

XXXX XXXX,  
STUDENT

v.

HOWARD COUNTY  
PUBLIC SCHOOLS

\* BEFORE BRIAN ZLOTNICK  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO: MSDE-HOWD-OT-14-33335  
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**RULING ON MOTION FOR JUDGMENT**

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**STATEMENT OF THE CASE**

On September 18, 2014, [Father] and [Mother] (Parents), on behalf of their daughter, [Student] ([Student]), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of [Student] by the Howard County Public School System (HCPSS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

The parties notified the OAH on October 16, 2014 that a resolution session was held on October 16, 2014, and the case was not resolved. The parties did not participate in a mediation session.

I held a telephone prehearing conference on November 5, 2014. The Parents' attorney, Mark Martin, Esquire, participated on their behalf. Jeffrey A. Krew, Esquire, represented the HCPSS. By agreement of the parties, after counsel for each party reviewed their calendars to

find the earliest dates available for the hearing, it was scheduled for January 26, 2015 through January 30, 2015 and February 2, 2015 through February 3, 2015<sup>1</sup>. Under the federal regulations, a hearing must be conducted and a decision is due within 45 days of certain triggering events. 34 C.F.R. § 300.510 (b) and (c); 34 C.F.R. § 300.515(a) and (c) (2013). In this case, the triggering event was the October 16, 2014 notice to the OAH of the resolution session outcome, which would require the hearing to be held and the decision to be issued on or before November 28, 2014. During the prehearing conference the parties agreed to waive the 45-day time requirements for holding the hearing and issuing a decision in this matter. The parties agreed to allow thirty days from the close of the record for issuance of a written decision on the merits.

After the November 5, 2014 prehearing conference, the Parents' attorney, Mark Martin, Esquire, ceased his representation of their case. The Parents subsequently represented themselves in this matter.

On January 22, 2015, HCPSS filed motions to quash the Parents' subpoenas for XXXX XXXX and XXXX XXXX to testify on their behalf. As a result of these motions, I arranged a telephone conference between the parties which was held on January 26, 2015. I asked the Parents to provide a proffer of expected testimony from Ms. XXXX and Ms. XXXX and I then allowed HCPSS to present its arguments in support of its motions to quash the subpoenas for those witnesses. I then allowed the Parents to respond to HCPSS arguments and then I ruled on the record to grant HCPSS' motions to quash the subpoenas for Ms. XXXX and Ms. XXXX as I found that their expected testimony was not probative for the issues of this matter.

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<sup>1</sup> After the hearing was scheduled for January 26, 2015, OAH discovered that Mr. Krew was scheduled to represent a party in a special education hearing before Administrative Law Judge XXXX XXXX on January 26, 2015 in an unrelated case. Therefore, the hearing date of January 26<sup>th</sup> was cancelled. The next scheduled date for this hearing, January 27, 2015, was also cancelled because Howard County Public Schools were closed on that date due to snow.

I held the hearing on January 28, 29, and 30, 2015. The Parents represented themselves. Mr. Krew represented the HCPSS.

On January 28, 2015, at the outset of the hearing, the Parents raised a motion to quash HCPSS' subpoena duces tecum for [Student]'s medical records. After allowing for a proffer from HCPSS regarding those records and arguments from the parties on this motion, I denied the Parents' motion to quash on the record because I found that the medical records may be probative to the issues in this matter.

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) (2013); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

At the close of the Parents' case, HCPSS made a Motion for Dismissal, Summary Decision and a Motion for Judgment, to which the Parents responded. I did not expressly rule on these motions, but held them sub curia. I informed the parties that I would issue a written ruling on the motions after the close of the evidence in the case. HCPSS declined to move forward with its case at the conclusion of the Parents' case and decided to rest.

The Administrative Procedure Act, the Maryland State Department of Education 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(12); and COMAR 28.02.01.

### **ISSUES**

1. Whether the HCPSS has failed to provide [Student] with a Free and Appropriate Public Education (FAPE) for school years 2012-2013 and 2013-2014 and if compensatory education for those school years should be awarded to [Student].

2. Whether the HCPSS has failed to provide [Student] with a FAPE for the 2014-2015 school year and if her Individualized Education Program (IEP) for the 2014-2015 school year is appropriate.
3. Whether [Student]'s placement at an eleven-month non-public special education day school for the 2014-2015, 2015-2016 and 2016-2017 school years is appropriate.
4. Whether the Parents are entitled to reimbursement from HCPSS for the fees associated with a private neuropsychological evaluation and educational consulting services.

### SUMMARY OF THE EVIDENCE

#### Exhibits

The Parents introduced the following documents, which were admitted into evidence with the exception of those exhibits that are noted otherwise:

- |            |   |
|------------|---|
| P. Ex. #1  | List of [Student]'s disabilities  |
| P. Ex. #2  | [Student]'s GPA and Credit Worksheet, 2011-2014   |
| P. Ex. #3  | [Student]'s School Timeline – <b>NOT ADMITTED INTO EVIDENCE</b>   |
| P. Ex. #4  | Letter from Parents to XXXX XXXX, dated January 18, 2014 with attachments                                   |
| P. Ex. #5  | Neuropsychological Evaluation, dated April 29, 2014   |
| P. Ex. #6  | Educational Report, dated April 30, 2014 – <b>NOT ADMITTED INTO EVIDENCE</b>                                |
| P. Ex. #7  | HCPSS Functional Behavioral Assessment and Behavioral Intervention Plan (BIP)                               |
| P. Ex. #8  | BIP Communication Log, dated April 17, 2013   |
| P. Ex. #9  | Parental Input regarding [Student]'s behavior, dated August 2012  |
| P. Ex. #10 | Parent Summary of June 2010 and March 2011 IEP meetings   |
| P. Ex. #11 | Annual Progress Report, dated November 4, 2013  |
| P. Ex. #12 | List of IEP Goals and Objectives from 2010 to 2013 – <b>NOT ADMITTED INTO EVIDENCE</b>                      |
| P. Ex. #13 | Meeting notes between [Mother] and Principal XXXX, dated August 4, 2011 – <b>NOT ADMITTED INTO EVIDENCE</b> |
| P. Ex. #14 | Syllabus for Computer Skills Class  |
| P. Ex. #15 | Behavior Reports from [Student]'s teachers from October 25, 2013 to November 21, 2013                       |
| P. Ex. #16 | First quarter report card for 2013-2014 school year   |

