

██████████ AND ██████████,
PARENTS,
ON BEHALF OF AIDEN ALLISON,
STUDENT,

BEFORE DANIEL ANDREWS,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS

v.

HOWARD COUNTY PUBLIC SCHOOLS

OAH No.: MSDE-HOWD-OT-24-05482

DECISION

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ORDER

STATEMENT OF THE CASE

On February 27, 2024, ██████████ and ██████████ (Parents),¹ on behalf of their child, ██████████ (Student), filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH). The Parents requested a hearing to review the identification, evaluation, or placement of the Student by the Howard County Public Schools (HCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);² 34 C.F.R. § 300.511(a) (2023);³ Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2023);⁴ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

¹ Only ██████████ (Parent) actively participated during all phases of this case. For this reason, any future reference regarding a parent refers to ██████████ as “Parent.”

² “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

³ “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2023 bound volume.

⁴ Unless otherwise noted, all citations herein to the Education Article are to the 2022 Volume of the Maryland Annotated Code.

On April 22 and 29, 2024, I held a prehearing conference (Conference). Ashley Vancleef, Esquire, represented the Parent and Student. Manisha Kavadi, Esquire, represented the HCPS. At the Conference, I advised the parties of the federal forty-five-day timeline for issuing a decision:

The public agency must ensure that not later than 45 days after the expiration of the [30-day resolution] period under § 300.510(b), or the adjusted [resolution] time periods described in § 300.510(c)—

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each party.

34 C.F.R. § 300.515(a). As indicated, the forty-five-day timeline ordinarily begins to run at the end of a thirty-day resolution period triggered by filing a due process complaint.

Id. § 300.510(b)(2).

Under the regulatory timeline, a decision in this case would be due on Friday, May 10, 2024, which would have been forty-five days after the thirty-day resolution period ended on March 28, 2024.⁵ 34 C.F.R. §§ 300.510(b)(2), 300.515(a). I also note that based on the five-business day disclosure rule, the hearing could not have started sooner than May 7, 2024. *See* 34 C.F.R. § 300.512(a)(3). However, the federal regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c).

The parties indicated that they were not prepared to proceed with the due process hearing beginning May 7, 2024 and anticipated that the hearing would last six days, with each party having three days to present their respective cases. During the Conference, the parties and I reviewed our respective schedules and witness availability to determine the first available dates to schedule the hearing. Accordingly, the parties agreed to the following hearing dates: June 18,

⁵ The actual due date was Sunday, May 12, 2024. However, per OAH policy, due process decisions with a due date falling on a weekend day are issued no later than the preceding weekday, which was Friday, May 10, 2024.

21, 23, and 25, July 9, and 23, 2024.⁶ These dates fall outside of the regulatory timeline. Consequently, the parties jointly requested that I extend the timeline to accommodate this hearing schedule to allow the hearing to begin on June 18, 2024 and to continue on the agreed upon hearing dates, and after the hearing concluded, for thirty days to allow time for me to consider and weigh all the evidence in a written decision. Based on the scheduling constraints noted, I found good cause to extend the timelines.

On June 18, 21, 23, and 25, July 9, and 23, 2024, I conducted the due process hearing. The parties required additional hearing dates, which occurred on July 25, and 30, August 5, and 22, 2024.⁷ Because the hearing concluded on August 22, 2024, I agreed to issue a written decision no later than thirty days from August 22, 2024, which is Friday, September 20, 2024.⁸ Ms. VanCleaf represented the Parent. Ms. Kavadi represented the HCPS.

Procedure 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. Educ. § 8-413(e)(1) (Supp 2023); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

⁶ From May 7, 2024 to May 15, 2024, my schedule already had conflicts with preschedule hearings. The attorneys for each party reviewed their respective schedules for hearing dates which would not create unavoidable conflicts for the attorneys or witnesses. Ms. Kavadi had prescheduled hearing conflicts from May 15 through May 31, 2024. Ms. VanCleaf had prescheduled travel and other hearings in the first two weeks of June 2024. The first hearing date, without conflicts for either party, was June 18, 2024. After this date, the parties mutually agreed on other hearing dates to accommodate other prescheduled hearings or witnesses' schedules.

⁷ Originally, the Parent was to present her case on June 18, June 21, and June 25, 2024. The HCPS was to present its case on June 26, July 9, and July 23, 2024. The Parent's case did not conclude until July 9, 2024. As a result, the parties agreed to additional hearing dates of July 25, and 30, August 5, 2024, to permit the HCPS an opportunity to present its case. Because the HCPS anticipated finishing its case on August 5, 2024, the parties also agreed to present closing arguments on August 22, 2024. The Parties agreed to the August 22, 2024 because of scheduling conflicts for each attorney or the party representatives. The parties also requested the additional time so each could prepare a written closing statement or a statement of legal authority to supplement the oral closing argument. The written closing statements have been retained as part of the record. *See* COMAR 28.02.01.22B(1) ("All pleadings, motions, responses, correspondence, memoranda, including proposed findings of fact and conclusions of law, and requests filed by the parties.").

⁸ Thirty days from August 22, 2024 is Saturday, September 21, 2024. As noted earlier, per OAH policy, this decision will be issued no later than the preceding weekday, which is Friday, September 20, 2024.

ISSUES

1. Whether the HCPS denied the Student a free appropriate public education (FAPE), since October 11, 2023, by failing to develop and implement an Individualized Education Program (IEP), that provided the Student with a related service of a Private Duty Nurse (PDN), throughout the school day.
2. If so, what compensatory education is the Student entitled to receive?

SUMMARY OF THE EVIDENCE

Exhibits

I have attached a complete Exhibit List as an Appendix.

Testimony

The Parent⁹ testified and presented the following witnesses:

- [REDACTED], [REDACTED],¹⁰ [REDACTED],¹¹ admitted as an expert in Special Education and Behavioral Analysis;
- [REDACTED], [REDACTED], HCPS, School Nurse, admitted as an expert in Nursing;¹²
- [REDACTED],¹³ [REDACTED],¹⁴ [REDACTED], admitted as an expert in School Health Services, School Health Care Plans, Nursing, Delegation of Nursing Services, and Pediatric Nursing.

⁹ The Parent is a [REDACTED] ([REDACTED]) and was offered as an expert in [REDACTED]. Except for having the required education, training, and a license for a [REDACTED], the Parent had limited work experience as a [REDACTED]. The Parent's work experience was limited to providing care for the Student. Because the Parent's experience as a [REDACTED] was limited to a singular patient, I did not accept her as an expert in nursing.

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED] was admitted as an expert in nursing, over the objection of HCPS, and despite the Student not providing [REDACTED] *curriculum vitae* to the HCPS. [REDACTED] has been a school nurse for the HCPS system for ten years and is currently the school nurse at [REDACTED], which is the Student's school. [REDACTED] played an important role in determining the Student's need for a PDN. I found that the substance of her testimony and her qualifications as a school nurse were known to the HCPS and that the failure to comply with any prehearing order or discovery rule was not prejudicial to the HCPS.

¹³ [REDACTED].

¹⁴ [REDACTED].

The HCPS presented the following witnesses:

- [REDACTED], Special Education Coordinator of Compliance, Nonpublic Services, and Family Support for HCPS, admitted as an expert in Special Education;
- [REDACTED], [REDACTED], [REDACTED], [REDACTED], Director of School Health, HCPS, admitted as an expert in School Nursing and Nursing-Generally;
- [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED],¹⁵ Health Services Supervisor, HCPS, admitted as an expert in School Nursing, General Nursing, and Pediatric Gastroenterology;¹⁶
- [REDACTED],¹⁷ Assistant Principal at [REDACTED], a school facility within the HCPS, admitted as an expert in School Administration and Elementary Education.¹⁸

FINDINGS OF FACT

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

The Student's Medical History

1. The Student was born in 2013. P. Ex. 48.
2. In March 2016, the Student was diagnosed with [REDACTED], which includes generalized [REDACTED], [REDACTED], and [REDACTED]. *Id.*
3. In June 2016, the Student was diagnosed with [REDACTED], which later led to a diagnosis of [REDACTED] in November 2019. *Id.*
4. In 2014 through 2017, the Student had ten surgeries, mostly to place, replace or revise a [REDACTED] ([REDACTED])¹⁹ because of the Student's diagnosis of [REDACTED]

¹⁵ [REDACTED].

¹⁶ Because there was no factual or legal issue related to the Student's [REDACTED] or nursing care for the Student's [REDACTED], I denied a request to accept [REDACTED] as an expert in Pediatric Nephrology.

¹⁷ Doctor of Education.

¹⁸ Because there was no factual or legal issue related to the Student's IEP in the area of reading, I denied a request to accept [REDACTED] as an expert as a Reading Specialist.

¹⁹ [REDACTED]
[REDACTED] (last visited September 19, 2024). *See also Ishola v. State*, 404 Md. 155, 161 (2008) (dictionary definitions help clarify the plain meaning.).

██████████.²⁰ Originally, the Student received a ██████████²¹ in August 2014, which was later replaced by a ██████████ l (██████) ██████████²² in July 2016. P. Ex. 48.

5. In 2017 through 2019, the Student had three other surgeries (for a total of ██████████ ██████████) to revise the ██████████, with the last ██████████ revision occurring on February 28, 2019. Additionally, in 2019, the Student had a ██████████ (for a total of ██████████) in an attempt to place a ██████████, which was not successful. *Id.*

6. In 2017 through 2019, in addition to the ██████████, the Student experienced ██████████ separate ██████████ for ██████████ (██████) issues and monitoring by ██████████ (██████) for ██████████ and ██████████ issues. *Id.*

7. On January 13, 2020, the Patient had a ██████████ to place a ██████████ ██████████ (██████) ██████████, and a ██████████ (██████) for ██████████ because of ██████████. P. Ex. 48.

8. In 2020, the Student experienced ██████████ for ██████████ issues and ██████████ monitoring for ██████████ and ██████████ (██████) for ██████████. *Id.*

9. In December 2020, the Student experienced a ██████████ resulting from a fall. He has not had a ██████████ since. The Student's ██████████ has occurred only a hand full of times and are associated with ██████████ ██████████, or ██████████. *Id.*

²⁰ ██████████ (last visited September 19, 2024); *see also Ishola, supra.*

²¹ A ██████████

²² ██████████ (last visited September 19, 2024); *see also Ishola, supra.*

10. On February 6, 2023, the Patient had a [REDACTED] to [REDACTED]²³ the [REDACTED]

Id. The Student has not had a [REDACTED] since February 2023.

