

XXXX XXXX,

STUDENT

V.

CARROLL COUNTY

PUBLIC SCHOOLS

*** BEFORE ROBERT F. BARRY,**
*** AN ADMINISTRATIVE LAW JUDGE**
*** OF THE MARYLAND OFFICE OF**
*** ADMINISTRATIVE HEARINGS**
*** OAH CASE NO.: MSDE-CRRL-OT-08-14170**

DECISION

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ORDER

STATEMENT OF THE CASE

On April 11, 2008, XXXX and XXXX XXXX (Parents),¹ by attorney Mark B. Martin, filed a due process complaint on behalf of their daughter, XXXX XXXX (Student). The complaint asserted that the Carroll County Public Schools (CCPS) failed to provide or offer to provide the Student a Free Appropriate Public Education (FAPE) for the 2007-2008 school year. The Parents asked for the development of an appropriate Individualized Education Program (IEP) with placement at [School 1], the non-public school that the Student currently attends. The Parents also asked for reimbursement for the cost of tuition and related services and expenses incurred by the Parents during the period of time in which the CCPS failed to offer an appropriate IEP and placement.

¹ I will use Parents to refer to Mr. and Mrs. XXXX when they jointly acted on the Student's behalf. I will use Parent to refer to XXXX XXXX when she acted alone on the Student's behalf.

The parties jointly agreed to waive the resolution process.² The parties participated in mediation with an administrative law judge on April 30, 2008, but did not reach a settlement. On April 30, 2008, I held a telephonic prehearing conference to schedule the due process hearing.

On June 17, 18, 19, 20, and 23, 2008, I conducted a hearing at the CCPS's office, 125 North Court Street, Westminster, Maryland 21157. Mr. Martin, accompanied on occasion by attorney Jennifer Falter, represented the Parents and the Student. Attorney Rochelle S. Eisenberg, accompanied on occasion by attorney Heather Fogelson, both of Hodes, Pessin & Katz, P.A., represented the CCPS. Dona Foster, CCPS's Supervisor of Special Education, attended the hearing as the CCPS's representative. The hearing was held pursuant to the following laws: Individuals With Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415 (Supp. 2008); 34 C.F.R. § 300.511 (2007); Md. Code Ann., Educ. § 8-413 (2006); Code of Maryland Regulations (COMAR) 13A.05.01; and Maryland State Department of Education Guidelines for Maryland Special Education Mediation/Due Process Hearings.

At the conclusion of the hearing on June 23, 2008, the parties agreed that my decision would be due on July 23, 2008.

The contested-case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2007), and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01, govern procedure.

ISSUES

1. Was the IEP offered by the CCPS on November 8, 2007 for the Student's 2007-2008 school year reasonably calculated to provide the Student a FAPE?

² 20 U.S.C. § 1415(f)(1)(B)(i)(IV) (Supp. 2008); 34 Code of Federal Regulations (C.F.R.) § 300.510(a)(3)(i) (2007).

2. Are the Student's Parents entitled to reimbursement of tuition and expenses for their unilateral placement of the Student at [School 1] for the Student's 2007-2008 school year?

SUMMARY OF THE EVIDENCE

A. Exhibits

The following exhibits were admitted into evidence on behalf of the Parents:

Parent #1³ - Letter, December 16, 2003, from the Parent to XXXX XXXX, the Student's kindergarten teacher at [School 2] ([School 2]) (01)⁴

Parent #2 - Psychological Evaluation, XXXX XXXX, Ph.D., December 2003 (02-08)

Parent #3 - Meeting Notice, December 17, 2003 (273)

Parent #4 - Meeting Notice, February 26, 2004 (272)

Parent #5 - IEP Parent Consent/Signature (Attendance Page) and Multidisciplinary Evaluation Review Signature Page, February 26, 2004 (270-271)

Parent #6 - Letter, undated, from XXXX XXXX, special education teacher, to the Parents (12)

Parent #7 - Letter, June 8, 2004, Report on CCPS May 2004 Mathematics Benchmark Assessment (16)

Parent #8 - The Student's Kindergarten Developmental Checklist (Report Card), end of 2003-2004 school year (15)

Parent #9⁵ - not submitted

³ Parent #1 and Parent ##3 through 8 were admitted over the CCPS's continuing objection. The CCPS argued that written evidence and testimony about anything that occurred more than two years before the Parents filed their complaint was not relevant. The CCPS's argument apparently is based upon the requirement that a complaint be filed within two years of the date of the alleged action that is the basis for the complaint. 34 C.F.R. § 300.511(e) (2007). The Parents timely filed their complaint about the November 8, 2007 IEP; evidence concerning the Student's prior experience with the CCPS is not barred by the statute of limitations and it is relevant to several issues in this case, including the appropriateness of the IEP, the Student's educational progress, and the reliability of CCPS's witnesses.

⁴ The Parent exhibits were submitted in a white three-ring binder with a tab number for each exhibit. The pages of the exhibits were numbered pursuant to a Bates Stamp system; I will use these page numbers throughout this decision.

⁵ I placed the Parent exhibits that were not submitted into evidence, ##9-10, 13, 15-16, 22-23, 26-28, 31, 35-36, 54, 59, and 62, into a manila envelope and placed the envelope in the case record.

- Parent #10 - not submitted
- Parent #11 - Letter, May 31, 2007, from the Parent to XXXX XXXX, [School 2] (19)
- Parent #12 - Meeting Notice, June 4, 2007 (20)
- Parent #13 - not submitted
- Parent #14 - Prior Written Notice, June 14, 2007 (23)
- Parent #15 - not submitted
- Parent #16 - not submitted
- Parent #17 - admitted in CCPS's case
- Parent #18 - Psycho-Educational Evaluation, XXXX XXXX, Ph.D., July 25, 2007 (29-39)
- Parent #19 - Cognitive Assessment Report, XXXX XXXX, Ph.D., School Psychologist, CCPS, July 27, 2007 (40-44)
- Parent #20 - Cover Letter, September 26, 2007, with Corrected Cognitive Assessment Report, XXXX XXXX, Ph.D., School Psychologist, CCPS, July 27, 2007 (45-49)
- Parent #21 - The Parent's written notes of phone message from XXXX XXXX, Speech-Language Pathologist, CCPS, September 27, 2007 (50)
- Parent #22 - not submitted
- Parent #23 - not submitted
- Parent #24 - Consent to Release Personal Information, September 24, 2007 (54)
- Parent #25 - Multidisciplinary Evaluation Review, September 11, 2007 (55-64)
- Parent #26 - not submitted
- Parent #27 - not submitted
- Parent #28 - not submitted