- P. Ex. #17 E-mail from [Mother] to Ms. Appel, dated December 12, 2013
- P. Ex. #18 E-mail from Ms. XXXX to Mr. XXXX, dated October 29, 2013, with attached response from [Mother] to Mr. XXXX, dated October 30, 2013
- P. Ex. #19 E-mail from [Mother] to XXXX XXXX, dated September 13, 2013
- P. Ex. #20 E-mail from [Mother] to Mr. XXXX, dated September 19, 2013
- P. Ex. #21 E-mail from [Mother] to Ms. XXXX, dated November 20, 2013
- P. Ex. #22 E-mail from [Mother] to Ms. XXXX, dated December 1, 2013
- P. Ex. #23 E-mail stream between [Mother], XXXX XXXX and Principal XXXX, dated November 3, 2013
- P. Ex. #24 IEP team meeting report, dated September 28, 2012
- P. Ex. #25 E-mails between [Mother] and Principal XXXX, dated from September 27, 2013 to October 30, 2013
- P. Ex. #26 Letter from XXXX XXXX to Parents, dated May 15, 2014 – **NOT ADMITTED INTO EVIDENCE**
- P. Ex. #27 IEP team meeting report, dated February 26, 2014
- P. Ex. #28 Due Process Hearing Request, dated September 17, 2014
- P. Ex. #29 Settlement Offer, dated December 23, 2014 – **NOT ADMITTED INTO EVIDENCE**
- P. Ex. #30 E-mail from XXXX XXXX to [Mother], dated June 16, 2014
- P. Ex. #31 XXXX XXXX’s Letter of Resignation, dated October 6, 2013 – **NOT ADMITTED INTO EVIDENCE**
- P. Ex. #32 Letter from Mr. XXXX to Governor Martin O’Malley, dated April 7, 2014 – **NOT ADMITTED INTO EVIDENCE**
- P. Ex. #33 IEP, dated December 19, 2014 – **NOT ADMITTED INTO EVIDENCE**
- P. Ex. #34 Draft IEP, dated August 17, 2014 – **NOT ADMITTED INTO EVIDENCE**
- P. Ex. #35 IEP, dated August 26, 2014
- P. Ex. #36 E-mail from Parents to Dr. XXXX XXXX, dated March 5, 2014 – **NOT ADMITTED INTO EVIDENCE**
- P. Ex. #37 IEP Notes, dated March 18, 2014
- P. Ex. #38 Psychological Assessment, dated May 18, 2010

HCPSS introduced the following documents, which were admitted into evidence<sup>2</sup>:

- Board Ex. #A Letter from Mr. Krew to [Mother], dated January 22, 2015
- Board Ex. #B Letter from [Mother] to Mr. Krew, dated January 27, 2015
- Board Ex. #31 IEP team meeting report, dated August 5, 2014
- Board Ex. #32 E-mails between Dr. XXXX, [Mother] and Mark Martin from August 21, 2014 to August 22, 2014
- Board Ex. #50 [Student]’s hospital and medical records<sup>3</sup>

<sup>2</sup> The HCPSS exhibits are not in sequential order as it did not offer any of the other exhibits it disclosed to the Parents prior to the hearing.

<sup>3</sup> These records will be sealed for confidentiality purposes.

## **Testimony**

The Parents testified on behalf of the Student and called the following witnesses:

- XXXX XXXX, Instructional Team Leader, Special Education Department, [School 1]
- XXXX XXXX, Special Education Teacher, [School 1]
- XXXX XXXX, Special Education Teacher, [School 1]
- XXXX XXXX, Instructional Facilitator, Howard County Department of Special Education
- XXXX XXXX, P.H.D., School Psychologist, [School 1]

HCPSS did not call any witnesses as it rested its case at the conclusion of the Parents' case.

## **PARTIES' JOINT STIPULATIONS OF FACT**

The parties submitted joint stipulations of fact which I incorporated into the record as follows.

1. [Student] was born on XXXX, 1995.
2. [Student] is participating in a six-year plan of program completion and pursuing a Maryland High School Certificate of Program Completion, which entitles her to receive special education and related services from HCPSS until the age of 21.
3. [Student] attended the [Program] at [School 1] ([School 1]) from the 2010-2011 school year through the 2013-2014 school year.
4. From May 21, 2010 to June 11, 2010, [Student] was hospitalized at [Hospital 1] for mental health reasons.
5. On December 1, 2010, May 2 and June 1, 2011, [Student] was hospitalized at [Hospital 2] for mental health reasons.

