

XXXX XXXX, XX.

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

* BEFORE DAVID HOFSTETTER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: MSDE-PGEO-OT-15-01496

* * * * *

DECISION

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STATEMENT OF THE CASE

On January 13, 2015, XXXX XXXX, Sr. (Parent¹), on behalf of his child, XXXX XXXX, XX. (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by the Prince George's County Public Schools (PGCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

On March 19, 2015, the Parent notified OAH that the parties had participated in a resolution meeting on January 26, 2015 and that they did not reach an agreement.² As a result, on April 17, 2015, I conducted a telephone pre-hearing conference (TPHC) in the captioned matter.

¹ The Due Process Complaint was filed in the name of XXXX XXXX, Sr. only. However, at the hearing both Mr. XXXX, Sr. and his wife, XXXX XXXX, were present. Both testified and the parties clearly understood them to be acting as a unit for the purposes of this litigation and commonly referred to them as "the Parents." I will adopt this convention throughout; when necessary for clarity, I will refer to Mr. XXXX, Sr. as "the Father" and XXXX XXXX as "the Mother."

² At the TPHC, neither party informed the OAH as to why it was not notified until March 19, 2015 of the outcome of the January 26, 2015 resolution meeting. See, COMAR 13A.05.01.15.C.11(e) and (f); 34 C.F.R. § 300.510.

The parents were represented by Dennis C. McAndrews, Esquire, on behalf of the Student. Jeffrey Krew, Esquire, appeared on behalf of PGCPs.

By agreement of the parties at the TPHC, the hearing was scheduled for June 12, 15, 16, and 17, 2015. The hearing dates requested by the parties fell more than 45 days after the triggering events described in the federal regulations, which is the date my decision would be due. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2014). The Parties requested an extension of time until thirty days after the close of the hearing (that is, until July 17, 2015) for me to issue a decision. 34 C.F.R. 300.515 (2014); Md. Code Ann., Educ. § 8-413(h) (2014). At the TPHC, the parties waived on the record the time requirements set forth above.

I conducted the hearing on June 12, 15, 16, and 17, 2015. On June 17, 2015, it became apparent that two additional days of hearing would be required to complete the testimony of all witnesses. Due to litigation and summer vacation schedules of both counsel and the Administrative Law Judge (ALJ), as well as the vacation schedule of the remaining witnesses, the earliest dates available for additional days of hearing were July 27, 2015 and August 17, 2015. On June 17, 2015, the parties agreed to additional days of hearing on July 27, 2015 and August 17, 2015. The parties again agreed to an extension of time until thirty days after the close of the hearing (that is, until September 16, 2015) for me to issue a decision. The parties again, on the record waived the time requirements set forth above.

On each day of the hearing, the Parent was represented by Mr. McAndrews³ and PGCPs was represented by Mr. Krew.

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

³ Mr. McAndrews, a member of the Pennsylvania Bar, was admitted *pro hac vice* for the purpose of appearing in this matter by order of the Circuit Court for Prince George's County, MISC-XXX, April 28, 2015.

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

ISSUES

The issues are:

1. What is the appropriate statute of limitations applicable to this matter?
2. Whether the Student was denied a free appropriate public education (FAPE) during the parts of the 2013-2014 and 2014-2015 school years which fall within the applicable statute of limitations and; if so, what, if any compensatory education should be provided to the Student to remedy that denial.
3. Whether the Parents are entitled to reimbursement for an Independent Educational Evaluation (IEE) of the Student conducted in May 2014.

SUMMARY OF THE EVIDENCE

Exhibits⁴

I admitted the following exhibits on behalf of the Parent:⁵

1	4/2/15	IEP
2	4/7/15	Prior Written Notice of PGCPs
3	3/12/15	Prior Written Notice of PGCPs
4	2/20/15	Confidential Psychological Report of PGCPs
5	2/10/15, 2/9/15	Emails re Home and Hospital Teaching (HHT) Program to/from Parent and PGCPs
6	2/2/15	Psychologist's Verification (3 forms) for HHT Program
7	1/27/15	Authorization of Parent to Request for Information by PGCPs

⁴ Exhibits are numbered as presented by the parties. Parent exhibits are designated as "P-#."

⁵ PGCPs exhibits are designated as "PGCPs-#."

8	1/26/15	Form letter re: HHT Program
9	1/26/15	Initial Contact and Referral Form – HHT Program
10	1/26/15	Prior Written Notice of PGCPs
11	1/26/15	Notice and Consent for Assessment/Initial Evaluation of PGCPs
12	1/13/15	Request for Mediation and Notice of Due Process Complaint
13	1/13/15	Fax cover sheet to OAH
14	1/13/15	Due Process Complaint letter of Caitlin McAndrews, Esquire
15	1/13/15	Release of Records or Other Information signed by Parent
16	1/13/15	Email to McAndrews Law Office reflecting fax to PGCPs successfully transmitted
17	10/23/14	Psychologist's Verification for HHT
18	10/18/14	Letter of Parent to PGCPs
19	10/6/14	Email from Parent to PGCPs
20	9/16/14	Emails to/from Parent and PGCPs
21	9/11/14	Emails to/from Parent and PGCPs
22	9/5/14	Email from PGCPs to Parent
23	9/5/14	Withdrawal/Transfer Record
24	9/5/14	Publicity Release of PGCPs signed by Parent
25	9/5/14	[School 1] form regarding education services
26	9/5/14	Personal Information Form of PGCPs regarding Student
27	8/28/14	Email from Parent to PGCPs regarding testing
28	8/30/14	Individual Treatment Plan (ITP) date 5/21/14, signed as received 8/30/14 by the Student's family
29	8/26/14	School Attendance Information
30	8/26/14	Email from Parent to PGCPs regarding testing, special education program request
31	6/26/14	2013-2014 Report Card, Grade 10
32	8/29/14	Independent Psychological Evaluation of XXXX Group Practice
33	3/6/14	Emails between Parent and Ms. XXXX of PGCPs
34	2/10/14	Emails to Parent from PGCPs staff re testing, homework, injury

35	12/17/14	Emails to Parent from PGCPs staff re failing grade, poor classwork, poor homework
36	11/21/13	Emails to/from Parent to PGCPs staff re comprehension problems, absence, homework
37	6/17/13 to 7/31/13	2012-2013 Report Card, Grade 9
38	6/2013	[School 2] registration and grade report for English course
39	3/5/13	Email from Parent to XXXX XXXX re: discipline issue
40	1/4/13 to 1/11/13	Emails to/from Parent and XXXX XXXX requesting testing, smaller class, scheduling
41	2010-2012	Test Information - State Mandated Testing for Grades 7, 8, 9
42	11/7/12	IEP Team Meeting sign-in sheet
43	10/10/12 to 10/31/12	Emails to/from Parent and PGCPs staff requesting testing, alternate program, meeting
44	6/20/12	2011-2012 Report Card, Grade 8
45	2012	Annual School Performance Data Summary, Grades 5 to 8 from 9/08 to 6/12
46	2011	Attendance Information
47	6/2011	2010-2011 Report Card, Grade 7
48	2010	Performance Data Summary, Grades K-6, through 6/10 (Grade 6) and Beginning With 2003-04 School Year (Kindergarten)
49	6/2009	2008-2009 Report Card, Grade 5
50	2008	Test Information, State Mandated Testing Grade 4
51	2007/2008	Progress Report, Grade 4 (2007-2008)
52	10/07-10/08	Reading, Writing Strategies for Fourth Grade
53	2006/2007	Performance Data Summary, Grades K-3
54	2006/2007	Attendance Information, Grades K-3
55	2006/2007	Progress Report, Grade 3 (2006-2007)
56	3/27/2007	Letter to Parents regarding Otis Lennon School Ability Test, Grade 3
57	2005-2007	Standardized Test Information from 4/05 and 4/06 with National Percentiles and 2007 MSA Basic Scores (Grades 1 and 2)

58	2004/2005	Progress Report, Grade 1 (2004-2005)
59	2003/2004	K-1 Comprehensive Reading/LA Data Sheet
60	9/03	Emergent Reading Behaviors Inventory
61	No date	School Readiness Initiative
62	04/28/15	Order Granting <i>Pro Hac Vice</i>
63	04/8/15	Lindamood Bell Testing Summary
64	No date	<i>Vita</i> of Dr. XXXX XXXX
65	No date	<i>Vita</i> of Dr. XXXX XXXX
66	2013-2014	Grades from Foundations of Technology (10 th grade)
67		Dr. XXXX XXXX list of exhibits (marked for identification)
68	11/7/12	11/7/12 Meeting Notes of XXXX XXXX

I admitted the following exhibits on behalf of PGCPS:

