

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

BEFORE JEROME WOODS, II,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-20-11499

DECISION

STATEMENT OF THE CASE
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CONCLUSION OF LAW
ORDER

STATEMENT OF THE CASE

On May 20, 2020, Michael Eig, Esq., on behalf of ██████████ and ██████████, the Student's Parents (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 Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. §§ 1400-1419 (2017).¹ On June 11, 2020, the parties participated in a resolution session and subsequently notified OAH on June 23, 2020, that the resolution session concluded without resolving the dispute.

¹ 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.

The Complaint alleges that MCPS violated the IDEA by denying the Student a free appropriate public education (FAPE) by failing to develop an Individualized Education Program (IEP) and placement that would address the unique needs of the Student for the 2019-2020 and 2020-2021 school years. The Student requests as a remedy that I find that MCPS failed to make FAPE available for the 2019-2020 and 2020-2021 school years and that MCPS reimburse the Parents for tuition and related expenses incurred as a result of the Parents' placement at the [REDACTED] [REDACTED] for the 2019-2020 school year, which they maintain is proper. The Student also requests that MCPS also pay for tuition at the [REDACTED] for the 2020-2021 school year.

This case is unfolding against a backdrop of COVID-19-related issues. On March 12, 2020, Governor Lawrence Hogan ordered Maryland Public Schools, which includes MCPS, to close from March 16 through March 27, 2020, to protect public health by limiting the spread of COVID-19. On March 30, 2020, Governor Hogan issued a Stay at Home Order allowing travel within the State only for essential purposes. After that, Governor Hogan and the Maryland State Department of Education (MSDE) extended the school closure through the end of the 2019-2020 school year, and the OAH suspended all in-person proceedings through July 6, 2020, holding emergency and special proceedings remotely.

Because of these unusual circumstances, the parties requested that the timelines for conducting a due process hearing and issuing a final decision be extended. An extension of the timeline is permitted under the due process procedural safeguards for the reasons expressed. 34 C.F.R. § 300.515(c) (2019).² Thus, pursuant to the parties' request and agreement, I granted the motion for an extension of the timeline, finding good cause based on the COVID-19 pandemic,

² "C.F.R." is the abbreviation for the Code of Federal Regulations. Unless otherwise noted, all references hereinafter to the C.F.R. are to the 2019 bound volume.

the closure of MCPS, and the partial suspension of proceedings at the OAH. 34 C.F.R. § 300.515(c).

I held the hearing on October 5, October 6, October 7, October 8, October 9, October 26, October 30, and November 24, 2020. Manisha Kavadi, Esquire represented MCPS, and Mr. Eig represented the Student and the Parents. The timeline to issue the decision was thirty days upon completion of the hearing. In this case the decision is due no later than December 23, 2020. Subsequent to the last day of the hearing, December 24, 2020 was made a State holiday. This moved the original due date from December 24, 2020 to December 23, 2020.

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

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; MSDE procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

1. Did the MCPS fail to make a FAPE available to the Student for the 2019-2020 school year, including developing an IEP and placement appropriate to meet the unique needs of the Student?
2. If the MCPS did not make a FAPE available to the Student for the 2019-2020 school year with an appropriate IEP and placement, was the Parents' placement of the Student at the [REDACTED] ([REDACTED]) proper?

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

3. If the placement by the Parents of the Student at the [REDACTED] is determined to be proper for the 2019-2020 school year, should the MCPS reimburse the Parents for tuition and related expenses associated with the placement of the Student at the [REDACTED] for the 2019-2020 school year?
4. Did the MCPS fail to make a FAPE available and develop an IEP and placement appropriate to meet the unique needs of the Student for the 2020-2021 school year?
5. If the MCPS did not make a FAPE available and develop an appropriate IEP and placement for the 2020-2021 school year, is the Parents' placement of the Student at the [REDACTED] proper?
6. If the placement by the Parents of the Student at the [REDACTED] is determined to be proper for the 2020-2021 school year, should the MCPS pay for tuition and related expenses associated with the placement of the Student at the [REDACTED] for the 2020-2021 school year?

SUMMARY OF THE EVIDENCE⁴

Exhibits

I admitted the following exhibits on behalf of MCPS⁵:

- | | |
|--------|---|
| MCPS-1 | New Student Information, 12/29/2016 |
| MCPS-2 | Authorization to Release Student Records sent to [REDACTED] Elementary School ([REDACTED]), 1/11/2017 |
| MCPS-3 | MCPS Response to Request for School Records and Report from [REDACTED] Department of Children and Family Services, 3/9/2017 |

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

⁵ The parties submitted an index of their respective exhibits. I have inserted the indices as written.

MCPS-4 ██████████ Department of Children and Family Services Request for report cards and list of current classes, 9/14/2017

MCPS-5 MCPS Observation Report, ██████████, 1/23/2018

MCPS-6 Section 504 Eligibility, 2/26/2018

MCPS-7 Section 504 Plan, 2/26/2018

MCPS-8 Section 504 Distribution of 504 Plan to school staff, 3/16/2018

MCPS-9 IEP Meeting Invitation, 4/12/2018 for 4/23/2018 meeting

MCPS-10 Prior Written Notice, 4/23/2018

MCPS-11 Specific Learning Disability Team Report, 4/23/2018

MCPS-12 MCPS Observation Report, ██████████, 4/17/2018

MCPS-13 MCPS Team Consideration of External Report, Psychoeducational Evaluation, 4/23/2018

MCPS-14 Psychoeducational Evaluation, Dr. ██████████, March 2018

MCPS-15 IEP Meeting Invitation, 5/9/2018 for 5/17/2018 meeting

MCPS-16 Prior Written Notice, 5/17/2018

MCPS-17 IEP, 5/17/2018

MCPS-18 IEP Meeting Invitation, 2/7/2019; Prior Written Notice, 2/15/2019; Amended IEP 2/28/2019

MCPS-19 MCPS letter to Parents, 2/27/2019

MCPS-20 IEP Meeting Invitation, 5/7/2019 for 5/24/2019 meeting

MCPS-21 MCPS letter to Parents, 5/7/2019

MCPS-22 Prior Written Notice, 6/12/2019

MCPS-23 IEP, 6/12/2019

MCPS-24 M. Eig letter to MCPS, 8/30/2019

MCPS-25 Email and letter from MCPS to M. Eig, 9/16/2019

MCPS-26 Fax confirmation and ██████████ Request for Student Records, 6/13/2019

MCPS-27 Email from M. Eig to MCPS enclosing [REDACTED] records, 12/17/2019

MCPS-28 [REDACTED] Report Card, School Year 2019-2020, 12/13/2019

MCPS-29 [REDACTED] Reading Report, 9/5/2019

MCPS-30 [REDACTED] [REDACTED] Summary, 9/2019

MCPS-31 [REDACTED] IEP, 2/21/2020

MCPS-32 IEP Meeting Invitation, 2/5/2020 for 2/21/2020 meeting

MCPS-33 [REDACTED] IEP, 2/21/2020 (Duplicate)

MCPS-34 Emails between M. Eig and MCPS re: IEP Meeting, 12/17/2019 – 3/10/2020

MCPS-35 Emails between M. Eig and MCPS regarding IEP meeting, 2/26/2020 – 3/11/2020

MCPS-36 Email between MCPS and M. Eig regarding scheduling IEP meeting date, 4/22/2020

MCPS-37 Email from M. Eig attaching [REDACTED] documents, 4/28/2020

MCPS-38 [REDACTED] Speech & Language Assessment, February 2020

MCPS-39 [REDACTED] Occupational Therapy Evaluation, October 2019-February 2020

MCPS-40 Student Observation ([REDACTED]), 2/7/2020

MCPS-41 [REDACTED] Report Card, School Year 2019-2020, 4/28/2020

MCPS-42 [REDACTED] Fall 2019-2020 MAP Scores

MCPS-43 Vision Screening, 2/28/2020

MCPS-44 Parent Consent for Release of Confidential Information from [REDACTED] to MCPS, 4/28/2020

MCPS-45 MCPS Team Consideration of External Report, Speech-Language Assessment, 6/12/2020

MCPS-46 MCPS Team Consideration of External Report, Occupational Therapy Evaluation, 6/16/2020

MCPS-47 MCPS Summary Review of Non-MCPS Occupational Therapy Report, 5/8/2020

MCPS-48 Emails between M. Eig and MCPS regarding IEP meeting date, 5/11/2020

MCPS-49 Emails between M. Eig and MCPS regarding IEP meeting date, 4/28/2020-5/13/2020

MCPS-50 Emails between M. Eig and MCPS regarding IEP meeting date, 4/28/2020-5/15/2020

MCPS-51 Emails between M. Eig and MCPS regarding IEP meeting date, 5/15/2020 – 5/18/2020

MCPS-52 IEP Meeting Invitation, 5/19/2020, for 6/12/2020 meeting

MCPS-53 Letter from MCPS to M. Eig, regarding receipt of due process request, 5/20/2020

MCPS-54 Due Process Hearing Response letter from MCPS to M. Eig, 5/29/2020

MCPS-55 Emails between MCPS and [REDACTED] regarding work samples, 5/27/2020 - 6/12/2020

MCPS-56 Email from M. Eig to MCPS, 6/19/2020, enclosing [REDACTED] IEP Progress Report, Quarter 4

MCPS-57 Emails between M. Eig and MCPS regarding IEP meeting and late submission, 6/19/2020

MCPS-58 Prior Written Notice, 6/22/2020

MCPS-59 IEP, 5/20/2020

MCPS-60 MCPS Student Report Cards, Attendance Data, MAP data, 2017-2019

MCPS-61 IEP Progress Reports

MCPS-62 MCPS Test for Reading, 6/11/2018

MCPS-63 Progress to College and Career Report, 9/4/2018-6/13/2019

MCPS-64 MCPS Teacher Reports, May 2019

MCPS-65 MCPS Twice Exceptional Review Meeting Notes, March 2018

MCPS-66 Student Observation ([REDACTED]), 6/6/2019

- MCPS-67 Report of [REDACTED], LCSW-C, 6/12/2019
- MCPS-68 Email between MCPS staff regarding meeting with Parents regarding GT/LD program, 11/7/2018
- MCPS-69 Emails between MCPS and Parents, 12/3/2018 to 1/22/2019
- MCPS-70 Letter from Parents to MCPS requesting GT/LD out of area transfer to [REDACTED] Middle School, 1/20/2019 (referenced in MCPS 69)
- MCPS-71 Email from MCPS to Parent regarding 504 paperwork, 3/7/2018
- MCPS-72 Invitation to 504 Eligibility Meeting, 2/23/2017
- MCPS-73 Outcome letter of 504 Meeting, enclosing 504 Eligibility Evaluation, and 504 Plan 3/1/2017
- MCPS-74 Invitation to 504 Review Meeting, 5/22/2017
- MCPS-75 Outcome letter of 5/24/2017 504 Review Meeting enclosing 504 Plan
- MCPS-76 Student work sample (Multi-paragraph comparison: *The Outsiders & Only Daughters*)
- MCPS-77 Student work sample (Subjective v Objective)
- MCPS-78 Student work sample (Single paragraph organizer: *The Outsiders*)
- MCPS-79 Student work sample (*Under a War-Torn Sky*: Chapter 2)
- MCPS-80 Student work sample (*Under a War-Torn Sky*: Chapter 3)
- MCPS-81 Student work sample (*Under a War-Torn Sky*: Chapter 6)
- MCPS-82 MCPS *Twice Exceptional Students Staff Guidebook*, excerpt page 36-37
- MCPS-83 Resume – [REDACTED]
- MCPS-84 Resume – [REDACTED]
- MCPS-85 Resume – [REDACTED]
- MCPS-86 Resume – [REDACTED]
- MCPS-87 Resume – [REDACTED]
- MCPS-88 Resume – [REDACTED]

MCPS-89 Resume – [REDACTED]
MCPS-90 Resume – [REDACTED]
MCPS-91 Resume – [REDACTED]

I admitted the following exhibits on behalf of the Parents/Student:

- P- 1 Amended Request for Due Process, 7/16/20
- P- 2 Psychological Evaluation by Dr. [REDACTED], March 2018
- P- 3 MCPS IEP and Amendment Form, 5/17/18
- P- 4 MCPS Amended IEP, 2/28/19
- P- 5 MAP Student Progress Report, Winter 2017 to Spring 2019
- P- 6 Correspondence between parents and MCPS regarding testing reimbursement, 1/ 31/19 to 5/7/19
- P- 7 MCPS Secondary Teacher Reports, May 2019;
- P- 8 Observation Report by [REDACTED], 6/6/19
- P- 9 MCPS IEP, 6/12/19
- P- 10 Letters between parents and MCPS regarding COSA request, 6/26/19 and 6/28/19
- P- 11 MCPS Student Transcript, 7/29/19
- P- 12 Letter to MCPS serving notice and MCPS response letter, 8/30/19 and 9/16/19
- P- 13 [REDACTED] Reading Assessment Reports, September 2019
- P- 14 [REDACTED] Reading Assessment Summary, September 2019
- P- 15 [REDACTED] MAP Student Progress Report, Fall 2019
- P- 16 [REDACTED] Low Complexity Occupational Therapy Evaluation, 12/20/19
- P- 17 Observation Report by [REDACTED], 2/7/20
- P- 18 [REDACTED] Intermediate Speech and Language Assessment, 2/20/20
- P- 19 [REDACTED] Amended IEP, 2/21/20
- P- 20 [REDACTED] Comprehensive Vision Screening, 2/28/20

- P- 21 [REDACTED] High Complexity Occupational Therapy Evaluation, 2/28/20
- P- 22 [REDACTED] IEP Progress Report, May 2020
- P- 23 MCPS Summary Review of Non-MCPS Occupational Therapy Report, 5/8/20
- P- 24 MCPS IEP, 5/20/20
- P- 25 Email enclosing parent feedback of draft MCPS IEP, 6/11/20
- P- 26 [REDACTED] Occupational Therapy Annual Report, 6/12/20
- P- 27 [REDACTED] Junior High End-of-Year Progress Report, 6/18/20
- P- 28 MCPS Prior Written Notice, 6/22/20
- P- 29 [REDACTED] Fourth Quarter Report Card, 6/23/20
- P- 30 Letter to MCPS serving notice and MCPS response letter, 8/17/20 and 9/9/20
- P- 31 Student's Personal and Confidential Social History from [REDACTED] County
- P- 32 Resume of [REDACTED]
- P- 33 Resume of [REDACTED]
- P- 34 Resume of [REDACTED]
- P- 35 Resume of [REDACTED]
- P- 36 Resume of [REDACTED]
- P- 37 Resume of [REDACTED]
- P- 38 Resume of [REDACTED]

Testimony

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

1. [REDACTED], Executive Director, [REDACTED], accepted as an expert in special education;
2. [REDACTED], Speech/Language Pathologist, [REDACTED], accepted as an expert in speech language pathology;

3. [REDACTED], Head of Junior High, [REDACTED], accepted as an expert in special education administration;
4. [REDACTED], accepted as an expert in special education;
5. [REDACTED], accepted as an expert in social work with emphasis on issues of adoption;
6. [REDACTED], accepted as an expert in occupational therapy;
7. [REDACTED], Student's father; and
8. [REDACTED], Student's mother.

MCPS presented the following witnesses:

1. [REDACTED], accepted as an expert in special education, with an emphasis on gifted and talented and twice exceptional students;
2. [REDACTED], accepted as an expert in speech/language pathology; and
3. [REDACTED], accepted as an expert in occupational therapy.