- Parent #29 - Multidisciplinary Evaluation Review - Signature Page, September 11, 2007 (72)
- Parent #30 - Prior Written Notice, September 11, 2007 (73-74)
- Parent #31 - not submitted
- Parent #32 - Notice and Parents' Consent to Assessments, September 11, 2007 (76-77)
- Parent #33 - IEP (Rejected), September 11, 2007 (78-101)
- Parent #34 - Cover Letter, September 17, 2007, with Language Assessment, September 29, 2006, XXXX XXXX, Ph.D. (102-107)
- Parent #35 - not submitted
- Parent #36 - not submitted
- Parent #37 - Cover Letter, July 18, 2007, from [School 1] to the Parents, regarding Benchmark Testing (110)
- Parent #38 - [School 1] Lower School Benchmark Results, July 27, 2007, for September 2006, January 2007, and May 2007 (111-112)
 Explanation of [School 1]'s Standardized Test Battery (113)
 [School 1] 2007 Test Results (114)
- Parent #39 - [School 1] Summary of Oral Language, September 2004, XXXX XXXX, Speech-Language Pathologist (115-116)
- Parent #40 - Individual Assessment of Dolch Sight Words, June 20, 2007 (117)
- Parent #41 - Individual Assessment of Dolch Sight Words, June 22, 2007 (118)
- Parent #42 - Individual Assessment of Dolch Sight Words, July 2, 2007 (119)
- Parent #43 - Early Level Reading Benchmark Record Sheet (120)
- Parent #44 - Wide Range Achievement Test, Arithmetic, September 6, 2007 (266)
- Parent #45 - Class Schedule (267)
- Parent #46 - Math Benchmark, September 24, 2007 (274-280)

- Parent #47 - E-mail, September 26, 2007, from XXXX XXXX to the Parent (121-122)
- Parent #48 - E-mail, September 27, 2007, from XXXX XXXX to the Parent (123)
- Parent #49 - E-mail, October 8, 2007, from XXXX XXXX to the Parent (124)
- Parent #50 - E-mail, October 31, 2007, from the Parent to XXXX XXXX (125)
- Parent #51 - Multidisciplinary Evaluation Review, November 8, 2007 (126-140)
- Parent #52 - admitted in CCPS's case
- Parent #53 - Hearing Assessment, XXXX XXXX, Au.D., Audiologist, October 15, 2007 (146-149)
- Parent #54 - not submitted
- Parent #55 - admitted in CCPS's case
- Parent #56 - IEP (Rejected), November 8, 2007 (158-185)
- Parent #57 - IEP Meeting Attendance Waiver, November 8, 2007 (186)
- Parent #58⁶ - Reading and Spelling Evaluation, January 31, 2008, XXXX XXXX, Ph.D. Educational Consultant (187-213)
- Parent #59 - not submitted
- Parent #60 - Instructional Reading Levels (222-223)
- Parent #61 - admitted in CCPS's case
- Parent #62 - not submitted
- Parent #63 - [School 1] Lower School Benchmark Data, May 2005, May 2006, and May 2007 (229)
- Parent #63A - Reading Sample, May 2006 Benchmark, May 15, 2006 (no Bates #)

⁶ Parent ##58 and 65, and the 2008 portion of Parent #66 were admitted over the CCPS's continuing objection. The CCPS argued that these documents, as well as testimony concerning these documents, were not admissible because they concerned a time period after the November 8, 2007 IEP. The documents and the related testimony concern the Student's educational needs and progress and are relevant to the issues in this case.

- Parent #64 - [School 1] 2007 Test Results (230)
- Parent #65- [School 1] 2008 Test Results (231)
- Parent #66 - WADE - Summary of Results (Raw Data), September 2007, January 2008, and May 2008 (232)
- Parent #67 - [School 1] Report Card 2006/2007 Trimester 3 (233-243)
- Parent #68⁷ - CCPS January Mathematics Assessment, (Grade Three 2007) (281-290); part admitted in CCPS's case
- Parent #69 - Resume, XXXX XXXX, M.Ed., Administration and Special Education, Head of [School 1] (245-247)
- Parent #70 - Curriculum Vitae, XXXX XXXX, Ph.D., Neurolinguistics, Educational Consultant (248-252)
- Parent #71 - Curriculum Vitae, XXXX XXXX, Ph.D., Child Development and Family Relations, Educational Consultant (253-259)
- Parent #72 - Resume, XXXX XXXX, M.S., Curriculum and Instruction, Head of [School 1] Lower School (303)
- Parent #73⁸ - Wilson Assessment of Decoding and Encoding (WADE), Assessment Data, September 2007 (no Bates #)
- Parent #74 - Standardized Testing, Evaluator's Score Sheets (no Bates #)

The following exhibits, including five exhibits marked as Parent exhibits, were admitted into evidence on behalf of the CCPS:

- CCPS #12⁹ - E-mail, September 7, 2007, from the Parent to XXXX XXXX (no Bates #)

⁷ A portion of Parent #68, pages 281-290, was admitted in the Parent's case; pages 292-302 were admitted in the CCPS's case. There was no page 291.

⁸ Parent ##73 and 74 were taken from the CCPS's pre-marked exhibits and renumbered as Parent exhibits.

⁹ I placed the CCPS exhibits that were not submitted into evidence, ##1-11, 13-31, 33-37, 39-42, and 44-45, into a large manila envelope and placed the envelope in the case record. The CCPS exhibits were submitted in a black three-ring binder with a tab number for each exhibit.

- CCPS #32 - Carroll County Assistive Technology Evaluation, October 25, 2007, XXXX XXXX, Speech-Language Pathologist, Assistive Technology Practitioner, and Consulting Special Education Teacher (no Bates #)
- CCPS #38 - Photocopy of Wilson Foundations Alphabet Overlay (no Bates #)
- CCPS #43A - Resume, XXXX XXXX, M.S., Elementary Education and Mathematics, Assistant Principal, [School 2] (no Bates #)
- CCPS #43B - Resume, XXXX XXXX, Ph.D., Counseling Psychology, School Psychologist, CCPS (no Bates #)
- CCPS #43C - Resume, XXXX XXXX, M.S., Speech-Language Pathology; M.Ed., Special Education, with a concentration in Instructional and Assistive Technology, Speech-Language Pathologist, Assistive Technology Practitioner, and Consulting Special Education Teacher, CCPS (no Bates #)
- CCPS #43D - Professional Resume, XXXX XXXX, M.A., Special Education, Coordinator, Specialized Reading Interventions, CCPS (no Bates #)
- Parent #17 - Reassessment Referral Review, June 14, 2007 (26-28)
- Parent #52 - Assessment Report, November 7, 2007, XXXX XXXX (141-145)
- Parent #55 - Prior Written Notice, November 8, 2007 (156-157)
- Parent #61 - Local Assessments, [School 2], School Year 2003-2004 (224)
- Parent #68 - CCPS January Mathematics Assessment, (Grade Three 2007) (292-302)

