

**XXXX XXXX,**

**STUDENT**

**v.**

**PRINCE GEORGE'S COUNTY**

**PUBLIC SCHOOLS**

**\* BEFORE MARY SHOCK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO: MSDE-PGEO-OT-15-04976**

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

**DECISION**

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

**STATEMENT OF THE CASE**

On February 10, 2015, XXXX XXXX (Mother) and XXXX XXXX (collectively, Parents), on behalf of the 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).

On March 9, 2015, the parties notified the OAH that they had participated in a resolution meeting but no agreement was possible.

On March 25, 2015, I held a telephone prehearing conference. The Parents were not present but were represented by Michael Eig, Esquire. Andrew Nussbaum, Esquire, represented PGCPS. By agreement of the parties, the hearing was scheduled for May 12, 13, and 15, 2015.

On May 12, 13, and 15, 2015, I held the hearing in the Prince George's County government offices in Landover, Maryland. Mr. Eig represented the Parents. Mr. Nussbaum represented PGCPS. On May 27, 2015, the parties submitted written memoranda of law.

The hearing dates requested by the parties fell more than 45 days after the triggering events described in the federal regulations, which is the date my decision is due. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2014). Based on the parties March 9, 2015 notice that a resolution was not possible, the decision would have been due on April 23, 2015. Because of the parties' schedules, they requested an extension of time to hold the hearing in May 2015 and until June 15, 2015, for me to issue a decision. 34 C.F.R. 300.515 (2014); Md. Code Ann., Educ. § 8-413(h) (2014).

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

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 OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**<sup>1</sup>

1. Did PGCPS fail to provide the Student a free appropriate public education (FAPE) for the 2014-2015 school year because the Central Individualized Education Program (CIEP) team did not consider the Student's Individualized Education Program (IEP), as amended on March 31, 2014?

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<sup>1</sup>The parties identified the issues at the prehearing conference on March 25, 2015.

2. Does the Student's 2014-2015 IEP, with placement at [School 1] ([SCHOOL 1]), provide the Student with a FAPE when it requires that the Student receive:

- a. one hour a day of specialized instruction in the general education setting;
- b. one hour a week of pull-out instruction on social and emotional supports;
- c. one half-hour a day pull-out instruction for math; and
- d. counseling in a separate county program.

3. If the Student's 2014-2015 IEP does not provide the Student with a FAPE, is the [School 2] ([SCHOOL 2]) a proper placement that PGCPs must fund?

### **SUMMARY OF THE EVIDENCE**

#### Exhibits

The Parents submitted 73 exhibits. PGCPs submitted 48 exhibits. An exhibit list is attached to this decision.

#### Testimony

The Parents called the following witnesses:

1. XXXX XXXX, Educational Consultant, accepted as an expert in special education with an emphasis in the education of students with high functioning autism and Asperger's syndrome, and in twice exceptional students;
2. XXXX XXXX, Special Education Teacher, [SCHOOL 2], accepted as an expert in special education; and
3. [Mother], Student's mother (Mother).

PGCPs called the following witnesses:

1. XXXX XXXX, General Education Teacher, accepted as an expert in general education;
2. XXXX XXXX, Special Education Resource Teacher, accepted as an expert in special education.

3. XXXX XXXX, Autism Specialist, accepted as an expert in educating children with autism.
4. XXXX XXXX, CIEP Chairperson, accepted as an expert in special education;
5. XXXX XXXX, School Psychologist, accepted as an expert in school psychology.

### **FINDINGS OF FACT**

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

1. The Student is eleven years old, born on XXXX, 2004.
2. The Student has a diagnosis of Asperger's Syndrome.
3. The Student received psychotherapy from XXXX XXXX, Ph.D., from October 2010 through June 2014.
4. The Student's disability affects her in the areas of academics (math fluency, math problem solving, speech and language pragmatics, receptive language, and written language mechanics), and behavior (organization, attention, social/emotional, and social interaction skills).
5. The Student is affected considerably more than others by auditory, visual, movement and touch sensitivity. She is over-aware of stimuli and sensation, loud talking and noise.
6. Because of her cognitive and sensory profile, the Student requires a small class setting.
7. The Student has been eligible for special education and related services since she began school. She has had a dedicated assistant (DA) since kindergarten and the same DA since that time.
8. On October 15, 2012, when the Student was in third grade, the IEP team recognized that the Student had difficulty remaining on task during undesirable activities and when

participating in or attending during large group activities. She displayed an unusual reaction to loud, unpredictable noise.

9. The October 15, 2012 IEP team provided the Student with setting accommodations because she was distracted in her immediate environment and she was sensitive to sound in group situations. Supports included frequent eye contact, proximity control, and strategies to initiate and sustain attention.
10. The Student's October 15, 2012 IEP identified the following goals:
  - a. Throughout the school day, during a variety of desirable and undesirable activities, the Student will respond to the situations without distress, anxiety, or frustration by responding to or following visual and verbal cues. The evaluation method was informal procedures, four out of five trials.
  - b. The Student will apply self-management skills in the classroom by engaging in group activities, completing independent assignments, and waiting her turn to speak with an adult. The evaluation method was observation, three out of five days.
11. The October 15, 2012 IEP provided that the Student would be placed in the general education classroom with two thirty-minute sessions of pull-out services a week to work on strategies pertaining to her social and emotion behavioral goals. A special education teacher provided the services.
12. The Student was permitted to leave the classroom with her DA for breaks and to walk around the school. At times, the Student pulled and twirled her hair in class.
13. The Student made progress on the goals, but PGCPSS did not document the number of trials during which the Student was able to respond to situations without distress, anxiety or frustration, nor did it document the days she applied self-management skills in the classroom. The Student did not master either goal.
14. On October 9, 2013, when the Student was in fourth grade, the IEP team noted that the Student had demonstrated growth with her self-advocacy skills and independence. She

was less reliant on her DA. The team was concerned with the Student's hair-pulling, which occurred at different times of the day with no identifiable cause. She would twirl her hair when reading a book, an activity she enjoyed, or when performing math problems, which she did not enjoy. A rubber band or a stress ball appeared effective in keeping the Student from pulling her hair out in school. She continued to display an unusual reaction to loud, unpredictable noise.

15. On October 9, 2013, the IEP team again recognized that the Student had difficulty remaining on task during undesirable activities and when participating in or attending to instruction or work during large group activities. The difficulty affected the Student's participation in all content area subjects.
16. The October 9, 2013 IEP team provided the Student with setting accommodations because she was distracted in her immediate environment and she was sensitive to sound in group situations. Supports included: manipulatives or sensory activities; frequent eye contact; proximity control; strategies to initiate and sustain attention; and preferential seating.
17. The Student's October 9, 2013 IEP identified the same goals as those in the October 15, 2012 IEP, which are:
  - a. Throughout the school day, during a variety of desirable and undesirable activities, the Student will respond to the situations without distress, anxiety, or frustration by responding to or following visual and verbal cues. The evaluation method was informal procedures, four out of five trials.
  - b. The Student will apply self-management skills in the classroom by engaging in group activities, completing independent assignments, and waiting her turn to speak with an adult. The evaluation method was observation, four out of five trials.
18. The Student made progress on the goals, but PGCPs did not document the number of trials in which the Student was able to respond to situations without distress, anxiety or

frustration, or the number of trials in which she applied self-management skills in the classroom. The Student did not master either goal.

