

XXXX XXXX

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

*** BEFORE JOHN T. HENDERSON, JR.,**

*** ADMINISTRATIVE LAW JUDGE**

*** THE MARYLAND OFFICE**

*** OF ADMINISTRATIVE HEARINGS**

*** OAH NO.: MSDE-MONT-OT-15-41442**

* * * * *

DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
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ORDER

STATEMENT OF THE CASE

On December 14, 2015, [Mother], Ph.D., and [Father] (Parents), on their behalf and that of their son, XXXX XXXX (Student), filed a Due Process Complaint (complaint) with the Maryland Office of Administrative Hearings (OAH). The complaint requested a hearing to review the identification, evaluation, or placement of the Student by the Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

The Parents did not request mediation. On December 16, 2015, both parties waived the resolution meeting. 34 C.F.R. § 300.510(a)(3)(i) (2015). The parties determined there would be no agreement and the dispute needed to be resolved by administrative adjudication.

I held a telephone pre-hearing conference on January 4, 2016, with counsel for the parties participating. I conducted a merits hearing over the course of sixteen days, as follows:

February 24, 25, 26 and 29, 2016
March 7, 8, 14 and 15, 2016
April 13, 14, 18 and 20, 2016
May 2, 3, 10 and 11, 2016

Jeffrey A. Krew, Esquire, represented MCPS at the hearing. Michael J. Eig, Esquire and Paula A. Rosenstock, Esquire, represented the Parents and the Student at the hearing.¹

The hearing date(s) requested by the parties fell more than 45 days after the triggering events² described in the federal regulations, which is the date my decision is due. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2015). The Parties requested an extension of time until thirty days after the closure of the record (on May 11, 2016) for me to issue a decision. 34 C.F.R. 300.515 (2015); Md. Code Ann., Educ. § 8-413(h) (2014). The number of witnesses for both sides, scheduling of those witnesses, and prior attorney scheduling obligations were the reasons a decision could not be issued 45 days after the triggering events.

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) (2015); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE) procedural regulations; and

¹ During the pre-hearing conference, the parties and representatives were advised of the time requirements for issuing a decision. The parties agreed that the decision would be due within thirty days from the close of the record. The record was closed on May 11, 2016.

² MCPS did not resolve the due process complaint to the satisfaction of the Parents within thirty days of the receipt of the due process complaint. The timeline for issuing a final decision under 34 C.F.R. § 300.515 began at the expiration of this thirty day period. 34 C.F.R. § 300.510 (b)(2) (2015).

the Rules of Procedure of OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

1. Was the Individualized Education Program (IEP) proposed by MCPS for the 2014-2016 school years reasonably calculated to provide the Student with a Free and Appropriate Public Education (FAPE)?
2. If there was a denial of FAPE, are the Parents entitled to tuition reimbursement from MCPS for the placement of the Student into a restricted setting non-public school?

SUMMARY OF THE EVIDENCE

A. Exhibits³

Unless otherwise noted, the Parents offered the following exhibits on behalf of the Student, which I admitted into evidence:

- | | |
|---------|---|
| Stu. 1 | Request for Due Process, 12-14-15 |
| Stu. 2 | MCPS Educational Assessment Report, 8-14-09 |
| Stu. 3 | MCPS Psychological Report, 8-24-09 |
| Stu. 4 | MCPS Speech/Language Re-Assessment Report, 5-13-11 |
| Stu. 5 | MCPS Psychological Report, 5-24-11 |
| Stu. 6 | Observation Report by XXXX XXXX, 12-1-11 |
| Stu. 7 | Email to XXXX XXXX from XXXX XXXX, 2-10-12 |
| Stu. 8 | MCPS Educational Assessment Report, 2-27-12 |
| Stu. 9 | Letter to Principal and Special Education Coordinator at [School 1] from the Parents, 2-23-13 |
| Stu.10 | Letter to Principal and Special Education Coordinator at [School 1] from the Parents, 3-10-13 |
| Stu. 11 | Letter to Principal and Special Education Coordinator at [School 1] from the Parents, 3-17-13 |
| Stu. 12 | IEP Meeting Notes, 3-19-13 |
| Stu. 13 | Letter to Principal and Special Education Coordinator at [School 1] from the Parents, 5-14-13 |
| Stu.14 | IEP Meeting Notes by XXXX XXXX, 3-19-13 & 5-28-13 |
| Stu.15 | MCPS IEP, 5-28-13 |
| Stu.16 | MCPS Third Grade Report Card, June 2013 |

³ The exhibits for the Student were submitted and identified by his initials. To preserve confidentiality, I have replaced the initials with Stu. There was some editing to the format of each exhibit list provided by the parties.

- Stu. 17 Observation Notes and email to Student's teacher from the Parents, 10-14-13
- Stu.18 MCPS Teacher Reports and Summary of Progress, 10-14-13
- Stu.19 MCPS IEP, 10-22-13
- Stu. 20 Neuropsychological Educational Evaluation by Dr. XXXX XXXX, 2-24-14
- Stu. 21 MCPS IEP Progress Report, 3-27-14
- Stu. 22 Comments on Draft IEP by XXXX XXXX, 4-20-14
- Stu. 23 Emails between Parents and Student's teacher, 4-28-14
- Stu. 24 MCPS Teacher Reports, April through May 2014
- Stu. 25 Letter to Principal and Special Education Coordinator at [School 1] from the Parents, 5-12-14
- Stu. 26 MCPS IEP, 5-20-14
- Stu. 27 IEP Meeting Notes, 5-20-14
- Stu. 28 IEP Meeting Notes by XXXX XXXX, 5-20-14
- Stu. 29 Teacher Evaluation Form completed by Student's teacher for the [School 2] ([SCHOOL 2]) Student Application, 6-8-14
- Stu. 30 Maryland School Assessment Score Report, Spring 2013 and Spring 2014
- Stu. 31 MCPS Fourth Grade Report Card and Addendum, June 2014
- Stu. 32 Observation Report by XXXX XXXX, 6-5-14
- Stu. 33 MCPS Observation Report by XXXX XXXX, 6-10-14
- Stu. 34 Reading Testing by the [School 2], July 2014
- Stu. 35 MCPS Observation Report by XXXX XXXX, 10-15-14 & 10-23-14
- Stu. 36 Letter to Principal and Special Education Coordinator at [School 1] from the Parents, 12-20-14
- Stu. 37 MCPS IEP Re-evaluation Planning Meeting and PARCC Decision Making Tool Documentation, 1-7-15
- Stu. 38 MCPS Educational Assessment Report with Observation Report and Woodcock Johnson III Score Report, 2-25-15
- Stu. 39 MCPS Speech/Language Re-Assessment Report, 3-10-15
- Stu. 40 MCPS Occupational Therapy Re-Evaluation, 3-12-15
- Stu. 41 MCPS Psychological Assessment Report, 3-17-15
- Stu. 42 MCPS IEP Meeting Notes, 3-24-15
- Stu. 43 Observation Report by XXXX XXXX, 4-20-15
- Stu. 44 MCPS Teacher Reports, 5-7-15
- Stu. 45 MCPS IEP Progress Report, 5-11-15
- Stu. 46 PARCC Testing, Mathematics and Reading, Spring 2015
- Stu. 47 Emails between Parents and MCPS staff, 5-15-15
- Stu. 48 Feedback on Draft IEP by XXXX XXXX, 5-18-15
- Stu. 49 MCPS IEP, 5-18-15
- Stu. 50 IEP Meeting Notes by XXXX XXXX, 5-18-15
- Stu. 51 MCPS Fifth Grade Report Card, June 2015
- Stu. 52 MCPS IEP, 6-8-15
- Stu. 53 Letter to XXXX XXXX from Paula A. Rosenstock, Esq. dated June 30, 2015
- Stu. 54 Reading and Mathematics Testing with myLexia XXXX Centers,

	Summer 2015
Stu. 55	Student Schedule at the [School 2] for 2015-2016 School Year
Stu. 56	First Quarter Interim Progress Reports from the [School 2], Dated October 14, 2015
Stu. 57	[School 2] XXXX (XXXX), 11-17-15
Stu. 58	[School 2] Progress Summary and Teacher Input, 11-17-15
Stu. 59	[School 2] First Quarter Report Card, 12-1-15
Stu. 60	Follow-up and Addendum to Neuropsychological Educational Evaluation, 12-8-15
Stu. 61	[School 2] First and Second Quarter Grade Report, 1-27-16
Stu. 62	Information on [School 3] and Autism Resource Services
Stu. 63	Student Reading Data, September 2013 to May 2015
	(1) MCPS Reading Targets
	(2) MCPS Guided Reading Levels
	(3) Reading Data Analysis
	(4) Reading Data Analysis, page 2
	(5) Progress Monitoring for 2013-2014
	(6) Progress Monitoring for 2013-2014, page 2
	(7) 2013-2014 End of Year Reading Assessment, 6-12-14
	(8) Not Admitted
	(9) 2014-2015 Reading Assessment
Stu. 64	Measures of Academic Progress (MAP), Mathematics and Reading, Fall 2012 to Spring 2015
Stu. 65	Demonstrative Graphs
	(1) Comparison of Present Levels of Performance Taken from IEP's, 2010-015
	(2) Comparison of Present Levels of Performance Taken from IEP's, 2010-2015, pg. 2
	(3) Woodcock-Johnson III Score Comparison
Stu. 66	Student Work Samples
Stu. 67	Resume of XXXX XXXX
Stu. 68	Resume of Dr. XXXX XXXX
Stu. 69	Not Offered
Stu. 70	Resume of XXXX XXXX
Stu. 71	Resume of XXXX XXXX
Stu. 72	Resume of XXXX XXXX
Stu. 73	Resume of XXXX XXXX
Stu. 74	Resume of XXXX XXXX
Stu. 75	Measures of Academic Progress, Mathematics and Reading, Fall 2015
Stu. 76	[School 2] ([SCHOOL 2]), XXXX (XXXX) Progress Report, January 2016
Stu. 77	[SCHOOL 2] Counseling Daily Notes, September 2015 to February 2016
Stu. 78	Not Offered

