

**XXXX XXXX,**

**STUDENT**

**v.**

**BALTIMORE COUNTY**

**PUBLIC SCHOOLS**

**\* BEFORE MICHAEL D. CARLIS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH No.: MSDE-BCNY-OT-14-34685**

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

**DECISION**<sup>1</sup>

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

**STATEMENT OF THE CASE**

On September 29, 2014, [Mother] ([Mother])<sup>2</sup> and [Father] ([Father]); collectively, Parents), on behalf of their child, [Student] (Student), filed a Due Process Complaint with the Baltimore County Public Schools (BCPS), requesting a hearing to review the identification, evaluation, or placement of the Student under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010). On September 29, 2014, the BCPS transmitted the request to the Office of Administrative Hearings (OAH) to schedule a hearing.

On October 28, 2014, an in-person pre-hearing conference was held at the OAH in Hunt Valley, Maryland. The Parents were present and represented themselves. J. Stephen Cowles,

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<sup>1</sup> The parties participated in a resolution meeting on October 13, 2014, and agreed in writing on the same date that their efforts did not resolve the dispute. As a result, under 34 C.F.R. 300.515 (2014) and 34 C.F.R 300.501(c) (2014), the forty-five-day period for issuing a decision began to run on October 14, 2014. Therefore, this decision should be issued no later than Monday, December 1, 2014, because the forty-fifth day after October 14, 2014, is the immediately preceding Saturday.

<sup>2</sup> In the Parents’ Motion of Correction (to the initial pre-hearing conference report), filed on November 5, 2014, the Parents indicated that the formal way to address [Mother] is “[Mother].”

Associate General Counsel, represented the BCPS. By agreement of the parties, the hearing was scheduled for November 14, 2014.

On November 14, 2014, I convened a due process hearing at the OAH. The Parents represented themselves. Mr. Cowles represented the BCPS.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2014); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

The Administrative Procedure Act, the Maryland State Department of Education's procedural regulations, and the OAH Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

The issues, as agreed to by the Parents at the pre-hearing conference, are:

1. Whether the BCPS' failure to answer the Parents' question to clarify the amount of speech and language services that the BCPS provided in a draft Individualized Education Program (IEP) impermissibly impeded the Parents' meaningful participation in the IEP development process; and
2. Whether the BCPS' failure to provide the Parents with a written document that contains a policy that prevents the BCPS from providing speech and language services at the [School 1] impermissibly impeded the Parents' meaningful participation in the IEP development process.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The following exhibits were admitted for the Parents:

Parents #1: Letter to XXXX XXXX, dated June 4, 2014;

Parents #2: Front of an envelope, with a hand-written note on adhesive paper;

Parents #3: Letter to XXXX XXXX, dated June 4, 2014;

Parents #4: Letter to XXXX XXXX, dated June 16, 2014;

Parents #5: Letter to XXXX XXXX, dated August 27, 2014;

Parents #6: Hand-written note, with attachments, to the Parents, dated September 16, 2014;

Parents #7: Notes;

Parents #8: Letter to the Parents, dated October 9, 2014;

Parents #9: Summary of resolution meeting;

Parents #10: Notice of Outcome of Resolution Meeting, dated October 13, 2014;

Parents #11: Letter to XXXX XXXX, dated May 28, 2014;

Parents #12: Note from [School 2], dated May 30, 2014;

Parents #13: Print-out from the BCPS regarding special education services;

Parents #14: Addendum to Procedural Safeguards Document;

Parents #15: Resume of [Mother];

Parents #16: The BCPS calendar for the 2013-2014 school year;

Parents #17: A Notice of Documents, with attachment, provided to the Parents on or about May 9, 2014;

Parents #18: Speech and Language Assessment, completed on April 11, 2014;

Parents #19: A Guide for Parents of Students with Disabilities;

Parents #20: Employee Career Pathway Profile;

Parents #21: Note to [Mother], dated October 28, 2014;

Parents #22: Lost time and expenses breakdown; and

Parents #23: Maryland Procedural Safeguard Notice.

The following exhibits were admitted for the BCPS:

BCPS #1: Child Find Referral, dated January 27, 2014;

- BCPS #2: IEP team meeting summary from March 5, 2014;
- BCPS #3: Parent Permission for Assessment;
- BCPS #4: Receipt of Procedural Safeguards Parental Rights Document, signed on March 5, 2014;
- BCPS #5: IEP team meeting summary from April 29, 2014;
- BCPS #6: Eligibility Determination;
- BCPS #7: IEP team meeting summary from May 20, 2014;
- BCPS #8: IEP, dated May 20, 2014;
- BCPS #9: Speech and Language Assessment;
- BCPS #10: Resumes of XXXX XXXX, XXXX XXXX, XXXX XXXX, and XXXX XXXX.

