

VIRGINIA:

**DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES**

In the matter of

REDACTED a minor,
by her parents, **REDACTED** and **REDACTED** **Petitioners**

vs. **VDOE Case #: 24-018**

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS, **Respondent.**

**Rhonda J. S. Mitchell
Hearing Officer**

**Representatives:
Kimberly Mehlman-Orozco, Advocate for Petitioners / Student
Nicole Thompson, Counsel for Prince William County Public Schools, Respondent**

Planet Depos, Court Reporter

HEARING OFFICER DECISION

Introduction and Procedural History

On October 23, 2023, a due process request for hearing (complaint) was filed by **REDACTED** and **REDACTED** (parents / petitioners) against Prince William County Public Schools (PWCS), on behalf of their daughter, **REDACTED** (child / student). The *pro se* complaint was filed pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et. seq.* The complaint was amended on November 3, 2023.

The hearing officer was formally appointed on October 25, 2023 by letter from Wendy Martin-Johnson, Director of Programs and Development, PWCS. The hearing officer has jurisdiction to hear this matter pursuant to 20 U.S.C. §1415(f) and 8 VAC §20-81-210(O).

Initially, the parents represented themselves, *pro se*. Later, petitioners and student were represented by Dr. Kimberly Mehlman-Orozco, advocate. Prince William County Public Schools was represented by Attorney Nicole Thompson, Assistant Division Counsel for Special Education, PWCS, Manassas, Virginia. Brian Miller was appointed case monitor by the Virginia Department of Education (VDOE) on October 30, 2023.

On October 26, 2023, counsel for PWCS responded to the complaint by filing a Notice of Insufficiency, Motion to Dismiss, and general denial of the due process complaint. The hearing officer ruled on the Notice of Insufficiency and Motion to Dismiss by decision dated October 29, 2023. The Motion to Dismiss was denied. The complaint was found to be legally insufficient.

Petitioners were granted leave to file an amended complaint on or before November 3, 2023. Petitioners filed an amended complaint on November 3, 2023 requiring timelines to be adjusted.

During the first prehearing conference call conducted on October 27, 2023, the following administrative matters were settled:

- * There were no objections to the appointed hearing officer.
- * The petitioners opted for the hearing to be open to the public.
- * The student could be present for the hearing, if deemed appropriate.
- * The parties raised no objection to decisions or other pertinent information being transmitted electronically.
- * Motions, objections, or other issues would be addressed via conference call or written decision(s).

The petitioner, **REDACTED** suffers from a documented traumatic brain injury. From onset of the proceedings, she repeatedly requested that she be allowed to video record the hearing as an accommodation for her disability. PWCS objected to the request due to previous derogatory social media postings by Mrs. **REDACTED** about PWCS employees. The hearing officer permitted the petitioner to audio record the proceedings as an accommodation, but denied her request to video record the proceedings by decision dated December 2, 2023.

The parties had many ongoing discussions and disagreements regarding several subpoenas that were submitted and issued in this case. Petitioners filed a Motion to Quash on November 16, 2023, objecting to release of the student's medical records to PWCS as required by a PWCS subpoena. The hearing officer entered a decision dated November 19, 2023 denying the Motion, but narrowed the scope of the subpoena.

Regarding other subpoenas and subpoena compliance, the hearing officer issued three decision letters dated November 16, 2023, November 20, 2023 and December 31, 2023. Petitioners continue to maintain that several of the documents they subpoenaed from PWCS were not delivered. PWCS maintains that they have fully complied with the subpoena.

Five telephone conference calls were conducted during the course of this proceeding. Filed for the record are: the complaint; amended complaint; decision on motion to quash subpoena; decision on video recording the proceedings; prehearing reports; four prehearing orders; one interim order; conference call notices; hearing notices; subpoenas; closing briefs; exhibit books; witness lists; hearing transcript; settlement agreement dated January 3, 2024; filings from both parties, including motions and response documents; and copies of pertinent electronic messages.

The Hearing

The hearing was initially scheduled for December 5, and 6, 2023, with an extension day of December 7th, if required. On December 5, 2023, the testimony of one witness, the student's case manager, was heard as well as an appeal from her attorney asking that she not be required to testify due to an ongoing federal lawsuit filed by the witness against the petitioner, **REDACTED**. The hearing officer denied the request and ordered the witness to testify.

Although the hearing commenced on December 5th, the parties jointly moved that the hearing be temporarily stayed so they could negotiate before proceeding. The hearing officer granted the motion, the hearing stopped, and the parties entered into negotiations. On that same day, the parties reached settlement on the issues of vision therapy, compensatory education owed to the student, and reimbursement for an independent educational evaluation (functional vision assessment). The oral agreement reached between the parties on December 5, 2023 was put on the record, and eventually culminated into a written settlement agreement dated January 3, 2024. A copy of the settlement agreement is filed with the record and incorporated herein by reference.

In an effort to settle the remaining issues, the parties jointly moved on December 5, 2023 for a hearing delay so they could enter into mediation. The Hearing Officer granted the delay, ordered PWCS to arrange mediation services through the VDOE, and rescheduled the hearing for January 9, and 10, 2024, with an extension day of January 11, 2024. Ultimately, mediation was unsuccessful.

Day 2 of the hearing commenced on January 9, 2024. Opening statements from both parties were presented. The exhibit books from both parties were accepted into evidence.

The first day of hearing, December 5, 2023, was held at the Hampton Inn, 7300 Atlas Walk Way, Gainesville, Virginia. Days 2 thru 4 of the hearing, January 9, 10, and 11, 2024, were held at Springhill Suites, 7921 Gateway Promenade Place, Gainesville, Virginia.

This hearing was conducted in Gainesville instead of Manassas, Virginia to accommodate the work schedule of **REDACTED** petitioner, who works at night. The school board office is located in Manassas which is about a 40 minute drive from Gainesville. Due process hearings are usually conducted in or around where the school board is located. The petitioners live in Gainesville. To avoid the long drive for petitioner after working all night, PWCS arranged for the hearing to be held in Gainesville.

The hearing was contentious. The petitioners and their advocate harbor a deep-seated distrust of PWCS and its employees. Several derogatory social media posts by Mrs. **REDACTED** of PWCS employees, no doubt, contributed to the contentiousness.

The following persons were present for the hearing:

Day 1 – December 5, 2023

Rhonda Mitchell, Hearing Officer

Kimberly Mehlman-Orozco, Advocate for Petitioners, Student

REDACTED Petitioner

REDACTED Petitioner

REDACTED Student

Nicole Thompson, Counsel for PWCS

Wendy Martin-Johnson, PWCS Representative

Amanda Mallory, PWCS Representative

Brian Miller, Case Monitor, VDOE

Day 2 – January 9, 2024

Rhonda Mitchell, Hearing Officer

Kimberly Mehlman-Orozco, Advocate for Petitioners, Student

REDACTED Petitioner

REDACTED Petitioner

REDACTED Student

Nicole Thompson, Counsel for PWCS

Wendy Martin-Johnson, PWCS Representative

Amanda Mallory, PWCS Representative

Brian Miller, Case Monitor, VDOE

Day 3 – January 10, 2024

Rhonda Mitchell, Hearing Officer

Kimberly Mehlman-Orozco, Advocate for Petitioners, Student

REDACTED Petitioner

REDACTED Petitioner

Nicole Thompson, Counsel for PWCS

Wendy Martin-Johnson, PWCS Representative

Amanda Mallory, PWCS Representative

Brian Miller, Case Monitor, VDOE

Day 4 – January 11, 2024

Rhonda Mitchell, Hearing Officer

Kimberly Mehlman-Orozco, Advocate for Petitioners, Student

REDACTED Petitioner

REDACTED Petitioner

REDACTED Student

Nicole Thompson, Counsel for PWCS

Wendy Martin-Johnson, PWCS Representative

Amanda Mallory, PWCS Representative

Witness Appearances

The following witnesses were duly sworn and provided testimony on behalf of the petitioners:

Day 1, December 5, 2023:

Transcript	Page #s:
Adelina Blankenship, Case Manager, Special Education Teacher, Gainesville Middle School, PWCS	31 - 84

Day 2, January 9, 2024:

Transcript	
Denise Heubner, Associate Superintendent for Student Services and Post-Secondary Success, PWCS	180 - 265
Dustin Goode, Adapted PE Teacher, Gainesville Middle School, PWCS	267 - 277
Mary K. Graham, Principal, Gainesville Middle School, PWCS	279 - 463
Marjorie Kellner, Administrative Coordinator, Special Education Office, PWCS	468 - 542

Day 3, January 10, 2024:

Transcript	
Steven Williams, Assistant Principal, Gainesville Middle School, PWCS	559 - 673
Natalie Buttner, Algebra Teacher, Gainesville Middle School, PWCS	677 - 721
Laura Mathers, Homebound Teacher, PWCS	723 - 732

The following witness was duly sworn and provided testimony on behalf of the respondent:

Redacted Head of School, **Private School** School

733 - 768

The following witnesses were duly sworn and provided testimony on behalf of the petitioners:

Dione Aanderud, Family and Consumer Science Teacher, Gainesville Middle School, PWCS

769 – 813

Day 4, January 11, 2024:

Amanda Mallory, Supervisor of Procedural Support, Office of Special Education, PWCS

827 - 126

Wendy Martin-Johnson, Director of Programs and Development, PWCS

1126 - 1184

REDACTED Petitioner, Mother of the Student

1184 - 1305

REDACTED Student

1306 - 1324

Issues

The original issues of the case from the amended complaint were identified as follows:

1. *Whether Prince William County Public Schools (PWCS) failed to develop, implement, and/or revise the student's Individualized Education Program (IEP) in a manner reasonably calculated to enable the student to make progress, including but not limited to, providing sufficient compensatory education, homebound services, and vision therapy, thereby denying the student a free appropriate public education (FAPE).*

2. *Whether PWCS violated the Individuals with Disabilities Education Act Child Find laws by failing to timely identify the student as a student with qualifying disabilities.*

3. *Whether PWCS significantly impeded the parents' opportunity and/or ability to participate in the decision making process regarding the provision of a FAPE for the student.*

4. *Whether PWCS violated procedural safeguards by failing to provide timely prior written notice to the parents of proposed IEP modifications and/or IEP meetings.*

5. *Whether the student should be educated in a private school setting to receive a FAPE.*

Following the January 3, 2024 settlement agreement, issue #1 was partially resolved. On the second day of hearing, issues #2, #3, and #4 were withdrawn by the petitioners. Therefore, the issues for hearing were amended as follows:

1. *Whether Prince William County Public Schools (PWCS) failed to develop, implement, and/or revise the student's 504 Plan and/or Individualized Education Program (IEP) in a manner reasonably calculated to enable the student to make progress and provide the student with a FAPE for her 7th and 8th grade school years.*

2. *Whether the student should be educated in a private school setting at public expense in order to receive a FAPE.*

3. *Whether the petitioners should be reimbursed by PWCS for tuition associated with placing the student in The **Private School** School, a private school.*

Burden of Proof

The Petitioners, as the parties who filed the request for a due process hearing, bear the burden of proof in this proceeding. *See, e.g., N.P. by S.P. v. Maxwell*, 711 F. App'x 713 (4th Cir. 2017) (At an impartial due process hearing, the parents bear the burden of proving that their child was denied a free appropriate public education.) *Id.* at 716, *citing Weast v. Schaffer ex rel. Schaffer*, 377 F.3d 449, 456 (4th Cir. 2004), *aff'd*, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). The burden of persuasion shall be met by a preponderance of the evidence. *See, e.g., Cty. Sch. Bd. of Henrico Cty., Va. v. R.T.*, 433 F. Supp. 2d 657, 671 (E.D. Va. 2006) (Hearing Officer's factual conclusions supported by the preponderance of the record evidence.)

Witness Summaries

(The witnesses were sworn by the Court Reporter.)

On December 5, 2023, the first and only witness on that day, **Adelina Blankenship**, special education teacher and student's case manager, appeared with her attorney and husband, M. Keith Blankenship. Mr. Blankenship appealed to the hearing officer to excuse his client from testifying, because his client currently has a federal lawsuit pending against Mrs. [REDACTED] for defamation, the Virginia Computer Crimes Act, and various civil rights violations. The hearing officer ruled that the witness should testify since the federal lawsuit has no bearing on the due process hearing, and because Mrs. Blankenship's testimony is important since she was the student's case manager. Mr. Blankenship remained with his client during her testimony.

Mrs. Blankenship's testimony was often illusive or she claimed not to remember. For example, Mrs. Blankenship did not remember how long she served as the student's case manager. She did not remember when she was introduced to the student. She did not remember whether she or other PWCS personnel completed the student's progress reports. If the progress reports were completed by someone other than her, she claimed not to remember who the other PWCS teacher(s) could have been. She did recall that the student attended Gainesville Middle School for the 7th and 8th grades.

When the witness was directed to review certain exhibits such as emails from or to her, the student's written goals, the IEP, and rubrics designed to measure goals, she was a bit more forthcoming. She testified that the County designed the rubrics. However, she claimed not to recall whether homebound instructors provided her with information to be included in the progress reports. She did not remember the student's grades or how the student's annual goals were measured.

As the student's case manager, the witness did not recall why the student missed so much school. She did not recall why the student had an IEP. She did not recall whether the student had been excluded from any assignments.