2016	Stu. 79	[SCHOOL 2] Speech/Language Daily Notes, August 2015 to February
	Stu. 80	Demonstrative Graph of Student's Reading Progress
	Stu. 81	[SCHOOL 2] Summary Progress Report, Summer 2014
	Stu. 82	Not Offered
	Stu. 83	Resume of XXXX XXXX
	Stu. 84	Not Offered
	Stu. 85	Not Offered
	Stu. 86	Not Offered
	Stu. 87	IEP Addendum 12-6-11 meeting
	Stu. 88	Not Offered
	Stu. 89	Occupational and Physical Therapy Early Intervention and School-Based Services in Maryland, revised June 2014
	Stu. 90.	Not Offered
	Stu. 91	Fountas & Pinnell Benchmark Assessment System Guide, pages 174 to 181
	Stu. 92	[SCHOOL 2] XXXX for meeting, 11-17-15

Unless otherwise noted, MCPS offered the following exhibits, which I admitted into evidence:

Board Ex. No.	Date	Description
1	8/24/09	Report of Psychologist - XXXX XXXX, M.Ed., AGS (MCPS)
2		Not Offered
3	5/13/11	Speech-Language Re-Assessment - XXXX XXXX, M.S., CCC-SLP (MCPS)
4		Not Offered
5	5/24/11	Report of Psychologist - XXXX XXXX, Ed.S., NCSP (MCPS)
6		Not Offered
7	9/23/11	Letter to Ms. XXXX and Ms. XXXX from Mother
8	2/10/12 - 2/14/12	Email string between Mother and XXXX XXXX
9	2/27/12	Educational Assessment Report - XXXX XXXX (MCPS)
10	3/6/12	IEP and IEP Team Meeting Documentation (MCPS)
11		Not Offered
12		Not Offered
13		Not Offered
14	3/19/13	IEP Team Meeting Documentation (MCPS)
15	5/14/13	Parent Report
16	5/28/13	IEP and IEP Team Meeting Documentation (MCPS)
17	June 2013	3rd Grade Report Card (MCPS)

Board Ex. No.	Date	Description
18		Not Offered
19		Not Offered
20	10/10/13	Parent Report
21	October 2013	Elementary Teacher Reports (MCPS)
22	10/22/13	IEP and IEP Team Meeting Documentation (MCPS)
23	5/20/14	Team Consideration of External Report - XXXX XXXX & XXXX XXXX (MCPS)
24	5/20/14	IEP and IEP Team Meeting Documentation (MCPS)
25		Not Offered
26	6/8/14	[School 2] Application for Admissions
27	6/8/14	[School 2] Parent Evaluation Form
28	6/9/14	Email to XXXX XXXX from Mother
29	6/10/14	Observation Report - XXXX XXXX (MCPS)
30	6/17/14	Email to Mother from XXXX XXXX, [School 2]
31		Not Offered
32		Not Offered
33	June 2014	4th Grade Report Card (MCPS)
34	7/7/14	Letter to XXXX XXXX from Paula Rosenstock
35	7/14/14	Record Pick-Up Notification
36		Not Offered
37	7/28/14	Request for Due Process Hearing
38		Not Offered
39		Not Offered
40		Not Offered
41	10/10/14 - 10/15/14	Email String between Mother and XXXX XXXX
42	10/10/14 - 10/20/14	Email String between Mother and XXXX XXXX
42-A	10/16/14	Accessible Technology Considerations: SETT
43	10/23/14	Classroom Observation Report - XXXX XXXX, M.A., C.A.S (MCPS)
44	10/24/14	Student Progress Report Math and Reading
45	11/3/14	Letter to XXXX XXXX from Paula Rosenstock
46	11/5/14	Accessible Technology Trial Period Plan - XXXX XXXX, XXXX XXXX & XXXX XXXX (MCPS)
46-A	11/14/14	Email to XXXX XXXX, [School 2], from Mother

Board Ex. No.	Date	Description
47	December 2014	Elementary Teacher Reports
48	1/7/15	IEP Team Meeting Documentation (MCPS)
49	1/21/15-1/28/15	Email string between XXXX XXXX and Mother
50	1/25/15	Email to XXXX XXXX and XXXX XXXX from Mother
50-A	1/25/15 - 1/26/15	Email string between Mother and XXXX XXXX, [School 2]
51	2/8/15	Email to XXXX XXXX and XXXX XXXX from Mother
51-A	2/20/15	Email to Mother from XXXX XXXX, [School 2]
52	2/25/15	Educational Assessment - XXXX XXXX, Special Education Teacher (MCPS)
53	3/4/15	Student Progress Report Math and Reading
54	3/10/15	Report of Speech-Language Reassessment - XXXX XXXX, M.S., CCC-SLP (MCPS)
55	3/12/15	Occupational Therapy (OT) Re-Evaluation Report - XXXX XXXX, OTR/L (MCPS)
56	3/17/15	Report of Psychological Assessment - XXXX XXXX, NCSP (MCPS)
57	3/24/15	IEP Team Meeting Documentation (MCPS)
58	4/27/15	Email to Mother from XXXX XXXX
59		Not Offered
60	5/12/15 - 5/15/15	Email string between Mother and XXXX XXXX
61	5/18/15	IEP and IEP Team Meeting Documentation (MCPS)
62	5/21/15	Email to Mother from XXXX XXXX
63	5/29/15	Email to Mother from XXXX XXXX
64	6/8/15	IEP and IEP Team Meeting Documentation
65		Information regarding Autism Resource Services at [School 3]
66		Not Offered
67		Not Offered
68	6/2015	5th Grade Report Card (MCPS)
69		Not Offered
70	14-15 S.Y.	Work Samples
71	6/27/15	Letter to Parents from XXXX XXXX, [School 2]
72	6/30/15	Letter to XXXX XXXX from Paula Rosenstock

Board Ex. No.	Date	Description
72-A	7/15/15 – 7/26/15	Email string between Mother and XXXX XXXX, [School 2]; Email string between XXXX XXXX, [School 2] and XXXX XXXX, [School 2]
73	7/28/15	[School 2] Lower/Middle School Private Enrollment Contract 2015-2016 Academic Year
74	8/31/15 - 12/23/15	XXXX Centers, Inc.'s Statement for Related Services
75		Not Offered
76		Not Offered
77	10/14/15	Request for Due Process Hearing
78		Not Offered
79	10/30/15	6th Grade Report Card ([School 2])
79-A	undated	Note by Dr. XXXX
79-B	11/17/15	Email to Paula Rosenstock from Dr. XXXX
80	11/17/15	[School 2] XXXX Goal
81	11/23/15	Educational Consultant Agreement - XXXX Education Group, LLC
82	11/25/15	Email to XXXX XXXX, [School 2], from Mother
82-A	12/3/15	Email to Mother from XXXX XXXX, [School 2]
83	12/4/15	Letter to XXXX XXXX from Michael Eig
83-A		
84	12/14/15	Request for Due Process Hearing
85	12/22/15	Letter to Michael Eig from Jeffrey Krew
86		XXXX XXXX Curriculum Vitae
87		XXXX XXXX Curriculum Vitae
88		XXXX XXXX Curriculum Vitae
89		XXXX XXXX Curriculum Vitae
90		XXXX XXXX Curriculum Vitae
91		XXXX XXXX Curriculum Vitae
92		Not Offered
93		XXXX XXXX Curriculum Vitae
94		Not Offered
95		Not Offered
96		XXXX XXXX Curriculum Vitae
97		Comparison of Student's WJ-III Scores
98	2/5/16	Drafts of XXXX XXXX's Observation Reports
99	3/17/15	Letter from XXXX XXXX, PMH, CNS-BC, XXXX Center, LLC

Board Ex. No.	Date	Description
100		XXXX XXXX Curriculum Vitae
101		Reading Chart for third, fourth and fifth grade

B. Testimony

The Student was not present. Dr. XXXX (mother) testified (on direct and rebuttal) and presented testimony from the following witnesses:

