

PRINCE GEORGE'S COUNTY  
PUBLIC SCHOOLS

v.

[REDACTED]

STUDENT

\* BEFORE ROBERT F. BARRY,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-PGEO-OT-19-00649

\* \* \* \* \*

**DECISION**

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DISCUSSION  
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ORDER

**STATEMENT OF THE CASE**

On January 4, 2019, the Prince George's County Public Schools (PGCPS) filed a complaint with the Office of Administrative Hearings (OAH), requesting a due process hearing under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(b)(6), (f)(1)(A) (2017). The PGCPS asserted that [REDACTED] (Parent), the mother of [REDACTED] (Student), failed to respond to a request to provide written consent for the PGCPS to conduct an initial evaluation to determine whether the Student qualified as a child with a disability, and requested permission to conduct such an initial evaluation. 20 U.S.C.A. § 1414(a)(1)(D)(ii)(I) (2017).

On February 1, 2019, I conducted a hearing at the Largo Government Center. Gail Viens, Deputy General Counsel, represented the PGCPS. The Parent did not appear for the hearing.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2018); Md. Code Ann., Educ. § 8-413(d)(2), (e)(1) (2018); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

The decision in this case would normally be due on Monday, February 18, 2019, the forty-fifth day after January 4, 2019, the date the PGCPS filed its due process complaint. 34 C.F.R. § 300.515(a) (2018). The normal due date of February 18, 2019 is a State holiday, so my decision is due the following day, Tuesday, February 19, 2019. See 34 C.F.R. §§ 300.510(b) and (c), 300.515(a) and (c) (2018); Md. Code Ann., Educ. § 8-413(h); COMAR 13A.05.01.15C(13)-(14).

The contested case provisions of the Administrative Procedure Act; the Maryland State Department of Education's procedural regulations; and the Rules of Procedure of the OAH, govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

1. Did the Parent fail to appear for the hearing after receiving adequate notice of the hearing?
2. Did the Parent fail to respond to a request to provide consent for an initial evaluation to determine whether the Student qualifies as a child with a disability under the IDEA?
3. Should I grant the PGCPS's request for permission to conduct an initial evaluation to determine whether the Student qualifies as a child with a disability under the IDEA?

### **SUMMARY OF THE EVIDENCE**

Except as noted below, I admitted the following exhibits on behalf of the PGCPS:

- #1 - Notice of Individualized Education Program (IEP) Team Meeting, June 14, 2018
- #2 - Notice of IEP Team Meeting, September 24, 2018
- #3 - Prior Written Notice, October 7, 2018
- #4 - Notice and Consent for Assessment, October 1, 2018

- #5 - (not offered)
- #6 - IEP Team Meeting Sign-In Sheet, October 1, 2018
- #7 - Restraint Report, September 18, 2018
- #8 - Restraint Report, November 8, 2018
- #9 - Emergency Conference Notification Form, December 17, 2018
- #10 - Student's Disciplinary Records:
  - Student Discipline Referral, January 24, 2018
  - Student Discipline Referral, January 19, 2018
  - Student Discipline Referral, January 9, 2019
  - Notification of Student's Suspension, December 17, 2018
  - Student Discipline Referral, December 17, 2018
  - Student Discipline Referral, December 17, 2018
  - Notification of Student's Suspension, November 30, 2018
  - Notification of Student's Suspension, November 8, 2018
  - Student Discipline Referral, November 8, 2018
  - Student Discipline Referral, November 8, 2018
  - Student Discipline Referral, October 31, 2018
  - Documentation Form October 24, 2018
  - Student Discipline Referral, October 24, 2018
  - Notification of Student's Suspension, October 16, 2018
  - Student Discipline Referral, October 16, 2018
  - Student Discipline Referral, October 16, 2018
  - Documentation Form October 12, 2018
  - Notification of Student's Suspension, October 9, 2018

- Student Discipline Referral, October 9, 2018
- Notification of Student's Suspension, October 9, 2018
- Student Discipline Referral, October 3, 2018
- Documentation Form, October 2, 2018
- Documentation Form, October 2, 2018
- Notification of Student's Suspension, September 24, 2018
- Student Discipline Referral, September 24, 2018
- Notification of Student's Suspension, September 18, 2018
- Student Discipline Referral, September 18, 2018
- Student Discipline Referral, September 18, 2018
- Notes/Observations, September 15, 2018
- Daily Teacher Observations/Notes, undated
- Documentation Form, September 13, 2018
- Student Discipline Referral, June 15, 2018
- Notification of Student's Suspension, May 29, 2018
- Student Discipline Referral, May 29, 2018
- Student Discipline Referral, May 24, 2018
- Notification of Student's Suspension, May 14, 2018
- Student Discipline Referral, May 14, 2018
- Student Discipline Referral, May 18, 2018
- Student Discipline Referral, May 4, 2018
- Student Discipline Referral, May 2, 2018
- Student Discipline Referral, May 2, 2018

