

XXXX XXXX

v.

MONTGOMERY COUNTY PUBLIC
SCHOOLS

* BEFORE WILLIAM SOMERVILLE,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH Nos.: MSDE-MONT-OT-12-34020 &
* MSDE-MONT-OT-12-34872

* * * * *

DECISION

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

STATEMENT OF THE CASE

On August 27, 2012, XXXX XXXX (parent or [Student]'s mother), on behalf of herself and her daughter, [Student] ([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 Montgomery County Public Schools (MCPS or school system) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010). Thereafter, on September 4, 2012, the school system filed a Due Process Complaint with the OAH requesting a hearing to review an evaluation of the Student under the IDEA. 20 U.S.C.A. § 1415(f)(1)(A) (2010).

Upon motion, I consolidated the cases on September 11, 2012.

On September 12, 2012, the parent filed an amended complaint.

I held a telephone prehearing conference on September 24, 2012. The parent was represented by Diana M. Savit, Esq. Jeffrey A. Krew, Esq., represented the school system. By

agreement of the parties, the hearing was scheduled for five days, starting on November 15 and ending on November 27, 2012. During the course of the hearing, by agreement of the parties, an additional nine days were added to the hearing schedule. The hearing continued from day to day on the following dates: November 15, 16, 19, 20, 27, 28, 29, December 14, 17, 18, 19, 20, 2012, January 3, and 10, 2013.

I held the final day of the hearing on January 10, 2013. The somewhat piecemeal nature of the hearing schedule was attributable to the unavailability of counsel, of witnesses, and of parties, and also based upon intervening State holidays and State Service Reduction days. The parties waived the 45-day time line.

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 have otherwise been due. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2012). Also by agreement, the parties requested an extension of time until 30 days from the date of the final day of the hearing to allow me to issue a decision. 34 C.F.R. 300.515; Md. Code Ann., Educ. § 8-413(h) (2008).¹

The parent made a motion for summary decision on the initial day of the hearing. The motion was heard and denied.

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.

¹ The resolution sessions were waived on, or about, September 6, 2012. The Code of Federal Regulations (C.F.R.) generally requires that a final decision be issued within 45 days of that date. 34 C.F.R. § 300.515(a) (2012). An Administrative Law Judge has the authority to grant specific extensions of this time period when a party requests such an extension. 34 C.F.R. § 300.515(c). In the instant cases, as explained above, and by full agreement of the parties, the decision in these two cases could not have been issued within the 45-day time frame. The 30-day decision period would end on Saturday, February 9, 2013. (OAH policy is to establish such a deadline on the next business day but I intend to issue the decision in less than 30 calendar days from the last date of the hearing.)

Procedure in this case 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.

ISSUES

The issues on the merits of the parent's case are: 1) whether the school system failed to provide a free appropriate public education (FAPE) for lack of an appropriate Individualized Education Program (IEP), or for lack of an appropriate placement in the 2010-11 school year, in the 2011-12 school year, and in the 2012-13 school year, 2) whether "[School 1]" was an appropriate unilateral placement, 3) whether the "[School 2]" would be an appropriate placement, and 4) whether the relief requested in the parent's amended complaint is appropriate.

The issue on the merits of the school system's complaint is whether a certain speech/language evaluation, dated July 17, 2012, is appropriate.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties offered a two-and-a-half inch thick binder of Joint Exhibits, containing documents tabbed 1 through 52. They were admitted into evidence by agreement. The appendix of this decision further lists and describes those exhibits.

The parent offered a number of documents labeled "[Student]-1" through "[Student]-191" which were admitted into evidence. Because the exhibits were pre-marked, offered out of sequence, and because not all of the pre-marked exhibits were offered or entered into evidence, the numbering contains gaps. The appendices of the transcripts, and the appendix of this decision, further list and describe those exhibits.

The school system offered a number of documents labeled "MCPS-1" through "MCPS-114" which were admitted into evidence. Because the exhibits were pre-marked, offered out of

sequence, and because not all of the pre-marked exhibits were offered or entered into evidence, the numbering sequence contains gaps. The appendices of the transcripts, and the appendix of this decision, further list and describe those exhibits.

The parties also offered a document in which several stipulations of fact were reduced to writing.

B. Testimony

The parent testified and presented the following witnesses:

- XXXX XXXX, MCPS Placement Office Supervisor
- XXXX XXXX, Director of [School 2]
- XXXX XXXX, Educational Advisor of [School 1]
- XXXX XXXX, Social Worker, admitted as an expert in “Fetal XXXX Spectrum Disorder” and in “Reactive Detachment Disorder”
- The student ([Student])
- XXXX XXXX, Director of [School 3], admitted as an expert in “special education with an emphasis on students with emotional disabilities”
- XXXX XXXX, Educational Consultant, admitted as an expert in “special education, generally”
- XXXX XXXX, Social Worker at the [School 4], admitted as an expert in “social work”
- XXXX XXXX, Vice President of Educational Services, [School 4]
- XXXX XXXX, Coordinator for Placement, MCPS
- XXXX XXXX, Child Adolescent Coordinator for the Montgomery County Department of Health and Human Services
- XXXX XXXX, Speech/Language Pathologist, admitted as an expert in “speech/language pathology and diagnostics”

The school system presented the following witnesses:

- XXXX XXXX, Speech/Language pathologist for the school system, admitted as an expert in “speech/language pathology”
- XXXX XXXX, School Psychologist, admitted as an expert in “school psychology”
- XXXX XXXX, Coordinator for Placement, MCPS, admitted as an expert in “Special Education with an emphasis in out-of-state placement”
- XXXX XXXX, Speech/Language Pathologist
- XXXX XXXX, Ph.D., Speech/Language Pathologist, admitted as an expert in “speech/language pathology in the educational setting and special education”
- XXXX XXXX, Vice President of Educational Services, [School 4], admitted as an expert in “Special Education with an emphasis in emotional disabilities.”

FINDINGS OF FACT

Based upon the demeanor evidence, the testimony, and the other evidence presented, I find the following facts² by a preponderance of the evidence:

[Student].

1. [Student] was born on XXXX, 1991 in XXXX, in the [Country]. At about age two, she was adopted and brought to the United States. Her eighteenth birthday was in 2009 and her twenty-first birthday was in 2012. She has many impairments; her needs are great. [Student] has been coded on her IEPs since 2009 as a student with what is currently called “XXXX.” She has superimposed mental disorders. She has been prescribed many psychotropic medicines. She has been hospitalized many times, and for extended

² A trier of fact can accept some, all, or none of the evidence offered. *Silfrit v. State*, 383 Md. 116, 135 (2004); *Edsall v. Huffaker*, 159 Md. App. 337, 341-43 (2004). Demeanor evidence, *Bragunier Masonry Contractors, Inc. v. Maryland Comm’r of Labor and Industry*, 111 Md. App. 698, 717 (1996); *N.L.R.B. v. Dinion Coil Co.*, 201 F.2d 484, 487 (2d Cir., 1952), played a role in this matter.

periods, for her mental disorders. Her Axis I and Axis II diagnoses have evolved over the years. Those have included: Bi-polar Disorder with psychotic features, Depression, Mood Disorder NOS, Post Traumatic Stress Disorder, XXXX Syndrome, mild XXXX (currently referred to as "XXXX"), Pervasive Developmental Disorder, an absence-type seizure disorder, XXXX Dependence, Borderline Personality Disorder (called "Reactive Attachment Disorder," or "RAD," for patients under age eighteen), Attention Deficit/Hyperactivity Disorder (ADHD), Obsessive Compulsive Disorder, Oppositional Defiance Disorder, and an eating disorder. Accurately reported symptoms or traits, among others, have included: XXXX thoughts, mood swings, auditory and visual hallucinations, impulsivity, emotional immaturity, inability to distinguish between fantasy and reality, anger, aggression, racing thoughts, anxiety, poor judgment, self-cutting, self-burning, drug overdosing, XXXX abuse, and tremors in her hands. She has eloped, or run away from home, several times. She has a low-average full-scale IQ of 85. Her achievement scores are in the average range. She has organizational deficits and expressive language deficits. She has difficulty understanding figurative language and social use of language. She has low self-esteem, relatively poor self-advocacy skills, and poor social skills. She has poor peer and adult relations. She has engaged in inappropriate sex or sexual contact with males and females and she has acted as a XXXX. When she attends school, or is available to the curriculum, she does relatively well. Despite missing much time from school, the school system calculates that she is two credits (more accurately, four ½ credits) shy of earning a diploma. She has no habilitation needs. Much of the time while she was enrolled and attending schools through MCPS, she was assigned a one-to-one aide. Her strengths are, or have been, playing XXXX, enjoying working with animals, and writing when the task is not assigned. She is child-like.

