

██████████,

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE ERIN H. CANSIENNE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-23-16365

DECISION

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STATEMENT OF THE CASE

On June 20, 2023,¹ ██████████ (Parent), on behalf of her child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);² 34 C.F.R. § 300.511(a) (2021);³ Md. Code Ann., Educ. § 8-413(d)(1) (2022);⁴ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

¹ The Parent sent the Complaint via fax on June 19, 2023, a state holiday, and the OAH did not receive it until the next business day, June 20, 2023.

² "U.S.C.A." is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

³ "C.F.R." is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2021 bound volume.

⁴ Unless otherwise noted, all citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

I held a remote prehearing conference on July 13, 2023. The Parent was represented by Holly L. Parker, Esquire. Pamela Foresman, Esquire, represented the BCPS.

I held the hearing on August 11, 18, 23, 28, and 30, 2023. Holly L. Parker, Esquire, represented the Parent. Allyson Huey, Esquire, represented the BCPS.

Under the applicable law, a decision in this case normally would be due by August 28, 2023, forty-five days after July 13, 2023, the day when the parties concluded mediation and reported that no agreement could be reached. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, the parties requested hearing dates through August 30, 2023. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

In this case, the parties reviewed the available dates for the hearing. BCPS requested time to file a dispositive motion and asked for two weeks to prepare that motion, which gave a filing date of July 28, 2023. The Parent requested one week to respond to BCPS's motion, which gave a filing date of August 4, 2023. I expedited my ruling on the motion, and agreed to issue it within one week of the Parent's response, August 11, 2023.⁵ The parties indicated that they needed four full hearing days to conclude this case. I suggested scheduling one additional day in the event there are any delays or problems during the hearing.

I was unavailable for a hearing on August 15, 16, and 22, 2023 due to previously scheduled hearings. BCPS was unavailable for a hearing on August 14, 17, 21, 24, 25 and 29, 2023 due to other special education hearings, mediations, and witness unavailability. The first dates that all parties were available were August 11, 18, 23, 28 and 30, 2023. After reviewing the calendar closely, considering the amount of time the parties needed to adequately present their case, and considering the time needed to file, respond to and rule on a dispositive motion,

⁵ The Ruling on Motion was issued August 9, 2023, and denied the BCPS' motion.

the parties jointly requested that I extend the deadline in this case and issue my decision within thirty days of the close of the hearing.

For the reasons discussed above, I granted the parties' request to extend the time frame, and therefore, the decision is due by Friday, September 29, 2023, as the hearing finished on August 30, 2023, as scheduled.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

Did the BCPS fail to provide the Student with a Free Appropriate Public Education (FAPE) from June 2021 through the present by:

- a) Failing to properly consider private evaluations provided to BCPS by the Parent;
- b) Failing to offer the Student appropriate compensatory education services as a remedy for failure to provide individualized education program (IEP) services or other special education and related services;
- c) Failing to include the parent in IEP discussions as equal members of the IEP team;
- d) Failing to properly document all disagreements with placement determination; and
- e) Failing to provide an IEP that is appropriately ambitious in light of the Student's circumstances?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parent:⁶

- Parent Ex. 5 – Letter from Holly L. Parker to Pamela Foresman, August 24, 2022
- Parent Ex. 7 – Speech Language and Communication Evaluation, April 18, 2022
- Parent Ex. 9 – Letter from [REDACTED], Principal of [REDACTED] Middle School to the Parent, September 7, 2021
- Parent Ex. 14 – Only pages 37 – 55 [REDACTED], Level A and B, [REDACTED] (2015) with notes
- Parent Ex. A – Curriculum Vitae of [REDACTED]

I admitted the following exhibits on behalf of BCPS:

- BCPS # 1 - Email dated October 31, 2021 with attachments:
 - October 31, 2021 letter from [REDACTED], IEP Chairperson
 - BCPS Compensatory Education/Recovery Services Prior Written Notice dated September 10, 2021
 - Parental Rights Maryland Procedural Safeguards Notice, Revised July 2021
- BCPS # 2 - Email dated November 15, 2021 with attachment:
 - Parent Notification of IEP Team Meeting dated November 15, 2021
- BCPS # 3 - Email dated November 19, 2021 with attachment:
 - Individualized Education Program (IEP), IV. Goal dated March 22, 2021
- BCPS # 4 - Parent Notification of IEP Team Meeting dated March 1, 2021
- BCPS # 5 - Notice of Documents dated March 2, 2021
- BCPS # 6 - IEP Team Summary, mailed April 7, 2021
- BCPS # 7 - IEP dated March 22, 2021
- BCPS # 8 - Extended School Year Request 2020-2021 dated March 22, 2021
- BCPS # 9 - IEP Team Summary, mailed April 14, 2021

⁶ The Parent had premarked her exhibits prior to the hearing, but determined several exhibits were duplicates of the exhibits being offered by the BCPS. She only offered exhibits 5, 7, 9, 14 (only pages 37-55) and A. The other premarked exhibits were submitted in a binder and will be maintained with the file, but I did not review or consider them in writing this decision.

- BCPS# 10 - Email dated January 13, 2022 with attachment:
- Parent Notification of IEP Team Meeting dated January 13, 2022
- BCPS # 11 - Parent Notification of IEP Team Meeting dated January 13, 2022
- BCPS # 12 - IEP Team Summary dated February 1, 2022
- BCPS # 13 - Private Educational Assessment Report dated February 23, 2022
- BCPS # 14 - Test of Nonverbal Intelligence, Fourth Edition (TONI-4) dated February 23, 2022
- BCPS # 15 - Email dated March 10, 2022, with attachment:
- Parent Notification of IEP Team Meeting
- BCPS # 16 - Email dated March 11, 2022, with attachments:
- Notice of Documents dated March 11, 2022
 - IEP dated March 18, 2022
 - “Alternative Appendix A” Participation Criteria and Checklist
 - Parent’s Guide to Habilitative Services, 2015
- BCPS # 17 - Parent Notification of IEP Team Meeting Notice of Documents dated March 11, 2022
- BCPS # 18 - Notice of Documents dated March 11, 2022
- BCPS # 19 - [REDACTED] Speech Language and Communication Assessment Report dated April 18, 2022
- BCPS # 20 - Parent Permission for Assessment (May 1, 2022)
- BCPS # 21 - Report Card for the 2021-2022 School Year
- BCPS #22 - Email dated April 4, 2022 with attachment:
- Mutual Written Agreement for Requested Team Delay
- BCPS # 23 - Email dated March 22, 2022
- BCPS # 24 - MCAP Student Report & Dynamic Performance Profile 2021-2022
- BCPS # 25 - Special Education Mediation Agreement dated August 5, 2022
- BCPS #26 - Email dated August 5, 2022 with attachments:
- Signed Parent Permission for Assessment dated August 5, 2022
 - Parent Notification of IEP Team Meeting dated August 5, 2022
- BCPS # 27 - Parent Notification of IEP Team Meeting dated August 25, 2022

- BCPS # 28 - IEP Team Summary and email dated August 25, 2022
- BCPS # 29 - Email dated September 8, 2022
- BCPS # 30 - Email dated September 19, 2022, with attachment
 • Parent Notification of IEP Team Meeting dated September 19, 2022
- BCPS # 31 - Parent Notification of IEP Team Meeting dated September 19, 2022
- BCPS # 32 - Notice of Documents dated September 27, 2022
- BCPS # 33 - Certificate Program Student Interest Sheet dated September 16, 2022
- BCPS # 34 - School-Based Occupational Therapy Assessment Report dated September 18, 2022
- BCPS # 35 - School-Based Psychological Assessment Report dated September 26, 2022
- BCPS # 36 - IEP Team Summary dated October 4, 2022
- BCPS # 37 - Eligibility Determination dated October 4, 2022
- BCPS # 38 - Email dated September 19, 2022, with attachment
 • IEP Team Summary mailed September 8, 2022
- BCPS # 39 - Email dated October 4, 2022, with attachments:
 • Referral for Psychological Assessment dated August 25, 2022
 • Notice of Documents dated September 27, 2022
 • Email dated October 4, 2022 with Kaufman Test of Educational Achievement
- BCPS # 40 - Email dated October 18, 2022, with attachments:
 • IEP Team Summary dated October 4, 2022
 • Assessment Review
 • Documentation of Disagreement
 • Eligibility Determination dated October 4, 2022
 • Parents' Guide to Habilitative Services 2015
- BCPS # 41 - Email dated October 28, 2022, with attachment:
 • Parent Notification of IEP Team Meeting dated October 28, 2022
- BCPS # 42 - Parent Notification of IEP Team Meeting dated October 28, 2022
- BCPS # 43 - Email dated October 31, 2022, with attachments
 • Notice of Documents dated October 31, 2022
 • Draft IEP dated November 9, 2022
- BCPS # 44 - Notice of Documents dated October 31, 2022

- BCPS # 45 - Parent Permission for Assessment dated November 2, 2022
- BCPS # 46 - Alternate Appendix A: Participation Criteria and Checklist dated November 9, 2022
- BCPS # 47 - IEP dated December 19, 2022
- BCPS # 48 - Email dated November 23, 2022, with attachment:
 - Letter dated November 23, 2022, re: Compensatory Services
- BCPS # 49 - Correspondence to Parents from [REDACTED] Middle School IEP Chairperson dated November 23, 2022 re: Compensatory Services
- BCPS # 50 - Transition Process Agency Linkage
- BCPS # 51 - Email dated December 5, 2022, with attachment:
 - Parent Notification of IEP Team Meeting dated December 5, 2022
- BCPS # 52 - Email dated December 15, 2022, with attachments:
 - Draft IEP dated November 9, 2022
 - Alternative Appendix A: Participation Criteria and Checklist dated November 9, 2022
- BCPS # 53 - Parent Notification of IEP Team Meeting, December 5, 2022
- BCPS # 54 - Prior Written Notice (PWN) dated December 19, 2022
- BCPS # 55 - Extended School Year Request 2022-2023 dated December 19, 2022
- BCPS # 56 - Parent Notification of IEP Team Meeting dated December 29, 2022
- BCPS # 57 - Email dated December 29, 2022 with attachments:
 - Parent Notification of IEP Team Meeting, December 29, 2022
 - Draft IEP dated December 19, 2022
- BCPS # 58 - Email dated January 8, 2023 with attachment:
 - Parent Notification of IEP Team Meeting dated January 8, 2023
- BCPS # 59 - Prior Written Notice (PWN) dated January 3, 2023
- BCPS # 60 - PWN dated January 18, 2023
- BCPS # 61 - Email dated January 13, 2023, with attachments:
 - Draft IEP Goals dated December 19, 2022
- BCPS # 62 - PWN dated January 18, 2023
- BCPS # 63 - Parental Consent Form dated January 18, 2023

- BCPS # 64 - Email dated January 26, 2023, with attachments:
- IEP III. Special Consideration and Accommodations, IV, Goals
 - Parent Notification of IEP Team Meeting dated May 11, 2023
- BCPS # 65 - Email dated April 11, 2023, with attachment:
- IEP, IV. Goals dated January 18, 2023
- BCPS # 66 - Email dated April 25, 2023, with attachments:
- PWNs dated December 19, 2022, January 3 and 18, 2023
 - IEP dated January 18, 2023
- BCPS # 67 - Email dated May 11, 2023
- BCPS # 68 - Parent Notification of IEP Team Meeting dated May 11, 2023
- BCPS # 69 - Email dated May 30, 2023, with attachment:
- Draft IEP dated June 6, 2023
- BCPS # 70 - Notice of Documents dated May 30, 2023
- BCPS # 71 - Correspondence to Parents from Department of Special Education dated May 11, 2023
- BCPS # 72 - Email dated June 13, 2023, with attachments:
- Email dated June 26, 2023, re: compensatory hours
- BCPS # 73 - PWN dated June 6, 2023
- BCPS # 74 - IEP dated June 6, 2023
- BCPS # 75 - Parent Notification of IEP Team Meeting dated June 16, 2023
- BCPS # 76 - Parent Notification of IEP Team Meeting, June 26, 2023
- BCPS # 77 - Email dated July 3, 2023, with attachment:
- Parent Notification of IEP Team Meeting dated July 3, 2023
- BCPS # 78 - Email dated July 7, 2023, with attachments:
- Draft IEP dated June 6, 2023
- BCPS # 79 - PWN dated July 14, 2023
- BCPS # 80 - Report Card for the 2022-2023 School Year
- BCPS # 81 - IEP dated June 6, 2023
- BCPS # 82 - Emails dated July 17 and 28, 2023 and August 3, 2023

- BCPS # 83a - Resume [REDACTED]
- BCPS # 83b - Resume [REDACTED]
- BCPS# 83c - Resume [REDACTED]
- BCPS # 83d - Resume [REDACTED]
- BCPS # 84 - Parent Notification of Community-Based Instruction Trips

Testimony

The Parent testified and presented the following witnesses:

- [REDACTED], Psy.D., accepted as an expert in psychology with the emphasis on the needs of special education;
- [REDACTED], IEP chair at [REDACTED] High School ([REDACTED] HS);
- [REDACTED], Special Education Department Chair at [REDACTED] HS; and
- The Student.

The BCPS presented the following witnesses:

- [REDACTED], Special Education Department Chair at [REDACTED] HS, accepted as an expert in Special Education⁷;
- [REDACTED],⁸ Special Education Self-Contained [REDACTED] teacher at [REDACTED] Middle School ([REDACTED] MS), accepted as an expert in Special Education;
- [REDACTED], school psychologist, at [REDACTED] MS⁹ accepted as an expert in school psychology;

⁷ Ms. [REDACTED] was called as a witness by both parties, but only offered as an expert for the BCPS. To maintain judicial efficiency, she was only on the stand for a single day, and both parties were allowed direct, cross, and redirect examinations at that time.

⁸ Ms. [REDACTED] is the witness' married name. Some of the exhibits contain Ms. [REDACTED]'s birth name, [REDACTED]. Throughout this decision, I will use Ms. [REDACTED]'s current name, regardless of the name used in any exhibit being referenced.

⁹ Ms. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] all provide services to more than one school in the BCPS system. However, in this case, their relevant work is at [REDACTED] MS.

- [REDACTED], occupational therapist at [REDACTED] MS; and
 - [REDACTED], M.A., CCC-SLP, Speech-Language Pathologist at [REDACTED]
- accepted as an expert in Speech-Language Pathology.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Student was first enrolled in the BCPS system for an infants and toddlers program and he has remained enrolled in programs through the BCPS through the 2022-2023 school year.¹⁰ Testimony of Parent.

2. The Student attended [REDACTED] MS in the [REDACTED] ([REDACTED]) program during the 2019-2020, 2020-2021, 2021-2022, and 2022-2023 school years.¹¹ Testimony of Parent, [REDACTED], and [REDACTED].

3. In March 2020, [REDACTED] MS closed to in-person learning due to the COVID-19 pandemic. Testimony of Parent.

4. The Student did not return to the school for any in-person instruction or services until late March 2021, when instruction shifted to a hybrid of in-person and virtual instruction and learning. Testimony of Parent and [REDACTED].

5. The IEP team approved an IEP for the Student on March 22, 2021 (2021 IEP). BCPS Ex. 7.

6. In the 2021 IEP, the IEP team determined that Assistive Technology (AT) devices and services were not required. BCPS Ex. 7.

¹⁰ At the time of Ms. [REDACTED]'s testimony in the prima facie case (August 18, 2023), the 2023-2024 school year had not yet started. The first day of school for the BCPS was August 28, 2023. While Ms [REDACTED] testified in rebuttal on August 30, 2023, she did not provide any information regarding whether the Student had started at [REDACTED] HS for the 2023-2024 school year. Ms. [REDACTED] testified that the Student was registered for [REDACTED] HS as of August 23, 2023, but the school year had not yet started for students.

¹¹ The Student repeated the seventh grade, which is why he attended the middle school for four years.

7. The 2021 IEP contained goals in the following areas: communication, community, reading comprehension, written language, mathematics, fine motor, and adapted PE.¹² BCPS Ex. 7.

8. The 2021 IEP included related services of transportation, occupational therapy (one session for thirty minutes weekly), and speech-language pathology services (one session for thirty minutes weekly). BCPS Ex. 7.

9. The 2021 IEP team concluded the least restrictive placement for the student was inside of general education less than forty percent of the day. BCPS Ex. 7.

10. On April 14, 2021, the IEP team met to conduct the annual review, discuss the need for Extended School Year (ESY) services, and develop a transition plan. BCPS Ex. 9.

11. The IEP team recommended Extended School Year (ESY) services for the summer of 2021. This included classroom instruction for thirteen hours, occupational therapy (two sessions for thirty minutes each per week) and speech-language pathology services (two sessions for thirty minutes each per week). BCPS Ex. 8.

12. [REDACTED] MS did not have any speech-language pathologists to perform services from the beginning of school in fall 2021 to the beginning of December 2021. During that time, the Student did not receive any direct speech-language pathology services. Parent Ex. 9; Testimony of Parent, and [REDACTED].

13. On October 31, 2021, the BCPS instructional team determined that the Student required compensatory education recovery services.¹³ BCPS Ex. 1. These compensatory services were due to COVID-related regression and/or lack of adequate progress. Testimony of [REDACTED].

¹² Physical Education.

¹³ The CERP states that the Parent and the school system agree that the document serves as the CERP. There was no testimony regarding whether the Parent initially agreed to the CERP or not.

14. The Compensatory Education/Recovery Service Plan (CERP) included six hours of speech language therapy, six hours of occupational therapy, three hours of mathematics, three hours of written language, and two hours of community skills/job training. These services would be provided after school and on Saturday. The services were anticipated to begin December 2021 and end in June 2022. BCPS Ex. 1, p. 8.; See also Testimony of [REDACTED].

15. On November 15, 2021, [REDACTED], Special Education Department and IEP Chair, [REDACTED] MS, emailed the Parent and attached a Parent Notification of IEP Team Meeting for a meeting on November 29, 2021. BCPS Ex. 2. The purpose of the meeting was to conduct reevaluation planning.

16. On November 19, 2021, Ms. [REDACTED] sent a follow-up email to the Parent to schedule a meeting for an IEP team. BCPS Ex. 3.