1. Dr. XXXX XXXX, Ph.D.; accepted as an expert in Developmental Neuropsychology
2. XXXX XXXX, Classroom Teacher at [School 2] ([SCHOOL 2]); accepted as an expert in Special Education
3. XXXX XXXX, Speech Language Pathologist, [SCHOOL 2]
4. XXXX XXXX, Social Worker, [SCHOOL 2]; accepted as an expert in Social Work
5. XXXX XXXX, Student Advocate; accepted as an expert in Special Education
6. XXXX XXXX, [SCHOOL 2]; accepted as an expert in Occupational Therapy (OT)

The following witnesses testified on behalf of MCPS:

1. XXXX XXXX; Fifth Grade Learning Center Classroom Teacher, [School 1] ([SCHOOL 1]); accepted as an expert in Special Education
2. XXXX XXXX, Fourth Grade Learning Center Classroom Teacher, [SCHOOL 1]; accepted as an expert in Elementary Education and Special Education
3. XXXX XXXX; School Psychologist, MCPS; accepted as an expert in School Psychology and Special Education
4. XXXX XXXX, Speech Language Pathologist, MCPS; [SCHOOL 1]; accepted as an expert in Speech Language Pathology
5. XXXX XXXX, Art Teacher, MCPS; accepted as an expert in Teaching Art on the Elementary School Level

6. XXXX XXXX, Occupational Therapist, MCPS; accepted as an expert in OT
7. XXXX XXXX, Itinerant Resource Services Teacher, MCPS; accepted as an expert in Special Education
8. XXXX XXXX, Learning Center Coordinator; MCPS; accepted as an expert in Special Education
9. XXXX XXXX, Resource Teacher for Special Education, [School 3] ([SCHOOL 3]); MCPS, Coordinator; Autism Resource Center; accepted as an expert in Special Education and Teaching Students with Autism

FINDINGS OF FACT

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

The Student

1. The Student is a twelve-year-old boy who is diagnosed with autism, attention deficit hyperactivity disorder (ADHD), and significant learning disabilities, to include a reading disability.
2. The Student's disabilities impair his speech and ability to process language quickly. His disabilities also impair his social skills, visual motor skills, reading, writing and math skills, as well as his ability to self-advocate.
3. The Student was prescribed a medication named XXXX, which is used to treat ADHD. He has taken the medication since kindergarten. The XXXX dosage was increased at [SCHOOL 2].
4. The Student attended fifth grade at [SCHOOL 1] for the 2014-2015 school year and now attends sixth grade at [SCHOOL 2] in XXXX, Maryland for the 2015-2016 school year. He is a diploma bound MCPS Student.

The Parents

5. The Student's mother has a doctorate degree in XXXX and teaches graduate school. His Father works for the XXXX.
6. The Parents determined that the Student needed a more intense educational services and placement school environment that was different from [SCHOOL 1].
7. The Parent's determination was based on their belief that within one and one-half year of reading instruction, the Student had improved only one reading level while at [SCHOOL 1].
8. The Parents concluded that the program offered by [SCHOOL 1] was not working.
9. The Parents believed that the plan for the XXXX (XXXX) at [School 3] would not provide the Student with educational benefit.
10. The Parents determined that the Student did not make significant gains in independent performance and executive functioning; that he was getting further behind in math and struggled at reading; that he had difficult interactions with friends; and that he had a difficult time socializing without adult intervention.
11. The Parents observed the Student at [SCHOOL 2] twice since August 2015, when he began as a full-time Student. The Mother observed the Student in his classroom at [SCHOOL 2] once during the 2015-2016 school years for about one and one-half hour.

The Schools

12. [SCHOOL 1] is a MCPS school. The Student began kindergarten at [SCHOOL 1] and completed the fifth grade after the 2014-2015 school years.
13. His teacher for the fifth grade was Ms. XXXX.

14. The Student started at [SCHOOL 2] in August 2015.

15. [SCHOOL 2] is a Maryland Department of Education-approved, non-public, special education school in XXXX, Maryland. It addresses academic, cognitive, interpersonal, and organizational needs of Students with moderate to severe language and learning disabilities, mild to moderate autism, mild intellectual disabilities, and other health impairments.

16. The Student received a scholarship of \$10,000.00 to attend [SCHOOL 2]. The total tuition for the 2015-2016 school years is approximately \$19,000.00.

17. The [SCHOOL 2] program focuses on the individual needs of its Students and provides full-time special education and related services including Speech-Language therapy, OT, and social work counseling services.

18. Prior to the development of its own version of an IEP for the Student's 2015-2016 school year, known as the XXXX (XXXX), [SCHOOL 2] used the MCPS IEP prepared for the 2015-2016 school year.

19. [SCHOOL 2] provided a XXXX for the Student on November 17, 2015.

The IEP's

20. There were ten annual and interim IEP's prepared by various IEP teams while the Student matriculated through [SCHOOL 1], dated as follows:

March 6, 2012
March 19, 2013
May 28, 2013
October 22, 2013
May 20, 2014
January 7, 2015
March 24, 2015
May 18, 2015
June 8, 2015

21. At the time of the May 20, 2014 IEP, the Student was ten-years-old, in the fourth grade at [SCHOOL 1]. An IEP team meeting was convened for developing goals and objectives for the Student's IEP review, for the period of May 20, 2014 through May 19, 2015.

22. The Student's primary disability listed on the May 20, 2014 IEP was autism. Reading (decoding, comprehension & fluency), math (calculation & problem solving), written language, oral language, fine motor skills, attention, and social skills were all listed as areas affected by his disability. The team members were as follows:

Case Manager:	XXXX XXXX
Chair:	XXXX XXXX
Parent/Guardian	Mrs. XXXX XXXX Mr. XXXX XXXX
Principal/Designee:	XXXX XXXX
General Educator:	XXXX XXXX
Special Educator:	XXXX XXXX
School Psychologist:	XXXX XXXX
PPW:	None
Speech/Language Pathologist:	XXXX XXXX
Student:	None
Agency Representative	None
Others in attendance:	XXXX XXXX, OT XXXX XXXX Instructional Specialist

23. The Parents provided input as follows:

[The Student] was making progress on his math facts. He becomes frustrated and more reluctant to do his homework. [The Student] is visual, learns best with multiple repetition, and hands on manipulatives. [The Student] needs to start closing the gap in all areas of reading.

(Bd. Ex. 24, pg. 14489.)

24. As of the May 20, 2014 IEP team report, the Student was making sufficient progress on many of the objectives toward reaching the identified goals.

25. For the May 20, 2014 IEP, OT services would be delivered thirty minutes per week in a small group setting as well as in the general education setting.

26. At the time of the January 7, 2015 IEP meeting, the Student was eleven-years-old, in the fifth grade at [SCHOOL 1]. An IEP re-evaluation team meeting was convened to determine if the Student remained eligible for services and if new evaluations were necessary.

27. The Student's primary disability listed on the January 7, 2015 re-evaluation was autism.

28. The team members were as follows:

Case Manager:	XXXX XXXX
Chair:	XXXX XXXX
Parent/Guardian	Mrs. XXXX XXXX Mr. XXXX XXXX
Principal/Designee:	XXXX XXXX
General Educator:	XXXX XXXX
Special Educator:	XXXX XXXX
School Psychologist:	XXXX XXXX
PPW:	None
Speech/Language Pathologist:	XXXX XXXX
Student:	None
Agency Representative	None
Others in attendance:	XXXX XXXX Reading Specialist XXXX XXXX, OT Emily Rachlin, MCPS Attorney XXXX XXXX, Educational Consultant Paula Rosenstock, Counsel for the XXXX's

29. The Parents were concerned with the Student's progress as follows:

[The Student] has been on a level N for the past school year. . . [The Student] participated in a summer program at the [[SCHOOL 2]] for 6 weeks over the last summer. The concern is that there is no progress in the reading level and map-R score. As the other Students progress and [the Student] stays at the same level, the discrepancy is getting bigger. [The Student] was making progress in the XXXX intervention program. Parents are concerned about the lack of social skill instruction outside of the classroom and other structured settings. He needs embedded social skills instruction throughout his day They would like to see a curriculum based social skills program that other teachers would be trained in and as situations arise they would help [the Student] through the social situation.

(Bd. Ex. 48, pg. 14790.)

30. The Student was falling behind his non-disabled peers. The educational gap between his ability and his actual performance was widening.

31. Soon after the meeting, on January 21, 2015, Ms. XXXX emailed the Parents to follow up on their concerns. The team added the reading intervention XXXX to the Student's reading instruction and added a social skills lesson taught each week as a group lesson that was reinforced throughout the week.

32. MCPS conducted a battery of reevaluations during February and March 2015.

33. An educational assessment report was completed by Ms. XXXX on February 25, 2015.

34. The Student was reading on an instructional level of the third quarter of the third grade as a fifth grade student at [SCHOOL 1].

35. Ms. XXXX administered to the Student the Woodcock-Johnson III (WJ-III) test of achievement.⁴

36. The Student scored as follows on the WJ III:

Reading:

Letter Word Identification	Standard Score of 71	Low Range of Achievement
Passage Comprehension	Standard Score of 67	Very Low Range of Achievement
Word Attack	Standard Score of 82	Low Average Range of Achievement
Reading Vocabulary	Standard Score of 64	Very Low Range of Achievement

Mathematics:

Calculation	Standard Score of 82	Low Average Range of Achievement
Applied Problems	Standard Score of 66	Very Low Range of Achievement
Quantitative Concepts	Standard Score of 78	Low Range of Achievement

⁴ WJ III are tests of achievement, individually administered, that measures a student's academic performance in relation to their peer group based on age. Test clusters are composed of subtests that provide diagnostic information and give insight into a student's strengths and weaknesses in reading, mathematics and writing, as well as important related skills. (Stu. Ex. 38, pg. 2.)