- Student Discipline Referral, April 18, 2018
- Student Discipline Referral, February 12, 2018
- Student Discipline Referral, February 12, 2018
- Student Discipline Referral, February 9, 2018
- School Bus Disciplinary Report, January 26, 2018
- Student Discipline Referral, January 9, 2019
- Student Discipline Referral, January 22, 2019

#11 - Student's Disciplinary Records:

- Documentation Form, October 9, 2018
- Documentation Form, October 12, 2018
- Notes/Observations, October 8 and 12, 2018
- Notes/Observations, October 15, 2018
- Notes/Observations, October 1, 3, 4, and 5, 2018
- Notes/Observations, September 24, 2018
- Notes/Observations, September 17 and 18, 2018

#12 - Action Plan for Positive Behavioral Support, April 10, 2018

#13 - Student Intervention Team (SIT) Referral, September 18, 2018;

School Instructional Team Meeting Sign-In Sheets, February 8, 2018;  
April 26, 2018; September 20, 2018

#14 - Report Card, First Grade

#15- Occupational Therapy/Physical Therapy Colleague Consultation, April 16, 2018

#16 - Curriculum Vitae – [REDACTED] M.S., School Psychologist;

Curriculum Vitae – [REDACTED] Ed.D., Principal;

(four other curriculum vitae were not offered)

## Testimony

██████████ Ed.D., Principal, who testified as an expert in elementary education and special education; and ██████████ M.S., School Psychologist, who testified as an expert in school psychology, testified for the PGCPs.

## FINDINGS OF FACT

1. The Student is a six-year old boy who has attended ██████████ Elementary School, a comprehensive public elementary school, since he started kindergarten in fall 2017.
2. The Student lives with the Parent, who has sole legal custody of the Student.
3. Upon his return to school after winter break in January 2018, the Student displayed constant and serious dysfunctional behaviors.
4. Between January 19, 2018 and June 15, 2018, teachers or staff made fourteen student discipline referrals, some on the same day, concerning the Student's behavior:
  - January 19, 2018 – the Student disobeyed directions given by his art teacher, screaming “no;” threw his shoes around the class, hitting a student; hit the art teacher and the classroom aide; threw chairs around the classroom; disobeyed directions of the assistant principal; and climbed on shelves
  - January 24, 2018 – the Student climbed on a stack of chairs and, after being told not to do so, again climbed on a stack of chairs; refused to follow the teacher's directions; screamed, knocked chairs over, and swept items off of desks; kicked and hit the teacher; and bit the substitute teacher's hand
  - February 9, 2018 – after being told his time was up on the i-Pad, the Student knocked over empty chairs and then pushed students out of their chairs so he could knock their chairs over; and threw things off the counters
  - February 12, 2018 – at lunch in the cafeteria, the Student knocked other students' lunches off the table; disobeyed a teacher's direction to stop his behavior; ran away from the teacher and laid on the floor; knocked down chairs in the principal's office; bit his

teacher's arm; and continued to kick and scream in the principal's office

- February 12, 2018 – the Student eloped from Russian class and went back to his classroom, where he screamed at and hit a substitute teacher; screamed at and hit another teacher; and threw furniture around in another classroom
- April 18, 2018 – the Student pulled his pants partially down, exposing his penis to two female students
- May 2, 2018 – the Student ran into another kindergarten classroom, threw toys at students, flipped over a table, and then ran out of the school building; hit ten students in their heads with his backpack; and hit a teacher with his backpack and told the teacher to “shut up”
- May 2, 2018 – the Student screamed inappropriate words and expletives at other students; refused to talk with the Parent after she was called, and ran out of the classroom
- May 4, 2018 – at lunch in the cafeteria, the Student hit a student with a lunchbox and a tray; pushed a student and tried to bite a teacher; and scratched a teacher's arm, hand, and neck and used profanity towards the teacher
- May 14, 2018 – the Student fought with a female student on the bus; threw magnetic letters around the classroom; ran out of the classroom; in the main office, the Student crawled under a chair, hit a teacher and then bit the teacher's shirt, urinated on himself and the teacher, and then bit his wet pants
- May 18, 2018 – the Student fought with a student on the bus; punched a teacher in the stomach; and refused to go into his classroom
- May 24, 2018 – the Student pushed another student; after a teacher took away a stuffed animal, the Student flipped a student's lunch tray, and shoved a student to the ground while leaving the cafeteria
- May 29, 2018 – the Student refused to do work in math class; tried to bite the teacher; and scratched her, breaking the skin; ripped displays off the walls in the hallway; screamed and fell to the floor in the hallway; snatched a teacher's glasses off his face, spit on the teacher, and bit and scratched the teacher, breaking the skin