17. In December 2021, the BCPS hired¹⁴ a speech-language pathologist to provide virtual speech-language services for the remainder of the 2021-2022 school year. Testimony of Parent and [REDACTED].

18. On February 1, 2022, the IEP team held a meeting to conduct reevaluation planning, and review/revise the IEP. BCPS Ex. 12.

19. During the February 1, 2022 meeting, the BCPS discussed the CERP. However, the Parent did not feel the amount of compensatory hours approved in the CERP was sufficient. Further, the Parent did not consent to the Student receiving services after school or on Saturdays.

20. During the February 1, 2022 meeting, the BCPS recommended assessments in psychological, educational, occupational therapy and speech language. The Parent rejected the recommendation of school-conducted assessments as the Parent wanted assessments from an outside provider. BCPS Ex. 12.

¹⁴ It is unclear if the BCPS directly employed this provider, or if the BCPS arranged with a contractor who employed this provider. The use of the word “hired” is not meant to imply direct employment.

21. On February 23, 2022, Dr. [REDACTED] administered the Test of Nonverbal Intelligence, Fourth Edition (TONI-4) and the Kaufman Test of Educational Achievement, Third Edition (KTEA-3). BCPS Ex. 13. This assessment was parent-initiated.

| <u>Assessment</u> | <u>Standard Score</u> |
|--|-----------------------|
| TONI-4 | 70 |
| KTEA-3: Reading: Letter Word Recognition | 40 |
| KTEA-3: Reading: Reading Comprehension | 40 |
| KTEA-3: Reading: Silent Reading Fluency | 40 |
| KTEA-3: Math: Math Concepts and Applications | 42 |
| KTEA-3: Math: Math Computation | 40 |
| KTEA-3: Written Language: Spelling | 40 |

BCPS Exs. 14.

22. On March 10, 2022, the BCPS sent a Parent Notification of IEP Team Meeting for a scheduled meeting on March 22, 2022. BCPS Exs. 15 and 17.

23. On March 11, 2022, the BCPS sent the Parent the Notice of Documents, including a draft of the IEP in anticipation of the March 22, 2022 meeting. BCPS Exs. 16 and 18.

24. The Parent was unavailable on that date, and therefore BCPS considered other dates in March and April.

25. On or about April 18, 2022, [REDACTED] administered the following assessments of the Student:

| <u>Assessment</u> | <u>Standard Score</u> |
|---|--|
| The Peabody Picture Vocabulary Test, Fifth Edition (PPVT-5) | 40 |
| Expressive Vocabulary Test, Third Edition (EVT-3) | 54 |
| Clinical Evaluation of Language Fundamentals Preschool-3 (CELF Preschool-3) ¹⁵ | Sentence Comprehension: 3:8 Word Structure: 3:3 Expressive Vocabulary: 3:2 Following Direction: 3:3 Word Classes: <4.0 |

¹⁵ The Student is outside of the age range for the CELF Preschool 3. Standard scores were not reported, and instead age equivalency was reported.

| | |
|--|----|
| Goldman-Fristoe Test of Articulation, Third Edition (GFTA-3) | 40 |
|--|----|

BCPS Ex. 13.

The Parent initiated these assessments.

26. By April 2022, the Student achieved his goals from the 2021 IEP in the areas of community, reading comprehension, mathematics, and adapted PE. BCPS Ex. 7 and Testimony of [REDACTED].

27. On August 5, 2022, the Parent consented to assessments in psychology and occupational therapy.

28. On August 25, 2022, the IEP team met to discuss the results of the assessments and reports from Dr. [REDACTED] and Ms. [REDACTED]. BCPS Ex. 28.

29. At the August 25, 2022 meeting, IEP team accepted the assessment of Ms. [REDACTED] and did not request further speech-language assessments. BCPS Ex. 28.

30. At the August 25, 2022 meeting, the IEP team recommended additional educational assessments based on concerns with the validity of the KTEA-3 which requires students to respond either verbally or in writing, which is a weakness for the Student. BCPS Ex. 28. The Parent and her representative did not agree to additional educational assessments.

31. On September 12 and 14, 2022, Ms. [REDACTED] performed an occupational-therapy assessment of the Student. She recommended:

- the Student should use small writing tools to promote a more effective grip pattern;
- the Student should continue to practice fine motor skills in relation to functional skill tasks that he needs throughout the day;

- the classroom staff should reduce physical prompting from wrist, to forearm, to independent for tracing/similar activities;
- the classroom staff should help the Student learn verbal cues to guide writing his name, with all adults using the same strategy throughout the day; and
- the Student should use multiple forms of expression to practice writing his name for maximizing independence during the school day (such as stamping, typing, hand writing and using sticker labels).

BCPS Ex. 34.

32. On September 26, 2022, [REDACTED] performed a psychological evaluation of the Student. BCPS Ex. 35. She used the Vineland-3, which uses a rating scale completed by the Parent and the special educator teacher, Ms. [REDACTED].¹⁶ The following results were received:¹⁷

| Scale | Ms. [REDACTED] | Adaptive Level | Parent | Adaptive level |
|---------------------------------|----------------|----------------|-----------|----------------|
| Communication | 49 | Low | 42 | Low |
| Receptive | 7 | Low | 6 | Low |
| Expressive | 6 | Low | 8 | Low |
| Written | 1 | Low | 1 | Low |
| Daily Living Skills | 38 | Low | 41 | Low |
| Personal | 1 | Low | 2 | Low |
| Numeric (Teacher only) | 4 | Low | | |
| Domestic (Parent Only) | | | 6 | Low |
| School Community (Teacher Only) | 8 | Low | | |
| Community (Parent Only) | | | 4 | Low |
| Socialization | 49 | Low | 58 | Low |
| Interpersonal Relationships | 6 | Low | 5 | Low |
| Play and Leisure time | 1 | Low | 7 | Low |

¹⁶ There is no rating scale given to the Student and the Student was not observed by Ms. [REDACTED] for this assessment.

¹⁷ The domains are in **bold** and the scores are a standard score with a mean of 100. Scores between 86 and 114 are considered to be in the adequate range. The other categories are sub domains, which result in V-scores. V-scores between 13 and 17 are considered to be in the adequate range.

| | | | | |
|------------------------------------|-----------|----------------|-----------|------------|
| Coping Skills | 10 | Moderately low | 9 | Low |
| Adaptive Behavior Composite | 52 | Low | 53 | Low |

BCPS Ex. 35.

33. On October 4, 2022, the IEP team met to discuss the results of the school-administered assessments and reports. BCPS Ex. 40. The Parent did not have any questions or concerns regarding the psychological assessment results. BCPS Ex. 40.

34. At the October 4, 2022 IEP meeting, the IEP team found the Student continued to be eligible for special education and related services as a student with Multiple Disabilities: Intellectual Disability, Speech-Language and Other Health Impairment (ADHD).¹⁸ BCPS Ex. 40.

35. By November 2022, the Student had achieved his goals in the areas of written language and fine motor from the 2021 IEP. BCPS Ex. 7.

36. The IEP team recommended ESY services for the summer of 2023. The ESY services included classroom instruction for thirteen hours, occupational therapy (two sessions for fifteen minutes each per week) and speech-language pathology services (two sessions for thirty minutes each per week). BCPS Ex. 55.

37. The IEP team met on January 18, 2023. During the meeting, the BCPS IEP team members disagreed with the Parent and her representative regarding compensatory services for both speech-language pathology and COVID regressions, the amount of occupational therapy services, the amount of speech-language pathology services, the least restrictive environment (LRE) and the placement of the Student. BCPS Ex. 62.

38. On January 18, 2023, the IEP team approved an amended IEP (January 2023 IEP). However, the Parent and her representative did not agree to the IEP. BCPS Ex. 66.

¹⁸ The Parent and her representative agreed that the Student was eligible for special education and related services, but felt that the diagnosis should include a diagnosis of autism. BCPS Ex. 40.

39. The primary disability listed in the January 2023 IEP is multiple disabilities: Cognitive: Speech or Language Impairment, Intellectual Disability, and Physical: Other health impairment. Autism is not included as a disability. BCPS Ex. 66.

40. The January 2023 IEP did not include a requirement for assistive-technology devices and services. BCPS Ex. 66.

41. The January 2023 IEP included a toileting schedule and assistance in the supports sections.¹⁹ BCPS Ex. 47.

42. The January 2023 IEP had goals in Reading Fluency, Community, Communication - Language, Communication: Speech Intelligibility, Reading Comprehension, Written Language, Mathematics, Fine Motor, Adapted PE, and Fine Motor – Life Skills. BCPS Ex. 66.

43. On June 6, 2023, the IEP team met to address proposed amendments to the IEP including a revision to the writing goal to include assistive technology and to include assistive technology as a special consideration and accommodation. BCPS Ex. 72.

44. During the June 6, 2023 meeting, the BCPS members of the IEP team found that proper placement for the Student would be at the home high school, ██████ High School. The Parent disagreed and requested a referral to a non-public placement. BCPS Ex. 72.

45. The IEP team amended the IEP at the June 6, 2023 meeting (June 2023 IEP). BCPS Ex. 72. The Parent and her representative disagreed to the IEP as written.

46. The primary disability listed in the June 2023 IEP is multiple disabilities: Cognitive: Speech/Language Impairment and Physical: Other health impairment. Autism is not included as a disability. BCPS Ex. 72.

¹⁹ Toileting was addressed in the Physical/Environmental Supports and the School Personnel/Parental Supports sections.

47. In the June 2023 IEP, the team found the Student required assistive-technology devices and services. BCPS Ex. 72.

48. The June 2023 IEP included a toileting schedule and assistance in the supports sections.²⁰ BCPS Ex. 72.

49. The June 2023 IEP had goals in Reading Fluency, Community, Communication - Language, Communication: Speech Intelligibility, Reading Comprehension, Written Language, Mathematics, Fine Motor, Adapted PE, and Fine Motor - Life Skills. BCPS Ex. 72.

50. During the June 2023 meeting, the Parent raised the issue of compensatory education for when the schools were closed/virtual for COVID closures and for when [REDACTED] MS did not have a speech language pathologist to provide services. However, this issue could not be fully addressed at this meeting. BCPS Ex. 72.

51. On July 14, 2023, the IEP team met to continue to review and revise the IEP and to determine whether compensatory services were required due to the lack of a SLP at [REDACTED] Middle School from September 7, 2021 to December 1, 2021. BCPS Ex. 78.

52. At the July 2023 meeting, the school members found that there was no regression of skills due to the failure to provide SLP direct services from September 7, 2021 to December 1, 2021. BCPS Ex. 78. The Parent and her representative disagreed with this decision.

53. Between October 2022 and June 2023, the Student's [REDACTED] class participated in thirty-one [REDACTED] ([REDACTED]) trips. BCPS Ex. 84.

54. At [REDACTED] HS in the [REDACTED] program, the general schedule for a day is:

- Enter the building, unpack, and greet each other. Each student has their own particular protocols for getting ready for the day, which could include a binder of work that they can complete with minimal or no support.

²⁰ Toileting was addressed in the Physical/Environmental Supports and the School Personnel/Parental Supports section.

- First period is an academic instructional period, which is a heavily broken down lesson and can include sensory and brain breaks.
- Second period is for elective courses, which can include general education electives.²¹
- Lunch in the main cafeteria.²²
- Third period is for social studies, science, soft skills²³ or social skills.²⁴
- Fourth period is for transition supports, and work-based learning.²⁵

Testimony of ██████.

55. ██████ HS ██████ takes a ██████ trip approximately once a month. Testimony of ██████.

56. The Student is currently sixteen years old and is in the ninth grade on a Maryland High School Certificate of Program Completion track for the 2023-2024 school year.

DISCUSSION

Burden of Proof

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v.*

²¹ If a ██████ student attends a general education elective, then an instructional assistant or additional adult accompanies that student to the elective. Testimony of ██████.

²² Ms. ██████ testified that the ██████ students each lunch in the general or main cafeteria unless the IEP dictates otherwise.

²³ Soft skills were defined as being able to read an individual and know what is going on with them; or becoming in tune with the environment around them and being aware of the surroundings. Testimony of ██████.

²⁴ Social skills were defined as how to behave around others. This would include proper greetings, taking turns, waiting times, how to show appropriate emotion, discussing issues with a peer, self-advocacy, and knowing appropriate hand placement. Testimony of ██████. While there are specific lessons on social skills in the ██████ program, social skills are also addressed throughout the day as issues arise.

²⁵ Work based learning is practicing job skills, including not only the actual job, but how to complete an application, or how to know when to get ready for work. Testimony of ██████. This was distinguished from ██████, which addresses how to access and navigate the community. These skills would include what to do if he got lost, how to cross the street, how to order at a restaurant or purchase something at a store. Testimony of ██████ and ██████.

Anne Arundel Cnty. Police Dep't, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parent is seeking relief and bears the burden of proof to show that the challenged actions by the BCPS did not meet the requirements of the law. COMAR 28.02.01.21K(1).

Analysis

The Student is sixteen years old and has been a student in the BCPS throughout his entire education. Based on the testimony at the hearing, the Parent's frustration with the BCPS started in reaction to the COVID-related closures and virtual learning periods and continued once the Student returned to in-person learning. However, the Complaint in this matter is limited to June 2021 through the present. See Complaint, and Parent's Response to BCPS's Motion for Summary Decision. The Complaint alleges that the BCPS failed to provide the Student with a FAPE and listed specific alleged failures. Below each alleged failure will be analyzed separately and relevant testimony and exhibits on each alleged failure will be discussed.

A. Failing to properly consider private evaluations provided to BCPS by the Parent

Substantive Law

Under 34 C.F.R. section 300.502(c), the BCPS must consider parent-initiated evaluations.

Specifically, the regulation states:

- c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—
 - (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
 - (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

Id. Agency criteria includes the location of the evaluation, and the qualifications of the examiner. 34 C.F.R. 300.502(e). A parent-initiated evaluation, whether at public or parent expenses, need only be “considered” by the school district, consistent with its overarching

obligation to provide a free and appropriate education, to decide what services are necessary.

Mr. P v. West Hartford Board of Education, 885 F.3d 735 (2d Cir. 2018). The school district is not required to implement the suggestions in the evaluation, nor is it required to have a substantive discussion regarding the evaluation. *Id.*

Evidence and Testimony on the Issue of [REDACTED]'s Evaluation

There is no dispute that the Parent obtained two private evaluations of the Student and provided these evaluations to the BCPS for consideration. [REDACTED] conducted speech and language-pathology assessments on or about April 18, 2022. BCPS Ex. 13. The Student received a standard score of 40 on the PPVT-5, a standard score of 54 on the expressive EVT-3 and a standard score of 40 on the GFTA-3. These are well below the expected range of scores for children of the same age as the Student. Because the Student struggles with written and spoken expression, Ms. [REDACTED] also administered the CELF Preschool-3. This is a nonverbal test and allowed Ms. [REDACTED] to assess the Student without requiring written or verbal expression. However, this assessment is not normally used for children sixteen years old. Therefore, there were no standard scores available for the Student for this test. Instead, Ms. [REDACTED] provided age-level equivalencies. For the CELF Preschool-3, the Student had an age equivalency of less than four years old in all areas.

At the August 25, 2022, IEP meeting, the team discussed the results of Ms. [REDACTED]'s assessments. BCPS Ex. 28. The IEP team accepted the assessment of Ms. [REDACTED] and did not request further speech-language assessments. BCPS Ex. 28. Ms. [REDACTED], accepted as an expert in speech-language pathology, provided her review of this assessment at the IEP meeting, and also testified regarding her opinions. Ms. [REDACTED] found that the assessment by Ms. [REDACTED] was thorough and that she did not need any other assessments. Ms. [REDACTED] testified that at this

meeting there was discussion regarding the Student's articulation,²⁶ which had been addressed on prior IEPs, but was not addressed on the 2021 IEP. According to Ms. [REDACTED], it was determined that in the new IEP an articulation goal (speech intelligibility) would be added and address this skill for both familiar and unfamiliar listeners.

Both in the documents and in the Parent's testimony, the Parent contended that the Student was diagnosed with autism. BCPS Ex. 40 and Testimony of the Parent. The Parent testified to specific behaviors that she believes are indicative of autism such as sensitivity to sound, need for sensory activities, oral defensiveness, and rocking to soothe himself. Testimony of Parent. She further testified that he was diagnosed with Autism by the BCPS in 2012 and by private assessment in 2013.²⁷ The assessment of Ms. [REDACTED] also relayed this information that the Student was diagnosed with autism.

The BCPS team members contended that there is no documented identification of autism. BCPS Ex. 40; See also Testimony of [REDACTED].²⁸ Ms. [REDACTED], the school psychologist at [REDACTED] MS, had one criticism of Ms. [REDACTED]'s report and this was the diagnosis of autism. Testimony of [REDACTED]. Ms. [REDACTED] reviewed the prior assessments by the BCPS, and previous IEP's discussing eligibility and could not find any diagnosis of autism. While a previous report from the BCPS indicated that the Student presented with characteristics associated with mild to moderate autism spectrum condition, the report went on to state, "these do not appear to be the primary reason for his very low academic achievement, cognitive ability or adaptive

²⁶ Articulation is the speech sound production. Testimony of [REDACTED]. Intelligibility is how much of a spoken message from a person is understood. Testimony of [REDACTED].

²⁷ The Parent offered no documentation from any assessment that confirmed a diagnosis of autism and gave the basis for that diagnosis.

²⁸ During Ms. [REDACTED]'s cross examination, Parent's counsel asked about various issues that could be a characteristic of autism. However, Ms. [REDACTED] did not assess the Student for autism as she contends the BCPS previously evaluated the Student for autism and determined the Student did not meet the criteria for autism. Further, Ms. [REDACTED] is not aware of any request for an autism assessment by the Parent or her advocate.

functioning.” Further, the prior assessment indicated that elevated ratings on some of the autism subscales may have been inflated due to the Student being nonverbal at the time. BCPS Ex. 40.

Further, Ms. [REDACTED] contended that while having an accurate diagnosis can inform services, once a student is eligible for an IEP, all of a student’s needs must be addressed in the IEP regardless of what disability is identified. Therefore, since the Student in this case is eligible for an IEP, his needs must be met, regardless of whether autism is listed as a primary diagnosis.

Testimony of [REDACTED].

