

██████████  
STUDENT  
v.  
HOWARD COUNTY  
PUBLIC SCHOOLS

BEFORE ERIN H. CANSIENNE,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-HOWD-OT-19-38700

**DECISION**

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

**STATEMENT OF THE CASE**

On December 11, 2019, ██████████ and ██████████ (Father, Mother, and collectively Parents), on behalf of their child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the placement of the Student by Howard County Public Schools (HCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2019);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held a telephone prehearing conference on January 23, 2020. The Parents were self-represented. Kathy Stump represented the HCPS.

I held the hearing on February 10, 2020.<sup>3,4</sup> The Parents were self-represented. Andrew Nussbaum, Esquire, represented the HCPS.

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<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated.

<sup>2</sup> C.F.R. is an abbreviation for Code of Federal Regulations.

<sup>3</sup> The hearing was originally set for four days, February 10, February 20, March 2 and March 9, but it was completed in a single day.

<sup>4</sup> At the conclusion of the Parent's case, the HCPS made a Motion for Judgment, which I did not grant. Following the close of the evidence, the HCPS did not renew the motion. COMAR 28.02.01.12E.

Both parties agreed in writing to waive the resolution meeting on January 13, 2020. Under the applicable law, a decision in this case normally would be due by February 27, 2020, forty-five days after January 13, 2020. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a) (2019); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14)(a). However, the parties requested hearing dates through March 9, 2020. 34 C.F.R. § 300.515(c); Md. Code Ann., Educ. § 8-413(h). At the time of the prehearing conference, the parties intended for the hearing to last three to four days. The prehearing conference order describes in depth the scheduling concerns of the parties to determine the first four available dates on all parties' calendars. The parties requested that the deadline for the decision to be extended to thirty days after the close of the record.

For the reasons discussed above, I granted the request to extend the deadline to thirty days after the close of the record. As the hearing was completed in a single day, February 10, 2020, the decision is due by March 11, 2020.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article of the Maryland Annotated Code; the Maryland State Department of Education procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2018); State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

The issues in this case are:

1. Does the placement at [REDACTED] School for the 2019-2020 school year provide the Student a FAPE<sup>5</sup>?
2. Is [REDACTED] School the least restrictive environment in which the Student can receive a FAPE?

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<sup>5</sup> Free Appropriate Public Education.

## SUMMARY OF THE EVIDENCE

### Exhibits

The Parents did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of HCPS:

- HCPS Ex. 1 – IEP<sup>6</sup> Team Meeting Report, dated October 25, 2016<sup>7</sup>
- HCPS Ex. 2 – IEP Team Meeting Report, dated December 20, 2016
- HCPS Ex. 3 – Evaluation Report Specific Learning Disability (SLD) Supplement, dated December 20, 2016
- HCPS Ex. 4 – Evaluation Report Emotional Disability (ED) Supplement, dated December 20, 2016
- HCPS Ex. 5 – IEP Team Meeting Report, dated January 17, 2017
- HCPS Ex. 6 – IEP Team Meeting Report, dated June 6, 2017
- HCPS Ex. 7 – IEP Team Meeting Report, dated May 24, 2018
- HCPS Ex. 8 – IEP Team Meeting Report, dated May 10, 2019
- HCPS Ex. 9 – IEP Team Meeting Report, dated May 17, 2019
- HCPS Ex. 10 – IEP Team Meeting Report, dated June 7, 2019
- HCPS Ex. 11 – IEP Team Meeting Report, dated August 16, 2019
- HCPS Ex. 12 – IEP Team Meeting Report, dated September 16, 2019
- HCPS Ex. 13 – IEP Team Meeting Report, dated October 3, 2019
- HCPS Ex. 14 – IEP Team Meeting Report, dated October 24, 2019
- HCPS Ex. 15 – Evaluation Report SLD Supplement, dated October 24, 2019
- HCPS Ex. 16 – Evaluation Report ED Supplement, dated October 24, 2019
- HCPS Ex. 17 – IEP Team Meeting Report, dated December 3, 2019
- HCPS Ex. 18 – IEP Team Meeting Report, dated January 9, 2020
- HCPS Ex. 19 – IEP, dated January 17, 2017
- HCPS Ex. 20 – IEP, dated June 6, 2017
- HCPS Ex. 21 – IEP, dated May 10, 2019
- HCPS Ex. 22 – IEP, dated December 3, 2019
- HCPS Ex. 23 – Therapy Progress Log from May to June 2018
- HCPS Ex. 24 – Therapy Progress Log from September 2018 to May 2019
- HCPS Ex. 25 – Therapy Progress Log from September 2019 to October 2019
- HCPS Ex. 26 – Educational Assessment Report, dated November 16, 2016
- HCPS Ex. 27 – Educational Assessment Report, dated October 17, 2019
- HCPS Ex. 28 – Reevaluation Report, dated September 16, 2019
- HCPS Ex. 29 – Report of Psychological Assessment, dated June 16, 2015
- HCPS Ex. 30 – Report of Psychological Assessment, dated December 15, 2017
- HCPS Ex. 31 – Report of Psychological Evaluation, dated October 10, 2019
- HCPS Ex. 32 – Speech Language Screening, dated December 20, 2016
- HCPS Ex. 33 – Speech Language Assessment, dated July 14, 2019
- HCPS Ex. 34 – Reevaluation Report, date of meeting September 16, 2019

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<sup>6</sup> Individualized Education Program.

<sup>7</sup> Prior to the hearing, HCPS pre-marked exhibits with page numbers. The first page of each exhibit is marked only with the exhibit number. The subsequent pages are marked with the exhibit and a page number. For example, Exhibit 1 contains marked pages: 1, 1.2, 1.3, 1.4. As they were marked prior to the hearings, I will refer to the page numbers as they appear on the exhibits.

- HCPS Ex. 35 – Attendance Contract for 2019-2020, signed January 10, 2020
- HCPS Ex. 36 – Report Card for 2017-2018
- HCPS Ex. 37 – Report Card for 2018-2019
- HCPS Ex. 38 – Emails between the Parents and various school personnel, various dates from July 2019 through January 2020
- HCPS Ex. 39 – CV<sup>8</sup> for Kathy Stump, Instructional Facilitator for Nonpublic Services and Special Education Compliance, undated
- HCPS Ex. 40 – CV for [REDACTED] Instructional Facilitator – Middle Schools, undated
- HCPS Ex. 41 – CV for [REDACTED] Principal, undated
- HCPS Ex. 42 – CV for [REDACTED] Special Education Team Leader, undated
- HCPS Ex. 43 – CV for [REDACTED] School Counselor, undated
- HCPS Ex. 44 – CV for [REDACTED] School Psychologist, undated
- HCPS Ex. 45 – CV for [REDACTED] Special Education Teacher, undated
- HCPS Ex. 46 – CV for [REDACTED] Pupil Personnel Worker, undated
- HCPS Ex. 47 – CV for [REDACTED] Clinical Coordinator/School Psychologist, undated

Testimony

The Parents both testified and did not present any other witnesses.