FINDINGS OF FACT

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

1. The Student is fourteen years old (date of birth: [REDACTED] 2006) and is in the ninth grade at the [REDACTED].
2. Prior to coming to Maryland in 2016, the Student lived with his biological family in [REDACTED].
3. Before being adopted by the Parents, the Student attended approximately [REDACTED] different elementary schools.
4. In [REDACTED] the Student and his biological siblings experienced severe abuse and neglect and as a result, were placed in the foster care system.

5. In December 2016, the Student came to live with the Parents, who eventually adopted him and his biological sister one year later in December 2017.
6. After relocating from [REDACTED], on December 23, 2016, the Student enrolled in MCPS and began attending [REDACTED] Elementary School.
7. At the time the Student enrolled in MCPS, he was not receiving special education and related services under the IDEA.
8. During the 2017-2018 school year, the Student attended [REDACTED] Middle School ([REDACTED] MS) in Montgomery County.
9. During the 2017-2018 school year, MCPS determined the Student eligible to receive a 504 Plan under Section 504 of the Rehabilitation Act of 1973 based on his March 1, 2013 diagnosis of attention deficit hyperactivity disorder (ADHD).
10. The Parents consented to the implementation of the 504 Plan for the Student.
11. On April 12, 2018, the IEP Team at [REDACTED] MS invited the Parents to participate in an IEP team meeting to discuss the Student's educational program and to review written referrals and existing data and information, and if appropriate, determine eligibility for special education services under the IDEA.
12. On April 23, 2018, the IEP team convened, including the Student's mother. The Student's mother was informed of her *Procedural Safeguards and Parental Rights* under IDEA.
13. At the IEP team meeting on April 23, 2018, the IEP team reviewed the Student's academic performance, a classroom observation conducted on January 23, 2018, the Student's 504 Plan and the results of a private psychoeducational evaluation conducted by [REDACTED], Ph.D. on March 14 and March 21, 2018.

14. The methods of assessment utilized on the psychoeducational evaluation were as follows:

- Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V) to assess the Student's overall intellectual and cognitive functioning in verbal comprehension, visual spatial, fluid reasoning, working memory and processing speed skills;
- Intake Interview with the Parents;
- Woodcock Johnson Psycho-Educational Battery-4th Edition (WJ-IV) to more fully assess the Student's cognitive strengths and weaknesses;
- WJ-IV Tests of Oral Language- Selected Clusters to assess the Student's listening, reading and vocabulary skills (with the following):
 - Oral Language (Oral Comprehension);
 - Speed of Lexical Access, (Rapid Picture Naming, Retrieval Fluency) to assess the Student's efficiency when required to retrieve words on demand;
 - Math (Calculation, Applied Problems, Math Facts Fluency);
 - Writing (Spelling, Writing Samples, Sentence Writing Fluency);
 - Test of Written Language-Fourth Edition (TOWL-4) to ascertain the Student's written language skills;
 - Rey Complex Figure Test, to assess the Student' ability to organize and motorically reproduce complex visually represented information;
- Jordan Left Right Reversal Test to assess the Student's directionality in perception of visual symbols;
- Bender Visual Motor Gestalt Test to assess the Student's visual-motor integration skills;

- Trail Marking Test to assess the Student's immediate recognition of symbolic significance of numbers and letters, visual scanning to identify number/letter sequences and cognitive flexibility in integrating numerical and alphabetical series skills;
- Rey's Fifteen Item Test to measure the Student's symptom validity and motivation;
- Conners 3 Parent Rating Scale;
- Children's Clinical Interview; and
- Behavior Assessment System for Children - Parent Rating Scale to ascertain the Student's behavioral skills.

15. Based upon the evaluative data gleaned from the evaluation conducted in March 2018, including the classroom observation, the Student's academic performance and information shared by the Student's mother and teachers, the IEP team determined the Student had ADHD and Dysgraphia. Further, the Student experienced significant behavioral problems with his attention, activity levels, social interactions, work habits, listening comprehension, organizational skills and task completion. Additionally, the Student's cognitive skills in areas of visual-spatial, fluid reasoning and working memory registered in the superior ranges. His verbal comprehension ranged from the average to superior range. The Student experienced weaknesses in his processing speed, which was in the low average range when compared to same-aged peers.

16. The evaluative data reviewed by the IEP team also indicated the Student's math and reading skills as average to superior with weaknesses in all areas of math, reading fluency, written expression and speed of word retrieval skills.

17. The IEP team including the Student's mother, agreed the Student was identified as a student with a specific learning disability (SLD) under IDEA and required special education services.

18. On May 17, 2018, the IEP team met and developed an IEP for the Student.

19. The Student was to receive special education inclusion support in his English, Math, Social Studies, and Science classes for the 2018-2019 school year. The team noted, the Student “is able to make progress in the general education setting with special education supports.” (MCPS Ex 17-29).

20. The Student’s grades at the end of his sixth grade 2017-2018 school year were as follows:

- Advanced English 6 “B”
- Advanced World Studies 6 “C”
- Health Education 6 “A”
- Physical Education 6, three grades noted, “B”, “A” and “C”
- Resource “B”.

IEP development for the 2019-2020 School Year

21. The Student’s progress report toward achieving the annual goals on the IEP Indicated the following as of April 3, 2019:

- Behavior/executive functioning: making sufficient progress to meet goal;
- Given strategies to improve focus: making sufficient progress to meet goal;
- Developing positive verbal and nonverbal communication skills: making sufficient progress to meet goal;
- Written language skills: making sufficient progress to meet goal;
- Math problem solving: making sufficient progress to meet goal; and
- Written language expression: making sufficient progress to meet goal.

22. The MCPS Secondary Teacher Report from May 28, 2019 indicates the Student’s

progress toward achieving the annual IEP goals in each of his classes. The rating criteria is assessed using three criteria: Strength, Satisfactory and Concern. The teachers assessed the Student as follows:

- **Advanced World Studies 7:** *Reading:*
Satisfactory: reading accurately, understanding class readings.
Concern: interpreting lengthy texts, ability to keep up with longer readings.

Written Language:
Satisfactory: ideas and development, organization, voice, conventions.
Concern: diction and sentence fluency.

Oral Communication:
Strength: understands information presented orally.
Satisfactory: understands class readings, speaks in complete sentences to express ideas, speaks clearly.

Organization:
Satisfactory: assignment completed by due date.
Concern: notebook organization, arrives with necessary materials.

Participation:
Strength: contributes during class discussion.
Satisfactory: requests accommodations.
Concern: socializes at appropriate times, focuses on instruction/activity, and works collaboratively with team members.

Social/Emotional:
Satisfactory: interaction with staff and students, problem solves when stressed, raises hand/waits to be called on.

- **Advanced Math:**
Written Language:
Math Concepts: Satisfactory.
Basic Operations: Satisfactory.
Math Application: Satisfactory.

Oral Communication:
Satisfactory: Understands information presented orally, speaks in complete sentences to express ideas and speaks clearly.

Organization:

Satisfactory: notebook organization, assignment completed by due date, arrived with necessary materials.

Participation:

Satisfactory: contributes during class discussion, socializes at appropriate times, requests accommodations, focuses on instruction/activity, and works collaboratively with team members.

Social/Emotional:

Satisfactory: interactions with staff/students, problem solves when stressed, raises hand/waits to be called on.

- Science:

Reading:

Satisfactory: reads accurately and fluently and understands class readings.

Written Language:

Concern: ideas/development and organization.

Oral Communication:

Satisfactory: understands information presented orally, understands class readings, speaks in complete sentences to express ideas, and speaks clearly.

Organization:

Satisfactory: Notebook organization, assignment completed by due date and arrives with necessary materials.

Participation:

Strength: contributes during class discussion.

Concern: Socializes at appropriate times and focuses on instruction/activity.

Satisfactory: Requests accommodations and works collaboratively with team members.

Social/Emotional:

Satisfactory: interaction with staff/students, problem solves when stressed and raises hand/waits to be called on.

Special Comments:

The Student is easily distracted in class and has to be constantly helped to stay on task. The Student rushes through assignments and on an assignment, did not support his claim with evidence.

- CADD:
(Computer Aided Design)

Oral Communication:

Satisfactory: understands information presented orally, understands class readings, speaks in complete sentences to express ideas and speaks clearly.

Organization:

Satisfactory: notebook organization, assignment completed by due date, arrives with necessary materials.

Participation:

Satisfactory: contributes during class discussion, socializes at appropriate times, requests accommodations, focuses on instruction/activity.

Social/Emotional:

Satisfactory: interaction with staff/students, problem solves when stressed, raises hand/waits to be called on.

Special Comments:

The Student rushes through his paperwork assignments and should be doing better in class. Hands on work significantly better. Works much harder when building with his hands.

- Theater 1:

Reading:

Satisfactory: understands class readings.
Concern: reads accurately and fluently.

Written Language (on grade level):

Satisfactory: organization, voice, diction.
Concern: ideas and development, sentence fluency.

Oral Communication:

Satisfactory: understanding information presented orally.
Concern: speaks in complete sentences to express ideas, speaks clearly.

Organization:

Satisfactory: notebook organization, arrives with necessary materials.
Concern: assignment completed by due dates.

Participation:

Satisfactory: socializes at appropriate times, requests accommodations.

Concern: contributes during class discussion, focuses on instruction/activity and works collaboratively with others.

Social/Emotional:

Satisfactory: interaction with staff and raises hand/waits to be called on.

Concern: interactions with students and problem solving when stressed.

Special Comments:

The Student performed a speech for the class and improvised additional material. He took “brave chances sharing fictionalized details about himself.”

- English:

Reading: Satisfactory: reads accurately and fluently, understands class readings, is able to interpret lengthy texts and is able to keep up with longer readings.

Written language (below grade level):

Satisfactory: ideas/development and voice.

Concern: organization, diction, sentence fluency, conventions.

Oral Communication

Satisfactory: understands information presented orally, understands class readings, speaks in complete sentences to express ideas and speaks clearly.

Organization

Satisfactory: notebook organization, assignment completed by due date and arrives with necessary materials.

Participation

Satisfactory: contributes during class discussion, requests accommodations and works collaboratively with team members.

Concern: socializes at appropriate times, focuses on instruction/activity.

Social/Emotional

Satisfactory: interactions with staff/students and problem solves when stressed.

Concern: raises hand/waits to be called on.

Special Comments:

The Student benefits from provided outlines and sentence frames. Despite provision of the outlines, the Student

struggled with organizing his writing. The Student also needed to continue to work on his use of correct grammar, and sentence structure. His writing was sometimes difficult to read because of the lack of conventions. Specifically, the Student sometimes deviates from the sentence frames resulting in redundancies. The Student demonstrated great ideas conceptually. He utilized tools to have his writing read back to him (to assist in editing). However, he still had errors possibly due to inattention. He often wants to finish quickly but is very motivated. The Student improved on his binder organization and ability to turn in assignments on time. He needed to continue to work on his tendency to call out and socialize at inappropriate times. He often distracts himself and others around him by talking and calling out information/questions that are related to class discussion. The Student is always willing to share.

- Physical Education:

Oral Communication:

Satisfactory: understanding information presented orally and speaks clearly.

Participation:

Satisfactory: Physical activities.

Concern: Socializes at appropriate times, focuses on instruction/activity and works collaboratively with team members.

Social/emotional:

Satisfactory: interaction with staff and raises hand/waits to be called on.

Concern: interaction with students and problems solved when stressed.

Special comments:

The Student had missing homework assignments. The Student completed physical activities every day. The Student experienced difficulty getting along with peers (difficult time talking out the situation if he becomes upset with a peer). The instructor had to separate the Student from other students he may have been having an altercation with. The Student required redirection four out of five times to refrain from talking during instruction. The Student experienced difficulty with impulse control and would take equipment when not authorized to do so. The Student also displayed helpfulness when setting up equipment.

23. The Student's final grades at the end of this seventh grade 2018-2019 school year are as follows:

- Advanced English 7 "B";
- Advanced World Studies "C";
- CADD/ARE "B";
- Health Education 7 "B";
- Investigation in Science 7 "C";
- Math Investigations "C";
- Theatre 1 "B"; and
- Physical Education 7 (three grades noted) "B", "B" and "B".

24. On June 6, 2019, [REDACTED], educational consultant, on behalf of the Parents, conducted an observation of the Student in his classroom at [REDACTED] MS. The purpose of the observation was to assist the Parents in their decision-making process with regard to the Student's educational programming for the 2019-2020 school year.

25. The results of the June 6, 2019 observation indicated the Student displayed a strong cognitive identity, was generally on task, but faced challenges with writing, reading and peer interaction.

26. The IEP in effect for the Student at the start of the 2019-2020 school year was developed and revised as appropriate on June 12, 2019. The Parents participated in the meeting and were informed of their *Procedural Safeguards and Parental Rights* under IDEA. Additionally, the Parents educational consultant, Mr. [REDACTED] participated in the meeting.

27. The team determined that the evaluative data ascertained from the evaluation conducted during the 2017-2018 school year remained appropriate to determine the Student's then present levels of performance in conjunction with anecdotal information shared by the

Parents and teachers regarding the Student's grades, academic performance and progress toward achieving the annual IEP goals. This information also included the Student's performance on the measures of academic progress assessments from fall 2017, winter 2018, spring 2018, fall 2018, winter 2019 and spring 2019. Additionally, the team determined that based on Mr. [REDACTED]'s June 6, 2019 observation, the Student's present levels of performance would be revised to reflect his social emotional needs as identified during the observation.

28. The IEP team determined the Student had a clear discrepancy between his skills and processing speed. The Student is also impacted by his inattention and impulsivity. This affects the Student in the areas of academic fluency, written expression, social interactions and math problem solving. The Student is impacted by ADHD and experiences problems with executive functioning. Additionally, in class, the Student rushes through work to get to preferred tasks, experiences difficulty writing and struggles to positively interact with peers.

29. In addition to having an SLD under IDEA, the Student is also gifted/talented. Gifted/talented students are individuals who demonstrate outstanding levels of aptitude (defined as an exceptional ability to reason and learn) or competence (documented performance or achievement in top 10% or rarer) in one or more domains. Domains include any structured area of activity with its own symbol system (e.g., mathematics, music, language) and/or set of sensorimotor skills (e.g., painting, dance, sports)."

30. In MCPS, gifted/talented students are also referred to as "twice exceptional students" if they meet certain criteria. In MCPS, twice exceptional students means those students who are identified as gifted and talented who also have met criteria for an IEP or a Section 504 plan. The National Association for Gifted Children identifies "twice-exceptional" as the most commonly used term for a gifted student with a co-occurring disability. A twice exceptional student is "A learner who evidences high performance or potential in a gift, talent, or

ability area combined with one or more disabilities that may affect achievement (e.g., learning disability, ADHD, Asperger's Syndrome, or a physical or sensory disability).

31. Because the Student is gifted/talented (G/T) and has a learning disability (L/D) under IDEA requiring an IEP, he is sometimes referred to as GT/LD. If the Student is referred to as being GT/LD or LD/twice exceptional, it means the same thing.

32. The IEP team determined that the Student required annual goals and objectives to address the Student's cognitive and academic deficits in math problem solving, written language, executive functioning, self-management and social interaction skills. The Parents agreed with the annual goals developed to address the Student's deficits with one notable exception regarding the Student's behavioral needs. Specifically, the Parents and their educational consultant asserted that the Student required a new goal regarding his social/emotional needs. The school-based members of the IEP team disagreed and drafted objectives in the Student's self-management goals instead of creating a new goal. The self-management goal and objectives address the Student's social/emotional and behavioral needs that impact his ability to make progress in the general curriculum.

33. The annual goals developed on June 12, 2019, reflect the areas of deficits identified on the IEP as ascertained from all of the evaluative data. The IEP requires that the Student receive four forty-five-minute sessions of classroom instruction in the general education classroom for a total of three hours per week. The special education classroom teacher, general education classroom teacher and instructional assistant would implement the services in the general education classroom. The IEP also requires that the Student receive one session for forty-five minutes per week in the resource classroom for specialized instruction by the special education teacher and instructional assistant and one fifteen-minute session of counseling to assist with addressing his social/emotional needs.

