

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE RACHAEL BARNETT,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-20-14814

DECISION

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ORDER

STATEMENT OF THE CASE

On September 10, 2020, ██████████ (Parent),¹ on behalf of her child, ██████████ (Student), filed an amended Due Process Complaint² with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);³ 34 C.F.R. § 300.511(a) (2019);⁴ Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held telephone prehearing conferences on August 26, 2020, August 31, 2020, and October 2, 2020. The Parent did not participate in the conferences but was represented by

¹ Ms ██████████ is the Student's mother. She filed the Request for Due Process Hearing on her own. She is not married to the Student's father. I will refer to the mother as "Parent" and to she and the Student's father as "Parents."

² The Parent filed the initial Request for Due Process Hearing on July 8, 2020.

³ 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.

⁴ C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations of 34 C.F.R. hereinafter refer to the 2019 volume.

Michael Eig, Esquire and Paula Rosenstock, Esquire. Robin Silver, Esquire, and Yvette Pappoe, Esquire, represented the MCPS.

I held the hearing on the following dates: November 9, 2020, November 10, 2020, November 13, 2020, November 16, 2020, November 17, 2020, and November 20, 2020. I held the record open briefly until November 25, 2020 for the receipt of memorandum and copies of caselaw from both parties, because, given that the hearing was virtual, they could not be handed to me as they typically would be on the last day of hearing, nor could they be transmitted electronically as attachments because they were so voluminous. Michael Eig, Esquire, and Paula Rosenstock, Esquire, represented the Parent. Robin Silver, Esquire, and Yvette Pappoe, Esquire, represented the MCPS throughout the matter.

Under the applicable law, a decision in this case normally would have been due by October 23, 2020, forty-five days after the filing of the amended complaint, accounting for the fact that the forty-fifth day falls on a weekend.⁵ 34 C.F.R. §§ 300.510(b)(2), (c) (2019), 300.515(a) (2019); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). However, the parties requested hearing dates outside that timeframe. 34 C.F.R. § 300.515(c) (2019); Educ. § 8-413(h). As of August 31, 2020, MCPS was attempting to schedule a Central IEP team meeting. Due to scheduling constraints, in part caused by the COVID-19 pandemic and the closure of schools, the soonest the meeting could take place was October 27, 2020. At the point when the Central IEP team was being scheduled, the parties were trying in earnest to settle the matter. The parties attended the Central IEP Team meeting where MCPS proposed a new placement for the Student. Additionally, counsel had previously scheduled matters in the first week of November that precluded holding the hearing in the first week of November 2020.

⁵ The forty-fifth day was Sunday, October 25, 2020; however, that is not a business day. Therefore, the deadline would have been Friday, October 23, 2020.

For the reasons discussed above, I granted counsels' joint request to extend the timelines to conduct a hearing and issue a decision outside of the forty-five-day timeframe, which was thirty days from the last day of hearing. While I held the record open for the receipt of closing authorities, the last day of hearing was November 20, 2020. Accordingly, the decision is due to be issued no later than December 18, 2020.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2018); State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

Did the Parent's challenged action by MCPS meet the requirements of the law?

Specifically:

1. Was the Student denied a FAPE⁶ for the 2019-2020 school year due the MCPS' failure to provide an appropriate IEP and placement reasonably calculated to enable the Student to make progress based on his unique needs?
2. Was the Student denied a FAPE for the 2020-2021 school year due to the MCPS' failure to provide an appropriate IEP and placement reasonably calculated to enable the Student to make progress based on his unique needs?
3. Is the Parent entitled to the relief sought in the Request or other appropriate relief, and in particular, placement of the Student at [REDACTED] (" [REDACTED] ") for the 2020-2021 school year and reimbursement the costs associated with his attendance at [REDACTED] for the 2019-2021 school years?

⁶ Free appropriate public education

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parent:

- Parent Ex. 1 – Amended Request for Due Process, August 31, 2020
- Parent Ex. 2 – MCPS Educational Management Team Summary, December 7-17, 2017
- Parent Ex. 3 – Letter from [REDACTED], M.D., January 25, 2018
- Parent Ex. 4 – Secondary Teacher Report, March 22, 2018
- Parent Ex. 5 – MCPS Section 504 Plan, May 3, 2018
- Parent Ex. 6 – MCPS Final Report Card, June 2018
- Parent Ex. 7 – MCPS Summaries of Parent Teacher Conferences, January 16, 2018, March 22, 2018, October 23, 2018, and December 12, 2018
- Parent Ex. 8 – MCPS Application for Home and Hospital Teaching, January 4, 2019
- Parent Ex. 9 – Letter from MCPS Regarding Absences and Student Grades and Attendance Record, January 25, 2019
- Parent Ex. 10 – MCPS Educational History, March 10, 2019
- Parent Ex. 11 – MCPS Child Find Referral and Teacher Referrals, March 12, 2019
- Parent Ex. 12 – MCPS Initial Evaluation, March 21, 2019
- Parent Ex. 13 – MCPS Prior Written Notice, March 28, 2019
- Parent Ex. 14 – MCPS Educational Evaluation, May 9, 2019
- Parent Ex. 15 – MCPS Psychological Evaluation, May 9, 2019
- Parent Ex. 16 – MCPS Evaluation Report, Emotional Disability Form, and Prior Written Notice, June 6, 2019 and June 11, 2019
- Parent Ex. 17 – MCPS IEP and Prior Written Notice, June 18, 2019 and June 25, 2019
- Parent Ex. 18 – MCPS Final Report Card, June 19, 2018
- Parent Ex. 19 – MCPS Student Transition Interview, undated
- Parent Ex. 20 – Parent Request for Twice Exceptional Support, September 4, 2019
- Parent Ex. 21 – Letter to Stacy Reid Swain, Esq. Regarding Representation and Meeting, October 4, 2019
- Parent Ex. 22 – Letter to MCPS. Serving Notice, October 7, 2019
- Parent Ex. 23 – [REDACTED] Daily Progress Reports, October 22, 2019 to November 11, 2019
- Parent Ex. 24 – MCPS Prior Written Notice, November 11, 2019
- Parent Ex. 25 – Letter to MCPS Requesting Independent Educational Evaluation and MCPS Response Letter, December 10, 2019 and December 19, 2019
- Parent Ex. 26 – Diagnostic Educational Evaluation by Dr. [REDACTED], January 19, 2020
- Parent Ex. 27 – Psychological Evaluation by Dr. [REDACTED] January 21, 2020
- Parent Ex. 28 – [REDACTED] Therapist Call Log, March 26, 2020
- Parent Ex. 29 – MCPS Draft IEP Feedback by Dr. [REDACTED], May 26, 2020
- Parent Ex. 30 – [REDACTED] Feedback on MCPS Draft IEP, May 27, 2020
- Parent Ex. 31 – [REDACTED] Student Transcript, June 2020
- Parent Ex. 32 – Letter to MCPS Serving Notice and MCPS Response Letter, August 18, 2020 and October 13, 2020
- Parent Ex. 33 – [REDACTED] Summary Report, August 18, 2020
- Parent Ex. 34 – Emails between Parent and MCPS, September 2, 2020
- Parent Ex. 35 – [REDACTED] 2020-21 Student Schedule

- Parent Ex. 36 – ██████████ Monthly Progress Report, September 2020
- Parent Ex. 37 – MCPS draft IEP, October 8, 2020
- Parent Ex. 38 – ██████████ Attendance Record, October 2019 – October 2020
- Parent Ex. 39 – ██████████ Daily Summaries, November 16, 2019 to October 21, 2020
- Parent Ex. 40 – ██████████ Monthly Progress Report, October 2020
- Parent Ex. 41 – ██████████ Student Snapshot, Fall 2019
- Parent Ex. 42 – ██████████ Student Transcript, 2020-21 School Year
- Parent Ex. 43 – Resume of Dr. ██████████, undated
- Parent Ex. 44 – Resume of Dr. ██████████, undated
- Parent Ex. 45 – Resume ██████████, undated
- Parent Ex. 46 – MCPS IEP and Prior Written Notice, October 27, 2020 and October 29, 2020
- Parent Ex. 47 – ██████████ Progress Report, November 2, 2020.
- Parent Ex. 48 – Letter by Dr. ██████████, November 2, 2020