Testimony

The Parents called and examined the following witnesses in their case-in-chief:

1. XXXX XXXX, Coordinator for Compliance and Related Services at the BCPS; and
2. XXXX XXXX, Lead Speech and Language Pathology Team Leader at the BCPS.

[Mother] testified in rebuttal for the Parents. The Parents also examined XXXX XXXX, Speech and Language Pathologist at the BCPS, accepted as an expert in speech and language pathology, in their rebuttal case.

The BCPS called and examined the following witnesses:

1. XXXX XXXX; and
2. XXXX XXXX, Speech and Language Pathologist/Team Leader, accepted as an expert in speech pathology.

**FINDINGS OF FACT**

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

1. The Student was born on XXXX, 2010. He lives with his Parents in Baltimore County.

2. The Student's home school is [School 3] ([School 3]), which is one and one-half miles from his home.
3. During the 2013-2014 school year, the Student attended the [School 1] ([School 1]) three days per week. [Mother] worked full time outside the home. [Father] stayed home throughout the week. He cared for the Student during the two days the Student was not at [School 1].
4. On or about January 27, 2014, the Student was referred to the Child Find Office of the Office of Special Education. The principal concern was that the Student "is hard to understand."
5. On March 5, 2014, an IEP team meeting was held at [School 3] to discuss the Student's "educational performance or potential need for special education services." The Parents received proper notice of this meeting and actively participated. XXXX XXXX was the IEP team leader. The Parents consented to an assessment of the Student's speech/language development.
6. On April 11, 2014, [Father] took the Student to Speech and Language Pathologist XXXX XXXX for an evaluation of the Student's "current levels of performance and profile strengths and needs" in the area of articulation. Among other things, Ms. XXXX administered the Goldman-Fristoe Test of Articulation-2 and completed a written report of her conclusions, which contained the following diagnostic statement: "[Student] presents with articulation delay which negatively impacts his overall intelligibility. His limited intelligibility is further exacerbated by the presence of phonological processes. At this time services are indicated."
7. On April 29, 2014, a second IEP team meeting was convened at [School 3] to "[d]iscuss the results of assessment reports." The Parents received proper notice of this meeting and actively participated. The team determined that the Student is a child with a disability (speech/language impairment) and qualified for special education and related services. Ms. XXXX was the IEP team leader.

8. On May 15, 2014, Ms. XXXX talked by telephone to [Mother] about where services could be provided to the Student. Ms. XXXX did not participate in any of the IEP team meetings. Ms. XXXX told [Mother] that BCPS' policy is to provide speech and language services in the child's home school unless there is an "access issue." [Mother] told Ms. XXXX that, although the Student is home with his father two days each week, the father does not have a motor vehicle at home to transport the Student to [School 3]. Ms. XXXX considered this an "access issue" that would allow the BCPS to provide service at [School 1].

9. During the same telephone conversation on May 15, 2014, Ms. XXXX and [Mother] discussed whether it would be best for the Student to begin service in the fall because it was so close to the end of the 2013-2014 school year and because the Student was enrolled in [School 2] ([School 2]) for the 2014-2015 school year. Ms. XXXX told [Mother] that if speech therapy began at the end of the 2013-2014 school year,<sup>3</sup> the Student would have to start the next school year with a different speech therapist at [School 2]. [Mother] decided to wait until fall to begin services to the Student.

10. On May 20, 2014, a final IEP team meeting was convened to "[d]evelop [an] initial IEP and discussion of need for extended school year service." The Parents received proper notice of this meeting and actively participated. The team developed an IEP that contained, among other things, (i) present levels of academic achievement and functional performance, (ii) a specific goal to demonstrate improvement in intelligible speech, with three intermediate, specific objectives to show progress toward reaching the goal, and (iii) thirty minutes per week of speech and language pathology services. The IEP did not recommend extended school year service. Ms. XXXX was the IEP team leader.<sup>4</sup>

11. The IEP is reasonably calculated to provide the Student with improved articulation skills.

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<sup>3</sup> The last day of classes for students in the 2013-2014 school year was June 17, 2014.

<sup>4</sup> The only members of the IEP team who were present at all three meetings were Ms. XXXX and the Parents.

12. The Parents sent a series of letters to the BCPS beginning on June 4, 2014. In a June 4, 2014, letter to Ms. XXXX, the Parents reported that there had been “a verbal recommendation of twice a week in thirty minutes sessions” during the April IEP team meeting and that [Mother] had told the IEP team that [Father] could not take the Student to [School 3] for speech and language services because he did not have a motor vehicle. The Parents requested documentation of a policy that prohibits the BCPS from providing services at [School 1].

13. The Parents did not sign the IEP at the meeting on May 20, 2014, and returned another unsigned copy of the same IEP to the BCPS on June 6, 2014.