34. With regard to communication, the IEP team deliberated whether the Student had any special communication needs.

35. The Student does not have special communication needs.

36. The IEP team considered the Student's need for assistive technology to increase, maintain or improve his functional capabilities and determined that the Student required the use of assistive technology but did not require assistive technology services. Specifically, the Student required supplementary aids, services, program modifications, supports, instructional and testing accommodations. The Student required highlighters, the use of a word processor as well as reading technology on the computer for compositions. He also required a calculator to aid in focusing throughout the problem solving process.

37. The IEP team considered the Student's instructional and assessment accessibility needs. The team determined the Student required:

- Bookmark (flag items for review);
- Blank scratch paper;
- General administration directions clarified;
- General administration directions read aloud and repeated as needed;
- Highlight tool;
- Headphone or noise buffers;
- Writing tools and the use of a graphic organizer.

These accommodations would help the Student's writing and skills regarding paying attention to instruction.

38. To assist the Student with writing and with paying attention to task during instruction and assessment, the IEP team determined the Student required:

- Color contrast (background font/color);

- Text to speech for mathematics, science and government assessments;
- Small groups;
- Separate or alternate location;
- Frequent breaks;
- Reduce distractions to self; and
- Reduce distractions to others.

Further, the IEP team determined that during literature circles or group discussions, the Student required peer notes on what information was shared so he does not need to capture thoughts while discussing/sharing his thoughts.

39. The IEP team determined the Student required a calculation device and mathematics tools (on non-calculated sections of the mathematics assessment). He also required constructed response speech-to-text to support his weakness in writing, math facts fluency and processing speed. Additionally, the Student required accommodations for extended time to review his work.

40. The IEP team considered the Student's needs regarding supplementary aids, services, program modifications and supports. After deliberating his needs, the team determined the Student required:

- Instructional support: scribe during literature circles or labs, periodically. During literature circles, science labs or other shared activities, allow/assign a student scribe to collect the Student's verbal sharing so the Student does not have to split time between notes and participating;
- Instructional support: provide examples of writing for specific assignments, periodically. This would be for all writing assignments;
- Instructional support: encourage use of Google read and write tools, in all classes daily;

- Instructional support: provide alternative ways for the Student to demonstrate learning, daily. Instead of written responses, allow the Student to respond verbally with a picture, an outline or other means of sharing his understanding of the task. This does not replace essays and required written expression for English, but can be used as a scaffold for supporting the writing in English;
- Instructional support: limit amount to be copied from board, in all content classes, daily;
- Instructional support: allow use of manipulatives, primarily in math, but as appropriate in all content classes, weekly;
- Instructional support: provide proofreading checklist, for all content classes, daily;
- Instructional support: frequent and/or immediate feedback in all classes and nonacademic settings, daily;
- Instructional support: break down assignments into smaller units, in all classes, daily;
- Social/behavioral supports: utilize strategies to initiate and sustain attention, utilizing fidgets, mind mapping, movement breaks, tracking the teacher, daily; and
- Physical/environmental supports: preferential seating in all classes, daily.

41. With regard to the least restrictive environment in which to implement the Student's IEP, the team considered all of the placement options on the continuum of options. The team determined the Student would receive specialized instruction in the general education inclusion setting, except for a self-contained gifted/talented/learning disabled (GT/LD) resource classroom. Specifically, during the 2019-2020 school year, the Student would receive support in English, Math, World Studies and Science. He would participate in a self-contained GT/LD resource classroom.

42. The IEP also required the Student to check in with the counselor to work on coping skills and strategies to deal with frustration.

43. The school that the Student would have attended if not disabled for the 2019-2020 school year was [REDACTED] MS. This is also referred to as the Student's home school i.e., the school the Student would attend if not disabled. The Student's home school did not have a GT/LD program. As a result, the IEP team determined that the Student should attend [REDACTED] Middle School ([REDACTED] MS) for the 2019-2020 school year.

44. The Parents believed the Student's IEP should be implemented in the GT/LD program at [REDACTED] Middle School ([REDACTED] MS), another comprehensive MCPS public school.

45. On June 26, 2019, the Parents applied for a Change of School Assignment (COSA) from [REDACTED] MS to [REDACTED] MS. The Parents were adamant that the Student's needs could be met in the GT/LD program at [REDACTED] MS.

46. MCPS granted the COSA and assigned the Student to [REDACTED] MS. The change of school assignment did not alter the least restrictive environment in which the Student's IEP would be implemented. This was a change in location of services. Specifically, the Student's IEP continued to indicate that he would receive three hours of special education services inside the general education classroom daily, and forty-five minutes daily of special education outside of the general education classroom. Additionally, the Student would receive one fifteen-minute session of counseling to address his social/emotional needs.

47. On August 30, 2019, the Parents and their attorney notified MCPS via written correspondence that the Student would not attend [REDACTED] MS for the 2019-2020 school year. Further, the correspondence indicated the Parents were unilaterally enrolling the Student at the [REDACTED] and they requested that MCPS fund the unilateral placement.

48. On September 16, 2019, Emily B. Rachlin, Assistant General Counsel, MCPS informed the Parents and their attorney via correspondence that MCPS declined to pay for the Student's placement at the [REDACTED]. Further, Ms. Rachlin indicated that if the Parents had any new information they wished to share with MCPS regarding the Student's educational needs, the IEP team would reconvene and review the information if provided.

49. The Student did not return to MCPS for the 2019-2020 school year as the Parents elected to keep him enrolled in the [REDACTED].

50. The Student attended the [REDACTED] for his entire eighth-grade year during the 2019-2020 school year.

51. The Student's grades for the 2019-2020 school year by quarter (Q) are as follows:

- Performing Arts: Q1 A; Q2 A; Q3 A; Q4 A;
- Reading 8: Q1 P (progressing); Q2 P; Q3 P; Q4 P;
- English 8: Q1 C+; Q2 B-; Q3 B-; Q4 B;
- Democracy: Q1 C+; Q2 C+; Q3 B; Q4 A-;
- Physical Education: Q1 A; Q2 A-; Q3 A; Q4 Pass;
- Algebra I: Q1 B+; Q2 B-; Q3 B+; Q4 A-.

IEP development for the 2020-2021 school year

52. On or about December 17, 2019, a representative of the Parents advocate contacted MCPS staff to "begin the IEP process and request a meeting at your earliest convenience" in order to develop the Student's program for the 2020-2021 school year (MCPS Ex. 34-6).

53. MCPS scheduled an IEP meeting for February 7, 2020 to review the Student's program. Because of conflicts in schedules and because the [REDACTED] was convening a meeting on February 14, 2020 to review and possibly revise the Student's program, the parties agreed to meet on March 12, 2020 to review the Student's program.

54. Prior to the IEP team meeting with the Parents, their advocates, MCPS and [REDACTED] staff, the [REDACTED] conducted new assessments in the areas of speech/language, vision screening and occupational therapy.

55. The Intermediate Speech/Language Assessment was conducted on February 13, February 14, February 18 and February 20, 2020.

56. The Test of Language Development-Intermediate: Fourth Edition (TOLD-I:4) was conducted during the speech/language assessment. This test assesses various components of the Student's oral language skills, including listening, speaking, organizing language, and exploring the meaning and structure of oral language.

57. The Test of Narrative Language-Second Edition (TNL-2) was conducted during the speech/language assessment. This test is a normed language sample analysis, i.e., designed to compare and rank test takers in relation to one another.

58. The Test of Auditory-Processing Skills-Fourth Edition (TAPS-4) was administered to assess the Student's higher-order language processing skills that relate to the development of effective listening and communication, specifically auditory memory and listening comprehension.

59. The Social Language Development Test-Adolescent: Normative Update (SLDT-A: NU) was administered to assess the aspects of the Student's social language development such as the ability to interpret and respond to sarcasm, engage in peer-to-peer perspective talking, respond to sensitive information, rumors, and understand socially complex emotions.

60. The collective results of the speech/language assessment indicate the Student's receptive language skills are within the average range as demonstrated by his average abilities to understand vocabulary, and to identify whether he heard a grammatical error in a spoken sentence. The Student's expressive language abilities are weaker and below average relative to

his peers. The Student demonstrated relative strength in basic morphological understanding and use, that is his ability to identify errors in subject-verb agreement, verb tense, irregular verbs and pronoun use. The Student's comprehension and ability to sequence given words into a grammatically correct sentence was within the average range. Further, with regard to the Student's receptive semantic abilities, the Student's skills were within the average range. He demonstrated the ability to infer the connection between given words and a picture, indicating an average ability to think more flexibly about the meaning of words.

61. The Student's weaknesses in language organization lead to difficulty sharing his knowledge effectively. Accordingly, the evaluative data indicates academic tasks that require the Student to gather and prioritize information to summarize what has been learned, and to edit work for coherence and logical flow of ideas, are challenging for the Student.

62. The Student's contextual language abilities are within the average range on narrative tasks. Further, the Student has average receptive language skills within the highly structured context of the assessment regarding listening comprehension skills.

63. The Student experiences weaknesses in expressive language skills and syntax.

64. With regard to higher-order processing skills that relate to the development of effective listening and communication, the Student's ability to recall specific details was strong. His ability to interpret verbal information was relatively weaker but still within the average range. Further, the Student experiences difficulty recalling specific details from multi-step instructions with many embedded details. He also struggles to recall details in conditional instructions given in the academic setting and at home.

65. The speech/language assessment indicated the Student has scattered social pragmatic skills. Relative to same-aged peers, the Student exhibited average abilities to interpret figurative language and to identify irony within social situations. He also demonstrated skills

within the low end of the average range in his ability to identify and interpret nonverbal cues. These deficits make it difficult for the Student to provide appropriate responses in social situations.

66. The Student experiences relative strengths in his ability to appropriately support his peers in challenging situations but struggles to interpret terms associated with social language. The evaluative data indicates that the Student struggles with aspects of social-pragmatic communication, including eye contact, understanding and using social-emotional vocabulary and explaining or justifying his actions. These weaknesses result in the Student experiencing difficulty understanding different kinds of communication, gestures and concepts.

67. The Student's speech production, voice quality, and nasal resonance are within the normal range relative to his same-aged peers. However, his affect is relatively flat, which has the potential to negatively impact his ability to reflect the degree of his emotion or his precise attitude if the conversation is insufficient.

68. The Comprehensive Vision Screening was conducted on February 28, 2020. The evaluative data indicates the Student's ability to clearly see small details at a distance (distance acuity) is within normal limits (20/20 vision). His ability to see small details at reading distance is also within normal limits. In contrast, some visual skills were outside normal limits. The Student's convergence, or ability of the eyes to move inward to view a near object was outside of normal limits on two of four trials. Instead of being able to coordinate and use both eyes to look at an object four inches away or less, and do so without seeing double, the Student reported double vision at five inches on one trial and four and one half on another. Additionally, the Student experienced difficulty with focusing capacity of his eyes, and with eye alignment and maintaining a consistent fixed gaze.

69. The Occupational Therapy Assessment was conducted over a span of six days: October 22, 2019, November 22, 2019, January 6, 2020, January 10, 2020 and February 28, 2020. As part of the assessment, the following tests were conducted:

- Development Test of Visual Perception, Adolescent and Adult Edition (DTVP-A), a battery of five subtests which measure different but interrelated visual perceptual and visual motor abilities;
- Sensory Profile Caregiver Questionnaire, a judgment based caregiver questionnaire which provides a standard method to measure a child's sensory processing abilities and profile the effect of sensory processing on functional performance in the daily life of a child;
- Sensory Profile School Companion, a judgment-based questionnaire for teachers which provides a standardized method to measure a child's sensory processing abilities and profile the effect of sensory processing on functional performance in the school environment;
- Adolescent/Adult Sensory Profile, designed to promote self-evaluation of behavioral responses to everyday sensory experiences for persons aged eleven to sixty-five plus. Scoring for this profile represents patterns of sensory processing, based on theoretical intersection of two continua (neurological threshold and behavioral responses/self-regulation) using the descriptors of Low Registration, Sensation Seeking, Sensory Sensitivity and Sensation Avoiding;
- Grip and Pinch Strength, measures overall gross grasp and various types of pinch grip, in pounds of force;
- Handwriting and keyboarding screening, informal measures of an individual's written communication skills;

- Behavior Hand Assessment, informal measures of an individual's written communication skills;
- Benbow Hands Skill Assessment, a non-standardized assessment of handwriting readiness that assesses biomechanical and functional hand and finger movements as they relate to visual motor integration;
- Purdue Pegboard Test, designed to measure the fine motor control and speed of each hand separately, of both hands working together on a simple synchronous bilateral task, and of both hands coordinating in more complex alternating right and left hand assembly task;
- Brunswick-Oseretsky Test of Motor Proficiency, 2nd Edition (BOT-2), provides a comprehensive index of motor proficiency as well as four separate composites of different aspects of gross and fine motor skills. Scores are compared to typical same-aged peers;
- Behavioral Assessment of the Dysexecutive Syndrome for Children (BADS-C), assists in the early identification of deficits in executive functioning in children ranging from eight to sixteen years of age. It is designed to assess a number of aspects that may inhibit executive functioning, including inflexibility and perseveration, novel problem solving, impulsivity, planning, and the ability to use feedback in order to moderate one's behavior; and
- Comprehensive Vision Screening, examines a variety of ocular motor skills required for efficient reading, writing and copying; including visual acuity, binocular vision, focusing, scanning and shifting of gaze.

70. The results of the Occupational Therapy Assessment indicate that all measures of the Student's hand and finger strength were within the average range for boys his age. The Student has the potential strength to manage his writing instrument appropriately. However, his strength wanes over longer writing assignments. Further, the Student demonstrated average skills with rapid sequential peg placement for his dominant right hand, both hands together, and during a four-part peg, washer and bead assembly task. He scored in the high range for his non-dominant left hand. Additionally, the Student demonstrated manual dexterity and upper limb coordination in the average skills range. His fine motor precision and fine motor integration skills are below average and his pencil and paper skills require more effort and concentration than needed by same-aged peers.

71. With regard to keyboarding, the Student experiences difficulty with finger isolation and sequencing. His speed for typing was approximately fifty to sixty letters per minute. He does not use capitalization or spell check without prompting.

72. A comprehensive screening of the Student's visual/ocular motor functioning at reading distance indicated that while some visual skills were within normal limits, others were not or had qualitative concerns. The Student's ability to clearly see small details at a distance was within normal 20/20 vision limits. His ability to see small details at reading distance was within normal limits. Tracking movements of the eyes used when reading and gaze shifting movements used when reading, copying, and doing math computations also measured as adequate.

73. The Student's visual skills were outside normal limits and one skill was within normal limits, but demonstrated qualitative concerns. The Student's convergence, or ability of the eyes to move inward to view a near object was outside normal limits on two of the four trials. Instead of being able to coordinate and use both eyes to look at an object four inches away or

less, and do so without seeing double, the Student reported double vision at five inches on one trial and four and half on another. At about the same distance, his eyes lost fusion as well, consistent with his report of double vision. The Student experienced difficulty maintaining a consistent fixed gaze when asked to look at a target for the ten-second minimum without blinking, which he should have been able to do.

74. The Student's visual processing skills are inconsistent. The Student's areas of superior visual skills are augmented when he employs mental manipulation of visual information such as picture sequences and mental rotation. Static forms, two-dimensional space, or subtle differences may be difficult for the Student to perceive and process. Additionally, the Student struggles to organize needed material within a finite work space.

75. With regard to motor control, the Student's bilateral control skills are average. Balance and strength were also measured to be average. Running speed and agility are below average.

