

**XXXX XXXX,**

**STUDENT**

**v.**

**BALTIMORE COUNTY**

**PUBLIC SCHOOLS**

**\* BEFORE STUART G. BRESLOW,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO.: MSDE-BCNY-OT-15-10545**

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

**DECISION**

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ORDER

**STATEMENT OF THE CASE**

On March 30, 2015 XXXX XXXX (Parent) on behalf of her 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 the Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

I held an in-person prehearing conference on April 22, 2015 following mediation that same day, which did not resolve this matter. The Parent was present and represented herself. J. Stephen Cowles Esquire, represented the BCPS. By agreement of the parties, the hearing was scheduled for May 12 and 13, 2015.

I held the hearing on May 12, 2015. The Parent represented herself. J. Stephen Cowles Esquire, represented the BCPS. The hearing was completed on May 12, 2015.

## ISSUE

Was the Individualized Education Program (IEP) and placement developed by the BCPS reasonably calculated to provide the Student with a free and appropriate public education for the 2014-2015 school year?

## SUMMARY OF THE EVIDENCE

### Exhibits

The Parent did not offer any documents for admission into evidence.

I admitted the following exhibits, with the exception of the documents not offered, on behalf of BCPS:

- |             |  |
|-------------|--|
| BCPS Ex. 1  | IEP Team Participant Signature Page with IEP Team Summary, dated March 23, 2015      |
| BCPS Ex. 2  | IEP Team Participation Signature Page with IEP Team Summary, dated February 24, 2015 |
| BCPS Ex. 3  | Not offered  |
| BCPS Ex. 4  | Not offered  |
| BCPS Ex. 5  | IEP, dated March 17, 2015  |
| BCPS Ex. 6  | IEP, dated February 20, 2015   |
| BCPS Ex. 7  | IEP Current Progress Reports, dated March 17, 2015                                   |
| BCPS Ex. 8  | BCPS Report Card for 3 <sup>rd</sup> grade school year 2014-2015                     |
| BCPS Ex. 9  | BCPS Report Card for 2 <sup>nd</sup> Grade for School Year 2013-2014                 |
| BCPS Ex. 10 | Not offered  |
| BCPS Ex. 11 | Not offered  |
| BCPS Ex. 12 | Data Chart, undated  |
| BCPS Ex. 13 | Communication Log, dated March 17, 2015 through May 1, 2015                          |

- BCPS Ex. 14 Not offered
- BCPS Ex. 15 Not offered
- BCPS Ex. 16 Not offered
- BCPS Ex. 17 Board Policy and BCPS Superintendent's Rule 5140, revised December 6, 2011
- BCPS Ex. 18 Resumes of Expert Witnesses

Testimony

The Parent testified and presented the following witnesses:

- XXXX XXXX, grandmother of Student
- XXXX XXXX, stepfather of Student
- XXXX XXXX, Family Navigator, XXXX

The BCPS presented the following witnesses:

- XXXX XXXX, Director of Special Education, BCPS, accepted as an expert in special education and school administration
- XXXX XXXX, Special Education Teacher, [School 1], admitted as an expert in special education
- XXXX XXXX, Principal, [School 1]

**STIPULATIONS OF FACT**

The parties stipulated to the following facts:

1. The Student is nine years old, and her date of birth is XXXX, 2005.
2. On February 13, 2013, the Parent provided consent for speech/language, psychological, occupational therapy, and educational assessments. These assessments were completed and reviewed on March 28, 2013. At that time, the Student's eligibility for special education was confirmed.

3. The Student is identified as a student with a disability under the IDEA in the category of Specific Learning Disability.
4. According to the Student's IEP, the areas affected by her disability include reading, mathematics, visual perceptual/motor, language and writing.
5. During the 2013-2014 school year and a portion of the 2014-2015 school year, the Student attended [School 2] and received special education services in accordance with the IEP.
6. The Student is currently in the third grade at a comprehensive public day program at [School 1].
7. The Student began attending [School 1] in January 2015.
8. The IEP team at [School 1] convened on March 17, 2015 and February 20, 2015 to review the Student's IEP and to make revisions.