Evidence and Testimony Regarding Dr. [REDACTED]’s evaluation

Dr. [REDACTED], an expert in psychology, testified that he assessed the Student on February 23, 2022. He used two assessments: (1) the TONI-4 to determine cognitive ability and (2) the KTEA-3 to determine academic achievement. BCPS Ex. 13. Dr. [REDACTED] assessed the Student one on one in his office. The office is small, quiet, on a lower level, with no windows and no distractions.

Dr. [REDACTED] described the Student as a friendly sweet child, who struggles tremendously with academics. Dr. [REDACTED] described that the Student was not decoding words to read them, but he did recognize some memorized sight words. Dr. [REDACTED] stated that the Student could write some letters, but it was labored and pressured. Dr. [REDACTED] discussed the Student’s lack of any sense of numeracy, relations of numbers, and estimation skills. Dr. [REDACTED] testified that based on the academic assessments the Student’s percentile scores in every category were approximately 0.01%, which means that the Student’s scores would be below 99% of the scores for other students of the same age. BCPS Ex. 14.

Based on the Assessments, Dr. [REDACTED] concluded that the Student requires specific instructions with concrete vocabulary, modelling and practicing of new tasks with immediate positive reinforcement, and regular opportunities to interface with the community. BCPS Ex. 13.

Dr. [REDACTED]'s report concludes: "Because of their strong life skills and job training curriculums, the following schools are recommended for consideration: [REDACTED] ([REDACTED]) and the [REDACTED]." BCPS Ex. 13.

Dr. [REDACTED] did not do a full document review for this case, but he did review some documents prior to the assessment of the Student. His report does not identify which documents he reviewed, and he could not remember the specific documents reviewed when he testified at the hearing. BCPS Ex. 13. Dr. [REDACTED] did not observe the Student in the [REDACTED] program at [REDACTED] MS and has not observed the [REDACTED] program generally. Dr. [REDACTED] did not talk to the staff at [REDACTED] MS prior to issuing his report. Testimony of [REDACTED].

On August 25, 2022, the IEP team discussed Dr. [REDACTED]'s report regarding both the TONI-4 and KTEA-3 assessments. BCPS Ex. 28. The school members of the IEP team had concerns with the use of the KTEA-3, which required responses both verbally and in writing. This is in contrast to the TONI-4 which is a non-verbal assessment. *Id.* During the meeting, the Student's special education teacher, Ms. [REDACTED] expressed concern that the information gathered was not thorough enough to determine the Student's skills since the KTEA-3 relies on the verbal and written responses. She recommended performing an alternative assessment such as the PEP-3²⁹ to measure the ability of the Student. This test is intended and standardized for younger children, but it allows for non-verbal response to get more information about the Student's strengths and needs for educational planning. BCPS Ex. 28. The Parent, her representative, and Dr. [REDACTED] disagreed that additional educational assessments were needed. Instead, they felt that informal information from progress reports was adequate to determine the Student's abilities. BCPS Ex. 28.

²⁹ This acronym was not explained at the hearing, but it is believed to refer to the Psychoeducational Profile - Third Edition.

Ms. [REDACTED] is the special education teacher in the [REDACTED] program and was the Student's case manager for his four years at [REDACTED] MS (the 2019-2020 school year through the 2022-2023 school year). She was accepted as an expert in Special Education. Ms. [REDACTED] held the opinion that the Student has grown both academically and socially in the past four years. For example, when he started at [REDACTED] MS, he required prompting to answer and only used one-word responses. He would cling to Ms. [REDACTED] because he knew her the best and she had to facilitate his communication with his peers. Now, he engages in more communications with his peers, especially about the Ravens or the Orioles.

Ms. [REDACTED] described the Student's disability as multiple disabilities in areas affecting communication, reading fluency, reading comprehension, mathematics, community, fine motor skills, and job training. She testified that autism was not an identified disability by the BCPS.

Ms. [REDACTED] contended that the KTEA-3 assessment was not appropriate for the Student. This requires the Student to write and respond verbally. Testimony of [REDACTED]. Ms. [REDACTED] testified that writing is a weakness for the Student. The Student should be assessed with a test designed for a non-verbal student as it would provide a better representation of the Student's skills. Testimony of [REDACTED]. The Student is familiar with a curriculum in the classroom that allows for touch responses, and verbal responses, instead of writing. This is a familiar format to the Student, and Ms. [REDACTED] testified that the Student requires structure and similar formats to feel comfortable and perform. Further, Ms. [REDACTED] suggested that the Student would test better when he is assessed by an individual he knows. She would have divided assessments into increments (no more than twenty minutes at a time). Ms. [REDACTED] had concerns regarding the testing by Dr. [REDACTED], as the writing and speaking components of the assessment would not present a true picture of the Student's abilities. She joined the other BCPS IEP team members in

recommending additional assessments, but the Parent did not consent to further educational assessments.

██████████ testified as an expert in school psychology. She is a school psychologist at ██████████ MS but has not provided direct services to the Student. She knows the Student through the IEP process and assessing him. Testimony of ██████████. Ms. ██████████ was present at the August 25, 2022 meeting where the IEP team reviewed Dr. ██████████'s assessments and report.

There were concerns about the KTEA-3 assessment, as the Student has disabilities affecting both speech language and fine motor skills. Therefore, she contends that it did not provide much insight into the Student's abilities. Testimony of ██████████. Further, the KTEA-3 has long verbal directions, which is also a difficulty for the Student. Ms. ██████████ was concerned that Dr. ██████████'s background assessment is based upon the Parent's reporting and there were no documents referenced by Dr. ██████████. Dr. ██████████'s report further stated that the Student was in the ██████████³⁰ program, instead of the ██████████ program. Testimony of ██████████. Ms. ██████████ was concerned that there was no validity statement in Dr. ██████████'s report. This would include behavioral observations of the test giver,³¹ and then any explanation on how those observations may affect the validity of the assessment. Validity statements are not required, but they can help a reader better interpret the results and be alerted if there is a reason to read the results with caution. Testimony of ██████████. While Ms. ██████████ had concerns about using the KTEA-3 for this student, she felt the TONI-4 test was appropriate as it was a non-verbal cognitive test and allowed the Student to point to pictures or gesture.

Ms. ██████████ testified that prior to testing any student, she reviews the prior IEPs, team notes, and previous assessments. Further, she contends that after administering a test in a

³⁰ ██████████ is a program offered in some BCPS schools. The exact acronym was not defined, but the program focuses on communication issues. The parties did not dispute that at all relevant times for this hearing, the Student was enrolled in the ██████████ program.

³¹ Behavioral observations are pretty broad, and can include things like alertness, willingness to test, level of comfort (with test and examiner), understanding, and fatigue during test and need for breaks.

standardized manner, sometimes it should be administered in a non-standardized manner by giving the student more support. Ms. [REDACTED] testified that this is helpful for planning purposes because it gives insight into what supports allowed the student to better complete the examination. Dr. [REDACTED] did not perform any limit testing when he administered the test. Testimony of [REDACTED]. To determine what supports should have been provided in the limit testing, Ms. [REDACTED] would look at supports on the IEP for the Student, such as chunking (breaking down) activities and directions into smaller pieces, providing teacher check ins to make sure the Student is understanding the test, typing instead of writing, and providing additional time. Testimony of [REDACTED].

Ms. [REDACTED] criticized Dr. [REDACTED]'s report for having no input from the teachers or staff of [REDACTED] MS. There were no references to IEPs, or progress reports, or discussions with teachers, etc. Ms. [REDACTED] contended that Dr. [REDACTED] merely considered the cognitive educational assessments and the Parent reporting to determine the Student needed non-public placement. Testimony of [REDACTED]. However, Ms. [REDACTED] considered that the Student was making progress at [REDACTED] and it was an appropriate placement considering his support and his progress. Ms. [REDACTED] agreed with the recommendation to test the student using the PEP-3, even though it is an assessment for younger students, because it would give a better assessment of what the Student can actually do.

Ms. [REDACTED] performed an adaptive-behavior assessment for the home and school settings. Adaptive skills include communication skills (such as, understanding and expressing information), functional academic skills (such as, counting money, telling time, basic math, reading), daily living skills (such as, dressing, feeding, bathing) and social skills. Testimony of [REDACTED]. To complete this assessment, she sent out the Vineland 3 Adaptive Behavior scales to the Parent and the Special education teacher, Ms. [REDACTED]. These scales were completed by those individuals and their answers are what created the assessment. Testimony of [REDACTED], and BCPS

Ex. 35. For this assessment, Ms. [REDACTED] did not meet with the Student and the assessment is not based on Student responses or observations by Ms. [REDACTED]. Testimony of [REDACTED]. Instead, this rating scale is based on information from the people who have more direct and consistent contact with the Student.

Analysis for both Evaluations

The evidence is clear that Ms. [REDACTED]'s evaluation was reviewed and considered at the August 25, 2022 IEP meeting. BCPS Ex. 28 and Testimony of [REDACTED]. After thoroughly reviewing the evaluation, Ms. [REDACTED] did not request any further speech-language pathology assessments. Several of the recommendations in Ms. [REDACTED]'s report are consistent with services either being provided prior to her evaluation or included in the January 2023 IEP (such as increasing speech therapy services to two thirty-minute sessions per week). See BCPS Ex. 7 for 2021 IEP and BCPS Ex. 69 for January 2023 IEP. There is ample evidence that Ms. [REDACTED]'s evaluation was considered in the development of an updated IEP for the Student. Therefore, I conclude that the BCPS did not fail to consider the parent-initiated evaluation administered by Ms. [REDACTED]. 34 C.F.R. §300.052(c)(1).

The BCPS also considered the report of Dr. [REDACTED]. It was clear that the members of the IEP team reviewed the report and discussed it at the IEP meeting on August 25, 2022. BCPS Ex. 28. Ms. [REDACTED] and Ms. [REDACTED] both testified about concerns they had regarding the use of the KTEA-3 test for the Student based on his difficulties with written and verbal communication. Further, they explained that due to the extent of the communication difficulties of the Student that the testing was of limited value in determining the appropriate goals, objectives, and services for the Student. Dr. [REDACTED]'s evaluation recommended that the Student have concrete vocabulary with new tasks being modeled and practiced with immediate positive reinforcement and regular opportunities to interface with the community. He then recommended private placement at

either [REDACTED] or the [REDACTED]. BCPS Ex. 13. However, the BCPS provided extensive testimony regarding the [REDACTED] program at [REDACTED] MS and how this program is substantially similar to the [REDACTED] program at [REDACTED] HS. See Testimony of [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Based on their testimony, much of the recommended items in Dr. [REDACTED]'s report match what was being provided through the [REDACTED] program at [REDACTED] MS or what would be provided through the [REDACTED] program at [REDACTED] HS. Dr. [REDACTED] had no knowledge of the programs at either of those schools, and therefore, his recommendation of a private placement does not provide a basis to say that the [REDACTED] program at either [REDACTED] MS or [REDACTED] HS would be inappropriate. Instead, it just argues that these other schools may also be appropriate for consideration. Considering all of the exhibits and testimony, I conclude that the BCPS did consider the parent-initiated evaluation of Dr. [REDACTED] when preparing the updated January 2023 IEP. 34 C.F.R. §300.052(c)(1).

B. Failing to offer the Student appropriate compensatory education services as a remedy for failure to provide individualized education program (IEP) services or other special education and related services

Substantive Law on Compensatory Education Services

The IDEA's procedural safeguards direct district courts to "grant such relief as the court determines is appropriate." 20 U.S.C.A. § 1415(i)(2)(C)(iii). Where a school district has failed to provide a FAPE, "a court will evaluate the specific type of relief that is appropriate to ensure that a student is fully compensated for a school district's past violations of his or her rights under the IDEA and develop an appropriate equitable award." *D.F. v. Collingswood Borough Bd. of Educ.*, 694 F.3d 488, 498–99 (3d Cir. 2012) (quoting *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 720 (3d Cir. 2010)). The equitable relief authorized by 20 U.S.C.A,

§ 1415(i)(2)(C)(iii) most commonly results in reimbursement for private placement when the child was denied a FAPE or prospective compensatory education. *G. ex rel R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d. 295, 308 (4th Cir. 2003). Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to account for the period of time that a student was deprived of his right to a FAPE. Courts have held that to accomplish the IDEA’s purposes, a compensatory education award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

The overarching principle of a compensatory award is rooted in equity and what is necessary to remediate the denial of a FAPE. The Forth Circuit has held, “[c]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student.” *G. ex rel R.G.*, 343 F.3d. at 309. In *Diatta v. District of Columbia*, the D.C. District Court held that educational programming sought as a compensatory award should be “reasonably calculated to confer the remedial and contemporary educational benefits” due to the student. 319 F. Supp. 2d 57, 67 (D.D.C. 2004).

Evidence and Testimony Regarding COVID Related Compensatory Services

Ms. [REDACTED] discussed the services provided for the [REDACTED] program during the COVID-19 pandemic for the 2019-2020 and 2020-2021 school years. For the end of the 2019-2020 and beginning of the 2020-2021 school years, [REDACTED] still had academic instruction virtually, and related service providers (OT and speech-language pathology) provided services virtually. Testimony of [REDACTED] For the instruction portion of the program, it included whole group sessions, small group sessions, and one-on-one instruction. Ms. [REDACTED] had the ability to send

students into different meetings or divide them in different ways to work on different skills. During the virtual school time period for COVID, there were some issues with the Student logging off the virtual platform or not being on the right page. Testimony of [REDACTED]. Therefore, an application called Quick Assist was set up to allow the teacher or other adults to have control of the Student's computer and return him to a meeting, or to the correct page, or to point out a specific part of the text. Testimony of [REDACTED]. Ms. [REDACTED] acknowledged that virtual instruction was a different way of learning for everyone and required adjustment. However, Ms. [REDACTED] testified that the Student did make progress once he started to adjust to it, and Quick Assist was available. Testimony of [REDACTED]. Ms. [REDACTED] testified that during the hybrid portion of the COVID learning (starting March 2021), the students would receive four days of direct instruction and have one day of work at home.

Ms. [REDACTED] testified at length about the [REDACTED] ([REDACTED]) at [REDACTED] MS. Ms. [REDACTED] explicitly stated that [REDACTED] is not just about going out into the community. [REDACTED] starts with practicing skills in the school (or virtually during the COVID shutdown) (for example, handling money), and then trying to generalize those skills in the community. There can be multiple skills in any trip. Testimony of [REDACTED]. For example, if you are going to a restaurant, there are communication skills (ordering, using appropriate volume, working with a communication device, etc.), and money skills (budgeting, paying, determining correct change, etc.).

When the BCPS was closed for COVID and even when it returned in a hybrid format, the students could not access the community directly, but they continued to practice the skills. For example, she would use a projection of a virtual grocery store and have the students decide where to locate the items on a list, or she would have the students create sets of items. Even when the students returned to a hybrid in person at [REDACTED] MS in the Spring of 2021, the students

could not go back out into the community. Therefore, the Student, and his classmates, would work on [REDACTED] in the main office (sorting mail, using a paper shredder, creating packets of papers to hand out, creating ice bags for the nurse, helping in the cafeteria to clean table surfaces or restock supplies). Testimony of [REDACTED]. The testimony was unclear as to when the students started taking [REDACTED] trips outside of the school after COVID. However, Ms. [REDACTED] testified that she sent out [REDACTED] newsletters monthly to parents and provided newsletters from September 2022 through May 2023. BCPS Ex. 84.³² Ms. [REDACTED] testified that the Student did well with the [REDACTED] trips. Different accommodations would be implemented in the community depending on the different needs of any individual student. For example, some students may have a sentence strip,³³ or they may review a menu and practice ordering their choices before leaving the school.

The BCPS approved the Student to receive compensatory services due to the COVID school closures. BCPS Ex. 1 and Testimony of [REDACTED]. This included six hours of speech language services, six hours of OT, three hours of math, three hours of written language, and two hours of community skills or job training services. These services were to be delivered after school or on Saturday. BCPS Ex. 1. The anticipated beginning date for the services was during December 2021. Further, the approving document states “All Services must be completed by June 30, 2022. If there is a need to extend beyond June 30, 2022 a waiver of exceptions must be filed with the Office of Compliance no later than June 1, 2022.” BCPS Ex. 1, p. 8.

Ms. [REDACTED] testified that on November 23, 2022, she sent an email ending the compensatory services related to the COVID closures due to a lack of response by the Parent. BCPS Ex. 48. According to Ms. [REDACTED], the Parent disagreed with both the amount of compensatory hours and the delivery model of the services. The Parent did not want the hours to

³² No party provided testimony regarding whether the [REDACTED] trips restarted during the 2021-2022 school year, or if they were not restarted until the 2022-2023 school year. The exhibit only has newsletters from the 2022-2023 school year.

³³ A sentence strip is a piece of paper with the beginning of a sentence, or the entire sentence. A student can practice with the sentence strip in the classroom, and/or bring it to the community for a [REDACTED] trip.

be before school, after school, or on weekends. Testimony of [REDACTED]. However, Ms. [REDACTED] testified that she and other service providers could only provide services outside of the school day to avoid interfering with the services the Student was already receiving during the school day.

Even though the school had previously closed out the COVID-related compensatory services, in the summer of 2023, the BCPS restarted the COVID-compensatory services during the ESY period. Testimony of [REDACTED] and BCPS Ex. 82. During the summer of 2023, Ms. [REDACTED] testified that she provided two hours of compensatory services to the Student and that she knows the Student met with a speech pathologist at least two times. However, she did not know the amount of time for either of those meetings. Testimony of [REDACTED]. BCPS did not provide any OT compensatory services in the summer of 2023 due to the lack of mutually available dates. Testimony of [REDACTED]. Ms. [REDACTED] testified that she and the Parent were not able to coordinate the other hours over the summer. Testimony of [REDACTED]. Ms. [REDACTED] was not involved in providing the ESY services for the Student over the summer of 2023 and was not aware of any complaints regarding toileting during the summer ESY. Testimony of [REDACTED].

