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[ENTERED AUGUST 14, 2017]

PUBLISHED

UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

No. 15-1977

M. L., a minor, by his parents and next friends,
Akiva and Shani Leiman; AKIVA LEIMAN; SHANI
LEIMAN,

Plaintiffs – Appellants,

v.

DR. JACK R. SMITH, in his official capacity as
Superintendent; MONTGOMERY COUNTY BOARD
OF EDUCATION,

Defendants – Appellees.

NATIONAL JEWISH COMMISSION ON LAW
AND PUBLIC POLICY, "COLPA"; MARYLAND
CAPE, INC.; JEWELS SCHOOL; MAGEN LEGAL,

Amici Supporting Appellants,

NATIONAL SCHOOL BOARDS ASSOCIATION;
MARYLAND ASSOCIATION OF BOARDS OF
EDUCATION; AMERICANS UNITED FOR
SEPARATION OF CHURCH AND STATE;
AMERICAN CIVIL LIBERTIES UNION; ACLU OF
MARYLAND; BAPTIST JOINT COMMITTEE FOR

RELIGIOUS LIBERTY; CENTRAL CONFERENCE OF AMERICAN RABBIS; JEWISH SOCIAL POLICY ACTION NETWORK; PEOPLE FOR THE AMERICAN WAY FOUNDATION; UNION FOR REFORM JUDAISM; WOMEN OF REFORM JUDAISM,

Amici Supporting Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Paul W. Grimm, District Judge. (8:14-cv-01679-PWG)

Argued: December 8, 2016

Decided: August 14, 2017

Before NIEMEYER, KING, and AGEE, Circuit Judges.

Affirmed by published opinion. Judge Agee wrote the opinion, in which Judge Niemeyer and Judge King joined.

ARGUED: Michael Eig, MICHAEL J. EIG AND ASSOCIATES, P.C., Chevy Chase, Maryland, for Appellants. Jeffrey A. Krew, JEFFREY A. KREW, LLC, Ellicott City, Maryland, for Appellees. **ON BRIEF:** Paula A. Rosenstock, MICHAEL J. EIG AND ASSOCIATES, P.C., Chevy Chase, Maryland,

for Appellants. Joshua Civin, Zvi Greismann, Office of the General Counsel, MONTGOMERY COUNTY PUBLIC SCHOOLS, Rockville, Maryland, for Appellees. Nathan Lewin, Alyza D. Lewin, LEWIN & LEWIN, LLP, Washington, D.C.; Meir Katz, MAGEN LEGAL, Baltimore, Maryland, for Amici National Jewish Commission on Law and Public Policy “COLPA”, Maryland CAPE, Inc., JEWELS School, and Magen Legal. Leslie Robert Stellman, PESSIN KATZ LAW, P.A., Towson, Maryland; Francisco M. Negrón, Jr., NATIONAL SCHOOL BOARDS ASSOCIATION, Alexandria, Virginia, for Amici National School Boards Association and Maryland Association of Boards of Education. Daniel Mach, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, Washington, D.C.; Jeffrey I. Pasek, COZEN O’CONNOR, Philadelphia, Pennsylvania; Richard B. Katskee, Carmen N. Green, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, Washington, D.C., for Amici Americans United for Separation of Church and State, American Civil Liberties Union, ACLU of Maryland, Baptist Joint Committee for Religious Liberty, Central Conference of American Rabbis, Jewish Social Policy Action Network, People for the American Way Foundation, Union for Reform Judaism and Women of Reform Judaism.

AGEE, Circuit Judge:

M.L., a minor, by and through his parents, Akiva and Shani Leiman, and Akiva and Shani Leiman, individually and in their capacity as M.L.’s parents (collectively, the “Plaintiffs”), appeal the

district court's denial of their motion for summary judgment under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, and the grant of summary judgment to Dr. Jack Smith,¹ in his official capacity as superintendent of Montgomery County Public Schools, and the Montgomery County Board of Education (collectively, "MCPS"). The district court held that the IDEA does not require a school system to instruct disabled students in the customs and practice of Orthodox Judaism as part of a "free appropriate public education" ("FAPE"). For the reasons stated below, we affirm the judgment of the district court.

I.

The facts are largely undisputed. M.L. was born in 2003 with Down Syndrome and is considered a "child with a disability" under the IDEA. *See* 20 U.S.C. § 1401(3)(A). He and his family are members of the Orthodox Jewish faith and reside in an Orthodox Jewish community in Montgomery County, Maryland. The tenets of Orthodox Judaism include instruction that "[t]he Jewish Bible and Jewish law and custom govern how an Orthodox Jew dresses, eats, prays, works, what holidays are celebrated, and almost every aspect of life, including social interaction and understanding and speaking Hebrew." J.A. 1117.

In 2009, M.L. was enrolled, at his parents' expense, in Sulam, "a special education program that serves the Orthodox Jewish community." J.A. 1117. In 2012, the Plaintiffs and MCPS met to form

¹ The superintendent has changed multiple times throughout the proceedings. Smith is the current superintendent.

an individualized education program (“IEP”) for M.L. so that he could attend classes in the public school district.² After expert assessments of M.L.’s capabilities, MCPS determined that M.L. “is able to learn despite his severe intellectual disability, but he needs constant repetition and consistency.” J.A. 1118. After multiple meetings with the Plaintiffs, MCPS created an IEP for M.L. in 2013. The Plaintiffs, however, “rejected the IEP because it does not provide functional instruction to prepare [M.L.] for life in the Orthodox Jewish community.” J.A. 1119. Rather, the Plaintiffs wanted the “incorporation of goals and objectives designed to teach [M.L.] about the laws and customs of Orthodox Judaism.” J.A. 1119. MCPS rejected this proposal in turn because it was “not part of the curriculum, too specific, religious, or not compatible with [M.L.’s] present levels.” J.A. 1119. Shortly thereafter, the Plaintiffs filed a due process complaint against MCPS with the Maryland Office of Administrative Hearings, alleging violations of the IDEA and Maryland state law. *See* 20 U.S.C. § 1415(b)(6), (f) (requiring due process hearings and instructing that those hearings “be conducted by the State educational agency or by the local educational agency, as determined by State law”); Md. Code Ann., Educ. § 8-413 (establishing the procedures for due process hearings under Maryland law).

In their request for mediation and a due process hearing, the Plaintiffs maintained that M.L. “has many important cultural needs that must be taken

² The IDEA requires a school to furnish a covered student with a FAPE. It is uncontested that M.L. is a covered student.

into account when designing an appropriate learning environment for him,” and the IEP proposed by MCPS was “not appropriate for his religious and cultural needs.” J.A. 836.³ Although the Plaintiffs conceded that the goal of the MCPS IEP “is to prepare students to live independently in their community,” they preferred Sulam because there “this goal is accomplished by preparing students to live independently in their community *within their cultural guidelines.*” J.A. 838 (emphasis added). The Plaintiffs stressed that “Orthodox students [and therefore M.L.] do not and will not participate in the non-Orthodox community, and the community that MCPS . . . curriculums prepare students for is not the same community [M.L.] will live in.” J.A. 838. For example, Sulam instructors lead M.L. in “*davening*, the reciting of Jewish prayers.” J.A. 840. Sulam “prepares [M.L.] to participate in the Sabbath or religious holidays, [and] familiarizes him with [the *parsha*,] a particular portion [of the Torah] read [weekly] in Synagogue.” J.A. 839–40. The Plaintiffs argued that the IEP proposed by MCPS did “not address the cultural and religious realities of [M.L.’s] life [and] would not prepare him to be functional in his Orthodox community.” J.A. 840.

The parties engaged in an extensive hearing process before a Maryland administrative law judge (“ALJ”). Both sides presented testimonial evidence

³ Although the Plaintiffs often make “cultural” arguments, at the administrative hearing they presented an expert in Judaism who testified that there is no “significant difference between describing” Orthodox Judaism as a religion or culture. J.A. 174.

from several witnesses, including Rabbi Akiva Leiman, M.L.'s father and fellow plaintiff. He testified that all of his children are in "private, religious schools that teach the Orthodox Jewish way of life" because he and his wife "believe that children should be educated for an Orthodox lifestyle and the only place to get that type of education would be in a private, religious school." J.A. 52. The Plaintiffs want M.L. taught about the Torah, kosher rules, and Orthodox Jewish garments (such as the *yarmulke*—"kind of a skullcap, to remind us of God"—and *tzitzit*—"a garment that has fringes at the end, strings that hang out"). J.A. 68–69. They want him instructed, as part of his IEP, in *halacha* (Jewish law) and *mitzvot* ("commandments from God," or things "that the Rabbis have asked [Orthodox Jews] to do over the centuries"). J.A. 82. The Plaintiffs would also require instruction in the *berachot*, which "is a blessing that [Orthodox Jews] make before [they] partake in food and a blessing that [they] make when [they] finish partaking in food." J.A. 87. They believe it is "[e]ssential" for M.L.'s education "that he be able to read Hebrew." J.A. 97. The Plaintiffs demand that MCPS provide this instruction to M.L. as part of his IEP. *E.g.*, J.A. 118 (Rabbi Leiman admitting that he "expect[s] the public school to teach [M.L.] Jewish precepts such as mitzvot and dietary laws").

The Plaintiffs submitted Sulam's 2012–13 Formal Education Plan for M.L. as an exhibit at the administrative hearing. That plan shows the type of curriculum that the Plaintiffs want included in M.L.'s IEP. For example, like the Sulam plan, the Plaintiffs desire the IEP to include lessons in

“Judaic Studies,” where the goal is to “increase [M.L.’s] understanding of Jewish customs and halacha.” J.A. 907. One of the targets of Judaic Studies includes “correctly sequenc[ing] between 3 and 5 events from the parsha” when “[g]iven a previously studied parsha or part of a parsha.” J.A. 907. In a class studying the “Chumash,” a religious text, Sulam would teach M.L. different parts of the *Chumash*, such as the *parsha*, *perek*, *pasuk*, and *Rashi*. J.A. 908. The Sulam plan also establishes goals for “Ivrit/Kriah” class, or instruction in Hebrew, where objectives include identifying vocabulary words such as those “taken from the current *parsha*” and “us[ing] the correct *Ivrit* word to identify . . . object[s]/explain . . . illustration[s].” J.A. 909.

The ALJ concluded that neither the IDEA nor Maryland law requires a public school to provide religious instruction to disabled students as part of an IEP. According to the ALJ, a FAPE primarily requires that a school provide the disabled student with “access [to] the general curriculum.” J.A. 1141; *see also* J.A. 1140 (“Nothing in the IDEA, corresponding State law, or enabling regulations require a state educational agency to individualize an educational program to a disabled child’s religion, culture, or community enclave.”). Ultimately, the ALJ found the IEP proposed by MCPS provided M.L. with a FAPE under the IDEA. In view of that holding, it was not necessary for the ALJ to address any of the Establishment Clause defenses made by MCPS.

The Plaintiffs then filed a complaint in the United States District Court for the District of Maryland seeking declaratory and injunctive relief

under the IDEA and Maryland state law. *See* 20 U.S.C. § 1415(i)(3)(A) (“The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.”). In pertinent part, the Plaintiffs requested that the district court “order [MCPS] to reimburse plaintiffs for the costs associated with enrolling M.L. at Sulam School for the 2012–13 school year” and also “[o]rder [MCPS] to place and fund M.L. at Sulam School for the 2013–14 school year and declare it to be his current educational placement under the IDEA.” J.A. 14. On cross motions for summary judgment, the district court granted the motion by MCPS and denied that of the Plaintiffs.

In its memorandum opinion and order, the district court recognized that “beyond the alleged problematic interplay between the IEP and [M.L.’s] role in his Orthodox community, including the ALJ’s failure to account for [M.L.’s] inability to generalize and the consequent (in Plaintiffs’ view) failure to place [M.L.] at Sulam, Plaintiffs do not identify any faults in the IEP or the ALJ’s review of it.” J.A. 43. The court identified “the crux of this dispute: Is the education proposed in the IEP a FAPE when it does not account for [M.L.’s] individual religious and cultural needs?” J.A. 43. Answering that query in the affirmative, the district court held that “a FAPE, to which a child with a disability is entitled, is the education that any student without disabilities would receive.” J.A. 43. Outside of their religious and cultural argument, the district court concluded that the Plaintiffs had not shown that the IEP was in any way deficient or treated M.L. in a different way than any other disabled student. Because

MCPS provided a FAPE to M.L. under the IDEA, it was unnecessary to reach the Establishment Clause issues that would arise had the Plaintiffs prevailed and placement of M.L. at Sulam resulted.

The Plaintiffs filed a timely notice of appeal, and we have jurisdiction pursuant to 28 U.S.C. § 1291.⁴

II.

The Plaintiffs argue that the district court erred in concluding that the IDEA does not require a school to provide religious or cultural instruction to disabled students as part of their IEPs. In other words, the Plaintiffs contend that MCPS failed to provide M.L. with a FAPE in violation of federal and state law, despite their concession that the IEP was adequate in all other respects.⁵ We disagree with the Plaintiffs.

⁴ After oral argument, the Plaintiffs filed a motion to hold the appeal in abeyance pending the Supreme Court's decision in *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. ___, 137 S. Ct. 988 (2017). We granted the motion. After the Supreme Court released its decision, we ordered supplemental briefing on the limited issue of how *Andrew F.* affects the disposition of this case, if at all. The case is now ripe for decision.

⁵ While the Plaintiffs largely focus their arguments on the IDEA, they also cite to Maryland statutes and regulations designed to implement the IDEA. *See* Md. Code Ann. Educ. § 8-401 *et seq.*; Md. Code Regs. 13A.05.01.01 *et seq.* These statutes and regulations, however, do not deviate materially from their federal counterparts. *See generally John A. v. Bd. of Educ.*, 929 A.2d 136, 140–43 (Md. 2007) (discussing the requirements of the IDEA and citing to its Maryland counterpart). Thus, the Plaintiffs' arguments under Maryland law fail for the same reasons that their IDEA arguments are unavailing.

A.

In IDEA cases, we apply “the standard of review utilized by the district court” in reviewing the ALJ’s decision: a “modified de novo review, giving due weight to the underlying administrative proceedings.” *O.S. v. Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015).⁶ “While the court must make an independent determination on whether the school complied with the IDEA, the hearing officer’s factual findings are considered prima facie correct.” *Id.* The determination of whether an IEP is adequate “is itself a question of fact.” *Id.*

B.

1.

Among other purposes, the IDEA seeks “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).⁷ A FAPE is defined as

special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an

⁶ We have omitted internal quotation marks, alterations, and citations here and throughout this opinion, unless otherwise noted.

⁷ Congress provides federal funding to states to implement this goal. *See generally* 20 U.S.C. § 1411(a).

appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

Id. § 1401(9). “Special education” is “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education.” *Id.* § 1401(29). The goals of the “specially designed instruction” are “(i) [t]o address the unique needs of the child that result from the child’s disability; and (ii) [t]o ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” 34 C.F.R. § 300.39(b)(3). A FAPE includes the provision of certain “nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.” *Id.* § 300.107(a).

An IEP is “a written statement for each child with a disability that is developed, reviewed, and revised in accordance with [20 U.S.C. § 1414(d)].” 20 U.S.C. § 1401(14). Among other provisions, the IEP includes “a statement of measurable annual goals, including academic and functional goals, designed to (aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the

child’s other educational needs that result from the child’s disability.” *Id.* § 1414(d)(1)(A)(i)(II); see also 34 C.F.R. § 300.320 (defining IEP). When developing the IEP, the school “shall consider (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial evaluation or most recent evaluation of the child; and (iv) the academic, developmental, and functional needs of the child.” 20 U.S.C. § 1414(d)(3)(A).

2.

The leading IDEA case is *Board of Education v. Rowley*, 458 U.S. 176 (1982).⁸ In that case, the plaintiff was a deaf student who sued the defendant school district after it refused to provide her with a sign-language interpreter in class as part of her IEP. *Id.* at 184–85. The district court held that the child “was not receiving a free appropriate public education, which the court defined as an opportunity to achieve her full potential commensurate with the opportunity provided to other children.” *Id.* at 185–86. The Second Circuit affirmed that decision. *Id.* at 186. The Supreme Court granted certiorari to address “[w]hat is meant by the Act’s requirement of a free appropriate public education.” *Id.* at 186.

The *Rowley* Court began by recognizing that the purpose of the IDEA is “to promote the education of handicapped children, and [that it] was passed in response to Congress’ perception that a majority of

⁸ The *Rowley* Court analyzed the plaintiff’s claims under the Education of the Handicapped Act (“EHA”). Congress later renamed the EHA the IDEA. To prevent confusion, we use “IDEA” in our *Rowley* discussion instead of “EHA.”

handicapped children in the United States were either totally excluded from schools or were sitting idly in regular classrooms awaiting the time when they were old enough to drop out.” *Id.* at 179. Further, the Court determined that the IDEA defined a FAPE essentially as “consist[ing] of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.” *Id.* at 188–89. Although the Court acknowledged that the definition of FAPE found in the IDEA “tends toward the cryptic rather than the comprehensive,” it nevertheless concluded that the definition “is the principal tool which Congress has given us for parsing the critical phrase of the Act.” *Id.* at 188.

The Court also looked to the motive of Congress in enacting the IDEA, understanding it to be the “intent to bring previously excluded handicapped children into the public education systems of the States and to require the States to adopt *procedures* which would result in individualized consideration of and instruction for each child.” *Id.* at 189. That said, the Court noted that “[n]oticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children.” *Id.* The legislative history of the IDEA’s enactment likewise did not support an interpretation that, “in seeking to provide [children with disabilities] access to public education, Congress [intended to] impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful.” *Id.* at 192. Rather, “the intent

of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.” *Id.*; *see also id.* at 197 n.21 (“Whatever Congress meant by an ‘appropriate’ education, it is clear that it did not mean a potential- maximizing education.”).

The Court also held that the term “free appropriate public education” did not mandate “equality” or any requirement that schools provide the same education to students with disabilities as that provided to students without disabilities. *Id.* at 198 (“The requirement that States provide ‘equal’ educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons.”). Instead, a school is required only to provide “equal access.” *Id.* at 200 (emphasis added). Thus, the lower courts in *Rowley* “erred when they held that the Act requires [the State] to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children.” *Id.* Rather, providing a FAPE means “that the education to which access is provided [must] be sufficient to confer some educational benefit upon the handicapped child.” *Id.* The Court “conclude[d] 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.” *Id.* at 201. In sum, a school “satisfies [the FAPE] requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Id.* at 203.

Since *Rowley*, we have consistently held that “a school provides a FAPE so long as a child receives some educational benefit, meaning a benefit that is more than minimal or trivial, from special instruction and services.” *O.S.*, 804 F.3d at 360 (stating that, “[i]n this circuit, the standard remains the same as it has been for decades”). After oral argument in this case, however, the Supreme Court heard argument in and decided *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. , 137 S. Ct. 988 (2017), in which the Court rejected the Tenth Circuit’s “merely more than *de minimis*” FAPE standard, *id.* at 1000–01. The Supreme Court held that *Rowley*’s “statement that the Act did not guarantee any particular level of education simply reflects the unobjectionable proposition that the IDEA cannot and does not promise any particular educational outcome.” *Id.* at 998. Although the Court in *Rowley* had found it “difficult . . . to say when educational benefits are sufficient,” that did not mean “that *any* educational benefit was enough.” *Id.*

The Court went on to hold that, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* at 999. This is a “fact-intensive exercise.” *Id.* When a child is unable to “fully integrate[] in[to] the regular classroom,” as with M.L., the “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* at 1000. In sum, the

Court found that “[t]he IDEA demands more” than “an educational program providing ‘merely more than *de minimis*’ progress from year to year.” *Id.* at 1001. However, the Court rejected Endrew F.’s argument that “a FAPE is an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.” *Id.*

Our prior FAPE standard is similar to that of the Tenth Circuit, which was overturned by *Endrew F.* We have cited to the Tenth Circuit’s standard in the past, including that court’s decision in *Endrew F.* itself. See *O.S.*, 804 F.3d at 360 (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338–41 (10th Cir. 2015)). For purposes of the case at bar, though, we need not delve into how *Endrew F.* affects our precedent because the IDEA does not provide the remedy the Plaintiffs want, regardless of the standard applied. Moreover, the Plaintiffs never raised any issue about the standard before the ALJ or district court, and it was never at issue on appeal. The Plaintiffs have not identified in post-argument briefing any way in which *Endrew F.* affects the resolution of this case.

3.

Like *Rowley*, “[t]his case presents a question of statutory interpretation.” 458 U.S. at 179. In that regard, absent from the IDEA is any requirement that schools provide religious or cultural instruction. The Plaintiffs do not point to any section of the IDEA or its implementing regulations that requires

a school to develop a religious or cultural curriculum, such as the Plaintiffs' requested teaching of "blessings [and] Hebrew words." Opening Br. 38; *see also* J.A. 86–87 (Rabbi Leiman's testimony that the school should instruct M.L. in "keeping kosher," "wearing a yarmulke," "observing mitzvot," and "observing Jewish holidays"). The Plaintiffs' requested interpretation of the IDEA necessitates adding requirements not present in the statute: a function for Congress, not the judiciary. *See United States v. Luskin*, 926 F.2d 372, 376 (4th Cir. 1991) (refusing to "legislate from the bench by adding [a] provision" to a statute because "[t]he statute does not contain words to this effect, and this Court does not have the power to make such an amendment"); *see also Henson v. Santander Consumer USA Inc.*, 582 U.S. , 137 S. Ct. 1718, 1726 (2017) ("[T]he proper role of the judiciary . . . [is] to apply, not amend, the work of the People's representatives."); *Rowley*, 458 U.S. at 190 n.11 ("After all, Congress expresses its purpose by words. It is for us to ascertain—neither to add nor to subtract, neither to delete nor to distort."). In fact, federal regulations support the conclusion that states may *not* use IDEA funds to provide religious and cultural instruction. *See, e.g.*, 34 C.F.R. § 76.532(a)(1) (funding regulation prohibiting a state from "us[ing] its grant or subgrant to pay for . . . [r]eligious worship, instruction, or proselytization"). As the Sixth Circuit stated in an IDEA case, albeit in response to an Establishment Clause argument, "[t]he IDEA certainly has a secular purpose and its primary effect is one that does not advance religion." *Peck ex rel. Peck v. Lansing Sch. Dist.*, 148 F.3d 619, 629 (6th Cir. 1998).

The district court was correct in holding that religious and cultural instruction does not fall within the school's duty to provide a disabled student with access to the general curriculum. Under the IDEA, the school must only address the student's individual needs to the extent it takes to provide that access. *See* 20 U.S.C. § 1414(d)(1)(A)(i)(II) (stating that the IEP must include "a statement of measurable annual goals, including academic and functional goals, designed to (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child's other educational needs that result from the child's disability"). MCPS is not required to "maximize the potential of handicapped children commensurate with the opportunity provided to other children." *Rowley*, 458 U.S. at 189–90.

The Plaintiffs' witnesses, including Rabbi Leiman, agreed that the IEP would be sufficient but for the Plaintiffs' desire for instruction in Orthodox Judaism. For example, Rabbi Leiman acknowledged that "the goals and objectives [of the MCPS IEP] meet [M.L.'s] secular needs." J.A. 111. He also admitted that, "but for his religion [and culture], [MCPS] could meet [M.L.'s] special education and general education needs." J.A. 112. Further, the Plaintiffs concede that they "send [M.L.] to Sulam school in furtherance of [their] religious beliefs." J.A. 102. Their "main objection" to the MCPS IEP is that it "does not address Judaism," and they are concerned that M.L. will be taught "various things that would contravene Jewish law" if he were to attend public school. J.A.

156–57. Thus, the Plaintiffs concede that their only objection to the IEP proposed for M.L. is the absence of religious instruction on M.L.’s cultural preferences.

