

XXXX XXXX

V.

HOWARD COUNTY PUBLIC
SCHOOLS

* BEFORE JENNIFER M. CARTER JONES,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: MSDE-HOWD-OT-12-40643

* * * * *

DECISION

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STATEMENT OF THE CASE

On October 15, 2012, XXXX XXXX (Mother) and XXXX XXXX (Father) (together, Parents), on behalf of their child, XXXX XXXX (Student),¹ filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the services and placement of the Student by Howard County Public Schools (HCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

A Resolution Meeting on October 19, 2012 did not resolve the matter. On October 19, 2012, OAH was notified of the outcome of the Resolution Meeting. The parties' attorneys advised OAH that they were available for a telephone prehearing conference on October 26, 2012.

¹ The Student's mother participated in the hearing on behalf of the Student. Neither the Student nor the Student's father participated in the hearing.

I held the prehearing conference on October 26, 2012. The Parents were represented by Holly Parker, Esq. MCPS was represented by Manisha Kavadi, Esq. The parties agreed that the hearing required four days. Based on counsels' available dates, the first available dates were December 4, 7, 10 and 12, 2012.

I held the hearing on December 7 and 10, 2012 at the HCPS office in Columbia, Maryland.² Ms. Parker represented the Parents, and Ms. Kavadi represented HCPS.

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) (2012); Md. Code Ann., Educ. § 8-413(e)(1) (2008); and Code of Maryland Regulations (COMAR) 13A.05.01.15C. Procedure is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2012); COMAR 13A .05.01.15C; COMAR 28.02.01.

Under the federal regulations, a hearing must be conducted and a decision is due within 45 days of certain triggering events. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2012). The parties' requested hearing dates fell outside of the 45-day timeframe; therefore, they waived the right to have the hearing within the 45-day period. I granted the parties' request for an extension of time for the decision to be due thirty days after the record closed. 34 C.F.R. 300.515; Md. Code Ann., Educ. § 8-413(h) (2008). For due date purposes, the record closed on December 10, 2012.

ISSUES

- (1) Did HCPS fail to offer the Student a free appropriate public education for the 2012-2013 school year by:
 - a. Failing to develop an appropriate individualized education program (IEP) for the Student;

² At the Parents' request and without objection from HCPS, the first day of the hearing, December 4, 2012, was cancelled because the Parents could not attend the hearing. The hearing concluded on the second day, December 10, 2012.

- b. Failing to properly consider harmful effects of educational placement recommendations as required by law; and
- c. Failing to offer appropriate special education and related services to the Student for the 2012-2013 school year;³ and,

(2) Was the May 16, 2012 IEP reasonably calculated to enable the Student to receive educational benefits in the least restrictive environment?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parents:⁴

- P. # 3 - Student Reassignment Form, dated May 24, 2012
- P. # 4 - Letter from XXXX XXXX, HCPS Specialist for Residency and Student Reassignment, to the Student's mother, dated July 2, 2012
- P. # 5 - Letter from Ms. Parker to XXXX XXXX, dated July 17, 2012
- P. # 6 - Letter from XXXX XXXX, HCPS Instructional Facilitator, Department of Special Education, to Ms. Parker, dated July 19, 2012
- P. # 7 - Letter from Ms. XXXXX to Ms. XXXX, dated July 20, 2012
- P. # 9 - Letter from XXXX XXXX addressed to "To Whom It May Concern"
- P. # 12 - Letter from Ms. XXXX to Ms. XXXXX, dated August 6, 2012
- P. # 14 - Letter from Ms. XXXX to Ms. XXXX, dated August 10, 2012, with attached Notice of IEP Team Meeting
- P. # 17 - Letter from Ms. XXXX to Ms. XXXXX, dated August 20, 2012
- P. # 18 - Letter from Ms. XXXXX to the OAH, dated August 23, 2012, with attached Request for Mediation/Due Process Hearing, dated August 23, 2012
- P. # 42 - Email from XXXX XXXX to the Student's mother, dated October 25, 2012

³ The Parents' request for due process hearing also alleged that the HCPS failed to conduct a functional behavioral assessment for the Student and failed to develop a Behavioral Intervention Plan for him. However, neither the Student's mother nor any of the Student's witnesses offered any testimony or other evidence related to these allegations. Indeed, the Student's mother did not even offer argument regarding these issues. Accordingly, she has failed to meet her burden with regard to those arguments.

⁴ The Parents did not offer exhibits number 1, 2, 8, 10, 11, 13, 15, 16, 19-41, or 43-48.

- P. # 49 - Resume for XXXX XXXX, M.S., CCC-SLP
I admitted the following exhibits on behalf of HCPS:⁵
- HCPS # 1 - The Student's IEP, dated May 16, 2012
- HCPS # 13 - Email from the Student's mother to XXXX XXXX, dated December 15, 2011
- HCPS # 17 - Letter from Ms. XXXXX to Ms. XXXXX, dated October 3, 2012, with attached email from Ms. XXXX, dated October 4, 2012
- HCPS # 20 - Letter from Ms. XXXX to Ms. XXXXX, dated November 4, 2012, with attached IEP Team Meeting Report, dated October 26, 2012
- HCPS # 23 - Occupational consultation notes for the Student, completed by XXXX XXXX, for dates including August 28, 2012, October 17, 2012, and October 31, 2012 Consultation Notes
- HCPS # 24 - Resume for XXXX XXXX, Principal, [School 1]
- HCPS # 25 - Resume for XXXX XXXX, Special Education Team Leader, [School 1]
- HCPS #28 - Resume for XXXX XXXX, Special Education Teacher, [School 2]
- HCPS # 32 - Resume for XXXX XXXX, Speech-language Pathologist, [School 2]
XXXX Childhood Center
- HCPS # 33 - Resume for XXXX XXXX, Speech-language Pathologist, [School 2]
- HCPS # 36 - Resume for XXXX XXXX, Occupational Therapist, [School 2] and [School 1]
- HCPS # 37 - Resume for XXXX XXXX