76. With regard to executive functioning skills, the Student has difficulty keeping an orderly work space and experiences difficulty sustaining focus and is easily sidetracked. Further, the Student's writing is characterized as messy and disjointed. He skips lines while reading and copying and does not always notice a lack of continuity in his work. He is socially immature, and prone to touch other peers or objects in his environment excessively.

77. Additionally in the area of executive functioning, the Student's ability to shift focus and work with simultaneous features was in the below average range on at least one test and demonstrated average expectations on other tests.

78. With regard to sensory processing skills, the Student's touch, movement, behavioral, and visual input needs are more than the norm in his classes. He requires more external support and assistance to be available for learning in school than is nondisabled peers. The Student

struggles with focus in class and can be easily distracted by what he sees or hears. Additionally, he can be impulsive at times and this interferes with his focus and productivity. His speed of work is slower than his peers and he often requires additional time to complete tasks.

79. On March 10, 2020, a representative of the Parents' advocate contacted MCPS and informed them that the Parents "just received [the] updated IEP from the [REDACTED]. Please share with the team and kindly let us know if this allows them enough time to review before the Thursday IEP meeting." (MCPS Ex. 35-2).

80. In order to give MCPS staff an opportunity to review the revised [REDACTED] IEP, the Parents cancelled the scheduled IEP team meeting and agreed to reschedule the meeting.

81. The COVID-19 crisis affected MCPS staff's ability to conduct observations of the Student because the Student was taking classes by virtual learning in March 2020 through the end of the school year.

82. On April 28, 2020, the Parents provided written consent for MCPS staff to access the Student's records from the [REDACTED] including the results of the assessments.

83. The IEP in effect at the [REDACTED] as of April 28, 2020, was revised on February 21, 2020. This is the IEP provided to MCPS staff on March 10, 2020. This IEP was reviewed by MCPS staff when developing the Student's IEP for the 2020-2021 school year.

84. The [REDACTED] February 21, 2020 IEP indicates the Student's areas of strengths and weaknesses. With regard to reading, the IEP indicates the following:

Reading:

- ***Strengths:***
- with regard to phonological awareness, including augmenting and blending syllabus, phoneme deletion, segmenting and blending phonemes;
- Blending phonemes;

- Identification of phonograms including consonants, vowels, consonant digraphs, vowel teams, basic prefixes/suffixes;
- Decoding level one and two words;
- Fluency; and
- Encoding.
- ***Weakness:***
- Phonological awareness including isolating and manipulating phonemes within blends;
- Identification of phonograms including level three sound patterns;
- Decoding structured analysis: level three words;
- Reading fluency: increase rate accuracy above baseline;
- Using targeted vocabulary to demonstrate comprehension;
- Demonstrating comprehension in oral and written tasks (Student requires cueing to identify details from text that support his opinions);
- Encoding: level two;
- Comprehension: recall facts and sequence events, summarize material read, using context for word meaning, main idea, supporting details, predictions, conclusions, inferences, analytical reading;
- Expressive language;
- Word retrieval;
- Organization of language: oral/written;
- Organization of physical space; and
- Independent learning skills.

With regard to written language, the [REDACTED] IEP indicates the following:

Written language:

• ***Strengths:***

- Receptive language;
- Use of technology; and
- Auditory processing.

• ***Needs:***

- Sentence structure, grammar, mechanics, vocabulary usage, writing fluency, spelling, paragraph structure, multi-paragraph structure, essay development, maintain relevance to topic, editing, revision, organization of language-oral/written, independent learning skills and grade level curriculum.

85. The IEP indicates the reading needs/target areas named contribute to weak comprehension and/or decoding skills, required specialized intervention and affect the Student's ability to access and make progress through reading in all areas of the general education curriculum.

86. The IEP indicates the written language needs/target areas named hinder the ability to successfully complete daily written assignments (paragraphs, essays, reports, journals, research papers), require specialized instruction, and affect the Student's ability to access and make progress in the general curriculum.

87. With regard to math skills, the IEP indicates the following:

Math:

- ***Strengths:*** number sense, math reasoning, measurement-linear, whole number calculation-addition, subtraction, multiplication, division, decimals-place value and decimals-calculation.

- **Needs:** fractions-calculation, percent-calculation, understanding word problems, application of calculation to problem solving, word retrieval and independent learning skills.

The IEP indicates the math needs/target areas named affect the Student's ability to acquire math calculation and problem solving skills and to successfully use these skills to complete assignments that require specialized instruction, and interfere with the ability to access and progress in the general education curriculum.

88. With regard to behavior/executive functioning, the IEP indicates the following:

- **Strengths:**
- Follows classroom procedures after having been given explicit instructions, follows directions as given with teacher prompts, understands expectations of the teacher/courses, uses playbook daily to record assignments.
- **Needs:**
- Attend to classroom instruction/teacher directions, organize work space, able to work independently, check for clarity of understanding, return completed homework as needed, plan study schedule/procedures for completing assignments, follow through with study schedule/procedures, self-advocate, for assistance and clarification.

The IEP indicates the academic behavior/executive functioning target/needs areas named compromise the Student's ability to engage in the learning process (maintain attention, organize material and information, use effective independent, learning skills and develop relationships) in the general education curriculum.

89. With regard to social/behavior, the IEP indicates the following:

- **Strengths:** works cooperatively with a group/partner, uses learned strategies to engage in social situations with teacher support.

- **Needs:** demonstrate/verbalize knowledge of own strengths/needs, take responsibility for his/her own behavior, self-advocacy, monitor own personal space and space of others, recognize and read environmental cues from teacher/classmates.

The IEP indicates the social skills needs/target areas named compromise the Student's ability to engage in the learning process and develop relationships in the general education curriculum.

90. With regard to speech/language, the IEP indicates the following:

- **Strengths:** aspects of semantics, single-word vocabulary, semantic reasoning, identifying categories, aspects of social pragmatics: using social amenities, politeness markers, interpreting figurative language, auditory memory, receptive oral language, articulation, speech fluency and voice.
- **Needs:** relative needs, aspects of semantics: defining words, expressive oral language: expressive morpho-syntactic skills, word retrieval, language formulation, language organization, semantic-syntactic integration, social pragmatics: eye contact, forming inferences, explaining solutions to problems.

The IEP indicates these weaknesses compromise functioning in the general education curriculum in the following manner: difficulty following classroom instructions and directions, difficulty answering questions and participating in class discussions, difficulty independently completing grade level reading and writing assignments, and language-laden academic course-work, difficulty interacting with peers, and difficulty taking notes.

91. With regard to occupational therapy the IEP indicates the following:

- **Strengths:**
- General visual perception, motor reduced visual perception, grip strength, pinch strength, general dexterity, upper limb coordination for gross motor tasks, aspects of bilateral coordination, general strength, general balance skills, curiosity.

- *Needs:*
- Visual motor integration, handwriting sizing, speed and legibility, bilateral hand use while writing or typing, postural control while seated, processing speed, time management, organization and planning skills, task initiation and completion, inconsistent attention and focus, poor self-advocacy skills, sensory seeking (tactile input), poor trunk strength and endurance, variable physical endurance, vulnerable social skills, variable self-monitoring skills, visual figure round perception, editing skills, work space organization body awareness.

With regard to occupational skills, the IEP indicates the Student struggles with writing and organization in school. The Student demonstrated many relative strengths that are foundational to handwriting. Hand and finger strength measured in the average range during specific testing on the occupational therapy evaluation. His poor handwriting is negatively impacted by deficient skills with fine motor precision, figure ground perception, visual search and sequence skills and poor finger isolation and sequencing skills. His inefficient typing skills are limited by poor finger isolation and sequencing. Perceptual deficits may interfere with his ability to organize and manage classroom materials in a consistent and efficient manner. The Student also demonstrates impulsivity and attentional deficits.

92. The MCPS members of the IEP team reviewed the Speech/Language and Occupational Therapy Assessments conducted by the [REDACTED]. These reports were accepted by the MCPS-based persons on the IEP team and the results of the evaluative data were included in ascertaining the Student's present levels of performance when developing his IEP for the 2020-2021 school year.

93. The [REDACTED] IEP team developed annual goals and objectives to address the Student's deficits in reading, written language, math, behavior/executive functioning, social/behavioral, speech/language, occupational (motor) skills. The IEP also contains classroom and testing accommodations: 100% extended time for tests as allowed by the parameters of the test; advanced notice of tests, calculator for mathematics testing, extra time for processing information and formatting oral/written responses during testing, class discussion and instruction, for machine scored tests: the Student marks answers in test booklets, location of testing with minimal distractions, paraphrasing/simplification of oral and written directions, preferential seating near the teacher, school personnel may check the Student's transferred responses for alignment and completion of hand filled bubbles as allowed by the parameters of test requirements and a small group setting. The Student may be provided a space to read aloud the questions and/or his responses, supervised movement breaks during test session, tests can be administered at best time of day for the Student, tests may be administered over multiple days without exceeding total time and within the parameters of the test, the Student may use assistive technology and electronic devices as allowed by the parameters of the test, word-processing with spell check features, use of assistive technology and electronic devices as allowed by the parameters of the test: text to speech software and the use of computer for all written work (essays, tests).

94. [REDACTED], MCPS Occupational Therapist, conducted a review of the Occupational Therapy Evaluation conducted by the Occupational Therapist for the [REDACTED]. Ms. [REDACTED] also spoke with the occupational therapist at the [REDACTED] who conducted the assessment. Ms. [REDACTED] prepared a report of her review for the IEP team's consideration. A copy of the report was provided to the Parents.

95. In Ms. [REDACTED]'s report, she noted the assessment instruments used by the [REDACTED]. Ms. [REDACTED] acknowledged the Test of Visual Perception Adolescent and Adult Edition (DTVP-A) and the Bruininks-Oseretsky Test of Motor Proficiency 2nd Edition (BOT-2), the Sensory Profile School Companion and the Adolescent/Adult Sensory Profile used by the [REDACTED] in assessing the Student's occupational/motor skills are typically used by MCPS occupational therapists when assessing a student's motor skills needs. These assessments used by the [REDACTED] to assess the Student's occupational and motor skills needs were only partially accepted by MCPS because typically in MCPS, only the Fine Motor Integration and Manual Dexterity subtests of the BOT-2 are used with students to determine school-based strengths/needs, as these test items more closely related to the fine motor activities found in a typical classroom. Additionally, the Sensory Profile Caregiver Questionnaire is not typically used by the MCPS occupational therapists since this information is based on how the Student functions at home and not at school.

96. The occupational therapist at the [REDACTED] used the Behavioral Assessment of the Dysexecutive Syndrome for Children (BADSC) which is not used by MCPS occupational therapists. Typically, school psychologists would explore executive functioning concerns. Additionally, the Grip/Pinch Strength Test, the Benbow Hand Skills Assessment and the Purdue Pegboard Test are measures not typically used by MCPS occupational therapists.

97. The occupational therapist at the [REDACTED] completed a handwriting and keyboarding screening which are informal measures that MCPS occupational therapist utilize. During the screening, the Student copied near point and he wrote/typed with words being dictated to him at performance pace of below average with accuracy ranging from ninety to one hundred percent. Information on how the Student writes/types the alphabet or with self-

composed text, as is assessed by MCPS occupational therapists was not included in the [REDACTED]

[REDACTED] Occupational Therapy Evaluation report.

98. A review of the Occupational Therapist Evaluation report from the [REDACTED] indicates the assessment data results regarding the Student's occupational and motor skills are partially sufficient and clear. For example, the test scores were clearly presented in a graph on the last nine pages of the evaluation without qualitative descriptions provided of the Student's performance during most of the standardized testing measures. In the text of the report, some of the score results were worded differently than the graphs indicated. On page six in the second paragraph referencing how the Student performed on the DTVP-A, it was noted that his figure ground perception was weak, but his score fell into the below average range. On page nine, it was noted that the Student's scores on the BADS-C ranged from very poor to superior, but his lowest scores were in the significantly below average range. It was also noted that his problem-solving skills on the two zoo map tasks were in the average range, but one score was in the average range and the other was in the high average range. On the BOT-2, the Student earned a below average score with his Fine Manual Control skills, and he earned average scores with his Manual Coordination, Body Coordination, Strength and Agility and for his total motor score. Specific information on the pace at which the Student completed tasks and his focus during testing was not provided in the [REDACTED] Occupational Therapy Evaluation report.

99. On the DTVP-A, the Occupational Therapy Evaluation conducted by [REDACTED] [REDACTED] personnel, the Student earned scores in the below average range with Figure-Ground and Visual-Motor Integration. He earned scores in the average range with Copying, Visual-Motor Search, Visual-Closure, Visual-Motor Speed, General Visual Perception and Motor-Reduced Visual Perception. Although each perceptual process is viewed as distinct, a single visual process cannot be isolated to analyze visual information; meaning, a weakness in one area can be

compensated by using all visual skills in tandem. The Student earned a score in the superior range with Form Consistency. Additionally, information regarding the Student's focus, visual attention, paper stabilization and the pace at which he worked was not provided to know if these factors might have impacted the scores he earned. During the evaluation it was noted that the Student demonstrated difficulty with finding a specific paper in his binder and that he struggled to organize his materials with a finite workspace. The difficulties were attributed to the Student's poor visual spatial skills but there is no mention of any influence the Student's diagnosis of ADHD may have impacted the Student's abilities.

100. On April 28, 2020, MCPS convened an IEP team meeting to review and revise the Student's IEP as appropriate for the 2020-2021 school year. All meetings were conducted over the Google Meet video platform as a result of the COVID-19 pandemic. The Parents participated in the meetings and were provided their *Parental Rights and Procedural Safeguards*.

101. At the IEP team meeting on April 28, 2020, the team discussed the Student's academic progress and progress toward achieving the annual goals in his program at the [REDACTED]. The Parents requested an updated draft IEP, based on the information provided from the [REDACTED] regarding the Student's academic performance and the evaluative data ascertained from the assessments. The meeting was continued on June 12, June 16 and June 22, 2020.

102. MCPS provided a draft IEP to the Parents.

103. On June 11, 2020, the Parents provided MCPS staff persons with their detailed written comments and concerns regarding the draft IEP, including specific comments about the annual goals, accommodations and modifications, supplementary aids and related services.

104. On June 12, 2020, the IEP team reconvened, including the Parents. At the

meeting, the team discussed the Student' draft IEP, supplementary aids and services, accommodations, and the present levels of performance. The team also determined that the Student was eligible to receive Extended School Year Services due to the Student's reading deficits. The team agreed to meet on June 16, 2020 to further discuss the Student's proposed IEP and program and to review and discuss the results of the Speech/Language Assessment and Occupational Therapy Evaluation conducted by the [REDACTED]

105. On June 16, 2020, the IEP convened including the Parents and further discussed the assessments conducted by the [REDACTED]. The team agreed to reconvene on June 22, 2020 to finalize the Student's IEP and program.

106. On June 22, 2020, the IEP team convened and developed the Student's IEP. The team considered the Parents, their advocate and attorney's input and was able to review the following from the [REDACTED]:

- the Student's February 21, 2020 [REDACTED] IEP;
- teacher reports and observations;
- Fall 2019 test results for Measures of Academic Progress (MAP-R);
- Quarter 2 and Quarter 3 report cards for the 2019-2020 school year;
- Student writing samples, undated;
- Occupational Therapy Evaluation Report;
- Results of evaluative data from the April 2018 reevaluation;
- Maryland Comprehensive Assessment Program (MCAP) assessment results;
- Speech/Language Assessment report.

The team agreed that some of the annual goals on the [REDACTED] IEP were not specific enough and sometimes not measurable. Some of the goals were rewritten and some were edited.