Analysis for COVID-Related Compensatory Services

First, it is imperative to note that while the due process complaint contained information about events that pre-date June 20, 2021, the section entitled “Violations” specifically limited the timeframe for the alleged failure to provide a free appropriate public education (FAPE) to the 2021-2022 and 2022-2023 school years. In the prehearing conference, and in the Parent’s Response to BCPS’s Motions,³⁴ the Parent has consistently stated that the claims are from actions that occurred from June 2021 to the present. Therefore, whether there was any failure to

³⁴ One of the sections of the BCPS’s Motion specifically raised the statute of limitations issue because of the background information provided by the Parent in the due process complaint.

provide FAPE due to COVID closures for the 2019-2020, and 2020-2021 school years is outside the scope of this hearing and will not be addressed.

On October 31, 2021, the BCPS offered compensatory services to the Student and at least initially, the Parent agreed to those services. BCPS Ex. 1. The first documentation in the exhibits that the Parent disagreed with hours and the proposed delivery of the services is the PWN from February 21, 2022. BCPS Ex. 12. It is unclear from both the testimony and the documentation whether the Parent raised an issue sooner, or if this was the first time the Parent disagreed with the amount of hours. However, the determination of whether a FAPE was provided during the COVID-related closures before June 2021, and the corresponding amount of compensatory services required to address any alleged denial of FAPE, is outside of the scope of this hearing as explained above.

During the hearing, the parties provided testimony about why the services were not actually provided, and the basic reason was that the BCPS contended that compensatory services had to be provided either before or after school or on the weekend, and the Parent contended that the services should not be provided before or after school or on the weekend. Neither party provided any case law, legislation or regulations which supported how the compensatory services must be provided.

However, compensatory services should be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005). The Student has an extensive IEP which requires that the majority of his education take place in a self-contained classroom taught by a special education teacher. The IEP also includes OT and speech language pathology that are to be provided through direct

services. The last part of the Student's day has a limited amount of time around general education peers when he is able to go to Art and lunch.

Providing compensatory services during the school day would take away from the Student's ability to receive the services on his current IEP. The Parent did not provide any feasible way for the Student to receive both the extensive services on the IEP and the compensatory services during the same school day, without providing services before or after the normal school day. It is illogical to require the BCPS to provide compensatory services in a manner that would take away the current services on the IEP. Doing so would merely cause the Student to need further compensatory services, and still not receive a FAPE. Therefore, I conclude that the compensatory hours approved for the time period involving COVID closures can only be provided outside of the normal school hours, and that BCPS did not deny the Student a FAPE when they refused to provide those compensatory hours during the school day.

Evidence and Testimony Regarding Speech-Language Pathology Services

The Parent testified regarding the lack of speech services from September 2021 to December 2021. Further, she discussed her frustration with the virtual speech language services provided from December 2021 through the end of the 2021-2022 school year. Starting in December 2021, the speech language services were only provided virtually, with the Student inside of the school and the provider logging in remotely. The Parent testified that at times the provider referred to her son by the wrong name and sent emails regarding school closures that did not apply to ■MS. Testimony of the Parent.

While the Student receives direct speech services, Ms. ■■■■■ testified that in the ■■■■■ classroom she incorporates some of the speech strategies into a group lesson. For example, if a student is working on expressing how they felt, then when they are given a chance to describe their weekend, the teacher may ask how they felt. Similarly, if they are working on asking

related questions or giving a relevant comment in a conversation, then these skills can be worked on in the [REDACTED] classroom setting with the large group. Testimony of [REDACTED]. For the Student, he was working on projecting volume. Ms. [REDACTED] testified that this was addressed in the larger class, and she used strategies like asking him to repeat, using a visual cue (cupping her ear), or using a visual on the table for a speech strategy.

Ms. [REDACTED], accepted as an expert in speech-language pathology, was the supervisor of related services for the BCPS from March 2019 until the June of 2022. Starting in June 2022, Ms. [REDACTED] went back to working directly with students. For the 2022-2023 school year, she provided direct services to the Student at [REDACTED] MS. Ms. [REDACTED] had not met the Student prior to the 2022-2023 school year.

During the 2021-2022 school year, Ms. [REDACTED] testified that there were more vacancies than there had been previously and there was a critical staffing shortage for speech-language pathology. When the school transitioned back to in person after the COVID closures, a lot of school staff resigned. Testimony of [REDACTED]. As the supervisor, Ms. [REDACTED] testified that she worked on hiring by calling contracting agencies and interviewing applicants on a daily basis. She also was trying to support the speech language pathologists that were working for the BCPS as they had heavy case loads. Testimony of [REDACTED]. During the summer of 2021, the person that should have met the speech language pathology needs of [REDACTED] MS resigned. Because of the already existing vacancies and the late resignation, the BCPS had to get creative with solutions. The BCPS was able to contract with a virtual speech language pathologist, [REDACTED], but her services did not start until approximately the first week in December 2021. Testimony of [REDACTED]. Ms. [REDACTED] would participate virtually, while the students were at the [REDACTED] MS building. Ms. [REDACTED] provided the speech-language pathology services for the Student from December 2021 through the end of the 2021-2022 school year.

Ms. [REDACTED] used the data from the Student's progress reports to determine whether there was any adverse impact from the lack of speech services during the September 2021 to December 2021 time frame. She considered the progress reports from the fourth quarter of the 2020-2021 school year, the progress report at the end of the ESY, and then compared this information to the data in the January 2022 progress report (second quarter of the 2021-2022 school year). Testimony of [REDACTED]. See BCPS Ex. 7. Ms. [REDACTED] says the data and input from the Student's teachers did not reveal any regression. She further testified that the Student maintained progress towards his language goal that he was working on at that time (the 2021 IEP communication goals). Testimony of [REDACTED]. The Parent and her representative adamantly disagreed with this assessment.

When Ms. [REDACTED] worked with the Student, she provided one thirty-minute session per week outside of the general education setting. Ms. [REDACTED] worked with Ms. [REDACTED] and Ms. [REDACTED] to collaborate and provide instruction to the other staff members regarding cues or other skills. This was done to allow the classroom instructors to use the same cues or symbols when working on the same communication goals. Testimony of [REDACTED].

Ms. [REDACTED] testified that at the July 14, 2023 IEP meeting the team discussed compensatory services. Ms. [REDACTED] testified that the IEP team considered the time before there was no speech pathologist and then at the time after a speech pathologist was hired to see the Student's levels of progress in speech. During the period from September to December 2021, the Student received some speech instruction during his school day from the staff of the [REDACTED] program. Testimony of [REDACTED]. While he did not have the direct services, the Student received whatever instruction was embedded into the curriculum. Testimony of [REDACTED]. The school members determined there was no negative impact during the period of September 2021 to

December 2021 when there was no speech language pathologist at [REDACTED] MS. BCPS Ex. 79 and Testimony of [REDACTED].

Analysis for Speech-Language Pathology-Related Compensatory Services

The Communication goal on the 2021 IEP stated: “March 2022 [REDACTED] will express his desires using a visual sentence starter such as “I wish that…” and will express his feelings given pictures of 5 feelings (i.e., excited, disappointed, I miss, frustrated, comfortable) in 4/5 trials without further prompts and will project his voice given a visual depicting voice volume in 2/3 trials without verbal prompts.” BCPS Ex. 7. There were three objectives underneath that goal that addressed the three parts of the goal. As of the fourth quarter for the 2020-2021 school year, the Student’s progress was described as:

6/15/2021

We have been focusing on Objectives 2 and 3, and have started addressing Objective 1 in more depth. Objective 2: [The Student] expresses his feelings using a social story in approximately 4/5 trials. He had difficulty remembering “Calm” and using “scared” instead of “sad,” while he independently used “excited, sad.” He has independently used “scared” during the sessions. Objective 3: [The Student] has used proper vocal volume in 3/3 trials and Ms. [REDACTED] has reported that when asked to project his voice in class he has successfully done so this quarter. [The Student] identifies the proper vocal volume in videos and on a visual of vocal volume in 3/3 trials. Ms. [REDACTED] has also reported that [the Student] in an inclusion class independently advocated to take a walk since he was uncomfortable with a balloon project that was being conducted. Amazing self-knowledge and self-advocacy. Great work [Student]!! Have a wonderful summer and remember to review your feelings book and “I wish” pages this summer. [REDACTED] SLP

BCPS Ex. 7.

As of the end of ESY for the summer of 2021, the Student’s progress report stated:

[The Student] expressed desires using sentence starters and “I wish” statements in 2-3/3 trials. Given pictures, he expressed and identified feelings with 70% accuracy. [The Student] projected his voice appropriately in 3/3 trials. [REDACTED] SLP.

Id.

The next progress report was the after the second quarter of the 2021-2022 school year. In January 2022, the progress report stated:

While looking at pictures together and talking about feelings, [the Student] is able to identify “excited” and “frustrated” images of adults and children with 100% accuracy and 71% accuracy without prompts. He completed the sentence “I wish that ____” with 3 out of 3 targeted trials without prompts respectively. We have not addressed the feelings “I miss...” and “disappointed.” I look forward to continuing to work with him this school year. Good work, [Student]!! [REDACTED], MS CCC/SLP

BCPS Ex. 7.

By the end of Summer 2021, the Student was projecting his voice appropriately in three out of three trials and there is no indication in any progress report that there was any regression on this skill. This exceeded the objective (Objective 3) on the 2021 IEP as the objective only called for the Student to project his voice in two out of three trials. BCPS Ex. 7. Neither party provided any explanation regarding why this objective was not amended or removed after the Student had met this objective.

By the end of Summer 2021, the Student was completing “I wish...” statements in two or three out of three trials. This met the objective (Objective 1) on the 2021 IEP as the objective called for the Student to express desires with “I wish” statements in two to three trials. BCPS Ex. 7. Further, between Summer of 2021 and January of 2022, the student had improved his use of “I wish ____” statements from two out of three accuracy to three out of three accuracy. BCPS Ex. 7. This exceeded the objective on the 2021 IEP. Again, neither party provided any explanation regarding why this objective was not amended or removed after the Student had met this objective.

The only objective that is less clear about progress or the lack thereof is the objective addressing emotions. Part of the difficulty is the different terminology and language used by the various speech language providers to address this objective. The Objective (Objective 2) on the

2021 IEP states that the Student will express his feelings in four out of five trials without further prompts. However, the ESY progress report addresses whether the Student could both express and identify feelings. Similarly, the January 2022 progress report addressed whether the Student could identify feelings with or without prompts. The January 2022 progress report did not address whether the Student could express his own feelings. Neither party clarified whether identifying emotions in a picture is a step toward expressing your own emotions, or a different skill altogether. While Ms. [REDACTED] testified that the Student was making progress on his objectives, I do not find that the progress reports show there was any progress or regression during that time. Two of the objectives had been previously met and not revised and the data on the last objective is unclear at best.

Considering all of those things, I find that the BCPS failed to provide a FAPE in relation to the speech-language pathology services, and the student is entitled to compensatory education to compensate him for the BCPS's violation. See *D.F. v. Collingswood Borough Bd. of Educ.*, 694 F.3d 488, 498–99 (3d Cir. 2012) (quoting *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 720 (3d Cir. 2010)). The Parent throughout the hearing only requested that the Student be placed in a non-public placement. However, I do not find that this violation entitles the Student to this remedy. Instead, the Student was denied specific services, namely, thirty minutes of speech language pathology services per week from September 7, 2021 through December 7, 2021 (approximately thirteen weeks). Parent Ex. 9, and Testimony of [REDACTED]. The evidence presented by BCPS does not show that the Student made any progress during the thirteen-week lapse. The evidence presented by the Parent does not indicate that the Student had any regression during the thirteen-week lapse. As neither side has provided evidence to show that it would be equitable to provide less services or more services, I find that the equitable remedy would be to provide the Student with exactly what he missed, thirteen thirty-minute sessions of

speech language pathology services or 6.5 hours of speech language pathology services. 20 U.S.C.A. § 1415(i)(2)(C)(iii). *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

C. Failing to include the parent in IEP discussions as equal members of an IEP team

Substantive Law

The IDEA affords parents important procedural and substantive rights to ensure that their child receives a FAPE under the statute. Emphasizing the importance of the procedural safeguards embodied in title 20, section 1415 of the U.S.C.A., the Supreme Court, in *Rowley*, explained:

When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act,^[35] we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP . . . demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

458 U.S. at 205–06 (citation omitted). As this passage explains, the purpose of the procedural safeguards afforded under the IDEA is to ensure full and meaningful participation of “concerned parties,” including the parents of a child, throughout the IEP development process.

³⁵ The Supreme Court in *Rowley* interpreted what was titled the Education for All Handicapped Children Act (EHA), the predecessor to the IDEA.

With *Rowley*'s emphasis on procedural compliance, therefore, it is unsurprising that the IDEA was amended in 2004 to provide that certain procedural violations may result in a finding that a child was denied a FAPE. In relevant part, the IDEA states the following:

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

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 U.S.C.A. § 1415(f)(3)(E)(ii) (emphasis added); *see also* 34 C.F.R. § 300.513(a)(2).

School staff must also consider parental feedback, or parental participation would not be meaningful. Thus, “[a] school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003), *superseded by statute on other grounds*, 20 U.S.C.A. § 1414(d)(1)(B), *as recognized in G.M. ex rel. Marchese v. Dry Creek Joint Elementary Sch. Dist.*, 595 F. App'x 698, 699 (9th Cir. 2014).

Ultimately, in light of such disagreements between school staff and parents, the United States Department of Education's Office of Special Education and Rehabilitative Services has provided guidance stating, “If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.” Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 Fed. Reg. 12406, 12473–74 (Mar. 12, 1999) (providing answer to question number nine in section II of the Appendix); *see* 34 C.F.R. § 300.148(b) (“Disagreements between the parents and a public agency regarding the availability of a program

appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures . . .”).

Evidence and Testimony Regarding Parental Involvement

It was undisputed that the Parent and/or her representative attended numerous IEP meetings during the relevant time frames. Testimony of Parent, ██████, ██████, and ██████. Further, it is undisputed that some of the Parent’s concerns were addressed at the meetings and the IEP team revised the goals and objectives to address those concerns. See Testimony of ██████ regarding articulation and intelligibility; Testimony of ██████ regarding handwriting and wiping. Further, the exhibits are replete with PWNs, which documented disagreements between the BCPS and the Parent regarding various issues. BCPS Exs. 54, 59, 60, 62, 66, 73, 79.

In the October 4, 2022 IEP meeting, the Parent raised concerns with the Student’s toileting skills and the Parent’s frustration that this has not been addressed as an IEP goal on the current IEP. BCPS Ex. 40. The Parent indicated that as of October 2022 the Student was not working on how to wipe and she is unsure how to teach him. The Parent also told the IEP team that the Student was unable to dress himself at home. BCPS Ex. 40. Similarly, at the hearing, the Parent testified that the Student still does not know how to wipe, has trouble pulling up long pants, and cannot put on his shirt or shoes by himself. She further stated toileting was on the IEP when the Student was at the elementary school. Testimony of Parent. She contends that the Student has made no progress with toilet training.

Ms. ██████ had a different opinion regarding the Student’s progress during the school day in toileting. While the Student does not use the toilet, or wipe independently, the Student had progressed in other parts of the toileting routine. Ms. ██████ described that when the Student began at ██████MS, he required full assistance with the toileting process, including removing and putting on shoes and clothing items. Ms. ██████ and other staff had worked with the

Student to put clothing right side out and turning the clothing to the right direction. This was practiced in the classroom. Testimony of [REDACTED]. The student also had to learn to put on his shoes, and the staff worked with him and provided him with a shoe horn to help with that skill.³⁶ Testimony of [REDACTED]. The steps of the toileting process were chunked (broken down) and then generalized into the restroom setting.

Ms. [REDACTED] further described that now, the Student can undress and dress, including his shoes, and dispose any used pullup in a plastic bag without prompting. Testimony of [REDACTED] and BCPS Ex. 40. The Student can wash his hands independently. Testimony of [REDACTED]. There are times that the Student will still put on clothing inside out or backwards, but he is able to recognize the errors. Testimony of Ms. [REDACTED]. Further, when a season changes (for example, he switches from shorts to pants), there is sometimes a loss of a skill for a brief time. Testimony of [REDACTED]. Ms. [REDACTED] and Ms. [REDACTED] discussed at the IEP meeting that the OT portion of the skills is to manipulate his clothing, which the Student was doing. However, the school members of the IEP team were willing to collect more specific data to determine if the toileting issues were having an academic impact. BCPS Ex. 40. The Parent was upset that the school did not already have that data prior to the meeting. The Parent also asserted that in 2016, the Student could pull up his pants so his performance now is not progress. BCPS Ex. 40.

In the 2021 IEP, the Written Language Goal in the Student's IEP addressed the Student's ability to type his first and last name and the ability to draw some objects of interest in two out of three trials. BCPS Ex. 7. During the October 2022 IEP meeting, there was concern that the Student still cannot write his name. BCPS Ex. 40. During that meeting, Ms. [REDACTED] clarified that she considers typing his name the same as writing his name. BCPS Ex. 40. However, it was clear throughout the hearing, and through the notes of IEP team meetings, that the Parent is

³⁶ The Student cannot tie shoes and he uses a shoe horn to put on shoes.

frustrated that the Student cannot handwrite his name. Ms. [REDACTED] provided testimony that she has worked with the Student to handwrite his name using a strategy with beginning and end dots. This did improve the Student's ability to handwrite his name, but Ms. [REDACTED] testified that the Student will need to practice every day and even after he masters the skill, if he stops practicing he may not remember how to write his name. Testimony of [REDACTED].

Analysis of Involving Parent in IEP Meetings

Based on the review of the evidence in this case, the Parent was heavily involved in the IEP process. She was notified of and attended almost all IEP meetings.³⁷ Further, the BCPS regularly considered the Parent's input and sometimes incorporated it into revised IEPs.

For example, the School members of the IEP team had not observed any issues with articulation and speech intelligibility in the school setting. The special education teacher and other adults in the classroom were not having difficulties understanding the Student. Testimony of [REDACTED] and [REDACTED]. However, the Parent raised a concern that unfamiliar listeners could not understand the Student. Based on this concern, the IEP team crafted a Communication - Speech Intelligibility goal that the IEP team added to the January 2023 IEP. BCPS Ex. 66. This goal would address strategies for increasing intelligibility for both familiar and unfamiliar listeners.