B. Testimony

The following witnesses testified on behalf of the Parents:

1. XXXX XXXX, Ph.D., Neurolinguist, accepted as an expert in neurolinguistics, speech-language pathology, and the neuroscience of reading (T. 32)
2. XXXX XXXX, M.Ed., Head of [School 1], accepted as an expert in special education (T. 138)
3. XXXX XXXX, M.S., Head of [School 1] Lower School, accepted as an expert in special education (T. 163)

4. XXXX XXXX, Ph.D., Educational Consultant, accepted as an expert in reading and special education (T. 230-231)
5. XXXX XXXX, the Student's mother

The following witnesses testified on behalf of the CCPS:

1. XXXX XXXX, M.S., Assistant Principal, [School 2], CCPS, accepted as an expert in teaching mathematics (T. 483)
2. XXXX XXXX, Ph.D., School Psychologist, CCPS, accepted as an expert in school psychology (T. 630)
3. XXXX XXXX, M.S., M.Ed., Speech-Language Pathologist, Assistive Technology Practitioner, and Consulting Special Education Teacher, CCPS, accepted as an expert witness in speech-language pathology, special education, and assistive technology (T. 669-670)
4. XXXX XXXX, M.A., Coordinator, Specialized Reading Interventions, CCPS, accepted as an expert in special education and reading intervention (T. 771)

FINDINGS OF FACT

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

Background

1. The Student is a pretty, XXXXXXXXXXXX, socially-outgoing, self-confident, ten-year-old girl who enjoys dancing and playing [sport]. She has a specific learning disability, severe dyslexia, and she reads at somewhere between a first-or-second-grade level. (T. 373, 440-441, 444-445).
2. Dyslexia is the inability to learn to decode sounds into symbols, or letters, in a person who does not have a sensory or cognitive deficit. (T. 42).
3. Two of the Student's grandparents (one on each side of the family), the Student's father and four of his brothers, and either an uncle or cousin on the Student's mother's side of the

family, have dyslexia. (Parent #2, 02; T. 358). Genetic dyslexia, dyslexia that runs in families as a genetic trait or characteristic, has been identified by researchers in two chromosomes. (T.39, 42).

4. The Student has an average-to-above-average full-scale intelligence. She had a full scale I.Q. score of 100 on the Wechsler Preschool and Primary Scale of Intelligence in December 2003, (Parent #2, 03), and a full scale I.Q. score of 111 on the Wechsler Intelligence Scale for Children, 4th Edition (WISC-4) on July 18, 2007. (Parent #20, 49).

5. The Student's Parents have lived in [City] in Carroll County for thirteen years. They have three children younger than the Student, two of whom, a boy, age eight, and a girl, age six, attend [School 2]. The fourth child is two years old. (T. 356-357).

6. The boy receives special education services for XXXX and XXXXX at [School 2] pursuant to an IEP. (T. 357).

7. The Student attended a private preschool program for three years and then half-day, afternoon kindergarten at [School 2] for the 2003-2004 school year. (T. 357, 371, and 439).

8. In December 2003, based upon language struggles that the Student was exhibiting at home and with schoolwork, as well as the family history of dyslexia, the Parent had the Student evaluated by XXXX XXXX, Ph.D., a psychologist, to determine whether the Student required early intervention. (T. 358-361).

9. Dr. XXXX conducted a psychological evaluation of the Student on December 2 and 4, 2003. She administered the following standardized tests:

- Wechsler Preschool and Primary Scale of Intelligence 3rd Edition
- Peabody Picture Vocabulary Test-III Form A
- Lindamood Auditory Conceptualization Test
- Wide Range Assessment of Memory and Learning (WRAML)

- NEPSY Developmental Neuropsychological Assessment
- Woodcock-Johnson III: Tests of Achievement

Dr. XXXX also reviewed parent and teacher comments on an Achenbach Child Behavior Checklist and a Behavior Rating Inventory of Executive Function. (Parent #2, 03-04).

10. Dr. XXXX concluded:

Results of this assessment indicated that [the Student] was of at least average overall intelligence. Non-verbal skills were more advanced than this while language skills tended to lag behind significantly. [The Student] also demonstrated a significant strength with respect to processing speed. Although she was a young kindergarten student and, as such, was not yet significantly behind classmates educationally, [the Student] did exhibit a number of indicators which placed her at high risk for a language-based disability (or Dyslexia). In addition to the above noted discrepancy between verbal and perceptual-motor skills, [the Student] demonstrated significant difficulties with phonemic awareness and processing which are precursors to effective phonetic skills and typical areas of deficit for Dyslexic individuals. Difficulties with expressive language, understanding directions, and memory (both verbal and non-verbal) were also found.

(Parent #2, 07).

11. Dr. XXXX made the following recommendations:

1. The Student needs a thorough hearing assessment to ensure that difficulties with language are not secondary to hearing impairment.
2. A speech and language assessment is needed to evaluate the need for language therapy.
3. [The Student] lacks some of the preliminary language skills needed to effectively master phonetic skills. It is therefore recommended that she receive intensive tutorial instruction in phonemic awareness and processing prior to efforts to teach her decoding or encoding skills.
4. Given both visual and auditory memory difficulties, it will be important that instructions and information be presented repeatedly and in a multisensory manner to aid retention. [The Student's] teacher will need to carefully monitor her progress and assess whether she has mastered all aspects of a skill before moving to subsequent material.

5. [The Student] will need tutorial instruction (or participation in a camp with a tutorial component) during summer months to reinforce the year's learning and remediate in areas of weakness.
6. It will be important that [the Student] be read to often and/or listen to books on tape to reinforce language skills and present new vocabulary and information as her reading develops.
7. [The Student] will need to be in a small group for language arts skills as she is likely to become confused in the context of a large group and because she will need careful monitoring.
8. Strengths in nonverbal areas should be reinforced and [the Student] should be allowed to utilize these skills whenever feasible to demonstrate knowledge. Thus, early efforts at "writing" might include few words and many illustrations.
9. In addition to reading difficulties, [the Student] demonstrated some confusion and delay in basic math skills. She will need to have remedial assistance in this area before more complex skills are introduced.
10. [The Student's] progress should be carefully monitored and a re-evaluation conducted in one year.

(Parent #2, 07-08).

