

HOWARD COUNTY PUBLIC  
SCHOOLS

v.

XXXX XXXX,

STUDENT

\* BEFORE DOUGLAS E. KOTEEN,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO. MSDE-HOWD-OT-15-15272

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### **DECISION**

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

### **STATEMENT OF THE CASE**

On May 4, 2015, the Howard County Public Schools (HCPS) filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of XXXX XXXX (Student) by HCPS under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010). HCPS seeks a ruling that the Educational and Psychological Assessments it administered to the Student in November 2014 were appropriate, and that the request by the Student's parents, XXXX and XXXX XXXX (Parents), for an independent educational evaluation (IEE) of the Student at public expense is not warranted.

The relevant procedural history of this dispute, prior to the May 4, 2015 hearing request, is as follows: On November 12 and 14, 2014, an HCPS special educator conducted an Educational Assessment of the Student and issued an Educational Assessment Report on November 14, 2014. On November 13 and 24, 2014, an HCPS school psychologist administered

a Psychological Assessment of the Student and issued a Report of Psychological Assessment on November 25, 2014. On March 31, 2015, the Parents advised that they disagreed with the HCPS assessments and requested an IEE at public expense.

On May 26, 2015, I conducted a Telephone Prehearing Conference (TPHC). HCPS was represented by Jeffrey A. Krew, Esquire. The Student and Parents were represented by Caitlin E. McAndrews, Esquire; Jacqueline C. Lembeck, Esquire; and Heidi B. Konkler-Goldsmith, Esquire.<sup>1</sup> I issued a Prehearing Conference Report and Scheduling Order on May 27, 2015. A hearing on the merits was scheduled for June 6 and 26, 2015, and July 7 and 8, 2015, by agreement of the parties.

Federal regulations require that the due process hearing be held, and a decision issued, within forty-five days of certain triggering events described in the federal regulations. OAH received the due process complaint on May 4, 2015. Neither party requested mediation and a resolution session was not required because the school system filed the hearing request. 34 Code of Federal Regulations (C.F.R.) § 300.510(a) (2014)<sup>2</sup>; Code of Maryland Regulations (COMAR) 13A.05.01.15C(11)(d)(iii). Therefore, the triggering event for the forty-five-day time period in this case was the filing of the due process request. 34 C.F.R. §§ 300.510(b) and (c), 300.515(a) and (c). Forty-five days from May 4, 2015, when HCPS filed its due process hearing request, was June 18, 2015. Due to the litigation and vacation schedules of counsel and their witnesses, all of the hearing dates, other than Day 1, could not be scheduled within the time frames. As a result, at the prehearing conference, the parties expressly waived the timeframe requirements of sections 300.515(a) and (c), and agreed to an extension of time to permit the decision in this

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<sup>1</sup> Ms. Konkler-Goldsmith is a member of the Pennsylvania and District of Columbia Bars. At the TPHC, I advised that she would have to be specially admitted to the Maryland Bar in advance of the due process hearing before the OAH if she intended to represent the Parents and Student at this hearing. By Order dated June 4, 2015, Ms. Konkler-Goldsmith was specially admitted to the Maryland Bar by the Circuit Court for Howard County for the limited purpose of appearing and participating in the due process hearing in this matter as co-counsel for the Student and his Parents.

<sup>2</sup> All C.F.R. citations are to the 2014 volumes.

matter to be issued within thirty days after the close of the record. 34 C.F.R. § 300.515; Md. Code Ann., Educ. § 8-413(h) (2014). On the last day of hearing on July 7, 2015, it was confirmed that the parties waived the timeframe requirement and agreed to extend the due date for issuance of a decision in this matter until August 6, 2015, thirty days after the close of the record. The due process hearing concluded on July 7, 2015, and I cancelled the July 8, 2015 hearing date.

I conducted the due process hearing in this matter on Saturday, June 6, 2015; Friday, June 26, 2015; and Tuesday, July 7, 2015, at the offices of HCPS, at 5451 Beaverkill Road, Columbia, Maryland 21044. HCPS was represented by Jeffrey A. Krew, Esquire. The Student and Parents were represented by Caitlin A. McAndrews, Esquire, and Heidi B. Konkler-Goldsmith, Esquire, of the McAndrews Law Offices.

The legal authority for the hearing is as follows: Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and COMAR 13A.05.01.15C. Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; 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**

The issues are as follows:

- 1) Whether the Educational and Psychological Assessments of the Student conducted by HCPS staff in November 2014 were appropriate; and if not
- 2) Whether HCPS should be required to pay for an IEE of the Student at public expense.

## **SUMMARY OF THE EVIDENCE**

### **Exhibits**

HCPS offered the following exhibits, identified as Board Exhibits, which I admitted into evidence:<sup>3</sup>

- Bd. Ex. 2. HCPS Educational Assessment Report of Student, by XXXX XXXX, M.S., Special Education Teacher, dated November 14, 2014 (6 pages);
- Bd. Ex. 2A. Relevant pages from Woodcock-Johnson III Tests of Achievement Examiner's Manual, Standard and Extended Batteries, dated 2001 (20 pages);
- Bd. Ex. 3. HCPS Report of Psychological Assessment of Student, by XXXX XXXX, Ed.S., Nationally Certified School Psychologist (NCSP), dated November 25, 2014 (9 pages);
- Bd. Ex. 3A. Relevant Pages from Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), Administration and Scoring Manual, undated; Behavior Assessment System for Children, Second Edition (BASC-2), Manual, undated; Conners – 3rd Edition, Manual, dated 2009; Behavior Rating Inventory of Executive Function (BRIEF), Professional Manual, undated (39 pages);
- Bd. Ex. 9. Curriculum Vitae for XXXX XXXX, M.S., undated (4 pages);
- Bd. Ex. 10. Curriculum Vitae for XXXX XXXX, Ed.S., NCSP, undated (5 pages); and
- Bd. Ex. 12. Report of Psychologist for a [Redacted] student, by XXXX XXXX, Ph.D., dated March 20, 2006 (7 pages).

The Student and Parents offered the following exhibits, which I admitted into evidence:<sup>4</sup>

- Parents Ex. 1. Evaluation Report Specific Learning Disability (SLD) Supplement, dated December 2, 2014; and Evaluation Report Attention Deficit Hyperactivity Disorder (ADHD) Supplement, dated December 2, 2014 (3 pages);
- Parents Ex. 5. Email Chain from/to XXXX XXXX and Parent [Mother], dated October 16, 17, and 23, 2014 (3 pages);
- Parents Ex. 7. Functional Behavior Assessment and Behavior Intervention Plan for Student, by XXXX XXXX, School Psychologist, dated October 6, 2014 (4 pages);
- Parents Ex. 8. Parent Consent for Evaluation or Reevaluation, dated October 6, 2014 (2 pages);
- Parents Ex. 9. HCPS Section 504 Plan for Student, dated September 8, 2014 (2 pages);
- Parents Ex. 10. Academic Intervention Mid-Summer School Progress Reports, Grade 7, 2014 (2 pages);
- Parents Ex. 11. Summer Registration Requirements for Student, Grade 6, undated (1 page);
- Parents Ex. 12. HCPS Fourth Quarter Progress Report for Student for Grade 6, 2013-2014 (3 pages);
- Parents Ex. 13. HCPS IEP Team Meeting Report, dated October 28, 2014 (3 pages);
- Parents Ex. 14. HCPS Section 504 Plan, Accommodation Plan, dated September 24, 2013; and HCPS Section 504 Plan, Eligibility Form, dated September 24, 2013 (5 pages);
- Parents Ex. 15. Prince George's County Public Schools (PGPS) Report Card for Student for Fifth

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<sup>3</sup> Other numbered exhibits not listed here were not offered by HCPS or admitted into evidence.

<sup>4</sup> Other numbered exhibits not listed here were not offered by the Parents or admitted into evidence.

- Grade, dated June 17, 2013 (1 page);
- Parents Ex. 16. PGPS Talented and Gifted Program (TAG) Student Identification Evaluation Form/Talent Assessment Matrix – Grades 3, dated February 11, 2011 (1 page);
- Parents Ex. 17. Letter from PGPS to Parent/Guardian of Student re: Stanford Achievement Test Series, Tenth Edition, dated February 7, 2011 (1 page);
- Parents Ex. 18. Letter from PGPS to Parent/Guardian of Student re: Otis-Lennon School Ability Test, 1996 Edition, dated January 25, 2011 (1 page); and
- Parents Ex. 19. Student Observation Forms for Student, from XXXX XXXX, dated September 22 and 24, 2014 (2 pages).

### Testimony

HCPS presented the following witnesses:

1. XXXX XXXX, M.S., Special Education Team Leader, [School 1] ([SCHOOL 1]) (accepted as an expert in special education, with an emphasis on educational assessment and administration of the Woodcock-Johnson III Tests of Achievement); and
2. XXXX XXXX, Ed.S., School Psychologist, [SCHOOL 1] (accepted as an expert in school psychology with an emphasis on psychometric evaluation of elementary and secondary students) (testified for HCPS in case-in-chief and in rebuttal).

The Parents presented the following witnesses:<sup>5</sup>

1. XXXX XXXX, M.S., Special Education Team Leader, [SCHOOL 1] (through expanded cross-examination);
2. XXXX XXXX, Ed.S., School Psychologist, [SCHOOL 1]; and
3. XXXX XXXX, Ph.D., School Psychologist (accepted as an expert in school psychology and the assessment of children with disabilities).

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<sup>5</sup> The Parents requested subpoenas for five additional witnesses, including three of the Student's classroom teachers, the Student's Section 504 case manager/counselor, and the Director of Special Education for HCPS, and a broad subpoena *duces tecum* for documents related to the Student. At the due process hearing on June 6, 2015, counsel for HCPS raised an oral motion to quash the subpoenas. I quashed the subpoena for the special education director at the hearing on June 6, 2015 because that prospective witness had no relevant testimony to provide regarding the narrow issues that were the subject of this hearing. Counsel for HCPS supplemented his oral motion with a written motion to quash, which he filed at the OAH on June 9, 2015. Counsel for the Student filed an opposition to the motion to quash on June 10, 2015. Both parties filed multiple written supplements to their motion and response, respectively. On June 23, 2015, the Parents filed a supplemental opposition to motion to quash and request for sanctions. At the hearing on June 26, 2015, I quashed the subpoenas for the three teachers and the Section 504 case manager/counselor because the Parents failed to demonstrate that these witnesses had relevant information that was not duplicative, and that was not based on mere speculation. At the June 26, 2015 hearing, I denied a portion of the motion to quash the subpoena *duces tecum* related to documents involving teacher input for the Educational Assessment and classroom observations for the Psychological Assessment. I quashed the remainder of the subpoena *duces tecum* as the information requested was previously disclosed by HCPS with the Student's educational record or its five-day disclosure, the information requested was within the Parents' control or possession, and/or the information requested was unduly broad. I also denied the Parents' request for sanctions at the June 26, 2015 hearing as they failed to establish good cause for such extreme relief.

