

██████████,
STUDENT
v.
MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE JENNIFER A. NAPPIER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-23-09157

DECISION

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

STATEMENT OF THE CASE

PROCEDURAL HISTORY

On April 4, 2023, ██████████ and ██████████ (Parents), by and through counsel, on behalf of ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA).^{1,2,3,4}

I held a video prehearing conference on May 24, 2023. Paula Rosenstock, Esquire, appeared on behalf of the Parents and the Student, and was accompanied by Ms. ██████████. Emily

¹ 20 U.S.C.A. § 1415(f)(1)(A) (2017). “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

² 34 C.F.R. § 300.511(a) (2021). “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2021 bound volume.

³ Md. Code Ann., Educ. § 8-413(d)(1) (2022). Unless otherwise noted, all citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

⁴ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

Rachlin, Esquire, appeared on behalf of MCPS. On June 1, 2023, I issued a Prehearing Conference Report and Order.

I conducted the hearing on June 22, June 23, July 19, July 20, July 26, and July 27, 2023, via the Webex videoconferencing platform.⁵ Michael Eig, Esquire, and Paula Rosenstock, Esquire represented the Student and the Parents. Emily Rachlin, Esquire, and John Delaney, Esquire, represented MCPS.

THE DECISIONAL TIMEFRAME

Under the applicable law, a decision in this case would normally be due by Friday, June 16, 2023.⁶ However, in light of the time the parties needed to prepare and exchange documents in conformity with the five-day disclosure rule and counsel's previously-scheduled professional obligations and vacation leave, as well as my own, the parties requested hearing dates that fell after June 16, 2023 and jointly asked that I extend the decisional timeframe. The parties jointly requested that I issue a decision within thirty days after the conclusion of the hearing.

Having considered the aforementioned scheduling constraints and the time needed to adequately examine the evidence and arguments presented and draft a decision, I determined there was good cause to extend the decisional timeframe per the parties' request.⁷ After reviewing the availability of the parties, counsel, and witnesses, I scheduled the hearing for

⁵ COMAR 28.02.01.20B(1)(b).

⁶ The decision normally would have been due forty-five days after the expiration of the 30-day resolution period on May 4, 2023, on which date that the Parents and MCPS also agreed in writing that no resolution was possible. 34 C.F.R. §§ 300.510(b)(2), (c)(2), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14)(b). However, forty-five days after May 4, 2023 is Sunday, June 18, 2023. Policy requires issuing the decision on the business day before Saturday or Sunday, which was Friday, June 16, 2023.

⁷ 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

seven non-consecutive days, on the earliest mutually available dates.^{8,9} The hearing concluded on July 27, 2023, making the decision due no later than August 25, 2023.¹⁰

THE LAW GOVERNING PROCEDURE IN THIS CASE

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education procedural regulations; and the Rules of Procedure of the OAH.¹¹

ISSUES

1. Did MCPS fail to make a free appropriate public education (FAPE) available to the Student for the 2022-2023 school year by failing to conduct the necessary assessments?
2. Did MCPS fail to make a FAPE available to the Student for the 2022-2023 school year by failing to develop an IEP and placement appropriate to meet the unique needs of the Student?
3. Did MCPS fail to make a FAPE available to the Student for the 2023-2024 school year by failing to develop an IEP and placement appropriate to meet the unique needs of the Student?
4. If MCPS failed to provide the Student a FAPE for the 2022-2023 and/or the 2023-2024 school year, what is the appropriate remedy?

⁸ Originally, August 9, 2023 was scheduled to be the seventh and final day of hearing. However, the hearing concluded on the sixth scheduled day of hearing, July 27, 2023.

⁹ To allow the parties sufficient time to prepare and exchange documents in conformity with the five-day disclosure rule, we collectively started looking at scheduling this matter onwards from June 12, 2023. A detailed calendar of the scheduling conflicts for me, counsel, and the parties' witnesses is attached to this Decision as Appendix I.

¹⁰ Thirty days after July 27, 2023 (the conclusion of the hearing) was Saturday, August 26, 2023. Per policy, the due date was shifted to Friday, August 25, 2023.

¹¹ Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

SUMMARY OF THE EVIDENCE

Exhibits

I have attached a complete Exhibit List as Appendix II.

Testimony

The Student presented the following witnesses:

1. [REDACTED], Ed.D., Director of Social-Emotional Services, [REDACTED]
[REDACTED], admitted as an expert in Special Education with an emphasis on the educational needs of emotionally disabled students;
2. [REDACTED], MAT, Academic Director, [REDACTED] ([REDACTED]), admitted as an expert in education, instruction, programming, and administration;
3. [REDACTED], LCMCHA,¹² primary therapist, [REDACTED], admitted as an expert in mental health counseling;
4. [REDACTED], the Student's mother; and
5. [REDACTED], Ph.D., psychologist and educational consultant, [REDACTED]
[REDACTED] ([REDACTED]), admitted as an expert in clinical psychology and therapeutic residential placements.

MCPS presented the following witnesses:

1. [REDACTED], MA, MCPS itinerant resource teacher, Department of Special Education Services, admitted as an expert in special education, with an emphasis on emotional disabilities and autism;
2. [REDACTED], M.A.Ed., former MCPS special education teacher, [REDACTED]
Elementary School ([REDACTED] Elementary), admitted as an expert in special education, with an emphasis on emotional disabilities; and

¹² Licensed Clinical Mental Health Counselor Associate.

3. [REDACTED], MAT, MCPS special education resource teacher, [REDACTED] [REDACTED] Middle School ([REDACTED] Middle) [REDACTED] ([REDACTED]), admitted as an expert in special education.

FINDINGS OF FACT

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

The Student - Background

1. The Student is a thirteen-year-old (date of birth: [REDACTED] 2010) rising seventh grader and a resident of Montgomery County, Maryland. As of the last hearing date in this matter, she was enrolled in [REDACTED], a therapeutic boarding school in [REDACTED].

2. The Student's current diagnoses include autism spectrum disorder (autism), attention-deficit/hyperactivity disorder-predominantly inattentive presentation (ADHD), a specific learning disorder (SLD) with impairment in reading fluency, and major depressive disorder with anxious distress, in partial remission. She has also been diagnosed with binocular vision dysfunction, sensory processing issues, a developmental coordination disorder, and [REDACTED] [REDACTED]/hypermobility.¹³

3. From September 2016 through December 2019, the Student attended kindergarten through third grade at [REDACTED] Elementary School ([REDACTED] Elementary), a public school in MCPS.

4. In May 2017, MCPS conducted a speech and language evaluation of the Student in response to the Parents' concerns about the Student's articulation. Following the evaluation, speech therapy services were recommended for the Student and the Parents consented to the

¹³ These additional diagnoses are not at issue in this case and will not be further addressed in this Decision.

implementation of an IEP for the Student. Subsequently, MCPS developed an IEP for the Student, identifying speech/language impairment as the Student's primary disability.

5. Around October 2018, when the Student was eight years old, the Student began reporting a depressed mood and suicidal ideations to her Parents. She also began making negative self-directed comments (such as "I am stupid" and "I don't belong in this world") and exhibiting self-injurious behavior, such as banging her head against the wall.

6. On November 1, 2018, the IEP team held a reevaluation planning meeting to identify the Student's primary disability because the Student needed adult support throughout the school day to complete tasks and assignments. During the meeting, the Student's mother reported that the Student was becoming self-critical, dwelled on negative events, showed signs of mood dysregulation and separation anxiety, and expressed suicidal ideation. The MCPS psychologist who attended the reevaluation planning meeting recommended that the Parents find a psychologist to address these issues with the Student.

7. In November and December 2018, MCPS conducted an educational assessment of the Student to assess her progress in reading comprehension and decoding, writing skill development, and mathematical skill development.

8. The Parents took the Student to several psychologists and psychiatrists in late-2018. During this time, the Student was diagnosed with anxiety, depression, disruptive mood dysregulation disorder, and ADHD.

9. On January 8, 2019, a screening IEP team meeting was held regarding the Student.

10. Following the screening IEP team meeting, MCPS conducted psychological and educational assessments of the Student on January 8 and 11, 2019.

11. Following MCPS's evaluation of the Student, the IEP team reviewed the results of the January 2019 assessments and special education services were added to the Student's IEP.¹⁴ Additionally, speech/language impairment was removed from the IEP as the Student's primary disability and the Student was discharged from speech therapy services because the Student had met her speech goals and objectives and her speech and language no longer had a discernible impact on her academic performance.

12. In September 2019, during the Student's first week of third grade at [REDACTED] Elementary, the Student found the school environment overwhelming and overstimulating. During the weekend that followed, the Student told her mother that she had stuck a pencil in her ear in an attempt to drown out the noise in the classroom.

13. After the Student reported that she stuck a pencil in her ear, the Parents scheduled a session with the Student's therapist. After the session, the Student's therapist recommended that the Parents call [REDACTED] to get the Student into a partial hospitalization program. However, when the Parents called the hospital, hospital staff indicated that they would only admit the Student for a full hospitalization.

14. The Student was hospitalized at [REDACTED] for ten nights, before beginning a partial hospitalization program, which was approximately three weeks.

15. Following the Student's partial hospitalization, the Student was enrolled in [REDACTED] ([REDACTED])¹⁵ with MCPS and received instruction while at home for approximately two months.

¹⁴ The date of this IEP is not in the record. The earliest IEP entered into evidence is the November 23, 2020 IEP.

¹⁵ [REDACTED] was formerly known as [REDACTED].

16. During the time the Student received [REDACTED], her mother made efforts to have the Student participate in certain activities at [REDACTED] Elementary, such as small group instruction with the resource teacher or “lunch bunches”¹⁶ with other students.

17. In December 2019, the IEP team, including the Parents, determined that the Student should transfer to the [REDACTED] ([REDACTED]) program at [REDACTED] Elementary, where the Student would receive instruction in a self-contained classroom for certain academic subjects.

18. The [REDACTED] program at [REDACTED] Elementary consisted of three small, self-contained social emotional learning classrooms. Most of the students exhibited primarily externalizing behaviors, but there were also students in the program, such as the Student, who exhibit primarily internalizing behaviors.¹⁷ There is also a combination of students who are socially sophisticated, and socially immature and vulnerable.

19. In mid-January 2020, the Student transferred to [REDACTED] Elementary and was placed in the [REDACTED] program.

20. The Student attended classes in-person at [REDACTED] Elementary until March 2020, when MCPS closed its school buildings due to the COVID-19 pandemic.

21. Around April 2020, MCPS resumed classes via virtual learning.

22. The Student began to experience great distress during the school closure. In late-April 2020, the Student told the Parents that she was going to kill herself. She said that she had a plan, she would not tell her Parents the plan, and said she would follow through with the plan if

¹⁶ A lunch bunch is a small group of students that meet for lunch with a teacher or school staff in a location other than the school cafeteria.

¹⁷ Externalizing behaviors are behaviors that are directed outwardly. Internalizing behaviors are behaviors that are focused inward.

she was not immediately hospitalized. As result, the Student was emergently hospitalized at [REDACTED] for fourteen nights.

23. After being discharged from [REDACTED], the Student returned home for about a week before starting a partial hospitalization program at [REDACTED].

24. The Student was hospitalized again in July 2020 for an unspecified period of time.

25. The Student continued in [REDACTED] at [REDACTED] Elementary for fourth grade during the 2020-2021 school year. The November 23, 2020 IEP identified the Student's primary disability as multiple disabilities (SLD¹⁸ and other health impairment (OHI)). The Student received instruction in a self-contained classroom for math, writing, and reading. She received instruction in the general education setting with her grade level peers for lunch, recess, specials, and whole group instruction for science and social studies. The Student also received thirty minutes of counseling services per week, provided in a group or individual setting, over one or multiple sessions, at the discretion of the provider and dependent on the Student's needs during the week. She also received four, thirty-minute sessions per month of social work services.

26. In late 2020, at school the Student made negative comments about herself and lacked confidence when faced with academic challenges; she frequently said, "I can't do it."

27. At home, the Student often had tantrums and "meltdowns" for twenty minutes or as long as two hours and were triggered when transitioning from a preferred activity or when she was asked to complete a nonpreferred task. Two or three times per week, the Student had meltdowns that included threats of suicide, screaming, hysterical crying, and/or aggression, and she sometimes made purposefully hurtful comments directed at her parents. The Student had a

¹⁸ On the IEPs, SLD is referred to as specific learning disability, rather than specific learning disorder. There is no difference between the two terms.

“technology addiction”¹⁹ and used her father’s credit card without permission to spend large sums of money on a video game.

28. By the end of the 2020-2021 school year, MCPS resumed in-person learning. The Student was happy to be back at school in person.

29. During the 2020-2021 school year, the Student had no absences during the first marking period, had three absences during the second marking period, four absences during third parking period, and a half-day absence during the fourth marking period.

30. During the summer of 2021, the Student was briefly hospitalized twice—first for the purpose of changing and monitoring her psychotropic medications, and later, for stabilization.

The December 2020/February 2021 Neuropsychological Evaluation of the Student

31. In December 2020, [REDACTED], Ph.D., and [REDACTED], Ph.D., of [REDACTED] ([REDACTED]) began a neuropsychological evaluation of the Student to document the Student’s current neuropsychological functioning, provide diagnostic consultation, and assist with treatment planning.

32. The [REDACTED]’s team interviewed the Parents, reviewed all of the available records pertaining to the Student, conducted a psychiatric diagnostic interview of the Student, and conducted two days of psychological testing. The team also obtained information from the Student’s teacher and IEP case manager, Mr. [REDACTED].

33. The [REDACTED]’s team tested the Student on December 11, 2020 and February 26, 2021.

¹⁹ This is a term used by the Student’s mother to describe the Student’s fixation on technology, such as video games. The Student has not been formally diagnosed with a technology addiction.

34. The [REDACTED]'s team determined that the Student had several cognitive strengths. She performed in the average range overall for intellectual functioning, with well-balanced visual and verbal thinking skills. The Student showed relative strength in working memory; and age-appropriate skills in verbal learning and memory, and nonverbal problem solving.