Testimony

The Student's mother testified and she presented the following additional witnesses:

- XXXX XXXX, Special Education Teacher, [School 2], whom I accepted as an expert in special education
- XXXX XXXX, Special Education Instructional Team Leader, [School 1], whom I accepted as an expert in special education
- XXXX XXXX, Private Speech-language Pathologist, whom I accepted as an expert in speech-language pathology

⁵ HCPS did not offer exhibits numbered 2-12, 14-16, 18, 19, 21, 22, 26, 27, 29-31, 34, 35, or 38.

HCPS presented Ms. XXXX and Ms. XXXX as its witnesses and presented the following additional witnesses:

- XXXX XXXX, whom I accepted as an expert in speech-language pathology and school administration
- XXXX XXXX, HCPS Instructional Facilitator, Department of Special Education, whom I accepted as an expert in special education
- XXXX XXXX, Speech-language Pathologist, [School 2] XXXX Childhood Center, whom I accepted as an expert in speech-language pathology
- XXXX XXXX, Speech-language Pathologist, [School 2], whom I accepted as an expert in speech-language pathology
- XXXX XXXX, Occupational Therapist, [School 2] and [School 1], whom I accepted as an expert in occupational therapy

FINDINGS OF FACT

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

1. The Student was born on XXXX, 2005. He is diagnosed with Autistic Spectrum Disorder.
2. The school closest to the Student's home (home school) is [School 1] ([School 1]).
3. The Student has a twin brother who has not been diagnosed with Autistic Spectrum Disorder and who attends [School 1]. (T.⁶ Mother).
4. The Student has special communication needs in the areas of expressive and receptive language. (T. Mother; T. XXXX; HCPS #1).
5. A major component of the Student's speech and language needs is apraxia, a motor planning disorder, which requires heavy reliance on visual maps and devices to allow students to access information. (T. XXXX).
6. The Student also has hyperlexia, a heightened ability and desire to read words, but an inability to contextualize those words. (T. XXXX).

⁶ The abbreviation "T" stands for testimony.

7. During the 2009-2010 and 2010-2011 school years, the Student was enrolled in the XXXX Childhood Center (XXCC) program at [School 2] ([School 2]) in the XXXX Class (XXXX-XXXX). (T. XXXX; T. XXXX).
8. The XXCC program provided by HCPS ends in kindergarten. (T. XXXX; T. XXXX).
9. [School 1] does not have a XXCC or XXXX-XXXX program. (T. XXXX; T. XXXX).
10. When the Student was enrolled in the XXXX-XX class, the Student's speech-language pathologist was XXXX XXXX. (T. XXXX).
11. Since February 2010, XXXX XXXX has provided the Student with private speech-language therapy. (T. XXXX).
12. Ms. XXXX has never observed the Student at [School 2]. (T. XXXX).
13. Ms. XXXX began providing the Student with speech-language therapy in an office separate from her home. Later, she began providing that therapy in her home office. (T. XXXX).
14. During the 2011-2012 school year, the Student was enrolled at [School 2] in a general education kindergarten classroom. Because [School 2] provided special education services under the XXCC program, the Student's kindergarten class included a full-time special educator, XXXX XXXX. (T. XXXX).
15. Ms. XXXX taught the Student almost every day in the general education classroom. (T. XXXX).
16. During his kindergarten year at [School 2], the Student responded well to routine and visual cues to access the curriculum. (T. XXXX).
17. The Student's general education teacher in kindergarten was XXXX XXXX. (T. Mother).
18. The Student had an aide in his kindergarten class. (T. Mother).
19. The Student's speech pathologist in kindergarten was Ms. XXXX. (T. XXXX).
20. On May 16, 2012, the Student's IEP team met for an annual review of the Student's IEP. The following people participated in the May 16, 2012 IEP meeting:

- a. XXXX XXXX, The IEP Case Manager and the Student's special educator at [School 2];
- b. XXXX XXXX, the Student's speech-language pathologist at [School 2];
- c. XXXX XXXX, the Student's general educator at [School 2];
- d. XXXX XXXX, [School 1] special educator;
- e. XXXX XXXX, the Student's occupational therapist at [School 2]; and
- f. The Student's mother.

(HCPS # 1).

21. The Student's May 16, 2012 IEP requires that the Student have the following daily supplementary aids, services, program modifications and supports, as needed, to allow him to access the general education curriculum and regulate his participation in class activities:

- repetition of directions;
- close adult supervision throughout the day for safety during arrival and dismissal, transitions, bathroom, lunch/recess, and access to instruction for prompting consistency and follow through;
- instructional supports, including pairing verbal directions/questions with visual supports (including written language and a white board);
- use of manipulatives; and
- a personal copy of books being read aloud during whole group instruction.

(HCPS #1).

22. The Student's May 16, 2012 IEP dictates that close adult supervision for the Student should be faded as he acclimates to his first grade routines, but that he will require an adult within close proximity during fire drills, assemblies and other events. (HCPS #1).

23. The Student's May 16, 2012 IEP requires that the Student have the following physical/environmental supports on a daily basis as needed:

- preferential seating;
- minimization of distractions during independent work times; and
- equipment/activities for self-regulation.

