

**[REDACTED],**  
**STUDENT**  
  
**v.**  
**HOWARD COUNTY**  
**PUBLIC SCHOOLS**

**BEFORE JOHN T. HENDERSON, JR.,**  
**ADMINISTRATIVE LAW JUDGE**  
  
**THE MARYLAND OFFICE**  
**OF ADMINISTRATIVE HEARINGS**  
  
**OAH No: MSDE-HOWD-OT-20-09686**

**DECISION**

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

**STATEMENT OF THE CASE**

On April 10, 2020, [REDACTED] (Parent), on behalf of [REDACTED] (Student), filed a due process complaint with the Office of Administrative Hearings (OAH). The Parent alleges Howard County Public Schools (HCPS) violated the Individuals with Disabilities Education Act by denying the Student a free appropriate public education (FAPE) over the course of the seventh and eighth grades (the 2018-2020 school years) at [REDACTED] Middle School by failing to provide the Student with an appropriate Individualized Education Program (IEP). 20 U.S.C.A. § 1415(f)(1)(A) (2017). The parties did not participate in a resolution meeting but participated in mediation on May 22, 2020, which was unsuccessful.

The parties determined there would be no agreement and the dispute needed to be resolved by administrative adjudication. Therefore, the matter was scheduled for hearing on July 8, 9, and 10, 2020.

I held the hearing on July 8, 2020 which concluded the same day. Andy Nussbaum, Esquire represented HCPS. The Parent represented the Student. The legal authority for the hearing is as follows: 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).

Under the applicable law, a decision in this case normally would be due by July 6, 2020, forty-five days after the conclusion of the mediation session of May 22, 2020. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). However, the parties requested hearing dates outside of the required timeframe due to the Covid-19 pandemic. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). Therefore, my decision is due thirty days from the close of the hearing of July 8, 2020.<sup>3</sup>

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 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

#### **ISSUES**<sup>4</sup>

1. Did the HCPS implement the IEPs for the 2018-2019 school years?
2. If not, is the Student entitled to compensatory education?

---

<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated. Unless otherwise noted, all citations of 20 U.S.C.A. hereinafter refer to the 2017 bound volume.

<sup>2</sup> C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations of 34 C.F.R. hereinafter refer to the 2019 volume.

<sup>3</sup> I allowed the parties to submit memoranda of law, if they chose, after the conclusion of the Hearing. The HCPS filed its memorandum on July 9, 2020. On July 12, 2020, the Parent filed her memorandum along with a publication entitled *Compensatory Services and Students with Disabilities*.

<sup>4</sup> During the hearing, the Parent withdrew her request for an apology by HCPS and disciplinary action against HCPS employees as remedies.

## SUMMARY OF THE EVIDENCE

### A. Exhibits

The Parent offered the following exhibits on behalf of the Student, which I admitted into evidence:

- Student Ex. 1: Letter from the MSDE to the Parent and HCPS, March 11, 2020
- Student Ex. 2: Email from HCPS to the Parent, December 6, 2019
- Student Ex. 3: Email from the Parent to HCPS, March 20, 2019
- Student Ex. 4: Email from the Parent to HCPS, March 6, 2019

HCPS offered the following exhibits on its behalf, which I admitted into evidence:

