

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

* BEFORE BRIAN PATRICK WEEKS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MSDE-BCNY-OT-19-10395

* * * * *

DECISION

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

STATEMENT OF THE CASE

On April 2, 2019, [REDACTED] (Parent), on behalf of her grandson, [REDACTED] (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA or the Act). 20 U.S.C.A. § 1415(f)(1)(A) (2017).¹

On April 24, 2019, I conducted a pre-hearing conference (Conference) at the OAH in Hunt Valley, Maryland. The following individuals participated: J. Stephen Cowles, Deputy General Counsel, on behalf of BCPS; and the Parent on behalf of the Student.² By agreement of the parties, the hearing was scheduled for May 20 and 23, 2019.

¹ U.S.C.A. is an abbreviation for United States Code Annotated. All subsequent citations are to the 2017 volume of the U.S.C.A.

² At the Conference, BCPS stipulated that the Parent, the Student's grandmother and legal guardian, qualifies as a parent under the IDEA and therefore is able to file a due process complaint and prosecute the appeal on the Student's behalf. 20 U.S.C.A. § 1401(23) (2017); 34 C.F.R. § 300.30 (2018).

I held the hearing as scheduled. The Parent represented the Student. Mr. Cowles represented BCPS.

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);³ Md. Code Ann., Educ. § 8-413(e)(1) (2018);⁴ and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

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

ISSUES

The issues are:

- (1) Did BCPS deny the Student a free and appropriate public education (FAPE) from April 7, 2018 through the end of the 2017-2018 school year and during the 2018-2019 school year, by failing to draft and implement an Individualized Education Program (IEP) that includes academic goals and that provides proper accommodations or supports for the Student?⁵
- (2) Did BCPS deny the Student a FAPE by failing to:
 - (a) update the IEP; and
 - (b) properly discipline the Student in the 2017-2018 and 2018-2019 school years?

³ All subsequent references to the Code of Federal Regulations are to the 2018 volume.

⁴ Unless otherwise noted, all references hereinafter to the Education Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

⁵ In the Pre-Hearing Conference Report and Order, this issue was time-limited to after April 6, 2018, because there was a decision on the merits involving the Student by another Administrative Law Judge (ALJ) on this same issue and that ALJ took evidence through the date of April 6, 2018.

- (3) Did BCPS engage in procedural violations by:
 - (a) failing to include the Parent in IEP team meetings;
 - (b) failing to include the Parent in discussions regarding the Behavioral Intervention Plan (BIP); and
 - (c) during the time period of 2017-2019, releasing private information of the Parent and Student without the Parent's permission?
- (4) Did any procedural violations impede the Student's right to a FAPE, significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or cause a deprivation of educational benefit?
- (5) If BCPS denied the Student a FAPE, what is the proper remedy?

SUMMARY OF THE EVIDENCE

Exhibits

Unless noted, I admitted the following exhibits on behalf of the Student:

- Student Ex. 1 - IEP, approved December 10, 2018
- Student Ex. 2 - IEP, amended February 14, 2019
- Student Ex. 3 - IEP, amended April 10, 2019
- Student Ex. 4 - [REDACTED] treatment plan, undated
- Student Ex. 5 - Letter from Dr. [REDACTED] April 26, 2018
- Student Ex. 6 - *not admitted*⁶
- Student Ex. 7 - BCPS Functional Behavior Assessment, January 19, 2017
- Student Ex. 8 - *not admitted*
- Student Ex. 9 - BCPS Educational Assessment, January 24, 2017

⁶ Exhibits marked as "*not admitted*" were offered by the Parent but excluded.

- Student Ex. 10 - BCPS Occupational Therapy Assessment Report, updated February 17, 2017
- Student Ex. 11 - Referral for Psychological Assessment and Report of Psychological Assessment, completed February 8, 2017
- Student Ex. 12 - Student's standardized test scores, undated
- Student Ex. 13 - Student's Grade 3 Report Card, marking period ending June 13, 2017
- Student Ex. 14 - Student's Grade 4 Report Card, marking period ending June 15, 2018
- Student Ex. 15 - Student's Grade 5 Report Card, marking period ending June 17, 2019
- Student Ex. 16 - Bullying, Harassment or Intimidation Reporting Form, December 5, 2018
- Student Ex. 17 - Emails between Parent and BCPS, various dates in December 2018
- Student Ex. 18 - *not admitted*
- Student Ex. 19 - Family Educational Rights and Privacy Act Complaint Form, January 17, 2019
- Student Ex. 20 - *not admitted*
- Student Ex. 21 - *not admitted*
- Student Ex. 22 - Letters from BCPS to Parent and photo of BCPS envelope, April 4 and May 7, 2019
- Student Ex. 23 - Emails between Parent and BCPS, various dates in April 2018
- Student Ex. 24 - Emails between Parent and BCPS, various dates in May 2018
- Student Ex. 25 - Emails between Parent and BCPS, various dates in June 2018
- Student Ex. 26 - *not admitted*
- Student Ex. 27 - Emails between Parent and BCPS, various dates in September 2018
- Student Ex. 28 - Emails between Parent and BCPS, various dates in October 2018
- Student Ex. 29 - Emails between Parent and BCPS, various dates in November 2018
- Student Ex. 30 - Emails between Parent and BCPS, various dates in December 2018
- Student Ex. 31 - Emails between Parent and BCPS, various dates in January 2019
- Student Ex. 32 - Emails between Parent and BCPS, various dates in February 2019

Student Ex. 33 - Emails between Parent and BCPS, various dates in March 2019

I admitted the following exhibits on behalf of BCPS:

- BCPS Ex. 1 - IEP Team Summary, December 10, 2018
- BCPS Ex. 2a - Parent Notification of IEP Team Meeting, sent November 21, 2018
- BCPS Ex. 2b - Notice of Documents, November 12, 2018
- BCPS Ex. 2c - Notice of Documents, November 28, 2018
- BCPS Ex. 4⁷ - Parent Notification of IEP Team Meeting, sent January 15, 2019
- BCPS Ex. 5 - IEP Team Summary, mailed February 15, 2019
- BCPS Ex. 6 - BIP, revised February 14, 2019
- BCPS Ex. 7 - IEP, February 14, 2019⁸
- BCPS Ex. 10 - Notice of Temporary Suspension, issue date October 18, 2018
- BCPS Ex. 11 - Notice of In-School Suspension, issue date January 7, 2019
- BCPS Ex. 12 - Notice of Temporary Suspension, issue date March 18, 2019, with attachments
- BCPS Ex. 13 - Student Discipline History, printed April 5, 2019
- BCPS Ex. 14 - ██████████ Elementary Behavior Referral Forms, various dates
- BCPS Ex. 15 - Tally sheets, various dates during 2018-2019 school year
- BCPS Ex. 17 - IEP, amended April 10, 2019
- BCPS Ex. 21 - IEP Team Summary, mailed October 20, 2017
- BCPS Ex. 22 - Notice of Documents, October 3, 2017
- BCPS Ex. 24 - IEP Team Summary, mailed November 17, 2017
- BCPS Ex. 26 - IEP Team Summary, mailed January 31, 2018

⁷ BCPS pre-marked its exhibits but did not offer into evidence all of the pre-marked exhibits which is why the numbers are not sequential.

⁸ I admitted Student Exhibit 2 at the hearing without objection from BCPS. I did not admit BCPS Exhibit 7 because I was under the impression that Student Exhibit 2 consisted of the complete February 14, 2019 IEP. However, Student Exhibit 2 is missing Sections IV. (Goals) and V. (Services). Therefore, I will admit BCPS Exhibit 7 since neither party disputed the admissibility of the entire February 14, 2019 IEP.

- BCPS Ex. 27 - IEP Team Summary, mailed February 21, 2018
- BCPS Ex. 28 - IEP, amended February 20, 2018
- BCPS Ex. 29 - IEP Goals, February 20, 2018
- BCPS Ex. 30 - Tally sheets, various dates during 2017-2018 school year
- BCPS Ex. 31 - Student Discipline History, printed March 26, 2018
- BCPS Ex. 37 - Speech and Language Assessment, signed February 7, 2017
- BCPS Ex. 42 - Application for Instructional Program for Homebound or Hospitalized Students, signed March 21, 2019
- BCPS Ex. 43 - Application for Special Permission Transfer for Medical/Student Adjustment (K-12), signed April 27, 2018
- BCPS Ex. 44 - Curricula vitae, undated

Testimony

The Parent testified.

BCPS presented the following witnesses:

- [REDACTED] Assistant Principal at [REDACTED] Elementary School ([REDACTED]), admitted as an expert in special education;
- [REDACTED] Classroom Teacher at [REDACTED] admitted as an expert in general education with a focus in English Language Arts (ELA);
- [REDACTED], Special Education Inclusion Teacher at [REDACTED] admitted as an expert in general and special education;
- [REDACTED] Assistant Principal at [REDACTED] Elementary School ([REDACTED]), admitted as an expert in special education; and
- [REDACTED] Specialist in Office of Special Education at BCPS, admitted as an expert in special education.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

Background


1. The Student is a fifth grader at [REDACTED]
2. The Student has a primary disability of attention deficit disorder/attention deficit hyperactivity disorder (ADD/ADHD).
3. The Student's disability affects his ability to remain on task, complete assignments, regulate his behavior and remain in an assigned location.
4. From kindergarten to second grade, the Student attended [REDACTED] Elementary School.
5. For third and fourth grade, the Student attended [REDACTED]
6. During fourth grade, the Parent requested that BCPS transfer the Student from [REDACTED] BCPS granted the Parent's transfer request.
7. For fifth grade, the Student attended [REDACTED]
8. Beginning in October 2014 and at all times relevant to this matter, the Student has had a BIP.
9. [REDACTED], Compliance Director at BCPS's Special Education Office, is related to the Parent's [REDACTED]. In or around June 2018, the Parent requested that Ms. [REDACTED] no longer participate in IEP team meetings involving the Student, and BCPS agreed to the request.
10. The Student arrived late to [REDACTED] because his bus picked him up late on the following days:
 - September 4, 2018, arrived forty-five minutes late;

- September 5, 2018, arrived forty-five minutes late;
- September 6, 2018, arrived eight minutes late;
- September 7, 2018, arrived thirty minutes late;
- September 11, 2018, arrived twenty-eight minutes late; and
- September 12, 2018, arrived fifty-five minutes late.

