

XXXX XXXX,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

*** BEFORE HENRY R. ABRAMS**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE**

*** OF ADMINISTRATIVE HEARINGS**

*** OAH No: MSDE-MONT-OT-14-21758**

*** * * * ***

DECISION

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STATEMENT OF THE CASE

On June 19, 2014, the Honorable Cynthia Callahan, of the Circuit Court of Montgomery County, Maryland, appointed XXXX XXXX as the Parent-Surrogate and Educational Guardian (collectively Parent-Surrogate) of XXXX XXXX (Student). Judge Callahan had found the Student to be a Child in Need of Assistance (CINA) in November 2013, and appointed the Parent-Surrogate pursuant to the Circuit Court’s continuing jurisdiction over the Student. Md. Code Ann., Cts. & Jud. Proc. § 3-804 (b) (Supp. 2014). Thereafter, on June 19, 2014, the Parent-Surrogate filed a Due Process Complaint on the Student’s behalf with the Office of Administrative Hearings (OAH).¹ The Parent-Surrogate filed the Complaint against the Montgomery County Public Schools (MCPS) to review MCPS’ evaluation and placement of the Student under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C.A. § 1415

¹ The Student does not support the allegations or requested remedies contained in the Due Process Complaint. As a result, and to avoid confusion, I will refer to the Parent-Surrogate as the moving party, even though she filed the Due Process Complaint on the Student’s behalf.

(f)(i)(A)(2010). At the same time, the Parent-Surrogate invoked stay-put on the Student's behalf.²

On July 16, 2014, the parties participated in a mediation session, which did not successfully resolve the case.

I held a telephone prehearing conference on July 16, 2014. The Parent-Surrogate represented the Student. Jeffrey A. Krew, Esquire, represented MCPS. On July 23, 2014, I issued a Prehearing Conference Report and Order (PCR) setting forth, among other things, the issued and requested relief sought by the Parent-Surrogate. The Parent-Surrogate agreed to that statement of issues and requested relief. By agreement of the parties, due to their scheduling conflicts, the hearing was scheduled for August 27, September 2, 5, 19, and October 3, 2014.³

I held the hearing on those dates at the headquarters of the MCPS. The Parent-Surrogate represented the Student. Mr. Krew represented MCPS. The hearing dates fell more than 45 days after the resolution period described in the federal regulations. Absent extensions, my decision is due 45 days after the end of that period. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2014). The parties requested an extension of time until November 6, 2014 for me to issue a decision. 34 C.F.R. § 300.515; Md. Code Ann., Educ. § 8-413(h) (2014).

The legal authority for the hearing is as follows: 20 U.S.C.A. § 1415(f); 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 contested case provisions of the Administrative Procedure Act; the Maryland State Department of Education (MSDE) procedural regulations, and the Rules of Procedure of the

² The "stay-put" provisions require the school system to maintain the student's present placement pending the outcome of judicial or administrative hearings under the IDEA. 34 Code of Federal Regulations (C.F.R.) § 300.518(a).

³ At the parties' request, I held an additional day of hearing on October 7, 2014.

OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES⁴

1. As evidenced by MCPS' 2013 tests of the Student's academic progress/level of achievement and 2014 tests currently being conducted by third parties on the Student's behalf, did the Student's January 13, 2014 Individualized Education Program (IEP) fail to provide the Student with a free appropriate public education (FAPE) by:
 - a. overstating the Student's academic progress/level of achievement in academic reading comprehension, math problem solving and written language instruction, and, if so, what is the Student's proper level of academic progress/level of achievement in these three areas;
 - b. failing to provide the following transitional services for the Student: job training skills; personal money management; social skills (meaning the ability to take directions and follow instructions); and hands-on work experience, whether on campus or elsewhere;
 - c. failing to provide a vocational assessment of the Student; and
 - d. placing the Student on the diploma track to graduate at the end of the 2014-15 school year, rather than the certificate of attendance track?
2. Did MCPS wrongly require the Student to graduate in June 2014, contrary to the terms of the IEP and the Student's needs?

REQUESTS FOR RELIEF⁵

The Parent-Surrogate seeks the following remedies to rectify the alleged failure to provide a FAPE:

1. a vocational assessment to be provided by MCPS to determine what transitional services the Student should receive; and
2. enrollment in MCPS's school through twenty-one (21) years of age.

⁴ At the conclusion of the Parent-Surrogate's case-in-chief MCPS moved for judgment on a variety of grounds. I held the motion *sub curia*. Based on the outcome stated in this Decision, I will not rule on MCPS' motion. It is moot.

⁵ At different times during the hearing, the Parent-Surrogate identified other requested relief. However, in the event I find that MCPS denied the Student a FAPE, any relief I award is limited to that requested by the Parent-Surrogate and set forth in the PCR.

SUMMARY OF THE EVIDENCE

Exhibits

I have attached an Exhibit List to this Decision.

Testimony

The Parent-Surrogate presented the following witnesses:

- The Student.
- XXXX XXXX, Social Worker, Child Welfare Services (CWS), Montgomery County Department of Health and Human Services.
- XXXX XXXX, Placement Specialist, MCPS Placement and Assessment Services Unit.
- Dr. XXXX XXXX. Dr. XXXX has a Ph.D. in clinical psychology. She was admitted as an expert in the psychological testing and assessment of children and adolescents, and their cognitive, educational, social and emotional development.
- XXXX XXXX. Ms. XXXX has an Advanced Professional Certificate (APC) in special education. She is the Assessments Coordinator at [School 1] ([School 1]).

MCPS presented the following witnesses:

- XXXX XXXX. Ms. XXXX holds Masters Degrees in school psychology and in guidance and counseling. She is a National Certificated Counselor and holds an APC in school psychology and guidance counseling. She is an MCPS school psychologist. She was admitted as an expert in school psychology and guidance counseling.
- XXXX XXXX. Ms. XXXX has a Masters Degree in Social Work and is a Licensed Clinical Social Worker (LCSW) and holds a MSDE certification as a special education school social worker. She is [School 1]'s Academic Coordinator.
- XXXX XXXX. Mr. XXXX is MCPS' Coordinator, XXXX Plan for Academic Validation, MCPS Office of Curriculum and Instructional Programs. He has a Masters Degree in English, and holds an APC and has a Maryland teacher's certificate in English and an Administrative and Supervisory certificate. Mr. XXXX was admitted as an expert in teaching high school English and in the MCPS XXXX Plan program.
- XXXX XXXX. Mr. XXXX holds Masters Degrees in curriculum and Instruction and in Administration/Supervision. He is a special education teacher at [School 1], teaching Horticulture, Environmental Science and Microsoft Certification I.

- XXXX XXXX. Ms. XXXX has a Masters Degree in social work and is a Licensed Graduate Social Worker (LGSW). She is a therapist at [School 1], and was admitted as an expert in social work.

FINDINGS OF FACT⁶

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

1. The Student was born on XXXX, 1995.
2. She turned 18 years old on XXXX, 2013, while enrolled in high school.
3. The Student's mother was a drug addict when the Student was born. During the Student's first two years, her mother traded the Student and the Student's younger brother to neighbors for the neighbors' XXXX, in exchange for which the neighbors paid the mother.
4. The Student's mother abandoned the Student when she was 2 or 3 years old. The mother left her on the house steps of the Student's aunt, XXXX XXXX.
5. The Student's father was in prison at the time that the Student was abandoned by her mother.⁷
6. Following her abandonment, the Student lived the majority of her life, prior to her 18th birthday, with her aunt, her grandmother, or both. At an unknown date the Student's aunt became her legal guardian.⁸

⁶ Findings of Fact 1, 15, 18, 21, 23, 29, 30, 32, 46, 3, 55, 57 and 64 were entered by joint stipulation. I have changed some of the wording of the stipulations but have not altered the substance.

⁷ The parties did not provide exact dates surrounding the events occurring in the Student's early life.

⁸ No guardianship papers were submitted, but the parties did not dispute that Ms. XXXX was the Student's legal guardian. The formal guardianship expired on the Student's 18th birthday. MCPS continued to treat Ms. XXXX as the Student's guardian, in place of her parents, throughout all relevant times.

7. When the Student was approximately 8 years old, her father was released from prison. At an unknown date thereafter, the father was murdered after confronting some or all of the individuals who had abused the Student and her younger brother.⁹
8. When the Student was approximately 11 years old, the Student's aunt and grandmother enlisted the assistance of Montgomery County's CWS to assist them in dealing with the Student's emotional difficulties and problematic behavior. This behavior included fighting, threats to harm family members, running away and general argumentativeness.
9. The Student was in the 8th grade during the 2008-09 school year, attending MCPS' [School 2]. Either before or during that school year, the Student was placed in special education, having been found to have a Specific Learning Disability affecting her reading, writing, and math skills.¹⁰
10. The Student's June 17, 2009 IEP provided that the Student was on the diploma track, expected to graduate in four years. She was to receive a variety of instructional and testing accommodations to assist her academic progress, including, among other things: a human reader or reading device for verbatim reading of all materials; use of a calculator; use of a word processor; note-taking assistance; and extra time on tests.
11. The June 17, 2009 IEP contained a section for transition services that the IEP team anticipated the Student would require within one year of graduation. The services

⁹ While the parties did not identify the date of the father's death, there is no indication from the evidence presented that he played a significant role in the Student's life following his release from prison.

¹⁰ Students with any of the following categories of disability (also known as disability codes) are covered by the IDEA and entitled to special education, if required, to meet their unique educational needs: (1) autism; (2) deaf-blindness; (3) hearing impairment including deafness; (4) serious emotional disturbance (emotional disability); (5) mental retardation (now referred to as intellectual disability); (6) multiple disabilities; (7) orthopedic impairments; (8) other health impairment; (9) specific learning disability; (10) speech or language impairment; (11) traumatic brain injury; and (12) visual impairment (including blindness). 34 C.F.R. 300.8(a)(i). 20 U.S.C. § 1401(3)(A).