MCPS offered uncontested evidence that it would make reasonable accommodations for M.L.’s religious preferences. *See* Reply Br. 1 (the Plaintiffs conceding that “[t]his appeal has nothing to do with any allegation that MCPS has failed in its efforts to accommodate M.L.’s religious beliefs and those of his parents”). For example, the Plaintiffs have continually cited their objection to M.L.’s participation in MCPS-sponsored trips to McDonald’s “to practice buying and ordering items,” Opening Br. 49; *see also* J.A. 75 (testimony of Rabbi Leiman: “McDonald’s serves food that is specifically non-kosher and we wouldn’t want [M.L.] to be there, certainly not to purchase there, and obviously not to eat there.”), but MCPS does not “require children to participate in things that go against their cultural beliefs.” J.A. 612. Another example is that, for children, like M.L., whose parents find the celebration of Halloween “very offensive . . . and strongly against their religious beliefs, . . . those children rather than participating in the party and the parade, participate[] in a story time in the library.” J.A. 560. MCPS accommodates “students who maintain a kosher diet.” J.A. 604. Even more, the school “provide[s] opportunities to practice certain prayers” as well as “places for students to come and have their prayers if they need be.” J.A. 613.

The Plaintiffs also contend that the district court and ALJ erroneously disregarded their argument that an IEP must allow M.L. “to

generalize what he learns from one setting to another.” Opening Br. 44.⁹ However, the Plaintiffs do not truly argue that the IEP fails to generalize M.L.’s education across the school and home settings. Instead, they contend that the religious instruction he receives at home should be generalized to the school setting. Again, however, the IDEA does not mandate that a school instruct a student in his preferred religious practices. Rabbi Leiman essentially conceded this point when he testified that he and his family “believe that children should be educated for an Orthodox lifestyle and the only place to get that type of education would be in a private, religious school”—not just for M.L., but all of the Leiman children. J.A. 51–52. Because the IDEA does not require a school to provide religious and cultural instruction inside the schoolhouse gates, it likewise does not contemplate how a student may absorb such instruction at home.

Finally, the Plaintiffs cite to the requirement that an IEP include “a statement of measurable annual goals, including academic and functional goals, designed to . . . meet each of the child’s other

⁹ As MCPS points out, the Eleventh Circuit has held that a school need not necessarily consider a student’s ability to generalize skills between school and home to find an IEP adequate. *Devine v. Indian River Cty. Sch. Bd.*, 249 F.3d 1289, 1293 (11th Cir. 2001) (holding that “generalization across settings is not required to show an educational benefit”). It is unnecessary for us to decide today whether to adopt that holding, as the Plaintiffs do not contest that the IEP does instruct M.L. on generalizing among settings, except when it comes to religious practice. As we explain at several places herein, that type of instruction is not required by the IDEA for a FAPE.

educational needs that result from the child's disability." 20 U.S.C. § 1414(d)(1)(A)(i)(II)(bb). They argue that, "to the extent that M.L.'s religious and cultural needs resulting from his inability to generalize skills across settings do not fall within his progress in the general education curriculum, they are squarely within the context of the statute's 'other educational needs' section." Opening Br. 34. According to the Plaintiffs, these "other educational needs" include "[l]earning Hebrew, recognizing kosher signs and impurities in foods, and telling time according to [M.L.'s] dietary restrictions." Opening Br. 34¹⁰ Assuming for the sake of argument that the Plaintiffs are correct that these "other educational needs" are much broader than the needs of the child "to be involved in and make progress in the general education curriculum," 20 U.S.C. § 1414(d)(1)(A)(i)(II)(aa), the IEP did appropriately address those other needs. For example, the MCPS IEP provided for instruction in areas not specifically part of the general curriculum, such as learning to tell time, fine motor coordination, identification of community and safety signs, and cognizance of currency. M.L. would also be taught how to interact when participating in a community experience. These non-general

¹⁰ By way of explanation, according to Rabbi Leiman, the Plaintiffs do not "eat milk and meat together." J.A. 79. If M.L. eats a "milky meal," he must wait five hours before eating a "meaty meal," and vice versa, so he must be taught how to calculate those religious increments as part of his faith practice. J.A. 79. M.L. must learn how to identify "blood spots" in eggs because Orthodox Jewish law forbids the consumption of eggs with those spots. J.A. 76. M.L. must also learn to recognize "dozens of kosher symbols"—perhaps even "over a thousand." J.A. 62, 237.

education curriculum activities would be the same as for any other disabled child with similar disabilities. The IEP also set goals for M.L. outside the general curriculum in behavioral, speech and language, and occupational therapy.

Just like the needs in § 1414(d)(1)(A)(i)(II)(aa), these “other educational needs” do not include any religious or cultural instruction, nor are they required by the IDEA. The Plaintiffs erroneously read “other educational needs” as “*all* other educational needs.” But the IDEA does not require a public school to account for every deficiency a disabled student might possess, just like a school does not have to exhaust its resources to enable a nondisabled student to achieve his ultimate potential. *See Rowley*, 458 U.S. at 199 (concluding that the IDEA does not require “the furnishing of every special service necessary to maximize each handicapped child’s potential”). Rather, the school must only “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 137 S. Ct. at 999. The relevant circumstance here is that M.L. is disabled, not that he is of the Orthodox Jewish faith. As the Supreme Court reaffirmed in *Endrew F.*, “the IDEA cannot and does not promise any particular educational outcome,” *id.* at 998, and it does not require one that furthers a student’s practice of his religion of choice.

MCPS provided M.L. with equal access to an education, on the same basis as it provides to all other students with disabilities. It does not provide religious and cultural instruction to its students with or without disabilities and has no duty under the IDEA to administer such instruction to M.L.

Thus, because the proposed IEP provided M.L. with a FAPE, it meets the requirements of the IDEA. The district court did not err in so finding and awarding summary judgment to MCPS.¹¹

III.

For all of these reasons, the judgment of the district court is

AFFIRMED.

¹¹ The district court concluded that it was unnecessary to decide whether MCPS would violate the Establishment Clause by paying for M.L.'s private education. A public school is not required to pay for a student's placement in private school if the public school "made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility." 20 U.S.C. § 1412(a)(10)(C)(i); *see also* 34 C.F.R. § 300.148(a). A court may order the public school to pay the private school tuition only if it finds the public school did not provide the student with a FAPE. 20 U.S.C. § 1412(a)(10)(C)(ii); *see also* 34 C.F.R. § 300.148(c). Once the district court determined that MCPS provided M.L. with a FAPE, the inquiry ended. Thus, any question of whether publicly-funded private tuition in this case would violate the Establishment Clause would be speculative and purely advisory. Therefore, that issue is moot.

Finally, we do not reach the Free Exercise Clause arguments raised by amici and addressed by MCPS and the Plaintiffs in their response and reply briefs, respectively. The Plaintiffs did not raise a Free Exercise argument in their opening brief. Because the Court generally does not consider arguments raised in amicus or reply briefs in the first instance, we do not reach those arguments here. *See Suarez-Valenzuela v. Holder*, 714 F.3d 241, 248–49 (4th Cir. 2013) (reply briefs); *Snyder v. Phelps*, 580 F.3d 206, 216–17 (4th Cir. 2009) (amicus briefs).

[ENTERED AUGUST 3, 2015]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Southern Division

M.L. *exrel.* AKIVA LEIMAN, *et al.*,

PLAINTIFFS,

v. Case No.: PWG-14-1679

JOSHUA P. STARR, *et al.*,

DEFENDANTS.

* * * * *

MEMORANDUM OPINION AND ORDER

Rabbi Akiva Leiman and Shani Leiman (“Parents”) and their minor son, M.L. (“Student”), by and through his Parents, filed suit against Joshua Starr in his official capacity as Superintendent of Montgomery County Public Schools (“MCPS”) and Montgomery County Board of Education (“the Board”), claiming that Defendants failed to provide the Student, who has an intellectual disability, “with the Free Appropriate Public Education (‘FAPE’) to which he is entitled under the Individuals with Disabilities Education Improvement Act (‘IDEA’), 20 U.S.C. §§1400 *et seq.*” Compl. ¶¶ 1, 9, ECF No. 1. Specifically, they allege that Defendants “fail[ed] to propose an appropriate educational program or placement for M.L. that takes into account his religious and cultural needs.” *Id.* ¶ 70. They also claim that the administrative law judge (“ALJ”)

who reviewed the Student's individualized education program ("IEP") erred in "failing to render a proper decision based on an accurate and impartial understanding of the facts and law" and consequently "unreasonably concluded that the school system had proposed an educational program and placement for M.L. that was reasonably calculated to provide him with a FAPE for the 2012-13 school year," and "incorrectly denied the parents their requested relief of funding and an appropriate placement at the Sulam School ('Sulam')." ¹ *Id.* ¶¶ 1, 74. Sulam, the school the Student currently attends at his Parents' expense, "is a full-time special education program serving the Orthodox Jewish population"; there, the Student participates in a "program . . . to prepare students to live independently in their Orthodox Jewish community." *Id.* ¶¶ 6, 22-24. Because, giving due weight to the ALJ's factual findings and from my own *de novo* review of the entire record, I conclude that Plaintiffs are not entitled to judgment as a matter of law and Defendants are, I will deny Plaintiffs' Motion for Summary Judgment, grant Defendants' Cross-Motion for Summary Judgment, and close this case.²

1. FREE APPROPRIATE PUBLIC EDUCATION

Children with disabilities are entitled to a free appropriate public education, or "FAPE," pursuant

¹ Plaintiffs requested that MCPS "fund the secular portion of [the Student's] school day" at Sulam. Compl. ¶ 49.

² The parties have fully briefed cross-motions for summary judgment. ECF Nos. 12, 12-1, 13, 13-1, 14, 15. A hearing is not necessary. *See* Loc. R. 105.6.

to the IDEA. 20 U.S.C. § 1412(a)(1)(A). Maryland regulations also “govern[] the provision of FAPEs to children with disabilities in accordance with the IDEA.” *M.C. v. Starr*, No. DKC-13-3617, 2014 WL 7404576, at *1 (D. Md. Dec. 29, 2014) (citing Md. Code Regs. Tit. 13A, § 05.01). A FAPE is an education that provides “meaningful access to the educational process” in “the least restrictive environment” and is “reasonably calculated to confer ‘some educational benefit’” on the child with a disability. *Id.* (citing *Bd. of Educ. of the Henrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192, 207 (1982)). “The benefit conferred . . . must amount to more than trivial progress,” but “[t]he IDEA does not require that a school district provide a disabled child with the best possible education” *Id.* (citing *Rowley*, 458 U.S. at 192; *Reusch v. Fountain*, 872 F. Supp. 1421, 1425 (D. Md. 1994)).

To this end, each child with a disability must have “an appropriate Individualized Education Program (‘IEP’)” that “state[s] the student’s current educational status, annual goals for the student’s education, which special educational services and other aids will be provided to the child to meet those goals, and the extent to which the child will be ‘mainstreamed,’ i.e., spend time in regular school classroom with non-disabled students.” *Id.* (citing 20 U.S.C. § 1414(d)(1)(A)). In Maryland, parents may voice disagreement with their children’s proposed IEPs and request due process hearings before the Maryland Office of Administrative Hearings to address their concerns. *See id.* at *2 (citing 20 U.S.C. § 1415(b)(6), (f); Md. Code Ann., Educ. § 8–413; Md. Code Regs. Tit. 13A, § 05.01.15(C)(1)). “Any party can then appeal the

administrative ruling in federal or state court.” *Id.* (citing Educ. § 8–413(h)). Additionally, parents may place their children in private school that is “appropriate to meet the child’s needs” and “seek tuition reimbursement from the state,” but only if “if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.” *Id.* (quoting Title 20 § 1412(a)(1)(C)(iii); citing *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 369–70 (1985)).

II. BACKGROUND³

The material facts are undisputed⁴ The Student has an intellectual disability, and his “full scale IQ” was determined in 2009 and again in 2012 to be in the first percentile. Compl. ¶¶ 9, 18, 30; Defs.’ Mem. 3. Therefore, he is entitled to a FAPE under the IDEA. Compl. ¶ 1; Defs.’ Mem. 3. His instruction must be consistent and repetitive for him to learn. Pls.’ Mem. 4, 8; Defs.’ Mem. 3.

The Student is a part of the Orthodox Jewish community in which he lives, and it is very

³ In reviewing a motion for summary judgment, the Court considers the facts in the light most favorable to the nonmovant, drawing all justifiable inferences in that party’s favor. *Ricci v. DeStefano*, 557 U.S. 557, 585–86 (2009); *George & Co., LLC v. Imagination Entm’t Ltd.*, 575 F.3d 383, 391–92 (4th Cir. 2009). Where, as here, the Court is presented with cross-motions for summary judgment, the facts relevant to each motion must be considered in the light most favorable to the nonmovant. *Mellen v. Bunting*, 327 F.3d 355, 363 (4th Cir. 2003). Unless otherwise stated, this background is composed of undisputed facts. *See Ricci*, 557 U.S. at 585–86; *George & Co.*, 575 F.3d at 391–92.

⁴ Although Plaintiffs dispute which facts are material, as discussed below, the facts presented here are not disputed.

important to his Parents that he learn the rules and customs of Orthodox Jewish life. Compl. ¶ 8; Defs.' Mem. 3–4. In their view, “he has many important religious and cultural needs that must be taken into account when designing an appropriate learning environment for him,” and his “functional life skills are different than those of a non-Orthodox student.” Compl. ¶¶ 8, 41. Therefore, they sought an IEP for the 2012–2013 school year that provided for the Student to be placed at Sulam, where the basics of Orthodox Jewish life are a part of the curriculum. Compl. ¶ 49; Defs.' Mem. 4, 14 n.7. Instead, MCPS proposed an IEP that placed the Student at Woodlin Elementary School, a MCPS public school, and did not include instruction for the Student on rules and customs of the Orthodox Jewish community. Compl. ¶¶ 46–47, 50, 58, 60; Defs.' Mem. 4.

In response, the Parents “filed a due process hearing request on July 26, 2013, seeking reimbursement and placement for M.L. at Sulam.” Compl. ¶ 52; Defs.' Mem. 4. During the five-day hearing, the ALJ heard testimony from the Parents' six witnesses (the Student's father, an expert in Judaism, experts in special education, the Assistant Director/Director of Advocacy at the Weinfeld Education Group, and an expert in the teaching and supervision of special education in a Jewish day school) and MCPS's three witnesses (an expert in psychology and two experts in special education, one with “an emphasis on culturally and linguistically diverse students with disabilities”). Compl. ¶¶ 53–55; ALJ Dec. 5–6. He also received 56 exhibits from the Parents, 22 from the Board, and 4 from the Office of Administrative Hearings;

the exhibits included assessments, reports, evaluations, the IEP, school report cards and updates, correspondence, witness resumes, and the Common Core Curriculum that MCPS follow. ALJ Dec. 5–6.

Insisting that the Student “is not capable of generalizing what he learns at school to home and vice-versa” and therefore “needs the same information taught in [both] settings,” the Parents argued that “It is clear that the school system's proposed IEP cannot prepare [the Student] for life in his Orthodox Jewish community, rendering it inappropriate,” and that “MCPS has just refused to consider adding instruction that will prepare [the Student] for an Orthodox Jewish way of life, and that violates his right to a FAPE.” ALJ Dec. 15, 25, Admin. Rec., ECF No. 3 (quoting Parents’ Rebuttal Closing 11). They noted that “the school system’s witnesses . . . repeatedly testified that they would not personalize [the Student’s] IEP to meet his unique needs or include any of the bilingual or bicultural education he needs to be part of his community.” *Id.* (quoting Parents’ Written Closing (“PWC”) 16). As the Parents see it, Hebrew literacy, identification of Kosher symbols, and “time recognition” tailored to abiding by Kosher rules in separating the consumption of meat and dairy are “functional and/or academic skills that [the Student] needs in his community and in his culture” and that must be included in his IEP. *Id.* at 25–26 (quoting PWC 19–20).

The ALJ made the following findings of fact:

1. The Student was born on March 31, 2003. He lives with the Parents and nine siblings

in Montgomery County, Maryland. The family is part of the Orthodox Jewish community. All the school-age children attend private Jewish schools.

2. The way of life of an Orthodox Jew is much different from that of the general population. The Jewish Bible and Jewish law and custom govern how an Orthodox Jew dresses, eats, prays, works, what holidays are celebrated, and almost every aspect of life, including social interaction and understanding and speaking Hebrew.

3. The Student was diagnosed with Down Syndrome at birth. He is eligible for special education services under federal and State law as a child with an intellectual disability. For some period of time, but only before kindergarten, the Student received special education services from MCPS. Since September 2009, he has attended Sulam, a special education program that serves the Orthodox Jewish community and is located inside the Melvin J. Berman Hebrew Academy.

4. Beginning on June 6, 2012, the parties met to discuss an IEP for the Student for his education during the 2012-2013 school year in the MCPS. The purpose of the initial meeting in June 2012 was to reevaluate the Student's current levels of academic achievement and educational performance. The parties agreed at this meeting to obtain updated assessments of the Student in

education, speech and language pathology, and psychology.

5. The parties next met on September 5, 2012, and reviewed the results from some of the assessments. They agreed that intellectual disability was the Student's correct diagnosis and that an IEP should include goals in academics and social-adaptive skills. At this meeting, the parties agreed to obtain an occupational therapy (OT) assessment.

6. On June 20, 2012, Dr. Foster conducted a psychological assessment of the Student. It showed significantly below average scores in all areas of cognitive functioning. Most of the Student's test scores were at or below the first percentile. This assessment was essentially the same as an assessment done by Dr. Foster on March 30, 2009.

7. The Student's most recent educational assessments in February-March 2009 and July-August 2012 showed significantly below average performance in all academic areas in 2009 and weaknesses in all areas in 2012 on an instrument designed to test children functioning below the developmental age of 7. In all the academic and visual-motor areas, his scores in 2012 were aligned with children of kindergarten age, with some below and some at the first-grade level.

8. The Student is able to learn despite his severe intellectual disability, but he needs constant repetition and consistency.

9. On December 5, 2012, the parties met for a third time at an IEP team meeting. They reviewed the results of the assessments done by the speech and language pathologist and the occupational therapist (OT). The speech and language pathologist reported weaknesses in expressive grammar, vocabulary, syntax, and reported speech and language difficulties in practical environments. The OT reported decreased muscle tone and strength that impacted the Student's ability to manage classroom materials and personal belongings. At this meeting, the parties began to develop an IEP, but did not complete it.

10. The final IEP meeting was on January 9, 2013. A proposed IEP was completed, but it was rejected by the Parents. The Parents rejected the IEP because it does not provide functional instruction to prepare the Student for life in the Orthodox Jewish community. The Parents requested at the IEP meetings incorporation of goals and objectives designed to teach the Student about the laws and customs of Orthodox Judaism. This was rejected by the MCPS as not part of the curriculum, too specific, religious, or not compatible with the Student's present levels.

11. The proposed IEP includes a description of the Student's present levels of academic achievement and functional performance across the standard range of academic areas; goals and objectives in sixteen separate practical and functional areas; and the provision of special education services for

twenty-eight hours and forty-five minutes per week, occupational therapy for one hour per week, and speech and language therapy for one hour per week, with four hours and fifteen minutes per week of exposure to non-disabled peers. The Student's placement was in the fundamental life skills curriculum in a self-contained classroom at Woodlin Elementary School.

12. On July 26, 2013, the Parents filed a request for a due process hearing with the MCPS.

The ALJ acknowledged that the “proposed IED for the 2012-2013 school year does not provide an education program that teaches the Student the ways of the Orthodox Jewish community,” but he found that “the IDEA, and corresponding State law, imposes no . . . obligation on the MCPS” to prepare the Student “for life in his Orthodox Jewish community.” ALJ Dec. 26. The ALJ reasoned:

Congress enacted the IDEA to require states to make public education available to disabled children. Nothing in the IDEA, corresponding State law, or enabling regulations require a state educational agency to individualize an educational program to a disabled child’s religion, culture, or community enclave. This was essentially Ms. Browne’s⁵ testimony when she was asked to explain why MCPS did not

⁵ “Brenda Browne, Instructional Specialist in Special Education for the MCPS, accepted as an expert in special education with an emphasis on culturally and linguistically diverse students with disabilities,” testified for MCPS. ALJ Dec. 6.

include religious or cultural goals and instruction in the IEP. She testified that “specially designed instruction” is “strategy,” “instruction,” “related services,” and “specific” reading or math “interventions ... that meet the needs of a student’s educational disability in order that they can access and make progress in the general curriculum as defined by the school system area, the local education agency.” Tr. 799

ALJ Dec. 29. Noting that “Subsection 1414(d) of the IDEA addresses IEPs and makes clear that the goals and objectives in an IEP are ‘designed to ... meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the *general educational curriculum*,” the ALJ concluded that “Congress enacted the IDEA to require local educational agencies to provide disabled children *access to the public school curriculum*, not, as the Parents here argue, . . .access [to] his Orthodox Jewish community.” *Id.* (emphases added). He found that the “‘I’ in ‘IEP,’” which the Parents insisted meant that MCPS must “provide the Student ‘necessary help in accessing whatever **his curriculum** might be,” actually meant that “the local agency must use special education and related services that are intended to provide disabled children meaningful access to *the general curriculum*, despite the child’s disabling conditions.” *Id.* at 28–30 (quoting PWC 23 (bold emphasis in PWC, italicized emphasis added)).

The ALJ observed that “two of the Parents’ witnesses who testified as experts in special education agreed that the IEP would be appropriate for the Student if he were not being reared as an

Orthodox Jew,” and “Rabbi Leiman agreed that MCPA’s proposed IEP’s goals and objective would meet the Student’s secular needs,” although he later testified to the contrary that “the IEP would not meet the Student’s secular needs ‘because his secular needs include making him as a person and fitting into his cultural milieu,’” and Rabbi Leiman agreed that, “but for the Student’s cultural needs, his placement at Woodlin would meet his special and general educational needs.” ALJ Dec. 32–33.

The ALJ concluded that “[t]he absence of goals and objectives expressly related to Orthodox Judaism does not render the Student’s educational program inappropriate.” ALJ Dec. 33. The ALJ found that “[t]he Student’s IEP [was] reasonably calculated to provide him with some educational benefit because it adequately addresses the Student’s disability-based impediments to learning and appropriately provides for special education and related services that reasonably should enable him to benefit from the MCPS’ curriculum,” such that “the IEP and placement proposed by MCPS for the 2012–2013 school year [were] reasonably calculated to offer the Student a FAPE.” *Id.* He denied “the Parents’ request for a declaration that Sulam is the proper educational placement for the Student and for reimbursement for the costs of the Student’s attendance at Sulam for the 2012–2013 school year.” ALJ Dec. 34. Dissatisfied, Plaintiffs filed suit in this Court, and the parties filed the pending summary judgment motions.

III. STANDARD OF REVIEW

In reviewing cross-motions for summary judgment in an IDEA action, the “reviewing court is

obliged to conduct a modified *de novo* review” of the administrative record, “giving “due weight” to the underlying administrative proceedings.” *M.C. v. Starr*, No. DKC-13-3617, 2014 WL 7404576, at *6 (D. Md. Dec. 29, 2014) (quoting *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 530–31 (4th Cir. 2002) (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982))). This means that when an ALJ makes findings of fact “in a regular manner and with evidentiary support,” those findings “are entitled to be considered *prima facie* correct,” and “the district court, if it is not going to follow them, is required to explain why it does not.” *Doyle v. Arlington Cnty. Sch. Bd.*, 953 F.2d 100, 105 (4th Cir. 1991); see *M.C.*, 2014 WL 7404576, at *6-7. The Court then reaches its decision based on the preponderance of the evidence. *Bd. of Educ. of the Henrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192, 207 (1982). Yet, the Court cannot ““substitute [its] own notions of sound educational policy for those of local school authorities.”” *M.C.*, 2014 WL 7404576, at *6–7 (quoting *MM*, 303 F.3d at 530–31 (quoting *Hartmann v. Loudoun Cnty. Bd. of Educ.*, 118 F.3d 996, 999 (4th Cir. 1997))). The burden of proof is on Plaintiffs as the party seeking relief. See *Barnett v. Fairfax Co. Sch. Bd.*, 927 F.2d 146, 152 (4th Cir. 1991), *cert. denied*, 502 U.S. 859 (1991).

