

SEP 10 2015

Dispute Resolution &
Administrative Services

VIRGINIA:

**IN THE VIRGINIA DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DIVISION**

MR. and MRS.)	
Petitioners,)	
v.)	In Re:
)	
COUNTY PUBLIC SCHOOLS,)	
Respondents.)	

DUE PROCESS HEARING DECISION

This proceeding was initiated by the Petitioner's (Petitioners or Parents) request for a due process hearing, through their attorney, dated June, 26, 2015, against County Public Schools (Respondent, CPS or the LEA), under the Individuals with Disabilities Education Act, ("the IDEA") 20 U.S. C. 1400, *et seq.*, and the regulations at C.F.R., Part B. Section 300, *et seq.*

The Due Process Hearing was held before the undersigned Hearing Officer over a four day period, on August 11, 12 ad 13th and August 20, 2015 at the _____ Center, in _____, County Virginia. The hearing was closed to the public and transcribed by a court reporter.

This Decision is within the time limitation period under the IDEA. The record includes the electronic recording of the 2015-2015 IEP meeting, Petitioner's Due Process Request, CPS Response to the Due Process Request, a Request for Stay-Put from the Petitioners, CPS Response to the Stay-Put Motion, the Stay-Put Decision, Petitioner's Objections to the Stay-Put Decision and

CPS Response in support of the Stay-Put Decision, Petitioner's Motion *in Limine* and CPS Response to Petitioner's Motion *in Limine*, written motions, the Petitioner's exhibit book, the CPS exhibit book, Petitioner's and CPS Proposed Findings of Fact and Conclusions of Law and the full transcript of this Hearing.

Various CPS exhibits were the subject of a Motion *in Limine* filed by the Parents and the CPS filed a response to the objections. Prior to beginning of the hearing it was decided that the admissibility of each challenged exhibit would be addressed as it was presented for entry. Subsequently, the Hearing Officer held that the exhibits were admissible and overruled the objections while noting that she would provide the exhibits the appropriate weight. Counsel for the Parents noted his continuing objection. CPS withdrew its exhibits 81, 84, 86, 101 and 105. The Parents' exhibits and the remainder of the CPS exhibits were admitted without objection from either Party.

VIOLATIONS ASSERTED BY THE PARENTS

1. CPS has failed to provide an Individualized Education Program (IEP) that contained appropriate goals, accommodations, services and placement to enable to access a meaningful educational benefit during the 2013-2014 school year given 's unique educational needs.

2. CPS failed to ensure that had an appropriate IEP that provided a FAPE during his non-educational Children's Service Act (CSA) placement at , including the purposeful denial and prevention by CPS of critical Applied Behavior Analysis (ABA) service.

3. CPS's proposed IEP for the 2015-2016 school year continues to deny the appropriate level of residential placement and services to meet his needs according to his disabilities.

4. As a result, [redacted] has not made meaningful educational progress particularly in management of his dysregulated behaviors which interfere with his learning and education.

BURDEN OF PROOF:

In the controlling case of *Schaeffer v. Weast*, 546 U. S., 49, 126 S. Ct. 528, 163 L. Ed. 2d, 387 (2005) the United States Supreme Court held that the burden of proof in an administrative hearing challenging an IEP, is properly placed upon the Party seeking relief, whether that is the disabled child or the school district. *Id* at 537

This Request for a Due Process Hearing challenging the [redacted] County Public School's 2012-2013, 2014-2015 and the 2015-2016 [redacted] Public School System IEPs was brought by the Petitioners. Accordingly, I find that the Petitioners have the burden of proof in this Due Process Hearing.

**FACTUAL FINDINGS REGARDING ISSUES
AND PARENT'S CLAIMS OF VIOLATIONS BY CPS:**

1. [redacted] is a twelve year old [redacted] who has been diagnosed with Autism Spectrum Disorder, Attention Deficit/Hyperactivity Disorder, Gastro-intestinal complications as well as a variety of additional medical ailments. (PET: 3, 5-9 and 20b.) Psychological and educational testing has consistently placed [redacted]'s cognitive abilities in the Moderately Impaired Range, with a Full Scale IQ of 48 (CPS-57-61; TR at 307, PET 3, 5, 9, 20)

2. The student displays behaviors that include aggression, biting self and others, throwing items, pulling hair out, hitting, kicking, head banging and elopement from the home. (PET-3, 10 a, 11, 23, 34-39)

3. After attending the private School in for two years returned to CPS in 2012 for third grade school year. An Individualized Educational Plan (IEP) was developed for in July of 2012. This IEP focused on intervention in the areas of basic academic skills, such as writing, math, expressive identification and early reading skills, language skills, social skills and behavior. Because of level of behavioral difficulty CPS proposed that attend the Behavior Transition Program at the Center but, due to the Parent's strong disagreement and belief that was too restrictive for, was placed in an Enhanced Autism Program at the Elementary School for the 2012-2013 school year. Requests by the Parents for assistive technologies, adaptive physical education and occupational therapy were provided. (CPS- 11 & 12)

4. At attended an enhanced autism classroom. (TR III at 15) The classroom was comprised of four students with a full-time special education teacher, a part-time teacher, two instructional assistants and a registered nurse. *Id* at 16. The classroom focused on academic instructions and utilized the principals of Applied Behavioral Analysis (ABA) and positive reinforcement in a highly structured environment. In accordance with the principals of ABA there was frequent data collection regarding (TR III at 8; 15-16, 19-20 and TR IV at 233-234)

5. made educational progress and was provided FAPE throughout the 2012-2013 school year. 's 2012-2013 Final Progress Report for grade 3 demonstrated that made educational progress. For example, progressed through the Edmark reading program (CPS-26) and passed Grade 3 mathematics, science and reading on the Virginia Alternative Assessment Program (VAAP). (CPS-26)

Ms. , 's teacher during two years at noted in her comments in the third grade Final Progress Report that " ... has increased basic sight vocabulary. ... has learned to rote count. ... has learned to seek attention from teachers in an appropriate manner." *Id.*

6. was provided a free and appropriate education (FAPE) by CPS while attended School during 2013-2014. IEP contained appropriate goals, accommodations, services and placement to enable to access a meaningful educational benefit during the 2013-2014 school year. continued educational progress in the School program is evidenced by passing all but one of the subjects in the Virginia Alternative Assessment Program (VAAP); showing progress on the Brigance Comprehensive Inventory of Basic Skills II (CPS 29; TR 111A at 40-43, 55-56); Report Card which detailed improvement in fine motor skills and progress towards learning to copy letters and words, create a picture to match text and identify pennies, nickels, dimes and quarters by name. (CPS 34); IEP Progress Reports (CPS 28) and Probe Data Sheets (CPS 32); work samples demonstrating independent writing of name, the date, and weather (CPS 36); and benefit from the related services of SL (CPS 28 at 18-21) and APE (CPS 38) .