Written Expression:

Writing Fluency	Standard Score of 76	Very Low Range of Achievement
Writing Samples	Standard Score of 91	Average Range of Achievement

37. The Student's test performance on the WJ III was an accurate reflection of his aptitude and educational achievement.

38. Ms. XXXX completed an OT assessment on March 12, 2015.

39. The Student scored in the low range for the test of visual motor integration skills. He scored in the average range for visual perceptual skills. He scored low for motor coordination.

40. The Student has adequate functional fine motor skills in his accuracy with classroom tools and legible handwriting.

41. The Student benefits from the use of word processing with word prediction to support his spelling needs.

42. The Student uses computer typewriting technologies. He keyboards by utilizing the hunt and peck method.

43. A psychological assessment was completed by Ms. XXXX

44. On March 17, 2015, Ms. XXXX, the MCPS psychologist, completed her psychological assessment of the Student.

45. Ms. XXXX administered the Social Responsiveness Scale- Second Edition, a test to evaluate the Student's social skills, to his Parents, teacher, and his private therapist.

46. The Student was rated as having social behavior in the typical to severe range, depending on the rater (teacher or mother) and the environment.

47. Ms. XXXX did not administer cognitive testing.

48. At the time of the March 24, 2015 IEP, the Student was eleven-years- old, in the fifth grade at [SCHOOL 1]. An IEP team meeting was convened for discussing the results of the psychological, educational, speech-language and OT reassessments.

49. The Student's primary disability listed on the March 24, 2015 IEP was autism.

The team members were as follows:

Case Manager:	XXXX XXXX
Chair:	XXXX XXXX
Parent/Guardian	Mrs. XXXX XXXX
Principal/Designee:	XXXX XXXX
General Educator:	XXXX XXXX
Special Educator:	XXXX XXXX
School Psychologist:	XXXX XXXX
PPW:	None
Speech/Language Pathologist:	XXXX XXXX
Student:	None
Agency Representative	Emily Rachlin, MCPS Attorney
Others in attendance:	XXXX XXXX XXXX XXXX, Reading Specialist XXXX XXXX, Educational Consultant Paula Rosenstock, Counsel for the XXXX Family

50. The subject areas identified for re-evaluation were psychological, educational, speech, language and OT.

51. An addendum to the March 24, 2015 IEP team meeting form stated the following:

Updates from previous meeting-new reading intervention has been in place for 2 weeks. The school counselor, XXXX XXXX, teaches a social skills lesson once per week for the past 6 weeks. [The Student] has done well during the lesson. He is able to act out the social situation appropriately. Ms. XXXX uses a curriculum based program. The team will find out the name of the program and report back to Parents. [The Student] does not consistently carry over the social skills into situations outside of the classroom.

Parents asked what the data shows for the social skills goal included in the IEP. Mrs. XXXX shared that once a week, [the Student] will initiate a greeting with the teacher.

Mrs. XXXX shared that [the Student] will greet the other student's in his group at least 95% of the time. If [the Student] is interested in a topic, he is able to maintain a topic for more than 3 conversational exchanges. If he is not interested in a topic, he does not engage in a conversation. Mr. XXXX stated that [the Student] will initiate a conversation with him at recess on a topic of interest to [the Student].

Reading-XXXX is a new reading intervention was started with [the Student] 2 weeks ago. This intervention works a lot on vowel patterns, which is an area of concern for [the Student]. The intervention teaches to mastery. [The Student] receives the intervention for 30 minutes five days per week. [The Student] is seen in a small group with 3 other students. The intervention is a multisensory approach. This intervention replaces the phonics portion of the XXXX. [The Student] receives the XXXX comprehension, which includes a fluency piece, 30 minutes per week five days per week. A pretest is included in the XXXX, which places him into a level in the program. [The Student] started on a level 2. Parents requested the scope and sequence for the program. Checkpoints and assessments are embedded in the program.

Psychological Assessment Results – Parents would like the wording changed under the methods of assessment section that says “interviewed Parents.” Ms. XXXX included the rating scales as the interview, but parents would like that wording changed. Parents asked why other more specific rating scales for attention were not given. Ms. XXXX felt the BASC was sufficient for the purposes of this meeting. . . .

[The Student] receives science and social studies in Mrs. XXXX's classroom with 14 general education classroom and 5 learning Center students. Mrs. XXXX is the teacher for both of these classes. Mrs. XXXX stated that [the Student] works with the general education students during science and social studies. He is more engaged during science and will speak up for himself during the investigations. The science investigations come with a worksheet with step by step directions. Social studies is accompanied by video clips to help with comprehension and the Students work with small groups. [The Student] is involved with the safety patrols with Mr. XXXX, 5th grade general education teacher and sponsor of the patrols.

Mrs. XXXX shared Speech and language assessment results. . . .

Parents shared a graph chart of the 3 times the WJ-III was administered in 8/2009, 2/2012 and 3/2015. The graph is included as parental input. The team will determine if the confidence interval scores from the 3 assessment dates can be shared with Parents. The team expressed concern that the scores are reported without confidence intervals, therefore it is difficult to determine whether the variance is statistically significant.

The team agreed to reconfirm the disability code of autism.

The [OT] is not in attendance at the meeting. The team agreed to table the discussion of the occupational therapy report until the Occupational Therapist is in attendance to go over her results.

Mrs. XXXX went over possible middle school placements for [the Student]. The possible placements Parents were asked to visit are the home school, [School 4], XXXX [[SCHOOL 3]], and XXXX Program at [[SCHOOL 3]].

(Bd. Ex. 57, pgs. 14835-14836.)

52. On May 11, 2015, the Parents received the Student's IEP progress reports.

53. The Parents were concerned with the progress report's notation that the Student was not making sufficient progress to meet the goal regarding OT-fine motor skills.

54. At the time of the May 18, 2015 IEP meeting, the Student was eleven-years-old, in the fifth grade at [SCHOOL 1]. An IEP team meeting was convened for the purpose of developing goal and objectives for the Student's IEP interim review, for the period of May 20, 2014 through May 19, 2015.

55. The Parents met with the IEP team on May 18, 2015, and the team created a split⁵ IEP for the rest of fifth grade and for sixth grade.

56. For the duration of the fifth grade, the Student's speech and language services and OT services would be delivered in a small group setting. Reading, writing, and math would be delivered in a self-contained setting. Social studies, science, art, music, PE, lunch, recess, chorus, and instrumental music would be delivered in the general education setting with support.

57. The Student would not participate with his non-disabled peers during reading, writing and math. He would participate with his non-disabled peers for all other subjects and

⁵ A split IEP is when a child is transitioning from either elementary to middle or middle to high school. An IEP is needed to match the service hours at the given school to last until the end of the current school year. Then an IEP is needed to go from the beginning of the next school year to the date of the annual review, because the hours of the middle school would not be the same as the elementary school. (Tr. Vol. 6, pg. 1450.)

activities at school—science, social studies, art, music, PE, media, lunch, recess and after school activities.

58. The Student's fifth grade IEP services would remain the same for the rest of the 2014-2015 school year.

59. During the May 18, 2015 IEP meeting, the Parents requested for the Student, the following:

An evidence-based reading intervention program
OT services remain at thirty minutes weekly
Self-contained classes for physical education and elective courses
Intensive, self-contained special education program for sixth grade.

(Stu. Ex. 52-53; Stu. Ex. 49-55.)

60. The Student had 100% legible handwriting and efficient fine motor skills.

61. The IEP team proposed a reduction in the Student's OT services from thirty minutes per week to fifteen minutes per month of consultation for the sixth grade.

62. The IEP team denied the Parents' request for self-contained physical education and elective courses. The IEP team determined that the Student continued to make progress with the support of a para-educator.

63. The Student's IEP for sixth grade was finalized. The IEP team proposed that the sixth grade program be implemented at the XXXX Program (XXXX) at [SCHOOL 3].

64. The Parents did not support placing the Student into the [SCHOOL 3] XXXX program.

65. The May 18, 2015 IEP was appropriate to meet the Student's educational needs.

66. At the time of the June 8, 2015 IEP meeting, the Student was eleven-years-old, having completed the fifth grade at [SCHOOL 1]. An IEP team meeting was convened for the purpose of developing goals and objectives for the Student's sixth grade school year.

67. The Student's primary disability listed on the June 8, 2015 IEP was autism. The team members were as follows:

Case Manager:	XXXX XXXX
Chair:	XXXX XXXX
Parent/Guardian	Mrs. XXXX XXXX Mr. XXXX XXXX
Principal/Designee:	XXXX XXXX
General Educator:	XXXX XXXX
Special Educator:	XXXX XXXX
School Psychologist:	None
PPW:	None
Speech/Language Pathologist:	XXXX XXXX
Student:	None
Agency Representative	None
Others in attendance:	Emily Rachlin, MCPS Attorney Paula Rosenstock, Family Attorney XXXX XXXX, Family Advocate

68. On June 30, 2015, the Parents, through their counsel, notified MCPS and formally rejected the Student's proposed IEP and placement for the 2015-2016 school year.

