

[REDACTED]

STUDENT

v.

ANNE ARUNDEL COUNTY

PUBLIC SCHOOLS

\* BEFORE JEROME WOODS, II,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-AARU-OT-18-23304

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**DECISION**

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SUMMARY OF THE EVIDENCE  
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DISCUSSION  
CONCLUSION OF LAW  
ORDER

**STATEMENT OF THE CASE**

On July 25, 2018, Brian Gruber, Esquire, and Ashley VanCleaf, Esquire, on behalf of [REDACTED] (Student) and his parents, [REDACTED] and [REDACTED] (Parents), filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH).

On August 15, 2018, the Student and Parents participated in a mediation with the Anne Arundel County Public Schools (AACPS), which did not resolve the dispute. On August 15, 2018, I conducted a telephone pre-hearing conference (Conference) in the captioned matter. Manisha Kavadi, Esquire, on behalf of the AACPS, and Ashley VanCleaf, Esquire, on behalf of the Student and the Parents, participated.

In the Complaint, the Parents allege AACPS has violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415(f)(1)(A) (2017),<sup>1</sup> by failing to identify the Student as

<sup>1</sup> "U.S.C.A." is the abbreviation for the United States Code Annotated. The U.S.C.A. is published by Thomson Reuters and contains the general and permanent laws of the United States, as classified in the official United States Code (U.S.C.) prepared by the Office of the Law Revision Counsel of the House of Representatives. Unless otherwise noted, all references hereinafter to the U.S.C.A. are to the 2017 bound volume.

a student eligible for special education and related services under the IDEA, and as a result, failing to provide the Student with a free appropriate public education (FAPE). The Parent's requested remedy is for the OAH to order that the Student be found eligible for special education and related services as a student with a specific learning disability and/or other health impairment under the IDEA and to order AACPS to provide compensatory educational services.

Because of the need for the issuance of subpoenas for AACPS staff who were on vacation and not available for the remainder of August 2018, and for full compliance with the discovery rules, the parties were unavailable for a due process hearing for the remaining two weeks of August 2018. Additionally, because of the Labor Day holiday, the Parents' vacation schedule, the observance of religious holidays, the Parents' work travel commitment, the Student's pre-arranged oral surgery for September 2018, and the ALJ's approved sick leave, the hearing could not be scheduled until September 18, September 24, and September 27, 2018, the earliest available dates.

Unsolicited, the parties jointly requested that I issue the decision thirty days after the conclusion of the hearing on the merits because of the complexity of the identification issue regarding the Student's eligibility under IDEA, who previously lived in foster care in [REDACTED] and because of the number of witnesses and exhibits to review. An extension of the timeline is permitted under the due process procedural safeguards for the reasons expressed. 34 C.F.R. § 300.515(c) (2017).<sup>2</sup> Thus, pursuant to the parties' request and agreement, I granted the parties' request and agreed to issue the decision thirty days after the conclusion of the hearing. 34 C.F.R. §§ 300.510(c), 300.515(a).

I held the hearing on September 18, September 24, and September 27, 2018. Ms. Kavadi represented AACPS, and Mr. Gruber and Ms. VanCleaf represented the Student and the Parents.

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<sup>2</sup> "C.F.R." is the abbreviation for the Code of Federal Regulations. Unless otherwise noted, all references hereinafter to the C.F.R. are to the 2017 bound volume.

At the hearing on September 27, 2018, Ms. Kavadi became ill, and we were unable to proceed with the hearing. By agreement of the parties, at the close of the proceeding on September 27, 2018, the hearing was continued to October 8, November 7, November 9, November 14, and November 16, 2018. The proceedings concluded on November 16, 2018. The timeline to issue the decision was thirty days upon completion of the hearing. In this case the decision is due no later than Friday, December 14, 2018, since the thirtieth day is Saturday, December 15, 2018.

The legal authority for the hearing is as follows: 20 U.S.C.A. § 1415(f); 34 C.F.R. § 300.511(a); Md. Code Ann., Educ. § 8-413(e)(1) (2018);<sup>3</sup> and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

Whether AACPS failed to identify the Student as a student eligible for special education and related services under the IDEA, and if so, whether AACPS failed to provide the Student with a FAPE.

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<sup>3</sup> Unless otherwise noted, all references hereinafter to the Education Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

## SUMMARY OF THE EVIDENCE<sup>4</sup>

### Exhibits

I admitted the following exhibits on behalf of the Student and Parents, except where noted:

1. ██████████ Children's Welfare Institute Report, July 9, 2013; ██████████ Institute Medical Record Review, February 14, 2014
2. NOT ADMITTED
3. Progress Notes, December 5, 2016
4. Parent Referral, January 8, 2017
5. ██████████ Neuropsychological Evaluation, March 22, 2017
6. Individualized Education Program (IEP) Team Meeting Report, April 6, 2017
7. Adoption Day, Essay, April 21, 2017
8. Qualitative Readiness Inventory (QRIV), April 20, 2017, May 2, 2017, May 3, 2017
9. IEP Team Meeting Report, May 4, 2017
10. Progress Notes, May 8, 2017
11. NOT ADMITTED
12. Partnership for Assessment of Readiness for College and Careers (PARCC) Scores 2016-2017; World Class Instructional Design and Assessment (WIDA) Student Report, April 27, 2017
13. NOT ADMITTED
14. NOT ADMITTED
15. Parent Questionnaire Referral, September 12 and September 14, 2017

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<sup>4</sup> Throughout the decision, there are numerous assessments and documents that are referenced by their commonly known acronyms. Because of the length of the decision and for reader ease, I will sometimes use the full name and acronym or just the acronym depending on the number of pages from when the acronym was last defined.

16. Summary of Student Performance in the School Setting, October 2, 2017; Grades  
October 9, 2017; Student Evaluation Plan, October 12, 2017
17. First marking Period Grades, 2017-2018
18. NOT ADMITTED
19. Second Marking Period Grades, English Language Acquisition Progress Report, Second  
Quarter, Bench Mark Scores Second Quarter, 2017-2018
20. NOT ADMITTED
21. NOT ADMITTED
22. Language Dominance Determination Response Form, January 12, 2018; 2017-2018  
Third Marking Period Grades 2017-2018; English Language Acquisition – Elementary  
Progress Report Third Quarter 2017-2018; Benchmark Scores Third Quarter, 2017-2018
23. NOT ADMITTED
24. Record of Observation-Reading, March 5, 2018
25. NOT ADMITTED
26. NOT ADMITTED
27. Psychological Assessment Report, April 18, 2018
28. NOT ADMITTED
29. IEP Team Meeting Report Prior Written Notice, April 26, 2018
30. 504 Eligibility Plan, June 4, 2018
31. English Language Development Program Exit Letter, June 15, 2018
32. Reading Assessment Information, What Do the Levels Mean?, Fountas and Pinnell  
Progress Monitoring by Instructional Text Reading Level, Report of Progress June 2018;  
Fourth Marking Period Grades 2017-2018
33. Recommendation for Reading Intervention, 2018-2019

34. Video file: Reading Work Sample: Brush of the Gods, 2018
35. NOT ADMITTED
36. NOT ADMITTED
37. Learning Disability Online: Language and the Older Adopted Child: Understanding Second Language Learning, 2018
38. NOT ADMITTED
39. MSDE: Specific Learning Disability and Supplement Technical Assistance Bulletin, November 7, 2018
40. MSDE: Improving Outcomes for Students with Disabilities Curriculum, Instruction and Assessment Technical Assistance Bulletin, April 2018
41. Curriculum Vitae, Dr. [REDACTED]
42. Curriculum Vitae, [REDACTED] Ph.D., CCC-SLP
43. Curriculum Vitae, [REDACTED], Ed.D.
44. Curriculum Vitae, [REDACTED]
45. Resume, [REDACTED]
46. NOT ADMITTED
47. NOT ADMITTED
48. Fluency Performance with Record Sheets, 2017-2018 school year
49. Email exchanges with Parents and or Parents' advocates with AACPS
50. Fountas and Pennell Benchmark Expectations

I admitted the following exhibits on behalf of AACPS, except where noted:

1. Parents' request to AACPS, January 19, 2017
2. Parent/Guardian Questionnaire, February 7, 2017
3. Referral, January 19, 2017

4. Referral for Language Dominance Determination, January 20, 2017
5. Language Dominance Determination Response Form, February 8, 2017
6. IEP Team Meeting Report/Prior Written Notice, February 17, 2017
7. Referral, March 23, 2017
8. IEP Team Meeting Report/Prior Written Notice/Meeting documents, April 6, 2017
9. IEP Team Meeting Report/Prior Written Notice/Meeting documents, May 4, 2017
10. Referral, September 12, 2017
11. Parent/Guardian Questionnaire, September 14, 2017
12. IEP Team Meeting Report/Prior Written Notice/Meeting documents, October 12, 2017
13. Parents' letter to AACPS, undated
14. Referral for Language Dominance Determination, December 11, 2017
15. Language Dominance Determination Response Form, January 12, 2018
16. IEP Team Meeting Report/Prior Written Notice/Meeting documents, March 2, 2018
17. IEP Team Meeting Report/Prior Written Notice/Meeting documents, April 26, 2018
18. Section 504 Eligibility, May 24, 2017
19. Section 504 Plan, May 24, 2017
20. Section 504 Eligibility, June 4, 2018
21. Section 504 Plan, June 4, 2018
22. AACPS Comprehensive Evaluation Review, May 4, 2017
23. Physical Therapist Report of Observation, March 24, 2017
24. Occupational Therapist Report of Observation, March 16, 2017
25. Neuropsychological Evaluation Report, March 22, 2017
26. ██████████ University Children's Hospital Wechsler Intelligence Test, July 9, 2013
27. Pediatric Office Visit Notes, December 5, 2016

28. AACPS Team Consideration of External Report (Neuropsychological), April 6, 2017
29. AACPS Team Consideration of External Report (Medical Records), April 6, 2017
30. Records Release Authorization, February 9, 2017
31. AACPS Comprehensive Evaluation Review, April 26, 2018
32. AACPS Psychological Assessment Report, April 18, 2018
33. AACPS Academic Assessment Report, April 18, 2018
34. AACPS Record of Observation-Reading, March 5, 2018
35. AACPS Communication Assessment Report, April 17, 2018
36. AACPS English Language Arts/Literacy Assessment Report, 2017-2018 (Spring 2018)
37. AACPS Mathematics Report, 2017-2018 (Spring 2018)
38. Fountas and Pinnell Benchmark Assessment Criteria and Levels
39. Running Record Assessment Summary Form, Grade Three
40. Reading Records Grade Four
41. Reading Records Grade Five
42. Fountas and Pinnell Reading Progress Chart
43. AACPS Benchmark Scores
44. PARCC Score/Reading and Math
45. Report Cards
46. International Student Services Office Intake Questionnaire, January 14, 2015
47. International Student Services Office Checklist and WIDA Access Placement Test (W-APT) score, January 14, 2015
48. AACPS Notification of Placement in English as a Second Language (ESOL) Program, January 14, 2015
49. English Learner Plan, February 20, 2015



50. WIDA Individual Student Report 2016, August 31, 2016
51. WIDA Individual Student Report 2017
52. WIDA Individual Student Report 2018
53. NOT ADMITTED
54. WIDA Performance Definitions
55. NOT ADMITTED
56. NOT ADMITTED
57. Anne Arundel County Health Services/Request to Perform Treatment Procedures,  
April 22, 2015
58. [REDACTED] Pediatric Urology Clinic note, June 1, 2015
59. Email from Parents to school, August 26, 2015
60. Physician Certification to Return to School, September 9, 2015
61. AACPS Emergency Action Plan, October 28, 2015
62. AACPS Mealtime Plan of Care, October 24, 2016
63. NOT ADMITTED
64. Resume, [REDACTED]
65. Resume, [REDACTED]
66. Resume, [REDACTED]
67. NOT ADMITTED
68. Resume, [REDACTED]
69. NOT ADMITTED
70. NOT ADMITTED

71. NOT ADMITTED

72. Resume, [REDACTED]

Testimony

The following witnesses testified on behalf of the Student and Parents:

1. [REDACTED] Ph.D., Psychologist, accepted as an expert in psychological testing and treatment relative to children with cardiac conditions;
2. [REDACTED] special education teacher, AACPS (subpoenaed);
3. [REDACTED] Ph.D., accepted as an expert in speech-language pathology, language development and disorders in internationally adopted children;
4. [REDACTED] Ed.D., accepted as an expert in educational administration and in general education;
5. [REDACTED] (Student's mother), accepted as an expert in children's literature;
6. [REDACTED] IEP special education teacher, AACPS (subpoenaed), received as an expert in special education; and
7. [REDACTED] Ed.D., accepted as an expert in special education.

AACPS presented the following witnesses:

1. [REDACTED] English Language Acquisition teacher specialist, accepted as an expert in the teaching of kindergarten through grade twelve children, English as a second language and limited English proficiency;
2. [REDACTED] Ph.D., School Psychologist, accepted as an expert in school psychology, psychoeducational assessments, as well as clinical psychology;
3. [REDACTED] Principal, accepted as an expert in childhood education, elementary education, school administration, and middle school education; and

4. [REDACTED] special education teacher, accepted 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:

1. The Student is thirteen years old (date of birth: [REDACTED] 2005) and is in the sixth grade at [REDACTED] Middle School in AACPS.
2. The Student is not identified as a student requiring special education services under IDEA.
3. The Student was born in [REDACTED]
4. The Student's prenatal, family, medical, and psychiatric history is unknown.
5. Upon birth, the Student was found abandoned at a gas station and was of low birth weight and malnourished.
6. The Student is diagnosed with heart conditions, Tetralogy of Fallot (TOF), and atrial septal defect (ASD). Additionally, the Student was diagnosed with [REDACTED] (additional [REDACTED]) and Attention Deficit Hyperactivity Disorder (ADHD) "without the hyperactivity component." (AACPS 1).
7. The Student had surgery at nine months old to repair the TOF.
8. The Student is also diagnosed with Tourette's Disorder.
9. In [REDACTED] the Student resided with a foster parent until approximately four years old.
10. From age four to age nine, the Student resided in an orphanage in [REDACTED]
11. The Student's academic history prior to coming to the United States is largely unknown.
12. While in [REDACTED] the Student's reading and writing instruction was limited.
13. In July 2013 when the Student was seven years old and still residing in [REDACTED] the

Student underwent an intelligence assessment. The Student was assessed with the Wechsler Intelligence Scale for Children-Revised (WISC-R).

14. The results of the WISC-R revealed the Student's nonverbal cognitive abilities were within the average range for his age, and verbal reasoning abilities in the borderline deficient range with a full scale intelligence quotient (IQ) estimate in the low average range.

15. The WISC-R was outdated when the Student was assessed by that testing instrument. Specifically, the WISC-R has been outdated since at least 1980.

16. In December 2014, at nine years old, the Student was adopted by the Parents.

17. The Student had surgery at ten years old to remove his extra [REDACTED]

18. At the time of the Student's adoption, his primary language was Mandarin.

#### **2014-2015 School Year**

19. For the 2014-2015 school year, the Student was enrolled in AACPS as a repeat second grade student at [REDACTED] Elementary School ([REDACTED]).

20. During the 2014-2015 school year, the Student was not able to speak English beyond the proficiency level.

21. With Parental consent, the Student received supports from the ESOL program at [REDACTED]

22. Every Student in the ESOL program receives an English Learner Plan based on the Student's proficiency levels. At the time of enrollment, the Student's proficiency levels were established in the areas of speaking, reading, writing, reading, and literacy on the Access English Language Learners (ELL), a test used to determine English Language Learners proficiency. He received a score of one in these areas and an overall score of one. Proficiency levels are ranked on a scale of one to six, with six being the highest. Scores are determined by the scoring sheet referred to as the World Class Instructional Design (WIDA) Access Placement Test Scoring

Sheet for Listening and Writing, Grades Three through Five (W-APT). After completing all domains on the test, the test administrator will use the raw score conversion tables on the scoring sheet to convert the raw scores into proficiency levels.

23. The Student's English Learner Plan indicates he would be expected to perform the following with regard to the area identified: Reading: connect print to visuals, match real-life familiar objects to labels, follow directions using diagrams or pictures; Listening: follow modeled, one-step oral directions, identify pictures of everyday objects, as stated orally, point to real-life objects; Speaking: repeat simple words, phrases, and memorized chunks of language, respond to visually supported questions of academic content with one word or phrase, identify and name everyday objects; and Writing: copy written language, communicate through drawings, and label familiar objects or pictures.