A	6/4/15	Letter to Jeffrey Krew from Dennis McAndrews
B	6/5/15	Letter to Dennis McAndrews from Jeffrey Krew
C	5/12/15	Letter to Parties from ALJ Hofstetter
D	6/4/15	Letter to Dennis McAndrews from Jeffrey Krew
E	5/20/15 – June 2015	Emails between Dennis McAndrews and Jeffrey Krew
2	11/7/12	IEP Team Meeting
3	12-13 School Year (SY)	Student's Attendance History for 2012-2013 SY.
4	13-14 SY	Student's Attendance History for 2013-2014 SY
6	10/24/14	Initial Contact & Referral, Office of HHT
7	1/13/15	Due Process Complaint
8	1/26/15	Prior Written Notice & Notice and Consent for Assessment
12	2/20/15	Psychological Report - XXXX XXXX, School Psychologist, PGCPS
13	3/12/15	Prior Written Notice
15	4/2/15	Draft IEP and Prior Written Notice

16	4/17/15	Letter to Caitlin McAndrews from Jeffrey Krew
19	6/1/15	Text of Chat during virtual live English 10 class
20		XXXX XXXX <i>Curriculum Vitae</i>
21		XXXX XXXX <i>Curriculum Vitae</i>
23		XXXX XXXX <i>Curriculum Vitae</i>
25		XXXX XXXX <i>Curriculum Vitae</i>
29		XXXX XXXX <i>Curriculum Vitae</i>
30	January 2010	Parental Rights – Maryland Procedural Safeguards Notice , Maryland State Department of Education
31	12-13 S.Y.	Gradebook
32	13-14 S.Y.	Emails from Parents to [School 3] staff
33	6/10/15	XXXX Group Practice Statement of Account
34	7/5/14	Kaiser Permanente Billing Detail
35	12/1/14	Letter to Parents from XXXX XXXX, [School 1]

Testimony

The Parent presented the following witnesses:⁶

- XXXX XXXX, Spanish teacher, [School 3]
- XXXX XXXX, Math teacher, [School 3]
- XXXX XXXX, Science Teacher, [School 3]
- XXXX XXXX, Principal, [School 4]
- XXXX XXXX, Physical Education teacher, [School 4]
- XXXX XXXX, Social Studies teacher, [School 3]
- XXXX XXXX, World Cultures teacher, [School 4]
- XXXX XXXX, HHT teacher
- XXXX XXXX, Foundations of Technology teacher, [School 3]

⁶ Subpoenas issued by the Parents to the following persons were either withdrawn on the first day of hearing or quashed by the ALJ: XXXX XXXX, XXXX XXXX, XXXX XXXX, XXXX XXXX, XXXX XXXX, and XXXX XXXX. (Ms. XXXX testified as a witness called by PGCPs.)

- XXXX XXXX, Ph.D., admitted as an expert in psychology and school psychology
- XXXX XXXX, Ph.D., admitted as an expert in special education
- Parent, father of the Student
- Parent, mother of the Student

PGCPS presented the following witnesses:

- XXXX XXXX, English teacher, PGCPS
- XXXX XXXX, Art teacher, [School 3]
- XXXX XXXX, English teacher, [School 3]
- XXXX XXXX, Special Education Department Chairperson, [School 3], admitted as an expert in special education
- XXXX XXXX, PGCPS school psychologist, admitted as an expert in school psychology
- XXXX XXXX, PGCPS guidance counselor, admitted as an expert in high school guidance counseling
- XXXX XXXX, PGCPS guidance counselor, admitted as an expert in high school guidance counseling
- XXXX XXXX, PGCPS school psychologist, admitted as an expert in school psychology

FINDINGS OF FACT

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

1. The Student is currently 17 years old, born on XXXX, 1998.
2. The Student began attending PGCPS in elementary school.

3. In 5th Grade, the Student received mostly As and Bs, except for Cs in Reading and Writing. P-49.
4. In 6th Grade, the Student received three As, two Bs and one C. He was considered to be below grade level in Reading and Math. P-48.
5. In 7th Grade, the 2010-2011 SY, the Student began at [School 4] ([School 4]) in PGCPs.⁷
6. In 2011-2012 SY, the Student attended 8th Grade at [School 4]. During 8th Grade, the Student received numerous Ds and failed Health.
7. For 9th grade, the 2012-2013 SY, the Student attended [School 3].
8. On October 10, 2012, the Student's father emailed the Student's guidance counselor, XXXX XXXX, under the subject heading, "Having my son get tested" and stated that the Student was "having trouble remembering things" and "is struggling to process the information in class." He asked whether "there is a program or some kind of test he could take [as] I want to help my son he need before it is too late and he fall behind." P-43 at 10.
9. On November 7, 2012, an IEP meeting was held at [School 3] concerning the Student.
10. The Father was unable to attend, however the Student's Mother attended, along with various PGCPs staff.
11. At the November 7, 2012 IEP meeting, the Mother was provided with the MSDE document "Parental Rights – Maryland Procedural Safeguards Notice." PGCPs-30. Page 19 of that document provides information to the Parent regarding the time to file a complaint and the applicable statute of limitations. *Id.*
12. None of the Student's classroom teachers attended the November 7, 2012 IEP meeting.

⁷ As set forth in the Discussion portion of this decision, I have determined that the Parents' claims concerning events occurring before January 13, 2013 are barred by the statute of limitations. For historical and background purposes, however, I have nevertheless included in these findings of fact some information concerning events occurring before that date.

13. The PGCPs members of the IEP team reviewed all available information and discussed whether certain specific testing was appropriate. After reviewing the Student's academic history, and receiving information from the Student's mother and the PGCPs members of the IEP team, the IEP team concluded that the Student's difficulties were not the result of a learning disability or any condition requiring special education services and that further assessments were not at that time warranted.
14. At the IEP meeting of November 7, 2013, the participants agreed that a parent-teacher conference with the Parents would be scheduled for January 2013. A further IEP meeting was not scheduled.
15. On January 16, 2013, a parent-teacher conference was conducted at [School 3] with the Parents, some of the Student's teachers, the principal, other PGCPs staff, and the Student.
16. Among the topics discussed at the January 16, 2013 parent-teacher conference were the Student's apparent lack of motivation, failure to come to class and to do work. The Student was asked if he could explain these problems and he stated that he simply wasn't trying.
17. The Parents did not raise in their due process complaint any issue concerning the lack of a classroom teacher at the IEP of November 7, 2012.
18. During 9th Grade, SY 2012-2013, and 10th Grade, SY 2013-2014, the Student was repeatedly absent from school. On days when he came to school, he skipped certain classes.
19. At times, the Father would send emails to PGCPs staff concerning the Student's absences. The absences were attributed to illness, family illness, or funerals, but never to anxiety or any other emotional condition. P-43.
20. In 9th Grade, SY 2012-2013, the Student was absent from Integrated Sciences 17 times and was tardy four times. PGCPs-3.

21. In 9th Grade, SY 2012-2013, the Student was absent from Personal Fitness nine times and tardy once. PGCPs-3.
22. In 9th Grade, SY 2012-2013, the Student was absent from Algebra I on 37 occasions.
23. In 9th Grade, SY 2012-2013, the Student was absent from Naval Science 10 times.
24. In 9th Grade, SY 2012-2013, the Student was absent from U.S. History 13 times.
25. In 9th Grade, SY 2012-2013, the Student's English teacher was XXXX XXXX.
26. The Student was absent from English class 16 times during 9th grade and generally failed to do either class work or homework. PGCPs-3; Tr.⁸ IV-903-904. On those occasions when the Student did his assigned work, he performed satisfactorily and received some good grades. Tr. IV-915-917.
27. Ms. XXXX contacted the Parents in an effort to get the Student to perform his work and the Parents accused her of "picking on" the Student and telling the Student that if a student was not on the honor roll, "they didn't have a brain." Tr. IV-904-908.
28. The Student failed every quarter of English in 9th Grade because he did not consistently attend class or do assigned work.
29. In every class in 9th grade, the Student's poor grades were a direct result of his failure to attend class and/or to do classwork and homework.
30. In 10th Grade, SY 2013-2014, the Student was absent from his Government class 29 times and was tardy five times. PGCPs-4.
31. In 10th Grade, SY 2013-2014, the Student was absent from his Algebra class 28 times. PGCPs-4.
32. In 10th Grade, SY 2013-2014, the Student was absent from his Biology class 20 times. PGCPs-4.

⁸ "Tr." refers to the volume and page of the hearing transcript.