Similarly, there was no goal on the 2021 IEP regarding toileting.³⁸ At the October 2022 IEP meeting, the Parent raised concerns regarding toileting generally, including wiping. The BCPS offered to collect data on whether toileting was impacting the Student's education, and then it found that toileting did not impact the education. In addition, Ms. [REDACTED], the therapist, provided strategies to the Parent regarding wiping. Similarly, the IEP team found ways to include wiping skills on the IEP in a Fine Motor – Life Skills goal, which was added on the draft

³⁷ The Parent missed one meeting because of a migraine but her representative attended in her absence.

³⁸ There were services regarding assisting the Student with toileting but no goals or objectives addressing either toileting directly or the toileting protocols. BCPS Ex. 7.

December 2022 IEP and the January 2023 IEP. BCPS Ex. 47 and 66. Under this goal there was an objective to address grading force correctly for cleaning surfaces. BCPS Ex. 66. Finally, Ms. [REDACTED] addressed how the team was working with the Student on dressing as part of the toileting protocol and that the Student was becoming adept at that protocol.

While there are other topics, such as placement, that remained disputed by the Parent and the BCPS IEP team members, the Parent has not shown that the BCPS team prevented her involvement or refused to consider her concerns. Instead, the evidence shows that the BCPS valued the Parent's opinion and attempted to include her concerns in the IEP when they felt it was appropriate, even when they did not observe some of the same concerns during the school day.

D. Failing to properly document all disagreements with placement determination

Substantive Law

The regulations require written prior notice to the parents of the child whenever the local educational agency:

- (A) proposes to initiate or change; or
- (B) refuses to initiate or change,

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

20 U.S.C.A. § 1415(b)(3).

The contents of this notice shall include the following:

- (A) a description of the action proposed or refused by the agency;
- (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

- (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and
- (F) a description of the factors that are relevant to the agency's proposal or refusal.

20 U.S.C.A. § 1415(c).

Testimony and Evidence Regarding Placement Determination

The IEP team discussed the placement determination at the June 6, 2023 IEP team meeting, and the discussion is documented in a PWN. BCPS Ex. 73. After listening to the testimony of all witnesses, reviewing all the documents, and reviewing the closing arguments of both parties, it is still unclear what was not properly documented in terms of any disagreements with the placement determination.

The PWN states the following regarding placement:

The IEP team discussed that [redacted] HS is [the Student's] home-zoned school for ninth grade. The IEP chair from [redacted] HS participated. He provided details about the [redacted] program there. Upon review of the IEP, including the revisions made today, Mr. [redacted] shared that the IEP can be implemented at [redacted] HS. They have the staff with the capacity to implement the IEP including the assistive technology. [The Student] would have additional adult support in all classes and settings as he does currently. Mr. [redacted] explained that the teachers and staff have the ability to provide individualized instruction that will meet [the Student's] needs regardless of the varying level of ability that may be present in his classes. The current class size in their [redacted] program is approximately 7 students and up to 4 adults in the class.

...

The family disagrees that [the Student's] home school can provide the supports he requires. The team discussed that the IEP as written (including revisions) can be implemented at [the Student's] home school as his least restrictive setting. [The Student] has met with success with the supports and services including in his special area/elective classes which are inside general education.

Overall, the family disagrees with the school's proposal for [the Student] to progress to [redacted] HS and is requesting a referral to a non-public placement. They do not feel that he has made progress in public school and is too far behind as a result to move to the ninth grade. They would like [the Student] in a class of no more than 6 students with intensive repetition of instruction that they feel can only be provided in a non-public setting.

BCPS Ex. 73.

██████████ has been the IEP chair at ██████████ High School for approximately one year. In that role, he facilitates teams, handles the IEP process in terms of coordinating support personnel, and contacts parents to make sure they receive IEPs and accompanying paperwork in the appropriate timeframes. Mr. ██████████ does not personally know the Student. The Student has not previously been a student at ██████████ HS. However, Mr. ██████████ did participate in the IEP team meeting on June 6, 2023. See BCPS Ex. 73. Mr. ██████████'s testimony regarding his participation did not match the description of his participation in the PWN. Mr. ██████████ testified that he did not know the Student's disability, did not know the supports, goals or services required under the IEP and that he did not make any statement at the meeting whether the IEP could be implemented at ██████████ High School.

According to Mr. ██████████, he provided information at the June 6, 2023 IEP meeting about the ██████████ program at ██████████ High School. He testified that he provided information generally about the ability of the staff in the ██████████ program to provide individualized services and instruction to the various students in the program based on the students' disabilities and needs. However, Mr. ██████████ did not specifically address the application of this program and/or individualized services and instruction to the Student.

Ms. ██████████ testified that she did not think a non-public placement is appropriate for the Student. She testified that the Student thrives socially and communicates with his non-disabled peers. Testimony of ██████████. He learns from the interactions from the non-disabled peers. He was able to participate in inclusion classes with modified work and he looked forward to those classes. The Student ate lunch with non-disabled peers, and would wait for his bus while talking to peers that were his friends.³⁹ Testimony of ██████████

³⁹ The Parent testified that the Student has a single friend from his classroom and no friends that are non-disabled peers. She asserted that no one is mean to the Student, no one talks to him, or invites him to events. Further, some of the same nondisabled peers are at the neighborhood pool, and do not talk to the Student there.

The Student participated in [REDACTED] club which is an extracurricular activity that meets two times a month to promote friendship and a positive school culture. Testimony of [REDACTED]. It is for both disabled and non-disabled peers. Ms. [REDACTED] testified that initially the Student had to be next to her for [REDACTED] club and would seek her assistance for all activities. However, now the Student will get started with the activity and ask his peers if he needs help. Ms. [REDACTED] testified this is progress for the Student. She acknowledged this Student will not make progress in the same way a non-disabled peer will make progress, but she contends he is having successes along the way. Testimony of [REDACTED]. She contends that the Student is receiving social benefits from [REDACTED] MS and is growing academically.

The Student also was a student athlete on the [REDACTED] Softball and [REDACTED] Bocci teams. Testimony of [REDACTED]. These teams are for non-varsity athletes. The athletes can be disabled or non-disabled. For the warmup, the Student was able to put his stuff where it belonged, do laps, stretch, and then pick a partner to play catch. Testimony of [REDACTED]. The Student also was able to work with peers with and without disabilities and participated in team competitions with other schools as well.

The Student participated in the eighth-grade field trip, an Orioles game. Testimony of Ms. [REDACTED]. Both Ms. [REDACTED] and the paraeducator could not attend the field trip with the Student. He attended with a less familiar adult and even had to use the restroom at the game. But according to Ms. [REDACTED], he thrived and sat with his peers in the eighth-grade class, ate snacks, and enjoyed the game. This was an extended day field trip.

[REDACTED], an expert in special education, is the current department chair for special education at [REDACTED] HS. As department chair, Ms. [REDACTED] supports the teachers instructionally and works with the team to ensure school goals are met. This includes making sure that the proper staffing is available to align with IEP compliance. The case managers are the special educators

and provide direct services to the students. The department chair works directly with the special educators and instructional assistants as well as acting as a liaison between the family and the providers if necessary.

At █ HS, there are currently twelve and a half (12.5) special educators on staff. There are approximately two hundred students at █ HS who receive special education services.⁴⁰ █ HS has a █ program, which is available for students pursuing a certificate of completion. This program has an extensive modification to the curriculum to allow these students to access the curriculum. The █ program focuses on community readiness, work-based learning, and life skills.

According to Ms. █, there are approximately fourteen students in the █ program at █. This is divided into two classrooms, an upper class for students ages eighteen to twenty-one and a lower class for students younger than eighteen. The division is not based on specific skills or needs, but instead on the age of the students. In a █ classroom, there is a special educator as well as instructional assistants and additional adults. Instructional assistants must have specific education and experience. Instructional assistants can reteach and deliver lessons but cannot teach new skills. An additional adult is only required to have a high school diploma but participates in professional development. The role of an additional adult can vary from student to student, including transition support (escorting students from one place to another), hand-over-hand support, additional prompting, feeding support, and toileting protocols.

█ HS' █ program mirrors the █ programs at █ MS and the other BCPS middle school that feeds into █ HS. Students in the █ program at █ HS could attend some elective classes in general education, but Ms. █ did not know if the Student would attend any

⁴⁰ This number varies each year as students matriculate in and out of the program, as well as due to students changing schools during the year.

electives in the general education class. This would be based on the individual student and his/her needs.

Ms. [REDACTED] does not know the Student and had not reviewed his IEP at the time of her testimony. The teacher for the younger [REDACTED] class this year is Ms. [REDACTED]. Ms. [REDACTED] testified that typically the week prior to school starting, Ms. [REDACTED] would review the IEPs for each of her students and if there were any concerns about implementing the IEP in the classroom. If so, then she can reach out to Ms. [REDACTED]. At the time of Ms. [REDACTED]'s testimony, Ms. [REDACTED] had not raised any issues regarding the Student's IEP.

Ms. [REDACTED] extensively explained the general schedule of the [REDACTED] program. The schedule consists of four periods: first period: academic instruction, second period: elective, third period: social studies, science, social skills, or soft skills, and fourth period: transition supports and work-based learning. The academic instruction would include functional math, which is basic math required to be functional in society, including time and money skills. For both Math and English, the students would engage in small groups. They work on curricular standards but in a modified way and tailored to the students.

Ms. [REDACTED] provided descriptions of the various work-based learning provided. The school works with different employment agencies to allow a child to practice a skill at a job site. The students in the [REDACTED] program are not directly employed, but they have had the opportunities in the past to work with companies like [REDACTED], [REDACTED], [REDACTED]'s (a grocery store), the county public library, and the [REDACTED]. In addition, there is job-based learning in the classroom and at the school. This can include creating an order system for teachers to order copies, or other supplies and having the students help to fill the orders and check inventory. The students can help deliver packages inside of the building. Part

of the goal with the job-based learning is to learn skills that could be used in a workplace, but the other part is to increase the stamina of the students with a goal of working for three hours at a time.

The job-based learning is different than the community-based instruction. This instruction is to assist the students with being able to interact with the community. For example, when the [REDACTED] students were studying habitats in science, they had a trip to the zoo. During that trip, they practiced with maps to find certain animals, to use the community restroom, and to order, purchase and eat food. Testimony of [REDACTED]. They also had to work on telling time and determining when they had to start heading back to a meeting point to be on time. The skills worked on at a [REDACTED] trip can be tailored to different students based on their needs and what skills they are ready to address. Testimony of [REDACTED].

[REDACTED] students at [REDACTED] HS also work on executive functioning skills (skills to plan, organize and execute a task). These skills are supported with organizers, and working with each student individually to pull back supports and help foster independence. For example, the instructors may talk about the entire day and what to expect throughout the day. The instructor may provide a scenario and have the student figure out what to do first. The goal is to start with the teacher showing a task, then have the students and teacher work together on a task, and eventually have the student do the task with the minimal amount of support necessary.

Ms. [REDACTED] explained that the least restrictive environment is to experience school with non-disabled peers as much as possible. She described it as a continuum, starting with having the entire IEP implemented in the general education setting, and going all the way to a placement in a highly restricted setting. She testified that at [REDACTED] HS [REDACTED] students are allowed to engage with non-disabled peers in elective courses and sometimes, if there is a special interest, the

█ student can even engage with nondisabled peers in an academic course. Further, the █ students generally eat lunch and attend assemblies with non-disabled peers. There is an █ Sports program that includes both disabled and non-disabled peers.

Ms. █ discussed the placement of students in a non-public school. She discussed that there must be data to support that placement. She said a more restrictive placement depends on the services needed and lack of progress on the goals and objectives. She has not reviewed the Student's IEP or his progress on his goals. However, she stated that the █ programs at █ MS and █ HS mimic each other, and if the IEP could be implemented at █ MS, then it would also be able to be implemented at █ HS.

At █ MS, the █ program for the past two years (2021-2022 and 2022-2023) had four students. In the classroom, there was the special education teacher, Ms. █, as well as an instructional assistant and an adult additional support. Testimony of █.

Analysis

While it is concerning that the description of Mr. █'s participation does not match his testimony, there is nothing in his testimony to indicate that he disagreed with the Student's placement at █ HS in any way. Further, the PWN was clear that the Parent did not agree with the placement and spent two paragraphs explaining that disagreement. Finally, both the PWN and the testimony of the witnesses, specifically █ and █, provide the reasons that the IEP team members from BCPS recommended placement at the █ program at █ HS. Therefore, I conclude that the BCPS properly documented all disagreements regarding placement. 20 U.S.C.A. § 1415(b)(3) and (c)(1).

E. Failing to provide an IEP that is appropriately ambitious in light of the Student's circumstances

Substantive Law

The Supreme Court set forth the following “general approach” to determining whether a school has met its obligation under the IDEA:

While *Rowley*⁴¹ declined to articulate an overarching standard to evaluate the adequacy of the education provided under the [IDEA], the decision and the statutory language point to a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The [IDEA] contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an “ambitious” piece of legislation enacted in response to Congress' perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to “drop out.” A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child's circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be “*specially* designed” to meet a child's “*unique* needs” through an “[i]ndividualized education program.”

Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 998-999 (2017)
(citations omitted; emphasis in original).

⁴¹ *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 (1982).

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Andrew F.* Court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Id.* (quoting *Rowley*, 458 U.S. at 206). At the same time, the *Andrew F.* Court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Id.* at 1002.

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* at 1000. Moreover, the IEP must be reasonably calculated to allow a child to advance from grade to grade, if that is a “reasonable prospect.” *Id.*

The development of an IEP is a prospective process. *See Andrew F.*, 137 S. Ct. at 999. The test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved. While outcomes may shed some light on appropriateness, the proper question is whether the IEP was objectively reasonable at the time it was drafted.” (Citation omitted). Thus, a judge in a due process hearing must look 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 educational

benefit. An IEP is essentially a “snapshot” in time and “cannot be judged exclusively in hindsight.” *See K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). However, evidence of actual progress during the period of an IEP may also be a factor in determining whether a challenged IEP was reasonably calculated to confer educational benefit. *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009); *see also M.M. v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 532 (4th Cir. 2002).

Evidence and Testimony regarding whether the IEP is appropriately ambitious for the Student

The Parent testified extensively about various concerns regarding different aspects of the Student’s education. First, she addressed the difficulties that she and the Student had with virtual learning, staying engaged during these virtual sessions, and keeping the Student logged into the sessions. Next, she addressed a lack of services for speech pathology and occupational therapy (OT) during these time frames. Once the Student was back at the school, the Parent had concerns regarding the lack of any speech pathologist for the first few months of the 2021-2022 school year, and then only a virtual provider for the remainder of the 2021-2022 school year. Similarly, the Parent did not agree with the OT assigned to provide services to the Student during the 2021-2022 school year. The therapist provided his services in person at the school but he recommended that IEP goal regarding the Student writing his name may not be appropriate as the Student may not be able to write his name. The Parent disagreed and contended that if the Student had more OT, then he would be able to master this skill. Currently, the Student can write the first three letters of his first name, when he has handwriting lines and dots to show starting points but would only have an illegible scribble if he was asked to write his name in a card.

The Parent also testified extensively about the Student's toileting issues. He is not able to wipe himself. He generally does not use the toilet and instead uses a pull up. The Student has trouble pulling up his pants or shorts. He also has trouble with putting on his shirt and his shoes. The Parent testified that toileting was a goal on the Student's IEP when he was in elementary school but it was not a goal on the 2021 IEP or any subsequent IEPs. According to the Parent, the Student has not made any progress on toileting.

The Student has limited reading skills. The Parent testified that the Student has memorized some sight words, but he has to practice them to remember them. The Parent discussed how the Student is not progressing in reading past level A or B books.⁴² The Parent feels that the Student has not improved in reading since February 2020. She explained that the Student is still working on the same book or going backwards with his skills. The Student can count, and could possibly increase the number by one, but he could not add two numbers unless he had something to count. He cannot do any written addition.

The Parent is concerned about the Student's articulation. She asserted that the Student's articulation regressed during the 2020-2021 school year. She claimed the Student is difficult to understand, particularly if you do not know what he is talking about. She also testified that an unfamiliar listener would not know what he was saying. The Student's speech volume is low and he generally answers with only one word or a short phrase. She testified that the Student's IEP had an articulation goal when he was elementary school, and that she does not know when that articulation goal was removed or why it was removed. The IEP team added a Speech Intelligibility goal to the IEP during the 2022-2023 school year to address the Parent's concerns regarding the Student's articulation.

⁴² Level A books are at a kindergarten reading and vocabulary level and contain one line of text on each page with a corresponding picture. Further, each page has a repeated story line with a word changing in each sentence. Level B books are leveled for the end of kindergarten through first grade level. The amount of vocabulary is increased, and the book does not include repeated story line. These books can have one or two lines of texts on each page. Testimony of [REDACTED]. Examples of a Level A and a Level B book are contained in Parent Exhibit 14, p. 37-55.

The Parent believes the Student needs to be placed at a non-public school, either the [REDACTED] or [REDACTED]. She visited those schools and was shocked at the differences between them and the public school. The classes were small (six or seven students). The students receive specific individualized attention and speech therapy and OT on a daily basis. She also described the life-skills training, including making cafeteria food and serving the meal to the other students. The students at the private schools could participate in plays and musicals. [REDACTED] had an art program, where the art was being sold. The Parent discussed how some of the students at the private schools had specific toileting schedules.

The Parent repeatedly expressed frustration that the Student has been working on some skills since elementary school and still has not mastered those skills, including toileting, writing his name, and, until recently, zipping his jacket. She described how goals were on IEPs repeatedly and just re-written or removed instead of achieved. The Parent described that the Student was reading A-level books when he left elementary school and started at [REDACTED] MS and is still seemingly on A-level books. Testimony of Parent.

Starting in November 2021, the BCPS attempted to schedule an IEP team meeting to conduct reevaluation planning for the Student. BCPS Ex. 2, and Testimony of [REDACTED]. The Student had last been evaluated in May 2019, and therefore, it was approaching three years since his evaluation. BCPS Ex. 3. The first meeting to discuss reevaluation planning occurred on February 1, 2022. BCPS Ex. 12. At the meeting, compensatory services for services not provided due to COVID closures were addressed as well as obtaining assessments for both reevaluation purposes and for addressing the Parent's concerns about lack of progress. BCPS Ex. 12. The BCPS members of the IEP team recommended educational, psychological, OT, and speech-language assessments. The Parent wanted to pursue assessments from outside providers and did not provide consent for assessments performed by the school at that time. BCPS Ex. 12.