2. XXXX XXXX XXXX XXXX (XXXX) is a general categorization or “descriptive term” of neurological disorders or medical conditions associated with being exposed to XXXX in XXXX . The term has neurological and psychiatric implications but that categorization or term is not recognized as a diagnosis by the American Psychiatric Association in the DSM IV. Likewise, it is not recognized in an “International Classification of Diseases.” The “International Classification of Diseases,” however, includes a similar disorder called “Alcohol-related Neurodevelopment Disorder.” XXXX is not widely recognized by the medical profession.³
3. XXXX XXX XXXX (XXXX) is a neurological medical condition associated with being exposed to XXXX in XXXX while the brain is developing. It is a true DSM IV diagnosis. Such a diagnosis requires proof that the person being diagnosed was actually exposed to XXXX in XXXX. Often there are physical traits that manifest themselves in people with XXXX. XXXX is an extreme example of a neurological condition that can be said to be on the XXXXD continuum.⁴ [Student] does not have XXXX.
4. Reactive Attachment Disorder of Infancy or Early Childhood (categorized as “Borderline Personality Disorder” for patients over the age of eighteen) is a DSM IV disorder by which a child (onset begins before age five) demonstrates inappropriate social responses and interactions. The “Disinhibited Type” is manifested by indiscriminate sociability or lack of selectivity in the choice of attachment figures. It is attributed to persistent disregard of an infant’s emotional need for comfort, stimulation, and affection, persistent disregard of a child’s basic physical needs, or repeated changes of the primary caregiver,

³ The social worker who opined about the existence of the “descriptive term” XXXX was not an impressive opinion witness. See *T-up, Inc. v. Consumer Prot. Div.*, 145 Md. App. 27, 51 – 53 (2002) (similarly unimpressive opinion witness).

⁴ The social worker who testified about the nebulous term “XXXX” refused to describe XXXX as existing at a point on the extreme end of the XXXX spectrum or continuum. That refusal, however, might have been because the spectrum or continuum could have been better described, not as a one-dimensional line of traits, but as a three dimensional “S0-type” lenticular galaxy of traits, with XXXX represented as a cluster of traits in the center.

such that formation of stable interpersonal attachments are prevented. It is marked by excessive familiarity with relative strangers. The differential diagnoses include XXXX, Autistic Disorder, Pervasive Development Disorders, ADHD and Oppositional Defiant Disorder, among others. (MCPS Exhibit 92.)

Early Schooling

5. Before 1998, [Student] went to the XXXX School for kindergarten.
6. In 1998, [Student] attended MCPS for first grade. She was in general education at the [School 4] and had special education services in the form of speech/language therapy.
7. [Student] went to school at [School 4], through fifth grade, until June of 2003.
8. In the summer of 2003, [Student] attended summer school at [School 5] and did not return to MCPS in the fall. Instead, she attended [School 6] for sixth grade.
9. In 2004, [Student] attended [School 7] which later was named [School 7]. That year was her seventh-grade year. That school was a private general education day school with very small classes.
10. In 2005, [Student] attended [School 7] for eighth grade.
11. In 2006, [Student] attended [School 7] for ninth grade. In the spring of that school year, at age 15, [Student] had an episode in which she “shut down” or “melted down” and she was taken to a hospital emergency room. [Student] was expressing XXXX; she was hospitalized⁵ on a psychiatric unit for five days. She had exhibited no disruptive or oppositional behavior at school.
12. In the 2007-2008 school year, her tenth-grade year, [Student] attended [School 7] School and [Student] “shined” academically in some areas. (Tr. 1,425)

⁵ “Hospitalized” or “admitted” or a similar term, hereinafter, generally means voluntarily confined.

2008-2009 School Year

13. In the fall of 2008, [Student]'s mother enrolled her at [School 8] ([School 8]) for eleventh grade. She was placed in the general education program with various supports. There were 1,600 students in that school. Three weeks into that school year, [Student] had a psychiatric "melt down" and was admitted into the psychiatric unit of a hospital for ten days. She was discharged to her home and she returned to school on the next day. She cut classes in the afternoon and did not return to her home that night. When police found her, she was admitted to the [Hospital 1] psychiatric hospital for five or six weeks. Thereafter she was discharged to home and participated in a psychiatric treatment day program at XXXX in [State 1]. When she was discharged from that day program in early December 2008, MCPS offered her home and hospital teaching at home.
14. In February 2009, [Student] ran away from home for a week and stopped taking her psychiatric medicines. When the XXXX police found her, her mother took her to the [Hospital 3] psychiatric facility in [State 1] and she was admitted for thirty days. [Student] reported having sex with several men during the time when she had run away.
15. In March 2009, [Student] was sent to the [School 9], a residential mental health treatment center for children and adolescents, in XXXX, [State 2]. [Student] was there primarily for diagnosis, treatment, and stabilization of her mental conditions. [School 9] is a secure, mental health residential treatment center where some patients participate in a [University] program called [School 10]. Less than half of the students enrolled in the charter school received special education services at that time. [School 9] is one of several campuses where the charter school exists.
16. In April 2009, [Student] was given an IEP by the charter school; her disability was described as "XXXX." [Student] was capable of following the local school district's Code of Conduct without any modifications or behavioral intervention plan. In the

charter school, [Student]'s behavior did not interfere with her learning or the learning of others. A general education teacher implemented the IEP and [Student] had access to a teacher's aide. [Student]'s IEP goals were 1) to increase mastery of adaptive behavior skills to cope with and ameliorate stress and 2) to increase mastery of speech therapy skills including expressive language and processing skills. She received math tutoring for 60 minutes per week and speech therapy for 30 minutes per week. There were four students in [Student]'s charter school class. At the time that the IEP was formulated, [Student] was advised that in [State 2], special education rights would be transferred to her from her parents upon her eighteenth birthday, unless her parents were awarded guardianship of the person. [Student] was discharged from [School 9] facility to home in August 2009.

2009-2010 School Year

17. On August 19, 2009, MCPS formulated an IEP that coded [Student] as "XXXX" and indicated that [Student] would receive special education services outside of MCPS's general education environment 100% of the time. The IEP called for 30 sessions of speech/language therapy during the year, among many other supports and services. (Joint Exhibit 3.) She was retained in eleventh grade.
18. [Student] attended [School 8] for half-day sessions for the first six weeks of the 2009-2010 school year and then she attended the day school at [School 11] ([School 11]). The school program at [School 11] was a therapeutic public day school where students had access to counseling, therapy, treatment, and mental health supports during the school day. The day school staff was employed by MCPS. The day school was generally responsible for formulating student's IEPs which were intended to facilitate a student's access to education and progress in the curriculum. [School 11] also had a residential mental health treatment program associated with the school; some students of the day

school resided in the residential part of [School 11] after school hours. Some residents of the residential mental health treatment program did not attend the [School 11] school but attended other schools. The residential mental health treatment program staff was employed, not by the school system, but by a State agency. The residential mental health treatment program formulated individual treatment plans (ITP) for the treatment of mental disorders. As expected, IEPs and ITPs tended to overlap, sometimes, with regard to stated goals.

19. On December 4, 2009, on the advice of a counselor or therapist at [School 11], [Student] was admitted to the [Hospital 3] psychiatric unit in [State 1]; [Student] stayed there for 32 days.
20. On XXXX, 2009, [Student] turned eighteen years old.
21. On January 10, 2010, [Student] went to [School 9] in [State 2] for five months. She was there primarily for diagnosis, treatment, and stabilization of her mental conditions.

2010-2011 School Year

22. In June of 2010, [Student] returned from [School 9] to her mother's house. Within two weeks, she ran away and ingested a XXXX. [Student] was admitted into a psychiatric unit of a hospital for two weeks and was subsequently transferred to the [Hospital 1] psychiatric facility at [Hospital 4] for 21 more days.
23. In July 2010, [Student] was transferred from [Hospital 1] to a State psychiatric facility, the [School 12], near XXXX, Maryland. There, [Student] voluntarily committed herself to the custody of a State agency, the Department of Health and Mental Hygiene. She was there primarily for diagnosis, treatment, and stabilization of her mental conditions.

