

XXXX XXXX,

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

*** BEFORE GERALDINE A. KLAUBER**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE**

*** OF ADMINISTRATIVE HEARINGS**

*** OAH NO.: MSDE-PGEO-OT-14-27568**

* * * * *

DECISION

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STATEMENT OF THE CASE

On August 5, 2014, XXXX and XXXX XXXX (Parents), on behalf of their child, XXXX XXXX (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Prince George's County Public Schools (PGCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

I held a telephone prehearing conference on August 19, 2014.¹ The Parents were represented by Michael J. Eig, Esquire. Andrew Nussbaum, Esquire, represented the PGCPS. By agreement of the parties, the hearing was scheduled for September 29, 30 and October 6, 2014.

¹ During the pre-hearing conference, the parties' representatives were advised of the time requirements for issuing a decision. The parties agreed that on August 18, 2014, they waived a resolution session. The time frame for issuing the decision as set forth in Md. Code Ann., Educ. § 8-413(h) (2014); 34 C.F.R. § 300.515 and COMAR 13A.05.01.15C is 45 days from the waiver of the resolution conference, which is October 2, 2014. During the conference, the parties requested that I waive the time requirements so that a hearing could be scheduled to accommodate their calendars while allowing sufficient time to render a written decision. The parties agreed to allow thirty days from the conclusion of the hearing for the issuance of a written decision on the merits.

I held the hearing as scheduled.² Michael J. Eig, Esquire, represented the Parents. Andrew Nussbaum, Esquire, represented the PGCPs. The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2013); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

The issues are as follows:

Was the Individualized Education Program (IEP) and placement developed by the PGCPs reasonably calculated to provide the Student with a free appropriate public education (FAPE) for the 2014-2015 school year, and if there was a denial of FAPE, is placement at the [School 1] (a separate day school) at the expense of PGCPs appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

The parties stipulated to the admissibility of the opposing party's exhibits.

The following documents were admitted on behalf of the Parents:

- | | |
|---------------------|-----------------------------------------------------------------------|
| XX ³ # 1 | Request for Mediation/Due Process Hearing |
| XX # 2 | XXXX Associates Psychoeducational Evaluation, date September 14, 2012 |

² The record was held open until October 7, 2014 in order to allow PGCPs supplement PGCPs Exhibit #24. The record closed on October 7, 2014. By email dated October 14, 2016, Mr. Eig requested that I reopen the record in order to allow him to submit an Opinion Letter from the United States Department of Education. Mr. Nussbaum objected to reopening the record. By email dated October 15, 2014, I denied the request to reopen the record.

³ The Parents pre-marked the exhibits as XX- the Student's initials.

- XX # 3 PGCPS Notice of Individualized Education Program, dated October 3, 2012
- XX # 4 PGCPS Prior Written Notice, dated October 17, 2012
- XX # 5 PGCPS Notice of Consent for Assessment, dated October 17, 2012
- XX # 6 PGCPS Specific Learning Disability Team Report
- XX # 7 PGCPS Notice of Individualized Education Program (IEP) Team Meeting
- XX # 8 IEP, dated November 14, 2012
- XX # 9 PGCPS Ottis-Lennon School Ability Test Results, dated January 25, 2013
- XX # 10 PGCPS Standard Achievement Test Series, dated March 8, 2013
- XX # 11 Maryland School Assessment Home Report, dated Spring 2013
- XX # 12 Letter to XXXX XXXX from Michael Eig, Esq., dated September 24, 2013
- XX # 13 Letter to Gail Viens, Esq. from Michael Eig Esq., October 8, 2013
- XX # 14 Student Observation by XXXX XXXX, dated October 10, 2013
- XX # 15 Letter to Michael Eig, Esq. from Parents, dated October 13, 2013
- XX # 16 PGCPS IEP, dated October 15, 2013
- XX # 17 Neuropsychological Evaluations by Dr. XXXX XXXX, dated October 22, 2013
- XX # 18 PGCPS Educational Assessment Report, dated November 13, 2013
- XX # 19 Letter to Gail Viens, Esq. from Michael J. Eig, Esq., dated November 18, 2013
- XX # 20 Letter to Gail Viens Esq. from Michael J. Eig, Esq., dated November 21, 2013
- XX # 21 Letter to Gail Viens Esq. from Michael J. Eig, Esq., dated December 9, 2013
- XX # 22 Email to XXXX XXXX and Michael Eig, Esq., dated December 9, 2013
- XX # 23 PGCPS Psychological Report, dated January 23, 2014

- XX # 24 Email to XXXX XXXX and Michael J. Eig Esq. from [Mother], dated December 18, 2013
- XX # 25 Email to Parents from XXXX XXXX, dated February 5, 2014
- XX # 26 Letter to Gail Viens, Esq. from Michael Eig, Esq., dated February 11, 2014
- XX # 27 Email to XXXX XXXX and Michael J. Eig, Esq. from [Mother], dated February 24, 2014
- XX # 28 PGCPs IEP, dated February 26, 2014
- XX # 29 Email to XXXX XXXX and Michael J. Eig, Esq. from [Mother], dated February 24, 2014
- XX # 30 Review of Draft IEP by XXXX XXXX, dated March 3, 2014
- XX # 31 Email to XXXX XXXX and Michael J. Eig, Esq. from [Mother], dated March 5, 2014
- XX # 32 Letter from Gail Viens Esq. to Michael J. Eig, Esq., dated March 5, 2014
- XX # 33 PGCPs Talented and Gifted Program Acceptance Information, dated March 14, 2014
- XX # 34 Letter to Gail Viens, Esq. from Michael J. Eig, Esq., dated March 28, 2014
- XX # 35 Letter to Parents from XXXX XXXX, dated April 17, 2014
- XX # 36 PGCPs Psychological Addendum, dated May 12, 2014
- XX # 37 Letter to Gail Viens Esq. from Michael J. Eig, Esq., dated May 16, 2014
- XX # 38 PGCPs Draft IEP, May 26, 2014
- XX # 39 Letter to XXXX XXXX from Michael J. Eig, Esq., dated May 30, 2014
- XX # 40 PGCPs Amended IEP, dated June 6, 2014
- XX # 41 PGCPs Prior Written Notice, dated June 6, 2014
- XX # 42 Letter to XXXX XXXX from Michael J. Eig, Esq., dated July 24, 2014
- XX # 43 Letter to XXXX XXXX from Michael J. Eig, Esq., dated August 5, 2014
- XX # 44 Letter to Gail Viens Esq. from Parents, dated August 11, 2014

- XX # 45 Letter to Andrew Nussbaum, Esq. to Michael J. Eig, Esq., dated August 29, 2014
- XX # 46 Classroom Diagnostics from the [School 1], dated September 2014
- XX # 47 PGCPS Report Cards for 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 School Years
- XX # 48 IEP Progress Reports, dated January 2013-June 2014
- XX # 49 Resume of XXXX XXXX
- XX # 50 Resume of Dr. XXXX XXXX
- XX # 51 Resume of XXXX XXXX
- XX # 52 Resume of XXXX XXXX
- XX # 53 Resume of XXXX XXXX on behalf of PGCPS.

The following documents were admitted on behalf of PGCPS

- PGCPS # 1 Curriculum Vitae of XXXX XXXX
- PGCPS # 2 Curriculum Vitae of XXXX XXXX
- PGCPS # 3 Curriculum Vitae of XXXX XXXX
- PGCPS # 4 Curriculum Vitae of XXXX XXXX
- PGCPS # 5 Curriculum Vitae of XXXX XXXX
- PGCPS # 6 Curriculum Vitae of XXXX XXXX
- PGCPS # 7 Curriculum Vitae of XXXX XXXX
- PGCPS # 8 Curriculum Vitae of XXXX XXXX, Ph.D.
- PGCPS # 9 Curriculum Vitae of XXXX XXXX
- PGCPS # 10 Curriculum Vitae of XXXX XXXX
- PGCPS # 11 Curriculum Vitae of XXXX XXXX
- PGCPS # 12 PGCPS Prior Written Notice, dated October 17, 2012
- PGCPS # 13 Specific Learning Disability Team Report, dated November 13, 2012

- PGCPS # 14 PGCPS Prior Written Notice, dated November 19, 2012
- PGCPS # 15 PGCPS Prior Written Notice, dated October 15, 2013
- PGCPS # 16 PGCPS Prior Written Notice, dated December 19, 2013
- PGCPS # 17 PGCPS Prior Written Notice, dated April 28, 2014
- PGCPS # 18 PGCPS Prior Written Notice, dated June 6, 2014
- PGCPS # 19 IEP, dated November 14, 2012
- PGCPS # 20 IEP, dated October 15, 2013
- PGCPS # 21 IEP, Amended June 6, 2014
- PGCPS # 22 School Instructional Team/Supplemental Services Team Action Plan
- PGCPS # 23 XXXX Associates Psychoeducational Evaluation, date September 14, 2012
- PGCPS # 24 Educational Assessment Report, dated November 13, 2013
- PGCPS # 25 Confidential Psychological Report, dated January 23, 2014
- PGCPS # 26 Confidential Psychological Addendum, dated May 12, 2014
- PGCPS # 27 Assistive Technology Assessment Report, dated November 4, 2013
- PGCPS # 28 Occupational Therapy Report, dated November 4, 2013
- PGCPS # 29 Speech Language Assessment Report, dated November 19, 2013
- PGCPS # 30 Progress Reports on IEP Goals
- PGCPS # 31 Report Cards for 2012-2013 and 2013-2014 school years
- PGCPS # 32 Maryland School Assessment Home Report 2013 and 2014 Results
- PGCPS # 33 PGCPS Ottis-Lennon School Ability Test Results, dated January 25, 2013
- PGCPS # 34 PGCPS Stanford Achievement Test Results, dated March 8, 2013
- PGCPS # 35 PGCPS Talented and Gifted Program documents

Testimony

The Parent(s) testified and presented the following witnesses:

- XXXX XXXX, Director of XXXX Group, admitted as an expert in special education with an emphasis on identifying and meeting the needs of twice exceptional students;
- XXXX XXXX, Director of Speech and Language Department at the [School 1], admitted as an expert in speech language pathology;
- XXXX XXXX, Head of the Intermediate School at the [School 1], admitted as an expert in the administration of programs for learning disabled students;
- XXXX XXXX, Occupational Therapy Consultant at the [School 1], admitted as an expert in occupational therapy;
- Dr. XXXX XXXX, Neuropsychologist, admitted as an expert in neuropsychology;
- [Mother], Parent⁴

The PGCPS presented the following witnesses:

- XXXX XXXX, General Education Classroom Teacher, [School 2];
- XXXX XXXX, Ed.D., Assistant Principal [School 2];
- XXXX XXXX, PGCPS Assistive Technology Consultant, admitted as an expert in assistive technology;
- XXXX XXXX, Special Education Chair, [School 2], admitted as an expert in elementary school special education;
- XXXX XXXX, OTD, OTR/L, Occupational Therapist, admitted as an expert in occupational therapy;

⁴ In this decision, all references to the Parent pertain to the Parent witness.