- HCPS Ex. 1: Educational Assessment Report, August 6, 2019
- HCPS Ex. 2: Speech-Language Assessment, July 24, 2019
- HCPS Ex. 3: Evaluation Report – ADHD Supplement, October 15, 2018
- HCPS Ex. 4: IEP Team Meeting Report, October 15, 2018
- HCPS Ex. 5: IEP Team Meeting Report, February 25, 2019
- HCPS Ex. 6: IEP Team Meeting Report, June 10, 2019
- HCPS Ex. 7: IEP Team Meeting Report, October 1, 2019
- HCPS Ex. 8: IEP Team Meeting Report, November 12, 2019
- HCPS Ex. 9: IEP Team Meeting Report, November 25, 2019
- HCPS Ex. 10: IEP Team Meeting Report, June 24, 2020
- HCPS Ex. 11: IEP Report, October 15, 2018
- HCPS Ex. 12: IEP Report, January 25, 2019
- HCPS Ex. 13: IEP Report, November 12, 2019
- HCPS Ex. 14: Email from [REDACTED], January 9, 2020
- HCPS Ex. 15: Annual Goals Progress Report, April 13, 2018 through November 5, 2018
- HCPS Ex. 16: Annual Goals Progress Report, April 5, 2019 through November 1, 2019
- HCPS Ex. 17: Annual Goals Progress Report, January 24, 2020
- HCPS Ex. 18: *Curriculum Vitae* (CV) for [REDACTED], Instructional Facilitator for Nonpublic Services and Special Education Compliance
- HCPS Ex. 19: CV for [REDACTED], Instructional Facilitator, Middle Schools, HCPS
- HCPS Ex. 20: CV for [REDACTED], Special Educator, [REDACTED] Middle School
- HCPS Ex. 21: CV for [REDACTED], School Psychologist
- HCPS Ex. 22: Report of Psychological Assessment, September 18, 2019

### Testimony

The Student was not present. The Parent testified.

HCPS moved for judgment at the conclusion of the Student's case. I declined to rule at the conclusion of the hearing in order to take the motion under advisement and deliberation.

HCPS determined that it would continue to defend and present testimony and evidence. The following witnesses testified for HCPS:

1. [REDACTED]  
Instructional Facilitator for Nonpublic Services, and Special Education Compliance, HCPS  
Qualified as an expert in the field of special education
2. [REDACTED]  
Special Educator, [REDACTED] Middle School, HCPS  
Qualified as an expert in the field of special education
3. [REDACTED]  
School Psychologist, HCPS  
Qualified as an expert in the field of school psychology
4. [REDACTED]  
Instructional Facilitator, Middle Schools, HCPS  
Qualified as an expert in the field of special education

#### **FINDINGS OF FACT**

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

1. The Student is thirteen years old and for the school year of 2020-2021 will begin the ninth grade at [REDACTED] ([REDACTED]), a [REDACTED] County Public School ([REDACTED] CPS). He lives with the Parent, who is his mother.
2. The Student formerly attended the [REDACTED] Middle School ([REDACTED] MS), a Howard County public school, during the 2018-2020 school years. The Student completed the 7<sup>th</sup> grade and began the 8<sup>th</sup> grade in the fall of 2019.
3. In February 2020, the Parent and Student moved from the HCPS district which resulted in the Student withdrawing from HCPS and enrolling within the [REDACTED] CPS district.
4. The Student is identified under the IDEA as a student with an intellectual disability.
5. HCPS prepared the Student's IEP's for the 2018-2020 school years.
6. HCPS conducted seven IEP team meetings during the 2018-2020 school years

where reports and IEPs were created. The Parent attended six of those meetings. The last meeting the Parent attended was on June 24, 2020.

7. The IEP team produced IEPs for the Student dated October 15, 2018, January 25, 2019 and November 12, 2019.

8. The IEPs for the 2018-2020 school years required that HCPS provide the Student with instructional supports and accommodations, listed as follows:

- Eliminating answer choices
- Bookmark items for review
- General directions clarified and read aloud and repeated as needed
- Frequent breaks
- Reduced distractions
- Notes and outlines from teachers.
- Check off lists during independent work
- Proofreading checklist
- Organization system
- Breaking down assignments into smaller units
- Positive reinforcers

9. The educational supports and accommodations were provided to the Student by HCPS during the 2018-2020 school years.

### **DISCUSSION**

At the end of the Parent's case-in-chief, HCPS moved for judgment against the Student arguing the Student failed to meet his burden of proof that he did not receive accommodations required by his IEPs and thus did not receive FAPE. I declined to rule on the motion in order to deliberate and take the matter under advisement. The HCPS decided to continue to defend the complaint. COMAR 28.02.01.12E. For reasons discussed below, I will rule in HCPS favor on the merits and will not, therefore, address the motion.