69. The Parents enrolled the Student into [SCHOOL 2] for the 2015-2016 school year.

70. The June 8, 2015 IEP was appropriate to meet the Student's educational needs.

71. The XXXX program at [SCHOOL 3] is an appropriate placement in which the Student can be provided FAPE in the least restrictive environment (LRE).

Expert Witnesses

Dr. XXXX XXXX, Ph.D.

72. Dr. XXXX observed the Student in class on February 24, 2014 and prepared a

report of her observations.

73. The report of the February 24, 2014 observation was presented to the IEP team meeting during the Student's fourth grade year.

74. It was not realistic to close the educational gap to bring the Student up to grade level. The Student was capable of making progress, in language, math and social skills.

75. It was harder for the Student to make progress in reading comprehension and math that required a working memory.

76. Dr. XXXX observed the Student at [SCHOOL 1] for approximately two hours and at [SCHOOL 2] for approximately two hours.

77. Dr. XXXX spent approximately six hours administering standardized testing to the Student.

78. Dr. XXXX did not recommend that the Student be segregated from his non-disabled peers or that he needed a non-public special education school in order to make progress.

XXXX XXXX

79. Ms. XXXX is the Director of Advocacy for the XXXX Educational Group, LLC (XXXX), of which she has a seven percent ownership interest.

80. XXXX offers families educational assessments and Student advocacy services within the special education system.

81. Ms. XXXX became involved with the Student in 2011, when the Parents retained the services of XXXX because they determined the Student was not making progress at [SCHOOL 1].

82. On December 1, 2011, Ms. XXXX observed the Student at [SCHOOL 1] and wrote a report.

83. Ms. XXXX detailed her observation with the Student at [SCHOOL 1] during the period of 9:00 a.m. to 10:00 a.m., when the Student was in the second grade.

84. Ms. XXXX made notes of his activities in one minute increments for a total of sixty minutes.

85. Ms. XXXX attended her first IEP meeting at [SCHOOL 1] on March 6, 2012.

86. Ms. XXXX prepared written recommendations to the draft IEP, dated April 20, 2014.

87. The May 20, 2014 IEP and team meeting, of which she was present, incorporated much of the April 20, 2014 recommendations.

88. Ms. XXXX did not object to the implementation of the IEP's developed for the 2014-2016 school years.

XXXX XXXX

89. Ms. XXXX is a Learning Center Classroom Teacher for [SCHOOL 1] where she has taught for seventeen years. She was the Student's second and fifth grade teacher.

90. There would be two adults at all times; the classroom teacher (XXXX) and a certified special education para-educator who instructed the Student during his second and fifth grade years.

91. Ms. XXXX teamed with Ms. XXXX to work with the Student on his reading intervention during his fourth grade year.

92. The Student interacted with his peers at [SCHOOL 1] during lunch and recess, within the hallways, in special classes, science and social studies.

93. The Student's [SCHOOL 1] science and social studies classes consisted of 16-20 students with a teacher and para-educator to support special needs students.

94. The Student knew the other children and worked on group activities with his non-disabled peers, especially in science and social studies.

XXXX XXXX

95. Ms. XXXX is an Itinerant Resource Services Teacher for MCPS, Department of Special Education. She has been with MCPS for eighteen years.

96. Ms. XXXX provides support to the elementary Learning Centers.

97. The Learning Centers provide services to students with many different disability codes who require smaller, self-contained programming.

98. Ms. XXXX assisted the IEP team in drafting the Student's 2014-2015 IEP.

99. The Student was making progress on all of his goals for the 2014-2015 IEP, although not having been achieved.

100. The Student's WJ-III scores were commensurate with his cognitive expectancies.

DISCUSSION

The Legal Framework

The identification, assessment and placement of Students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1482 (2010), 34 C.F.R. Part 300, Md. Code Ann., Educ. §§ 8-401 through 8-417 (2009), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412.

The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

Implicit in the congressional purpose of providing access to a "free appropriate public education" is the requirement that the education

to which access is provided be sufficient to confer some educational benefit upon the handicapped child... We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to give educational benefit to the handicapped child.

458 U.S. at 200, 201. In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide FAPE to a student with disabilities.

First, a determination must be made as to whether there has been compliance with the procedures set forth in the IDEA, and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefit. 458 U.S. at 206-207.

Providing a student with access to specialized instruction and related services, however, does not mean that a student is entitled to “the best education, public or non-public, that money can buy” to maximize educational benefits. *Hessler v. State Bd. of Educ. of Maryland*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. 176). Instead, FAPE is satisfied when a child’s IEP is designed to allow the child to receive educational benefit. *Rowley*, 458 U.S. at 203. Therefore, “educational benefit” requires that “the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.” *Rowley*, 458 U.S. at 200. See also *MM ex rel. DM v. School Dist. of Greenville County*, 303 F.3d 523, 526 (4th Cir. 2002) (citing *Rowley*, 458 U.S. at 207); *A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004). Thus, the IDEA requires an IEP to provide a “basic floor of opportunity that access to special education and related services provides.” *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4th Cir. 1990). Yet, the benefit conferred by an IEP and placement must be “meaningful” and not merely “trivial” or “de minimis.” *Polk v. Cent. Susquehanna Intermediate Unit*, 853 F.2d 171, 182 (3rd Cir. 1988), cert. denied, 488 U.S. 1030 (1989); see also *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 862

(6th Cir. 2004), *cert. denied*, 546 U.S. 936 (2005); *Bd. of Educ. of Frederick County v. Summers*, 325 F. Supp.2d 565, 576 (D. Md. 2004).

The Court of Appeals for the Fourth Circuit has recognized that no bright line test can be created to establish whether a student is progressing or could progress educationally. Rather, the decision-maker must assess the evidence to determine whether the student's IEP and placement were reasonably calculated to enable the student to receive appropriate educational benefit. *See In Re Conklin*, 946 F.2d 306, 312 (4th Cir. 1991); Md. Code Ann., Educ. § 8-403 (2014).

The IEP is the tool for providing necessary services to the disabled child. 20 U.S.C.A. § 1414(d). Congress instructed each public school system to review such a child's IEP as follows:

. . . periodically . . . to determine whether the annual goals for the child are

- (i) being achieved; and
- (ii) revises the IEP as appropriate to address –
 - (I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
 - (II) the results of any reevaluation . . . ;
 - (III) information about the child provided to, or by, the parents . . . ;
 - (IV) the child's anticipated needs; or
 - (V) other matters.

20 U.S.C.A. § 1414(d)(4)(A)(i) & (ii) (Supp. 2014).

Furthermore, while a school system must offer a program which provides educational benefits, the choice of the particular educational methodology employed is left to the school system. *Rowley*, 458 U.S. at 208. “Ultimately, [IDEA] mandates an education for each handicapped child that is responsive to his or her needs, but leaves the substance and the details of that education to state and local school officials.” *Barnett v. Fairfax County*, 927 F.2d 146,

151-152 (4th Cir. 1991), *cert. denied*, 502 U.S. 859 (1991).⁶

In addition to the IDEA's requirement that a disabled child receive some educational benefit, the child must be placed in the LRE to achieve FAPE, meaning that, ordinarily, disabled and non-disabled Students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i) and 300.117 (2015). Yet, placement in the general education environment may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. 34 C.F.R. § 300.114(a)(2)(ii) (2015).

There has always been a statutory preference for educating children with learning disabilities in the LRE with their non-disabled peers. The IDEA provides as follows:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A) (Supp. 2010).

However, this "mainstreaming" requirement is "not an inflexible federal mandate." *Hartmann*, 118 F.3d at 1001. MCPS is obligated to provide the Student with a placement that affords him at least an opportunity to interact with nondisabled peers, if he will receive educational benefit in that placement.

The IDEA does not require a local educational agency to pay for the cost of private education if the agency has made a FAPE available to the child and the parents have nevertheless

⁶ The IDEA is not intended to deprive educators of the right to apply their "professional judgment." *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997).

elected to place the child in a private school. 34 C.F.R. § 300.148(a) (2013). Parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (citing *Burlington* at 373-74). Parents may recover the cost of private education only if they satisfy a two-pronged test: (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parent were appropriate to the child's needs.

The burden of proof in an administrative hearing under IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, in this matter, the Parents have the burden of proving that the Student's IEP'S for the 2014-2015 and 2015-2016 school years, as they pertain to [SCHOOL 1] and proposed placement at [SCHOOL 3] XXXX program, were not reasonably calculated to provide him with an educational benefit.

An IEP is the "primary vehicle" through which a school provides a Student with FAPE. *M.S. ex rel Simchick v. Fairfax County Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009). The IEP "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." *M.M.* 303 F.3d at 527; *see* 20 U.S.C.A. § 1414(d)(1)(A). The IEP should be the result of a collaborative process, usually one or more meetings in which the parents and their representatives, discuss the child's abilities and needs with school staff. When developing the Student's program in this case, the team considered all of the assessments, progress reports and information provided by the Parents and MCPS staff.

