

████████████████████  
STUDENT  
v.  
ANNE ARUNDEL COUNTY  
PUBLIC SCHOOLS

BEFORE JENNIFER M. CARTER JONES,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-AARU-OT-20-09996

**DECISION**

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SUMMARY OF THE EVIDENCE  
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DISCUSSION  
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ORDER

**STATEMENT OF THE CASE**

On April 20, 2020, █████ and █████ (Parents) filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) on the Student’s behalf, requesting a hearing to review the identification, evaluation, or placement of the Student by AACPS under the Individuals with Disabilities Education Act (IDEA). (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2019); 2 Md. Code Ann., Educ. § 8-413(d)(2) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

The Complaint alleges that AACPS denied the Student a Free and Appropriate Public Education (FAPE) because it failed “to provide him an [Individualized Education Program] (IEP) and educational placement reasonably calculated to produce meaningful academic progress.” The requested remedies are that AACPS be ordered to:

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<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated. Unless otherwise noted, all citations of 20 U.S.C.A. hereinafter refer to the 2017 bound volume.

<sup>2</sup> C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations of 34 C.F.R. hereinafter refer to the 2019 volume.

- Reimburse the Student for the cost of enrollment at [REDACTED] for the 2018-2019 school year; and
- Place the Student at [REDACTED] for the 2019-2020 school year.

On May 21, 2020, Administrative Law Judge (ALJ) Robert Barry held a telephone conference with the parties during which they requested that a hearing in the matter be scheduled for July 13-16, 2020.

The applicable federal regulations afford the local educational agency, in this case AACPS, up to thirty days to try and resolve any issues found in the Complaint by resolution session or mediation. 34 C.F.R. § 300.510(b) (2019). Furthermore, a hearing on the Complaint must be completed and a decision issued no later than forty-five days after the resolution period expires, mediation did not result in resolution of the issues, or the parties submit a signed waiver of the resolution session. 34 C.F.R. § 300.510(c). In the Complaint, the Student and Parents did not seek an opportunity to resolve the matter through mediation, electing to proceed with a due process hearing only.

The following events have transpired in the State of Maryland. On March 12, 2020, Governor Larry Hogan ordered Maryland Public Schools, which includes AACPS, to close from March 16 through March 27, 2020, to protect public health by limiting the spread of the COVID-19 virus. On March 30, 2020, Governor Hogan issued a Stay at Home Order only allowing travel within the State for essential purposes. Governor Hogan extended the school closure through the end of the 2019-2020 school year, and the OAH suspended all in-person proceedings through July 3, 2020, holding only emergency and special proceedings by video or telephone. The OAH reopened for in-person hearings on July 6, 2020, with liberal options to request video or telephonic hearings.

Under the applicable law, a decision in this case normally would be due by July 13, 2020, forty-five days after the Parties waived their rights to a resolution session in writing. 34 C.F.R.

§§ 300.510(b)(2), (c), 300.515(a); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). On May 27, 2020, I held a telephone prehearing conference during which Mr. Eig and Ms. Kavadi explained that although they engaged in a telephone settlement discussion on May 20, 2020, due to the limitations imposed by the COVID-19 pandemic, the parties did not participate in a resolution session by May 20, 2020, which is thirty days from the date of the Due Process Complaint. The parties agreed to extend the resolution period timeframe and on May 29, 2020, they submitted to the OAH a signed, written waiver of the resolution session.

For reasons related to the COVID-19 pandemic, the Parties' schedules, and my schedule, the Parties jointly requested that the timelines for the hearing and the issuance of the decision be issued be extended beyond the forty-five days announced in 34 C.F.R. § 300.510. The Parents moved to extend the timelines for the issuance of the decision to thirty days after the close of the record. AACPS agreed with this motion. I granted that motion and after input from the Parties, I scheduled the hearing to take place on July 13-16, 22-23 and 29, 2020. On July 23, 2020, I granted an emergency postponement of the balance of the hearing on that date and of the July 29, 2020 hearing date at AACPS' counsel's request. After consulting with Mr. Eig and Ms. Kavadi, the balance of the hearing was rescheduled for August 24, 27 and 28, 2020. On August 26, 2020, I was compelled to postpone the August 27 and 28, 2020 hearing dates due to a medical emergency. The parties requested that the matter be continued to September 23, 24 and 25, 2020, to avoid a long gap in testimony and I granted that request. The hearing concluding on September 25, 2020.<sup>3</sup>

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<sup>3</sup> Counsel presented oral closing arguments on September 25, 2020 and on October 2, 2020, submitted written Memoranda of Points and Authorities supporting their oral closing arguments. I did not leave the record open for receipt of the Memoranda and closed the record on September 25, 2020.

For the reasons stated above, at the request of the parties, I granted an additional extension of the IDEA timelines to allow the decision to be issued within 30 days from the close of record, or by October 23, 2020.<sup>4</sup>

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:

1. Did AACPS fail to provide the Student with FAPE by doing the following:
  - Developing and proposing implementation of an IEP on and after August 30, 2018, recommending the Student's placement in an AACPS program consisting of part-time instruction in a self-contained special education class and part-time instruction in general education with supports;
  - Failing to place the Student full-time in a small self-contained classroom as the Least Restrictive Environment (LRE); and
  - Failing to utilize an appropriate approach to reading and writing instruction for the Student?
  
2. Is the Student entitled to reimbursement for the Student's enrollment at [REDACTED] for all or a portion of the 2018-2019 school year and placement at [REDACTED] for the 2019-2020 school year?

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<sup>4</sup> The thirtieth day after the close of record is October 25, 2020. As that date falls on a Sunday, I determined I would issue my decision no later than Friday, October 23, 2020, the last business day before the thirtieth day.

## SUMMARY OF THE EVIDENCE

### Exhibits

I have attached an Exhibit List as an Appendix to this Decision.

### Testimony/Expertise

The Parents presented the testimony of the following individuals:

- [REDACTED] Mother, admitted as an expert in the Application of Instruction, Curriculum, and Reading in a General Education Setting
- [REDACTED] Educational Consultant; admitted as an expert in Special Education
- Dr. [REDACTED] Neuropsychologist, admitted as an expert in Neuropsychology/Psychology
- Dr. [REDACTED] CEO, [REDACTED] Founder of [REDACTED] admitted as an expert in Special Education
- [REDACTED] admitted as an expert in General Education/Elementary Education

The AACPS presented the testimony of the following individuals:

- [REDACTED] Compliance Specialist, admitted as an expert in Special Education
- [REDACTED] [REDACTED] Middle School Special Educator, admitted as an expert in Special Education
- Dr. [REDACTED] School Psychologist, admitted as an expert in Clinical Psychology and School Psychology
- [REDACTED] AACPS Coordinator of Interagency and Nonpublic Placement, accepted as an expert in Special Education

## **FINDINGS OF FACT**

### Legal History

1. On February 3, 2017, the Parents filed a request for a Due Process Complaint on behalf of the Student with the OAH alleging that the AACPS denied the Student a FAPE for the 2014-2015 (third grade), 2015-2016 (fourth grade) and 2016-2017 (fifth grade) school years. The Parents also alleged that ██████ a licensed private special education school located in Anne Arundel County, Maryland, constituted an appropriate placement for the Student and requested reimbursement for the Student's tuition there for the third, fourth and fifth grades.
2. On July 14, 2017, Administrative Law Judge (ALJ) Daniel Andrews denied the Parents' Due Process Complaint, concluding that the IEPs developed by the AACPS was designed to provide the Student with a FAPE.
3. The Parents appealed ALJ Andrews' decision to the U.S. District Court for the District of Maryland.<sup>5</sup>
4. On September 14, 2018, the District Court denied the Parents' Motion and granted the AACPS' Cross-Motion, affirming ALJ Andrews' decision.
5. The Parents did not file a Request for Due process regarding the Student's 2017-2018 school year (sixth grade).

### The Student

6. The Student is generally sociable. He enjoys and participates in extra-curricular activities such as martial arts, soccer, church classes, biking, swimming, and Boy Scouts.
7. The Student has been in the Boy Scouts since at least the second or third grade.

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<sup>5</sup> The case was captioned ██████ ██████ and ██████ v. *George Arlotto*, 2018 WL 4384156 (2018).

8. The Student has a great interest acquiring knowledge and has a particular interest in history. The Parents have traveled extensively with the Student, which has buttressed his interests.
9. The Parents, through travel and other opportunities, have exposed the Student to a wealth of experiences, which has allowed the Student to develop a wide general fund of knowledge.
10. The Student enjoys listening to National Public Radio and discussing current events.

### **The Student's Behavioral and Educational History**<sup>6</sup>

11. The Student has a history of difficulties with attention, fine motor skills (impacting his handwriting), executive functioning (impacting working memory and organization), phonemic understanding (impacting his decoding and reading), and mathematical calculation (impacting his ability to perform word problems and more complex math exercises).
12. The Student has historically displayed anxiety when he is in new situations and when he is required to complete tasks he finds difficult.
13. The Student has had an IEP developed by the AAPCS every year since at least his second-grade year.
14. On or about August 24, 2014, the Parents notified AACPS that they would be placing the Student at [REDACTED]
15. [REDACTED] is approved in general and special education MSDE.

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<sup>6</sup> As stated above, the Parents allege the AACPS failed to provide the Student with a FAPE for the 2018-2019 (seventh grade) and 2019-2020 (eighth grade) school years. Findings of facts regarding the Student during the second-through-sixth grade are included only to provide context for the Student's cognitive, academic, and attentional growth into the time period at issue in this matter. The historical and legal background facts are taken from ALJ Andrews' July 14, 2017 decision as affirmed by the District Court, and from evidence submitted in the instant matter.

16. [REDACTED] is a school organized to address the needs of a particular profile of learning - - students of average intelligence with diagnosed language-based learning disorders and attentional challenges.
17. The total student population at [REDACTED] is between 100 and 112 students. [REDACTED] has small class sizes to allow for teaching with intensity and fidelity.
18. [REDACTED] only accepts and serves students who have been diagnosed with specific learning disabilities, primarily language based. [REDACTED] does not accept students who are on the autism spectrum, those who have behavioral disorders or other educational disabilities.
19. The Student attended [REDACTED] from the third through the fourth grade.

**2015 – 2016 School Year (4<sup>th</sup> Grade)**

20. Clinical psychology and school psychology are related. Clinical psychologists typically conduct assessments with an eye toward providing a mental health diagnosis. Clinical psychologists then are involved in creating treatment plans based on diagnoses. School Psychologists have specific training in mental health and learning behavior, and education to learn how to service students in the school setting. School psychologists are trained to collaborate with school staff, administrators, students, and their families to help children succeed academically, socially, emotionally, and behaviorally. Both clinical psychologists and school psychologists are extensively trained and conduct similar assessments of children and students.
21. On February 1 and 3, 2016, Dr. [REDACTED] Clinical Psychologist, and his associates, performed a neuropsychological evaluation of the Student, who was then almost ten years old.



22. Regarding his behavioral observations of the Student, Dr. ██████ noted the following:

[The Student] was quite distractible, impulsive and restless throughout the assessment. At times he would rush through tasks while other times he would run out of time. He required frequent verbal redirection and prompts to sustain his performance. . . . [The Student] seemed to comprehend the task well, but simply could not direct his visual attention consistently to the screen.

(P - 2)

23. In his evaluation, Dr. ██████ used several standardized tests to assess the Student, including: the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) to assess intellectual functioning; the Woodcock Johnson Test of Achievement, Fourth Edition (WJ-IV) to assess academic functioning; the BRIEF to assess executive functioning; the CTOPP-2 to assess phonological awareness; and the VMI to assess the Student's functioning with visual/motor integration.

24. On the CTOPP-2, the Student scored in the 5<sup>th</sup> percentile for phonological awareness and the 21<sup>st</sup> percentile for phonological memory.

25. Dr. ██████ also assessed the Student using the Test of Word Reading Efficiency – Second Edition (TOWRE-2), which measures sight and phonemic decoding efficiency. The Student's ability to rapidly decode sight words fell in the 27<sup>th</sup> percentile and his phonemic decoding efficiency were in the 5<sup>th</sup> percentile, indicating weakness in this area.

26. Dr. ██████ also used the WRAML-2 to assess the Student's working memory, which include story memory, sentence memory and finger windows as subtests.

27. The story memory subtest measures a student's ability to retain a story, packaged and presented to the student and the sentence memory subtest measures a student's ability to retain aspects of a sentence. The finger windows subtests measure the Student's ability to retain more immediate measures of visual memory. (T. 274)

28. The Student's scores on the WRAML-2 indicated difficulties with retaining more immediate measures of visual memory.
29. Dr. [REDACTED] also assessed the Student using the Intermediate Visual and Auditory Continuous Performance Test (IVA-CPT). The IVA-CPT measures a student's capacity to attend and inhibit a response when required to do so.
30. The Student scored below the 1<sup>st</sup> percentile in on the IVA-CPT, indicating an inability to attend and respond appropriately to stimuli.
31. Dr. [REDACTED] also assessed the Student using the Beck Youth Inventories – Second Edition (BYI-2), which is the Student's reported self-inventory of his emotional and personality features, including self-concept, anxiety, depression, anger, and disruptive behaviors. Based on the Student's answers, he scored in the high range for anger and in the mid-range for the other emotional and personality features.
32. Dr. [REDACTED] also assessed the Student using the Children's Sentence Completion Test, on which students finish a sentence stem like "In school, I . . . ." (T. 275) The Student's responses were in the expected range and "revealed no evidence of diminished motivation or effort." (T. 276)
33. Dr. [REDACTED] also used a Child Behavioral Checklist, which is a survey on which the Student's parents, teachers, and school counselor rate different areas of the Student's emotional and attentional functioning. The Student's mother, one teacher of five of the Student's teachers, and the school counselor reported the Student had a higher-than-average level of anxiety. The Student's father and the other four teachers did not report a similar level of anxiety. On that same checklist, only the Parents reported the Student was withdrawn or depressed. The teachers, parents and school counselor did not report the Student had significant attention problems, rule-breaking behavior, or aggressive

behavior.

34. Cognitively, the Student performed in the low average range, with relative weakness in sustained auditory attention, grapho-motor speed, and verbal abstract reasoning. The Student had strength in his general fund of information.
35. Academically, the Student had a Broad Reading score in the low average range. However, basic reading skills were in the borderline range and were marked by a weakness in word attack and single word decoding skills.
36. The Student's comprehension, oral reading, and sentence reading fluency skills fell within the average range.
37. Phonological awareness measures the brain's ability to hear sounds – to disarticulate and pull apart sounds and language on a neurological level, such as our ability to hear the word "cat" and pull apart the phonemes "c", "a", and "t" and rejoin them to automatically form the word.
38. The Student demonstrated borderline low phonemic decoding and phonological awareness scores. The Student had strengths in word efficiency and phonological memory.
39. The Student's Broad Written Language score fell in the low average range, with a borderline score in Spelling and a low average score in Writing Samples.
40. The Student's Broad Mathematics score fell within the borderline range; he exhibited difficulties in Applied Problem Solving and Calculation skills. His math fluency was in the low-average range.

41. The Student's neuropsychological functioning revealed strengths in verbal list learning, verbal working memory, short free and cued recall skills, immediate memory for sentences, and semantic fluency or the ability to retrieve words given a categorical clue. Weaknesses were in fine motor speed and efficiency, visual construction and perceptual organizational skills, and sustained visual attention.
42. The Student struggled with aspects of executive functioning, including rapid automatic naming, sustained auditory and visual attention, and response control skills.
43. Dr. ██████ determined that, emotionally, the Student presented with reduced ability to self-advocate and a low tolerance for frustration. He presented with elevations reflecting anxiety, withdrawn behavior, and depression symptoms. However, the Student did not meet diagnostic criteria for an anxiety disorder, but his symptoms merited continued observation.
44. As of the February 2016 Neuropsychological assessment, the Student had adjusted academically and socially at ██████ His teachers referred to him as the "Mayor of ██████"<sup>7</sup> and reported he displayed a pleasant disposition, was motivated to learn, and displayed an increased willingness to try new activities and friendships.
45. Based on Dr. ██████ Neuropsychological Evaluation, the Student was diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), a Specific Learning Disorder in reading and mathematics, Developmental Coordination Disorder with dysgraphia, and Unspecified Anxiety Disorder.<sup>8</sup>

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<sup>7</sup> (P – 2)

<sup>8</sup> Although in the narrative portion of his report, Dr. ██████ stated that the Student's anxiety symptoms did not meet a diagnostic threshold, he nevertheless included Unspecified Anxiety Disorder as one of his diagnoses in his report.

46. Developmental Coordination Disorder is classified as difficulty with visual motor, visual perceptual and fine motor skills, which can manifest as a difficulty with handwriting.
47. Based on his assessment, Dr. [REDACTED] recommended that the Student required special education services to make appropriate progress, including:
- a highly structured, self-contained classroom throughout the school day due to the cumulative impact of the Student's attention, learning and motor coordination disorders
  - a small class size with a low student to teacher ratio throughout the school day
  - a science-based reading program to address decoding, fluency, vocabulary, and comprehension
  - occupational therapy to address deficits in fine motor speed, visual construction skills, and handwriting
  - a reliable home school communication strategy
  - frequent checks to ensure comprehension
  - chunking of materials
  - cueing prior to being called on in class so the Student can begin to formulate a response
  - pre-reading and pre-writing rubrics
  - word banks and graphic organizers
  - preferential seating
  - repetition of previously taught skills
48. Dr. [REDACTED] recommended that the Student be provided to-do lists to develop and reinforce automatic routines and serve as external cues to begin an activity.
49. Dr. [REDACTED] also recommended that the Student be permitted to change tasks more frequently to alleviate a drain on his working memory. Specifically, Dr. [REDACTED] gave an example that the Student could spend ten minutes on math, rotate to reading for ten minutes, then return to math for ten more minutes.
50. Dr. [REDACTED] recommended that the Parents consider working with the Student's pediatrician to discern an appropriate stimulant medication for the Student to facilitate his attention, reduce distractibility, and strengthen his executive function skills.

51. Dr. ██████ recommended that the Student participate in extracurricular activities for the development of peer relationships, confidence, and self-advocacy skills.
52. Beginning sometime before September 1, 2016, in English/Language Arts at ██████ the Student was taught with a research-based reading program, Word Sense, which focuses on teaching children how to decode words. He also was taught with a program called Read Naturally, which focuses on comprehension, phonics, and fluency. These programs were used to teach the Student, directly, and were also embedded in his in his English/Language Arts class instruction.
53. To assist the Student with improving his writing skills, his teachers at ██████ used the EmPower program to create paragraphs and writing assignments.
54. The EmPower program helps students with executive functioning deficits organize their writing, mapping their ideas using a webbing structure, and allows students to create more cohesive paragraphs through various drafts.
55. On a September 1, 2016 Word Sense Placement test, the Student scored a 71.5% read score.<sup>9</sup>
56. In his English/Oral Language Class, the Student was often off-topic to threads of discussion and direction. Calling on the Student frequently to share his opinion or knowledge helped keep him attentive and actively involved. He was encouraged to take time to reread his written work, check for missing words or ideas, and add information as needed.

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<sup>9</sup> The significance of this score was not offered at the hearing, but the assessment scale appears to range from 0% to 100%. (AACPS – 15)

57. The Student's spring 2016 Progress Report indicated that in Social Studies and Science, he was Progressing or Secure in several areas. However, the Student demonstrated emerging skills requiring significant teacher assistance in the following areas:

- Applying knowledge independently
- Using content vocabulary when expressing thoughts or ideas
- Recalling information from past lessons
- Following oral directions
- Actively participating in class
- Using work time effectively
- Seeking assistance when needed
- Showing readiness to learn

58. In Social Studies and Science, the Student benefited from teacher prompting to start an assignment, focusing on the teacher during discussion, and listening to directions. The Student's ability to focus on classroom discussion was inconsistent. He lost focus frequently and required teacher intervention.

59. The Student's spring 2016 Progress Report indicated that in Math, he was Progressing or Secure in several areas and subareas, including:

- Patterns and Functions
- Place Value
- Number Computation
- Estimates
- Fractions
- Geometry
- Measurement Units, Tools, Calendar
- Problem Solving Strategies
- Work Habits

60. In Math, the Student benefitted from explicit teaching before learning reasoning strategies. He required occasional reminders about posture or side conversations but was easily redirected.

61. On August 9, 2016, an IEP meeting was held to develop the Student's IEP for the 2016-2017 School Year.
62. The IEP Team determined that the Student's disability remained a Specific Learning Disability, which affected areas of visual/fine motor skills, reading, math, written expression, and requisite learning skills.
63. The IEP Team agreed that the Student's instructional grade levels were as follows:
- Reading - in decoding and comprehension, beginning fourth grade
  - Math - third grade
  - Written Expression - third grade
  - Requisite Learning Skills - significantly below grade level expectations
  - Fine Motor and Visual Skills - moderately below expectations of same aged peers
64. The AACPS proposed that the Student would receive a total of five hours of special education instruction provided in the general education/co-taught setting in the area of Language Arts, provided primarily by a special education teacher, with other instructional support provided by a general education teacher and an instructional assistant; and two hours and thirty minutes of special education instruction in Language Arts and five hours and fifty minutes of special education in Math in a self-contained special education setting. As a related service, AACPS proposed that the Student would receive two thirty-minute OT sessions per month from August 9, 2016 through October 28, 2016, and one thirty-minute OT session per month from October 29, 2016 through August 8, 2017, in the general education setting.
65. Based on the proposed IEP, AACPS determined that in a thirty-two-hour school week, the Student would spend twenty-three hours and forty minutes in the general education setting and teight hours and twenty minutes outside of the general education setting in self-contained special education classes. AACPS also determined that the Student would spend approximately 73% of his special education within the general education setting



with non-disabled peers, and the special education services could be provided at [REDACTED] as the LRE.

66. The Parents disagreed with the proposed service hours and education placement because, due to his inattention issues, the Student would not make sufficient educational progress in a general education setting with twenty to twenty-five students; instead, the Student required a small class size of five to seven students taught by a special educator.

67. On August 16, 2016, the Parents provided written notice to AACPS that they disagreed with the proposed August 9, 2016 IEP and were placing the Student at [REDACTED] for the 2016-2017 fifth grade school year.

#### **The 2016-2017 School Year (5th Grade)**

68. During the fifth grade, the Student demonstrated difficulty in organizing his materials. He could read sentences with fluency at a 4.9-grade level. He worked well with peers, readily participated in reading in class, and followed directions.

69. The Student had difficulty with math and he was performing at the second to third grade level in math and well below grade level in math calculation and concepts.

70. The Student demonstrated strong typing skills but weak basic writing skills and his handwriting was immature. The Student demonstrated an understanding of sentence structure and could diagram a complex sentence, but his self-generated sentences were simple, compound, or run-on, without punctuation.

71. On November 29, 2016, the Student's IEP Team held another IEP meeting to review the Student's IEP for the 2016-2017 School Year (fifth grade).

72. The IEP Team determined that the Student's disability remained a Specific Learning Disability, which affected areas of visual/fine motor skills, reading, , written expression, and requisite learning skills.
73. In addition to the records considered during the August IEP meeting, the IEP Team also considered the Student's 2016 summer Progress Reports from [REDACTED]
74. The IEP Team agreed upon the Student's Present Levels of Academic Achievement and Functional Performance, including instructional grade level and strengths and weakness in the areas of Reading, Math, Written Expression, Fine Motor Skills, Requisite Learning Behavior, and Fine Visual Motor Skills.
75. In the following areas, the IEP Team agreed that the Student's instructional grade levels were as follows:
- Reading - in decoding, fifth grade, and in comprehension, beginning of fourth grade
  - Math - late second to early third grade
  - Written Expression - late second to beginning third grade
  - Requisite Learning Skills - below grade level expectations
  - Fine Motor and Visual Skills - moderately below expectations of same aged peers
76. The IEP Team agreed upon the Student's Supplementary Aids, Services, Program Modifications and Accommodations, which would be provided on a daily or periodic basis, all of which were carried over from the Student's August 2016 IEP and for the same reasons provided in the August 2016 IEP.
77. The IEP Team agreed upon the Student's goals and objectives in the areas of Reading, Math, Written Expression, Fine Motor Skills, and Requisite Learning, all of which were carried over from the August 2016 IEP.
78. The AACPS proposed that the Student would receive a total of five hours of special education instruction provided in the general education/co-taught setting in the area of

Language Arts, provided primarily by a special education teacher, with other instructional support provided by a general education teacher and an instructional assistant..