14. Ms. XXXX and Ms. XXXX and [Mother] met on June 18, 2013, to discuss the Parents’ concerns. At the end of the meeting, they thought any disagreements had been resolved.

15. On August 27, 2014, the Parents sent another letter to Ms. XXXX complaining, among other things, that they had not received a corrected IEP or a document that “excludes my son of receiving services in his least restrictive environment[.]”

16. Sometime in September 2014, the Parents declined the BCPS’ invitation to participate in another IEP team meeting. As of the date of the hearing, the Parents have not signed the IEP.

## **DISCUSSION**

### *General Background*

The Student was born on XXXX, 2010. He lives with his Parents in Baltimore County, Maryland. On January 27, 2014, when the Student was three years old, he was referred to The Child Find Office for problems in “Speech/Pronunciation.” At the time, the Student attended pre-school at [School 1] three days each week. On the remaining two weekdays, he stayed home with [Father].

On February 4, 2014, The Child Find Office conducted a telephone assessment with [Mother]. The results of the assessment are as follows:

[H]is preacademics [sic], social skills are fine. He is talking more and uses sentences but his speech is not clear. Others understand him most of the time in XXXX. He is spoken to in XXXX and English at home. There is an older brother who speaks English often. [Student] understands both in English [and] XXXX and almost always responds in English. No history of ear infections and he is healthy. Mom is XXXX.

BCPS #1. On February 6, 2014, the Student was referred to [School 3] because that is his home school.

### *General Legal Context*

The purposes of the IDEA include the following:

(1)(A) to ensure that all children with disabilities<sup>5</sup> have available to them a free appropriate public education<sup>6</sup> that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected;

...

20 U.S.C.A. § 1400(d) (2010).

Section 1415 of Chapter 20 of the U.S.C.A. addresses procedural safeguards. This section states in relevant part the following:

#### **§ 1415. Procedural safeguards**

...

##### **(b) Types of procedures**

The procedures required by this section shall include the following:

(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child,<sup>7</sup> and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.<sup>8</sup>

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<sup>5</sup> A “child with a disability” includes a child who is three years old. 20 U.S.C.A. § 1401(3)(B) (2010); 34 C.F.R. 300.101(a) (2014).

<sup>6</sup> A “free appropriate public education” means “special education and related services that— (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.” 20 U.S.C.S. § 1401(9) (2014).

<sup>7</sup> 34 C.F.R. § 300.322 (2014) also requires parental participation or the opportunity to participate in IEP team meetings.

<sup>8</sup> State law also requires local school systems to provide parents the “opportunity to participate” in meetings to discuss the identification, evaluation, educational program, or provision of special education and related services to a child with a disability. Md. Code Ann., § 8-405(b) (Supp. 2014); COMAR 13A.05.01.07D.



...  
(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

(A) proposes to initiate or change; or

(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

...  
**(c) Notification requirements**

**(1) Content of prior written notice**

The notice required by subsection (b)(3) shall include—

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

...  
(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

20 U.S.C.A. § 1415 (2010).<sup>9</sup>

*Summary of the Evidence*

The Parents agreed at the pre-hearing conference that their due process complaint was about the IEP procedural safeguards. They also agreed at the pre-hearing conference that the issues to be resolved are whether the BCPS denied them meaningful participation in the IEP development process by not responding to their question about the amount of speech and language services to be provided to the Student and not responding to their request for written documentation that the speech and language services could not be provided at [School 1].

Most of the facts are either agreed upon by the parties or uncontroverted by the Parents. The principal dispute seems to be what the Parents said about [Father]'s ability to transport the Student to [School 3] for speech and language services at the last IEP team meeting. Not

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<sup>9</sup> These requirements are also set forth at COMAR 13A.05.01.12A & B.

disputed by the Parents is that they received proper notice of and actively participated in each of the three IEP team meetings that occurred on March 5, 2014, April 29, 2014, and May 20, 2014.

The purpose of the IEP team meeting on March 5, 2014, was to “discuss student’s educational performance or potential need for special education services (initial).” BCPS #2. An “Additional Comments” document shows that [Mother] was an active participant in the meeting. The Parents did not dispute their active participation. At this meeting, the Parents signed a “Parent Permission for Assessment” for an assessment of the Student’s “articulation” skill no later than May 3, 2014. BCPS #3.

On April 29, 2014, the IEP team reconvened with the Parents in attendance. The purpose of this meeting was to “[d]iscuss the results of the assessment reports.” BCPS #5. The assessment was done by Speech and Language Pathologist XXXX XXXX, who administered the Goldman-Fristoe Test of Articulation–2 to the Student on April 11, 2014. The Parents did not dispute their active participation at this meeting.