35. The [REDACTED]'s team found that the Student had more variable academic skills as well as weaknesses in attention, executive functioning, visual motor skills, and emotional functioning. Additionally, the team found that the Student's adaptive skills were well below age expectations and her general cognitive abilities. The Student showed relative weaknesses in functional academics, leisure, self-direction, home living, and self-care skills. The team opined that the Student's weaknesses in these areas of adaptive functioning were likely related to her current mental health functioning, rather than stemming from cognitive deficits.

36. The [REDACTED]'s team determined that the results of the evaluation might be a slight underestimation of the Student's true abilities but were likely to be a good reflection of her typical neuropsychological functioning in a structured, cognitively challenging environment.

37. The Student was diagnosed with an SLD with an impairment in reading fluency, ADHD, predominantly inattentive presentation, developmental coordination disorder, and major depressive disorder with anxious distress—recurrent episode.

38. The [REDACTED]'s team determined that the Student's neuropsychological profile posed several risks that could impact her performance in both home and school settings.

39. Given her ongoing challenges with emotional functioning, the team opined that it would be critical to continue to support the Student's mental well-being so that these issues would not interfere with her academic achievement and daily functioning. The team noted that the Student's engagement in learning and academic activities had been most successful when

given the support and structure of the small group and socioemotional learning classroom and opined that without these interventions, the Student was at high risk for becoming overwhelmed and disengaging both academically and socially.

40. Based upon the impact of the Student's disabilities, the [REDACTED]'s team recommended that the Student have a small-group social emotional learning classroom placement with accommodations because she was not able to academically engage in a general education classroom setting.

41. The [REDACTED]'s team encouraged the Student's special education team to consider both the Student's cognitive and emotional needs and opined that the school psychologist needed to be intimately involved as a part of the Student's team due to the educational impact of her psychiatric symptoms.

42. The [REDACTED]'s team also strongly recommended that the Student receive reading intervention to target automaticity and fluency. This was noted as critical because the Student did not currently have automaticity for grade level independent reading.

43. The team also provided recommendations for several classroom accommodations, as well as recommendations for the Parents to implement in the home.

The 2021-2022 School Year IEP (Fifth Grade)

44. On November 22, 2021, the IEP team at [REDACTED] Elementary convened to conduct the annual review of the Student's IEP. The IEP team included the Parents; the Student's IEP case manager and special education teacher, [REDACTED]; Principal [REDACTED]; a behavioral specialist, [REDACTED]; and a school psychologist, [REDACTED].

45. The Parents were informed of their *Procedural Safeguards and Parental Rights* under IDEA.²⁰

46. The November 22, 2021 IEP again identified the Student's primary disability as multiple disabilities (an SLD and OHI). The IEP team determined that the Student had needs in the following areas: reading comprehension, reading fluency, written language mechanics, and social emotional/behavioral skills.

47. The IEP team reviewed the Student's present levels of performance and developed annual goals and objectives for each of the areas affected by the Student's disabilities.

48. The IEP provided for the necessary accommodations, supplementary aids, services, program modifications and/or supports.

49. The IEP team determined that the Student required small group instruction throughout the school day to access the general education curriculum, including specialized instruction in small groups to address her goals in reading decoding and writing mechanics. The IEP team noted that due to the Student's difficulties with self-regulation and anxiety, the Student had difficulty focusing, learning, and working in the general education classroom.

50. The November 22, 2021 IEP provided that the Student would receive the following services: nineteen and a half hours of instruction per week outside of the general education setting, to be delivered primarily by a special education teacher and with an instructional assistant; ten hours and ten minutes per week of instruction in the general education setting, to be delivered primarily by a general education teacher, in conjunction with an instructional assistant, school social worker, and special education teacher; one, thirty-minute counseling session per week; as well as four, thirty-minute sessions per month of social work

²⁰ The Parents were informed of their *Procedural Safeguards and Parental Rights* under IDEA at each IEP meeting referenced in this Decision.

services, to be provided primarily by a school social worker, with the support of a school psychologist.

51. The IEP team agreed that the Student's placement in the [REDACTED] program at [REDACTED] continued to be the least restrictive environment in which the IEP could be implemented.

The 2021-2022 School Year (Fifth Grade)

52. During the 2021-2022 school year, the Student continued in [REDACTED] at [REDACTED] Elementary.

53. The Student was the only female student in her fifth-grade class.

54. For about the first three months of the fifth-grade school year, the Student presented at school with a positive attitude and cheery disposition toward her classmates. At times the Student had frustration with her peers and the classwork. When she experienced "larger feelings," the Student shut down in the classroom—staying at her desk and not engaging with staff or classmates. She still displayed some negative self-talk, especially when she was upset. When upset, she also expressed how others around her were not working as hard as she was, at which point staff reminded her to focus on herself.

55. During the Student's fifth grade school year, one of the [REDACTED] teachers went out on an extended period of leave and the Student's teacher, Mr. [REDACTED], absorbed part of that teacher's third-grade class. There was a lot of friction between the fifth and third grade students in the combined class and the Student had a hard time with the changes in the classroom and the added distraction of the third graders, some of whom displayed externalizing behaviors and physical outbursts. This caused some of the Student's behaviors that had started to diminish to occur more often, such as shutting down, not following her schedule, saying unkind words to

peers, and crying. The Student had trouble being flexible to solve the issues that arose due to the combined class and had a hard time considering other people's perspectives. The Student continued to use adult support, walking breaks, and listening to music to help her calm down at school.

56. School staff made alternative workspaces available to the Student, including the social worker's office next to Mr. [REDACTED]'s classroom, for the Student to work away from the third-grade students. However, the Student felt protective over her space in Mr. [REDACTED]'s classroom and would not consider any of the proposed solutions other than the complete removal of the third graders from the classroom.

57. By November 2021, the Parents were having an increasingly hard time getting the Student to go to school.

58. On November 11, 2021, a male student with externalizing behaviors was trying to get attention by tipping over a desk and accidentally knocked it down near the Student. This upset the Student and she later went to the school social worker to report the incident. The Student said that she was frightened, and the social worker needed to do something. The social worker explained that there are always consequences for those types of behaviors, but they are never implemented in front of other Students.

59. The next morning, the Student told the Parents that she was scared to go back to class and begged to stay home. The Parents allowed the Student to take a mental health day and stay home, with some strict rules in place.

60. During the fall of 2021, the Parents began seeking information regarding possible middle school placements for the Student for the 2022-2023 school year. In January 2022, after reviewing information about the [REDACTED] program at [REDACTED] Middle School ([REDACTED] Middle), the

Parents expressed to MCPS staff that they were concerned that █████ Middle's █████ program was not an appropriate fit for the Student. The Parents decided that they would apply to private schools, in case there was not an appropriate placement for the Student within MCPS and requested that Mr. █████ provide letters of recommendation for the Student's private school applications.

61. In February 2022, the Student voiced concerns about other students displaying externalizing behaviors in the classroom and on the bus and she began refusing to go to school more frequently. She told her parents that she “[couldn't] take” certain classmates having meltdowns and throwing things and begged the Parents to allow her to change schools.

Bullying Incidents During the Student's Fifth Grade Year

62. On November 19, 2021, a male student threw a carton of milk that hit the Student in the head. The Student sustained a minor injury that did not require medical attention.

63. On November 30, 2021, a male student dug his nails into the Student's hand, leaving nail marks and causing her to bleed. The school health room technician cleaned the Student's arm and offered the Student a bandage, but the Student declined. The Student then returned to class.

64. On February 9, 2022, a male student became angry when the Student told him that it might be dangerous for him to join her and her friends in a game of “duck duck rock”²¹ because it was too crowded, but he could play in a couple of minutes when there was more room. The student responded by telling the Student that no one loved her and calling her several offensive names. He also threw rocks toward her (the rocks did not strike her). He told the Student that he would kill her and that if she told anyone, it would get worse.

65. MCPS staff appropriately addressed each of the bullying incidents.

²¹ Duck duck rock is a game where the students walk around a tree by stepping on rocks.

66. By late March-2022, the Student had missed several weeks of school because she refused to go to school due to the bullying incidents she had experienced and her negative response to her classmates' externalizing behaviors.

67. In April of 2022, the Student's mother filed Bullying, Harassment, or Intimidation Reporting Forms with MCPS regarding the November 2021 and February 2022 bullying incidents.

IEP Development for the 2022-2023 School Year (Sixth Grade)

68. In May of 2022, the Student was approaching the end of her fifth-grade year at [REDACTED] Elementary.

69. MCPS students enter middle school in the sixth grade.

70. On May 12, 2022, the IEP team at [REDACTED] Elementary, including the Parents, convened to discuss the services and supports required for the Student's transition to middle school, and to review and revise the Student's IEP. The IEP team included the Parents; the Student's IEP case manager and special education teacher, [REDACTED]; Principal [REDACTED]; a behavioral specialist, [REDACTED]; and a school psychologist, [REDACTED]. The Parents' attorney also attended the meeting.

71. At the IEP meeting, the IEP team reviewed evaluative data, including 2021 to 2022 school year testing observations and classroom-based observations, attendance records, point sheets, and anecdotal notes. Additionally, the IEP team considered the Parents' input and team discussions with the Parents and middle school team representatives.

72. Based upon the IEP team's review of the evaluative data, the IEP team amended the November 22, 2021 IEP to include revisions for the remainder of the 2021-2022 school year and for the upcoming 2022-2023 school year. The Student's primary disability remained multiple

disabilities (SLD and OHI). The IEP team determined that the areas affected by the Student's disabilities were reading comprehension, reading fluency, written language mechanics, self-management, social emotional/behavioral skills, social interaction skills, and task completion.

73. At the IEP meeting, the IEP team considered that the Student had been anxious about coming to school and had problems with school attendance. The school-based members of the IEP team stated that they would continue to work with the Parents on supporting the Student in coming to school and identifying a solution for the increase in her school avoidance.

74. The IEP team, including the Parents, was in agreement as to the annual goals and objectives developed for the 2022-2023 school year for each of the areas identified as being affected by the Student's disabilities.

75. The IEP did not include an annual goal related to attendance and the Parents did not ask for an attendance goal to be added to the IEP.

76. The IEP provided for the necessary accommodations, supplementary aids, program modifications and/or supports.

77. The IEP team determined that the Student required instruction in a self-contained setting for all subjects for the 2022-2023 school year. The IEP provided that the Student would receive classroom instruction outside of the general education setting during seven, fifty-minute periods each day (five hours and fifty minutes per week). This classroom instruction was to be provided primarily by a special education classroom teacher, with the aid of an instructional assistant. Additionally, the IEP team determined that the Student required two, forty-five-minute sessions of counseling services each month, to be provided by primarily by a psychologist with the support of a social worker.

78. The IEP did not provide for mental health therapy or additional therapeutic services.

79. The IEP team considered placing the Student in [REDACTED] at [REDACTED] Middle. However, [REDACTED] Middle's [REDACTED] program did not have the services necessary to support the Student. The school-based members of the IEP team recommended the Student be placed in the [REDACTED] at [REDACTED] Middle because [REDACTED] would allow for the Student to be in a self-contained setting for all periods of the instructional day. Additionally, the IEP team recognized that the student population at [REDACTED] Middle might be better suited for the Student because the students in the program had more internalizing behaviors, rather than the externalizing behaviors that the Student had such difficulty with when exhibited by her fifth-grade classmates.

80. The Parents expressed that they were concerned about the Student attending a middle school program located in a comprehensive school building and asserted that the Student required a therapeutic environment to learn in. The Parents asked for a referral to the Central Office IEP team because they wished for a more restrictive placement for middle school. They said they did not believe the [REDACTED] program was intensive enough to address the Student's academic, social, and emotional needs.

81. The IEP team also determined that the Student was eligible for extended school year services.

[REDACTED]

82. [REDACTED] services are provided in a self-contained environment within a larger, comprehensive population middle or high school. It provides a small, structured setting, with a typical class size of five to ten students. The only part of the school day not spent in the self-contained environment is when [REDACTED] students have lunch with the general student population of the school, as well as during any extracurricular activities in which the student chooses to participate.

83. At ██████ Middle, ██████ has its own suite of classrooms which includes the social worker and psychologist's office. Students only need to leave the suite to go to lunch and physical education (although physical education may be self-contained, there is not an area in the ██████ suite where physical education can be held.)

84. ██████ provides specially designed instruction to students who are academically capable and are accessing on or above grade-level instruction.

85. ██████ classes always have a certified special education teacher, as well as one or two paraeducators, depending on the size of the class.

86. ██████ is aimed toward socially vulnerable students with a significant focus on social skills instruction, coping skills and reducing anxiety.

87. The Students in ██████ typically display primarily internalized behaviors, rather than externalized behaviors.

88. Almost all of the students in ██████ at ██████ Middle during the 2022-2023 school year were biologically male. However, there were students in the program who were either binary or identified as female.

89. ██████ students have access to a school psychologist and social worker who provide group counseling, as well as individual responsive counseling when a student is experiencing distress that is interfering with their learning. Either a student or ██████ staff may request that a Student participate in individual responsive counseling.

The Summer of 2022 – ██████

90. In May 2022, the Parents hired ██████, Ph.D., an educational consultant and psychologist for ██████ to assist them in finding a residential placement for the Student.

91. Dr. [REDACTED] reviewed records provide by the Parents, including evaluations, IEPs assessments, and reports regarding the Student, conducted over ten hours of interviews with the Parents, and met with the Student two or three times. After reviewing all of the data available to him, Dr. [REDACTED] recommended to the Parents that the Student be placed at [REDACTED] ([REDACTED]), a residential wilderness therapy program located in [REDACTED], for the 2022-2023 school year.

92. On July 8, 2022, the Parents, through counsel, notified MCPS that the Student would attend [REDACTED] for the 2022-2023 school year. The Parents requested that MCPS place and fund the Student in the [REDACTED]. MCPS denied the Parents' request.