12. The Parent sent a copy of Dr. XXXX's report to XXXX XXXX, the Student's kindergarten teacher and to XXXX XXXX, a CCPS speech-language pathologist, on December 16, 2003. (Parent #1, 01).

13. Ms. XXXX administered a Clinical Evaluation of Language Fundamentals, 4th Edition (CELF-4), a standardized test, to the Student, and found that the Student scored in the average-to-low-average range. (T. 366-367).

14. At a meeting on February 26, 2004, the Parents met with Ms. XXXX, Ms. XXXX, and XXXX XXXX, a special education teacher. (Parent #5, 270).

15. The three CCPS members of the IEP Team determined that the Student was not eligible for special education services. (T. 367-368). The IEP Team did agree that Ms. XXXX would provide the Student with phonics/reading instruction, three times per week during the last fifteen minutes of the school day. (Parent #6, 12, T. 367).

16. At the end of her kindergarten year, the Student was reading at a Reading Recovery (RR) Level 1, with 75% frustration. (Parent #8, 15). She scored 32/55, or 58%, on the CCPS May Mathematics Benchmark Assessment. The county average scores ranged from 78% (all day kindergarten) to 88% (afternoon kindergarten). (Parent #7, 16).

17. The Parents enrolled the Student at [School 1] for the 2004-2005 school year. (T. 374).

[School 1]

18. [School 1] is a private school of approximately 282 students in the equivalent of traditional grades one through twelve. (T. 141, 161). It specializes in children of average-to-above-average intelligence who have a language-based learning difference, usually dyslexia. In general, these students have language skills, such as decoding, reading, and spelling, that are not equal to their innate cognitive abilities. (T. 138).

19. [School 1] is not approved by the Maryland State Department of Education as a non-public special education school. (T. 154-155).

20. [School 1]'s curriculum is based upon the Orton-Gillingham methodology for teaching children with dyslexia. All of [School 1]'s teachers are trained in the Orton-Gillingham methodology, and that methodology is used consistently throughout the curriculum. (T. 166-167).

21. All of the specific teaching programs used by [School 1] follow the tenets of Orton-Gillingham; however, [School 1] does not implement any specific program exactly as prescribed by the program's authors. (T. 141-144).

22. The Student has attended [School 1] since September 2004.

23. On May 15, 2006, near the end of "year 2" ([School 1]'s equivalent of second grade), the Student took a reading benchmark test. The Student read the following 27-word paragraph out loud in 45 seconds with one error (misreading his as this):

The Hat

Tim had a hat. The cat got his
hat and is sitting on it. Tim had a fit.
Tim is mad at the cat. The cat hid.

In May 2005, at the end of her first year at [School 1], the Student could not read this paragraph at all.

24. On May 15, 2006, the Student read the first 26 words of a second paragraph in one minute with four errors (misreading big as bad, in as on, and as as us, and not knowing stepped):

Brad Had a Fit

Brad had a big fit. He did
not see well in the fog and
stepped in mud and got wet.
As he shook off the mud . . .

In May 2005, the Student could not read this paragraph at all.

25. XXXX XXXX has a Ph.D. in neurolinguistics, as well as a Master's Degree in speech-language pathology. Dr. XXXX has had a private practice as a clinical neurolinguist and educational consultant for twenty-five years, and she has evaluated thousands of children.

26. Dr. XXXX is on the Board of Directors of several Baltimore-area independent schools; she is a XXXXXXXXXXX of [School 1]. (Parent #70, T. 25-31).

27. In 2006, [School 1] asked Dr. XXXX to conduct a limited language assessment of the Student due to the Student's extremely slow progress in reading, (T. 43).

29. On September 29, 2006, Dr. XXXX met with the Student and administered selected subtests of the Clinical Evaluation of Language Fundamentals-4 (CELF-4) and the Token Test. (Parent #34, 104).

30. The Student's test scores and Dr. XXXX's observations indicated that the Student had intact auditory processing skills in that she was able to understand and interpret information, but missed specific concepts. (Parent #34, 104-105).

31. The Student had deficits in her immediate rote memory that undermined her ability to master basic skills dependent upon rote memory. (Parent #34, 105). Dr. XXXX made recommendations for the Student's teachers and the Parents.

32. Dr. XXXX concluded her evaluation as follows:

It will be important for [the Student's] teachers and parents to keep in mind that given her reported genetic history of learning disabilities and dyslexia, and her rote memory deficits that she will be the most compromised in these early years and will require a significant amount of repetition for basic skill mastery. Her rate of growth early on is likely to be slow and incremental but her long term prognosis is much more favorable, especially in light of what appears to be good working memory and intact verbal thinking and problem solving.

(Parent #34, 107).

33. The Student completed the 2006-2007 school year at [School 1].

The IEP Process – Part 1

34. On May 31, 2007, the Parents wrote a letter to XXXX XXXX, [School 2]'s

Principal, requesting that the Student be assessed with a full evaluation to determine if the school system would be able to provide an education to meet her individual needs. (Parent #11, 19).

35. On June 14, 2007, the Parent met with Ms. XXXX; XXXX XXXX, a special education teacher; XXXX XXXX, a regular education teacher; and XXXX XXXX, Ph.D., a school psychologist, to review all available current screening information and determine if an evaluation was needed. (Parent #12, 20; Parent #15, 24).

36. The Parent advised the IEP Team that the Student was to be assessed by Dr. XXXX in July 2007 using the following assessments:

- Woodcock Johnson Tests of Achievement-3
- Kaufman Brief Intelligence Test-2
- Test of Auditory Perceptual Skills-3
- Peabody Picture Vocabulary Test-4
- Beery Visual Motor Integration Test
- Oral Written Language Scales
- Clinical Evaluation of Language Fundamentals
- Comprehensive Test of Phonological Processing

37. The IEP Team agreed that the Student would also have a cognitive assessment and CCPS staff would do a “running record” of the Student’s reading and review a writing sample. (Parent #14, 23).

Neuroscience of Reading

38. Neurolinguistics is the science concerned with the relationship between the human brain and language, either spoken or written. (T. 27).

39. The ability to hear sounds, including the ability to differentiate sound patterns and sound sequences, is an innate human skill, one demonstrated by infants. This skill, which is actually a neurological mechanism, lets a person sequence sounds (phonological sequencing) and to know how sounds come together (phonological processing). (T. 32-35).

40. This neurological mechanism is designed for oral language; however, it is also used in reading for purposes of decoding. (T. 33).

41. Decoding is the ability to look at print and understand the sound corresponding to that print. (T. 35-36).

42. The ability to decode, to understand the sound represented by the letter, is not the same thing as reading comprehension, which requires a person to use vocabulary skills and rules of grammar to actually understand what the sounds mean. (T. 36-37).