Functional Behavior Assessment

11. On January 19, 2017, BCPS conducted a Functional Behavior Assessment (FBA) of the Student. The FBA identified two behaviors of concern:

- Tantrum behavior - including throwing objects, kicking and pushing furniture, destroying materials; and
- Eloping behavior - including leaving assigned area and/or classroom without permission.

These behaviors increased in frequency during the beginning of the second quarter of the 2016-2017 school year at 

12. The FBA identified the following contributing factors and triggers for the Student's concerning behavior: change in routine, staffing patterns, environmental stimuli, afternoons or end of day, corrective feedback, presentation of undesirable task and denial of the Student's request.

13. The FBA states that the behavior was designed to gain attention, control an object/activity, and to avoid work or another activity/task. The FBA also states that the behavior may be a function of the Student's difficulty expressing feelings.

14. The FBA lists possible reinforcers such as peer socialization (lunch with choice of classmates), staff praise, special activity (gym time, movement activities), good note home, phone call to parent and lunch with teacher.

Speech and Language Assessment

15. On or about February 8, 2017, [REDACTED] of BCPS completed a written speech and language assessment of the Student. The Student scored in the 34th percentile for oral language composite, 50th percentile for listening comprehension and 27th percentile for oral expression. No significant pattern of weaknesses or needs was identified.

Educational Assessment

16. On or about January 24, 2017, [REDACTED] a special educator at BCPS, completed a written educational assessment of the Student. Ms. [REDACTED] administered the Woodcock Johnson IV, which is a test to determine a student's development of academic skills, application and fluency in the areas of reading, mathematics and written language. The Student's scores were mostly in the average range for third graders and ranged from a low of 3.0 (spelling) to a high of 5.2 (sentence reading fluency). The Student's academic skills, fluency with academic tasks and ability to apply academic skills were all within the average range. The Student scored in the average to high average range on reading subtests, average range for mathematical achievement and average range for written language skills. No specific area of weakness was noted.

Occupational Therapy Assessment

17. On February 17, 2017, [REDACTED] conducted an Occupational Therapy (OT) assessment of the Student on behalf of BCPS. Ms. [REDACTED] noted concerns in the areas of tactile processing, which measures a student's response to stimuli that touch the skin, and vestibular processing, which measures a child's response to movement. Ms. [REDACTED] identifies these areas of concern as barriers to the Student's participation in school routines. Ms. [REDACTED] opined that use of school-based OT services was indicated and that sensory-based supports may help the Student to manage his behavior.

Psychological Assessment

18. On February 8, 2017, [REDACTED] school psychologist, completed a written report following a psychological assessment of the Student. Ms. [REDACTED] administered the Differential Abilities Scale, Second Edition, School Age Battery (DAS-II) to the Student in order to assess his cognitive ability. The Student scored in the 66th percentile for the verbal cluster, 45th percentile for nonverbal reasoning, 47th percentile for spatial cluster and 53rd percentile for general cognitive ability. These scores are within the average range of intellectual functioning.

19. The Student's general education teacher and the Student completed the Behavior Assessment for Children, Second Edition (BASC-2), which is designed to assess perceptions of a student across several areas of emotional and behavioral functioning as compared to a national sample of same-age peers. The Student's general education teacher assessed the Student's behavior using the Behavior Symptoms Index and his overall behavior fell within the clinically significant range. The Student's teacher indicated clinically significant levels of externalizing problems, atypicality and adaptability. The Student's scores fell within the clinically significant range on hyperactivity, aggression and conduct problems. The Student self-reported average ratings on the BASC-2.

20. The Conners Third Edition (Conners 3) is an assessment tool used to obtain adult observations about a child's behavior across settings. Very elevated scores in the Conners 3 are a significant cause for concern. The Conners 3 assessment indicated that the Student has very elevated levels of inattention and hyperactivity/impulsivity within the school setting, as well as scores in the very elevated range for executive functioning problems, defiance/aggression and peer relations.

21. Ms. [REDACTED] suggested that BCPS shorten longer activities and/or chunk these activities into smaller sections for the Student, provide frequent breaks for the Student, and provide a visual menu of coping strategies and direct instruction on coping strategies.

Standardized Test Scores

22. The MAP⁹ test assesses a student's reading and mathematics levels as compared to the statewide average.

23. The Student scored a 209 on the MAP reading 2018-2019 winter test. The average is 209.

24. The Student scored a 204 on the MAP math 2018-2019 winter test. The average is 217.

Report Cards

25. During the 2016-2017 school year, the Student received grades of C (average) or above in all subjects, with the exception of Science in marking period three, in which he received an E (failing). The Student also received an incomplete grade for Library in marking period three after missing many classes and assignments because he was in time out. The Student received the lowest rating possible, a 1 (beginning), for his skills and conduct in areas such as classroom conduct, work completion, working with adults and working with peers.

26. During the 2017-2018 school year, the Student received a grade of E (failing) for ELA, with the exception of marking period two, when he received a D (below average). With respect to his accuracy, fluency and comprehension of text, he was rated as on grade level in all marking periods. In Mathematics, the Student received a grade of E (failing), with the exception of marking period one, when he received a C (average). In Science, the Student received a C (average) in marking period one and E (failing) in marking periods two and four. In Social

⁹ The parties did not tell me what this acronym stands for.

Studies, the Student received a D (below average) in marking period two, an A (outstanding) in marking period three and an E (failing) in marking period four. In Health, the Student received an A (outstanding) in marking period one, a B (above average) in marking period three and an E (failing) in marking period four. For the above subjects, the Student received a rating of either 1 or 2 in all marking periods for his skills and conduct. In all other subjects (Library Media, Art, Music, Physical Education, Instrumental Music), the Student received Cs and Bs and ratings of 2 (developing) or 3 (meeting) for his skills and conduct.

27. During the 2018-2019 school year up to and including marking period three, the Student achieved Science grades of C (average) in marking period one and E (failing) in marking periods two and three. The Student received Mathematics grades of E (failing) in marking periods one and three and a D (below average) in marking period two. The Student received Science grades of A (outstanding) in marking period one, B (above average) in marking period two and D (below average) in marking period three. The Student received grades in Social Studies of E (failing) in marking period one and D (below average) in marking period two. In marking periods one and two, the Student received a C (average) in Library Media, a B (above average) in Art, a D (below average) in Music and an A (outstanding) in Physical Education. With the exception of Physical Education, the Student received ratings of 1 (beginning) or 2 (developing) for his skills and conduct in each class.

Treatment Outside the School Environment

28. The Student saw Dr. [REDACTED] during the 2017-2018 school year on about a monthly basis at her Developmental-Behavioral Pediatrics practice for ADHD. In April 2018, Dr. [REDACTED] recommended that BCPS provide therapeutic behavioral support including ignoring minor noncompliance and instead focusing on natural consequences of the Student's

behavior and a BIP that includes rewards that occur at the end or outside of the school day. Dr. [REDACTED] did not observe the Student in class.

Student Discipline

29. On December 20, 2017, [REDACTED] suspended the Student for two days for refusing to cooperate with school rules and regulations.

30. On January 26, 2018, [REDACTED] suspended the Student for one day for refusing to cooperate with school rules and regulations.

31. On March 9, 2018, [REDACTED] suspended the Student for one day in school for refusing to cooperate with school rules and regulations.

32. On or around April 17, 2018, [REDACTED] suspended the student. The Student was out of school until on or around May 4, 2018, based on the suspension and the inability of BCPS and the Parent to find a mutually agreeable date for a reinstatement meeting.

33. On October 18, 2018, the Principal at [REDACTED] issued a Notice of Temporary Suspension indicating that the Student would be suspended for one day starting on October 22, 2018 for failure to follow a direction by refusing to leave the classroom during a fire drill.

34. On January 7, 2019, the Principal at [REDACTED] issued a Notice of In-School Suspension to the Student for one day starting on January 8, 2019, for refusing to cooperate with school rules and regulations by failing to follow adult directions and wandering in and out of the classroom and spitting in another student's face.

35. On March 18, 2019, the Principal at [REDACTED] issued a Notice of Temporary Suspension indicating that the Student would be suspended for two days starting on March 19, 2019, for running away from the bus dismissal location and throwing rocks at school staff and passing cars.

36. [REDACTED] teachers complete a behavior referral form and submit the form to the principal or assistant principal for behaviors that are disruptive to the school environment but that do not warrant a suspension. The Student's teachers completed behavior referral forms for the Student on the following dates:

- October 17, 2018 - Student walked out of music class and refused to speak with teachers and administrators;
- October 18, 2018 - Student walked out of music class;
- November 14, 2018 - Student drew on a teacher's computer cart and shouted out an expletive;
- January 4, 2019¹⁰ - Student left class on multiple occasions and was running in the halls;
- February 15, 2019 - Student involved in fight with peers during gym class; and
- March 15, 2019 - Student turned off lights in classroom, left classroom without permission, ran and chased another student in the hallway during instruction time, held the gym doors closed preventing students from exiting, and ran and chased another student around the classroom.

October 2017 IEP Team Meeting

37. On October 17, 2017, BCPS convened a IEP team meeting that was attended by the IEP team which consisted of the Parent and the following individuals from BCPS:

- [REDACTED] Administrator/Designee;
- [REDACTED] General Educator;
- [REDACTED] Special Educator;

¹⁰ The date on the referral is January 4, 2018, but this appears to be a typographical error, as the Student was not enrolled at [REDACTED] Elementary School during the 2017-2018 school year.

- [REDACTED] Behavior Intervention-Special Education; and
- [REDACTED] Social Worker.

38. The Parent requested that BCPS assign a different social work provider for the Student and revise the Student's point sheets. The meeting summary notes that Ms. [REDACTED] will speak to her supervisor regarding the Parent's request for a new social worker. The team discussed how to revise the point sheets at the meeting.

November 2017 IEP Team Meeting

39. On November 15, 2017, BCPS convened a IEP team meeting that was attended by the IEP team which consisted of the Parent and the following individuals from [REDACTED]

- [REDACTED] Administrator/Designee;
- [REDACTED], General Educator;
- [REDACTED] Special Educator;
- [REDACTED] Behavior Intervention-Special Education;
- [REDACTED] Guidance-Elementary; and
- [REDACTED] OT.

