

██████████,  
STUDENT  
v.  
HOWARD COUNTY  
PUBLIC SCHOOL SYSTEM

BEFORE ROBERT F. BARRY,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-HOWD-OT-23-06747

**DECISION**

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

**STATEMENT OF THE CASE**

On March 13, 2023, ██████████ and ██████████ (Parents), by their attorney, Christopher M. DeCarlo, of Talkin & Oh, LLP, filed a due process complaint with the Office of Administrative Hearings (OAH) on behalf of their son, ██████████ (Student),<sup>1</sup> under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>2</sup> 34 C.F.R. § 300.511(a) (2022);<sup>3</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2022);<sup>4</sup> Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). The due process complaint asserted that the Howard County Public School System (HCPSS) denied the Student a free appropriate public education (FAPE) under the IDEA and Maryland education law when it determined that the Student was

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<sup>1</sup> At times in this decision, in keeping with the parties' usage, I refer to the Parents and the Student collectively. as the Petitioners. References to a singular Parent are to the Student's mother.

<sup>2</sup> All citations to the United States Code Annotated are to the 2017 bound volume.

<sup>3</sup> All citations to the Code of Federal Regulations are to the 2022 bound volume.

<sup>4</sup> All citations to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

not eligible for special education services for the 2022-2023 school year. As a remedy, the Parents requested reimbursement for tuition and expenses for the 2022-2023 school year related to the Parents unilateral placement of the Student at [REDACTED], and placement of the Student (with reimbursement for tuition and expenses) at [REDACTED] for the 2023-2024 school year.

On March 13, 2023, the OAH forwarded the due process complaint to the HCPSS. On April 11, 2023, the HCPSS sent the OAH a Due Process Resolution Meeting Tracking Form, reporting that, on April 10, 2023, the parties agreed in writing to waive the resolution meeting.

On April 26, 2023, I conducted a remote pre-hearing conference. Mr. DeCarlo represented the Petitioners. Attorney Kathy L. Stump, of Carney, Kellehan, Bresler, Bennett & Scherr, LLP, represented the HCPSS. On May 5, 2023, I issued a Pre-Hearing Conference Report and Order, memorializing the parties' agreement as to hearing dates and their mutual request to extend the time requirement for issuing a decision. The decision in this case would normally be due Thursday, May 25, 2023, the forty-fifth day after April 10, 2023, the date the parties agreed in writing to waive the resolution meeting. 34 C.F.R. §§ 300.510(c), 300.515(a). The parties, however, requested that I extend the due date to provide time to conduct a hearing and issue a comprehensive decision. Accordingly, I granted an extension of time beyond the normal forty-five-day timeframe for issuing a decision. *Id.* § 300.515(c). The parties agreed that my decision would be due thirty days after the conclusion of the hearing.

The attorneys and I reviewed our calendars to agree upon the hearing dates listed above. Ms. Stamp or HCPSS's representative or a witness were unavailable on June 1 (representative unavailable); June 5, 6, 8, and 9 (representative in another hearing); June 7 (professional development day); June 12-13 (final exams); June 23 (representative unavailable); June 26, 29, and 30 (representative and witnesses on vacation); July 5-6 (witness unavailable), and July 10-12

(representative or witness unavailable). Mr. DeCarlo was unavailable on June 12-14 (trial) and July 5-6 (vacation). I was unavailable on June 20, 21, 27, and 28 (another hearing), The parties and I agreed not to use July 3 and 7, preferring consecutive dates on July 13-14.

On May 31, 2023, June 2, 15 and 16, 2023, and July 13 and 14, 2023, the dates agreed to by the parties during the pre-hearing conference, I conducted a hearing at the HCPSS's office in Columbia, Maryland. The parties filed written closing arguments. I received the Petitioner's initial closing argument on July 21, 2023, the HCPSS's closing argument on July 28, 2023, and the Petitioner's rebuttal closing argument on August 2, 2023. Because the thirtieth day after July 14, 2023, is a Sunday, the due date for my decision, per State Department of Education policy, is the preceding Friday, August 11, 2023.

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

### ISSUES

1. Did the HCPSS deny the Student a FAPE under the IDEA and Maryland education law when it did not identify him as eligible for special education services for the 2022-2023 school year?
2. Is [REDACTED] an appropriate educational placement for the Student?
3. Are the Parents entitled to reimbursement for tuition and related expenses they incurred for placing the Student at [REDACTED] for the 2022-2023 school year?
4. Should [REDACTED] be the Student's educational placement for the 2023-2024 school year?

## SUMMARY OF EVIDENCE

The parties submitted forty-three joint exhibits:

- JOINT #1 - Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP), revised April 4, 2019 (1-1 to 1-16)
- JOINT #2 - Group Conference Summary Form, January 31, 2020 (2-1 to 2-4)
- JOINT #3 - Section 504 Progress and Accommodation Review Worksheets, meeting date March 12, 2020 (3-1 to 3-21)
- JOINT #4 - Section 504 Meeting Notice, meeting date March 12, 2020 (4-1 to 4-5)
- JOINT #5 - Section 504 – Eligibility, meeting date March 12, 2020 (5-1 to 5-5)
- JOINT #6 - Section 504 Plan, March 12, 2020 (6-1 to 6-9)
- JOINT #7 - FBA and BIP, discontinued March 12, 2020 (7-1 to 7-15)
- JOINT #8 - Final Eighth Grade Report Card and Daily Attendance, June 23, 2020 (8-1 to 8-3)
- JOINT #9 - Section 504 Plan, meeting date March 12, 2020, amended August 27, 2020 (9-1 to 9-7)
- JOINT #10 - Psychological Report, [REDACTED], Ph.D., December 2020 (10-1 to 10-29)
- JOINT #11 - Release of Records, [REDACTED], January 18, 2021 (11-1 to 11-2)
- JOINT #12 - Letter from [REDACTED], Chairman of the Board, [REDACTED], to [REDACTED], HCPSS, February 3, 2021 (12-1)
- JOINT #13 - Section 504 Meeting Notice, meeting date March 5, 2021 (13-1 to 13-5)
- JOINT #14 - Section 504 – Eligibility, meeting date March 5, 2021 (14-1 to 14-5)
- JOINT #15 - Section 504 Plan, March 5, 2021 (15-1 to 15-11)
- JOINT #16 - Emails between Parents and [REDACTED], March 9 and 22, 2021 (16-1 to 16-2)
- JOINT #17 - Consent for Communication, Review, or Release of Records, [REDACTED], May 24, 2021 (17-1)
- JOINT #18 - Final Ninth Grade Report Card, June 14, 2021 (18-1)

- JOINT #19 - Referral for a Student Suspected of Having a Disability, October 1, 2021 (19-1)
- JOINT #20 - Test Results, Woodcock Reading Mastery Tests-III (Form A), [REDACTED], M.Ed., Educational Consultant, October 6, 2021 (20-1 to 20-2)
- JOINT #21 - Trimester 1 Progress Report, 2021-2022, [REDACTED], October 26, 2021 (21-1 to 21-2)
- JOINT #22 - Notice of IEP Team Meeting, meeting date November 19, 2021 (22-1 to 22-2)
- JOINT #23 - Parent Questionnaire (23-1 to 23-5)
- JOINT #24 - IEP Team Meeting Report, meeting date November 19, 2021 (24-1 to 24-4)
- JOINT #25 - Trimester 1 Report Card, 2021-2022, [REDACTED] (25-1 to 25-2)
- JOINT #26 - Parental Consent for Evaluation, December 7, 2021 (26-1)
- JOINT #27 - Letter from [REDACTED], Chairman of the Board, [REDACTED], to [REDACTED], HCPSS, January 11, 2022 (27-1)
- JOINT #28 - Educational Assessment Report, [REDACTED], Special Education Resource Teacher, January-February 2022 (28-1 to 28-17)
- JOINT #29 - Report of Psychological Assessment, [REDACTED], Ed.S., School Psychologist, January 27, 2022 (29-1 to 29-9)
- JOINT #30 - Notice of IEP Team Meeting, meeting date February 23, 2022 (30-1 to 30-2)
- JOINT #31 - IEP Team Meeting Report, meeting date February 23, 2022 (31-1 to 31-5)
- JOINT #32 - Evaluation Report Attention Deficit Hyperactivity Disorder (ADHD) Supplement, meeting date February 23, 2022;  
Specific Learning Disability Supplement, meeting date February 23, 2022 (32-1 to 32-8)
- JOINT #33 - Trimester 2 Report Card, 2021-2022, [REDACTED] (33-1)
- JOINT #34 - Trimester 3 Report Card, 2021-2022, [REDACTED] (34-1 to 34-2)
- JOINT #35 - Comprehensive Executive Function Inventory (CEFI) Teacher Responses (35-1 to 35-14)

- JOINT #36 - Teacher's Report Form for Ages 6-18 (36-1 to 36-16)
- JOINT #37 - Neuropsychological Evaluation, [REDACTED], Ph.D., [REDACTED], June 1, 2022, amended June 9, 2022, and July 5, 2022 (37-1 to 37-18)
- JOINT #38 - Release and Settlement of Claims, October 25, 2022 (38-1 to 38-5)
- JOINT #39 - Notice of IEP Team Meeting, meeting date December 22, 2022 (39-1 to 39-2)
- JOINT #40 - Trimester 1 Progress Report, 2022-2023 (40-1 to 40-3)
- JOINT #41 - IEP Team Meeting Report, meeting date December 22, 2022 (41-1 to 41-4)
- JOINT #42 - Specific Learning Disability Supplement, December 22, 2022; Evaluation Report Emotional Disability (ED) Supplement, December 22, 2022; Attention Deficit Hyperactivity Disorder (ADHD) Supplement, December 22, 2022 (42-1 to 42-10)
- JOINT #43 - Trimester 2 Report Card, 2022-2023 (43-1)

I admitted the following exhibits into evidence for Petitioners:<sup>5</sup>

- PET. #1 - Third Grade Report Card, 2014-2015 (1-2)
- PET. #2 - Third Grade Assessment Report, 2014-2015 (3-4)
- PET. #3 - Emails between Parent and [REDACTED], June 1, 2015 (5-6)
- PET. #4 - Fourth Grade Report Card (7-8)
- PET. #5 - Emails between Parent and [REDACTED], Sept. 9 and 14, 2015 (9-10)
- PET. #6 - Emails between Parent and [REDACTED], June 1, 3, and 4, 2016 (11-13)
- PET. #7 - Fifth Grade Report Card, 2016-2017 (14-15)
- PET. #8 - Emails between Parent and [REDACTED], September 7, 2016 (16-17)

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<sup>5</sup> I admitted Petitioners' Exhibits ##1-22, and 1-37 over the objection of the HCPSS, which argued that those records were outside the relevant timeframe for the issues at this hearing.

