

**CARROLL COUNTY PUBLIC  
SCHOOLS**

**v.**

**XXXX XXXX,  
STUDENT**

**\* BEFORE EMILY DANEKER,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH Case No.: MSDE-CRRL-OT-16-02114**

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**DECISION**

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

**STATEMENT OF THE CASE**

The Carroll County Public Schools system (CCPS) is providing special education services to XXXX XXXX (Student) pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. sections 1400 *et seq.* (2010).<sup>1</sup> CCPS seeks to conduct an adaptive behavior assessment of the Student. The Student’s parents, XXXX and XXXX XXXX (collectively, Parents), refuse to consent to the assessment. Federal and State law both require a school system to obtain parental consent prior to conducting any reevaluations of a child with a disability,<sup>2</sup> and further provide that if the parents refuse to consent, the school system may pursue the reevaluation by filing a due process complaint.<sup>3</sup> Accordingly, on January 20, 2016, CCPS filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing

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<sup>1</sup> Unless otherwise specified, all references to the IDEA are to the 2010 replacement volume and 2015 supplement.

<sup>2</sup> See 20 U.S.C. § 1414(c)(3) (2010); 34 C.F.R. § 300.300(c)(1)(i); Code of Maryland Regulations (COMAR) 13A.05.01.13A(1).

<sup>3</sup> 34 C.F.R. § 300.300(c)(1)(ii); COMAR 13A.05.01.13A(2).

to establish that it is lawfully entitled to proceed with an adaptive behavior assessment of the Student, despite the Parents' objection.<sup>4</sup>

On February 24, 2016, I held an initial pre-hearing conference in this matter. I was located at the OAH and all other participants attended by telephone. David Burkhouse, Esquire, represented CCPS. XXXX XXXX, CCPS Supervisor of Special Education Services, also participated in the conference. Mark Martin, Esquire, represented the Student and Parents. During the pre-hearing conference, the parties agreed to participate in mediation using an administrative law judge (ALJ) from the OAH as their mediator. The mediation was held on March 30, 2016, the first mutually agreeable date available for the parties and their representatives.

During this pre-hearing conference, the parties discussed the time requirements for issuing a decision. In accordance with the regulations governing the time frames for the issuance of special education decisions, the decision in this case would have been due on Friday, March 4, 2016, the last business day within 45 days after the Due Process Complaint was filed by CCPS on January 20, 2016. *See* 34 C.F.R. § 300.515 (2015);<sup>5</sup> COMAR 13A.05.01.15C(13), (14). As the first mutually agreeable date for conducting the mediation was outside of the 45-day timeframe for the issuance of a decision, CCPS proposed waiving the time requirements for issuing a decision, set forth in section 300.515 of Title 34 of the Code of Federal Regulations. *See* COMAR 13A.05.01.15C(13). The Student and the Parents, through counsel, agreed. The

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<sup>4</sup> In its Due Process Complaint, CCPS also sought an order determining that it is not liable for any denial of a free appropriate public education (FAPE) resulting from its inability to obtain the assessment of the Student. Both parties filed cross-motions for summary decision; the Parents' motion asserted that they were entitled to judgment as a matter of law on this claim. I found that CCPS's claim for an order insulating it from liability for a FAPE claim was not ripe for review. Accordingly, I entered judgment for the Parents on that claim and on May 20, 2016, I issued a written decision reflecting my ruling.

<sup>5</sup> All references to title 34 of the C.F.R. are to the 2015 version.

parties waived the time requirements on the record and agreed that I shall issue a decision in this matter within thirty days after the close of the record.

The parties were unable to resolve their dispute through the mediation process and, accordingly, I conducted a second pre-hearing conference on March 30, 2016, immediately following the unsuccessful mediation session. I was located at the OAH and all other participants participated by telephone. Mr. Burkhouse represented CCPS. Ms. XXXX, XXXX XXXX, Coordinator, Compliance, and XXXX XXXX, school principal, participated in the conference for CCPS. Mr. Martin represented the Student and the Parents. The Parents participated in the conference. At that pre-hearing conference, by agreement of the parties, the hearing was scheduled for May 16 and 17, 2016<sup>6</sup> at the OAH in Hunt Valley, Maryland.<sup>7</sup>

I held the hearing on May 16 and 17, 2016. Mr. Burkhouse represented CCPS. Mr. Martin represented the Parents.

The statutory and regulatory authority governing the decision in this matter is set forth in the IDEA, sections 8-401 *et seq.* of the Education article of the Annotated Code of Maryland, title 34, part 300 of the Code of Federal Regulations, and 13A.05.01 of the COMAR. The procedures to be followed in this case are set forth in the contested case provisions of the Administrative Procedure Act, the Maryland State Department of Education regulations governing hearings on due process complaints, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A .05.01.15C; COMAR 28.02.01.

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<sup>6</sup> Initially, a third hearing day was scheduled for May 18, 2016, but the hearing concluded on May 17, 2016.

<sup>7</sup> The hearing was held at the OAH at the Parents' request.

## ISSUE

Is CCPS entitled to proceed with an adaptive behavior assessment of the Student, over the Parents' objection?

### SUMMARY OF THE EVIDENCE

#### Exhibits<sup>8</sup>

I admitted into evidence the following exhibits offered by CCPS

- CCPS Ex. 1 – *Curriculum Vitae* of XXXX XXXX, Ph.D.
- CCPS Ex. 2 – Resume of XXXX XXXX
- CCPS Ex. 5 – Email from XXXX XXXX to the CCPS Board of Education Members, Commissioners, Superintendent, and Assistant Superintendent, dated February 25, 2015
- CCPS Ex. 6 – Email from XXXX XXXX to XXXX XXXX, Principal of [School 1], dated May 2, 2016
- CCPS Ex. 7 – Affidavit of XXXX XXXX, Ph.D., ABN, dated May 2, 2016
- CCPS Ex. 10 – CCPS Notice and Consent for Assessment, signed by XXXX XXXX on November 11, 2015
- CCPS Ex. 11 – “Parental Input from the 11/11/15 Prior Written Notice,” undated
- CCPS Ex. 12 – CCPS Prior Written Notice, dated November 16, 2015
- CCPS Ex. 13 – CCPS Notice and Consent for Assessment, dated December 15, 2015, unsigned
- CCPS Ex. 14 – CCPS Prior Written Notice, dated December 15, 2015
- CCPS Ex. 15 – Student’s Individualized Education Program dated June 1, 2015 and amended December 15, 2015; progress reports, dated between June 5, 2015 and January 27, 2016

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<sup>8</sup> At my request, the parties brought their exhibits to the hearing pre-marked and in tabbed binders. The parties did not use and offer all of their pre-marked exhibits and, as noted below, not all exhibits were admitted. Thus, the exhibit numbers are not sequential.

- CCPS Ex. 16 – CCPS Psychological Report prepared by XXXX XXXX, M.A., CAS/NCSP,<sup>9</sup> dated December 20, 2011
- CCPS Ex. 17 – Confidential Psychological Evaluation prepared by XXXX XXXX, Ph.D., dated August 31, 2012
- CCPS Ex. 18 – CCPS Psychological Report prepared by XXXX XXXX, NCSP, dated December 1, 2014
- CCPS Ex. 19 – Confidential Psychological Evaluation prepared by Dr. XXXX, dated July 17, 2015
- CCPS Ex. 20 – Neuropsychological Evaluation prepared by Dr. XXXX, for evaluation dates between July 23, 2015 and August 19, 2015
- CCPS Ex. 21 – CCPS Psychological Report, prepared by Dr. XXXX, dated January 22, 2016
- CCPS Ex. 22 – CCPS Initial Eligibility Determination Tool: Intellectual Disability, blank copy

I admitted into evidence the following exhibits offered by the Parents:

- Parents Ex. 1 – Multidisciplinary Evaluation Review, dated January 12, 2012
- Parents Ex. 9 – CCPS Occupational Therapy Services Assessment Report, for evaluation dates of October 9, 2014 and October 16, 2014
- Parents Ex. 11– CCPS Adapted Physical Education Assessment Report, for assessment date November 6, 2014
- Parents Ex. 12– Classroom Observation to Determine Continued Eligibility for Adult Support, November 11, 2014
- Parents Ex. 15– CCPS Educational Assessment Report, dated December 2, 2014
- Parents Ex. 16– CCPS Speech and Language Assessment Report, dated December 4, 2014
- Parents Ex. 17– Letter from XXXX XXXX, M.D., Ph.D., to Whom it May Concern, dated December 8, 2014
- Parents Ex. 18– CCPS Functional Behavior Assessment, dated December 19, 2014
- Parents Ex. 24– Emails between XXXX XXXX, M.Ed., Supervisor of Special Education-Elementary, CCPS, and XXXX XXXX, dated March 1 and 2, 2015

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<sup>9</sup> NCSP is the designation for a Nationally Certified School Psychologist.