The HCPS presented the following witnesses:

- [REDACTED] M.A., CAS, NCSP, School Psychologist at [REDACTED] School, admitted as an expert in school psychology
- [REDACTED] School Psychologist at the [REDACTED] at [REDACTED] School, admitted as an expert in psychology
- [REDACTED] Special Education Teacher at [REDACTED] School, admitted as an expert in special education
- Kathy Stump, Instructional Facilitator for Nonpublic Services and Special Education Compliance, admitted as an expert in Special Education Administration

**FINDINGS OF FACT**

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

1. The Student is currently fourteen years old and in the 8<sup>th</sup> grade at [REDACTED] School ([REDACTED])
2. The Student has been diagnosed with [REDACTED] and social anxiety disorder, since she was in pre-school.

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<sup>8</sup> Curriculum vitae

3. When the Student was in 5<sup>th</sup> grade at [REDACTED] Elementary School, the Parents and her teachers held an Individualized Education Program (IEP) meeting to discuss lack of attendance, social anxiety and possible need for further testing. An academic assessment, psychological assessment, and speech screening was completed in the Fall of 2016 to give the team more information about the Student.

4. The Student's first IEP went into effect on January 17, 2017, when the Student was in 5<sup>th</sup> grade.

5. Starting in the 2017-2018 school year, the Student began attending [REDACTED] as a 6<sup>th</sup> grader and is still attending [REDACTED]

6. The Student had subsequent IEPs for the 2017-2018 (6<sup>th</sup> grade), 2018-2019 (7<sup>th</sup> grade), and 2019-2020 (8<sup>th</sup> grade) school years.

7. During the 2017-2018 school year, the Student had a total of 33 absences for the year. Her final grades were A's in every class except for a B in Health.

8. During the first quarter of the 2018-2019 school year, the Student had 100% attendance. The Student had A's in all her subjects for that quarter.

9. During the second quarter of the 2018-2019 school year, the Student became ill and had an extremely difficult time returning to school consistently for the remainder of the school year. By the end of the 2018-2019 school year, the Student had 54.5 absences. While some of these absences were due to physical illness, the majority were due to her anxiety.

10. In the 2017-2018 school year, the Student would come to the school the evening before returning from an absence to meet with the school psychologist, go into a few classrooms and plan for the following day. This was a successful strategy for the Student to return from an absence for that school year.

11. In the 2018-2019 school year, the strategy of going to the school the evening before returning from an absence was not as effective.

12. During the third and fourth quarters of the 2018-2019 school year, the Student's quarter grades had dropped from A's and B's in the first two quarters to mostly D's and E's in the last two quarters.<sup>9,10</sup> Due to her high grades in the first two quarters, the Student's final grades were mostly B's and C's.<sup>11</sup>

13. In the May 10, 2019 IEP for the 2019-2020 school year, the Student would receive 12 hours of Special Education Services per week in English language arts, science, and social studies, as well as 30 minutes per week of psychological services. The Student's placement was to be in the general education setting more than 80% of the time.

14. At the May 17, 2019 IEP Team Meeting, the Parents indicated "...that at this point, they will not be able to get [the Student] in to school much for the rest of the school year." (HCPS Ex. 9)

15. At the June 7, 2019 IEP Team Meeting a language assessment of social pragmatics was recommended. Based on the Social Language Development Test Adolescent, the Student exhibited some weaknesses in her social pragmatic language skills, including a concern with the Student's ability to accurately interpret a social situation to understand what others are feeling and thinking, and the Student's ability to converse during social routines and conversations.

16. The Student came to the school periodically over the summer in 2019 as well as every day for about a week prior to school starting. This was an effort to make her feel comfortable in her new classrooms and the building.

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<sup>9</sup> In the third quarter, the Student did maintain a B in Mathematics, an A in French and a C in Science II. See HCPS Ex. 37.

<sup>10</sup> An E is a failing grade and means the student's average is a 59% or lower.

<sup>11</sup> The Student received an E for Art (which only had a fourth quarter grade), and an A for Health (which only had a second quarter grade).

17. The Student attended her classes for the first two days of school in the 2019-2020 school year; however, since that time, she has been unable to attend all her classes for a full day of school.

18. At the September 16, 2019 IEP Team Meeting, Ms. [REDACTED] the school psychologist requested that the Parents call her if they are in the parking lot with the Student and the Student is refusing to get out of the car, so that she can attempt to talk to the Student. The Parents did not call Ms. [REDACTED] to assist in the parking lot.

19. At the September 16, 2019 IEP Team Meeting, the team questioned “if [the Student’s] gap is widening since she has missed so much school and if she is behind in academic subjects.” (HCPS Ex. 12, p. 12.5)

20. In September 2019, the Parents considered moving the Student to a smaller school with smaller classes but decided not to move the Student at that time.

21. The Student has not been in any classes with her peers since September 23, 2019. The Student has not had lunch with her peers since that time. The Student has participated in one school bowling trip that was non-academic since September 2019, but did not ride the bus with the other students to go to or from that trip.

22. During the October 3, 2019 IEP Team Meeting, the IEP team discussed the [REDACTED] [REDACTED] at [REDACTED] School ([REDACTED]) However, at that time, the IEP team was not recommending a change in placement.

23. In the Fall of 2019, reassessments were performed for the Student as it had been three years since the prior assessments

24. During the Fall of 2019, the Parents, and the French teacher<sup>12</sup> completed the Behavior Assessment System for Children – Third Edition (BASC-3). This test was used to obtain current information regarding the Student’s social and emotional functioning at school.<sup>13</sup>

25. The scores on the BASC-3 for Internalizing Problems for both respondents fell within the at-risk range. Both respondents noted that the Student worries, is fearful, is easily stressed and worries about things that cannot be changed. The French teacher’s ratings indicated symptoms of depression that fell within an at-risk range. The Parents’ ratings indicated significant concerns with somatization, which fell into a clinically significant range.

26. On the BASC-3, while the Student fell within the typically developing range for behavioral symptoms as rated by the Parents, the Student fell in the at-risk range as rated by the teacher. Both respondents rated behaviors related to withdrawal as clinically significant.

27. The scores on the BASC-3 for adaptive skills for both respondents fell within the at-risk range. Concerns were noted with the Student’s adaptability, social skills and leadership. The Student’s functional communication skills fell within the at-risk range from her Parents’ responses and fell within the clinically significant range from the teacher’s responses.

28. On the BASC-3, the Student fell within the typically developing range for the categories: externalizing problems and school problems.

29. The Student completed the self-assessment version of the BASC-3 in the Fall of 2019. Based on her self-rating scores, all areas fell within the typically developing range.

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<sup>12</sup> No other teacher completed the assessment because they had not spent sufficient time with the Student to provide valid responses.

<sup>13</sup> The following results were obtained:

Composites	Parents	French teacher
Externalizing Problems	49	42
Internalizing Problems	67	65
School Problems	n/a	51
Behavioral Symptoms	56	67
Adaptive Skills	37	34



30. During the Fall of 2019, the Student's Parents also completed a Multidimensional Anxiety Scale for Children – 2<sup>nd</sup> edition, to learn more about the types of anxiety that the Student may be experiencing. The ratings revealed a very elevated total score. Scores in the areas of separation anxiety/phobias, social anxiety total and physical symptoms total were within the very elevated range. The score for humiliation/rejection was in the elevated range. The score for harm avoidance was in the typically developing range. The score for generalized anxiety disorder was within the very elevated range.