- XXXX XXXX, Ph.D., PGCPs School Psychologist, admitted as an expert in school psychology;
- XXXX XXXX, PGCPs Special Education Instructional Specialist, admitted as an expert in special education and twice exceptional students;
- XXXX XXXX, PGCPs Special Education Instructional Specialist, admitted as an expert in elementary school special education

FINDINGS OF FACT

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

1. The Student is ten years old, and his date of birth is XXXX, 2004.
2. The Student attended his neighborhood school, [School 2] ([School 2]), from kindergarten through fourth grade.
3. The Student was identified by PGCPs as a student with a disability under the IDEA. He has a primary diagnosis of Specific Learning Disability and a secondary diagnosis of Other Health Impaired for Attention Deficit/Hyperactivity Disorder.
4. The Student is a twice exceptional student: he is gifted and has a learning disability. The Student is gifted in his verbal comprehension and perceptual reasoning abilities. The Student has an IQ of 121 in those areas. (Tr. 80⁵)
5. In or about October 2013, the Student was identified by PGCPs as a student with a disability under the IDEA. He has a primary diagnosis of Specific Learning Disability and a secondary diagnosis of Other Health Impaired for Attention Deficit Hyperactivity Disorder.

⁵ Tr. is a reference to hearing transcript and the number that follows references the transcript page.

6. The Student has an engaging personality and strong willpower when goal oriented. (PGCPS # 23) The Student always puts forth good effort in the classroom.
7. In August or September 2012, when the Student was eight years old and in the third grade, XXXX XXXX, Ph.D., XXXX Associates, at the request of the Parents performed a psychoeducational assessment of the Student in order to determine if he had any learning disabilities or attention disorders. A report of the assessment was drafted on September 14, 2012. (XX #2)
8. The September 2012 psychoeducational assessment revealed that the Student had superior verbal comprehension, superior perceptual reasoning or nonverbal reasoning and gifted verbal abstract thinking. (XX #2)
9. The Student's general intellectual functioning was evaluated using the Wechsler Intelligence Scale for Children, Fourth Edition, (WISC-IV). On the Verbal Comprehension Index, or the ability to solve orally presented problems with words, the Student's composite score was 121 where the mean is 100, placing the Student in the superior range. His verbal intellectual potential was more developed than 92% of his peers. His Perceptual Reasoning Index or his ability to use visual information when reasoning or problem solving was measured in the superior range. He was more effective than 92 percentile in this area as well. (XX # 2)
10. The Student's full scale IQ was 107 but was invalidated due to the significant differential findings amongst the other broad abilities. (XX #2)
11. On the WISC- IV, the Student demonstrated weakness in basic working memory and visual motor processing speed. His score on the Working Memory Index was

in the low average range or 21st percentile and his score on the processing speed index was in the 7th percentile (PGCPS # 23).

12. In terms of the Student's academic achievement, Dr. XXXX administered the Wechsler Individual Achievement Test, Third Edition (WIAT-III).⁶ The Student obtained average scores on the measures of single word reading, oral reading fluency, math calculation, spelling and speeded retrieval of simple multiplication facts (25th to 42nd percentile). The Student obtained scores in the low end of average range in reading comprehension, sentence composition and math problem solving (16th to 19th percentile). Alphabet writing fluency, phonological awareness and decoding was below average (6th to 12th percentile). Speeded retrieval of simple subtraction and addition facts was in the low range (1st to 2nd percentile) (PGCPS # 23)
13. Dr. XXXX recommended that PGCPS provide special education resource support and individual education goals in for weak reading skills, delayed writing skill development, disorganization, poor assignment completion, below average math and weak study skills. (XX #2)
14. Dr. XXXX recommended that PGCPS provide Occupational Therapy (OT) and Speech/Language evaluations. (XX #2)
15. In October 2012, the PGCPS received the XXXX Associates evaluation and the Student's first IEP was developed November 14, 2012. The IEP included goals in Math, Writing and Reading. The IEP provided for three thirty minute intense special education sessions weekly. The IEP provided for thirty minutes to address the reading goal, thirty minutes to address the math goal and thirty minutes to

⁶ The test has a mean of 100 with a standard deviation of 15 and the average range is 90-109.

address the writing goal. The IEP in place at the end of the 2012-2103 school year was carried over to the following school year. (XX # 8 and PGCPS # 19)

16. During the 2013-2014 school year, the Student had classes with his general education teacher and class for all major subjects and all his activities were with general education students. A teacher's aide and a paraprofessional were in the classroom along with the general educator. (PGCPS #19)
17. During the 2013-2014 school year, in the general education setting, the Student continued to exhibit difficulty with organizational skills, making appropriate choices when faced with a frustrating situation and he often required numerous prompts to sustain his attention in order to complete assignments.
18. During the 2012-2013 and 2013-2014 school years, the Student had difficulty keeping up with his peers in reading and struggled to work independently. (Tr. 336)
19. During 2013-2014 school year, the Student did not enjoy math instruction and had a poor attitude toward that subject area. (Tr. 335)
20. During the 2013-2014 school year, the Student had three incidents during math class where he became frustrated and upset with not being able to understand the tasks. The Student had to leave the classroom for brief periods of time in order to cool down and gather himself. [School 2] had arranged for the Student to visit the Assistant Principal on these occasions when he felt overwhelmed.
21. On September 25, 2013, at the suggestion of their attorney, the Parents hired an educational consultant, XXXX XXXX, to help delineate educational services and a placement for the Student. (Tr. 214)

22. Mr. XXXX reviewed all of the Student's educational records and on October 10, 2013, Mr. XXXX observed the Student in the classroom for approximately one hour. Mr. XXXX never observed the Student reading and never spoke to the Student. (Tr. 90, 92 and 93)
23. Based on his record review and classroom observations, Mr. XXXX recommended that PGCPs do further academic testing of the Student to ascertain how he is doing in Reading, Writing and Math. He also recommended that Occupational Therapy and Speech evaluations be performed. He recommended that the Student be identified for Talented and Gifted and those goals be added to the IEP for organization, task completion and study skills. He recommended that the Student have a calculator for math and a word processor for written language. (XX #14)
24. On October 15, 2013, an IEP team meeting was held. At the meeting, the IEP Team determined that additional information was needed regarding the Student's current level of academic functioning. The Parents consented to have the Student administered the Woodcock Johnson Test of Achievement- III (WCJ-III) test of Achievement and the Test of Written Language-Fourth Edition (TOWL-4) and any changes to the IEP were tabled. (PGCPS #20)
25. On October 30, November 11 and November 13, 2013, XXXX XXXX, PGCPs Special Education Instructional Specialist, performed an educational assessment of the Student, which included an observation of the Student in the classroom as well as testing. She administered the Student the WCJ-III and the TOWL-4. (XX # 18)

26. On the WCJ-III, a norm-referenced test used to compare the performance of a student with peer performance, the Student's scores were as follows:⁷

CLUSTER/TEST	RAW ⁸	AE ⁹	SS ¹⁰ (68% BAND) ¹¹	GE ¹²
ORAL LANGUAGE	-	8-7	95 (88-102)	3.3
ORAL EXPRESSION	-	8-3	94 (89-99)	2.9
BRIEF ACHIEVEMENT	-	9-5	102 (99-105)	4.1
TOTAL ACHIEVEMENT	-	8-6	90 (88-93)	3.2
BROAD READING	-	8-3	90 (85-94)	3.0
BROAD MATH	-	8-9	94 (90-97)	3.4
BROAD WRITTEN LANGUAGE	-	8-6	93 (89-96)	3.2
BRIEF READING ¹³	-	9-1	99 (96-101)	3.7

⁷ The bottom eight tests starting with letter word identification are the individual subtests that measure the skill.

⁸ Raw score is the number of test items answered correctly- converted to a Standard Score for meaningful interpretation.

⁹ AE denotes age equivalent.

¹⁰ According to the expert witness testimony of Ms. XXXX, Standard Scores are based on national norms by the exact age of the student. Scores from 80-89 were considered in the low average range, scores from 90-110 were considered in the average range, scores from 110-119 were considered high average. (Tr. pages 631-632)

¹¹ Ms. XXXX explained that the 68 percent band is the confidence interval that if the student is given the test multiple times, one can be confident that 68 percent of the time the score will fall within that range.

¹² GE denotes grade equivalent.

¹³ Brief reading is not based on time and is based on skill and application of the skill.

