEP team's decision as evidenced by their interview with Ms. XXXX at [School 4] and later with Ms. XXXX at [School 3]. The Parents wrote to Ms. XXXX XXXX, the social worker at [School 1], on May 22, 2013 indicating that:

The Montgomery County School System has determined that the [School 4] in [City 4], Maryland is an appropriate educational setting for our daughter [Student]. The [School 4] has indicated that they want to interview [Student] by telephone. Please provide me with a detailed assessment of how you believe she will react to this proposed interview with a new school. (Parents' #63).

Clearly the evidence is that the Parents knew that the MCPS had "determined that the [School 4] in [City 4], Maryland is (was) an appropriate educational setting for" [Student]. In his letter to Mr. Krew on August 12, 2013 Mr. Eig acknowledges that a referral to [School 4] was made by the IEP team.

2. Delay by MCPS and Timing of the IEP

The Parents also claim that delays by MCPS denied [Student] any educational placement. I disagree. The initial request for special education services was made by the Parents on November 1, 2012, while [Student] was still a patient at [Hospital 3]. (MCPS #3). MCPS convened the first IEP on December 11, 2012. (MCPS #12). At this first IEP meeting, which was attended by the Parents and which was for initial screening, the team decided that various

reports and evaluations had to be obtained. [Student] wasn't even discharged from [Hospital 3] until November 29, 2012. (Parents' #32). Then on January 17, 2013, Ms. XXXX travelled to [State 1] to interview [Student]. (Parents' #45, MCPS #16). The Parents made no objection as to any delays caused by MCPS.

The next IEP meeting was held on February 6, 2013 when the team determined that [Student] needed special education services as a child impaired by OHI in the areas of ADHD, anxiety, Tourette syndrome, mood dysregulation, and OCD. There were still some evaluations or reports to be considered and the team agreed to meet again on February 25, 2013. (Parents' #46). The Parents made no objections as to any delays caused by MCPS.

Prior to the meeting on February 25, 2013, MCPS prepared and sent to the Parents a draft of goals and objectives for [Student]. When the IEP team met again on February 25, 2013, the goals and objectives were discussed and the Parents provided input as did staff from [School 1]. The Parents had no objections to the goals and objectives and made no complaints as to any delays by the MCPS. The team, with the Parents' input but against their wishes, determined that a special education day school with therapeutic services was the appropriate placement for [Student]. The Parents disagreed with the placement only. (Parents' #53).

The next IEP meeting was on May 7, 2013. Again the Parents were present and provided input. They made no objection as to any delays. At this meeting, Dr. XXXX was present and explained her observations and opinions concerning [Student]'s placement. All agreed that the goals and objectives were acceptable. A placement decision for [School 4] was made. The Parents disagreed with the placement. There then ensued the meetings of the Parents at [School 4] and later at [School 3], as explained later.

All of this occurred while [Student] was either still a patient at [Hospital 3] or unilaterally enrolled as a student at [School 1] and while the Parents were insisting that [Student] could not be interviewed by anyone.

The Parents are certainly correct in stating that the MCPS has ninety (90) days within which to process the request for special education services, sixty (60) days to evaluate and then thirty (30) days to decide. COMAR 13A.05.01.06A(1). The initial request was made by the Parents on November 1, 2012. The placement decision was made on May 7, 2013, nearly five months after the request. However, COMAR 13A.05.01.06A(2) allows an exception to the ninety (90) day requirement if: “(i) The parent of the student repeatedly fails or refuses to produce the student for assessments.”

The Parents refer to the case of *Kitchelt v. Weast*, 341 F. Supp. 2nd 553, 558 (D. Md.2004) in support of their claim that MCPS’s delay denied [Student] a FAPE. *Kitchelt* is distinguishable, however. In *Kitchelt*, Judge Messitte ruled that the school system had denied FAPE because it did not have an IEP in place at the start of the school year. The parents investigated various possible schools and enrolled their child in a private school during negotiations over the IEP, and, according to the court, were acting in good faith in genuinely considering public school placement, this being a key consideration. In the instant matter, the Parents had enrolled [Student] at [School 1] even before the school system had sufficient time to evaluate, develop goals and objectives, and make a placement decision. The school system had no opportunity to even offer a FAPE prior to the private placement. Furthermore, as indicated, the Parents were not acting in good faith as evidenced by their previous decision that [School 1] was the only placement they would accept for [Student] and because of the failure to provide an opportunity for her to be interviewed.⁴

⁴ See the discussion below concerning the interviews required of [Student].

There was a placement by MCPS, the Parents frustrated that placement, and the decision to reject the placement was made even before the placement was made. Furthermore, any significant delays were not caused by MCPS but rather because of the necessity of obtaining evaluations, reports, and documents from [State 3] and [State 1], and more importantly because of the Parents' failure to provide an opportunity for [Student] to be interviewed.

I note further that parents' private placement absent consent of the school system is made at their own risk. Although the Parents initiated the process for evaluation of [Student], they clearly enrolled her at [School 1] prior to the MCPS process. *Jenkins v. Squillacote* 935 F.2d 303 (D.C.1991)

3. The Interview

The issue of [Student] being interviewed pertains both to the Parents' bad faith, discussed later, as well as to the alleged delay by MCPS. Considerable time was used in presenting evidence and in argument concerning the need for [Student] to be interviewed by [School 4] and [School 3]. The issue is relevant and significant because MCPS claims that the Parents subverted the process by refusing to allow [Student] to be interviewed and therefore, the MCPS recommendation for placement at [School 4] and [School 3] could not come to fruition. I believe that the Parents were acting in bad faith with regard to [Student]'s interview and this stymied efforts by the MCPS.

MCPS recommended [School 4] and it was then up to [School 4] to decide whether [Student] could be properly served there, *i.e.* could [School 4] implement [Student]'s IEP. As mentioned, I have found that MCPS did indeed recommend a placement at [School 4] and [School 3]. The Parents have acknowledged that they were aware that an interview was part of the process. This is clear from the IEP meeting notes of May 7, 2013 and by the Parents' subsequent meeting and conversation with XXXX XXXX. (Parents' #61 & 62, Mother

testimony, Vol. 2, page 400). According to the Mother, she received notice of the meeting at [School 4] scheduled for May 23, 2013. The notice of this meeting was Mr. XXXX's letter of May 14, 2013. In his letter Mr. XXXX states: "As you are aware, a pre-admissions clinical interview is scheduled for [Student] at [School 4] on Thursday, May 23, 2013, at 10:30 am." (Parents' #60). The meeting was later changed to June 7, 2013.

The Parents and Dr. XXXX met with Ms. XXXX but [Student] was not part of this meeting and no interview of [Student] occurred. The Parents and Dr. XXXX discussed with Ms. XXXX the need for [Student] to be interviewed. According to Ms. XXXX, she and Dr. XXXX explained that such an interview would be quite upsetting and that [Student] would obsess over such a meeting and furthermore, any indication that [Student] might transfer from [School 1] would cause her to regress. No one, according to the Mother, told the Parents that an interview of [Student] "had" to be done, and she never refused to have [Student] be interviewed. (Mother's testimony, Vol. 2, page 473).

Although the Parents may not have specifically said that they would not allow [Student] be interviewed, their actions, coupled with correspondence from their attorney and Dr. XXXX certainly amounted to a refusal. Dr. XXXX, in her undated letter to Mr. Eig states that:

To follow the direction of MCPS, [the Parents] will attend an interview meeting with [School 4] staff as was requested by MCPS officials during the May 7 IEP meeting. However, due to [Student]'s exceedingly fragile state, **I recommend that [Student] not participate in either a phone or in person interview with [School 4] staff** or receive any communication either verbal or written that implies or states that [Student] will move to a new academic placement. (Emphasis added) (MCPS #33).