- PET. #9 - Emails between Parent and [REDACTED], October 25, 2016; November 18, 2016; December 14 and 18, 2016; January 9, 2017 (18-25)
- PET. #10 - Sixth Grade Report Cards (26-29)
- PET. #11 - Emails between Parent and [REDACTED], October 2, 4, and 9, 2017 (30-31)
- PET. #12 - Emails between Parent and [REDACTED], October 18-21, 2017 (32-34)
- PET. #13 - Emails between Parent and [REDACTED] November 2 and 5, 2017 (35-36)
- PET. #14 - Emails between Parent and [REDACTED], December 19, 2017 (37)
- PET. #15 - Emails between Parent and [REDACTED], February 9, 2018 (38-39)
- PET. #16 - Emails between Parent and [REDACTED], March 1, 2018 (40-41)
- PET. #17 - Emails between Parent and [REDACTED], March 28 and 29, 2018, and April 5, 2018 (42-44)
- PET. #18 - Emails between Parent and [REDACTED], April 19, 2018 (45-46)
- PET. #19 - Seventh Grade Report Cards (47-50)
- PET. #20 - Emails between Parent with [REDACTED], November 13, 2018 (51)
- PET. #21 - Email from Parent to [REDACTED], January 10, 2019 (52)
- PET. #22 - Emails between Parent and [REDACTED], January 15, 2019 (53-54)
- PET. #23 - Eighth Grade Report Cards (55-58)
- PET. #24 - Emails between Parent and [REDACTED], October 10, 2019 (59)
- PET. #25 - Message from [REDACTED] to Parents, November 13, 2019 (60-61)
- PET. #26 - Message from [REDACTED] to Parents, November 20, 2019 (62)
- PET. #27 - Message from [REDACTED] to Parents, December 12, 2019 (63)
- PET. #28 - Emails between Parent and [REDACTED], November 20, 2019, and December 12, 2019 (64-65)
- PET. #29 - Emails between Parent and [REDACTED], December 18 and 19, 2019 (66-67)

- PET. #30 - Message from [REDACTED] to Parents, February 19, 2020 (68)
- PET. #31 - Message from [REDACTED] to Parents, June 15, 2020 (69)
- PET. #32 - Report of Psychological Assessment, [REDACTED], Ph.D., March 30, 2017 (70-81)
- PET. #33 - Section 504 – Eligibility, meeting date February 17, 2017; Section 504 Plan, June 1, 2017; Section 504 – Eligibility, meeting date April 7, 2017; Section 504 School Referral Form, undated (82-122)
- PET. #34 - Section 504 Plan, meeting date February 8, 2018 (123-164)
- PET. #35 - Section 504 Plan, meeting date April 4, 2018 (165-194)
- PET. #36 - Section 504 Plan, meeting date April 4, 2019 (195-235)
- PET. #37 - Student Test History, 2014-2020 (236-240)
- PET. #38 - Letter from [REDACTED] to the Parents April 20, 2020 (241-243)
- PET. #39 - Trimesters 1 and 2 Progress Reports; and Trimesters 1, 2, and 3 Report Cards, [REDACTED], 2021-2022 (244-251)
- PET. #40 - Trimesters 1 and 2 Progress Reports; Trimesters 1 and 2 Report Cards, [REDACTED], 2022-2023 (252-256)
- PET. #41 - Transactions, [REDACTED] (257-258)
- PET. #42 - New Student Enrollment Agreement, [REDACTED], 2021-2022 (259-263)
- PET. #43 - Letter from [REDACTED]'s Board of Trustees to Parents, January 2023 (264-265)
- PET. #44 - [REDACTED] Account (266)
- PET. #45 - FBA & BIP, February 8, 2018 (267-282)
- PET. #46 - Summary of Psychological Evaluation, [REDACTED], Ph.D., January 21, 2021 (283-315)
- PET. #47 - Curriculum Vitae, [REDACTED], Ph.D. (316-321)
- PET. #48 - Curriculum Vitae, [REDACTED], M.Ed., Education Specialist (322-325)
- PET. #49 - Curriculum Vitae, [REDACTED]. Ph.D. (326-333)



- PET. #50 - Curriculum Vitae, [REDACTED], M.Ed. (334)
- PET. #51 - [REDACTED] High School Profile (335-336)
- PET. #52 - Score Interpretation (for [REDACTED]'s Report) (337)

I admitted the following exhibits into evidence for HCPSS:

- HCPSS #1 - Emails between Parent and [REDACTED], December 18, 2020 (1-1)
- HCPSS #2 - Emails between Parent and [REDACTED] High School staff, December 23, 2020; January 4, 18, 26, 2021 (2-1 to 2-5)
- HCPSS #3 - Emails between [REDACTED] and [REDACTED] High School staff (3-1 to 3-4)
- HCPSS #4 - Teacher Input for Annual Review – Section 504 Plan, March 2021 (4-1 to 4-2)
- HCPSS #5 - Review of Independent Assessment, March 5, 2021 (5-1 to 5-3)
- HCPSS #6 - Request for Cumulative Student Education File, April 19, 2021 (6-1 to 6-2)
- HCPSS #7 - Letter from [REDACTED] to Mr. DeCarlo, April 21, 20121 (7-1)
- HCPSS #8 - Review of Independent Assessment, November 19, 2021 (8-1 to 8-7)
- HCPSS #9 - Emails between Parent and [REDACTED] (9-1)
- HCPSS #10 - Emails between [REDACTED] and [REDACTED], January 6, 2022 (10-1 to 10-6)
- HCPSS #11 - Connors-3 Teacher Assessment Reports (11-1 to 11-57)
- HCPSS #12 - Emails between Ms. Stump and Mr. DeCarlo (12-1 to 12-7)
- HCPSS #13 - Emails between Mr. DeCarlo and [REDACTED] (13-1 to 13-2)
- HCPSS #14 - Review of Independent Assessment 12.22.2022 (14-1 to 14-5)
- HCPSS #15 - A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework, June 2008 (15-1 to 15-73)

- HCPSS #16 - Technical Assistance Bulletin: Specific Learning Disability & Supplement (Focus On: Dyslexia, Dyscalculia, and Dysgraphia), revised July 1, 2017 (16-1 to 16-15)
- HCPSS #17 - The Role of the School Psychologist in the Identification of Dyslexia, Dysgraphia, and Dyscalculia, October 2018 (17-1 to 17-13)
- HCPSS #18 - Technical Assistance Bulletin: Improving Outcomes for Students with Disabilities: Curriculum, Instruction, and Assessment, revised November 2019 (18-1 to 18-22)
- HCPSS #19 - A Guide for Implementing Specially Designed Instruction within an Integrated Tiered System of Supports, November 2019 (19-1 to 19-100)
- HCPSS #20 - Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition, Text Revision (DSM-V-TR) - Attention Deficit/Hyperactivity Disorder (20-1 to 20-9)
- HCPSS #21 - DSM-V-TR - Generalized Anxiety Disorder (21-1 to 21-5)
- HCPSS #22 - DSM-V-TR - Specific Learning Disorder (22-1 to 22-10)
- HCPSS #23 - HCPSS Catalog of Approved High School Courses, 202-2023 (23-1 to 23-140)
- HCPSS #24 - ██████████ High School Eleventh Grade Class Sizes (24-1 to 24-2)
- HCPSS #25 - Résumé of ██████████, M.S., School Counselor, ██████████ Middle School (25-1)
- HCPSS #26 - Résumé of ██████████, M.Ed., K-12 Reading Intervention, Access, and Opportunity Resource Teacher (26-1 to 26-2)
- HCPSS #27 - Résumé of ██████████, M.Ed., Assistant Principal, ██████████ MS, and former Special Education Resource Teacher for High Schools (27-1 to 27-3)
- HCPSS #28 - Résumé of ██████████, Ed.S., School Psychologist (28-2)
- HCPSS #29 - Résumé of Kelly Russo, M.Ed., Coordinator of Special Education Compliance and Dispute Resolution (29-1 to 29-2)
- HCPSS #30 - Résumé of ██████████, M.S., School Counselor (30-1)
- HCPSS #31 - Résumé of ██████████, M.A., School Psychologist (31-1 to 31-3)

HCPSS #32 - Résumé of [REDACTED], M.Ed., Special Education Instructional Team Leader (32-1 to 32-2)

HCPSS #33 - Emails between Parent and [REDACTED], January 13, 2021 (33-1 to 33-2)

HCPSS #34 - Emails between Parent and [REDACTED] January 14 and 16, 2021; Emails between [REDACTED] and [REDACTED], [REDACTED], January 13 and 14, 2021 (34-1 to 34-5)

### Stipulations of Fact

The parties submitted stipulations of fact, which I have included in the OAH file. I incorporated some of those stipulations into my findings of fact.