(HCPS #1).

24. The Student's May 16, 2012 IEP includes a list of equipment/sensory activities available to the Student to allow him to minimize his distraction during independent work times and for self-regulation, including the following:

- movement breaks;
- movement cushion; and
- weighted vest or lap pad.

(HCPS #1).

25. The Student's May 16, 2012 IEP requires that the Student receive two thirty-minute sessions of speech-language therapy in the general education classroom and one thirty-minute "pull-out" session of speech-language therapy outside the general education classroom. (HCPS #1).

26. The May 16, 2012 IEP team determined that the Student's IEP could be implemented at his home school, [School 1] and they assigned the Student to that school for the 2012-2013 school year. (HCPS #1; T. XXXX; T. XXXX; T. XXXX).

27. At the May 16, 2012 IEP team meeting, the Student's mother voiced concern that the Student required more pull-out speech-language therapy. (HCPS #1; T. XXXX).

28. After Ms. XXXX explained her reasoning for including only one 30-minute pull-out speech-language therapy, the Student's mother expressed agreement with the speech-language therapy as written in the IEP. (T. XXXX; T. XXXX).

29. The team agreed to review the appropriateness of the IEP within 60 days of its implementation. (T. XXXX; HCPS #1).

30. At the May 16, 2012 IEP team meeting, other than the speech-language therapy, the Student's mother did not otherwise voice any dissatisfaction with any element of the Student's IEP, including the IEP team's determination that the Student's IEP could be implemented at [School 1] as his least restrictive environment. (T. XXXX; T. XXXX; T. XXXX).
31. Sometime after the May 16, 2012 IEP team meeting, the Student's mother met with the principal of [School 2], Mr. XXXX, and the principal of [School 1], Ms. XXXX, and conveyed that she wanted the Student to remain at [School 2]. (T. Mother).
32. On May 24, 2012, the Student's mother submitted a Student Reassignment request form to the HCPS to request that the Student be allowed to remain at [School 2] rather than being assigned to his home school, [School 1]. (P. # 3; T. Mother).
33. By letter, dated July 2, 2012, XXXX XXXX, Specialist for Residency and Student Reassignment for the HCPS, notified the Student's mother that her request that the Student remain at [School 2] had been denied because her request was based upon special education considerations. (P. # 4; T. Mother).
34. By letter dated July 17, 2012, addressed to XXXX XXXX and carbon copied to XXXX XXXX, HCPS Instructional Facilitator, Department of Special Education, Ms. Parker, counsel for the Student and the Parents, notified the HCPS that the Parents intended to enroll the Student in a non-public educational program and to request funding for that program by HCPS. (P. # 5).
35. On or about August 23, 2012, the Student's Parents filed a Request for Mediation/Due Process Hearing with the OAH. (P. # 18).
36. The Student remained at [School 2] for the first grade at the beginning of the 2012-2013 school year after the Student's mother filed a Request for a Due Process Hearing. (T. Mother; T. XXXX).

37. [School 2] has approximately 1,000 students. [School 1] has approximately 587 students. (P. # 35; T. XXXX).
38. The Student's mother has never seen or observed the classroom where the Student would be assigned at [School 1]. (T. Mother).
39. During the Student's current first grade school year at [School 2], he receives instruction in a general education class with about eighteen students. (T. XXXX; T. XXXX).
40. If the Student had attended [School 1] for his first grade year, he would have been assigned to Ms. XXXX's general education class. Ms. XXXX's class includes about eighteen students. (T. XXXX; T. XXXX).
41. The adults in Ms. XXXX's class include the following: Ms. XXXX, the general educator; a special education assistant; a para-educator, who travels among the five first-grade classrooms at [School 1] to provide assistance; Ms. XXXX, the special educator, who provides special education services to children with IEPs in Ms. XXXX's class for 12.5 hours per week; and an instructional assistant, who remains with Ms. XXXX's class all day. (T. XXXX; T. XXXX).
42. In his first grade class at [School 2], the Student's special educator is XXXX XXXX. Ms. XXXX supports the special education needs of students in two classes at [School 2] (T. Mother). Ms. XXXX does not provide full-time special education services to the Student. (T. Mother).
43. Ms. XXXX's class has three other students enrolled with IEPs. (T. XXXX).
44. In his first grade class at [School 1], Ms. XXXX would be the Student's special educator. She provides special education instruction to two classes at [School 1]. (T. XXXX).
45. No first grade general education class at either [School 2] or [School 1] includes a full-time special educator. (T. XXXX; T. XXXX).

46. The Student receives close adult supervision at [School 2], including an adult to accompany the Student during arrival and dismissal, for bathroom breaks, for independent class activities and for sensory breaks. (T. Mother).
47. If the Student was enrolled at [School 1] he would receive close adult supervision, including an adult to accompany the Student during arrival and dismissal, for bathroom breaks, for independent class activities and for sensory breaks. (T. XXXX, T. XXXX).
48. [School 2] has a sensory room where the Student can go for sensory breaks. (T. Mother).
49. [School 1] has two sensory rooms where the Student can go for sensory breaks. (T. XXXX; T. XXXX).
50. The speech-language pathologist at [School 1] is XXXX XXXX. She has been the speech-language pathologist at [School 1] for three years. (T. XXXX).
51. The Student's current occupational therapist at [School 2] is XXXX XXXX. His occupational therapist at [School 1] would also be Ms. XXXX. (T. XXXX; T. XXXX).
52. Prior to the arrival of a new student with an IEP, Ms. XXXX creates a "new school book" to give to the student's family before the school year. The book includes photos of the school and staff. Ms. XXXX also ensures that the student has an opportunity to tour the school and meet the teachers to aid with the transition from another school. (T. XXXX).
53. If the Student had enrolled at [School 1], Ms. XXXX would have collaborated with the Student's previous case manager and instruction team to ensure that she is able to use some of the same social stories and visuals. She will do that if the Student is assigned to [School 1] at any point in the school year.⁷ (T. XXXX).

