

XXXX XXXX,

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

*** BEFORE TARA K. LEHNER,**

*** AN ADMINISTRATIVE LAW JUDGE**

*** OF THE MARYLAND OFFICE**

*** OF ADMINISTRATIVE HEARINGS**

*** OAH Case No.: MSDE-BCNY-OT-15-36173**

*** * * * ***

DECISION

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STATEMENT OF THE CASE

On October 27, 2015, [Parent] ([Parent] or Parent) filed a Request for Due Process Hearing (Request) with the Office of Administrative Hearings (OAH) on behalf of his son, [Student] ([Student] or Student). In his Request, the Parent indicated that he wanted a hearing only, without mediation. The Request alleges Baltimore County Public Schools (BCPS) violated the Individuals with Disabilities Education Act (IDEA), 20 United States Code Annotated (U.S.C.A.) § 1415(f)(1)(A) (2010 & Supp. 2015). Specifically, the Parent alleges BCPS violated IDEA by denying a free appropriate public education (FAPE) to the Student for the 2013-2014, 2014-2015, and 2015-2016 school years (SY). As relief, the Parent seeks: (1) the immediate non-public placement of the Student at [School 1] ([SCHOOL 1]) for the 2015-16 and 2016-17 school years at BCPS expense; (2) the completion of a psychiatric evaluation and consultation for the Student by BCPS; and (3) the completion of an independent compensatory education

evaluation for the Student at BCPS expense with the commiserate review and an award for compensatory education.¹

The parties attended the required resolution session; however, they were unable to reach a settlement on or before November 26, 2015 (the thirty-day resolution period established in Section 300.510(b) of Title 34 of the Code of Federal Regulations (C.F.R.)). Thus, the forty-five day timeframe for the holding of the hearing and the issuance of a decision in this case was scheduled to conclude on Sunday, January 10, 2016. *See* 34 C.F.R. § 300.515(a).

I convened a telephone pre-hearing conference on December 17, 2015. At that time, I reviewed the attorneys' calendars with them and confirmed that the parties and their attorneys did not have any dates available for the hearing prior to January 10, 2016. The parties thus agreed to waive the decision time requirement of the above-cited regulations. The hearing was scheduled for January 26, 27 and 29, 2016, the first available dates agreed upon by the parties, and the parties jointly requested that I issue a decision no more than thirty days after the close of the record. However, on January 23 and 24, 2016, a historic snowstorm took place in Maryland, resulting in the closure of BCPS for the entire week of January 25 through 29, 2016. Hearing dates for February 9 and 16 were also cancelled due to BCPS's weather related closures. The hearing was held on February 10, 12, 19, and 24, 2016. At the conclusion of the hearing on February 24, 2016, the parties requested that I issue a decision in this case on or before March 25, 2016. *See* 34 C.F.R. § 300.515(c).

The hearing took place at the OAH in Hunt Valley, Maryland. Kimm Massey, Esquire, appeared on behalf of the Parent, and J. Stephen Cowles, Associate General Counsel, Board of Education of Baltimore County, appeared on behalf of BCPS.

¹ In the Request, the Parent also made a demand for attorney and expert witness' fees. During closing arguments, the Parent withdrew his request for expert witness' fees. The Parent also stated that he was not seeking an award for attorney's fees from this administrative body.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2010); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

The contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE or Department) procedural regulations; and the Rules of Procedure of the OAH govern this case. Md. Code Ann., State Gov't II §§ 10-201 through 10-226 (2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

1. Did BCPS deny the Student a FAPE by failing to develop an appropriate Individualized Education Program (IEP) for the Student for the 2013-2014, 2014-2015, and 2015-2016 SYs that was reasonably calculated to ensure that the Student received educational benefits by:
 - (a) Failing to offer an appropriate educational placement;
 - (b) Failing to fully evaluate the Student through the IEP process, specifically, failing to conduct a recommended psychiatric evaluation;
 - (c) Failing to institute appropriate positive behavior interventions and supports;
 - (d) Failing to provide appropriate speech hours;
 - (e) Failing to provide appropriate accommodations/related services;
 - (f) Failing to institute appropriate goals and objectives?
2. If FAPE was denied for the 2013-2014, 2014-2015, and/or 2015-2016 SYs, and/or is presently being denied, are the following requested remedies appropriate:
 - (a) An order for BCPS to pay for a compensatory education evaluation and an order that BCPS pay for reasonable compensatory education;
 - (b) The placement of the Student at [SCHOOL 1] for the rest of the 2015-2016 SY and the entire 2016-17 SY;
 - (c) An order for BCPS to provide a psychiatric evaluation of the Student and to pay for future consultations with a psychiatrist?

SUMMARY OF THE EVIDENCE

Exhibits

A complete exhibit list is attached as an appendix.

Testimony

The Parents presented the following witnesses:

- [Parent], Parent
- XXXX XXXX, Ph.D., whom I accepted as an expert in Speech/Language Pathology, with a specialty in Language Based Learning Disabilities, Autism, Tests and Measurements in the Speech/Language Pathology field, and Interventions in Speech, Language and Voice Disorders
- XXXX XXXX, Ph.D., whom I accepted as an expert in Neurobehavioral Disorders, including Learning Disabilities, Attention Disorders and Autism
- XXXX XXXX, Psychologist, whom I accepted as an expert in Clinical Psychology, Educational Assessments and the placement of a student at [School 1]

BCPS presented the following witnesses:

- XXXX XXXX, IEP Chair, [School 2] ([SCHOOL 2]), BCPS, whom I accepted as an expert in Education, Special Education and Reading
- XXXX XXXX, School Psychologist, BCPS, whom I accepted as an expert in School Psychology
- XXXX XXXX, Speech/Language Pathologist, BCPS, whom I accepted as an expert in Speech/Language Pathology with an emphasis on education of students with Autism
- XXXX XXXX, Special Educator, [SCHOOL 2], BCPS, whom I accepted as an expert in Special Education
- XXXX XXXX, General Educator, [SCHOOL 2], BCPS, whom I accepted as an expert in Secondary General Education

FINDINGS OF FACT

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

1. [Student] is twelve years old, born in 2003. (Jt. Ex. 18).
2. BCPS initially determined [Student] eligible for services under IDEA on October 30, 2006. [Student] then received speech-language services at the pre-K level from BCPS for approximately three months during the 2006-2007 SY at [School 3]. Thereafter, [Student] left BCPS and did not return until the 2008-2009 SY. (Jt. Ex. 18).
3. [Student] resumed receiving special education services from BCPS beginning with the 2008-2009 SY, and continued to receive special education services from BCPS each year thereafter. (Jt. Ex. 18),
4. BCPS conducted assessments of [Student] in January/February 2013 (2013 Assessments) when [Student] was in the middle of 4th grade in preparation for [Student]’s February 2013 annual review meeting. BCPS conducted a speech/language assessment, a psychological assessment and an educational assessment. (Jt. Exs. 2, 3, and 4),
5. The 2013 psychological assessment included the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), the Connors Third-Edition, and Autism Spectrum Rating Scales, as well as observations by the assessor and teacher interviewer. (Jt. Ex. 2).
6. The WISC-IV scores were as follows:

Full Scale IQ (FSIQ)	95	37th percentile
Working Memory index	91	27th percentile

Digit Span subtest	5	5th percentile
Letter-Numbering Sequencing subtest	12	75th percentile
Processing Speed index	85	16th percentile
Coding subtest	6	9th percentile
Verbal Comprehension index	96	39th percentile
Comprehension subtest	6	9th percentile
Perceptual Reasoning index	108	70th percentile

(Jt. Ex. 2),

7. The Digit Span subtest measures an individual's ability to attend to and hold on to information in short-term memory as affected by that individual's ability to organize and sequence information. A low score in this area suggests the individual could be impeded in the processing of complex information and thus slow new learning. The Coding subtest measures an individual's ability to process visual material and a low score could indicate that the individual's mental energy is easily drained resulting in decreased comprehension of novel information. The Comprehension subtest evaluates an individual's ability to evaluate and make sense of everyday situations and documents the individual's knowledge of conventional standards of behavior applicable to social situations and the ability to express one's own thoughts.

(Jt. Ex. 2).

8. [Student]'s performance on the Autism Spectrum Rating Scales documented that [Student] was having difficulty using appropriate verbal and nonverbal communication in social situations. (Jt. Ex. 2).

9. [Student]’s performance on the Connors Third-Edition (Connors 3) documented very elevated levels of activity and impulsivity and non-compliance in the classroom. His Inattention score was in the high average range. (Jt. Ex. 2).
10. The 2013 scores also revealed significant growth in his academic and cognitive performance since his 2010 assessments. (Jt. Ex. 2).
11. The 2013 Speech and Language assessment was based on the Clinical Evaluation of Language Fundamentals – Fourth Edition (CELF-IV), observations by the assessor, questionnaires completed by parent and teachers and school records. (Jt. Ex. 4).
12. [Student]’s scores on the CELF-IV were as follows:

Core Language Index	81(10th percentile)
Receptive Language Index	85 (16th percentile)
Expressive Language Index	85 (16th percentile)
Language Content Index	88 (21st percentile)
Language Memory Index	76 (5th percentile)
Concepts and Following Directions subtest	6 (9th percentile)
Recalling Sentences subtest	3 (1st percentile)
Understanding Spoken Paragraphs subtest	5 (5th percentile)

(Jt. Ex. 4).
13. The Core Language score is a measure of an individual’s general language ability. It quantifies a student’s overall language performance. At the time of testing, [Student] was mildly delayed. (Jt. Ex. 4).
14. The subtests for Following Directions, Recalling Sentences and Understanding Spoken Paragraphs assess skills that are important for understanding orally presented

information. [Student]’s low scores on these subtests suggest that he could have difficulty retaining small bits of information in his memory. It also suggests that he could have problems with following multi-step oral directions, including ones that contain sequential and temporal concepts. Finally, the scores indicate that he could have difficulty comprehending higher-order concepts, such as inferencing and predicting. (Jt. Ex. 4).

15. The 2013 speech/language assessment documented that [Student]’s pragmatic skills were emerging, but were not yet observed. (Jt. Ex. 4).

16. During the 2013 speech/language assessment, [Student] was cooperative but easily distracted throughout testing. He was similarly distracted during the psychological assessment. During the educational assessment, he was very cooperative and was careful and diligent with his responses. (Jt. Exs. 2, 3, and 4).

17. For the 2013 educational assessment, the assessor relied upon the Woodcock-Johnson III Test of Achievement (WJIII), teacher interviews and school records. (Jt. Ex. 3).

18. [Student]’s most relevant scores, instructional levels and comparison to peers on the WJIII were as follows:

	Score	Inst. Level	Comp. to Peers
Broad Reading	84	2.3-3.1	Low average
Broad Written Language	87	2.1-4.1	Low average
Basic Reading Skills	92	2.6-3.6	n/a
Reading Fluency	89	2.5-3.5	Average
Letter-word Identification	89	2.6-3.3	Average
Word Attack	97	2.4-4.8	Average

Passage Comprehension	80	1.6-2.3	Low
Spelling	86	2.3-3.6	Very low average
Writing Samples	87	1.5-4.1	Low average
Writing Fluency	95	2.8-4.6	n/a

His passage comprehension was in the low range, but he demonstrated stronger comprehension abilities in the classroom. In spelling, [Student] could spell sight words and knew his short vowel sounds and blends; however, he struggled with vowel combinations. (Jt. Ex. 3).

19. The Word Attack test measures an individual's decoding ability. Decoding is a person's ability to look at a word on paper and understand the sounds that are represented by the letters and their ability to speak the word aloud as written on the paper. [Student]'s performance on this test demonstrated that he knew most sight words, but struggled on the multi-syllabic words. (Jt. Ex. 3; T. XXXX).
20. The Basic Reading Skills test measures an individual's overall reading ability. [Student]'s score of 92 translated to the middle of second grade. (Jt. Ex. 3).
21. The assessors of the 2013 Assessments recommended the following for [Student]:
 - Challenge him in a larger classroom setting
 - Cuing to begin and sustain attention
 - Guided practice in attending to aspects of social communication, such as body language, tone of voice and/or emotional context of speech
 - Rephrasing of instructions to be more explicit
 - Limiting the number/bits of information when giving directions
 - Use of visuals to reinforce information presented orally

- Repeating directions back to teacher before attempting the task
- Reducing the amount of extraneous information presented
- Use of graphic organizers, diagrams, and outlines
- Small group setting for reading and language arts
- Support for staying on task
- A reading program that focuses on phonics
- Placed where there are limited distractions
- Provided with chunked information

(Jt. Exs. 2, 3, and 4).

22. On February 21, 2013, [Student]’s IEP team held an annual review meeting (2013 IEP Meeting) to develop a new IEP for [Student] (2013 IEP). The 2013 IEP covered the balance of 4th grade and the first half of 5th grade. (Jt. Ex. 6).

23. On or before February 21, 2013, [Student]’s IEP team determined that [Student] was a student with the disability of Autism. (Jt. Ex. 6).

24. Based on the 2013 Assessments, as well as [Student]’s performance on reading benchmarks and classroom assessments, [Student]’s IEP team determined [Student]’s weaknesses at that time to be:

- Reading comprehension, including determining the main idea, summarizing, and drawing conclusions
- Language, including sentence memory, answering higher level questions, inferencing, recalling details in a story, differentiating between relevant/irrelevant information, length of spoken paragraphs, and using conversational rules appropriately

- Writing, including writing complex sentences, expanding on ideas and staying on topic
- Social/emotional/behavioral, including impulse control, sustaining attention, and social interaction skills

(Jt. Ex. 6).

25. At the time of the 2013 IEP Meeting, [Student]'s parents wanted [Student] to become more independent. They wanted him in the general education setting with accommodations. (Jt. Ex. 6).

26. The 2013 IEP included goals and objectives that addressed the following areas:

- Reading comprehension - summarizing, identifying the main idea, and sequencing
- Reading fluency - reading with automaticity, reading at an appropriate rate, and decoding multisyllabic words
- Written language – increasing length of sentences, correcting rambling sentences, applying correct verb tense, using adjectives and adverbs, and using concluding sentences
- Behavior - taking turns, exhibiting appropriate behavior in group work, participating in a shared activity, identify appropriate time for informal conversation
- Communication (2 goals) - (1) using critical thinking, such as recalling details, responding to higher level questions, inferencing, and differentiating between relevant and irrelevant information; and (2) using expressive language, such as increasing length and complexity of verbal paragraphs, appropriately asking questions and making comments during a group activity, and appropriate using conversational

- rules, such as orienting to speaker, paying attention, politely interrupting, using correct tone of voice, and staying on topic. (Jt. Ex. 6).
27. The 2013 IEP contained the following accommodations and supplementary aides: reducing distractions; organizational tools; extended time; breaks; human reader; repeating and/or paraphrasing information; providing clear, concise directions; breaking down assignments into smaller units; instituting strategies to initiate and sustain attention; and providing preferential seating. (Jt. Ex. 6).
28. The team agreed to provide [Student] with 10 hours per week of special education instruction outside of general education for his written language and reading needs. The team believed this was necessary given that [Student]'s attention difficulties significantly affected his reading comprehension, his fluency, his written language skills, his auditory processing and his expressive language development. The team also provided him with 1 hour per week of Speech/Language Pathology (speech) special education services outside general education to address his communication needs. (Jt. Ex. 6).
29. The team also agreed to provide [Student] with 15 hours per week of special education instruction inside the general education setting for math, science and social studies. (Jt. Ex. 6).
30. [Student] attended 5th grade during the 2013-2014 SY at XXXX School. (Jt. Ex. 18).
31. In the early part of 5th grade, [Student]'s teachers noted that [Student] struggled with decoding and reading fluency. He was given a modified reading curriculum. [Student]'s teachers also noted that [Student] struggled with maintaining attention and often made silly and irrelevant comments in class. (BCPS Ex. 10).

32. [Student]'s progress on his goals and objectives in the 2013 IEP varied. [Student]'s skill acquisition in comprehension was slow; however, he did make progress. He began the period answering comprehension questions on a 4th grade passage at 60% accuracy; however, by October 2013 he was doing so with 75% accuracy. Additionally, he advanced in his decoding skills. By January 2014, [Student] could read a 4th grade passage with 94% accuracy and a 5th grade passage with 88% accuracy. In writing, he began the period writing paragraphs that stayed on topic, but provided little detail with short sentences. By January 2014, he was able to write topic sentences and provide details and use proper punctuation and capitalization with 75% accuracy, as well as proper verb tense with 95% accuracy. He still, however, struggled with spelling on grade level. He also demonstrated increased ability to respond to higher-level questions and make inferences (he achieved these objectives). Additionally, he increased the length and complexity of his oral paragraphs. He was having conversations with his peers and was working cooperatively when in a group. He decreased his calling out, became less defiant, participated in class more often, complied with directions more, and completed and handed in his homework more consistently. (BCPS Exs. 5 and 21).

33. On February 13, 2014, [Student]'s IEP team met (February 2014 IEP Meeting) for an annual review and developed a new IEP for [Student] (February 2014 IEP). [Parent] was present. The February 2014 IEP was for the balance of [Student]'s 5th grade year. It was intended it would also follow him through his transition to middle school. (Jt. Ex. 7).

34. To develop the February 2014 IEP, the team relied upon the 2013 Assessments, teacher observations regarding [Student]'s performance in the classroom, [Student]'s progress on his goals and objectives in the 2013 IEP, the results of his classroom assessments, and his current reading benchmarks, to determine [Student]'s present levels of performance. (Jt. Ex. 7).