Dr. _____, who had evaluated _____ for the Parents in 2010 and then again in 2014, personally observed _____ in _____ classroom at _____ in May of 2014 and observed that _____ had progressed from below the pre-K level to as high as the kindergarten level. (PET- 9 at p. 8)

At the end of _____ fourth grade school year _____ had shown success in the Touch Math and Reading Mastery Programs and had made progress towards all of his agreed-upon IEP goals.

Ms. _____ testified that _____ made educational progress “every day that _____ was there” as well as progress in the area of behavior and self-calming. (CPS-14, 27; TR IIIA at 29-30; 35-58)

7. When questioned about an e-mail that she wrote on April 1, 2014, in support of the Parent’s service request for CSA assistance in placing _____ in the _____ School, Ms. _____ testified that she had been _____’s teacher for two years and that _____ behavior is impulsive and, as with other autistic children it often fluctuates but that she and the other staff in the classroom were able to manage _____’s behavior and adjust _____ assignments to re-direct _____. (TR III A-132-135)

She explained that _____’s behavior might affect how quickly _____ was learning, but that was “always able to get back on track,” *Id* at 136, 138-140) She stated that _____’s behavior issues did not change her opinion that _____ had progressed during the year and that the program was appropriate for _____. *Id.*

8. In July of 2014 another IEP was developed by CPS for _____. This IEP recommended continued placement, with some modification, in the Enhanced Autism program at _____ Elementary School for the 2014-2015 academic school year. The prior IEP was amended to

include, among other things, an updated level of performance goals and services. It also recommended similar ESY services at his neighborhood summer program. (CPS-51)

Ms. _____ was present at all three meetings in May, June and July of 2014 working on the IEP. (TR 111A. 59) She testified that the IEP was to be implemented at _____ School in an enhanced autism classroom because _____ was making progress in her classroom and did not need to go into a more restrictive environment (TR III at p.60). Ms. _____ testified that there was discussion at the last IEP meeting in July of 2014 concerning whether _____ would be going into a non-educational private placement or returning to _____. Although CPS requested that _____ return to _____ the parents declined that request. *Id* at 63.

When asked if the parents had given any reason at the IEP meeting why they wanted to go _____ instead of _____ she testified that “Well, my impression was that it was mostly because of a lot of things that were going on at home. But they did state that they didn’t feel like made progress—as much progress with me but I thought _____ did. I thought _____ was- did well in the classroom with me.” *Id* at 66

The CPS IEP stated on page 22 that _____ was “... currently entering residential placement for non-educational reasons “due to significant self-injurious and aggressive behaviors in the home and in the community.” (PS-51 at 23)

That this placement was being made through the Community Services Board of _____ County for non-educational reasons was further acknowledged in the July 21st, 2014 modification of the July 7th IEP. Page 21 states that: “ _____ was placed at _____ residential for non-educational reasons and will receive services, effective July 14, 2014 until November 14, 2014.” (CPS-52 at 21) This is a non-educational, non IEP placement. The IEP team recommended ESY; however, _____ will be entering residential placement for non-educational purposes, so _____ will not

be attending ESY.” The Parents agreed with the July 7th 2014 IEP as well as the July 21, 2014 IEP modification. (FCPS-51& 52)

During the Due Process Hearing the Parents stipulated that “The placement at _____ was for non-educational purposes.” When asked by the Hearing Officer if that included the period up to the date of the hearing, Parent’s counsel confirmed that it did and said “_____ condition at _____ is for non-educational purposes.” (TR II at 188-189). Accordingly, it is found that _____’s placement at the _____ School was and continues to be for non-educational purposes.

9. The CPS July 2014 IEP was reasonably calculated to provide _____ with a free and appropriate public education (FAPE). Based upon _____’s educational progress at _____ during the two prior years, the IEP team proposed that _____ should continue to receive an appropriate education in an enhanced autism class here for the 2014-2015 school year. The IEP was amended to update the present level of performance, goals and services, among other things. (CPS at 51-52)

The IEP team went over the IEP page by page with the parents and answered any questions that they had. The parents, who were represented by an advocate, signed their agreement to this IEP and then later signed an Addendum to the IEP.

10. The _____ School is a private residential treatment facility. (TR- I at 53). _____ resides there in a group home with a total of six other students. (TR-II at 85) _____ attends school from 8:30 a.m. until 2:30 p.m., five days per week. _____ special education classroom contains five to six students. *Id* at 85-86. _____ developed an IEP in 2014 that primarily followed the CPS July 2014 IEP. (PAR 40). The IEP team determined that _____ should be

placed in a residential day program. *Id.* Under the heading "Additional IEP Information/Notes, states "... is placed at , per Parental placement, for non-educational reasons." *Id.*

11. The 2014 IEP basically followed the CPS 2014-2015 IEP including the same specific goals and objectives: no major changes were made. (TR III at 15)

Although the IEP does not specifically provide for ABA services to be provided it primarily followed the CPS 2014 IEP which included the ABA methodology. Mr. , the CPS Procedural Support Liaison, who participated in the IEP stated that: "They really didn't make any major changes to the goals. The goals seemed to be -- they stuck with sort of what we had proposed. (TR-Barr 8/11/ at 13).

Mr. went on to discuss the CPS denial of 's request for an ABA assessment which is noted in the IEP.

"They had asked about an ABA assessment which, at that time, we already knew was -- was in an ABA program here in County. You know, was making progress. We know that needs ABA and benefits from ABA methodology. So in looking at the goals, we had written in FBA and a BIP -- Functional Behavior Assessment and Behavior Intervention Plan. And within that Behavior Intervention Plan, there were multiple goals to teach replacement behaviors. It spelled out exactly when to reinforce; when to ignore; when to differentiate; if does get upset and 's self-injurious, how to react to that. So everything was sort of spelled out and that was spelled out with ABA methodology. So we kind of laid out the plan of how it worked. So, that time, with their request of the ABA assessment, we didn't think it was necessary based on -- we know that does need it." (TR- at p. 16) and "Based on goals, based on behavior plan, some of the ABA would already have been included. If you are doing the plan, ABA would be a part of that.