33. In 10th Grade, SY 2013-2014, the Student was absent from his Spanish class 25 times.
PGCPS-4.
34. In 10th Grade, SY 2013-2014, the Student was absent from his Art class 35 times and tardy six times. PGCPS-4.
35. In 10th Grade, SY 2013-2014, the Student was absent from his Foundations of Technology class 35 times. PGCPS-4.
36. In 10th Grade, SY 2013-2014, the Student's English teacher was XXXX XXXX.
37. During 10th Grade, the Student was absent from English class a total of 46 times and was also tardy on numerous occasions. Tr. IV-956.
38. In the first weeks of 10th grade English, the Student completed most of his work and had a solid "B" grade. The Student was capable of doing the work required of the course. Tr. IV-969-971.
39. When the Student did attend English class in 10th grade he was disruptive, talking with other students out of turn, using his cell phone, refusing to follow directions and making insulting statements to Ms. XXXXX. Tr. IV-957-960. As a result, Ms. XXXXX requested the Parents to come in and meet with her to discuss the Student's performance, but they would not do so. Tr. IV-963-965.
40. In every class in 10th grade, the Student's poor grades were a direct result of his failure to attend class and/or to do classwork and homework.
41. More than 90% of the Student's absences in 9th and 10th grade were unexcused. PGCPS-3 and 4.
42. Sometime in the beginning of April 2014 (10th Grade, SY 2013-2014) the Student simply stopped going to school at all. The Parents did not inform PGCPS of a reason for the Student's failure to attend. Tr.-IV-854-855.

43. The Parents did not provide PGCPs with a reason why the Student stopped coming to school. They did not claim that his failure to attend school was due to anxiety, depression, or any other reason.
44. On various dates, including March 6, 2014, March 18, 2014, August 26, 2014, and September 11, 2014, the Father emailed PGCPs teachers or administrators asking that the Student be tested for learning disabilities. PGCPs did not test the Student until after the testing conducted by Mr. XXXX in March 2015.
45. In May 2014, the Parents retained XXXX Group Practice, LLC, (XXXX) to perform an IEE. XXXX performed testing and assessments of the Student on May 6, 8, and 13, 2014 and a report was delivered on August 29, 2014. XXXX also conducted interviews with the Student's Parents.
46. The XXXX report concluded that the following diagnoses applied to the Student: Attention Deficit Hyperactivity Disorder, combined presentation, moderate; Specific Learning Disorder with impairment in written expression; and unspecified depressive disorder. P-32 at 23.
47. The Student was scheduled to begin classes at [School 1] in September 2014.
48. The Student attended [School 1] for only a few days in September 2014, with his last day of attendance being on or about September 22, 2014.
49. In September and October 2014, the Father sent emails to PGCPs personnel making conflicting claims as to why the Student was not attending school. The emails variously claimed that the Student was not attending due to noise in the school, to asthma, or to panic attacks.
50. The Parents did not raise in their due process complaint any issue concerning an obligation for PGCPs to conduct testing due to alleged head injuries the Student suffered as a young child.

51. In October 2014, the Parents requested HHT services for the Student due to “psychological problems.”
52. On January 26, 2015, subsequent to the filing of the due process request in this case, an IEP team meeting was convened. The meeting was attended by the Parents and their attorney and various PGCPs staff. PGCPs-8.
53. After reviewing all relevant information, including the Student’s academic history, the IEE from XXXX and input from the team members including the Parents, the team determined that additional academic and social/emotional testing was appropriate to determine eligibility for special education services. The Parents consented to the testing. PGCPs-8.
54. The Parents received all appropriate procedural safeguards and notices concerning the January 26, 2015 IEP meeting.
55. At the January 26, 2015 IEP the Parents stated that they had kept the Student out of school due to anxiety he suffered at the beginning of the 2014-2015 SY.
56. Shortly after, January 26, 2015, the Student began receiving HHT services either at his home or by live computer connection.
57. On February 19 and 23, 2015, XXXX XXXX, a PGCPs school psychologist, conducted social/emotional and academic testing of the Student.
58. On March 12, 2015, a further IEP meeting was convened. Both parents participated. After reviewing all relevant information, the including the Student’s academic performance while in HHT, input from the parents and PGCPs staff, and review of the additional testing performed by Mr. XXXXX, the team found that the student was eligible for special education services under the category of Emotional Disability due to anxiety which prevented him from regularly attending school. PGCPs-13; Tr. IV-1344-1352.

59. The March 12, 2015 IEP team also agreed that compensatory services for one calendar year in the form of five fee-waived credit recovery courses would be offered to so as to permit the Student to recover any lost instructional opportunity. The March 12, 2015 IEP also provided for one-on-one tutoring by a PGCPs-approved tutor at PGCPs expense. PGCPs-13. At the IEP meeting, the Parents stated that they were pleased with this offer and believed that it would motivate the Student to obtain his high school diploma. *Id.*
60. The March 12, 2015 IEP team determined that the matter would be referred to a Central IEP (CIEP) team to determine an appropriate placement for the Student.
61. In the interim, the Student would continue to receive HHT services, but the services would be provided at [School 1], rather than at his home, to assist the Student with a transition to a school environment.
62. The Parents were provided with all required procedural safeguards and documentation regarding the March 4, 2015 IEP meeting.
63. On April 4, 2015, a CIEP meeting was convened. Both Parents participated, as well as PGCPs staff. The IEP team recommended the XXXX Program, housed at [School 5] ([School 5])⁹. The Parents were provided with all required procedural safeguards and documentation regarding the April 4, 2015 CIEP meeting.
64. The XXXX Program is a self-contained program within the [School 5] building for students with emotional disabilities. Class size in the XXXX program is limited to 12 students and classes typically have 8-12 students. Tr. VI-1354,1361.
65. The Student has never attended the XXXX Program at [School 5]. The Parents have never told PGCPs why the Student has not attended the XXXX Program at [School 5].

⁹ The “XXXX” refers to Dr. XXXX, not to the school. The school is a high school.

66. Despite the Parents expressed enthusiasm for the services offered at the March 4, 2015 IEP meeting, the Student has never attended school at PGCPs in 2015, other than instruction received in the HHT program.

67. The XXXX Program at [School 5] would provide the Student with a FAPE.

DISCUSSION

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

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

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

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

The IDEA contains the following, similar definition of FAPE:

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

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

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “[t]he best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ. of*

Maryland, 700 F.2d 134, 139 (4th Cir. 1983), *citing Rowley*. Instead, FAPE entitles a student to an IEP that is “reasonably calculated to enable the child to receive educational benefits.” *Id.* at 177. “Educational benefit” requires that “the education to which access is provided be sufficient to confer *some* educational benefit upon the handicapped child.” *Rowley*, 458 U.S. at 200 (emphasis added). *See also MM ex rel. DM v. School Dist. of Greenville County*, 303 F.3d 523, 526 (4th Cir. 2002), *citing Rowley*, 458 U.S. at 192; *see also A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004). Thus, the IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4th Cir. 1990). Yet, the benefit conferred by an IEP and placement must be “meaningful” and not merely “trivial” or “*de minimis*.” *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988).

In addition to the IDEA’s requirement that a disabled child receive some educational benefit, the child must be placed in the “least restrictive environment” to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5) (2010); 34 C.F.R. 300.114(a)(2)(i) & 300.117 (2014). However, placing disabled children into regular school programs may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. *Id.*

The Supreme Court has placed the burden of proof in an administrative hearing under the IDEA upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). In this case, the burden is on the Parent.

Statute of Limitations and PGCPs's Motion *in Limine*

The Parents' hearing request was filed on January 13, 2015. PGCPs argues that any claims in this matter are limited to a two-year statute of limitations. In support of its view, prior to hearing, PGCPs filed a Motion *in Limine*, seeking to limit evidence to events occurring within two years of the filing of the due process complaint on January 13, 2015. I heard argument on the Motion *in Limine* at the commencement of the first day of hearing. After argument, I deferred a ruling on the Motion *in Limine* and allowed evidence to be presented by both sides concerning events prior to January 13, 2013. For the reasons set forth below, I now grant the PGCPs Motion *in Limine*.

The Parents argue that the statute of limitations should be construed to be a period of time longer than two years. A statute of limitations is a legislative expression of policy that prohibits litigants from bringing claims after a period of time, which destroys any right and remedy of the potential claimant. When the IDEA was amended extensively in 2004, a statutory limitation was added for the first time. The relevant provisions currently are codified as follows:(C) Timeline for requesting hearing

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--

- (i) *specific misrepresentations* by the local educational agency that it had resolved the problem forming the basis of the complaint; or
- (ii) the local educational agency's *withholding of information* from the parent that was required under this subchapter to be provided to the parent.

20 U.S.C.A. § 1415(f)(3)(C)-(D)(2010). Emphasis supplied. Along with the other 2004

amendments, this limitations provision became effective on July 1, 2005.

The Maryland statute is substantially identical. Md. Educ. Art. §8-413(d)(3) provides:

Except as provided in paragraph (4) of this subsection, the complaining party shall file a due process complaint within 2 years of the date the party knew or should have known about the action that forms the basis of the due process complain.

