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STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

\* BEFORE JENNIFER L. GRESOCK,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-MONT-OT-18-34695

\* \* \* \* \*

**DECISION**

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

**STATEMENT OF THE CASE**

On November 7, 2018, ██████ and ██████ (Parents<sup>1</sup>), on behalf of their child, ██████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).<sup>2</sup>

I held a telephone prehearing conference on December 11, 2018. The Parents were represented by Michael J. Eig, Esquire. Manisha S. Kavadi, Esquire, represented MCPS. By agreement of the parties, the hearing was scheduled for January 17, January 22, January 25, January 29, and January 30, 2019.

Due to inclement weather that resulted in changes to the hearing schedule, as well as agreement by the parties that additional days were needed to present their cases, I held the

<sup>1</sup> I refer to Ms. ██████ as Ms. ██████ throughout this decision to reduce the need for redaction.  
<sup>2</sup> U.S.C.A. is an abbreviation for United States Code Annotated.

hearing on January 17, January 22, January 25, January 29, February 11, February 15,<sup>3</sup> February 19, February 22, March 5, and March 7, 2019.<sup>4</sup> Mr. Eig and Paula Rosenstock, Esquire, represented the Parents. Ms. Kavadi represented MCPS.

The hearing dates requested by the parties fell more than forty-five days after the triggering events described in the federal regulations, which is the date my decision is due. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a), (c) (2018).<sup>5</sup> At the prehearing conference, the parties explained that they had decided on mutually agreeable dates based on their earliest availability. They also requested that I issue a decision on or before thirty days from the conclusion of the hearing. § 300.515(c); Md. Code Ann., Educ. § 8-413(h) (2018). Based on the request of the parties, and their detailed explanations of their availability, I found good cause to extend the timeframe for the hearing and the issuance of my decision. During the hearing, the parties agreed that more hearing dates were necessary, and they mutually proposed the additional dates based on their earliest availability. They agreed that this would extend the due date for my decision to April 5, 2019. Due to the additional evidence the parties wished to present, as well as delays caused by inclement weather, I found good cause to extend the timeframe accordingly.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2018); Md. Code Ann., Educ. § 8-413(e)(1) (2018); 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

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<sup>3</sup> On February 15, 2019, the Parents requested that the hearing be opened to the public. I granted that request, pursuant to 30 C.F.R. 300.512(c)(2). After that date, there were typically members of the public present during the hearing.

<sup>4</sup> Inclement weather resulted in the hearing concluding early on January 29, cancelled the hearing on January 30 and February 20, and delayed the start of the hearing on February 11, 2019.

<sup>5</sup> C.F.R. is an abbreviation for Code of Federal Regulations.

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

The issues are:

- (1) Whether the Individualized Education Program (IEP) and placement developed by MCPS is reasonably calculated to provide the Student with a free appropriate public education (FAPE) for the 2018 – 2019 school year?
- (2) Whether the Parents are entitled to the relief sought in the complaint or other appropriate relief?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- |      |  |
|------|--|
| P 1  | Request for Due Process, 11/06/18  |
| P 2  | Kindergarten Progress Report Card, 2014-2015   |
| P 3  | ██████████ Reading Intervention Plan, 9/28/15 [NOT ADMITTED]   |
| P 4  | Email to ██████████ from Ms. ██████ 11/19/15   |
| P 5  | MCPS Classroom Observation, 12/03/15 [NOT ADMITTED]  |
| P 6  | MCPS Teacher Referral, Educational History and Parent Interview/Questionnaire, 11/24/15 to 12/04/15                        |
| P 7  | MCPS IEP Meeting Notes, 12/17/15 [NOT ADMITTED]  |
| P 8  | MCPS Educational Management Team Summary, 4/20/16  |
| P 9  | MCPS First Grade Report Card through summer, 2015-2016 School Year   |
| P 10 | MCPS Educational Management Team Summary, 11/01/16   |
| P 11 | MCPS Educational Management Team Summary, 12/20/16   |
| P 12 | MCPS Parent Interview/Questionnaire and Report, 1/05/17  |
| P 13 | MCPS Classroom Observation, 1/13/17 [NOT ADMITTED]   |
| P 14 | MCPS IEP Meeting Documents, 1/24/17  |
| P 15 | Parent Report and IEP Meeting Response Form, 2/8/17  |
| P 16 | MCPS Teacher Referral, 2/25/17   |
| P 17 | MCPS Educational Assessment Report, 3/03/17  |
| P 18 | MCPS Report of School Psychologist, 3/08/17  |
| P 19 | MCPS Multidisciplinary Evaluation Report, Educational History and IEP Meeting Documents, 1/13/17 to 3/15/17 [NOT ADMITTED] |
| P 20 | MCPS IEP, 4/05/17  |
| P 21 | MCPS IEP Progress Report in Reading and Written Language, 6/16/17 [NOT ADMITTED]   |

- P 22 MCPS Second Grade Report Card through summer, 2016-2017 School Year
- P 23 Psychoeducational Evaluation by Dr. [REDACTED] September and October 2017
- P 24 Emails between Ms. [REDACTED] and [REDACTED] 10/14/17 to 10/27/17
- P 25 Emails between Ms. [REDACTED] and [REDACTED] 9/29/17 to 10/30/17
- P 26 Emails between parents and [REDACTED] enclosing Early Interventions in Reading, 10/30/17
- P 27 Emails between the Parents and [REDACTED] 10/31/17 to 11/07/17 [NOT ADMITTED]
- P 28 Emails between Ms. [REDACTED] and [REDACTED] 11/01/17 and 11/07/17
- P 29 Emails between Ms. [REDACTED] and [REDACTED] 11/08/17 to 11/09/17 [NOT ADMITTED]
- P 30 MCPS Quarter 1 Report Card with addendum [NOT ADMITTED]
- P 31 Emails between Ms. [REDACTED] and [REDACTED] 11/13/17 and 11/14/17 [NOT ADMITTED]
- P 32 MCPS IEP Meeting Documents including First Quarter IEP Progress Report and Parent Report, 11/16/17
- P 32A K-3rd Grade Table of Reading Data compiled by MCPS, undated [NOT ADMITTED]
- P 33 Student Work Samples, Fall 2017 [only pages 42-43 admitted]
- P 34 Letter to [REDACTED] from Michael Eig, Esquire, 12/08/17 [NOT ADMITTED]
- P 35 Letter to Zvi Greismann, Esquire, from Michael Eig, Esquire, and Mr. Greismann's Response Letter, 12/18/17 and 12/29/17 [NOT ADMITTED]
- P 36 MCPS Reading Interventions for Student from Kindergarten to Third Grade, received by parent in December 2017
- P 37 Letter to Zvi Greismann, Esquire, from Michael Eig, Esquire, 1/10/18 [NOT ADMITTED]
- P 38 MCPS Teacher Report, 1/22/18
- P 39 Parent Report, 1/25/18
- P 40 MCPS Quarter 2 Report Card with addendum and Progress Report on IEP Goals, various dates
- P 41 Partnership for Assessment of Readiness for College and Careers (PARCC) Reading Testing, 11/01/17 to 1/31/18
- P 42 Student Work Samples, February 2018 [NOT ADMITTED]
- P 43 Reactions to IEP Draft proposed by MCPS by [REDACTED] 11/16/17 and 2/20/18
- P 44 MCPS Draft IEP, 2-20-18
- P 45 Letter of Acceptance to [REDACTED] 3/02/18
- P 46 Letter to Michael Eig, Esquire, and Paula Rosenstock, Esquire, from [REDACTED] 3/04/18 [NOT ADMITTED]
- P 47 MCPS Speech-Language Assessment Report, 3/26/18
- P 48 Email to [REDACTED] from Ms. [REDACTED] 4/03/18
- P 49 MCPS IEP Progress Reports, 11/9/17, 1/26/18 and 4/09/18
- P 50 Parent Report, 4/11/18
- P 51 MCPS Quarter 3 Report Card with Addendum [NOT ADMITTED]
- P 52 IEP Follow-up by [REDACTED] 4/11/2018

P 53 Email to the Parents from [REDACTED] 4/13/18

P 54 MCPS Prior Written Notice, 4/17/18

P 55 MCPS Amendment/Modification to IEP, 4/20/18 [NOT ADMITTED]

P 56 Formal Observation Report by [REDACTED] 4/24/18

P 57 MCPS Amended IEP, 4/26/18

P 58 Student Writing Work Samples, April 2018 [NOT ADMITTED]

P 59 Letters to [REDACTED] enclosing and withdrawing a hearing request, 5/01/18 and 6/12/18 [NOT ADMITTED]

P 60 MCPS IEP with Progress Reports, 6/15/18 [NOT ADMITTED]

P 61 MCPS Quarter 4 Report Card, undated

P 62 Timeline and Comprehensive Report of Orton-Gillingham Reading Intervention by [REDACTED] and [REDACTED] November 2017 to June 2018

P 63 [REDACTED] Tutorial Report, Summer 2018

P 64 Occupational Therapy Report, 7/27/18

P 65 Letter to MCPS serving notice and MCPS Response Letter, 8/06/18 and 8/13/18

P 66 Notes by [REDACTED] 8/29/18

P 67 Email to Ms. [REDACTED] from [REDACTED], 9/17/18

P 68 Resume of [REDACTED]

P 69 Resume of Dr. [REDACTED]

P 70 Resume of [REDACTED]

P 70A Occupational Therapy Evaluation by [REDACTED] 9-14-18

P 70B Resume of [REDACTED]

P 71 MCPS amendment form and amended IEP, 9/21/18

P 72 MCPS Prior Written Notice, 9/23/18

P 73 [REDACTED] Initial Assessment, 10/04/18

P 74 Observation Report by [REDACTED] 10/05/18

P 75 [REDACTED] IEP, 10/26/18

P 76 MCPS Summary Review of Non-MCPS Occupational Therapy Report, 11/16/18

P 77 MCPS Occupational Therapy Assessments Results, 12/04/18

P 78 [REDACTED] Second Quarter Speech/Language Progress Updates, 12/18/18

P 79 MCPS IEP, 12/19/18

P 80 Email from [REDACTED] to Michael Eig, Esquire, [REDACTED] and Paula Rosenstock, Esquire, enclosing [REDACTED] Sign-In Sheet, 1/07/19

P 81 Emails between parents and [REDACTED] ES staff, 10/17/17 to 5/15/18

P 82 Memorandum to MCPS Elementary School Principals regarding Orton-Gillingham Methodologies, 9/20/18 [NOT INTRODUCED]

P 83 Email from [REDACTED] to [REDACTED] ES staff regarding Student reading level, 4/13/18

P 84 MCPS Memorandum on Orton-Gillingham Methodologies with accompanying documents, 9/20/18

P 85 Fountas and Pinnell Instructional Level Expectations for Reading

P 86 MCPS document, "Understanding End of Year Reading Benchmarks: A Parent's Guide," 2013 [NOT ADMITTED]

P 87 Emails between the Parents and [REDACTED] 9/12/17, 9/19/17, and 10/9/17

P 88 Declaration of [REDACTED] 2/1/19  
P 89 [REDACTED] Assessment Summary, 2/11/19  
P 90 Dyslexia Reading Well website, "About Us" section [NOT ADMITTED]  
P 91 Comparison of AOGPE Levels of Certification  
P 92 Comparison of AOGPE Levels of Membership and Certification  
P 93 Reading Grade-Level Comparison Chart  
P 94 "Orton-Gillingham Classroom Educator (OCGE Level)" Web Page  
P 95 Select pages from Early Interventions in Reading, Teacher's Edition A.

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

MCPS 1 IEP Team Meeting Report/Prior Written Notice, 12/17/2015 [NOT INTRODUCED]  
MCPS 2 Educational Management Team (EMT) Meeting documents, 4/20/2016 [NOT INTRODUCED]  
MCPS 3 EMT Meeting documents, 11/1/2016 [NOT INTRODUCED]  
MCPS 4 EMT Meeting documents, 12/20/2016  
MCPS 5 IEP Team Meeting Report and Documents/Prior Written Notice, 1/24/2017  
MCPS 6 IEP Team Meeting Report and Documents/Prior Written Notice, 3/15/2017  
MCPS 7 MCPS Report of School Psychologist ([REDACTED]), 3/8/2017  
MCPS 8 MCPS Educational Assessment Report, 3/3/2017  
MCPS 9 MCPS Teacher Referral, 2/25/2017  
MCPS 10 IEP/ IEP Team Meeting Report and Documents/Prior Written Notice, 4/5/2017  
MCPS 11 IEP Team Meeting Report and Documents/Prior Written Notice, 11/16/2017  
MCPS 12 PARCC Decision-Making Tool, 11/16/2017  
MCPS 13 Psychoeducational Evaluation (Dr. [REDACTED]), September and October 2017  
MCPS 14 MCPS Team Consideration of External Psychological Report, 11/13/2017  
MCPS 15 [REDACTED] Reactions to IEP proposed, 11/16/17  
MCPS 16 Notice of IEP Team Meeting, 12/1/2017  
MCPS 17 Letter from Michael Eig, Esquire, to MCPS, 12/8/2017  
MCPS 18 Notice of IEP Team Meeting, 1/22/2018  
MCPS 19 IEP Amendment, 2/20/2018  
MCPS 20 Authorization for Assessment, 2/20/2018  
MCPS 21 [REDACTED] Reactions to IEP proposed, 2/20/2018  
MCPS 22 MCPS Speech-Language Assessment ([REDACTED]), 3/26/2018  
MCPS 23 IEP Team Meeting Report and Documents/Prior Written Notice, 4/16/2018  
MCPS 24 IEP, 4/16/2018  
MCPS 25 Amendment/Modification to Current IEP without an IEP meeting, 4/20/2018  
MCPS 26 Summer 2018 Extended School year (ESY) service recommendations of IEP team and information  
MCPS 27 Letter from Michael Eig, Esquire, to MCPS, 8/6/2018

MCPS 28 Letter to Michael J. Eig, Esquire from MCPS, 8/13/2018  
 MCPS 29 E-mail from office of Michael J. Eig, Esquire to MCPS attorney  
 8/13/2018, requesting IEP meeting and proposed hearing dates  
 MCPS 30 Notice of IEP Team Meeting, 8/24/2018  
 MCPS 31 E-mail from office of Michael J. Eig, Esquire to MCPS attorney  
 8/27/2018  
 MCPS 32 MCPS Prior Written Notice for IEP meeting, 9/23/2018  
 MCPS 33 IEP Amendment Changes and revised IEP, 9/21/2018  
 MCPS 34 ██████████ Summer Tutorial Report 2018  
 MCPS 35 Summer 2018 Lower School Program, OT Report, 7/2018  
 MCPS 36 ██████████ LLC, Timeline and Comprehensive Report, June  
 2018  
 MCPS 37 E-mail from ██████████ to Ms. ██████, 9/17/2018  
 MCPS 38 ██████████ LLC, Summary of Phone Meeting with ██████████  
 8/29/2018  
 MCPS 39 Report Cards, Kindergarten through Third Grade  
 MCPS 40 IEP Progress Notes, various dates  
 MCPS 41 Academic Student Profile, 10/9/2018  
 MCPS 42 PARCC English Language Arts/Literacy Assessment Report, 2017-2018  
 MCPS 43 Methodology of Reading Interventions, ██████████ undated  
 MCPS 44 Elementary Teacher Reports, various dates  
 MCPS 45 MCPS School Attendance Information, as of January 10, 2018  
 MCPS 46 Read Naturally Live Student Data and Additional Assessments, various  
 dates  
 MCPS 47 E-mails between Parent and School Staff, various dates  
 MCPS 48 Letter to Ms. ██████ from the Student  
 MCPS 49 My Teacher is Awesome, by the Student  
 MCPS 50 Request for School Records by Parents to be sent to ██████████ 1/4/2018  
 MCPS 51 E-mails between Ms. ██████ and ██████████ 9/27/2017  
 MCPS 52 Statement by the Student, 3/2018  
 MCPS 53 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 54 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 55 Resume – ██████████  
 MCPS 56 Resume – ██████████  
 MCPS 57 Resume – ██████████  
 MCPS 58 Resume – ██████████  
 MCPS 59 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 60 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 61 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 62 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 63 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 64 Resume – ██████████ [NOT INTRODUCED]  
 MCPS 65 Email from Parent counsel enclosing letter withdrawing hearing request,  
 10/22/2018  
 MCPS 66 Email from Parent counsel to MCPS counsel seeking IEP meeting,  
 10/30/2018 and referencing Parent disclosure documents – P 63, 64, 73,  
 74, 70

MCPS 67 [REDACTED] Summer Tutorial Report 2018  
(duplicate of P 63)

MCPS 68 Summer 2018 [REDACTED] Occupational Therapy Report  
(duplicate of P 64)

MCPS 69 Note from [REDACTED] 10/4/2018 (duplicate of P 73)

MCPS 70 Observation by [REDACTED] 10/5/2018 (duplicate of P 74)

MCPS 71 Email from Parents' counsel enclosing corrected [REDACTED] Occupational  
Therapy Evaluation (duplicate of P 70A)

MCPS 72 Email from Parents' counsel enclosing [REDACTED] IEP, 12/4/2018

MCPS 73 MCPS Review of [REDACTED] Occupational Therapy Report, 11/16/2018

MCPS 74 Five Day Advance Documents for 12/19/2018 IEP meeting

MCPS 75 Prior Written Notice and IEP documents from 12/19/2018 IEP meeting

MCPS 76 Email from Parents to Ms. [REDACTED] 6/14/2016

MCPS 77 Resume – [REDACTED]

MCPS 78 Reading Records, various dates

MCPS 79 Orton-Gillingham Instructional Approach, Dyslexia Reading Well,  
1/24/19

MCPS 80 Reading Programs That Work, Dyslexia Reading Well, 1/24/19

MCPS 81 IEP Progress Report, 4/5/2017

MCPS 82 MAP-R Targets, undated

MCPS 83 MCPS Office of Special Education Comparison Chart of Orton-Gillingham  
and SRA Early Interventions in Reading

Testimony

The Student's mother, Ms. [REDACTED] testified, and the Parents presented the following witnesses:

- [REDACTED] Speech-Language Pathologist and Literacy Specialist at the [REDACTED]  
[REDACTED] admitted as an expert in speech/language pathology;
- [REDACTED] Psy.D., admitted as an expert in clinical psychology with an  
emphasis on the remediation of dyslexia through the Orton-Gillingham method;<sup>6</sup>
- [REDACTED] M.S., OTR/L, Associate Head of Elementary Division at the [REDACTED]  
[REDACTED] admitted as an expert in occupational therapy;
- [REDACTED] M.Ed., admitted as an expert in special education, with an emphasis  
in Orton-Gillingham;
- [REDACTED] Education Director at the [REDACTED]<sup>7</sup>

<sup>6</sup> Dr. [REDACTED] was present to testify during the Parents' case-in-chief and testified by telephone during the Parents' rebuttal.

<sup>7</sup> Ms. [REDACTED] testified by telephone.



- [REDACTED] MCPS Special Education Teacher;
- [REDACTED] MCPS Special Education Supervisor.

MCPS presented the following witnesses:

- [REDACTED] MCPS Special Education teacher, admitted as an expert in general education and special education;
- [REDACTED] MCPS Reading Specialist, admitted as an expert in special education and reading instruction;
- [REDACTED] MCPS teacher, admitted as an expert in elementary education;
- [REDACTED] CCC-SLP,<sup>8</sup> MCPS Speech-Language Pathologist, admitted as an expert in speech-language pathology;
- [REDACTED] OTR/L, MCPS Instructional Specialist, admitted as an expert in occupational therapy.