79. The AACPS proposed that the Student would receive two hours and 30 minutes of special education instruction in Language Arts and five hours and 50 minutes of special education in Math in a self-contained special education setting.
80. AACPS proposed that the Student would receive special education instruction for a total of 15 hours per week in the areas of Language Arts and Math, which would be primarily provided by a special educator and an instructional assistant.
81. As a related service, AACPS proposed that the Student would receive two thirty-minute OT sessions per month from August 9, 2016 through October 28 and one thirty-minute OT session per month from October 29, 2016 through August 8, 2017, in the general education setting
82. Based on the proposed IEP, AACPS determined that in a thirty-two-hour school week, the Student would spend seventeen hours in the general education setting and fifteen hours outside of the general education setting. AACPS also determined that the Student would spend approximately 53 percent of his special education within the general education setting with non-disabled peers. However, because the Student required more services than were available at [REDACTED] AACPS determined that [REDACTED] Elementary School ([REDACTED]) could implement the IEP for the Student and [REDACTED] would also be the LRE.
83. The proposed IEP continued to recommend OT as a related service at the same level of service as proposed in the August 2016 IEP.

84. The IEP Team did not agree as to the Student's Special Education Services and Educational Placement and the Parents filed a request for due process hearing, seeking placement at [REDACTED] and reimbursement of the [REDACTED] tuition for the third, fourth and fifth grades.

85. On March 9, 2017, the Student's IEP team met to discuss the Student's triannual evaluation. The IEP team recommended assessments in the following areas:

- Cognitive/Intellectual (Cognitive Ability, Psychological Processing, Attention/Executive Functioning);
- Academic (Basic Reading Skills, Reading Comprehension, Math Calculation, Math Reasoning, Written Expression);
- Motor (Fine/Motor)
- An observation (Language Arts and Math), due to Specific Learning Disability coding

86. On or after April 20, 2017, [REDACTED]<sup>10</sup> AACPS Special Educator, conducted an Academic Assessment of the Student to develop the Student's present levels of performance in the areas of reading, math, and written expression.

87. Ms. [REDACTED] administered the WIAT-III, to assess the Student's basic reading, reading comprehension and fluency, written expression, mathematics, and math fluency. She also observed the Student in his math class at [REDACTED]

88. During the assessments, the Student engaged in conversation with Ms. [REDACTED] was on-task, and put forth effort in completing tasks without requiring breaks to maintain attention and perseverance.

89. Regarding basic reading, the Student showed strengths in his ability to read words accurately in list form consisting of single and multiple syllables. He displayed difficulties reading nonsense words, both single and multi-syllabic.

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<sup>10</sup> On April 20, 2017, Ms. [REDACTED] last name was [REDACTED]

90. The Student fell into the average range for basic reading when compared to same-age peers.
91. Regarding Reading Comprehension and Fluency, the Student demonstrated an ability to answer literal questions about short passages he read with fluency and accuracy. The Student demonstrated difficulty with answering questions that required him to make inferences; he made reading errors with words containing two or more syllables. When the Student did not appear to recognize his reading errors, which could lead to misunderstanding of the text.
92. The Student fell into the average range for reading comprehension and fluency when compared to same-age peers.
93. Regarding Written Expression, the Student was able to compose a basic declarative sentence using a target word and combine two short declarative statements into one simple statement, maintaining the same message. When given a prompt, the Student was also able to generate a topic, a topic sentence and support the topic with related details. The Student had difficulty with combining ideas into a complex sentence to maintain the same meaning and using correct grammar, semantics, and mechanics. The Student's writing was difficult to read because of his letter formation, spacing and spelling, and he demonstrated difficulty with spelling words.
94. The Student fell into the below average range for basic reading when compared to same-age peers.

95. Regarding Mathematics and math fluency, the Student demonstrated an ability related to basic math concepts such as counting, identifying math symbols and one-to-one correspondence. He was able to solve word problems requiring the use of addition or subtraction when provided a picture or when the problem represented a concrete math situation. He was able to use a graph to solve problems, identify place value up to the thousands place, multiply basic facts, and solve whole number computations involving addition and subtraction of 2- and 3-digit numbers.
96. The Student demonstrated weaknesses in Mathematics and math fluency in that he was unable to solve problems involving fractions. He could not place fractions in order, identify the perimeter of an object, and he had difficulty identifying the correct operation to solve word problems – using addition to solve all of the word problems when multiplication or division concepts were required. When presented with six-digit numbers, the Student could not identify place value higher than the thousands place.
97. The Student fell into the below average range for mathematics and math fluency when compared to same-age peers.
98. Ms. [REDACTED] also administered the KeyMath-3 to assess the Student's math application and data analysis skills.
99. In Math Application and Data Analysis, the Student displayed strengths in applying knowledge of basic addition facts to find facts totaling a targeted number and he was able to identify numbers and shapes in a pattern. The Student was able to use pictures to help solve basic fact problems in a word problem format read out loud and he was able to create a word problem story to fit a given situation.

100. The Student displayed difficulty with identifying strategies to solve a problem; he was unable to select the correct operation to solve problems consisting of single and multiple steps involving basic computation facts and computing whole numbers that required more than one step.

101. The Student fell into the below average range for Math Application and Data Analysis when compared to same-age peers.

102. Ms. [REDACTED] suggested the following strategies to allow the Student to participate in the general reading curriculum:

- utilize self-monitoring strategies while reading
- have [the Student] look for unfamiliar words before he starts reading
- continue to encourage [the Student] to utilize the text when answering questions
- provide direct instruction for decoding practice

(P - 3; AACPS - 7)

103. Ms. [REDACTED] suggested the following strategies to allow the Student to participate in the general writing curriculum:

- Provide organizers to help [the Student] expand ideas
- Utilize space markers or grid paper to remind [the Student] to space between his words
- Provide models and paragraph structure to encourage extended writing output
- Use of spell checker to assist with spelling
- Computer usage for writing tasks

(P - 3; AACPS - 5)

104. Ms. [REDACTED] suggested the following strategies to allow the Student to participate in the general math curriculum:

- provide math steps for math problem solving
- use of part: part: whole maps to represent math problems
- use of Concrete, Representational, Abstract (CRA) model to help bridge concrete skills to abstract concepts

- practice multiple step computations
- practice identifying place value and developing place value concepts

(P - 3; AACPS - 5)

105. Before June 2, 2017, the Student began taking medication to assist with focusing and attention.

106. On June 2 and June 5, 2017, Dr. [REDACTED] AACPS School Psychologist, conducted a Psychological Re-evaluation Assessment of the Student, then age eleven, at the AACPS' request.

107. Dr. [REDACTED] interviewed the Student before she conducted formal assessments. The Student said that he liked all of his teachers and that "math can be tricky." (P - 4; AACPS - 4) The Student reported that he was silly last year, but he was focusing better at the time of the assessment and he was taking medicine to help him focus. (*Id.*) The Student reported that he had classmates, but he did not report to Dr. [REDACTED] that he spent any time with his classmates outside of school. The Student reported that having to do something when he did not want to made him angry.

108. During the interview, the Student was interactive, socially engaging, and responsive. Verbally, the Student was able to respond to Dr. [REDACTED] with on-task conversation and engaged in conversation with Dr. [REDACTED] with language typical for his age. He maintained good eye contact and was generally, social.

109. In her evaluation, Dr. [REDACTED] used several standardized tests to assess the Student, including: the WISC-V to assess intellectual functioning; selected tests from the NEPSY-II, to assess the Student's attention and executive functioning; the Conners, Third Edition (Conners-III) to assess the Student's purported ADHD, attention, and distractibility; and the BRIEF-II to assess the Students' executive functioning.



110. Dr. [REDACTED] also observed the Student in his Language Arts and English classes at

[REDACTED] During her observation of the Student in his Language Arts class, Dr. [REDACTED] made the following observations:

- The Student was on-task 83% of the time as compared with a peer, who was on-task 78% of the time;
- The Student's off-task behaviors consisted of asking unrelated questions and making noises. His motor off-task behaviors included tapping on the table or leaving to go to the bathroom.
- The Student would occasionally stare off;
- The student willingly participated in class and volunteered information, though his answers were not always accurate;
- When the Student asked to tell the teacher a story that was unrelated to the current subject matter, his teacher asked him to wait until later, which he was able to do, sharing the story at snack time instead;
- While playing a tapping game to help identify syllables, the Student frequently hit his game pieces harder than other students and he grabbed tools from across the table without waiting or asking a teacher or another student to pass it to him;
- The Student struggled with content accuracy more than his peers;
- The Student periodically stated random quotes and used a different voice to answer questions;
- The Student made frequent attempts to start a conversation with his teacher, but not with his peers; and
- During a 20-minute period, the Student called out or interrupted the teacher nine times.

111. During her observation of the Student in his English class, Dr. [REDACTED] made the following observations:

- The class had more peers and staff than his Language Arts class.
- The Student complied with all of the teacher's requests, voluntarily participated in class, collected papers, completed work, and initiated tasks.
- The teacher frequently provided the Student with one-on-one assistance to scaffold more efficient execution of the task and to help him better organize the ideas he had written.
- When the Student pulled his hands inside of his shirt and pulled his legs up, crossing them, he immediately responded to his teacher's prompt to return to a normal seated position.

112. Scores from the WISC-IV are compared to those obtained by same-age peers. Based on his performance on the WISC-IV, the Student's full-scale IQ score was 83, which placed him in the low average range (13<sup>th</sup> percentile) of intellectual ability.
113. The WISC-IV Verbal Comprehension subtest measures students' ability to access and apply acquired word knowledge. All of the items on the Verbal Comprehension subtest require a verbal response and require the student to display their abilities in the areas of verbal concept formation, reasoning, and expression. The Student scored in the 45<sup>th</sup> percentile on in the Verbal Comprehension subcategory, placing him in the average range.
114. The WISC-IV Visual Spatial Index subtest measures students' ability to evaluate details and understand visual-spatial relationships to construct geometric designs from a model. The Student scored in 10<sup>th</sup> percentile in the Visual Spatial Index subcategory, which was in the low average range.
115. The WISC-IV Fluid Reasoning Index subtest measures students' ability to detect underlying conceptual relationships among visual objects and their ability to use reasoning to identify and apply rules. The Student scored in the 21<sup>st</sup> percentile, which placed him in the low average range.
116. The WISC-IV Working Memory Index subtest measures students' ability to identify visual and auditory information, maintain that information in temporary memory, and mentally manipulate the information to re-sequence it for use in problem solving. Students must utilize attention, auditory and visual discrimination and concentration. The Student scored in the 21<sup>st</sup> percentile, which placed him in the low average range.
117. The WISC-IV Processing Speed Index subtest measures students' speed and accuracy of

visual identification, decision making, and decision implementation. Students must visually scan, discriminate, use short term memory, and concentrate. The Student scored in the 30<sup>th</sup> percentile, placing him in the average range.

118. The WISC-IV Auditory Working Memory Index subtest measures students' ability to maintain and manipulate information that has been presented, verbally. The Student scored in the low average range.

119. The WISC-IV Nonverbal Index measures students' general intellectual functioning for visually presented material with reduced language. The Student scored in the very low range on this subtest, and indicated the Student is better able to access content when it is verbally presented.

120. The WISC-IV General Ability Index is an estimate of general intellectual ability, which is less reliant on working memory and processing speed than the full-scale IQ. This subtest provides information about students' ability to use abstract thinking, conceptual reasoning, visual perceptual, and spatial reasoning, and verbal problem solving. The Student's score subtest fell in the low average range, indicating his cognitive potential might be better demonstrated when working memory demands were reduced.

121. The WISC-IV Cognitive Proficiency Index subtest measures the efficiency with which students process information in learning, problem solving, and higher order reasoning. The Student scored in the low average range on this subtest.

122. The WISC-IV Figure Weights and Arithmetic subtest measures quantitative reasoning skills. The Student's score fell in the low average range.

123. The Naming Speed Index analyzes students' scores on the WISC-IV Naming Sped Literacy and Naming Speed Quantity subtests and provides a broad estimate of students'

ability to quickly and accurately name letters, numbers and quantities. The Student's score fell in the very low range. His naming speed for letters and numbers was sufficient, but his naming speed for quantity estimation was weak.

124. On the NEPSY-II assessment of the Student's attention and executive functioning, he generally performed below expected levels with some areas of weaknesses and strengths.

125. On the NEPSY-II Animal Sorting subtest, the Student struggled with formulating basic concepts and independently transferring those concepts into action. Dr. ██████ concluded the Student would "perform best when given a brief review of information with explicit steps for completion, including visuals and copies of original instructions." (P - 4; AACPS - 4)

126. The NEPSY-II Auditory Attention and Response Set subtest requires students to listen to a series of words and touch the appropriate circle when they hear the target word. The Student generally performed at the expected level but below the expected level when errors were considered. Dr. ██████ concluded that the Student is able to attend for shorter bursts of information but is more likely to make errors when required to attend for extended time periods. Results also indicated the Student might struggle when increased demands were placed on his working memory.

127. The NEPSY-II Clocks subtest required the Student to reproduce drawings and content based upon images presented to him. The Design Fluency Subtest required the Student to draw as many designs as he could from an array within a specified timeframe. The Inhibition subtest required the Student to look at a series of black and white shapes and arrows and name the shape, the direction of the arrow, or an alternate response

depending on the color of the shape or arrow. The Student performed at expected level in terms of the substantive errors, but he performed below level when the slow speed with which he completed the task was factored. The Student's speed and accuracy was better on the more complicated tasks, leading Dr. [REDACTED] to conclude the student "may exert more purposeful mental control when it is understood the task may be more challenging." (P - 4; AACPS - 4)

128. Overall, the Student's performance on the NEPSY-II indicated the Student may perform better, cognitively, when working memory demands are reduced and when he is able to access and utilize verbal strengths and supports; and he will likely perform best when given a brief review of information with explicit steps for completion, including visuals and copies of original instructions.

129. The Connors-3 is a set of rating scales used to assess symptoms generally associated with ADHD. The Student completed a self-report of what symptoms he believed he experienced and three of his teachers (Language Arts/English, English, and Math) reported regarding the ADHD symptoms they observed in the Student. The Parents did not complete a Parent survey despite Dr. [REDACTED] attempt to obtain one.

130. The Student's English teachers rated the Student very high on hyperactivity/impulsivity and inattention scales and the Student's math teacher reported that the student often has a short attention span, does not pay attention to details or makes careless mistakes, gives up easily on difficult tasks, gets easily sidetracked, avoids things he does not like, and has trouble keeping his mind on work for long periods of time.

131. The Student's teachers also reported on the Connors-3 that the student generally fidgets or squirms in his seat, is restless or overactive, talks non-stop, and is noisy or loud when playing or using free time.

132. The only elevated rating on the Connors-3 based on the Student's own report was in the area of family relations, indicating that he often feels his parents unjustly criticize him, expect too much of him, or notice only his bad behavior. On the BRIEF-2, which assesses executive functioning, the Student completed a self-report and three of his teachers (Language Arts/English, English, and Math) reported regarding the executive functioning strengths and weaknesses they observed in the Student. The Parents did not complete a parent survey despite Dr. [REDACTED] attempt to obtain one.

133. All of the rating scales indicated elevated concerns about the Student's ability to plan and organize tasks, goals, events, and concepts. Two of the Student's three teachers indicated very elevated concerns regarding the Student's working memory and task monitoring abilities. None of the ratings indicated significant concerns about the Student's organization of materials or ability to initiate.

134. Dr. [REDACTED] made the following recommendations of accommodations that should be provided for the Student to assist with allowing him to access the curriculum:

- Consider providing a brief review of information with explicit steps for completion, including visuals and copies of original instructions, before assigning [the Student] a task
- Provide repetition of expectations throughout tasks
- Conduct frequent check-ins during independent work to monitor correct execution of tasks
- Model and encourage self-monitory techniques to assist [the Student] with accuracy when completing tasks
- Provide [the Student] with clear, simply stated directions or explanations so that he knows exactly what is expected.

- Avoid multiple commands. Allow [the Student] to complete one portion before giving directions for the next part
- Have [the Student] paraphrase or repeat directions to ensure understanding
- Reduce potential distractions by limiting [the Student's] desk contents to absolute necessities
- Keep [the Student's] assignments short or break them into shorter segments which will allow more frequent contacts with the teacher
- Establish a habit of having [the Student] re-check written work before accepting it
- If [the Student] chooses to stand at his seat while working, that could be allowed if it does not interfere with work (his or others)
- Consider providing something safe (such as a rabbit's foot or a small nerf ball) for [the Student] to manipulate in his hands while listening or working. Children often find it soothing to keep their hands active. This often reduces their tendency to become involved in more distracting activities.
- Present new information in shorter bursts of time and in small chunks to promote optimal attention from [the Student].

(P - 4; AACPS - 4)

135. On August 17, 2017, the Parents notified the AACPS in writing that the Student would be attending ██████ for the 2017-2018 school year and requested that the AACPS place and fund him there.

136. On August 21, 2017, the Student's IEP Team AACPS completed a Comprehensive Evaluation Review of assessments.

**The 2017-2018 School Year (6<sup>th</sup> Grade)**

137. By fall 2017, the Student was taking the prescription medication ██████ to address his attention deficits. ██████ is designed to increase the brain's access to dopamine, which promotes self-regulation. It is a common prescription for ADHD.

138. The Student has continued to take ██████ since fall 2017.

139. ██████ was the Student's teacher in sixth grade. Mr. ██████ taught the Student Social Studies, English, and Reading for the first semester and Social Studies, English, Reading and Math in the second semester.

140. ██████ began working for ██████ the summer before the 2017-2018 school year. Prior to coming to work for ██████ Mr. ██████ taught only general education elementary school students. He had not taught the sixth grade common core curriculum such as that provided by ██████
141. Directly prior to the 2017-2018 school year, Mr. ██████ received three weeks of training provided by ██████ He did not receive training in the core curriculum for sixth grade social studies and he is not specialized in the area of social studies, math or reading. Mr. ██████ did receive training in the ██████ reading curriculum and interventions during the three weeks of training prior to the 2017-2018 school year.
142. During the 2017-2018 school year, Mr. ██████ taught the student in co-taught social studies and English classes with another teacher who was trained in those areas.
143. During the 2017-2018 school year, Mr. ██████ taught the Student reading without a co-teacher.
144. There were seven students in the English class with the Student and Mr. ██████ There were eleven students in the Social Studies class and there were four students in his Math class.
145. The Student's English class and Math class was separated into smaller groups according to the level of ability and comprehension.
146. Mr. ██████ tutored the Student during the summer at the Parents' expense after the 2017-2018 school year and he continues to tutor the Student.



## The 7<sup>th</sup> and 8<sup>th</sup> Grades

### *The August 2018 IEP*

147. On May 22, 2018 Word Sense Placement testing, the Student scored a 94.5% read score.

This score represents an increase of 23% between his Word Sense placement score on September 1, 2016.

148. Between 2016 and the end of the 2017-2018 school year, the Student's scores on

■■■■■ math assessments rose from 52.6% to 90.6%.

149. On May 3, 2018, the Student received a 10/10 (A+) on a vocabulary quiz.

150. On or about May 5, 2018, the Student received a 10/12 (B) on a vocabulary assignment.

151. On or about May 24, 2018, the Student received an A+ on an ELA assignment.

152. On or about May 31, 2018, the Student wrote a two-paragraph essay about the musician,

Stevie Wonder. He also wrote a paragraph about the book *Out of my Mind*, by Sharon Draper.

153. As of June 2018, the Student was reading on or near grade-level. He was still receiving reading intervention via the Read Naturally program.

154. As of June 2018, the Student was learning and graded in math at a 4<sup>th</sup>-grade level.

155. On March 26, 2018, Ms. ■■■■■ sent an invitation to ■■■■■ Director Dr. ■■■■■

■■■■■ inviting someone from ■■■■■ to attend an upcoming ESY meeting tentatively scheduled for April 4 or April 18, 2018.

156. Ms. ■■■■■ corresponded with ■■■■■ staff regarding the upcoming ESY meeting

between March 26 and April 10, 2018 and, on April 10, 2018, Ms. ■■■■■ sent to Dr.

■■■■■ a questionnaire to provide input regarding the Student's need and eligibility for ESY services.

157. By email, dated June 6, 2018, Ms. [REDACTED] requested that [REDACTED] [REDACTED] School Psychologist, provide the AACPS with any assessment data and work samples for the Student in anticipation of his annual IEP review.
158. On June 6, 2018, Ms. [REDACTED] sent to Ms. [REDACTED] by email the data noted above in findings of fact 224 through 227 related to 2018 academic assessments of the Student.
159. On or about June 11, 2018, Ms. [REDACTED] sent to Ms. [REDACTED] by email, samples of the Student's work from May 2018 noted above in findings of fact 221 through 223.
160. Between March 26, 2018 and June 15, 2018, Ms. [REDACTED] and the Parents corresponded by email about scheduling an IEP meeting to address ESY for the Student.
161. During their email conversations, Ms. [REDACTED] and the Parents discussed convening a full IEP Team meeting to develop an IEP for the 2018-2019 school year. On April 30, 2018, Ms. [REDACTED] advised the Parents that she would like to observe the Student at [REDACTED] speak with his teachers at [REDACTED] and collect current work samples. She offered to convene the IEP Team meeting on May 23, 30, June 4 or 6, 2018.
162. The IEP Team met on June 15, 2018 to discuss ESY. During the meeting, [REDACTED] represented that [REDACTED] had recently conducted a WJ-IV assessment of the Student and told Ms. [REDACTED] she would submit a copy to AACPS.
163. On four occasions, between June 15, 2018 and August 20, 2018, Ms. [REDACTED] requested a copy of the WJ-IV referenced by Dr. [REDACTED] at the June 15, 2018 IEP ESY meeting. The AACPS did not receive a copy of then-recent WJ-IV assessment results for the Student from the Parents or [REDACTED]
164. On August 6, 2018, the Parents notified AACPS that they would be unilaterally placing the Student at the [REDACTED] and requested that the AACPS fund that placement.

165. On August 20, 2018, the Student's IEP team met to develop an IEP for the Student for the 2018-2019 school year.

166. The following individuals participated in the August 21, 2018 IEP team meeting:

- [REDACTED] Administrator/Designee
- [REDACTED] Special Educator
- [REDACTED] General Educator
- The Parents
- [REDACTED] Occupational Therapist

167. The IEP Team determined the Student's Present Levels of Academic Achievement and Functional Development; the Student's need for Special Considerations and Accommodations, including Supplementary Aids, Services, Program Modifications and Supports; and the appropriate Goals and Objectives for the Student to achieve during the seventh grade.

168. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in reading, the IEP team considered Ms. [REDACTED] May 12, 2017 AACPS Academic Assessment Report, [REDACTED] Data Sheets, [REDACTED] Work Samples, the Student's spring 2016 Progress Reports from [REDACTED] May 2016 observation reports, AACPS November 11 and November 15, 2016 Observations; May 2016 Classroom Teacher Report, 2016 [REDACTED] Neuropsychological Evaluation Report, AACPS 2017 OT Assessment; and Dr. [REDACTED] June 2017 Psychological Assessment Report.

169. The Parents were given an opportunity to provide any additional documentation regarding the Student's Present Levels of Academic Achievement and Functional Performance, but they did not share any new documentation. The Parents did verbally

offer information at the August 20, 2018 IEP meeting and represented they were compiling documents from [REDACTED] and would provide them to the AACPS.

170. The IEP team determined that using strategies employed by [REDACTED] the Student displayed strengths in reading comprehension and fluency, oral and sentence reading fluency, and passage comprehension.<sup>11</sup>

171. The IEP team determined the Student displayed the following weaknesses in reading:

- Word Attack;
- Decoding nonsense words in isolation;
- Letter-word identification;
- Difficulty making inferences; and
- Reading errors and a lack of self-monitoring while reading

172. The IEP team determined that these weaknesses in reading impacted the Student's academic achievement and/or functional performance.

173. The IEP team determined the Student's instructional level in reading was the 6<sup>th</sup> grade.

174. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in Written Expression, the IEP team considered the May 12, 2017 AACPS Academic Assessment Report; the 2016 [REDACTED] Neuropsychological Evaluation Report, and [REDACTED] work samples. The IEP team determined the Student displayed strengths in the following areas:

- Answering comprehension questions in complete sentences
- Using word processing, include details from a text, use correct capitalization, punctuation and spelling;
- Write a claim statement and a concluding sentence;
- Write two paragraphs with details from the text that supported his position;
- Compose a basic declarative sentence using a target word;

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<sup>11</sup> Phonological awareness is the ability to identify all syllables within multi-syllabic words and identify each sound within the syllables. (P. 24 – 7; AACPS 34 – 4)

- Combine two short declarative statement into one simple sentence while maintaining the same message; and
- Generate a topic in response to a prompt, draft a brief topic sentence, and support his topic with related details.