Under the PGCPs view, the Parents, therefore, would be limited to claims of violations (both procedural and substantive) which the Parents knew or should have known about and which occurred no earlier than January 13, 2013, two years before the filing of the due process request.

The Parents assert that, PGCPs misrepresented or withheld certain information around the time of the November 7, 2012 IEP team meeting, which should extend the period of the statute of limitations. 20 U.S.C.A section 1415(f)(3)(D)(i) and (ii). As discussed below, I find this that the evidence does not support the Parents' argument in this regard.

The Parents, in their hearing complaint and at hearing, argued for a four year statute of limitations based on a single case from the United States District Court for the Middle District of Pennsylvania that has not been adopted by any other court. *Jana K. v. Annville-Cleoba School District*, 39 F. Supp. 3d. 584 (M.D. Pa. 2014).¹⁰ In any event, 20 U.S.C.A. § 1415(f)(3)(C) provides that the federal statute of limitations does *not* apply where state law provides its own, different, statute of limitations. It is clear beyond cavil, that Maryland has adopted the federal two-year statute of limitations. Md. Educ. Art. §8-413(d)(3). Finally, even if the Third Circuit were to uphold the view that a four-year statute of limitations was proper given certain provisions of Pennsylvania law, that decision would not be binding on the Fourth Circuit, and, indeed, would be highly unlikely to be adopted by it given the language of the Maryland statute.

¹⁰ Based on representations from counsel at hearing, the case is currently on appeal in the Third Circuit, but oral argument has not yet occurred.

The gravamen of the Parents' remaining argument regarding the statute of limitations thus turns on their argument that they were deceived or misled regarding the November 7, 2013 IEP team meeting. Unfortunately very little documentation still exists of this meeting. Indeed, the only apparent existing written record of the meeting is the sign-in sheet. PGCPS Ex. 2. It is unclear why no further record of the meeting exists (either in the possession of the Parents or PGCPS), however neither party has presented evidence of any nefarious reason for the lack of documentation.

The Parents assert that, at the November 7, 2012 IEP meeting, PGCPS failed to provide the Mother with the Parental Rights-Procedural Safeguards notice, thereby committing a procedural violation that rises to the level of denying the Student a FAPE. I find that the overwhelming weight of the evidence is that the Parents received all required and appropriate procedural notices and rights concerning the November 7, 2012 IEP team meeting. Specifically, the PGCPS witnesses who were present at the November 2012 IEP team meeting testified unanimously as follows on the question of whether the Mother was provided with the Parental Rights-Maryland Procedural Safeguards Notice.

XXXX XXXX, the Chair of the Special Education department at [School 3], who was accepted as an expert in special education, testified that the Parental Rights document was provided to the Mother at the beginning of the IEP meeting. Although Ms. XXXX did not have a specific memory of the event, she testified that it is provided at every IEP team meeting as a matter of routine and that, in her 36 years as a special educator, she has never been previously accused of failing to provide a Parental Rights document. Ms. XXXX testified that on a scale of 1-10, her certainty that the Mother was provided with a copy was a "10." Tr. IV-982-986.

Also present at the November 7, 2012 IEP team meeting was XXXX XXXX, who testified and was accepted as an expert in school psychology. Like Ms. XXXX, she testified that

she did not have a specific memory regarding the meeting and the Parental Rights document but testified that it is invariably provided to the parent at every IEP team meeting. She further testified that, if for some reason in a hypothetical case, Ms. XXXX forgot to provide the document, “I would have reminded her. I would have, I know where they were located in the room, I would have grabbed them, [inaudible] stop the meeting at that time and reminded her.” Tr. V-1020-1021. She also testified that her level of certainty that the Mother was provided with the document was a “10.” Tr. V-1021.

Finally, XXXX XXXX, who was accepted as an expert in guidance counseling, also testified that she was absolutely certain that the Mother was provided a copy of the Parental Rights document. Tr. V- 1126-1127.

In contrast to the recollections of the witnesses noted above, the Mother testified that she was certain that she was not given the Parental Rights document at the November 7, 2012 IEP meeting. Tr. IV-872. She further testified that her husband is the person who primarily keeps the Student’s school records and documents. Tr. IV-873. On cross-examination, however, the Mother testified that since November 7, 2012 the family has lived at four different addresses and experienced three different floods. In response to the question, “And the point you make is that your records are incomplete because of all that, right?”, the Mother responded, “Yes, sir.” Tr. IV-876-877.

I find the unanimous testimony of the PGCPs witnesses to be more credible than that of the Mother on this issue of whether the Mother was provided with the Parental rights form at the November 7, 2012 IEP team meeting. I find the PGCPs witnesses to be credible based on their demeanor, their long experience with the practices followed at IEP team meetings in the PGCPs, and the unanimity and certainty of their testimony. I find the Mother to be less credible on this issue and her testimony on this issue would be worthy of little weight based on her

acknowledgement that, because of frequent moves and repeated floods, her records were incomplete. I therefore conclude that no misrepresentation or withholding of information occurred concerning the duty of PGCPs to provide the Mother with the Parental Rights document at the November 7, 2012, and therefore there is no basis to extend the statute of limitations on that basis. 20 U.S.C.A. § 1415(f)(3)(C)-(D)(i) and (ii).(2010).

As a separate matter, the Parents argue that the statute of limitations should be extended because the PGCPs members of the November 7, 2012 IEP team told her that the IEP meeting would re-convene in January 2013 to further consider the need for special education services. No such IEP meeting occurred, and therefore, the Parents argue, they were victims of misrepresentations justifying the extension of the statute of limitations period. *Id.*

Despite the Parents' claim that the IEP team meeting would be re-convened in January 2013, Ms. XXXX, the school psychologist at the November 7, 2012 IEP team meeting, testified that the meeting was not held open or rescheduled to a later date, but that it was complete as of November 7. Tr. IV-1052-1054. Similarly, Ms. XXXX, the guidance counselor had a specific memory that the IEP meeting was complete on November 7, 2012, "that we were finished with the IEP team meetings, that there was no need for further assessment and we could continue outside of the IEP team to look at any other interventions for him. But no special education or testing was warranted at that time." Tr. V-1141. When asked if there was a decision to re-convene the IEP team meeting, she responded: "That wasn't the case. The team decided that we would do a parent-teacher conference so that we could get all parties in the same room to discuss ways to support and assist [the Student] in getting on track." *Id.* Indeed, such a parent-teacher conference was held on January 16, 2013. Tr. V-1154-1155, 1175, 1222.

In contrast to the testimony of Ms. XXXX and Ms. XXXX, Ms. XXXX testified that she believed that the IEP meeting of November 7, 2012 was indeed suspended to re-convene in

January 2013 and that the subsequent IEP team meeting was not held. Tr. IV-991.

I note that the Mother was not asked during her testimony as to whether she was told at the IEP team meeting of November 7, 2012 if the meeting would be re-convened at a later date. Tr. IV-869-879. The Father was not present at the meeting. The fact that the Mother was not asked, and did not testify about this important fact, provides a further basis for my conclusion that it is more likely than not that no further IEP team meeting or “re-convening” of the IEP team meeting was agreed to on November 7, 2012. In addition, the Father did not testify that his wife told him that a further IEP team meeting would be convened in January 2013. The Father was asked on direct examination, “What did [your wife] tell you about this meeting when she came home?” He responded, “. . . she called me at work and she told me that they said that they – he’s proficient and there is nothing that they will be able to do for him.” Tr. III-606. At no point in his testimony did the Father state that his wife, or anyone else, had told him that a further IEP team meeting would be held in January 2013.

Although Ms. XXXX testified that she believed there was a plan to re-convene the IEP team meeting in January 2013, I conclude that she was simply mistaken. Based on the clear testimony of Ms. XXXXX and Ms. XXXX, the lack of testimony on the subject from the Parents (that is, the proponents of the argument) and the passage of time, I find that the weight of the evidence is that no such agreement or decision to re-convene in January 2013 was made and that the IEP team meeting was complete as of its conclusion on November 7, 2012.¹¹ I therefore conclude that no procedural errors such as would toll or extend the statute of limitations in this case occurred relating to the November 7, 2012 IEP team meeting.

Accordingly, I find that that, as of November 7, 2012 (the date of the IEP team meeting),

¹¹ The Parents also argued at the hearing that the November 7, 2012 IEP team was defective in that it did not include a classroom teacher. This issue was not raised in the due process complaint, PGCPs Ex. 8, and I therefore consider it waived.

as well as by January 13, 2013 (the last date before prior claims would be barred by the statute of limitations), the evidence is overwhelming that the Parents knew or should have known all the facts supporting any alleged violation of the Student's rights under the IDEA prior to that date and that there is no justification to extend the two-year statute of limitations. PGCPS' Motion *in Limine* is granted.