⁷ A social story is a visual story used to help a special needs child work through anxiety or frustration that impacts his learning. It can include a photograph of the student and use repetitive language explaining how to properly deal with the source of the student's frustration or anxiety. (T. XXXX).

54. Prior to the hearing date, Ms. XXXX had spoken with the Student's current special education teacher, Ms. XXXX, and the Student's general education teacher, Ms. XXXX, to discuss strategies for addressing the Student's needs (T. XXXX).
55. It is common for [School 1] to receive new students with IEPs during any point of the school year. (T. XXXX).
56. When new students with IEPs join [School 1], Ms. XXXX meets with the new family to discuss any concerns they may have, meets the student, and allows the student to visit the school and meet staff before joining an actual class at the school. She also corresponds with the new student's previous school to determine what equipment and resources the student requires as part of his IEP. (T. XXXX).
57. On or about October 4, 2012, Ms. Parker sent an email to Ms. Kavadi, HCPS Counsel, forwarding an October 3, 2012 email from XXXX XXXX, the Student's private speech-language therapist. In her letter, Ms. Parker notified the HCPS that her letter and Ms. XXXX's email would be followed with updated progress reports. (HCPS #17).
58. After receiving Ms. Parker's and Ms. XXXX's email, the HCPS team scheduled an IEP team meeting to address the contents of Ms. XXXX's email. (HCPS #18; T. XXXX).
59. Between October 4, 2012 and October 15, 2012, the Student's parents withdrew their request for a due process hearing on behalf of the Student. (T. XXXX; T. Mother).
60. On or about October 15, 2012, the Student's parents filed another Request for Mediation/Due Process Hearing. (T. XXXX; T. Mother).
61. On or about October 26, 2012, the Student's IEP team met. (HCPS #20; T. XXXX; T. Mother).
62. At the October 26, 2012 IEP meeting, the IEP team reviewed Ms. XXXX's October 3, 2012 email; the Student's mother's explanation that the Student had regressed in his speech and language at home and in speech-language therapy with Ms. XXXX; and Ms. XXXX's

experience with the Student as his current speech-language pathologist at [School 2]. (HCPS # 20).

63. Neither Ms. XXXX nor the Student's mother ever requested updated progress reports for the Student. (T. XXXX).

64. At the October 26, 2012 IEP team meeting, members of the IEP team determined that they needed to follow up with Ms. XXXX regarding the information she provided.

65. Ms. XXXX attempted to contact Ms. XXXX at least one time by email and at least one time by telephone (T. XXXX).

66. Ms. XXXX never returned Ms. XXXX's email or phone call. (T. XXXX; T. XXXX).

DISCUSSION

Legal Framework

Because the Parents have challenged the validity and adequacy of the May 16, 2012 IEP, the Parents bear the burden of proof and they also bear the burden of persuasion. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court stated that the congressional purpose in enacting the IDEA was the provision of a free appropriate public education to children with disabilities. The court stated that implicit in this purpose was a requirement that the education to which access is provided is sufficient to "confer some educational benefit upon the handicapped child." 458 U.S. at 200. The court identified the basic inquiry as twofold: first, has the education agency complied with procedures set forth in the IDEA; and second, is the child's IEP, developed through IDEA procedures, "reasonably calculated to enable the child to receive educational benefits." If these two requirements are satisfied, the requirements of IDEA have been met. 458 U.S. at 206-207.

The IDEA requires that to the maximum extent appropriate, children with disabilities should be educated in the least restrictive environment with children who are not disabled; special

classes, separate schooling or other removal from the regular educational environment should occur only when the nature or severity of the child's disability prevents satisfactory education in regular classes with the use of supplementary aids and services. 20 U.S.C.A. § 1412(a)(5)(A) (2010); *see also*, 34 C.F.R. § 300.114(a)(2)(2012).

In determining what placement constitutes the least restrictive environment, 34 C.F.R. § 300.116 (2012) dictates the following:

In determining the educational placement of a child with a disability. . . each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

The Student's mother's primary challenge to the Student's IEP was to the location within which the IEP would be implemented. Her primary argument was that [School 1] was an inappropriate place for the Student because (1) it was not safe enough for the Student; and (2) that the transition from [School 2] to [School 1] would result in damaging regression that would unnecessarily reverse any meaningful educational progress he has made at [School 2]. The Student has attended [School 2] for the last three years and he has become accustomed to the

building and his teaching staff. According to the Student's mother, the IEP team violated 35 C.F.R. § 300.116(d) in that it failed to consider the harmful effects that would result from assigning the Student to [School 1], where every aspect of the school, the teaching staff and the experience would be new to the Student.

Secondary to her arguments regarding safety and transitions, the Student's mother also asserted that the speech-language therapy as included in the Student's IEP was insufficient, and that the [School 1] would be unable to provide the Student with the sensory activities and implements to allow him to meaningfully access the educational instruction. I shall address each of the Student's mother's arguments individually.

Transitions

The Student's mother made it clear at the hearing that her strongest concern about having the Student assigned to [School 1] is her belief the transition will be extremely difficult for him and will lead to regression in his speech and language.