This reluctant witness was called by the petitioners. As the student's case manager, the important testimony of this illusive witness was not credible. The witness was often non-responsive.

Following unsuccessful mediation by the parties to settle the remaining issues, the due process hearing resumed on January 9, 2024. The first witness was **Denise Heubner**. Ms. Heubner is the Associate Superintendent for Student Services and Post-Secondary Success, PWCS. Her office handles student health and wellness. Her office approves homebound services and holds the budget for home-based services.

She testified that if a parent has a complaint regarding IEP implementation, including homebound services, there are several steps that would be taken before it got to her desk. The parent would first complain to the case manager, then to the assistant principal in charge of special education, then the principal, and then homebound offices. She testified that parent complaints regarding homebound services rarely made it to her. She did, however, recall having a conversation with someone regarding the student's surgery and what qualifies for homebound services. If there was a problem with homebound or home-based instruction, Ms. Heubner testified that the person responsible for addressing the problem is at the school level, usually the coordinator.

The witness acknowledged that approved homebound services should commence within five days of approval. She testified that the minimum hours for homebound instruction should be decided on a case-by-case basis with teachers, a team, and in collaboration with the parents, based on the student's needs. She explained the difference between homebound and home-based services. Generally, homebound is provided for medical reasons. Home-based often involves children with disciplinary issues. She testified that homebound and home-based services have a combined ceiling of 8 hours per week.

The witness explained that homebound is usually approved for 8 weeks and then revisited, requiring medical documentation to be extended. The child must miss 14 days of school up front due to medical reasons for the initial approval. The expectation is that the child will return to school.

When asked about the budget, the witness testified that there were no cuts in the budget. She explained that the budget was reorganized, and that approximately 45 different areas were realigned. She stated that in her 19 years with PWCS, she has never seen more support for special education than the current level of support.

The witness was called by petitioners. The witness was credible.

Dustin Michael Goode was the next witness called by the petitioners. He is an adapted physical education (PE) teacher, PWCS. He was the student's PE teacher for school year 2021 – 2022.

He was familiar with the student's 504 Plan that limited high-impact activities for the student. The determination of what was "high-impact" was left to the discretion of the student.

The witness recalled an incident when the student asked to stop running because she tasted blood. He told her to continue running because he did not see any blood. He recalled telling her

to come see him if she continued to feel discomfort. The student did not come back to him, and completed the run. He was unaware that the student later went to the hospital following the incident. The witness stated that he was not reprimanded for the incident.

The witness was credible.

Mary Kathryn Graham was called by the petitioners. She is the principal of Gainesville Middle School, PWCS. She is in her third year as principal. She was principal when the student attended Gainesville Middle School for 7th and 8th grades.

While an assistant principal, Ms. Graham testified that she wrote the student's 504 Plan when she was a 6th grader. As principal, she participated as an IEP member for the student's IEP team meetings.

When asked about the homebound / home-based services that the student did not receive, the witness testified (after hearing a recording clip of an IEP meeting) that she apologized to Mrs. **REDACTED** for how long it took for services to get in place. In response to a question regarding it taking about four months for services to be approved, Ms. Graham testified that homebound services are applied for, and that the parents did not return the application until the fall, after an August IEP meeting. Ms. Graham also testified that there was a delay with delivering services because of staffing shortages. It was difficult to find teachers. The witness acknowledged that neither home-based services for school year 2021-2022 nor homebound services for school year 2022-2023 began 5 days following approval as is the policy. Despite this, the witness testified that compensatory services were not offered.

Ms. Graham testified that the parents initially refused virtual / Zoom services. However, she recalled that later the parents allowed it and language arts was delivered virtually. Later in her testimony, the witness acknowledged that the parents did not *refuse* online or virtual teaching, but expressed a *preference* for in-person instruction, which is not the same as a refusal.

The witness remembered an IEP meeting in which the student stated that one of her homebound teachers, Mrs. Aanderud, was a bus driver and should not be teaching her. The witness also recalled that Mrs. **REDACTED** complained that the same teacher was playing Candy Crush instead of teaching the student. Shortly afterwards, the teacher quit.

Ms. Graham testified that the student's parents opted her out of taking 7th grade Standards of Learning (SOL) tests. The student took 8th grade SOLs but failed Algebra 1 and civics. The student passed reading and science, but did not take writing. She was supposed to take the writing SOL with pencil and paper, but the test did not arrive in time. Nonetheless, the student's record reflected "did not attempt" without explanation.

During the witness' testimony, there was much discussion about what assignments the student was exempted or excluded from. Petitioners' advocate kept requesting a list of the excluded assignments. The witness kept referring to Petitioners' Exhibit W – the students' progress reports. The advocate insisted that the exhibit does not show which assignments the student was excluded from, and that the exhibit is non-responsive to the question and subpoena. There was

back and forth between the advocate, witness, and counsel for PWCS regarding the question of excluded assignments.

When asked whether she thought Gainesville Middle School failed the student, Ms. Graham testified that as principal, she did what she could to accommodate the student. She claimed that the school offered counseling, a learning strategies class, and smaller class settings, among other things. She claimed that the parents refused the proposed accommodations.

The witness recalled a 90-minute telephone conversation with the parents in May of 2022. She testified that no matter what she offered, the parents were not receptive. She stated that about 60% of the conversation was parent complaints. She listened to the complaints, tried to be flexible, supportive, and accommodating, but felt no matter what she offered, it was not good enough to repair the relationship or improve the student's school experience.

The witness testified that the relationship between the school and parents seemed to deteriorate in the student's 7th grade. Although she did not remember specifics, she recalled an incident with the student's science teacher. The teacher apologized for the incident and the student was removed from her class. She remembered that the parents expressed multiple complaints during that time but that she felt the complaints were handled properly and that her subordinates did what was necessary to support the family and the student.

When asked about the student's application to the Colgan High School Specialty Program, Ms. Graham testified that applications were due in December, and that the parents did not inquire about the application process until March or April. She testified that an IEP team did not convene to discuss what accommodations would be needed for the student to apply for the program.

Ms. Graham testified that she was aware of a June 1, 2023 VDOE decision finding that PWCS has a fundamental misunderstanding of its responsibility to implement IEP accommodations, and has systemically denied IEP accommodations to students with disabilities during admissions-related testing and auditions to PWCS' Specialty Programs. She testified that no accommodations were offered to the student when she auditioned for the Colgan High School Specialty Program.

The witness testified that progress reports are prepared by the student's case manager. She expressed surprise and concern when told that Adelina Blankenship, the student's case manager, did not remember preparing the reports.

When questioned about the incident with the PE teacher, the witness remembered the incident but recalled that the student was allowed to stop running.

On cross-examination, the witness acknowledged that the student was approved for homebound services on November 28, 2022. She also stated that she did not know when the student applied to Colgan and that she was not involved with the application process. She testified that she felt attacked by the parents, and that no matter what she suggested nothing was ever resolved. She stated that the parents were hostile towards her.

When asked about the TikTok videos that were posted by Mrs. [REDACTED] the witness stated that she was in the videos, but only watched the one at the school board meeting where the student called her a liar. She was aware of the other videos with herself and other staff.

She also testified on cross that the student failed her math class, and that she was made aware that the student would leave class without permission. The student had a fast pass to use the bathroom. But even with the fast pass, she was supposed to let the teacher know that she was leaving class for accountability and safety purposes. When in class, the student would be drawing on herself. The witness also testified that the math teacher informed her that the student told the teacher not to talk to her. Since the student was struggling in math class, the parents were approached about putting her in a lower level math class, however, the parents rejected that option.

Regarding the delay in homebound services, the witness testified that the IEP was sent to the parents on about December 12, 2022 but was not signed until later. This caused a delay in services. Also, the witness testified that the parents were not flexible regarding homebound teachers. The parents turned down Zoom instruction, wanting only in-person instruction which made it difficult to find teachers willing to teach in-person. The overall availability of teachers was a problem in and of itself.

Due to complaints made by the parents about teachers and their conduct during IEP meetings, it was difficult to find homebound teachers that were willing to work with the [REDACTED]. To illustrate, the witness used the example of the parent and student questioning the credentials to one of the teachers because she doubled as a bus driver due to a bus driver shortage. She stated that the IEP meetings became parent complaint sessions and nothing got accomplished. The IEP meetings often ran 3 or 4 hours. As principal, this caused her to have to find coverage for teachers who were in the IEP meetings because their planning periods were for only about 90 minutes after which time they were supposed to return to their classes.

The witness revisited the PE incident on cross and stated that she thought the student started walking after telling the teacher she tasted blood. She testified that the student had a fast pass with her 504 Plan to go to the nurse, but she did not advocate for herself to go to the nurse.

On redirect examination, the witness was surprised to learn that the PE teacher testified that he made the student continue to run after she complained about tasting blood. When confronted about her testimony regarding homebound services being delayed because the parents took several weeks to sign the IEP, the witness conceded that a consented to IEP is not necessary for homebound services to begin.

The witness also testified on redirect that it was reported to her that the student had to be picked up from school for bleeding through her clothing when she was not allowed to use her fast pass. She was aware that the student was taking blood thinners.

The witness discussed an incident when she told the parents that the student could not attend the end of school 8th grade dance. She testified that it was her understanding at the time that if the student was not present in school on the day of the dance, the student could not attend after school

social functions. She informed the parents of this following an IEP meeting. About 15 minutes later, she informed the parents that the student could attend the dance. The student attended the dance. The witness admitted that she misunderstood the regulation.

The witness was generally credible.

The next witness called by petitioners was **Megan Kellner**. She works as Administrative Coordinator, Special Education Office, PWCS. Ms. Kellner stated that she has been in her current position for almost 6 years. Her responsibilities are to support schools with special education classes and to support instructional needs in the classrooms. She also participates in 504 and IEP meetings.

Ms. Kellner has participated in the following IEP meetings for the student: two in May of 2022; one in June 2022; August 2022; September 2022; October 2022; November 2022; and March of 2023. She testified that the meetings normally lasted about 2 hours and that often times, the meetings were continuations of previous meetings. She testified that the meetings were contentious, and seemed to not come to a conclusion.

She testified that the meetings were contentious when the following topics were discussed: homebound or home-based services, compensatory time, the PE incident, and other incidents with teachers that were outside of the IEP process. Based on the 504 Plan, home-based services were calculated as 1 hour up to 3 consecutive absences. She did not know the reference for this calculation. She did not know how long it took for services to begin.

On cross-examination, the witness testified that she services 7 schools and attends several IEP meetings per week. That is why she may lack recall on the specifics of any one meeting. Although she is a licensed teacher, she does not teach in her current position.

On redirect examination, Ms. Kellner explained that home-based services were not included in the IEP prior to the 2022 – 2023 school year because the team was waiting for information from the student's surgery. She testified that there were discussions about the possible need for homebound services when she returned from her surgery in Seattle.

The witness was credible.

The next witness for the petitioners was **Sherry Baker**. Ms. Baker is the Section 504 Coordinator for PWCS. She oversees the 504 process. She participated in a couple of 504 meetings for the student and 4 or 5 IEP meetings. She also participated in the student's eligibility meeting in March of 2022. The witness was unable to recall many specifics about the meetings.

Ms. Baker was aware of the student's numerous absences but explained that the team was trying to access exactly what the student needed and was waiting for more information about the student's medical needs following her surgery before assigning home-based and/or homebound services. Ms. Baker testified that when the student started experiencing more and more absences, home-based services were considered under her 504 Plan. The home-based services would be provided to support the student in the areas of organization, prioritization, and helping her when

she was absent. It was not meant to be a replacement for the general education curriculum. Homebound is a service that had to be applied for. The witness established that up to 3 home-based hours (and not 1 hour) should have been afforded the student for every 3 days of absence. The record is unclear but it appears that the parents were upset because they were told 1 hour for 3 absences, and not up to 3 hours for 3 absences.

On cross-examination, the witness testified that the parents were sent a list of the student's missing or exempted assignments on March 29, 2022 by Amanda Mallory. When asked whether exempted meant the same as excluded, the witness said the document says excused from the assignment due to mastery or absences. The witness did not know whether the matter had been discussed with the parents prior to excusing the student from the assignments or not.

The witness was credible.

Day 3 of the hearing began with the testimony of **Steven Williams**. He was called by petitioners. Mr. Williams is an assistant principal at Gainesville Middle School. He has served as the assistant principal at Gainesville for almost 3 years. Overall, he has been an assistant principal for 12 years. Prior to that, he taught special education for 15 years. He is the homebound coordinator at Gainesville Middle School.

Mr. Williams explained that he sends an email to school staff at the beginning of the year to solicit persons interested in being homebound teachers. If there is not enough interest from his school, he will solicit teachers from other schools. He testified that the student's name is not included on the solicitation email. He recalled that Mr. Silber was the only Gainesville teacher that responded. Mr. Silber provided homebound services to the student.

The witness did not recall when the student became eligible to receive either home-based or homebound services. It was established through documentary evidence that she was first approved for services on November 28, 2022. Mr. Williams explained how homebound hours are calculated, placing emphasis on the IEP team's determination of student needs. Mr. Williams acknowledged that homebound instruction did not start for the student until January 11, 2023. Mr. Williams also acknowledged that homebound instruction was supposed to start no later than 5 instructional days from approval.