107. The IEP team determined that the Student's primary disability remained an SLD (other: processing speed) and he was twice exceptional. The academic, physical and social/emotional areas affected by the Student's disability are math problem solving, reading comprehension, reading fluency, reading phonics, speech and language expressive language, speech and language pragmatics, written language content, written language mechanics, executive functioning, and visual motor skills.

108. At the meeting, the team reviewed and developed the IEP goals and objectives. The goals and objectives address all of the Student's deficits identified by the evaluative data, and the Student's academic performance and anecdotal information shared from the Parents and teachers regarding the Student's performance while at the [REDACTED]. The Parents agreed with the annual goals developed to address the unique needs of the Student.

109. The IEP team considered the Student's need for assistive technology to increase, maintain or improve his functional capabilities and determined the Student required the use of assistive technology but did not require assistive technology services. Specifically, the Student required supplementary aids, services, program modifications, supports, instructional and testing accommodations. The Student required the use of a calculator, speech-to-text software, text-to-speech software for instruction, word prediction software, recording devices or software to provide answers, digital text, and a word processor.

110. The IEP team considered the Student's instructional and assessment accessibility needs. The team determined the Student required:

- Blank scratch paper;
- General administration directions clarified;
- General administration directions read aloud and repeated as needed;
- Redirection;

- Spell check or external check device; and
- Graphic organizer.

111. To assist the Student with reduced distractions, the IEP team determined the Student required:

- Text-to-speech for mathematics, science and government assessments;
- Small group;
- Separate or alternate location;
- Frequent breaks;
- Reduce distractions to self; and
- Reduce distractions to others.

112. With regard to instructional and assessment accommodations, the IEP team determined that the Student required copies of notes and outlines for courses and instruction due to his executive functioning and written language needs. The Student also required:

- a calculation device and calculation tools (on non-calculation sections of the Mathematics assessment), speech-to-text for Mathematics, Science and Government;
- constructed response speech-to-text;
- word prediction external device;
- answers recorded in text book and;
- recording device.

The Student requires the instructional and assessment accommodations because of his written language and executive functioning needs.

113. With regard to timing accommodations, the Student required extended time by fifty percent to fully complete assignments and assessments.

114. The IEP team considered the Student's needs regarding supplementary aids, services, program modifications and supports. After deliberating his needs, the team determined the Student required:

- Instructional support: multi-sensory approach to learning instruction when available (i.e. media, pictures, videos etc.) to increase the Student's attention and engagement in all academic settings;
- Instructional support: use of a word processor or computer daily in all settings;
- Instructional support: specified comprehension check-ins during reading for lengthy readings or texts, to improve reading comprehension in all classes where reading is required;
- Instructional support: check for understanding, daily, in all settings;
- Instructional support: preview content material vocabulary, or information as needed in all academic settings to assist with understanding, application and retention of information;
- Instructional support: models or examples of written work for lengthy writing assignments, when possible, in all classes where lengthy writing is required;
- Instructional support: oral rehearsal prior to writing, for lengthy oral tasks, in all classes where writing is required;
- Instructional support: wait time for oral responses, daily, in all classes;
- Instructional support: tests may be administered over multiple days without exceeding total time and within the parameters of the test;
- Instructional support: tests are administered at the best time of the day for the Student, when possible, when pre-arranged and scheduled with approval from the test coordinator, teacher and/or administrator;

- Instructional support: repetition of direction, in all classes, daily;
- Instructional support: paraphrasing/simplification of oral and written directions, daily in all classes;
- Instructional support: advance notice of tests, prior to major assessments in all calluses;
- Instructional support: encouraging use of speech-to-text and text-to-speech and other technology tools, as needed, in all classes where extensive writing or note taking is required to assist with reading online text;
- Instructional support: limit amount to be copied from the board, daily, in all classes where extensive note-taking is required;
- Instructional support: allow use of manipulatives when learning new math concepts, primarily in math, but as appropriate in all content classes;
- Instructional support: provide proofreading checklist for all writing assignments, in all classes where writing tasks are required;
- Instructional support: frequent and/or immediate feedback, daily, in all classes and nonacademic settings;
- Program Modifications: visual supports, daily, across settings as needed;
- Program Modifications: break down assignments into smaller units, for large projects and assignments, in all classes that require larger or long-term assignments or projects;
- Social/behavioral supports: (homework reward system) to be utilized daily;
- Social/behavioral supports: encourage Student to ask for assistance when needed, daily across all settings;
- Social/behavioral supports: social skills training, periodically, in academic and nonacademic settings (the counselor or special education teacher will provide coaching and/or encouragement to use social skills strategies);

- Social/behavioral supports: verbal and non-verbal cues, daily, across all academic settings;
- Social/behavioral supports: monitor use of agenda book and/or progress reports, daily, in all classes to make sure that assignments are recorded;
- Social/behavioral supports: strategies to initiate and sustain attention, daily, with fidgets, mind mapping, movement breaks, tracking the teacher; and
- Physical/environmental supports: preferential seating, daily, in all classes.

115. With regard to the least restrictive environment in which to implement the Student's IEP, the team considered all of the continuum options of placement. The team determined the Student would receive specialized instruction in the general education inclusion setting, except for a self-contained gifted/talented/learning disabled (GT/LD) resource classroom. Specifically, during the 2020-2021 school year, the Student would receive support in Honors English, Honors Biology, Honors Geometry, Honors US history and an elective of the Student's choice. He would participate in two self-contained GT/LD resource classrooms in order to work on his reading intervention, written expression needs, executive functioning needs and social/emotional goals.

116. The IEP also required that the Student receive the related service of occupational therapy, thirty minutes per month to support the following supplanted aids and services: encourage use of speech-to-text and text-to-speech and other technology tools, strategies to initiate and sustain attention, allow use of manipulatives and visual aids.

117. The IEP also required that the Student receive the related service of counseling, thirty minutes per week to support his transition to high school and to address his social/emotional goals.

118. The IEP required that the Student receive speech/language therapy for four forty-

Five-minute sessions monthly, in a small group setting, with consultation with classroom teachers to facilitate improved verbal expression, organization, and pragmatic language skills. He will also receive four fifteen-minute sessions monthly in the classroom setting to facilitate carry over of verbal expression, organization and pragmatic language skills.

119. The IEP would be implemented at [REDACTED] HS.

120. The IEP and placement are reasonably calculated to meet the unique needs of the Student and to provide FAPE in the least restrictive environment for the 2019-2020 and 2020-2021 school years.

DISCUSSION

The Legal Framework

Burden of Proof

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case, the Parents are seeking relief, and bear the burden of proof to show that MCPS failed to offer the Student a FAPE for the 2019-2020 and 2020-2021 school years, and that they are entitled to reimbursement for their unilateral placement of the Student at the [REDACTED]. For the reasons that follow, I find that the Parents have not met this burden, and conclude that MCPS offered the Student a FAPE for the 2019-2020 and 2020-2021 school years, with an IEP that was reasonably calculated to meet his unique needs and that the

Parents are therefore not entitled to reimbursement for their unilateral placement of the Student at the [REDACTED].

Legal Framework

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01. The IDEA requires “that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

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

(A) In General

The term “child with a disability” means a child –

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

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

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

individually designed to provide educational benefit to the handicapped child.” *Id.* at 201 (footnote omitted). The Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07.

The *Rowley* Court found, because special education and related services must meet the state’s educational standards, that the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade-to-grade on grade level. *Rowley*, 458 U.S. at 204; 20 U.S.C.A. § 1401(9).

The Supreme Court recently revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017). Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001.

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

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

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

20 U.S.C.A. § 1414(d)(3)(A).

Among other things, the IEP depicts a student's current educational performance, explains how the student's disability affects a student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children) . . ." 34 C.F.R. § 300.320(a)(1)(i). If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies and supports to address that behavior. *Id.* § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. *Id.* § 300.324(b)(1).

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

services, supplementary aids, program modifications, supports, and accommodations. 20

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

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

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

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

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an “ambitious” piece of legislation enacted in response to Congress’ perception that a majority of disabled children in the United States “‘were either

totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to “drop out.” *Andrew F.*, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 179). A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child’s circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be “*pecially* designed” to meet a child’s “*unique* needs” through an “[i]ndividualized education program.” *Andrew F.*, 137 S. Ct. at 998-99 (citations omitted). The Court expressly rejected the Tenth Circuit’s interpretation of what constitutes “some benefit”: When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Id.* at 1001 (citation omitted).

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

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

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

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

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

provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1). Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2). In such a case, a FAPE might require placement of a child in a private school setting that would be fully funded by the child's public school district.

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

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

By definition, specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, consistent with Maryland State Department of Education (MSDE) criteria. A full explanation of the criteria to be used for a SLD determination is contained in *A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework* (June 2008).

SLD includes, but is not limited to, conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Given that this is not an exhaustive list, other conditions may also form the basis for a SLD determination if all other criteria under the IDEA are met and the student requires the provision of specially designed instruction. With regard to one item that is on the list, brain injury, please note that "traumatic brain injury" is a distinct disability category under the IDEA. Lastly, the definition of SLD does not include learning problems, which are primarily the result of visual, hearing, or motor impairments, intellectual disability, emotional disability, or environmental, cultural, or economic disadvantage.

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

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

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

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

- 1) oral expression;
- 2) listening comprehension;
- 3) basic reading skills;

- 4) reading fluency skills;
- 5) reading comprehension;
- 6) written expression;
- 7) mathematics calculation; or
- 8) mathematics problem solving.

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

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

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

- 1) does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the 8 academic areas when using a process based on the student's response to evidence-based intervention; or
- 2) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

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

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

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

The IEP team is required to consider both:

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

student's general education record with regard to both instruction and assessment in the areas of reading, math, and written expression.

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

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

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

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

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

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

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

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

- 1) A statement of whether the student has a SLD;
- 2) The basis for making the determination;
- 3) The relevant behaviors, if any, noted during the observation of the student;
- 4) The relationship of the behaviors to the student's academic functioning;
- 5) The educationally relevant medical findings, if any;

6) The determination of the IEP team concerning the effects of visual, hearing, or motor disability, intellectual disability, emotional disability, cultural factors, environmental or economic disadvantage, or limited English proficiency on the student's achievement level; and

7) The written certification of each IEP team member as to whether the written report reflects the member's conclusion. If the written report does not reflect an IEP team member's conclusion, the team member must submit a separate statement presenting the team member's conclusions. If the student participated in a process to assess the student's response to evidence-based intervention, the written report must also include:

1) The instructional strategies used and the student-centered data collected;

2) Documentation that the student's parents were notified of the MSDE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

3) Strategies for increasing the student's rate of learning; and

4) The parents' right to request an evaluation. *Authority:* 34 CFR § 300.311; COMAR 13A.05.01.06D(5) & (6).

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

The Contentions of the Parties

The Parents' attorney filed a comprehensive complaint on behalf of the Student and the Parents. The Parents complained and subsequently argued that MCPS did not develop an appropriate IEP and placement for the Student for the 2019-2020 and 2020-2021 school years. As a result, the Parents maintain they had to unilaterally place the Student at the [REDACTED] in order for him to benefit from an educational program that could meet the Student's needs. The Parents seek reimbursement for tuition at the [REDACTED] for both school

years on the theory that the MCPS proposed IEPs were not developed to provide a FAPE and that the program at the [REDACTED] meets the Student's needs.

After reviewing all of the evidence in this case, I must conclude that MCPS developed an IEP that was reasonably calculated to meet the unique needs of the Student for both the 2019-2020 and 2020-2021 school years. I have assessed the witnesses and explain below why I have determined the IEP team was correct in developing the Student's program for both school years.

The IEP is reasonably calculated to provide the Student with a FAPE for the 2019-2020 and 2020-2021 school years

2019-2020 school year

The Student is identified as a student with an SLD under IDEA and is twice exceptional. The IEP developed for the 2019-2020 school year required that the Student receive special education services under IDEA as a student with an SLD who is twice exceptional or G/T. Specifically, the Student's IEP was developed on June 12, 2019. At the June 12, 2019 IEP team meeting, the team essentially determined that the student continued to require specialized instruction and related services as a result of a clear discrepancy between his skills and processing speed. The Student also experiences inattention, immaturity and impulsivity which impacts him in the areas of academic fluency, written expression, social interactions and math problem solving skills. The Student is also impacted by ADHD and experiences deficits with executive functioning skills.

The Student's IEP contained numerous testing and instructional accommodations, use of assistive technology devices and supplementary aids and services to help him achieve the annual goals on the IEP. The goals and objectives on the IEP were developed in accordance with the applicable law and regulations and the Parents did not dispute the developed goals when the IEP was revised on June 12, 2019, with the exception of the Student's social/emotional goals. This is

very important because the annual goals are what determine the Student's program and placement.

[REDACTED], Executive Director, [REDACTED], accepted as an expert in special education and the Student's mother [REDACTED] participated in the IEP team meeting where the Student's program was developed for the 2019-2020 school year.

The Student's mother and father are very knowledgeable about all aspects of the Student's health and education. Additionally, it is overwhelmingly clear from the testimony and tangible evidence that both Parents love their son very much and simply want him to be able to maximize his potential. The Parents were very clear in their testimonies regarding many of the Student's deficits, the impact of the severe abuse and neglect he received prior to coming to the loving home the Parents have provided, and how they perceive that the Student's deficits impact his ability to progress in the general curriculum. Despite their appropriate passion and understandable zeal to want the Student to receive special education services under IDEA at the [REDACTED], the Student simply does not require his program to be implemented in one of the most severe placements on the continuum of placement options, in light of the fact that MCPS developed an appropriate IEP for the Student for the school years in question. Quite frankly, the Student's deficits are such that his program can be implemented in a comprehensive school and does not require a separate school given that supplementary aids and services can assist the Student with receiving FAPE in the least restrictive environment (LRE).

Even after considering the Parents' experts, I am convinced that MCPS prepared an appropriate program for the Student for the 2019-2020 school year. Mr [REDACTED] conducted an observation of the Student in one of his classrooms at [REDACTED] MS for approximately one hour and forty minutes, to assist the Parents in their decision-making process with regard to developing the Student's educational program for the 2019-2020 school year. In assessing the Student's

skills, strengths, and weaknesses, Mr. [REDACTED] also performed record reviews, and reviewed the results of a private psychoeducational evaluation conducted by [REDACTED], Ph.D. on March 14 and March 21, 2018. In conjunction with anecdotal information shared by the Parents and teachers regarding the Student's grades, academic performance and progress toward achieving the annual IEP goals, Dr. [REDACTED]'s evaluation helped the team determine the Student's then present levels of performance. Additionally, a review of Dr. [REDACTED]'s report indicates that Dr. [REDACTED] recommended that the Student receive his educational program in the GT/LD program with numerous accommodations and supports. A review of the IEP that MCPS developed, reveals that many of Dr. [REDACTED]'s suggestions were drafted into the IEP and the IEP developed was to be implemented in the GT/LD program. In essence, MCPS developed the type of program that Dr. [REDACTED] indicated the Student required.

Concerning the development of the 2019-2020 IEP, Mr. [REDACTED] testified that when he observed the Student in his CADD class, the Student clearly understood the content lesson and was participating in class but that he observed the Student to experience difficulty interacting with peers and with his reading fluency. Based upon the Student's demeanor in the class and the data Mr. [REDACTED] reviewed concerning the Student's deficits and academic performance, progress and lack of progress in some areas toward achieving the annual IEP goals, Mr. [REDACTED] opined that the Student would benefit from having a small class for part of his academic day, benefit with a cohort of peers who are gifted and have learning challenges. Mr. [REDACTED] presented as a very credible witness based upon his familiarity with the Student's needs upon reviewing numerous points of data about the Student's skills and deficits and his experience with interpreting data and working with Students who are learning disabled and gifted/talented. In fact, before starting his own consulting group, Mr. [REDACTED] worked for MCPS and had oversight of the program that worked extensively with learning disabled/gifted

talented students under IDEA and was the first full-time instructional specialist for MCPS to coordinate all of the GT/LD programs and services for MCPS, prior to completing his career with the school system. As a result, I gave Mr. [REDACTED]'s testimony significant weight concerning what he originally shared with the IEP team when developing and revising the Student's program.