#### **FINDINGS OF FACT**

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

1. Prior to January 23, 2015, the Student attended [School 2].
2. On January 23, 2015, the Student was transferred to [School 1] ([School 1]).  
[School 1] is the Student's home school.
3. Before the Student was transferred to [School 1], the Assistant Principal assured the Parent that the Student would receive all of the same special education services at [School 1] that she had previously received at [School 2].
4. The Student was moved from [School 2] to [School 1] because the Parent believed that the Student was being harassed by other students. In particular, there was an

incident involving the Student and other students on a school bus. To prevent further incidents, a bus aide sat next to the Student on the bus.

5. While at [School 1], the Parent has complained of other incidents involving the Student with other students. Most recently the Parent referred a matter to police authorities involving a student who knocked glasses off of the Student's face.

6. The incidents involving students at either [School 2] or [School 1] have not impacted the Student's ability to access the curriculum.

7. While in second grade at [School 2], the Student demonstrated that she made progress over the course of the school year in mathematics, science, and language arts skills.

8. The Principal at [School 2], Ms. XXXX XXXX, became the Director of Special Education for BCPS in August 2014.

9. Ms. XXXX is familiar with the Student and her educational needs. She frequently communicated with the Parent when the Parent had questions or concerns about the Student's educational experience at [School 2].

10. [School 1] is able to implement the IEP for the Student that was developed while she was a student at [School 2].

11. The IEP team would not approve a transfer to [School 2] if the IEP that was developed at [School 2] could not be successfully implemented.

12. Observations of the Student while at [School 1] were conducted by BCPS special education personnel to verify that the Student was receiving instruction that was specified in the IEP. Direct observations resulted in confirmation that the Student was receiving the appropriate instruction and supports described in her IEP.

13. The Parent, her husband, XXXX XXXX, and the Student's grandmother, XXXX XXXX, have all observed the Student exhibit signs of anxiety in the home, including stomach aches, and the Student's reluctance to attend school in the morning.

14. The Parent and her husband have taken the Student to a pediatrician for evaluation of these symptoms. There is no report from the pediatrician attributing any anxiety symptoms to the Student's schooling.

15. The Student has not exhibited symptoms of anxiety while at [School 1].

16. If a parent wishes to transfer a student in the BCPS system from a home school to another school, the parent must follow BCPS Policy 5140.

17. Policy 5140 does not apply to requested transfers for special education services, but if there are medical, emotional, or social adjustment needs, a student may be transferred, with permission, provided there is independent, detailed documentation substantiating the circumstances. For example, the reports can be generated by physicians, psychologists, social workers, counselors or other individuals qualified to substantiate the reasons for a transfer.

18. The Parent has not filed a special permission transfer for the Student.

19. The Principal of [School 1], XXXX XXXX, communicates frequently with the Parent. A communication log was implemented to provide notification to the Parent on the Student's activities during the school day at [School 1].

20. A "lunch bunch" group was implemented to have the Student eat lunch with an educator, typically, Ms. XXXX XXXX, and other students in a small group setting. The program was implemented to assist in socialization.

21. During the school day at [School 1], the Student works primarily in a self-contained classroom where the teacher provides the Student with the third grade curriculum.

22. For math class, there are three students in the classroom, including the Student, along with two adults, an instructor and an intern.

23. There are seven students in the Student's language arts class as well as in her science and social studies class. There are also two instructors and an intern teaching these subjects.

24. Shortly after being transferred to [School 1], the Student's IEP was reviewed and revised by the IEP team on February 20, 2015.

25. In addition to the program outlined in her existing IEP, the IEP team initiated changes to the Student's IEP by adding a phonics component. This was added based on an informal assessment at [School 1].

26. In addition to adding phonics, the IEP team added decoding goals to her IEP.

27. The Parent raised an issue involving the Student being struck on the bus and other students using profanity directed towards her. This issue was addressed at the IEP meeting.

28. The Student does not have a behavior intervention plan, nor is there any need for one as her behavior in school is not disruptive to other students nor does she have behaviors that impact her ability to access her program.

