

XXXX XXXX,

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

*** BEFORE KATHLEEN A. CHAPMAN,**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE**

*** OF ADMINISTRATIVE HEARINGS**

*** OAH No.: MSDE-BCNY-OT-17-00268**

*** * * * ***

DECISION

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STATEMENT OF THE CASE

On January 4, 2017, XXXX and XXXX XXXX (Parents), on behalf of their son, XXXX XXXX (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 the Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).¹

On January 27, 2017, Administrative Law Judge (ALJ) XXXX XXXX conducted an in-person prehearing conference.² The Parents were present and represented by Susan Leviton,

¹ U.S.C.A. is an abbreviation for United States Code Annotated, and all references to the U.S.C.A are to the 2010 volume unless otherwise specified.

² The prehearing conference was originally scheduled for January 17, 2017, immediately following a mediation session. The mediation was continued to permit the parties more time to resolve the dispute. The Parents requested a postponement of the prehearing conference until after the conclusion of the mediation session and also because of their unavailability prompted by professional and childcare obligations. Without objection by the BCPS, ALJ XXXX granted the postponement and rescheduled the prehearing conference to January 27, 2017, the same date as the continued mediation session.

Esquire. J. Stephen Cowles, Esquire, represented the BCPS. By agreement of the parties, the hearing was scheduled for February 28, March 1 and March 2, 2017. Due to unforeseen circumstances, ALJ XXXX was not able to preside over the due process hearing. On February 24, 2017, I took over the case and I informed the parties of the same in writing.

On February 28 and March 1, 2017, I held the hearing.³ The Parents represented themselves.⁴ J. Stephen Cowles, Esquire, represented the BCPS.

The Parties confirmed that they opted for mediation in lieu of a resolution meeting, but the waiver was not reduced to writing. As such, the triggering event for issuing a decision is the failure to reach an agreement during the mediation session that ended on January 27, 2017. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2016).⁵ Therefore, the 45-day timeline for conducting a due process hearing and issuing a decision is Monday, March 13, 2017.⁶ 34 C.F.R. 300.510(b)(1) and (2).

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f); 34 C.F.R. § 300.511(a); Md. Code Ann., Educ. § 8-413(e)(1) (Supp. 2016); 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 (MSDE) procedural regulations, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 13A.05.01.15C; COMAR 28.02.01.

³ The due process hearing concluded on day two (March 1, 2017).

⁴ Ms. Leviton withdrew her appearance on February 17, 2017; thereafter, the Parents proceeded *pro se*.

⁵ C.F.R. is an abbreviation for Code of Federal Regulations. All references to the C.F.R. are to the 2016 volume.

⁶ During the prehearing conference, the Parties agreed to extend the timeframe for issuing a decision based on certain time constraints in ALJ XXXX's schedule. Since my schedule is not so encumbered, I am able to issue the decision timely.

ISSUES⁷

The issues are:

- (1) Whether the BCPS denied the Student a free appropriate public education (FAPE) in the 2016-2017 school year by failing to offer appropriate transitional services;
- (2) Whether the BCPS violated Section 504 of the Rehabilitation Act of 1973⁸ by failing to offer the Student the same benefits offered to non-disabled students who have not completed the requirements for graduation at the start of the 2016-2017 school year; and
- (3) Whether the BCPS committed a procedural due process violation at the December 5, 2016 Individualized Education Program (IEP) meeting because the meeting allegedly continued after the Parents and their attorney had left.

SUMMARY OF THE EVIDENCE

Exhibits

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

- Parent #1 – [School 1] ([School 1]) Parent/Student Handbook, 2016-2017 School Year
- Parent #2 – High School Quarterly Progress Report, Fall 2016-2017, dated September 30, 2016
- Parent #3 – Not admitted on the basis of relevance
- Parent #4 – High School Quarterly Progress Report, End of Year 2015-2016, dated June 15, 2016

⁷ These issues were discussed and agreed to during the prehearing conference with ALJ XXXX and contained in the Prehearing Conference Report and Scheduling Order, issued on February 6, 2017. At the request of the Parents, I amended Issue #2 as written above. The BCPS did not object to the amendment.

⁸ See 29 U.S.C.A. §§ 701 *et seq.* (2008 & Supp. 2016).

I admitted the following exhibits on behalf of the BCPS:⁹

- BCPS #1 – High School Quarterly Progress Report, Winter 2016-2017, dated January 5, 2017
- BCPS #2 – [School 1] Student Transcript, dated January 5, 2017
- BCPS #3 – Email correspondence regarding team notes, dated December 14, 2016
- BCPS #4 – IEP, dated December 5, 2016
- BCPS #6 – BCPS Determination of Educational Disability, dated December 5, 2016
- BCPS #8 – Email correspondence regarding transition information, dated December 2, 2016
- BCPS #10 – IEP Team Summary, dated December 5, 2016
- BCPS #11 – [School 1] Educational Evaluation, dated November 1, 2016
- BCPS #12 – IEP Team Summary, dated October 17, 2016
- BCPS #13 – [School 1] Student Transcript, dated September 30, 2016
- BCPS #14 – High School Quarterly Progress Report, Fall 2016-2017, dated September 30, 2016
- BCPS #16 – IEP Team Summary, dated December 7, 2015
- BCPS #18 – IEP, dated December 7, 2015
- BCPS #19 – A series of emails, including:
 - #19a – Email correspondence regarding the XXXX ([COLLEGE]) class, dated October 23, 2016 through November 7, 2016
 - #19b – Email correspondence regarding the [COLLEGE] class, dated October 23, 2016 through October 27, 2016
 - #19c – Email correspondence regarding transitions, dated October 6, 2016 through October 10, 2016

⁹ At the outset of the hearing, the BCPS gave me a binder containing pre-numbered documents, from #1 through #22; however, at the conclusion of the hearing, the BCPS had only offered into evidence those exhibits listed here and admitted into evidence.

- #19d – Email correspondence regarding transitions, dated August 22, 2016 through August 23, 2016
- #19e – Email correspondence regarding the [COLLEGE] class and schedule, dated August 12, 2016 through August 15, 2016
- #19f – Email correspondence regarding the Accuplacer test, dated November 18, 2016 through November 19, 2016
- #19g – Email correspondence regarding the Developmental Disabilities Administration (DDA), dated October 14, 2016
- #19h – Email correspondence regarding the new transition specialist, dated September 25, 2016

BCPS #20 – Transition information and data tracking for the following sites:

- #20a – XXXX for 2016-2017 School Year
- #20b – XXXX for 2016-2017 School Year
- #20c – XXXX for 2013-2014 School Year
- #20d – XXXX for 2012-2013 School Year
- #20e – XXXX for 2012-2013 School Year
- #20f – XXXX (XXXX) for 2012-2013 School Year

Testimony

Both Parents testified and presented testimony from the following witnesses:

- XXXX XXXX, Counseling Department Chair, [School 2], BCPS
- XXXX XXXX, Special Education Department Chair, [School 2], BCPS
- XXXX XXXX, Receptionist, [School 1]
- XXXX XXXX (*née* XXXX),¹⁰ Transition Specialist, [School 1]
- XXXX XXXX, Resource Teacher/Non-public Case Manager, Office of Special Education, BCPS

¹⁰ During the Fall Quarter of 2016, Ms. XXXX got married. I will interchangeably refer to Ms. XXXX by her married name and maiden name.

The BCPS presented testimony the following witnesses:

- XXXX XXXX, Resource Teacher/Non-public Case Manager, Office of Special Education, BCPS, admitted as an expert in the field of special education¹¹
- XXXX XXXX, Curriculum Coordinator, [School 1], admitted as an expert in the field of special education
- XXXX XXXX, Program Director, [School 1], admitted as an expert in the field of special education with an emphasis in transitional services
- XXXX XXXX, Placement Supervisor, Department of Special Education and Student Support Services, BCPS

STIPULATION OF FACTS

The Parents and the BCPS agreed to the following facts:

1. The Student was born in XXXX 1995.¹²
2. The Student is eligible for special education and related services under the IDEA as a student with multiple disabilities consisting of intellectual disability, hearing impairment, and other health impairment based on his attention deficit hyperactivity disorder.
3. During the 2010-2011 school year, on March 22, 2011, the IEP Team at [School 2] met and determined that the Student would be placed at a nonpublic special education school.
4. The Student entered [School 1] on May 2, 2011, towards the end of the 2010-2011 school year, and has continued to attend [School 1] beginning the first quarter of the 2016-2017 school year. The Student has continued at [School 1] pursuant to the implementation of “stay-put” as a result of the initiation of due process.¹³

¹¹ When the Parents called Ms. XXXX as a witness, they did not offer her as an expert. When the BCPS called Ms. XXXX as a witness, they offered her as an expert in the field of special education. I admitted Ms. XXXX as an expert over the objection by the Parents who felt Ms. XXXX did not have the requisite number of years of experience in the field of special education as compared to other the BCPS witnesses. Ms. XXXX has been employed in the special education field since 1997 and holds a Master of Science degree in Special Education from XXXX University. She is also MSDE certified in special education (grades 6-12).

¹² I redacted the Student’s date of birth for privacy purposes.

¹³ During the pendency of any administrative or judicial proceeding regarding a due process complaint, the child involved must remain in his current educational placement unless otherwise agreed upon by the parties.

5. The IEP Team convened on December 7, 2015, to review the Student's progress and revise the IEP to address the Student's needs. During the IEP Team meeting, the IEP team discussed the Student's graduation and determined it would occur in the Spring of 2016.

6. During the 2015-2016 school year, the Student did not complete the requirements for a regular high school diploma. He continued to receive special education instruction and related services as well as transition services to address his needs.

7. The Student began the 2016-2017 school year at [School 1] where he was enrolled in Family and Consumer Studies (FACS) 5: Wellness 2; Secretary 1; Academic Management; English Seminar; Intensive Time and Money; English 12 Common Core (CC); and Geometry CC.

8. The IEP Team meeting was convened on October 17, 2016, at which time the IEP Team, including the Parents, reviewed the IEP, the Student's graduation requirements, and his transition services. The anticipated graduation date was January 2017. The Parents disagreed with the anticipated graduation date.

9. Based on that disagreement, the Parents submitted the request for mediation and due process prior to the Student's graduation date of January 5, 2017.

FINDINGS OF FACT

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

Graduation Requirements

1. A publically-funded student at [School 1] may pursue a regular high school diploma, certificate of completion, or certificate of achievement. Parent #1, p. 47.
2. To earn a regular high school diploma, a student must meet the BCPS' course and credit requirements, pass the required state assessments, and complete 75 hours or more of service learning.¹⁴ Parent #1, p. 47.
3. To meet the BCPS' credit requirements, a student must earn 21 credits in following courses:¹⁵ English (4 credits), Mathematics (3 credits), Science (3 credits), Social Studies (3.5 credits), English/Technology (1 credit), Wellness (.5 credit), Physical Education (1 credit), Fine Arts (1 credit), and Completer Career Research and Development (CRD) (4 credits).¹⁶ Test. of XXXX and XXXX.
4. [School 1]'s curriculum is competency-based, which means that credits are earned when a student has demonstrated the skills required for a particular field of study. Parent #1, p. 46; Test. of XXXX.

¹⁴ [School 1] divides the service learning requirement into two components with 30 of the 75 hours dedicated to a Senior Project that is completed during a student's senior year in high school. Parent #1, pp. 47-48. Failure to complete the Senior Project requirement results in a student not being able to participate in senior activities (*i.e.*, graduation). *Id.*, p. 48; Test. of XXXX. The graduation requirements for the MSDE and the BCPS do not include the completion of a Senior Project. Test. of XXXX.

¹⁵ See generally COMAR 13A.03.02.03 (the current language of the regulation applies to students entering the ninth grade class of 2014-2015 school year, so the list is different from the graduation requirements the Student needed to meet to earn a regular high school diploma).