## **FINDINGS OF FACT**

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

### **Background**

1. The Student was born on XXXX, 2002 and was age twelve when the Educational and Psychological Assessments at issue in this case were performed.
2. The Student attended the Prince George's County Public Schools (PGPS) through the fifth grade and enrolled in HCPS for the 2013-2014 school year when he was entering sixth grade.
3. The Student already had a Section 504 Plan when he came to HCPS from PGPS at the beginning of the 2013-2014 school year. The Student continues to have a 504 Plan that provides him with certain accommodations. (Parents Ex. 9, 14; TR 368-369, 376).
4. The Student was identified as below grade level in Math by a [School 1] ([SCHOOL 1]) guidance secretary when he first enrolled at [SCHOOL 1] in the summer of 2013. This was based on his performance in fifth grade in PGPS. (Parents Ex. 11; TR 535-536). The Student was previously involved in the talented and gifted program in PGPS. (TR 537).
5. During the 2013-2014 school year, the Parents raised concerns about the Student's poor academic performance. An Individualized Education Plan (IEP) team met in October 2013 to discuss whether the team suspected an educational disability that warranted assessments. The IEP team received input from the Student's classroom teachers, reviewed his records and performance, and discussed the issues. The IEP team agreed at that time that it did not suspect the Student had an educational disability. (TR 369).
6. At an IEP meeting on October 28, 2013, the IEP team proposed a consult with the Instructional Access Team (IAT) to assist with the Student's engagement in class due to his interest in technology. (TR 539-541; Parents Ex. 13).
7. The Student was placed in the alternative education program (AEP) during the third

quarter of the 2013-2014 school year. The AEP program provided the Student with support in being organized and getting assignments done. The Student continues to receive support from an AEP teacher and paraeducator. (TR 542-547).

8. The Student initially attended sixth grade at [SCHOOL 1] during the 2013-2014 school year. The [SCHOOL 1] administration required the Student to repeat the sixth grade during the 2014-2015 school year. This decision was based, in part, on the Student's record of attendance during the 2013-2014 school year, in which he was absent 22 times and tardy 73 times. The Student also had problems completing his work, was disengaged from class activities, and had difficulty initiating class work and asking for assistance. (Bd. Ex. 3; Parents Ex. 7, 12; TR 136, 179-181).

9. The Student attended sixth grade again at [SCHOOL 1] during the 2014-2015 school year. (Bd. Ex. 2; TR 119).

10. A meeting was held on September 8, 2014 to conduct an annual review of the Student's Section 504 Plan. The Plan was found to be appropriate and included certain accommodations, including preferential seating, verbal and non-verbal cues and reinforcements, simple and concise directions and commands, and teacher and parent signature of the Student's agenda book. His teachers were also going to try out extra time for class assignments. The Parents also requested a Functional Behavior Assessment (FBA) at the 504 meeting. (Parents Ex. 9; TR 419-420).

11. The special education department at [SCHOOL 1] held an IEP meeting on October 6, 2014 to address the Student's educational needs. At the meeting, the IEP team discussed whether the Student required assessments. The IEP team determined that it suspected the presence of educational disabilities for the Student of a Specific Learning Disability (SLD) or Other Health Impairment (OHI) based on Attention Deficit Hyperactivity Disorder (ADHD). After discussing the Parents' concerns and the Student's academic performance, the IEP team

referred the Student for Educational and Psychological Assessments due to academic concerns. (Bd. Ex. 2, 3; TR 369-371).

12. The IEP team agreed at the October 6, 2014 IEP meeting that HCPS would conduct an Educational Assessment, to include assessments of Reading Skills, Reading Comprehension, Reading Fluency, Math Calculation, Math Reasoning, and Written Calculation. The IEP Team also agreed that HCPS would conduct a Psychological Assessment, to include assessments of Cognitive Ability, Attention/Behavior, Information Processing/Memory, and Specific Learning Strengths and Weaknesses. (Parents Ex. 8; TR 369-371).

13. The Parents took the Consent Form for the assessments home after the IEP meeting on October 6, 2014. The Parents returned the signed Consent Form on October 14, 2014. The Parents also added to the Consent Form a request for an Assistive Technology Consultation and an Executive Function assessment. (Parents Ex. 8).

14. HCPS did not conduct an Assistive Technology assessment at that time based on the Parents' request on the Consent Form because the IEP team had not discussed this type of assessment at the October 6, 2014 IEP meeting and had not referred the Student for an Assistive Technology assessment. (TR 166-168; Parents Ex. 8). XXXX XXXX (XXXX), special educator at [SCHOOL 1], explained this to the Student's mother in a series of emails exchanged between October 16 and 23, 2014. XXXX also advised the mother that this issue could be discussed at a subsequent IEP meeting. (Parents Ex. 5).

15. The Parents also requested an Executive Function assessment on the Consent Form. Executive Function is not a separate type of assessment. However, HCPS did assess the Student's executive function skills as part of the Psychological Assessment conducted by [SCHOOL 1] school psychologist XXXX XXXX (XXXX) on November 13 and 24, 2014. (Bd. Ex. 3; TR 166-168).



16. At the October 6, 2014 IEP meeting, the IEP team also discussed the Parents' previous request for an FBA and Behavior Intervention Plan (BIP) based on their concerns with the Student's behavior and time on task in class. The IEP team approved the referral for an FBA to determine whether the Student required a BIP. XXXX conducted the FBA, relying on input from the Parents, from the Student's teachers, and from her classroom observations. (Parents Ex. 7; TR 419-421, 495-497). XXXX subsequently concluded that a BIP was not warranted at that time. Despite the Student's inattention, she found that he responds well to redirection, is able to complete assignments independently, and his ability to begin tasks independently had improved significantly. XXXX also found that the Student's behaviors were not disruptive to the classroom environment or to the learning of others. (Parents Ex. 7).

#### Educational Assessment

17. XXXX is the Special Education Team Leader at [SCHOOL 1]. In that position, XXXX is the chairperson of the special education department at [SCHOOL 1]. She has held that position since her employment at [SCHOOL 1] in January 2014. (TR 47).

18. XXXX was previously a special education teacher at another HCPS school, [School 2], since 2008. (TR 48). XXXX has taught special education students for approximately six years and has conducted educational assessments of students to determine their qualification for special education services since about 2010. (TR 49-51).

19. XXXX received a Bachelor of Science degree (B.S.) in Education from XXXX University, where she received a dual certification in Elementary and Special Education. She also received a Master's degree (M.S.) in Education from XXXX University with a concentration in Administration and Supervision. She has a National Board Certification for Students with Exceptional Needs, and has additional certifications including Administrator I,

Elementary and Middle School Education, Generic Special Education, and Middle School Mathematics. (TR 49-50; Bd. Ex. 9).

20. XXXX attended a workshop provided by the HCPS special education department staff and received other instruction and supervision regarding the proper administration of the Woodcock-Johnson III Tests of Achievement (WJ-III). (TR 51). She also attended a practicum course in the administration and interpretation of tests of academic achievement taught by HCPS staff. (TR 95-96). XXXX also had coursework in her undergraduate training regarding the use of assessment tools for students. (TR 52).

21. XXXX has administered approximately twenty WJ-III tests to students. (TR 54). She is trained and knowledgeable in administering the WJ III to students and meets the criteria for administering, scoring, and interpreting the WJ III. (TR 82, 99-100; Bd. Ex. 2A, 9).

22. XXXX administered an Educational Assessment to the Student on November 12 and 14, 2014. This Assessment consisted of XXXX's administration and interpretation of the WJ III and her solicitation and review of information provided to her by the Student's classroom teachers regarding his educational performance. XXXX obtained information from the classroom teachers through direct conversations with the teachers and/or through emails she received from them. (Bd. Ex. 2; TR 62-64, 80, 211-212). XXXX compared the Student's performance on the WJ-III with the reports she obtained from his classroom teachers. (TR 63).

23. The WJ-III is a "gold standard" assessment that looks at a student's educational ability in the areas of reading, writing, and math performance according to the student's age. It provides an accurate and complete assessment of a student's educational ability and is widely used for assessing a student's educational performance. (TR 65, 67).

24. The WJ-III is a statistically valid and technically sound instrument that is age-appropriate

in measuring a student's performance in reading, written language, and mathematics. (TR 66-67, 81). The WJ III was administered so as not to discriminate on a racial or cultural basis, it was given in the Student's native language – English, and was administered to the Student for the purpose intended. The test is designed to assess a student's particular areas of educational need and does not just provide a general intelligence quotient. (TR 80-82, 621-624).

25. XXXX followed the Manual and protocols for the WJ III when she administered this test to the Student. There was a brief pause in the testing due to a fire drill. The Student was able to continue with the testing immediately after returning from the fire drill. XXXX documented this brief interruption in her Educational Assessment Report. (TR 67-68, 82; Bd. Ex. 2).

26. XXXX properly scored the WJ III and reported the scores in accordance with the testing protocols prescribed in the Manual. XXXX scored the test using a computer program and included a detailed narrative in her Assessment Report regarding the Student's performance. (TR 69-74). XXXX included the narrative in conformity with best practices to ensure that she had a true and complete picture of the Student's performance, to assist her in identifying and addressing the Student's strengths and weaknesses, and to assist the IEP team. (TR 74-75).

27. XXXX conducted the test individually with the Student in her office at [SCHOOL 1] and with the door closed to provide a quiet and comfortable learning environment free of distractions. The Student was relaxed during the assessment. (TR 77-79, 81). There were no impediments to the Student's performance on the test that might have impacted his achievement. (TR 83-84).

28. The WJ-III provided an accurate picture of the Student's performance. (TR 80, 82). XXXX concluded that the Student did not demonstrate difficulty in an area of educational performance. XXXX considered the Student's score of 82 on the Math Fluency subtest, which is in the low-average range and reflects that the Student has a weakness in Math Fluency. She also

considered the Student's overall performance in Math, which reflected a standard score of 96 in Broad Mathematics, which is in the average range of achievement for his age. His score on other Math subtests included 97 in Calculation and 101 in Applied Problems, which are also in the average range and show the Student's strength in those areas. XXXX concluded that the Student's weakness on one Math subtest did not impact his overall ability in Math. (Bd. Ex. 2; TR 153-155, 375).

29. XXXX addressed in the Educational Assessment that the Student was retained in sixth grade for the 2014-2015 school year. She noted that he had a number of absences and tardies when he previously attended sixth grade during the 2013-2014 school year, which impacted his educational performance. (Bd. Ex. 2). However, the focus of the Educational Assessment involved the Student's current academic skills and whether he was performing on grade level at the time of the Assessment in November 2014. (TR 181-183).

30. The Student performed in the high average range of achievement for his age on the Broad Reading Cluster of the WJ III with a Standard Score of 118. (Bd. Ex. 2; TR 375).

31. The Student's classroom teacher for Reading reported to XXXX that the Student is performing above grade level for reading, was meeting grade level expectations for assignments, and had placed in the 83rd percentile on the Measures of Academic Progress (MAP) assessment given by HCPS, which measures a student's progress in math and reading. The teacher also reported that the Student completed classroom tasks without additional assistance or teacher prompting, and that the Student's work was thoughtful and well done. (Bd. Ex. 2; TR 373).

32. The Student's math teacher reported to XXXX that the Student was performing on grade level in Math and was doing well. She reported that the Student's problem-solving skills have improved, he understands most concepts, and does not have a problem with calculation skills. She also reported that the Student participates in class and does very well on quizzes. She

indicated that periodically the Student does not turn in his homework, but he is able to complete the work when given extra time. (Bd. Ex. 2).

33. The Student performed in the average range of achievement for his age on the Broad Written Language Cluster of the WJ III with a Standard Score of 99. (Bd. Ex. 2; TR 375).