The BCPS attempted to schedule a follow-up IEP meeting on March 22, or 25, 2022, but the Parent and/or her representative were not available for those dates. BCPS Ex. 22. Further, the Parent's representative responded on March 25, 2022 that the Parent and her representative were in the process of securing private testing for the Student and would send the testing results when completed as well as provide dates for an IEP meeting. BCPS Ex. 22. The BCPS replied that it still needed to conduct the annual review of the Student's IEP using informal data, unless the family wished to request a delay. BCPS Ex. 22. Ms. [REDACTED] testified that while educational assessments are not required for students matriculating to high school, the IEP team recommended the assessments to provide updated information for the Student's strengths, needs and levels of performance, as this could help with the transition. However, if she were unable to conduct an educational assessment, she could consider informal sources. BCPS sent a draft IEP to the Parent in preparation for a March 2022 IEP meeting. Ms. [REDACTED] testified that, due to the rescheduling of IEP meetings, and the Parent obtaining private assessments, the IEP meeting for the annual review did not occur in March 2022.

The next dated exhibit provided by the parties is the August 5, 2022 mediation agreement, where the Parent agreed to consent to OT and adaptive-rating assessments, and the BCPS agreed to convene additional IEP meetings to review assessments and decide on placement.⁴³ BCPS Ex. 25. On August 25, 2022, the parties convened an IEP meeting and discussed the assessments that had been obtained by the Parent.⁴⁴ BCPS Ex. 28.

⁴³ The exact details of what happened between March 2022 and August 2022 are unclear. In July 2022 the parent filed a due process complaint, which was why the parties attended the mediation, and reached the mediation agreement. However, there are months between these events and there does not appear to be any communications regarding rescheduling the IEP meeting or receiving the private assessments. Neither party provided testimony regarding this time frame either.

⁴⁴ During the hearing, there was argument that the BCPS failed to abide by the mediation agreement as their testing was not completed prior to the August 25, 2022 IEP meeting. However, no term in the mediation agreement requires testing be completed prior to the August 25, 2022 IEP meeting. Instead, the obligations for BCPS were to conduct an IEP meeting on August 25, 2022 and to have a second IEP meeting where an individual who has authority to make a decision on non-public placement would attend. BCPS Ex. 25.

After the August 25, 2022 meeting, the BCPS next proposed a meeting for October 4, 2022 to discuss the results of the BCPS assessments, including the Student Interest Sheet (BCPS Ex. 33), the Occupational Therapy Assessment Report (BCPS Ex. 34), and the Report of Psychological Evaluation (BCPS Ex. 35 by Ms. [REDACTED]). At the October 4, 2022, IEP meeting, the OT and psychological assessments were discussed. At the end of the October 4, 2022 meeting, the IEP team found the Student eligible for services. However, an IEP was not formulated or agreed upon at that meeting.

Ms. [REDACTED] testified regarding her assessments of the Student's adaptive skills. She explained adaptive skills can include communication skills (ability to understand and express information), functional academic skills (such as how to count money, tell time, do basic math, and read), daily living skills (such as self-help, dressing, feeding, bathing), and social skills. Ms. [REDACTED]'s evaluation was not based on a direct assessment of the Student but was instead based on scales sent to and completed by the Parent and the special education teacher. The questions are standardized and the scales for parents and teachers are the same, except for a few categories. The scales instruct the individuals completing them to base responses on the past two to three weeks, and the questions are based on what a student can do independently without any support. Ms. [REDACTED] testified that the Student was demonstrating adaptive behavior that was below what it expected for children in his age. In her report, Ms. [REDACTED] recommended continuation of the accommodations on the Student's IEP, including chunking of information and directions, and picture supports paired with auditory information. She also recommended using social stories to review social skills and activities of daily living that the Student has not yet mastered. BCPS EX. 35.

Ms. [REDACTED] testified regarding her OT assessment of the Student. She performed the assessments on September 12 and 14, 2022. Testimony of [REDACTED] and BCPS Ex. 34. Ms. [REDACTED]

worked with the Student for the 2022-2023 school year, which means they had just started therapy together at the time of the assessments.⁴⁵ Testimony of Ms. [REDACTED]. She explained that OT addresses skills needed to perform one's occupation (in this matter, the Student's occupation is school). These could include transition skills, fine motor skills, and following and completing routines. Testimony of [REDACTED]. In order to assess the Student, Ms. [REDACTED] did not use a standardized assessment because it would not give valuable insight. The Student's fine motor skills are significantly below his age level, and the assessment would require the Student to follow directions and use his motor skills. The purpose of the assessments was to design goals and objectives that would assist the Student. In preparing her assessment she considered previous OT logs, the Student's actual performance on tasks, and input from the special education teacher. While Ms. [REDACTED] wanted to interview the Parent, this interview did not occur. Testimony of [REDACTED]; BCPS Ex. 34.

Ms. [REDACTED]'s OT assessment covers classroom routines, mealtime routines, toileting and dressing routines, arrival and dismissal routines, classroom tool use, and technology skills. BCPS Ex. 34. A common theme throughout both the assessment and the remainder of Ms. [REDACTED]'s testimony was that the Student can learn to use a specific item that he is familiar with but he has problems with generalizing the skill to other similar items. For example, if he learned how to zip up a jacket, he may not be able to also zip up a coat with a different zipper; or if he learned to open a Tupperware container for lunch, he may not be able to open a similar container. Testimony of [REDACTED]. The Student cannot problem solve on his own. After reviewing the assessment at the IEP meeting, the IEP team disagreed with the Parent about whether the Student could write his name. He was primarily using circular motion to write his name. Ms. [REDACTED] indicated he was primarily writing his name by typing, and the BCPS considered typing,

⁴⁵ Ms. [REDACTED] had worked with the Student during a summer program years earlier but her testimony and assessments referred to what she observed during the 2022-2023 school year.

or stamping, or writing to be writing his name. Between the assessment and the date of the October 2022 IEP meeting, there was significant progress in writing his name by utilizing a visual strategy with dots. Testimony of [REDACTED].

Ms. [REDACTED] found the Student independent in dressing and undressing and removing his pull up, which Ms. [REDACTED] determined was the school-based piece of toileting (ability to participate in the routine). Testimony of [REDACTED]. However, she also testified that she could work on assistance with wiping as a skill. The OT assessment recommended small-writing tools to promote a more effective grasp pattern, practice fine motor skills that affect the ability to complete functional skills that he need throughout the day, reduced physical prompting, verbal cues to guide writing his name, and multiple forms of expression to practice writing his name (such as stamping, typing, handwriting and sticker label).

After the October 4 meeting, the BCPS and the Parent exchanged potential dates for a meeting in November 2022, but the first mutually agreeable date was December 19, 2022. On December 19, 2022, the IEP team met to discuss the draft IEP. BCPS Ex. 54. It is unclear from both the documents and the testimony if the IEP team approved this IEP. See BCPS Exs. 50 and 54⁴⁶ and Testimony of [REDACTED].⁴⁷ It is clear that the parties were still working on some parts of the IEP such as a speech-intelligibility goal, and later, an assistive-technology goal.

Additionally, IEP meetings were held on January 3, 2023, where the IEP was approved, and January 18, 2023, where the IEP was amended. BCPS Ex. 66. At the January 3, 2023 IEP meeting, the Student's reading comprehension goal was discussed. The Parent indicated that the Student is still working on the same text at the same or a lower level, and that there has been no

⁴⁶ BCPS Ex. 50 indicates this is an approved IEP from an IEP team meeting of December 19, 2022. However, the PWN from the December 19, 2022 meeting does not make it clear that the IEP team recommended adopting this version of the IEP, particularly when the PWN states, "the team would need to reconvene to finish the development of [the Student's] IEP."

⁴⁷ Ms. [REDACTED] testified initially that the December 19, 2022 IEP was a draft, but then later said it may have been finalized but she was not certain for that meeting date.

progress. BCPS Ex. 66. Ms. [REDACTED] disagreed and contended that the Student was making progress. BCPS Ex. 66. She explained that the text had been mastered (read with 83% accuracy) at school and was being sent home for practice. She indicated that the fluency goal is to increase the Student's ability to read words in isolation from 150 words to 190 words in sentences. Some of the Student's reading involves picture cues or prompts, which the Parent contended is not reading. However, the school members of the IEP team hold the opinion that the Student's needs, which are documented through multiple sources, including team discussions, progress reports and assessments, require a goal reasonably calculated for the Student. Ms. [REDACTED] testified that the Student is working toward reading high frequency sight words at the first and second grade level, including words with suffixes. See BCPS Ex. 78 for his current IEP goals and the progress reports for the third and fourth marking periods. His baseline was reading high frequency sight words (including words with suffixes) in isolation at 85% accuracy.

At first, the progress between the third and fourth marking periods looks identical, but when you read it more closely it is measuring two different objectives. In the third marking period, the report considers reading 190 high frequency sight words in *isolation* and the Student had 78% accuracy. (Emphasis added). In the fourth marking period, the report considers reading 190 high frequency sight words *in sentences*, and the Student had 77% accuracy. (Emphasis added). The objectives by December 2023 are to read 190 high frequency sight words *in isolation* with 90% accuracy, to read high frequency sight words with suffixes with 80% accuracy, and to read 190 high frequency sight words *in phrases* with 85% accuracy.⁴⁸ Similarly, the reading comprehension goal can be misleading. Parts of the comprehension goal addresses explicit questions about a text and other parts address implicit questions. According to

⁴⁸ Suffixes are only addressed in one of the three objectives. BCPS Ex. 78.

Ms. [REDACTED], the Student is showing improvement as he is now answering some implicit questions correctly.

At the January 3, 2023 IEP meeting, the teachers and staff discussed that they were not having any difficulty understanding the Student in the classroom or school setting. However, they acknowledged that at times his peers have difficulty understanding the Student during extracurriculars and non-structured settings. BCPS Ex. 66. The Parent believes that the Student's articulation needed to be addressed in a small non-public school setting. While the teachers and staff at BCPS did not see an articulation issue in the school setting, Ms. [REDACTED] still drafted an articulation goal for the IEP to address the Parent's concern.

At the January 18, 2023 IEP meeting, the team discussed the Student's placement. The school members of the team recommended services to address academic and community-based goals outside of the general education setting for five one-hour sessions daily. However, the school members also recommended that the Student participate in electives, like Art, with the general education class. BCPS Ex. 66. Ms. [REDACTED], the art teacher, attended the January 18, 2023 meeting and discussed the Student's participation in art, including that he was happy and participates in partner work, which she described as collaborating with peers. BCPS Ex. 66. The Parent does not feel the student can participate in a general education setting because of the difficulty of the coursework. The family disagreed with both the proposed service delivery, the placement inside any general education classes, and the placement at [REDACTED] MS specifically and instead requested a nonpublic placement and a referral to nonpublic from the Central Department of Special Education. BCPS Ex. 66.

After January 18, 2023, the next IEP meeting was June 6, 2023, and the purpose was to review and/or revise the Student's IEP and to discuss his progression to high school. During this meeting, the school team members recommended that the Student transition to the [REDACTED]

program at ■ HS. BCPS Ex. 73. The Parent disagreed and wanted the student to be placed in a non-public placement. Ms. ■ testified that the school members considered the Student's current services, goals, and objectives from previous IEPs, as well as the current IEP and his progress on that IEP. Testimony of ■. She testified that the staff members agreed that the Student was making progress and that the services could be implemented at ■ HS. Testimony of ■. She acknowledged that the Parent was not in agreement. However, she noted that data supported the progress, and referred to the quarterly progress reports. Testimony of ■.

At the time of the June 6, 2023 IEP meeting, the team discussed the Student using assistive technology. BCPS Ex. 74. At the time of the meeting, the Student had tried a few different assistive technologies. The team recommended Clicker Writer, which is an assistive technology software with different levels of support. Ms. ■ testified that the Student started with the most restrictive level, where he would dictate a sentence and he would click on words and hear them to recreate his sentence. At this first level, the words were in the right order, and could not be selected twice. For later levels, the words could be selected twice or the words could be out of order. Testimony of ■. According to Ms. ■, the Student enjoyed using Clicker Writer and would want to do more writing on preferred topics after whatever task he was initially given.⁴⁹ Testimony of Ms. ■. The assistive technology can continue with the Student at ■ HS. The application is installed on a chrome book that the Student can take back and forth from home to school. Testimony of Ms. ■. Also, Clicker Writer could be used inside of the general education classrooms; however, it was not at ■ MS because it was in a trial period and by the time it was approved, the 2022-2023 school year was over. The general education teachers would need some training on the technology. Testimony of ■.

⁴⁹ Ms. ■ testified that video was taken of the Student using the assistive technology but this video was not introduced by any party at the hearing.

It was interesting how the Parent and Ms. [REDACTED] viewed an award that the Student received from [REDACTED] MS at the end of the year. Ms. [REDACTED] explained that the award is to recognize a student that has made progress, worked hard, and is a part of the [REDACTED] MS community. Testimony of [REDACTED]. The department of special education could nominate one student for the award and they collaborated and decided the Student was the appropriate person to receive the award. When Ms. [REDACTED] testified about this award, her eyes began to water and her face lit up as she described her speech to give out the award, and the Student's reaction to having his name called, and the cheers from the students sitting next to the Student.

The Parent however viewed this award as an attempt to make her son feel included and was not any actual accomplishment. Testimony of Parent. She acknowledged the Student liked to have his name called but did not feel that it was an earned award. Testimony of Parent.

Ms. [REDACTED], an expert in special education, offered her opinion that FAPE was provided during the 2021-2022 and 2022-2023 school years for academic and all services on the IEP, except for the speech services from September 2021 to December 2021. She held the opinion that the Student was making appropriate individualized progress, and that the BCPS was appropriately trying to revise his IEP. Finally, Ms. [REDACTED] held the opinion that the 2022-2023 IEP was appropriately ambitious for the Student. Testimony of [REDACTED].

[REDACTED] is a group of students working together on specific life skills. Ms. [REDACTED] co-led a functional skills group with Ms. [REDACTED] during the 2022-2023 school year. The group worked on things such as cooking projects and craft activities. During the activities, they would address skills of need for the students.

For the January 2023 IEP, Ms. [REDACTED] supported the written language goal (writing his name), fine motor goal (independence with dressing), and fine motor life skills (difficulty with

bilateral hand usage⁵⁰ and ability to grade force⁵¹). Ms. [REDACTED] provided progress report for the third quarter (March 24, 2023) and for the fourth quarter (June 13, 2023) for the fine motor goals (dressing the upper body) and the fine motor life skills. BCPS Exs. 69 and 74; and Testimony of [REDACTED]. She described that for the Student, tasks often had to be broken down into much smaller pieces to achieve the bigger goal. In both progress reports, Ms. [REDACTED] found he was making sufficient progress in these areas. She provided explanations regarding where the Student started with the various skills, and where he was at the time of the progress reports and why that was progress. Testimony of [REDACTED]. Ms. [REDACTED] did not participate in ESY for the Student for 2023. She reviewed the progress report from August 3, 2023 and stated that it shows some growth of skills or at least maintenance of the skills. Testimony of [REDACTED].

Ms. [REDACTED] testified that the Student did not require more OT on his IEP to address his skills because the practice of a motor pattern (like writing his name) did not require skilled occupational-therapy service, but the breaking down of the task required her unique skills. Then she must train everyone properly about how to break it down. The Student did not need an occupational therapist to practice with the Student daily, but the occupational therapist needed to make sure the other staff were trained on how to break steps down and then follow up to make sure the practice was properly implemented. Testimony of [REDACTED]. She also testified that extra OT could take away from services for other needs. Ms. [REDACTED] testified that she thinks the OT-related goals in the IEP are appropriate for the Student and she agrees that the current IEP could be implemented at [REDACTED] HS in the [REDACTED] program.

⁵⁰ Bilateral hand usage is using both hands for a task, such as holding a bowl with one hand while mixing with the other.

⁵¹ Grading force is determining how much force is needed to complete a task. For example, the force needed to wipe water versus wiping a sticky substance off a counter or the force needed to mix all dry ingredients versus the force needed to mix wet and dry ingredients together.

Ms. [REDACTED] filled out the AT form after the Parent's requested the services. She does not know if this was denied by the BCPS before. She specifically requested AT to assist with the Student's ability to compose sentences. Testimony of [REDACTED].

Ms. [REDACTED] testified that she does think that the Student will be able to wipe himself eventually. However, prior to middle school practicing wiping and grading force may not have been something to address on an IEP because this type of skill is more aligned with the functional skills (cooking, CBI, etc.). She has seen progress since working on the skill in the 2022-2023 school year. Testimony of [REDACTED].

While Ms. [REDACTED] acknowledged that it is important for the Parent that the Student can write his name, she does not feel that this skill is the most important for the Student as he progresses in life. If the Student practices his name every single day, he will maintain gross legibility. This does not require continued specialized OT services. However, if the Student stops practicing writing his name for some time, he will likely regress. Testimony of [REDACTED]. Further, there are other ways for the Student to convey who he is, such as typing, stamps, stickers, or using other automated devices. Testimony of [REDACTED]. The Student can type his name.⁵² Testimony of [REDACTED].

Ms. [REDACTED] helped to draft the proposed goals for speech intelligibility. BCPS Ex. 57 and Testimony of [REDACTED]. The goal as drafted stated that the Student would apply strategies (reducing speech rate, using overarticulation, adjusting volume, restating what he said, and using pausing and phrasing) when he is provided with feedback, to increase the amount of speech understood by familiar and unfamiliar listeners. BCPS Ex. 57.⁵³ Ms. [REDACTED] noted that the special education teacher did not have any concerns about the speech intelligibility of the Student at school but the Parent had raised concerns about his speech intelligibility. Ms. [REDACTED]

⁵² Sometimes the Student will type his name with an additional "O."