- included, among other things, higher education support services and an assessment and evaluation by Maryland's Division of Rehabilitation Services (DORS).¹¹
12. On July 1, 2009, MCPS' XXXX XXXX administered the Woodcock-Johnson III Achievement Test to the Student. The test is administered without accommodations. Compared to other 8th grade students, the Student's scores ranged generally from the low average to the low range. She received a score of 91, however, with respect to applied problems. The applied problems sub-test measures a student's ability to analyze and solve math problems. The Student's score placed her within the average range for students her age. (MCPS Ex. 2 at p. 4)
13. The Student required 21 credits to obtain an MCPS high school diploma, consisting of the following: 4 credits in English; 4 credits in Math; 3 credits in Social Studies; 3 credits in Science; 1 credit in Physical Education; .5 credit in Health; 1 credit in Fine Arts; 2 credits in Foreign Language; and 2.5 elective credits.¹²
14. To be eligible to graduate, MCPS also requires students either to pass the High School Assessment exams (HSAs) in English, Biology, and Math; or, in the event the Student twice fails the HSAs in a given subject, to successfully complete XXXX Projects in the failed subject areas.¹³
15. For the 2009-10 school year, the Student attended the 9th grade at [School 3] ([School 3]), an MCPS public school.

¹¹ DORS is part of the MSDE. It assists graduation disability students (and others) in developing career and job plans and the skills required for independent living. MD. Code Ann., Educ. § 21-305. *See also* www.dors.state.md.us. Transition services are services that promote movement from school to post-school vocational training, employment and further education. Md. Code Ann., Educ. § 21-305 (a)(3). *See* the discussion of transition services later in this Decision for further explanation of transition services.

¹² The identity of the required courses is not entirely clear, but is not material. The Parent-Surrogate does not claim the Student failed to enroll in the required courses.

¹³ XXXX Projects are graded by the XXXX Plan for Academic Validation unit of the MSDE's Office of Curriculum and Instruction. *See* the later discussion for a more detailed description of the Validation unit and XXXX Projects.

16. She was in special education and received various accommodations and assistance consistent with the terms of her then-outstanding IEP. She remained on the diploma track.
17. During the 2009-10 school year, the Student received the following grades and credits toward graduation: Academic ReadingA = C - 1 credit; Academic ReadingB = B - 1 credit; English 9A = E - 0 credit; English 9B = D - .5 credit; U.S. HistoryA = D - .5 credit; U.S. HistoryB = D - .5 credit; Algebra 1A = D - .5 credit; Algebra 1B = C - .5 credit; Related MathB = A - .5 credit; General Physical Education 1 = C - .5 credit; Resource ProgramA = C - .5 credit; Resource ProgramB = B - .5 credit. The Student received a total of 6.5 credits.
18. The Student attended [School 3] for a period of the 2010-11 school year.
19. The Student was in the 10th grade during the 2010-11 school year.
20. In the 2010-11 school year, the Student received the following grades and credits towards graduation: English 10A = E - 0 credit; English 10B = E - 0 credit; Spanish 1A = D - .5 credit; Spanish 1B = E - 0 credit; NSL GovernmentA = D - .5 credit; NSL GovernmentB = E - 0 credit; GeometryA = D - .5 credit; GeometryB = E - 0 credit; Applied ScienceA = D - .5 credit; Foundation of ArtA = C - .5 credit; Foundation of ArtB = B - .5 credit; Resource ProgramA = B - .5 credit; Resource ProgramB = E - 0 credit. The Student received a total of 3.5 credits. The Student remained on the diploma track.
21. Upon being placed in a therapeutic group home that was within the school boundaries for [School 4], the Student transferred to [School 4] in October 2011.¹⁴

¹⁴ The parties did not explain why in the 2011-12 school year the Student was enrolled in the 10th grade for the second time. I assume it was because the Student lacked sufficient credits to advance to the 11th grade.

22. In 2011, the Student's aunt, Ms. XXXX, referred the Student to the CWS. Ms. XXXX sought assistance because of the Student's emotional difficulties and problematic behaviors.
23. During the course of the 2011-12 school year, the Student was admitted twice for inpatient psychiatric care to XXXX Hospital (XXXX). The first hospitalization was from November 12, 2011 through November 18, 2011. The second hospitalization was from February 12, 2012 to January 31, 2013.¹⁵
24. The Student was hospitalized at XXXX due to her inability to control her anger, threats of suicide, and threats and acts of violence towards others. XXXX staff diagnosed the Student as having Bipolar Disorder NOS (not otherwise specified). Throughout the hospitalizations, the Student received educational instruction.
25. On November 21, 2011, Ms. XXXX wrote MCPS requesting that MCPS assess the Student's special education needs. Ms. XXXX stated that she, XXXX staff and the Student's CWS social worker concurred that the Student needed to "receive services under the Emotional Disturbance Coding." (S. Ex. 30.)
26. At the end of the 2011-12 school year, the Student received the following grades and credits: English 9A = D - .5 credit; English 10B = D - .5 credit; NSL GovernmentA = E - 0 credit; NSL GovernmentB = E - 0 credit; GeometryA = E - 0 credit; GeometryB = C - .5 credit; Foundation of TechnologyA = E - 0 credit; Chorus 1A = A - .5 credit; General Physical Education = B - .5 credit; Resource ProgramA = C - .5 credit. The Student received a total of 3 credits.

¹⁵ The parties stipulated that the Student was admitted to XXXX during the 2010-11 school year. I believe that is incorrect; but the dates of the hospitalizations are not material to the outcome in this case.

27. During the majority of the 2012-13 school year, while hospitalized at XXXX, the Student remained formally enrolled in [School 4]. She received the following grades and credits from [School 4]: English 10A = B - .5 credit; English 11B (no grade and 0 credit); Modern World HistoryA = B - .5 credit; Modern World HistoryB (no grade and 0 credit); XXXX to Algebra 2A = A - .5 credit; XXXX to Algebra 2B (no grade and 0 credit); BiologyA = B - .5 credit; and BiologyB (no grade or credit). The Student received a total of 2 credits.
28. Sometime between late January and mid- February 2013, XXXX discharged the Student due to her then-recent regression in impulse control and anger management. XXXX believed that the Student most likely regressed due to her frustration with her longstanding placement there and her need to attend a full day school program. XXXX believed part of the Student's frustration arose from her desire to graduate high school. At the same time, XXXX noted that the Student had gained insight into her behavior, identified triggers to her anger and learned useful coping skills. XXXX recommended that the Student continue treatment within a residential treatment center.
29. On February 13, 2013, an IEP Team meeting was held at [School 4]. The team recommended educational and psychological assessments for the Student.
30. On or about February 15, 2013, MCPS placed the Student temporarily at [School 1]. [School 1] is a private residential treatment center and educational institution serving students with disabilities. It is a unit of the XXXX Health System (XXXX), a nationally renowned mental health facility.

31. From the time of her February 2013 placement forward, the Student has been in residence (first temporarily and then formally) and has received educational instruction, individual mental health counseling and other services from [School 1].
32. On February 26, 2013, XXXX XXXX, an MCPS psychologist not affiliated with [School 1], conducted part of the Student's recommended evaluation.
33. Ms. XXXX conducted a series of assessments, including a limited classroom observation, interview of the Student, interview of the Student's English 11 teacher; and administration of the Wechsler Abbreviated Scale of Intelligence (WASI); the Behavior Assessment System for Children, Second Edition (BASC-2); the Roberts-2 and the Reynolds Adolescent Depression Scale-2nd edition (RADS-2).
34. The Student's English 11 teacher reported to Ms. XXXX that the Student could perform the work required in that course.
35. The WASI is an IQ test. It was administered without accommodations. The WASI consists of a number of sub-tests, each resulting in an individual score which, when totaled together, scores the subject's verbal performance and full scale IQ. Scores range from low to high. Low scores can represent intellectual disability.
36. With one exception, the Student scored in the range of intellectually disabled on the WASI. The Student scored low average on vocabulary. On a previous IQ test, the Student tested in most areas in the borderline range, but average with respect to working memory.
37. Ms. XXXX indicated that the low WASI scores might be attributable to the Student's inability to access her educational program due to her emotional, rather than cognitive, problems.

38. The BASC-2 consists of a questionnaire designed to facilitate the differential diagnosis and classification of a variety of emotional and behavioral disorders and aid in the development of an appropriate treatment plan.
39. Ms. XXXX gave the questionnaires to the Student, her aunt, one of her teachers, her counselor and her therapist. The results indicated, among other things, a number of clinically significant and at-risk emotional and behavioral problems. Clinically significant scores included the following: externalizing problems; hyperactivity; aggression; conduct problems; internalizing problems; anxiety; depression; attention problems; and behavioral problems. At-risk areas included anger control; bullying; emotional self-control; executive functioning and negative emotionality.
40. The Roberts-2 asks the test subject to tell stories based on sixteen separate pictures. Each picture is intended to elicit a separate story. The Student interpreted five of the pictures before refusing to go any further. The Student interpreted each of the five pictures as part of the same story, four of which indicated some form of violence or abuse by an adult toward the daughter or abuse by a husband toward his wife.
41. The RADS-2 measures depression in children. The Student's results did not indicate severe depression, although Ms. XXXX found these results inconsistent with the Student's results on the other tests.
42. Based on the results of all the tests Ms. XXXX administered, as well as those administered by others within the MCPS, Ms. XXXX believed the Student's low scores were caused by the emotional trauma the Student experienced in her life, causing her inability to access her education. She did not believe the Student was intellectually disabled. She concluded, among other things, that the Student's low

- average score on vocabulary, and her prior 91 score on working memory, were inconsistent with intellectual disability.
43. On March 1, 2013, XXXX XXXX, another MCPS employee unaffiliated with [School 1], completed an education assessment of the Student.
 44. She administered the Woodcock-Johnson Test of Achievement to the Student. The Student took the test without the aid of any accommodations or support.
 45. The Student scored in the low range in letter/word identification and writing samples, and in the very low range in all other subjects within the areas of mathematics, reading, reading comprehension and written expression. However, the Student refused to complete two of the sub-tests, in part causing her to score in the very low range: writing fluency and writing samples.
 46. [School 4] convened an IEP Team meeting on March 13, 2013. The team determined the Student met the criteria for the educational code of emotionally disabled, and recommended the Student attend the educational program at [School 1] for the remainder of the 2012-13 school year.
 47. Following the meeting, the IEP Team issued the March 13, 2013 IEP.
 48. The IEP Team, including Ms. XXXX and Ms. XXXX, concurred that the Student met the criteria for the Emotional Disability Code, and recommended that she continue to attend [School 1] for the remainder of the 2012-13 school year.¹⁶ The Team did not find her intellectually disabled.
 49. Based upon the results of the standardized tests and classroom-based assessments, the IEP Team reported on the IEP that the Student was performing at the 7th-8th grade level in Math; at the 8th grade level in Reading; and at age level in Oral Language.