“This standard works in tandem with the general standard of review for summary judgment, which also applies in IDEA cases” *M.C.*, 2014 WL 7404576, at *7. Thus, summary judgment is proper when the moving party demonstrates, through “particular parts of materials in the record, including depositions, documents, electronically

stored information, affidavits or declarations, stipulations . . . admissions, interrogatory answers, or other materials,” that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a), (c)(1)(A); *see Baldwin v. City of Greensboro*, 714 F.3d 828, 833 (4th Cir. 2013). If the party seeking summary judgment demonstrates that there is no evidence to support the nonmoving party’s case, the burden shifts to the nonmoving party to identify evidence that shows that a genuine dispute exists as to material facts. *See Celotex v. Catrett*, 477 U.S. 317 (1986). When considering cross-motions for summary judgment, “the court must view each motion in a light most favorable to the non-movant.” *Linzer v. Sebelius*, No. AW-07-597, 2009 WL 2778269, at *4 (D. Md. Aug. 28, 2009); *see Mellen v. Bunting*, 327 F.3d 355, 363 (4th Cir. 2003).

IV. DISCUSSION

To obtain court-ordered reimbursement for the secular portion of the Student’s education, Plaintiffs first must demonstrate that “the public school system failed to provide a free appropriate public education.” *Carter ex rel. Carter v. Florence Cnty. Sch. Dist. Four*, 950 F.2d 156, 161 (4th Cir. 1991) (stating that the second element to prove is that “the private school chosen by the parents did provide an appropriate education to the child”). Preliminarily, I must determine the weight to give the ALJ’s findings of facts. *See Doyle v. Arlington Cnty. Sch. Bd.*, 953 F.2d 100, 105 (4th Cir. 1991). According to Plaintiffs, the ALJ’s findings of fact were not “regularly made” and were not entitled to a presumption of correctness, because he

“consistently disregarded substantial, relevant, and reliable written evidence as well as expert opinions.” Pls.’ Mem. 12, 13, 14. Specifically, they insist that, “[e]ven though M.L.’s inability to generalize is essential to his educational programming, the ALJ made no finding whatsoever on this critical point.” *Id.* at 18.

While it is true that the ALJ did not mention the Student’s generalization skills in his findings of fact, the ALJ did not disregard the evidence about his ability to generalize. Rather, he observed:

The parties disagree about whether the Student can generalize what he learns from one setting to a different setting. The Parents’ witnesses do not think he can. Mr. Weinfeld testified that the Student “needs consistency between home and school” and “needs to be part of a group where it’s consistent, where other kids are doing the same things where it’s the same thing that’s done at home and in school, so, it’s all -- all part of one structured, consistent package.” Tr. 224. Ms. Resti testified that “once [the Student] has a skill, it’s critical that it be developed in a variety of areas across a variety of settings.” Tr. 365. Dr. Foster, on the other hand, testified that the Student “can generalize,” although “it might take him longer.” Tr. 544

ALJ Dec. 17. Thus, the absence of any reference to the Student’s generalization skills from the ALJ’s factual findings is not a basis for concluding that the ALJ disregarded evidence, when the ALJ’s evaluation of the evidence produced during the

extensive hearing clearly demonstrates that he did not disregard evidence regarding the Student's ability to generalize what he learns at school to non-school settings. Rather, it appears that the ALJ considered the evidence and concluded, as I independently conclude below, that it was not relevant to his findings of fact.

As for the perceived shortcomings of the IEP and Defendants' alleged failure to provide a FAPE, Plaintiffs insist that the problem is not "the school system's failure to teach M.L. how to be a member of his Orthodox Jewish Community during the school day." Pls.' Mem. 23. In their view, the underlying IDEA violation is that Defendants did not "support [the Student's] access to the general education curriculum," which "required accommodation of his religious and cultural practices" because of the Student's "unique disability profile and his membership in the Orthodox community." *Id.* They argue:

[T]he MCPS IEP is inappropriate because it does not afford M.L. access to the general education curriculum while maintaining his ability to become a member of his religious and cultural community. The failure of the MCPS IEP has thus not been that it neglected to teach M.L. to be Jewish, but that it failed to permit him to access the general education curriculum areas, such as telling time, reading symbols, and learning how to provide food for himself, whilst still remaining a part of his community.

Id. at 27–28. They also contend specifically that the Student would not receive a FAPE under the IEP

because the IEP did not provide for the Student to learn Hebrew. *Id.* at 21. Notably, beyond the alleged problematic interplay between the IEP and the Student's role in his Orthodox community, including the ALJ's failure to account for the Student's inability to generalize and the consequent (in Plaintiffs' view) failure to place the Student at Sulam, Plaintiffs do not identify any faults in the IEP or the ALJ's review of it.

Try as the Plaintiffs do to distinguish their misgivings with the IEP from its failure to provide for instruction geared to the Student's religious and cultural identity as an Orthodox Jew, that is the crux of this dispute: Is the education proposed in the IEP a FAPE when it does not account for the Student's individual religious and cultural needs? The short answer is yes. Simply put, a FAPE, to which a child with a disability is entitled, is the education that any student without disabilities would receive. *See D.L. ex rel. K.L. v. Balt. Bd. of Sch. Comm'rs*, 706 F.3d 256, 260–61 (4th Cir. 2013) ("Public schools are only required to make a FAPE available on equal terms to all eligible children within their district."). The IEP is "individualized" or "personalized" to ensure that a child can access that education, considering his or her individual or personal cognitive and developmental capabilities and needs. In this regard, Plaintiffs have pointed to no authority, nor have I found any, that expands the requirement of the IDEA that an IEP be "individualized" to the extent that it affords a qualified student with an educational program specifically tailored to the religious and cultural enclave in which the student lives. *See Rowley*, 458

U.S. at 193 n.15 (noting that instruction is individualized when it is “appropriate to [the student’s] learning capacities” (citation omitted)); *Hanson ex rel. Hanson v. Smith*, 212 F. Supp. 2d 474, 482 (D. Md. 2002). Rather, “the intent of the [IDEA] was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.” *Rowley*, 458 U.S. at 192; *Hanson*, 212 F. Supp. 2d at 482 (same). “[T]he “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.” *Hanson*, 212 F. Supp. 2d at 482 (quoting *Rowley*, 458 U.S. at 201). Thus, the IDEA does not require an IEP to be individualized to ensure that the child can access a personalized curriculum based on that child’s cultural and religious circumstances or parents’ beliefs. *See Rowley*, 458 U.S. at 193 n. 15; *Hanson*, 212 F. Supp. 2d at 482. Therefore, the IEP’s admitted failure to include instruction addressing the Student’s religious and cultural needs and MCPS’s failure to place him in a private school that would account for those needs did not deprive him of a FAPE when, based on the record before the ALJ and independently reviewed by me, the IEP that MCPS proposed did confer educational benefit to the Student as required by the IDEA.

This is because “[a]ll that is required [by the IDEA] is that the disabled child benefit educationally from the program.” *Hanson*, 212 F. Supp. 2d at 488. Plaintiffs have not shown that, due to the IEP’s failure to include the religious and

cultural instruction they sought, the Student would not have benefitted educationally from following the IEP or that it affected his access to a FAPE. “[T]he insistence of parents that a non-public school setting is more appropriate does not establish the inappropriateness of the public school, even if the child would have benefitted more in the private setting.” *Id.* And, because the IEP did not need to account for the Student’s religious or cultural needs, whether the Student could generalize the skills he learned in public school to life within his Orthodox Jewish community, that is, whether his public school education complemented the instruction he needed to live as an Orthodox Jew, is not determinative of whether the IEP provided the Student with a FAPE. As the ALJ explained in his well-reasoned decision, the IEP and the Student’s proposed placement in public school were reasonably calculated to provide him with a FAPE for the 2012-13 school year. Indeed, aside from its lack of provisions for the Student’s religious and cultural needs (which Plaintiffs see as indivisible from the whole), this fact is uncontested.

Plaintiffs also argue that funding the secular portion of the Student’s education at Sulam would not violate the Establishment Clause. Pls.’ Mem. 31. I need not reach this issue, as Defendants can provide the Student with a FAPE without placing him at Sulam, as outlined in the IEP. *See Carter*, 950 F.2d at 161; *In re Under Seal*, 749 F.3d 276, 293 (4th Cir. 2014) (“The principle of constitutional avoidance ... requires the federal courts to avoid rendering constitutional rulings unless absolutely necessary.” (quoting *Norfolk S. Ry. v. City of Alexandria*, 608 F.3d 150, 157 (4th Cir. 2010))).

Thus, neither *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993), nor *Agostini v. Felton*, 521 U.S. 203, 234-35 (1997), two Establishment Clause cases on which Plaintiffs rely, is apposite. In *Zobrest*, the Supreme Court concluded that the provision of a sign language interpreter for a student attending a Catholic school did not violate the Establishment Clause of the First Amendment of the United States Constitution. 509 U.S. at 3, 13–14. Not only the issue but also the circumstances were different because, there, the school district was obligated to provide a sign language interpreter, an expense beyond the standard curriculum, and it was only a question of whether the interpreter provided services at the Catholic school or at a public school. *Id.* at 10–11. The partial funding of the student’s education at a religious school was not at issue. *See id.* Moreover, the Supreme Court did not consider whether the student was receiving a FAPE. *See id.* Likewise, in *Agostini Felton*, 521 U.S. 203, 234-35 (1997), the Supreme Court considered whether New York’s Title I instruction program could be offered in parochial schools. As in *Zobrest* but unlike here, Title I instruction was “aid [that was] provided to students at whatever school they cho[]se to attend” and that was “supplemental to the regular curriculum.” *Id.* at 228. The Supreme Court held that “a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as [the

[ENTERED: JANUARY 23, 2014]

M [REDACTED] L [REDACTED]¹

v.

MONTGOMERY COUNTY PUBLIC SCHOOLS

BEFORE: MICHAEL D. CARLIS,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-13-28844

* * * * *

DECISION

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

STATEMENT OF THE CASE

On July 26, 2013, Rabbi Akiva and Shani Leiman (Parents),² on behalf of their son,

¹ The Student's name is spelled [REDACTED] [REDACTED], and [REDACTED] in the record, which includes two applications that are signed by at least one parent. In one application, the Student's name is spelled [REDACTED]; in the other, [REDACTED]. In the Request for Due Process, the Student's name initially is spelled [REDACTED] and, then, [REDACTED] throughout the narrative. For this reason, I have spelled the Student's name as [REDACTED].

² Mrs. Leiman is also referred to in the record as Shoshana Leiman. Because she is referred to as Shani Leiman in the Request for Due Process, I have spelled her name that way.

(Student), who was born on March 31, 2003, filed a Due Process Complaint (Complaint) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a)-(d) (2013); Md. Code Ann., Educ. § 8-413(e)-(h) (2008); and Code of Maryland Regulations (COMAR) 13A.05.01. 15C. The Parents requested reimbursement from the Montgomery County Public Schools (MCPS) for the secular portion of the Student's education at The Sulam School (Sulam), a special education program that serves the Orthodox Jewish community and is located inside the Melvin J. Berman Hebrew Academy.

The Complaint avers that the Student "has very important cultural needs that must be taken into account when designing an appropriate learning environment." According to the Parents, their Orthodox Jewish community's customs related to dress, food, social activity, and religious adherence would make the Student's "social interaction [with his peers in the public school] difficult" and would prevent his participation "in many parts" of the public school curriculum. The Parents allege that "MCPS' ... proposed placement for [the Student] ... is not appropriate for his religious and cultural needs."

On November 13, 14, 15, 20, and 21, 2013, I held a due process hearing at the administration building of the MCPS in Rockville, Maryland.³ The contested

³ On August 19, 2013, the parties participated in a resolution meeting, but were unable to resolve their dispute. On September 13, 2013, I convened a telephone pre-hearing conference with the parties' attorneys. The dates for the due process hearing were decided at this conference according to the availability of the attorneys and witnesses. Under COMAR

case provisions of the Administrative Procedure Act; Maryland State Department of Education procedural regulations; and the Office of Administrative Hearings Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); COMAR 13A.05.01.15C; and COMAR 28.02.01. Michael J. Eig, Esquire, and Michael J. Eig and Associates, P.C., represented the Parents. Jeffrey A. Krew, Esquire, and Jeffrey A. Krew, LLC, represented the MCPS.

ISSUES

The issues are as follows:

1. Whether the MCPS failed to provide the Student with a Free Appropriate Public Education (FAPE) for the 2012-2013 school year when it proposed an individualized educational program (IEP) -- which was to be implemented using a fundamental life skills curriculum in a self-contained public elementary school -- that did not address teaching the Student the religion and culture of his Orthodox Jewish community; and if so,

13A.05.01.ISC(15), 34 C.F.R. § 300.SIS(a) (2013), 34 C.F.R. § 300.SIO(b)(2) (2013), and 34 C.F.R. § 300.SIO(c)(2) (2013), August 19, 2013, triggered the forty-five-day limit for issuing the due process decision. As discussed above, however, the hearing was held for five days beginning on November 13, 2013, and ending on November 21, 2013, which was after the forty-five-day period. Furthermore, the record remained opened after November 21, 2013, for the parties to submit written closing arguments according to a schedule that ended on December 24, 2013. As a result, the parties agreed that my decision would be issued no later than thirty days after that date; that is, no later than January 23, 2014.

2. Whether the Parents' unilateral placement of the Student at Sulam provided him with a proper education for the 2012-2013 school year; and if so,

3. Whether the Parents' request for reimbursement from the MCPS for seventy percent of the Student's tuition and costs at Sulam for what the Parents characterize as the secular part of the Student's Formal Educational Plan (FEP) at Sulam is fair and equitable and does not violate the First Amendment of the United States Constitution.

SUMMARY OF THE EVIDENCE

Exhibits

The following were admitted for the Parents:⁴

Parents 1: Request for Due Process, dated July 26, 2013;

Parents 2: MCPS Psychological Assessment, dated April 27, 2009;

Parents 3: Sulam Application for Admission, dated April 29, 2010;

Parents 4: Sulam Progress Notes, dated June 3, 2011;

Parents 5: Annual Review Meeting Noted, dated June 7, 2011;

Parents 6: Sulam Educational Goals and Objectives progress notes, dated June 2011;

Parents 7: Sulam Report Card for June 2011;

⁴ The Parents' exhibits were pre-labeled as ML 1-56.

Parents 8: Sulam Weekly Update, ending September 2, 2011;

Parents 9: Sulam Weekly Update, ending September 23, 2011;

Parents 10: Email, dated October 5, 2011;

Parents 11: Email, dated November 22, 2011;

Parents 12: Sulam FEP for the school year 2011-2012;

Parents 13: Update, dated May 16, 2012;

Parents 14: [The Student's] Annual Review Meeting, dated June 5, 2012;

Parents 15: Sulam FEP, dated June 5, 2012;

Parents 16: Present Level of Performance in Occupational Therapy, dated June 15, 2012;

Parents 17: Educational Goals and Objectives, dated June 2012;

Parents 18: Report Card, Grade 02;

Parents 19: Report of Psychologist-Initial Evaluation, dated August 13, 2012;

Parents 20: Sulam Periodic Update, dated October 10-16, 2012;

Parents 21: Occupational Therapy Evaluation, dated November 21, 2012;

Parents 22: IEP, dated December 5, 2012;

Parents 23: Addendum to IEP team meeting, dated January 9, 2013;

Parents 24: Update, dated March 4, 2013;

Parents 25: Email, dated April 4, 2013;

- Parents 26: Update, dated April 5, 2013;
- Parents 27: Update, dated May 13, 2013;
- Parents 28: Sulam Daily Teachers' Report for the 2012-2013 school year;
- Parents 29: Sulam FEP for the 2013-2014 school year;
- Parents 30: Sulam Report Card for grade 3;
- Parents 31: Sulam Progress Updates for the 2012-2013 school year;
- Parents 32: Letter, dated June 26, 2013, with transmittal attachments;
- Parents 33: Letter, dated July 29, 2013;
- Parents 34: Letter, dated August 6, 2013;
- Parents 35: Letter, dated August 29, 2013;
- Parents 36: Due Process - Resolution Meeting - Tracking Form;
- Parents 37: Questions for MCPS at [the Student's] Resolution Session;
- Parents 38: Letter, dated August 21, 2013;
- Parents 39: Email from E. Lester, dated August 21, 2013, with attached letter;
- Parents 40: Letter to Parents, dated August 23, 2013;
- Parents 41: Letter to Parents, dated August 30, 2013;
- Parents 42: Update on the Student's progress, dated September 17, 2013;
- Parents 43: Letter to Parents, dated September 17, 2013;

Parents 44: Letter to Parents, dated October 4, 2013;

Parents 45: Letter to Parents, dated October 18, 2013;

Parents 46: Letter to Parents, dated October 25, 2013;

Parents 47: Letter to Parents, dated October 31, 2013;

Parents 48: Teachers' reports for the 2012-2013 school year;

Parents 49: Resume of Rabbi Meyers;

Parents 50: Resume of L. Goodwin-Gudelsky;

Parents 51: Resume of I. Resti;

Parents 52: Resume of R. Weinfeld;

Parents 53: Resume of J. Fisher;

Parents 54: Board of Education of Montgomery County minutes of a meeting on July 2, 2001;

Parents 55: School schedule for the Student; and

Parents 56: Sularn's Helping Jewish Children Reach New Heights.

The following were admitted for the MCPS⁵:

MCPS 1: Psychological Evaluation, dated April 27, 2009;

MCPS 2: Educational Assessment Report, dated April 30, 2009;

MCPS 3: Classroom Observation, dated January 23, 2012;

⁵ The MCPS' exhibits were pre-labeled Bd. 1-22.

MCPS 4: Elementary Teacher Report for IEP, return date of February 1, 2012;

MCPS 4A: Email from R. Susher, dated March 23, 2012, with attachment;

MCPS 5: Elementary Teacher Report for IEP, return date of May 25, 2012;

MCPS 6: Sulam FEP, dated June 2012;

MCPS 7: Re-evaluation Planning Report, dated June 6, 2012;

MCPS 7A: Registration Application, signed June 26, 2012;

MCPS 8: Report of Psychologist-Initial Evaluation, dated August 10, 2012;

MCPS 9: Report of Speech-Language Assessment, dated August 31, 2012;

MCPS 10: Elementary Teacher Report, dated September 4, 2012;

MCPS 11: Educational Assessment, dated September 4, 2012;

MCPS 12: Report of IEP meeting on September 5, 2012;

MCPS 13: Addendum Report/Classroom Observation occurring on August 30, 2012;

MCPS 14: Report of Psychologist, dated September 25, 2012;

MCPS 15: Elementary Teacher Report, dated November 2, 2012;

MCPS 15A: Objection to admissibility sustained;

MCPS 16: Occupational Therapy Evaluation,

dated November 21, 2012;

MCPS 17: Report of IEP meeting on January 9, 2013, with attachment;

MCPS 17B: Sulam Financial Statement, dated May 13, 2012;

MCPS 18: Request for Mediation/Due Process Hearing;

MCPS 19: Letter, dated August 12, 2013;

MCPS 19A: Sulam Financial Statement, dated August 13, 2013;

MCPS 20: Resume of B. Browne;

MCPS 21: Resume of L. Davisson; and

MCPS 22: Resume of R. Foster, Ph.D.

The following were admitted as OAH exhibits:

OAR 1: The Maryland Common Core Curriculum and Students with Disabilities informational sheet;

OAH 2: Top Ten Things Parents Need to Know about the Common Core State Standards;

OAH 3: COMAR 13A.04.04.01-.07; and

OAH 4: Rock Creek Forest Elementary School Spanish Immersion Program.

Testimony

The following testified for the Parents:

1. Rabbi Akiva Leiman, the father of the Student;
2. Rabbi Avrom Landesman, a retiree from employment as an attorney for the federal government, accepted as an expert in Judaism;

3. Richard Weinfeld, Director of Weinfeld Education Group, accepted as an expert in special education;
4. Jennifer Engel Fisher, Assistant Director/Director of Advocacy at the Weinfeld Education Group;
5. Israelle Resti, Program Supervisor at Ivymount School, a private special education school, accepted as an expert in special education; and
6. Rabbi Uri Meyers, Division Chair for the lower and middle schools at Sulam, accepted as an expert in the teaching and supervision of special education in a Jewish day school.

The following testified for the MCPS:

1. Robert Foster, Ph.D., Psychologist for the MCPS, accepted as an expert in psychology;
2. Lisa Davisson, Special Education Instructional Specialist for the MCPS, accepted as an expert in special education; and
3. Brenda Browne, Instructional Specialist in Special Education for the MCPS, accepted as an expert in special education with an emphasis on culturally and linguistically diverse students with disabilities.

FINDINGS OF FACT

I find the following by a preponderance of the evidence:

1. The Student was born on March 31, 2003. He lives with the Parents and nine siblings in Montgomery County, Maryland. The family is part of the Orthodox Jewish community. All the school-age children attend private Jewish schools.

2. The way of life of an Orthodox Jew is much different from that of the general population. The Jewish Bible and Jewish law and custom govern how an Orthodox Jew dresses, eats, prays, works, what holidays are celebrated, and almost every aspect of life, including social interaction and understanding and speaking Hebrew.

3. The Student was diagnosed with Down Syndrome at birth. He is eligible for special education services under federal and State law as a child with an intellectual disability. For some period of time, but only before kindergarten, the Student received special education services from MCPS. Since September 2009, he has attended Sulam, a special education program that serves the Orthodox Jewish community and is located inside the Melvin J. Berman Hebrew Academy.

4. Beginning on June 6, 2012, the parties met to discuss an IEP for the Student for his education during the 2012-2013 school year in the MCPS. The purpose of the initial meeting in June 2012 was to reevaluate the Student's current levels of academic achievement and educational performance. The parties agreed at this meeting to obtain updated assessments of the Student in education, speech and language pathology, and psychology.

5. The parties next met on September 5, 2012, and reviewed the results from some of the assessments. They agreed that intellectual disability was the Student's correct diagnosis and that an IEP should include goals in academics and social-adaptive skills. At this meeting, the parties

agreed to obtain an occupational therapy (OT) assessment.

6. On June 20, 2012, Dr. Foster conducted a psychological assessment of the Student. It showed significantly below average scores in all areas of cognitive functioning. Most of the Student's test scores were at or below the first percentile. This assessment was essentially the same as an assessment done by Dr. Foster on March 30, 2009.

7. The Student's most recent educational assessments in February-March 2009 and July-August 2012 showed significantly below average performance in all academic areas in 2009 and weaknesses in all areas in 2012 on an instrument designed to test children functioning below the developmental age of 7. In all the academic and visual-motor areas, his scores in 2012 were aligned with children of kindergarten age, with some below and some at the first-grade level.

8. The Student is able to learn despite his severe intellectual disability, but he needs constant repetition and consistency.

9. On December 5, 2012, the parties met for a third time at an IEP team meeting. They reviewed the results of the assessments done by the speech and language pathologist and the occupational therapist (OT). The speech and language pathologist reported weaknesses in expressive grammar, vocabulary, syntax, and reported speech and language difficulties in practical environments. The OT reported decreased muscle tone and strength that impacted the Student's ability to manage classroom materials and

personal belongings. At this meeting, the parties began to develop an IEP, but did not complete it.