Because of Dr. XXXX's use of the conjunctive "or," I infer from this letter that she was recommending that no interview of [Student] be allowed. Additionally, Mr. Eig's letter of June 3, 2013 to Mr. XXXX suggests that an interview could not be done. He states:

I wrote last week concerning the interview process at [School 4] – and [Student]'s **"incapacity"** to go through that process given her emotional condition. (Emphasis added) (MCPS #34).

In the previous letter he refers to, Mr. Eig states:

Enclosed are communications from Dr. XXXX XXXX (MCPS #34), [Student]'s psychotherapist, and XXXX XXXX, [Student]'s social worker at [School 1], expressing significant concerns **about any attempt to involve [Student] in the [School 4] interview process**, or to even suggest a potential changing of placement while the interview process is continuing. (Emphasis added) (MCPS #32 & Parents' #63)

I infer from these comments that the Parents were not agreeing, and would not agree to allow [Student] to be interviewed at all. Incapacity means that [Student] **could not** be interviewed; the use of the terms "**any attempt to involve [Student] in the [School 4] interview process**" suggests the same.

In another letter from Dr. XXXX (Parents' #65), again undated, to Mr. Eig, she states:

I asked Ms. XXXX what an interview with [Student] would entail. Based on the interview protocol, **it is evident that an interview with [Student] would be impossible for her to tolerate**. At that time Ms. XXXX stated that she would consult with her colleagues about how to proceed in this situation, to see if there may be a way to waive the interview for a determination to be made. (Parents' #65).

Dr. XXXX's use of the term "impossible" convinces me that she was opposed to any interview of [Student] and that she and the Parents made this known to Ms. XXXX. It is also patently clear from Dr. XXXX's letter that she was strongly opposed to [Student] leaving [School 1].

For its part, MCPS was not as clear as it might have been concerning [Student]'s interview. After the Parents met with Ms. XXXX on June 7, 2013, XXXX XXXX, the Admissions Coordinator for [School 4] sent a memo to XXXX XXXX, MCPS Placement Specialist, indicating that [School 4] was not appropriate for [Student] because: "Due to [Student]'s high level of stress, dysregulation and arousal, [School 4] is not an appropriate placement for her." Conspicuously absent as a reason for [Student]'s rejection is any mention of a lack of an interview. (Parents' #66 & MCPS #36). The Mother testified that she did not see this memo until after Mr. Eig wrote to MCPS requesting copies of all responses from [School 4] in his letter

of June 17, 2013. (Parents' #69). When Ms. XXXX became aware of this memo, she contacted XXXX XXXX at [School 4] to get more information as to why [Student] had been rejected. According to Ms. XXXX, Mr. XXXX explained that [Student] was rejected because: "If she is too fragile to be interviewed, then she is too fragile to come into the program." (XXXX testimony, Vol. 4, page 909). Ms. XXXX testified further that she was unaware of any student being admitted to [School 4] without an interview.

Mr. XXXX, on July 25, 2013, who was also puzzled as to the reason for [Student]'s rejection, contacted Dr. XXXX, Director of Clinical Services at [School 4] asking for clarification. Dr. XXXX responded by indicating:

The decision to reject her from our program was based on (1) verbal reports from her parents and therapist about her current presentation of emotional fragility, difficulty with transitions and unpredictable triggers, and (2) Our preadmission interviewer XXXX XXXX, LCSW-C was recommended against having a telephone interview with [Student], by her parents and therapist, given her fragility and minimal progress.

In the absence of an interview with the student, and reports by caregivers of [Student]'s high level of stress and dysregulation even in a structured environment, [School 4] was not considered to be an appropriate placement. (Parents' 82, MCPS #47).

In addition to reasons given by Dr. XXXX and Mr. Eig, as stated above, several other people have explained why [Student] could not be interviewed or why an interview was not in her best interest. XXXX XXXX, Social Worker at [School 1], in her email of May 24, 2013, indicated that because of [Student]'s fragile condition: "It is not in [Student]'s best interest to interview with the [School 4] school as it would cause her angst and concern." There was more however, as Ms. XXXX suggested that an interview with a school "that you are not considering as a possible placement would cause her unnecessary anxiety." MCPS, and ostensibly the Parents as well were considering [School 4] as a possible placement, and in fact MCPS had already made a placement at [School 4]. (Parents' #63-3 & #98).

Certainly the Parents expressed their concerns about [Student] being interviewed. In the Parents letter of July 22, 2013, they indicated that Ms. XXXX of the [School 3] “was well aware that interviewing [Student] would cause severe disruptions and it would increase her anxiety and stress. We noted to her this was exemplified when [Student] was interviewed at the [School 1] by MCPS psychologist, XXXX XXXX.”⁵ (Parents’ #80 & 82). On numerous occasions, the Parents made it known that they would not allow [Student] to be interviewed.

For its part, I find that the MCPS never waived the interview process. To suggest, as Mr. Eig does, that some sort of waiver of the interview requirement was offered by MCPS simply does not comport with the credible evidence. In his argument, Mr. Eig acknowledges that everyone knows that an interview is part of the process, this includes the Parents. The basis for the assertion that MCPS had waived the need for an interview is based on the memo from XXXX XXXX to the MCPS placement office indicating that [Student] was rejected at [School 4] because of her “high level of stress, dysregulation and arousal, [School 4] is not an appropriate placement for her.” (Parents’ at #66). Ms. XXXX felt [Student]’s rejection without mentioning a lack of an interview seemed unusual. She sent a message to Mr. XXXX who confirmed that the missing interview was a reason. (XXXX testimony, Vol. 4, page 909).

Certainly there is nothing in writing indicating that any such waiver was offered. With all of the back and forth over this issue it seems that Mr. Eig would have clarified any such waiver in writing. Certainly Mr. Krew’s letter of July 30, 2013 would disabuse anyone that a waiver of the interview had been granted. (MCPS #48). Even assuming a waiver was granted, it would not have been offered until the memo from Ms. XXXX to the MCPS placement office on June 7, 2013.

⁵ This implies that [Student] had significant problems because of Ms. XXXX’s interview with her at [School 1]. The credible evidence before me is contrary to this implication; this will be discussed later.

It is also very clear that MCPS offered accommodations to the Parents for an interview of [Student]. Although the Mother testified that before Mr. Krew's letter of July 30, 2013 the MCPS had not shown flexibility in the manner of conducting the interview. However, in his letter of May 14, 2013, Mr. XXXX mentions that it was his understanding that [Student]'s interview at [School 4] would be conducted by telephone. (Parents' #60, MCPS #48). This was in response to concerns raised by the Parents and Dr. XXXX at the IEP meeting of May 7, 2013. Both Mr. XXXX and the Mother acknowledged in their testimony that a telephone interview was discussed at the May 7, 2013 IEP meeting.

In the Mother's emails to XXXX XXXX on May 22, 2013, the Mother advised Ms. XXXX that [School 4] was proposing a telephone interview of [Student]. This was well before Mr. Krew's letter of July 30, 2013. (Parents' #63).

Further evidence that a telephone interview was offered to the Parents is the discussion with Ms. XXXX at the [School 4] as evidenced by the email string between Dr. XXXX, XXXX XXXX, and Ms. XXXX on July 29 & 30, 2013. (Parents' #82). Dr. XXXX indicates that a telephone interview was not held because of the Parents' and therapist's explanation of [Student]'s fragility. The messages show that XXXX XXXX of [School 4] had offered to conduct an interview by telephone. (Parents' #82, page 2). Mr. Krew in his letter of July 30, 2013 states:

MCPS is prepared to consider **any reasonable limitations** to the scope and process of the interviews to be conducted by [School 4] and [School 3] staff. However, until presented with data to the contrary, it rejects the position that [Student]'s condition has degenerated to such a degree during the ensuing six months she has spent at [School 1] since her interview with Ms. XXXX as to render her unconditionally incapable of participating in an interview process with [School 4] or [School 3]. (Emphasis added) (Parents' at #83).

As to possible accommodations for an interview I note that MCPS agreed to send Ms. XXXX to the [School 1] in [State 1] to conduct her interview and evaluation. Certainly this does not suggest that MCPS was intransigent concerning interviews of [Student].