29. On March 17, 2015, an annual IEP review was conducted at [School 1]. In addition to the Parent, those in attendance included XXXX XXXX, a general educator, XXXX XXXX, Administrator, XXXX XXXX, Special Educator, XXXX XXXX, stepfather of the Student, XXXX XXXX, Occupational Therapist, and XXXX XXXX, XXXX.

30. During the annual review, it was reported by the IEP team that the Student was making measurable progress towards her goals and objectives.

31. The Student's teachers employ strategies and manipulatives to assist the Student in learning. The Student has made a great deal of progress with phonics and reading. She can currently read at 10% of the third grade curriculum.

32. Prior to the March 17, 2015 IEP meeting, on March 9, 2015, a screening was conducted to determine where the Student was academically in achieving her IEP goals. This initial screening was compared to a screening conducted on April 22, 2015 to measure progress.

33. On initial screening, the Student was able to recognize 10% of the words read on the second grade list. After rescreening she was able to read 55% of the words.

34. On initial screening the Student was able to recognize money denominations 25% of the time; however, on rescreening, she was able to recognize money 75% of the time.

35. At a second grade level for reading comprehension, she was able to answer 15% of the questions correctly; however, on rescreening, she was able to answer 30% correctly.

36. While comparing numbers to 999 in math, she was able to provide correct answers 10% of the time without prompting and on May 4, 2015, when she was retested, she was able to provide correct answers 70% of the time.

37. Although the Student is in a self-contained classroom for math, reading, written language, science and social studies, she is with the general student population for specials. The IEP team anticipates that she will be moved to the general student population as she acquires skills and makes continuing progress towards her goals that will enable her to be successful in the general student population.



## DISCUSSION

### Motion for Judgment

Under the OAH Rules of Procedure, a party may move for judgment at the close of the evidence offered by an opposing party, as provided in COMAR 28.02.01.12E:

#### E. Motion for Judgment.

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

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

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

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

COMAR 28.02.01.12E is patterned after Md. Rule 2-519, Motion for Judgment, and is the OAH equivalent. Rule 2-519 allows the court to proceed “as the trier of fact to determine the facts and to render judgment” at the end of the opposing party’s case. In deciding a motion for judgment, the fact finder is not required to view the evidence in a light most favorable to the non-moving party. Md. Rule 2-519.

BCPS moved for judgment as to the issue at the close of the Parent’s evidence stating the grounds for its Motion. The Parent was given an opportunity to respond. The BCPS argued that since the Parent had the burden of proof in challenging whether the Student was provided FAPE as set forth in *Schaffer v. Weast*, 546 U.S. 49 (2005), the Parent failed to prove that the IEP was inadequate or that it failed to provide the Student with FAPE. The Parent argued that since the Student was transferred to [School 1], her educational skills had regressed and she was no longer making any progress towards her IEP goals and objectives. I denied the BCPS Motion for

Judgement because the Parent had provided testimony that, based on her observations of the Student in her home environment, no meaningful progress had been made based on the Student's IEP goals.

### **The General Legal Framework**

The identification, assessment, and placement of students in special education is governed by the IDEA. 20 U.S.C.A. §§ 1400-1482 (2010), 34 C.F.R. Part 300 (2014), 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. 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 free appropriate public education as follows:

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

458 U.S. at 200-01 (emphasis added). *See also In Re Conklin*, 946 F.2d 306, 313 (4th Cir. 1991).

The IDEA contains the following similar definition of free appropriate public education:

special education and related services that . . . have been provided at public expense, under public supervision and direction, and without charge...[and that have been] provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9) (2010). *See also* Md. Code Ann., Educ. § 8-401(a)(3) (2014); COMAR 13A.05.01.03B(27).