10. The final IEP meeting was on January 9, 2013. A proposed IEP was completed, but it was rejected by the Parents. The Parents rejected the IEP because it does not provide functional instruction to prepare the Student for life in the Orthodox Jewish community. The Parents requested at the IEP meetings incorporation of goals and objectives designed to teach the Student about the laws and customs of Orthodox Judaism. This was rejected by the MCPS as not part of the curriculum, too specific, religious, or not compatible with the Student's present levels.

11. The proposed IEP includes a description of the Student's present levels of academic achievement and functional performance across the standard range of academic areas; goals and objectives in sixteen separate practical and functional areas; and the provision of special education services for twenty-eight hours and forty-five minutes per week, occupational therapy for one hour per week, and speech and language therapy for one hour per week, with four hours and fifteen minutes per week of exposure to non-disabled peers. The Student's placement was in the fundamental life skills curriculum in a self-contained classroom at Woodlin Elementary School.

12. On July 26, 2013, the Parents filed a request for a due process hearing with the MCPS.

DISCUSSION

General Law

The IDEA provides federal assistance to state and local educational agencies for the education of children with disabilities. 20 U.S.C.A. §§ 1400-1487 (2010). The purposes of the IDEA are:

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities, coordinated research and personnel preparation; coordinated technical assistance,

dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

Id. § 1400(d)⁶.

To receive federal assistance, states must provide special education services that are designed to meet the unique and individual needs of disabled children. *Id.* § 1412. States must also provide related services, as needed, to allow eligible children to obtain educational benefit from special education services. *Id.* Those requirements fulfill a state's obligation to provide a FAPE to children with disabilities. FAPE is defined as follows:

The term "free appropriate public education" means special education and related services that-

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with

⁶ Maryland's General Assembly and the Department of Education have enacted laws and promulgated regulations implementing the IDEA in Maryland. Md. Code Ann., Educ. §§ 8-401-17 (2008 & Supp. 2013); COMAR 13A.0S.01.

the individualized education program required under section 1414(d) of this title.

Id. § 1401(9). *See also* 34 C.F.R. § 300.17 (2013) (defining FAPE similarly).

A two-pronged analysis is used to resolve due process challenges to a local educational agency's compliance with the IDEA: "First, has the State complied with the procedures set forth in the Act? And second, is the [IEP]⁷ developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982).

A FAPE is provided by personalized instruction with sufficient support services to permit a child to benefit educationally from that instruction. *Rowley*, 458 U.S. 176. In *Rowley*, the Supreme Court explained as follows:

Implicit in the congressional purpose of providing access to a 'free appropriate public education' 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

⁷ An IEP is "a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324." 34 C.F.R. § 300.22 (2013); *see also* COMAR J3A.05.0I .03B(34).

which are individually designed to provide educational benefit to the handicapped child.

Id. 200-201; *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990).

Summary of the Evidence

The parties do not dispute the material facts. The general or background facts are that the Student was born on March 31, 2003; he was ten years old when the Complaint was filed. He lives with the Parents and his nine siblings in an Orthodox Jewish "enclave" in Montgomery County. All his school age siblings attend private Jewish schools because the Parents believe their children "should be educated for an Orthodox [Jewish] lifestyle."

The Student is the Parents' only child with significant educational disabilities. His eligibility for services under the IDEA is based on an intellectual disability, formerly called mental retardation in Maryland.⁸ The Student received special education services from the MCPS, but only for pre-kindergarten. He has been enrolled at Sulam since September 2009.

The Student's most recent psychological assessments in March 2009 and June 2012 resulted in a similar disability profile: "[S]ignificant deficits that create barriers to learning," with general cognitive abilities at or below the first percentile and "significantly below average social-adaptive skills." On a non-verbal test of intelligence, the results were "very poor, meaning that it's the lowest classification you can

⁸ The Student is also diagnosed with Down Syndrome.

get in terms of classifying where the child is functioning." Nonetheless, the Student "can learn" and "there's nothing about his profile that says he cannot learn."

The Student's most recent educational assessments in February-March 2009 and July-August 2012 showed "significantly below average" performance in all academic areas in 2009 and "weaknesses" in all areas in 2012 on an instrument designed to test children "functioning below the developmental age of 7." In all the academic and visual-motor areas, his scores in 2012 were "aligned with" children of kindergarten age, with some below and some at the first- grade level.

The parties also do not dispute the facts related to the IEP process that culminated in the Parents' rejection of the proposed IEP for the 2012-2013 school year. The IEP meetings began on June 6, 2012. The attendees included Ms. Browne, Ms. Resti, and the Parents, among others. The purpose of the meeting was to re-evaluate the Student's current levels of academic achievement and educational performance. The parties agreed that additional assessment information was needed, and the Parents authorized the MCPS to obtain assessments in the areas of education, speech and language, and psychology.

The parties next met on September 5, 2012, to review the results of the assessments. The attendees included Ms. Browne, Ms. Davisson, Dr. Foster, Mrs. Leiman, Ms. Resti, and Ms. Fisher, among others. The parties agreed intellectual disability was the Student's correct diagnosis.

They further agreed that an educational program should contain goals in the areas of academics and social-adaptive skills and that the Student's occupational therapy needs should be explored. Mrs. Leiman authorized the MCPS to obtain an occupational therapy assessment.

The OT and speech and language assessments were completed before the next IEP meeting in December 2012. The speech and language pathologist (SLP) evaluated the Student on August 29, 2012. The SLP reported weaknesses in the Student's expressive grammar and vocabulary, syntax, articulation, and speech-language difficulties in practical environments that "negatively impact educational performance in understanding verbal directions, expressing ideas verbally in class, and reading comprehension." The speech and language pathologist recommended the following classroom accommodations:

- Provide verbal cues when possible to increase comprehension of oral language
- Have [the Student] verbally repeat important directions/information.
- Encourage [the Student] to verbalize whenever appropriate.
- Provide step-by-step directions, repeating when necessary.
- Rephrase and repeat directions when [the Student] appears to misunderstand.
- Model clear speech when [the Student] does not articulate.

- Praise [the Student] when he uses clear speech.

On November 21, 2012, the occupational therapist evaluated the Student's fine motor skills. Although the Student refused to finish the testing, the therapist diagnosed decreased muscle tone or strength that adversely affected the Student's ability to manage classroom materials and personal belongings, and she recommended one hour of physical therapy per week.

The next IEP meeting was on December 5, 2012. The attendees included Ms. Browne, Mrs. Leiman, Ms. Resti, and Ms. Fisher, among possibly others. At this meeting, the IEP team began to focus on the development of an IEP. The Student's present levels of functioning in oral language, mathematics, written language, reading, fundamental life skills, social/emotional skills, and fine motor coordination were identified. In the area of fundamental life skills, the draft IEP records the following:

Strengths: can say his first and last name, can navigate safely from one place to the next within a school building, knows some community signs (bathroom, exit, stop), washing his hands for personal cleanliness[.] Weaknesses: personal information, address, telephone number, managing his clothes.

The draft IEP also lists several instructional and testing accommodations and goals and objectives in written language, mathematics, fine motor skills, reading, self-advocacy behavior, community participation, and speech and

language. The goal in the area of community participation reads as follows:

Given whole group and small group instruction about a preplanned community experience, teacher modeling, verbal prompts, visual clues, picture/graphics incorporated into instruction, opportunities to rehearse/practice, word banks/ sentence starters, [the Student] will positively participate in a community experience and complete the assigned tasks related to the experience.

The parties were unable to finalize the Student's IEP at this meeting. The Parents were concerned about the emerging content of the IEP. Their concerns included "identifying, understanding/distinguishing between, and determining Kosher snacks/foods." The notes from this IEP also indicate:

The family believes that [the Student's] functional life skill needs are different [from] a non-Orthodox Jewish student's functional life skill needs and these are non-negotiable items and these are necessary for him to function independently in his specific community. He needs to know which hobbies/interests can be pursued on religious days, identifying and applying kosher symbols, knowing when to say appropriate blessings at the appropriate time, [and] applying rituals and blessings at the appropriate times.

The IEP was finalized on January 9, 2013. The attendees at this meeting included Ms. Browne,

Ms. Davisson, the speech and language pathologist, the occupational therapist, Mrs. Leiman, and Ms. Resti. Most of the decisions reached at the December 2012 IEP meeting were incorporated into the proposed IEP. The descriptions of the Student's present levels of academic achievement and functional performance in each subject matter area are essentially the same as those listed on the December 2012 IEP.⁹

The final IEP includes a list and description of supplemental aides, services, and program modifications and supports that were not part of the December IEP. These include the daily use by the special education teacher of the following: (i) manipulatives, (ii) frequent and/or immediate feedback, (iii) picture schedule, (iv) breaking tasks into simpler steps, (v) fading verbal/visual prompts/cues, (vi) exemplars of student work, (vii) opportunities for re-teaching and reassessment, (viii) repeated/rephrased directions, (ix) pictorial word bank/sentence starters, (x) wait time for the formulation of oral responses, (xi) pictures to support reading passages when possible, (xii) provide for home-school communication system, (xiii) reinforcement of positive behavior, and (xiv) positive/concrete reinforcers.

The final IEP also contains goals and objectives in the following eleven areas: (i) written language, (ii) mathematics, (iii) functional mathematics, (iv) fine motor coordination, (v) reading, (vi) functional

⁹ The January 2013 IEP lists, for the first time, "managing when his face is dirty or when his nose is running" as a weakness in the fundamental life skills area.

reading, (vii) self-advocacy, (viii) functional writing, (ix) behavior, (x) community participation, and (xi) speech and language. In regard to the mathematics goals, the objectives include, among others, telling time in intervals of half hour and hour using an analog clock and identifying coins. In the area of functional reading, goals include learning to identify increasingly larger number of community/safety signs. And, in the area of community participation, the objectives include: (i) identify a variety of predetermined items from a given list, (ii) explain/share ideas about the community experience, (iii) complete the instructional related to the community experience, and (iv) identify predetermined community signs.

The final IEP also provides for placement in a self-contained, special education program at Woodlin Elementary School where the Student would receive instruction in the fundamental life skills curriculum and receive a high school certificate of completion. The IEP provides for twenty three hours and forty-five minutes of special education services outside the general education program, five hours of special education services in the general education program, one hour per week of both occupational therapy and speech and language therapy.

The Parents rejected the final IEP because MCPS refused to incorporate goals and objectives related to the Student's Orthodox Jewish culture as part of the Student's educational plan. The final IEP summarized the Parents' disagreements as follows:

The family believes that the community participation goal is tricky as [the Student] should be [sic] be expected to participate in a general [c]ommunity outing if it does not align with his Orthodox Jewish rules.¹⁰ For example, if they are expected to order food at a restaurant, [the Student] may not be able to eat at that restaurant, nor would he ever go to a restaurant that was not Kosher.

The final IEP also lists the Parents' "concerns/request regarding [the Student's] proposed placement in MCPS" as follows:

1. I feel that the IEP focuses on preparing [the Student] to "fit in" with the general community instead of the one he will live in. [The Student] needs to learn skills that are relevant to his "real world."
2. He is not capable of generalizing what he learns at school to home and vice-versa. [H]e needs the same information taught in both [sic] settings.
3. The teachers he will have at school will not have in-depth knowledge of his cultural and religious practices.
4. [The Student] will never be able to cook at an MCPS location, which is included in the FLS learning domain.
5. In the community, he will be exposed to things that go against his cultural beliefs.

¹⁰ It is clear from the context, and the entire due process hearing, that this should read: "should not be expected to participate"

6. [The Student's] reading needs are different in order to function independently [sic] in his community. He needs to be able to identify which foods he will be able to eat (which is stated in the curriculum) and which foods he cannot.

7. [The Student] needs to follow certain cultural routines and will not have the opportunity to do those practices in the public school.

8. The behaviors [sic] expected of a non-Orthodox Jewish person are vastly different from those in the Orthodox Jewish community.

9. Without an educator who understands the cultural needs of [the Student], undue burden on the parents to know how to meet his instructional needs in order to attain the independent living skills he needs.

The Student continues to attend Sulam where he receives a proper education.

DOES THE MCPS' IEP FOR THE 2012-2013 SCHOOL YEAR PROVIDE THE STUDENT A FAPE?

In a case like this -- where parents have rejected the public school's proposed IEP, the child is attending a private school, and parents request public reimbursement for tuition -- an administrative law judge must first determine whether the public school's proposed IEP offered the child a FAPE. *Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985). In addition, because the Parents filed the due

process complaint, they have the burden, by a preponderance of the evidence, to prove the inadequacy of the proposed IEP. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

The Parents argue that the IEP does not provide FAPE because it fails to "address the culture and literacy that [the Student] needs to learn despite the overt reality that the challenges he faces in acquiring those skills 'result from [his] disability.'" The Parents' argument flows from what they see as a confluence of (i) the Student's intellectual disability, (ii) the Student's membership in the Orthodox Jewish community, and (iii) the nature of the MCPS' obligations under the IDEA.

The Student's disability

The parties agree that the Student is eligible for special education and related services under the IDEA based on a diagnosis of intellectual disability. Mr. Weinfeld testified that the Student has a "significant" intellectual disability, although he is capable of learning with an "intensive, repetitive, and structured kind of program." Tr. 234. Dr. Foster agrees that the Student "can learn," but his cognitive functioning is "extremely low," and he has "a pervasive weakness in significant areas, in major areas of the learning domain, consisting of visual processing, consisting of verbal skills as well as processing speed as well as language development." Tr. 499, 500. Ms. Davisson agrees the Student needs structure and repetition to learn and acquire skills. Tr. 657. Ms. Browne also agrees the Student needs a lot of structure, repetition, and reinforcement to learn. Tr. 843.

The parties disagree about whether the Student can generalize what he learns from one setting to a different setting. The Parents' witnesses do not think he can. Mr. Weinfeld testified that the Student "needs consistency between home and school" and "needs to be part of a group where it's consistent, where other kids are doing the same things where it's the same thing that's done at home and in school, so, it's all -- all part of one structured, consistent package." Tr. 224. Ms. Resti testified that "once [the Student] has a skill, it's critical that it be developed in a variety of areas across a variety of settings." Tr. 365. Dr. Foster, on the other hand, testified that the Student "can generalize," although "it might take him longer." Tr. 544.

The Student's Orthodox Jewish community

There is no dispute that the Student is being raised in the Orthodox Jewish community. The Parents' primary complaint is that the IEP does not address what he needs to learn to be a functional member of that community. As described below, the Jewish Bible, laws, and customs control the manner in which an Orthodox Jew eats, dresses, prays, and generally conducts him- or herself.¹¹

All of the Parents' school-age children attend private Jewish schools that "teach the Orthodox

¹¹ The record includes frequent references to the difference between the religion of Judaism and the culture of Orthodox Judaism. This often occurred in the context of questions or testimony about what is missing from the MCPS' proposed IEP and in the Parents' closing arguments. Rabbi Landesman, the only witness accepted as an expert in Judaism, testified, however, that there is no significant difference between the religion and culture of Orthodox Judaism. Tr. 167.

Jewish way of life." Tr. 29. Rabbi Leiman explained that it is important that the Student learn to be an Orthodox Jew because "that is the life style we live" and "believe in very strongly." Tr. 34. Furthermore, Rabbi Leiman testified, "[T]here would be no greater pleasure for a parent that is like us to see our children go in pretty much the same way that we go ... [and] we think it is also right."

Rabbi Landesman explained that Orthodox Judaism "is a culture that observes Jewish law as reflected in the Bible and the Talmud and in the codes of Jewish law, which -- which regulates and affect Jewish people's lives in its totality."¹² Tr. 167. Orthodox Jews must "follow Jewish law in all aspects of their lives" (Tr. 175) and "orthodox religious people believe they are required to train their children to follow the same path." Tr. 168. Rabbi Landesman testified about difficulties a public school would have in educating a child to be an Orthodox Jew:

The -- the practical difficulties are that the public school would have to accommodate the many differences in life style that Orthodox children are subject to, like food, like holidays, national holidays, Christian holidays, its effect on music. The -- the effect on the interaction of kids with each other, social interaction, of going to parties, visiting each other's homes is beset with a lot of difficulties because of the numerous restrictions that Jewish kids -- Jewish Orthodox kids live by.

¹² See *supra* note 11.

Tr. 190.

Rabbi Landesman testified that it is "extremely important" for an Orthodox Jew to follow the rules of kosher and explained that kosher is "system of restrictions and prohibitions on what an Orthodox Jew is allowed to eat." Tr. 171, 176. Rabbi Leiman testified that "Kosher food means food that has been certified by a Rabbi," and certification means "[the food] meets the requirement that Torah lists for Kosher food." Tr. 35.

Rabbi Leiman testified that the essential rules of kosher are that milk foods and meat foods must be kept separate, and all foods must be distinguished as kosher or not kosher. Tr. 37. Kosher symbols -- there are dozens of them -- distinguish between kosher and non-kosher foods. Tr. 39. The rule of separation prohibits the mixing of meat foods and milk foods; they cannot be cooked using the same pots and pans or eaten using the same plates and utensils or together.

Rabbi Leiman testified that his family must wait "five hours" between eating a milk and meat meal. Tr. 56. Furthermore, there are brachot, or blessings, an Orthodox Jew must learn to say over food.

Rabbi Leiman testified about how a public school program might harm the Student by teaching him incorrectly:

A basic component in training a child for what life will be, it is very important for [the Student] to know, for independent living, how to cook, how to take care of himself.

Since [the Student] has a lot of rules about cooking, if he weren't taught those rules, it wouldn't be helping him at all and would not be preparing him for his way of life. In fact much of what he is taught there [MCPS] we would probably have to un-teach him before we would teach him the way that he would be doing it.

Just as several examples, we have already spoken about kosher and not kosher food. As a nice small example, an Orthodox Jew, before he uses an egg, checks the egg to make sure there are no blood spots in it. If there is a blood spot in the egg, the egg is not considered to be kosher. If [the Student] is not taught to do that, then he is cooking in an improper way, according to Orthodox Jewish law, just an example.¹³

Tr. 53.

The Student also dresses differently from non-Orthodox Jews. He wears a yarmulke, or "skull cap," which is "a demonstration of respect for God." Tr. 45, 178. He also wears tzitzit, which is a four-corner garment with fringes on the ends. Tr. 45, 175. "It is very discernable, when you see him, that he is not your average kid, but that he subscribes to some religion." Tr.46.

¹³ Rabbi Leiman also testified that he saw the Student eat a piece of a non-kosher cupcake during a birthday party when the Student attended a pre-kindergarten classroom at MCPS. Rabbi Leiman testified that he was not upset at the Student for what he had done, but "in terms of who he is and what we would like him to be, that's, for us, a horrifying experience," because "a basic component of Orthodox Judaism is eating kosher food." Tr. 43.

In addition, Orthodox Jews observe the shabbos, from sundown on Friday to forty-five minutes after sundown on Saturday night. Tr. 184. Shabbos is a day of rest during which Orthodox Jewish law prohibits thirty-nine categories of labor, including cooking, traveling in a motorized vehicle, and the operation of any electrical appliance. Tr. 184-85. Furthermore, explained Rabbi Landesman, Orthodox Jews do not carry anything outside the eruv on Saturdays. An eruv is a demarcated boundary around an Orthodox Jewish community within which Orthodox Jews may carry things on Saturdays. Tr. 186. Rabbi Leiman testified that the Student needs to be educated about the eruv:

I would never expect him to be able to build an eruv. I would never expect him to be able to check an eruv to make sure if it is halakhically permissible, which means that it is okay under Jewish law. That I would never expect him to do. But generally, Jew doesn't carry where there is no eruv, that I would. And I would expect him to ask, is the eruv serviceable this weekend? That is a question that every Orthodox child and young adult would ask.

Tr. 55.

Rabbi Leiman also testified that it is important for the Student to learn the Jewish calendar:

It is important for him [the Student] to realize that there is a holiday coming up. We prepare for a holiday before a holiday comes, we just don't allow it to happen to us. We make sure that we are ready for it. We

are schooled in what the holiday is about and try to get into the mindset of that holiday, so obviously you would need to know where we are in the calendar and what is coming next. It's important.

Tr. 58.

The following exchange between Mr. Eig and Rabbi Leiman took place about holidays:

Q. Speaking of holidays, I assume [the Student] observes holidays?

A. Yes.

Q. What holidays does he observe?

A. Jewish holidays.

Q. Are there a lot of them?

A. Yes.

Q. Especially in September?

A. Yes.

Q. When you went to observe in Montgomery County at [Woodlin], did you see any reference to holidays in their curriculum in any way?

A. Yes, I did. I believe it was [Woodlin]. We saw that one of the main parts, one of the main components of the class there was to train the children in the use of the calendar. So the way that they would differentiate the months, there was a picture under every month. So Halloween for November and a tree for December, et cetera.

Q. Is that a problem?

A. That's disturbing for us, yes.

Q. Because?

A. [The Student] does not celebrate those holidays and some of those holidays, we would have a very difficult time explaining to him why we do or don't celebrate those holidays.

Q. Such as?

A. Such as Halloween.

Q. Because?

A. We don't celebrate Halloween because Halloween is a -- it's not a Jewish holiday, it's a Pagan holiday and we don't celebrate that holiday. So to explain to [the Student] why everybody else in his classroom is celebrating that and we aren't would be difficult for us. Also, [the Student] has very limited hard drive space, should we say, and we didn't want to use up that space with something that would be extraneous to him, at best.

Tr. 50-51.

Rabbi Leiman also testified that the "ultimate source, of course, [of things one has to learn to be a good, observant Orthodox Jew] is the Bible." Tr. 59. Rabbi Leiman also testified that it is "essential" that the Student learn to read Hebrew on "two levels." One level is "an emotional level" related to the Student being able to read a "few verses in the Torah" at his bar mitzvah so that he "feels like he is part of things"; and the other level

is to be able to learn what "the Torah wants of him" by reading in Hebrew what the Torah commands. Tr. 74-76. In addition, the Student needs to learn about mitzvot, or "commandments from God," which are taught to Orthodox Jewish children in school. Tr. 59, 205. The Bible contains 613 mitzvot. *The nature of MCPS' obligations under the IDEA, according to the Parents*

The Parents rely on three sections of the IDEA as legal support for their general argument that the MCPS has failed to offer the Student a FAPE because the final IEP does not incorporate teaching him the Orthodox Judaism way of life. They rely on sections 1400(c)(1) and (c)(5)(B) of the IDEA to argue that "[the Student] has a right to become reasonably self-sufficient and economically independent within the community that he and his family select." Parents' Written Closing (PWC) at page 1.

20 U.S.C.A. § 1400(c) (2010) states:

(c) Findings

Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by

(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home.

The Parents also rely on sections 1400(d)(1)(A), 1401(29), and 1401(34) of the IDEA; *Bd. of Educ. of Hendrick County Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); and COMAR 13A.04.05 to argue that MCPS is obligated "to educate [the Student] to live in the Orthodox Jewish community[]" and section 1414(d)(1)(A) of the IDEA to allege that the "MCPS has refused to include goals in [the Student's] [IEP] that address culture and literacy that he needs to learn despite the overt reality that the challenges he faces in acquiring those skills, 'result from [his] disability.'" PRC pages 2 and 15.

20 U.S.C.A. § 1400(d) (2010) states:

(d) Purposes

The purposes of this chapter are-

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

20 U.S.C.A. § 1401 (2010) provides:

Except as otherwise provided, in this chapter:

(29) Special Education

The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including-

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(34) Transition Services

The term "transition services" means a coordinated set of activities for a child with a disability that-

(A) is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supportive employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

COMAR 13A.04.05 regulates "[e]ducation that is multicultural." The Parents rely on portions of the following regulations:

COMAR 13A.04.05.01A states:

.01 Scope

A. Assurance of success for all students in Maryland is dependant upon quality and equity in education, which empowers students to make decisions on important social and personal issues, and take action to help solve them. The intent of this chapter is to provide for local school systems' guidelines and goals for education that is multicultural, that will enable the school systems to provide curricula, instruction, staff development, and instructional resources that are multicultural while recognizing our common ground as a nation. These will enable children to demonstrate knowledge, understanding, and appreciation of cultural groups in the State, nation, and world.