19. During the 2013-2014 school year, the Student was placed in a general education classroom of twenty-seven students. The classroom area was small for that number of students, but it was well organized and well run.
20. During the 2013-2014 school year, the Student twisted her hair when she was concentrating on work or anxious. She pulled her hair out, sometimes in clumps. At home before school, the Student would scream and cry that she did not want to go to school. After school, she would curl up in a ball, hide under a table, or spin on the floor to decompress.
21. Between 2012 and 2014, the Student's scores on the Woodcock Johnson-III (WJ) test of academic achievement declined in all areas tested.
22. On November 26, 2013, the IEP team met and proposed to complete updated assessments in academics (reading, writing, mathematics), social/emotional functioning, intellectual/cognitive functioning, fine motor, and speech and language receptive/expressive language, and pragmatics. The team deferred updating the educational program and considering a smaller class setting for the Student until the updated assessments were complete.
23. On March 12, 2014, the IEP team met to discuss the assessments. The team agreed to meet again on March 31, 2014 to revise the Student's IEP.
24. On March 31, 2014, the IEP team met, revised the Student's IEP, and referred the case to the CIEP team.

25. On June 10, 2014, the CIEP team met, revised the IEP, adding goals, supports and special instruction hours as recommended by the IEP team on March 31, 2014. The CIEP team also recommended the following:

- a. DA with fade-out plan;
- b. Five hours of special education services weekly, in general education, to provide instructional supports across academic areas;
- c. Two thirty-minute sessions weekly, outside of general education, to address social skills and cognitive flexibility;
- d. Five thirty-minute sessions weekly, outside of general education, to address math skills;
- e. Placement at [SCHOOL 1]; and
- f. Referral to Community Counseling and Mentoring Services.

26. The Parents enrolled the Student in the [SCHOOL 2] in [State], for the 2014-2015 school year.

27. On November 10, 2014, the IEP team adopted the June 10, 2014 revisions and finalized the following IEP:

Present Levels – Academics	<b>Reading Fluency</b>
Observations/Reports	Demonstrates good fluency skills
Tests	WJ – average
Other	Qualitative Reading Inventory – fluent
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	None
Services	One hour a day specialized instruction in general education classroom

Present Levels – Academics	<b>Reading Comprehension</b>
Observations/Reports	5 <sup>th</sup> grade reading level; demonstrates good comprehension based on participation in class discussion
Tests	WJ – average
Other	Qualitative Reading Inventory – 3 <sup>rd</sup> grade



	instructional level on longer expository passages
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	None
Services	One hour a day specialized instruction in general education classroom

Present Levels – Academics	<b>Math Calculation</b>
Observations/Reports	Addition and subtraction difficult, works hard to understand concepts
Tests	WJ – below average
Other	
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	None
Services	One-half hour a day pull-out instruction

Present Levels – Academics	<b>Math Problem Solving</b>
Observations/Reports	Grade A for first quarter
Tests	WJ – low average to below average
Other	
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	None
Services	One-half hour a day pull-out instruction

Present Levels – Academics	<b>Written Language Mechanics</b>
Observations/Reports	5 <sup>th</sup> grade instructional level; adds details to writing; handwriting legible but immature
Tests	WJ – average; below expected level in editing, capitalization, and punctuation
Other	

Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	Demonstrate command of the conventions of grammar and usage, use adjectives, identify errors in writing using proofreaders or writer's checklist, use initial capital letters and end punctuation
Services	One hour a day specialized instruction in general education classroom

<b>Present Levels – Academics</b>	<b>Written Language Expression</b>
Observations/Reports	5 <sup>th</sup> grade level; generates ideas with use of graphic organizer but struggles with transferring thoughts from organizer into sentences
Tests	WJ – average; low average in writing sentences
Other	
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	None
Services	One hour a day specialized instruction in general education classroom

<b>Present Levels – Academics</b>	<b>Speech and Language – Receptive Language</b>
Observations/Reports	
Tests	Clinical Evaluation of Language Fundamentals – average in language functioning
Other	
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	Identify work relationships, select picture showing the meaning of a comparative

	relationship, judge the meaning of a pair of passive and declarative sentences, complete sentence using time-sequencing relationships and familial relationships
Services	One hour a day specialized instruction in general education classroom

<b>Present Levels – Academics</b>	<b>Speech and Language – Pragmatics</b>
Observations/Reports	
Tests	Comprehensive Assessment of Spoke Language – average in language processing, pragmatic language weakness
Other	
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	Acknowledge speaker with eye contact, nods, body postures, comments; add to topic under discussion without directing discussion to an object of obsession or fixation
Services	One hour a day specialized instruction in general education classroom

<b>Present Levels – Academics</b>	<b>Math Fluency</b>
Observations/Reports	4 <sup>th</sup> grade level; grade A for first quarter
Tests	WJ – below average
Other	
Accommodations	Extended time, frequent breaks, turn in assignments when completed, prompting, redirection, visual schedule, break down assignments, visual timer, limit amount to be copied from the board, organizational aids adult support
Goals and Objectives	Increase fluency with math facts involving four operations, add and subtract multi-digit numbers with and without regrouping, complete drill involving four operation, reinforcement of concepts of measurement, time and money
Services	One-half hour pull-out instruction daily

<b>Present Levels – Behavioral</b>	<b>Social/Emotional – Behavioral</b>
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Observations/Reports	Works cooperatively with peers, chews fingers and lip, history of pulling or twirling hair
Tests	Developmental Teaching Objective Rating Form – behavior and socialization skills below expected levels
Other	
Accommodations	Social skills training, First-Then strategies, movement breaks, fidget toy/stress ball, advanced preparation for schedule changes, strategies to increase class participation, manipulative or sensory activities to support listening and focusing
Goals and Objectives	Identify and express feelings and strengths about self and others, advocate for self; identify when feeling anxious or angry and identify strategies to use
Services	One hour a week pull-out instruction

Present Levels – Behavioral	<b>Social Interaction Skills</b>
Observations/Reports	Engages with peers when initiated by peers and peers are involved in her areas of interest; at lunch engaged with peers and then held her ears
Tests	Developmental Teaching Objective Rating Form – verbalizes feelings appropriately in group; express cause and effect of feelings
Other	
Accommodations	Social skills training, First-Then strategies, movement breaks, fidget toy/stress ball, advanced preparation for schedule changes, strategies to increase class participation, manipulative or sensory activities to support listening and focusing
Goals and Objectives	Given support and role-playing, initiate interactions and asking questions of peers, use varied topics, identify and understand non-verbal social communications, seek assistance for help, initiate communicative interactions with others
Services	One hour a week pull-out instruction