43. Fluency concerns the ease or speed with which a person can see a word and comprehend its meaning. (T. 36).

44. Reading is not an innate human skill; it has to be learned through instruction. (T. 33).

45. Because of their intact cognitive ability, dyslexic children can learn to decode and to read; dyslexic children, however, will not learn to read without explicit systematic intensive instruction, and, for severe dyslexics, repetitious instruction is required. (T. 37, 41).

46. Dr. XXXX evaluated the Student on July 25, 2007, XXXX after the Student's ninth birthday. The Student continued to present as a child with age-appropriate ability with significant deficits in short-term auditory memory and severe dyslexia. (Parent #18, 30). The Student was reading independently at a middle first-grade level. (Parent #18, 35).

47. Dr. XXXX noted that the Student was making very slow, labor-intensive progress, and stressed the importance of continued intensive, systematic, explicit instruction with an increase in the intensity of this instruction. (Parent #18, 35).

48. Dr. XXXX recommended that the Student receive three to four hours of

individualized reading instruction a day, or enough intensity of reading instruction to facilitate the Student's acquisition of early phonics skills. Dr. XXXX noted that the Student could benefit from the Wilson Reading System, assistive technology, books on tape, and other strategies. (Parent #18, 36).

The IEP Process – Part 2

49. XXXX XXXX, Ph.D., a CCPS school psychologist, conducted a cognitive evaluation of the Student on July 18, 2007, including a WISC-4, to assist in determining the presence of a learning disability. (Parent #20, 40).

50. Dr. XXXX received a Bachelor's Degree in Social Science and Psychology from the University of XXXX in 1991, and then taught high school social studies for four years. She then attended XXXX University where she received a Master's Degree in Counseling in 1997 and a Ph.D. in Counseling Psychology in 2002. She was employed as a school psychologist in XXXX from 2002 to 2004, before starting her employment with the CCPS. (CCCPS #43B; T. 626-630).

51. The WISC-IV provides four index scores:

- Verbal Comprehension Index (VCI)
- Perceptual Reasoning Index (PRI)
- Working Memory Index (WMI)
- Processing Speed Index (PSI)

52. These four index scores combined comprise the Full Scale Intelligence Quotient (FSIQ). The index scores have a mean of 100 and a standard deviation of 15 (scores between 85-115 are considered in the average range).

53. The Student scored 99, in the 47th percentile, on the Verbal Comprehension Index; 112, in the 79th percentile, on the Perceptual Reasoning Index; and 88, in the 21st percentile on

the Working Memory Index. Dr. XXXX was unable to report a score for Processing Speed Index because she had conducted the test using a wrong date of birth for the Student. The Student's Full Scale IQ, without the Processing Speed Index was 111, in the 77th percentile. (Parent #20, 46-49).

54. Ms. XXXX assessed the Student's reading at [School 2] on July 10, 2007. The Student read two selections from the Rigby assessment series. The level 15, 1.2 grade level, was too difficult for the Student; she was able to read the level 14, also 1.2 grade level, at 88% accuracy with good comprehension. It was not apparent to Ms. XXXX that the Student was using phonetic strategies to decode difficult words. (Parent #25, 62).

55. On September 11, 2007, the IEP Team met to review the assessments. In addition to the Parents, Dr. XXXX, Ms. XXXX, Dr. XXXX, Ms. XXXX, and Ms. XXXX, the following CCPS personnel participated in the meeting: XXXX XXXX, regular education teacher; and XXXX XXXX, assistive technology specialist. (Parent #33, 78).

56. The IEP team recognized that the Student had a specific learning disability, and recommended special education services to meet the Student's educational needs in basic reading skills, reading comprehension, spelling, and written language. (Parent #25, 63-64).

57. The CCPS presented a Proposed IEP that contained the following goals:

- A. Goal: Academic Reading: By September 10, 2008, the Student will read text at a Reading Recovery level 22 with 90% accuracy in 4 out of 5 times.
- B. Goal: Academic Reading: By September 8, 2008, the Student will improve her reading comprehension skills to an end of 2nd grade level assessment with 90% accuracy in 4 out of 5 times.
- C. Goal: Academic Written Language: The Student will reach a third grade benchmark in writing by September 10, 200[8] with 90% accuracy in 4 out of 5 times.

58. The Proposed IEP indicated that the Student would receive 8 hours per week of direct special education services in reading, writing, and spelling. (Parent #33, 95).

59. The Proposed IEP found that the Student was able to participate in the general education curriculum for content area subjects with accommodations and modifications. (Parent #33, 84).

60. The Student would receive the following accommodations and modifications in the general education classroom:

- Preferential seating
- Repeating and rephrasing directions/verbal rehearsal
- Pre-teaching – vocabulary and concepts
- Skill reinforcement throughout the day
- Webbing and brainstorming before all written assignments
- Writing software
- Word bank for written responses
- Small group skill instruction
- Multisensory approach to learning

61. In addressing the least restrictive environment requirement of IDEA, the Proposed IEP indicated that the Student would be educated with age-appropriate nondisabled peers during homeroom, lunch, special subject areas, math, social studies and science, transportation to and from school and all extracurricular activities (field trips, programs, etc.) (Parent #33, 96).

62. In a normal 32½-hour school week, the Student would be in pull-out special education for 8 hours and in general education for 24½ hours.

63. The Parents did not consent to the initiation of services.

64. The Multidisciplinary Team proposed additional assessments:

- CCPS Third Grade Math Benchmark Assessment (January and May)
- Test of Written Language and/or written language samples

- Gray Oral Reading Test - 4
- Word Identification and Spelling Test
- Test of Word Reading Efficiency
- Assistive Technology Assessment
- Classroom Observation
- Referral to Dr. XXXX XXXX, Audiologist, for Auditory Processing
- CHAPPS Checklist
- Test of Narrative Language
- Test of Word Finding
- Test of Problem Solving

65. The Parents agreed to proceed with the math benchmark testing, speech and language assessments, auditory processing evaluation by Dr. XXXX, assistive technology evaluation, and classroom observations. (Parent #30, 73-74).

66. On September 21, 2007, the Parent provided copies of the Student's records from [School 1] to the Multidisciplinary Team. (Parent ## 36-46, 109-120, 266-267, 274-280).

67. XXXX XXXX, [School 2]'s assistant principal, evaluated the Student's mathematics skills on September 13, 2007, using CCPS's third-grade benchmark assessments, which are based upon Maryland's Voluntary State Curriculum. (T. 488-489).