24. On August 16, 2010, someone at the [School 12] applied to the local school system where the [School 12] is located, [County 1], for home and hospital teaching services⁶ for [Student]. Length of confinement at that time was predicted to be 20 to 30 days. MCPS was to pay for the services offered by the local school system. After [Student] had been approved for the home and hospital services, and a tutor had been assigned, [Student] continuously refused the home and hospital services. [Student] was not medically or emotionally ready to accept those services. [Student], as an adult patient, also refused to allow staff at the [School 12] to talk to her mother.
25. On or about August 23, 2010, MCPS held an IEP team meeting to revise [Student]’s IEP. [Student] was coded as “XXXX.” The IEP listed Borderline Personality Disorder, RAD, ADHD, and Mood Disorder as some of the underlying reasons for the disability. The IEP noted that [Student] had difficulty completing work when she was stressed but that her reading comprehension, language skills, and writing were “on grade level.” The IEP noted that [Student] had problems with 1) task completion, 2) adult and peer relations, and 3) organizational skills. The IEP called for access to assistive technology devices, various “presentation” and “response” accommodations, “timing” accommodations, instructional supports such as speaking slowly or pausing so that [Student] might process what is being said, instructional supports such as having [Student] paraphrase information back to the teacher, and use of multi-sensory teaching strategies. The IEP contained a transition plan in which post-secondary school goals included attending college and pursuing a career in biology, art, or paleontology. [Student] was to take college entrance tests and participate in practice job interviews. Goals, with underlying objectives, were

⁶ Generally, home and hospital services are tutoring services provided to a student who is too ill to attend school.

that [Student] would: follow a system for remaining organized, improve relationships with adults, demonstrate understanding of.

26. Methods to reduce poor choices, manage anxiety and frustration, improve school-related self-advocacy, improve interpersonal skills and relationships with peers in school, and solve real-world math problems. The IEP did not call for a functional behavioral assessment. The IEP called for small classes with specialized instruction and mental health support during the school day. Placement was “private separate day school” and such a school, [School 3], was ready to take [Student] when the school year was to begin. [School 3] is a therapeutic private day school where students have access to counseling, therapy, treatment, and mental health supports during the school day. [Student] and her mother were advised, at the time when the IEP was composed, that special education rights in Maryland do not transfer to the student upon reaching the age of majority, except under limited circumstances. (Joint Exhibit 6.)
27. Soon thereafter, MCPS sent referral information for [Student] to several private separate day schools including the XXXX School, the XXXX School, the XXXX Program at XXXX, [School 2], and [School 3].
28. On August 26, 2010, MCPS wrote to [Student]’s mother that MCPS would be willing to pay for the school component of a residential mental health treatment center, if [Student] were to be admitted to one.
29. Eight months later, in April 2011, [Student] was still confined in the [School 12]. During that month, [Student] began accepting some home and hospital services from the [County 1] Public Schools.
30. On April 13, 2011, the parties attended an IEP meeting for [Student]. They discussed the home and hospital services that [Student] would accept and noted that the [School 12] could not force [Student] to accept home and hospital services. They formulated a home

and hospital IEP with the intent to have [Student] involved in “getting back into the swing of school.” The IEP avoided math tutoring because the stress of that subject was one “trigger.” (MCPS Exhibit 25.)

31. On June 7, 2011, MCPS held another IEP meeting at which the team finalized another home and hospital IEP. The placement would be a private separate day school but, because [Student] was a student who by virtue of a physical or emotional condition could not participate in her school of enrollment, services would continue to be provided by a local school system’s home and hospital program. (MCPS Exhibit 28.)
32. On June 22, 2011, [Student]’s mother notified MCPS that she was unilaterally placing [Student] in a private residential program in [State 3].

2011-2012 School Year

33. On or about July 1, 2011, the 2010-2011 regular school year ended. [Student] was still confined in the [School 12].
34. On July 1, 2011, [Student] was deemed to be eligible to receive course credits from the [County 1] home and hospital teaching program, in English, Math, World Cultures, and Environmental Science.
35. On or about July 5, 2011, [Student] was discharged from the [School 12] to home.
36. On July 6, 2011, [Student]’s mother flew with [Student] to [State 3]. They traveled to “[School 1].” That organization is a residential program. It was licensed, or provisionally licensed,⁷ by [State 3] as a “private alternative adolescent residential or outdoor program.” [Student]’s mother sent [Student] there because she had investigated several alternatives and the [School 1] was the only one that would take young adults. It was a place that provided “respite care for children and adolescents with fetal XXXX

⁷ An entity called “[School 1]” was issued Provisional License Number 1 by a State Board of Private Alternative Adolescent Resident or Outdoor Programs on July 2, 2009.

syndrome and attachment disorders.” [Student] was there primarily for diagnosis, treatment, and stabilization of her mental and social/emotional conditions. Patients or residents stay at properties in the XXXX, [State 3] area. There are three separate [School 1]: one for high-school-aged boys, one for high-school-aged girls, and one for younger children. Patients’ schedules are highly structured with chores, school work, and/or therapy. Some patients are working towards a General Education Development, or GED, certificate. Some of the patients go to a school associated with the [School 1]; the school portion of the program was in the town of XXXXX, or in the XXXXX School building. The school was similar to home-schooling. The school did not follow the local school system’s curriculum; some high-school-aged patients followed a XXXX University secondary school correspondence curriculum, some followed a XXXX Independent Study correspondence curriculum. Neither the [School 1] nor the XXXXX School was certified as a school by the State of [State 3]; it did not have enough certified teachers to qualify. It had no special education teachers. There were about a dozen high-school-aged students in the school program; four came to the [School 1] with IEPs. The [School 1] did not implement IEPs. The [School 1] composed service plans for the education portion of its program. [Student]’s service plan had one goal: “[Student] will use technology to organize and complete writing assignments.” (Joint Exhibit 31.)

37. On August 9, 2011, MCPS composed an IEP for [Student] for the 2011-2012 school year. [Student] was coded as “XXXX.” The IEP listed Borderline Personality Disorder, RAD, ADHD, and Mood Disorder as some of the underlying reasons for the disability. The IEP noted that [Student] had difficulty completing work when she was stressed but that her reading comprehension, language skills, and writing were “on grade level.” The IEP noted that [Student] had problems with 1) task completion, 2) adult and peer relations,

anger management, and social skills and 3) organizational skills and executive functioning. The IEP called for access to assistive technology devices, various instructional and testing accommodations, timing and scheduling accommodations, setting accommodations such as reducing distractions, instructional supports such as speaking slowly or pausing so that K might process what is being said, instructional supports such as having [Student] paraphrase information back to the teacher, and use of multi-sensory teaching strategies. The IEP called for program modifications such as reducing length of assignments and breaking down multi-step projects into manageable chunks. The IEP called for social/behavioral supports such as adult support (i. e. a one-to-one aide), anger management training, social skills training, breaks when [Student] was feeling upset, and stress management techniques, daily. The IEP contained a transition plan in which post-secondary school goals were to explore post-secondary school options and research options for entry-level jobs in paleontology. Goals, with underlying objectives, were that [Student] would: follow a system for remaining organized, improve relationships with adults, demonstrate understanding of methods to manage anxiety and frustration, improve school-related self-advocacy skills, improve interpersonal skills and relationships with adults, follow school routines, accept responsibility for her behaviors, improve relationships with peers, and solve real-world math problems involving geometric concepts. The IEP called for special education for 30 hours per week and counseling services by a social worker for one hour per week. The IEP called for small classes with specialized instruction and mental health support during the school day. Placement was private separate day school with a one-to-one aide, and such a school, the [School 3], was ready to provide the education and services. (Joint Exhibit 27.)

38. When [Student] began taking course work at the XXXXX School while residing at the [School 1], she took English 12, Earth Science, and a child care course. She completed the no-credit child care course but did not complete the English course or the science course before she left the [School 1].
39. While at the [School 1], [Student] improved her attitude towards school work and, over time, she increased the time that she devoted to academic tasks. She became more confident in her academic ability and she was willing to work and to ask for more academic help.
40. In mid-February 2012, [Student] was caught having inappropriate sexual contact with a 14-year old girl at the [School 1]. [Student] was asked to leave.
41. Upon learning of the situation, [Student]'s mother told staff at the [School 1] that she could not pick up [Student].
42. [Student] was temporarily housed in another [School 1] facility for three weeks after the incident and then housed in her original resident facility for an additional three weeks.
43. [Student]'s mother attempted to have an Adult Protective Services unit of [State 3] government take custody of [Student]. That agency declined to take custody of [Student].
44. On March 28, 2012, MCPS notified [Student] and her mother of an IEP team meeting for a periodic review to be held on April 17, 2012.
45. On April 1, 2012, staff at the [School 1] e-mailed [Student]'s mother and wrote that the [School 1] was forced to put [Student] on an airplane and send her to Maryland on Thursday, April 5, 2011. (MCPS Exhibit 95.)
46. On April 5, 2012, at about 10:46 p.m. when [Student]'s airplane landed in Maryland, [Student]'s mother picked up [Student] at the baggage claim area of the airport and drove her straight to Montgomery County's Crisis Center, a temporary shelter program of the

Montgomery County Department of Health and Human Services. [Student]'s mother left her there.⁸