Present Levels – Behavioral	<b>Organization/Attention</b>
Observations/Reports	Difficulty starting on work; reminders to complete work; difficulty following directions; easily redirected when prompted; required

	repeated direction and assistance finding materials
Tests	Attention and executive functioning average, but a high number of error of commission and inhibitory errors
Other	
Accommodations	Social skills training, First-Then strategies, movement breaks, fidget toy/stress ball, advanced preparation for schedule changes, strategies to increase class participation, manipulative or sensory activities to support listening and focusing
Goals and Objectives	Initiate and complete assignments with no more than two verbal and visual prompts, work on task for five minutes before a break, remain on task long enough to complete the assignment
Services	None

Present Levels – Physical	<b>Occupational Performance Skills (School Functional Skills)</b>
Observations/Reports	Participates in classroom activities functionally and independently; answers questions appropriately, completes activity with occasional redirection and minimum verbal cues, DA provides support with redirection, fine motor skills adequate
Tests	Sensory Profile School Companion: affected more than others or much more than others by auditory, visual, movement and touch sensitivity; over-aware of stimuli and sensation, loud talking or noise.
Other	Record review: average performance in visual motor and visual perceptual skills
Accommodations	Preferential seating
Goals and Objectives	None
Services	None

28. The November 10, 2014 IEP provided that the Student would be placed at [SCHOOL 1] in the general education classroom with: one hour a day of specialized instruction in the general education setting provided by the special education classroom teacher and an instructional

assistant; two thirty-minute sessions of pull-out instruction on social and emotional supports; and one half-hour a day pull-out instruction for math provided by a special education classroom teacher and instructional assistant. As a related service, the Student would receive six thirty-minute sessions from a Speech and Language Pathologist for the duration of the IEP.

29. The November 10, 2014 IEP did not provide a plan to fade out the DA.

30. [SCHOOL 2] is a college preparatory school teaching grades three to twelve. It is licensed in [State] as a special education school. The school has a total student body of 166 pupils, with twenty-three students in the lower school. Of the twenty-three lower school students, one or two do not have a disability that has an impact on their education.

31. The classrooms in the [SCHOOL 2] lower school have a staff to student ratio of one-to-five. The Student is in a class of five children.

32. An executive functioning system is embedded to the [SCHOOL 2] curriculum. The Student is taught organization and time management. The setting and schedule is consistent.

33. [SCHOOL 2] emphasizes social skills, teaching the Student to advocate for herself, understand what kind of learner she is, and how to communicate her needs. The school emphasizes working as a team, sharing information, and presenting ideas.

34. At [SCHOOL 2], the Student has the following accommodations: quiet work environment and small group testing; verification that written instructions are understood through the Student explaining instructions and repeating back instructions; preferential seating; additional time on tests; frequent breaks during testing; dictate answers on tests; reader for testing; calculator; computer for written work; mark directly on test book, reduce length of written assignments; use active reading strategies; close monitoring by advisors and teacher for organizational support; break down multi-step tasks; access to counselor; sensory activities and

devices; encourage Student to ask for assistance; and assistance manipulatives to develop math concepts.

35. At [SCHOOL 2], the Student takes the following classes: math, visual thinking, reading, physical education, science, social studies, and writing.

36. Since attending [SCHOOL 2], the Student has not pulled out her hair or experienced severe emotional breakdowns before or after school.

## **DISCUSSION**

### **Legal Framework**

The IDEA provides every disabled child the right to a FAPE, which is defined as special education and related services that: are provided at public expense, under public supervision; meet the standards of the State educational agency; include appropriate education; and are provided in conformity with the child's IEP. 20 U.S.C.A. § 1401(9) (2010). The FAPE required by IDEA is tailored to the unique needs of the handicapped child by means of an IEP. 20 U.S.C.A. § 1414(d) (2010).

An educational agency is required to have an IEP in effect for each disabled child by the beginning of the school year. 20 U.S.C.A. § 1414(d)(2)(A). The IEP must include a statement of the special education and related services, and supplemental aids and services to be provided a student. The IEP must also include a statement of the program modifications or supports that the educational agency will provide for the child. 20 U.S.C.A. § 1414(d)(1)(A)(i)(IV).

An IEP team is required to review a student's IEP at least annually and revise the IEP to address any lack of expected progress toward the student's annual goals and the student's anticipated needs. 20 U.S.C.A. § 1414(d)(4)(A).

In *Board of Education of Hendrick Hudson Central School District v. Rowley*, the Supreme Court stated that the congressional purpose in enacting the IDEA was the provision of a FAPE to children with disabilities. 458 U.S. 176 (1982). Implicit in this purpose is a requirement that the education to which access is provided is sufficient to “confer some educational benefit upon the handicapped child.” *Id.* at 200. 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 to “all services necessary to maximize his or her potential.” *Hessler v. State Bd. of Educ.*, 700 F.2d 134, 139 (4<sup>th</sup> Cir. 1983) (citing *Rowley*, 458 U.S. 176.)

Instead, as stated above, FAPE entitles a student to an IEP that is reasonably calculated to enable that student to receive educational benefit. If the child is being educated in the regular classroom of the public education system, then to provide FAPE, the IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. *Rowley*, 458 U.S. at 204. However, while achieving passing marks and advancing from grade to grade are important factors in determining whether a student has received educational benefit, it is not determinative. *See In Re Conklin*, 946 F.2d 306, 316 (4<sup>th</sup> Cir. 1991).

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the law mandates that the child be placed in the “least restrictive environment” (LRE). This means that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5)(A) (2010). The LRE provisions of the federal regulations also provide that a child’s educational placement should be as close to the child’s home as possible. 34 C.F.R. § 300.116(b)(3).

Finally, if a school district fails to offer a student a FAPE, it must fund private placement if the placement is appropriate under the IDEA. *School Comm. of Town of Burlington v. Dep’t of*



*Ed. of Mass.*, 471 U.S. 359, 369 (1985). To be appropriate, the placement and program must be reasonably calculated to provide the student an educational benefit. *Carter v. Florence Co. School District Four*, 950 F.2d 156, 163, (1991), *affirmed*, *Florence Co. School District Four v. Carter*, 510 U.S. 7 (1993).

### **Background and Position of the Parties.**

The Student is an eleven-year-old girl with Asperger's Syndrome. Cognitively, she functions in the average to above-average range. The Student's disability affects her in the areas of executive functioning and language pragmatics. She has deficits in the areas of flexibility, organization and planning problem-solving strategies. These deficits have an impact on her communication skills and social interaction skills. The Student's language deficits include difficulty organizing output, understanding complex language and using language effectively during social interactions. The Student's cognitive processing style makes her vulnerable to overload and being overwhelmed. (XX #2.) Throughout her school career, the Student has had difficulty initiating interactions with her peers. She will focus on her interests, for example, a toy or a book, to the exclusion of other activities.

