



(Parents collectively and Ms. ■ and Mr. ■ individually), for an independent educational evaluation (IEE) of the Student at public expense is not warranted.

The relevant procedural history of this dispute, prior to the May 20, 2022 hearing request, is as follows: On October 25, 2022, Ms. ■ consented to MCPS conducting a PA of the Student by a school psychologist to determine the Student's present level of academic achievement and developmental needs. The school psychologist analyzed the Student's recent educational assessments, conducted a formal classroom observation, interviewed the Student's teachers, reviewed Parents' observations and assessments, and conducted several comprehensive psychological assessments which resulted in a December 10, 2021 PA (Report). The Parents disagreed with the MCPS Report and requested an IEE at public expense.

On June 15, 2022, I conducted a Telephone Prehearing Conference (Conference). MCPS was represented by Stacy Reid Swain, Esquire. Mr. ■ represented the Student. I issued a Prehearing Conference Report and Scheduling Order on June 27, 2022. A hearing on the merits was scheduled for July 11 and 14, 2022 by agreement of the parties.

Federal regulations require that the due process hearing be held, and a decision issued, within forty-five days of certain triggering events described in the federal regulations. 34 Code of Federal Regulations (C.F.R.) §§ 300.510(b)-(c), 300.515(a) (2017).<sup>4</sup> OAH received the due process complaint on May 20, 2022. Neither party requested mediation, and a resolution session was not required because the school system filed the hearing request. *Id.* § 300.510(a); Code of Maryland Regulations (COMAR) 13A.05.01.15C(11)(d)(iii). Therefore, the triggering event for the forty-five-day time period in this case was the filing of the due process request. 34 C.F.R. §§ 300.510(b)-(c), 300.515(a). Forty-five days from May 20, 2022, when MCPS filed its due

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<sup>4</sup> All references to Title 34 of the Code of Federal Regulations hereinafter cite the 2021 volume.

process hearing request, was July 1, 2022.<sup>5</sup> During the Conference the parties discussed their availability as well as the availability of their witnesses and when considering their calendars as well as my availability the hearing was scheduled for the earliest possible dates. The parties requested an extension of the decision deadline due to their scheduling conflicts and prior commitments which resulted in the hearing being scheduled for July 11 and 14, 2022. The parties acknowledged that the hearing was being held after the decision due date, therefore they jointly requested that I issue a decision within thirty days after the conclusion of the hearing, and I agreed to do so. Therefore, in accordance with 34 C.F.R. § 300.515(c), my decision would be due thirty days after the close of the record.

I held the hearing as scheduled on July 11, 2022<sup>6</sup>, via the Webex online platform. COMAR 28.02.01.20B. The Parents represented the Student and John J. Delaney, Esquire, represented the MCPS.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) 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 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

The issues are as follows:

- 1) Whether the PA of the Student conducted by MCPS staff in December 2021, which resulted in the Report, was appropriate; and, if not,
- 2) Whether MCPS should be required to pay for an IEE of the Student at public expense.

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<sup>5</sup> The 45<sup>th</sup> day was Monday, July 4<sup>th</sup>, which is a holiday thereby making the due date the preceding Friday, July 1<sup>st</sup>.

<sup>6</sup> The parties concluded their cases on July 11<sup>th</sup> so the scheduled second day of the hearing, July 14<sup>th</sup>, was not necessary.

## SUMMARY OF THE EVIDENCE

### Exhibits

MCPS offered the following exhibits which I admitted into evidence:<sup>7</sup>

- MCPS #1 [REDACTED] Pediatrics Developmental and Behavioral Evaluation of the Student, January 20, 2020
- MCPS #7 Student's Educational Status Report, April 6, 2021
- MCPS #8 Student's Speech and Language Services Report, April 7, 2021
- MCPS #10 [REDACTED] Cognitive Assessment Report for the Student, May 25, 2021
- MCPS #11 Student's Occupational Therapy Evaluation, July 8, 2021
- MCPS #16 Student's PA Report, December 10, 2021
- MCPS #21 Student's Individualized Education Program (IEP), May 19, 2021
- MCPS #22 Student's IEP, October 6, 2021
- MCPS #41 Student's Section 504 Accommodation Plan, January 12, 2021
- MCPS #46 Resume of [REDACTED], MCPS School Psychologist
- MCPS #47 Resume of [REDACTED], MCPS Coordinator, Division of Psychological Services

