

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

BEFORE NICOLAS ORECHWA,  
ADMINISTRATIVE LAW JUDGE  
THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-19-30951

**DECISION**

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

**STATEMENT OF THE CASE**

On October 1, 2019, ██████████ (Parent), on behalf of her child, ██████████  
██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings  
(OAH) requesting a hearing to review the identification, evaluation, or placement of the Student  
by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities  
Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2018);<sup>2</sup>  
Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR)  
13A.05.01.15C(1).

On October 28, 2019, the parties, after participating in a resolution meeting, agreed in  
writing no resolution was possible. I held a telephone prehearing conference on November 13,  
2019. The Parent participated and was represented by Kimm Massey, Esquire. Leslie Turner  
Percival, Esquire, represented the MCPS.

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<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated.

<sup>2</sup> C.F.R. is an abbreviation for Code of Federal Regulations.

I held the hearing on December 9, 2019; December 10, 2019; December 11, 2019 and December 12, 2019. Kimm Massey, Esquire, represented the Parent. Leslie Turner Percival, Esquire and Zvi Greisman, Esquire represented the MCPS.

Under the applicable law, a decision in this case normally would be due by Thursday December 12, 2019, forty-five days after the parties agreed in writing no resolution was possible. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a) (2018); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). The earliest dates of availability for both the parties and myself were December 9, 2019, December 10, 2019, December 11, 2019 and December 12, 2019. Given December 12, 2019, was the last scheduled day of the hearing, the Parent requested a ten day extension of time for me to draft my decision. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). MCPS consented to the Parent's request. Both parties agreed on the record that my decision would be due Monday, December 23, 2019. Given the original due date provided me with zero days to write my decision, I granted the Parent's request and on the record extended the time to write my decision ten days to Monday, December 23, 2019. When I drafted my prehearing conference report, I calculated ten days as being Sunday, December 22, 2019. Because December 22, 2019 falls on a Sunday, the decision is due December 20, 2019, which I reflected in my prehearing conference report. On the last day of the merits hearing, I inquired of the parties whether despite the fact the ten days fell on Sunday, December 22, 2019, they still agreed, per the prehearing conference, that my decision would be due Monday, December 23, 2019.<sup>3</sup> The parties maintained their agreement the decision would be due Monday, December 23, 2019, which is technically eleven, not ten days.

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<sup>3</sup> This discussion arose after I listened to a recording of the prehearing conference in light of a request by MCPS to extend the time of the hearing from four to five days.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2018); State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUES**

The issues are whether MCPS denied the Student a free appropriate public education for the 2017-2018, 2018-2019 and 2019-2020<sup>4</sup> school years, whether the Student's Individualized Education Program (IEP) for those school years provided a free appropriate public education, whether the services and supports called for in the IEPs were provided, and whether the Student's proposal that MCPS fund 100 hours of compensatory educational tutoring and placement at [REDACTED] or the [REDACTED] [REDACTED]<sup>5</sup> provides an appropriate education.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

I admitted the following exhibits on behalf of the Parent:

Parent Ex. 1 – which contained the following documents in the following numbered pages<sup>6</sup>:

- Student's Individualized Education Program (IEP) Findings and Recommendations, August 31, 2017<sup>7</sup>, pp. 1-53;
- IEP Amendment and Modification, February 8, 2018, pp. 54-55;
- IEP Findings and Recommendations, January 18, 2018, pp. 56-112;
- IEP Findings and Recommendations, January 16, 2019, pp. 113-174;
- IEP Findings and Recommendations, January 18, 2019, pp. 175-185;
- IEP Goals, April 6, 2017, pp. 186-192;

<sup>4</sup> The 2019-2020 school year is technically not complete. However, the Student's current IEP governs the Student's education through January 15, 2020. (MCPS Ex. 39 p. 1).

<sup>5</sup> The Complaint did not specify for what year.

<sup>6</sup> The attorney for the parent submitted Parent Ex. 1 into evidence as a binder containing various documents numbered as set forth below. She did not divide or otherwise segregate the documents into different sections. She provided no index. The segregation set forth below is by me, based upon my review of the binder.

<sup>7</sup> The date connotes the IEP meeting date.

- Math Session Results, pp. 193-195;
- Student's Educational Assessment Report from [REDACTED] Middle School ([REDACTED]), January 9, 2019, pp. 196-206;
- Informal Assessments, January 8, 2019, pp. 207-211;
- Student's Language Skills Pre-Assessment, December 19, 2018, pp. 212-213;
- Student's Educational Assessment Report from [REDACTED], December 4, 2018, pp. 214-226;
- [REDACTED] Hospital Sensory Integration Assessment, April 9, 2018, pp. 227-229;
- Occupational Therapy Evaluation, March 5, 2018, pp. 230-238;
- [REDACTED] Hospital Auditory Processing Evaluation, January 23, 2018, pp. 239-244;
- Report of School Psychologist, June 15, 2017, pp. 245-249;
- [REDACTED] Hospital Speech Language Evaluation Final Report, April 5, 2017, pp. 250-255;
- Draft Report of School Psychologist, October 25, 2016, pp. 256-267;
- Educational Assessment Report, [REDACTED] Elementary School ([REDACTED]), November 15, 2016, pp. 268-276;
- Progress Note from [REDACTED], LCPC, November 28, 2017, pp. 277-278;
- Progress Note from [REDACTED], MD, December 6, 2017, 279-280;
- Progress Note from [REDACTED], LCPC, December 28, 2017, 281-282;
- Progress Note from [REDACTED], LCPC, January 16, 2018, p. 283;
- Progress Note from [REDACTED], LCPC, January 23, 2018, pp. 284-285;
- Progress Note from [REDACTED], MD, January 23, 2018, pp. 286-288;
- Progress Note from [REDACTED], LCPC, January 29, 2018, p. 289;
- Progress Note from [REDACTED], LCPC, March 12, 2018, pp. 290-291;
- Progress Note from [REDACTED], LCPC, March 27, 2018, pp. 292-293;
- Progress Note from [REDACTED], MD, March 27, 2018, pp. 294-295;
- Progress Note from [REDACTED], LCPC, April 11, 2018, pp. 296-297;
- Progress Note from [REDACTED], LCPC, April 25, 2018, pp. 298-299;
- Progress Note from [REDACTED], LCPC, June 25, 2018, pp. 300-301;
- Progress Note from [REDACTED], LCPC, July 9, 2018, pp. 302-303;
- Progress Note from [REDACTED], LCPC, July 24, 2018, pp. 304-305;
- Progress Note from [REDACTED], LCPC, July 30, 2018, pp. 306-307;
- Progress Note from [REDACTED], LCPC, August 20, 2018, pp. 308-309;
- Progress Note from [REDACTED], MD, August 28, 2018, pp. 310-311;
- Progress Note from [REDACTED], LCPC, December 26, 2018, pp. 312-313;
- Progress Note from [REDACTED], LCPC, March 27, 2019, pp. 314-315;
- Progress Note from [REDACTED], LCPC, May 22, 2019, pp. 316-317;
- Progress Note from [REDACTED], MD, May 31, 2019, pp. 318-319;
- Progress Note from [REDACTED], LCPC, October 30, 2019, pp. 320-321;
- Progress Note from [REDACTED], MD, November 8, 2019, pp. 322-324;
- Child Psychiatric Evaluation, July 21, 2016, pp. 325-331;
- Event Chronology, [REDACTED], pp. 332-341;

- Related Services Log Notes, pp. 342-344;
- IEP Findings and Recommendations, December 14, 2018, pp. 345-347;
- Prior Written Notice, December 18, 2018, pp. 348-349;
- IEP Meeting Information, January 16, 2019, pp. 350-352;
- Prior Written Notice, January 18, 2019, pp. 353-355;
- Various E-mails, pp. 356-410;
- Request for Mediation and Due Process Complaint, October 1, 2019, pp. 411-415;
- Letter from MCPS to the Parent, October 3, 2019, p. 416;
- Pre-hearing Conference Report and Order, pp. 417-421;
- Parent's Motion to Correct Pre-Hearing Conference Report and Order, November 21, 2019, pp. 422-423;
- Letters from Counsel for the Parent to the OAH requesting the issuance of subpoenas, November 21, 2019, pp. 424-429;
- Letter from [REDACTED], MS, to [REDACTED] and [REDACTED], May 4, 2018, pp.430-437;
- Letter from [REDACTED] to the Parent, February 2, 2018, p. 438;
- Examples of the Student's Schoolwork, pp. 439-441;
- MAP Goal Score Translation Chart; p. 442;
- Maryland College and Career-Ready Standards, English Language Arts, pp. 443-447;
- Maryland College and Career Ready Curriculum Framework, pp. 448-461;
- Curriculum Vitae (CV) of [REDACTED], pp. 462-464;
- CV of [REDACTED], MD, pp. 465-467;
- COMAR 13A.05.01.09, pp. 468-471;
- Grade 2 Number and Operations in Base Ten, pp. 472-473;
- Grade 3 Number and Operations in Base Ten, p. 474;
- Grade 3 Operations & Algebraic Thinking, pp. 475-477;
- English Language Arts Standards, Language Grade 1, pp. 478-481;
- English Language Arts Standards Language Grade 3, pp. 482-485;
- English Language Arts Standards Language Grade 4, pp. 486-489;
- English Language Arts Standards Reading Foundational Skills, Grade 5, p. 490;
- English Language Arts Standards Writing, Grade 6-8, pp. 491-494;
- [REDACTED] Program Description, p. 495;
- [REDACTED] Program Description, p. 496;
- [REDACTED] Program Description, p. 497;
- Fluency Standards Table, pp. 498-499;
- Fluency Standards for Oral Reading, pp. 500-501;
- Interactions Among Living Things Assessment, December 18, 2018, pp. 502-508;
- IEP-at-a-glance and IEP, January 18, 2018, pp. 509-555;
- Various e-mails, pp. 556-560;
- Multidisciplinary Evaluation Report, November 15, 2016, pp. 561-562.