6. From February 17, 2012 to February 28, 2012, [Student] was hospitalized at [Hospital 3] for mental health reasons.
7. From March 13, 2013 to March 22, 2013, [Student] was hospitalized at [Hospital 3] for mental health reasons.
8. On February 14, 2014, [Student] was hospitalized at [Hospital 2] for mental health reasons.
9. On February 26, 2014, HCPSS convened an interim review IEP team meeting. [Father] participated.
10. On March 18, 2014, HCPSS convened an interim review IEP team meeting. [Mother] participated.
11. At the Parents' request, on April 22, 28, and 29, 2014, XXXX Associates conducted a neuropsychological evaluation of [Student].
12. At the Parents' request, on April 25 and 30, 2014, XXXX XXXX, M.Ed., of the XXXX Company, Inc., completed observations of [Student] at [School 1].
13. On August 22, 2014, the Parents' attorney advised HCPSS that the Parents declined to consent to the adaptive skills testing being completed.
14. On August 26, 2014, HCPSS convened an IEP team meeting to discuss the Parents' request that [Student] receive Home and Hospital Teaching (HHT) services due to mental health issues. [Mother] participated in this meeting and the IEP team agreed that [Student] should receive HHT services.
15. On September 17, 2014, the Parents filed their Request for Mediation and Due Process Complaint.

16. On November 10, 2014, HCPSS convened an IEP team meeting to review [Student]'s HHT services. [Father] participated in this meeting. The team agreed to continue HHT services due to mental health issues.
17. On December 12, 2014, the Parents submitted another application for HHT services based upon medical reasons.
18. On January 7, 2015, HCPSS convened an IEP team meeting to review [Student]'s HHT services and conduct her annual review. [Mother] participated in this meeting. The team agreed to continue HHT services due to medical reasons and agreed another meeting would be scheduled to continue [Student]'s annual review.
19. During the 2014-2015 school year, [Student] has not attended an HCPSS school and has received HHT services due to mental health and medical reasons.

### **FINDINGS OF FACT**

I find the following by a preponderance of the evidence:

1. On April 23, 2010, a Psychological Assessment of [Student] was performed by XXXX XXXX, M.A., CAS, NCSP, School Psychologist. [Student] demonstrated significantly subaverage intellectual functioning with deficits in adaptive behavior manifested in the developmental period. [Student] met the criteria for the educational disability of Intellectual Disability. (Parent Ex. #38).
2. A Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP) meeting was held on December 21, 2011 to evaluate [Student]'s behavior issues. The FBA listed the following target behaviors of [Student] that needed to be addressed:
  - Withdrawal – [Student] would put her head down during class, ignore staff direction, and her gaze would shift to various locations around the room. The antecedent to this behavior would be if instruction was difficult or not preferred by [Student].



- Breaking classroom materials – [Student] would break pens and pencils. The antecedent to this behavior would be if instruction was difficult or not preferred by [Student].
- Vocalizations – [Student] would shout out or make other verbalizations such as singing. The antecedent to this behavior would be transitions, engagement in work tasks that are preferred or not preferred by [Student], during unstructured time/free time

The FBA developed strategies that were implemented at [School 1] to address [Student]’s target behaviors. [School 1] utilized communication charts that tracked [Student]’s behaviors in class which if successful [Student] was rewarded with prizes. (Parent Exhibit #s 7 and 8).

3. [Student] began the 2012-2013 school year at [School 1] receiving special education services under the disability coding of Intellectual Disability. [School 1] was aware of [Student]’s mental disorder during the 2012-2013 school year and had its behavioral specialist, XXXX XXXX, work with [Student]’s teachers to develop support strategies for her. (Testimony of XXXX).

4. On September 28, 2012, an IEP meeting was held. Teacher reports indicated that [Student] was transitioning well in the new school year with a few bumps in the road but overall was doing very well. The team agreed to increase [Student]’s speech and language services by 15 minutes per week. (Parent Exhibit #24).

5. [Student] made progress on most of her IEP goals during the 2012-2013 school year. (Testimony of XXXX).

6. During the 2012-2013 and 2013-2014 school years, [Student] was provided with an academic program that was individually designed to meet her IEP. (Testimony of XXXX).

7. At [School 1], [Student] was making progress on her IEP objectives and was making meaningful educational progress. (Testimony of XXXX).

8. [Student] received the following final grades during the 2012-2013 school year:

[Program] English -	A
Strategic Reading 9 -	A
[Program] Math -	A
Art 2 Media -	B
Lifetime Fitness -	A
Strength & Conditioning 1 -	A
Food & Nutrition Tech -	A
[Program] Tutorial 1 -	A

(Parent Exhibit #2)

9. During the 2012-2013 school year, [Student] was involved in the XXXX Sports programs which included her participation on the XXXX [teams]. XXXX Sports included a mix of special education students and general education students who would play other schools in these sports on a varsity level. (Testimony of XXXX).

10. Dr. XXXX, School Psychologist, provided direct psychological services to [Student] at [School 1] from February 2012 until January 28, 2013, when those direct services were removed from [Student]'s IEP. [Student]'s IEP dealt with managing her anxiety. After the January 2013 IEP team meeting determined that direct psychological services were no longer needed, Dr. XXXX remained available for [Student] on an as needed basis and in a consultative manner. (Testimony of Dr. XXXX).

11. [Student] remained placed at [School 1] for the 2013-2014 school year.

12. In the fall of the 2013-2014 school year [Student] told her Physical Education teacher, "I don't feel like living." This was brought to the attention of Ms. XXXX who met with [Student] and engaged in conversation with her regarding how her day was going. Dr. XXXX assessed the situation and spoke with [Student]. At the end of [Student]'s meeting with Ms. XXXX and Dr. XXXX, [Student]'s mood was elevated so she returned to class. [Student] never displayed any further suicidal ideations at [School 1] after this incident. (Testimony of [Mother] and XXXX).