As concerns the [School 3], the MCPS made a referral to [School 3] on June 26, 2013, which was after the Parents' rejection of [School 4]. [Student]'s educational packet was forwarded to [School 3] by XXXX XXXX of the MCPS Placement Office with a request to advise whether the [School 3] program was appropriate for her. (Parents' #73). On June 27, 2013, Mr. Eig sent copies of recommendations from Dr. XXXX, Dr. XXXX, and XXXX XXXX recommending not removing [Student] from [School 1]. (Parents' 74). The Parents met with XXXX XXXX, the Director of the [School 3] on July 2, 2013. (Parents' #77). Ms. XXXX reported to Mr. XXXX that [School 3] could not offer [Student] a placement because "we were unable to interview [Student]." (Parents' #77). The Mother acknowledged meeting with Ms. XXXX and discussing [Student]'s interview but insisted that Ms. XXXX never told her that [Student] was, or would be, rejected because of a lack of an interview. After the discussion with Ms. XXXX and the Parents explaining [Student]'s situation, Ms. XXXX, according to the Mother, agreed that [School 3] was not an appropriate placement for [Student].

The Mother testified further that she never indicated to the MCPS that, although she was never told that an interview was required, *i.e.* "had" to be conducted, she never offered to have [Student] interviewed. (Mother testimony, Vol. 3, page 473). She never refused an interview but she never offered one. This, according to the Mother, was in spite of [Student] being able to be interviewed. It was not a question of whether she could be interviewed but rather the impact an interview would have on [Student]. An interview would have been very upsetting to the child and would disrupt her work and progress at [School 1], according to the Mother. (Mother's testimony).

I find that not only was [Student] capable of being interviewed at both [School 4] and [School 3], but also that such an interview could have been conducted with minimal if any negative impact. First, there were numerous occasions when [Student] was home for holidays or

school breaks when an interview could have been arranged. As they did prior to the interview by Ms. XXXX at [School 1], the Parents could have explained the purpose of the interview to [Student]. This would have alleviated the need for a telephone interview or an interview at [School 1]. Additionally, I am convinced by the testimony of Ms. XXXX that such an interview could have been conducted by the professionals at [School 4] without undue negative repercussions. I am further convinced that the interview could easily have avoided any mention of the possibility that [Student] might be transferred from [School 1].

Furthermore, [Student] had already been interviewed numerous times recently. She was interviewed by professionals at [Hospital 3], admittedly in a secure setting. More significantly, she was interviewed by the psychologist at [School 1] immediately prior to admission and without any adverse impact. Even more significantly, Ms. XXXX interviewed [Student] on January 17 and 18, 2013. Ms. XXXX noted the following concerning [Student]'s interaction and reaction to her interview:

[Student] came easily and willingly to meet with the examiner. [Student]'s mother had talked with her already that an MCPS person would meet with her, which [Student] shared initially. [Student] presented as bubbly, sharp, and inquisitive but overall, socially and emotionally immature for a girls her age.

...

The examiner spent time talking with [Student] about why the examiner was there and [Student] had quick and concerned questions about special education and what that meant for her. Like many students she assumed that special education was for kids who are intellectually disabled and visibly different. [Student]'s affect and mood was observed to shift and change quickly, going from visibly upset with her eyes watering to angry with a tense and mad look on her face.

... this conversation was very difficult because the wave of emotions that went over [Student]'s face, body, in her voice, and her verbal expression were quick, diverse, and intense.

During the interview, there were several moments that [Student] presented as being on the edge of falling apart as evidenced by quick and high intensity of emotions that seemed to teeter on the edge of loss of control with either anger or crying with tears. (Parents' #45).

Nothing in Ms. XXXX's report indicates any significant negative impact that the interview had on [Student]. Contrary to the Mother's indication to Ms. XXXX that an interview of [Student] would cause "severe disruption as it would increase her anxiety and stress" as it had when Ms. XXXX interviewed [Student] at [School 1], Ms. XXXX testified that [Student] suffered no ill effects as a result of that interview. (Parents' #80, page 2, Mother's testimony). Ms. XXXX reports that [Student] was at times angry, anxious, and crying, but I have found no other evidence to suggest that this interview had any negative impact on [Student] or in any way negatively affected her progress or work at [School 1].

I am convinced by this evidence that [Student] could and should have been interviewed by [School 4] and [School 3] and that such an interview would not have had any significant negative impact on her emotional or anxious condition and that it would not have caused her to regress.

Nevertheless, even after Mr. Krew's letter of July 30, 2013, and up until the present, no interview has been offered by the parents. As mentioned, this stymied the placement decisions made by the MCPS.

The interview could have been conducted within the confines of [Student]'s own home, with her Parents close at hand, which would certainly have been less onerous than the interviews already conducted at [School 1], one by the [School 1] psychologist and one by Ms. XXXX. In her testimony, the Mother acknowledged that [Student] was "capable" of being interviewed even though the language in various letters and emails indicated an "incapacity." In the final analyses the failure to facilitate the interview subverted and stymied the placement process. For a decision concerning parents frustrating the process see *MM ex rel. DM v. School Dist.*, 303 F.3d 523 (4th Cir. 2004).

However, as the discussion above indicates, I am convinced that regardless of any

Interview, the Parents had already decided that they would not allow [Student] to attend either [School 4] or [School 3], or for that matter any other school than [School 1].

4. Bad Faith of the Parents

I believe the Parents had simply decided that [Student] was going to stay at [School 1] from the time they committed to that school. For several reasons I do not believe that they considered [School 4] or the [School 3] School in good faith. As to [School 4], the Parents were concerned, rightfully so, about [Student]’s need to transition from class to class, as well as for lunch and other activities. But as Mr. Krew points out, and the credible evidence shows, [Student], although clearly impacted by transitions, was required to transition at [School 1]. Although she was in a self contained class, precluding transitions from class to class, she still needed to transition to special classes such as art and physical education. Furthermore, she had made the transition from [Hospital 3] to [School 1] without evidence of significant harm. Additionally, she transitioned home and back to [School 1] for holidays and school breaks without significant negative impact. Although there may be less transitioning at [School 1] than at [School 4], I find that this was not sufficient basis to reject this placement. A placement decision was made that [Student] would be at [School 4] and the Parents rejected that decision, even before it was made.

The same is true with regard to the [School 3]. XXXX XXXX of the MCPS placement office wrote to the [School 3] on June 26, 2013 requesting that the school advise whether it was an appropriate placement for [Student]. The Parents met with Ms. XXXX, Director of the school on July 2, 2013. In addition to the discussion concerning an interview of [Student] (see discussion later), the Parents informed Ms. XXXX that the [School 3] was not appropriate for [Student] because of the psychiatrist, Dr. XXXX XXXX, who would be working with [Student] at the school. During the fall of 2012, the Parents had met with Ms. XXXX concerning the

possible placement of [Student] at [School 3] after she completed her stay at [Hospital 3]. At that time, the Parents rejected [School 3] because they had a prior unpleasant encounter with Dr. XXXX. According to the Parents, in 2010, Dr. XXXX had not only misdiagnosed [Student]'s condition but she had even mistreated [Student]. Clearly, regardless of any programs or services to be offered at [School 3], the Parents rejected placement there. (Parents' #81).

I believe the decision to reject [School 4] and [School 3] was preconceived. For one thing, the Parents were obligated to pay the costs and fees at [School 1] regardless of whether [Student] attended any MCPS school or any other school. Additionally, [Student] was enrolled at [School 1] on November 29, 2012, just a short time after the Parents requested MCPS to evaluate her for special education services. At the time of enrollment at [School 1], the Parents were already considering the possibility of MCPS paying for the [School 1] placement. The Parents clearly believed that **only** a residential therapeutic school was appropriate for [Student], and that [School 1] was the **only** such school that would do, so much so that they committed themselves to costs and fees exceeding \$119,000.00 a year. Although I disagree with the Parents concerning the need for a residential therapeutic school, I certainly do not impugn their beliefs as to the benefit of such a placement. I do impugn the sincerity of their consideration of placement at [School 4] or [School 3] or any other school other than [School 1]. I find that there was indeed a placement and that the Parents frustrated that placement by their bad faith preclusion of an interview of their daughter and by having already decided that [School 1] was the only school [Student] could or would attend.