Id at 38.

When asked by the Hearing Officer: "Mr. _____, did you assume that the ABA methodology was being used by _____ when you received good progress reports? He responded "Yes, yes." (TR IV-96-97)

Mr. _____ denied that CPS refused to agree to provide ABA services to _____ at _____ per the handwritten notation on the IEP. He emphasized that the only request made by _____ regarding ABA was for a new assessment. "The assessment -- we were asked about an ABA assessment, but the services -- we didn't reject ABA services. So I don't know why it's written like that." *Id* at 38. He reiterated that:

"As far as the ABA services, though, I still want to be clear that the ABA -- based on the IEP that was given to _____ if you're doing the IEP, you're doing the FBA, BIP, you are implementing the ABA services." (TR IV 102-103)

Ms. _____, _____'s Case Manager at _____, confirmed in her testimony that CPS denied _____'s request that CPS approve the funds to pay for "the evaluation to determine the level of services that _____ would receive." And she noted that "Typically, we request the approval of an ABA evaluation through the IEP, which would essentially be paid for by the school system. My understanding, with his IEP, that this was requested and rejected." (TR II at p. 103.)

The _____ IEP was produced at the _____ School with CPS personnel participating by telephone. All writing on the IEP, other than CPS signatures and personal identification was done by the _____ personnel. There was no evidence or testimony provided to establish that a request for ABA services was made or who wrote that CPS refused to provide ABA services to _____ Mr. _____ denies that any issue other

than an ABA assessment was even raised and Ms. _____ confirms that it was an *assessment* that was denied. *Id*

There seems to be confusion as to which entity received a request for ABA services from the parents. Despite the Parent's claim that their requests to CPS for ABA services at _____ were denied there is no testimony or evidence that a request was actually made to CPS.

When Mr. _____, was asked if he was involved in the discussion with _____ County Public Schools, _____, or CSA about the provision for ABA services for _____ at the _____ School," he testified:

A. "I remember both of -- my wife and I asking multiple times, requesting multiple times to have ABA funded as part of my _____'s education, and I remember it being rejected multiple times.

Q Who rejected it?

A Well, and I -- I can -- I know of one person who did. And in the last FAPT hearing we had requested ABA funding, and I believe it was _____ who said, We don't recommend funding. And I said, Why not? And they said, You should pay it. And I believe there may have been an interchange or -- or there may have been a discussion with other members of the FAPT team, and we were just told summarily, We're not paying for it. (TR II at 227)

Mrs. _____ testified that she recalled the issue of ABA services being raised during her telephone participation in the _____ IEP but that she was told by _____ that they needed to get permission from CSA in order to implement those services. When asked:

Q. In the IEP meeting itself, that you participated in, do you remember whether any representative from _____ County Public Schools

addressed, during the meeting, whether or not [redacted] should have ABA services as part of his IEP?

Mrs. [redacted] replied "I do not recall that." (TR II at 347)

It is, therefore found that CPS did not refuse to provide ABA services to [redacted] at [redacted] in the [redacted] IEP and that [redacted] was not denied FAPE as a result of not being provided with ABA services at [redacted].

12. A further factor to be considered is whether [redacted] was denied ABA services while at [redacted] is a comparison of the differences between the ABA program at [redacted] and how ABA is provided at [redacted]. At [redacted] ABA services are only offered as an additional service on a pull-out basis several times a week for a few hours, much like occupational therapy or speech therapy. (TR. Ms. [redacted]). At [redacted] and the [redacted] Center ABA methodology is utilized throughout the day every day.

In response to questions regarding the ABA program at [redacted] Ms. [redacted]

was asked "Okay. So to what degree do you think that it is important to apply ABA methodology in your classroom both in the third grade and in the fourth grade?

How important was that?" Ms. [redacted] responded that "I think that it is important for [redacted] to get ABA throughout his school day." ... "Because it worked for [redacted] ...

benefited from it," and "The ABA that I did with [redacted] was beneficial with helping [redacted]."

(TR III at 96)

When asked if she thought that ABA would have been successful with [redacted] if it was given on a pull-out basis instead of throughout the day Ms. [redacted] responded "No.

I think [redacted] needs to be in [redacted] own environment, not pulled out of the classroom. [redacted] does very well with routine. [redacted] doesn't do well with being pulled out to, like, an unknown place." (TR III at 163)

13. In May of 2015, a re-assessment was performed and [redacted] CPS and the Parents agreed that [redacted] continued to be eligible for special education on the basis of Autism and an intellectual disability. (TR III at 18-20, 40-41; TR-285-86)

14. Despite not being provided with separate ABA services [redacted] made educational progress while at [redacted] School. Ms. [redacted], [redacted] case manager testified that she and the Parents were in agreement that the [redacted] School IEP was appropriate for [redacted] and that it was still the current IEP, despite it not containing provision for ABA services. (TR II at 212 and FCPS51 at 34) She also agreed that [redacted]'s evaluations of [redacted] in December of 2014, February of 2015 and in April of 2015 all demonstrated that [redacted] was making progress on most of [redacted] IEP goals and that as of June 2015 [redacted] was still continuing to make progress on [redacted] IEP goals. (TR-II at 231-32, 233) [redacted] and CPS personnel all testified that [redacted] was making educational progress on most of [redacted] IEP goals at [redacted] from August 2014 through May 2015, as documented on the contemporaneous reports prepared by [redacted]. (FCPS 133, PET 41, ([redacted] IEP progress reports); PET 12-17) [redacted] also passed [redacted] Virginia Alternate Assessment Program (VAAP) while at [redacted].

15. An IEP for school year 2015-2016 was developed by CPS in June of 2015. (CPS 64) The Parents, staff, and CPS personnel participated in the two meetings formulating the IEP with the personnel participating by telephone. (CPS -143) Ms. testified that the Parents were present as well as "the school psychologist, all the specialists, the speech pathologists, occupational therapists. We had a general education teacher on the phone. There were people partaking from on the phone – their principal, the administrator, a case worker, 's current teacher- they were all on the phone" (TR III at 78-79) She went on to testify that she believed that all of the CPS personal present had all gone to to observe or evaluate *Id.*

At the IEP meeting 's goals and objectives were discussed and agreed to by all parties, including the Parents and the personnel. In response to a question as to whether consensus on the goals proposed by the CPS team had been made Ms. responded that "Yes" that the parents and the participants all agreed to the goals and objectives from the CPS team and that other than rewording some of the goals the Parents did not ask for any changes. *Id* at 83.