34. The Student's classroom teacher for Written Language reported to XXXX that the Student was performing on grade level for written language. The teacher reported that the Student was able to correctly construct simple and compound sentences, did not have grammatical errors in his writing, used basic punctuation correctly, used technology independently and successfully, and was able to create a well-developed paragraph. The Student required some instruction to help improve his paragraph construction. (Bd. Ex. 2).

35. XXXX concluded that the Student did not demonstrate difficulty in an area of educational performance, that any lack of educational performance was not the result of limited English proficiency, and that any lack of educational performance was not the result of a lack of instruction in reading or math. (Bd. Ex. 2).

### Psychological Assessment

#### A. Background and Education

36. XXXX has worked as an HCPS school psychologist at [SCHOOL 1] since July 2013. Previously, XXXX worked as a school psychologist in PGPS for one year, and performed a one-year internship at HCPS before her employment with PGPS.

37. XXXX received a B.S. degree *cum laude* in psychology from the University of XXXX. She also received an Education Specialist (Ed.S.) degree in school psychology from the graduate school at the University of XXXX. The school psychology program at the University of XXXX is accredited by the American Psychological Association (APA) and approved by the National Association of School Psychologists (NASP). (Bd. Ex. 10; TR 363-365).

38. XXXX's graduate school coursework included courses in cognitive assessment, academic achievement assessment, curriculum-based assessment, and social-emotional assessment. (TR 363-365; Bd. Ex. 10).

39. XXXX was trained in the administration of the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) in graduate school and in her practicum and internships and has conducted about 60-75 of these tests. (TR 386). XXXX was also trained in graduate school and in her practicum and internships in administering the Behavior Assessment System for Children, Second Edition (BASC-2), the Conners 3, and the Behavior Rating Inventory of Executive Function (BRIEF). (TR 386-387).

40. XXXX is certified as a school psychologist in the State of Maryland, and is a nationally certified school psychologist (NCSP) by the NASP. She has conducted seventy-five to one hundred psychological evaluations during her employment in HCPS and PGPS. She has conducted student assessments as part of IEP teams regarding educational disabilities, including autism, ADHD, social-emotional disabilities, specific learning disabilities, and others. (TR 366-369; Bd. Ex. 10).

#### B. Administering and Analyzing the Assessment

41. XXXX reviewed the Educational Assessment completed by XXXX, discussed this Assessment with XXXX, and discussed with XXXX the input she received from classroom teachers that XXXX addressed in her Educational Assessment. (TR 372-374). XXXX also observed the Student in several of his classes and discussed the Student's academic performance with his teachers as well. (TR 373-374, 392-393).

42. XXXX conducted a Psychological Assessment of the Student after the IEP team recommended this assessment. As part of the Assessment, XXXX reviewed and considered the Student's educational history, educational records, including his 504 Plan and accommodations,

attendance history, grade history, comments on report cards, progress reports, any records provided by PGPS, and other information regarding how the Student was progressing in school. XXXX also conducted classroom observations, and considered the Student's engagement with the curriculum, attention and focus, completion of independent assignments, and concentration during teacher instruction. XXXX also considered input from the Student's teachers in preparing her Assessment. XXXX included background information in her Psychological Assessment regarding the Student's educational history. (TR 376-377, 391-392, 532-534; Bd. Ex. 3).

43. XXXX did not review the FBA before administering the Psychological Assessment because the FBA had not yet been reviewed by the IEP team. (TR 418-420).

44. XXXX administered four standardized tests as part of her Assessment. This included the WISC-IV, which tests the cognitive ability of students age 6 through 16. The WISC-IV is considered one of the most reliable and valid measures of a student's cognitive ability, and is considered the gold standard for cognitive testing. (TR 378). It measures cognitive functioning and processing skills. (TR 385).

45. XXXX administered the WISC-IV individually with the Student in her office with the door closed and her phone on silent in a quiet environment. She used the test manual to administer the test in accordance with the testing protocols. (TR 387-388). She determined that the Student was engaged, understood the directions, and participated appropriately in the session.

46. XXXX considered and reported the Student's test behaviors so she could demonstrate that the testing was administered in accordance with the testing protocols, the test results were not impaired by improper procedures or behaviors, and the test results were valid. The test results were valid and accurately represented the Student's cognitive strengths and weaknesses. (TR 396-397; Bd. Ex. 3).

47. XXXX also administered the BASC-2, an assessment system that includes parent and teacher rating scales that look at a student's behaviors across multiple domains. The BASC-2 assessment considers a student's attention, hyperactivity, aggression, depression, anxiety, and social skills. It provides a global assessment of a student's social-emotional strengths and weaknesses. (TR 378-379, 385).

48. XXXX also administered the Conners 3, which is a narrower measure that looks specifically at behaviors associated with ADHD. The Conners 3 has been updated so that its questions and scoring profiles reflect the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). (TR 379-380, 385).

49. XXXX also administered the BRIEF, a rating scale completed by parents and teachers that looks at a student's executive functioning skills, which are the processes that control the way the brain works. (TR 380, 385).

50. XXXX distributed the BASC-2, Conners 3, and BRIEF to the Parents and certain teachers in accordance with the manufacturer's instructions for each instrument. (TR 388-389). XXXX distributed the BASC-2 packet to the Student's mother and to his English-Language Arts (ELA) and Geography teachers. (TR 403-404). XXXX obtained input from the Student's mother, which provided her with input across both school and home environments. She obtained input from two different teachers so she could receive input from a variety of different sources and settings. (TR 405).

51. XXXX selected these four standardized measures because HCPS has determined that these instruments are sound, reliable, valid measures of the necessary rating scales. XXXX also learned from her training that these instruments are valid and reliable measures of the skills that she was looking to measure for the Student. (TR 380-381).



52. XXXX also selected these assessments because they were geared towards the Student's suspected areas of disability identified by the IEP team, which included SLD and OHI due to ADHD. (TR 381-382, 391; Bd. Ex. 3). The WISC-IV provides a wealth of information on the question of an SLD regarding the Student's cognitive processes and provides information regarding ADHD. The BASC-2, Conners 3, and BRIEF provide information directly related to the question of ADHD and the identification of impairments in the classroom regarding inattention and hyperactivity. (TR 381-382).

53. HCPS used a variety of technically sound assessment tools and strategies to gather relevant functional, developmental, physical, and academic information regarding the Student. These tools assessed the relative contribution of cognitive and behavioral factors. The assessment tools used by HCPS assisted the IEP team in determining whether the Student was a student with a disability under the IDEA. If it were determined that the Student was a student with a disability and met eligibility criteria under the IDEA, the variety of assessment tools used by HCPS would then assist the IEP team in crafting the content of an IEP. (TR 382-386).

54. XXXX and XXXX used a variety of technically sound instruments in completing the Educational and Psychological Assessments and in assessing the Student's needs and educational performance. The assessments used by XXXX are nationally normed instruments that are not discriminatory on the basis of racial or cultural bias and were conducted in the Student's native language of English. XXXX used the instruments she administered for the purpose for which they were intended and for which they were valid and reliable. (TR 383-386, 607-614).

55. The instruments used by XXXX in the Psychological Assessment were tailored to assess the Student's specific areas of educational need and were not designed to provide only a single general intelligence quotient. (TR 389-390). The Student did not have any impediments that

prevented XXXX from assessing the Student in the areas intended by the producers of the instruments she used. (TR 390-391, 607-614, 620-621).

56. XXXX spoke with the Student's classroom teachers and accurately included their input in her report. For example, the Student's ELA teacher, Ms. XXXX, advised that the Student was a "deep thinker," which she included in her report. (TR 392-395).

57. XXXX conducted classroom observations of the Student in his Math class with Ms. XXXX, and in his ELA class with Ms. XXXX. (TR 395-396; Bd. Ex. 3).

58. XXXX reported the Student's test scores in accordance with the manufacturer's instructions. She reported all the subtests and index scores on the WISC-IV as the Manual requires. (TR 397-399). XXXX hand-scored the Student's test scores on the WISC-IV in accordance with the Manual's instructions. (TR 399-402). XXXX also reported the test scores on the BASC-2 in accordance with the manufacturer's instructions. (TR 406-408).

59. The Conners 3 was administered through a computer, and the scores were reported online. XXXX reported the Conners 3 scores consistent with the manual. (TR 408-409).

60. The BRIEF was distributed to the Student's mother and two teachers through a paper packet. XXXX also hand-scored the test results on the BRIEF. (TR 409-410). XXXX hand-scores the test results so she can observe more clearly how a student performed on various tasks and the kinds of skills that were assessed on a task. It helps her to determine when a student's skills have broken down on a task. (TR 763-767).

61. XXXX provided narratives to explain and interpret the test scores and to give context to the Student's ratings, address the strengths and weaknesses of his skills, and explain what his scores really meant. (TR 410-411).

62. XXXX determined in her Psychological Assessment, based on the ratings across settings, that there were concerns with the Student in the areas of inattention, working memory, and some

organization. XXXX concluded that these ratings were consistent with the Student's current diagnosis of ADHD. Although XXXX concluded that the Student's behaviors and ratings were consistent with ADHD, she did not make a determination of whether the Student had a disability of OHI or SLD. A diagnosis of ADHD does not necessarily mean that the student has an educational disability. (Bd. Ex. 3; TR 433).

63. HCPS does not use the Response to Intervention (RTI) or discrepancy model in determining whether a student has an SLD. The school system considers the pattern of strengths and weaknesses in academic skills model to determine whether a student has an SLD. The Student's pattern of strengths and weaknesses includes a processing deficit. (TR 431, 449-450).

64. XXXX did not calculate the Student's General Ability Index (GAI) on the WISC-IV. The GAI is an alternate method for scoring the results of the WISC-IV, that is not required, which excludes the Working Memory and Processing Speed subtests. XXXX does not use the GAI analysis because she believes that Working Memory and Processing Speed are important factors that should be included in assessing a student's overall cognitive functioning. (TR 430-431).

65. The results of the WISC-IV demonstrated that the Student has a deficit in the area of his processing speed. The Student demonstrated a slower processing speed than would be expected based on his other cognitive abilities. (TR 431-432, 446). A processing deficit is one of the criteria to be considered in determining whether a student has an SLD. Another factor to be considered in determining whether an SLD is present is that the Student's achievement functioning was in the average to superior range on the Educational Assessment. (TR 431-432).

66. Curriculum-based assessments measure how a student functions relative to the kinds of things that are actually taught in the classroom. The math portion of the WJ III may be considered a curriculum-based assessment because the test is similar to the math curriculum

taught in HCPS. The reading portion in the Psychological Assessment was a curriculum-based assessment. (TR 437-439).

67. The protocols for the BASC-2 and Conners 3 instruments indicate that a person should know the student for at least one month before completing the questionnaires. The testing protocols also indicate that only behaviors that are observed for the past month should be included in the response on the questionnaires. The instruments are designed to provide a snapshot of a student's current functioning and behaviors. (TR 450-452).

68. The BASC-2 rating scale looks at a number of social-emotional concerns, and XXXX determined that the results of the BASC-2 did not show any social-emotional concerns that were clinically significant. XXXX did not associate the Student's behaviors related to working memory with social-emotional difficulty, and she was not concerned that the Student had unaddressed social-emotional issues. (TR 453-458, 460-461, 485-486).