40. The Parent shared her belief that many of the Student's behavioral difficulties stem from handwriting. In response, the IEP team discussed classroom-based strategies to assist the Student with his written responses, such as chunking assignments, talking about responses before writing them, using organizers and sentence starters, and having the Student record his responses orally and listen to them to help organize his writing.

41. The IEP team agreed to remove direct social work services from the IEP at the recommendation of the social worker and based on the Student's progress towards his IEP goals.

February 2018 IEP

42. On February 20, 2018, BCPS convened a IEP team meeting (February 2018 Team Meeting) that was attended by the IEP team which consisted of the Parent and the following individuals from [REDACTED]

- [REDACTED] Administrator/Designee;
- [REDACTED] General Educator;
- [REDACTED] Special Educator;
- [REDACTED] Behavior Intervention-Special Education;
- [REDACTED], School Psychologist; and
- [REDACTED] OT.

43. At the time of the February 2018 Team Meeting, the IEP contained two goals: a behavior-compliance goal and a social-emotional goal.

44. The behavior-compliance goal had the following four objectives:

- Given direction to report to a specific area in the classroom, the Student will go to and remain in the assigned location;
- Given up to three visual or verbal reminders, the Student will complete the assigned task;
- Given a behavior chart and reward system, the Student will be safe in all areas of the school setting; and
- Given up to three visual or verbal reminders, the Student will initiate tasks.

45. The IEP contained three progress reports indicating that, in each monitoring period, the Student was making progress sufficient to meet the behavior-compliance goal.

46. The social-emotional goal had the following two objectives:

- By April 2018, the Student will be able to demonstrate and apply respectful communication to example scenarios in two out of five trials and
- By April 2018, the Student will use positive self-expressive language with adults and peers during times when asked to do a less-preferred activity, in two out of five interactions.

47. The IEP contained three progress reports. In the first two progress reports, the Student was making progress sufficient to meet the goal. In the third progress report, BCPS noted that the Student was not making sufficient progress to meet the goal based on his failure to meet the objective of using positive self-expressive language with adults and peers when asked to do a less-preferred activity.

48. As of March 28, 2018, the Student had achieved the objectives in the behavior-compliance goal and social-emotional goal.

December 2018 IEP

49. On December 10, 2018, [REDACTED] convened a IEP team meeting (December 2018 Team Meeting) that was attended by the IEP team which consisted of the Parent, accompanied by [REDACTED] a social worker from [REDACTED] and the following individuals from [REDACTED] and BCPS:

- [REDACTED] Administrator/Designee;
- [REDACTED] Special Educator;
- [REDACTED] General Educator;
- [REDACTED] Elementary Classroom;
- [REDACTED] Occupational Therapist;

- [REDACTED] Principal; and
- [REDACTED] Specialist.

50. At the time of the December 2018 Team Meeting, the Student was performing below grade-level expectations in the areas of compliance and work completion.

51. At the December 2018 Team Meeting, the Parent expressed concern regarding whether the Student is truly performing on grade level based on his grades. The Parent also stated her belief that the Student has other issues that are impacting his ability to listen, follow directions and complete work. She identified auditory processing as a potential issue.

52. Between September 11, 2018 and November 8, 2018, the Student's teachers collected the following data regarding the Student's behavior in the classroom:

- Refusal to follow directions: 121 times;
- Refusal to complete assignments as directed: forty-four times;
- Refusal to make corrections as advised by an adult: fifty-six times;
- Leaving assigned area/location without permission: fifty-six times; and
- Walking away from an adult when being addressed: thirty-two times.

53. Between October 24, 2018 and November 8, 2018, the Student's teachers collected the following data regarding accommodations or supports offered by BCPS to the Student:

- Additional Adult Support: Accepted: zero, Refused: four;
- Scribe: Accepted: zero, Refused: one;
- Small Group Instruction: Accepted: five, Refused: eight; and
- Outside General Education Support: Accepted: zero, Refused: six.

54. At the time of the December 2018 Team Meeting, the Student had a current Mathematics grade of 49%, or an E (failing).

55. In Mathematics and ELA classes, the Student required multiple reminders to follow directions, complete work and stay on task. The Student rarely participated in whole group instruction, but when he participated he often shouted out answers.

56. The Student did not use his school device to complete assignments or access class lessons; instead, he used the device to play games on a website called Cool Math. Based on the Student's problems with the school-provided device, school officials removed the device and his teachers provided the Student with a folder of missing or incomplete assignments and allowed him to redo or complete these assignments.

57. The Student often refused to attend small-group instruction for Mathematics which prevented him from demonstrating an understanding of fifth-grade Mathematics skills, concepts and strategies taught in the Mathematics class. The Student often refused to attend small-group instruction in ELA class.

58. During the 2018-2019 school year, the Student tested on grade level for reading using the Fountas and Pinnell guided-reading assessment.

59. An occupational therapist observed the Student throughout the school year to monitor his use of fine and visual perceptual motor, and sensory regulation skills. The occupational therapist did not observe any issues related to the Student's fine and visual perceptual motor. The occupational therapist offered various accommodations and services to the Student, such as noise-reduction headphones, out-of-room breaks, and allowing him to choose his classroom seat, to help the Student maintain focus. The Student declined the use of noise-reduction headphones and out-of-room breaks.

60. The Student participated in small-group instruction at [REDACTED] when the activity was of high interest to him.

61. The December 2018 IEP requires BCPS to provide the Student with frequent breaks in instruction and assessments, the option of a separate or alternative location for assessment, monitoring of test responses and extended time.

62. The December 2018 IEP requires BCPS to provide the following instructional supports:

- Have Student repeat and/or paraphrase information (periodically as needed) and
- Use of word bank to reinforce vocabulary and/or when extended writing is required (periodically).

The December 2018 IEP also states that additional instructional supports are necessary for the Student, such as breaking down assignments into smaller parts (chunking), reducing assignments, frequent breaks and pairing visuals with auditory presentations. Also, instructional supports are to be provided across all academic areas by the general educator and/or special educator, or an instructional assistant under the direct supervision of the general educator or special educator.

63. The December 2018 IEP requires BCPS to provide the following social/behavior supports to the Student: frequent eye contact, proximity control, positive reinforcement, strategies to initiate and sustain attentions, opportunities for movement throughout the school day and home school communication. Also, it specifies that social/behavior supports are to be provided across all academic areas by the general educator and/or special educator, or an instructional assistant under the direct supervision of the general educator or special educator.

64. The December 2018 IEP requires BCPS to provide the following physical/environmental supports to the Student: preferential seating in close proximity to an adult throughout the school day, consideration of sensory-based needs by allowing the Student to

sit further away from other students and noise, and movement-based seating strategies. The December 2018 IEP specifies that physical/environmental supports are to be provided across all academic areas by the general educator and/or special educator, or an instructional assistant under the direct supervision of the general educator or special educator.

65. The December 2018 IEP requires BCPS to provide adult support to the Student on a daily basis to assist with managing emotional outbursts, support before and during transitions, supervision during breaks, coping strategies, organization of materials, maintaining focus and completing tasks.

66. The December 2018 IEP requires BCPS to provide a monthly OT consult to ensure that the Student is able to utilize previously acquired skills and to support co-instruction with sensory-based coping strategies.

67. The December 2018 IEP contains one goal, a behavior-compliance goal. The goal contains the following three objectives:

- Given a direction from a teacher to attend to instruction, whole group or small group, the Student will comply with the directive with no more than three reminders on three out of five learning opportunities;
- Given feedback from a teacher or adult, the Student will make corrections to his assignments prior to turning in the assignment for a grade; and
- Given opportunities to redo low score class assignments, or complete missing assignments, the Student will make necessary corrections, or complete the missing assignment.

68. After discussion and input from the Parent, the IEP team changed the language of the first goal to emphasize positive behavior.

69. After discussion and input from the Parent, the IEP team agreed to remove an existing social-emotional goal to allow for a social work referral.

70. The IEP team was not able to review the existing BIP.

71. The December 2018 IEP requires BCPS to provide to the Student one hour and thirty minutes daily of specialized instruction by the general education and/or special education teacher to address compliance and work completion and strategies for sustaining attention for work completion. The December 2018 IEP also requires BCPS to provide access to sessions provided in a separate room by a special education teacher on an as-needed basis. The IEP also requires OT to meet with the Student's teacher and other team members for fifteen minutes quarterly to discuss sensory processing issues that may present in the classroom environment.

72. The December 2018 IEP calls for services to be provided at [REDACTED] and for the Student to participate in all school activities with non-disabled peers except when receiving as-needed support from the OT or when the Student is in the special education classroom in order to get behavioral support or assistance with work completion.

February 2019 IEP Team Meeting

73. On February 14, 2019, BCPS convened a IEP team meeting (February 2019 Team Meeting) that was attended by the IEP team which consisted of the Parent and [REDACTED] a therapist from [REDACTED] and the following individuals from [REDACTED] and BCPS:

- [REDACTED] Administrator/Designee;
- [REDACTED] Special Educator;
- [REDACTED] General Educator;
- [REDACTED] Elementary Classroom;
- [REDACTED] Occupational Therapist;
- [REDACTED] Principal; and

• [REDACTED] Specialist.

74. Between the December 2018 Team Meeting and the February 2019 Team Meeting, the Student improved his Mathematics grade from 49% (E) to 78% (C). The Student had a Science grade of 82% at the time of the February 2019 Team Meeting.

75. Between the December 2018 Team Meeting and the February 2019 Team Meeting, the Student did not complete or return the folder of missed or incomplete assignments.

76. The Student left the Mathematics classroom without permission on numerous occasions between the December 2018 IEP Team Meeting and the February 2019 IEP Team Meeting.

77. At the end of the second quarter, the Student was reading at a U level according to the Fountas and Pinnell reading assessment. Fifth graders are expected to be at a level T at the end of the second quarter. Level U is higher than level T.

78. The Student continued to refuse to attend small-group instruction on numerous occasions for both Mathematics and ELA classes.

79. BCPS added two weekly thirty-minute sessions outside the general education setting to the IEP to address compliance and work completion and review assignments from the week. The Parent disagreed with this change.

80. BCPS added two monthly thirty-minute psychological services sessions consisting of fifteen minutes of direct instruction by the school psychologist and fifteen minutes of consultation with the teachers to the IEP. The purpose of these sessions is to help the Student learn to regulate his emotions. The Parent disagreed with this change.