BASIC READING SKILLS	-	9-9	104 (102-107)	4.4
READING COMP	-	8-5	93 (90-96)	3.1
BRIEF MATH	-	9-1	98 (94-101)	3.7
MATH CALC SKILLS	-	8-2	84 (79-89)	2.9
BRIEF WRITING	-	8-9	96 (93-100)	3.4
WRITTEN EXPRESSION	-	8-1	90 (85-94)	2.8
ACADEMIC SKILLS	-	9-1	99 (96-101)	3.8
ACADEMIC FLUENCY	-	7-8	78 (74-83)	2.3
ACADEMIC APPS	-	8-10	96 (93-99)	3.8
ACADEMIC KNOWLEDGE	-	9-10	105 (99-110)	4.5

LETTER WORD IDENTIFICATION	49	9-6	103 (100-106)	4.2
READING FLUENCY	18	7-5	80 (75-85)	2.2
Story recall	-	9-8	102 (95-109)	4.3
Understanding directions	-	8-3	93 (84-101)	2.9

Calculation	13	8-7	91 (85-97)	3.2
Math fluency	24	7-3	74 (70-78)	1.9
Spelling	31	9-1	99 (95-103)	3.7
Writing fluency	10	8-1	87 (80-95)	2.7
Passage Comprehension	25	8-4	94 (90-97)	2.9
Applied problems	34	9-6	103 (98-107)	4.2
Writing samples	9-c	8-2	93 (89-98)	2.9
Story recall- delayed	-	7-7	94 (85-102)	2.3
Word attack	23	10-4	106 (102-109)	5.0
Picture vocabulary	21	7-10	92 (87-97)	2.5
Reading vocabulary	-	8-6	96 (93-98)	3.2

27. On the WCJ- III, the Student had average global scores. The only scores that fell below average were the Student's fluency scores. Fluency tests speed and accuracy and is a measure of what the student can accomplish when compared to nondisabled peers within a given time frame. The Student's academic fluency was in the below average range. He scored below average in reading fluency, writing fluency and math fluency (XX #18)

28. At the request of the Student's IEP team, on October 25 and 29, 2013, XXXX XXXX, PGCPS assistive technology consultant, conducted an assistive technology assessment of the Student. Based on her assessment, Ms. XXXX made recommendations to address issues including handwriting and reading. To assist

with handwriting, the Student was assigned a Portable Electronic Keyboard (PEK) with the features of word prediction. The PEK also has many built-in supports to assist the Student with his difficulties with organization. (PGCPS #27; Tr. 297)

29. All of Ms. XXXX's recommendations, with the exception of a trial of text to speech software, were adopted by the IEP team. (Tr. 294)
30. In the fall of 2013, Mr. XXXX referred the Parents to Dr. XXXX XXXX for an evaluation that focused on the executive functioning and social emotional status. On October 22, 2013, at the recommendation of Mr. XXXX, Dr. XXXX XXXX performed a neuropsychological evaluation of the Student. (XX #17)
31. Dr. XXXX administered a Developmental Neuropsychological Assessment (NEPSY) to assess his executive functioning. The test revealed that the Student has significant difficulties in planning and organization. The test further revealed significant weakness in working memory, which manifests in the Student's difficulty following directions and tasks that require multi-steps. (XX #17)
32. To assess the Student's emotional issues, Dr. XXXX administered the Student the Behavior Assessment Scale for Children-2 (BASC-2) and the Screen for Anxiety and Related Disorders (SCARED). The Parents were also given the BASC-2 and the SCARED as well as the Behavior Rating Inventory of Executive Function (BRIEF). The Student's teachers were given the BASC-2 and the BRIEF.¹⁴ (XX #17)
33. The results of the SCARED indicated that the Student the presence of an anxiety disorder and some school avoidance issues. The Student's BASC-2 results

¹⁴ There is not a teacher version of the SCARED.

indicated that he was not at risk for anxiety and attitude toward school fell below the at risk level. The Parent's score on the BASC-2, reflecting their perception of the Student's anxiety was higher for anxiety than the Student's. (XX #17; Tr. 486-487; Tr. 520)

34. Dr. XXXX recommended that the Student receive his classroom instruction in a small classroom setting with a low student-to-teacher ratio with children who are bright but also have significant executive and learning deficits. (Tr. 490-491)

35. On December 19, 2013, an IEP meeting was held in order to review the assistive technology, occupational therapy, educational assessments and Dr. XXXX assessment. No changes were made to the IEP and it was suggested that the school keep data in terms of reducing the student to teacher ratio. (PGCPS # 16; Tr. 625)

36. As of January 2014, the Parents decided that the Student would attend the [School 1] for the 2014-2015 school year. (XX#24)

37. On January 23, 2014, the school psychologist, Dr. XXXX XXXX, performed an assessment of the Student as part of the IEP team's effort to determine the appropriateness of the Student's current placement. (PGCPS #25)

38. Dr. XXXX's assessment included two observations of the Student in the classroom. Once observation occurred during math class and one occurred during language arts. In math class, Dr. XXXX observed the Student stop working and when he did not understand the task. The Student did not self advocate and ask for help. (Tr. 538)

39. On January 23, 2014, Dr. XXXX administered the Wechsler Intelligence Scales for Children-III (WISC –III)¹⁵ The Student had a verbal comprehension score of 106, a working memory score of 97 and processing speed score of 73. (PGCPS # 25; Tr. 539)
40. Based on his testing, Dr. XXXX concluded that the type of task that the Student is required to do impacts his processing speed. (Tr. 544)
41. Dr. XXXX performed an assessment of the Student’s memory and learning through the California Verbal Learning Test for Children, which reflected that he had not learned the information as efficiently as other children (PGCPS #25;Tr. 550)
42. Dr. XXXX administered the fluid reasoning subtest from the WCJ-III and concluded that the Student’s abstract fluid reasoning was in the average range.
43. Dr. XXXX concluded that the Student was compensating for some of his processing deficits by over-relying on memorization. The Student was doing more sight reading and was memorizing as much as he could, which is not as efficient (Tr. 552)
44. On the Maryland School Assessment Spring 2013, the Student scored a 462 in reading proficiency, which is advanced proficiency and indicates that on that particular test the Student scored as an above grade level reader. (PGCPS #32, Tr. 344)
45. On the Maryland School Assessment Spring 2013, the Student scored a 423 in math proficiency, which is proficient and indicates that on that particular test the Student scored on grade level. (PGCPS #32; Tr. 344)

¹⁵ The WISC-III is a measure of intelligence in the age range of 6-16 and consists of subtests in two scales- verbal scale and performance scale.

46. On the Maryland School Assessment Spring 2014, the Student scored a 392 in reading proficiency, which is proficient and indicates that on that particular test the Student scored on grade level. (PGCPS #32; Tr. 344)
47. On the Maryland School Assessment Spring 2014, the Student scored a 392 in math proficiency, which is proficient and indicates that on that particular test the Student scored on grade level.(PGCPS #32; Tr. 344)
48. During the 2013-2014 school year, the Maryland State Schools adopted the Common Core state curriculum and schools were no longer teaching to the Maryland State curriculum that the MSA measures. The test in the Spring of 2014 had represented information that the curriculum in the school did not have. Students did not receive as much preparation time for the Spring 2014 MSA as they had received for the Spring 2013 MSA tests. Scores on the 2014 MSA dropped state wide. (Tr. 382, 668)
49. On the 2013-2014 Mandatory Unit System Test (MUST), the Student earned an above average score on the Reading Language Arts and on the Math assessment he earned an average score. (PGCPS #21; Tr. 348)
50. As of March 14, 2014, based on the Student's scoring on the WISC-III in verbal comprehension and perceptual reasoning, the Student was accepted into the PGCPS Talented and Gifted Program for the 2014-2015 school year. (XX #33)
51. TAG services are not considered specialized instruction and are not incorporated into an IEP. TAG services are general education services with opportunities for academic rigor. (Tr. 644)
52. An IEP meeting was held on April 28, 2014, Dr. XXXX shared his additional report and all of Mr. XXXX's suggestions for the IEP were reviewed to see where

they were implemented into the IEP. Most of Mr. XXXX's recommendations were incorporated into the IEP. (PGCPS #17; Tr. 676-677)

53. Following the April 28, 2014 meeting, the IEP team determined that it needed to further assess his level of reading comprehension and self-esteem. (PGCPS #17)

54. On May 12, 2014, Dr. XXXX administered the Gray Oral Reading Tests- 5th Edition (GORT) in order to gauge the Student's level of reading comprehension. The results of the test indicated that the Student was "able to read the stories at an average Rate and with Average accuracy, resulting in an average reading Fluency score." The Student's comprehension score also fell within the average range at the 50th percentile. The Reading Fluency and Reading Comprehension scores were combined and yielded an average Oral Reading Index falling at the 50th percentile.(PGCPS #26)

55. On May 12, 2014, Dr. XXXX administered the Piers Harris Children's Self Concept Scale to try and assess the Student's self-esteem with the educational process. The test results were average with one low average score relating to intellectual and school status where the Student did not view himself as doing really well in the academic realm. The tests further indicated no anxiety in relation to school. (PGCPS #26; Tr. 562)

56. On May 30, 2014,¹⁶ the final IEP meeting was held and the team finished discussing the IEP in terms of incorporating Mr. XXXX's recommendations. Most of his recommendations were accepted by the IEP team. The IEP team also discussed using the co-teaching model with the Student. (PGCPS #21; Tr. 678)

¹⁶ The IEP was amended on June 6, 2013 to address an omission in the documentation regarding answers to questions pertaining to Extended School Year (ESY) services. The substance of the IEP was not changed.