5. MCPS Cooperation and Working with the Parents

The Parents claim that the MCPS "refused to work with the parents in finding a placement for [Student]," while they, the Parents, cooperated in good faith. I disagree.

I have already discussed above the issue of the Parents' bad faith and that of the MCPS to some degree. Those discussions are incorporated here.

I mention again the fact that the school system sent Ms. XXXX all the way to [State 1] to conduct an interview with [Student] and to provide an evaluation. This is not evidence that the school system was unwilling to work with the Parents. Additionally, there were numerous instances when the school system agreed to have [Student] interviewed by telephone, also previously discussed. Even as late as Mr. Krew's letter of July 30, 2013, the school system offered to "consider any reasonable limitations to the scope and process of the interviews to be conducted by [School 4] and [School 3] staff." (MCPS #48). Even at this point an interview could have occurred but there was no offer by the Parents to proceed with any interview. Additionally, the Parents, staff from [School 1], and [Student]'s therapist, Dr. XXXX, were all allowed to participate in the IEP process and their opinions were duly considered by the IEP teams. In fact, no one has objected to the goals and objectives developed by the team, goals and objectives that are quite detailed. The only objection is to the placement.

The Parents have provided me with no credible evidence, and I have found none, that requires the school system to continue to offer placements every time the Parents reject placement recommendations already made. This is particularly the case when, as in this matter, the Parents had long before set their minds on [Student] being at [School 1].

The Parents allege further that [Student]'s rejection at [School 3] and [School 4] did not relieve the MCPS of its responsibility to identify an appropriate placement. Contrary to this allegation, it was the Parents that rejected [School 3] and [School 4], as I have already discussed. The Parents' reliance on the case of *A.K. v. Alexandria Sch. Bd.* 484 F.3d 672, 681 (4th Cir. 2007) is misplaced. In *A.K.* the IEP referred to 5 possible schools but failed to identify any specific placement, *id at 681*. Such is not the case in the instant matter where the school system

specifically identified [School 4], and when this was rejected it specifically identified [School 3] as a placement. Unlike the parents in *A.K.*, the Parents in the instant matter were not left to “fend for themselves,” because in fact specific placements had been decided by the IEP team.

There is no credible evidence that the MCPS failed to “work with” the Parents to identify an appropriate placement. In fact, the credible evidence is to the contrary.

B. FAPE Requirements

1. The Requirement for a Therapeutic Residential Placement and the Appropriateness of [School 4]

No one disputes that [Student] must have a therapeutic educational setting. The question is whether she must have a residential therapeutic setting. I find that she does not.

Obviously the witnesses have differing opinions. On the Parents’ behalf, a number of witnesses or professionals were of the opinion that a residential therapeutic school was essential for [Student] to be successful. Experts and professionals who testified for the MCPS were of the opinion that a therapeutic day school was appropriate.

2. Those arguing for a residential therapeutic school

a. Dr. XXXX XXXX

On September 18 and continuing through September 24, 2012, Dr. XXXX XXXX, a Psychologist, conducted a psychological evaluation of [Student]. The evaluation was requested by Dr. XXXX XXXX of [Hospital 3]. Dr. XXXX conducted extensive psychological tests of [Student] and provided an extensive review. She made the following educational recommendation:

[Student] will need a very individualized program to help her remain focused on tasks to completion, as well as to provide her with support and the accommodations that she needs. This would include frequent breaks, shortened assignments, and a quiet area where she could retreat as needed. This could be a study carrel or an area in which there are few distractions. She needs a learning environment that allows her to subvocalize and move about in her seat. She will need a table or desk of her own, as her movements would

likely result in too much disturbance of the table or desk for others that might share the same area.

[Student] would probably do poorly with a project approach to learning. She would probably grasp concepts most easily when presented verbally. Timed tasks should be avoided wherever possible, and when timed tasks are mandatory, she should be allowed 100% for extra time.

Independent reading assignments with some writing tasks to test knowledge would probably boost [Student]'s sense of accomplishment, whereas [Student] would need as much individualized instruction as possible in math. Applied problems seem to overwhelm her right now, as they involve short term memory as well as calculations. She probably will gradually improve on these tasks, but such tasks should be simplified as much as possible at this time.

Visuospatial and motoric speed difficulties will make it difficult to perform copying problems or assignments from a book or other sources. Writing at length will also be likely to be quite effortful. It is suggested that these types of requirements be reduced. Oral assignments will be a viable alternative, and would capitalize on her well-developed verbal skills. Reading graphs, maps and charts might be difficult. Individual assistance with this type of assignment is suggested.

Instruction in verbal mnemonics might be helpful in order to strengthen verbal memory skills.

Organizational checklists, color coded files and notebooks, and establishing a routine are suggested. [Student] would benefit from being forewarned of any changes in routine, and having new routines explained to her ahead of time, she would benefit from firm boundaries that are presented in a gentle fashion and in a way that she has some input when possible. (Parents' #29).

At the request of the Parents, Dr. XXXX provided an addendum to her report of September 24, 2012. The addendum is not dated. In the addendum Dr. XXXX states:

[Student] is also suffering from severe OCD and XXXXXXXX, and **her condition is deemed too severe to function within a regular school setting**. She needed constant individualized attention during the recently completed evaluation. Even with this attention, she was unable to conform her behaviors to tasks without constant monitoring and interventions by the examiner. Her noted meltdown during testing would have been extremely disruptive for those around her even in a modified classroom setting. (Emphasis added).

It is therefore considered imperative that [Student] receives an Individualized Educational Plan. Clinical impression is that the best setting for [Student] would be a therapeutically oriented school where she receives constant individualized attention from someone trained in both therapeutic and educational strategies. (Parents' #29).

b. Dr. XXXX XXXX, Psychiatrist/Pediatrician and XXXX XXXX, Educational Specialist at [School 1]

Dr. XXXX XXXX, the Child and Adolescent Psychiatrist and Pediatrician for [Student] and XXXX XXXX, an Educational Specialist at [Hospital 3], stated the following in their letter of November 14, 2012:

[Student]'s academic skills are not in question but her ability to handle stressful situations and to also recognize success and find academic satisfaction is of concern. [Student] will need resources room support and ongoing help to aid her in handling any anxiety she will experience while in school. Currently, [Student]'s response to stressors is age-inappropriate behavior, including tantrumming, screaming, crying and regressing into younger behaviors. These behaviors have only minimally improved with intensive Cognitive/Behavioral Therapy, social skills training, Habit Reversal Training and psychopharmacologic interventions. **For these reasons, we feel that [Student]'s needs and educational goals could be best reached by [Student] attending a therapeutic boarding school.** (Emphasis added). (Parents' #30).

Mr. XXXX also provided a Teacher Referral on November 12, 2012. In this report, Mr. XXXX made the following observations concerning [Student] and which I infer are the basis, at least in part, for the opinions he stated in the letter of November 14, 2012:

Student becomes overwhelmed at volume of problems and perceived difficulties but often can work her way through a set of problems after recalling the correct way to solve the type of problem.

Concerning the types of errors [Student] makes: Spelling errors, rushed writing and math leads to many errors in both spelling and organization.

Anxiety causes the student to become avoidant to do work at times, especially math. Student performs better when work is broken up into smaller sections. Large assignments tend to overwhelm the student.

Peer or outside distractions can greatly distract and cause learning to come to an abrupt halt. Student often becomes sidetracked by different thoughts or ideas that she likes to discuss but have little to do with the subject matter. When student believes a concept is too difficult, little attempt will be made to learn the new concept.