¹⁶ Per the Student's December 7, 2015 and December 5, 2016 IEPs, he is only required to complete four credits of the Completer CRD. See BCPS #2, p. 21; BCPS #18, p. 21. Students attending [School 1], on the other hand, must complete 6.5 credits in the Completer CRD. Test. of XXXX and XXXX.

5. The academic calendar at [School 1] is based on eleven months of instruction with a quarterly marking period (Fall, Winter, Spring, and End of Year). Parent #1, p. 14.

6. Depending on a student's progress in a particular field of study, at each marking period, teachers will indicate on the student's progress report (*i.e.*, High School Quarterly Progress Report), among other things: (a) projected completion of a course; (b) number of quarters the student has been enrolled in a course; and (c) grades. Parent #2, #4; BCPS #1, #14.

7. On December 7, 2015, the IEP Team conducted an Annual IEP Review with the following persons present:

Chairperson:	XXXX XXXX	Title:	Case Manager, Nonpublic Placement
Parents:	X.X. and X.X.		
	XXXX XXXX	Position:	Special Educator
	XXXX XXXX	Position:	DORS ¹⁷ Counselor
	XXXX XXXX	Position:	Speech and Language Pathologist
	XXXX XXXX	Position:	Transition Specialist/Coordinator
	XXXX XXXX	Position:	Principal/Designee
	XXXX XXXX, Ph.D.	Position:	Psychologist
	The Student		

BCPS #16, #18.

8. The IEP Team discussed the Qualitative Reading Inventory – 5 (QRI-V) and Kaufman Test of Educational Achievement – Third Edition (KTEA-III) assessments that were conducted in October 2015, which showed:

- a. On the QRI-V assessment (English), the Student was reading on an independent sixth/seventh grade level; however, with accommodations and teacher support, he was reading on an instructional eighth grade level;
- b. On the KTEA-III assessment (English), the Student was writing on an independent seventh grade level; however, with accommodations and teacher support, he was writing on an instructional eighth grade level;

¹⁷ DORS is an abbreviation for Division of Rehabilitation Services.

- c. On the KTEA-III assessment (Mathematics), the Student was performing math computation independently on a 2.8 grade level; however, with the use of a calculator, he was working at a 10.8 grade level;
- d. On the KTEA-III assessment (Mathematics), the Student understood math concepts and applications on a 3.5 grade level; and
- e. The KTEA-III assessment (Mathematics) revealed that the Student continued to have difficulty with being on task and putting forth effort to accurately represent his capabilities without the use of a calculator. The KTEA-III also revealed that the Student's area of need included applying previous knowledge to new concepts, completing problems that involve three steps or more, and applying concepts to real world dimensions.

BCPS #16, Academic Progress Summary; BCPS #18, pp. 6-8.

9. After listening to the assessment results, the Parents expressed concern about the Student's ability to take an Accuplacer¹⁸ without a calculator. BCPS #16, handwritten notes; BCPS #18, p. 11. In response, the IEP Team added two objectives to the Student's IEP, including: a problem-solving component in Mathematics without a calculator and organizational strategies to assist with problem-solving. BCPS #16, handwritten notes. The IEP Team also agreed that the Student would be given additional time to complete the Geometry CC course and English to prepare for the Accuplacer, continue to take courses necessary to receive a high school diploma, learn interview skills, and take course work with real work applications. BCPS #16, handwritten notes; BCPS #18, p. 21; Test. of XXXX.

10. The IEP Team also discussed the Student's remaining graduation requirements and noted that the Student had passed the required state assessments,¹⁹ completed the requisite number of service learning hours, and was beginning his Senior Project at the XXXX Fire Department. BCPS #16, handwritten notes.

¹⁸ An Accuplacer evaluates students' skills in reading, writing, and math to assess their preparedness for introductory credit-bearing college courses. <https://accuplacer.collegeboard.org/educator/why-accuplacer> (last viewed on March 3, 2017).

¹⁹ See *infra* Findings of Fact No. 33.

11. All members of the IEP Team agreed that the Student’s projected date of graduation would be Spring 2016. BCPS #16, handwritten notes.

12. The IEP Team approved the Student’s December 7, 2015 IEP. *See* BCPS #18.

13. During the 2015-2016 school year, the Student took the following courses:²⁰

Fall	Winter	Spring	End of Year
<ul style="list-style-type: none"> • Economics • Financial Literacy • Transportation • Geometry CC • English 12 CC • English Seminar 2 • Completer CRD <ul style="list-style-type: none"> ○ CRD2B ○ WBL 3 	<ul style="list-style-type: none"> • Financial Literacy • Economics • Transportation • Geometry CC • English 12 CC • English Seminar 2 • Completer CRD <ul style="list-style-type: none"> ○ CRD2B ○ WBL 3 	<ul style="list-style-type: none"> • Economics • Transportation • Geometry CC • English 12 CC • English Seminar 2 • Completer CRD <ul style="list-style-type: none"> ○ WBL 3 ○ Career Center – General Office Clerk • Technical Theatre 	<ul style="list-style-type: none"> • Transportation • Geometry CC • English 12 CC • English Seminar 2 • Completer CRD <ul style="list-style-type: none"> ○ WBL 3 ○ Career Center – General Office Clerk • Technical Theatre • Psychology & The Individual 5: Acad. Mgmt. (Psychology)

Parent #4; BCPS #16, Academic Progress Summary.

14. At the end of the 2015-2016 school year (as of June 15, 2016), the Student achieved competency (or passed the course) in English Seminar 2, Economics, CRD3 (Fine Literature1B), CRD2B (Class), and Technical Theatre. Parent #4; BCPS #2, #13.

15. Based on the Student’s performance up to that point, the Student’s anticipated competency in Transportation, Geometry CC, English 12 CC, Job Skills (WBL 3 and Career Center – General Office Clerk), and Psychology was determined to be the end of the Winter 2016-2017 quarter. Parent #4.

²⁰ CC, CRD and WBL are acronyms for Common Core, Career Research and Development, and Work-Based Learning, respectively.

16. With respect to Geometry CC course, the Student completed ten quarters of instruction in Geometry CC and completed five out of seven competency topics, as follows:

Competency Topic:	% Complete	Date Complete
1. Given tools & methods, complete geometric constructions and transformations	100	10/7/2014
2. Prove geometric theorems by using deductive reasoning	100	4/1/2016
3. Apply geometric and trigonometric principles, solve real-world design problems	100	12/4/2015
4. Utilize the relationship between two- and three-dimensional objects to model	100	5/13/2016
5. Verify geometric relationships using a coordinate system	100	6/15/2016
6. Model a real-world context using theorems involving circles	25	
7. Compute and interpret theoretical and experimental probabilities for compound	25	

Parent #4.

17. In the Comments section concerning the Student's participation in the Geometry CC course, the teacher wrote:

COMMENT: [The Student] has completed 18/18 assignments this quarter. [The Student] has needed continual review of adding like terms, solving equations, geometric definitions, and geometric theorems to be successful in Geometry CC. Due to this, [the Student] will require extra time in order to complete this course.

Parent #4.

18. Leading into the 2016-2017 school year, the Student had 109 hours of service learning and earned a total of 23.5 credits in the following courses:

- English (4 credits)
- Mathematics (2 credits)
- Science (3 credits)
- Social Studies (3.5 credits)
- Technology (1 credit)
- Wellness (.5 credit)
- Physical Education (1.5 credits)
- Fine Arts (2 credits)

- Completer CRD (5.5 credits)
- Electives (.5 credit)

BCPS #2, #13.

19. [School 1] began the 2016-2017 school year on July 1, 2016.²¹
20. The Student turned twenty-one years old in XXXX 2016.
21. During the 2016-2017 school year, the Student took the following courses:

Fall (July 1, 2016 – September 30, 2016)	Winter (October 4, 2016 – January 5, 2017)	Spring (stay put) (January 6, 2017 – March 22, 2017) ²²	End of Year (March 23, 2017 – June 9, 2017)
<ul style="list-style-type: none"> • Transportation • Geometry CC • English 12 CC • English Seminar 3 • Job Skills: <ul style="list-style-type: none"> ○ WBL 3 ○ Career Center – General Office Clerk • Psychology • FACS 5: Wellness 2 • Intensive: Time and Money 	<ul style="list-style-type: none"> • Transportation • Geometry CC • English 12 CC • English Seminar 3 • Job Skills: <ul style="list-style-type: none"> ○ WBL 3 ○ Career Center – Secretary 1 • Psychology • FACS 5: Wellness 2 • Intensive: Time and Money 	<ul style="list-style-type: none"> • Senior Project • Intensive: Time and Money 	

Parent #2; BCPS #1, #14.

22. At the end of the fall quarter of the 2016-2017 school year (as of September 30, 2016), the Student achieved competency (or passed the course) in English 12 CC and Job Skills (Career Center – General Office Clerk). Parent #2; BCPS #14.

²¹ By comparison, the BCPS’ 2016-2017 school year began on August 24, 2016.

²² The list is not intended to be inclusive of all of the courses the Student is taking during the spring semester.

23. Based on the Student's performance up to that point, his anticipated competency in Transportation, Geometry CC, English Seminar 3, Job Skills (WBL 3), Psychology, FACS: Wellness 2, and Intensive: Time and Money was the end of the Winter 2016-2017 quarter.
Parent #2; BCPS #14.

24. With respect to Geometry CC course, the Student had completed eleven quarters of instruction in Geometry CC and completed six out of seven competency topics as follows:

Competency Topic:	% Complete	Date Complete
1. Given tools & methods, complete geometric constructions and transformations	100	10/7/2014
2. Prove geometric theorems by using deductive reasoning	100	4/1/2016
3. Apply geometric and trigonometric principles, solve real-world design problems	100	12/4/2015
4. Utilize the relationship between two- and three-dimensional objects to model	100	5/13/2016
5. Verify geometric relationships using a coordinate system	100	6/15/2016
6. Model a real-world context using theorems involving circles	100	9/28/2016
7. Compute and interpret theoretical and experimental probabilities for compound	25	

Parent #2; BCPS #14.

25. In the Comments section concerning the Student's participation in the Geometry CC course, the teacher wrote:

COMMENT: [The Student] has completed 18/18 assignments this quarter. [The Student] has needed review on solving equations involving 2 or more steps. Therefore, he will require extra time in order to complete this course.

Parent #2; BCPS #14.

26. On October 17, 2016, the IEP Team conducted a periodic review at the request of the Parents with the following persons present:²³

Chairperson:	XXXX XXXX	Title:	Case Manager, Nonpublic Placement
Parents:	X.X. and X.X.		
	XXXX XXXX	Position:	IEP Coordinator/Math Teacher
	XXXX XXXX	Position:	Program Coordinator
	XXXX XXXX	Position:	Current Coordinator
	XXXX XXX	Position:	IEP Mentor
	XXXX XXXX	Position:	Speech and Language Pathologist
	XXXX XXXX, Ph.D.	Position:	Psychologist
	XXXX XXXX	Position:	Transition Specialist

BCPS #12.

27. At the IEP Team meeting, the Parents expressed concern that the Student had not sufficiently progressed through the Geometry CC course to complete the competencies by January 2017 and, thus, graduate. The Parents also questioned whether the Student had met the required State assessments.

28. The IEP Team listened to the Parents' concern and XXXX XXXX explained to them that not all competencies are treated equally and are cumulative in nature in the Geometry CC course and that the Student is able to build upon his prior learning experience to the remaining competency topic, which was: "compute and interpret theoretical and experimental probabilities for compound." Test. of XXXX. In addition, XXXX XXXX told the Parents that if

²³ The Parents consistently claimed that the October 2016 meeting was not an IEP Team meeting. The Parents, however, failed to corroborate this point. On the other hand, each of the BCPS' witnesses testified, and the IEP Team meeting notes support a finding, that the meeting was indeed an IEP Team meeting. The record establishes that this was not an informal or unscheduled meeting, and the conversation surrounded issues contained in the Student's IEP. See COMAR 13A.05.01.03B(42)(b)(i), (ii). Therefore, the October 2016 meeting meets the definition of "meeting," which means:

a prearranged event when personnel of a public agency, a parent, and others who have knowledge or special expertise regarding the student, at the discretion of the public agency or the parent, come together at the same time and place to discuss matters related to the identification, evaluation, educational placement, and the provision of FAPE for a student with a disability.