The Parents offered the following exhibits, which I admitted into evidence:

- Resp. #1 Functional Behavioral Assessment (FBA), November 17, 2021, with handwritten notes inserted by Ms. [REDACTED].
- Resp. #2 FBA, December 15, 2021<sup>8</sup>
- Resp. #3 E-mail exchange between Ms. [REDACTED] and MCPS Administrators, April 21, 2022

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<sup>7</sup> MCPS submitted a binder with tabbed exhibits numbered 1-47. Exhibit numbers 2-6, 9, 12-15, 17-20, 23-40, and 42-45 were not offered by MCPS into evidence.

<sup>8</sup> This exhibit is MCPS Ex. 17 from the MCPS Exhibit Binder.

## Testimony

MCPS presented the following witnesses:

1. [REDACTED], School Psychologist, MCPS (accepted as an expert in school psychology); and
2. [REDACTED], Coordinator for Psychological Services, MCPS, (accepted as an expert in school psychology)

The Parents testified and did not present any witnesses.

## **FINDINGS OF FACT**

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

### Background

1. The Student was born in [REDACTED] 2014 (Testimony of Mr. [REDACTED]).
2. During the 2018-2019 school year, the Student resided in [REDACTED] and attended kindergarten.<sup>9</sup> (Testimony of Mr. [REDACTED]).
3. During the 2019-2020 school year, the Student resided in [REDACTED] and attended first grade at the [REDACTED] Elementary School. (Testimony of Mr. [REDACTED]).
4. The Student started the 2020-2021 school year at the [REDACTED] Elementary School in [REDACTED] as a second grade student. (Testimony of Mr. [REDACTED]).
5. On January 20, 2020, the [REDACTED] Pediatrics Cognitive and Behavioral Evaluation ([REDACTED] Report) of the Student was issued. The report diagnosed the Student with Autism Spectrum Disorder (ASD), Anxiety, Sensory Integration Disorder, Developmental Coordination Disorder and features of Attention Deficit Hyperactive Disorder (ADHD). The report also found that the Student presents with impairments in communication, social skills and cognitive flexibility. (MCPS Ex. 1).

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<sup>9</sup> Mr. [REDACTED] explained that children begin kindergarten a year earlier in [REDACTED] than they do in the United States.

6. A Section 504 Accommodation Plan (504) was developed for the Student on January 11, 2021, by the [REDACTED] Public School system in [REDACTED]. The 504 indicated the delivery of social skills instruction and speech and language services. It also provided behavioral interventions and support to foster collaboration and communication and provide nonverbal cues for behavior as needed. (MCPS Ex. 41).
7. On January 15, 2021, the Student moved to Montgomery County, Maryland, and enrolled at [REDACTED] Elementary School ([REDACTED]) for the remainder of his second grade academic year. (Testimony of Mr. [REDACTED]).
8. The Student was placed in a general education setting during his first and second grade years in [REDACTED] and at [REDACTED] (Resp. Ex. #3).
9. A May 2021 IEP qualified the Student for special education under the IDEA with a coding of Autism resulting in written language, speech and language, self-management/advocacy, and social communication impairments. The IEP recommended placement in a [REDACTED] / [REDACTED] program ([REDACTED] / [REDACTED]). (MCPS Ex. 21).
10. On May 25, 2021, the Student received a private psychological/cognitive assessment from [REDACTED], PhD, at the [REDACTED] ([REDACTED] Study). Dr. [REDACTED] utilized the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) and the Child/Adolescent Psychiatry Screen (CAPS). In the WISC-V the Student scored in the extremely high to high average range when compared to other children his age. The Student's full scale IQ score is 131 which places him the 98<sup>th</sup> percentile. The [REDACTED] Study concluded that the Student's area of dysfunction is ADHD and associated oppositional behavior. (MCPS Ex. 10).