31. On her October 17, 2019 educational assessment,<sup>14</sup> the Student did not demonstrate a difficulty in any area of educational performance.

32. During the October 24, 2019 IEP Team Meeting, the team determined that the Student was not making progress on her goals and objectives due to absences. The Student did not have a specific learning disability which required special education as of October 24, 2019. However, the Student had an emotional disability and required special education as of October 24, 2019.

33. A Centralized Education Placement Team (CEPT) meeting was held on December 3, 2019.

34. During the December 3, 2019 CEPT meeting, the Student's anxiety disorder was a greater concern than the [REDACTED]. At that time, the Student's anxiety was so debilitating that it prevented her from going to school and interacting with many other people besides her immediate family on a regular basis.

35. Throughout the 2019-2020 school year, transition plans have been attempted to get the Student back into the classroom. Generally, these plans involve the Student coming to [REDACTED] for increasing amounts of time and then to transition her back into the classroom. While

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<sup>14</sup> The Woodcock-Johnson IV, Tests of Achievement was used for this assessment.

this approach did increase the Student's time on campus from none to four hours, the Student did not return to the classroom.

36. When the Student attends school regularly, she can keep up with her assignments and knows what she should complete without needing adult assistance.

37. The Student has a difficult time articulating her feelings, as well as identifying potential triggers to her anxiety.

38. When asked specifically about her level of anxiety after an extended absence, the Student rates herself as a 2 or 3 on the Likert scale (1 = no anxiety; 5 = significant anxiety), but she is still unable to go to class.

39. At the December 3, 2019 CEPT meeting, the team decided that ██████ could not implement the Student's IEP, and that the least restrictive placement is in ██████. The Parents disagreed with both of these decisions.

40. Under the area of social interaction skills, the December 3, 2019 IEP contains an assessment of progress for the first and second quarter marking periods and indicates that the Student was making insufficient progress to meet the goal. The Student's absenteeism resulted in her attending less than five sessions with the school psychologist to work on this goal.

41. Under the area of Study/organizational skills, the Student had a goal of completing 80% of assignments after an absence and with adult support. However, the Student is not achieving this goal as she is not completing 80% of her assignments after her absences,<sup>15</sup> and has E's in most of her classes.

42. The IEP dated December 3, 2019 provided that the Student would be in a separate special education school for thirty-three hours and forty-five minutes (the entire school week).

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<sup>15</sup> An exact percent of completion was not provided by any witness.

The team recommended the change in placement because the Student required therapeutic interventions and supports that are not available at ██████ but are available in ██████

43. The December 3, 2019 IEP provided that the Student could participate with nondisabled peers in any after-school or extracurricular activities at her home school.<sup>16</sup>

## DISCUSSION

### Burden of Proof

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(I)(2)(C)(iii) (2017); 34 C.F.R. § 300.516(c)(3) (2019); *Indep. School Dist. No. 283 v. S.D. ex rel. J.D.*, 88 F.3d 556, 560-61 (8th Cir. 1996). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the Parents as the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

In this case, I did not have to use the burden of proof to decide the outcome. I did not find the evidence to be so close that I had to decide that because the Parents had the burden of proof, they were unable to meet their burden. Instead, the evidence overwhelming supported HCPS’s position that the Student should be placed in the ██████ to receive FAPE.

### Legal Framework

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01. The IDEA requires “that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their

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<sup>16</sup> This presumes that the Student meets any eligibility requirements for those activities.

unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) and the applicable federal regulations. The statute provides as follows:

**(A) In General**

The term “child with a disability” means a child –

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8; Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78).

The Supreme Court addressed the requirement of a FAPE in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that the requirement is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Id.* at 201 (footnote omitted). The Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07.

The *Rowley* Court found, because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade on grade level. *Id.* at 204; 20 U.S.C.A. § 1401(9).

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001. Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* at 1000.

An IEP is the “primary vehicle” through which a public 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).

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3)(A). IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present levels of academic achievement and functional performance, including . . . [h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children) . . .” 34 C.F.R.

§ 300.320(a)(1)(i).

To comply with the IDEA, an IEP must, among other things, allow a student with a disability to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI).

In addition to the IDEA's requirement that a disabled child receive educational benefit, the child must be placed in the "least restrictive environment" to achieve a free appropriate public education, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the "least restrictive environment" consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into a general education school programs may not be appropriate for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like HCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in general education classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement.

*Id.* § 300.115(b); COMAR 13A.05.01.10B(1). Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2).

It is well-established that, in enacting the IDEA, and its predecessor, the Education of the Handicapped Act, Congress deliberately left the selection of education policy and methods to state and local officials. *Bd. of Educ. of Hendrick Hudson Cent. Dist. v. Rowley*, 458 U.S. at 207–08 (1982), *Barnett v. Fairfax County*, 927 F.2d 146, 152 (4th Cir. 1991), *cert. denied*, 502 U.S. 859 (1991). The IDEA is not intended to deprive educators of the right to apply their “professional judgment.” *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997).

### Analysis

In this case, the CEPT team decided on December 3, 2019, that ██████ could not implement the Student’s IEP, and that the least restrictive placement is ██████. The Parents disagree with both conclusions and filed a due process complaint. The Parent did not raise any procedural challenges as to how the CEPT arrived at its conclusion that the Student’s IEP could not be implemented at ██████ but could be implemented at ██████.

### *Relevant History of the Student’s Education*

The Student has been diagnosed with ██████ and social anxiety. The Student has had an IEP since her 5<sup>th</sup> grade school year. Ms. ██████ the School Psychologist at ██████<sup>17</sup> first met the Student at the end of the Student’s fifth grade year (2016-2017), when a transition plan was being created. She has completed continuing education courses in both anxiety and ██████ and participated in staff trainings. She has worked with four students with the diagnosis of ██████ over her approximately thirteen years of experience. Ms. ██████

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<sup>17</sup> Ms. ██████ was accepted as an expert in school psychology.

testified that the Student is incredibly intelligent. She testified that the Student does not suffer from testing anxiety but does suffer from social anxiety.

Ms. [REDACTED] testified that the Student had a successful sixth grade school year. Similarly, the Student started out the 2018-2019 school year well. At that time, Ms. [REDACTED] was providing direct psychological services for thirty minutes every other week. However, in the third quarter of the 2018-2019 school year, the Student became ill requiring absences, which then morphed into absences for anxiety. The Student did not attend any classes in the fourth quarter of the 2018-2019 school year. By May 17, 2019, the Parents indicated to Ms. [REDACTED] that they “feel that at this point, they will not be able to get [the Student] in to school much for the rest of the school year.” (HCPS Ex. 9, pg. 9).

At the end of the 2018-2019 school year, the Parents could not persuade the Student to enter the school building; however, the Parents did not call staff to come out to the parking lot to provide assistance. Ms. [REDACTED] discussed that she practices strategies to get students from the parking lot into the building. These strategies vary from student to student and will incorporate coping mechanisms that are being developed during the psychological services. Ms. [REDACTED] would not put her hands on the Student and force the Student to come inside of the building. The avoidance cycle in situations where students are refusing to go to school can be difficult to break.