11. The Student has multiple diagnoses referred to as “co-morbidity,” which include:

[REDACTED]

P. Ex. 48.

[REDACTED] County Public School ([REDACTED]) History

12. In July 2019, the Student moved to Maryland and enrolled in the [REDACTED] system for the 2019-2020 kindergarten school year. Testimony of Parent.

13. At all relevant times when enrolled in the [REDACTED], the Student was eligible for special education through an IEP. See P. Ex. 9, HCPS Ex. 4.

²³ “[REDACTED]” refers to the “[REDACTED].” See [REDACTED] (last visited September 19, 2024); *see also Ishola, supra.*

14. For the 2020-2021 first grade school year, the Parent entered into a PDN Letter of Agreement with the [REDACTED]. P. Ex. 11.

15. The Letter of Agreement identified that the Student would be enrolled in [REDACTED].
Id.

16. The Letter of Agreement required the [REDACTED] School Nurse to be familiar with the Student's physician's orders in the event that it became necessary to assist with the Student's care in extreme emergencies, or in the momentary absence of a PDN. Otherwise, the [REDACTED] system was responsible for providing the Student with a FAPE and had assumed no special liability for the Student other than its responsibility to all students in the event of an emergency.
Id.

17. The Letter of Agreement required the Parent to retain a PDN for the Student and to be responsible for the PDN. *Id.*

18. The Letter of Agreement required the PDN to be exclusively responsible for the Student's daily medical care and to act in conformity with emergency procedures developed for the Student related to [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] [REDACTED], and emergency exits plans. *Id.*

19. During this time period, the Student's PDN was provided by the Parent through the Student's father's [REDACTED] health insurance plan.

20. As of November 2022, the Student's father had retired from the [REDACTED] which caused a change in the Student's health insurance. As result, the Student enrolled in Maryland's [REDACTED] ([REDACTED]) program to obtain nursing services in the community.
Testimony of Parent, P. Ex. 13.

21. During the 2022-2023 third grade school year, beginning in December 2022, the Student received his education through a Home and Hospital program,²⁴ which allowed the Student stay at home and to maintain access to a PDN. P. Ex. 40.

22. On January 17, 2023, the Student began receiving nursing services at home through the [REDACTED]. The [REDACTED] required the Student to be certified as eligible to receive nursing services every sixty days. [REDACTED]²⁵ was the Student's doctor that certified the Student's eligibility for the [REDACTED] and also was the doctor who established a Plan of Care (POC) through the [REDACTED] for the Student. HCPS Ex. 36, P. Ex. 13.

23. The [REDACTED] allows a [REDACTED] to live at home until the age of twenty-two. Without this benefit, the individual would be hospitalized because the medical need requires hospital or nursing facility level of care. P. Ex. 13.

24. On September 22, 2023, [REDACTED] certified the Student as eligible to receive PDN services through the [REDACTED] from October 20, 2023 to January 20, 2024. HCPS Ex. 36.

25. The [REDACTED] POC authorized fifty hours per week of skilled nursing by an RN or a licensed practical nurse (LPN). *Id.*

26. The POC identified the Student's principle diagnoses as [REDACTED], [REDACTED], and [REDACTED]. The [REDACTED] also identified the Student had having a [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.*

27. In relevant part, the [REDACTED] identified the Student's medication to include [REDACTED] via his [REDACTED] in the morning and evening, for [REDACTED]; [REDACTED] via a nebulizer as needed for [REDACTED]; and a nightly [REDACTED]. *Id.*

²⁴ Home and Hospital services refer to the "provision of instructional services to public school students who are unable to participate in their school of enrollment due to a physical or emotional condition." See COMAR 13A.03.05.01A.

²⁵ [REDACTED] is the Student's treating Pediatrician.

28. The [REDACTED] identified the safety measures for the Student's care to include an emergency plan, universal precautions, aspiration precaution (proper positioning during feeding), safety precautions with Activities of Daily Living (ADLs), proper use of assistance devices, child safety precaution with [REDACTED], [REDACTED], [REDACTED], fall/injury precaution [REDACTED], safe administration of medications, and safety in keeping all equipment clean and charged. *Id.*

29. In relevant part, the POC required the nurse to be alert and awake to provide medication, positioning, ADLs, and complete head-to-toe assessment during shift documentation every two hours or as needed. The nurse was also required to assess all bodily systems. *Id.*

30. In relevant part, the POC ordered the care for the Student's ADLs to include observation and head to toe assessment, vital signs during each shift and as needed, notify doctor and parent immediately with any change in condition of skin integrity, and maintain skin integrity to prevent skin impairment. *Id.*

31. In relevant part, the [REDACTED] ordered the [REDACTED] care to include monitoring of the [REDACTED] during each shift to ensure it is secure and to prevent [REDACTED], monitoring for infection [REDACTED]²⁶ for fever, odor, warmth, redness, purulent drainage, and discomfort. *Id.*

32. In relevant part, the [REDACTED] ordered the [REDACTED] management to include calling the parent and 911 if the Student experiences continuous s [REDACTED] lasting greater than five minutes, and to be prepared to describe the pattern of the [REDACTED] and look at the clock to see how long the [REDACTED] lasts. *Id.*

²⁶ [REDACTED] (last visited September 19, 2024); see also *Ishola, supra*.

33. On September 11, 2023, by email, the Parent notified [REDACTED], HCPS, that the Student was relocating to Howard County, Maryland, and that she needed to enroll the Student, a medically [REDACTED], into the HCPS system. P. Ex. 40.

34. On October 6, 2023, the Parent withdrew the Student from [REDACTED] and began the process of enrolling the Student into the HCPS system. HCPS Ex. 6.

The HCPS History

46. The Student was considered enrolled in the HCPS system on October 13, 2024. P. Ex. 29.

47. The Student is ten years-old and enrolled in the fourth grade at [REDACTED] ([REDACTED]). HCPS Ex. 13.

48. [REDACTED] is a comprehensive elementary school with 850 students and has three regional programs for students whose needs cannot be served in their home school. These students attend [REDACTED] to receive instruction and behavioral supports from staff who are highly qualified and specialized in areas which meet the students' needs. Testimony of [REDACTED].

49. The fourth grade at [REDACTED] has approximately 126 students, and approximately 27 students in the Student's classroom. Testimony of [REDACTED].

50. During the 2023-2024, the health room at [REDACTED] was staffed by two RNs, which included [REDACTED]. Typically, the staffing model at [REDACTED] would include an RN and either another RN or Licensed Practical Nurse (LPN) or a Certified Nurse Technician (CNT). Testimony of [REDACTED].

51. On November 17, 2023, the HCPS convened an IEP meeting, referred to as a "move-in review" to review the Student's records from [REDACTED], to determine the Student's eligibility for special education, to consider comparable services, and to determine if new assessments needed to be conducted. HCPS Ex. 7.

52. In relevant part, the IEP team included the Parent, [REDACTED], a special education consultant for the Parent, [REDACTED], the school nurse at [REDACTED], [REDACTED], Health Services Supervisor, [REDACTED], Special Education Coordinator, and [REDACTED], Assistant Principal at [REDACTED]. *Id.*

53. During this meeting, the IEP team discussed the Student's health needs. [REDACTED] explained that the school will need to order equipment such as a changing table and that more equipment may be required as information is provided. *Id.*

54. The Parent reported that the Student's uses a [REDACTED] for water hydration, has a [REDACTED], and will take medication at school each day. The Parent asked if the PDN criteria considered the Student's [REDACTED] versus a specific medical need. The Parent reported that each of the Student's specific medical needs can be managed but was concerned if several issues occur at once. *Id.*

55. [REDACTED] reported that the Student has a [REDACTED] response protocol with [REDACTED] that occur more at school and are unpredictable but are usually [REDACTED]. She added that the Student has [REDACTED] which indicate something is majorly wrong with the Student. *Id.*

56. [REDACTED] explained the criteria for a PDN, and if needed that the HCPS has contracts with several providers.²⁷ *Id.*

57. HCPS has written eligibility criteria for students who qualify or do not qualify for PDN services. P. Ex. 50.

58. In relevant part, a student qualifies for a PDN if a student is [REDACTED] and whose medical conditions can rapidly change resulting in a sudden decline requiring medical intervention; and students with complex, active [REDACTED] requiring either pulse ox

²⁷ Neither party presented any testimony of what PDN criteria Ms. Pazulski explained during this meeting.

monitoring with application of oxygen or the immediate administration of [REDACTED]^{t28} / [REDACTED] medication. *Id.*

59. A student does not qualify for a PDN if a student has stable medical conditions (e.g. [REDACTED] with [REDACTED] phase, not requiring oxygen administration, simple [REDACTED]) or needs only physical or occupational therapy. If it is determined that a student requires Close Adult Supervision, the school will assign a one-to-one staff member to be with the student. *Id.*

60. [REDACTED] reported that the Student's medical issues are things to consider and to have training on. [REDACTED] also explained that the Parents' concern about the Student's medical needs can be revisited after [REDACTED], the school nurse, develops a healthcare plan. *Id.*

61. On December 5, 2023, [REDACTED] informed the HCPS that the Student's health is tenuously balanced, and the Student has had a rapid decline, severe complications, and [REDACTED] following [REDACTED] and [REDACTED] that were delayed in being treated. HCPS Ex. 33.

62. [REDACTED] recommended safety protocols to be followed at school to include all classroom and nursing staff to be trained to identify and respond to [REDACTED], with an RN or LPN on campus throughout the school day. [REDACTED] opined that an aide could help recognize if the Student is having [REDACTED], but the nurse should treat the Student and assess if the Student is back to baseline. [REDACTED] advised that it was essential that the Student be administered [REDACTED] within five minutes. *Id.*

63. [REDACTED] recommended that the Student have a dedicated PDN to monitor [REDACTED], safe wheelchair mobility, [REDACTED] implementing [REDACTED], communication support,

²⁸ There was testimony that [REDACTED] it was an older term referencing a type [REDACTED] s, which the Student did not use.

assistance with [REDACTED], monitoring [REDACTED] and [REDACTED], and replacing both if accidentally [REDACTED]. *Id.*

64. On December 15, 2023, the HCPS and the Parent again participated in an IEP meeting to develop the Student's IEP. The IEP team included the [REDACTED], a nursing consultant for the Parent, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. HCPS Ex. 11.