¹⁶ The IEP Team listed Emotional Disability on the IEP as the Student's primary disability.

The Student performed below expected levels in attention and in social/emotional skills.

50. The IEP Team found that the Student should receive a variety of supports and accommodations with respect to her testing, including among others, a human reader or audio of the full text of all tests, and use of a word processor and calculator, as well as extended time. These accommodations and supports are set forth in the IEP.
51. In addition, the IEP team found that the Student required a number of supports and accommodations with respect to instruction, including, among others, daily checks for understanding; the Student's required repetition or paraphrasing of instructional information; giving the Student teachers' notes and, (in writing) the steps to follow for completing assignments and tests. These accommodations and supports are included in the IEP.
52. The IEP also directed that on a daily or periodic basis, as appropriate, the Student was to receive exposure to text in multiple ways; opportunities to engage in oral discourse before writing tasks; instruction and practice in the use of graphic organizers; rubrics and checklists for the completion of written assignments; and instruction as to how to think aloud when problem-solving.
53. The March 13, 2013 IEP indicated, as had all previous IEPs, that the Student was on the diploma track. It indicated she was projected to graduate in June 2016.¹⁷
54. Following issuance of the March 13, 2103 IEP, MCPS placed the Student permanently at [School 1].

¹⁷ I believe the 2016 exit date is a typographical error. The Student's 2009, 2010, and 2011 IEPs projected an expected graduation in June 2013. The 2012 IEP (issued while the Student was hospitalized) did not mention any projected exit date. In both the Due Process Complaint and at the hearing, the Parent-Surrogate indicated she was complaining about the failure to keep the Student in school until sometime in 2015. The Parent-Surrogate never complained that the intended exit date was June 2016.

55. On May 30, 2013, an IEP team meeting was convened at [School 1]. The team conducted a periodic review and recommended that the Student continue at [School 1] during the 2013-14 school year.
56. The Student completed the 2012-13 school year at [School 1]. She received the following grades and credits: English 11 = 79 - 1 credit; Biology = 68 - 1 credit; Government = 85 - .5 credit; Digital Photography = 85 - .5 credit; Modern World History = 94 - .5 credit. She received a total of 4 credits.
57. On November 18, 2013, XXXX XXXX, the curriculum instruction coordinator at [School 1], completed achievement testing on the student.
58. Ms. XXXX was in charge of student assessments at [School 1]. She administered the Woodcock-McGrew-Werder Mini-Battery of Achievement to the Student. The Student took the test without accommodations. She tested at the following grade level equivalents: Reading - grade 6.7; Writing - grade 3.1; Mathematics - grade 5.1; Factual Knowledge - grade 4.9. Her combined grade equivalent for all the above subject areas was 4.7.
59. During the period February 2013 through the middle of December 2013, various [School 1] social workers routinely provided twice-weekly therapy to the Student. The Student did not share with them her early life experiences and traumas.
60. At some point in December 2013, XXXX XXXX, a Maryland-licensed LGSW, assumed primary responsibility for the Student's ongoing therapy. Ms. XXXX met with the Student approximately two times per week during the remainder of December 2013.

61. Throughout the end of the 2013 school year, the Student received inconsistent reports regarding class attendance, attention, and timely completion of assignments. She had difficulty in these areas, in, among others, her English 11 class. She had difficulty maintaining focus in her Government class, and focus and attendance difficulties in Biology. On the other hand, she consistently completed assignments and often helped her peers in Modern World History. She accepted constructive criticism in that class.
62. In November 2013, the Circuit Court for Montgomery County found that the Student was a CINA.¹⁸
63. [School 1] conducted monthly Individual Treatment Plan (ITP) meetings regarding the Student throughout her residence there. [School 1] routinely invited the Student's CWS social worker, the Student, and her aunt to these meetings, and sent copies of the monthly ITPs to the CWS social worker and the aunt.
64. On January 13, 2014, [School 1] conducted an IEP Team meeting. The team conducted the Student's annual review and recommended she continue at [School 1].
65. The Student attended some portion of the January 13, 2014 meeting. Invitations were sent to her CWS social worker and her aunt, but they did not attend. At the time of the meeting, the Student's CWS social worker had changed to XXXX XXXX, but no one had informed [School 1] of the change. As a result, the invitation to attend may have gone to the prior social worker. The Student's aunt authorized the IEP team to proceed without her.
66. As in the prior years' IEPs, the January 13, 2014 IEP listed Emotional Disability as the Student's primary disability. It did not list Intellectually Disabled as an additional

¹⁸ See Md. Code Ann., Cts. & Jud. Proc. § 3-802 – 3-804 as to the grounds for finding a child to be CINA, and the court's authority and jurisdiction in CINA-related matters.

- disability. The IEP noted that the Student performed at the 8th grade level in Reading Comprehension; the 7th - 8th grade level in Math Problem Solving; and the 8th grade level in Written Language Expression. It also noted that the Student was below expected levels in attention to academics and in behavior.
67. The IEP generally kept in place the same accommodations and supports as those mandated in the prior IEP. Pursuant to the IEP, the Student was to receive daily anger management training; crisis intervention; a behavioral contract; social skills training and, if required, seclusion or a safe room.
68. The January 13, 2014 IEP reported that the Student remained on the diploma track, with an expected graduation date of June 1, 2015.
69. The January 13, 2014 IEP also reported that the Student had twice failed the HSAs in Algebra/Data Analysis, Biology and English.
70. In addition to the completion of required courses, credits and service hours, Maryland requires that students complete one of two alternative assessments to graduate from high school. The first is passing the HSAs. If a student fails any of the HSAs twice, the student is entitled to successfully complete one or more XXXX Projects in the failed subject matter. XXXX Projects are written expositions in the required subjects, based on problems provided by MCPS. The XXXX Projects are graded by a group of MCPS teachers led by XXXX XXXX, a Maryland-certified English teacher and head of the XXXX Plan for Academic Validation unit, which administers and grades XXXX Projects. No one from [School 1] participates in grading the XXXX Projects.
71. Students submitting XXXX Projects are assigned project monitors who monitor the students' work at designated checkpoints as the projects proceed. The monitors

- review the students' work and, in the event students make errors, the monitors identify them and re-teach, as necessary, the subject matter to their students, each time requiring the students to re-do the work. The XXXX Project program anticipates that students may need remedial instruction along the way and authorizes such instruction, as long as the students, rather than their instructors, complete the work.
72. The January 13, 2014 IEP indicated that the Student would complete XXXX Projects in Algebra, Biology and English.
73. The January 13, 2104 IEP recited that the Student wanted to be a XXXX, and would enter a college or university program to become a XXXX. The IEP did not include, within the transition plan and services, a vocational assessment for the Student or job training.
74. The January 13, 2014 IEP stated the Student was to be referred to DORS and Maryland's Mental Health Administration.
75. During or immediately following the January 13, 2104 IEP meeting, one or more members of the IEP team reviewed its terms with the Student. The Student was told how many course credits she required to graduate and that she was expected to have those credits by June 2015. At the same time, the team members explained that she could graduate in June 2014, if she devoted herself more diligently to her classwork.
76. [School 1] sent copies of the IEP to the Student's aunt and her CWS social worker.
77. Following the January 2014 IEP meeting, the Student expressed to Ms. XXXX the Student's excitement at the possibility of graduating in 2014. Ms. XXXX explained the requirements and made clear to the Student the need to pass her courses so as to

- amass the required number of credits in the appropriate classes. Accordingly to Ms. XXXX's contemporaneous notes, the Student "reported being 'excited and kind of nervous' due to the added responsibilities." (MCPS Ex. 16, at 000190.)
78. Beginning in or about February or March 2104, Ms. XXXX noted in her ITP reports, sent to the Student's aunt and Ms. XXXX that the Student was working toward a June 2014 graduation. By this time, the Student had established a strong relationship with Ms. XXXX and for the first time began to share with a therapist the emotional traumas the Student had suffered.
79. On March 31, 2014, MCPS' Department of Special Education Services notified the Registrar of [School 5] ([School 5]), then the Student's home district school, that the Student was anticipated to graduate in June 2014. As the Student's home district school, [School 5], rather than [School 1], was responsible for the issuance of the Student's diploma.
80. For the second semester of 2013-14, the Student received the following grades and credits: Spanish 1 = 74 - .5 credit; Health = 76 - .5 credit; English 12 = 67 - 1 credit; Environmental Science = 62 -1 credit; Algebra II = 78 - 1 credit; Modern World History = 58 - 0 credit; Creative Writing = 63 - 1 credit; Introductory Chemistry/Physics = 67 - 1 credit; Spanish II = 62 - 1 credit; and Foundations of Technology = 75 - 1 credit. The Student received 8 credits during the semester. She had a total of 27 credits toward graduation.
81. By June 2014, the Student successfully completed her three XXXX Projects, as graded by Mr. XXXX's XXXX Projects team.

82. On June 12, 2014, MCPS certified that the Student had obtained the necessary credits to graduate. Thereafter, sometime prior to June 18, 2014, the County Superintendent of Schools and the President of the Montgomery County Board of Education signed the Student's diploma, which states that the Student "has completed in a satisfactory manner...a program of studies, in accordance with the requirements...for graduation, and is therefore awarded this Diploma." (MCPS Ex. 24.)
83. On or about June 18, 2014, Ms. XXXX was scheduled to appear before Judge Callahan to give her regular six-month status report on the Student. When Ms. XXXX appeared, she told Judge Callahan that the Student was set to attend graduation ceremonies and receive her diploma on June 20, 2014.
84. Judge Callahan convened a hearing on June 18, 2014, with respect to the June 20, 2014 graduation. The hearing continued on June 19, 2014. At the end of the hearing on June 19, 2014, Judge Callahan issued an Order appointing Ms. XXXX as the Student's "Educational Guardian and Surrogate."¹⁹ (June 19, 2014 Order, attached as an exhibit to the Due Process Complaint.)
85. While not stated in Judge Callahan's June 19, 2014 Order, on October 1, 2014, Judge Callahan issued a second Order in the matter, declaring among other things, that on June 19, 2014, she found the Student to be "incompetent to make decisions about her educational needs," as a result of which the Judge designated Ms. XXXX as the Surrogate and Educational Guardian. (MCPS Ex. 25.)²⁰

¹⁹ During the hearing the parties referred to Ms. XXXX as the Parent-Surrogate. The term in the IDEA implementing regulations is "surrogate parent." 34 C.F.R. §300.30 (a)(5). MCPS uses the term "parent-surrogate." The correct terminology is immaterial, as the important point is that on June 19, 2014, Judge Callahan placed the Student's educational decision-making in Ms. XXXX's hands.