Student thrives during in class discussion time. Student volunteers to speak and feels comfortable speaking to her peers. While in our care, she loved to tell peers about her home state, where her grandparents live, books she read, etc. Subjects the student is comfortable with and has knowledge of increases the student's attentiveness dramatically. (Parents' #31).

On November 27, 2012, Dr. XXXX prepared a discharge summary. The summary is quite detailed and an excellent review of [Student]’s course while at [Hospital 3]. In significant part the summary provides as follows:

[Student] was admitted to the Child Center upon the recommendation of Dr. XXXX XXXX for residential treatment due to her separation anxiety, mood lability, and ADHD symptoms. [Student]’s parents identified her mood lability and inability to function at home or at school as the issues that led to residential admission. Their goals for treatment included reduction in XXXX, improvement in mood lability, and medication management.

...

Our social worker individual and family therapy for [Student] and her parents. Weekly family sessions were used to discuss the home environment, family dynamics, and other issues that impacted [Student] prior to residential treatment. We discussed parenting strategies form [Student], self-care for the family and ongoing treatment recommendations for [Student] during family sessions. **We recommended that they look for a therapeutic boarding school due to the lack of resources to help [Student] from an educational and emotional standpoint in their area.** It was also felt that [Student] would benefit from the ongoing practice of using coping strategies. We also used family sessions to discuss ongoing medication changes and discharge planning. (Emphasis added).

While [Student] was in treatment, I recommended psychoeducational testing for further diagnostic clarification. Dr. XXXX completed the evaluation on September 18th and 24th. Her diagnoses included ADHD, Combined Type; Generalized Anxiety Disorder; Tourette Disorder, Features of Obsessive Compulsive Disorder; Separation Anxiety, by history; and XXXXXXXX. **She recommended that [Student] would benefit from ongoing help in a setting such as therapeutic boarding schools to help with her tantrumming behavior.** She also recommended that [Student] have specialized instructions related to educational setting. (Emphasis added).⁶

...

The treatment team determined that [Student] was prepared for discharge to a therapeutic boarding school based on her progress in treatment. She was able to work on her exposure hierarchy and use the competing response for her XXXX. She also had a reduction in tantrums. **Communication with the therapeutic boarding school occurred to help [Student]’s transition.** (Emphasis added). (Parents’ #32).

c. Dr. XXXX XXXX, Child, Adolescent, and Adult Psychiatrist at the [School 1]

On or about December 5, 2012, Dr. XXXX XXXX, Child, Adolescent, and Adult

⁶ Concerning Dr. XXXX’s reliance of Dr. XXXX’s reports see discussion below.

Psychiatrist at the [School 1] conducted a psychological evaluation of [Student] at the request of [School 1]. Dr. XXXX met with [Student] and in his report he reviewed [Student]'s history and current status. He concluded that:

The level of care **needed for safety is residential placement such as the [School 1]**. (Emphasis added).

Recommendations: Educational: Since [School 1] is primarily a boarding school for children and young adults with special needs, primary focus remains to address the varying levels of academic, social, and emotional development with a goal to prepare form continued education. (Parents' #35).

d. Dr. XXXX XXXX

Dr. XXXX, a Psychotherapist in private practice, has worked with [Student] and her family since January 2010 and she has provided cognitive behavioral therapy and family counseling. She was familiar with the recommendations from [Hospital 3] for [Student] to attend [School 1] and she agreed with that placement. According to Dr. XXXX, [School 1] met [Student]'s needs because it could address the child's problems with insight, which, according to Dr. XXXX, other schools could not. Additionally, Dr. XXXX was impressed with [School 1]'s approach to behavioral programs. [Student]'s multiple issues are so profound, according to Dr. XXXX, that she is unable to transition from school to home and vice versa. She would have to transition within school from class to class without immediate interventions available, *i.e.* in a day school. She should not have to transition during the day at all. Even if [Student] were to try a day program she would regress considerably. [Student] is doing better at [School 1], making small gains and improvements in her behavior and academics, but she is still struggling.

Dr. XXXX testified further that [Student] needs a therapeutic residential school in order to be successful. She was present when the Parents went to visit the [School 4] and during the discussion about [Student] being interviewed. She was also present at IEP meetings and expressed her disagreement with placement in a day school. She indicated that no one is

recommending that [Student] leave [School 1] except MCPS personnel. Dr. XXXX reported that in her opinion bullying is pervasive at [School 4], something that [Student] should not have to face, although she acknowledged that [Student] has had some problems with teasing and perhaps bullying at [School 1]. (Dr. XXXX testimony, Vol. 1, pages 78-80, 92-93).

According to Dr. XXXX, [School 1] is a school and not a residential treatment center. Because of [Student]’s multiple problems it is very stressful for the Parents when [Student] is at home, and she needs to be out of the home. This was because of her tantrums, argumentative nature, and other problems. However, Dr. XXXX was uncertain if [Student]’s behaviors were worse at home than in school. In reviewing Dr. XXXX’s reports, Dr. XXXX acknowledged that Dr. XXXX did not recommend a residential placement. Finally, Dr. XXXX, having reviewed Ms. XXXX’s report agreed that it was a very good report. (Parents’ #98 and Dr. XXXX testimony, Vol. 1, page 96).

e. XXXX XXXX, Social Worker at [School 1]

Ms XXXX XXXX, the Social Worker at [School 1], testified first about [Student]’s behavioral, emotional, and academic issues. She also was of the opinion that [Student] needs a therapeutic residential school because she responds best to structure and routine, she needs to learn how to live among peers, and such a school would provide modeling and coaching 24 hours a day, 7 days a week. When [Student] goes home, the Parents work on the same issues and they use a point system. [Student] is in a self contained class at [School 1] but she does have to transition for classes in art, music, etc. (XXXX Testimony, Vol. 1, pages 194-195)

f. XXXX XXXX, [Student]’s Teacher at [School 1]

Ms. XXXX is [Student]’s teacher at [School 1] and she began her testimony, as did everyone, by describing [Student]’s behavioral, emotional and academic issues. She was asked about [Student]’s possible removal from [School 1] and she was very much opposed to such a

move. She is of the opinion that [Student] needs a school that provides therapeutic services 24 hours a day and seven days a week. Removal from [School 1] would be very detrimental. At [School 1], [Student] receives education and therapy not just Monday through Friday, but on weekends as well. The boarding staff even has lesson plans for the weekends. Weekends give her more time to work on social skills. If she left, her anxiety would increase and she would be without the friends she has made. According to Ms. XXXX, it was very difficult for [Student] when she transitioned to [School 1]; she has become invested at the school.

Ms. XXXX had read Ms. XXXX's report and believed it was a very good evaluation of [Student]. She agreed with all of Ms. XXXX's recommendation, and she noted that Ms. XXXX did not recommend a residential placement. However, according to Ms. XXXX, what Ms. XXXX recommended is consistent with what is provided in a therapeutic residential school. (Ms. XXXX's testimony, Vol. 2, pages 262).

g. The Parents

Finally, although not least importantly, the Parents believe very strongly that only a residential therapeutic school will adequately serve [Student]'s needs. In fact, they insist that only [School 1] will suffice. They certainly have the closest relationship with [Student] and perhaps the best understanding and insight as to her difficulties. They have had [Student] in several schools, public and private, with minimal success. Additionally, they have had [Student] in several hospitals over the past several years. They, more than anyone, have experienced [Student]'s outbursts, tantrums, screaming, inattention and the like. Granted, their experience is in the home, where some education has occurred.

The Mother testified that professionals at [Hospital 3] instructed her that [Student] must go immediately to a residential therapeutic school, specifically [School 1], upon discharge from [Hospital 3]. I find no documentation of the claim of immediacy, but certainly Dr. XXXX and

Mr. XXXX recommended to the Parents that a residential boarding school was required. The Mother testified that [Student] could not get the same educational benefits in a setting that is less restrictive than [School 1]. (Parent testimony, Vol. 2, page 419).