65. During the IEP meeting, the Parent expressed a concern that the school nurse cannot meet the Student's medical needs and because of his chronic medical needs, the Student requires a PDN. The Parent also expressed a concern about the school placing responsibility for all of the Student's medical needs on the school nurse. *Id.*

66. [REDACTED] expressed a concern that the Student's is at risk of a complicated medical emergency and possible death. [REDACTED] was concerned that nursing assessments could not be delegated because the Student's medical needs are not routine or predictable and inquired if the HCPS was considering a PDN for the Student. *Id.*

67. [REDACTED], the school nurse, reported that she has not met the Student yet and would be conducting an evaluation and also reported that the Student's doctor believes the Student requires a PDN to attend school. *Id.*

68. On December 15, 2023, the HCPS and the Parent created the Student's IEP. HCPS Ex. 13, P. Ex. 17.

69. The Student was eligible to receive special education with a primary disability identified as "multiple disabilities." The areas affected by the Student's disabilities include reading comprehension, mathematics - calculation, written expression, behavior, [REDACTED], orientation & mobility, gross motor, fine motor, articulation, expressive and receptive language, [REDACTED], cognitive and intellectual, and adaptive skills. HCPS Ex. 13.

70. The Student's present level of academic achievement and functional performance (PLAAFP) in the area of health and medical condition was based on information contained in the Student's IEP from the [REDACTED]. HCPS Ex. 13, P. Ex. 17.

71. The Student's PLAFP regarding his health and medical condition was:

[The Student] has a complex medical history. His diagnoses include [REDACTED], [REDACTED], [REDACTED], [REDACTED] including [REDACTED] with a [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] bladder.

HCPS Ex. 13, P. Ex. 17.

72. The Student's IEP describes the supplementary aids, services, program modifications and other supports that the Student was to receive. The Student required a dedicated adult support for all functional tasks, mobility, transitioning to different classrooms, transitioning in and out of equipment, walking in assistive devices, and for self-care needs. *Id.*

73. The dedicated adult support was required to help implement modifications to the general education curriculum and ensure that the Student can access all curriculum and activities in the general education classroom, the school building, and to assist the Student during emergency evacuations. *Id.*

74. The IEP provided that the dedicated adult support will assist the Student with the following:

- all transfers, i.e., wheelchair to adaptive chair, wheelchair to gait device, wheelchair to changing table, and moderate to maximal assistance for transfers to low surfaces, with a two-person dependent lift or use of a mechanical lift for transfers to high surfaces when he is unable to assist;
- donning and doffing [REDACTED], knee immobilizers and [REDACTED],²⁹
- propelling the wheelchair to transition to and from classroom to walk in the gait device;

²⁹ [REDACTED]

- using his adaptive device for communication;
- monitoring the padding around the [REDACTED] to decrease risk of skin breakdown;
- maintaining appropriate and safe behavior during play, i.e., floor play and recess;
- assistance to decrease mouthing behaviors and risk of skin breakdown;
- [REDACTED] two to three times daily at school;
- escorting to and from health room to ensure safe building navigation;
- after training implementing the Student's mealtime plan of care during lunch and snack; and
- to and from cultural arts, assist on elevator if cultural arts classroom is located upstairs for supervision and safety.

Id.

75. The IEP provided that an emergency evacuation plan would be created by the nurse and carried out by adult staff in the building. In the case of an emergency, staff should aid and support the Student to an appropriate pathway to exit the building safely. If the Student is in a two-story building an appropriate device such as the [REDACTED] will be needed to exit the building. *Id.*

76. The IEP included a Mealtime Plan of Care to provide for safe oral intake of nutrition/hydration and a positive mealtime experience in order to access learning. Staff members must attend feeding training prior to feeding or monitoring students to provide direct close supervision of the Student while sitting at the table with Student. P. Ex. 50.

77. The Mealtime Plan of Care require staff to:

- Assist the Student with retrieving and setting up his snack;
- Observe that the food is soft and has been cut into bite sized pieces ($\frac{1}{4}$ - $\frac{1}{2}$ inch);
- Allow the Student to feed himself and assist if needed;
- Observe for the Student to take one bite at a time;
- Watch for the Student to chew, swallow and clear the food from his mouth with each bite before taking the next;
- Give verbal/physical cues as needed; and
- Assist/remind/support the Student head to make sure he maintains upright positioning of his head while eating/drinking.

Id.

78. The dedicated adult to support the Student at [REDACTED] was [REDACTED]. [REDACTED] would be the Student's primary support in the classroom and would be the primary contact and communication person for the Student to all other service providers. [REDACTED] was going to support the Student in the classroom and with his health needs. Testimony of [REDACTED].

79. On December 19, 2023, the HCPS and the Parent participated in another IEP meeting. The IEP team included the Parent, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. HCPS Ex. 12.

80. During this IEP meeting, the team determined that the Student's least restrictive environment (LRE) to receive special education services would be at [REDACTED] and reviewed the fourth-grade schedule and the IEP's service hours. *Id.*

81. The IEP team discussed that the Student required a slow transition into school because the Student had been out of school for almost a year and, for that reason, the Student was to begin at [REDACTED] with a partial day program and then transition to a full day program. *Id.*

82. Because the Student had complex needs, the purpose of a slow transition back to school was to ensure that he felt comfortable and welcomed into the school setting and to build his stamina as well as the competency of all staff working the Student. Testimony of [REDACTED].

83. The IEP team discussed the Student's nursing needs. [REDACTED] explained that a nursing assessment would need to take place before a final decision could be made about a PDN. She also reported that the Student was scheduled to come to PRES the next day for an assessment to be conducted by [REDACTED], and that [REDACTED] would also participate in the assessment. HCPS Ex. 12.

84. On December 20, 2023, [REDACTED], RN, performed a Special Health Needs Nursing Assessment (Assessment) of the Student. HCPS Ex. 32.

85. Prior to a physical assessment, the Assessment included a review of the Student's various systems [REDACTED]

[REDACTED]. *Id.*

86. A physical assessment of the Student included a head-to-toe assessment starting with vital signs, assessment of the [REDACTED], a check of the heart and lungs, and skin integrity around the [REDACTED]. *Id.*

87. Based on the Assessment, the Student required:

- the administration of medication during the school day to include A [REDACTED] and [REDACTED] as needed;
- special health care needs included a [REDACTED] and the administration of medication via the [REDACTED];
- periodic nursing assessment as needed;
- special needs during transportation including a bus with a wheelchair lift; and
- the nursing services required by the Student were delegable to an unlicensed individual.

Id.

88. During the Assessment, [REDACTED] obtained information from the Parent to confirm that the Student's daily medication was administered through the [REDACTED], with a water [REDACTED], and the Student required a [REDACTED] hydration. Additionally, per [REDACTED] orders, the Student required emergency [REDACTED] for [REDACTED] lasting greater than five minutes, which at the time was [REDACTED], provided orally by mouth. However, the Parent reported that the Student had not received emergency medication in many years because he had not had a [REDACTED] requiring [REDACTED] medication. HCPS Ex. 33.

89. During the Assessment, [REDACTED] also confirmed with the Parent that the Student was last [REDACTED] in February 2023 for a [REDACTED], that his last [REDACTED] or [REDACTED] was four years ago, and that he does not have a [REDACTED]. *Id.*

90. After the Assessment, the Student's emergency medication for s [REDACTED] was changed to [REDACTED], a [REDACTED], and was to be administered when a [REDACTED] lasts longer than five minutes or if a there is a [REDACTED] of three or more within one hour. HCPS Ex. 35.

91. On or about January 4, 2024, the HCPS developed an Individualized Health Care Plan for the Student, which described his major health diagnoses and medical issues related to [REDACTED] [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. HCPS Ex. 16.

92. The Health Care Plan provided nursing goals for the Student to include having a safe and nurturing environment at school, having skilled nursing needs met a school, and to participate in activities as tolerated and modified. *Id.*

93. The Health Care Plan described an emergency plan for [REDACTED], [REDACTED], and issues with the [REDACTED], all of which included notifying the nurse, administrator and the Parent. *Id.*

94. The Health Care Plan's emergency plan for each of these medical issues specifically described the symptoms to be observed and the required response if the symptoms are observed. Generally, each emergency plan required staff to contact the [REDACTED] health room so the RN could respond. *Id.*

95. Specifically, the emergency plan for any issues with the [REDACTED] required the Student to rest in upright position, to notify health, contact the parents to make them aware of possible [REDACTED], consider calling 911 (make them aware that student is a child with complex [REDACTED] associated with [REDACTED] and a [REDACTED]), to notify administrators. *Id.*

96. For the Student's [REDACTED], the emergency plan required staff to:

- Start timing and call the Health Room, and clear the area around the Student to avoid injury;
- Complete the [REDACTED] checklist and give it to the Health Room staff;

- Be prepared to perform CPR³⁰ if Student stops breathing;
- For a [REDACTED] or a [REDACTED] lasting three minutes, the RN is to give [REDACTED] or [REDACTED] medication is to be administered as ordered by physician and per HCPS policy;
- The Student should be allowed to rest following a [REDACTED]; and
- The Parent is to be called

Id.

97. On January 5, 2024, the HCPS and the Parent participated in an IEP meeting to discuss the Student's eligibility for a PDN. HCPS Ex. 12.

98. During this IEP meeting, [REDACTED] reported that the Student has a very complex medical history but based on PDN criteria and his current state of functioning and needs, he does not meet the criteria for a PDN at this time, and if there is a change requiring reevaluation that will be addressed in a timely manner. P. Ex. 46.