47. Several hours later, [Student] was found by police flagging down cars in traffic. She was returned to the Crisis Center at 3:45 a.m. The Crisis Center provided a one-to-one aide to watch [Student].
48. The Crisis Center is only open at night.
49. On the next morning, someone at the Crisis Center sent [Student] to her mother's house in a taxi. [Student]'s mother said that [Student] could not come in the house. [Student] went to a fast food restaurant and then to a soup kitchen. [Student]'s mother allowed [Student] to sleep in her house that night.
50. On the next morning, Saturday, April 7, 2012, [Student]'s mother drove [Student] back to the Crisis Center.
51. On April 8, 2012, [Student] reported to authorities that she had been XXXX at a Metro station and [Student] was hospitalized in the psychiatric ward of [Hospital 5] for nine days.
52. On April 16, 2012, various staff members of various government agencies, and others, met at the hospital to attempt to resolve [Student]'s treatment needs. All agreed that [Student] would need some form of residential mental health treatment services to help ameliorate [Student]'s mental health needs and to help keep her safe.
53. On April 17, 2012, [Student] was discharged from the hospital to the Crisis Center.
54. On that day, MCPS held a periodic IEP team meeting for [Student]. The team determined that [Student] could read and comprehend on grade level, could use language

⁸ As of that moment, [Student] had not been deemed incompetent, [Student] was living outside of the parent's home, and [Student] was not in the care or custody of another public agency. (MCPS Exhibit 99.) See Md. Code Ann., Ed. § 8-412.1. Thus, [Student]'s parent lost standing to assert IDEA rights alleged to have been violated after that point. In an abundance of caution, I will rule on the merits of the IDEA violations alleged after that point anyway.

adequately, could write and spell on grade level, had difficulty retaining concepts and completing work when stressed, had difficulty with organization and executive functioning, had difficulty with peer and adult relations, had difficulty with anger issues, and has difficulty with resisting engaging in maladaptive behaviors demonstrated by those around her. The team continued her coding as “XXXX.” [Student] would be provided assistive technology devices, instructional and testing accommodations such as a graphic organizer, among others, extended time and frequent breaks, supplementary aids and program modifications such as pauses when speaking so that [Student] would process what was being said, extended school year services based upon “special circumstances,” and transition services. The goals on [Student]’s IEP were: accurately solve real-world geometry problems 80% of the time, improve relationships with peers 4 out of 5 trials, improve school related self-advocacy skills 80% of the time, manage feelings related to anxiety and frustration 3 out of 5 times, develop interpersonal skills with adults 3 out of 5 opportunities, demonstrate understanding of methods to reduce poor choices 80% of the time, follow school routines 80% of the time, follow a system for remaining organized 80% of the time, and accept responsibility for her behavior 8 out of 10 times. [Student] would be in a small special education class and would receive counseling from a school psychologist one hour per week. The IEP noted that [Student] needed the small, structured special education class and [Student] needed access to mental health providers because of her social-emotional needs. The least restrictive learning environment or placement would be in a private separate day school. [School 3] continued to be the private separate day school listed as the educational location. (Joint Exhibit 35.)

55. [Student] never attended [School 3].

56. On April 30, 2012, [Student] and various Crisis Center staff members, and others, met to decide whether [Student] could be admitted or accepted into a certain residential program so that she would no longer reside at the Crisis Center. After extended discussion between [Student] and others, [Student] decided to try the [Program] residential rehabilitation program, also referred to as “the group home.” It was a residential rehabilitation apartment building in XXXX where young adults with various treatment needs could live in the community. The facility had 12 beds, had a curfew, had counselors, and offered each resident an individual rehabilitation plan (IRP). [Student] began residing in the group home on that day.⁹ [Student] was there primarily for diagnosis, treatment, or stabilization of her mental conditions. [Student] was also there for a place to live. [Student] was supposed to attend school while living at the group home. Although [Student]’s “home school” changed from [School 8] to [School 13], she was to attend [School 3].

57. On May 1, 2012, MCPS sent a letter to [Student] at her fixed, regular residence at the group home.¹⁰ The letter invited her to an IEP team meeting for a periodic review and to consider her transition needs.

58. On or about May 7, 2012, [Student] was admitted to a local hospital. [Student] had been drinking with some men and was assaulted.

59. On May 9, 2012, MCPS held an IEP team meeting. [Student] was not present; [Student]’s mother noted that [Student] was in the hospital. The team modified the IEP to some extent. The counseling services on the IEP were modified from that of a school

⁹ Although the term “group home” is not technically correct, most witnesses used that term and it is a simple way to refer to the residential rehabilitation program.

¹⁰ As of the time that [Student] began residing at the group home, [Student] had not been deemed incompetent, [Student] was living outside of the parent’s home, [Student] was not in the care or custody of another public agency, and [Student] had a fixed, regular address and an adequate home. (MCPS Exhibit 99.) See 42 U.S.C.A. §11434a(2) and (6); 20 U.S.C.A. §1401 (11); Md. Code Ann., Ed. § 8-412.1. Thus, [Student]’s parent lost standing to assert IDEA rights alleged to have been violated after that time. In an abundance of caution, I will rule on the merits of the IDEA violations alleged after that point anyway.

psychologist to that of a school social worker. Extended School Year services would be delivered in small classes with specialized supports and [Student] would have access to mental health providers throughout the school day. The private separate day school listed to provide services continued to be the [School 3]. During the meeting, [Student]'s mother suggested that [Student] had Fetal XXXX Syndrome and that she could provide documentation of that neurological condition. [Student]'s mother wanted a residential educational placement. The team agreed that [Student] needed treatment for her mental disorders but decided that [Student] did not need a residential educational placement for her educational needs. The team also decided that it needed additional information through an education assessment, a speech/language assessment, and a psychological assessment. (Joint Exhibit 37.)

60. On or about May 11, 2012, [Student] was discharged from the hospital back to the group home.
61. On May 13, 2012, [Student] left the group home and did not return at night. She allowed herself to be XXXX.
62. On May 15, 2012, police found [Student] and returned her to the group home. The group home refused to take her back. [Student] was then admitted to XXXX Hospital psychiatric unit for mental health treatment.
63. After May 15, 2012, and before May 20, 2012, MCPS learned of [Student]'s situation and contacted Montgomery County Department of Health and Human Services and Maryland State Department of Education in order to obtain extraordinary help for [Student].
64. On or about May 20, 2012, at a meeting at XXXX Hospital in which hospital staff and staff of various government agencies participated, [Student] was persuaded to try residing at [School 4] in [County 2]. [Student]'s mother was also at that meeting.

65. On May 25, 2012, MCPS sent a referral packet, including the latest IEP, to [School 14] in [County 2] and asked whether that school could be an appropriate match for [Student]. [School 14] is small, self-contained, private separate day school certified by the Maryland State Department of Education to address students' emotional disabilities and other disabilities. The school is physically located on the campus of the [School 4]. The school is a therapeutic private day school where students have access to counseling, therapy, treatment, and mental health supports during the school day. It offers both special education and general education for grades 8 through 12. It has about 85 students. Students are from Maryland and D.C. Some students are referred by local school systems and some are, or have been, private pay students. The school has an Occupation Preparation program associated with it. [School 4] also has a residential program that is a secure, residential mental health treatment program licensed by the Maryland Department of Health and Mental Hygiene. That residential program has a unit for young adults. Some students in the school do not live in the residential mental health treatment facility at [School 4]. There are parallel admission processes for the school and for the residential program but if a patient is in the residential treatment program, she is automatically enrolled in the day school too. The two programs are separate and have separate staffs. There is some coordination between the two for those students who live in the residential mental health treatment center; the school staff lets the mental health treatment staff know what is happening with a student during the school day, as if the treatment staff were a parent. With regard to students who have ITPs, often their ITPs and IEPs, have some overlapping goals.¹¹

¹¹ Some students do not have IEPs.

66. On May 30, 2012, [School 14] replied to MCPS that the school would be able to implement [Student]'s IEP and that it would be a good fit for [Student]. (MCPS Exhibit 94.)
67. On May 31, 2012, MCPS emailed the director of Education at the [School 4] to let him know that MCPS would pay for the private separate day school placement at the [School 14] and that a State agency would pay for the residential mental health treatment facility at [School 4], thus allowing [Student] to live at [School 4].
68. On June 1, 2012, the XXXX Hospital discharged [Student] to [School 4]. A person at the Montgomery County Department of Health and Human Services telephoned [Student]'s mother to ask that she transport [Student] to [School 4] and [Student]'s mother said that she was unable to transport [Student] because of work obligations. [Student] was transported by ambulance to the [School 4]. [Student] signed herself in to [School 4]. [Student] was there primarily for diagnosis, treatment, or stabilization of her mental conditions. [Student] was also there for a place to live.
69. At the [School 4], [Student] refused to authorize staff to contact her mother for some weeks.
70. As of June 4, 2012, [Student] was enrolled in, and participating in, academic classes at [School 14] pursuant to [Student]'s IEP. She had a one-to-one aide. She also began the admission assessment and orientation process.
71. On June 16, 2012, staff at [School 4] did a psychosocial assessment on [Student]. ([Student] Exhibit 167.)
72. On June 18, 2012, staff at [School 4] did a psychiatric evaluation on [Student]. The evaluation found that [Student]'s admission to the secure, residential mental health treatment facility at [School 4] was warranted for [Student]'s safety and her mood lability. ([Student] Exhibit 167.)