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “[t]he best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4<sup>th</sup> Cir. 1983), *citing Rowley*. Instead, free appropriate public education entitles a student to an IEP that is “reasonably calculated to enable the child to receive educational benefits.” *Id.* 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. School Dist. of Greenville County*, 303 F.3d 523, 526 (4<sup>th</sup> Cir. 2002), *citing Rowley*, 458 U.S. at 192; *A.B. v. Lawson*, 354 F.3d 315 (4<sup>th</sup> Cir. 2004); *Board of Educ. of Montgomery County v. S.G.*, 2006 WL 544529 (D. Md. March 6, 2006). Thus, the IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4<sup>th</sup> Cir. 1990).

Nevertheless, 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 (3<sup>rd</sup> Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). To provide a free appropriate public education, the educational program offered to a student must be tailored to the particular needs of the disabled child by the development and implementation of an IEP, taking into account:

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

20 U.S.C.A. § 1414(d)(3) (2010). The IEP depicts a student's current educational performance, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A). IEP teams must consider students' evolving needs when developing their educational programs. *Schaffer v. Weast*, 554 F.3d 470 (4<sup>th</sup> Cir. 2009).

In addition to the IDEA's requirement that a disabled child receive some educational benefit, the child must be placed in the "least restrictive environment" to achieve a free appropriate public education, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5) (2010); 34 C.F.R. 300.114(a)(2)(i) & 300.117 (2014). However, mainstreaming 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.* Accordingly, in such a case, free appropriate public education might require placement of a child in a private school setting that would be fully funded by the child's public school district.

The Supreme Court has placed the burden of proof in an administrative hearing under the IDEA upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent bears the burden of proving that the IEP developed for the Student's 2014-2015 school year was not reasonably calculated to provide the Student with a free appropriate public education in the least restrictive environment.

In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide FAPE to a student with disabilities. First, a determination must be made as to whether there has been compliance with the procedures set forth in the IDEA, and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefit. 458 U.S. at 206-207. In the case at bar, there has not been any allegation of procedural error; therefore, this part of the analysis will not be addressed.

The United States Department of Education's Office of Special Education and Rehabilitative Services (OERS) issued a letter providing an overview of a school district's responsibilities under the IDEA to address bullying of students with disabilities. Although there is no federal law addressing bullying, the Department of Education defines bullying as the following:

Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (eg. Excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (e.g. cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

Dear Colleague Letter 61 IDELR 263 (United States Department of Education, Office of Special Education and Rehabilitative Services Office of Special Education Programs (2013).

The Department emphasized in the letter that bullying of a student with a disability that results in the student not receiving a meaningful educational benefit constitutes a denial of FAPE under the IDEA.

### Analysis

The Parent argues that the Student was denied FAPE because she was bullied and/or harassed while attending [School 2] and now [School 1]. In order to establish that the Student was denied FAPE, the Parent, who has the burden of proof, must establish that the Student was subject to bullying and second, if she was subjected to bullying, whether the bullying caused the Student not to receive meaningful educational benefit in her program.

I find that the Parent has failed to prove either element. First, the Parent testified that the Student was harassed, both at [School 2] and while at [School 1], by other students who called her names and, in particular, one incident that involved the use of profanity directed at the Student while she was on a school bus. These incidents were addressed by the school administrators. No formal complaints were filed by the Parent. There is a procedure in place in the BCPS to register formal complaints due to harassing or bullying behavior. Additionally, there was no evidence introduced at the hearing to suggest that any action directed towards the Student was carried out by one student or several students. When issues on the playground or elsewhere on school property are brought to the attention of the administration, they are immediately investigated and appropriate action is taken. None of these isolated incidents rise to the level of “bullying” as described in the letter from the Department of Education.

Even if one could establish that bullying took place, there must also be a finding that the bullying caused the Student not to receive a meaningful educational benefit. Once again, the Parent’s arguments fall short.

The Parent did not allege that the incidents involving the Student deprived her of receiving a meaningful educational benefit. The Parent was concerned about her child’s safety at school and whether the school administration was properly responding to these concerns. While

the Parent tried to attribute the Student's alleged anxiety about going to school to these isolated incidents, she failed to provide any testimony or documentation from medical professionals to support her allegations. If the Student suffered from anxiety, it may have been attributable to other factors, including a recent tragedy that occurred in the Student's home. There is simply no evidence to causally link the incidents described by the Parent to a failure by the Student to receive FAPE. In fact, having reviewed the record, it is abundantly clear that the Student has received FAPE while attending [School 1] during the 2014-2015 school year.