175. The IEP team determined the Student displayed the following weaknesses in written expression:

- The Student needed assistance when editing using word processing software;
- Spelling
- Combining ideas into compound or complex sentences to maintain the same meaning
- Using correct grammar, semantics, and mechanics when combining ideas
- Varying his extended writing with the use of descriptors, transitions, or types of sentences
- Proper letter formation, spacing, and spelling

176. The IEP team determined the Student's instructional level in Written Expression was 5<sup>th</sup> grade.

177. The IEP team determined that these weaknesses in Written Expression impacted the Student's academic achievement and/or functional performance.

178. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in Math, the IEP team considered [REDACTED] Data Sheets; the AACPS May 12, 2017 Academic Assessment Report and the 2016 [REDACTED] [REDACTED] Report.

179. The IEP team determined the Student displayed strengths in the following areas:

- basic math concepts, including counting, identifying math symbols, and one-to-one correspondence;
- adding single digit addition problems and single digit subtraction problems;
- solving word problems requiring addition or subtraction when provided a picture or representing a concrete math situation;
- using a graph to solve problems;
- identifying place value up to the thousands place;
- multiplying basic facts and solve whole number computations with addition and subtraction;
- identifying numbers in a pattern;

- using pictures to help solve basic fact problems in a word problem when read out loud; and
- creating a word problem story to fit a given situation.

180. The IEP team determined the Student displayed the following weaknesses in Math based on the Student's performance:

- solving problems that utilized fractions;
- identifying the correct operation needed to solve word problems;
- using only addition to solve word problems;
- not identifying place value higher than the thousands when presented with six -digit numbers;
- difficulty identifying strategies he would use to solve a problem;
- inability to select the correct operation to solve problems consisting of single and multiple steps involving both basic computation facts and computing whole numbers involving more than one step.

181. The IEP team determined the Student's instructional level in math was 4<sup>th</sup> grade.

182. The IEP team determined that these weaknesses in math impacted the Student's academic achievement and/or functional performance.

183. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in Learning Behaviors, the IEP team considered the Student's spring 2016 Progress Reports from [REDACTED] the May 2016 [REDACTED] Classroom Teacher Report, the May 2016 Observations at [REDACTED] and the November 2016 Observations by AACPS.

184. The IEP team determined the Student displayed learning behaviors strengths in the following areas:

- following oral directions;
- using work time effectively;
- showing readiness to learn through eye contact and posture;
- coming to class prepared;
- demonstrating respect and appropriate interactions with peers and adults;
- during observation, following seven out of eight oral directions in a 15-minute interval, answering three of three questions asked by a teacher, participating in a

decoding bingo game without prompting by the teacher, and remaining appropriately seated in a chair with no modifications.

185. The IEP team also determined the Student displayed the following Learning Behaviors

weaknesses:

- work habits vary among content areas with weaker work habits during social studies and science;
- requires reminders about behaviors like side conversations;
- inconsistency in ability to focus on instruction in social studies;
- requires frequent intervention such as a touch on the shoulder or calling his name to pull his attention back to a class discussion;
- making noises (robotic sounds, grunts, growls, singing, etc.), with easy redirection;
- shutting down and attempting to avoid non-preferred or unfamiliar tasks (*i.e.*, writing assignments);
- difficulty initiating tasks and sustaining attention to tasks that last longer than 10 minutes;
- during observation in math having his head down nine out of twenty minutes, folding his paper despite his teacher's verbal prompts to participate, raising his hand to participate three of nine times in reading class and two of eight times in math class;
- deficits in sustained attention, impulsivity, divided attention, and inhibition; and
- distractibility, impulsivity and restlessness during the February 2016 Neuropsychological Assessment.

186. The IEP team determined that these weaknesses in Learning Behaviors impacted the Student's academic achievement and/or functional performance.

187. The IEP team determined the Student's instructional level in Learning Behaviors was below grade level expectations.

188. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in relation to his Fine/Visual Motor skills, the IEP team considered the 2017 AACPS OT Assessment.

189. The IEP team determined the Student displayed fine/visual motor skills that were within functional limits for school in the following areas:

- ability to access the environment and class materials to interact with his educational program;
- ability to use his hands to manipulate materials;
- ability to stabilize his paper when writing and cutting;
- improved penmanship when provided with supports, such as a model or visual boundaries;
- ability to manage his personal belongings without difficulty

190. The IEP team determined the Student displayed the following Fine/Visual Motor weaknesses:

- difficulty sustaining attention when writing or typing, leading to decreased production and penmanship quality;
- decreased visual motor skills and motor control skills, impacted by visual and overall attention; and
- hyperextension of his index finger when writing and increased exertion on the pencil lead, leading to fatigue when writing.

191. The IEP team determined that these weaknesses in Fine/Visual Motor skills impacted the Student's academic achievement and/or functional performance.

192. The IEP team determined the Student's instructional level in Fine/Visual Motor skills was below grade level expectations.

193. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in related to Attention/Executive Functioning, the IEP team considered the June 2017 AACPS Psychological Assessment Report.

194. The IEP team determined the Student displayed Attention/Executive Functioning strengths in the following areas:

- the Student reported attention and executive functioning within normal limits, indicating that the Student did not believe his executive functioning abilities fell below same-age peers;
- many teacher-reported scores reported executive functioning within normal limits;



- based on a formal observation of the Student in his Language Arts class, the student was on task 83% of the time as compared to an in-class peer, who was on-task 78% of the time; and
- during an informal observation of the Student's English class, which had more peers and staff than Language Arts, the Student complied with all teacher requests, voluntarily participated, helped collect papers, completed work, and initiated tasks.

195. The IEP team determined the Student displayed the following Attention/Executive

Functioning weaknesses:

- difficulty with concept formation and poor monitoring for redundant information;
- difficulty with selective and sustained attention for an extended period of time or when increased demands are placed on his working memory and inhibitory control;
- difficulty with planning, organization, and self-monitoring tasks and behavioral productivity when not applying these skills at a slower speed or when he did not perceive a task as more challenging;
- weaknesses in fine motor skills, which could manifest as difficulty writing quickly; trouble taking notes, finishing tests, following instructions, and expressing ideas;
- inattention in some aspects of math class and hyperactivity/impulsivity in some aspects of Language Arts and English

196. The IEP team determined that these weaknesses in Attention/Executive Function skills impacted the Student's academic achievement and/or functional performance.

197. The IEP team determined the Student's instructional level in Attention/Executive Function skills varied, but generally fell well below grade level expectations with areas of relative strength and weaknesses.

198. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance related to Cognitive/Intellectual skills the IEP team considered the June 2017 AACPS Psychological Assessment Report.

199. The IEP team determined the Student displayed Cognitive/Intellectual strengths in the following areas:

- the Student’s verbal comprehension abilities fell within the average range; they were sufficient and evenly developed;
- the Student visual spatial, fluid reasoning, and working memory abilities fell within the low average range and were also sufficient and evenly developed;
- his naming speed for literacy fell within the average range.

200. The IEP team determined the Student displayed the following Cognitive/Intellectual weaknesses:

- the Student’s processing speed fell within the average range but was unevenly developed and may have been impacted by his fine motor weaknesses;
- despite slow speed, the Student’s answers were generally correct on coding subtests; and
- based on ancillary indexes, the Student’s cognitive potential may be better when he is able to access and utilize verbal strengths and supports.

201. The IEP team determined that these weaknesses in Cognitive/Intellectual skills did not impact the Student’s academic achievement and/or functional performance.

202. The IEP team determined the Student’s instructional level in Cognitive/Intellectual skills varied, but generally fell in the low average range when compared to same-age peers.

203. The IEP team suggested the following supplemental aids would mitigate the Student’s Fine/Visual Motor weaknesses:

- appropriate-sized chair and desk for proper positioning to facilitate sitting tolerance and core strength due to signs of low muscle tone and core weakness;
- dynamic seating, including an opportunity to stand, take movement breaks during instruction, use a yoga ball, dynamic air cushion or sitting wedge;
- use of an elastic band around the legs of the Student’s chair for opportunities for movement and deep pressure (to facilitate calming, focus, and/or stability)
- clearly-define, large writing spaces when handwritten responses are required;
- the option of producing key word or short, bulleted responses during handwritten work once he demonstrates he can properly compose a sentence
- breaks during longer writing assignments to reduce the potential of fatigue
- Assistive technology to compensate for the Student’s slow handwriting speeds and to promote legibility
- opportunities for movement and self-regulation through non-disruptive fidgeting to assist with calming, alerting, and attention

- opportunities to stand, pace in a designated area and change position/move during instruction to assist with listening and focus
- breaks in reading to reduce eye and hand fatigue.

204. The IEP Team agreed the Student required assistive technology (AT) device(s) to increase, maintain, or improve the Student's functional capabilities. This/these AT device(s) would be provided as a supplemental aid, service, program modification and support and with instructional and testing accommodations.

205. The IEP Team agreed that the following accommodations were appropriate for the Student due to the Student's difficulty with attention, visual motor integration, and working memory:

- magnification/enlargement device;
- redirection to tests; and
- graphic organizer.

206. The IEP Team agreed that the following accommodations were appropriate for the Student to sustain the Student's attention and reduce distractibility and noisemaking:

- frequent breaks;
- reduce distractions to self; and
- reduce distractions to others.

207. The IEP Team agreed that the following accommodations were appropriate to address the Student's written language:

- large print edition;
- notes and outlines (instruction only)

208. The IEP Team agreed that the following accommodations were appropriate to address the Student's motor difficulties:

- calculation device and mathematics tools on assessments;
- constructed response Speech-to-Text
- constructed response human scribe; and
- answers recorded in a test book.

209. The IEP Team agreed that the following accommodations were appropriate to address

the Student's ADHD:

- extended time;
- frequent breaks;
- large print;
- a human reader or audio recording for selected test selection;
- visual cues;
- a scribe;
- monitoring of test responses;
- visual organizers; and
- reduced distractions to the Student and from other Students.

210. The IEP Team agreed the following Supplementary Aids, Services, Program

Modifications and Supports would be provided to the Student as instructional supports on

a daily or periodic basis:

- limitation of amount to be copied from board;
- frequent and/or immediate feedback;
- student repetition or paraphrasing of information;
- use of manipulatives;
- provision of a home set of textbooks/materials;
- use of a word processor for writing assignments longer than one paragraph;
- provision of access to word processing software that includes word prediction, word lists, reading of written text back to the Student, and editing checklists;
- pairing verbal instructions and prompts with visual supports and prompts (*e.g.*, checklists for proofreading and writing process steps);
- use of a word bank or word lists for all content areas;
- reduction of visual clutter on assignments;
- teaching and encouraging the use of spacing strategies on handwritten work;
- use of a highlighter during instruction and assignments;
- a copy of teacher/student notes; and
- strategies/items to assist with tracking when reading or writing.

211. The IEP Team agreed the following Program Modifications would be provided to the

Student as instructional supports on a daily or periodic basis:

- breaking down assignments into smaller units;
- breaking down math problems into manageable steps;

- alternative ways for demonstrated illustrated assignments;
- enlarged font to 20-22 point; and
- finger rest or stretches.

212. The IEP Team agreed the following Social/Behavior supports would be provided to the

Student on a daily or periodic basis:

- frequent reminder of rules;
- monitoring use of agenda book and/or progress report;
- home-school communication system;
- provision of frequent changes in activity or opportunities for movement; and
- use of a behavior incentive program to improve attention

213. The IEP Team agreed the following physical/environmental supports would be provided

to the Student on a daily or periodic basis:

- preferential seating; and
- use of a move-n-sit cushion or similar device

214. The IEP Team agreed school personnel/parental supports would be provided to the

Student as instructional supports on a daily or periodic basis:

- additional adult support to prompt for sustained attention and occupational therapist consult

215. The IEP Team agreed upon the Student's goals and objectives in the areas of Reading,

Math, Written Expression, and Learning Behaviors.

216. Specifically, the IEP Team agreed to the goals and objectives for the Student in the

following instructional areas:

- Reading Comprehension
- Math Calculation
- Math Problem Solving
- Written Expression
- Learning Behaviors

217. AACPS proposed that in the general education/co-taught setting in the area of Language

Arts and Math, the Student would receive a total of ten hours of special education

instruction, provided primarily by a special education teacher, with other instructional support provided by a general education teacher and an Temporary Support Assistant (TSA).

218. The [REDACTED] team also proposed that the Student be provided with a TSA throughout his school day to assist with redirection, prompting, and other supports he may need in class.

219. TSAs are trained to work with students to provide prompting for redirection, pre-teaching, re-teaching and anything the Student needs as dictated by his IEP.

220. TSAs are trained to be inconspicuous. They typically float around the room, but they are charged with noticing when the student for whom they are providing support needs help.

221. AACPS proposed that the Student would receive his co-taught special education instruction in science class and social studies class.

222. Outside the general education setting, in a self-contained setting, AACPS proposed that the Student would receive special education instruction for a total of ten hours per week in the areas of Language Arts and Math.

223. Specifically, in the self-contained or pull-out setting, the Student's special education services would be provided as follows:

- 5 hours per week in Language Arts
- 5 hours per week in Math

224. The AACPS proposed that the student would receive special education instruction targeting learning behaviors throughout instruction.

225. As a related service, AACPS proposed that the Student would receive OT, provided by an Occupational Therapist or certified OT Assistant, as follows:

- One, thirty-minute sessions per month in the general education setting from August 20, 2018 to August 19, 2019
- One, thirty-minute session per month outside of the general education setting from August 20, 2018 to August 19, 2019.

226. AACPS proposed that the Student would receive OT to address fine motor skill development and to assist the IEP Team to determine appropriate expectations and accommodations.

227. AACPS proposed that the Student would attend Encore classes, such as art, music, physical education, etc., and lunch with non-disabled peers in the general education setting.

228. The AACPS contemplated that the Student's TSA would travel with him throughout the day to assist the Student and to ensure the IEP services and accommodations were implemented in each of his classes.

229. Based on the proposed IEP, AACPS determined that in a thirty-hour school week, the Student would spend twenty-one hours and fifty-three minutes in the general education setting and ten hours and seven minutes outside of the general education setting in self-contained special education classes. AACPS also determined that the Student would spend approximately 68% percent of his special education within the general education setting with non-disabled peers, and the special education services could be provided at

██████████ As a result, AACPS determined that the LRE to implement the IEP would be an educational placement at ██████████

230. The Parents disagreed with the proposed service hours and education placement because his attention deficits impaired his ability to make sufficient progress in the general education classroom. They wanted “[the Student] to develop his reading and math skills in accordance with 6<sup>th</sup> grade expectations . . . in a setting that account[ed] for his

inattention and distractibility.” (P – 28) The Parents believed the small class sizes and specialized instruction the Student was receiving at [REDACTED] was necessary for the Student to make meaningful educational progress.

231. The AACPS timely provided the Parents with Prior Written Notice memorializing the August 20, 2018 IEP team meeting.

232. The Prior Written Notice noted the IEP’s proposed educational placement for the Student, the basis for the team’s decision, and the reasons the Parents rejected the proposed placement.

233. The Parents did not advise the AACPS that they were confused about the IEP Team’s proposed placement.

#### **The 2018-2019 School Year (7th Grade)**

234. Mr. [REDACTED] taught the Student in Social Studies and Math during the fall semester in 2018.

235. During the seventh grade at [REDACTED] the Student participated in class sizes that did not exceed eleven students.

236. In September 2018, the Student took the AIMSWeb Plus (AIMS) assessment, which assesses students’ achievement in reading and math as compared to same-grade peers, nationally, both disabled and non-disabled. The AIMS assessment tests whether students are prepared to move the next grade-level curriculum.

237. The AIMS Composite reading category includes four subcategories: Vocabulary, Silent Reading Fluency, Reading Comprehension, and Oral Reading Fluency.

238. The Vocabulary category is aimed at determining a student’s ability to understand word meanings without context. The Silent Reading Fluency category is designed to determine



a student's ability to quickly read and answer questions about brief story sections. The Reading Comprehension category is designed to determine a student's ability to understand literary information and informational texts. Oral Reading Fluency is designed to assess a student's ability to read stories aloud. The Student displayed an average ability in all of these categories as of fall 2018.

239. As of fall 2018, the Student's composite reading score was average.

240. The AIMS Composite math category included four subcategories: Number Sense Fluency, Number Comparison Fluency – Triads, Mental Computation Fluency, and Concepts & Applications.

241. The Number Sense Fluency category includes the outcome of the Number Comparison Fluency – Triads and Mental Computation categories and assesses a student's ability regarding basic number and computational skills.<sup>12</sup> The Student displayed a below average ability in this category as of fall 2018.

242. The Number Comparison Fluency - Triads category is designed to determine a student's ability to assess magnitude and compare numbers within and across number systems (integers, fractions, and decimals). The Student displayed well-below average ability in this category as of fall 2018.

243. The Mental Computational Fluency category is designed to assess a student's ability to solve mathematical problems, mentally, including addition, subtraction, multiplication, and division and across number systems. The Student performed in the average range in this category as of fall 2018.

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<sup>12</sup> The AIMS description of this category notes that this metric "provides a more reliable estimate of performance on [basic number and computational skills]." (P. 23-30)

244. The Concepts and Applications category is designed to assess a student’s understanding of important math concepts and ability to solve problems. The Student performed in the well-below average range in this category as of fall 2018.

245. As of fall 2018, the Student’s composite math score on the AIMS was well-below average.

246. By letter dated November 9, 2018, the Parents requested that AACPS consider placing the Student at [REDACTED] and advised that they were in the process of compiling documents about the Student and would provide them in a few weeks.

247. At the Parents’ request, on November 5 and November 15, 2018, using the KeyMath-3 Diagnostic Assessment (KeyMath-3), [REDACTED] D.Ed.,<sup>13</sup> NCSP,<sup>14</sup> Director of [REDACTED] Program Supports, conducted an assessment of the Student to obtain current information about his achievement in math.

248. The KeyMath-3 is a “comprehensive norm-referenced measure of essential mathematical concepts and skills . . . designed to provide accurate diagnostic information to develop effective and individually tailored intervention programs.” (AACPS 23 – 2)

249. KeyMath-3 is designed to measure different categories of mathematical ability and included the following subtests:

- Numeration
- Algebra
- Geometry
- Data Analysis and Probability
- Basic Concepts
- Mental Computation and Estimation
- Addition and Subtraction
- Multiplication and Division

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<sup>13</sup> Doctor of Education

<sup>14</sup> Nationally Certified School Psychologist

- Operations
- Foundations of Problem Solving
- Applied Problem Solving
- Applications

250. The Student fell in the below-average range for all of the subtests except Mental Computation and Estimation, on which he fell in the well-below average range.

251. Overall Scores that fall between 86 and 114 are considered average on the KeyMath-3.

252. The Students overall score on the KeyMath-3 was 75, which fell in the below average range.

253. The Student's fall 2018 Progress Report indicated that, in English/Language Arts/Oral Language, the Student was Progressing or Secure in several areas and subareas, including:<sup>15</sup>

- Communication
- Vocabulary
- Grammar and Mechanics
- Composition
- Reading Comprehension and Literature (Progressing in all subareas)
- Phonological Awareness
- Decoding and Morphology (Secure in all subareas)
- Fluency (Secure in all subareas)
- Encoding/Spelling (Progressing in all subareas)
- Keyboarding (Secure in all subareas)
- Study Skills
- Work Habits/Behavior (Secure in all areas)

254. The English/Language Arts/Oral Language Study Skills area of the Student's fall 2018 Progress Report had the following subareas:

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<sup>15</sup> Unless otherwise noted, the Student received a mix of Secure and Progressing reports for each of the subcategories for a given Language Arts area.

- Organizes materials for efficient studying and work completion (secure)
- Applies strategies (*i.e.*, *Word Sense* charts and toolkit, math charts, definition chart, *Story Grammar Marker*, frame, circle and underline, highlighting, *Brain Frames*, starter word cues) to facilitate learning (secure)
- Accepts suggestions for using study skills (secure)
- Studies effectively for tests and quizzes (progressing)

255. The English/Language Arts/Oral Language Work Habits/Behavior area of the Student's

fall 2018 Progress Report had the following subareas (all secure):

- Comes to class prepared
- Follows oral directions
- Actively participates in class
- Demonstrates respect and appropriate interactions with peers
- Demonstrates respect and appropriate interactions with adults
- Completes projects and homework on time
- Uses work time in class effectively
- Seeks assistance when needed
- Shows readiness to learn through eye contact and posture

256. Under the "Comments" section of the Student's English/Language Arts, the Student's

teachers/██████ staff provided the following comments regarding the Student:

This semester [the Student] showed his hardworking and enthusiastic personality in English and Language Arts. Whether in a small or large group, [the Student] consistently was attentive to each lesson, actively participating on a regular basis. In English, he worked to improve his writing skills. [The Student] used the EmPOWER process to craft an elaborated paragraph and an autobiographical essay. While working on these assignments, the Student often struggled to independently apply structure and cohesion to his writing when developing full sentences from his original ideas. Always open to using suggested strategies, he was able to create more cohesive paragraphs with teacher support. In Language Arts, explicit instruction of various strategies for responding to comprehension question [sic] allowed [the Student] to practice forming organized and detailed sentences from his ideas. Additionally, he worked on fluency through repeated readings of nonfiction passages. Finally, [the Student] used Word Sense strategies, daily dictation, and games to help improve his decoding and encoding skills.

(AACPS - 23)

257. During fall 2018, the Student was taught math skills and concepts based on a fifth and sixth-grade curriculum.

258. The Student's fall 2018 Progress Report indicated that, in Math, the Student was Progressing or Secure in several areas and subareas, including:<sup>16</sup>

- **Knowledge of Algebra**
  - Patterns & Function (Progressing in subareas)
  - Expressions (Progressing in all subareas)
  - Equations
- **Knowledge of Numbers**
  - Place Value
  - Number Value
  - Number Computations
- **Knowledge of Problem Solving**
  - Problem Solving
  - Reasoning
  - Communication
  - Connections
  - Work Habits/Behavior

259. The Math Work Habits/Behavior area of the Student's fall 2018 Progress Report had the following subareas:<sup>17</sup>

- Comes to class prepared
- Follows oral directions
- Actively participates in class (Progressing)
- Demonstrates respect and appropriate interactions with peers
- Demonstrates respect and appropriate interactions with adults
- Completes projects and homework on time
- Uses work time in class effectively
- Seeks assistance when needed (Progressing)
- Shows readiness to learn through eye contact and posture (Progressing)

260. Under the "Comments" section of the Student's Math, the Student's teacher, [REDACTED] provided the following comments regarding the Student:

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<sup>16</sup> Unless otherwise noted, the Student received a mix of Secure and Progressing reports for each of the subcategories for a given Language Arts area.

<sup>17</sup> The Student's progress report reflected that the Student was secure in all of the Math Work Habits/Behavior subareas except for those noted.

[The Student] has entered math class for the past few weeks with a positive attitude. He began to become a quality contributor, cooperative, and willing to take risks. [The Student] tended to enjoy our math games and was competitive with his peers. He started to improve as a self-advocate by asking questions to clarify directions and contacting his teachers when he was having difficulty completing homework. To support [the Student's] need for continued support of basic number sense and retention of previously taught skills, he received an additional 15 minutes of individualized daily instruction before school. I continue to work with him to ask more questions about concepts that he finds confusing or difficult. Sometimes, [the Student] lost focus but was easily redirected back to task. [The Student] thrived in our small class where he was given the extended time to process material. [The Student] also benefitted from individualized instruction and support when he did not understand a concept or fell behind the group due to his processing speed. Through the use of *XtraMath*, *Reflex Math*, Ninja Multiplication, multiplication songs, and class games, he improved his automaticity of basic facts. The use of the calculator helped him solve problems so he didn't have to rely on his challenge with remote memory of math facts. [The Student] is a nice young man and I look forward to seeing him continue to improve his math skills.

(AACPS 23 – 21).

261. The Student's fall 2018 Progress Report indicated that, in Social Studies, the Student

was Progressing or Secure in several areas and subareas, including:<sup>18</sup>

- Geography Content (Secure in all areas)
- Content Skill
- Study Skills
- Work Behavior/ Habits

(AACPS 23 – 21).