The Student's mother testified that the Student becomes anxious and overstressed when he transitions from one activity to another or when he is removed from a familiar setting. As an example, the Student's mother testified that the Student made significant progress in his speech over the most recent summer break. He had begun speaking in four-to-five word spontaneous sentences, which was a new achievement for the Student. When, however, the Student began the first grade after the summer break, he became non-verbal. The Student's mother also testified that in December 2011, the Student developed a tic, which she associated with stress. If the Student displayed regression at the beginning of the school year after returning to the familiar setting at [School 2], the Student's mother posited that the Student would display even greater regression if he were required to attend a new school with new staff and routines. The Student's mother argued that she does not believe that the IEP team truly considered the effect transitions have on the Student or whether the Student would regress upon being placed in a brand new

school.

The Student's mother also presented the testimony of XXXX XXXX, the Student's private speech-language therapist. Similar to the Student's mother's testimony, Ms. XXXX testified that the Student retreats inward whenever he is exposed to any big transitions or novel experiences and he refuses to engage verbally. When this happens, explained Ms. XXXX, the Student can take up to two months to recover and return to speaking consistently. Ms. XXXX expressed concern that if the Student was required to move to a new setting with new teachers and new classrooms, he would again demonstrate a loss of his verbal ability. According to Ms. XXXX, similar to the Student's mother, she observed the Student's regression at the beginning of the 2011-2012 school year and at the beginning of the 2012-2013 school year.

Ms. XXXX was unable to speak to how the Student has reacted to transitions at school because she acknowledged that she had never observed the Student in an educational setting. She also acknowledged that she has not spoken with any of the Student's educators at [School 2] or those who would be his educators at [School 1] and she is unaware of how the Student is performing academically at school.

The Student's mother argued that although the HCPS asserts that it has not observed significant regression in the Student in the school setting, once it received Ms. Parker's October 3, 2012 correspondence and an email from Ms. XXXX attached to that correspondence (HCPS #17), in which Ms. XXXX asserted that the Student had displayed significant regression in the private speech-language therapy setting, it promptly scheduled an IEP meeting to address that information. At the IEP meeting, the team reviewed Dr. XXXX's email and determined that it should consult with Ms. XXXX to learn more about what regressive behaviors the Student displayed with her and to determine if those behaviors compromise his ability to access the curriculum. The Student's mother explained that as of the hearing date, the HCPS had not spoken with Ms. XXXX and, at the very least, the HCPS should refrain from assigning the

Student to [School 1] until it has followed up with Ms. XXXX's report of regression and tics.

Contrary to the Student's mother's testimony and that of Ms. XXXX, each of the Student's teachers at [School 2], both past and present, testified that they did not observe significant regression during the transition from summer break to school and they all expressed unequivocal confidence that the Student would be able to transition from [School 2] to [School 1] and could receive instruction pursuant to his IEP at [School 1].

Ms. XXXX, who was the Student's XXXX-XXXX speech-language pathologist during the 2009-2010 school year and his speech-language pathologist during the Student's 2011-2012 kindergarten school year, testified that she has seen significant growth in the Student's ability to adapt to change. Particularly, Ms. XXXX explained that the XXXX-XXXX program is highly structured, including, among other things, two hours of one-to-one therapy with a very specific methodology. According to Ms. XXXX, because the students in the XXXX-XXXX class reacted fairly severely to change, that program ensured repetition and consistency to allow the students to access the curriculum. Ms. XXXX went on to explain that she observed the Student during his kindergarten year and although the general structure of the day was consistent, activities changed every day and the Student was able to meaningfully participate in the activities and stay on grade level.

Ms. XXXX offered a snapshot of the Student, including his areas of difficulty. Specifically, Ms. XXXX testified that the Student does best when he has prior knowledge of the schedule. Although he does not attach to a particular person, Ms. XXXX explained that the Student does become attached to his schedule and as long as he is provided a visual explanation regarding any anticipated changes to his schedule, he is able to process change without significant anxiety or regression. Ms. XXXX further explained that the Student may not always recognize her, individually, but he does respond to her interventions using visual cues. Therefore, although it is critical to ensure that the Student has consistent access to the

appropriate interventions to allow him to access the curriculum, Ms. XXXX believes that the location where he receives those interventions is much less critical. Ultimately, Ms. XXXX expressed that she had no reservations or concerns about the Student's ability to receive educational instruction in compliance with his IEP at [School 1].

Ms. XXXX was the Student's kindergarten special educator and she has considerable experience working with autistic children. She expressed her unequivocal opinion that the Student was prepared to receive his special education in the least restrictive environment at [School 1]. In offering that opinion, Ms. XXXX explained that during his kindergarten year, the Student made significant progress in his academics and in his ability to transition from one activity to another.

According to Ms. XXXX, in kindergarten, the Student was required to make several transitions every day. Particularly, the Student had to transition from the classroom to lunch, to recess, back to the classroom, to related arts (physical education, art, music, technology and media), each of which were in different rooms throughout the school building. Ms. XXXX further explained that in order to allow the Student to transition among activities in kindergarten, she and his other instructors made sure that his schedule was clearly outlined on a visual calendar. As long as the Student was advised of what the day would bring, he generally displayed no anxiety or regression.

Ms. XXXX explained that although the Student has a set schedule upon which he is fairly dependent, changes to that schedule occurred on numerous occasions. For instance, sometimes, there was a substitute teacher in the Student's class or a half-school day, and the Student responded to these changes to his schedule very well as long as his instructors made the adequate changes to his visual schedule.