35. In February 2014, [Student]'s weaknesses were identified by the IEP team as:

- Reading, including fluency and decoding multisyllabic words
- Reading comprehension, including summarizing, drawing conclusions, and

identifying the main idea

- Language/communication, including pragmatic language and comprehension
- Writing, including complex sentences and spelling
- Social/emotional/behavioral, including social interaction skills

(Jt. Ex. 7; BCPS Ex. 21).

36. In February 2014, [Parent] believed [Student] was making academic progress.

(Jt. Ex. 7).

37. [Student]'s goals on the February 2014 IEP were the same goals as the 2013 IEP. The percentage of accuracy to attain each goal was increased as follows:

- Reading comprehension from 50% to 60%
- Reading fluency from 50% to 70%
- Written language 30% to 60%
- Behavior 50% to 80%

(Jt. Exs. 6 and 7).

38. The objectives in the February 2014 IEP were changed as follows:

- Reading comprehension: an objective for generalization and drawing conclusions was added; the objectives of summarizing and identifying the main idea remained
- Reading fluency: all objectives remained the same
- Written language: objectives for spelling and increasing the length of sentences were added
- Behavior: [Student] had achieved the taking-turns objective; his objectives that he had not yet achieved remained
- Communication: [Student] had achieved the objectives regarding inferencing, higher level questions, length and complexity of oral paragraphs, and joining a group of peers; the objectives relating to recalling important details, differentiating between relevant and irrelevant information, and using conversational rules remained, with the addition of a new objective to address making appropriate comments to a situation. (Jt. Exs. 6 and 7).

39. The February 2014 IEP contained the following accommodations and supports: human reader; scribe; extended time; strategies to reduce distractions; strategies to initiate and sustain attention; repeat and/or paraphrase information; use of clear, concise directions; and breaking down assignments into smaller units. (Jt. Ex. 7).
40. The February 2014 IEP added that [Student] would periodically attend a social group with the guidance counselor. (Jt. Ex. 7).
41. The February 2014 IEP contained the same special education service hours as the 2013 IEP, with the same placement (inside and outside general education), except [Student]'s speech service hours were reduced to thirty minutes weekly. His hours

- inside general education were 15 weekly, and outside general education were 10 weekly. (Jt. Ex. 7).
42. On May 29, 2014, [Student]'s IEP Team met to discuss [Student]'s transition from elementary to middle school (May 2014 Team Meeting). [Parent] was present. This was not an annual review meeting. (Jt. Ex. 18; BCPS Ex. 5).
43. On May 29, 2014, [Parent] agreed that [Student] was making progress academically, however he believed [Student] was academically and socially behind his peers. He also believed that [Student]'s behaviors were affecting his academic and social skills. (BCPS Ex. 9).
44. At the May 2014 Team Meeting, [Parent] asked that [Student] be placed at [SCHOOL 2], and not his home middle school, [School 4]. He wanted this because [Student] had been bullied at his home elementary school. The IEP team, however, did not agree to change [Student]'s middle school from his home school to [SCHOOL 2]. (Jt. Ex. 18; BCPS Ex. 5).
45. As of May 2014, [Student] had become less defiant, participated more often in class, was improving in complying with directions, and was improving in completing and handing in his homework. [Student] continued to give incorrect answers in class to be humorous. (BCPS Ex. 5).
46. At the May 2014 Team Meeting, [Student]'s IEP was revised (May 2014 Revised IEP) to reflect the change of [Student]'s schedule that would occur in middle school. He was reduced to 7.5 hours weekly outside general education for reading and language arts because his reading and writing classes would change from 1 hour each

day in elementary school to 45 minutes in middle school. His speech service hours remained the same at thirty minutes weekly, outside general education.

(BCPS Ex. 9; T. XXXX).

47. [Student] earned the following grades during his 5th grade school year:

- Cs in all four quarters for Reading
- Bs and Cs in all four quarters in Written Language
- Cs in the first and second quarter and Bs in the 3rd and 4th quarter in Science
- Cs in all four quarters in Social Studies

(BCPS Ex. 10).

48. In 5th grade, [Student] was given a modified curriculum in Language Arts. He was below grade level his entire 5th grade year in this subject. [Student]'s effort level was rated by his teachers as "very good" in three out of the four quarters. [Student]'s effort grade in Science increased from "needs development" to "satisfactory."

(BCPS Ex. 10).

49. In 5th grade, [Student] was very good at completing classwork and homework and in working cooperatively with others throughout all four quarters. He ended the year needing development in following classroom and school rules. He was easily distracted and liked to make silly and irrelevant comments in class. (BCPS Ex. 10).

50. By fourth quarter of 5th grade, [Student] was easily redirected when he became off task. He increased his participation in class discussion as the year progressed, and began to add relevant comments. (BCPS Ex. 10).

51. Sometime after the May 2014 IEP Team Meeting and the beginning of the 2014-2015 school year, BCPS agreed to let [Student] attend [SCHOOL 2] for 6th grade. (T. XXXX).
52. In the beginning of his 6th grade year, [Student]'s schedule included the following classes:
- Language Arts, outside of general education, taught by a special educator
 - Language! (a reading intervention class), inside general education, taught by a special education teacher; the class was smaller than a normal general education classroom with about 18 students. It was considered a general education class because two of the students in the class did not have IEPs
 - Math Assistance, outside general education, taught by a special educator
 - Math, Science, World Cultures, inclusion classes, inside general education; [Student]'s inclusion classes included either a special educator or an Instructional Assistant, and usually had multiple additional supporting adults in the room
 - Other classes, such as Music, Physical Education (PE) and health, in which where he did not receive special education service hours, he had adult support
- (Jt. Ex. 18; BCPS Exs. 4 and 11; T. XXXX; T. XXXX).
53. Language! is a class that includes instruction in phonemic awareness, word recognition, vocabulary, grammar, listening and reading skills (including inferencing and main idea skill development), speaking and writing (including use of graphic organizers, use of complete sentences, sequencing, hypothesizing and providing supporting evidence in a paragraph). (BCPS Ex. 5).

54. On September 11, 2014, [Student]'s IEP team, including [Parent], met (September 2014 IEP Team Meeting) to revise [Student]'s IEP (September 2014 Revised IEP) to reflect his attendance at [SCHOOL 2]. This was not an annual review. [Parent] expressed concern that [Student] was not receiving sufficient intervention in Language.

(Jt. Ex. 8 and 18; BCPS Ex. 4).

55. The September 2014 revised IEP was a continuation of the February 2014 IEP, as revised by the May 2014 Revised IEP. There were no changes to the goals, objectives, accommodations and supports, except for the addition of adult support. Adult support was added so that [Student] could be provided help in the areas of: interacting appropriately with his peers in classrooms and hallways; interpreting social cues; reducing distractions; redirection during instruction; completing assignments; following directions; fostering positive social interactions; assisting in note-taking and scribe services; and overseeing the copying of all homework into his agenda book. Adult support was added in all academic and nonacademic classes, as well as in the hallways, to allow [Student] to remain in the least restrictive environment. (Jt. Ex. 8 and 18; BCPS Ex. 4).

56. [Student]'s IEP was further revised at the September 2014 IEP Team Meeting to correct [Student]'s special education service hours. The previous IEP incorrectly stated the inside general education hours as 7.5 weekly. It was corrected to 15 hours weekly. (Jt. Ex. 8; BCPS Ex. 4; T. XXXX).

57. In October 2014, [Student] required a lot of redirection and reminders to initiate and continue work on task. Strategies such as "stop and think," whole body listening,

- verbal and physical prompts, and redirection by the adult support person were the most effective ways to get [Student] to start and complete a task. (BCPS Ex. 3).
58. On October 9, 2014, [Student]'s IEP team met (October 2014 IEP Team Meeting). [Parent] attended. Teacher reports were reviewed. The team discussed the service hours within the IEP. [Parent] again asked for additional intervention for [Student] in language. The IEP team did not modify the IEP as [Parent] requested. [Parent] also requested updated formal assessments, and the IEP Team agreed to perform educational, speech/language and psychological assessments (2014 Assessments). (Jt. Ex. 18; BCPS Ex. 3).
59. In November 2014, [Student] was still exhibiting difficulties with attention to task and initiation of tasks. [Student] was capable of completing work when he had the assistance of adult support. The adult support provided prompts to start and continue tasks, redirection from negative behaviors, clarification of directions, and help with writing. [Student] continued to ask silly questions and make off-topic comments to get attention from his teachers. He rarely asked for clarification from his teachers. He rarely applied conversational rules in class. (Jt. Exs. 9, 10, and 11).
60. During the 2014 Assessments, [Student] presented many challenges to testing. He made many off topic comments, provided silly answers, refused to comply with directions, purposefully answered questions incorrectly, and, at times, refused to work. It took a system of motivators and rewards for [Student] to complete the tests appropriately. [Student] needed significant redirection during the testing. He also expressed that he was tired during the educational assessment and his eyes wander away from the page while he was reading. (Jt. Exs. 9, 10, and 11).

61. The 2014 psychological assessments reflected the following scores on the WISC-IV
 (as compared to the 2013 score):

	10/2014		1/2013	
Full Scale IQ (FSIQ)	81	10th percentile	95	37th percentile
Working Memory index	68	2nd percentile	91	27th percentile
Processing Speed index	85	16th percentile	85	16th percentile
Verbal Comprehension index	83	13th percentile	96	39th percentile
Perceptual Reasoning index	100	50th percentile	108	70th percentile
Digit Span subtest	6	n/a	5	5th percentile
Letter-Numbering Sequencing	3	n/a	12	75th percentile

[Student]’s other index scores fell within the low average to average range.

(BCPS Ex. 2; Jt. Ex. 9).

62. [Student]’s low score on the Letter-Numbering Sequencing subtest was the result of his inattention during the test. (Jt. Ex. 9).

63. [Student]’s performance on the 2014 Psychological assessment was consistent with his Autism and ADHD diagnoses. Weaknesses identified included: use of immature language, difficulty noticing social cues, focusing on one subject too much of the time, becoming obsessed with detail, making careless errors, becoming easily sidetracked, impulsivity, excitability, difficulties initiating work, difficulties initiating conversations, difficulties self-monitoring, and difficulties holding multi-step directions in his memory. It further reflected that [Student] had trouble making and keeping friends because he did not know how. It was noted that [Student] needed

extra explanation of instructions, was having trouble with reading, and was forgetting to turn in his work. (Jt. Ex. 9).

64. The 2014 speech/language assessment reflected the following scores on the CELF-IV (as compared to the 2013 Assessment):

	10/2014	1/2013
Core Language Index	88 (21st percentile)	81(10th percentile)
Receptive Language Index	90 (25th percentile)	85 (16th percentile)
Expressive Language Index	89 (23rd percentile)	85 (16th percentile)
Language Content Index	94 (34th percentile)	88 (21st percentile)
Language Memory Index	88 (21st percentile)	76 (5th percentile)
Recalling Sentences subtest	2 (percentile unavailable)	3 (1st percentile)
Understanding Spoken Paragraphs subtest	8 (percentile n/a)	5 (5th percentile)

[Student]'s subtest scores on the Core Language index fell within the average range as related to same age peers. (Jt. Ex. 11).

65. [Student] was able to demonstrate his understanding of pragmatic language on the Test of Pragmatic Language. His score was in the average range. However, [Student] was not yet incorporating his knowledge into his actions. The Pragmatics Profile checklist completed by [Parent] also documented that [Student] was demonstrating some fundamental skills such as responding to greetings, maintaining topics of conversation, telling/understanding jokes, and participating appropriately in structured group activities. However, nonverbal communication skills were not demonstrated. (Jt. Ex. 11).

66. Pragmatic language is social language, specifically how a person interacts with other people, how a person effectively communicates with them, and how a person can read verbal and nonverbal messages from another. (T. XXXX).

67. The 2014 Assessments reflected that [Student]’s scaled scores on the WJIII decreased since the 2013 Assessments. The instructional ranges associated with each score remained the same and in some areas even declined. [Student]’s most relevant scores, instructional levels and comparison to peers (where available) were as follows:

	10/2014	1/2013
Broad Reading	77 2.5-3.9 Low	84 2.3-3.1 Low average
Broad Written Language	73 2.1-3.7 Low	87 2.1-4.1 Low average
Basic Reading Skills	84 2.8-3.9 n/a	92 2.6-3.6 n/a
Reading Fluency	78 2.0-4.8 Low	89 2.5-3.5 Average
Letter-word Identification	85 3.2-4.2 Low average	89 2.6-3.3 Average
Word Attack	85 2.2-3.6 Low average	97 2.4-4.8 Average
Passage Comprehension	73 1.9-2.9 Low	80 1.6-2.3 Low
Spelling	78 2.2-3.4	86 2.3-3.6

	Low	Very low average
Writing Samples	83 2.1-4.6 Low average	87 1.5-4.1 Low average
Writing Fluency	71 1.7-3.6 Low	95 2.8-4.6 n/a

[Student]’s scores on the Letter-Word Identification test demonstrated that [Student] continued to struggle with reading multisyllabic words; however on the Word Attack test, [Student] was in the low average range. The WJIII now also identified that [Student] was having difficulties with vowel digraphs and consonant blends, as well as spelling and sequencing and organizing his writing. He, however, had improved his writing quality with complete and meaningful sentences, and expended ideas.

(Jt. Ex. 10).

68. Based on the results of the 2014 Assessments, the assessors made the following recommendations:

- Provide [Student] with small group activities to encourage use of age appropriate social skills
- Pair auditory information with visuals when possible
- Use social stories to facilitate social skill development
- Provide models of appropriate social language use
- Provide extra time to process information and complete work
- Incorporate demonstrations, pictures, and various activities that utilize all levels of sensory processing in learning activities
- Obtain [Student]’s undivided attention before beginning instruction
- Give [Student] preferential seating
- Break longer projects into smaller portions
- Reduce distractions

- Provide opportunities for small group instruction and reteaching
 - Read text aloud
 - Give [Student] a scribe
 - Give adult support for redirection and explanation of directions
 - Monitor tests to ensure test completion and truthful answers
 - Give multiple and frequent breaks to reduce frustration, anxiety and resistance during assessment
 - Assign [Student] a reading intervention class that emphasizes direct instruction in basic reading and writing skills
- (Jt. Exs. 9, 10, and 11).

69. On December 11, 2014, [Student]’s IEP team met (December 2014 Team Meeting) to discuss [Student]’s assessment results. [Parent] was present. (Jt. Ex. 18, BCPS Ex. 2).

70. [Parent] disagreed with the results of the testing. He requested independent evaluations of [Student] at BCPS’ expense. (Jt. Ex. 18; BCPS Exs. 1 and 2.)

71. [Student] made progress on the goals and objective in the February 2014 IEP, as revised by the May and September 2014 Revised IEPs. [Student] did not achieve any of the relevant goals. However, he did make significant progress in reading comprehension, demonstrating 83% accuracy on 6th grade level text with accommodations, compared to 40% accuracy just over two months prior.

Additionally, without accommodations, [Student] went from 20% to 50% accuracy within the same period. As far as decoding and fluency, [Student] increased from 23% to 42% on 6th grade level text during the same period of time. [Student] did not make any significant progress on his Written Language goals; he was no longer using a scribe and was argumentative with teachers about expanding on and correcting his written work. [Student] achieved many of the objectives in his Communication goals, including taking turns in a conversation, making comments appropriate to the

situation, and recalling important details of a story. He was also able to use correct tone of voice, and get a teacher's attention appropriately, with 75% accuracy.

[Student] continued to struggle with working with a group on an academic task, as well as sharing and taking turns with peers. (BCPS Ex. 22).

72. On January 13, 2015, [Student]'s IEP team met (January 2015 IEP Team Meeting) to conduct an annual review and create a new IEP for [Student] (January 2015 IEP). [Parent] was present. Based on the updated assessments completed by BCPS, the team changed [Student]'s diagnosis code from Autism to Multiple Disabilities. (BCPS Ex. 1, Jt. Exs. 13 and 18).

73. Based on the results from the 2014 Assessments, as well as his progression on past goals and objectives, his performance on classroom and grade-level performance based assessments, and teacher reports, the team identify that [Student]'s demonstrated weaknesses at that time included:

- Reading decoding: unable to decode grade level text
- Reading comprehension: difficulties with inferences, tone, and point of view
- Writing: difficulties with expression, fluency and organization
- Communication: poor pragmatic language and pro-social skills
- Behavior: poor work habits, difficulty with on task behavior, inappropriate test taking behavior

(Jt. Ex. 13).

74. The January 2015 IEP included goals and objectives that addressed the following areas:

- Reading comprehension - objectives were updated to address making comments, asking relevant questions, responding to text and inferencing; retelling the main idea remained as an objective from the January 2014 IEP; and summarizing was removed
- Decoding - [Student]'s January 2014 IEP fluency goal was modified to a decoding goal with relevant objectives
- Written language - This goal remained similar to the January 2014 IEP; the objectives were modified to address making a plan before writing, using tools to organize writing, maintaining a topic, and expanding on ideas
- Behavior - An on-task behavior goal was added with objectives that addressed whole body listening, class participation, comprehension of classroom instructions, and task initiation.
- Behavior: Conversation skills - This goal was a continuation of a similar goal from the January 2014 IEP; the objectives were modified to address taking turns in a conversation, using appropriate greetings and endings, and staying on topic
- Communication: Conversation skills - This goal also addresses conversation skills such as conversation turn taking, maintaining a topic during a discussion, orienting to speaker, tone of voice, paying attention to speaker, politely interrupting, remaining on topic in classroom discussions, and making appropriate versus inappropriate comments; this goal also implemented the lessons of expected/unexpected behaviors of the Social Thinking program
- Communication: Language subtleties - a goal was added to address [Student]'s lack of pragmatic language skills, and included objectives such as understanding nonverbal communication cues and using cooperative work behaviors

(Jt. Ex. 13).