11. The Student enrolled at [REDACTED] Elementary School ([REDACTED]) for the 2021-2022 academic year for third grade. On or about May 5, 2022, the Student re-enrolled at [REDACTED] for the remainder of the 2021-2022 academic year. The Student is excelling academically getting all “A”s on his report card for third grade. (Testimony of Mr. [REDACTED]).
12. The Student was placed in the [REDACTED]/[REDACTED] program at [REDACTED]. In accordance with the Student’s May 2021 IEP, the Student was placed in a [REDACTED]/[REDACTED] setting for all of his classes with the exception of participating in the general education setting for nine hours and fifty-five minutes per week for specials, lunch, recess and extra-curricular activities. The IEP determined that the Student requires enriched and social-emotional supports outside of the general education curriculum. (MCPS Ex. 21).
13. At [REDACTED], school staff noted that the Student was struggling with peer interactions, and following instructions from adults which heavily impacted his social/emotional/behavioral skills. (Testimony of Ms. [REDACTED]).
14. In the fall of 2021, Ms [REDACTED] expressed concerns about how the Student was doing in his self-contained [REDACTED]/[REDACTED] classroom. Ms. [REDACTED] performed a classroom observation of the Student on October 4, 2021 in his [REDACTED]/[REDACTED] English/Language Arts class and observed that the Student did well writing sentences but had difficulties with spatial awareness. (Testimony of Ms. [REDACTED] and MCPS Ex. 12).
15. In the fall of 2021, Ms [REDACTED] requested the school staff to conduct an assessment of the Student to determine if he met the criteria for ASD. On October 6, 2021, an IEP team convened and recommended an Emotional/Social/Behavioral Development Assessment of the Student to gain further clarity on whether the Student meets the criteria for ADHD, ASD, and/or Anxiety. On October 25, 2021, Ms. [REDACTED] signed the consent form enabling

MCPS to conduct a psychological assessment of the Student. (Testimony of Ms. [REDACTED] and MCPS Ex. 13).

16. On October 6, 2021, the IEP team requested an FBA of the Student, which was completed on November 17, 2021. The FBA found that the Student engages in physically aggressive behavior when there is less adult supervision, such as at lunch and recess. These behaviors include hitting, kicking, pushing, and throwing objects towards people in general and targeting one student in particular. The FBA found that a Behavioral Intervention Plan (BIP) is needed for the Student. (Resp. Ex. 1).

17. A second FBA was requested on November 17, 2021 by the IEP team, and was completed for the Student on December 15, 2021. This FBA similarly found that the Student engages in physically aggressive behavior including hitting, kicking, pushing and throwing objects towards peers and sometimes school staff. The December FBA does not indicate that the Student's physically aggressive behaviors were targeted at one particular student. The December FBA also recommended a BIP for the Student. (Resp. Ex. 2).

18. Ms. [REDACTED], the School Psychologist, is responsible for providing psychological services, consulting with teachers and staff, conducting PAs and FBAs and creating reports. She has been employed by MCPS for five years and was previously employed for three years with the [REDACTED] Public Schools ([REDACTED] PS). She received a Bachelor of Arts degree (B.A.) in Psychology from [REDACTED] University; Master of Science in School Psychology from the [REDACTED]; and a Certificate of Advanced Study in School Psychology from the [REDACTED]. (Testimony of Ms. [REDACTED] and MCPS Ex. 46).