### FINDINGS OF FACT

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

#### Background

1. The Student is nine years old and lives with her parents and brother in Montgomery County, Maryland.
2. The Student is an outgoing, social child who enjoys singing and participating in competitive [REDACTED]
3. For the 2018 – 2019 school year, the Student is a fourth-grade student at the [REDACTED]  
[REDACTED] ([REDACTED]).

<sup>8</sup> CCC-SLP refers to the Certificate of Clinical Competence for Speech-Language Pathologists, a program through the American Speech and Hearing Association.

4. [REDACTED] is a private day school in [REDACTED] for children with language-based learning disabilities. The typical student has average to above average intelligence and a language-based learning disability. There are no nondisabled students at the [REDACTED]

5. The Student has a specific learning disability. She is diagnosed with dyslexia, dysgraphia, and dyscalculia.

6. Phonology is the study of the systematic organization of sounds in language.

7. Phonological awareness is a person's awareness of the sound structure of words.

8. Sound discrimination is the ability to recognize the differences between sounds.

9. Phonological processing is the ability to distinguish and manipulate the sounds that make up words.

10. Phonics is attaching sounds to letter symbols.

11. Reading requires understanding the correspondence between sounds and symbols. Understanding sound/symbol correspondence requires effective sound discrimination skills.

12. Rapid naming is the ability to say names of letters and numbers. Difficulty with rapid naming skills predicts difficulty with reading.

13. Decoding is the process of matching letters or combinations of letters to their sounds and recognizing the patterns that make syllables and words.

14. Fluency is the ability to read with speed, accuracy, and proper expression.

15. Dyslexia is a language-based learning disability rooted in phonological processing that impacts reading and writing skills.

16. Dyslexia impacts phonological processing, decoding, and spelling.

17. Orton-Gillingham is an instructional approach to teaching reading, writing, and spelling. It is structured, multisensory, cumulative, and flexible, with a defined scope and

sequence. It includes a diagnostic prescriptive component that involves tailoring instruction to the specific strengths and weaknesses of the student as the lessons progress.

18. The Fountas & Pinnell (F&P) Leveled Literacy Intervention (LLI) is an informal, supplementary reading intervention. It is widely used in public schools, including MCPS.

19. Science Research Associates (SRA) Early Interventions in Reading (EIR) is a reading intervention program.

20. Read Naturally is a reading intervention program that focuses on fluency. Read Live Naturally is the computer-based version of the program.

21. Early Success is a reading intervention program.

22. Words Their Way (word study program for teaching phonics), Making Words (activity focusing on letter-sound correspondence and spelling patterns), Picture Me Reading (visual-conceptual method of teaching sight words), and Reading A – Z Decodable Text (books corresponding to vowel sounds) are tools used in literacy programs.

23. A “cold” read is reading unfamiliar text. A “warm” or “hot” read is working with text the student has read previously.

24. A running record is where a student is given text, typically for a cold read, and the instructor notes which words were said correctly, what the errors were. The teacher then analyzes the errors to modify instruction as needed.

#### Kindergarten Through Second Grade at [REDACTED]

25. The Student attended kindergarten (2014 – 2015 school year) at [REDACTED] Elementary School ([REDACTED]), a Montgomery County public school.

26. The Student struggled at times with academic skills in kindergarten. Specifically, she had difficulty with reading and retaining sight words.

27. During her kindergarten year, the Student received one hour per week of LLI with a paraeducator.

28. At the end of kindergarten, the Student's instructional reading level was 3, which was below grade level. (MCPS 39-1.)

29. The Student attended a summer school program at [REDACTED] in 2015.

30. The Student attended first grade (2015 – 2016 school year) at [REDACTED]

31. In November 2015, the Student's first-grade teacher, [REDACTED], referred her for a special education screening due to the Student's difficulties with reading, writing, and math. (P 6., T. at 147-148.)

32. An IEP team meeting was held on December 17, 2015. The team determined that the Student was making sufficient progress and did not find the Student eligible for special education services at that time.

33. During first grade, the Student received reading intervention through LLI until February 2016, when she began receiving instruction through EIR to focus on phonics.

34. At the end of the first marking period in first grade, the Student's instructional reading level was 4. By the end of first grade, her reading level was 13, which is below grade level expectations. (MCPS 39-4.)

35. The Student attended the summer school program at [REDACTED] in 2016.

36. The Student attended second grade (2016 – 2017 school year) at [REDACTED]

37. At the start of second grade, the Student's reading level was 9, even though she had ended first grade at reading level 13. (P 10.)

38. On November 1, 2016, an Educational Team Management meeting was held. The team reviewed the Student's progress and noted specific areas in which she was struggling,

including reading, letter sounds, sight word knowledge, phonetic spelling, and conventions of writing. (P 10.)

39. The team agreed upon the following strategies: visual phonics for forty minutes per week, Early Success reading intervention for two hours per week, and practice at home using sandpaper, chalk board, as well as Picture Me Reading sight word cards. (P 10.)

40. In December 2016, the IEP team reviewed the Student's progress in light of the interventions and determined that the Student should be screened for special education services. (MCPS 4.)

41. During the Student's second grade year, [REDACTED] staff stopped using the Early Success reading intervention and tried several different reading intervention strategies instead, including informal visual phonics, Picture Me Reading sight word cards, consonant-vowel-consonant (CVC) practice, Words Their Way, Making Words, Reading A-Z Decodable Text, and LLI.

42. On January 24, 2017, the IEP team met. The IEP team determined that a disability was suspected and that educational and psychological assessments should be completed. (MCPS 5.)

***Educational Assessment by [REDACTED]***

43. On February 2, 2017, [REDACTED] MCPS, conducted an educational assessment of the Student. This assessment included a classroom observation, administration of the Brigance Inventory of Early Development III Standardized (IED III), and consideration of informal classroom data, instructional reading level data, and winter MAP-P score (183, below the benchmark of 186).

44. Ms. [REDACTED] concluded that the Student's needs included decoding skills (short vowels), sight word recall, reading, encoding, and writing. She recommended a number of

instructional supports and strategies, including the use of manipulatives; direct, consistent instruction, breaking assignments into small parts, visual supports, tactile practice of sight words, multisensory approach, and a research-based intervention to support decoding skill development. (MCPS 8.)

45. Ms. [REDACTED]'s assessment specifically revealed weaknesses in visual discrimination, phonological awareness, reading words from common signs, word recognition, sorting objects (by size, color, and shape), and reading numerals. (MCPS 8.)

*Psychological Assessment by [REDACTED]*

46. In February and March 2017, [REDACTED] MCPS school psychologist, conducted a psychological assessment of the Student. (MCPS 7.)

47. Ms. [REDACTED] administered the following tests and assessments: Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V); Wide Range Assessment of Memory and Learning, Second Edition (WRAML2); The Beery-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition (VMI); Jordan Left-Right Reversal Test, Third Revised Edition; Piers-Harris Children's Self-Concept Scale, Second Edition; Conners Third Edition (Conners 3).

48. Ms. [REDACTED]'s evaluation revealed that the Student's full scale IQ is in the average range. In addition, the Student demonstrated average skills in verbal comprehension (accessing and acquiring word knowledge); fluid reasoning (detecting the underlying relationships among visual objects and using reasoning to identify and apply rules); processing speed (speed and accuracy of visual identification, decision making, and decision implementation). She demonstrated low average skills on the visual spatial index (evaluating visual details and understanding visual spatial relationships in order to construct geometric designs from a model) and in working memory (ability to register, maintain, and manipulate visual and auditory

information in conscious awareness, requiring attention and concentration, as well as auditory and visual discrimination).

49. In the assessment by Ms. [REDACTED] the Student demonstrated deficits in general memory and attention/concentration, as well as visual-motor integration skills. She was also in the deviant range with regard to letter reversals. With regard to self-concept, the Student's scores reflect a "mild level" of concern related to difficulties on school-related tasks and peer interactions, but no concerns about anxiety. The Student also demonstrated some inattentive behaviors, but did not meet the criteria for an attention-based disorder.

50. Ms. [REDACTED] recommended a number of strategies for improving instruction and peer relations, including breaking large tasks into smaller tasks, organizational tools, chunking, ensuring sufficient time to complete tasks, mnemonic devices and visual imagery, meaningful verbal and/or visual content to aid memory, achievable goals, discouraging peer or sibling comparisons, motor breaks, and praise and encouragement.

#### ***IEP Process for the Student's Third Grade IEP (Initial IEP)***

51. On March 15, 2017, the IEP team met. It considered the psychological assessment and educational assessments, as well as a classroom observation conducted by Ms. [REDACTED] on January 13, 2017. (MCPS 6.)

52. The IEP team found the Student eligible for special education services based on a Specific Learning Disability, identifying reading (decoding and fluency) and written expression as affected areas. In particular, the IEP team noted inadequate achievement in basic reading skills and reading fluency. (MCPS 6.)

53. On April 5, 2017, the IEP team met. The IEP team developed an initial IEP that provided for two hours of specialized reading instruction outside of the general education

classroom and five hours of special education support in the general education classroom. The effective dates of the IEP were April 5, 2017 through April 4, 2018. (MCPS 10.)

54. By the end of second grade, the Student progressed to a reading level of 12. (MCPS 39-7.<sup>9</sup>)

55. The Student attended the summer school program at [REDACTED] in 2017.

**Third Grade at [REDACTED] the 2017 – 2018 School Year**

56. The Student attended third grade (2017 – 2018 school year) at [REDACTED]

57. The Student began third grade at a reading level of 6 or 7, which is the benchmark reading level for the beginning of first grade. ([REDACTED] testimony, T. at 1206.)

58. The Student's third-grade teacher was [REDACTED]. The Student received special education services from [REDACTED] who was also her IEP case manager.

59. The Student's third grade school day included the following: warm up activities, specials (art, music, physical education, from 9:05 a.m. until 9:55 a.m.), Language Arts (9:55 a.m. to 12:20 p.m.), lunch and recess (12:20 p.m. to 1:30 p.m.), and mathematics (1:30 p.m. to 3:10 p.m.), 3:20 p.m. dismissal.

60. The 2017 – 2018 school year was Ms. [REDACTED]'s eighteenth year as a teacher, and her seventh at [REDACTED]. She is certified to teach students in first through eighth grade. She is a general education teacher who is accustomed to having children with IEPs included in her classroom.

61. The 2017 – 2018 school year was Ms. [REDACTED] twentieth year as a teacher and her second as a special education teacher. She has extensive training in teaching reading, including training in EIR.

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<sup>9</sup> Hyphenated references to exhibits include the exhibit number and then, after the hyphen, the relevant page number.



62. The Student was receiving two hours of pullout reading instruction and five hours of special education support in the general education classroom at the start of third grade.

63. The Student's third grade reading interventions included EIR and Read Live Naturally. Ms. [REDACTED] delivered these interventions as pull out services. In addition, she provided support in the general education classroom in Language Arts and mathematics.

64. The Student participated in two guided reading groups during her third grade year, one geared towards her instructional reading level and focusing on fluency, decoding, and sight words, and one geared towards complex text, as the Student has a high vocabulary level.

65. Ms. [REDACTED] and Ms. [REDACTED] met weekly to plan instruction together and daily to discuss that instruction.

66. Ms. [REDACTED] and the Student had a good relationship. Beginning in January 2018, the Student attended "lunch bunch" sessions with Ms. [REDACTED] in her classroom, where they would tell stories and sing karaoke using Ms. [REDACTED]'s cell phone for the song lyrics and music.

67. The Student participated in class discussions and was outgoing and articulate, with an advanced vocabulary and clear speaking style.

68. The Student completed writing assignments during third grade with support from Ms. [REDACTED] including narrative, informational, and opinion essays, as well as a folk tale.

69. The Student fully participated at grade level in the third grade science curriculum, which included hands on activities and experiments.

70. The Student fully participated at grade level in the third grade social studies curriculum, which included hand on activities and projects.

71. At times, the Student expressed frustration with her work. She also asked why she was not in the "gifted and talented" program, as her brother was.

72. The Student was aware that she was significantly behind her peers in reading, which made her feel self-conscious and eroded her confidence.

73. At times, the Student would “shut down” due to frustration, meaning that she would refuse to engage with her assignments.

74. The Student was assigned the job of “ambassador,” meaning that she was chosen to be one of the students in her third-grade classroom who would help to welcome any new students and show them around the school.

75. In November 2017, the Student was assigned the job of being a helper to a kindergartner, which involved working with the kindergartner on numbers and letters. The assignment was made in part because the Student’s mother expressed to MCPS staff that the Student was upset about attending school, and feeling anxious and discouraged.

76. In April 2018, after a contentious April 16, 2018 IEP meeting, the Student told Ms. [REDACTED] she would no longer be attending the “lunch bunch” sessions.

77. The Student was able to handle all tools and materials in her third grade classes, including pencils, scissors, glue sticks, manipulatives (such as geoboards), crayons, and markers. She was also able to open all of her own food packages at “lunch bunch” sessions.

78. The Student was able to fully participate in all physical activities during recess and physical education class, including running, jumping, using the playground equipment, and engaging in sports activities.

79. None of the Student’s third-grade teachers at [REDACTED] raised any concerns about her ability to physically participate in her classes or to use school tools or materials.

*Evaluation by [REDACTED] Psy.D.*

80. In September and October 2017, [REDACTED] Psy.D., conducted a psychoeducational evaluation of the Student. This involved two sessions, one of which Dr. [REDACTED] conducted himself, and the other of which was conducted by a clinical extern.

81. Dr. [REDACTED] and the extern administered the following formal tests and assessments: Beery VMI; Child Behavior Checklist; Comprehensive Test of Phonological Processing-2 (CTOPP-2); Conners 3; Gray Oral Reading Tests – Fifth Edition (GORT-5); Peabody Picture Vocabulary Test – Fourth Edition (PPVT-IV); Test of Word Reading Efficiency- Second Edition, Form B (TOWRE-2); Wechsler Abbreviated Scale of Intelligence – Second Edition (WASI-II); Wide Range Assessment of Memory and Learning-2 (WRAML-2); and the Woodcock Johnson Psychoeducational Battery – Fourth Edition (WJ-IV). He also considered a Teacher Report Form and a number of informal assessments, including writing the alphabet and the numbers from one to thirty. (P 23.)

82. Dr. [REDACTED]'s assessments demonstrated that the Student's IQ is in the average range, as well as weakness in the following areas: perceptual reasoning, visual spatial production, visual-motor integration, sound symbol memory, phonological memory, writing skills, sentence writing fluency, and math calculations and fluency. Her phonological processing was revealed to be extremely weak, as were rapid naming skills. Also extremely weak were skills in letter word identification, phonetic decoding, word recognition, oral reading accuracy, reading efficiency, reading rate, fluency, and comprehension, and accuracy.

83. On the WJ-IV, which includes subtests in broad math, broad written language, basic reading, broad reading, academic fluency, letter-word identification, word attack, sentence reading fluency, passage comprehension, oral reading, spelling, sentence writing fluency, writing

samples, calculation, applied problems, and math facts fluency, the Student measured at a first grade or kindergarten level in nearly every single area.

84. The Student was unable to write the alphabet correctly for Dr. [REDACTED] omitting k, n, and w; including the letter s twice, reversing the letter z, and confusing v and g.

85. Dr. [REDACTED] identified the Student's learning disability as dyslexia. He recommended a multisensory instructional approach to teach reading and spelling. Specifically, he recommended an Orton-Gillingham-based approach, with a focus on the process of decoding. He also recommended instructional strategies including reduced language in instructions, response modeling, chunking, checking for understanding, frequent review, use of manipulatives, direct, multisensory instruction, and a focus on memory techniques, as well as assistive technologies.

86. Dr. [REDACTED] attended the November 16, 2017 IEP meeting and provided his recommendations to the IEP team.

***Revisions to the Third Grade IEP and Tutoring Sessions with [REDACTED] LLC***

87. On November 16, 2017, the IEP met to consider Dr. [REDACTED]'s evaluation and report, and to review teacher reports and current data. (MCPS 11.)

88. The IEP team proposed revising the IEP to add dyslexia as a designated disability. It also updated the present levels of academic achievement and functional performance. (MCPS 11.)

89. In November 2017, the Parents contacted [REDACTED] LLC, for a consultation and tutoring services.

90. [REDACTED] M.Ed., is an educational consultant and academic therapist. She is the owner and Director of [REDACTED].

91. On November 13, 2017, the Student began tutoring sessions with [REDACTED] [REDACTED] M.Ed., an academic therapist, at [REDACTED]. Each session was one hour, and the Student attended three mornings per week, on Mondays, Wednesdays, and Fridays.

92. Ms. [REDACTED] used the Orton-Gillingham reading intervention approach in her sessions with the Student.

93. The Student continued the tutoring sessions with Ms. [REDACTED] through the end of June 2018, for a total of seventy-four sessions.

94. [REDACTED] attended the November 16, 2017 IEP meeting and reviewed the proposed amendments, providing detailed written feedback and reactions.

95. The IEP team attempted to meet again in December 2017, but scheduling conflicts delayed the meeting to February 20, 2018. The IEP team met on this date and discussed further revisions to the IEP. However, the IEP was not finalized at that time.

96. The Student's tutoring sessions with [REDACTED] reflected improvement in her phonological awareness skills, as well as her decoding and encoding skills. By December 15, 2017, the Student demonstrated mastery (90% accuracy or above) of decoding in text. By January 15, 2018, the Student demonstrated mastery of decoding in isolation. By December 22, 2017, the Student demonstrated mastery of encoding both in isolation and in text. Her baseline fluency on a hot read as of February 11, 2018, was fifty-six words per minute with 96% accuracy. (MCPS 36.)

97. Ms. [REDACTED] provided additional written feedback to the IEP team shortly before the February 20, 2018 IEP meeting. This feedback included specific language for the proposed goals and objectives and the addition of dyscalculia and dysgraphia to the Student's diagnoses. (MCPS 21.)

98. In March 2018, the Student was offered admission at the [REDACTED]

[REDACTED] which she accepted that same month. (P 45.)

99. In March 2018, [REDACTED] of MCPS, conducted a speech/language assessment, including formal and informal measures as well as a classroom observation, at the Parents' request. Ms. [REDACTED] administered the following assessments: Receptive One-Word Picture Vocabulary Test-4 (ROWPVT-4) (measures understanding of orally presented words); Expressive One-Word Picture Vocabulary Test-4 (EOWPVT-4) (measures expressive vocabulary); Clinical Evaluation of Language Fundamentals – 5<sup>th</sup> Edition (measures receptive and expressive language skills); Language Processing Test – Third Edition (LPT-3), and a number of informal assessments, such as evaluation of a recorded language sample.

100. In this assessment, the Student demonstrated speech and language skills within the normal limits, and the assessment did not reveal oral communication needs requiring special education services.

#### ***The Student's Performance at the End of Third Grade***

101. As of June 2018, the Student was making sufficient progress to meet all of her IEP goals. (MCPS 33.) Specifically, the Student was:

- Using visual cues for r-controlled vowels and vowel patterns, and using strategies without reminders (Reading Phonics goal);
- Able to score 100% on rapid recall of kindergarten sight words, 82% on first grade sight words, and 52% on second grade sight words (Reading Phonics goal);
- Using pre-reading strategies (previewing text, brainstorming, using text features, and asking questions), “during reading” strategies (paraphrasing, questioning, context clues, summarizing), identifying the main idea, and making predictions and inferences (Reading Comprehension goals);

- Solving problems that employ different placements for the unknown with 90% accuracy when one of two parts is missing, and 40% accuracy when the “whole” is missing (Math Problem Solving Goal);
- Reading at a fluency level of 2.0 (Read Live), with hot timing scores of 87 words correct per minute, with improved expression and longer phrases before pausing, and comprehension scores averaging 90% (Reading Fluency goal);
- Adding three-digit numbers with and without composing, though she sometimes reversed digits, was inconsistent with regard to decomposing when given three-digit subtraction problems, and could solve single-digit multiplication problems accurately seven out of ten times (Math Calculation goal);
- Able to draft an introduction, supply details, and make corrections, but needed guidance presenting detailed, explanatory information, rephrasing her topic sentence, and revising and editing (Written Language Expression goal);
- Able to draft an introduction that oriented readers to characters and established the problem and draft story sequences with appropriate structure, but needed guidance in developing descriptive details, clarifying thoughts, and revising and editing (Written Language Expression goal);
- Identifying triggers, acknowledging anxiety and explaining it to herself, and using self-talk and other techniques (Social Emotional/Behavioral Goal); and
- Breaking apart and sequencing the sounds in one and two syllable words (CVC, CCVCC, CVCC, CCVC), though she made errors with regard to vowels and b/d reversal.