57. The May 30, 2014 IEP team discussed what TAG services would be offered. The IEP provides for the Student to receive his instruction in a classroom with his intellectual peers and receive support and accommodations for his areas of weakness, including executive functioning weaknesses. (PGCPS #21)
58. The IEP provides for the Student to receive 45 minutes of special education instruction each day during math and reading-language and 30 minutes four times per week during science and social studies. (PGCPS #21)
59. The IEP contains goals in Math Calculation, Math Problem Solving, Written Language Mechanics, Written Language Expression and Behavioral-Self Management. (PGCPS #21)
60. The IEP does not contain any reading goals because the IEP team determined that although the Student had weaknesses in reading fluency, reading fluency was not impacting his comprehension. The data considered by the IEP team indicated that the Student did not have any issues with decoding and his comprehension of what he was reading was at grade level. (Tr. 688-689)
61. The IEP provides for the following accommodations in the classroom: assistive technology in the form of a portable electronic keyboard. Presentation accommodations include visual cues to bring his focus back to task and notes and outlines to help with organization and to provide reminders for next steps. Response accommodations include, scribe and electronic word processors. Accommodations in the form materials and devices used to solve or organize problems include: Respond on Test Book, Monitor Test Response, Mathematics Tools and Calculation Devices, Spelling and Grammar devices and Graphic

Organizer. Timing and Scheduling accommodations include extended time and multiple/frequent breaks and reduction in distractions. (PGCPS #21)

62. The IEP included instructional supports for the Student, including verbal praise and positive comments to reinforce his effort and persistence. The Student will be allowed to use manipulatives to assist with problem solving; repetition of directions, monitoring of independent work, use of organizational aids, provide assistance with organization, limit amount to be copied from board, check for understanding, provide checklist/written steps, use of visual/physical guides, allow use of highlights, altered modified assignments, provide opportunities/tools for movement. (PGCPS #21)
63. The IEP provided for the Student to have a dedicated aide in order to reduce the student teacher ratio and assist the classroom teacher with implementing supplementary aids, modifications, and supports in the IEP. (PGCPS #21)
64. The IEP provided for the Student to receive consultative occupational therapy services in order to ensure that the [School 2] staff knows how to implement occupational supplemental aids, modification and supports. (PGCPS #21)
65. The IEP provided for a 30-minute per week psychology consult for the Student and/or his teachers to build understanding of self -monitoring strategies.(PGCPS #21)
66. If the Student had attended [School 2] for the 2014-2015 school year, he would have received his special education services in a classroom with 28 other students, all of whom identified as TAG. (Tr. 420, 686)

67. The Student began attending the [School 1] at the beginning of the 2014-2015 school year. All students who attend the [School 1] have some form of educational disability, primarily language based learning disabilities. (Tr. 154)

68. On September 19, 2014, the [School 1] Administered the Student the WCJ –III with the following results: (XX #54)

CLUSTER/TEST	RAW ¹⁷	AE	SS (68% BAND)¹⁸	GE
BRIEF ACHIEVEMENT	-	9-3	93 (90-95)	3.9
BROAD READING	-	9-2	92 (90-95)	3.8
BROAD MATH	-	7-11	73 (69-76)	2.6
BROAD WRITTEN LANGUAGE	-	7-9	75 (70-79)	2.4
BROAD READING	-	9-7	96 (94-98)	4.2
BASIC READING SKILLS	-	9-11	99 (97-101)	4.6
BRIEF MATH	-	8-1	76 (71-81)	2.8
MATH CALC SKILLS	-	7-4	59 (53-64)	2.0
BRIEF WRITING	-	8-3	87 (84-91)	2.9
WRITTEN EXPRESSION	-	7-3	66 (59-73)	1.9
ACADEMIC SKILLS	-	8-10	88 (86-91)	3.5
ACADEMIC	-	7-1	61 (55-67)	1.8

¹⁷ Raw score is the number of test items answered correctly- converted to a Standard Score for meaningful interpretation.

¹⁸ Ms. XXXX explained that the 68 percent band is the confidence interval that if the student is given the test multiple times, one can be confident that 68 percent of the time the score will fall within that range.

FLUENCY				
ACADEMIC APPS	-	8-4	84 (80-87)	3.0
ACADEMIC KNOWLEDGE	-	9-9	97 (92-102)	4.4
Letter word identification	52	10-2	100 (98-102)	4.8
Reading fluency	23	7-8	77 (72-83)	2.4
Calculation	9	7-6	65 (59-71)	2.2
Math fluency	19	6-11	66 (63-69)	1.6
Spelling	30	8-9	91 (89-96)	3.4
Writing fluency	2	6-5	56 (45-67)	1.1
Passage Comprehension	26	8-7	91 (87-95)	3.2
Applied problems	31	8-7	87 (83-91)	3.3
Writing samples	7-c	7-8	83 (77-88)	2.4
Word attack	21	9-7	98 (95-100)	4.3
Academic knowledge	-	9-9	97 (92-102)	4.4

69. In the Fall of 2014, the [School 1] administered the Quality of Reading Inventory (QRI), an informal, non-normed reading assessment where the student reads a passage and answers a series of questions and is asked to do a retell of the story. The passages have different grade levels associated with them. The Student was assessed at a grade level of 3.5. (XX #46; Tr. 141)

70. In the Fall of 2014, the [School 1] administered the Wilson Assessment of Decoding and Encoding (WADE). The results indicated that the Student's Sound

Knowledge was 45 percent, Real Words was 90 percent and Nonsense words were 60 percent. (XX #46)

71. The Student is in a homeroom class of 13 students with a classroom teacher, a classroom assistant and a graduate intern. The Student receives integrated occupational therapy services in the classroom. (Tr. 157)

DISCUSSION

Applicable Law

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1482 (2010 and Supp. 2014), 34 C.F.R. Part 300 (2013), Md. Code Ann., Educ. §§ 8-401 through 8-417 (2014), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a free appropriate public education (FAPE). 20 U.S.C.A. § 1412(a)(1)(A) (2010).

In *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the United States Supreme Court described FAPE as follows:

Implicit in the congressional purpose of providing access to [FAPE] 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 provide educational benefit to the handicapped child.

Id. at 200-01. *See also In re Conklin*, 946 F.2d 306, 313 (4th Cir. 1991).

Students with disabilities have the right to FAPE. The IDEA defines FAPE as follows:

The term “free appropriate public education” means special education and related services that—

- (A) have been provided at public expense under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414 (d) of this title.

20 U.S.C. § 1401(8) (2010). Maryland's General Assembly and the State Board of Education have enacted laws and regulations implementing the IDEA for Maryland students. The Maryland special education law is found at Sections 8-101 to 8-417 (20) of the Education Article of the Annotated Code of Maryland. The regulations governing the provisions of the special education to children with disabilities are found at COMAR 13A.05.01.

The educational program offered to the child must be tailored to meet the specific needs of the disabled child by the development and implementation of the IEP. To provide a FAPE, the student's educational program must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3)(A) (2010).

Among other things, an IEP depicts a student's current educational performance, sets forth annual goals and short-term objectives and measurement of improvements in that performance, describes the specifically-designed instruction and services that will assist a student in meeting those objectives, and indicates the extent to which a student will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A) (2010).

The question of whether a student is receiving FAPE has a procedural and a substantive component. The Supreme Court set out a two-part inquiry to determine if a local education agency, such as HCPS, satisfied its obligation to provide FAPE to a student with disabilities. The Supreme Court noted that the first inquiry is whether a school district complied with the

procedures set forth in IDEA. The second inquiry is whether the IEP, developed through the IDEA's procedures, was reasonably calculated to enable a student with disabilities to receive appropriate educational benefit. *Rowley*, 458 U.S. at 206-07.

In this case there is no allegation that the IDEA's procedural safeguards were violated. The question presented here is whether the Student's IEP and placement are reasonably calculated to enable him to receive an appropriate educational benefit. The controlling law is as follows: While FAPE does not require "the best possible education that a school could provide if given access to unlimited funds," *Barnett v. Fairfax County School Board*, 927 F.2d 146, 154 (4th Cir. 1991), it does require the state to provide personalized instruction with sufficient support services to permit the disabled child to benefit educationally. In turn, "educational benefit" has been construed to mean more than "trivial or *de minimis*" educational progress. *In re Conklin*, 946 F.2d at 313; *Polk v. Ctrl. Susquehanna Intermediate Unit*, 853 F.2d 171, 182 (3rd Cir. 1988); *Alexis v. Bd. of Educ. for Balt. Cnty. Public Sch.*, 286 F. Supp. 2d 551, 559 (D. Md. 2003); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir 2009).

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 services necessary" to maximize educational benefit. *Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. at 200). Instead, FAPE entitles a student to an IEP that is "reasonably calculated to enable the child to receive educational benefit." *Rowley*, 458 U.S. at 177.

"Educational benefit" requires that "the education to which access is provided be sufficient to confer *some* educational benefit upon the handicapped child." *Rowley*, 458 U.S. at 200 (emphasis added). *See also MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 526 (4th Cir. 2002) (citing *Rowley*, 458 U.S. at 192); *see also A.B. ex rel. D.B. v. Lawson*, 354

F.3d 315 (4th Cir. 2004). Thus, the IDEA requires an IEP to provide a ““basic floor of opportunity that access to special education and related services provides.”” *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4th Cir. 1990) (quoting *Rowley*, 458 U.S. at 201).

The question of what an “appropriate educational benefit” means can be complex, and will certainly vary with the nature and degree of the disability and the unique needs of each child. An “appropriate” education, however, does not mean that a student is able to maximize his potential or to receive optimal services. *Rowley*, 458 U.S. at 200; *Burke Cnty. Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990). Clearly, no bright line test can be created to establish whether a student is progressing or could progress educationally. *In re Conklin*, 946 F.2d at 313. Rather, the decision-maker must assess the evidence to determine whether the student’s IEP and placement was reasonably calculated to enable him to receive an appropriate educational benefit.

The burden of proof in an administrative hearing under IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent has the burden of proving that the Student’s IEP was not reasonably calculated to provide educational benefit to him, and that placement at a separate day school is appropriate.

With these legal requirements in mind, the facts do not support a find that PGCPS offered the Student FAPE for the 2014-2015 school year.