The IEP team met at the end of the 2018-2019 school year to develop an IEP for the 2019-2020 year. Prior to the beginning of the 2019-2020 school year, Ms. [REDACTED] met with the family of the Student several times. [REDACTED] is a special education teacher and eighth grade team leader at [REDACTED]<sup>18</sup> Ms. [REDACTED] is the case manager for the Student. Over the summer, Ms. [REDACTED] attempted to get to know the Student and establish a relationship. She helped to phase in

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<sup>18</sup> Ms. [REDACTED] was accepted as an expert in special education.



the Student by bringing her into empty classrooms and helping her to meet teachers before the school year started.

Ms. [REDACTED] testified that after attending [REDACTED] for the first two days of the school year of 2019-2020, the Student began to have significant absences. Ms. [REDACTED] testified that the Student seemed to be comfortable the first two school days. However, by the end of September, the Student was no longer attending classes. The Student did not want to go to her locker. The Student could have conversations about non-school related topics with certain staff members but did not want to see and would not talk to other people. The last time the Student was in any class was on September 23, 2019.

During October 2019, Ms. [REDACTED] testified that the Student was not going to school at all, meaning she was not even coming inside of the building. With the Student not attending school, Ms. [REDACTED] opinion was that [REDACTED] could not meet the Student's needs in her IEP or the goals in the IEP. At that time, Ms. [REDACTED] approved of a referral of the Student to the CEPT because [REDACTED] was not able to implement this Student's IEP.

On October 23, 2019, Ms. [REDACTED] had a conference call with outside providers<sup>19</sup> for the Student. During this conference call, Ms. [REDACTED] discussed a transition plan, which included identifying a key worker<sup>20</sup> to establish a relationship and build a rapport, and having the key worker assist the Student in transitioning back to a classroom. A transition plan was developed based on this discussion. The plan included increasing the Student's time at school by fifteen-minute increments each day, as well as bringing the Student back into a classroom. While Ms. [REDACTED] did not testify specifically about the plan and a final written plan was not

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<sup>19</sup> The Student was consulting with [REDACTED] at that time. This group was out of New York. It was unclear whether anyone from [REDACTED] had met with the Student in person, and how often the Student had consulted with anyone from [REDACTED]

<sup>20</sup> A key worker is designed as an individual who provides transition services, such as providing a voice for the Student if the Student is uncomfortable speaking on her own.

included in evidence submitted during the hearing, an October 23, 2019 email from [REDACTED] [REDACTED] from the outside provider summarized the discussion with Ms. [REDACTED] and what features a plan might include. (See HCPS Ex. 38, p. 38.31). Further, emails that were admitted into evidence indicate that [REDACTED] created a plan that was emailed to the family in December 2019 and was intended to go into effect on January 2, 2020 (after winter break). (See HCPS Ex. 38, pp. 38.74-38.77). However, Ms. [REDACTED] testified that the Parents never responded to this plan or provided any feedback. Ms. [REDACTED] testified that this plan was developed between the school, and the outside providers, and was designed to give the Student some choices. The plan was not implemented for the Student.

The Student has not been with other Students since September 23, 2019, except for a class bowling trip in November 2019. At the class bowling trip, the Student did not ride the bus with the other students. She came to the trip with her father and left a little before the other students left on the bus. Ms. [REDACTED] did not see the Student bowl or interact with any peers, but she also was not watching the Student during the whole event.

Prior to Christmas break, the Student was present at the school for up to a four-hour period each day. When she is present, the Student sits in a conference room independently doing her work, which is left for her by her teachers. Various staff members check in on the Student while she is present, but the Student is not receiving instruction from her teachers in the conference room.

Ms. [REDACTED] testified that during the December 3, 2019 CEPT meeting, representatives from various schools available in HCPS, including the Regional Program for Students with [REDACTED] (Regional Program),<sup>21</sup> and a

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<sup>21</sup> This program is located at [REDACTED] no explanation of these initials was provided.

public separate day school program<sup>22</sup> came to discuss what services could be provided to the Student. These discussions included explanations of the various placements available in HCPS and whether those placements would be appropriate for the Student. The CEPT did not believe that the Regional Program would be appropriate because it would not provide the ongoing therapeutic supports woven throughout the day required by the Student to allow her to access her education. The CEPT opinion is that ██████ would be the best placement for the Student.

██████ works with students that have more of the internalizing disorders, similar to the Student's profile, and can provide support that ██████ is unable to offer. The IEP prepared during the December 3, 2019 meeting included the following goals:

- Social/Emotional – [the Student] will identify the characteristics and impact of her ██████ and anxiety and will apply coping and self-management strategies in response to her anxiety in order to improve her attendance and advocate for her needs.
- [The Student] will use language to communicate feelings, information, needs and attitudes in the interpersonal activities of daily living.
- After an absence and with adult support, [the Student] will review feedback given from teachers and develop a timeline for completing assignments 80% of the time when she is present in school.

(HCPS Ex. 22, pp. 22.32-22.34). Ms. ██████ testified that there has been no progress with the first goal of the Student identifying the characteristics and impact of her ██████ and anxiety. The Student cannot identify her anxiety. The Student has a difficult time articulating her feelings, as well as identifying potential triggers to her anxiety. When asked specifically about her level of anxiety after an extended absence, the Student rates herself as a 2 or 3 on the Likert scale (1 = no anxiety; 5 = significant anxiety), but she is still unable to go to class.

The December 3, 2019 IEP proposed psychological services two times a week for thirty minutes each session. The December 3, 2019 IEP proposed special education services be increased from 18 hours to specially designed instruction for the entire school day while

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<sup>22</sup> This is ██████

attending [REDACTED] The Parents did not object to the goals and objectives in the December 3, 2019 IEP but did object to the placement at [REDACTED]

Another IEP team meeting was held on January 9, 2020. Ms. [REDACTED] testified that she had continued placement concerns and reiterated the difficulties in meeting the Student's needs at [REDACTED] During this meeting, the Parents requested psychological services be removed and/or that all psychological goals and objectives be removed or modified. The Mother testified that she wants all of the Student's psychological services to be provided by a private psychologist, Dr. [REDACTED] Ph.D.<sup>23</sup> instead of psychological services at the school. The psychological services at the school require the Student to be pulled out of class and miss further class time. The IEP team found that there was no data to support a change in the goals or objectives.

The Student's father testified that the family has struggled with the Student's conditions. During his testimony, he acknowledged how difficult the recent years have been and how much he appreciated the efforts the [REDACTED] team made throughout the Student's time there. [REDACTED] [REDACTED] is a rare condition and finding a medical provider who can assist the Student has been a difficult process for the family. Within the last few months, the Student began to see Dr. [REDACTED] Prior to seeing Dr. [REDACTED] the Student had been on a wait list for a year. At the time of the hearing, the Father testified that the Student had seen Dr. [REDACTED] once in person and had a few phone sessions. The Mother testified that the Student has only seen Dr. [REDACTED] two times since December 2019, and at the time of the hearing, there were no further appointments scheduled.