19. Ms. [REDACTED] participates in students' IEP meetings and participated in the Student's October 2021 IEP meeting. (Testimony of Ms. [REDACTED]).
20. After Ms. [REDACTED] conducts a PA and writes a report, she conveys those results to IEP teams. (Testimony of Ms. [REDACTED]).
21. Ms. [REDACTED] has known the Student for the past school year since he was enrolled at [REDACTED]. She enters the Student's [REDACTED] / [REDACTED] class at [REDACTED] frequently and is a familiar face to the Student. She also observes the Student walking in the hallways at [REDACTED] as part of his accommodation to allow him to increase his movement by walking the hallways with a para-educator. (Testimony of Ms. [REDACTED]).
22. After Ms. [REDACTED] initiated a request for a PA of the Student and consent from the Parents was obtained, Ms. [REDACTED] conducted a PA of the Student which consisted of an evaluation period of October 27, 2021 through December 10, 2021. (Testimony of Ms. [REDACTED] and MCPS Ex. 16).
23. As part of her information-gathering to administer the PA, Ms. [REDACTED] employed numerous data collection methods. She performed two classroom observations<sup>10</sup> of the Student. She reviewed the Student's current and prior IEPs and his prior Section 504 plan from [REDACTED]. Ms. [REDACTED] reviewed the prior Speech and Language and Occupational Therapy evaluations of the Student and an April 2021 Educational Status Report. She also reviewed the [REDACTED] and [REDACTED] reports and interviewed the Student's special education teachers. Ms. [REDACTED] further reviewed written responses, as part of the Conners-3 diagnostic tool, provided by the Student's current teachers at [REDACTED] and his mother regarding his behaviors at school and home (Testimony of Ms. [REDACTED] and MCPS Ex. 16).

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<sup>10</sup> One observation was performed informally prior to consent for the PA.

24. Ms. [REDACTED] conducted the following standardized evaluative tests as part of her PA:

- Conners Comprehensive Behavior Rating Scales (CCBRS) – a broad tool used to obtain observations from the Parents and the Student’s teachers to hone in on specific characteristics of ASD.
- Conners-3 – a series of questions answered by the Student’s parents and teachers to obtain information about the Student’s behavior at home and at school and is specifically designed to assess behaviors associated with ADHD.
- Autism Spectrum Rating Scale (ASRS) – a series of questions completed by the Student’s parents and teachers relating to the Student’s social, communication, and self-regulation behaviors.
- Multidimensional Anxiety Scale for Children 2<sup>nd</sup> Edition-Parent (MASC 2-P – an assessment of the Student’s anxiety based on behaviors observed by the Parents.
- Emotional Disturbance Decision Tree (EDDT) – An assessment completed by the Student’s teachers to determine if he meets the criteria for an Emotional Disability.
- Children’s Depression Inventory, Second Edition (CDI-2) – an assessment completed by the Student’s parents and his teachers to assess any symptoms of depression.

(Testimony of Ms. [REDACTED] and MCPS Ex. 16).

25. The non-standardized assessments and standardized tests administered by Ms. [REDACTED] were proper and are accepted in the field of psychiatry. The testing methods were interpreted in accordance with testing protocols and Ms. [REDACTED]’s conclusions were appropriate and in accordance with MCPS protocols. Based on the data collected by Ms. [REDACTED] for the PA, the results found by Ms. [REDACTED] were consistent with that data. The assessments performed for the PA were proper measurements of the Student. (Testimony of Ms. [REDACTED] and Ms. [REDACTED]).

26. The Parents disagreed with the PA and in April 2022, requested a PA IEE for the Student. (Testimony of Parents and Resp. Ex. 3).

## DISCUSSION

When a local education agency performs an evaluation of a student, the student's parents have the right to seek an IEE as a procedural safeguard. 20 U.S.C.A. § 1415(b)(1) (2017). However, the right to obtain an IEE at public expense is qualified. The federal regulations provide the following, in pertinent part:

*(b) Parent right to evaluation at public expense.*

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

34 C.F.R. § 300.502(b)(1)-(3).

The appropriateness of an evaluation, however, is not determined by the progress, or lack thereof, that a student experiences after being evaluated, or whether all parties agree with the findings and recommendations of an evaluation. The focus of the determination of the appropriateness of a student assessment is a review of the procedures, methodology, and assessment tools that are employed, and the qualifications of the evaluator, in accordance with the requirements of the IDEA and its accompanying regulations. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233 (3rd. Cir. 2012). However, “while an evaluation should be tailored to the specific problems a potentially disabled student is having, it need not be designed to identify and diagnose every possible [educational] disability.” *Id.* at 250.