#### **2015-2016 School Year: Third Grade**

24. During the 2015-2016 school year, the Student was in the third grade.

25. In August 2016, the Student was administered the World Class Instructional Design and Assessment (WIDA) to assess his strengths in reading and language skills. Proficiency levels on the WIDA are ranked on a scale of one to six, with six being the highest. Scores from the WIDA are determined by the scoring sheet referred to as the WIDA Access Placement Test Scoring Sheet for Listening and Writing, Grades Three through Five (W-APT). After completing all domains on the test, the test administrator will use the raw score conversion tables on the scoring sheet to convert the raw scores into proficiency levels.

26. The Student's proficiency scores were as follows: listening 4.80, speaking 5.40, reading 1.9, writing 2.6, oral language 5.0, literacy 2.30, and comprehension 2.9. The Student's overall score was 2.9 out of 6.

27. Based on the WIDA scores, the Student is expected to be able to match icons or diagrams with words/concepts, make sound/symbol/word relations, and match illustrated word/phrases in different contexts with regard to reading. With regard to speaking, the Student could be expected to justify/defend opinions or explanations with evidence, give content-based presentations, using technical vocabulary, and sequence steps in grade level problem solving. With regard to listening, the Student could be expected to interpret oral information and apply to new situations, identify illustrated main ideas and supporting details from oral discourse, and infer from and act on oral information. With regard to writing, the Student could be expected to complete/produce sentences from word/phrase banks, fill-in graphic organizers/charts and tables, and make comparisons using real-life or visually supported materials.

28. The English Learner Plan developed from the WIDA scores indicates the Student required the following instructional accommodations: extended time, visual/audio support, monitor responses, and read to-all texts. The Student also required assessment accommodations as follows: human reader or audio recording for verbatim reading of entire test, monitor test responses, provide extended time, and reduce distractions to the Student.

29. For WIDA purposes, instructional accommodations are changes to the instructional procedures, delivery methods, and materials in order to provide English learners with access to appropriate content. Teachers are expected to implement the instructional accommodations on a regular basis. The Assessment accommodations should only be offered to the Student if they are used in instruction on a regular basis. Assessment accommodations must be selected according to the guidelines set forth in the Maryland Accommodations Manual. (AACPS 50).

**2016-2017 School Year: Fourth Grade**

30. During the 2016-2017 school year, the Student was in the fourth grade.

31. On January 19, 2017, AACPS staff received a written referral as a result of the Parents' request that the Student be evaluated for a possible specific learning disability under IDEA.

32. On January 20, 2017, the Student's mother provided written consent for AACPS to screen the Student to determine the Student's language skills in English and Mandarin. The Student would be asked to identify and label pictures in both languages. The purpose of the screening was to assist in determining the language of assessment that would yield the most accurate results. The screening is not to be utilized to guide instruction, diagnose learning difficulties, or determine language proficiency.

33. The Language dominance determination screen was conducted on February 8, 2017. The results of the screen indicated the "language of relative dominance for testing purposes [was] mixed (Mandarin/English)," indicating the Student was considered to be mixed Dominant. (AACPS 5).

34. On February 13, 2017, after receiving the written referral regarding the Parents' request to have the Student evaluated for a possible disability under IDEA, [REDACTED] special education teacher, AACPS, conducted an observation of the Student during his math class. The results of the observation indicated that during a lesson on utilizing the metric system, the Student sat at a table with three other students for the group lesson. During the lesson, while facing the smartboard, the Student held his pencil, looked at it, and played with it. The teacher redirected the Student by telling him to face the smartboard. When the students were given a worksheet to complete the problems, the Student completed the problems.

35. On February 17, 2017, the IEP team convened, including the Parents. The Parents were provided a copy of their *Procedural Safeguards and Parental Rights* brochure. At the meeting, the Parents discussed their concerns regarding the Student's academic performance and ability to make progress in the general curriculum. Specifically, the Parents questioned whether the Student's presence in America for only two years impacted his academic performance, or whether the Student's academic performance was impacted by an undiagnosed learning disability. The Parents were also surprised the Student was screened as mixed language dominant since they believed he had "lost" most of his first language of Mandarin. Additionally, the Parents informed the school-based members of the IEP team that they were having the Student privately evaluated utilizing cognitive and educational assessments.

36. The IEP team determined that upon receipt of the private assessment report, the IEP team would meet and review the evaluation results and assessment report and determine if additional assessments were required to ascertain whether the Student required special education services under IDEA as a result of a learning disability. Additionally, the school-based members of the IEP team determined that the Student was making progress in reading and the Student's receptive language skills are better in Mandarin and that his expressive language skills are better in English.

37. The Parents were provided a copy of the IEP team meeting results.

#### **PRIVATE NEUROPSYCHOLOGICAL EVALUATION: FEBRUARY 21, 2017**

38. As discussed at the IEP team meeting on February 17, 2017, the Student's cardiac physician referred him for a private neuropsychological and developmental evaluation. The Student was referred to assess cognitive, academic, and behavioral-emotional functioning as part of the [REDACTED] Pediatric Cardiology Neurodevelopmental Follow-Up Program.



39. On February 21, 2017, [REDACTED] Ph.D., conducted an evaluation of the Student to provide information regarding the Student's cognitive abilities, academic achievement capabilities, executive functioning, social-emotional functioning, and to provide recommendations for any treatments.

40. [REDACTED] Ed.D., is the Director of the Pediatric Medical Psychology Department at [REDACTED] and was Dr. [REDACTED]'s supervisor at the time Dr. [REDACTED] assessed the Student. Dr. [REDACTED] assisted Dr. [REDACTED] in drafting the report of the neuropsychological evaluation, but he did not test the Student.

41. As part of the neuropsychological evaluation, Dr. [REDACTED] administered the following tests in the areas identified below:

- Kaufman Assessment Battery for Children, Second Edition (KABC-II); Universal Nonverbal Intelligence Test (UNIT)-Abbreviated Battery; Wechsler Abbreviated Scale of Intelligence, Second Edition (WASH-II)-Verbal Comprehension subtests to assess the Student's cognitive processing/intellectual functioning skills;
- Peabody Picture Vocabulary Test, Fourth Edition (PPVT-IV) to assess the Student's receptive language skills;
- Conners Continuous Performance Test, Third Edition (CPT3); KABC-II-Sequential Index subtests; Behavioral Rating Instrument for Executive Functioning (BRIEF) to assess the Student's executive functioning/attention skills;
- Wide Range Assessment of Memory and Learning, Second Edition (WRAML-2)-Picture Memory subtests; KABC-II-Sequential and Learning Index subtests; Symbolic memory subtest to assess the Student's Memory skills;

- Beery Development Test of Visual Motor Integration (VMI); Wide Range Assessment of Visual Motor Ability (WRAVMA)-Grooved Pegboard to assess the Student's visual/motor functioning skills;
- Adaptive Behavior Assessment Scale, Third Edition (ABAS-3) to assess the Student's adaptive functioning skills;
- Woodcock Johnson Psychoeducational Battery-Test of Academic Achievement, Fourth Edition (WJ-Ach-IV)-Select subtests to assess the Student's academic skills, and;
- Behavioral Assessment System for Children, Second Edition (BASC-2): parent and teacher reports; Parenting Stress Index-Fourth Edition (PSI-4); Family Environment Scales (FES); and Dominic and Terry Interactive to assess the Student's behavioral/emotional skills and personality.

42. The Assessment results of the neuropsychological evaluation indicated the Student's cognitive skills are commensurate with same age peers. His verbal IQ composite scores place him in the low average range.

43. The Student shows strength in visual-spatial reasoning, and his non-verbal cognitive abilities are superior to same-aged peers.

44. In the areas of working auditory memory and problem-solving, the Student's skills are in the average range. Consistent with his relatively limited exposure to English, his verbal abilities were generally lower than his non-verbal cognitive abilities.

45. With regard to expressive and receptive verbal comprehension, the Student's skills are low average.

46. The Student experiences difficulty with sustained attention and focus but no consistent evidence of impulsivity or hyperactivity.

47. The Student demonstrated extremely low academic functioning in the basic skills in reading and reading comprehension. Additionally, he demonstrated borderline deficient abilities in math calculation and applied problems. The Student's recent immigration to America was found to have a possible impact on his performance in these areas.

48. The Student's functioning capabilities across conceptual, social, and practical domains are impacted by his immigration to America.

49. The Student's cognitive abilities suggest that he is capable of learning and acquiring skills.

50. Dr. [REDACTED] diagnosed the Student with a specific learning disability.

#### **REVIEW OF PRIVATE NEUROPSYCHOLOGICAL EVALUATION:**

51. On April 6, 2017, the IEP team convened, including the Parents, and reviewed the results of the neuropsychological evaluation and the Parents and teacher information to determine if the Student had a disability under IDEA, requiring special education services. The Parents received notice regarding their Procedural Safeguards and Parental Rights.

52. At the time of the IEP meeting on April 6, 2017, the Student was receiving ESOL supports one to two times per week in a small group setting. The ESOL curriculum is covered during these lessons.

53. The Student also received Leveled Literacy Intervention (LLI) to assist him with his reading skills. The Student began participating in LLI on November 7, 2016, utilizing Fountas and Pinnell. The Fountas & Pinnell LLI is short-term intervention that provides daily, intensive, small-group instruction, which supplements classroom literacy teaching. LLI provides small-group instruction for students who experience difficulty reading and writing.

54. The Student began Fountas and Pinnell reading on a level F (equivalency of mid first grade). At the time of the IEP team meeting on April 6, 2017, the Student was reading on a level K (equivalency of beginning of second grade).

55. At the time of the IEP team meeting on April 6, 2017, the Student received accommodations of extended time and assessments were read to him. It took the Student extra time to complete assignments in the areas of reading and writing.

56. At the IEP meeting on April 6, 2017, the school-based members of the team discussed the Student was on grade level with regard to math skills and below grade level regarding reading skills. Anecdotal information shared by the Student's teachers indicated that in reading he is working at his level as often as possible and requires significant support to complete grade level work. Additionally, he requires significant support to organize his thoughts, spell, and compose paragraphs for assignments.

57. The school-based members of the IEP team accepted Dr. [REDACTED]'s diagnosis of ADHD and accepted the cognitive, attention, and educational assessments. The team did not accept Dr. [REDACTED]'s diagnosis of a specific learning disability.

58. The team also reviewed medical records provided by the Parents, which indicated the Student has medical diagnoses of Tetralogy of Fallot (TOF), developmental delay, and Tourette's Disorder.

59. The written results of the April 6, 2017 IEP team meeting indicate that the school-based members of the team did not suspect the Student of having a disability under IDEA, including a specific learning disability because the Student was making progress in the general curriculum and the Student's limited time in America affected his learning and academic performance.

60. The IEP team discussed the Student's reading skills with specificity. The team noted that the Student has poor phonic awareness skills, difficulty comprehending and responding to stories

read aloud, poor letter recognition, difficulty decoding unfamiliar words, poor sight vocabulary, does not understand age-appropriate vocabulary, does not use context cues to assist in word identification, reads at an unacceptable slow rate (sixteen words per minute), has difficulty understanding meaning of words when reading, does not use context clues to facilitate comprehension when reading, cannot draw inferences or conclusions from passages that have been read, exhibits difficulty retelling a story, experiences difficulty recalling facts or details from a passage, cannot identify the author's purpose, has difficulty predicting outcomes using stated information in a story, cannot determine cause-effect relations within passages, and experiences tics during reading due to increased stress.

61. The school-based members of the IEP team indicated the Student's "lack of exposure (only being in the country for two years) is the primary factor for the Student performing below grade level." (Parents 6).

62. Additionally, at the April 6, 2017 IEP meeting, the school-based members of the IEP team discussed whether a Section 504 Plan would provide the Student with enough academic support in the classroom. The IEP team also determined no further assessments were required in the following areas: cognitive, psychological processing, adaptive, attention/executive functioning, basic reading comprehension, math calculation, math reasoning, written expression, speech, language (receptive/expressive), pragmatic language, written language, communication, vision, hearing, fine/visual, gross, sensorimotor, vision, orientation and mobility, physical education, social/emotional and behavioral skills.

63. The Team Consideration of External Report, which was provided to the Parents, indicates that at the IEP team meeting on April 6, 2017, the Parents expressed that they "are pleased with the interventions in place for [the Student] and the progress he has made in reading. [Our] concerns are for a plan to be put in place for [the Student] to document these supports before he

goes to middle school. [We] are concerned about [the Student's] lack of background knowledge. It takes him a while to complete homework assignments at home. [We] wonder if [the Student] would make more progress if more supports were in place for him." (Parents 6).

64. On April 27, 2017, the Student was administered the World Class Instructional Design and Assessment (WIDA) to assess his strengths in reading and language skills. Proficiency on the WIDA is ranked on a scale of one to six, with six being the highest. The Student's proficiency scores were as follows: listening 6.0, speaking 4.0, reading 2.5, writing 3.4, oral language 5.1, literacy 3.1, and comprehension 4.0. The Student's overall score was 3.7 out of 6 on the WIDA, which was an improvement from his score the previous year of 2.9 out of 6.

65. On May 4, 2017, the IEP team met, including the Student's mother, to review the Student's academic performance and to consider the Parents' continued request that the Student be identified as a student with a disability under IDEA, requiring special education services.

66. At the IEP team meeting on May 4, 2017, the IEP team discussed the Student's performance on the Qualitative Reading Inventory (QRI) completed on May 3, 2017. The QRI allows for the assessment of a student's reading skills. The Student's reading teacher shared the Student takes a long time reading passages, but never gives up. The Student's ESOL teacher shared "the timing could be an impact on the fact that he is learning a second language [English]." (AACPS 9). The team also discussed the Student made over a year's growth in less than one school year with his reading skills.

67. After considering the Student's academic performance, Parents' concerns, teacher input, and English Language Learner's (ELL) data, the school-based members of the IEP team determined the Student did not meet the criteria for a specific learning disability and did not require specialized instruction. The team agreed that a referral would be made to determine if the Student could benefit from a 504 Plan as a result of his ADHD diagnosis.

68. On May 24, 2017, the Student was found eligible to receive a 504 Plan under section 504 of the Rehabilitation Act of 1973 based on his diagnosis of ADHD. The Parents consented to the implementation of a 504 Plan.<sup>5</sup> The accommodations to be provided to the Student in the 504 Plan are designed so that the Student can receive a free appropriate public education (FAPE), learn in a classroom environment, and participate in school just as he would if he didn't have a disability, i.e. ADHD. The plan is specific to the Student and uniquely suited to his needs.

69. The Student's needs that necessitated the 504 Plan include: reduce distractions, repeat directions, redirect to task, and provide one to two-step directions to assist with concentration. The Student also has identified needs to assist with work completion including: chunking assignments, hearing verbally before writing, and providing visual supports. The accommodations in the 504 Plan are as follows: preferential seating; repetition of directions; teacher redirect to task; have the Student repeat or restate directions back to the teacher in order to check for understanding; monitor response to ensure that the Student is accurately completing tasks; ask the Student to verbally share his thinking before beginning written responses; provide visual supports such as graphic organizers and/or charts; check agenda for completion; break larger tasks into smaller more manageable chunks; and provide one to two-step directions.

70. The Student's report card for the 2016-2017 school year indicates the following grades in the identified areas for quarters one through four:

- reading: below grade level quarters one through four;
- reading: comprehension informational texts: C, C, B, B;

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<sup>5</sup> The 504 Plan provides services and changes to the learning environment to meet the needs of the Student as adequately as other students. To get a 504 Plan, there are two requirements:

1. A child has any disability, which can include many learning or attention issues.
2. The disability must interfere with the child's ability to learn in a general education classroom. Section 504 has a broader definition of a disability than IDEA. (It says a disability must substantially limit one or more basic life activities, such as learning). That is why a child who doesn't qualify for an IEP might still be able to receive a 504 plan.

- reading: comprehends literary texts: C, B, C, B;
- writing: communicates effectively: C, D, D, C;
- writing: applies writing conventions and grammar: B, B, C, B;
- writing: mechanics and spelling: B, B, C, B;
- mathematics: understands and applies computational skills: B, B, A, C;
- mathematics: applies mathematical concepts to problem solving: C, C, C, B;
- science: A, A, C, C; and
- social studies: C, B, A, C.