68. The assessment was designed to take 120 minutes. The Student, however, was unable to do many parts of the assessment, including questions at the kindergarten-to-second-grade level. (T. 498). The Parent, who observed the testing with Ms. XXXX's permission, saw that the Student's chin was quivering and her eyes were welling up, and ended the assessment

after twenty-five minutes. (T. 416-417).

69. CCPS generally attempts to remediate students who score poorly on mathematics assessments by placing them in a class with the strongest mathematics teacher and intensifying the instruction, including the use of direct instruction. (T. 505-506).

70. The eventual Proposed IEP offered by the CCPS in November 2007 contained an unquantified provision for direct mathematics instruction outside a general education classroom; it made no reference to a specific mathematics teacher for the Student. (T. 564-569).

71. Ms. XXXX observed the Student's mathematics class at [School 1] on October 11, 2007. Ms. XXXX did not observe any direct instruction and did not believe that the teacher was following any curriculum's "scope and sequence" (the curriculum's material and order of presentation without adherence to the curriculum's time constraints) . (Parent #51, 130).

72. Ms. XXXX also observed the Student's social studies class at [School 1] on October 11, 2007. Ms. XXXX did not observe any direct instruction and did not believe that the teacher was following the scope and sequence of a curriculum. (Parent #51, 131).

73. XXXX XXXX observed the Student's language arts and reading skills classes at [School 1] on October 16, 2007. Ms. XXXX noted that the Student's teachers were not using the Wilson Reading System with fidelity. (Parent #51, 132-133; Parent #52, 140-145).

74. Dr. XXXX XXXX, Au.D, an audiologist, examined the Student on October 3, 2007. He found that the Student did not have a global auditory processing deficit, but did have a lower threshold to interference of background noise and slowed temporal resolution. Temporal resolution is an underlying skill that can affect learning. Dr. XXXX named some programs that can be used to help a person to learn to detect the smallest acoustical signals required to detect

spoken language. (Parent #53, 146-149).

75. Dr. XXXX spoke with Dr. XXXX; Dr. XXXX agreed with Dr. XXXX that his evaluation was consistent with Dr. XXXX's opinion that the Student's primary problem was a severe reading disability and not any problem the Student had with acoustical signals. (T. 118-119).

76. XXXX XXXX has a Master's Degree in Special Education from XXXX University, with a concentration in assistive technology. She evaluated the Student at [School 1] for assistive technology, and made several useful recommendations about computer software to assist children with dyslexia, including word-prediction writing programs. (T. 673-682).

77. Ms. XXXX also strongly encouraged the use of the FastForWord program to develop the Student's ability to detect the smallest acoustical signals. (T. 686-689).

78. The program requires a student to receive instruction for 100 minutes per day (not all at once, but perhaps in five 20-minute sessions) five days per week (8 hours and 20 minutes per week) for four to ten weeks. (T. 723-724).

79. The eventual Proposed IEP offered by the CCPS in November 2007 did not provide for FastForWord. (T. 724). There is no long-term scientific evidence that FastForWord has lasting benefit; the CCPS has anecdotal evidence of its short-term success. (T. 697-699).

80. On November 8, 2007, the IEP Team met to review the assessments. In addition to the Parents, Dr. XXXX, Ms. XXXX, Dr. XXXX, Ms. XXXX, Ms. XXXX, Ms. XXXX, the following CCPS personnel participated in the meeting; XXXX XXXX, Wilson Certified Instructor, XXXX XXXX, Special Education Consulting Teacher, and XXXX XXXX, regular educator. (Parent #56, 158-159).

81. The CCPS presented a Proposed IEP that contained the following goals:
- A. Goal: Academic Reading: Given a multisensory approach to instruction, will read text at a Reading Recovery level 22 with 80% accuracy in 4 out of 5 times.
 - B. Goal: Academic Reading will improve her reading comprehension skills to an end of second grade level with 80% accuracy in 4 out of 5 times.
 - C. Goal: Academic Written Language: Given a multisensory approach to instruction, will reach a third grade benchmark in writing with 80% accuracy in 4 out of 5 times.
 - D. Goal: Academic Math: The Student will improve her math skills to meet demands of the Maryland Voluntary State Curriculum for third grade.
 - E. Goal: Academic Communication: The Student will use her auditory and phonological skills for reading, spelling, and writing tasks in structured learning activities.
 - F. Goal: Academic Communication: The Student will comprehend curricular vocabulary and oral/written materials in structured tasks.
 - G. Goal: Academic Communication: The Student will be able to express herself in a clear, concise manner using age appropriate vocabulary as it relates to the curriculum in structured tasks.

(Parent #56, 175-179).

82. The Proposed IEP stated that the Student was able to participate in the general education curriculum for content area subjects with accommodations and modifications.

83. Under the Proposed IEP, the Student would receive twelve hours per week of special education services, four hours and thirty minutes of direct special education services in the reading, decoding, reading comprehension, writing, spelling, math, expressive and receptive language, and auditory and phonological processing; six hours of special education support in general education classrooms; thirty minutes of pull-out speech-language therapy; one hour of push-in (teacher in the general education classroom) speech-language therapy; and thirty

minutes per month of assistive technology. (Parent #56, 180).

84. The Student would receive accommodations and modifications in the general education classroom

85. In a normal thirty-two-and-one-half hours school week, the Student would be in pull-out special education for no more than five hours and in general education classrooms with unspecified special education services for the balance.

86. The Parents did not consent to the initiation of services.

87. During the 2007-2008 school year at [School 1], the Student received one-on-one teaching, five times per week, in primary language skills, decoding, fluency, and spelling, primarily following the scope and sequence of the Wilson Reading System®. (T. 164-165).

88. The Student also received additional one-to-one teaching in language skills, fluency, sight word recognition, and spelling, four times per week. (T. 165).

89. The Student also received speech-language services twice a week in a setting of two students and one teacher. (T. 165).

90. Five times a week the Student had a language arts class, focusing on creative writing or poetry, in a class of twelve students with one teacher. (T. 165).

91. The Student received mathematics instruction, times per week using the scope and sequence of the Saxon™ mathematics program, in a class of five students with one teacher. (T. 165).

92. The Student received social studies instruction, five times per week, in a class of twelve students with one teacher, and science instruction, four times per week, in a class of twelve students with two teachers. (T. 166).

DISCUSSION

The identification, assessment and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1482 (Supp. 2008), 34 C.F.R. Part 300 (2007), Md. Code Ann., Educ. §§ 8-401 through 8-417 (2006 & Supp. 2007), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to FAPE. 20 U.S.C.A. § 1412(a)(1)(A) (Supp. 2008).