102. At the end of third grade, the Student’s reading level was K, which is the benchmark for the middle of second grade. (MCPS 39-10.)

103. The Measurement of Academic Progress, or MAP, is a formal, computer-based assessment in reading and math that is administered three times per school year.

104. The MAP was administered to the Student in the fall, winter, and spring of the 2017 -2018 school year in both reading (MAP-R) and math (MAP-M).

105. In the fall, the Student's MAP-R score was 154 (second percentile; benchmark is 188). In winter, it was 159 (first percentile; benchmark is 196). In spring, it was 172 (fourth percentile, benchmark is 199). (MCPS 41-2.)

106. In the fall, the Student's MAP-M score was 169 (fifth percentile; benchmark is 190). In winter, it was 189 (twenty-fourth percentile; benchmark is 198). In spring, it was 192 (twentieth percentile, benchmark is 203). (MCPS 41-2.)

107. Partnership for Assessment of Readiness for College and Careers (PARCC) assessment is administered to third graders annually in MCPS. 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.

108. The Student's accommodations for the PARCC assessment included a human scribe for writing. The Student was still responsible for grammar and writing mechanics, except for spelling. In addition, the Student received a text to speech accommodation.

109. PARCC scores include an overall score on a scale of Level 1 (did not yet meet expectations) to Level 5 (exceeded expectations). The Student received an overall score of 761, which is in the "met expectations" category. (MCPS 42.)

110. PARCC performance is also categorized with regard to reading and writing. In both reading and writing, the Student "met expectations." (MCPS 42.)



111. The Student's end-of-year grade averages were as follows: A's in mathematics, science, social studies, art, music, and physical education; B's in reading and writing. (MCPS 39-11.)

112. An "A" indicates that a student "consistently demonstrates mastery of the grade-level standards taught this marking period." A "B" indicates that a student "frequently demonstrates mastery of the grade-level standards taught this marking period." (MCPS 39-11.)

113. On the Read Naturally Live program, the Student was able to do a "cold" read at forty-two words per minute (without considering accuracy) and a "hot" read at seventy-five words correct per minute at a sequential level of approximately 2.0, which was an improvement in levels from the start of the school year. She also improved with regard to comprehension and phonics.

114. The Student was absent from school seven times during third grade. (MCPS 45-1.)

#### **The IEP Process for Fourth Grade: the 2018 – 2019 School Year**

115. On April 11 and April 16, 2018, the IEP team met to review the Student's progress and to develop the IEP for the period of April 16, 2018 through April 15, 2019. (MCPS 24.)

116. The following people attended the April IEP meetings: Ms. [REDACTED] Ms. [REDACTED]; [REDACTED] (special education teacher); Rebecca Bixler and Emily Rachlin (counsel for MCPS); the Parents; [REDACTED] [REDACTED] (counselor); [REDACTED] (principal); [REDACTED] (psychologist); Michael Eig (counsel for the Parents); and [REDACTED] (parent advocate, consultant, and academic therapist). The Student's Parents were provided a copy of the Parental Rights and Procedural Safeguards brochure.

117. The IEP for April 16, 2018 through April 15, 2019 identified present levels of performance in the following areas:

- reading phonics (level J instructional level, or 16/17, with 95% accuracy; 68% of first grade sight words; this equates to an end-of-first-grade/beginning-of-second-grade level);
- reading fluency (instructional level equates to first grade; sequenced level 1.5 on Read Live, reading an average of sixty-one words correctly per minute; cold reading average of fifty words per minute; cold read of fiction test is level J, or 16/17, with fourteen words correct per minute);
- reading comprehension (silent reading at level J, with 5/6 comprehension, which is second grade, first quarter benchmark; listening comprehension at level T, or fifth grade, first semester benchmark; MAP-R reading score: first percentile);
- math calculation (does not consistently apply knowledge, MAP-M score in the 24<sup>th</sup> percentile, or between second and third grade level);
- math problem solving (demonstrated difficulty; grades of C and D; MAP-M score in the 24<sup>th</sup> percentile, or between second and third grade level);
- written language mechanics (second grade level; difficulty with run-on sentences, capitalization, sentence fluency);
- written language expression (second grade level; difficulties with organization and sentence fluency);
- communication (age expectancy);
- encoding (first grade level; difficulty encoding);
- social emotional/behavioral (below age expectancy).

118. The IEP provides for the use of assistive technology, including speech to text, word prediction, text to speech, audio books, and calculation devices.

119. The IEP provides for accommodations including a line reader mask tool, graphic organizers, small group testing, frequent breaks, reduced distractions, a human reader (for specific assessments), human scribe, and extended time during tests.

120. The IEP provides for instructional supports including: speech to text or scribe; text to speech or human reader; modeling of answers; moving from concrete/manipulative to abstract; strategies to promote working memory, including repetition, restating, visualizing, and chunking; connecting prior knowledge to new tasks; simultaneous visual pairing; opportunities for oral rehearsal; repetition of directions; small group instruction; additional wait time; math strategy cards with illustrations; use of manipulatives; having Student repeat or paraphrase information; multisensory instruction (cursive, visual, auditory, tactile, and kinesthetic activities); use of mnemonics; chunking; providing Student with teacher notes; instructional materials with increased white space; visual supports for sound/letter correspondence; use of word bank for vocabulary and/or extended writing; use of highlighters; teacher modeling; monitoring of independent work; frequent and immediate feedback; checking for understanding; simplified sentence structure, vocabulary and graphics; breaking assignments into smaller pieces; social stories; positive/concrete reinforcers; preferential seating.

121. The Student's IEP provides for extended school year services. Specifically, the IEP provided for four weeks of summer instruction for summer 2018, five days per week and three hours per day.

122. The Student's IEP provides for thirty minutes of pullout counseling services per week, which the Parents requested and to which the IEP team agreed. The Student is also permitted a "flash pass" to visit the guidance counselor as needed.

123. The Student's IEP contains the following eleven goals:

- Given whole group and small group instruction in evidence based reading phonics strategies, modeling, wait time for the formulation of oral responses, multiple opportunities for practice, and visual supports, the Student will use her knowledge of all letter-sound correspondence to read accurately unfamiliar words in and out of context at level M (3<sup>rd</sup> grade level) with 90% accuracy (related objectives include decoding single syllable words with silent e, vowel patterns, and diphthongs;<sup>10</sup> decoding words with common digraphs; decoding words with r-controlled vowels; and blending, segmenting, deleting, sequencing, isolating, and substituting syllables and phonemes first auditory only, working up to manipulatives and letter symbols);
- Given evidence-based strategies, multimodal learning opportunities, repetition and practice, the Student will read and spell irregular words (sight words) in isolation and connected text with 90% or greater accuracy (related objectives include kindergarten, first, and second grade sight words; spelling words; and rapid recognition of sight words);
- Given whole group and small group instruction in an evidence based fluency intervention, models of fluent reading, multiple opportunities to rehearse, ongoing progress monitoring, verbal prompts, and visual cues, the Student will be able to orally read a second-grade level decodable text with an increase of 20% per quarter over baseline with no more than three errors and proficient fluency scores (3 or 4) with sufficient accuracy and fluency to support reading comprehension

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<sup>10</sup> This objective was modified in September 2018, which is noted in these Findings of Fact.

(related objectives include use of decoding strategies, using context to confirm or self-correct, and logging rate, accuracy, and progression);

- Given instruction in evidence-based reading strategies, small group and whole-class instruction, pre-taught vocabulary, modeling, and practice, the Student will demonstrate comprehension of instructional level text read independently through oral and written response at 90% accuracy (related objectives include use of pre-reading strategies, “during reading” strategies, strategies to demonstrate understanding, and context clues for unknown words);
- Given audio, enlarged font and repetition, the Student will demonstrate listening comprehension of level W text through oral and written response with 90% accuracy (related objectives include use of pre-reading strategies, “during reading” strategies, strategies to demonstrate understanding, and context clues for unknown words);
- Given whole group and small group instruction, multiple opportunities to rehearse, visual supports, manipulatives, teacher modeling, and utilizing where appropriate evidence based instruction, the Student will represent and perform calculations involving addition, subtraction, multiplication, and division as well as use place value for understanding and properties of operations to perform multi-digit arithmetic (related objectives include fluently adding and subtracting using strategies and algorithms; multiplication using specific strategies; finding specified whole-number quotients and remainders, and rounding);
- Given whole group and small group instruction, multiple opportunities to rehearse, visual supports, strategy cards with illustrations, manipulatives, teacher modeling, and including appropriate evidence based instruction, the Student will

determine the unknown whole number in a multiplication or division equation relating three whole numbers (related objectives include using concrete objects and models to compose and decompose sets of numbers; finding the unknown in a given multiplication or division equation; using the inverse operation; and solving problems that use different placements for the unknown and product/quotient);

- Given whole group and small group instruction in the writing process, teacher modeling, rubrics, opportunities for oral rehearsal, example of finished product, graphic organizers, word bank, frequent feedback, and with guidance and support from peers and adults, the Student will write informative texts to examine and convey ideas and information clearly and accurately (related objectives include drafting an introduction with a topic sentence, developing the topic, presenting similar information grouped appropriately; drafting a conclusion; and planning, revising, and editing);
- Given whole group and small group instruction in the writing process, teacher modeling, opportunities for oral rehearsal, rubrics, example of finished product, graphic organizers, word bank, frequent feedback, and with guidance and support from peers and adults, the Student will write narratives to develop real or imagined experiences, effective technique, descriptive details, and clear event sequences (related objectives include drafting an introduction, body, and conclusion; applying knowledge of story structure; and planning, revising, and editing);
- Given small group instruction in spelling patterns and generalizations, visual supports, frequent feedback, repetition and practice, the Student will encode phonetically predictable words in isolation and connected text with 90% or

greater accuracy (related objectives include using simultaneous oral spelling while identifying and sequencing sounds and corresponding symbols, such as CVC, CCVCC, CCVC, CVCC, and consonant blends in one and two syllable words; CVCe in single syllable words; and vowel teams, including diphthongs);

- Given direct instruction in the use of self-calming strategies, positive self-talk, regulated flash pass, access to a trusted adult, and assignment directions, the Student will manage her frustration or anxiety and initiate the assigned task within five minutes (related objectives include identifying triggers, acknowledging frustration, and using and evaluating self-calming strategies).

124. The IEP team rejected the addition of speech-language-related services, a decision with which the Parents disagreed. (MCPS 23-2.)

125. The IEP team proposed to implement the IEP with seventeen hours and five minutes per week in the general education environment, four hours of pullout special education instruction, and thirty minutes per week of counseling with the guidance counselor. (MCPS 24.)

126. The Parents disagreed with the IEP team's decision regarding pullout services, as they felt four hours per week was not adequate to meet her needs. (MCPS 23-2.)

**Fourth Grade at the [REDACTED] the 2018 – 2019 School Year**

**Summer School at [REDACTED]**

127. The Student attended summer school at the [REDACTED] She received tutorial services focusing on phonemic awareness, phonics, reading fluency, vocabulary, and comprehension. (P 63.)

128. The Student used a special pencil grip at the recommendation of her tutorial instructor, [REDACTED]

129. The Student also received occupational therapy services. Clinician [REDACTED] MS, OTR/L noted the following concerns: attention/focus; hand development/fine motor; handwriting; pencil grasp; visual/ocular motor; and directionality. (P 64.)

[REDACTED]

130. For the 2018 – 2019 school year, the Student attends the [REDACTED]

131. The Student is happy and engaged at the [REDACTED] She enjoys attending school.

132. The Student's classes include language arts, American Revolution Club, physical education, mathematics, and science.

133. The Student receives 1:1 reading intervention daily from instructors certified in Orton-Gillingham.

134. [REDACTED] did not evaluate the Student for speech-language services.

135. Beginning in November 2018, the [REDACTED] provided speech-language services to the Student based on feedback from teachers. She has one forty-five-minute session with a speech-language pathologist per week.

136. On October 5, 2018, Ms. [REDACTED] observed the Student at the [REDACTED] The total observation time was forty-six minutes. Ms. [REDACTED] observed the Student receiving 1:1 instruction. (P 74.)

137. On November 16, 2018, Ms. [REDACTED] observed the Student at the [REDACTED] The total observation time (from sign in to sign out) was fifty-seven minutes. She observed the Student in Language Arts, where she was painting, and American Revolution Club, where she was copying text from a chalkboard. (MCPS 73; P 80.)



138. [REDACTED] administered a decoding assessment in the fall and then again in winter. (P 89.) The assessment included the following parts:

- Phonogram assessment: letter patterns, including consonants, vowels, VCe (silent e), digraphs/trigraphs (sh, ck), welded/word families (sing, sunk), additional vowel sounds (eat, ouch), r-controlled vowels (car, horn), additional sounds (tion, sion), silent letters (knife, lamb), prefixes/suffixes;
- Real words: word patterns, including CVC; digraphs/trigraphs; CCVC/CVCC/CCVCC (scum, tusk, crept); VCe; VCCV; Families 1 (swing, clonk); VCCCV; V.CV (acorn, topaz); consonant le (bumble, jingle); VC.V (habit, lemon); Families 2 (kind, postman); r-controlled (smirk, dorm); vowel teams (decay, broach, achieve, pew, faucet); V.V (bias, stoic); soft C/G; stable final syllable (nature, lotion); additional sounds and affixes (obtuse, golden, social, captain);
- Nonsense words: words patterns, including CVC (fam, tup); digraphs/trigraphs (nesh, yoch); CCVC/CVCC/CCVCC (frad, tisp); VCe (tane, nive); VCCV (gobten); Families (twold); vowel teams (pleech); additional sounds and affixes (pinture);
- Red Word Reading Assessment;
- Phono-graphix Screener, including phoneme blending, phoneme segmenting, phoneme manipulation, rhyming discrimination, and rhyming production.

139. The Student's scores on the phonogram assessment were as follows:

- Consonants: 19/24 in fall, and 22/24 in winter;
- Vowels: 5/18 in fall, and 6/18 in winter;
- VCe: 0/6 in fall, and 5/6 in winter;
- Digraphs/trigraphs: 6/11 in fall, 5/11 in winter;

- Welded/word families: 3/14 in fall, 12/14 in winter;
- Additional vowel sounds: 0/34 in fall, 1/34 in winter;
- R-controlled: 0/7 in fall, 2/7 in winter;
- Additional sounds: 0/9 in fall and winter;
- Silent letters: 0/8 in fall and winter;
- Prefixes/suffixes: 0/29 in fall and winter.

140. The Student's scores on the real word assessment were as follows:

- CVC: 7/10 in fall, 9/10 in winter;
- Digraphs/trigraphs: 6/10 in fall, 8/10 in winter;
- CCVC/CVCC/CCVCC: 7/10 in fall, 9/10 in winter;
- VCe: 2/10 in fall, 8/10 in winter;
- VCCV: 3/10 in fall, 6/10 in winter;
- Families 1: 7/10 in fall, 8/10 in winter;
- VCCCV: 3/10 in fall, not tested in winter;
- V.CV: 0/10 in fall, not tested in winter;
- Consonant le: 0/10 in fall, not tested in winter;
- Families 2: 1/10 in fall, 4/10 in winter;
- R-controlled: 1/10 in fall, not tested in winter;
- Vowel teams, V.V, soft C/G, stable final syllable, additional sounds and affixes: all 0/10 in fall and not tested in winter.

141. The Student's scores on the nonsense word assessment were as follows:

- CVC: 0/10 in fall, 7/10 in winter;
- Digraphs/trigraphs: not tested in fall, 9/10 in winter;
- CCVC/CVCC/CCVCC: not tested in fall, 8/10 in winter;

- VCe: not tested in fall, 6/10 in winter;
  - VCCV: not tested in fall, 4/10 in winter;
  - Families: not tested in fall, 9/10 in winter;
  - Vowel teams and additional sounds and affixes: not tested.
142. The Student's scores on the red word reading assessment were as follows:
- Stage one: 27/41 (65%) in fall, 32/41 (78%) in winter;
  - Stage two: 30/60 (50%) in fall, 39/60 (65%) in winter.
143. The Student's scores on the phono-graphix screener were as follows:
- Phoneme blending: 15/15 in fall, 15/15 in winter;
  - Phoneme segmenting: 61/63 in fall, 57/63 in winter;
  - Phoneme manipulation: 3/10 in fall, 6/10 in winter;
  - Rhyming discrimination: 5/5 in fall, 4/5 in winter;
  - Rhyming production: 5/5 in fall, 5/5 in winter.

***Occupational Therapy Evaluation – High Complexity, by [REDACTED]***

144. In September 2018, [REDACTED] MS, OTR/L conducted an occupational therapy (OT) evaluation of the Student over four sessions. The evaluation was a “high complexity” evaluation, which is the most intensive level of evaluation. (P 70A.)

145. The occupational therapy evaluation was a clinical OT evaluation, not a school-based OT evaluation.

146. Ms. [REDACTED] administered the following tests: the Bruininks-Oseretsky Test of Motor Proficiency, second edition (BOT-2) (which provides a comprehensive index of motor proficiency and four composites of different aspects of gross and fine motor skills); Jordan Left-Right Reversal Test, third edition (assesses a student's ability to locate and recognize visual reversals of pictures, letters, words, numbers, and letter sequences); the Sensory Profile 2: Caregiver and Teacher

Questionnaires (provide standardized methods of documenting sensory processing patterns and can help identify the effect of sensory processing on functional participation); handwriting screening (informal measure of written communication skills as compared to same-age peers); comprehensive vision screening (examines ocular motor skills required for efficient reading, writing, and copying, including visual acuity, binocular vision, focusing, scanning, and shifting of gaze); the Developmental Test of Visual Perception, third edition (DTVP-3) (battery of five subtests measuring different but interrelated visual perceptual and visual-motor abilities); the Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI) (assesses the extent to which individuals can integrate visual and motor abilities); Grip and Pinch Strength (measures overall gross grasp and various types of pinch grip); and clinical observations (of sensory and motor planning skills).

147. Ms. [REDACTED]'s evaluation revealed the Student has deficits in fine manual control (composite standard score of 40, or below average on the BOT-2); bilateral coordination (well below average on the BOT-2); balance (below average on the BOT-2); running speed and agility (below average on the BOT-2); and strength and agility (below average on the BOT-2). Overall, her motor composite score was below average on the BOT-2.

148. With regard to visual perception skills, the Student's overall score was below average (on the DTVP-3). Particular weaknesses included eye-hand coordination (below average); figure ground, or the ability to pick out an object within a busy background (very poor); form constancy, or recognizing an object in different contexts regardless of changes in size, shape, and orientation (below average). Her motor-reduced visual perception skills were in the poor range and general visual perception was below average.

149. With regard to reversals (the Jordan-3), the Student was atypical, with accuracy and errors below the first percentile. She had difficulty completing the subtests and required several breaks.