During the January 9, 2020 team meeting, Ms. [REDACTED] requested permission to contact Dr. [REDACTED] but the parents denied that request. At some point before the hearing, the Parents signed a release to allow Ms. [REDACTED] to contact Dr. [REDACTED] Approximately two weeks prior to

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<sup>23</sup> Dr. [REDACTED] is a psychologist at [REDACTED] LLC. She did not testify or provide any report for the hearing.

the hearing, there was a conference call with Dr. [REDACTED] the Parents, and Ms. [REDACTED]. The week before the hearing Ms. [REDACTED] talked to Dr. [REDACTED] again. Ms. [REDACTED] testified that Dr. [REDACTED] provided consultative services to the Student, but she has never evaluated or provided therapy to the Student in person and there were no follow up appointments scheduled. Ms. [REDACTED] opined that it is surprising that the Student is not getting intensive support outside of school considering that she had not attended a full day of classes since the second day of school. As Dr. [REDACTED] services are not part of the IEP, and are private services obtained by the family, the disparities in the testimony regarding how many appointments occurred, and whether they were face to face or via phone or skype are of little weight in my decision.

At some point after Christmas break, but before the hearing date, the Student had another illness, and was no longer attending school for a period. In the week before the hearing, the Student was attending school for only one to one and a half hours per day. The Student's 2<sup>nd</sup> quarter grades for the 2019-2020 school year are an incomplete in Art, a B in Geography, and E's in Algebra, French, ELA, I and I Reading,<sup>24</sup> and Science. Ms. [REDACTED] stated the Student is failing everything because she is not able to complete the work. Ms. [REDACTED] stated the Student is not making progress because she is not in the classroom receiving instruction.

Both Parents testified about various social interactions outside of the school setting. For example, the family has joined a group of families with [REDACTED] and the Parents discussed the Student's interactions in these groups. The Parents also discussed the Student's ability to order at restaurants or speak to family and friends at dinner parties. While these interactions are enlightening as to the Student's [REDACTED] and anxiety, these interactions

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<sup>24</sup> I and I Reading was the name of the class listed on the Student's report card. I and I Reading was not defined in the exhibit or through testimony.

are not relevant to the issues in this case regarding whether placement at ██████ provides a FAPE to the Student.

██████ *and Limitations With* ██████

████████████████████ is the Clinical Coordinator and Team Leader at ██████. He has worked at that program since 1997. He was accepted as an expert in psychology at the hearing.

Mr. ██████ described ██████ a program with sixty-two children from sixth to twelfth grade. Approximately eleven or twelve students are in the middle school program and the remainder are in the high school program. The classes are small<sup>25</sup> (1 adult to every 3 children) and are taught by special educators. There are therapeutic supports available at ██████ that are not available at ██████. The therapeutic supports assume that there is a driving force behind behavior that is more important than the behavior itself, meaning the program is trying to determine why is a student acting in a certain way and address the reason for the behavior. At ██████ there is a sensory room, behavioral intervention space<sup>26</sup> and mental health technicians for immediate response to a student who is in crisis or unable to participate in education. A mental health technician, also called a behavioral support interventionist, is a trained individual that goes into a classroom to support a student or brings a student out of the classroom to provide supports to enable the student to return to instruction as soon as possible. These workers are trained with dealing with students in crisis, determining what a student needs during that time, meeting the student's needs when possible and bringing in other professionals when needed. The staff has five therapists, three social workers, a school psychologist and a licensed psychologist. Approximately 80% of the students in the ████████████████████ have an anxiety disorder, and

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<sup>25</sup> Class sizes are approximately four to six students.

<sup>26</sup> Behavioral intervention space was described as several separate rooms that can be used for individual students when they are in a crisis. The spaces can vary. One was described as having a tent for a student to go inside and shut out the world around them until they are ready to emerge. The rooms can be used for students to listen to a song, receive therapy, or otherwise find ways to calm themselves before returning to a class.

approximately 50% had significant school refusal concerns. [REDACTED] has had students with [REDACTED] and Mr. [REDACTED] testified that the staff have significant experience in dealing with a variety of emotional disabilities. At [REDACTED] the curriculum can be presented and taught differently because of the small class size. More time can be spent addressing each child's individual needs, including repeating material that a student may have missed during a period of absences, providing additional breaks, and allowing students to have their own highly individualized plan based on their own needs. No one at [REDACTED] appears different because every student is on their own individualized plan.

According to Mr. [REDACTED] [REDACTED] is appropriate for the Student because the child is not able to access instruction at [REDACTED]. He testified that [REDACTED] had other students with profiles similar to the Student and has had success with those students. Mr. [REDACTED] believes that all the Student's IEP goals and services can be provided at [REDACTED]. He believes that eventually the Student would be able to transition back to a comprehensive school but he stressed that strategies need to be coordinated with the family, the school and outside providers.

Both Parents testified that one of their major concerns is that a drastic change, such as changing the Student's placement, could cause the Student to become more self-conscious and to regress instead of progress. There have been times when the family has had extreme difficulty getting the Student to go to school, or even getting her out of the car after arriving at the school parking lot. The Parents believe that if the Student's placement is changed, then any progress that has occurred since September 2019 will be lost. Further, the Father does not agree with switching the Student at this point in the school year when she will have to transition to high school in the Fall of 2020. While the Father testified that the Student's pediatrician and Dr. [REDACTED] did not agree with a change of placement to [REDACTED] for the Student, neither Dr. [REDACTED] nor the pediatrician testified at the hearing or provided any report with their opinions.

When asked specifically about the progress that the Parents contend was reached during the 2019-2020 school year, they testified that early in the school year the Student had refused to attend ██████ at all, but then she was able to attend one hour to four hours a day. However, on cross examination, the Parents conceded that although the Student attended ██████ for four hours a day at the end of 2019, after she was ill in early 2020, she regressed, and at the time of the hearing, the Student was only at ██████ from one to one-and-one half hours a day. The Mother testified that the Student has not really been in class since the first month of the school year. Further, even when the Student is at the ██████ she has problems with her ██████. For example, the Student had an assignment that referred to a page in a book, which the Student did not have, but the Student would not ask anyone at ██████ for the book. The Mother also contends it is progress for the Student to come to ██████ at different times of the day than the Student normally attends. In the examples given by the Mother, the Student had to go to the school at a different time to take a test.

According to both Ms. ██████ and Ms. ██████ the Student is not going into classes currently. The Student is coming to the main office when she is at ██████ and spends approximately 90% of her time in the main office conference room or the student service conference room. Ms. ██████ testified that currently the Student is not getting an education as she is not receiving any classroom instruction. On cross examination, Ms. ██████ acknowledged that the Student voluntarily comes into the building. The Parents' questioning required Ms. ██████ to acknowledge that the Student stays without restraints, but Ms. ██████ noted on redirect that the Student knows when she walks into ██████ exactly how long she will stay for that day, which is not a full day and is not in classes with peers. Further, no one is alleging that the Student could be physically restrained to keep her at ██████. The Student is uncomfortable with even one other student being present in the room.