Therefore any alleged failures on the part of the PGCPS as set forth in the Findings of Fact above, or presented or argued at the hearing, including the alleged failure to test in response to the Father's emails of October 10, 2012 and January 4, 2013, January 10, 2013 and following the IEP team meeting of November 7, 2012, are outside the statute of limitations and not before me.

The Parents' requests for testing

Pursuant to COMAR 13A.05.01.04A, a student's parent may make an initial "referral" to the school district, requesting an evaluation. COMAR 13A.05.01.06(1) provides that "an IEP team shall complete an initial evaluation of a student" within 60 days of parental consent for assessments. A substantially identical requirement appears in 20 U.S.C.A. § 1414.

In this case, it is clear that the Parents made, within the statute of limitations period, repeated requests for evaluation of the Student. Not all of the requests (mostly by email) were clear, articulate requests for testing, but some were. For example, on March 6, 2014, the Father wrote to one of the Student's teachers, XXXX XXXX, and stated, "For your FYI we are trying to get my son additional help with his learning because we believe he has a learning disability. No one wants to test him to see, I am working on this matter and I am willing to take it as far as I can to get him the help he need [sic]." P-33 at 2. Similarly, on March 18, 2014, the Father emailed the administration at [School 3] discussing the Student's academic difficulties and stating, "we have asked for him to be tested at [School 3] . . . this request has been ignored and

my son is falling behind . . .” PGCPs-32 at 28. A similar email was sent to Ms. XXXX on August 26, 2014. P-30. Another was sent to Ms. XXXX on September 11, 2014. P-21 at 3. In sum, then, the Parent made repeated requests during the applicable period for testing.

In this case, PGCPs erred in failing to respond to the Parents’ requests and conduct a timely evaluation. However, not every procedural violation of a procedural requirement under the IDEA is sufficient grounds for relief. *DiBuo ex rel. DiBuo v. Bd. of Educ. of Worcester Cnty*, 309 F.3d 184, 190 (4th Cir. 2002). “[T]o the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide [FAPE].” *Id.*, (quoting *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir. 1997)); see also *MM ex rel. DM v. Sch. Dist. of Greenville Cnty*, 303 F.3d 523, 534 (4th Cir. 2002); *Wagner v. Bd. of Educ. of Montgomery Cnty*, 340 F. Supp. 2d 603, 617 (D. Md. 2004).

I conclude that the PGCPs failure to promptly schedule testing in this case did not establish a failure to provide FAPE. My reasoning is simple: the entirety of the record before me establishes that the Student simply does not want to go to school. This is the case regardless of the school, the teachers, the courses, the programs, the placement, the accommodations, the class size, or the compensatory services offered to him. As discussed below, whether with or without an IEP, and even with an IEP providing a small, self-contained special education classroom setting with only 8-12 students in the class, the Student will not go to school. While the failure of PGCPs to timely respond to the Parents’ requests for evaluation is inexcusable, no evidence supports the view that, had testing been promptly provided, the Student would have regularly attended school.

Reimbursement for An IEE

The Parents argue that they are entitled to reimbursement for the IEE conducted by

XXXX in August 2014. PGCPs argues that the criteria for reimbursement have not been met.

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.A. § 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). Emphasis supplied.

The regulations provide guidance in determining whether an assessment is appropriate. The regulations, at 34 C.F.R. §300.304, require 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.

Emphasis supplied.

As set forth above, at hearing, the public agency must “demonstrate” that the IEE did not meet agency criteria. 34 C.F.R. § 300.502(b)(2)(ii). Those criteria are contained in 34 C.F.R. § 300.304(b), as set forth above. In Mr. XXXX's testimony, he severely criticized the methodology and conclusions of the XXXX report. With one important exception, however, Mr. XXXX and PGCPs did not clearly establish that the report failed to meet “agency criteria.” That exception concerns 34 C.F.R. § 300.304(c)(1)(iv) which provides that any evaluation or assessment must be administered by “trained and knowledgeable personnel.” In this case, the XXXX document itself states that the “examiner” was “XXXX XXXX, M.A., P.A., Doctoral Psychology Intern.” P-32 at 1. It also states that the supervisor for XXXX (no honorific is used because it is not clear if XXXX is male or female), is XXXX XXXXX, Ph.D., Licensed Psychologist.” *Id.* The document is signed on the last page by “XXXX XXXX, M.A., P.A., Psychology Associate/Evaluator” and “XXXX XXXXX, Ph.D., Licensed Psychologist/Supervisor.” P-32 at 28. The document does not state whether it was actually written by XXXX or by Dr. XXXX, or by both of them in collaboration. No *curriculum vitae* is in evidence for either XXXX or Dr. XXXX. I conclude that XXXX is not a licensed psychologist, given the designation of “intern” and given the fact that Dr. XXXX is identified as licensed but XXXX is not. Neither XXXX nor Dr. XXXX testified. These facts were noted repeatedly by various PGCPs witnesses, including Mr. XXXX.

It is true that 34 C.F.R. § 300.502(b)(2)(ii) provides that the IEE must be at public

expense unless the agency “demonstrates . . . that the evaluation obtained by the parent did not meet agency criteria.” I do not take that to mean, however, that in these circumstances, PGCPs must affirmatively prove that XXXX was not “trained and knowledgeable” to administer the evaluations performed. Rather, I understand it to mean that establishing that the examiner is “trained and knowledgeable” is part of “agency criteria” and that where the agency itself would be required to make such a showing, and where the very report of the IEE itself leaves that question unanswered and subject to serious doubt, the agency has “demonstrated” a failure to show that the IEE meets “agency criteria.”¹² If the school district were required to “prove” that the evaluator was *not* trained and knowledgeable, it would allow virtually anyone to conduct an IEE for a parent and make it exceedingly difficult for the school district to “prove a negative.” I do not believe this is the intent or meaning of the statute. For this reason, I conclude that the Parents are not entitled to reimbursement for the XXXX IEE.

Issues properly raised at the hearing are limited to those identified in the due process complaint

As provided in 20 U.S.C. § 1415(f)(3)(B), “The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [due process hearing complain]” Similarly, 300 C.F.R. 300.511(d) provides, “The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b) unless the other party agrees otherwise.” No such agreement exists in this case. Despite this requirement, the Parents raised numerous issues not addressed in the due process complaint. Those issues include the claim that no regular educator was present at the November 7, 2012 IEP meeting and that no parental rights

¹² While it is true that PGCPs could have subpoenaed XXXX and Dr. XXXX, I conclude that it was not required to do so in order to “demonstrate” a failure to meet “agency criteria” given that the document itself fails to provide any information as to the qualifications and training of XXXX other than the bare facts of degrees granted and “intern” status.

statement was provided to the Mother at that meeting.¹³ In addition, there was a substantial amount of discussion at the hearing about head injuries that the Student may have sustained as a result of falls as a child at the ages of two, nine, and eleven. He received no medical treatment for any of the alleged injuries at or near the time of their occurrence or any time since. Tr. III-690-720. The Parents argued at the hearing that these head injuries may be partly responsible for any learning problems the Student has. The head injuries and the supposed responsibility of PGCPS to test based on such injuries was not set forth in the due process request, and is therefore not before me.

The Merits

In this case, there is no question that the Student performed poorly in school in the period from January 13, 2013 to January 13, 2015 (the period within the statute of limitations.) However, the overwhelming evidence before me establishes that the Student was capable of doing satisfactory work when he wanted to and that his poor performance was due to the fact that he failed to attend an almost preposterous number of classes and rarely did either homework or class work. Eventually, in April 2014, he just stopped coming to school at all. This failure to attend class and to do assigned work began well before the period at issue here (*i.e.*, the period within the statute of limitations) and continued and worsened during the period at issue. Virtually every teacher (regardless of by whom they were called) testified that the Student was capable of performing satisfactory work but that his frequent absences and failure to do assignments necessarily led to poor or failing grades. Most if not all of the witnesses testified that they had referred students for special education services in the past or that they were prepared to do so, but that there was no reason to suspect that the Student suffered from a learning disability or any other condition mandating special education services. A summary of

¹³ These issues were outside the applicable limitations period as discussed above.

the testimony of the Students' teachers' concerning his attendance, completion of assignments and ability to do required work during the relevant period follows¹⁴:

XXXX XXXX

XXXX XXXX, called as a witness by the Parents, was the Student's Spanish teacher at [School 3] in 10th Grade. He testified that that a student cannot pass his class if he doesn't do homework, has irregular attendance, doesn't pay attention in class, and/or does not show any motivation or desire to learn. Tr. I-84-86.