COMAR 13A.05.01.03B(42)(a).

the Student completes the requirements for the Geometry CC course, he will have met all the requirements for a high school diploma and exit school at that time. BCPS #12.

29. The meeting was emotional. Test. of XXXX. The Parents documented their firm disagreement that their son could meet the graduation requirements and abruptly ended the meeting by indicating that they would be calling their attorney. BCPS #12. The IEP Team gave the Parents a procedural safeguard packet.

30. On December 5, 2016, the IEP Team conducted an Annual IEP Review. *Infra.*, Findings of Fact Nos. 54 through 68.

31. During the winter quarter of the 2016-2017 school year (October 4, 2016 – January 5, 2017), the Student took the following courses: Transportation, Geometry CC, English 12 CC, English Seminar 3, Job Skills (WBL 3 and Career Center – Secretary 1), Psychology, FACS 5: Wellness 2, and Intensive: Time and Money. BCPS #1.

32. At the end of the winter quarter (January 5, 2017), the Student achieved competency (or passed the course) in Transportation, Geometry CC, WBL 3, Psychology, English Seminar 3, and FACS 5: Wellness 2.

33. On January 5, 2017, the Student graduated with a BCPS high school diploma after earning a total of 30 credits, completing 109 hours of service learning, and passing the required State assessments.²⁴ BCPS #1, #12.

²⁴ The Student was exempt from passing certain tests, including: Algebra and English. BCPS #2, #12 and #13. In 2016, the State of Maryland replaced the High School Assessment (HSA) Test with a new testing tool known as the Partnership for Assessment of Readiness for College and Careers (PARCC). The Student was not required to pass the PARCC. BCPS #12; Test. of XXXX.

Transition Services

34. When the Student enrolled at [School 1] he was 14-years-old. [School 1] generally begins transition services at that age or earlier. Test. of XXXX and XXXX. Thereafter, transition services are reflected in a student's IEP.²⁵

35. Prior to a student's Annual IEP Review meeting, the Transition Team will meet with a student to learn more about the student's interests upon exiting high school. Test. of XXXX.

36. On October 28, 2015, the Transition Team at [School 1] met with the Student to discuss his "preferences and interests," and post-secondary goals, and to complete a Transition Planning Inventory. Test. of XXXX. During the meeting, the Student stated, "that he enjoys swimming, playing basketball and playing computer games in his free time...[T]hat upon graduation from high school he would like to obtain a position in the XXXX field, with a focus on XXXX." BCPS #18, p. 20. The Student also indicated a desire to attend college majoring in XXXX. *Id.*

37. At the December 7, 2015 IEP Team meeting, the IEP Team agreed to provide the Student with remediation in both English and Mathematics (extending the Student's time in the Geometry CC course to more than ten quarters of instruction) in preparation for taking the Accuplacer without a calculator, based on the Student's desire to take a college course at the XXXX ([COLLEGE]). BCPS #16, handwritten notes; BCPS #18, p. 21; BCPS #19e; Test. of XXXX. The IEP Team also agreed to give the Student additional time to complete a 3-month paid employment in the community. BCPS #18, p. 21.

²⁵ The "first IEP to be in effect when the child is 16, and update annually thereafter [must include] appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills...and the transition services (including courses of study) needed to assist the child in reaching these goals." 20 U.S.C. § 1414(d)(1)(A)(i)(VIII).

38. At the December 7, 2015 IEP Team meeting, Ms. XXXX gave the Parents a transition planning guide and shared with them “job option possibilities for the Student” and “supportive employment programs.” BCPS #16, handwritten notes.

39. From November 9, 2015 through May 27, 2016, Ms. XXXX provided various supports to the Student to assist him in passing the Accuplacer in order to attend the [COLLEGE]. BCPS #8; Test. of XXXX.

40. The [COLLEGE]’s fall semester began August 29, 2016, and the Student was able to enroll and take a college course.

41. On October 17, 2016, the IEP Team discussed the timeline of events from December 2015 to the present and what transition services the Student had vocationally and functionally. It was noted that the Student volunteers off campus at a local XXXX and is taking a course at the [COLLEGE]. BCPS #12.

42. On November 7, 2016, the Transition Team at [School 1] met with the Student to discuss his “preferences and interests,” and post-secondary goals, and to complete a Transition Planning Inventory. Test. of XXXX. During the meeting, the Student stated that he “enjoys playing football, basketball, soccer, and ice hockey...working on set during play productions at [School 1].” The Student further indicated that “he is interested in working in the field of XXXX, in the area of XXXX.” BCPS #4, p. 20. The Student also indicated a desire to attend college majoring in XXXX. *Id.*

43. From October 27, 2016 to November 17, 2016, among other things, Ms. XXXX accompanied the Student on a trip to the [COLLEGE] in order to pick up an accommodations form and give it to the professor, and complete a College Resources homework assignment. Ms. XXXX spoke to Disability Services on the Student’s behalf to arrange for a note taker. Ms.

XXXX met with the IEP Team to discuss a plan for helping the Student be successful in his college courses, and check accommodations. She also maintained daily monitoring of the Student's blackboard account and assignment management. BCPS #8; BCPS #19a, b, e, f; Test. of XXXX.

44. The Student's post-secondary goals have fluctuated over time and have included stage design, working with people, and hospitality. Test. of XXXX.

45. According to vocational testing, the Student's interests included XXXX desk clerk. Test. of XXXX and XXXX.

46. By December 2016, the Student had participated in numerous transitional activities, including:

a. Work Experiences (paid and volunteer):

- XXXX (XXXX): November 2012
- XXXX: April 2013, January 2014 – June 2014
- XXXX: May 2013
- XXXX: May 2016; August 2016 – September 2016
- XXXX – Lot Attendant (paid): September 2016 – present
- XXXX: October 2016 – present

b. Job Shadowing Tours:

- XXXX: October 17, 2011
- XXXX: January 5, 2012
- XXXX: February 13, 2012
- XXXX: April 10, 2012
- XXXX: April 16, 2012

c. [School 1] theater productions:

- XXXX 2014 (performer)
- XXXX.: May 2015 (stage crew)
- XXXX 2015 (stage crew)
- XXXX 2016 (stage crew)
- XXXX: May 2016 (stage crew)

d. Off Campus:

- XXXX: Spring 2012
- Senior Project: XXXX Volunteer Fire Company

- e. Coursework:
 - Theater Arts 1: 2012-2013
 - Technical Theater: 2015-2016
- f. [COLLEGE]:
 - Accuplacer

BCPS #2, #3, #8, #10, #20a-f.

47. Job shadowing builds “soft skills” including showing up to work on time, time management, advocating for oneself, experience building, transference of skills, computer-based learning program, and job coach. Test. of XXXX and XXXX.

48. [School 1] routinely sends a letter home to the Parents to let them know what work experiences their Student is involved in and will also send permission slips home to permit a Student to participate in job shadowing. BCPC #20a-f. Ms. XXXX also communicated with the Parents via telephone calls, in person, and email regarding transition activities as well as [COLLEGE]. BCPC #19a-g; Test. of XXXX.

504 Violation

49. [School 2]’s academic schedule is based on an A day/B day schedule which means that courses, such as Mathematics and English, are taught over the course of a full school year. Test. of XXXX.

50. If a disabled or non-disabled student at [School 2], however, has a deficit in credits and fulfills those credits mid-year, the Student does not remain enrolled in high school to take elective courses through the end of the school year. Test. of XXXX and XXXX.

51. [School 1] does not employ an A day/B day schedule. Instead, [School 1] utilizes a competency-based curriculum which permits a student to progress at his or her own pace. Test. of XXXX.

52. On January 5, 2017, the Student completed his Geometry CC course after twelve quarters of instruction.

53. Once a student earns a high school diploma, the student is not entitled to remain in school to take elective courses. Test. of XXXX.

Procedural Due Process violation

54. On December 5, 2016, the IEP Team conducted an Annual IEP Review. The purpose of the meeting was to review a draft IEP that would be active until January 5, 2017 (the Student's anticipated completion of high school graduation requirements and exit date from [School 1]). XXXX XXXX, Case Manager, set aside 3.5 hours (from 9:00 a.m. to 12:30 p.m.) for the IEP Team to review the proposed IEP. Test. of XXXX.

55. The following persons were present for this IEP Team meeting:

Chairperson:	XXXX XXXX	Title:	Case Manager, Nonpublic Placement
Parents:	X.X. and X.X.		
	Susan Leviton, Esquire	Position:	Parents' Attorney
	XXXX XXXX	Position:	Transition Specialist
	XXXX XXXX	Position:	Service Coordinator
	XXXX XXXX	Position:	Curriculum Coordinator
	XXXX XXXX, Ph.D.	Position:	Psychologist
	XXXX XXXX	Position:	Special Education Teacher
	XXXX XXXX	Position:	Speech Language Pathologist
	XXXX XXXX	Position:	IEP Coordinator/Math Teacher
	XXXX XXXX	Position:	Special Educator

BCPS #4, #10.

56. The IEP Team discussed the updated testing, including: the Weschler Adult Intelligence Scale – Fourth Edition (WAIS-IV), Vineland Adaptive Behavior Scales – Third

Edition (Vineland – 3), and Woodcock-Johnson IV Tests of Achievement, Form B – Selected Subtest (Woodcock-Johnson IV).²⁶ The tests showed:

- a. On the WAIS-IV, that the Student received a full scale IQ of 67, whereas in 2010 his score was 60. This placed the Student in the limited range of functioning, with his area of strength being the information subtest (scoring in the average range) and his area of weakness being Digit Span;
- b. On the Vineland – 3 (Adaptive Functioning), that the Student had weaknesses in socialization and strengths in communication and daily living skills; and
- c. On the Woodcock-Johnson IV (Math Problem Solving), that the Student was working at a 1.3 grade level in applied problems, 2.6 grade level in calculation, and a 4.4 grade level in math facts fluency. The Student’s areas of need included applying previous knowledge to new concepts, completing problems that involve 3 steps or more, and applying concepts to real work problems. The Student is able to find the area and volume of 2D and 3D shapes and find the probability of a given situation. The Student utilizes the following accommodations: calculator, small group, 1:1 instruction, highlighting, chunking, and graphic organizers. The Student’s strengths lie in writing, written language and letter word identification. The Woodcock-Johnson was administered in 2008 and 2010, and the Student’s scores were a bit higher but scattered.

BCPS #4, p. 6; BCPS #10, #11.

57. After the assessments were reviewed, the IEP Team signed the Determination of Educational Disability form acknowledging that the “team finds that the assessment procedures were valid for the purpose intended and valid for the student.” BCPS #6.

58. Soon thereafter, the tenor of the IEP Team meeting turned confrontational and emotional. Test. of XXXX. There was a lengthy discussion regarding the Student’s graduation and exit from [School 1]. The Parents and their attorney insisted that the Student could not complete the remaining competency topic when compared to how long it took him to master the

²⁶ In September 2016, the QRI-V and KTEA-III assessments were administered. BCPS #4, pp. 6, 7. The Woodcock-Johnson IV was administered on November 1, 2016. BCPS #4, p. 7; BCPS #10, #11. The record is unclear when the WAIS-IV and Vineland – 3 assessments were administered. In the typewritten notes from the IEP Team meeting, Ms. XXXX indicated that updated testing was reviewed; however, she only summarized the results from the WAIS-IV, Vineland – 3, and Woodcock-Johnson IV assessment in the IEP Team Summary. The test results for the QRI-V (Reading Comprehension) and KTEA-III (Written Language Mechanics and Written Language Expression) are contained in the December 5, 2016 IEP. BCPS #4, pp. 6, 7.

other competency topics in the Geometry CC course, and they claimed that the IEP Team was simply hurrying the process in order to push the Student through to graduation. XXXX XXXX addressed the Parents and their attorney's concerns about the Geometry CC course and explained that the Student was on schedule to complete the competencies by the end of the term. XXXX XXXX also indicated that after the Student earns his high school diploma, he is no longer entitled to remain in school. BCPS #10.