262. On November 9, 2018, the Parents sent a letter to Alison Barmat, AACPS

Program Manager, Special Education Compliance and Legal Issues, requesting that AACPS place the Student at [REDACTED] and advising that they were compiling documents on the Student and would provide them within a few weeks.

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<sup>18</sup> Unless otherwise noted, the Student received was noted as Secure in each of the Science subareas.

263. Mr. ██████ stopped working at ██████ after the fall 2018 semester. He tutored the Student in spring 2018 and continually until the COVID-19 pandemic at the Parents' expense.

264. On January 17, 2019, Ms. ██████ contacted the Parents, advised the Parents that the Student was due for a tri-annual evaluation. Ms. ██████ began, with this email, attempting to schedule the evaluation.

265. On January 24, 2019, the Parents provided the AACPS with documents and assessments regarding the Student. These included the Keymath Assessment results, the fall 2018 progress reports, and the Student's results from the fall 2018 AIMS assessment.

266. On February 26, 2019, Ms. ██████ and Ms. ██████ observed the Student in his Language Arts, Reading, Math, and Social Studies classes at ██████

267. On February 26, 2019, Ms. ██████ observed the following regarding the Student in his

Language Arts class:

- The student was proficient using technology, using a laptop to fill in PowerPoint information.<sup>19</sup>
- The Student was very engaged in the lesson, sharing with a student at his table and calling his teacher over to see his work.
- The teacher prompted the Student to add more detail to two sections.
- The Student shifted and changed position in his seat often but remained engaged in the activity while working.
- The Student called out an answer without being called on when the teacher asked a question about the assignment, prompting the teacher to remind the Student to wait to be called upon.
- The Student answered questions 4 times and bounced in his seat.
- The Student kept his materials in his zippered binder and was able to quickly and easily find materials when asked.
- The Student shared information in front of his class and appeared comfortable in front of peers.

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<sup>19</sup> PowerPoint is presentation software that allows the user to create slides that may be displayed on a computer or other screen.

- The Student was engaged in reading a novel when it was being read aloud; he read ahead of the teacher but was not prompted to remain on the correct page.
- Although initially reluctant to participate in an exercise at the end of class during which students threw a ball to each other with various restrictions (on one foot, one hand behind the back, etc.), the Student became more engaged, smiling and laughing, without becoming overly silly.
- The Student did not require any individual prompts to complete his work or transition to activities.

268. On February 26, 2019, Ms. [REDACTED] observed the following regarding the Student in his Social Studies class:

- The Student entered the room, read the directions on the board to himself, took out a Chromebook laptop, pencil, and agenda paper without prompting.
- The Student Logged into his Chromebook and wrote down his homework assignment with no prompting.
- The Student quickly identified the definitions of words on an assignment.
- The Student sat with his head leaning on one hand and tapped his fingers quietly on the desk.
- The Student chose to complete a class assignment using a pencil and paper rather than typing on his Chromebook even when privately prompted by the teacher to use the Chromebook. Using unlined paper with a written prompt, the Student created a bulleted list.
- The Student took several breaks to drink water at his desk.
- The Student acknowledged a request to move to a nearby table and share his ideas, but he did not move until he was prompted twice.
- The Student read ahead in an article while highlighting.
- The Student was much quieter and less animated than the prior observation.
- The Student engaged in a silly pantomime about Albert Einstein.
- The Student was called upon without volunteering by the teacher. When the Student did not have the answer, the teacher informed him she would come back to him for an answer.
- The Student was seated crossed legged in his chair, leaned back in his chair, rubbing his eyes and appearing very tired.
- The Student would nod at the teacher when spoken to, but did not seem actively engaged.

269. The Student's Social Studies teacher informed Ms. [REDACTED] that the Student is pretty quiet and will occasionally raise his hand to answer questions.



270. On March 5, 2019, Ms. [REDACTED] observed the Student in Math class and noted the following:

- Working on the fraction of the day, the Student had to write the fraction in words and draw it a variety of ways using a paper with boxes for fractions.
- The Student forgot to add a number when regrouping.
- The Student had trouble figuring out the problem in his head and got a little upset when he made a mistake and was the last one to finish the assignment.
- The Student completed the assignment incorrectly, recognized his error and asked for help from his teacher.
- The Student required two individual re-teachings of the assignment from the teacher and was able to correctly solve the math problem when prompted for each step by the teacher. He was unable to complete the problem correctly independently.

271. Between January 17, 2019 and April 17, 2019, AACPS and the Parents engaged in email correspondence attempting to schedule the Student's tri-annual review.

272. On March 15, 2019, Ms. [REDACTED] conducted a transition interview of the Student. The Transition interview is the designed to start developing appropriate transition services in the IEP aimed at preparing students for their post-secondary goals.

273. During the interview, Ms. [REDACTED] worked with the Student to complete a Career Skills Transition Interview during which the Student noted what he found easy and hard for him in school. The Student reported that he was strong at reading and typing and that he found science and social studies to be interesting.

274. The Student also reported that math and handwriting were difficult for him.

275. On March 18, 2019, the Student's IEP team met to develop the Student's annual IEP and to determine his eligibility for ESY. The following individuals participated in the March 18, 2019 IEP team meeting:

- [REDACTED] Administrator/Designee
- [REDACTED] Special Education Teacher
- [REDACTED] General Education Teacher

- ██████████ Occupational Therapist
- Alison Barmat/Program Manager of Compliance
- Michael Eig, Esq., Parents' attorney
- Paula Rosenstock, Esq.
- The Parents
- The Student

276. At the March 18, 2019 IEP team meeting, the Student's father requested that the IEP team collect more information about the Student's areas of need in decoding and fluency and math calculation skills.

277. The March 18, 2019 IEP meeting was continued to April 29, 2019 so the IEP team could obtain and consider data from ██████████ regarding the Parents' areas of concern.

278. On March 21, 2019, Ms. ██████████ requested from ██████████ School any data regarding the Student's areas of need in oral and silent reading fluency and asked that ██████████ provide a baseline from which the IEP team could develop a goal

279. Regarding math, Ms. ██████████ also specifically requested that ██████████ provide information about the Student's area of need in the following areas:

- Multi-digit all 4 operations with regrouping (whole numbers and decimals) without a calculation device;
- All 4 operations involving positive and negative integers without a calculation device; and
- All 4 operations involving fractions (both like and unlike denominators without a calculation device).

280. On March 21, 2019, Ms. ██████████ replied to Ms. ██████████ request for information about the Student's decoding, reading fluency and math skills and advise that the Student's silent reading fluency was in the average range for 7<sup>th</sup>-grade passages; he was able to identify 71% of provided vowel sounds in isolation, but struggled to identify multiple vowel sounds. He also struggled to shift vowel sounds based on the word (*e.g.*, cow and snow) and he scored a 60% on the sound deletion portion of his WordSense assessment,

indicating he had trouble recognizing words when a letter was subtracted to form a new word (e.g., “sent” without the “n” or “crop” without the “r”).

281. On April 29, 2019, the IEP team reconvened to finish drafting the Student’s IEP for the 2019-2020 school year.

282. The following individuals participated in the April 29, 2019 IEP team meeting:

- [REDACTED] Administrator/Designee
- [REDACTED] Special Education Teacher
- [REDACTED] General Education Teacher
- The Parents
- Alison Barmat, Program Manager of Compliance
- [REDACTED] Occupational Therapist
- [REDACTED] the Student’s ELA teacher at [REDACTED] (by phone)
- [REDACTED] the Student’s math teacher at [REDACTED] (by phone)
- [REDACTED] [REDACTED] School Director of Student Supports
- Pam [REDACTED] [REDACTED] School Director of Education
- The Parents’ Attorney, Michael Eig, Esq.
- [REDACTED] Special Educator
- [REDACTED] General Educator
- The Parents
- Alison Barmat, Program Manager of Compliance

283. The Student’s Parents offered input at the March and April 2019 IEP team meetings.

284. The IEP Team determined the Student’s Present Level of Academic Achievement Functional Performance; the Student’s need for Special Considerations and Accommodations, including Supplementary Aids, Services, Program Modifications and Supports; appropriate Goals and Objectives for the Student to achieve during the Second Grade.

285. The IEP Team considered, among other points of data and information about the Student, Ms. [REDACTED] and Ms. [REDACTED] observations of the Student on February 26 and March 5, 2019

286. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in reading, the IEP team considered the Student's fall 2018 Progress Reports from ██████ fall 2018 AIMS Assessment, and the Word Sense Assessment provided by ██████

287. Based on their review of those items, the IEP team determined that using strategies employed by ██████ the Student displayed strengths in reading comprehension support skills, vocabulary classification, phonological awareness,<sup>20</sup> decoding, fluency, segmenting sounds, and silent reading fluency. The IEP team also noted the Student had a great deal of background knowledge on many topics, which facilitated his ability to recognize many words.

288. The IEP team determined the Student displayed the following weaknesses in reading:

- Reading: Independence while shifting syllable stress while reading (important because words that are spelled the same way may have different meanings and require different contextual pronunciations)
- Comprehension and Literature: Identifying the elements of story structure (an ability to cite "textual evidence to support explicit and inferential comprehension, determining theme and/or ██████ idea, providing summaries of text and analyzing the interaction of story elements." (P. 24 – 7; AACPS 34 – 4).
- Vocabulary: "using context clues to make meaning of unknown words and demonstrating meaning of selected vocabulary from text." (Id.)
- Identifying the same sound for multiple vowel combinations
- Shifting sounds (e.g., ow as used in "cow" and "snow")
- Sound deletion (accurately stating a word after taking a letter out, e.g. "crop" without the "r")
- Applying code knowledge to sound out a word without prompting.

289. The IEP team determined the Student's instructional level in Reading in decoding was within his normal age range; for comprehension, the IEP team determined the Student's instructional level was the 6<sup>th</sup> grade.

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<sup>20</sup> Phonological awareness is the ability to identify all syllables within multi-syllabic words and identify each sound within the syllables (P. 24 – 7; AACPS 34 – 4).

290. The IEP team determined that these weaknesses in Reading impacted the Student's academic achievement and/or functional performance.

291. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in Written Expression, the IEP team considered the Student's fall 2018 English, Language Arts/Oral Language Progress Reports from [REDACTED]. The IEP team determined the Student displayed strengths in the following areas:

- Grammar and mechanics – appropriately using end marks, and initiating a topic sentence in paragraph writing
- Composition – responding to a prompt in writing using a picture of story starter, creative journal writing, planning for expository writing at the paragraph and multi-paragraph level with guidance from adults, and using a resource such as a spell-checker or dictionary, to ensure the correct spelling of words.

292. The IEP team determined the Student displayed the following weaknesses in Written Expression:

- Applying rules of capitalization and punctuation, combining sentences in various sentence structures, run-on sentences, identifying and defining nouns, verbs, adjectives, and predicate expanders (how, when, where, why of an action)
- Using transition words in composition, logically ordering ideas with a topic sentence, supporting details, and conclusion, with opening and closing paragraphs for a multi-paragraph task
- Spelling words with common prefixes, (CVVC) words,<sup>21</sup> and words with irregular vowel sounds, consonant sounds and common suffixes.

293. The IEP team determined the Student's instructional level in Written Expression was 6<sup>th</sup> grade.

294. The IEP team determined that these weaknesses in Written Expression impacted the Student's academic achievement and/or functional performance.

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<sup>21</sup> C=Consonant; V=Vowel

295. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in Math, the IEP team considered the Student's fall 2018 Math Progress Reports from [REDACTED] the AIMS Informal Assessment in Math; the Keymath Formal Assessment from November 5 and November 15, 2018; and the 5<sup>th</sup> grade intervention skills accuracy data chart for the 2018-2019 school year.

296. The IEP team determined the Student's instructional level in math was 5<sup>th</sup> grade and he displayed strengths in the following areas:

- Rounding and estimating decimals
- Multiplying whole numbers by powers of ten
- Subtracting decimals to the thousandths place
- Using appropriate relational and operational math symbols
- Communicating mathematical ideas orally and symbolically
- Comparing fractions using appropriate relational symbols (place value)
- Identifying divisibility rules, greatest common factors, greater and least common multiples (number theory)
- Recalling multiplication facts from zero -to -twelve, division facts, and addition and subtraction of multi-digit numbers without regrouping (computation)
- Identifying the question, selecting and applying a strategy, alternatives to solving, and showing and justifying multiple solutions to a problem. (problem solving and reasoning)

297. The IEP team also considered comments made by the Student's teachers at [REDACTED] related to the Student's positive attitude, his increased self-advocacy, and communication in math.

298. The IEP team determined the Student displayed the following weaknesses in Math based on the Student's performance:

- Numeration, algebra, geometry, and data analysis/probability based on the Student's score in the 5<sup>th</sup> percentile in these areas on the KeyMath-3 assessment;
- Basic concepts, operations and applications, based on the Student's score in the below-average range on the KeyMath-3 assessment;
- Number sense fluency related to basic number and computational skills, based upon the Student's math composite score in the 7<sup>th</sup> percentile on the Fall 2018 AIMS assessment;

- Number comparison fluency in the ability to compare numbers within and across number systems and to assess number value, based on the Student's well-below-average score on the AIMS assessment; and
- Math concepts and applications based on the Student's low score on the AIMS assessment indicating a well-below-average understanding of the concepts necessary for problem solving.

299. The IEP team also considered that according to the Student's fall 2018 Math Progress Report, the Student's teachers indicated that the Student was only beginning to show independence in the following math skills:

- Patterns and Functions – identifying and applying number patterns in one, two and three operation function tables;
- Equations – writing and solving equations using two operations and identifying, describing and drawing polygons
- Place Value – comparing, ordering, and determining mixed numbers in equivalent fractions
- Computation – making a plan and computing multi-digit numbers in all four operations.

300. The IEP team also considered comments made by the Student's teachers at [REDACTED] related to the Student's weaknesses in math; specifically, that he had difficulty when having to rely on rote memory for math facts, his need for continued support to retain previously taught skills, and his periodic loss of focus.

301. The IEP team determined that these weaknesses in math impacted the Student's academic achievement and/or functional performance.

302. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in Learning Behaviors, the IEP team considered the Student's fall 2018 Progress Reports from [REDACTED]. The IEP team determined the Student displayed strengths in the following areas because his teachers at [REDACTED] classified him as secure, competent and independent in those areas:

- Coming to class prepared
- Appropriate interactions with peers and adults
- Completing projects and homework on time
- Using work time in class effectively.
- Following oral directions and seeking assistance when needed.
- Redirection

303. The IEP team also considered that according to the Student's fall 2018 Progress Reports, the Student's teachers indicated that the Student was only beginning to show independence in the following work habits:

- Actively participating in class Showing readiness through eye-contact and posture
- Requiring extended time and individualized instruction.

304. The IEP team determined that these weaknesses in Learning Behaviors impacted the Student's academic achievement and/or functional performance.

305. The IEP team determined the Student's instructional level in Learning Behaviors to be moderately below grade level.

306. To ascertain the Student's Present Levels of Academic Achievement and Functional Performance in relation to his Fine/Visual Motor skills, the IEP team considered the Student's fall 2018 Progress Reports from [REDACTED] and observations of the Student at [REDACTED] on February 26, 2019 and March 5, 2019. The IEP team determined the Student displayed fine/visual motor aspects that were within functional limits for school in the following areas:

- Posture, with no need for adaptive seating;
- Mobility, as he independently transferred to and from chairs, walked up and down stairs and inside and outside of the school building without needing assistive devices;
- Functional dynamic standing balance and standing tolerance;
- Muscle tone was adequate with accommodations;
- With opportunities for movement and to shift position, sitting in a stable position when writing without signs of pain or discomfort up to 15 minutes;



- Writing and typing for less than 15 minutes without shaking his hand or showing other signs of pain;
- Joint range of motion in his hands, arms and neck;
- Manipulation skills and hand-eye coordination;
- Eye movements and eye teaming for fluid reading from both near and far points;
- Visual discrimination skills, recognizing pictures of objects and characters in books, spelling errors, and mathematical symbol;
- Figure ground skills;
- Position in space, understanding and following spatial terms like over, above, next to, left, right, bottom, and top;
- Visual spatial skills with accommodations writing up to nine lines of text in clearly defined horizontal lines with minimal wavering and legible handwriting;
- Visual spatial skills appropriately aligning answers in given blank spaces and appropriately placing carried numbers from the ones column to the tens column when performing double digit addition and multiplication;
- Visual closure, recognizing items partially covered in his binder;
- Visual memory with an ability to quickly locate and put away items in his binder;
- Visual motor integration skills with accommodations, using age-appropriate grasps and pinches to manage school materials;
- Pencil grasp, with accommodations and paper stabilization;
- Drawing ability;
- Ability to imitate and copy;
- Erasing, writing his first and last name fluidly and legibly in cursive;
- Classroom skills, independently following school routines and schedules and using a class agenda to prepare for transition between in-class activities;
- Actively listening and answering question when alert;
- Ability to be easily redirected;
- Completing homework on time;
- Following multi-step, oral and written instructions and using work time in class efficiently;
- Advocating for himself by requesting assistance or accommodations when needed;
- Independently managing his locker and backpack;
- Technology Skills, with a particular strength in keyboarding;
- Response to learning environment with accommodations in a small class (10 students: 2 instructors) environment without signs of sensory sensitivity, missing sensory input or showing signs of sensory sensitivities ;
- Interactions with peers and adults in a small class environment demonstrating respect and appropriate social interchange;
- Maintaining personal space, independently and appropriately participating in movement activities between breaks and between classes with peers in the allotted time;
- Persevering through tasks he may perceive as challenging or non-preferred despite showing signs of frustration;

- Redirecting himself and participating in class during a period of low energy without teacher prompts or redirection; and
- Self-care (independent with clothing management, toileting, feeding and carrying a water bottle).

307. The IEP team determined the Student displayed the following Fine/Visual Motor

weaknesses:

- Low tone/ weak core strength evidenced by rounded posture when sitting and a sway back/ forward head while standing;
- Fidgeting, shifting while seated or standing, supporting his head in his hands;
- Vigorously rubbing his eyes after reading 4-5 minutes indicating potential eye fatigue;
- Handwriting without accommodations – characterized by poor legible manuscript handwriting due to errors in letter formation, letter closure, letter omissions, letter/word spacing, capitalization, punctuation, and spelling;
- Writing legibly with sufficient speed to keep up with writing demands in the classroom;
- Passing on answering questions when sluggish;
- Errors in capitalization, punctuation, and spelling while typing, similar to handwritten errors;
- Showing excitement and frustration by vocalizing, making a comment softly to himself or out loud to no one in particular, jumping up and down 2-3 times, sighing heavily and/or making exaggerated facial expressions; and
- Inability to form a response during a period of low energy, even when given extra time.

308. The IEP team determined that these weaknesses in Fine/Visual Motor skills impacted the Student's academic achievement and/or functional performance.

309. The IEP team suggested the following supplemental aids would mitigate the Student's

Fine/Visual Motor weaknesses:

- Appropriate-sized chair and desk for proper positioning to facilitate sitting tolerance and core strength due to signs of low muscle tone and core weakness;
- Dynamic seating, including an opportunity to stand, take movement breaks during instruction, use a yoga ball, dynamic air cushion or sitting wedge;
- Use of an elastic band around the legs of the Student's chair for opportunities for movement and deep pressure (to facilitate calming, focus, and/or stability);
- Clearly-define, large writing spaces when handwritten responses are required;
- The option of producing key word or short, bulleted responses during handwritten work once he demonstrates he can properly compose a sentence;

- Breaks during longer writing assignments to reduce the potential of fatigue;
- Assistive technology to compensate for the Student's slow handwriting speeds and to promote legibility;
- Opportunities for movement and self-regulation through non-disruptive fidgeting to assist with calming, alerting, and attention;
- Opportunities to stand, pace in a designated area and change position/move during instruction to assist with listening and focus; and
- Breaks in reading to reduce eye and hand fatigue.

310. The IEP Team agreed the Student required assistive technology (AT) device(s) to increase, maintain, or improve the Student's functional capabilities. This/these AT device(s) would be provided as a supplemental aid, service, program modification and/or support and in the areas of instructional and testing accommodations.

311. The IEP Team agreed the following Supplementary Aids, Services, Program Modifications and Accommodations on Instructional and Testing Accommodations for the Student, including:

- large print;
- a human reader or audio recording for selected test selections;
- visual cues;
- a scribe;
- monitoring of test responses;
- visual organizers;
- extended time;
- multiple or frequent breaks; and
- reduced distractions to the Student and from other students.

312. The IEP Team agreed the following Supplementary Aids, Services, Program Modifications and Accommodations would be provided to the Student as instructional supports on a daily or periodic basis:

- a copy of teacher/student notes;
- allow key word and short/bulleted responses when appropriate;
- large writing spaces for handwritten assignments;
- organizational aid;
- limitation of amount to be copied from board;
- frequent and/or immediate feedback;

- student repetition or paraphrasing of information;
- use of manipulatives;
- provision of a home set of textbooks/materials;
- use of a word processor and word processing software (word prediction, word lists, text to speech, edition checklists) for writing assignments;
- pairing verbal instructions and prompts with visual supports and prompts;
- use of a word bank or word lists for all content areas;
- reduction of visual clutter on assignments;
- use of a highlighter during instruction and assignments;
- encouragement of repeated readings (close reading) of text passages;
- picture or story starters to prompt written initiation; and
- encouragement of resources such as spell check, dictionary, etc., to correct spelling errors.

313. The IEP Team agreed the following Program Modifications and Accommodations

would be provided to the Student as instructional supports on a daily or periodic basis:

- breaking down assignments into smaller units;
- breaking down math problems into manageable steps; and
- enlarged font on paper copies or access to technology with the ability to enlarge the font.

314. The IEP Team agreed the following Social/Behavior supports would be provided to the

Student on a daily or periodic basis:

- monitoring use of agenda book and/or progress report;
- home-school communication system;
- provision of frequent changes in activity or opportunities for movement;
- encouragement of self-advocacy when the Student needs assistance; and
- redirection to assist with focus and attention.

315. The IEP Team agreed the following physical/environmental supports would be provided

to the Student on a daily or periodic basis:

- provision of an appropriately sized chair and desk; and
- opportunities for breaks and movement during the school day.

316. The IEP Team agreed school personnel/parental supports would be provided to the

Student as instructional supports on a daily or periodic basis:

- Additional adult support to prompt for sustained attention; and
- Occupational therapist consult.

317. The IEP Team agreed upon the Student's goals and objectives in the areas of Reading, Math, Written Expression, Fine Motor Skills, and Requisite Learning.

318. Specifically, the IEP Team agreed to the goals and objectives for the Student in the following instructional areas:

- Reading Comprehension;
- Reading Comprehension – Expository Text;
- Foundational Reading Skills – Decoding;
- Written Expression;
- Math Calculation;
- Math Problem Solving;
- Computation (fractions, integers, and multidigit); and
- Learning Behaviors (task initiation and problem solving).

319. All of the members of the IEP team agreed the Goals and Objectives for the Student and the supplemental aids, instructional supports and services in the Student's IEP were appropriate.

320. The IEP team proposed that the Student would receive five hours of special education instruction and services in Language Arts and five hours of special education in Math in a self-contained special education setting.

321. The IEP team proposed that the student would receive five hours of special education instruction and services in Language Arts and five hours of special education instruction in the general education setting in social studies and science.

322. The IEP team proposed that the Student would receive special education instruction and services in Learning Behaviors throughout the school day.

323. The IEP Team determined the appropriate Least Restrictive Environment where the Student's IEP could be implemented was [REDACTED]

324. The Student's IEP dictated that the Student would have attended lunch and all special non-academic classes (*e.g.*, art, music, physical education, health, etc.) in a general education setting with non-disabled peers. The Student's TSA would have also been present in the Student's non-academic classes.
325. The AACPS timely provided the Parents with Prior Written Notice memorializing the April 29, 2019 IEP team meeting.
326. The Prior Written Notice noted the IEP's proposed educational placement for the Student and the basis for the team's decision, as well as the reasons the Parents rejected the proposed placement.
327. The Parents did not advise the AACPS that they were confused about the IEP Team's proposed placement.
328. Before August 26, 2019, the Parents requested that Dr. [REDACTED] conduct a neuropsychological assessment of the Student because it was required for the Student to apply for high school admission.
329. On August 27, 2019, the Parents notified the AACPS that they would be unilaterally placing the Student at the [REDACTED] and requested that the AACPS fund that placement.
330. On August 26 and September 4, 2019, [REDACTED], led by Dr. [REDACTED] conducted a Neuropsychological Re-evaluation of the Student. Dr. [REDACTED] interviewed the Student with his parents for 30 minutes and interviewed the Student 15 minutes alone before an associate in the [REDACTED] office conducted assessments. Dr. [REDACTED] reported that the Student had taken [REDACTED] before his assessment, but the Student was initially fidgety and distractible. Nevertheless, the Student, who was thirteen, responded well to redirection.