XXXX XXXX, the Director of Special Education at the BCPS, was admitted as an expert in special education and school administration. Although she is now responsible for special education services throughout the BCPS system, she has great familiarity with the Student as her previous assignment was as principal of [School 2]. In that position, she had an excellent working relationship with the Parent and communicated with her frequently concerning the Student. During the 2<sup>nd</sup> grade at [School 2], Ms. XXXX noted that the Student's report cards showed very good effort in nearly all of her subject areas, establishing that the Student made progress from quarter to quarter throughout the school year. (BCPS Ex. 9).

When the Student entered 3<sup>rd</sup> grade, the curriculum changed and became more challenging to the Student. Nevertheless, the Student showed either satisfactory or better grades in all subjects. (BCPS Ex. 8). The Student continues to need improvement in the language arts; however, based on an initial screening conducted on March 9, 2015 compared to a rescreening conducted on April 22, 2015, the progress that the Student has made was remarkable. Ms. XXXX, admitted as an expert in special education, conducted both screenings. (BCPS Ex. 12). Although the tests used for both screenings were the same, Ms. XXXX, based on her professional experience, opined that the fact that the tests were the same had no bearing on the

accuracy of the results. In other words, there would be no concern that recollection by the Student of the testing materials used in the initial screening would cause one to question the validity of the results in the second screening. As previously mentioned, the results were remarkable in that it showed considerable progress in a relatively short period of time while at [School 1]. Test results for phonics using the 2<sup>nd</sup> grade word list indicated 55% of the words read, while at the initial screening on March 9, 2015, the Student was only able to read 10% of the 2<sup>nd</sup> grade word list. Money identification, a major concern of XXXX XXXX during her testimony, showed an improvement from 25% to 75% recognition. Reading comprehension on the second grade level improved from 15% to 30%. Her Math-Place Value (comparing numbers to 999) improved from 10% accuracy to 70% accuracy without prompting. Ms. XXXX testified that the Student was unable to identify money and was concerned whether she would ever be able to master this skill since she did not see any mastery on the part of the Student while she was home. When asked if she ever observed the Student in the classroom, Ms. XXXX indicated that she had not. The results of the screenings do not support the testimony of Ms. XXXX. The screenings do indicate that the Student is making good progress and is receiving educational benefit from the implementation of the IEP.

At the February 20, 2015 IEP meeting, which the Parent attended, the Parent was pleased with the progress the Student was making. She was quoted as saying, "I feel that [the Student] is improving constantly. I am very happy with her progress." (BCPS Ex. 6). She was also quoted as saying that "She loves school and learns everyday." This is contrary to her testimony that the Student does not like school and that she is anxious whenever she goes to school. The Parent's observations do not coincide with the observations of the Student's teachers. During the third quarter of the 2014-2015 school year, when the Student transferred from [School 2] to [School



1], the comments from her classroom teacher, Ms. XXXX, and her special education teacher, also contradict the statements from the Parent. It is important to note that the teachers are the ones who actually see the Student in the classroom environment. The Parent has not had the opportunity to directly observe how well the Student has transitioned from [School 2] to [School 1].

Transitioning to a new school can be difficult, meeting new students, teachers and administrators. Her general education teacher provided the following 3<sup>rd</sup> quarter comments:

[Student] has been a wonderful addition to my class. She enjoys going to specials with the rest of the class and has really come out of her shell at recess. [Student] likes to socialize with her peers at lunch, also. [Student] does a nice job following the rules of the classroom and the Code of Conduct. Keep working hard!- Ms. XXXX.

Ms. XXXX, the Student's special education teacher made the following comments:

[Student] has made a smooth transition to our small group reading and math class. She works very hard in both and has made a great deal of progress. This quarter we worked on multiplication and measurement. [Student] did very well with using pictures to solve multiplication problems and using the strategies that were taught to find perimeter and area. In reading, [Student] did very well with summarizing and sequencing events. We also worked on cause and effect this quarter. [Student] did well with finding causes and effects. This quarter I would like to see her work on explaining how she found her answer using support from the text. I look forward to seeing [Student] progress in the fourth quarter.- Ms. XXXX. [Student is receiving a modified program for both mathematics and reading instruction].