The subsections in Regulation .04 that are cited by the Parent are as follows:

COMAR 13A.04.05.04:

B. Curriculum.

(2) Goal. To provide pre-K--2 curriculum, which develops the valuing of cultural groups in the United States as an integral part of education for a culturally pluralistic society. The curriculum shall provide opportunity for students to demonstrate the following attitudes and actions:

- (a) Valuing one's heritage;
- (b) Valuing the uniqueness of cultures other than one's own;
- (c) Valuing the richness of cultural diversity and commonality;
- (d) Respecting diverse cultural groups throughout the world;
- (e) Awareness of and sensitivity to individual differences within various cultural groups; and
- (f) Eliminating stereotypes related to race, ethnicity, region, religion, gender, socioeconomic status, age, and individuals with disabilities.

C. Instruction.

- (2) The instructional program shall:
 - (a) Promote a school climate that reflects the diversity of the community;
 - (b) Promote a school climate in which different cultural linguistic patterns are respected;

(c) Promote grouping of students to reflect cultural diversity;

(d) Ensure that a student may not be denied access to equally rigorous academic instruction on the basis of cultural background;

(e) Use instructional activities which recognize and appreciate students' cultural identities and learning styles;

(f) Address racism, sexism, bias, discrimination, and prejudice;

(g) Use organizations promoting cultural and ethnic understanding;

(h) Use instructional activities that promote an understanding of and a respect for a variety of ways of communicating, both verbal and nonverbal;

(i) Use instructional materials which reinforce the concept of the United States as a pluralistic society within a globally interdependent world while recognizing our common ground as a nation;

(j) Incorporate multicultural instructional materials in all subject areas; and

(k) Provide opportunities for students to analyze and evaluate social issues and propose solutions to contemporary social problems.

D. Staff Development.

(1) Goal. To include in staff development experiences that prepare school system personnel to design, manage, implement, and evaluate multicultural education.

(2) The experiences in § D(1) of this regulation include:

(b) Activities to identify instructional strategies, techniques, and materials appropriate for education that is multicultural;

(c) Training in assessing the prior knowledge, attitudes, abilities, and learning styles of students from varied backgrounds in order to develop multicultural instructional programs[.]

Analysis

The gravamen of the Parents' complaint is the following: "MCPS has just refused to consider adding instruction that will prepare [the Student] for an Orthodox Jewish way of life, and that violates his right to a FAPE. It is clear that the school system's proposed IEP cannot prepare [the Student] for life in his Orthodox Jewish community, rendering it inappropriate." Parents Rebuttal Closing (PRC) at page 11. Furthermore, they insist that the MCPS' proposed IEP fails to provide the Student with a FAPE because

[n]ot only has [the] MCPS failed to propose an educational program for [the Student] that would prepare him to be a successful, independent member of his Orthodox

Jewish community, but the school system's witnesses at the hearing repeatedly testified that they would not personalize [the Student's] IEP to meet his unique needs or include any of the bilingual or bicultural education he needs to be part of his community.

PWC at page 16.

Moreover, according to the Parents,

There is no rational argument that such goals ["addressing skills necessary for the practice of the Orthodox Jewish culture and rituals"] do not belong in [the Student's] IEP. . . . [A]s the IDEA states, these annual goals ["telling time and making change"] can be either academic and functional. What we know about [the Student] is that his functioning for the rest of his life is primarily going to be in an Orthodox Jewish Community. Consequently, his functional IEP goals should not merely address skills such as reading and visual discrimination, but they should address them functionally. That means that the reading instruction should be in both English and Hebrew, and the visual discrimination instruction should focus on telling various Kosher symbols apart on food packaging. And, of course, the time recognition mentioned above should focus on how long [the Student] must wait after a meat dish to eat dairy.

All these things belong in [the Student's] IEP goals because they are all functional

and/or academic skills that he needs in his community and in his culture, and the acquisition of them is seriously impacted by his educational disability. It is not more complicated than that.

PWC 19-20.

There is virtually no dispute about material facts. The MCPS' proposed IEP for the 2012-2013 school year does not provide an educational program that teaches the Student the ways of the Orthodox Jewish community. Although the Parents accuse the MCPS of abdicating an obligation under the IDEA to "prepare [the Student] for life in his Orthodox Jewish community," I do not agree because I find that the IDEA, and corresponding State law, imposes no such obligation on the MCPS.

The IDEA obligates the MCPS to offer the Student a FAPE. Section 1401(9) of Title 20 defines a FAPE as,

"special education and related services that- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9) (2010); *see also* 34 C.F.R. § 300.17 (2013) (same definition); Md. Code Ann., Educ. § 8-401(a)(3) (Supp. 2013) (essentially the

same definition); COMAR 13A.05.01.03B(27) (essentially the same definition).

"Special education" is "**specially designed instruction**, at no cost to parents, to meet the unique needs of a child with a disability, including- (A) instruction conducted in the classroom...and in other settings; and (B) instruction in physical education." 20 U.S.C.A. § 1401(29) (2010) (emphasis added); *see also* 34 C.F.R. § 300.39 (2013) (adding speech-language pathology services and others); Md. Code Ann., Educ. § 8-401(a)(3) (Supp. 2013) (essentially the same); COMAR 13A..05.01.03B(71) (adding speech-language pathology services and others). COMAR 13A.05.01.03B(72) defines "specially designed instruction" as "the adaptation of content, methodology, or delivery of instruction to address the unique needs of a student with a disability **to ensure access to the general curriculum**, so that the student can meet the educational standards that apply to each student within the jurisdiction of the public agency." (Emphasis added).

"Related Services" are "transportation, and such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education" 20 U.S.C.A § 1401(26) (2010); *see also* 34 C.F.R. § 300.34 (2013) (generally the same, but including a laundry list of services); Md. Code Ann., Educ. § 8-401(a)(4) (Supp. 2013) (essentially the same); COMAR 13A.05.01.03B(65) (generally the same, but including a laundry list of related services and exclusions).

In *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 186 (1982), the Court decided "what is meant by the [IDEA's] requirement of a 'free appropriate public education[.]'" In reaching its decision, the Court referred to the IDEA's definition of FAPE as "cryptic," but determined that "if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act."¹⁴ *Id.* at 189.

The specific issue before the *Rowley* Court, however, was whether Congress intended a FAPE also to "meet some additional substantive standard." *Id.* at 189-90. This specific issue arose because the dispute brought to the Court was: what amount of educational benefit to the disabled child was enough to satisfy the appropriate requirement of a FAPE? The Court examined the legislative history of the IDEA to discern Congress' intent in order to answer that question.

The congressional record showed that Congress "sought primarily to make public education available to handicapped children." This paramount intent flowed from socio- educational data showing that about one million of "roughly" eight million "handicapped" children were excluded from public education and over one half

¹⁴ The "definitional checklist" includes that the educational instruction and services "be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP." *Rowley*, 458 U.S. at 189.

of those attending public schools were receiving an inadequate education. The Court explained:

By passing the [IDEA], Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful. Indeed, Congress expressly "[recognized] that in many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome." Thus, the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.

Id. at 192 (citation omitted).

The Court specifically held that a State satisfies its requirement to provide a disabled child with a FAPE:

By providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized

instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Id. at 203-204.

The Parents' argument that the "fundamental problem with the MCPS' position is that it removes the 'I' from [the Student's] IEP" (PWC page 17) and that the IDEA requires the MCPS to provide the Student "necessary help in accessing whatever **his curriculum** might be" (PWC page 23, emphasis supplied) is incorrect.

As discussed above, Congress enacted the IDEA to require states to make public education available to disabled children. Nothing in the IDEA, corresponding State law, or enabling regulations require a state educational agency to individualize an educational program to a disabled child's religion, culture, or community enclave. This was essentially Ms. Browne's testimony when she was asked to explain why MCPS did not include religious or cultural goals and instruction in the IEP. She testified that "specially designed instruction" is "strategy," "instruction," "related services," and "specific" reading or math "interventions ... that meet the needs of a student's educational disability in order that they can access and make progress in the general curriculum as defined by the school system area, the local education agency." Tr. 799.

The language relied on by the Parents in *Rowley* -- that FAPE is satisfied "by providing personalized

instruction with sufficient support services to permit the child to benefit educationally from that instruction" -- must be understood in the context of the purpose of the IDEA and statutory language that addresses the IEP. As discussed above, Congress enacted the IDEA to require local educational agencies to provide disabled children access to the public school curriculum, not, as the Parents argue here, to access his Orthodox Jewish community.

Subsection 1414(d) of the IDEA addresses IEPs and makes clear that the goals and objectives in an IEP are "designed to ... meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general educational curriculum" ¹⁵ U.S.C.A. § 1414(d)(1)(A)(II)(aa) (2010). In addition, when addressing reviews and revisions of IEPs, the IDEA makes clear that a revision of goals and objectives is required when a review shows lack of progress "in the general education curriculum." U.S.C.A. § 1414(d)(4)(ii)(I) (2010). In other words, the IDEA requirement that local educational agencies offer disabled children appropriate education means that the local agency must use special education and related services that are intended to provide disabled children meaningful access to the general curriculum, despite the child's disabling conditions. That is what is meant by the "I" in the IEP.

¹⁵ The Parents emphasize §1414(d)(1)(A)(II)(bb), which requires the annual goals "to meet each of the child's other educational needs that result from the child's disability." This language does not alter the IDEA's purpose of individualizing an education program to the child's disability in a manner that ameliorates the adverse effect of the child's disability on his or her ability to access the school's curriculum.

The Parents also refer to language in the preamble to the IDEA in support of their argument that the IDEA requires that the MCPS "must teach [the Student] and assist in his preparation for life in the Orthodox Jewish community." PWC at page 14. They refer to the following: "The purposes of this chapter are- (l)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." PWC at page 14 (quoting 20 U.S.C.A. § 1400(d)(l)(A) (2010)). There is nothing in that language that requires MCPS to teach the Student how to integrate into his Orthodox Jewish community. Furthermore, a preamble to a statute "is not an operative part of the statute and it does not enlarge or confer powers on administrative agencies or officers" when the operative sections of the statute are clear. *Jurgensen v. Fairfax County, Va.*, 745 F.2d 868, 885 (4th Cir. 1984) (quoting *Ass'n of Am. R.R. v. Costle*, 562 F.2d 1310, 1316 (D.C. Cir. 1977)). As discussed above, the *Rowley* Court addressed the meaning of the IDEA's FAPE requirement without reference to section 1400(d), and the operative parts of the IDEA only require a local educational agency to create an educational program that allows the disabled child reasonably to access the general curriculum.

The Parents also refer to COMAR 13A.04.05 and argue that Regulations .01, .04, and .05 make "[t]he obligation for MCPS to educate [the

Student] to live in the Orthodox Jewish community ... even more compelling" This argument is not persuasive because Chapter 05 does not regulate the State's implementation of its FAPE requirement under the IDEA, and Chapter 05 does not require Maryland public schools to educate a child to function in accordance with Orthodox Judaism.

COMAR 13A.05.01 regulates the State's implementation of the IDEA. COMAR 13A.04.05 regulates multicultural education. Even if the Parents had proven that the MCPS failed to comply with the regulatory requirements in COMAR 13A.04.05, such noncompliance does not create a right for them to file a due process complaint under the IDEA. Furthermore, COMAR 13A.04.05 does not grant individuals remedial rights.

The Department promulgated COMAR 13A.04.05 to provide "guidelines and goals for education that is multicultural ... and "that will enable the school systems to provide curricula [and] instruction ... that are multicultural. . . . COMAR 13A.04.05.01A.

COMAR 13A.04.05.04B(1) does not address IEPs or the IDEA; it addresses the development of a curriculum that "enables students to demonstrate an understanding of and an appreciation for cultural groups in the United States as an integral part of education for a culturally pluralistic society." COMAR 13A.04.05.04B(2) also does not address IEPs or the IDEA; it addresses the provision of "curriculum, which develops the valuing of cultural groups in

the United States as an integral part of education for a culturally pluralistic society." These subsections are for the development of curricula that encourage social tolerance for differences among cultures; they do not obligate teaching a child any particular culture or, in this case, a religion.

COMAR 13A.04.05.04C addresses providing "instruction" to students to enable them to obtain "an understanding of and appreciation for cultural groups as an integral part of education for a culturally pluralistic society." Regulation .04C(2) enumerates the goals and general content of such instruction, but there is nothing in this regulation that mentions the IDEA or IEPs or in any way requires the MCPS to instruct an individual student to be an Orthodox Jew.

COMAR 13A.04.05.04D(l) addresses the inclusion of "experiences that prepare school system personnel to design, manage, implement, and evaluate multicultural education" in staff development. Regulations .04D(2)(b) and (c) provide that such experiences "identify instructional strategies, techniques, and materials appropriate for education that is multicultural" and provide "[t]raining in assessing the prior knowledge, attitudes, abilities, and learning styles of students from varied backgrounds in order to develop multicultural instructional programs[.]" These regulations do not address any requirement that a child's educational program under the IDEA must be designed to include teaching him or her how to become a member of his or her insular cultural community. They address staff development, and they, like the others, are for the

purpose of creating general education that encourages tolerance and understanding of cultural differences. None of them provides legal support for the proposition that the MCPS' proposed IEP for the Student's 2012-2013 school year failed to provide a FAPE.

The Parents argue that the IEP is inappropriate and a denial of a FAPE because it does not provide an educational program that teaches the Student how to function as a member of his Orthodox Jewish community. However, two of the Parents' witnesses who testified as experts in special education agreed that the IEP would be appropriate for the Student if he were not being reared as an Orthodox Jew. Ms. Resti agreed that the proposed IEP would be appropriate if the Student were being raised in a family of atheists. Tr. 426. When asked whether the goals and objectives in the proposed IEP would be appropriate for the Student if he were not Jewish, Mr. Weinfeld testified, "I think they are appropriate, although I thought they could have been more inclusive." He agreed the final IEP would provide the Student with some educational benefit. Tr. 259-60. Furthermore, Rabbi Leiman agreed that MCPS's proposed IEP's goals and objective would meet the Student's secular needs (Tr. 88),¹⁶ and, but for the Student's cultural needs, his placement at Woodlin would meet his special and general educational needs. Tr. 89.

The absence of goals and objectives expressly

¹⁶ Rabbi Leiman later testified that the IEP would not meet the Student's secular needs "because his secular needs include making him as a person and fitting into his cultural milieu. The secular IEP contravenes that." Tr. 107.

related to Orthodox Judaism does not render the Student's educational program inappropriate. The Student's IEP is reasonably calculated to provide him with some educational benefit because it adequately addresses the Student's disability-based impediments to learning and appropriately provides for special education and related services that reasonably should enable him to benefit from the MCPS' curriculum. The Parents' position essentially is that the Student's IEP fails to provide a FAPE because it is not reasonably calculated to teach him to participate in his Orthodox Jewish community. However, as discussed above, the absence of goals that address the Student's Orthodox Judaism does not, as a matter of law, render the Student's educational program inappropriate. Accordingly, I do not find that the MCPS' proposed IEP for the Student's 2012- 2013 school year denied him a FAPE. The proposed IEP fully complies with the requirements of the IDEA.¹⁷

DOES THE STUDENT'S ENROLLMENT AT SULAM PROVIDE HIM A PROPER EDUCATION?

Because I have concluded that the Parents failed to prove that the proposed IEP for the Student's 2012-2013 school year in the MCPS did not provide a FAPE, it is not necessary for me to address this issue in more detail than to say, based on my review of the

¹⁷ Although the MCPS has no burden of proof, I have reviewed the proposed IEP and the legal requirements for the provision of FAPE, and I am satisfied that the proposed IEP conforms to the legal requirements set forth in the relevant federal and State law.

record and the testimony of the Parents' witnesses, Sulam provides a proper education.

DOES THE PARENTS' REQUEST FOR TUITION REIMBURSEMENT VIOLATE THE FIRST AMENDMENT?

Because I have concluded that the Parents failed to prove that the proposed IEP for the Student's 2012-2013 school year in the MCPS did not provide a FAPE, it is not necessary for me to address this issue.¹⁸

CONCLUSIONS OF LAW

I conclude the following:

A. The Parents have failed to prove that the IEP offered by the MCPS was not reasonably calculated to offer the Student with a meaningful educational benefit for the 2012-2013 school year. 20 U.S.C.A. §§ 1400-1482 (2010 & Supp. 2013); Md. Code Ann., Educ. § 8-403 (2008); COMAR 1 3A.05.01. 03B(71); *see Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

B. The IEP and placement proposed by MCPS for the 2012-2013 school year are reasonably calculated to offer the Student a FAPE. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Sch. Comm. of Burlington v. Dep't. of Educ. of Mass.*, 471 U.S. 359, 369 (1985).

ORDER


I **ORDER** that the Parents' request for a declaration that Sulam is the proper educational

¹⁸ The MCPS also makes a bad faith argument that is not necessary for me to address based on my ruling regarding the FAPE issue.

placement for the Student and for reimbursement for the costs of the Student's attendance at Sulam for the 2012-2013 school year is **DENIED**.¹⁹

January 23, 2014

Date Decision Mailed


Michael D. Carlis
Administrative Law Judge *by EJA*

¹⁹ After the close of the record, the parties' attorneys submitted the following correspondence to me. Mr. Krew wrote on January 2, 2014, that he objected to what he thought was Mr. Eig's unfair characterization in the PRC of how he treated witnesses during the hearing. Shortly after Mr. Eig received a copy of Mr. Krew's correspondence, he submitted an email on the same date objecting to what he believed was Mr. Krew's violation of OAH's rules and the schedule I set for the parties' submission of closings. Mr. Eig requested sanctions and separately submitted legal authority. Mr. Krew followed Mr. Eig's email with an email of his own in which he placed responsibility for his initial correspondence squarely on Mr. Eig's shoulders. Both parties have asked me to respond, which I do: I do not think sanctions are appropriate, and I do not think that either attorney's behavior during the hearing was outside the boundaries of acceptable conduct

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) (2008).

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

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

[ENTERED SEPTEMBER 11, 2017]

FILED: September 11, 2017

UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 15-1977 (8:14-cv-01679-PWG)

M. L., a minor, by his parents and next friends, Akiva
and Shani Leiman; AKIVA LEIMAN; SHANI
LEIMAN

Plaintiffs - Appellants

v.

DR. JACK R. SMITH, in his official capacity as
Superintendent; MONTGOMERY COUNTY
BOARD OF EDUCATION

Defendants - Appellees

NATIONAL JEWISH COMMISSION ON LAW
AND PUBLIC POLICY, "COLPA"; MARYLAND
CAPE, INC.; JEWELS SCHOOL; MAGEN LEGAL

Amici Supporting Appellant

NATIONAL SCHOOL BOARDS ASSOCIATION;
MARYLAND ASSOCIATION OF BOARDS OF
EDUCATION; AMERICANS UNITED FOR
SEPARATION OF CHURCH AND STATE;
AMERICAN CIVIL LIBERTIES UNION; ACLU
OF MARYLAND; BAPTIST JOINT COMMITTEE
FOR RELIGIOUS LIBERTY; CENTRAL
CONFERENCE OF AMERICAN RABBIS;
JEWISH SOCIAL POLICY ACTION NETWORK;
PEOPLE FOR THE AMERICAN WAY
FOUNDATION; UNION FOR REFORM
JUDAISM; WOMEN OF REFORM JUDAISM

Amici Supporting Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

United States Code Annotated
Title 20. Education
Chapter 33. Education of Individuals with
Disabilities (Refs & Annos)
Subchapter I. General Provisions

20 U.S.C.A. § 1400
§ 1400. Short title; findings; purposes

Effective: October 5, 2010 Currentness

(a) Short title

This chapter may be cited as the “Individuals with Disabilities Education Act”.

(b) Omitted

(c) Findings

Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because--

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by--

(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to--

(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

(C) coordinating this chapter with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

(B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

(C) Minority children comprise an increasing percentage of public school students.

(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our

Nation's students from non-English language backgrounds.

(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) African-American children are identified as having intellectual disabilities and emotional disturbance at rates greater than their White counterparts.

(D) In the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this

chapter, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

(d) Purposes

The purposes of this chapter are--

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational

results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 601, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647; amended Pub.L. 111-256, § 2(b)(1), Oct. 5, 2010, 124 Stat. 2643.)

20 U.S.C.A. § 1400, 20 USCA § 1400

Current through P.L. 115-84. Title 26 current through 115-89.

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United States Code Annotated
Title 20. Education
Chapter 33. Education of Individuals with
Disabilities (Refs & Annos)
Subchapter II. Assistance for Education of All
Children with Disabilities

20 U.S.C.A. § 1414

§ 1414. Evaluations, eligibility determinations,
individualized education programs, and
educational placements

Effective: October 1, 2016

Currentness

**(a) Evaluations, parental consent, and
reevaluations**

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this subchapter.

(B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) Procedures

(i) In general

Such initial evaluation shall consist of procedures--

(I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) Exception

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(D) Parental consent

(i) In general

(I) Consent for initial evaluation

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(II) Consent for services

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

(ii) Absence of consent

(I) For initial evaluation

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the

parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

(II) For services

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

(III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) Consent for wards of the State

(I) In general

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) Exception

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) Rule of construction

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(2) Reevaluations

(A) In general

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)--

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation

A reevaluation conducted under subparagraph (A) shall occur--

(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall--

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

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

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

(3) Additional requirements

Each local educational agency shall ensure that--

(A) assessments and other evaluation materials used to assess a child under this section--

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

(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

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

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

(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) Determination of eligibility and educational need

Upon completion of the administration of assessments and other evaluation measures-

-

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title, as such section was in effect on the day before December 10, 2015);

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) Specific learning disabilities**(A) In general**

Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional authority

In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific,

research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall--

(A) review existing evaluation data on the child, including--

(i) evaluations and information provided by the parents of the child;

(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(2) Source of data

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency--

(A) shall notify the child's parents of--

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) Evaluations before change in eligibility**(A) In general**

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception**(i) In general**

The evaluation described in subparagraph (A) shall not be required

before the termination of a child's eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(d) Individualized education programs

(1) Definitions

In this chapter:

(A) Individualized education program

(i) In general

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

(I) a statement of the child's present levels of academic achievement and functional performance, including--

(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;

(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

(II) a statement of measurable annual goals, including academic and functional goals, designed to--

(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(bb) meet each of the child's other educational needs that result from the child's disability;

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports,

concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and

(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why--

(AA) the child cannot participate in the regular assessment; and

(BB) the particular alternate assessment selected is appropriate for the child;

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter--

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and,

where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

(ii) Rule of construction

Nothing in this section shall be construed to require--

(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

(B) Individualized education program team

The term “individualized education program team” or “IEP Team” means a group of individuals composed of--

(i) the parents of a child with a disability;

(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;

(iv) a representative of the local educational agency who--

(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(II) is knowledgeable about the general education curriculum; and

(III) is knowledgeable about the availability of resources of the local educational agency;

(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(vii) whenever appropriate, the child with a disability.

(C) IEP Team attendance

(i) Attendance not necessary

A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(ii) Excusal

A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if--

(I) the parent and the local educational agency consent to the excusal; and

(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(iii) Written agreement and consent required

A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

(D) IEP Team transition

In the case of a child who was previously served under subchapter III, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the subchapter III service coordinator or other representatives of the subchapter III system to assist with the smooth transition of services.