- Parents Ex. 25– Letter from Rochelle Eisenberg, Esq., counsel for CCPS, to the Parents, dated March 17, 2015
- Parents Ex. 32– CCPS Functional Behavior Assessment, dated December 8, 2015
- Parents Ex. 35– CCPS Behavioral Intervention Plan, dated December 15, 2015
- Parents Ex. 37– Behavioral and Educational Consultant Report prepared by XXXX XXXX, Ph.D., BCBA-D
- Parents Ex. 38– CCPS Speech and Language Assessment Report, dated January 6, 2016
- Parents Ex. 39– CCPS Review of Educational Assessments, dated January 20, 2016
- Parents Ex. 41– *Curriculum Vitae* of Dr. XXXX
- Parents Ex. 42– *Curriculum Vitae* of Dr. XXXX
- Parents Ex. 44– Affidavit of XXXX XXXX, Ph.D., dated April 15, 2016
- Parents Ex. 45– Affidavit of XXXX XXXX, dated April 18, 2016

In addition to the exhibits admitted into the evidentiary record, CCPS offered a thumb drive (CCPS Ex. 23) containing an audio recording of the IEP team meetings held on November 11, 2015 and December 15, 2015; it contained more than five hours of recordings. The supporting witness, XXXX XXXX, testified that she had attended the IEP team meetings and she had listened to some, but not all, of the recordings on the thumb drive. The portions that she listened to were accurate recordings of the meeting. The Parents objected to the admission of the thumb drive based on the length of the recordings and the witness's inability to state whether the entirety of the two IEP team meetings were accurately represented in the recordings. I sustained the objection to the admissibility of the thumb drive, but permitted CCPS to play the relevant excerpts of the meeting, supported by witness testimony. The thumb drive was retained as part of the case record. COMAR 28.02.01.22C.

CCPS also offered a copy of a September 4, 2015 Settlement and Release Agreement (CCPS Ex. 9) between the parties. The Parents objected to the admissibility of that document on the basis that it lacked relevance, in light of my ruling on the parties' cross-motions for summary judgment. I sustained that objection. The Settlement and Release Agreement was retained as part of the case record.<sup>10</sup> COMAR 28.02.01.22C.

During the hearing, the Parents created a chart summarizing the Student's adaptive scores over a period of time and they used that exhibit with several witnesses. The chart was marked as Parents Exhibit 47. It was not offered for admission into the evidentiary record, but it was retained as part of the case record. *Id.*

### Testimony

CCPS presented testimony from XXXX XXXX, a special educator with CCPS; XXXX XXXX, CCPS Supervisor of Special Education Services, who was qualified and permitted to testify as an expert in the field of special education; and Dr. XXXX XXXX, a school psychologist with CCPS, who was qualified and permitted to testify as an expert in the area school psychology. Both parties presented testimony from Dr. XXXX XXXX, who was qualified and permitted to testify as an expert in the areas of neuropsychology and psychological testing. For purposes of efficiency, the parties agreed that Dr. XXXX need only testify a single time. The Parents also presented testimony from Dr. XXXX XXXX, who was qualified and permitted to testify as an expert in special education and behavioral analysis; and XXXX XXXX.

### **FINDINGS OF FACT**

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

1. The Student was born in 2003.

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<sup>10</sup> The parties filed cross-motions for summary judgment and both parties included a copy of the Settlement and Release Agreement with the papers filed in connection with those motions.

2. The Student receives special education services, supports, and accommodations as a student in CCPS and she attends [School 1] ([School 1]). The Student receives special education services in reading, written language, math, speech and language, social/emotional/behavioral, and physical education. She has a dedicated 1:1 assistant for academic, communication, and behavioral needs.

3. The Student is active in the community and social skills are one of her strengths. She has participated in [activities], among other activities. She enjoys watching cooking shows and cooking with her parents.

4. The Student is identified in her Individualized Education Program (IEP) as a student with multiple disabilities, including speech language impairment and other health impairment. The Student has XXXX (XXXX) and attention deficit hyperactivity disorder (ADHD), as well as other health issues.

5. The 2015-16 school year was the first year the Student attended [School 1]; prior to that, she attended [School 2] ([School 2]). [School 1] is the XXXX in Carroll County and, with over 1,000 students, is larger than some of the high schools in Carroll County.

6. At [School 1], the Student exhibits behavioral issues that interfere with her education, including refusing to do her work, leaving class, delaying her return to class, not taking her seat, and not transitioning to and from the classroom, despite having a Behavior Intervention Plan (BIP).

7. The Student's academic skills are significantly below her same-grade peers. As of a January 27, 2016 progress report, the Student is not making sufficient progress to meet IEP goals in the areas of Academic--Reading Phonics, Reading Comprehension, Math Problem Solving, Written Language Content, Written Language Mechanics, Speech and Language



Receptive Language, and Speech and Language Expressive Language.

8. CCPS suspects that the Student is a student with an intellectual disability (ID), within the meaning of the IDEA, due to the fact that she has XXXX and due to her lack of progress in meeting her IEP goals related to the grade-level curriculum.

9. To determine whether a child has an ID within the meaning of the IDEA,<sup>11</sup> CCPS considers the child's intellectual ability and adaptive ability, among other things.

10. Adaptive skills are skills which allow people to function effectively in everyday life, and are generally classified into three domains: communication (talking, listening, reading and writing), daily living skills (including personal hygiene, understanding money, understanding time, and following rules and instructions), and socialization (interaction with others, use of leisure time, helping others, recognizing others' dislikes and likes, following social norms).<sup>12</sup> An assessment of adaptive skills measures what a child typically does, rather than what the child is capable of doing. Adaptive scores below, approximately, 70 signify sub-average adaptive functioning at or below two standard deviations below the mean.

11. On November 10 and December 8, 2011, XXXX XXXX, a CCPS school psychologist, evaluated the Student. The purpose of the evaluation was to determine the Student's adaptive behavior abilities and make instructional/programming recommendations.

12. Ms. XXXX evaluated the Student's adaptive skills using the Vineland Adaptive Behavior Scales, second edition (Vineland-II). The Vineland-II was completed by the Student's regular education teachers, special education teacher, and instructional assistant. XXXX XXXX was provided with a copy of the Vineland-II, but, with the exception of questions relating to the communication domain, Ms. XXXX did not answer a sufficient number of questions to permit

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<sup>11</sup> See 34 C.F.R. § 300.8(c)(6) (2015) (defining "mental retardation," which was the term previously used for "intellectual disability").

<sup>12</sup> The three domains are also classified as conceptual, practical, and social.

calculation of overall domain scores for the daily living skills and socialization domains. The adaptive scores obtained by Ms. XXXX were as follows:

Domain	Regular education teachers	Special education teacher	Instructional assistant	Mother
Communication	60	60	62	72
Daily Living Skills	51	60	51	
Socialization	67	69	74	
Composite <sup>13</sup>	57	61	61	

13. Ms. XXXX concluded that the Student’s communication and daily living skills fell significantly below average but that the Student had a relative strength in the area of socialization. Based on her evaluation, Ms. XXXX made instructional and programming recommendations.

14. On August 31, 2012, XXXX XXXX, Ph.D., completed a psychological evaluation of the Student. This evaluation was privately obtained by the Parents. The Parents did not provide Dr. XXXX’s evaluation to CCPS at that time.

15. Dr. XXXX’s evaluation included, among other things, an assessment of the Student’s cognitive functioning using both the Wechsler Intelligence Scale for Children, fourth edition (Wechsler), and the Test of Nonverbal Intelligence, fourth edition (TONI-IV), and an assessment of the Student’s adaptive functioning using the Adaptive Behavior Assessment System, second edition (ABAS-II). The Student was unable to complete the Wechsler. The Student scored a 73 on the TONI-IV, which falls into the “poor” range of intellectual functioning. Dr. XXXX noted that the Student “struggle[d] significantly to attain even the most basic academic skills.”

16. Dr. XXXX’s adaptive behavior assessment used an ABAS-II completed by XXXX XXXX. The adaptive scores were as follows:

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<sup>13</sup> CCPS’s ID determination tool does not use the composite scores in assessing whether a child meets the eligibility criteria for an ID code.

Scale	Mother
Conceptual	72
Practical	77
Social	89
General Composite	71

The Student’s adaptive score in the social domain was within the “below average” range; all other adaptive scores fell within the “borderline” range.

17. On December 1, 2014, XXXX XXXX, a CCPS school psychologist, completed a psychological assessment of the Student for CCPS as part of its triennial reevaluation of the Student. Ms. XXXX assessed the Student’s adaptive skills and a functional behavior assessment (FBA) was performed. CCPS also recommended a cognitive assessment of the Student, as it suspected an ID, but the Parents refused to consent to it.

18. Ms. XXXX evaluated the Student’s adaptive skills using the ABAS-II. The ABAS-II rating scales were completed by XXXX XXXX, the Student’s special education teacher, and her speech-language pathologist. The adaptive scores obtained by Ms. XXXX were as follows:

Domain	Mother	Special education teacher	Speech-language pathologist
Conceptual	57	50	67
Practical	42	49	67
Social	78	84	95
General Composite	57	54	76

19. The general adaptive composite scores from Ms. XXXX’s and the special educator’s reports fell within the extremely low range and the general adaptive composite score from the speech/language pathologist fell within the borderline range. Ms. XXXX indicated that the ratings provided by the speech-language pathologist and the mother contained more than the recommended amount of guesses for skill areas and, therefore, “caution” had to be taken in

interpreting the scores.<sup>14</sup> Ms. XXXX found the Student demonstrated significant impairment in the conceptual and practical domains of adaptive functioning.