These comments from professional educators paint a completely different picture than what was portrayed by the Parent, her grandmother and stepfather. This is not a child who does not want to go to school, but is a child who is anxious to learn and puts in the effort to achieve the goals set for her by the IEP team. I give the testimony of the educators more weight than I give the Student's relatives who have not seen her perform in the classroom.

Ms. XXXX, principal of [School 1], testified that she has never seen anxiety in the Student while at school. Although she has communicated with the Parent frequently about the Parent's concern for the Student's safety, the Parent has never filed a formal complaint, even though the BCPS system has a formal system for filing complaints.

In addition to a system for filing complaints, the BCPS also has a policy (Rule 5140) that would allow a parent to transfer a student from a school that serves his or her attendance area to another school when the student demonstrates exceptional hardship for reasons of medical, emotional, or social adjustment. The parent would have to apply for a *Special Permission Transfer* and provide independent, detailed documentation substantiating the circumstances (eg., from physicians, psychologists, social workers or counselors). (BCPS Ex. 17). Although a transfer of the Student would not be approved for special education purposes because the Student is receiving FAPE at [School 1], if the Parent is able to provide independent documentation establishing exceptional hardship for reasons of medial, emotional, or social adjustment as set forth in Rule 5140, the BCPS would consider the application. Again, approval or disapproval of any application filed would be unrelated to the Student's IEP or whether the Student has received FAPE.

Ms. XXXX, the Student's special education teacher, admitted as an expert in special education, confirmed that incidents with other students that the Parent mentioned in her testimony had no educational impact on the Student's educational progress that she was making while at [School 1]. A communication log was implemented at [School 1] to provide daily feedback to the Parent. (BCPS Ex. 13). The communication log is filled with information on how well the Student performed during the day and the activities done each day. On April 21, 2015, Ms. XXXX reported a conflict between the Student

and another girl at recess. Ms. XXXX intervened and talked to both. Ms. XXXX reported that the Student had a great end of the day.

The IEP that has been implemented and revised for the 2014-2015 school year is appropriate to meet the Student's needs. Ms. XXXX testified that the Student is making progress and is receiving educational benefit from her IEP. The benefit she is receiving from her IEP is also meaningful and not trivial. *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). At present, the self-contained classroom is the least restrictive environment for the Student's needs in the subjects of math, language arts, science and social studies. The Student is in the general education classroom setting for specials and recess. The Parent does not dispute that the Student is currently in the least restrictive environment.

As noted by the Supreme Court, education is left to the educators. See *Barnett v. Fairfax County*, 927 F.2d 146, 152 (4<sup>th</sup> Cir. 1991), *cert. denied*, 502 U.S. 859 (1991) and *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1001 (4<sup>th</sup> Cir. 1997). The evidence submitted by BCPS demonstrates that the professionals have prepared an IEP for the Student that appropriately addresses her disability and provides the supports needed for the Student to achieve an educational benefit. The March 17, 2015 review of the IEP, her report card and the recent screening and rescreening validate the progress the Student is making. Any incidents with other students have no bearing on the Student's ability to attain a meaningful educational benefit.

## CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parent failed to prove that the BCPS failed to provide the Student with a FAPE for the 2011-2012 school year. *Schaffer v. Weast*, 546 U.S. 49 (2005). *Barnett v. Fairfax County*, 927 F.2d 146, 152 (4<sup>th</sup> Cir. 1991), *cert. denied*, 502 U.S. 859 (1991). 20 U.S.C.A. § 1414(d)(3) (2010).

## ORDER

I **ORDER** that the Due Process Complaint is **DISMISSED**.

May 19, 2015  
Date Decision Issued

\_\_\_\_\_  
Stuart G. Breslow  
Administrative Law Judge

SGB/cj

## 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). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence. 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.