71. The Student participated in the Partnership for Assessment of Readiness for College and Careers (PARCC) during the school year. The PARCC tests measure whether students are meeting new, higher academic standards and mastering the knowledge and skills they need to progress in their kindergarten through grade twelve education and beyond. They test more complex skills like critical-thinking, persuasive writing, and problem-solving. In reading, the Student scored a level one, which indicated he did not yet meet expectations.

**2017-2018 School Year: Fifth Grade**

72. During the 2017-2018 school year, the Student obtained an overall proficiency level of 5.5 on the WIDA Access for English Language Learners (ELL). Students who score a proficiency level of 4.5 or higher on the WIDA ELL may no longer have to receive ESOL instruction.

73. When a student is reclassified or exits from the ESOL program, they continue to be monitored by an ESOL professional for up to four years. In Maryland, students in ESOL are monitored for two years prior to exit. When monitored for two years, the ESOL teacher assigned to that student consults with the student's content teachers regularly throughout the year to monitor the student's progress, and if they see that a student is not making progress and they find



that it might be due to language development issues, they would provide support to that teacher and to the student with English language development interventions.

74. The Student exited the ESOL program in the spring of 2018 but continues to be monitored in the event that he requires supports.

75. It takes approximately five to seven years for English learners to obtain native-like proficiency in a second language.

76. On September 12, 2017, the Parents submitted a request to AACPS to have the Student evaluated for a disability under IDEA, requiring special education services.

77. After receiving the written referral regarding the Parents' request to have the Student evaluated for a possible disability under IDEA, [REDACTED], special education teacher, AACPS, conducted an observation of the Student during his writing class. The results of the observation indicated that the class was assigned to continue a personal narrative that was started the previous day. The Student was working independently at his desk located in the front row of the classroom. The Student began work on the task independently. He did not require additional prompting. After several minutes, the Student became distracted by the teacher who was conferencing with two other students. A student next to the Student was distracted as well. The Student and his classmate were prompted to use a personal desk divider or to sit in another location in order to focus on the assignment. The Student chose to get a divider and as a result was able to sustain his attention to his writing task for over five minutes. The Student added three additional sentences to his writing. His sentences were both simple and complex and logical and legible.

78. On October 12, 2017, the IEP team convened, including the Parents and their advocate [REDACTED]. The Parents were provided a copy of their *Procedural Safeguards and Parental Rights* brochure. At the meeting, the Parents discussed their concerns regarding the

Student's academic performance and ability to make progress in the general curriculum. Specifically, the Parents expressed their belief that the Student required an IEP with annual "trackable goals" to assist him with his reading skills. (AACPS 12). The Parents also indicated they did not have concerns regarding the Student's fine and gross motor skills. Additionally, the Parents expressed concerns regarding the Student's cognitive, attentional, social-emotional, behavioral, and writing skills needs.

79. At the IEP team meeting, the parents expressed that the Student has a tutor for "Mandarin" Chinese, reading, and writing.

80. Because the Student had just started the fifth grade for the 2017-2018 school year, the IEP team discussed the Student's performance for his fourth grade year when making its determination regarding whether he should be identified as a student with a disability under IDEA requiring special education services.

81. The IEP team discussed the Student scored "proficient" or "advanced" on all three math assessments (AACPS benchmark assessments) that he took during his fourth grade year. A writing work sample from the Student was reviewed and indicated the Student had good ideas and was able to complete the assignment. Further, the IEP team discussed the language dominance determination from the fourth grade year that indicated the Student was mixed dominant. In Mandarin he was stronger receptively than expressively.

82. The IEP team further discussed and noted the Student can produce sentences verbally, respond to questions, and participate in conversations. Information shared by the Student's fourth grade teacher indicated the Student's comprehension is adequate when he reads books on his instructional level, as well as when he accesses the verbatim reading accommodation.

83. The IEP team also discussed the Student scored at the basic level for the first and second quarters' reading skills assessments. He improved to "proficient" for quarters three and four for the readings skills assessment.

84. At the time of the IEP team meeting, the Student continued to be enrolled in the Leveled Literacy Intervention (LLI) program. The program was being implemented by [REDACTED]. The Student was also enrolled in a co-taught math class.

85. At the meeting, the IEP team discussed the Student's performance in English as a Second Language (ESOL). At the time of the meeting, the Student's English proficiency level was 3.7, based on the assessment completed during his fourth grade year. The level was commensurate with his reading level as indicated by Fountas and Pinnell.

86. After considering the concerns shared by the school-based members of the IEP team, the Parents, and the advocate regarding the Student's academic performance and social-emotional interaction at home and school, the school-based members of the team determined assessments were not warranted as AACPS staff did not suspect the Student of having a disability under IDEA. The team also determined the Student was reading on grade level and was on grade level in math. The prior written notice of the team explanation of the decision states:

[The Student] did not receive instruction in reading or the English language until he enrolled at [REDACTED] from [REDACTED] at the age of nine (January 20, 2015). Therefore, the school team feels the lack of instruction in reading and identification as an [ELL] are contributing factors to the Student's reading level. In addition, [the Student] made 1.5 years of growth in reading last year in fourth grade based on Fountas and Pinnell assessments. Based on the information discussed, the school team does not suspect the presence of an educational disability that requires the provision of special education services at this time.

(AACPS 12).

87. On December 21, 2017, the Student's mother provided written consent for AACPS to screen the Student to determine the Student's language skills in English and Mandarin. The Student would be asked to identify and label pictures in both languages.

88. The Language dominance determination screen was conducted on January 8, 2018. The results of the screen indicated the “language of relative dominance for testing purposes [was] English.” Although the Student was considered English dominant, the results of the screen assessment did not mean the Student was fully English proficient but rather English was the stronger of his two languages. (AACPS 15).

89. On March 2, 2018, AACPS staff received a written referral based on the Parents’ request that the Student be evaluated for a possible specific learning disability, a speech/language impairment, as well as another health impairment under IDEA.

90. An IEP meeting was convened on March 2, 2018. The Parents participated and were provided a copy of their *Procedural Safeguards and Parental Rights* brochure. A student evaluation plan was developed, and the Parents provided consent for assessments to be conducted in the areas of cognition (cognitive ability, psychological processing, adaptive functioning, and attention/executive functioning), academics (reading, writing, math), communication (expressive and receptive language), and social/emotional skills. (AACPS 16).

#### **PSYCHOLOGICAL ASSESSMENT APRIL 2018**

91. The psychological assessment was conducted over a span of four days by [REDACTED] [REDACTED] Ph.D., NCSP, School Psychologist on March 19, March 20, March 23, and March 26, 2018. The methods of assessment utilized were as follows: record review; observations; Student interview, WISC-V, WISC-V-I (Integrated); selected subtests; California Verbal Learning Test-Children’s Version (CVLT-C); A Developmental Neuropsychological Assessment- Second Edition Ages 5-16 (NEPSY-II); selected subtests; Social Language Development Test-Adolescent (SLD-A); Conners Comprehensive Behavioral Rating Scales (CBRS; Parent, Teacher); Multidimensional Anxiety Scale for Children-Second Edition (MASC-2); and the

Adaptive Behavior Assessment System- Third Edition, Ages 5 to 21 (ABAS-III; Parent, Teacher). (AACPS 32).

92. Dr. [REDACTED] prepared a Psychological Assessment Report, dated April 19, 2018, of the results of the Student's performance on the numerous assessments that comprise the psychological assessment.

**Classroom Observation: March 5, 2018:**

93. The Student was observed during his cultural arts period. The Student was seated at a table in the middle of the room with two other students and engaged in appropriate reciprocal conversation with the female peer while waiting for class to start. The Student oriented himself toward the smartboard once the teacher began the lesson. The teacher indicated the class would be continuing to work on drawing self-portraits and specified how to begin the task for the day. The Student got up to obtain his project folder and independently initiated the tasks while other students were still settling down and requiring additional prompts to start their work.

94. The Student was observed to be engaged and on-task for the full duration of the class period. He appropriately oriented towards the smartboard when instructional videos were being played and immediately resumed work when the videos concluded. The Student did not require or request adult or peer assistance during the class period. When the teacher asked a question about a jewelry contest his sister won, he answered appropriately. At the end of the period, the Student required an additional prompt to put his materials away. Overall, the Student demonstrated compliance, appropriate peer interactions, and an ability to initiate tasks independently without prompting. He remained attentive, on-task, and required no additional assistance.

**Classroom Observation: March 7, 2018:**

95. A second informal classroom observation was conducted on March 7, 2018 in the English/LA and reading intervention classes. In the larger group the Student was seated in the middle front of the classroom in easy view of the smartboard and two teachers in the classroom. He participated in whole-group responses but experienced some hesitancy. He required wait-time before he provided a response. When pulled into the smaller group within the larger group, the Student was an active listener, complied with all instruction, and was able to transition quickly and appropriately between different activities. The Student also continued actively reading without any observed distractions while other students transitioned in and out of the room and talked at moderate volume.

96. In the small reading intervention class the Student was one of three students receiving ELL interventions. He actively participated and expressed disappointment when he was not chosen to complete a problem at the whiteboard. The Student spontaneously contributed additional knowledge to the conversation during discussions. He self-corrected a conversational error (sink to think). The Student experienced a brief moment of impulsivity when he got out of his seat and was prompted to return to it, took a book out of the teacher's hand with enthusiasm to start looking at it, and corrected another student during reading but did not appear to be disruptive to the learning environment.

97. In all classes the Student was observed to fidget with his hair while reading longer passages. Consistent with the previous observations, the Student demonstrated compliance and on-task behavior.

98. The WISC-V results indicated the Student has a Full Scale IQ (FSIQ) score of 103, placing him solidly in the average range of intellectual ability and the fifty eighth percentile when compared to same age peers.

99. The Student obtained a Verbal Comprehension Index (VCI) Score of 9.2, placing him in the average range and at the 30th percentile compared to same age peers. The VCI measured the Student's ability to access and apply acquired word knowledge, reflecting the Student's ability to verbalize meaningful concepts, think about verbal information, and express himself using words. The Student's verbal comprehension skills are evenly developed.

100. The Student obtained a Visual Spatial Index (VSI) Score of 119, placing him in the high average range and at the 90th percentile compared to same age peers. The VSI measured the Student's ability to evaluate visual details and understand visual relationships in order to construct geometric designs from a model. The skill requires visual spatial reasoning integration and synthesis of part-whole relationships, attentiveness to visual detail, and visual-motor integration. The Student's visual spatial skills are evenly developed and represent a relative area of strength among other skills in his cognitive profile and a normative strength compared to same-aged peers.

101. The Student obtained a Fluid Reasoning Index (FRI) Score of 123, placing him in the very high range and at the 94th percentile when compared to same-aged peers. This was the Student's greatest area of strength on the WISC-V and considered a normative strength compared to same-aged peers. The FRI measured the Student's ability to detect the underlying conceptual relationships among visual objects and to use reasoning to identify and apply rules. Identification and application of conceptual relationships in the FRI require inductive and quantitative reasoning, broad visual intelligence, simultaneous processing, and abstract thinking. The Student's fluid reasoning skills may be unevenly developed. Specifically, Matrix Reasoning in particular was a significant strength for the Student as he performed the same as or better than 99% of same-aged peers in the standardized sample. The Student will likely demonstrate exceptional ability to problem-solve novel concepts compared to same-aged peers.

102. The Student obtained a Working Memory Index (WMI) Score of 94, placing him in the average range and at the 34th percentile when compared to others his age. The WMI measured the Student's ability to maintain, register, and manipulate visual and auditory information in conscious awareness, which requires attention and concentration, as well as visual and auditory discrimination. The Student's working memory skills are evenly developed, and he recalled and sequenced series of pictures and lists of numbers at an average for his age. His performance on these tasks was a relative strength when compared to his performance on measuring processing speed tasks. The Student's much better performance on working memory tasks over those measuring processing speed implies that his ability to identify and register information in short-term memory is a strength, relative to his speed of decision-making using this information. The Student demonstrated age-appropriate sequential processing, mental manipulation, and attention on the Letter-Numbering Sequencing (LN), which was similar to same-aged peers.

103. The Student obtained a Processing Speed Index (PSI) Score of 69, placing him in the extremely low range and the second percentile when compared to same-aged peers. The PSI measures speed and accuracy of visual identification, decision-making, and decision implementation. Performance on the PSI is related to visual scanning, visual discrimination, short-term visual memory, visual motor coordination, and concentration. The PSI assessed the Student's ability to rapidly identify, register, and implement decisions about visual stimuli. His overall processing speed performance was weak for his age and was an area of relative weakness to his performance on tasks requiring him to use logic-based reasoning and to mentally manipulate information. The Student's cognitive processing speed is the weakest of his skill set. The PSI is derived from two timed subtests. Symbol search required the Student to scan a group of symbols and indicate if the target symbol was present. On Coding, the Student used an answer key to copy symbols that corresponded with numbers. Performance across these tasks



was similar, suggesting that the Student's associate memory, graphomotor speed, and visual scanning ability are similarly developed. His score on Coding was below most same-aged peers and was one of his weakest areas of performance.

104. Figure Weights and Arithmetic comprise the Quantitative Reasoning Index (QRI), which measures quantitative reasoning skills. Quantitative reasoning indicates the Student's capacity to perform mental math operations and comprehend abstract relationships. The Student's overall index score fell within the low average range compared to same-aged peers. However, the Student demonstrated uneven performance on the subtests included in the Quantitative Reasoning Index. While he showed age-appropriate performance when balancing scales under a time constraint (Figure Weights), he showed greater difficulty mentally completing math word problems during arithmetic. This pattern of scores suggests the Student's quantitative reasoning is better facilitated when solving visual rather than verbal problems, which is appropriate given his status as an ELL.

105. The Auditory Working Memory Index (AWMI) is an indicator of auditory working memory skills and reflects the Students to maintain and manipulate information presented verbally. The Student's performance reflects average auditory working memory ability.

106. The Nonverbal Index (NVI) is derived from six subtests that do not require verbal responses. This index score provides a measure of general intellectual functioning that minimizes expressive language demands for students with special circumstances or clinical needs. Subtests that contribute to the NVI are drawn from four of the five primary cognitive domains (i.e. visual, spatial, fluid reasoning, working memory, and processing speed). The Student's performance on the NVI fell solidly within the average range when compared to same-aged peers.

107. The Student was administered the subtests comprising the General Ability Index (GAI), an ancillary index score that provides an estimate of general intelligence that is less impacted by working memory and processing speed, relative to the Full Scale IQ (FSIQ). The Student's scores fell within the high average range. The discrepancy between the Student's GAI and FSIQ was statistically significant. The difference between his GAI and his FSIQ scores indicates that the effects of cognitive proficiency, as measured by working memory and processing speed, may have impacted his overall FSIQ score and that his GAI is likely more indicative of cognitive potential. The results also support the Student will benefit from extra time to process information and execute tasks.

108. The Student was administered the Cognitive Proficiency Index (CPI). The Student's performance on the GAI was significantly stronger than his overall level of cognitive proficiency. The significant difference between the GAI and CPI Scores indicates that higher-order cognitive abilities may be a strength compared to abilities that facilitate cognitive processing efficiency. The results indicate a higher general ability score may have resulted from reduced demands on processing speed.

109. The Student was administered the Naming Speed Index (NSI), which measured the Student's ability to quickly and accurately name letters, numbers, and quantities. His overall score fell within the low average range compared to same-aged peers. During the NSI subtest, the Student named letters and numbers as quickly as possible. On this subtest, his score fell within the average range. Both the Student's letter/number and quantity naming was accurate despite speed.

110. The Student was administered the California Verbal Learning Test Children's Version (CVLT-C) to obtain additional information about his learning and memory. Specifically, the CVLT-C measures strategies and processes involved in learning and recalling verbal material

within the context of an everyday shopping task; both recall and recognition of words are measured over a number of trials. The Student performed at an age-expected level on overall item recall compared to same-aged peers, and many of the learning processes he utilized to perform the CVLT-C also fell within the average range. The Student's performance on Trial 1 indicates that he may not encode the expected amount of information upon initial presentation. However, his performance on Trial 5 was well within the average range, indicating that his ability to retain and recall is greatly improved by repetition/rehearsal, as he increased the number of items remembered with each reading of the list. His learning slope reflected a significant increase in the number of new words recalled from trial to trial; this indicates that while the Student may retain less than typical verbal material upon initial presentation of information, he has a superior ability to catch-up once given additional practice opportunities.