When asked if the Parents had participated in the IEP, Mr. who took part in the meetings, testified that Mr. was present at the meeting and that "We talked about each goal – we talked about each strength, each weakness. And then we talked about the annual goal, short-term objectives, made any changes based on input from the team, the Parents, , anybody that had input and we discussed why we had those goals. Mr. gave information especially on the strengths and weaknesses and questions that had." (TR-

)

The IEP recommended that _____ attend the _____ Behavior Transition program. The Parents did not agree with this placement and declined to sign the IEP.

16. The 2015-2016 IEP which recommended placement at the Behavior Transition program at the _____ was reasonable calculated to provide a Free and Appropriate Education to _____ The Behavior Transition program at the _____ is an intensive, self-contained school system designed for students with severe learning disabilities. Its purpose is to get a student's behavior under control; focus on learning and getting the student back into a less restrictive environment. (TR IV at 55-56, 257-58). Classes in the _____ transition program are very small and highly structured with a very low student to teacher ratio which would allow staff to provide with extensive behavior support. *See* TR IV at 50-51.

Ms. _____ is an expert in ABA, a board certified behavioral analyst, and a former _____ teacher and who now supervises lead behavior coaches at the _____. She testified that _____ teachers, and its other staff, have a great deal of training and experience in working with students who have severe behaviors, autism, and intellectual disabilities which interfere with learning. *Id* at 48, 52-54) She further testified that "every adult in the school from the custodian to the secretaries know the students well, know what the behavior plan is and support the students". *Id* at 222

Ms. _____ stated that all teachers are certified and experienced in working with students with intellectual disabilities. *Id* at 227, 290. In addition she noted that there are two behavior resource teachers who are present at the school full time supporting students with challenging behaviors and who work in classrooms with student ensuring implementation of student's FBAs. If _____ had attended _____ for the 2015 ESY _____ would have been one of four students working with

four adults and if [redacted] were attending [redacted] in the fall of 2014 [redacted] would likely have a student ratio of two to one. *Id* at 53-54, 290-291. Staff at [redacted] is extensively trained in ABA and is extremely skilled and familiar with working with children with self-injurious behavior so that [redacted]'s behavior would be neither unusual nor unmanageable for them. *Id* at 228-29

17. The CPS 2015-2016 IEP was reasonably calculated to provide [redacted] with FAPE. The 2015-2016 IEP was based upon the exchange of extensive information between CPS, the Parents and [redacted] School. In addition, CPS staff conducted updated evaluations (including Educational, SL, OT, and Psychological) of [redacted], and CPS staff also conducted personal observations and evaluations of [redacted] at [redacted]. (CPS 57, 58, 59, 60 156). The evaluations and recommendations provided by the Parent's expert witnesses were also utilized to prepare the IEP, which included [redacted]'s goals and present level of performance. (TR III at 76-77; TR IV at 30-31) A review of the IEP demonstrates that the goals and objectives and the services that would be provided at the [redacted] Center Behavior Transition Program would provide [redacted] with the necessary educational and behavior supports to receive an appropriate education in the least restrictive environment. (CPS 64 at 30; TR IV at 51-52)

18. The selection of the [redacted] Transitional Program by the CPS for the 2015-2016 IEP was not a pre-determined placement nor did they disregard the opinions of the Parent's experts. The Parent's claim that CPS refused to consider any alternative placement to [redacted] is not borne out by the record. Ms. [redacted] testified that all CPS participants reviewed the Parent's expert's reports prior to the IEP meetings. (TR III p. 88) She identified Dr. [redacted]'s Report as having been reviewed by all CPS participants. (*Id* at 87-88; CPS 55) She stated that Mr. [redacted] had expressed

interest in the Residential and a program in New York. She noted that while “We heard the information that he gave us, we still thought we could meet educational needs with us because was making progress with us at .” *Id* at 86.

Ms. was asked: “ recommends a number of things: ABA programming, behavior plans, sensory breaks. What do you think about Dr. 's recommendations in this report? She replied that: “Those are all things that we gave in ” and that those things were included in the program. Ms. responded that she agreed with some things in his report but disagreed with residential placement recommendation. *Id* at 88

In a follow up to questions regarding Dr. 's report and his recommendation for residential placement she was asked: “And as a teacher--- as a special education teacher who worked with in third and fourth grade and observed at and did an education evaluation as recently as two months prior to the IEP—what was your position on residential for ?” She responded: “After hearing the information of residential and observing at school I just thought that made more progress being in the environment and setting that we had in previously than where was currently. “ When asked: “Progress in what areas?” she replied “ educational progress.” (TR III at 87-89)

Mr. testified that the IEP team read Dr. 's report and then listened as Mr. read them an e-mail from Dr. . When asked if he, as a member of the team, had considered Dr. 's e-mail he responded: “Yes, Dr. had observed at and that's what the e-mail discussed.” When asked about who participated in placement options he replied: “So, each – talked about their program a little bit. Multi-Agency talked about their—you know, private day as well as residential. (TR IV 46) “So each -- you know, started and

spoke about their program, spoke about what they had to offer. And then [redacted] spoke about their program. Multi-Agency discussed that they represent private day as well as residential. I think Mr. [redacted] had a question as far as what I think specifically why [redacted] wasn't there. [redacted] is a private day school. And [redacted], the Multi-Agency representative explained that she represents all of the private day and all of the residential, so she's there representing all of those schools. And after each person had a chance to discuss the programs, we started to discuss placement." *Id.*

Mr. [redacted] testified that he did not come to the IEP team knowing where he thought should be. When asked if the Parents had a chance to express what they wanted for [redacted] He said " Mr. [redacted] talked about the residential [redacted], presented the information, talked about what they have as far as some of the supports they have there and then presented - you know, it was made clear that they were absolutely looking for residential." When asked if they considered residential and the [redacted] or Discovery he replied "We did. We talked about - again, Ms. [redacted] talked about what private day looks like, what residential would be and then we talked about all of the information we had. (TR IV at 63-64)

Upon being questioned about the discussion of placement options at the IEP meeting Ms. [redacted] testified that the IEP team also discussed the option of [redacted] because it was [redacted]'s previous school but that it was rejected as an appropriate placement at the time. She confirmed that Mr. [redacted] had told the IEP team that he was interested in the [redacted] for [redacted] but that no questions were asked about the [redacted] at that time because "when [redacted]'s Dad had brought [redacted] there, we've researched it in the past and we

listened to what [redacted] had to say. " And "...when [redacted] went there during [redacted] fourth grade year, I just looked online at their website and just saw what they had and everything because [redacted] made it sound so amazing." When asked if she didn't think that it would be an appropriate placement she replied "No." (TR III at 152-53).