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 - MCPS Report of School Psychologist by [REDACTED], October 31, 2016;
- MCPS Ex. 2 - MCPS Educational Assessment Report by [REDACTED], November 15, 2016;
- MCPS Ex. 3 - Work Sample, May 4, 2017;
- MCPS Ex. 4 - MCPS Report of School Psychologist by [REDACTED], June 15, 2017;
- MCPS Ex. 5 - IEP, Amended, November 16, 2017;
- MCPS Ex. 6 - Prior Written Notice, November 16, 2017;
- MCPS Ex. 7 - MCPS Summary of Informal Consultation, November 30, 2017;
- MCPS Ex. 8 - Functional Behavioral Assessment, December 7, 2017 and Behavior Intervention Plan, December 7, 2017;
- MCPS Ex. 9 - Absence Report, September 5, 2017 to February 9, 2018;
- MCPS Ex. 10 - Team Consideration of External Report, May 16, 2018;
- MCPS Ex. 11 - IEP, January 18, 2018;
- MCPS Ex. 12 - Prior Written Notice, January 25, 2018;
- MCPS Ex. 13 - Progress Report on IEP Goals, June 15, 2018;
- MCPS Ex. 14 - Assignment Report – Writing Grade 5, MP2 2017;
- MCPS Ex. 15 - Amendment/Modification to Current IEP without an IEP Meeting, February 8, 2018;
- MCPS Ex. 16 - IEP, Amended February 13, 2018;
- MCPS Ex. 17 - MCPS Occupational Therapy Evaluation, March 5, 2018;
- MCPS Ex. 18 - Letter from [REDACTED] to the Parent, February 2, 2018;
- MCPS Ex. 19 - Prior Written Notice, March 2, 2018;
- MCPS Ex. 20 - [REDACTED] Request for School Records from [REDACTED], April 12, 2018;
- MCPS Ex. 21 - Academic Student Profile, May 1, 2018;
- MCPS Ex. 22 - Prior Written Notice, June 1, 2018;

MCPS Ex. 23 - IEP, Amended June 6, 2018;

MCPS Ex. 24 - Amendment/Modification to Current IEP without an IEP Meeting, June 6, 2018;

MCPS Ex. 25 - Weekly Progress Summary, September 2017 to June 2018;

MCPS Ex. 26 - ESY Letter from [REDACTED], ESY Coordinator, Summer 2018;

MCPS Ex. 27 - Prior Written Notice, October 4, 2018 and IEP Meeting Notes and Notice and Consent for Assessment, October 19, 2018;

MCPS Ex. 28 - Prior Written Notice, October 22, 2018;

MCPS Ex. 29 - Email chain between the Parent and [REDACTED], September 11, 2018 to November 30, 2018;

MCPS Ex. 30 - School Year 2018-2019 Progress Report for Quarter Two;

MCPS Ex. 31 - Functional Behavioral Assessment, November 12, 2018 and Behavior Intervention Plan, November 12, 2018;

MCPS Ex. 32 - MCPS Educational Assessment Report by [REDACTED], December 4, 2018;

MCPS Ex. 33 - MCPS Report of School Psychologist [REDACTED], December 14, 2018;

MCPS Ex. 34 - Prior Written Notice, December 18, 2018;

MCPS Ex. 35 - Related Services Log, January 16, 2019;

MCPS Ex. 36 - Functional Behavioral Assessment, January 7, 2019 and Behavior Intervention Plan, January 7, 2019;

MCPS Ex. 37 - Fountas and Pinnell Assessments- Edition 2, January 8, 2019;

MCPS Ex. 38 - MCPS Educational Assessment Report by [REDACTED], January 9, 2019;

MCPS Ex. 39 - IEP, January 16, 2019;

MCPS Ex. 40 - Prior Written Notice, January 18, 2019;

MCPS Ex. 41 - Work Sample – Essay: Call to Action, February 11, 2019;

MCPS Ex. 42 - IEP, Amended February 12, 2019 and IEP Amendment Changes – IEP, February 12, 2019;

MCPS Ex. 43 - Prior Written Notice, February 19, 2019;

MCPS Ex. 44 - Weekly Updates, February 2019 to May 2019;

MCPS Ex. 45 - Related Services Log Notes, February 21, 2019 to June 11, 2019;

MCPS Ex. 46 - Work Sample – Essay: Original Narrative, March 28, 2019;

MCPS Ex. 47 - Organizational Record Sheet, April 8, 2019 to June 3, 2019;

MCPS Ex. 48 - Prior Written Notice, May 1, 2019;

MCPS Ex. 49 - Progress Report on IEP Goals, June 17, 2019;

MCPS Ex. 50 - Work Sample – Reflection Journal Entry, June 2019 and Work Sample,  
Advanced English 7 – Quarter 1

MCPS Ex. 51 - Email to [REDACTED] from [REDACTED], May 21, 2019;

MCPS Ex. 52 - Prior Written Notice, September 3, 2019 and IEP Meeting Notes, August 30, 2019;

MCPS Ex. 53 - Student Growth Report, November 27, 2019;

MCPS Ex. 54 - Student Health Room Record September 2017 to May 2019, Grade 5 and  
Report Cards Grades 5, 6 and Student Assignment Scores Grade 7 MP1;

MCPS Ex. 55 - E-mails between the Parent and [REDACTED], September 18, 2019 to  
September 25, 2019;

MCPS Ex. 56 - Resume of [REDACTED];

MCPS Ex. 57 - Resume of [REDACTED];

MCPS Ex. 58 - Resume of [REDACTED];

MCPS Ex. 59 - Resume of [REDACTED];

MCPS Ex. 60 - Resume of [REDACTED];

MCPS Ex. 61 - Resume of [REDACTED];

MCPS Ex. 62 - Resume of [REDACTED];

MCPS Ex. 63 - Resume of [REDACTED];

MCPS Ex. 64 - Resume of [REDACTED];

MCPS Ex. 65 - Resume of [REDACTED];

MCPS Ex. 66 - Resume of [REDACTED];



MCPS Ex. 67 - Resume of [REDACTED].

Testimony

The Parent testified and presented the following witnesses:

- The Student;
- [REDACTED];
- [REDACTED];
- Dr. [REDACTED], M.D., accepted as an expert in Child and Adolescent

Psychiatry;

- [REDACTED], accepted as an expert in Special Education.

MCPS presented the following witnesses:

- [REDACTED], accepted as an expert in Special Education;
- [REDACTED], accepted as an expert in Special Education with a specialization in

Learning Disabilities;

- [REDACTED], accepted as an expert in School Counseling and the provision of Behavioral Support;

- [REDACTED], accepted as an expert in Educational Leadership, Administration and Instruction;

- [REDACTED], accepted as an expert in School Psychology;

- [REDACTED], accepted as an expert in Special Education, General Education and Academic Instruction;

- [REDACTED], accepted as an expert in Special Education;

- [REDACTED], accepted as an expert in Special Education, Curriculum Instruction and Administration.

## FINDINGS OF FACT

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

1. The Student attended [REDACTED] from Kindergarten through fifth grade. The Student completed the fifth grade at [REDACTED] during the 2017 to 2018 academic year.

2. The Student completed the sixth grade at [REDACTED] for the 2018 to 2019 academic year. The Student is currently enrolled in seventh grade at [REDACTED] for the 2019 to 2020 academic year.

3. Both [REDACTED] and [REDACTED] are not the Student's resident schools. Her commute to both schools is longer than her commute to her resident school. The Student attended [REDACTED] and attends [REDACTED] by choice.

4. The Student has the following specific learning disabilities: Dysgraphia and Dyscalculia. The Student also has a history of Attention Deficient Hyperactivity Disorder (ADHD) and received that diagnosis in the first grade.

5. On August 31, 2017, prior to the commencement of the Student's fifth grade year, the IEP team at [REDACTED] met and developed an IEP governing the Student's education going forward (August 2017 IEP). The August 2017 IEP identified the Student's primary disability as "Other Health Impairment" and identified the following areas as being affected by the Student's disability and determined the following levels of development the Student achieved in each area:

- Academic – Math Calculation – third grade level;
- Academic – Math Problem Solving – third grade level;
- Academic – Reading Comprehension – fourth grade level;

- Academic – Reading Fluency – third grade level;
- Academic – Written Language – third grade level;
- Behavioral – Organizational/task completion – below grade level expectancy;
- Behavioral – Social Emotional/Behavioral – fourth grade level.

6. With regard to these areas, the August 2017 IEP determined the Student’s Goals and Objectives as follows:

- Academic Math Calculation – one goal, three objectives;
- Academic – Math Problem Solving – one goal, four objectives;
- Academic – Reading Comprehension – one goal, three objectives;
- Academic – Reading Fluency – two goals, three objectives each goal;
- Academic – Written Language – one goal, four objectives;
- Behavioral – Organizational/task completion – one goal, four objectives;
- Behavioral – Social Emotional/Behavioral – one goal, three objectives.

7. With regard to Reading Fluency and Math Problem Solving the August 2017 IEP specifically noted a goal of raising the Student’s performance to a fifth grade level.

8. The August 2017 IEP assigned August 31, 2018, as the date the Student would achieve all goals and objectives.

9. The August 2017 IEP identified the following services for the Student beginning August 31, 2017 and ending June 14, 2018:

- four sessions of classroom instruction per week outside general education of fifty minutes each, provided by a special education classroom teacher;
- four sessions of classroom instruction per week outside general education of thirty minutes each, provided by a special education classroom teacher;

- five sessions of classroom instruction per week inside general education of two hours and thirty five minutes each, provided by a general education teacher, a special education teacher and an instructional assistant;
- two sessions of counseling per week of fifteen minutes each, provided by a guidance counselor.

10. The August 2017 IEP identified the following services for the Student beginning July 9, 2018 and ending August 3, 2018:

- Five sessions of classroom instruction per week outside general education of three hours each, provided by a special education teacher and a guidance counselor.

11. The August 2017 IEP identified the following twenty-six supplementary aids, services, program modifications and supports to be provided to the Student for the period of August 31, 2017 until August 31, 2018:

- wait time for processing directions and for formulating verbal response on a daily basis;
- opportunities for re-teaching and re-assessing on an undetermined<sup>8</sup> basis;
- word banks on a periodic basis;
- sentence starters on a periodic basis;
- graphic organizers on a daily basis;
- visual cues on a daily basis;
- verbal prompts on a daily basis;
- models of fluent reading on a daily basis;
- math problem solving rubric on a daily basis;
- proofreading checklist on a daily basis;

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<sup>8</sup> The August 2017 IEP states “other” as the frequency for this category.

- providing the Student with copies of student/teacher notes on a daily basis;
- frequent or immediate feedback on a daily basis;
- use of manipulatives on a daily basis;
- checking for the Student's understanding on a daily basis;
- monitor independent work on a daily basis;
- limit amount to be copied from the board on a daily basis;
- have the Student limit or paraphrase information on a daily basis;
- provide the Student with multiple opportunities to show what she knows and is able to do on a daily basis;
- break down assignments into smaller units on a daily basis;
- task completion checklist on a daily basis;
- social stories on a periodic basis;
- structured times for organization of materials on a daily basis;
- frequent, varied and specific opportunities for praise on a daily basis;
- home to school communication on a weekly basis;
- strategies to initiate and sustain attention on a daily basis;
- provide the Parent with resources to explain homework on a quarterly basis;

12. On November 16, 2017, the IEP team determined the Student was making sufficient progress to meet all goals contained in the August 2017 IEP.

13. On January 18, 2018, the IEP team convened and drafted a new IEP (January 2018 IEP). The January 2018 IEP team identified the same primary disability as the August 2017 IEP and identified the same areas affected by the Student's disability as the August 2017 IEP team but added written language mechanics and reading phonics as additional areas.