The federal regulations provide guidance in determining whether an assessment is appropriate:

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must –

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child . . . ;

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) *Other evaluation procedures.* Each public agency must ensure that –

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status,

general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

34 C.F.R. § 300.304(b)-(c). Similarly, COMAR 13A.05.01.05C(1) provides:

C. Assessment Materials.

(1) A public agency shall ensure that testing and assessment materials and procedures used to assess a student's need for special education and related services are:

(a) Technically sound; and

(b) Provided and administered in the student's native language or other mode of communication, in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.

The Court in *E.P. ex rel. J.P. v. Howard County Public School System* adopted the language of previous courts and stated:

In challenging an evaluation, courts have found that a parent "cannot simply argue that the evaluation was inappropriate because they disagree with its findings." In [*West Chester Area School District v. G.D.*], the court explained: "Because IDEA evaluations depend on the exercise of professional judgment, they are entitled to a reasonable degree of deference. Accordingly, when plaintiffs challenge a decision reached by an educational professional, they must show more than simple disagreement with the conclusion; they must show the professional judgment rendered is actually wrong, and not just in doubt. For example, a plaintiff must show evidence of a flawed evaluation process, by failing to follow regulatory requirements, or if the district failed to investigate an area of suspected disability with little or no explanation why."

No. ELH-15-3725, 2017 WL 3608180, at \*28 (D. Md. Aug. 21, 2017), *aff'd per curiam*,

727 F. App'x 55 (4th Cir. June 19, 2018) (citations and footnotes omitted).

### Position of MCPS

MCPS maintains that the issue here is a narrow one; specifically, whether the PA of the Student administered by MCPS in December 2021 met the IDEA requirements outlined above. MCPS contends that the PA was comprehensive, appropriate, and consistent with the requirements of the IDEA and its accompanying regulations, thereby warranting denial of the Parents' request for an IEE at the school system's expense.

### Position of the Parents

The Parents assert that Ms. [REDACTED] was unable to capture the true picture of the Student through only one classroom observation performed after they provided consent for the PA. The Parents were also concerned that the teacher observations utilized by Ms. [REDACTED] in the PA were obtained from teachers that had only known the Student for a little over two months. The Parents argued that the Student's initial FBA completed in November 2021 was quickly revised in December 2021 in response to the Parents' concerns about numerous errors they found in the November FBA. The Parents held that the inaccurate November FBA established a pattern of incompetence by the MCPS and Ms. [REDACTED] and therefore renders the PA flawed. For all of the above reasons, the Parents argue that the PA conducted by MCPS was inappropriate.

### Analysis

The evidence presented by MCPS establishes that Ms. [REDACTED] had the proper education, training, licensing, and qualifications to administer the PA and interpret the results, in accordance with the federal regulations. § 300.304(c)(1)(iv). Ms. [REDACTED] has worked as a School Psychologist with MCPS for five years and worked in the same capacity with the [REDACTED] Public Schools for three years. She received a B.A. in Psychology from [REDACTED] University in

██████████, ██████████; Master of Science and a Certificate of Advanced Study in School Psychology from the ██████████.

The evidence also clearly establishes that Ms. ██████████ is appropriately trained and knowledgeable to conduct PAs of students in accordance with the requirements of the IDEA and federal regulations. 34 C.F.R. § 300.304(c)(1)(iv). Ms. ██████████ has been a Certified School Psychologist in Maryland since 2016 and performs approximately twenty to twenty-five PAs per school year. Ms. ██████████ was accepted without objection as an expert in school psychology.