XXXX XXXX

XXXX XXXX, called as a witness by the Parents, was the Student's Algebra 1 teacher in 9th Grade. She testified that approximately 14% of her students fail Algebra 1 in an average year and the fact that they fail does not imply that all or any of them should therefore be receiving special education services. She testified that a student cannot pass if he doesn't do homework, pay attention, study, or is absent for an inordinate number of days. Tr. I-103-105

XXXX XXXX

XXXX XXXX, called as a witness by the Parents, was the Student's Integrated Science teacher for 9th Grade, SY 2012-2013. Ms. XXXX testified that the Student received an 81 during the first semester of the course, showing that he was capable of performing the work. Tr. I-120-121. She also testified that, although Integrated Science is not a rigorous class, a student cannot pass if he doesn't do homework or pay attention in class. *Id.* She also testified that about 10% of students fail her class, and that there are various reasons other than a need for special education services why they fail. Tr. I-121-122.

XXXX XXXX

XXXX XXXX, called as a witness by the Parents, was the Student's History teacher in

¹⁴ This summary does not purport to be comprehensive but is a fair condensation of the testimony of the teachers who testified on this issue.

9th Grade, SY 2012-2013. She testified that the Student's grades improved in the third and fourth quarters of the course, indicating that the Student was capable of performing the work when he wished to do so. Tr. I-193-194.

XXXX XXXX

XXXX XXXX, called as a witness by the Parents, was the Student's Foundations of Technology in 10th Grade, SY 2013-2014. He testified that the Student did well on a number of tests, showing that he was capable of doing the work required of him. Tr. II-305, 309. He also testified that the Student simply didn't do homework and showed little effort or motivation. Tr. II-314-315.

XXXX XXXX

XXXX XXXX, called as a witness by PGCPs, taught the Student English in 9th Grade, SY 2012-2013. She testified that the Student was absent at least 16 times that year and refused to do classwork or homework. Tr. IV-903-904. She testified that the Student failed every quarter because he simply did not do the work. She noted that when he wanted to do work, his work was satisfactory and he achieved some good grades on assignments he completed. Tr. IV-915-917.¹⁵

XXXX XXXX

XXXX XXXX, called as a witness by PGCPs, was the Student's Art teacher in 10th grade, SY 2013-2014. She testified that the Student showed poor motivation and rarely did homework or classwork. Tr. IV-936-937. She testified that the work that the Student did turn in was satisfactory. She also testified that she gave the Student an opportunity to turn in work late

¹⁵ Ms. XXXX also testified that she contacted the Parents concerning the Student's failing work and she was accused of "picking on" him. The Parents alleged that she told the Student that any student who did not make the honor roll "did not have a brain." In her testimony she denied the statement. I find her to be a credible witness based on her demeanor and the consistency of her testimony. The issue is relevant only to the extent that it supports the view that the Student failed due to absenteeism and failure to do assigned work, and that his failure was not due to any animus on the part of his teacher.

when he was absent, but that he never did so. Tr. IV-940-944. She also testified that she notified the Parents about the Student's poor performance and that he was in danger of failing, but they did not respond. Tr. IV-938-939.

XXXX XXXX

During 10th Grade in Ms. XXXX's English class, the Student was absent from English class a total of 46 times and was also tardy on numerous occasions. Tr. IV-956. In the first weeks of 10th grade English, the Student completed most of his work and had a solid "B" grade. The Student was capable of doing the work required of the course. Tr. IV-969-971. When the Student did attend English class in 10th grade he was disruptive, talking with other students out of turn, used his cell phone, refused to follow directions and made insulting statements to Ms. XXXX. Tr. IV-957-960. As a result, Ms. XXXX requested the Parents come in and meet with her to discuss the Student's performance, but they would not do so. Tr. IV-963-965. Ms. XXXX also testified that she made an official written report (known as a "PS 74") of the Student's disorderly and disruptive behavior in class. PGCPS-32 at 12; Tr. IV-957-959. This behavior included talking out of turn and using his cell phone to play games or send text messages. *Id.* The Student also intentionally ridiculed Ms. XXXX, who is XXXX (a fact known to her students and the school community in general), by referring to her as "XX" or "XX." Tr. IV-959-60. The Student persisted in this clearly intentional conduct, even after being corrected by Ms. XXXX and told to desist. *Id.* Ms. XXXX testified that the student made little or no effort and that she saw nothing that indicated he had a learning disability or should otherwise be considered for special education services.

XXXX XXXX

XXXX XXXX, called by PGCPS and accepted as expert in school psychology, testified that lack of motivation is one of the most common reasons for failing grades and does not, in itself,

present a reason to suspect a disability. Tr. V-1092-1093. She also states that when a student specifically states (as the Student did at the January 16, 2013 parent-teacher meeting) that his lack of motivation or effort is the cause of his poor performance, that provides a clear reason *not* to suspect a disability. Tr. V-1095-1096.¹⁶

XXXX XXXX

XXXX XXXX, called by PGCPs and accepted as an expert in high school guidance counseling, testified that a review of the relevant grade books showed that the Student was able to do assignments when he wished to. She testified that his grades suffered from numerous zeroes as a result of not handing in assignments. Tr. V-1132-1133.

The conclusions of each of the PGCPs educator witnesses (including those called by the Parents), and not limited to those accepted as experts, is entitled to substantial deference. *MM ex rel. DM v. School Dist.*, 303 F.3d 523, 532-33 (4th Cir. 2002).

The Parents argue that the Student's long history of poor academic performance establishes that he should have been deemed eligible for special education services for many years prior to the filing of the due process complaint. As set forth above, I only consider that time period within the statute of limitations, that is, from January 13, 2013 to January 13, 2015. Even within that period, the Parents argue, the Student was denied a FAPE. In support of their claim, the Parents rely largely on the testimony of the Father (the Mother's testimony was short and dealt mainly with issues concerning the November 7, 2012 IEP); the XXXXs report, and the testimony of their experts. I will evaluate each of these sources in turn.

Testimony of the Father

¹⁶ Ms. XXXX also testified in great detail about the many factors the November 7, 2012 IEP team reviewed in reaching its determination that further testing was not warranted at that time. She described in detail why each of approximately six tests were deemed to be inappropriate or unwarranted and why there was not a reasonable basis upon which to suspect a disability. I do not recount this testimony (or similar testimony of XXXX XXXX) in detail as I have determined that the events of the November 7, 2012 IEP meeting are outside the statute of limitations in this case.

The Father, as is the case with most parents, is of course not an educator or an expert in special education. However, as to the factual matters that he testified concerning, his testimony was frequently shifting or contradicted by other testimony and documentary evidence. For example, his claim that the Student had been continuously in therapy since March 2014 (Tr. III-573) is contradicted by the Statement of Account at PGCPS-33. His claim that no teacher ever informed him about the Student's poor motivation or lack of effort (Tr. III-592-593) is contradicted by the repeated testimony of many teachers, including that of Ms. XXXX. Tr. IV-963-965, PGCPS-32 at 12. Similarly, his reasons for the Student's absences also vary. He testified that the Student's absences from 8th grade onward were due to asthma, nose bleeds, and an injury when he fell on some icy steps. Tr. III-639-640. PGCPS-3 and 4, however, show that the vast majority of his many, many absences were unexcused and unexplained. On October 6, 2014, the Father sent an email to school personnel stating that the Student's absence at the beginning of the new year was due to anxiety attacks. P-15. But at the hearing he testified, first, that the Student stopped going to [School 1] after the first week in September 2014 due to bullying. He then said that bullying was not an issue for the Student at [School 1]. Tr. III-655-656. In sum, the Father's testimony on almost every factual matter was unreliable and subject to frequent revision. I therefore give little weight to his testimony.

The Father did confirm the testimony of other witnesses that at the January 16, 2013, parent-teacher meeting, the Student stated that he "just wasn't trying" and that was the reason for his academic difficulties. Tr. IV-832-833.

For these reasons, I conclude that the Father's testimony does not support the Parents' claim of a denial of FAPE.

The XXXX Report

As set forth above, the Parents retained XXXX in May 2014 and a report was delivered

on August 29, 2014. After a series of testing and interviews with the Student and his parents, the author or authors of the report concluded that the following diagnoses applied to the Student: Attention Deficit Hyperactivity Disorder (ADHD), combined presentation, moderate; Specific Learning Disorder with impairment in written expression; and unspecified learning disorder. P-32 at 23.

XXXX concluded that the Student was eligible for services under IDEA and made various recommendations regarding services and accommodations it believed were appropriate and due the Student. *Id.* It also prepared a proposed IEP. P-28.

For the reasons that follow, I conclude that the XXXX report is entitled to little weight. First, as noted above, the qualifications and training (and, indeed, the identify) of the person administering the test is uncertain. In addition, the author or authors of the report were not present to testify and therefore were not subject to cross-examination. (According to its letterhead, XXXX is a local company located in XXXXX, Maryland. No reason was advanced as to why the author or authors of the report were not presented at the hearing.) The failure to permit PGCPs the opportunity to cross-examine on this critical piece of evidence figures strongly in my decision to accord the report little weight.