The IEP team reviewed Ms. XXXX’s written report of her speech and language assessment. The report indicated that the Student has “an articulation disorder.” BCPS #9 at page 3. The following problematic phonological processes were identified: “weak syllable deletion, devoicing, final consonant deletion, vowel distortion, and velar fronting.” Ms. XXXX also noted: “Concerns in the area of receptive and expressive language development include: minimal responses to questions, limited use of spontaneous sentence, and inconsistency in providing requested information in response to questions (e.g. responding with a color when asked ‘What is that?’).” BCPS #9 at page 3. She concluded: “[Student] presents with an articulation delay which negatively impacts his overall intelligibility. His limited intelligibility is further exacerbated by the presence of phonological processes. At this time, services are

indicated.” BCPS #9 at page 4. The IEP team agreed that the Student was eligible for speech and language therapy as a student with a disability. BCPS #6.

On May 20, 2014, the IEP team convened for the purpose of “develop[ing] initial IEP and discussion of need for extended school year services.” The Parents actively participated. BCPS #7 at page 4; BCPS #8 at page 8.

At this meeting, an IEP was developed. BCPS #7 at page 2. It identifies the Student with a speech/language disability, summarizes the results from Ms. XXXX’s assessment, and identifies the following as the Student’s needs: “[Student] would benefit from services to address his articulation and reduce the presence of phonological processes.” BCPS #7 at page 7.

The IEP also establishes one articulation goal and four specific objectives designed to facilitate the goal of “demonstrat[ing] connected speech that is at least 80% intelligible to an unfamiliar listener in an open context.” It provides for thirty minutes per week of speech and language pathology services “provided by the SLP [Speech/Language Pathologist] assigned to [Student]’s home school.”

The Parents did not, and as of the date of the hearing have not, signed the IEP, either at the IEP team meeting or after it was received by them a second time on June 2, 2014. Instead, they sent at least four letters to the BCPS raising a number of concerns, including the amount of service being offered and where the service would be provided.

By letter dated June 4, 2014 (Parents #3), addressed to Ms. XXXX,<sup>10</sup> the Parents wrote that the amount of services on the IEP is different from the thirty minutes twice a week that was “discussed in the meeting, and that I [[Mother]] have in my notes.” [Mother] wrote that there is “information that is not totally accurate” in the written summary of discussion at the IEP meeting

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<sup>10</sup> Ms. XXXX was not offered as a witness at the hearing. Another witness testified Ms. XXXX had “moved.”

The Parents inform Ms. XXXX “we are forced to return the IEP without our signatures until corrections are made.” Parents #3.

By letter also dated June 4, 2014 (Parents #1) and addressed to Ms. XXXX,<sup>11</sup> [Mother] wrote that, at the March 29, 2014, IEP team meeting, there was “a verbal recommendation of [speech therapy] twice a week in thirty minute sessions.” [Mother] wrote that she told Ms. XXXX on May 7, 2014, that [Father] was unable to drive the Student to [School 3] for speech therapy “because my husband [sic] situation changed [and] he was not going to be able to take my son to [School 3].”<sup>12</sup>

According to the letter, [Mother] spoke to “a person” at the BCPS’ special education office on May 15, 2014. That person told her speech therapy services could be provided at [School 1] but if it turned out that “time will not allow services during this school year,”<sup>13</sup> the “IEP Chair could state that the services will initiate at the beginning of the next school year and [the Student] will receive services at [[School 2]].”

Also in the letter, [Mother] wrote that when the team reviewed the IEP, she pointed out “the corrections that I found should be done,” suggesting corrections to the decision not to offer extended year services and to the amount of services. [Mother] wrote that the Parents did not agree with services being provided to the Student at [School 3] and “that we were not going to be able to come to a fourth IEP meeting to discuss this situation that we presented since the second IEP.” The letter indicates that Ms. XXXX insisted that services be provided at [School 3], but that she “going to make some calls.”

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<sup>11</sup> Ms. XXXX admitted she received this letter.

<sup>12</sup> According to the letter, the Parents tried to enroll the Student at the preschool at [School 3] for the 2014-2015 school year, but their income exceeded the maximum eligibility requirement. The Parents, instead, enrolled him at [School 2] for the 2014-2015 school year.

<sup>13</sup> The last day of classes for students in the 2013-2014 school year was June 17, 2014.

[Mother] also wrote that Ms. XXXX telephoned her on June 2, 2014, and told her that because the Parents had transportation they would have to take the Student to [School 3] for services and told her that another copy of the IEP would be sent to her for the Parents' signatures. [Mother] indicated she received the IEP on June 3, 2014, which again provided for thirty minutes per week of speech therapy and contained "inaccurate information and contradictions" in the additional comments section. The letter ends with: "[W]e strongly request an investigation of this process and a hard copy of the policies that exclude my child of receiving services in his least restrictive environment."