20. On December 22, 2014, CCPS convened an IEP team meeting to conduct a triennial review of the Student. The Parents attended the meeting.

21. At the December 22, 2014 IEP team meeting, CCPS requested that the Parents consent to additional psychological testing, specifically including cognitive testing. The Parents refused to consent to that testing.

22. In March or April 2015, while the Student was still attending [School 2], XXXX XXXX, Ph.D., sent behavior checklists to the Student's [School 2] teachers for them to complete and return to him in connection with a private neuropsychological evaluation requested by the Parents. Dr. XXXX did not ask the Student's [School 2] teachers to again rate her adaptive skills.

23. On June 1, 2015, the Student's IEP was revised.

24. On or about July 17, 2015, CCPS filed a due process complaint seeking authority to conduct a cognitive assessment of the Student.

25. On July 17, 2015, separate and apart from Dr. XXXX, Dr. XXXX made a second psychological evaluation of the Student at the Parents' request.

26. In connection with her evaluation, Dr. XXXX administered the TONI-IV, on which the Student again scored a 73; this falls within the "poor" or "borderline" range of intellectual functioning.

27. In assessing the Student's adaptive functioning, Dr. XXXX used the results of the ABAS-II reports obtained by Ms. XXXX in approximately December 2014. Based on those

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<sup>14</sup> There was no explanation provided at the hearing as to how Ms. XXXX's cautionary statement should be interpreted; her report contains a validity statement indicating, generally, that the completed assessment is valid.

reports, and noting Ms. XXXX's cautionary statement, Dr. XXXX concluded that the Student demonstrates significant impairment in the conceptual and practical domains and had relative strengths in the social domain.

28. Dr. XXXX, who also assessed the Student's academic functioning, concluded that the Student had made progress since 2012 and that the results of her evaluation indicated that the Student was continuing to learn in the general education environment. Dr. XXXX recommended, among other things, that the Student's academic program should continue to include goals in functional academics (reading, writing, mathematics), communication, socialization, and adaptive behavior.

29. On July 23, 2015, August 4, 2015, and August 19, 2015, Dr. XXXX evaluated the Student. Dr. XXXX evaluated the Student's intellectual functioning, her academic abilities, her neuropsychological functioning, and her adaptive behavioral skills.

30. Dr. XXXX's adaptive behavior assessment used a Vineland-II rating scale completed by XXXX XXXX. The adaptive scores obtained from Ms. XXXX were as follows:

Scale	Mother
Communication	67
Daily Living Skills	83
Socialization	83
General Composite	75

Dr. XXXX assessed the Student to have adaptive behavior scores in the moderately-low range.

31. Dr. XXXX used the Differential Ability Scales—second edition (DAS-II) to measure the Student's general cognitive ability; the Student's scores fell in the very-low range. Dr. XXXX also used the Comprehensive Test of Nonverbal Intelligence, second edition (CTONI-II) to assess the Student's cognitive ability; the Student's full scale score fell below the first percentile.

32. In assessing the Student's academic abilities, Dr. XXXX administered the Woodcock-Johnson IV Tests of Achievement. Unlike Dr. XXXX, Dr. XXXX concluded that it was "difficult to discern any appreciable academic progress throughout the past three years."

33. Subsequently, in September 2015, the parties entered into a settlement of the July 2015 due process complaint, by which the Parents agreed to provide CCPS with the results of the ongoing neuropsychological assessment being performed for the Parents by Dr. XXXX, including a cognitive assessment of the Student. The Parents further agreed to provide CCPS with the psychological evaluation that Dr. XXXX completed in August 2012. The Parents provided these assessments to CCPS in approximately October 2015.

34. On November 11, 2015, CCPS convened an IEP team meeting for the Student to discuss the evaluations provided by the Parents and to discuss the Student's lack of progress on her IEP goals. The meeting participants included the Parents, Dr. XXXX, Ms. XXXX, and Dr. XXXX.<sup>15</sup>

35. During the November 11, 2015 meeting, the IEP team considered Dr. XXXX's 2015 neuropsychological evaluation and report and Ms. XXXX's December 2014 psychological report, which were part of the current reevaluation cycle. The team also considered Dr. XXXX's 2012 psychological report.

36. During the November 11, 2015 IEP team meeting, the team employed CCPS's ID determination tool. The first question that must be addressed on the ID tool is whether the Student exhibited significantly sub-average intellectual functioning, at least two standard deviations below the mean, on an individually administered general intelligence assessment. Prior to Dr. XXXX's evaluation of the Student, the IEP team did not have the information necessary to respond to this question. Based on Dr. XXXX's report, the IEP team determined at

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<sup>15</sup> This identification of attendees at the November 11, 2015 IEP team meeting is not intended to be exhaustive.

the meeting that for the Student, the answer to this question was “yes.”

37. The IEP team then proceeded to the second question on the ID tool, which considers whether the Student exhibits significantly sub-average adaptive functioning at or below two standard deviations below the mean on an individually administered standardized measure of adaptive functioning. At least two or more respondents on a formal adaptive assessment must report significant limitations in the level of adaptive functioning and these limitations must be apparent in both academic and nonacademic settings.

38. At the November 11, 2015 IEP team meeting, Dr. XXXX asserted that given the discrepancy in the Student’s adaptive scores over only a nine to ten month period of time, the IEP team could not then answer the second question on the ID tool, as to whether the Student’s adaptive scores were sub-average across the three domains (practical, social, conceptual). He suggested that it would be appropriate to defer answering the second question on the ID tool in order to perform an additional adaptive assessment of the Student in approximately April 2015, which would allow the Student’s [School 1] educators further opportunity to get to know the Student.

39. At the meeting, CCPS informally requested that the Parents consent to conduct an updated adaptive behavior assessment later in the school year and formally requested that the Parents consent to an FBA and speech and language assessments. The Parents consented to speech and language assessments and an updated FBA by CCPS. The Parents further noted that they “agree[d] to an adaptive behavior assessment to be deferred to later in the school year” after the [School 1] teachers had spent additional time working with the Student.

40. On December 15, 2015, CCPS convened another IEP team meeting. The Parents

attended with their parent advocate, Ms. XXXX.<sup>16</sup> Ms. XXXX and Dr. XXXX were also in attendance, as was Dr. XXXX. At the meeting, the IEP team reviewed the FBA and reviewed and amended the Student's IEP and BIP. At the meeting, the team continued to discuss the need for updated adaptive data and CCPS formally requested, in writing, permission to conduct an adaptive behavior assessment of the Student. The Parents did not consent to the assessment.

41. An adaptive behavior assessment would involve the Student's parents and teachers completing rating scales of the Student's adaptive skills, that is, they would answer questions about the Student. The Student would not miss any instructional time and would not know the assessment was taking place.

42. The Parents desire to have the Student continue on the diploma-track, as opposed to a certificate-track. They are concerned that a classification of ID, within the meaning of the IDEA,<sup>17</sup> would ultimately lead to the Student's removal from the diploma-track. These concerns have influenced the Parents' objection to the adaptive assessment. (*See* CCPS Ex. 5.)

43. CCPS has not yet formally proposed removing the Student from the diploma-track, which would first require a determination that the Student has a significant cognitive disability, which could be, but is not required to be, an ID. CCPS has, however, suggested to the Parents that moving the Student to the certificate-track should be considered.

44. On January 20, 2016, CCPS filed this Due Process Complaint to obtain authorization to proceed with an adaptive behavior assessment over the Parents' objection.

## **DISCUSSION**

### **Applicable Law**

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<sup>16</sup> Ms. XXXX's first name was not provided.

<sup>17</sup> The Parents have recognized that the Student has an intellectual disability within the definition of the DSM-V. (*See, e.g.,* CCPS Ex. 5.) The criteria are different for an intellectual disability under the IDEA.



The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living [and] to ensure that the rights of children with disabilities and parents of such children are protected[.]” 20 U.S.C.A. § 1400(d)(1)(A), (B). The IDEA provides federal money to the states to educate disabled children on condition that states comply with the extensive goals and procedures of the IDEA. 20 U.S.C.A. §§ 1412-1414; 34 C.F.R. § 300.2; *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 179-83 (1982).

A free appropriate education (FAPE) is defined in COMAR 13A.05.01.03B(27) as follows:

[S]pecial education and related services that:

- (a) Are provided at public expense, under public supervision and direction;
- (b) Meet the standards of the Department, including the requirements of 34 CFR §§300.8, 300.101, 300.102, and 300.530(d) and this chapter;
- (c) Include preschool, elementary school, or secondary education; and
- (d) Are provided in conformity with an IEP that meets the requirements of 20 U.S.C. § 1414, and this chapter.

FAPE is similarly defined in the IDEA and in the applicable federal regulations. 20 U.S.C.A. § 1401(9); 34 C.F.R. § 300.17.