### Testimony

The following witnesses testified for the Petitioners:

1. [REDACTED], the Student's Mother
2. [REDACTED], the Student's father
3. [REDACTED], Ph.D., Clinical Psychologist, who appeared via videoconference, and testified as an expert in child psychology and special education
4. [REDACTED], M.Ed., Educational Consultant, who testified as an expert in dyslexia, dysgraphia, and dyscalculia
5. [REDACTED], Ph.D., Neuropsychologist, who testified as an expert in neuropsychology and child psychology
6. [REDACTED], M.Ed., a former teacher at [REDACTED], who appeared via videoconference

The following witnesses testified for the HCPSS:

1. [REDACTED], M.S., School Counselor, [REDACTED] Middle School, who testified as an expert in school counseling
2. [REDACTED], M.A., School Psychologist, [REDACTED] Middle School, who testified as an expert in school psychology and special education

3. [REDACTED], M.Ed., Resource Teacher, K-12 Reading Intervention, Access, and Opportunity, who testified as an expert in reading and public-school administration
4. Kelly Russo, M.Ed., Coordinator for Special Education Compliance and Dispute Resolution, Department of Special Education, who testified as an expert in special education, nonpublic placements, and special education administration
5. [REDACTED], M.S., School Counselor, Section 504 Case Manager, who testified as an expert in school counseling
6. [REDACTED], M.Ed., Instructional Team Leader for Special Education, [REDACTED] High School, who testified as an expert in special education
7. [REDACTED], M.Ed., Assistant Principal, [REDACTED] Middle School; formerly a High School Resource Teacher with HCPSS's Department of Special Education, who testified as an expert in special education and special education administration
8. [REDACTED], Ed.S., School Psychologist, who testified as an expert in school psychology

### **FINDINGS OF FACT**

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

1. The Student, who is seventeen years old (born in [REDACTED] 2005), has attended [REDACTED] since tenth grade (2021-2022 school year); he is scheduled to graduate in 2024.
2. In 2007-2008, the Student received services at home and in daycare through the Howard County Infants and Toddlers Program due to concerns with expressive language development and transitioning between activities in daycare.
3. When the Student was evaluated for eligibility under Part B of the IDEA at age three, examiners reported that the Student demonstrated delays in social/emotional development (short attention span, distractibility, poor peer interactions), receptive communication (following directions), and expressive language (pragmatics).
4. The Student received special education and related services as a child with developmental delay through May 2009 at the [REDACTED] at [REDACTED]

Elementary School. In May 2009, an IEP team determined that the Student no longer required special education and related services.

5. In November 2010, when the Student was attending [REDACTED], the Parents referred him to an HCPSS IEP team due to concerns with social-emotional development, speech, behavioral functioning, and motor skills. Despite reports concerning the Student's behavior – demands had to be met immediately, disturbing children, intense mood changes without warning, repetitive behaviors such as tapping feet and humming, uncooperative with adults, over-reactive to sensory experiences, impulsive, fails to finish tasks, and easily frustrated – the IEP team did not suspect that the Student, who was also described as a bright child, was a child with a disability.

6. The Student attended [REDACTED] Elementary School for kindergarten through fifth grade (2011-2012 school year through 2016-2017 school year). On his final kindergarten report card, the Student was marked as working independently in most academic and related arts areas and working with assistance in the areas of beginning writing skills, music, and media. Reports indicated some learning behavior concerns with recognizing rights of others, working cooperatively with others, responding appropriately to directions, and writing legibly.

7. In first grade, the Student received support from an alternative education program.

8. Between January 2013 and April 2015, the Student received special education services for a speech impairment, specifically, for his articulation.

9. In December 2016, one of the Student's fifth-grade teachers, [REDACTED], expressed her concerns about the Student's inability to start and to continue with classroom work, and how he might need a "legal document" in middle school for his behavior difficulties and needs. (PET. #9).

10. In April 2017, when the Student was in fifth grade, the HCPSS determined that the Student was eligible for accommodations through a Section 504 Plan due to ADHD, Combined Presentation. This determination was based in part on the results of assessments, including a DAS-II (cognitive), BASC-3 (social/emotional and behavior), and Conners-3 (ADHD symptoms and other common co-occurring issues). The assessment data and classroom observations indicated concerns across settings with the Student's inattentiveness, hyperactivity, and impulsivity. According to the assessments, however, the Student's cognitive processing abilities were either within or above age expectations, with scores ranging from average to high, with no evidence of a processing deficit. The Student also exhibited a strength in processing speed.

11. The Student attended [REDACTED] Middle School ([REDACTED]) for sixth, seventh, and eighth grades (2017-2018, 2018-2019, and 2019-2020 school years).

12. In sixth grade, the Student was assigned to [REDACTED] Reading (Comprehension), a reading intervention program for comprehension.

13. In April 2018, the HCPSS conducted a functional behavioral assessment (FBA) of the Student and implemented a behavioral intervention plan (BIP) to address the Student's problematic behaviors, which included difficulties with task initiation and completion.

14. The Student consistently received poor grades in sixth and seventh grade.

15. On March 12, 2020, just as the COVID-19 pandemic was beginning, the HCPSS conducted an annual review of the Student's Section 504 Plan. The resulting Section 504 Plan included accommodations for the Student's ADHD; it did not include any accommodations concerning reading.

16. The Student completed eighth grade through virtual learning. The Student's final grades were two As, two Bs, and five Cs, but the fourth quarter was graded on a pass/fail system,

with a pass (based on completion of half the posted assignments for a course) calculated as an A for purposes of a Student's final grade.

17. The Student attended [REDACTED] High School for ninth grade (2020-2021 school year) through virtual learning.

18. [REDACTED], a school counselor, was the Student's Section 504 Plan case manager. Mr. [REDACTED] met with the Student virtually throughout the school year.

19. In fall 2020, due to concerns with their son's reading skills, the Parents retained [REDACTED], Ph.D., a licensed psychologist, to evaluate the Student.

20. Dr. [REDACTED] evaluated the Student via videoconference on November 2, 4, 11, and 18, 2020, and December 2, 2020. She administered several assessments, including the Conners-3 Behavior Rating Scale (Conners-3), the Wechsler Intelligence Scale for Children-V (WISC-V), the Wechsler Individual Achievement Test-3 (WIAT-3), the Gray Oral Reading Test-5 Form B (GORT-5), and the Comprehensive Test of Phonological Processing-2 (CTOPP-2).

21. The Student's Full-Scale IQ of 108 on the WISC-V was in the average range, but he had a low average standard score of 92 on the Processing Speed Index subtest.

22. The Student's Phonological Awareness Index standard score of 107 on the CTOPP-2 was in the average range, but he scored in the low average range on a Rapid Naming Index.

23. The Student had difficulty sounding out nonsense words on the WIAT-3 and the GORT-5, indicating he had difficulty with decoding. This difficulty with nonsense words was noted consistently in later assessments.

24. Dr. [REDACTED] reported that the Student's phonological processing skills were average, but that he had not mastered the automaticity of visual symbol reading, indicating that he is making sound or symbol matches slowly and inaccurately, sequentially blending the visual symbols as he reads.

25. Dr. [REDACTED] concluded that the Student's mild dyslexia was exacerbated by his attention deficit disorder. She indicated that the Student was likely losing focus and or giving up because of the excessive concentration it took him to accurately decode.

26. Dr. [REDACTED] recommended tutoring to overcome dyslexia and improved treatment (medication) of attention deficit disorder to focus on the Student's challenging language arts weaknesses. Dr. [REDACTED] also indicated that the Student's issues with reading visual symbols carried over to his written language disability.

27. Dr. [REDACTED] diagnosed the Student with specific learning disorders with impairments in reading (dyslexia), math, and written expression; unspecified neurodevelopmental disorder; general anxiety disorder; and dysgraphia, in addition to his previous diagnosis of ADHD.

28. In January 2021, Dr. [REDACTED], who recommended that the Parents consider [REDACTED] for the Student, wrote to [REDACTED] to endorse his acceptance to the school.

29. At a March 5, 2021, meeting concerning the Student's Section 504 Plan, Ms. [REDACTED] critiqued Dr. [REDACTED]'s testing and reporting methods. The Section 504 Plan team determined that the Student was eligible for additional accommodations for a specific learning disorder, impairment in reading with dyslexia; and specific learning disorder, impairment in written expression.

30. On March 9, 2021, [REDACTED] accepted the Student for enrollment for the 2021-2022 school year; the Parents subsequently enrolled the Student at [REDACTED].



31. The Student received the following grades for his nine classes at ██████████ High School: Geometry - C; United States History - B; English 9 - B; Guitar II - B; Music Technology - A; Tutorial - A; Health - D; Lifetime Fit 9 - C; and Earth and Space Systems Science - E.

32. In July 2021, the Parents filed a due process complaint, asserting that the HCPSS failed to timely identify the Student as a child with a disability due to specific learning disabilities and emotional disturbance.

33. On October 6, 2021, ██████████, M.Ed., Educational Consultant, evaluated the Student's reading readiness and reading achievement by conducting four subtests of the Woodcock Reading Mastery Tests-III (Form A): Word Identification; Word Attack; Passage Comprehension; and Oral Reading Fluency. Based on the Student's standard scores of 73 and 79, respectively, on the Word Attack and Oral Reading Fluency subtests, Ms. ██████████ concluded that the Student required multisensory systematic structured literacy instruction for reading and writing.

34. In October 2021, the Parents voluntarily withdrew the pending due process complaint, without prejudice, in exchange for the HCPSS agreeing to convene an IEP team meeting to determine the Student's eligibility for special education services.

35. On November 19, 2021, the IEP team reviewed Dr. ██████████'s psychological evaluation and Ms. ██████████'s assessment. The IEP team recommended assessments to determine whether the Student met criteria as a student with a specific learning disability and/or other health impairment due to ADHD. The IEP team recommended educational assessments of the Student's reading skills, reading comprehension, reading fluency, and mathematics calculation.

36. On January 6 and 10, 2022, ██████████, a special education resource teacher, conducted an educational assessment of the Student. Ms. ██████████ administered several

assessments, including the Woodcock Johnson IV, Tests of Achievement Broad Reading Cluster (WJ-IV) Form A, and the Qualitative Reading Inventory 6 (QRI-6).

37. The Student's Broad Achievement standard score of 97 on the WJIV was in the average range, as were all his scores on then subtests. The Student's scores on Word Attack and Oral Reading Fluency indicated that he had relative weaknesses in decoding and fluency. Other testing also indicated that the Student had relative weaknesses basic writing skills and editing.

38. The Student's performance on the QRI-6, a timed reading test, demonstrated that he struggled to decode some of the words on the high-school-level passage but understood the relevant passage well enough for high-school-level text to be considered his instructional level.

39. On January 26, 2022, [REDACTED], Ed.S., a certified school psychologist, conducted a record review and behavior rating scales provided by the Parent and three [REDACTED] teachers, progress reports and grades from [REDACTED], and Dr. [REDACTED]'s psychological report.

40. On February 23, 2022, the IEP team reviewed information, including Ms. [REDACTED]'s educational assessment and Ms. [REDACTED]'s psychological report. The IEP team also considered the Student's performance at [REDACTED] High School in ninth grade and during his several months at [REDACTED].

41. The IEP team determined that the Student was not eligible for special education services. The IEP team accepted the diagnoses provided by Dr. [REDACTED] but concluded that neither the Student's specific learning disabilities nor his ADHD adversely impacted his ability to meet State-approved grade-level standards.