By letter dated June 16, 2014 (Parents #4), addressed to Ms. XXXX, [Father] complained about Ms. XXXX's conduct when he returned the unsigned IEP to her at [School 3] on June 6, 2014.<sup>14</sup>

Finally, on August 27, 2014, the Parents wrote to Ms. XXXX complaining they had not received any response to their prior requests to receive the Student's IEP "with correction or clarifications" and again specifically mentions "copy of policies that exclude my son of receiving services in his least restrictive environments[.]" Parents #5.

Ms. XXXX testified that the BCPS does not have a written document that states a child cannot receive speech and language services at [School 1]. Ms. XXXX also testified that she did not provide a written response to the Parents' letter to her dated August 27, 2014.

Ms. XXXX testified that she, with Ms. XXXX, met with the Parents on June 18, 2014, in response to their letters dated June 4, 2014, and June 16, 2014. According to Ms. XXXX, she thought the meeting resolved the Parents' concerns about the amount and location of services. Ms. XXXX testified that she told the Parents that the BCPS could provide the speech and language services at the Student's pre-school in the fall. Ms. XXXX also testified that when it

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<sup>14</sup> This letter makes references to one or more attachments, which the Parents did not offer.

was discovered that the BCPS had given the Parents incorrect information about where services could be provided, the IEP Chair “should have held another meeting to say the services could be provided at [School 1].”

Ms. XXXX also testified that she attended the June 18, 2014, meeting with the Parents and thought the meeting had answered all of the Parents’ questions. Ms. XXXX testified that she subsequently encouraged [Mother] on September 16 and 26, 2014, to sign the IEP.

Ms. XXXX opined that the amount of services contained in the IEP was appropriate.

Ms. XXXX was the only witness, excluding [Mother], who attended the IEP meeting in May 2014. According to her, the team reviewed the IEP “section by section,” and the Parents did not raise any objection to the amount of services. Ms. XXXX also testified that the Parents indicated that [Father] worked from home, and the Student was home with him two school days. According to Ms. XXXX, the Parents did not raise any issue regarding transportation. Finally, Ms. XXXX testified that [Mother] said she wanted the Student to begin services in the fall.

Ms. XXXX testified that, as the Speech and Language Team Leader for the XXXX region of the BCPS, she is responsible for assigning speech pathologists for [School 3]. Ms. XXXX testified that she spoke to [Mother] by telephone on May 15, 2014. Ms. XXXX acknowledged that [Mother] requested that services be provided at [School 1].

According to Ms. XXXX, the BCPS provides speech therapy in public schools unless the parents have an “access issue.” Ms. XXXX testified she told [Mother] that an access issue “is defined” to include when parents work full time and cannot bring their private pre-school child to a public school for services or the parents do not have transportation. Ms. XXXX testified that [Mother] told her that she uses the only family car for her job and, although [Father] stays home, he does not have a car. Ms. XXXX acknowledged that constituted an access issue and services could be provided at [School 1].

Ms. XXXX also testified that, during this conversation, she learned that the Student would enroll at [School 2] in the fall. Ms. XXXX told [Mother] that the BCPS has a “private and parochial project”; the BCPS assigns a speech and language pathologist to [School 2]; and there would be no problem providing the Student’s services there. Ms. XXXX testified she told [Mother] to sign the IEP at the next meeting, register the Student at [School 3], and services would be provided at [School 1].

Ms. XXXX also testified, however, that she asked [Mother] -- given how close it was to the end of the school year -- whether, for reasons of continuity of the service provider, it might make sense to wait until the fall to begin service so that the Student would not have to change therapists. Ms. XXXX testified [Mother] decided it would be better to wait until fall.

Ms. XXXX also testified that sometime in September 2014, when she learned that the Parents had not signed the IEP, the BCPS attempted to schedule an IEP team meeting with the Parents, but they refused to participate. Finally, Ms. XXXX opined that the amount of speech and language service in the IEP was appropriate.

[Mother] testified that she asked Ms. XXXX about where services were going to be provided at the IEP team meeting on May 20, 2014. [Mother] also testified after the IEP meeting in May 20, 2014, the Parents wanted “to continue as soon as possible” and did not “manifest any concern about the number of speech therapists to provide service because, as a special educator herself, she understands that “therapists can change at any moment during the year,” due to unexpected events, like illness and resignation. [Mother] also testified that she did not sign the IEP that was sent to her in June 2014 because “concerns that [Ms. XXXX] said to be addressed were not addressed.” Finally, [Mother] testified: “Due to lack of answers all this time my child has not been provided services[.] We know we have the right to ask for any single thing that we need to.”