Mr. Williams testified that he could not locate homebound instructors willing to teach in-person. Since Mrs. REDACTED expressed a preference for in-person instruction, that slowed the process. He also acknowledged that it was a preference and not a refusal of virtual services as he previously concluded. He could not recall whether he notified anyone about the problem or, if so, when. He could not recall whether he met with the IEP team to discuss the problem. He could not remember whether he explained the delays to the parent or not. Although the requirement was pointed out to Mr. Williams that the IEP team should meet to determine whether compensatory services are warranted in the event of a delay in homebound services, the witness could not recall meeting, but stated that there were several IEPs generated, but not signed. The witness testified that he knew services were provided by Ms. Cohen, but did not know whether services were ever provided virtually or not.

The witness could not recall why he sent an email to Ms. Graham attaching some notes that “might be helpful in any response required by the state for IL’s homebound.” He did not know whether IL referred to the student but acknowledged that it could have been. He was not sure why he sent the message. Although the witness claimed that the parents refused services via Zoom, he could not locate where the refusal was documented.

When asked about a message in which he stated that the parents refused services from teachers not certified in the content area, he used Ms. Aanderud as an example. He testified that Ms. Aanderud started services with the student but that her certifications were questioned by the parents and that they refused her as a teacher. This was later refuted by a note from Ms. Aanderud to the parents (shown to the witness) in which Ms. Aanderud stated that she would be unable to provide homebound services for the remainder of the year.

The witness was questioned about Laura Mathers, a teacher who canceled her session with the student on April 11th with less than 2 hours notice through no fault of the parents. On April 19th, that same teacher was about 30 minutes late. Throughout his testimony, the witness was questioned about various teachers who provided homebound, home-based, and compensatory services to the student.

The witness was questioned about the number of homebound hours that were provided, the delays in service, and the deficits. The witness testified that it was hard to find teachers. He testified that the school was well-intended, but teachers were just not available. The witness testified that he had no recollection of any documentation showing that the parents were at fault for the delays in homebound services.

When shown documentary evidence, the witness conceded that the parents did not either limit the student’s availability or refuse services. He acknowledged that the parents were not at fault for the delays in service.

On cross examination, Mr. Williams testified that homebound means a change in placement for the student. In order to have a change in placement, there must be a consented to IEP. The parents did not sign the IEP until January 11, 2023, so the student could not start homebound until after that date. He testified that he was looking for homebound teachers even before the IEP was signed. That once homebound was approved, he convened an IEP meeting on December 2nd to discuss the change in placement.

When he was informed by the parent that the student performed better with in-person instruction vs. virtual, the witness testified that he wanted the student to succeed and was trying to find in-person teachers. This contributed to the delay in services.

On redirect examination, the witness could not recall whether he communicated to the parents that there needed to be a signed IEP before services could start. It was also pointed out to the witness that the signed IEP dated January 11th showed at the bottom that the finalized IEP was not created until December 19, 2022. The parents could not sign an IEP before it was created.

Mr. Williams testified that although there were teachers willing to do homebound virtually, he could not remember who they were. When asked whether he thought the parents were obstructive, he testified that they were to an extent. He cited the incident when the parents questioned Ms. Aanderud's credentials. He also cited: waiting for signatures, applying for extensions for homebound, and the difficulty finding teachers.

On re-cross examination, it was pointed out to the witness that the parents sent an email stating that there was some information missing from the draft IEP and that that email could have delayed creation of the IEP.

On redirect examination, the witness was asked which schools he contacted to get staff for homebound. The witness was asked for the names of specific persons that responded and whether they would teach in-person or virtually. He could not remember, but agreed to search his messages for the information.

This witness was semi-credible. As homebound coordinator for the student, his lack of recall in many instances was suspect.

Petitioners' next witness was **Natalie Buttner**. Ms. Buttner teaches Algebra and math at Gainesville Middle School. She is in her second year of teaching. She taught the student while the student was attending school. Joanie Williams was her homebound teacher. She communicated with Ms. Williams via email. Ms. Williams also had access to the Canvas module and could get the class information from there. Ms. Buttner testified that she provided hard copies of homework with answer keys to the parents.

The witness testified that she sent an email to the parents stating that she intended to exempt the student from some formatives. She got an email back from Ms. **REDACTED** "ripping her apart" that stated that her daughter did not need to be exempted, she needed to be taught. The teacher explained that she did not need for the student to complete all of the formatives to know whether she understood the standard. Moreover, she testified that she was confused because the student's IEP permitted teachers to exempt the student from some lessons. When asked which part of the message was "ripping her apart," the witness conceded that it was not that message but another message she was referring to.

The witness discussed an incident when she denied the student from going to the bathroom. The student alleges that she bled through her clothes. The witness denied knowing that. Ms. Buttner testified that the fast pass in the student's IEP said that she could use it to go to the nurse for hand pain or to the counselor for anxiety and being overwhelmed. She testified that the IEP did not mention use of the fast pass to go to the bathroom.

On cross-examination, Ms. Buttner testified that she felt on edge with the student. She was afraid to speak to her, even in the nicest way, for fear of what Ms. **REDACTED** would do or say to her. She testified that she was confused as to what the parents wanted. The witness testified that the student did not do well in her class. She stated that the student was writing on her arm and would not open her devices when instructed. She cited an incident when the student and another student left her class without permission. When she asked where they were going for accountability

reasons, the other student apologized, and said they would not do that again. [REDACTED] asked the other student why she apologized to the teacher. The teacher said she felt disrespected and that her comment was rude. She testified that they returned to class after roaming the halls. They were visiting teachers on the 6th grade hall, something they knew they were not supposed to do. She stated that there were other times that the student just left her class.

She stated that she was accused by the parent of trying to humiliate the student. She was accused of ignoring the student's IEP. The witness testified that in emails, the parent accused her of making passive-aggressive remarks to the student and of being unprofessional. The emails from the parent were contentious.

When asked why she did not speak to the parents about the student's behavior, the witness testified that she was at a loss. She reported it to administration so they could handle it. If she spoke with the parents, she felt like it would have been turned around on her.

Ms. Buttner further testified that she offered to meet with the student to catch her up after one of her extended absences. She gave her a packet, and said she would meet with her to help her, but the student never got back with her.

The witness was credible.

The next witness called by the petitioners was **Laura Mathers**. Ms. Mathers is a teacher at Pennington Traditional. She has been a teacher for 15 years. She conducted five homebound sessions with the student. She testified that the reason there were so few sessions was because she did not receive the solicitation for homebound teachers until late in the year. She would have worked with the student earlier if she had received the solicitation earlier.

Ms. Mathers described the student as very cooperative and thankful. She testified that the parents were never rude or disrespectful to her. They were flexible and accommodating with the session times. She started services in April. In May, the witness testified that she sent an email stating that she could no longer do homebound due to unforeseen circumstances.

On cross-examination, Ms. Mathers testified that since she does not work at Gainesville Middle School, she would have received the solicitation for homebound teachers later than Gainesville teachers. She also stated that the time sheet she submitted needed to be corrected for March 2 and March 7 to indicate that the services were for another student.

The witness was credible.

Testimony continued with [REDACTED] who is the Head of School (principal) at The [Private School] School located in Plains, Virginia. Ms. Harper was the only witness called by the respondent, PWCS. She testified that The [Private School] School does not have special education services and that they do not follow IEPs that are drafted by public schools. She testified that The [Private School] School has learning support systems that follows the ADA and fulfills the individual needs of the student as defined by the neuropsychologist or wherever the testing may have come from. She stated that sometimes that plan may look like an IEP and other times it may not. She

testified that The Private School School provides specially designed instruction for students that include goals, services and accommodations for students with disabilities.

Ms. Harper stated that The Private School School does not have the type of specialists on staff that the public school may have. She claimed that some areas of learning might require an alternative pathway to learning. For example, The Private School School does not have one-on-one aides, however, the school has pull-out services that provide individualized instruction that corresponds with the needs of the child.

The witness explained that it is not a requirement for teachers at The Private School School to have a Virginia license. However, they must have teaching and educational background experience. Only 2 of the school's 7 teachers have a Virginia license.

Ms. Harper testified that it was explained to the parents that The Private School School does not provide special education services *per se*, but that they offer an Academic Resource Center that provides learning support. The witness stated that the student took a test to be admitted in The Private School School and she performed well enough to be admitted. The student was placed in Algebra 1 when most 9th graders are placed in Algebra 2 or geometry. To date, the student had missed about 75 classes (not days) and was tardy 14 times. However, with a medical excuse and working one-on-one with the teachers, the student can miss as many classes as needed so long as she is able to keep up.

School started on September 5, 2023. As of November, the first marking period, the student had pretty good grades. When asked whether her grades were indicative of a good middle school foundation, the witness stated that the student was capable of doing the work. She testified that the student-teacher ratio at The Private School School at the high school level was 1 to 14 or 15 students. She again mentioned the Academic Resource Center that has four teachers who assist students with learning disabilities as well as students that just need extra help. Attending the Center can be worked into the student's daily schedule like a built-in tutorial.

Ms. Harper testified that The Private School School is certified and accredited by the Virginia Counsel for Private Education which serves as an arm of the Virginia Department of Education.

On cross-examination, the witness testified that Private School diplomas are equivalent to public school diplomas. However, The Private School School requires more credits for graduation than the public schools. About 20% of the students at Private School have accommodations. The school has about 400 students. She explained that the purpose of admissions testing was to get a snapshot of where the child is at that particular moment and to see if their school's programs align in such a way that the child would be successful. They look at the student as a whole. In the student's case, they were concerned about her math so they suggested that she retake Algebra 1 and use the resource center for any additional support she might require. She testified that during the admissions process, grades, reports, teacher recommendations, individual meetings with students, individual meetings with parents, and the testing, capture the whole child.

She testified that Private School School students do not take SOLs. There are a lot of formative assessments as well as SATs and ACTs testing. Ms. Harper testified that 100% of their students

have been admitted to colleges and universities. They have had a couple of graduates that took gap years here and there, but they eventually went on to college.

Ms. Harper described the student as delightful, fun to work with, committed, and dedicated. She testified that, like the student, [REDACTED] has experience dealing with children that are absent due to chronic illnesses. To accommodate such students, [REDACTED] builds into the student's schedule community times throughout the day. During those periods, students are able to meet one-on-one with their teachers for help as needed, or in some cases, acceleration. They also have after-school teachers. She noticed that if the student misses class due to medical reasons, she exhibits dedication by following up with her teachers one-on-one to catch up her work.

On redirect examination, the witness explained why more credits are required to graduate from [REDACTED] than public school. She explained that [REDACTED] doubles down on communication. Unlike public schools, they have distinction courses called: English, compensation, literature, and writing. The witness testified that to teach at [REDACTED] a teacher must have a college degree, an educational background, and they must complete professional development courses.

She testified that it costs \$32,300 to attend [REDACTED] 40% of the families receive some sort of financial aid. She discussed the school's fundraising and grants. They offer a concentration in Theatre, English. She said that the school also offers athletics. As a student in the three-day arts program, the student pays an additional \$3,500.

The witness was credible.

Petitioners' called **Dione Aanderud**. Ms. Aanderud is a Family and Consumer Science teacher at Gainesville Middle School. She has been teaching for 17 years. She started homebound services with the student in March of 2023 teaching language arts and civics.

She first got an email soliciting homebound teachers in February 2023. She testified that she might have been available earlier if she had received the solicitation earlier. She testified that she met with the student on March 2, 3, and 9, 2023. On one of those days, she went on a walk with the student. She was trying to get acquainted with the student and build a relationship with the student so that she could better assist her with her educational needs. She denied playing Candy Crush on her phone during one of the sessions. She coordinated with her in-school teachers for assignments and homework. She testified that the petitioners never tried to reschedule service and they were flexible if she was running late.

Ms. Aanderud testified that she was given a packet of assignments from one teacher and added to Canvas by another teacher. She was not added to Canvas to get the assignments until 10 days after she started homebound services. She noted that her time sheet needed to be corrected for March 2, and 3, to reflect that she taught language arts and not civics.

The witness testified that on March 9th, she decided to quit because she was questioned by Mr. [REDACTED] about her credentials to teach civics. When she told him her credentials, he did not seem satisfied. The following week she was ill and could not teach. After thinking about it, the witness decided that it was not the best situation for her and she quit. Ms. Aanderud also testified that on

March 9th the student may have asked her a question that she could not answer but she planned to research it and provide the answer later. She explained that it is not unusual for questions to be asked that she may not know the answer to right then, but that she would find the answer and provide it later.

The witness acknowledged that she ran late a few times and on one occasion sent an email informing the parents that she was running late, one minute after services were supposed to start. The witness also acknowledged sending emails to the parents scheduling and canceling services (after she claims to have quit) on the 20th, 23rd, and 30th of March.

On cross-examination, the witness claimed to have still been thinking about whether to quit or not, and that is why she kept scheduling and canceling. She confirmed that she is a licensed teacher.

The witness could not recall whether either the parents or student questioned her about being a bus driver in addition to teaching. She stated that she just felt uncomfortable with the family.

The witness was credible.

The next witness was **Amanda Mallory** who was present throughout the hearing. She was called by the petitioners. Ms. Mallory stated that she is employed as Supervisor of Procedural Support, Office of Special Education, PWCS. She has been employed by PWCS for about 18 years. She began her lengthy testimony by explaining that her office is often referred to as ‘compliance.’ She is responsible for professional development, direct support to schools and families, and compliance with the requirements required for students with disabilities. She also assists with dispute resolution. She works with both IEP and 504 compliance. Her office has a cluster support system where parents and teachers can come to express concerns, gain input, ask questions, and get support. She stated that her office has had teacher complaints regarding the parents in this case.