75. The January 2015 IEP contained accommodations and supports, such as: human reader/text to speech software; scribe; test response monitoring; extended time; reduction of distractions; repeat and/or paraphrase information; organizational aids; breaking down assignments into smaller units; altering/modifying assignments; chunking of texts; using positive/concrete reinforcers; and adult support. (Jt. Ex. 13).
76. The January 2015 IEP provided for Language Arts and Math Assistance to continue outside of general education. Math, Science, and Social Studies continued inside general education classes with special education assistance. The Student's Reading Intervention class remained inside general education; however, it continued to be taught by a special educator and was smaller than other general education classes. Additionally, [Student]'s IEP team added a class period every-other day (ten 45-minute sessions monthly) for [Student] to receive direct reading intervention instruction taught by a special educator using the Wilson reading program. This class was in place of [Student]'s Music class. [Student]'s speech service hours remained at 30 minutes weekly. (Jt. Ex. 13; BCPS Ex. 1; T. XXXX).
77. At the January 2015 IEP Meeting, the team considered placing [Student] completely outside of general education; however, the team determined that [Student] could remain in the current placement with the accommodations, modification and supports being provided. (BCPS Ex. 1).
78. At the January 2015 IEP Meeting, [Parent] agreed that [Student]'s weaknesses and needs were correctly identified, and that the goals and objectives met those needs. However, he expressed displeasure that [Student] reading intervention class was not

taught by a reading specialist and was not outside of general education. He again requested independent evaluations at BCPS's expense. (BCPS Ex. 1).

79. After the January 2015 IEP Meeting, [Student]'s new 6th grade schedule included the following classes:

- Language Arts, outside of general education, taught by a special educator
- Language!, inside general education, taught by a special education teacher;
- Reading Intervention, outside general education, taught by Ms. XXXX, a special educator, one-to-one with [Student], every-other-day, utilizing the Wilson and i-Ready reading programs.

- Math Assistance, outside general education, taught by a special educator
- Math, Science, World Cultures, inclusion classes, inside general education; [Student]'s inclusion classes included either a special educator or an Instructional Assistant, and usually had multiple additional supporting adults in the room
- Other classes, such as PE and health, in which where he did not receive special education service hours, he had adult support

(Jt. Ex. 18; BCPS Exs. 4 and 11; T. XXXX; T. XXXX).

80. On February 27, 2015, [Student] was assessed using the Wilson Program's Assessment of Decoding and Encoding (WADE) by a reading specialist with BCPS. The WADE assesses a student's ability to read real, sight, and nonsense words. It is used for placement in the Wilson Reading Program. At that time, [Student] received the following scores:

- Consonants in isolation 83%
- Digraphs/Trigraphs in isolation 67%

- Vowels in isolation 21%
- Additional sounds in isolation 27%
- Welded in isolation 75%
- Total Sounds in isolation 45%
- Real words decoding 44%
- Nonsense words decoding 13%
- Sight words decoding 95%
- Total words decoding 51%

(BCPS Exs. 13 and 16).

81. The i-Ready Diagnostic & Instruction™ Reading Program (i-Ready Program) is an adaptive computer-based diagnostic reading system. It is generally aligned with core curriculum. It teaches phonological awareness, phonics, high-frequency words and comprehension. Between March and May 2015, [Student] advanced in the i-Ready Program. He advanced in Phonics from the early first-grade level to late third-grade level, in Vocabulary from the early third-grade to late third-grade level, and in Reading Comprehension from the early first-grade to late first-grade level.

(P. Ex. 17; T. XXXX).

82. On May 9, 2015, [Student] was assessed using the Advanced Decoding Skills Survey, a tool that measures a student's decoding skills. At that time, [Student] received the following scores:

- One syllable and one vowel nonsense 92%
- Long and other vowels spelled with more than one letter nonsense 33%
- R-controlled vowel nonsense 67%

- Multi-syllabic words nonsense 63%
- Total Nonsense Words 66%
- Real words 83%

(BCPS Exs. 13 and 15).

83. By June 2015, [Student]’s progress on the January 2015 IEP was as follows:

- [Student] achieved his written language goal, without the use of any accommodation, on grade level material. [Student] still required redirection and reminders to stay on task, as well as breaks and motivators to continue writing.
- [Student] achieved his reading comprehension goal. He scored 80% on 6th grade level passages on the Brigance Inventory of Basic Skills. He also demonstrated strong concrete and literal comprehension skills, but he still demonstrated needs in inferential comprehension.
- [Student] achieved his reading decoding goal. [Student]’s results on the Qualitative Reading Inventory (QRI) demonstrated that he was reading grade level words at 75% accuracy. His success on consonants, vowel sounds, digraphs and double consonant accuracy increased from 47% in March to 93% in June 2015. [Student] increased his decoding when he utilized passage context clues.
- [Student] increased his ability to stay on task from 50% of the time to 61% of the time as evidenced on daily behavior point sheets. He also progressed in starting his work on time, finishing his work and asking for help when needed.
- [Student] increased his ability to take turns in a conversation, use appropriate greetings and endings, and stay on topic from 60% in January to 80% accuracy in June. He also increased the use of “friendly” language with peers and adults.

- [Student] increased his ability to identify inappropriate comments from 50% of the time to 75% of the time, to understand body language from 60% to 75% accuracy, and to engage in cooperative work behavior from 50% to 66%. He also increased his turn taking in conversation from 60% of the time to 80%.

(BCPS Ex. 23).

84. [Student]'s 6th grade final grades were all Bs and Cs, except for an A in his Reading Intervention class. [Student] was satisfactory in: completing class assignments and homework in almost every class; working cooperatively in groups; and demonstrating knowledge on assessments. Throughout the year, [Student] earned a D in the first quarter of his Language! Class, and a D in the second quarter in Science; however he earned no grade lower than a C in his third and fourth quarters. (BCPS Ex. 11).
85. During 6th grade, [Student] received the following accommodations and supports in the general education classroom: scribe; chunking of longer assignments; graphic organizers; modified quizzes and test to provide a reduced number of questions and/or a reduced number of answers; distraction-free area to take tests; extra time to complete assignments. (T. XXXX).
86. During 6th grade, [Student]'s notebook became more organized. (T. XXXX).
87. During 6th grade, [Student]'s had a behavior chart. If he had a good day, he earned a reward such as computer time. On most days, [Student] was defiant and distracted. (T. XXXX; T. XXXX; T. XXXX).
88. During 6th grade, [Student] exhibited defiant behavior such as refusing teacher's instructions. He also often drew violent drawings and on many occasions said that he wanted to blow up the school. (T. XXXX).

89. On June 11, 2015, BCPS agreed to fund independent psychological and speech and language assessments (2015 Independent Assessments) without a hearing to resolve [Parent]' May 28, 2015 Due Process Complaint. (Jt. Ex. 18).
90. June 19 and July 1, 2015, [Student] underwent an independent Language Processing evaluation by Dr. XXXX XXXX. The first session was approximately four hours and the second session was approximately two hours. Dr. XXXX did not observe [Student] in a classroom setting. (Jt. Ex. 14).
91. Dr. XXXX has a masters and doctorate in Speech/Language Pathology, and has been practicing for over forty years. (T. XXXX).
92. On July 7, 10 and 14, 2015, [Student] underwent an independent Neuropsychological evaluation by Dr. XXXX XXXX. Each session was approximately two hours. Dr. XXXX did not observe [Student] in the school setting. (Jt. Ex. 15).
93. The majority of the Neuropsychological testing was completed by a psychological associate of Dr. XXXX who is registered with the Board of Examiners of Psychologists, and this is a common practice in the industry. (T. XXXX).
94. Dr. XXXX is a board certified Neuropsychologist and is very experienced in evaluating Neurobehavioral Disorders including Learning Disorders, Attention Disorders and Autism. (T. XXXX).
95. As a result of the 2015 Independent Assessments, Drs. XXXX and XXXX diagnosed [Student] with Autism and an associated Pragmatic Communication Disorder. They also both diagnosed [Student] with Specific Learning Disabilities in the areas of reading (also known as Dyslexia) and written expression. Dr. XXXX further

diagnosed [Student] with Attention-Deficit/Hyperactivity Disorder (ADHD) and an Anxiety Disorder. (Jt. Exs. 14 and 15; T. XXXX; T. XXXX).

96. Dr. XXXX administered the Clinical Evaluation of Language Fundamentals - Fifth Edition (CELF-V). This was a normative updated version of the CELF-IV that was administered to [Student] in 2013 and 2014. [Student]'s relevant scores were as follows:

Core Language Index	75 (5th percentile)
Receptive Language Index	82 (12th percentile)
Expressive Language Index	71 (3rd percentile)
Language Content Index	78 (7th percentile)
Language Memory Index	75 (5th percentile)
Recalling Sentences subtest	3 (1st percentile)
Understanding Spoken Paragraphs	6 (9th percentile)
Formulated Sentences	6 (9th percentile)
Following Directions	8 (25th percentile)
Word Classes	7 (16th percentile)
Sentence assembly	6 (9th percentile)
Pragmatic profile (parent)	3 (1st percentile)
Pragmatic profile (teacher 1)	2 (0.4 percentile)
Pragmatic profile (teacher 2)	4 (2nd percentile)

(Jt. Ex. 14).

97. Dr. XXXX also administered the Gray Oral Reading Test – Fifth Edition (GORT-5).

[Student]'s scores were as follows:

- Rate – 16th percentile
- Accuracy – 25th percentile
- Fluency – 16th percentile
- Comprehension – 16th percentile
- Oral Reading Quotient – 14th percentile

(Jt. Ex. 14).

98. Based on [Student]’s assessment, Dr. XXXX identified that [Student] exhibited the following weaknesses:

- Recalling simple sentences with verbatim accuracy
- Using life experience to state plausible solutions to problems
- Identifying causes of events or problems
- Predicting what will happen next in a social situation
- Formulating a solution to a problem
- Understanding social pragmatic language and attending to appropriate social cues
- Decoding multi-syllabic words
- Comprehending text beyond the third grade level
- Understanding sentence and word structures and complex grammar

(Jt. Ex. 14).

99. Based on the weaknesses she identified for [Student], Dr. XXXX recommended the following:

- Direct speech-language services three times weekly within a small group of students who have similar profiles and needs to permit the development of pragmatic skills

- Integration of the Social Thinking program throughout [Student]'s school day to permit reinforcement and generalization of the targeted skills as issues that arise in the course of educational programming
 - Instruction in comprehending and using grammatical structures that facilitate higher order language processing; specifically adverbs, conjunctions and complex language
 - Direct instruction in narrative language, including telling and writing stories with a clear beginning, end, statement of a problem, resolution of the problem and predictions for how events will transpire in the future
 - An evidence-based reading program for decoding and integration of this program throughout his school day
 - Accommodations, such as providing him with a list of comprehension questions before he begins reading and chunking of text
 - An appropriate educational placement that permits him to be provided with interventions in reading and pragmatics throughout his day from trained and experienced personnel
100. During Neuropsychological testing with Dr. XXXX, [Student] was restless and required almost constant redirection to sustain task focus. [Student] rushed through his work, made careless errors, talked during tasks, and had difficulty inhibiting his impulses. He was easily frustrated by moderately-demanding tasks and often asked a number of off-topic questions. He was also considered impulsive. He was provided with frequent breaks and incentives to sustain task focus. (Jt. Ex. 15).

101. Dr. XXXX administered a newer version of the Woodcock-Johnson Test of Achievement; he administered the Fourth version (WJIV). The test underwent a normative update from the WJIII. (Jt. Ex. 15; T. XXXX; T. XXXX).

102. [Student] attained the following scores, and instructional levels, on the WJIV:

	Score	Inst. Level
Broad Reading	67	2.5
Broad Written Language	76	3.2
Basic Reading Skills	78	2.9
Reading Fluency	69	2.4
Letter-Word Identification	74	2.8
Word Attack	86	3.1
Passage Comprehension	62	2.0
Spelling	73	2.8
Writing Samples	90	4.1
Writing Fluency	78	3.3

(Jt. Ex. 15).

103. Dr. XXXX also administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V). [Student]'s scores were as follows:

	7/2015		10/2014		1/2013	
General Ability Index	97	42nd	n/a		n/a	
Full Scale IQ (FSIQ)	85	16th	81	10th	95	37th percentile
Working Memory index	82	12th	68	2nd	91	27th percentile
Processing Speed index	77	6th	85	16th	85	16th percentile
Verbal Comprehension	92	30th	83	13th	96	39th percentile

Perceptual Reasoning	n/a		100	50th	108	70th percentile
Digit Span subtest	5	5th	6	n/a	5	5th percentile
Letter-Numbering Seq.	n/a		3	n/a	12	75th percentile
Coding	4	2nd	n/a		n/a	

[Student]'s full-scale IQ score was diminished by weaknesses in both working memory and processing speed. His working memory score was influenced by his low digit span score. His processing speed score was influenced by his low coding score. (Jt. Ex. 15).

104. The Digit Span subtest measures short-term auditory memory as well as focused concentration. The Coding subtest measures visual associative learning as well as processing speed. (Jt. Ex. 15).

105. Dr. XXXX also administered the GORT-5. [Student]'s scores were as follows:

- Rate – 5th percentile
- Accuracy – 2nd percentile
- Fluency – 2nd percentile
- Comprehension – 9th percentile
- Oral Reading Quotient – 4th percentile

(Jt. Ex. 15).

106. Based on [Student]'s assessment, Dr. XXXX identified that [Student] exhibited the following weaknesses:

- Verbal comprehension
- Verbal memory
- Working memory

- Processing speed
- Decoding
- Higher-order problem-solving
- Executive functioning
- Frustration tolerance

(Jt. Ex. 15).

107. Based on these identified weaknesses, Dr. XXXX recommended the following for [Student]:

- An evidence-based reading program, implemented throughout [Student]'s day, that is multi-sensory, systematic, sequential and phonics based.
- Classes with a low teacher/student ratio
- Speech language services
- Accommodations such as behavioral supports, extended time on tests, chunking of information, lack of penalty for spelling errors, voice to text software, pre-reading and pre-writing rubrics, word banks, and adult supervision during less structured times of the day
- Opportunities to learn with peers of similar cognitive ability and from appropriate language and gender models
- Direct intervention for pragmatic language skills by a speech language pathologist
- Graphic organizers and story mapping

(Jt. Ex. 15).

108. [Student] began his 7th grade year at [SCHOOL 2] for the 2015-2015 school year. [Student]'s schedule included the following classes:

- Language Arts, outside of general education, taught by Ms. XXXX, his special education teacher
- Reading Intervention, outside general education, utilizing the Wilson program, taught by Ms. XXXX
- Math Intervention, outside general education, taught by Ms. XXXX
- Pre-algebra, Science, World Cultures, inclusion classes, inside general education. [Student]’s inclusion classes included either a special educator or an Instructional Assistant.
- [Student] continued to receive adult assistance in all content classes, as well as strings and physical education in which he did not special education assistance. (Jt. Ex. 17; P. Ex. 2; T. XXXX; T. XXXX).

109. On September 3, 2015, [Student]’s IEP team convened to discuss the results of the 2015 Independent Assessments. [Parent], his attorney and Drs. XXXX and XXXX were present. The team reviewed the results of the 2015 Independent Assessments as well as teacher reports, and agreed that [Student] demonstrated needs in the following areas:

- Reading-decoding
- Reading comprehension
- Written language
- Executive functioning (attention, planning and organization)
- Social skills, including pragmatic language and higher-order expressive and receptive language skills

The team agreed to reconvene on September 30, 2015 to review a draft IEP to address the Student's agreed upon needs. (Jt. Exs. 16 and 18).

110. On September 30, 2015, [Student]'s IEP team convened to revise [Student]'s January 2015 IEP (September 2015 Revised IEP). [Parent], his attorney and Drs. XXXX and XXXX were present. (Jt. Exs. 17 and 18).

111. [Student]'s September 2015 Revised IEP includes goals and objectives were modified as follows: a Behavior Work Habits goal in his January 2015 IEP was updated to include an objective that [Student] will use expected means of interacting with the teacher as detailed in the Social Thinking program; and two Communication goals on the January 2105 IEP were modified to four new Communication goals targeting pragmatic social language, critical thinking, grammar and narrative language. The team agreed on the goals in [Student]'s September 2015 Revised IEP. (Jt. Ex. 17; BCPS Ex. 8; T. XXXX).

112. The team considered placing [Student] entirely outside of general education. The staff from BCPS did not agree to that placement. (T. XXXX; T. XXXX).

113. Not one member of [Student]'s team indicated at either the September 3, 2015 or the September 30, 2015 IEP meetings that any other evaluations, assessments or testing was necessary for the IEP team to adequately identify [Student]'s needs and/or to develop an appropriate IEP for [Student]. (Jt. Exs. 16 and 17).

114. Between August and mid-October 2015, [Student]'s teachers completed behavior charts for [Student] in each of his classes.² Each teacher was asked whether [Student]

² BCPS exhibits 25 and 26 contain [Student]'s daily behavior point sheets. They also contain a few pages of analysis of the data contained in these point sheets. During the hearing, the validity and accuracy of the analysis was called into question. When writing this Decision, I considered [Student]'s daily behavior point sheets only, and did not review or consider the analysis provided.

attained certain goals including: started his work on time; finished his work; used friendly words; and asked for help when needed. Each teacher was also provided a space for a comment. If he earned more than fourteen points he received a reward of either computer time or a good email home, his choice. The charts reflect that through the beginning of October, [Student] earned a reward every day except one, and the teachers' comments were generally positive. The second week of October was a difficult week for [Student]; there are many comments about him talking, playing around, and not using his time in class wisely. By the third week of October, [Student] was earning rewards again. (BCPS Ex. 26).