Ms. ██████████ testified that she has known the Student for the current 2021-2022 school year. She indicated that she frequently enters the Student's classroom so she is a familiar face to the Student. Ms. ██████████ stated that she conducted the Student's PA in response to his mother's request for an assessment to determine if the Student met the criteria for ASD. The IEP team determined that only a Social/Emotional/Behavioral PA was needed because the Student received recent private cognitive assessments; notably the ██████████ Report in January 2020 and the ██████████ Study in May 2021.

Ms. ██████████ employed a number of data collection methods as part of her PA evaluation period of the Student from October 27, 2021 through December 10, 2021. She performed one classroom observation of the Student for thirty minutes in his self-contained classroom during morning meeting. Ms. ██████████ also performed a classroom observation of the Student during his English and Language Arts instruction on October 4, 2021, prior to parental consent for the PA. Ms. ██████████ reviewed the Student's current and prior IEPs and his prior Section 504 plan. She reviewed the Student's current Speech and Language and Occupational Therapy evaluations as well as his April 2021 Educational Status Report. Ms. ██████████ further reviewed the ██████████ Report and the ██████████ Study private cognitive assessments of the Student.

Ms. [REDACTED] conducted a CCBRS to obtain observations from the Parents and the Student's teachers regarding specific characteristics of ASD. She also employed the Connors-3 which questioned the Student's teachers and Parents to gain information regarding his behaviors at school and home. Ms. [REDACTED] also utilized the ASRS which consisted of a series of questions answered by the Student's Parents and teachers relating to his social, communication, and self-regulation behaviors. Ms. [REDACTED] utilized the MASC 2-P to assess the Student's anxiety levels based on behaviors observed by the Parents. She also used the EDDT and the CDI-2 assessments to determine if the Student meets the criteria for an Emotional Disability and to determine if he exhibits symptom of depression.

As a result of her data collection and analysis, and her classroom observation, Ms. [REDACTED] had sufficient data to find that the Student meets the criteria for ADHD-Hyperactive-Impulsive Type, Anxiety, and ASD.

Ms. [REDACTED], Coordinator for Psychological Services for MCPS, was accepted as an expert in school psychology. Ms. [REDACTED] began practicing as a school psychologist in 1996 and started her current position in 2017. During her tenure as a school psychologist Ms. [REDACTED] performed thirty to forty PAs per year. As Coordinator, Ms. [REDACTED] supervises all of the school psychologists employed by MCPS and reviewed Ms. [REDACTED]'s PA of the Student.

The Parents argued that Ms. [REDACTED] testified that two to three classroom observations are preferable and that since Ms. [REDACTED] only performed one for the Student, her PA is deficient. However, I found Ms. [REDACTED]'s testimony credible and persuasive that a minimum of one observation, although it is preferable to have two to three classroom observations, validates that Ms. [REDACTED]'s PA was appropriately conducted. Further, Ms. [REDACTED] indicated that Ms. [REDACTED] selected appropriate testing tools for the Student's PA and that based on the data collected by Ms. [REDACTED] her interpretation of the data were consistent with the PA's results. Ms. [REDACTED] also



found that the tests selected by Ms. [REDACTED] are accepted in the field of school psychology and were proper measurements of the Student's behaviors. Ms. [REDACTED] also indicated that the testing instruments used by Ms. [REDACTED] for the PA were conducted in accordance with the publishers' protocols for those tests. I found Ms. [REDACTED]'s assessment of the PA to be compelling and unrebutted by any witness with expertise in school psychology, therefore I find that those testing instruments complied with the IDEA requirements and procedures. 34 C.F.R. § 300.304(b)-(c). Ms. [REDACTED] further stated that the classroom observations, interviews and record analysis were appropriate non-standardized measurements of the Student. Lastly, Ms. [REDACTED] opined that Ms. [REDACTED]'s PA of the Student was appropriate and that Ms. [REDACTED] interpreted her test results appropriately in accordance with the protocols for those standardized tests. The Parents argued that Ms. [REDACTED]'s single classroom observation of the Student after consent was inadequate to distinguish the traits of ADHD and ASD in the Student. Yet, Ms. [REDACTED] rejected that argument during cross examination when she stated that Ms. [REDACTED] could distinguish ADHD from ASD in the Student with only one post-consent classroom observation.