99. The IEP team also discussed the Student's schedule to come to school, which included training for all staff and service providers to demonstrate competency. The school's physical therapist (PT) was scheduled to conduct the first training. Other training sessions would be performed and would be ongoing once the staff and service members get to know the Student better. The first training session was scheduled to begin on January 8, 2024, however based on the Student's availability, the training was scheduled for January 9, 2024. HCPS Ex. 14.

100. As of January 8, 2024, [REDACTED] had received all the necessary equipment the Student required to attend school. Testimony of [REDACTED].

101. As of January 8, 2024, [REDACTED], the Assistant Principal at [REDACTED], established a training schedule for the staff and service providers at [REDACTED]. HCPS Ex. 18.

102. As of January 8, 2024, the Student had a Health Care Plan and until that plan could be shared with all staff and service providers that would be involved with the Student,

³⁰ Cardiopulmonary resuscitation.

██████████ would have had a person from health services to accompany him during the school day until all staff could be properly trained to provide for his medical needs. Testimony of ██████████.

103. On January 9, 2024, PRES conducted its first training, which was conducted by the school's PT and was designed to train all staff and services providers who would have contact the Student, including the Student's dedicated adult, ██████████. The purpose of the training was for participants to learn how to transfer the Student for issues including but not limited to ██████████. Testimony of ██████████, HCPS 18.

104. After this training, because staff at ██████████ would be capable of providing for the Student's most immediate needs and safety, ██████████ was ready for the Student to attend school. Testimony of ██████████.

105. After the January 9, 2024 training, the Parent stopped participating in any training at ██████████ and would not bring the Student to school without a PDN. Testimony of Parent, HCPS Ex. 19.

106. On March 19, 2024, ██████████, the Coordinator for Special Education Compliance for the HCPS notified the Parent that the Student's IEP was not implemented from October 13, 2023 to January 4, 2024, which was the time period required to obtain necessary equipment and train staff to support the Student's medical needs before he could attend school. During this time, the Student was at home and not receiving any educational services from the HCPS. Ex. 29.

107. ██████████ notified the Parent that the Student was eligible for compensatory education services equal to 216.75 hours of classroom instruction, twelve hours of adaptive

physical education, three hours of physical therapy, three hours of occupational therapy, and ten and one-half hours of speech language therapy.³¹ *Id.*

DISCUSSION

Legal Framework

Burden of Proof

The standard of proof is a preponderance of the evidence. COMAR 28.02.01.21K(1). 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 Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parent seeks relief and bears the burden of proof to show that the HCPS failed to develop an IEP which provided a FAPE to the Student by containing a PDN as a related service. The relief the Parent seeks is an IEP which provides the Student with a PDN throughout the school day, including during transportation to and from school by a school bus. The Parent also seeks compensatory education services for the time period that the HCPS did not provide a FAPE to the Student.

IDEA and FAPE

The IDEA requires the states to provide a FAPE³² to all children who qualify for special education services. *See* 20 U.S.C.A. § 1412. To meet this obligation, local educational agencies (LEAs) must ensure that a “FAPE emphasizes special education and related services designed to meet [the eligible child’s] 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. LEAs meet the federal requirement to provide a FAPE to eligible students through development and

³¹ The Parent agreed with the compensatory education services offered by the HCPS but was also requesting to receive compensatory education services to continue beyond January 4, 2024. .

³² In relevant part, a “FAPE” means special education and related services that are provided at public expense, under public supervision and direction, without charge and are provided in conformity with an IEP. *See* 34 C.F.R. § 300.17, *see also* 20 U.S.C.A. § 1401(9).

implementation of IEPs. *See M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009) (“An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE.”); *see also* 20 U.S.C.A. § 1414(d); 34 C.F.R. §§ 300.320-300.324. In relevant part, the IEP must contain, among other things, a statement of the child’s present levels of academic achievement and functional performance, a statement of measurable annual goals, a statement of the special education and related services, supplementary aids and services, and program modifications or supports to be provided to the child. *See* 20 U.S.C.A. § 1414(d)(1)(A)(i).

This case is focused on whether the Student’s IEP provides a related or supportive service which provides the Student with a FAPE. In relevant part, “related services” includes a supportive service of school nurse services designed to enable a child with a disability to receive a FAPE as described in the IEP. 20 U.S.C.A §1401(26)(A). By federal and state regulation, also in relevant part, “related services” includes other supportive services including school health services and school nurse services. 34 C.F.R. § 300.34(a); COMAR 13A.05.01.03B(65)(b)(xi) (“Related services” includes school health services, including school nursing services). School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child’s IEP. 34 C.F.R. § 300.34(c)(13), COMAR 13A.05.01.03B(67). School nurse services are services provided by a qualified school nurse or other qualified person. *Id.*

As a general matter, nursing services that enable a disabled child to remain in school during the day provide the student with the meaningful access to education that Congress envisioned. *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66, 73 (1999) (internal citations omitted). In *Garret F.*, the Supreme Court held that the case was “about whether meaningful access to the public schools will be assured, not the level of education that a school

must finance once access is attained.” *Id.* at 79. The Supreme Court further held that the nursing services at issue must be provided if Garret is to remain in school.³³ *Id.* Accordingly, the Supreme Court concluded that under the IDEA, the school district must fund such “related services” in order to help guarantee that students like Garret are integrated into the public schools. *Id.*

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*

Maryland – Nursing Services

Central to the Parent’s complaint is whether any related or supportive service for the Student which involves a nursing service must be directly provided by an RN, including a PDN, or can be delegated to an individual who is unlicensed as an RN. The duties and responsibilities of an RN, including delegation of nursing services, are defined by Maryland’s Nurse Practice Act (NPA).

In Maryland, there is a State Board of Nursing (Board) within the Maryland Department of Health (Department or MDH), with the power and duties to carry out the NPA. *See* Md. Code Ann., Health Occ., §§ 8-201, 8-205, 8-801 (2021 and Supp. 2023). A “Registered Nurse” means an individual who is licensed by the Board to practice registered nursing. COMAR

³³ Garret F. was a four-year-old who was seriously injured in a motorcycle accident resulting a spinal cord injury which caused him to become a quadriplegic and ventilator dependent. *See Rapids Cmty. Sch. Dist. v. Garret F.*, 106 F. 3d. 822 (1997). Garret F. attended school with a personal attendant until the fifth grade, when his parent requested the school to provide nursing services to the student. During the school day, Garret F. required a personal attendant within hearing distance of him at all times to see to his health care needs, urinary bladder catheterization about once a day, suctioning of his tracheostomy as needed, food and drink on a regular schedule, repositioning, ambu bag administration if the ventilator malfunctions, ventilator setting checks, observation for respiratory distress or autonomic hyperreflexia, blood pressure monitoring, and bowel disimpaction in cases of autonomic hyperreflexia. *See Garret F.*, 106 F. 3d. 823 (1997).

10.27.09.01B(22)(a). The “standards of registered nurse practice” means the minimum criteria the registered nurse shall adhere to in the practice of registered nursing and includes certain standards of care (SOC). COMAR 10.27.09.01B(26). “SOC” means a minimum level of competent nursing practice demonstrated through assessment, analysis, formulation of nursing diagnosis, outcome identification, planning, implementation, and evaluation. COMAR 10.27.09.01B(25).

The SOC of assessment means a systematic, dynamic process by which the nurse, through interaction with the client, family, significant others, and other health care providers, collects and analyzes data. COMAR 10.27.09.01B(3), COMAR 10.27.09.02A(1). The SOC to formulate a nursing diagnosis requires that the RN analyze the assessment data to describe the actual or potential, overt or covert health problems which registered nurses are licensed to treat. COMAR 10.27.09.01B(16). The SOC to develop a plan of care means designing methods to solve identified problems and to attain outcomes by means of establishing priorities, setting goals, and defining interventions for the client. COMAR 10.27.09.01B(18), COMAR 10.27.09.02D(1).

As a SOC, the RN shall implement the interventions identified in the plan of care. COMAR 10.27.09.02E(1). “Implementation” means the process of performing, delegating, assigning, supervising, and coordinating interventions. COMAR 10.27.09.01B(13). Selected interventions may be assigned and delegated to other personnel participating in delivering care. COMAR 10.27.09.02E(2)(c). When assignment or delegation occurs, supervision is provided. COMAR 10.27.09.02E(2)(d). As a SOC, the RN shall evaluate the client’s progress, which means the review and analysis of the extent to which the assessment, nursing diagnosis, planning, and implementation is effective in resolving the client’s health problems or progress toward the attainment of expected outcomes. COMAR 10.27.09.01B(9), COMAR

10.27.09.02F(1). Each SOC shall be derived in a complete, systematic, and ongoing manner, formulated with the client, family, significant others, and other members of the health care team, when possible, and documented. COMAR 10.27.09.02.

The RN may delegate the responsibility to perform a nursing task to an unlicensed individual, a certified nursing assistant (CNT), or a medication technician (MT). COMAR 10.27.11.03A. The delegating nurse retains the accountability for the nursing task. COMAR 10.27.11.03A.

A nursing task delegated by the nurse shall be:

- (1) Within the area of responsibility of the nurse delegating the act;
- (2) Such that, in the judgment of the nurse, it can be properly and safely performed by the unlicensed individual, [CNT], or [MT] without jeopardizing the client welfare; and
- (3) A task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment.

COMAR 10.27.11.03B.

A nursing task delegated by the RN may not require the unlicensed individual, CNT, or MT to exercise nursing judgment or intervention except in an emergency situation. COMAR 10.27.11.03C. When delegating a nursing task to an unlicensed individual, CNT, or MT the nurse shall:

- (1) Make an assessment of the patient's nursing care needs before delegating the task;
- (2) Either instruct the unlicensed individual, [CNT or MT] in the delegated task or verify the unlicensed individual's, [CNT's or MT's] competency to perform the nursing task;
- (3) Supervise the performance of the delegated nursing task in accordance with Regulation .04 of this chapter;
- (4) Be accountable and responsible for the delegated task;
- (5) Evaluate the performance of the delegated nursing task; and

(6) Be responsible for assuring accurate documentation of outcomes on the nursing record.

COMAR 10.27.11.03D.