331. Neither Dr. [REDACTED] nor anyone from [REDACTED] observed the Student at [REDACTED] or in any educational setting, or with peers or with his teachers.

332. Dr. [REDACTED] selected several standardized tests to assess the Student, most of which were administered during the Student's February 2016 neuropsychological assessment.

333. At the time of the August/September 2019 assessment, the Student was involved in extracurricular sports, church activities, and he was still active in Boy Scouts. He was more engaged than he was in 2016 and presented as a neurotypical young teenager.

334. The following represents the Student's scores on the WJ-IV in 2019 as compared to his scores in 2016:

[REDACTED] 2016	[REDACTED] 2019
<u>Reading - 81</u>	<u>Reading -89 (+8)</u>
Letter-Word Identification – 76	Letter-Word Identification – 90 (+14)
Sentence Reading Fluency – 92	Sentence Reading Fluency – 87 (-5)
Passage Comprehension – 92	Passage Comprehension – 89 (-3)
Word Attack – 80	Word Attack – 79 (-1)
Oral Reading – 93	Oral Reading – 91 (-2)
<u>Math</u>	<u>Math</u>
Math Facts Fluency – 81	Math Facts Fluency – 91 (+10)
Calculation – 74	Calculation – 81 (+6)
Applied Problems – 64	Applied Problems – 84 (+20)
<u>Written Language</u>	<u>Written Language</u>
Writing Samples - 89	Writing Samples – 92 (+3)

Spelling – 78	Spelling – 81 (+3)
Sentence Writing Fluency – 92	Sentence Writing Fluency – 87 (-5)

335. As in 2016, the Student full-scale IQ score was 78.

336. The Student’s scores in reading improved modestly and his math scores displayed a significant improvement from 2016.

337. The Digit Span subtest of the Working Memory portion of the WISC-V measures immediate auditory memory, The Student scored in the 5<sup>th</sup> percentile. On the CVLT-C, the Student scored in the first percentile for Level of Recall for List A and List B. On the REY Complex Figure Test, which measures visual construction skills (taking visual information and reproducing it through drawing), the Student scored below the 1<sup>st</sup> percentile. On the Trail Making Test, Part B, which cognitive flexibility and an ability to switch back and forth quickly in sequencing numbers and letters, the Student scored below the 1<sup>st</sup> percentile. All of these measures indicate the Student had deficits in executive functioning.

338. The CEFI analyzed the Student’s Math and English teachers’ observational reports of the Student’s ability to function in class in different categories. The English teacher’s responses resulted in average scores in attention, emotional regulation, inhibitory control, initiation, organization, planning, and self-monitoring. The English teacher’s responses resulted in low average scores for flexibility and working memory. The Math teacher’s responses resulted in average scores for all of the categories.

339. On the TOWRE-2, the Student scored in the 21<sup>st</sup> percentile in both sight word efficiency and phonemic decoding efficiency. For phonemic decoding efficiency, the Student



improved significantly from his score in the 5<sup>th</sup> percentile in this area in 2016, which indicates that he had developed the ability to apply decoding skills more effectively.

340. On the CTOPP-2, the Student scored in the 3<sup>rd</sup> percentile for phonological awareness, which was 2 percentile points lower than in 2016. The Student scored in the 12<sup>th</sup> percentile for Phonological Memory, which was 9 percentile points lower than in 2016.

341. On the Child Behavioral Checklist, the Student's mother reported the Student had increased depression and anxiety and was withdrawn. Neither the Student's father nor his teachers reported increased depression, anxiety or a propensity to be withdrawn.

342. On the MASC-II, which also measures aspects of students' socio-emotional characteristics, the Student scored in the average range, indicating no elevated levels of anxiety or anti-social behaviors.

343. On the IVA-2 Sustained Auditory Quotient subtest, which measures students' ability to pay attention to and retain a story and the sentences used to comprise the story, the Student scored in the 34<sup>th</sup> percentile. This was a significant score increase from his results on the 2016 assessment, which placed him below the 1<sup>st</sup> percentile.

344. Based on Dr. [REDACTED] evaluation, the Student was diagnosed with ADHD, a Specific Learning Disorder in with impairment in reading and mathematics, Developmental Coordination Disorder with dysgraphia.

345. Dr. [REDACTED] did not diagnose the Student with an anxiety disorder.

346. Based on his assessment, Dr. [REDACTED] recommended same special education services for the Student to make appropriate progress as he did in his February 2016 report.

347. Dr. [REDACTED] also recommended that the Student be provided with daily routines or sequence of routines and once he has learned these sequences, an alternative set of

sequences, such as taking a different route to school, could be introduced to provide the Student with options for flexibility.

348. Dr. [REDACTED] recommended that the Student be provided to-do lists to develop and reinforce automatic routines and serve as external cues to begin an activity.

349. Dr. [REDACTED] also recommended that Student be permitted to change tasks more frequently to alleviate a drain on the Student's working memory. Specifically, Dr. [REDACTED] gave an example that the Student could spend ten minutes on math, rotated to reading for ten minutes, then return to math for ten more minutes.

350. Dr. [REDACTED] issued his Neuropsychological Evaluation Report detailing the results of the Student's assessments in September 2019.

351. The Parents did not share Dr. [REDACTED] Neuropsychological Report with AACPS at any time before the hearing in the instant matter. The Parents did not request an IEP Team meeting to review Dr. [REDACTED] Neuropsychological Report.

352. The Parents did not request an IEP Team meeting after they received Dr. [REDACTED] report.

353. The Parents filed a request for due process hearing on October 16, 2019. The Parents withdrew that request.

### **The Special Education Program at [REDACTED]**

354. If the Student had attended [REDACTED] for seventh and eighth grade, he would have been taught by a special educator and an instructional aide in a self-contained special education math and Language Arts classroom.

355. The Student's assigned TSA would have been present in all of his classes to provide support and implement the accommodations and services in his IEP so that he could access the sixth and seventh grade curricular content.
356. During both the seventh and eighth grade years, the Student's general education sciences and social studies classes at [REDACTED] would have been co-taught by a general education teacher, a special education teacher, with support from his assigned TSA.
357. For Encore classes, a [REDACTED] Special Educator would collaborate with Encore teachers to ensure those Encore teachers were aware of and implemented the services, supports and accommodations in the Student's IEP. The Student would also have the support of his TSA in those Encore classes.
358. During the seventh and eighth grade at [REDACTED] the Student participated in classes with eleven or fewer students. His Language Arts and Math classes would have been comparable to the class sizes at [REDACTED]. His Social Studies and science classes could have had up to 25 students, and some of his Encore classes could have had more than 25 students depending on the class.
359. To provide special education instruction in the general education classroom at [REDACTED] the class general educator and special educator engage in a collaborative team-model, the special educator using their expertise in specially designed instruction working with the general educator to tailor the class content to students' IEPs.
360. In science and social studies, the larger group of students is broken down into smaller groups and then lessons are broken down into different stations or segments throughout the day.

361. In the Student's self-contained special education Math class, his teachers would have used a math intervention called CRA model of instruction. Under the "concrete" portion of instruction, teachers use actual models to assist students with visualizing a math problem. Once mastered, the teacher instructs students using a representational construct, in which the Student uses tally marks. Finally, the Student moves to the abstract portion of instruction by using numbers and operational signs.

362. In the Student's self-contained Language Arts class, his teachers would have used a research-based reading intervention for the Student called Wilson Reading Intervention, which is designed to bolster phonemic awareness. Also, he would also have been instructed using the Lucy Calkins writing intervention. This intervention teaches students to write using multiple steps from developing background information to drafting writing projects.

363. All of the special education teachers at ██████ hold an advanced professional special education certificate and all of the general educators are certified in their areas of instruction.

**The 2019-2020 School Year (8<sup>th</sup> Grade)**

364. The Student attended ██████ for the 8<sup>th</sup> grade.

365. In eighth grade, the Student took the AIMS assessment three times, in fall, the winter, and the spring.

366. In eighth grade, between fall 2019 and spring 2020, the student increased his composite reading score on the AIMS from 552 to 578, moving from an average level to an above-average level.

367. As of spring 2020, the Student's composite reading score was above average.

368. The Student displayed an average ability in the vocabulary category.<sup>22</sup>

369. In the Silent Reading Fluency category, the student displayed an ability in this category that was well above average as of spring 2020.

370. In the Reading Comprehension category, the Student displayed an average ability as of spring 2020.

371. In the Oral Reading Fluency category, the Student displayed a below-average ability as of spring 2020.

372. AIMS Composite math category included four subcategories: Number Sense Fluency, Number Comparison Fluency – Triads, Mental Computation Fluency, and Concepts & Applications.

373. The Number Sense Fluency category includes the outcome of the Number Comparison Fluency – Triads and Mental Computation categories and assesses a student’s ability regarding basic number and computational skills.<sup>23</sup> The Student displayed an average ability in this category as of spring 2020.

374. The Number Sense Fluency - Triads category is designed to determine a student’s ability to assess magnitude and compare numbers within and across number systems (integers, fractions, decimals, exponents, and scientific notation). The Student displayed an average ability in this category as of spring 2020.

375. The Mental Computational Fluency category is designed to assess a student’s ability to solve mathematical problems, mentally, including addition, subtraction, multiplication,

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<sup>22</sup> The Student’s displayed achievement in each of the categories was compared to a national sample of all students.

<sup>23</sup> The AIMS description of this category notes that this metric “provides a more reliable estimate of performance on [basic number and computational skills].” P. 31 – 5.

and division and across number systems. The Student performed in the below average range in this category as of spring 2020.

376. The Concepts and Applications category is designed to assess a student's understanding of important math concepts and ability to solve problems. The Student performed in the average range in this category as of spring 2020.

377. As of spring 2020, the Student's composite math score was average.

378. The Student made academic gains in math and reading between his fifth-grade school year and his eighth-grade school year improving from the borderline average range to the average range.

379. AACPS did not request to assess the Student during his seventh and eighth-grade school years.

380. In February 2020, the Parents hired [REDACTED] an educational consultant and the Director of the [REDACTED] [REDACTED] as a consultant for the Student. In that capacity, Mr. [REDACTED] reviewed the Student's records, including the Student's 2019 – 2020 accommodations at [REDACTED] (P. 29), the Student's 2019 – 2020 Progress Reports from [REDACTED] (P. 30), [REDACTED] Academic Testing Data from spring 2020 (P. 31), and the Student's 2019-2020 [REDACTED] Third Trimester Report Card (P. 32), the Student's OT information from 2010 through 2020 (P. 33), and the Student's awards from [REDACTED] (P. 40) to gain an understanding of the Student's academic and social circumstances.

381. Mr. [REDACTED] also spoke with the Student's parents and teachers at [REDACTED] [REDACTED] the Founder and former Director of [REDACTED] [REDACTED] AACPS Special Educator at [REDACTED] and [REDACTED] the Student's former teacher and tutor.

382. In late February – early March, traditional school was impacted by the Novel Coronavirus COVID-19 pandemic. Many schools switched from in-person instruction to virtual video instruction.
383. Mr. ██████ spoke with the Student over a video platform once in March or April 2020 for about 45 minutes.
384. Mr. ██████ did not observe the Student in the school setting and has not met the Student in person.
385. Mr. ██████ has never participated in any of the Student’s IEP teams.
386. Mr. ██████ does not conduct standardized assessments of students.
387. Also in February 2020, the Parents contacted Dr. ██████ the Founder of ██████ seeking her guidance on an appropriate placement for the Student in high school.
388. Prior to February 2020, when Dr. ██████ was at ██████ to observe a different child, she saw the Student in one of his ██████ classes.
389. Dr. ██████ interviewed the Student, virtually, for forty minutes. The Student was engaging during the interview with Dr. ██████
390. During her interview with the Student, he made eye contact; he was not fidgeting or distractible. He was expressive with appropriate voice modulation and politely listened to and responded to questions.
391. In March 2020, Dr. ██████ spoke with Dr. ██████ who was the Executive Director of ██████ at that time; she also spoke over the phone with the Student’s English teacher and math teacher.
392. Dr. ██████ did not attend any of the Student’s IEP Team meetings.
393. The last time Dr. ██████ visited ██████ was approximately eight years ago.

394. Dr. [REDACTED] did not speak with any of the teachers who would have taught the Student at [REDACTED] or members of the IEP Team who crafted the Student's IEPs for the seventh and eighth grade.

395. As of spring 2020, the Student was enrolled to begin high school at a comprehensive Catholic High School, [REDACTED] High School ([REDACTED] in the [REDACTED] Program.

396. The [REDACTED] Program is designed to provide college preparatory specialized instruction, support and structure for kids with language-based learning and attention disorders.

397. The [REDACTED] Program does not accept students on the autism spectrum or students who have severe behavior issues.

398. In the [REDACTED] Program, the Student would be enrolled in class sizes no greater than sixteen students for his academic subjects (Math, Science, English, and Social Studies). The Student would share the rest of his classes (art, physical education, music, etc.) with general education students.

399. The [REDACTED] teachers are not required to be certified as special educators but have been trained to provide accommodations so Students can access the material. (T. [REDACTED]

400. [REDACTED] students primarily have language-based learning deficits, but they come from different settings (e.g., some public school, some private, some parochial schools).

401. The Student wanted to attend [REDACTED] so he would have a larger environment with more opportunities such as robotics club, computer technology, etc.

402. As of July 14, 2020, the Student was reading "House Arrest," a young-adult fiction book that is on the ninth-grade reading level. (T. [REDACTED]



## Discussion

### Legal Authority

The substantive requirements of the IDEA mandate that state and local education agencies make a FAPE available to children with disabilities. 20 U.S.C.A. § 1412(a)(1). As the Supreme Court detailed in *Hendrick Hudson District Board Of Education v. Rowley*,<sup>24</sup> because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; generally, to pass from grade-to-grade on grade level. *Rowley*, 458 U.S. at 204; 20 U.S.C.A. § 1401(9). The Supreme Court further refined the meaning of a FAPE in *Endrew F. v. Douglas Cty. Sch. Dist.*<sup>25</sup> 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.

In addition to the IDEA’s requirement that a disabled child receive appropriate educational benefit, the child must be placed in the least restrictive environment (LRE) to achieve FAPE. The nature of the LRE necessarily differs for each child but could range from a regular public school to a residential school where twenty-four-hour supervision is provided. COMAR 13A.05.01.10B. The IDEA requires specialized and individualized instruction for a learning or educationally-disabled child. Nonetheless, “[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities,” must be “educated with children who are not disabled . . . .” 20 U.S.C.A. § 1412(a)(5)(A). It follows that the State and federal regulations that have been promulgated to implement the requirements of the IDEA also require such inclusion. 34 C.F.R. §§ 300.114

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<sup>24</sup> 458 U.S. 176 (1982).

<sup>25</sup> 137 S.Ct. 988 (2017)

through 300.120; COMAR 13A.05.01.10A(1). The IDEA mandates that the school system segregate disabled children from their non-disabled peers only when the nature and severity of their disability is such that education in general classrooms cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A); *Rowley*, 458 U.S. at 181 n.4; *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997); *see also Honig v. Doe*, 484 U.S. 305 (1988).

To provide a FAPE, the educational program offered to a student must be tailored to the particular needs of the disabled child by the development and implementation of an IEP, taking 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); *see also Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 368 (1985) (“The *modus operandi* of the Act is the already mentioned individualized educational program.” (internal quotation marks omitted)).

The IEP depicts the student’s current educational performance, 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, 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); *accord* 34 C.F.R. § 300.22; Md. Code Ann., Educ. § 8-405(a)(4).

As the “centerpiece” of the IDEA’s “education delivery system” for disabled students, an IEP is a “comprehensive plan” for the “academic and functional advancement” for the student. *Andrew F.*, 137 S. Ct. at 994, 999. It must be tailored to the student’s “unique needs” with “careful consideration” of the student’s present levels of achievement, disability, and potential

for growth. *Id.*; *see also* 20 U.S.C.A. § 1401(29). The IEP must be “appropriately ambitious,” *Andrew F.*, 137 S. Ct. at 1000, and it must provide for “specially designed instruction” that is “reasonably calculated to enable the child to receive educational benefits” and to “make progress appropriate in light of the student’s circumstances.” *Id.* at 996, 999 (quoting *Rowley*, 458 U.S. at 207). The amount of progress anticipated for the student should be “markedly more demanding than the merely more than *de minimis* test” applied in the past by many lower courts. *Id.* at 1000 (internal quotation marks omitted).

The test for whether an IEP is “appropriately ambitious,” *id.*, and “reasonably calculated to enable the student to receive educational benefits,” *id.* at 996, is different for each student; there is no bright-line rule or formula to determine whether an IEP provides a FAPE.<sup>26</sup> *Id.* at 1000-01. For a student who is fully integrated in the regular classroom, a FAPE would generally require an IEP to be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 996, 999 (citing *Rowley*, 458 U.S. at 203-04). However, for a student who is not fully integrated and/or cannot be reasonably expected to achieve grade-level advancement, the “educational program must be appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* at 1000. Regardless, “every child should have the chance to meet challenging objectives.” *Id.*

When assessing whether a student was offered, given, or denied a FAPE, a judge must “afford great deference to the judgment of education professionals . . . .” *O.S.*, 804 F.3d at 360 (quoting *E.L. v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014)). A judge

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<sup>26</sup> In *Rowley*, the Supreme Court also held that a FAPE may be found to have been denied a student when a school fails to comply with the procedures set forth in the IDEA. 458 U.S. at 206; *see also Bd. of Educ. v. I.S. ex rel. Summers*, 325 F. Supp. 2d 565, 580 (D. Md. 2004).

should not substitute his or her own “notions of sound educational policy for those of the school authorities which they review.” *Endrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S. at 206). Additionally, a judge “should be reluctant . . . to second-guess the judgment of education professionals.” *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). A judge should be mindful that local educators deserve latitude in determining the IEP most appropriate for a disabled child, and that the IDEA does not deprive these educators of the right to apply their professional judgment. *See Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997). Additionally, a judge must be careful to avoid imposing his or her view of preferable educational methods upon a school district. *Rowley*, 458 U.S. at 207; *A.B.*, 354 F.3d at 325.

This respect and deference, while unquestionably a well-settled principle of review under the Act, both within and without this circuit, is not limitless, however. *See Cty. Sch. Bd. of Henrico Cty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”).

“[T]he fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.*; *see Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993) (“Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.”).

“To give deference only to the decision of the School Board would render meaningless the entire process of administrative review.” *Sch. Bd. of Prince William Cty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted). A reviewing judge may fairly expect the

school system's professionals "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 or her] circumstances." *Endrew F.*, 137 S. Ct. at 1002.

The *Endrew F.* Court confirmed that a FAPE does not promise an "ideal" education. *Id.* at 999. Nor does it promise that a student with a disability will be provided with "opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities." *Id.* at 1001. A reviewing court must determine whether the IEP is "reasonable." *Id.* at 999. It is also important to remember that the IDEA does not require "the best possible education that a school could provide if given access to unlimited funds." *Barnett v. Fairfax Cty. Sch. Bd.*, 927 F.2d 146, 154 (4th Cir. 1991). Nor does it require the "furnishing of every special service necessary to maximize each handicapped child's potential." *Hartmann*, 118 F.3d at 1001.

The IDEA does not require a local educational agency to pay for the cost of private education if the agency has made a FAPE available to the child and the parents have nevertheless elected to place the child in a private school. 34 C.F.R. § 300.148(a) (2013). Parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15 (1993) (citing *Burlington* at 373-74). Parents may recover the cost of private education only if they satisfy a two-pronged test: (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parent were appropriate to the child's needs. *Id.*

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, in this matter the Parent has

the burden of proving that the AACPS denied the Student a FAPE when it failed to develop IEPs for the 2018-2019 and 2019-2020 school years that were reasonably calculated to enable the child to make progress appropriate in light of his circumstances. If they meet their burden regarding the AACPS' failure to provide a FAPE, the Parents also have the burden of proving they are entitled to reimbursement of the Student's for the private education services he received at ██████ during the 2018-2019 and 2019-2020 school years because placement of the Student was appropriate to meet the child's educational needs.

### **The Posture of this Case**

The issue in this case is whether the placement proposed by the local education agency, in this case, AACPS, was appropriate. The issue and any remedy is narrowly focused on only two school years, the 2018-2019 school year, when the Student was in the seventh grade, and the 2019-2020 school year, when the Student was in the eighth grade. While the evidence suggests that there were minor disagreements about the proposed Student's Present Levels of Academic Achievement and Functional Performances, goals and objectives, and accommodations, supports, and services offered in the Student's IEPs, the crux of the Parents' position is that the AACPS' proposed placement of the Student at ██████ was improper. To that end, the Parents argue that in the proposed placement at ██████ the Student would only receive ten hours of special education instruction in small self-contained classes and the balance of his special education instruction in general education classes with classes of that could exceed 25 students. The Parents argue that the Student required small class sizes where the Student's reading, writing, and math interventions could be provided across all of the Student's academic instruction. Accordingly, the Parents argue that in the seventh and eighth grades, the only proper

placement for the Student would have been one in which he was instructed in exclusively self-contained special education classes for all of his academic content.

This case involves only two school years, and, thus, I am called upon only to decide if the IEPs developed for the Student's seventh and eighth grade school years were designed to provide the Student with a FAPE during those school years. Prior to this matter, on February 3, 2017, the Parents filed a request for due process hearing alleging essentially the same complaint, that the AACPS denied the Student a FAPE for the 2014-2015 (third grade), 2015-2016 (fourth grade) and 2016-2017 (fifth grade) school years by improperly placing him at an AACPS elementary school where the Student would receive his special education instruction part-time in self-contained special education classes and part-time in general education classes. In both of these matters, the Parents alleged that the Student's weaknesses required that he receive his academic content in small classes comprised of students with similar profiles to the Student.

ALJ Andrews issued a decision in favor of the AACPS with regard to the Student's third, fourth and fifth grade IEPs, determining that its placement of the Student at [REDACTED] and [REDACTED] to receive special education instruction part-time in self-contained special education classes and part-time in general education classes was appropriate. In reaching that decision, ALJ Andrews relied upon the evidence regarding the Student's cognitive, academic, attentional, and emotional weaknesses and determined that the IEPs upon which the AACPS based its placement were reasonably calculated to allow the Student to receive meaningful educational benefit in light of his abilities in the LRE. The District Court affirmed ALJ Andrew's determination and the Parents did not pursue any further appeal. Accordingly, regarding the Student's third, fourth, and fifth grade years, the matter is closed. As a matter of law, the placements proposed by the AACPS during those years and the IEPs on which they relied, were appropriate.

During the hearing, extensive evidence was presented about the Student during the years preceding the ones at issue in this case. Ultimately, my review of the extensive evidence in this case led me to conclude that a determination of whether the placement proposed in the August 2018 and April 2019 IEPs was appropriate and provided the Student with a FAPE was inextricably tied to the Student's historical academic, cognitive and socio-emotional performance. Accordingly, though the appropriateness of the Student's third, fourth and fifth grade IEPs has been settled, I nevertheless considered information regarding the Student during those years and his sixth-grade year, in reaching my determination.

### **The IEPs**

The content of the August 2018 and April 2019 IEPs were largely the same. Both IEPs relied upon multiple sources of data to discern the level at which the Student was performing academic, attentionally, socio-emotionally, and behaviorally; they both represent that the IEP team considered the Student's strengths and weaknesses and in both IEPs, the IEP team offered accommodations, services and supports that the IEP team designed to assist the Student with accessing the curriculum in spite of his displayed weaknesses.

Both IEPs reflect that the IEP Teams recommended that the Student be placed at his home school, [REDACTED] as the Student's home middle school and the LRE, where he would receive five hours of special education instruction per week in Language Arts and five hours of special education instruction per week in Math in self-contained special education classes. They both also reflect that the IEP team recommended that the Student receive Math and Language Arts special education instruction in a general classroom for five hours each, where the Student would be co-taught by a general educator and a special educator. Both IEPs also contemplated that the Student would be provided a dedicated TSA to assist him when he was struggling with the



academic content in his general education classes and would follow him to his Encore classes to provide similar support as needed.