In addition, I note that the XXXX report which found a diagnosis of a Specific Learning Disorder with impairment in written expression (P-32) is in conflict with the proposed IEP prepared by XXXX. P-28. The proposed IEP in the “Diagnosis” section does *not* list a learning disorder at all, but rather notes ADHD and “adjustment disorder with mixed disturbance of emotions and conduct.” P-28 at 1. In his testimony, Dr. XXXX noted this contradiction and agreed that it was an inconsistency. Tr. II-472. Moreover, the XXXX report is in conflict with Dr. XXXX’s opinion. Dr. XXXX did not find any learning disorder, but rather diagnosed the Student as having a diagnosis of “situational” anxiety and depression. Tr. II-453. Further, the

XXXX report's statement that the supposed learning disorder concerns *written* expression is apparently contradicted by Dr. XXXX's testimony that the Student has problems with abstract material "particularly in the *verbal* realm...." Tr. II-355-356. Finally, all the relevant witnesses, including Dr. XXXX and Mr. XXXX agreed that the author or authors of the XXXX report received virtually all of their background "facts" from the Father and that they had no contact with any of the Student's teachers or other PGCPs educators. As a result, the XXXX report is likely deficient in its consideration of factors such as lack of motivation or effort on the part of the Student. Dr. XXXX agreed that the better and accepted practice is for an evaluator to have information from a student's teachers. Tr. II-474.¹⁷

Finally, I note that Mr. XXXX testified comprehensively about what he considered to be various shortcomings or errors in the XXXX report. Tr. VI-1293-1364. For the reasons set forth above concerning my view that the XXXX report is entitled to little weight, I add the persuasive testimony of Mr. XXXX. In particular, I credit his opinion that XXXX' finding of a specific learning disability in written language is based solely on a discrepancy model which is no longer in favor or generally relied upon exclusively. Tr. VI-1327. Mr. XXXX testified that multiple confirming data would be required to confirm such a diagnosis and that such an approach was not taken by XXXX and was not supported by the data.¹⁸ Tr. VI-1327-1328. I found Mr. XXXX to be a credible witness based on his education, training, experience, and expertise, as well as the clarity and consistency of his testimony, including on cross-examination.

Dr. XXXX XXXX

Dr. XXXX testified on behalf of the Parents and was admitted as an expert in psychology

¹⁷ It is particularly unclear why no teacher input went into the XXXX report given that the testing took place in early May 2014, but the report was not issued until August 29, 2014. This span of time would, presumably, allow sufficient time to solicit and receive information from at least some teachers. There was no evidence at the hearing that any teacher was contacted by XXXX or that any teacher refused to talk with XXXX.

¹⁸ Had any witness from XXXX testified, this deficiency *might* have been explained.

and school psychology. Dr. XXXX testified that he reviewed documents regarding the case (including the XXXX report) provided to him by Parents' counsel, and met with the Student and his father on one occasion for a total of about an hour and fifteen minutes. (One hour of that time being with the Student and fifteen minutes being with the Father. Tr. II-449.) During part of that time the Student was interacting with his HHT instructor via computer. However, Dr. XXXX did not observe or participate in the session. Tr. II-352-353. Dr. XXXX testified that based on his one interview with the Student, the Student was a "well-behaved," "nice looking young man" with a "supportive family." Tr. II-353. He testified that the Student described his biggest problems as involving comprehension and memory and that he has panic attacks when he feels like he is being judged or evaluated. Tr. II-354. Dr. XXXX testified that the Student doesn't have "deep consistent depression" but that "[his depression] is very situationally related, so when he feels inadequate or has failed or cannot do the work." *Id.* Dr. XXXX testified that the Student has particular problems with abstract material, "particularly in the verbal realm" but that "he has a strength in visual perception that might apply to a technology class" Tr. II-355-356. As noted above, this opinion contradicts the XXXX findings. Dr. XXXX testified that his diagnosis of the Student is "situational" anxiety and depression. Tr. II-453.

Dr. XXXX further testified that the Student "has a cognitive impairment . . . in terms of thinking and memory and it may be in, it's inside the brain, so it is it a learning disability is it the product of three head traumas, it manifests as a learning disability . . . his processing, his memory, his pace and his understanding, particularly of verbal material, although it applies to other abstract material." Tr. II-357. Regardless of this rather unclear musing, Dr. XXXX did not testify that the Student has a learning disability. He did testify that PGCPs had reason to suspect a disability sometime during the 7th grade year based on poor academic performance and academic decline. Tr. II-363.

In general, I place little weight on Dr. XXXX's testimony and opinions. Specifically, I note the following. Dr. XXXX met with the Student only once and only briefly. Tr. II-418. He made no written report of his findings and opinion. Tr. II-405, 410. He did not perform an IEE regarding the Student. Tr. II-405-406. He did not perform any testing on the Student. Tr. II-409-410. He did not engage in any therapy with the Student. Tr. II-406. He did not attend any IEP team meetings concerning the Student, speak with any of his teachers, or observe the Student in an educational setting. Tr. II-406, 410-411. Other than a writing sample of a few sentences, Dr. XXXX did not have the Student perform any academic activity for him. Tr. II-413. Dr. XXXX met with the Student one time, for at most one hour, approximately two weeks before Dr. XXXX testified in this matter. Tr. II-417-419. Dr. XXXX testified that his opinions were based in part on a review of documents, but was unable to identify precisely which documents he reviewed. Tr. II-419-438. He was unable to provide data to support his opinion that the Student needed a class of no more than 15 students. Tr. II-382-385. (This size class was being offered by PGCPs in any event.)

Dr. XXXX also agreed that no one other than he (*i.e.*, the XXXX staff, Ms. XXXX, and school personnel) had made the diagnosis of "situational anxiety and depression," explaining that "sometimes I get stuff other people miss." Tr. II-453.

Taken as a whole, I find that Dr. XXXX's testimony and opinions were based on limited sources, very limited contact with the Student, and were largely conclusory. I therefore consider them entitled to little weight. In addition, I note that one of his key opinions conflicts with that of the XXXX group (as to whether a diagnosis of a learning disability was correct), leading me to question the credibility of both.

Moreover, Dr. XXXX's testimony added little if anything to the question of what compensatory services might be due to the Student. Dr. XXXX was asked on direct, "What

would be the components of a compensatory education program for [the Student?]" Tr. II-398. His answer was vague and rambling and did not answer the question. Tr. II-399. Specifically, he did not testify as to whether or not the most recent IEP including compensatory services and the placement in a small class setting at [School 5] with one-to-one tutoring provided sufficient compensatory services. Even accepting, for the sake of argument, the remainder of Dr. XXXX's conclusions, without a specific statement that the services currently offered for the Student were inadequate or inappropriate, I am unable to conclude that his testimony supports the view that the Student is entitled to further services beyond those presently "on the table." The Parents specifically argue in this case that it is the ALJ's role to determine what appropriate compensatory services, if any, should be, but this expert was unable to provide a clear or fact-based opinion on the subject upon which an ALJ could base such a determination.

Dr. XXXX XXXX

Dr. XXXXX was admitted as an expert in the field of special education. She met with the Student one time for about 40 minutes and observed him in an online class for about another 20 minutes. In addition, she spoke briefly with the Parents during the same visit. Tr.II-534-537. She also reviewed documents concerning the case. Tr. II-527. She testified that she believed that the Student's absences were a result of his needs not being met by the school, but did not explain the basis of her statement. Tr. II-544. She also testified that she was unaware of misconduct the Student exhibited in school, including inappropriate and bullying statements he made to a XXXX teacher. Tr. II-541-542. She testified that PGCPs should have suspected a disability in 7th Grade and he should be in a classroom of seven or fewer students. Tr. II-516-517.

Like Dr. XXXX, Dr. XXXX did not write a report concerning the Student or perform any testing on the Student. Tr. II-528-529. Nor did she speak with any of the Student's teachers or

attend any IEP meetings concerning the Student, or observe him in a classroom setting. Tr. II-529-530. As was the case with Dr. XXXX, I find that Dr. XXXX's opinions were based on limited sources, very limited interaction with the Student, and were largely conclusory. I therefore give her testimony and opinions little weight. Indeed, she did not even initially offer a diagnosis of the Student, but when eventually asked whether she agreed with the XXXX diagnoses, she responded that "that person's report makes sense to me." Tr. II-515.

Dr. XXXX testified that the Student requires an Extended School Year (ESY) program of 4-5 weeks in the summer. She also testified that for each day of "lost instruction" he should receive four hours of compensatory education. She did not testify, however, as to how she arrived at these conclusions or what factors, data, or accepted professional body of knowledge she relied on in calculating her "four hours of compensatory instruction per 'lost day'" equation. Like Dr. XXXX, she did not testify substantively as to why she believed that the services offered by the current IEP were inadequate to provide any required compensatory services.