## *Analysis*

The Parents have the burden of proof by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005). At the pre-hearing conference the Parents identified their complaint as one that challenges the procedural safeguards contained in the IDEA and corresponding State law. More specifically, they alleged having been denied meaningful participation in the process of the development of the IEP because the BCPS (1) did not answer their question about the amount of speech and language services contained in the IEP and (2) did not provide them with a written document that excluded the provision of speech services at [School 1]. For the following reasons, I find that the Parents have failed to prove their case.

### **Did the BCPS Answer the Parents' Question about the Amount of Related Service?**

Although both Parents participated in each IEP team meeting, neither Parent testified about whether one or the other raised any concern about the amount of service at any of the IEP team meetings.

Other than the Parents, Ms. XXXX was the only IEP team member who attended the hearing. Ms. XXXX attended the IEP team meeting on May 20, 2014, when the IEP was developed. She testified that the IEP was reviewed "section by section" at the meeting, and the Parents did not raise any concern about the amount of service. The "Additional Comments" portion of the IEP team summary of the May IEP team meeting does not mention service time.

The Parents mentioned a concern about service time in their June 4, 2014, letters: one to Ms. XXXX and the other to Ms. XXXX. In the letter to Ms. XXXX, the Parents wrote that there was an inconsistency between the service time discussed at the May meeting and the amount of service time contained in the IEP. The Parents stated in the letter that "thirty minutes twice a week" was discussed in the May meeting. Parents #3. In the June 4 letter to Ms. XXXX, the



Parents mention that a “verbal recommendation [of speech and language services] of twice a week in thirty minutes sessions” was made at the IEP team meeting on April 29, 2014,<sup>15</sup> and that [Mother] had indicated at the May 2014 IEP team meeting that the service time in the IEP required a “correction” to “the delivery of services twice a week at [School 3].” Parents #1.

Ms. XXXX testified that service time was discussed with [Mother] on June 16, 2014, after the above-letters were received. Ms. XXXX testified that matter was resolved at the meeting. Ms. XXXX also was at the meeting and testified that she believed the Parents concerns were resolved to their satisfaction.

Based on the evidence reviewed above, I am not persuaded that the Parents voiced any opposition to the thirty minutes per week of speech and language pathology service contained in the IEP. Ms. XXXX’s testimony that the Parents raised no objection to service time at the May IEP team meeting was not refuted by the Parents through testimony. Moreover, the summaries of the IEP team meetings on April 29, 2014, and May 20, 2014, do not mention any questions raised by the Parents about the amount of service time.

In addition, I am not persuaded that the BCPS did not answer the Parents’ questions about service time that appears to have been raised for the first time in their June 4, 2014, letters. Both Ms. XXXX and Ms. XXXX testified they met with [Mother] and discussed her concerns on June 18, 2014. The Parents did not rebut this testimony. For these reasons, I find that the Parents have failed to prove that the BCPS did not respond to their concerns or questions about the amount of service time contained in the IEP.

In addition, I also note that, assuming the BCPS had not responded to the Parents to clarify their inquiry about service time in the IEP, for the following two reasons, I would not

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<sup>15</sup> Ms. XXXX’s report does not recommend an amount of services.

have concluded that, as a result, the Parents were denied meaningful participation in the IEP process or a denied a free appropriate public education (FAPE).

First, the facts in this case establish that the Parents were afforded all the procedural safeguards to which they were entitled under relevant federal and State law. Under section 1415 of the IDEA, parents of a child with a disability are entitled to examine all school records related to their eligible child and to participate in meetings with respect to the identification, evaluation, and education of the child. Parents are also entitled to receive proper notice whenever the child's school proposes to initiate the identification, evaluation, or placement of their child. Finally parents must have the opportunity to present a timely due process complaint. 20 U.S.C.A. § 1415(b)(3) & (6), (c); *see also* Md. Code Ann. § 8-405(b); 34 C.F.R. § 300.501; COMAR 13A.05.01.07D.

There is no evidence in the record before me that the Parents were denied the above-enumerated procedural rights, even had the BCPS not responded to the Parents' contention that the IEP team meetings included discussion of more speech and language services than what appeared on the IEP. The record here shows the Parents actively participated in the IEP development process. The legal guarantee provided Parents in federal and State special education law is the entitlement to participate in the IEP process. Parents are not guaranteed that what they believe might be best for the child becomes the content of the IEP.

Second, under relevant federal law, not all procedural violations of federal or State special education law constitute a violation of the IDEA or corresponding State law. In *DiBuo v. Bd. of Educ. of Worcester County*, 309 F.3d 184, 190 (4th Cir. 2002), the Court held as follows:

We now turn to the threshold question presented in this appeal: Whether a procedural violation of the IDEA can support a finding that a school district failed to provide FAPE when the procedural violation *did not actually interfere* with the provision of FAPE to that child. The answer to this question under well-established circuit precedent, is no.