59. In addition, the Parents and their attorney disagreed with the transition services outlined in the draft IEP, claiming that [School 1] failed to provide adequate resources to help the Student "obtain a position in the XXXX field, with a focus on XXXX." BCPS #10.

60. The BCPS told the Parents and their attorney that it was receptive to their ideas on how to make the IEP acceptable to everyone at the table, but the Parents and their attorney felt it was pointless to continue reviewing an IEP that would only be in effect for one month. BCPS #10.

61. At approximately 11:00 a.m., the IEP Team meeting ended abruptly when the Parents and their attorney refused to discuss the IEP any further and left. BCPS #10; Test. of XXXX and XXXX. Ms. XXXX also left upset and crying. Test. of XXXX and XXXX.

62. The remaining members of the IEP Team stayed behind for another twenty minutes during which time the IEP was reviewed, approved, and closed. BCPS #4, #10; Test. of XXXX. In addition, [School 1] staff shared information with the BCPS staff about the Student's transition services. BCPS #10.

63. Ms. XXXX contemporaneously took handwritten notes of the December 5, 2016 IEP Team meeting. Test. of XXXX.

64. Ms. XXXX's typewritten notes (or summary) from the December 5, 2016 IEP Team meeting included a list of "vocational activities" that the Student had participated in while attending [School 1], including job shadowing, volunteer and paid positions at school and off-campus jobs, high school theater productions, and Ms. XXXX' efforts to help the Student transition to [COLLEGE].²⁷ BCPS #10.

65. Ms. XXXX gleaned the information for the list of "vocational activities" from two emails, dated December 2, 2016 and December 14, 2016. BCPS #3, #8.

66. The IEP Team did not specifically discuss the list of "vocational activities" during the meeting, but the topic of transitional services was discussed. Test. of XXXX.

67. The Parents were fully aware of the "vocational activities" their son had participated in up to the point of the December 5, 2016 IEP Team meeting and the list contained in the IEP Team notes did not constitute new or different information about those activities.

68. It is a common practice to add information to the IEP Team notes for clarification, to expand on information discussed at the IEP Team meeting, and for parents to submit written responses. Test. of XXXX and XXXX.

DISCUSSION

I. Preliminary Issues

At the outset of the hearing, the Parents made two preliminary arguments that they believed warranted the continuation of the hearing to a later date. First, the Parents stated that they never received a written response from the BCPS to the Due Process Complaint as required by the IDEA. 20 U.S.C.A. § 1415(c)(2)(B)(i)(I) provides:

²⁷ The list appears to mimic information contained in a December 14, 2016 email between Ms. XXXX and Ms. XXXX, and a December 2, 2016 email between Ms. XXXX and Ms. XXXX. BCPS #3, #8.

(c) Notification Requirements.

...
(2) Due Process Complaint Notice.

...
(B) Response to complaint

(i) Local educational agency response

(I) In general. If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency's proposal or refusal.

The BCPS countered by indicating that it had given the Parents written notice of its position regarding the Student's graduation requirements, transition services, and performance at [School 1] as noted in the IEP and IEP Team meeting notes. The BCPS further noted that the Parents were clearly on notice about what occurred during the December 5, 2016 IEP Team meeting after they received the minutes from that meeting. In addition, the BCPS reminded the Parents that it had participated in the mediation and these topics were covered there as well. The BCPS also indicated that it exchanged its witness list and exhibits with the Parents on February 21, 2017, as provided by the Prehearing Conference Report and Scheduling Order.

As noted above in the Statement of the Case, the timeframes associated with this case were remarkably condensed, with the Due Process Complaint being filed on January 4, 2017 and the in-person prehearing conference scheduled for January 17, 2017, to be held immediately following the mediation session scheduled for the same date. Because of that, ALJ XXXX did not require either party to provide a prehearing statement in advance of the in-person prehearing

conference. While it is true that the BCPS did not respond to the Parent's Due Process Complaint within ten days, I am persuaded by the BCPS' argument that the Parents were nevertheless on full notice of the BCPS' position via the mediation process and, to some degree, during the in-person prehearing conference. Clearly, these dates overlapped with when the local educational agency would otherwise be required to provide written notice of the agency's position to the Parents.

It's well-established under the IDEA that:

The participation of the child's parents, teachers, etc. in the development of the [IEP]...and the creation of an intricate system of administrative and judicial review...are examples of the procedural safeguards[.]

In Re Conklin, 946 F.2d 306, 312-3 (4th Cir. 1991) (internal citations omitted). The procedural safeguards are found at 20 U.S.C.A. § 1415. While the safeguards are designed to protect the rights of children with disabilities and their parents, the notice requirement following the filing of a Due Process Complaint operates as a safeguard against either party being surprised at the due process hearing with information not previously known. I am not persuaded by the Parents' argument that they were either surprised by or not apprised of the BCPS' position, or hindered in their ability to fully present their case, with respect to Issue #3. As such, this argument fails and will be disregarded as harmless.

Second, the Parents stated that they wanted additional time to request a subpoena, to be served on [School 1], for the "visitor and teacher front desk log book for the date of Monday, December 5, 2015."²⁸ While the Parents argued that they wanted to review the document in advance of the hearing, they did not explain what they intended to learn from this document, nor did they proffer as to what the document would indicate. The BCPS stated that it learned of the

²⁸ In their subpoena request, the Parents erroneously asked for the desk log book for Monday, December 5, 2015, not 2016.

Parents' request for a subpoena from OAH MSDE Clerk XXXX XXXX and pointed out that the front desk log book corresponding to the December 5 IEP Team meeting was 2016, not 2015.

The BCPS further proffered that the December 5, 2016 IEP Team meeting lasted approximately two hours and after the Parents and their attorney left, Ms. XXXX left, and the remaining members of the IEP Team stayed behind for approximately twenty more minutes. I questioned the Parents about the relevance of the log book considering the proffer made by the BCPS. This did not assuage the Parents.

After a lengthy discussion on this topic, I denied the continuance. In my letter to the parties, dated (Thursday) February 24, 2017, I discussed the status of the case and wrote:

[T]he file reflects that ... ([the]Parents) paid for and requested subpoenas to be issued to four individuals, including: XXXX XXXX, [School 1]; XXXX XXXX, [School 1]; XXXX XXXX, [School 2], Baltimore County Public Schools (BCPS), Special Education Department Chair; and XXXX XXXX, [School 2], BCPS, Counseling Department Chair. The Office of Administrative Hearings (OAH) issued those subpoenas on February 21, 2017. The Parents also requested a subpoena to be issued to XXXX XXXX, [School 1], and XXXX XXXX, BCPS, but according to XXXX XXXX, Clerk, the Parents withdrew that request and the OAH did not issue subpoenas for these individuals. The Parents also wanted the "visitor and teacher front desk log book for the date of Monday, December 5, 2016" from [School 1], but declined to have a subpoena issued to the Custodian of Records and, as such, the OAH did not issue a subpoena for that item.

OAH Official Case File.²⁹

The Parents acknowledged receipt of my letter, but claimed they did not receive it until Monday, February 27, 2017, the day before the hearing. In addition, the Parents disputed that they withdrew their request for a subpoena.

At the hearing, I told the Parents that it was their obligation to subpoena the Custodian of the Records for that person to bring those documents to the hearing because there was no mechanism for the delivery of a document before the hearing. As such, the Parents needed to

²⁹ COMAR 28.02.01.22.

use the discovery process afforded to them by the OAH Rules of Procedure.³⁰ This did not sit well with the Parents, because they wanted the log book prior to the hearing, not the day of the hearing, in order to prepare their case. The Parents further stated that they had attempted to obtain the log book from [School 1] in advance of the hearing, but [School 1] refused to provide them with the log book without a subpoena.

Thereafter, I gave the Parents leave to obtain a subpoena for the log book and Mr. Cowles agreed to forward the subpoena to [School 1]. On day two of the hearing (March 1, 2017), one of the BCPS' witnesses from [School 1] brought with her a redacted copy of the log book and handed it to the Parents. I gave the Parents time to review the log book. Thereafter, the Parents did not ask questions of the BCPS' witnesses about the log book, did not recall any witnesses with regard to the log book, and did not offer the log book into evidence.

II. Position of the Parties

A. The Parents

In their Due Process Complaint, the Parents wrote that the BCPS denied their son a FAPE when it failed to provide the Student with appropriate transitional services that would enable him to be career or college ready. Specifically, the Parents contend that the Transition Team placed their son in a number of job positions, such as XXXX, that were unrelated to his expressed "preferences and interests," and post-secondary goal of working in the field of XXXX, in the area of XXXX. The Parents argued that after the BCPS decided the Student would exit high school in January 2017, [School 1] lacked the requisite amount of time to place the Student somewhere else that would be more appropriate. As such, the Transition Team simply accepted the XXXX position as acceptable. To underscore this point, the Parents wrote in their Due Process Complaint that transitional services are intended to be "a coordinated set of activities for

³⁰ COMAR 28.02.01.14

a student with a disability designed ... result oriented process that is focused on improving the academic and functional achievement of a student to facilitate his movement from school to a job or post-secondary education.”³¹ The Parents believe that the record will support a finding that the exit from high school was not driven by the need to continue to educate the Student, but instead the Student’s transitional services were driven by his exit.

With regard to Section 504 of the Rehabilitation Act of 1973 issue, the Parents wrote in their Due Process Complaint that the non-disabled and disabled children who attend the BCPS who entered the school year not having completed requirements for graduation and then achieved the required credits for graduation during the school year were entitled to take courses through the end of the school year. More to the point, the Parents contend that the BCPS permitted students (disabled and non-disabled) who turned twenty-one prior to the start of the school year, with a deficit in credits, to complete the entire school year even if the graduation credits were met mid-year. The Parents firmly believe that the BCPS’ decision to graduate the Student mid-year was arbitrary and failed to take into account that the Student was placed at a non-public setting as a result of the BCPS’ inability to service the Student’s IEP due to his intellectual limitations and multiple disabilities.

Finally, the Parents charged that the third issue stems from the BCPS’ mismanagement of the Student’s IEP. Specifically, after a dispute arose between the Parents and the BCPS over the transition services and exit date (graduation) during the December 5, 2016 IEP Team meeting, the BCPS’ liaison told the Parents and their attorney that the meeting was running over time, backing up the schedule for other meetings, and needed to be wrapped up. According to the Parents, they and their attorney expressed concern to the other members on the IEP Team that

³¹ When the Parent’s Due Process Complaint was sent to the OAH via facsimile the right side margin of the documents were cut off; as a result, some words are missing from the excerpt where I reference from the Due Process Complaint.

the discussion could not be conducted in such a rushed and pressured atmosphere. The Parents asserted that at that moment it was agreed by everyone that the IEP Team meeting be adjourned and the IEP remain open. It was only later, after the Parents received a copy of the IEP Team notes in an email on December 19, 2016, that they discovered the Student's due process rights had been violated when the BCPS and [School 1] continued the meeting in their absence without their consent, the Parents and their attorney were not asked to contribute to the discussion, and closed the IEP without their acknowledgement. The Parents also charge that the IEP Team notes went beyond the scope of what was discussed during the IEP Team meeting and do not accurately reflect how the IEP Team meeting ended.

As relief, the Parents want their son to complete his school year at [School 1].

B. *The BCPS*

The BCPS argued that this case is about a twenty-one year old Student who, by January 5, 2017, had successfully completed his program at [School 1]. In fact, the Student had met the requirements for a regular high school diploma. Academically, he earned all of the necessary credits, met the State assessment requirements, and received appropriate transition services.