- June 15, 2018 – the Student refused to comply with directions, yelled, and knocked over a trash can; left the classroom several times; and left the school building at least three times

5. On February 20, 2018, the Student was transferred to another kindergarten classroom because he posed a threat to his assigned teacher, who was pregnant.

6. On April 10, 2018, school staff prepared an Action Plan for Positive Behavioral Support to address the Student's behaviors. The Student's behaviors were noted to occur across many settings and to be triggered by many different factors, including lack of attention and adult direction.

7. On May 14 and 29, 2018, the Student was suspended for three days for his behaviors on those dates.

8. Upon his return to school after summer break in September 2018, the Student continued to display constant and serious dysfunctional behaviors.

9. Between September 18, 2018 and January 22, 2019, teachers or staff made sixteen discipline referrals, some on the same day, concerning the Student's behavior:

- September 18, 2018 - the Student jumped on other students while the students were watching and dancing to a video; banged his lunchbox on the door and wall; and tried to close the door on other students
- September 18, 2018 - the Student disrupted class, throwing books, pencils, and his shoes; climbed on and jumped from one table to another; yelled "I want to die," "Kill me," "I want to die with a gun," "I hate myself so I don't care what I do," "I want to kill myself," "No one loves me," "All my parents hate me," "I hate everybody in this school," "I'm going to bite myself," "Just call 911 on me so I can get under arrest;" kicked two teachers and tried to bite them and spit on them; and urinated on himself
- September 24, 2018 - the Student threw objects around the classroom; grabbed a student's arm and threw the student to the floor; yelled and spat at school staff; hit a teacher; urinated on himself; and yelled "I hate you," "I hate my mom, I hate everybody, I want to kill her," "I want to shoot all the police," "I want to bite myself, let me bite myself."



- October 3, 2018 – the Student was not engaged in classroom work; told bathroom-themed jokes out loud in class; climbed on the window air conditioning unit; threw puzzle pieces; pulled on the teacher’s arm; and ran from the classroom
- October 9, 2018 – the Student was disruptive throughout the school day; he ran away from an assistant principal and told her that she was dumb and mean; threw a chair across the classroom and threatened to throw a chair at the assistant principal; threw a pencil case, a notebook, and a water bottle at the assistant principal; and grabbed the assistant principal’s necklace and dress
- October 16, 2018 – the Student refused to follow the physical education teacher’s instructions and poked students with a stick
- October 16, 2018 – the Student disrupted class; kicked and punched a student who had been assigned to hold the door; pulled a student’s arm as he took a marker from her; kicked three students and hit a student on the head during art class; climbed and jumped on tables; and held the legs of two students
- October 24, 2018 – the Student grabbed a student around the stomach, grabbed another student by the throat, and then attempted to hit a third student with an easel
- October 31, 2018 – the Student punched a student wearing a Black Panther costume, telling the student that he was not strong and was not the Black Panther
- November 8, 2018 – the Student kicked another student during physical education class and left the gym without permission
- November 8, 2018 – the Student left the classroom several times, and ran out the school’s front door; refused to come in from recess; and kicked two students and a teacher because he “wanted to”
- December 17, 2018 – the Student ran around the lunch room; refused to do classwork; shouted at teachers; hit two teachers with his shoes; hit a student with an eraser; and climbed on an easel<sup>1</sup>
- January 9, 2019 – the Student walked around the classroom with scissors, pretending to cut hair, and then kicked the teacher when

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<sup>1</sup> The record contains a second student discipline referral for December 17, 2018, but it does not contain a description of the Student’s conduct.