### **Legal Framework**

As noted above, the burden of proof in an administrative hearing under IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Student

has the burden of proving by a preponderance of the evidence that the relevant IEPs developed by the HCPS were not reasonably calculated to provide the Student with FAPE for the 2018-2020 school years, and that HCPS failed to provide for required accommodations.

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1487, 34 C.F.R. Part 300, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2018 & Supp. 2019), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412(a)(1).

FAPE is statutorily defined as “special education and related services” that are provided “in conformity with the individualized education program required under section 1414(d)” of the IDEA. 20 U.S.C.A. § 1401(9).<sup>5</sup> In 2017, the United States Supreme Court ruled that FAPE “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017). Rejecting the “‘merely more than *de minimis*’ test applied by the Tenth Circuit, *see id.* at 1000, the Court iterated and clarified principles originally set forth in *Board of Education of the Hendrick Hudson Central School District. v. Rowley*, 458 U.S. 176 (1982).

Directly adopting language from *Rowley*, and expressly stating that it is not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Endrew F.* Court instructs that the “absence of a bright-line rule ... should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Endrew F.*, 137 S.Ct. at 1001 (citing *Rowley*, 458 U.S. at 206). At the same time, the *Endrew F.* Court wrote that in determining the extent to

---

<sup>5</sup> In *Endrew F.*, the Court observed that it remains “[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided.” *Id.* (comparing 20 U.S.C. 0§ 1401(18) (1976 ed.) with 20 U.S.C. § 1401(9) (2012 ed.)).

which deference should be accorded to educational programming decisions made by public school authorities, “a reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Endrew F.*, 137 S.Ct. at 1002.

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 (4<sup>th</sup> Cir. 2009). To comply with the IDEA, an IEP must, among other things, allow a disabled child 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).

An IEP shall include “[a] statement of the child's present levels of academic achievement and functional performance, including” and, specifically, “[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 nondisabled children).” 34 C.F.R. § 300.320(1). If a child’s behavior impedes his or her learning or that of others, the IEP team, in developing the child’s IEP, must consider, if appropriate, development of strategies, including positive behavioral interventions, as well as strategies and supports to address that behavior, consistent with 34 C.F.R. § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. 34 C.F.R. § 300.324(b).

Having considered the testimony of the Parent and witnesses, as well as all exhibits admitted into evidence, I find that the Student has failed to meet his burden of proof.

### *Testimony of the Parent*

The Parent's testimony did not demonstrate by a preponderance of the evidence that the HCPS failed to provide a FAPE to the student. There was no evidence provided from documents or testimony to support the allegations that the Student was not receiving accommodations as required in each IEP relevant to the school years. The Parent, at best, believed the Student was not receiving the accommodations, in part, based on the conclusions of the March 11, 2020 Letter of Findings from the MSDE, which found the following:

No documentation that since January 15, 2019, IEP (revised on January 25, 2019 and November 12, 2019), the Student was provided with notes and outlines during instruction or that he was provided with frequent breaks, reduced distractions to self and others, as required by the IEP.

No documentation that since January 15, 2019, the Student's assignments were broken down into smaller units on a daily basis, that he was provided assistance with organization on a daily basis, or that he was provided with check-off lists during independent work, positive/concrete reinforcers and frequent breaks, as required by the IEP.

No documentation since November 12, 2019, that the Student was provided with proofreading checklists as required by the IEP.

The violations had a negative impact on the Student's education program

No documentation that the IEP team addressed the request for smaller classes for the Student.

The Parent testified that the Student came home every day complaining about not getting proper assistance in class and that she saw results that appeared to show the Student was not getting help in school. According to the Parent, she is not alleging the IEPs were incorrect in their construction; she complains that the HCPS teachers were not implementing the IEPs, specifically in not providing the Student with supports and accommodations as they required.

The Parent testified that she did agree she had no complaints about the IEPs as written and conceded that the Student's special educator, [REDACTED], did work with the Student in making effort to provide him with educational assistance. According to the Parent, she



determined the Student was not benefitting from the IEPs as implemented due to his below average grade results and her speaking with the Student about his school day.