²⁰ This series of court-related events is relevant to two issues in the case. When the Student turned 18, she was entitled, if not adjudicated incompetent, to request the transfer of educational decision-making to herself. Md. Code Ann., Educ. § 8-412.1. MCPS notifies its students of their transfer rights but apparently neglected to do so in this

86. On June 19, 2014, the Parent-Surrogate filed the Due Process Complaint, and invoked “stay-put” to maintain the Student’s then-current placement. As a result, the Student did not attend the June 20, 2014 graduation ceremony.
87. When the Student learned she was not going to receive her diploma, she was distraught. Shortly thereafter, the Student attempted suicide, at least in part due to her inability to receive her diploma.
88. In July 2014, Dr. XXXX XXXX, a Child and Adolescent psychologist, administered a battery of tests to the Student at the behest of the Parent-Surrogate. These included, among others, the Wechsler Adult Intelligence Scale, 4th ed. (WAIS IV). The results were generally consistent with those obtained by Ms. XXXX, Ms. XXXX and Ms. XXXX in 2013.
89. Dr. XXXX did not interview any of the Students’ teachers.
90. One of the tests Dr. XXXX administered was the Vineland Adaptive Behavioral Scales II- Interview Edition, Survey Form (Vineland). The Vineland is a test used to confirm a student’s intellectual disability, if it is suspected.
91. The Vineland assesses the subject’s functioning across three domains: communication, daily living skills, and socialization. These areas involve, in general, a person’s critical living skills, including the ability to communicate with others, complete activities of daily living, and live independently.

case. Near the outset of the hearing, MCPS requested permission to advise the Student of her rights. I ultimately held that MCPS could proceed, unless the Circuit Court for Montgomery County had found her incompetent. The Parent-Surrogate then obtained the Court’s October 1, 2014 Order, which mooted MCPS’ request. The court-related events are also relevant to the question of whether CWS or the Court was entitled to receive advance notice of the Student’s anticipated June 2014 graduation.

92. The Vineland consists of one or more questionnaires, to be answered by persons who have relatively constant contact with the subject and, through such contact, know the subject extremely well with respect to the domain examined.
93. Dr. XXXX asked Ms. XXXX if she knew the Student well enough to answer the questions in all three domains. Ms. XXXX said she did and, on that basis, completed the questionnaire. Dr. XXXX did not ask any of the [School 1] teachers and administrators, or Ms. XXXX, to complete questionnaires.
94. Prior to the June 19, 2014 Order of the Circuit Court for Montgomery County, no one, including MCPS personnel, [School 1] personnel, the Student's aunt, her CWS workers, or the XXXX staff, disputed the fact that the Student was emotionally disabled, and no one found her to be intellectually disabled, as those terms apply to disability coding pursuant to the IDEA.
95. Prior to the June 19, 2014 Order of the Circuit Court for Montgomery County, no one, including MCPS personnel, [School 1] personnel, the Student's aunt and her CWS social workers, claimed that the Student should not be on the diploma track.
96. Prior to the June 19, 2014 Order of the Circuit Court for Montgomery County, no one participating in any of the Student's IEP meetings or receiving copies of the resulting IEPs, including MCPS personnel, [School 1] personnel the Student's aunt, and her CWS social workers, objected to the contents of the IEPs.²¹

DISCUSSION

Contentions of the Parties

²¹ Ms. XXXX did not dispute that the January 13, 2014 IEP was sent to CWS, but testified that she never saw it. She did not know whether the prior CWS social worker assigned to the Student received the IEP.

The Parent-Surrogate raised the following issues, which are set forth in the July 23, 2104 Prehearing Conference Report and Order:

1. Whether, as evidenced by the Student's scores on standardized tests MCPS administered in 2013, and on the tests administered by Dr. XXXX, the Student's January 13, 2014 IEP failed to provide the Student a FAPE in three ways:
 - a. Overstating the Student's level of achievement in reading comprehension, math problem- solving, and written language.
 - b. Failing to give the Student a vocational assessment and transitional services regarding job training, and money management, social skills and hands-on work experience; and
 - c. Placing the Student on the diploma track rather than certificate of attendance track.
2. Whether MCPS wrongly required the Student to graduate in June 2014, contrary to the terms of the January 13, 2014 IEP and the Student's needs.²²

The Parent-Surrogate requested the following remedies: a vocational assessment to determine the Student's need for transitional services; and maintaining the Student in the MCPS system through her 21st birthday.

The Parent-Surrogate did not allege in her Due Process Complaint that MCPS failed to give timely notice of, or an exit meeting regarding the Student's anticipated June 2014 graduation, or that these omissions violated the procedural regulations implementing the IDEA. Moreover, despite my insistence at the Prehearing Conference that the Parent-Surrogate identify all the issues and the precise bases for each, the Parent-Surrogate did not request that I include these matters as issues in the PCR.

²² I have paraphrased the issues identified in the PCR but they are substantively the same.

I will, nevertheless, address the Parent-Surrogate's notice and exit meeting claims, even though she failed to specifically include them as a basis for her claim that MCPS wrongly issued the Student's June 2014 diploma.²³

MCPS contends that each of the above issues is moot as a matter of law, because the Student graduated and was awarded her diploma before the Parent-Surrogate filed the Due Process Complaint. MCPS also contends that the Student's IEP did not overstate her academic progress, did not fail to provide appropriate transitional services, or wrongly fail to conduct a vocational assessment. MCPS also contends it gave timely notice of the Student's anticipated June 2014 graduation; the absence of notice would not have harmed the Student; the Student deserved to be on the diploma track; and the Student properly earned her diploma in June 2014.

Many of these issues are interrelated. Considered together, they reveal that the fundamental underlying dispute in this case is whether the Student earned her diploma in 2014. The Parent-Surrogate alleged she did not, relying principally upon MCPS' 2013 test scores and the testimony of Dr. XXXX, who reviewed those scores and conducted her own standardized achievement and IQ tests of the Student after MCPS issued her a diploma. Dr. XXXX testified that her test results were generally consistent with those obtained by MCPS in 2013. According to these results, she claimed, the IEP grossly overstated the Student's level of achievement and suggested that [School 1] staff falsely awarded the Student credit for one of her required subjects (English 11) and cheated or allowed the Student to cheat in the completion of her XXXX Projects. Further, based on the Student's 2013 and 2104 test results, the Parent-Surrogate argued that the Student lacked the intellectual (or cognitive) ability to earn a diploma from MCPS.

²³ The Parent-Surrogate did not allege or offer evidence that MCPS failed to give the Student's aunt, formerly the Student's Legal Guardian, timely notice.

Because the diploma-related issue drives much of the outcome in this case, I will address that claim first.

The Governing Law

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent-Surrogate has the burden of proving, by a preponderance of the evidence, the allegations made against MCPS. Md. Code Ann., State Gov't § 10-217 (2009). To prove her case by a preponderance of the evidence, the Parent-Surrogate must show that it is more likely than not that MCPS failed to provide the Student a FAPE. Merely asking questions and raising doubts does not constitute proof.

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1487 (2010), 34 C.F.R. Part 300, as supplemented by Maryland's Education Article, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2008), and by COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412. Courts have defined the word "appropriate" to mean personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. 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 appropriate educational benefit. *See In Re Conklin*, 946 F.2d 306, 316 (4th Cir. 1991).

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

instruction. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).²⁴ In *Rowley*, the Supreme Court defined a 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.

Rowley, 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 a 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 benefits. *Rowley*, 458 U.S. at 206-207. See also, *A.B. ex rel. D.B. v. Lawson*, 354 F. 3d 315, 319 (4th Cir. 2004).

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “the best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. at 176. Instead, a FAPE entitles a Student to an IEP that is *reasonably calculated* to enable that Student to receive educational benefit.

²⁴ The Parent-Surrogate never used the phrase “reasonably calculated to provide educational benefit,” but the clear thrust of her Due Process Complaint is that MCPS failed to do so.

Analysis

1. The Student completed high school and earned the diploma issued by MCPS.

Pursuant to 34 C.F.R. § 300.102 (a)(3)(i) and (ii), the obligation to provide a FAPE terminates when a student with a disability graduates and has been awarded a regular high school diploma. MCPS argued that the Student did graduate and her diploma was awarded. As a result, MCPS claimed, the Student is no longer entitled to a FAPE. The Parent-Surrogate's claim is moot.

The Parent-Surrogate did not fully address this part of the MCPS's contention. Even if she had, however, it is clear that MCPS and the Student did meet the regulation's terms. The Student did graduate and MCPS did award the diploma before the Circuit Court for Montgomery County intervened and before the Parent-Surrogate invoked stay-put.

The issue of whether a student with a disability will receive a high school diploma or a certificate of program completion when she graduates from school is not addressed in the IDEA. State law determines diploma and graduation requirements. If a student with a disability meets all state and local school district requirements for the award of a high school diploma, she cannot be denied a diploma simply because she has a disability. The IDEA does not make achievement of a disabled student's IEP goals a prerequisite for awarding her a high school diploma.

During the first week of June 2014, MCPS recognized that the Student had obtained all the credits, courses, and service hours required for graduation, and that she passed each of her required XXXX Projects. Sometime before June 19, 2014, MCPS issued the Student's high school diploma. The diploma was signed by both the Montgomery County Superintendent of Schools and by the President of the County's Board of Education. The text of the diploma provides:

This is to certify that [the Student] has completed in a satisfactory manner at the [School 5] a program of studies, in accordance with the requirements of the State Board of Education for graduation from an approved high school, *and is therefore awarded this diploma.*

(MCPS Ex. 25) (emphasis added).