she ordered him to give her the scissors; ripped a behavior chart off the classroom wall; and pushed a student at lunch

- January 9, 2019 – the Student walked around the classroom throwing pencils and pushing a whiteboard; shoved a pencil in a bathroom door handle when another student was in the bathroom; pushed the bathroom door to keep the other student in the bathroom; put his mouth on a teacher's arm without biting down; and kicked the teacher's legs
- January 22, 2019 – the Student did not participate in a math assessment; threw his workbook in the trash; removed all the tissues from a tissue box and squirted hand sanitizer into a trashcan; swung the top of the hand sanitizer at the teacher; took the teacher's phone, and called her a "dummy" for not watching him; grabbed another student by the arm; and told the teacher, "I want to hurt myself. I want to bleed. I want to kill myself."

10. The discipline referrals reflect the worst of the Student's conduct. He exhibited many other disruptive behaviors, especially insubordination and leaving the classroom, throughout the school day.

11. On September 18, 2018, the Student was suspended for three days for his behaviors on that date.

12. On September 24, 2018, the Student was suspended for four days for his behaviors on that date.

13. On October 9, 2018, the Student was suspended for two days for his behaviors on that date.

14. On October 16, 2018, and November 8 and 30, 2018, the Student was suspended for five days for his behaviors on those dates.

15. On December 17, 2018, the Student was suspended for four days for his behaviors on that date.

16. On September 18, 2018, and November 8, 2018, [REDACTED] Elementary School staff physically restrained the Student.

17. On September 18, 2018, December 17, 2018, and January 22, 2019, [REDACTED] Elementary School staff informed the Parent in writing that the Student may be suicidal and encouraged the Parent to seek mental health support for the Student. The Parent signed the first such notice, but refused to sign the subsequent notices.

18. School staff recommended in-school community counseling services for the Student, but the Parent rejected these services.

19. On his most recent report card, the Student received a grade of “not developed” in Social Skills, Reading, Science, Physical Education, Oral and Written Communication, Work Habits, and Russian. He received a grade of “in progress” in Math and Music, and a grade of “emerging” in Science, Social Studies, and Health.

20. On September 18, 2018, after school staff had physically restrained the Student, the [REDACTED] Elementary School’s Student Intervention Team (SIT) referred the Student to the school’s Individualized Education Program (IEP) team.

21. On September 24, 2018, the [REDACTED] Elementary School’s IEP team scheduled an IEP team meeting for October 1, 2018.

22. On October 1, 2018, the IEP team, with the Parent participating by telephone, met to discuss concerns regarding the Student’s social, emotional, and behavioral performance, as well as his academic performance in math calculation and math problem solving.

23. The IEP team reviewed data collected by the SIT team during the 2017-2018 and 2018-2019 school years, as well as the Student’s behavioral records, Developmental Reading Assessment, teacher observations, and statements and observations of the school counselor.

24. The IEP team recommended that the initial evaluation of the Student include assessments of his academic performance (reading, mathematics, and written language), intellectual/cognitive functioning, emotional/social/behavior development, and functional school

participation. The IEP team also proposed that an occupational therapist provide assessments as needed.

25. The IEP team's stated basis for an initial evaluation of the Student was the Student's "frequency of physical behaviors towards peers and teachers, self-injurious behaviors, and work refusal." (PGCPS #4).

26. Because the Parent was not physically present for the IEP team meeting, the IEP team sent the Parent a Notice of Consent for Assessment form by e-mail and paper form.

27. On October 7, 2018, the IEP team sent the Parent a Prior Written Notice form summarizing the IEP team meeting on October 1, 2018, and reiterating the IEP team's conclusion that the Student needed to be evaluated.

28. The Parent did not respond to the IEP team; nor did she sign or return the Notice of Consent for Assessment form.

### DISCUSSION

#### **1. The Parent failed to appear for the hearing after receiving proper notice of the hearing**

If, after receiving proper notice, a party fails to attend or participate in a hearing, an administrative law judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party. COMAR 28.02.01.23A. It would be inappropriate to issue a final default order against the Parent in this case where the PGCPS bears the burden of production and the burden of persuasion by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49 (2005). Although there were some problems with the notices the OAH sent to the Parent, she had actual notice of the hearing, and it was proper to proceed in her absence.