115. In late October, [Student]'s charts were modified to mimic the Superflex characters of the Social Thinking program. The areas assessed were whether [Student]: demonstrated expected behaviors; used Superflex to defeat Rock Brain; and used Superflex to defeat Topic Twister. Teachers were asked to answer yes or no to whether he met each of these goals in their classroom that day, and a space was provided for comments. He continued to work towards a reward of computer time or a positive email to his father. These charts demonstrate that [Student]'s behavior was inconsistent. They are full of many positive comments; however, they are also full of many comments describing [Student] as very distracted, chatty with other students and off task. There were also numerous notes where [Student] either had his hood up or his headphones on in class. These negative behaviors occurred in both inside and outside general education classes. (P. Ex. 13; BCPS Ex. 25).

116. [Student] received a detention on October 30, 2015 for refusing to take his hood off in school. (P. Ex. 11).

117. On October 30, 2015, [Student]’s first quarter grades for 7th grade were: Bs in Reading Intervention, Math Assistance, Strings and PE; Cs in Language Arts, World Cultures, Pre-Algebra, and Science. (P. Ex. 2).

118. [Student]’s adult support person is trained by Ms. XXXX in the Social Thinking program and helps implement the program throughout [Student]’s school day. Additionally, Ms. XXXX modeled her use of the Social Thinking program with [Student] for [Student]’s teachers. She also provided them with information about the Social Thinking program. (T. XXXX).

119. On December 8, 2015, [Student] was administered the QRI. [Student] was reading independently at the 4th grade level and at the instructional level on 5th and 6th grade texts. (BCPS Exs. 13 and 18).

120. On December 8, 2015, [Student] was again assessed using the Advanced Decoding Skills Survey. At that time he received the following scores:

- One syllable and one vowel nonsense 100%
- Long and other vowels spelled with more than one letter nonsense 44%
- R-controlled vowel nonsense 100%
- Multi-syllabic words nonsense 88%
- Total Nonsense Words 81%
- Real words 83%

(BCPS Exs. 13 and 15).

121. Between September and December 2015, [Student] progressed in the i-Ready Program in both Vocabulary and Reading Comprehension up into the late fourth-grade level. (P. Ex. 6).

122. From the beginning of 7th grade in August 2015 to mid-7th grade in January 2016, [Student] progressed through six levels of the Wilson program, from wordlists at level 3.1 to wordlists at level 4.2. (BCPS Ex. 14).

123. On January 4, 2016, [Student] was again assessed using the WADE. At that time, he received the following scores:

- Consonants in isolation 92%
- Digraphs/Trigraphs in isolation 78%
- Vowels in isolation 41%
- Additional sounds in isolation 27%
- Welded in isolation 100%
- Total Sounds in isolation 60%
- Real words decoding 86%
- Nonsense words decoding 38%
- Sight words decoding 100%
- Total words decoding 79%

The skill of “additional sounds in isolation” was not taught to [Student] as of January 4, 2016. (BCPS Exs. 13 and 16).

124. Between January 2015 and the present day, [Student] progressed from level 1.2 to 4.2 in the Wilson Reading program. (T. XXXX.)

125. Between June 12, 2015 and January 6, 2016, [Student] made progress on the goals and objectives in his January 2015 IEP, as modified by the September 2015 Revised IEP.

- [Student] continued to progress on his written language goal on grade level materials. He progressed from 57% in June 2015 to 82% in January 2016, and he was able to do this even though the material he was assessed on changed from 6th to 7th grade level. [Student] still required graphic organizers and proofreading checklists to perform this task. His spelling remained inconsistent.
- [Student] continued to meet his reading comprehension goal even though the material increased from 6th to 7th grade level. He demonstrated the ability to ask relevant questions with 100% accuracy, summarize with 83% accuracy, retell the main idea with 75% accuracy and make inferences with 67% accuracy. He became overwhelmed by lengthy texts and required motivation and encouragement to continue reading.
- [Student] achieved his reading decoding goal. [Student]'s results on the QRI demonstrated that he was reading grade level words at 80% accuracy. His success in decoding was contingent on whether the words are in isolation, or if [Student] could retrieve clues from the word in context.
- [Student] achieved his Work Habits goal, increasing his ability to stay on task from 61% of the time in June 2015 to 75% of the time. He attended to the teacher during instruction and could restate directions with 75% accuracy. He still, however, needed prompting to participate in group instruction and assistance with asking for help.
- [Student] achieved his Behavior Pro Social Skills goal. He took turns in a conversation with 100% accuracy. He talked with friends at lunch about appropriate topics, such as Legos and video games they play.

- In his four new Communication goals, [Student] achieved two goals and was making sufficient progress to meet the other two goals. [Student] could ask appropriate questions about a topic, utilize appropriate non-verbal techniques to enhance communication, speak at a proper rate, tone and volume, and differentiate between a sentence and a phrase, all on 75% of the occasions. He was also able to identify expected/unexpected behaviors when presented with materials from the Social Thinking program 100% of the time. He used conjunctions correctly 88% of the time when given a pair of simple sentences; however, he still struggled to formulate compound sentences on his own. When given a sequence of pictures, [Student] progressed from being able to retell a story in correct order with 25% accuracy in November 2015 to 75% accuracy in January 2016. He also was progressing in his use of temporal words from 50 to 75% accuracy, and in his accurate use of synonyms from 50 to 60 % of the time. His ability to predict increased from 25% to 75% of the time, and he could identify the problem in a story from 50% to 75% of the time. Additionally, his ability to state one expected and one unexpected outcome to a problem increased from 25% to 75%.

(BCPS Ex. 24).

126. On January 8, 2016, [Student] was involved in an incident at school. A student at the school was being disrespectful to a teacher. [Student] defended the teacher, resulting in the other student hitting [Student]. [Student] was not injured. (P. Ex. 8).

127. Throughout 6th grade and through the present day, [Student] went from hardly participating in his larger general education classes to, at times, volunteering to read out loud for the class and to go up to the board during group instruction. He is raising

his hand more and more as time goes on. At the beginning of 6th grade, he was silly and was often off task, calling out and providing nonsense answers. By the end of 6th grade [Student] was eager to please, increased his participation in the class, and his silly and inappropriate behaviors lessened. [Student] began to implement strategies that helped increase his focus and attention, including independently moving his seat to an area that provided fewer distractions. (T. XXXX; T. XXXX; T. XXXX).

128. [Student]'s social interaction increased over his 6th and 7th grade years. He now actively participates in many group projects. His cooperation with his group has increased. (T. XXXX; T. XXXX).

129. In the beginning of 6th grade, [Student] sat alone at lunch with a book. Currently, [Student] eats lunch with two or three friends. He also asks for friends to come with him to social group meetings. [Student] and the other children talk about Legos and Minecraft. (T. XXXX).

DISCUSSION

The Legal Framework³

The federal government provides federal education funding to states that choose to comply with the IDEA. 20 U.S.C.A. §§ 1411-1414; 34 C.F.R. § 300.2; *Bd. of Educ. of the Hendrick Hudson Cent. School Distr. v. Rowley*, 458 U.S. 176 (1982). Funding is conditioned upon a state's compliance with the extensive goals and procedures of the IDEA. *Id.* Maryland implements the IDEA, and adds additional procedural safeguards and substantive requirements above those required

³ During closing argument, I requested that counsel provide me with additional case law to support identified issues in this case. Both parties submitted a list of cases to me and each other. On March 7, 2015, [Parent] filed an "objection" to BCPS's case law submission, stating that BCPS incorrectly presented case law that addressed issues beyond my request. BCPS did not file a response. I sustain [Parent]' objection. I did not consider any part of BCPS's post-hearing case law submission that went beyond my instructions during closing arguments.

by the IDEA, through Title 8, Subtitles 3 and 4 of the Maryland Code's Education Article and through COMAR 13A.05.01.

The IDEA demands "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]" 20 U.S.C.A. § 1400(d)(1)(A). A "free appropriate public education" (FAPE) is defined in COMAR 13A.05.01.03B(27) as special education and related services that:

- (a) Are provided at public expense, under public supervision and direction;
- (b) Meet the standards of the Department, including the requirements of 34 CFR §§300.8, 300.101, 300.102, and 300.530(d) and this chapter;
- (c) Include preschool, elementary, or secondary education; and
- (d) Are provided in conformity with an IEP that meets the requirements of 20 U.S.C. § 1414, and this chapter.

FAPE is similarly defined in the IDEA and in the applicable federal regulations. 20 U.S.C.A. § 1401(9); 34 C.F.R. § 300.17.

To have an entitlement to a FAPE, the child must have a disability as defined by the statute. 20 U.S.C.A. §§ 1401(3), 1414(a)(1) and (b)(4)(A); COMAR 13A.05.01.01. When a disability is suspected, the school system must perform an evaluation of the child. *Id.*; *See also* 34 C.F.R. § 300.15; COMAR 13A.05.01.04 and .06. The results of the evaluation are used not only to determine whether the child has a qualified disability, but also serves to determine the nature and extent of the special education and related services that the child needs to receive a FAPE. 20 U.S.C.A. § 1414(a)(1)(C)(i); 34 C.F.R. §§ 300.15, 300.304(b)(1); COMAR 13A.05.01.05. Reevaluations of a child are also to be done not less than every three years, or earlier: (1) if the school system determines that the educational and related services needs of the child warrant reevaluation; (2) if the child's parent or teacher requests a reevaluation; or (3) before determining a

child is no longer a child with a disability. 20 U.S.C.A. § 1414(a)(2); 34 C.F.R. § 300.303; COMAR 13A.05.01.06E.

When conducting an evaluation or a reevaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1). No single measure or assessment may be the sole criterion for determining whether the child is a child with a disability, or for determining an appropriate educational program for the child. 34 C.F.R. § 300.304(b)(2). The school system must ensure that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified,” and that the “assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the child are provided.” 34 C.F.R. § 300.304(c)(6) and (7).

Once an evaluation or reevaluation is completed, an IEP team must convene to review the results of the evaluation. 34 C.F.R. § 300.305(a). The team must determine whether additional information is necessary to determine, among other things, the present level of performance of the child, and the special education and related services needs of the child. *Id.* The IEP team must consider any input from and any evaluations provided by the child’s parents. 34 C.F.R. § 300.305(a)(1)(i).

If the IEP team determines that the child has, or continues to have, a disability as defined by the IDEA, an IEP must be developed for the child. 34 C.F.R. § 300.306(c)(2).

IEPs are the primary vehicle through which schools provide a particular child with a FAPE. *M.S. ex rel. Simchick v. Fairfax County School Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

An IEP is a document tailored to the unique needs of each disabled child. In essence, IEPs “must contain statements concerning a disabled child’s level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child’s progress.” *Id.* (quoting *MM ex rel. DM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 527 (4th Cir. 2002)). *See also* 20 U.S.C.A. § 1414(d)(1)(A). If a child’s behavior impedes their learning or the learning of others, the IEP team must “consider the use of positive behavioral interventions and supports [(PBIS)] and other strategies” to address that behavior. 20 U.S.C.A. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).⁴ Additionally, an IEP must contain “an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities.” *See* 20 U.S.C.A. § 1414(d)(1)(A)(i)(V); COMAR 13A.05.01.09A(1)(e).

IEPs must be reviewed periodically, but not less frequently than annually, to determine whether the annual goals for the student are being achieved. 20 U.S.C.A. § 1414(d)(4)(A)(i). IEPs should be revised, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum. 20 U.S.C.A. § 1414(d)(4)(A)(ii). IEPs should also be revised based on the results of any reevaluation conducted and for other reasons, such as other anticipated needs of the child. *Id.*; *Honig v. Doe*, 484 U.S. 305, 311 (1988).

Although the law in special education has undergone a significant evolution in the past few decades, the *Rowley* case still sets the standard for determining whether a child is being accorded a FAPE under the IDEA. *See O.S. v. Fairfax County Sch. Bd.*, 804 F.3d 354 (4th Cir. 2015). *Rowley* sets forth a two pronged analysis.

⁴ A Functional Behavior Assessment and a Behavior Intervention Plan are only required if the disabled child is removed from the child’s current placement. 20 U.S.C.A. § 1415(k)(1)(D). [Parent] does not assert that [Student] was removed from his placement at any time.

First, a determination must be made as to whether there has been compliance with the procedures set forth in the IDEA. *Rowley*, 458 U.S. at 206. Failure to comply with the IDEA's procedural provisions may be a sufficient basis upon which to find that a student was denied a FAPE. *Bd. Of Educ. Of Frederick County v. I.S.*, 325 F. Supp. 2d 565, 580 (D. Md. 2004) (quoting *Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 634 (4th Cir. 1985)); see also *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1206 (4th Cir. 1990); *Hudson v. Wilson*, 828 F.2d 1059, 1063 (4th Cir. 1987). However, not every instance of a procedural violation will result in a determination that a child was denied a FAPE. See *I.S.*, 325 F. Supp. 2d 565, 579-80 (D. Md. 2004).

Second, it must be determined whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive *some educational benefit*. *Rowley*, 458 U.S. at 200; *O.S.*, 804 F.3d at 358. Under this second prong, the determination is often a prospective process that looks to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive some educational benefit. *Rowley*, 458 U.S. 206-07, see also *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). However, in some instances, evidence of *actual progress* during the period of an IEP may also be relevant to determining whether a challenged IEP was reasonably calculated to confer *some educational benefit*. *MS ex rel v. Fairfax*, 553 F.3d 315 (4th Cir. 2009); see also *MM ex rel. DM*, 303 F.3d at 532 (finding error where the district court concluded that the 1995–96 IEP was inadequate because it “failed to consider the actual educational progress” made by the student during the 1995–96 school year). It is important to note, however, that lack of progress, while important, is not dispositive as to whether there was a denial of a FAPE. *Id.*

Some educational benefit is something more than a minimal or trivial benefit. *O.S.*, 804 F.3d at 359. When determining whether the amount of educational benefit received by the child meets the standard of “some educational benefit,” I should take into consideration the child’s particular capabilities. *Hall*, 774 F.2d 629, 635-36 (4th Cir. 2009). A variety of measures and factors should be considered when assessing whether a student received some educational benefit. *See e.g., Hall 774 F.2d at 636* (the court’s decision to discount the student’s promotion through grade levels was appropriate given the school’s policy on social promotion; however, the court’s reliance upon standardized tests scores as proof of lack of progress was appropriate); *Smith v. Parham*, 72 F. Supp. 2d 570, 575-76 (D. Md. 1999) (“advancement from grade to grade should not be the *only* factor considered when determining whether a child is receiving an educational benefit”).

It is also important to remember that the IDEA does not require “the best possible education that a school system could provide if given access to unlimited funds.” *Barnett v. Fairfax Co. Sch. Bd.*, 927 F.2d 146, 154 (4th Cir. 1991). Nor does it require the “furnishing of every special service necessary to maximize each handicapped child's potential.” *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir.1997) (internal quotation marks and citations omitted). Rather, it requires the school district to provide the child with a “basic floor of opportunity” which consists of “access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Rowley*, 458 U.S. at 200-01. Further, the IDEA does not guarantee any particular level of education once a placement has occurred. Rather, all that is required is that the child benefit educationally from the program. *Hanson ex rel. Hanson v. Smith*, 212 F. Supp. 2d 474, 488 (D. Md. 2002).

Additionally, when assessing whether a student was given or denied a FAPE, I “must afford great deference to the judgment of education professionals in implementing the IDEA.” *O.S.*, 804 F.3d at 360. I should only question the judgment of the education professionals’ decision regarding a child’s placement with great reluctance. *Tice*, 908 F.2d at 1207; *see also Hartman v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997) (local educators deserve latitude in determining the most appropriate IEP for a disabled child; the IDEA does not deprive these educators the right to apply their professional judgment). Additionally, I am not permitted to substitute my “own notions of sound educational policy for those of local school authorities.” *Id.*; *see also A.B. by D.B. v. Lawson*, 354 F.3d 315, 325 (4th Cir. 2004); *M.M. ex rel. D.M.*, 303 F.3d at 532-53 (4th Cir. 2002); *Barnett v. Fairfax County Sch. Bd.*, 721 F. Supp. 757, 762 (E.D. Va. 1989).

The IDEA further mandates that to the “maximum extent appropriate,” a disabled child should remain in the least restrictive environment (LRE). 20 U.S.C.A. § 1412(a)(5)(A). The disabled child is to be “educated with children who are not disabled,” and the removal of a child from “the regular educational environment” shall occur “only when the nature or severity of the disability ... is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.*; *see also Hartmann*, 118 F.3d at 1001.

“Mainstreaming of handicapped children into regular school programs ... is not only a laudable goal but is also a requirement of the [IDEA].” *DeVries v. Fairfax County Sch. Bd.*, 882 F.2d 876, 878 (4th Cir. 1989).

If I determine that BCPS failed to provide the Student with a FAPE, I am authorized to grant such relief as I determine is “appropriate.” 20 U.S.C.A. § 1415(i)(2)(C). The ordinary meaning of these words confers “broad discretion” to me to grant appropriate relief. *Burlington*

Sch. Comm. V. Dept of Educ., 471 U.S. 359, 369 (1985).

The burden of proof in a due process hearing is by a preponderance of the evidence and rests with the party bringing the Due Process Complaint. *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005). Therefore, the burden in this matter is on the Parent.