The nurse shall be the primary decision maker when delegating a nursing task to an unlicensed individual, CNT, MT. COMAR 10.27.11.03E. Nursing judgment shall be exercised within the context of the employing facility's model of nursing practice which includes a mechanism for:

- (1) Identifying those individuals to whom nursing tasks may be delegated;
- (2) Reevaluation of the competency of those to whom nursing tasks may be delegated;
- (3) Recognizing that the final decision regarding delegation is within the scope of the nurse's professional judgment;
- (4) Determining the competency of the nurse to delegate; and
- (5) Determining to whom nursing tasks may be delegated, which includes input by nurses employed in the facility.

COMAR 10.27.11.03E.

“Model of nursing practice” means the policies, procedures, and practice guidelines established by the facility, which are consistent with this chapter regarding delegation of nursing functions and regulations governing the facility; and that provide direction to nursing staff on the delivery of care to the client population which the facility serves. COMAR 10.27.11.02B(13)(a). The “model of nursing practice” may not supersede a delegating nurse's prudent judgment regarding delegation of a nursing function to a CNT, an unlicensed individual, or a MT; or a particular delegated nursing function to that individual or individuals. COMAR 10.27.11.02B(13)(b).

The RN shall assume the role of case manager in delegating nursing tasks, including the administration of medications, only in accordance with Regulation .05G of this chapter in situations where the nurse has thoroughly assessed and documented that:

- (1) The client's health care needs are chronic, stable, uncomplicated, routine, and predictable;
- (2) The environment is conducive to the delegation of nursing tasks; and
- (3) The client is unable to perform his or her own care.

COMAR 10.27.11.02F.

Analysis

Delegation and PDN - FAPE

In September 2023, the Parent sent an email to the HCPS to communicate that the family was moving and anticipated enrolling the Student into the HCPS system. By this email and in her testimony, the Parent described the Student's medical issues and his need for a PDN to access his education. The Parent described the Student's medical issues as:



P. Ex. 40.

The Parent also described why it was important for the Student to have a PDN:

It is incredibly important that his PDN be able to attend school with him because it is the only way our son will be able to maintain access to dependable nursing care both inside and outside of school, have consistency in daily care-plan implementation, ensure consistent communication across settings, and maintain the flexibility to be able to move between environments as needs arise. The assessment data that his nurse collects and documents throughout the day is vital to keeping [all] of

his doctors and therapists informed so that we can work together to effectively manage the many intricacies of his ongoing treatment plans.

Id.

In her testimony and through this same email, the Parent explained that the Student currently has a nurse providing daily care through the [REDACTED] and as ordered by the Patient's treating physician, [REDACTED]. The Parent was hoping to maintain the same nursing provider, should the Student be approved to have a PDN at school.

The Parent also testified extensively about the Student's complex medical history and the importance of providing the Student with the skilled nursing care that only a RN can provide. The Parent contends that only an RN can properly assess and treat the Student's complex medical needs related to his [REDACTED], the [REDACTED], his [REDACTED], his skin integrity, nutrition and hydration. The Parent contends that the Student medical needs qualify him for a PDN to access his education and keep him safe in school and that his medical care is not delegable to any other care provider, especially an unlicensed dedicated adult. The Parent argues that the Student's medical needs are too complex and too interrelated to be considered on a separate basis and must be considered as whole when determining if his care needs can be delegated by the nursing staff at [REDACTED].

The Parent asserts that that the Student's medical needs are not delegable because those needs are chronic, unstable, complicated, non-routine, and not predicable. *See* COMAR 10.27.11.02. During the IEP development process, the Parent was provided a document which described the HCPS criteria for a PDN. *See* P. Ex. 50. In relevant part, a student who is [REDACTED] and whose medical condition can rapidly change resulting in a sudden decline requiring medical intervention qualifies for a PDN. *Id.* However, the same criteria also provide that a student with stable medical conditions does not qualify for a PDN. *Id.* The criteria explains that if it is determined that a student requires close adult supervision, the HCPS will

assign a one-to-one staff member to be with the student. The criteria provide some examples of stable medical conditions to include [REDACTED] with [REDACTED] phase,³⁴not requiring oxygen administration, and [REDACTED]. *See id.*

There is no dispute that the Student's medical issues are chronic, based on his unique circumstances. He has experienced these medical issues for most of his lifetime. The Parent is an [REDACTED] and has extensive experience caring for the Student. She testified with a great degree of specificity about the Student's medical needs. The Parent believes that the Student's [REDACTED] [REDACTED], complicated, non-routine, and not predicably because he has [REDACTED] [REDACTED] but not predicably which are usually caused by stress. She testified that the Student's [REDACTED] can fail any time, without warning, which will cause a [REDACTED] [REDACTED]. She explained that Student's [REDACTED] and require skilled nursing assessment to recognize the difference between each type of [REDACTED] and to determine the appropriate treatment. The Student's heart rate also has to be monitored because if it is below 90 or 80, then it is an indication of a [REDACTED] or [REDACTED]; and if his heart rate is greater than 140, the Student's [REDACTED] should be withheld. The Parent explained that the Student can eat food if it is cut up for him but he has to be monitored to ensure proper pacing and that he is fully chewing so he is not at risk of aspiration. The assessment of whether he has sufficient nutritional intake will require a [REDACTED] by the [REDACTED], which necessitates a nursing assessment. The Parent testified that the Student has skin integrity issues because he uses a wheelchair, wears devices for walking, and has the [REDACTED], and [REDACTED] and requires the nursing assessment to ensure the skin is not breaking down, becoming inflamed, and leading to infection.

³⁴ [REDACTED].

In essence, the Parent argues that the Student's baseline is determined on a day-to-day basis and because his issues are so complex, so varied, subject to change at any time, and interconnected that the HCPS incorrectly found the Student not eligible for PDN services or has services which can be delegated to an unlicensed dedicated adult.

The Parent also disputes that [REDACTED], the school nurse at [REDACTED], can safely provide nursing services to the Student because she is also responsible for the care of 850 students, and on occasion has been the only RN in the school's health room. For this reason, should an emergent issue occur for the Student, [REDACTED] would be incapable of providing the [REDACTED] required to keep the Student safe in school. The Parent contends that the Student is continually at risk of [REDACTED] because of his eating difficulties, the Student [REDACTED] [REDACTED] which can cause them to be [REDACTED], and his [REDACTED] require constant nursing assessment.

[REDACTED] was called to testify by the Parent. In early communication with the Parent both before and after the Assessment conducted by [REDACTED] on December 20, 2024, [REDACTED] conveyed support for the Student's need for a PDN. However, after [REDACTED] supervisor, [REDACTED], and the HCPS Director of School Health, [REDACTED] became involved, the Parent contends that [REDACTED] opinion changed. Ultimately, after the Assessment, [REDACTED] determined that the Student did not qualify for a PDN and that much of his medical care as described by the Health Care Plan was delegable to the Student's dedicated adult. The Parent argues that, based on the influence of these individuals, [REDACTED] [REDACTED] decision was not a proper exercise of her nursing judgement and was inconsistent with the NPA. *See* COMAR 10.27.11.03B.

In support of the Parent's position, [REDACTED] testified as an expert in special education. To be clear, there is no dispute that the Student's December 15, 2024 IEP is

reasonably calculated to provide the Student with meaningful educational benefit. The disputed issue is whether the Student can safely access that special education. ██████████ opined that the educational staff, the general and special education teachers, and the related services providers should be focused on implementing the IEP's educational goals and objectives and a PDN can focus on the Student's medical needs. ██████████ testified that the IEP as written, without a PDN, does not provide the Student with a FAPE, so that the Student can safely go to school. However, as to the Student's eligibility for a PDN, ██████████ agreed that a Director or Supervisor of Health Services at the HCPS would have a greater basis of knowledge as to what services can be provided to the Student to meet his medical needs.

██████████ testified as an expert in School Health Service, Nursing, and Delegation of Nursing Services. She explained that delegation of nursing tasks is appropriate if a person's medical needs are chronic, routine, predictable, stable, and uncomplicated. As a nurse, ██████████ would delegate low risk tasks to an unlicensed caregiver. She also explained that a decision to delegate nursing services depends on the nurse's judgement and should be a decision that a reasonable, prudent nurse would make. In the opinion of ██████████, the Student needs a PDN because his medical needs are complex from head to toe and include neurological complications, in addition to a ██████████ that is not in the right place, which can cause him to be a ticking time bomb. She added that the ██████████ is going to fail and that it is just a matter of time. ██████████ explained the Student has the ██████████ which occur several times a week and there is a risk that these ██████████ can add up to a ██████████, requiring proper nursing assessment. Additionally, the Student has several other complications related to the ██████████, positioning in the wheelchair, and ██████████—all which cause a risk of skin breakdown and require proper assessment and treatment. Based on the Student's complex needs, ██████████ explained that the Student requires constant nursing assessment, which cannot be delegated. She

further explained that the Student has multi-system needs, with multi-system risks and delegating any nursing tasks is not worth the risk to his morbidity or mortality. During her testimony, [REDACTED] [REDACTED] acknowledged that students in a public school have [REDACTED], [REDACTED], and [REDACTED]. She agreed that on an individual basis, the nursing services for those medical needs can be delegated to an unlicensed individual. However, [REDACTED] continued to opine that based on the Student's complex co-morbidity, all his needs require skilled nursing assessment which cannot be delegated. She also opined that it was not reasonable or prudent to require one RN in a large school to be readily available for any assessment or intervention in case of an emergency.

Clearly the HCPS determined that the Student was not eligible for a PDN in order to provided him a FAPE. To support its decision, the HCPS primarily relied upon two witnesses. [REDACTED], the Health Services Supervisor at [REDACTED], who participated in several IEP meetings, participated in the Student's Assessment, and was a part of a collaborative effort with [REDACTED] and [REDACTED] to determine if the Student required a PDN. The second witness was [REDACTED], the Director of School Health Services for the HCPS system, who helped to develop the statewide guidance from the MSDE and MDH on delegation of nursing tasks in the school setting, and likewise participated in several IEP meetings and collaborated on the determination regarding PDN services for the Student.