(2) Requirement that program be in effect**(A) In general**

At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) Program for child aged 3 through 5

In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 1436 of this title, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is--

- (i) consistent with State policy; and
- (ii) agreed to by the agency and the child's parents.

(C) Program for children who transfer school districts

(i) In general

(I) Transfer within the same State

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(II) Transfer outside State

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education,

including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(ii) Transmittal of records

To facilitate the transition for a child described in clause (i)--

(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(3) Development of IEP

(A) In general

In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider--

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

(B) Consideration of special factors

The IEP Team shall--

- (i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- (ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;
- (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate

reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) consider whether the child needs assistive technology devices and services.

(C) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

(D) Agreement

In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

(E) Consolidation of IEP Team meetings

To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(F) Amendments

Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

(4) Review and revision of IEP**(A) In general**

The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team--

- (i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address--

(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

(IV) the child's anticipated needs; or

(V) other matters.

(B) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

(5) Multi-year IEP demonstration

(A) Pilot program

(i) Purpose

The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to

coincide with the natural transition points for the child.

(ii) Authorization

In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

(iii) Proposal

(I) In general

A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

(II) Content

The proposal shall include--

(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

(cc) a list of required elements for each multi-year IEP, including--

(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child

to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

(dd) a description of the process for the review and revision of each multi-year IEP, including--

(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local

educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

(B) Report

Beginning 2 years after December 3, 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including—

(i) reducing--

(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

(II) noninstructional time spent by teachers in complying with this subchapter;

(ii) enhancing longer-term educational planning;

(iii) improving positive outcomes for children with disabilities;

(iv) promoting collaboration between IEP Team members; and

(v) ensuring satisfaction of family members.

(C) Definition

In this paragraph, the term “natural transition points” means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

(6) Failure to meet transition objectives

If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(7) Children with disabilities in adult prisons

(A) In general

The following requirements shall not apply to children with disabilities who are convicted

as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 1412(a)(16) of this title and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).

(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this subchapter will end, because of such children's age, before such children will be released from prison.

(B) Additional requirement

If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections ¹ 1412(a)(5)(A) of this title and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) Educational placements

Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(f) Alternative means of meeting participation

When conducting IEP team² meetings and placement meetings pursuant to this section, section 1415(e) of this title, and section 1415(f)(1)(B) of this title, and carrying out administrative matters under section 1415 of this title (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

CREDIT(S)

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Footnotes

¹ So in original. Probably should be “section”.

² So in original. Probably should be capitalized.

20 U.S.C.A. § 1414, 20 USCA § 1414

Current through P.L. 115-84. Title 26 current through 115-89.

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United States Code Annotated
Title 20. Education
Chapter 33. Education of Individuals with
Disabilities (Refs & Annos)

Subchapter II. Assistance for Education of All
Children with Disabilities

20 U.S.C.A. § 1415

§ 1415. Procedural safeguards

Effective: July 1, 2005

Currentness

(a) Establishment of procedures

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include the following:

- (1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of--

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in section 11434a(6) of Title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency--

(A) proposes to initiate or change; or

(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with subsection (e).

(6) An opportunity for any party to present a complaint--

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)-

(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

(ii) that shall include--

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of Title 42), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) Notification requirements

(1) Content of prior written notice

The notice required by subsection (b)(3) shall include--

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

(2) Due process complaint notice

(A) Complaint

The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

(B) Response to complaint

(i) Local educational agency response

(I) In general

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include--

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency's proposal or refusal.

(II) Sufficiency

A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that

the parent's due process complaint notice was insufficient where appropriate.

(ii) Other party response

Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

(C) Timing

The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

(D) Determination

Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

(E) Amended complaint notice

(i) In general

A party may amend its due process complaint notice only if--

(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(ii) Applicable timeline

The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

(d) Procedural safeguards notice

(1) In general

(A) Copy to parents

A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents--

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

(B) Internet website

A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

(2) Contents

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to--

- (A)** independent educational evaluation;
- (B)** prior written notice;
- (C)** parental consent;
- (D)** access to educational records;
- (E)** the opportunity to present and resolve complaints, including--
 - (i)** the time period in which to make a complaint;
 - (ii)** the opportunity for the agency to resolve the complaint; and
 - (iii)** the availability of mediation;
- (F)** the child's placement during pendency of due process proceedings;
- (G)** procedures for students who are subject to placement in an interim alternative educational setting;
- (H)** requirements for unilateral placement by parents of children in private schools at public expense;
- (I)** due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (if applicable in that State);

(K) civil actions, including the time period in which to file such actions; and

(L) attorneys' fees.

(e) Mediation

(1) In general

Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) Requirements

Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process--

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this subchapter; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) Opportunity to meet with a disinterested party

A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with--

(i) a parent training and information center or community parent resource center in the State established under section 1471 or 1472 of this title; or

(ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) List of qualified mediators

The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) Costs

The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Scheduling and location

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Written agreement

In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) Mediation discussions

Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(f) Impartial due process hearing**(1) In general****(A) Hearing**

Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local

educational agency, as determined by State law or by the State educational agency.

(B) Resolution session

(i) Preliminary meeting

Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--

(I) within 15 days of receiving notice of the parents' complaint;

(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

(ii) Hearing

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence.

(iii) Written settlement agreement

In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) Review period

If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

(2) Disclosure of evaluations and recommendations

(A) In general

Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and

recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

(B) Failure to disclose

A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitations on hearing

(A) Person conducting hearing

A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum--

(i) not be--

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) possess knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State courts;

(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) Subject matter of hearing

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) Timeline for requesting hearing

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to--

- (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint;
or
- (ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

(E) Decision of hearing officer

(i) In general

Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(g) Appeal

(1) In general

If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

(2) Impartial review and independent decision

The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

(h) Safeguards

Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded--

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses; the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(3) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions--

(A) shall be made available to the public consistent with the requirements of section 1417(b) of this title (relating to the confidentiality of data, information, and records); and

(B) shall be transmitted to the advisory panel established pursuant to section 1412(a)(21) of this title.

(i) Administrative procedures

(1) In general

(A) Decision made in hearing

A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

(B) Decision made at appeal

A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

(2) Right to bring civil action

(A) In general

Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent

jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(B) Limitation

The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.

(C) Additional requirements

In any action brought under this paragraph, the court--

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees

(A) In general

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) Award of attorneys' fees

(i) In general

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs--

(I) to a prevailing party who is the parent of a child with a disability;

(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(ii) Rule of construction

Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) Determination of amount of attorneys' fees

Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) Prohibition of attorneys' fees and related costs for certain services

(i) In general

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if-

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) IEP Team meetings

Attorneys' fees may not be awarded relating to any meeting of the IEP Team

unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

(iii) Opportunity to resolve complaints

A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered--

(I) a meeting convened as a result of an administrative hearing or judicial action;
or

(II) an administrative hearing or judicial action for purposes of this paragraph.

(E) Exception to prohibition on attorneys' fees and related costs

Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys' fees

Except as provided in subparagraph (G), whenever the court finds that--

(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably

comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A), the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees

The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) Maintenance of current educational placement

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) Placement in alternative educational setting**(1) Authority of school personnel****(A) Case-by-case determination**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination**(i) In general**

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant

information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause

(I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the

jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in

placement of a child with a disability. In such situations, the hearing officer may--

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency--

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the

child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration

information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions

In this subsection:

(A) Controlled substance

The term “controlled substance” means a drug or other substance identified under schedule I,

II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug

The term “illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Weapon

The term “weapon” has the meaning given the term “dangerous weapon” under section 930(g)(2) of Title 18.

(D) Serious bodily injury

The term “serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of Title 18.

(I) Rule of construction

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(m) Transfer of parental rights at age of majority

(1) In general

A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

(A) the agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this subchapter transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this subchapter transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the

period of eligibility of the child under this subchapter.

(n) Electronic mail

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

(o) Separate complaint

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

CREDIT(S)

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20 U.S.C.A. § 1415, 20 USCA § 1415

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**FUNDAMENTAL LIFE SKILLS
INSTRUCTIONAL GUIDE
AND CURRICULUM FRAMEWORKS**

**Elementary School
Grades K-5
2005**

**Special Education Instruction
Department of Curriculum and Instruction
Office of Curriculum and Instructional
Programs
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland**



Instructional Guide for the Fundamental Life Skills Curriculum Elementary School

Introduction to the Guide

Background

The Montgomery County Public Schools (MCPS) Fundamental Life Skills (FLS) Curriculum was developed to provide a scope and sequence of indicators and competencies for students who are pursuing alternate learning outcomes. These students meet the participation criteria for the Alternate Maryland School Assessment (Alt-MSA). The curriculum is centered on fourteen Instructional Frameworks which have been aligned to the Maryland Content Standards and incorporate functional academics in the context of the following learning domains: communications/decision-making/interpersonal skills, community skills, career/vocational skills, recreation/leisure skills, and personal management.

The FLS Curriculum:

- provides access to the general education curriculum;
- promotes inclusive opportunities for students with disabilities who receive instruction in general education classrooms; and
- facilitates the direct teaching of Alt-MSA outcomes through modified general education content and functional learning experiences.

The FLS Curriculum is not intended to be used as a prescribed curriculum for any one specific group of students, but rather to serve as a guide for instructional decision-making on an individual student basis.

Purpose

The purpose of the **FLS Instructional Guide** is to further define "what students need to know and be able to do" as stated in the FLS Instructional Frameworks and to provide instructional supports to address the remaining essential questions:

- ❖ How will we know that they have learned it?
- ❖ What will we do when they haven't learned it?
- ❖ What will we do when they already know it?

Principles of instruction

The FLS Instructional Guide is based on the following principles of instruction widely accepted in the education of students with developmental disabilities:

1. Instruction should occur in "natural environments" and at naturally occurring times of the school day whenever possible; e.g., teach dressing skills in the locker room in preparation for PE class.
2. Repeated practice in isolated skills in classroom settings without connections to students' lives will not be motivating and will not generalize to real life situations.
3. Instructional priorities for each student should come from real world needs of the individual students to increase independence and autonomy in his or her home and community.
4. Access to the general education curriculum should be planned to the maximum extent appropriate for the individual needs of the child to the end of maximum independence and the highest possible quality of life.

5. Parent participation in establishing instructional priorities is critical to IEP planning.
6. Parents and professionals from different disciplines should collaborate in addressing the learning needs of students in multiple school and community settings.
7. Students should learn skills that are referenced to performance demands of real world environments.
8. Students should learn skills at a proficiency level necessary to be maintained in natural environments after instruction is finished.
9. Students should learn skills critical to maintain meaningful participation in the least restrictive environment.

The FLS Instructional Guide will assist teachers and school staff who work with students with moderate to severe disabilities in planning and providing multiple opportunities for the students to be involved and make progress in the general curriculum through functional learning experiences by providing:

- specific suggestions for instructional strategies in each learning domain
- effective practices in portfolio assessment
- procedures for aligning Alt-MSA outcomes with IEP development and implementation
- differentiated instructional strategies to ensure that daily instruction addresses individual needs of students
- samples of exemplary lesson plans developed by MCPS teachers
- tips and techniques for classroom scheduling and behavior management

**Learning Domains:
Suggested Instructional Strategies,
Assessments and Resources**

**Communication/Decision-
Making/Interpersonal
Personal Management
Community
Career/Vocational
Recreation/Leisure**

The learning domains outcomes and indicators are the vehicle by which the content becomes events. Through the learning domains the students demonstrates the skills necessary to perform a variety of tasks. The learning domains not only complement each other symbolically but also enhance and the content outcomes. The learning domains are an effort to assimilate and apply the essential; personal development skills to concepts and applied performance of tasks, in settings as natural as possible. These include, but are not limited to, communication, decision-making, interpersonal skills and academics. Learning domains should assist in the development of independence, interdependence, maintenance and transmission of skills necessary for the improvement of both self and society.

The learning domains are that part of the Fundamental Life Skills Curriculum which uses the communication, decision making, interpersonal skills and academics necessary to promote personal responsibility and interdependent living. The learning domains reflect current thinking in the field and are based on the Maryland Life Skills curricular Framework, contemporary research, curriculum

management and instructional practices. These domains must be continuously reviewed and applied.

The learning domains match the seven federal targeted aspects that define an integrated lifestyle. These aspects are: education, employment, social relationships; self-determination; recreation and leisure; neighborhood and community; and home.

Learning Domain: Personal Management

Personal management is an effort to assimilate and apply the essential concepts and applied performances of daily authentic tasks, in settings as natural as possible. These include, but are not limited to, personal needs, health and safety and certain routines. Professional consensus over the last decade has dictated the primary goal of personal management is the maintenance of hygiene and grooming skills, eating and feeding, and dressing appropriately under various seasonal conditions. The goal for appropriate health and safety is maintaining healthy lifestyles choices, demonstrating safe behavior, and making responsible decisions about sexuality. The goal for managing routines is the preparation of food, performing housekeeping tasks and managing time and schedules.

The ultimate purpose of the study of personal management is the development of independence, interdependence, maintenance and transmission of our cultural heritage for the improvement of both self and society. This can be achieved through an individuals assumption of personal care and effective responsibility for self.

Personal management is that part of the Fundamental Life Skills Curriculum which uses

communication, decision-making and behavioral skills necessary to promote personal responsibility and interdependent living. The outcomes in the personal management domain provide a broad description of what students should know, be able to do, and how they should as a result of their experiences in personal management. Students should acquire a knowledge base for understanding personal management, the process skills essential for analysis and application of that knowledge base and the attitudes needed to use the knowledge base and skills within the context of interdependent participating member of society.

LEARNING DOMAINS: SUGGESTED INSTRUCTIONAL STRATEGIES, ASSESSMENTS AND RESOURCES			
PERSONAL MANAGEMENT: Why: Enduring Understanding: Students will demonstrate their ability in the following areas: personal needs, appropriate health and safety practices, manages routines, and participates in transition planning with adult service providers.			
What: Major Indicators	How: Assessment Modified from General Education	How: Instructional Strategies Functional Academics	How: Differentiation Modified Instructional Strategies Functional Academics
<p>IPK-D1e Identify some signs, labels, and environmental print</p> <p>1K-D1f Read signs labels and environmental print</p> <p>VSC Speaking: 7K-A1a Speak clearly enough to be heard and understood in a variety of settings</p> <p>VSC Listening: 6.3-A1a Attend to the speaker</p> <p>6.3 - A2d Follow a set of multi-step directions</p> <p>Eats independently with assistance when needed. (K)</p> <p>Feeds self, with assistance when needed (grades 3 & 5)</p> <p>Feeds self, with assistance when needed; (grades 8 and 11)</p> <p><u>Connections to Curriculum</u></p> <p>VSC Reading: IPK-E4b Respond orally to questions.</p> <p>IPK-D1e Identify some signs, labels, and environmental print</p>	<p>Formative assessment: During meals and snacks, use a checklist to record observations of students' ability to correctly grasp utensils</p> <p>Pre-assessment: Create a checklist with eating criteria/skills established in order to implement a program focusing on the child's area of need. Ask for parent input about current level of independence.</p> <p>Formative assessment: Assess level of independence during meals and snacks across settings, using a variety of foods and utensils.</p>	<p>pudding). (VSC Reading: 1PK-E4b, 1PK-D1e, 1K-D1f) (VSC Listening: 6.3-A1a, 6.3-A2d)</p> <p>When eating the meal have students request the specific utensil needed. Provide additional practice by having students use utensils to feed pretend food to dolls and stuffed animals. (VSC Reading: 1PK-E4b, 1PK-D1e, 1K-D1f) (VSC Listening: 6.3-A1a, 6.3-A2d)</p> <p>Create opportunities to practice eating a variety of foods across settings. For example, have students plan a meal and shop for (or bring in foods), order lunch from the cafeteria and a variety of restaurants, have a picnic, ask parents if the class can come to their home to prepare a meal. Facilitate interactions with students and adults. Allowing students to eat foods they enjoy and in different settings may help to motivate some students. (VSC Reading: 1PK-E4b, IPK-D1e, 1K-D1f) (VSC Listening: 6.3-A1a, 6.3-A2d)</p>	<p>If the student cannot maintain a grasp to hold onto a utensil contact an OT who can help assess what type of adapted handle may work.</p> <p>Provide adapted utensils, as appropriate. Turn the fork with the tines facing downward to help a student learn to spear his/her food.</p> <p>Some children who have learned to 'scoop' with a spoon as their first utensil try to scoop with the fork too. This position strategy interferes with that.</p> <p>Place dycem, or other non-slide material, under the bowl or plate the student is using if the plate moves during eating.</p> <p>There are wide based cups available to help stabilize a cup. Students who are learning to replace a cup on the table after taking a drink may need this for a short or</p>

LEARNING DOMAINS: SUGGESTED INSTRUCTIONAL STRATEGIES, ASSESSMENTS AND RESOURCES

PERSONAL MANAGEMENT: Why: Enduring Understanding: Students will demonstrate their ability in the following areas: personal needs, appropriate health and safety practices, manages routines, and participates in transition planning with adult service providers.

What: Major Indicators	How: Assessment Modified from General Education	How: Instructional Strategies Functional Academics	How: Differentiation Modified Instructional Strategies Functional Academics
<p>Connections to Curriculum</p> <p>VSC Reading: 1PK-E6b Respond orally to questions.</p> <p>1PK-D1e Identify some signs, labels, and an environmental print</p> <p>1K-D1f Read sign labels and environmental print</p> <p>VSC Math: 3K-A1b Recognize time by identifying days of the week and by using term such as: yesterday, today, tomorrow, morning, afternoon, night, before, after</p> <p>VSC Speaking: 7K-A1a Speak clearly enough to be heard and understood in a variety of settings.</p> <p>7.3-A1a Speak clearly enough to be heard and understood in a variety of situations for a variety of purposes</p> <p>VSC Listening: 6.3-A1a Attend to the speaker</p> <p>6.3 - A2d Follow a set of multi-step directions</p>	<p>Establish a checklist with the steps listed to thoroughly wash and dry hands. Collect data on the level of independence for each student.</p> <p>Formative assessment:</p> <p>Pre-Assessment: Create a checklist with the steps for washing hands and face. Use the checklist to establish a baseline and determine the student's strengths and areas of need.</p> <p>Formative Assessment: Use task analysis to determine level of independence for each step in the washing routine</p>	<p>hands. Have students recall the steps. Provide text, PCS, VOD, or sign as needed) (VSC Reading: 1PK-E6b, 1PK-D1e) (VSC Listening: 6.3-A1a, 6.3-A2d) (VSC Speaking: 7K-A1a) (Grade 3)</p> <p>Students will write about appropriate times to wash hands and face using an adapted writing overlay. (VSC Reading: 1PK-E6b, 1PK-D1e) (VSC Listening: 6.3-A1a, 6.3-A2d) (VSC Speaking: 7K-A1a) (Grade 5)</p> <p>Include washing of hands and face into daily schedule. Provide opportunities to practice at different locations to ensure generalization. (VSC Reading: 1PK-E6b, 1PK-D1e) (VSC Listening: 6.3-A1a, 6.3-A2d) (VSC Speaking: 7K-A1a) (Grade 5)</p> <p>Do pre-activities where the student 'washes' other items. (VSC Reading: 1PK-E6b, 1PK-D1e) (VSC Listening: 6.3-A1a, 6.3-A2d) (VSC Speaking: 7K-A1a) (Grade 5)</p> <p>Make up a song or other rhyme to help the student remember the sequence of where to wash on the face. Remember to</p>	<p>their hands. The sequencing books can be read during grooming activities and during reading groups. (VSC Reading: 1PK-E6b, 1PK-D1e) (VSC Listening: 6.3-A1a, 6.3-A2d) (VSC Speaking: 7K-A1a) (Grade 3)</p> <p>Hand wipes may be helpful when student cannot easily access faucets (Check with health room staff). (Grade 3)</p> <p>Provide motivating experiences that require students to wash hands and/or face (i.e. after a messy snack, use scented soap). (VSC Reading: 1PK-E6b, 1PK-D1e) (VSC Listening: 6.3-A1a, 6.3-A2d) (VSC Speaking: 7K-A1a) (Grade 5)</p> <p>Wash hand-over-hand with the student in front of a mirror. (Grade 5)</p> <p>Modifications may be needed for students with motor difficulties, such as the faucets, types of soap, paper towel dispensers/hand-dryers. (Grade 5)</p>

LEARNING DOMAINS SUGGESTED INSTRUCTIONAL STRATEGIES, ASSESSMENTS AND RESOURCES			
PERSONAL MANAGEMENT: Why: Enduring Understanding: Students will demonstrate their ability in the following areas: personal needs, appropriate health and safety practices, manages routines, and participates in transition planning with adult service providers.			
What: Major Indicators	How: Assessment Modified from General Education	How: Instructional Strategies Functional Academics	How: Differentiation Modified Instructional Strategies Functional Academics
<p>1.2-D.4.1. Answer questions (what, if, why, and how) in writing</p> <p>4.3.A.2b. Plan and organize ideas for writing</p> <p>4.3.A.4c. Write a variety of responses to text (Logs, Journals, Constructed responses)</p> <p>Identifies healthy foods and snacks (grade 3)</p> <p>Connections to Curriculum VSC Reading: IPK-E.4b Respond orally to questions.</p> <p>IPK-D.1c Identify some signs, labels, and environmental print</p> <p>IPK-D.1a. Acquire new vocabulary through listening to a variety of texts on a daily basis</p> <p>IPK-C.1a. Listen to models of fluent reading</p> <p>IPK-E.1f. Identify pictures, shapes, letters, and numerals</p> <p>IK-D.1f Read signs labels and environmental print</p> <p>IK-E.4b. Respond to questions (who, what, and where) and verify answers using illustrations/text</p> <p>L.2-D.3 a. Recall and discuss what they understand</p>	<p>Pre-Assessment: Read a story that contains a variety of foods (such as The Very Hungry Caterpillar by Eric Carle) and ask students to point to the foods that are good for us.</p> <p>Formative Assessment: Given objects, PCS, or photographs students will sort them by healthy food.</p>	<p>Create a food pyramid with examples of each food category. Have students create their own food pyramid by cutting out magazine pictures and PCS. VSC Reading: IPK-E.4b, 1K-E.4b, IPK-E.1f) (VSC Writing: 4K-A.2b, 1.2-D.4c, 4.3.A.2b, 4.3.A.4c) (VSC Math: 4K-A.1a, 1K-A.1c, 2K-B.1a) (VSC Listening: 6.3-A.1a, 6.3-A.2b) (VSC Speaking: 7.3-A.1a)</p> <p>Have students select healthy lunch and snack choices using multi-modal communication systems. VSC Reading: IPK-E.4b, 1K-E.4b; IPK-E.1f (IPK-D.1c, 1K-D.1f) (VSC Math: 1K-A.1c, 2K-B.1a) (VSC Listening: 6.3-A.1a, 6.3-A.2b) (VSC Speaking: 7.3-A.1a)</p>	<p>Cut out pictures or use objects to sort into healthy and unhealthy foods categories. (VSC Reading: IPK-E.4b, 1K-E.4b, IPK-E.1f) (VSC Math: 1K-A.1c, 2K-B.1a) (VSC Listening: 6.3-A.1a, 6.3-A.2b) (VSC Speaking: 7.3-A.1a)</p> <p>Sort ingredients/menu items that students bought at the grocery store into healthy/unhealthy categories. (VSC Reading: IPK-E.4b, 1K-E.4b, IPK-E.1f) (VSC Math: 1K-A.1c, 2K-B.1a) (VSC Listening: 6.3-A.1a, 6.3-A.2b) (VSC Speaking: 7.3-A.1a)</p>