Ms. [redacted] testified that in addition to researching the [redacted] she had also reviewed all of the reports from the [redacted] as part of her IEP planning and that she considered that in making a determination of placement for [redacted] *Id* at 154. When asked "When did you first, yourself, come to the conclusion that [redacted] would be an appropriate placement for [redacted]?" Mr. [redacted] responded "Probably after we assessed [redacted]. After — you know, during the IEP meeting. Looking at all the data and what everyone from [redacted] was saying about [redacted] progress and what we saw. *Id* at 154

When questioned "Did you go into the IEP meeting having concluded from your assessment and reviewing the data yourself that [redacted] was an appropriate placement?"

She responded "I mean, I had an open mind to anything. I would have been open to

[redacted]." Upon being asked if that was her preference going into the IEP meeting she stated "I mean, I really try to go into the IEP meeting with an open mind about what was best for [redacted]. *Id* at 164-165

The Parents argument that CPS prohibited them from having effective input or pre-determined the IEP placement because there was not sufficient discussion of the

[redacted] School or alternative placements for [redacted] is found to be factually unsupported.

19. The Parents had [redacted] evaluated by the [redacted] for [redacted] ("The [redacted]") on March 27-28, 2014. The [redacted] which produced a Psychiatric and Behavioral Assessment Report recommended, among other things, that [redacted] be in a classroom with no more than six other students and that [redacted] be provided with a comprehensive, consistent and well-coordinated program and that this would be best provided in a program for children with autism that utilizes a "medical home" model. (PET-7)

20. Although the Parents requested that the [redacted] for [redacted] be considered as a residential placement for [redacted] at the 2015-2016 IEP meeting the [redacted] had no openings and already had a long waiting list for admission. Mr. [redacted] acknowledged that the [redacted] had advised the Parents when the Psychiatric and Behavioral Assessment Report was done in March of 2014, that the [redacted] was careful to advise them that it did not have any openings and that they had a backlog. (TRII at 261) There was no testimony or evidence introduced that demonstrated that the [redacted] had an opening for [redacted] when the 2015-2016 IEP was developed, or since then. Therefore, it is difficult to understand the Parent's position that CPS was at fault in not placing [redacted] in the [redacted] for [redacted]. Other than the [redacted] School and the [redacted] the Parents did not identify any other school that they wanted to have considered as a placement.

21. There is a question as to whether or not the [redacted], in its written Psychiatric and Behavioral Assessment Report, recommended residential placement for [redacted]. On page 10 of the Report it is noted that:

“While the family has consulted with numerous medical and behavioral professionals, there has not been a coordinated effort with adequate communication between providers to offer optimal care. As such [redacted]’s progress has been limited despite the effort and expense.”

And that “It is absolutely imperative that that [redacted] have a comprehensive, consistent and well-coordinated program given the intensity of [redacted] needs and the complexity of presentation. This is best provided in a program for children with autism that utilizes a “Medical Home” model.(CPS-43 at 10).

In Dr. [redacted]’s review of documents provided by the Parents, which include a June 1, 2014 utilization review assessment and the Behavioral Assessment Report from the [redacted] for [redacted], noted that:

“A utilization review assessment from June 1, 2014 was reviewed. ... Content notes that the family was asking for residential treatment with the assessment indicating that this request was made despite the [redacted] for [redacted] suggesting a “medical home” model. Specifically, this program suggested wraparound services and the application of Intensive Care Coordination with the home.” (PET 3 at 14)

22. The “Medical Home” model recommended by The [redacted] is defined by the United States Department of Health and Human Services as “a cultivated Partnership between the patient, family, and primary provider in cooperation with specialists and support from the community. The patient/family is the focal point of this model and the medical home is built around this center” (PET-1)

23. Dr. [redacted], who is the chief of Psychology at the [redacted], and who participated in formulating the Psychiatric and Behavioral Assessment Report at the [redacted] testified that D. C. needed a residential placement. This was a somewhat different opinion, or different interpretation of the recommendation, from the one in the Psychiatric and Behavioral Assessment Report. She was asked:

Q. Dr. [redacted], in your report, you use a term called "medical home

model."

A. Uh-huh.

Q Could you tell us --

A Yes. So that's the term that refers to having a primary care physician coordinate the care of different medical professionals. So it doesn't have to happen not home-based. It can be home-based, but it could also be in a residential program. (TR at 259-260)

However, despite the "Medical Home" model being recommended for in the assessment report, when asked during her testimony:

Q And just to be very clear about your recommendations in this case, do you recommend in any way that return to home right now and go to a public day school?

A No. *Id* at 61

Dr. was questioned about a series of e-mails that reference conversations held with her by other members of the staff in March of 2014." (CPS 41-p 297) and she acknowledged that it was suggested to her by Ms. a school administrator, that she should amend the wording of the assessment report to connect the Parents having to lock in room with "the strategies of the school not carrying over,"" which she did. She testified that Ms. spoke to her about: "the fact that they wanted me to testify in this case regarding the report that was generated." She identified an e-mail that she had sent asking: "Okay, I'm just wondering what their plan of attack is. Is it medical, psychiatric, or educational? "

When she was asked if Mr. had talked to her about the plan of attack,

she replied "No, she said that, you know, that [redacted] was in a residential program currently and that the school district was no longer willing to support that and that they wanted to call me as a witness to testify regarding my report. *Id* at 296 |

Dr. [redacted] testified that although she had reviewed hundreds of pages of documents provided to her by the Parents prior to testifying she had not spoken to anyone at the [redacted] School where [redacted] is now to see how [redacted] was doing. She confirmed that she had not spoken to Ms. [redacted] his teacher at [redacted] School when preparing the 2014 assessment report. Dr. [redacted] agreed that, other than what she saw on its web-site she didn't know much about the [redacted] Center and had not contacted them. (TR I at 272-277)