In *Board of Education of the Hendrick Hudson Central School District. v. Rowley*, 458 U.S. 176 (1982), the United States Supreme Court described FAPE as follows:

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

458 U.S. at 200-01 (emphasis added). *See also In Re Conklin*, 946 F.2d 306, 313 (4th Cir. 1991).

The IDEA contains the following, similar definition of FAPE:

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

20 U.S.C.A. § 1401(9) (Supp. 2008). *See also* Md. Code Ann., Educ. § 8-401(a)(3) (2006);

COMAR 13A.05.01.03B(27).

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “[t]he best education, public or non-public, that money can buy” or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4th Cir. 1983), *citing Rowley*. Instead, FAPE entitles a student to

an IEP that is “reasonably calculated to enable the child to receive educational benefits.” *Id.* at 177.

“Educational benefit” requires that “the education to which access is provided be sufficient to confer *some* educational benefit upon the handicapped child.” *Rowley*, 458 U.S. at 200 (emphasis added). *See also MM ex rel. DM v. School Dist. of Greenville County*, 303 F.3d 523, 526 (4th Cir. 2002), *citing Rowley*, 458 U.S. at 192; *see also A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004); *Board of Educ. of Montgomery County, v. S.G.*, 2006 WL 544529 (D. Md. March 6, 2006). Thus, the IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4th Cir. 1990). Yet, the benefit conferred by an IEP and placement must be “meaningful” and not merely “trivial” or “de minimis.” *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989).

In addition to the IDEA’s requirement that a disabled child receive some educational benefit, the child must be placed in the “least restrictive environment” to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. 300.114(a)(2)(i) & 300.117. Yet, mainstreaming disabled children into regular school programs may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. *Id.* Accordingly, in such a case, FAPE might require placement of a child in a private school setting that would be fully funded by the child’s public school district.

The Supreme Court has placed the burden of proof in an administrative hearing under the IDEA upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parents bear the burden of proving here that the Student's proposed 2008-2009 IEP and placement are not reasonably calculated to provide her FAPE.

In *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985), the Supreme Court established a two-part test that must be satisfied before a court will order reimbursement for private placement. First, it must be determined that services provided under an IEP at a public school are inappropriate. Second, the private placement sought by the parents must be appropriate under the IDEA.

1. The IEP proposed by the CCPS on November 8, 2007 for the Student's 2007-2008 school year was inappropriate because it was not reasonably calculated to provide the Student with a FAPE.

The Parent testified that she was shocked by the IEP proposed by the CCPS on November 8, 2007 because it actually reduced the amount of direct special education services offered to the Student in the September 11, 2007 IEP. (T. 432-433). I have to admit that my visceral reaction upon first seeing the services offered in the November 8, 2007 was similar to that of the Parent. The services offered and the settings in which those services would be implemented appeared disconnected from the Student's severe dyslexia, past academic struggles, and current performance. As a matter of legal analysis, my decision ultimately depends on my weighing the opinions of the Parents' expert witnesses against those of the CCPS's expert witnesses. The credentials, experience, and credibility of the Parents' primary expert witnesses, Dr. XXXX and Dr. XXXX¹⁰, were overwhelmingly superior to those of the CCPS's expert

¹⁰ The Parents' other expert witness, Mr. XXXX, was an unimpressive witness; his testimony, however, was fairly

witnesses who offered opinions, Ms. XXXX, Ms. XXXX, and Ms. XXXX. I found Dr. XXXX especially to be a thoughtful witness, who offered well-reasoned opinions based upon her assessments of the Student, her review of testing of the Student performed by other professionals, her involvement in the IEP process, and her considerable experience with dyslexic children. In contrast, I was not satisfied that any of the CCPS's expert witnesses provided well-considered opinions that offered a true picture of the Student's educational requirements.

Both Dr. XXXX, who was present during both the September 11, 2007 and November 8, 2007 IEP Team Meetings, and Dr. XXXX, who thoroughly reviewed the Student's reading skills in preparation for the hearing, testified that the IEP proposed by the CCPS on November 8, 2007 was not reasonably calculated to provide the Student with a FAPE. Dr. XXXX testified, initially in regards to the September 11, 2007 IEP, that the severity of the Student's dyslexia and her need for basic reading skills, required that she be taught in an environment where these basic skills would be reinforced throughout the school day. (T. 97-98). As to the November 11, 2007 IEP, Dr. XXXX was convinced that the Student's need for intensive instruction in reading, writing, and spelling could not be met in a regular classroom setting. (T. 115). I also note that in September 2006, before the current IEP process began, Dr. XXXX wrote an assessment of the Student for [School 1] that essentially matches her current opinion. Dr. XXXX, who the Parents hired after they had rejected the November 11, 2007 IEP, did not have the same experience with the Student as did Dr. XXXX; nevertheless I found her to be a thoroughly professional and persuasive expert witness. She testified at length about the basic foundations of reading instruction and the need for intensive instruction on phonemes and phonics. I found Dr. XXXX's

limited and not nearly as Student-specific as the testimony of Dr. XXXX and Dr. XXXX.

opinion that the Student would not receive academic benefit from the IEP proposed by the CCPS to be credible. (T. 310-313).

The CCPS did not meaningfully impeach either Dr. XXXX or Dr. XXXX or undermine their expert opinions. Dr. XXXX was not asked a single question concerning the substance of her testimony; she was asked to concede the trivial detail that in her career she had not been a classroom teacher. The cross examination of Dr. XXXX covered some substance, but essentially re-elicited that the Student was reading at near a first-grade level and needed intensive instruction. The CCPS's strategy apparently was to convince me that its experts were more persuasive, or at least equally persuasive, as the Parents' experts. If so, the CCPS failed miserably.

Granted that a due process hearing is an adversarial setting, I still found the CCPS's general tone throughout the hearing to be unnecessarily sarcastic and rude. The Parent and the Parents' expert witnesses were wrongly and pointlessly questioned about the disclosure of certain documents, (T. 129-131; 320-321; 461-463), and other non-substantive issues. Some of this tone is apparent even from the written transcript. I found the CCPS's attitude particularly puzzling considering the Parents' obvious good faith approach to the Student's educational needs. In 2004, the CCPS, despite Dr. XXXX's report and the Student's academic performance, failed to identify the Student, described by Dr. XXXX and Dr. XXXX as one of the most severely dyslexic children that they had ever seen, as being eligible for special education services. The Parents enrolled the Student at [School 1], and in the interim they have enrolled two of their other children, one with an IEP, at [School 2], demonstrating their willingness to work with the CCPS. The Parents sought appropriate private evaluations of the Student by Dr.