We thus have a situation where the opinions of the Parents' experts are in a jumble. The XXXX documents contradict each other, one (P-32) stating that the Student has a specific learning disability and another (P-28) stating that he does not.¹⁹ Dr. XXXX does not believe the Student has a learning disability, but rather stands alone in the opinion that the Student suffers from situational depression and anxiety. And Dr. XXXX simply adopts the views of the XXXX author or authors, although it is not perfectly clear from her testimony if those are the views in P-32 or those in P-28.

For all the reasons set forth above, I find that the opinions expressed in the XXXX evaluation, as well as the testimony of Drs. XXXX and XXXX are entitled to little weight and do not establish that the Student was entitled to special education services during the time period at

¹⁹ Specific learning disability is defined in COMAR 13A.05.01.03B(73).

issue or that he did not receive a FAPE.

Matters occurring after the filing of the due process complaint are not before me

Just as events occurring prior to the filing of the due process complaint are limited by statute of limitations, events occurring *after* the filing are also excluded from consideration.

While it is true that a PGCPs IEP team found the student eligible for special education services on March 12, 2015 (PGCPs Ex. 13), as a student with an emotional disability, this fact cannot be held to suggest that PGCPs should have found the Student eligible at an earlier date.²⁰

As PGCPs aptly put it in its Closing Memorandum:

Accordingly, events occurring subsequent to the January 13, 2015 filing of the Parent's hearing complaint [PGCP-7] are not properly before the ALJ. While the *unrefuted* testimony of the PGCPs witnesses was that the determinations of the [January, March, and April 2014] IEP teams were appropriate, the Parent raised no challenge to those decisions in his January 13, 2015 hearing complaint. And for good reason – those determinations had not been made as of the time of the filing of the hearing complaint. Incredibly, the Parent's attorney stipulated on the final day of the hearing that those decisions were not part of this case. Tr. at 1360.

Parent's Closing Memorandum at 35.

The fact that the PGCPs IEP team of March 12, 2015 found the Student eligible for special education services based on a designation of emotionally disturbed, simply provides no basis for a conclusion that he was eligible for special education services prior to that date.

Indeed, the facts, testing, and opinions which led to the conclusion that the Student was eligible for special education services are neither relevant nor challenged. It is sufficient to say that, following additional testing by Mr. XXXX and a review of the entire record, including input from the Parents, the IEP made its determination.

²⁰ The Parents' argument on this issue is uncertain and confused. While acknowledging that events occurring after the January 13, 2015 filing of the due process complaint were not issues in this case, counsel nevertheless argued that certain facts which came to light subsequent to January 13, 2015, could be considered. Tr. VI-1360.

While the Parents agree that the IEP meetings of January 26, 2015 and March 12, 2015, and the placement recommended following the determination of eligibility for special education services, is not before me, it is notable that the Student has not attended the proposed placement at [School 5]. Although occurring after the due process request, the failure to attend the XXXX Program at [School 5] is nonetheless analytically significant. It tends to corroborate the view that either the Student, or his Parents, or both, are not interested in the Student receiving academic services from PGCPS, whether in a general education or a special education setting. There is no argument (nor could there be one, given the date of the due process request) that the current IEP does not offer a FAPE. There is no claim before me that the recommended placement at [School 5] is appropriate and calculated to provide a FAPE. Certainly the Parents have not shown or even intimated that the recommended placement is not appropriate or calculated to give a FAPE. In addition, the only expert evidence on the issue came from Mr. XXXX who testified that the placement at [School 5] was indeed appropriate and would provide FAPE. Tr. VI-1361-1362. The Parents provided no testimony or other evidence as to why the Student is not attending the XXXX Program at [School 5] and accepting the compensatory services provided in the current IEP. PGCPS-13.

Thus, this case presents an unusual confluence of events. Subsequent to the filing of the due process request, PGCPS found the Student eligible for special education services and proposed a placement. The IEP also provided for compensatory services in the form of five credit recovery courses and one-on-one tutoring, all at PGCPS expense. PGCPS-13. The Student has never attended the placement at [School 5] which was found appropriate by the IEP team. The Parents have never explained why the Student has not attended. The Parents nevertheless claim that the Student is due compensatory services based on alleged procedural and substantive violations by PGCPS. The Parents have presented no evidence, however, as to why the latest

IEP and the placement at [School 5], including the compensatory and tutoring services offered, would not provide appropriate compensatory services for any alleged violations. It is in this limited sense that I consider the post-due process request IEP relevant. Compensatory services are “educational services ordered ... to be provided prospectively to compensate for a past deficient program.” *G ex rel. RG v. Ft. Bragg Dependent Schools*, 343 F.3d 295, 308 (4th Cir. 2003). Based on my conclusion that the Parents have not met their burden to establish that the Student was denied FAPE during the portion of the 2012-2013, 2013-2014, and 2014-2015 school years which fall within the statute of limitations, I find the Parents have not demonstrated that an award of compensatory education is warranted. Moreover, PGCPs *has* offered compensatory services and the Parents have, by deed if not word, rejected them. Without some showing (beyond the conclusory statements of Dr. XXXX) of the inadequacy of these services, I will not presume or speculate that they are inappropriate.

The Parents’ claims under Section 504 of the Rehabilitation Act

The Maryland State Department of Education has delegated to OAH the authority to hear cases under the IDEA and issue decisions on behalf of the Department. The Maryland State Department of Education, however, has not delegated OAH to conduct hearings under Section 504. Education Article § 8-413(d). Parents did not address this lack of jurisdiction at the hearing or in its due process complaint. Because the OAH does not have jurisdiction to hear Section 504 cases, I must deny the Parents’ claims arising under that statute.²¹

Issues concerning Child Find

The requirement that school districts identify all children eligible for special education services is known as Child Find and is mandated under both IDEA and Maryland law. U.S.C.A.

²¹ In any event, the Parents have not established a violation of Section 504. In order to “establish a violation of Section 504 and its implementing regulations, plaintiffs must show that they were discriminated against solely on the basis of disability.” *K.D. v. Starr*, 55 F.Supp.3d 782, 788 (D.Md. 2014), citing *Sellers v. School Board of Manassas, Virginia*, 141 F.3d 524, 528 (4th Cir. 1998). The Parents have failed to make such a showing.

§ 1412(a)(3)(A) and (B); 34 C.F.R. § 300.111; C.F.R. §§ 104.32, 104.33, 104.35; COMAR 13A.05.02.13A. Under these provisions, school districts have a continuing obligation to properly evaluate and identify students who are reasonably suspected of having a disability and offering a FAPE to every disabled student. *Gadsby v. Grasmick*, 109 F.3d 940, 950 (4th Cir. 1997).

Child Find does not obligate a school district to act based on remote or speculative reasons for suspecting a disability or simply because the student is struggling. This includes cases where a student's poor performance is a result of frequent absences, a lack of motivation, or a failure to do classwork or homework. In this case, the evidence is overwhelming that during the applicable period within the statute of limitations (and indeed even before), the Student's difficulties were indeed due to his utter lack of motivation and his repeated truancy. *See, D.K. v. Abingdon Sch. Dist.*, 696 F.3d 233, 249-251 (3rd Cir. 2012), and cases cited therein. (Child Find does not require evaluation of every struggling student or an evaluation to determine potential disability of any child having academic difficulties and frequent absences). I conclude that the Parents have not met their burden to establish a violation of any Child Find requirement.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law Parents have not established by a preponderance of the evidence that the Student was denied a free appropriate public education during the portion of the 2012-2013, 2013-2014, and 2014-2015 school years which fall within the statute of limitations. 20 U.S.C.A. §§ 1401(9), 1412(a)(1)(A) (2010); Md. Code Ann., Educ. § 8-401(a)(3) (2014); COMAR 13A.05.01.03B(27); COMAR 13A.05.01.06A; COMAR 13A.05.01.09D. Therefore, the Student is not entitled to compensatory education at public expense. *G ex rel. RG v. Ft. Bragg Dependent Schools*, 343 F.3d 295, 308 (4th Cir. 2003). I further find that the Parents are not

entitled to reimbursement for an IEE conducted by XXXX in May 2014. 34 C.F.R. § 300.502(b); 34 C.F.R. §300.304.

ORDER

I **ORDER** that the January 13, 2015, Due Process Complaint filed by the Parent on behalf of the Student is hereby **DISMISSED**.

September 16, 2015
Date Decision Issued

David Hofstetter
Administrative Law Judge

DH/cj

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the Student resides. Md. Code Ann., Educ. § 8-413(j) (2014). 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.