The Parent argues and requested, as one element of relief, that HCPS provide the Student with compensatory education. She submitted a publication that advocated when a Student is denied services, the Student is entitled to relief. The Parent argues that the conclusions within the MSDE Letter of Findings dated March 11, 2020, support her allegations that HCPS failed to provide the Student with FAPE and as such, he is entitled to a remedy. She further argues that since HCPS could not document that supports and accommodations were provided to the Student, logic dictates that if “it wasn’t documented, it wasn’t done.”

***Testimony of the HCPS Witnesses***

██████████ qualified as an expert in the field of school psychology. She is employed with the HCPS. She testified that she observed the Student on two different formal observations of his performance within the classroom and prepared a psychological assessment of him dated September 18, 2019 (HCPS Ex. 22). In addition, she testified, she was a participant at the team meetings of October 1, 2019 and November 12, 2019, where the Parent was present for each.

Ms. ██████████ testified that she first became involved with the Student during his seventh grade year, the beginning of 2018. The IEP team during that school year requested that she develop strategies for helping him manage his behaviors.

Ms. ██████████ further testified that she assessed the Student as having an intellectual disability. In addition, she testified that during the two observations, she observed the Student receiving from his teachers the supports and accommodations required by the IEPs. She further testified that the Parent did not disagree with any findings of the IEP team meetings in which she participated. In her opinion, Ms. ██████████ testified she did not observe anything to suggest the

Student's grades or educational programming was adversely affected by not getting supports in the classroom.

██████████ qualified as an expert in the field of special education. She is employed by HCPS. In addition, from January 2008 through August 2013, she worked as an investigator for MSDE, investigating complaints alleging violations of the IDEA.

Ms. ██████████ testified that the MSDE Letter of Findings dated March 11, 2020, did conclude that there was no documentation for some supports and accommodations; however, according to her, the finding of no documentation did not mean that the MSDE investigator concluded the IEP requirements were not implemented. Ms. ██████████ further testified that, in practice, the MSDE does not find an act done without some corroboration. Ms. ██████████ did determine that teachers failed to document appropriately the supports and accommodations that were provided to the Student; however, according to her, the supports and accommodations were provided.

██████████ qualified as an expert in the field of special education. She is employed by HCPS. She also testified that there were no corroborating documents to provide MSDE during its investigation, but according to her, the services required by the IEPs were provided to the Student.

██████████ qualified as an expert in the field of special education. She is employed by HCPS. She testified that, in her opinion, the Student was not making progress because he was not making effort.

HCPS argues that the Student failed to meet the burden of proof by a preponderance of the evidence that the IEPs for the 2018-2020 school years failed to provide FAPE.

## *Analysis*

*Schaffer v. Weast* requires the Student bear the burden of proving the failure of the school system to provide him a FAPE. The Student must provide sufficient information to show that the school system, through his IEPs, did not address his individual needs adequately. *Id.*

The Parent attended all but one IEP team meeting and agreed with the decisions made by the IEP team after each meeting she attended. The Parent's essential complaint to MSDE on January 15, 2020 has been and remains to be that the Student was not provided accommodations required by the IEPs in issue. As a result, she argues, the Student has not performed satisfactorily on each grade level. However, the Parent did not provide evidence to show the accommodations were not provided. She essentially argues that an inference should be made they were not provided because MSDE determined there was no documentation to support the provision of the supports and accommodations.

Each witness for HCPS testified under oath without contradicting each other, that there was some deficiency of documentation for supports and accommodations. However, they each testified that they had knowledge and witnessed that the required accommodations were provided to the Student, and that the failure to document appropriately was a failure of the documentation process and not of the implementation of the requirements of the IEPs.

The law recognizes that "once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals." *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). In this case, there is insufficient evidence from the Student for me to determine whether HCPS failed to provide the Student with FAPE.

Although the Parent testified and offered some exhibits, she failed to provide evidence relevant to the Student's failure to obtain some educational benefit from the implementation of

the IEPs. Based on the lack of evidence from which I could reasonably find material facts to support the Parent's allegation that HCPS failed to provide FAPE during the 2018-2020 school years, I conclude the Student failed to satisfy his burden of production or persuasion in this case. 20 U.S.C.A. § 1412 (2010); *Schaffer v. Weast*, 546 U.S. 49 (2005).