42. On May 5, 2022, [REDACTED], Ph.D., and [REDACTED], M.A., Psychology Associate, conducted a neuropsychological evaluation of the Student. Ms. [REDACTED] administered assessments, including the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV).

43. The Student's scores on the WAIS-IV were within the average to superior range compared to his same-aged peers. The Student's composite scores of 83 and 81, respectively, on the Written Expression and Reading Fluency subtests were in the low average range.

44. The Student's standard score of 92 on the Phonological Memory subtest on the CTOPP-2, was in the average range.

45. The Student's mother and two of his [REDACTED] teachers completed Achenbach Child Behavior Checklists. The Student's mother noted concerns with anxiety; neither of the teachers did so.

46. Dr. [REDACTED] concluded that the Student met criteria for DSM-5 diagnoses of specific learning disorder with impairment in reading, specific learning disorder with impairment in written expression, unspecified attention deficit/ hyperactivity disorder (ADHD), and, based on indications of excessive worry, generalized anxiety disorder, mild.

47. In September 2022, the Parents filed a second due process complaint, again asserting that the HCPSS failed to timely identify the Student as specific learning disability and emotional disability. The Parents cited Dr. [REDACTED]'s evaluation and Dr. [REDACTED]'s neuropsychological evaluation.

48. On October 18, 2022, the parties reached a settlement agreement in mediation, which they reduced to writing on October 25, 2022. In exchange for an IEP team meeting to consider Dr. [REDACTED]'s report and consider eligibility based on that report and reimbursement of the costs of all private evaluations (Dr. [REDACTED], [REDACTED], and Dr. [REDACTED]), the Parents agreed that they would withdraw the request for due process and mediation with prejudice and that all legal claims that they could have raised related to the issues in that complaint were settled.

49. Notwithstanding the Parents' withdrawal of the due process complaint with prejudice, the Parties agreed that the Parents maintained their right to request mediation or file a subsequent due process hearing complaint if the Parents were dissatisfied with the upcoming IEP team's decisions.

50. The Parties also agreed that they would act in good faith to seek and obtain permission from [REDACTED] for HCPSS staff to observe the Student in his classroom setting before the next IEP team meeting.

51. Pursuant to [REDACTED]'s policy, HCPSS staff were not allowed to conduct a classroom observation of the Student.

52. On December 22, 2022, the IEP team met to consider the Student's eligibility for special education services. The IEP team reviewed the Student's educational assessment and Dr. [REDACTED]'s neuropsychological assessments and Ms. [REDACTED]'s psychological report. The IEP team also considered the Student's performance at [REDACTED] High School and considered grades and progress reports from [REDACTED].

53. At [REDACTED], the Student earned final grades mostly in the 90s, with a low grade of 88 for the 2021-2022 school year. His grades for the first two trimesters of the 2022-2023 school year ranged from 77 to 95.

54. The IEP team determined that the Student was not eligible for special education services. The IEP team concluded that neither the Student's specific learning disabilities nor his ADHD adversely impact his ability to meet State-approved grade-level standards.

55. The IEP team also determined that the Student's diagnosed general anxiety disorder was not exhibited over a long period of time, was not exhibited to a marked degree, and did not adversely affect his educational performance.

56. The Parents paid \$23,440.00 for the Student to attend [REDACTED] for the 2022-2023 school year.

### **DISCUSSION**

The Parents, who are seeking relief on the Student’s behalf, bear the burden of proof by a preponderance of the evidence (more likely so than not so) to show that the HCPSS denied the Student a FAPE under the IDEA and Maryland education law when it did not identify him as eligible for special education services for the 2022-2023 school year. The Parents also bear the burden of proof by the same standard as to whether [REDACTED] is an appropriate placement for the Student, whether the Parents are entitled to reimbursement for tuition and expenses related to the Student’s 2022-2023 school year at [REDACTED], and whether [REDACTED] should be the Student’s educational placement for the 2023-2024 school year. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). I find the Parents have not met their burden on the first issue and, consequently, also failed to meet their burden as to the other three issues.

#### **Child with a Disability**

A primary purpose of the IDEA is to ensure “that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); Educ. § 8-403 (the State and each local school system shall make a free appropriate public education available to each child with a disability). The disputed issue in this due process hearing is the threshold IDEA question of whether the Student is a “child with a disability,” meaning, that he needs special education and related services due to specific learning disabilities (dyslexia and dysgraphia); other health

impairment (attention-deficit/hyperactivity disorder or ADHD); and/or emotional disability (generalized anxiety disorder). 20 U.S.C.A. § 1401(3)(A); 34 C.F.R. § 300.8(a); Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78).

A state or local educational agency shall conduct a full and individual evaluation of a child before the initial provision of special education and related services to a child with a disability. 20 U.S.C.A. § 1414(a)(1)(A); 34 C.F.R. § 300.301(a); COMAR 13A.05.01.06(a). The determination of whether a child is a child with a disability shall be made by a team of qualified professionals and the parents of the child based upon assessments and other evaluation measures. 20 U.S.C.A. § 1414(b)(4)(A); 34 C.F.R. § 300.306(a). On two occasions, most recently on December 22, 2022, an IEP team determined that the Student was not a child with a disability because he did not require special education and related services. For purposes of the eligibility determination, the school-based members of the IEP team accepted the diagnoses of dyslexia, dysgraphia, ADHD, and generalized anxiety disorder reported by private psychologists and an educational consultant, but ultimately determined that these disorders did not have an adverse impact on Student's educational performance and did not require specialized instruction.

The Parents believe that the HCPSS failed to identify the Student's dyslexia and dysgraphia while he attended kindergarten through ninth grade in the HCPSS, and therefore failed to provide him appropriate special education and related services through an IEP. Citing the Student's consistent poor grades and teacher comments about the Student's behavior and performance, the Parents asserted that the Student required more than the instructional accommodations and supports made available to him through a Section 504 Plan. The Student's mother testified that she became aware of the extent of her son's reading difficulties when she was working with him at home during virtual learning in fall 2020.

When Dr. [REDACTED] subsequently diagnosed the Student with specific learning disorders with impairments in reading (dyslexia), math, and written expression; unspecified neurodevelopmental disorder; general anxiety disorder; and dysgraphia, in addition to his previous diagnosis of ADHD, the Parents, clearly frustrated with the HCPSS, enrolled the Student at [REDACTED] for tenth grade (2021-2022 school year). The Student has flourished at [REDACTED]; he is on schedule to graduate in 2024.

In July 2021, the Parents, citing Dr. [REDACTED]'s psychological evaluation, filed the first of three due process complaints. The Parents asserted that the HCPSS failed to timely identify the Student as a child with a disability due to specific learning disabilities and emotional disability disturbance and sought reimbursement for tuition and costs for [REDACTED].

In October 2021, the Parents voluntarily withdrew the due process complaint, without prejudice, in exchange for the HCPSS agreeing to convene an IEP team meeting to determine the Student's eligibility for special education services. On November 19, 2021, the IEP team reviewed Dr. [REDACTED]'s psychological evaluation and an assessment conducted by [REDACTED], an educational consultant. The IEP team recommended assessments to determine whether the Student met criteria as a child with a disability.

On January 6 and 10, 2022, [REDACTED], a special education resource teacher, conducted an educational assessment of the Student. On January 26, 2022, [REDACTED], a certified school psychologist, reviewed the Student's educational records, considered behavior rating scales provided by the Parent and three of the Student's [REDACTED] teachers, and reviewed the Student's progress reports and grades at [REDACTED]. On February 23, 2022, the IEP team reviewed Ms. [REDACTED]'s educational assessment, Ms. [REDACTED]'s psychological report, and additional information, and determined that the Student was not a child with a disability.

On May 5, 2022, [REDACTED], Ph.D., a neuropsychologist, and [REDACTED], M.A., a psychology associate, conducted a neuropsychological evaluation of the Student, which included extensive standardized assessments. Dr. [REDACTED] concluded that the Student met criteria for DSM-5 diagnoses of specific learning disorder with impairment in reading, specific learning disorder with impairment in written expression, unspecified attention deficit/ hyperactivity disorder (ADHD), and, based on indications of excessive worry, generalized anxiety disorder, mild.

In September 2022, the Parents filed a second due process complaint, once again asserting that HCPSS failed to timely identify the Student's specific learning disabilities and emotional disability. On October 18, 2022, the parties reached a written settlement agreement. In exchange for an IEP team meeting to consider Dr. [REDACTED]'s report and to reconsider the Student's eligibility for special education services and reimbursement of the costs of three private evaluations (Dr. [REDACTED]'s, Ms. [REDACTED]'s, and Dr. [REDACTED]'s), the Parents agreed that they would withdraw the due process complaint with prejudice and that all legal claims that they could have raised related to the issues in that complaint were settled.

As noted above, on December 22, 2022, an IEP team determined that the Student was not a child with a disability under the IDEA. I concur with the HCPSS's argument that my decision must focus on the most recent eligibility determination. Evidence of the Student's problematic performance and the HCPSS's response to his issues while he was enrolled in the HCPSS from kindergarten through ninth grade provided important context, but ultimately is not material to the issues before me. Under the IDEA, a due process complaint must be filed within two years of when a party knew or should have known of the alleged action forming the basis of the complaint. 20 U.S.C. §§ 1415(b)(6)(B); 1415(f)(3)(C). The Parents filed this due process complaint on March 7, 2023. There is no remedy available now for any procedural or substantive



violation that the Parents knew or should have known about as of March 7, 2021. Additionally, pursuant to the parties' settlement agreement there is no remedy available now for any procedural or substantive violation that occurred prior to October 25, 2022. That leaves the eligibility determination on December 22, 2022, and any consequences of that determination as the issues for this decision.

### Specific Learning Disability

The parties' main point of contention, one involving some disagreement among the various experts, concerned the specific learning disorders of dyslexia and dysgraphia. The school-based members of the IEP team, pursuant to an HCPSS policy, accepted the Student's clinical diagnoses of dyslexia and dysgraphia; however, through an application of an evaluation process mandated by federal and State law, the IEP team ultimately determined that these disorders were not specific learning disabilities under the IDEA because the disorders did not have an adverse educational impact as required by COMAR 13A.05.01.06D. The IEP team also cited the inability of HCPSS staff to conduct an observation of the Student in a classroom setting at [REDACTED] as required by federal and State regulations.