As to medication management [REDACTED] explained that Student required one daily administration of [REDACTED], which would be provided through the [REDACTED] [REDACTED] at about mid-day. The Student also required a [REDACTED] with a [REDACTED]. [REDACTED] [REDACTED] explained that these are the only two skilled nursing tasks that the Student needed on a daily basis. She also explained that the Student required [REDACTED], as needed, which was provided through an inhaler. For the Student's [REDACTED], as an emergency medicine, the Student had an order for [REDACTED], which would be provided through a [REDACTED]. [REDACTED]

explained that this medication is administered on an emergency basis and is authorized to be done by an unlicensed staff member.³⁵

reviewed the HCPS criteria for a PDN and explained that the Student does not qualify for a PDN because his medical condition is stable, and he only has periodic . See P. Ex. 50. She agreed that the Student has a complex medical history, but his are infrequent and without the severity of requiring oxygen or emergency medication. She supported this position based on the Parent's report that the Student's last requiring was years ago. explained that the severity of a is dependent on the need for emergency medication and whether hospitalization is required. She added that Student has a and is expected to have a , but the severity is based on need for . For the Student, per ' orders, acknowledged that the Student requires if he has three or more within an hour or any kind of that lasts more than five minutes. However, pointed out that the Student has not required for years.

explained that at , there is an RN on staff, in the building every day, and that the RN is . The staffing model at includes another nurse, either an LPN or an RN, or a Certified Nurse Technician. This past year for each school day there were two RNs. noted that recommended that there be a nurse in the building for the Student and the staffing model meets that recommendation. She added that based on the staffing model, despite the large number of students at the school, would be able to provide any required nursing care for the Student and be able to respond to an emergency if needed.

³⁵ See COMAR 10.27.11.03C, HCPS Ex. 40.

As to training of staff, [REDACTED] explained that all special educators, therapists, any adult support that will be working with the Student, including the dedicated adult support, and any transportation staff like the bus driver or a bus aide would be trained in providing care to the Student and to observe for anything that is not the Student's baseline. The Staff would also be trained to report the observation back to the school health staff for a follow-up assessment. She added that the training would include observing the signs of [REDACTED], to report it to the nurse, to continue monitoring the [REDACTED] and, if required, administering the [REDACTED], calling 911, and to notify the Parent. Similarly, with the Student's other medical issues involving the [REDACTED], [REDACTED], and skin integrity, all staff will be trained to observe and report any changes in the Student's baseline. If the [REDACTED], the nurse can [REDACTED] she is trained. [REDACTED] explained that if such an issue occurred, it would typically require a response within twenty or thirty minutes. Staff would have to report the issue to the nursing staff who would then respond to [REDACTED] as ordered by a doctor.

[REDACTED] testified that when it comes to providing nursing services for the Student, except for issues that an unlicensed individual can provide like supporting the Student's ADLs or providing [REDACTED], the adult unlicensed staff would be trained to observe the Student's baseline and report any changes to the nursing staff. The nurse would then respond to make an assessment, develop an intervention, and if needed notify the Parent. In [REDACTED] opinion, the Student did not require a PDN because his medical conditions were stable and the plan that the HCPS had in place would meet the Student's needs to be safe in school.

[REDACTED], the Director of School Health Services for the HCPS system testified about delegation of nursing services. As to HCPS criteria for the Student to be eligible for a PDN, [REDACTED] testified that the Student may be complex, but he has been very stable. As to his [REDACTED], [REDACTED] explained that the Student has not required any emergency

activity, or medicine. His [REDACTED] has been maintained. She added that the Student does not have a compromised respiratory status and does not require pulse-oxygen monitoring and has not been given any oxygen, according to his current orders. The Student also does not have a tracheotomy. For these reasons, [REDACTED] agreed that the Student did not qualify for a PDN because his medical conditions were stable.

As to the criteria of stability, [REDACTED] explained that it is based on language from the NPA related to delegation of nursing services which require a medical condition to be chronic, routine, uncomplicated, and predictable. As to the Student's medical conditions, she opined that these terms applied to the Student. For example, as to the Student's [REDACTED], the [REDACTED] may be periodic but the symptoms to observe are predictable. The Student would require [REDACTED] daily and checking for any changes in his base line to [REDACTED] which would occur on a daily basis, which is a routine uncomplicated process.

In her capacity as the Director of School Health for the HCPS, [REDACTED] has been involved in the development of guidelines that are used on a statewide basis for all school systems. The development of these guidelines involves the Directors of School Health for each county school system, the MDH, and the MSDE. Under section 7-401 of the Education Article of the Maryland Code, the MSDE and the MDH were jointly required to develop public standards and guidelines for school health services, including those related to the delegation of nursing tasks in a school setting. *See Md. Code Ann., Educ., § 7-401, see also HCPS Ex. 40.*

The Maryland State School Health Services Guidelines for the Delegation of Nursing Functions in a School Setting provides that:

The following are criteria for delegation that must be thoroughly assessed and documented for the school nurse to assume the role of case manager in delegating nursing tasks, including the administration of medications:

- The student's health care needs are chronic, stable, uncomplicated, routine, and predictable;

- The environment is conducive to delegation of nursing tasks; and
- The student is unable to perform his/her own care.

HCPS Ex. 40.6.

In the final analysis, the issue presented by the Parent's due process complaint is that the HCPS failed to provide the Student with a FAPE because it did not provide the Student with a PDN so he can safely attend school. This issue is principally answered by determining whether the Student's medical needs require a PDN to attend school. The Parent argues that the Student's medical needs would not be met through a dedicated support adult which will be tasked with performing nursing tasks which are non-delegable. The Parent contends that the Student's medical needs are chronic, unstable, complicated, non-routine, and unpredictable. However, after considering all the Parent's evidence, I find the argument unpersuasive. The Parent contends that the Student's [REDACTED] is going to fail in future. While that may be an unfortunate event, the evidence also demonstrated that his [REDACTED] has been stable for several years as demonstrated by the fact that he has not had to have any [REDACTED] to revise the [REDACTED], nor has he required [REDACTED] to address a [REDACTED]. I am persuaded by the HCPS witnesses' testimony that since the Student has not required any emergency medicine for years to address [REDACTED], the [REDACTED] is stable. The Student has a [REDACTED], which require monitoring, but I find there was no credible evidence to demonstrate that this activity is complicated or not routine. I understand that the Student's nutrition may need to be provided by the [REDACTED], but the evidence also demonstrated that the Student is eating food by mouth and only requires a [REDACTED]. Both [REDACTED] and [REDACTED] testified that treating students with complex needs or with co-morbidity like those who have a [REDACTED] or [REDACTED], and a seizure disorder is not uncommon in the HCPS and that staff are all regularly trained to specifically

provide appropriate care for such students. Ultimately, under the HCPS criteria for a PDN, the applicable Maryland regulation regard delegation, and the MSDE-MDH Guidance for delegation, based on all evidence, I conclude that the Student's health care needs are chronic, stable, uncomplicated, routine, and predictable. *See* COMAR 10.27.11.02F, P. Ex. 50.

The HCPS also demonstrated that the environment at [REDACTED] was conducive to delegation of nursing tasks. The HCPS created Health Care Plans and a training schedule to instruct all adults who will interact with the Student, including teachers, service providers, and the dedicated adult support. The [REDACTED] health room is staffed every day with an RN, [REDACTED], and as of this school year a second RN, who can provide supervision of the Student's medical needs and respond to emergencies, if needed. In fact, the Student's Health Care Plans were designed to require the HCPS staff and dedicated adult to only make observations of any changes in the Student's baseline and then report the change to the RN so she can assess the medical issue. In total, this evidence met the conducive environment requirement for delegation of a nursing tasks.³⁶ *Id.* Lastly, there is no dispute that the Student cannot provide for his own care, which satisfies the last criteria for delegation of nursing tasks. *Id.*

The HCPS developed an IEP which contemplated providing the Student a special education in an environment that he could safely attend by a combination of dedicated adult support, delegable nursing tasks, and the availability of the school nurse to prove non-delegable nursing tasks, which was reasonably calculated to provide the Student with a FAPE. *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

³⁶ For the same reasons, I find that the requirements of COMAR 10.27.09.03I(2)(b) have also been met because the HCPS provided sufficient testimony of how [REDACTED] would be instructed and directed and how the documentation and reported by [REDACTED] would be provided to and evaluated by [REDACTED]. Additionally, because the decision of whether a PDN is required to provide the Student with FAPE can be revisited at any time, [REDACTED], who is an experienced nurse, can recognize any issues with incompetence and revoke her decision to delegate task to [REDACTED]. Thus, the Parent's additional argument in the written closing argument also fails.

Compensatory Education Services

When the local education agency fails to abide by the procedural protections afforded students and parents under the IDEA, at a hearing, the parent must prove that any procedural violation resulted in a denial of FAPE to the child. Particularly, the parent must prove that the procedural violation (I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child; or (III) caused a deprivation of educational benefits. *See* 20 U.S.C.A. § 1415(f)(3)(E)(i)-(ii).

When a school system has failed its obligation to a student under the IDEA, that student is entitled to be made whole with nothing less than a "complete" remedy including compensatory services. *G.I. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); citing *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 244 (2009). Further "[w]hen a FAPE is not provided to a disabled student, the student's parents may seek an award of compensatory education. These educational services are ordered by the court to be provided prospectively to compensate for a past deficient program, i.e., the school system's failure to provide the student with a FAPE." *Y.B. v. Bd. of Educ. of Prince George's Cnty.*, 895 F. Supp. 2d 689, 693-94 (D. Md. 2012) (internal citation and quotation marks omitted). *See also Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005) ("[A] court fashioning 'appropriate' relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place."). "Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." *G. v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir. 2003). While "[t]here is no obligation to provide a day-for-day compensation for time missed" the

appropriateness of compensatory relief lies in an equitable analysis. *Reid ex rel. Reid v. D.C.*, 401 F.3d 516, 524 (D.C. Cir. 2005).

The HCPS acknowledged that it committed a procedural error by not having an IEP in place at the start of the 2023-2024 school year. 34 C.F.R. §300.323(a) (“At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.”). As a result, on March 19, 2024, it offered the Parent compensatory education services equal to 216.75 hours of classroom instruction, twelve hours of adaptive physical education, three hours of physical therapy, three hours of occupational therapy, and ten and one-half hours of speech language therapy. This was an hour for hour computation based upon the number of service hours per discipline that the Student would have received between October 11, 2023, the accepted date of enrollment, and January 8, 2024, the date that the HCPS was prepared to receive the Student for educational services. The HCPS had a plan in place for ongoing training of staff working with the Student, however, the Parent refused to make the Student available for further training and opted to not send the Student to school without a PDN.