FAPE is, in part, furnished through the development and implementation of an IEP for each disabled child. *Rowley*, 458 U.S. at 181-182. Maryland regulations define an IEP as “written statement for a student with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§300.320 - 300.324 and Regulations .08 and .09 of [COMAR 13A.05.01].” *See* COMAR 13A.05.01.03B(34). In turn, COMAR 13A.05.01.09A outlines the required content of an IEP as follows:

- (1) The IEP for a student with a disability shall include:
- (a) A statement of the student's present levels of academic achievement and functional performance, including:
    - (i) How the student's disability affects the student's involvement and progress in the general curriculum, . . . .
  - (b) Measurable academic and functional annual goals, including benchmarks or short-term instructional objectives related to:
    - (i) Meeting the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general curriculum, and meeting each of the student's other educational needs that result from the student's disability; . . .
  - (c) The special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, including staffing support, to be provided to the student, or on behalf of the student;
  - (d) Program modifications or supports for school personnel that will be provided for the student to enable the student to:
    - (i) Advance appropriately toward attaining the annual goals;
    - (ii) Be involved in and make progress in the general curriculum;
    - (iii) Participate in extracurricular and other nonacademic activities; and
    - (iv) Be educated and participate with other students with disabilities and students without disabilities;
  - (e) An explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and in the activities, as described in §A(1)(e) of this regulation;
  - (f) A statement of any appropriate individual accommodations that are needed to measure the student's academic achievement and functional performance on Statewide or district-wide assessments, consistent with 34 CFR §300.320(a)(6);  
...
  - (h) The projected dates for initiation of services, and modifications as described in §A(1)(c) and (d) of this regulation, including the anticipated frequency, location, and duration. . . .

*See also* 20 U.S.C.A. § 1414(d)(1)(A). The IEP goals, objectives, activities, and materials must be adapted to the needs, interests, and abilities of each student. 20 U.S.C.A. § 1414(d). A student's IEP must be reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 182.

The IDEA requires that at least every three years, a local education agency, such as CCPS, is to conduct a reevaluation of a child with a disability who is in need of special education services. Specifically, it provides, in pertinent part:

§ 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements

...

(D) Parental consent.

(i) In general.

(I) Consent for initial evaluation. The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

...

(ii) Absence of consent.

(I) For initial evaluation. If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

...

(2) Reevaluations.

(A) In general. A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

- (i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation. A reevaluation conducted under subparagraph (A) shall occur--

- (i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and
- (ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

...

(b) Evaluation procedures.

- (1) Notice. The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.
- (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 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 . . . ;
  - (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. . . .

20 U.S.C.A. § 1414(a), (b); *see also* 34 C.F.R. §§ 300.303 and 300.304.

The applicable regulations provide guidance in determining whether an assessment<sup>18</sup> is appropriate. The regulations, at 34 C.F.R. §300.304, require that certain standards be met when evaluating a child:

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<sup>18</sup> In this context, an "assessment" is "the process of collecting data in accordance with Regulation .05 of this chapter, to be used by the IEP team to determine a student's need for special education and related services." COMAR 13A.05.01.03B(3).

- (b) Conduct of evaluation. In conducting the evaluation, the public agency must –
  - (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child . . . that may assist in determining—
    - (i) Whether the child is a child with a disability under §300.8; and
    - (ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum . . . ;
  - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
  - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) Other evaluation procedures. Each public agency must ensure that –
  - ...
    - (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
    - ...
      - (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
      - ...
        - (6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
        - (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

*See also* COMAR 13A.05.01.05B(1) to (3), C(1).

Under the IDEA and the relevant regulations, if parents do not consent to a reevaluation plan, or consent only to certain components of that plan,<sup>19</sup> the school system may proceed with the reevaluation plan only if it shows, at a due process hearing, that the requested evaluations and assessments are needed to produce data that is necessary to determine the child's educational needs. *See* 20 U.S.C.A. § 1414(c)(1)(B), (c)(2), and (c)(3); 34 C.F.R. § 300.300(c)(1)(ii); *see also Shelby S. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450, 454 (5th Cir. 2006), *cert. denied* 549 U.S. 1111 (2007).<sup>20</sup> If a school district articulates reasonable grounds for its need to conduct the requested assessment of a student, the lack of parental consent does not bar it from proceeding with the assessment. *Shelby S.*, 454 F.3d at 454. Thus, the burden of proof rests with CCPS, as the party bringing the Due Process Complaint, and its burden of proof is by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49 (2005). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so[.]" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

## **Analysis**

### **I. The Parties' Positions**

CCPS contends that it has a reasonable basis for conducting the adaptive behavior assessment because the assessment is necessary to identify and determine all of the Student's areas of educational disability, resolve a discrepancy in existing assessment data, and develop an IEP for the Student that will provide a FAPE. The Parents respond that the adaptive behavior assessment is not necessary because the Student is already fully eligible for special education

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<sup>19</sup> Refusal to consent to a reevaluation also occurs where the parents place extensive conditions on the evaluation, such as dictating the type of assessments, the use that can be made of the assessments, the identity of the assessor, and the time and location of the assessment. *G.J. v. Muscogee Cty. Sch. Dist.*, 668 F.3d 1258, 1261, 1264-65 (11th Cir. 2012).

<sup>20</sup> Although not binding on me, I find *Shelby* to be persuasive.

services and identification of the Student as having an ID would be less specific, there is no data variance that needs to be resolved, and adaptive data is not necessary for development of the Student's IEP.

As set forth below, I find that CCPS failed to prove that an adaptive behavior assessment is necessary to determine if the Student meets the ID disability code or that the ID code, itself, is necessary to meet the Student's educational needs. I further find that CCPS failed to prove that an adaptive behavior assessment is necessary to resolve a discrepancy among previous adaptive scores. I further find, however, that CCPS established that an adaptive behavior assessment is reasonably necessary to develop the Student's IEP and meet her educational needs.

## **II. Analysis**

### **A. Identification of the Student's areas of educational disability does not warrant overriding the Parents' refusal to consent to the adaptive behavior assessment.**

CCPS notes that pursuant to the IDEA, it is required to assess a child in all areas of suspected disability. Further, it explains that evaluation of a child for a suspected ID disability code requires consideration of the child's adaptive skills. Hence, CCPS argues, it should be permitted to proceed with the adaptive behavior assessment of the Student in order to determine whether she meets the criteria for an ID disability code, as suspected. *See* 34 CFR §300.304(c)(4); COMAR 13A.05.01.05B(1). The Parents' response is twofold: (1) there is no need for additional adaptive data, as CCPS already has it, and (2) assessment of the Student for an ID is not necessary because the Student is already eligible for special education services under other identification categories.

#### **1. CCPS did not establish that additional adaptive data is necessary for purposes of determining whether the Student meets the criteria for an ID.**

Assuming, for the moment, that an ID code would be necessary to determine the Student's educational needs, the testimony from CCPS's special education expert, XXXX XXXX, CCPS Supervisor of Special Education Services, was that an additional adaptive assessment would not be needed to determine if the Student meets the eligibility criteria for that code. Specifically, the following testimony was elicited from Ms. XXXX on direct examination:<sup>21</sup>

- Q: Do you have an opinion to a reasonable degree of professional certainty as to whether an updated adaptive behavior assessment is reasonably necessary to determine whether [the Student] has an intellectual disability under the IDEA?
- A: As to whether or not she has an intellectual disability? Umm. I believe that updated information is necessary, although I umm do believe **we have the information for that code umm at this time.** I think we need it for programming.

On cross-examination, the following testimony was elicited from Ms. XXXX, in reference to the ID tool considered at the November 11, 2015 IEP team meeting:

- Q: . . . You and Dr. XXXX felt there was sufficient information to determine an intellectual disability, correct?
- A: That's correct.
- Q: And that's both with respect to the adaptives and the cognitive?
- A: That's correct.
- Q: M'kay. So we don't need an additional adaptive for that?
- A: In my opinion, correct.
- Q: So what that leaves is the adaptive is necessary to resolve the discrepancy and to develop the IEP, in your opinion, is that fair to say?
- A: Correct.

Ms. XXXX subsequently confirmed: "In my opinion we have the data that would warrant a coding of ID."

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<sup>21</sup> All quotations of testimony at the hearing are taken from audio recording of the hearing. No transcript was prepared.



I found Ms. XXXX to be forthright and credible. She had ample experience in the field of special education and was CCPS's own expert witness. Accordingly, I gave her testimony in this regard considerable weight.

CCPS also relied upon Dr. XXXX's statements during the November 11, 2015 IEP team meeting as support for its position that an updated adaptive assessment is necessary in order to evaluate whether the Student meets the criteria for the ID disability code. The audio excerpts from the November 11, 2015 IEP team meeting establish that Dr. XXXX took the position that the second question on the ID tool could not be answered based on the existing adaptive data, due to the variability in that data.<sup>22</sup> At the meeting, Dr. XXXX suggested that in order to answer the second question on the ID tool, it would be necessary to first conduct an additional adaptive assessment later in the school year (April 2016), which would allow the Student's [School 1] teachers additional time to get to know her. Dr. XXXX's statements at the IEP team meeting directly support CCPS's position and are inconsistent, in many respects, with Dr. XXXX's testimony at the hearing, where he opined that additional adaptive data was not necessary.