Noting that the diploma was issued by [School 5], rather than by [School 1], the Parent-Surrogate seemed to contend that this was somehow improper and rendered the diploma invalid. Any such contention is not correct. However, MCPS' witnesses made clear that [School 1] is not empowered to issue diplomas; pursuant to its relationship with MCPS, [School 1] merely certifies a student's course work, credits and service hours to MCPS. The diploma is then issued in the name of the student's home district school, even though the student attended [School 1]. The Student's home district school was [School 5].

The Parent-Surrogate did not claim that the issuance of the diploma was in any other way procedurally irregular. In fact, issuance of the diploma fully complied with county and State requirements, as attested by the terms of the diploma itself.

At the hearing, some attention was paid to the fact that the Student did not actually attend her graduation ceremony, held on June 20, 2014. That is true, but not for lack of trying. The Student desperately wished to attend. Indeed, the Student was quite adamant at the hearing that she does not support the Parent-Surrogate's claims. As the student testified:

I really need my diploma... 'Cause I need a future. I have a future.
I want a future. I have things to do out in the real world...

(Transcript, at 104); hereafter (Tr., at ____).

She did not attend the graduation ceremony only because Judge Callahan appointed the Parent-Surrogate on June 19, 2014, who filed the Due Process Complaint the same day, simultaneously invoking "stay put." 34 C.F.R. 300.518 (a).

While the Student did not attend the graduation ceremony, MCPS did find that she met all graduation requirements and did issue her a diploma before the Circuit Court's rulings. The Parent-Surrogate did not point to any State or county requirement that one must attend a graduation ceremony to graduate or must physically obtain the diploma before qualifying as having graduated. I am not aware of any such requirement.²⁵ Absent an express requirement to that effect, I find that the Student did graduate and MCPS did issue her a diploma. To find otherwise would mean that every student, regardless of circumstances or reasons for absence, must literally attend the graduation ceremony to "graduate." That would be an unreasonable requirement. *See Gorski, et al. v. Lynchburg School Board* 1988 U.S. Dist. LEXIS 18210, *11-12(W.D.VA., Lynchburg Div.) *aff'd*, 875 F. 2d 315 (4th Cir. 1989) (despite parents' removal of child from graduation list, under state law those students who fulfilled all graduation requirements had to have graduated). *See also Russell A. Muth, Jr. v. Donald M. Carroll, et al.*, 1990 U.S. Dist. LEXIS 8152, *30-31 (E.D. Pa. 1990) (same) (*dicta*).

2. The Student's diploma, her course credits, and her XXXX Projects were honestly achieved and awarded.

- a. Absent the award of a sham diploma, further claims concerning the failure to provide a FAPE are moot.

In *Moseley v. Board of Education of Albuquerque Public Schools*, 483 F.3d 689 (10th Cir. 2007), the court considered the case of a Student who filed a due process complaint after graduation. The Student did not contest his graduation, but sought additional services. Citing *Board of Education v. Nathan R.*, 199 F.3d 377, 381 (7th Cir. 2000), the court held that a school district satisfies its obligation to provide a FAPE when the Student graduates, and that thereafter any due process claim that a FAPE was deficient becomes moot. *Moseley*, 483 F.3d at 693.

²⁵ The standards for a Maryland high school diploma are established by the Maryland State Board of Education. They are set forth in COMAR 13A.03.02.

In *T.S. v. Independent School District No. 54*, 265 F.3d 1090 (10th Cir. 2001), *cert denied*, 535 U.S. 927 (2002), that court also found that upon graduation, a school district's obligation to a student ceased. It held that, as a general matter, graduation renders a due process complaint moot, regardless of post IDEA volitions. *Id.* at 1092. Once a student has graduated with a regular high school diploma, she is no longer entitled to FAPE. 34 C.F.R. 300.102 (a)(3)(i). Thus, any claim that a FAPE was deficient becomes moot upon a valid graduation.

The *T.S.* court found that, to avoid mootness, a student would need to claim and prove that his or her graduation was not improper:

Once a student has graduated, he is no longer entitled to a FAPE; thus any claim that a FAPE was deficient becomes moot upon a valid graduation.

T.S., 265 F. 3d at 1092. In other words, absent proof that the award of the diploma was a “sham” and that the student was the beneficiary of a “social promotion,” the graduation ends the case.

b. The Student's graduation and diploma were not shams.

Relying principally upon the Student's 2013 standardized IQ and achievement test scores and the testimony of Dr. XXXX, the Parent-Surrogate asserted that the Student lacked the cognitive and academic skills necessary to complete the requirements for a diploma. According to the Parent-Surrogate, the Student did not earn her diploma; she was the beneficiary of a social promotion intentionally carried out by [School 1].²⁶

²⁶ The Parent-Surrogate offered no evidence as to why [School 1] would intentionally promote the Student, especially as that cost [School 1] additional tuition.

For the reasons stated below, I find that that Parent-Surrogate failed to satisfy her burden of proof with respect to this claim.²⁷

- i. The Parent-Surrogate failed to prove by a preponderance of the evidence that the Student did not complete the course work and credit requirements needed to graduate.*

The Parent-Surrogate called the Student as her first witness. Upon questioning, the Student was able to identify the value of a quarter and subtract \$.50 from \$1.00. She was not able to calculate 10% of \$.50; and could not define certain words she used in her XXXX Projects.

Dr. XXXX testified with respect to the Student's achievement scores, both generally and as reported in her January 13, 2014 IEP. In 2013 and 2014, the Student was completing certain 11th and 12th grade classes. According to the Student's January 13, 2014 IEP, the Student achieved at a 7th to 8th grade level in reading, writing and math. The IEP established achieving at grade level in these subjects as the Student's primary goal.²⁸

Relying on the achievement test scores obtained in March and November 2013, by Ms. XXXX and Ms. XXXX, Dr. XXXX testified that the Student in fact had a grade level equivalent of (approximately) 7th grade in reading; 5th grade in Math and 3rd grade in writing.

²⁷ As stated in the Findings of Fact, Dr. XXXX administered IQ and achievement tests to the Student in July 2014. I admitted the test results as exhibits. However, because these test results were never shared with the Student's IEP team prior to issuance of her diploma, I limited the Parent-Surrogate's reliance on these scores, and Dr. XXXX's testimony with respect to them. Because the Student's IEP and assessments could only be based on information that either was or should have been available to MCPS, I permitted the admission of Dr. XXXX's test results and testimony only to the extent relevant to what MCPS knew or should have known when evaluating the Student's abilities and achievements when formulating her IEP. Dr. XXXX testified that the Student's IQ and achievement test results were generally consistent with those obtained by MCPS in 2013, and that MCPS' 2013 results supported Dr. XXXX's conclusions. That testimony rendered the need to rely on Dr. XXXX's 2014 results unnecessary.

²⁸ Dr. XXXX testified that it was inappropriate to give the Student this goal given her intellectual ability. Dr. XXXX was unaware that IEP teams typically use grade level achievement as a goal, although students do not always achieve that goal.

According to Dr. XXXX, an intellectually disabled person evidencing the latter grade level equivalents lacked the ability to meet MCPS academic requirements for graduation.

Dr. XXXX also testified that the Student should have been recognized and coded as intellectually disabled. She explained that, pursuant to the test results on the IQ test Ms. XXXX administered in March 2013, the Student's IQ indicated she might qualify as intellectually disabled under IDEA.²⁹

There are a myriad of problems with the Parent-Surrogate's contention. I am not in any way concerned that, at the hearing, the Student was unable to compute a single percentage, define words used in her Biology XXXX Projects, or describe the Projects in detail. I do not find it indicative of or even suggestive of intellectual disability. As numerous witnesses testified, the Student is easily frustrated, medicated to control her emotional and behavioral problems, and easily distracted. These witnesses testified, *without contradiction*, that the Student's emotional problems interfered with the Student's learning and test taking. Given the Student's emotional disability, her extreme upset at having not received her diploma issued to her, and the natural nervousness that accompanies witnesses in court, it is not at all surprising, or indicative of academic failure, that the Student could not answer some of the test questions asked of her during her testimony.

(a) IQ Testing

I also find Dr. XXXX's testimony that the Student was intellectually disabled unpersuasive. The parties spent an inordinate amount of time debating whether the Student should have been coded with an Intellectual Disability in addition to her existing Emotional

²⁹ To confirm that the Student had an intellectual disability, Dr. XXXX administered the Vineland, and testified that, due to the Student's IQ test results obtained by Ms. XXXX, MCPS should itself have administered the Vineland. For reasons later stated in this decision, I did not rely on the results of the Vineland administered by Dr. XXXX, but I did consider whether MCPS should have administered the test itself and what, if any, impact the Student's possible Intellectual Disability had on the case outcome.

Disability Code. In addition to an IQ assessment, a central element justifying the Intellectual Disability code is an assessment of a student's adaptive abilities, which measure the student's personal and social sufficiency. The Vineland is used for this purpose, assessing the Student's adaptive functioning in three areas related to her ability to care for herself, live independently, and work. (S.Ex. 1.)

According to Dr. XXXX, based on the Student's IQ scores, MCPS should have performed its own Vineland on the Student's behalf. Had MCPS done so, the Vineland would have confirmed that the Student was intellectually disabled and should have been so coded. It also would have revealed that the Student had low adaptive functioning, required a vocational assessment and, as part of her transitional services, life skills training.³⁰

I disagree with Dr. XXXX's assertions. The Student has never been found intellectually disabled throughout her educational career. The staff at XXXX did not diagnose her as intellectually disabled, and in fact believed she should be given the Emotional Disability code. Ms. XXXX, a highly-credentialed MCPS school psychologist unaffiliated with MCPS, believed the Student's low scores were attributed to the Student's emotional disability, precluding her from accessing her education - - not an intellectual disability.