93. The Student began [REDACTED] in July 2022. While at [REDACTED], the Student received the following services: a full battery of testing (including a psychological evaluation by [REDACTED] [REDACTED], Ph.D.), and stabilization, individual, group, family, and milieu interventions. The Student also received individualized service planning, case management, equine facilitated mental health services, experiential education, aftercare and discharge planning, academic instruction, and transition counseling.

94. On August 24, 2022, the Parents, through counsel, notified MCPS that the Student was on schedule to complete [REDACTED] in the next one to two weeks and that the Student would now attend [REDACTED] for the 2022-2023 school year. They requested that MCPS place and fund the Student at [REDACTED].

95. The Student successfully completed [REDACTED] on August 31, 2022. She earned the following grades:

- Environmental Studies – A
- World Literature – A
- Health & Wellness – Pass
- Adventure Education (PE) – Pass

96. Upon her discharge from [REDACTED], the Student's primary therapist at [REDACTED], [REDACTED], noted that the Student had multiple strengths, including that the Student was humorous, creative, compassionate, empathetic, and a hands-on learner. Ms. [REDACTED] also noted that the Student had the ability to focus on areas of interest, manage conflict effectively with the [REDACTED] tools, and access tools to manage depression and anxiety.

97. Ms. [REDACTED] noted that the Student needed small class sizes, more one-on-one instruction, more time to process information, more concrete information, more reflection time, more group and individual therapy, more discussion about a transition before it occurs, and continued medication evaluation and management.

98. On September 1, 2022, MCPS responded to the Parents, through counsel, and declined to place and fund the student at [REDACTED] for the 2022-2023 school year.

The August 2022 Psychological Evaluation of the Student²²

99. On August 4, 2022, Dr. [REDACTED] of the [REDACTED] ([REDACTED]) conducted a private psychological evaluation of the Student to assess the Student's socioemotional functioning, including relevant mood symptomology and the presence/absence of autism symptoms; and to make recommendations for treatment, intervention, and after-care planning.

100. Dr. [REDACTED] used the following methods of assessment when performing her evaluation of the Student:

- Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) to assess the Student's communication, social interaction, and imaginative use of materials;
- Social Responsiveness Scale, Second Edition (SRS-2) to measure social awareness, social cognition, social communication, social motivation, and restrictive interests and repetitive behavior;

²² See Exhibit P-24.

- Australian Scale to assess autism symptoms, particularly those more commonly associated with the milder and higher functioning form of autism;
- Millon Pre-Adolescent Clinical Inventory (M-PACI) and the Sentence Completion Test to evaluate the Student's over all mental health and behavioral functioning;
- Broad-band diagnostic and symptom ratings scales, including the Achenbach Youth Self-Report (YSR) and Child Behavior Checklist (CBC), as well as other unspecified specific symptom checklists;
- Vanderbilt ADHD Diagnostic Parent Rating Scale (VADPRS);
- Behavior Ratings Inventory of Executive Functions, Second Edition (BRIEF-2) to assess symptoms and behaviors consistent with impaired executive functioning, including difficulties with cognitive regulation, emotional regulation, and behavioral regulation;
- Mental status examination of the Student;
- Clinical interview of the Student;
- Informal observation of the Student;
- Clinical interview of the Parents; and
- Review of medical, psychological, and educational records provided by the Parents

101. Based upon her evaluation of the Student, Dr. [REDACTED] diagnosed the Student with autism (without accompanying language or intellectual impairment; level 1 or mild in severity for both social communication and restricted, repetitive behaviors); and major depressive disorder, with anxious distress, in partial remission. Since Dr. [REDACTED] did not administer any cognitive, academic, or neuropsychological testing measures, the Student's prior diagnoses of ADHD, predominantly inattentive type; and SLD with impairment in reading fluency; and developmental coordination disorder were continued by history.

102. Dr. [REDACTED] also determined that the Student had a parent-child relational problem, which is a formal way to denote the need for continued family support.

103. Dr. [REDACTED] opined that the Student's "presenting concerns" have negatively impacted her ability to access an appropriate education because these issues are inextricably intertwined with the Student's ability to make adequate academic progress.

104. Based upon her evaluation of the Student, Dr. [REDACTED] made the following treatment recommendations²³:

- The Student needs individualized attention and small group instruction to help her become engaged in socially interactive pursuits, build a more positive sense of identity, support her academically, and improve her cognitive flexibility. She should receive comprehensive services in a nurturing setting that will understand her learning style.
- Following her placement at [REDACTED], the Student should be placed in a residential therapeutic school with the following features: (1) structure and individualized attention to assist the Student in improving emotional regulation; (2) a strong clinical and treatment-oriented component; (3) ongoing interventions to promote social connectedness; (4) access to psychiatric treatment and medication management as needed; (5) a strong family therapy component; (6) development of emotion management skills, to include healthy means for coping with and expressing emotions; (7) positive peer culture; (8) academic support to address ADHD and learning differences; and (9) an activity-oriented setting to encourage the Student to build her distress tolerance in a myriad of activities in areas in which she has strengths.
- The Student should participate in individual therapy, which can be combined with role-modeling and more hands-on approaches, which would be beneficial for the Student in learning to implement coping strategies. Safety planning should be incorporated consistently into the Student's therapeutic goals.
- The Student should continue to build advanced interpersonal skills that will help her develop healthy social relationships. She will be aided in frequent practice and exposure opportunities to develop social skills in a real-life setting. Suggestions include:
 - pragmatic language should be a focus of an intervention to aid the Student in understanding what is appropriate for her age and to help recognize any social cues that she may be missing. She should learn to attend to other interests, approach conversations flexibly, and effectively transition between topics.

²³ Exhibit P-24, pp. 15 to 20; Exhibit MCPS-13, pp.15-20.

- The Student would benefit from the continued development of social problem-solving skills, conflict resolution skills, and self-monitoring strategies. Discussion and psychoeducation around distress tolerance and emotional bond boundaries is recommended.
 - The Student may benefit from specific social scripting, behavioral rehearsal, corrective feedback, and modeling to build her comfort in social situations, as/if needed.
 - Verbal cueing and visual queuing could be used to remind the Student to use the skills she is learning in groups/individual therapy in real world situations.
- The Student should participate in coping skills and/or social skills groups. She will profit from the opportunity to give and receive interpersonal feedback. As she better understands how she presents herself and how others perceive her, she will be better prepared to change her stance to adapt to her social environment. Skills training that promotes assertive communication, interpersonal boundaries, self-soothing, and conflict resolution skills will likely be appropriate. It is hoped that group interactions can support the Student and understanding how her thoughts, feelings, perceptions, and expectations of others impact her emotions, behaviors, and overall functioning.
 - The Student and her family should participate in family therapy as needed.
 - The Student's diagnosis of ADHD indicates she will benefit from a comprehensive approach to intervention, including medical, educational, behavioral, and psychological interventions. This approach to treatment is called multimodal and consists of education about diagnosis and treatment, medication, and school programming and supports.
 - The Student should receive specialized instruction due to her diagnosis of autism and weakness in attention and executive functions. The Student will likely respond optimally to a smaller classroom environment with a small Student to teacher ratio. She should begin to receive education about her unique learning style, with an emphasis on her strengths. Suggestions include:
 - the Student will benefit from individual tutoring with a qualified specialist for the purpose of improving academics that are impacted by her cognitive proficiency and executive functions, and for the purpose of providing support for planning and organization skills.
 - In the classroom, the Student will benefit from preferential seating as needed, and should select a seat in a place where external distractions are minimized and she is close to the teacher.
 - Due to her executive function weakness, breaks or preferred subjects should be built into the routine in between more challenging subjects, as possible, to allow her to replenish her mental energy.
 - The Student will respond optimally to short, specific instructions and expectations.

- The Student's teachers are encouraged to combine visual cues in addition to verbal directions when possible.
 - The Student will benefit most from a structured and predictable environment.
 - If determined to be needed it is recommended that the Student receive extended time accommodation for tests.
 - The social climate of the school needs to be positive, supportive, and nurturing. The Student will respond best to positive peer models in the classroom. She should be placed with developmentally similar classmates.
 - As needed, the Student's teachers should consider reducing her workload to a degree that the student is able to demonstrate mastery of the concept without overly taxing her mental energy.
 - It will be important to discuss all accommodations with the Student and allow her the opportunity to weigh in on those interventions she finds most helpful, as well as secure her commitment to utilize these interventions and seek additional support should she experience difficulties.
- To foster the Student's self-esteem and feelings of self-efficacy, it is suggested that she participated in adaptive endeavors outside of the academic environment that assist in developing a positive sense of self.
- In regard to language-based learning and developmental coordination challenges, the Student's teachers should emphasize the quality over the quantity of her written work and reduce the number of tasks the Student is required to perform correctly to demonstrate competence in a specific area. Classwork should require brief responses when appropriate and should minimize unnecessary elements such as rewriting work. Suggestions include:
 - the Student should learn strategies to maintain her attention while reading. She should determine how long she can read before zoning out and should check to ensure comprehension of material. She should be encouraged to take short breaks during reading assignments and reward herself for progress.
 - The Student should be allowed to use books on tape in conjunction with her reading, in an attempt to improve in areas of sight word vocabulary and reading fluency.
 - The Student may benefit from interventions drawn from the collaborative strategic reading approach, the directed reading thinking activity approach, and the KWL approach. These approaches involve identifying main topics of passages to promote reading comprehension, encouraging frequent stops to check for comprehension, and linking what she already knows with the knowledge she would like to acquire, and then summarizing her progress. Each approach involves specific structured interventions that can be planned collaboratively with her teachers.

- The Student and the Parents should continue consultation with the psychiatrist or other professional with expertise in psychotropic medication management. All psychiatric evaluations should include a review of prior medication trials and a discussion of the risks versus benefits of psychotropic medication.
- The Parents are encouraged to help the Student keep busy in a variety of exciting and stimulating activities that will promote positive social experiences and help her to develop her identity in positive ways.
- The Parents are encouraged to educate themselves about autism and may benefit from reading books about students with executive functioning challenges.

The 2022-2023 School Year at [REDACTED] (Sixth Grade)

105. The Student began to attend [REDACTED] in September 2022.

106. [REDACTED] serves students in grades six through ten who are biological females, non-binary, or transgender girls who have completed their transition, primarily between the ages of twelve and sixteen years old.

107. [REDACTED] serves students with a variety of mental health issues and disabilities, including suicidal ideation, depression, anxiety, autism, and other learning deficits or disorders.

108. [REDACTED] prioritizes therapeutic services over curriculum and instruction.

[REDACTED]'s primary area of focus is building the familial relationship.

109. The average class has an average teacher-to-student ratio of one-to-six and each class has an academic support person. All [REDACTED] teachers have degrees in the content area they teach, but they are not all certified teachers.

110. There is a seven-hour school day and the students take a rotation of five classes. [REDACTED]'s academic curriculum is fluid and staff make adjustments in assignments and materials as needed. Core subjects include social studies, English, math, and science, and they take art as an elective. Additionally, students earn a credit for health and mindfulness by participating in group therapy for an hour outside of the school day.

111. After the school day is over, students participate in adventure programming, which earns them a physical education credit. Adventure programming includes activities such as rock climbing, bicycling, and water-related activities.

112. Students also participate in family therapy once per week.

113. The Student was successful at [REDACTED] and as of the last hearing date in this matter, she was expected to “graduate” during the week of August 13, 2023.

The September 30, 2022 IEP Reevaluation and Reevaluation Planning Meeting

114. On September 30, 2022, the IEP team at [REDACTED] Middle met to review Dr. [REDACTED]’s August 19, 2022 psychological evaluation report. The IEP team agreed to proceed in the absence of the general educator, who was unavailable for the meeting.

115. The following individuals attended the IEP meeting: The Parents; the Parents’ attorney; MCPS’s attorney; MCPS Special Education Resource Teacher [REDACTED]; MCPS Behavioral Specialist [REDACTED]; MCPS School Psychologist [REDACTED]; MCPS Special Educator ([REDACTED]) [REDACTED]; MCPS Special Educator [REDACTED] [REDACTED]; MCPS Administrator [REDACTED]; and the Academic Director of [REDACTED], [REDACTED].

116. The IEP team reviewed the results and recommendations contained in Dr. [REDACTED]’s August 2022 psychological evaluation report, as well as the Student’s current MAP²⁴ scores from [REDACTED], a teacher report from [REDACTED], information provided by Ms. [REDACTED], and parental input.

117. Based upon Dr. [REDACTED]’s report, the IEP team reconfirmed that the Student still qualified for special education services with the educational disability code of multiple

²⁴ Measures of Academic Progress.

disabilities, due to an SLD and OHI. The IEP team updated the Student's eligibility as of September 30, 2022.

118. The school-based members of the IEP team proposed that assessments were warranted because more data was needed since Dr. [REDACTED]'s report did not include sufficient academic data, such as information from staff that had worked with the Student in an educational setting. The information from the proposed assessments was necessary for the school-based members of the IEP team to determine whether the Student met the criteria for the autism disability code to be added to her IEP. The IEP team proposed norm-referenced, formal achievement testing, rating scales, observations, and interviews of the Student and Parents.

119. Ms. [REDACTED] stated that some informal assessments would be conducted to develop the Student's learning plan at [REDACTED] as she settled into the school's routine, but formalized academic assessments are not conducted through [REDACTED].

120. The school-based members of the IEP team informed the Parents that they would need to make the Student available to MCPS staff in-person for achievement testing. The Parents responded that at that time, it would not be appropriate to bring the Student back to Maryland for testing because it would negatively impact the Student's progress at [REDACTED].

121. The IEP team did not make any changes to the IEP at that time because the school-based team needed more data from the educational setting before determining if changes were warranted.