⁵³ The goal focuses on the Student's ability to use strategies after being provided with feedback. (Emphasis added).

explained that any student may be able to perform a skill inside the school, but for whatever reason be unable to generalize that skill to a setting outside of the school. Testimony of [REDACTED]. The Parent is an equal member of the team and while the IEP is designed to improve the educational performance during the school day, the team takes into consideration other home and life concerns. Testimony of [REDACTED]. When the speech intelligibility goal was added, the direct services time was increased from one thirty-minute session a week, to two thirty-minute sessions a week. Ms. [REDACTED] testified that the communication goals are appropriately ambitious and that the necessary supports can be provided at [REDACTED] HS in the [REDACTED] program.

She explained that the Student is social at school and does interact with his non-disabled peers. Ms. [REDACTED] described how the Student had progressed from only responding to questions with one word responses to spontaneously speaking a statement or sentence without a prompt. In the progress notes by Ms. [REDACTED], she provided some examples of those spontaneous statements. BCPS Exs. 7 and 81. She indicated that the statements were socially relevant and intelligible. Testimony of [REDACTED]. Ms. [REDACTED] discussed a new strategy to encourage a longer conversation by using a “talking ball.” The “talking ball” is just a tangible item that is passed back and forth to encourage the Student to take turns talking in a conversation. Testimony of Ms. [REDACTED]. When Ms. [REDACTED] talked about the Student and his progress, her face seemed to brighten. I found her to be credible and proud of the Student’s progress.

Analysis of whether the IEP was appropriately ambitious for the Student

The Student in this matter is on a certificate track. He is sixteen years old, and has difficulty with toileting, writing his name, reading, basic math skills, dressing himself, and several other areas. These factors must be considered when determining what is or is not appropriately ambitious. Further, it is undisputed that the Student was impacted negatively by

the COVID-related closures and virtual learning. See BCPS Ex. 1. However, the claimed violations start from June 2021 through the present.

The Student testified briefly at the hearing. He was in an unfamiliar setting, with multiple unfamiliar adults in the room.⁵⁴ The room was set up as a traditional hearing room with a bench for the administrative law judge and a witness box. The Parent was allowed to stay next to the Student during his testimony to ease any unnecessary anxiety. He answered questions with topic appropriate answers, even though his answers were not always correct. For example, when he was asked the answer to 4+5 or 3+2, he gave an incorrect answer, but he did give a number as an answer. He was able to state his first and last name but could not spell his first name. When asked to take off and put on his shoes, he said he could not do it. He could not provide his mother's phone number, and only provided a street address for his address (no city or state was included). The Student was friendly, observant, and polite. His speech was mostly intelligible, even for me as an unfamiliar listener. There were a few words that were mispronounced; however, it did not prevent me from understanding his responses to the questions. His volume was appropriate for the courtroom, and when asked he repeated answers without any difficulty. Considering that I was an unfamiliar listener, I find it credible that the teachers and staff of the Student were also not having issues with the Student's articulation, particularly when they are familiar with the Student.

The Parent made clear throughout her testimony that she does not see sufficient progress for the Student and that she contends that the IEP was not appropriately ambitious to move the Student toward having the necessary life skills he will need when he is outside of the school system. The Parent raised concerns regarding toileting and writing his name, which both are not specifically identified as goals or objectives on the current IEPs. The Parent also commented on

⁵⁴ At the time of the Student's testimony, the Parent's counsel was present, with co-counsel and a paralegal, the BCPS's counsel was present with a representative for BCPS, the Parent, two grandparents, and myself were in the room.

the lack of progress in reading, math, and communication, which all are goals or objectives on both the current and prior IEPs. However, the Parent did not provide any expert to provide insight as to what would be appropriately ambitious goals for a student with a profile similar to the Student in this case. Further, it is not clear whether the Parent argued that all of the goals on the Student's IEP were not appropriately ambitious, or only some of the goals. In addition, it is not clear whether the Parent argued that the 2021 IEP or the current IEP, or both, were insufficient. The Parent did not provide any expert to explain why the IEP goals on any of the IEPs (March 2021, January 2023, or June 2023) were not appropriately ambitious for the Student.

Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] all testified as to the progress they have seen with the Student. Based on my observations of their testimony, Ms. [REDACTED] and Ms. [REDACTED] in particular seemed to be proud of the Student's growth they have observed. They would smile as they explained what growth they have seen over the period they worked with the Student. Further, all three testified that the goals listed in the January 2023 and June 2023 IEPs were appropriately ambitious for the Student.

The evidence included the Individualized Education Program Team Summaries from the Meetings of March 22, 2021 and April 14, 2021. BCPS Exs. 6 and 9. During the March 22, 2021 meeting, the IEP team, including the Parent, discussed the goals on the prior IEP and also the progress toward those goals. BCPS Ex.6. During the April 14, 2021 meeting, the IEP team, including the Parent, found the Student was eligible for ESY for the Summer of 2021, and also discussed various goals and objectives, including the Communication goal, the fine motor goal, and the community goal. BCPS Ex. 9. There is no indication in these documents that either the Parent or anyone from BCPS disagreed with the goals set forth in this IEP. Instead, it appears that the Parent raised some concerns, the BCPS team members attempted to address those

concerns by adding or revising objectives, by offering to send things home to the Parent to help the Student have consistent access to similar tasks once mastered at school and by answering questions.

On the 2021 IEP, there were goals in Communication, Community,⁵⁵ Reading Comprehension,⁵⁶ Written Language,⁵⁷ Mathematics,⁵⁸ Fine Motor,⁵⁹ and Adapted PE.⁶⁰ The progress reports showed that the Student was working toward these goals and that some took longer to achieve than others. The Parent provided no evidence from an expert as to what would have been appropriately ambitious goals for the Student as of March 2021. The testimony of the BCPS witnesses, specifically Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED], indicated that the Student was working towards the goals and was making progress. Except for the Communication goal,⁶¹ all of these goals were achieved before a new IEP was implemented. Based on the testimony and exhibits, the Parent has provided insufficient evidence that the goals on the 2021 IEP were not appropriately ambitious in light of the Student's circumstances.

⁵⁵ The Community goal stated: "By March 2022, when completing a job task in the school or community, [the Student] will increase his time to 5 minutes of work productivity with no more than four gestural or verbal prompts for 3 out of 4 job completion activities." BCPS Ex. 7.

⁵⁶ The Reading Comprehension goal stated: "By March 2022, after a shared reading of a modified grade level text, [the Student] will sequence 3 captioned picture choices to reflect the text's beginning, middle and end events, for 2 out of 3 text structure activities." BCPS Ex. 7.

⁵⁷ The Written Language goal stated: "By March 2022, when given a writing tool, paper, and visual cues, [the Student] will write his first name legibly in 2 out of 4 writing opportunities." However, the objectives address the Student typing his first and last name, and the Student drawing an object of interest following steps using a paper and pencil, or dry erase board and marker or virtual platform. BCPS Ex. 7.

⁵⁸ The Mathematics goal stated: "By March 2022, [the Student] will display increased functional math skills both in the community and the classroom setting." BCPS Ex. 7.

⁵⁹ The Fine Motor goal stated: "Given visual and verbal prompts as needed, [the Student] will participate in fine motor tasks to complete functional school related tasks." BCPS Ex. 7. The objectives addressed completing simple two step tasks, opening packages, and writing/typing his full first name consistently.

⁶⁰ The Adapted PE goal stated: "By March 2022, in a group P.E. setting, [the Student] will increase performance on at least 2 out of 3 grade level exercises." BCPS Ex. 7.

⁶¹ As discussed above, the BCPS did not have a Speech Language Pathologist available to provide the Student with services for thirteen weeks and those services would have been relevant to the Communication goal.

The 2021 IEP remained the working IEP for the Student until either December 2022 or January 2023.⁶² The Student had been evaluated in May 2019 and was due for reevaluation by May 2022. The IEP's annual review date was March 2022. In November 2021, the BCPS reached out to the Parent to conduct reevaluation planning. The first date scheduled did not work for the Parent and eventually a meeting was scheduled for February 1, 2022. On the February 1, 2022 IEP meeting date, the BCPS team members recommended the following assessments: Psychological, Educational, Occupational Therapy, and Speech/Language. BCPS Ex. 12. At that meeting, the Student's family⁶³ rejected the compensatory services for COVID-related regressions because they felt that the hours offered were insufficient, and because they did not feel the Student should have to receive services after school or on Saturdays. Further, the family was pursuing assessments from an outside provider and did not consent to the BCPS providing assessments. The outside assessments were obtained in February 2022 and April 2022. See BCPS Exs. 13-14.

The BCPS attempted to schedule an IEP team meeting on March 22, 2022. BCPS Ex. 15-16. In the Notice of Documents for that scheduled meeting is a draft of an updated IEP. BCPS Ex. 16. That meeting did not occur because the Parent and/or her representative did not confirm the date prior to the hearing.

On March 25, 2022, the Parent, through their counsel, notified the BCPS that they were in the process of securing private testing and that they would send those results when completed as well as providing dates for an IEP meeting. BCPS Ex. 22. The BCS responded that while waiting for the results of the assessments, "we still need to conduct the annual review of [the

⁶² BCPS Ex. 47 purports to be an approved IEP for the Student dated December 19, 2022. However, the notes from that meeting, BCPS Ex. 54, indicate that the IEP team was still discussing the IEP and needed to hold an additional meeting scheduled for January 3, 2023. Therefore, it is unclear if the IEP was actually approved in December 2022 or January 2023. The testimony did not clarify the issue.

⁶³ The notes from this meeting do not specifically indicate who from the family held these opinions. At the meeting, both parents of the Student were present, as well as the Parent's representative, Ms. Parker.

Student's] IEP using informal data. If the family wishes to request a delay, then I'd like to get that in writing. There is a form attached as a guide or that can be used." BCPS Ex. 22. It does not appear that the Parent and the BCPS offered any additional dates between March 25, 2022 to August 5, 2022.

At that time, the parties entered into a Special Education Mediation Agreement, where the Parent agreed to consent to OT and adaptive-rating assessments and dismissed a July 11, 2022 due process request and the BCPS agreed to hold two more IEP meetings (one on August 25, 2022, and the other on a date not selected).⁶⁴ BCPS Ex. 25.

The IEP team then met again multiple times (August 25, 2022, October 4, 2022, December 19, 2022, January 3, 2023, and January 18, 2023). The IEP team approved the IEP on the January 18, 2023 meeting. For the period between March 2022 when the IEP was due for an annual reevaluation through December 2022 or January 2023, the date of the new IEP, the Student's IEP team was still using the 2021 IEP as the active IEP. The goals on that IEP had not been adjusted.

Some of the delays were caused by the Parent in this case. For example, the Parent did not consent to BCPS-requested assessments in February 2022. The Parent did provide some assessments on a date not clear in the record, but these assessments did not include all recommended areas for assessment. Further, the BCPS offered a proposed IEP to discuss at a meeting in March 2022, but the Parent's representative indicated that the family was unavailable for the scheduled date and that they wanted to wait to obtain further assessments. After the assessments were obtained by April 2022, there is no indication that the Parent or her representative attempted to reach out to the BCPS to provide the assessments and request another IEP meeting until a mediation was held in August 2022.

⁶⁴ Based on the evidence at the hearing, it is unclear whether the parties attempted an annual review of the IEP, or any discussions between March 2022 and the mediation on August 5, 2022.

After August 25, 2022, it appears that the parties did work together to attend meetings and draft an IEP for the Student.⁶⁵ There were five meetings in a matter of five months and both the Parent and the BCPS IEP team members were working toward developing a new IEP for the Student. An IEP was approved no later than January 18, 2023 by the IEP team. The Parent disagreed with portions of the IEP, including the lack of autism as a diagnosis, and the placement of the Student at ■ HS.

The IEP was clearly not reviewed by March 2022 for its annual update. However, I find that, at least until August 25, 2022, the delay was due to the Parent's refusal to consent to additional assessments and refusal to attend an IEP meeting prior to receiving the reports of the parent-initiated assessments. The BCPS was willing to review the IEP prior to receiving the parent-initiated assessments and before the annual deadline; however, the Parent's representative stated in her email that the Parent was not. This failure to review before the deadline is due solely to the actions of the Parent and/or her representative, and not due to the actions of the BCPS. Therefore, I conclude that the Parent cannot assert that the IEP lacked appropriately ambitious goals during the period from March 2022 through August 2022 as the Parent was the cause for the delay. See 20 U.S.C. § 1412(a)(10)(C)(iii)(III) (providing that "[t]he cost of reimbursement ... may be reduced or denied ... upon a judicial finding of unreasonableness with respect to actions taken by the parents"). The Parent acted unreasonably in not agreeing to review the draft IEP from March 2022 through August 25, 2022 (and at that time threatening not to attend any other IEP meetings).⁶⁶

⁶⁵ At the conclusion of the August 25, 2022 meeting the Parent or her representative indicated "they will be filing and will not be participating in any IEP team meetings with ■ MS moving forward." BCPS Ex. 28. Despite that statement, on October 4, 2022, the IEP team met again.

⁶⁶ The record is unclear whether this threat to not attend any other IEP meetings is the reason that there were no meetings between August 25, 2022 and October 4, 2022. The record shows that the OT assessment and the psychological assessment, which were performed by the BCPS, both occurred in September 2022.

After October 4, 2022 through January 2023, the parties appeared to work collaboratively in reviewing assessments from the BCPS, discussing the various aspects of eligibility, the goals and objectives and eventually the placement of the Student under a new IEP. While the parties may not have agreed on all aspects of the January 18, 2023 IEP, there does not appear to be any intentional delay or frustration of the process by either party during the months between October 4, 2022 and January 2023. Further, based on the progress reports by the Student's teachers and service providers, the Student was still working towards goals and objectives. For example, in the Community goal, the Student was working on various job tasks and improving his ability to complete different tasks for longer increments of time. BCPS Ex. 7. For Mathematics, the Student continued to work on functional skills such as using a number line, rounding up to the next dollar, determining how much money you have and whether you can purchase an item, and giving the correct money to pay for an item. BCPS Ex. 7. For the Fine Motor Goal and the Written Language goal there was work with the Student to type his first and last name. Additionally, in the Fine Motor goal, the progress notes indicate the Student was working on appropriate gradation of force, and functional life care skills such as zippers, putting on shirts, and using a butter knife, cooking, and wiping up a spill. BCPS Ex. 7. Some of the skills addressed in progress reports under the Fine Motor goal were not directly referenced in the 2021 IEP as objectives but were discussed at the IEP team meetings as the parties were drafting the new IEP and were incorporated into the OT services being provided.

A procedural violation may rise to the level of a denial of a FAPE if it "causes substantive harm to the child or his parents." *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66 (3d Cir. 2010). "[S]ubstantive harm occurs only if the preponderance of the evidence indicates

that the procedural inadequacies (i) [i]mpeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of the educational benefit." *Id.* at 67. While the IEP should have been reviewed and updated prior to March 2022, I do not find that there was substantive harm to the Student. The Student was still receiving a FAPE as he was receiving appropriate instruction to work on his goals, the Parent had an opportunity to, and actually participated, in the decision-making process, and the student was receiving educational benefit as the teachers and service providers continued to work with the Student to make progress.

The IEP team approved a January 18, 2023 IEP and then amended that IEP on June 6, 2023. BCPS Exs. 65 and 69, respectively. Most of the goals on these IEPs are the same, therefore, I will address whether the goals are appropriately ambitious on both of these IEPs in the same section. On both the January 2023 and the June 2023 IEPs, there were goals for Reading Fluency,⁶⁷ Community,⁶⁸ Communication-Language,⁶⁹ Communication – Speech

⁶⁷ Both Reading Fluency goals stated: "Given high frequency/sight words in sentences (including words with suffixes -s, -ed, -ing) at the first and second-grade level, [the Student] will accurately read 190 words aloud with 85% accuracy."

⁶⁸ There were two Community goals on each of the IEPs and the two goals are the same on both IEPs and stated: "By January 2024 when asked by a familiar or unfamiliar adult what his personal information is including his full name, age, address and mother's home number, [the Student] will verbally respond with accurate information during 2/4 trials" and "By January 2024, [the Student] will identify the correct aisle to locate a specific grocery item in the community setting at a store, locate the item, bring the item to the cash register, pay for the item by rounding the cost to the next whole dollar and wait for change as measured by teacher data collection with 50% accuracy, 3/6 items during 2/3 trials with no more than four verbal or visual prompts."

⁶⁹ Both Communication-Language goals stated: "By December 2023, during structured and unstructured activities and when given no more than one verbal model or cue, [the Student] will share information and answer factual 'wh' questions using appropriate oral language that includes phrases/complete sentences and provides sufficient detail."

Intelligibility,⁷⁰ Reading Comprehension,⁷¹ Written Language,⁷² Mathematics,⁷³ Fine Motor,⁷⁴ Adapted PE,⁷⁵ and Fine Motor – Life Skills.⁷⁶ BCPS Exs. 65 and 69.

The goals on the January 2023 and June 2023 IEPs were more challenging than what had been on the 2021 IEP. During the IEP meetings, the team members went through each goal, and addressed the Student's test results, strengths and weaknesses.

In the areas of both Reading Fluency and Reading Comprehension, the Parent was concerned that the Student's performance appeared to be the same from Spring of 2020 to the present. BCPS Ex. 66. Ms. [REDACTED] explained that there was progress in reading comprehension as the Student had been working on sequencing events from a story and answering some explicit questions. Further, according to Ms. [REDACTED], based on the Student's strengths and needs, picture cues are necessary. Based on the discussion, the IEP team recommended adding a reading

⁷⁰ The Communication – Speech Intelligibility goals stated: “By January 2024, when provided with feedback about his speech intelligibility, [the Student] will use intelligibility strategies (e.g., reducing speech rate, using overarticulation, adjusting his volume, restating what he said, using pausing and phrasing) to increase the amount of his speech that is understood by familiar and unfamiliar listeners.”

⁷¹ Both Reading Comprehension goals stated: “By December 2023, after a guided reading and discussion, [the Student] will demonstrate comprehension of a modified grade level text through answering explicit and implicit comprehension questions with 70% accuracy during 2/3 trials.”