73. During the school day at [School 14], [Student] participated in hour-long group therapy sessions, about once per week, to work on IEP goals. [Student] also participated in pet therapy about once per month. These services are separate from, and in addition to, therapy services she received in the residential mental health treatment milieu. ([Student] Exhibits 171 and 167.)
74. On July 13, 2012, MCPS completed speech/language testing of [Student]. The testing was done at [School 4] by a speech/language pathologist employed by MCPS. (The report was signed and issued four days later.) That assessment consisted of administering to [Student]: the Peabody Picture Vocabulary Test – 4th Ed. ([Student] scored 103), Expressive Vocabulary Test - 2 ([Student] scored 73), the Comprehensive Assessment of Spoken Language ([Student] scored 98 on the synonyms test, 96 on the “grammaticality judgment” test, 56 on the “nonliteral language” test, 80 on the “meaning from context” test, 79 on the “pragmatic judgment” test, and 80 on the CORE COMPOSITE), and non-standardized testing instruments including the Prutting & Kirchner Pragmatic Protocol (revised and up-dated). The testing session took about three hours. In addition, language samples were taken and analyzed. The tester reviewed background information on [Student]. The tester issued the assessment report a few days after the data was collected. [Student] was in the average range for her age with regard to single-word receptive vocabulary, [Student] was below average with regard to single-word expressive vocabulary suggesting word retrieval difficulties, and [Student] was slightly below average in her spoken language skills with clear weakness in understanding figurative language and borderline weakness in inferring meaning from context and in using language for social purposes. [Student] showed some disorganized conversation and some weakness in cohesion and sequencing. [Student] also showed some weakness in comparing and contrasting. The speech/language pathologist recommended

speech/language support. The speech/language pathologist recommended several goals to be included in [Student]'s IEP, including a goal to increase her vocabulary and one in which [Student] would use six-word, grammatically-correct sentences to explain an idea. (MCPS Exhibit 62.)

75. On July 17 and 20, 2012, an MCPS school psychologist did an evaluation on [Student] to determine whether the XXXX was the correct primary disability code in [Student]'s IEP or whether it should be modified to "Other Health Impaired" because of neurological conditions associated with XXXXD or XXXX. That evaluation accurately reflected that [Student]'s social/emotional difficulties have impacted her school performance.

76. On August 9 and 29, 2012, MCPS held IEP meetings. Although some portions of the IEP were finalized, the IEP meeting was continued until September 19, 2012. (MCPS Exhibit 77.)

77. On August 12, 2012, [Student]'s mother requested an independent educational evaluation regarding the speech/language assessment. She agreed, however, with conclusions reflected in the speech/language assessment done by MCPS that [Student] had speech/language weaknesses that required speech/language services. (Joint Exhibit 44.)

2012-2013 School Year

78. On August 27, 2012, [Student]'s mother filed a request for hearing, asking for compensatory education for [Student].

79. On August 29, 2012, a therapist at [School 4] accurately noted in [Student]'s chart or progress note that [Student] had a one-to-one aide, that [Student] tended to remain in classes frequently, and that [Student] also has been participating in school field trips and has attended extracurricular study. (MCPS Exhibit 69.)

80. On September 4, 2012, MCPS filed a request for hearing to demonstrate that its speech/language evaluation of [Student], dated July 17, 2012, was appropriate.

81. On September 12, 2012, [Student]’s mother filed, with the consent of MCPS, an amended request for hearing, asking for: 1) compensatory education, 2) a ruling that the IEPs of August 23, 2010, August 9, 2011, April 17, 2012 and May 9, 2012 were inappropriate, 3) reimbursement for costs [Student]’s mother expended at [School 1] in [State 3], 4) a ruling that [Student] must have a residential educational placement as long as [Student] remains eligible for special education, 5) rule that [Student]’s current placement is a residential educational placement, and 6) order that MCPS maintain that placement for [Student] as long as special education proceedings are pending in this matter. (MCPS Exhibit 75.)
82. At no time did [Student] file a request for hearing to challenge a determination or action of MCPS.
83. On September 19, 2012, the IEP team met again. The team completed the IEP for [Student] that was a “work in progress” on August 12, and 29, 2012. In the IEP, [Student] would continue to be coded as XXXX and many of the previous terms and goals would remain. The recommended speech/language goals were added. [Student] would receive classroom instruction in special education classes 100% of the time, she would receive counseling at school from a social worker eight times per month in thirty minute sessions, she would continue to be provided a one-to-one aide, and she would receive speech/language therapy for one hour per week. She would be provided social behavioral supports at school such as anger management, stress management, and social skills training. Included was a transition plan which contemplated that [Student] would be awarded a diploma by June of 2013. The placement was a private separate day school and the school where the education and services would occur was the [School 14].

DISCUSSION

Burdens of Proof

In the parent's case on the merits, the burdens of production and persuasion are on the parent. In the school system's case on the merits, the burdens are on it. *Schaffer v. Weast*, 546 U.S. 49 (2005). The standard of proof is "by a preponderance of the evidence." Md. Code Ann., State Gov't § 10-217 (2009).

Special Education Law

The identification, evaluation, and placement of students in special education are governed by the IDEA, state statutes, and state and federal regulations. 20 U.S.C. §§ 1400-1482 (2012); 34 C.F.R. Part 300 (2012); Md. Code Ann., Educ. §§ 8-401 through 8-417 (2008 & Supp. 2012) and COMAR 13A.05.01. The IDEA requires "that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C.A. § 1400(d)(1)(A) (2010); 20 U.S.C.A. § 1412; *see also* Md. Code Ann., Educ. § 8-403 (2008).

Title 20, Section 1401(9) of the United States Code defines FAPE:

(9) Free appropriate public education -- The term "free appropriate public education" means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

Similarly, 34 C.F.R. § 300.17 defines FAPE:

Free appropriate public education or FAPE means special education and related services that —

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit a child to benefit educationally from that instruction. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

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

Rowley, 458 U.S. at 200, 201.

A student is not 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.*, 700 F.2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. 176. The *Rowley* Court further stated that with regard to the IEP, the issue is whether the IEP is “reasonably calculated to enable the child to” benefit educationally. *Id.* at 203-04. The issue is not whether the IEP will enable the student to maximize his or her potential.

The IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200,

1207 (4th Cir. 1990) (citing *Rowely*, 458 U.S. at 201). It does not establish a “requirement to guarantee any particular outcome for the child.” *King v. Bd. of Educ.*, 999 F. Supp. 750, 767 (D. Md. 1998).

To the maximum extent possible, the IDEA seeks to have children placed in regular public school environments, but in any case, to have them placed in the “least restrictive environment” (LRE) that is consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5).

The IDEA provides procedural safeguards. With regard to claims of procedural violations under the statutory scheme, one statute, 20 U.S.C.A § 1415(f)(E)(ii), provides:

(ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

- (I) impeded the child’s right to a free appropriate public education;
- (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or
- (III) caused a deprivation of educational benefits.

Arguments of the Parties

1) FAPE case

The parent argues that the IEPs developed for the three challenged school years failed to provide a FAPE mainly because they did not provide services beyond the hours of the traditional school day, in a residential educational setting. The parent argues that the IEPs for the 2010 – 2011 school year and the 2011 – 2012 school year lacked the goals and objectives and the supportive services necessary to allow [Student], a student with Reactive Attachment Disorder, to make educational progress. The parent argues, additionally, that the IEP for the 2011-12 school year did not use present levels of academic achievement and performance and, therefore, did not change as [Student]’s needs changed. The parent argues that the current 2012 – 2013 IEP failed to provide FAPE because it failed to address RAD and XXXXD. The parent argues that

the IEPs for the school years in issue were not reasonably calculated to provide meaningful educational benefit.

The parent also argues that the placements in a separate private day school, with the service school being [School 3] and then [School 14], were inappropriate and would not allow [Student] to benefit educationally because those service locations did not provide the distraction-free environment that [Student] needed in order to gain educational benefit. The parent provides a laundry list of reasons why she contends that [School 14] was an inappropriate service location for [Student]. (See parent's closing argument memorandum, at 4.)

The parent argues that [School 1] program was an appropriate unilateral placement for reimbursement purposes. Regarding the relief requested that [Student]'s service school be modified, the parent argues that [School 2]¹² in [County 3], Maryland, could offer an appropriate educational location because staff at that school has some training in RAD.