24. Dr. [redacted], a Licensed Psychologist was retained by the Parents in 2010 and again in May of 2014 to conduct a Psychological Evaluation of [redacted]. Dr. [redacted] was the only non-parental witness who had actually observed [redacted] in [redacted] home environment so her observations are given significant weight. She also observed [redacted] in the classroom and in the testing office. Her observations in the home were made in May of 2014 during what was described by the Mother as a typical "at home" morning. Dr. [redacted] observed [redacted] in [redacted] playroom where [redacted] was enjoying swinging on the large swing attached to the ceiling. She noted that "[redacted] clearly takes great delight in the swing and was smiling and vocalizing joyfully as [redacted] swings." She observed that [redacted] continued to be fascinated by strings and cords and that [redacted] was enjoying [redacted] self by swinging a large bungee cord around [redacted] head and body; that [redacted] pulled down a play tent and threw some objects; and that

spent unstructured time walking about yelling or vocalizing, as well as swinging the bungee cord. She did not see interact with Mother or little sister. (PET 9)

Dr. observed the Mother help to transition calmly when babysitter arrived to take to school. She was told by the Mother that the Parents rely upon a part-time babysitter who helps her manage her behavior. *Id.*

was observed by Dr. in May of 2014, on what teacher, Ms. reported to be a typical day for . The Doctor reported seeing working with Ms. on language arts; and described Ms. using an applied behavior analysis approach (ABA) with . She observed that appeared "calm during this lesson" and that" expression brightened when was given string for reinforcement and then give the string back to the teacher after the reinforcement period without any problem. She noted that "The teacher frequently had to redirect attention to a task but that received frequent praise and "Hi-5" from the teacher to which responded with a smile."

She went on to note that she observed touch letters and make corresponding letter sounds and identify objects in a picture book when asked to do so; read some single syllable words when prompted; and trace letters with a pencil on a worksheet. She saw copy name on a worksheet; heard repeat address back to the teacher and said age and birthday when asked. She observed bite finger and hand twice during lessons. However, she observed that "was compliant with all instructions." When spilled a cup of plastic letters, smiled and said "I made a mess." complied immediately when asked to clean them up.

transitioned to the second activity without incident. affect during the transition was bright. appeared to look forward to the art project at the next station and immediately began

painting.” *Id.* Surprisingly, after reporting the above Dr. [redacted]’s recommendation was for residential placement.

25. Dr. [redacted] did not personally observe [redacted] in any location after May of 2014, however, she stated that she had reviewed the reports of other witnesses such as Dr. [redacted] and Dr. [redacted] and used them to formulate her opinions given during her testimony. Dr. [redacted] testified that she still believed that a residential placement would be the best choice for [redacted] but other than saying that she read other witness’s reports she failed to substantiate her opinion or explain why what she had observed personally in 2014 led her to conclude that [redacted] needed to be in a residential placement.

Dr. [redacted] was hired by the Parents in 2014 to perform a psychological evaluation to primarily address their concerns about [redacted]’s behavior in the home setting. “The family sought an updated evaluation primarily due to concerns about escalating aggressive behavior, and dangerous behavior such as elopement and pulling down furniture. Testing was also sought for placement decisions.” (PET -9)

In her Summary and Recommendations section of her evaluation Dr. [redacted] focused primarily upon [redacted]’s need for structure and behavior in the home and on [redacted] reportedly increasingly aggressive behavior there. Dr. [redacted] states that “Parent’s reports of [redacted] behavior and emotional deterioration are consistent with this examiner’s observations and data from other members of his treatment team.” However, Dr. [redacted]’s own personal observations of “typical days” at home and school do not appear to substantiate the Parent’s reports to the extent that [redacted] is unable to learn and make educational progress at school. Upon cross examination she acknowledged that ABA services were being properly utilized at [redacted] School and that

had made educational progress since her first evaluation in 2010. (TR I -113)

Dr. [redacted] states that: “[redacted]’s ability to regulate his emotions depends heavily on professional support, a structured environment and routines. Observational data from across [redacted] settings shows that with more structure, [redacted] is less agitated. ... [redacted] is clearly comforted by predictable routines and expectations.” She goes on to note that: “[redacted] finds throwing things and tipping things over reinforcing. Unfortunately, in a less structured environment such as home, [redacted] looks for opportunities to do so as much as [redacted] can. These behaviors place [redacted] safety and that of family members in jeopardy. And “Though [redacted] *does not* demonstrate any interest in harming others, [redacted] behaviors are dangerous to [redacted] self and [redacted] family. ... [redacted]’s family members, particularly [redacted] two year old sister, are also increasingly at risk for being harmed during one of [redacted] outbursts. It is the recommendation of this Psychologist that [redacted] be considered for a residential placement.”

Prior to making her recommendation in 2014 and giving her opinion at the hearing the Doctor failed to consider the community based services available and other types of programs or assistance for the Parents and [redacted] in the home that would provide the structured environment and routine that she recommended.

Under cross examination, Dr. [redacted] conceded that she personally knew nothing about the Behavior Transition Program at the [redacted] that was being proposed by CPS as an appropriate placement for [redacted] nor had she any knowledge about the wrap-around or other service or services being offered by [redacted] County in [redacted]’s case. She stated that she only knew about the [redacted] center from Dr. [redacted]’s Report and in response to questions regarding services proposed said: “But, no, I do not know the specifics of what they proposed in terms of how many hours that would involve, what kinds of staff, no.” (TR I-94-96)

Although the Doctor opined that it would be likely that [redacted] would have less stress and could make more educational progress in a full-time structured setting it is clear that the main reason for her recommending a residential placement was primarily based upon non-educational factors.

26. Dr. [redacted] is a neuro-psychologist who has appeared as an expert witness many times both for school systems as well as for Parents. [redacted] administered fourteen different tests to [redacted] and reviewed eighty seven documents; [redacted] visited [redacted] at the [redacted] School and prepared a Report of Neuropsychological Evaluation for the Parents, which was admitted as an exhibit at the Hearing. Dr. [redacted]'s report is detailed and well thought out and his testimony was accomplished and impressive. Dr. [redacted] and the Parent's other experts all testified that [redacted] suffers from autism, intellectual disabilities and behavior problems along with various medical conditions. On these points there is no disagreement between the parties.