Failure to Appropriately Evaluate

[Parent] makes an allegation that BCPS did not appropriately evaluate [Student] in accordance with 34 CFR 300.304. Specifically, he asserts that in 2015, BCPS should have paid for a psychiatric evaluation of [Student] as recommended by Dr. XXXX in his July 2015 Report. In Dr. XXXX's opinion, [Student] suffers from an anxiety disorder that manifests as "low-frustration tolerance, depressive thoughts, aggressive thoughts, and withdrawing behavior." He concluded that [Student] would benefit from medication that could reduce [Student]'s impulsivity and his symptoms of anxiety, as well as promote his availability for learning.

Interestingly, however, although [Parent] and Dr. XXXX were both present at the September 3 and 30, 2015 IEP team meetings, the summaries from each of these meetings are silent as to any discussion regarding the need for a psychiatric evaluation. Additionally, no evidence was presented that these summaries are incorrect. Most importantly, there is no evidence that any member of the IEP team expressed any concern that the existing evaluations and assessments were inadequate for the development of [Student]'s IEP.

34 CFR 300.304(b) states, in part, that a public agency must use a variety of assessment tools and strategies to gather information about the child that may assist in determining the appropriate content of the child's IEP. The regulation also provides that an evaluation is to be sufficiently comprehensive to identify all of a child's needs with regard to special education and related services. 34 CFR 300.304(c)(6). Finally, when reviewing the evaluation, the team must

determine whether additional information is necessary to determine, among other things, the present level of performance of the child, and the special education and related services needs of the child.

34 C.F.R. § 300.305(a).

After Dr. XXXX wrote his Report, [Student]'s IEP team met twice to discuss the evaluations and the revisions to his IEP. As per 34 C.F.R. § 300.305(a), any member of the team who felt that additional information was necessary should have raised the issue at the time the evaluations were reviewed. There is no evidence that any member of [Student]'s team did this. The appropriate time to raise this issue would have been at those team meetings.

The Speech/Language and Neuropsychological assessments provided by Drs. XXXX and XXXX are impressively comprehensive. They were considered by the team and many aspects of them were incorporated into [Student]'s IEP. Accordingly, I find that the Parent has not proven there was a procedural violation of the IDEA.

Failure to Develop and Implement IEPs that would Provide [Student] with a FAPE⁵

In his Request, [Parent] asserts that [Student] was denied a FAPE because his IEPs were not reasonably calculated to ensure that [Student] would receive educational benefit. Additionally, he claims that [Student] has not made any meaningful educational progress during the relevant time period.

Witnesses and evidence presented

[Parent] testified and presented testimony from three expert witnesses. He also offered into evidence professional assessments completed by BCPS and his experts. Finally, he offered worksheets, report cards, emails, and IEPs and their associated team meeting summaries.

⁵ [Student]'s IEPs all contain a Mathematics goal. During the hearing, [Parent] made clear that his claims revolved around the deficits in [Student]'s reading, language and behavior. There is no allegation that BCPS failed to provide a FAPE to [Student] with regard to mathematics.

[Parent] is clearly an involved and concerned parent. He wants what is best for [Student] so that [Student] can grow to become a productive member of society. He has expressed concerns repeatedly over the years to the IEP team that he does not believe [Student]'s needs have been appropriately met. For example, [Parent] explained that [Student] has a hard time grasping a lot of concepts taught in school, and that he spends a lot of time re-teaching [Student] the material at home.⁶ He also believes the school is inconsistent in the way it teaches [Student], and that the school is not properly implementing [Student]'s IEP. He explained that a lot of [Student]'s work comes home written in someone else's writing, and that he believes the teacher is writing the correct answer for [Student] even when [Student] does not understand the assignment. He also has concerns that the school modifies the curriculum to such an extent that the teachers are often making the assignments too simple for [Student], without requiring [Student] to completely grasp the material as presented to the rest of the class.

[Parent] also expressed concerns about his son's behavior, and how, in his opinion, it has declined over the years. He explained that before 6th grade [Student] was a well behaved student, but that beginning in 6th grade, and continuing this year, [Student] has become defiant towards his teachers, and he has begun to lie about classwork and homework. He also noted that [Student] has gotten detention on at least one occasion.

[Parent] also expressed his concern about [Student] socially. He stated that [Student] has no friends, never has any play dates and is never invited to any birthday parties. He recalled

⁶ [Parent] testified that he reteaches [Student] school content material at home. Mr. XXXX confirmed that he is aware that [Parent] works with [Student] at home. This evidence, however, is insufficient for me to quantify the amount of assistance [Parent] provides at home or assess the impact this assistance had on [Student]'s documented academic progress. It is [Parent]' burden of proof. Accordingly, I find the evidence is insufficient to support [Parent]' assertion that, had [Parent] not provided this added support, [Student] would not have made academic progress during this time period.

observing [Student] sitting alone at lunch reading a book last year. He stated that [Student] has a phone, but that he does not have any other students' phone numbers in it.

I am sympathetic to [Parent] concerns. [Student] clearly has many obstacles that hinder his ability to learn. The evidence presented, however, does support [Parent]' allegations, and thus, I do not find many of his perceptions to be reality.

To support his case, [Parent] presented the testimony of Dr. XXXX XXXX. Dr. XXXX is an experienced speech-language pathologist, having practiced for over forty years. I have absolutely no reason to doubt her evaluation or her expert opinion regarding [Student]'s current weaknesses and deficits. Dr. XXXX's conclusions regarding [Student]'s lack of progress are speculative and not supported by the evidence. Her failure to observe [Student] in the school setting renders many of her opinions regarding the appropriateness of [Student]'s current and past IEPs suspect.

[Parent] further presented the testimony of Dr. XXXX XXXX. Dr. XXXX is an experienced and knowledgeable Neuropsychologist. His expert opinion regarding [Student]'s diagnoses is not contested. His testimony about [Student]'s current weaknesses and their impact on his ability to learn was very informative and helpful. Dr. XXXX's opinion that [Student]'s previous IEPs were not reasonably calculated to provide [Student] with some educational benefit, and that [Student] has not made meaningful educational progress, is based on limited evidence that I deem unreliable. Additionally, his opinion regarding the inappropriateness of [Student]'s current IEP, specifically his placement, is theoretical because he did not observe [Student], and his functioning, in the school setting.

Finally, [Parent] presented the testimony of XXXX XXXX, a Psychologist from the [School 1] ([School 1]). Dr. XXXX's testimony regarding the [School 1] was not called into

question. In fact, BCPS stipulated during the hearing that, should I determine that [Student] was denied a FAPE, the [School 1] is an appropriate placement for [Student].

BCPS presented abundant evidence that [Student]'s IEPs conformed with the requirements of the IDEA. Specifically, that the team has taken into account [Student]'s identified weaknesses at each IEP meeting, developed appropriate and measurable goals and objectives to address the identified weaknesses in each IEP, provided supports and accommodations that addressed [Student]'s weaknesses and assisted [Student] in accessing the curriculum, provided special education service hours and placements that were reasonably calculated to permit [Student] to make progress on his goals and objectives and on the curriculum, while also permitting him to remain in the least restrictive environment with non-disabled peers to the maximum extent possible. BCPS also presented substantial evidence that [Student] did make progress on his goals and objectives and the curriculum.

In many cases, BCPS relied upon the same evidence as [Parent] but had a different take on what the evidence proved. In addition, BCPS presented IEP progress notes, behavior charts, and additional assessments, such as ones from reading programs and the school curriculum, in support of its position. BCPS presented testimony from two of [Student]'s special education providers: XXXX XXXX, [Student]'s Special Education Case Manager and teacher of many of his daily classes for both 6th and 7th grade; and XXXX XXXX, [Student]'s Speech-Language Pathologist who has provided direct speech services to [Student] for 6th and 7th grade. BCPS offered additional testimony from [Student]'s 6th grade World Cultures teacher, XXXX XXXX, the School Psychologist from [SCHOOL 2], XXXX XXXX, and the [SCHOOL 2] IEP Team Leader, XXXX XXXX.

Ms. XXXX has a unique view of [Student]. She has been his IEP Case Manager for 6th and 7th grade, meaning she is in and out of his classrooms and in constant contact with his teachers to ensure that [Student]'s IEP is correctly implemented within the school. Ms. XXXX also has served as his classroom teacher for 6th and 7th grade in multiple classes throughout [Student]'s day. She is responsible for monitoring [Student]'s progress on the goals and objectives in his IEP, and for ensuring that the accommodations and supports are provided to [Student] in an appropriate manner. Her significant involvement with [Student] renders her the most appropriate witness regarding the development of [Student]'s IEPs and his progress on the goals and objectives contained therein.

Although she only began her position as a Special Education Teacher three years ago, I accepted Ms. XXXX as an expert in Special Education; her education and training make her qualified as such. She is also trained and certified by the Wilson program and she has been the teacher responsible for implementing this program for [Student]. I, thus, accepted her expert testimony regarding the Wilson program as well. Additionally, given her role as [Student]'s direct service provider of this program, her testimony on how that program is implemented for [Student] is extremely probative. Further, as will be discussed below, much of Ms. XXXX's testimony was corroborated by the testimony of other witnesses, and, more importantly, much of it was not contradicted by any other evidence in this case.

I accepted Ms. XXXX as an expert in Speech Language Pathology. Ms. XXXX has been a speech pathologist at [SCHOOL 2] for the past thirteen years, and the majority of her case load over these thirteen years has involved students with Autism. She has been trained by XXXX XXXX, the creator of the XXXX Program. Ms. XXXX has significant experience and contact with [Student]. She worked with him for thirty minutes weekly during his 6th grade year. This

school year she works with [Student] three days a week; two group sessions for thirty minutes and one group session for forty five minutes. She has had the opportunity to observe him in a variety of settings: in small group sessions; in his inclusive general education setting of his World Cultures class; and in his outside of general education Language Arts class. She also works with him periodically in a lunch social group. Based on this frequent and varied contact with [Student], Ms. XXXX's observations carry great weight. Additionally, her testimony was corroborated by others and was not at all contradicted.

Mr. XXXX, [Student]'s 6th grade World Cultures teacher, similarly had daily contact with [Student] during his 6th grade year. Thus, his observations and opinions as a general educator are extremely relevant to this discussion. Mr. XXXX was a very forthright witness; he was quick to say when he was unsure about something he was asked about. He did not try to evade the hard questions. I similarly find him very credible.

Finally, BCPS called: Ms. XXXX, [SCHOOL 2]'s Special Education Department Chair and [Student]'s IEP Chair; and Ms. XXXXX's School Psychologist. I accepted these witnesses as experts in their fields. Their expert testimony regarding [Student]'s assessments and his IEPs carry significant weight. I, however, do not give tremendous weight to their classroom observations of [Student]. Each witness has only observed [Student] in the classroom a limited number of times.

As developed and implemented, each IEP was reasonably calculated to provide [Student] with some educational benefit.

I find by a preponderance of the evidence that each of [Student]'s IEPs, when developed, were reasonably calculated to provide [Student] with some educational benefit. Each IEP identifies [Student]'s then present strength and weaknesses as identified by assessments, teacher observations and classroom performance. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I). Each IEP contains

goals and objectives that were developed and tailored to address [Student]’s identified needs, and the methodology for measuring progress on those goals. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II) and (III). Each IEP contains the accommodations and supports that were to be provided to [Student] to allow him to access the curriculum and receive educational benefit, and these accommodations and supports were developed based on the data received from the assessments, as well as from suggestions made by [Student]’s educational providers. 20 U.S.C.A. § 1414(d)(1)(A)(i)(IV). I find that each IEP contains an appropriate placement, considering [Student]’s strengths and weaknesses, past performance, and the LRE requirements of the IDEA. 20 U.S.C.A. § 1414(d)(1)(A)(i)(V). Finally, I conclude that each IEP was implemented as prescribed by the IEP and was implemented in such a way that it was reasonably calculated to provide [Student] with some educational benefit.

The Fourth Circuit has held that, when determining if a FAPE was denied, a student’s IEP and placement must be evaluated on a year-by-year basis. *M.S. ex rel. Simchick*, 553 F.3d at 324. Accordingly, I review each of [Student]’s IEPs separately below.

2013 IEP

In order to develop [Student]’s 2013 IEP, BCPS performed updated assessments of [Student] in the beginning of 2013, when [Student] was in 4th grade. A wide variety of assessment tools were utilized in the speech/language, psychological, and educational assessments that were performed. The WISC-IV, CELF-IV, WJIII, Connors Third-Edition (Connors 3), and Autism Spectrum Rating Scales were implemented by the assessors. The assessors also relied on teacher reports, teacher and parent questionnaires and on their own observations. There is no indication that [Parent] believed these assessments were in any way insufficient.

The psychological assessment documented that [Student] was of average intelligence, and had experienced significant growth in his academic and cognitive performance since his previous assessments completed in 2010. It, however, also documented that [Student], at that time, displayed weakness in his ability to attend to instruction, to hold on to information in his short-term memory, and in processing novel information. It also demonstrated that [Student] was having difficulty evaluating and making sense of everyday situations due to his lack of knowledge of conventional standards of behavior applicable to social situations, and that he was experiencing difficulties in social communication. Finally, it was noted that [Student] was demonstrating impulsive and noncompliant behavior in the classroom, and that the scores on the assessments reflected that he suffered from poor concentration and distractibility.

The speech/language assessment revealed that [Student] had a mild language delay for his age. His receptive and expressive skills were average; however, he had weaknesses in understanding orally presented information, including holding information in his memory, following multi-step oral directions, and higher-order thinking such as inferencing and predicting. Additionally, the assessments substantiated that [Student]'s pragmatic language skills were emerging, but not yet observed.

The educational assessment provided that in most areas, [Student]'s abilities were consistent with his peers, having scores in the average to low average range. Spelling and Passage Comprehension were [Student]'s most significant weaknesses, although it was observed that [Student] demonstrated stronger comprehension abilities in the classroom than the testing suggested. It is also interesting to note that, at that time, [Student]'s scores reflected that he was mildly, but not significantly, delayed in both reading and writing, and that his reading fluency, letter-word identification, word attack subtest scores (the subtests most likely to identify a

decoding weakness), were all within the average range. The assessor, however, noted that she observed [Student] struggle on decoding multi-syllabic words. [Student]'s overall reading score translated to middle of second grade.

The individuals performing the assessments made very appropriate recommendations for [Student]. Given his weaknesses in language, it was recommended that [Student] stay in a small group setting for reading and language arts classes. However, to challenge him, they recommended that [Student] be given opportunities in a larger classroom settings as well. Interesting to note is that [Student]'s parents agreed with this recommendation and asked that [Student] be integrated into the general education environment, with suitable supports and accommodations.

The recommended accommodations and supports were also appropriate. Given his weaknesses in holding onto and processing information, it was recommended that teachers limit the amount of information given to [Student] at a given time, limit the amount of information in directions, rephrase directions to be more explicit, ask [Student] to repeat directions, chunk information, provide visuals to reinforce orally presented information, and encourage him to use graphic organizers, diagrams, outlines, and/or mapping to organize information for easy recall. These supports and modifications would permit [Student] to access the content in his general education, on-grade level classes, by putting it in a format from which he could receive the information. For his social communication deficits, it was recommended that [Student] be presented with guided practice in attending to body language, tone of voice and/or emotional context of speech. For his language deficits, it was recommended that [Student] continue with a reading program that focused on phonics. Finally, for his issues with distractibility and

impulsivity, strategies such as cueing to begin and sustain his attention and being placed where there are limited distractions, were recommended.

The 2013 IEP correctly identifies [Student]'s weakness as reflected in the assessments. [Student]'s weaknesses in reading and writing include comprehension, sentence memory, answering higher level questions including inferencing and sequencing, recalling details in a story, differentiating between relevant/irrelevant information, writing complex sentences, expanding on ideas and staying on topic. The social/emotional/behavioral weaknesses are also correctly identified and include impulse control, sustaining attention, social interaction skills, and using conversational rules appropriately.

The 2013 IEP also includes goals and objectives that address all of the enumerated weaknesses, including reading comprehension, decoding, writing, distractibility and social skills. The Reading Comprehension goal and objectives address [Student]'s weaknesses in summarization, determining the main idea, and sequencing. The Reading Fluency goal and objectives provide that [Student] will be working on reading at grade level at an appropriate rate with accurate decoding of multisyllabic words. The Written Language goal and objectives address [Student]'s need for writing complex sentences and paragraphs and staying on topic. His Behavior goal and objectives address some of his social deficits and distractibility issues and looks to address taking turns, group work, participating in shared activity, and identifying appropriate times for informal conversation. Finally, two Communication goals and associated objectives address: (1) critical thinking, such as recalling details, responding to higher level questions, inferencing, and differentiating between relevant and irrelevant information; and (2) expressive language, such as increasing length and complexity of verbal paragraphs, appropriately asking questions and making comments during a group activity, and appropriate

use of conversational rules, such as orienting to speaker, paying attention, politely interrupting, using correct tone of voice, and staying on topic.

When testifying to his opinion regarding this IEP, Dr. XXXX expressed concern regarding its goals and objectives. In his opinion, [Student]'s goals should not require him to perform at grade level. He argues that this is too lofty for [Student] given his deficits. However, as explained by Dr. XXXX when he was cross examined, MSDE guidelines require the goals be written to grade level. Additionally, the objectives take this into consideration, and break each goal down into more reasonable stepping stones.

Dr. XXXX also expressed concern with [Student]'s reading comprehension goal, and stated that it did not adequately address [Student]'s phonemic awareness and decoding issues; specifically, it did not break the task of reading down into the smaller elements that reflect the building blocks of reading. As discussed above, however, [Student]'s assessments did not, at that time, reveal that [Student] had a significant decoding concern. His scores in this area were average as compared to his peers. As Dr. XXXX testified, when children are young, there is a lot of variability in the acquisition of literacy skills. A child's deficits often do not become apparent until they get older and their scores start to deviate from their peers. This is what happened with [Student] as he continued to be assessed in 2014 and 2015; his significant weakness in decoding became more apparent. However, because at the time this IEP was drafted [Student]'s level of weakness had not been revealed by the assessments, it was not unreasonable for the team to address [Student]'s only known weakness at the time, the decoding of multi-syllabic words. Thus, I do not find this goal and associated objectives inappropriate.