On January 11, 2019, the OAH sent to the parties a Notice of Telephone Pre-Hearing Conference to be conducted at 10:00 a.m. on January 18, 2019. The OAH failed to include the

Parent's unit number on the notice sent to the Parent, but the United States Postal Service did not return that notice to the OAH. On January 18, 2019, I conducted a telephone pre-hearing conference. Ms. Viens represented the PGCPS. The Parent did not answer two phone calls to the phone number listed on the due process complaint. I left two voice-mail messages for the Parent. I proceeded with the pre-hearing conference in the Parent's absence. On January 23, 2019, I issued a pre-hearing conference report and order, which I e-mailed to the Parent and had the OAH mail to the Parent. I indicated in the pre-hearing conference report and order that the Parent could request a second pre-hearing conference if she could establish that she did not have notice of the pre-hearing conference held on January 18, 2019. The Parent did not respond to the pre-hearing conference report and order.

On January 23, 2019, the OAH issued a notice for the hearing scheduled for February 1 and 4, 2019. The OAH again failed to include the Parent's unit number on the notice sent to the Parent, but the United States Postal Service did not return the notice to the OAH. On January 29, 2019, the OAH sent another notice for the hearing scheduled for February 1 and 4, 2019, one that contained the Parent's unit number. The United States Postal Service did not return this notice to the OAH.

On January 24, 2019, the PGCPS sent the Parent an e-mail with an attachment that contained the documents the PGCPS intended to present at the hearing. On January 30, 2019, in response to that e-mail, the Parent indicated that a hearing was not necessary because the Student "is officially being withdrawn from [REDACTED] Elementary." The PGCPS responded to the Parent's e-mail, indicating that it had not withdrawn its due process complaint.

I am satisfied that the Parent received proper notice of the hearing. Most significantly, her response to the PGCPS indicates that she had actual notice of the hearing.

**2. The Parent failed to respond to a request to provide consent for an initial evaluation to determine whether the Student qualifies as a child with a disability under the IDEA**

Under the IDEA, a state is eligible for federal financial assistance if it has policies and procedures in place to ensure that the state meets certain conditions. In particular, a state must have in place “child find” procedures to ensure that all children with disabilities residing in the state who are in need of special education and related services are identified, located, and evaluated. 20 U.S.C.A. § 1412(a)(3)(A) (2017); 34 C.F.R. § 300.111(a)(1)(i) (2018). A local educational agency, such as the PGCPS, shall conduct a full and individual evaluation before it provides special education and related services to a child with a disability. 20 U.S.C.A. § 1414(a)(1)(A) (2017); 34 C.F.R. § 300.301(a) (2018). An initial evaluation shall, in pertinent part, consist of procedures to determine whether a child is a child with a disability (as defined in section 1401 of title 20). 20 U.S.C.A. § 1414(a)(1)(C)(i)(I) (2017); 34 C.F.R. § 300.301(c)(2)(i) (2018). Either a parent of a child or a local educational agency may initiate a request for an initial evaluation to determine if a child is a child with a disability. 20 U.S.C.A. § 1414(a)(1)(B) (2017); 34 C.F.R. § 300.301(b) (2018).

A local educational agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability “shall obtain informed consent from the parent of such child before conducting the evaluation.” 20 U.S.C.A. § 1414(a)(1)(D)(i)(I) (2017); 34 C.F.R. § 300.300(a)(1)(i). If, however, a parent of a child does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide consent, the local educational agency may pursue the initial evaluation of the child by filing a due process complaint. 20 U.S.C.A. § 1414(a)(1)(D)(ii)(I) (2017); 34 C.F.R. § 300.300(a)(3)(i) (2018).

The Parent did not respond to the PGCPS’s request to provide consent for an initial evaluation of the Student to determine whether the Student is a child with a disability. As noted

above, on October 1, 2018, the IEP team met to discuss the PGCPS's concerns regarding the Student's social, emotional, and behavioral performance, as well as his academic performance in math calculation and math problem solving. The Parent participated by telephone. The IEP team recommended that the initial evaluation of the Student include assessments of his academic performance (reading, mathematics, and written language), intellectual/cognitive functioning, emotional/social/behavior development, and functional school participation. The IEP team also proposed that an occupational therapist provide assessments as needed. Because the Parent was not physically present for the IEP team meeting, the IEP team sent the Parent a Notice of Consent for Assessment form by e-mail and paper form. As of the date of the hearing, the Parent had not signed or returned the Notice of Consent for Assessment form.