14. The January 2018 IEP team raised the Student's reading fluency level from third grade (as determined by the August 2017 IEP) to fourth grade. The January 2018 IEP identified the Student as performing at a third grade level in written language mechanics and at a fourth grade level in reading phonics. In all other areas, the January 2018 IEP team identified the Student as performing at the same grade level at which they determined she performed at the August 2017 IEP.

15. With the exception of Reading Fluency, which the January 2018 IEP reduced from two goals to one, all goals in the same areas from the August 2017 IEP remained. The January 2018 IEP added new goals in each of the following areas with the following corresponding objectives:

- Academic – written language mechanics (six objectives);
- Academic – reading phonics (three objectives) – a component of the goal being the Student read first grade to fourth grade level text with ninety percent accuracy.

16. With regard to each goal from the August 2017 IEP, the January 2018 IEP retained the same amount of objectives with regard to each goal with the exception of the following:

- Math calculation reduced from three objectives to two objectives;
- Social emotional/behavioral raised from three objectives to four objectives.

17. The January 2018 IEP modified the Student's services set forth in the August 2017 IEP to the following services from January 18, 2018 to January 17, 2019:

- four sessions of classroom instruction per week outside general education of fifty minutes each, provided by a primary special education teacher and another special education teacher;

- five sessions of classroom instruction per week in general education of two hours and thirty-five minutes each by a primary general education teacher, another special education teacher and an instructional assistant.

18. The January 2018 IEP maintained the same amount and frequency of counseling sessions beginning January 18, 2018 and ending June 18, 2018.

19. On June 6, 2018, the IEP team added transportation services for extended school year (ESY) services.

20. The January 2018 IEP maintained all twenty-six of the supplementary aids from the August 2017 IEP with the exception of two: have the Student limit or paraphrase information on a daily basis and social stories on a periodic basis. The January 2018 IEP added two sensory diet aids: chewing gum and a wiggle pad for the Student's chair.

21. On April 13, 2018, the IEP team determined the Student achieved the reading comprehension and reading fluency goals. With regard to reading comprehension, the IEP team determined the Student read at grade level.

22. However, on June 15, 2018, the IEP determined the Student was only making sufficient progress to meet all the IEP goals including reading comprehension and reading fluency – thus the IEP team did not deem reading comprehension and reading fluency achieved.

23. The IEP team drafted a new IEP on January 16, 2019 (January 2019 IEP). The January 2019 IEP identified the Student's specific learning disability as Dysgraphia and Dyscalculia.

24. The January 2019 IEP identified the same areas as being affected by the Student's disability and grade level achievement with regard to each area as the January 2018 IEP with the exception of the following:

- math calculation raised from third grade to third/fourth grade level;
- math problem solving raised from third to fourth grade level;



- reading comprehension raised from fourth to sixth grade level;
- reading fluency reduced from fourth grade to second grade level;
- written language raised from third grade to third/fourth grade level;
- written language mechanics raised from third grade to third/fourth grade level.

25. The IEP team did not include a reading comprehension goal on the January 2019 IEP. The IEP team kept all other previous goals from the August 2017 and January 2018 IEPs with the following modifications:

- math calculation – raised from two objectives to four;
- written language – reduced from four objectives to three;
- organizational/task completion – reduced from four objectives to three;
- social emotional/behavioral – reduced from four objectives to three.

26. The January 2019 IEP modified the Student’s services set forth in the January 2018 IEP to the following services from January 16, 2019 to January 15, 2020:

- five sessions of classroom instruction per week outside general education of fifteen minutes each provided by a primary special education teacher;
- ten sessions of classroom instruction per week outside general education of forty-five minutes each provided by a primary special education teacher;
- twenty sessions of classroom instruction per week within general education of forty-five minutes each provided by a primary special education teacher, another special education teacher and an instructional assistant.

27. The January 2019 IEP added the following sensory aids not present in the Student’s previous IEPs:

- use of non-verbal cues, present auditory information in animated manner and multimodality cueing on a daily basis;

- pre-teaching new vocabulary on an unspecified basis;
- paraphrase instructions and gain attention prior to verbal communication as needed;
- have the Student repeat and/or paraphrase information on a daily basis;
- voice typing as needed;
- word processing program on a daily basis;
- provide the Student with electronic versions of worksheets as appropriate;
- provide the Student with lined spaces when she needs to handwrite assignments on a daily basis;
- trial of mild gain FM system on a weekly basis;
- frequent breaks to avoid auditory fatigue as needed;
- break down assignments into smaller units on a daily basis;
- use of a flash pass as needed;
- reinforce positive behavior through non-verbal and verbal communication on a daily basis;
- task completion checklist for math class work on a daily basis;
- reduce noise to improve signal to noise ratio as needed.

28. The January 2019 IEP removed the following supplementary aids, services, program modifications and supports present in the previous IEPs:

- math problem solving rubric on a daily basis;
- proofreading checklist on a daily basis;
- providing the Student with copies of student/teacher notes on a daily basis;
- use of manipulatives on a daily basis;
- limit amount to be copied from the board on a daily basis;

- provide the Student with multiple opportunities to show what she knows and is able to do on a daily basis;
  - break down assignments into smaller units on a daily basis;
  - task completion check list on a daily basis;
  - sensory diet (wiggle pad for chair).
29. On June 17, 2019, the IEP team determined the following:
- the Student achieved the math problem solving and reading phonics goals set forth on the January 2019 IEP;
  - the Student was not making sufficient progress to meet the math calculation and written language mechanics goals;
  - the Student was making sufficient progress in all other goals set forth on the January 2019 IEP.
30. The Student did not always have access to co-teachers as required by her IEPs.
31. The Student performs normally on a cognitive level and has average intelligence.
32. During her sixth and seventh grade years, the Student routinely earned mostly A's and B's in all her classes.
33. The Student does not have Autism Spectrum Disorder.
34. The Parent took the Student to [REDACTED] Hospital on the following three occasions for three separate evaluations (collectively "the [REDACTED] Hospital Evaluations"):
- a Speech Language Evaluation on April 5, 2017;
  - an Auditory Processing Evaluation on January 23, 2018;
  - an Occupational Therapy (OT) and Physical Therapy (PT) assessment on April 9, 2018.

35. The [REDACTED] Hospital Evaluations concluded the following:

- that the Student presents with sensory processing difficulties and attention deficits with a sensory diet recommended for school;
- the Student's performance on Auditory tests fell within a wide range with recommendations for teaching methods and classroom structure;
- the Student possesses age appropriate core vocabulary/grammar and syntax but presents with mild higher order language deficits.

36. In May 2018, the Parent presented the [REDACTED] Hospital Audiology report to the Student's IEP team. The IEP team did not adopt the recommendations of the Audiology report, but suggested use of a mild gain FM system to enhance signal to noise ratio in the classroom.

37. The Parent filed a complaint with the MSDE on March 6, 2018. Among other things, the MSDE found MCPS did not properly consider the [REDACTED] Hospital Auditory evaluation.

38. The Student's IEP team has since incorporated various sensory aids to address the issues raised the in the [REDACTED] Hospital Evaluations.

39. The MCPS performed an OT evaluation (MCPS OT evaluation) on the Student on March 5, 2018, during the Student's fifth grade year.

40. The MCPS OT evaluation concluded the Student exhibited:

- above average fine motor precision;
- average fine motor integration;
- average manual dexterity;
- average visual motor integration.

41. The MCPS OT evaluation further concluded the Student exhibited strengths in fine motor skills, visual motor skills and was functionally independent with self-care.

42. The MCPS OT evaluation finally concluded the Student possesses no needs which require OT but recommended she be provided paper with lined spaces to provide handwritten responses on worksheets.

43. The MSDE found no evidence MCPS considered the results of the MCPS OT evaluation.

44. The MSDE ordered MCPS to provide the Student with compensatory education hours. MCPS agreed to provide the Student with twenty compensatory education hours.

45. The twenty compensatory education hours addressed the Student's deficiencies in math calculation and writing mechanics. The twenty compensatory hours allowed the Student to make some progress – but did not result in her meeting her goals in these areas.

46. The Parent requested MCPS allow the Student to use the Moby Max computer program for math. MCPS obliged the request.

47. The Student suffers from anxiety which is rooted in both her school and home environments.

48. The Student's father injured himself in a work accident. The work accident left him bedridden, in constant pain and unable to work. The father's physical condition, coupled with the loss of his income produced significant stress on the Student's entire family. This exacerbated the Student's anxiety.

49. The Student has, at times, struggled with weight problems and sleeplessness. These problems contribute to her anxiety.

50. The Student, at times, has experienced conflict with other students and some bullying. However, overall the Student has made friends. She was overall happy at [REDACTED] and is overall happy at [REDACTED].

51. The Parent routinely takes the Student to see a therapist who addresses the Student's anxiety issues. MCPS provides the Student with access to a counselor during the school day.

52. While at [REDACTED] and into her time at [REDACTED], the Student [REDACTED] in class due to anxiety over use of the bathroom; would exhibit "school avoidance" and concoct excuses to either miss or be late for school; and would chew on inanimate objects in class including erasers.

53. On December 7, 2017, during the Student's fifth grade year, [REDACTED] performed a Functional Behavioral Assessment (FBA) to address the following behavior exhibited by the Student: 1) chewing non-edible objects; 2) [REDACTED]; and 3) school refusal (December 2017 FBA).

54. The Student received no disciplinary referrals prior to the December 2017 FBA. The Student had one documented occurrence of school avoidance as reported by the Parent.

55. After conducting the December 2017 FBA, [REDACTED] did not complete a Behavioral Intervention Plan (BIP). However, the December 2017 FBA provided the following recommendations:

- that the Student be offered gum to address the chewing behavior;
- that the Student be reminded to use the bathroom and have scheduled bathroom breaks;
- that the Student's teachers and counselor discuss the importance of school attendance with the Student.

56. On November 12, 2018, during the Student's sixth grade year, [REDACTED] conducted a second FBA (November 2018 FBA).

57. The Student received no disciplinary referrals prior to the November 2018 FBA.

58. The purpose of the November 2018 FBA was to address the Student's stress management, the Student leaving class to deal with frustration, and working through emotional stress.

59. Prior to the November 2018 FBA, [REDACTED] addressed these issues in the following ways:

- use of a flash pass;
- seeking a trusted adult;
- breathing techniques;
- problem solving, coaching and roleplaying.

60. These techniques positively impacted the Student's issues the November 2018 FBA addressed.

61. [REDACTED] did not complete a BIP as a result of the November 2018 FBA. Instead, as part of the November 2018 FBA, [REDACTED] recommended the following:

- that the Student continue to be provided a flash pass;
- written checklists with directions/steps;
- criteria for success;
- frequent checking for understanding;
- small group instruction.

62. In addition, the November FBA recommended the Student be afforded the following supports:

- Google read and write;
- spell and grammar check;
- sentence stems and word banks;
- graphic organizers;
- models and exemplars.