111. When presented with a second interference list after the five readings of the first list, the Student could remember the new information at an age-expected level without any interference from the first list. After a short delay, the Student's ability to recall the first list without any cues was well within the average range and suggests that he retained what he learned and was actually able to remember the information independently better than when he was given category cues to assist with recall. Following a delay of about twenty minutes, the Student's performance was similar to that of his short-delay recall, indicating that even after a period of time passes, the Student is able to adequately retain and independently recall information learned. Category cueing and recognition after the long delay did not appear to benefit his performance compared to long delay free recall, suggesting that the Student is able to recall a fair amount without additional support. Long delay recognition discriminability fell within normal limits, suggesting that even after a delay, the Student is able to recognize what he has learned and differentiate from what he has not learned. When trying to recall words, the Student did not

show a preference for semantic strategies versus serial strategies and may in fact have developed his own strategy for effectively encoding information.

112. The Student remembered more words than typical from the beginning of the list, an average number of words from the end of the list, but significantly less words from the middle of the list. This suggests the information the Student hears first is what he remembers best, followed by what he most recently heard. The Student's performance on the test indicates that it is possible that the Student puts forth so much effort to focus on the information at the beginning, that he loses mental energy towards the middle and then regains the mental energy to focus again towards the end. The Student's difficulty remembering information from the middle of the list indicates the Student would benefit from breaking down larger passages of information into smaller chunks and/or incorporating brain breaks so that he doesn't become mentally fatigued from processing efforts and miss information.

113. While the Student had few repetition of words, suggesting adequate ability to self-monitor his own responses, he had more intrusions than considered typical. However, the intrusions the Student used were generally similar to the words missed and within the same category of the words stated before it; when the Student is aware that he is missing information, he may still be able to make an educated guess based on previous knowledge and context clues. Overall, the Student's performance on the CVLT-C indicates that he can effectively attend to, learn, and retain/recall verbal information. The Student can adequately self-monitor his responses as well as recognize what he has learned and differentiate from what he has not learned. The information he hears first is what he remembers best, followed by what he heard most recently.

## **Attention and Executive Functioning Skills**

114. The Student's performance on the NEPSY-II indicated his attention and executive functioning skills generally fell at age-expected levels. During the assessment, the Student's selective/focused attention, sustained attention, and ability to shift attention were assessed. Selective/focused attention refers to vigilance in monitoring information. Sustained attention refers to the ability to maintain attention span over a prolonged period of time. Shifting attention refers to the ability to maintain mental flexibility in order to move from one task to another. The Student's performance on both the auditory attention and response set tasks on the NEPSY-II fell at an age-expected level with minimal error, indicating adequate ability to focus and sustain attention on a selective task even when task demands change and/or become more complex.

115. Areas of executive functioning evaluated included planning, inhibition, concept formation, and shifting/flexibility. Executive functioning is higher-level functions that draw upon the individual's more fundamental or primary cognitive skills, such as attention, language, and perception, to generate higher levels of creative and abstract thought. Planning is the cognitive skill needed to think before one begins an activity, as well as the ability to adjust one's actions as the activity progresses based on the results of one's efforts. Inhibition (problem solving) refers to a reasoning process that requires individuals to discern, develop, explain, and apply rules that govern the relationship between various types of information and situations. Shifting/flexibility is one's ability to switch from one activity to another without error, like from addition to subtraction, on a page of mixed operations. The Student generally performed at an age-expected level on the majority of executive functioning tasks. The Student's borderline completion time performance on the initial naming task as compared to his average completion time performance on the more complex inhibition and switching tasks may suggest that he put forth better effort once tasks were understood to be more challenging. His borderline naming

combined score was due to one error made during the task, however, he independently went back to self-correct that error, which also then impacted his completion time. On design fluency, the Student did not make any errors and frequently demonstrated self-monitoring techniques (looked back to make sure he did not repeat designs), therefore his below expected age-level score is more likely a function of poor fluency for nonverbal tasks than impaired initiation and productivity.

### **Sensorimotor**

116. Sensorimotor subtests of the NEPSY-II examined how well the Student can manipulate his fingers and hands to perform a task effectively and efficiently, including tasks that assessed the Student's ability to produce repetitive and sequential finger movements, imitate hand positions, and carry out rhythmic, sequential hand movements. Motor skill development can play a role in later development of executive functioning and academic skills. The Student generally performed at an age-expected level for all tasks. The Student's performance on the visual-motor precision subtest was below the age-expected level, providing further support that slower speed increased accuracy for the Student.

### **Social-Emotional**

117. The Student's mother and teacher completed the Conners Comprehensive Behavior Ratings Scales (Parent) and (Teacher) CBRS-P and CBRS-T to evaluate the Student's social-emotional behavioral functioning.

### **Teacher Scores**

118. The majority of scores from the teacher's CBRS-T rating generally fell within normal Limits, indicating that in the school setting, the Student is demonstrating an overall level of behaviors considered to be typical compared to same-aged peers and is not demonstrating any significant social-emotional concerns. In the school-setting, the Student may appear socially

awkward or shy, experience poor social connections, experience difficulty with friendships, have limited conversation skills, and/or may have poor social reciprocity. However, the Student very often has good social skills when comfortable with someone.

### **Parent Scores**

119. Scores from the Parent CBRS-P ratings resulted in very elevated scores on the Social Problems, Language, and Math subscales and elevated scores on the Emotional Distress, Defiant/Aggressive Behaviors, Hyperactivity/Impulsivity, and Physical Symptoms subscales. This indicates that primary concerns from the home setting are that the Student may appear socially awkward or shy, experience poor social connections, experience difficulty with friendships, have limited conversation skills, and/or may have poor social reciprocity. The Student may have problems with learning, understanding, or remembering academic material and may struggle with math, reading, writing, spelling, and/or communication skills. Specifically, an item analysis the Student's mother endorsed indicated the Student is often socially awkward and has trouble starting a conversation or keeping a conversation going. Additionally, she endorsed that the Student often has trouble reading and needs extra explanation of the instructions and often takes a long time to complete classwork or homework. He can pronounce words but has difficulty understanding them. Further, she endorsed he has trouble identifying the main idea of a story, has poor spelling, has trouble finding the right words, has trouble answering questions about what he reads, has trouble understanding what is said, and has trouble combining words into sentences or phrases. Secondary concerns from the home setting are that the Student worries a lot, may show signs of depression, has physical symptoms, and seems socially isolated. At times the Student shows poor control of anger and can be physically or verbally aggressive, has high activity and may be restless, has difficulties with impulse control, and may have sleep, appetite, or weight issues. Specifically, an item analysis the

Student's mother endorsed indicates the Student occasionally shows signs of emotional distress (panics about social situations or doing things in front of people, appears nervous or on edge, loses interest in pleasurable activities, seems physically slowed down, has limited interests, seems tired or has low energy, and avoids social situations). The Student very often lies to avoid having to do something or to get things. In the home setting, the Student often fidgets or squirms in his seat and interrupts others. He often has a poor appetite and has weight changes. Scores for the Upsetting Thoughts, Worrying, Separation, Fears, Perfectionistic and Compulsive Behaviors, and Violence Potential Indicator scales fell within normal limits. The following Diagnostic and Statistical Manual of Mental Disorders (DSM-5) scales were considered to be very elevated: ADHD Predominately Inattentive, ADHD Predominately Hyperactive-Impulsive Conduct Disorder, Major Depressive Disorder, Manic Episode, Generalized Anxiety Disorder, and Autism Spectrum Disorder, while Social Anxiety Disorder was considered to be elevated. However, symptom counts were "probably met" only for ADHD Predominately Inattentive Presentation and Conduct Disorder. All other DSM-5 scale symptom counts were considered "probably not met," indicating that although the current presentation is atypical for twelve year old boys, there are insufficient symptoms reported to meet the DSM-5 symptomatic criteria for these disorders and alternative explanations should be considered.

120. The Social Language Development Test Adolescent was administered to assess the Student's language skills, including nonverbal communication. It is administered for children between the ages of twelve and seventeen. The tasks focus on taking someone else's perspective, making correct inferences, solving problems with peers, interpreting social languages, and understanding idioms, irony, and sarcasm. The test does not address all aspects of social language or pragmatic skills; it focuses on social interpretation and interaction with peers. The Student's overall performance on the Social Language Development Test Adolescent



fell within the average range. An examination of individual subtests highlights the Student's areas of weaknesses. On the making inferences subtest, the Student scored within the below average borderline on average range when compared to same-aged peers. The Interpreting Social Language subtest has questions that are designed to tap into a variety of skills that reflect how people communicate. The Student's ability to interpret social language fell within the average range when compared to same-aged peers. On the Problem Solving Subtest, the Student scored within the average range compared to same-aged peers. On the Social Interaction subtest, the Student was required to provide an appropriate response that supported the test scenario and avoid responses that were negative, unsupportive, or passive. He scored within the average range compared to same-aged peers. The Student struggled the most with Interpreting Ironic Statements subtests, where he was required to listen to situations on a compact disc and show an understanding of the dialogue, including idioms and pick-up on the irony and sarcasm. The Student's ability to interpret ironic statements fell within the borderline impaired or delayed range compared to same-aged peers. While the Student was unable to interpret the irony of statements, he often correctly interpreted the meaning of the idiom. Irony is considered to be a higher-level language skill that often develops later for English language learners, which may mean the Student's struggle to interpret irony is more a reflection of his limited exposure to the English language as opposed to true lack of ability.

121. The Student was administered the NEPSY-II to obtain additional information about his ability to understand emotions and thought/feelings for others. The Student performed at an age-expected level on the Affect Recognition subtest, indicating sufficient ability to recognize emotional expressions. With regard to the ability to understand the thoughts, beliefs, and feelings of others, regardless of whether information provided is in verbal or visual context, the Student fell at an age-expected level when compared to same-aged peers.

122. With regard to the MASC-2 test to determine the overall extent the Student is experiencing signs and symptoms of anxiety, the Student scored within the average range compared to same-aged peers. The Student has a low probability of having one or more anxiety disorders, as all scores fell within normal limits. Specifically, no significant concerns with Separation Anxiety/Phobias, Generalized Anxiety Disorder, Social Anxiety, Obsessions and Compulsions, Physical Symptoms, or Harm Avoidance were reported, which is considered typical for same-aged male peers.

123. Dr. [REDACTED] interviewed the Student during the Psychological Assessment. The Student reported his favorite subject is math and he has a good number of friends. The Student demonstrated an understanding of how to initiate friendships and how to maintain them despite disagreements. He was able to adequately indicate how it feels to be happy, sad, or angry and stated appropriate coping strategies for handling negative emotions. The Student reported he does not often feel sad, nervous, worried, or lonely and reported no suicidal ideations or harmful behaviors.

#### **Adaptive Functioning Skills: Home**

124. With regard to adaptive functioning skills in the home setting, the Student's mother completed the Parent rating form of the ABAS-3 as part of the General Adaptive Composite assessment. The Student is demonstrating more difficulty with adaptive skills in the home setting than compared to same-age male peers. On the Parent rating, the Conceptual, Social, and Practical domains all fell in the low range.

#### **Adaptive Functioning Skills: Teacher**

125. With regard to adaptive functioning skills in the school setting, the Student's teacher completed the Teacher rating form of the ABAS-3 as part of the General Adaptive Composite assessment. The Student is demonstrating adaptive skills that are comparable to same-aged

peers. On the Teacher rating, the Social and Practical domains all fell in the average range compared to same-aged peers, and the Conceptual fell within the below average range but bordering on average range.

#### ACADEMIC ASSESSMENT

126. The Academic Assessment was conducted over a span of two days, March 27 and March 28, 2018 by [REDACTED] special education teacher.

127. Ms. [REDACTED] prepared an Academic Assessment Report, dated April 18, 2018, of the results of the Student's performance on the numerous assessments that comprise the academic assessment. The methods of assessment utilized were as follows: The Woodcock Johnson IV (W-J IV) Basic Reading, Letter Word Identification, Word Attack, Phonemic Grapheme Knowledge, Spelling of Sounds, Oral Reading, Sentence Reading Fluency, Word Reading Fluency, Reading Comprehension, Passage Comprehension, Reading Recall, Broad Written Language, Spelling, Writing Samples, Sentencing Writing Fluency, Written Expression, Math Calculation Skills, Calculation, Math Problem Solving, Applied Problems, Number Matrices, Academic Fluency, Applications and Skill; Gray Oral Reading Test, Fifth Edition (GORT-5) Oral Reading Rate, Accuracy, Fluency, Comprehension, Comprehensive Test of Phonological Processing (CTOPP-2) Phonological Awareness, Elision, Blending Words, Phoneme Isolation, Phonological Memory and Memory for Digits.

128. With regard to the W-J IV, CTOPP-2, and GORT-5, the examiner administered the instruments in the manner the publisher intended and under the conditions that they were normed. Test items and directions were read as written, and questions were not reworded or rephrased. Test items were repeated only when needed and permitted on individual tests/subtests. The Student's responses were queried to clarify a response only if they met the criteria listed in the testing manuals.

## **Basic Reading**

129. The basic reading assessment data indicates the Student is able to identify words automatically and apply strategies to quickly decode unfamiliar single and multi-syllabic words. Words that the Student is able to recognize and decode consisted of the following letter and sound patterns: short and long vowels, vowel teams and diphthongs, as well as consonant blends and digraphs. The Student recognized words that contain both closed and open syllables, as well as syllables that contained silent letter patterns.

130. The Student's ability to read multi-syllabic words with irregular spelling patterns was slightly inconsistent. Overall, the Student did not demonstrate difficulties in the area of word recognition and decoding, and his ability to read and decode words is within age-level expectations.

131. The Student is able to apply encoding and decoding skills to write nonsense words containing closed syllables and short vowel sounds. The student spelled words with suffixes including "-es" and "ing." The Student correctly identified initial, medial, and final sounds in words.

132. The Student did not demonstrate difficulties in spelling nonsense words. In very few instances, the Student did not use the most common letter combination in his spellings, causing his answers to be marked incorrect. However, the Student's ability to apply phoneme knowledge is within age-level expectations and is commensurate with his basic reading skills.

## **Phonological Awareness**

133. The Student was able to manipulate words stated orally by dropping word parts and dropping initial, medial, and final sounds from one and two syllable words presented to him. The Student was able to listen to words stated by syllables or word parts, as well as individual sounds, and state the whole word in words up to three syllables. The Student was able to identify

the initial, medial, and final sounds in words containing three and four sounds and up to two syllables.

### **Phonological Memory**

134. The Student was able to repeat a series of numbers up to six digits with accuracy and repeat nonsense words accurately with four to five word parts, indicating that he has the ability to code information phonologically and store that information into his short-term memory with age-level expectations. He did not demonstrate difficulties in the area of phonological memory.

135. The Student was able to accurately state the letters and numbers presented to him. The amount of time that it took the Student to state the names of the numbers and letters is below age-level expectations. He took longer than expected to complete the subtests.

### **Reading Fluency and Reading Rate**

136. The Student was able to read with accuracy. He was able to decide if statements were true or false, and he was able to identify relationship words.

137. The amount of time it took the Student to read and process information fell within the low range. While the Student was able to recognize both single and multi-syllabic words, he did not do so quickly. When information was presented to him in short sentences and paragraphs, his ability to quickly recognize words decreased while his accuracy remained the same. The Student's most frequent error problems when reading connected texts resulted from hesitations and repetitions. The Student hesitated while reading, which made his reading less fluent. He hesitated while attempting to decode words, as it took him longer to do so when reading connected texts. Once the Student had decoded a word, he would then go back and repeat part of the word, the whole word, or two to three words prior to that word.

## Reading Comprehension

138. When presented with short statements along with a picture, the Student was able to use that picture, context, and semantic clues to determine the missing word. When pictures were removed, the Student was again able to use context and his background knowledge to identify the missing word in short statements. When asked to read a short passage silently and restate what he read, the Student was able to recall characters, settings, and step-by-step events and details from the beginning, middle, and end of the short passages presented to him.

139. The Student was unable to complete sentences with missing words when he became unfamiliar with the topic or when he was unable to use semantic clues to determine the missing word. The Student often gave an answer that related to the topic but was not appropriate to complete the statement.