However, [redacted] recommendation that [redacted] needs residential placement, like that of the three other experts: Dr. [redacted], Dr. [redacted] and Dr. [redacted], appears to have been somewhat shaded to support the Parent's strong preference for a residential placement for [redacted] rather than having [redacted] return home. That is not to say that any of the experts were dishonest or intentionally misleading, or that their opinions could not be supported by their evaluations and observations. It is just that they gave little if any consideration to the myriad of services available through the community based supports or, except for Dr. [redacted], explored or visited the [redacted] program to see what it could provide for [redacted]. There should have been more of a weighing of options rather than discounting and ignoring the services available that would allow [redacted] to return to live with family instead of having an institutional life.

Additionally, none of the experts had attended s IEP meetings, reached out in a meaningful way to talk about with teachers such as Ms. who worked with daily for two years or teachers at School. All of the experts are from academic, hospital or private settings with little or no experience with programs such as the proposed , or the School autism program. They generally have very little day to day hands-on experience dealing with students like They exhibit a somewhat dismissive attitude towards the work and opinions of the CPS teachers, the IEP team and its proposals. For these reasons I give less weight to the Parent's expert's opinions regarding than I do to the CPS witnesses.

27. Having received and carefully reviewed the extensive record in this case and heard testimony and argument and weighed the evidence and testimony it is determined that the CPS 2012-2013; 2013-2014 and 2015-2016 Individual Educational Plans (IEPs) were reasonably calculated to provided with a free and appropriate public education (FAPE) and reasonably calculated to confer some educational benefit on .. While has made educational progress at , the program is found to be a more appropriate placement.

28. The Parents have failed to sustain their burden of proving that , educational, medical and behavioral and emotional issues are so intertwined that would not be "available for learning" unless placed in a residential school. They have not proven that would be unable to make meaningful educational progress as a student in the CPS school system as proposed in the 2015-2016 IEP.

29. s non-educational CSA funded placement in was intended to be temporary with the goal of organizing comprehensive wrap-around services in the home so that could return to family. For various reasons, including non-cooperation by the parents with CSA that did not occur. The CSA suspended its payment towards 's educational costs in May of 2015 and over a year later remains at School with the Parents paying his educational costs and Medicaid paying the majority of the residential costs. The Parents are found to have made a unilateral placement as of May 2015, when the CSA suspended their support of at and when the Parents continued to have attend the school.

30. Reimbursement is not appropriate unless the Parents prove that the CPS 2014-2015 and 2015-2016 IEPs were or are not appropriate. The Parents have not proven that the IEPs are inappropriate or that they are not reasonably calculated to provide a Free and Appropriate Public Education. Therefore, on that basis, the Parents are not entitled to reimbursement for any private school placement costs they have incurred.

DISCUSSION OF CASE LAW ASSOCIATED WITH ISSUES

The IDEA is a federal statute that provides students with disabilities and the right to a FAPE designed to meet their needs. 20 U.S.C. § 1400(d)(1)(A). Central to the

IDEA is the requirement that local school districts develop, implement, and annually revise an IEP that is calculated to meet the eligible student's specific educational needs. *Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143, 1148-49 (10th Cir. 2008); 20 U.S.C. § 1414(d). Thus, the determination of whether a FAPE has been provided turns in large Part on the sufficiency of the IEP for each disabled child. *Tyler V., ex rel. Desiree V. v. St. Vrain Valley Sch. Dist. No. RE-1J*, 2011 WL 1045434 (D. Colo. 2011) (unpublished) (citing *A.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 675 (4th Cir. 2007)).

In *Rowley*, the Supreme Court established the following two-Part test that courts should use to decide the appropriateness of a student's education:

1. Has the state complied with the procedures set forth in the IDEA?
2. Is the IEP, developed through the IDEA's procedures, reasonably calculated to enable the child to receive educational benefits?

Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 553 IDELR 656 (U.S. 1982). The Supreme Court held that when this two-part test is satisfied, the state has complied with the obligation imposed by Congress, and the courts can require no more.

Districts are not required to maximize a student's educational performance. For example, in *J.L. v. Mercer Island School District*, 55 IDELR 164 (W.D. Wash. 2010), the District Court noted that the FAPE standard requires that districts offer a student some educational benefit, not that they attempt to remediate a student's deficiencies or maximize her potential. See also *Klein Indep. Sch. Dist. v. Hovem*, 59 IDELR 121 (5th

Cir. 2012), *cert. denied*, 113 LRP 10911 , 133 S. Ct. 1600 (2013). Furthermore, districts need not cater to a Parent's preference and place the student in what the Parent considers the "better" placement. *Z.W. v. Smith*, 47 IDELR 4 (4th Cir. 2006, unpublished); *Bradley v. Arkansas Dep't of Educ.*, 106 LRP 21288 , 443 F.3d 965 (8th Cir. 2006); and *A.S. v. New York City Dep't of Educ.*, 63 IDELR 246 (2d Cir. 2014, unpublished).

In *Hartmann v. Loudoun County*, 118 F.3d 996, 1004 (4th Cir. 1997), *cert. denied*, 552 U.S. 1046 (1998), the 4th Circuit, quoting the *Rowley* decision, stated that federal courts cannot run local schools and must be given "latitude" in creating an IEP.

Parents have the right to participate in decisions about their children's placements. However, the IDEA does not give Parents the right to control or veto placement decisions. *White v. Ascension Parish Sch. Bd.*, 343 F. 3'd 373, (5th Cir. 2003). While Mr. [redacted] had an absolute right to make his placement preferences known to the 2015-2016 IEP team their failure to grant his request is not a violation on the part of the IEP team.

The Parent's claim that placement at [redacted] was predetermined has been found to be without basis, however, it should be noted that the court in *T. P. v. Mamaroneck Union Free Sch. Dist.* 554 F 3'd 247, 51 IDELR 176 (2'd Cir. Held that the school staff can discuss potential services and placements in advance

of the IEP meeting, so long as the school staff arrive at the meeting with an open mind.

The 2015-2016 IEP has carefully been reviewed for its appropriateness on the basis of whether or not it is reasonably calculated to confer some educational benefit on and it has determined that it would provide FAPE to The LEA is not required to provide the best education or an ideal education in order to provide a FAPE to the Child. *Rowley*, 458 U.S. at 206-207.