69. If XXXX were to suspect that there was an additional area of suspected disability that was not identified at an IEP meeting, she would contact a parent and ask the parent to request another IEP meeting for the purpose of amending the areas of suspected disability on the consent form. (460-461). XXXX did not do this because, based on the data she collected, she did not suspect that the Student had an emotional disability. (TR 547).

70. XXXX selected two teachers to perform the ratings on the BASC-2, Conners 3, and BRIEF. She selected the Student's ELA and Geography teachers because they are experienced teachers and observant individuals, they knew the Student well, and they had previously given XXXX good and reliable information. XXXX selected the same two teachers for each of the different rating scales because she likes to receive multiple data points from the same individuals. (TR 465, 512-513).

71. The Psychological Assessment indicated that the Student had problems with inattention and staring off in his Geography class. XXXX knew the child had previously been diagnosed with ADHD before she began her Assessment, so she was more interested in looking closely at those areas of executive function in which he was observed to have weaknesses, rather than just considering his rating score in a subscale of Learning Problems. (TR 473-474).

72. There were some discrepancies in the Geography teacher's comments to XXXX regarding the Student's performance in class and his ratings of the Student on the Conners 3 and BRIEF. XXXX did not go back and talk to the Geography teacher with regard to any discrepancies in his information because she integrates all the data she receives and considers the convergence in the data in reaching her conclusions and interpretations. The areas of disability must impact two or more settings under the DSM-5 criteria. (TR 475-477; Bd. Ex. 3).

73. XXXX determined from the data obtained on the BRIEF that the Student was most impacted in the areas of working memory, planning, and his organization of materials. She observed these issues across multiple settings as they were identified by one of the Student's teachers and by his Parents. She determined that the Student's ability to keep track of multiple assignments, his ability to plan and complete assignments, and his organization of materials were areas of difficulty for him. She also found that the Student's working memory scores on the cognitive assessment were a strength for him. (TR 484). The working memory included in the WISC-IV and the working memory on the BRIEF do not look at exactly the same skills. The BRIEF is more focused on behaviors associated with working memory and the ability to multi-task. (TR 487).

74. XXXX conducted the Student's classroom observations on September 22 and 24, 2014, in his Math and ELA classes. The observations were initially related to the Parents' request for an FBA, but XXXX also used the results of these observations in her Psychological Assessment.

(TR 507-511). XXXX knew the Student had problems with inattention before the observation. She was looking to gauge his inattention and engagement in class activities, and the impact these had on his education. (TR 494-497).

75. XXXX used observation forms to record the results of the observations. (Parents Ex. 19; Bd. Ex. 3). She also observed the Student in the classroom after HCPS received consent from the Parents to conduct the Educational and Psychological Assessments, but she did not use the observation forms for any of her additional classroom observations. (TR 512).

76. Based on her classroom observations, XXXX addressed in her Psychological Assessment the Student's time on and off task, what he does when the teacher is instructing him, and what he does when he is supposed to be performing independent work. XXXX conducted her observations to see what difficulties the Student had with engaging in the curriculum, to see whether the instruction was appropriate for the Student and to see whether the teacher's activities contributed to the Student's difficulties. (TR 498).

77. XXXX did not give the Student a self-report form for her Psychological Assessment because she believes that elementary and middle school students, based on age and development, are less self-aware of their difficulties. She has used student self-reports on other occasions when she believes that a student is self-aware and has great insight. (TR 513-514).

78. XXXX addressed the Student's involvement in the AEP in her Assessment and spoke with teachers from the AEP. After placement in the AEP, the Student made significant improvement in his work completion and overall academic performance. His attendance and timeliness improved substantially during the 2014-2015 school year, and he showed great growth in his effort and motivation during this school year. (Bd. Ex. 3).

79. XXXX did not give the rating scales questionnaires to the AEP teacher because she believed it would be more useful to give them to the Student's classroom teachers to address his

ADHD and educational functioning, and because emotional disability was not an area of suspected disability. (TR 546-547).

80. XXXX composed the paragraphs in her Assessment report that described the nature and purpose of the tests she administered. (TR 763-767). She also provided detailed descriptions and analyses of the tasks the Student performed and the results of his testing. (TR 768-769).

81. XXXX provides the same detailed descriptions and analyses in all of her assessments, regardless of whether they are initial evaluations or reevaluations. (TR 769-770). XXXX includes all relevant information in her assessment reports and does not hold back information to present orally at an IEP meeting. (TR 770-771).

82. XXXX addressed in her Psychological Assessment the Student's struggle with attendance during the 2013-2014 school year when he first attended sixth grade and was absent 22 times and tardy 73 times. She also considered and included in her report that he failed to complete work and was disengaged from class activities during his first sixth grade year. (Bd. Ex. 3).

83. XXXX considered the Student's failing grades during the 2013-2014 school year to be based on poor attendance and a lack of work production in class. This was based on her knowledge of the Student and her collaboration with his teachers. (TR 455-456).

84. XXXX included a detailed description of the Conners 3 test, an analysis of the Conners 3 test results from the Student's mother and two teachers, and reported all the scores from each rater on each subtest in a clear chart on her Psychological Assessment. (Bd. Ex. 3; TR 694-705).

85. XXXX provided a detailed explanation of how the BRIEF is administered and what it is designed to address. She also provided a detailed analysis of the results of the BRIEF rating scales from the Parent and from two teachers, in addition to the scoring chart. (Bd. Ex. 3).

86. XXXX provided a detailed description of the purpose, categories, and scoring of the WISC-IV. She also provided a detailed analysis of the Student's scores in all of the areas tested

on the WISC-IV. She also provided detailed information in her scoring charts in the Assessment. (Bd. Ex. 3; TR 722-728).

87. XXXX intentionally did not include a determination in her report as to whether the Student met the criteria for an SLD or OHI. Her role was to bring her report back to the IEP team and discuss the results of her assessment at the IEP meeting. The ultimate determination regarding whether the Student has an educational disability and whether he is eligible for special education and related services must be decided by the IEP team as a whole considering all available information. HCPS does not permit an evaluator to make that determination on her own because the decision must be made by the entire IEP team. In accordance with HCPS policy, the IEP team must consider the Psychological Assessment together with the Educational Assessment and other information so it can make a determination as to whether the Student has an SLD or other educational disability. (TR 411-412; 432-433, 435-436, 447, 517; Bd. Ex. 3).

88. The Evaluation Report SLD Supplement and the Evaluation Report ADHD Supplement were generated at the IEP meeting when the IEP team was making an eligibility determination. These supplements were not part of the HCPS Educational or Psychological Assessments. (Parents Ex. 1; Bd. Ex. 2, 3; TR 518).

89. The Educational and Psychological Assessments administered by XXXX and XXXX, respectively, were used to consider the Student's suspected areas of educational disability and his eligibility for special education and related services. (TR 390; Bd. Ex. 3). The IEP team met on December 2, 2014 to discuss the results of the Assessments and other information to determine whether the Student has an educational disability and whether he is eligible for special education or related services. (Parents Ex. 1; TR 418-419).



## **DISCUSSION**

When a local education agency performs an evaluation of a student, the student's parents have the right to seek an IEE as a procedural safeguard. 20 U.S.C. § 1415(b)(1) (2010). However, the right to obtain an IEE at public expense is qualified. The federal regulations provide the following, in pertinent part:

(b) Parent right to evaluation at public expense.

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

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

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

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

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

34 C.F.R. § 300.502(b).

The appropriateness of an evaluation, however, is not determined by the progress, or lack thereof, that a student experiences after being evaluated, or whether all parties agree with the findings and recommendations of an evaluation. The focus of the determination of the appropriateness of a student assessment is a review of the procedures, methodology, and assessment tools that are employed, and the qualifications of the evaluator, in accordance with the requirements of the IDEA and its accompanying regulations. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233 (3rd. Cir. 2012); While an evaluation should be tailored to the specific problems a

potentially disabled student is experiencing, it need not be designed to identify and diagnose every possible educational disability. *Id.* at 250.

The regulations provide guidance in determining whether an assessment is appropriate. The regulations, at 34 C.F.R. §300.304, requires that certain standards be met when evaluating a child:

(b) Conduct of evaluation. In conducting the evaluation, the public agency must –

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child . . .

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that –

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Similarly, COMAR 13A.05.01.05C provides:

#### C. Assessment Materials.

(1) A public agency shall ensure that testing and assessment materials and procedures used to assess a student's need for special education and related services are:

(a) Technically sound; and

(b) Provided and administered in the student's native language or other mode of communication, in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.

#### Position of HCPS

HCPS maintains that the issue here is a narrow one; specifically, whether the Educational and Psychological Assessments of the Student administered by HCPS in November 2014, with reports completed on November 14 and November 25, 2014, respectively, met the IDEA

requirements outlined above. HCPS contends that both Assessments were comprehensive, appropriate, and consistent with the requirements of the IDEA and its accompanying regulations, thereby warranting denial of the Parents' request for an IEE at the school system's expense. HCPS further contends that the Student's expert was not credible in addressing the comprehensive nature and appropriateness of the HCPS assessments. It relies on a Psychologist's Report that Dr. XXXX prepared in 2006 regarding an unrelated student that HCPS contends was deficient, included little analysis, and was less comprehensive than XXXX's Psychological Assessment. Therefore, HCPS contends that the analysis provided by the Student's expert, and his claim that certain items were missing from the HCPS Psychological Assessment, are unreliable.

#### Position of the Parents

The Parents assert that the Educational and Psychological Assessments administered by HCPS were inappropriate because they were not comprehensive and failed to address certain issues that the Parents contend are required by the IDEA. The Parents claim that HCPS failed to use proper research-based procedures required by the IDEA in evaluating the Student for a SLD. The Parents also contend that HCPS failed to evaluate the Student in all areas of suspected disability, failed to provide necessary analysis in its Assessment reports, and failed to determine and make recommendations regarding the Student's educational needs. The Parents further contend that HCPS failed to calculate the GAI to gain a better understanding of the Student's processing speed on his cognitive ability, and failed to obtain rating scales from the Student's teachers in the classes where the Student struggled the most. The Parents also claim that HCPS failed to observe the Student's academic performance in the regular education classroom. In addition, the Parents argue that HCPS failed to perform a thorough FBA, failed to consider that

the Student was learning the sixth grade curriculum for a second time, and failed to administer certain subtests of academic achievement.

Therefore, the Parents argue that the Assessments conducted by HCPS were not comprehensive, did not include an appropriate opinion on whether the Student is a student with a disability, and did not provide appropriate recommendations for the Student's educational needs. For all these reasons, the Parents argue that the Educational and Psychological Assessments conducted by HCPS were inappropriate.

#### Educational Assessment

The evidence presented by HCPS establishes that XXXX possessed the proper education, training, licensing, and qualifications to administer the Educational Assessment and interpret the results, in accordance with the federal regulations. 34 C.F.R. § 300.304(c)(1)(iv) (2014). (HCPS Ex. 2). The evidence demonstrates that XXXX has taught special education students for more than six years in HCPS, has conducted educational assessments for more than four years, and is currently the chairperson of the special education department at [SCHOOL 1]. In addition, she explained that she has administered the WJ-III to students approximately twenty times.

XXXX received her B.S. degree in Education from XXXX University, with a major in Elementary and Special Education. She then received an M.S. degree in Education from XXXX University, with a major in Administration and Supervision. She has a National Board Certification for Students with Exceptional Needs, and she has additional educational certifications in the areas of Administrator I, Elementary and Middle School Education, Generic Special Education, and Middle School Mathematics.