The December 19, 2022 IEP Meeting

122. On December 19, 2022, the IEP team at [REDACTED] Middle convened to review and revise the Student's IEP.

123. The following individuals attended the IEP meeting: The Parents; the Parent's attorney; MCPS's attorney; MCPS Special Education Resource Teacher [REDACTED]; MCPS General Educator [REDACTED]; MCPS Behavioral Specialist [REDACTED]; MCPS School Psychologist [REDACTED]; MCPS Special Educator ([REDACTED] [REDACTED]); MCPS Special Educator [REDACTED]; MCPS Administrator [REDACTED]; and the [REDACTED] [REDACTED] Primary Therapist [REDACTED].

124. By December 19, 2022, the Parents had not signed an authorization for the assessments that were recommended during the September 30, 2022 IEP meeting because Ms. [REDACTED] and Ms. [REDACTED] had advised the Parents that subjecting the Student to assessments during her visits home would negatively impact the Student.

125. MCPS did not agree to fund a private assessment or to send MCPS staff to [REDACTED] [REDACTED] to privately assess the Student at [REDACTED]. The Parents agreed to provide private assessments conducted in conjunction with the academic assessments completed while the Student was at [REDACTED]. The IEP team agreed to reconvene to review the assessment report once it was completed.

126. The IEP team determined that the Student still had a primary disability of multiple disabilities (SLD and OHI).

127. The IEP team discussed the ability to have partial assessments provided by MCPS. The team agreed to follow up with the family and their attorney to supplement the psychological assessments that could be provided remotely.

January 2023 Psychological Evaluation of the Student²⁵

128. On January 11, 2023, [REDACTED], Ph.D., of [REDACTED] ([REDACTED]) conducted a private psychological evaluation of the Student to assess her cognitive and educational functioning.

129. Dr. [REDACTED] reviewed the August 2022 evaluation and the Student's answers on a [REDACTED] Developmental Questionnaire. Dr. [REDACTED] also obtained information about the Student's family and educational history from the Parents.

130. Dr. [REDACTED] administered a number of assessments to evaluate the Student's cognitive, neuropsychological, executive functioning, as well as her academic performance.

131. Based upon her evaluation, Dr. [REDACTED] diagnosed the Student with moderate ADHD, combined presentation; and developmental coordination disorder.

132. Dr. [REDACTED] made numerous recommendations based upon her assessment:

Recommendations for Executive Functioning

1. As [the Student's] difficulty with sustained attention interferes with her efficiency, allow her extended time to complete tasks and assignments. Inform her ahead of time that this will be allowed to reduce anxiety.
2. Teach [the Student] how to be a self-advocate and request the specific accommodations she needs to compensate for her memory and executive functioning difficulties.
3. [The Student] may benefit from neurofeedback to encourage habituation of more desirable brainwave activity.
4. Provide compensatory aids, such as written directions, procedures, assignments, lecture notes, and study guides.
5. Provide intensive repetition, practice, and review in learning activities. To promote retention, provide activities to reinforce the skills or content at frequent and regular intervals, gradually increasing the intervals to less frequent and intermittent.
6. As much as possible, provide [the Student] with multisensory learning experiences. Present content and skill instruction using combinations of visual, auditory, tactile, and kinesthetic input or experience.
7. Teach memory strategies, such as chunking, verbal rehearsal, and mnemonics.

²⁵ Exhibits P-36 & P-37; Exhibits MCPS 14 & 15.

8. Talk [the Student] through a set of multiple instructions so that she can break the task down into do-able steps. Help her write down the steps on an index card so she has a visual reminder.
9. Because [the Student] has difficulty with tasks involving memory, reduce the amount of information that she is required to memorize. For example, provide her with a calculator to compensate for her difficulty recalling math facts.
10. Make sure you have eye contact with [the Student] before speaking to her or giving verbal instructions. Make instructions clear and concise. Simplify complex instructions and avoid multiple commands.
11. Keep the daily schedule consistent. Routine sets up a structure in which [the Student] can develop a sense of inner organization and control rather than feeling as if the day's activities and schedule happen arbitrarily.
12. Whenever it is possible, use a game format for learning (e.g., reviewing for a test by playing Jeopardy with the target information). [The Student] will find it easier to attend to the information and hold it in her mind long enough to process it more effectively.
13. Teach [the Student] goal-setting strategies and ways to use visualization to enhance success (before she starts a task, creating a mental image of how she will carry out and complete it).
14. Teach [the Student] organizational skills such as time management and materials management, directly and explicitly, with modeling, guided practice, reinforcement, independent practice, and monitoring.
15. Provide occasional breaks in the work schedule for exercise or movement breaks to provide [the Student] brief relief from mentally exhaustive tasks and maintain cognitive stamina.

Recommendations for Attention Difficulties

16. [The Student] may maximize her productivity during study time by eliminating outside distractions, extraneous noise, and unnecessary interruptions. At school, [the Student] should be given a quiet place to work, away from other students. At home, [the Student's] family may help her complete her assignments by providing a location where she can be monitored. It is recommended that she not do her assignments in an unsupervised room, as this offers too many opportunities for distraction.
17. To help [the Student] maintain focus on cognitive tasks, she is encouraged to provide "motor breaks." These are periods of 3 to 5 minutes of physical movement or motor activity and occur after every 15 to 20 minutes of cognitive effort. [The Student] would additionally benefit from stretch breaks. This means that she should be allowed, when appropriate, to stand up and stretch during extended periods of cognitive effort.
18. [The Student] may benefit from assistance in channeling her excess energy into appropriate activities. For example, she may stand during seatwork or use activity (e.g., running an errand, arranging classroom materials, cleaning the chalkboard) as reinforcement for task completion.
19. [The Student] may benefit from techniques utilizing "self-talk" in situations where attention is vital. These inner reminders might include statements such as

“Sit up straight, eyes on the speaker,” “I need to keep looking at the person speaking,” and “I need to write this down.” Additionally, she should be encouraged to self-monitor by asking herself, “Did I get everything that was said?” and by double-checking with the speaker.

20. Individuals with attention problems often find it helpful to keep track of their on- and off-task behavior. For example, [the Student] can keep a chart at her desk that is divided in half. At regular intervals, a timer can cue her to mark whether she was on or off task during that interval. She can be encouraged to calculate her performance by determining what percentage of the time she was on or off task. As her ability to attend to task improves, these intervals can become longer.

21. [The Student] should benefit from a mixture of high- and low-interest tasks. For example, she could follow a lecture with a hands-on activity. She is more likely to maintain attention when presented with a variety of tasks rather than a series of either high-interest or low-interest activities.

22. [The Student’s] tasks should be short, well within her attention span, varied, and should gradually increase in length. Long or complex tasks should be broken into smaller pieces that she can easily complete. For example, if a task consists of three steps, [the Student] should be given one step at a time rather than all at once.

23. Family and authority figures are encouraged to establish eye contact with [the Student] before giving instructions.

24. [The Student] would benefit from a well-structured learning environment that is carefully planned and consistently implemented in terms of the physical arrangement, schedule of activities, and expected behaviors.

25. Because [the Student] may not remember everything at once, she can be encouraged to start with the main ideas, until that information becomes part of her general fund of knowledge. She can then classify new information based on these main ideas. She should attempt to classify information into clusters based on similarities in meaning, making it easier for her to remember.

26. [The Student] should be taught to advocate for her own needs, requesting additional time for scheduled tests, and separating herself from sources of distraction.

Test Taking Accommodations in Academic Settings

27. An extended-time (double time) to complete tests (including standardized tests such as the statewide assessments and SAT’s) should be allowed. According to her preference, [the Student] should have access to verbally or visually presented material.

28. [The Student] should take tests in a quiet environment with as little background noise and visual distractions as possible.

29. Instructions and exams should be read aloud to [the Student].

30. The following resources may be helpful in assisting [the Student] manage her ADHD in the college environment.

a. Hallowell, E. and Ratey, J. (1994) *Driven to distraction*. New York: Pantheon

b. Hallowell, E. and Ratey, J. (1994) *Answers to distraction*. New York: Pantheon

- c. Hartmann, T. *ADD success stories*. (1995) Grass Valley, California: Underwood Books
- d. Kolberg, J. and Nadeau, K. (2002) *ADD-Friendly Ways to Organize Your Life*. Brunner-Routledge

General Educational Recommendations

- 31. Teachers may best support [the Student's] needs by explicitly presenting information verbally.
- 32. [The Student] would likely do best in academic environments with a low teacher-to-student ratio. In addition, while it is clear that [the Student] is highly intelligent, she should avoid highly competitive and stress-inducing academic environments. It will be important for [the Student] to attend a school that is large enough to offer a variety of interests and social groups, but small enough that she does not get overlooked or easily feel overwhelmed.
- 33. [The Student] should be offered up to 50% more time on classroom assignments and tests. [The Student] should be allowed to take breaks during longer sessions and utilize coping skills as needed.
- 34. [The Student] would benefit from expectations being presented in a structure and clear manner. Instructions should be presented in a verbal or written manner.
- 35. [The Student] should be asked to repeat orally presented material, when possible, to ensure information was received.

Writing Recommendations

- 36. Use a computer word processing with spell check and grammar check. This necessitates learning how to keyboard in an efficient manner. However, there is a debate as to whether using a keyboard for all applicable assignments should be completed with the keyboard. The argument can be made that it allows [the Student] to take advantage of various organizational tools in addition to checking spelling and grammatical errors.
- 37. Dictate information to a scribe or use voice recognition software.
- 38. Use a proofreader.^[26]

133. On a date not in the record, Dr. [REDACTED] drafted an undated Addendum to Psychological Evaluation, addressed "To whom it may concern." In the Addendum, Dr. [REDACTED] noted that many details regarding the Student's emotional history were omitted from her report because her evaluation of the Student solely focused on the Student's cognitive and academic functioning. Dr. [REDACTED] stated that she wrote the addendum to acknowledge the Student's social and emotional needs, and to indicate that those difficulties have contributed to significant academic disruption in her past. Dr. [REDACTED] asked that the omission of a reference to the

²⁶ Exhibit P-36, pp. 19-22; Exhibits MCPS 14, pp. 19-22.

Student's social and emotional functioning in her original report not be interpreted as an indication that those aspects of her functioning do not impact her academic performance.

The March 2023 Psychological Evaluation of the Student

134. During the Student's spring break from [REDACTED], the Student returned to Maryland and the Parents consented to MCPS's evaluation of the Student during her visit home.

135. On March 8 and March 9, 2023, MCPS school psychologist [REDACTED], Ed.S., evaluated the Student. Mr. [REDACTED] interviewed the Parents and reviewed records, including school staff observations, autism rating scales and behavior assessments completed by a parent and teachers.

136. Mr. [REDACTED] reviewed the January 2018 educational assessment; the January 2019 MCPS psychological re-evaluation; a November 11, 2019 physical therapy evaluation; a December 14, 2019 occupational therapy reflex integration evaluation; the February 11, 2020 private neuropsychological evaluation; and the August 2022 private psychological evaluation.

137. Because the Student was only in Maryland during her spring break at the time of the evaluation and still attending school at [REDACTED], Mr. [REDACTED] was unable to observe the Student in the classroom.

138. Mr. [REDACTED] determined that based on the Student's medical records, previous psychological and neurological evaluations, and current psychological data, the Student showed symptoms of OHI (ADHD), emotional disability, and autism.

139. With regard to the Student's educational placement, Mr. [REDACTED] opined:

Given the educational impact of these disabilities, [the Student] should continue to qualify for special education services in the form an Individualized Education Program (IEP). The federal classification coding of Multi Disabilities would mostly appropriately reflect her neuropsychological profile, and its educational impact. A small group social emotional learning classroom placement with accommodations is recommended as the most appropriate placement for [the

Student], as she is not able to academically engage in a general education classroom setting. The special education team is encouraged to consider both [the Student's] cognitive and emotional needs, particularly given the potential impact of a depression, worry, or frustration about her performance on her confidence and motivation for learning.^[27]

140. Based upon his evaluation of the Student, Mr. [REDACTED] made the following recommendations:

It is important for [the Student's] family, outside service providers and school staff to collaborate and work together to ensure that the [S]tudent's goals and expectations are reinforced both at home and at school.

Utilize hands on and visually based activities as much as possible.

Provide [the Student] with choices for learning activities when possible. All children like to feel a sense of control over their world and want to do what they love.

Structure activities in a way to help the [Student] know how long the activity will last. Children do best when they know how long an activity or break will last so structure them in a clear way.

- Outline the difficulties [the Student] has with negative emotions and build strategies to help her deal with and overcome these vulnerabilities.
- Discuss the barriers that [the Student] has to changing her emotions and develop a plan for overcoming these obstacles.
- Provide training that enables [the Student] to identify the physical effect of emotions. Skills training in deep breathing exercises and muscle relaxation techniques may help alleviate some of the physical symptoms of negative emotions, especially anxiety.
- Help [the Student] develop strategies to tolerate rather than avoid distress. If [the Student] is able to fully experience and develop an awareness of her emotions, he can learn to experience distress without judgment and then to let go. Avoidance behaviors may make the situation worse and become harmful over time.
- Provide strategies that will help [the Student] be more aware of and increase the number of positive events in his life. These strategies may include providing techniques on how to avoid giving up, being more mindful of positive events, and building positive relationships with others.
- Keep routines in the classroom clear and consistent. Provide the [the Student] with additional guidance during more unstructured times and transitions. Give as much advanced notice as possible when you are aware of a change or disruption in his schedule.

²⁷ Exhibit MCPS-16.