When asked what PWCS has done to correct the June 1, 2023 VDOE finding that PWCS systemically did not provide accommodations for disabled students who applied to specialty schools, the witness testified that PWCS has initiated a very robust program to address the problem and to assist parents and students. The findings of the VDOE were appealed by PWCS, and upheld. After the appeal, the witness testified that PWCS followed the corrective action plan and was working with VDOE to come into compliance.

The witness discussed the elements of a FAPE. She participated in one 504 meeting, one IEP meeting on October 5, 2023, but the parents did not attend, and the student’s eligibility meeting on March 17, 2023. Ms. Mallory estimated that she attends between 10 and 15 IEP meetings per year. She explained how she interpreted the student’s IEP. When asked about measuring specific IEP goals, the witness testified that she did not write nor implement the IEP so she could only go by what was written in the IEP.

Ms. Mallory testified that the student required intermittent home-based services according to her 504 Plan beginning in December of 2021. She stated that all but 6 hours had been provided.

She acknowledged that corrections were needed on the time sheets of Ms. Mathers and Ms. Aanderud, and that the wrong times were counted against the student's hours. She explained that when homebound is canceled by the parents, that time is not made up.

The witness testified that PWCS was having problems finding teachers and that it was a nationwide problem. There is also a problem locating homebound teachers. The witness did not have any independent knowledge about a teacher's strike or social media postings regarding PWCS' teacher pay and staffing deficits.

It was established that the student was taking Algebra 1 when in school, however, when home-based services commenced, they enrolled her in pre-algebra in January, about ½ way through the school year. When asked whether she thought that this was appropriate, the witness provided a round-about answer that the hearing officer interpreted as a no. She testified that the student was given an additional 17 hours of home-based instruction and that the 504 team was waiting for additional medical information on the student before finalizing the hours. The team was aware that the student was going to have surgery and wanted more medical information following the surgery.

On March 17 an eligibility meeting was conducted. At that time, the team determined that the student was eligible for special education services under the IDEA. She attended the eligibility meeting. She also attended an IEP meeting on October 5. That was the only IEP meeting she attended for the student. Following the eligibility meeting, the team agreed to reconvene to discuss any updated medical information, and to decide whether the student required homebound services. She did not attend the follow-up meetings. She did attend a 504 meeting in December 2021.

The team met again on August 23 and there were two meetings after that before an IEP was produced. The medical certification for homebound service was not submitted until November 2022.

Ms. Mallory recalled speaking to the parents about an incident that occurred in science class. She recalled that there was some missing work, and the science teacher asked the student in front of the class, why she didn't do more work while she was at home ill, or something like that. The parents were upset, and the teacher later apologized for making the comment so they could all move forward.

She testified that PWCS was in compliance with VDOE regulations even though the student was first found to be eligible for special education services on March 17, 2022 and the first IEP was not created until May 26, 2022. She stated that a draft IEP was created, and that they tried to work with the parents to get full participation, but the parents were very upset. She claimed that the team met within the 30-day requirement.

The witness recalled testimony from Mr. Williams and Ms. Graham that the IEP took so long because the parents took a long time to provide consent. The witness acknowledged that, in her experience, it was not an extraordinary amount of time between the first IEP being created on May 26, 2022, and when the parents signed and provided consent on June 16, 2022.

The only other IEP created for the student was created on December 19, 2022. The parents signed and provided consent for implementation on January 11, 2023. The witness thought this was an unreasonable amount of time to sign, because a draft was presented to the parents on December 4, 2022. She testified that the parents had concerns and did not sign until January 11, 2023.

Ms. Mallory testified that she did not know how many homebound hours were due to the student at the end of the 2023 school year. Nor did she know who was responsible for keeping track of those hours. She stated that usually the case manager or homebound coordinator would keep track but she was unsure who maintained the hours for this particular student. The hours owed the student were further discussed and at some point, the witness testified, she tried to assist with tracking the hours of compensatory services owed.

In either March or April 2022, the witness became aware of hours being owed the student for home-based instruction. She assisted by finding Mr. Sprinella to provide services. He started in January 2023. After much discussion, the witness testified that 32 hours were ultimately awarded and that PWCS currently owes 6 of the 32 hours to the student.

The witness was questioned about the appropriateness or inappropriateness of the initial 6 hours awarded the student for home-based instruction, when the student had been absent for 46 days. She stated that at the time the six hours were awarded, the student had only been absent for 4 days with 10 tardies. The team was waiting to get further information from a physician.

Home-based under the 504 Plan was approved on December 9, 2021. The student was absent 7 times prior to approval for home-based. Ms. Mallory testified that she spoke with the parent on March 17, 2022, and that the parent did not feel that the hours were appropriate. Also, around that time, some of the teacher reports indicated that the student was having difficulty with her assignments due to her growing number of absences. The number of hours were not increased at that time because they had an eligibility meeting in March of 2022. She testified that the number of home-based hours were not increased until August of 2022. The witness claimed not to know why it took from March to August to increase the hours, despite both parent and teacher concerns.

When going through the record, it was determined that the student was absent between 42 and 46 times in 2022. She testified that the parents first notified PWCS that they were going to enroll the student in The [Private School] School in September of 2023. It was her understanding that the student was already enrolled in [Private School] by the time they received the notice. However, once shown an emailed message from the parent dated August 8, 2023, the witness acknowledged that the parent gave notice on August 8, 2023. However, she testified that she believed the student was enrolled at [Private School] as far back as July of 2023. After reviewing The [Private School] admissions checklist for the student, it was established that the student was not enrolled until September 2023. The application was received on August 14, 2023.

When discussing why the IEP team rejected the parents' request to place the student in a private school, the witness testified that such a placement would be too restrictive. She testified that to remove the student from her community, her school, and her peers, would be restrictive

when the services and supports she needed could be provided by PWCS. She stated that PWCS offered for the student to attend any high school within the PWCS system, but the parents rejected that offer. She reaffirmed her belief that PWCS could meet the child's needs in any high school in the county.

Regarding the student's failure of Algebra class, the witness testified that there were other factors that contributed to the student's failure. She cited the parents' rejection of a proposed pre-algebra class; a math support class; and a learning strategies class. She said that it was proposed in an IEP drafted in November, but never signed by the parents.

Ms. Mallory testified that there was an IEP in place for the 2023-2024 school year but that it took 19 proposed dates to get together and finish the IEP, because the parents were unavailable. When asked why extended school year (ESY) services were not offered to the student, the witness testified that it should have been discussed at the June meeting. That meeting did not finish, and was continued. After that it took 19 proposed dates to convene another meeting. The team was waiting to receive additional data, but did propose ESY in one of the prior written notices. When asked whether the IEP team rejected all of the parents' requests, including vision therapy, the witness answered that they were considered.

On cross-examination, Ms. Mallory stated that there was an IEP meeting on October 5th, but the parents did not attend. That meeting lasted 2 ½ hours. The witness answered questions about a series of documents that offered various services to the student such as a math support class and a change from Algebra 1 to pre-algebra. She testified that the parents rejected the proposals.

She testified that the IEP team rejected the parents' proposal to place the student in both a private day school and a private school, because it was too restrictive. She reiterated that PWCS could provide the student with the services she needed. She said that the parents never told her where the student was going to school even though they were in contact. She claimed that no PWCS staff knew about Private School

Ms. Mallory testified that The Private School School did not meet the definition of a private day school for children with disabilities. She stated that The Private School School is an independent college preparatory day school.

Regarding the exclusion of assignments, she testified that the provision was put into place so that teachers could skip assignments where the student showed mastery, to address the student's feeling of being overwhelmed, and to curb her anxiety. She further testified that the parents concerns were not ignored prior to the December IEP being signed. Ms. Hornbeck was in communication with the parents trying to address their concerns. She testified that dealing with parent concerns is what precipitated the delay.

The witness stated that she had received complaints from PWCS staff regarding TikTok postings of them on social media. There were about six people posted. The videos contained their email addresses and phone numbers, with captions below their pictures. The teachers were concerned that the videos were attacking them professionally and could also incite people to

harass them. She also testified that the IEP team felt that their good intentions to help the student were negatively received by the parents as well as their two advocates.

On redirect examination by petitioner's advocate (who took offense that she was identified as one of the disgruntled advocates), the witness stated that she was not sure what one thing caused things to evolve the way they have between the parties. She testified that she believed that PWCS could support the student's needs. She hated that the parties were nitpicking things instead of focusing on the student's strengths.

It was revealed that the parents did not attend the October 5, 2023 IEP meeting because they felt uncomfortable since they had just received the Blankenship lawsuit. The parents sent an email to explain why they did not attend the meeting.

It was also revealed on redirect that the student was required to get letters of recommendation from Gainesville as a part of the admissions process to **Private School**. The student got those letters along with her transcripts. Therefore, contrary to what the witness stated earlier, the evidence suggests that there were some PWCS staff who knew the student was looking into attending **Private School**.

On re-cross examination, when addressing the issue of whether PWCS could still work with the parents, the witness reiterated that the student could attend any high school within PWCS. Depending on where she chose, she may not have to deal with the same central office staff. Even if they chose a school that would be working with the same staff, she testified that they could work with the parents and student because they are professionals and student-oriented. She testified that their focus would be on the student.

On re-direct, the witness testified that the IEP that was proposed in October is a provision of FAPE. She testified that their willingness to work with the parents to reach settlement shows that they are willing to work with the parents.

The witness was credible.

Petitioners called **Dr. Wendy Martin-Johnson**, who is the Director of Programs and Development, PWCS. She is one of three directors. She served as the PWCS representative in this case because she is in charge of procedural support. She has been with PWCS since 2019. In 2023, she accepted the director position.

To save time, the hearing officer asked some preliminary questions. The witness testified that the 2021-2022, 2022-2023, nor 2023-2024 special education school year budgets had been reduced or cut. She testified that there is definitely a teacher shortage in PWCS and nationwide. She testified that to her knowledge, no student had been placed at The **Private School** School from PWCS via the IEP process.

The advocate then began to question the witness. When asked about a school board member who allegedly accused PWCS of retaliation, the witness said she was unaware, and does not directly interact with the school board. She stated that her associate superintendent deals with the

school board. She denied having ever retaliated against a special education family for filing a complaint.

When asked about posts from teachers on the PWCS Facebook page complaining about the lack of resources and the fear of retaliation if they complained, the witness stated that she does not follow the page. She stated that since she has been in her position, PWCS has added resources. Dr. Martin-Johnson was aware that the PWCS teacher's union had asked for several things, but she could not say exactly what. She was aware that the union was active, explaining that is one of the reasons it exists.

When asked about the testimony she heard throughout the course of the hearing from witnesses who admitted that errors were made by PWCS regarding the student, the witness maintained that the student received a FAPE. She testified that PWCS was prepared to correct any previous errors that were made. She testified that she believes it to be a misappropriation of local, state, and federal funds for the county to pay for a student to attend a college preparatory school when PWCS can provide the student with a FAPE. She does not believe that a private preparatory school is required to meet the educational needs of a disabled student particularly when the school does not provide special education services.

Dr. Martin-Johnson testified that roughly 14 percent of students in PWCS have IEPs. She did not know the maximum number of students that could be in a classroom in PWCS. She was aware of Private School operations and classroom size.

When asked about the difficulties during the student's IEP meetings, the witness said she definitely heard it throughout the hearing. She was unaware that the parents were involuntarily removed from a virtual IEP meeting on August 9, 2023 by dropping them from the meeting.

Even with the lag in homebound and home-based services to the student, the witness believed that PWCS provided the student with FAPE. She stated that PWCS has worked to resolve the lack of services in the student's middle school years.

On cross-examination, the witness was asked about the Facebook post where teachers were complaining about salary, benefits and the lack of personnel. She stated that the complaint was posted anonymously and could have been made by anyone. She testified that mid-year, PWCS employees received a 2% raise.

She testified that post complaint, PWCS representatives have met with the parents several times through mediation and resolution sessions. They tried to resolve the issues by offering: full virtual, a virtual hybrid model, attendance and transportation at any high school in the county, including Colgan. She explained that by working with the parents, three of the four major issues were resolved. Since the IEP meetings and the relationship between the parents and PWCS has been contentious, PWCS offered facilitated IEP meetings where a neutral party would facilitate the meetings.

She testified that the smallest high school in the district was Brentsville High School with about 1000 students. She said that logically, since the school was smaller, the class sizes would be smaller.

On redirect examination, the witness testified that hypothetically, the class sizes at Brentsville could be the same as the other high schools in the district. She discussed specialized instruction, and what it could or should be for individual students.

When discussing the contentious nature of the relationship between the parents and PWCS central office personnel, the witness testified that facilitated IEP meetings had already been suggested. She stated that if a liaison was appointed to deal exclusively with the parents, she would have to identify who that person would be because they would have to have a background in special education.

The witness was credible.

Ms. **REDACTED** mother of the student, was called as a witness for the petitioners. She testified that her family moved into Prince William County when her daughter was in the 4th grade. She discussed the fact that she has had a traumatic brain (TBI) injury for about three years that affects her memory.