Finally, Dr. XXXX opined that some of the objectives with the IEP were hard to interpret and therefore measure. For example, he took issue with the Communication objectives that did

not specify what the team meant by words such as “direct instruction” and “perform/complete assigned task.” I agree with Dr. XXXX. These objectives could have been written with more specificity; however, I do not conclude that their lack of specificity is of such significance that they rise to the level of denying [Student] a FAPE. As revealed by the progress notes for this IEP, [Student]’s team was able to collect data for these objectives to document [Student]’s progress.

The 2013 IEP also contains appropriate accommodations, supports and program modifications. It includes everything recommended by the assessors, including reducing distractions, preferential seating, providing organizational tools, extended time and breaks, having [Student] repeat and/or paraphrase information, clear and concise directions, breaking down assignments into smaller units, and instituting strategies to initiate and sustain attention. Again, these supports and modifications would permit [Student] to access the content in his general education, on-grade level classes, by putting it in a format from which he could receive the information.

As to behavior, there is no direct evidence that [Student] was exhibiting any behavioral problems beyond his general distractibility and impulsivity, which were addressed through these accommodations. Thus, I conclude that there was no requirement for the team, at that time, to consider any additional PBIS or other strategies.

The 2013 IEP placed [Student] outside of general education for his written language and reading needs as recommended by the assessors. It also placed [Student] outside general education one hour weekly for speech services. The IEP team agreed that this time outside of the general education setting was necessary and was also the LRE given [Student]’s difficulties with attention, and how those difficulties affected his reading comprehension, his fluency, his written

language skills, his auditory processing and his expressive language development. However, also consistent with the recommendations of the assessors, and in line with [Student]'s parents' request, the 2013 IEP placed [Student] inside the general education setting with special education support for math, science and social studies.

Dr. XXXX and Dr. XXXX both opined at the hearing that [Student] should have been placed in a smaller classroom setting throughout his day. Smaller classroom settings would have allowed [Student]'s speech/language and reading interventions to be implemented throughout his day, allowing for the rehearsal of skills that were previously taught and real-time prompting and cueing as troublesome issues arose. For example, Dr. XXXX explained that the programs should have been implemented so the social studies instructor, the math instructor, and even the gym teacher were all using the same evidence-based reading and social skills programs that [Student] was being taught in his reading class and by his speech teacher. Both experts concluded that the failure to provide these interventions throughout the day resulted in [Student] failing to acquire the skills at a meaningful pace. Further, they opined that smaller classroom settings were appropriate for [Student] given his attention issues. Dr. XXXX further stated that it would have lessened [Student]'s anxiety and thus his aggressive and defiant behavior. Dr. XXXX opined that [Student]'s speech service hours were insufficient.

I do not agree with Drs. XXXX's and XXXX's opinions that [Student]'s placement was, de facto, incorrect. Drs. XXXX's and XXXX's recommendations are based on the information they obtained from their assessments done in the summer of 2015, over two years after the development of this IEP. Hindsight is an effective tool in measuring decisions made in the past; this is a luxury [Student]'s IEP team did not have at the time. However, even with the benefit of hindsight, I do not agree with Drs. XXXX and XXXX; as will be discussed further below,

[Student] did make significant progress during this IEP period even though his placement included both smaller and larger classes inside and outside of general education and only one hour of speech services. Also relevant to my decision to discount their opinion is that neither of them observed [Student] in the classroom during that, or during any other, time period. They, therefore, do not have a full and complete understanding of [Student] and his performance in school at that time and do not have concrete basis upon which to render an accurate opinion as to what was appropriate or inappropriate placement for [Student].

Finally, with regard to the appropriateness of the placement at the time the 2013 IEP was developed, I conclude that [Student]'s team made an appropriate placement given what the team knew about [Student] at that time. His special education service hours, including his speech hours, were reasonably calculated to provide [Student] with a FAPE. [Student]'s intelligence scores were average. Teachers noted some decoding concerns; however, his Word Attack, Letter-Word Identification and Reading Fluency scores on the WJIII were all within average range. His Core Language score on the CELF-IV indicated that he was only mildly delayed. He did exhibit pragmatic skill deficits; however, his skills were emerging, and he was provided speech services outside general education to address this. [Student] had issues with distractibility; however, many accommodations and supports were put in place to address this issue in the general education setting. It is important to note that even though [Student] was in the general education setting for much of his day, [Student] was being provided with special education services and supports during that period. His instruction included either a Special Educator or an Instructional Assistant who was responsible for ensuring, through the provision of the accommodations, modifications and supports contained within [Student]'s IEP, that [Student] was able to access and benefit from the education provided in those classes and was

able to make progress with the curriculum. In fact, [Student] did; he earned all Bs and Cs on his 5th grade report card. Additionally, I do not find any evidence in the record to support Dr.

XXXX's opinion that, at that time, [Student] was exhibiting defiant and aggressive behaviors that would warrant complete removal from the general education environment. The IDEA only permits a child to be removed from the general educational environment when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [Parent] has not met his burden of proof in that regard.

February 2014 IEP, as modified by the May and September Revised IEPs

At the February 2014 IEP Meeting, an annual review of [Student]'s IEP was conducted and the team developed a new IEP for [Student]. The February 2014 IEP was for the balance of [Student]'s 5th grade year, and would follow him through his transition to middle school. In developing this IEP, the team continued to rely upon the information they received in the 2013 Assessments. Additionally, to determine [Student]'s present levels of performance, the team considered [Student]'s progress on his goals and objectives from the 2013 IEP. The team also considered [Student]'s current teachers' observations regarding his performance in the classroom, the results of his classroom assessments, and his current reading benchmarks.

When considering [Student]'s progress on the 2013 IEP, [Student]'s skill acquisition in reading comprehension and decoding was slow. He was still struggling with multi-syllabic words out of context. He was still unable to answer comprehension questions concerning grade level text. His writing was improving, but he continued to struggle with spelling. He attained objectives related to answering higher-order questions and inferencing, but these were identified

as a skill in progress. His communication skills were improving; the length and complexity of his oral paragraphs improved and he was having conversations with his peers and working cooperatively in a group. He decreased his calling out in the classroom, became less defiant, participated in class more often, complied with directions more, and completed and handed in his homework more consistently.

Clearly, [Student]'s IEP team was getting a better sense of [Student] and the extent of his weaknesses, and the February 2014 IEP correctly incorporates this better understanding into the discussion of his present levels of performance. [Student]'s weakness in reading fluency was identified, as was his continued weakness in decoding multi-syllabic words. His weaknesses in summarizing and identifying the main idea had not been remediated, so this continued to be identified as an area of weakness on the IEP. The team noted that [Student] was also struggling with drawing conclusions from what he read, and, thus, this was added as a weakness in the IEP. [Student] similarly did not attain his writing goal, and his weaknesses in spelling and writing complex sentences are noted. Finally, [Student]'s social/interactional and pragmatic language deficits continued to be a concern of the IEP team.

The goals on the February 2014 IEP were the same as the 2013 IEP. This made sense given that [Student] did not attain any of these goals. However, the team increased the percentage of accuracy to attain the goals. Additionally, the team refined the objectives under the goals to address the current observed and identified weaknesses. In his Reading Comprehension goal, an objective for drawing conclusions was added. In his Written Language goal, objectives for spelling and writing longer sentences were added. Under his Behavior goal, [Student] had achieved the taking-turns objective, so only the other objectives that he had not yet achieved remained. The objectives under his two Communication goals were modified to delete

the objectives he achieved (inferencing, higher order questions, length and complexity of oral paragraphs, and joining a group of peers), left the objectives he had not achieved (recalling important details, differentiating between relevant and irrelevant information, and using conversational rules), and then added a new objective to address making appropriate comments to a situation.

The February 2014 IEP also contained many of the same accommodations and supports as the 2013 IEP, all of which remained relevant and important given the weakness [Student] was displaying with inattention and processing information. Additionally, the February 2014 IEP added that [Student] would periodically attend a social group with the guidance counselor, which was very relevant given his social skills deficits. The February 2014 IEP contained the same special education service hours as the 2013 IEP, with the same placement (inside and outside general education) except that, for reasons that are not explained in the record, [Student]'s speech service hours were lessened to thirty minutes weekly.

Based on the evidence presented, I find that the February 2014 IEP appropriately identified [Student]'s weaknesses and that the goals and objectives, the program modifications, and the in classroom accommodations and supports, appropriately addressed these weaknesses.⁷ The weaknesses were originally identified by the 2013 Assessments, and were updated based on what teachers were observing in the classroom and on [Student]'s progress on the goals and objectives in the 2013 IEP. Additionally, the content modifications, and the accommodations and supports provided to [Student] under this IEP continued to be appropriate given [Student]'s documented weaknesses in retaining and processing information and his distractibility. [Student]'s placement inside general education for part of his day, with special education support

⁷ There is no evidence that [Student] did not receive the supports, program modifications and accommodations provided for in this IEP.

that modified the grade-level curriculum in such a way that [Student] was able to benefit and access it, was appropriate given his teacher's observations that [Student] was in fact successful with this assistance. This placement provided [Student] the direct intervention he needed, as well as respected the LRE requirement of IDEA. I also note that in 6th grade, [SCHOOL 2] implemented the PBIS methodology of a behavior chart for [Student] that provided a daily reward for good behavior.

Dr. XXXX's and Dr. XXXX's opinions, that [Student] should have been placed outside of general education for his entire day, once again are not supported by [Student]'s profile of needs and weaknesses during this time period. As with the 2013 IEP, the accommodations and supports within this IEP were put in place to assist [Student]. Their lack of personal observation of [Student] in this setting renders their opinions on the matter suspect. Teachers who had the benefit of observing [Student] were reporting that [Student] had decreased his calling out in the classroom, had become less defiant, was participating more in class, was complying more with directions, and was completing and handing in his homework more consistently. There is no evidence that [Student]'s behavioral issues, including his distractibility, were so severe that he could not access the general education curriculum while in this setting, or that there was a need for the team to consider additional PBISs or other strategies.

It is arguable that [Student] may have progressed more quickly if he was placed entirely outside of the general education setting. However, the IDEA does not require that a child's potential be maximized. It only requires that a child receive some educational benefit. As will be discussed further below, I do find that [Student] did receive some educational benefit from this IEP. Thus, I do not conclude that his placement was inappropriate on this basis.

Dr. XXXX also again raised concerns regarding the goals and objectives in this IEP. He indicated that one of [Student]'s Reading Fluency objectives was inappropriate in that it did not specify the number of words per minute [Student] should be reading and the number of errors permitted. However, the evidence is that the teacher implementing this goal would be aware of grade level standards for reading fluency and would interpret this objective based on those standards. Therefore, I do not find this lack of specificity fatal to the appropriateness of the objective. Additionally, in the Written Language goal, Dr. XXXX took issue with the objective that provides that [Student] would be given a prompt, and argues that the type of prompt should be identified in the objective. While I do agree that more specificity as to the type of prompt would have improved the objective, I do not find that this lack of specificity renders the objective wholly unmeasurable. Ostensibly, any prompt would be appropriate in this situation, and data could still be collected on the objective.

Finally, as raised by Dr. XXXX, [Student]'s speech hours were reduced to thirty minutes from one hour. Dr. XXXX opined that this was inappropriate given [Student]'s documented pragmatic language issues. I do agree that it would have been more advantageous for [Student] if the team had not lessened his service hours for speech. However, as discussed above, [Student] is not entitled to a perfect education. Additionally, when I look to the IEP as a whole, I do not conclude that [Student] was denied a FAPE. His many areas of weaknesses were all identified and addressed. Even more importantly, as will be discussed below, [Student] made progress on his language goals during this time period.

After the development of [Student]'s February 2014 IEP, it was then revised twice. The first time was in May 2014 when the team was considering [Student]'s transition to middle school. At that time [Parent] asked for [Student] to attend [SCHOOL 2] instead of his home

school; the team did not agree with this change in location for [Student]'s schooling. The service hours on the February 2014 IEP were then revised to 7.5 hours (from 10 hours) weekly outside and another 7.5 hours (from 15 hours) weekly inside general education. [Parent] expressed concern with the drop in special education service hours. As explained by Ms. XXXX, the change in hours outside general education was only a reflection of the fact that classes in middle school are 45 minutes as opposed to one hour in elementary school. She also explained that the decrease in service hours for inside general education was a clerical error and should have remained at 15.⁸

Sometime over the summer of 2014, BCPS agreed to change [Student]'s location from his home middle school to [SCHOOL 2]. The team met again in September 2014 and created the September 2014 Revised IEP to modify [Student]'s school location and to correct the inside general education service hours to 15 hours weekly. [Student] was also still receiving 7.5 hours of special education outside general education; however, as of the beginning of that school year, half of that time was now devoted to a math intervention class. Alternatively, [Student]'s reading intervention class, Language!, was no longer outside of general education. Despite this classification, the class was still a smaller class of approximately 18 students and taught by a special educator. The reason this class was designated as inside general education was because the class had two students who did not have IEPs in it.

[Parent] takes issue with this reduction in special education service hours for [Student] in the area of reading and writing. However, I find this change in the service hours to be a reasonable educational decision by the team. Although some of [Student]'s reading and writing intervention was now provided inside general education, I do not find that this change affects the

⁸ The hours of special education [Student] received did not change as a result of the clerical error. It was corrected on the September 2014 Revised IEP.

IEPs likelihood to provide at least some educational benefit to [Student]. This Language! class addressed phonemic awareness, word recognition, vocabulary, grammar, listening and reading skills (including inferencing and main idea skill development), speaking and writing (including use of graphic organizers, use of complete sentences, sequencing, hypothesizing and providing supporting evidence in a paragraph). This class was clearly an appropriate intervention for [Student] in that it covered many areas that were identified as weaknesses for [Student]. Additionally, it was taught by a special education teacher, and the class was smaller than a normal general education class.

As discussed above, I must afford great deference to the judgment of education professionals with regard to the implementation of the IDEA, including placement issues. *See O.S.*, 804 F.3d at 360; *Tice*, 908 F.2d at 1207; *Hartman*, 118 F.3d at 1001. In this case, the team determined this class was appropriate to address [Student]'s needs. The fact that it was designated as inside general education does not, in itself, render the intervention and/or [Student]'s IEP inappropriate.

Finally, the supports section of the IEP was revised at the September meeting to add adult support for [Student]. Adult support is an individual who assists a student in remaining on task, attending to instruction and interpreting social cues. For [Student], it was included so that he could increase his appropriate social interaction with his peers, to assist him in starting and completing his classroom tasks and assignments, to assist [Student] in following directions and to act as [Student]'s scribe. Adult support was added in all academic and nonacademic classes, as well as in the hallways, to allow [Student] to remain in the least restrictive environment.

[Parent] takes issue with this support and deems it to be inappropriate. He believes that the stigma of an adult support person with [Student] is harmful, in that it interferes with

[Student]'s acceptance among his peers. [Parent] testified that [Student] has no friends, and that the stigma associated with the adult support contributes to this problem. He opined that adult support was, in actuality, more restrictive than an outside of general education setting for this reason. [Parent] also believes that [Student]'s adult support person is completing [Student]'s work for him and that this is falsely convincing teachers that [Student] comprehends the curriculum. Dr. XXXX offered that adult support is inappropriate in that it only remedies a short term problem, but does not address the underlying issue. Both [Parent] and Dr. XXXX offered that it would have been more appropriate for [Student] to be placed in smaller classroom settings, and not in the general education setting with adult support.

[Student]'s 5th grade teacher reported that [Student] was often distracted in class, but that [Student] was easily redirected. Additionally, [Student]'s teachers reported that [Student] did not always follow classroom and school rules. He also made silly and irrelevant comments in class. Given these concerns, and given that [Student] was easily redirected, I find it appropriate that [Student]'s team would include the PBIS of adult support over removal of [Student] from the general education environment. As discussed above, one of the reasons for the provision of adult support was to assist [Student] in starting and completing his classroom tasks and assignments and following directions in class. With this support, the team ostensibly hoped that [Student] would benefit from the general education environment, thereby also respecting the LRE requirement of the IDEA. As discussed above, the IDEA requires that disabled students remain with their non-disabled peers to the maximum extent possible. The provision of adult support was offered with the intent of meeting this goal.

Additionally, [Student]'s IEP addresses [Student]'s deficits in social interaction skills. Adult support was added to ensure that [Student] could have positive social interactions with his non-disabled peers.

Finally, I note that there is no direct evidence that [Student] was harmed by this adult support.⁹ Although [Parent] testified that [Student] does not have any friends, there is no evidence in the record that adult support is the cause. [Student] has significant social skills deficits. I find it more likely than not that [Student]'s deficits at that time were the cause of [Student]'s lack of peer relationships, especially in light of the fact that Ms. XXXX and Ms. XXXX both testified to the fact that in 7th grade, [Student] has now developed friendships in school, and he has developed these friendships despite his continued receipt of adult support. Additionally, [Parent] allegation that [Student]'s work was completed by his adult support person was similarly not supported by the evidence.¹⁰

Accordingly, based on the above discussion, I conclude that the January 2014 IEP, as modified by the May and September 2014 Revised IEPs, was reasonably calculated to provide [Student] with some educational benefit.

January 2015 IEP

In October 2014, [Parent] requested updated assessments for [Student]. BCPS agreed to perform updated psychological, educational and speech/language assessments.