The term specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Dyslexia, a language-based learning disability in reading, writing, spelling, or math, is an example of such a disorder. 20 U.S.C.A. § 1401(30)(A), (B); 34 C.F.R. § 300.10((i); COMAR 13A.05.01.03B(73). Under federal regulations, a state must adopt criteria for determining whether a child has a specific learning disability, which:

- (1) must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability;

(2) must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.

34 C.F.R. § 300.307(a); 20 U.S.C.A. § 1414(b)(6).

A local education agency, such as the HCPSS, must use the State criteria adopted pursuant to the federal regulation in determining whether a child has a specific learning disability. *Id.* § 300.307(b). The relevant State criteria are set out in COMAR 13A.05.01.06D. The State Department of Education has also provided guidance on specific learning disabilities to local education agencies through technical assistance bulletins. Under the relevant State regulations, the IEP team shall determine that a student has a specific leaning disability (or SLD, the term used in the regulations) if the student does not achieve adequately for the student's age or meet State-approved grade level standards when provided with learning experiences appropriate for the student's age and ability levels in one or more of the following areas: (i) oral expression; (ii) listening comprehension; (iii) basic reading skills; (iv) reading fluency skills; (v) reading comprehension; (vi) written expression; (vii) mathematics calculation; or (viii) mathematics problem solving.<sup>6</sup> COMAR 13A.05.01.06D(2).

The IEP team may consider evaluative data and appropriate assessments, consistent with sections 300.304 and 300.305 of title 34 of the Code of Federal Regulations, if the team determines that data to be relevant to the identification of an SLD if the student:

(i) Does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in §D(2) of this regulation, when using a process based on the student's response to scientific research-based intervention; or

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<sup>6</sup> The student's lack of achievement described in § D(2) of this regulation is not primarily the result of: (i) a visual, hearing, or motor impairment; (ii) intellectual disability; (iii) emotional disability; (iv) cultural factors; (v) environmental, cultural, or economic disadvantage; or (vi) limited English proficiency. COMAR 13A.05.01.06D(3).

(ii) Exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

COMAR 13A.05.01.06D(3). If a student is suspected of being a student with an SLD, at least one member of the IEP team, other than the student's general education teacher, shall observe the student in the student's learning environment, including the general education classroom setting, to document academic performance and behavior in the areas of difficulty. COMAR 13A.05.01.05B(5(a); 34 C.F.R. § 300.310(a). In determining whether a student has an SLD, the IEP team shall:

(i) use information from an observation in routine classroom instruction and monitoring of the student's performance that occurred before the child was referred for an evaluation; or

(ii) have at least one member of the IEP team conduct an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent is obtained[.]

COMAR 13A.05.01.05B(5); 34 C.F.R. § 300.310.

When a student is suspected of having an SLD, the IEP team shall prepare, in pertinent part, a written report that includes: (a) a statement of whether the student has a specific learning disability; (b) the basis for making the determination; (c) the relevant behaviors, if any, noted during the observation of the student; (d) the relationship of the behaviors to the student's academic functioning. COMAR 13A.05.01.06D(5). The IEP team used a Specific Learning Disability Supplement form to fulfill this reporting requirement. The determination of an SLD shall be made by an IEP team that includes at least one person qualified to conduct individual diagnostic assessments of students in accordance with federal and State regulations. COMAR 13A.05.01.06D(7).

The State Department of Education's *Specific Learning Disability & Supplement (Focus on Dyslexia, Dyscalculia, and Dysgraphia)* states:

While a student with dyslexia, dyscalculia, or dysgraphia may qualify for services under the IDEA, having one of these conditions does not automatically qualify a student for services. A student only qualifies for services after an IEP team has conducted a comprehensive evaluation, determined that the student meets all of the criteria for one of the disability categories under the IDEA, and found that the student requires specially designed instruction to address the unique needs that result from his or her disability and to ensure access to the general education curriculum.

(HCPSS #16, 16-6).

As permitted by State regulation, the HCPSS has chosen to use the pattern of strengths and weaknesses option (Option 2 in a document titled *A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework*) to determine whether a child has a specific learning disability. The State Department of Education has issued additional guidance concerning identification of a student with SLD:

Local school systems that choose to implement Option 2 for determination of a [SLD] will need to establish procedures and criteria that yield reliable decisions and that are consistent with [federal law]. Assessments and other evaluation materials used to assess a child must be valid and reliable, and administered by trained and knowledgeable personnel. At a minimum, patterns of a student's strengths and weaknesses in performance, achievement, or both relative to age, State-approved grade level standards, or intellectual development should be evaluated in terms of the level of performance, the degree of variation among strengths and weaknesses, the frequency of such variation across individuals, and the relevance to identification of a [SLD]. Criteria need to account for the fact that some profile variation is typical nondisabled peers. That is, significant intra-individual differences in score profiles are normal and can be expected to occur among all students . . .

With these cautions in mind use of Option 2 for determination of a [SLD] requires local procedures and criteria that identify patterns of a student's strengths and weaknesses that are

significant, meaningful, and relevant to identification of a specific learning disability.

(HCPSS #15)

The Parents' experts, a clinical psychologist, a neuropsychologist, and an educational consultant, did not focus on the State Department of Education's guidance documents, and presented an uneven and ultimately unconvincing case that the Student is a child with a disability, including specific learning disabilities, who requires specialized instruction in a private school. Where a school system's experts and parents' experts disagree, the "IDEA requires great deference to the views of the school system rather than those of even the most well-meaning parent." *AB ex rel. DB v. Lawson*, 354 F.3d 315, 328 (4th Cir. 2004). The HCPSS's experts, especially their explanations concerning the assessments of the Student and the HCPSS's obligation to follow State regulations and State Department of Education guidance, were impressive and overwhelmingly established that the Student is not eligible for special education services.

While I credit Dr. [REDACTED]'s diagnoses of specific learning disorders with impairments in reading and written expression, it became obvious during her testimony (and later as explained by Ms. [REDACTED]) that she did not follow standard testing or reporting protocols. And her unprofessional conduct during the hearing – displaying open hostility to the HCPSS's staff and attorney – and her obvious bias in favor of [REDACTED], raised significant credibility issues. Dr. [REDACTED] presented as an advocate rather than an expert providing helpful guidance.

Ms. [REDACTED]'s limited testing of the Student, whereby she had him complete just four subtests of the Woodcock Reading Mastery Tests-III (Form A) WRMT-III, seemed an odd approach, but sufficiently corroborated a diagnosis of dyslexia. Two of the Student's standard scores (73 on Word Attack and 79 on Oral Reading Fluency) were consistent with a diagnosis of

mild dyslexia. Ms. [REDACTED] noted that due to the Student's intelligence, he was able to compensate for his disfluency and answer comprehension questions correctly.

Dr. [REDACTED], in contrast to Dr. [REDACTED] and Ms. [REDACTED], was a thorough, respectful, and thoughtful expert witness. As noted above, the cognitive testing conducted by Dr. [REDACTED] indicated that the Student's scores on the WAIS-IV were within the average to superior range compared to his same-aged peers. The Student had low average standard scores on subtests on the WIAT-4 (83 on Written Expression and 81 on Reading Fluency). His standard score of 92 on the Phonological Memory subtest on the CTOPP-2, was in the average range. Dr. [REDACTED] reviewed the Student's records, including Dr. [REDACTED]'s psychological evaluation and Ms. [REDACTED]'s assessment, and Ms. [REDACTED]'s educational assessment. He also considered rating scales and checklists completed by the Student's mother and teachers, and he interviewed the Student.

Dr. [REDACTED] concluded:

The results of this evaluation are consistent with the DSM-5 diagnostic criteria for specific learning disorder, with impairment in reading (dyslexia); specific learning disorder, with impairment in written expression (dysgraphia); unspecified attention deficit/hyperactivity disorder; and generalized anxiety disorder.

...

[Student's] test results revealed a pattern of strengths and weaknesses in academic skills. [Student] demonstrated strengths in mathematic skills, oral language, and reading comprehension, and weaknesses in written expression and reading fluency.

During this evaluation [Student] demonstrated significant weaknesses in reading fluency and aspects of phonological processing. These findings, along with his learning history and previous evaluation results, indicate dyslexia. According to the International Dyslexia Association, dyslexia is a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background

knowledge. In [Student's] case he reads slowly but demonstrates much stronger reading comprehension skills.

During this evaluation, [Student] also demonstrated significant weaknesses in written expression with deficits in spelling, sentence composition, and essay composition skills. These findings, along with his learning history and previous evaluation results indicate dysgraphia. Dysgraphia is a neurologically based specific learning disability that can present as difficulties with spelling, poor handwriting, and trouble putting thoughts on paper. It can be a language-based and/or non-language-based disorder. When it is language-based, a student may have difficulty converting the sounds of language into written form or knowing which alternate spelling to use for sounds. When it is non-language-based, a student may have difficulty performing the controlled fine motor skills required to write. Students with dysgraphia may speak more easily and fluently than they write. [Student] has deficits in both domains and his oral language skills are comparatively strong

...

Across evaluations, [Student] has demonstrated overall reasoning abilities that are in the average range, with individual measures extending into the high average and superior ranges.

Student was previously diagnosed with attention deficit/hyperactivity disorder (ADHD). He was under the care of a psychiatrist, and he was prescribed [REDACTED] for his symptoms. Rating scales completed by his parents indicate ongoing problems with attention. They described [Student] as distractible, inattentive, highly active, impulsive, and fidgety. Rating scales completed by his teachers did not indicate problems with attention or hyperactivity/impulsivity.

Emotionally [Student] presents with symptoms of anxiety and the diagnosis of generalized anxiety disorder is used to capture this problem. The essential feature of this disorder, and reported by [Student], is excessive anxiety or worry, occurring more days than not. At the time of referral [Student] was not in counseling.

Overall, [Student] presents as a bright, musically talented 16-year-old with a complex set of neurodevelopment disorders that have interfered with his academic achievement. Although he is capable of learning and succeeding in the classroom, he currently requires systematic supports and services to do so.

(JOINT #37).