81. BCPS updated the BIP to reflect that the Student likes to earn afternoon gym time as a reward for good behavior.

82. The Parent disagreed with the proposed IEP because she did not believe it met the Student's needs.

DISCUSSION

General IDEA Framework

The IDEA is intended to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403. The IDEA defines FAPE as special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9).

The United States Supreme Court was first called upon to interpret what Congress meant by FAPE in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Court held that if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act. *Id.* at 189. The Court explicitly rejected the petitioner's argument that the IDEA requires the provision of services sufficient to maximize each child's potential commensurate with the opportunity provided other children. *Id.* at 198. Instead, the Court concluded that the basic floor of opportunity provided by the Act consists of access to specialized instruction and related

services which are individually designed to provide educational benefit to the child. *Id.* at 201. The Court did not seek to define educational benefit, but held that an IEP should be reasonably calculated to enable the child to receive passing marks and advance from grade to grade. *Id.* at 203-204.

The Supreme Court further refined the meaning of FAPE in a recent case, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. *Endrew F. v. Douglas City Sch. Dist.*, 137 S. Ct. 988 (2017). The United States Court of Appeals for the Fourth Circuit recently reexamined its precedent to bring it in line with the standard announced by the U.S. Supreme Court in *Endrew F.* See *R.F. by and through E.F. v. Cecil County Pub. Sch.*, 919 F.3d 237 (2019).

The IEP is the mechanism by which FAPE is achieved. After a local educational agency has evaluated a child and determined that the child has a disability and is eligible for services under the IDEA, the local educational agency is required to have in place an IEP. The IDEA defines IEP as a written statement for each child with a disability that includes, in pertinent part:

- (I) a statement of the child's present levels of academic achievement and functional performance, including--
 - (aa) how the child's disability affects the child's involvement and progress in the general education curriculum;
 -
- (II) a statement of measurable annual goals, including academic and functional goals, designed to--
 - (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (bb) meet each of the child's other educational needs that result from the child's disability;
- (III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- (IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be

provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications[.]

20 U.S.C.A. § 1414(d)(1)(A)(i).

At the beginning of each school year, each local educational agency is required to have in effect an IEP for each child with a disability in the agency's jurisdiction. 20 U.S.C.A.

§ 1414(d)(2)(A). At least annually, the IEP team is required to review a child's IEP to determine whether the goals are being met. 20 U.S.C.A. § 1414(d)(4)(A)(i).

Subsequent to its initial evaluation to determine if the child has a disability, a local educational agency is required to reevaluate each child. Unless the local educational agency and parents agree otherwise, a reevaluation shall occur not more frequently than once a year, but at least once every three years. 20 U.S.C.A. § 1414(a)(2)(B). A local educational agency is required to ensure that a reevaluation of each child with a disability is conducted 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 if the child's parents or teacher requests a reevaluation. 20 U.S.C.A. § 1414(a)(2)(A).

In addition to the IDEA's requirement that disabled children receive FAPE, the law requires that, to the maximum extent appropriate, children with disabilities be educated with their non-disabled peers. 20 U.S.C.A. § 1412(a)(5). This requirement is referred to as "least restrictive environment." *Id.* The IDEA mandates that removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A). An agency is required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115(a). The continuum is required to include alternative placements such as instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115(b)(1). The continuum must also allow for supplementary services to be provided in conjunction with regular class placement. 34 C.F.R. § 300.115(b)(2).

Burden of Proof

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, in this matter the Parent has the burden of proving BCPS failed to provide a FAPE to the Student.

After reviewing all the evidence in this case, I conclude that BCPS has provided the Student with a FAPE. I also conclude that BCPS did not fail to include the Parent in discussions regarding the IEP and the BIP. Finally, I conclude that BCPS did not commit a violation relating to the release of confidential information of the Student. I explain each conclusion in detail below.

Lack of Academic Goal in the Student's IEP

The IDEA defines an IEP, in part, as a written statement that includes “a statement of measurable annual goals, including academic and functional goals, designed to . . . meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum . . . and . . . meet each of the other educational needs that result from the child’s disability.” 20 U.S.C.A. § 1414(d)(1)(A)(i)(II); *see also* 34 C.F.R. § 300.320(a)(2)(i) (“IEP . . . must include . . . [a] statement of measurable annual goals, including academic and functional goals.”).

There is no dispute that none of the IEPs at issue in this matter contain an explicit academic goal for the Student. The question is whether, taking into consideration the Student’s unique needs, an explicit academic goal was necessary to allow the Student to be involved in and make progress in the general education curriculum. Based on the record before me, I conclude that the goals in the Student’s IEPs were designed to meet the Student’s unique educational needs that stem from his ADD/ADHD. Although not explicitly academic goals, both the social-emotional and behavior-compliance goals and corresponding supplementary aids and services were designed to meet the educational needs that result from the Student’s ADD/ADHD and, as a result, to make academic progress in the general education curriculum.

Under the IDEA, the local educational agency is required to determine the educational needs of a child with a disability during the evaluation process. *See* 20 U.S.C.A. § 1414(a). At the beginning of 2017, BCPS conducted a reevaluation of the Student, including the following assessments: functional behavior, speech and language, educational, OT and psychological.

The FBA identified tantrum behavior and eloping behavior as the Student’s behaviors of concern. The FBA further identifies ADHD as a contributing factor that impacts the Student’s behaviors of concern.

The school psychologist explained that the Student's attention to tasks was inconsistent during the assessment, that this is attributable to his disability, and that as a result the conclusions of the assessment may represent an underestimate of his current cognitive functioning. Even taking into account this word of warning from the school psychologist, the Student's DAS-II¹¹ scores were in the average range. The psychological assessment also contains information from the Student's then-general education teacher regarding his social/emotional and behavioral functioning. In these areas, the teacher reported significant issues, including an overall rating in the Clinically Significant range, the highest possible range in the rating system for the BASC-2.¹² The teacher reported Clinically Significant levels of aggression, hyperactivity and conduct problems. On the Connors 3, the teacher noted scores in the Very Elevated range, the highest possible range, for inattention, hyperactivity and executive functioning problems. The school psychologist who administered the psychological assessment concluded that high scores in these areas are consistent with the Student's ADHD diagnosis. The school psychologist suggested certain interventions and support to address the Student's needs such as shortening longer activities, chunking into smaller and more manageable sections and taking frequent breaks.

The OT assessment states that the Student is demonstrating minor differences in sensory processing which are interfering with his classroom behavior, peer interactions and his overall ability to maintain a "learning ready" state during instruction. The OT examiner concluded that the sensory processing issues are consistent with the Student's disability of ADHD, and that sensory-based supports may help the Student manage his behavior.

¹¹ The DAS-II is an individually-administered assessment that addresses a student's cognitive ability through verbally posed questions and the use of manipulatives.

¹² The BASC-2 is designed to assess perceptions of a student across several areas of emotional and behavioral functioning as compared to a national sample of his same-age peers.

The educational assessment utilized by BCPS was the Woodcock Johnson IV.¹³ The Student's scores on the assessment were all within the average range. His scores on the academic skills, academic fluency and academic applications components of the test were also within the average range. The assessment report notes no specific area of weakness. Similarly, on the Speech and Language Assessment, the examiner concluded that the Student has average expressive and receptive language skills and that no significant pattern of weaknesses was identified and no needs were identified.

At the hearing, the Parent noted her concerns with the accuracy of the above assessments. However, she did not specify why she believes that the assessments are inaccurate. Instead, she stated that she disputes the validity of the above assessments because BCPS did not fully address the needs of the Student. As an example, she stated that the Student has a newly discovered medical issue of hearing loss.

In support of this argument, the Parent submitted into evidence a letter signed by Dr. [REDACTED] Doctor of Audiology at [REDACTED]. The letter provides treatment recommendations. The Parent acknowledged that she had not shared the document with BCPS prior to the hearing. The [REDACTED] letter provides little, if any support for the Parent's argument that BCPS has not fully addressed the needs of the Student because, in addition to the fact that it is undated and does not mention the Student's name, it does not provide a medical diagnosis, nor does it explain the basis for the opinion and recommendations expressed in the letter. Instead, it recommends further consultation to determine whether the Student requires a hearing aid. Additionally, the Parent testified that Dr. [REDACTED] did not observe the Student in the classroom environment, which is important because Dr. [REDACTED] made recommendations regarding accommodations in the classroom environment without observing that environment.

¹³ The Woodcock Johnson provides age-level comparisons regarding the development of academic skills, application and fluency in the areas of reading, mathematics and written language.

The Parent also stated that Ms. [REDACTED] of [REDACTED] had provided information to the IEP team regarding a potential diagnosis of central auditory processing disorder. However, there is nothing in the record from Ms. [REDACTED] regarding any concerns related to central auditory processing disorder, and Ms. [REDACTED] did not testify in the Parent's case. Further, there is nothing in the record to demonstrate that BCPS was aware of a confirmed diagnosis of central auditory processing disorder, or of any need for a referral or evaluation to determine whether the Student has the disorder. In fact, [REDACTED] testified that BCPS was told by the Parent that she was still looking into central processing disorder and that BCPS did not have consent from the Parent to speak with Ms. [REDACTED] regarding this issue.

On the other hand, the assessments relied upon by BCPS were all conducted by professionals in the areas of concern, each of whom explained how they reached their conclusion. For these reasons, I give great weight to the BCPS assessments conducted in early 2017. Conspicuously absent from the BCPS assessments is any data or assessment from which I can infer that an academic goal is required to meet the Student's needs emanating from his disability so that he may make progress in the general education curriculum.

Based on the 2017 assessments, BCPS drafted an IEP. The IEP in effect on April 6, 2018,¹⁴ was an IEP that was revised in February 2018. The February 2018 IEP had a behavior-compliance goal and a social-emotional goal. There is nothing in the record showing the Student's progress in meeting the goals from the February 2018 IEP during the fourth quarter of the 2017-2018 school year. BCPS offered into evidence data collection sheets from [REDACTED] [REDACTED] Elementary School for the 2017-2018 school year. These sheets show that the Student was absent a total of twenty-six days from April 6, 2018 until the end of the school year on June 15, 2018. During the fourth marking period, the Student was absent a total of twenty-two days

¹⁴ Prior IEPs were discussed at the hearing, but the February 2018 IEP is the earliest IEP that was submitted into evidence.

and had an attendance rate of 54%. In ELA, Mathematics, Science and Social Studies, the Student's grades either remained the same or got worse as compared to the previous marking period; the Student received an E (failing) in each of these subjects.