Ms. XXXX also testified that on a few occasions, the Student participated in "XXXX Club," a monthly activity during which children are allowed to go to another teacher's classroom

and participate in activities. According to Ms. XXXX, as long as he was advised that XXXX Club was on his schedule, he was able to transition nicely to that activity. Furthermore, Ms. XXXX testified that although she was the Student's special educator in kindergarten and he was used to her presence and instruction, she went on vacation for a whole school week. When she returned, she received feedback from the Student's other teachers that the Student did not display any anxiety in her absence and he participated and responded to instruction and interventions.

The key to reducing or avoiding the Student's anxiety and maximizing his access to instruction, explained Ms. XXXX, is to use the visual calendar and social stories. Ultimately, Ms. XXXX testified that she did not witness in school the regression Ms. XXXX reported.

Ms. XXXX, the Student's current speech-language pathologist, testified very similarly to Ms. XXXX and Ms. XXXX, regarding the Student's ability to adapt to new environments. Specifically, Ms. XXXX testified that when the Student began first grade, he moved to a new classroom and he had a new schedule. Although there was a period during which the Student was learning to adapt to his new environment, Ms. XXXX explained that due, in part, to interventions like his visual calendar and social stories, the Student became acclimated to his first-grade surroundings in one-to-two weeks. Ms. XXXX further explained that social stories have been particularly helpful in addressing the Student's anxiety about transitions and change. For instance, Ms. XXXX has used social stories to assist the Student with understanding what to do during fire drills and the social stories were instructive when the Student was assigned to a new math class. As Ms. XXXX explained, the preparation, visual cues, and social stories have been the keys to preventing anxiety and regression resulting from change or transitions. The Student has generally responded to these interventions and Ms. XXXX testified that even when the Student displays some anxiety, it usually requires less than thirty seconds to redirect him.

Furthermore, according to Ms. XXXX, the special educator at [School 1], she attended the Student's May 16, 2012 IEP team meeting after she learned that the least restrictive

environment for the student was [School 1]. She observed the Student in class and spoke with the Student's teachers about his problems with transitions. As a result, Ms. XXXX explained that she intended to create social stories for the student to allow him to acclimate to [School 1] with greater ease. She also testified that she was prepared to create a visual calendar for the Student so that he would be fully aware of what his schedule would be without any surprises and that she would have taken the Student on an individual tour of the school and introduced him to his teachers for that year before actually starting the first grade there. Ms. XXXX explained that it is not uncommon for children with IEPs to begin attending [School 1] in the middle of the school year and she testified that she remains willing and prepared to ensure that the Student's transition to [School 1] was smooth.

I do not doubt that the Student displayed some regression with Ms. XXXX at the beginning of the school year. Indeed, Ms. XXXX, the Student's current speech-language pathologist at [School 2], testified that all students display some regression when they return to school after summer break. Ms. XXXX also testified that after the Student's educational team used the appropriate visual interventions, the Student was able to surmount any anxiety and/or regression he may have experienced at the beginning of the school year and access the grade-level curriculum within one-to-two weeks. Ms. XXXX also testified that she did not notice that the Student's tic significantly compromised his grasp of the curriculum. According to HCPS #20, the meeting notes for the October 26, 2012 IEP team meeting, Ms. XXXX made similar statements during that meeting. According to Ms. XXXX, after about one week of some regressive behaviors, the Student became familiar with the first grade schedule, began participating in class, and was doing well academically.

Furthermore, I disagree with the Student's mother's position that the HCPS should refrain from assigning the Student to [School 1] until after it has reviewed Ms. XXXX's information about the Student's regression in the private speech-language therapeutic setting.

The Student's teachers remain unequivocal that the Student can receive a free and appropriate public education at [School 1]. Ms. XXXX and the Student's other educators were clear that they did not observe the regression of which Ms. XXXX and the Student's mother complained. According to Ms. XXXX, it is the policy of the HCPS to schedule an IEP team meeting when a parent presents new information or concerns about any student who is receiving special education services in any HCPS school. Accordingly, when it received Ms. Parker's letter and the email from Ms. XXXX, it scheduled the IEP team meeting for October 26, 2012. Certainly, if the Student's mother wished for input from Ms. XXXX, she could have invited her to attend that meeting, but she did not.⁸

Even though neither Ms. XXXX, nor any other of the Student's educators, had observed the regression reported by the Student's mother and Ms. XXXX, and regardless of the fact that the Student's mother did not invite Ms. XXXX to the IEP team meeting, the IEP team determined that it should give the Student's mother the benefit of the doubt and contact Ms. XXXX to gather more information regarding the Student's regression. Ms. XXXX testified that she called and emailed Ms. XXXX numerous times but never received a response. Ms. XXXX acknowledged that she received an email and a voicemail from HCPS, but testified that the Student's mother advised her not to speak with the HCPS in light of the then-pending due process hearing.

I do not agree with the Student's mother's position that HCPS was required to review the information provided by Ms. XXXX or to investigate her report of regression before making its determination that [School 1] was the least restrictive environment for the Student. Rather, I find that the HCPS simply employed its policy of fully reviewing new information when received by a student with an IEP. Regardless of their willingness to review Ms. XXXX's findings regarding

⁸ Ms. XXXX testified that she would have been willing to come to the October 26, 2012 IEP team meeting but she did not push to attend to avoid creating a financial burden for the Student's Parents to pay for her presence at that meeting.

the student in a private speech-language setting, Ms. XXXX, Ms. XXXX, and his other educators at [School 2], unequivocally testified they had observed very little regression at school and that the Student was doing well academically. Furthermore, Ms. XXXX testified at the beginning of the first day of the hearing in this matter. The HCPS had an opportunity to digest her information and her evidence of regression during the hearing and did not determine that any of the information provided changed its position that the Student's least restrictive environment was [School 1].