XXXX was trained in administering the WJ-III and other educational assessments through undergraduate coursework and through additional training, supervision, and coursework provided by the HCPS special education department after completing her undergraduate and

graduate educational programs. XXXX attended a workshop conducted by HCPS special education staff, which addressed the methods for administering and interpreting educational assessments using the WJ-III. She received additional supervision from HCPS staff in the administration and interpretation of the WJ-III, and also took a practicum course through HCPS regarding the administration and interpretation of tests of academic achievement. Based on her education and experience, XXXX was accepted as an expert in special education, with an emphasis on educational assessment and administration of the WJ-III.

The Parents objected to XXXX's expertise, but they failed to present evidence to support their objection. The Parents claimed that XXXX's training for administering and interpreting educational assessments was deficient because she did not have graduate level coursework in administering and interpreting the WJ-III. Counsel for the Parents argued that the WJ-III Manual required graduate level coursework in the administration and interpretation of tests of academic achievement. However, this was a misstatement of the language set forth in the Manual. The Manual only recommended such graduate level coursework. The Manual required a higher degree of knowledge and experience to interpret the results of the WJ III. (Bd. Ex. 2A). The evidence established that XXXX met these requirements because she had a higher degree of knowledge and experience to administer, score, and interpret the WJ-III based on her undergraduate and graduate degrees in Education, her employment experience as a special education teacher and department chairperson with HCPS, her multiple administrations of the WJ-III, and her training in a workshop and practicum course taught by special education department staff at HCPS. Her knowledge and experience is supplemented by her National and State certifications in teaching students with exceptional needs, and in teaching Elementary Education, Middle School Education, and Special Education. The Parents' contention that XXXX was not sufficiently trained or knowledgeable to

administer educational assessments, or to administer and interpret the results of the WJ-III or other academic tests of achievement, was unfounded.

This evidence establishes that HCPS administered the Student's Educational Assessment, using the WJ-III and supplemented by input from the Student's teachers, with trained and knowledgeable personnel, as required by the federal regulations and in accordance with the requirements of the WJ-III Manual. 34 C.F.R. § 300.304(c)(1)(iv); (Bd. Ex. 2, 2A, 9).

HCPS further established that it used a technically sound and valid instrument that was age-appropriate for a twelve-year-old when XXXX administered the WJ-III Tests of Achievement for the Student. 34 C.F.R. § 300.304(b)(3). XXXX, an expert in special education and in administering educational assessments and the WJ-III, described the WJ-III as the "gold standard" of educational assessments that looks at a student's educational ability in the areas of reading, writing, and math performance according to the student's age. She explained that it provides a true and complete assessment of a student's educational ability and is widely used for assessing a student's educational performance.

In accordance with the requirements of the federal regulations, the evidence establishes that HCPS did not use a single measure or assessment as the sole criterion for determining whether the Student is a child with a disability, but instead used multiple measures. 34 C.F.R. § 300.304(b)(2). In addition to the WJ-III Tests of Achievement, XXXX also obtained input from the Student's classroom teachers regarding his academic performance in class and his performance on the MAP, another standardized test in math and reading. XXXX compared the Student's performance on the WJ-III with the reports she obtained from his classroom teachers. She also considered other background information from the Student's educational records, including his retention in sixth grade for the 2014-2015 school year and his high level of absences and tardies during the 2013-2014 school year that impacted his educational

performance. HCPS also considered XXXX's Psychological Assessment, which included multiple instruments designed to assess the Student in the areas of suspected disability that were identified by the IEP team at the IEP meeting where the team agreed to conduct both Educational and Psychological Assessments. The Psychological Assessment is addressed in detail below.

The WJ-III was selected and administered so that it was not discriminatory on a racial or cultural basis, it was administered in the Student's native language – English, and it was used for the purpose for which the assessments or measures were intended and for which they are valid and reliable. It was used to assess the Student in the areas of suspected disability as determined by the IEP team at the October 6, 2014 IEP meeting. At that meeting, the IEP team identified the Student's areas of suspected disability to include SLD and OHI, based on the Student's previous diagnosis of ADHD. The measures used by XXXX on her Educational Assessment, including the WJ-III and input from teachers regarding the Student's classroom performance, were designed to assess the Student in the identified areas of suspected disability. 34 C.F.R. § 300.304(b).

XXXX followed the Manual and protocols for the WJ-III when administering this test and described the Student's test behavior in her report. She explained that she administered the test in her office in a quiet and comfortable learning environment free of distractions. Although there was a brief interruption in the testing due to a fire drill, XXXX explained that the Student was able to resume the testing without incident following his return from the fire drill. XXXX documented this brief interruption in her Educational Assessment report, but did not identify which subtest was interrupted. (Bd. Ex. 2). Although the Parents argued that this interruption invalidated certain subtests or the entire test, I do not find that such a *de minimis* interruption, that occurred through no fault of the evaluator, rendered the Educational Assessment invalid.



The interruption was brief and did not interfere with the Student's ability to promptly continue testing upon his return, and was documented in the report.

XXXX explained that she properly scored the WJ-III and reported the scores in accordance with testing protocols. She explained that she included a narrative in her report regarding the Student's performance on the various subtests to ensure that she had a true and complete picture of his performance, to assist her in identifying the Student's strengths and weaknesses, and to assist the IEP team. XXXX considered the Student's weakness in Math Fluency as reflected in his low average standard score of 82 on that subtest. She explained that she considered this score in context with his overall performance in Math, including his average standard scores in Broad Mathematics, Calculation, and Applied Problems. Based on these scores that showed the Student's strength in those areas, XXXX concluded that the Student's weakness in one subtest did not impact his overall ability in Math. As a result, XXXX concluded that the Student did not demonstrate difficulty in an area of educational performance. (Bd. Ex. 2).

XXXX explained that she considered and reported the Student's retention in sixth grade for the 2014-2015 school year. She documented in her report that the Student had a number of absences and tardies during the 2013-2014 school year, which impacted his educational performance during that year when he first attended sixth grade. However, she explained that the focus of her Educational Assessment was the Student's current academic skills and whether he was performing at grade level at the time of the Assessment. His retention in sixth grade, while important historical information, did not impact her interpretation of his current performance.

XXXX noted that the Student performed in the high average range of achievement for his age on the Broad Reading Cluster with a standard score of 118, he performed in the average range of achievement for his age on the Broad Math Cluster with a standard score of 96, and he

performed in the average range of achievement for his age on the Broad Written Language Cluster with a standard score of 99. (Bd. Ex. 2).

XXXX also reported the feedback she received from the Student's classroom teachers regarding his performance in class and compared it to his performance on the WJ-III. The Student's Reading teacher reported that the Student was performing above grade level for Reading, he was meeting grade level requirements for assignments, he completed classroom tasks without additional assistance or teacher prompting, and his work was well done and thoughtful. He also performed in the 83rd percentile on the MAP, an assessment that measures a student's progress in Math and Reading.

XXXX also noted in her report that the Student's Math and Written Language teachers reported that the Student was performing on grade level for both Math and Written Language. These teachers reported the Student's performance on various math and written language skills in the classroom that were strengths, and they also noted certain areas of weakness, which included paragraph construction and turning in homework. The Math teacher noted that the Student was able to complete his assignments when he was given extra time.

The Parents questioned whether XXXX accurately reported in her Educational Assessment the information she obtained from the teachers regarding the Student's classroom performance. The Parents provided no evidence to support the claim that XXXX's report did not accurately report this information. In addition, documentation submitted by HCPS with one of its supplements to the motion to quash subpoenas demonstrated that XXXX accurately reported in her Assessment input she received from teachers regarding the Student's classroom performance.

Based on the Student's overall performance on the WJ-III and the input she received from his classroom teachers, XXXX concluded that the Student did not demonstrate difficulty in an area

of educational performance. (Bd. Ex. 2). She submitted her Assessment to the IEP team, where the results were discussed along with the Psychological Assessment at an IEP meeting on December 2, 2014. The evidence established that HCPS complied with the requirements of the IDEA and the accompanying federal and State regulations, and that the Educational Assessment conducted by XXXX was appropriate. 34 C.F.R. §§ 300.304, 300.305; COMAR 13A.05.01.05, .06.

### Psychological Assessment

The evidence presented by HCPS establishes that XXXX XXXX also had the proper education, training, licensing, and qualifications to administer the Psychological Assessment and interpret the results, in accordance with the federal regulations. 34 C.F.R. § 300.304(c)(1)(iv). (HCPS Ex. 3, 10). XXXX has worked as a School Psychologist with HCPS for two years, and worked in the same capacity with PGPS for one year. Prior to her employment with HCPS, she performed a one year internship with HCPS.

XXXX received a B.S. degree *cum laude* in psychology from the University of XXXX, and she received an Education Specialist (Ed.S.) graduate degree in school psychology from the graduate school at the University of XXXX. The graduate school psychology program at the University of XXXX is accredited by the APA and approved by the NASP. In graduate school, XXXX took courses in educational assessments, including cognitive, academic achievement, curriculum-based, and social-emotional assessments.

XXXX is a certified school psychologist in Maryland, and the NASP has certified her as a Nationally Certified School Psychologist. XXXX estimated that she has conducted between 75 and 100 psychological evaluations during her employment as a school psychologist with HCPS and PGPS, and she has administered the WISC-IV between 60 and 75 times. XXXX was

accepted without objection as an expert in school psychology with an emphasis on psychometric evaluations of elementary and middle school students.

The evidence clearly establishes that XXXX is trained and knowledgeable to conduct psychological assessments of students in accordance with the requirements of the IDEA and federal regulations. 34 C.F.R. § 300.304(c)(1)(iv).

XXXX stated in her Assessment report that she was conducting the Psychological Assessment based on a referral from the IEP team due to concerns from the Parents and the school about the Student's lack of academic success. She explained in her report that the Assessment was being conducted to determine whether the Student meets the criteria for an educational disability of an SLD or OHI due to ADHD. (Bd. Ex. 3).

XXXX conducted four standardized tests as part of her Assessment that were designed to address the issues regarding the Student's areas of suspected disability. She used the WISC-IV, which tests the cognitive ability and processing skills of students ages six to sixteen. XXXX explained that the WISC-IV is one of the strongest, most reliable, and valid measures of a student's cognitive ability. The WISC-IV measures Verbal Comprehension, Perceptual Reasoning, Working Memory, Processing Speed, and Full Scale IQ.

XXXX also administered the BASC-2, which measures a student's behaviors across multiple domains, including attention, hyperactivity, aggression, depression, anxiety, and social skills. It provides a global assessment of a student's social-emotional strengths and weaknesses. She also administered the Conners 3, a more narrow measure that looks specifically at behaviors associated with ADHD. In addition, XXXX used the BRIEF, which measures a student's executive function skills, which are processes that control how the brain works. The BASC-2, Conners-3, and BRIEF are rating scales that are completed by parents and teachers. XXXX distributed these instruments to the Student's mother and to his ELA and Geography teachers.

She selected these two teachers because they were experienced teachers who knew the Student well and had previously provided XXXX with reliable information. She explained that she selected the same two teachers for all three rating scale instruments because she finds it helpful to receive multiple data points from the same person. XXXX explained that she did not request the Student to complete any rating scales because she finds that a student of his age generally does not have sufficient maturity or insight to provide useful information on the rating scales.