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<p>1K-E 2a Make connections to the text using illustrations, photographs, and prior knowledge</p> <p>VSC Math:</p> <p>3K-A1b R Recognize time by identifying days of the week and by using term such as: yesterday, today, tomorrow, morning, afternoon, night, before, after</p> <p>1K-A1c Sort a collection of objects according to a rule.</p> <p>2K-B1a Match, sort and regroup objects according to attributes</p> <p>4K-A1a Collect data by answering a question</p> <p>VSC Speaking:</p> <p>7.3-A1a Speak clearly enough to be heard and understood in a variety of situations for a variety of purposes</p> <p>VSC Listening:</p> <p>6.3-A1a. Attend to the speaker</p> <p>6.3 - A2d. Follow a set of multi-step directions</p> <p>VSC Writing:</p> <p>1.2.D.4 I. Answer questions (what if, why, and how) in writing</p> <p>4.3 A2b. Plan and organize ideas for writing</p>		<p>Have students plan a healthy snack and then write about the steps they completed to make the snack. (VSC Reading: 1PK-68b, 1K-E 4b, 1PK-E11, 1PK-D1c, 1K-D1D)(VSC Writing: 1.2.D.4i, 4.3 A2b)(VSC Math: 1K-A1c, 2K-B1a)(VSC Listening: 6.3-A 1a, 6.3 - A2d)(VSC Speaking: 7.3-A1a)</p>	<p>Some students may need limited choices, such as an apple and sugar, or only healthy choices. Some students may need to match pictures or real foods to foods in a pyramid. (VSC Reading: 1PK-68b, 1K-E 4b, 1PK-E11, 1PK-D1c, 1K-D1D)(VSC Math: 1K-A1c, 2K-B1a)(VSC Listening: 6.3-A 1a, 6.3 - A2d)(VSC Speaking: 7.3-A1a)</p>

LEARNING DOMAINS SUGGESTED INSTRUCTIONAL STRATEGIES, ASSESSMENTS AND RESOURCES			
PERSONAL MANAGEMENT: Why: Enduring Understanding: Students will demonstrate their ability in the following areas: personal needs, appropriate health and safety practices, manages routines, and participates in transition planning with adult service providers.			
What: Major Indicators	How: Assessment Modified from General Education	How: Instructional Strategies Functional Academics	How: Differentiation Modified Instructional Strategies Functional Academics
<p>VSC Listening: 6.3-A.1a. Attend to the speaker</p> <p>6.3 - A.2J. Follow a set of multi-step directions</p> <p>6.3 - A. 1b. Ask appropriate questions</p> <p>OUTCOME: Manages Routines by:</p> <p>Assists in choosing simple lunch and snack menus (grades K, 3 & 5)</p> <p>Connections to Curriculum</p> <p>VSC Reading:</p> <p>IPK-E.4b Respond orally to questions.</p> <p>IPK-D.1e Identify some signs, labels, and environmental print</p> <p>IK-D.1f Read signs labels and environmental print</p> <p>IPK-D.1a. Acquire new vocabulary through listening to a variety of texts on a daily basis</p> <p>IPK-C.1a. Listen to models of fluent reading</p> <p>L.2-D.3 a. Recall and discuss what they understand</p> <p>IK-E.2a Make connections to the text using illustrations, photographs, and prior knowledge</p>	<p>Pre-Assessment: Display various food items, school supplies, and other various objects. Have students decide which items could be used to make a simple lunch or snack</p> <p>IK-E.4b, Respond to questions (who, what, and where) and verify answers using illustrations/text</p> <p>IPK-E.1f. Identify pictures, shapes, letters, and numerals</p>	<p>Discuss the student's lunch (from home or cafeteria) daily. Help them determine what is included, such as drinks, vegetables, sandwich, etc. (VSC Reading: IPK-C.1a.1.2 E.g., 1.2-D.1c. IPK-D.1a. 1K-E.4b, 1.2-D.3 a.) (VSC Listening: 6.3-A.1a. 6.3 -A.2J. (VSC Speaking: 7.3-A.2b, 7.3-A.1a) (VSC Writing: 1.2-D.4.1, 4.3 A.2b--4.3-A.4e)</p> <p>Have students sort food pictures from grocery flyers into categories (such as main dish/sandwich, fruit, vegetable, snack, dessert, and drink) for planning a lunch. Then students can pick one from each category. The food in each category that has the most tallies is the "winner." (VSC Reading: IPK-C.1a.1.2 E.g., 1.2-D.1c, IPK-D.1a. 1K-E.4b, 1.2-D.3 a.) (VSC Listening: 6.3-A.1a. 6.3 -A.2J. (VSC Speaking: 7.3-A.2b, 7.3-A.1a) (VSC Writing: 1.2-D.4.1, 4.3 A.2b--4.3-A.4e)</p>	<p>Have students make menu choices for planning a meal using actual objects or photographs from local grocery store flyers. (VSC Reading: IPK-C.1a.1.2 E.g., 1.2-D.1c, IPK-D.1a. 1K-E.4b, 1.2-D.3 a.) (VSC Listening: 6.3-A.1a. 6.3 -A.2J. (VSC Speaking: 7.3-A.2b, 7.3-A.1a) (VSC Writing: 1.2-D.4.1, 4.3 A.2b--4.3-A.4e)</p> <p>Students can expressively or receptively make a choice.</p> <p>Limit the number of choices; consider providing very obvious choices (for example, for snack they could choose crackers or a telephone).</p>

Learning Domain: Community

The community learning domain is an effort to apply the essential concepts and performances of daily community living through specific tasks, and portfolio documentation in settings as natural as possible. These include, but are not limited to, access to community resources and getting about in the environment of the community. Consensus over the last decade has dictated the primary goal of instruction for students with severe disabilities is the ability to get about in the community and access resources.

The ultimate purpose of the study of community is the development of independence, interdependence, maintenance and transmission of our cultural heritage for the improvement of both self and society. This can be achieved through an individual's assumption of self-advocacy, effective community knowledge and movement ability.

Community is that part of the Fundamental Life Skills Curriculum which uses communication, decision-making and behavioral skills necessary to promote personal responsibility and interdependent living. The outcomes in the community domain provide a broad description of what students should know, be able to do, and how they should as a result of their experiences in the community. The community domain focus is on the knowledge base required for understanding the community and the outcomes needed to analyze and apply that knowledge within the context of a daily living experience.

RESOURCES - COMMUNITY

At the beginning of the school-year, work with your teammates and administration for policies and procedures specific to your school.

Identify the sites your students will be visiting during the entire school year

Determine mode of transportation - bus, walking, etc.

Decide how the bus time will be used (upper grades may need more community time than lower grades) and times and days that fit your schedule

Determine how trips will be funded, how much money is available, and how you can be reimbursed for expenses

Determine number of hours of bus time that your school has been allotted

Obtain parent permission

Visit chosen site beforehand to assess accessibility for students and to set-up the visit if necessary.

Obtain permission to videotape or photograph from managers

Communicate plans to the administration, the health room, and to parents. Ensure that there are enough adults for a safe and educational experience.

Be sure all voice output devices are charged before going into the community.

Invite therapists on community trips. In addition to having another adult you will get some great ideas to maximize your students' learning in the community.

Invite family members so they can learn how to follow-up on the skills their child is working on as well as help supervise students.

Invite general education students on community trips (after receiving permission from administration, teachers, and parents). They are role models and provide some help. This can be a reward for work or good behavior.

Check that all students have an ID card or a tag with their name and school phone number.

If possible, bring a cellular phone and give the front office the phone number.

During Community Trips

Bring emergency information, medical supplies, data sheets and pencils, adaptive equipment (i.e. scoop dish, communication devices, behavior contracts, reinforcers, etc.) and extra clothes as needed

Minimize downtime. Use travel time and time in line to practice social skills and to review the task.

Consider the image that your students present (i.e. consider small groups, reinforce appropriate behavior, handle inappropriate behaviors and accidents discretely).

Take **data** on the goals being addressed and modify instruction as needed. Keep data collection simple. A task analysis is appropriate for many community tasks. When possible use checks or a +/- system. To avoid carrying clipboards, try using index cards or masking tape.

After community trips

Review with students and reinforce the skills addressed within the community setting. If appropriate, direct students to explore the items that they brought back from the trip (i.e. a lunch/snack, an art project, a library book, etc.). Have students communicate in class and/or write or tell someone (i.e. friend, principal, parent) about their community trip.

Turn in receipts for reimbursement as appropriate for your school.

Learning Domain: Career/Vocational

The career/vocation domain is an effort to apply the essential skills, concepts and performances of career and vocational living through specific tasks, and portfolio documentation in settings as natural as possible. These include, but are not limited to, competitive, supported or non-paid employment. Consensus over the last decade has dictated the primary goal of instruction for students with severe disabilities is the ability to be as self sufficient as possible and become a contributing member of society.

The ultimate purpose of the study of career and vocational skills is the development of independence, interdependence, maintenance and transmission of our cultural heritage for the improvement of both self and society. This can be achieved through an individuals assumption of self-advocacy, effective career and vocational skills.

Career/vocation is that part of the Fundamental Life Skills Curriculum which uses communication, decision-making and behavioral skills necessary to promote personal responsibility and interdependent living. The outcomes in the career/vocation domain provide a broad

description of what students should know, be able to do, and how they should as a result of their experiences in career/vocation students will develop an awareness of career possibilities. The career/vocation domain focus is on the knowledge base required for understanding careers, direct vocational skills, attitudes and the work habits needed to analyze and apply that knowledge within the context of a daily living experience. Students need to participate in educational experiences and settings which represent environments in which they might live, work, learn and play as adults.

Learning Domain: Recreation/Leisure

The recreation/leisure domain is an effort to apply the essential concepts and applied performances of daily authentic tasks, in settings as natural as possible. These include, but are not limited to, choosing ones own activities, participating in individual or group activities, and awareness of rules or activity purposes. Professional consensus over the last decade has dictated the primary goal of recreation and leisure activity instruction is the development of health and interactive cooperation in pleasurable free time pursuits. The goal for appropriate recreation and leisure activities is maintaining healthy lifestyles choices, demonstrating safe pleasurable individual and social behavior, and enjoying ones free time.

The ultimate purpose of the study of recreation and leisure activities is the development of independence, interdependence, maintenance and transmission of our cultural heritage for the improvement of both self and society. This can be achieved through an individuals assumption of personal care and effective responsibility for self.

Recreation/leisure is that part of the Fundamental Life Skills Curriculum which uses communication, decision-making and behavioral skills necessary to promote personal responsibility and interdependent living. The outcomes in the recreation/leisure domain provide a broad description of what students should know, be able to do, and how they should as a result of their experiences in recreation/leisure.

LEARNING DOMAINS SUGGESTED INSTRUCTIONAL STRATEGIES, ASSESSMENTS AND RESOURCES			
What: Major Indicators	How: Assessment Modified from General Education	How: Instructional Strategies Functional Academics	How: Differentiation Modified Instructional Strategies Functional Academics
<p>Participates cooperatively in recreational activities with family and friends; (grade 5, 8, HS)</p>	<p>Pre-Assessment Survey family to gain information on what activities they participate.</p> <p>Formative Assessment Assess student's skills while participating in various recreational activities. Have parents provide feedback on child's strengths and needs.</p> <p>Be aware of fatigue issues and low endurance levels for a task for kids with motor difficulties. May need to give frequent breaks for children with motor impairments. To maintain an enjoyment level. Fatigue is often mistaken for avoidance to task or poor attitude.</p>	<p>Identify what is trendy with specific age groups: Pokemon, Yugioh cards. Provide opportunities and instruction as needed for such activities: hiking, biking, shopping, visiting, movies, eating out, parks, nature programs, organized community recreation activities/groups, sport teams, karate, library, sight seeing, museums, zoo. (grade 5)</p> <p>Encourage parents to attend school events to meet and socialize with other parents. Help network for play dates, and daycare. (grade 5)</p> <p>Encourage parents to give birthday parties for their child; help provide names of compatible peers. (grade 5)</p> <p>Identify skills and activities for which the child can be held accountable (keeping score, collecting balls, cheering for school or community teams. (grades 8 and HS)</p>	<p>Encourage parents to network with other parents of students with disabilities (grade 5).</p> <p>Hand out fliers of events that support individuals with disabilities (grade 5)</p> <p>For students with physical disabilities research accessible site for recreational activities and accessible activities (e.g. bowling, swimming with special equipment, adapted horseback riding, accessible miniature golf, attending movies, plays). Student should be taught to request physical assistance as needed. Consult with OT/PT re: adapted materials and equipment.</p>

FLS Instructional Guide

Planning for Instruction

Making decisions about instructional programming for students in the FLS curriculum should begin with a review of their academic needs. The focus should be on what supports will foster their independence and autonomy in the home and community.

Instructional planning for students is being guided by Maryland content standards, students IEPs, and the Alt-MSA. The content standards define, in broad terms, what all students should be working towards in the subject areas. Using the content standards as a point of reference, the process described in this section should be used to plan for instruction that focuses on specific performance standards and objectives (i.e., what should they know and be able to do) based on the needs of the student(s). The process is as follows:

- Take an inventory of student's learning strengths and needs with the family for independence and autonomy in home and community environments.
- Identify the desired outcomes using IEP goals and Alt-MSA objectives.
- Determine acceptable evidence of learning to maintain skills.
- Plan learning experiences and instruction in natural environments during natural times of the school day.

While the process should involve an initial scan of the Alt-MSA objectives, the process should continuously integrate learning experiences that foster student progress in the general curriculum and IEP.

IEP Development and Implementation Process

The instructional priorities for each student are based on the IEP. The IEP should be aligned with standards (i.e., standards-referenced IEP) and reflect specific skills and strategies needed to help the student access the general education curriculum and to increase independence in school, home, and community environments.

Aligning the IEP to standard will enable teachers to:

- Compare the student's present levels of education instruction to standards
- Identify the skills needed to increase independence and autonomy across settings
- Ensure that the assessed skills and essential learning are taught
- Provide accountability for individual student learning

Suggested Process for Aligning IEPs to Standards

- Determine the student's present levels of education instruction
- Identify the student's learning strengths and needs
- Compare the student's needs to the standards, essential learnings and indicators
- Consider the learning domain needs in relationship to the standards
- Consider functional and academic skills needed to make progress towards or meet the standard(s)
- Select an appropriate standard, essential learning, or learning domain:

- Modify it as needed to reflect the individual needs of the students
- Identify general education indicators or domain competencies that would support the attainment of the goal (see Figure 2)
- Write measurable objectives in the context of functional learning experience based on individual needs of the student (see following examples)

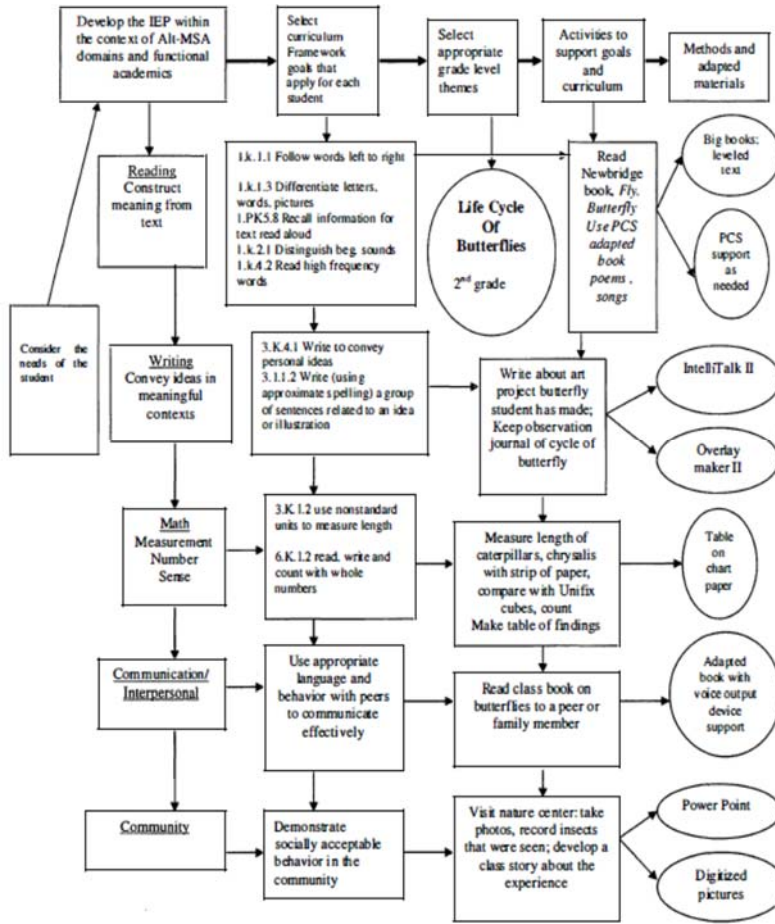
IEP Alignment Example

Learning Domain - Personal Management:

Student will demonstrate their ability in the following areas: personal needs, appropriate health and safety practices and manage routines.

- **Goals and Objectives:**
 - **Goal:** Given a picture schedule, S. will manage routines by following a daily schedule for the entire day, 4 out of 5 days per week, for five consecutive weeks, as measured by a teacher checklist or behavior contract.
 - **Objectives:**
 1. Given picture sequence cards, S. will put away and retrieve personal belongings at the beginning and end of the day 80% of the time using a teacher checklist.
 2. Given verbal warnings five minutes before all transitions, S. will transition from preferred to non-preferred activities 70% of the time as indicated by a behavior contract

FIGURE 2



204a

**Guidelines for
Community-Based
Instruction**

**Montgomery County Public Schools
Department of Special Education**

**Revised
2005**

Guidelines for Community-Based Instruction
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Overview

This instructional guide was developed for use by educators who serve students ages five through 21 years, who have been identified as having significant cognitive disabilities, and who are following the Fundamental Life Skills Curriculum. These students may have a primary handicapping condition of mental retardation or autism, which may be accompanied by vision impairment, deafness, hearing impairment, speech language impairment, emotional disturbance, orthopedic impairment, deaf/blindness, traumatic brain injury, or other health impairment.

Community-based instruction is a critical component of the educational program for these students, primarily because, as adults, the community is where they will need to use the skills they acquire during their school years. The expectation is that our students will live, work, shop, and play in integrated environments in the community, and that they will participate, either independently or with accommodations and supports, in typical activities across a variety of settings. Therefore, these guidelines are premised upon the following principles and best practices among students with cognitive disabilities:

- Instruction should occur in "natural environments" and at naturally occurring times of the school day whenever possible; e.g. teach money use in settings and situations where money is naturally used, such as grocery stores, restaurants, etc.
- Repeated practice in isolated skills in classroom settings without connections to students' lives will not be motivating and will not help them to generalize to real life situations.

- Instructional priorities for each student should be based on the real world needs of the individual students, and should lead toward increased independence and autonomy in his or her home and community.
- Parents and professionals from different disciplines should collaborate in addressing the learning needs of students in multiple school and community settings.
- Students should learn skills that are referenced to performance demands of real world environments, and which are critical to maintain meaningful participation in the least restrictive environment.

Historically, students with cognitive disabilities were perceived as having special needs, which could not be met by regular education. This perception has changed with the increased focus on inclusion of students with severe disabilities in general education classes.

The movement toward increased integration of students with severe disabilities in school and community settings stems from the Principle of Normalization (Wolfensberger, 1967): People with disabilities have a right to a range of typical experiences and activities. In Montgomery County Public Schools, integration of students with severe handicaps into general education settings began in Fall, 1983, as a cooperative effort between MCPS and the University of Maryland, College Park.

Research indicates that individuals with mental retardation and/or developmental disabilities benefit from functional, hands-on instruction in meaningful life skills in the natural settings where those skills are typically used. Learning takes place across a variety of environments; indeed, it must if our

students are to generalize what they learn. So, particularly for older elementary and secondary students, instruction takes place not only in school settings, but also in the community.

Community-Based Instruction has been identified as an approach for teaching functional life-skills to persons who exhibit a wide variety of learning characteristics and abilities. Instruction in community settings addresses issues common among students with cognitive disabilities, including difficulty generalizing skills learned in one setting to a new setting or situation, coupled with a relatively slow rate of acquisition of new skills. Additionally, community-based instruction allows these students to have more opportunities to interact with typical members of the community; indeed, the Maryland State Department of Education now defines the community as a Least Restrictive Environment for educational purposes. Due to the success of teaching students with severe disabilities in community settings, effective techniques that were first documented in the 1980s and early 1990s continue to be used today.

Definitions of terms

Community-based Instruction = Regular & systematic instruction in meaningful, functional, age-appropriate skills in integrated community settings, using naturally occurring materials and situations, designed to help the student to acquire and generalize life-skills that enhance his/her opportunities for meaningful experiences and relationships within the general community. Instruction is driven by individual strengths and needs, using consistent teaching strategies, as well as accommodations

designed to enhance the student's participation in typical activities. Home settings or area surroundings such as shopping centers, convenience stores and/or grocery stores, as well as community resources such as public libraries and post offices, take on importance as potential instructional settings. Also, students may learn important skills such as travel training, pedestrian skills, money use and management, leisure skills, and restaurant use. For older students, the community also includes vocational settings.

Community-based Instruction differs from the traditional field trip in that instruction is regular, and usually the same site(s) are used from week to week. The emphasis is on acquisition and application of functional and age-appropriate skills in a naturalistic context.

Field Trips = Field trips are **not** Community-based Instruction, and are **not** a legitimate substitute for systematic instruction in functional, age-appropriate skills in natural settings. Because they tend to be episodic, one-time activities, student needs for consistency, repeated practice, and systematic generalization are difficult to address in the context of a field trip.

Students with mental retardation/developmental disabilities should participate in field trips with grade-level age-peers in the context of a mainstreaming activity; presumably, if this is the case, specific IEP goals relating to socialization and communication and academic skills are addressed. However, activities of this sort do **not** constitute, nor are they a substitute for, Community-based Instruction.

Preliminary Program Planning

Because Community-Based Instruction is designed to increase independent living and social interactions for students with cognitive disabilities, careful planning must take place prior to beginning instruction. Educational staff are charged with determining the student's needs and matching these needs with the proper instructional setting. Educators must take into account what family members view as important skills for both current and future environments. It is also crucial to align community instruction to age-appropriate goals and objectives from the student's Individualized Education Plan (I.E.P.), the Fundamental Life Skills Curriculum, Alternate Maryland School Assessment (Alt-MSA), and skills that the General Public uses.

Parent Input:

Information should be solicited from the students' families regarding: places and types of recreation the family/student enjoys, where the family shops for food and/or clothing, where they are likely to dine when they go out to eat, and other services the family routinely accesses in the community (e.g. post office, coin laundry, public library, etc.). The purpose of gathering this information is to help in identifying meaningful sites and activities for community-based instruction. Teachers may send home a parent inventory or questionnaire for the parents or caregivers to complete (SEE SAMPLE), or may pose questions directly, by phone or during an informal parent conference.

Ecological Inventory:

An ecological inventory of each community instructional site should be conducted. Among the factors to take into consideration are: General layout

of the facility and accessibility for individuals with limited mobility; proximity to public transportation; ease of access via school-bus; location and accessibility of bathrooms; location of pay-phones; location of emergency exits; times/days of operation; potential opportunities for interactions ; "slack" times (times when the facility may be less crowded; prices/costs; menus and availability of specialized foods (if site is a restaurant or other dining facility); as well as additional environmental factors such as noise-level, amount of clutter, potential for over-crowding, etc.

In addition, the ecological inventory should yield information regarding the skills needed to access and function independently in the environment and in any of the sub-environments identified. Once this information has been identified the special educator should determine which skills the student currently demonstrates that are relevant to accessing the target environment and which skills he/she still needs to learn. The special educator should work with the parent/guardian to prioritize and select skills that the student needs to acquire.