Although I understand the Student's mother's concern that the Student might find the transition to [School 1] from [School 2] difficult and stressful, it is clear that the administration and staff at [School 1] are aware of the Student's problems with transitions and are prepared to address those problems. The IDEA dictates that a student's IEP must be delivered in the least restrictive environment. If an IEP can be implemented in the Student's home school, the IDEA dictates that the home school is presumptively the least restrictive environment. The Student's mother has not offered sufficient evidence to sustain her burden of proving that the Student cannot receive adequate educational benefit from his instruction at [School 1] as a result of his difficulty with transitions.

Safety

The Student's mother testified that the Student has very distinct sensory needs, and requires safety measures to ensure that he is not exposed to harm as a result of his deficits. The Student's mother further testified that another son, the Student's twin brother, attends [School 1]. She has volunteered at both of the schools and her observation has been that [School 1] does not offer the same level of safety for autistic children. Particularly, she testified that during the day, there are fewer adults patrolling the hallways at [School 1] to ensure that students are in the right place. She also testified that she has observed dismissal from school at both [School 1] and [School 2]. During dismissal at [School 2], volunteers and teachers walk the children out of the

school and to their designated areas for return to their homes. At [School 2], a teacher and an aid walk the pre-kindergarten students out from the school first, followed by other students. According to the Student's mother, the whole process for dismissal at [School 2] is very orderly. By comparison, she testified that the children at [School 1] are offered no guidance upon dismissal from school and that it seems like a "cattle call." In fact, according to the Student's mother, the children are allowed to leave the school and wander into the parking lot to find their parents who are picking them up from school.

The Student's mother explained that the Student is exposed to harm if he is dismissed from school in this manner because the Student does not understand the danger he may be exposed to by talking to or leaving the school with strangers or wandering into traffic. Her fear regarding the Student's proximity to traffic is exacerbated because [School 1] is on a non-residential street with a speed limit of 30-35 miles per hour.

[School 2]' principal, Ms. XXXX disagreed with the Student's mother's description of dismissal from [School 1] as a cattle call, and she testified that the students line up in an orderly fashion and teachers and aids escort all of the children out of the building at the end of the school day. Ms. XXXX further explained that should the Student become a student at [School 1], she would meet with the Student's parents to discuss their concerns and assign an adult to meet the Student and walk him in and out of the school during arrival and dismissal. Ms. XXXX further testified that it is not unusual for her to assign additional adults to assist with students with special needs and that the Student would have more than adequate adult supervision during lunch and recess, in the hallway, during fire drills, and for all of the purposes as enunciated in the Student's IEP.

Each of the Student's teachers at [School 1] and at [School 2] expressed the unequivocal belief that the Student would be safe at [School 1]. According to the Student's IEP, he requires close adult supervision at all times, especially during transitions between classes. Ms. XXXX,

Ms. XXXX, Ms. XXXX, Ms. XXXX and Ms. XXXX each testified that they were confident that [School 1] was capable of implementing and intended to abide by the terms of the IEP to ensure that the Student always had close adult supervision while in class, during his transitions between classes and upon dismissal from the school. Without more than a generalized concern for the Student, the Student's mother offered nothing substantial to support her subjective claim that the dismissal from [School 1] is chaotic and akin to a "cattle call."

In so finding, I note that I find the Student's mother's description of the [School 1] dismissal process as a "cattle call" to be disingenuous. The Student's twin brother attends [School 1] and although I accept the Student's mother's explanation that the Student's brother is more mature and aware of strangers and safety than the Student, the fact remains that he is six years old. I find it very difficult to believe that a mother would allow her child to be exposed to the harm that could come to him/her if he or she was dismissed without supervision and allowed to wander into the parking lot.

Ultimately, the Student's mother has failed to prove that the placement of the student at [School 1] could potentially have harmed the Student, either in the form of regression or exposure to danger. As I have stated, each of the members of the Student's IEP team expressed agreement that [School 1] was the appropriate location for the Student as the least restrictive environment. None of the Student's educators at [School 2] or potential educators at [School 1] testified that they had any concerns whatsoever regarding the Student's safety or his ability to transition to [School 1].

Furthermore, Ms. XXXX, Ms. XXXX, and Ms XXXX, all of whom were present at the May 16, 2012 IEP team meeting, testified that the Student's mother voiced no concern regarding the appropriateness of [School 1] at that meeting. Therefore, the IEP team had no reason to question the belief that the Student faced no potential harmful effect by having his IEP implemented at [School 1]. Accordingly, the Student's Parents' position that the IEP failed

to consider the harmful effects of assigning the Student to [School 1] is flawed.

Sensory needs

The Student's mother also testified that she did not believe that [School 1] was equipped to provide the Student with the activities, sensory tools and occupational therapy to address the Student's sensory needs. To that end, the Student's mother explained that [School 2] employs tools and strategies to address the Student's sensory needs, including the use of a weighted vest, a weighted lap pad, removing the student from the classroom to allow him to pull a wagon or ride a bike, a large OT sensory room where the Student can move around, and a private playground where the Student can move around in a secluded setting.

According to the Student's mother, she has never seen any student riding a bike in the hallways at [School 1], there are no sensory rooms at [School 1] and there is no segregated playground where the Student could go to work through sensory issues. The Student's mother explained her fear that without these activities, the Student would regress or not otherwise be able to access the educational content.