The parent argues that the various forms of relief requested in the complaint, including reimbursement for the cost of [School 1], an award of compensatory education, and an order recognizing the need for residential educational placement,¹³ should be granted.

MCPS argues that [Student] is not entitled to compensatory education for the year she spent at [School 12] because her rights under the IDEA were not violated. MCPS argues that the parent is not entitled to reimbursement for the unilateral placement at [School 1] because MCPS did not deny a FAPE during that year and the placement there was a mental health treatment placement and not an appropriate educational placement. MCPS argues that [Student] has benefitted by her placement at [School 14]. MCPS argues that at no time did [Student] require a residential educational placement in order to gain educational benefit and that [Student]'s

¹² There are two "[School 2]" noted in the record. One was associated with the [School 12] in [County 1] and is not a requested service location. The other one, in [County 3], is a service location requested by the parent.

¹³ The parent argues that [Student]'s educational needs and mental health disorders are "intertwined" such that a residential mental health treatment facility could qualify as an educational placement or as an educational related

medical or psychiatric needs are separate from those educational needs that are required to be addressed in an IEP so that [Student] can benefit educationally. MCPS argues that [Student] has no educational needs that require programming beyond the regular school day and that there was no deprivation of FAPE. MCPS argues that not only are [Student]'s educational needs separable from her mental health needs but she was authorized to reside at the mental health residential treatment facility at [School 4], by statute, because she would have otherwise been homeless.

MCPS essentially argues that it, along with several other county and State agencies, went beyond the call of statutory duty under the IDEA and jumped through various bureaucratic hoops to find this young adult a mental health residential treatment facility in which she could voluntarily reside, while she would still be able to attend a private separate day school, and that the parent now wants the young adult to reside in a different educational location and wants the school system to call the residential portion of the young adult's school-and-residence arrangement an educational placement.

2) Speech/Language Assessment Case

MCPS argues that its speech/language assessment, dated July 17, 2012, met all legal requirements and that it provided valuable information to [Student]'s IEP team. It argues that it did not need to pay for an independent assessment as requested by the parent.

The parent argues that the speech/language assessment did not meet the legal standards in order to be deemed "appropriate," especially with regard to the improper use of the Prutting & Kirschner protocol checklist, and that an award of the cost for an independent educational evaluation should be granted to the parent.

Analysis

1) Compensatory Education

The parent argues that [Student] should receive compensatory education for the months

[Student] spent at [School 12] in school year 2010-2011 during which she was not educated and not receiving FAPE. “Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student.” *G. v. Fort Bragg Indep. Sch.*, 343 F.3d 295, 309 (4th Cir. 2003). Thus, if I conclude that [Student] was deprived of a FAPE by MCPS during her stay at [School 12], I can, in my exercise of sound discretion, order that [Student] be awarded prospective relief. *But see French v. N.Y. State Dept. of Ed.*, 476 Fed. Appx. 468, 471-72 (2011) (rule limiting such relief for persons over 21 years old to instances of “gross procedural violation” resulting in complete denial of FAPE.)

In the instant case, [Student] refused education and related services at [School 12]. She did so as an adult. She did so from August of 2010 until April of 2011. (Findings of Fact 23, 24, 28, and 29.) No matter which school system was ultimately responsible for providing services to [Student] during those months, [Student] did not accept those services. [Student] was not medically or emotionally ready to accept those services.¹⁴ (Finding of Fact 24.) During this period, MCPS had on hand an impressive IEP for [Student] that, had she been healthy enough to access it, would have allowed [Student] to gain educational benefit. (Finding of Fact 25.) That IEP was reasonably calculated to provide FAPE, or some educational benefit, to [Student]. *Rowley*, 458 U.S. at 204; *Schaffer v. Weast*, 554 F. 3d 470, 480 (2009). Under such circumstances, I cannot conclude that MCPS failed to provide a FAPE to [Student] during the period when [Student] chose to be absent and not available for the scheduled instructional service. *See* COMAR 13A.03.05.03D(1) (home and hospital service regulations; student’s absence).

¹⁴ Like a patient suffering with a coma, by analogy, [Student] could not access the services that were continuously offered. Any period of educational languishment was due to [Student]’s medical problems and [Student]’s recalcitrance, and not due to lack of effort on the part of a school system to provide FAPE. To the extent that [Student]’s mother argues that she could have convinced [Student] to begin accepting services if she had been

After mid-April 2011, [Student] began accepting home and hospital services and did relatively well, academically. From April until July 2011, [Student] earned high school credits in English, math, science, and World Cultures. (Finding of Fact 33 and MCPS Exhibit 35.) Educational benefit has been demonstrated with regard to academics and progress on social/emotional academic goals. (Findings of Fact 37 and 38.) *See Jaccari v. Bd. of Ed.*, 690 F. Supp. 2d. 687, 705 (N. D. Ill., 2010) (mere positive behavioral steps can manifest educational benefit) and Tr. at 3,412 (better attitude and willingness to work show educational benefit for [Student]). *See also K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d 795, 807(8th Cir. 2011) (case in which “the record indicates that a student’s behavioral problems, if unattended, might significantly curtail [her] ability to learn, the fact that [she] is learning is significant evidence that [those] behavioral problems have, at least, in part, been attended to”). Clearly, [Student] gained educational benefit during the 2010-2011 school year, despite having been confined in a mental health treatment facility, and despite having been unavailable to access even the home and hospital services for many months of that school year. Not having concluded that FAPE was denied by MCPS during the 2010-2011 school year, I decline to order MCPS to provide compensatory education. *G. v. Fort Bragg Indep. Sch.*, 343 F.3d 295, 309 (4th Cir. 2003).

2) Reimbursement for [School 1]

The parent argues that she should be reimbursed for the cost of [School 1] program where [Student] was unilaterally placed in the 2011-2012 school year. The cost of a unilateral placement by parents is ordinarily not borne by the public school system. However, under some circumstances, parents may be entitled to reimbursement.

“In a case where a court determines that a private placement desired by the parents was proper under the Act and that an IEP calling for placement in a public school was inappropriate, it seems clear, without cavil, that ‘appropriate’ relief would include a prospective injunction directing the school officials to develop and implement at public expense an IEP placing the child in a private school.”

afforded an opportunity, that argument is not persuasive. Finding of Fact 24.)

Burlington Sch. Comm. v. Dept. of Educ., 471 U.S. 359, 369 (1985). The *Burlington* Court also noted:

[W]e are confident that by empowering the court to grant “appropriate” relief Congress meant to include retroactive reimbursement to parents as an available remedy in a proper case.

Id. at 370. See also *Gadsby by Gadsby v. Grasmick*, 109 F.3d 940, 951 (4th Cir. 1997).

In *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) the Court stated:

[P]ublic educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State’s choice. This is IDEA’s mandate, and school officials who conform to it need not worry about reimbursement claims.

510 U.S. at 15. Moreover, the following provision is contained in the IDEA at 20 U.S.C.A. § 1412(a)(1)(c)(ii):

(ii) Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

Discussing reimbursement of private school tuition under the IDEA, the federal appeals court in *Carter v. Florence County Sch. Dist.*, 950 F.2d 156, 163 (4th Cir. 1991), *aff’d*, 510 U.S. 7 (1993) (citing *Rowley*, 458 U.S. at 207), wrote, “when a public school system has defaulted on its obligations under the [IDEA], a private school placement is ‘proper under the Act’ if the education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” The *Carter* court further wrote:

In sum, we do not believe that the Act as written forbids reimbursement when parents place their child in a private school that has not been approved by the state, and we join those courts that have so held. As interpreted by *Burlington*, the Act imposes only two prerequisites to reimbursement: that the program proposed by the

state failed to provide the child a free appropriate public education, and that the private school in which the child is enrolled succeeded in providing an appropriate education, i.e., an education that is reasonably calculated to enable the child to receive educational benefits.

Carter, 950 F.2d 156, 164.

In the instant case, despite many drawbacks of the [School 1] program, the parent demonstrated that the private alternative adolescent residential or outdoor program – the [School 1] – and the associated XXXXX School into which the parent unilaterally placed [Student], provided “some educational benefit.” See *Taylor v. Sandusky*, 43 IDELR 4 (D. Md. 2005) (“some educational benefit” test also applies to unilateral placement); but see *Indianapolis Public Schools v. M.B.*, 771 F. Supp. 2d. 928, 930 (S. D. Ind. 2011) (in which the court quoted the Sixth Circuit Court of Appeals from *Berger v. Medina City School Dist*, 348 F. 3d 513, 523 (2003), writing “[A] unilateral private placement cannot be regarded as ‘proper under the [IDEA]’ when it does not, at a minimum, provide some element of special education services in which the public school placement was deficient”). Educational benefit at [School 1] has been demonstrated with regard to transition services, academics, and progress on social/emotional academic goals. (Findings of Fact 37 and 38.) See *Jaccari v. Bd. of Ed.*, 690 F. Supp. 2d. 687, 705 (N. D. Ill., 2010) (mere positive behavioral steps can manifest educational benefit) and Tr. at 3,412.