I did not give meaningful weight to Dr. XXXX's November 11, 2015 assertion that an additional assessment was necessary to answer the second question on the ID tool for the very reason identified by CCPS in its closing argument: Dr. XXXX's changing opinions appeared to be largely motivated by an effort to advance the position of his clients, the Parents, in delaying or avoiding an ID classification for the Student.<sup>23</sup> Unlike CCPS, however, I considered this bias to impact the reliability of both Dr. XXXX's statements at the November 11, 2015 IEP team meeting and his testimony at the hearing. That is, I considered that Dr. XXXX's statements at the IEP team meeting—that the ID tool could not then be completed because the adaptive data

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<sup>22</sup> The issue of variance in the data will be discussed below.

<sup>23</sup> I did not credit Dr. XXXX's explanation that his opinion changed because he believed CCPS had bad faith reasons for wanting the assessment.

was too variable—were consistent with an effort to advance the Parents’ desire to avoid or delay an ID classification.

I did not credit Dr. XXXX’s explanation that his opinion at the November 11, 2015 IEP team meeting was motivated by the spirit of collaborating with CCPS and that he changed his opinion because he subsequently realized that CCPS wanted the adaptive data for disability coding purposes. Contrary to his explanation, the recording excerpts from that IEP team meeting reflect that Dr. XXXX actively advocated for the additional adaptive assessment, not that he simply made a concession in the spirit of cooperation. Moreover, at the November 11, 2015 IEP team meeting the Student’s adaptive behavior was being discussed in the context of question two on the ID tool. Dr. XXXX has over 20 years of experience attending IEP team meetings. It is not credible for Dr. XXXX to suggest that at any relevant point during the November 11, 2015 IEP team meeting he was somehow unaware that CCPS sought the adaptive data for purposes of coding the Student with an ID. It was apparent throughout the course of his testimony that Dr. XXXX was influenced by the fact that updated adaptive behavior data could be used to remove the Student from the diploma track—a result the Parents seek to avoid and that Dr. XXXX does not support. Thus, as noted above, I gave his shifting opinions on this issue very little weight.

Dr. XXXX XXXX, a CCPS school psychologist and CCPS’s expert in the field of school psychology, also testified on the need for an adaptive assessment in order to evaluate whether the Student meets the eligibility criteria for an ID coding, explaining that updating the adaptive data would be a valid and comprehensive approach in light of perceived discrepancies in the adaptive scores. More specifically, Dr. XXXX opined that it would be reasonable to obtain an updated adaptive behavior assessment, based on multiple raters, to assess whether the Student meets the criteria for an ID.

I found Dr. XXXX's testimony, opinions, and the bases for her opinions, to be less robustly developed at the hearing than Ms. XXXX's were. At best, Dr. XXXX's testimony provides only a counterpoint to Ms. XXXX's testimony. Moreover, I note that Ms. XXXX testified on cross-examination, without objection or refute, that, at some point, Dr. XXXX had agreed with Ms. XXXX that there was sufficient adaptive data to make the ID determination.

CCPS bears the burden of proof, by a preponderance of the evidence: where the evidence is evenly balanced, the party with the burden of proof cannot prevail. *Coleman*, 369 Md. at 125 n.16. I found Dr. XXXX's testimony to be less persuasive than that of Ms. XXXX and, accordingly, I find that CCPS has not met its burden of showing that the additional data sought is necessary to determine all areas of the Student's educational disability, that is, whether the Student qualifies for an ID disability code.

**2. CCPS did not establish that an ID disability code is necessary for it to meet the Student's educational needs.**

CCPS's argument fails for the further reason that it did not establish that an ID code itself is necessary to meet the Student's educational needs. The primary disability code on an IEP is an eligibility category. The disability code on an IEP does not drive the services to be provided to a student. Indeed, the applicable law contemplates that all of a child's educational needs may not be covered by the eligibility category of his/her primary disability code. *See* 34 C.F.R. §300.304(c)(6); COMAR 13A.05.01.05B(2)(d). "Because all children are different, with different strengths and weaknesses and thus different needs, it is impossible to formulate specific, universal guidelines for their education, and [the] IDEA does not purport to do so."<sup>24</sup> A disabled child may have individual strengths as well as weaknesses. *See* 20 U.S.C.A. §1414(d)(3)(i). A child's strengths may allow that child to be involved in, and progress in,

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<sup>24</sup> Theresa M. Willard, Note, *Economics and the Individuals with Disabilities Education Act: The Influence of Funding Formulas on the Identification and Placement of Disabled Students*, 31 Ind. L. Rev. 1167, 1169 (1998).

the general education curriculum despite the effects of a disability. It is the “the academic, developmental, and functional needs of the child” for special education and related services as determined by a variety of information, including tests, observations, parental input, formal assessments and other evaluative materials and the goals and objectives designed to meet those “education needs” that drive services in an IEP, not the eligibility category label that appears as the primary disability code. 20 U.S.C.A. § 1414(a)(1)(C)(i)(II), (b)(2)-(3), (d)(3)(iv). “Congress passed the IDEA to provide disabled children with programs ‘that emphasize[ ] special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.’” *M. S. v. Fairfax Cnty. Sch. Board*, 553 F.3d 315, 319 (4th Cir. 2009) (alteration in original) (citing 20 U.S.C.A. § 1400(d)(1)(A)).

There is no dispute that the Student qualifies for special education services, supports, and accommodations with her current identification as a student with multiple disabilities, including speech language impairment and other health impairments related to her diagnoses of XXXX and ADHD. There was testimony that identification of the Student as having an ID could eventually lead to her being removed from the diploma-track. However, there was no specific, persuasive, testimony that an ID disability code, in and of itself,<sup>25</sup> would impact CCPS’s present ability to develop an appropriate education plan for the Student or would otherwise alter the Student’s current special education services, supports, or accommodations.

In this regard, Ms. XXXX testified on examination by CCPS as follows:

Q: What would be different, potentially, about [the Student’s] IEP were the team to have sufficient data to identify her as a student with an intellectual disability?

...

A: . . . This is going to sound like I don’t care if it changes her code. **The code isn’t really the driving force within that.** I believe it [(the adaptive assessment)] would change likely some of the goals I believe there are areas of need that have

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<sup>25</sup> As noted above, CCPS separately argued that, aside from coding purposes, the adaptive data is necessary to formulate an appropriate IEP for the Student. That argument is addressed below.

yet to be addressed for [the Student] that might be drawn to light in an adaptive skills assessment. Umm, **I don't believe that what is supported within it such as her goal areas necessarily would be changed just as the result of an ID code or any code for that matter.**

Ms. XXXX also made an analogy between a disability code and the cover of a book, observing that although the cover of a book may provide a general idea of what is inside the book, it is not as important as what is inside the book. However, she also acknowledged, on cross examination, that even where two students have the same coding, of ID, their IEP's may look very different, depending on each student's specific needs and circumstances. Ms. XXXX repeatedly explained, throughout her testimony, that it was the data itself, not the coding necessarily, that would potentially lead to changes in the Student's IEP goals or identify new areas of need. For instance, during cross-examination the following exchange occurred:

Q: . . . [The Student] doesn't need a coding of intellectual disability in order to develop an appropriate IEP for her, correct?

A: A code? No.

When questioned as to whether the ID code was necessary to remove the Student from the diploma-track, Ms. XXXX explained it is the determination that a student has "a significant cognitive disability" that can lead to the student being removed from the diploma track. She testified that all individuals with IDs have significant cognitive disabilities, but that not all significant cognitive disabilities are necessarily IDs.

Ms. XXXX's testimony was thorough, well-explained, and consistent. Her testimony was informative and she had ample experience in the field of special education. As noted above, I found her to be credible and persuasive on this point and I gave her testimony considerable weight.

Dr. XXXX also offered testimony on this issue. She testified, nonspecifically, that there may be some changes to the Student's IEP goals if the Student were identified as having an ID

code; however, she also testified that it is the data, not the coding, that drives the IEP and the services provided to a student. On cross-examination, when questioned as to how an ID code would change the IEP, she testified, “It depends on what the team decides. It shouldn’t change the programming. **Just the actual code doesn’t necessarily change the IEP.** The goals, you know, drive the IEP.” She opined that the change to an ID code may result in additional living skill instruction being provided to the Student, but also acknowledged that the team already had some data showing that the Student needed living skills instruction. Additionally, there was evidence that the Student was already receiving some life skills instruction. (*See, e.g.,* CCPS Ex. 15 at 3, 21, 42.) I did not find Dr. XXXX’s testimony to be sufficient to support a finding, by a preponderance of the evidence, that an ID code is necessary for the Student’s educational needs.

Dr. XXXX’s testimony was also to the effect that the data, and not the disability code, guides the services that are provided to a special education student. He further testified that there were no services that the Student could not receive because of her current coding. That is, a change in disability code to ID is not necessary to meet the Student’s educational needs. I note that his testimony on this point was substantially consistent with the testimony of Ms. XXXX and Dr. XXXX.

Finally, the Parents’ expert in special education and behavioral analysis, Dr. XXXX, testified that the disability code does not govern the services to be provided to a student. Dr. XXXX, like Ms. XXXX, Dr. XXXX, and Dr. XXXX, testified that instead, the services are to be based on the student’s present goals and objectives.