Clearly the Parents have done a yeomen's job in their attempts to find the appropriate school for their daughter.

3. Those who believe that a residential therapeutic school is not necessary

a. Ms. XXXX XXXX, School Psychologist for MCPS

Although Ms. XXXX, in her written report, did not give an opinion as to [Student]'s need for residential versus a day school, various people have referred to her report as substantiating that a residential placement is not necessary.

On January 17 and 18, 2013, as a result of the Parents' request for special education services, Ms. XXXX travelled to the [School 1] in [State 1] to interview and evaluate [Student]. Ms. XXXX's goal was to assess whether [Student] met the criteria for an educational disability and the need for special education services pursuant to the IDEA and the Maryland Code. She wrote her report on January 30, 2013.

In her report, she began by summarizing [Student]'s health and developmental history. She also reviewed [Student]'s sociocultural background and family history. She also reviewed [Student]'s educational history and previous assessments. Ms. XXXX detailed [Student]'s behavior as observed while she was at [School 1].

In describing her interview with [Student], Ms. XXXX indicated that the child came willingly, was bubbly, sharp, and inquisitive, but socially and emotionally immature. In speaking about why Ms. XXXX was there, [Student] was concerned about special education and what that meant for her. Overall, [Student] was engaged, social, friendly and intellectually inquisitive. She had a strong desire to please. However, she did have a high level of arousal and

dysregulation during most of the interview and throughout the school day. At times during the interview [Student] seemed to be on the edge of falling apart. Ms. XXXX reviewed the test results and interpretations of the results including the Behavior Assessment System for Children and the Connor's Rating Scale completed by [Student]'s teacher, XXXX XXXX.⁷

In summary Ms. XXXX related that reports, record review, and past assessments show that there are no concerns as to [Student]'s intellectual ability to access learning and instruction. The fluctuation in [Student]'s intellectual reasoning skills could be attributed to her significant mood swings and her fluctuation of cognitive functioning. Her ability to perform well on standardized tests was expected due to her issues with attention, impulsivity, and mood dysregulation.

Behavioral assessments confirmed the long-standing issues reported at home and previous schools. She has complex medical issues that reveal a complicated and changing learning profile and her social, emotional, and behavioral difficulties impact her educationally, including her ability to attend, sustain effort, complete work, and to regulate herself in class and with peers. She also has intrusive and perserverative thoughts that interfere with her emotional and behavioral regulation. Her triggers are difficult to predict, suggesting that the triggers are internal and organically based, which is consistent with her diagnosis of XXXXXXXX and related problems. Overall, Ms. XXXX believes that [Student] has a high level of arousal, stress, and dysregulation that affects her educationally, socially, and emotionally.

Ms. XXXX recommend that the IEP team consider that [Student] qualifies for special education services in the OHI category because she has limited strength, or alertness, due to chronic or acute health problems which adversely affect her educational performance. She also suggested that the IEP team explore whether [Student] should also be characterized as having an

⁷ Concerning any ill effects of Ms. XXXX's involvement with [Student], see previous discussion.

emotional disability. Ms. XXXX made numerous recommendation, however, she did not give an opinion on whether [Student] required a residential placement or whether a day placement was sufficient. (MCPS #16).

b. Mr. XXXX XXXX, Coordinator of the Placement and Assessments Unit of the MCPS

Although most of Mr. XXXX's testimony centered on his criticisms of the [School 1], he did offer his opinion that a residential school was not needed in order to meet [Student]'s needs.

Mr. XXXX testified that he had reviewed Ms. XXXX' report and spoke to her about it. They discussed her recommendations and, according to Mr. XXXX, Ms. XXXX told him, and the IEP team, that [Student] could be adequately served in a day school.⁸ According to Mr. XXXX, nothing in Ms. XXXX's report suggested the need for a residential school. The mental health supports recommended by Ms. XXXX can be provided in a day setting, as can all of her recommendations. Mr. XXXX discussed [Student]'s emotional issues and reported that the IEP team considered this but rejected it as a learning disability because it found no educational impact. Nevertheless, [Student]'s emotional problems were not sufficient to require a residential placement. Finally, Mr. XXXX testified that all of the goals and objectives developed by the IEP team could be fulfilled in a day placement and that is what the team decided. The team made a placement decision for [School 4] and [School 3]. (Mr. XXXX's testimony, Vol. 3, pages 638-639, 643-644-646).

c. The IEP Team

I have already discussed above the IEP team's decision that a residential placement was not necessary. The team considered Ms. XXXX's written report, her comments at the team meetings, the comments of staff from [School 1], reports from Dr. XXXX, Dr. XXXX, Mr.

⁸ No one has disputed that Ms. XXXX advised the IEP team that a residential placement was not necessary.

XXXX, and input from the Parents. The team made a decision to place [Student] at [School 4] and later at [School 3]. (MCPS #30). I incorporate here the previous discussion on this issue.

d. Ms. XXXX XXXXe, Principal at [School 4]

According to Ms. XXXX, [School 4] is a public separate day school operated by the MCPS for students with behavioral, emotional problems, including students with autism, and students who are unable to succeed in the general school population due to emotional and behavioral issues. [School 4] has a residential unit, a residential treatment center, for students needing clinical treatment. There is no barbed wire around the school as alleged by the Parents when they rejected [School 4].⁹

Ms. XXXX had reviewed the IEP developed by the MCPS team as well as the documents from [School 1]. The IEP from [School 1] was not as detailed as it might have been. She has never met or evaluated [Student] and she was not present at any of the IEP meetings. She detailed the program at [School 4], including the therapeutic services and daily activities of students.

Ms. XXXX explained that [Student] might qualify for the [School 4] residential unit but such a decision would be up to the clinical team. She expressed her opinion that a residential setting was not needed and that [School 4] could well serve [Student]'s needs. (Ms. XXXX testimony, Vol. 4).

4. Analysis of the Need for a Residential Placement and the Appropriateness of [School 4]

To uphold the Parent's claim that MCPS should fund [Student] at the [School 1], I must first determine whether the program and placement offered by MCPS was reasonably calculated to provide [Student] with a FAPE. As indicated, the Parents have the burden of proof in this

⁹ Apparently the Parents were referring to a near by facility that had barbed wire fences.

matter. This is not a contest between [School 1] and [School 4]. This is not a question of which school, [School 1] or [School 4], has the better program. Even assuming *arguendo* that [School 1] is considerably better than [School 4] and would be the better placement for [Student], the question before me is whether [School 4] can implement [Student]'s IEP, *i.e.* is the placement at [School 4] reasonably calculated to provide [Student] with a free appropriate public education? I find that the MCPS placement of [Student] at the [School 4] is reasonably calculated to provide her with a FAPE.

I am not persuaded that [Student] needs a residential placement to meet her educational needs. Neither am I persuaded that [School 4] is unable to provide [Student] with a FAPE, I find to the contrary.

I will first address the Parents' criticisms of [School 4]. They argue that [School 4] is prone to teasing and bullying of students by other students. There clearly is some verification of this claim as evidenced by the survey of students and staff taken in 2011-2012. (Parents' #100). According to the survey of parents, about 37% indicated that teasing and bullying was a problem. About 70% of the staff felt teasing was a problem and about 54% felt that bullying was a problem. The MCPS acknowledges that teasing and bullying does occur at [School 4]. Specifically, Ms. XXXX did not shy away from this issue but expressed her opinion that the percentage of people indicating that teasing and bullying was a problem did not comport with the reality as she saw it. She pointed out that in the parent survey only 8 parents responded and therefore she felt the survey was not all that reliable. Because only 52% of staff responded she felt that that portion of the survey was only moderately reliable. During the most recent school year, according to Ms. XXXX, there were reports of 18 instances of bullying in grades 6 through 12, 9 of which were confirmed as legitimate complaints.