The parent did not show, however, that the school system failed to provide, at that time, a program that was reasonably calculated to provide a free appropriate public education to [Student]. *Carter*, 950 F.2d 156, 164. The IEP in effect during the 2011-12 school year when [Student] was at [School 1] was impressive. (Finding of Fact 36.) It included mental health supports and accommodations and it was to be implemented at a private separate day school, [School 3], which was well-suited to allow [Student] to benefit educationally. Based upon the

factual testimony, opinion testimony,¹⁵ and the other evidence offered, I have concluded that the IEP and proposed placement in a separate private day school, to have been implemented at the [School 3] during the 2011-2012 school year, would have provided [Student] with educational benefit and FAPE. For instance, the opinion testimony of the Director of the [School 3], admitted as an expert in “special education with an emphasis on students with emotional disabilities,” was compelling. (Tr. 532 – 536) She testified that not only would [Student] progress at [School 3], but that she would have most likely graduated with a diploma. (Tr. 575 – 576.) The separate private day school was the least restrictive environment that would allow [Student] to gain educational benefit. Not having satisfied the primary requirement, the Parents have not shown entitlement to tuition reimbursement.

3) Residential Educational Placement

The parent asks that I find, declare, and rule that [Student] needs a residential educational placement in order to gain educational benefit. She also asks that I rule that [Student]’s placement in a private separate day school, at [School 14], under circumstances when [Student] simultaneously resides at [School 4]’s residential mental health treatment facility, is actually a residential educational placement.

MCPS asks that I deny such relief because [Student] did not need a residential educational placement in order to gain educational benefit and [Student]’s medical, social, or emotional disabilities are separable from the learning process in [Student]’s case. MCPS distinguishes between a proper residential educational placement and a placement at a separate private day school when a student might simultaneously reside in a residential mental health treatment facility, for treatment of medical conditions, after school hours.

¹⁵ For the most part, MCPS’s expert witnesses offered more credible opinions than those witnesses (XXXX, XXXX, XXXX, and XXXX) called to testify by [Student]’s mother. That conclusion is based upon, among other things, knowledge, skill, experience, training, education, and factual support that those witnesses offered. *See Blackwell v. Wyeth*, 408 Md. 575, 578, n. 4, (2009) (quoting Md. Rule 5-702).

The law distinguishes between residential educational placements (or related services for educational purposes) and residential medical treatment facilities (or services for medical treatment purposes.) *See* 34 CFR 300.104 (residential educational placement to provide special education and related educational services.) The IDEA does not require school systems to provide purely medical services as a “related service.” 20 U.S.C. A. §1401(a)(26) (“related services” defined). *See also* 20 U.S.C. A. §1400(c)(1), (6), (7) and (d) (purpose of the IDEA is education, not medication.)

The IDEA does not generally require that a school system provide to special education students medical care, medical treatment, or medical services, as that medical concept is defined in the statute. In *Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984), the Supreme Court held that a certain medical-like procedure on the school-health-service/medical-service continuum which did not need to be done by a physician, was not an excluded “medical service” under the statutory scheme. The Court wrote:

[O]nly those services necessary to aid a handicapped child to benefit from special education must be provided, regardless how easily a school nurse or layperson could furnish them. For example, if a particular medication or treatment may appropriately be administered to a handicapped child other than during the school day, a school is not required to provide nursing services to administer it.

Id. at 894

In *Cedar Rapids Comm. Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999) the Supreme Court ruled that in-school ventilator services were not excluded medical services but were related services under the IDEA. Services that can be accomplished by a school nurse or a layman, and that are required during the school day to allow the student to access education can qualify as related services under the IDEA.

With regard to the purpose of a related service, a related service is not to treat a medical condition but is to accommodate or ameliorate symptoms that might impede access to the

curriculum. In *Forest Grove Sch. Dist. v. T.A.*, 675 F. Supp. 2d 1063, 1068 (D. Or. 2009) the Federal District Court ruled that the “IDEA is to remedy the learning related symptoms of a disability, not to treat the underlying disability, or to treat other, non-learning related symptoms.”

Like related services, placement is authorized under IDEA for educational purposes but not for medical purposes apart from the learning process. *Ashland Sch. Dist. v. R.J.*, 588 F. 3d 1004 (9th Cir. 2009); *Clovis Unified Sch. Dist. v Cal. OAH*, 903 F. 2d 635 (9th Cir. 1990). In some cases, factually, it might be difficult to distinguish between a placement or a service that is offered to address a student’s education, and not merely to address a student’s medical treatment. In order to determine in nebulous or “gray area” cases whether a placement is authorized for educational purposes and not for medical purposes under the IDEA, different Circuits apply different legal tests. In *Kruelle v. New Castle County Sch. Dist.*, 642 F. 2d 687, 694 (3rd Cir. 1981) the Third Circuit Court of Appeals held that residential educational placement was required under the facts and circumstances of that case in order for the student to benefit educationally because the medical grounds and educational grounds of the residential placement were properly found to be inextricably intertwined and “unseverable.” In *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286 (5th Cir. 2009), the Fifth Circuit Court of Appeals discussed the various legal tests for determining whether a residential placement is truly an educational placement or related service covered by the IDEA, or whether it is a medical placement or service. Of the other Circuits’ legal tests, the Court wrote, “Specifically, the Third Circuit’s test focuses on whether a child’s medical, social, or emotional problems are ‘inextricably intertwined’ with the learning process, while the Seventh Circuit’s test focuses on whether the private residential placement is ‘primarily educational.’” *Id* at 299. To resolve the case, the fifth Circuit Court Appeals adopted the following legal test: “In order for a residential placement to be appropriate under IDEA, the placement must be 1) essential in order for the disabled child to

receive a meaningful educational benefit, and 2) primarily oriented toward enabling the child to obtain an education.” *Id* at 300. This test is the “essential and primarily educational” test.

In the Fourth Circuit there is yet another legal test. In *Shaw v. Weast*, No. 08-1485, 2010 U.S. App. LEXIS 1703, (4th Circ., Jan. 26, 2010)(per curium), an unpublished opinion,¹⁶ in a case that is very similar to the instant case,¹⁷ the Fourth Circuit Court of Appeals noted that the Fourth Circuit has adopted in *Burke County Bd. of Ed. v. Denton*, 895 F. 2d 973, 980 (4th Cir. 1990) what the Court describes as the test articulated by the Third Circuit in the *Kruelle* case. The Fourth Circuit’s test from the *Burke County* case is “If the educational benefits which can be provided through residential care are essential for the child to make *any* educational progress at all, then residential care is required” under the statute. [Emphasis in original.] Thus, the thrust of the Fourth Circuit’s test is that residential services and care must be educational in nature, in light of the nature and severity of the student’s disability, and the residential services and care must be essential for the student to make any educational progress. The Court also recognizes that “medical, social, or emotional problems” can be segregable from the learning process. *Shaw* at 6 - 7. The test, boiled down, seems to be whether the residential placement offers educational services necessary and required for the student to make educational progress.

In the instant case, [Student] did not need the residential component of any of the residential mental health treatment programs, alternative adolescent residential programs, hospitals, or residential rehabilitation apartment building programs for educational purposes.¹⁸

¹⁶ This case is considered “unpublished” by the Court. Under Local Rule 32.1 of the Fourth Circuit Court of Appeals, the Court authorizes citation of its unpublished opinions that are issued after January 1, 2007. Otherwise, the case can be viewed as valuable persuasive authority, based upon the binding authorities set forth therein.

¹⁷ Among some of the similarities between the *Shaw* case and the instant case are the following: no disruptive behavior in school; emotional, social problems are segregable from the learning process; hospitalizations were primarily for mental health needs and not for educational needs; the student’s residential treatment programs were to address housing needs, safety needs, or mental health needs and not educational needs; the student’s educational progress was slowed during periods when she was unavailable by virtue of a psychiatric episode, but education progressed when stabilized; the student would have received educational benefit at the [School 3]; and the student’s segregable mental health treatment needs might have required a certain level of care beyond that provided by a separate private day school.