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 – Secondary Teacher Report (PE), December 7, 2017
- MCPS Ex. 2 – Secondary Teacher Report (Theater), December 7, 2017
- MCPS Ex. 3 – Secondary Teacher Report (World Studies), December 7, 2017
- MCPS Ex. 4 – Secondary Teacher Report (no subject listed), March 22, 2018
- MCPS Ex. 5 – Secondary Teacher Report (Computer Science), March 22, 2018
- MCPS Ex. 6 – Secondary Teacher Report (English), March 22, 2018
- MCPS Ex. 7 – Secondary Teacher Report (Math), March 22, 2018
- MCPS Ex. 8 – Secondary Teacher Report (Science), March 22, 2018
- MCPS Ex. 9 – Secondary Teacher Report (Spanish 1AB), March 22, 2018
- MCPS Ex. 10 – ██████████ MS Progress Report, June 19, 2018
- MCPS Ex. 11 – ██████████ MS Student Detail Report, January 25, 2019
- MCPS Ex. 12 – Grade Report for Secondary School Students Receiving Interim Instructional Services (World Studies), March 26, 2019
- MCPS Ex. 13 – MCPS Educational Assessment Report, May 09, 2019
- MCPS Ex. 14 – MCPS Psychological Report, May 9, 2019
- MCPS Ex. 15 – MCPS Emotional Disability Form, June 6, 2019
- MCPS Ex. 16 – Grade Report for Secondary School Students Receiving Interim Instructional Services (Investigations in Science 7), May 2, 2019 – June 7, 2019
- MCPS Ex. 17 – MCPS Approval of an Independent Educational Evaluation, December 19, 2019
- MCPS Ex. 18 – Psychological Evaluation Report [██████████], January 21, 2020
- MCPS Ex. 19 – Diagnostic Educational Evaluation [██████████], February 16, 2020
- MCPS Ex. 20 – ██████████ Therapist Call Log, March 26, 2020
- MCPS Ex. 21 – ██████████ MS Grade History, various years
- MCPS Ex. 22 – Section 504 Eligibility, May 3, 2018
- MCPS Ex. 23 – Section 504 Plan, May 3, 2018
- MCPS Ex. 24 – MCPS Approved IEP, June 18, 2019
- MCPS Ex. 25 – MCPS Amended IEP, November 7, 2019
- MCPS Ex. 26 – MCPS Draft IEP, May 22, 2020
- MCPS Ex. 27 – MCPS Draft IEP With Dr. ██████████'s comments, May 26, 2020
- MCPS Ex. 28 – MCPS Draft IEP, May 26, 2020

- MCPS Ex. 29 – MCPS Draft IEP, May 27, 2020
- MCPS Ex. 30 – MCPS Draft IEP with Dr. [REDACTED]'s comments, June 26, 2020
- MCPS Ex. 31 – MCPS Draft IEP, October 27, 2020
- MCPS Ex. 32 – Educational Management Team Summary, December 7, 2017
- MCPS Ex. 33 – Classroom Observation, March 6, 2019
- MCPS Ex. 34 – Educational History, March 10, 2019
- MCPS Ex. 35 – Child Find Referral, March 12, 2019
- MCPS Ex. 36 – Eligibility Screening Parent Interview Questionnaire, March 19, 2019
- MCPS Ex. 37 – Notice and Consent for Assessment, March 21, 2019
- MCPS Ex. 38 – IEP Team Meeting Sign-In Sheet, March 21, 2019
- MCPS Ex. 39 – Prior Written Notice, March 28, 2019
- MCPS Ex. 40 – IEP Team Meeting Sign-In Sheet, June 6, 2019
- MCPS Ex. 41 – Evaluation Report and Determination of Initial Eligibility, June 6, 2019
- MCPS Ex. 42 – Request to Delay Evaluation, June 6, 2019
- MCPS Ex. 43 – Prior Written Notice, June 11, 2019
- MCPS Ex. 44 – IEP Team Sign-In Sheet, June 18, 2019
- MCPS Ex. 45 – Prior Written Notice, June 25, 2019
- MCPS Ex. 46 – Request for Twice Exceptional Support, September 4, 2019
- MCPS Ex. 47 – Notice of IEP Team Meeting, September 10, 2019
- MCPS Ex. 48 – Notice of IEP Team Meeting, October 1, 2019
- MCPS Ex. 49 – Prior Written Notice, November 11, 2019
- MCPS Ex. 50 – Five-Day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting, April 20, 2020
- MCPS Ex. 51 – Prior Written Notice, May 4, 2020
- MCPS Ex. 52 – Five-Day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting, May 22, 2020
- MCPS Ex. 53 – Prior Written Notice, June 3, 2020
- MCPS Ex. 54 – Prior Written Notice, July 6, 2020
- MCPS Ex. 55 – Notice of IEP Team Meeting Scheduling Central IEP Meeting, October 8, 2020
- MCPS Ex. 56 – Prior Written Notice, October 27, 2020
- MCPS Ex. 57 – Feedback from Homework Café, June 03, 2020
- MCPS Ex. 58 – [REDACTED] for Student, August 18, 2020
- MCPS Ex. 59 – Fall Schedule, 2020
- MCPS Ex. 60 – Winter Schedule, 2020
- MCPS Ex. 61 – Attendance Records ([REDACTED]), October 2019 – October 2020
- MCPS Ex. 62 – Official Progress Report, Fall 2020
- MCPS Ex. 63 – Student Schedule 2020- 2021
- MCPS Ex. 64 – Progress Chart, various dates
- MCPS Ex. 65 – Unofficial High School Transcript, 2020 (in progress)
- MCPS Ex. 66 – Unofficial Middle School Transcript, 2019 – 2020
- MCPS Ex. 67 – [REDACTED]⁷ Goals, various dates
- MCPS Ex. 68 – [REDACTED] – Resume, undated
- MCPS Ex. 69 – [REDACTED] – Resume, undated
- MCPS Ex. 70 – [REDACTED] – Resume, undated
- MCPS Ex. 71 – [REDACTED] – Resume, undated

⁷ This exhibit does not explain the abbreviation, [REDACTED].