Since the survey, [School 4] has implemented a strong anti-bullying program. The program includes counseling of the bullied and the bullying students, parent conferences, full team involvement, and the possibility of in school suspensions and even removal from the school. Removal has not been necessary thus far. In the year after the survey and after implementing the program, the rate of bullying has decreased by 50%, when there were 9 reported incidents with 4 confirmed reports. As part of the anti bullying program training programs are being used in all classes once a month as part of lesson plans in all grades 6 through 12. (Parents' #100 and testimony of XXXX). The evidence also shows that teasing and bullying is a concern for the staff at [School 1]. Teasing and bullying seems to a problem is most schools. [School 4] has a zero tolerance policy with regard to teasing and bullying and it is quite like that in place at [School 1]. The teasing and bullying that occurs at [School 4], which seems to me to be similar to what occurs at [School 1], is insufficient, in my view, to show that placement at [School 4] will deprive [Student] of a FAPE.

Dr. XXXX and Mr. XXXX recommend a residential placement. However, [Student] was already in such a placement at [School 1] and more than anything it was the issue of transitions that [Student] would have to make in a day school setting that concerned Dr. XXXX and Mr. XXXX. I believe it is very significant that Dr. XXXX and Mr. XXXX were improperly influenced by the belief that MCPS did not have the "resources" to implement services [Student] needed. This is evident from [Hospital 3]' discharge summary on November 27, 2012. In that summary, Dr. XXXX states: "We recommend that they look for a therapeutic boarding school due to the lack of resources to help [Student] from an educational and emotional standpoint in their area." The Parents denied telling Dr. XXXX that MCPS lacked the necessary resources. (Parents' #32 and Parent testimony, Vol. 2, page 587-588). It may well be that the Parents did not inform Dr. XXXX concerning resources, nevertheless, their belief that [Student] had to be in

a residential placement certainly must have influenced Dr. XXXX to some degree. Clearly someone suggested to Dr. XXXX that MCPS was without resources to provide [Student] with an appropriate education. MCPS indeed has such resources. Dr. XXXX's belief that MCPS lacked resources certainly lessens the credibility of her comments.

Additionally, Dr. XXXX relies on the report from Dr. XXXX, stating: "She recommended that [Student] would benefit from ongoing help in a setting such as therapeutic boarding schools to help her tantrumming behavior." (Parents' #32). I have thoroughly read, and re-read Dr. XXXX's 2 reports and have found nothing indicating that she recommended a residential boarding school in any way. (Parents' #29). Because of these anomalies, relying on the reports from Dr. XXXX and Dr. XXXX concerning residential placements is much less credible in my mind.

The Parents themselves rely heavily on the reports and comments of Dr. XXXX, as well as Dr. XXXX, and Mr. XXXX. Dr. XXXX, whose reports are quite detailed and well done, never recommended a residential placement, even after the Parents requested additional information from her. The time period when the Parents requested additional information is not before me. It certainly is plausible that the Parents wanted Dr. XXXX to recommend a residential placement. Although it can be argued that Dr. XXXX's recommendations could be interpreted as requiring a residential placement, she simply never suggests this. (Parents' #29). On the other hand, it can be argued, as the MCPS does, that her recommendations can be implemented in a day school. Clearly, Dr. XXXX's major concerns are for [Student] to be provided with therapeutic services.

Dr. XXXX, who has worked with [Student] since 2010, testified that [Student] requires a therapeutic residential program. Her main concern was [Student]'s fragility and problems she would encounter if she had to transition from class to class in day placement. The problem of

transitions is no more formidable at [School 4] or [School 3] than at [School 1]. According to Dr. XXXX, [Student] was doing well at [School 1] and removing her would be quite traumatic.

The Parents also believe that a residential placement is required. The Parents' opinion, while understandable, is not reliable expert evidence as to [Student]'s needs. Moreover, I believe the Parent's opinion as to residential placement is, understandably, biased. My previous discussion concerning the Parents' opinions are incorporated here.

I do not give much weight to the opinions expressed by Ms. XXXX and Ms. XXXX concerning residential placement. It is clear that they do an excellent job as [Student]'s teacher and social worker, but their expertise in special education placements has not been adequately demonstrated.

Ms. XXXX, in her comments at the IEP meetings, Mr. XXXX, in his testimony, and Ms. XXXX, in her testimony, all are of the opinion that a residential placement is not needed. I agree.

Why Ms. XXXX made no recommendation as to residential versus day school in her written report is not clear to me. Her report is every bit as detailed and well done as that of Dr. XXXX and the recommendations are quite similar. All of [Student]'s educational and therapeutic needs can be met at [School 4]'s day program. She would be in a self contained class that would help with transitioning issues.

By far, the most significant evidence in my determination is the testimony of Ms. XXXX and I give her evidence significant weight, more so than opinions of witnesses and professionals for the Parents. Although Ms. XXXX had never met with [Student] or her Parents, she had reviewed the file forwarded to [School 4] and she was aware of [Student]'s problems. She reviewed [Student]'s disabilities, including her emotional, behavioral, and academic problems. Concerning the issue of transitioning, Ms. XXXX stated that teachers and staff are stationed in

the halls when transitioning occurs and that if needed a student is assigned a specific staff to provide escort. Staff also escorts students who have difficulty with self control. In reviewing [Student]'s IEP from MCPS, Ms. XXXX stated that all of the goals and objectives, including therapeutic services could be met at [School 4]. Therapy would be integrated and [Student] would have a designated therapist and a therapy team would meet regularly to identify and plan strategies. Although therapists do not teach they are very involved in managing behavior. There is also therapy provided in the cottages for residential students.

Ms. XXXX testified further that [School 4] would, as a matter of course, complete a functional behavioral assessment (FBA) and behavior intervention plan (BIP) for [Student]. Students who have participated in the [School 4] program have had a variety of disabilities, including: acting out, acting in, self injurious behavior, significant anxiety issues, dysregulation, misperceptions, problems interacting with peers and adults, aggression, tantrums, screaming, crying, etc. Additionally, [School 4] uses comfort rooms for calming, self soothing techniques, stress reduction using toys, use of a sensory motor room, use of a "squeeze machine," stress walks, and cognitive work concerning the basis for dysregulation. The school also works on regressive behavior and the staff teaches coping skills. Several of the students at [School 4] have Tourette syndrome and XXXX. A vast number of students have attention deficit disorder (ADD) or ADHD and physicians on campus will address these issues with medication if appropriate. [School 4] has also had experience with 2 students who have had XXXXXXXX, one of whom has recently transitioned to [School 8]. The staff regularly deals with students who have separation anxiety.

Ms. XXXX testified further that all of Dr. XXXX's recommendations and those of Ms. XXXX can be implemented at [School 4], and that none of the recommendations were unusual for the [School 4] program. According to Ms. XXXX, [School 4] has successfully worked with

students even more disabled than [Student]. Ms. XXXX's recommendations, according to Ms. XXXX, describe [School 4]'s program to a "T." The IEP goals and objectives established by the MCPS IEP team are all typical of what [School 4] implements.

Ms. XXXX reviewed the letter sent to Mr. XXXX by Paralegal XXXX with a summary of a letter provided by the Parents. (Parents' #35). She was asked about the following portion of that letter:

It is a beautiful school, but not for [Student]. I asked her if drugs were a problem and she noted that as it is a public high school, there are going to be kids that do drugs. The school utilizes the "phase" system that is similar to that which is used at [School 1]. The kids who are at the residential facility attached to the school attend [School 4] as well. These kids need to be able to transition from classroom to classroom, too. So, the residential facility (at [School 4]) is not an option for [Student]. (MCPS #35).

Ms. XXXX disagreed with this statement and indicated that [School 4] has numerous tools to assist students that have transitioning problems, including, in addition to what is mentioned above, school maps and even the buddy system. Kids need to learn to transition because eventually they will have to transition as they get older and the ability to transition enhances self esteem.