13. An IEP meeting was held on March 18, 2014, to answer questions regarding [Student]'s social/emotional goals and objectives. At this meeting, [Mother] indicated that she sent Dr. XXXX an email giving him permission to speak to [Student]'s psychologist and psychiatrist but Dr. XXXX responded that an updated signed release of information form would have to be provided by [Student]'s parents. [Mother] wanted Dr. XXXX to address [Student]'s emotional issues and its impact on her ability to learn by updating his information of [Student]'s mental illness through consultation with [Student]'s current psychologist and psychiatrist. At the meeting, [Mother] informed Dr. XXXX that she would grant permission for Dr. XXXX to consult with [Student]'s health providers by providing a signed consent form to him by the day after the March 18<sup>th</sup> meeting. The Parents never provided HCPSS with a signed consent form after this meeting. The Parents never provided Dr. XXXX with any medical records regarding [Student]'s hospitalizations for mental illness during the 2013-2014 school year. (Testimony of Dr. XXXX and Parent Ex. #37).

14. The Parents hired XXXX Associates to conduct a Neuropsychological Evaluation of [Student] in April 2014. XXXX XXXX, Psy.D., conducted this evaluation and was the author of its report (XXXX Report). Dr. XXXX diagnosed [Student] with the following:

- Cognitive Disorder – NOS
- Attention-Deficit/Hyperactivity Disorder – Predominantly Inattentive Type
- Bipolar I Disorder, Most Recent Episode Depressed, Severe with Psychotic Features
- Generalized Anxiety Disorder
- Rule Out Tic Disorder – NOS
- Mild Mental Retardation (Intellectual Disability)

(Parent Exhibit #5)

15. A Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV) was conducted by Dr. XXXX as part of her April 2014 evaluation and resulted in the following scores for [Student]:

- Verbal Comprehension Index – 66 standard score - 1 Percentile
- Perceptual Reasoning Index - 51 standard score - .1 Percentile
- Working Memory 50 standard score - .1 Percentile
- Processing Speed 50 standard score - .1 Percentile
- Full Scale (IQ) 48 standard score - .1 Percentile
- General Ability 54 standard score - .1 Percentile

[Student] also completed the Woodcock-Johnson III Tests of Achievement with the following results:

- Broad Reading 45 standard score - .1 Percentile 1.4 Grade Equivalency
- Broad Math 45 standard score - .1 Percentile K.5 Grade Equivalency
- Broad Written Language 45 standard score - .1 Percentile 1.2 Grade Equivalency

Dr. XXXX found that [Student] presented with a complex set of interacting neurodevelopmental and psychiatric disorders that substantially interferes with her ability to function at home, in the community, and the classroom and which have significantly limited her availability for learning. Dr. XXXX went on to make the following recommendations for [Student]:

- Low student to teacher ratio in her classroom
- One-on-one adult supervision throughout the academic day
- Highly regular schedule and routine
- Access to direct psychological and psychotherapeutic services
- Access to direct psychiatric services
- Systemic and Sequential positive BIP
- Access to crisis intervention services and support
- Support for using a variety of stress management strategies
- Opportunity to be educated with peers with reasonable degree of cognitive variability for exposure to appropriate peer modeling
- Social skills training
- Requires starting each task below her instructional level before beginning new instruction. Instruct her at her present level of functioning so that she can be successful at least 80% of the time to prevent frustration
- One-to-one learning of new skills and repetition of previously acquired skills

- Flexible approach to assignments and instructional demands
- Services to address deficits in executive functioning
- Access to a scribe for in-class assignments and tests, as well as access to a reader or books on tape as needed
- Visual, auditory, kinesthetic, and tactile teaching modalities
- Opportunities to explore her interests in animals
- Access to regular movement breaks
- Requires tasks to be broken down into smaller, sequential steps
- Extended Service Year (ESY) program
- Reliable home-school communication
- Monitoring of her academic program through standardized testing, criterion-based measures, and classroom-based assignments.

(Parent Exhibit #5)

16. [Student]'s intellectual disability makes her educational progress slow and incremental. (Testimony of XXXX).

17. [Student]'s cognitive functioning is significantly below average as evidenced by her general ability IQ score of 54. [Student]'s academic expectations are in the functional skills area where she can learn to manage skills for community living. (Testimony of Dr. XXXX)

18. In May of 2014, [Student] ran away from her school bus when it arrived at [School 1]. [Student] ran out to [road], a busy multiple lane roadway, where another teacher recognized her while driving and was able to pick her up and transport her back to school. After this incident, [School 1] had an individual waiting for [Student] at her bus door to assist her into the school. (Testimony of Parents and XXXX).

19. During the 2013-2014 school year [Student] was absent from school for approximately 50 days. (Testimony of XXXX XXXX and XXXX).

20. [Student] received the following final grades during the 2013-2014 school year:

English 9 -	B
Strategic Reading 10 -	B
[Program] Math -	B
Art 2 Media -	A
Lifetime Fitness 9 -	A
Health -	A
Sport for Life -	A
[Program] Tutorial -	B

(Parent Exhibit #2)

21. [Student] made sufficient progress to meet her IEP goals in Reading Foundation Skills, Math, Written Language, Independent Community Living and Social Interaction Skills during the 2013-2014 school year. (Parent Exhibit #11).

22. At [School 1], [Student] was provided with an academic program that was individually designed to meet her needs. (Testimony of XXXX).

23. [Student]'s behavior at [School 1] did not match the type of behavior that would require psychiatric hospitalization. [Student] had one incident when she pushed over a desk but [Student]'s behavior problems at [School 1] were mostly centered on her withdrawal from individuals and not from acting out in an aggressive manner. [Student] made progress in her IEP objectives at [School 1]. (Testimony of XXXX).

24. [Student] made meaningful educational progress during the 2013-2014 school year. (Testimony of XXXX and XXXX).