A student receives a free appropriate public education through the IEP process. *MM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002). Appropriate IEPs "must contain statements concerning a disabled child's level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child's progress." *J.P. ex rel. Peterson v. County Sch. Bd. of Hanover County, Va.*, 516 F.3d 254, 257 (4th Cir. 2008); 20 U.S.C. § 1414(d). Both the 2014-2015 and the 2015-2016 CPS IEPs were examined and found to contain the requisite statements, goals, services, etc., to be provided and the objective criteria for measuring 's progress.

In *Rowley*, the Supreme Court made it clear that the IDEA does not require districts to provide students with disabilities with the best possible education. Referring to the minimal level of benefits that an appropriate educational program must confer, the Supreme Court termed the state's obligation as being the provision of a "basic floor of

portunity." *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 56 (1982). See also *Coleman v. Pottstown Sch. Dist.*, 64 IDELR 33 (3d Cir. 2014, unpublished); and *Barron v. South Dakota Bd. of Regents*, 57 IDELR 122 (8th Cir. 2011).

According to a well-worn analogy from the 6th U.S. Circuit Court of Appeals, FAPE does not require a "Cadillac." Rather, it requires a "Chevrolet." The 6th Circuit observed that: "The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to appellant, and is therefore in compliance with the requirements of the IDEA." *Doe v. Board of Educ. of Tullahoma City Sch.*, 20 IDELR 617 (6th Cir. 1993), cert. denied, 111 LRP 3215, 511 U.S. 1108 (1994).

If a student with a behavioral impairment makes adequate gains in school but no progress at home, he is still considered to be receiving an educational benefit. See *J.S.K. v. Hendry County Sch. Bd.*, 18 IDELR 143 (11th Cir. 1991); *Thompson R2-J Sch. Dist. v. Luke P.*, 50 IDELR 212 (10th Cir. 2008), cert. denied, 110 LRP 798, 555 U.S. 1173 (2009) (explaining that so long as a student makes educational progress in the classroom, the

district does not have to ensure that the student is able to apply his learned skills outside of school).

The parents claim that [redacted]'s educational and behavioral issues are so interwoven that they cannot be separated thus mandating a finding that a residential placement is required to provide [redacted] with meaningful education and FAPE. In support of their position they cite *Kruelle v. New Castle County School District*, 552 IDELR 350, 642 F. 2d (3'd Cir. 1981). This case concerned a thirteen year old boy who was profoundly retarded and afflicted with cerebral palsy; who could not walk, dress himself or eat unaided. He was not toilet trained and did not speak. His I.Q. was well below 30 and he had a history of emotional problems which resulted in choking and self-induced vomiting when under stress.

In this case all parties agreed that the child needed a residential placement: the main question at issue was who was going to pay for it. This case can be easily distinguished from the present case, first by the relative degrees of disability, and where the evidence and testimony demonstrate that [redacted] was able, despite medical conditions and behavior, to receive meaningful educational benefits and FAPE from [redacted] attendance at the [redacted] School and the [redacted] School.

Pursuant to IDEA: (C) Payment for education of children enrolled in private schools without the consent of or referral by the public agency:

(i) In general-are subject to subparagraph:

(A) [the “equitable participation” requirement, [not at issue here, and not subject to due process hearing in any event] of this section does not require a local educational agency to pay the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free and appropriate public education available to the child and the parents elected to place the child in such private school or facility. 20 USC 1412(a)(10)(C)(i).

This rule applies regardless of whether the parental placement is made for educational or non-educational reasons. *Jasa v. Millard Pub.Sch. Dist. No 17*, 206 F. 3d 813, 815 (8th Cir. 2000).

However, 8 VAC 20-81 E. 3. (See also 8 VAC 20-81-30 B.9) provides that if the Parent places the child in a residential placement for non-educational reasons, then the school division of the Parent’s residence continues to have FAPE responsibility.

Clearly, the Federal IDEA and the Virginia State regulation are in conflict. Courts have recognized that when a federal law conflicts with a state law, the state law will be preempted. *See, e.g., United States v. Locke*, 529 U.S. 89, 109 (2000); *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941).

Many courts have specifically noted that the IDEA preempts conflicting state law:

Hacienda La Puente United Sch. Dist. V. Honig, 976 F. 2d 496 (9th Cir. 1992); *Antkowiak v. Ambach*, 838 F. 2d 635, 641 (2^d Cir. 1988); *Gonzales ex rel Doe v. Maher*, 793 F. 2d 1470, 1485-86 (2^d Cir.1986); *Converse County Sch. Dist. No. 2 v. Pratt*, 993 F. Supp. 848, 860 (D. Wyo. 1997)and *Bray by Bray v. Hobart City Sch. Corp.* 818 F. Supp. 1226, 1230 (N. D. IND. 1993); and *Evans v. Evans*, 818 F. Supp. 1215 (N. D. Ind. 1993) .

It is a familiar and well established principle that the Supremacy Clause, U.S. Const., Art. VI, c 12, invalidates state laws that “interfere with or are contrary to Federal law. *Gibbons v Ogden*, 9 Wheat .1 211 (1894) Marshall.

RULING

Virginia, 8 VAC 20-81 E. 3, is found to be in conflict with the IDEA and is therefore preempted by federal law.

Parents did not succeed in meeting their burden of proof in their assignment of violations and errors by CPS of [redacted]’s right to FAPE. The facts set out above as well as a thorough review of the exhibits, including the 2013-2014 IEP and the proposed 2015-2016 IEP, the electronic record of the IEP meeting and supporting documents, and the testimony of CPS witnesses and the Parent’s witnesses conclusively demonstrated that [redacted] was provided with FAPE in 2014-2015 and that the 2015-2016 IEP is not only reasonably calculated to provide [redacted] with FAPE and meaningful educational benefit but what is clearly an education far superior to the “basic floor of opportunity” and “some educational benefit” required under IDEA. *See Supra*.

PREVAILING PARTY: County Public Schools

RIGHT OF APPEAL

This decision shall be final and binding unless either party appeals in federal district court within 90 calendar days of the date of this decision, or in a state circuit court within 180 calendar days of the date of this decision.

Date: September 9, 2015

Morgan Brooke-Devlin

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CERTIFICATE

I hereby certify that a true copy of the foregoing Decision on the Parent's Due Process Complaint was sent by e-mail on September 9 2015, to the following Parties:

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