- MCPS Ex. 72 – ██████████ – Resume, undated
- MCPS Ex. 73 – ██████████ – Resume, undated
- MCPS Ex. 74 – ██████████ – Resume, undated
- MCPS Ex. 75 – ██████████ – Resume, undated
- MCPS Ex. 76 – Emails Regarding ██████████’s Absence from Math Class, November 2017
- MCPS Ex. 77 – Email Regarding Math Class Instructions, January 11, 2018
- MCPS Ex. 78 – Email Regarding Concerns About Attendance, March 1, 2018
- MCPS Ex. 79 – Email Regarding Concerns About Attendance, April 25, 2018
- MCPS Ex. 80 – Email Regarding Missed Unit Test, April 30, 2018
- MCPS Ex. 81 – Email Excusing the Student’s Absence, October 16, 2018
- MCPS Ex. 82 – Email Regarding Recommendation to Student Support Center Due to Low Grades, November 1, 2018

- MCPS Ex. 83 – Email Regarding Fourth Week of Absence, December 4, 2018
- MCPS Ex. 84 – Email Regarding the Student’s Special Education Services, February 2019
- MCPS Ex. 85 – Email Regarding Automatic Excused Absence, February 5, 2019
- MCPS Ex. 86 – Email Regarding Math Accommodations, June 7, 2019
- MCPS Ex. 87 – Email Regarding Request to Discuss the Student’s Schedule and Supports, September 6, 2019

- MCPS Ex. 88 – Email Regarding ██████████’s Comments on the Student’s IEP, September 4, 2019

- MCPS Ex. 89 – Email Regarding Attendance, September 17, 2019
- MCPS Ex. 90 – Email Regarding the Student’s Transition Interview, May 18, 2020
- MCPS Ex. 91 – Emails Regarding Scheduling the Student’s IEP Meeting with ██████████ Representatives, June 2020

- MCPS Ex. 92 – Email Regarding ██████████’s Comments on the Draft IEP, June 26, 2020

- MCPS Ex. 93 – Email Regarding June 26, 2020 Prior Written Notice and Revised IEP, July 6, 2020

- MCPS Ex. 94 – Enrollment Details (Absences), various dates
- MCPS Ex. 95 – Summary of Parent Conferences, various dates
- MCPS Ex. 96 – Letter from ██████████, M.D. January 25, 2018
- MCPS Ex. 97 – Application for Home and Hospital Teaching, January 9, 2019
- MCPS Ex. 98 – Letter to Parent Regarding Approval for Home and Hospital Teaching, January 23, 2019

- MCPS Ex. 99 – Interim Instructional Services Return to School Plan, January 25, 2019
- MCPS Ex. 100 – Letter from ██████████ MS to Parents Regarding Absences, January 25, 2019
- MCPS Ex. 101 – Teacher Referrals, various dates
- MCPS Ex. 102 – Application for Interim Instructional Services, With Qualified Mental Health Condition ONLY, April 30, 2019

- MCPS Ex. 103 – Letter to Parent Regarding Approval of Interim Instructional Services, May 2, 2019

- MCPS Ex. 104 – Parent Conference Notes, September 4, 2019
- MCPS Ex. 105 – 2019 ██████████ Daily Summary Reports, various dates
- MCPS Ex. 106 – ██████████ Record Request Correspondence, various dates in October 2020
- MCPS Ex. 107 – Secondary Transition Middle School Interview, August 2016
- MCPS Ex. 108 – ██████████ MS Communication Log, various dates

- MCPS Ex. 109 – IEP Meeting Sign-In Sheet, April 27, 2020
- MCPS Ex. 110 – IEP Meeting Sign-In Sheet, May 27, 2020
- MCPS Ex. 111 – Prior Written Notice, September 4, 2020

Testimony

██████████ (Parent) testified and the Parents collectively presented the following witnesses:

- Dr. ██████████, admitted as an expert in Special Education
- Dr. ██████████, admitted as an expert in Psychology
- ██████████, admitted as an expert in School Administration

The MCPS presented the following witnesses:

- ██████████, admitted as an expert in School Counseling
- ██████████, admitted as an expert in School Counseling
- ██████████, admitted as an expert in Special Education
- ██████████, admitted as an expert in School Psychology
- ██████████, admitted as an expert in Special Education
- Dr. ██████████, admitted as an expert in Special Education and in Social

Emotional Services

- ██████████, admitted as an expert in Social Work

FINDINGS OF FACT

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

1. The Student is a twice exceptional boy with high intelligence and diagnoses of Anxiety Disorder, Major Depressive Disorder (in partial remission), Frontal Lobe and Executive Function Deficit, Other Specified Phobia, and Trichotillomania⁸.