Upon consideration of the testimony, I find that CCPS failed to establish that in order to meet the Student’s current educational needs, it is necessary to determine whether the Student has an ID. Thus, in the circumstances of this case, consideration of whether the Student meets

the criteria for an ID does not warrant overriding the Parents' refusal to consent to the adaptive behavior assessment at this time.

In summary, for the reasons set forth above, I find that CCPS has not established that additional adaptive data is needed to determine whether the Student meets the criteria for an ID disability code. I further find that, CCPS has not demonstrated that consideration of whether the Student has an ID is necessary to determine the Student's educational needs. For these reasons, CCPS's argument that, despite the Parents' refusal, it should be permitted to proceed with the adaptive behavior assessment because the data is necessary to determine the Student's disability coding (*i.e.*, whether she meets the criteria for an ID), fails.

**B. Resolution of a variance in the data points does not independently warrant overriding the Parents' refusal to consent to the adaptive behavior assessment.**

Resolution of a data discrepancy solely for the purpose of resolving disparate data would not, itself, advance the Student's educational needs, and CCPS did not argue otherwise. Rather, CCPS primarily argued that resolution of a perceived discrepancy in the data is necessary so that it will have more solid data for consideration of the ID tool. I have already determined that classification of the student as having an ID code is insufficient, in this case, to overcome the Parents' refusal to consent to the adaptive assessment, because the assessment is not needed to produce data that is necessary to determine the Student's educational needs.<sup>26</sup> Thus, the argument that new adaptive data is necessary to permit the IEP team to resolve the perceived discrepancy and thereafter complete the ID tool, fails for the same reasons.

Further, the testimony from Ms. XXXX established that the adaptive assessment is a subjective, not objective, measure of a child's typical behavior.<sup>27</sup> The ID tool itself recognizes

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<sup>26</sup> See section II.A, *supra*.

<sup>27</sup> Dr. XXXX testified to the same effect.

that some variance in scores may occur, and requests that the variance among raters be stated. (See CCPS Ex. 22 at 1.) Ms. XXXX testified that a child's adaptive performance outside of the school setting could "absolutely" be higher than it is in the school setting. Ms. XXXX further testified that, as a general matter, it is "not uncommon" to see discrepancy among assessment scores and that a discrepancy does not necessarily require an additional assessment, provided the IEP team understands how to interpret the scores. She explained that because the IEP team (particularly Dr. XXXX) had concerns over the variance, the team agreed further testing was necessary and should be conducted at a later date. However, throughout her testimony, Ms. XXXX maintained that, in her opinion, the data was sufficient for the IEP team to proceed. In other words, in Ms. XXXX's opinion, the variance in the adaptive data did not necessitate another adaptive assessment in the same reevaluation period.

Indeed, when Ms. XXXX was questioned on cross-examination about variance among the scores obtained by Ms. XXXX in December 2014, Ms. XXXX acknowledged that the composite scores of 54 from the Student's special education teacher and 76 from the Student's speech-language pathologist exhibited a "significant discrepancy." Ms. XXXX further acknowledged that at no time had anyone sought a new adaptive assessment in light of this significant discrepancy among the scores obtained by Ms. XXXX. Ms. XXXX testified:

**Again, a discrepancy in and of itself doesn't warrant a reevaluation. Again, in my opinion, it didn't on the 11<sup>th</sup> [(the date of the November 2015 IEP meeting)] either, but that's what the team agreed to.**

Ms. XXXX reiterated this point when questioned about the discrepancy between the composite adaptive scores obtained by Ms. XXXX from XXXX XXXX, a 57, and the speech-language pathologist, a 76. She testified: "Again, a discrepancy alone, in my opinion, isn't warranting a reevaluation [but] that's what the IEP team agreed to . . . ." Ms. XXXX



affirmatively testified that the IEP team could have relied upon Ms. XXXX's adaptive assessment data, despite the "significant discrepancies" among the raters.

Ms. XXXX further testified that XXXX XXXX's adaptive ratings in 2012, for Dr. XXXX, and 2015, for Dr. XXXX, which were a 71 and 75, respectively, were not significantly different. She again testified that she would expect that the mother's scores, for the home environment, would be different from the scores for the academic environment. She explained that she was not "surprised" by the ratings that Dr. XXXX obtained from XXXX XXXX; rather, the only "surprise" was Dr. XXXX's failure to include any raters from the academic environment. Dr. XXXX likewise voiced concerns with Dr. XXXX's adaptive results in light of his failure to obtain an adaptive rating from any of the Student's teachers.

Despite the concerns voiced by Ms. XXXX and Dr. XXXX about the methodology used by Dr. XXXX, there was no evidence that Dr. XXXX's failure to obtain adaptive ratings from an academic rater undermined either the scores he obtained from XXXX XXXX or the scores Ms. XXXX obtained from the Student's teachers in December 2014. In fact, Dr. XXXX explained why he did not solicit new adaptive ratings from the Student's teachers. In this regard, he testified that he sent a Child Behavior Checklist form<sup>28</sup> to the Student's teachers as early as April 2015 so that the teachers could provide responses to him for before they dispersed for the summer break, when it may be more difficult to get their attention. Dr. XXXX further explained that he did not send an adaptive behavior assessment to the Student's teachers at that time because those same teachers had completed adaptive ratings just four months earlier. Thus, he did not see the need for new ratings by them. Dr. XXXX did not have XXXX XXXX complete an adaptive rating of the Student until approximately July 2015; he noted that by then, Ms.

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<sup>28</sup> This form is not an adaptive skills assessment.

XXXX's prior adaptive ratings were seven months old and, due to the summer schedule, the Student had been in the home environment for more extensive periods of time.

I found Dr. XXXX's explanation to be logical. It is worth noting that his explanation is also relatively consistent with Dr. XXXX's decision, in July 2015, not to repeat Ms. XXXX's December 2014 adaptive assessment. (*See* CCPS Ex. 19 at 6.) Accordingly, on this point, I found Dr. XXXX's testimony to be credible. Additionally, Ms. XXXX recognized that even though Dr. XXXX did not issue his report until after the new school year had begun and even though the Student had received extended school year (ESY) services at [School 1] over the summer, the teachers at [School 1] still would not have known the Student well by the time Dr. XXXX issued his report. Moreover, once the full student body returned, the atmosphere would be different from that during the ESY, including variance in the Student's schedule and an increase in "stimuli." This lends some additional support to Dr. XXXX's decision not to obtain adaptive scores from an academic rater at the point in time when he was making his assessment.

Dr. XXXX further spent a significant portion of his testimony attempting to explain why an additional adaptive assessment was not necessary to resolve any perceived discrepancy in the adaptive data. His testimony was in conflict with his statements at the November 11, 2015 IEP team meeting, where he asserted that the data was so variable that an additional adaptive assessment was necessary. Ultimately, the testimony revealed that Dr. XXXX's opinions were colored by his perception of CCPS's motivation for collecting updated adaptive behavioral data. For the same reasons noted in section II.A, *supra*, I did not give his testimony on this point significant weight.<sup>29</sup>

Dr. XXXX's testimony was contrary to Ms. XXXX's and Dr. XXXX's. On direct examination, she opined that "the results that Dr. XXXX had were markedly discrepant than the

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<sup>29</sup> Dr. XXXX testified that she would defer to Dr. XXXX on this point.

results from Ms. XXXX had [sic] just six months prior.” Dr. XXXX recognized that it was “not uncommon” to see “some” variability in their adaptive scores, but she was of the opinion that the variability was “pretty significant” from year to year and also among the same evaluators in a given year. She noted that at the November 11, 2015 IEP team meeting, Dr. XXXX expressed his belief that the adaptive scores were too variable to answer the second question on the ID tool and that CCPS, accordingly, wanted to have another set of adaptive scales completed by the [School 1] teachers and the Parents. Dr. XXXX noted that at that time, Dr. XXXX agreed with this approach, but on a deferred basis so that the [School 1] teachers had additional time to get to know the Student.

Based on the evidence, I find that the variance between the adaptive scores obtained by Dr. XXXX and the prior adaptive scores is not meaningful, for purposes of the issue before me. The only new adaptive data obtained by Dr. XXXX was from XXXX XXXX, and the ratings she provided were relatively consistent with her ratings from 2011, per the testimony of Ms. XXXX and, for what it is worth, Dr. XXXX. Variance is expected in adaptive scores and Ms. XXXX, CCPS’s own witness, credibly and candidly testified that in her opinion the variance here did not warrant an additional adaptive assessment. Accordingly, I find that CCPS, as the party bearing the burden of proof, has not prevailed on its argument that an additional adaptive assessment is necessary to resolve a discrepancy in the adaptive data. *Coleman*, 369 Md. at 125 n.16.