### **The Parents' Position**

The Parents argue that the Student's August 2018 and April 2019 IEPs were not designed to provide the Student with FAPE. Particularly, they assert that the Student, who is multiply disabled, was significantly impacted by his deficits in executive functioning, attention, written expression, phonemic reading and decoding, and mathematics. The Student, argue the parents, also has a history of anxiety. The Parents assert that in seventh and eighth grades, the Student was greatly impacted by those weaknesses and would not have been able to make meaningful educational progress from receiving special education instruction in large co-taught science and social studies general education classes.

To the contrary, the Parents assert that in seventh and eighth grade, the Student required the application of intensive strategies and interventions like those the Student received at ██████ to make meaningful educational progress. Pointing to the gains the Student made while enrolled at ██████ the Parents argue that the Student's success demonstrates that the appropriate placement for the Student's seventh and eighth grades was at ██████

In support of their position, the Parents offered the testimony of ██████ the Student's mother and an educator involved in instruction and curricular development with Montgomery County Public Schools; Neuropsychologist ██████ who in concert with his colleagues at his clinical psychology practice, ██████ conducted cognitive and academic evaluations of the Student in February 2016 and a re-evaluation in October 2016; Educational Consultant ██████ Dr. ██████ ██████ Founder; and ██████ ██████ the Student's teacher during his 2017-2018 sixth grade year and the fall of the

Student's 2018-2019 seventh grade year. Each of the Parents' witnesses were accepted as experts in their various education-related fields and each offered the opinion that the AACPS' placement of the Student in a special education program in which the Student would receive any part of his special education instruction in general education classrooms with more than 10 or eleven students at a time would be inappropriate for the Student. They also all testified that during the seventh and eighth grades, the Student required small, self-contained classes like those provided at ██████ to make academic progress, each pointing to the fact that the Student made academic progress at ██████ due to the small class sizes and the integrity and fidelity with which his instructors implemented learning and behavioral strategies that allowed the Student to achieve positive academic and behavioral outcomes.

Mr. ██████ testified that the Parents contacted him in February 2020, advised him that they had unilaterally placed the Student at ██████ and planned to seek reimbursement from the AACPS through an administrative hearing, and requested his assistance with reviewing the Student's profile. Mr. ██████ accepted the Parents request and reviewed the Student's records, including the Student's 2019 – 2020 accommodations at ██████ the Student's 2019 – 2020 Progress Reports from ██████ Academic Testing Data from spring 2020, the Student's 2019-2020 ██████ Third Trimester Report Card, the Student's OT information from 2010 through 2020, and the Student's awards from ██████ to gain an understanding of the Student's academic and social circumstances.

Mr. ██████ also reported that he spoke the Parents and teachers at ██████ Dr. ██████ ██████ AACPS Special Educator at ██████ and ██████ the Student's former teacher and tutor. Finally, Mr. ██████ spoke with the Student over a video platform once in March or April 2020 for about forty-five minutes.

Mr. [REDACTED] testified that the Student seems to be of average intelligence in many areas. He is interested in a number of topics, especially history, due, in great part due to the fact that his parents have traveled with him extensively to many historic sites. Among the Student's strengths, Mr. [REDACTED] noted the Student was very respectful and a good member of the community, noting that the Student won an award from [REDACTED] for his participation in distance learning during the COVID-19 pandemic and he was one of three nominees for a [REDACTED] outstanding citizenship award. Mr. [REDACTED] also testified that based on his review of the Student's records and interview with the Student, he appears to be maturing nicely.

Turning to the Student's weaknesses, Mr. [REDACTED] testified the Student has been diagnosed with multiple disabilities, something that is uncommon, and that these multiple diagnoses overlap and have the cumulative effect of substantially impacting his learning. As an example, Mr. [REDACTED] testified that the Student's learning disabilities significantly impact his reading decoding. Specifically, Mr. [REDACTED] pointed to the fact that the Student was able to identify only twenty-five out of thirty-seven vowel sounds in isolation, could not identify some combinations of vowels, and struggled with sound deletion. Mr. [REDACTED] explained that students usually attain these skills in elementary school, placing the Student behind in significant aspects of reading and decoding. Similarly, Dr. [REDACTED] testified that his review of the Student's educational profile revealed that the Student had significant deficits in math computation and problem solving and significant motor challenges that impact his written language skills in the areas of capitalization, punctuation, grammar, handwriting, and all phases of mechanics and editing

Mr. [REDACTED] further testified that the attentional challenges the Student experiences as a result of his ADHD is troubling and makes it difficult for the Student to pay attention for

appreciable length of time. In support of that conclusion, Mr. ██████ pointed out that Student's seventh grade August 2018 IEP, included a goal that the Student would pay attention for ten minutes with one prompt and his eighth grade IEP included a goal to pay attention for fifteen minutes with one prompt. Mr. ██████ opined that the inclusion of these attention-related goals demonstrates that the Student was significantly impacted by his ADHD in seventh and eighth grade. Adding to his multiple diagnoses was the Student's difficulty with executive functioning, which impact his affect his planning, organization and working memory. Mr. ██████ explained that executive functioning can impact beginning a task, initiating and sustaining efforts, organizing thoughts, and keeping things in his working memory. As an example, Mr. ██████ explained, that when we write a paragraph, we begin with a topic sentence and while writing that topic sentence, we may already be thinking about what supporting sentences we will add to the topic sentence to complete the paragraph, but we are not ready for those sentences yet, so we hold them in our working memory until we are ready for them. This, explained Mr. ██████ is a problem for children like the Student who have working memory challenges.

Further complicating the Student's academic difficulties, testified Dr. ██████ is the fact that the Student has a history of anxiety. /nted, given the Student's anxiety, Mr. ██████ opined the Student would be far too embarrassed by being singled out for this type of repetitive instruction in light of his history with anxiety.

Similarly, Dr. ██████ testified that some of the other supports delineated in the Student's IEPs would have had the effect of worsening the Student's anxiety. For instance, calling for the Student to repeat and paraphrase directions given by the teacher would result in great anxiety for the Student because it would be embarrassing for the teacher to stop instruction,

go to the Student and spotlight his disabilities by requiring him to repeat aloud the directions she had just given the class.

Mr. [REDACTED] agreed that the accommodations and services and supports included in the Student's IEP are potentially appropriate because they enable a child with learning disabilities to access the academic content and those accommodations, services, and supports can be provided in various settings. Indeed, he testified that for some students, it would be wholly appropriate to provide those services in the program at [REDACTED]. With regard to the Student, however, Mr. [REDACTED] offered the opinion that due to the Student's multi-dimensional deficits, including attention deficits, executive functioning, his phonemic, decoding and computational math challenges, and history of anxiety, the Student would not be successful receiving his special education instruction in a larger general education classroom such as the proposed science and social studies classes at [REDACTED]. Rather, Mr. Weinfield explained, in his opinion, the Student required the intensive strategies the Student's educators employed at [REDACTED] in the small classes [REDACTED] provided the Student to ensure he could make meaningful educational progress.

Like Mr. [REDACTED] the Parents engaged Dr. [REDACTED] for her assistance with the Student, initially requesting that she review his educational profile to assist them and the Student with selecting an appropriate high school for the Student. Once the Parents decided to file a Due Process Complaint, they requested that she testify on their behalf. Dr. [REDACTED] also reviewed the Student's records, spoke with Dr. [REDACTED] the Executive Director of [REDACTED] at that time and spoke over the phone with the Student's English teacher and Math teacher to glean a snapshot of the Student's overall educational profile. She also interviewed the Student by video.

Dr. [REDACTED] testified that when she interviewed the Student he made eye contact; he was not fidgeting or distractible. He was expressive with appropriate voice modulation and politely

listened to and responded to questions. Notwithstanding the Student's appropriate and engaging demeanor, Dr. [REDACTED] testified that the large social studies and science classes at [REDACTED] were not an appropriate placement for the Student.

Dr. [REDACTED] explained that [REDACTED] is uniquely situated to assist children like the Student, whose primary disabilities are language based. Using evidence-tested reading and math intervention programs, Dr. [REDACTED] testified that [REDACTED] has a track record of providing students with the tools to allow them to make beneficial academic outcomes. [REDACTED] is able to achieve these outcomes, explained Dr. [REDACTED] because the small class sizes allow educators to implement intensive strategies interventions across all of the students' academic content, allowing for consistency and fidelity. In turn, the consistent and faithfulness to the [REDACTED] strategies and interventions allow [REDACTED] students to make strides toward greater academic achievement even when their cognitive deficits make that achievement quite difficult.

Like Mr. [REDACTED] Dr. [REDACTED] offered the opinion that it is very unlikely that impactful strategies and interventions like those employed at [REDACTED] could be carried out in class sizes like the ones the Student would encounter at [REDACTED] in social studies and science a teacher with more than 25 students teaching team in a large classroom would not be able to provide the consistency and depth of intervention the Student received at [REDACTED] While the intention would be to honor the IEP, in larger, general education classes, the teachers do not have enough time to cater to the specific needs of the student – especially one as multidimensional as the Student's disabilities. Indeed, Dr. [REDACTED] testified that large class size would make it very difficult for a teacher to remember to repeat material and instructions to him or check in with the Student to see if he needed clarification.

Dr. [REDACTED] also testified that she was worried that because the Student has been identified as having markers of anxiety, placing him in a situation where he will have to navigate different peer groups and new models of learning, may lead to anxiety, which in turn, leads to depression, and then perhaps, suicide. She testified that suicide is a “primary issue” in AACPS public, private, parochial and high schools. (T. 501).

Dr. [REDACTED] conceded that as of his October 2019 re-evaluation, the Student had made some significant gains in math and that his reading comprehension scores consistently displayed his strengths in reading proficiency, and had improved attentionally and behaviorally. Dr. [REDACTED] opined, however, that although the Student certainly displayed strengths, his weaknesses were also consistently present at the time of the development of the August 2018 and April 2019 IEPs. For instance, Dr. [REDACTED] explained that he diagnosed the Student with Developmental Coordination Disorder with Dysgraphia because the Student’s difficulty with visual motor, visual perceptual and fine motor skills manifested in his difficulty with handwriting. Dr. [REDACTED] further explained that when, writing the letter “B,” a non-impaired student will simultaneously hear the “buh,” sound and this connection between writing the letter and hearing the sound it makes forms the basis for literacy. The Student’s impairment in making those connections, explained Dr. [REDACTED] impact him with reading and writing and create for the Student a steeper hill for achieving literacy. When these deficits are accompanied by ADHD and a student’s difficulty with attending, Dr. [REDACTED] explained that the Student’s window of availability to remain undistracted and receive information is compromised. Accordingly, the Student required small class sizes to ensure directed assistance with his dysgraphia and to mitigate any distractibility.

Dr. [REDACTED] testified aptly about the difference between IQ and academic skills and neuropsychological functions. Specifically, IQ and academic skills can be best described as the

part of an iceberg that is above the water – in other words, the part of the iceberg that we can see. The part of the iceberg under the water are the processes that drive the iceberg –the underlying mechanics create the observable impact above the water. Dr. [REDACTED] testified that based on his testing of the Student, neuropsychologically, he has difficulties with fine, visual motor and perceptual organization deficits which greatly impact him. Specifically, regarding working memory and recall, the Student does well with recalling information when it is presented in an organized and packaged fashion. When, however, he is tested on more immediate visual memory and he must, in essence, package that narrative himself, he displays significant weaknesses.

Regarding the Student’s anxiety, Dr. [REDACTED] testified that the results of the neuropsychological evaluation he and his associates conducted in 2016 indicated that the Student was experiencing heightened levels of anxiety. To that end, Dr. [REDACTED] testified that the Student’s mother reported on the Child Behavior Checklist, that prior to the February 2016 assessment, the Student was displaying heightened levels of anxiety and periods of being withdrawn/depressed. As one of the Student’s five teachers and the school counselor also reported heightened anxiety in the Student, Dr. [REDACTED] testified he diagnosed the Student with an unspecified anxiety disorder. Dr. [REDACTED] conceded that neither the father nor any of the Student’s teachers reported the same or similar levels of anxiety but he gave great weight to the Student’s mother’s report of anxiety, testifying that as his mother, she was uniquely situated to detect the student’s increased anxiety and he believed that mothers, generally, are “pretty perceptive about their kids.” (T. 260).

Dr. [REDACTED] also conceded that as of his October 2019 re-evaluation of the Student, the Student’s indications of anxiety had abated to the extent that he did not diagnose him with Unspecified Anxiety Disorder as he did in February 2016. Dr. [REDACTED] attributed the Student’s



lessened anxiety to the success [REDACTED] had with providing him strategies to make academic improvement.

Mr. [REDACTED] taught the Student during the sixth grade and the beginning of seventh grade. He has also tutored the Student since summer 2018 and testified that in the time he has taught and tutored the Student, he has grown to learn he is a smart, funny and unique child. He testified the Student has shown some significant academic strengths in reading fluency and comprehension, generally reading on grade level. In fact, Mr. [REDACTED] noted that as of the date of his testimony, the Student was reading a book titled “House Arrest,” which is a young-adult fiction book on the ninth-grade level. Mr. [REDACTED] explained that the Student is very knowledgeable about and loves history. As the Student would be learning world history in the ninth grade, he was working with the Student reading world history so that when he began school in the fall, he would already have a basic floor of knowledge in the subject matter. Mr. [REDACTED] testified that the Parents often took proactive measures to prepare the Student for academic topics he would encounter in school.

Mr. [REDACTED] further testified that the Student learned how to draft essays at [REDACTED] using the EmPOWER program. Despite his historical weakness in writing, Mr. [REDACTED] testified that the Student’s essay-writing greatly improved between his sixth-grade year and graduation with the use of the EmPOWER writing program, a writing program that assists students with drafting essays by helping them map their ideas using a webbing structure and which allows students to create more cohesive paragraphs through various drafts. To that end, Mr. [REDACTED] testified that recently, the Student used the EmPOWER program to draft high school admission essays and although he provided some support to the Student, thanks to [REDACTED] consistent application of strategies like EmPOWER, the Student was able to construct

those essays almost completely independently. Indeed, Mr. ██████ testified that ██████ provided an exemplary model for developing and solidifying organization skills in its students between the sixth and eighth grades, which has been a huge help for the Student. Similarly, Mr. ██████ explained that being with students with similar learning and social profiles and being in smaller academic setting allowed the Student to feel safe and unjudged to the extent that the Student flourished at ██████

Mr. ██████ testified that when he first started teaching the Student, he was easily distracted and had difficulty maintaining his attention for longer periods of time. This was especially true in his ██████ classes that had a larger number of students, like Social Studies, where he was instructed along with ten other students. When, however, the Student was in a class with a smaller student population, he was much better able to pay attention. This was especially so when the Student received individual instruction from a teacher. Furthermore, he testified that in the sixth grade, the Student would occasionally make noises and click his teeth when he became distracted or bored, causing Mr. ██████ to remind the Student not to engage in those distracting behaviors. Mr. ██████ testified that like his ability to attend, the greater the size of the class, the greater the likelihood that the Student would engage in making these noises and periods of distraction. To redirect the Student, Mr. ██████ testified that he would use a verbal prompt, put his hand on the Student's shoulder, or tap on his notebook.

According to Mr. ██████ since he began tutoring the Student after fall 2018, the Student's distractible behaviors improved. The Student does speak in accents at random times - for instance, speaking using the voice of Yoda from Star Wars, or reading an entire passage in a text with a Scottish accent. When the Student does this, explained Mr. ██████ he reminds the student that he can't do that in high school.

Mr. [REDACTED] testified that in his experience, most children the Student's age do not need to be redirected at all, therefore, he considered the Student's inability to consistently attend and distractibility to be weaknesses for the Student that would be difficult to address in a large class full of non-disabled peers.

Regarding anxiety, Mr. [REDACTED] testified that the Student gets anxious at somewhat random times and in response to somewhat random situations. Specifically, in Mr. [REDACTED] experience, the Student does not necessarily get anxious in expected situations, for instance, when preparing for tests. However, the Student was anxious about applying for high school and waiting to hear whether he was accepted and admitted. Mr. [REDACTED] testified the Student also gets anxious when preparing to earn Boy Scout badges and when his mother gives him homework she wants him to complete. However, due to the writing instruction he received at [REDACTED] the Student was not nervous about writing short essays in support of his high school applications.

Ultimately, based on his knowledge of the Student as a teacher and a tutor, Mr. [REDACTED] testified that he believes [REDACTED] provided him with the educational programming he needed, in small class sizes where he was able to focus on working on his areas of academic and behavioral weakness in a safe setting and supportive setting without being judged.

The Student's mother, [REDACTED] described the Student as funny and intellectual. She reported that he loves swimming and riding his bike; he has a strong fund of knowledge and is very interested in history. He has participated in sports, such as soccer and Taekwondo, and he has participated in church activities and been a long-time member of the Boy Scouts.

[REDACTED] testified that she did not believe the AACPS proposed placement at [REDACTED] was appropriate for the Student. Specifically, she testified that he would not be able to process

information in a general education classroom of twenty-five students or more, even with the accommodations provided in his IEP. ■■■ pointed to the Student's proven processing issues and working memory difficulties to support her concern that the Student would founder in larger general education classes.

■■■ also testified that the Student is aware of what other children in his classroom are doing and how they might perceive him and his behaviors. She expressed concern that to avoid standing out in class, the Student might not advocate for himself when he needs help, preferring to "fly under the radar." (T. 789) Furthermore, his mother testified that when the Student is uncomfortable, he displays inappropriate behaviors like making noises and speaking in accents, which would put him in a negative spotlight and negatively affect his relationships with other students and his teachers.

Regarding the Student's anxiety, ■■■ testified that in the past, the Student displayed behaviors associated with anxiety, such as picking his skin and hoarding. Now, after being at ■■■ where he is familiar with his routine and where to go if he needs help, the Parents are not seeing those behaviors.

■■■ testified that she was happy to see that the Student had made some gains in math based on Dr. ■■■ most recent neuropsychological assessment and she believed those gains were made because ■■■ had worked so diligently with him to move him forward. To that end, ■■■ was not surprised that the Student performed in the average range on the AIMS math tests even though he performed in the low average range on the WJ-IV even though both assessments scale students against their age-related peers. ■■■ explained that although the Student had still had some discrete areas of cognitive difficulty, she believes due to ■■■ consistent interventions, the Student has been better able to access the academic content. For

instance, according to [REDACTED] [REDACTED] infuses the Student's decoding reading strategies into all of his classes and every teacher at [REDACTED] is trained about how to administer his reading intervention in every class. [REDACTED] further explained that the classes at [REDACTED] are grouped according to ability and taught in small groups so the teachers can provide the level of support necessary to allow each child to progress at his or her own level.

[REDACTED] contrasted the targeted individualized education students receive at [REDACTED] with her perspective regarding the education students with learning disabilities receive in a public middle school class of 25-30 students. Using her own experience as a teacher, [REDACTED] testified that often, such classes may include about 50% of students who have some level of learning disability, which requires the teacher to split her or his attention between teaching the general education curriculum and remembering/attending to the deeper needs of children with IEPs or some other form of formalized educational supports and accommodations. Turning to Dr. [REDACTED] recommendations, such as avoiding multiple commands and speaking with clear, simply stated directions, [REDACTED] testified that providing such targeted instruction to one child is very difficult, if not untenable in a class full of students.

[REDACTED] acknowledged that under the AACPS' proposed placement at [REDACTED] the Student would have been provided with a TSA, a staff member dedicated to specifically assist with implementing the accommodations, supports and services in the Student's IEP. Although she testified she believed that type of support would be beneficial to the Student, she also believed that the moment that TSA walked away the Student for a few seconds, the Student would likely be off-task due to his attention deficits and his aversion to tasks he finds difficult.

[REDACTED] testified that the Student has gotten to know Mr. [REDACTED] well after Mr. [REDACTED] started teaching the Student in the sixth grade. According to [REDACTED] the Student has

developed a great relationship with Mr. [REDACTED] who has able to get the Student to produce, academically, in a way that not every teacher has been able to do. In addition to helping the Student with academic output, [REDACTED] explained that Mr. [REDACTED] shares personal interests with the Student. For instance, the Student is active in boy scouts. As Mr. [REDACTED] is an Eagle Scout, he has helped the Student work toward badges and complete writing assignments associated with obtaining badges using the EmPower writing process.

[REDACTED] testified that she is thrilled with the academic gains the Student has made since sixth grade. In addition to academic gains, [REDACTED] conceded the Student has also made social and organizational gains. Although the Student still has attentional needs and behaviors such as making noises, that must be consistently addressed, [REDACTED] conceded that these behaviors have lessened as he has gotten older and matured. Nevertheless, [REDACTED] testified that she is apprehensive and reserved about the Student transitioning from the small classes at [REDACTED] where he received such consistent and individual intervention, to the [REDACTED] program at Spalding where he will be in much larger class sizes. She conceded, however, that the Student is anxiously eager to move to a more comprehensive school setting and it is her hope that he will be able to utilize the skills and strategies he learned at [REDACTED] at Spalding.

### **AACPS' Position**

The AACPS disagrees with the Parents that the Student required a special education program where he is provided special education instruction solely in small classes with other similarly disabled children. To the contrary, the AACPS argues that although the Student still has significant weaknesses in areas of math and reading and some attentional and behavioral deficits, he has made significant progress and, by the seventh grade, he would have been able to make meaningful educational progress in the part-time self-contained/part-time general education

instruction model it proposed as the Student's placement. In support of its position, the AACPS offered the testimony of AACPS Compliance Specialist [REDACTED] [REDACTED] Special Educator, [REDACTED] School Psychologist [REDACTED] and AACPS Coordinator of Interagency and Nonpublic Placement [REDACTED]

Ms. [REDACTED] testified that the Student has been diagnosed with multiple disabilities that impact him in multiple ways. Contrary to Mr. [REDACTED] testimony, however, she explained that it is not unusual for a student to have multiple disability diagnoses on an IEP and the AACPS has encountered and provided appropriate programming and placement for such children on many occasions. To that end, Ms. [REDACTED] testified that the fact that a student might have many sources of impact, however, does not automatically mean that student's disabilities are severe or that he requires intensive educational intervention in every area. Rather, Ms. [REDACTED] testified, his educators must consider the whole student and discern his strengths and weaknesses to determine how much support he requires.

Ms. [REDACTED] conceded that the Student has attentional deficits and his seventh grade IEP included a goal that he sustain attention to a task for up to ten minutes with no more than one verbal prompt. That goal was amended for his eighth grade IEP, increasing the time the Student would be expected to sustain attention without a verbal prompt to fifteen minutes. Contrary to Mr. [REDACTED] testimony, Ms. [REDACTED] testified that in her experience working with and observing middle school students, maintaining attention for fifteen minutes with only one prompt to do so was an average expectation for any middle school child. Ms. [REDACTED] testified that despite his somewhat significant attentional weakness in his elementary years, the Student has become much better able to maintain his focus for a more sustained period of time.

Similarly, Ms. [REDACTED] testified that based upon the Student's academic history, including reports and data provided by [REDACTED] the Student had shed many of the behavioral weaknesses he displayed in his elementary years at [REDACTED]. The Student was participating in class, putting forth effort to complete work - even when it was difficult, and he was self-advocating, seeking assistance from his teachers when he found the work difficult.

Ms. [REDACTED] testified that she observed the Student participating in his math, Language Arts and Social Studies classes when she observed him in on February 26 and March 5, 2019. Even though the Student was quieter and less participatory in social studies than when she observed the Student in Language Arts, he still participated. This behavior, Ms. [REDACTED] testified, was consistent with what Mr. [REDACTED] reported on his fall 2018 progress report, on which he rated the Student as secure with the grade-level content, work habits and behaviors in social studies. Ms. [REDACTED] testified that considering the Student's improved attention and behavior, the supports and services included in his IEP, and the adult support TSA that would be present in his co-taught general education and Encore classes, the Student would be able to access the instruction in those classes with the accommodations, supports, and services included in his August 2018 and April 2019 IEPs.

Ms. [REDACTED] and Ms. [REDACTED] testified that the middle school social studies and science curricula at [REDACTED] includes built-in transitions every ten to fifteen minutes throughout the classes. [REDACTED] uses this transitional model, explained Ms. [REDACTED] because middle school age students are generally unable to sustain attention for a fifty-minute class. Ms. [REDACTED] explained that this transitional model lent would mesh nicely with the Student's IEP goal that he would maintain attention with only one prompt for fifteen minutes was based on the established transitions within each class.