With regard to the Student's program I found the following exchange very compelling in terms of understanding what the Student requires:

Q: So you basically were recommending what is a gifted, talented, GTLD type of profile of a student, correct?

A: I was recommending what is generally a GTLD program, yes.

Q: Okay. So a GTLD -- and I know you use the term twice exceptional. If I go back and forth, just for the Judge's reference, is twice exceptional, that concept equivalent to GTLD?

A: For Montgomery County, I would say it is.

(Tr., at 106).⁶

Q: So you recommended the GTLD Program at that time, correct?

A: That is correct.

Q: And that is what the School System proposed, correct?

A: That's right.

Q: And you were part of the development of that IEP, correct?

⁶ Throughout the decision, I have highlighted various relevant points of testimony from multiple witnesses. However, I have not engaged in isometric analysis based solely on any quoted passages in arriving at my conclusions. I have considered all of the testimony and evidence and simply highlight the testimony to emphasize my conclusions.

A: That is correct.

Q: And in terms of all elements of that IEP, you were there during the entirety of the IEP meeting?

A: That's right.

Q: So when you left that meeting, other than the family seeking a change of area placement, the family and you agreed with the IEP proposed, correct?

A: Uh -- From my notes, there were two areas that I didn't agree with during the meeting. One was I wanted reading goals to be added, and the team eventually agreed to add that goal. I didn't see the goal during the meeting, I saw it afterwards, and I saw afterwards that they didn't answer any, didn't add a present level to the IEP. The other omission was I asked that they add a social --

A: There was a reading comprehension goal added after the meeting.

Q: Okay. And then the second -- that's when you froze on my screen.

A: Okay, and then the other piece was that I ask the team [to] add a social-emotional goal, and the team disagreed with that.

Q: But the IEP has one, isn't that true? If you can look at -- and I'm going to look at MCPS 17 because it's easier for me to follow. If you can look at, first of all the reading comprehension, if you can look at MCPS 17.24 -- I'm sorry, Judge. I apologize. I'm looking at the May 2018 -- one moment -- give me one minute -- let me kind of get my documents in order. Okay, I'm looking at MCPS 23.23, there's a social interaction skills, do you see that?

A: 23.23, you said?

Q: Yes.

A: Give me a moment please. I do see a social interaction goal. That's not in my mind the same thing as a social-emotional goal.

Q: Okay, but it's how you interact with peers, correct?

A: Correct, that is included.

Q: Okay, and also MCPS and its services proposed a counseling service in terms of services, isn't that right?

A: Yes, 15 minutes a week. That's correct.

Q: Okay. But in terms of the overall, other than that, you agreed with the GTLD proposal at that meeting, correct?

A: At that point in time I did, yes.

Q: Okay. And the other areas -- and that was enough so that the family even asked for an area assignment transfer from [REDACTED] Middle School with a GTLD program to [REDACTED] Middle School, correct?

A: That's right.

(Tr., at 108-110).

The evidence received in this case supports Mr. [REDACTED]'s opinion concerning the Student's needs and the type of program he required when the IEP was developed in June 2019. It is very clear that he understood the Student's strengths and weaknesses and that is why he recommended the GT/LD program in MCPS when he met with the IEP team in June 2019. Mr. [REDACTED] acknowledged that although he subsequently recommended the [REDACTED] for the Student, in June 2019, he believed as MCPS staff believed, that the GT/LD program was appropriate to meet the unique needs of the Student.

[REDACTED], Twice Exceptional Instructional Specialist, MCPS, accepted as an expert in special education, with an emphasis on gifted and talented and twice exceptional students, testified on behalf of the school system. Ms. [REDACTED], the Special Education Coordinator, participated in the June 2019 IEP team meeting where the IEP was developed for the 2019-2020

school year. Ms. [REDACTED], like Mr. [REDACTED], has great insight regarding the Student and his unique needs. She has a thorough understanding of the Student's needs as a student with a learning disability who is also gifted/talented or twice exceptional. She was a part of the IEP team that developed the Student's program. The following exchange highlights the basis for her being competent to form a viable opinion regarding the Student's needs in conjunction with her understanding of the Student's then present levels of performance:

Q. So that we can understand -- so I'm going to qualifying you as an expert, but I want to understand so you can explain to the Judge is there a difference in the term gifted versus twice exceptional. Let's start there.

A. Yes, there is.

Q. Okay. So you're -- your certification is gifted and talented but I'm hearing twice exceptional and then I'm going to get to the GTLD. Let's talk about the gifted and talented versus twice exceptional. What's the difference?

A. So gifted and talented is a student who is identified as having unique cognitive abilities or unique talents who is exceptional in a particular field. And while that can cover a number of fields within the world of education, we really focus on the cognitive abilities. So classroom abilities, critical thinking, creativity, and their ability to learn differently than the general education students. A twice exceptional student is a student who is all of that and also has another exceptionality which is usually classified as a disability. And so it's a student who, you know, might have superior cognition they can see all these wonderful big picture things, but they might have very slow processing speed. They might have a learning disability. They might have an emotional disability. Just any number of exceptionalities which impact their ability to full embrace their giftedness and -- and access their giftedness.

Q. Okay. And so in terms of your background, you have background in the twice exceptional as well as the gifted and talented?

A. So because it's a cross section between gifted and talented in special education by holding both of those certifications it brings that twice exceptional experience. There are very very few programs nationally that actually offer certification in twice exceptional. One of them, the most prominent, is actually in the process of being certified right now and it's my hope to go for their educational doctorate once they are certified. So it's not really a possibility to get a certification in -- in twice exceptional in isolation, but part of the mandated course load of gifted and talented specialists is a course in twice exceptional learners.

Q. Okay. And you're the chairperson of the Twice Exceptional Special Interest Group for the National Association for Gifted Children?

A. Yes, ma'am.

(Tr., at 956-958).

When Ms. [REDACTED] testified, I did not detect any bias in her testimony nor bias in any of the testimony from MCPS witnesses. Ms. [REDACTED]'s testimony was supported by reliable data and anecdotal information and highlighted the Student's strengths and weaknesses. Ms. [REDACTED]'s testimony indicated no predisposition to render an opinion favorable to MCPS. For these reasons, I have placed considerably more weight upon Ms. [REDACTED]'s testimony.

Ms. [REDACTED] meticulously testified about the Student's deficits as identified through all of the anecdotal and evaluative data, including the information learned about the Student's abuse, neglect and trauma in his proadaptive environment prior to living with his Parents. The evidence received in this case supports her testimony, and it is very clear that she understands the Student's strengths and weaknesses. When Ms. [REDACTED] would make assertions about the Student's strengths and weaknesses during her testimony, those assertions were supported by independent data. For example, Ms. [REDACTED] discussed the Student's social/emotional needs and how when additional information was shared at the June 12, 2019 meeting concerning his past experienced trauma and abuse and how they might impact his school performance, the school-

based members of the IEP team agreed that counseling services would be provided in the IEP. She further opined how the Student would benefit from his numerous supplementary aids, modifications, assistive technology and accommodation to assist him in overcoming his deficits so that he could progress in the general curriculum. In short, Ms. [REDACTED]'s testimony indicated that when she made assertions about the Student, those assertions could be corroborated with data that could actually be assessed and documented.

It is clear that Ms. [REDACTED] and quite frankly, Mr. [REDACTED] were proverbially on the same page when supporting the decision that the Student's IEP could be implanted in an LD/GT program in a comprehensive school. Although sometime between the end of June and August 2019, Mr. [REDACTED] changed his mind and determined the Student's program should be implemented in a separate day school, the evidence does not support that decision. In fact, Mr. [REDACTED] was very adamant during his testimony that he had a thorough understanding of the Student's needs based upon his observation and review of the existing evaluative data from a variety of sources. I found him credible on that point based upon his exhaustive review. This is why I believe his initial recommendation was correct as it comports with what MCPS knew about the Student and his strengths at the time of the IEP meeting on June 12, 2019. Lastly, it is very important to note that there is no area of deficient skills that impacted the Student's ability to make progress in the general curriculum that is not fully addressed on the IEP either with a related service, accommodation, modification, supplementary aid, assistive technology device, or annual goal/objective. When I reviewed the Student's identified deficits, I was able to find where those deficits are addressed in the IEP in order to assist the Student to make progress in the general curriculum. This is the main reason I have painstakingly listed all of the components of the Student's IEP in the Findings of Fact section of this decision. An IEP can only be appropriate if it accurately identifies the student's present levels of performance to include

academic, emotional, behavioral, social, and physical deficits which impede the Student's ability to progress in the general curriculum. Secondly, the present levels of performance should address not only weaknesses, but also strengths of the child, so that those strengths can be used to develop strategies to address areas of weakness. Additionally, the goals on the IEP must identify a specific, measurable result for the child to achieve at the end of the IEP period and the specially designed instruction must be designed to allow the child to make meaningful educational progress in the least restrictive environment i.e., a placement involving the maximum level of integration with non-disabled students in which the child can receive appropriate instruction. Lastly, the related service intervention must be necessary to allow the student to make meaningful educational progress. The MCPS IEP meets all of the criterion.

Least Restrictive Environment proposed by MCPS is appropriate for the 2019-2020 IEP

As alluded to above, under IDEA, the Student must be placed in the least restrictive environment to achieve a FAPE. Pursuant to federal statute, disabled and nondisabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5). Yet, placing disabled children into regular school programs may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. *Id.* and 34 C.F.R. § 300.114(a)(2). That does not mean, however, that in such a case, placement of a child in a non-public school setting, at the public school district's expense, is the only option available that would allow a child to receive a FAPE. If a public school setting has a self-contained special education program that allows the child to access the curriculum and receive educational benefit, then IDEA's requirement that a disabled child be educated in the least restrictive environment would be accomplished by placement in the public school program. To the maximum extent appropriate, children with disabilities "are educated

with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aid and services cannot be achieved satisfactorily.” 20 U.S.C. §1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2). However, this “mainstreaming” requirement is “not an inflexible federal mandate.” *Hartmann v. Loudoun County Bd. of Educ.*, 118 F. 3d 996, 1001 (4th Cir. 1997). MCPS was obligated to provide the Student with a placement that affords him at least an opportunity to interact with nondisabled peers, if he will receive educational benefit in that placement. That is precisely the case in this matter. The Student can receive his education in an environment with nondisabled peers. The general education environment is the first LRE placement option, and how placement is designed is unique to a student’s individualized needs. In this case, it is clear from a review of the Student’s academic performance while in MCPS that he can perform better academically and learn the appropriate social and communication skills when he has access to the general education setting and with similar cohorts, with proper supports and accommodations.

I see nothing in this case that with regard to inclusion (i.e., the belief and practice that all students have the right to meaningfully access academic and social opportunities in general education settings) should not be implemented under the MCPS IEP. Consider, at the June 12, 2019 IEP team meeting, when developing the Student’s IEP for the 2019-2020 school year, the IEP team discussed the Student’s academic performance and needs. The MCPS’ June 12, 2020 IEP was reasonably calculated to provide FAPE to the Student. A review of the Student’s grades and progress toward achieving the annual goals in the IEP shared with the team as they developed the IEP for the 2019-2020 school year indicates the Student was integrated into the general education classroom and made educational progress. As *Andrew F.* states:

Accordingly, for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”

...

... When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum.

... [The] educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.”

137 S. Ct. at 999-1000. The Student was taking honors courses, made “passing marks” and “advance[d] from grade to grade.” *Id.* at 999. The “level of instruction” he was provided was “reasonably calculated to permit . . . [his] advancement through the general curriculum.” *Id.* at 1000. Based on the Student’s performance reviewed at the time of the IEP team meeting in June 2019, the IEP team was reasonable in building on this progress and proposing a program where the Student could continue to be integrated into the general education environment with special education supports and pull-outs as necessary. As the Supreme Court noted, the Student falls into the category of children where “advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.*

Based on the progress the Student made, his educational program is also “appropriately ambitious in light of his circumstance.” Across a variety of domains, the evidence in this case showed that the Student made progress. The Parents have not proven their assertion that the Student should have been made to receive his educational program in a separate school.

The parties agreed in June 2019 that the Student’s IEP could be implemented in a comprehensive school. Additionally, the team discussed various placements along the continuum of placements. As indicated above, in determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team in conformity with the least restrictive environment provisions, determined at least annually, be based

on the student's IEP, and be as close as possible to the student's home. 34 C.F.R. §300.116(a) and (b). In selecting the least restrictive environment, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. 34 C.F.R. §300.116(d). This is exactly what the IEP team did. Specifically, the team determined that the Student could receive his services in a typical school in the LD/GT program and that he could take advanced courses. Moreover, at the Parents request, MCPS agreed to a change in location to [REDACTED] MS.

In this case, it is clear from the evidence in this case, including the prior written notice for the June 12, 2019 IEP team meeting that none of the IEP team members believed on June 12, 2019 that the Student required his program to be implemented in a separate day school. Consequently, the evidence indicates that a more restrictive change in placement with regard to the LRE was simply not necessary. MCPS staff who have worked with the Student provided a detailed analysis of the Student's performance, strengths and deficits. The school-based members of the IEP team believe that the Student's IEP could be effectively implemented at a typical school with an LD/GT program. Although the Parents and their advocates subsequently changed their minds, the judgment of educational professionals such as these is ordinarily entitled to deference. *G. v. Ft. Bragg Dependent Schools*, 343 F.3d 295, 307 (4th Cir. 2003); *M.M. v. School District of Greenville County*, 303 F.3d 523, 532 (4th Cir. 2002). Where appropriate, I have given deference to MCPS staff, because the assertions concerning what the Student required are supported by concrete evaluative data regarding the Student's needs, ascertained from a variety of sources as detailed in the facts set out above.

After carefully reviewing all of the evidence presented by the Parents and MCPS, I find that MCPS developed an appropriate IEP and placement for the 2019-2020 school year. The IEP

and placement are reasonably calculated to enable the Student to make appropriate progress in light of his unique needs as a student who has a learning disability and is twice exceptional.

2020-2021 School year

MCPS developed an IEP for the 2020-2021 school year that was reasonably calculated to meet the Student's unique needs. When developing the Student's program for the 2020-2021 school year, the IEP team met via a video platform, over the course of four meetings, April 28, June 12, June 16, and June 22, 2020 during the COVID-19 pandemic.

When the IEP team initially met on April 28, 2020, the team reviewed the Student's progress while at the [REDACTED]. As indicated above, the Student received his entire educational program at the [REDACTED] for the 2019-2020 school year, after being unilaterally placed at the school by his Parents. At the first meeting to develop the program, the team did not have all the evaluative data to ascertain the Student's present levels of performance, as he had not been enrolled in MCPS for a full school year.