As a result of her disability, the Student has received special education and related services since she began school. She has had a DA since kindergarten. The DA helps the Student focus by prompting her to return to the task at hand. The DA also gives the Student sensory objects, like stress balls, when her anxiety increases. The Student can leave the classroom with the DA if she becomes overwhelmed. She uses headphones to block out the noise.

On October 9, 2013, the PGCPS IEP team met for the annual review of the Student's program. By that time, the Parents had becoming increasingly concerned with the Student's anxiety, emotional decompensation, and academic decline. The Student resisted going to school

in the morning and cried and screamed. After school she would curl in a ball or spin on the floor to decompress. She twirled and pulled her hair, sometimes pulling her hair out in clumps. In school, she struggled particularly with mathematics. As a result of the Student's behavioral and emotional decline, the Parents retained an educational consultant, XXXX XXXX, M.Ed., to observe the Student and make recommendations for her educational program.

On November 26, 2013, the IEP team met again and discussed updating the Student's education program and a smaller class setting. The team rejected those options until PGCPS completed assessments. (PGCPS #4.) At that time, PGCPS called in its autism specialist, XXXX XXXX, to observe the Student in class and evaluate her program. The IEP team did not meet again until March 12, 2014, when it reviewed the educational assessments and agreed to meet again. (PGCPS #5.) When the team met on March 31, 2014, it revised the Student's IEP and referred the case to the CIEP team to discuss appropriate services and placement. (PGCPS #6.)

On June 10, 2014, the CIEP team met and revised the IEP, adding goals, supports and special instruction hours recommended by the IEP team on March 31, 2014. The IEP team adopted the revisions and finalized the IEP on November 10, 2014. (PGCPS #13.) Under that IEP, the Student would still have the DA, but the IEP would include a fade-out plan. The team determined that the IEP could be implemented in the general education classroom at [SCHOOL 1]. The Parents disagreed with the IEP and placed the Student at [SCHOOL 2], a non-public school in [State] for the 2014-2015 school year.

The Parents maintain that they have worked with PGCPS for many years to address the educational issues resulting from the Student's autism. However, the Student's increased anxiety, emotional struggles, and academic declines have occurred because PGCPS failed to provide the Student with small classes and the specialized instruction she requires to progress. The Parents

argue that the IEP goals are inadequate because there are no goals addressing math problem solving, vocabulary development, higher order comprehension skills and working with groups. They also note that the Student has become overly reliant on her DA. They maintain that as a result of the large classroom and increased academic demands, the Student, decompensates at home.

At [SCHOOL 2], the Student is in a small classroom. The Parents contend that the Student has made progress at [SCHOOL 2] in the areas of social and emotional skills and academics. She has stopped pulling out her hair and is no longer breaking down emotionally before and after school. As a result, they contend that [SCHOOL 2] is an appropriate placement for the Student and request PGCPS to reimburse them for the cost of that placement for the 2014-2015 school year. Additionally, the Parents maintain that [SCHOOL 2] is the appropriate placement for the 2015-2016 school year, and they argue that PGCPS is required to fund the placement for that school year.

PGCPS contends that it appropriately assessed the Student in all areas of suspected disability and developed an IEP that addresses all areas of need through accommodations, goals and objectives, and services. PGCPS argues [SCHOOL 1] staff is able to implement the 2014-2015 IEP, which includes increased goals, supports and special instruction and calls for fading out the DA. [SCHOOL 1] is the Student's neighborhood, public school. At [SCHOOL 1] the Student will be in a general education classroom with her non-disabled peers. As a result, [SCHOOL 1] is the Student's LRE.

Finally, PGCPS argues that the Parents failed to establish a causal link between the Student's anxiety and hair-pulling and school. There are no reports or testimony from therapists that connect the Student's behavior at home to school and demonstrate that they are school issues

the IEP team must address. Instead, the Student's increased anxiety could have been caused by her absence from class when her Parents took her to visit other schools and when she underwent the educational assessments, or the result of the two to three hours a night of tutoring.

First, I would like to clarify the issues before me. The parties presented evidence related to the Student's IEP in the third and fourth grades and the Student's progress or lack of progress under the IEPs in effect for those years. While those IEPs provide history and background, the appropriateness of the October 15, 2012 and October 9, 2013 IEPs is not before me. (PGCPS #11 and #12.) Instead, whether the November 10, 2014 IEP was reasonably calculated to provide the Student with educational benefit and thus provide her a FAPE is the issue before me.

As stated above, the Parent's presented evidence to prove that the Student's test scores and WJ scores declined between 2012 and 2014. The Parents also presented evidence to show that the Student's was experiencing severe emotional outbursts at home. In response to that decline and the Parents' reports of the Student's emotional deterioration, PGCPS ordered updated assessments. Then, the IEP team considered those assessments and revised the IEP. The question before me is whether the November 10, 2014 IEP accurately states the areas affected by the Student's disability and her present levels of academic achievement and functional performance, and whether the accommodations, supplementary aids, services, program modifications and supports, goal and objectives, and placement provisions adequately address the areas affected by the Student's disability and her performance. If so, then the IEP was reasonably calculated to allow the Student to access the curriculum and make meaningful progress in the LRE and, thereby, provide her a FAPE.

As discussed below, I find that the Parents failed to prove that the November 10, 2014 IEP does not provide the Student a FAPE because there are no goals in math problem solving, vocabulary development, higher order comprehension skills and working with groups.

The Parents did present evidence to show that the Student becomes overwhelmed, in part, based on her sensory profile. She is greatly affected by auditory, movement, and visual stimuli. When confronted with cognitive and social challenges, the Student also cannot handle a classroom of twenty-seven children. Although the November 10, 2014 IEP includes accommodations and services properly designed to address the Student's cognitive and social skills profile, it fails to adequately address her sensory profile. As a result, the IEP fails to offer the Student a FAPE.

I will order PGCPS reimburse the Parents for placement at [SCHOOL 2] for the 2014-2015 school year. However, the Parents also requested that I find that [SCHOOL 2] is an appropriate placement for the 2015-2016 school year. The parties did not identify prospective funding for the 2015-2016 school year as an issue in this case; as a result, it is not before me. As stated above, the only IEP before me is the November 10, 2014 IEP with placement at [SCHOOL 1].

**Issues.**

**Did PGCPS fail to provide the Student FAPE for the 2014-2015 school year because the CIEP team did not consider the Student's IEP, as amended on March 31, 2014?**

The Parents did not present evidence or argument on this issue at the hearing. The evidence shows that the November 10, 2014 IEP incorporates that same goals and objectives outlined in the March 31, 2014 draft IEP. (PGCPS #13 and XX #29.) The Parents failed to

demonstrate as a fact that the CIEP team did not consider the March 31, 2014 amended IEP, and, as a result denied the Student FAPE for the 2014-2015 school year.