I agree with the HCPS’ argument that I may deny a compensatory education claim in response to a district’s procedural violation of the IDEA if no harm resulted from the violation. *See T.B. v. Prince George’s Cnty. Bd. of Educ.*, 897 F.3d 566 (4th Cir. 2018) (Although a Maryland district violated the IDEA when it failed to timely evaluate a struggling high school Student, the Student’s unwillingness to attend school under any circumstances made the district’s procedural violation harmless). Thus, I find that the compensatory hours offered were sufficient to provide the Student with FAPE, based on the hour-for-hour calculation of services not provided since the Student’s enrollment and further find that the Student has not shown an

ongoing violation warranting the provision of additional compensatory services based upon the decision of the Parent to not permit the Student to attend school.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the HCPS provided the Student with an IEP which was reasonable calculated to provide the Student with a FAPE because he can safely attend school without a PDN. *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017); *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 663 (1999); 20 U.S.C.A §1401, 34 C.F.R. § 300.34; Md. Code Ann., Educ., § 7-401; COMAR 13A.05.01.03B; COMAR 10.27.09.03; COMAR 10.27.11.03; COMAR 10.27.09.03I(2)(b) Maryland State School Health Services Guidelines for the Delegation of Nursing Functions in a School Setting (December 2023).

I also conclude as matter of the law that the Student is not entitled to any additional compensatory education beyond that was agreed upon by the parties. 20 U.S.C.A. § 1415(f)(3)(E)(i)-(ii); 34 C.F.R. §300.323(a); *G.I. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 244 (2009); *Y.B. v. Bd. of Educ. of Prince George's Cnty.*, 895 F. Supp. 2d 689 (D. Md. 2012); *G. v. Fort Bragg Dependent Schools*, 343 F.3d 295 (4th Cir. 2003); *Reid ex rel. Reid v. D.C.*, 401 F.3d 516 (D.C. Cir. 2005); *T.B. v. Prince George's Cnty. Bd. of Educ.*, 897 F.3d 566 (4th Cir. 2018).

ORDER

I **ORDER** that the Parent's Complaint filed on February 27, 2024 is **DENIED**.

September 20, 2024
Date Decision Issued

Daniel Andrews
Administrative Law Judge

DA/ja
#213238

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) (Supp. 2023). 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:

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[Redacted]

██████████ AND ██████████,
PARENTS,
ON BEHALF OF ██████████,
STUDENT,

BEFORE DANIEL ANDREWS,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS

v.

HOWARD COUNTY PUBLIC SCHOOLS OAH No.: MSDE-HOWD-OT-24-05482

APPENDIX - FILE EXHIBIT LIST

Unless otherwise indicated, the following exhibits were admitted into evidence on behalf of the Parent:¹

- P. 1 - Parent, *Curriculum Vitae*, undated (0001-0003)
- P. 2 - ██████████, *Curriculum Vitae*, undated (0001-0004)
- P. 3 - NOT OFFERED - ██████████, *Curriculum Vitae*, undated (0001)
- P. 4 - ██████████, *Curriculum Vitae*, undated (0001-0003)
- P. 5 - ██████████ (██████████) Neuropsychological Evaluation Report, ██████████
██████████, Pediatric Neuropsychologist, ██████████ (0001-0012)
- P. 6 - ██████████ (██████████) Assessment Reports, including:
- Vision Assessment Report, November 14, 2019 (0001-0004)
 - Orientation and Mobility Assessment Report, October 23, 2019 (0005-0007)
 - The ██████████ Range, undated (0008-0013)
- P. 7 - ██████████ Assessment Reports including:
- Kindergarten Readiness Assessment, December 2, 2019 (0001-0006)
 - Psychological Assessment Report, November 11, 2019 (0007-0013)
 - Occupational Therapy Assessment Report, November 1, 2019 (0014-0019)
 - Physical Therapy Assessment Report, October 10, 2019(0020-0023)
 - Orientation and Mobility Assessment Report, October 23, 2019 (0024-0026)²
 - ██████████ Range, undated (0027-0032)³
 - Communication Assessment Report, November 14, 2019 (00330-0040)

¹ Each exhibit for the Parent was pre-marked with an exhibit number and sequential page bates stamped page number, e.g., P1-0001, P1-0002. Each exhibit's page numbers are parenthetically referenced. Although listed as "P." with a corresponding number in the exhibit list, the designation "P. Ex." was used in citations throughout this Decision to identify exhibits offered by the Parent."

² This report is a duplicate to the Orientation and Mobility Assessment Report in P. 6

³ This is a duplicate of the ██████████ Range report in P. 6.

- Team Consideration of External Report (Articulation Assessment), October 17, 2019 (0041)
 - Vision Assessment Report, November 14, 2019 (0042-0045)⁴
- P. 8 - [REDACTED] Neuropsychological Evaluation Report, [REDACTED], Pediatric Neuropsychologist, February 13, 2020 (0001-0012)
- P. 9 - [REDACTED] Individualized Education Program (IEP), March 5, 2019 (0001-0037)
- P. 10 - [REDACTED] Neuropsychological Evaluation Report, Natasha Ludwig, Pediatric Neuropsychologist, September 10, 2020 (0001-0014)
- P. 11 - [REDACTED], [REDACTED], Private Duty Nurse Letter of Agreement, undated (0001-0006)
- P. 12 - [REDACTED] Letter Details, Listing of Diagnoses, [REDACTED], Pediatrician, Medical Doctor (M.D.), December 17, 2021 (0001-0003)
- P. 13- Progress Notes, [REDACTED], August 10, 2023 (0001-0009)
- P. 14 - Progress Notes, [REDACTED], August 22, 2023 (0001-0014)
- P. 15 - HCPS IEP Team Meeting Report, November 17, 2023 (001-0004)
- P. 16 - [REDACTED] Letter Details, Listing of Diagnoses, [REDACTED], Pediatrician, Medical Doctor (M.D.), December 5, 2023 (0001-0002)
- P. 17 - HCPS IEP December 15, 2023 (0001-0074)
- P. 17a - IEP Team Meeting Report, December 15, 2023 (0001-0005)
- P. 18 - IEP Team Meeting Report, December 19, 2023 (0001-0003)
- P. 19 - NOT OFFERED - [REDACTED] Care Plan, School Year 2023-2024, January 3, 2024 (0001); [REDACTED] Care Plan, School Year 2023-2024, January 3, 2024 (0002); ADMITTED - Special Health Needs Nursing Assessment, School Year 2023-2024, date of assessment, January 4, 2024 (0003-0005)
- P. 20 - IEP Meeting Report, January 5, 2024 (0001-0004)
- P. 21 - Letter of Representation from Ashley VanCleeef, Esq. to HCPS, January 21, 2024 (0001-0002)
- P. 22 - NOT ADMITTED - [REDACTED], Behavioral Plan, September 21, 2023 to February 8, 2024 (0001-0005)
- P. 23 - [REDACTED] Action Plan, [REDACTED], February 9, 2024 (0001-0002)
- P. 24 - NOT OFFERED - Parent email to [REDACTED] requesting evaluation for Student, February 14, 2024 (0001)
- P. 24a- NOT OFFERED - Parent's Letter Request for Music Therapy Evaluation, February 14, 2024 (0001-0002)
- P. 25 - My Chart, Appointment History, January and February 2024 (0001-0004)
- P. 26 - IEP Team Meeting Report, February 26, 2024 (0001-0003)
- P. 27 - [REDACTED], Letter Details, Nursing at School, [REDACTED], March 12, 2024 (0001-0003)
- P. 28 - [REDACTED], Letter Details, Nursing at School, [REDACTED], March 7, 2024 (0001-0003)
- P. 29 - HCPS letter to Parent, Compensatory Services, March 19, 2024 (0001-0002)
- P. 30 - [REDACTED], Letter Details, Specialized Transition Program (STP), April 5, 2024 (0001-0002)
- P. 31 - NOT OFFERED - STP Discharge Treatment Plan, April 4, 2024 (0001-0010)

⁴ This report is a duplicate to the Vision Assessment Report in P. 6.

- P. 32 - NOT OFFERED - [REDACTED] Speech and Language, Statement, May 1 to May 31, 2024 (0001)
- P. 33 - Lethargy v. Fatigue, Statement of Parent (Shared in Dispute Resolution), undated (0001)
- P. 34 - [REDACTED], Educational Consultant, Timeline of Events, July 31, 2023 to February 27, 2024, created May 2024 (0001)
- P. 35 - NOT ADMITTED - Home Health Certification and Plan of Care, Certification Period April 9, 2024 to June 7, 2024, [REDACTED], R.N., March 7, 2024 (0001-0008)⁵
- P. 36 - NOT OFFERED - Maryland Student Exit Record, October 6, 2023 (0001-0011)
- P. 37 - NOT OFFERED - HCPS Health Services, Medication Form/Physician's Order, February 9, 2024 (0001)
- P. 38 - COMAR 10.27.11, Delegation of Nursing Functions, Regulations .01 through .06, undated (0001-0011)
- P. 39 - NOT OFFERED - [REDACTED] Care Plan, January 3, 2024 (0001); [REDACTED] Care Plan, School Year 2023-2024, January 3, 2024 (0002); Special Health Needs Nursing Assessment, School Year 2023-2024, [REDACTED], January 4, 2024 (0003-0004)⁶
- P. 40 - Emails between Parent, HCPSS, and other related individuals, October 13, 2023 through January 9, 2024 (0001-0059)⁷
- P. 41 - Text messages between the Parent and [REDACTED], December 20, 2023 through January 7, 2024 (0001-0008)
- P. 42 - All About Me, Created by Parent, November 2021 (0001-0011)
- P. 43 - MSDE, Delegation of Nursing Functions in a School Setting, December 2023 (0001-0010)
- P. 44 - NOT OFFERED - Home Health Certification and Plan of Care, Certification Period April 9, 2024 to June 7, 2024, [REDACTED], March 7, 2024 (0001-0006)⁸
- P. 45 - NOT OFFERED - Delegation of Nursing Functions to Unlicensed Direct Care Providers in a School Setting, Maryland State Health Services Guidelines, MSDE, MDH, January 2006 (0001-0006)
- P. 46 - Limited Portion of Audio Recording and Written Transcript, IEP Meeting January 5, 2024 (related [REDACTED] statements)⁹
- P. 47 - NOT OFFERED - Home Health Certification and Plan of Care, Certification Period June 8, 2024 to August 8, 2024, [REDACTED], May 31, 2024 (0001-0009)
- P. 48 - Summary of Diagnoses/Active Problems, Medications, Medical Equipment, Surgical History, Allergies, Medical Providers, and Service Providers, created by Parent, undated (0001-0005)
- P. 49 - COMAR 10.27.11, Delegation of Nursing Functions, Regulations .01 through .06, undated (0001-0011)¹⁰
- P. 50 - HCPS, PDN Agreements, undated (0001-0007)

⁵ This exhibit was offered but not admitted into evidence because the dates of each certified plan of care were after any IEP meeting conducted by the HCPS and contained data not considered by the IEP Team.