In addition, pursuant to MCPS policy, before finding a student intellectually disabled, all other possible causative factors are to be *ruled out*, including emotional issues and trauma. (MCPS Ex. 46, at pp. 23-28.) There is no dispute that the Student experienced grave emotional trauma at a very young age and did not begin to verbalize the trauma or come to grips with it until in therapy with Ms. XXXX in 2014.

³⁰ I limited the relevance of Dr. XXXX's testimony to establishing whether, based on what MCPS knew at the time, it should have administered its own Vineland. I have not considered the results obtained by Dr. XXXX.

As stated by the Fourth Circuit in *MM v. School District of Greenville County.*, 303 F. 3d 523 (4th Cir. 2002):

We have always been, and we should continue to be, reluctant to second-guess professional educators.

The courts should, to the extent possible, defer to the considered rulings of administrative officers, *who also must give appropriate deference to the decisions of professional educators.*

303 F. 3d at 532-33 (emphasis added). *See also TICE v. Botetourt County School Board*, 908 F. 2d 1200, 1207 (4th Cir. 1990)(*same*).

I will defer to the judgments of Ms. XXXX, Ms. XXXX, and the many MCPS educators who crafted the Student's IEPs based on an emotional disability, never finding the Student intellectually disabled.

Dr. XXXX's testimony did not cause me to give up that deference. First, Dr. XXXX was not aware of the MCPS policies concerning coding those with emotional trauma as intellectually disabled. Second, unlike Ms. XXXX, members of the IEP Team, and the teachers at [School 1], Dr. XXXX is neither a special educator nor a school psychologist. Third, Dr. XXXX had no plausible answer when asked why no one in the Student's past had found her intellectually disabled. According to Dr. XXXX, "well, my argument is that MCPS should not have missed it. [MCPS] had the data." (Tr., at 443.) Dr. XXXX did not address the fact that XXXX staff did not find the Student intellectually disabled. The DSM-IV includes intellectual disability as a diagnosis.³¹ That is the definition Dr. XXXX used. Assuming XXXX was doing its job, it would have diagnosed the Student with intellectual disability had it found that to be the case.

³¹ Diagnostic and Statistical Manual of Mental Disorders, 4th Edition

Fourth, I reject Dr. XXXX's Vineland results, not only because they had not been shared with MCPS before they IEP was drawn, but also because Dr. XXXX failed to observe test protocol in administering the test. It is fundamental to the reliability of the test results that the respondent (s) to the Vineland questionnaire be carefully selected.

(MCPS Ex. 46, at 9.) As the instructions state:

“The respondent must be the adult who is most familiar with the everyday behavior of the individual being evaluated. In general, the respondent should have frequent contact with the individual preferably every day over a period of time...

If the child... lives in residential facility, then the respondent should be the caregiver who best knows the child. Such a respondent might be a house parent, unit aide, social worker, nurse, day-care worker, or recreation workers.

(MCPS Ex. 46, at 000009.)

In addition, the Vineland provides a form teacher questionnaire and states, [t]he [Vineland] scales assess personal and social sufficiency of individuals 3 through 21 years old based on the report of the student's teacher. (MCPS Ex. 4, at 000010.)

Ms. XXXX, who answered the Vineland questionnaire, did not meet any of these criteria. She met with the Student for approximately one-half hour every month, and sometimes transported the Student to appointments. Ms. XXXX, who met with the Student twice per week, as well as many of the Student's teachers, would have been far more appropriate respondents.

Yet Dr. XXXX rejected anyone from [School 1] as a respondent, whether teacher or social worker, and regardless of familiarity. She testified that she felt that anyone from [School 1] might be biased in framing responses because their work was the subject

of the Due Process Complaint. Dr. XXXX instead asked Ms. XXXX if she knew the Student well enough to respond to the questionnaire. When Ms. XXXX answered in the affirmative, Dr. XXXX chose her as the respondent, without any independent verification of the extent of Ms. XXXX's knowledge.

Dr. XXXX did not recognize that Ms. XXXX might also have a bias, as she was answerable to the Court and believed that the Student was intellectually disabled before being asked to fill out the questionnaire.

For all the above reasons, I reject the Parent-Surrogate's claim that the Student should have been identified as intellectually disabled, should have been given the Vineland, and based on the results of that Vineland, should have received a vocational assessment and job and life-skills training as part of her transitional services.

In like measure, I find unpersuasive Dr. XXXX's testimony that the January 13, 2014 IEP significantly overstated the Student's different grade level equivalents in her academic subject areas.

Ms. XXXX evaluated the Student and gave her an achievement test. Ms. XXXX stated that the Student had failed to move smoothly from grade to grade due to her social/emotional issues. Ms. XXXX questioned whether the Student's results on the achievement test were an accurate reflection of her true levels of achievement, because of the emotional difficulties the Student faced during the prior three years. (S. Ex. 20.)

Based upon the evidence presented, Dr. XXXX's reliance on MCPS' 2013 achievement test scores as indicative of the Student's true achievement levels is misplaced. The Student did not receive any of her identified academic supports and accommodations when taking the achievement tests. In contrast, as Ms. XXXX testified and as made clear by the IEP, the reported

achievement levels in the IEP reflect both the Student's test scores *and* her teachers' classroom-based assessments. They, in turn, are based on the Student's performance with academic accommodations and supports. (*See* MCPS Ex. 21). Because the achievement levels listed in the IEP reflect the Student's work with accommodations, it stands to reason that those achievement levels are higher than those established by the Student's test results without accommodations or support. Dr. XXXX did not consider the classroom-based assessments in determining the Student's correct achievement levels.

Dr. XXXX testified that as a result of the IEP Team's alleged overstatement of the achievement levels "the goals and the rest of the IEP is structured" on a false premise. (Tr., at 332). Dr. XXXX knew of the requirement that the IEP Team is to take classroom performance into account. She nevertheless failed to mention classroom assessments in her written evaluation or in her direct testimony, and failed to take them into account in drawing her conclusions on the matter.³²

A far more fundamental problem with Dr. XXXX's conclusion is her failure to establish any link between the Student's achievement levels and the requirements to pass particular MCPS high school courses. Whether achieving at the 3rd, 7th or 8th grade level, the Student in fact passed 9th and 10th grade classes before she came to [School 1]. (One of the Parent-Surrogate's own documents is an April 2, 2011 report from the Student's geometry class reporting that the Student was on grade level. (S. Ex. 34)). The Parent-Surrogate did not allege that these grades, awarded by MCPS teachers, were fabricated or incorrect. She did not call the teachers who awarded these grades to investigate why they did so.

³² Due to this omission, which concerns a critical component of the Parent-Surrogate's claim, and due to other indications from Dr. XXXX's testimony, I am not impressed by her conclusions as to the Student's abilities and achievement generally. My concerns are further explained below.

During the 2012-13 school year, while at [School 4] (and while hospitalized at XXXX), the Student passed English 10A, Modern World History, XXXX to Algebra A and XXXX to Algebra B. Again, the Parent-Surrogate did not challenge these passing grades; nor did she examine the teachers who awarded them. The teachers had no association with [School 1] and no apparent reason to give the Student undeserved credit.

This evidence, without more, demonstrates that there is no necessary link between a student's IQ and achievement levels and his or her satisfaction of the curricular and credit requirements for graduation. Students are often graded on matters other than test and homework scores.³³ They are graded on attendance, classroom participation, and effort. In addition, students in any particular grade exhibit a wide range of ability and accomplishment. Some do poorly despite high intelligence, while others do well by dint of effort. The Parent-Surrogate failed to call any teacher from any of the Student's schools to explore the criteria for passing in their courses and how the Student satisfied those criteria.

The Parent-Surrogate did question how the Student could have completed her English 11A class during her first four months at [School 1], when it appears that the Student had not even taken the class the prior year and had received no credit for it.³⁴ The Parent-Surrogate pointed out that on the prior year's transcript there was neither a grade nor credit with respect to the Student's English 11A class, whereas that transcript indicated a grade and credit awarded or denied for other classes taken by the Student. From this, the Parent-Surrogate inferred that the Student did not take English 11A the prior year, and on that basis questioned how the Student could have completed and passed a full semester course in less than a semester at [School 1].

³³ Dr. XXXX testified that intellectually disabled students can obtain diplomas.

³⁴ The [School 1] transcripts identify the course merely as English. (MCPS Ex. 24.)

This, she contended, was proof that an indication [School 1] pushed the Student through, regardless of performance, in its effort to socially promote her.

Here, again, the Parent-Surrogate failed to prove her point. First, as Ms. XXXX testified, it could well be that the Student took English 11A the prior year, but did not complete the course at that time, thus resulting in no grade and no award or denial of credit, but nevertheless completing some of the work required to ultimately pass the course. Second, the Parent-Surrogate did not call either the [School 1] teacher or the prior year's teacher to explain the circumstances at issue. As previously stated, doubts and concerns are not evidence.

Third, the evidence regarding the Student's other grades at [School 1] do not support the claim of a false grade in English 11A. If [School 1] were intent on passing the Student through to graduation regardless of her actual performance, it is unlikely that [School 1]'s teachers would fail the Student and award no credits in particular classes. Yet, a [School 1] teacher did just that, failing the Student in Modern World History (*See* MCPS Ex. 24).

Based upon the evidence presented, there is no necessary correlation between the Student's unsupported standardized, IQ and achievement test results on her achievement levels, when her classroom performance, with accommodations, is taken into account.³⁵

³⁵ I note that Dr. XXXX never observed the Student in class or interviewed her teachers. Moreover, with regard to the Student's standardized IQ and achievement test results, I am persuaded by the testimony of Ms. XXXX and the report of Ms. XXXX that, considered in a vacuum, the results likely are not a true indication of the Student's IQ or achievement levels. IQ and achievement test results are affected by a subject's state of mind and general condition at the time the test is administered. As to the Student's achievement test results, Ms. XXXX wrote in her March 1, 2013 report that "[t] here is some question as to whether or not [the Student's] test performance can be considered to be an accurate reflection of her achievement. [She] had had a number of significant changes... in her life over the last three years which may have had an impact on her achievement scores." (S. Ex. 20). Ms. XXXX reported much the same as to the potential unreliability of the Student's IQ scores in her March 1, 2013 report. (S. Ex. 21). She testified at the hearing as to her conclusion that the Student's results on the IQ tests administered by MCPS were not indicative of intellectual disability. Among other things, she pointed out that some of the Student's scores were higher than the range for intellectual disability, and that the overall scores were likely the result of emotional trauma. Ms. XXXX and Ms. XXXX have no relationship to [School 1] and wrote their reports long before the dispute in this case arose. They had no reason to fabricate these conclusions.