**C. Developing the Student’s IEP and providing the student with a FAPE warrant overriding the Parents’ refusal to consent to the adaptive behavior assessment.**

Finally, CCPS argued that a new adaptive behavior assessment is necessary to develop the Student’s special education programming and address her behavioral issues. An IEP, as noted above, is to include a statement of the child’s present levels of academic achievement and

functional performance, a statement of measurable annual academic and functional goals, a statement of the special education and related and supplementary aids and services that will be provided to the child to advance the child toward the annual goals and for the child to be involved in the general education curriculum, and an explanation of the extent to which the child will not participate in the general education curriculum. 20 U.S.C.A. § 1414(d)(1)(A); *see also* COMAR 13A.05.01.09A. In developing the IEP, the IEP team is to consider the strengths of the child, the parental concerns, the results of the child’s evaluations, and the child’s academic, developmental, and functional needs. 20 U.S.C.A. § 1414(d)(3)(A); *see also* 34 C.F.R. §300.324(a)(1). In the case of a child whose behavior is impeding the child’s ability to learn, the IEP is also to consider “the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 20 U.S.C.A. § 1414(d)(3)(B)(i); *see also* 34 C.F.R. §300.324(a)(2)(i). The child’s communication needs are also to be considered. 20 U.S.C.A. §1414(d)(3)(B)(iv); *see also* 34 C.F.R. §300.324(a)(2)(iv). An IEP is to be revised to address any lack of expected progress toward the annual goals, as well as the child’s anticipated needs, and behavioral impediments. 20 U.S.C.A. § 1414(d)(4)(A); *see also* 34 C.F.R. §300.324(b)(1), (2).

Ms. XXXX obtained adaptive scores for CCPS in or about December 2014, as part of this same reevaluation period. Ordinarily, the fact that a school system had adaptive data from the same reevaluation period would weigh heavily against the school system’s request for an additional adaptive assessment. *See* 20 U.S.C.A. § 1414(d)(3)(A)(iii). Here, however, the adaptive data obtained by Ms. XXXX was from the time that the Student attended [School 2], and the Student has since moved on to [School 1].

Ms. XXXX’s testimony explained that CCPS was interested in having data about the Student’s adaptive behavior in the [School 1] environment:

- Q: Now. Ms. XXXX, you have testified regarding students' different adaptive performance in different settings. Is that uncommon?
- A: No. Certainly, when you change venues. I honestly am not familiar with the exact size of [[School 2]] but [[School 1]] is the largest XXXX in Carroll County Public Schools, there are over a thousand students, which I do know is larger than some of our high schools. So [a] greater amount of stimuli, greater number of students, greater number of transitions. So any student's functionality would change. In fact sixth graders have a hard time adjusting. Sixth graders typically are able to correct that, if you will, or adjust, relatively quickly. [The Student] has had a longer adjustment period. . . .

Ms. XXXX again explained that the changes that accompanied the transition to [School 1] could result in a change in a student's adaptive behavior. On cross-examination Ms. XXXX confirmed that the Student was having a difficult time adjusting to the [School 1] and was not performing in the same manner she had performed at the [School 2]. Ms. XXXX went on to explain that it was not the numerical values of the existing adaptive scores that presented a problem for CCPS in determining the Student's educational programming and needs, but rather the lack of adaptive data from the [School 1] setting. She testified:

It was obvious that [the Student's] functionality at [[School 1]] was very different than it had been at [[School 2]] be it her comfort level there, the smaller size—[[School 1]] is the XXXX that we have—her ability to be successful throughout the school day was very different, and has been very different, at [[School 1]]. Adaptive scores with raters from [[School 1]] could point in a direction. So different from the FBA, where we use observable behaviors . . . the adaptive skills assessment looks at a broad range of skills. So that's sort of a different measure of her functionality.

Ms. XXXX testified that the Student was not making progress on her IEP goals and struggled to access the grade-level curriculum. (*See also* CCPS Ex. 15.) She explained that new adaptive data for the Student would be useful for purposes of the Student's educational programming. Specifically, Ms. XXXX believed that, in the Student's case, updated adaptive data, from teachers at [School 1], may lead to additional IEP goals and areas of need that had not

previously been identified for the Student. The adaptive data could provide information about the Student's ability to transfer skills across environments.

In a similar vein, Dr. XXXX testified that at the [School 1], the Student exhibited behavioral problems in the larger school setting and during transition times. Dr. XXXX noted that the Student exhibited less disruptive behavior and remained more on task during her intensive, one-on-one, reading instruction. Despite the implementation of several behavior plans, Dr. XXXX testified, the Student's behavioral problems were not fully resolved. Dr. XXXX explained that adaptive data from the [School 1] setting would be looked at to determine what other instructional practices could be put in place to further help the Student behaviorally for the portion of her day that was spent in the general education setting. Although Dr. XXXX testified that CCPS was not presently limited in the options available to it, the requested adaptive data from the [School 1] setting could inform the IEP team's decision on how to proceed within the available options. Finally, Dr. XXXX noted that she believed that adaptive data may indicate that the Student needs additional instruction in living skills.

As previously noted, an adaptive behavior assessment is concerned with the student's typical or expected behavior, and not necessarily the student's highest capability. The evidence was that a child's adaptive skills may vary with the setting, which is of particular importance in this matter. Both Ms. XXXX and Dr. XXXX testified that different environments could account for differences in a child's adaptive skills. For instance, this is one reason why adaptive behavior assessments typically seek information about a child's adaptive skills in both academic and non-academic settings, as does the ID tool. Thus, I found Ms. XXXX's and Dr. XXXX's explanations—that additional information was needed to assess the Student's change

functionality and behavior in a new setting—to be generally consistent with the evidence that environment can impact functional behavior.

The Parents presented testimony to the effect that behavioral issues could be more appropriately addressed through a more thorough FBA and a BIP.<sup>30</sup> Ms. XXXX and Dr. XXXX each recognized that, despite some overlap, data collected as part of an adaptive behavior assessment is distinct from data collected as part of an FBA. The testimony explained that an adaptive behavior assessment collects subjective data as to how the Student might respond in certain situations, while an FBA collects objective data on behavior actually observed. Ms. XXXX and Dr. XXXX each testified that even though an FBA had been performed for the Student, an adaptive behavior assessment would be useful in addressing the Student's continuing behavioral problems—which had not been remedied by the Student's BIPs based on an FBA done in the absence of adaptive data from the [School 1] setting.

The record establishes that CCPS's efforts to resolve the Student's behavioral issues, including her inability to stay on task in the general education classes and her difficulty during transitions, have not succeeded, despite having conducted an FBA of the Student and implemented behavioral plans. CCPS is seeking the data from an adaptive behavior assessment, from the Student's [School 1] educators, to assist it in resolving those issues. The testimony established that adaptive data weighs on that issue and would assist CCPS in determining the Student's areas of need, including whether the Student may need different supports, program modifications, and goals. Thus, CCPS has articulated reasonable grounds for conducting the adaptive behavior assessment over the Parents' objection.

The evidence presented for the Parents does not alter this conclusion. Again, I did not find Dr. XXXX's testimony, on whole, to be particularly credible or reliable and, thus, I gave it

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<sup>30</sup> See discussion of Dr. XXXX's testimony, *infra*.

less weight. It is worth noting, however, that even Dr. XXXX's opinions on this issue did not persuasively or wholly support the Parents' position. As discussed above, the recordings from the November 11, 2015 IEP team meeting reflect, and Dr. XXXX acknowledged, that he was the one who suggested that a new adaptive behavior assessment would be appropriate once the Student's [School 1] teachers had additional time to get to know her. Although Dr. XXXX backed away from that opinion at the hearing, even then he conceded that a "reassessment was reasonable if we are really trying to find something relevant to [the Student's] strengths and weaknesses and build upon that." In explaining why he was of the opinion that a new adaptive assessment was not necessary for the development of the Student's IEP, Dr. XXXX testified:

**We also had a kid who is transitioning to a new school without knowledgeable informants who was having a lot of behavioral issues. So, I do think that at some point revisiting the adaptive behavioral measures would be important.** And I certainly suggest that we consider that at the end of the year, with the assumption that we're seeking what's in the best interest of [the Student]. But I think as the team's impetus changed for doing that, my impetus changes for wanting to do the assessment. I don't trust them, frankly.

Thus, Dr. XXXX recognized that an adaptive behavior assessment from the Student's [School 1] instructors "would be important" in light of her transition to a new school and her continued behavioral issues. Dr. XXXX again noted that the assessment should occur once the Student's instructors became more familiar with, or knowledgeable about, the Student; at the time of the hearing, the school year was in its penultimate month.<sup>31</sup> While Dr. XXXX and the Parents are concerned, and rightly so, that CCPS will also use new adaptive data in considering whether to remove the Student from the diploma-track, such use of adaptive data is not nefarious

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<sup>31</sup> On cross-examination, Dr. XXXX attempted to backpedal his opinion that it would be important to revisit the adaptive measures once the Student's educators got to know her. Instead, Dr. XXXX first testified that, even absent a perceived bad faith intention by CCPS in seeking the data, the IEP team would need to have a discussion to determine whether there was any useful reason to re-administer adaptive assessments. Subsequently, Dr. XXXX opined that even absent a bad faith motive, there was no useful purpose in conducting an updated adaptive assessment of the Student. Although Dr. XXXX eventually agreed that a reassessment may be useful for determining if certain existing scores were discrepant, this type of backtracking detracted from the weight I gave to Dr. XXXX's testimony generally.



and it does not bar the collection of data that is reasonably needed for educational purposes. Whether or not the Student should be removed from the diploma-track is not the issue before me. Rather, the issue is whether data from an updated adaptive behavioral assessment is reasonably necessary to determine the Student's educational needs. On this point, even Dr. XXXX recognized that, in light of the Student's move to [School 1] and her ongoing behavioral issues, an updated adaptive behavioral assessment "would be important."