It is not entirely clear from the record before me why the Student missed so much class time during the fourth quarter of the 2017-2018 school year. There is some indication in the record that [REDACTED] suspended the Student on or around April 17, 2018, and that there was difficulty scheduling the reinstatement meeting, which is required by BCPS before a suspended student can return to the classroom. It appears that the Student returned to the classroom on or around May 4, 2018. Regardless, what is clear is that the Student was making sufficient progress on all of the goals from the 2018 IEP as of March 2018. During this time the Student was also making grade-level progress. It is also clear that starting in late 2017 or early 2018 the Student's classroom behavior began to deteriorate, leading to the February 2018 IEP Team Meeting. Without further explanation and proof from the Parent as to how the Student's fourth quarter grades stem from the lack of an academic goal in the IEP, I infer that the Student's poor fourth quarter grades were attributable to his attendance and behavioral issues rather than the IEP itself, especially in light of his ability to achieve higher grades earlier in the school year while under the same IEP.

This conclusion is supported by an email from [REDACTED] Assistant Principal at [REDACTED] from on or around June 7, 2018. In that email she writes to the Parent that the Parent needs to connect to BCPS One, an online portal that contains grades, assignments and comments from teachers, that school officials have repeatedly sent the access email to allow the Parent to connect to BCPS One, and that if she needs assistance connecting to BCPS One, the school can help. She notes that the cause of the Student's poor grades in the fourth quarter is the

number of absences and the amount of work he had missed. She writes that the school is willing to have a staff member work with the Student to complete missing assignments, but that the Student's absences have prevented the school from providing assistance with work completion. She also states that she will gather some of the missing or incomplete work to send home. It also appears that the Parent withdrew the Student from [REDACTED] on June 8, 2018, shortly prior to the end of the school year, at least in part over a dispute with [REDACTED] regarding the Parent's efforts to help the Student complete missing or incomplete work from the fourth quarter.

BCPS also presented the testimony of Ms. [REDACTED] Ms. [REDACTED] s role as Assistant Principal at [REDACTED] required her to observe teachers, take part in IEP team meetings and act as a liaison for school personnel. Ms. [REDACTED] testified that she recalled the Parent raising a concern regarding the lack of an academic goal at the IEP team meetings during the 2017-2018 school year. She stated that the IEP team determined that the Student was performing at grade level, and that this decision was based on its review of the Student's scores from the 2017 educational assessment, classroom observation and data from the classroom. She testified that she spoke several times each quarter with the Student's classroom teachers, and also observed the Student's classroom both formally and informally. She stated that the Student's poor fourth quarter grades were based on his refusal to complete work or respond to feedback regarding his work. She also said that, based on her classroom observation, the Student was consistently offered services but sometimes refused the services.

The IEP team next met to revise the Student's IEP in December 2018, subsequent to the Student's transfer to [REDACTED] At the time of the meeting, the Student had a grade of 49% (E) in Mathematics, 73% (C) in Health, 75% (C) in ELA and 38% (E) in Social Studies. In Mathematics, the Student's teacher noted that the Student requires multiple reminders to follow

directions, complete work and stay on task, that he does not often participate in whole-group instruction and rarely attended small-group instruction. She attributed his low grade to his choosing not to attend small group instruction, rather than any academic impediment. Similarly, his ELA and Social Studies teacher noted his reticence to attend small-group instruction, as well as problems staying on task, as exemplified by his inappropriate use of his school device to play games on a math website. She also noted that he tested on grade level using the Fountas and Pinnell guided-reading assessment.

The December 2018 IEP also contains data pertaining to the Student's classroom behavior. Using data collection, or tally, sheets,¹⁶ BCPS counted the number of times since September 11, 2018, that the Student had refused to follow directions (121 times), refused to complete assignments as directed (forty-four times), refused to make corrections as advised by an adult (fifty-six times), left an assigned area without permission (fifty-six times) and walked away from an adult when being addressed (thirty-two times). Beginning October 24, 2018 through November 8, 2018, BCPS also counted the Student's acceptance or rejection of accommodations and supports, including additional adult support (accepted: zero, rejected: four), scribe (accepted: zero, rejected: one), small group instruction (accepted: five, rejected: eight) and outside general education support (accepted: zero, rejected: six). On the basis of the above data, BCPS concluded that the Student was performing below grade-level expectations in the areas of compliance and work completion.

The December 2018 IEP contains one goal, a behavior-compliance goal. The IEP states: "[b]y December 10, 2019, when given a direction from an adult, [the Student] will demonstrate

¹⁶ Ms. [REDACTED] a special education inclusion teacher at [REDACTED] Elementary School, testified that the Student's BIP was used to draft the tally sheets so that they were aligned with his BIP.

compliance by acknowledging the direction and will engage in instruction and work completion on 3 out of 5 learning opportunities.” The goal has three objectives:

- Objective 1: Given a direction from a teacher to attend to instruction, whole group or small group, [the Student] will comply with the directive with no more than 3 reminders on 3 out of 5 learning opportunities,
- Objective 2: Given feedback from a teacher or adult, [the Student] will make corrections to his assignments prior to turning in the assignment for a grade, and
- Objective 3: Given opportunities to “redo” low score class assignments, or complete missing assignments, [the Student] will make necessary corrections, or complete the missing assignment.

All of the goals have a target rate of 60% compliance and are to be evaluated using informal procedures.

The December 2018 IEP identifies the following instructional supports to help the Student meet the goal: have the Student repeat or paraphrase information, chunk of assignments, reduce assignments, give frequent breaks to allow Student to use coping strategies, pair visuals with auditory presentations, and use a word bank to reinforce vocabulary. With the exception of chunking or breaking down assignments into smaller units, which is to be provided to the Student daily, the rest of the supports are to be provided on an as-needed basis. The December 2018 IEP identifies the following social/behavior supports to help the Student meet the goal: frequent eye contact, proximity control, positive reinforcement, visual cues, opportunities for movement throughout the day and home school communication. With the exception of home-school communication, all of the supports are to be provided on an as-needed basis. The December 2018 IEP provides the following physical/environmental supports: preferential seating and adaptive

equipment, both to be provided on an as-needed basis. The December 2018 IEP provides the following school personnel/parental supports: adult support (daily) and occupational therapist consult (monthly).

In February 2019, the IEP team met again to review and revise the Student's IEP. The IEP team reviewed the Student's progress towards the new goal from the December 2018 IEP, and determined that the Student was making sufficient progress to meet the goal. Ms. [REDACTED] the Student's special education teacher, noted at the meeting that the Student's behavior is very inconsistent from day to day, making it difficult to determine progress. However, the Student came to small group more often after the December 2018 Team Meeting and complied with some directives from teachers with three reminders or less.

BCPS presented the testimony of [REDACTED] the Student's classroom teacher for ELA and Social Studies. Ms. [REDACTED] testified that the Student is capable of performing at grade level. She based this opinion on the fact that the Student can read and comprehend with grade-level proficiency as demonstrated by his score on the Fountas and Pinnell guided-reading assessment. Ms. [REDACTED] has been trained to administer this assessment, which is conducted three times a year. During the second quarter, the Student scored at level U, which is slightly better than average. Ms. [REDACTED] also stated that the Student's score on the winter 2018 MAP reading assessment, where he received a score of 209, which is the benchmark, informed her opinion that he is able to perform at grade level.

BCPS also presented the testimony of [REDACTED] a special education inclusion teacher at [REDACTED]. Ms. [REDACTED] is responsible for developing and reviewing IEPs, monitoring progress, reporting to parents, participating in IEP team meetings, interacting with classroom teachers to assist with IEP implementation and providing direct services to certain students. She testified that at the December IEP team meeting, the Parent raised concerns regarding the

Student's Mathematics grade, but that the school looked at all of the Student's assessments and concluded that an academic goal was not warranted. At the time of the February meeting, the Student had a grade of 78% in Mathematics – Ms. [REDACTED] testified that this is “really good.” With respect to the Student's winter 2018 MAP math assessment, he received a score of 204, lower than the benchmark of 217. However, Ms. [REDACTED] testified that, based on her years of experience as a special educator, most students with IEPs score in the 175-190 range on this assessment, and most students without IEPs score in the 200-210 range on this assessment. Ms. [REDACTED] testified in summary that IEP goals must be supported by data and that the data did not support an academic goal for the Student.

While I do not doubt the sincerity of the Parent's concern regarding the Student's academic progress, I conclude that she has not shown that an academic goal is necessary for the Student to make progress in light of his unique circumstances. I base this conclusion on my review of the 2017 assessments, the Student's report cards, and the testimony of Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] none of which indicate that the Student has any academic issue that needs to be addressed in the IEP. On the contrary, the evidence uniformly shows that the Student is capable of grade-level achievement. Further, the social-emotional goal and, to a larger extent, the behavior-compliance goal, is related to improving the Student's participation in the general education classroom and work completion, both of which should improve his grades.

The Parent also has not shown that the IEP does not have proper accommodations or supports. The IEP notes in the Present Level of Academic Achievement and Functional Performance section that the Student's disability affects his ability to remain on task, complete assignments and remain in an assigned location, which negatively impact his interactions with peers and adults and his ability to complete work in a timely manner. The supplementary aids and services are consistent with the professional recommendations from the 2017 assessments.

For example, in the psychological evaluation the school psychologist suggested that BCPS utilize certain interventions to address the Student's high inattention and hyperactivity assessment scores such as shortening longer activities, chunking into smaller and more manageable sections and taking frequent breaks. All of these techniques are present on the Supplementary Aids and Services section of the February 2018, December 2018 and February 2019 IEPs. Similarly, the sensory-processing issues noted in the 2017 OT assessment are addressed in each of the IEPs, as recommended by the OT. The Parent expressed concern regarding the Student's handwriting and these were validated by at least one of the Student's teachers at [REDACTED] and the February 2018 IEP addresses this concern by allowing the Student to utilize a keyboard for extended writing assignments if the writing demand is noted to be triggering stress or negative behaviors. In sum, there is no indication in the record that the Student's unique needs, which relate to his diagnosis of ADD/ADHD, were not addressed in the IEPs through the supplementary aids and services sections.