140. On another test assessing the Student's ability to comprehend material as well as his ability to read with fluency and accuracy, the Student was able to demonstrate accuracy while reading passages. His ability to answer comprehension questions was within the average range when compared to same-aged peers. This indicates that even though the Student read with slower fluency and rate, he was still able to gain meaning from what he read in order to accurately answer literal questions about short passages. Questions that he answered correctly were questions that asked who the story was about, details about events or characters, and the setting of the stories.

141. While the Student again demonstrated accuracy in his ability to read information, he did so with slower fluency and rate. The Student took time to decode unfamiliar words. Words that he recognized quickly in isolation were not quickly recognized in context, although his accuracy remained the same. At times, words that the Student recognized in isolation without decoding them he was unable to recognize with automaticity once placed in context.

Again, his accuracy did not change; however, his rate at which he read decreased. The Student again hesitated to read several words, due to his need to apply decoding strategies rather than rely on word recognition automaticity. The Student did not read at a rate that was expected for his age due to those hesitations. While reading, the Student again repeated parts of words, whole words, or short phrases once he was able to decode them. When the Student read, he often read in one-to-three word chunks, pausing inappropriately throughout the passage. The assessment results indicate the Student would benefit from previewing texts before reading, to identify unfamiliar words and provide him with the opportunity to practice those words before reading them in context. Extra time should also be considered to ensure that the slow rate at which he reads is accounted for. The Student would also benefit from repeated readings and opportunities to practice fluency and correct phrasing using short statements for him to read at a faster pace and with expression. Echo or choral reading could also provide opportunities for the Student to build fluency and rate of reading.

### **Written Expression**

142. The Student was able to write declarative sentences, both simple and compound, in response to a prompt. The Student used correct beginning capitalization and ending punctuation in his sentences, and he often correctly used commas between clauses and subordinate conjunctions with accuracy. The Student was able to write detailed sentences in order to describe a picture. The Student was able to create a topic sentence and when asked to spell words that were high frequency words or words that could be sounded out, he was able to do so.

143. The Student did not demonstrate difficulties in the areas of written expression that significantly impacted his performance. Further, the Student did not spell words that contained irregular phonetic patterns. His writing is legible and can be easily identified even with some

spelling mistakes, as he uses phonetic spelling to spell unfamiliar words. Additionally, the Student was unable to produce sentences quickly; however, his sentences contained accurate responses to the task asked of him.

144. The Student was unable to complete sentences missing from pre-written paragraphs. At times in his attempts to write longer sentences, the Student inappropriately used a comma where he needed to use a period. Despite these minor errors, the Student did not demonstrate significant difficulties in his ability to express himself in writing and demonstrated writing skills within the average range when compared to same-aged peers.

### **Math Calculation**

145. The Student demonstrated the ability to add, subtract, and multiply both basic facts and larger whole numbers consisting of one, two, and three digits. He was able to solve basic division fact problems and demonstrated knowledge of the steps involved in long division, although he was unable to demonstrate accuracy in following through with all of the steps needed in order to solve the long division problems. Further, the Student was able to add and subtract fractions with like denominators and demonstrated the ability to add more than two numbers and decimals.

146. The speed at which the Student is able to complete tasks impacted his math fact fluency score. While he was able to accurately solve the problems, he did not do so quickly. The score also significantly impacted his overall calculation cluster score.

### **Math Reasoning**

147. The Student was able to solve one-step word problems by identifying important information that was needed in order to solve the problem. The Student was able to select the correct operation to solve the problem and accurately computed the information to arrive at the correct answer. Additionally, the Student was able to count money and solve problems involving



money, as well as tell time and calculate elapsed time. Lastly, the Student was able to solve number matrices by finding the missing number to compute the pattern.

## **COMMUNICATION ASSESSMENT REPORT**

148. [REDACTED] Speech Language Pathologist, conducted a speech/language assessment of the Student's language and communication needs. The assessment was conducted on March 6, March 7, and March 8, 2018.

149. The Student was assessed following proper protocols, utilizing the following assessment instruments: Comprehensive Assessment of Spoken Language, Second Edition (CASL-2); Oral Passage Understanding Scale (OPUS); Peabody Picture Vocabulary Test-Fourth Edition (PPVT-4); and the Test of Auditory Processing Skills-Third Edition (TAPS-3).

150. On April 17, 2018, Ms. [REDACTED] completed a report regarding the results of the assessment.

### **Receptive Vocabulary**

151. With regard to receptive vocabulary, the Student was assessed to determine his knowledge of words that are opposite in meaning, as well as retrieval and production of a single word when its opposite is given as a stimulus. The Student earned an average standard score and demonstrated the ability to generate antonyms for a variety of nouns. An item analysis revealed the Student provided more exact responses (preferred) as compared to those considered acceptable, which are close to correct but not as precise. Successful performance on the test indicates the Student has robust expressive word knowledge and memory retrieval even without the aid of cues.

152. On the test utilizing synonyms, the Student was assessed regarding his understanding of the meaning of a word, as well as the ability to recognize words that have similar meanings, using a multiple-choice format with four choice options to correspond with the stimulus word.

The Student achieved a below average score on the test. The Student chose the correct synonym for target words such as “easy,” “closer,” and “sick.” The Student demonstrated difficulty identifying the correct synonym for nouns and verbs as compared to adjectives. Difficulty on this test suggests the meaning of either the stimulus or its synonym is not known.

153. The Student was assessed to determine his understanding, retrieval, and expression of a single word that best completes a sentence in content as well as structure. The Student earned an average standard score. An item analysis revealed the Student provided more exact responses (preferred) as compared to those considered acceptable, which are close to correct but not as precise. Successful performance on the test indicates the Student possesses the ability to discriminate among the qualities of a sentence, associate those qualities with the appropriate concept, identify that concept with a single word, and express that word to complete a sentence.

#### **Syntax/Morphology**

154. The Student’s syntax/morphology skills were assessed to determine his ability to understand rules governing the order and combination of words in the construction of well-informed sentences and the structure of words and construction of individual word forms from the basic elements of a meaning. The Student earned an average score regarding his ability to use correct syntax, including the appropriate use of grammatical morphemes, sentence structure, and word order, in their sentence formulations. The Student demonstrated the ability to finish sentences, combine two sentences, answer a question with a sentence, make a sentence with given words, and use a word in two different places in a sentence. An item analysis revealed the Student provided more exact (preferred) as compared to those considered acceptable, which are close to correct but not as precise. The Student’s performance indicates the Student has the ability to formulate and express basic sentence types and the basic syntax of verb tense for regular and irregular verbs, auxiliary, and linking verbs.

155. The Student was assessed to determine his skills regarding grammatical morphemes. The test measures the form and meaning of grammatical morphemes, which are words or word endings that add meaning to sentences including function words and inflections. The Student tested in the average range when compared to same-aged peers. The Student demonstrated the ability to apply grammatical elements, such as past tense verbs, possessive pronouns, and future verb tense. An item analysis revealed the Student provided more exact responses (preferred) as compared to those considered acceptable, which are close to correct but not as precise. The Student's successful performance on the test indicates knowledge and accurate use of function words and inflections.

156. The Student's grammatical judgment skills were assessed to determine his ability to judge the syntactical structure of sentences, as well as make modifications as necessary. The Student's skills fell in the average range when compared to same-aged peers. He demonstrated the ability to accurately judge the grammatical correctness of items on the test. He received full credit on test items that probed irregular past (e.g. "caught"), sentence structures with negation (e.g. "I don't have any"), and pronouns ("I," "me"). He was more inconsistent with his response on test items probing noun-verb agreement. The Student's scores indicate that he has an age-appropriate ability to identify errors in syntax through listening. The ability to judge grammatically in sentences, while important for spoken-language, is critical for accurate written language.

### **Auditory Skills**

157. The Student tested above average when compared to same-aged peers when assessed regarding his ability to recognize how changes in word combinations and order, grammatical structures, and sentence construction may change the meaning of the sentence. He correctly answered test questions on complex sentence pairs and passive voice sentence pairs. The

Student's success on the test indicates he is able to recognize different sentence types, sentences with clause constructions and that he understands that word combinations and word order can change the meaning of a sentence.

158. With regard to understanding oral passages, the Student tested in the average range when compared to same-aged peers. He demonstrated the most success on test items that required him to recall specific details from the passage and answer passage synthesis questions. The Student, however, demonstrated difficulty on lexical/semantic questions (related to vocabulary) and inferences from figurative language questions. He demonstrated more difficulty answering questions from a persuasive essay question and a passage with personification. He performed well on fiction and nonfiction passages. An average standard score indicates the Student's integrated listening comprehension is not difficult for him even when there are heavy expressive and memory demands.

159. With regard to how well the Student understands spoken information, the Student demonstrated an ability to answer a variety of "wh" questions (who, what, where, when, why) as well as "how" questions, including those requiring memory for precise details. His accuracy did not decrease even as passages increased in length and complexity.

### **Verbal Reasoning**

160. The Student's verbal reasoning skills were assessed to determine the Student's ability to comprehend nonliteral language in the form of figurative speech, indirect requests, and sarcasm. He demonstrated relative success answering figurative language test questions but demonstrated difficulty answering questions containing indirect requests and sarcasm. The Student can suspend the literal meaning of spoken information until a relationship is found between the sentence and the speaker's intended message.

161. With regard to using inferential skills in conjunction with linguistic context surrounding a specific unknown word in order to recognize and express the word's meaning, the Student was assessed as average when compared to same-aged peers. The Student demonstrated more success using context clues to determine the meaning of unknown nouns than using adjectives and verbs. The Student's successful performance indicates he has the ability to determine the meaning of a word given the context in which the word occurs.

162. The Student was assessed regarding his ability to utilize information that is not directly stated, along with his prior knowledge, in order to draw conclusions regarding actions in various scenarios. The Student's skills fell within the below average range of functioning. He demonstrated the ability to make inferences from scenarios in which he was likely familiar. An item analysis revealed the Student's ability to make inferences from context, inferences from background knowledge, and inferences for prediction was evenly developed. Below average performance during the assessment indicates the Student has difficulty consistently bridging the link with his background knowledge and world experience explicit to the language being received in order to fully comprehend spoken or written language.

163. On the double meaning test measuring interpretation and expression of words or sentence structure that have more than one meaning, resulting in multiple interpretation, the Student earned an average standard score, demonstrating the ability to interpret double meanings for nouns and verbs. His successful performance indicates he has the ability to understand that words have more than one meaning and to produce multiple interpretations of a word used in a sentence.

164. The auditory reasoning test assessed the Student's higher linguistic processing skills that are related to understanding jokes, riddles, inferences, and abstractions. It determines if the Student can understand implied meanings, make inferences, and come to logical conclusions.

The Student earned an average rating, demonstrating the ability to understand implied meanings, make inferences, and come to a logical conclusion from the information provided.

### **Classroom Observation**

165. The evaluator conducted a classroom observation of the Student in his math class in order to gain familiarity with his overall language usage in school. The Student was one of twenty-four students present in class. The lesson objective was to organize shapes into categories and subcategories. The Student was at the front of the classroom with a clear line of sight to the smartboard. He was an active participant and volunteered for activity and answers. The Student easily transitioned from working in a small group to working independently at his desk. He remained focused and on-task. During this observation, the Student's language skills were appropriate to access the language of curriculum and instruction throughout the lesson.

### **Classroom Teacher Reports**

166. With regard to morphology/syntax, verbal reasoning, pragmatics, and auditory integrations, the Student's teachers, Mrs. [REDACTED] and Ms. [REDACTED] completed the language impact on educational performance questionnaire.

167. The teachers essentially noted the Student uses sentences in conversation and uses age-appropriate non-verbal agreement and a variety of sentence types. The Student also attends to tasks but demonstrates difficulty ignoring auditory distractions. He follows oral directions and responds to direct questions. The Student does not ask questions for clarification and information. The Student participates in class discussions when called on. He gains the teacher's attention appropriately and converses with peers. The Student applies conversation rules and can adjust a conversation according to the listener. The Student's language is average (3 on a scale of 1-5) when compared to same-aged peers. The Student's lack of prior knowledge and science vocabulary causes him to have some difficulty in science class. He does well in

math class; however, he needs extra support in both content areas. Additionally, the Student's processing speed and desire to communicate, along with inattention, impact him during whole group discussion.

**Data Analysis: Deviation from Norms/and or Expectations**

168. With regard to spoken, expressive, and receptive language skills, the Student's language functions in the average range.

169. With regard to the Student's understanding of grammatical structure and higher-order linguistic skills, he functions in the average range.

**COMPREHENSIVE EVALUATION REVIEW OF: IEP TEAM DETERMINATION OF NONELIGIBILITY FOR SPECIAL EDUCATION SERVICES UNDER IDEA**

170. On April 26, 2018, the IEP team convened, including the Parents. The Parents were provided a copy of their *Procedural Safeguards and Parental Rights* brochure and were provided a copy of the Comprehensive Evaluation Report, which included the results of the assessment data and the rationale for the team's determination that the Student does not have a disability under IDEA.

171. At the IEP team meeting, the team discussed the Student's background in [REDACTED] when he came to America, and noted the Student's "educational history is unknown prior to coming to America." (AACPS 31).

172. At the time of the meeting, the Student was in the fifth grade and was twelve years and three months old.

173. The IEP team discussed the Student continued to receive daily reading intervention through the Leveled Literacy Intervention program, and was making progress. The Student had no discipline referrals and his grades at the time of the meeting were B's and C's across the academic content areas.

174. At the meeting the IEP team discussed the data from the Student's classroom performance on reading as follows:

- Fountas and Pinnell, February 7, 2018, Instructional/Frustration: Level S (End of 4th) 95% accuracy, 5/9 Comprehension Independent: Level R (Middle of 4th) 99% accuracy;
- County Based Assessment, March 20, 2018: 5th grade Q3: Proficient (Given Double Time);
- County Based Assessment, January 18, 2018: 5th grade Q2: Proficient (Given Double Time); and
- County Based Assessment, October 23, 2017: 5th grade Q1: Proficient.

175. At the meeting the IEP team discussed the data from the Student's classroom performance on math as follows:

- County Based Assessment, April 6, 2018: 5th Grade Q3: Advanced;
- County Based Assessment, January 24, 2018: 5th Grade Q2: Proficient; and
- County Based Assessment, November 6, 2017: 5th Grade Q1: Proficient.

176. At the meeting the team discussed the data from the Student's classroom performance on written language as follows:

- County Based Assessment, March 20, 2018: Reading Benchmark Q3-Writing Portion: 4.95 out of 9 (Given Double Time);
- County Based Assessment, January 18, 2018: Reading Benchmark Q3-Writing Portion: 5.85 out of 9 (Given Double Time); and
- County Based Assessment, October 23, 2017: Reading Benchmark Q1-Writing Portion: Incomplete (Given 1.5 Time).

177. At the meeting the IEP team discussed the data from the Student's performance on classroom assignments/work samples. The team noted the Student was successful completing grade level reading tasks when given double time. He continued to require support with grade level vocabulary. In math, the Student demonstrated level skills in class and on county benchmark assessments. The Student is able to complete grade level writing tasks appropriately when given double time. However, he has difficulty with grade level spelling.



178. With regard to anecdotal information shared from the Student's teachers concerning his academic performance, the comments indicate the team discussed that the Student is very hard-working. He requested supports more often than in the beginning of the year and requires improvement making requests when working with new or unfamiliar material.

179. The team reviewed the assessment reports for each assessment utilized for the evaluation.

180. The team determined the Student is not disabled under IDEA and does not have a specific learning disability.

181. The Student's report card for the 2017-2018 school year indicates the following in the identified areas for quarters one through four:

- reading: below grade level quarters one through three, on grade level quarter four;
- reading: comprehends texts: B, C, B, B;
- writing: communicates effectively: A, B, A, B;
- writing conventions: grammar, mechanics, spelling: B, C, B, C;
- writing: mechanics and spelling: B, B, C, B;
- mathematics: understands and applies computational skills: B, B, B, B;
- mathematics: applies mathematical concepts to problem solving: B, B, B, B;
- science: B, B, B, A; and
- social studies: B, C, B, A.

182. Every time the IEP team convened, the team was comprised of all required participants.

183. Neither the Student's TOF heart condition or any other physical or mental condition the Student has impacts his educational performance and/or ability to learn and benefit from the

184. general education curriculum and does not lead to the need for specialized instruction under IDEA.