Both Mr. [REDACTED] and Ms. [REDACTED] discussed whether the Student has made progress during the 2019-2020 school year. Mr. [REDACTED] specifically testified that while the Parents feel that the Student is motivated, the Student has not made any improvements from where she was in December 2019, and there needs to be a plan to get from where she is now, to where she wants to be. Mr. [REDACTED] testified that motivation is generally not enough to overcome anxiety, there needs to be therapy and strategies for overcoming the resistance. Mr. [REDACTED] acknowledged that progress is unique to each student and has several factors so he could not state a specific progress goal for this Student. However, he testified unequivocally, if it takes a whole year to get the Student to even enter the classroom, then that is not progress. Similarly, Ms. [REDACTED] testified that the Student merely being present in the building for short periods does not show a decrease in anxiety. Ms. [REDACTED] testified that there is no set time frame for the Student to be required to return to the classroom, but there does not seem to be any progress to reaching that goal. In Ms. [REDACTED] opinion, the Student needs therapeutic support at least daily. This support should include creating coping strategies and dealing with anxiety, as well as identifying triggers for the anxiety. Adding a support staff member to sit with the Student throughout the school day would not implement the IEP as it would not address the social-emotional goals for the Student's IEP. Ms. [REDACTED] believes the Student would do better in a smaller and less stimulating environment, such as [REDACTED]. Ms. [REDACTED] testified that there is not enough flexibility available at [REDACTED] to meet the needs of the Student.

Both Mr. [REDACTED] and Ms. [REDACTED] testified specifically about what services can be offered at [REDACTED] that may not be available at [REDACTED]. Mr. [REDACTED] was asked specifically what would be done at [REDACTED] to get the Student to come into the school building, and he responded that the same techniques that would be used by the school psychologist at [REDACTED] would be used

at the ██████████ to get a student to come from the parking lot into the building.<sup>27</sup> However, entering the building is not the point; the intensive, therapeutic services available throughout the day at ██████████ would result in the Student eventually having less anxiety about entering the building because the program is completely different from what she has experienced at ██████████. Both Mr. ██████████ and Ms. ██████████ testified that the ██████████ provides more intensive therapeutic assistance throughout the school day that is not available at ██████████. ██████████ provides social workers, therapists, mental health technicians and a psychologist, as well as smaller classes, individual spaces, and more individualization in the education itself. This cannot be offered at ██████████ which is a larger and comprehensive school. In Ms. ██████████ opinion, ██████████ has done everything it can do to meet the Student's needs, but the Student's needs are not being met. Further, Ms. ██████████ does not see how the Student would transition to a general education high school in the fall. A high school would have more people than ██████████ and require more adaptability by the Student for changes in schedule and plans.

When the Mother testified initially, she indicated that the Student had two close friends that she would sit with at lunch and have playdates with outside of school. However, on cross examination, the Mother conceded that the Student has not seen either of those students since October 2019. In addition, in September or October 2019, the Student felt these friends were badgering her through text message questions about why she was not at school. The Student was included in a group chat but did not add any information to that discussion.<sup>28</sup> The Mother contends that it would be better for the Student to stay at ██████████ and be surrounded by the same peers who would later attend ██████████ High School (the comprehensive high school).

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<sup>27</sup> I note that the testimony is that the Parents did not call the school psychologist at ██████████ to assist them in getting the Student from the parking lot into the school, despite Ms. ██████████ request that they do so. Therefore, the Parents have never received this service at the current placement either.

<sup>28</sup> The exact date and context of that group chat was not provided.

Both Ms. [REDACTED] and Ms. [REDACTED] pointed out that the Student is not currently surrounded by her peers as she is not in the classroom with her peers and she is not attending lunch with her peers. Ms. [REDACTED] testified that the Student is not preparing herself for life by sitting alone in a conference room. The goal for this Student should be to interact with peers and others, to get back into the classroom, and to be able to accurately rate her level of anxiety.

Similarly, the Father is concerned that if the Student is at the [REDACTED] she will have less of a chance to have real life experiences, as she will not be around non-disabled peers. In the December 3, 2019 IEP, the Student would be allowed to participate in after school and extracurricular activities at [REDACTED] which could permit her some experiences with non-disabled peers if she chooses to participate in those activities. Further, while each individual student at [REDACTED] has their own independent goals, the overarching goal of [REDACTED] is to provide students with the appropriate coping techniques to transition back to a comprehensive school at some point in the future.

The Parents support a collaborative approach with the Student.<sup>29</sup> This approach is different from the plan suggested by Ms. [REDACTED] in December 2019. The collaborative approach supported by both parents requires the Student's agreement with the plan, and repeated check-ins with the Student to see if she still agrees with the plan. If the Student does not agree with the plan, then the plan is changed. For example, the Student does not want to attend [REDACTED] and therefore, she will not attend the placement.

The approach supported by both Ms. [REDACTED] and Mr. [REDACTED] is different in that the Student is not the sole arbiter of the plan. Mr. [REDACTED] testified about how to achieve progress with a student like this Student and indicated that there is some bargaining with any similar

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<sup>29</sup> No written collaborative plan was provided during the hearing. Further, no IEP contains a collaborative plan as described by the Parents. Based on the testimony, it appears that this plan was the oral agreements between the Parents and the Student as to what would be expected on any given day, including how long the Student would stay at [REDACTED] and whether the Student would need to go to a classroom.

student to achieve progress in a graduated fashion. [REDACTED] meets both the family and the student wherever they are. However, the expectations will continue to grow and develop, and the student cannot be the sole arbiter on what is sufficient. The goal is to teach any student coping strategies and then get them back into a comprehensive school. Every year approximately 10-15% of the students at the [REDACTED] transition back to a comprehensive school.<sup>30</sup>

The Father sincerely cares and is concerned about his daughter. He also appreciates the efforts HCPS has made for the Student. He believes that his daughter is progressing, with occasional setbacks, but changing her placement could derail her progress. I find him credible in terms of his personal observations of his daughter and the family's experience, but as he is not an expert in psychology or education, I give his opinions of the Student's progress less weight than those of Ms. [REDACTED] Ms. [REDACTED] and Mr. [REDACTED]

The Mother argued that [REDACTED] does provide a FAPE to her daughter because the Student progressed from not going inside the school to attending school for four hours with school personnel assistance. However, the Mother also testified that [REDACTED] caused the regression by asking the Student if she wanted to go into class, which according to the Mother was not part of the collaborative plan. Further, the Mother testified that she does not think [REDACTED] is trained in [REDACTED] and that they do not fully understand the condition. Additionally, the Mother wants to remove all psychological services and goals from the Student's IEP to have all psychological services provided by a private psychologist, Dr. [REDACTED]. This undercuts her argument that [REDACTED] can provide FAPE when she is asserting that [REDACTED] is both causing regression and not properly trained in her daughter's condition.

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<sup>30</sup> There was some confusion regarding this testimony at the hearing. Mr. [REDACTED] could not state a percent for how many students that have attended [REDACTED] eventually transition to a comprehensive school. However, this percent is how many students on an annual basis can transition to a comprehensive school.