63. On January 7, 2019, the [REDACTED] staff completed a third FBA (January 2019 FBA).

64. The January 2019 FBA addressed the Student's following specific behaviors:

- locker avoidance;
- not being able to attend counseling sessions without a trusted female adult.

65. [REDACTED] did not complete a BIP as a result of the January 2019 FBA, but made the following recommendations:

- changing the student's locker location, practice using the locker every morning; use of a peer buddy system;
- taping off trusted adult support for use of counseling sessions; praise and encouragement for efforts; and a peer buddy system if agreed upon by the IEP team.

66. The recommendations in all the Student's FBAs have positively impacted the problem areas addressed.



## DISCUSSION

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<sup>9</sup> 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 requirement of a free appropriate public education in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that the requirement 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: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as

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<sup>9</sup> “FAPE” is an acronym meaning free appropriate public education.

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. *Id.* at 204; 20 U.S.C.A. § 1401(9).

The Supreme Court revisited the meaning of a free appropriate public education in a more recent case, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017). Consideration of the student's particular circumstances is key to this analysis; the court emphasized in *Endrew F.* that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *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 student with a disability 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 *Rowley*’s “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 (10th 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.

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

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

*Endrew F.*, 137 S. Ct. at 998-99 (citations omitted; emphasis in original). 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 a free appropriate public education, 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 free appropriate public education might require placement of a child in a private school setting that would be fully funded by the child's public school district.

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). In this matter the Parent has the burden of proving that MCPS failed to provide the Student with a free appropriate public education for the 2017-2018, 2018-2019 and 2019-2020 school years, and that placement is proper at [REDACTED] [REDACTED] or [REDACTED].

#### The Parent's Case

The Parent called the Student, who is twelve years old, to testify. The Student testified as to the teaching dynamic in several of her seventh grade classes. She takes math and originally had three teachers. However, [REDACTED] "dialed down" the number of math teachers to just

one. This reduces available opportunities for math help. Many times the other students are talking too loudly which causes the Student to lose concentration. When the Student returns home she has difficulty remembering what she learned in math class. Despite all this, the Student is currently enrolled in advanced math and will soon be learning eighth grade level math.

The Student takes an English class. It is a “good class” and she is “doing good” in the class although it is a bit loud. There are two teachers in the class who will help if the Student raises her hand. The Student is able to focus more when a teacher helps her. When the Student took English in sixth grade an additional teacher helped her in that class as well.

The Student takes a science class. There are two teachers in the class. At times the Student is able to perform the classwork, however, at other times she gets lost. Periodically some students in science class make “car noises” which distracts the Student.

The Student takes a world studies class. This class is better than most other classes. Some students are loud, but the world studies teacher does a better job of controlling the students than some other teachers. The Student can complete her work most of the time. There is a second adult in the class but the Student receives minimal help from that person. The Student took world studies in sixth grade. The class could be frustrating when her friends started talking during class. A second adult in the classroom would help if the Student raised her hand.

The Student reports to a “resource class” during the day which she testified is “pretty full.” The Student studies reading and math which are taught on a rotating basis: math first, then reading. The reading component concerns reading an article then answering questions about the article. In sixth grade, the Student had help from two teachers: Mr [REDACTED] and Ms [REDACTED]. Ms.

[REDACTED] would help the Student one on one with math both inside and outside of resource class. She would help the Student during lunch and afterschool. In seventh grade, Ms. [REDACTED] helps the Student with math and homework after school. The Student takes a reading class. This class is

quiet and consists of some eighth grade girls and seventh grade boys. The Student is the only female seventh grader in the class.

The Student has friends at [REDACTED] – mainly three. She has friends she talks to in homeroom and English class. On even days when she has the “c” lunch she sees her friends. On odd days she has the “b” lunch which mainly consists of sixth graders. Last year the Student had a few more friends because of a different schedule. However, she has experienced issues with other children. Some children are “really rude,” use profanity and skip class. The student does not want these children as friends. In one instance some students “ganged up” on another student.

The student testified that she had some accidents where she [REDACTED] at school. In sixth grade she had approximately two. Those accidents stemmed from her desire not to miss any part of the class and thus fail to understand the material. She receives much homework but needs to attend an after school club because her mother needs to pick her up late. She becomes stressed from the amount of homework she receives and the fact she has little time to do it due to the fact she arrives home late.

The Parent testified that she has always been involved in the Student’s education and attends all IEP meetings. She observed the Student at [REDACTED], but not [REDACTED]. The Parent feels the Student’s ability to perform arithmetic, especially the arithmetic required to make change when buying something, is grossly inadequate. As an example, when playing Monopoly, the Student cannot be the banker because she has difficulty adding money. The Student has a “big sister” who took the Student bowling. The alley at which the Student and the big sister bowled required patrons to manually calculate their scores. The Student could not properly calculate her score. Instead of teaching the Student to perform the arithmetic, MCPS requires the Student utilize a calculator with the rationale that some students



simply cannot learn math and need calculators. In addition, the Student has difficulty with writing and physically writing sentences. In fifth grade, the Student experienced a panic attack when an assignment required her to write more than one sentence. When overwhelmed by work the Student becomes stressed. The Student's difficulty with math goes all the way back to Kindergarten when she could not make it past 35 when trying to count to 100.

The Parent took the Student to [REDACTED] Hospital to have sensory testing since loud noises in class negatively trigger the Student's senses. The Parent questioned whether MCPS pays adequate attention to the Student's sensory needs since some classes contain many students. When the Student becomes stressed, especially over homework, she chews her nails. MCPS dismissed the [REDACTED] Hospital findings. MCPS then performed their own testing and concluded the Student did not require services. However, in fifth grade MCPS tested the use of a headphone to help the Student. The Student used the headphones in sixth grade which helped – however, it is unknown if the Student still uses the headphones in seventh grade. The Student becomes stressed over homework and suffers from headaches as a result. Sometimes the Parent has difficulty waking the Student up in the morning.

The Parent testified that around the Student's third grade year, her father suffered a work accident which left him incapacitated and unable to work. The loss of income to the family and the father's suffering contributed greatly to the Student's stress and problems at school.

The Parent noted a discrepancy between the Student's grades and her achievement scores. While at [REDACTED] the Student has received A's and B's. However, the Student's standardized tests reveal she is behind her peers. When the Student performs her schoolwork at home, the Parent questions how she can perform at A and B levels. For example, in the middle of sixth grade, the Student took an exam to evaluate her reading level. The exam concluded the Student read at an end of second grade level. When the MSDE ordered MCPS to provide the

Student with some compensatory education hours, MCPS offered ten when the Parent wanted 100. Ultimately the Parent grudgingly agreed to twenty.

During the Student's fifth grade year, the Parent communicated frequently with [REDACTED] [REDACTED] and with [REDACTED] ([REDACTED]) during the sixth grade year. [REDACTED] and [REDACTED] served as case managers for the Student. The Parent frequently e-mailed [REDACTED] and [REDACTED] about her concerns. Those concerns included the Student [REDACTED] in class, gym class, use of her locker and organizing her homework.

[REDACTED] ([REDACTED]), a learning for independence teacher, testified on behalf of the Student. [REDACTED] provided the Student with the agreed-upon twenty hours of compensatory education during the Student's sixth grade year. [REDACTED] tutored the Student in the areas of math and writing. With regard to math, [REDACTED] tutored the Student on adding and subtracting money, making change and multiplication. [REDACTED] instructed the Student in this area at the fifth and sixth grade levels. [REDACTED] acknowledged that the Student should have known this material as a sixth grader. In the area of writing, [REDACTED] tutored the Student on mechanics, grammar, verbs, nouns and using online tools to edit.

[REDACTED] testified the Student learned from the services she provided. However, after the twenty hours, the Student still required work and still needed daily practice with math calculations.

[REDACTED] testified she served as the Student's case manager for her sixth grade year. She was the Student's homeroom teacher and morning check in contact. In addition, she worked as a resource teacher on some of the Student's assignments. [REDACTED] testified that during sixth grade the Student experienced "typical middle school stuff." She needed some time to adjust to the new school building and had an experience with a male bully. [REDACTED] heard about incidents where the Student [REDACTED] and had a panic attack, but did not personally observe those incidents. The Parent notified [REDACTED] of those incidents.

██████████ acknowledged that pursuant to the January 2018 IEP, the Student would be co-taught in classes three hours and twenty minutes per week. The co-taught classes included English, math, science and history. ██████████ co-taught math and another teacher co-taught English. ██████████ testified that the presence of co-teachers in any given class at any given time depends on needs of the Student and class dynamics. An additional adult need not be in all classes at all times. Co-teaching services can be transferred to other classes as needed. However, that would need to be pursuant to the IEP.

As the sixth grade year wore on, ██████████ observed the Student was on the right page and assignment, was prepared for class and on task and went quickly from class to class while in the hallways. ██████████ saw the Student at lunch every other day. The Student was generally in a good mood and laughed and interacted with other girls. When the Student made comments about wanting to perform better on homework and questioned her abilities, ██████████ told the Student to think more positively.

Dr. ██████████ M.D. (Dr. ██████████) who I qualified as an expert in Child and Adolescent Psychiatry testified that the Student has been under his care and he has prescribed her medication for ADHD and Anxiety. Dr. ██████████ took the Student off the medication. Recently he prescribed her melatonin and another medication<sup>10</sup> which can be used for sleep and off label for anxiety. However, the Student's issues are related to her development as opposed to her medication.

Dr. ██████████ opined that the Student's anxiety inhibits her ability to succeed in class. When she struggles with learning her anxiety kicks in and she withdraws. On top of this she is self-conscious of her different learning style and feels judged by her peers. At times, the Student experiences difficulty articulating and needs constant leeway in dealing with her anxiety so she can stop and process in the moment.

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<sup>10</sup> Dr. ██████████ testified by telephone. I could not clearly make out the name of this medication.

Dr. [REDACTED] further opined that certain circumstances at the school serve as a barrier to the Student's success. As an example, the school experiences staff turnover which prevents the Student from adequately forming relationships with staff. The school lacks a trained mental health professional, which the Student needs to address her anxiety when it appears during the school day. Although MCPS is addressing the academic portion of the Student's needs, they have failed to adequately address her anxiety. Thus their efforts are counter-productive.

[REDACTED] ([REDACTED]), who I qualified as an expert in Special Education, testified that the Parent hired her as an educational advocate who attended IEP meetings with the Parent, communicated with the school and filed the Parent's due process complaint. [REDACTED] observed the Student in class one time during the Student's fifth grade year. [REDACTED] observed the Student for approximately forty-five minutes during her morning math class. She wrote her observations minute by minute. [REDACTED] observed the Student "fumbling around" and needing to ask her peers what was going on in class. Even during a small group session the teacher needed to refocus the Student. [REDACTED] did not believe the teacher appropriately redirected the Student. While the class overall went well, the Student was not engaged.