**Does the Student's 2014-2015 IEP, with public placement at [School 1, provide the Student with FAPE when it requires that the Student receive:**

- a. one hour a day of specialized instruction in the general education setting;**
- b. one hour a week of pull-out instruction on social and emotional supports;**
- c. one half-hour a day pull-out instruction for math; and**
- d. counseling in a separate county program.**

The Parents presented the testimony of XXXX XXXX, M.Ed., accepted as an expert special education with an emphasis on educating students with high functioning autism, Asperger's Syndrome, and twice-exceptional children.<sup>2</sup> Mr. XXXX worked for Montgomery County Public Schools for almost thirty years in special education. He held positions such as Instructional Specialist, where he coordinated programs and services for students who were identified as gifted and learning disabled, and Learning Center Coordinator, where he coordinated special education services for leaning disabled, physically challenged and gifted-learning disabled students. (XX #63.) Mr. XXXX observed the Student at [SCHOOL 1] and [SCHOOL 2] and spoke with staff at both schools. He spoke with XXXX XXXX, Ph.D., the Student's psychotherapist, and the Student's tutor.

Mr. XXXX testified that the November 10, 2014 IEP goals are inadequate because there are no goals addressing math problem solving, vocabulary development, higher order comprehension skills and working with groups. (T. p. 656.) He notes that math problem solving is an area affected by the Student's disability. (PGCPS #13.) Mr. XXXX testified than an IEP, to

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<sup>2</sup>Mr. XXXX defined twice-exceptional children as those who show evidence of both a gift and a disabling condition. (T. p. 37.)

be appropriate, must include goals in all areas affected by the student's disability. (T. p. 78.)

Here, the IEP lacks a math problem solving goal.

Additionally, in reading, Mr. XXXX notes that the Student's passage comprehension WJ score fell between 2012 and 2014. For example, XXXX XXXX, Clinical Psychologist, administered the WJ on August 18 and 19, 2014. She found that the Student's comprehension skills were well-below grade level. (XX #43.) As a result, in Mr. XXXX's opinion, the IEP must include reading comprehension goals.

XXXX XXXX, CIEP Chair, testified for PGCPs. Ms. XXXX holds a master's degree in Occupational Therapy (OT). She has worked for PGCPs for twenty years, sixteen as an OT, the remainder as a CIEP chairperson. As an CIEP chair, Ms. XXXX facilitates IEP team meetings when there is a determination that a student may need additional resources or services. (T. pp. 551-553). Ms. XXXX testified that the math fluency goal on the Student's November 10, 2014 IEP, along with other services, including one-half hour a day pull-out instruction, adequately address the Student's math deficiencies. (T. p. 631.) She stated that math fluency means doing calculations more quickly. Math problem solving means that a student uses his or her knowledge of math calculation and math functions to solve more real-life problems, for example, word problems that have multiple steps. She stated the math fluency objectives in the Student's IEP include tasks related to measurement, time and money, which are components of math problem solving. (T. 683-684.)

With regard to a vocabulary goal, Ms. XXXX stated that the IEP team considered Mr. XXXX's recommendation for a vocabulary goal, but based on the classroom data and information, and assessments, the team determined that vocabulary was not an area of need for the Student. (T. pp. 685-686.) Further, Ms. XXXX stated that a reading comprehension goal was

not appropriate because the Student's reading comprehension was at or above grade level. (T. p. 687.) Finally, Ms. XXXX testified that the social interaction and self-management goals addressed the issue of the Student working with groups. For example, the IEP includes a goal for role playing to learn appropriate social interactions, initiating social interactions, and initiating interactions on various topics. (T. pp. 687-688.)

I have considered Mr. XXXX's opinion and his experience which exceeds Ms. XXXX's experience, specifically in special education. However, Mr. XXXX failed to explain his statement that all areas affected by the Student's disability must have an attached goal. He also failed to explain why the support and services, including daily one-half hour pull-out instruction fails to address the Student's math deficiencies.

Additionally, the IEP provides that the Student will have one hour a day of specialized instruction in the general education classroom and supports in the area of reading. Again, Mr. XXXX failed to explain his opinion that those supports and services were inadequate; he merely stated that they were areas of need and required goals.

Finally, as Ms. XXXX noted, the IEP addresses social interaction and self-management concerns and includes goals and objectives related to appropriate social interactions, initiating social interactions, and initiating interactions on various topics. Mr. XXXX failed to explain why these goals were inadequate.

Turning to the area of the Student's sensory profile, first, the parties agree, and the evidence demonstrates that the Student can become cognitively overwhelmed as academic demands increase. The parties further agree that the Student has deficits in the area of social interactions. The evidence also establishes that the Student can become overwhelmed by sensory stimuli.



XXXX XXXX, OT, assessed the Student's occupational performance or school functional skills. On December 6, 2013 and February 3, 2014, she observed the Student in the [SCHOOL 1] classroom. Overall, Ms. XXXX describes the Student as a pleasant young girl who participates in activities when instructed. On December 6, 2013, the Student appeared focused and attentive during instruction, she asked for help, and she sat at her desk when the DA directed. Ms. XXXX found that the Student was easily distracted but easily redirected. She notes that the DA provides instructional support and verbal redirection to help the Student focus and complete work. On February 3, 2014, Ms. XXXX observed the Student covering her ears during whole group instruction and repeatedly twirling her hair. (XX #24.)

Ms. XXXX administered the Sensory Profile – School Companion. The results show that the Student is affected “more than others” or “much more than others” in all sensory areas but one, sensitivity. She is more or much more sensitive to auditory, visual, movement, touch, and behavior. She is over-aware of stimuli and sensation, and loud talking or noise in the background. (XX #24.) Despite that profile, Ms. XXXX writes in her report that the Student's sensory processing deficits have a very limited effect on her functional performance in the classroom because her DA provides the needed support. (XX #24.)

Mr. XXXX testified that the Student was capable of high achievement in academic areas, but she is susceptible to sensory overload and over-stimulation. When overwhelmed, she is capable of self-harm, such as hair twirling and pulling, or of shutting down. Mr. XXXX stated that the classroom at [SCHOOL 1] with twenty-seven students was too much for the Student to handle. In Mr. XXXX's opinion, the Student is improperly placed in a large classroom setting. She requires a small class setting. (T. pp. 42 and 67.)

Mr. XXXX's opinion is supported by the record. For example, on April 29, 2009, when the Student was five years old, XXXX XXXX, Ph.D., conducted a neuropsychological evaluation. (XX #2.) She diagnosed the Student with Asperger's Syndrome, characterized by strong intellectual abilities but poor social skills. Dr. XXXX found that the Student had difficulty with social problem solving, including interpreting social situations and having insight into the feelings of others, which interfere with her ability to understand and respond appropriately to other people. Her weaknesses are exacerbated by executive dysfunction which challenges her ability to automatically integrate what is said with body language, facial expression and the context of the conversation. Her problems are compounded when the complexity of the situation increases, including multiple conversation partners, loud environments, and/or visually distracting environments.

Dr. XXXX stated that the Student's cognitive process style makes her vulnerable to overload and being overwhelmed when she is faced with large, complex multimodal or longer materials. She is at risk in any large, noisy or more stimulating group settings. Once overloaded, the Student's vulnerability to poor impulse control and inflexibility, anxiety and weak social problem solving skills make her vulnerable to behavioral outbursts or refusals to participate. Dr. XXXX wrote that because the Student is at severe risk for overload in a large standard classroom, she requires an educational placement with a combination of extensive individualized teaching or a small-group classroom. (XX #2.)