- Develop a schedule with the child to keep track of homework and other assignments since many students with autism struggle with organization. It may even be helpful to check that the homework has gotten into the child's backpack to ensure that it make it home. students with [autism] symptoms also might have difficulty taking notes. Consider giving [the Student] a copy of the notes or allowing them to copy another willing student's notes.
- Establish a safe place where the [Student] can go to calm down if [she] becomes overstimulated. Over-stimulation can often manifest itself in angry or abrupt behaviors. It would be best to wait until the child has calmed down to talk with the student about what you and/ or the child could do differently to avoid the situation in the future.
- Remember that the although the [Student] may be speaking very intelligibly about a subject, the [Student] might not understand the meaning of what they are saying. Children with [autism] are often more advanced in language production than comprehension.
- Be aware that normal levels of auditory and visual inputs can be perceived by the [Student] as too much or too little.
- Identifying a specific support person at school (such as a counselor) available for check-ins as needed.
- Provide the [Student] with opportunities for social and academic success.^[28]

The March 17, 2023 IEP Meeting

141. On March 17, 2023, the IEP team at ██████ Middle convened to review the results of the reevaluations.

142. The following individuals attended the IEP meeting: The Parents; the Parents' attorney; MCPS's attorney; MCPS Special Education Resource Teacher ██████; MCPS Special Educator ██████; MCPS General Educator ██████; MCPS Behavioral Specialist ██████; MCPS School Psychologist ██████; MCPS Special Educator ██████; MCPS Administrator ██████; the Student's educational consultant, Dr. ██████; and the ██████ Primary Therapist ██████.

143. The IEP team reviewed teacher reports from ██████, classroom assessments, the Student's grades, observation data from ██████, the Student's MAP scores, input from

²⁸ *Id.*

the Student's therapist at [REDACTED], and input from the Parents, the Parent's attorney, and educational consultant. The team also reviewed January 2023 private psychological evaluation of the Student and Mr. [REDACTED]'s March 2023 reevaluation report.

144. Based on the evaluative data they reviewed, the IEP team agreed that the Student still qualified for the disability code of OHI. The team also agreed that the Student no longer qualified for a SLD and removed SLD from her identification.

145. The IEP team discussed that the Student demonstrates characteristics of autism due to her sensory issues and peer socialization. The team did not identify the Student under the identification code of autism, but they agreed to outline this information in the impact statement of eligibility.

146. Based upon its review of the evaluative data and team discussions, the IEP team determined that the Student met the criteria for a student with an emotional disability.

147. The IEP team agreed to meet on March 29, 2023 to develop the IEP.

IEP Development for the 2023-2024 School Year (Seventh Grade)

152. On March 29, 2023, the IEP team met to revise the Student's IEP for the remainder of the 2022-2023 school year and develop the IEP for the 2023-2024 school year.

153. The following individuals attended the IEP meeting: The Parents; the Parents' attorney; MCPS's attorney; MCPS Special Education Resource Teacher [REDACTED]; MCPS Special Educator [REDACTED]; MCPS General Educator [REDACTED]; MCPS Behavioral Specialist [REDACTED]; MCPS School Psychologist [REDACTED]; MCPS Special Educator [REDACTED]; MCPS Administrator [REDACTED]; the Student's educational consultant, Dr. [REDACTED]; and the [REDACTED] Primary Therapist [REDACTED].

154. The IEP team reviewed input from the Parents and their attorney, Ms. [REDACTED], Ms. [REDACTED], and Dr. [REDACTED] as well as teacher reports and assessment data from [REDACTED].

155. The IEP team developed and agreed upon annual goals and objectives for each of the areas identified as being affected by the Student's disabilities.

156. The Student's goals do not include an attendance goal and the Parents did not request that an attendance goal be included in the IEP.

157. The IEP team updated the IEP to include the recent academic assessments from [REDACTED] in the Student's present levels of performance.

158. The IEP team also included ongoing communication with outside providers in the supplementary aids and services section of the IEP. All other supplementary aids and services were agreed upon by the team.

159. The IEP team agreed upon all assessment accommodations.

160. The IEP team determined that the Student required instruction in a self-contained setting for all subjects for the 2023-2024 school year. The IEP provided that the Student would receive classroom instruction outside of the general education setting during seven, forty-five-minute periods each day (five hours and fifteen minutes per week). This classroom instruction was to be provided primarily by a special education classroom teacher, with the aid of an instructional assistant. Additionally, the IEP team determined that the Student required two, forty-five-minute sessions of counseling services each month, to be provided primarily by a psychologist with the support of a social worker.

161. The IEP did not provide for mental health therapy or other therapeutic services.

162. Based on the evaluative data reviewed during the IEP meeting, the school-based members of the IEP team recommended the Student be placed in the [REDACTED] at [REDACTED] Middle because this placement would address all of the Student's needs.

163. The Parents agreed that the self-contained setting would address the Student's academic needs and that the IEP could be implemented in [REDACTED], but did not agree with the Student being placed in [REDACTED] because they were concerned about the gender makeup of [REDACTED] and the Student's mental health.

164. The IEP team determined that the Student qualified for ESY at [REDACTED] Middle.

165. In response to the Parents' concerns that the school-based members of the IEP team did not know the Student, Ms. [REDACTED] offered to meet with the Student by video chat.

The 2023-2024 School Year (Seventh Grade)

166. The Parents do not intend to reenroll the Student at an MCPS school for the 2023 school year. Instead, the Parents elected to enroll the Student in [REDACTED] ([REDACTED]), a nonpublic school located in [REDACTED].

DISCUSSION²⁹

BURDEN OF PROOF

The standard of proof in this case is a preponderance of the evidence.³⁰ To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so

²⁹ The record in this matter is extensive. The hearing included six days of testimony and argument. Any citations to the record are for illustrative purposes only. My findings, analysis, and legal conclusions are based upon consideration of all of the parties' arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. See, e.g., *Walker v. Sec'y of Health & Human Servs.*, 884 F.2d 241, 245 (6th Cir. 1989) (an administrative law judge need not address every piece of evidence in the record); *Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 442 (2002) (emphasizing that "[t]he Commission was free to accept or reject any witness's testimony" and "the mere failure of the Commission to mention a witness's testimony" does not mean that the Commission "did not consider that witness's testimony").

³⁰ COMAR 28.02.01.21K(1).

than not so” when all the evidence is considered.³¹ The burden of proof rests on the party seeking relief.³² In this case, the Parents are seeking relief and bear the burden of proof to show that the challenged actions by the MCPS did not meet the requirements of the law. For the reasons set forth, below, I find that the Parents have failed to meet their burden.

THE GENERAL LEGAL FRAMEWORK

FAPE

The identification, evaluation, and placement of students in special education are governed by the IDEA.³³ The IDEA requires “that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.”³⁴

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) of the U.S.C.A. and the applicable federal regulations. The statute defines “child with a disability” as a child:

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.^[35]

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that FAPE is satisfied if a school district provides “specialized instruction and related services which are

³¹ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

³² *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

³³ 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01.

³⁴ 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

³⁵ 20 U.S.C.A. § 1401(3)(A); *see also* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; and COMAR 13A.05.01.03B(78).

individually designed to provide educational benefit to the handicapped child.”³⁶ The Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit.³⁷ The *Rowley* Court found, because special education and related services must meet the state’s educational standards, that the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade, on grade level.³⁸

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances.³⁹ Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”⁴⁰

The Supreme Court set forth a “general approach” to determining whether a school has met its obligation under the IDEA. While *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

³⁶ *Rowley*, 458 U.S. at 201 (footnote omitted).

³⁷ *Id.* at 206-07.

³⁸ *Rowley*, 458 U.S. at 204; 20 U.S.C.A. § 1401(9).

³⁹ *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017).

⁴⁰ *Id.* at 1001.

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The IDEA contemplates that this fact-intensive exercise will involve consideration not only of the expertise of school officials, but also the input of the child’s parents or guardians. Any review of an IEP must include the recognition that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.⁴¹ The Supreme Court stated:

[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an ‘ambitious’ piece of legislation enacted ‘in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’” A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.^[42]

A focus on the particular student is at the core of the IDEA, and so, it is unsurprising that the Court concluded that the progress contemplated by the IEP must be appropriate in light of the particular student’s circumstances. “The instruction offered must be ‘*specially* designed’ to meet a child’s ‘*unique* needs’ through an ‘*[i]*ndividualized education program.’”⁴³ The Court expressly rejected the Tenth Circuit’s interpretation of what constitutes some benefit:

[w]hen all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to ‘sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.^[44]

⁴¹ *Id.*, at 999

⁴² *Id.*, at 999 (quoting *Rowley*, 458 U.S. at 179).

⁴³ *Id.*, at 999 (citations omitted; emphasis in original).

⁴⁴ *Id.* at 1001 (citation omitted).

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Andrew F.* court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’”⁴⁵ At the same time, the *Andrew F.* court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”⁴⁶

Ultimately, a disabled student’s “educational program must be appropriately ambitious in light of [her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.”⁴⁷ Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.”⁴⁸

The IEP

The IEP is the “primary vehicle” through which a public agency provides a student with a FAPE.⁴⁹ COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of a student and the special education and related services to be provided to meet those needs. The IEP must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the Parents for enhancing the education of their child;

⁴⁵ *Id.* (quoting *Rowley*, 458 U.S. at 206).

⁴⁶ *Id.* at 1002.

⁴⁷ *Id.* at 1000.

⁴⁸ *Id.*

⁴⁹ *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017); see also *M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.⁵⁰

The IEP describes a student's current educational performance, explains how the student's disability affects a student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs.⁵¹

IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children)"⁵² If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies and supports to address that behavior.⁵³ A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision.⁵⁴ However, a "school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year's IEP for the child is under administrative or judicial review."⁵⁵

⁵⁰ 20 U.S.C. § 1414(d)(3)(A).

⁵¹ 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

⁵² 34 C.F.R. § 300.320(a)(1)(i).

⁵³ *Id.* § 300.324(a)(2)(i).

⁵⁴ *Id.* § 300.324(b)(1).

⁵⁵ *M.M. v. Sch. Dist. of Greenville Cnty.* 303 F.3d 523, 536 (4th Cir. 2002).

To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations.⁵⁶

At the beginning of each school year, each local educational agency is required to have an IEP for each child with a disability in the agency's jurisdiction.⁵⁷ At least annually, the IEP team is required to review a child's IEP to determine whether the goals are being met.⁵⁸

Least Restrictive Environment (LRE)

In addition to the IDEA's requirement that disabled children receive a FAPE, the law requires that, to the maximum extent appropriate, children with disabilities be educated with their non-disabled peers.⁵⁹ This requirement is referred to as "least restrictive environment." Thus, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program.⁶⁰ The IDEA mandates that removal of children with disabilities from the regular educational environment shall occur "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."⁶¹

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities.⁶²

⁵⁶ 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV), (VI).

⁵⁷ 20 U.S.C.A. § 1414(d)(2)(A).

⁵⁸ 20 U.S.C.A. § 1414(d)(4)(A)(i).

⁵⁹ 20 U.S.C.A. § 1412(a)(5)(A).

⁶⁰ *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

⁶¹ 20 U.S.C.A. § 1412(a)(5)(A).

⁶² 34 C.F.R. § 300.115(a).

The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement.⁶³ Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.⁶⁴

Unilateral Private Placement

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education.⁶⁵ The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement.⁶⁶ The nonpublic education services need not be provided in the least restrictive environment.⁶⁷

Like an IEP, a parental placement is appropriate if it is "reasonably calculated to enable the child to receive educational benefits."⁶⁸ Evidence of actual progress is important but not dispositive in determining the appropriateness of the placement.⁶⁹ The private education

⁶³ *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

⁶⁴ COMAR 13A.05.01.10A(2).

⁶⁵ *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

⁶⁶ *See Id.* at 12-13.

⁶⁷ *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009)

⁶⁸ *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

⁶⁹ *Id.* at 326-327.

services need not be provided in the least restrictive environment, but the tribunal may consider the restrictive nature of a placement in determining whether the placement was appropriate.⁷⁰

Equitable considerations are relevant in fashioning relief, and the tribunal enjoys broad discretion in fashioning such relief.⁷¹ Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required.⁷² Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable. *Id.*

ANALYSIS

The Parents' attorney filed a detailed complaint on behalf of the Student and the Parents. The Parents complained and subsequently argued that MCPS failed to provide the Student a FAPE for the 2022-2023 and 2023-2024 school years. First, the Parents argue that MCPS failed to provide the Student a FAPE during the 2022-2023 school year because MCPS allegedly did not reevaluate the Student by conducting the necessary assessments. The Parents further argue that MCPS failed to provide a FAPE because it did not develop an IEP and placement appropriate to meet the unique needs of the Student for the 2022-2023 and 2023-2024 school years. Specifically, the Parents argue that [REDACTED] at [REDACTED] Middle is not an appropriate placement for the Student and the Student required a therapeutic residential placement for the 2022-2023 school year. As a result, the Parents maintain they had to unilaterally place the Student in [REDACTED], and then at [REDACTED] for her to benefit from an educational program that could meet her needs. The Parents seek reimbursement for tuition for [REDACTED] and [REDACTED] for the 2022-2023 school year. Additionally, the Parents assert that although the Student no longer requires a therapeutic residential placement, [REDACTED] at [REDACTED] Middle is still not an appropriate

⁷⁰ *Id.* at 319, 327.

⁷¹ *Burlington*, 471 U.S. 359 at 374, 369.

⁷² *Carter*, 510 U.S. at 16.

placement for the Student due to the gender makeup of the program. Accordingly, the Parents seek placement at [REDACTED] with funding for the 2023-2024 school year.