Ms. XXXX is the Student's current occupational therapist at [School 2] and she would also be his occupational therapist at [School 1]. Ms. XXXX testified that contrary to the Student's mother's belief that [School 1] does not have a sensory room, there are actually two sensory rooms at [School 1], where the Student could go to address his sensory needs. Ms. XXXX further explained that weighted vests, lap pads, motion cushions, ear muffs, riding a bike, pulling a wagon and other tools and approaches to address the Student's sensory needs are contemplated in his IEP. Therefore, those tools and approaches would follow him from [School 2] to [School 1]. Because she is familiar with the Student, Ms. XXXX explained that she would work closely with the Student's instructional team at [School 1], as she currently does at [School 2], to determine the best use of sensory tools to best meet his needs at that time.

It is clear that the Student's mother is unfamiliar with the options [School 1] offers to

address the Student's sensory needs. Indeed, the Student's mother testified that she had not visited Ms. XXXX's classroom, she did not know that there were sensory rooms available to the Student, and she believed that the Student would not have the benefit of the sensory tools to which he has become accustomed at [School 2]. I find that the Student's mother's lack of information and misinformation makes her argument that [School 1] is unable to meet the Student's sensory needs untenable. This is particularly so in light of Ms. XXXX's clear and unequivocal testimony that the Student will be afforded every sensory tool and method as anticipated in his IEP. As his current occupational therapist, Ms. XXXX has knowledge of the Student and his current needs, she is uniquely situated to assess which academic environments are suitable for the Student's sensory needs.

Accordingly, I find that the Parents have failed to sustain their burden of proving that [School 2], not [School 1], is the least restrictive environment with regard to the Student's sensory needs.

Speech-Language

Finally, the Student's mother testified that at the May 16, 2012 IEP team meeting, she disagreed with the IEP team that the Student should receive only thirty minutes of pull-out speech-language therapy, but she asserted that after Ms. XXXX explained why she believed the speech-language services enumerated in the IEP were appropriate, the IEP team essentially disregarded her concerns.

Ms. XXXX, Ms. XXXX, and Ms. XXXX each testified that they recalled the Student's mother expressing concern that the Student would receive two thirty-minute speech-language therapy sessions in the general education classroom and only one thirty-minute speech-language therapy session outside of the general education classroom. Ms. XXXX testified that she explained to the Student's mother that the area where the Student was having the most difficulty with speech and language was in the classroom. Therefore, she explained that he would benefit

from more sessions in the classroom than individually, in a pull-out session with the speech-language pathologist. Ms. XXXX, Ms. XXXX and Ms. XXXX all testified that once Ms. XXXX explained the reasoning behind the assignment of the speech-language therapy sessions, the Student's mother agreed with the speech-language therapy sessions as enumerated in the IEP.

At the hearing, the Student's mother did not offer any testimony from a speech-language pathologist or any other evidence that the speech-language therapy sessions for the Student as proposed in his IEP were improper. Accordingly, she cannot prevail on this argument.

Ultimately, the Student's mother expressed that she believes that [School 2] is the best place for the Student. In his classroom last year, there were numerous volunteers, teachers and aids in the Student's classroom and once, while she was volunteering in the Student's class, the ratio of students to adults was 4:1. Although the Student has experienced "peaks and valleys" while attending [School 2], the Student's mother believes that the staff at [School 2] have services in place that will allow the Student to thrive. In fact, the Student's mother described his class at [School 2] as "academically unbelievable."

As I have stated, the IDEA requires that students be placed in the least restrictive environment and if the Student's home school can effectively implement the IEP so that he can obtain educational benefit, then the home school is the least restrictive environment for the Student. Although I understand the Parents' desire to keep the Student enrolled in the school they deem best suited to meet his needs, "the issue is not whether [the placement advocated by the parents] is better, or even appropriate, but whether [the school system] has offered...an appropriate program for the Child at [the placement which it recommended]." *A.B. ex rel D.B. v. Lawson*, 354 F.3d 315, 324 (4th Cir. 2004). While [School 2] may possess certain qualities that render it more appealing to the Parents than [School 1], case law provides an apt analogy when comparing programs available to students who qualify for special education. In *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993), the Court found:

The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to the appellant, and is therefore in compliance with the requirements of the IDEA.

Id. at 459-460.

Each of the Student's educators at [School 2] and each of those individuals who would be his educators and administrators at [School 1] testified unequivocally that [School 1] is fully capable of implementing the Student's IEP. The Student's Parents have failed to offer sufficient evidence to prove that [School 1] is not appropriate or that [School 2] constitutes the least restrictive environment for the Student. Therefore, I must deny their request that the Student be allowed to remain at [School 2] for the 2012-2013 school year rather than attending [School 1], which is the least restrictive environment within which his IEP could be implemented.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the May 16, 2012 IEP is appropriate for the Student because it is reasonably calculated to enable the Student to receive educational benefits in the least restrictive environment. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993); 34 C.F.R. §§ 300.114 & 300.116 (2012). I further conclude as a matter of law that the Student's IEP team fully considered the harmful effects of the educational placement recommendation in its determination that [School 1] constituted the least restrictive environment for the Student. 34 C.F.R. § 300.116 (d).

ORDER

I **ORDER** that the Due Process Complaint filed by the Parents on October 15, 2012 is
DISMISSED.

January 4, 2013
Date Decision Mailed

Jennifer M. Carter Jones
Administrative Law Judge

JCI/emh

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) (2008). 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.