Background and Positions of the Parties

The Student is a complex child in that he is talented and gifted and also learning disabled, or what is now known as twice exceptional. He has been diagnosed with a Reading Disorder (dyslexia), Central Auditory Processing Disorder, and Attention Deficit/ Hyperactivity Disorder (ADHD). It is undisputed that the Student has general intellectual and reasoning skills in the Superior range, but that he has some significant weaknesses in attention, executive functioning

and processing speed. The executive functioning difficulties are pervasive across all curriculum areas. It is also generally agreed upon by the parties that the Student is charismatic and has the desire to learn and succeed in school. The Parents contend that the Student also has emotional issues that are rooted in his academic frustration and are manifested in displays of anxiety and poor self-esteem.

During the second grade, the Student began to exhibit more trouble focusing in school so In August 2012, the Parents arranged for a neuropsychological evaluation through, XXXX XXXX, Ed. S, and XXXX XXXX, PH.D., of XXXX Associates (XXXX). As part of the evaluation, XXXX administered to the Student standardized measures, including the WISC-IV and the WIAT- III. The WISC-IV revealed that he had Superior verbal comprehension, Superior perceptual reasoning or nonverbal reasoning and Gifted verbal abstract thinking. The WISC-IV also revealed deficits in basic working memory and visual motor processing speed. On the WIAT- III, the Student obtained average scores on the measures of single word reading, oral reading fluency, math calculation, spelling and speeded retrieval of simple multiplication facts (25th to 42nd percentile). The Student obtained scores in the low end of average range in reading comprehension, sentence composition and math problem solving (16th to 19th percentile). Alphabet writing fluency, phonological awareness and decoding was below average (6th to 12th percentile). Speeded retrieval of simple subtraction and addition facts was in the low range (1st to 2nd percentile). The assessment noted other weaknesses including weak auditory attention, distractibility, impaired processing of directions and deficits with prolonged visual processing.

PGCPS accepted XXXX's report and in October 2012, PGCPS found the Student eligible for special education as a student with a Specific Learning Disability. PGCPS provided the Student with an IEP beginning in November 2012. That IEP was carried over into the 2013-2014 school year and included goals in math, written language expression and reading. The IEP

provided for thirty minute intense special education sessions three times weekly. The IEP provided for thirty minutes to address the reading goal, thirty minutes to address the math goal and thirty minutes to address the writing goal. The services were provided to the Student on a pull-out basis outside of the general education classroom.

The Student attended the [School 1]'s summer program between the third and fourth grade. According to the Parents, the Student continued to struggle academically and was exhibiting frustration at the end of the third grade which carried over into the first few weeks of the fourth grade. At the beginning of the fourth grade they consulted an attorney, Mr. Eig, who recommended that they obtain an educational consultant to help make recommendations regarding supports and services for the Student. In September 2013, the Parents hired XXXX XXXX to help determine the appropriate services and placement for the Student. After a review of the Student's records and an observation of the Student at [School 2] on October 10, 2013, Mr. XXXX recommend that the Student have occupational therapy and speech evaluations and undergo testing to see his current performance in reading, writing and math. He recommended that the Student have a neuropsychological evaluation particularly for his executive functional and social-emotional status. Mr. XXXX also made specific recommendations regarding goals and accommodations to add to the IEP. In October 2013, the Parents had a private neuropsychological evaluation done by Dr. XXXX XXXX, and PGCPs Special Educational Instructional Specialist performed an Educational Assessment in October and November 2013. PGCPs professionals conducted Assistive Technology, Occupational Therapy and Speech Language assessment in November 2013. In January 23, 2014, the school psychologist, Dr. XXXX XXXX, performed an assessment of the Student as part of the IEP team's effort to determine the appropriateness of the Student's current placement. All of the assessments were shared with the IEP team continued to work towards developing the IEP at meetings held on

December 19, 2013 and April 28, 2013. At the April 28, 2013 meeting it was decided that an additional assessment was needed regarding the Student's current level of reading and his emotional status. On May 12, 2014, Dr. XXXX performed the additional testing to address those concerns. As of March 14, 2014, based on the Student's scoring on the WISC-III in verbal comprehension and perceptual reasoning, the Student was accepted into the PGCPS Talented and Gifted Program for the 2014-2015 school year.

On May 30, 2014, an IEP meeting was held where the Student's final IEP was drafted. The IEP proposed that the Student would receive his special education services in a classroom with 28 other students, all of whom identified as TAG. The Student would be co-taught by a general education teacher and a special education teacher. The classroom would also have a paraprofessional. (Tr. 420 and 686) The Student would receive 45 minutes of special education instruction each day during math and reading-language and 30 minutes four times per week during science and social studies. The IEP included goals for math calculation and problem solving, written language mechanics and expression as well as behavioral goals for self-management and attention. The IEP did not include any reading goals or fluency goals.

The Parents contend that the Student's continued placement at [School 2] is inappropriate as evidenced by the fact that the Student did not make meaningful educational progress at [School 2] during the 2013-2014 school year. The Parents further contend that Student's 2014-2015 IEP denies the Student FAPE because it is substantively defective. According to the Parents, the IEP lacks goals in all the areas of the Student's needs, specifically reading, handwriting, study skills and emotional/behavioral issues. The Parents further assert that the IEP does not provide him with the small class size, integrated special education program that the Student requires in order to learn. The Parents have unilaterally placed the Student at the [School 1] for the 2014-2015 school year where according to them he has continued to make

progress. The Parents seek funding of the [School 1] placement for the 2014-2015 school year because PGCPs has denied the Student FAPE.

PGCPS concedes that the Student has needs that need to be addressed in his IEP but contends that the IEP developed for the Student for the 2014-2015 school year is appropriate and can be implemented at [School 2], which is the least restrictive environment. PGCPs also disputes the Parents' contention that the Student did not make meaningful progress from one year to the next. The PGCS points to the Student's scores on the standardized testing, classroom assessment and descriptors on the IEP of what he was doing in the classroom as evidence of progress.

Student's Progress

The Parents contend that PGCPs failed to offer the Student an appropriate designed program as evidenced by the fact that the Student made no meaningful educational progress since the implementation of his IEPs beginning in November 2012 and throughout the 2013-2014 school year. In support of this contention, the Parent's refer specifically to the Progress Notes on the Student's IEP. They point out that each quarterly progress note for every goal was rated as sufficient progress had been made, but in not one instance was it noted that the Student had achieved the goal. The Parent further noted that the handwritten Monthly IEP Progress Notes that the Student's special education teacher, Ms. XXXX, sent home from May 2013 through June 5, 2014 all indicated that the Student was making sufficient progress to meet his goals and not one of the Progress Notes indicated Mastery of the Goals. (XX #48, pages 4-16)

In addition to the purported lack of achievement of any goals, the Parents point to the multiple diagnostic test results. The Parents rely upon a comparison of the test results obtained during the 2013-2014 school year as compared to the test results obtained by the [School 1] at the beginning of the 2014 school year to support their assertion that the Student did not make any

progress during the 2013-2014 school year. The Parents refer to the WCJ-III administered in November 2013, the beginning of fourth grade, as compared to the WCJ-III results in the Fall of 2014, the beginning of fifth grade. In analyzing the test results, the Parents rely primarily on the grade equivalency scores. The Parents note that in October 2013, on the Broad Written Language cluster, the score reflected a grade equivalency of 3.2 but in the beginning of September 2014, the fifth grade, the Student's grade equivalency on that cluster had dropped to a 2.4. Similarly, in Math the Student's test result of October 2013 show he had a grade equivalency of 3.4, but on the September 2014 test, the score had dropped to a score of 2.6. The word attack subtest showed a drop from a 5.0 grade equivalency to a 4.3. The Parents noted that comparing the WCJ-III 2013 results with the 2014 results there was also a decline in some of the standard scores. On the Broad Written language the standard score dropped from a 93 to a 75 and on Broad Math from a 94 to a 73. There were also declines on every subtest. The math calculation subtest showed a decline in the standard score from a 91 to a 65. Writing fluency dropped from an 87 to a 56. Further indication that Student failed to make progress was the report of the Student's third grade teacher that indicated that the Student was reading on a third grade level at the end of the 2012-2013 (XX #8) school year; the [School 1] administered the Quality of Reading Inventory (QRI), an informal, non-normed reading assessment, the Student was assessed at a grade level of 3.5 in the beginning of the fifth grade. (XX #46; Tr. 141) Additionally, the Parents point out that the Student's MSA scores from the Spring of 2013 to the Spring of 2014 dropped 70 points, although the Student still tested in the proficient range.

The PGCPS disputes the Parents' contentions that the IEP Progress Notes and the diagnostic testing support a finding that that the Student did in fact make academic progress during the 2013-2104 school year. In addition, the PGCPS contends that the anecdotal evidence from the Student's teachers show that the Student made significant progress. PGCPS presented

testimony from the teachers who had hands on experience with the Student as well as those educators who performed assessments to dispute the contention that the Student made no progress during the third and fourth grade school years.

There is no dispute that all of the Student's monthly progress reports from May 2013 through June 5, 2014 indicate the Student was making sufficient progress on all of his goals, and not that he had mastered any of them. Ms. XXXX XXXX, a special educator, provided special education services to the Student during the third and fourth grade. She provided the Student with special education services in reading, writing and math on a pull-out basis. At some point during the 2013-2014 school year, she provided math services on a plug-in basis.