XXXX XXXX, Ph.D., the Student's psychotherapist, conducted educational testing on May 2, 2013. He noted in his report that the Student was easily distracted by stimuli around her. For example, when his phone vibrated, the Student stopped performing on the test and did not resume until prompted. (XX #33.)

Additionally, the IEP teams recognized the Student's difficulties during large group activities. When the Student was in third grade, the October 15, 2012 IEP team wrote in the Present Levels of Academic Achievement and Functional Performance section that the Student's "disability in the areas of self-regulations and sensory integration cause her to have difficulty to remain on tasks during undesirable activities and participating/attending during large group activities." (PGCPS #11i.) Also, the team notes that the Student displays unusual reaction to loud, unpredictable noise. (PGCPS #11h.) Under the Special Considerations and Accommodation section of the same IEP, the team recommended that the Student have setting accommodations to reduce distractions. The team notes that the Student "requires reduced distractions due to her difficulty attending and distractibility in her immediate environment. In addition to her sensitivity to sound in group situations." (PGCPS #11m.) To address the issue, the Supplementary Aids, Services, Program Modifications and Supports section of the IEP identifies the DA as an instructional support and frequent eye contact, proximity control, and strategies to initiate and sustain attention as social/behavioral supports. (PGCPS #11m and n.)

When the Student was in fourth grade, the October 9, 2013 IEP team again wrote that the Student had difficulty remaining on tasks during undesirable activities and when participating or attending during large group activities. "This affects her participation in all content subject areas." (PGCPS #12g.) She again required reduced distractions due to her difficulty attending and distractibility in her immediate environment, and her sensitivity to sound in group situations. (PGCPS #12j.)

XXXX XXXX, the Student's fourth-grade teacher, testified that the Student used earphones when she becomes stressed or anxious. She stated that the Student took frequent

breaks with the DA to walk around the classroom or the school and that the Student has “safe places” in the classroom. (T. pp. 319-320.)

Other evidence indicates that the Student does not always react to the stimuli in the large classroom. For example, on December 16, 2013, XXXX XXXX, PGCPs Autism Specialist, observed the Student at [SCHOOL 1]. She testified that she did not see the Student in distress in the classroom from the environment. In Ms. XXXX’s opinion, the Student’s anxiety is a math issue, not an environmental issue. (T. p. 509.) Neither Ms. XXXX nor Mr. XXXX, who observed the Student at [SCHOOL 1] on November 21, 2013, document any obviously reaction to the stimuli in the large classroom. (PGCPs #24 and #32.) All observers noted the Student’s reliance on her DA.

Additionally, the record demonstrates that the Student self-harms or shuts down when academic material is too difficult for her. (XX #43.) XXXX XXXX, Ph.D., notes in his report that the purpose of his assessment was to ascertain aspects of the school environment that place a high enough cognitive demand on the Student as to induce a stressful or anxious response. (PGCPs #22d.) He observed that when the Student became confused about how to proceed with a highly demanding executive task, she was unable to continue. Dr. XXXX concluded that when cognitive demands exceed the Student’s capacity to continue to process, she will need a break. If pushed when overwhelmed, she may overreact. (PGCPs #22d-e.) He did not address her reaction to noise or other stimuli.

Despite the classroom observations, I find that it is more likely than not that the Student is sensitive to stimuli, particularly noise. In the fourth grade, the Student was in a class of twenty-seven pupils. The Parents presented a photograph of the classroom showing a cheerful

setting with many children at desks clustered around the room. (XX #73.) Ms. XXXX testified that the classroom was small for twenty-seven students, but it was organized and well-run.

The Mother testified that the Student was a compliant child and behaved in school. After school she had to decompress; she would curl up in a ball or spin to relieve pressure. The Mother presented photographs of the Student lying on the floor or under a bench. The Mother testified that her husband would text her to ask how the Student's day had been at school. In response, the Mother would take and send a photograph; that is how she came to have the photographs submitted into evidence.

Further, the Mother testified that the hair-pulling began in third grade when the Student had a strict teacher who would yell at the Student to focus. The Student was in an open classroom with pods. The Mother compared the noise to that in a mall eatery. When the Student moved to the fourth grade, the Mother believed the hair-pulling would stop because Ms. XXXX was a gentle teacher and the Student was in a classroom with four walls. The hair-pulling did not stop. Instead, the Student twisted her hair into dreadlocks and it pulled out in clumps.

At the October 9, 2013 IEP team meeting, the team recognized that the Parents and school staff were concerned because the Student was "pulling her hair out during the school day," not just hair-twirling. Sensory devices such as a rubber band or a stress ball seemed to be effective in stopping the behavior. (PGCPS #12d.)

Generally, the PGCPS witnesses testified that the Student appeared happy in school. She would hug the DA and the teacher. The PGCPS witnesses also described the Student's hair-twisting, but found it to be a habit that occurs across all settings rather than a specific sign of anxiety; it occurs when she is engaged and happy, and when she is withdrawn. Ms. XXXX testified, however, that during the second half of the fourth grade, the Student's anxiety had

increased. She attributes the increased anxiety to the Parents and PGCPs staff pulling the Student out of class for school visits and testing. She also mentioned the Student talking about her cousin and problems she had interacting with him. The Prior Written Notice from the June 10, 2014 CIEP team meeting states that the Student's symptoms of anxiety manifest primarily in the home environment. (PGCPS #8.) The team notes that she can "bring worries to school about things going on outside of school." PGCPS, for example, noted that the Student has tutoring two to three hours a night.

Additionally, Ms. XXXX testified that in her experience autistic children have difficulty regulating their behavior. Thus, she does not believe that if the Student was experiencing anxiety and stress, she would be able to hold it in all day at school. (T. p. 522-523.) Similarly, Dr. XXXX stated that if the Student lacked self-regulation she would be unable to hold in her anxiety all day. (T. p. 715.) On cross-examination, Mr. XXXX testified that it was possible that the DA's presence prevented any meltdown, but he did not endorse that conclusion. (T. p. 733.)

Yet, other evidence, including Ms. XXXX's testimony demonstrates that the Student did not hold her anxiety in all day at school. Instead, she used earphones to block out the noise of the classroom, and she took frequent breaks with her DA, including leaving the classroom to walk around the school. There also is evidence that the Student would put her hands over her ears, and she uses headphones to reduce noise distractions. (PGCPS #8 and #20.) The evidence demonstrates that in combination with cognitive and social interaction demands, the Student was having difficulty with the large classroom environment.