The Parents' contentions regarding the PA were not supported by any expert witnesses. In fact, the Parents did not call any witnesses to testify. Neither Parent is a trained school psychologist, therefore, I found the opinion provided by Ms. [REDACTED], accepted as an expert in school psychology with over twenty-five years of experience in this field, to carry substantially more weight than the Parents' opinions regarding the sufficiency of Ms. [REDACTED]'s PA of the Student.

It is clear that Ms. [REDACTED] did not use a single measure or assessment as the sole criterion for determining the diagnoses that impact the Student's learning. 34 C.F.R. § 300.304(b)(2). Ms. [REDACTED] used six different instruments, as well as performed a classroom observation, reviewed input from the Student's teachers and parents, and reviewed the Student's recent assessments. It

is clear that MCPS, through the PA conducted by Ms. [REDACTED] used a variety of assessment tools and strategies to gather relevant behavioral information regarding the Student.

The evidence in this record demonstrates that Ms. [REDACTED] prepared a detailed and insightful PA. She included a complete record of the results of the instruments used, included a detailed analysis of the results of the assessment, employed a clear structure for presenting information in the PA, and included a detailed description of the instruments used and their purpose. I credit the knowledgeable and detailed testimony of Ms. [REDACTED] regarding information that is properly included in the PA. I find that Ms. [REDACTED]'s PA was detailed and supported by the assessment instruments.

I conclude that MCPS employed appropriate instruments and measures that were designed to evaluate the Student. I further conclude that the PA contained appropriate analysis of the results of the instruments that were administered and included appropriate diagnostic conclusions for the Student.

The Parents have presented no evidence, either through testimony, documentation, or expert opinion, that challenged the MCPS PA or demonstrated that it failed to meet the IDEA requirements as provided in 34 C.F.R. § 300.304(b)-(c) and COMAR 13A.05.01.05C(1). The Parents alleged, without substantiation, that the absence of multiple classroom observations performed after consent was provided impacted the validity of the PA. However, this assertion was rebutted by Ms. [REDACTED]'s expert testimony that conducting one observation met the minimum required for the PA and that she found that the PA was performed appropriately in accordance with professional school psychology standards. The Parents also argued that the Student's November 2021 FBA was riddled with errors that they pointed out to the IEP team which resulted in a corrected second FBA issued in December 2021. The Parents asserted that since the November FBA was performed poorly, this established a pattern of MCPS' inability to

properly perform assessments including Ms. [REDACTED]'s PA. This argument fails to address any specific shortcomings of the PA, which is the only issue at hand. Any mistakes that may have been made in the November FBA fail to show a direct link to any deficiencies in the PA. Further, both FBAs found that the Student engages in physically aggressive behavior when there is less adult supervision and each recommended a BIP for the Student. The major difference or correction noted was that the November 2021 FBA found that the Student's aggressive behaviors were targeted mostly at one particular student whereas the December FBA did not indicate that the Student's behaviors were targeted at one particular student. Accepting the correction made in the December FBA fails to prove that the PA was improperly administered and interpreted.

#### Summary

For all the reasons addressed above, MCPS has proven that the PA of the Student administered by Ms. [REDACTED] in December 2021 was appropriate and in accordance with the requirements of the IDEA and federal and State regulations. Ms. [REDACTED] testified credibly and in detail regarding the assessment she administered, the reasons she chose the instruments she used and the basis for the information she included. She also analyzed the data she obtained and explained the basis for her conclusions. Ms. [REDACTED] reviewed Ms. [REDACTED]'s PA of the Student and opined that it utilized appropriate standardized and non-standardized instruments and that Ms. [REDACTED] appropriately interpreted the results from those instruments in accordance with industry standards. I find that Ms. [REDACTED] conducted an appropriate PA of the Student.