MCPS did not fail to provide the Student with a FAPE for the 2022-2023 school year by failing to conduct the necessary assessments

34 C.F.R. § 300.303 sets forth the requirements for reevaluation of a child with a disability:

- (a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—
 - (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
 - (2) If the child's parent or teacher requests a reevaluation.
- (b) Limitation. A reevaluation conducted under paragraph (a) of this section—
 - (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
 - (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

COMAR 13A.05.01.06E, in part, mirrors 34 C.F.R. § 300.303 and provides:

E. Reevaluation.

- (1) A public agency shall ensure that a reevaluation of each student with a disability is conducted in accordance with 34 CFR §§ 300.303 and 300.305 and Regulation .05 of this chapter:
 - (a) If the public agency determines that the educational and related services needs, including improved academic achievement and functional performance of the student, warrant reevaluation;
 - (b) If the student's parent or teacher requests a reevaluation; or
 - (c) Before determining a student is no longer a student with a disability.
- (2) In accordance with 34 CFR § 300.303(b), a reevaluation shall occur:
 - (a) Not more frequently than once a year, unless the parent and public agency agree otherwise; and

- (b) At least once every 3 years, unless the parent and public agency agree that a reevaluation is not necessary.
- (3) The IEP team shall review existing assessment data in accordance with §C of this regulation.
- (4) On the basis of the review, and input from the student's parents, the IEP team shall identify what additional data, if any, is needed to determine:
 - (a) Whether the student continues to be a student with a disability;
 - (b) The educational needs of the student;
 - (c) The present levels of academic achievement and related developmental needs of the student;
 - (d) Whether additions or modifications to special education and related services are needed to enable the student to meet the measurable annual goals in the student's IEP and to participate in the general curriculum; and
 - (e) Whether the student continues to need special education and related services.
- (5) If the IEP team determines the need for additional data, the public agency shall conduct assessment procedures in accordance with Regulation .05B of this chapter.
- (6) The results of assessment procedures shall be used by the IEP team in reviewing, and, as appropriate, revising the student's IEP in accordance with Regulation .08B of this chapter within 90 days of the IEP team meeting as described in §E(4) of this regulation.
- (7) The IEP team shall notify the parents, in accordance with Regulation .12B of this chapter, if the IEP team determines that no additional data is needed to determine:
 - (a) Whether the student with a disability continues to be a student with a disability; and
 - (b) The student's educational needs.
- (8) The notification described in §E(7) of this regulation shall include:
 - (a) The decision of the IEP team and the basis of the determination; and
 - (b) The right of the parents to request a public agency to conduct assessment procedures to determine:
 - (i) Whether the child continues to be a student with a disability; and
 - (ii) Their child's educational needs.
- (9) A public agency shall conduct assessment procedures in accordance with Regulation .05 of this chapter before determining that a student is no longer a student with a disability.
- (10) A public agency is not required to conduct assessment procedures:
 - (a) Unless requested to do so by the student's parent; or
 - (b) Before the termination of a student's eligibility in accordance with this chapter due to:
 - (i) Graduation from secondary school with a regular high school diploma; or
 - (ii) Exceeding the age of eligibility for FAPE in accordance with Regulation .01 of this chapter.

The IEP for the 2022-2023 school year was initially developed during the May 12, 2022 IEP team meeting. According to the May 12, 2022 amended IEP, the Student's most recent evaluation date was November 21, 2019 and the projected date for her next reevaluation was approximately three years from that date, on November 20, 2022.⁷³ Neither the Parents nor a teacher requested a reevaluation leading up to or at the May 12, 2022 IEP meeting.⁷⁴ More importantly, during the May 12, 2022 IEP meeting, the school-based members of the IEP team reviewed the existing assessment data and parental input and found that they had sufficient data to determine the Student's educational and related services needs.⁷⁵ The Parents did not present any evidence to contradict that determination. Therefore, there was no violation of the IDEA by an alleged failure of MCPS to conduct a reevaluation in May 2022.

In August 2022, as the Student was approaching completion of ██████ in ██████, the Parents elected to obtain a private psychological evaluation of the Student for the purpose of obtaining recommendations for treatment, intervention, and aftercare planning. The Parents did not request that MCPS reevaluate the Student. Instead, they had the Student evaluated by a psychologist located in ██████, Dr. ██████ of ██████. The Parents submitted Dr. ██████'s evaluation report to the IEP team and the IEP team timely reviewed the results during the annual IEP review meeting held on September 30, 2022. After reviewing the results of Dr. ██████'s evaluation, the school-based members of the IEP team proposed that further assessments were warranted, because Dr. ██████'s report did not include information from staff that had worked with the Student in an educational setting.⁷⁶ MCPS requested that the Parents consent to an evaluation but the Parents declined because they were advised by ██████ staff that having

⁷³ 34 C.F.R. § 300.303(b)(2); COMAR 13A.05.01.06E(2)(b), (3), (4); Exhibit P-20, pp. 1-2; Exhibit MCPS-3, pp. 1-2.

⁷⁴ 34 C.F.R. § 300.303(a)(2); COMAR 13A.05.01.06E(2)(a), 10(A).

⁷⁵ 34 C.F.R. § 300.303(a)(1); COMAR 13A.05.01.06E(1)(a).

⁷⁶ Exhibit P-21, pp. 1-2; Exhibit MCPS-9.

the Student return to Maryland for testing so soon after she started at [REDACTED] could negatively affect her progress. By the time the IEP team reconvened on December 19, 2022, the Parents had still not authorized MCPS to reevaluate the Student because they continued to be concerned that it would be detrimental to the progress she was making at [REDACTED]. The school-based members of the team respected the Parents' wishes and the Parents agreed to provide MCPS with private assessments that would be completed while the Student was at [REDACTED]. As soon as the Parents made the Student available for a reevaluation in March 2023, MCPS's school psychologist timely conducted a psychological evaluation.

In summary, the evidence in the record establishes that MCPS acted in compliance with the federal and state regulations governing the reevaluation process—by May 12, 2022, the Student was not due for a triennial reevaluation; neither the Parents nor a teacher had requested a reevaluation; and the school-based members found they had sufficient data to determine the Student's educational and related services needs. Additionally, in December 2022, when the school-based members of the team determined that they needed further data to supplement the private assessment presented by the Parents, they immediately requested that MCPS be allowed to conduct assessments but were denied access to the Student until March 2023. Thus, the Parents have failed to prove by a preponderance of the evidence that MCPS did not provide the Student a FAPE for the 2022 to 2023 school year because it failed to perform the necessary assessments.

The IEPs were reasonably calculated to provide the Student with a FAPE for the 2022-2023 and 2023-2024 school years and can be implemented in [REDACTED] at [REDACTED] Middle

Residential Placement is Not Necessary for the Student to Make Academic Progress

The Parents and the school-based members of the IEP team agreed that the Student requires full-time special education in a self-contained setting. They also agreed on the present levels, goals and accommodations set forth in the IEPs for both the 2021-2022 and 2022-2023 school years. The Parents acknowledged that the IEP could be implemented in [REDACTED] to meet the Student's academic needs but disagree that [REDACTED] is an appropriate placement, primarily due to the gender makeup of the program. At the hearing, the Parents also asserted that the Student required more therapeutic services than provided by [REDACTED] and argued that the IEPs did not address the Student's school refusal.

After rejecting the recommendation that the Student be placed in [REDACTED] at [REDACTED] Middle, the Parents enrolled her in two programs with residential placements— [REDACTED] and [REDACTED] [REDACTED]. A residential setting is the most restrictive setting on the placement continuum. MCPS is required to consider less restrictive settings to help effectuate the IDEA's least restrictive environment requirement.⁷⁷ If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.⁷⁸ The determination as to whether a student needs services beyond the regular school day to receive any educational benefit is dependent on the particular facts of a case.⁷⁹

Generally, if services provided in a residential facility are necessary for a student to make educational progress, then residential placement is required to provide the student with a FAPE;

⁷⁷ See 34 C.F.R. § 300.115(b)(1); 20 U.S.C.A. § 1412(a)(5).

⁷⁸ 34 C.F.R. § 300.104.

⁷⁹ *Burke County Board of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990).

however, residential placement is not warranted when the residential placement merely “enhance[s] an *otherwise sufficient* day program.”⁸⁰ “Even though mental health issues can interfere with academic progress, the IDEA does not make public school systems responsible for residential placements that primarily address mental health issues.”⁸¹ If the placement of a student in a residential facility is for emotional and psychiatric problems that are not so intertwined with the learning process as to be inseparable, such a residential placement is not necessary for the student to receive a FAPE.⁸²

The Parents presented expert testimony and private assessments opining that the Student requires a residential placement.⁸³ Dr. [REDACTED], Director of Social-Emotional Services for the [REDACTED], testified and was admitted as an expert in special education with an emphasis on the educational needs of emotionally disabled students. With regard to the Student’s need for a therapeutic placement, Dr. [REDACTED] provided the following testimony:

Q. ... if indeed under your definition that you’ve given us this morning, a therapeutic placement requires a treatment plan which you have defined. Why does [the Student] need a treatment plan in order to access her education?

A. [The Student] requires a treatment plan because nothing else has worked for her in the past. She has completely shut down. She was not able to access her education. All of her outside providers that she was working with recommended that she have residential support or therapeutic support in this case. And when we look at how she responded both at [REDACTED] and [REDACTED], she was able to start accessing the curriculums, that she had

⁸⁰ *Id.*, quoting *Abrahamson v. Hershman*, 701 F.2d 223, 227 (1st Cir. 1983) (emphasis in the original).

⁸¹ *A.H. v. Arlington Sch. Bd.*, 2021 WL 1269896 (E.D.Va. 2021) (citations omitted).

⁸² *Burke* at 980.

⁸³ The Student’s psychiatrist, Dr. [REDACTED], wrote a letter, dated June 1, 2023, stating “[The Student] was under my care as an outpatient prior to requiring an increased level of care and supervision in a therapeutic placement.” Exhibit P-47. Although the letter sets forth the symptoms which Dr. [REDACTED] asserts led to the need for a therapeutic placement, Dr. [REDACTED] does not otherwise provide the basis for his statement that the Student required supervision in a therapeutic placement. Further, it is not clear whether Dr. [REDACTED] made an independent determination that the Student requires a therapeutic placement or if he repeated the opinion of another individual.

not been able to do prior to having a treatment plan once she had a treatment plan in place.^[84]

I find this explanation for why the Student *requires* a treatment plan (and therefore, a therapeutic placement) to access her education is a bit misleading. Essentially, Dr. [REDACTED] asserted that since the Student made progress and benefited from residential therapeutic placements at [REDACTED] and [REDACTED], then this must be what she required. However, this is not evidence that there were no other less restrictive placements the Student had not yet tried, such as [REDACTED], where the Student could have made educational progress without a treatment plan. [REDACTED] at [REDACTED] Middle would have provided the Student with a different educational environment and support than what she experienced in [REDACTED] at [REDACTED] Elementary. The Student could have entered [REDACTED] and responded positively to the implementation of the IEP at [REDACTED] Middle, but since she never attended [REDACTED] at [REDACTED], no one can say with one hundred percent certainty how she would have responded.

Similarly, Dr. [REDACTED] testified:

Q. The question is, can you provide a filter, I guess might be the right wording in the computer age here, of her educational over non-educational reasons for needing residential placement?

A. In the case of [the Student], I don't think that you can filter them out. If you think about prior to her going to [REDACTED] or [REDACTED], she wasn't able to access education or related services within a day program. And because she wasn't able to access any of that, she stopped going to school. She ended up being hospitalized on several occasions. So once she was removed from that setting and she was being able to provide the education within a therapeutic and educational setting, that's when things started to turn around for her. That's when she was starting to make progress and start to demonstrate steps forward of being able to get ready for a day program. But prior to those interventions, she wasn't able to access any of the services that were in place for her, so there really wasn't a way to separate out the two at the time.

⁸⁴ Tr., Vol. 6, p. 477.

Again, Dr. [REDACTED]'s opinion that the Student's educational and non-educational needs are not segregable is simply based on the fact that the Student made progress in the residential setting. I do not find that this is a sufficient basis for determining that the Student's educational and non-educational needs are not segregable.

Dr. [REDACTED], a psychologist who the Parents hired as an educational consultant, testified as an expert in clinical psychology and therapeutic residential placements. The Parents contacted Dr. [REDACTED] in the spring of 2022 for help finding a residential placement that would be a good fit for the Student. Before making a recommendation, Dr. [REDACTED] spent around ten hours interviewing the Parents about the Student's background and he reviewed all the available reports, evaluations of the Student, and IEPs. He also spoke with the Student on two or three occasions. Additionally, Dr. [REDACTED] spoke with the Student's fourth and fifth grade teacher at [REDACTED], Mr. [REDACTED]. After reviewing all the background data he collected, Dr. [REDACTED] recommended [REDACTED] as a residential therapeutic placement for the Student. At the hearing, Dr. [REDACTED] provided clear and detailed testimony about the bases for his recommendation:

Q. What were your conclusions in that regard vis a vis [the Student]?

A. My conclusions were that this family had been working tirelessly. They were trying everything they could. And they were at the end of their rope. It wasn't just what was going on with [the Student] at the time. The family was really struggling. And if things had continued it would probably deteriorate because the family was just overwrought.

Q. So what recommendation did you make?

A. I recommended therapeutic [REDACTED], [REDACTED].

Q. Okay. Let's talk about, this is our opportunity to talk about a term that we've used a lot in this hearing, but I don't think we have defined. What is a residential [REDACTED]?

A. In its original form, in its truest form, it's an extended kind of Outward-Bound type of extended backpacking trip with a licensed clinician with you out on the trail. [REDACTED] is a little bit different. It is what they call a base camp model. So imagine a physical plant, kind of like summer camp, cabins. And for part of the time, they are "in camp"

doing various activities, and go through what [REDACTED] does when they are in camp and second. And part of the time they are out of camp, camping, backpacking.

Q. What is the philosophy or idea behind doing that kind of programming for a kid like [the Student]?

A. There are a couple of things to talk about. First, when we talked about the depression, the sadness, I was also very worried when you put them together with the ADHD and the impulsivity, that really worries me. And this is an individual who has tried all the outpatient work. One of the ways I look at things is I'll draw a distinction between sitting and talking, which is what I do when I see outpatient therapists, as an outpatient therapist, and more experiential or doing. And this is the part that we really can't do on an outpatient basis the way they can at these programs. This was a kid who had tried all of this, and the parents followed through on it so of course one of the things that I wanted to do was to suggest something different. In addition, [REDACTED] has just been shown in the past to be incredibly helpful for the depression, the anxiety, it's really worked wonders with a lot of patients I've seen where the outpatient work couldn't get to things, and this did. By the way, one of the myths about [REDACTED] is that it is only for these externalizing, angry young men. And "budding juvenile delinquents." And there certainly are programs for those kids. [REDACTED] is a program specifically designed for much softer kids. No history of substance use, or things like that. Typically, the ones I send to [REDACTED] are much more internalizing. Two other factors with [REDACTED]. Oh, three. One, I had used them before and had good results. [REDACTED] is one of the few [REDACTED] that has kind of a cell program for younger students, middle school age students. And they are really good with that age. [REDACTED] is also one of a few programs that has a specific focus on [autism].