185. The Student does not have a SLD or any other disability under IDEA.

## DISCUSSION

### The Legal Framework

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01. 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.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

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) and the applicable federal regulations. The statute provides as follows:

#### **(A) In General**

The term “child with a disability” means 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.

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).

Local education agencies are mandated under IDEA Child Find provisions to ensure that “[a]ll children with disabilities residing in the State . . . and who are in need of special education and related services are identified, located, and evaluated . . . .” 20 U.S.C.A. § 1412(a)(3); 34 C.F.R. § 300.111(a)(1)(i). Locating children in need of special education and related services

may occur as a result of various circumstances. For instance, a student's teacher may observe that a child's academic performance continuously falls below grade level or that the student's behaviors are consistently unusual or unexpected. Similarly, a parent may suspect that a student has a disability based upon the child's academic or behavioral performance at home or notice the student's grades have significantly decreased without explanation.

A request for an initial evaluation may be initiated by either the parent of a child or by the public agency. 34 C.F.R. § 300.301(b). Once the public agency receives parental consent for evaluation, the public agency must conduct the evaluation within sixty days. As applicable to this matter, "assessment" is "the process of collecting data in accordance with Regulation .05 of this chapter, to be used by the IEP team to determine a student's need for special education and related services." COMAR 13A.05.01.03B(3).

Under section 300.301 of the federal regulations, before a local education agency may begin providing special education services to a child with a disability, it "must conduct a full and individual initial evaluation" to establish whether a disability exists and the nature of the suspected disability. 34 C.F.R. § 300.301; *see also* 20 U.S.C.A. § 1414(a)(1)(A). Once the local education agency determines that it is appropriate to evaluate a student, it must use:

- (2) A variety of assessment tools and strategies . . . to gather sufficient relevant functional, cognitive, developmental, behavioral, academic, and physical information, and information provided by the parent to enable [an] IEP team to determine:
  - (a) If the student is a student with a disability;
  - (b) The student's educational needs;
  - (c) The content of a student's IEP, including information related to enabling the student to be involved in and progress in the general curriculum . . . ; and
  - (d) Each special education and related service needed by a student, regardless of whether the need is commonly linked to the student's disability.

COMAR 13A.05.01.05B(2). Upon conclusion of the assessments, the local education agency must provide the student's parent(s) with a written report of the procedures and assessments it used to determine whether the student has a disability and the "[i]nstructional implications for the student's participation in the general curriculum." COMAR 13A.05.01.05D. Furthermore, once the local education agency has conducted the appropriate and relevant assessments and identified a student as eligible for special education and related services, an IEP team must convene and develop an IEP designed to address the student's identified disability, including goals and objectives and services and accommodations designed for the student to make meaningful educational progress.

The IEP is the tool for providing necessary services to the disabled child. 20 U.S.C.A. § 1414(d). Congress instructed each public school system to review such a child's IEP periodically to determine whether the annual goals for the child are being "achieved" and to revise the IEP as appropriate to address:

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

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

The substantive requirements of the IDEA mandate, as stated above, that state and local education agencies make a FAPE available to children with disabilities. 20 U.S.C.A. § 1412(a)(1). As the Supreme Court detailed in *Hendrick Hudson District Board of Education v. Rowley*, because special education and related services must meet the state's educational standards, 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; generally, to pass from grade-to-grade on grade level. 458 U.S. 176, 204 (1982); *see also* 20 U.S.C.A. § 1401(9). The Supreme

Court further refined the meaning of a FAPE in a recent case, 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. *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017).

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

Throughout the process of identifying a student as a child with a disability and establishing the appropriate individualized educational content for the student, parents are entitled to certain mandatory procedural protections related to the identification of the student as a child with a disability, the establishment of the individualized educational content reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances, and notice of the parents' right to appeal any determination of the IEP team with which they disagree. 20 U.S.C.A. § 1415. Additionally, every time the student's IEP team meets, the local education agency is required to provide the parents with "prior written notice," which essentially means the local education agency must provide in writing what was discussed during the IEP team meeting and any conclusions made and proposed actions with regard to the student's educational program. *Id.*

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, in this matter the Parents have the burden of proving AACPS should have identified the Student with a disability under IDEA.

Specific learning disability (SLD) is one of the 13 categories of disability recognized by the IDEA. 20 U.S.C.A. § 1401(3)(A)(i) and (30); 34 C.F.R. pt. 300. SLD is the only disability category for which the IDEA establishes special evaluation procedures in addition to the general evaluation procedures that are used for all students with disabilities.

In order to assist IEP teams with evaluation of students, the Maryland State Department of Education issued a Technical Assistance Bulletin to provide a brief overview of the relevant evaluation procedures, as well as illustrative examples of academic difficulties that may form the basis of a SLD determination if a student meets all other criteria under the IDEA and requires the provision of specially designed instruction. The parties are familiar with the Technical Assistant Bulletin and requested that I review it. The following are the relevant excerpts from the Technical Assistance Bulletin issued November 7, 2016:

By definition, specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, consistent with Maryland State Department of Education (MSDE) criteria. A full explanation of the criteria to be used for a SLD determination is contained in *A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework* (June 2008). SLD includes, but is not limited to, conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Given that this is not an exhaustive list, other conditions may also form the basis for a SLD determination if all other criteria under the IDEA are met and the student requires the provision of specially designed instruction. With regard to one item that is on the list, brain injury, please note that "traumatic brain injury" is a distinct disability category under the IDEA. Lastly, the definition of SLD does not include learning problems, which are primarily the result of visual, hearing, or motor impairments, intellectual disability, emotional disability, or environmental, cultural, or economic disadvantage.

*Authority:* 34 CFR § 300.8; COMAR 13A.05.01.03B(73).

The IEP team determines whether a student has a SLD by completing the evaluation process and carefully considering the eligibility criteria under the IDEA, with input from all members of the team. As is the case with any other disability determination, the IEP team consists of various school personnel, the student's parent or guardian, and, as appropriate, the student. When compiling the members of the IEP team, it is important to consider the areas of suspected disability so the team is knowledgeable about the student's needs. Certain qualified professionals are expressly required in order for the IEP team to make a SLD determination. For the purposes of a SLD determination, the IEP team must include:

- 1) the student's general education teacher;
- 2) if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of that age; or
- 3) for a child of less than school age, an individual qualified by the MSDE to teach a child of that age. In addition, the IEP team must include at least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, or reading teacher. The same person may conduct multiple diagnostics, provided he or she is qualified to conduct each. *Authority:* 34 CFR § 300.308; COMAR 13A.05.01.06D(7).

The IEP team may determine that a student has a SLD if the student does not achieve adequately for the student's age or meet State-approved grade level standards when provided with learning experiences appropriate for the student's age and ability levels in one or more of the following areas:

- 1) oral expression;
- 2) listening comprehension;
- 3) basic reading skills;
- 4) reading fluency skills;
- 5) reading comprehension;
- 6) written expression;
- 7) mathematics calculation; or
- 8) mathematics problem solving.

In short, the IEP team is looking for inadequate achievement, despite appropriate instruction, in listening, speaking, reading, writing, and math.

*Authority:* 34 CFR § 300.309; COMAR 13A.05.01.06D(2)(a).

Maryland has adopted two processes through which an IEP team can determine that a student's achievement is inadequate and forms the basis for a SLD. The IEP team may consider evaluative data and appropriate assessments to determine whether the student:

- 1) does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the 8 academic areas when using a process based on the student's response to evidence-based intervention; or

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

The IDEA allows for alternative research-based procedures to identify a SLD, but the MSDE has not identified any such alternatives at this time. Thus, response to intervention (RTI) or a pattern of strengths and weaknesses are the two options that are available in Maryland.

The IEP team may, in conjunction with one of the two options above, also look for a severe discrepancy between intellectual ability and achievement. Severe discrepancy became disfavored during adoption of the 2004 IDEA amendments, in part because it delays intervention until a student's achievement is sufficiently low for a discrepancy to be identified, unlike RTI, which is actively linked to instruction. While a local school system (LSS) may not be required to use a severe discrepancy, it remains available, and may be useful for identifying gifted (twice exceptional) students and/or older students with a SLD.

A fuller explanation of the processes above and how they fit into an integrated tiered system of supports is contained in *A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework* (June 2008). *Authority*: 34 CFR § 300.307; 34 CFR § 300.309; COMAR 13A.05.01.06D(1); COMAR 13A.05.01.06D(3).

The IEP team is required to consider both:

- 1) data demonstrating that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and
- 2) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, that was provided to the student's parent. In other words, the IEP team must review the student's general education record with regard to both instruction and assessment in the areas of reading, math, and written expression.

One important consideration when evaluating data is that a timely evaluation must not be delayed or denied on the basis that a LSS is implementing a RTI strategy. Additional guidance on this topic is contained in *Memorandum 11-07*, issued by the United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS). *Authority*: 34 CFR § 300.309; COMAR 13A.05.01.06D(4).

The IEP team must ensure that the student has been observed in the student's learning environment (including the general education classroom setting) to document academic performance and behavior in the areas of difficulty. The IEP team may:

- 1) use information from an observation *before* the student was referred for an evaluation; or
- 2) have at least one member of the IEP team, other than the student's general education teacher, conduct an observation *after* the referral was made.



In the case of a child of less than school age or out of school, an IEP team member must observe the child in an environment appropriate for a child of that age. *Authority:* 34 CFR § 300.310; COMAR 13A.05.01.05B(5).

The IEP team shall not determine a student has a SLD if the student's lack of achievement is primarily the result of:

- 1) a visual, hearing, or motor impairment;
- 2) intellectual disability;
- 3) emotional disability;
- 4) cultural factors;
- 5) environmental, cultural, or economic disadvantage; or
- 6) limited English proficiency.

While the first three items in this list may indicate eligibility under a disability category other than SLD, the IEP team must be particularly careful when considering the last three items. Failure to distinguish a disability from other factors that may impact a student's achievement can lead to inappropriate over identification by race and ethnicity, and may result in a finding of disproportionality under 34 CFR § 300.646. *Authority:* 34 CFR §300.309; COMAR 13A.05.01.06D(2)(b).

When a student is suspected of having a SLD, the IEP team must prepare a written report that includes:

- 1) A statement of whether the student has a SLD;
- 2) The basis for making the determination;
- 3) The relevant behaviors, if any, noted during the observation of the student;
- 4) The relationship of the behaviors to the student's academic functioning;
- 5) The educationally relevant medical findings, if any;
- 6) The determination of the IEP team concerning the effects of visual, hearing, or motor disability, intellectual disability, emotional disability, cultural factors, environmental or economic disadvantage, or limited English proficiency on the student's achievement level; and
- 7) The written certification of each IEP team member as to whether the written report reflects the member's conclusion. If the written report does not reflect an IEP team member's conclusion, the team member must submit a separate statement presenting the team member's conclusions. If the student participated in a process to assess the student's response to evidence-based intervention, the written report must also include:

- 1) The instructional strategies used and the student-centered data collected;
- 2) Documentation that the student's parents were notified of the MSDE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
- 3) Strategies for increasing the student's rate of learning; and
- 4) The parents' right to request an evaluation. *Authority:* 34 CFR § 300.311; COMAR 13A.05.01.06D(5) & (6).

The IEP team must determine what special education and related services, supplementary aids and services, modifications, and accommodations are appropriate based on the individual student's needs. A SLD, regardless of the underlying condition (e.g. perceptual disability, brain injury, minimal brain dysfunction, dyslexia, or developmental aphasia), may manifest itself in a number of ways, with varying degrees of severity. Therefore, the IEP team must rely upon multiple sources of information and data, and plan for specially designed instruction that targets the identified needs of the student. A determination that a student fits into a particular disability category – SLD or otherwise – does not dictate a particular placement, nor does it guarantee a particular set of services. No single measure or assessment can be used as the sole criterion for determining an appropriate educational program for a student. *Authority:* 34 CFR § 300.304; COMAR 13A.05.01.05B(3).

### *The Contentions of the Parties*

The Parents' attorneys filed a comprehensive multi-page complaint on behalf of the Student and the Parents. The Parents complained and subsequently argued that AACPS's decision not to find the Student eligible for special education services under IDEA as a student with a SLD is not supported by the Student's academic and background information. The Parents argue the Student has a SLD under IDEA as a result of the number of words per minute the Student reads.<sup>6</sup> Additionally, the Parents maintain the Student has not made sufficient progress to meet age or State standards in reading fluency, even though he's been provided three and a half years of a research-based intervention, separate from what he was receiving in his regular class for reading.

AACPS argued the Student is not disabled under IDEA and is not a Student with a SLD. The Student was born in [REDACTED] and was assessed there when he was seven years old and in the second grade. In [REDACTED] the Student was deemed to be a child with a learning disability. The Student was adopted by his Parents in December 2014 and shortly thereafter brought to the United States where he enrolled in the second grade in AACPS. When the Student was adopted,

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<sup>6</sup> The Parents essentially argued the Student should be found eligible for special education services under the IDEA as a student with a specific learning disability regarding reading fluency. Although additional reasons were raised in the Complaint, the Parents' evidence focused exclusively on reading fluency. The other reasons will not be addressed.

he did not speak English. Additionally, the Student underwent heart surgery in June of 2015 and was diagnosed with Tourette Disorder in September of 2015. The Student displays tics from his Tourette's, include throat clearing, shoulder shrugs, and a head jerk.

After the Student recovered from his heart surgery he entered school as a third grade student where he was provided limited reading intervention services in order to address his reading deficits. His language scores improved in some respects as he made progress with his overall reading skills. The deficit between the Student's ability to understand oral language and his ability to read has been consistent throughout his last four years in AACPS.

The Parents took the Student to his developmental pediatrician who diagnosed him with ADHD, inattentive type. This information was provided to the school, and the Parents requested the Student be determined eligible for special education services. Also, at that time the Parents secured a private neuropsychological assessment for the Student at [REDACTED] Hospital from Dr. [REDACTED]. Dr. [REDACTED] found the Student's scores to be similar to the IQ scores and deficits relayed to the Parents from the Student's examination in [REDACTED] and concluded that the Student has weaknesses in executive functioning and short-term visual recall, affecting his ability to acquire skills. Dr. [REDACTED] diagnosed the Student with SLD in reading and math, as well as diagnosed him as having ADHD, inattentive type and recommended special education services.

The Parents shared Dr. [REDACTED]'s assessment with AACPS in order that the IEP team could review the assessment results. When the IEP team reviewed the assessment results, the school-based members of the team agreed with the ADHD diagnosis but did not accept the learning disability as a diagnosis, because they believed the Student's scores were the result of his inability to speak and understand English.

After reviewing all of the evidence in this case, I must conclude the Student is not disabled under IDEA and it is not appropriate to identify him as a student with SLD. I have assessed each witness and explained below why I have determined the IEP team was correct in determining the Student does not have a SLD under IDEA.

*Mrs.* [REDACTED] *Dr.* [REDACTED] *Dr.* [REDACTED] *Dr.* [REDACTED]

The Student's mother is very knowledgeable about all aspects of her son's health and education. Additionally, it is overwhelmingly clear that the Parents love their son very much and simply want him to be able to maximize his potential. Mrs. [REDACTED] was very clear in her testimony regarding many of the Student's deficits and how she perceives they impact his ability to progress in the general curriculum. Despite her appropriate passion and understandable zeal to want the Student to receive special education services under IDEA, the Student simply does not require it. Even after considering the Parents' experts, I am convinced the Student's fluency rate is not slow because he has a SLD.

[REDACTED] Ph.D., School Psychologist, received as an expert in school psychology, psychoeducational assessments, as well as clinical psychology, conducted the Psychological assessment of the Student's cognitive abilities. In assessing the Student's skills, strengths, and weaknesses, Dr. [REDACTED] performed record reviews, observations of the Student, and consulted with multiple staff members that worked with the Student. Dr. [REDACTED] met with the Student multiple times and observed him multiple times. She also consulted with [REDACTED] [REDACTED] the school psychologist who participated in the IEP team meeting on October 12, 2017.

I did not detect any bias in Dr. [REDACTED] or any of the witnesses presented by AACPS. Dr. [REDACTED]'s testimony was supported by reliable data and anecdotal information and highlighted the Student's strengths and weaknesses. Dr. [REDACTED]'s testimony indicated no predisposition to

render an opinion favorable to AACPS. For these reasons, I have placed considerable weight upon Dr. [REDACTED]'s testimony.