The Parent also alleges that BCPS has failed to implement the IEP and the supplementary aids and services and therefore has failed to provide FAPE to the Student. Ms. [REDACTED] testified that she checked with staff at [REDACTED] regarding implementation of the IEP because the Parent had expressed concerns. She testified that she observed the Student's classroom firsthand and that the Student was always offered services, but sometimes refused to cooperate with the teacher and additional adult in the classroom. Her account is corroborated to some extent by the data collection sheets from [REDACTED]. For the period from April 7, 2018 until the end of the school year on June 15, 2018, the data collection sheets indicate a total of three days where the Student participated in a small group, and six days where special education providers provided instruction to the Student. As noted, the Student was absent a lot during this period. In addition, there are a number of days where there is no indication that the Student was absent, but the line

is blank for the day. Ms. [REDACTED] testified that she is not sure what occurred on those days, but that she presumes the special education teacher was out that day. However, she expressed no concern regarding IEP implementation on these days because the classroom teacher and the additional adult knew of the Student's IEP. I credit Ms. [REDACTED]'s testimony regarding the implementation of the IEP on these days based on the fact that she acted as liaison for school personnel and served on the IEP team for the Student and therefore has familiarity with the Student's IEP. Further, there is no evidence or testimony to contradict her testimony regarding what occurred on these days.

In support of her argument that BCPS failed to implement the IEP while the Student was enrolled at [REDACTED] the Parent submitted a series of emails between the Parent and [REDACTED] music teacher. The exchange begins with an email from Ms. [REDACTED] informing the Parent that during preparation for a winter concert, the Student would not follow directions and she removed him from the practice group and gave him written work. There is another email from Ms. [REDACTED] dated a couple of days later, informing the Parent that the Student had again refused to participate in rehearsals, and that she told the Student he would have to do a written assignment if he refused to sing. The Parent responded to Ms. [REDACTED]'s email and expressed her understanding of why a written assignment is required in order for the Student to obtain a grade if he chooses not to participate in the music performance. She requested that Ms. [REDACTED] send the written assignment home so that she could work with the Student to complete the written assignment.

At the hearing, the Parent pointed to this incident as indicative of her difficulty working with the staff at [REDACTED]. My review of the email exchange shows that Ms. [REDACTED] and the Parent were actually working collaboratively to reach a solution that would allow the Student to obtain a grade. The emails also demonstrate that the Student's classroom teachers have reached out to the Parent to alert her to the Student's classroom behavior and ask for her assistance in

encouraging improvement in this area. In short, the email exchange provides no support for the Parent's argument that BCPS failed to implement the IEP at [REDACTED] thereby denying the Student a FAPE.

There are other emails in the record that demonstrate that [REDACTED] was implementing the Student's IEP. On September 20, 2018, [REDACTED] Assistant Principal at [REDACTED], sent an email to the Parent informing her that the Student has been arriving early at certain school locations without permission. Mr. [REDACTED] asks the Parent to talk with the Student about this behavior. In an email dated October 10, 2018, Ms. [REDACTED] Mathematics teacher, informs the Parent that the Student has chosen to not participate in small group instruction during STEM¹⁷ and ELA classes; instead, he chose to play games on his device. Ms. [REDACTED] states that his teachers have attempted to have the additional adult assistant persuade the Student to join the small groups, to no avail. Ms. [REDACTED] informs the Parent that the Student's failure to participate in small group instruction means that he is not able to demonstrate an understanding of the curriculum, and solicits any ideas from the Parent as to how to engage the Student to ensure that he attends small group instruction and completes his classroom work. In response to the Parent's ideas, Ms. [REDACTED] noted the supplementary aids and services that the school has in place for the Student and his utilization of the services: additional adult assistant (Student "refuses help from him and/or will not talk to him"), special educator (refuses to attend), and scribe ("he won't talk to us or his adult assistant, therefore we can't scribe for him"). These are examples of Home-School Communication System, which is identified on the IEPs as a social/behavioral support.

Mr. [REDACTED] testified that he has observed the Student's classroom and has not seen any indication that the classroom teachers are failing to implement the IEP. He gave the following as

¹⁷ Science, Technology, Electronics, and Mathematics.

examples of interventions in the classroom that he has personally observed: option of additional adult and special education teacher, shortening/chunking of assignments and an incentive program. Ms. [REDACTED] testified that she provided word banks for the Student on any assignment that requires vocabulary references, and that she also utilized other visual cues and reminders in the classroom as called for by the IEP. She testified she utilized chunking, where text is broken down into smaller segments with breaks to test comprehension, to address processing delays. She said she utilized preferential seating for the Student, which allows the Student to sit where he is most comfortable and to adjust as necessary. With respect to behavior, she testified she has used proximity control and positive behavioral interventions to address the Student's behavior. Ms. [REDACTED] testified that the IEP has been implemented and as evidence she pointed to the tally sheets which measure the accommodations offered to the Student. She stated also that she personally observed the supplementary aids and services that were provided in the general education classroom.

I credit the testimony of Ms. [REDACTED] and Ms. [REDACTED] because they were able to identify the aids and services, how they were delivered and how the Student reacted to the aids and services. They also testified as to which strategies worked (e.g. positive behavioral interventions) and how they adjusted in response to the Student's reaction to the supplementary aids and services. In other words, Ms. [REDACTED] and Ms. [REDACTED] were not simply reading from the IEP, but appeared to have a detailed understanding of the unique needs of the Student as embodied in the IEP and how those needs are to be addressed through the supplementary aids and services section of the IEP. The testimony of BCPS's witnesses with respect to implementing the IEP is bolstered by documentary evidence that corroborates their account of the implementation – as an example, the October 17, 2018 email, described above, from Ms.

█ detailing the supplementary aids and services being provided to the Student in both his Mathematics and ELA classes.

Although not raised with specificity in the Parent's due process complaint, the Parent submitted evidence, which BCPS did not object to, concerning problems with transportation from the Student's home to █ at the beginning of the school year. The IDEA defines "related services" as including transportation. 20 U.S.C.A. § 1401(26). Transportation is defined by IDEA's implementing regulations, in part, as including travel to and from school. 34 C.F.R. § 300.34(a)(16)(i); *see also Donald B. By and Through Christine B. v. Bd. of Sch. Commissioners of Mobile County, Ala.*, 117 F.3d 1371 (11th Cir. 1997) (IDEA requires transportation of disabled child as service related to child's special education if that service is necessary for child to benefit from special education, even if that child has no ambulatory impairment that directly causes unique need for some form of specialized transport). Thus, the Parent's allegation that BCPS failed to provide appropriate supplementary aids and services for the Student could include a failure to provide adequate transportation.

The Student's IEPs all provide for transportation as a related service since services are being provided to the Student outside of his home school. There are a series of emails between the Parent and Mr. █ from September 2018 in which the Parent expressed her concern regarding the transportation provided by the school. On multiple occasions, the transportation was late in picking the Student up, leading him to miss instructional time. Mr. █ corroborated the Parent's account of the transportation problems and confirmed the Student's late arrival time on the following dates: September 4, 5, 6, 7, 11 and 12, 2018. Mr. █ explained in his emails to the Parent that the Student missed a portion of special-area class on the above days. In total, the Student missed two-hundred-eleven minutes, or a little bit more than three-and-a-half hours, of special-area class time.

The Parent did not argue at the hearing that the failure of BCPS to provide transportation on the above dates constituted a denial of FAPE. On the basis of the late arrivals alone, I cannot conclude that BCPS denied the Student a FAPE. I have no evidence before me regarding the impact of the lost instructional time on the Student's progress in the impacted classes. In reaching this conclusion, I have also considered that the Student's grades for his special area classes in the first and second quarters and the fact that the grades show that he made grade-level progress, as he received a C in Library Media, a B in Art, a D in Music, and an A in Physical Education.

On the basis of the above considerations, I conclude that the lack of an academic goal in the Student's IEP did not deprive the Student of a FAPE and the IEP was not implemented in a way that deprived the Student of a FAPE.

Failure to Update the Student's IEP

The Parent argued that BCPS denied the Student a FAPE by failing to update his IEP. Under the IDEA, the IEP team is required to review the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved. 20 U.S.C.A. § 1414(d)(4)(A)(i). There is no explicit requirement in the IDEA that the IEP be updated every time the IEP team reviews the IEP. Instead, the IEP team is required to revise the IEP "as appropriate" to address:

- (I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;
- (II) the results of any reevaluation conducted under this section;
- (III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);
- (IV) the child's anticipated needs; or
- (V) other matters.

20 U.S.C.A. § 1414(d)(4)(A)(ii).

Three IEPs were submitted into the record by the parties: February 2018, December 2018 and February 2019. As explained more fully below, modifications were made to the IEP at each IEP team meeting. I conclude that BCPS did not fail to update the IEP as alleged by the Parent.

The February 20, 2018 IEP team meeting took place because of the Student's lack of progress during the second quarter of the 2017-2018 school year at [REDACTED]. According to the IEP team summary, the IEP team discussed the Student's behavior challenges. As a result, the IEP team decided that it was necessary to decrease the target trials to two out of five for the Student's social-emotional goal. In addition, the IEP team increased the number of service hours to help the Student achieve the amended social-emotional goal. Total time outside the general education classroom was amended to seven hours, thirty-one minutes per week. The IEP team also sought to add direct services with the school psychologist to the IEP, but the Parent expressed disapproval and therefore these services were not added.

The December 2018 IEP Team Meeting took place to take stock of the Student's progress at [REDACTED]. After discussing the Student's progress, the IEP team discussed the Student's updated IEP goals. The behavior-compliance goal on the IEP is similar to the goal from the February 2018 IEP. However, the objectives changed considerably. In the February 2018 IEP, there were four objectives focused on ensuring that the Student goes to and remains in an assigned location, completes an assigned task, is safe in all areas of the school and initiates tasks. In the December 2018 IEP, there are three objectives, and the objectives are focused on ensuring that the Student attends to instruction, makes corrections to assignments before turning in for a grade, and makes necessary corrections to assignments or complete assignments when given the opportunity to redo assignments. The target trials are different as well, with the February 2018 IEP having target trials ranging from 30%-95% whereas the December 2018 IEP utilizes three out of five targeted trials as the measure of progress. The IEP team also decided to remove the

social-emotional goal from the IEP. Ms. [REDACTED] also testified that the IEP team removed pull-out services as the Student responded better to his general education teachers at the beginning of the school year.