Ms. **REDACTED** testified that PWCS often provided her with untrue information. She stated that it began in 2021 when she tried to reach out to get help with the student's 504 Plan. She testified that her questions were sometimes not answered, other times they were answered but it turned out that they were not in agreement after all. She thought certain things were in the student's plan, and it turned out they were not, like the bathroom fast pass.

PWCS kept asking for medical documentation when she had already provided a lot of medical information and documents to both the 504 and IEP teams. She said that Ms. Graham told her that the student had a fast pass to the bathroom prior to the September 2022 incident when the student bled through her clothing. She stated that she had informed Ms. Graham that the student was on blood thinners and needed a fast pass to go to the bathroom. She testified that Ms. Graham assured her she would get her the fast pass with a bathroom accommodation. She explained that the first incident with blood occurred in the gym when the student tasted blood and ended up at the hospital.

She testified that when the incident occurred where she menstruated through her pants, blood was running down her legs and that sometimes the blood gushes out. She said her husband had to get a towel to contain it. Ms. **REDACTED** testified that it was a humiliating experience for the student. She testified that it happened once before, but that she did not make a big deal out of it, because accidents happen. But the second time, Ms. **REDACTED** testified that she was livid because she had been in constant communication with the school about her daughter's medical condition and needs.

The witness testified that she was not made aware of the incident mentioned during the hearing by Ms. Buttner alleging that the student got up and walked out of her class without permission.

She testified that some of the witnesses tried to make the point that her daughter was a problematic child. She denied that her daughter is problematic.

The witness testified that during mediation, Dr. Martin-Johnson rolled her eyes, while the advocate and parent were speaking. She laughed when the parent was expressing her concerns. She also scowled or stared at the witness during mediation.

Ms. [REDACTED] said that she tried to compromise with PWCS by offering that the student attend [Private School] for 2 years at public expense. She thought that was a reasonable compromise considering they squandered 2 years of her education in middle school.

While at Gainesville, she testified that her daughter became depressed and just stayed in bed. She said she was humiliated by teachers when she returned from absences about her not being able to do the work. She testified that she personally had bad experiences with teachers whenever she tried to advocate for her child. She testified that the math teacher told the student that if she could not keep up, there was a slower math class down the hall. She remembered a science teacher telling the student that it was her fault that she had so many assignments to complete during the holiday break. That teacher blamed the student for the outstanding assignments although the absences were due to illness.

With the gym incident, she did not feel that her concerns were taken seriously. She testified that the student couldn't breathe and that the medical documentation from the hospital shows that.

She testified that not all of the teachers at Gainesville or the homebound teachers were bad. Some of them were very supportive. For example, Mr. Silber was very supportive. He taught the student homebound science. The student finished the class and passed her SOL.

Ms. [REDACTED] testified that her daughter is thriving at The [Private School] School. She has returned to her normal self. She testified that although PWCS, in a lot of their documents, reference the student having anxiety due to her disability, the parent stated that she never told them that. She testified that her daughter has had her disability all of her life and never suffered from depression or anxiety before middle school. She never before had to take Pepcid because of nausea associated with going to school. She testified that her daughter was anxious about going to school at Gainesville, and that she never used her disability to get out of an assignment.

The witness testified that her daughter was a curious, intelligent, people-loving, social, and outgoing person. She stated that her daughter is now back to her normal self. Since being at [Private School] even in pain, the student wants to go to school.

When asked whether she could have done better with her tone when speaking with PWCS, the witness testified that she probably could have but that there was an accumulation of incidents, especially with Ms. Buttner. However, she now doesn't believe that Ms. Buttner was ever given a copy of the IEP. She believes that either Ms. Graham or Ms. Blankenship dropped the ball. She also blames the office of support because she communicated with them often begging for help.

The witness testified that she talked with Ms. Mallory and Ms. Baker, copied them on emails, and generally kept them informed. She stated that they knew what was going on. She initially thought they were advocating for her daughter, but looking back, she now believes that there was no way they were helping.

She claims there should have been an intervention or something so that her daughter would feel safe at school. When she advocated for herself, the student felt disbelieved. She felt the school was not paying attention to the student's disabilities. After two years of that, she testified that she had no choice but to remove her child from public school and place her in private school.

The witness testified that she signed two IEPs. She said she was told that some services could not be provided unless an IEP was in place. That was not true. She did not understand the process and later learned that she should have better voiced her concerns when she got the prior written notice. She was constantly in contact with the school and when an oral agreement was reached, she thought that it would be done, but it was often not.

When reviewing the 504 Plan for the 2021-2022 school year, the witness pointed out that she thought the home-based hours awarded were inadequate. She communicated her concerns to Ms. Mallory. When she would ask about it at the meetings, she was told that it would be discussed at another meeting.

The witness reviewed goal one of the IEP, and shared that she could not really understand what it meant given the way it was written. She did not understand how the goal was to be measured other than by writing samples. When she repeatedly asked for the writing samples, they were not provided. During the August 9th IEP meeting, the witness recalled that the advocate asked for the goals to be rewritten in a more understandable manner, but the IEP team rejected that request. The witness recalled sending an email to Ms. Graham asking for the checklist, writing samples, tallies, observations, tests, and quizzes that were used to measure the goals. The witness testified that this information was requested via email, verbally, and by subpoena, but it has not been provided.

The witness testified that she believed that the IEP was not properly implemented. The witness believed that the home-based hours were inaccurately calculated by PWCS and that the student is owed between 67.2 and 73.6 hours of home-based instruction based on 42 to 46 absences at an 8-hour minimum per week. In the last proposed IEP from PWCS dated October 2023, no home-based services were included. She said she kept being told they needed more medical documentation. She testified that they had plenty of medical documentation, and she could not understand what medical documentation they were talking about.

Ms. REDACTED discussed Colgan High School and its specialty program. She stated that she and her child were no longer interested in that school. She explained that she has heard numerous complaints from parents about their disabled child being bullied at Colgan. There has been no accountability from administration about the bullying. She said the same thing happened to her child at Gainesville where a student threatened to beat her child up, and when she reported it, there was no accountability. She said that Ms. Graham told her that it just looked like students talking.

She also mentioned hearing an audio recording where someone from Colgan said that they did not want students with IEPs, they only wanted the cream of the crop, and that students with IEPs are not cream of the crop. She does not want her child to attend a school where she is not wanted. She also acknowledged that the VDOE letter of findings about Colgan not providing appropriate accommodations to its specialty program further convinced her that the student should not attend Colgan. Ms. [REDACTED] also testified that she does not believe that the student was provided with the knowledge to access the Colgan application, given her disabilities, and her situation.

The witness stated that she has no faith in PWCS when it comes to students with disabilities. She does not trust PWCS or its staff.

She claimed to have spent over \$10K in advocate and attorneys fees trying to get some relief for her child from PWCS, but to no avail. She stated that her attorney sent a demand letter requesting that the IEP team consider placing the student in private school. She could not remember whether they responded.

Reference the derogatory TikTok videos, the witness testified that she was fed up and desperate. In retrospect, she would not have posted them because of the result. However, she stated that there was animosity between her and PWCS personnel way before she posted the videos. She thought Ms. Graham had a lot to do with the animosity. She believed that Ms. Graham saw her as being difficult when she was just advocating for her child. She testified that there were instances when Ms. Graham would not respond to her emails. There were also miscommunications between them.

She testified that no homebound or home-based services were provided for the student in September, October, and November 2022. In the fall of 2022, compensatory services were still owed to the student. The witness also testified that she felt that Ms. Blankenship did not adequately monitor or report on the student's progress.

On cross-examination, in relation to her distrust of PWCS, the witness acknowledged that the student had never attended high school in PWCS. When asked whether she ever asked for the student to be transferred to another middle school, the witness could not remember. The witness testified that she went to Colgan High School once when her daughter's art was selected to be in a show. She also had contact with Colgan personnel during her daughter's application process to the specialty school, but that she really does not know what Colgan staff would be like if her daughter attended Colgan.

She stated that a lot of her reluctance about Colgan was due to parents reaching out to her after the student's TikTok video speaking to the school board went viral. The student's video was a speech she gave to the school board discussing her negative experiences. She said she received numerous comments from disgruntled parents whose children went to Colgan.

Ms. [REDACTED] acknowledged that she discussed many of her IEP concerns with Ms. Hornbeck. The witness recalled a 2 ½ hour conversation with Ms. Graham. After the call, she felt that nothing had been accomplished. She felt there was no accountability. She testified that to her,

accountability meant that they were sorry for the infraction, they would promise to do better, and then actually do better. She felt that none of that happened. She did not think that she was believed despite having provided a lot of doctor's notes.

The witness agreed that the school provided her with a health treatment plan form to complete, but she claimed that the form did not apply to her daughter's situation. She was not asking the school to administer her child with any medication, which is what the form primarily discussed. When discussing the bleeding incident, the witness explained that the fast pass to the bathroom was added after that incident. Before the incident it was only for the nurse and counselor.

She testified that things became very contentious between PWCS and her family after her daughter's video speech to the school board went viral in July of 2023. She stated that she did not provide PWCS with any additional medical documentation after her daughter's surgery because PWCS already had the medical documentation they needed to begin services. PWCS never told her that they needed more documentation to continue services. The student's condition is a life-long illness which they knew. The student's surgery was in August and no other medical documentation was provided after the surgery.

The witness claimed that she did not receive the proposed IEP from the August 9th IEP meeting, from which she was removed, within the required 10 days. So she contacted Ms. Mallory who emailed her that the team was waiting for updated medical information on the student. She did not provide the information, because she did not believe they cared about her child, and because they had not even provided the services already due to the student. At that point, she testified that she did not believe they were capable of delivering the services.

Ms. REDACTED admitted that PWCS reached out to her before school to convene an IEP meeting, but it was only after she filed a VDOE complaint. She believes it was in response to the complaint. Also, the email was sent after school had already started.

When asked to put the student in pre-algebra, the witness testified that she rejected the idea so long as the student was receiving the compensatory services to help her catch up. However, once the student started struggling, she asked for her to be put in pre-algebra class or for her homebound. She stated that her attorney rejected learn acts and the math support class. She relied on her attorney for those decisions.

On redirect examination, the witness was again questioned about the August 9, 2023 IEP meeting. She reiterated that she contacted Ms. Mallory after 10 days to ask for the promised IEP proposal but she did not receive it. At the end of the meeting, PWCS said that they would meet again without the parents. She was unsure whether that actually happened. The meeting lasted 3 hours and the advocate asked that it stop and be reconvened because she was in Hawaii at the time and there was a time difference. PWCS refused to stop the meeting and dropped the parent and advocate from the call.

The witness testified that the case manager, Ms. Blankenship, accused her of having Munchausen Syndrome. After that, she was scared to meet with PWCS personnel for fear that they may accuse her of making her daughter sick for personal attention.

On recross, Ms. [REDACTED] reviewed an email message from Ms. Mallory dated August 24, 2023. In this message, Ms. Mallory asks to follow-up on the recent IEP meeting.

She testified that the Munchausen Syndrome accusation from Ms. Blankenship occurred after several IEP meetings had occurred.

On redirect examination, it was pointed out that the August 24, 2023 email from Ms. Mallory asking to follow-up on the August 9th IEP meeting was actually sent in response to an email of inquiry from the parent.

The witness was credible.

Testimony was heard from the final witness, [REDACTED] who is the student in this case. The student is 15 years old. She knew the difference between a lie and the truth. She promised to tell the truth during her testimony. [REDACTED] is a pleasant, articulate, personable, well-mannered child. She was present for 3 days of the 4-day hearing. She testified that she was doing very well at [Private School] and felt accepted by both the teachers and the students.

The witness admitted sometimes leaving Ms. Buttner's classroom without permission to perform feminine hygiene. She did it because of the humiliating incident when she was not allowed to leave and bled through her clothing. She denied ever roaming the halls. She denied being disrespectful to Ms. Buttner. She testified that she bled through her clothes 4 or 5 times while attending Gainesville Middle School.

In reference to the gym incident, she testified that Mr. Goode did not permit her to stop running. He never apologized even though it was in her 504 Plan to stop running at her discretion.

She explained that at first she wanted to attend Colgan, but now she does not. She said that she believed that if she went to Colgan, the same thing would happen to her there that happened at Gainesville. She feels she would be ignored, and not be provided with a FAPE. She testified that she is enrolled in the arts program at [Private School] where she is publicly commended for her hard work, and for the creativity of her artwork.

She testified that when she received homebound services, she felt with Ms. Aanderud, that she went on walks to waste time. She could not answer her questions, and when they sat to do work, she would just hand her some papers, and tell her to do it herself. She testified that she called her a bus driver only to identify who she was, not in a derogatory way. She never called her a bus driver to her face. It was at an IEP meeting where she was talking about her experience with her. She did not mean it to be disrespectful.

She said that she felt very unprepared for her 8th grade year. She testified that she got a little bit of math during homebound. In the 8th grade, she felt like she was running while everyone else was walking. She denied ever drawing on her hand.

The witness testified that in her Algebra class, at first she tried her best to keep up but towards the end she felt defeated, because no one cared enough to pull her aside and teach her one-on-one to prepare a base for her. She claimed that she is doing much better in Algebra now, and that her last tests were 85 and above. She said that at Private School she rarely has to ask for help, they can look at her and know she needs help. They are right there to help her.