25. An IEP meeting was held on August 5, 2014, to discuss the Parents' concerns and to review Dr. XXXX's report. The Parents, Ms. XXXX, Ms. XXXX, Dr. XXXX, Mr. XXXX (School Psychologist Intern), Dr. XXXX, Mr. XXXX and Ms. XXXX participated in the meeting. The IEP team analyzed the XXXX Report and agreed that [Student] would benefit from smaller classes, one-on-one assistance, and a highly regular schedule and routine. The IEP

team agreed with the XXXX Report's recommendations with the exception of providing psychiatric services. [Mother] expressed great concerns with [Student] continuing her placement at [School 1] and the IEP team determined to review the IEP and make any necessary changes and placement decisions at the next scheduled IEP meeting. The IEP team requested consent from the Parents to allow for Adaptive Behavior Assessment System (ABAS) testing of [Student] by two of her teachers but the Parents denied consent. (Board Exhibit #31 and Testimony of XXXX).

26. On August 22, 2014, the Parents' attorney, Mark Martin, notified Dr. XXXX that the Parents declined to consent to the ABAS testing of [Student]. (Board Exhibit #32).

27. An IEP team meeting was held on August 26, 2014 to approve and finalize [Student]'s IEP for the 2014-2015 school year. The Parents were in attendance for this meeting along with Ms. XXXX (IEP Case Manger), Mr. XXXX (Principal/Designee), Dr. XXXX (School Psychologist), Ms. XXXX (Educational Consultant), Ms. XXXX (Instructional Facilitator), Ms. XXXX (Speech Language Pathologist) and Ms. XXXX.<sup>4</sup> [Student]'s disability code was changed to Multiple Disability to reflect other health impaired for ADHD along with [Student]'s intellectual disability. The IEP team determined that due to [Student]'s anxiety issues all of her classes for the 2014-2015 school year will be in self-contained special education classrooms outside of general education. This includes 17 hours per week in classroom instruction and 4.5 hours per week in XXXX Education Services. The IEP also includes the continuation of two sessions of speech and language services per week with each session consisting of 45 minutes and an additional two 15 minute sessions of speech and language services per week. [Student] will also receive 15 minutes of Occupational Therapy per quarter.

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<sup>4</sup> The record does not indicate Ms. XXXX's position.

The IEP also calls for two 15 minute sessions of psychological services per week. (Parent Exhibit #35).

28. The August 26, 2014 IEP specifies 23.5 hours per week of services outside of general education and 10 hours and 15 minutes per week of time in the general education setting for [Student]. [Student] would be exposed to non-disabled peers during lunch and through her participation in XXXX sports. (Parent Exhibit #35 and Testimony of XXXX).

29. The August 26, 2014 IEP included the following goals to address [Student]'s mental health issues:

- Social Interaction Skills
- Self-Management/Behavior
- Social/Emotional

(Parent Exhibit #35)

30. The August 26, 2014 IEP recommended placement at [School 2] ([School 2]), a regional [Program] which provides self-contained classrooms for [Student]'s special education instruction and her related services. [School 2] has a full time school psychologist and speech pathologist assigned to the school and smaller classroom settings with lower student to teacher ratios than typical high schools. (Parent Exhibit #35 and Testimony of XXXX and XXXX).

31. On September 3, 2014, the Parents visited [School 2] and found their program to be similar to that offered at [School 1].

32. [Student] never attended [School 2] during the 2014-2015 school year as she has remained on Home and Hospital instruction. (Testimony of [Mother]).

33. [Student]'s August 26, 2014 IEP can be fully implemented at [School 2] where [Student] would receive her education in the Least Restrictive Environment (LRE) as she would interact with non-disabled peers during lunch and during her participation in XXXX sports.



[Student] can reasonably be expected to make meaningful educational progress at [School 2].  
(Testimony of XXXX and XXXX).

## **DISCUSSION**

### A. **The Legal Framework**

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1482 (2014 & Supp. 2014), 34 C.F.R. Part 300, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2009), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to FAPE. 20 U.S.C.A. § 1412.

The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.

*Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

Implicit in the congressional purpose of providing access to a “free appropriate public education” is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child... We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to give educational benefit to the handicapped child.

458 U.S. at 200-201. In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide FAPE to a student with disabilities. First, a determination must be made as to whether there has been compliance with the procedures set forth in the IDEA, and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefit. 458 U.S. at 206-207.

Providing a student with access to specialized instruction and related services, however, does not mean that a student is entitled to “the best education, public or non-public, that money

can buy” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4<sup>th</sup> Cir. 1983) (citing *Rowley*, 458 U.S. 176). Instead, FAPE is satisfied when a child’s IEP is designed to allow the child to receive an educational benefit. *Rowley*, 458 U.S. at 203. Therefore, “educational benefit” requires that “the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.” *Rowley*, 458 U.S. at 200; *see also MM ex rel. DM v. School Dist. of Greenville County*, 303 F.3d 523, 526 (4<sup>th</sup> Cir. 2002) (citing *Rowley*, 458 U.S. at 207); *A.B. v. Lawson*, 354 F.3d 315 (4<sup>th</sup> Cir. 2004). Thus, the IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4<sup>th</sup> Cir. 1990). Yet, the benefit conferred by an IEP and placement must be “meaningful” and not merely “trivial” or “de minimis.” *Polk v. Central Susquehanna Intermediate Unit*, 853 F.2d 171, 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989); *see also Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 862 (6<sup>th</sup> Cir. 2004), *cert. denied*, 546 U.S. 936 (2005); *Board of Educ. of Frederick County v. Summers*, 325 F. Supp.2d 565, 576 (D. Md. 2004).

The Court of Appeals for the Fourth Circuit has recognized that no bright line test can be created to establish whether a student is progressing or could progress educationally. Rather, the decision-maker must assess the evidence to determine whether the Student’s IEP and placement were reasonably calculated to enable the Student to receive an appropriate educational benefit. *See In Re Conklin*, 946 F.2d 306, 312 (4<sup>th</sup> Cir. 1991); Md. Code Ann., Educ. § 8-403 (2014).