Dr. [REDACTED] testified based on academic progress noted from the Fountas and Pinnell reading levels, County-wide benchmark scores, Qualitative Readiness Inventory (QRI) levels, and teacher input; the Student made progress in all areas of academics, reading, writing, math, science, and social studies. The evidence received in this case supports her testimony, and it is very clear that she understands the Student's strengths and weaknesses. When Dr. [REDACTED] would make assertions about the Student's strengths and weaknesses during her testimony, those assertions were supported by independent data. For example, Dr. [REDACTED] testified the Student's processing speed was weak, and for that reason, she recommended he be given extra time to process information and execute tasks. She opined the Student would benefit from this accommodation because his processing speed falls below his same-aged peers, but his general ability as indicated by the General Ability Index (GAI) score (assessment designed to measure general intellectual ability of a Student without undue reliance on how fast a child processes information) indicated that he has the necessary basic skills but needs extra time in order to demonstrate the skills that he has. Her opinion is supported by the Student's results on the formalized assessment, which indicate the Student's scores fell within the high average range. Another example would be when Dr. [REDACTED] discussed the Student's non-verbal reasoning skills. She opined, based on the results of her assessments, that non-verbal reasoning skills and novel problem solving skills are strengths for the Student because when the Student is presented with a problem situation, i.e. something that he can independently figure out, he finds ways to navigate the problem. She testified the Student has the ability to look at those problems from multiple angles. In short, Dr. [REDACTED]'s testimony indicated that when she made assertions about

the Student, those assertions could be corroborated with data that could actually be assessed and documented.

Dr. [REDACTED]'s testimony regarding her observation of the Student in class was particularly compelling. She testified the classroom observations helped indicate the Student has some of the basic skills necessary to perform tasks, but that he needed extra time in those settings. Additionally, she testified that the Student should be provided additional opportunities for repetition and rehearsal to improve his ability to retain and recall new information and would likely benefit from brain breaks and breaking down longer passages of information into smaller chunks so that he does not become mentally fatigued from his own processing efforts. She also indicated that adults working with the Student should make efforts to understand the impact of his loss of first language as that can affect different rates of linguistic, social, and educational progress, as demonstrated by the data collected on the assessments. Dr. [REDACTED] observed the Student without any obstructions, assessed the Student, and has credible bases for explaining the IEP team's decision for not finding the Student disabled under IDEA with a SLD.

Dr. [REDACTED] was at the eligibility meeting on April 26, 2018 and submitted her report of the assessment results of the psychological assessment. She testified that the team met and considered whether the Student has a SLD. Dr. [REDACTED]'s testimony comports with the law as outlined in the MSDE Technical Assistance Bulletin, which indicates what an IEP team should consider and what it should document when making a determination regarding whether a student has a SLD. Dr. [REDACTED] testified as follows:

So a specific learning disability is a disorder in one or more basic psychological processes involving the use of language spoken. It might manifest itself in imperfect ability to read, write, think, speak, spell, do mathematical calculations according to MSDE criteria. The State of Maryland has two processes by which they determine that a student's achievement is inadequate. One of those ways is by determining if the student exhibits a pattern of strengths and weaknesses in performance, achievement or both. The second process that an IEP team can use

is whether or not the student is making sufficient progress in response to intervention and instruction. So it's up to the IEP team to determine which of those processes is most relevant to that individual student. So that's kind of the first prong of it. The second prong of it is then if the student is determined to have a disability, the team needs to indicate the educational impact of that disability. So the severity of the impact if they do present with a disability, do they require specially designed instruction in order to support their needs in the educational setting.

(Tr., at 1110).

Dr. [REDACTED] understands the process for determining what should be considered when considering whether a Student has a SLD under IDEA. Because she understands the IDEA requirements, I gave great weight to her testimony regarding the reading interventions and exclusionary factors that an IEP team should consider when making the determination. She testified that the Student made progress with instruction and intervention and the IEP team considered those factors as well as grades, data provided on the QRI benchmarks, and the Student's scores on the World Class Instructional Design and Assessment (WIDA). The data collected supports Dr. [REDACTED]'s testimony that the Student is demonstrating that he is responding well to the instruction that he has been given and the interventions and supports that are currently in place for him are working. She further opined that the Student's pattern of weaknesses is not skill deficits for which he requires specially designed instruction in order to teach those skills. The Student receives interventions for reading but does not receive specialized instruction. The teachers who are providing the interventions are not modifying it for the Student and are implementing it with fidelity (i.e. fidelity of implementation occurs when teachers use the instructional strategies and deliver the content of the curriculums in the same way that they were designed to be used and delivered). Dr. [REDACTED] testified that based on the Student's progress with interventions, the Student's difficulties can be supported with different interventions that aren't specialized or individualized—he can essentially benefit from certain

supports that other students may also benefit from. The Student is making progress without the use or need for specialized instruction.

Dr. [REDACTED] further testified that even though the Student is English dominant, he is still building his English proficiency skills, and he has not spent that much time in an American school, which impacts his reading skills. She testified the Student has missed a lot of additional practice opportunities that other students who have consistently attended school since kindergarten have had. So for the Student, the rate of growth needs to be taken into consideration. Dr. [REDACTED] is correct that in the short amount of time the Student has been in America and in the AACPS, the Student has actually made significant progress compared to what would be expected for a student who missed a lot of primary instruction. Moreover, the evaluative data indicates the Student is acquiring more academic knowledge, building more of his verbal cognitive abilities, and closing the gap. The Student's limited English proficiency was taken into consideration by the IEP team because of it being an exclusionary factor, but the team also took into consideration the Student is making progress with traditional teaching and interventions.

In contrast with Dr. [REDACTED]'s testimony, I considered the testimony of Dr. [REDACTED] [REDACTED] Psychologist. I did not give Dr. [REDACTED]'s testimony the same weight as Dr. [REDACTED] Dr. [REDACTED] was received as an expert in psychological testing and treatment relative to children with cardiac conditions. In February 2017, Dr. [REDACTED] conducted an evaluation of the Student to provide information regarding the Student's cognitive abilities, academic achievement capabilities, executive functioning, and social-emotional functioning and to provide recommendations for any treatments. When Dr. [REDACTED] assessed the Student, the Student's language level was mixed dominant.



On April 6, 2017, the IEP team convened, including the Parents, and reviewed the results of the neuropsychological evaluation conducted by Dr. [REDACTED]. Some of the reasons I did not give Dr. [REDACTED]'s testimony the same amount of weight as I gave Dr. [REDACTED], are as follows. Dr. [REDACTED] a clinical psychologist, did not perform a classroom observation of the Student. This may be correct practice as a clinical psychologist and I do not suggest otherwise. In fact, there is no dispute a SLD can be a clinical diagnosis under the DSM-5 as well as the ICD-10 (International Classification of Diseases, Tenth Revision). The DSM-5 considers SLD to be a type of disorder that is a biologically based, neurodevelopmental disorder that affects a person's ability to take in, process, and/or communicate information. These abnormalities in the brain's ability to accurately and efficiently perceive and process information result in difficulties in learning foundational academic skills, such as reading accuracy, fluency, and comprehension; spelling and written expression; and arithmetic calculation and mathematical reasoning. I am mindful that the DSM-5 is a medical diagnostic manual and the ICD-10 is a clinical cataloging system for noting disorders and diseases and their signs and symptoms. With regard to whether the Student has a SLD under IDEA, I have looked to the IDEA and State and federal guidance, including guidance provided by MSDE. Under IDEA, as indicated in the MSDE Technical Assistance Bulletin, a classroom observation is required under the law when making an educational determination regarding a SLD under IDEA. As Dr. [REDACTED] opined, an observation provides the opportunity for developing a whole picture of the Student and how the Student performs and whether or not the deficits the Student exhibits are impacting the Student. Moreover, Dr. [REDACTED] indicated in his testimony that he based his diagnosis of a SLD on the Student's history, data from tests, and parental information. Based on Dr. [REDACTED]'s report, she observed the Student, talked with his teachers, reviewed parental information, and spent a significant amount of time with the Student. Dr. [REDACTED] opined that even as a clinical

psychologist, it is just best practice to be able to observe the student in multiple settings and to be able to formulate hypotheses about how the student is performing and whether or not that data is supported in different contexts. Her assessment is more comprehensive than Dr. [REDACTED] s.

Dr. [REDACTED] also testified that the Student is functioning far below others his age with respect to his cognitive abilities. Dr. [REDACTED] agreed that in terms of his processing speed, he is indeed functioning below his peers. But as Dr. [REDACTED] testified, with the General Ability Index, that essentially indicates that when we remove some of that cognitive proficiency piece, the Student is capable of performing the skills at the same level of same-age peers, even a little bit better. Additionally, Dr. [REDACTED] indicated the Student has executive functioning skills needs. After a full battery of tests given by Dr. [REDACTED] the data did not support the Student has executive functioning skills needs. In fact, the most recent assessment results indicate the Student's executive functioning skills generally fell at age-expected levels.

I do agree with Dr. [REDACTED] s acknowledgment that the WISC-R, which he partially relied on, was outdated when the Student was assessed by that testing instrument with regard to his cognitive abilities. Specifically, the WISC-R has been outdated since at least 1980. Dr. [REDACTED] agreed that much more emphasis should be placed on the more current and valid assessments. The evidence in this case indicates the Student is not processing at the speed of his same age peers. As a result, the accommodation of extended time supplies him the additional processing time that he needs to demonstrate the skills that he has. Dr. [REDACTED] opined:

The Student utilizes all of his extended time. An example of this could be when we think of a chess player, for instance. A chess player may look like they're not doing anything at the time that they're playing, they might be taking an extended amount of time to figure out their move . . . but for a good chess player, there is multiple things that they are processing in several different layers and very complex ways, and that is sort of a similar way of comparing [the Student]. He is scanning everything, he is taking the skills that he's learned into consideration, he's trying to pull from context, he's trying to develop his own strategies, so there

are several different things that happen within that extended time that are beneficial for [the Student].

(Tr., at 1144).

A review of the Student's 504 Plan indicates he receives the type of accommodations Dr. [REDACTED] recommended. Dr. [REDACTED] agreed that these are the type of accommodations the Student requires.<sup>7</sup>

The Parents' witnesses and AACPS witnesses talked about the Student's fluency reading skills. Three interdependent but distinct elements characterize fluency reading: accuracy, rate, and prosody. Accuracy relates to the ability to decode words in text (not in isolation) without error. Rate refers to the ability to automatically decode words. Rate can also be characterized by age-appropriate chunking strategies and a repertoire of "sight" words. Prosody is the use of appropriate phrasing and expression and is believed to be an important factor in comprehension. Essentially, a fluent reader moves beyond simple decoding to automatically recognizing words, interpreting text, and retaining the details of what has been read. Essentially, success in all three areas is needed to proceed to good comprehension. Fluency can vary, depending on the type of text (narrative, expository, etc.), familiarity with the vocabulary, background knowledge of the subject, the number of sight words, and the amount of practice the reader has had with a particular text or type of text. The development of fluency comes from many successful opportunities to practice reading.

In assessing the Student's cognitive processing and how it affects his reading skills, I also found the Parents' witness, [REDACTED] Ph.D., received as an expert in speech-language pathology, language development, and disorders in internationally adopted children, to be helpful in determining whether the Student has a SLD. Dr. [REDACTED] never met the Student, never

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<sup>7</sup> Nothing about the 504 Plan is an issue in this case. References to the 504 Plan in this case are mentioned to identify the accommodations and interventions only.

observed him, never evaluated the Student, and never attended any IEP team meetings or spoke with the Student's teachers or staff who were instrumental in assessing the Student or who could give information regarding his strengths and weakness and academic performance. However, I still found Dr. [REDACTED]'s testimony helpful.

Dr. [REDACTED] presented as being extremely knowledgeable regarding the needs of internationally adopted children. Dr. [REDACTED] testified that she agrees the Student's reading fluency was lower than what was expected for his age, lower than his above average abilities, and lower than some of the progress he has made in other areas of his reading skills. She acknowledged the Student has made progress with his reading and writing skills. She also acknowledged she did not know where the Student was functioning when he came to America at nine years old.

Dr. [REDACTED] opined the Student's reading difficulties are a result of poor processing speed. She believes the Student has a SLD and recommended the Student receive repeated readings as a form of specialized instruction to address fluency. Dr. [REDACTED] acknowledged that when the Student was considered to be mixed dominant in language, it impacted his academic performance. She acknowledged that limited exposure to language and academic enrichment would impact the Student's functioning and academic abilities. She also acknowledged the Student has strong accuracy comprehension skills. Dr. [REDACTED] also agreed with the recommendations of Dr. [REDACTED] including that the Student requires interventions and accommodations. For reasons stated throughout the decision, I do not agree with Dr. [REDACTED] that the student requires specialized instruction. The type of intervention and strategies the Student requires can continue to be provided through reading interventions and accommodations and interventions on his 504 Plan. Dr. [REDACTED] acknowledged the Student was mixed language dominant during the 2016-2017 school year, the year in which Dr. [REDACTED] conducted his

evaluation. She indicated that mixed dominant meant that both languages (Mandarin and English) are still fairly strong. She acknowledged that being mixed dominant impacted academics and that the limited exposure to language and academic enrichment would impact the Student's functioning abilities. She also indicated, and the evidence confirms, the Student has strong accuracy comprehension with regard to reading. She acknowledged that the Student had made progress and reading accuracy, and comprehensions are areas of strength for the Student. She also agreed that the WIDA scores demonstrated the Student's progresses well. Dr. [REDACTED] also agreed with Dr. [REDACTED]'s recommendations. She testified that reading interventions and accommodations are warranted for the Student, which is exactly what he is getting in terms of extended time and the small groups.

As indicated above, a student qualifies for special education services under the SLD category if they meet two basic criteria, i.e., the student does not achieve adequately for the student's age or fails to meet State-approved grade level standards in one or more of the eight listed areas when provided with learning experiences and instruction appropriate for the student's age or State-approved grade level standards. In this case, the Student's reading rate is nineteen to twenty-four words per minute, which is below the grade level standard of one-hundred forty to one-hundred eighty. Essentially, the Student demonstrates a pattern of poor fluency scores because of his rate and processing speed. However, the data irrefutably shows in terms of fluency, the Student's overall accuracy and comprehension is good. Processing ability affects reading rate, which is why the Student benefits from accommodations and interventions.

[REDACTED]  
[REDACTED] English Language Acquisition teacher specialist, was received as an expert in the teaching of Kindergarten through grade twelve children, English as a second language, and limited English proficiency. Ms. [REDACTED] first met the Student in January

2018. Ms. [REDACTED] came to [REDACTED] Elementary School to administer the Access for ELL assessment, the assessment used to assist English language proficiency yearly. She was present over the course of five or six days, and the Student was in her testing group every single one of those days. She also participated in the IEP team meetings and reviewed the Student's ESOL records. Ms. [REDACTED] was most helpful in explaining the Student's WIDA Access Scores. She explained that when students receive WIDA Access scores, they get a score between one and six. An English language proficiency level of one indicates a beginning level English language proficiency, i.e., when students are just beginning to understand and use the English language. Once students reach a proficiency level of six, that indicates that the student is approaching native-like English language proficiency. Ms. [REDACTED] explained the State sets the criteria for when a student may exit the ESOL program. A student may exit the ESOL program once they have obtained an overall score of 4.5 or are reclassified.

Ms. [REDACTED] explained how the Student's initial scores on the WIDA Access for ELL test were converted to determine his proficiency levels. For example, she testified and explained that on the WIDA test for 2015-2016 on listening and reading, the Student was not able to respond to any of the items on a listening test or any other items on the reading test. So, the Student received a raw score of zero on each of those tests, which then gave him a proficiency level of one for each of those subtests.

A great deal of time during the hearing focused on the Student's WIDA scores, and I found Ms. [REDACTED]'s testimony helpful in understanding the significance of the scores and what they mean in context of determining the emphasis they should be given in ascertaining whether the Student requires special education services under IDEA.

Ms. [REDACTED] opined that English learners:

Develop listening and their speaking skills prior to their reading and writing skills. Typically you find that listening is acquired the fastest. And then their

speaking skills followed by reading and then writing. But, that being said, not all English learners are the same and language learning is not a linear process so it's not that it will look the same for everyone or every child.

(Tr., at 982).