In her testimony, Dr. XXXX recognized that the Student has behavioral concerns that are interfering with her education. Specifically, the Student refuses to do aspects of her work by leaving class, not taking a seat where her work is, and not transitioning to and from the classroom. The Student exhibits disruptive behavior in the classroom and the hallways. The December 2015 IEP team meeting, which Dr. XXXX attended, focused on the FBA and addressing these behaviors. Dr. XXXX made suggestions for the BIP at the December 2015 meeting, but, she testified, the Student continues to regularly receive disciplinary referrals.

Dr. XXXX explained that where, as in the Student's case, the behavioral issues are frequent and intense and are disrupting her education, more specific data should be collected to formulate more precise and effective behavioral interventions. She testified that estimates of how a child would respond in a given situation (such as would be obtained during an adaptive assessment) would not be useful in an FBA because it was not to the level of precision necessary to create a meaningful intervention. Dr. XXXX further opined that using an FBA that collects specific data and employing effective analysis and faithful implementation, a BIP would have a "very high likelihood" of decreasing the incidence of challenging behavior. Dr. XXXX testified that more precise data collection "could have" allowed CCPS to address the Student's behavioral issues through a BIP and identify appropriate behavioral supports.

Dr. XXXX further opined that she did not believe an updated adaptive assessment was necessary because it “would not have provided much information about what specifically would have needed to change in her IEP in order for her to access her education.” She explained that an adaptive assessment can provide a general idea of where areas of concern lie, but it would not be sufficient for an FBA.

Dr. XXXX went on to testify that, as of December 2015, if the IEP team needed to consider adaptive data, it had prior adaptive assessments to utilize. Her direct testimony did not focus on the fact that those prior adaptive assessments were in the [School 2] environment and that the Student’s behavior had changed at [School 1]. When questioned on this point on cross-examination, Dr. XXXX acknowledged that a change in setting from [School 2] to [School 1] could result in changes to the Student’s adaptive behavior. Despite that recognition, Dr. XXXX maintained that a new adaptive assessment was unnecessary because the existing adaptive data could inform the IEP in the necessary areas. Dr. XXXX offered no further explanation for this opinion.

Although I found Dr. XXXX to be knowledgeable and credible, I noted that she was more hesitant in her testimony. Additionally, she did not fully reconcile her concession that the Student’s adaptive behavior could be expected to change with the transition to [School 1], with her opinion that the existing adaptive data, from [School 2], was sufficient for purposes of formulating the Student’s IEP.

XXXX XXXX also testified. Ms. XXXX observed that the Student was “pretty independent” at home and goes to large venues with limited supervision for XXXX competitions. The Student enjoys XXXX in the driveway, and can do so independently. The Student enjoys watching cooking shows and assists her parents with cooking; she can make a

sandwich or plate of nachos on her own. The Student participates in sports, including [sports]. She is involved in the Special Olympics. The Student is also capable of assisting with some household chores; she enjoys washing windows, but is still working on being able to load and unload the dishwasher.

As the other witnesses also acknowledged, Ms. XXXX observed that the Student's strengths are her social skills. Ms. XXXX further acknowledged that the Student's behavior can impact the Student's social skills, however. In discussing the behavioral issues, Ms. XXXX testified that by the time of the November 11, 2015 IEP team meeting, the Student's "behavior was already beginning to be such a problem" that it was the main priority for Ms. XXXX at that meeting. On cross-examination, Ms. XXXX confirmed that the Student's behavior had been a "big problem" this year. Ms. XXXX explained that, nonetheless, she believes an updated adaptive behavior assessment would not be helpful or beneficial to the Student because Ms. XXXX already obtained adaptive ratings from the [School 2] teachers who were very familiar with the Student. By contrast, Ms. XXXX noted, the [School 1] team had not known the Student long and had not seen the Student at her best. Given the subjective nature of the adaptive assessment, Ms. XXXX believes an updated assessment is not appropriate and will not change the Student's BIP or IEP.

Ms. XXXX repeatedly noted, however, that the Student's behavior impediments were something new as of the Student's transition to [School 1]. Further, as of the date of the hearing, the behavior problems continued, such that the staff at [School 1] was still unable, per Ms. XXXX, to get to know the "real" Student. On cross-examination, Ms. XXXX acknowledged that she saw an ID classification as a step toward changing the Student to a certificate-track, to which Ms. XXXX objects.

I gave greater weight to the testimony from Ms. XXXX and Dr. XXXX. In particular, as noted above, I found Ms. XXXX to be knowledgeable and candid throughout her testimony. Her opinion was sometimes contrary to CCPS's position and she was not simply toeing the line for CCPS. Further, that an additional, more thorough FBA might result in changes to a behavioral plan for the Student is not a reason to preclude CCPS from collecting data that it has not previously collected from the Student's [School 1] instructors in order to validly assist it in addressing her behavioral issues and special education needs generally.

In further support of their position, the Parents also argued that even though CCPS had uncontroverted adaptive data when it revised the Student's IEP in June 2015, it did not include any adaptive skills in the Student's IEP. Thus, the Parents suggest, CCPS is disingenuous in its assertion that adaptive data is needed for the Student's IEP goals and programming. I do not agree.

Ms. XXXX and Dr. XXXX pointed to specific areas where adaptive skills were addressed in the Student's IEP. Additionally, the assessment reports prepared by Ms. XXXX and Ms. XXXX both note that the data would be shared with the IEP team and used to assist with the Student's educational planning. (CCPS Ex. 16 at 4; CCPS Ex. 18 at 8 (noting referral from IEP team) and 9.) Indeed, Ms. XXXX made specific recommendations in her written report that appear to be reflected in the Student's IEP. For instance, Ms. XXXX reported:

In the area of **Daily Living Skills**, [the Student's] ability to manage her personal needs; understand time, money, and math; and follow rules and routines fall below average when compared to her same-aged peers. Personal living skills [the Student] should work on include toilet training, putting her shoes on the right feet, and buttoning large buttons in the correct buttonholes. Academic opportunities for growth include understanding the function of money, saying the days of the week in order, and stating the current month of the year when asked. In the school/community subdomain, [the Student] needs to work on consistently following simple instructions and following classroom rules and routines.

(CCPS Ex.16 at 3 (emphasis in original).) Correspondingly, the Student’s IEP reflects that:

- “in the area of functional skills, [the Student] needs to demonstrate more independence with toileting<sup>32</sup> . . . and everyday tasks.” (CCPS Ex. 15 at 3.)
- Goals included that “[g]iven play/real coins, resources, and one prompt, [the Student] will apply knowledge of money as measured by solving 10 math problems.” (CCPS Ex. 15 at 42.)
- Instructional supports to be provided to the Student include providing her “with a schedule that includes her class times. Have [the Student] connect the current time to particular class time in order to assist with telling time and making real life connections.” (CCPS Ex. 15 at 21.)
- Goals included that “[g]iven a visual and verbal script, [the Student] will transition appropriately (moving toward appropriate location, staying in assigned location, complying with adult directions) throughout the school building.” (CCPS Ex. 15 at 57.)

Although the IEP does not expressly refer to any adaptive behavior assessment, the written psychological reports expressly relate that this information was provided to the IEP team and the IEP reflects the results of those adaptive behavioral assessments.

The evidence offered by CCPS was sufficient to meet its burden of establishing that new adaptive behavior data is reasonably necessary to determine the Student’s educational needs in relation to her special education programming. Accordingly, under 20 U.S.C.A § 1414(a)(2), I authorize CCPS to conduct an adaptive behavior assessment.

### **CONCLUSIONS OF LAW**

Based on the Findings of Fact and Discussion, I conclude as a matter of law that CCPS is authorized to conduct an adaptive behavior assessment of the Student, as requested by CCPS during the Student’s December 15, 2015 IEP team meeting, despite the Parents’ refusal to consent to the assessment. 20 U.S.C.A. § 1414(a)(2); 34 C.F.R. §§ 300.303 and 300.304.

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<sup>32</sup> The testimony at the hearing was that the Student was now independent in toileting, and has been since just after the end of fifth grade.

**ORDER**

I **ORDER** that Carroll County Public Schools is authorized to conduct an adaptive behavior assessment of the Student, as requested by CCPS during the December 15, 2015 IEP team meeting.

I further **ORDER** that Carroll County Public Schools shall conduct the reevaluation of the Student in a manner consistent with the provisions of 20 U.S.C.A. § 1414(a)(2) and 34 C.F.R. §§ 300.303 and 300.304.

June 14, 2016  
Date Decision Mailed

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Emily Daneker  
Administrative Law Judge

## **REVIEW RIGHTS**

Any party aggrieved by this decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or to the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (2014). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

Should a party file an appeal of the hearing decision, that party must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing, of the filing of the court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

The Office of Administrative Hearings is not a party to any review process.

ED/da