The IEP is the tool for providing necessary services to the disabled child. 20 U.S.C.A. § 1414(d). Congress instructed each public school system to review such a child’s IEP:

- (i) . . . periodically . . . to determine whether the annual goals for the child are being achieved; and
- (ii) revises the IEP as appropriate to address –
  - (I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
  - (II) the results of any reevaluation . . . ;

- (III) information about the child provided to, or by, the parents . . . ;
- (IV) the child’s anticipated needs; or
- (V) other matters.

20 U.S.C.A. § 1414(d)(4)(A)(i) & (ii) (Supp. 2014).

Furthermore, while a school system must offer a program which provides some educational benefit, the choice of the particular educational methodology employed is left to the school system. *Rowley*, 458 U.S. at 208. “Ultimately, [IDEA] mandates an education for each handicapped child that is responsive to his or her needs, but leaves the substance and the details of that education to state and local school officials.” *Barnett v. Fairfax County*, 927 F.2d 146, 151-152 (4<sup>th</sup> Cir. 1991), *cert. denied*, 502 U.S. 859 (1991).<sup>5</sup>

In addition to the IDEA’s requirement that a disabled child receive some educational benefit, the child must be placed in the LRE to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i) and 300.117. Yet, placement in the general education environment may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. 34 C.F.R. § 300.114(a)(2)(ii).

There has always been a statutory preference for educating children with learning disabilities in the LRE with their non-disabled peers. The IDEA provides as follows:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A) (2010).

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<sup>5</sup> The IDEA is not intended to deprive educators of the right to apply their “professional judgment.” *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1001 (4<sup>th</sup> Cir. 1997).

However, this “mainstreaming” requirement is “not an inflexible federal mandate.” *Hartmann v. Loudoun County B. of Educ.*, 118 F.3d at 1001. The HCPSS was obligated to provide [Student] with a placement that afforded her at least an opportunity to interact with nondisabled peers, if she will receive educational benefit in that placement.

The IDEA does not require a local educational agency to pay for the cost of private education if the agency has made FAPE available to the child and the parents have nevertheless elected to place the child in a private school. 34 C.F.R. § 300.148(a) (2013). Parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (citing *Burlington* at 373-74). Parents may recover the cost of private education only if they satisfy a two-pronged test: (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parent were appropriate to the child’s needs.

The burden of proof in an administrative hearing under IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, in this matter the Parents have the burden of proving that [Student]’s IEPs for the 2012-2012, 2013-2014 and 2014-2015 school years, as they pertained to her placement at [School 1] and [School 2], were not reasonably calculated to provide her with an educational benefit and that the Parents are entitled to reimbursement for placement of [Student] in a non-public special education school for the 2014-2015, 2015-2015 and 2016-2017 school years. The Parents also have the burden of proving that the denial of FAPE for [Student] during the 2012-2013 and 2013-2014 school years entitle [Student] to an award of compensatory education.

**B. Parents' Contentions**

[Mother] argued that [Student] did not receive a FAPE at [School 1] during the 2012-2013 and 2013-2014 school years because the school failed to address [Student]'s emotional issues and their impact on her ability to learn. [Mother] cited the incident during the 2013-2014 school year in which [Student] stated she wanted to kill herself in Physical Education class as evidence of her severe mental illness and [School 1]'s failure to address it through a BIP.

The Parents also expressed concerns about [Student]'s safety at [School 1]. They referred to an incident in May 2014 when [Student] ran away from her bus and into [road] when the bus arrived at school. The Parents contend that a private placement setting would provide enhanced security to ensure that [Student] was not able to elope from campus.

The Parents also argued that the variety of curriculum offered to [Student] at [School 1] was insufficient and that the courses offered to [Student] were not adequately modified to meet her educational needs. [Father] also asserted that a private school placement would provide [Student] with an environment that would minimize her mental health issues, stabilize her conditions and allow her to succeed educationally. [Father] also contended that a private school setting would reduce the level of anxiety [Student] experiences in the classroom. [Father] explained that the private schools they are considering for [Student] have teams of therapists and social workers to attend to students and thus would be able to reduce [Student]'s anxiety level in the classroom. [Father] also stated that the considered private schools offer Art and Music therapy as well as calming rooms that would benefit [Student].

The Parents indicated that they visited [School 2] in September 2014 and that it could not meet [Student]'s educational needs because it seemed similar to [School 1]. [Father] argued that [Student] has not progressed during her time at [School 1] and that since [Student] turns

21 in two years, they cannot afford to experiment with [School 2] and its ability to provide FAPE to [Student].

### **Motion for Judgment**

After the Parents rested, the HCPSS moved to dismiss the Parents' due process complaint because the Parents failed to present evidence that [Student] did not receive FAPE during the 2012-2013 and 2013-2014 school years and that her IEP for the 2014-2015 school year also failed to provide [Student] with an appropriate placement to allow her FAPE. The HCPSS styled their oral motion as a Motion to Dismiss or, in the alternative, Motion for Summary Decision. I allowed HCPSS to present its arguments in favor of its Motion on the record and I provided the Parents an opportunity to respond on the record as well. After listening to the parties' arguments regarding the Motion, I deferred ruling on the Motion until the conclusion of the HCPSS case. HCPSS declined to present a case and rested.

COMAR 28.02.01.12 Motions, provides, in pertinent part, as follows:

C. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

D. Motion for Summary Decision.

(1) Any party may file a motion for summary decision on all or part of an action, at any time, on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Motions for summary decision shall be supported by affidavits.

(2) The response to a motion for summary decision shall identify the material facts that are disputed.