The Mother was clearly invested in her daughter's well-being and education and had very strong opinions about what was best for her daughter. However, during her testimony, there were several times where the Mother overstated or exaggerated topics, which made her testimony less credible than the testimony of others. For example, the Mother testified extensively about the friends her daughter has at [REDACTED] but then on cross examination admitted that her daughter has not seen those friends, even at lunch time or play date outside of school, for several months. The Mother repeatedly testified that her daughter was attending [REDACTED] for four hours a day. However, during cross examination, she admitted that the word "attending" did not include going into a classroom for those hours, but was instead sitting in a conference room on the school premises and that at the time of the hearing the Student was only at [REDACTED] for one to one and a half hours a day. This made her testimony less credible as there is a likelihood that it was designed to make things appear better than they are. Further, as the Mother is not an expert in psychology or education, I give her opinions regarding whether there has been progress less weight than the opinions of Ms. [REDACTED] and Mr. [REDACTED]

Ms. [REDACTED] displayed a concern for the Student. During the hearing, it was apparent that Ms. [REDACTED] was frustrated that the Student is not improving and that the Student is not receiving more intensive services for her social anxiety conditions. Ms. [REDACTED] appeared genuinely alarmed that the Student is not having regular outpatient appointments with a psychologist when the Student had missed most of the school year. Further, Ms. [REDACTED] was adamant that the Student sitting in a conference room is not progress at this point, because the Student has not been able to transition out of the conference room into any classroom for most of the school year. Based on her years of experience, as well as her training, I give her opinions regarding the Student's progress, or lack thereof, significant weight.

Mr. [REDACTED] has years of experience in school psychology and specific experience in a school that regularly addresses students with social anxiety. Mr. [REDACTED] testimony persuasively explained why the Student is not making progress at [REDACTED]. Mr. [REDACTED] provided extensive testimony regarding the services that [REDACTED] can provide to this Student to meet her needs as stated in her IEP. While Mr. [REDACTED] could have a bias in the sense that [REDACTED] is under his direction, Mr. [REDACTED] testimony was straightforward and supported by facts regarding the Student's current school year and the specifics of [REDACTED].

The evidence clearly shows that the Student has severe social and emotional issues, which are attributable to her social anxiety and [REDACTED] diagnoses. The testimony and evidence presented shows that at her current placement at [REDACTED] the Student has not been in a classroom with her peers since September 23, 2019. The Student has been present at the school for varying periods of one hour a day to four hours a day for the majority of the 2019-2020 school year, but during those hours the Student is generally in a conference room away from any peers. As the Student is not in the classroom, she is missing instruction from her teachers, interactions with peers, and her grades have decreased dramatically from A's and B's in the 2017-2018 school year to almost all E's for the 2<sup>nd</sup> quarter in the 2019-2020 school year. Each HCPS expert concurred that the Student's IEP developed in December 2019 with [REDACTED] as the proposed placement was reasonably calculated to provide her with FAPE. The experts also agreed that although [REDACTED] is more restrictive than [REDACTED] the Student is not receiving any educational benefit at [REDACTED] because she has been unable to access the curriculum at [REDACTED] despite the supports and accommodations in her IEP.

The issue here is not the specific goals and objectives laid out in the IEP, but placement alone. The evidence is compelling that the Student has struggled both academically and emotionally during the second half of the 2018-2019 school year, and for the entire 2019-2020 school year.

As discussed above, HCPS is required to provide a continuum of alternative placements to meet the needs of children with disabilities. HCPS attempted to have the Student with non-disabled students at [REDACTED]. However, at this point, the Student is not being educated with any students (disabled or non-disabled). Indeed, the Student is not receiving instruction and her grades are reflecting her inability to access education at [REDACTED]. The Student was consistently receiving A's and B's and excelling academically despite her emotional disability until the second half of the 2018-2019 school year. As her attendance and participation in a classroom decreased, the Student's grades decreased as well.

Placement in a self-contained special education school is obviously more restrictive than the Student's previous placement, but the Student is not actually going into the regular classroom at this time and has not gone into a regular classroom since September 23, 2019. The Student is also not participating in lunch or other activities with non-disabled peers at [REDACTED] except for a single bowling trip, since September 2019. Under these circumstances, HCPS has reasonably concluded that placement at the [REDACTED] a self-contained special education school is the least restrictive environment in which to meet the Student's needs and provide her with a FAPE. The Student is still allowed to participate in after school and extracurricular activities at [REDACTED] with her non-disabled peers. I find the record amply demonstrates that the Student's 2019-2020 IEP from December 3, 2019, including placement at the [REDACTED] is reasonably calculated to provide the Student a FAPE.

The Parents have not met their burden to show that the Student could remain at [REDACTED] and receive a FAPE, as opposed to being placed at [REDACTED] where the Student would have more frequent and intensive social/emotional support that would allow her to access her education. The Parents insist that the Student is making progress, however, the evidence is overwhelming that the Student has not made appropriate progress from the second half of the 2018-2019 school year to

the present. At the time of the hearing, the Student had missed more than four months<sup>31</sup> of instruction and classroom time in the 2019-2020 school year and she is not regularly interacting with peers at ██████████ does not provide sufficient therapeutic services available throughout the day to address the Student's needs for her emotional disability. The evidence is clear that placement in a special education facility with therapeutic supports is the appropriate way to implement the Student's IEP in the least restrictive environment, which is consistent with her needs. Further, the 2019-2020 IEP from December 3, 2019 would allow the Student to participate in extracurricular activities at ██████████

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<sup>31</sup> The testimony was that the Student has not been in a classroom since September 23, 2019 and that her classroom attendance prior to that time was sporadic. Therefore, the Student has missed all of October, November, and December 2019 and January 2020, as well as parts of September 2019 and February 2020.



*Home and Hospital Services Could Not Implement the Student's IEP*

The Parents' testified that they believe the best approach is to keep the Student at [REDACTED] with the assistance of a Home and Hospital instructor. The Father testified that his intention would be to have a Home and Hospital instructor teach the Student for a few hours a day, with a plan to transition the Student back into the classroom with fading techniques.<sup>32</sup> The Mother testified that Home and Hospital would both help the Student catch back up with the school work, but also contended that a Home and Hospital instructor could possibly sit with the Student in the classroom when she returns.

Kathy Stump is the Instructional Facilitator for Nonpublic Services and Special Education Compliance for HCPS. She was accepted as an expert in special education administration. As there was extensive testimony by various witnesses about Home and Hospital services, Ms. Stump explained those services in depth to discuss their purpose and limitations. Based on her years of experience and knowledge of the regulations in this area of the law, there was no reason to doubt her explanation of Home and Hospital services.

Home and Hospital<sup>33</sup> is a service provided by the Maryland State Board of Education and implemented by the various local departments, such as HCPS, when a student is unable to attend school for a significant period due to physical or emotional conditions. Home and Hospital provides a tutor who assists the student in staying current with the content during a set period. Home and Hospital does not provide transition services to assist a student back into a classroom

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<sup>32</sup> Various individuals discussed "fading in" or transitioning during the hearing. While the definitions varied slightly, the substantive steps were similar. These terms reference a process of gradual transition to attempt to move a student from where they are to a classroom setting with or without assistance in the classroom. Some of the steps can include starting in an empty classroom with a trusted person (such as a parent or the school psychologist), introducing the regular teacher into the classroom, introducing another student (or a small group of students) and attending classes with the entire class. The process would be tailored for the individual student.