Task Analysis and Baseline Assessment:

A task analysis should be developed in which the planned activity is broken down into its component steps, as these might be performed by a person without disabilities. Each student's current abilities should be assessed in the context of this task analysis. In some cases, a modified task analysis may be developed for this purpose, which accounts for physical or sensory limitations. In cases where a student needs to use an accommodation or assistive technology in order to access a community site or perform a functional task within the site, the task analysis should include use of

that accommodation or assistive technology. However, if a modified task analysis is used, it should still follow the same general sequence as the typical activity, and no segments of the activity should be omitted during the baseline assessment.

Baseline assessment is conducted in the natural setting and situation in which the task will be taught. There are two methods of baseline assessment using a task analytical approach:

- **Discontinued probe:** The student is given an initial cue (e.g. "Order your lunch"). Data is collected on the steps the student performs without any additional instruction. If the student fails to perform a component step of the task, or performs it incorrectly, the probe is discontinued. (Obviously, this method will not be very practical for most students with severe disabilities);
- **Reposition probe:** The student is given an initial cue (e.g. "Order your lunch"), and no further direct instruction is provided. Data is collected on the steps the student performs without additional instruction. If the student fails to perform a component step of the task, or performs it incorrectly, the teacher or para-educator performs the step and positions the student for the next step in the task. This procedure is repeated each time the student performs incorrectly or fails to perform, until the entire task/activity has been completed. On the data sheet, a minus (" - ") is recorded for any steps the student did not perform correctly. This method is preferable because it allows the educator to identify the specific parts of a given activity with which the student is having the most difficulty, and provides information which may be helpful in determining appropriate modifications and accommodations.

Baseline assessment usually continues for at least three sessions; it is only discontinued after three sessions in which the student shows no progress, or during which the student's performance actually declines. In some cases, it may be very clear after the initial session that the student is not likely to make further progress without direct instruction, however these cases should be more the exception than the norm. On the other hand, if a student is actually making progress without receiving direct instruction, there is no reason to provide instruction (i.e. to discontinue baseline). However, in such a case, the task or activity itself may need to be re-visited and redesigned so that it is more instructionally challenging for that particular student.

Once a decision to discontinue baseline is made, then formal systematic instruction may begin. As suggested above, it may be advisable to modify the task, design material or procedural accommodations, or otherwise differentiate instruction, to best meet the student's needs as indicated by the results of the baseline assessment. When this is done, the task analysis should also be modified, as it will form the basis for ongoing assessment.

Implementing Community Based Instruction

Sequence of Community-based Instruction:

Community Based Instruction should be based on individualized programs that are developed as a result of objectives that are part of the student's I.E.P. The number of hours that a student needs to receive community-based instruction will vary based on the goals and objectives specified on his/her I.E.P. and upon his/her ability level. Also, as students grow older, more and more time should be delegated to

Community Based Instruction. The proportion of time spent in the community to time in school should always be based on individual student needs, however as a general rule-of thumb, we recommend the following ranges per grade/age-group:

Grade level	Age Group	Range of hours/week
K-2	(5 to 7 years)	one to five
3-5	(8 to 10 years)	one to ten [at least 4 hrs/month]
6-8	(11 to 14 years)	five to fifteen
9-12	(15 to 18 years)	ten to twenty
Post-secondary	(19 to 21 years)	fifteen to twenty five

Elementary students spend the majority of the time in the school building. Inclusion or integration with age-peers is a critical component of their school day. They may go out for community-based instruction once or twice a week, or even less often. Typical community-based activities include: Shopping (making purchases); using a restaurant; accessing recreational facilities and community resources (parks, libraries, etc.). Social/behavioral skills, communication, and functional academic goals are the focus of instruction.

Older elementary students may receive an increasing amount of community-based instruction, in order to prepare them for articulation from elementary to secondary. Settings and activities are similar to those noted above for primary-aged students, but there is greater instructional emphasis on applied academics in the context of shopping/making purchases, and on early transitional skills such as pedestrian safety.

As the student articulates to middle school and then to high school, the proportion of time in the community typically increases; concurrently, the range and variety of community settings is increased. While the essential goals of instruction are similar to those addressed during the elementary years, there is greater emphasis on generalization of skills across a range of settings and situations, and on problem-solving, in order to facilitate increased independence.

At about age 15- 16, students begin vocational training in integrated community work settings. Typically, the high school student will begin with 1-2 days/week of vocational training, which increases over time, such that most students 19 or older are spending 3-4 hours per day, 4-5 days per week in on-the-job training.

Some students may spend the majority of their day integrated in mainstream classes; others may only be included with their general education peers for specials, lunch, and recess. Some students may start vocational training as early as age 14, while some students, even at age 20 may benefit from less emphasis on vocational training and more on self-help, domestic, and daily living skills. Moreover, there may be some students for whom intensive instruction in academics or social/communication skills, provided in a school-based setting, continues to be warranted. The critical variable here is the individual need of the student!

Aligning I.E.P. objectives with Curriculae, Assessment, and Family Needs:

Community instruction should integrate: the student's needs as stated on his/her I.E.P.; the appropriate learner domains and indicators expressed in the Fundamental Life Skills and/or general education curriculum; and the family's priorities. It should be kept in mind that

community instruction is aligned with alternative assessments, and referenced to Maryland State Content Standards and the Voluntary State Curriculum (VSC), and that documentation relating to community-based instruction is typically part of a student's assessment portfolio. Academics (Reading, Math, Writing, Science and Social Studies) and learning domains addressed during Community instruction include:

- **Community** [Purchasing/Stores & Services, Travel Training including Pedestrian Safety, Banking and Money management]
- **Communication/Decision-making/Inter-personal**
- **Personal Management** [Mobility, Domestic, Self-Care]
- **Recreation/Leisure**; and
- **Career/Vocational.**

Academics (reading, writing and math) can be addressed in the community in various ways. For example before going into the community the teacher could have students practice the sequence for the purchasing routine. This could be accomplished by making a sequential book for the sequence of a familiar purchasing routine. Students would review the book before following the purchasing routine. In the context of this learning experience reading, listening and speaking indicators are addressed. See below:

Reading indicators addressed:

Respond orally to questions.

Respond to questions (who, what, and where) and verify answers using illustrations/text

Identify pictures, shapes, letters, and numerals.

Identify some signs, labels, and environmental print

Read signs labels and environmental print

Acquire new vocabulary through listening to a variety of texts on a daily basis

Listen to models of fluent reading

Make connections to the text using illustrations, photographs, and prior knowledge

Speaking indicators addressed:

Speak clearly enough to be heard and understood in a variety of settings

Listening indicators addressed:

Attend to the speaker

Follow a set of multi-step directions

Another example of addressing academics in the community is:

Students practice matching the photo to the object to prep for the community.

Provide students with the picture of the item they are buying (i.e. photo of the hamburger from McDonalds, photo of bananas from the grocery store).

Speaking indicators addressed:

Speak clearly enough to be heard and understood in a variety of settings

Speak clearly enough to be heard and understood in a variety of situations for a variety of purposes

Listening indicators addressed:

Attend to the speaker

Ask appropriate questions

The following learning experience utilizes the community as the environment in which students learn about the various chores people do and then have to think about the steps needed to complete a given chore:

Have students take a walk in the school and/or community and look for people completing chores, such as taking out trash, cleaning, putting items

away. Have students cut out pictures/PCS to create a book that shows the steps for each chore.

Reading indicators addressed:

Listen to models of fluent reading. Acquire new vocabulary through listening to a variety of texts on a daily basis

Respond to questions (who, what, and where) and verify answers using illustrations/text Engage in conversation to understand what has been read Make connections to prior knowledge and new vocabulary by listening, reading, and responding to a variety of texts

Math indicators addressed:

Sort a collection of objects according to a rule.

Match, sort and regroup objects according to attributes

Speaking indicators addressed:

Speak clearly enough to be heard and understood in a variety of situations for a variety of purposes

Speak in a variety of situations to inform and/or relate experiences, including retelling stories

Listening indicators addressed:

Attend to the speaker

Follow a set of multi-step directions

Ask appropriate questions

Identifying Community Sites:

Site selection should take parental input into account, as discussed above, and should reflect typical activities in which the students' age-peers would be engaged. For example, many elementary-aged students visit the public library, or go to restaurants with their families, while few children of elementary age actually go bowling or engage in comparison shopping. Typical high school students may visit the local shopping mall, or may hang out in a video arcade, but they are not very likely to be found at a playground designed for small children.

Specific locations should be identified within the students' communities, or within the school neighborhood. Types of community sites include the following:

Shopping: Supermarkets; drug stores/pharmacies; convenience stores; dollar stores; music/video stores.

Dining: fast food restaurants; family-style restaurants; cafeterias; pizzerias; food courts.

Services: Public libraries; banks; post offices.

Recreational facilities: Parks; public swimming pools; video arcades.

Scheduling Community Instruction:

Sites identified for community-based instruction should be within a reasonable distance from the school. As a rule of thumb, travel time one-way should not exceed thirty minutes; moreover, in most cases, destinations should be within the bounds of Montgomery County. Exceptions to this will be dealt with on a case-by-case basis; SCB and LFI classes should submit requests for exceptions in writing to the Special Education Supervisor for their area. Autism program staff should submit such requests to the Program Coordinator. Staff in all other programs must submit requests for exemption through their program supervisor to the appropriate Director.

Montgomery County Public Schools allocates school busses to provide access to community sites for those schools/classes implementing community-based instruction. The number of hours allocated to any given school is based primarily on the age-range of the students, though other factors, such as enrollment, may be taken into account. If schools find that they are allocated more hours than needed, they will notify

the appropriate Supervisor or Coordinator, and the individual designated by the Director of School-based Special Education Services to coordinate CBI-related issues. Similarly, if schools find that they need more hours than initially allocated, they will contact the appropriate Supervisor or Coordinator, and the individual designated by the Director of School-based Special Education Services to coordinate CBI-related issues to request additional hours, providing a rationale for the increase.

When appropriate, schools may also choose to access public transportation (Metrobus, Ride-On, Metrorail); this is particularly appropriate when students are in need of travel-training. See <http://www.wmata.com/> and/or <http://montgomerycountymd.gov/content/dpwt/index.asp> for routes and further information.

It is expected that schools will submit a routing request form to the Transportation Cluster Supervisor *every nine weeks*, which details community destinations, days and times of departure, as well as staff and students involved, equipment needs (such as wheelchair tie-downs), and so on. A copy of this form should also be provided to the appropriate school administrators (Principal, Assistant Principal, RTSE, etc.).

In the event of any questions or concerns regarding specific destinations, etc., the Transportation Cluster Supervisor will contact the school and/or the appropriate Supervisor or Coordinator.

Time-line for Routing Community-based Bus Services

March-April: Department of Special Education staff review current CBI bus-service allocations and make tentative decisions regarding allocations for next

school year, including additions (new sites or programs), increases in hours, and decreases in hours.

May 1st: Tentative allocations are distributed to schools/programs, along with procedural instructions.

May 1st - June 20th: Schools/programs send CBI routing information to Transportation Support Services @ Festival Center. The "*CBI Routing Request Form*" will be used, however during this time-frame, only the following information (page *one* of the form) is required:

- Anticipated Number of busses requested
- Days of the week and hours of the day bus service is needed
- Anticipated Number of students using wheelchairs
- Anticipated Number of additional students and staff

Schools/programs submitting this information by June 20th will have Priority One status, and will be guaranteed a start-date for CBI services on the first day of school for students. If the information is not received until after June 20th, Transportation cannot guarantee a start-date for CBI service during the first week of school.

August 16th: Confirmation of mid-day runs is sent to the schools (along with AM/PM transportation rosters). In the event of problems, an *Exception Report* will be sent to the school and to the appropriate Special Education Supervisor (for SCB & LFI services) and/or Program Coordinator/Supervisor (For all other services). Receipt of an *Exception Report* will indicate that either (a) the school failed to get the necessary information in to transportation prior to

the June 20th deadline, or (b) the bidding process has not been finalized. In either case, the Supervisor or Coordinator will work with Transportation and the school to resolve the problem.

August 27th: Schools submit up-dated CBI information to the Transportation Cluster Supervisor (TCS) for their area; the up-dated information must include specific student information and specific destinations, as indicated on page *two* of the *CBI Routing Request Form*. Through the school year, the CBI Routing Request Form must be **completed in full** and submitted to the TCS **every nine weeks**.

In addition to filing the CBI Routing request Form every nine weeks, a written weekly or bi-weekly schedule of community-based instructional activities should be developed, indicating the following: Departure/return times; the address/phone number of each community site; and the names of students and staff going to each site. This information must be given in advance to the school administrator, or designate, as well as the bus driver.

Supporting activities:

Community-based instruction cannot stand alone. It must be linked to ongoing classroom instruction (and vice versa). For example, prior to community instruction in shopping at a supermarket, each student will prepare a shopping list (written or pictorial) and determine the estimated cost of items to be purchased at the supermarket. After returning from the community, each student will also be instructed in related functional skills such as putting away items that have been purchased at a store, or brushing his/her teeth following a meal at a restaurant. In addition, journal writing or language

experience activities may be used to reinforce the concepts and skills addressed during community instruction.

All students, regardless of level of ability, should be involved in supporting community preparation activities. For example, a student with a mild or moderate cognitive disability might use newspaper advertising inserts to identify items to be purchased at a supermarket, and the prices, and might make a written list and use a calculator to figure total costs. Students with more severe disabilities can use picture symbols, photographs, or actual labels to construct his/her list, and might use a "nextdollar" strategy to estimate the cost. Students with significant motor impairments can dictate their shopping list (if verbal), or use an adapted keyboard, or dictate their choices using eye-gaze. Some students might learn to use a calculator in conjunction with the next-dollar strategy, by first being taught to enter " 1 +" for each dollar bill. Others may use a number line to calculate costs. Students with profound cognitive disabilities might make limited choices as to the item(s) they will purchase, and may be working on basic money concepts, (i .e. that one exchanges money in order to acquire a desired item) by grasping, holding, and securing a money-clip containing a predetermined amount, to be given to the cashier in the store. Similar strategies should be used to involve all students in preparation for restaurant use. It is important that all students have the opportunity to express their preferences, in terms of meals to be ordered, not only during the context of a preparation activity, but also in placing their own orders at the restaurant. Staff should never be placing orders for students; this defeats the purpose of the instructional activity.

Students who have limited verbal skills, or no verbal skills, can use a variety of low-tech and high-tech devices to place their own orders. Students who are on special diets, or who have difficulty with solid foods, might order from a limited menu, or might order only an appropriate beverage at the restaurant (consuming the rest of their meal back at school).

Staff responsibilities:

Teachers should strive to make maximum use of staff resources at all times. Paraeducators are crucial members of the classroom team, who should be given responsibility for providing instruction in specified individualized skills, implementing behavioral strategies and communication protocols, and collecting ongoing data, both in the community and in the classroom. Professional staff are responsible for analyzing data and making judgments about the students' progress and any modifications in instruction, materials, or the skill-sequence needed to facilitate skill acquisition.

During community instruction, specific staff should be assigned to specific students. Student groupings should be planned to be as heterogeneous as possible, mixing students of various ability-levels. Strong consideration should be given to splitting classes into smaller groups (two to four students, with an adult), so that no community site is disproportionately overloaded.

Staff are responsible for insuring the safety of the student at all times. While in the community, all staff should carry relevant emergency contact information; if a student has a written health-care plan, staff should be familiar with the procedures and precautions outlined therein.

Naturalistic instruction:

Although at some times it is necessary to enhance instruction that would occur in the community by using simulated activities that do not occur in the natural setting, this is less desirable than naturalistic instruction. As educators we recognize that providing instruction in the naturally occurring situation greatly enhances the chances the student will generalize skills and appropriately demonstrate these skills post-instruction. Simulated activities should always be tied to regularly scheduled opportunities to practice the skills addressed in the natural setting (i.e. the community).

Communication Programs & Integration:

Once programming has begun, staff should make certain that each student's individual communication program is an integral part of their instruction in the Community. Programming for communication in the community can be supported during functional skills and routines. In restaurants and similar facilities, students should be expressing their preferences and provided with instruction in placing their own orders, using whatever communication strategies are in place. Students should receive instruction in the use of appropriate verbal or non-verbal skills to greet and interact with store/restaurant personnel. When staff act as "voices" for their students, this leads to over-dependency on the part of the students, and perpetuates stereotypes among the general community.

One of the primary goals of community-based instruction is to ensure that students will be prepared to live, work, and recreate in integrated settings as adults, alongside their non-disabled peers. Thus, social skills are a critical focus of community

instruction for students with severe disabilities. Practicing eye contact, communication exchanges, and body awareness are useful skills in the integrated setting. As noted elsewhere, it is important to keep numbers of students with severe disabilities to a minimum when doing community instruction at a particular site. That is, if students need to work on purchasing skills, use several different stores and try not to take more than two or three students into a store at any one time. It should be kept in mind that the larger the instructional group, the fewer natural opportunities there will be for those students to interact with non-disabled people; moreover, large groups are more likely to engender negative perceptions and stereotypes among bystanders.

Generalization:

As stated earlier, teaching in the naturally occurring conditions helps to facilitate generalization. However, for many students, generalization needs to be systematically planned. Simply exposing students to a variety of environments does not ensure competency in any of them. Repeated opportunities to practice skills in a specific setting, as well as instructional strategies that are designed to meet the needs of the individual learner, are needed in order to attain mastery.

When teaching in the community, a common practice entails using one facility to provide instruction in a particular set of skills until the student demonstrates or approaches mastery before moving on to another facility to continue to assess and/or program for generalization. For example, if the student has been working on ordering from a menu in a fast-food restaurant, the next step may be to have him/her

demonstrate the same skills and behaviors in a different type of establishment, such as a food court.

Data collection, graphing, and analysis:

Data collection should be ongoing and specific to the IEP and/or FLS Curriculum. Data should be gathered each time the student receives instruction in the task or skill; typically, data on community skills will take the form of teacher-made checklists or task analyses. Data should then be graphed and visually analyzed for student progress. Modifications to teaching methodology should be based on visual inspection of graphs, and documented.

There are five basic types of data collection instrument, each suited to a particular purpose:

- a. **CHECKLIST:** Used to evaluate behaviors that have a clear start and end [e.g. asking for help appropriately, touching a picture of an apple, making eye-contact] or that entail repeated trials. You can record one or several related behaviors on a single checklist. Simply record whether or not the student performed correctly (+ or -), or encode the level of prompt he/she required in order to perform the skill or task component, (e.g.: V = verbal, G = gesture, P = physical prompts, etc.).
- b. **TASK ANALYSIS:** For complex tasks, in which multiple behaviors form a chain of components of the whole, e.g. shopping in a supermarket, brushing teeth, etc. The task or activity is broken down into its component steps. If Task Analyses are used, it is recommended that you focus only on the most critical components of the task. Record student performance on each step of the task as for a CHECKLIST (+ or -, or prompt level).

c. **ANECDOTAL DATA/LOGS:** Used for behaviors which may not always occur in the same way, or under the same conditions. These are skills which may require alternative responses, e.g. making choices, interacting with peers, communication, etc. Anecdotal data is also used to record incidents of challenging behavior, especially when the function/cause is unknown, or when function/cause seem to vary.

d. **TALLIES:** (Includes rate, interval recording, frequency, duration, etc.) Used to record how often, or for how long, a behavior occurred. The behavior being measured **MUST** be discrete (i.e. having a clear start and finish).

e. **PERMANENT PRODUCT:** This is simply a sample of the student's performance, & is used most often with vocational or academic tasks. Permanent products usually yield either a frequency/rate measure, or a qualitative appraisal.

Documentation:

You must be able to document which IEP goals are being addressed during Community-based Instruction activities, and how they are being addressed.

This documentation should include:

- **Written Lesson Plans**, which describe objectives and activities for the class as a group, and should include curricular and/or I.E.P. objectives being addressed, as well as a description of the activities.
- **Daily/weekly classroom schedules** that reflect groupings, locations, and objectives for community-based instruction, and indicate where each student is,

what each student is doing, and with which staff he/she is doing it at any given time of the school day.

- **Instructional Programs** developed for individual students, which include specific instructional strategies (prompt hierarchies, reinforcement schedules, etc.) as well as specific objectives addressed during community instruction.

- **Teacher-made data sheets**, such as checklists or task analyses, that are used to monitor and assess individual student performance on I.E.P.-related skills such data is also evidence of the frequency and regularity with which instruction has been provided on a specific task, activity, routine, or skill.

Instructional Funds:

MCPS allocates instructional materials funds for each special education classroom for the school year, the purpose of which is to implement IEP goals and address students' educational needs. It is expected that some portion of those funds will be used to support community-based instruction. In each school, the business office, or the administrative secretary has the exact amount for the individual special education classes within their building. Any expenditure of MCPS funds must be accounted for by turning in the receipts to the business office for reimbursement. Care must be taken to ensure that students or staff collect, and turn in to the teacher, their receipts for any purchases that are made with MCPS funds. Receipts are then turned in on a regular basis to the school business manager, or the person handling school funds. Classroom staff should work closely with this individual in order to ensure that expenditures are accurately recorded.

In planning community training lessons, a direct link must be made to the students' IEP objectives and FLS curriculum, and costs should be taken into consideration. To the greatest extent possible, costs should be minimized. Some suggested ways to accomplish this follow:

If supermarket shopping is a priority goal for a student, this goal can be addressed just as effectively by buying generic store brands when possible, rather than more expensive items. The opportunity to provide instruction in comparison-shopping should not be discounted; many students' families operate on tight budgets, and it is likely that some, if not most, of our students will be living on fixed incomes as adults.

If students are using public transportation, receipts are available, and should be requested from the bus driver. In addition, individuals with disabilities may be eligible for reduced fares; See <http://www.wmata.com/accessibility/fares.cfm> and/or <http://montgomerycountymd.gov/content/dpwt/index.asp> for further information.

Identify activities that are natural situations, e.g. purchasing school supplies, or buying household staples at the supermarket, and incorporate these into the context of regularly scheduled community instruction. The advantages of this approach may be self-evident. The instructional activity is functional and meaningful for the student, and because the items purchased are needed and used by the family, the student is making a valued contribution to his/her household. In addition, the items are things the family would have purchased anyway, so sending in

the money to defray their cost should not impose an additional financial burden.

The following should be kept in mind:

- Items purchased for use in the student's home, or for the student's sole personal use *outside of instructional programming*, **must** be purchased with the family's money, not with MCPS funds (this includes gifts for family members).
- Parents are expected to defray the cost of lunches purchased in the course of community-based instruction to the extent that they would pay for a lunch purchased at school, with the balance covered by instructional materials funds. (Take into account students who are on free or reduced meals typically could not afford to pay full price for a community training activity at a restaurant.
- Receipts for items purchased with funds sent in by the family should be collected and sent to the family, along with any unspent change.

Family Contributions: Instructional materials funds may be supplemented through parent/guardian contributions to defray the cost of some community-based activities.

There are several considerations in this regard:

- Contributions are **requested, not required**, and the amount should be kept to a minimum, i.e. no more than five dollars per week. It is preferred that the school request only the specific amount necessary for the activity and it is expected that any change will be returned to the family. Since the FLS curriculum includes Community Training as a learning domain, the families should not be held responsible for funding a portion of the curriculum that is required.

- Students from families with limited incomes are not excluded from any instructional activities. Instructional materials funds and other school accounts (such as school PT A money) can also be used to cover the costs of the instructional activities.

Conclusion

Community-based instruction is an integral part of the curriculum for students with cognitive disabilities, and is crucial in order to achieve the long-range outcome of preparing each student for life as an adult in which he/she is a full participant in society. The community is where our students will use the skills they learn in school once they have matriculated; instruction that is designed to help them apply those skills in the real world must be carefully planned, systematic in design, and rigorous in terms of expectations. Properly implemented, community-based instruction will make the difference for our students between a rich, meaningful and fulfilling life, and an adulthood of isolation, boredom, and purposelessness.

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