Certainly, the critical underpinning of the IDEA is that Students with disabilities must be provided with an individualized program of education commensurate with their abilities to allow

them to make reasonable academic progress. *Rowley*, 458 U.S. at 203. Therefore, “educational benefit” requires that “the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.” *Rowley*, 458 U.S. at 200; *see also MM*, 303 F.3d at 526 (*citing Rowley*, 458 U.S. at 207); *A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004); *Polk*, 853 F.2d at 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). In this case, I find that the goals and objectives of the 2014-2016 IEPs were developed in accordance with the applicable law and regulations.

Analysis

All of the IEP’s for the 2014-2015 and 2015-2016 school years contained statements concerning the Student’s level of functioning, set forth measurable annual achievement goals, described the services to be provided, and established objective criteria for evaluating the Student’s progress. None of the Student’s witnesses, expert or otherwise, testified that any IEP prepared for the Student did not meet these basic standards.

Likewise, there was no evidence presented by the Student to suggest that any IEP prepared was not the result of a collaborative process. The Parents were participants in every IEP, as well as their representatives. There was always sufficient MCPS staff participating for each IEP team meeting.

In this case, the dispute concerns whether the 2014-2016 IEP’s were calculated to assist the Student to make reasonable academic progress, so that sufficient educational benefit might be conferred upon the Student.

I found each witness who testified for the Student and MCPS made an effort to answer questions posed to them truthfully. Each expert provided an opinion based on their experience, education, and training, to include any direct interaction they had with the Student. I did not

sense that any witness was being less than truthful, exaggerating, or evasive. Each made an effort to answer the questions to the best of their ability and provide the truth as they perceived in their recollections.

However, the Student's expert witnesses desired a particular result and used data to justify recommending, in their view, a better way for the Student to obtain educational benefit. By contrast, the MCPS' expert witnesses, who were more involved with the Student's day-to-day educational needs and related services than the family advocate and the retained psychologist, met and collaborated with the Parents and their advocates, to create IEP's for the 2014-2016 school years that would provide the Student with at least, a basic floor of educational opportunity. The MCPS' teachers took into consideration the concerns of the Parents and the recommendations of their advocates, yet, the MCPS' teachers made IEP decisions that, in their professional judgment, were reasonably calculated to enable the Student to receive educational benefit while at [SCHOOL 1].

I considered the expert testimony of the Student's expert witnesses who generally opined that the 2014-2016 IEP's were not designed to close the educational gap which existed between his ability and actual educational performance. However, I am guided by the principle that I should be reluctant to second guess the professional educators (here the [SCHOOL 1] school teachers and IEP team members), who were directly involved with the Student's educational needs.

The fourth circuit guides me further with the following:

We have always been, and we should continue to be, reluctant to second-guess professional educators. As we observed in *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir.1990), "once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals." Indeed, we should not "disturb an IEP simply because we disagree with its content," and we are obliged to "defer to

educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides.” *Id.* (internal citation and quotations omitted).

MM, 303 F.3d at 532. All of the expert witness testimony for the Student in general, offered disagreements or recommended a better way for the Student to achieve educational benefit. Yet, only one, Ms. XXXX opined that the IEP for the 2015-2016 school year was inadequate.

The Parents’ Position

The Parents contend that the Student cannot reasonably be expected to make the necessary educational progress under the 2014-2015 and 2015-2016 IEP’s. The Mother testified that placement in the special education program at [SCHOOL 3] would not be appropriate. She testified that the Student has been consistently behind his non-disabled peers at least two grade levels and the IEP’s have not been sufficient to close the educational gap for any grade level of his matriculation through MCPS and in particular, [SCHOOL 1].

The Parents challenged the IEP’s goals and objectives and the services or accommodations provided within the relevant IEP’s. The Mother at least believed that the particular service accommodations were not helping the Student meet the goals and objectives planned by the IEP teams. According to the Mother, the Student did not make significant gains in independent performance and executive functioning; that he was getting further behind in math and struggled at reading level; that he had difficult interactions with friends; and that he had a difficult time socializing without adult intervention. The Parents believed that the Student needed embedded social skills instruction throughout his day. They wanted to see a curriculum based social skills program that other teachers would be trained in and as situations arise, they would help the Student through the social situation. They were additionally concerned that the Student was not making sufficient progress to meet the goal regarding his OT fine motor skills.

The Mother maintains through her testimony and the testimony of the Student's witnesses, that MCPS has been programming the IEP's essentially with the same content year to year, to the point where Einstein's alleged theory of insanity comes into play.⁷ The Parents maintain and their witnesses agree that the best educational environment for the Student, giving him the best possible opportunity to close the educational gap, is the educational environment provided by [SCHOOL 2]. The evidence presented from the Student's expert witnesses to support the contention is not persuasive to me.

There was no testimony from any expert witness that suggested any of the 2014-2016 IEP's from MCPS failed to provide sufficient educational benefit for the Student. The Mother and Ms. XXXX are of the opinion that the Student's low performance from standardized testing and the fact he remains two grade levels below his non-disabled peers, suggests that there should be a better way to provide him educational benefit. That better way, they believe, is the educational services provided by [SCHOOL 2]. In their opinion, [SCHOOL 2] provides a better educational benefit because the Student is segregated in learning environment from his non-disabled peers.

Most of the testimony requires me to infer, after reviewing the various reports and testing data, (report of Dr. XXXX, reports of Ms. XXXX, the Student's quarterly grade reports, results of the standardized tests given to him during the 2014-2016 school years), that the MCPS IEP's were not reasonably calculated to enable educational benefit, by accepting the educational deficiencies of the Student and determining that the reason for the deficiencies are due to poor IEP planning.

Dr. XXXX testified that she observed the Student in class at [SCHOOL 1] on February

⁷ Albert Einstein is attributed with the following: "Insanity is doing the same thing over and over again and expecting different results." <http://www.caridad.com/2011/03/29/einsteins-theory-of-insanity/>. (last visited June 3, 2016.)

24, 2014 for approximately two hours. She prepared a report of her observations for that day. The [SCHOOL 1] IEP team was presented with the report during the Student's fourth grade year.

Dr. XXXX further testified and opined that it was not very realistic to expect the Student to become a grade level Student. According to her, the Student was capable of making progress in his language, math and social skills. It would be harder, she opined, for the Student to make progress in reading comprehension and math that requires the Student to use his working memory.

Within her report concerning her class observation of February 24, 2014 and evaluations on February 26 and 28, 2014, she states that the Student has a history of developmental delays and atypicalities, with previous diagnoses of PDD-NOS,⁸ ADHD⁹ and Specific Learning Disability.¹⁰ (Stu. Ex. 20-1.) Dr. XXXX agreed that the Student's ability to understand, in general, is different from his non-disabled peers, because of his autism, plus the additional learning disabilities, such as ADHD.

She noted the Parents concerns about the Student's lack of progress, especially in reading and writing, and that the Parents sought her evaluation in order to ensure he receives the kind of instruction and individual assistance the Student needs in order to make appropriate progress. *Id.* Dr. XXXX concluded, in summary, the following:

Overall, given his consistent and high levels [of] cooperation and motivation, the results - though not an absolute measure of his potential - should be considered a

⁸ PDD-NOS stands for Pervasive Developmental Disorder-Not Otherwise Specified. PDD-NOS was one of several previously separate subtypes of autism that were folded into the single diagnosis of autism spectrum disorder (ASD) with the publication of the DSM-5 diagnostic manual in 2013. <https://www.autismspeaks.org/what-autism/pdd-nos>. (last visited June 3, 2016)

⁹ ADHD is a chronic condition marked by persistent inattention, hyperactivity, and sometimes impulsivity. <http://www.webmd.com/add-adhd/childhood-adhd/understanding-adhd-basics>. (last visited June 3, 2016.)

¹⁰ In general, the term specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. 20 U.S.C.A. § 1401 (30)(A) (West, 2010).

realistic reflection of his current functioning. Because of [the Student's] atypical and delayed language processing, both receptively and expressively, the verbal-cognitive scores under-estimate his cognitive potential, but correctly show his language processing and communication problems.

(Stu. Ex. 20-6.)

Dr. XXXX administered to the Student the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) test, which she states is an “intellectual battery comprised of many different subtests.” It assesses a wide range of skills relating to language development, visual-spatial and perceptual abilities, abstract reasoning and problem solving, working memory and visual-motor processing speed. (Stu. Ex. 20-6.) According to Dr. XXXX, the test does not measure other types of intelligence such as musical, artistic, creative or interpersonal abilities. She reports that factors, such as attention, motivation and shyness can affect performance, so efforts are made to maximize the comfort level and motivation of the Student.

Dr. XXXX reports the verbal and visual indexes on the WISC-IV, listed as standard scores in comparison with the Student's age group. The strict average was 100 with a standard deviation of 15. The Student scored, as follows:

Scale	Composite	Percentile Rank	Range
Verbal intellectual (VCI)	75	5	Borderline
Visual Intellectual (PRI)	84	14	Low Average

(Stu. Ex. 20-6, pg. 7.)