The BCPS indicated that each of the issues identified by the Parents result from a decision by the IEP Team in October 2016 and December 2016 to have the Student exit services upon his graduation from [School 1] with a regular high school diploma. The BCPS asserted that the decision to terminate the Student's services is consistent with IDEA. According to the BCPS, the implementing regulations talk about the obligation to make a FAPE available to all children with disabilities did not apply with respect to the following: "children with disabilities who have graduated from high school, with a regular high school diploma." *See* 34 C.F.R. § 300.102(a)(3)(i). That is what is at issue. [School 1] determined that the Student met the BCPS'

graduation requirements. In essence, the Parents object to the Student's graduation and have couched their concerns in the Due Process Complaint as regarding a lack of transition services, a 504 violation, and a due process violation.

The BCPS indicated that it was prepared to present testimony and documentary evidence to show that the Student was provided transition services as well as supports which (a) linked him with an agency for post-secondary pursuits and to assist him after high school, (b) allowed him to successfully hold paid employment, and (c) helped him achieve a regular high school diploma.

With regard to the alleged 504 violation, the BCPS argued that the record will demonstrate that the Student received services comparable to or even exceeded the services non-disabled students would have received at the BCPS. According to the BCPS, given the nature of [School 1]'s program, the Student was provided the time and instruction that allowed him to succeed. In addition, the BCPS argued that the Student was permitted to return to [School 1] after his twenty-first birthday, whose start date for the fall quarter was July 1, 2016. This is important because had the Student attended a BCPS high school, he would have already been aged-out given that the BCPS start date for the fall quarter was August 24, 2016. In light of this, the BCPS believes that the Student received more services than his disabled and non-disabled peers attending a BCPS high school.

With regard to the Parent's alleged procedural due process violation stemming from the December 5, 2016 IEP Team meeting, the BCPS asked that I keep in mind the language at 34 C.F.R. § 300.513.³² Here, the BCPS indicated that it was prepared to show that, because the

³² § 300.513 Hearing decisions.

(a) Decision of hearing officer on the provision of FAPE.

Student was awarded a regular high school diploma, any alleged procedural inadequacies did not impede his right to a FAPE; the parents fully participated in both the October and December 2016 IEP Team meetings; and the Student was not deprived of any educational benefit, again, because he graduated with a high school diploma.

III. Burden of Proof

The Parents, as the party seeking relief in this administrative hearing under the IDEA, bear the burden of persuasion to establish the three issues summarized above. *Schaffer v. Weast*, 546 U.S. 49, 57-58 (2005). The burden of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014). “[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n. 16 (2002), quoting Maryland Pattern Jury Instructions 1:7 (3rd ed. 2000). For the reasons explained below, I find the Parents did not satisfy their burden of proof.

(1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies –

(i) Impeded the child’s right to a FAPE;

(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or

(iii) Caused a deprivation of educational benefit.

34 C.F.R. § 300.513.

IV. Legal Framework

The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412(a)(1)(A). The IDEA governs the identification, assessment, and educational placement of students in special education. 20 U.S.C.A. §§ 1400-1482 (2010 & Supp. 2016); 34 C.F.R. pt. 300 (2016); Md. Code Ann., Educ. §§ 8-401 through 8-417 (2014 & Supp. 2016); and COMAR 13A.05.01. The purpose of COMAR 13A.05.01 is to:

[I]mplement Part B of the [IDEA], 34 C.F.R. 300, and Education Article, Title 8, Subtitles 3 and 4, Annotated Code of Maryland, which assure a free appropriate public education (FAPE) for all students with disabilities, birth through the end of the school year in which the student turns 21 years old, in accordance with the student's Individualized Education Program (IEP).

COMAR 13A.05.01.01.

The requirement to provide a FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. In the *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court described a FAPE as follows:

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

Id. at 200-201 (emphasis added) (footnote omitted). The IDEA contains the following, similar definition of a FAPE:

special education and related services that...have been provided at public expense, under public supervision and direction, and without charge;...[and that have been] provided in conformity with the [IEP] required under Section 1414(d) of this title.

20 U.S.C.A. § 1401(9); *see also* Md. Code Ann., Educ. § 8-401(a)(3) (2014); COMAR 13a.05.01.03B(27).

In *Rowley*, the court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide a FAPE to a student with disabilities: first, was there compliance with the procedures set forth in the IDEA; and, second, is the IEP reasonably calculated to enable the child to receive educational benefit. 458 U.S. at 206-207. *See also, A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 319 (4th Cir. 2004).

V. Substantive Claims³³

A. Was the Student denied a FAPE with respect to transitional services?

The purpose behind transition services is the acquisition of functional skills and hands-on knowledge to enable students to enter the workforce or continue their education or training post-secondary. Specifically, according to IDEA,

The term “transition services” means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

20 U.S.C.A. § 1401(34).

The definition is mirrored in COMAR 13A.05.01.03B, as follows:

(80) Transition Services.

³³ The issues to be resolved in this case are written in the reverse of the *Rowley* two-part inquiry. Therefore, the discussion will start with the substantive due process claims followed by the procedural due process claim.

(a) “Transition services” means a coordinated set of activities for a student with a disability, designed within a results-oriented process, that is focused on improving the academic and functional achievement of a student with a disability to facilitate the student’s movement from school to post-school activities, including:

- (i) Post-secondary education;
- (ii) Career and technology education;
- (iii) Integrated employment, including supported employment;
- (iv) Continuing and adult education;
- (v) Adult services;
- (vi) Independent living; or
- (vii) Community participation.

(b) “Transition services” also means activities based on the student’s needs, taking into account the student’s strengths, preferences, and interests.

(c) “Transition services” include:

- (i) Needed activities in the areas of instruction, related services, community experiences, development of employment, or other post-school adult living objectives;
- (ii) Acquisition of daily living skills; and
- (iii) Functional vocational evaluation, if appropriate.

The Parents contend that the BCPS, via [School 1], failed to provide their son with adequate and appropriate transition activities by placing him in jobs that had nothing to do with his interest of attending college to study XXXX, with an emphasis in XXXX. The Parent (Mr. X) testified that his son’s preferences are clearly noted in his IEP, which was approved by the IEP Team on December 7, 2015. Specifically, under the section for Transition, Course of Study, it provides:

The course of study is to support the stated postsecondary goal(s):
Arts, Media & Communication

Student is enrolled in the following Functional and Skill Development Activities:
Supported Employment

Discussion to support decision:

[The Student] stated during his student interview that he wants to pursue a career in the XXXX field.

BCPS #4, p. 20; BCPS #18, p. 20.

The Parent (Mr. X) explained that it was his and his wife's understanding that, since the adoption of the IEP, the Transition Team would attempt to find more appropriate placements which best reflected or modeled the IEP and their son's stated interests. On this point, the Parent (Mr. X) testified that despite his son's personal interest in attending college, [School 1] made no effort to place him in a position dealing with XXXX, XXXX, or XXXX. To the contrary, the placements dealt with "everything of a different nature." The Parent (Mr. X) also made a point of disputing the BCPS' and [School 1]'s contention that the Student benefitted from transition services stemming from extracurricular activities, *i.e.*, his involvement in school-sponsored theatre productions. The Parent (Mr. X) stated that extracurricular activities are not a program of study by the BCPS or [School 1], but a choice his son made to become more involved in [School 1] community. The Parent (Mr. X) also believed that, at the December 5, 2016 IEP Team meeting, the BCPS agreed to keep the IEP open until such time that the members of the IEP Team could discuss "actual placements" for his son that were more closely related to his goals and desires.

The Parents also called as their witness, XXXX XXXX, the Student's Transition Specialist, at [School 1]. Ms. XXXX's testimony, however, was antithetical to the Parents' position that BCPS denied the Student a FAPE with respect to transitional services. Ms. XXXX testified that as a Transition Specialist, she is responsible for working with students assigned to her caseload to make certain that the student meets all of the necessary requirements of the Completer Program and be connected with post-secondary services that are appropriate for that

student. Ms. XXXX testified that the Student was assigned to her caseload shortly after she started at [School 1] on September 8, 2015, but that she worked closely with the Student's previous Transition Specialist, XXXX XXXX, until December 2015.

Ms. XXXX testified that she participated in the December 5, 2016 IEP Team meeting and, to the best of her recollection, the IEP Team discussed the Student's program, that the Student would be meeting the graduation requirements at the end of the Winter quarter, as well as his transition services. When asked by the Parent (Mrs. X) what occurred during the IEP Team meeting, Ms. XXXX said that the Parents and their attorney expressed concern about the Student's transition plan. Specifically, the Parents and their attorney wanted her to explain why she wrote that the Student would "obtain a position in the XXXX field, with a focus on XXXX" in his goals and objectives under transition services. *See* BCPS #4, p. 20. Ms. XXXX explained that every year she interviews students prior to that child's annual review to learn more about the student's interests upon exiting high school, the coursework the student is interested in, and whether the student wants to go to college.

On cross-examination, Ms. XXXX spoke about the structure of [School 1]'s transition services for the benefit of its student body. According to Ms. XXXX, in a student's freshman year, the student will be assigned to five job shadow tours. The purpose of job shadowing is to view employment opportunities, and figure out what topics or fields of interest the student might have prior to graduating or exiting high school. Ms. XXXX testified that job shadowing opportunities help to be build "soft skills" that assists a student with learning how to show up to work on time, time management, build experiences, and advocating for oneself. Ms. XXXX testified that, based on her review of the Student's record, he participated in five job shadow tours: XXXX in October 17, 2011, XXXX in January 5, 2012, XXXX in February 13, 2012,

XXXX in April 10, 2012, and XXXX in April 16, 2012.

Next, in the following year, a student will be given the opportunity to job sample. This is referred to as “WBL 1.” Ms. XXXX testified that WBL also correlates to “soft skills” training for students in order to learn transferrable skills. Ms. XXXX stated that the program is “vital to being successful outside of high school.” According to Ms. XXXX, these are short-term job experiences that are intended to hone in on what a student likes and dislikes. Ms. XXXX, however, was quick to mention that since [School 1] is a “competency-based program,” it is likely for a student to take a longer period of time to fulfill this requirement. As illustrated by the list of vocational activities, in the Findings of Fact No. 46, the Student had been involved in WBL 1 since 2012. More specifically, Ms. XXXX testified that the Student participated in numerous unpaid positions, including: the XXXX in November 2012; XXXX in April 2013; XXXX in May 2013; XXXX in May 2016 and from August 2016 to September 2016; and the XXXX in October 2016 to present.

Ms. XXXX testified that the next level is WBL 2, which is a three-month internship which the Student did at XXXX from January 2014 to June 2014. Finally, WBL 3 provides students with a paid position and the Student began his job at the XXXX, as a Lot Attendant, in September 2016.

Ms. XXXX acknowledged that it can be difficult to find paid employment in a student’s expressed area of interest, but that [School 1] generally does a good job of conducting various vocational assessments to find opportunities that reflect a student’s interests as discovered in those assessments. Here, the Student’s area of interest, based on a vocational testing, was XXXX clerk. And, as seen from the list of vocational opportunities, the Transition Team assigned the Student job shadowing and work experiences at the XXXX, the XXXX, and XXXX

was actively involved in play productions at [School 1] and had participated in a work experience at the XXXX.

Ms. XXXX testified that either she or Ms. XXXX would have notified the Parents about the different work experiences being offered the Student and, therefore, the Parents would have been aware of their Student's transition activities. *See* BCPS #20a-f. Ms. XXXX also testified that she personally communicated much of this information by telephone, in person or via email to the Parents. *See* BCPS #19a-g.

On behalf of the BCPS, XXXX XXXX, Resource Teacher/Non-public Case Manager, from the BCPS' Office of Special Education, testified in her capacity as a fact and expert witness in the field of special education.³⁴ Ms. XXXX indicated that in her role as the Non-public Case Manager, she provides liaison services between the BCPS and non-public schools, like [School 1], for approximately 125 students. In this role, she reviews, edits, and approves IEP documents for students in special education schools throughout the county. Ms. XXXX testified that she is familiar with the Student – she has observed him in the classroom, attended his IEP Team meetings, and interviewed other IEP Team members.