XXXX to support their effort to return the Student to [School 2]. The Parents just could not have been more reasonable. The CCPS, by contrast, rather than acknowledge its egregious error in 2004, implied that the Student left [School 2] in 2004 as a successful emerging reader only to be damaged at [School 1] by exposure to reading programs administered without fidelity. (T. 846-847). In general, the CCPS did not present itself in a good light.

Moreover, when they attempted to defend the proposed IEP, the CCPS's expert witnesses simply were not very convincing. To a large extent, the parties agreed that the Student had severe dyslexia combined with a deficit in short-term memory. The CCPS believed that the Student could receive educational benefit with some direct instruction in the Wilson Reading System and some limited special education services provided to the Student in a general education classroom. The CCPS's expert witnesses, Ms. XXXX, Ms. XXXX, and Ms. XXXX attempted to explain how this could happen. Their explanations, however, cannot withstand even a cursory review.

Ms. XXXX, who actually made a good point by insisting that any proposed IEP contain mathematics goals, severely undercut her own credibility by reducing the mathematics assessment to a farce and the Student almost to tears. I find it difficult to credit testimony from an expert witness who gave a third-grade assessment to a child functioning at a first-or-second grade level. The proposed IEP goal, suggesting that the Student would meet the demands of the third-grade Maryland Voluntary State Curriculum in mathematics, meaning the Student would master three years of mathematics in twelve months seems equally tone-deaf to the Student's actual educational abilities and needs.

XXXX XXXX, who made insightful and helpful suggestions concerning assistive

technology, also undercut her own credibility by focusing on one program, FastForWord, as being the key component to the Student's success. Based upon the report from Dr. XXXX, the audiologist, and without actually speaking with Dr. XXXX, Ms. XXXX concluded, contrary to all that was known about the Student, that the Student had a significant auditory problem at the acoustical level. Ms. XXXX advocated for FastForWord, a program requiring a student to have 100 minutes of instruction per day for four to ten weeks. At the hearing, Ms. XXXX conceded that the November 8, 2007 IEP does not provide for this instruction. (T. 724). I find it difficult to understand why the proposed IEP contains no allotted time for a program that Ms. XXXX believes is so essential to the Student's mastery of essential auditory processing. Moreover, at the practical level, there is the problem of the Student receiving more than eight hours of FastForWord during a school week. Ms. XXXX testified that the instruction would have to be provided during the Student's general education program, that is, at times other than when the Student was receiving direct special education services or supportive special education services within a general education classroom. (T. 725-726). Such a schedule would seem to require the Student to routinely miss classes in Math, Social Studies, or Science, in addition to non-academic classes. Ms. XXXX herself testified that it's really important to keep the Student in classes as much as possible (T. 701). Ms. XXXX's opinion concerning FastForWord was wholly unconvincing. The better evidence in this case is that the Student's problem is not audiological, but a combination of a neurological impairment combined with a deficient short-term memory. An expert witness should at least consider alternative theories before reaching a conclusion, which Ms. XXXX did not do.

XXXX XXXX is an advocate for the Wilson Reading System to such an extent that she is

convinced that the Student can make academic progress in reading if she receives Wilson instruction “with fidelity” for four hours and thirty minutes per week. Ms. XXXX observed two of the Student’s classes at [School 1] and saw that the Wilson instruction was not being presented as prescribed by its author. Much like Ms. XXXX’s opinion concerning FastForWord, I am not satisfied that Ms. XXXX has considered all of the relevant evidence; her opinion seemed to have been formed primarily in response to her observations at [School 1]. On cross-examination, she repeatedly disavowed any reliance on Dr. XXXX’s reports, which would include the advice that the Student is one of the most severely dyslexic children that Dr. XXXX has ever seen and that while the Student will make progress, that progress will be painfully slow. In that light, Ms. XXXX’s opinion strikes me as her impulsive reaction to [School 1]’s teaching methods rather than a well-considered judgment of what the Student needs. In contrast to Dr. XXXX, who testified in a very straightforward, reflective, professional manner, I found that Ms. XXXX’s demeanor - a mixture of bravado and salesmanship - diminished her credibility. She did not remotely convince me that the Student could receive any educational benefit from the CCPS’s proposed IEP.

2. The Student’s Parents are entitled to reimbursement for tuition and related expenses that they incurred for the Student’s 2007-2008 school year at [School 1] because [School 1] is an appropriate placement under the IDEA for the Student.

The CCPS spent much of the hearing denigrating [School 1], and did pose some legitimate questions about [School 1]’s educational philosophy, which gives the teacher a great deal of autonomy in providing instruction, as opposed to the more rigid, prescriptive educational mandates that public schools must follow. It is quite possible that [School 1]’s students could benefit from more rigor. The issue for me, however, is much simpler: Is [School 1] an

appropriate placement under the IDEA for the Student? [School 1] specializes in dyslexic children like the Student, and it uses the Orton-Gillingham methodology for teaching children with dyslexia. throughout the curriculum. As testified to by Dr. XXXX, the Student needs that immersion to succeed. The Student has made very limited progress during her four years at [School 1], but I accept Dr. XXXX's opinion that the Student is making progress commensurate with the severity of her genetic dyslexia and memory impairment. Dr. XXXX testified that in time the Student will learn to decode and eventually to read with some fluency, but that will only happen with a comprehensive program specifically addressing the Student's needs. Right now, [School 1] is that place. The CCPS noted that [School 1] is not approved by the Maryland State Department of Education as a non-public special education school. That does not preclude me from finding it an appropriate placement under IDEA. *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).¹¹ [School 1] is also the least restrictive environment for the Student; she need not, as suggested by the CCPS, have to first sink in a general education classroom.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law as follows:

1. The CCPS's November 8, 2007 IEP for the Student's 2007-2008 school year was not reasonably calculated to provide the student a FAPE.
2. [School 1] is an appropriate placement for the Student.

¹¹ In closing argument, the Parents briefly alleged that the CCPS committed procedural violations before the November 8, 2007 IEP Team Meeting. Assuming there were violations, nothing in this record suggests that the Student was denied a FAPE or the Parents were deprived an opportunity to participate in the IEP process. 34 C.F.R. §300.513 (2007).

3. The Parents are entitled to reimbursement of tuition and expenses for their unilateral placement of the Student at [School 1] for the Student's 2007-2008 school year.

Burlington School Committee v. Department of Education., 471 U.S. 359, 370 (1985).

ORDER

I **ORDER** that the CCPS shall reimburse the Parents for tuition costs and related expenses incurred for the Student's 2007-2008 school year at [School 1].

July 23, 2008
Date Decision Mailed

Robert F. Barry
Administrative Law Judge

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the student resides. Md. Code Ann., Educ. §8-413(j) (2006).

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