The central thesis of [REDACTED] testimony concerned MCPS's focus on accommodation as opposed to the direct teaching of the Student. By accommodating the Student (e.g. providing the Student with a calculator for math skills) MCPS fails to foster the Student's ability to actually learn the skill (e.g. math calculation). [REDACTED] testified that MCPS typically tailors the implementation of its goals and objectives toward accommodations as opposed to direct learning. Allowing the Student to rely on the accommodations results in the Student's dependency on them as an adult. [REDACTED] testified as to a variety of the Student's work samples. She opined the samples indicated the Student's failure to meet grade level expectations and learn basic skills, especially in the areas of writing and math. While the Student's standardized tests revealed

“average” scores in certain areas, the narratives accompanying those scores revealed significant deficiencies not in line with an “average” score.

██████████ opined the Student’s IEPs were deficient in other respects. For example, the Student is below grade level in many academic goals. This requires her to be removed from the general education environment to address those goals. However, the IEPs require inadequate hours to address the goals outside of general education. The fact the Student met no goals as of the January 2018 IEP is indicative of the inappropriateness of the IEPs. The IEPs require two fifteen minute sessions of counseling each month. ██████████ opined that allotted time is insufficient to address some of the Student’s more severe problems (e.g. ██████████ in class). Moreover, a therapist, not a guidance counselor is the appropriate provider for the Student.

██████████ noted that MCPS never enacted any BIPs after performing the three FBAs. MCPS failed to implement teaching strategies or response strategies. The Parent requested the calculator be removed from the Student’s IEP. MCPS refused to remove it. On January 22, 2018, the Parent requested that MCPS change the Student’s IEP to reflect the Student was not making progress. MCPS refused.

The ██████████ Hospital evaluations determined the Student suffered from a variety of sensory deficits. MCPS mostly ignored the evaluations and instead provided the Student with “sensory diets” on her IEP. In response, ██████████ filed a complaint with the MSDE. The MSDE found MCPS failed to appropriately consider the ██████████ Hospital evaluations. In light of the violations, the MSDE ordered MCPS to take a variety of corrective actions which included providing the Student with compensatory hours. MCPS offered ten hours but eventually agreed to twenty. The compensatory hours only concerned tutoring in the areas of math and writing. They failed to address behavioral and sensory issues.

### MCPS's Case

MCPS called [REDACTED], who I qualified as an expert in Special Education [REDACTED] worked with the Student on her writing mechanics goal. [REDACTED] testified that the Student made progress by, for example, learning to correctly write a date. The Student made further progress in the areas of capitalization of proper nouns and the placement of commas. [REDACTED] also worked with the Student on her math calculation goal. [REDACTED] opined that the Student's use of a calculator for math is not unusual.

[REDACTED] conducted the Student's twenty hours of compensatory education in the library. She faced the Student away from the library window to reduce the risk of distraction. She used manipulatives and flashcards to assist with the tutoring. [REDACTED] opined that the Student does not need a smaller classroom setting for learning and can make progress in her grade level curriculum. The Student made ample progress in the twenty hours and her current placement at [REDACTED] is appropriate.

[REDACTED] who I qualified as an expert in Special Education with a specialization in learning disabilities, also testified on behalf on MCPS. During the Student's sixth grade year, [REDACTED] saw the Student every day. The two attended math class and "lunch bunches" together. In math, the Student engaged and participated in class and confidently answered questions in class. When something pleased the Student, she would share it with her teachers. In homeroom, the Student would sometimes be late and sometimes say she is tired and ask to go home. In math class the Student would be in a small room at times and asked questions if she did not understand a concept. In math, the Student worked on ratios, geometry and data and statistical analysis. She understood the concepts. Encouragement and immediate feedback helped the Student who was always receptive to accommodations.

██████ testified that the Student progressed at an inconsistent rate – however she did make progress. She worked on curriculum. She participated in class. While she did not meet her goals, that is not uncommon – the Student simply continues to work toward meeting the goals.

██████ was familiar with some of the Student’s non-math coursework. The Student performed independently on science coursework. In one writing assignment ██████ acted as a scribe for the Student’s written coursework. The Student demonstrated an ability to answer questions and use complete thoughts and sentences.

██████ also observed the Student’s peer interaction. The Student asked questions of peers and engaged in class. In math, the Student demonstrated an ability to work independently without distraction from other students. ██████ opined that the Student’s placement with general education peers is beneficial. While the Student does have anxiety, ██████ believes the Student is developing skills to cope with the anxiety. ██████ opined that ██████ is the proper placement for the Student and the least restrictive environment.

MCPS called ██████ (██████) who I qualified as an expert in school counseling and the provision of behavioral support. ██████ worked as a counselor at ██████ during the Student’s fifth grade year. The Student’s fifth grade teachers used a weekly summary to document the Student’s progress on behavioral and academic goals during fifth grade.

██████ opined that the student made progress on her social goals in fifth grade and obtained problem solving skills to allow her to navigate social conflicts. ██████ noted that overall the Student expressed more happiness and engagement in fifth grade than in previous years at ██████. The Student had a core group of friends whom she sought out.

When ██████ performed the December 2017 FBA, they could not determine consistent patterns of behavior by the Student. They could only document one school

avoidance incident and one incident where the Student [REDACTED]. The Student exhibited “chewing behavior” by chewing on inanimate objects. [REDACTED] addressed that behavior by allowing the Student to chew gum. All teachers reported the gum significantly reduced the Student’s chewing behavior. The teachers kept the Student on a regular bathroom schedule to address the issues of the Student [REDACTED] in class. [REDACTED] received no further reports of school avoidance and no reports the Student arrived at the building and refused to attend class. [REDACTED] provided the Student with a flash pass to use when she felt anxiety. The Student used the flash pass. The Student had access to a counselor. The Student saw the counselor and would rejoin class and her peers. [REDACTED] did not institute a BIP because of the lack of data. [REDACTED] opined [REDACTED] was the appropriate placement for the Student. She demonstrated an ability to advocate for herself, seek out trusted adults and be with her peers.

MCPS called [REDACTED] principal [REDACTED] (Principal [REDACTED]) who I qualified as an expert in educational leadership, administration and instruction. Principal [REDACTED] knew the Student from her fifth grade year at [REDACTED] and participated in the Student’s IEP meetings that academic year.

Principal [REDACTED] acknowledged the [REDACTED] National speech language evaluation of the Student. [REDACTED] considered the results of that evaluation, but chose not to provide speech language services at that time. A student’s progress is measured by a variety of metrics including grades and “MAP” scores. Principal [REDACTED] testified to the “MAP” scores the student received while in fifth grade. She described the scores as showing progress but also showing areas of need. The MAP-R is the independent reading test which reflects “some up and down” from fourth to fifth grade. The MAP-M is the independent math test. The Student scored low on



the MAP-M for fourth and fifth grade. The tests are self-paced and designed to adjust depending

on the answer a student provides. If a student provides a correct answer, the subsequent questions become more difficult. Principal [REDACTED] differentiated between grades and test scores. She opined that grades consist of multiple assignments, some of which a student is afforded the opportunity to redo. In fifth grade, the Student earned mostly A's and B's with two C's.

Principal [REDACTED] testified that [REDACTED] listened to the concerns raised by the Parent and [REDACTED] at the IEP meetings. The meetings could be lengthy as a result of addressing those concerns. She acknowledged the Parent disagreed the Student was making progress and requested [REDACTED] modify the IEP to reflect the lack of progress. [REDACTED] did not adjust the IEP per the Parent's request, but adjusted other goals based upon feedback from the Parent and [REDACTED].

MCPS called [REDACTED] [REDACTED] who I qualified as an expert in school psychology. [REDACTED] is a school psychologist who services two elementary schools and a middle school. She was the school psychologist at [REDACTED] during the Student's fifth grade year and would see the Student in class from time to time. Except for the August 2017 IEP meeting, she attended all the Student's fifth grade IEP meetings. [REDACTED] reviewed the various psychological tests administered to the Student and concluded the Student did not meet the criteria for Autism Spectrum Disorder. The tests reveal the Student has average to high average cognitive abilities and average processing abilities. [REDACTED] opined the Student possesses strong cognitive abilities for a child her age. The Student tested in the average range for memory.

[REDACTED] looked at the December 2018 Woodcock Johnson educational assessment (December 2018 assessment) and the January 2019 Woodcock Johnson educational assessment (January 2019 assessment). The December 2018 assessment reveals a pattern of strengths and weakness in the Student's mastery of various subject matters indicative of a learning disability. In 2016, MCPS identified the Student as having a Specific Learning Disability (SLD). An SLD

is a deficit in basic processes which appears in a variety of areas. One way a child qualifies for an SLD is through a pattern of strengths and weaknesses. The Student's SLD affects her ability to learn reading, writing and math. There is no cure for a SLD, it can only be reevaluated and addressed.

After reviewing the results of the December 2018 assessment, the Parent and ██████ requested that MCPS retest the Student. Although testing is typically only performed on an annual basis, MCPS retested the Student in January 2019 using a different form of the Woodcock Johnson test. The Student's scores increased significantly from the December 2018 assessment. ██████ opined that the increase in the Student's scores from December 2018 evaluation to January 2019 evaluation was unusual, but sometimes can be a result of a student being on or off medication.

██████ opined that the Student's reading fluency standard scores might be down because of time constraints – children with anxiety such as the Student might not do well on time tests. The Student can read, she just needs more time. The Student's grades are more of a reflection of how the services the Student is receiving are working – the Student, with the appropriate supports from the IEP is earning good grades.

██████ reviewed the December 7, 2017 FBA. ██████ concluded the FBA provides no pattern of behavior – only isolated incidents, thus a BIP is not necessary. A BIP is not required if a student's environment can change or their behavior improves. With regard to the November 2018 FBA, during the Student's sixth grade year, ██████ identified certain issues but chose not to implement a BIP – instead enacting processes to address the behavior.

██████ acknowledged the Student has anxiety-related symptoms. However, she opined that MCPS put services and supports in place to allow the Student to seek assistance. ██████ opined that no data exist to support the argument that placement at ██████ is not appropriate.

Further, data do not support the contention the Student needs to be in a special education program full time.

MCPS called [REDACTED] ([REDACTED]) whom I accepted as an expert in special education, general education and academic instruction. [REDACTED] serves as the sixth and seventh grade team leader and community engagement coordinator at [REDACTED]. [REDACTED] reviewed the Student's file and observed the Student in her world studies class. [REDACTED] observed the Student on task, tracking the speaker, advocating for herself, asking for directions and addressing assignments in a meaningful way.

MCPS called [REDACTED] ([REDACTED]) who I qualified as an expert in special education. [REDACTED] is the Student's case manager at [REDACTED]. She sees the Student in the morning and at the end of the day, checks in on the Student in class and keeps in contact with the Student's teachers. On a typical day, the Student arrives in homeroom, retrieves her Chromebook, takes her medication if necessary and sits and talks with other students. Oftentimes the Student will only[?] say "Hi" to [REDACTED] before she joins the other students and engages them. As an example, [REDACTED] said the Student once used her phone to assist another student who was looking for a "green bag of chips."