150. Ms. [REDACTED] created a sensory profile based on questionnaires completed by Ms. [REDACTED] and [REDACTED], the Student's classroom teacher at the [REDACTED]. While Ms. [REDACTED] noted numerous areas of "probable difference" from other children, Mr. [REDACTED] marked that the Student reflected "typical performance."

151. Ms. [REDACTED] recommended that the Student receive OT services and identified the Student's needs as the following: frustration tolerance, recognizing letter reversals within words, fine motor skills, hand/finger strength, handwriting alignment and letter sizing, increased pencil pressure, poor pencil grasp, ocular motor skills, upper body strength and endurance, hand/finger muscular development, bilateral coordination, motor planning, and sensory processing skills. She made a number of specific recommendations, including hand breaks, a workspace without visual distractions, specialized paper, access to a "sensory space," increased font size, puzzles, mazes, crafts, and use of a slant board.

***MCPS IEP Process: Amendments to the IEP for the 2018 – 2019 School Year***

152. On September 21, 2018, the IEP team met. The following people were present: Ms. [REDACTED], Ms. [REDACTED] the Parents, Ms. [REDACTED], Mr. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], [REDACTED] (from [REDACTED]), Ms. Kavadi, Ms. Rosenstock, and Ms. [REDACTED] (MCPS 33.)

153. The IEP team considered additional documents provided by the Parents, including: comprehensive report on the tutoring from [REDACTED] [REDACTED] summer tutorial report, [REDACTED] Occupational Therapy Report, phone conversation summary ([REDACTED] [REDACTED] and [REDACTED]), and an email exchange between the Parents and the [REDACTED]

154. The Parents proposed additional supplemental aids (pencil grip, tracking tools, uniform font), an additional phonics goal (ADD), and increasing pullout services. The IEP team accepted all of these proposed changes, increasing pullout services from four hours to five hours per week.

155. The IEP team amended the objectives associated with a reading phonics goal. An amended objective stated that the Student “will decode words with vowel patterns (ex. – ee, ea, ie), and diphthongs (ai, ay, oy, ow).” In addition, the following objective was added: the Student “will decode words with short vowels (CVC, CVCe).”

156. On December 19, 2018, the IEP met to consider additional documents, including [REDACTED] documents and Ms. [REDACTED]’s summary review. MCPS declined to add speech-language services or OT services to the IEP. (MCPS 75.)

157. The IEP team added an objective under the math calculations goal and added two supplementary aids and services (advanced notice for assessments and large print test material).

158. The Student does not require OT or speech-language services.

159. As of December 2018, which was when the IEP was last reviewed, the IEP did not include OT or speech-language services.

## **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).

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Id.* at 201 (footnote omitted). The Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. (*Id.* at 206-07.)

The *Rowley* Court found, 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; that is, generally, to pass from grade-to-grade on grade level. *Rowley*, 458 U.S. at 204; 20 U.S.C.A. § 1401(9).

The Supreme Court revisited 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. *Andrew F. v. Douglas Cty. Sch. Dist.*; 137 S. Ct. 988 (2017). Consideration of the student's particular circumstances is key to this analysis; the Court emphasized in *Andrew F.* that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1001.

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3)(A). Among other things, the IEP depicts a student's current educational performance, explains how the student's disability affects the student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A. IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children) . . ." 34 C.F.R. § 300.320(a)(1)(i). If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if



appropriate, the use of positive behavioral interventions, strategies and supports to address that behavior. *Id.* § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. (*Id.* § 300.324(b)(1).).

To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI).

Thirty-five years after *Rowley*, the parties in *Andrew F.* asked the Supreme Court to go further than it did in *Rowley* and set forth a test for measuring whether a disabled student had attained sufficient educational benefit. The framework for the decision was the Tenth Circuit's interpretation of the meaning of "some educational benefit," which construed the level of benefit as "merely . . . 'more than *de minimis*.'" *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10<sup>th</sup> Cir. 2015).

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

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

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

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

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

*Andrew F.*, 137 S. Ct. at 998-99 (citations omitted). The Court expressly rejected the Tenth Circuit’s interpretation of what constitutes “some benefit”:

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

*Id.* at 1001 (citation omitted).

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

explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” (*Id.* at 1002.).

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

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the child must be placed in the “least restrictive environment” to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular school programs may not be appropriate for every disabled child and 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.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make

provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1). 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. COMAR 13A.05.01.10A(2). In such a case, a FAPE might require placement of a child in a private school setting that would be fully funded by the child's public school district.

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. *See id.* at 12-13. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

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 that MCPS failed to provide the Student with FAPE for the 2018 – 2019 school year, and that they are entitled to reimbursement for their unilateral placement of the Student at the [REDACTED]. I find that the Parents have not met this burden, and therefore conclude that MCPS offered the Student a FAPE for the 2018 – 2019 school year.

### Arguments of the Parties

The Parents argued that despite MCPS's efforts to educate the Student, it has failed to teach her to read. The proof is in the data, contend the Parents: simply put, in the middle of the Student's third-grade year, her reading level was lower than it had been at the end of first grade. Where there should have been progress, there was instead regression. This regression, maintained the Parents, occurred because MCPS failed to address the Student's fundamental deficit – extremely weak phonological awareness skills. Such skills are foundational to reading, and MCPS's failure to build these skills was the reason that over time, she regressed in reading while her peers made progress.

The Parents acknowledged that MCPS tried many different reading interventions, but contended that none of these worked, and that while parents cannot dictate the methodology educators use, school districts must use methodologies that actually work. The Student only began to make progress once the Parents enrolled her in an academic therapy program with [REDACTED] where she received thrice-weekly instruction from an academic tutor using the Orton-Gillingham approach, during her third grade year. Even so, the Student had a miserable third-grade year at [REDACTED] as she became increasingly aware of her inability to read and to keep up with her peers.

According to the Parents, the IEP offered by MCPS for the 2018 – 2019 school year failed to provide services the Student needed, including speech-language services and OT. Furthermore, the Parents asserted that [REDACTED] staff lacked the training and skills to provide effective reading instruction to the Student. In light of the Student's failure to progress at [REDACTED] – and her clear regression between first grade and third grade – the Parents argued that they had no choice but to enroll her in a private program like the [REDACTED] and

that they are entitled to reimbursement for [REDACTED] tuition, as it is a proper placement for the Student.

MCPS, noting that the only issue before me is the appropriateness of the IEP for the 2018 – 2019 school year, argued that the relevant IEP considered the Student's present levels of performance and set appropriate goals, and that it was developed in collaboration with the Parents and their advocates, including Ms. [REDACTED] and Dr. [REDACTED]. Further, the IEP developed by MCPS provided appropriate special education reading instruction, and in fact provided for more hours of such instruction than the Student currently receives at the [REDACTED] MCPS. [REDACTED] contended that the data does not support a determination that a full-day special education program is either necessary or appropriate for the Student, as the Student is able to participate in and benefit from an educational environment that includes nondisabled peers. MCPS further argued that the Parents have not shown that the Student requires speech-language or OT services.

With regard to reading instruction methodology, MCPS argued that its teachers are training in multiple reading interventions and employ them as needed. It maintained that the Student's teachers have the education, training, and experience to implement the Student's IEP such that she would make progress towards her goals.

Finally, MCPS contended that the Student made progress in third grade at [REDACTED] and that the teachers who worked with her saw significant growth in her reading skills. MCPS cited data collected by the Student's teachers that reflects this growth, including a ten-level increase in the Student's reading level during the third-grade school year. She also progressed with regard to writing skills, writing numerous essays, and accessed the grade-level curriculum in science and social studies. MCPS argued that the Student's 2018 – 2019 IEP was developed based on consideration of the Student's present levels of performance and needs, including data

from her third-grade year, and had appropriate goals, objectives, and services; it was therefore reasonably calculated to provide her with educational benefit consistent with *Endrew F.*

### *Evidence Presented by the Parents*

The Parents offered extensive testimonial and documentary evidence that they contend supports their position that the 2018 – 2019 IEP developed by MCPS was insufficient, beginning with [REDACTED] an expert in speech-language pathology, who testified regarding speech-language services. Ms. [REDACTED] works at the [REDACTED] and supervises the clinician who provides speech-language services to the Student there. Ms. [REDACTED] maintained the Student requires speech-language services.

The Student's mother, Ms. [REDACTED] also testified. She stated that the Student is by nature a happy, social, smart, expressive child. The Student attended [REDACTED] beginning in kindergarten, and during that first year, she struggled with reading, including her sight words. Because of the Student's difficulties, she participated in summer programs at [REDACTED] in 2015, 2016, and 2017. She also received extra support at school (though no special education services) beginning in kindergarten, and her parents worked with her on reading at home. Nonetheless, the Student was not reading on grade level at the end of either kindergarten or first grade.

Ms. [REDACTED] then described the assessments that took place in the Student's second-grade year after she continued to raise concerns about the Student's progress. These assessments resulted in a determination that the Student was eligible for special education services. Her initial IEP was finalized on April 5, 2017, and while the Parents were concerned it did not provide sufficient services, they agreed to it. (MCPS 10.) Still, the Student finished second grade below grade level in reading. Ms. [REDACTED] became emotional as she recounted how the Student still could not read at the end of second grade, would promptly forget written words she had just been shown, and

could not seem to retain information. When the Student began third grade, her teacher informed Ms. [REDACTED] that the Student's instructional reading level was 6 or 7 – even though she had ended second grade at level 12. This regression was deeply upsetting to the Parents, and they sought an evaluation by Dr. [REDACTED] a clinical psychologist, in the fall of 2017.

Dr. [REDACTED]'s findings that the Student was one of the most severely dyslexic children he had ever evaluated were no surprise to Ms. [REDACTED] and she shared his report with the IEP team. Ms. [REDACTED] noted that Dr. [REDACTED] recommended Orton-Gillingham, as it was proven to work with students like the Student, and she therefore asked MCPS to provide it. However, instead, MCPS continued to provide EIR.

Ms. [REDACTED] further testified that as third grade progressed, the Student's struggles at school began to take an emotional toll on the child. Ms. [REDACTED] characterized her as essentially illiterate, unable to keep up with her peers, and increasingly convinced of her own worthlessness. While the Student continued to put effort into her school work, she felt stupid because she could not read. In November 2017, the Parents arranged for the Student to receive tutoring through [REDACTED] LLC. The Student received three hours of tutoring per week, on the Mondays, Wednesdays, and Fridays, before the school day started. She continued with tutoring through the end of her third grade school year. Ms. [REDACTED] characterized the results of the tutoring as "amazing."

According to Ms. [REDACTED] in December 2017, the Student had a particularly upsetting incident where she was called to come up in front of the class by Ms. [REDACTED] her third-grade teacher, to read out loud, resulting in laughter from her peers and humiliation for the Student, who cried at school and still finds the incident too distressing to discuss with her mother.

Ms. [REDACTED] then recounted the interactions with MCPS that followed, including IEP meetings in February 2018 and the input of [REDACTED] of [REDACTED]. She also acknowledged



that in March 2018, the Student was admitted to the [REDACTED] and that the Parents accepted the offer of admission that same month. Nonetheless, the Parents continued participating in the IEP process with MCPS, and in April 2018, Ms. [REDACTED] submitted to the IEP team her written answers to questions, in which she emphasized that Orton-Gillingham has been the key to the Student's progress. Ms. [REDACTED] did not agree with the IEP MCPS proposed in April 2018 for the 2018 – 2019 school year, as she felt it did not include enough specialized pullout reading instruction and that reading instruction would be EIR, rather than the Orton-Gillingham recommended by Ms. [REDACTED]

Finally, Ms. [REDACTED] testified regarding the Student's experience at the [REDACTED] which has been overwhelmingly positive. She described the Student as "thriving," with enormous enthusiasm for school. Her anxiety, self-doubt, and shame have dissipated, and the Student receives no counseling services at the [REDACTED] as she no longer needs such services, though she did while attending [REDACTED]. Ms. [REDACTED] described what she observed when she visited the Student's classroom, including a structured setting and hands on, multisensory learning. She also noted that the OT services the Student receives have improved her hand strength, and that she more easily ties her shoes and has improved her handwriting.

Dr. [REDACTED] also testified on behalf of the Parents, explaining that he conducted a psychoeducational assessment of the Student in September and October 2017 over the course of two sessions, one of which he completed himself and the other of which was completed by a clinical extern. He stated that the Parents told him they were seeking an assessment because the Student was struggling academically, and the interventions used at school were not leading to improvement. The Student told Dr. [REDACTED] that she had trouble reading and sometimes skipped words. Based on the results of the psychoeducational assessment, Dr. [REDACTED] concluded that the Student had severe academic impairments.

In his testimony, Dr. [REDACTED] noted that the Student demonstrated strong comprehension skills, which would suggest that she should be a strong reader. He highlighted of particular concern the Student's low scores on the sound/symbol subtest of the WRAMI-2, a subtest that simulates the process of learning to read. The Student scored only in the fifth percentile. In addition, he testified that she was in the fifth percentile on the VMI, which measures visual-motor integration, which is relevant to handwriting skills. Based on these weaknesses, Dr. [REDACTED] concluded that the Student has dyslexia, and that she is in fact one of the most dyslexic students he has tested. Dr. [REDACTED] emphasized that while dyslexia was once understood to be a visual processing disorder, it is now understood to primarily relate to phonological processing. (T.<sup>11</sup> at 348-349.)

The Student, explained Dr. [REDACTED] had particularly low scores in subtests measuring phonological processing. Specifically, she was in only the first or second percentile on subtests measuring blending words, phonological awareness (composite), and phonological memory. She also scored in only the ninth percentile on rapid letter naming, which he noted is a predictor of reading difficulties. He described the Student's dual weaknesses in phonological awareness and rapid naming as a "double deficit," as each of those weaknesses is itself associated with dyslexia. (T. at 351.) He also cited the WJ-IV tests, which he described as very effectively separating skills that can be conflated by more informal measures. On these subtests, the Student scored at the first grade or kindergarten level in nearly every single area.

Dr. [REDACTED] also noted that despite being in third grade, the Student could not successfully write the alphabet, omitting some letters, duplicating others, and reversing several. He observed that his testing revealed no problems with social emotional functioning, though he noted that it was still only the beginning of the school year, which can be a "honeymoon" period for students.

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<sup>11</sup> Citations to the transcript are noted in this manner. I include the name of the person testifying as part of the citation only when it would otherwise be unclear.

Dr. [REDACTED] further testified that the Parents had raised a concern about the Student's self-esteem, and that the internalization of failures is a particular challenge with dyslexic students, and speaks to the need for effective interventions.

In explaining his recommendation for instruction through the Orton-Gillingham methodology, Dr. [REDACTED] emphasized its focus on a multisensory approach, including attention to lip and mouth movements when making sounds, as well as large muscle movements to learn letters. He stated that delivery of Orton-Gillingham may be in isolation or infused throughout the school day, and that the [REDACTED] takes the latter approach. Regardless of its delivery, Dr. [REDACTED] noted that it was important that the Student receive Orton-Gillingham in a "structured" manner, and not just piecemeal, as it is less effective when combined with aspects of other methodologies. The Student would also benefit from instruction with reduced reliance on language, with "learning by doing" in place of language-heavy lessons.

In his testimony, Dr. [REDACTED] also summarized his review of the assessment conducted by Ms. [REDACTED] (of MCPS), noting that the WISC-V scores from that testing were generally consistent with the results of his own testing. The WRAML-2 differed a bit from his testing, with Ms. [REDACTED]'s showing slightly better results in memory and learning. Even so, Ms. [REDACTED]'s testing reflected weaknesses in general memory and attention/concentration.

Dr. [REDACTED] recalled in his testimony that he had attended an IEP meeting for the Student in November 2017 and participated as the IEP team worked through goals and objectives. He testified that the informal classroom data suggested reading performance that exceeded his own assessments, but that that classroom data was from books with pictures, and not plain text, which made the classroom data less reliable.

[REDACTED] Associate Head of the Elementary Division, also testified on behalf of the Parents. She is new to her position as associate head and has a background in occupational

therapy; she still retains a small OT caseload at the [REDACTED]. She described the [REDACTED] program, including the Student's educational program at [REDACTED]. She noted that she was involved in the Student's admission to the [REDACTED] and interacts with her at times at the school. Ms. [REDACTED] described the Student as kind and a bit quiet. She specifically recalled the Student greeting Ms. [REDACTED] when the latter visited the [REDACTED] in October 2018; the Student had been excited to share that she was reading.

In her testimony, Ms. [REDACTED] reviewed the findings of the OT evaluation in detail, explaining the assessments and results. The OT evaluator concluded, and Ms. [REDACTED] agreed, that OT services were appropriate for the Student. When asked about the specifics of the Student's program, Ms. [REDACTED] was unsure about which of the Student's teachers at the [REDACTED] [REDACTED] were certified in special education, or exactly what the Language Arts program looks like. She was also unsure about which teachers were certified in Orton-Gillingham. With regard to physical education, Ms. [REDACTED] noted that the Student fully participates without accommodations. She also fully participates in playground activities.

The Parents also offered the testimony of [REDACTED], an educational consultant and academic therapist. Ms. [REDACTED] has particular expertise in Orton-Gillingham, having completed a ninety hour initial course and then over 700 hours of supervised hours of instruction to hone her skills. Ms. [REDACTED] first met the Student in November 2017, when the Parents first sought academic support through [REDACTED] where Ms. [REDACTED] is the founding director. Ms. [REDACTED] further testified that [REDACTED] provided three hours per week of Orton-Gillingham intervention, on Mondays, Wednesdays, and Fridays, before the Student's school day began. Her academic therapist was [REDACTED].

Ms. [REDACTED] noted that she has reviewed all evaluations of the Student in the record, talked to her teachers at both [REDACTED] and the [REDACTED] observed the Student at both [REDACTED]

██████████ and the ██████████ and spoken with Dr. ██████████ about the Student. Ms. ██████████ offered her opinion that MCPS has failed to teach the Student to read and write. It was Ms. ██████████'s position that due to the severity of the Student's disability, the only appropriate – meaning the only effective – method of remediation is an Orton-Gillingham-based intervention, delivered with fidelity, which she maintained MCPS has not provided to the Student.

Ms. ██████████ further testified that the IEP developed by MCPS for the Student for the 2018 – 2019 school year was not appropriate for her. She contended that in contrast, the ██████████ provided appropriate, effective instruction for the Student. She explained that she had reviewed the summer tutorial report prepared by the ██████████ and had spoken with ██████████ staff several times about appropriate instruction for the Student. In her experience, ██████████ staff was responsive and collaborative. In addition, Ms. ██████████ observed the Student at the ██████████ in October 2018, and she reported that the Student was thriving. Ms. ██████████ approved of the instruction she observed in the Student's classroom, which was Orton-Gillingham-based. She praised the diagnostic prescriptive approach the instructor used and the incorporation of the services of a speech-language pathologist. According to Ms. ██████████ the Student requires an educational environment that provides phonological training at an intense level (daily, and also all day long), with effective chunking and scaffolding, as well as at least forty to sixty minutes of pull out Orton-Gillingham at least five days per week.

The Parents also presented the testimony of ██████████ Education Director at the ██████████ who clarified Ms. ██████████'s earlier testimony about the education, training, and experience of the Student's teachers at the ██████████ ██████████ MCPS special education teacher, who testified about her education, training, and experience (and to whom the Student would have been assigned for special education instruction in fourth grade); and ██████████ MCPS special education supervisor, who testified regarding MCPS teacher training.

*Evidence Presented by MCPS*

MCPS presented the testimony of Ms. [REDACTED] who was the Student's special education case manager during her third grade year. Ms. [REDACTED] detailed her own training, education, and experience, including completion of a thirty-four-hour course in Orton-Gillingham in the fall of 2018. She outlined her extensive experience in reading intervention programs and stated that most often, she relies on EIR. Ms. [REDACTED] provided pull out reading intervention to the Student during third grade, and also provided special education support to the Student (and several other students) during Language Arts and mathematics in the general education classroom.