The Parent-Surrogate bears the burden to demonstrate that the Student failed to satisfy the curricular and credit requirements for graduation. For all the above reasons, I find that she failed to meet that burden. I find that the Student fairly and honestly amassed the courses and credits to graduate.³⁶

- ii. *The Parent-Surrogate failed to prove that [School 1] staff or the Student cheated in the successful completion of the Student's Biology XXXX Projects.*

The Student twice failed to pass her English, Algebra and Biology HSAs. As a result, she was required to successfully complete XXXX Projects in each of those areas to be eligible to graduate. The number of projects per subject was based on the Student's HSA scores in that subject; for every 21 points below a passing score, the Student was required to complete a project. Based on the Student's scores, she was required to complete one project in English, one project in Algebra, and two projects in Biology.

The requirements for XXXX Projects are set forth in COMAR XXXX, which states:

[COMAR]

Students are required to independently complete their XXXX Projects. Each student undertaking a XXXX Project is assigned a monitor with knowledge of the particular subject matter involved. The monitor and the student establish a timeline within which the project is to be completed. They also agree upon checkpoints along the way, during which the monitor and the student meet about the student's progress. Once the student completes the project, the school forwards it for grading to the MCPS XXXX Plan for Validation unit, administered by Mr. XXXX. The unit consists of review panels composed of teachers with expertise in each of

³⁶ MCPS called Mr. XXXX, one of the Student's teachers at [School 1], to testify. Mr. XXXX taught the Student. He testified that the Student passed his course. He also testified that he did not believe the Student was intellectually disabled.

the academic disciplines. The panels review each submission and recommend passage or failure.³⁷ The MCPS Superintendent reviews those recommendations and finalizes the grades.

The Parent-Surrogate elicited testimony from the Student that she could not recall her XXXX Project essays with any particularity, and did not know the meaning of certain words in the essays, including “crustacean” and “abiotic.” The Student also testified that she obtained help on one of the Biology projects from another student. She initially testified that the other student “really helped me;” she then stated “I got help with a little bit of it.” (Tr., at 84-85.)

The Parent-Surrogate then elicited Dr. XXXX’s testimony as to her conclusions regarding the Student’s ability to complete the Biology projects. Dr. XXXX testified that she reviewed the Student’s biology essays and opined that “[t]he skills demonstrated on these essays are not consistent with prior MCPS testing of her written language skills, her cognitive skills, her vocabulary.” (Tr., at 353). However, when asked directly if the Student cheated, Dr. XXXX could only opine that “I have concerns that [the Student] wrote these [essays] independently or with accommodations.” (Tr., at 355.) Similarly, when asked her opinion as to whether [School 1] cheated, Dr. XXXX opined “I don’t know. I don’t know whether they cheated.” (Tr., at 373).

In other words, despite her misgivings about the Student’s ability, Dr. XXXX could not give a definitive opinion as to whether the Student or [School 1] cheated on the essays. If there was no cheating, the Biology Projects represented the Student’s work. The absence of a definitive opinion, from Dr. XXXX, without more, defeats the Parent-Surrogate’s claim. Here again, concerns and doubts do not rise above the level of speculation; speculation is not evidence. If the Parent-Surrogate’s own expert, armed with all the test results and testimony, is unable to opine definitively that the Student or [School 1] cheated, I am unwilling to independently draw such a conclusion.³⁸

³⁷ No one on the Student’s review panel was affiliated with [School 1].

There are other reasons to discount Dr. XXXX's concerns and the Parent-Surrogate's fabrication claim in general. First, and most basically, the Parent-Surrogate did not call the Student's monitor to ask what role the monitor played and what, if anything, led the monitor to believe the Student completed the projects. Second, to the extent that the Parent-Surrogate believed the Student copied the material, the Parent-Surrogate did not request or produce the source materials from which the Student was to have conducted her research to check for copying. The Parent-Surrogate asked Mr. XXXX if he or the review team ran the Student's essays through a plagiarism software program. They did not. However, the Parent-Surrogate had an equal opportunity to do so, yet produced no evidence that she had done so, despite having the burden of proof on the issue.

Third, Dr. XXXX was apparently unaware that MCPS does not consider the assignment and completion of XXXX Projects to be a test. Unlike traditional tests, monitors are supposed to review a student's product at each of the checkpoints, and in the event of errors, teach and re-teach the relevant subject matter until the Student masters it or time expires. As Ms. XXXX testified:

When MSDE developed these projects, they suggested that students be monitored regularly while they... were working on completing the projects and that they check in with their monitor from time to time so that the work could be reviewed, that students could be re-taught skills if necessary if they weren't... doing the tests correctly.

The XXXX Plan for Validation is called an academic intervention... [T]he guidelines that MSDE puts out emphasize that students can be taught and re-taught skills they need to have in order to complete the project tasks successfully.

³⁸ I have already explained why I find the Student's testimonial responses to test questions indicative of nothing. Further, Mr. XXXX testified that the fact that another student may have helped the Student, without more, does not constitute cheating. It may be that the other student merely explained concepts, as would the monitor. As stated below, that is allowed. I also am not persuaded of cheating based on the Student's testimony that she could not remember the meaning of a few words used or describe the project in detail. Students often "study to the test;" only to forget the material as soon as the test, or assignment, is concluded. Moreover, as previously stated, the Student is easily shaken and might very well have let her emotions affect her memory and testimony before me.

(Tr., at 1033-34.)

Dr. XXXX also failed to indicate in her testimony an awareness that the XXXX Projects are given and completed with accommodations. While not entirely clear from her testimony, she seemed to believe that accommodations render the projects invalid.

(Tr., at 355.)

For each of the above reasons, I find that the Parent-Surrogate failed to prove that the Student did not honestly, independently and successfully complete her Biology and XXXX Project.

3. MCPS' award of the diploma was valid, rendering any concerns about FAPE moot.

To qualify for a diploma and graduate, the Student needed to pass her required courses, amass the necessary service hours, and having twice failed the HSAs, successfully complete XXXX Projects in English, Algebra and Biology. The Parent-Surrogate disputed the MCPS' claim that the Student met these criteria, but as found above, failed to sustain her burden of proof. As a result, the Parent-Surrogate's claims are moot and any concerns about the Student's IEP and FAPE are not before me. *T.S.*, 265 F.3d at 1092; *Gorski*, 1988 U.S. Dist. LEXIS 18210, *9-11.

Even if the Parent-Surrogate's claims were not moot, however, they nevertheless lack individual merit.³⁹ For the sake of clarity, I will take the claims out of order.

4. MCPS did not wrongly require the Student to graduate in June 2014, contrary to the terms of the January 13, 2014 IEP and the Student's needs.

The January 13, 2014 IEP projected the Student's graduation to occur in June 2015, and was never formally amended to reflect an anticipated June 2014 graduation.

³⁹Based upon the discussion on mootness, it is clear that that Parent's first claim - - that MCPS denied the Student a FAPE by overstating her academic progress/level of achievement in her January 13, 2014 IEP - - has no merit and is denied.

The Parent-Surrogate alleges that the failure to amend the IEP constituted a lack of required notice pursuant to the IDEA implementing regulations. According to the Parent-Surrogate, Ms. XXXX did not know of the June 2014 graduation until early June. The Parent-Surrogate also claims that [School 1] failed to hold an exit meeting before issuing the Student's diploma, a second violation of the implementing regulations.

If the Parent-Surrogate were correct, these would constitute procedural violations of the IDEA. To be actionable, procedural violations must result in a loss of substantive benefits, and be linked to substantive relief. *T.S.*, 265 F.3d at 1092-93.

The IDEA does not require an exit meeting. That aspect of the Parent-Surrogate's claim is without merit on its face.

The alleged lack of written notice is of somewhat greater concern. However, even though [School 1] did not amend the January 13, 2014 IEP to change the expected date of the Student's graduation, I find that [School 1] gave written notice by alternative means and that, regardless of the nature and timing of the notice given, the Parent-Surrogate's claim must fail.

A change in the graduation date constitutes a change in placement. Pursuant to 34 C.F.R. § 330.503 (a), a change in placement requires written notice to the parents in a reasonable time before the proposed change is implemented. The written notice is to contain, among other things, a description of the proposed action, an explanation of the reason for the proposed change, the evaluations, assessments, records or reports upon which the educational institution relies, and a statement of the procedural safeguards available to the parents if they disagree with the proposed change. *See* 34 C.F.R. 300.503 (b)(1)- (7) for the full notice requirements.

Before reaching the merits of the notice issue, it is important to understand the purpose behind the requirements. The clear purpose is to “ensure parents are appropriately informed to protect the rights of their child.” 64 Fed. Reg. 12, 556 (1999).

While [School 1] did not amend the IEP itself, the implementing regulations do not require the notice to be contained in the IEP. Any written notice will do, as long as it complies with the timeliness and content requirements.

Ms. XXXX testified that the change in graduation date was discussed at numerous ITP meetings from approximately the end of March 2014 forward, some of which Ms. XXXX attended. In addition, Ms. XXXX testified that the date change was included in ITP reports sent to Ms. XXXX and to the Student’s aunt following those meetings.

Ms. XXXX, on the other hand, denied receiving any notice of the proposed change until Ms. XXXX informed her by telephone in early June 2014.

I believe Ms. XXXX.⁴⁰ I can fathom no reason for Ms. XXXX or [School 1] to conceal the date change. The Parent-Surrogate did not establish (or attempt to establish) any reason why [School 1] would keep the date secret. Certainly, MCPS knew of the change in the graduation date as of March 31, 2014. Moreover, because the Student knew of the anticipated change in her graduation date, because she met with Ms. XXXX at least once per month, and because the Student was very excited about the prospect of graduation, [School 1] had every reason to believe the Student would herself tell Ms. XXXX of the change.⁴¹

As important as a matter of proof, the Parent-Surrogate did not call the Student’s aunt as a witness. Through the aunt’s testimony the Parent-Surrogate could have tested

⁴⁰ Neither party produced the ITP documents, but MCPS produced the letters of enclosure sent to Ms. XXXX and the aunt to which the ITP reports were attached. They are in [School 1]’s clinic file. (MCPS Ex. 11.)