Ms. XXXX testified that transition services will generally begin at age fourteen and remain a component of a student's IEP until he/she exits. She testified that in her experience, transition services are a “very difficult process for parents,” because it means that they have to plan early for their kid's success in post-secondary employment. Moreover, in her experience in working with numerous special education schools, Ms. XXXX believed that [School 1] had one of the “best transition programs” in the State. Ms. XXXX explained that when compared to the BCPS, [School 1]'s programming is far more extensive; for instance, [School 1] provides its

³⁴ The Parents also called Ms. XXXX as a witness and the scope of her testimony during the presentation of their case centered on the December 5, 2016 IEP Team meeting as opposed to specific questions about transition services.

student body with 6 credits of CRD, whereas the BCPS only requires 4.5 hours of CRD. In addition, Ms. XXXX pointed out that [School 1] has four coordinators (Transition Specialists) on staff which is simply “unheard of” in the industry. This, according to Ms. XXXX, translates into “outstanding job connections for students in the community.”

Similarly, XXXX XXXX, Program Director at [School 1], who was accepted as an expert in the field of Special Education with an emphasis in transition services, testified that the “Course of Study” section on page 20 of the IEP (BCPS #4), is intended to be a “broad statement” about areas of interest a student “may wish to work in” and that this information is gleaned from annual interviews with a student about his interests. Ms. XXXX testified that while the Student’s area of interest on the December 7, 2015 and December 5, 2016 IEPs included communication and set design, his interests have changed overtime. At one point, he was interested in the hospitality industry. It was also Ms. XXXX’s recollection that the parents had not previously communicated to [School 1] or the BCPS that they were dissatisfied with their Son’s transition services.

In response to my question about the changing nature of a student’s interest as they mature, Ms. XXXX stated that it would not be appropriate or feasible for the school system to reset the clock on the CRD credits each time a Student changed his or her interest. As such, the CRD credits are a compilation of a student’s interest over time.

In Ms. XXXX’s opinion, the Student received a “robust transition program” that included 2.5 more CRD credits than required by the BCPS, coursework, job site shadowing, career center, paid employment, and the acquirement of soft skills. Most of which is community-based or off school premises, and is intended for a student to “partake of, or pursue life goals.” Ms. XXXX also added that the CRD is competency-based, meaning that the Student mastered the

competencies associated with career exploration. Encompassed in that opinion, Ms. XXXX also considered the other opportunities the Student had at [School 1], including his [COLLEGE] course, extra-curricular activities (performing arts and after-school athletics), work experiences in the community, work experiences in the in the XXXX field, and his paid employment at XXXX benefitted him as constituting transitional services. Furthermore, Ms. XXXX opined that the Student received a FAPE because his experiences in and outside of the school, coursework, the implementation of the IEP, and completion of the BCPS' graduation requirements. Ms. XXXX testified that while the legal definition for transition services does not include "extra-curricular activities," "the acceptable standard would be that all activities the student is able to participate in and partake of allows them to pursue their life goals." And, that is an acceptable standard.

While the *Rowley* court discussed that there is no bright line test to establish whether a student is progressing or could progress educationally, I must nevertheless assess the evidence to determine whether the student's IEP and placement were reasonably calculated to enable him or her to receive appropriate educational benefit. *See Rowley*, 458 U.S. at 204. The term "appropriate," means "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *See In Re Conklin*, 946 F.2d 306, 314 (4th Cir. 1991). Providing a student with access to specialized instruction and related services, however, does not mean that a student is entitled to "the best education, public or non-public, that money can buy" or "all the services necessary" to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. at 176.

The credible evidence demonstrates that the Student was afforded a FAPE. The Parents'

presentation was entirely based on supposition, whereas the presentation by the BCPS was based in fact supported by the documentary evidence and the testimony of its witnesses who had knowledge of the Student and were admitted as experts in the field of special education and transition services. In addition, the Parents' presentation was myopic and jaundiced. Whereas the evidence presented by the BCPS was more broadminded and far more consistent with the definition of transition services, which requires the BCPS to provide a student with a myriad of services ("instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation"), based on the student's "strengths, preferences, and interests."

For instance, regarding the Student's expressed goal to attend college and study XXXX, the testimony and evidentiary documentation shows that a great deal of time, effort, and thought went into the BCPS' support of the Student's endeavor to attend the [COLLEGE], a local community college, during the last year of his high school career at [School 1]. In fact, Ms. XXXX supported the Student in a whole host of ways including, but not limited to:

- On November 9, 2015, she worked with the Student on his application to the [COLLEGE];
- On November 11, 2015, she met with the [COLLEGE] disability services counselor (XXXX XXXX) and the Student to obtain accommodations for the Accuplacer testing;
- On January 11, 2016, she took the Student for his second attempt on the reading portion of the Accuplacer;
- On May 18, 2016, she took the Student to the [COLLEGE] to meet with the program supervisor (XXXX XXXX) of the [COLLEGE]'s hospitality non-credit program;
- On May 27, 2016, she went to the [COLLEGE] to get more information on the Gates test and available tutoring. She also referred the Parent (Mrs. X) to the tutoring program at the [COLLEGE] XXXX campus where she signed the Student up and took him for tutoring;
- On August 12, 2016, the Student took the Gates test in August and passed;
- On October 27, 2016, she went with the Student to the [COLLEGE] to pick up his accommodations form and give it to his professor;

- On November 1, 2016, she went with the Student to the [COLLEGE] and spoke to a professor regarding college resources assignment, and to ask the professor about the Student's accommodations; and
- On November 2, 2016, she took the Student to the [COLLEGE] XXXX campus to complete the College Resources homework assignment.

BCPS #8; *see also* BCPS #19a-g.

In addition, the record reveals that other teachers from [School 1] provided the Student with tutoring and other supports prior to his admission to the [COLLEGE]. In a July 28, 2016 email, the Parents' wrote,

We would like to begin our response by letting Mr. XXXX and Ms. XXXX know how much [the Student] and we appreciate all the time and effort they have put into helping [the Student] to be successful in basic math skills and reading comprehension. Both of which are skills that are necessary for him to be college and career ready.

BCPS #19e. In another email, dated August 12, 2016, the Parents' wrote, "We want to thank Ms. XXXX & Mr. XXXX for all their extra work with [the Student] in preparing for the exam and Ms. XXXX for directing us to the Success Center at [COLLEGE]." *Id.*

Further, it is documented in the December 7, 2015 IEP Team notes that the BCPS agreed to give the Student additional time to complete the Geometry CC course and English to prepare him for the Accuplacer. The BCPS also agreed to add in the Students' IEP, interview skills and coursework with real world or work applications. BCPS #16, handwritten notes; BCPS #18, p. 21; Test. of XXXX. These changes in the Students' curriculum were also highlighted in an email from XXXX XXXX to the Parents, dated July 22, 2016, as follows:

Your email hit a curious note so I looked back at [the Student's] transcript and into several quarterly Progress Reports to refresh my own memory. Last January, [the Student] completed CRD 3: Financial Literacy after 3 quarters of enrollment. The specific focus of this course is for a student to apply financial literacy skills to make financially responsible decisions, manage personal finances and identify ways to protect financial information. In addition, [the Student] has been enrolled in our Transportation course for over 11 quarters where the real world focus is again on managing money safely during supervised community

outings. [The Student] also used time concepts to map out routes for destinations by bus, train and light rail which culminated in a trip to XXXX ...

I also recall that your main concern last year was for us to provide remediation in both English and math as preparation for the Accuplacer and [the Student's] desire to take a college course. In that vein, XXXX XXXX has extended [the Student's] time in Geometry for over 10 quarters. XXXX XXXX spent the year helping [the Student] to examine text and diverse media and other English Seminar 2 topics...

BCPS #19e.

The record also reflects that Ms. XXXX sought the Parents' approval to place the Student with XXXX for paid employment, and the Parents considered the placement a valuable resource for their son. Specifically, on August 22, 2016, in an email to the Parents, Ms. XXXX remarked that the placement would be a good fit for the Student because it would build on "highly transferable" skills "if he...decide[s] to go into the XXXX field." BCPS #19d. In addition, Ms. XXXX asked the Parents to chat with the Student to see if the position would be a good fit for him. *Id.* In a reply email, dated August 23, 2016, the Parents wrote, "Yes, XXXX will be fine. The opportunity to experience a position where you need to be responsible not only to the Employer but fellow employees as well, should benefit [the Student]. [The Student] has also agreed to the placement." BCPS #19d.

In addition, I was persuaded by the testimony of the BCPS' witnesses and the Parents' witness, Ms. XXXX, indicating that the Student benefitted educationally from the transition services he received, which included a full range of situations (employment, college, and employment-like experiences) that involved interaction with the public and his peers. The placements, as both Ms. XXXX and Ms. XXXX indicated, provided the Student with transferrable skills that could be utilized in the community. For instance, the paid position at XXXX is one example where the Student was clearly able to transfer whatever skills he learned

from his experiences to be successful in that position. BCPS #20a, data tracking. The Parents' testimony, on the other hand, was driven by a desire to give their son more opportunities than he was not eligible to have.

Lastly, I found Ms. XXXX's answers to my questions to have mirrored the finding in *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18 (2008). In the *Lessard* case, when faced with the question of whether an IEP was tailored to meet the needs of a student whose transition services component called for field trips, the court held that community-oriented services must be evaluated in conjunction with the IEP's other transition services:

in considering the adequacy of a myriad of transition services, an inquiring court must view those services in the aggregate and in light of the child's overall needs...The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits...Were the law otherwise, parents could endlessly parse IEPs into highly particularized components and circumvent the general rule that parents cannot unilaterally dictate the content of their child's IEP.

Id. at 30 (internal citations omitted).

Therefore, the record overwhelmingly supports a finding that [School 1] Transition Team crafted a series of placements that provided the Student with training that was reasonably calculated to enable him to receive educational benefits.

B. Did BCPS violate Section 504 of the Rehabilitation Act of 1973?

Section 504 of the Rehabilitation Act of 1973 provides, in pertinent part, as follows:

No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

29 U.S.C.A. § 794(a) (2008). It is undisputed that the Student is an individual with a disability for section 504 purposes and that the BCPS is a program receiving Federal financial assistance.

The Court of Appeals for the Fourth Circuit held in *Sellers v. The School Board of the City of Manassas, Virginia*, 141 F.3d 524 (4th Cir. 1998), that to establish a violation of section 504, the person alleging the violation must prove that he or she has either been subjected to discrimination or excluded from a program solely by reason of his or her disability. The *Sellers* court further held that in section 504 cases involving educational services, liability for discrimination must be based on something more than “a mere failure to provide the ‘free appropriate education,’” an incorrect evaluation, or a substantively faulty IEP. To find discrimination, there must be either bad faith or gross misjudgment. *Id.* at 528-29.

The Parents’ allegation that the BCPS discriminated against the Student when it exited him from [School 1] mid-year falls way short of this standard. While the Parent (Mr. X) testified that his son was being treated differently than other BCPS students and he and his wife could not understand why the BCPS was not servicing his needs, his testimony was remarkably divergent from the testimony of the Parents’ witnesses, XXXX XXXX, School Counseling Department Chair at [School 2]; and XXXX XXXX, Special Education Department Chair at [School 2].

The Parents asked Mr. XXXX a series of questions about whether the BCPS will permit a student who begins his/her last year of high school with a deficit in credits and meets those credits mid-year to continue through the end of the school year to take elective courses. Mr. XXXX testified that it would depend entirely on the course for which the student is deficient in credits. For instance, at [School 2], where there is an “A day/B day schedule” that runs the whole school year, it is possible for a student to attend school the entire school year. However, if a 5th year student only needs to finish a health credit, that student could and would conclude his/her high school career mid-year. When asked whether his answer changed for a disabled student who has not yet turned twenty-one before the start of the school, Mr. XXXX said no and

added that the typical situation is for the student to complete the outstanding course and when they are done, exit the school.