The February 2019 IEP Team Meeting was held to discuss the Student's progress in achieving his IEP goals and to discuss the BIP. The IEP team determined that it would be helpful to add one-on-one instruction with the school psychologist to help the Student develop self-calming strategies and coping skills. The IEP team updated the IEP to add two thirty-minute sessions with the psychologist every month. The IEP team also determined that additional support was necessary to address the Student's work habits and completion. The IEP team updated the IEP to add service hours, including one hour and thirty minutes daily of specialized instruction focused on compliance and work completion as well as two thirty-minute sessions outside of general education to work on class assignments. The IEP team also updated the BIP to take into account the fact that the Student liked to earn afternoon gym time as a reward for demonstrating positive behavior. Ms. [REDACTED] testified that the IEP team also updated the consequence strategies in the BIP.

Having reviewed the IEPs in question, it is clear that school officials at [REDACTED] and [REDACTED] updated the IEP at each of the three IEP team meetings. In addition to the changes described above, the IEP team updated the Present Level of Academic Achievement and Functional Performance section to include the Student's grades, classroom observations and data from tally sheets. Therefore, BCPS did not deny the Student a FAPE by failing to update the IEP as the Parent alleges.

Failure to Properly Discipline

The Parent alleged that BCPS failed to properly discipline the Student during the 2017-2018 and 2018-2019 school years, thereby depriving him of FAPE. Under the IDEA, the IEP team is

required, in the case of a child whose behavior impedes the child's learning or that of others, 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).

The Student has had a BIP since October 2014 to address behaviors described as "not complying with instructions or completing work" and "crying/expressing anger or frustration by banging or throwing objects." On January 19, 2017, the IEP team at [REDACTED] conducted an FBA of the Student. In the FBA, the IEP team identified two behaviors of concern: (1) tantrum behavior (defined as throwing objects, kicking and pushing furniture, destroying materials), and (2) eloping behavior (defined as leaving assigned area, and/or leaving classroom without permission).

During the February 2019 IEP Team Meeting at [REDACTED] the IEP team updated the Student's BIP.¹⁸ The BIP identified non-compliance as the first problem behavior, defining the term as refusal to follow teacher directions, refusal to complete assignments and/or make corrections as directed by an adult. The BIP states that the replacement behavior is "[w]ith adult assistance and reminders, [the Student] will follow adult directions." As a behavior goal, the BIP calls for the Student to follow adult directions with 70% accuracy.

The BIP identified eloping as the second problem behavior, and defined the term as leaving the assigned area without permission and/or walking away when being addressed by an adult. The BIP states that the replacement behavior is "[the Student] will move to the front corner or back table in the classroom when he has the desire to elope from the room." As a behavior goal, the BIP calls for the Student to remain in his assigned location.

The BIP concludes that the behaviors are an attempt by the Student to do the following: gain control, avoid work, avoid activity task, gain attention and avoid attention. The BIP

¹⁸ The document notes that the original date of the BIP was March 15, 2018. This version of the BIP was not made part of the record.

identifies certain strategies to address the contributing factors of the behavior and to minimize the triggers of the behavior, as well as certain positive strategies to reinforce the behavior goals. These strategies include giving advance warnings of change in routine, positive corrective feedback, verbal praise, clear expectation of tasks and assignments, first/then language and reminder of points/rewards. The BIP calls for the following consequence strategies for the problem behavior: redirection to task or location, loss of reward and logical consequences. The BIP also calls for a hierarchical response to problem behavior, starting with a reminder of expected behavior, then fair warning of consequence, following through with consequence as soon as possible and giving the Student time and space to de-escalate.

The Parent did not identify any specific example of [REDACTED]'s failure to properly discipline the Student. Regarding discipline of the Student at [REDACTED] Ms. [REDACTED] testified that at the beginning of the school year the Student's behavior was acceptable but as the school year went on the Student had more and more difficulty following directions. She testified that when she and others intervened, the Student would not listen. She testified that [REDACTED] suspended the Student three times. The Student Discipline History shows one additional in-school suspension. All of the suspensions were for refusing to cooperate with school rules and regulations.

The Summary of Social Work Services sent to the Parent prior to the October 2017 IEP Team Meeting corroborates Ms. [REDACTED]'s testimony that the Student was behaving well at the beginning of the 2017-2018 school year. In that document, the social worker, Ms. [REDACTED] notes that the Student is making progress towards his IEP goals with the assistance of a weekly thirty-minute social-work session. She states that he has made "significant behavioral progress as evidenced by behavioral data." The IEP team summary from the February 2018 IEP Team Meeting indicates that the Student's behavior had deteriorated and that the Student had been

refusing help from adults and eloping on several occasions during the second quarter of the 2017-2018 school year.

The Parent identified one incident of alleged improper discipline from [REDACTED]. The Parent pointed to the December 2018 exchange with the Student's music teacher, Ms. [REDACTED] as indicative of a singling out of the Student for discipline. As noted above, based on my review of the entire exchange, I conclude there was no singling out of the Student and that Ms. [REDACTED] worked with the Parent to come up with an alternate written assignment and ensure that the Parent could assist in completing that assignment. Ms. [REDACTED] also expressed empathy, to the extent that can be communicated through email, regarding the Parent's concerns.

The Parent did not identify any other specific instances where [REDACTED] failed to discipline the Student properly.

Regarding the Student's behavior at [REDACTED], Ms. [REDACTED] testified that he walked out of class on occasion and chose not to complete his classroom work. She testified of the school staff's familiarity with the BIP and their implementation of the BIP. I credit her testimony because she was present in the classroom to observe the Student's behavior and the implementation of the BIP. She stated that the tally chart was used to keep track of the Student's behavior. She testified that school staff utilized positive behavioral interventions such as a ticket system which allowed the Student to purchase items in the school store or earn gym time. She also testified as to which behavioral intervention strategies were most successful for the Student, and identified the use of a daily schedule, giving the Student the choice of where to sit and whether to write or type his responses, the rewards system, praise and the use of first/then. She testified that at times the rewards became a distraction for the Student and that he did not always make a choice when presented with choices, which limited the effectiveness of these interventions.

Ms. [REDACTED] testified that she utilized the BIP that was in existence at the time the school year started in order to draft the tally sheets. She also commented that the Student had made progress between the December 2018 and February 2019 IEP Team Meetings, as he became more accepting of time spent outside the general education setting. With respect to the strategies to address the Student's problem behaviors, she stated that early in the school year the Student did not respond well to the additional adult, so the classroom teachers were the point people to help address his non-compliant behavior. She characterized his response to behavioral interventions as "hit or miss." She also stated that flexible seating was used to deal with the Student's eloping, and that he would often move to the back of the room, and as the year progressed he would go to her room more often. She also testified that the IEP team noticed that he was often eloping in the afternoon, so they programmed more time in Ms. [REDACTED]'s classroom during the afternoon hours. She testified that the tally sheets helped inform the BIP; as an example, she stated that at [REDACTED] the Student would walk away from adults but that the IEP team at [REDACTED] did not see this behavior so did not focus on it as much in the BIP.

Mr. [REDACTED] had responsibility, in conjunction with the Principal at [REDACTED], for addressing behavior and discipline for the Student. He spoke regarding specific behaviors that the Student engaged in during the school year, including leaving the classroom, walking the halls, not leaving the classroom for fire drills, throwing rocks, showing disrespect to teachers and leaving the cafeteria. [REDACTED] suspended the Student three times. The first suspension was for an incident on October 18, 2018 when the Student refused to leave the classroom during a fire drill. The second suspension was for an incident on January 7, 2019 when the Student wandered in and out of his classrooms throughout the day, did not follow adult directions and spit in another student's face. The third suspension was for an incident on March 18, 2019 – Mr. [REDACTED] did not testify as to the reason for this suspension but the Student's disciplinary history notes that it

was for failure to follow a direction such as but not limited to failure to report to office when directed by school staff to do so. Mr. [REDACTED] also testified regarding other behavior that was disruptive to the school environment but that did not warrant a suspension, and he provided the behavior referral forms completed at the time of the incidents. These forms describe behavior such as leaving the classroom unannounced, failing to follow directions as to when the Student could use the bathroom, drawing on a computer cart, turning off lights in the classroom, chasing other students in the hallway during instruction time and in the classroom and shouting expletives during class.

In conclusion, the Parent has not shown that either [REDACTED] or [REDACTED] improperly disciplined the Student. On the contrary, the testimony of BCPS's witnesses is unrefuted that the BIP was implemented and that suspensions were only utilized as a last resort after repeated instances of poor behavior by the Student.

Failure to Include the Parent in IEP Team Meetings

The Parent alleges that BCPS failed to include her in IEP team meetings and in discussions regarding the BIP. Specifically, she acknowledges her presence at each IEP team meeting but asserts that BCPS ignored her input and failed to update the IEP in accordance with her input.

The IDEA defines IEP team to include the parents of a child with a disability. 20 U.S.C.A. § 1414(d)(1)(B)(i). In developing each child's IEP, the IEP team is required to consider, *inter alia*, the concerns of the parents for enhancing the education of their child. 20 U.S.C.A. § 1414(d)(3)(A)(i). Each public agency is required to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually

agreed on time and place. 34 C.F.R. § 300.322(a). Under the procedural safeguards section of the IDEA, a local educational agency is required to provide an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to such child. 20 U.S.C.A. § 1415(b)(1).

I conclude that BCPS included the Parent in all discussions regarding the IEP and BIP. Although the record shows that a difference of opinion existed as to the addition of an academic goal, this does not mean that BCPS failed to include the Parent.

The Parent does not dispute that BCPS provided her with adequate prior written notice in accordance with IDEA requirements prior to the IEP team meetings in February 2018, December 2018 and February 2019. With respect to the December 2018 IEP Team Meeting, there was a lot of discussion between the Parent and Mr. [REDACTED]. [REDACTED] accommodated the Parent's request that she observe the Student in the classroom prior to the IEP team meeting. This request, as well as the Parent's scheduling conflicts, meant that the IEP team meeting was pushed from October to December 2018. The preference from Mr. [REDACTED] and BCPS was to hold the IEP team meeting sooner. The delay was solely to accommodate the Parent's request for classroom observation time.