The Parent's testimony reflects, understandably, her frustrations with the apparent lack of grade level progress of the Student during his time with HCPS. She believes the academic deficiencies are the result of inadequate implementation of the IEPs. However, the Parent's opinion and obvious dissatisfaction with HCPS is not sufficient alone to sustain the Student's burden. The record does not present evidence legally sufficient to demonstrate that HCPS failed to implement the IEPs.

Accordingly, after carefully reviewing all of the evidence presented, I find that the Student failed to meet his burden to prove that HCPS did not implement the IEP's for the 2018-2020 school years.

### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion I conclude, as a matter of law, that the Parent failed to prove by a preponderance of the evidence that Howard County Public Schools denied the Student a FAPE by failing to implement his IEPs for the 2018-2020 school years. 20 U.S.C.A. §§ 1400 - 1487 (2017).

### **ORDER**

I **ORDER** that the Student's due process complaint filed on April 10, 2020 is **DENIED AND DISMISSED.**

July 29, 2020  
Date Decision Mailed

John T. Henderson, Jr.  
Administrative Law Judge

JTH/emh  
#186919

**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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

**STUDENT**

**v.**

**HOWARD COUNTY**

**PUBLIC SCHOOLS**

**BEFORE JOHN T. HENDERSON, JR.,**

**ADMINISTRATIVE LAW JUDGE**

**THE MARYLAND OFFICE**

**OF ADMINISTRATIVE HEARINGS**

**OAH No: MSDE-HOWD-OT-20-09686**

**FILE EXHIBIT LIST**

The Parent offered the following exhibits on behalf of the Student, which I admitted into evidence:

- Student Ex. 1: Letter from the MSDE to the Parent and HCPS, March 11, 2020
- Student Ex. 2: Email from HCPS to the Parent, December 6, 2019
- Student Ex. 3: Email from the Parent to HCPS, March 20, 2019
- Student Ex. 4: Email from the Parent to HCPS, March 6, 2019

HCPS offered the following exhibits on its behalf, which I admitted into evidence:

- HCPS Ex. 1: Educational Assessment Report, August 6, 2019
- HCPS Ex. 2: Speech-Language Assessment, July 24, 2019
- HCPS Ex. 3: Evaluation Report – ADHD Supplement, October 15, 2018
- HCPS Ex. 4: IEP Team Meeting Report, October 15, 2018
- HCPS Ex. 5: IEP Team Meeting Report, February 25, 2019
- HCPS Ex. 6: IEP Team Meeting Report, June 10, 2019
- HCPS Ex. 7: IEP Team Meeting Report, October 1, 2019
- HCPS Ex. 8: IEP Team Meeting Report, November 12, 2019
- HCPS Ex. 9: IEP Team Meeting Report, November 25, 2019
- HCPS Ex. 10: IEP Team Meeting Report, June 24, 2020
- HCPS Ex. 11: IEP Report, October 15, 2018
- HCPS Ex. 12: IEP Report, January 25, 2019
- HCPS Ex. 13: IEP Report, November 12, 2019
- HCPS Ex. 14: Email from ██████████ January 9, 2020
- HCPS Ex. 15: Annual Goals Progress Report, April 13, 2018 through November 5, 2018
- HCPS Ex. 16: Annual Goals Progress Report, April 5, 2019 through November 1, 2019
- HCPS Ex. 17: Annual Goals Progress Report, January 24, 2020
- HCPS Ex. 18: *Curriculum Vitae* (CV) for ██████████, Instructional Facilitator for Nonpublic Services and Special Education Compliance
- HCPS Ex. 19: CV for ██████████, Instructional Facilitator, Middle Schools, HCPS

HCPS Ex. 20: CV for [REDACTED], Special Educator, [REDACTED] Middle School  
HCPS Ex. 21: CV for [REDACTED], School Psychologist  
HCPS Ex. 22: Report of Psychological Assessment, September 18, 2019