As a Department Chair, Ms. XXXX oversees instruction and IEP compliance to ensure that the BCPS students have the necessary supports in place to be successful. Ms. XXXX testified that while she may be familiar with the graduation requirements for disabled and non-disabled students, it is the responsibility of the Guidance Department to confirm whether a particular student has met the guidelines for graduation. Ms. XXXX was asked a hypothetical question of whether a disabled student who has not yet turned twenty-one years old and has not obtained all of the requirements for graduation at the beginning of a school year, but then obtains the graduation requirement mid-year, is required to exit the school mid-year or can the student remain in the school taking elective classes? Ms. XXXX said that it was the role and responsibility of our guidance department, but added that “typically when students, whether they are disabled or not, once they have earned their credits they move forward, they move on.” In a follow-up question, the Parent (Mrs. X) asked Ms. XXXX to clarify her answer based on a telephone conversation the two had had during the 2016 Winter Break. Specifically, the Parent (Mrs. X) asked, “did you and I not discuss that if a child who is not yet twenty-one, and begins the school year at [School 2] with a deficit in credits, you would never ask him to leave in the middle of the school year, the student would be permitted to stay for the whole school year?” In response, Ms. XXXX testified that if a student had “a deficit in credits,” meaning, that the student did not have the requisite number of credits needed to graduate, BCPS would not ask that student to leave school. At which point, the Parent (Mrs. X) tried to get Ms. XXXX to acknowledge that she said during their telephone conversation that a student, similarly situated as the Student, would be permitted to finish out his final school year. Ms. XXXX said no and

explained that her answer was prefaced on a student attending [School 2] where the academic schedule, in most instances, runs the full length of the school year. Ms. XXXX also insisted that she told the Parent to speak directly with Mr. XXXX regarding her inquiries because she did not have any first-hand knowledge about the Student to say what credits he has or has not earned. When asked the hypothetical question again, Ms. XXXX reiterated that the BCPS would not ask a student to leave prior to the end of the school if the student needed to earn credits in order to graduate. Ms. XXXX went on to say that, “over the phone, you [the Parent] reiterated a number of times your son will be twenty-one after the school year, the Student turns twenty-one after the school year,” and I said that “they are eligible to stay with us for that school year until they earn their credits. If they have a deficit in credits, they have an opportunity to earn where there is that area of need.”

Both Parents testified after the testimony from the above witnesses, however, neither Parent testified in a manner which remotely challenged the sum and substance of Mr. XXXX’s and Ms. XXXX’s testimony. It is also important to note that based on the questions presented by the Parent (Mrs. X) to Ms. XXXX, it is clear that the Parent (Mrs. X) had knowledge of and was a participant in a telephone conversation with Ms. XXXX which was the subject matter of the direct examination. I also find that the Parent (Mrs. X) had an opportunity to refute the comments made by Ms. XXXX during her testimony, but the Parent (Mrs. X) failed to do so. As such, Mr. XXXX’s and Ms. XXXX’s testimony stood unrebutted by the Parents. Therefore, I find by a preponderance of the evidence that the Student was not being treated differently from his non-disabled and disabled peers who attended a BCPS high school.

VI. Procedural Claim

Did the BCPS commit a procedural due process violation during the December 5, 2016

IEP Team meeting? If so, what should be the remedy?

The Parents made an array of due process arguments stemming from the December 5, 2016 IEP Team meeting, including that: (A) the BCPS predetermined the Student's graduation; (B) the BCPS' continuation of the December 5, 2016 IEP Team meeting and approval of the IEP in the absence of the Parents and their counsel; and (C) the IEP Team notes went beyond the scope of the discussion at the table.

An IEP is the "primary vehicle" through which a local educational agency provides a student with a FAPE. *M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F. 3d 315, 319 (4th Cir. 2009); *accord* 20 U.S.C.A. § 1414(d). An IEP team collaborates to develop and review an IEP. The IEP "must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress." *M.M. v. Sch. Dist. of Greenville Cty.*, 303 F. 3d 523, 527 (4th Cir. 2002); *accord* 20 U.S.C.A. § 1414(d)(1)(A).

And, the local educational agency is responsible for ensuring that the team includes the student's parents; a regular education teacher if the student is or may participate in regular education; the child's special education teacher; and, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and when appropriate, the child with the disability. 34 C.F.R. § 300.321(a).

(A) Did the BCPS predetermine the Student's exit date?

The Parent (Mr. X) testified that he and his wife requested a meeting in October 2016 with representatives from the BCPS and [School 1] to discuss their concern that the Student had not sufficiently progressed through the required competencies in the Geometry CC course to

graduate. In addition, the Parent (Mrs. X) testified that she and her husband “were very concerned about the pace, and felt that the mindset was that the Student needed to be done; “full steam ahead” to get him finished by the January 5th date and they were going to do it.” The Parent (Mr. X) testified that while he and his wife knew that the projected exit date from [School 1] was January 2017, it had only been “a date floated,” so they still believed that the “exit date was still open” for discussion. The reason for this is because “You can’t make the determination. You can’t make the determination until the school semester is done. You can’t determine before the Student has received his grades. You can’t make the determination before the transition is completed. So, they cannot declare that that is the exit date because the Student was only three weeks into the school year.”

With regard to the December 5, 2016 IEP Team meeting, the Parent (Mr. X) testified that he and his wife shared the same concern at this meeting, too. The Parent (Mr. X) stated that it was simply premature for the IEP Team to foretell the Student’s graduation date when “the grades were not completed; transitions were not completed; and educational testing still needed to be done.” As such, the Parents wholeheartedly disagreed with the other members of the IEP Team that their son would accomplish the grade requirements for the Geometry CC course by the January 2017 exit date.

The IDEA requires local educational agencies to ensure that the parents of each child with a disability are members of any group that makes decisions about their child’s educational placement. 34 CFR 300.327; 34 CFR 300.501(c)(1). However, the difference between “preparation” and “predetermination” is the local school system’s willingness to listen and address the Parents’ concerns. *See Cooper v. District of Columbia*, 77 F.Supp.3d 32 (D.D.C. 2014).

The evidence presented in this case does not support the Parents' viewpoint that the BCPS inappropriately "predetermined" their son's exit from [School 1]. There is the December 7, 2015 IEP Team meeting notes which shows that the BCPS, after listening to the Parents' concern about the Student's desire to attend the [COLLEGE] and the necessity to pass an Accuplacer test, agreed to elongate the Student's coursework in English and Geometry CC beyond the anticipated graduation date of June 2016 to January 2017. BCPS #16. There are emails in evidence that underscore the BCPS' dedication to helping the Student achieve a passing score in the Accuplacer by offering the Student tutoring. BCPS #19f. There are emails between [School 1] and the Parents concerning the Student's coursework and the rearranging of his class schedule to accommodate elective courses the Parents wanted their son to take. BCPS #19e.

Another subplot associated with the Parents' argument about predetermination is that the BCPS rushed the Student through his progress. The Parent (Mrs. X) testified that the IEP Team knew that, based on statements made by Ms. XXXX, due to the change to common core the objectives for English and Geometry were much more rigorous and that it would take the Student longer to complete the coursework. The Parent (Mrs. X) further questioned the veracity of the IEP Team's position that the Student was able to complete the competencies at the beginning of the 2016-2017 school year when the summer schedule included shortened school days and XXXX on Fridays, which is not considered an academic day.

Ms. XXXX agreed that there had been these discussions, but added that the Student was "absolutely not" rushed through classes at [School 1]. Ms. XXXX recalled, for instance, in the Geometry CC course, "that the IEP Team spoke with the Parents on at least two occasions regarding the pace of the Student's instruction; the Team presented quarterly reports over the

course of three school years describing where the Student was in terms of obtaining the competencies; Mr. XXXX clearly explained how the Student went from one percentage to another as well as the increase in percentages in an amount of time allotted for the semester; Mr. XXXX was there to talk about the fidelity of the instruction on at least two occasions. I also addressed how the coursework progressed from foundations of English into the college and career curriculum when the MSDE changed curriculums and how the progress reports reflected the Student's achievement through the English 12 course.”

In *Cooper*, the court explained that procedural violations are actionable only if they impede the parent's participation in the IEP process or result in educational harm. The court pointed out that the parent in *Cooper* attended every IEP meeting that addressed the proposed transition, and that she had “substantial input” on the student's present levels of performance, annual goals, and special education services. 77 F.Supp.3d at 37-8.

The same holds true here as well. I am persuaded by the Parents' testimony that they had been involved in three IEP Team meetings where the members discussed the Student's progress and coursework. The Parent (Mr. X) also acknowledged on cross-examination that Mr. XXXX spoke to the Parents on at least two occasions about the Student's progress in the Geometry CC course and how the Student's learning was cumulative. As such, I do not see any actionable procedural violations.

(B) Did the BCPS continue the December 5, 2016 IEP Team meeting after the Parents and their counsel left the meeting, and did the IEP Team adopt the IEP in their absence?

Both Parents testified and also elicited testimony from the BCPS' witnesses (Ms. XXXX, Ms. XXXX, and Ms. XXXX) about the sequential events that occurred at the December 5, 2016 IEP Team meeting. First, the introductions were made. Then, papers were passed around the

table for signatures. The procedural safeguards were provided and the sign-in sheet was done. The Parents indicated that this practice occurs as a matter of course and the Parent (Mrs. X) testified that it should “not be confused with approval” of the IEP, because thereafter the draft IEP is discussed.

And, according to the Parent (Ms. S), the IEP, too, is done in a sequential fashion. As a result, the December 5, 2016 IEP Team meeting was “extremely long.” Test. of Parent (Mr. X). The Parent (Mr. X) also testified that before the members of the Team could discuss transition services, Ms. XXXX told everyone at the table that there was “another IEP meeting behind us” and the meeting ended. At that point, he, his wife, and the attorney left. The Parent (Mr. X) also testified that he believed there would be a future IEP Team meeting to close out several loop holes and to finish the review of the Student’s transition services. Finally, the Parent (Mr. X) testified that it was not until after he and his wife received a letter containing the notes from the meeting that he realized the IEP was closed.

The Parents also called as their witness, Ms. XXXX, who testified that to the best of her recollection, the IEP Team discussed the Student’s programming, graduation requirements at the end of the winter quarter, as well as transition services. With regard to the discussion on transition services, Ms. XXXX recalled only that the Parents and their attorney expressed concern about the Student’s transition plan. Ms. XXXX further indicated that she left the building at the “perceived end of the meeting,” and had no recollection of Ms. XXXX telling the participants that the meeting needed to end early.

The Parents also called as their witness, Ms. XXXX, who testified that she allotted extra time for the IEP Team meeting because of the prior, contentious meeting in October 2016. In fact, Ms. XXXX testified that she did not schedule the next IEP Team meeting until 12:30 p.m.,

which would have allowed the Team 3.5 hours to review and adopt the Student's IEP.

In addition, Ms. XXXX testified about the typical chronology of a discussion about an IEP; for instance, the discussion begins with the eligibility date, State assessments, present levels of performance, goals, graduation status, overall programming, supplemental aids, least restrictive environment criteria, extended school year, and transitions. Ms. XXXX testified that she tried to stick to this typical script, but the Parents and their attorney wanted to jump into the Student's graduation status and then briefly jumped into transition services. At that point, in the discussion, the meeting "abruptly ended" after the Parents and their attorney left. Ms. XXXX testified that she never told the Team that there was not enough time to finish reviewing the Student's IEP. Ms. XXXX also testified that she did not tell the Parents that there would be another meeting to finalize the IEP, and she certainly had no recollection of telling the Parents that the IEP would remain open. Ms. XXXX further noted that the meeting was "very contentious and emotional," and "Ms. XXXX left upset and in tears."