⁸ This is the urge to pull out one's hair.

2. The Student enjoys learning; however, he has a long and significant history of school refusal.

3. The Student attended [REDACTED] Elementary School for pre-Kindergarten through second grade.

4. The Student attended [REDACTED] Elementary School for third through fifth grade. During his time at [REDACTED] Elementary School, the Student demonstrated good academic performance.

5. The Student entered the Mathematics, Science and Computer Science (STEM)⁹ Magnet Program at [REDACTED] Middle School ([REDACTED] MS) in sixth grade, the 2017-2018 academic year. STEM is a program for academically advanced students.

6. At the outset of his sixth-grade year, the Student had a difficult time with his math teacher and stopped attending math class. He felt embarrassed by being called out for making mistakes. This was the beginning of the Student's pattern of school avoidance.

7. The Student's parents pulled him out of math class and arranged for him to be tutored privately in mathematics but left him enrolled in his other classes.

8. As the fall semester sixth grade progressed, the Student stopped attending his other classes and was missing full days of school on many occasions. The Student suffered from somatic reactions to going to school, including stomach pain, vomiting, and headaches.

9. The Student was overly concerned about his academic performance, as compared to his peers, who like him, were intelligent students in the STEM program. He was also overly concerned about becoming embarrassed about making a mistake in front of his peers if he answered a question incorrectly in class. These normal school concerns were a source of major worry for the Student and caused him to shut down emotionally and refuse to attend school.

⁹ STEM is short for Science, Technology, Engineering, and Mathematics.

10. In January 2018, the Student's parents provided MCPS with a letter from Dr. [REDACTED], stating the Student was diagnosed with Anxiety Disorder¹⁰ and recommending the school provide him with classroom accommodations through a Section 504 Plan.

11. On January 16, 2018, the Parents attended a school conference about school avoidance issues.

12. On May 3, 2018, MCPS approved the Student for a Section 504 Plan. The plan offered the Student classroom and testing accommodations, including extended time for classwork, homework reminders, and small-group testing.

13. The Student's rate of attendance did not increase after the implementation of the Section 504 Plan.

14. In sixth grade, the Student missed a total of fifty-one days of school.

15. The Student had a GPA of 3.62 in the first semester of his sixth-grade school year at [REDACTED] MS. By the fourth semester, he had a GPA of 3.0.

16. At the outset of seventh grade (the 2018 – 2019 school year), the Student's school avoidance continued.

17. On October 23, 2018, the Parents attended another school conference about school avoidance.

18. In seventh grade, the Student's school refusal worsened to the point where he was rarely attending school. In total, he missed over 100 days of school during this academic year.

19. The Student's behavior at home worsened, as well. He would refuse to go to school and would not leave the home. He would sit in his room alone with the lights off; he

¹⁰ A diagnosis of Attention Deficit Hyperactivity Disorder was also made at that time; however, that has since been ruled out.

pulled out his hair. He engaged in physical violence towards his mother when she directed him to go to school.

20. In seventh grade, the Student was undergoing behavior therapy on a private basis, and his mother took a parenting class related to school attendance.

21. The Student's mother attempted many methods of trying to get the Student to attend school, including positive reinforcement and bribery. However, the Student did not resume school attendance.

22. A pupil personnel worker (similar to a truancy officer) reported to the Student's home on a few occasions in late 2018 or early 2019 and discussed with his mother the legal ramifications of the Student's continued absence from school. One of the possible ramifications included her incarceration. The Parent became increasingly worried.

23. On December 12, 2018, the Parents attended another school conference, this time with the pupil personnel worker present, and discussed the legal ramifications of truancy.

24. In December 2018, MCPS recommended that the Student attend a partial day at ■■■MS and complete the remainder of his studies through Interim Instructional Services ("IIS") at home.

25. On January 9, 2019, the Parent applied for Interim Instructional Services (IIS), so the Student could learn from his home environment.

26. On January 23, 2019, MCPS approved the IIS application. The IIS arrangement was scheduled to conclude by March 9, 2019.

27. By March 2019, the Student was failing all of his classes, except Science, for which he earned a D.

28. On March 12, 2019, the Parent requested MCPS evaluate the Student for special education services by completing a Child Find Referral.