She testified that she receives one-on-one support at Private School. She said there is no IEP meeting for her to get help, all she has to do is ask. They just help her, because they know she needs it. She stated that when she is absent and returns to school, the teachers pair up to help her get caught up. They schedule meetings with her and other things to help her catch up. She also receives one-on-one assistance to help her catch up on work she missed. If she is out of school, she can use email to ask questions and she will get a response within 2 or 3 minutes.

The student testified that if she were ordered to return to PWCS she would feel a sense of defeat. She does not feel she could ever go back and have a bright future ahead of her. She said that when she sat in those classes she felt ignored / invisible. She said she cried for help and sent messages to Ms. Blankenship, and she did nothing to help her.

The student recalled attending an IEP meeting where transition services were discussed. The teacher mentioned that students with IEPs were taught to fold clothes, at perhaps Goodwill, and she could not imagine that being the best future they could come up with for her.

The student discussed the reaction she received to the video posted of her speaking with the school board. She said it broke her heart to know that so many other parents and children have had to deal with what she went through.

On cross examination, the witness testified that she was not a part of the conversation about her going back to pre-algebra. She said that she thought her mother wanted that, but was not sure. She stated that if given the chance, she thinks she may have gone back to pre-algebra. She testified that she never scheduled a time to meet one-on-one with Ms. Buttner, because she was afraid of her.

When asked about Colgan, she testified that she went to an open house but has not talked to staff there. When asked about Ms. Aanderud, the student testified that she did not think of her as a bus driver. She said that she knew that Ms. Aanderud was a licensed teacher.

The hearing officer asked the student what she wanted to be when she grew up. The student said lawyer and alternatively, a dermatologist. When asked about her interest in art, she said she wanted that to be a side business.

She testified that her 4th grade teacher, Mr. Brewer, was the best. He never embarrassed her for not knowing something like they did at Gainesville. He taught her how to read and he inspired her to read.

She testified about an incident in Ms. Dorsey's class when she was having trouble in class. The teacher, looking directly at her said that if she could not keep up there is a slower class down the hall.

The witness was very credible.

The hearing concluded at 9:58 PM.

Argument Summaries

Petitioners

Petitioners argue that PWCS failed the student, and did not provide the student with a FAPE. Summarily, they claim that the 504 Plan and IEP failed to adequately address the student's specific educational needs. They allege that the student was excluded from assignments without parental consent. They further claim that the IEP lacked measurable goals and inadequate progress monitoring. They contend that the student's 504 Plan, as written, was not properly implemented. They contend that the student's IEP, as written, was not properly implemented. They allege that when PWCS failed to reimburse the petitioners for vision therapy, failed to implement the optometrist's suggestions to help the student, and denied an independent educational evaluation (IEE) for vision, they denied the student a FAPE.

Petitioners allege that PWCS is incapable of providing the student with a FAPE. They claim that PWCS admitted that they failed to provide the student with appropriate compensatory education services, currently owing the student 105.5 hours. The petitioners claim that they repeatedly expressed concerns and problems to PWCS about their child's education, but that PWCS would either: lie; blame the parents or child; deny the problem; placate the petitioners; "gaslight" the petitioners; retaliate; or diminish the severity of the concern or problem.

Petitioners argue that some of the student's assignments were unilaterally excluded from the student's grade level curriculum by teachers. There was no parental consent or request to take this action. They argue that the unilateral excusal of the student from course material without parental consent or without consulting a team, constitutes a denial of FAPE.

Petitioners also argue that the annual goals, as written in the IEP, were either not measurable because they were not written properly, or, they were incorrectly measured. They claim that rubrics are not checked off or written in as to the manner of measuring an annual goal and that to do so is a denial of FAPE. Summarily, the petitioners argue that the student's IEP goals were not measurable as written and that progress was inaccurately measured. Petitioners claim that the number of home-based hours owed to the student were inaccurately calculated by PWCS and moreover, generally not delivered.

Petitioners claim that PWCS failed to provide FAPE when they did not follow the IEP. They claim that the IEP called for weekly updates to the parents during homebound instruction, but there were no weekly updates provided and that most of the homebound instruction was not provided.

Petitioners claim that the student had to wait several months to start her 8th grade education because of PWCS failures. They claim that the student was unquestionably denied a FAPE due to these unnecessary delays for which PWCS blames the parents. They claim that neither homebound or home-based services were delivered timely, if at all.

Petitioners argue that the family's cries for help were ignored as well as the doctors that made recommendations to PWCS about the student's medical conditions. PWCS failed to accept or implement the doctors' recommendations regarding the student's overall health and vision.

Petitioners argue that the student is thriving at The [Private School] School. They claim that since her placement there for the 2023-2024 school year, she has been doing well and getting good grades. They claim that The [Private School] School is providing the services, supports, and accommodations she needs to do well in school and educationally progress. They allege that The [Private School] School provides the student with an education that is reasonably calculated to enable her to make appropriate progress in light of her unique needs. Petitioners claim that although The [Private School] School does not provide "special education" *per se*, it has a resource academy that provides individual and specialized services for students that need extra help. They help the student with one-on-one services when she is having difficulty.

Petitioners claim that enrolling the student in The [Private School] School was a necessary step due to the inadequacies of PWCS to provide an appropriate IEP. They claim that PWCS failed to address the student's unique educational needs and was unable to offer an appropriate educational program. They claim that they repeatedly attempted to collaborate with PWCS personnel to improve or modify the student's IEP, but to no avail. They claim that their decision to place the student at The [Private School] School was both reasonable and necessary for the student's educational, developmental, and emotional progress.

Respondent

PWCS argues that the petitioners failed to meet their burden of proof. It contends that the petitioners failed to show through testimony or documentary evidence that the student was denied a FAPE by PWCS. It claims that the petitioners' unilateral placement of their daughter at The [Private School] School was not justified. It alleges that petitioners failed to provide them with timely notice of the student's unilateral placement at [Private School] to PWCS, as required by law. PWCS claims that The [Private School] School cannot offer the student a FAPE. PWCS argues that The [Private School] School does not offer special education services, does not follow IEPs, and is therefore an inappropriate placement for the student.

PWCS further claims that The [Private School] School is an inappropriate placement because it is a private, college preparatory school, and not a private day school. PWCS believes that it would be a misappropriation of public funds that are earmarked for specialized instruction for students with disabilities, to pay for a student to attend [Private School] a private, preparatory school, when PWCS can provide the student with appropriate special education services.

PWCS contends that [Private School] School teachers do not need to be licensed in the Commonwealth of Virginia and that only two of the student's current seven teachers have

Virginia licenses. The two licensed teachers are not licensed in the student's biggest areas of concern, i.e. Algebra and English.

PWCS admits to owing the student 105.5 hours of compensatory education services as documented in the January 3, 2024 settlement agreement, however, PWCS argues that its inability to deliver the services was due to: a lack of available teachers; the petitioners' preference for in-person versus virtual instruction; delays caused by the petitioners; and the petitioners' derogatory questioning of available teachers. PWCS argues that the owing of 105.5 hours of compensatory education services does not rise to the level of placing the student in a school that does not provide special education services, and does not follow an IEP.

PWCS claims that prior to the hearing, it made numerous offers to the petitioners that would have provided the student with a FAPE. For example, PWCS offered the student the option of attending any high school within the PWCS system, including Colgan High School which has a Fine Arts Program that the student was previously interested in, but for which the student was not selected. Among other things, PWCS offered a learning strategies class along with IEP team discussions regarding assignments, delayed start times and early release, transportation, and a collaborative general education class for Algebra I and/or any subsequent math class. These offers were rejected by the petitioners.

PWCS claims that the petitioners offered no evidence as to why the student should attend a private school instead of public school. PWCS contends that a private school is not the least restrictive environment for the student. PWCS claims that the only evidence offered by the petitioners was testimony that the student would not be happy, and it would be detrimental to the student to attend high school with PWCS.

Since the student has never attended high school in PWCS, they contend that it is only speculation to presume that the student would not be happy or that it would be detrimental. Moreover, the student has been given the option to select any school within the PWCS system so if she does not want to be with the students with whom she attended middle school, she could select a different school. PWCS argues that they can provide the student with a FAPE.

PWCS alleges that the petitioners failed to provide timely and sufficient notice of the private placement as required by law. PWCS claims that the petitioners pursued private placement prior to giving notice of the placement to PWCS and that they only provided 8 business days notice instead of the required 10 business days. Petitioners provided PWCS with notice of the private placement on August 8, 2023. Public school started on August 21, 2023.

PWCS also argues that by placing the student at The Private School School two days following the start of public school, the petitioners did not provide sufficient time for PWCS to correct any perceived deficiencies in the student's special education program. PWCS claims that it attempted several times before public school started to schedule an IEP meeting with the parents. Further, PWCS argues that the petitioners' actions show that they had no intention to return the student to PWCS schools, as also evidenced by them starting the application process to the Private School School on July 2, 2023.

The student failed Algebra class and she did not pass all of her Standards of Learning exams. PWCS claims that the student did not actively participate in the Algebra class. They claim that the evidence shows that the student: would not take out her materials when requested by the teacher; drew on her hand during class; did not do any work while in class; and left the class without permission. PWCS asserts that the student's class failure was not due to their failure to provide a FAPE, but the student's unwillingness to receive instruction.

PWCS asserts that although the petitioners allege that PWCS failed to provide a FAPE, the student was nonetheless able to pass The [Private School] School entrance exam using the educational background and tools she received from PWCS. The student is also performing well at The [Private School] School, again, using the educational background and tools she received from PWCS.

Findings of Fact

Having considered all of the evidence and arguments from both parties, this hearing officer makes the following findings of fact:

REDACTED (the student) is a 15-year old child who currently attends The [Private School] School in Plains, Virginia. Her parents removed the student from public school and placed her at the private [Private School] School for school year 2023-2024. The student is just beginning high school as a 9th grader. The student at all times relevant to this proceeding resided with her parents in Gainesville, Virginia.

For 7th and 8th grades, the student attended Gainesville Middle School in Prince William County. During her 2021-2022 school year, the student had an Individual Accommodations, Section 504 Plan. Among other things, the 504 Plan permitted the student to limit high-impact activities at her discretion. In January 2022, the Plan was amended to include intermittent home-based services in the amount of 3 hours for every 3 consecutive absences. (PWCS Exhs. 5 and 11)

On March 17, 2022, the student was found eligible for special education services under the category of "other health impairment." (PWCS Exhibit 15) The student suffers from venous malformation, attention deficit disorder, and deficits in working auditory memory. The student also requires vision therapy for myopia and amblyopia. Although no expert witness testified regarding the student's disabilities, the evidence is clear from the record that the student qualifies for special education services pursuant to the IDEA. The first IEP was created on May 26, 2022. The parents consented to the IEP on June 16, 2022. The last consented to IEP is dated January 11, 2023. (PWCS Exhs. 1 and 2) It was created on or about December 7, 2022.

The student has undergone surgical procedures for the venous malformation and missed between 42 and 46 days of school, requiring both homebound and home-based instruction. The student has suffered from venous malformation since birth which causes severe, debilitating pain in her right hand. This has impacted her school attendance and the functionality of her right hand. At some point, the student was required to take blood thinners. Due to her numerous absences and medical condition(s), the student was assigned home-based instruction for the 2021-2022 school year per a 504 Plan, and homebound instruction for the 2022-2023 school year per an IEP.

While attending Gainesville Middle School, the evidence shows that the student was once denied a bathroom pass while taking blood thinners due to her illness. As a consequence, she menstruated through her clothing. The evidence also shows that during gym class, the student requested to stop either running or fast walking because she tasted blood. The teacher denied her request, resulting in a hospital visit. (PWCS Exhibit 14)

On March 21, 2022, Dr. John Dresely, Neuro-optometrist, recommended vision therapy for the student due to a diagnosis of amblyopia of her right eye. On March 22, 2022, Dr. Dresely wrote a summary document titled “What the Classroom Teachers Can Do to Help” that included certain accommodations that could be put in place to assist the student. The recommended accommodations were not provided for the student by her classroom teachers. (PWCS Exhibit 13) On September 30, 2022, Dr. Dresely wrote another letter emphasizing the importance of providing the accommodations outlined in his previous letter. (PWCS Exhibit 43) PWCS did not provide the accommodations.

On October 1, 2022, Dr. Lindsay Russow, pediatrician, wrote a letter to PWCS explaining the student’s numerous medical issues. He suggested that an emergency medical action plan be put in place. (PWCS Exhibit 43) Dr. Russow wrote a second letter dated February 16, 2023 requesting that intermittent home-based services be written into the student’s IEP. (PWCS Exhibit 65)

On November 1, 2022, the student reached out to her case manager, Adelina Blankenship, conveying symptoms of anxiety, bullying, and feeling generally overwhelmed. Ms. Blankenship responded two days later without a plan to help the student. (PWCS Exhibit 51)

On November 28, 2022, the student was approved for homebound instruction from November 28, 2022 to January 23, 2023. On February 2, 2023, the parents submitted a medical certification to extend homebound services. Homebound was approved on February 23, 2023 until April 11, 2023.

On March 21, 2023, PWCS acknowledged owing the student homebound services from November 28, 2022 to January 23, 2023. Between June 2023 and July 2023, the parties exchanged several back-and-forth emails that discussed: the number of hours the student was owed; a parent request for copies of audio and video recordings of IEP meetings; a FERPA request made by the parents; a record review requested by the parents; continued parental concerns to be discussed at the IEP meeting; and the scheduling of IEP meetings.