The BCPS' witness, Ms. XXXX, concurred with Ms. XXXX that the IEP Team meeting was not able to finish the discussion about the Student's IEP. Ms. XXXX agreed with Ms. XXXX's statement that the meeting was "very upsetting." Ms. XXXX also indicated that the Parents and their attorney left the meeting before the logical end of the meeting.

Based on the record before me, I am not persuaded by the Parents' testimony that the BCPS failed to allocate enough time to logically conclude the December 5, 2016 IEP Team meeting and did not tell the Parents and their attorney that the meeting was "running over and needed to be wrapped up." Due Process Complaint. The Parents did not present any corroborative documentation or testimony to support this statement. Instead, the Parents' witness, XXXX XXXX, Receptionist at [School 1], offered little relevant information to this

issue. Ms. XXXX testified that she answers the telephones at the front desk. She also confirmed the existence of a sign-in log book used by staff, students, visitors, and parents to sign in and out whenever they come and go. This is particularly true for staff when they take a student off campus to work or anytime a student goes off campus. For the most part, according to Ms. XXXX, staff will sign back in when they return to campus afterwards. The Parents, however, did not seek any testimony about the log book for December 5, 2016 or enter into evidence the log book to prove their point that the meeting was rushed due to another IEP Team meeting in the queue.

I am equally not persuaded by the Parents' presentation that the BCPS would tell them that the IEP needed to remain open. This position is simply illogical and contravenes the Parents' earlier testimony that the BCPS was trying to rush their son through his coursework to graduate in January 2017. You cannot have it both ways. In addition, I find it more likely than not that the IEP Team meeting was contentious and ended abruptly at the Parents' own doing. I find Ms. XXXX's testimony, a witness called by both sides, to be far more credible than the Parents on this point in light of the fact that the Parents had had a history of leaving an IEP Team meeting (October 17, 2016) early in a similar fashion.

Even if I were to agree with the Parents that the structure of the December 5, 2016 IEP Team meeting was unusual and, "despite trying to stick to the format" (Test. of Ms. XXXX), the meeting concluded without fully addressing each element of the Student's IEP, the BCPS correctly pointed out that procedural violations of the IDEA do not necessarily lead to the denial of a FAPE. "To the contrary, such violations are only actionable if they compromise the student's educational opportunities or seriously infringe [on the] parents' participation in their child's education." *Cooper*, 77 F.Supp.3d at 37. Moreover, "[i]f a disabled child receives a

FAPE despite technical violations of the IDEA, the school district has fulfilled its statutory obligation.” *Id.* The credible evidence shows that the Student earned his regular high school diploma fairly soon after the December 5, 2016 IEP Team meeting. The adoption of the IEP did not compromise his ability to do that, nor did it seriously infringe on the Parents’ participation in their son’s education. The Parents had been an everpresent participant in the drafting and crafting of the Student’s educational plan at [School 1].

Finally, the Parents charged that the IEP Team adopted the Student’s IEP in their absence and, in doing so, denied their son a FAPE. Parents are mandatory members of the IEP team. 34 CFR § 300.321(a)(1). While a local educational agency cannot compel the attendance of parents in the same way it can demand attendance of its own personnel or contractors, the local educational agency must invite parents and strongly encourage them to attend. Here, it is clear that the Parents and their attorney knew that the IEP Team meeting on December 5, 2016 was an annual meeting with the purpose to adopt the Student’s IEP and they chose to leave the table mid-stream. The notes from the December 5, 2016 also shows that the IEP Team encouraged the Parents and their attorney to stay and talk out their differences, but the Parents chose to leave. BCPS #10. At that point, the local educational agency may conduct an IEP meeting when the local educational agency is unable to convince the parents to attend. 34 CFR § 300.322(d).

(C) Did the IEP Team notes go beyond the scope of the discussion at the December 5, 2016 meeting?

The Parents testified and elicited testimony from the BCPS’ witnesses (Ms. XXXX, Ms. XXXX, and Ms. XXXX) about the scope of the IEP Team meeting notes from the December 5, 2016 meeting. At issue was the addition of certain information about the Student’s transition services that the Parents felt were not included in the discussion at the table while they were in attendance. The following excerpt from the notes is the subject matter of the Parents’ procedural

due process complaint:

[School 1] staff shared with BCPS representative after parents and attorney left that [the Student] took Technical Theatre at [School 1] in the 2015-2016. [The Student] was also involved in several theater productions at [School 1] including Stage Crew for XXXX (May 2015), XXXX (May 2016), and XXXX 2015 and 2016. [The Student] was a performer in XXXX.

The following is a list of vocational activities that [The Student] has participated in while attending [School 1]. These include job shadowing, volunteer and paid positions at school and off campus jobs. Also included is a list activities completed at [COLLEGE] where [The Student] has taken a pre-college course.

Work experiences (paid and volunteer): XXXX: 11/2012, XXXX: 4/2013, 1/2014-6/2014, XXXX: 5/2013, XXXX: 5/2016, 8/2015-9/2015, XXXX (paid): 9/2016-present, XXXX: 10/2016-present.

Job shadowing Tours: XXXX: 10/17/11, XXXX: 1/5/12, XXXX: 2/13/12, XXXX: 4/10/12, XXXX: 4/16/12.

Off Campus: XXXX – Spring 2012, Senior Project – Hours at XXXX Volunteer Fire Company

[COLLEGE]:

11/9/15: worked with [the Student] on his application to [COLLEGE].

11/11/15: met with [COLLEGE] disability services counselor (XXXX XXXX) and [the Student] to obtain accommodations for the Accuplacer testing [the Student] took the Accuplacer, but failed).

1/11/16: I took [the Student] for his second attempt on the reading portion of the Accuplacer.

5/18/16: I took [the Student] to [COLLEGE] to meet with the program supervisor (XXXX XXXX) of [COLLEGE]'s hospitality non-credit program.

5/27/16: went to [COLLEGE] to get more information on the Gates test and available tutoring. Referred [the Parent (Mrs. X)] to the tutoring at [COLLEGE], she signed [the Student] up and took him for tutoring. [The Student] took the test in August, and passed (8/12/16)

10/27/16: Went with [the Student] to [COLLEGE] to pick up his accommodations form and give it to his professor.

11/1/16: Went with [the Student] to [COLLEGE] and spoke to the professor regarding college resources assignment, and to ask the professor about [the Student's] accommodations.

11/2/16: Took [the Student] to [COLLEGE] to complete the College Resources homework assignment.

11/7/16: Met with [the Student's] team to discuss a plan for helping him be successful in his college course;

11/17/16: Checked accommodations, received a new “recording device” accommodation for [the Student]
Daily monitoring of blackboard account and assignment management.

Parent and attorney left prior to the end of the meeting. [School 1] staff and BCPS liaison remained. IEP was reviewed and approved to be closed. Copy of finalized IEP and team notes will be sent home to parent.

BCPS #10.

Across the board, the witnesses agreed that the aforementioned information was not specifically discussed at the IEP Team meeting. While Ms. XXXX recalled a conversation about transition services, she confirmed that the conversation was not as detailed as the notes would suggest. She also testified that she did not return to the table after she left the meeting; thus, she did not engage in a discussion of any additional information about the Student’s transition services with the other members of the IEP Team. Ms. XXXX, however, agreed that the aforementioned information appeared strikingly similar to information she listed in an email, dated December 2, 2016, that was sent to Ms. XXXX, Ms. XXXX, Mr. XXXX, Ms. XXXX, and the Baltimore Admin. BCPS #8. Ms. XXXX also testified that the aforementioned list was not discussed at the IEP Team meeting, but added that the Parents would have known about this information since it “reflects the cumulative nature of transition services” for the Student. Ms. XXXX also agreed that some of the aforementioned information was gleaned from an email, dated December 14, 2016, she sent to Ms. XXXX, XXXX XXXX, and Ms. XXXX. Moreover, Ms. XXXX confirmed that she added the aforementioned information “after-the-fact” into the IEP Team notes because she felt the information was “relevant” to the conversation that occurred. Both Ms. XXXX and Ms. XXXX testified that it is a standard practice to add information into IEP Team notes after the meeting closes.

Other than the shock of finding information contained in the notes that apparently did not

occur during the IEP Team meeting, the Parents did not truly explain or support their claim that the BCPS committed a procedural violation. The Parents did not rebut Ms. XXXX or Ms. XXXX's testimony that it is standard practice to add information to the notes for clarification purposes. The Parents, at no point, suggested that the information on the list was inaccurate or erroneous. The Parents did not testify in what way the notes "seriously infringe[d]" on their participation in their child's education, nor did they explain to any degree whether the situation "compromised" their son's educational opportunities. *Cooper*, 77 F.Supp.3d at 37. Under a similar scenario, a Tenth Circuit court held:

Even if we were to assume that T.S. was challenging his graduation (certainly a questionable assumption), T.S. has waived any argument that the school district denied him a FAPE because he has not made such a contention on appeal. It is well-settled that, without a claim that the FAPE was deficient, procedural defects are not actionable.

T.S. v. Indep. Sch. Dist. No. 54, 265 F.3d 1090 (10th Cir. 2001).

Therefore, since the alleged defect did not violate the Parents' or the Student's substantive due process rights, it must be "disregarded as harmless." *Id.*

VII. Summary

Without belaboring the point much further, the Parents did not sustain their burden of proof in this case for all of the reasons stated above. What is clear is that the Student has now aged-out by virtue of turning twenty-one in August 2016 and earned a regular high school diploma on January 5, 2017. The BCPS argued in closing that when this occurs, there is no requirement for the local educational agency to measure achievement of goals. I agree. In a Q & A with the Office of Special Education and Rehabilitative Services (OSERS) in the United States Department of Education, the question was asked: "Must public agencies measure achievement of the goals once a student has graduated or has aged out?" OSERS' answer was as follows:

However, the obligation to make FAPE available does not apply to children who have graduated from high school with a regular high school diploma (34 C.F.R. § 300.102(a)(3)(i)) or to children who have exceeded the mandatory age range for provision of FAPE under State law (34 C.F.R. § 300.102(a)(1)). When a child's eligibility for FAPE pursuant to Part B of the IDEA terminates under these circumstances, in accordance with 34 C.F.R. § 300.305(e)(3), the LEA [local educational agency] must provide a summary of the child's academic achievement and functional performance.

<https://www.specialedconnection.com/LrpSecStoryTool> (last viewed on March 12, 2017).

After considering all the credible evidence, I am persuaded that the BCPS provided the Student with a FAPE by providing appropriate transitional services; did not violate Section 504 of the Rehabilitation Act of 1973; and did not commit a procedural due process violation at the December 5, 2016 IEP meeting. As a result, I find that the Parents failed to establish any basis, credible or otherwise, for their son to remain at [School 1].

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the Baltimore County Public Schools did not deny the Student a FAPE with respect to transitional services. 20 U.S.C.A. § 1401(34) (2010); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *In Re Conklin*, 946 F.2d 306, 314 (4th Cir. 1991); *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 R.3d 18 (2008).

I further conclude that the Baltimore County Public Schools did not violate Section 504 of the Rehabilitation Act of 1973. 29 U.S.C.A. §§ 701 *et seq.* (2008 & Supp. 2016); *Sellers v. The Sch. Bd. of the City of Manassas, Virginia*, 141 F.3d 524 (4th Cir. 1998).

I further conclude that the Baltimore County Public Schools did not commit a procedural due process violation during the December 5, 2016 IEP Team meeting. 34 C.F.R. § 300.513 (2016); *T.S. v. Indep. Sch. Dist. No. 54*, 265 F.3d 1090 (10th Cir. 2001); *Cooper v. District of Columbia*, 77 F.Supp.3d 32 (D.D.C. 2014).

ORDER

I **ORDER** that the Parents' January 4, 2017 Due Process Complaint be **DENIED**.

March 13, 2017
Date Decision Mailed

Kathleen A. Chapman
Administrative Law Judge

KAC/da

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 to the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (Supp. 2016). 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.