29. In April 2019, the Student began taking medication for his conditions.¹¹

30. On April 30, 2019, the Parent applied again for IIS, this time based on a mental health condition. MCPS approved this application a few days later.

31. Also in April 2019, MCPS completed a Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP). The Student was not present for either of the proposed observation days, so he could not be observed in class. The goal of the BIP that emerged was for the Student to attend four out of eight class periods per day.

32. In May 2019, [REDACTED], MCPS Psychologist, evaluated the Student using the Weschler Intelligence Scale for Children, Fifth Edition (“WISC-V”). Ms. [REDACTED] determined his full-scale IQ was Very High, 127. Based on behavioral rating data she collected and her assessment, Ms. [REDACTED] determined the Student had an Emotional Condition.

33. On May 8, 2019, [REDACTED], Resource Teacher at [REDACTED] MS, completed an educational evaluation of the Student. Ms. [REDACTED] based her evaluation on a partial assessment using the Woodcock-Johnson testing tool and scored the Student’s results based on an incorrect birthdate (wrong year). The scoring varies by the age of the child taking the test. Ms. [REDACTED] found that the Student needed extra processing time but average to very superior skills in all areas, as compared to his peers. She recommended in-class accommodations, including wait time for responses, and extended time for reading and processing.

34. On June 6, 2019, an IEP team convened and found the Student eligible for special educational services as a student with an emotional disability. The team developed an IEP, which proposed that the Student attend a Resource Class and kept his placement in general education at [REDACTED] MS.

¹¹ The name of the medication is omitted to preserve the privacy of the Student’s health information.

35. The Student attended one to two weeks' worth of school at the end of the 7th grade.

36. In the summer of 2019, the Student took a non-credit summer class at [REDACTED] in the area of Forensic Science; he attended the classes.

37. The Student spent substantial time working with his therapist over the summer of 2019, in preparation for resuming school at [REDACTED] MS in the Fall.

38. In the Fall of 2019, the Student was scheduled to resume classes as an eighth-grade student at [REDACTED] MS. He attended four days but became distressed over his course schedule, which did not include classes in the STEM program and included scheduled time in the resource room. The Student placed a request with the [REDACTED] MS guidance department to rejoin STEM classes, but his request was denied. The Student suffered a panic attack on his fourth day of classes and refused to return for any classes.

39. On September 4, 2019, the Parent filed a request for Twice Exceptional Student Support with MCPS.

40. On October 7, 2019, the Student notified MCPS that he would be attending the [REDACTED] (" [REDACTED] ") for the remainder of the 2019-2020 academic year.

41. On October 22, 2019, the Student began attending [REDACTED].

42. [REDACTED] is a private middle and high school located in [REDACTED]¹² that provides individualized academic instruction in a one-to-one setting (one teacher instructing one student). It serves grades sixth through twelfth. The [REDACTED] campus has sixty-two students.

¹² [REDACTED] has other campuses, but the Student attends the [REDACTED] campus.

43. [REDACTED] offers small group classes in Music and Homework Café (essentially, a study hall with teacher support), as well as clubs and lunchtime where students can socialize.

44. [REDACTED] is designed to serve students who do not fit into a public-school model; however, it is not an MSDE-accredited special education school. On the other hand, it is an MSDE-accredited school.

45. [REDACTED] offers individualized instruction, including honors classes. The one-to-one instruction is intentionally flexible, allowing teachers to adjust to students' needs and interests as they deliver instruction.

46. Some students at [REDACTED] have disabilities; however, some do not.

47. Students who graduate from [REDACTED] receive high school diplomas.

48. Once enrolled at [REDACTED], the Student immediately began attending school on a regular basis. The Student willingly woke up early and took the [REDACTED] independently to [REDACTED].

49. The Student formed good relationships with the majority of his [REDACTED] teachers, attended classes and completed assignments. The Student's somatic symptoms related to school attendance vanished. He began demonstrating more normal behavior in the home environment.¹³

50. The Student had a conflict with one teacher, and [REDACTED] replaced that teacher with a different faculty member.

51. In September 2019 and October 2019, the Parent was unavailable to attend IEP meetings because her father was terminally ill.

¹³ His behavior at home began improving when he started taking medications; however, it normalized significantly when he began attending [REDACTED].

52. On November 5, 2019, an IEP team met and discussed the Student's testing data, including the possibility of performing additional testing. The IEP team did not propose a new placement.

53. On December 10, 2019, an IEP team meeting was held and MCPS agreed to fund an Independent Educational Evaluation (IEE) for the Student. Once again, the IEP team did not propose a new placement.