<sup>33</sup> This program is regulated under COMAR 13a.03.05.00 et seq. As the issue in this case is not whether the Student can obtain Home and Hospital services, I will not address the requirements of Home and Hospital services in this decision. The description of Home and Hospital services in this opinion is based on the testimony of Kathy Stump rather than quotes from the regulations, unless specifically cited.

after a period of absences. Home and Hospital services are not part of an IEP, and the providers of these services are not psychologists or special educators. Instead, this is a service that parents apply for, and if the student meets certain requirements and the application is completed correctly, then services are provided. Home and Hospital is not a special education placement and receiving Home and Hospital services does not change placement decisions.

While Home and Hospital services could assist the Student with completing some missed work, it would not address any of the concerns with getting the Student back in a classroom or the emotional and social issues that are described in the IEP. Both the Parents believed that Home and Hospital could provide transition services to get the Student back into the classroom, and possibly sit with the Student in the classroom upon her return. However, there are two problems with this theory. First, transition services, including sitting with the Student in a classroom are not the services provided by Home and Hospital services. Second, both Parents acknowledge that the Student does not like receiving attention because she is different. Therefore, the Student may refuse to have anyone sit with her in a classroom.

In Mr. ██████ opinion, Home and Hospital services would just further isolate the Student because this does not bring the child into a classroom. None of the HCPS experts recommend Home and Hospital services as an alternative to a placement at ██████ as Home and Hospital services would not address the social or emotional goals in the December 3, 2019 IEP and would not assist the Student in transitioning back into a classroom.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Student's IEP from December 3, 2019 for the 2019-2020 school year is reasonably calculated to provide the Student a free, appropriate public education in the least restrictive environment, which is the ██████ at the ██████ School. 20 U.S.C.A.

§§ 1400(d)(1)(A), 1412(a)(5); 34 C.F.R. §§ 300.114, 300.116; *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Endrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017).

### **ORDER**

I **ORDER** that the due process request filed by the Parents on December 11, 2019 is **DENIED** and **DISMISSED**.

March 3, 2020  
Date Decision Issued

Erin H. Cancienne  
Administrative Law Judge

EHC/cmjg  
#184551

### **REVIEW RIGHTS**

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision 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 appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

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

**Copies Mailed To:**

[REDACTED]  
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**STUDENT**

**v.**

**HOWARD COUNTY**

**PUBLIC SCHOOLS**

**BEFORE ERIN H. CANSIENNE,**

**AN ADMINISTRATIVE LAW JUDGE**

**OF THE MARYLAND OFFICE**

**OF ADMINISTRATIVE HEARINGS**

**OAH No.: MSDE-HOWD-OT-19-38700**

**FILE EXHIBIT LIST**

The Parents did not offer any exhibits into evidence.

I admitted the following exhibits on behalf of HCPS:

- HCPS Ex. 1 – IEP Team Meeting Report, dated October 25, 2016
- HCPS Ex. 2 – IEP Team Meeting Report, dated December 20, 2016
- HCPS Ex. 3 – Evaluation Report Specific Learning Disability (SLD) Supplement, dated December 20, 2016
- HCPS Ex. 4 – Evaluation Report Emotional Disability (ED) Supplement, dated December 20, 2016
- HCPS Ex. 5 – IEP Team Meeting Report, dated January 17, 2017
- HCPS Ex. 6 – IEP Team Meeting Report, dated June 6, 2017
- HCPS Ex. 7 – IEP Team Meeting Report, dated May 24, 2018
- HCPS Ex. 8 – IEP Team Meeting Report, dated May 10, 2019
- HCPS Ex. 9 – IEP Team Meeting Report, dated May 17, 2019
- HCPS Ex. 10 – IEP Team Meeting Report, dated June 7, 2019
- HCPS Ex. 11 – IEP Team Meeting Report, dated August 16, 2019
- HCPS Ex. 12 – IEP Team Meeting Report, dated September 16, 2019
- HCPS Ex. 13 – IEP Team Meeting Report, dated October 3, 2019
- HCPS Ex. 14 – IEP Team Meeting Report, dated October 24, 2019
- HCPS Ex. 15 – Evaluation Report SLD Supplement, dated October 24, 2019
- HCPS Ex. 16 – Evaluation Report ED Supplement, dated October 24, 2019
- HCPS Ex. 17 – IEP Team Meeting Report, dated December 3, 2019
- HCPS Ex. 18 – IEP Team Meeting Report, dated January 9, 2020
- HCPS Ex. 19 – IEP, dated January 17, 2017
- HCPS Ex. 20 – IEP, dated June 6, 2017
- HCPS Ex. 21 – IEP, dated May 10, 2019
- HCPS Ex. 22 – IEP, dated December 3, 2019
- HCPS Ex. 23 – Therapy Progress Log from May to June 2018
- HCPS Ex. 24 – Therapy Progress Log from September 2018 to May 2019
- HCPS Ex. 25 – Therapy Progress Log from September 2019 to October 2019
- HCPS Ex. 26 – Educational Assessment Report, dated November 16, 2016
- HCPS Ex. 27 – Educational Assessment Report, dated October 17, 2019
- HCPS Ex. 28 – Reevaluation Report, dated September 16, 2019
- HCPS Ex. 29 – Report of Psychological Assessment, dated June 16, 2015
- HCPS Ex. 30 – Report of Psychological Assessment, dated December 15, 2017

- HCPS Ex. 31 – Report of Psychological Evaluation, dated October 10, 2019
- HCPS Ex. 32 – Speech Language Screening, dated December 20, 2016
- HCPS Ex. 33 – Speech Language Assessment, dated July 14, 2019
- HCPS Ex. 34 – Reevaluation Report, date of meeting September 16, 2019
- HCPS Ex. 35 – Attendance Contract for 2019-2020, signed January 10, 2020
- HCPS Ex. 36 – Report Card for 2017-2018
- HCPS Ex. 37 – Report Card for 2018-2019
- HCPS Ex. 38 – Emails between the Parents and various school personnel, various dates from July 2019 through January 2020
- HCPS Ex. 39 – CV for Kathy Stump, Instructional Facilitator for Nonpublic Services and Special Education Compliance, undated
- HCPS Ex. 40 – CV for [REDACTED] Instructional Facilitator – Middle Schools, undated
- HCPS Ex. 41 – CV for [REDACTED] Principal, undated
- HCPS Ex. 42 – CV for [REDACTED] Special Education Team Leader, undated
- HCPS Ex. 43 – CV for [REDACTED] School Counselor, undated
- HCPS Ex. 44 – CV for [REDACTED] School Psychologist, undated
- HCPS Ex. 45 – CV for [REDACTED] Special Education Teacher, undated
- HCPS Ex. 46 – CV for [REDACTED] Pupil Personnel Worker, undated
- HCPS Ex. 47 – CV for [REDACTED] Clinical Coordinator/School Psychologist, undated