⁹ This case is distinguishable from *Board. Of Education of Frederick County v. I.S.*, 325 F. Supp. 2d 565. In *I.S.*, the individual rendering the opinion that the student was harmed and severely restricted by the adult support was able to testify to their observations of ways the student was actually harmed (*e.g.*, the adult support person was sitting in such a way to block the student's view of the teacher). In the present case, Dr. XXXX did not observe [Student] in school, thus, his opinion regarding any harm to [Student] is speculative. Additionally, in [Student]'s case, the adults support is shared, meaning that the adult is not just present for [Student], but is present for at least one other student as well (T. XXXX), thus further minimizing the impact of the intervention as compared to the *IS* case.

¹⁰ [Parent] offered documents into evidence to support his contention that [Student]'s scribe was completing [Student]'s work for him. The record does not contain any evidence to support that these documents were graded assignments or that the words written by the adult on the pages were something other than [Student]'s exact words. Because I do not have an appropriate foundation upon which to interpret these documents, I do not consider them persuasive evidence supporting [Parent]' claim.

The psychological assessment was completed by Ms. XXXX, [Student]'s school psychologist. She evaluated [Student] using the WISC-IV, the Autism Spectrum Rating Scale, the Conners 3, and the Comprehensive Executive Functioning Inventory. She also considered parent, teacher and student interviews and a review of [Student]'s records.

The WISC-IV reflects a significant decline in [Student]'s Full Scale IQ score since the 2013 Assessments, as well as in [Student]'s Working Memory and Verbal Comprehension indexes. [Student]'s drop in the Verbal Comprehension index stemmed from his continued lack of understanding of how to react to common, everyday situations, as well as his inability to describe how items/words are similar. With regard to the drop in [Student]'s Working Memory index score, Ms. XXXX noted that [Student] was inattentive during the Letter-Numbering Sequencing subtest, which resulted in a significantly lower score than in the 2013 Assessments. In her professional opinion, the drop in score was related to [Student]'s inattention.

Additionally, [Student]'s performance on the Autism Spectrum Rating Scale, the Conners 3, and the Comprehensive Executive Functioning Inventory was consistent with his Autism diagnosis and his history of inattention. With regard to his Autism diagnosis, Ms. XXXX noted that [Student]'s scores reflect that he uses immature language, has difficulty noticing social cues, focuses on one subject too much of the time, becomes obsessed with detail, and has difficulties initiating conversations. It further reflected that [Student] was having trouble making and keeping friends because he did not know how. With regard to his history of inattentiveness, Ms. XXXX found that [Student] makes careless errors, gets sidetracked easily, is impulsive and excitable, and exhibits difficulties initiating work, self-monitoring, and holding multi-step directions in his memory. She also identified that he needs extra explanations of instructions, has trouble reading, and forgets to turn in his work.

The speech/language assessment was completed by Ms. XXXX. [Student]'s scores on the CELF-IV document that in most areas, [Student] showed some moderate improvement since the 2013 Assessments in Core Language and Receptive/Expressive Language, and significant improvement in Language Memory. [Student], however, still demonstrated weaknesses in Recalling Sentences and Understanding Spoken Paragraphs; however, these scores were consistent with the 2013 Assessments.

Additionally, [Student] was able to demonstrate his understanding of pragmatic language on the Test of Pragmatic Language. His score was in the average range. However, [Student] was not yet incorporating his knowledge into his actions. The Pragmatics Profile checklist of the CELF-IV completed by [Parent] also documented that [Student] was demonstrating some fundamental skills such as responding to greetings, maintaining topics of conversation, telling/understanding jokes, and participating appropriately in structured group activities. However, nonverbal communication skills were not demonstrated.

The educational assessment was completed by Ms. XXXX. [Student]'s scores on the WJIII decreased in all relevant areas since the 2013 Assessments. His Broad Reading and Broad Writing scores fell into the Low range from the Low Average range. Although, interestingly, his scores on the Word Attack and Letter-Word Identification tests, the test best to demonstrate a weakness in decoding, were in the low average range. However, the testing indicted that not only was [Student] having issues with decoding multi-syllabic words, but he was now also evidencing difficulties with vowel digraphs and consonant blends. The tests also demonstrated that [Student] was having significant issues with spelling, sequencing and organizing his writing. He, however, had improved his writing quality with complete and meaningful sentences, and expended ideas.

The individuals performing the assessments made appropriate recommendations for [Student]. Given his weaknesses in social skills, it was recommended that [Student] be provided with small group activities to encourage use of age appropriate social skills. They also recommended the use of social stories to facilitate social skill development. Given [Student]'s decoding weaknesses, it was recommended that [Student] be placed in a reading intervention class that emphasized direct instruction in basic reading and writing skills. Accommodations and supports such as obtaining [Student]'s undivided attention before beginning instruction, reducing distractions, small group instruction, adult support, test monitoring, and multiple and frequent breaks were all recommended to address [Student]'s inattention, frustration, and resistance during assessments. It was also suggested that [Student] be exposed to repeated instructions, be given extra time to process information and complete work, have longer projects broken into smaller portions, and be provided with opportunities for small group instruction, all to address his processing issues. It was also recommended that [Student] have a scribe, although [Parent] discouraged this.

[Parent] disagreed with the results of the testing, and requested that independent evaluations be completed at BCPS' expense. In the meantime, [Student]'s IEP team met on January 13, 2015 to conduct an annual review and create a new IEP for [Student]. Based on the updated assessments completed by BCPS, the team changed [Student]'s diagnosis code from Autism to Multiple Disabilities.

Teachers reports and the progress notes for [Student]'s February 2014 IEP further clarified some issues that [Student] was dealing with. Although [Student] was improving his reading comprehension, it was still clearly a concern for him. At the time of the IEP's development, he was only decoding 6th grade level text with 42% accuracy. With regard to

writing, [Student] was no longer using a scribe (as per his father's request) and was argumentative with teachers about expanding on and correcting his written work. [Student] was progressing nicely through his communication goals and objectives; however, [Student] continued to struggle with working with a group on an academic task, as well as sharing and taking turns with peers. [Student]'s teachers also reported that [Student] rarely asked for clarification or information from his teachers, and he rarely applied conversational rules in class. [Student]'s distractibility was still a concern as he was still exhibiting difficulties with attention to and initiation of tasks; however, teachers reported that [Student] was capable of completing work when the adult support prompted and redirected [Student], and clarified directions for [Student]. The adult support also was helpful in intervening when [Student] asked silly questions or made off-topic comments to get attention from his teachers.

Given the above, the team correctly identified [Student]'s then identified weaknesses in the January 2015 IEP. The IEP stated that decoding and understanding grade level text was an issue for [Student]. It noted that [Student] had problems understanding inferences, tone, and point of view from a narrative. It noted that his written expression was weak and lacks fluency and organization. It addressed his weaknesses in pragmatic language and social skills. Finally, it identified [Student]'s difficulty with presenting on task behavior and with appropriate test taking behavior.

Based on these identified weaknesses, the January 2015 IEP included appropriate goals and objectives. [Student]'s Reading Comprehension goal addressed his weaknesses in making appropriate comments, asking relevant questions, responding to text and inferencing, and retelling the main idea. His Reading Fluency goal became a Decoding goal and included objectives regarding word structures and patterns, as well as automaticity of reading. The

objectives in [Student]'s Written Language goal were modified to address making a plan before writing, using tools to organize writing, maintaining a topic, and expanding on ideas. An on-task Behavior goal was added with objectives that addressed whole body listening, class participation, comprehension of classroom instructions, and task initiation. A conversation skills Behavior goal was updated to address taking turns in a conversation, using appropriate greetings and endings, and staying on topic. A Communication goal was added that addressed conversation skills, such as conversation turn taking, maintaining a topic during a discussion, orienting to speaker, tone of voice, paying attention to speaker, politely interrupting, remaining on topic in classroom discussions, and appropriate versus inappropriate comments, and the lessons of expected/unexpected behaviors of the Social Thinking program. A second Communication goal was added that addressed language subtleties, including understanding nonverbal communication cues and cooperative work behaviors. It is clear that the January 2015 IEP team identified that [Student] was struggling in his language skills and that more needed to be done to address the problem.

The team did not make many adjustments to the accommodations and supports, except to add things such as text to speech software to address [Student]'s resistance to writing, test response monitoring to address [Student]'s history of becoming distracted during testing and use of positive/concrete reinforcers to attempt to modify [Student]'s behavior. The IEP continued to allow for modifications to on-grade level material to permit [Student] to access the content at a level he was able to understand. There is no evidence that [Student] did not receive the supports provided for in this IEP.

To address all of the new issues identified, [Student] was given an additional reading intervention class. This class was to occur every-other day (ten 45-minute sessions monthly) and

would provide [Student] one-on-one reading intervention instruction taught by a special educator. During this class period [Student] would be provided decoding intervention in the Wilson reading program (an evidence-based reading program that both Drs. XXXX and XXXX recommended for [Student]) and the i-Ready reading program. His Language Arts and Math Assistance classes continued to be outside of general education. His Math, Science, and Social Studies all continued to be inside general education classes with special education assistance. His existing Reading Intervention class continued to remain inside general education, but it was still taught by a special educator and was smaller than other general education classes. [Student]'s speech service hours remained at 30 minutes weekly.

[Parent] does not take issue with the goals and objectives of this IEP. However, he believes that the IEP did not appropriately place [Student] and did not provide appropriate intervention to him. Specifically, [Parent] expressed that [Student] should have been in smaller classroom setting for all subjects where his reading and pragmatic interventions could be provided throughout the day. He also objected to a non-reading specialist teaching [Student] in the new reading intervention class.

Drs. XXXX and XXXX both agreed with [Parent] that the only appropriate placement for [Student] at that time was outside of a general education setting. Dr. XXXX noted BCPS was on notice that [Student]'s placement both in and outside of general education was not working due to [Student]'s assessment scores dropping significantly since 2013 and based on [Student]'s escalating behavioral problems in school.

The team considered placing [Student] outside of general education; however BCPS staff believed that [Student] could remain in the current placement with the accommodations, modification and supports being provided. I agree. The significant drop in [Student] FSIQ score

cannot be related solely to a past inappropriate placement. I accept Ms. XXXX's opinion that the decreased score was caused by [Student]'s low Letter-Number Sequencing subtest score. Ms. XXXX noted that [Student] was very distracted during this subtest, and opined that the result was not accurate. Additionally, as Ms. XXXX explained, [Student]'s performance on the second subtest in that category indicates that [Student] has the skill that was being tested in the Letter-Number subtest, further lending support that [Student]'s low score was an anomaly, and not the result of any cognitive deficiency. Also, as evidenced by the speech/language assessment, [Student] showed significant improvements in his language skills. Most importantly, this IEP added significant additional reading intervention for [Student]; it provided the Wilson and i-Ready reading programs to [Student] in a one-to-one setting with a special educator, every-other day. This is a significant change to [Student]'s services. Finally, teachers reported that [Student]'s adult support was a very effective method of addressing [Student]'s distractibility and behaviors in the classroom.

Despite [Parent] and Dr. XXXX's assertions to the contrary, I do not find it was inappropriate for BCPS to offer the reading intervention through a special education teacher. The evidence in the record is that Ms. XXXX was certified by the Wilson reading program to teach the program, and was a certified i-Ready provider.

Based on the evidence in the record, I conclude that the January 2015 IEP is reasonably calculated to provide [Student] some educational benefit.

September 2015 Revised IEP

In spring 2015, BCPS agreed to pay for independent evaluations. Drs. XXXX and XXXX were hired to perform comprehensive Neuropsychological and Speech/Language evaluations. Each of them spent approximately six hours with [Student]. In fact, Dr. XXXX spent even less time with [Student]; his associate performed most of the testing.

The IEP team met on September 3 and 30, 2015 to discuss Drs. XXXX's and XXXX's assessments and to discuss modification to [Student]'s January 2015 IEP. Drs. XXXX and XXXX shared that they diagnosed [Student] with Autism and an associated Pragmatic Communication Disorder. They also both diagnosed [Student] with Specific Learning Disabilities in the areas of Reading (specifically decoding and comprehension) and Written Expression. Dr. XXXX further diagnosed [Student] with Attention-Deficit/Hyperactivity Disorder (ADHD) and Anxiety Disorder.

Dr. XXXX explained that [Student] is a child with "normal intelligence" but because of his very complex and significant neurological disorders, [Student] has difficulties in learning. He explained that the co-occurrence of Autism and Dyslexia is very uncommon, and collectively cause significant deficits in [Student]'s ability to learn. He noted that [Student] has significant weaknesses in phonemic awareness and decoding, and that is unique to children with Autism, because children with Autism are usually hyperlexic, and that these decoding deficits make reading fluency and comprehension difficult for [Student]. He explained that because of [Student]'s Autism, [Student] is a very literal person, and that he has difficulty comprehending language that is more abstract or inferential. He also concluded that [Student] has significant deficits in working memory and processing speed, and that these deficits significantly impact his ability to acquire, use and retain information that is presented to him in the classroom. Further complicating [Student]'s availability for learning are [Student]'s issues with inattention and distractibility, as well as what Dr. XXXX described as an escalating pattern of anxiety that is manifesting itself in [Student]'s recent behaviors of challenging teachers and general opposition. Dr. XXXX explained that both Autism and Dyslexia are chronic, lifelong disorders and that

[Student] has a very limited window left within which to acquire the skills to overcome these challenges.

Dr. XXXX also expressed grave concerns regarding [Student]'s complex and multiple disabilities. She explained that [Student] has significant difficulties with recalling language, meaning that [Student] is unable to recall and/or explain what is being said to him. Dr. XXXX contended that this hinders [Student] academically in that what he learns is not easily retained permanently into his memory. Dr. XXXX explained that there is no real intervention that can change a person's weaknesses in this area; however, a student can access the curriculum and make academic progress if appropriate accommodations, modifications and supplementary aids and services are provided to the student. She explained that instruction has to be modified across the board for [Student].

Dr. XXXX also explained that [Student] suffers from significant pragmatic language deficits; specifically deficits in predicting and problem solving, which often translates to difficulty in grasping what is happening in a social situation and making a prediction about what will happen next. Dr. XXXX explained that his deficits in pragmatics also mean that [Student] would likely be regarded by others as socially awkward, and generally would not have good insight into things such as why people are saying what they are saying in a social context, how to politely disagree, and when someone was making a joke. Given these limitations, Dr. XXXX expressed the opinion that, in an education context, [Student] would likely have difficulty interpreting what people are talking about and asking for clarification or support from a teacher when he does not understand an instruction. She also explained that without an understanding of social context and social nuances, [Student] has a difficult time comprehending literature. She

did however opine that social pragmatics can be taught to those who lack it through the use of storybooks, cartoons and small group instruction.

Both Drs. XXXX and XXXX insisted that [Student] needs an evidence-based reading program that is built into his educational program throughout the day. They agreed that the Wilson program that was currently being implemented is an effective program, but expressed concern that BCPS is not providing the program at the intensity that is necessary for [Student] to receive any meaningful educational benefit. Both experts also recommended that BCPS provide [Student] with direct speech services three times weekly with a small group of students who have similar profiles and needs, as well as continued services integrated throughout [Student]'s day by a speech pathologist so that his targeted skills can be reinforced or corrected as they organically appear during his school day. Dr. XXXX recommended the XXXX program as the appropriate tool to address his pragmatic deficiencies.

Drs. XXXX and XXXX and [Parent] all maintained that [Student] must be placed in a setting that is entirely outside the general education setting. They asserted this was necessary so that specialized intervention could be provided to [Student] throughout his day allowing for development of his reading and pragmatic skills. Dr. XXXX also maintained that a student with [Student]'s neurodevelopmental profile could not make satisfactory progress in any on grade-level class. Finally, Dr. XXXX opined that [Student] is currently exhibiting violent ideations, and that it is necessary to remove [Student] from the general education environment to reduce [Student]'s frustration and distress. Dr. XXXX attributed these behaviors directly to the absence of appropriate educational programming for [Student].

For the reasons outlined below, I find, by a preponderance of the evidence, that [Student]’s September 2015 Revised IEP is reasonably calculated to provide [Student] with some educational benefit.

[Student]’s current IEP addresses the weaknesses identified by Drs. XXXX and XXXX, as well as those reported by [Student]’s teachers. The team concluded that [Student] demonstrated needs in decoding, reading comprehension, written language, executive functioning (attention, planning and organization), and social skills, including pragmatic language and higher-order expressive and receptive language skills. [Student]’s goals have been updated to address these deficits. His Behavior Work Habits goal was updated to include an objective that [Student] will use expected means of interacting with his teacher as detailed in the XXXX program. Additionally, [Student]’s two Communication goals on the January 2105 IEP were modified to four new Communication goals targeting pragmatic social language, critical thinking, grammar and narrative language. Dr. XXXX testified that she was “pleased and heartened” that the September 2015 IEP incorporated many of the goal and objective recommendations she made in her Report. She also testified that she had good interactions with Ms. XXXX and traded many ideas.

Additionally, [Student]’s accommodations and supports incorporate almost every recommendation made by Drs. XXXX and XXXX in their reports. [Student]’s adult support is effective in redirecting [Student] to his current tasks.¹¹ The extended time provided to [Student] on assignments and assessments addresses [Student]’s processing speed issues. The chunking of text and breaking down assignments into smaller units addresses [Student]’s distractibility and

¹¹ Interesting to note is, despite Dr. XXXX’s insistence that adult support is a restrictive intervention, in his report he recommended adult support for when [Student] was in less structured settings.

processing issues. Use of organization aides helps [Student] with his executive functioning deficits.