Ms. [REDACTED] conceded that the Student maintained weaknesses in aspects of writing, phonemic reading and math computation. He was working significantly below grade level in math being instructed with a fourth-grade level so he was missing math foundational skills that would be required to access a seventh-grade curriculum without very intensive supports. Similarly, the Student had not mastered phonemic and coding foundational skills that assist with inferential reading and comprehension.

Furthermore, Ms. [REDACTED] acknowledged that the Student's weaknesses in language/reading had the potential to cause great impact on his ability to access the grade-level curriculum in Language Arts. Specifically, she testified that the 7<sup>th</sup>-grade curriculum calls for students to begin to synthesize multiple texts rather than just analyzing one text at a time. This synthesis, explained Ms. [REDACTED] requires inferencing, which was a displayed weakness for the Student. The Student's weaknesses with inferencing was compounded by a weakness in written expression. Therefore, the IEP team determined the Student required a self-contained Language Arts class to allow for the intense interventions necessary to make him able to access the 7<sup>th</sup> grade curricular content.

Ms. [REDACTED] testified that in the Student's self-contained special education Language Arts class, his teachers would instruct him using the Wilson reading intervention, which is designed to bolster phonemic awareness and individual letter sounds, which are areas where the Student has difficulty. Much like his reading intervention at [REDACTED] Ms. [REDACTED] explained that he would have been given the opportunity to generalize the discrete skills he learned in his self-contained class across his other subject matters.

Furthermore, to address his difficulties with writing, The Student's teachers would have used the Lucy Calkins writing intervention, where students move through multiple steps to learn

how to draft a complete piece of writing. Ms. [REDACTED] further explained that in his self-contained math class, the Student would receive instruction with CRA, a research-based math intervention, in which problem solving is separated into three different progressive instruction modes. Students instructed with CRA, explained Ms. [REDACTED] move from the concrete modality, in which teachers use physical models to assist students with visualizing a math problem. Once mastered, the teacher instructs students using a representational construct, in which the Student uses tally marks. Finally, the Student moves to the abstract portion of instruction by using numbers and operational signs. Similar to the intervention programs use at [REDACTED] the Student's reading, writing, and math interventions at [REDACTED] would have been provide in small self-contained classes, from one to four students. She further testified that the Student's exposure to the strategies and skills he learned in the self-contained special education classes could then be used throughout the rest of his school day in his science, social studies, and Encore classes.

Although the Student had difficulties making inferences, a skill necessary for reading comprehension in Language Arts, Ms. [REDACTED] explained that the Student displayed relative strengths related to reading comprehension and fluency. [REDACTED] reported the Student had been reading on grade-level and according to the work samples provided by [REDACTED] the Student's reading fluency at the end of sixth grade was average for his grade level. The work samples provided by [REDACTED] also indicated that the Student scored 100% on work which required the Student to find foundational information from a text, which showed his reading comprehension was a strength. The IEP team determined that in light of the Student's relative strengths in reading, his special education instruction in co-taught social studies and science classes was appropriate. This is because the students work in small groups, participating in mini-lessons

throughout the day and week, during which a special educator or general educator can address any perceived deficits. This model of presenting the curriculum, explained Ms. [REDACTED] and Ms. [REDACTED] would be consistent with the recommendation in his IEPs that the Student be taught academic materials in “chunks” and would allow space and time for the special educator or general educator to check in with the Student to make sure he was grasping the material.

Ms. [REDACTED] and Ms. [REDACTED] testified that the Student has a strong interest and background in history and his parents have traveled extensively with him which has bolstered his interest in history and provided him with a strong general fund of knowledge most students do not have. Coupled with his strong vocabulary skills, eagerness to learn and class participation, and the fact that the Student’s teachers reported he was progressing in those classes on grade-level, Ms. [REDACTED] testified the appropriate placement for the Student in social studies and science in seventh grade was in the general education class, with the supports dictated by his IEP.

Regarding the Encore classes such as art, music and physical education, Ms. [REDACTED] pointed to the fact that the Student has participated in extracurricular activities since he was very young, including boy scouts, martial arts, and church activities. Furthermore, Ms. [REDACTED] testified that all of the Student’s supplementary services would be provided in the Student’s Encore classes. To that end, Ms. [REDACTED] and Ms. [REDACTED] testified that the special educators at [REDACTED] collaborate with Encore teachers and assist them with modifying the delivery and instruction and assignments based on the student’s needs. For instance, explained Ms. [REDACTED] if an Encore class required more writing, the special educator would collaborate with the teacher to modify the assignment or advise the teacher how to break it down into chunks and scaffold it

so the Student could participate in the assignment. Ms. [REDACTED] applied the same reasoning to the IEP the team developed in March and April 2019.

Ms. [REDACTED] and Ms. [REDACTED] offered the opinion that the Student has a variety of strengths that allow him to participate with non-disabled peers and benefit from the experience as well. Regarding the Student's reported anxiety, Ms. [REDACTED] testified that the supplementary aids and services on the Student's IEP are designed to reduce the classroom demands that might spur anxiety in the Student, including a copy of the teacher's notes and chunking of assignments into smaller sections. Ms. [REDACTED] explained that by placing the Student in classes with non-disabled peers, the Student would be in a situation to expand his vocabulary, social experiences and knowledge.

Regarding re-evaluating the Student, Ms. [REDACTED] testified that the AACPS believed the 2016 Neuropsychological Assessment administered by Dr. [REDACTED] Dr. [REDACTED] 2017 AACPS Psychological Evaluation, Ms. [REDACTED] academic assessments and data from [REDACTED] and the Parents were sufficient for the purposes of identifying the Student's Present Level of Academic Achievement and Foundational Performance. and she did not believe the AACPS needed to obtain updated testing when developing the August 2018 and March/April 2019 IEPs.

Ultimately, Ms. [REDACTED] testified that having worked as the IEP facilitator at [REDACTED] for seven years, she is very familiar with the special education program and in her opinion, having considered the Student's strengths and weaknesses, the proposed placement of the Student at [REDACTED] was appropriate and constituted the LRE for the Student during his seventh and eighth grade school years.

Dr. [REDACTED] who conducted a psychological assessment of the Student in June 2017, testified that the results of her assessment revealed the same deficits in conceptual thinking, fine

motor skills, working memory, attention and behaviors as the other psychological and neuropsychological evaluations that have been administered to the Student. In addition to the standardized assessment, Dr. [REDACTED] testified that she conducted an observation of the Student at [REDACTED] in his Language Arts class and in his English class. In his Language Arts class, Dr. [REDACTED] reported that she observed the Student to be on task 83% of the time which she determined to be a positive result.

In English, the Student responded to teacher requests, voluntarily participated and appeared to enjoy the class. He collected papers, completed his work, and was able to initiate tasks on his own. Dr. [REDACTED] noted that a teacher frequently checked in with the Student to help him scaffold and organize the task he was completing.

Dr. [REDACTED] acknowledged that the Student displayed attentional deficits and some inappropriate behaviors during her observations which were consistent with the results of his assessment; however, she found that during those instances of off-task behavior, whether in class or during the assessment, the Student was easily redirected by the teacher or Dr. [REDACTED]. This, explained Dr. [REDACTED] led her to conclude that the attention and behavior areas of weakness identified in the Student's assessment results were not as much of a factor in the classroom because he was provided with teacher support and had developed compensatory strategies to overcome those weaknesses and areas of difficulty. In fact, Dr. [REDACTED] testified that the Student had some level of insight into his strengths and weaknesses and he had learned to advocate for himself in light of that insight. Once a student obtains regulating tools such as easy redirectibility, self-advocacy and insight, explained Dr. [REDACTED] those tools can be applied in various settings as long as there is appropriate support to reinforce those strengths.

Dr. ██████ testified that as part of the collaborative process for determining the clinical and practical aspects of the Student's educational profiles, she developed a list of recommendations that would appropriately support the student in his educational setting. Dr. ██████ testified that she is familiar with the special education program at ██████ and offered the opinion that ██████ could have implemented the supports and accommodations she recommended in her psychological report; further, she testified that with those supports, ██████ constituted an appropriate placement for the Student.

Dr. ██████ stressed that she believed that the Student would derive great value from being in classes with his non-disabled peers. To that end, she explained that although it is important to attend to a child's educational needs, it is also important to provide that child with social experiences and situations typical for his age. Dr. ██████ opined that in light of the Student's general fund of knowledge, he would benefit from more integration into his community, which would provide peer models for academic skills, behavioral skills, and social skills.

The AACPS relied on Dr. ██████ testing as part of the foundation for its development of the Student's Present Levels of Academic Achievement and Functional Performance, appropriate goals and objectives and services and accommodations that would address the Student's ongoing demonstrated weaknesses. While the timing of the August 2018 IEP Team meeting precluded AACPS personnel from observing the Student in the classroom prior to that meeting,<sup>27</sup> Ms. ██████ and Ms. ██████ observed the Student in the classroom setting at ██████ and essentially came to the same conclusion as Ms. ██████ regarding the impact of the

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<sup>27</sup> The Parents intimated that because the Student was being tutored by Mr. ██████ during the Summer 2018, the AACPS could have requested to observe a tutoring session. The Parents, however, offered no explanation of how a private tutoring session would yield relevant data about how the Student was performing in the classroom setting.

Student's behavioral and academic weaknesses and strengths on his ability to access the academic content with appropriate supports and services.

Ms. Donahue testified that in her role as the ACCPS Coordinator of Interagency and Nonpublic Placement she helps to determine the appropriate placement for a student with disabilities – usually when no school within the County has a placement that can implement the student's IEP and address the student's needs. When that happens, explained Ms. Donahue, her office looks outside of the the AACPS for a non-public placement. Ms. Donahue further explained that placement in a non-public school is considered the more restrictive setting than a public-school placement. Ms. Donahue testified that she is familiar with [REDACTED] and she is familiar with the Student, having testified at the hearing before ALJ Andrews in 2017.

Ms. Donahue agreed with the other the AACPS witnesses that in light of the Student's strong verbal communication skills, his ability to interact with peers and adults, his strong fund of background knowledge, and his reported participation and motivation to learn, [REDACTED] constituted the LRE for the Student. Supporting her opinion was the fact that when prompted with a tap on the paper or stating his name, the Student modified his behavior and was easily redirected, which is appropriate for middle school. Furthermore, like Ms. [REDACTED] Ms. Donahue testified that according to the Student's progress reports, he is academically progressing; reading on grade level and accessing the social studies and science curriculum at grade level. This, explained Ms. Donahue, proves that the Student is sufficiently competent and independent in those academic areas. Noting the Student is not as secure in math and writing, Ms. Donahue testified that these areas of strengths and weaknesses have been consistent for the Student, having only slightly improved in the last two years. With the goals and objectives,

accommodations and supports and services on his IEPs, Ms. Donahue opined that the Student's weaknesses could be well managed in the special education program at [REDACTED]

Ms. Donahue further explained that her office places students in non-public schools typically when they not only have deficit in academic skills, but also have deficits in their behaviors, such as readiness for participation, inability to accept redirection, and interaction with peers and adults. Ms. Donahue testified that she has learned that not only does the Student respond well to redirection, within the last few years, he also has become aware of his strengths and weaknesses and learned to advocate for himself when he realizes he is in an area where he needs assistance. Ms. Donahue testified that in her position as Coordinator of Nonpublic Placement, she encounters students with many different academic profiles, and she has placed some of these students in non-public placements when their disabilities precluded them from learning in a less restrictive environment. Based on that experience, Ms. Donahue testified that the Student did not require a non-public placement at [REDACTED]

### **Analysis**

***The AACPS' proposed placement of the Student in the special education program at [REDACTED] was appropriate and designed to provide the Student with a FAPE***

There is no dispute in this case that the Student has experienced areas of weakness that have impacted him throughout his educational experience, including those in fine motor functioning, written expression, phonemic literacy, executive functioning, math calculation, attention, and interruptive behaviors. Indeed, according to the results of Dr. [REDACTED] June 2 and June 5, 2017 Psychological Re-evaluation Assessment, like his earlier years at [REDACTED] the Student continued to show difficulty with aspects of his intellectual functioning.

Ms. [REDACTED] reported that the results her May 2017 academic testing of the Student's demonstrated that while the Student performed in the average range for vocabulary, fluency, and



comprehension, he was still struggling with more complex tasks requiring inferencing, and the application of decoding and as of her. In math, Ms. ██████ noted that the Student grasped basic math concepts like counting, identifying math symbols and one-to-one correspondence, but he had significant difficulty with problem solving and employing mathematic strategies to tackle problems. These were foundational skills that placed the Student well below grade level and were weakness that were present in the third, fourth and fifth grades and they were present when the AACPS developed the Student's seventh and eighth grade IEPs.

I find, however, that Ms. ██████ and Ms. ██████ amply explained that the special education program it proposed for the Student was designed to address those weaknesses. Specifically, in his self-contained special education Language Arts class at ██████ the Student would have been instructed using research-based and proven reading and writing interventions that to bolster his areas of weakness. The Student could then use these learned foundational skills in social studies and science, combining them with his strengths in general reading fluency, his general fund of knowledge, and his interest in in those subjects. Similarly, in his small self-contained math class, the Student would have had intensive instruction using the research-based CRA modality. All of the intensive programs would have been provided in classroom with one-to-four students where the Student would have had available to him the support of the special education teacher, his TSA, and an instructional aide. I conclude that the interventions proposed by the AACPS for the Student's seventh and eighth grade years sound substantially similar to those that were provided at ██████ and were designed to be delivered with intensity and fidelity as Dr. ██████ testified was necessary for a child like the Student with significant phonemic and math computational deficits.

Furthermore, there is significant evidence that as of the seventh grade, the Student's behaviors and attention had improved to the extent that he would have ready to move from the more restrictive setting at [REDACTED] to a more generalized setting at [REDACTED]. As of fall 2017, the Student had been taking [REDACTED] a medication to mitigate attention weaknesses associated with ADHD. In her 2017 Psychological Re-evaluation report, Dr. [REDACTED] reported that during her observation of the Student, although he became distracted, he maintained attention 83% of the time over the duration of the observation. She also reported that when the Student became distracted or exhibited inappropriate behaviors, he was easily redirected. Ms. [REDACTED] reported much of the same regarding her observation of the Student.

Dr. [REDACTED] and the Student's teacher in seventh and eighth grade, Mr. [REDACTED] reported that during the seventh and eighth grades, the Student would periodically become distracted, make noises or talk in a silly voice. Also, like Ms. [REDACTED] and Dr. [REDACTED] Mr. [REDACTED] testified that when these instances arose, the Student could be easily redirected with a tap on his paper or the mention of his name. This Student's positive response to redirection is recounted in the progress reports provided by the Student's instructors at [REDACTED]. Furthermore, Dr. [REDACTED] Dr. [REDACTED] Ms. [REDACTED] Dr. [REDACTED] and Mr. [REDACTED] all reported that during their respective interviews with the Student, he was sociable and attended to the conversation without noticeable distractibility or inattention. during their various interviews with him. Indeed, in his February 2016 Neuropsychological Report, Dr. [REDACTED] reported the following when he first interviewed and assessed the Student in February 2016:

[The Student] was quite distractible, impulsive and restless throughout the assessment. At times he would rush through tasks while other times he would run out of time. He required frequent verbal redirection and prompts to sustain his

performance. . . . [The Student] seemed to comprehend the task well, but simply could not direct his visual attention consistently to the screen.

(P - 2)

By his September 2019 neuropsychological re-evaluation of the Student, Dr. [REDACTED] noted that although the Student was initially somewhat distracted during his interview with the Student, he was easily redirectable and he testified the Student was much better able to concentrate on completing the assessments that he was in 2016. Dr. [REDACTED] attributed this increased attention to a number of things, including the instruction the Student received at [REDACTED] small class sizes, parenting, maturation, and the fact that he has been taking [REDACTED] to assist with attention.

It is clear, that whether the Student's improved attention and behaviors result from maturity, the medication [REDACTED] [REDACTED] and the Parents' consistent work with him to or a combination of some or all of those things, as of the date of the August 2018 and April 2019 IEPs, the Student had developed strategies to mitigate his inattention and distracting behaviors, which made him better prepared to move to a less restrictive educational environment.

The crux of the Parents' disagreement with partial placement in general education classes is that the classes would be too large for the Student to be able to keep up with the academic content in light of his weaknesses. They are that the Student's academic success at [REDACTED] in small class sizes with low student to teacher ratios, is decisive evidence that the placement at [REDACTED] is the only option for ensuring that the Student continues to make reasonable academic progress. Although Dr. [REDACTED] Dr. [REDACTED] Mr. [REDACTED] and [REDACTED] agreed that the Student required supports, such as breaking down material into chunked sections, repeating instructions and checking with the Student for comprehension, they believed that even in the co-taught

model, the Student's teachers would not have sufficient time to provide him with the supports and services crucial to his success. I find that argument unpersuasive.

First, Ms. [REDACTED] and Ms. [REDACTED] made it clear that the science and social studies model for all students at [REDACTED] involves being separated into smaller groups of students that come closest to sharing each other's educational profile. Using this format, Students move in ten-to-fifteen increments to different stations to study different aspects of a given topic. This small group model, explained Ms. [REDACTED] and Ms. [REDACTED] enables the general education teacher and the special education teacher to move from group to group offering more direct guidance for the Students. Accordingly, although the Student would have been in a large classroom in his smaller group, he would have been able to receive more targeted support.

Neither Dr. [REDACTED] nor Mr. [REDACTED] acknowledged that the Student would be co-taught and receive special education instruction from a special educator in his social studies and science classes. The Student's mother focused on her belief that notwithstanding the supports, accommodations and services included in the Student's IEP, based on her experience working in Montgomery County Public Schools and her knowledge of the heavy demands on teachers to teach students at various levels of competency, she doubted the Student's teaching staff in the social studies and science classes would have the time to adequately support the Student in accord with his IEP. I disagree.

I agree with the AACPS witnesses that in light of the strategies the Student had as of the seventh grade to maintain attention, avoid distracting behaviors, his ability to advocate for himself, his interests in science and social studies, his large general fund of knowledge and the small group transitional structure of the science and social studies teaching model, the preponderance of the evidence shows that the AACPS would have been able to implement the

supports, accommodations and services in his IEP to allow him to access the curriculum in those classes and make meaningful educational progress.

Furthermore, none of the Parents' witnesses offered their opinion about the substantive impact the proposed TSA would have had on the Student's ability to access classroom content. Rather, Dr. [REDACTED] and the Student's mother testified that he worried, in light of the Student's history of anxiety, having an assistant might cause the Student to withdraw from class participation and result in his needs being overlooked. The Student's mother testified that the Student would feel singled out and embarrassed with a dedicated aide following him from class to class and the Parents argued that pursuant to *Board of Education of Frederick County v. I.S. ex rel Summers*,<sup>28</sup> the provision of a one-to-one aide is more restrictive than placement in a private self-contained education program.

Regarding the Student's anxiety, the Parents and Dr. [REDACTED] testified that historically, the Student's anxiety was triggered when he is introduced to new situations and new people and when he becomes frustrated and avoids work that he finds difficult or uninteresting. Regarding the Student's anxiety, Dr. [REDACTED] testified as follows:

. . . [A]nxiety escalates when children find they're increasingly unable to meet the challenges of their world. And I think that progressed early on through elementary school we were seeing an increasing rate of anxiety . . . . And so, even the transition to [REDACTED] doesn't end on that day. He's - - he's got to be there for a while to have confidence in the learning. To develop confidence in himself. To recognize he can navigate the curriculum and that he can navigate the peer group. And as that happened over time, his symptoms progressively decreased.

(T.404).<sup>29</sup>

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<sup>28</sup> 325 F. Supp. 2d 565 (D. Md. 2004).

<sup>29</sup> Dr. [REDACTED] further offered that fairly hyperbolic testimony that anxiety in children can lead to suicide which she testified, without corroboration, that suicide is a problem in the County schools.

I have no reason to doubt these sources of the Student's anxiety. However, the Parents offered no evidence that anxiety that was the result of being introduced to a new situation, or due to the difficult nature of the work, would translate into anxiety related to the presence of a dedicated aide. Indeed, since the second grade, the Student has received significant one-one-one assistance from the educational staff at [REDACTED] and once the Student became acclimated at [REDACTED] with this support, he demonstrated an ability to achieve cognizable academic gain. In their observations, AACPS personnel witnessed the Student receiving ample support from his teachers. Specifically, Dr. [REDACTED] reported that during her observation of the Student in Math, the Student's teacher had to offer multiple instances of one-on-one assistance in helping when the Student had great difficulty solving a math problem. Although he was frustrated, Dr. [REDACTED] testified he persevered and finally figured out how to answer the problem.

I certainly understand the Parents' and Dr. [REDACTED] concern that the Student might potentially be embarrassed by having an adult assistant follow him around. As the Student would have been in a new and larger educational atmosphere and exposed to all of the anxieties related to adolescence, there is certainly the *potential* that he might have become anxious in light of the novelty of the placement and location and the presence of an aide. However, to determine that such a possibility should preclude placement in the program endorsed by the AACPS and the IEP team puts the cart before the horse. Under the IDEA, had the Student developed impactful anxiety as a result of the presence of the TSA, the Parents and the AACPS could have reevaluated the need for the TSA and worked collaboratively to agree on an alternative approach for the Student. I conclude that the Parents have presented insufficient evidence to connect the Student's historical anxiety related to new situations and difficult work to their concern that the Student might develop anxiety as a result of the presence of a TSA. Accordingly, I give little

weight to the Parent's argument that the provision of the TSA would have been detrimental to the Student.

Further, I note that the Parents' reliance on *I.S.* is misplaced. In that case, the student had an undiagnosed [REDACTED] nervous system disability that severely limited her ability to communicate or interact with anyone, including peers. The dedicated aide was observed sitting directly in front of the student in the public-school classroom, blocking the student's view from the teacher.<sup>30</sup> The District Court agreed with the ALJ's determination that, given the situation, the aide was serving as a filter or conduit through which the student was receiving academic input. That is, the level of interaction with the aide was at such a great degree that the aide would have precluded Student from working on her goal of socialization. *Id.*

The situation in *I.S.* is wholly distinguishable from the circumstances in this case. There has been no evidence presented that the Student has difficulty communicating – in fact, he has consistently been described and engaging in age-appropriate reciprocal communication. Furthermore, the credible evidence of record is that although the TSA that would have been assigned to the Student would have traveled with the Student throughout his day, in the program placement proposed by the AACPS, his assigned TSA would have been trained to be inconspicuous and provide assistance to the Student only when needed.

For these reasons, I conclude the August 2018 and April 2019 were reasonably developed to allow the Student to make meaningful educational progress in light of his circumstances.

*Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017).

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<sup>30</sup> *I.S.*, 325 F.Supp.2d at 582.

***The AACPS' experts' testimony is entitled to more weight than the Parents' experts***

In concluding that the IEPs proposed by the AACPS were appropriate, I assigned substantially more weight to the AACPS' experts than I do to the Parents' experts.

In *Tice v. Botetourt County Sch. Bd.*,<sup>31</sup> and *A.B. ex. rel. D.B. v. Lawson*,<sup>32</sup> the United States Court of Appeals for the Fourth Circuit (Court of Appeals) held that “once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second guess the judgment of education professionals.<sup>33</sup> Certainly local education agencies are not entitled to unmitigated deference. As the Court of Appeals pointed out in *A.B.*, “whether an IEP is appropriate is a question of fact.” Accordingly, in the context of an administrative hearing, the deference due to the opinion of the local education agency in crafting an IEP is appropriate only when that local education agency presents sufficient facts to support the conclusion that the IEPs were reasonably calculated to provide the Student with FAPE. Indeed, I conclude that to assign blanket presumptive weight to the school system’s IEP determinations would result in raising the Parents’ burden from a preponderance of the evidence standard to something more akin to a clear and convincing standard. In this matter, however, I conclude it is clear that the AACPS witnesses in this case are entitled to greater deference and weight than the Parents’ witnesses.

Dr. [REDACTED] testified that clinical psychology and school psychology are related. Clinical psychologists typically conduct assessments with an eye toward providing a mental health diagnosis. Clinical psychologists then are involved in creating treatment plans based on diagnoses. School Psychologists have specific training in mental health and learning behavior, and education to learn how to service students in the school setting. School psychologists are

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<sup>31</sup> 908 F.2d 1200 (4th Cir.1990).