Ms. [REDACTED] explained that she and Ms. [REDACTED] worked together to plan lessons and modify assignments as needed, and that she (Ms. [REDACTED]) would be present in the general education classroom to provide support during whole group instruction and to work with small groups of students as needed. Ms. [REDACTED] participated in providing instruction in multiple subject areas, including Language Arts, mathematics, science, and social studies. She noted that the Student's strengths included strong communication and social skills, and that the Student also had excellent background knowledge in many subject areas. She described her as a happy, social child who smiled often.

Ms. [REDACTED] further testified that her rapport with the Student was good, and that when the Student became discouraged, they worked together on strategies for maintaining a positive mindset and problem solving effectively. She stated that the Student was receptive to these strategies and was learning to incorporate them as needed. She observed that the Student actively participated in class, especially during small-group instruction, and was accessing the curriculum. Ms. [REDACTED] also noted that the Student's reading comprehension was one of her strengths, and that audiobooks were used so that she could access grade-level text for comprehension purposes. In addition, the Student was able to access the curriculum in science

and social studies, both of which involved many hands-on lessons, and fully participated in physical education, art, and music. Ms. [REDACTED] also acknowledged that at times, the Student's attention and participation were variable, particularly during whole-group instruction; she noted that the April 2018 IEP added strategies to address this, including redirection and checking for understanding. (MCPS 33-14.)

Ms. [REDACTED] was involved in revising the IEP during the Student's third grade year, as well as developing the IEP for the Student's fourth grade year, and she described this process, noting that the IEP repeatedly collaborated with both Ms. [REDACTED] and Dr. [REDACTED]. She explained that the IEP process involved a discussion of increasing the number of hours earmarked for pull out reading intervention, and though this number was not officially increased until April 2018, the Student actually received increased hours beginning in the fall of 2017 (forty-five minutes per day five times a week, rather than the thirty minutes per day reflected in her IEP). She testified that the Student made progress during her third grade year.

Ms. [REDACTED] testified that [REDACTED] had the resources to implement the Student's IEP, had she attended for the 2018 – 2019 school year.

Reading specialist [REDACTED] also testified on behalf of MCPS. Ms. [REDACTED] contended that Orton-Gillingham was not the only appropriate intervention for the Student, whom she described as less severely disabled than some other students she has worked with. Ms. [REDACTED] who did not provide direct instruction to the Student but assessed her periodically, compiled a list of the various reading interventions [REDACTED] staff employed for the Student from kindergarten through third grade, with detailed information about each, along with the rationale for its use. (MCPS 43.) In third grade, [REDACTED] staff used EIR because they felt it had worked well in first grade. Particular attention was directed to the Student's phonological awareness needs. Ms. [REDACTED] described in detail how the Student received reading instruction

through EIR, Read Live Naturally, and guided reading in the general education classroom. Ms. [REDACTED] further described how the Read Naturally Live data is collected, with a teacher sitting next to the Student while the Student completes a timed session.

Ms. [REDACTED] the Student's third grade teacher, also testified for MCPS. She described the typical day in her classroom in detail and said that she and the Student had a good relationship. She noted that the Student was in two different guided reading groups, one for her instructional reading level and one that focused on complex text because of her strong comprehension skills. Ms. [REDACTED] also emphasized the Student's strong social skills, noting that she was excited when she was assigned to a kindergarten buddy and attended "lunch bunch" daily in Ms. [REDACTED]'s classroom from January 2018 until April 2018. Ms. [REDACTED] recalled that the Student enjoyed telling stories and singing karaoke during "lunch bunch." While the Student was generally bubbly and happy, Ms. [REDACTED] noted that she became frustrated at times and had a "flash pass" to allow her to visit the guidance counselor as needed.

Ms. [REDACTED] also testified that the Student expressed some anxiety at school. She hated being timed on school assignments or assessments, and would sometimes simply refuse to complete the task if she was being timed. She also talked about how her brother was in the gifted and talented program, as her parents had been, and wondered why she was not. Ms. [REDACTED] described the kind of works the Student did in writing and math, and noted that she participated at grade level in science and social studies. She also described some of the hands-on activities the students did, stating that the Student was engaged in these activities. In particular, Ms. [REDACTED] recalled a poster on China that the Student created and presented to her class.

Ms. [REDACTED] explained the Student was assigned to be a buddy to a kindergartner and a class ambassador in part to ease her anxiety and build her self-confidence. As the school year progressed, Ms. [REDACTED] testified that the Student became more confident and developed skills to



manage feelings of anxiety or discouragement. Ms. [REDACTED] recalled with pleasure the handwritten letter with which the Student presented her during teacher appreciation week.

With regard to the Student's physical skills, Ms. [REDACTED] recounted that the Student often talked about the competitive [REDACTED] in which she participated. Ms. [REDACTED] could not recall the Student having any physical difficulty with classroom tools or activities, including in physical education class, art class, at recess, or during math class when manipulatives were used. She also noted that the Student engaged well with nondisabled peers, working in collaborative groups that gave her the opportunity to both learn from others and model skills others could learn from her.

Finally, Ms. [REDACTED] testified that she was involved in the development of the Student's IEP for the 2018 – 2019 school year, and in her opinion, it was appropriate for the Student based on her needs.

MCPS offered the testimony of [REDACTED] speech-language pathologist, to address whether the Student's IEP should include speech-language services; it was her recommendation that the IEP should not, as discussed below.

Finally, [REDACTED], MCPS occupational therapist, testified regarding occupational therapy services. In her testimony, she reviewed the reports provided by the [REDACTED] regarding its assessment of the Student's OT needs and discussed her own written report. She explained the basis for her determination that OT services were not recommended.

### Analysis

The Parents frame the case before me in stark terms: if the Student's reading level dropped between the end of first grade and the middle of third grade, how can she possibly have been provided with the FAPE to which she was entitled? That this regression occurred is undisputed. At the end of first grade, the Student was reading at a level 13, according to MCPS.

This meant that she was reading below grade level at that time. By the end of the second quarter of third grade, she was reading at a level 11, which is the expected reading level for a mid-year first grader. MCPS's own data reflects this regression, and it acknowledged the regression at the hearing.

However jarring that regression is, it is not the summation of the issue before me. This is not to ignore its relevance with regard to both the difficult emotional experience of the Student and Parents, and also to a thorough analysis of the key question in this case: whether the IEP and placement developed by MCPS is reasonably calculated to provide the Student with a FAPE for the 2018 – 2019 school year. In fact, it is highly relevant to both. But the plain truth of the Student's regression over this time period does not equate to a conclusion that, for the Student's fourth grade year, MCPS failed to provide the Student with FAPE or that the IEP was not reasonably calculated to meet the unique needs of the Student. The regression clearly raises a number of questions that I must, and do, address – about the adequacy of the response of MCPS to the Student's difficulties, about the effectiveness of the interventions MCPS employed, about the ability of MCPS to address the Student's needs – but, despite its emotional resonance, it is not dispositive with regard to the central issue before me in this case.

The Student's regression is but a piece of the evidence before me, which includes formal assessments, informal assessments, evaluations, grades, classroom data, and the testimony of the Student's teachers, administrators, evaluators, and mother. Both parties presented extensive expert testimony and a large number of documents. I have reviewed this testimony, the documents, the arguments of the parties, and the relevant case law. Based on the evidence before me, I conclude that the IEP and placement developed by MCPS for the 2018 – 2019 school year is reasonably calculated to provide the Student with a FAPE. Below, I explain, addressing the following specific complaints by the Parents: MCPS's decision not to include

speech-language services; MCPS's decision not to include OT services; whether the IEP goals, objectives, and services otherwise address the Student's needs such that she would be expected to make progress appropriate in light of her unique circumstances; whether the Student's placement is the least restrictive environment for the implementation of her IEP; and whether MCPS has the ability to appropriately implement the IEP as written to enable the Student to make progress.

### **Speech-Language Services**

The Student's MCPS IEP for the 2018 – 2019 school year does not include speech-language services. The Parents' interest in speech-language services appears to have its germination in Ms. [REDACTED]'s reactions to the Student's third-grade IEP in November 2017, in which she included under "parental requests" a request for "speech language observation and evaluation to rule in/out receptive expressive language disorder." (P 43-4.) This request prompted Ms. [REDACTED]'s assessment, which took place over six sessions in March 2018. (MCPS 22.) In short, she concluded that neither the testing nor the classroom observation she conducted supported a need for special education services in the area of speech-language. In particular, she noted the Student's strong receptive vocabulary skills. Ms. [REDACTED] emphasized that the role of a MCPS speech-language pathologist is to address oral communication needs, and that while a student with dyslexia may exhibit patterns of errors in speech based on phonological awareness deficits, such oral communication needs are not inherent to dyslexia.

The assessment conducted by Ms. [REDACTED] was a thorough one. In her report, she provides an extensive review of the Student's medical and educational history, noting both strengths and weaknesses. (MCPS 22.) Ms. [REDACTED] administered a number of formal and informal measures to assess the Student's speech and language skills, measuring her receptive and expressive vocabulary skills, receptive and expressive language skills, proficiency with word

structure, sentence formulation, sentence recall, and other language skills. Ms. [REDACTED] also considered a language sample, which she recorded and analyzed. In addition, Ms. [REDACTED] observed the Student in her classroom at [REDACTED] during a literacy assignment, where she noted the Student demonstrated fluency and voice quality skills in the normal range, though she did have some difficulty sequencing multisyllabic words with three or more syllables.

Ms. [REDACTED]'s assessment revealed that the Student has no needs in the area of speech-language. She noted the Student's strong vocabulary, comprehension and narrative skills. (T. at 2059.) Ms. [REDACTED]'s professional credentials are impressive – she holds an MSDE Advanced Professional Teaching Certificate and is licensed by Maryland in speech pathology. In addition, she holds a Certificate of Clinical Competence in Speech-Language Pathology through American Speech and Hearing Association (ASHA). She also has twenty-three years of experience in MCPS. (MCPS 57.) In light of her expertise, coupled with the thoroughness of her assessment, which considered both formal and informal measures, the Student's medical and educational history, and a classroom observation during a literacy lesson, I give her opinion that the Student has no needs requiring the services of a speech-language pathologist significant weight. Ms. [REDACTED] attended an IEP meeting in April 2018 and provided her recommendation that the Student did not require speech-language services at that time.

Ms. [REDACTED]'s opinion that the Student's oral language skills are a strength is echoed elsewhere in the evidentiary record as well. In November 2017, Ms. [REDACTED] provided a parent report to the IEP team that described the Student's "unbelievably strong vocabulary, excellent comprehension, and very strong narrative skills." (MCPS 11-4.) In March 2017, the IEP team considered teacher reports that the Student "is easily understood by her peers and teachers." (MCPS 10-11.) Teacher reports from her third-grade year also underscore her strong oral communication skills. (MCPS 44-2; 44-5; 44-8.)

Ms. [REDACTED] acknowledged that the IEP developed by the [REDACTED] for the Student's 2018 – 2019 school year includes speech-language as an area of need. (P 75.) However, I found Ms. [REDACTED]'s criticisms of the [REDACTED] IEP document compelling. Specifically, she noted that no evaluator was listed and that it was unclear what data source was used for the information on speech/language strengths and needs. (T. at 2062-64.) She expressed surprise at the inclusion of phonological awareness and memory, as well as rapid naming, under the "needs" section, as these are not speech-language issues. (T. at 2063.) Ms. [REDACTED] testified that the [REDACTED] IEP conflated reading goals and purported speech-language needs, and that nothing in the [REDACTED] IEP changed her opinion that the Student does not have speech-language needs. (T. at 2067, 2074.)

The Parents disputed Ms. [REDACTED]'s position regarding the scope of appropriate speech-language services, contending that there is significant overlap between reading and writing skills and oral language skills, as sound discrimination is a component of each. Ms. [REDACTED] did not disagree with this, but noted that this overlap does not necessarily require that direct speech-language services be provided by a speech-language pathologist in every case. In cases where an oral language disability impacts reading and/or writing, a speech-language pathologist may collaborate with teachers to assist with problem-solving as needed. However, she maintained that there was no data to support a need for speech-language services for the Student.

In support of their position, the Parents offered the testimony of Ms. [REDACTED] who also has many years of experience in speech-language pathology, as well as certification by ASHA. Ms. [REDACTED] is a Speech-Language Pathologist and Literacy Specialist at the [REDACTED] a position she holds part time, and supervises the clinician who provides services to the Student. Her opinions were based on observation of the Student at the [REDACTED] and a review of the records

from the [REDACTED] and MCPS. She also spoke with the Student's teachers at the [REDACTED] (T. at 47-8.)

In her testimony, Ms. [REDACTED] outlined the Student's strengths, including strong social skills, and noted that the Student is highly motivated and hard working. The Student also has a strong vocabulary, both receptive and expressive. (T. at 49.) She highlighted three areas of weakness: memory recall, oral formulation, and phonological awareness. (T. at 52.) With regard to literacy, Ms. [REDACTED] explained that weak memory skills impact the ability to associate sounds with letters, which slows an individual's ability to express coherent ideas, especially in the absence of visual cues or pictorial assistance.

Deficits in phonological awareness also significantly impact reading skills, because at its core, reading requires the ability to process and understand sounds. The Student, according to Ms. [REDACTED], struggles to remember and manipulate sounds. Reading comprehension is also compromised when the effort required to decode becomes overwhelming. In addition, difficulties with phonological awareness impact the ability to spell in an accurate and timely manner.

Ms. [REDACTED] testified that she had reviewed the strategies suggested by Dr. [REDACTED] and that these strategies have been implemented for the Student at the [REDACTED] (P 23-8; P 75.) In particular, she cited memory techniques, multisensory teaching, and the use of manipulatives. These strategies relate to speech and language skills because they can be integrated into exercises involving the manipulation of sounds, holding sounds in memory, and separating words into their individual sound components. Ms. [REDACTED] also highlighted a small student/teacher ratio, constant review of concepts, and extra time for the Student to think and formulate her ideas as essential for the Student.

It was Ms. [REDACTED]'s opinion that the [REDACTED] fits the Student's needs because it implements these strategies at an intensive level and allows her to learn at an age-appropriate rate, despite her struggles with literacy. It differs from [REDACTED] because the Student is taught in an effective manner, according to Ms. [REDACTED]. She further noted that the Student's report cards show that her reading level increased significantly by the second half of third grade, and she attributed it to the Student's private tutoring, which uses the Orton-Gillingham method. This method has a strong phonological awareness component, which addresses the Student's needs, and is also used at the [REDACTED]. In addition, Ms. [REDACTED] testified that the Student should receive daily reading instruction.

At the [REDACTED] the Student also receives one forty-five-minute session per week of speech and language services, which Ms. [REDACTED] testified to be appropriate for her, as she has weaknesses in oral formulation and written expression. Ms. [REDACTED] acknowledged that Ms. [REDACTED] concluded that special education services were not needed in this area. However, Ms. [REDACTED] noted that Ms. [REDACTED] did not specifically evaluate phonological awareness or extended discourse skills. (T. at 76.)

Ms. [REDACTED] further testified that at the [REDACTED] the Student is a happy, motivated child with no behavioral problems. The small class sizes allow for the individualized instruction the Student needs, including interaction with her teachers and extra time on assignments. Ms. [REDACTED] opined that a general education classroom is not appropriate for the Student because it does not allow for the individualized instruction she needs.

I found Ms. [REDACTED]'s expert opinion far less persuasive than that of Ms. [REDACTED]. Unlike Ms. [REDACTED] Ms. [REDACTED] has never evaluated the Student and, while she supervises the clinician who provided speech/language services to the Student at the [REDACTED] she herself has provided no direct services of any kind to the Student. (T. at 84, 90.) She also has not been

involved in the development of the Student's IEP at the [REDACTED] (or MCPS) and has attended no meetings. Further, Ms. [REDACTED] acknowledged that the Student did well at the [REDACTED] even before she began receiving speech-language services in November 2018, and that teachers raised concerns not because the Student was struggling, but because they believed she was not reaching her full potential. (T. at 90-91, 94.) Ms. [REDACTED] agreed that the Student was accessing the curriculum even before she started receiving services. Ms. [REDACTED] also agreed that implementation of the strategies recommended by Dr. [REDACTED] does not require the services of a speech-language pathologist. (T. at 118.)

In short, I am not persuaded that the Student has deficits in the area of speech-language skills requiring specialized instruction, accommodations, or that she requires the services of a speech-language pathologist. The Parents did not offer compelling evidence to the contrary. Accordingly, MCPS's decision not to include speech/language services in the 2018 – 2019 IEP is appropriate.

### **OT Services**

The Parents' request for occupational therapy services appears to have originated from the Student's participation in the [REDACTED] program in summer 2018. In that program, OT services are provided to all students. (P 64.) The program's clinician, [REDACTED] highlighted several concerns at the end of the summer program, including the Student's attention/focus, hand development/fine motor skills, pencil grasp, visual/ocular motor, and directionality. (P 64.) Ms. [REDACTED] recommended an OT observation to further assess these concerns. Ms. [REDACTED], who was Ms. [REDACTED]'s supervisor, expressed surprise in her testimony that MCPS had not provided OT service in light of the difficulties Ms. [REDACTED] had observed, including challenges with her shoelaces and her handwriting, as well as pencil pressure issues. (T. at 513.)



Accordingly, in September 2018, the Student underwent a formal evaluation for OT services at the start of the 2018 – 2019 school year at the [REDACTED]. The evaluator was [REDACTED]. Because of the multiple issues highlighted by Ms. [REDACTED] prior to the evaluation, the evaluation was considered “high complexity.” (P 70A, T. at 517.) Ms. [REDACTED] testified that the OT evaluation was thorough, evaluating gross and fine motor skills, the ability to recognize and locate reversals, sensory processing, handwriting, ocular motor skills, visual perception, visual motor-integration, and grip and pinch strength. Ms. [REDACTED] reviewed the findings of the OT evaluation in detail in her testimony, noting in particular that the Student did not always recognize when letters were reversed and sometimes reversed her own letters. (T. at 521-22.) She testified that the Student demonstrated a delay in fine motor skills and struggled to write fluidly, pushing hard on her paper. (T. at 526.) She also noted that ocular-motor testing revealed that the Student may have some difficulty in this area. In addition, the testing revealed upper body weakness and poor body coordination, which would negatively impact both posture and hand strength. (T. at 524.) Ms. [REDACTED] also stated that the testing showed motor planning and sensory processing deficits.

Ms. [REDACTED] specifically identified a number of problematic areas in her report, including: frustration tolerance, recognizing letter reversals within words, fine motor skills, hand/finger strength, handwriting alignment and letter sizing, increased pencil pressure, poor pencil grasp, ocular motor skills, upper body strength and endurance, hand/finger muscular development, bilateral coordination, motor planning, and sensory processing skills. She concluded, and Ms. [REDACTED] agreed, that OT services were appropriate for the Student.

Accordingly, the [REDACTED] IEP identified a number of needs, including difficulty sequencing properly, inefficient fine and gross motor planning skills, inefficient ocular motor skills, poor balance while moving, poor manuscript (printing) handwriting skills, poor sensory

regulation/modulation, reversals, weak hand/finger strength, weak upper body strength, and weak visual perception. The IEP includes three OT goals, and the Student receives OT services twice per week, with each session being forty-five minutes. (P 75.)