[REDACTED] observed the Student in English class and frequently checks in on the Student there since English is one of the Student's areas of concern. The English class consists of the Student's special education and general education peers. [REDACTED] observed the Student working with her peers to edit a document and interacting with her peers about writing. Once the Student requested the teacher to tell the class to quiet down. That was the only time [REDACTED] observed the Student exhibit any anxiety.

[REDACTED] opined that the Student can perform grade level work with accommodations. She is currently accessing the seventh grade level curriculum and has no need to be in an environment

consisting of only special education peers. [REDACTED] is the appropriate placement and least restrictive environment for the Student because the Student speaks to teachers and peers and shows she is finding a niche at the school.

MCPS called [REDACTED] principal [REDACTED] (Principal [REDACTED]) who I qualified as an expert in special education, curriculum instruction and administration. Principal [REDACTED] chairs IEP meetings at [REDACTED] and participated in the Student's IEP meetings.

Principal [REDACTED] characterized direct teaching as a vestigial remnant of antiquated 1960's teaching methods. She testified that inquiry and critical thinking based teaching methods have mostly replaced direct teaching. She described direct teaching as "I do We do" and "recall and remember." Specifically she stated that "anything you can 'google' you should not be teaching."

Principal [REDACTED] opined the Student shows progress in some areas, but lacks progress in others. However, she found the Student's specific goals and objectives appropriate in light of her progress. With regard to math, the Parent and [REDACTED] requested [REDACTED] utilize "Moby Math" which is a web based math teaching program. [REDACTED] obliged the request and the Student uses Moby Math.

#### Did the Student receive FAPE?

I find the Parent met her burden to prove MCPS did not provide the Student FAPE from October 1, 2017 through the October 1, 2019. This case encompasses two years of multiple IEPs, amended IEPs, tests, re-tests, evaluations and re-evaluations. Numerous teachers taught the Student. Several counselors counseled her. A generous portion of the four hearing days comprised both parties utilizing their witnesses to bounce between the various IEPs, tests and evaluations. All that evidence is important and I have considered it. However, for me to analyze every change, modification or source of disagreement within those documents would be impossible and counter-productive to rendering an understandable decision. Instead I look to the

IEPs as a whole to see if they reflect progress by the Student. The Parent argued they do not. I agree.

In rejecting the Tenth Circuit's holding that an IEP need offer only *de minimis* progress, the *Andrew F.* court held:

*Rowley* had no need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. That case concerned a young girl who was progressing smoothly through the regular curriculum. If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his 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.

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

*Andrew F.*, 137 S. Ct. at 1000-01.

In terms of goals, the Student's IEPs for fifth, sixth and seventh grade essentially duplicate each other. With the exception of reading comprehension, for all areas of academic concern, the August 2017 IEP identified the Student as performing at the third grade level. Fast forward to the January 2019 IEP: while the Student attained grade level in reading comprehension, she remained far below grade level in several of the original areas. She even regressed in reading fluency from fourth grade to second grade level. I find this is, according to *Andrew F.*, “[an indication] that [she] was failing to make meaningful progress toward [her] aims.” *Id.* at 996.

█████████ adamantly opined that the Student required “direct teaching” in order to achieve academic progress and master the material. ██████████ provided little actual basis for her opinion. For example, when asked on cross examination to define “direct teaching” she bluntly responded

“teach the student.” [REDACTED] provided no statistics and cited no studies as to why “direct teaching” represented the most desirable method of raising the Student’s grade level performance. [REDACTED] instead objected to MCPS reliance on various accommodations for the Student which she felt functioned as academic crutches.

I find [REDACTED]’s overall opinion to have some basis in the documentary evidence. In looking at the twenty hours of compensatory tutoring the Student received from [REDACTED] in the areas of written language and math calculation, the Student showed promise at mastering those subjects. However, even [REDACTED] made note of the Student’s need to continue tutoring to improve and master the written language and math calculation skills. As part of a note on March 2, 2019, [REDACTED]’s fourth tutoring session with the Student, [REDACTED] noted the following in all capital letters: “NEEDS MATH FACTS FLUENCY PRACTICE.” (MCPS Ex. 51 p. 7). Conversely, [REDACTED]’s notes contain several examples of the Student either correctly performing her assigned tasks or realizing her mistakes and correcting them.

The Student’s receptivity to [REDACTED]’s tutoring underscores a shortcoming in the implementation of the Student’s IEPs. [REDACTED] agreed that the IEPs required the Student to have co-teachers for specified amounts of time. However, by [REDACTED]’s own testimony, those co-teachers were not always in the Student’s classes and could sometimes “transfer their services” from one subject area to another – at least during sixth grade. I find the evidence unclear how MCPS implemented co-teaching for fifth and seventh grade. The Student testified for seventh grade she has co-teachers in some classes, but not math. The Student did receive co-teaching services – however [REDACTED]’s testimony indicates she did not receive the services as directed by the IEPs.

The August 2017 IEP contained twenty-six supplementary aids and services. The January 2018 IEP modified those slightly to remove two and add two “sensory diet” accommodations.

The January 2019 IEP represented a sea change in terms of supplementary aids and services adding fifteen not present on previous IEPs. Some of these aids, such as the flash pass and mild gain FM system seem clearly added to address the Student's sensory and behavioral issues. On the one hand I find that [REDACTED]'s dismissal of the supplementary aids and services as "fluff" is without basis. On the other hand, it is difficult to determine how any of the many aids and services MCPS placed in the IEPs helped the Student achieve success.

The MSDE found MCPS failed to consider the evaluations from [REDACTED] Hospital. The addition of the supplementary aids and services on the January 2019 IEP seems rooted in the MSDE's May 4, 2018 directive to MCPS. This raises the following question: Had MCPS originally considered the [REDACTED] Hospital evaluations, would the Student have exhibited more progress through 2019? The question is difficult to answer. The Student exhibited progress in certain areas (e.g. reading comprehension). The Student regressed in other areas (e.g. reading fluency). The June 17, 2019 IEP progress report noted the Student achieved two goals on the January 2019 IEP (math problem solving and reading phonics) but the Student failed to make sufficient progress on two other goals (math calculation and written language mechanics).

Likewise, it is difficult to determine what role the Student's time in general education versus her time outside of general education played. In all IEPs, the Student's time in general education included a general education teacher, a special education teacher and an instructional assistant. MCPS modified the times the Student spent in and out of general education from IEP to IEP. This appears to have had little effect on the Student's progress. I heard evidence that sometimes the Student had the opportunity for one on one time with an instructor, but sometimes she did not (e.g. in seventh grade math). The evidence and testimony of [REDACTED] reveals she benefitted from such instruction.



█████ opined that the Student's disability impairs her ability to perform well on timed standardized tests. Her high grades however, are indicators of her ability to succeed and her progress. I find █████'s underlying premise sound. However, the Student's IEPs illustrate a demonstrable lack of progress. For example, in reading fluency and math problem solving the August 2017 IEP set a goal for the Student to reach a fifth grade level in these areas. As of June 2019 (the end of the Student's sixth grade year), with the exception of reading comprehension, the Student failed to reach the fifth grade level in any of her goal areas. The January 2019 IEP listed her reading fluency level at second grade – a reduction.

I found the MCPS's witnesses to be well intentioned and dedicated professionals. They clearly care about the Student and have made conscious, good faith efforts to promote her success. However, as a whole I found they inadequately explained the Student's failure to meet her IEP goals. The gist of the explanations essentially amounted to "some students learn differently than others and we'll just keep trying." The Student has demonstrated the ability to succeed. This is true in reading phonics, math problem solving and reading comprehension. The cognitive tests she has undergone do not reveal she lacks the intelligence to succeed. She has attained above average grades.

However, I find certain methods implemented by MCPS inhibit the Student's ability to actually learn basic skills. Her reliance on a calculator does not teach her how to learn basic arithmetic. While MCPS did begin to use the Moby Math program at the request of the Parent and █████, the evidence is unclear that Moby Math actually helps the Student learn math calculation. If the June 17, 2019 IEP progress report is any indication, Moby Math does not help. The Student struggles with the use of basic capitalization, grammar and punctuation. However, MCPS at times uses a scribe to write down the Student's work, instead of the Student writing it herself. I do not find this helped the Student improve her basic writing skills.

Considering all the evidence in the record, I find that the Student's August 2017, January 2018 and January 2019 were not reasonably calculated to meet her unique needs and to allow her to make appropriate progress in light of her circumstances. The major problem appears to be the inconsistent use of IEP implemented co-teachers coupled with an overreliance on services and aids for the Student. MCPS provided those services and aids in good faith – however, I find, based on the Student's overall lack of progress, they failed. It is undisputed the Student experiences anxiety at school. As shall be discussed in further detail below, I find the Student's anxiety does not rise to a level warranting complete removal from a general education environment. However, I do find it warrants more one on one instruction than the IEPs provide and the Student receives.

What progress the Student achieved in 2019 does not offset the inadequacy of the previous IEPs. It is also countered by a noted lack of progress and regression in certain areas. I conclude that the Parent has proven that MCPS failed to provide a free appropriate public education to the Student for the 2017-2018, 2018-2019 and 2019-2020 school years, thus meeting the first prong of the *Burlington* test. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985).

Should the Student receive compensatory education?

“When a FAPE is not provided to a disabled student, the student's parents may seek an award of compensatory education. These educational services are ordered by the court to be provided prospectively to compensate for a past deficient program, i.e., the school system's failure to provide the student with a FAPE.” *Y.B. v. Bd. of Educ. of Prince George's Cty.*, 895 F. Supp. 2d 689, 693-94 (D. Md. 2012) (internal citation and quotation marks omitted).

I am persuaded that the inconsistent co-teaching and the IEP team's decision to rely on accommodations and services to teach the Student basic skills in which she is deficient to be a

denial of FAPE. The Parent requested 100 hours of compensatory education. In her direct exam of [REDACTED], counsel for the Parent did not ask [REDACTED] how she arrived at 100 hours as a sufficient amount of compensatory education. In response to a question from me, [REDACTED] testified she arrived at the 100 hours for the following reason: compensatory tutoring is provided one on one, as was the case with [REDACTED]. The Student's learning disability requires much repetition for her to learn the material within which she has deficits. In [REDACTED]'s opinion, 100 hours would be sufficient to address the Student's deficits. I found [REDACTED]'s explanation well reasoned. The Student already received twenty hours of compensatory education from [REDACTED]. Having considered the level of progress made with [REDACTED], I find eighty hours to be sufficient for the Student to receive the appropriate one on one tutoring in the academic subjects in which she has failed to meet her annual IEP goals since the August 2017 IEP. *See Burlington*, 471 U.S. at 369; *Fort Bragg Dependent Sch.*, 343 F.3d at 309; *Lopez-Young*, 211 F. Supp. 3d at 57.

Should the Student be placed in private school?