Additionally, I find that [Student]'s IEP as currently drafted and implemented addresses [Student]'s behavioral issues. First, I note that there is no evidence in the record that [Student]'s behavior is currently escalating to the point of necessitating his removal from the general education classroom. In fact, the uncontroverted evidence is that [Student]'s behavior in school is currently managed through his behavior charts. Additionally, the testimony of all of [Student]'s teachers and related service providers is that [Student]'s aggression and violent ideations have subsided and that [Student] is generally not a behavior problem in the school.

Additionally, [Student]'s IEP, as implemented, is incorporating the intervention programs recommended by both Drs. XXXX and XXXX. BCPS is implementing both the Wilson program and the XXXX program, as recommended by both experts. It is implementing these programs through direct instruction periods; the Wilson program is used in [Student]'s reading intervention class taught by Ms. XXXX; and the XXXX program is provided to [Student] by Ms. XXXX in three instruction sessions weekly. Additionally, BCPS provides continued reinforcement of these programs throughout [Student]'s day through his special education service hours that are provided in his Math, Social Studies and Science classes. Additionally, [Student]'s general education teachers, as well as [Student]'s adult support, have been trained by Ms. XXXX in the XXXX program and all individuals help implement the program throughout [Student]'s school by implementing behavior charts that allow [Student]'s

teachers to provide direct feedback to [Student] on his application of these skills in his classes.¹² [Student]'s adult support person is also in place to assist [Student] in maintaining attention to instruction and task, to start and complete work.

Finally, I conclude that [Student]'s current placement is appropriate. I disagree with Drs. XXXX and XXXX that [Student] will not make any educational progress unless [Student] is removed entirely from the general education program. Drs. XXXX and XXXX did not have the benefit of observing [Student] in his learning environment. Thus, I do not give weight to their opinion that he is unable to learn in the general education environment. In fact, [Student]'s teachers all agree that they have observed [Student] benefit from instruction in the general education setting when his accommodations and supports are implemented, and that he is taking part, more and more, in both small group and full class instruction; he is even volunteering to go to the board to demonstrate what he has learned. Additionally, his current placement, which includes direct reading and speech instruction, as well as continued Language Arts intervention outside general education, is most definitely sufficient for [Student] to make at least some educational progress in these areas. Additionally, I find that the evidence supports my conclusion that the IEP would violate the LRE provision of the IDEA if [Student] was removed entirely from the special education environment. The uncontroverted evidence is that [Student] is socializing, working and learning in his placement with both disabled and non-disabled peers, and I agree with Ms. XXXX that removing [Student] from his typically developing peers would be a step backwards, given [Student]'s ability to learn and navigate in a comprehensive school setting.

¹² Dr. XXXX expressed skepticism that the XXXX program could appropriately be implemented throughout [Student]'s day through the method Ms. XXXX has employed; however, Dr. XXXX did not observe [Student] in his school setting, thus she cannot express an accurate opinion regarding the effectiveness of Ms. XXXX's method.

[Student] did make some educational progress during the period of each IEP¹³

As discussed above, in some instances, the determination of whether an IEP was reasonably calculated to provide some educational benefit must also be retrospective, in that evidence of [Student]'s *actual progress* during the period of an IEP may also be relevant to a determination of whether a challenged IEP was reasonably calculated to confer some educational benefit. *See MS ex rel v. Fairfax*, 553 F.3d 315 (4th Cir. 2009). In this regard, [Parent] asserts that [Student] did not make educational progress under the relevant IEPs, and thus, I should find that [Student] was denied a FAPE for the entire relevant time period. BCPS counters that [Student] did actually receive some educational benefit under each IEP. As discussed above, the burden of proof rests with [Parent]. As outlined below, I find that the evidence presented in support of [Parent] position is speculative and not based upon sound reasoning. Accordingly, I conclude that [Parent] has not met his burden of proof on this issue as well.

Drs. XXXX and XXXX both rendered their professional opinion that, given [Student]'s current functioning, and given [Student]'s drop in scores on assessments, including the Woodcock-Johnson, [Student] did not receive any meaningful educational benefit from the 2013, 2014 and 2015 IEPs. I do not find Dr. XXXX's and Dr. XXXX's opinions to be persuasive. Both Drs. XXXX and XXXX utilize the same unreliable methodology for reaching their conclusion; they both opine that [Student] would not have the level of deficits he has today had appropriate interventions been in place. In other words, it is their opinion that [Student] would have made more progress in reading, writing and social pragmatics had appropriate IEPs been developed.

¹³ [Parent] offered worksheets, graphic organizers, assignments and other documents into evidence to support his contention that [Student] cannot complete the work given to him in school and that the work is being completed by someone other than [Student]. The record does not establish any concrete information about these documents, such as whether these documents were assignments given to [Student], whether [Student] was expected to complete them, and/or whether they were graded assignments. Because I do not have an appropriate foundation, I do not consider these documents persuasive evidence.

There are many flaws with their opinion. First, their opinion calls for significant speculation. There is no way to determine exactly how far [Student] would have progressed if he was provided with the type and intensity of intervention that they recommend, and how that would compare to the progress he actually made. Additionally, their opinions do not quantify whether [Student] made no progress, minimal progress, or some progress as defined by the case law interpreting the IDEA.

Dr. XXXX's view that [Student] did not make any progress is also based on [Student]'s standardized scores on the Woodcock-Johnson assessments conducted in 2013, 2014, and 2015. Dr. XXXX opines that [Student]'s falling scores on these assessments demonstrates that he did not make progress. I disagree.

The Woodcock-Johnson assesses an individual's knowledge as compared to his or her peers. The scores analyzed over time reflect how closely a particular individual follows the progression of their peers. When an individual's scores rise, it means they are catching up or surpassing their peers; when an individual's scores drop, it means they are falling further and further behind. The scores, however, do not assess the individual's own progress over time. As Dr. XXXX testified to, [Student]'s scores document that [Student] has not kept progress with the rate of development of children of his age and grade group. However, Dr. XXXX also testified that given [Student]'s complex neurodevelopmental profile, he would not expect [Student] to keep pace with typically-developing children.

Second, [Student] scores on the Woodcock-Johnson assessments are unreliable. Repeatedly, throughout many assessments, the assessors noted that [Student] was hard to test. During the 2013 assessments, [Student] was described as cooperative but easily distracted throughout testing. During the 2014 assessments, [Student] necessitated significant redirection

during the testing. He made many off topic comments, provided silly answers, refused to comply with directions, purposefully answered questions incorrectly, and, at times, refused to work. It took motivators and rewards get [Student] to complete the tests appropriately. He also expressed that he was tired during the educational assessment and his eyes would wander away from the page while he was reading. Finally, during the testing completed by Dr. XXXX, [Student] was reported to be restless and required almost constant redirection to sustain task focus. He also rushed through his work, made careless errors, talked during tasks, and had difficulty inhibiting his impulses. He was easily frustrated by moderately-demanding tasks and often asked a number of off-topic questions. He was also considered impulsive and necessitated frequent breaks and incentives to sustain task focus. Based on these reports, I conclude these test scores are an unreliable measure of whether [Student] did indeed make, or failed to make, progress.

The most compelling example of how [Student]'s scores on standardized tests are unreliable is from [Student]'s scores on the two GORTS-5 assessments administered by [Parent]' expert witnesses. Dr. XXXX administered the test first; yet [Student]'s scores on Dr. XXXX's assessment, less than a month later on the same exact text, were considerably lower. This is convincing evidence that [Student]'s performance on standardized assessments is not an appropriate yardstick upon which to measure his progress.

Additionally, it is inappropriate to rely upon only the Woodcock-Johnson scores to evaluate progress. Standardized tests are only one piece of the puzzle by which a student's educational progress can, and should, be assessed. The IDEA provides that when conducting an evaluation of a student, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child and that no single measure or assessment may be the sole criterion for determining whether the child is a

child with a disability, or for determining an appropriate educational program for the child. *See* 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b). I find that it similarly is inappropriate to do so when evaluating a student's progress. Interestingly, when testifying, Dr. XXXX stated that he would look to "a lot of different data sources so that I am informed about whether this kid is making meaningful progress."

BCPS, alternatively, provided copious, clear, and convincing evidence that [Student] did receive educational benefit from all of his IEP during this relevant period. BCPS offered teacher observations, progress notes on IEPs, report cards, and assessments in intervention programs such as the Wilson program, to prove that [Student] did make significant educational progress, and in fact, continues to do so under the current IEP.

The progress notes¹⁴ for each IEP reflect that [Student] did in fact make significant progress on his goals. For the 2013 IEP, progress notes reflect that [Student] progressed in reading comprehension, his decoding skills, writing, in having conversations with his peers, and in working cooperatively in group work. He decreased his calling out in the classroom, became less defiant, participated in class more often, complied with directions more, and completed and handed in his homework more consistently.

The progress notes for the February 2014 IEP, as revised by the May and September 2014 Revised IEPs, also reflect that [Student] was working steadily on his goals. Although [Student] did not achieve any of the relevant goals, he did make significant progress in reading comprehension and some modest progress on his decoding and fluency skills. [Student] achieved many of the objectives of his communication goals, including taking turns in a conversation,

¹⁴ [Parent]' counsel repeatedly made the assertion that the IEP Progress Reports were confusing and incorrectly documented [Student]'s progress on the goals. While I agree that at first blush the Progress Reports seem disjointed and confusing, after spending a few minutes comparing them to the IEPs that they were reporting on, I find that the Progress Reports are clear and unambiguous.

make comments appropriate to the situation, and recalling important details of a story. He was also able to improve on his tone of voice and getting a teacher's attention appropriately. In written language, [Student] did not make any significant progress. This was likely influenced by the fact that, at [Parent]' request, [Student] was no longer using a scribe.

[Student]'s progress through June 2015 on the January 2015 IEP was significant. [Student] achieved his Written Language goal, without the use of any accommodation, on grade level materials, his Reading Comprehension goal and his Reading Decoding goal. [Student] also increased his skills in staying on task, taking turns in a conversation, using appropriate greetings and endings, staying on topic, and in understanding body language.

Finally, [Student]'s progress in this first part of 7th grade has been substantial. In his four new Communication goals, [Student] has achieved two of them, and is making sufficient progress to meet the other two goals. [Student] has significantly increased his ability to ask appropriate questions about a topic, utilize appropriate non-verbal techniques to enhance communication, speak at a proper rate, tone and volume, and differentiate between a sentence and a phrase. He is also able to identify expected/unexpected behaviors when presented with materials from the XXXX program 100% of the time. He is mastering sequencing and use of temporal words. His ability to predict what will happen next and identify the problem in a story are both significant weaknesses of [Student], and he has significantly progressed in both areas in a short time.

Dr. XXXX opined that progress reports are subjective, and thus, unreliable. I agree that, at times, progress reports are a subjective reflection of how a student is performing. However, in this case, the progress noted in the reports is corroborated by other evidence in the record. I therefore conclude that my reliance upon them is appropriate.

[Student]’s report cards demonstrate that he is progressing through grade level satisfactorily. [Student]’s earned all Bs and Cs during all four quarters of 5th grade. [Student]’s teachers commented that [Student] had made improvements in decoding and fluency by the third quarter. Although [Student] had issues with distractibility, by fourth quarter, [Student] was easily redirected when he became off task. He class participation increased as the year progressed, and [Student] began to add relevant comments. His teacher reflected that [Student] was “a pleasure to have in class” and that he “seems to enjoy school.”

[Student]’s 6th grade final grades were mostly Bs and Cs, with an A in his Reading Intervention class. [Student] earned a D in first quarter of his Language! class, and a D second quarter in Science; however, not one of his grades was lower than a C in his third and fourth quarters. [Student] first quarter grades for 7th grade were also positive. [Student] earned Bs in Reading Intervention, Math Assistance, Music and PE. He earned Cs in Language Arts, World Cultures, Pre-Algebra, and Science.¹⁵

Assessments in the different intervention programs BCPS is utilizing for [Student] also reflect that [Student] is making progress. [Student]’s writing on quarterly written assessments based on a rubric progressed over time. He provided more content with longer sentences. [Student]’s scores on the Advanced Decoding Skills Survey between May and December 2015 show that [Student] has increased his decoding skills and abilities over a very short period of time. Between March and December 2015, [Student] also progressed through the i-Ready Reading Program. He advanced in Phonics from the early first-grade level to late third-grade level, in Vocabulary from the early third-grade to up into the late fourth-grade level, and in

¹⁵ A letter dated February 8, 2016 was mailed from BCPS to [Parent] stating that “[a] review of the 2nd quarter report card indicates that your child ... is in danger of failing ... World Cultures.” P. Ex. 21. [Student]’s 2nd quarter report card for this year was not offered by either party, and [Student]’s 1st quarter grade was a C. I do not have sufficient evidence to understand the full meaning of this document; therefore, I give it minimal weight.

Reading Comprehension from the early first-grade to the late fourth-grade level. Although he is not demonstrating that he is at grade level within this program, it does demonstrate that [Student] made progress with regard to these skills.¹⁶

Additionally, [Student] had advanced through the Wilson reading program. The uncontroverted testimony of Ms. XXXX is that [Student] progressed from January 2015 to present from Level 1.2 up to level 4.2.¹⁷ From August 2015 through January 2016, [Student] progressed through six levels of Wilson program wordlists, from level 3.1 to level 4.2. He also demonstrated progress on his ability to decode on the WADE.

Finally, the observations of Ms. XXXX, Ms. XXXX and Mr. XXXX are extremely positive. All three educators note that they observed [Student] “grow by leaps and bounds” throughout 6th grade, and Ms. XXXX and Ms. XXXX continue to watch [Student] blossom throughout 7th grade. [Student] is developing friendships; he is eating lunch with students and having age appropriate conversations with them. He is participating in class; he is reading out loud to the class, and raising his hand to participate in group discussion, even in his larger general education classes. He is independently removing himself from distracting situations.

With regard to [Student]’s behavior, there was significant testimony about how [Student] has improved over the years. In 6th grade, [Student] frequently mentioned that he wanted to blow things up and kill people. There is no evidence that this continues in 7th grade, and in fact, all evidence provided is that he is no longer exhibiting aggressive and violent ideations. Additionally, his immature behaviors, including calling out and providing silly answers to

¹⁶ Ms. XXXX testified that [Student] did not put forth great effort in this program. Interestingly, despite [Student]’s lack of effort, he still demonstrated that he was making progress.

¹⁷ These are not to be considered grade-level equivalents. (T. XXXX).

questions, have decreased. In 6th grade, [Student] was almost always defiant and distracted; his 7th grade behavior charts and teacher observations note only isolated incidences of these negative behaviors. Interestingly, when [Student] does misbehave, he does so in both his larger, general education classrooms and in his smaller classes. There is no doubt that [Student] had his good days and his bad days, even in 7th grade, but the uncontroverted evidence is that his behavior in 7th grade is remarkably better than it was in 6th grade, with significantly less defiance and aggression. Although [Student] received a detention this year for refusing to take off his hood in the lunch room and although he recently yelled at Ms. XXXX, I conclude that these isolated incidents do not prove that [Student]'s behavior warrants his removal from the general education environment.

[Student]'s team reviewed all of this data when it considered whether to place [Student] in a more restrictive setting. BCPS staff concluded that [Student]'s performance in school did not support his removal from his placement at [SCHOOL 2]. I agree. There is no doubt from the evidence reviewed above that [Student] has received educational benefit over the years, and that benefit has not been minimal or trivial. In fact, it has been significant, especially considering, as Dr. XXXX described, [Student]'s complex neurodevelopmental profile. The evidence, therefore, does not support a finding that [Student] should be, and should ever have been, removed from his placement at [SCHOOL 2] into a more restrictive setting. It does, however, support my finding that [Student] has been provided with a FAPE for 2013-2014, 2014-2015, and 2015-2016, and is continuing to receive a FAPE today.

Requested Relief

Because, I find that [Student] was provided with a FAPE for the relevant period, I may not grant any of [Parent]' requested relief.

CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law that BCPS provided [Student] with a FAPE for the 2013-2014, 2014-2015, 2015-2015 school years, in that the IEPs developed and in place during each of these time periods:

1. Fully evaluated the Student;
2. Instituted appropriate positive behavior interventions and supports for the Student;
3. Provide appropriate accommodations and related services for the Student;
4. Developed appropriate goals and objectives for the Student;
5. Provided appropriate speech language services for the Student; and
6. Provided an appropriate placement for the Student; and

I further conclude as a matter of law that the IEPs developed and in place during each of these time periods were reasonably calculated to provide the Student with some educational benefit; and

I further conclude as a matter of law that the IEPs developed and in place during each of these time periods did provide the Student with some educational benefit.

20 U.S.C.A. § 1414; *Bd. Of Educ. of the Hendrick Hudson Cent. School Distr. v. Rowley*, 458 U.S. 176 (1982); *O.S. v. Fairfax County Sch. Bd.*, 804 F.3d 354 (4th Cir. 2015).

ORDER

I **ORDER** that the Parents' request for the immediate non-public placement of the Student at the [School 1] ([SCHOOL 1]) for the 2015-16 and 2016-17 school years at BCPS expense **IS HEREBY DENIED**; and I further,

ORDER that the Parents' request for the completion of a psychiatric evaluation and consultation for the Student by BCPS **IS HEREBY DENIED**; and I further

ORDER that the Parents' request for the completion of an independent compensatory education evaluation for the Student at BCPS expense with the commiserate review and an award for compensatory education **IS HEREBY DENIED**.

March 25, 2016
Date Decision Mailed

Tara K. Lehner
Administrative Law Judge

TKL/sw

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the Student resides. Md. Code Ann., Educ. § 8-413(j) (2014).

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

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