Ms. XXXX testified regarding the Student's progress and referred to the IEP Progress of November 7, 2013, which was first report for the 2013-2014 school year. Ms. XXXX testified that despite the indication on the form that he was making sufficient progress and had not mastered any goals, the data contained therein indicates that he had in fact mastered every goal. She admitted that the IEP Progress Notes indicated otherwise, but she attributed the error to computer software. She explained that the computerized format has a drop down boxes to denote the level of progress on a student's goals and the default setting is "making sufficient progress." She stated that she did not change the default setting to indicate mastery of the goals because she is responsible for completing many IEPs and was more focused with inputting the data. She further admitted that she repeatedly marked on the monthly handwritten progress notes sent home to the Parents that there was sufficient progress on the goals and never checked off that mastery of the goal had been demonstrated. She explained that the reason she completed the form in that manner was because it was her thinking that he mastered the goals but still needs services in those areas. She testified that throughout the year, the Student had continued to make progress on his goals.

In addition to Ms. XXXX's assessment that the Student made progress in academic areas, Ms. XXXX provided specific testimony regarding the Student's progress. She testified that the Student made progress during the 4th grade in all his academic areas, including reading and reading fluency. According to Ms. XXXX, in the beginning of the year the Student took a very long time to read brief passages, but by the end of the school year, although he was not quite where the other students were but she "saw significant improvement." (Tr. 330) She further testified that the Student made progress in writing, which was his weakest area. In the beginning of the year, he could not routinely produce full sentences and when he was able to, the sentence structure was incorrect and it had many grammatical errors. His thoughts were scattered and he was not able to produce the amount of work that one would expect from a fourth grader. She confirmed that at the end of the year, he was still struggling and not writing at grade level but was able to complete a paragraph independently, which was progress from the beginning of the year when he was not able to complete sentences. Ms. XXXX testified that the Student also made progress in math but that was because his high comprehension abilities that assisted him in getting by, and the fact that he had been getting support in math outside of the classroom, it was difficult for her to assess what he was actually capable of doing in math. She stated that he "got better" in math but that he was still definitely below grade level. (Tr. 332)

PGCPS offered testimony from Ms. XXXX, the Special Educational Instructional Specialist, to interpret the Student's progress as reflected on the standardized test results. After carefully reviewing the test results and considering the testimony regarding those results, I cannot conclude that the standardized test results compel me to find that the Student made no progress during the third and fourth grade and thus requires placement at the [School 1]. There was extensive testimony from the parties regarding the Student's test results and the implications of those results. Overall, the testimony and interpretation of those results was somewhat difficult

to sort through given the scatter on some of the results and the testimony from the witnesses addressed numerous tests and waffled between comparing grade equivalent scores, standard scores, age equivalent scores and grade level. In asserting that the test results prove that the Student made no progress, the Parents relied primarily upon the grade equivalency scores generated by the WCJ-III. All of the PGCPs educators testified that the grade equivalency scores are not the best indicators of progress and that the Standard Scores are much more reliable. According to the educators, the grade equivalence on the WCJ-III is not a good representation of a Student's overall functioning because there is not sufficient correlation data between the WCJ-III and a specific academic curriculum to draw such a conclusion. Ms. XXXX explained that Standard Scores are based on age because different states have students of different ages in each grade level. She went on to explain why the Standard Scores on the WCJ-III reflect that the Student made progress. Ms. XXXX referred to the WCJ-III that she administered in October 2013. She explained that on the WCJ-III all of the Student's standard scores fell within the average range. The only scores that fell below average were the Student's fluency scores. Ms. XXXX also compared the Student's 2012 WIAT test scores, which are also achievement scores to the WCJ-III scores that she obtained in October 2013.¹⁹ She pointed out that for letter-word identification, he scored a 91 on the WIAT and a 103 on the WCJ-III, both in the average range. Calculation on the WCJ-III correlates to the WIAT numerical operation subtest and the Student had a 90 on the WIAT and a 91 on the WCJ-III. On the spelling subtest, he scored a 97 on the WIAT and a 99 on the WCJ-III and on passage comprehension he scored an 87 on the WIAT and a 94 on the WCJ-III, indicating that his score increased from low average in 2012 to average in 2013. She explained that the scores show progress because after

¹⁹ Ms. XXXX explained that one can globally compare some of the subtest scores on both the WIAT and the WCJ-III because some of the information contained on the WIAT subtests correlate with some of the individual subtests on the WCJ-III. (Tr. page 630)

one year he has learned that much more information to keep him in the average range; the same could be said for his scores in math calculation. Ms. XXXX also administered the TOWL- 4th Edition to the Student. She explained that the test results reflected that the Student has some good writing skills. His contrived writing and spontaneous writing was in the average range. He displayed strengths in story composition and sentence combining. Ms. XXXX further testified that for the 201-2013 and 2013-2014 school years, the Student scored in the proficient range on the MSA's which is also indicative of progress.

The Parents also relied on the QRI administered by the [School 1] at the beginning of the 2014 school as part of the beginning diagnostic inventory. The QRI is a non-normed test available to the general public. The assessment requires that the Student read a passage and answer a series of questions and to do a retell of the entire story. According to the [School 1], the QRI results had the Student reading at a grade level of 3.5. I have given little weight to the QRI test results. The test results were provided on a piece of paper without any indication who administered the test or the conditions under which the test was administered. Additionally, the test was administered in early September 2014, shortly after the summer break, and there was no testimony to explain what degree the results may have reflected the Student's regression during the summer months.

Although there was evidence that the Student's subtest scores on the WCJ-III declined between the time that Ms. XXXX administered then in November 2013 and when the [School 1] administered the test in the fall of 2014, only three of those subtests declines were statistically significant. The statistically significant drops were in math calculation, where the Student's standard score dropped from a 91 to a 65; math fluency where the standard score dropped from a 74 to 66 and in writing fluency where the standard scores dropped from 87 to 56. As pointed out by Ms. XXXX, this one test's data is just a snapshot of the Student's performance on one

particular day and cannot be the sole tool to determine that the progress had not been made. She further explained that the drop in the scores were in the areas of the Student's known weaknesses and, therefore, as the rigors of the test increased it was not surprising that declines were in those areas. The broad tests scores, although reflected some decline, were still in the average range. The fact that the scores remained in the average range is a reflection of progress as in order to maintain an average standard score, the Student had to increase his amount of knowledge. Ms. XXXX went on to further explain the scatter in 2013 and 2014 subtest scores confirms that the Student has definite weaknesses in those tested areas and those weaknesses indeed needed to be addressed, but those subtests scores should not be interpreted in a vacuum to reflect a lack of progress; the multi-confirming data, including his classroom performance, the MSA and the comparison between the 2012 and 2013 test results all indicate progress. Regarding the argument that the drop in the Students' MSA scores is indicative of a lack of progress, Ms. XXXX and Ms. XXXX both explained that the fact that the Student's MSA scores dropped from a 423 to 392 was not indicative of any lack of progress because during the 2013-2014 school year the Maryland State Schools adopted the Common Core state curriculum and schools were no longer teaching to the Maryland State curriculum that the MSA measures. The test in the Spring of 2014 had information that the curriculum in the school did not have and the Students did not receive as much preparation time for the Spring 2014 MSA as they had received in the prior year. As a result of these changes, 2014 MSA scores dropped state wide.

The Parents did not provide any testimony from the individual who administered the testing at the [School 1] to refute Ms. XXXX's expert opinion and interpretation of the test data.

My review of the Student's goals contained on the IEP and the progress documented therein along with the testimony of the witnesses leads me to conclude that errors were made by PGCPs during the 2013-2014 school year and the implementation of the Student's special

education services was less than perfect. The errors include Ms. XXXX's poor and sloppy documentation on the IEP and Progress Notes, some poor communication with between the special educator and the general education classroom teacher and problems with grouping students regarding ability. While it is true that a Student's failure to achieve goals set out in an IEP may indicate that a program is an inappropriate one, nothing in the IDEA equates educational benefit with achievement of each and every goal set forth in the IEP. *Rowley*, 458 U.S. at 198; *See Cavanaugh v. Grasmick*, 75 F.Supp.2d. 446 (D. Md. 1999). In this case, a review of the IEP goals and the progress notes and the data pertaining to those goals coupled with the standardized test results and teacher assessments, I conclude that the Parents did not prove that the Student only made trivial progress during his tenure at [School 2].

Does the IEP provide FAPE?

PGCPS IEP for the Student for the 2014-2015 school year provided for ten hours of special education service within the general education classroom. The IEP included goals in Math Calculation, Math Problem Solving, Written Language Mechanics, Written Language Expression and Behavioral Goals in Self- Management and Attention. The IEP also included many accommodations to address issues in executive functioning.

The Parents contend that in developing the 2014-2015 IEP, PGCPS either did not consider or ignored relevant information necessary to draft an appropriate IEP for the Student because it fails to address the Student's disabilities. Specifically, the Parents contend that the IEP is flawed because it does not included needed goals in reading and writing fluency and emotional/social issues. In support of their position regarding these needed goals, the Parents rely upon the test data as well testimony of XXXX XXXX and Dr. XXXX XXXX.

Reading Goal/Writing Goals

Mr. XXXX disagrees with the May 30, 2014 IEP present levels of performance and academic achievement (XX 40, page 6) regarding the Student's reading fluency. The IEP reflects a reading fluency score on the WCJ-III of 53, the very low range, yet the IEP indicates that he was in the average range in instructional grade level performance and it also indicates that it does not affect his academic achievement and functional performance. According to Mr. XXXX, the Student needs direct special education instruction in reading because he has "great reading fluency issues, reading comprehension issues and probably reading decoding issues." (Tr. 57) According to Mr. XXXX, the Student clearly needs a reading goal as he had a goal last year but did not progress in the general education classroom with Ms. XXXX when he received reading instruction from the special educator on a pull-out basis. Mr. XXXX pointed to the [School 1]'s QRI which assessed the Students as reading at a 3.5 grade level, one and one half years below grade level. Mr. XXXX stated that this would be of concern even if the Student was not gifted, but given his verbal IQ of 121, it is of particular concern.