She reported that the Student's visually-based/nonverbal intellectual performance was in the Low Average range and his verbally based intellectual performance was in the Borderline range. More of Dr. XXXX's testing of the Student resulted in extremely low scores in the Verbal Comprehension Index. He obtained a borderline score on the Vocabulary subtest. He obtained a

low average score on the Comprehension subtest. He scored in the low average range on the Block Design subtest. He achieved an average score on the Picture Concepts subtest. Within her report, she opined that it “was very significant and informative for [the Student’s] educational planning, that [he] did so much better on [the] visually based test than on the purely Verbal Similarities test, which required him to formulate responses with words.” (Stu. Ex. 20-9.)

She continues to report that the Student performed in the low average range on the Matrix Reasoning subtest. He performed in the extremely low range on the Digit Span subtest. He was slow to complete the coding subtest and the symbol search subtest. Dr. XXXX opined the following:

This helps us understand one of the reasons homework can be such as (sic) long and arduous process for him, and also why it may take him a long time to complete work at school. Using pencil and paper to produce will likely be an inefficient way for him to learn, so other forms will need to be integrated.

(Stu. Ex. 20-6, pg. 9.)

Dr. XXXX assessed the Student’s academic skills using the Wechsler Individual Achievement Test-Third Edition (WIAT-III)¹¹ and Qualitative Reading Inventory-Fourth Edition (QRI-4)¹² tests. According to Dr. XXXX, the Student’s sight word reading, decoding, and reading comprehension were all very significantly below age and grade and hovering between 2nd and 4th percentile for the winter of fourth grade. He showed difficulties with basic decoding skills and word reading for out of context words. Because of his reading level, Dr. XXXX was only able to administer the second grade selections from the WIAT-III. She reported that the Student’s pattern of word reading, decoding and passage reading resembled that of children who

¹¹ The WIAT-III is an individually administered measure of oral language, reading, written language, and mathematics. <http://www.pearsonclinical.com/psychology/products/100000463/wechsler-individual-achievement-testthird-edition-wiatiii-wiat-iii.html>. (last visited June 3, 2016.)

¹² Informal assessment instrument for reading. <https://www.pearsonhighered.com/product/Leslie-Qualitative-Reading-Inventory-4-4th-Edition/9780205443277.html>. (last visited June 3, 2016.)

learn to recognize sight words without developing first the decoding skills. She reported that the Student's reading comprehension was affected by language processing difficulties as well as basic reading problems. She further reported that when the Student read aloud, "he was able to reach Instructional at the second Grade level, but only with much repetition/rephrasing of questions, to allow him the opportunity to process the question and align his own thinking with the point of the question." (Stu. Ex. 20-11.)

Dr. XXXX further reported that the Student's numerical operations (using pencil and paper for math calculations), was significantly below grade level, at the 6th percentile for the winter of fourth grade. He was able to add and subtract one digit numbers and multiply one digit numbers. He was not able to add multi-digit numbers and did not "borrow" when subtracting multi-digit numbers. (Stu. Ex. 20-12.)

Dr. XXXX's report continued to reflect the many deficiencies the Student exhibited during the various testing exercises. She reported that the Student's math and writing skills were several years below grade level. (Stu. Ex. 20-15). She reported that the Student "shows a very significant reading disability, with regard to basic decoding and word reading." She opined that the disability would need to be "addressed through an evidence-based reading program. (*Id.*)

Dr. XXXX's report contained seventeen recommendations, which opined what the Student needed regarding specialized instruction and from whom. (Stu. Exs. 20-15 to 20-18.) He scored very low on the WIAT-III test. The grade equivalent that he achieved was no higher than second grade. (Stu. Exs. 20-19 to 20-21.)

Dr. XXXX's report and testimony certainly identified the Student's educational deficiencies and illustrated the problem with closing the educational gap. However, Dr. XXXX did not review the relevant IEP's to compare the planning of those IEP's with her

seventeen recommendations. She did not opine that her recommendations, if implemented as an IEP, would bring the Student closer to closing the educational gap.

However, according to Ms. XXXX XXXX, in some way or another, the IEP team for the fourth grade IEP had already implemented Dr. XXXX's recommendations or executed some part of her recommendations. (Tr., Vol. 10, pg. 2273.) The only recommendation the MCPS IEP team for the fourth grade did not implement, according to Ms. XXXX XXXX, was Dr. XXXX's recommendation numbered fifteen, suggesting that educational television shows be incorporated into math studies. *Id.*

Dr. XXXX offered a plan to provide a better educational benefit for the Student, but she did not opine that the MCPS IEP's for the 2014-2016 school years were not reasonably calculated to provide educational benefit.

Dr. XXXX did not recommend that the Student be segregated from his non-disabled peers. She did not have the opinion that he needed a nonpublic special education school in order to make educational progress.

Ms. XXXX is the Director of Advocacy for XXXX, of which she has a seven percent ownership interest. XXXX offers families educational assessments and student advocacy services. It helps parents of special education students navigate through the special education system.

Ms. XXXX became involved with the Student in 2011, when the Parents retained the services of XXXX because they determined the Student was not making progress at [SCHOOL 1]. She attended her first IEP meeting at [SCHOOL 1] on March 6, 2012. (Tr., Vol. 7, pg. 1618.)

Ms. XXXX was the strongest advocate for asserting the IEP's developed for the 2015-2016 split school years were not appropriate for the Student's educational benefit. (Tr. Vol. 7, pg. 1475.) She testified that she preferred that the Student's instruction be within small groups in all educational settings. The IEP team disagreed with her, believing such was not necessary to meet the goals and objectives. Ms. XXXX had the view that the Student had been receiving the same IEP program for at least three years with minimal progress, therefore the current program was not sufficient to compensate for the Student's autism, learning disability and ADHD.

During her testimony, Ms. XXXX disagreed with the data created by MCPS concerning the Student and its use for the 2015-2016 IEP. She disagrees with the educational program he matriculated through the fifth grade at [SCHOOL 1].

Within a report dated December 1, 2011, Ms. XXXX detailed her observation with the Student at [SCHOOL 1] during the period from 9:00 a.m. to 10:00 a.m., when the Student was in the second grade. (Stu. Ex. 6.) She made notes of his activities in one-minute increments. Everything that the Student did in class, for every minute, for a total of sixty minutes, Ms. XXXX reported. At the end of her report, she identified the Student's strengths, her concerns, and her recommendations. The recommendations were written in the context of what the Student should receive, what he should use, and what he needs. (Stu. Exs. 6-6 to 6-7.)

Ms. XXXX prepared written comments to the draft IEP dated April 20, 2014. (Stu. Ex. 22.) The May 20, 2014 IEP and the team meeting, at which she was present, incorporated much of the April 20, 2014 draft. The team incorporated some of Ms. XXXX's recommendations. At no time did Ms. XXXX object to the May 20, 2014 IEP and suggest that it was not designed to provide educational benefit for the Student.

Ms. XXXX testified that in her opinion, the Student was not receiving educational benefit because he was in an educational environment at [SCHOOL 1] with non-disabled children. She opined that he would have a better opportunity of closing the educational gap if he were placed in a restricted setting such as [SCHOOL 2]. However, she does not say how the segregation of the Student from his non-disabled peers will benefit him educationally and help close the educational gap. Regarding the May 18, 2015 IEP, she testified to the following (A = Ms. XXXX):

Q. Okay. Right. And did you have an opinion before this IEP meeting, before the May 18th, IEP meeting as to, first of all, the kind of IEP, not placement, but the IEP that [Student] should have?

A. Yes, I did.

Q. And in terms of service hours, what was your opinion walking into that IEP meeting?

A. I felt like he needed a self-contained setting for across all areas.

Q. Okay. Now this was before, I mean we, we've, we've gone with you through all these years that you've been observing and consulting and all that.

A. Right.

Q. But this is before you heard from the IEP, the staff at the meeting, right?

A. Right.

Q. Why do you think self-contained by the end of 5th grade?

A. Because what –

JUDGE: And while you're speaking on that, just to make sure I understand what you're talking about

MR. EIG: Sure.

JUDGE: -- define for me what you mean when you say self-contained.

MR. EIG: Thank you, Judge.

A. Thank you. A small class environment with only special education Students. I felt like he need -- because what was currently being given and what had been given since 2nd grade was not working and that was a split, self-contained and inclusion setting, and he was making minimal progress and it was more important for him to make more significant progress in the areas of reading, writing and math and social skills than it was for him to be with neurotypical peers.

(Tr., Vol. 6, p. 1452.)

Ms. XXXX opined that the Student should be in a small class environment with only special education students. Her opinion was based on her view that the IEP's since the second grade were not working. In her opinion, the split self-contained and inclusion setting was only allowing minimal educational progress. She opined that it was more important for him to have an opportunity to make more significant progress in the areas of reading, writing, math and social skills, than being taught with non-disabled children. In her view, inclusion was not working for his educational benefit, so segregation from his non-disable peers in all instruction should be tried.