Ms. [REDACTED]'s testimony was compelling and assisted me in understanding why the IEP team could find the Student does not have a SLD. She emphasized that when the Student came to America, he did not have foundational English skills. Moreover, he did not have literacy skills in English or Mandarin. So, in terms of English language development and reading fluency, the evidence indicates these are all phenomena that would impact his English language development and reading skills. Ms. [REDACTED] again emphasized the Student came to America at age nine and had to learn oral language and literacy skills and content knowledge—all in English, all at the same time—and learn how to adjust to culture in America, including adjusting to American schools and understanding how they work. And yet, despite all of this, the Student was able to make significant progress in English language proficiency, moving from a 1 to a 5.5 over the course of four years. This English language development is also allowing the Student to make gains in his reading, even though he is a slow reader. The evidence simply does not indicate the Student is a slow reader because he is disabled.

Ms. [REDACTED] discussed the Student's WIDA scores as well as his scores on Fountas and Pinnell. She acknowledged the WIDA Access scores do not directly correlate to the Fountas and Pinnell scores. However, she testified that based on his progress in Fountas and Pinnell, it further confirmed the Student was progressing with English skills. I find her credible because the data from the Fountas and Pinnell Assessments confirm the Student made significant progress from the time he came to America through his fifth grade year, actually making two and a half year's worth of growth from the end of his fourth grade year to the end of his fifth grade

year. She also emphasized that, generally, speaking and listening skills develop before reading and writing skills, but the Student had to learn all of these skills simultaneously.

With regard to the Student's fluency reading rate, Ms. [REDACTED] opined it's typical for English language learners to have slower processing time than their native English speaking peers. She further opined this occurs because the Student is processing a new language and may be taking time to think through and find that definition of the word that they are reading. Essentially, the Student might be doing some translating in his head. Nevertheless, regardless of what the Student is using the processing time to do, it's best practice to provide the Student with additional wait time during instruction for these reasons. Ms. [REDACTED] agreed the Student is a very slow reader but comprehends what he is reading.

[REDACTED] [REDACTED] [REDACTED] special education teacher, received as an expert in special education, testified on behalf of AACPS. Ms. [REDACTED] observed the Student in March 2018 and conducted the educational assessment.

During her testimony, Ms. [REDACTED] explained the test instruments used to assess the Student's academic skills. She explained, and the data confirms, the Student scored in the average range regarding basic reading. With regard to reading fluency, Ms. [REDACTED] acknowledged the Student scored in the very low range. During her testimony she talked about the Student's sentence reading fluency and word reading fluency. These tests were timed. She testified the Student's answers were accurate but slow. His accuracy was within the average range. During her testimony, she discussed the fact that she and Dr. [REDACTED] administered some of the same tests on the Woodcock Johnson. With regard to letter/word recognition, reading fluency, math computation, and passage comprehension, the Student made significant improvements.



With regard to reading fluency, Ms. [REDACTED] explained the goal of reading fluency is to be able to comprehend material. She further opined that a student may be a slow reader but still able to comprehend. Ms. [REDACTED] presented as a very credible witness based upon her familiarity with the Student's needs and her experience with interpreting data. With regard to the Student's fluency I found the following exchange very compelling in terms of understanding why the Student reads slowly:

- Q. Where does reading fluency kick in? You, I think the term you used, learn to read versus read to learn. So when does that kick in in terms typically with elementary education, development for reading?
- A. **So typically even when you look at common core standards, there are some pre-fluency standards for kindergarten and first grade. Really at that second, third grade level is where students are focusing on fluency, and starting to make that transition in third grade from being able to learn to read to reading to learn. So they are really starting to focus more so on being able to understand what they've read.**
- Q. Okay. So if [the Student] did not have those kindergarten, first grade, until later, what does, would that impact him in terms of general progression?
- A. **I would expect the rate at which he was reading to be slower. It took him based on the, I think it was around 4<sup>th</sup> grade when he was at that 2nd grade reading level. so really at that point it's really difficult to work on fluency before a student has word recognition. So he had to build his word recognition first before fluency could be addressed. So for him, that should have been probably about 4th grade based on the data that's been presented.**

(Tr., at 1471).

Ms. [REDACTED] opined the Student has shown that he can improve his reading rate. She gave specific examples of how the Student was able to improve his reading rate given repetition. She specifically highlighted the Student's performance when reading the story *Grandma Nell*. The Student read the story on two separate dates, September 19 and September 21, 2017, and showed

significant improvement. She cited another example where the Student's rate improved from 94% to 99% accuracy when given the opportunity to read it again. This is important because it highlights that the Student's accommodations and interventions can assist him and has assisted him in improving his reading comprehension and fluency. Moreover, Ms. [REDACTED] noted that in terms of speed, the amount of time the Student needed to repeat a passage greatly decreased on the second reading compared to the first reading. She cited an example of a passage read at 29 words per minute. On the second reading, the Student read it at 66 words per minute. Ms. [REDACTED] testified about numerous examples where the Student showed improvement in comprehension, accuracy, and prosody.

Ms. [REDACTED] agrees with the IEP team's determination the Student does not have a SLD or any other disability under IDEA. She indicated her opinion is based on the data that was presented that the IEP team considered regarding the Student's academic performance, as well as formal assessment data that indicated the Student was performing on the benchmarks on Fountas and Pinnell, indicating he was making progress. She noted the 504 Plan was assisting the Student in making progress, and he has not demonstrated a need for specially designed instruction. Of further note, she also testified that there is no evidence of a SLD in math as the Student is making progress and has passing benchmark scores. All of Ms. [REDACTED]'s assertions are supported by the data the IEP team considered.

Principal [REDACTED] received as an expert in childhood education, elementary education, school administration, and middle school education, has known the Student since he enrolled in AACPS. She has seen him on a daily basis, has reviewed his progress, spoken with his teachers, attended meetings, and reviewed the records. Ms. [REDACTED]'s testimony further solidified that AACPS staff who were working with the Student fully grasped his academic skill levels, his need for accommodations, and the fact that when he came to AACPS as a nine year old child, he

was essentially akin to a child in kindergarten learning the English alphabet and the basic proverbial building blocks for English language.

██████████ and ██████████  
██████████ special education teacher, which AACPS received as an expert in special education, and ██████████ special education teacher, were subpoenaed by the Parents to provide testimony. These two teachers provided reading interventions for the Student. During the 2016-2017 school year, Ms. ██████████ implemented Leveled Literacy Intervention (LLI) for the Student when he was in the fourth grade. Through LLI, the teacher provided intervention that constituted daily, intensive, and small-group (four students, three of them receiving special education services under IDEA) instruction, which supplements classroom literacy teaching. Ms. ██████████ worked with the Student on his reading comprehension and reading fluency, including rate and accuracy skills. She worked with the Student in a small group for thirty minutes in and sometimes outside of the classroom. All of the students received the intervention in the same manner. Ms. ██████████ provided an example of the intervention as follows:

- A. **Okay. Again, you start with word work and you focus on this certain skill. It might be vowels, and you go through that. And then the next section -- there's different parts of this intervention. The next section is introducing a new book, and that is scripted in the manual, and you read what's in the manual, and you present the book, and the students are looking at the book. And they read quietly and you -- what -- it's called whisper reading, you go around, and you listen to them and you could make notes on -- there's -- or things you note. and then after that, it depends on the day, but then you might go into the comprehension questions of asking the students.**
- Q. And you do the same types of activities for all students within (inaudible) intervention?
- A. Yes.
- Q. You don't change this at all if a student has an IEP

or a student is gen-ed?

A. No.

(Tr., at 174). When the Student required assistance with reading in his math class, Ms.

██████████ provided intervention.

Ms. ██████████ initially provided reading interventions to the Student when he first came to

██████████ Elementary School. She described the interventions as follows:

Q. When you say intervention, the reading intervention?

A. Yes, a reading intervention.

Q. Okay. And he audited, what do you mean by audited.

A. **He sat and participated, but was not scored because they were significantly above where he was, so he participated in parts of it. That intervention was going over letters, the first 5 to 10 minutes was going over letters and sounds, and we thought it would be a great opportunity for him to have exposure to English letters and sounds, since he did not have that. He had just arrived in the country.**

(Tr., at 824).

Ms. ██████████ implemented LLI during the Student's fifth grade year from the beginning of the year to approximately October 2018. Ms. ██████████ testified, and the data supports, the Student no longer matched with the instruction level of the group he was working with that received LLI because he progressed on Fountas and Pinnell to such a degree that LLI was no longer necessary for this group. The Student was also in the class that she co-taught for reading, writing, and math. Ms. ██████████ testified the only time she assisted him in these classes was if he raised his hand and required general support. She would answer his question and provide the appropriate directive. She did this for all students in the class, the ones disabled under IDEA and the ones not disabled under IDEA.

From November to June 2018, the Student participated in a more advanced LLI intervention group taught by a general education aide. All the students in this group were students in general education.

Ms. [REDACTED] testified that reading intervention is taught by special education and general education teachers at [REDACTED] Elementary School. The Reading Specialist (Ms. [REDACTED]) and Principal [REDACTED] oversee the program. All the teachers deliver the instruction with fidelity (i.e. following the program guide and steps). The Student worked in LLI based on his instructional level and never received specialized instruction from a modified curriculum. Ms. [REDACTED] testified as follows:

Q. Okay. And reading intervention by Anne Arundel County is not special education, correct?

A. No.

Q. And why is it not in your understanding?

A. **Because you're not specializing the instruction. You are following the program to fidelity. So for specialized instruction, you're adapting the process or the methodology to meet their unique needs and the needs and supports that are identified in their IEP.**

(Tr., at 819).

Ms. [REDACTED] opined the reading interventions are only valid when implemented with fidelity and not modified. All the reading intervention teachers would implement the interventions in the same manner. Ms. [REDACTED] referenced the Student's progress on Fountas and Pinnell (AACPS 42), which indicates the Student's progress and notes the two and a half years of progress at the end of his fourth grade year. By the end of the 2017-2018 school year the Student's overall reading level was middle of fifth grade.

Ms. [REDACTED]'s testimony was very compelling as she emphasized that the IEP team, in determining the Student not disabled, was not simply looking at how many words per minute he

could read but were considering many factors, including his rate and his ability to access the general curriculum. She emphasized the Student is reading with accuracy and continues to improve in comprehension. She further emphasized the team considered his academic needs and determined those needs do not prevent him from accessing the curriculum.

She testified the Student receives the accommodations of repetition to assist him with reading. Repetition is not specially designed instruction. The Parents argued that the accommodations are specially designed instruction, and therefore evidence that the Student requires special education services under IDEA. She testified credibly that the Student was receiving reading interventions from the time he came to America because he had never been taught the English language.

In this case, the implementation of the type of accommodations and interventions to assist the Student is not specially designed instruction. IDEA defines special education as specially designed instruction, which “means adapting, as appropriate to the needs of an eligible child . . . the content, methodology, or delivery of instruction.” 34 C.F.R. § 300.39(b)(3). While this means that special education is different from general education, it also means that special education is something more than providing accommodations and/or assisting the Student with assignments. Although students eligible for special education may need some accommodations to access the general education environment, simply providing accommodations and/or academic support does not equate with specially designed instruction. The evidentiary record in this case is replete with overwhelming data that demonstrates the Student is accessing the general education curriculum without specially designed instruction or related services.

*Dr.* [REDACTED] *Dr.* [REDACTED]

[REDACTED] Ed.D., received as an expert in special education, testified on behalf of the Parents. While *Dr.* [REDACTED] presented as very sincere in her testimony, I did not give her

testimony a lot of weight with regard to proving the assertions made by the Parents and stating her opinion that she believes the Student has a SLD. Dr. [REDACTED] never observed the Student outside of her tutoring session, never spoke with the Student's teachers, and was not knowledgeable about the reading interventions the Student was receiving at school. Additionally, the only assessment she has done on the Student was an informal assessment conducted in October 2018, well after the IEP team's decision not to find the Student disabled under IDEA.

It is obvious that Dr. [REDACTED] cares for the Student deeply. Dr. [REDACTED] works with the Student in helping him improve his math and readings skills. She has tutored him an hour per week since September 2017. I found Dr. [REDACTED] credible with regard to her observations of the Student's reading skills because her observations in this manner are consistent with AACPS staff, i.e., the Student reads slowly and with what I observed when I watched the video of the Student reading. (Parents 34).

Dr. [REDACTED] testified that she uses reading interventions known as "Triumphs." This reading intervention is no longer used in AACPS. Additionally, Dr. [REDACTED] testified that she could only implement interventions for the Student if she utilized individualized instruction. This is inconsistent with the evidence. Moreover, she agreed that the Student benefits from extra time, organizers, reading passages into smaller more manageable chunks, and short phrasing. These are all accommodations and interventions the Student is receiving, and it is not specialized instruction. She also acknowledged the Student is making progress and that reading comprehension and accuracy are "strong" for the Student. Dr. [REDACTED] further acknowledged the Student has made progress in the general curriculum with the implementation of the accommodations and interventions. She further testified that she believed the Student required an IEP "so there will be documentation of the strategies were working." (Tr., at 913).

Dr. [REDACTED] testified that she has worked with children who were diagnosed as having autism. She claimed that after they worked with her, as she implemented strategies and interventions, she concluded the children did not have autism. Dr. [REDACTED] acknowledged that simply because someone believes a child is disabled under IDEA does not make it so and that successful implementation of interventions may indicate a child is not disabled under IDEA after all.

Dr. [REDACTED] was received as an expert in educational administration and in general education. Dr. [REDACTED] reviewed school documents about the Student and participated in an IEP meeting in October 12, 2017 when the IEP team determined the Student was not eligible for special education services under IDEA. Dr. [REDACTED] has never met the Student. Dr. [REDACTED] essentially testified the Student needs more accommodations and supports than can be provided in the general education environment. She believes the Student has SLD under IDEA. Dr. [REDACTED] reviewed the evaluative data collected on the Student, including samples from reading passages and assessments, and expressed concern that despite the reading interventions the Student receives, his fluency rate remained below expectation. Dr. [REDACTED] conceded the Student does well with comprehension but stressed, as did most of the Parents' witnesses, concerns for the Student's speed. Dr. [REDACTED] testified the IEP team "overlooked" the Student's needs regarding fluency. (Tr., at 724). Further, she maintained that her opinion that the Student has a SLD should be given deference even above the opinions of those who have observed the Student, worked with the Student, and assessed the Student. Based upon the evidence in this case, I do not agree with Dr. [REDACTED]'s assertion. The data submitted for the IEP team's consideration and review addresses the Student's fluency skills needs. Additionally, while Dr. [REDACTED] fixated on the provision of extended time as an intervention for the Student that, in her opinion, may not be sufficient, the evidentiary record



indicates the Student receives other interventions and accommodations that are listed on his 504 Plan. Based on the Student's overall progress, the evidence established that the interventions and accommodations are assisting the Student to progress in the general curriculum. I simply cannot conclude from the evidence in this case, as Dr. [REDACTED] wants me to, that the Student's fluency skills are not being adequately addressed. The evidence, including objective data results, indicate the Student's fluency and rate of speed are affected by his background knowledge. As his background knowledge increases, his reading skills increase. The data also indicates the Student's accuracy and comprehension continue to get closer to grade level.

After reviewing all of the evidence in this case, including all of the testimony presented by the numerous witnesses, I find the judgment of the AACPS educational professionals regarding the reasons the Student does not have a SLD under IDEA is supported by the evidence. Every time the IEP team met, the team was comprised of all the appropriate members, and the team documented the reasons it deemed the Student not eligible under IDEA. The evidence indicates the Student is not disabled under IDEA and does not require specialized instruction. For all of the reasons stated above, the judgment of the AACPS educational professionals is entitled to deference. *G. v. Ft. Bragg Dependent Sch.*, 343 F.3d 295, 307 (4th Cir. 2003); *M.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002).

#### **CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Parents have failed to establish that the Student has a SLD or any other disability under IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md. Code Ann., Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01.

**ORDER**

I **ORDER** that AACPS did not fail to timely identify, locate, and evaluate the Student for special education and related services under the IDEA. 20 U.S.C.A. § 1412(a)(3). As I find that AACPS did not commit any violations, the Parents are not entitled to any remedy.

Signature Appears on Original

December 14, 2018  
Date Decision Issued

Jefome Woods, II  
Administrative Law Judge

JW/cj  
#177266

**REVIEW RIGHTS**

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

Copies Mailed To:

[REDACTED]

[REDACTED]

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