Dr. XXXX testified that the Student "needs special education in reading." She also based her conclusion on the [School 1]'s WCJ-III 2014 results reflecting a grade equivalency score of 3.8 in broad reading. (Tr. 495)

The PGCS educators provided consistent testimony which was corroborated by some testing data that refuted Mr. XXXX's conclusion that the IEP did not provide the Student with FAPE because of the lack of a reading goal. The Student's educators testified that the Student's reading comprehension was not an issue but admitted that his reading fluency was a definite weakness. The educators explained that fluency tests speed and accuracy and is a measure of what the student can accomplish when compared to nondisabled peers within a given time frame. While there was agreement among the PGCS educators that the Student has a definite weakness

in fluency, there was also the unanimous consent among them that the Student's fluency deficits did not require a reading goal on the IEP.

The record reflects that PGCPs carefully considered the Parents' experts' assertions regarding the necessity of a reading goal. In fact, on May 12, 2014, Dr. XXXX administered the Gray Oral Reading Tests- 5th Edition (GORT) specifically in order to gauge the Student's level of reading comprehension. The results of the tests, as explained by both Dr. XXXX and Ms. XXXX, indicated that the fluency issue was not impacting the Student's comprehension and ability to access the curriculum. Dr. XXXX's testimony along with his report of the GORT results indicated that the Student was "able to read the stories at an average Rate and with Average accuracy, resulting in an average reading Fluency score." The Student's comprehension score also fell within the average range at the 50th percentile. The Reading Fluency and Reading Comprehension scores were combined and yielded an average Oral Reading Index falling at the 50th percentile. Dr. XXXX confirmed again that the grade equivalency score relied upon by the Parent is not a valid indicator of where a tested student is performing in the Prince George's County curriculum.

Ms. XXXX XXXX, Special Education Instructional Specialist, testified that the Student's scores on the WCJ-III, MSA and GORT reflect that the Student knows the reading process; he knows how to read words in isolation and comprehend what he is reading. According to Ms. XXXX, the Student requires some support in reading but needed support includes prompting, cueing and chunking of information which can be accommodated for in the general classroom setting and are addressed in accommodations in his IEP. She attributed the fluency issues, in part, to the Student's issues with attention, which were also addressed through strategies and accommodations in the IEP.

Ms. XXXX and Ms. XXXX's assessments regarding the fluency issue not impacting the Student's ability to access the curriculum was corroborated by the Student's classroom educators, Ms. XXXX and Ms. XXXX. Ms. XXXX testified that although the Student was primarily a sight reader, she never noticed a problem with the Student's decoding. She observed that he understood sounds and blends. She stated that the Student's comprehension was very strong and the MUST score confirmed that he was reading on grade level. Ms. XXXX reiterated Ms. XXXX' assessment that the Student was a slow reader but that the fluency issue did not impact his comprehension and that he readily participated and answered questions accurately. Finally, Ms. XXXX, the PGCPS Assistive Technology Consultant, testified that although not part of her referral for Adaptive Technology services she did some reading work with the Student to cover all the bases. She stated that on a software package he read a multi-paragraph and fourth grade level passage. She noted tracking errors but that his fluency for the fourth grade reading passage was fine and was able to answer a number of different comprehension questions.

XXXX XXXX, PGCPS Instructional Specialist, explained why the IEP did not include fluency goals in reading, writing, or math. She explained that although the reading fluency scores were low on the 2013 WCJ-III, the fluency issues were not impacting his reading comprehension or decoding. Ms. XXXX testified that a writing fluency goal was not included because the Student was "just starting to get into the flow of writing" and the teachers needed to continue to deal with the developing those skills before asking the Student to write something fast. Writing fluency goals were not included in the IEP because the curriculum where he is going to be under timed situations and the same applied for math. She explained that in math they were working on calculation skills and would consider having a goal next year. (Tr. 693-694)

The Parents offered no expert testimony to rebut the consistent opinions of the several PGCPS experts that the Student's fluency issues, particular in reading, were affecting his

comprehension or ability to access the curriculum Without any evidence to support such a finding, I cannot find that the absence of a reading goals or fluency goals is a denial of FAPE. Mr. XXXX's conclusion that the Student should be reading at a higher level because of his high verbal intellectual potential is somewhat speculative. While it is true that the Student has high cognitive functioning in the verbal areas, it cannot be overlooked that he has some very definite weaknesses in executive functioning that most certainly would to some degree counterbalance his strong verbal intellect and impact his ability to learn.

Emotional/Social Goals

The Parents contend that IEP is defective because it fails to address the Student's significant emotional needs. Both Dr. XXXX and Mr. XXXX testified that the Student's cognitive profile makes him vulnerable to anxiety and frustration that may manifest itself in symptoms such as withdrawal or emotional outbursts. The Parents contend that this behavior has in fact manifested itself at home and school. According to the Parents, during the fourth grade, the Student starting to complain that he hated school and he began exhibiting signs of frustration and anxiety. The Parent reported that the Student was having at least one emotional outburst per week related to school. He makes statements such as "I hate school" and "I feel lost." In addition to the incidents at home, the Parents cited to several incidents at school where the Student became upset in the classroom and needed to leave. The Parents placed particular emphasis on an incident in math class when the Student crawled under his desk and began sobbing.

Dr. XXXX explained that her conclusions were based on a neuropsychological evaluation on October 22, 2013 which focuses on the Student's executive functioning and emotional status. Dr. XXXX explained that in order to assess the Student's emotional status, she spoke with him and gave him several questionnaires that specifically deal with emotional issues. As part of her evaluation, Dr. XXXX administered the BASC, a questionnaire assessment that looks at

externalizing as well as internalizing behaviors as well as some social aspects, such as relationships, attitudes about school and self-esteem. She also provided the Student and the Parents with the SCARED, a non-normed anxiety questionnaire. According to Dr. XXXX on the SCARED the Student's self-report indicated an "anxiety disorder of some kind." Dr. XXXX report specifically noted that the Student demonstrates "many social and emotional strengths." (XX #17) She documented that "on a sentence completion task, the Student made positive statements about himself peers, and family. Nevertheless, she opined that the Student "shows significant symptoms of emotional distress."

Although there is evidence that that Student had episodes of frustration and may experience episodes of anxiety, the evidence does not support a finding that the Student has extensive emotional needs that are not addressed in his IEP. It is important to note that Mr. XXXX's opinion is based on his general knowledge of twice exceptional children and the Parent's report of the Student's behavior and not any specific behaviors of the Student that he personally observed. Similarly, I have not given Dr. XXXX' opinion great weight as her conclusions that he displays significant symptoms of emotional distress was not gleaned from her interaction with the Student or even from the Student's self- assessment, but rather from the Parent's self- report on the SCARED. According to the Parents, the Student exhibited significant school avoidance, but the Student only endorsed as "somewhat true" the statement "I worry about going to school." She also found that the Student had symptoms consistent with a Separation Anxiety Disorder. However, on the BASC, the Parents and teachers ratings fell below the risk rating for Student anxiety. Dr. XXXX administered the Piers Harris Children's Self Concept Scale to assess the Student's self-esteem within the educational process and the test results indicated the absence of anxiety in relation to school.

Most importantly, the anxiety/emotional issues reported by the Parents and their experts were not exhibited by the Student on a routine basis. The overwhelming testimony of the [School 2] staff was that the Student generally did not present as an anxious one. The other [School 2] educators were unanimous in their observations and assessments of the Student being a happy and socially engaging participant at school. Ms. XXXX testified that throughout the school year the Student remained the same happy child, except when it came time to math instruction. She and the Assistant Principal confirmed that all of the incidents at school referenced by the Parents occurred during math class. The one particular incident where the Student was sobbing under the desk was described by Ms. XXXX as uncharacteristic of the Student. On that particular day, the Student was working independently on math when he became upset and crawled under his desk and sobbed. After being removed by the aide and going for a walk, the Student calmed down and explained that to Ms. XXXX that he became upset because he felt inadequate to his peers because he did not understand the information that was being presented. The fact that the Student became frustrated several times in a class of a subject area that is a known area of difficult and dislike for the Student does not lead to the conclusion that the school cannot address his emotional needs.

The 2014-2015 IEP provided for a Behavioral-Self management goal that specifically addressed the issue of frustration and overload. The goal provided that on an independent task, the Student will use strategies to work through frustration in order to complete the task. The goal included objectives of the Student identifying the source of the frustration, choosing a strategy to address the frustration and with prompting from staff, recognition that he is off task.

Proposed Placement at [School 2]

At the May 30, 2014 IEP team meeting, once the goals and objectives were formulated, the team determined that the Student's goals and objective could be met in the [School 2] fifth

grade classroom that was co-taught by a special educator and a general educator. The classroom would also be staffed with a para-professional. Within the classroom, the Student would receive 45 minutes of special education instruction each day during math and reading-language and 30 minutes four times per week during science and social studies. PGCPs educators testified that the Student would have been in a classroom with 28 other students, all of whom are identified as TAG.

The Parents disagree that the Student receiving special education services within a general education classroom with 28 other students is appropriate. The Parents offered the testimony of Mr. XXXX, who testified that he does not believe that the Student will benefit from being in a general education classroom with non-disabled peers because the testing and assessment data does not show that he made meaningful progress in the part-time special education, part-time general education program that he has attended for the past several years. In addition to the alleged failure of PGCPs in prior years, Mr. XXXX stated that due to the Student's ADHD, it would be too distracting for the Student to receive his special education instruction while the general educator was teaching her lesson.