According to Ms. XXXX, the Student, currently in the sixth grade, was running out of time before a planned high school graduation after twelfth grade. It was her view that segregating him from non-disabled peers would slow the educational gap from widening further. In her view, it should be closing toward the point that he would achieve grade level status by twelfth grade graduation. (Tr., Vol. 6, pg. 1455.) She did not believe that the Student should be in a LRE because according to her, he could not afford to lose any more time. She opined that he needed an intensive academic and social support intervention that she thought he could only receive at a private special education school. (Tr., Vol. 7, pg. 1547.)

Although she did not doubt that all of the MCPS teachers were highly professional and there was no intention to expose the Student to educational failure, she had disagreements with the data used by the MCPS teachers and IEP team members in their preparation of the [SCHOOL 1] IEP programs. (Tr., Vol. 7, pg. 1577.)

The MCPS teachers have been working with the Student at [SCHOOL 1] every day of each school year. Ms. XXXX has been "associated" with the Student since 2011; however, she

has not spent every one of her working days with him since 2011. It is clear, just by examining the time spent, that the teachers at [SCHOOL 1] have a better grasp of the Student's educational needs and requirements than Ms. XXXX. She has spent significantly less time with the Student in comparison to the MCPS teachers.

MCPS Position

MCPS contends that the IEP team correctly determined that the 2014-2016 IEP's were designed to provide the Student with a FAPE in the LRE for the special education program at [SCHOOL 1]. In addition, the IEP prepared at the end of the 2015 school year provided the Student FAPE for his proposed matriculation into [SCHOOL 3]. The Student would have been provided an educational setting partially within self-contained special education small resource classes, while still being exposed in general education classes with his non-disabled peers, satisfying the LRE requirement. It contends that the 2015 IEP was reasonably calculated for the Student to achieve meaningful educational benefit.

Further, MCPS maintains that [SCHOOL 3] is well-equipped and well-staffed to meet the Student's educational and related service needs in the LRE. To that end, it acknowledges that the Student has made some progress related to social skills while at [SCHOOL 2], since August 2015. However, it argues that the Student has not performed any better academically at [SCHOOL 2] than he did at [SCHOOL 1]. Accordingly, MCPS asserts that the Parents have failed to prove that the Student needs small self-contained special education classes to derive meaningful academic benefit.

The MCPS also asserts that [SCHOOL 2] is an inappropriate placement for the Student because it provides no greater academic programming and, as a small exclusively self-contained special education school, it violates the mandate that children receive their education in the LRE.

Therefore, the Parents may not recover from MCPS the cost of the private tuition to [SCHOOL 2].

In the event that I find that the IEP's and placement recommendations for the 2014-2016 school years were inappropriate for the Student, MCPS also contends that the Parents have not proven that [SCHOOL 2] is providing services and accommodations that give him any greater opportunity for meaningful educational benefit than [SCHOOL 3], and therefore, [SCHOOL 2] is an inappropriate placement for the Student as it is not the LRE.

Ms. XXXX was the Student's second and fifth grade teacher at [SCHOOL 1]. She was also a member of more than one IEP team. She was aware that the Student's cognitive ability was extremely low, which was consistent with his classroom performance. She was of the opinion that the Student's May 2015 IEP was appropriate to meet his educational needs.

Ms. XXXX XXXX was the Student's fourth grade teacher at [SCHOOL 1]. She, along with Ms. XXXX would teach the Student in reading intervention on a daily basis. She explained the purpose of the goals and objectives within an IEP. Objectives, she testified, relate to the process of achieving goals. Each objective is broken down into smaller pieces. According to Ms. XXXX, in order to achieve the IEP goal, the IEP objectives have to be met. In her view, although the Student did not achieve all of the stated goals within the IEP's, he was making sufficient progress toward them. According to her, it was not realistic, given his autism, to expect the Student to read at grade level. The autism does affect his ability to make progress toward closing the educational gap with his non-disabled peers.

Nevertheless, according to Ms. XXXX, the Student was able to work with his non-disabled peers in specials, science and social studies. He benefitted from those interactions in her opinion. She testified that the Student would model the behavior of his non-disabled peers,

thus learning social skills. Ms. XXXX was of the opinion that the Student made meaningful educational progress on all of his goals and objectives during his fourth grade year.

Ms. XXXX is the School Psychologist for MCPS. She became involved in the Student's educational planning during his fourth grade year at [SCHOOL 1]. According to Ms. XXXX, autism and the Student's cognitive ability affects his reading scores. She testified that students with the autism spectrum struggle with attention; in addition, communication and motor skills are impacted due to the autism spectrum disorder.

Ms. XXXX had the opinion that it is an unreasonable expectation for the Student to achieve grade level reading. According to her, the Student is doing his absolute best

Ms. XXXX testified that the Student's ability to close the educational gap is impacted by a number of factors, to include attention, motor skills, and social skills deficits. Her opinion was that the Student would always be behind his mainstream peers in grade level reading. Despite the educational short comings, she testified that the Student did well when he was mainstreamed with non-disabled peers. He benefited from the level of interaction with his peer group.

Ms. XXXX is an Itinerant Resource Services Teacher for MCPS, Department of Special Education. She has been with MCPS for eighteen years. She provides support to the elementary Learning Centers which provide services to Students with many different disability codes and who require smaller, self-contained programming. She assisted the drafting of the Student's 2014-2015 IEP. According to her, the Student was making progress on all of his goals, although not having been achieved. In her opinion, the Student's WJ-III scores were commensurate with his cognitive expectancies.

MCPS contends that the IEP team correctly recommended an appropriate placement for the 2015-2016 school years, that being the [SCHOOL 3]-XXXX program. It argues that the

[SCHOOL 3] XXXX program would have provided the Student FAPE partially in self-contained special education small resource classes while still being exposed to general education classes with non-disabled peers, satisfying the LRE requirement. It contends that the IEP was reasonably calculated for the Student to achieve meaningful educational benefit.

MCPS maintains that [SCHOOL 3]-XXXX is equipped and staffed to meet the Student's educational and related service needs in the LRE. To that end, although it acknowledges that the Student made some progress related to social skills at [SCHOOL 2], MCPS contends that the Student has not performed any better, academically, than he did at [SCHOOL 1]. Accordingly, MCPS asserts that the Parents have failed to prove that the Student needs small self-contained special education classes to derive meaningful academic benefit.

MCPS also asserts that [SCHOOL 2] is an inappropriate placement for the Student because it provides no greater academic programming and, as a small exclusively self-contained special education school, it violates the mandate that children receive their education in the LRE.

The Parents are seeking tuition reimbursement for the Student's placement at [SCHOOL 2] for the 2015-2016 school year of which he is currently enrolled and placement there for the remainder of the school year. They have the burden of proof. I am not satisfied that they have met their burden. The Student's witnesses have failed to convince me that the IEP's for the 2014-2016 school years were not designed to provide the Student with FAPE. The evidence shows that the Student derived some educational benefit that was significantly more than trivial, while he was at [SCHOOL 1].

The evidence also shows that MCPS professional teaching staff committed to provide the Student with an appropriate education. Nothing within the many exhibits and exhaustive testimony proves that MCPS failed to provide FAPE. The relevant IEP's, for the 2014-2016

school years were reasonably calculated to provide the Student with an educational benefit. The evidence presented does not persuade me that it is necessary to restrict the Student's learning environment and segregate him from his non-disabled peers. He is deriving benefit as he was making sufficient progress toward his goals. His autism, the evidence shows, will somewhat hinder his ability to close the educational gap, yet, there has been some educational progress, not enough to satisfy most loving parents, yet there was sufficient progress tending to provide the Student with a basic floor of opportunity toward his educational advancement.

I found there was no dispute concerning whether MCPS was complying with the procedural requirements of the IDEA. The Student's expert witness opinions that the progress could be better if he is placed in a restricted setting do not convince me that there was a failure of FAPE. The IDEA does not require absolute, educational perfection. Disagreements concerning the IEP substance are not enough for me to second guess the MCPS professionals. I find that the IEP's for the 2014-2016 school years provided the Student the basic floor of opportunity that access to special education and related services provide.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the 2014-2016 Individualized Education Programs were appropriate and reasonably calculated to meet the Student's unique needs; and will enable the Student to receive educational benefit in the least restrictive environment. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Doe v. Bd. of Educ. of Tullahoma City Sch.*, 9 F.3d 455 (6th Cir. 1993). I further find that the Student's Individualized Educational Program teams for the 2015-2016 school years fully considered the educational placement recommendation in its determination that [School 3]'s XXXX constituted the least restrictive environment and an

appropriate placement for the Student. 34 C.F.R. § 300.116.

Finally, I conclude that the Parents are not entitled to reimbursement for the cost of the Student's private school tuition at [School 2] because the IEP's developed by MCPS for the 2015-2016 school year was designed to provide the Student with a FAPE in the least restrictive environment. 34 C.F.R. § 300.148(a).

ORDER

I **ORDER** that the Due Process Complaint filed by the Parents on December 14, 2015 is **DISMISSED**.

June 9, 2016
Date Decision Mailed

John T. Henderson, Jr.
Administrative Law Judge

JTH/ej

REVIEW RIGHTS

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or to the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (2014). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence. 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