When drafting the IEP, the team included all of the supplementary aids and services the Student had at the [REDACTED]. Additionally, the team meticulously reviewed each of the Student's goals and objectives on his [REDACTED] IEP. The team drafted verbatim some of the annual goals and revised others. The ones that were revised were revised to be more specific and to ensure that all of the Student's deficits that impeded his ability to progress in the general curriculum were addressed. Ms. [REDACTED] was the Chairperson for the IEP team that revised the Student's IEP for the 2020-2021 school year. Ms. [REDACTED] wrote the prior written notice for the IEP team meeting that was instrumental in developing the Student's IEP and program. For this reason, I gave her testimony a great deal of weight and found her credible with regard to the rationale used by the IEP team in deciding what the Student's program would entail. What bolstered her credibility was the fact that the prior written notice was provided to the Parents in

close proximity to when the meetings occurred and when Ms [REDACTED] testified, the prior written notice confirmed her assertions. Under 34 CFR §300.503(a), written notice that meets the requirements of 34 CFR §300.503(b) must be given to the parents of a child with a disability a reasonable time before the public agency: (1) proposes to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This notice must be provided in either of these circumstances, irrespective of whether or not the proposal or refusal is made during the course of an IEP Team meeting, pursuant to 34 CFR Sections 300.320-300.324. Further, under 34 CFR Sections 300.503(b)(1) and (b) (2), the prior written notice must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. Prior written notice must also include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of the other options that the IEP Team considered; the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. *See* 34 CFR §300.503(b)(3),(6) and (7). In this case, it is easy to understand the rationale for the decisions made in reference to the Student's program because the prior written notice was written with great specificity. For example, with regard to revising the annual goals on the [REDACTED] IEP, the prior written notice dated June 22, 2020, indicates the Student's goals were amended or updated in the areas of reading phonics, reading comprehension, reading fluency, math problem solving, written language, speech language (pragmatic and expressive), social/emotional (self-discipline, conduct, problem-solving, organizing, attentional, task-follow through), and the team drafted a new self-advocacy goal.

The prior written notice, as well as the written IEP, states the Student's present levels of performance from the then most recent evaluative data, including the evaluations conducted by the [REDACTED]. All of the evaluative data including the information regarding the Student's performance as shared through the formal assessments, grades, Parents and teacher information, indicate the academic, physical and social/emotional areas affected by the Student's disability are math problem solving, reading comprehension, reading fluency, reading phonics, speech and language expressive language, speech and language pragmatics, written language content, written language mechanics, executive functioning, and visual motor skills. As a result, similar to the program for the 2019-2020 school year, the IEP and placement can only be reasonably calculated to meet the unique needs of the Student if it addresses these deficits. It is overwhelmingly clear that it does.

I am compelled to emphasize the MCPS-based members of the IEP team considered all of the concerns of the Parents and their advocates and memorialized in the prior written notice the reasons for accepting or rejecting the Parents proposals. Of particular note is this line of questioning when Ms. [REDACTED] testified concerning whether the Parents agreed with the annual goals and the related services, supplementary aids and accommodations:

A. The school team proposed [REDACTED] receive 45 minutes of speech and language instruction outside of general education per week. The school team proposed [REDACTED] receive 15 minutes of speech and language instruction instead of general education per week. The school team proposed [REDACTED] receive 30 minutes of occupational therapy services consults inside general education per month. The school team proposed [REDACTED] receive 30 minutes of counseling services inside general education per week.

Q. And how about special education services?

A. So that's actually integrated in the previous section. I'm sorry.

Q. Yes, go ahead and tell us then.

A. So that would be 58.1 the school team proposed [REDACTED] receive two special education GTLD resource classes outside of general education daily, so that would be two 45 minute classes outside of special education daily. One would focus on needs in writing and writing and a reading intervention. The second would focus on social emotional and executive functioning needs. The school team proposed [REDACTED] receive four academic classes with special education co-teacher support daily and again each of those would be for 45 minute classes. The school team proposed co-taught honors English 9, co-taught honors geometry, co-taught honors biology and co-taught honors U.S. history.

Q. Okay.

A. And then one -- one elective class of [REDACTED]'s choice with special education support.

Q. All right. So in terms of the -- let's talk about the present levels of performance on that IEP. Across those four meetings was there agreement as to present levels of performance?

A. Yes.

Q. Was there agreement as to goals and objectives?

A. Yes.

Q. Was there agreement as to supplemental aids and services?

A. Yes.

Q. Was there agreement in terms of instructional accommodations, technology?

A. Yes.

Q. Okay. In terms of service hours was there agreement as to service hours?

A. There was disagreement as to service hours around related services.

(Tr., at 1046-1047).

When I consider the collective expert testimony of Ms. [REDACTED], Ms. [REDACTED] (the [REDACTED]'s speech/language pathologist) [REDACTED] (the [REDACTED]'s occupational therapist), [REDACTED], (MCPS speech/language pathologist) and [REDACTED], (MCPS occupational therapist) it is very clear that Ms. [REDACTED] is correct in her assertion that with regard to the 2020-2021 school year, the parties vehemently disagree with regard to the amount of related services the Student should receive. Quite simply, the Parents believed the Student should receive more services.

With regard to the Student's speech/language needs, Ms. [REDACTED] testified that after considering all of the evaluative data, the MCPS-based members of the IEP team agreed that forty-five minutes of pull out services a week, and fifteen minutes inside the general education classroom per week coupled with consultation and collaboration in the classroom would address the Student's communication needs. Not surprisingly, Ms. [REDACTED] opined, as well as Ms. [REDACTED] that the amount of services is driven by the nature and severity of the Student's needs. I did not give more weight to Ms. [REDACTED]'s assertions that the Student required more speech/language therapy to meet his needs for the following reasons. Ms. [REDACTED] was very clear that she consulted with [REDACTED] staff and was well grounded in the Student's needs, even after the fact that he had not been enrolled in MCPS for one full school year. Ms. [REDACTED] and the IEP team reviewed the IEP goals and objectives and the severity of the Student's needs and then developed the Student's program including the recommended service hours. A review of the Student's present levels of performance and the annual goals are overwhelmingly clear that the Student's needs would be addressed under the MCPS IEP and that the amount of service and consultative hours would assist the Student to benefit from his program and progress in the

general curriculum. Moreover, I agree with Ms. [REDACTED] that the type of services developed by MCPS to help the Student meet his communication needs, would permit the Student to remain in his classroom in the general education environment, where he could practice his communications skills and interact utilizing varying strategies, with students who are not disabled.

With regard to occupational therapy and the Student's motor skills needs, I was most impressed with Ms. [REDACTED] the [REDACTED]'s Director of Occupational Therapy, and Ms. [REDACTED], the MCPS occupational therapist. Similar to the speech/language pathologists and quite frankly all of the witnesses who testified for both sides, these therapists were very knowledgeable regarding the Student's needs including his weaknesses and strengths. From the start, Ms. [REDACTED] opined that occupational therapy helps people with their occupation, i.e., what they do with their life. She further opined that with regard to students, therapy helps a child be the best student they can be in the school environment. Ms. [REDACTED] testified at length about the Student's needs as it relates to occupational therapy, including his attentional deficits, executive functioning skills regarding organization and his motor skills. Ms. [REDACTED] was knowledgeable about the annual goals on the [REDACTED] IEP regarding occupational therapy and how the Student has made progress. The goals assist the Student primarily with organization, typing, handwriting, using assistive technology, visual accommodations, and using writing implements. However, after reviewing the Student's needs and the annual goals on the MCPS IEP and the service hours for occupational therapy, I am satisfied that the MCPS proposed IEP meets the student's occupational and motor skills needs. Ms. [REDACTED]'s testimony assisted me greatly in coming to this conclusion and for the following reasons, I gave her testimony and opinion more weight than that of Ms. [REDACTED]'s. Ms. [REDACTED] reviewed the [REDACTED] occupational therapy report and the records from the [REDACTED] regarding the Student's academic performance. Additionally, she spoke with the person who conducted the [REDACTED]

occupational therapy evaluation. This is important because as a result of the COVID-19 pandemic crisis, Ms. [REDACTED] could not conduct an observation of the Student. Talking to the evaluator also provided Ms. [REDACTED] the opportunity to receive clarification for the things she had questions about in the evaluator's report of the findings from the evaluation. Ms. [REDACTED] wrote a review of her findings upon reviewing the [REDACTED] occupational therapy report. That information was shared with the IEP team.

Ms. [REDACTED] testified that in assessing the Student's needs regarding occupational therapy, she considered his attentional needs as a result of his diagnosis of ADHD. Ms. [REDACTED]'s assertions regarding the Student's needs are supported by the evaluative data. For example, Ms. [REDACTED] opined and the data supports, the Student has the basic foundational skills that a student requires when manually writing and typing. She testified that the Student's attentional processing speed impact his abilities. In addition to the direct service hours the Student would receive with regard to occupational therapy, the Student has numerous accommodations and supplementary aids determined appropriate by the IEP team to assist the Student with overcoming his deficits which impact his motor skills and occupational skills. For these reasons, additional service hours are simply not necessary to assist the Student with progressing in the general curriculum. Additionally, Ms. [REDACTED]'s credibility regarding the Student's needs was bolstered by her emphasis on the collaboration that took place with the Parents' advocates and [REDACTED] personnel when developing the Student's program. This is important because through multiple sources of data, Ms. [REDACTED] and the IEP team were well aware of the Student's needs, including how his executive functioning deficits also impact his occupational skills needs. The Student's executive functioning skills needs are addressed throughout his MCPS proposed program. In summary, the Student's occupational and speech/language needs are not simply being addressed in limited amounts of time through related services. The needs are integrated throughout the

MCPS' program and most definitely strengthened through the numerous accommodations and supplementary aids. This is why I am compelled to find that the concerns regarding the Student's deficits across all of the areas that impact his ability to progress in the general curriculum, expressed by [REDACTED] staff, the Parents and their advocates are fully addressed in the MCPS proposed program.

Least Restrictive Environment Proposed by MCPS is Appropriate for the 2020-2021

School year

At the risk of being repetitive, as highlighted above and fully explained for the 2019-2020 school year, and applicable here, the IDEA clearly states that schools are required to provide FAPE in the LRE to the maximum extent appropriate. The Parents offered numerous witnesses that spoke to the [REDACTED] as being an outstanding school that is able to meet the Student's needs. Indeed, [REDACTED], Head of Junior High, [REDACTED], accepted as an expert in special education administration and [REDACTED], accepted as an expert in special education coupled with Mr. [REDACTED] were very clear in their opinions of what the Student requires and why I should find the [REDACTED] is appropriate for the Student. However, in total, the evidence offered by MCPS is overwhelmingly clear that the Student would be appropriately challenged, and would receive great educational benefit, if the MCPS program and placement were permitted to be implemented. Concerning the Student's program at the [REDACTED], Ms. [REDACTED] testified to the following:

Q. Was any high school level course offered to [REDACTED]?
Did he take any?

A. He did not take any.

Q. Okay. So in terms of the curriculum he had in eighth grade, none of the curriculum he had in eighth grade was an Honors or gifted curriculum?

A. Not under those terms, but he was offered challenging work.

Q. But he was in classes with other learning disabled students, and it's one -- you know, you're not -- the students are taught using your [REDACTED] learning disabled model, but there's no differentiation for a gifted child, correct?

A. I would say there is differentiation for a gifted child; we don't have a set specific program for those students. It's just within our differentiation is how we adjust.

Q. But he then basically could be alone doing work but not necessarily having a peer or a peer group that has gifted ability?

A. Potentially; however, because of the nature of our students, we often have several students who fall into that category, and they're within a larger context of the classroom.

Q. But -- but in terms of those ten students, you said they're all learning disabled, but they're not necessarily gifted?

A. Correct. I mean, it's, you know -- if you think about a jigsaw mess of teaching, some students will be working on higher level material, and other kids will be working on material that's more fitted to their needs, and they be contributing to each other to that class dynamic and discussion.

Q. You testified that this child has superior cognitive ability in some areas, correct?

A. Yeah.

Q. So if he has superior cognitive abilities in some areas, your population is all disabled, how is that superior cognitive ability going to be challenged if the classroom A -- well, let me break it down. First of all, the classroom is not a gifted and talented classroom, correct?

A. Correct.

Q. So it's not a GT population. Your curriculum is not necessarily an Honors curriculum, correct?

A. Correct.

Q. So the population in terms of peer group is not a gifted and talented population. The curriculum that you're using is not necessarily a gifted or Honors curriculum, correct?

A. Correct. I just want to clarify that the population does have students who are GTLD and categorized as such.

Q. But you testified that in his classroom, it's not a gifted and talented peer group necessarily; it can be anyone who is learning disabled?

A. As a whole. However, many of the people that are in his classes are GTLD.

Q. But they have been designated as gifted, right?

A. Yes. In some cases they have, yes.

Q. But the class itself is not -- you said you individualize -- there's -- the curriculum itself is not a higher level curriculum. You're using eighth grade curriculum, correct, in eighth grade?

A. Using eighth grade curriculum that was differentiated to meet the needs of the students. So if they are GTLD, then we are going to advance and push them with the material that they will receive. And if they are students that need more support or scaffolding, we will provide that for them.

Q. But you don't provide -- so you provide for example, in high school -- you said that he may take geometry, but you're not providing Honors geometry or Honors biology; it's geometry or biology or English. English 9.

A. Correct.

(Tr., at 345-347).

The reason why this exchange is particularly noteworthy is because once more, it highlights the challenging needs of the Student who has a learning disability and who is also twice gifted. In contrast, Ms. [REDACTED] testified and opined,

Q. If you could focus on that question please.

A. Okay. So having challenging curriculum for a gifted or twice exceptional child is crucial because

children who are not -- children with this profile who are not appropriately challenged, they are easily distracted, they are easily bored and if their minds don't have something interesting to think about they're going to find other things to think about and we might not always care for what they chose to think about. They can -- they can become -- it's not just the distractibility but, you know, we can see behaviors crop up and a student that you wouldn't normally say has behaviors might suddenly exhibits behaviors. And it's not that they're a behavior problem, it's that they're bored and they're trying to find something to challenge or amuse themselves while they're bored. So if we give them challenging curriculum and things to really think about and things that make their brains ponder and pull apart and pick apart something interesting they are more likely to stay focused, they're more likely to stay on task and then they're also more likely to work on areas of -- of their weaknesses as well because they're interested in the broader topic.

Q. Okay. We've heard words like compensatory strategies. Do children in this profile have -- how does that term -- how do you define that term and how do these kids use their own strengths to help them?

A. Right. So the compensatory strategy as far as being a special educator is concerned is a strategy that either a student learns or develops or that we teach them that is kind of like a work around. So for a student who, you know, for a student who struggles with reading the compensatory strategy might be doing a better job looking at pictures and graphs to understand what's in the texts. It might be listening to somebody read the text to them like a read to accommodation and listening.

Q. Well not that in terms of supplemental aid or that. In terms of what do they bring from their own cognitive ability to a task to help them with their weaknesses? And if you can't answer that that's fine, I can rephrase and move to a next -- my next question and if I haven't phrased it properly. But my question to you is if these children are not receiving challenging enriching curriculum -- you talked about you can see behaviors off task. But in terms of why is that challenging curriculum and instruction and in terms of enrichment important for them in terms of academic engagement in school? And I want you to talk about it from -- we're going to go

through academic engagement, behavioral engagement and then also peer engagement -- peer interactions. Can you kind of -- and let's talk about academic engagement. If you do not give these children the academic engagement and the curriculum what do you see in terms of your experience with this kids especially at the high school level?

A. If they're not engaged academically they tend to first tune out and then drop out. They -- they participate less, they're in a profile that is in danger of not graduating, they just -- they lose interest in school and they feel like they can't be taught and so they give up on education.

Q. About behavior engagement. When you see these kids -- you talk about if they're not engaged you talked about the easily distracted behaviors cropping up, not being on task is there anything else in your experience that you see with these kids that they are not challenged and -- and engaged?

A. I have seen our kids when they're not challenged or engaged start to act out, start to exhibit behaviors we haven't seen previously. They appear often -- they can appear more distracted or just unable to focus and participate. And -- and using that engaging curriculum is how we would draw them back.

(Tr., at 1093-1096).

Q. But they're gonna -- he would be in a classroom with general education peers, right? I mean he's going to be with his GTLD cohort, that's the term you are using cohort, but he's also going to be in classes with general education peers. How would that work? How does that work?