54. In January 2020, Dr. [REDACTED], psychologist, completed the social/emotional portion of the IEE with the Student. She recommended the Student remain at [REDACTED], because he requires a one-on-one student-teacher relationship to receive the immediate emotional feedback he needs along with the opportunity for challenging coursework. She further concluded he is at risk of another Major Depressive Episode if he is destabilized.

55. Also in January 2020, Dr. [REDACTED] completed the Diagnostic Educational Evaluation of the Student. She administered the WJ-IV. The Student scored in the Average to High Average range in reading. The Student scored in the Superior range in mathematics. He underperformed in areas unrelated to mathematics, based on his high cognitive ability.

56. During testing with Dr. [REDACTED], the Student expressed significant emotions regarding his learning. He repeatedly called himself "stupid" during testing. He expressed extremely negative feelings about [REDACTED] MS and positive feelings about [REDACTED].

57. Dr. [REDACTED] concluded the Student had been traumatized by the environment at [REDACTED] MS and opined he should remain at [REDACTED] where he was attending and succeeding.

58. In March 2020, the COVID-19 pandemic caused the shutdown of most schools in Maryland, including MCPS schools and [REDACTED]. As a result, the Student engaged in virtual learning from home from March 2020 to June 2020.

59. Since the Parent works outside of the home as a [REDACTED], the Student was left to self-supervise his learning. He participated in the majority of his on-line classes but skipped some sessions, especially one class that was scheduled early in the morning. The head of school, [REDACTED], became concerned about the Student's participation.

60. [REDACTED] adjusted the Student's schedule to move his first class to a later time, and his attendance improved, though he continued to miss classes on occasion until mid-May.

61. Between mid-March and mid-May 2020, the Student was present for fifty virtual learning sessions and absent from fifteen.

62. From mid-May to the end of June 2020 (when classes concluded at [REDACTED]), the Student was present for all of his virtual learning sessions.

63. On April 27, 2020, an IEP meeting occurred and the parties discussed the results of the testing reports, as well as the Student's progress at [REDACTED].

64. On May 27, 2020, another IEP meeting occurred and staff from [REDACTED] participated. They shared that the Student was attending school regularly. The team discussed the Student's areas of concern and began drafting his IEP.

65. On June 26, 2020, another IEP meeting occurred to finish developing the Student's IEP. Dr. [REDACTED] participated and suggested revisions and the team accepted her suggestions. The team finalized the goals and objectives and began to discuss placement. The team determined the Student should be enrolled in honors classes but did not select a placement. The team discussed the following possibilities: [REDACTED] High School's [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]) program, and [REDACTED] High School's new [REDACTED] program. MCPS staff at the team ruled out the [REDACTED] [REDACTED] program because it could not provide honors classes. MCSPS requested to reconvene the IEP meeting at a later date so they could find out whether the [REDACTED] [REDACTED] program could offer honors classes.

66. On August 28, 2020, MCPS reconvened the IEP meeting but did not propose a placement. MCPS referred the Student's file to the Central IEP team for its consideration. The IEP team rejected the [REDACTED] [REDACTED] program because, as far as the team members knew, it did not offer self-contained honors classes and the student required both emotional support and access to an enriched curriculum.

67. In September 2020, the Student resumed in-person learning at [REDACTED]. As before, he attended school consistently. His in-person school schedule was Monday through Thursday. Classes on Fridays were cancelled because those are small-group sessions that [REDACTED] could not hold due to the risks associated with gatherings during the ongoing pandemic.

68. On October 27, 2020, MCPS convened a Central IEP team meeting and proposed that the Student receive 29.5 hours per week in special education and thirty minutes per week of school counseling. The IEP included several classroom accommodations, including the use of a calculator in mathematics and extra time for testing. The IEP team proposed placement at the [REDACTED] [REDACTED] program.

69. The [REDACTED] [REDACTED] program¹⁴ offers small-group classes to students with emotional impairments, but it does not offer one-on-one instruction. Its courses are dual-coded for honors and non-honors levels, meaning that the students receive instruction simultaneously, but enrichment is available for advanced students. At the time of the hearing, the [REDACTED] program was new, having opened in [REDACTED] 2020.

70. The [REDACTED] [REDACTED] program is physically located on the first floor of [REDACTED] High School, in a separate suite from the rest of the high school.

71. Students in the [REDACTED] program have the opportunity to attend general education classes in the high school if and when they are ready to do so.

¹⁴ This program is also referred to an "enhanced [REDACTED] program," meaning all of its classes are outside of general education. This differentiates it from other [REDACTED] programs that include its students in general education classes and offer special education classes.

72. In October 2020 and at the time of the hearing in November, [REDACTED] [REDACTED] was only operating on a virtual basis and did not have a potential or scheduled reopening date.