The Parents claimed that XXXX failed to obtain rating scales from the teachers in whose classes he struggled the most. The Parents did not identify which classes they were referring to, or the basis for their claim that the Student struggled more in the unidentified classes. In any event, XXXX conducted classroom observations in the Student's Math and ELA classes and spoke with his teachers, which supplemented the information she obtained from the Geography and ELA teachers on the rating scales. XXXX explained that she did not have the results of the Educational Assessment when she was conducting the Psychological Assessment so she did not know what information the Educational Assessment would show regarding the Student's strengths and weaknesses. In any event, the rating scales on the BASC-2, Conners 3, and BRIEF are designed to address issues related to ADHD. XXXX concluded based on the results of these instruments and her classroom observations that the Student's behaviors across settings showed concerns in areas of inattention, working memory, and organization, which she concluded were consistent with the Student's previous ADHD diagnosis. (Bd. Ex. 3). While the BASC-2 also measures social-emotional issues and behaviors, XXXX explained that she did not find the Student to have clinically significant social-emotional issues in her Assessment.

XXXX explained that she selected these instruments because they are sound, reliable, and valid instruments that measure the skills she was looking to assess for the Student, and because they were designed to investigate the areas of suspected disability identified by the IEP team.

XXXX explained further that the WISC-IV provides a wealth of information related to the question of whether the Student has an SLD and provides information related to ADHD. XXXX stated that she used the BASC-2, Conners 3, and BRIEF instruments because they provide information directly related to ADHD and impairments in the classroom regarding inattention and hyperactivity.

The instruments used by XXXX in the Psychological Assessment were tailored to assess the Student's specific areas of educational need and were not designed to provide a single general intelligence quotient. She used the instruments for the purposes for which they were intended and to investigate the areas of suspected disability identified by the IEP team. These instruments complied with the IDEA requirements and procedures. 34 C.F.R. § 300.304(b), (c).

XXXX also spoke with the Student's classroom teachers and accurately included their information in her report, such as from the Student's ELA teacher, Ms. XXXX, who commented that the Student was a "deep thinker." XXXX also conducted classroom observations of the Student in his Math and ELA classes. She addressed in detail in her Assessment report the results of her classroom observations and how they compared with the results of the instruments. (Bd. Ex. 3).

It is clear that XXXX did not use a single measure or assessment as the sole criterion for determining whether the Student was a child with a disability and for determining an appropriate educational program for the Student. 34 C.F.R. § 300.304(b)(2). XXXX used four different instruments that were designed to investigate the areas of suspected disability, including SLD and OHI due to ADHD. XXXX used other measures as well, including classroom observations and input from teachers. One of her classroom observations was in the Student's Math class, which involved a different teacher than the teachers she used for the rating scales on the BASC-2, Conners 3, and BRIEF. In her classroom observations, XXXX considered the Student's engagement with the curriculum, his attention and focus, his completion of independent

assignments, and his focus during teacher instruction. XXXX also reviewed the Student's educational history, including his Section 504 Plan, attendance history, grade history, report cards, progress reports, and records provided by PGPS. She did not review the FBA in conducting her Psychological Assessment because it was conducted concurrently and had not been submitted to the IEP team for their consideration at the time she administered the Psychological Assessment and prepared her report. It is clear that HCPS, through the Assessments conducted by XXXX and XXXX, used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information regarding the Student.

XXXX determined that the Student was engaged, understood the directions, and participated appropriately in the testing sessions. XXXX reported the test scores in accordance with the manufacturer's instructions. She also hand-scored the test results on the WISC-IV and the BRIEF. XXXX explained that she likes to hand-score the test results rather than use a computer because it helps her to better understand how a student performed on a task and to determine where a student's skills might have broken down in performing a task. She also composed the paragraphs in her report that describe the nature and purpose of the various instruments. In addition, XXXX provided detailed descriptions and analyses of the tasks the Student performed and the results of the testing.

XXXX concluded that the Student's tests results were valid and accurate representations of his cognitive strengths and weaknesses. She also explained in her report the results she observed on the tests. She found that the test results and classroom observations were consistent with a determination that the Student has ADHD. XXXX explained that she intentionally did not determine in her Assessment whether the Student had an educational disability of SLD or OHI because that is a determination that must be made by the full IEP team after it receives and considers the results of the assessments.

### SLD - Pattern of Strengths and Weaknesses Model

The Parents contend that the Educational and Psychological Assessments are inappropriate because HCPS failed to use research-based procedures in assessing whether the Student has an SLD.<sup>6</sup> The Parents contend that the method used by HCPS in assessing whether the Student has an SLD, the pattern of strengths and weaknesses model, “is clearly outside the bounds of the IDEA.” (Parents’ Memorandum of Law, at 2). The Parents’ argument in this regard is clearly erroneous as explained below. The Parents rely solely on section 300.307 of the Code of Federal Regulations (CFR) for this contention. However, additional sections of the CFR and the Maryland regulations must be considered to identify the appropriate procedures for determining whether a student has an SLD. Upon review of additional language in both the CFR and COMAR, it is clear that HCPS properly relied on the pattern of strengths and weaknesses model in assessing whether the Student might meet the criteria for an SLD.

Section 300.307 of the CFR provides that “[a] State must adopt, *consistent with* § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.308(c)(10).” (emphasis added). This section goes on to provide that, *in addition*, the criteria that a State adopts must not require use of a severe discrepancy model, must permit the use of the RTI model, and may permit the use of other alternative research-based procedures for determining whether a student has an SLD. 34 C.F.R. § 300.307(a)(1-3). Based on the reference to section 300.309 of the CFR, it is clear that section 300.307 did not intend to provide an exhaustive list of the criteria to be used in assessing whether a student has an SLD. Section 300.307(a) provides only certain rules that must be applied when considering whether a child has

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<sup>6</sup> A Specific Learning Disability is defined as “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” 34 C.F.R. § 300.8(c)(10)(i). The federal regulations also provide at section 300.8(c)(10)(ii) that an SLD “does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.”



an SLD. A careful review of CFR section 300.309, which is entitled “Determining the existence of a specific learning disability,” demonstrates that the IDEA and accompanying regulations recognize the pattern of strengths and weaknesses model as an appropriate method for determining whether a student has an SLD. In identifying the strengths and weaknesses model as an appropriate method for determining whether an SLD exists, CFR section 300.309 defines this model as follows:

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305[.]

34 C.F.R. § 300.309(a)(2)(ii) (2014).

A careful review of the COMAR regulations demonstrates that Maryland has also adopted the strengths and weaknesses model as an appropriate method for determining whether a student has an SLD. COMAR 13A.05.01.06D addresses the procedures for determining whether a student has an SLD and COMAR 13A.05.01.06D(3) provides as follows:

(3) The IEP team may consider evaluative data and appropriate assessments, consistent with 34 CFR §§ 300.304 and 300.305, if the team determines that data to be relevant to the identification of an SLD if the student:

. . . .

(ii) Exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

COMAR 13A.05.01.06D(3)(ii).

It is clear that both the IDEA and the State of Maryland have approved the pattern of strengths and weaknesses model as an appropriate method for determining whether a student has an educational disability of an SLD. Therefore, the Parents’ claim that the Educational and Psychological Assessments are inappropriate because HCPS did not prove that the pattern of strengths and weaknesses model is an alternative research-based procedure for determining

whether a child has an SLD, must fail. The evidence presented, and the law governing this matter, demonstrate that HCPS's reliance on the pattern of strengths and weaknesses model for determining whether the Student has an SLD was a proper method for this determination under both federal and State law.<sup>7</sup>

### Comprehensive Evaluations

The Parents also contend that HCPS failed to evaluate the Student in all areas of suspected disability and that the HCPS Assessments failed to include necessary analysis and recommendations. The Parents claim HCPS was required to provide comprehensive assessments, to determine whether the Student has an educational disability, and to make recommendations regarding the Student's educational needs.

The federal regulations provide that a child must be "assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." 34 C.F.R. § 300.304(c)(4). The regulations also provide that the evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6).

XXXX testified that in HCPS, she is not permitted to make an ultimate determination regarding whether the Student has an educational disability and whether he is eligible for special education services. She explained that these ultimate determinations are left to the IEP team as a whole, are not to be made by one individual, and should be made only after the IEP team has the opportunity to consider the results of the assessments and other available information. She

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<sup>7</sup> It is noted that XXXX testified that she was sure there were research articles cited in her HCPS school psychology handbook that support HCPS's use of the pattern of strengths and weaknesses model for identifying whether a student has an SLD. (TR 518-519). Although the HCPS school psychology handbook was not offered into evidence, her testimony was not refuted at the due process hearing.

explained that her role was to conduct the appropriate assessment and present her data and analysis to the IEP team. XXXX had a similar role with regard to her Educational Assessment. XXXX explained that the HCPS Educational and Psychological Assessments were discussed and considered at the IEP meeting on December 2, 2014.

This is consistent with clear language in the IDEA and the federal and State regulations. The statute provides that “upon completion of the administration of assessments and other evaluation measures,” a team of qualified professionals and the parent shall make the determination of whether the child is a child with a disability and the educational needs of the child. 20 U.S.C. 1414(b)(4)(A) (2010). The State regulations, at COMAR 13A.05.01.06D(5)(a), also provide that when a student is suspected of having an SLD, the IEP team shall prepare a written report that includes whether the student has an SLD. The Parents argued that the Educational and Psychological Assessments were inappropriate because section 300.305 of the C.F.R. and COMAR 13A.05.01.06C(2) require an evaluator to make a decision as part of their assessment report as to whether a student is a student with a disability and regarding the educational needs of the student. They argued that the Assessment reports were deficient because they did not include these ultimate determinations. However, when section 1414(b)(4)(A) of the IDEA is read together with the federal and State regulations, the IDEA requires only that the IEP team make these ultimate determinations. Therefore, I find that the procedures used by HCPS to defer the ultimate determination to the full IEP team of whether the Student has an educational disability, is eligible for special education and related services, and what his educational needs are, after the assessments have been completed and considered was appropriate and consistent with the IDEA. Moreover, the language of C.F.R. section 300.304(c)(6) contemplates that a child has already been classified in a disability category, which does not apply to the Student in this proceeding.

XXXX noted that she included language in her Psychological Assessment report that addresses the limited role of her individual assessment and the broader evaluative role of the entire IEP team. The Psychological Assessment report states in the Reason for Referral section that “[i]nformation obtained from this evaluation will be used to determine whether [the Student] meets criteria for an educational disability of a [SLD] or [OHI] due to [ADHD].” (Bd. Ex. 3). The Summary and Recommendations section states that “[t]he results of this assessment should be shared with the IEP team and integrated with other assessment data to determine whether or not [the Student] meets criteria for an educational disability.” (Bd. Ex. 3). The IEP team properly reviewed the assessments and considered whether the assessments demonstrated that the Student had an educational disability in the areas of suspected disability identified by the IEP team.