¹⁸ There was no showing that [Student] was “incapable of deriving educational benefit outside of a residential

Those residential programs were for treatment of [Student]’s mental disorders. (Findings of Fact 23, 35, 55, and 67.) MCPS demonstrated that the educational components and the residential treatment components of [Student]’s various programs were separate and relatively independent.¹⁹ (Findings of Fact 24, 28, 29, 35, 37, 55, 64, and 66.) MCPS demonstrated that [Student]’s medical, social and emotional problems were segregable from [Student]’s learning process. (Findings of Fact 1, 12, 24, 25, 28, 30, 51, 55, 58, 63, 64, 67, 72, and Tr. 2,214.) Moreover, [Student] benefited educationally in all of the school years in issue while she was placed in private separate day school.²⁰ Residing in various residential mental health facilities was incidental to her separate educational placement; she gained educational benefit during each school year in issue that she was enrolled with MCPS. (Findings of Fact 28 and 33 for SY 2010-11, 37, 38, 69, and 72 for SY 2011-12, and 78 for SY 2012-13.) For the 2012 – 2013 school year, MCPS had, again, formulated an impressive IEP for [Student]. It evolved from May 2012 to September 2012; it ultimately would cause [Student] to gain educational benefit. (Findings of Fact 58, 75, 78, and 82.) Credible experts testified that [Student] would receive educational benefit under the 2012 – 2013 IEP (Tr. 2,214 – 2,215; 3050 - 3077), and [Student] had already begun to receive educational benefit by the time that the hearing commenced in this case. (Finding of Fact 78.) That IEP was reasonably calculated to provide FAPE, or some educational benefit, to [Student]. *Schaffer v. Weast*, 554 F. 3d 470, 480 (4th Cir. 2009). Not having concluded that [Student] was deprived of a FAPE during the 2012 – 2013 school year, or the other years in issue, I cannot conclude that she needed or needs residential educational placement

placement.” See *Ashland Sch. Dist. v. R.J.*, 588 F. 3d 1004, 1009 (9th Cir. 2009).

¹⁹ Like the need for ventilator services at school by the student in *Cedar Rapids Comm. Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999), even though those same type of services were probably needed at home for reasons other than educational, the disability is segregable from the learning process, so there was no question in that case that the school system was not required to provide ventilator services at home as a “related service.” [Student]’s emotional disabilities persist away from school but the school system is not required by the IDEA to provide XXXX amelioration services when this particular student is not in school.

²⁰ I need not address whether the [School 2] would have been an appropriate educational placement or service school.

in order to receive educational benefit. *Burke County Bd. of Ed. v. Denton*, 895 F. 2d 980 (4th Cir. 1990); *Shaw v. Weast*, No. 08-1485, (2010).

4) Speech/Language Assessment

MCPS asks that I conclude that the speech/language assessment issued by an employee of MCPS was “appropriate” pursuant to 34 C.F.R. 300.502(b)(2)(i). That provision requires that when a parent requests an independent educational evaluation, the school system must either comply with the request, or initiate formal litigation to prove that its evaluation was appropriate.

There is no dispute in this case that after MCPS issued its speech/language evaluation on July 17, 2012, [Student]’s mother²¹ requested an IEE with regard to a speech/language assessment. (Finding of Fact 76, MCPS Exhibit 70, and Joint Exhibit 44.) There is also no dispute that [Student]’s mother agrees with the MCPS speech/language assessment to the extent that [Student] has speech/language needs and requires speech/language services. (Finding of Fact 76.) The dispute is over whether the MCPS assessment qualifies under the statutory and regulatory schemes as “appropriate.”

“Appropriate” under the IDEA and companion regulations, 20 U.S.C.A. §1414; 34 C.F.R. 300.304; COMAR 13A.05.01.06E, means that proper assessment tools are used and qualified persons administer the evaluation tests, instruments, and tools. *See L.S. v. Abington School Dist.*, 2007 U. S. Dist. LEXIS 73047 (E.D. Pa. 2007). The statute describes proper assessment tools and qualified testers. 20 U.S.C.A. §1414(b) provides:

(b) Evaluation procedures.

(2) Conduct of evaluation. In conducting the evaluation, the local educational agency shall--

(A) use a variety of assessment tools and strategies to gather relevant

²¹ Although the request letter recites with boilerplate language that both [Student] and [Student]’s mother were making the request, the request is clearly made by [Student]’s mother, according to the contents of the letter and the “cc:” notation. At this point, however, [Student]’s mother had no IDEA rights to exert. (See, Finding of Fact 56.) In an abundance of caution, I will rule on the merits as if she did.

functional, developmental, and academic information, including information provided by the parent that may assist in determining--

- (i) whether the child is a child with a disability; and
- (ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;
- (B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
- (C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements. Each local educational agency shall ensure that--

- (A) assessments and other evaluation materials used to assess a child under this section--
 - (i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
 - (iii) are used for 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 such assessments[.]

The tester in the instant case used a variety of assessment tools, did not use a single assessment tool for program determinations, used technically sound instruments that assessed relative contributions of cognitive and behavioral factors with regard to [Student]'s disabilities, did not use assessment materials that discriminated based upon race or culture, used tests in [Student]'s language, used assessments that were most likely to yield accurate information on what [Student] knew or could do academically, developmentally, or functionally, and used instruments that were intended for the purposes for which they were used. The tester was trained and knowledgeable in such speech/language diagnostics and the instruments were administered per instructions and protocols. The evidence produced by MCPS on the speech/language assessment accurately and methodically covered, through several witnesses, the statutory

requirements set forth above. (Finding of Fact 73; Tr. 2,019 – 2,024 and 2,965 – 2,974) The tester, who had an impressive background and reputation in speech/language pathology and diagnostics or assessments, testified credibly. She had a packet of 38 pages from which she composed her opinions and wrote her assessment report. She testified in detail and opined that the tests and instruments met each statutory requirement and that the assessment produced valuable information from which new IEP goals were formulated. (Tr. 2,063.) She spent three hours testing [Student]. She said that her testing caused the IEP team to decide [Student] would benefit from one hour per week of speech/language support. She supported her opinions. She explained credibly that the testing tools were appropriate for [Student]. She explained the testing in detail.

The witness through whom [Student]’s mother challenged the appropriateness of MCPS’ speech/language assessment, opined, generally, that the assessment was not appropriate or complete. Her emphasis was on her opinion that the assessment was incomplete. Her opinions on the assessment were focused on what she believed were violations of some guidelines that were promulgated by a private organization. Some of her opinions were based on some false facts, such as the use of an out-of-date test, and she opined that results demanded that the tester perform further tests. Her opinion suggested that the tester could have used better tests and more of them. She accused the tester of unethical conduct for using an out-dated tool when the tool was actually current. Her testimony did not show that MCPS’s assessment failed to comply with legal standards. On the witness stand, she appeared to be a well-intentioned fanatic.

I give more weight and credibility to MCPS’s expert witnesses with regard to the appropriateness of the speech/language assessment. MCPS has met its burdens to show that the assessment was appropriate.

Summary

During the 2010 – 2011 school year, MCPS offered [Student] an IEP, a placement, and a service school location that was reasonably calculated to provide her a FAPE. Despite mental illness and hospitalization, [Student] acquired educational benefit that year. During the 2011 – 2012 school year, MCPS offered [Student] an IEP, a placement, and a service school location that was reasonably calculated to provide a FAPE. While at [School 1] that year, [Student] acquired some educational benefit. When she returned from [School 1] in April of 2012, she was an adult who was no longer living with her mother. She did not attend school until June of that year when she agreed to attend [School 14] where she acquired educational benefit. During the 2012 – 2013 school year, MCPS offered [Student] an IEP, a placement, and a service school location that was reasonably calculated to provide a FAPE. [Student] has acquired and will acquire educational benefit during that school year.

MCPS's speech/language assessment was "appropriate."

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that [Student]'s mother has not met her burdens to show that MCPS failed to offer a FAPE to [Student] in school year 2010 – 2011, school year 2011 – 2012, and school year 2012 – 2013. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 200 - 201 (1982). I further conclude that, although [Student] gained some educational benefit at [School 1], reimbursement for that unilateral placement should be denied. *G. v. Fort Bragg Indep. Sch.*, 343 F.3d 295, 309 (4th Cir. 2003). I further conclude that I need not rule on whether the [School 2] would have been an appropriate service school. *Carter v. Florence County Sch. Dist.*, 950 F.2d 156, 163 (4th Cir. 1991). I also conclude that the remedies requested by [Student]'s mother (and requested by [Student], to the extent that she might have done so) should be denied, as further set forth in the above discussion. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

With regard to the complaint filed by MCPS, I conclude that MCPS has met its burdens to show that its speech/language assessment was appropriate under the statutory and regulatory scheme. 20 U.S.C.A. §1414; 34 C.F.R. 300.304; COMAR 13A.05.01.06E.

ORDER

Upon the evidence and argument offered in this matter, it is hereby

ORDERED that relief requested in the amended complaint, dated September 12, 2012, be, and is hereby, denied, and it is further

ORDERED that the record reflect that the speech/language assessment performed by MCPS, and dated July 17, 2012, was “appropriate” under the statutory and regulatory schemes.

February 8, 2013
Date Decision Mailed

William J.D. Somerville III
Administrative Law Judge

WS/

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.