(3) An affidavit supporting or opposing a motion for summary decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(4) The judge may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

#### E. Motion for Judgment.

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

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

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

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

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

I am going to treat the HCPSS oral motion as a Motion for Judgment. This is not a motion to dismiss for failure to state a claim, which is a preliminary matter determined before the taking of evidence. A motion for summary decision is likewise preliminary and envisions no dispute of a material fact. A motion for summary decision is similar to the Maryland Rule 2-501, Motion for Summary Judgment. The Court of Appeals in the case of *Whitcomb v. Horman*, 244 Md 431, 224 A2d 120 (1966), indicated that one of the beneficent purposes of the summary judgment rule is to prevent the necessity and expense of preparing for trial when there is no genuine dispute of fact and the moving party is entitled to judgment as a matter of law. *Id.* at 443. Since the Parents have presented their evidence, the hearing is beyond the preliminary state and the motion appropriately falls within the provisions of .12E Motion for Judgment.

The OAH's procedural rule on a motion for judgment is almost identical to Maryland Rule 3-519 (motion for judgment in the District Courts) and Maryland Rule 2-519 (motion for judgment in the Circuit Courts, as that rule applies to bench trials). Discussion about these court rules is applicable by analogy. The rules permit a judge in a bench trial to decide such a matter

on the sufficiency of the evidence or to find facts at the end of a plaintiff's (in this administrative matter, the Parents') case. Paul V. Niemeyer & Linda M. Schuett, *Md. Rules Commentary* § 500 (3<sup>rd</sup> ed. 2013) (discussing Maryland Rule 2-519). In such a case, an ALJ can properly grant the motion for insufficient evidence (evidence not produced to satisfy elements of proof in the administrative action) or, assuming that the Parent has offered some evidence to satisfy the elements, an ALJ can take the next step in the analysis and grant the motion by deciding that evidence was produced to satisfy the elements, but that the evidence was not competent and probative.

For the Parents to survive HCPSS' Motion, they must have offered some competent and probative evidence to establish, at a minimum, either the inadequacy of the IEP to provide special education and related services that are reasonably calculated to provide some educational benefit to [Student], or HCPSS' failure to implement the services in the IEP that are reasonably calculated to provide an educational benefit. The Parents did not do so; their evidence was woefully deficient.

In their response to the Motion, the Parents asserted that they never expected HCPSS to cure [Student]'s mental illness, but rather that accommodations and modifications were not provided at [School 1] which exacerbated [Student]'s mental illness. The Parents argued that [Student] was denied a FAPE by HCPSS and that they are only seeking a FAPE for [Student]'s last years of education.

I agree with the HCPSS that the Parents failed to prove that [Student] was not provided with FAPE under her 2012-2013, 2013-2014 and 2014-2015 IEPs at [School 1], or that the proposed 2014-2015 placement at [School 2] would not provide [Student] with FAPE.

The Parents' case that [Student] requires placement in a non-public, special education school was ill-conceived, poorly presented, and inconsistent with any rational understanding of



special education law, especially as to the LRE. There is absolutely no evidence in this record to support a conclusion that [Student] should be segregated in a non-public, all special education school. Most significantly, the Parents did not present expert testimony to support any of their arguments. The Parents themselves were unimpressive witnesses: they presented their beliefs as if they were facts. The Parents did not present any of the teachers involved with [Student]'s educational programming and implementation during the 2012-2013 and 2013-2014 school years to prove that [Student]'s IEP goals and objectives were not being met. The Parents merely called Ms. XXXX, [Student]'s special education teacher during the 2010-2011 and 2011-2012 school years, but she was not involved in the educational programming or implementation of [Student]'s IEP during the 2012-2013 and 2013-2014 school years, thus she offered no insight on [Student]'s education during the years in question in this case. Further, Mr. XXXX, who also testified on behalf of the Parents, did not offer any evidence of his interaction with [Student] as a direct service provider for her. Furthermore, the other witnesses that the Parents did present, Ms. XXXX, Ms. XXXX and Dr. XXXX, all testified that [Student] made meaningful educational progress at [School 1] from 2012 through 2014. Additionally, the Parents did not present any expert witnesses to testify regarding [Student]'s mental illness and how a fully segregated private day school would be the only environment that would allow [Student] to receive an educational benefit. Finally, the Parents provided sparse evidence regarding the private placement they are seeking, only mentioning a handful of schools without any documentation or witness testimony to support that those schools had accepted [Student] as a student or that placement at any of the schools is appropriate for [Student] in accordance with *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

Further, Dr. XXXX participated in an August 5, 2014 IEP meeting where her report was reviewed and considered in programming [Student]'s IEP for the 2014-2015 school year. Many

of Dr. XXXX's recommendations, which included direct psychological services, insertion of behavior and social/emotional goals into the IEP and placement of [Student] in a full time special education setting with self-contained classrooms, were adopted and incorporated into [Student]'s August 26, 2014 IEP. This IEP also recommended placement at [School 2] for the 2014-2015 school year. [School 2] meets [Student]'s IEP goals and objectives by providing a full time school psychologist and speech pathologist and smaller classroom settings with low student to teacher ratios. Both Dr. XXXX and Ms. XXXX testified that [Student] would be expected to make meaningful educational progress at [School 2]. The Parents only offered their lay opinion after a one-hour visit at [School 2] on September 3, 2014, that it would not be the appropriate placement for [Student].

The Parents also argued that a private placement for [Student] would provide enhanced security to protect [Student] from eloping from school grounds. Again, the Parents offered no documentary evidence or witness testimony regarding specific security measures at any specific private school.