A. So within the classroom it has a variety of ways. You know we don't segregate our kids in the classroom they are integrated fully. Even when we do pullout supports and things like that we tend to pull a mixed group so that they -- so that it doesn't become an isolating experience. But at the same time one of the -- the really -- socially speaking one of the pieces I've always liked about it is it gives me the opportunity as the teacher to get to know general education peers and try and help foster some of those friendships. And especially for ninth graders, you know, they're all coming from different

middle schools, it's a new experience for everybody and a lot of kids are trying to find their people when they get to middle school -- or to high school. And so, you know, when we have the students in those general education settings and they're in the general education setting in an advanced course it's likely right there they have some commonality as -- as being an advanced student and then helping from there, you know, find the kids who are perhaps socially kinder or forgiving, who would understand the student who has a disability. And if it's not an obvious case then sometimes just fostering friendships helping them, you know, get together in an academic group to do work together, but helping the friendships grow from there. And that's often how our students make friends outside the cohort is the kids they meet in their classes, kids they have in multiple classes together. And it has an opportunity to foster the relationship, but because their classes are co-taught you have your special education teacher, para with -- along side to help with some of the navigation.

Q. Okay. But let -- and in terms of -- you recommend -- I think you talked a little bit he's going to be in an environment with general education peers with the special education cohort and instruction and what's on the IEPs. You talked about how he can do it with supports from your staff, what is the benefit of him having the general education peers in these honors classes that cognitive group -- cognitive ability group that can take honors classes, advanced classes, what is that value to him based on your, you know, participation and knowledge of this child?

A. Sure. So having the cognitive peer group is important especially when there's like his deficit in written expression. You know he should have a cohort of students that he can talk to, that he can regularly converse with on academic and then eventually hopefully social topics as well. But he can have these big ideas with when he sees a big idea or a big picture he doesn't have to first explain all the nuance pieces to somebody who might not get it, likely the other kid gets it. And so by having gen ed peers who -- who can contact with him like that, again it builds on those areas of strength and it helps bring them up to say like you know I'm contributing valuable things to the classroom, this is an important place for me to be and you know, most if not all of our students are college bound and colleges are -- I

mean you might find a small college but they are fairly self-contained if you will. So, you know, just getting some of that -- some of that to be able to go on to colleges and -- and to do -- to be in a larger class in the college setting.

(Tr., at 1097-1100).

The above exchange is lengthy but necessary in light of *Endrew F.* *Endrew F.* instructed that a disabled student's "educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." 137 S. Ct. at 1000. The MCPS IEP is ambitious, but appropriately so. The above exchange indicates the fact that MCPS staff were fully aware of how this Student's uniqueness as a twice gifted student with a learning disability requires that his program address his deficits, but is also sufficiently challenging and gives him the opportunity to receive his education not only with cohorts who may have a similar profile but also with his general education peers. Moreover, a review of the Student's grades and academic performance at █████ MS in MCPS when he was taking advanced courses, indicates he can benefit from an advanced curriculum, in a comprehensive school, with numerous supports, which is precisely the kind of program and placement that MCPS has offered. Specifically, during the 2020-2021 school year, the Student would receive support in Honors English, Honors Biology, Honors Geometry, Honors US history and an elective of the Student's choice. He would participate in two self-contained GT/LD resource classrooms in order to work on his reading intervention, written expression needs, executive functioning needs and social emotional goals.

As emphasized above, school systems including MCPS, must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special

classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Just like the 2019-2020 school year, for the 2020-2021 school year, there is no credible evidence that the Student requires his program to be implemented in a separate day school.

In sum, I conclude that that the MCPS IEP offered for the 2019-2020 and 2020-2021 school years are reasonably calculated to enable the Student in the GT/LD inclusion program to make progress appropriate in light of his development, and that the MCPS provided rational and responsive explanations for its decisions.

Claim for Reimbursement of [REDACTED] Tuition, Costs and Expenses

Under *County School District Four v. Carter*, 510 U.S. 7 (1993), and *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985), whether a parent's private placement choice is proper is analyzed only if the IEP proposed by the local education agency results in the denial of a FAPE. I have concluded in this case for the reasons set forth above that the IEP and placement offered by the MCPS provide the Student a FAPE. Therefore, under *Carter* and *Burlington* the issue of whether the Student's placement at the [REDACTED] is proper is not required to be addressed further in this decision. As the MCPS did not deny the Student a FAPE, the Parents' claim for reimbursement of the [REDACTED] tuition, costs, and expenses is respectfully denied.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the MCPS made a free appropriate public education available to the Student and provided him with an appropriate individualized education program and placement for the 2019-2020 and

2020-2021 school years. I further conclude as a matter of law that the Parents failed to prove that they are entitled to reimbursement for tuition and expenses at [REDACTED] [REDACTED] for the 2019-2020 and the 2020-2021 school years. 20 U.S.C.A. § 1414 (2017); 34 C.F.R. §§ 300.148; *Andrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cty. Sch. District Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

ORDER

I **ORDER** that the Parents' request for placement at and reimbursement for tuition, costs and expenses at [REDACTED] for the 2019-2020 and the 2020-2021 school years is **DENIED**.

December 22, 2020
Date Decision Issued

Jerome Woods, II
Administrative Law Judge

JW/cj
#189522

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 Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE JEROME WOODS, II,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-20-11499

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of MCPS:

- MCPS-1 New Student Information, 12/29/2016
- MCPS-2 Authorization to Release Student Records sent to ██████ Elementary School
(██████), 1/11/2017
- MCPS-3 MCPS Response to Request for School Records and Report from ██████
Department of Children and Family Services, 3/9/2017
- MCPS-4 ██████ Department of Children and Family Services Request for report
cards and list of current classes, 9/14/2017
- MCPS-5 MCPS Observation Report, ██████, 1/23/2018
- MCPS-6 Section 504 Eligibility, 2/26/2018
- MCPS-7 Section 504 Plan, 2/26/2018
- MCPS-8 Section 504 Distribution of 504 Plan to school staff, 3/16/2018
- MCPS-9 IEP Meeting Invitation, 4/12/2018 for 4/23/2018 meeting
- MCPS-10 Prior Written Notice, 4/23/2018
- MCPS-11 Specific Learning Disability Team Report, 4/23/2018
- MCPS-12 MCPS Observation Report, ██████, 4/17/2018
- MCPS-13 MCPS Team Consideration of External Report, Psychoeducational
Evaluation, 4/23/2018
- MCPS-14 Psychoeducational Evaluation, Dr. ██████, March 2018

MCPS-15 IEP Meeting Invitation, 5/9/2018 for 5/17/2018 meeting

MCPS-16 Prior Written Notice, 5/17/2018

MCPS-17 IEP, 5/17/2018

MCPS-18 IEP Meeting Invitation, 2/7/2019; Prior Written Notice, 2/15/2019; Amended IEP 2/28/2019

MCPS-19 MCPS letter to Parents, 2/27/2019

MCPS-20 IEP Meeting Invitation, 5/7/2019 for 5/24/2019 meeting

MCPS-21 MCPS letter to Parents, 5/7/2019

MCPS-22 Prior Written Notice, 6/12/2019

MCPS-23 IEP, 6/12/2019

MCPS-24 M. Eig letter to MCPS, 8/30/2019

MCPS-25 Email and letter from MCPS to M. Eig, 9/16/2019

MCPS-26 Fax confirmation and [REDACTED] Request for Student Records, 6/13/2019

MCPS-27 Email from M. Eig to MCPS enclosing [REDACTED] records, 12/17/2019

MCPS-28 [REDACTED] Report Card, School Year 2019-2020, 12/13/2019

MCPS-29 [REDACTED] Reading Report, 9/5/2019

MCPS-30 [REDACTED] [REDACTED] Summary, 9/2019

MCPS-31 [REDACTED] IEP, 2/21/2020

MCPS-32 IEP Meeting Invitation, 2/5/2020 for 2/21/2020 meeting

MCPS-33 [REDACTED] IEP, 2/21/2020 (Duplicate)

MCPS-34 Emails between M. Eig and MCPS re: IEP Meeting, 12/17/2019 – 3/10/2020

MCPS-35 Emails between M. Eig and MCPS regarding IEP meeting, 2/26/2020 – 3/11/2020

MCPS-36 Email between MCPS and M. Eig regarding scheduling IEP meeting date, 4/22/2020

MCPS-37 Email from M. Eig attaching [REDACTED] documents, 4/28/2020

MCPS-38 [REDACTED] Speech & Language Assessment, February 2020

MCPS-39 [REDACTED] Occupational Therapy Evaluation, October 2019-February 2020

MCPS-40 Student Observation ([REDACTED]), 2/7/2020

MCPS-41 [REDACTED] Report Card, School Year 2019-2020, 4/28/2020

MCPS-42 [REDACTED] Fall 2019-2020 MAP Scores

MCPS-43 Vision Screening, 2/28/2020

MCPS-44 Parent Consent for Release of Confidential Information from [REDACTED] to MCPS, 4/28/2020

MCPS-45 MCPS Team Consideration of External Report, Speech-Language Assessment, 6/12/2020

MCPS-46 MCPS Team Consideration of External Report, Occupational Therapy Evaluation, 6/16/2020

MCPS-47 MCPS Summary Review of Non-MCPS Occupational Therapy Report, 5/8/2020

MCPS-48 Emails between M. Eig and MCPS regarding IEP meeting date, 5/11/2020

MCPS-49 Emails between M. Eig and MCPS regarding IEP meeting date, 4/28/2020 - 5/13/2020

MCPS-50 Emails between M. Eig and MCPS regarding IEP meeting date, 4/28/2020 - 5/15/2020

MCPS-51 Emails between M. Eig and MCPS regarding IEP meeting date, 5/15/2020 - 5/18/2020

MCPS-52 IEP Meeting Invitation, 5/19/2020, for 6/12/2020 meeting

MCPS-53 Letter from MCPS to M. Eig, regarding receipt of due process request, 5/20/2020

MCPS-54 Due Process Hearing Response letter from MCPS to M. Eig, 5/29/2020

MCPS-55 Emails between MCPS and [REDACTED] regarding work samples, 5/27/2020 - 6/12/2020

MCPS-56 Email from M. Eig to MCPS, 6/19/2020, enclosing [REDACTED] IEP Progress Report, Quarter 4

MCPS-57 Emails between M. Eig and MCPS regarding IEP meeting and late submission, 6/19/2020

MCPS-58 Prior Written Notice, 6/22/2020

MCPS-59 IEP, 5/20/2020

MCPS-60 MCPS Student Report Cards, Attendance Data, MAP data, 2017-2019

MCPS-61 IEP Progress Reports

MCPS-62 MCPS Test for Reading, 6/11/2018

MCPS-63 Progress to College and Career Report, 9/4/2018-6/13/2019

MCPS-64 MCPS Teacher Reports, May 2019

MCPS-65 MCPS Twice Exceptional Review Meeting Notes, March 2018

MCPS-66 Student Observation ([REDACTED]), 6/6/2019

MCPS-67 Report of [REDACTED], LCSW-C, 6/12/2019

MCPS-68 Email between MCPS staff regarding meeting with Parents regarding GT/LD program, 11/7/2018

MCPS-69 Emails between MCPS and Parents, 12/3/2018 to 1/22/2019

MCPS-70 Letter from Parents to MCPS requesting GT/LD out of area transfer to [REDACTED] Middle School, 1/20/2019 (referenced in MCPS 69)

MCPS-71 Email from MCPS to Parent regarding 504 paperwork, 3/7/2018

MCPS-72 Invitation to 504 Eligibility Meeting, 2/23/2017

MCPS-73 Outcome letter of 504 Meeting, enclosing 504 Eligibility Evaluation, and 504 Plan 3/1/2017

MCPS-74 Invitation to 504 Review Meeting, 5/22/2017

MCPS-75 Outcome letter of 5/24/2017 504 Review Meeting enclosing 504 Plan

MCPS-76 Student work sample (Multi-paragraph comparison: *The Outsiders & Only Daughters*)

MCPS-77	Student work sample (Subjective v Objective)
MCPS-78	Student work sample (Single paragraph organizer: <i>The Outsiders</i>)
MCPS-79	Student work sample (<i>Under a War-Torn Sky</i> : Chapter 2)
MCPS-80	Student work sample (<i>Under a War-Torn Sky</i> : Chapter 3)
MCPS-81	Student work sample (<i>Under a War-Torn Sky</i> : Chapter 6)
MCPS-82	MCPS <i>Twice Exceptional Students Staff Guidebook</i> , excerpt page 36-37
MCPS-83	Resume – [REDACTED]
MCPS-84	Resume – [REDACTED]
MCPS-85	Resume – [REDACTED]
MCPS-86	Resume – [REDACTED]
MCPS-87	Resume – [REDACTED]
MCPS-88	Resume – [REDACTED]
MCPS-89	Resume – [REDACTED]
MCPS-90	Resume – [REDACTED]
MCPS-91	Resume – [REDACTED]

I admitted the following exhibits on behalf of the Parents/Student:

- P- 1 Amended Request for Due Process, 7/16/20
- P- 2 Psychological Evaluation by Dr. [REDACTED], March 2018
- P- 3 MCPS IEP and Amendment Form, 5/17/18
- P- 4 MCPS Amended IEP, 2/28/19
- P- 5 MAP Student Progress Report, Winter 2017 to Spring 2019
- P- 6 Correspondence between parents and MCPS regarding testing reimbursement, 1/ 31/19 to 5/7/19
- P- 7 MCPS Secondary Teacher Reports, May 2019;
- P- 8 Observation Report by [REDACTED], 6/6/19

- P- 9 MCPS IEP, 6/12/19
- P- 10 Letters between parents and MCPS regarding COSA request, 6/26/19 and 6/28/19
- P- 11 MCPS Student Transcript, 7/29/19
- P- 12 Letter to MCPS serving notice and MCPS response letter, 8/30/19 and 9/16/19
- P- 13 [REDACTED] Reading Assessment Reports, September 2019
- P- 14 [REDACTED] Reading Assessment Summary, September 2019
- P- 15 [REDACTED] MAP Student Progress Report, Fall 2019
- P- 16 [REDACTED] Low Complexity Occupational Therapy Evaluation, 12/20/19
- P- 17 Observation Report by [REDACTED], 2/7/20
- P- 18 [REDACTED] Intermediate Speech and Language Assessment, 2/20/20
- P- 19 [REDACTED] Amended IEP, 2/21/20
- P- 20 [REDACTED] Comprehensive Vision Screening, 2/28/20
- P- 21 [REDACTED] High Complexity Occupational Therapy Evaluation, 2/28/20
- P- 22 [REDACTED] IEP Progress Report, May 2020
- P- 23 MCPS Summary Review of Non-MCPS Occupational Therapy Report, 5/8/20
- P- 24 MCPS IEP, 5/20/20
- P- 25 Email enclosing parent feedback of draft MCPS IEP, 6/11/20
- P- 26 [REDACTED] Occupational Therapy Annual Report, 6/12/20
- P- 27 [REDACTED] Junior High End-of-Year Progress Report, 6/18/20
- P- 28 MCPS Prior Written Notice, 6/22/20
- P- 29 [REDACTED] Fourth Quarter Report Card, 6/23/20
- P- 30 Letter to MCPS serving notice and MCPS response letter, 8/17/20 and 9/9/20
- P- 31 Student's Personal and Confidential Social History from [REDACTED] County
- P- 32 Resume of [REDACTED]

P- 33 Resume of [REDACTED]

P- 34 Resume of [REDACTED]

P- 35 Resume of [REDACTED]

P- 36 Resume of [REDACTED]

P- 37 Resume of [REDACTED]

P- 38 Resume of [REDACTED]