Q. Simplistic question number 2. Do you consider safety in making these recommendations?

A. Oh, absolutely. I am -- I told you I had worked with [REDACTED] before so overall in general I had a very strong level of trust with them in terms of structure, in terms of supervision, in terms of just their policies and procedures, and working with kids. In addition, one of the good things about [REDACTED] is if they are worried about a student, whether it's a worry they are going to self-harm or for whatever other reason, if they are just worried that they are going to become emotionally dysregulated or if they are just sad, at [REDACTED] you can set it up so a student is never more than 10 feet from a staff member for a period of time for days or even a week or so. You can't do that in an inpatient setting.^[85]

⁸⁵ Transcript (Tr.), Vol. 3 at pp. 438-443.

Dr. [REDACTED]'s testimony makes evident that his reasons for recommending a residential therapeutic placement were largely centered around the Student's mental health needs, and to a slightly lesser degree, helping the Parents to find some relief for their family's home life. Indeed, he said very little about why a therapeutic residential placement was necessary for the Student's *educational* needs. Instead, Dr. [REDACTED]'s explanation focused primarily on the Student's need for mental health therapy and he made the recommendation for [REDACTED] based upon how helpful he believed it would be in easing the Student's depression and anxiety. Additionally, although it is natural that Dr. [REDACTED] would consider safety in making a recommendation for a child such as the Student, there is insufficient evidence that there were safety concerns for the Student during the summer of 2022 that would have made a therapeutic residential placement necessary for the Student to access learning. The Student's last psychiatric hospitalization was during the summer of 2021 and was for the purpose of changing and stabilizing her medications and not due to any specific concerns that the Student would harm herself.

Dr. [REDACTED] further testified that the Student did great in [REDACTED] and really took to experiential learning, as opposed to sitting in a classroom, and that after she completed [REDACTED], he agreed with her [REDACTED] therapist's recommendation that she transition from the wilderness program to a therapeutic boarding school because not only did he have confidence in the connection the therapist had made with the Student, but he is aware of research finding that seventy-five percent of the time, [REDACTED] therapists nationwide recommend that children completing [REDACTED] transition to either a therapeutic boarding school or

treatment center and in his experience, families do really well when they listen to that recommendation.

Additionally, in August 2022, the Parents obtained a private psychological evaluation of the Student from Dr. [REDACTED] of [REDACTED]. Dr. [REDACTED] conducted a thorough assessment of the Student. In her report, Dr. [REDACTED] opined that the Student should be placed in a residential therapeutic school with certain features. Dr. [REDACTED] did not testify at the hearing. However, Dr. [REDACTED], who reviewed and agreed with Dr. [REDACTED]'s report, testified about the report and its recommendations:

Q. The numbered recommendations, components that are in this first paragraph [of Dr. [REDACTED]'s report] that I said I wanted to ask you about a couple of them. Let's talk first about number 2, "Install clinical and treatment-oriented component." What does that mean to you, first of all?

A. Clinically sophisticated. Like this is not just going to be behavior management. It's also, there are so many components that you have at these residential programs. There are also programs where the focus is more on academics and not much on clinical or therapeutic things. So I took this as she needed a program that was really strong on the clinical and the therapeutic.

Q. Number 5, "A strong family therapy component." Why is that? Why do you agree with that? Why is that important?

A. A couple of reasons. First, like I mentioned before. This family was very burnt out. They were doing a lot of the right things. They were really doing a very good job. This was less kind of teaching them how to do this and how to do this, as opposed to the family themselves needed support. They needed to kind of recover a little bit. In addition to that, understanding a little bit about [autism], what [the Student's] needs are specifically in regards to that, and then you get into kind of a real family therapy stuff, which is some of the dynamics and the patterns within the family between [the Student] and her family.^[86]

This testimony indicates that Dr. [REDACTED] also made considerations that were based more on the Student's mental health needs and support for her family.

Dr. [REDACTED] further testified as to whether the Student's educational and

⁸⁶ Tr., Vol. 3 at pp. 448-449.

noneducational needs are segregable:

Q. So back to that last paragraph and the first paragraph. “[The Student’s] presenting concerns have negatively impacted her ability to access an appropriate education. These issues are inextricably intertwined with [the Student’s] ability to make adequate academic progress.” You said you agree with the paragraph, so do you agree with that sentence?

A. Yes. I do.

Q. Is it possible, in your opinion, to unravel, whatever, separate out these needs between education and noneducation, as we sometimes hear it talked about?

...

A. All of us, no matter what we do, what’s going on with us socially, emotionally in terms of anxiety, relationships, affects how, in matter of fact, how we function in other areas of our life. As a practical matter, the reality is it depends. It depends on the circumstances. It depends on the student. It depends on the type. There are certainly some students where they can be dealing with X, Y, and Z and they can be significant, and for a period of time or for an ongoing period of time, you can kind of compartmentalize and over function over here. Or some students, you know, that is not the case. [The Student] in specific needed to feel safe. She needed to feel secure. She needed to feel supported. She needed to feel understood, and she needed certain structures and help interacting with peers. Perspective taking. Understanding social cues. Not missing social cues. Things like that in order to start to feel some of those things that I just said.^[87]

Despite Dr. [REDACTED]’s opinion that the Student’s mental health concerns have negatively impacted her ability to access an appropriate education and make academic progress, the evidence in the record, including the description of [REDACTED] and its services, as well as MCPS’s explanation for its determination that [REDACTED] is an appropriate placement, establish that it is more likely than not that the Student is able to access an appropriate education in the less restrictive environment of [REDACTED]

While in [REDACTED] at [REDACTED] during fifth grade, in the 2021-2022 school year, the Student was in class with all male students, the majority of whom exhibited primarily externalizing behaviors. The Student, who has primarily internalized behaviors, was greatly

⁸⁷ Tr., Vol. 3 at pp. 452-453.

affected and distressed by her classmates' externalized behaviors. To make matters worse, on multiple occasions these externalized behaviors were directed at the Student as she was bullied by her classmates. This bullying was what finally escalated her school refusal to the point where she began to miss several weeks of school.

There are aspects of ██████ that differ from ██████ in ways that would more likely than not provide the Student with a significantly different experience than she had while in ██████. The credible evidence in the record indicates that the distress the Student experienced because of her classmates' behavior during fifth grade in ██████ was not due to their gender, but due to the externalized nature of the behaviors students in ██████ commonly displayed. It is undisputed that Students in ██████ typically have more internalized behaviors, just as the Student does. ██████, an itinerant resource teacher for MCPS's Department of Special Education Services, was admitted as an expert in special education, with an emphasis on emotional disabilities and autism. Ms. ██████ has worked for MCPS in various roles since 1994 and has supported ██████ since 2015. At the hearing she described ██████ in detail and how it is different than ██████:

A. ... ██████ at the elementary level has a combination of students who are both externalizing and internalizing. They have a combination of students who are both socially sophisticated and socially immature and vulnerable. And at the middle school level, we're really able to look at those differently and serve them differently. So, students who are more socially sophisticated and may just really need working on anger management, how they handle frustration, and have more externalizing behaviors, they would most likely -- and, again, I'm speaking in generalities because, you know, every student is different and needs different things -- but would generally be -- may be served in the traditional ██████ program. And then students who are more socially vulnerable, may have awkward social skills, may be more socially immature and may have more anxiety and internalizing presentations to their social and emotional needs could be recommended for ██████ ██████. Because of the population we serve is really different than students in traditional ██████. And that's why, you know, I do go to all of the placements for ██████ and do a thorough review of the records to make sure that we're not placing

our students who are socially vulnerable -- that we're protecting them both emotionally, you know, that we're protecting their emotional safety.^{188]}

Based on the record before me, it is clear that [REDACTED] is able to provide virtually everything set forth in Dr. [REDACTED]'s recommendation, only not in a residential setting. Above all, [REDACTED] would address the Parents' concerns about the Student's emotional safety and well-being. The only recommendations in Dr. [REDACTED]'s report that could not be accommodated by [REDACTED] are the clinical and treatment-oriented component, access to psychiatric treatment and medication management, and a strong family therapy component. There is insufficient evidence in the record to establish why any of these things need to be provided within the school setting in order for the Student to make progress that is appropriate in light of her unique circumstances. The Student certainly could still continue seeing her mental health providers and engage in family therapy outside of the school environment.

The Parents argue that the Student would not attend [REDACTED] because there are few, if any girls in the program and the Student had such bad experiences with the boys in her [REDACTED] classes. Although I understand how one could easily draw the conclusion that the Student would be unable to tolerate an all-male classroom based upon a surface level consideration of the facts, I find there is insufficient evidence in the record to prove this is more than mere conjecture.

The Student's mother testified that being constantly exposed to her classmates' externalizing behaviors caused the Student anxiety and distress, leading her to request to stay home from school at times. After a series of bullying incidents, the Student was so distraught and afraid to go to school that she stopped attending school in approximately February 2022.

⁸⁸ Tr., Vol. 4, pp 522-533

The Student's mother further testified that during a recent family therapy session, the Student commented on the fact that there had been all boys in her class:

... we had a really useful family therapy session last night in which we shared family stories and last night was her turn to share her family story. And she spoke about how she just felt like why am I here? I must be bad. I must be a bad behavior because I'm around, and I have no girls. It was kind of heartbreaking to listen to but she felt -- It didn't -- I think it really just did bring down her confidence, the fact that she was in a, you know, a stigmatized classroom, for lack of better words, with a lot of externalizing behaviors.^[89]

From the mother's account of the Student's comments, while it is clear the Student did not like that there were all boys in her class, there is insufficient evidence that the Student would refuse to go to a new school based solely on the fact that she was in a predominantly male or all male class. In fact, in a February 9, 2022 email to Ms. [REDACTED], the Student's mother stated that the Student begged the Parents *to change schools* and leave [REDACTED].⁹⁰ The Student's mother also admitted that she has not asked the Student how she would feel about going back to an MCPS school:

Q. Has [the Student] in your family sessions or anywhere else, has she discussed her opinion about going back to school at MCPS?

A. I'm going --

Q. About the possibility -- (cross-talk)

A. I don't know if we ever bring it up because I don't want her to have trauma. She has a lot of ill feelings and trauma about the last few years. I mean there were definitely positives. I mean she loved her teachers, her teachers and support staff are wonderful and caring and supportive. But I don't think I even, I didn't want to set her back by even saying, "You're going to go into a similar classroom." I just -- It wasn't even an option. I mean 6 years is enough time to give the public school system the chance to try to help your child. And she's my kid and I'm not putting her through that. No.^[91]

⁸⁹ TR., Vol. 1, p. 385.

⁹⁰ Exhibit P-13, p. 3.

⁹¹ *Id* at pp. 396-397.

The Student's fourth- and fifth-grade⁹² special education teacher and IEP case manager, [REDACTED], testified and was accepted as an expert special education, with an emphasis on emotional disabilities. Mr. [REDACTED] was present at the May 12, 2022 IEP meeting and explained the school-based members of the IEP team's reasoning for recommending that the Student be placed in [REDACTED]. The school-based members recognized and considered that the Student had become withdrawn from the classroom and was having attendance issues. In light of this, the team determined that having the Student continue in [REDACTED] was not the best option for her because it would have been a similar environment as her fifth-grade class and there potentially would have been students around her with the same externalizing behaviors that caused the Student distress. Mr. [REDACTED] was clear that the issues the Student had with her [REDACTED] classmates was due to their externalizing behaviors, rather than the fact that the students were male. Mr. [REDACTED] explained that the team felt that [REDACTED] would better suit the Student's needs because the students in [REDACTED] had more internalized behaviors. He said that the Student was very strong academically when she engaged in learning and the hope was that [REDACTED] would be more supportive to the Student and "build her up" so that she would start to engage even more in academics. In Mr. [REDACTED]'s opinion, the May 12, 2022 amended IEP was appropriate to meet the Student's unique needs and [REDACTED] is the appropriate placement for the Student in the least restrictive environment because she would still be in a smaller classroom, but with students who had fewer externalizing behaviors. MCPS's other two witnesses, Ms. [REDACTED] and Ms. [REDACTED], agreed. Additionally, the Student would have access to counseling and be in the smaller classroom for most, if not all of the day. He explained that special education is very flexible and

⁹² Mr. [REDACTED] may have also been the Student's teacher at the end of third grade during virtual learning, but he was unable to say so for sure.

█████ could be responsive to the Student, moment to moment, day to day. In Mr. █████'s opinion, the Student did not need to be in a residential setting to receive educational benefit.

Mr. █████ has experience working in a therapeutic placement setting and while he believes it would be beneficial in some ways for the Student (or for any other █████ student) he does not believe that the Student required such a restrictive placement in May 2022. He also noted that just because a student may have benefitted from a therapeutic placement does not mean that it was the least restrictive environment in which the IEP could be implemented. Mr. █████ also did not believe that a therapeutic residential placement was necessary to address the Student's school refusal. Mr. █████ indicated that school refusal would not necessarily be a problem in █████ at █████ Middle because the Student would have attended school in a new building, with new teachers, and new peers.

Additionally, Ms. █████ testified that there are a fair number of students who have issues with school refusal and/or school fear and anxiety. She asserted that █████ services and supports create a difference in the school environment that often helps these students to feel comfortable at school. Ms. █████ also testified that the Student qualified for ESY and could have attended ESY through █████ during the summer of 2022, before starting sixth grade at █████ Middle. This would have been a half-day program at █████ Middle which would have allowed the Student to familiarize herself with the school and ease back into attending school regularly.