In November 2018, the IEP team considered the [REDACTED] OT evaluation, which it asked Ms. [REDACTED] to review for the IEP team. (MCPS 73.) Ms. [REDACTED] testified regarding this review and her own recommendation that OT services were not needed. Prior to her recommendation, Ms. [REDACTED] reviewed documents from the [REDACTED] including the OT report from summer 2018 and the [REDACTED] evaluation report from September 2018 recommending that occupational therapy services be provided as a school-related service. She also observed the Student at the [REDACTED]. Ms. [REDACTED] testified that in considering whether the Student required OT services, MCPS focused on whether the student is physically able to use school tools and materials to participate. She noted that the [REDACTED] OT evaluation was extensive, but did not consider any classroom data. (T. at 2141.)

When Ms. [REDACTED] visited the [REDACTED] on November 16, 2018, she observed the Student in art class working on a painting project and in her American Revolution class copying from a chalkboard. She stated that she observed no motor deficits. (T. at 2145-46.) She also spoke with the art instructor, who indicated that she had no concerns about sensory issues. (T. at 2148.) Ms. [REDACTED] further testified that she reviewed the Student's school records from [REDACTED] and found that no teachers had raised any concerns about fine motor or sensory difficulties. (T. at 2148.) She recalled speaking with Ms. [REDACTED] who told her the Student had no difficulty handling the tools and materials in class, and neither the art teacher nor physical education teacher noted any concerns. (T. at 2151.)

Ms. [REDACTED] cited some particular issues in the [REDACTED] report that she found puzzling, such as why the IEP goal referred to lacing shoes if the Student in fact had difficulty tying shoes,

why there was no data to support difficulties with hand strength in the classroom or what the basis was for sensory processing concerns. (T. at 2156-58.) At its core, said Ms. [REDACTED] the [REDACTED] [REDACTED] OT evaluation is a clinical evaluation, rather than a school-based evaluation. This means that it is broader in scope, relies on a single data source (testing), and does not consider classroom performance data. (T. at 2160.)

On cross examination, Ms. [REDACTED] agreed that handwriting difficulties could require OT services, but explained that looking at completed work samples (as she was asked to do during her testimony) would not provide the information she would need to make a recommendation. (See P 33-28 and 33-41.) She stated that she would need to see the Student actually writing (and noted that she did so, during her observation of the Student in November). When asked about the areas in which the Student had low scores on the [REDACTED] OT evaluation, Ms. [REDACTED] testified that many of these areas have little or no bearing on classroom performance, and that the low scores are of little import without such classroom data to support identifying a particular area as a need.

Ms. [REDACTED]'s primary criticism of the [REDACTED]'s approach to assessing whether the Student required occupational therapy was that the evaluation was a clinical evaluation, rather than a school-based evaluation. In fact, Ms. [REDACTED] did not use any classroom data in her evaluation. Based on the evidence before me, I conclude that the Parents have not shown that the Student requires OT services, or that MCPS's decision not to include such services, after it considered Ms. [REDACTED]'s report and parental input, denied the Student a FAPE.

There is no doubt that Ms. [REDACTED]'s evaluation revealed some distinct weaknesses. (MCPS 71.) Specifically, the Student has weaknesses in fine manual control, bilateral coordination, balance; running speed and agility, and strength and agility. Overall, her motor composite score was below average on the BOT-2. With regard to visual perception, the Student's overall score

was below average. Particular weaknesses included eye-hand coordination (below average); figure ground, or the ability to pick out an object within a busy background (very poor); form constancy, or recognizing an object in different contexts regardless of changes in size, shape, and orientation (below average). The Student's motor-reduced visual perception skills were in the poor range and general visual perception was below average. With regard to reversals, the Student was atypical, with accuracy and errors below the first percentile. She had difficulty completing the subtests and required several breaks.

However, Ms. [REDACTED] highlighted a number of significant problems with Ms. [REDACTED]'s evaluation and report. Specifically, Ms. [REDACTED] used the second edition of the sensory profile, but then presented her test score summary in the report using the first edition. In addition, Ms. [REDACTED] administered the supplements of visual-perception and motor coordination without first administering the Visual Motor Integration test, as required by the Beery VMI-6 manual. Ms. [REDACTED] was also critical of what she identified as inconsistencies in Ms. [REDACTED]'s report, including statements that fine motor skills were an area of need, but that the Student was able to stabilize her wrist while using fingers to color and draw; that she demonstrated above average skill on the visual motor subtest of the Beery VMI-6; and that concerns about sensory processing were contradicted by School Companion results (provided by her teacher at the [REDACTED]) indicating that her behaviors were typical. (MCPS 73.)

However, these inconsistencies undermine Ms. [REDACTED]'s findings far less than Ms. [REDACTED]'s most significant concern: none of the deficits the Student demonstrated in a clinical setting actually impact her performance in the classroom. Ms. [REDACTED] credibly testified that a student may have low scores in clinical testing that do not affect classroom performance, and for that reason, she emphasized that classroom data is critical to any determination regarding school-based OT services. As Ms. [REDACTED] noted, Ms. [REDACTED] did not consider classroom data. When Ms. [REDACTED]

spoke to the Student's teachers, including Ms. [REDACTED] and the [REDACTED] art teacher, the teachers consistently reported that the Student had no difficulty handling classroom tools and materials, and that they had not observed any sensory problems or barriers to full participation in class. ([REDACTED] testimony, T. at 1904.) In addition, Ms. [REDACTED] observed the Student herself, and the Student had no difficulty with classroom materials.

Ms. [REDACTED] was knowledgeable regarding the clinical assessments administered by Ms. [REDACTED] the limited scope of school-based occupational therapy services, and the Student's educational history. It is appropriate that Ms. [REDACTED]'s evaluation was more limited in scope, as it focused on school-based concerns, rather than taking a broader clinical approach. I found her testimony both compelling and well-supported by the record. There is no evidence that the Student struggled with hand strength, gross motor skills, fine motor control, or perceptual difficulties in the classroom. There is no evidence that the Student was either unable to participate in any classroom activities or able to participate in only a limited manner due to physical challenges at either [REDACTED] or the [REDACTED]. She fully participated in every subject area, including physical education, art, music, and all academic classes.

The Parents maintained that Ms. [REDACTED] did not have an accurate picture of the Student's classroom performance, emphasizing that Ms. [REDACTED] arrived late to the [REDACTED] on the date of her classroom observation, and that she therefore observed the Student for only a short time – significantly less than one hour. Ms. [REDACTED] testified that Ms. [REDACTED]'s brief observation provided Ms. [REDACTED] with very limited information about the Student's classroom performance, as Ms. [REDACTED]'s late arrival caused her to miss the writing portion of the lesson. It was Ms. [REDACTED]'s opinion that Ms. [REDACTED] did not have the opportunity to see the impact of the Student's OT challenges on her classroom performance. (T. at 530-531, 533.)

However, Ms. [REDACTED] explained that despite her short visit, she was able to see two activities particularly well suited to an observation for OT purposes: painting and copying text by hand. (T. at 2193-94.) Ms. [REDACTED]'s observation was indeed brief, but her conclusions are consistent with the extensive record before me, and that gives them significant weight, even though the observation itself was short.

With regard to the Student's handwriting, which the Parents argued reflected a need for OT services, Ms. [REDACTED] explained that looking at completed handwriting samples is not sufficient to make a determination that a student has OT needs. In order to assess any OT-related deficits, she would need to be present as the Student is writing – as she was when she observed the Student at the [REDACTED] in November 2018. (T. at 2170.)

While Ms. [REDACTED] has many years of experience in occupational therapy, she acknowledged that she is unfamiliar with MSDE guidelines for OT services and holds no Maryland license or certification. She has never worked in a public school in any jurisdiction. Further, Ms. [REDACTED] has never evaluated the Student or provided any direct services to her. Accordingly, I give her opinion that the Student requires OT services comparatively little weight.

#### **IEP Present Levels, Goals and Objectives, Services, and the Question of Progress**

I now consider whether the IEP goals, objectives, and proposed services otherwise address the Student's needs such that she would be expected to make progress appropriate in light of her unique circumstances. The Student's IEP for the 2018 – 2019 school year has all of the required elements, including present levels of academic achievement and functional performance, how the Student's disability affects her involvement and progress in the general education environment, measurable goals, and a description of how progress will be gauged. It also describes the specific special education and related services that will be provided. Section 1414(d)(1)(A)(i)(IV); *Endrew F.* at 994. (MCPS 24 and 33.)

There was no dispute regarding the procedural soundness of the IEP. Both parties acknowledged that while the Parents disagreed with aspects of the IEP (such as the decision not to include OT and speech-language services, and the number of hours in special versus general education), its development was a collaborative process that substantially incorporated the contributions of the Parents and their advocates, including Ms. [REDACTED] and Dr. [REDACTED].

With regard to the collaborative IEP process for the Student, Ms. [REDACTED] testified that she attended the IEP meeting in November 2017, along with Dr. [REDACTED], who presented his findings to the IEP team at that time. She also prepared a written reactions document in which she proposed specific revisions to the Student's IEP, including the addition of dyslexia as a diagnosis; amended goals on phonics and decoding, as well as written language - expression; an additional social emotional goal and math goal; a list of instructional accommodations; Orton-Gillingham or Wilson five days per week; Read Naturally Live for fluency; and a speech language observation and evaluation. (MCPS 21.) She testified that the IEP team incorporated the majority of these suggestions.

However, the process was not without bumps along the way – Ms. [REDACTED] explained that MCPS did not readily agree to her recommendation in April 2018 that reading comprehension-related goals should be included, for example. While the IEP team was generally receptive to Ms. [REDACTED]'s suggestions for amendments to the IEP, Ms. [REDACTED] and Ms. [REDACTED] had taken the position in early April 2018 that there was no need to add comprehension goals to the IEP. (P 83.) Ms. [REDACTED] testified that she spoke with [REDACTED], MCPS Special Education Supervisor, and that at her suggestion a comprehension goal was included only because of Ms. [REDACTED]'s intervention. (P 53; T. at 719.) (Ms. [REDACTED] explained that in her opinion, the Student's reading comprehension was a strength, and that she was in two different guided reading groups because her vocabulary and comprehension were so

strong. T at 1865-66; 1965.) Ultimately, though, the social-emotional goal was added, as the Parents wished.

In addition, during the IEP process Ms. [REDACTED] suggested additions to the portions of the IEP that purported to set out the Student's present levels, as she felt the IEP as proposed by MCPS overstated the Student's skills. Specifically, she requested that the February 2018 present levels be included in the IEP. (P 43.) In her testimony, she maintained that even after her suggested revisions, the IEP overstated the Student's level in, for example, written expression.

But the essence of the Parents' complaint regarding the IEP was that as written, it could not have been reasonably calculated to provide the Student with educational benefit because it did not reflect any meaningful shift in approach from the previous IEP, and the Student had not only failed to make progress under the previous IEP, she had actually regressed. Ms. [REDACTED] cited in particular the lack of Orton-Gillingham or similar program in the IEP. The IEP, contended the Parents, essentially offered the Student more of the same, and after her disastrous third-grade year, how could more of the same result in progress?

The problem with this argument is two-fold: first, the IEP does not offer the Student more of the same. Second, the Student did in fact make progress in third grade.

The IEP for the Student's third-grade year was developed in April 2017, with effective dates from April 5, 2017 through April 4, 2018. At its inception, it had only two goals: "apply[ing] grade level phonics and word analysis skills in decoding words" and "writ[ing] to convey information clearly and accurately." (MCPS 10.) It provided for two hours per week of specialized reading pullout instruction and five hours of special education support in the general education classroom. Amendments were discussed in February 2018, including changes suggested by Ms. [REDACTED] (though it is not clear if these amendments were finalized). The appropriateness of this IEP is not before



me, and I therefore reach no conclusions in that regard. However, it is clear that the IEP at issue in this case, developed in April 2018, is substantially different from the previous IEP.

In part because it incorporates the suggestions of Ms. [REDACTED] and Dr. [REDACTED] many of which MCPS staff agreed were excellent, the IEP for the 2018 – 2019 school year is an entirely different program from that of the Student's previous school year. The goals have been expanded and refined, with attention to both phonics and reading comprehension. The objectives are detailed and precise. The argument that the IEP could not have been reasonably calculated to provide educational benefit because it merely represented a continuation of a failed program is substantially undermined by the extensive, documented revisions to the program.

What the Parents actually find objectionable about the IEP is not that the literal program outlined in the document is the same, but that they understood MCPS's plan to implement that program to be effectively the same as it was in third grade. By this, the Parents mean that (as of April 2018) MCPS planned to use EIR and Read Naturally Live, reading interventions that the Parents maintained did not work for the Student previously, during her fourth-grade year. The IEP does not explicitly state that EIR would be the reading intervention, but Ms. [REDACTED] and Ms. [REDACTED] both testified that this was their understanding, with Ms. [REDACTED] adding that MCPS had told them Orton-Gillingham was not available. In September 2018, MCPS agreed to provide an Orton-Gillingham-based intervention by an educator trained in Orton-Gillingham, though again, this is not reflected in the written IEP. (The Parents nonetheless continued to object to the IEP, primarily because even with MCPS's agreement to use Orton-Gillingham, they remained skeptical of MCPS's ability to effectively implement the approach. I address this below, when I discuss the training of MCPS staff.)

First, I note that the IEP team's failure to specify Orton-Gillingham (or any other specific approach, methodology, or reading intervention) in the written IEP does not equate to a failure to provide FAPE. This is well established by case law, which the Parents acknowledged.

Second, it is simply untrue that the interventions employed by MCPS did not result in significant, meaningful progress for the Student. The Student did not achieve grade level performance in third grade, and this was understandably enormously frustrating and discouraging to both the Parents and the Student herself. It is clear that the Parents were active, involved, and well informed advocates for their daughter, and that they are deeply invested in both her academic success and emotional well-being. They are to be commended for their tireless advocacy and tenacity. It is also clear that as the Student became increasingly aware of the gap between her reading performance and that of her peers, she became distressed and struggled at times to cope with her feelings of discouragement and anxiety. Her progress in third grade was undeniably not what either the Student or her Parents hoped for.

However, as *Andrew F.* makes clear, "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Andrew F.* at 1001. That the Student made progress is evident by her grades, the increase in her reading level as reflected in informal assessments, her performance on formal assessments, including the MAP and PARCC assessments, and informal data shared by her teachers at the end of third grade, including progress reports. I consider each of these in turn below.

The Student's grades in third grade were excellent: not only did she receive passing marks, but her end-of-year average grades were A's in mathematics, science, social studies, art, music, and physical education ("the student consistently demonstrates mastery of the grade-level standards taught this marking period") and B's in reading and writing ("the student frequently demonstrates mastery of the grade-level standards taught this marking period"). (MCPS 39-10

and 39-11.) In addition, the Student's instructional reading level after the first quarter of third grade was 8 (which equates to a first grade, end of first marking period level), but by the end of third grade, it was K (which equates to second grade, end of the second marking period). (MCPS 39-10.) The Student's reading fluency, as measured by Read Naturally Live, also reflects substantial improvement, with "hot" timing scores reflecting seventy-five words per minute read correctly, and increased skill with regard to phonics and comprehension. (MCPS 46; [REDACTED] testimony, T. at 1222-23; [REDACTED] testimony, T. at 1683.)

In addition, the Student's third-grade scores on the MAP assessments reflect progress. The MAP was administered to the Student in the fall, winter, and spring of the 2017 -2018 school year in both MAP-R and MAP-M. The Student's MAP-R score increased from 154 in the fall to 172 in spring. Her MAP-M score increased from 169 in fall to 192 in spring. The Parents noted that all of these scores fall short of the benchmarks, which is true. In addition, the Parents contend that these scores, when considered as percentiles that compare the Student to her peers, hardly reflect progress: the spring MAP-R score places the Student in only the fourth percentile, and the spring MAP-M score places the Student in only the 24<sup>th</sup> percentile. (MCPS 41-2.)

Ms. [REDACTED] explained that as the MAP assessments are computer-based, results can be a bit variable. However, as Ms. [REDACTED] testified, in reading the Student's scores reflect a nearly twenty-point increase (more than the eleven-point increase in the benchmark levels), based on text that the Student had to decode herself. On the MAP-M, the Student's scores increased twenty-three points, which again was more than the benchmark increase of thirteen points. (MCPS 41-2.) The MAP is meant to evaluate a student's progress over time, and thus the Student's increase in scores is significant, even though her performance on the MAP-R in particular placed her well below her peers. (T. at 1193-95.)

The Student's PARCC scores, which measure how well she has learned grade-level material in English language arts/literacy, were also in the "met expectations" category for both reading and writing. (MCPS 42.) MCPS acknowledged that the Student received accommodations (as reflected in her IEP) for the PARCC, including a human scribe for writing and text to speech. Nonetheless, the PARCC scores reflect the Student's progress, as Ms. [REDACTED] testified that even with her accommodations, the Student was responsible for the composition on the writing portion, including grammar. (T. at 1480.) Ms. [REDACTED] explained that the PARCC essentially measures reading comprehension. Scoring "met expectations" translates to readiness for the next year's curriculum. (T. at 1197-1198.)

The Student's teachers also informally reported that the Student was making progress. At the end of June 2018, the IEP was updated to include progress reports on each of the eleven goals. ([REDACTED] testimony, T. at 1219.) For each of the goals, the progress report reflects sufficient progress to meet the goal, with detailed descriptions of the skills the Student has mastered and those she is working on. For example, one of the reading phonics goals includes this progress report: "[the Student] is currently reading texts on a level K with 95% accuracy. She uses visual cues for r-controlled vowels and vowel patterns. [She] is using her strategies more often without needing reminders." (MCPS 33-37.)

The Parents were critical of the reliability of each of these measures of progress. Ms. [REDACTED] in particular testified that the measures upon which MCPS relied were flawed or inappropriate. For example, Ms. [REDACTED] was skeptical regarding the Student's increase in reading levels, noting that the school work samples she reviewed in February 2018 were so poor that achievement of level K (second grade, second marking period) just a few months later seemed questionable at best. (T. at 723.) Ms. [REDACTED] further testified that the F&P reading levels used by MCPS are not necessarily an accurate measure of a child's reading skills, as children

with dyslexia are particularly good at using picture clues and memorization to compensate for weaknesses in phonological awareness. (T. at 846.)

According to Ms. [REDACTED], several of the running records, or informal reading assessments, conducted by Ms. [REDACTED] were completed improperly, with errors and self-corrections not marked and no fluency or comprehension score indicated. Ms. [REDACTED] went through several of the records line by line, noting alleged errors and inconsistencies. (MCPS 46; T. at 686-687.) The Parents contended that these errors fundamentally undermine MCPS's claim that the Student increased ten reading levels in third grade.

Certainly these informal assessments used by MCPS are not perfect. Both Ms. [REDACTED] and Dr. [REDACTED] credibly testified that children with dyslexia are particularly skilled in using strategies in an effort to keep up with their peers that may inadvertently mask their deficits in phonological awareness. In addition, witnesses for both parties testified that the Student tended to perform inconsistently on assessments and that she had particular sensitivity to being timed. When the Student realized she was being timed, she would become distressed and distracted, or she might flat-out refuse to complete the assessment. But despite the potential deficiencies in any single measuring tool (such as picture clues in a leveled reader), MCPS's case that the Student made progress remains a persuasive one because progress was reflected across so many different measuring tools. In addition, the Parents did not establish that any of these tools was so fundamentally flawed so as to be invalid.

With regard to the running records, Ms. [REDACTED] addressed Ms. [REDACTED]'s criticism in detail, acknowledging that she must have forgotten to mark a comprehension score on a record dated April 18, 2018. (MCPS 46-20; T. at 1802.) She reviewed the Recording Form she completed in October 2017 (MCPS 78), which was used to evaluate the Student's decoding skills, and explained how and why she marked it the way she did. The Student was able to read with

accuracy of 91% at an instructional level of 9/10, though her fluency was scored at one (on a scale of zero to three). However, Ms. [REDACTED] noted that at that time, the Student was not able to read consistently at a level 9/10, so it was more appropriate to score her as a level 8. She also detailed how she assessed the Student at a level 11/12 in February 2018, where the Student read with 93% accuracy. (MCPS 46.)