Dr. XXXX also advocated for a small classroom setting with a low student to teacher ratio. Dr. XXXX' recommendation was based largely on her assessment of the Student's difficulties in executive functioning. She explained that based on the assessments she administered, which included the NEPSY and the Behavior Rating Inventory of Executive functioning for the Parents, she determined that the Student has significant difficulties in planning and organization. The test further revealed significant weakness in working memory, which manifests in the Student's difficulty following directions and tasks that require multi-steps. Based on these assessments, she recommended that the Student be in classroom with "children who have neuropsychological profiles (i.e. cognitively bright with executive functioning deficits.)" (XX #17) Dr. XXXX

furthered this opinion in her testimony that he should be placed with children with similar profiles because he needs to be with his intellectual peers but with similar struggles because the strategies that would apply to him would also apply to the other students. She reiterated that the Student required low student to teacher ratio because of his distractibility, focus and attention issues, a small classroom setting would be more conducive to him being able to attend and focus. The lower student-to-teacher ratio would provide him with the expertise he needs to modify the way instruction is given as he needs a systemized approach and routine in order to address his executive function deficits that prevent him from retaining information that he has learned before.

The Parents also presented the testimony of XXXX XXXX, Head of the Intermediate School at the [School 1]. She offered the opinion that the Student needed the restrictive setting of the [School 1] because of his weak foundation skills in reading writing and math.

In addition to the purported lack of progress evidence in the diagnostic testing already discussed, Mr. XXXX and the Parent refer to a conversation in February 2014 that the Student's mother had with the Student's general education teacher, Ms. XXXX, in the winter of his fourth grade year. The Parent documented her recollection of the discussion in an email to her lawyer dated February 24, 2014. Of particular concern to the Parent was that the special educator was not following a schedule and not pulling the Student out for his scheduled services. According to the Parent, Ms. XXXX stated that she did not think that the current fifth grade team at [School 2] will take time to support the Student's needs and thinks the Student will benefit from a one on one classroom setting.

All of the PGCPS witnesses testified that the Student's IEP was appropriate as it provided him special education instruction within the general education classroom and provided the accommodations and supplementary services to access the curriculum. They were unanimous in their opinions that the IEP could be implemented at [School 2], the least restrictive environment.

The Student would be in a classroom with TAG students so he would be in a classroom environment with peers of similar cognitive abilities, yet receive the support needed through the supplementary aides and services such as chunking, graphic organizers, and use of highlighters to address his executive functioning issues.

Under IDEA, it is clear that the Student must be placed in the LRE to achieve FAPE. Pursuant to federal statute, disabled and nondisabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5). Yet, placing disabled children into regular school programs may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. *Id.* and 34 C.F.R. § 300.114(a)(2). Under this mandate, PGCPS is obligated to provide the Student with a placement that affords him at least an opportunity to interact with nondisabled peers, if he will receive educational benefit in that placement.

The Parents have failed to prove that the Student requires a more restrictive setting than the fifth grade co-taught classroom at [School 2] in order to receive educational benefit. The judgment of educational professionals is ordinarily entitled to deference. *G. v. Ft. Bragg Dependent Schools*, 343 F. 3d 295, 307 (4th Cir. 2003); *M.M. v. School District of Greenville County*, 303 F. 3d 523, 532 (4th Cir. 2002). I have given deference to the [School 2] educators who have worked with and observed the Student on a daily basis. Mr. XXXX's conclusion that the Student would be too distracted in the general education classroom consisting of 28 students to participate meaningfully was based on a review of the Students records as well as a very brief observation of the Student in his fourth grade class. Observations such as the one Mr. XXXX engaged in are not very meaningful when one is assessing a complex Student. Similarly, Dr. XXXX's recommendation was made without ever observing the Student in the classroom.

Neither Mr. XXXX nor Dr. XXXX addressed the specific accommodations contained in the IEP and why those accommodations, many of which were included at the suggestion of Mr. XXXX, were insufficient to address the Student's issues with organization and executive functioning.

I have given no weight to Ms. XXXX's opinion regarding the inappropriateness of the Student's placement at [School 2]. She was unable to provide a rational response on cross examination as to why the Student's foundational skills could not be addressed in a less restrictive setting than the [School 1]. Additionally, her contact with the Student has been very limited and for a very short time. As a staff member of the [School 1], her interest in having the [School 1] deemed as the only appropriate placement is self-evident.²⁰

Additionally, in assessing the weight that should be afforded to the Parent's experts' testimony, I have considered that their testimony was offered to support the Parent's interest in having the Student placed at the [School 1]. Although Mr. XXXX denied his opinion that PGCPs could not provide the Student with FAPE was formulated before the IEP process concluded, I did not find his assertion credible. The evidence reflects that the Parent shared her negative assessments and intent to place the Student at [School 1] with him well before the IEP was finalized. I am confident that Dr. XXXX was also well aware of the Parents' preference for a private placement. The Student's mother's denial that she was open to a placement at [School 2] until the end of the IEP process is clearly not supported by her own documentation. The Student's mother testified that she had not committed to sending the Student to [School 1] until April or later. (Tr. 225) The evidence is clear that this is not the case. In a letter written to her attorney dated October 13, 2013, the Student's mother states, in relevant part:

²⁰ The Parents also presented testimony from the occupational therapy consultant at the [School 1]. Her testimony went largely to the appropriateness of the [School 1] for the Student. She also testified that in her opinion the Student "could benefit from some direct pull-out occupational therapy services in addition to consultative services. The substance of testimony was not germane to my decision and is therefore not addressed in any detail.

We are writing to you in order to provide a clear explanation of our concerns with regard to Prince George's County Public School System and [School 2]. Simply put we no longer trust PGCPSS to educate our son.

Further on the letter goes on to state:

We are in agreement with XXXX XXXX's finding and recommendations with regard to supports. Unfortunately we are not convinced nor do we believe that [School 2] or any Prince George's County school is capable of implementing a successful IEP for [the Student].

(XX #15)

In a January 28, 2014 email to her attorney and Mr. XXXX, the Parent states, in relevant part:

Additionally, we met with the [School 1] last Friday, 1/24. Since [Student] was accepted last year waiving the application fee and attended the 2013 summer program... they are waiving the application fee and have modified the application process. We are submitting the required information this week. Which calls for 2 teacher evaluation forms. **Given our current position, is there anything special we need to do when we request the teachers to complete the forms?** ... If accepted we plan to enroll [the Student] to begin in the fall and pay out of pocket until you win our case.

(XX #24)

Given this evidence of the Parents having made the decision no later than January 2014 to have the Student attend [School 1] for the 2014-2015 school year, I have given little weight to the Parent's paraphrasing of her conversation with Ms. XXXX in February 2014 regarding [School 2] not being able to meet the Student's needs in the fifth grade.

Perhaps the most compelling evidence that the Student does not require a segregated classroom with all disabled peers is the Parent's own words in her October 13, 2013 letter to her attorney.

...To be clear, we feel that [the Student] can learn in any school with the proper supports. If XXXX XXXX hand-selected staff and was able to oversee [the Student's education on an ongoing basis...we would be completely comfortable, actually overjoyed to keep [the Student] in a public school setting.

(XX #15)

The law recognizes that “once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.” *Tice v. Botetourt County School Board*, 908 F. 2d 1200, 1207 (4th Cir. 1990). When determining the Student’s IEP and placement, the team considered all of the evaluative data gathered from numerous sources. The evidence supports PGCP’s conclusion that the special education services that the Student requires in order to receive a FAPE can be implemented at [School 2] .

The Student is not entitled to placement at [School 1] or any private special education day school at public expense.

When a parent disagrees with a proposed IEP and seeks reimbursement from the public school district for the child’s private school education, then reimbursement will be ordered only if a court ultimately determines that the placement proposed in the IEP was inappropriate. *School Comm. of Burlington v. Dep’t of Ed. of Mass.*, 471 U.S. 359 (1985). In such a case, even if a private school does not meet all of the requirements of IDEA, the private school will be considered a proper placement if it confers some educational benefit on the child. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

In determining educational benefit, the courts have reminded the decision-maker that an “appropriate” education does not mean that a student is able to maximize his potential or to receive optimal services. *Rowley*, 458 U.S. at 200; *Burke County Bd. of Educ. v. Denton*, 895 F. 2d 973, 980 (4th Cir. 1990). Instead, the courts have held, in *Rowley* and subsequent cases, that a public school authority complies with the IDEA when it devises an IEP that is reasonably calculated to enable the student to receive educational benefit and when it places a student in a program that “provides opportunity for some educational progress.” *Abrahamson v. Hershman*,

701 F. 2d 223, 227 (1st Cir. 1983). The IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetcourt County School Bd.*, 908 F. 2d 1200, 1207 (4th Cir. 1990) quoting *Rowley*, 458 U.S. at 201. However, the benefit conferred by an IEP and placement must be “meaningful” and not merely “trivial” or “*de minimis*.” *Polk v. Central Susquehanna*, 853 F. 2d 171, 182 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989); *Bd. of Educ. v. Diamond*, 808 F. 2d 987, 991 (3rd Cir. 1986).

Pursuant to *Carter*, the appropriateness of a parent’s private placement choice is analyzed only if the IEP results in a denial of FAPE. 510 U.S. 7; *Burlington*, 471 U.S. 359. In this matter, I have concluded that the IEP and placement offered by the public agency offers the Student FAPE. An analysis pursuant *Burlington* and *Carter* is inapplicable and the issue of whether [School 1] or any private educational setting is appropriate does not need to be addressed in this decision.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parents have failed to establish that the IEP offered by the PGCCPS was not reasonably calculated to offer the Student with a meaningful educational benefit for the 2013-2014 school year. 20 U.S.C.A. §§ 1400- 1482 (2010 & Supp. 2014).

I further conclude that the IEP and placement proposed by PGCCPS for the 2013-2014 school year is reasonably calculated to offer the Student a FAPE in the least restrictive environment. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993).

As I have concluded that the Student would have been provided a Free and Appropriate Public Education in the least restrictive environment at [School 2], the Parents are not entitled to

receive reimbursement as a result of their unilateral placement of the Student at the [School 1] for the 2013-2014 school year. 34 C.F.R. § 300.148 (2012).

October 31, 2014
Date Decision Issued

Geraldine A. Klauber
Administrative Law Judge

GAK/tc

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.