**3. The PGCPS is granted permission to conduct an initial evaluation to determine whether the Student qualifies as a child with a disability under the IDEA**

There simply could not be a clearer case supporting the need for an initial evaluation of the Student to determine whether the Student qualifies as a child with a disability under the IDEA. The evidence presented by the PGCPS, as outlined in the findings of fact, overwhelmingly established that the PGCPS has a sufficient basis to believe that the Student should be evaluated to determine whether he is a child with a disability who is need of special education and related services. At the October 1, 2018, IEP team meeting, the IEP team reviewed data collected by the SIT team during the 2017-2018 and 2018-2019 school years, as well as the Student's behavioral records, Developmental Reading Assessment, teacher observations, and statements and observations of the school counselor. The IEP team's stated basis for conducting an initial evaluation of the Student was the frequency of the Student's physically aggressive behaviors towards teachers and other students, his self-injurious behaviors, and refusal to do school work. The IEP team reasonably believed that the Student's behavior was affecting his ability to learn because he was missing instruction and refusing to complete classwork.

Dr. [REDACTED] testified that she has never seen an elementary school student exhibit such extreme behaviors. She also testified that although it is apparent that the Student has innate intelligence and some basic reading skills, his teachers simply do not know what he can do academically because of his behaviors. Dr. [REDACTED] expressed her belief that the Student needs to be evaluated to determine the Student's academic ability and to assess the reasons for his extreme behaviors. Ms. [REDACTED] testified that the Student's behaviors, exhibited over a period of at least six months, were red flags for the presence of an emotional disturbance or other health impairment, possibly, attention deficit hyperactivity disorder.

Under the IDEA, emotional disturbance and "other health impairments" are included in the statutory definition of child with a disability as specific types of disabilities. 20 U.S.C.A. § 1401 (3)(A)(i) (2017). Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (C) Inappropriate types of behaviors or feelings under normal circumstances;
- (D) A general pervasive mood of unhappiness or depression;
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8(c)(4)(i) (2018). Maryland uses the term "emotional disability," instead of emotional disturbance. Md. Code Ann., Educ. § 8-401(a)(2) (2018); COMAR 13A.15.01.03B(23). Other health impairment means having limited strength, vitality, or



alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that

- (i) Is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder . . .; and
- (ii) Adversely affects a child's educational performance.

34 C.F.R. § 300.8(c)(9) (2018); COMAR 13A.15.01.03B(51).

Ms. [REDACTED]'s expert opinion was that the Student's behaviors make it likely that he has a disability, such as emotional disturbance, and is in need of special education. Ms. [REDACTED] also opined that academic assessments are needed to measure the Student's current core knowledge, intellectual/cognitive testing is needed to measure the Student's intellectual functioning, and a functional behavior assessment is needed to address the Student's extreme and dangerous classroom behaviors. This case does not present a close call regarding the need to have the Student evaluated. The documentation in the record concerning the Student's behaviors, including his violence towards other students and school staff and his suicidal statements, and the expert opinions of Dr. [REDACTED] and Ms. [REDACTED] establish that the Student is in dire need of an initial evaluation to determine whether he qualifies as a child with a disability under the IDEA.

**CONCLUSIONS OF LAW**

Based upon the Findings of Fact and Discussion, I conclude that the Parent failed to appear for the hearing after receiving adequate notice of the hearing. COMAR 28.02.01.23A.

I further conclude that the Parent failed to respond to the PGCPS's request to provide consent for an initial evaluation to determine whether the Student qualifies as a child with a disability under the IDEA. 20 U.S.C.A. § 1414(a)(1)(D)(ii)(I) (2017); 34 C.F.R. § 300.300(a)(3)(i) (2018).

I further conclude that the PGCPS is authorized to conduct an initial evaluation to determine whether the Student qualifies as a child with a disability under the IDEA. 20 U.S.C.A. § 1414(a)(1)(D)(ii)(I) (2017); 34 C.F.R. § 300.300(a)(3)(i) (2018).

**ORDER**

I **ORDER** that Prince George's County Public Schools is authorized to conduct an initial evaluation to determine whether the Student qualifies as a child with a disability under the Individuals with Disabilities Education Act.

February 14, 2019  
Date Decision Issued

RFB/kdp  
#178119

Signature Appears on Original

Robert F. Barry  
Administrative Law Judge

**REVIEW RIGHTS**

Any party aggrieved by this Final 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 with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (2018). 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.

**Copies Mailed To:**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]