⁶ P. Ex. 39 is a duplicate of P. Ex. 19.

⁷ Certain pages of this exhibit were admitted at various times during the hearing, including pages: 0001-0009, 0010-0011, 0021, 0025-0029, 0038, 0040, 0042, 0044-0045, 0049, 0053-0054, 0055-0056, 0057, and 0058. Any pages not described in this footnote were not offered into evidence.

⁸ P. Ex. 44 is a duplicate of P. Ex. 35.

⁹ As to the January 5, 2024 IEP meeting, the admitted portion of the audio recording begins at a time stamp of 7:19 and ends at 8:13. The admitted portion of the written transcript for this IEP meeting are pages 0003-0004. All other portions of the audio recording or written transcript were not offered into evidence.

¹⁰ P. Ex. 49 is a duplicate of P. Ex. 38.

- P. 51 - Emails between Parent and [REDACTED], December 15 to December 18, 2023 (0001-0003)
- P. 52 - NOT OFFERED - Emails between Parent and [REDACTED], December 15 to December 18, 2023 (Duplicate)
- P. 53 - Emails between Parent and [REDACTED], January 4 and 5, 2024 (0001-0004)
- P. 54 - NOT ADMITTED - [REDACTED] Logs for Student, May 13, 2021 to June 16, 2022 (0001-0085)¹¹

Unless otherwise indicated, the following exhibits were admitted on behalf of the

HCPS:¹²

- HCPS 1 - [REDACTED] Prior Written Notice, June 12, 2023 (1-11)
- HCPS 2 - [REDACTED] IEP, June 12, 2023(1-66)
- HCPS 3 - [REDACTED] Prior Written Notice, August 3, 2023 (1-9)
- HCPS 4 - [REDACTED] IEP, August 7, 2023 (1-74)
- HCPS 5 - [REDACTED] Parental Consent for Alternate Curriculum and/or Assessment, August 24, 2023 (1-2)
- HCPS 6 - [REDACTED] Student Exit Record to Howard County, October 6, 2023 (1-7)
- HCPS 7 - [REDACTED] Prior Written Notice, November 17, 2023 (1-5)
- HCPS 8 - [REDACTED] Intake Plan, [REDACTED], November 17, 2023 (1-2)
- HCPS 9 - [REDACTED] Request of Release of Records to [REDACTED], November 27, 2023 (1)
- HCPS 10 - [REDACTED] Request of Release of Records to [REDACTED] and [REDACTED], December 13, 2023 (1-2)
- HCPS 11 - [REDACTED] Prior Written Notice, December 15, 2023 (1-5)
- HCPS 12 - [REDACTED] Prior Written Notice, December 19, 2023 (1-3)
- HCPS 13 - [REDACTED] IEP, December 15, 2023 (1-123)
- HCPS 14 - [REDACTED] Prior Written Notice, January 5, 2024 (1-4)
- HCPS 15 - [REDACTED] Transportation Request Form, January 8, 2024 (1-2)
- HCPS 16 - [REDACTED] Individualized Healthcare Action Plans 2023-2024, [REDACTED], Undated, [REDACTED], January 3, 2024, and School Health Services, January 3, 2024; [REDACTED] Care Plan, January 3, 2024; Transportation Plan, undated; Individualized [REDACTED] Plan 2023-2024, April 25, 2024 (1-10)
- HCPS 17 - [REDACTED] Medication Administration Record, Adderall and Albuterol, Nurse Review, February 7, 2024, Doctor Order, January 12, 2024; [REDACTED], received January 9, 2024; Controlled Dangerous Substance Form (blank), undated (1-4)

¹¹ This exhibit was not admitted into evidence because the exhibit was not timely provided by the Parent as required by my Prehearing Conference Order. Additionally, the Parent attempted to offer this exhibit into evidence after her case-in-chief, and during its rebuttal portion of the hearing. I found the contents of this exhibit was not proper rebuttal evidence but was evidence that could have been presented during the Parent's case in chief and would have been unfair to the HCPS since it would not have had fair opportunity to respond to this evidence. *See Wright v. State*, 349 Md. 334, 354 (1998) (holding that because defendant's confession should have been presented by the State as substantive evidence in its case-in-chief, it was error to permit the State to introduce confession as rebuttal evidence).

¹² Each exhibit for the HCPS was pre-marked with an exhibit number and sequential bates stamped page number, e.g., HCPS Ex 1.1, 1.2,1.3, 1.4. Each exhibit's page numbers are noted in the parenthetical reference. Although listed as "HCPS" with a corresponding number in the exhibit list, the designation "HCPS. Ex." was used in citations throughout this Decision to identify exhibits offered by the HCPS.

- HCPS 18 - Staff Training Schedule spreadsheet, undated (1)¹³
- HCPS 19 - Email between [REDACTED] staff regard the Student and Parent attending school/training, January 11 to January 22, 2024 (1-4)
- HCPS 20 - Prior Written Notice, February 26, 2024 (1-3)
- HCPS 21 - Letter from HCPS to Parents, Compensatory Services, March 19, 2024 (1-2)
- HCPS 22 - Letter from HCPS to Parents, [REDACTED] services, February 14, 2024 (1)
- HCPS 23 - Emails between Parents and HCPS, Absences, February 12 to February 13, 2024 (1-4)
- HCPS 24 - Email from Parents to HCPS, Absence, February 13, 2024 (1-2)
- HCPS 25 - NOT OFFERED - [REDACTED] letter to School Administration, Specialized Transition Program for Student, March 11 through April 5, 2024, April 5, 2024 (1)
- HCPS 26 - AACPS Comprehensive Evaluation Review, July 9, 2023 (1-7)
- HCPS 27 - NOT OFFERED - [REDACTED] Psychological Assessment, July 9, 2023 (1-9)
- HCPS 28 - NOT OFFERED - [REDACTED] Academic Assessment, June 9, 2023 (1-6)
- HCPS 29 - NOT OFFERED - [REDACTED] Orientation and Mobility Assessment, June 20, 2023 (1-4)
- HCPS 30 - [REDACTED] Physical Therapy Progress Notes, August 31, 2023 (1-6)
- HCPS 31 - [REDACTED] Physical Therapy Progress Notes, October 5, 2023 (1-4)
- HCPS 32 - HCPS Special Health Needs Nursing Assessment, December 20, 2023 (1-3)
- HCPS 33 - Letter from [REDACTED] to School Administration, December 5, 2023, with handwritten notes by [REDACTED] taken during Nursing Health Assessment, December 20, 2023 (1-4)
- HCPS 34 - Student Health Incident, [REDACTED], March 15, 2024 (1-3)
- HCPS 35 - Emails describing [REDACTED] administration, January 15 and January 17, 2024 (1)
- HCPS 36 - Plan of Care Order, [REDACTED], Home Health Care ([REDACTED]) Certification Period October 20, 2023 to January 20, 2024 (1-5)
- HCPS 37 - HCPS Health Survey Form, January 10, 2024 (1)
- HCPS 38 - Email from Parent to [REDACTED], regarding Home Health Plan of Care, [REDACTED], and [REDACTED], December 18, 2023, with Progress Note, [REDACTED], August 23, 2023 (1-3)
- HCPS 39 - [REDACTED] Plans, [REDACTED], August 7, 2019; Increased [REDACTED], August 7, 2019; [REDACTED] or [REDACTED], October 25, 2021; [REDACTED] or [REDACTED], October 22, 2021; [REDACTED] Plan, October 27, 2021 (1-6)
- HCPS 40 - Delegation of Nursing Functions in a School Setting, Maryland State School Health Services Guidelines, December 2023 (1-10)
- HCPS 41 - Nursing Appraisal and Assessment of Students with Special Health Care Needs, MSDE, MDH, December 2023 (1-17)
- HCPS 42 - [REDACTED] Prior Written Notice, May 11, 2023 (1-15)
- HCPS 43 - [REDACTED] Prior Written Notice, May 19, 2023 (1-14)
- HCPS 44 - *Curriculum Vitae* - [REDACTED] (1-2)
- HCPS 45 - *Curriculum Vitae* - [REDACTED] (1-5)

¹³ The HCPS offered this one paged exhibit into evidence. Because portions of exhibit were too dark to read, the HCPS emailed the exhibit to both me and the Parent's attorney, which contained two other pages, but were identical to the original one page. The Parent used these extra two pages to cross-examine [REDACTED] regarding the training schedule for the Student's dedicated adult staff member, and any HCPS staff who would have contact with the Student during the school day. These additional pages were not admitted into evidence.

- HCPS 46 - *Curriculum Vitae* - [REDACTED] (1-5)
- HCPS 47 - NOT OFFERED - *Curriculum Vitae* - [REDACTED] (1-3)
- HCPS 48 - *Curriculum Vitae* - [REDACTED] (1-4)
- HCPS 49 - Management of Students with [REDACTED], Maryland State School Health Services Guidelines, MSDE, MDH, April 2023 (1-21)
- HCPS 50 - [REDACTED] Meal Time Plan of Care, IEP Review Date, March 16, 2023 (1-3)