XXXX explained that on October 6, 2014, the IEP team discussed and determined that HCPS would conduct Educational and Psychological Assessments to address the Student’s areas of suspected disability that included SLD and OHI due to ADHD. The Parents gave formal consent for these assessments when they returned the signed parental consent forms on October 14, 2014. HCPS properly administered these Assessments for the purpose of determining whether the Student had the suspected educational disabilities in the areas of SLD and OHI. XXXX explained that if she were to have discovered other areas of suspected disability while conducting her assessment, she would have contacted the Parents and recommended that an IEP meeting be scheduled to amend the areas of suspected disability on the parental consent form. XXXX testified that the BASC-2 rating scale looks at a number of social-emotional concerns. She explained that she did not find any clinically significant social-emotional issues that were impacting the Student’s educational performance at the time of her assessment that would have warranted contacting the Parents and requesting that a new IEP meeting be convened to amend the parental consent form regarding the areas of suspected disability. Although the BASC-2 considers only a one-month

period, and social-emotional issues are to be evaluated over a prolonged period of time, XXXX explained that the IEP team did not identify an emotional disability as an area of suspected disability, and a student has to be currently impacted in his functioning to be diagnosed with any type of disability. XXXX explained that, based on the results of the instruments she used in her Assessment, she did not find the Student to be currently impacted by social-emotional issues. She also considered the Student's educational history in her Assessment.

The Parents presented testimony from Dr. XXXX, who was accepted as an expert in school psychology and the assessment of children with disabilities. XXXX had a Ph.D. in psychology and had worked as a school psychologist with the Montgomery County Public Schools for a number of years. He had retired approximately ten years earlier from that position, and currently maintains a private practice where he works primarily as a consultant.

XXXX claimed that XXXX's Psychological Assessment was not appropriate because he believed certain important components were missing from the Report. He acknowledged, however, that the Psychological Assessment contained most of the basic components of an evaluation, but claimed it did not contain interviews of the Parents and Student, a Student self-report, or handwriting samples and handwriting analysis. He also claimed that the Assessment failed to include adequate analysis of why the Student was not successful the first time he attended sixth grade, and why he did not perform better when he repeated sixth grade. Despite these claimed inadequacies, XXXX's testimony demonstrated that he was not familiar with the diagnostic questions set forth in the Referral section of XXXX's Assessment, which identified the diagnostic questions that the Assessment was designed to address, as to whether he meets the criteria for an educational disability of SLD or OHI due to ADHD.

XXXX testified that the Student had handwriting issues and should have been assessed in the area of handwriting or fine motor skills. However, no evidence was presented in the hearing

to demonstrate that the IEP team discussed or approved an Occupational Therapy Assessment or other assessment in the area of fine motor skills. Furthermore, aside from XXXX's testimony, no documents or other evidence were presented to show that the Student had problems with handwriting or fine motor skills.

XXXX stated that the school psychologist should have conducted an interview with the Student and with his Parents, and should have obtained a self-report form from the Student, as part of the Psychological Assessment. XXXX stated that he spoke with the Student for up to forty minutes and with the Parents for seventy-five minutes. The Parents did not show that the IDEA requires a school psychologist to conduct interviews with a student or his parents, or requires that a student submit a self-report as part of the Psychological Assessment. While XXXX did not interview the Student or his Parents as part of her Assessment, or obtain a Student self-report, she explained that she gave the rating scale to the Student's mother and received important input from her on the three rating scale instruments, including the BASC-2, the Conners 3, and the BRIEF. These rating scales allowed the mother to provide XXXX with critical information in the Psychological Assessment regarding the Student's behaviors related to ADHD and certain social-emotional issues, as well as his executive function skills. XXXX explained further that she does not generally obtain self-reports from twelve-year-old students because she does not usually find them to be sufficiently mature or self-aware to provide useful information.

XXXX suggested that a Psychological Assessment should include a thorough review of a student's history, including the history of relevant medical diagnoses, such as ADHD; relevant educational records, such as a student's grades, test scores, and Section 504 Plan; classroom observations; input from a student's classroom teachers; and pregnancy and birth history. Yet, XXXX included in the Psychological Assessment thorough background information, educational history, grades, and the Student's relevant diagnosis of ADHD, Predominantly Inattentive Type,

and his related medication. The Assessment noted that the Student has had a Section 504 Plan since December 2011, and it listed all of his 504 Plan accommodations. The Assessment also noted that the Student has been taking the medication XXXX since he was in second grade to treat ADHD. (Bd. Ex. 3).

In addition, the Assessment included information that the Student was previously identified for the gifted and talented program in PGPS based on his standardized test scores and teacher ratings, but that he was not currently enrolled in such classes. XXXX also addressed in the Assessment that the Student had struggled with attendance during the 2013-2014 school year, had a substantial number of absences and tardies during that year (22 absences and 73 tardies noted on his report card), and was retained in the sixth grade for the 2014-2015 school year. She also included in her report that he failed to complete work and was disengaged from class activities during his first year in sixth grade. XXXX noted in her Assessment that the Student's attendance and tardiness were much improved during the current school year, with the Student having only one absence and nine tardies at the time she completed her Report on November 25, 2014. (Bd. Ex. 3). She also noted the Student's placement in the AEP during the third quarter of the 2013-2014 school year, where he obtained additional support that led to significant improvement in his completion of work and overall academic performance by the end of the school year. XXXX included substantial background and educational history in her Assessment. The Parents did not show that the IDEA requires an Assessment to include pregnancy or birth history.

XXXX's Assessment also included input from two of the Student's classroom teachers, including his ELA and Geography teachers, as well as his Parents. The teachers noted that the Student was demonstrating improvement in his effort and motivation during the current school year, requiring less assistance and prompting in class, and contributing more to class discussions.

Some of his teachers described him as a deep thinker and noted that he displays strong critical thinking skills. His ELA teacher noted that the Student appears withdrawn from his peers at times. XXXX pointed out that the Parents reported the Student was taking more responsibility for his studies during the current school year. (Bd. Ex. 3).

The Psychological Assessment included the school psychologist's detailed classroom observations in his Math and ELA classes, and a careful description of the student's testing behavior. XXXX provided detailed descriptions of the nature of the instruments she administered and detailed descriptions and analysis of the Student's performance on each of the tests. XXXX also provided a detailed Summary of her conclusions, the basis for her ADHD diagnosis, and included recommendations to help the Student improve his educational performance and attentiveness and efficiency in the classroom. XXXX concluded in her Report that the results of the Assessment are considered to be an accurate representation of the Student's cognitive strengths and weaknesses, and that the assessments administered are reliable and valid instruments for their intended purposes. (Bd. Ex. 3).

HCPS submitted into evidence, during its cross-examination of XXXX, a 2006 Report of Psychologist that XXXX completed for an unrelated student for the purpose of impeaching XXXX's credibility as an expert. (Bd. Ex. 12)<sup>8</sup> Although XXXX claimed that XXXX's Psychological Assessment was not comprehensive and was incomplete, it is interesting to note that XXXX's report was more detailed, included more scoring information, and included more analysis than XXXX's 2006 Report. XXXX's Report did not address any interviews with the student's teachers, the student's parents, or with the student. The reader could not determine from reading the report which educational records XXXX reviewed in preparing the report. XXXX did not indicate that he considered any writing samples in preparing his Report. XXXX

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<sup>8</sup> All identifying information regarding the student who was the subject of the 2006 Report was redacted, including all test scores.



briefly discussed the student's testing behaviors but, unlike XXXX, he failed to conclude that the student's test results were accurate and that the assessments were reliable and valid instruments. (Bd. Ex. 12).

In addition, XXXX provided no description or explanation of the purpose of the testing instruments he used, little analysis of the test results, did not report all of the test scores he obtained from the parent and teachers who completed the rating scales on the Conners instrument, and included less information than XXXX in his scoring charts. XXXX explained that she hand-scored many of her test results to get a clearer picture of the Student's strengths and weaknesses. XXXX indicated that all of his test results were computer-generated.

XXXX explained that his Report involved a reevaluation of a student who had already been determined to have an educational disability and had already been found eligible for special education and related services. He claimed that it was not necessary to provide as much background information, detail, or analysis in a reevaluation report. He admitted, however, that a reevaluation report is still used to determine a student's continuing eligibility for special education services, the student's present levels of performance, the levels of special education and related services, the need for supplementary aids and services and accommodations, goals and objectives on an IEP, and for placement. In contrast, XXXX stated that she draws no distinction between an initial evaluation and a reevaluation for purposes of the nature and extent of information and the depth of analysis that should be included in a psychological assessment. Both types of evaluations must still be used to address important questions about a student's educational performance, potential educational disabilities, and educational needs. XXXX also explained that she includes all relevant information in her assessment report and does not hold back information for the purpose of presenting it orally at an IEP meeting.

The evidence in this record demonstrates that XXXX prepared a more detailed and insightful report than XXXX: she included a more complete record of the scores and results of the instruments used, included more detailed analysis of the results of the assessment, employed a clearer structure for presenting information in the Report, and included a more detailed description of the instruments used and their purpose. I credit the knowledgeable and detailed testimony of XXXX over that of XXXX with regard to information that is properly included in a psychological assessment and the propriety of her Assessment. I find that XXXX's Psychological Assessment was detailed, well-crafted, contained useful background information and analysis, relevant recommendations, and was appropriate under federal and State law.

The Parents claimed that HCPS improperly failed to conduct an Assistive Technology Assessment. The evidence shows that when the Parents returned the assessment consent form on or about October 14, 2014, they added a notation for assistive technology. XXXX explained that she sent an email to the Student's mother advising her that an Assistive Technology Assessment could not be done at that time because that issue was not addressed in the October 6, 2014 IEP meeting when the Educational and Psychological Assessments were discussed and agreed upon. She further advised the Student's mother that the Parents could raise the question of the need for an Assistive Technology Assessment at the next IEP meeting if they desired to pursue that issue. Under these circumstances where the IEP team never discussed and approved the need for an Assistive Technology Assessment, I conclude that it was proper for HCPS to not conduct one.

The Parents argued further that the Psychological Assessment was inappropriate because XXXX failed to calculate the GAI to gain a better understanding of the effects of processing speed on the Student's cognitive ability. XXXX explained that the GAI is an alternate way of calculating a student's cognitive ability, which considers only a student's verbal comprehension and perceptual reasoning skills, but does not consider a student's scores in the areas of working

memory and processing speed. XXXX explained that the GAI is a suggested method of calculation, but is not required. She went on to explain why she does not use the GAI when calculating a student's cognitive ability. XXXX pointed out that the technical bulletin creating the GAI also stated that it was not necessarily a more accurate score than the full-scale IQ. She explained that she adheres to the general view of the WISC-IV publishers that working memory and processing speed are important factors in a student's overall cognitive functioning. (TR 429-431, 446). For these reasons, I conclude that XXXX's decision not to calculate the Student's GAI was entirely proper.

Contrary to the Parent's contention, the evidence demonstrates that HCPS conducted appropriate assessments based on the Student's individual needs, which provided sufficient information to the IEP team to make recommendations for the Student's placement and program if he were determined eligible for special education and related services.

XXXX properly administered a Psychological Assessment that included the WISC-IV, a highly reliable and valid assessment of the Student's cognitive ability, which measures both cognitive functioning and processing skills. She supplemented this measure with three other instruments directly related to the Student's areas of suspected disability. The BASC-2 was designed to assess the Student's behaviors across multiple domains, including attention and hyperactivity as well as social-emotional strengths and weaknesses. The Conners 3 is designed to measure behaviors associated with ADHD, and the BRIEF is designed to assess a student's executive functioning skills. Each of these measures were selected because they were designed to provide important information regarding the Student's areas of suspected disability.