The Parents further argued that MCPS has never provided a cogent and responsive explanation for its determination that the Student does not require a therapeutic residential placement. However, Ms. █████ did provide a cogent and responsive explanation for MCPS's position that the Student does not require a therapeutic residential placement—the school-based members of the IEP team determined that █████ at █████ Middle was the least restrictive

environment in which the IEP could be implemented. MCPS's reasoning for selecting [REDACTED] as an appropriate placement for the Student is otherwise discussed, above. Indeed, once the school-based members of the IEP team determined that [REDACTED] at [REDACTED] Middle was the least restrictive environment, MCPS was under no obligation to consider the merits of a more restrictive placement in a therapeutic residential setting.

It is undisputed that the Student benefitted from the services she received during her time at [REDACTED] and [REDACTED]. However, the issue before me is not whether [REDACTED], [REDACTED], or [REDACTED] are better than [REDACTED] at [REDACTED] Middle. My inquiry is not which program better serves the Student.⁹³ The relevant inquiry is whether MCPS's placement in [REDACTED] provides the Student with a FAPE in the least restrictive environment. On this issue, I am persuaded that [REDACTED] is an appropriate placement and constitutes the least restrictive environment based on the Student's IEP and her unique needs and circumstances.

The Parents understandably want to provide the Student with the best education possible, so that she may thrive educationally and socially. However, the law does not permit me to elevate desire over need. While the Parents' chosen private placements may possess certain qualities that render them more appealing than [REDACTED], case law provides an apt analogy when comparing programs available to students who qualify for special education. In *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993), the Court found:

The Act requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant's use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP

⁹³ See *Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. at 176) ("First, we do not think that because a given school is allegedly more appropriate than another school, the less appropriate school becomes inappropriate. Second, the unexpressed premise of the allegations is that there is a constitutional and statutory obligation to provide the infant plaintiff the best education, public or nonpublic, that money can buy. Such a premise is in conflict with [*Rowley*].").

is reasonably calculated to provide educational benefits to the appellant, and is therefore in compliance with the requirements of the IDEA.

Id. at 459-460.

Based on the forgoing, I conclude that the IEPs MCPS developed for the 2022-2023 and 2023-2024 school years are each reasonably calculated to address the unique needs of the Student while providing the necessary supports and accommodations that all parties determined were appropriate.

Claim for Reimbursement and Funding for the Unilateral Private Placements

Under *Carter* and *Burlington*, whether a parent's choice of private placement is proper is analyzed only if the IEP proposed by the local education agency results in the denial of a FAPE.⁹⁴ I have concluded in this case for the reasons set forth above that the IEP and placement offered by MCPS for the 2022-2023 and 2023-2024 school years provided the Student a FAPE. Therefore, under *Carter* and *Burlington* the issue of whether the Student's placement at [REDACTED], [REDACTED], and/or [REDACTED] is proper is not required to be addressed further in this decision. As MCPS did not deny the Student a FAPE, the Parents' claim for reimbursement of the tuition and related expenses for the Student's unilateral private placement is denied.

CONCLUSIONS OF LAW

I conclude as a matter of law that the Montgomery County Public Schools made a free appropriate public education available to the Student and provided her with an appropriate individualized education program and placement for the 2022-2023, and 2023-2024 school years. Therefore, I further conclude as a matter of law that the Parents failed to prove that they are entitled to reimbursement for tuition and expenses for the private placement of the Student at

⁹⁴ *County School District Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985)

██████████, ██████████, and/or ██████████.⁹⁵

ORDER

I **ORDER** that the Parents' request for placement and reimbursement/funding for tuition and related expenses at ██████████ and ██████████ for the 2022-2023 school year, and at ██████████ for the 2023-2024 school year is **DENIED**.

August 25, 2023
Date Decision Issued

Jennifer A. Nappier
Administrative Law Judge

JAN/emh
206353

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.

⁹⁵ 20 U.S.C.A. §§ 1412(a)(5)(A), 1414 (2017); 34 C.F.R. § 300.303; 34 C.F.R. § 300.148 (2021); COMAR 13A.05.01.06E; *Andrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Florence Cty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

Copies Mailed and Emailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE JENNIFER A. NAPPIER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-23-09157

APPENDIX I: SCHEDULING CONFLICTS

June 2023

Monday	Tuesday	Wednesday	Thursday	Friday
12	13	14	15	16
- Ms. Rosenstock and Ms. Rachlin both had previously scheduled IEP meetings.	- Ms. Rachlin had previously scheduled IEP meetings.	- ALJ Nappier had a specially set OAH hearing.	- Ms. Rachlin had previously scheduled IEP meetings.	- ALJ Nappier was out on prescheduled leave.
19	20	21	22	23
Juneteenth Holiday	- ALJ Nappier was out on prescheduled leave.	- Ms. Rosenstock and Ms. Rachlin were both on prescheduled leave.	FIRST DAY OF HEARING	SECOND DAY OF HEARING
26	27	28	29	30
- Mr. Eig was out on prescheduled leave. - MCPS witness unavailability.	- Mr. Eig was out on prescheduled leave. - MCPS witness unavailability.	- Mr. Eig was out on prescheduled leave. - MCPS witness unavailability.	- Mr. Eig was out on prescheduled leave. - MCPS witness unavailability.	- ALJ Nappier was out on prescheduled leave. - Mr. Eig was out on prescheduled leave. - MCPS witness unavailability.

July 2023

Monday	Tuesday	Wednesday	Thursday	Friday
3	4	5	6	7
- Mr. Eig was out on prescheduled leave.	Independence Day Holiday	- Mr. Eig was out on prescheduled leave.	- Mr. Eig was out on prescheduled leave.	- Mr. Eig was out on prescheduled leave.
10	11	12	13	14
- Mr. Eig had a previously scheduled hearing. - MCPS witness unavailability.	- MCPS witness unavailability.	- MCPS witness unavailability.	- MCPS witness unavailability.	- MCPS witness unavailability.
17	18	19	20	21
- MCPS witness unavailability.	- ALJ Nappier had a specially set OAH hearing.	THIRD DAY OF HEARING	FOURTH DAY OF HEARING	- ALJ Nappier was scheduled to conduct an OAH training.
24	25	26	27	28
- ALJ Nappier was on prescheduled leave.	- MCPS witness unavailability.	FIFTH DAY OF HEARING	SIXTH AND FINAL DAY OF HEARING	- Ms. Rachlin was out on prescheduled leave.
31				
- Ms. Rachlin was out on prescheduled leave.				

August 2023

Monday	Tuesday	Wednesday	Thursday	Friday
	1	2	3	4
	- Ms. Rachlin was out on prescheduled leave.	- ALJ Nappier had a specially set OAH hearing. - Ms. Rachlin was out on prescheduled leave.	- Ms. Rosenstock was out on prescheduled leave. - Ms. Rachlin was out on prescheduled	- Ms. Rosenstock was out on prescheduled leave. - Ms. Rachlin was out on prescheduled
7	8	9	10	11
- Ms. Rachlin was out on prescheduled leave. - MCPS witness unavailability.	Ms. Rachlin requested that the final day of hearing be scheduled for August 9 th , because August 8 th would be her first day back from vacation. The Student's counsel did not object, and I found Ms. Rachlin's request to be reasonable.	ORIGNALLY SCHEDULED FINAL HEARING DATE		

[REDACTED],
STUDENT

v.
MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE JENNIFER A. NAPPIER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-23-09157

APPENDIX II: EXHIBIT LIST

I admitted the following pre-marked exhibits into evidence on behalf of the Student and Parents¹:

- P-01 Request for Due Process, April 4, 2023
- P-02 MCPS Educational Assessment Report, January 3, 2019²
- P-02A Psychoeducational Evaluation, January 14, 2019
- P-03 NOT OFFERED
- P-04 Email to MCPS from the Parents regarding the Student's social/emotional functioning, September 22, 2020
- P-05 MCPS IEP, November 23, 2020
- P-06 [REDACTED] Neuropsychological Evaluation, December 11, 2020
- P-07 MCPS Fourth Quarter Report Card, June 2021
- P-08 NOT OFFERED
- P-09 Emails between the Parents and MCPS regarding the Student's social/emotional functioning and request to discuss middle school placement, October and November 2021
- P-10 NOT OFFERED

¹ Exhibits P-1, P-5, P-7, P-11, P-12, P-15 through P-17, and P-19 through P-52 were admitted by stipulation of the parties.

² The report is dated January 3, 2018. This appears to be a clerical error, as the report states that the assessment occurred between November 2018 and December 2018.

- P-11 MCPS Student Bullying Incident Report, November 19, 2021
- P-12 MCPS Student Bullying Incident Report, December 2021
- P-13 Emails between the Parents and MCPS regarding middle school programs and draft IEP, January and February 2022
- P-14 MCPS Student Bullying Incident Report and emails with MCPS regarding incident, February 9 to February 15, 2020
- P-15 MCPS IEP, amended February 11, 2020
- P-16 MCPS Student MAP Score Report, Winter 2022
- P-17 MCPS Second Quarter Report Card, February 2022
- P-18 Emails to Dr. [REDACTED], Dr. [REDACTED], [REDACTED] and other MCPS staff members regarding parental request to discuss middle school placement, February 25, 2022 to April 19, 2022
- P-19 2021 IEP Parental form, May 2021
- P-20 MCPS IEP, amended May 12, 2022
- P-21 MCPS Prior Written Notices, May 18 and 27, 2022
- P-22 Letter to MCPS serving notice for [REDACTED], July 8, 2022
- P-23 Letter by Dr. [REDACTED], July 18, 2022
- P-24 Psychological Evaluation by Dr. [REDACTED], August 19, 2022
- P-25 Letter serving notice for [REDACTED] and MCPS response, August 24 and September 1, 2022
- P-26 [REDACTED] Student Academic Report, August 31, 2022
- P-27 [REDACTED] Youth Outcome Questionnaire, September 6, 2022
- P-28 [REDACTED] Discharge Summary, September 19, 2022
- P-29 [REDACTED] Brochure, undated
- P-30 [REDACTED] Progress Reports for MCPS, September 28, 2022

- P-31 MCPS Prior Written Notice and IEP, September 30, 2022
- P-32 [REDACTED] Youth Outcome Questionnaire, October 10, 2022
- P-33 Letter by [REDACTED] regarding testing recommendation and Milestones of Treatment Summary, undated
- P-34 [REDACTED] Progress Reports for MCPS, December 2022
- P-35 MCPS Prior Written Notice and Amended IEP, December 19, 2022
- P-36 Psychological Evaluation by Dr. [REDACTED], January 2023
- P-37 Addendum to Psychological Evaluation by Dr. [REDACTED], undated
- P-38 [REDACTED] Reading and Math Score Reports, February 23, 2023
- P-39 [REDACTED] Student MAP Score Report and Progress Reports for MCPS, March 2023
- P-40 MCPS Prior Written Notice and Emotional Disability Form, March 17, 2023
- P-41 MCPS approved IEP, March 29, 2023
- P-42 MCPS Prior Written Notices, March 29, 2023
- P-43 [REDACTED] Reading and Math Score Reports
- P-44 [REDACTED] Individual Academic Plan, September 5, 2022
- P-45 [REDACTED] Master Treatment Plan, September 12, 2022
- P-46 [REDACTED] Youth Outcome Questionnaires, May 8, 2023
- P-47 Letter by Dr. [REDACTED], June 11, 2023
- P-48 Resume of Dr. [REDACTED]
- P-49 Resume of Dr. [REDACTED]
- P-50 Resume of [REDACTED]
- P-51 Resume of [REDACTED]
- P-52 Resume of [REDACTED]

I admitted the following pre-marked exhibits into evidence on behalf of MCPS³:

- MCPS-1 MCPS IEP, November 11, 2021
- MCPS-2 MCPS IEP, November 11, 2021, amended February 11, 2022
- MCPS-3 MCPS IEP, November 11, 2021, amended May 17, 2022
- MCPS-4 MCPS IEP, September 30, 2022
- MCPS-5 MCPS IEP, September 30, 2022, amended December 19, 2022
- MCPS-6 MCPS IEP, March 29, 2023
- MCPS-7 MCPS Prior Written Notice, May 18, 2022
- MCPS-8 MCPS Prior Written Notice, May 27, 2022
- MCPS-9 MCPS Prior Written Notice, September 30, 2022
- MCPS-10 MCPS Prior Written Notice, December 19, 2022
- MCPS-11 MCPS Prior Written Notice, March 17, 2023
- MCPS-12 MCPS Prior Written Notice, March 29, 2023
- MCPS-13 ██████ Psychological Evaluation, August 7, 2022
- MCPS-14 ████████████████████ Evaluation, January 11, 2023
- MCPS-15 ████████████████████ Evaluation Addendum, undated
- MCPS-16 ████████████████████ Evaluation, January 11, 2023
- MCPS-17 Notice and Consent for Assessment, September 23, 2021
- MCPS-18 Notice and Consent for Assessment, September 30, 2022
- MCPS-19 Notice and Consent for Assessment, December 19, 2022
- MCPS-20 Email from ██████████ to ██████████, re: Discharge Summary, September 27, 2022
- MCPS-21 Email from ██████████ to P. Rosenstock, re: Authorization for Assessments, December 6, 2022

³ Exhibits MCPS 1 through MCPS 21 and MCPS 23 through MCPS 33 were admitted by stipulation of the parties.

- MCPS-22 [REDACTED] Intake Questionnaire, January 4, 2023
- MCPS-23 Email from [REDACTED] to [REDACTED], re: School Recommendation List, January 10, 2023
- MCPS-24 Email from [REDACTED] to [REDACTED], re: [REDACTED] documents, March 8, 2023
- MCPS-25 Email from [REDACTED] to [REDACTED], re: [REDACTED] documents, March 15, 2023
- MCPS-26 MCPS Form 230-36, May 10, 2022 (November 19, 2021 Incident)
- MCPS-27 MCPS Form 230-36, May 10, 2022 (November 30, 2021 Incident)
- MCPS-28 MCPS Form 230-36, May 10, 2022 (February 9, 2022 Incident)
- MCPS-29 Report Card, 2021-2022
- MCPS-30 Resume of [REDACTED]
- MCPS-31 Resume of [REDACTED]
- MCPS-32 Resume of [REDACTED]
- MCPS-33 Resume of [REDACTED]