Dr. [REDACTED] recommended that the IEP team find the Student eligible for supports and services pursuant to his dyslexia and dysgraphia, his problems with focusing and sustaining attention, and his ability to access curriculum in larger groups. Dr. [REDACTED] recommended an

evidence-based, direct, explicit, multisensory, structured, sequential, phonologically-based instructional approach to teach reading and writing instruction provided in small groups, with one-to-one tutoring. He also recommended goals and objectives for reading fluency and written expression, with direct instruction to support development of executive functions skills.

As noted by the HCPSS, the only statistically significant and meaningful weakness found in Dr. [REDACTED]'s testing was in written expression. On cross-examination, Dr. [REDACTED] made significant concessions, especially that the recommendations that he made for the Student could be implemented in a general education classroom setting, and that many of the accommodations he recommended were already in the Student's Section 504 Plan. The school-based members of the IEP team, pursuant to a policy whereby it does not challenge diagnoses provided by appropriately licensed professionals, agreed that the Student had the specific learning disabilities of dyslexia and dysgraphia. HCPSS noted that a determination does not mean that the student is a child with a disability entitled to special education services.

The HCPSS argued, consistent with federal and State regulations, that the Student could not be identified as a student with a specific learning disability under the IDEA without a classroom observation. The Technical Assistance Bulletin: Specific Learning Disability & Supplement states that the observation of a student is required for determining an SLD. The bulletin explains the purpose of the observation:

The classroom observation can be an important opportunity for assessing the fidelity with which instruction is provided. The observation could be considered important for assessing student engagement, opportunities to learn, and judgements about curricular and instructional fidelity. If this focus is not emphasized, the observation becomes more perfunctory or just a routing that doesn't lend itself to the diagnostic information that could be valuable.

(HCPSS #15).



Dr. [REDACTED] questioned the usefulness of a classroom observation for a specific learning disability, but Ms. [REDACTED] explained that she could obtain important data from observing how the Student was responding to instructional techniques. She also explained that substituting observation data from middle school would be inappropriate. I don't know what the Parents or the HCPSS could have done considering [REDACTED]'s ban on classroom observations of its students. Ultimately, I am not deciding the specific learning disability based solely on the lack of a classroom observation, but on convincing evidence that the Student's specific learning disabilities do not adversely impact his educational performance.

The HCPSS argued that the Student's diagnosed specific learning disabilities do not adversely impact his educational performance. The IEP team had to determine whether the Student's pattern of strengths and weaknesses in performance, achievement, or both, relative to age, adversely affected his ability to achieve State-approved grade-level standards. [REDACTED]'s non-engagement policy affected the IEP team's ability to evaluate this issue. In December 2022, the Student was halfway through his second school year at [REDACTED] under an unknown curriculum, but one that unlikely was aligned with State-approved grade-level standards. Ms. [REDACTED], a former [REDACTED] teacher between 2014-2016, testified that [REDACTED] uses an Orton-Gillingham reading intervention and assigns one teacher to a small group of students. She could not identify any details about the services that the Student receives at [REDACTED]. The IEP team assumed, however, that the reports of the Student's excellent performance at [REDACTED] reflected his achievement of grade-level standards. Again, I don't know what else the IEP team could have done without some explanation of [REDACTED]'s curriculum and grading criteria. The IEP team used an imperfect but reasonable method for determining whether the Student was achieving at grade-level standards.

The HCPSS also cited the Student's generally average results on formal assessments, even those conducted by Dr. [REDACTED] when properly reported, to support the IEP team's determination. Ms. [REDACTED] testified that the results of the QRI-6 that she administered provided a good evaluation of the Student's classroom performance. Ms. [REDACTED] indicated that the Student's scores demonstrated that he struggled to decode some of the words on the high-school-level passage but understood the relevant passage well enough for high-school-level text to be considered his instructional level. The HCPSS argued that this indicated that the Student's specific learning disorders had no discernible educational impact.

The lack of data concerning the Student's [REDACTED] curriculum also affected the determination concerning the Student's specific leaning disability of dysgraphia. Teacher comments from [REDACTED] indicated that the Student excelled on one writing assignment; another teacher indicated that the Student was doing well in written expression class. I also note that the Student's ninth-grade performance at [REDACTED] High School was generally average, but with the understanding that it was virtual learning. The IEP team's determination that the Student's diagnosed dysgraphia did not adversely affect his educational performance is consistent with the information that the IEP team had.

The HCPSS disputed the Parents' argument that the Student needed special education and related services to address his specific learning disorders. Dr. [REDACTED] testified that his recommendations must be provided through an IEP, but, consistent with a State-level tiered instructional approach, HCPSS's witnesses testified that all of Dr. [REDACTED]'s recommendations could be provided to a student without an IEP. Ms. [REDACTED], a school psychologist, testified that the kind of reading intervention Dr. [REDACTED] recommended can be provided to any student that needs it. Ms. [REDACTED], an expert in reading, testified that the HCPSS individualizes reading interventions for any student who needs one, not just for students with IEPs, that all reading

interventions used in the HCPSS meet the criteria noted by Dr. [REDACTED], and that any student in the county can qualify to be placed in a reading intervention class in the high school level. Mr. [REDACTED], Instructional Team Leader at [REDACTED] High School, an expert in special education, testified that students can take tutorial classes, primarily for executive function and organization. The HCPSS also has strategic reading classes, providing reading intervention for high school students.

Based on the formal assessments of the Student and the available data concerning his current academic performance, the IEP team properly determined that the Student was not a child with a disability based upon a specific learning disability.

#### Other Health Impairment

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

34 C.F.R. § 300.8(c)(9); COMAR 13A.05.01.03B(51).

The Student has been diagnosed with ADHD since at least 2017, for which he received accommodations through a Section 504 Plan while he attended HCPSS schools, and for which he has been prescribed medication. The IEP team evaluated the Student using an Evaluation Report ADHD Supplement that guides the determination of whether a student with ADHD requires special education services. The IEP team, by Ms. [REDACTED], a school psychologist, conceded that three criteria to identify ADHD were met – documentation of a diagnosis of ADHD from

licensed psychologists, documentation of ADHD as a chronic health problem that impacts the Student's behavioral characteristics, and a finding that the Student demonstrates limited alertness due to inattention, hyperactivity-impulsivity, or heightened alertness/sensitivity to environmental stimuli. The IEP team, however, determined that the Student did not meet the other criteria for his ADHD to qualify him as a student with other health impairment under the IDEA.

The other criteria to find a student with ADHD require the IEP team to conclude that documentation from qualified personnel indicates an adverse impact on the student's educational performance due to ADHD in one or more instructional areas as indicated and at least one of the following:

Standardized educational assessment data indicate the student is achieving significantly below grade level expectations due to the inattention and or hyperactivity.

A documented pattern of the quantity and or quality of work indicates a student is not maintaining a similar rate of academic progress is same age peers

A documented pattern of the student's limited availability for instructional activities resulting in a significant, negative impact on educational performance

(JOINT #42).

The HCPSS argued convincingly that the Student's ADHD, at least currently, is not adversely affecting his educational performance. The standardized educational assessment data available to the IEP team did not indicate that [REDACTED] is achieving significantly below grade-level expectations due to inattention and/or hyperactivity. As noted earlier, the Student's assessment scores were generally in average range. There were no scores that suggested he is achieving significantly below grade-level expectations due to inattention and/or hyperactivity. On the CTOPP-2, the Student scored in the average range on all the composite tests. There were no composite test scores to suggest that [REDACTED] was achieving significantly below grade-level

expectations due to inattention and/or hyperactivity. The limited information available from [REDACTED] teachers indicated that the Student was performing at or above grade level.

The limited information available from [REDACTED] teachers, and the fact that the Student only attended [REDACTED] for virtual learning, also affected the evaluation of whether the quantity or quality of the Student's work indicated he is not maintaining a similar rate of academic progress as same-aged peers. It is fair to say that was true in middle school, but the IEP team met in December 2022, when the Student was in eleventh grade. The Parents did not present any evidence to establish that the Student's ADHD was currently preventing him from maintaining a similar rate of academic progress as his same-aged peers.

Similarly, the limited information available from [REDACTED] teachers, and the fact that the Student only attended [REDACTED] for virtual learning, affected the evaluation of whether the Student has exhibited a pattern of limited availability for instructional activities resulting in a significant, negative impact on his educational performance. The limited information from [REDACTED] indicated to the contrary. One teacher commented that the Student exhibited positive qualities, such as active participation in class discussions and activities, offering valuable and creative ideas, attentiveness, and politeness.

Based on its findings as to the criteria discussed above, the IEP team determined that the Student's ADHD did not have an adverse impact on his educational performance and that he was not eligible for special education services. These determinations, given the lack of data concerning the Student's academic performance, are well supported by the record that the IEP had. HCPSS's witnesses testified that [REDACTED] High School could implement accommodations for the Student's ADHD, most likely through a Section 504 Plan, with a tutorial class and, possibly, a specialized reading class.

Based on the formal assessments of the Student and the available data concerning his current academic performance, the IEP team properly determined that the Student was not a child with a disability based upon other health impairment of ADHD.

### Emotional Disability

An emotional disability is a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a student's educational performance: (1) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) inappropriate types of behavior or feelings under normal circumstances; (4) a general, pervasive mood of unhappiness or depression; or (5) a tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. § 300.8(c)(4).

This issue was the weakest presented by the Parents. Their own expert, Dr. [REDACTED] testified that the Student would not qualify for special education services based on his generalized anxiety disorder. Dr. [REDACTED] explained that the Student's anxiety, which he described as excessive worry, not necessarily related to school, is a compounding factor for the Student. Dr. [REDACTED] indicated that the Student's anxiety has to be considered, as a comorbidity, with the Student's specific learning disorders and ADHD. The Student is not taking medication for anxiety, nor does he receive therapy for anxiety.

The IEP team considered Dr. [REDACTED]'s report and documented its determination its discussion and determination:

Three teachers completed Achenbach Behavior Rating Scale-Second Edition. All scales are within the average range and subthreshold for clinical significance.