I am unpersuaded that the Student's public placement at [REDACTED] was improper. I am equally unpersuaded that the Student's current placement at [REDACTED] is improper. I find the Parent failed to meet her burden on this issue. The Parent requested private placement at [REDACTED] and the [REDACTED] (the proposed private schools). While the Parent presented evidence and argument as to the shortcomings of [REDACTED] and [REDACTED] she presented no evidence as to why the proposed private schools are more appropriate placement alternatives. Other than two of the Parent's exhibits, which are informational printouts for the proposed private schools (Parent Ex. 1 pp. 495-497), I heard no evidence from the Parent which would open a window on the Student's circumstances should she attend either of the proposed private schools. The informational printouts contain no details

which would lead me to conclude the proposed private schools provide an environment MCPS cannot provide.

There is no dispute the Student suffers from anxiety. The Parent argued that MCPS failed to adequately address the Student's anxiety in class. A generous portion of the hearing concerned testimony concerning the Student's struggles with anxiety. Thus, it is ironic that the Parent brought the Student to the hearing to testify against MCPS. The Parent called the Student as her first witness. In the hearing room were the MCPS witnesses: some of the same teachers and staff the Student dealt with on a daily basis and with whom she developed relationships. The Student entered the hearing room, no doubt saw the MCPS witnesses and knew full well she would be testifying against them. I can think of no more of an anxiety inducing and antagonistic experience for a twelve year old.<sup>11</sup>

When testifying, the Student was, at first, shy, but then opened up and seemed almost chatty. I give the Student's testimony minimal weight. While the MCPS witnesses may have cleared the room, the Parent was still present and watched as the Student testified. How much of the Student's testimony was heartfelt versus how much was intended to please the Parent is unclear. However, one component of the Student's testimony was telling. The Student testified that she has anxiety over homework because she arrives home late and thus time to complete her homework is limited. [REDACTED] is located in Montgomery County where the Student resides. However, one of the Parent's proposed private schools is in [REDACTED] County. The other is in [REDACTED] County. If this is the case, the Parent's request makes little sense. The Parent presented no evidence as to how the proposed private schools would rectify the Student's

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<sup>11</sup> Counsel for the Parent asked for a rule on witnesses which I granted. She then requested MCPS's witnesses be asked to leave the hearing room during the Student's testimony. MCPS objected on the grounds all its witnesses were expert witnesses and thus exempt from the rule on witnesses. To avoid further traumatization of the Student, I requested MCPS's witnesses excuse themselves from the hearing room during the Student's testimony. However, I ruled the witnesses were not subject to the rule on witnesses and MCPS could discuss the Student's testimony with the witnesses as it saw fit.

homework issue. Moreover, [REDACTED] and [REDACTED] testified they have helped the Student with homework after school. Thus, MCPS has resources in place to address this issue.

The Parent attempted to portray the Student's experiences at [REDACTED] and [REDACTED] as generally unhappy. However, the Parent provided little direct evidence to support that contention. [REDACTED] observed the Student once at [REDACTED] for a short time period. The Student testified as to her experiences and how she struggles with friendships. I considered that testimony and find it impossible to ascertain whether those struggles stem from the Student's anxiety and learning disability or if they are the typical lamentations of a seventh grader. The Student indicated the fact she had more friends in sixth grade than seventh grade to be a function of the change in her schedule. She complained that some of her peers curse and skip class. The fact the Student finds that behavior objectionable is not grounds to place her in a private school at public expense.

Dr. [REDACTED] testified the Student's anxiety is triggered by her fears of being looked down upon by her general education peers due to her learning disability. In addition, the services MCPS provide trigger anxiety in the Student. Thus, he opined that she requires placement in a smaller environment. However, Dr. [REDACTED] never observed the Student in class. He never spoke to any MCPS staff. He received his information about the Student's schooling solely from the Student and the Parent. The IEPs require the Student be provided with two fifteen minute sessions of counseling per month. The Parent argued these sessions were inadequate and further argued, through Dr. [REDACTED], that the Student should have access to a licensed therapist as opposed to a school counselor. I do not find the evidence supports that argument. First, I do not find the Student exhibits anxiety at school, at least presently, anywhere near the levels the Parent contends. Second, I find the Student utilizes the school counselor to her benefit. I reviewed the school counselor's notes. (MCPS Ex. 45). They reveal the Student saw the school counselor at

various junctures in 2019. She discussed her anxiety including non-school related family stressors. In March and April of 2019, she discussed her friendship dynamics, issues related to those dynamics and reported an improvement in those dynamics.

I reviewed the treatment notes from the sessions between the Parent, the Student and Dr. [REDACTED] as well as his colleague [REDACTED], LCPC ([REDACTED]). On the one hand, the treatment notes corroborate the Student's struggles. They discuss her difficulty getting up for school in fifth grade, her [REDACTED] incidents and her problems with friends. In certain circumstances, the treatment notes do not help the Parent's case. For example in a November 28, 2017 treatment note from the Student's fifth grade year, [REDACTED] writes "[The Student] is struggling with getting up to go to school but when she is there she does fine." (Parent Ex. 1 p 277). The Student twice reports to [REDACTED] that school is going well in the Spring of her fifth-grade year and she uses the flash pass as needed. (Parent Ex. 1 p 292, 298). In a treatment note dated December 26, 2018, during the Student's sixth grade year, [REDACTED] writes "Overall, [the Student] likes her middle school. Reports she has friends, likes her afterschool program." (Parent Ex. 1 p. 312). In a treatment note dated October 30, 2019, [REDACTED] reports the Parent tells her that the Student has stress about her school related work and "does not know where to start." (Parent Ex. 1 p. 320). However, when [REDACTED] speaks to the Student alone in the same sessions, [REDACTED] and the Student [REDACTED] discuss various methods of organizing homework including taking advantage of after school time. The Student further reports that her peers are "not an issue" this academic (seventh grade) year. *Id.* In many instances, the treatment notes reflect the Student's anxiety over home based or non-school issues. The treatment notes discuss various issues such as the Student's struggles with her weight, her difficulty dealing with her father's condition, somatic issues and disagreements with her mother over use of a tablet.

There is evidence in the record the Student struggled with anxiety in school. However, on this issue I find MCPS has responded appropriately. MCPS identified the Student has having a chewing compulsion. MCPS addressed the compulsion by allowing the Student to chew gum. The compulsion subsided. The Student [REDACTED] in class and MCPS allowed her to have structured bathroom breaks and a flash pass. The incidents of the Student [REDACTED] decreased and subsided. I found the testimony of the MCPS witnesses who directly observed the Student credible. They testified clearly and in a detailed manner that the Student is engaged in her classes, engaged with her peers and has friends. The Student has demonstrated the ability to succeed in her current placement. Despite her learning disability she has earned good grades – I find this would not be the case if her placement was improper. There is no evidence her learning disability or anxiety cause her to violate school rules, engage in antisocial behavior or otherwise “act out” as a result of her present placement.

### **CONCLUSIONS OF LAW**

I conclude as a matter of law that the MCPS’s August 2017 IEP was not reasonably calculated to provide the Student with educational benefit and did not provide a free appropriate public education for the Student. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017); *Board of Education of the Hendrick Hudson Central School District. v. Rowley*, 458 U.S. 176 (1982); 20 U.S.C.A. § 1415(f)(1)(A) (2017).

I further conclude as a matter of law that MCPS’s January 2018 IEP was not reasonably calculated to provide the Student with educational benefit and did not provide a free appropriate public education for the Student. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017); *Board of Education of the Hendrick Hudson Central School District. v. Rowley*, 458 U.S. 176 (1982); 20 U.S.C.A. § 1415(f)(1)(A) (2017).

I further conclude as a matter of law that MCPS's January 2019 IEP was not reasonably calculated to provide the Student with educational benefit and did not provide a free appropriate public education for the Student. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017); *Board of Education of the Hendrick Hudson Central School District. v. Rowley*, 458 U.S. 176 (1982); 20 U.S.C.A. § 1415(f)(1)(A) (2017).

I further conclude as a matter of law that the MCPS did not violate the Individuals with Disabilities Education Act by proposing placement for the Student at [REDACTED] Elementary School and [REDACTED] Middle School. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Sch. Comm. of Burlington v. Dep't of Educ of Mass.*, 471 U.S. 359, 369 (1985); *Adams v. Dist. of Columbia*, 285 F. Supp. 3d 381, 393 (D.D.C. 2018).

### **ORDER**

I **ORDER** that:

The Montgomery County Public Schools shall provide eighty hours of compensatory one on one tutoring services for the Student for the 2017-2018, 2018-2019 and 2019-2020 school years; and I further

I **ORDER** that, the Parent's request for private school placement is **DENIED**.

If corrective action is required by this decision, the local education agency shall, within 30 days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

December 23, 2019  
Date Decision Issued

Nicolas Orechwa  
Administrative Law Judge



## **REVIEW RIGHTS**

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

A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

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

NO/fe  
#183451

**Copies Mailed To:**

[REDACTED]

[REDACTED]

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[REDACTED]

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

BEFORE NICOLAS ORECHWA,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-19-30951

### **FILE EXHIBIT LIST**

I admitted the following exhibits on behalf of the Parent:

Parent Ex. 1 – which contained the following documents in the following numbered pages<sup>1</sup>:

- Student’s Individualized Education Program (IEP) Findings and Recommendations, August 31, 2017<sup>2</sup>, pp. 1-53;
- IEP Amendment and Modification, February 8, 2018, pp. 54-55;
- IEP Findings and Recommendations, January 18, 2018, pp. 56-112;
- IEP Findings and Recommendations, January 16, 2019, pp. 113-174;
- IEP Findings and Recommendations, January 18, 2019, pp. 175-185;
- IEP Goals, April 6, 2017, pp. 186-192;
- Math Session Results, pp. 193-195;
- Student’s Educational Assessment Report from ██████████ Middle School (██████████), January 9, 2019, pp. 196-206;
- Informal Assessments, January 8, 2019, pp. 207-211;
- Student’s Language Skills Pre-Assessment, December 19, 2018, pp. 212-213;
- Student’s Educational Assessment Report from ██████████, December 4, 2018, pp. 214-226;
- ██████████ Hospital Sensory Integration Assessment, April 9, 2018, pp. 227-229;
- Occupational Therapy Evaluation, March 5, 2018, pp. 230-238;
- ██████████ Hospital Auditory Processing Evaluation, January 23, 2018, pp. 239-244;
- Report of School Psychologist, June 15, 2017, pp. 245-249;
- ██████████ Hospital Speech Language Evaluation Final Report, April 5, 2017, pp. 250-255;

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<sup>1</sup> The attorney for the parent submitted Parent Ex. 1 into evidence as a binder containing various documents numbered as set forth below. She did not divide or otherwise segregate the documents into different sections. She provided no index. The segregation set forth below is by me, based upon my review of the binder.

<sup>2</sup> The date connotes the IEP meeting date.