The Parents did not call any expert witnesses to testify in their behalf. On the other hand, the BCPS examined both Ms. XXXX and Ms. XXXX, accepted as experts in the area of speech pathology, who testified that the amount of speech and language services contained in the IEP was appropriate to meet the needs of the Student. Based on Fourth Circuit law, assuming BCPS had impermissibly failed to respond to the Parents' concern about the amount of service, that failure did not constitute a violation of federal or State special education law because the amount of speech therapy in the IEP was appropriate to address the Student's articulation deficiencies.

**Did the BCPS Fail to Provide the Parents a Document That Showed Services Could Not be Provided at [School 1]?**

34 C.F.R. § 300.116 (2014) provides in pertinent part:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parent, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

...

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled[.]

*See also* 34 C.F.R. §300.327 (2014) (requiring parental participation in a group's determination of placement); 34 C.F.R. § 300.501(b)(i) (2014) (same).

The IEP states that “[s]ervices will be provided by the [speech and language pathologist] assigned to [Student]’s home school.” The Student’s home school is [School 3], which is located one and one-half miles from the family’s residence.

After the last IEP team meeting in late May 2014, the Parents requested, in their June and August 2014 letters to Ms. XXXX, a “hard copy of policies that exclude my child from receiving

services in the least restrictive environment” (Parents #1 & Parents #5).<sup>16</sup> The issue related to this matter, as agreed upon by the Parents in the pre-hearing conference, is whether the BCPS’ failure to provide such a document impermissibly interfered with their meaningful participation in the IEP process.

The BCPS conceded that it did not provide the Parents with a hard copy of policies that prohibits BCPS from providing speech therapy at [School 1]. According to the BCPS, no such document exists. Based on the testimony of Ms. XXXX and Ms. XXXX, BCPS’ policy is to provide speech and language services at the child’s home school unless there is an “access issue,” meaning parents cannot provide transportation to the child’s home school.

The parties’ factual dispute seems to be a disagreement about what the Parents said at the May 20 IEP team meeting related to their ability to transport the Student to [School 3]. In the Parents’ June 4, 2014, letter to Ms. XXXX, they wrote that they explained at the May IEP team meeting that they could not transport the Student to [School 1]. The BCPS, on the other hand, offered testimony that the Parents (i) did not state at the May IEP team meeting that they could not provide transportation to [School 3] and (ii) reported that they had decided not to begin the related services to the Student until the fall, the 2014-2015 school year.

Ms. XXXX was the only witness who testified from personal knowledge about the discussion at the May 20 IEP team meeting. She recollected that the discussion was that [Father] was available to bring the Student to [School 3] because he worked from home, and the Student stayed there with him on the two days per week he was not in pre-school at [School 1].

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<sup>16</sup> The “least restrictive environment” refers to a local school agency’s obligation to educate, if possible, a child with a disability with his or her non-disabled peers. 34 C.F.R. § 300.114(a)(2)(i) (2014). The Parents use of this term is misplaced, because the only services the Student needs is the related service of thirty minutes of speech therapy per week. This service was to be one-on-one therapeutic service. Based on the context of the June 4 letter, the Parents appear to have used “least restrictive environment” to mean [School 1] because they complained that the speech therapy was not offered at [School 1].

According to Ms. XXXX, she could not recall any concerns the Parents had about the IEP. The Parents did not rebut this testimony by any testimony of their own.

Ms. XXXX also testified that the Parents said at the May IEP team meeting that they did not want to bring the Student to [School 3] because they wanted to start the related service in the fall, presumably when the Student would be enrolled at [School 2] where the BCPS provided in-school speech therapy. Ms. XXXX partially corroborated Ms. XXXX's testimony through her testimony that [Mother] told her on May 15, 2014, that she planned to wait until fall to begin services to the Student. Neither Parent testified about the conversation that occurred during the May 2014 IEP team meeting.

For the following reasons, I find that Ms. XXXX to have been a credible witness. First, she did not hesitate before answering questions posed to her and appeared confident and certain in her answers throughout her testimony. Moreover, Ms. XXXX was a disinterested witness, and no evidence even suggests that she might have tailored her testimony to advance a certain outcome. Finally, as discussed above, Ms. XXXX's testimony was partially corroborated by Ms. XXXX.

Ms. XXXX also testified that during the conversation she had with [Mother] on May 15, 2014, [Mother] said her husband could not take the Student to [School 3] because he did not have a motor vehicle on the two days the Student was home with him. According to Ms. XXXX, she told [Mother] that, that was an "access issue" that could allow for speech therapy at [School 1]. Because this conversation occurred just five days before the IEP team meeting, one might logically assume that [Mother] would have discussed the same thing at the May 20, 2014, IEP team meeting. However, a logical assumption cannot outweigh Ms. XXXX's direct, uncontested testimony that the Parents did not indicate at the IEP team meeting that they could not bring the Student to [School 3] for speech therapy.