Similarly, the Parent does not dispute the fact that she attended each of the relevant IEP team meetings. The record also reflects that she participated in and was heard by BCPS officials at each meeting. At the October 2017 IEP Team Meeting, she requested that BCPS change the social worker who was providing services to the Student, and that [REDACTED] amend the Student's point sheets. Both requests are noted in the IEP Team Summary document as being followed up on by the IEP team. At the November 2017 meeting, the Parent shared her belief that many of the Student's difficulties stem from handwriting. In response, the IEP team

discussed classroom-based strategies to assist the Student with written responses, including chunking assignments, talking with the Student before he completes his written responses, using organizers and sentence starters and having the Student record his responses orally and listen to them to help him organize his writing.

At the February 2018 meeting, she opined that [REDACTED] was not meeting the Student's needs, that he was not comfortable at the school and that there was a lack of communication from the school. The Parent raised the issue of the Student's difficulty writing – while the OT disputed that the Student lacks the capability to write, the special education teacher agreed with the Parent that writing is difficult for the Student but shared that he does not use the other strategies to assist with completing written assignments. The Parent also inquired regarding some of the other behavioral strategies, such as zones of regulation and direct social-work services. On that topic, the school psychologist suggested adding direct social-work services to the IEP because the increase in problem behaviors occurred following the removal of direct social-work services earlier in the 2017-2018 school year. However, the Parent disagreed with this recommendation and direct social-work services were not added to the IEP.

For the meetings at [REDACTED] the Parent was accompanied by Ms. [REDACTED] whose role was to serve as advocate for the Student and to share her observations of the Student. During the December 2018 meeting, Ms. [REDACTED] shared that when she observed the Student in art class, the Student did not have anything in front of him and the additional assistant did not assist him – she offered her opinion that the Student may not have developed a trusting relationship with the [REDACTED] staff. The Parent also questioned how the Student received low grades but the teachers continue to see him as working on grade level. She also questioned if he might have problems processing information. In response, the IEP team reviewed the most recent assessments. When the IEP team discussed the behavior-compliance goal, the Parent requested that the language of

the goal be changed to be more positive. The IEP team agreed to the change. The Parent also disagreed with the social-emotional goal, and the IEP team removed this goal to explore the addition of social-work services.

At the February 2019 IEP Team Meeting, the Parent did not agree that the Student's behavior interferes with his learning. She shared with the IEP team that the Student's teachers fail to provide instruction to the Student and do not provide missing work. The IEP team then reviewed the data regarding present levels of performance and discussed strategies to improve the Student's self-calming and coping skills. At that point, the Parent requested that BCPS social-work representatives not participate in the IEP team meeting. Regarding missed assignments, the IEP team discussed the use of a folder for missed work as a way to involve the Parent and communicate with her; the Parent shared that this system has not been working and suggested that BCPS scan classwork assignments and email them to her. The Parent indicated that she was not in agreement with the IEP team's recommendation that psychological services be added to the IEP and that two weekly thirty-minute special education sessions be added to the IEP. The IEP team made the above changes to the IEP despite the Parent's disagreement. The Parent declined to give input on the BIP at the meeting.

After reviewing the IEP Team summaries and the testimony from the hearing, it is apparent that the Parent was an active participant at each IEP team meeting. There are numerous instances of BCPS responding to input from the Parent, including her declination of certain services such as direct social-work services. Clearly, a disagreement exists regarding the necessity of an academic goal in the Student's IEP, and, to a lesser extent, the impact of handwriting on the Student's behavior. For both those points of disagreement, the Parent was allowed to express her opinion at the IEP team meeting, and the IEP team made a decision based on the 2017 assessments, classroom data and classroom observation. With respect to the BIP,

the testimony is unrefuted that the Parent refused to offer any suggestions at the February 2019 IEP Team Meeting, instead suggesting that the Student's behavior does not act as an impediment to his academic progress.

The key consideration in any procedural analysis under IDEA is whether full and fair parental involvement in the review process has been afforded. *Sanger v. Montgomery County Bd. of Educ.*, 916 F.Supp. 518, 526 (D. Md. 1996). I conclude that BCPS allowed the Parent to participate fully and fairly in the review process and therefore did not violate the Parent's procedural rights under the IDEA. The Parent argued that BCPS ignored her input at IEP team meetings and therefore she was not a full and equal participant in the development of the IEP and the BIP. However, crucially, BCPS never impeded her right to be heard. *See, e.g., A.E. By and Through his Parents and Next Friends, Mr. and Mrs. E. v. Westport Bd. of Educ.*, 463 F.Supp.2d 208, 217 (D. Ct. 2006) (concluding that the board did not deprive the student's parents of a meaningful opportunity to participate in the process where they attended all meetings, sought out and were represented by an advocate, and corresponded with the board throughout the process); *Long v. Dist. of Columbia*, 780 F.Supp.2d 49, 59 (D.D.C. 2011) (parents failed to show that their participation in IEP team meetings was restricted in any way). Furthermore, the IDEA does not grant parents the unilateral right to compel a school district to change the IEP or to veto or otherwise block a school system's ability to implement an IEP or to discipline a student. *See, e.g., Fitzgerald v. Fairfax County Sch. Bd.*, 556 F.Supp.2d 543, 557-558 (E.D. Va. 2008) (the IDEA does not require that parents and the school system reach a consensus); *J.P. ex rel. Popson v. West Clark Cmty. Sch.*, 230 F.Supp. 2d. 910, 919 (S.D. Ind. 2002) (citation omitted); *P.K. ex rel. P.K. v. Bedford Cent. Sch. Dist.*, 569 F.Supp.2d 371, 383 (S.D. N.Y.) ("A professional disagreement is not an IDEA violation."); *Rosinsky ex rel. Rosinsky v. Green Bay Area Sch. Dist.*, 667 F.Supp.2d 964, 984 (E.D. Wisc. 2009) ("The problem with plaintiff's assertion that she

was not part of the consensus arrived at by the IEP team is that IEP team consensus does not require parental agreement in order to satisfy the IDEA.”) (citations omitted).

Release of Private Information

The Parent alleges that BCPS released private information of the Student and Parent with other people outside of the school setting without the Parent’s permission.¹⁹ BCPS argued that it did not release private information of the Student or Parent. I conclude that the Parent has not provided credible evidence on which I can make a factual finding that BCPS released private information of the Student or Parent.

Under the IDEA, the Secretary of Education is required to take appropriate action to ensure the protection of the confidentiality of any personally identifiable data, information and records collected or maintained by the Secretary and by state educational agencies and local educational agencies. 20 U.S.C.A. § 1417(c). The Secretary’s action under the IDEA is required to be consistent with the Family Educational Rights and Privacy Act (FERPA). Congress enacted FERPA, 20 U.S.C.A. § 1232g, in 1974 in order to ensure access to educational records for students and parents and to protect the privacy of such records from the public at large. *Student Press Law Ctr. v. Alexander*, 778 F.Supp. 1227, 1228 (D.D.C. 1991). In order to implement the IDEA’s confidentiality provisions, the Education Department enacted regulations that require parental consent before personally identifiable information is disclosed to third parties. 34 C.F.R. § 300.622(a).

The Parent alleges that [REDACTED], a BCPS employee, shared information regarding her and the Student with her family member at a party towards the end of the 2017-2018 school year. In support of this allegation, she submitted into evidence a FERPA online complaint form

¹⁹ The Parent also submitted evidence regarding the manner in which BCPS transmitted the Student’s records that she requested in preparation for the due process hearing. Because the actions of BCPS occurred subsequent to the filing of the due process complaint, I will not consider them in this decision. The Parent retains the right to file a complaint with respect to this allegation.

that indicates that she became aware that Ms. [REDACTED] was related to her [REDACTED] when they both attended a family party. She indicates that she left the party but that she subsequently learned from her family members that Ms. [REDACTED] discussed the Student and her after she left.

I give this document little weight. The document provides little detail surrounding the incident, such as the date of the incident, the information or records that were allegedly disclosed, or the impact that the disclosure had on the Parent or the provision of FAPE to the Student. The Parent did not provide any further details regarding the incident at the hearing and did not call any witnesses to provide additional details.

Ms. [REDACTED] testified that BCPS determined that Ms. [REDACTED] did not share any information regarding the Student. After the Parent made BCPS aware of the fact that Ms. [REDACTED] is related to a relative of the Parent, BCPS granted the Parent's request that Ms. [REDACTED] no longer participate in IEP team meetings involving the Student.

I cannot conclude, solely on the basis of the FERPA online complaint form and the Parent's testimony, that Ms. [REDACTED] shared private information of the Parent or Student.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that BCPS did not deny the Student a free and appropriate public education during the portion of the 2017-2018 school year beginning on April 7, 2018 and ending at the end of that school year, and during the 2018-2019 school year, by failing to draft and implement an IEP that includes academic goals and that provides proper accommodations or supports for the Student. 20 U.S.C.A. § 1400(d)(1)(A); *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Endrew F. v. Douglas City Sch. Dist.*, 137 S. Ct. 988 (2017); 20 U.S.C.A. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i).

I further conclude as a matter of law that BCPS did not deny the Student a FAPE by failing to update the IEP. 20 U.S.C.A. § 1414(d)(4)(A).

I further conclude as a matter of law that BCPS did not deny the Student a FAPE by failing to properly discipline the Student in the 2017-2018 and 2018-2019 school years. 20 U.S.C.A. § 1414(d)(3)(B)(i).

I further conclude as a matter of law that BCPS did not commit a procedural violation by failing to include the Parent in IEP team meetings or failing to include the Parent in discussions regarding the BIP. 20 U.S.C.A. § 1414(d); 34 C.F.R. § 300.322(a); 20 U.S.C.A. § 1415(b)(1).

I further conclude as a matter of law that BCPS did not commit a procedural violation by releasing private information of the Parent and Student without the Parent's permission. 20 U.S.C.A. § 1417(c); 34 C.F.R. § 300.622(a).

ORDER

I **ORDER** that the Parent's request for private placement of the Student, compensatory education, reimbursement for math tutoring and removal of all disciplinary action from the Student's educational record for not following a verbal instruction is **DENIED**.

June 14, 2019
Date Decision Issued

Signature Appears on
Original

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#180100

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]