⁴¹ I also note that Ms. XXXX’s responsibilities did not include academic oversight.

Ms. XXXX's claims with respect to content of both the ITP meetings and ITP reports. Her failure to do so, combined with the other reasons stated above, convinces me that Ms. XXXX received timely written notice.⁴²

However, even assuming the projected date was communicated long before June 2014, it certainly would not have contained all the information required by the regulations. As a result, I find that MCPS did commit a procedural violation. I nevertheless find that this violation did not cause any substantive harm to the Student and is not linked to any substantive relief.

The Parent-Surrogate claims that, had proper notice been given, the Student would have remained in school at least through 2015. Thus, she claims, the failure to give proper notice resulted in the loss of a year's education. I disagree. The Parent-Surrogate offered no proof that would have been the outcome. Based on all of the evidence presented, I find that, had timely written notice meeting all the requirements been given, the result would have been the same as that following the appointment of the Parent-Surrogate. [School 1] would have taken the position that the Student qualified for graduation in 2014. If CWS (or the Court) disagreed, one or the other would ultimately seek the appointment of an educational guardian or surrogate. Failing an agreement with

⁴² It is not at all clear that CWS was entitled to notice of the anticipated change in dates. 34C.F.R. § 300. 503 requires that notice be sent to the Student's Parent. "Parent" is defined to include biological, adoptive and foster parents, guardians, custodial relatives and appointed parent-surrogates. 20 U.S.C. § 1401 (23). It does not include public agencies responsible for students who are wards of the State. Here, because the Student was a ward of the State, CWS was not a Parent. Conversely, the Student's aunt likely did qualify as a Parent. She was the Student's legal guardian until the Student reached 18 years old. [School 1] and MCPS continued to treat the aunt as the Student's guardian thereafter. And, despite her domicile at [School 1], the Student had always had formal residence at her aunt's home. Thus, the aunt likely qualified as the Student's custodial relative, assuming the aunt was not the Student's Parent; and, assuming my analysis is correct, CWS did not meet the definition, and the Circuit Court did not appoint a guardian of any kind until June 19, 2014. If this analysis is correct, CWS was not entitled to any notice.

[School 1] and MCPS, the guardian or surrogate would have filed a due process complaint. That is precisely what happened here.

For the above reasons, I find that the procedural violation regarding notice is neither consequential nor actionable. The Parent-Surrogate failed to prove that, due to the lack of notice, the Student should not have graduated in 2014.

5. MCPS did not deny the Student a FAPE by placing her on the diploma track, rather than the certificate of attendance track.⁴³

The Certificate of Program Completion has several eligibility requirements. COMAR 13A.03.02.09D(1)(a)(i) through (iv) and (b). The first of these is that the certificate is only available to those disability students “who cannot meet the requirements for a diploma.” COMAR 13A.03.02.09D(1.) As stated repeatedly in this Decision, the Parent-Surrogate failed to prove that the Student could not meet the requirements for a diploma.

Here, while Dr. XXXX opined that the Student could not satisfy the requirements for a diploma, she also testified she did not know what Maryland’s diploma requirements are.⁴⁴

Conversely, numerous IEP team members, from different schools, believed the Student should be on the diploma track. She was never placed on any other track, attesting to the MCPS’ consistent view that the Student could obtain a diploma.

As previously stated, absent compelling evidence to the contrary, I am to defer to the judgment of special educators. *M.M., supra*, 303 F. 3d at 532-33. I will defer to the multiple MCPS and [School 1] special educators, testers, and school psychologists who consistently placed the Student on the diploma track.

⁴³ I believe that the formal title of the certificate the Parent-Surrogate seeks is the Maryland High School Certificate of Program Completion (Certificate of Program Completion). COMAR 13A.03.02.091.)

⁴⁴ For this reason, I did not permit Dr. XXXX to express an opinion as to whether the Student should be on the Certificate of Program Completion track.

For each of the above reasons, I find that the Parent-Surrogate failed to prove that the Student should be on the Certificate of Program Completion track.

6. MCPS' failure to include a vocational assessment, as well as job and life skills training as part of the Student's transition plan, did not deny the Student a FAPE.⁴⁵

The Parent-Surrogate contended that the January 13, 2104 IEP should have, but did not provide the Student with a vocational assessment to determine reasonable and realistic career goals for the Student. The Parent-Surrogate contended that the Student's desire to become a pediatric nurse as her career goal was unrealistic, given the Student's overall IQ and achievement level. A vocational assessment should have been performed to determine realistic career goals.

The Parent-Surrogate also argued that the January 13, 2014 IEP should have contained job training, training in money management and social skills and hands-on work experience.

The transition requirements of the IDEA and State law are clear. The IDEA defines "transition services" as follows:

Transition services. The term "transition services" means a coordinated set of activities for a child with a disability that--
(A) is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and
(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and,

⁴⁵ I have combined the allegations regarding the inadequacy of transitional services and to need for a vocational assessment because the Parent-Surrogate indicated that a vocational assessment is needed to determine what career goals should have been included in the Student's transition plan. The issues are interrelated.

when appropriate, acquisition of daily living skills and functional vocational evaluation.

20 U.S.C.A. § 1401(34).

Federal regulations explain the requirements for transition services as follows:

Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that --

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes --

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

34 C.F.R. § 300.43.

The IDEA defines the required content of a child's IEP regarding transition:

Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter-

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; [and]
(bb) the transition services (including courses of study) needed to assist the child in reaching these goals....

20 U.S.C.A § 1414(d)(1)(A)(i)(VIII). *See also*, 34 C.F.R. § 300.320.

Section 21-305 of the Education Article of the Annotated Code of Maryland defines “transition services” as “a coordinated set of activities for a student with a disability who meets the definition of a transitioning student that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment, supported employment, adult services, independent living, and community participation.” Md. Code Ann., § 21-305(a)(3). The statute further requires DORS to “[d]evelop, in consultation with county boards, for each transitioning student who is determined eligible for rehabilitation services, an individualized plan for employment prior to graduation.” Md. Code Ann., Educ. § 21-305(b)(3). The Maryland regulations defining transition services and the IEP requirements regarding transition mirror the federal law. COMAR 13A.05.01.03B(80), 13A.05.01.09A(3).

The short answer to the Parent-Surrogate’s contention regarding the proposed addition of the Intellectual Disability code is that the failure to include the code makes no difference concerning the delivery of special education services, including transitional services. The various disability codes are merely a gateway to the provision of special education. Regardless of the code assigned, the school system is required to identify and meet all the educational needs of the student.

Dr. XXXX contended that, based on the results of the IQ and achievement tests, and of the Vineland, the Student should have been found intellectually disabled. If that occurred, the

Student's transition plan would have included a vocational assessment and job and life-skills training.⁴⁶

However, even if I found in the Parent-Surrogate's favor on these points, that would not change the outcome. [School 1] personnel acknowledge that the Student would always require mental health counseling and that she should be referred to DORS for an evaluation and assistance post-graduation. The January 13, 2014 IEP indicated, as "Anticipated Services for Transition," that the Student should be referred to both DORS and the Mental Hygiene Administration (MCPS Ex. 21, at 000018.) [School 1] did not itself make the referrals before the Student graduated. I have found no law requiring MCPS to make the referral itself. Even were MCPS so required, however, there is nothing prohibiting the Student, her aunt, her Parent-Surrogate, CWS or the Circuit Court from making these referrals. DORS will provide the Student with a vocational assessment and, if needed, the precise job and life-skills training the Parent-Surrogate has requested. In addition, the Circuit Court could itself order a vocational assessment of the Student, and follow-up services as necessary.⁴⁷

For all the above reasons, I find that the January 13, 2104 IEP did not deny the Student a FAPE by failing to include a vocational assessment and job and life-skills training to the Student.

⁴⁶ Mr. XXXX did submit a post-graduation assessment critical of the Student's vocational- and career-related behaviors. (MCPS Bd. Ex., 26, at 000008-9.)

⁴⁷ Pursuant to 34 C.F.R. 300.43 (a)(2), transitional services are to be based on a child's needs, taking into account the child's strengths, preferences and interests. The Student testified that her preference and interest was to be a XXXX. The IEP included this in the transition plan. Dr. XXXX testified that (considering the Student's strengths) a career as a XXXX is not an appropriate goal. This may or may not be true. However, for all the reasons spread throughout this Decision, I find that the Parent-Surrogate failed to prove it is an inappropriate career choice and goal. If it is, however, that can be determined by DORS pursuant to its vocational assessment.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parent-Surrogate failed to prove that the Student did not fairly and honestly complete all requirements for high school graduation and was wrongly issued a diploma. Therefore, that all claims asserting the denial of FAPE are moot. 34 C.F.R. 300-102 (a)(3)(i). I further conclude as a matter of law that the Parent-Surrogate failed to prove that the January 13, 2014 IEP was not reasonably calculated to enable the Student to receive educational benefit. *Rowley*, 458 U.S. at 207. I further conclude as a matter of law that the Parent-Surrogate failed to prove that the January 13, 2014, IEP denied the Student a FAPE with respect to the following particulars: (1) it did not overstate the Student's academic progress/level of achievement in academic reading comprehension, math problem-solving and written language instruction; (2) it did not wrongly fail to include job training skills, personal money management, social skills and hands-on work experience as transitional services, nor would such failure cause the Student harm; and (3) it did not wrongly fail to provide the Student with a vocational assessment. 20 U.S.C.A. § 1412.

I further conclude as a matter of law that the Parent-Surrogate failed to prove that the Student should have been placed on the Certification of Program Completion track, and failed to prove that MCPS wrongly required the Student to graduate in June 2014. I further conclude as a matter of law that any procedural violation by MCPS in the creating of the January 13, 2014 IEP did not cause the Student substantial harm or a loss of benefit.

ORDER

I **ORDER** that the relief requested in the Parent-Surrogate’s Due Process complaint is **DENIED**.

November 6, 2014
Date Decision Mailed

Henry R. Abrams
Administrative Law Judge

HRA/ac

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.