The PA was sufficiently comprehensive to meet the IDEA standard for administering and reporting appropriate assessments. The Parents' disagreement with the PA and their lack of confidence in Ms. [REDACTED]'s abilities does not render the PA inappropriate. Therefore, I conclude that the Parents are not entitled to obtain an IEE at public expense. The Parents are certainly

entitled to obtain their own assessment of the Student, but that assessment need not be funded by MCPS.

As noted above, the critical question before me is not the *results* of the MCPS testing, or any action taken by the IEP team after the PA was considered, but whether the PA was properly administered in accordance with the standards and requirements set forth above. It is important to note that the applicable legal issues in this proceeding, which resulted from the due process complaint filed by the school system, do not involve a determination of whether the Student has an educational disability or whether he is eligible for special education and related services. In this case, MCPS has established that the PA conducted by MCPS was proper, comprehensive, and in compliance with applicable law.

#### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the PA of the Student conducted by MCPS in December 2021 is appropriate under the applicable standards and, therefore, the Parents are not entitled to an IEE at public expense. 20 U.S.C.A. § 1415(b)(1) (2017); 34 C.F.R. §§ 300.304, 300.309, 300.502(b) (2021); COMAR 13A.05.01.05 and 13A.05.01.06.

#### **ORDER**

I **ORDER** that the Montgomery County Public Schools' Social/Emotional/Behavior/ Psychological Assessment administered in December 2021 is appropriate and that the Parents' request for an independent educational evaluation at public expense be denied.

July 28, 2022  
Date Decision Mailed

Brian Zlotnick  
Administrative Law Judge

BMZ/emh  
#199601

**REVIEW RIGHTS**

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

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

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

**Copies Mailed To:**

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

**MONTGOMERY COUNTY PUBLIC  
SCHOOLS**

**v.**

**[REDACTED],  
STUDENT**

**BEFORE BRIAN ZLOTNICK,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH NO. MSDE-MONT-OT-22-11944**

**FILE EXHIBIT LIST**

MCPS offered the following exhibits which I admitted into evidence:<sup>1</sup>

- MCPS #1 [REDACTED] Pediatrics Developmental and Behavioral Evaluation of the Student, January 20, 2020
- MCPS #7 Student's Educational Status Report, April 6, 2021
- MCPS #8 Student's Speech and Language Services Report, April 7, 2021
- MCPS #10 [REDACTED] Cognitive Assessment Report for the Student, May 25, 2021
- MCPS #11 Student's Occupational Therapy Evaluation, July 8, 2021
- MCPS #16 Student's PA Report, December 10, 2021
- MCPS #21 Student's Individualized Education Program (IEP), May 19, 2021
- MCPS #22 Student's IEP, October 6, 2021
- MCPS #41 Student's Section 504 Accommodation Plan, January 12, 2021
- MCPS #46 Resume of [REDACTED], MCPS School Psychologist
- MCPS #47 Resume of [REDACTED], MCPS Coordinator, Division of Psychological Services

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<sup>1</sup> MCPS submitted a binder with tabbed exhibits numbered 1-47. Exhibit #s 2-6, 9, 12-15, 17-20, 23-40, and 42-45 were not offered by MCPS into evidence.

The Parents offered the following exhibits, which I admitted into evidence:

- Resp. #1      Functional Behavioral Assessment (FBA), November 17, 2021, with handwritten notes inserted by Ms. [REDACTED]
- Resp. #2      FBA, December 15, 2021<sup>2</sup>
- Resp. #3      E-mail exchange between Ms. [REDACTED] and MCPS Administrators, April 21, 2022

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<sup>2</sup> This exhibit is MCPS Ex. 17 from the MCPS Exhibit Binder.