- Draft Report of School Psychologist, October 25, 2016, pp. 256-267;
- Educational Assessment Report, [REDACTED] Elementary School ([REDACTED]), November 15, 2016, pp. 268-276;
- Progress Note from [REDACTED], LCPC, November 28, 2017, pp. 277-278;
- Progress Note from [REDACTED] MD, December 6, 2017, 279-280;
- Progress Note from [REDACTED], LCPC, December 28, 2017, 281-282;
- Progress Note from [REDACTED] LCPC, January 16, 2018, p. 283;
- Progress Note from [REDACTED] LCPC, January 23, 2018, pp. 284-285;
- Progress Note from [REDACTED], MD, January 23, 2018, pp. 286-288;
- Progress Note from [REDACTED], LCPC, January 29, 2018, p. 289;
- Progress Note from [REDACTED], LCPC, March 12, 2018, pp. 290-291;
- Progress Note from [REDACTED], LCPC, March 27, 2018, pp. 292-293;
- Progress Note from [REDACTED], MD, March 27, 2018, pp. 294-295;
- Progress Note from [REDACTED], LCPC, April 11, 2018, pp. 296-297;
- Progress Note from [REDACTED], LCPC, April 25, 2018, pp. 298-299;
- Progress Note from [REDACTED] LCPC, June 25, 2018, pp. 300-301;
- Progress Note from [REDACTED], LCPC, July 9, 2018, pp. 302-303;
- Progress Note from [REDACTED], LCPC, July 24, 2018, pp. 304-305;
- Progress Note from [REDACTED], LCPC, July 30, 2018, pp. 306-307;
- Progress Note from [REDACTED], LCPC, August 20, 2018, pp. 308-309;
- Progress Note from [REDACTED], MD, August 28, 2018, pp. 310-311;
- Progress Note from [REDACTED], LCPC, December 26, 2018, pp. 312-313;
- Progress Note from [REDACTED], LCPC, March 27, 2019, pp. 314-315;
- Progress Note from [REDACTED], LCPC, May 22, 2019, pp. 316-317;
- Progress Note from [REDACTED] MD, May 31, 2019, pp. 318-319;
- Progress Note from [REDACTED], LCPC, October 30, 2019, pp. 320-321;
- Progress Note from [REDACTED], MD, November 8, 2019, pp. 322-324;
- Child Psychiatric Evaluation, July 21, 2016, pp. 325-331;
- Event Chronology, [REDACTED], pp. 332-341;
- Related Services Log Notes, pp. 342-344;
- IEP Findings and Recommendations, December 14, 2018, pp. 345-347;
- Prior Written Notice, December 18, 2018, pp. 348-349;
- IEP Meeting Information, January 16, 2019, pp. 350-352;
- Prior Written Notice, January 18, 2019, pp. 353-355;
- Various E-mails, pp. 356-410;
- Request for Mediation and Due Process Complaint, October 1, 2019, pp. 411-415;
- Letter from MCPS to the Parent, October 3, 2019, p. 416;
- Pre-hearing Conference Report and Order, pp. 417-421;
- Parent's Motion to Correct Pre-Hearing Conference Report and Order, November 21, 2019, pp. 422-423;
- Letters from Counsel for the Parent to the OAH requesting the issuance of subpoenas, November 21, 2019, pp. 424-429;

- Letter from [REDACTED], MS, to [REDACTED] and [REDACTED], May 4, 2018, pp.430-437;
- Letter from [REDACTED] to the Parent, February 2, 2018, p. 438;
- Examples of the Student's Schoolwork, pp. 439-441;
- MAP Goal Score Translation Chart; p. 442;
- Maryland College and Career-Ready Standards, English Language Arts, pp. 443-447;
- Maryland College and Career Ready Curriculum Framework, pp. 448-461;
- Curriculum Vitae (CV) of [REDACTED], pp. 462-464;
- CV of [REDACTED], MD, pp. 465-467;
- COMAR 13A.05.01.09, pp. 468-471;
- Grade 2 Number and Operations in Base Ten, pp. 472-473;
- Grade 3 Number and Operations in Base Ten, p. 474;
- Grade 3 Operations & Algebraic Thinking, pp. 475-477;
- English Language Arts Standards, Language Grade 1, pp. 478-481;
- English Language Arts Standards Language Grade 3, pp. 482-485;
- English Language Arts Standards Language Grade 4, pp. 486-489;
- English Language Arts Standards Reading Foundational Skills, Grade 5, p. 490;
- English Language Arts Standards Writing, Grade 6-8, pp. 491-494;
- [REDACTED] Program Description, p. 495;
- [REDACTED] Program Description, p. 496;
- [REDACTED] Program Description, p. 497;
- Fluency Standards Table, pp. 498-499;
- Fluency Standards for Oral Reading, pp. 500-501;
- Interactions Among Living Things Assessment, December 18, 2018, pp. 502-508;
- IEP-at-a-glance and IEP, January 18, 2018, pp. 509-555;
- Various e-mails, pp. 556-560;
- Multidisciplinary Evaluation Report, November 15, 2016, pp. 561-562.

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 - MCPS Report of School Psychologist by [REDACTED], October 31, 2016;
- MCPS Ex. 2 - MCPS Educational Assessment Report by [REDACTED], November 15, 2016;
- MCPS Ex. 3 - Work Sample, May 4, 2017;
- MCPS Ex. 4 - MCPS Report of School Psychologist by [REDACTED], June 15, 2017;
- MCPS Ex. 5 - IEP, Amended, November 16, 2017;

MCPS Ex. 6 - Prior Written Notice, November 16, 2017;

- MCPS Ex. 7 - MCPS Summary of Informal Consultation, November 30, 2017;
- MCPS Ex. 8 - Functional Behavioral Assessment, December 7, 2017 and Behavior Intervention Plan, December 7, 2017;
- MCPS Ex. 9 - Absence Report, September 5, 2017 to February 9, 2018;
- MCPS Ex. 10 - Team Consideration of External Report, May 16, 2018;
- MCPS Ex. 11 - IEP, January 18, 2018;
- MCPS Ex. 12 - Prior Written Notice, January 25, 2018;
- MCPS Ex. 13 - Progress Report on IEP Goals, June 15, 2018;
- MCPS Ex. 14 - Assignment Report – Writing Grade 5, MP2 2017;
- MCPS Ex. 15 - Amendment/Modification to Current IEP without an IEP Meeting, February 8, 2018;
- MCPS Ex. 16 - IEP, Amended February 13, 2018;
- MCPS Ex. 17 - MCPS Occupational Therapy Evaluation, March 5, 2018;
- MCPS Ex. 18 - Letter from [REDACTED] to the Parent, February 2, 2018;
- MCPS Ex. 19 - Prior Written Notice, March 2, 2018;
- MCPS Ex. 20 - [REDACTED] Request for School Records from [REDACTED], April 12, 2018;
- MCPS Ex. 21 - Academic Student Profile, May 1, 2018;
- MCPS Ex. 22 - Prior Written Notice, June 1, 2018;
- MCPS Ex. 23 - IEP, Amended June 6, 2018;
- MCPS Ex. 24 - Amendment/Modification to Current IEP without an IEP Meeting, June 6, 2018;
- MCPS Ex. 25 - Weekly Progress Summary, September 2017 to June 2018;
- MCPS Ex. 26 - ESY Letter from [REDACTED], ESY Coordinator, Summer 2018;
- MCPS Ex. 27 - Prior Written Notice, October 4, 2018 and IEP Meeting Notes and Notice and Consent for Assessment, October 19, 2018;

MCPS Ex. 28 - Prior Written Notice, October 22, 2018;

MCPS Ex. 29 - Email chain between the Parent and [REDACTED], September 11, 2018 to November 30, 2018;

MCPS Ex. 30 - School Year 2018-2019 Progress Report for Quarter Two;

MCPS Ex. 31 - Functional Behavioral Assessment, November 12, 2018 and Behavior Intervention Plan, November 12, 2018;

MCPS Ex. 32 - MCPS Educational Assessment Report by [REDACTED], December 4, 2018;

MCPS Ex. 33 - MCPS Report of School Psychologist [REDACTED], December 14, 2018;

MCPS Ex. 34 - Prior Written Notice, December 18, 2018;

MCPS Ex. 35 - Related Services Log, January 16, 2019;

MCPS Ex. 36 - Functional Behavioral Assessment, January 7, 2019 and Behavior Intervention Plan, January 7, 2019;

MCPS Ex. 37 - Fountas and Pinnell Assessments- Edition 2, January 8, 2019;

MCPS Ex. 38 - MCPS Educational Assessment Report by [REDACTED], January 9, 2019;

MCPS Ex. 39 - IEP, January 16, 2019;

MCPS Ex. 40 - Prior Written Notice, January 18, 2019;

MCPS Ex. 41 - Work Sample – Essay: Call to Action, February 11, 2019;

MCPS Ex. 42 - IEP, Amended February 12, 2019 and IEP Amendment Changes – IEP, February 12, 2019;

MCPS Ex. 43 - Prior Written Notice, February 19, 2019;

MCPS Ex. 44 - Weekly Updates, February 2019 to May 2019;

MCPS Ex. 45 - Related Services Log Notes, February 21, 2019 to June 11, 2019;

MCPS Ex. 46 - Work Sample – Essay: Original Narrative, March 28, 2019;

MCPS Ex. 47 - Organizational Record Sheet, April 8, 2019 to June 3, 2019;

MCPS Ex. 48 - Prior Written Notice, May 1, 2019;



MCPS Ex. 49 - Progress Report on IEP Goals, June 17, 2019;

MCPS Ex. 50 - Work Sample – Reflection Journal Entry, June 2019 and Work Sample,  
Advanced English 7 – Quarter 1

MCPS Ex. 51 - Email to [REDACTED] from [REDACTED], May 21, 2019;

MCPS Ex. 52 - Prior Written Notice, September 3, 2019 and IEP Meeting Notes, August 30, 2019;

MCPS Ex. 53 - Student Growth Report, November 27, 2019;

MCPS Ex. 54 - Student Health Room Record September 2017 to May 2019, Grade 5 and  
Report Cards Grades 5, 6 and Student Assignment Scores Grade 7 MP1;

MCPS Ex. 55 - E-mails between the Parent and [REDACTED], September 18, 2019 to  
September 25, 2019;

MCPS Ex. 56 - Resume of [REDACTED];

MCPS Ex. 57 - Resume of [REDACTED];

MCPS Ex. 58 - Resume of [REDACTED];

MCPS Ex. 59 - Resume of [REDACTED];

MCPS Ex. 60 - Resume of [REDACTED];

MCPS Ex. 61 - Resume of [REDACTED];

MCPS Ex. 62 - Resume of [REDACTED];

MCPS Ex. 63 - Resume of [REDACTED];

MCPS Ex. 64 - Resume of [REDACTED];

MCPS Ex. 65 - Resume of [REDACTED];

MCPS Ex. 66 - Resume of [REDACTED];

MCPS Ex. 67 - Resume of [REDACTED].