On July 26, 2023, an attorney representing the parents/student wrote a letter to PWCS requesting that the IEP team consider other placement options for the student. PWCS denied the request.

The student opted out of 7th grade SOLs. In the 8th grade, the student failed her math and civics SOLs. The student passed the reading and science SOLs. She was scheduled to take the writing SOL with pen and pencil but it did not arrive on time.

On August 8, 2023, the parent provides PWCS with written concerns as well as her written notice that she is privately placing the student. (PWCS Exhibit 114) On August 14, 2023, the student applies for admittance to The [Private School] School. On August 21, 2023, the parents pay the deposit to [Private School] (PWCS Exhibit 101) The student starts at [Private School] in September 2023. Notice to PWCS from the parents of private placement was two business days shy of 10 business days.

The parties entered into a settlement agreement dated January 3, 2024. That agreement is hereby incorporated herein by reference. Therein, PWCS agreed to reimburse the parents for vision therapy sessions. PWCS agreed to pay for a functional vision assessment -- independent educational evaluation (IEE) to assess strengths and weaknesses in the student's vision, and the impact on her educational performance. PWCS agreed to provide the student with 105.5 hours of compensatory education in the form of tutoring from The New Community School, Richmond, Virginia to make up for loss homebound instruction during the 2022-2023 school year. The parties agreed that the issue of a FAPE would remain, to be litigated at due process. PWCS denied any wrongdoing or liability on its part.

Although there was settlement on the amount of homebound hours owed to the student, the parties agreed that evidence regarding homebound could be presented during the hearing on the issue of FAPE. Evidence was also presented regarding home-based services as they relate to the issue of FAPE.

Legal Analysis, Findings, and Conclusions of Law

Issue 1:

Whether Prince William County Public Schools (PWCS) failed to develop, implement, and/or revise the student's 504 Plan and/or Individualized Education Program in a manner reasonably calculated to enable the student to make progress and provide the student with a FAPE for her 7th and 8th grade school years.

504 Plan

In the 7th grade, the student had a 504 Plan. A 504 Plan operates like a blueprint for how the school will support the disabled child. The purpose of the 504 Plan is to prevent discrimination and protect the rights of students with disabilities at school. 504 Plans often include accommodations for disabled students.

In this case, as an accommodation, the Plan permitted the student to limit high-impact activities *at her discretion*. In January 2022, the Plan was amended to include intermittent home-based services in the amount of 3 hours for every 3 consecutive absences. (PWCS Exhs. 5 and 11)

The Plan was violated when the student asked her gym teacher to stop running during gym class and the teacher denied her request. The student alleges that she tasted blood. Since the teacher did not see any blood, he told the student to continue running. The incident resulted in the student going to the hospital. The student claimed that she was having difficulty breathing and that she was tasting blood. Regardless of whether the gym teacher saw blood or not, he should

have permitted the student to stop running. The 504 Plan stated that the student should limit high-impact activities *at her discretion*.

The evidence also indicates that the student did not receive the amount of home-based instruction to which she was entitled. This too, was a violation of the Plan. Ms. Mallory confirmed during her testimony that at least six hours of home-based services remain due to the student.

I FIND that these two instances represent failures by PWCS to properly implement the 504 Plan. The hearing officer was to consider the lack of home-based services as it related to 504 implementation and FAPE. No calculation of hours owed is required.

As an aside, the hearing officer waited for PWCS to move that this matter be bifurcated. Local Educational Agencies usually have local policies in place that specifically address disputes dealing with 504 Plans.

Individualized Educational Program

A free appropriate public education (FAPE) is an educational entitlement guaranteed to all students who have been identified with a disability. This right is protected by the Individuals with Disabilities Education Act (IDEA). FAPE ensures that students with disabilities receive an individualized educational program (IEP) that is designed to meet their unique needs and provide the student with educational benefit.

School systems are required to provide special education services that meet the unique needs of students with disabilities. The right to FAPE is an essential part of ensuring an equal access to education for students with disabilities. Importantly, a FAPE should create both an inclusive and supportive learning environment for disabled students. Considering the testimony of the student, she did not feel included or supported at Gainesville Middle School.

The right to a FAPE for children with disabilities is rooted in the law. The Individuals with Disabilities Education Act (IDEA) requires the development and implementation of IEPs that are reasonably calculated to provide an educational benefit to the disabled student. See *Hartmann v. Loudoun County Board of Education*, 118 F 3d 996, 1001 (4th Cir. 1997.) The substance of the IEP must be reasonably calculated to provide the student with some educational benefit. See *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 205, 102 S. Ct. 3034, 3050, 73 L. Ed. 2d 690 (1982). In the case of *Endrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017), the U. S. Supreme Court further defined the standard of *some* educational benefit by requiring school systems to offer an IEP that is reasonably calculated to enable a child to make educational progress in light of the child's individual circumstances. The IEP has two general purposes: to establish measurable annual goals for the student; and to state the special education and related services, supplementary aids, accommodations, and services that the school district will provide to, or on behalf of the student.

In the case of Sumter County Sch. Dist. 17 v. Heffernan, 642 F.3d 478, 484 (4th Cir. 2011), the Court addressed situations where a local school board failed to implement, in material part, an IEP by opining:

Given the relatively limited scope of a state's obligations under the IDEA, we agree with the District that the failure to perfectly execute an IEP does not necessarily amount to the denial of a free appropriate public education. However, as other courts have recognized, the failure to implement a material or significant portion of the IEP can amount to a denial of FAPE. *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“[A] material failure to implement an IEP violates the IDEA.”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 n.3 (8th Cir. 2003) (“[W]e cannot conclude that an IEP is reasonably calculated to provide a free appropriate public education if there is evidence that the school actually failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit.”); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (“[A] party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP.”).

Homebound services for the student were approved on November 28, 2022. The IEP team promptly amended the student’s IEP on December 2, 2022, to include homebound placement. Prior written notice (PWN) and the amended IEP, including homebound placement, were sent to the parents on or about December 7, 2022. The parents did not consent to the IEP until January 11, 2023. Homebound services could not commence until the IEP was consented to by the parents.

Mr. Williams, the homebound coordinator for Gainesville Middle School, testified that homebound teachers were hard to find. It is here noted that there were problems with some of the teachers that started homebound for which PWCS tried to blame the petitioners by claiming they were inflexible and hard to work with. For instance, Ms. Aanderud quit but strung the family along for 2 or 3 weeks after she testified that she had made the decision to quit. PWCS claims that Ms. Aanderud quit because Mr. REDACTED questioned her credentials, and because the student negatively referred to her as a bus driver. However, Ms. Aanderud testified that the petitioners did not try to reschedule services and that they were flexible when she was running late. She was unaware of the bus driver reference. Ms. Aanderud, a Gainesville teacher, did not receive the solicitation for homebound teachers until February 2023. She testified that she might have been available earlier if she had known earlier about the need for homebound teachers.

Ms. Mathers, another homebound teacher from Pennington Traditional, testified that the family was flexible and accommodating with her. The evidence shows that Ms. Mathers once canceled her session with less than two hours notice. On another occasion, Ms. Mathers was about 30 minutes late. She stated that she did not receive the solicitation for homebound teachers until late in the school year. Otherwise, she could have started earlier with the student. She quit due to personal unforeseen circumstances.

Despite PWCS’ accusation that the petitioners were unreasonable and inflexible, these two homebound teachers contradict that allegation. In his testimony, Mr. Williams acknowledged that the petitioners were not at fault for the delays in service.

However, Mr. Williams also testified that a part of the delay was caused by Ms. [REDACTED] who stated that the student did better with in-person versus virtual learning. He interpreted that as a rejection of homebound virtual teaching. He later acknowledged that a preference is not the same as a rejection. Most importantly, Mr. Williams could not remember whether he convened an IEP meeting to discuss the delays in providing homebound services and whether compensatory educational services were due to the student as a result of the delays.

VDOE Homebound Instructional Guidelines state, in part:

Requested homebound instruction for students receiving special education services shall be subject to review by the student's Individualized Education Program (IEP) team pursuant to the Individuals with Disabilities Education Act. As part of its review and determination of a change in placement, the IEP Team must review the approved medical certification of need for homebound instruction and determine the appropriate placement for the student based on the student's educational needs. *Parental consent must be obtained to amend the IEP, prior to initiation of homebound services.* (emphasis added) (Eligibility for Homebound Services)

The medical certification of need is submitted by the parent/guardian directly to the staff person designated by the school division in its local procedure, usually the homebound coordinator. Homebound instruction should be initiated as soon as possible following receipt of a complete certification, but no later than five instructional days upon approval of the request. In cases where the student has an IEP, the certification should be promptly transmitted to the IEP Team by the homebound coordinator for review and determination of a change in placement for the student. (Initiation of Homebound Services)

When administrative processing delays the initiation of homebound services, efforts to provide homebound services should be documented and delays explained to the parent/guardian. If the school division experiences difficulty finding a licensed homebound instructor, the school division *shall* determine whether compensatory services for the student are warranted. For students with IEPs, the IEP Team must review and determine whether compensatory services for the student are warranted if there is any delay in the initiation of services or any interruption in the services. (emphasis added) (Initiation of Homebound Services)

The parents are not without fault when it comes to the delays in homebound instruction. The parents withheld consent for IEP implementation from on or about December 7, 2022 until January 11, 2023. This was the IEP that authorized homebound placement and services. Even considering the holidays, this was an unreasonable delay. According to the Virginia Homebound Guidelines cited above, homebound instruction could not start until the IEP was in place. Yet, even after the parents provided consent, it still took months for many of the homebound instruction to commence, causing a denial of FAPE. I FIND that PWCS failed to provide timely homebound instruction to the student, resulting in a denial of FAPE. PWCS failed to implement a material part of the student's IEP.

The Virginia Homebound Guidelines clearly state that for student's with IEPs, an IEP team must review and determine whether compensatory educational services for the student are warranted if there is any delay in the initiation of services or any interruption in the services. Mr. Williams testified that it was difficult finding homebound teachers resulting in a delay in services. The Virginia Homebound Guidelines address this exact problem and state that the school division *shall* determine whether compensatory services for the student are warranted.

In this case, homebound was approved in November 2022, but not provided for months. Homebound instruction should have started no later than five days after January 11, 2023, when

the IEP was signed by the parent. Nonetheless, PWCS failed to address compensatory educational services for the student until September 2023. The IEP team should have considered and implemented compensatory educational services as soon as it learned that there were delays in the delivery of homebound instruction.

The due process complaint claimed that PWCS failed to address any compensatory educational services that may be owed to the student and/or failed to correctly calculate the hours. To compound the already existing problem with the delay in homebound instruction, PWCS in its response to the parents' due process complaint wrote, "PWCS could not violate a statute or regulation regarding compensatory education, because there is not a federal or Virginia regulation that addresses or requires compensatory education." (Pet. Exh. N, pg. 4, par. 7) In footnote 6 of the response, PWCS notes that compensatory education was indeed offered in a draft IEP sent to the parents prior to a September 18, 2023 IEP meeting, but that the parents refused to attend the meeting, did not sign the proposed IEP, but instead opted to file for due process. PWCS now admits that it owes the student compensatory educational services. However, their initial response to the notion of compensatory education being owed the student was inappropriate, and only added fuel to an already flammable situation.

During her testimony, Mrs. [REDACTED] credibly explained why she did not attend the September IEP meeting. By that time, she felt uncomfortable with PWCS staff for several reasons, such as the belief that the school district had lied to her and were not working in her child's best interest. Understandably, after being accused by the case manager of having Munchausen Syndrome, she became fearful of being accused of making her child sick. Such an accusation made to Social Services, for example, could have had negative impacts on the family through unnecessary inquiries.

Compensatory education is special education instruction and/or related services owed to a student with disabilities as a result of a school system's failure to provide them with services in accordance with their individualized education program (IEP). Hearing officers have the authority to grant relief as deemed appropriate based on their findings. Equity practices are considered in fashioning a remedy, with broad discretion permitted. *Florence County School District Four v. Carter ex rel Carter*, 510 U.S. 7, 17 (1993). Where a court finds a deprivation of FAPE it should return the student to the educational path they would have traveled had the educational agency provided that child with an appropriate education in the first place. *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 620 (3d.Cir. 2015).

In this case, PWCS failed to follow the IEP by not providing the services required to meet the requirements for homebound placement. Further, they did not consider compensatory educational services when they first knew there were delays in delivery. I FIND that this constitutes a failure on the part of PWCS to implement a material part of the IEP and that FAPE was not provided to the student in a timely manner. The failure to consider and provide compensatory services was a failure to provide FAPE. Since the parties have already reached settlement on the question of how many compensatory education hours are owed the student, the hearing officer does not have to make that calculation.

PWCS also failed to follow the recommendations of Dr. Dresely regarding the student's vision. On March 21, 2022, Dr. John Dresely, Neuro-optometrist, recommended vision therapy for the student due to a diagnosis of amblyopia of her right eye. On March 22, 2022, Dr. Dresely wrote a summary document titled "What the Classroom Teachers Can Do to Help" that included certain accommodations that could be put in place to assist the student in the classroom. The recommended accommodations were not provided for the student by her classroom teachers. (PWCS Exhibit 13) On September 30, 2022, Dr. Dresely wrote another letter emphasizing the importance of providing the accommodations outlined in his previous letter. (PWCS Exhibit 43) PWCS did not provide the accommodations. This represented a violation of FAPE by PWCS.