⁷² On the January 2023 IEP the Written Language goal stated: “By December 2023 given a visual and/or verbal prompt to describe/reflect on a task/activity, [the Student] will dictate and accurately type 5 sentences by copying his dictation as written by an adult with 70% accuracy given no more than 10 verbal/visual prompts in 2/3 writing tasks in order to produce a clear and coherent piece of writing that includes a topic sentence, 2-3 details and a closing sentence.

On the June 2023 IEP, the Written Language goal stated: “By December 2023, given a visual and/or verbal prompt to describe/reflect on a task/activity, [the Student] will dictate five sentences based on an experience and reproduce his verbal response in a typed format using tools such as talking word processor, and text to speech (reads the entire sentence aloud) in the correct sentence order with 100% accuracy in 3/4 trials.”

⁷³ There were two Mathematics goals on each of the IEPs and the two goals are the same on both IEPs, and stated: “By January 2024, given no more than 4 verbal prompts, when given 10 addition problems involving one-digit numbers with sums less than 10, [the Student] will use mental math strategies to solve the equations with 70% accuracy” and “When given two, two-digit numbers to add using place value blocks, [the Student] will determine the sum by counting and verbally expressing the correct number response, in 3 out of 5 equations during 2/3 trials.”

⁷⁴ Both Fine Motor goals stated: “By December 2023, given visual and verbal cues, [the Student] will improve his independence with donning his clothing for school based dressing routines with upper body clothing including zippers.”

⁷⁵ Both Adapted PE goals stated: “Given verbal prompts and modeling, [the Student] will demonstrate the overhead throw using a majority of the cues (2 out of 3) towards a target or person with accuracy from various distances 2 out of 3 times in 3 out of 5 trials.”

⁷⁶ Both Fine Motor -Life Skills goals stated: By December 2023, given verbal reminders and up to minimal assistance (less than 25%), [the Student] will complete a classroom cooking task with adequate bilateral stabilization and gradation of force to complete the task effectively (examples, but not limited to: stirring dry ingredients into wet ingredients, cleaning a sticky surface from a spill).

fluency goal to the IEP and increasing the Student's ability to read 150 words in isolation to 190 words in sentences. BCPS Ex. 66. The goal both increases the number of words that the Student can read, but also sets the standard to read the words in sentences versus in isolation. The January 2023 and June 2023 IEPs also increased the expectations under the reading comprehension goals. During the prior IEP, the goal was to understand the explicit text, but the 2023 IEPs challenged the Student to answer implicit comprehension questions.

While the Parent was concerned about the Student's articulation, the teachers and staff at ■MS did not have difficulty understanding the Student in the classroom or school setting. However, some other peers did have difficulty understanding him during extracurricular activities or non-structured settings. Based on the Parent's concerns, the IEP team recommended a speech-intelligibility goal. The goal relied on teaching strategies and using those strategies to help the Student be more intelligible to both familiar and non-familiar listeners.

For the written language goal, the January 2023 IEP relied on the Student dictating to an adult, who would write the sentence, and then the Student would copy by typing. However, the June 2023 IEP changed the goal which reflects the new assistive technology being used by the Student and the possibility that he could dictate his work and use his dictation to form his sentences. This goal should be read in tandem with the Communication goal, where the student will answer "wh" questions with more details. The written language goals from prior IEPs involved the Student typing his name and drawing shapes.

For the community goals, the Student will be working to locate items in the grocery store and be able to provide more of his personal information to individuals. During his testimony, it was clear that providing personal information is a skill that the Student had not mastered. He provided his full name but could not spell his first name. He provided a street address but not a city or state. He could not state the Parent's phone number.

For the Fine Motor goals, Ms. [REDACTED] testified regarding the Student's difficulties with mixing ingredients and wiping surfaces. The Student has been working on bilateral stabilization (using two hands to complete a task) and appropriate gradation of force (the amount of force needed to complete a task). These life skills are important for functional life activities such as cooking, cleaning, and wiping during toileting, and they are a current deficit for the Student. Testimony of [REDACTED]. Similarly, the other Fine Motor goal addressed independently putting on a shirt and dressing. BCPS Ex. 65 and 69. The Parent was concerned that the Student is still working on zipping jackets and putting on shirts. However, it is unclear if these exact goals were on prior IEPs. The 2021 IEP did not specifically list any objective or goal related to getting dressed. However, both Ms. [REDACTED] and Ms. [REDACTED] testified that they were working with the Student on some of the skills needed to complete these tasks as the Student had not mastered them yet.

Finally, for the mathematics goals, the Student was not able to add simple numbers at the hearing. Testimony of Student. However, the mathematics goals on the IEPs written in 2023 are seeking to push the student to use place value blocks to figure out the sum of two-digit numbers and be able to add one-digit numbers.

In *Endrew F.*, the court stated that appropriately ambitious:

describes a general standard, not a formula. But whatever else can be said about it, this standard is markedly more demanding than the “merely more than de minimis” test applied by the Tenth Circuit. It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than de minimis progress for those who cannot.

When all is said and done, a student offered an educational program providing “merely more than de minimis” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly ... awaiting the time when they were old enough to ‘drop out.’” *Rowley*, 458 U.S., at 179, 102 S.Ct. 3034 (some internal quotation marks omitted). The IDEA demands more. It

requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 402–03 (2017).

In this case, the goals set for the Student reflect the strengths and weaknesses in the Student, his difficulty with language and speech, his academic deficits, and his physical deficits. The goals further considered the progress he has made while at ■ MS and what progress he may expect to make in the future. While the Parent is frustrated that the Student does not seem to be progressing in reading, handwriting, or toileting and that the Student's math and reading skills are minimal, the staff of ■ MS provided testimony that the Student is becoming more independent in activities, such as undressing and redressing, typing his name, following routines, engaging in job tasks, and learning some functional math (rounding up to a whole dollar and counting money). The notes from the various IEP team meetings show that the team actively discussed all assessments (formal and informal) and considered all input from the Parent, her representative and the school-based members of the team, and then crafted goals after all of the input had been considered. Based on where the Student's abilities currently stand, I conclude that the goals on the January 2023 and June 2023 IEPs are appropriately ambitious for the Student, and will be challenging for the Student.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that Baltimore County Public Schools failed to provide a Free Appropriate Public Education by failing to offer appropriate compensatory services for the period of September 2021 to December 2021 when the Student did not receive the services of a speech-language pathologist. As a result of this failure, I conclude as a matter of law the Student is entitled to 6.5 hours of speech-language pathology services. 20 U.S.C.A. § 1415(i)(2)(C)(iii). *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

I further conclude as a matter of law that Baltimore County Public Schools properly considered private evaluations provided by the Parent. 34 C.F.R. §300.052(c)(1).

I further conclude as a matter of law that Baltimore County Public Schools did not fail to provide appropriate compensatory services for any alleged denial of Free Appropriate Public Education during the COVID pandemic and related closures. *Reid ex rel Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

I further conclude as a matter of law that Baltimore County Public Schools did not fail to include the parent in individualized education program discussions as an equal member of the team. 20 U.S.C.A. § 1415(f)(3)(E)(ii) (emphasis added); 34 C.F.R. § 300.513(a)(2); *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003), *superseded by statute on other grounds*, 20 U.S.C.A. § 1414(d)(1)(B), *as recognized in G.M. ex rel. Marchese v. Dry Creek Joint Elementary Sch. Dist.*, 595 F. App'x 698, 699 (9th Cir. 2014).

I further conclude that Baltimore County Public Schools properly documented all disagreements with placement determination. 20 U.S.C.A. § 1415(b)(3) and (c)(1).

I further conclude that the individualized education programs from March 2021, January 2023 and June 2023 were appropriately ambitious in light of the Student's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 402-403 (2017).

I further conclude that the delay in reviewing the March 2021 individualized education program was not a failure to provide a free appropriate public education to the Student. 20 U.S.C.A. § 1415(f)(3)(E)(ii) (emphasis added); see also 34 C.F.R. § 300.513(a)(2); 20 U.S.C. § 1412(a)(10)(C)(iii)(III).

ORDER

I **ORDER** that that the Baltimore County Public Schools shall provide the Student 6.5 hours of speech and language therapy as compensatory education for lapses in his related services from September 2021 to the beginning of December 2021; and I further

ORDER that the Student's placement for the 2022-2023 school year shall be in the [REDACTED] program at [REDACTED] High School; and I further

ORDER that the Baltimore County Public Schools shall, within thirty days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

September 28, 2023
Date Decision Issued

Erin H. Cancienne
Administrative Law Judge

EHC/ds
#206918

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision 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 appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

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

Copies Mailed To:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

██████████,
STUDENT

v.

BALTIMORE COUNTY
PUBLIC SCHOOLS

BEFORE ERIN H. CANCIENNE,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-BCNY-OT-23-16365

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parent:¹

- Parent Ex. 5 – Letter from Holly L. Parker to Pamela Foresman, August 24, 2022
- Parent Ex. 7 – Speech Language and Communication Evaluation, April 18, 2022
- Parent Ex. 9 – Letter from ██████████, Principal of ██████████ Middle School to the Parent, September 7, 2021
- Parent Ex. 14 – Only pages 37 – 55 ██████████, Level A and B, ██████████ (2015) with notes
- Parent Ex. A – Curriculum Vitae of ██████████

I admitted the following exhibits on behalf of BCPS:

- BCPS # 1 - Email dated October 31, 2021 with attachments:
- October 31, 2021 letter from ██████████, IEP Chairperson
 - BCPS Compensatory Education/Recovery Services Prior Written Notice dated September 10, 2021
 - Parental Rights Maryland Procedural Safeguards Notice, Revised July 2021
- BCPS # 2 - Email dated November 15, 2021 with attachment:
- Parent Notification of IEP Team Meeting dated November 15, 2021
- BCPS # 3 - Email dated November 19, 2021 with attachment:
- Individualized Education Program (IEP), IV. Goal dated March 22, 2021
- BCPS # 4 - Parent Notification of IEP Team Meeting dated March 1, 2021

¹ The Parent had premarked her exhibits prior to the hearing, but determined several exhibits were duplicates of the exhibits being offered by the BCPS. She only offered exhibits 5, 7, 9, 14 (only pages 37-55) and A. The other premarked exhibits were submitted in a binder and will be maintained with the file, but I did not review or consider them in writing this decision.

- BCPS # 5 - Notice of Documents dated March 2, 2021
- BCPS # 6 - IEP Team Summary, mailed April 7, 2021
- BCPS # 7 - IEP dated March 22, 2021
- BCPS # 8 - Extended School Year Request 2020-2021 dated March 22, 2021
- BCPS # 9 - IEP Team Summary, mailed April 14, 2021
- BCPS# 10 - Email dated January 13, 2022 with attachment:
 - Parent Notification of IEP Team Meeting dated January 13, 2022
- BCPS # 11 - Parent Notification of IEP Team Meeting dated January 13, 2022
- BCPS # 12 - IEP Team Summary dated February 1, 2022
- BCPS # 13 - Private Educational Assessment Report dated February 23, 2022
- BCPS # 14 - Test of Nonverbal Intelligence, Fourth Edition (TONI-4) dated February 23, 2022
- BCPS # 15 - Email dated March 10, 2022, with attachment:
 - Parent Notification of IEP Team Meeting
- BCPS # 16 - Email dated March 11, 2022, with attachments:
 - Notice of Documents dated March 11, 2022
 - IEP dated March 18, 2022
 - “Alternative Appendix A” Participation Criteria and Checklist
 - Parent’s Guide to Habilitative Services, 2015
- BCPS # 17 - Parent Notification of IEP Team Meeting Notice of Documents dated March 11, 2022
- BCPS # 18 - Notice of Documents dated March 11, 2022
- BCPS # 19 - [REDACTED] Speech Language and Communication Assessment Report dated April 18, 2022
- BCPS # 20 - Parent Permission for Assessment (May 1, 2022)
- BCPS # 21 - Report Card for the 2021-2022 School Year
- BCPS #22 - Email dated April 4, 2022 with attachment:
 - Mutual Written Agreement for Requested Team Delay
- BCPS # 23 - Email dated March 22, 2022

- BCPS # 24 - MCAP Student Report & Dynamic Performance Profile 2021-2022
- BCPS # 25 - Special Education Mediation Agreement dated August 5, 2022
- BCPS #26 - Email dated August 5, 2022 with attachments:
 - Signed Parent Permission for Assessment dated August 5, 2022
 - Parent Notification of IEP Team Meeting dated August 5, 2022
- BCPS # 27 - Parent Notification of IEP Team Meeting dated August 25, 2022
- BCPS # 28 - IEP Team Summary and email dated August 25, 2022
- BCPS # 29 - Email dated September 8, 2022
- BCPS # 30 - Email dated September 19, 2022, with attachment
 - Parent Notification of IEP Team Meeting dated September 19, 2022
- BCPS # 31 - Parent Notification of IEP Team Meeting dated September 19, 2022
- BCPS # 32 - Notice of Documents dated September 27, 2022
- BCPS # 33 - Certificate Program Student Interest Sheet dated September 16, 2022
- BCPS # 34 - School-Based Occupational Therapy Assessment Report dated September 18, 2022
- BCPS # 35 - School-Based Psychological Assessment Report dated September 26, 2022
- BCPS # 36 - IEP Team Summary dated October 4, 2022
- BCPS # 37 - Eligibility Determination dated October 4, 2022
- BCPS # 38 - Email dated September 19, 2022, with attachment
 - IEP Team Summary mailed September 8, 2022
- BCPS # 39 - Email dated October 4, 2022, with attachments:
 - Referral for Psychological Assessment dated August 25, 2022
 - Notice of Documents dated September 27, 2022
 - Email dated October 4, 2022 with Kaufman Test of Educational Achievement
- BCPS # 40 - Email dated October 18, 2022, with attachments:
 - IEP Team Summary dated October 4, 2022
 - Assessment Review
 - Documentation of Disagreement
 - Eligibility Determination dated October 4, 2022
 - Parents' Guide to Habilitative Services 2015

- BCPS # 41 - Email dated October 28, 2022, with attachment:
- Parent Notification of IEP Team Meeting dated October 28, 2022
- BCPS # 42 - Parent Notification of IEP Team Meeting dated October 28, 2022
- BCPS # 43 - Email dated October 31, 2022, with attachments
- Notice of Documents dated October 31, 2022
 - Draft IEP dated November 9, 2022
- BCPS # 44 - Notice of Documents dated October 31, 2022
- BCPS # 45 - Parent Permission for Assessment dated November 2, 2022
- BCPS # 46 - Alternate Appendix A: Participation Criteria and Checklist dated November 9, 2022
- BCPS # 47 - IEP dated December 19, 2022
- BCPS # 48 - Email dated November 23, 2022, with attachment:
- Letter dated November 23, 2022, re: Compensatory Services
- BCPS # 49 - Correspondence to Parents from ██████████ Middle School IEP Chairperson dated November 23, 2022 re: Compensatory Services
- BCPS # 50 - Transition Process Agency Linkage
- BCPS # 51 - Email dated December 5, 2022, with attachment:
- Parent Notification of IEP Team Meeting dated December 5, 2022
- BCPS # 52 - Email dated December 15, 2022, with attachments:
- Draft IEP dated November 9, 2022
 - Alternative Appendix A: Participation Criteria and Checklist dated November 9, 2022
- BCPS # 53 - Parent Notification of IEP Team Meeting, December 5, 2022
- BCPS # 54 - Prior Written Notice (PWN) dated December 19, 2022
- BCPS # 55 - Extended School Year Request 2022-2023 dated December 19, 2022
- BCPS # 56 - Parent Notification of IEP Team Meeting dated December 29, 2022
- BCPS # 57 - Email dated December 29, 2022 with attachments:
- Parent Notification of IEP Team Meeting, December 29, 2022
 - Draft IEP dated December 19, 2022
- BCPS # 58 - Email dated January 8, 2023 with attachment:
- Parent Notification of IEP Team Meeting dated January 8, 2023

- BCPS # 59 - Prior Written Notice (PWN) dated January 3, 2023
- BCPS # 60 - PWN dated January 18, 2023
- BCPS # 61 - Email dated January 13, 2023, with attachments:
 - Draft IEP Goals dated December 19, 2022
- BCPS # 62 - PWN dated January 18, 2023
- BCPS # 63 - Parental Consent Form dated January 18, 2023
- BCPS # 64 - Email dated January 26, 2023, with attachments:
 - IEP III. Special Consideration and Accommodations, IV, Goals
 - Parent Notification of IEP Team Meeting dated May 11, 2023
- BCPS # 65 - Email dated April 11, 2023, with attachment:
 - IEP, IV. Goals dated January 18, 2023
- BCPS # 66 - Email dated April 25, 2023, with attachments:
 - PWNs dated December 19, 2022, January 3 and 18, 2023
 - IEP dated January 18, 2023
- BCPS # 67 - Email dated May 11, 2023
- BCPS # 68 - Parent Notification of IEP Team Meeting dated May 11, 2023
- BCPS # 69 - Email dated May 30, 2023, with attachment:
 - Draft IEP dated June 6, 2023
- BCPS # 70 - Notice of Documents dated May 30, 2023
- BCPS # 71 - Correspondence to Parents from Department of Special Education dated May 11, 2023
- BCPS # 72 - Email dated June 13, 2023, with attachments:
 - Email dated June 26, 2023, re: compensatory hours
- BCPS # 73 - PWN dated June 6, 2023
- BCPS # 74 - IEP dated June 6, 2023
- BCPS # 75 - Parent Notification of IEP Team Meeting dated June 16, 2023
- BCPS # 76 - Parent Notification of IEP Team Meeting, June 26, 2023
- BCPS # 77 - Email dated July 3, 2023, with attachment:
 - Parent Notification of IEP Team Meeting dated July 3, 2023

- BCPS # 78 - Email dated July 7, 2023, with attachments:
• Draft IEP dated June 6, 2023
- BCPS # 79 - PWN dated July 14, 2023
- BCPS # 80 - Report Card for the 2022-2023 School Year
- BCPS # 81 - IEP dated June 6, 2023
- BCPS # 82 - Emails dated July 17 and 28, 2023 and August 3, 2023
- BCPS # 83a - Resume [REDACTED]
- BCPS # 83b - Resume [REDACTED]
- BCPS# 83c - Resume [REDACTED]
- BCPS # 83d - Resume [REDACTED]
- BCPS # 84 - Parent Notification of Community-Based Instruction Trips