<sup>32</sup> 354 F.3d 315, 325–26 (4th Cir. 2004)

<sup>33</sup> *Id.*, quoting *Tice* at 1207-08



trained to collaborate with school staff, administrators, students and their families to help children succeed academically, socially, emotionally, and behaviorally. Both clinical psychologists and school psychologists are extensively trained and conduct similar assessments of children and students, but, Dr. [REDACTED] testified that the IDEA mandates that IEP teams work collaboratively and rely on multiple sources of data and perspectives to reach an appropriate placement for a student.

Dr. [REDACTED] concurred with Dr. [REDACTED] explanation of the difference between the different practice and goals related to clinical psychology and school psychology and the IDEA's preference for the collaborative approach contemplated by school psychology rather than reliance on the clinical model.

Dr. [REDACTED] is a clinical psychologist. While Dr. [REDACTED] is also a clinical psychologist, she has completed higher education coursework and received higher-level credentials as a school psychologist. By no means does the differentiation in the focus of clinical and school psychology mean that Dr. [REDACTED] testimony should be automatically afforded less weight. Indeed, Dr. [REDACTED] offered exemplary, instructive testimony regarding how the Student is impacted by his cognitive and academic weaknesses related to working memory, fine, visual motor and perceptual organization skills. Indeed, I found Dr. [REDACTED] equation of an IQ to an iceberg to be a very clear example that I will, candidly, rely upon as simple and clarifying way to understand the practical and formative aspects of cognition. Dr. [REDACTED] testified that based on his testing of the Student, neuropsychologically, he has difficulties with fine, visual motor and perceptual organization deficits, which continued to impact him at the time of the development of the August 2018 and April 2019 IEPs. Dr. [REDACTED] offered the opinion that in order to tease out

the processes under the water that are negatively impacting the Student, he needs specialized, individualized education in small class sizes.

While I do not doubt Dr. [REDACTED] explanation of the presence of the Student's underlying weaknesses, I find it seemed to lack a critical element necessary to determining whether a student can, does, or will be able to access academic content in a given academic setting -- a practical consideration of whether, given strategies, supports and services, the student *can* or *does* access academic content to the extent that he makes meaningful educational progress in a given setting. Dr. [REDACTED] did not observe the Student in any setting except his practice. And while I find no error in relying on the assessment data and the anecdotal data provided by the Student, his educators, and his parents, it seems he overlooked a critical piece of data – that despite his historical attention and behavioral issues and despite his math computation issues, the Student had indeed made practical gains in these areas when compared to his 2016 evaluation. That those gains were made at [REDACTED] does not automatically mean that they could *only* have been made at [REDACTED] – it means that given the right strategies and interventions, the Student had the capacity to make academic and behavioral gains. The part of the Student's iceberg under the water provided the Student with enough tools to make progress. I found Dr. [REDACTED] conclusion that based upon the educational model calling for a collaborative approach to determining what strategies, services and accommodations are both clinically and practically necessary to provide the Student with a educationally beneficial model for FAPE in the LRE more compelling and comprehensive than Dr. [REDACTED] largely clinical opinion. Accordingly, I gave it more weight.

Like Dr. [REDACTED] I found Dr. [REDACTED] and Mr. [REDACTED] educational credentials to be quite impressive. The evidence in this case is clear that the academic and behavioral strategies [REDACTED] used in educating the Student were quite successful. As [REDACTED] founder, I can only

conclude that Dr. [REDACTED] used her considerable experience and history teaching students with learning disabilities like the Student's to establish the educational model that benefitted the Student. However, other than documentation and information she received in and after February 2020, Dr. [REDACTED] has not personally been a part of the Student's education. She did not help to develop the Student's IEPs; she did not attend IEP meetings; she did not visit [REDACTED] and other than coming into contact with the Student when she was observing a different student at [REDACTED] she has not substantively observed the Student at [REDACTED]. In fact, Dr. [REDACTED] was initially requested to assist the Student with identifying an appropriate high school for the Student. Although she did conduct a short interview with the Student by video, she did not report that the interview resulted in any independent substantive academic or behavioral information about the Student that might influence the determination in this case.

Dr. [REDACTED] conceded there is value in observing a student in the school setting because it allows educators to experience how a student handles himself in class, including how often he interrupts, follows instructions, whether he can work independently, or is displaying antagonistic behavior.

Similarly, Mr. [REDACTED] understanding of who the Student is as a learner as driven largely by the Parents' report, his review of data, and a short interview with the Student. Like Dr. [REDACTED] he did not observe the Student at [REDACTED] or at [REDACTED] and he did not visit the [REDACTED] program. He did speak with Ms. [REDACTED] who informed him about the [REDACTED] special education program.

By contrast, other than Ms. [REDACTED] and Ms. Donahue, all of the other AACPS witnesses worked to collect data, correspond with the Student's teachers at [REDACTED] worked collaboratively with IEP teams to develop the Student's IEPs, and had observed the Student at [REDACTED] Ms.

██████ interviewed the Student and participated in the IEP process. Ms. Donahue's experience reviewing Student's profiles with the eye toward making non-public placements puts her in a unique position to understand what factors dictate placement of a student in a more restrictive setting. Each of the AACPS' witnesses have worked in the collaborative world of developing, implementing, reviewing and revising IEPs for decades and the evidence of record demonstrates that these witnesses took every step possible toward developing a wholistic view of the Student. Of course, they could not observe the Student at ██████ because Student had been unilaterally placed by the Parents at ██████. Regardless, I conclude by virtue of their greater familiarity with the Student and immersion in the process of developing the Student's IEPs and placement of students, generally, their testimony is entitled to greater weight than that of Dr. ██████ and Mr. ██████ whose familiarity with the Student began after the IEP process and in anticipation for a hearing.

Regarding Mr. ██████ I acknowledge, as the Parents point out, he was the only witness to actually teach the Student. His dedication to teaching is unquestionable, having studied and worked in education for over a decade. However, although he has completed the coursework to obtain his special education certification, as of the date of the hearing, he had not received it. Furthermore, according to his testimony, except for a three-week training course given by ██████ that immediately preceded the first semester he began teaching the Student, Mr. ██████ did not have any experience as a special education teacher.

I do not doubt that Mr. ██████ is a good teacher and it is clear he has made an educational and personal impact on the Student. However, when contrasted with the decades of experience in special education held by the AACPS witnesses, I cannot give his opinion equal weight.

***The [REDACTED] staff's opinion about the proper placement for the Student would not have impacted the placement determination***

The Parents argue that the AACPS failed to obtain a critical piece of information before making its placement determinations – it failed to obtain the [REDACTED] staff's opinion on the proper placement for the Student. Ms. [REDACTED] conceded that in making its placement determination, [REDACTED] perspective would have been helpful. To that end, Ms. [REDACTED] testified that in the spirit of the collaborative IEP process, any data is welcome if it will inform the team's decision on any aspect of the Student's IEP. Indeed, the record is rife with AACPS's attempts to obtain information from [REDACTED]. Regarding the August 2019 IEP meeting, on March 26, 2018, Ms. [REDACTED] contacted [REDACTED] Director [REDACTED] inviting a member of the [REDACTED] Staff to attend an upcoming ESY meeting tentatively scheduled for April 4 or April 18, 2018. (AACPS – 13) On June 6, 2018, Ms. [REDACTED] requested that [REDACTED] School Psychologist [REDACTED] provide the AACPS with any updated assessment and academic data, (AACPS - 15) and Ms. [REDACTED] provide that data on June 11, 2018. (AACPS – 14 and AACPS – 15). On June 19, 2018, Ms. [REDACTED] sent an email to [REDACTED] Director of Education [REDACTED] requesting [REDACTED] grading standards and on that same day, Ms. [REDACTED] responded with those standards (AACPS 18).

Furthermore, between June 6 and August 17, 2018, Ms. [REDACTED] made consistent efforts to schedule an annual IEP team meeting when the Parents would be available. Ms. [REDACTED] was unclear if ultimately, the AACPS invited a member of the [REDACTED] staff for the August 2018 IEP meeting but vaguely recalled that by the time the AACPS was able to establish the August 20, 2018 IEP meeting date, the [REDACTED] staff was unavailable due to summer vacation. Regardless of the reason why no one from [REDACTED] participated in the August 2018 IEP team meeting, I conclude that the AACPS did not intentionally exclude [REDACTED] input. To so conclude would be

inconsistent with the AACPS' consistent attempts to obtain updated data from [REDACTED] to assist in the development of the Student's IEP.

Additionally, the IDEA dictates who may be a member of the IEP team and states that the IEP team may include "at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate."<sup>34</sup> Accordingly, either the Parents or the AACPS could have invited the [REDACTED] staff to any IEP meeting if they believed that their input would have been instructive. The Parents offered no evidence that they made any request that the AACPS invite a [REDACTED] representative to the August 2018 IEP meeting or made any attempt to invite such a representative themselves.

Four [REDACTED] representatives participated in the April 2019 IEP team meeting. Although there is no evidence in the record that those representatives offered their perspective on the Student's placement for the 2019-2020 school year, presumably, they *could* have offered that perspective at that time.

Ultimately, Ms. [REDACTED] testified that that she assumed [REDACTED] staff would have offered the opinion that the Student's proper placement was at [REDACTED]. While that information may have been relevant and constituted another point of data for the IEP team to consider, Ms. [REDACTED] testified that it would not have change its placement determination in light of the multiple other sources of data that supported the Student's placement at [REDACTED].

I have already determined that the AACPS' placement determination was appropriate.

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<sup>34</sup> 20 U.S.C.A. § 1414(a)(1)(d)(1)(B).

*The Special Education Program at ██████ constituted the LRE for the Student*

Although the Student has not been enrolled in the AACPS since the second grade, I found the AACPS experts were keenly aware of the Student's cognitive, academic, and socio-emotional history. They testified cogently and knowledgeably about the Student

All of the AACPS witnesses echoed the belief that the Student would derive great value from exposure to his non-disabled peers. They opined that contrary to the opinion expressed by the Parents' witnesses the nature and severity of the Student's disability does not merit wholly removing him from the general education setting. To the contrary, they testified that the diverse experiences learning disabled students experience when educated with non-disabled peers is important when it comes to exchanging ideas with students of varied backgrounds.

I also find compelling the AACPS' opinion that the nature and severity of the Student's disabilities do not warrant completely removing him from the general education setting. The ample evidence of record indicates that as of the seventh grade, the Student had developed strategies that allowed him to mitigate the attentional and behavioral effects of those disabilities. Where he still displayed academic deficits in written language, executive functioning and attention, the Student's IEP was rife with supports, accommodations and services that would allow him to access the educational content in a way that was tailored to result in reasonable academic progress.

Furthermore, at ██████ the Student would have been exposed to more extracurricular activities where he would be able to interact with both disabled and non-disabled peers in a number of socially engaging settings. Dr. ██████ Dr. ██████ and Mr. ██████ all agreed that the Student has participated in and enjoyed extracurricular activities such as Boy Scouts, church activities, soccer, biking, swimming and martial arts. Dr. ██████ Mr. ██████ the Student's mother, and Dr. ██████ each agreed that the Student was excited about attending Archbishop

██████ high school where there would be more opportunity to learn in a comprehensive high school setting and there would be more extracurricular options for the Student, such as robotics.

For these reasons, the preponderance of the evidence supports the conclusion that the LRE for the Student in seventh and eighth grades was the placement proposed by the AACPS at ██████ 20 U.S.C.A. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 through 300.120; COMAR 13A.05.01.10A(1); *Rowley*, 458 U.S. at 181 n.4; *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997); *see also Honig v. Doe*, 484 U.S. 305 (1988).

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that Anne Arundel County Public Schools provided the Student with Free Appropriate Public Education by developing and proposing implementation of an Individualized Education Program on and after August 30, 2018, recommending the Student's placement in an Anne Arundel County Public Schools program consisting of part-time instruction in a self-contained special education class and part-time instruction in general education with supports;

I further conclude that the Anne Arundel County Public Schools did not deny the Student a Free Appropriate Public Education by declining to place the Student full-time in a small self-contained classroom as the Least Restrictive Environment and Failing to utilize an appropriate approach to reading and writing instruction for the Student.

I further conclude that the Anne Arundel County Public Schools did not fail to utilize an appropriate approach to reading and writing instruction for the Student?



I further conclude the Student and the Parents are not entitled to reimbursement for the Student's enrollment at [REDACTED] for all or any portion of the 2018-2019 school year and they not entitled to placement at [REDACTED] or reimbursement for tuition for the 2019-2020 school year

**ORDER**

I **ORDER** that the Parents' April 20, 2020 Due Process Complaint is DENIED.

October 23, 2020  
Date Decision Issued

Jennifer M. Carter Jones  
Administrative Law Judge

JCJ/emh  
#188602

**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.

**Copies Emailed and Mailed to:**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
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████████████████████

STUDENT

v.

ANNE ARUNDEL COUNTY

PUBLIC SCHOOLS

BEFORE JENNIFER M. CARTER JONES,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-AARU-OT-20-09996

**APPENDIX: EXHIBIT LIST**

Unless otherwise noted, I admitted the following pre-marked exhibits into evidence on behalf of the Parents:

The Parents offered the following exhibits on its behalf, which I admitted into evidence

- P – 1. Request for Due Process, 4-15-20;
- P – 2. Neuropsychological Evaluation by Dr. ██████████ February 2016;
- P – 3. AACPS Academic Assessment Report, 5-12-17;
- P – 4. AACPS Psychological Assessment Report, 6-9-17;
- P – 5. AACPS Occupational Therapy Assessment Report, 6-9-17;
- P – 6. AACPS Observations in Math and Reading, undated;
- P – 7. Administrative Law Judge Decision, 7-14-17;
- P – 8. Letter to Alison Barmat serving notice, 8-17-17;
- P – 9. AACPS IEP, 6-15-18;
- P – 10. AACPS Prior Written Notice, 6-15-18;
- P – 11. Not offered
- P – 12. ██████████ School Parent/Teacher Conference Notes and Academic Data, June 2018;
- P – 13. Letter to Manisha Kavadi, Esq. serving notice, 8-6-18;
- P – 14. AACPS IEP, 8-20-18;
- P – 15. AACPS Prior Written Notice, 8-21-18;
- P – 16. Letters between Michael J. Eig, Esq. and Alison Barmat, Esq. regarding IEP and placement, 11-9-18 and 11-13-18;
- P – 17. ██████████ School Academic Data, October and November 2018;
- P – 18. ██████████ School Progress Reports, Fall 2018;
- P – 19. ██████████ School Math Intervention Data, Fall 2018;
- P – 20. ██████████ School Trimester 2 Report Card, March 2019;
- P – 21. AACPS Prior Written Notice, 3-18-19;
- P – 22. ██████████ School Academic Data, Spring 2019;

- P – 23. ██████ School Information for AACPS IEP Meeting, 4-29-19;
- P – 24. AACPS IEP, 4-29-19; +
- P – 25. AACPS Prior Written Notice, 4-29-19;
- P – 26. ██████ School Trimester 3 Report Card, June 2019;
- P – 27. Letter to Alison Barmat serving notice, 8-7-19;
- P – 28. Neuropsychological Re-evaluation by Dr. ██████ 9-4-19;
- P – 29. ██████ School Accommodations, September 2019;
- P – 30. ██████ School Progress Reports, Fall 2019;
- P – 31. ██████ School Academic Testing Data, Spring 2020;
- P – 32. ██████ School Trimester 3 Report Card, June 2020;
- P – 33. ██████ Occupational Therapy Documentation, 2010 to present;
- P – 34. Resume of ██████
- P – 35. Resume of Dr. ██████
- P – 36. Resume of Dr. ██████
- P – 37. Resume of ██████
- P – 38. Resume of ██████
- P – 39. Resume of ██████ ██████
- P – 40. ██████ School Student Awards

The AACPS offered the following exhibits on its behalf, which I admitted into evidence:<sup>35</sup>

- AACPS – 1 Referral for Re-evaluation, 1/31/17
- AACPS – 2 IEP Team Meeting Report/Prior Written Notice, 3/9/17
- AACPS – 3 Comprehensive Evaluation Review, 8/21/17
- AACPS – 4 AACPS Psychological Assessment Report, 6/9/17
- AACPS – 5 AACPS Academic Assessment Report, 5/12/17
- AACPS – 6 AACPS Record of Observation, 2017 – Math
- AACPS – 7 AACPS Record of Observation, 2017 – Reading
- AACPS – 8 AACPS Occupational Therapy Assessment Report, 6/9/17
- AACPS – 9 IEP Team Meeting Report/Prior Written Notice, 8/7/17
- AACPS – 10 IEP, 9/6/17
- AACPS – 11 Emails between parents and AACPS staff, 3/26/18 to 8/18/18
- AACPS – 12 Emails between ██████ and AACPS staff  
3/26/18 to 4/10/18
- AACPS – 13 Emails between ██████ and AACPS staff, 3/26/18 to 5/24/18
- AACPS - 14 Email from ██████ to AACPS staff enclosing work samples,  
6/11/18
- AACPS – 15 Email from ██████ to AACPS staff enclosing academic data,  
6/6/18
- AACPS – 16 Email from ██████ to AACPS staff enclosing ESY feedback,

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<sup>35</sup> A number of the exhibits were offered by both the Parents and AACPS. I have included a chart of cross-referenced admitted exhibits as an addendum to this decision.

6/14/18

AACPS – 17 IEP Team Meeting Report/Prior Written Notice and ESY IEP, 6/15/18

AACPS – 18 Emails between ██████████ to AACPS staff, 6/18/18 to 6/19/18

AACPS – 19 IEP Team Meeting Report/Prior Written Notice, 8/21/18

AACPS – 20 IEP, 8/20/18

AACPS – 21 Email and enclosed letter from M. Eig to AACPS, 11/9/18

AACPS – 22 Letter from AACPS to M. Eig, 11/13/18

AACPS – 23 Email from M. Eig’s office to AACPS, with attached documents from ██████████ 1/24/19

AACPS – 24 Emails between AACPS and parents, 2/4/19 to 2/12/19

AACPS – 25 Emails between ██████████ and AACPS staff, 2/25/19

AACPS – 26 Email from ██████████ to AACPS staff enclosing English slides, 2/26/19

AACPS – 27 Emails between AACPS and parents, 2/4/19 to 3/13/19

AACPS – 28 IEP Team Meeting Report/Prior Written Notice, 3/18/19

AACPS – 29 Email between ██████████ and AACPS staff regarding additional information requested, 3/19/19 to 3/21/19

AACPS – 30 Emails between ██████████ parents’ counsel, and AACPS staff, 3/21/19 to 3/25/19

AACPS – 31 Emails between ██████████ and AACPS staff regarding additional information requested, 3/21/19 to 4/8/19

AACPS – 32 Email from ██████████ to AACPS staff enclosing math benchmark, 4/29/19

AACPS – 33 IEP Team Meeting Report/Prior Written Notice, 4/29/19

AACPS – 34 IEP, 4/29/19

AACPS – 35 Transition Assessment, AACPS, 3/15/19

AACPS – 36 ██████████ School Progress Reports, 2019-2020, Fall 2019

AACPS – 37 Not offered

AACPS – 38 Emails between parents and AACPS staff, 5/28/19 to 6/3/19

AACPS – 39 Email from AACPS to parents, 6/4/19

AACPS – 40 Emails between parents and AACPS staff, 1/22/20 to 4/17/20

AACPS – 41 Emails between parents and AACPS staff, 3/9/20 to 4/19/20

AACPS – 42 Emails between ██████████ School and AACPS, 4/7/20 to 4/20/20

AACPS – 43 Emails between parents’ counsel and AACPS, 4/24/20 to 5/5/20

AACPS – 44 Emails from AACPS to parents, 5/29/20, 6/1/20

AACPS – 45 ██████████ v. Arlotto, C.A. No. RDB -17-3294 (D.Md. Sept. 14, 2018)

AACPS – 46 ██████████ v. Anne Arundel County Public Schools, OAH No. MSDE-AARU-OT-17-03664

AACPS – 47 Resume—██████████

AACPS – 48 Resume—██████████

AACPS – 49 Resume – Dr. ██████████

AACPS – 50 Not offered

AACPS – 51 Not offered

AACPS – 52 Resume—██████████

**OAH No. MSDE-AARU-OT-20-09996**

**ADDENDUM**

**Overlapping Exhibits**

AACPS – 1		Referral for Re-evaluation, 1/31/17
AACPS – 2		IEP Team Meeting Report/Prior Written Notice, 3/9/17
AACPS – 3		Comprehensive Evaluation Review, 8/21/17
AACPS - 4	P-4	AACPS Psychological Assessment Report, 6/9/17
AACPS – 5	P-3	AACPS Academic Assessment Report, 5/12/17
AACPS – 6	P-6	AACPS Record of Observation, 2017 – Math
AACPS – 7	P-6	AACPS Record of Observation, 2017 – Reading
AACPS – 8	P-5	AACPS Occupational Therapy Assessment Report, 6/9/17
AACPS – 9		IEP Team Meeting Report/Prior Written Notice, 8/7/17
AACPS – 10		IEP, 9/6/17
AACPS – 11		Emails between parents and AACPS staff, 3/26/18 to 8/18/18
AACPS – 12		Emails between [REDACTED] and AACPS staff 3/26/18 to 4/10/18
AACPS – 13		Emails between [REDACTED] and AACPS staff, 3/26/18 to 5/24/18
AACPS - 14		Email from [REDACTED] to AACPS staff enclosing work samples, 6/11/18
AACPS – 15		Email from [REDACTED] to AACPS staff enclosing academic data, 6/6/18
AACPS – 16	P-11(AA-16.3-16.4)	Email from [REDACTED] to AACPS staff enclosing ESY feedback, 6/14/18

AACPS – 17	P-9, P-10	IEP Team Meeting Report/Prior Written Notice and ESY IEP, 6/15/18
AACPS – 18		Emails between [REDACTED] to AACPS staff, 6/18/18 to 6/19/18
AACPS – 19	P-15	IEP Team Meeting Report/Prior Written Notice, 8/21/18
AACPS – 20	P-14	IEP, 8/20/18
AACPS – 21	P-16.1 = AA 21.2	Email and enclosed letter from M. Eig to AACPS, 11/9/18
AACPS – 22	P-16.2	Letter from AACPS to M. Eig, 11/13/18
AACPS – 23	P-17.1-17.2 = AA 23.2 - 23.3 P-17.3 = AA 23.30 – 23.33 P-18 = AA 23.8 - 23.29 P-19.1 = AA 23.7 P-19.2 = AA23.5 P-19.3 = AA 23.4	Email from M. Eig’s office to AACPS, with attached documents from [REDACTED] 1/24/19
AACPS – 24		Emails between AACPS and parents, 2/4/19 to 2/12/19
AACPS - 25		Emails between [REDACTED] and AACPS staff, 2/25/19
AACPS – 26		Email from [REDACTED] to AACPS staff enclosing English slides, 2/26/19
AACPS – 27		Emails between AACPS and parents, 2/4/19 to 3/13/19
AACPS – 28	P-21	IEP Team Meeting Report/Prior Written Notice, 3/18/19
AACPS – 29		Email between [REDACTED] and AACPS staff regarding additional information requested, 3/19/19 to 3/21/19

AACPS – 30		Emails between [REDACTED] parents’ counsel, and AACPS staff, 3/21/19 to 3/25/19
AACPS – 31		Emails between [REDACTED] and AACPS staff regarding additional information requested, 3/21/19 to 4/8/19
AACPS – 32	P-22	Email from [REDACTED] to AACPS staff enclosing math benchmark, 4/29/19 [AA -32 has the email cover sheet]
AACPS – 33	P-25	IEP Team Meeting Report/Prior Written Notice, 4/29/19
AACPS – 34	P-24	IEP, 4/29/19
AACPS – 35		Transition Assessment, AACPS, 3/15/19
AACPS – 36	P-30	[REDACTED] School Progress Reports, 2019-2020, Fall 2019
AACPS – 37		Emails between parents and AACPS staff, 5/8/19 to 5/23/19
AACPS – 38		Emails between parents and AACPS staff, 5/28/19 to 6/3/19
AACPS -- 39		Email from AACPS to parents, 6/4/19
AACPS – 40		Emails between parents and AACPS staff, 1/22/20 to 4/17/20
AACPS – 41		Emails between parents and AACPS staff, 3/9/20 to 4/19/20
AACPS - 42		Emails between [REDACTED] School and AACPS, 4/7/20 to 4/20/20
AACPS – 43		Emails between parents’ counsel and AACPS, 4/24/20 to 5/5/20
AACPS – 44		Emails from AACPS to parents, 5/29/20, 6/1/20