Accordingly, I find that the Parents did not object to the Student's home school as the placement for the implementation of the IEP. Moreover, there is no question that the Parents fully participated in the discussion of placement as required by 34 C.F.R. § 300.116 (2014) and COMAR 13A.05.01.07D. 34 C.F.R. § 300.116 only requires parental participation in the decision making process leading to the determination of placement. Moreover, based on 34 C.F.R. § 300.116(2)(b), placement should be as close as possible to the child's home. Nothing in either the federal or a State regulation gives parental preference determinative status in placement decisions. Furthermore, "unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if not disabled." *Id.* at § 300.116(c).

Based on my factual determination that the Parents failed to prove that they explained at the final IEP team meeting on May 20, 2014, that they were unable to transport the Student to [School 3], the choice of [School 3] -- the Student's home school -- as the location where speech therapy was to be provided was reasonable and did not violate the Parents procedural rights. For these reasons, I find that the Parents failed to prove that BCPS improperly impeded their meaningful participation in decisions about placement.

### **The Legal Consequence of the Failure to Implement an IEP for the 2014-2015 School Year**

As of the date of the hearing, the Student was not receiving the related service that both parties agree he needs. Although the Parents did not raise this as an issue, I requested that the parties address the issue in their closing arguments out of concern that the Student still has not been receiving the speech and language therapy he needs.

The BCPS argues it may not provide services to a child with a disability whose parents have refused to sign an IEP. 34 C.F.R. 300.300 (2014) provides in pertinent part:

...

(b) *Parental consent for services.* (1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to the request for, or refuses to consent to, the initial provision of special education and related services, the public agency—

(i) May not use the procedures in subpart E of this part (parenthesis excluded) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) is not required to convene and IEP team meeting[.]

*See also* COMAR 13A.05.01.13B (requiring parental consent before providing special education and related services consistent with 34 C.F.R. 300.300(b)).

The Parents did not directly address my inquiry but stated: “It is not acceptable that [the BCPS] have spent all [this] time without providing parents with answers for just two simple questions.”

Based on 34 C.F.R. 300.300(b) and COMAR 13A.05.01.13B, I agree with the BCPS that it cannot be held liable for not implementing an IEP because the Parents have not signed it.<sup>17</sup>

However, the Student was enrolled at [School 2] at the beginning of the 2014-2015 school year. The Parents knew at that time that the BCPS would provide speech and language therapy to him there. Furthermore, the unrefuted testimony in the record is that the BCPS contacted the Parents in September 2014 to request their attendance at another IEP team meeting to obtain their consent to the implementation of the IEP. The Parents refused.

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<sup>17</sup> The record shows that the BCPS improperly provided speech therapy to the Student on September 16, 2014, at [School 2]. Mrs. XXXX explained in her testimony that this was a mistake. According to Ms. XXXX, she received a call from the speech and language therapist she assigned to [School 2], inquiring about whether the Student should receive speech therapy. Ms. XXXX reviewed the BCPS’ data base and saw that the Student was enrolled at the BCPS and assumed, based on the enrollment, that the Parents had signed the IEP. When it was discovered shortly thereafter that the Parents had not signed the IEP, no further service was provided.

Under COMAR 13A.05.01.08B(c), “[a] parent of a student with a disability or a public agency may request a meeting at any time to review and, as appropriate, revise the student’s IEP.” I urge the parties to contact one another to arrange an IEP team member to obtain the Parents’ signature on an IEP consistent with this decision.

**CONCLUSION OF LAW**<sup>18</sup>

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parents have failed to prove that the BCPS prevented them from meaningfully participating in the IEP process for the development and implementation of an appropriate IEP for the Student. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); 20 U.S.C.A. § 1415 (2010); COMAR 13A.05.01.12A & B; 34 C.F.R. §§ 300.116, 300.377; and 300.501(b)(i) (2014).

**ORDER**

I **ORDER** that the Parents’ request for due process be, and hereby is, **DENIED** and **DISMISSED**.

December 1, 2014  
Date Decision Mailed

\_\_\_\_\_  
Michael D. Carlis  
Administrative Law Judge

MDC/da

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<sup>18</sup> On November 6, 2014, the BCPS filed a Motion to Dismiss/Motion in Limine Regarding Requested Relief for Individuals with Disabilities Education Act Claims (Motion). The BCPS requested dismissal of the following relief requested by the Parents: (1) Discipline of BCPS staff, (2) Punishment of the BCPS, (3) Monetary damages to compensate the Parents for time lost, and (4) Compensatory speech and language services. On November 7, 2014, the Parents filed a response to the Motion. Because I have dismissed the Parents’ Due Process Complaint, it is not necessary for me to rule on the Motion.



## **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) (2014).

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.