As stated above, on December 2013, Ms. XXXX administered a Sensory Profile School Companion. (XX #24.) As noted above, she writes in her report, that the Student's sensitivity has a very limited effect on her functional performance in the classroom because she has a DA to

provide the needed support. Ms. XXXX fails to explain, however, exactly what the DA does to lessen the sensory impact on the Student. It appears, as stated above, that removing the Student from the environment through headphones and walks, is the accommodation. Although the DA may be able to prompt the Student should she lose focus on school work due to her cognitive and/or sensory profile, there is no evidence that the DA is able to lessen the impact of the sensory stimuli, except to give the Student a stress ball and take her out for a walks. Even with those supports, the Student is still required to return to the large classroom.

PGCPS witnesses failed to explain how any of those supports address distractions to the Student if those distractions are related to sensory stimuli. The DA or the teacher can prompt the Student when she loses focus, but they cannot change the environment. Finally, neither Ms. XXXX nor Dr. XXXX addressed Mr. XXXX's and Dr. XXXX's opinion that the Student can also shut down in response to stress. Thus, she might shut down rather than overreact emotionally while at school.

I believed the Mother's testimony. By her demeanor, I could tell she was extremely concerned by her daughter's increased anxiety and difficulties in school, but I do not believe she exaggerated the situation. The recordings the Parents introduced into evidence are alarming and upsetting. (XX #57.) Even accepting that children tend to act differently around their parents and to become over dramatic and demanding, the Student did not want to go to school, she was upset by the very idea. Also, I have considered that the Parents may have enabled the Student's behavior. Ms. XXXX testified that the complaints could have been a learned behavior. However, I believed the Mother's testimony that the Student resisted schools many days of the week, screaming and crying. I also believed the Mother's testimony that since she has attended

[SCHOOL 2] in a class of five students, the Student no longer has severe emotional episodes and not longer pulls her hair out.

As stated above, all the witnesses in this case observed the Student twisting her hair. The descriptions went from an absent-minded gentle twirling to pulling out clumps of hair. PGCPs staff generally stated that she twirled her hair when she was focusing or when she was working on math. They saw it as a habit rather than indication of heightened stress. However, none of the PGCPs witness addressed whether the Student was missing hair. A photograph of the Student in the fourth grade shows more hair on one side of her head than the other. (XX #73.) The Parents also submitted a photograph of a clump of hair the Mother noted she found in the Student's pocket one day after school. (XX #73.) There is no evidence that the IEP teams considered that the Student's hair-pulling was a manifestation of the Student's anxiety and a response to the stress of meeting the combined sensory, academic, and social demands of a large classroom.

PGCPs pointed out that the Parents failed to present the expert testimony of a psychologist, specifically Dr. XXXX, to establish that the Student's anxiety was caused by or connected to school. The Parents are not required to prove that the Student's anxiety was caused by school, only that PGCPs was aware of the anxiety and sufficiently addressed the issue in the IEP. As discussed above, I find that PGCPs failed to adequately address the Student's sensory profile as it relates to the large classroom environment and contributes to her anxiety.

Dr. XXXX's opinion, Dr. XXXX's report, Dr. XXXX's report, Ms. XXXX testing, the Student's use of headphones or covering her ears to block out noise, her breaks from the classroom with her DA, and the absence of anxiety at [SCHOOL 2], is sufficient evidence to demonstrate that it is more likely than not that the sensory stimulation the Student experienced at



[SCHOOL 1] was a contributing factor in her stress and anxiety. In turn, that stress and anxiety interfered with the Student's ability to access the curriculum and make meaningful progress.

Concerning the Student's placement in the general education classroom, the evidence demonstrates that the Student has passed from grade to grade and performed average to above average in her academic work. So, the question is: does the Student's sensory profile have an adverse impact on her educational performance, such that she unable to receive educational benefit with the special instruction and related services included in the IEP, and placement in a general education classroom over twenty students?

Dr. XXXX testified, and the parties agree, that the Student could benefit from involvement with her non-disabled peers. Also, Ms. XXXX testified that the environment at [SCHOOL 2] is too predictable and prevents the Student from learning how to operate in the real world. Ms. XXXX stated that from a classroom of four or five students, the Student would be unable to generalize skills into the real world.

Any analysis of the LRE requires an IEP team to balance the benefits of a student's involvement with non-disabled peers and the program the student requires to achieve educational benefit. The Parents successfully demonstrated that the Student must be moved along the LRE continuum to a more restrictive placement in order to reduce her sensory stress and anxiety. The supports included in the November 10, 2014 IEP include, among others, movement breaks, fidget toys or stress balls, manipulatives or sensory activities to promote listening and focusing, and preferential seating. Again, however, the supports do not directly address the noise and movement in a classroom, or how the school will support the Student in effectively reintegrating into a large classroom after a break. Without a smaller class size, the Student cannot properly access the school curriculum. In order to lessen impact of the stimuli that causes, in large part,

the Student's stress and anxiety, she requires less noise, movement, and activity than that present in a general education classroom.

I have considered that once education authorities have made a professional judgment about the substantive content of a child's IEP, that judgment must be respected. An administrative law judge, like a reviewing court, should not disturb an IEP simply because the judge disagrees with its content. Instead, an administrative law judge is obliged to defer to educators' decisions as long as an IEP provides the child the basic floor of opportunity that access to special education and related services provides." *M.M. ex rel D.M. v. School District of Greenville County*, 303 F.3d 523, 532 (2002), citing *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4<sup>th</sup> Cir.1990). In this case, I find that the education authorities underestimated the impact of sensory stimuli on the Student's ability to meaningfully participate in the classroom.

Unlike the student in *A.B. ex rel D.B. v. Lawson*, 354 F.3d 315 (4<sup>th</sup> Cir. 2004), the Parents are not claiming that PGCPs or [SCHOOL 1] are failing to fulfill the Student's potential. Instead, the Parents maintain that the Student is unable to cope with a classroom of twenty-seven students. Also, unlike the seventeen-year-old student in *Arlington School Board v. Smith*, 230 F. Supp. 2d 704 (2002), who took steps to avoid attending her program because she had a strong desire not to participate, there is no evidence that Student is manipulating or sabotaging the situation because she does not like [SCHOOL 1] or because she is not like other students.

Instead, the evidence establishes that even if the Student had been able to keep up with her non-disabled peers academically and advance on grade level, her sensory profile, as discussed above, makes the process overwhelming. The Student engages in serious and harmful behavior to cope. PGCPs was required to lessen the impact of the sensory overload so the

Student could access the curriculum. The accommodations in place, including headphones and breaks, fail to sufficiently address the issue. The Student should not be required to suffer that overload every school day. Under the circumstances of this case, I find that the IEP does not provide the Student with the basic floor of opportunity because the special education and related services outlined in the IEP, including placement in a general education classroom with over twenty peers, fails to adequately address the Student's sensory profile and the anxiety and stress she experiences as a result of that profile. Because the 2014-2015 IEP fails to sufficiently address the Student's sensory vulnerability and calls for placement at [SCHOOL 1], it fails to provide the Student a FAPE.

**If the Student's 2014-2015 IEP does not provide the Student with FAPE, is the [School 2] a proper placement that PGCPS must fund?**

The final issue in this case is whether the Student's placement at [SCHOOL 2] is proper to meet IDEA's educational goals of providing a program that is reasonably calculated to provide the Student educational benefit.