From the testimony of Ms. Mathers and Ms. Aanderud, it does not appear that homebound instructors were solicited early in the year as Mr. Williams testified. Slow solicitation for homebound teachers contributed to the delay in services. Both Ms. Aanderud and Ms. Mathers testified that they could have been available earlier to teach if they had received the solicitation earlier for homebound teachers.

The question remains whether PWCS can now provide the student with a FAPE. PWCS claims that it is able to provide the student with a FAPE and has made numerous offers to the parents that have been rejected.

In October of 2023, PWCS proposed an IEP that it claims was reasonably calculated to provide the student with a FAPE. That proposed IEP, they claim, would enable the student to make meaningful educational progress while accessing the general education curriculum. In an effort to resolve this case, PWCS offered the student the opportunity to attend any high school in PWCS, including Colgan, however, they would not guarantee placement into the school's specialty program, without an order from the hearing officer.

PWCS also offered special transportation for the student to any high school she selected within the PWCS system for school years 2023-2024 and 2024-2025. It offered 60 minutes per day of academic resource support by a special educator, either in-person or virtual, to assist the student with planning, coordinating and/or remediating assignments that may be impacted by student absences. It offered to provide a dedicated staff member from the Special Education Department to attend all meetings involving the student during the 2023-2024 and 2024-2025 school years.

PWCS further offered a VDOE facilitated IEP meeting within 20 business days, from acceptance of its offer, to develop an IEP using the proposed October 2023 IEP as a draft. It proposed that the IEP team *discuss*: delayed start times and early release; any assignment reductions; physical education requirements for the student during her 9th and 10th grades; student participation in a learning strategies class; and collaborative classes for Algebra 1 and/or any subsequent core math subjects. PWCS offered quarterly IEP meetings with the family with proposed dates for the meeting to be provided within seven days of an agreement.

Although PWCS has clearly given considerable thought to the student's future IEP and educational structure, the proposal is contingent on too many variables. First of all, the IEP team must meet to *discuss* the proposals set forth in the proposed October IEP. Simply because they agree to discuss the matters set forth in the proposed IEP does not mean that the team will come

to consensus. Unfortunately, the toxic and distrustful relationship between the parties was overwhelmingly on display during the hearing. Testimony from several witnesses, including the Ms. Graham, Ms. Kellner, mother, and student, established that IEP meetings went nowhere. Mediation failed, giving pause to the suggestion that a VDOE facilitated IEP meeting could solve the problem. Proposing a dedicated staff member from PWCS for the family is also suspect, considering that the petitioners and student distrust PWCS personnel as a whole.

Secondly, even if the parties reach consensus, the proposal is for the student's 9th and 10th grade years. What happens in the 11th and 12th grades? Based on what was observed throughout the hearing, this hearing officer believes that the parties will return to due process, as is their right. The toxic relationship between the parties appears to be beyond repair.

And finally, proposing to conduct a VDOE facilitated IEP meeting within 20 business days is too long of a wait. Also, as stated before, like mediation, a facilitated IEP meeting may not yield the expected results.

Although PWCS failed to provide a FAPE, the parents are not completely without fault. The parents unreasonably delayed the start of homebound instruction when they did not timely consent to the IEP that authorized homebound placement. The parents contributed to the toxic relationship between themselves and PWCS by posting derogatory information about PWCS staff on TikTok. The parents failed to provide follow-up medical information to PWCS after the student's surgery. This information may have assisted PWCS to formulate an appropriate IEP. The parents and their advocate(s) set a negative tone at IEP meetings. Their tone did not contribute to positive collaboration, thereby delaying production of an appropriate IEP.

Issue 2:

Whether the student should be educated in a private school setting at public expense in order to receive a FAPE.

In the case of *Hartmann v. Loudoun County Board of Education*, 26 IDELR 167 (4th Cir. 1997), the court agreed with the hearing officer that Loudoun personnel were "enthusiastic" about including the student at the school. The principal deliberately reduced the size of the student's class and ensured that it was composed of students who were more independent and had higher level skills. The teacher was selected because of her excellent teaching abilities, and the county hired a full-time, one-on-one aide for the student. He received a full hour of speech and language instruction daily. The supervisor of the county's program for autistic children provided assistance in behavior management throughout the year. Halfway through the year, the school's efforts increased when the student began receiving direct special education services. This instructor also began advising the student's teacher and aide. Inclusion specialists consulted with the school during the fall, and the student's teacher sought advice from other experts whose names were provided to her by the school or the parents. The teacher testified that she met constantly with the student's aide, his speech therapist, the IEP team, and others to work on the student's daily programming at the beginning of the year and at least twice a week throughout.

Ultimately, the court decided in *Hartmann*, that the student should be educated in a more restrictive environment. This case held that if a more restrictive environment will provide the

child with FAPE, the child should be placed in the more restrictive environment. Such is the case with this student. The evidence shows The [Private School] School to be an appropriate placement for the student.

FAPE ensures that students with disabilities receive an individualized educational program (IEP) that is designed to meet their unique needs and provide the student with educational benefit. School systems are required to provide special education services that meet the unique needs of students with disabilities.

The [Private School] School is a state certified private school. Ms. Harper, the school principal, testified that The [Private School] School is certified by the Virginia Counsel for Private Education that serves as an arm of the Virginia Department of Education. Ms. Harper testified that the school educates disabled children although they do not provide special education services *per se*. The school does not follow public school IEPs. She testified that The [Private School] School has experience educating disabled students and that the school provides specialized instruction that includes goals, services, and accommodations for students with disabilities. Sometimes the individualized plan may look like a public school IEP, and other times it may not. The plan is tailored to the student.

The school provides individual instructional plans for students using a whole child approach that considers the child's individual needs. Ms. Harper testified that the school has pull-out services that provide individual instruction to correspond with the student's needs.

The student population at The [Private School] School is approximately 400 with a student-teacher ratio at the high school level of 1 to 14 or 15 students. The school offers an Academic Resource Center that provides individual learning supports for students.

At the time of the hearing, the student had missed 75 classes and had 14 tardies while attending The [Private School] School. Ms. Harper testified that with a medical excuse, the student can miss as many classes as she needs because the teachers work one-on-one with the students to get them caught up.

Given the student's history with absences and tardies due to illness, The [Private School] School is equipped to handle the student's educational needs by providing her one-on-one instruction to catch up with her assignments. The [Private School] School offers no quibbling about compensatory services, whether homebound services are needed, how many hours are owed, or the content of IEPs. This student needs flexibility and swift action when addressing her disabilities, absences, tardies, and resulting educational deficits. The [Private School] School can timely offer this student what she needs to make meaningful educational progress. I FIND that The [Private School] School can provide this student with an appropriate and meaningful educational experience.

FAPE should create both an inclusive and supportive learning environment for disabled students. The student testified that she did not feel included or supported while attending Gainesville Middle School. She also testified that she does feel included and supported at The [Private School] School.

If ordered to attend The **Private School** School, of concern is the issue of the student being educated in the least restrictive environment (LRE). IDEA encourages disabled children to be educated in the regular classroom. However, the law permits disabled children to also be privately placed where appropriate. LRE requires that students with disabilities receive their education, to the maximum extent appropriate, with nondisabled peers and encourages special education students to not be removed from regular classes unless, even with supplemental aids and services, education in regular classes cannot be achieved satisfactorily. [20 United States Code (U.S.C.) Sec. 1412(a)(5)(A); 34 Code of Federal Regulations (C.F.R.) Sec. 300.114.]

IDEA, however, does not mandate that every child with a disability be placed in the regular classroom regardless of individual abilities and needs. This recognition that placement in the regular class may not be appropriate for every disabled child is reflected in the requirement that school districts make available a range of placement options to meet the unique educational needs of children with disabilities.

The general rule in placement is that each disabled child's placement must be individually determined based on that individual child's abilities and needs. For this student, given the uniqueness of her disabilities, I FIND The **Private School** School to be the student's least restrictive environment. There, she can receive the individualized attention she requires.

The student testified that she is doing well at The **Private School** School and that she felt accepted by the teachers and the students. Her grades were good for the first grading period. Although she had to repeat Algebra 1 (upon recommendation of The **Private School** School) she is doing much better in the course now. She said the teachers give her one-on-one instruction and that when she is absent due to her illness, they work with her to get her caught up. She testified that if she were ordered to return to PWCS schools, she would feel defeated.

The student's mother testified that since being at the **Private School** School, her daughter no longer has anxiety about going to school. She wants to go to school even though she is not feeling well and in pain. She testified that her daughter is not a problematic child as some PWCS personnel tried to insinuate. She testified that her daughter was progressing and doing well at **Private School**

Based on the evidence presented, including the testimony provided, I FIND The **Private School** School to be an appropriate placement for the student and one that will provide the student with educational benefit. I further FIND that the individualized program at The **Private School** School is reasonably calculated to enable the student to receive educational benefit. I therefore FIND that the student should be educated at the **Private School** School, at public expense.

It has already been determined that the student did not receive FAPE while attending PWCS. The student was unilaterally placed at The **Private School** School by her parents. Although notice of the unilateral parental placement to The **Private School** School was provided to PWCS on August 8, 2023, the notice fell two business days short of the ten business day notice requirement. This two-day deficit will be addressed below under Issue #3.

PWCS argues that The **Private School** School is an inappropriate placement for the student because the school, by its own admission, does not provide special education services, and because the

school is a college preparatory school. PWCS claims that The **Private School** School does not offer FAPE. It is here noted that a parental placement may be found to be appropriate by a special education hearing officer even if it does not meet the standards of the Virginia Department of Education that apply to education provided by the Virginia Department of Education and provided by the local school division. (34 CFR 300.148(c)) In this case, despite the fact that The **Private School** School does not provide special education services *per se*, it is equipped to handle the unique needs of the student, including but not limited to, her inherent absences and tardies due to illness associated with her disabilities. I FIND that The **Private School** School can provide education individualized to meet the unique needs of the student with her unique disabilities.

Issue 3:

Whether the petitioners should be reimbursed by PWCS for tuition associated with placing the student in the **Private School School, a private school.**

When parents enroll their child in a private school because they believe the educational program proposed by the school district does not provide FAPE, the district may be obligated to reimburse them for the costs of the placement. In order to obtain private placement reimbursement, a court or hearing officer must find that: the public agency had not made FAPE available to the child in a timely manner prior to that enrollment; and the private placement is appropriate. 34 CFR §300.148 (c). See also *Florence County Sch. Dist. Four v. Carter*, 20 IDELR 532 (U.S. 1993). See *Burlington Sch. Comm. v. Department of Educ. of Mass.* 556 IDELR 389 (U.S. 1985).

Based on the foregoing analysis, this decision has found that PWCS did not make FAPE available to the student in this case in a timely manner prior to the parents enrolling the student in The **Private School** School. It has also found The **Private School** School to be an appropriate private placement.

In order to obtain reimbursement for a private placement, the IDEA requires that parents provide the district with notice of their intent to place the child in private school. See *Ms. M. v. Portland Sch. Comm.*, 360 F.3d 267 (1st Cir. 2004). When the student was unilaterally placed at The **Private School** School by her parents, timely notice was not provided to PWCS. Notice was provided to PWCS two days shy of the required 10 days. Therefore, reimbursement to the parents for tuition costs at The **Private School** School should be proportionally reduced by two days. I FIND that petitioners are entitled to tuition reimbursement minus two days. There will be no reimbursement for any activity costs or other fees associated with the student's education at The **Private School** School.

Prevailing Party

Petitioners met their burden of proof, by a preponderance of the evidence, on the issues. The petitioners are the prevailing party.

Orders

Pursuant to the above decision, the following is hereby **ORDERED**:

- * The student will continue her education at The **Private School** School, at public expense.

* PWCS will immediately convene an IEP team meeting placing the student at The Private School School.

* The petitioners are required to provide PWCS with a copy of the student's progress reports as they receive them from The Private School School.

* The student will be educated in accordance with the educational plan crafted by The Private School School for the student. While attending The Private School School, the student will be evaluated, assessed, and tested in accordance with The Private School School protocols.

* The parents will be reimbursed for costs of enrollment/tuition associated with the student's attendance at The Private School School (minus two days). The parents are required to provide receipts to PWCS prior to reimbursement. Reimbursement will be made to the parents within 30 days of receipt delivery from the parents to PWCS.

* There will be no reimbursement to the parents for any activity costs or fees that are owed in addition to tuition.

PWCS is reminded of its responsibility to submit an implementation plan to the parties, the hearing officer, and the State Education Agency within 45 calendar days.

Rights of Appeal

This is the final administrative decision in this matter. A decision by the special education hearing officer in any hearing is final and binding unless the decision is appealed by a party in a state circuit court within 180 days of the issuance of the decision, or in a federal district court within 90 days of the issuance of the decision. The appeal may be filed in either a state circuit court or a federal district court without regard to the amount in controversy. See 8 VAC 21-81-T and §22.214 D of the Code of Virginia, 1950, as amended.

IT IS SO ORDERED.

ENTERED: February 29, 2024

Rhonda J. S. Mitchell
Hearing Officer

Copies to (via email):

Advocate for Parents / Student
Counsel for Prince William County Public Schools
VDOE
Case Monitor