Concerning the reference by Dr. XXXX as to a lack of resources in MCPS, Ms. XXXX stated that this was certainly not the case. [School 4], according to Ms. XXXX, is a premiere program. [Student] does not need a residential placement for education, according to Ms. XXXX. Whether she needs a residential placement for medical reasons would be up to the clinical staff at [School 4], but this was not the placement made by the IEP team.

As previously discussed, Ms. XXXX testified about teasing and bullying at [School 4]. That discussion above is incorporated here. She was surprised at the results of the staff and parents' survey. She testified that she felt that the pervious survey was not very reliable and indicated that a more recent survey showed far less teasing and bullying. Nevertheless, Mr. XXXX has implemented a zero tolerance program at [School 4]. Again, this program is outlined

above. As to teasing and bullying, the Parents acknowledge that [Student] has been both teased and bullied at [School 1]. The anti-bullying program at [School 1] is quite comparable to the one at [School 4]. Unfortunately, teasing and bullying is not uncommon in any school, public or private, residential or day school. However, the program at [School 4] is well organized, with regular training of staff, and with quick response built in. (Ms. XXXX testimony, Vol. 4, page 833).

Ms. XXXX's testimony far outweighs that of the witnesses and professionals who favored a residential placement. I disagree with counsel for the Parents' suggestion that MCPS witnesses and professionals were not as qualified as those supporting a residential placement, *i.e.* those from [School 1], [Hospital 3], and Dr. XXXX. (See Parents' Trial Brief, footnote #4, page 7).

Ms. XXXX's report shows unique skill in evaluating [Student]. The report was very detailed, including a detailed history of [Student]'s educational placements, medical and psychological history and treatment. Her observations were astute, detailed, and convincing. Her recommendations followed closely the difficulties that everyone agrees [Student] has. Furthermore, Ms. XXXX's education, training and experience show that she is exceptionally well qualified in the area of special education and school psychology. She has a masters degree in school psychology and she has been a special education school psychologist since July 2005. She is licensed as a school psychologist in Maryland and she is a Nationally Certified School Psychologist. (MCPS #16 and 54).

Ms. XXXX is also exceptionally well qualified in the area of special education. She has an undergraduate degree in Special Education and a masters degree in Educational Administration and Supervision. She has a Maryland Advanced Professional Certificate in Special Education and as an Administrator I/II. She began working as a special education

teacher in 1977 and has worked in this field since that time. She has vast experience in special education and is extremely well versed in what programs best suit the need of special education students. (MCPS #56).

Other than as already expressed, none of this analysis is to denigrate the expertise of professionals supporting the Parents' position. As I have explained, as to the issue of the need of a residential placement, I have given significantly more weight to the opinions of Ms. XXXX and Ms. XXXX than those of Dr. XXXX, Dr. XXXX, Mr. XXXX, and Dr. XXXX

Contrary to counsel's claim that this case does not involve a "battle of educational experts" in large measure such a contest does exist and I am much more persuaded by those providing evidence on behalf of the MCPS than those providing evidence on behalf of the Parents. (Parents Trial Brief, page 7, footnote #4)

I find that [Student] does not require a therapeutic residential school. I find further that placement at [School 4] is reasonably calculated to provide [Student] with a FAPE. 20 U.S.C.A. § 1412(a)(5) (2010); 34 C.F.R. 300.114(a)(2)(i) & 300.117 (2012).

The Parents in their Trial Brief stated five reasons why I should rule in their favor:

1. The School System's Own Delays Denied [Student] any Educational Placement.
2. MCPS had an obligation to Work with the Parents to Identify a Placement.
3. [Student]'s Rejection at [School 3] and [School 4] did not Relieve MCPS of it Responsibility to Identify a Placement.
4. [Student] Requires a Residential Placement to Make Meaningful Educational Progress.
5. [Student] Should be Funded and Placed by MCPS at the [School 1].

I have addressed each of the first four issues and ruled against the Parents in each instance. Because I have found that MCPS placement of [Student] at the [School 4] school is

reasonably calculated to provide her with a FAPE, I need not address further the Parents' claim for placement and funding at [School 1], *i.e.* I need not address the adequacy of [School 1] as suggested by the Parents in their 5th point as stated above. For the same reasons, I need not address MCPS's claim that the Parents failed to provide required notice of private placement.

C. Least Restrictive Environment

Finally, as to the issue of least restrictive environment, clearly the IDEA requires that children with disabilities be educated with their non-disabled peers to the maximum extent appropriate. Furthermore, students with disabilities should not be placed in separate schools or otherwise removed from the general education population unless the nature or severity of the disability is such that education in a regular classroom with supplemental aids and services can not be achieved satisfactorily. 34 CFR 300.114(a). All agree that [Student]'s needs cannot be met in the regular classroom setting. That being said, the question is whether placement at [School 4] is less restrictive than [School 1]. Because of the restrictive nature of residential schools, placement of students in such schools will comply with the LRE mandate in only extremely limited situations, situations where a student, though severely disabled, is unable to receive a FAPE in a less restrictive placement. *Carlisle Area Sch. Dist. V. Scott P.*, 22 IDELR 1017 (3d Cir. 1995), *cert denied* 517 U.S. 1135, 109 LRP 34841 (1996); and *Mohawk Trail Reg'l Schs.*, 25 IDELR 902 (SEA MA 1997); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).

MCPS placement at [School 4] is less restrictive than [School 1]. [School 1], in [State 1], affords [Student] less time with family, community peers, and the community generally. At [School 4] she would see her Parents daily. Even in the residential school at [School 4], she would see her family more often. She would be able to develop community connections and activities more easily. Her Parents would be much more readily available for conferences at

school for review of progress, IEP meetings, and even social functions. Finally, family therapy would be considerably easier as the use of telephone therapy sessions would not be needed. Clearly, [School 4] is less restrictive than [School 1].

D. Additional Observations

MCPS suggested that the Mother was evasive and even obstreperous throughout her testimony. Although there were some inconsistencies, her desire to go beyond simple yes or no answers is understandable. Many questions simply cannot be answered fully and accurately by a yes or a no. To impugn her or her testimony on this basis is misplaced. Frankly, it is to be expected that parents will be vigorous advocates for their children and I take no adverse credibility inference, other than previously indicated, from the Mother's going beyond simple yes and no answers. *Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80, 86 (3d Cir. 1999); *Bd. of Educ. V. Rowley*, 458 U.S. 176, 209 (1982).

E. Conclusions

After considering all of the evidence before me, I conclude that the Parents have failed to show:

1. That delay by the school system denied [Student] a FAPE.
2. That MCPS failed to work with the Parents in identifying a proper placement.
3. That MCPS was obligated to identify other placements after the Parents rejected [School 4] and [School 3].
4. That [Student] requires a residential placement in order to make meaningful educational progress.
5. That the MCPS has failed to offer [Student] an education program, including placement that is reasonably calculated to provide her with a FAPE.

CONCLUSIONS OF LAW

I further conclude as a matter of law that:

1. The MCPS IEP and placement of [Student] at [School 4] was reasonably calculated to provide her with a FAPE for the 2012-2013 and 2013-2014 school years. 20 U.S.C.A. § 1412(a)(5) (2010); 34 C.F.R. 300.114(a)(2)(i) & 300.117 (2012).
2. Placement at [School 4] is less restrictive than placement at the [School 1]. 34 CFR 300.114(a), *Carlisle Area Sch. Dist. V. Scott P.*, 22 IDELR 1017 (3d Cir. 1995), *cert denied* 517 U.S. 1135, 109 LRP 34841 (1996); and *Mohawk Trail Reg'l Schs.*, 25 IDELR 902 (SEA MA 1997); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).

ORDER

I **ORDER** that the due process complaint filed by the Parents concerning their daughter, [Student], be and it is hereby **DENIED**.

November 6, 2013
Date Decision Mailed

DHP/bp

D. Harrison Pratt
Administrative Law Judge

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the student resides. Md. Code Ann., Educ. § 8-413(j) (2008).

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.