As a result of these assessments, XXXX concluded that the Student showed strong performance on statewide and benchmark assessments, but did not exhibit the same mastery of skills in his school performance. She noted that he currently has accommodations through a

Section 504 Plan to address symptoms related to ADHD. XXXX determined that the Student exhibited attentional issues in the classroom, but was still able to participate meaningfully in classroom activities. She concluded that the ratings of the Student's behaviors on the instruments she used showed concerns with inattention, working memory, and organizational skills that were consistent with his ADHD diagnosis. XXXX also determined that the Student's overall cognitive ability fell in the Superior range as measured on the WISC-IV, but that he demonstrated a significant weakness in Processing Speed on that subtest, which she classified as a deficit in the Student's processing skills.

XXXX also included the following recommendations in her Psychological Assessment:

1. The results of this assessment should be shared with the IEP team and integrated with the other assessment data to determine whether or not [the Student] meets criteria for an educational disability.
2. [The Student] would continue to benefit from extended time to complete tasks and assignments.
3. [The Student] would continue to benefit from extra organizational supports (currently provided through alternative education program).
4. [The Student] might benefit from opportunities to be connected to peers.
5. [The Student] may benefit from subtle reminders when he is off task and checking for his understanding of a task before he begins, in order to make sure that he understands the directions.

(Bd. Ex. 3). XXXX's first recommendation is consistent with her explanation that the determination of whether the Student met the criteria for an educational disability must be made by the entire IEP team, rather than by one individual. She provided a similar explanation for why she concluded that the Student's behaviors were consistent with a diagnosis of ADHD, but did not make an individual determination of whether he had an educational disability of OHI. She distinguished the ADHD diagnosis from the ultimate determination of whether the Student has an educational disability. She explained that even where a student has been diagnosed with ADHD, the IEP team must still determine whether the symptoms and behaviors of ADHD

sufficiently impact the Student's educational performance to result in a determination that he has an educational disability such as OHI and is in need of special education or related services.

I conclude, contrary to the Parents' argument, that HCPS employed appropriate instruments and measures that were designed to evaluate the Student in all areas of suspected disability that were identified by the IEP team. XXXX explained that she did not find clinically significant results to support an emotional disability or to contact the Parents and recommend that a new IEP meeting be scheduled to amend the areas of suspected disability. I further conclude that the instruments selected by each evaluator were properly designed to test the Student in the areas of suspected disability identified by the IEP team. I also conclude that the Assessments contained appropriate analysis of the results of the instruments that were administered and included appropriate recommendations for the Student's educational plan.

The Parents contend that HCPS failed to observe the Student's academic performance in the regular education classroom. Contrary to the Parents' contention, XXXX conducted classroom observations in the Student's regular education ELA and Math classes and recorded her observations in the Psychological Assessment. XXXX explained in her Assessment report that she observed the Student in the classroom to gauge his functioning in the academic environment. XXXX addressed the Student's behaviors and his participation in classroom activities and class assignments. XXXX addressed the Student's classroom behavior, where he exhibited periods of inattention. She noted, however, that the Student was easily redirected, was ultimately attentive to teacher-led instruction, and subsequently worked on the class assignment involving math problems that were being reviewed in his Math class. She noted that in his ELA class, the Student worked on the class assignment related to answering questions about the assigned novel, he did not require assistance from the teacher concerning the classroom assignment, and he displayed only brief moments of inattention. (Bd. Ex. 3). XXXX concluded

that the Student was somewhat inattentive, but was able to meaningfully participate in classroom activities. XXXX also explained that she used her classroom observations to determine whether the Student was having difficulty engaging in the curriculum based on his behaviors and the teacher's instruction. I conclude that XXXX's classroom observations complied with the requirements to document the Student's academic performance and behavior in areas of difficulty. 34 C.F.R. § 300.310(a).

I also find that XXXX's use of her classroom observations that she conducted in September 2014 before the IEP team approved the recommendation for Educational and Psychological Assessments was appropriate. The regulations governing classroom observations provide that, in determining whether a student has an SLD, the IEP team may consider information obtained in a classroom observation conducted before the student was referred for an evaluation, or may consider information obtained from a classroom observation conducted after the student was referred for an evaluation and consent was obtained from the parent. 34 C.F.R. § 300.310(b). XXXX explained that she conducted two classroom observations associated with the Parents' request for an FBA before the Student was referred for the Educational and Psychological Assessments. XXXX stated that she also observed the Student in class after the referral and also obtained input from several of the Student's teachers. It is noted that XXXX also obtained input from the Student's teachers to address his performance in class, his present levels of performance, and his ability to access the curriculum. The classroom observations that XXXX conducted as part of her Psychological Assessment complied with the requirements of the federal regulations.

The Parents contend that the HCPS Assessments are inappropriate because the FBA conducted by XXXX was not thorough. The evidence establishes that XXXX conducted an FBA in response to the Parents' request raised at a Section 504 meeting on September 8, 2014

and performed classroom observations related to the FBA. This is confirmed in the September 8, 2014 504 Plan document. (Parents Ex. 9). This occurred before the IEP team approved the Educational and Psychological Assessments at the October 6, 2014 IEP meeting. XXXX explained that the FBA was not used to determine the Student's eligibility for special education and related services, although it was subsequently reviewed by the IEP team along with the other Assessments. She stated that formal consent from the IEP team is not needed to conduct an FBA because any team that addresses student concerns can decide to conduct an FBA, including through the Section 504 process. The IDEA does not require a school to use an FBA when initially testing a student for suspected disabilities. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 251 (3rd Cir. 2012). In fact, FBAs are only addressed in the IDEA and the federal regulations in the sections concerning disciplinary procedures and manifestation determinations. 20 U.S.C. § 1415(k)(1)(D), (F) (2010); 34 C.F.R. § 300.530(d)(1), (f)(1).

HCPS filed a due process hearing request in this case in accordance with IDEA procedures to establish that the Educational and Psychological Assessments conducted by HCPS in November 2014 were appropriate. The HCPS hearing request made no reference to the FBA. A Telephone Prehearing Conference was conducted on May 26, 2015, and I issued a Prehearing Conference Report and Order (Report) on May 27, 2015. In that Report, I identified the issues as follows:

The issues are whether the educational and psychological evaluations conducted by HCPS in November 2014 are appropriate, and whether the Parents are entitled to an IEE at public expense.

The Report afforded the parties five days to file a motion to correct that document. The Parents did not file such motion and, therefore, have waived any other claims in this proceeding.

Moreover, by not requesting that the issues identified in the Report be corrected, the Parents failed to place HCPS on notice that the appropriateness of the FBA was an issue to be litigated in this proceeding. Accordingly, I conclude that the only issues in this proceeding are the

appropriateness of the Educational and Psychological Assessments conducted by HCPS staff in November 2014, and whether the Parents are entitled to obtain an IEE at public expense. The question of whether the FBA conducted by HCPS was appropriate or thorough is outside the scope of the issues to be addressed in this decision.

The Parents also contend that HCPS failed to administer certain subtests in the WJ-III and argue generally that this renders the Educational Assessment inappropriate. I disagree. XXXX explained that when she administered the WJ-III she administered the standard battery of subtests, which afforded her an accurate picture of the Student's ability in the areas of reading, writing, and math. The standard battery includes the following nine subtests: Letter-Word Identification, Reading Fluency, Calculation, Math Fluency, Spelling, Writing Fluency, Passage Comprehension, Applied Problems, and Writing Samples. She explained that after she administers these subtests, she then reviews a student's scores. If she determines that the scores are low and she has some concerns, or there is an area of weakness, then she would elect to administer additional assessments or subtests. (TR 91).

XXXX explained that in this case she did not administer the extended battery to the Student, which consists of the additional subtests of Word Attack, Spelling of Sounds, Sound Awareness, Punctuation and Capitalization, and Editing, because she concluded that the Student performed well in the standard battery of subtests. In fact, the Student scored generally in the average, high average, and superior range on the subtests in reading, writing, and math. He had only one score, in Math Fluency, that was in the low average range. XXXX explained that she did not want to take him out of class and have him lose instructional time to administer additional assessments when she determined that he already had the skills that would have been assessed in the extended battery. (TR 92-93).



XXXX acknowledged that the Student scored in the low average range in the Math Fluency subtest. She explained, however, why she determined on the Educational Assessment that the Student did not demonstrate difficulty in an area of educational performance. She pointed out that the Student scored in the average range in Broad Mathematics, and in the Calculation and Applied Problems subtests. She concluded that despite his weakness in Math Fluency, the results showed that it did not impact his overall ability in math calculation skills or in his broad math ability. (TR 154-155; Bd. Ex. 2).

### Summary

For all the reasons addressed above, HCPS has proven that both the Educational Assessment administered and prepared on November 14, 2014 by XXXX XXXX, M.S., Education, special education team leader at [SCHOOL 1], and the Psychological Assessment administered and prepared on November 25, 2014 by XXXX XXXX, Ed.S., school psychologist at [SCHOOL 1], of the Student were appropriate in accordance with the requirements of the IDEA and federal and State regulations. The school system's evaluators testified credibly and in detail regarding the assessments they administered, the reasons they chose the instruments they used, the basis for the information they included, and why certain information was not included. They also analyzed the data they obtained and explained the basis for their conclusions. Both evaluators conducted appropriate assessments with regard to the areas of suspected disability identified by the IEP team of SLD and OHI.

The Educational and Psychological Assessments were sufficiently comprehensive to meet the IDEA standard for administering and reporting appropriate assessments. Although there was certain information not included in the Assessments, HCPS proved that both the Education and Psychological Assessments included the information that was required for an appropriate assessment, and the Parents did not show that any information they claimed was not

included was required to be present for an appropriate evaluation under federal or State law. While the Parents may disagree with some of the conclusions in the Assessments, and may disagree with subsequent decisions made by the IEP team after the assessments were completed and considered, these disagreements do not render the Assessments themselves inappropriate. Therefore, I conclude that the Parents are not entitled to obtain an IEE at public expense. The Parents are certainly entitled to obtain their own assessments of the Student, but those assessments need not be funded by HCPS.

As noted above, the critical question before me is not the *results* of the HCPS testing, or any actions taken by the IEP team after the Assessments were considered, but whether the Assessments were properly administered in accordance with the standards and requirements set forth above. It is important to note that the applicable legal issues in this proceeding, which resulted from the due process complaint filed by the school system, do not involve a determination of whether the Student has an educational disability or whether he is eligible for special education and related services. In this case, HCPS has established that the Educational and Psychological Assessments conducted by HCPS were proper, comprehensive, and in compliance with applicable law.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Educational and Psychological Assessments of the Student conducted by HCPS in November 2014 are appropriate under the applicable standards and, therefore, that the Parents are not entitled to an IEE at public expense. 20 U.S.C.A. § 1415(b)(1) (2010); 34 C.F.R. §§ 300.304, 300.309, 300.502(b) (2014); COMAR 13A.05.01.05C; COMAR 13A.05.01.06.

## **ORDER**

I **ORDER** that the HCPS Educational and Psychological Assessments administered in November 2014 are appropriate and that the Parents' request for an IEE at public expense be denied.

August 6, 2015  
Date Decision Mailed

\_\_\_\_\_  
Douglas E. Koteen  
Administrative Law Judge

DEK/da

## **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. Md. Rule 1-325. 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.