Next, the Parents argued that a private school setting would provide [Student] with enhanced therapeutic services such as multiple psychologists and/or social workers, and that in conjunction with calming rooms, would be able to minimize and ultimately stabilize [Student]'s anxiety levels to allow her receive educational benefit in the school setting. However, the Parents offered no evidence to support their assertions that private placement would minimize [Student]'s anxiety. Further, the Parents presented no evidence, other than their own unsupported opinions, that only a private school placement would comply with the IDEA, or that HCPSS failed to comply with the IDEA in placing [Student] at [School 2]. Finally, [Student] was making sufficient progress to meet her IEP goals during the 2012-2013 and 2013-2014 school years.

Viewing the facts and reasonable inferences in the light most favorable to the non-moving party, I determine that the Parents failed to produce sufficient evidence regarding HCPSS' inability to properly develop and implement [Student]'s IEP for the 2012-2013, 2013-2014 and 2014-2015 school years. The Parents also presented no material facts to suggest, or expert opinion to support a finding that, the IEP cannot be implemented at [School 2] or that [School 2] is not the appropriate placement. Nor did they submit sufficient evidence that [Student] is not progressing under the IEP—they did not contradict in any way the progress [Student] made at [School 1].

Based on the lack of evidence from which I could reasonably find material facts to support the Parents' allegations that HCPSS failed to provide [Student] FAPE during the 2012-2013, 2013-2014 and 2014-2015 school years, I conclude that the Parents failed to satisfy their burden of production or persuasion in this case. Md. Code Ann., State Gov't § 10-217 (2014); *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

The absence of evidence that the HCPSS was not providing FAPE dictates that the Parents' due process complaint be dismissed.

**Parents' Request for Reimbursement from HCPSS for Fees Associated with a Private Neuropsychological Evaluation and Educational Consulting Services**

**(b) Parent right to evaluation at public expense.**

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

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

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

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§

300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

34 C.F.R. § 300.502(b) (2013).

There is no evidence that prior to the Parents' decision to send [Student] to XXXX Associates in April 2014 that they ever asked HCPSS to have an independent evaluator conduct an educational assessment of her. Accordingly, one of the antecedent conditions of the "public expense" component of 34 C.F.R. § 300.502(b) has not been met. Therefore, the Parents are not entitled to reimbursement of the fees associated with the XXXX Report. Further, the Parents provided no evidence into the record regarding educational consulting services that they paid for; as such, they are not entitled to reimbursement for such services.

**Parents' Request for Compensatory Education for the 2012-2013 and 2013-2014 School Years**

The Parents requested compensatory education services as a remedy for HCPS' failure to provide a FAPE to [Student] in the 2012-2013 and 2013-2014 school years. When a public agency is found responsible for committing procedural violations under the IDEA statute and regulations, it is still necessary to determine whether those violations resulted in the loss of educational opportunity for the disabled student, or whether there was a mere technical contravention of the IDEA. *MM ex rel. DM v. School Dist. of Greenville County*, 303 F.3d at 533. In *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4<sup>th</sup> Cir. 1997), the court stated that where "the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to

provide” the student with a FAPE. Furthermore, compensatory education is available to remedy an educational deficit created by a school system’s failure to provide a student with a FAPE over a given period of time. *G v. Fort Bragg Independent Schools*, 343 F.3d 295, 309 (4<sup>th</sup> Cir. 2003). If the record does not support the denial of a FAPE, then the remedy of compensatory education is not warranted. Additionally, a material failure to implement an IEP may require a remedy when the services a school system provides fall significantly short of the services required by the student’s IEP. However, where the student has achieved educational progress, this demonstrates that the shortfall in instruction or other services was not significant or material. *Van Duyn v. Baker School District 5J*, 481 F.3d at 780.

On this issue, the Parents have not proved that the IEPs in effect in 2012, 2013, and 2014 were not reasonably calculated to provide a FAPE for [Student]. The evidence shows that [Student] did receive a FAPE during the school years in question. Accordingly, [Student] is not entitled to compensatory education for those years.

**Is [Student] Entitled to Costs Associated with Private Placement for the 2015-2016 and 2016-2017 School Years?**

In *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13 (1<sup>st</sup> Cir. 2006) the court held that under normal IDEA principals, a student is not entitled to be reimbursed for educational expenses that she has yet to pay. Therefore, [Student] is not entitled to an award of tuition for future years that the Parents have yet to pay. Accordingly, [Student] is not entitled to an award for costs associated with her private placement for the 2015-2016 and 2016-2017 school years.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

- A. The Parents have failed to satisfy their burden to offer any evidence that creates a legitimate dispute about whether HCPSS has failed to provide a FAPE to [Student]

and whether [Student] should be placed in a private school for the 2014-2015 school year. Md. Code Ann., State Gov't § 10-217 (2014); *Schaffer v. Weast*, 546 U.S. 49 (2005);

- B. The Parents have failed to meet their burden to demonstrate that HCPSS owes [Student] compensatory education for the 2012-2013 and 2013-2014 school years;
- C. The Parents have failed to meet their burden to show HCPSS is obligated to reimburse them for fees associated with the XXXX Report or for educational consulting services. 34 C.F.R. § 300.502(b) (2013);
- D. The Parents are not entitled to reimbursement for any fees associated with [Student]'s placement at a non-public special education day school day school for the 2015-2016 and 2016-2017 school years. *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13 (1<sup>st</sup> Cir. 2006); and
- E. HCPSS is entitled to a judgment against the Parents. COMAR 28.02.01.12E.

**ORDER**

I **ORDER** that HCPSS' Motion for Judgment be, and it is hereby, **GRANTED**; and I further **ORDER** that the Parents' Complaint be, and is hereby, **DISMISSED**.

February 13, 2015  
Date Decision Mailed

\_\_\_\_\_  
Brian Zlotnick  
Administrative Law Judge

BMZ/emh

## **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.