[Student] completed the Revised Children's Manifest Anxiety Scale-Second Edition. [Student] is not in counseling or on medication for anxiety. Total

Anxiety score was within the average range. Physiological Anxiety was Average. Social Anxiety was Average. Defensiveness was Average. Worry was elevated. Relative to Generalized Anxiety Disorder, the examiner noted that the essential feature of the disorder, as reported by [Student] is excessive anxiety or worry occurring more days than not. This is part of the diagnostic features according to the DSM-V, however there are five additional criteri[a] that were not addressed by this examiner including that the intensity, duration or frequency of anxiety and worry is out of proportion to the actual likelihood or impact of the anticipated event so much so individuals cannot keep thought from interfering with attention to tasks at hand. According to the DSM-V, several features distinguished generalized anxiety disorder from nonpathological anxiety. First, the worries associated with generalized anxiety or are excessive and typically interfere significantly psychosocial functioning. Second, the worries associated with generalized anxiety disorder are more pervasive, pronounced and distressing; have longer duration; and frequently occur without precipitants. Anxiety and worry are also accompanied by at least [three] of the following additional symptoms: restlessness or feeling keyed up or on edge, being easily fatigued, difficulty concentrating or mind going blank, irritability, muscle tension and disturbed sleep. It does not appear, based on this rating scale, that additional criteria are satisfied. Moreover, this worry must cause clinically significant distress or impairment in social, occupational or other important areas of functioning. This is not documented in this report.

(HCPSS #42).

The HCPSS argued that the IEP team's determination concerning generalized anxiety disorder is consistent with the entire record. The HCPSS addressed the five criteria at length and argued that the evidence presented did not indicate that the Student is unable to learn or to build and maintain satisfactory interpersonal relationships with peers and teachers due to anxiety. The HCPSS also argued that the evidence presented did not demonstrate that the Student displayed inappropriate types of behavior or feelings under normal circumstances, or that he exhibited a general, pervasive mood of unhappiness or depression. The HCPSS cited [REDACTED] reports indicated that the Student works well in small groups with his peers and is attentive, polite, and a pleasure to have in class. The Student was described as affable, exhibiting leadership, and displaying good study habits for his peers. The Parents testified that the Student performs in three bands.

There is evidence of the Student's anxiety in the record, primarily from the Parent, who described the Student's fears concerning burglary of the family home or contracting COVID, and, according to the Parent, of attending ██████████ High School in person. The Parent testified that the Student did not have friends in middle school, which an HCPSS witness refuted. None of the evidence indicated that the Student meets the criteria for an emotional disability.

Most significantly, the HCPSS also argued convincingly that the Student's anxiety at least currently, is not adversely affecting his educational performance. Although the Parents testified that the Student has more confidence and less anxiety since attending ██████████, there is no evidence that the Student is receiving any services or supports for his anxiety. Moreover, as already discussed above, the Student is achieving academically, apparently without services for anxiety, which negates his need for special education and related services.

Based on the formal assessments of the Student and the available data concerning his current academic performance, the IEP team properly determined that the Student was not a child with a disability based upon an emotional disability.

My conclusion that the Student is not a child with a disability under the IDEA controls the other three issues in the case, especially as to reimbursement and placement. A private placement is appropriate "if the placement is reasonably calculated to accord the child educational benefits." *M.M. ex rel. J.M. v. Foose*, 165 F. Supp. 3d 365, 370 (D. Md. 2015); see also *Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 359 (1985). While ██████████ might be appropriate for the Student in a general sense, it is not at all clear on this record that ██████████ ██████████ is providing the Student special education services as envisioned under the IDEA. Moreover, the appropriateness of ██████████ is essentially a moot point. The Parent indicated quite clearly at the hearing that the Student will remain at ██████████. The crucial remaining issues are whether the Parents are entitled to reimbursement for tuition and related expenses they



incurred for privately placing the Student at ██████████ for the 2022-2023 school year, and whether ██████████ should be the Student's educational placement for the 2023-2024 school year.

Having concluded that the Student is not a child with a disability, I cannot find that the Parents are entitled to reimbursement. In *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985), the Supreme Court established a two-part test that must be satisfied before a court will order reimbursement for private placement. First, it must be determined that services provided under an IEP at a public school are inappropriate. Second, the private placement sought by the parents must be appropriate under the IDEA. The first part of that test implicitly indicates that a child must be a child with a disability for the parents to be eligible for reimbursement. The Student is not eligible for an IEP as a child with a disability, which means he is ineligible for the special education services that the Parents argued that he was not receiving from the HCPSS. Nor by the same logic should the Student's placement for the 2023-2034 school year be a private school.

### **CONCLUSIONS OF LAW**

1. The HCPSS did not deny the Student a FAPE under the IDEA and Maryland education law when it did not identify him as eligible for special education services for the 2022-2023 school year. 20 U.S.C.A. § 1401(3)(A); 34 C.F.R. § 300.8(a); Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78).

2. The issue of whether ██████████ is an appropriate educational placement for the Student is moot.

3. The Parents are not entitled to reimbursement for tuition and related expenses they incurred for privately placing the Student at ██████████ for the 2022-2023 school year. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985).

4. [REDACTED] should not be the Student's educational placement for the 2023-2024 school year. 20 U.S.C.A. § 1401(3)(A); 34 C.F.R. § 300.8(a); Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78); *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985).

**ORDER**

I **ORDER** that the Howard County Public School System did not deny the Student a free appropriate public education under the IDEA and Maryland education law when it did not identify him as eligible for special education services for the 2022-2023 school year.

I further **ORDER** that the Parents are not entitled to reimbursement for tuition and related expenses they incurred for privately placing the Student at [REDACTED] for the 2022-2023 school year.

I further **ORDER** that the [REDACTED] should not be the Student's educational placement for the 2023-2024 school year.

August 11, 2023  
Date Decision Issued

Robert F. Barry  
Administrative Law Judge

RFB/ds  
#206781

**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.**  
**HOWARD COUNTY**  
**PUBLIC SCHOOL SYSTEM**

**BEFORE ROBERT F. BARRY,**  
**AN ADMINISTRATIVE LAW JUDGE**  
**OF THE MARYLAND OFFICE**  
**OF ADMINISTRATIVE HEARINGS**  
**OAH No.: MSDE-HOWD-OT-23-06747**

**EXHIBIT LIST**

The parties submitted forty-three joint exhibits:

- JOINT #1 - Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP), revised April 4, 2019 (1-1 to 1-16)
- JOINT #2 - Group Conference Summary Form, January 31, 2020 (2-1 to 2-4)
- JOINT #3 - Section 504 Progress and Accommodation Review Worksheets, meeting date March 12, 2020 (3-1 to 3-21)
- JOINT #4 - Section 504 Meeting Notice, meeting date March 12, 2020 (4-1 to 4-5)
- JOINT #5 - Section 504 – Eligibility, meeting date March 12, 2020 (5-1 to 5-5)
- JOINT #6 - Section 504 Plan, March 12, 2020 (6-1 to 6-9)
- JOINT #7 - FBA and BIP, discontinued March 12, 2020 (7-1 to 7-15)
- JOINT #8 - Final Eighth Grade Report Card and Daily Attendance, June 23, 2020 (8-1 to 8-3)
- JOINT #9 - Section 504 Plan, meeting date March 12, 2020, amended August 27, 2020 (9-1 to 9-7)
- JOINT #10 - Psychological Report, [REDACTED], Ph.D., December 2020 (10-1 to 10-29)
- JOINT #11 - Release of Records, [REDACTED], January 18, 2021 (11-1 to 11-2)
- JOINT #12 - Letter from [REDACTED], Chairman of the Board, [REDACTED], to [REDACTED], HCPSS, February 3, 2021 (12-1)
- JOINT #13 - Section 504 Meeting Notice, meeting date March 5, 2021 (13-1 to 13-5)

- JOINT #14 - Section 504 – Eligibility, meeting date March 5, 2021 (14-1 to 14-5)
- JOINT #15 - Section 504 Plan, March 5, 2021 (15-1 to 15-11)
- JOINT #16 - Emails between Parents and [REDACTED], March 9 and 22, 2021 (16-1 to 16-2)
- JOINT #17 - Consent for Communication, Review, or Release of Records, [REDACTED], May 24, 2021 (17-1)
- JOINT #18 - Final Ninth Grade Report Card, June 14, 2021 (18-1)
- JOINT #19 - Referral for a Student Suspected of Having a Disability, October 1, 2021 (19-1)
- JOINT #20 - Test Results, Woodcock Reading Mastery Tests-III (Form A), [REDACTED], M.Ed., Educational Consultant, October 6, 2021 (20-1 to 20-2)
- JOINT #21 - Trimester 1 Progress Report, 2021-2022, [REDACTED], October 26, 2021 (21-1 to 21-2)
- JOINT #22 - Notice of IEP Team Meeting, meeting date November 19, 2021 (22-1 to 22-2)
- JOINT #23 - Parent Questionnaire (23-1 to 23-5)
- JOINT #24 - IEP Team Meeting Report, meeting date November 19, 2021 (24-1 to 24-4)
- JOINT #25 - Trimester 1 Report Card, 2021-2022, [REDACTED] (25-1 to 25-2)
- JOINT #26 - Parental Consent for Evaluation, December 7, 2021 (26-1)
- JOINT #27 - Letter from [REDACTED], Chairman of the Board, [REDACTED], to [REDACTED], HCPSS, January 11, 2022 (27-1)
- JOINT #28 - Educational Assessment Report, [REDACTED], Special Education Resource Teacher, January-February 2022 (28-1 to 28-17)
- JOINT #29 - Report of Psychological Assessment, [REDACTED], Ed.S., School Psychologist, January 27, 2022 (29-1 to 29-9)
- JOINT #30 - Notice of IEP Team Meeting, meeting date February 23, 2022 (30-1 to 30-2)
- JOINT #31 - IEP Team Meeting Report, meeting date February 23, 2022 (31-1 to 31-5)

- JOINT #32 - Evaluation Report Attention Deficit Hyperactivity Disorder (ADHD) Supplement, meeting date February 23, 2022; Specific Learning Disability Supplement, meeting date February 23, 2022 (32-1 to 32-8)
- JOINT #33 - Trimester 2 Report Card, 2021-2022, [REDACTED] (33-1)
- JOINT #34 - Trimester 3 Report Card, 2021-2022, [REDACTED] (34-1 to 34-2)
- JOINT #35 - Comprehensive Executive Function Inventory (CEFI) Teacher Responses (35-1 to 35-14)
- JOINT #36 - Teacher's Report Form for Ages 6-18 (36-1 to 36-16)
- JOINT #37 - Neuropsychological Evaluation, [REDACTED], Ph.D., [REDACTED], June 1, 2022, amended June 9, 2022, and July 5, 2022 (37-1 to 37-18)
- JOINT #38 - Release and Settlement of Claims, October 25, 2022 (38-1 to 38-5)
- JOINT #39 - Notice of IEP Team Meeting, meeting date December 22, 2022 (39-1 to 39-2)
- JOINT #40 - Trimester 1 Progress Report, 2022-2023 (40-1 to 40-3)
- JOINT #41 - IEP Team Meeting Report, meeting date December 22, 2022 (41-1 to 41-4)
- JOINT #42 - Specific Learning Disability Supplement, December 22, 2022; Evaluation Report Emotional Disability (ED) Supplement, December 22, 2022; Attention Deficit Hyperactivity Disorder (ADHD) Supplement, December 22, 2022 (42-1 to 42-10)
- JOINT #43 - Trimester 2 Report Card, 2022-2023 (43-1)

I admitted the following exhibits into evidence for Petitioners:<sup>1</sup>

- PET. #1 - Third Grade Report Card, 2014-2015 (1-2)
- PET. #2 - Third Grade Assessment Report, 2014-2015 (3-4)
- PET. #3 - Emails between Parent and [REDACTED], June 1, 2015 (5-6)
- PET. #4 - Fourth Grade Report Card (7-8)

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<sup>1</sup> I admitted Petitioners' Exhibits ## 1-22, and 37 over the objection of the HCPSS, which argued that those records were outside the relevant timeframe for the issues at this hearing.