With eighteen years of experience as a reading specialist and twenty-five as an educator, Ms. [REDACTED] was a knowledgeable witness who was clearly well versed in different reading interventions. She testified regarding the different approaches the Student's teachers had tried with the Student at [REDACTED] noting that some were more successful than others. (T. at 1640-41.) She described EIR as having a phonological awareness component that made it an effective intervention for the Student. (T. at 1638.)

I found Ms. [REDACTED]'s explanation of how she (and other [REDACTED] teachers) marked the running records more than adequate to address the concerns raised by Ms. [REDACTED]. Ms. [REDACTED] explained how she used the recording form and exactly what her notations reflected. She was able to provide this explanation fluidly, without hesitating to try to recall her thinking, which suggests that the way she marked the recording form was consistent with her usual practice and an effective way of capturing the information she needed to assess the Student's reading level. (T. at 1659-1672.) Ms. [REDACTED] noted that the F&P reading levels correspond to some degree to advancing skills in phonological awareness, such as mastery of initial blends, final blends, the silent "e", and vowel teams (ai, oa), and that therefore progress with regard to reading levels reflects improving phonological awareness. (T. at 1674.)

Ms. [REDACTED] was able to use these recording forms to point out specific instances in which the Student was demonstrating mastery of phonological skills. (T. at 1669, 1671, 1691, 1694-95.) These recording forms were used frequently by Ms. [REDACTED] and others to informally assess the

Student, so they provided quite a bit of data over time. I am not persuaded that a few minor imperfections in Ms. [REDACTED]'s completion of the recording forms casts doubt on the results that she obtained, and which were used to determine the Student's instructional reading levels. Ms. [REDACTED] testified compellingly about the Student's engagement with the text, sharing that at times, the Student laughed in her enjoyment of reading and at the humor in the text. (T. at 1705.) She was able to speak, with reference to specific notations in the running records, about the Student's growth in decoding, fluency, and comprehension. In contrast, Ms. [REDACTED] acknowledged that she did not have this experience of working directly with the Student on a regular basis, and that the focus of [REDACTED] was on phonemic awareness, rather than reading authentic text. I therefore give Ms. [REDACTED]'s expert opinion regarding the validity of the reading levels as determined by MCPS significant weight as compared to Ms. [REDACTED]'s.

Ms. [REDACTED]'s criticisms of the tools MCPS used to assess the Student's reading levels, which she voiced along with her skepticism that the Student really could advance ten reading levels in one school year, reflect the essence of the expert opinion she offered in her testimony: that the Student lacked foundational skills in phonological awareness, that MCPS failed to address this deficit in her skills, and that the "progress" cited by MCPS is illusory in that it is based on flawed assessment tools and data. The proof, according to Ms. [REDACTED] is in the remarkable regression in instructional reading levels that occurred between each school year. Specifically, the Student ended first grade at level 13. However, after the first marking period of second grade, she was level 9. After reaching level 12 by the end of second grade, she then regressed to a level 6 or 7 at the start of third grade, and a level 8 at the end of the first marking period in third grade.

While acknowledging that many students experience a bit of regression over the summer (which witnesses such as Ms. [REDACTED] referred to as "the summer slide"), Ms. [REDACTED] testified that this kind of regressive pattern, with such a significant slide each summer and then a failure to

recover those skills such that even in the middle of third grade, the Student still was reading below her own level at the end of first grade, is clearly indicative of a severe deficit in the phonological skills that form the foundation of reading. Dr. [REDACTED] echoed this opinion. As Dr. [REDACTED] explained it, over the school year, students can become adept at memorizing words and patterns instead of internalizing an understanding of phonological awareness. That memorization would degrade over the summer, revealing the deficits in phonological awareness at the start of the next school year. Ms. [REDACTED] further asserted that the only reason the Student ultimately made progress in third grade was because of the private academic tutoring sessions with [REDACTED] [REDACTED]

This is a compelling argument, and Ms. [REDACTED] and Dr. [REDACTED] both have extensive experience with and knowledge regarding students struggling with dyslexia. Further, while the data is somewhat inconsistent with regard to the Student's phonological skills, it does show that at the start of third grade, the Student had significant deficits in phonological skills. But even if the Student's weak phonological skills contributed substantially to her summer regression (and overall regression in reading between the end of first grade and the middle of third grade), which is plausible, it does not follow that the IEP for the Student's fourth grade school year therefore failed to provide the Student with FAPE. What does follow is that any IEP that is reasonably calculated to provide the Student with educational benefit must adequately acknowledge and address the Student's deficits in these foundational skills. In this case, the IEP does; I explain below.

Dr. [REDACTED]'s findings in November 2017 were striking: across the board, the Student's phonological processing scores were extremely weak, with nearly all of the scores on the CTOPP reflecting skills at or below the fifth percentile. (MCPS 13.) Dr. [REDACTED] described the Student as one of the most severely dyslexic students he had ever evaluated. (T. at 357.) Ms. [REDACTED] had



a similar opinion; while she did not formally assess the Student, she noted that when the Student began her sessions at [REDACTED], she struggled with basic phonological awareness. When asked on cross examination why the Student had so many scores of 100% in the early tutoring activities at [REDACTED] Ms. [REDACTED] pointed out that these activities focused on very basic phonological skills – skills that should be mastered at the kindergarten or first grade level. (T. at 837.) Ms. [REDACTED] also noted that the activities resulted in many far lower scores, and indeed, records of the early sessions show scores of 0%, 15%, 50%, and so on. (MCPS 36.) This data strongly suggests that the Student's deficits in phonological awareness were still significant early in third grade. This is not entirely surprising, as the Student was only identified as a student with a learning disability during second grade, and her initial IEP was developed towards the end of her second grade year. As I have noted, the 2017 – 2018 IEP is not the issue before me.

What is relevant to my decision is MCPS's response when this information from Dr. [REDACTED] and Ms. [REDACTED] was provided to MCPS, which occurred in November 2017. Input from Dr. [REDACTED] and Ms. [REDACTED] significantly shaped the Student's education program in third grade. Ms. [REDACTED] testified that [REDACTED] opted for EIR in third grade because the Student had made progress with it in first grade, and because it was, in part, directed at phonological awareness. Accordingly, Ms. [REDACTED] testified that the Student received reading intervention in third grade that focused on both phonological awareness and phonics, tying the lessons to authentic text. In addition, [REDACTED] staff assessed the Student with regard to phonograms (reading words) and phonological awareness (oral only) in late November and early December 2017, which suggests that MCPS was paying particular attention to deficits in phonological awareness in the wake of the information provided by Dr. [REDACTED] and Ms. [REDACTED]. Ms. [REDACTED] cited data from December 2017 that showed mastery in initial sounds, blending, segmenting, and rhyming. The

Student performed well on these assessments, though Ms. [REDACTED] agreed that the assessments focused on skills well below grade level. (MCPS 46-3; [REDACTED] testimony, T. at 1688.)

Most significantly, the goals and objectives for the IEP at issue in this case were developed with these phonological deficits in mind. The IEP could not be clearer in this regard: "Given whole group and small group instruction in evidence based reading phonics strategies, modeling, wait time for the formulation of oral responses, multiple opportunities for practice, and visual supports, [the Student] will use her knowledge of all letter-sound correspondence to read accurately unfamiliar words in and out of context at level M (3<sup>rd</sup> grade level) with 90% accuracy." And, reflecting consideration of Ms. [REDACTED]'s concern about sound discrimination without regard to sound-symbol correspondence, a related objective reads: the Student "will blend, segment, delete, sequence, isolate, and substitute syllables and phonemes in the following order of mastery: solely auditory, with manipulatives and no letter symbols, and finally with manipulatives and letter symbols." (MCPS 33.)

The intensive focus on the Student's phonological awareness during third grade clearly yielded positive results. The [REDACTED] data suggests that by the fall of 2018, the Student had made significant strides towards mastering the phonological skills that provide the foundation for reading. On the phono-graphix screener in fall 2018, the Student had scores above 95% in every area but one: 15/15 in phoneme blending, 61/63 on phoneme segmenting, 3/10 on phoneme manipulation, 5/5 on rhyming discrimination, and 5/5 on rhyming production. (P 89-4.) This progress is not surprising, given the progress in phonological awareness the Student had made as early as December 2017, as reflected in both MCPS's data and that of [REDACTED]

Ms. [REDACTED] claimed that the Student's progress in third grade was entirely due to her Orton-Gillingham tutoring sessions. She noted that by February 2018, Ms. [REDACTED]'s notes reflected that the Student was making some progress in phonological awareness. Ms. [REDACTED]

explained that for a child older than eight, some unlearning must take place first, before the child can make progress, and that this is why it took some time to see progress. (T. at 693.) In addition, there must be a significant rebuilding of self-confidence, as children who have fallen so far behind no longer believe themselves capable of reading. By February 2018, the Student was starting to feel successful, though her attitude varied from session to session and she still expressed frustration and anxiety at times. Her progress was also slow: Ms. [REDACTED] noted that even in January 2018, the Student still could not encode words with a short “u” sound. (P 62; T. at 732.) By June 2018, according to Ms. [REDACTED] the Student was demonstrating phonological awareness skills on a first-grade level.

The Student undoubtedly received enormous benefit from these private tutoring sessions. However, I am skeptical that even an expert such as Ms. [REDACTED] can, with any degree of certainty, trace the Student’s progress in third grade solely to the Orton-Gillingham sessions, when the Student was simultaneously receiving intensive reading intervention at [REDACTED]. Ms. [REDACTED] stated that the basis for her opinion was that the addition of Orton-Gillingham in third grade was the only thing that had changed from prior years for the Student, but this is simply not the case; Ms. [REDACTED] credibly testified that substantial changes were made to the Student’s educational program in third grade, including targeting of the Student’s phonics and decoding needs, supplementation by Ms. [REDACTED] with regard to sight words, and word study to bridge EIR and small group instruction. (T. at 1832.) Ms. [REDACTED] did not deny the positive impact of the [REDACTED] sessions, but noted that the Student’s progress was most likely due to the confluence of these various factors. (T. at 1807.) Ms. [REDACTED] had a similar opinion. (T. at 1439-40.) I found Ms. [REDACTED]s and Ms. [REDACTED] expert opinions more persuasive than Ms. [REDACTED]s on this point, as the evidence does not support Ms. [REDACTED]s characterization that the

only difference between the Student's third-grade year and prior years was the addition of Orton-Gillingham.

The Parents also raised concerns about the Student's reading fluency. Ms. [REDACTED] was asked on cross examination about notations in the informal reading assessments that the Student was reading very slowly. For example, one record showed the Student reading fewer than fifteen words per minute. (MCPS 46-11.) Ms. [REDACTED] responded that in her experience, the Student did not typically read that slowly. (T. at 1750.) She noted that the text referred to in that record was nonfiction with text features, such as sidebars or diagrams. A more reliable indicator of fluency, according to Ms. [REDACTED] is the Student's Read Live Naturally data, which reflects "cold" readings at forty-two words per minute and "hot" readings at seventy-five words per minute. (MCPS 46; [REDACTED] testimony, T. at 1685-87.) Contrary to the Parents' contention, I do not find that the evidence supports a conclusion that the Student read so slowly that she was functionally illiterate.

Ms. [REDACTED] also pointed to several other statements in the record as indicative of the Student's lack of progress, none of which I found persuasive. For example, she cited a PARCC rubric, which included multiple scores of "one" (on a scale of zero to three), and even a zero in one area, as indicative of the Student's failure to make progress. (P 41.) However, Ms. [REDACTED] credibly testified that the document Ms. [REDACTED] was criticizing was only a practice session, and did not reflect the Student's actual performance on the PARCC. I give this document no weight. Ms. [REDACTED] also cited MCPS documents as explicitly admitting the Student's lack of progress, including November 2017 and January 2018 progress notes in the Progress Report on IEP goals that state the Student was not making sufficient progress to meet her goals. (P 40-5.) As Ms. [REDACTED] explained, these progress notes related to the phonics goal on the Student's third-grade IEP, which referred to "grade-level phonics." This goal was substantially revised for the

2018 – 2019 school year, and thus these notes do not provide useful information about the Student's progress with regard to the goals of the relevant IEP or the program outlined in that IEP.

The Parents also raised the issue of the Student's social-emotional well-being, citing to *Leggett and K.E. v. District of Columbia*, 793 F.3d 59 (D.C. Cir. 2015). *Leggett*, according to the Parents, stands for the proposition that the decline of a child's emotional state as a result of a failure to make actual educational progress is relevant in determining whether the parents' unilateral placement that improved a child's emotional state was proper. Because I am finding that MCPS provided the Student with FAPE, I am not reaching the question of whether the Parents' unilateral placement was proper. However, as there was extensive testimony regarding the Student's emotional state, including testimony as to whether she referred to [REDACTED] as "the death school," I briefly address the issue in the context of the Student's 2018 – 2019 IEP.

Ms. [REDACTED] testified that there was an upsetting incident in December 2017, where Ms. [REDACTED] humiliated the Student by asking her to read aloud in front of her classmates. Ms. [REDACTED] testified that the incident was devastating to the Student; Ms. [REDACTED] was adamant that no such incident ever occurred. (T. at 172-173; 1909; 1925.) The truth is likely somewhere in the middle, as I have no reason to doubt either Ms. [REDACTED]'s credibility or Ms. [REDACTED]'s; most likely, some incident occurred that loomed much larger in the Student's mind than Ms. [REDACTED]'s. Exactly what transpired has no bearing on my decision, and accordingly, I make no findings as to what actually happened. But what Ms. [REDACTED]'s recollection suggests, which is borne out by other evidence in the record, is that the Student was generally a happy, social child who liked school, but that she struggled with her emotions at times, experiencing frustration, sadness, and anxiety about being behind her classmates in reading. At times, this frustration and sadness meant the Student had negative and

angry feelings about attending school. Sometimes, she was disengaged in the classroom, particularly during whole-group instruction.

The Student clearly shared these emotions more freely with some people than others. Ms. [REDACTED] testified that the child she interacted with in the classroom did not exhibit the kind of misery and unhappiness that Ms. [REDACTED] described. (T. at 1871.) Ms. [REDACTED] describes the Student as happy. (T. at 1161.) Ms. [REDACTED]'s notes from the Orton-Gillingham sessions, however, reflect comments from the Student about her frustration, including crying at school. (MCPS 36-16.) And Ms. [REDACTED] described the Student as miserable at [REDACTED] and then an entirely different child once she began attending the [REDACTED]

MCPS responded to these concerns, first raised by the Parents at the start of third grade, by assigning the Student both the role of ambassador and that of a buddy to a kindergartner to boost her confidence and self-esteem. ([REDACTED] testimony, T. at 1891-93.) In addition, in April 2018, the IEP team added a social-emotional goal to the IEP at the request of the Parents and Ms. [REDACTED] (MCPS 21.) Ms. [REDACTED] testified that her recommendation that a social-emotional goal be included was prompted by her understanding that the Student was engaging in "shut down" behaviors and withdrawing from participation at school. The Student's statements to Ms. [REDACTED] that she was unhappy at school were also consistent with the Parents' reports that the Student was feeling lost and frustrated. The Student's emotional state made sense, according to Ms. [REDACTED] because she had fallen so far behind her peers in reading.

To address the Student's social-emotional needs, the IEP provided for thirty minutes of counseling per week. The Student also had a "flash pass" that let her visit the guidance counselor as needed. MCPS's responsiveness to this concern expressed by the Parents, and its revision to the IEP, supports my finding that the IEP was reasonably calculated to provide the Student with educational benefit. MCPS clearly recognized that the Student's emotional

response to her academic struggles could undermine her academic progress. However, I note that the evidence suggests that this concern did not come to fruition: as detailed above, the Student made progress in third grade. Her grades were excellent. Her attendance did not suffer, and while she sometimes was disengaged in whole group lessons, Ms. [REDACTED] described her as an engaged participant in small-group lessons. I also note that the fact the Student is happier at the [REDACTED] does not obligate MCPS to pay for it.

In short, the evidence before me supports a conclusion that the 2018 – 2019 IEP was reasonably calculated to provide the Student with educational benefit, consistent with *Rowley* and *Endrew F.*

#### **The Ability of MCPS to Implement the Student's IEP**

The Parents contended that MCPS as a whole, and the staff of [REDACTED] in particular, do not have the ability to provide the Student with the reading intervention that she requires to make progress. With regard to MCPS as a whole, the Parents cited to a grant document that they alleged reflects an admission by MCPS that it has failed to provide adequate reading interventions to its students. (P 84.) In particular, the grant includes statistics that show that a declining percentage of students with IEPs met the winter AP-PR<sup>12</sup> benchmark from kindergarten to second grade, and that proficiency scores on the PARCC show a need to address proficiency in both math and reading. (P 84-14 and 84-15.)

The grant does not mention the Student and includes no data specific to her. It does include some general information about training in Orton-Gillingham, with reference to specific courses. (P 84-3.) The grant supports a conclusion that MCPS seeks to improve its reading intervention strategies, system-wide resources, and data collection to more effectively address reading and math skills for MCPS students with IEPs. This conclusion has virtually no bearing

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<sup>12</sup> The document states that the AP-PR is administered to assess reading skills in the primary grades.

on the issue before me. In isolation, it suggests the possibility that MCPS failed to meet the Student's needs; in the larger context of actual and specific evidence regarding the Student's academic performance, strengths, deficits, IEP goals and objectives, and progress, the grant is simply not relevant. The issue before me requires consideration of the latter, not the former, and accordingly, I give the grant no weight.

I now consider the ability of [REDACTED] staff to implement the Student's IEP. Even as the Parents maintained that they were not demanding any particular methodology, they offered the testimony of Ms. [REDACTED] that based on her training and research, Orton-Gillingham was the only intervention that would remediate dyslexia as severe as the Student's. (T. at 669, 793.) Similarly, Dr. [REDACTED] testified that he recommended Orton-Gillingham for the Student. Both Dr. [REDACTED] and Ms. [REDACTED] emphasized the need for a structured, systematic, multisensory, cumulative, sequential approach with a prescriptive diagnostic component. Ms. [REDACTED] further testified that she is familiar with other reading interventions, and Orton-Gillingham is the only program with the structure and intensity that the Student requires, and she was adamant on this point.

Ms. [REDACTED] has extensive training and experience in Orton-Gillingham, and she described the process of becoming certified in Orton-Gillingham at her level of expertise in detail. (T. at 651-52.) A practitioner must complete over ninety hours of coursework, with periodic refresher courses subsequently, as well as at least 700 hours of supervised practice. Ms. [REDACTED] explained that while the supervisor is not always present, he or she provides necessary consultation and guidance, and that these 700 hours are essential to gaining competency and skill in Orton-Gillingham. (T. at 658.) This is in part because students can have such different challenges, and it takes time to become familiar with the different ways that these challenges present and the different strategies needed to effectively remediate them.



In her testimony, Ms. [REDACTED] focused in particular on the phonological awareness aspect of Orton-Gillingham, as that aspect is most relevant to the Student's needs in this case. For a child with dyslexia, Orton-Gillingham provides the totality of what the child needs, which distinguishes it from other methods. Ms. [REDACTED] was critical of MCPS's use of EIR for the Student, stating that it was designed as whole-class instruction for children in kindergarten through second grade, and that it also works well for students with intellectual disabilities. (T. at 679.) However, in Ms. [REDACTED]'s opinion, it is not appropriate for the Student, who is of average or above-average intelligence and for whom it was used in individual or small-group instruction. Ms. [REDACTED] emphasized the importance of delivering Orton-Gillingham instruction with fidelity, and not simply combining elements of Orton-Gillingham with other approaches and methodologies. (Dr. [REDACTED] made a similar statement, noting that Orton-Gillingham should not be used "piecemeal" for the Student.)