[SCHOOL 2] is a non-public college preparatory school for grades three to twelve. A majority of the students at [SCHOOL 2] have executive functioning deficiencies and/or require accommodations. The student teacher ratio does not exceed one-to-six, and in the Student's class the ratio is one-to-five. Executive functioning and social support is embedded in [SCHOOL 2]'s daily school-wide organizational strategies and time management skills. Executive functioning supports include advisors, a master notebook system, electronic organizational tools, planners. [SCHOOL 2] has on-site private pay speech and language services.

As stated above, the Student's 2014-2015 IEP identifies additional areas affected by the Student's disability, many more academic and behavioral goals, and increased supports. (PGCPS #13.) As outlined above, the goals address: written language mechanics; receptive language;

language pragmatics; math fluency; social emotional/behavioral, social interaction skills; and organization and attention. The receptive language goal provides that the Student will identify word relationships. The pragmatic language goals provide that the Student will acknowledge another speaker during project planning with a peer and will add to a topic during classroom discussion without directing the discussion to an object of fixation. The social interaction goal provides that the Student will initiate interaction with peer during role-play of social interactions. (PGCPS #13.)

PGCPS notes that at [SCHOOL 2], the Student does not have an IEP with specific goals for language pragmatics and social interaction skills. Mr. XXXX acknowledged that the Student is not receiving instruction in speech and language and pragmatic language at [SCHOOL 2]. Ms. XXXX testified that [SCHOOL 2] did not provide direct social skills instruction. Thus, PGCPS argues that [SCHOOL 2] is not an appropriate program.

At [SCHOOL 2], the Student studies mathematics. XXXX XXXX, [SCHOOL 2], testified that the Student is in a fourth-grade math class, rather than a fifth grade class. She stated that the Student made progress in adding, subtracting, multiplying and division. She is now working on decimals and fractions. (T. pp. 194-195.) The Student also studies reading and writing. She learns grammar and editing skills and new vocabulary. She answered comprehension questions about readings, wrote sentences, and explored story structure. The Student studies science and engaged in an applied physical laboratory where she learned about force, motion, energy, gravity and simple machines. In social studies she learned about the American Revolution. The Student is in a visual thinking class and created medieval mythological creatures using different software programs. She is in a physical education class. (XX #70.)

The Student has the following accommodations at [SCHOOL 2]: quiet work environment and small group testing; verification that written instruction are understood through the Student explaining instructions and repeating back instructions; preferential seating; additional time on tests; frequent breaks during testing; dictation answers on tests; reader for testing; calculator; computer for written work; marking directly on test book, reducing the length of written assignments; active reading strategies; close monitoring by advisors and teachers for organizational support; break down multi-step tasks; access to counselor; sensory activities and devices; and encouraging the Student to ask for assistance manipulatives to develop math concepts. (XX #41.)

The Student's [SCHOOL 2] Quarterly Report shows that in math class the Student still requires close proximity, one-on-one teacher assistance and nonverbal cues to complete her work. She made progress learning to follow routines and procedures in language arts class, but needed reminders and other proactive strategies to complete her assignments. She had difficulty following along with various whole-group instruction during social studies, but she was able to follow with repetition and individual attention. (XX #52.)

By the third quarter, the Student often struggled with self-confidence in math class and often waited for the teacher to assist her before beginning a problem. With teacher prompting, she was able to complete the process. In reading class, she effectively used different techniques and strategies to gather information from her reading. In science, she worked well with her partners on a project. In social studies she needed some prompting to stay on task when working with a partner; once prompted she was able to get back on track and finish the project. In writing the Student needed to work on time management. (XX #71.)

During the first three quarters at [SCHOOL 2], the Student progressed in every class in the following areas: follows classroom routines, procedures, and teacher direction; works cooperatively with others; uses tools and strategies effectively and seeks help when needed; maintains focus during lessons and activities; and responds positively to redirection. (XX #72.)

Ms. XXXX also described the work [SCHOOL 2] does with its students on social skills. Staff, for example, acknowledges positive behavior individually and in a public gatherings of the school community. [SCHOOL 2] works on communication skills in a daily school meeting where everyone greets each other and presents or shares information about the day. [SCHOOL 2] emphasizes team building and communication skills in a group setting. The school has a “lunch bunch” for social communication. (T. pp. 150-152.)

With regard to executive functioning, Ms. XXXX testified strategies are embedded in the [SCHOOL 2] program. Planning, organization and time management are addressed by, for example, a master notebook system, electronic organization tools, and planners. Counselors are available to help with lockers, backpacks and binders. (T. pp. 156-159.)

The Parents submitted sufficient evidence to show that the [SCHOOL 2] program addresses the Student’s academic needs and provides executive functioning support, social skills instruction, and a low teacher-to-student ratio. Although the Student still requires prompts and attention at school, like she did at [SCHOOL 1], the [SCHOOL 2] program has permitted the Student to make progress in focusing on her work and interacting with her peers.

Additionally, although the Student does not have an IEP and goals addressing language pragmatics, she participates in daily school meetings where she will share information and present to a group. She is involved in team building activities where [SCHOOL 2] staff will support her use of language to participate with her peers. Individual speech and language

services are available should [SCHOOL 2] staff and the Parents determine it is necessary for the Student to benefit educationally. The absence of a language pragmatic goal and speech language services does not, by itself, prove that the Student's program at [SCHOOL 2] is inappropriate especially because the Student is progressing academically and is no longer suffering emotional breakdowns.

Finally, the Parents submitted sufficient evidence prove that, now that the Student is enrolled in a class of five students, she is no longer pulling her hair out and she does not experience the same emotional turmoil before and after school as she did when she attended [SCHOOL 1] in a class of twenty-seven students. As a result, the Parents have shown that the [SCHOOL 2] program provides the Student educational benefit.

### **CONCLUSIONS OF LAW**

I conclude as a matter of law that the Student's 2014-2015 IEP, dated November 10, 2014, with placement in the general education classroom at [SCHOOL 1] fails to provide the Student with a FAPE. *Bd. of Ed. of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); 20 U.S.C.A. § 1401(9).

I further conclude as a matter of law that [SCHOOL 2] is an appropriate placement and can provide the Student with educational benefit. *School Comm. of Town of Burlington v. Dep't of Ed. of Mass.*, 471 U.S. 359, 369 (1985).

I further conclude as a matter of law that PGCPs must reimburse the Parents for the Student's placement at [SCHOOL 2] for the 2014-2015 school year. *School Comm. of Town of Burlington v. Dep't of Ed. of Mass.*, 471 U.S. 359, 369 (1985).

### **ORDER**

I **ORDER** that the Prince George's County Public Schools reimburse the Parents for the Student's placement at [School 2] for the 2014-2015 school year.

If corrective action is required by this decision, the local education agency shall, within 30 days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

June 12, 2015  
Date Decision Issued

\_\_\_\_\_  
Mary Shock  
Administrative Law Judge

MKS/kkc

**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.