- PET. #5 - Emails between Parent and [REDACTED], Sept. 9 and 14, 2015 (9-10)
- PET. #6 - Emails between Parent and [REDACTED], June 1, 3, and 4, 2016 (11-13)
- PET. #7 - Fifth Grade Report Card, 2016-2017 (14-15)
- PET. #8 - Emails between Parent and [REDACTED], September 7, 2016 (16-17)
- PET. #9 - Emails between Parent and [REDACTED], October 25, 2016; November 18, 2016; December 14 and 18, 2016; January 9, 2017 (18-25)
- PET. #10 - Sixth Grade Report Cards (26-29)
- PET. #11 - Emails between Parent and [REDACTED], October 2, 4, and 9, 2017 (30-31)
- PET. #12 - Emails between Parent and [REDACTED], October 18-21, 2017 (32-34)
- PET. #13 - Emails between Parent and [REDACTED] November 2 and 5, 2017 (35-36)
- PET. #14 - Emails between Parent and [REDACTED], December 19, 2017 (37)
- PET. #15 - Emails between Parent and [REDACTED], February 9, 2018 (38-39)
- PET. #16 - Emails between Parent and [REDACTED], March 1, 2018 (40-41)
- PET. #17 - Emails between Parent and [REDACTED], March 28 and 29, 2018, and April 5, 2018 (42-44)
- PET. #18 - Emails between Parent and [REDACTED], April 19, 2018 (45-46)
- PET. #19 - Seventh Grade Report Cards (47-50)
- PET. #20 - Emails between Parent with [REDACTED], November 13, 2018 (51)
- PET. #21 - Email from Parent to [REDACTED], January 10, 2019 (52)
- PET. #22 - Emails between Parent and [REDACTED], January 15, 2019 (53-54)
- PET. #23 - Eighth Grade Report Cards (55-58)
- PET. #24 - Emails between Parent and [REDACTED], October 10, 2019 (59)
- PET. #25 - Message from [REDACTED] to Parents, November 13, 2019 (60-61)

- PET. #26 - Message from [REDACTED] to Parents, November 20, 2019 (62)
- PET. #27 - Message from [REDACTED] to Parents, December 12, 2019 (63)
- PET. #28 - Emails between Parent and [REDACTED], November 20, 2019, and December 12, 2019 (64-65)
- PET. #29 - Emails between Parent and [REDACTED], December 18 and 19, 2019 (66-67)
- PET. #30 - Message from [REDACTED] to Parents, February 19, 2020 (68)
- PET. #31 - Message from [REDACTED] to Parents, June 15, 2020 (69)
- PET. #32 - Report of Psychological Assessment, [REDACTED], Ph.D., March 30, 2017 (70-81)
- PET. #33 - Section 504 – Eligibility, meeting date February 17, 2017; Section 504 Plan, June 1, 2017; Section 504 – Eligibility, meeting date April 7, 2017; Section 504 School Referral Form, undated (82-122)
- PET. #34 - Section 504 Plan, meeting date February 8, 2018 (123-164)
- PET. #35 - Section 504 Plan, meeting date April 4, 2018 (165-194)
- PET. #36 - Section 504 Plan, meeting date April 4, 2019 (195-235)
- PET. #37 - Student Test History, 2014-2020 (236-240)
- PET. #38 - Letter from [REDACTED] to the Parents April 20, 2020 (241-243)
- PET. #39 - Trimesters 1 and 2 Progress Reports; and Trimesters 1, 2, and 3 Report Cards, [REDACTED], 2021-2022 (244-251)
- PET. #40 - Trimesters 1 and 2 Progress Reports; Trimesters 1 and 2 Report Cards, [REDACTED], 2022-2023 (252-256)
- PET. #41 - Transactions, [REDACTED] (257-258)
- PET. #42 - New Student Enrollment Agreement, [REDACTED], 2021-2022 (259-263)
- PET. #43 - Letter from [REDACTED]'s Board of Trustees to Parents, January 2023 (264-265)
- PET. #44 - [REDACTED] Account (266)
- PET. #45 - FBA & BIP, February 8, 2018 (267-282)



- PET. #46 - Summary of Psychological Evaluation, [REDACTED], Ph.D., January 21, 2021 (283-315)
- PET. #47 - Curriculum Vitae, [REDACTED], Ph.D. (316-321)
- PET. #48 - Curriculum Vitae, [REDACTED], M.Ed., Education Specialist (322-325)
- PET. #49 - Curriculum Vitae, [REDACTED]. Ph.D. (326-333)
- PET. #50 - Curriculum Vitae, [REDACTED], M.Ed. (334)
- PET. #51 - [REDACTED] High School Profile (335-336)
- PET. #52 - Score Interpretation (for [REDACTED]'s Report) (337)

I admitted the following exhibits into evidence for HCPSS:

- HCPSS #1 - Emails between Parent and [REDACTED], December 18, 2020 (1-1)
- HCPSS #2 - Emails between Parent and [REDACTED] High School staff, December 23, 2020; January 4, 18, 26, 2021 (2-1 to 2-5)
- HCPSS #3 - Emails between [REDACTED] and [REDACTED] High School staff (3-1 to 3-4)
- HCPSS #4 - Teacher Input for Annual Review – Section 504 Plan, March 2021 (4-1 to 4-2)
- HCPSS #5 - Review of Independent Assessment, March 5, 2021 (5-1 to 5-3)
- HCPSS #6 - Request for Cumulative Student Education File, April 19, 2021 (6-1 to 6-2)
- HCPSS #7 - Letter from [REDACTED] to Mr. DeCarlo, April 21, 20121 (7-1)
- HCPSS #8 - Review of Independent Assessment, November 19, 2021 (8-1 to 8-7)
- HCPSS #9 - Emails between Parent and [REDACTED] (9-1)
- HCPSS #10 - Emails between [REDACTED] and [REDACTED], January 6, 2022 (10-1 to 10-6)
- HCPSS #11 - Connors-3 Teacher Assessment Reports (11-1 to 11-57)
- HCPSS #12 - Emails between Ms. Stump and Mr. DeCarlo (12-1 to 12-7)
- HCPSS #13 - Emails between Mr. DeCarlo and [REDACTED] (13-1 to 13-2)

- HCPSS #14 - Review of Independent Assessment 12.22.2022 (14-1 to 14-5)
- HCPSS #15 - A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework, June 2008 (15-1 to 15-73)
- HCPSS #16 - Technical Assistance Bulletin: Specific Learning Disability & Supplement (Focus On: Dyslexia, Dyscalculia, and Dysgraphia), revised July 1, 2017 (16-1 to 16-15)
- HCPSS #17 - The Role of the School Psychologist in the Identification of Dyslexia, Dysgraphia, and Dyscalculia, October 2018 (17-1 to 17-13)
- HCPSS #18 - Technical Assistance Bulletin: Improving Outcomes for Students with Disabilities: Curriculum, Instruction, and Assessment, revised November 2019 (18-1 to 18-22)
- HCPSS #19 - A Guide for Implementing Specially Designed Instruction within an Integrated Tiered System of Supports, November 2019 (19-1 to 19-100)
- HCPSS #20 - Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition, Text Revision (DSM-V-TR) - Attention Deficit/Hyperactivity Disorder (20-1 to 20-9)
- HCPSS #21 - DSM-V-TR - Generalized Anxiety Disorder (21-1 to 21-5)
- HCPSS #22 - DSM-V-TR - Specific Learning Disorder (22-1 to 22-10)
- HCPSS #23 - HCPSS Catalog of Approved High School Courses, 202-2023 (23-1 to 23-140)
- HCPSS #24 - ██████████ High School Eleventh Grade Class Sizes (24-1 to 24-2)
- HCPSS #25 - Résumé of ██████████, M.S., School Counselor, ██████████ Middle School (25-1)
- HCPSS #26 - Résumé of ██████████, M.Ed., K-12 Reading Intervention, Access, and Opportunity Resource Teacher (26-1 to 26-2)
- HCPSS #27 - Résumé of ██████████, M.Ed., Assistant Principal, ██████████ MS, and former Special Education Resource Teacher for High Schools (27-1 to 27-3)
- HCPSS #28 - Résumé of ██████████, Ed.S., School Psychologist (28-2)
- HCPSS #29 - Résumé of Kelly Russo, M.Ed., Coordinator of Special Education Compliance and Dispute Resolution (29-1 to 29-2)

- HCPSS #30 - Résumé of [REDACTED], M.S., School Counselor (30-1)
- HCPSS #31 - Résumé of [REDACTED], M.A., School Psychologist  
(31-1 to 31-3)
- HCPSS #32 - Résumé of [REDACTED], M.Ed., Special Education Instructional Team  
Leader (32-1 to 32-2)
- HCPSS #33 - Emails between Parent and [REDACTED], January 13, 2021  
(33-1 to 33-2)
- HCPSS #34 - Emails between Parent and [REDACTED], January 14 and 16,  
2021; Emails between [REDACTED] and [REDACTED],  
[REDACTED], January 13 and 14, 2021 (34-1 to 34-5)