Ms. [REDACTED] also cited her observation of the Student at [REDACTED] on April 24, 2018 in her criticism of MCPS's approach to educating the Student. (P 56.) Ms. [REDACTED] observed the Student in her classroom on that date, including a reading intervention pullout session with Ms. [REDACTED] and general education instruction with Ms. [REDACTED] and Ms. [REDACTED]'s reaction was a critical one. She noted that Ms. [REDACTED] included symbols (i.e., letters) in the reading intervention, which Ms. [REDACTED] described as inappropriate for the Student, who was still developing foundational skills in phonological awareness. In addition, she contended that Ms. [REDACTED] instruction lacked a diagnostic prescriptive component, which meant she could not effectively remediate as needed. For example, when the Student stated that she was being tripped up by the word "their," Ms. [REDACTED] did not have her shift to another activity. Ms. [REDACTED] also noted that the computer-based instruction MCPS provided to the Student is not appropriate for her. While Ms. [REDACTED] praised Ms. [REDACTED] use of handwritten cards with CVC real and non-real words, she

noted that the Student scored only 19/30, which is far from mastery of the material. The Student also did not respond well to the general education environment, according to Ms. [REDACTED] she observed that the Student sat in a slumped manner with a downtrodden expression. The 1:1 instruction she received in the general education classroom only made her appear more isolated.

MCPS did not claim that it would provide the Student with an instructor with the same level of experience or training that Ms. [REDACTED] has. The Parents repeatedly challenged the credentials of the Student's teachers, past and proposed, arguing that they used EIR improperly or in a manner that was inappropriate for the Student, that they lack sufficient training in Orton-Gillingham, and that the Orton-Gillingham training they did receive was not delivered by appropriately credentialed trainers or organizations.

Several MCPS educators, including Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] testified that they had recently completed a thirty-four-hour course in Orton-Gillingham. (Ms. [REDACTED] also completed a similar course in 2007, when she was a teacher in [REDACTED]) Ms. [REDACTED] is relatively new to special education, having received her certification in 2016. However, she has been certified in general education since 1998, and had special education students in her classroom every year. She testified that she is most familiar with EIR, but also integrates "pieces" of Orton-Gillingham into her instruction. She also acknowledged that she uses EIR in small-group instruction. Ms. [REDACTED] testified that she has twenty-five years of experience in education, including eighteen as a reading specialist. She is familiar with a number of reading intervention programs, including EIR and Orton-Gillingham. She agreed with Ms. [REDACTED] about the use of EIR in small-group instruction. Ms. [REDACTED] testified that she is now in her nineteenth year of teaching, and eighth at [REDACTED] and that she has taught general education classes with special education students included throughout her career. Ms. [REDACTED] who would have been the Student's special education instructor had she attended fourth grade at [REDACTED] (T.

at 1136), is in her third year at the school and has been teaching special education for fourteen years.

The Parents' allegations that [REDACTED] staff were and are unable to effectively teach the Student are wholly unsubstantiated. It is true that none of them had either the ninety hours of coursework or the subsequent 700 hours of supervised practice in Orton-Gillingham. It was also clear that none of them had the kind of intensive, supervised training that Ms. [REDACTED] had in Orton-Gillingham, or her years of experience in using it. However, MCPS is not obligated to provide an instructor with a background as extensive as Ms. [REDACTED] s.

The Fourth Circuit has addressed precisely this issue of replicating a private consultant's background. In *A.G. v. Fort Bragg Dependent Schools*, 343 F.3d 295 (4<sup>th</sup> Cir. 2003), the Court considered a hearing officer's decision that a school district had failed to provide a child with autism FAPE in part because the school personnel were not certified in a particular methodology and did not have training or experience comparable to that of the private consultant who provided such therapy to the Student. The Court concluded that the hearing officer's decision was erroneous, as it "does not appear to have been based on evaluation of the evidence under the proper standard" because "[r]ather than assessing [the school district's] ability to provide [the student] educational benefit" under the relevant IEP, the hearing officer assessed the school district's "ability to replicate" the therapy as provided by the private consultant. *Id.* at 307. The Court iterated that the appropriate standard is whether the IEP "was 'reasonably calculated to provide educational benefit' to [the Student]," and not on "whether that IEP would replicate the benefit to [the student] of the complete . . . therapy, which had been successful for him." *Id.* The Court reversed and remanded on this issue.

Accordingly, the question before me is not whether the Student's teachers at [REDACTED] [REDACTED] have training and experience comparable to Ms. [REDACTED]. Instead, the question is whether

they are able to implement an IEP that is reasonably calculated to provide the Student with educational benefit. The Parents presented no evidence that the staff at [REDACTED] is unable to implement the Student's IEP as written. Ms. [REDACTED] reading instruction specialist, has extensive familiarity with and experience in a variety of reading intervention methodologies, tools, and approaches. Ms. [REDACTED] is an experienced special education instructor with training in Orton-Gillingham, EIR, and other interventions. And, as discussed above, the Student made significant, meaningful progress in her third grade year. While the Orton-Gillingham sessions at [REDACTED] undoubtedly contributed to her success, the efforts of [REDACTED] staff cannot simply be discounted. As Ms. [REDACTED] testified and Ms. [REDACTED] her progress was most likely due to the confluence of interventions and methods.

The Parents offered Ms. [REDACTED]'s testimony on the use of EIR, which she maintained was not properly used by [REDACTED] staff with regard to the Student. However, I give Ms. [REDACTED]'s opinion on this matter relatively little weight. Ms. [REDACTED] testified that she is only "fairly familiar" with EIR, and she has not taught in a public school classroom since 1996, she was last employed by a public school system in 2000, and she has never taught in MCPS. (T. at 728, 784-785.) Ms. [REDACTED] has never been trained in EIR or delivered it to students. (T. at 823-824.) I found MCPS staff testimony that EIR was not only appropriate for the Student but also contributed to her progress in third grade more persuasive than Ms. [REDACTED]'s testimony on this point. In addition, I give relatively little weight to Ms. [REDACTED]'s comments on her observation of the Student's instruction on April 24, 2018, as the observation was brief, with only fifteen minutes spent on decoding. (T. at 864.)

A final point on training and experience with regard to phonological awareness: the Parents spent significant time parsing the lesson activity suggested by Ms. [REDACTED] in her testimony, where she proposed that she might address problems in phonology by breaking apart

the sounds in the word "cat": C - A - T. The Parents provided Dr. [REDACTED] with a transcript of Ms. [REDACTED] testimony, and he testified on rebuttal that what he had read in the transcript troubled him because Ms. [REDACTED] appeared to have failed to properly isolate the initial sound of the word, instead including both the "c" sound and the "a" sound. He demonstrated the proper isolation of the "c" sound, and further explained how a multisensory approach might assist a student in separating the sounds: if a finger is placed on the throat at the vocal cords, an isolated "c" sound should not be felt in the vocal cord. If the sound is not properly isolated and includes the "a" sound, the student will be able to feel that in his or her vocal cords. (T. at 2264, 2281.) Dr. [REDACTED] acknowledged that he was not present in the room during this testimony and that it was difficult to tell exactly what sounds Ms. [REDACTED] had made while demonstrating the sounds of the word. (T. at 2265.)

However, Ms. [REDACTED] was present in the hearing room during Ms. [REDACTED] testimony, and she echoed Dr. [REDACTED]'s concern that it did not reflect a good understanding of phonological awareness. Ms. [REDACTED] noted that when an instructor fails to properly isolate the sounds of a word, the isolated sounds can end up sounding like individual syllables, making a single-syllable word sound like a multi-syllable word.

I do not find that Ms. [REDACTED]'s failure to properly isolate the "c" sound in "cat" is adequate to support a finding that the [REDACTED] staff, as a whole, is unable to implement the Student's IEP. I have no doubt that Ms. [REDACTED]'s facility with sound discrimination is less precise than Ms. [REDACTED]'s or Dr. [REDACTED]'s. Orton-Gillingham is relatively new to her and she does not have either Ms. [REDACTED]'s level of training or her years of experience. Whatever Ms. [REDACTED] shortcomings may be, the Student nonetheless made progress in third grade, so any imperfections in her delivery of phonological training apparently did not impede the Student's progress in any significant way. I am unpersuaded that the example of a lesson Ms. [REDACTED]

described during the hearing renders her, or by extension any other [REDACTED] or MCPS educator, unable to implement the Student's IEP.

Ms. [REDACTED]'s position that "pure" Orton-Gillingham is the only appropriate methodology for the Student is undermined by her own recommendation to the IEP team that either Wilson or Orton-Gillingham could be appropriate. (Ms. [REDACTED] contended that her recommendation of Wilson, which she stated is also Orton-Gillingham-based, was at least in part because she was trying to make recommendations that aligned with what she knew MCPS could offer, and she had been told Orton-Gillingham was not available. Nonetheless, I find it significant that she also recommended Wilson.) But more significantly, I found MCPS witnesses who testified about using a variety of different tools, and incorporating different pieces as appropriate, both knowledgeable about the use of different methodologies and persuasive with regard to the effectiveness of combining them as needed.

Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] all experienced educators with many years in the classroom, each testified that aspects of Orton-Gillingham could be effectively incorporated into their teaching in this manner. Even Ms. [REDACTED] who testified for the Parents, agreed with this, stating that she herself uses pieces of different methodologies. (T. at 119.) While Dr. [REDACTED] disagreed with the notion that Orton-Gillingham could be provided "piecemeal," I note that Dr. [REDACTED] also has no experience delivering instruction in public schools. He testified that while he is aware of methodologies other than Orton-Gillingham, he is not familiar with them. He is a clinical psychologist, not an educator, and I therefore give his opinion regarding academic instruction less weight than the [REDACTED] educators who routinely deliver reading instruction to children with special needs, including dyslexia.

Ms. [REDACTED] also testified regarding the diagnostic prescriptive aspect of her teaching, which Ms. [REDACTED] had challenged as insufficient. Ms. [REDACTED] explained that she and other staff

would systematically identify the Student's weaknesses and target them in order to strengthen her skills. Doing so requires a systematic, scripted approach, which breaks down a large assignment into small, manageable pieces. Working in small groups or one-on-one was used as needed to target weaknesses. A similar approach was used for the Student in math. (T. at 1280-1282.) I am not persuaded that [REDACTED] staff failed to assess the Student's needs and adjust their teaching accordingly.

The intensive phonological training aspect of Orton-Gillingham was a significant reason for its endorsement by both Dr. [REDACTED] and Ms. [REDACTED] but it was not the only reason. Both also cited other features of the programs that use Orton-Gillingham methodology: instruction is structured, sequential, multisensory,<sup>13</sup> and experiential. Both Dr. [REDACTED] and Ms. [REDACTED] testified persuasively about the importance of these characteristics of any educational program for the Student. (T. at 366, 417, 451.) MCPS did not disagree; in fact, [REDACTED] staff agreed about the value of this kind of teaching for the Student, and its teachers testified extensively regarding lessons that incorporated experiential and multisensory learning.

For example, Ms. [REDACTED] testified regarding visual tools and kinesthetic games she used in the classroom. (T. at 1269.) She noted that manipulatives are often used in math. (T. at 1280.) She also described the individualized instruction and support the Student received in her writing assignments. (T. at 1277-1278.) Some lessons, explained Ms. [REDACTED], included going outside to observe things and drawing pictures of their observations. (T. at 1286.) She described a science lesson on the physical properties of matter that involved hands-on activities, including making ice cream and popped corn. (T. at 1290-91.) Ms. [REDACTED] emphasized that these techniques were effective for the Student, who was able to access the curriculum and

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<sup>13</sup> I note that multisensory learning was referenced during the hearing in two different contexts: Dr. [REDACTED] for example, testified that multisensory techniques should be used during phonological training in order to map multiple pathways in the brain and to help effectively separate the sounds of words. ([REDACTED] testimony, T. at 2269.) The term was also used more broadly during the hearing to describe hands-on activities and tools. The latter relates to Dr. [REDACTED]'s recommendation that the Student receive instruction in lessons that are not overly reliant on language.

demonstrate her knowledge and understanding through her academic performance. Ms. [REDACTED] also testified regarding the hands-on activities the class engaged in, including building cars to study motion and making posters about other countries. (T. at 1882-85.) I find that the Parents did not show that [REDACTED] was unable to provide multisensory and experiential learning experiences.

### **Least Restrictive Environment**

As noted above, the IDEA requires that a disabled child be placed in the “least restrictive environment” to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

The Parents maintained that the Student’s disabilities require that she be educated entirely in a special education setting, as she is at the [REDACTED]. The Parents raised the issue of less time in general education in April 2018, when the IEP team determined that four hours of special education instruction outside of the general education classroom was appropriate. (As I have noted, the special education instruction time was increased to five hours per week in September 2018.) The Parents disagreed with the decision of the IEP team.

The Parents offered the testimony of several witnesses on this point: Ms. [REDACTED] testified that an environment like the [REDACTED] with its smaller classes and more individualized instruction in a full time special education classroom, was appropriate for the Student, while the general education instruction at [REDACTED] was not. Ms. [REDACTED] testified that she observed the Student both at [REDACTED] and at the [REDACTED] and that at [REDACTED] the Student was miserable and unable to access the curriculum, while at the [REDACTED] she was engaged and learning. It was her opinion that a full time special education environment was appropriate for the Student.



The witnesses offered by MCPS strongly disagreed with this position. Ms. [REDACTED] testified about the Student's third grade year, and addressed the specific strategies she and Ms. [REDACTED] used to support the Student in the general education classroom, including planning and modifying lessons together, scaffolding, and prompting as needed. (T. at 1157.) She emphasized the Student's strengths in communication and background knowledge, noting that she was engaged during small group discussions in the general education classroom and that she both benefitted from and contributed to the cooperative learning that takes place in that environment. (T. at 1160.) Ms. [REDACTED] testified that this environment was beneficial for the Student, as it allowed her to develop self-confidence and critical thinking skills.

She also noted that the Student was able to fully participate in the general education curriculum in science, social studies, art, physical education, and music. (T. at 1158.) While the Student sometimes seemed distracted during whole-group lessons, subsequent small-group lessons provided an opportunity for her teachers to evaluate whether she had been listening (which often she had, despite any appearance to the contrary) and to reinforce anything she may have missed. (T. at 1284.) It was Ms. [REDACTED]'s expert opinion that the Student should be in a general education classroom with nondisabled peers, and that her IEP was appropriate in that regard. (T. at 1164- 65.)

Ms. [REDACTED]'s testimony on this point was similar, and she added that the Student also participated in both lunch and recess with nondisabled peers. She echoed Ms. [REDACTED] with regard to collaborative activities with nondisabled peers, noting that the Student enjoyed these activities and derived benefit from them. Ms. [REDACTED]'s opinion was also that the proposed IEP was appropriate for the Student, as she was able to access the grade-level curriculum in her academic subjects with support as needed.

I find the testimony of Ms. [REDACTED] and Ms. [REDACTED] who worked with the Student daily over the course of an entire school year, more persuasive than the Parents' witnesses on this point. Ms. [REDACTED] and Ms. [REDACTED] provided a number of compelling examples of the work the Student did in her third grade year, including posters she created, presentations she made, and her overall contributions to group activities and to whole-group classroom discussions, lessons, and activities. In addition, there was no evidence to contradict Ms. [REDACTED] and Ms. [REDACTED]'s assertion that the Student participated in her specials, lunch, and recess with no special education support. (T. at 1158.)

Neither Ms. [REDACTED] nor Ms. [REDACTED] have the familiarity that Ms. [REDACTED] and Ms. [REDACTED] do with regard to the Student's participation in a general education classroom. In fact, Ms. [REDACTED] has never observed the Student in a general education classroom, and Ms. [REDACTED]'s total observation time of the Student in a general education environment was twenty-seven minutes on April 24, 2018. (P 56.) Further, as discussed above, the Student made progress in third grade, earning A's in every class except reading and writing, where she earned B's. I also note that while Ms. [REDACTED] maintained that a special education environment allows Orton-Gillingham to be used throughout the school day, there was no evidence that this actually occurs at the [REDACTED] or that all of the Student's teachers at the [REDACTED] are even trained in Orton-Gillingham. Furthermore, Dr. [REDACTED] noted that Orton-Gillingham could be provided either in isolation or infused throughout the school day. He did not recommend one approach over the other.

Accordingly, I find that the general education time provided for in the Student's IEP is appropriate and consistent with a conclusion that the IEP is reasonably calculated to provide the Student with educational benefit in the least restrictive environment.

The Parents alleged that MCPS failed to provide a cogent and responsive explanation for their decision to provide the Student with four (later amended to five) hours of special education

instruction and seventeen hours and five minutes (amended to reflect the increase in pullout time) of general education instruction. Why, asked the Parents, were special education pullout services increased when the 2018 – 2019 IEP was developed in April 2018? Why were the hours increased in September 2018? I do not find that MCPS failed to provide a cogent and responsive explanation. The IEP team noted in writing that it increased the service hours in April 2018 because of the new goals that had been added to the IEP. (MCPS 23-2.) In addition, the IEP team noted that the hours of service were increased in September 2018 because the Parents indicated that the Student was receiving 2.5 hours per week of pullout instruction at the [REDACTED] and that she was doing well with that. Accordingly, in an effort to accommodate the Parents' request and to provide services matching the level at the [REDACTED] where the Parents reported success, MCPS increased the service hours to five hours per week. (MCPS 32-1.) There is no support for the Parents' contention that MCPS failed to provide a cogent and responsive explanation for its proposed IEP.

### Concluding Summary

The Parents alleged that the Student's IEP was not reasonably calculated to provide her with educational benefit consistent with *Endrew F.* In analyzing whether the MCPS failed to provide the Student a FAPE for the 2018 – 2019 school year, I have considered the IEP team's decision not to include speech-language or OT services; whether the present levels, goals, objectives, and services were appropriate such that the Student could be expected to make progress; and whether MCPS lacked the ability to implement the IEP. I conclude that the Parents have not met their burden to show that MCPS failed to offer the Student FAPE for the 2018 – 2019 school year.

Pursuant to *Carter*, a parent's private placement choice is analyzed only if the IEP proposed by the local education agency results in a denial of a FAPE. 510 U.S. 7; *Burlington*,

471 U.S. 359. In this matter, I have concluded that the IEP and placement offered by the MCPS for the 2018 - 2019 school year provides the Student a FAPE. Further analysis pursuant to *Burlington* and *Carter* is inapplicable and the issue of whether [REDACTED] or any private educational setting is proper does not need to be addressed in this decision.

### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parents failed to prove that the Montgomery County Public Schools did not offer the Student a free appropriate public education for the 2018 - 2019 school year. I further conclude as a matter of law that the Parents failed to prove that they are entitled to reimbursement for tuition and expenses at [REDACTED] 20 U.S.C.A. § 1414; 34 C.F.R. §§ 300.148; *Andrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cty. Sch. District Four v. Carter*, 510 U.S. 7 (1993).

### ORDER

I **ORDER** that the Parents' request for placement and reimbursement for tuition and expenses at [REDACTED] for the 2018 – 2019 school year is **DENIED**.

April 1, 2019  
Date Decision Issued

Signature Appears on Original [REDACTED]

Jennifer L. Gresock  
Administrative Law Judge

JLG/dlm  
#178081

**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]

[REDACTED]

[REDACTED]

[REDACTED]