73. The [REDACTED] [REDACTED] program is designed to offer classes in groups of four to ten students; however, there were only three enrolled at the time of the hearing. The Student would be the fourth if he enrolled.

74. All of the students in the [REDACTED] [REDACTED] program have disabilities.

75. The Student earned the following grades for the 2019 – 2020 academic year at [REDACTED]:

- a. English: A- and A+
- b. Physical Science: A and A
- c. Algebra: A and B

DISCUSSION

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) (2017); 34 C.F.R. § 300.516(c)(3) (2019). 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 is seeking relief and bears the burden of proof to show that the challenged actions by the MCPS did not meet the requirements of the law.

Legal Framework

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482 (2017); 34 C.F.R. pt. 300 (2019); Educ.

§§ 8-401 through 8-417 (2018 and Supp. 2020); 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) (2017); *see also* Md. Code Ann., Educ. § 8-403 (2018 & Supp. 2020).¹⁵ The IDEA defines a FAPE as special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9) (2017); *see also* Md. Code Ann., Educ. § 8-401(a)(3) (2018).

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

- (A) In General
The term “child with a disability” means a child –
 - (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
 - (ii) who, by reason thereof, needs special education and related services.

20 U.S.C.A. § 1401(3)(A) (2017); *see also* 34 C.F.R. § 300.8 (2019); Md. Code Ann., Educ. § 8-401(a)(2) (2018); and COMAR 13A.05.01.03B(78).

The Supreme Court was first called upon to address the requirement of a FAPE in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that the requirement is satisfied if a school district provides “specialized instruction and

¹⁵ All citations to the Education Article are to the 2018 Replacement Volume and 2020 Supplement.

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

The *Rowley* Court held, because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade on grade level. *Id.* at 204; 20 U.S.C.A. § 1401(9) (2017). Further the Court found “if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a ‘free appropriate public education’ as defined by the [IDEA].” *Id.* at 189. The Court explicitly rejected the petitioner’s argument that the IDEA requires the provision of services “sufficient to maximize each child’s potential commensurate with the opportunity provided other children.” *Id.* at 198 (internal quotation marks omitted). Instead, the Court concluded that the “‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the . . . child.” *Id.* at 201 (footnote omitted). The Court did not seek to define educational benefit but held that an IEP “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 203-04 (footnote omitted).

Additionally, to the maximum extent possible, the IDEA seeks to mainstream, or include, the child into regular public schools; at a minimum, the statute calls for school systems to place

children in the “least restrictive environment” (LRE) consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A) (2017).

The nature of the LRE necessarily differs for each child but could range from a regular public school to a residential school where twenty-four-hour supervision is provided. COMAR 13A.05.01.10B. The IDEA requires specialized and individualized instruction for a learning or educationally-disabled child. Nonetheless, “[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities,” must be “educated with children who are not disabled” 20 U.S.C.A. § 1412(a)(5)(A) (2017). It follows that the State and federal regulations that have been promulgated to implement the requirements of the IDEA also require such inclusion. 34 C.F.R. §§ 300.114 through 300.120 (2019); COMAR 13A.05.01.10A(1).

The IDEA mandates that the school system segregate disabled children from their non-disabled peers only when the nature and severity of their disability is such that education in general classrooms cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A) (2017); *Rowley*, 458 U.S. at 181 n.4; *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997); *see also Honig v. Doe*, 484 U.S. 305 (1988).

In 2017, the Supreme Court 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. RE-1*, 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.

An IEP is the “primary vehicle” through which a public agency provides a student with a

FAPE. *M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

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

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

20 U.S.C.A. § 1414(d)(3)(A) (2017).

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) (2019).

To comply with the IDEA, an IEP must, among other things, allow a student with a disability to advance toward measurable annual academic and functional goals that meet the needs resulting from the child’s disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI) (2017).

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

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

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

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

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

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

Endrew F., 137 S. Ct. at 998-99 (citations omitted; emphasis in original).

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 *Endrew 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 a child to advance from grade to grade, if that is a “reasonable prospect.” *Id.*

At the beginning of each school year, each local education agency is required to have in effect an IEP for each child with a disability in the agency’s jurisdiction. 20 U.S.C.A. § 1414(d)(2)(A) (2017). At least annually, the IEP team is required to review a child’s IEP to determine whether the goals are being met. *Id.* § 1414(d)(4)(A)(i) (2017); 34 C.F.R. § 300.324(b)(1) (2019).

The development of an IEP is a prospective process. *See Andrew F.*, 137 S. Ct. at 999. The test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir.1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved. While outcomes may shed some light on appropriateness, the proper question is whether the IEP was objectively reasonable at the time it was drafted.” (Citation omitted). Thus, a judge in a due process hearing must look to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive educational

benefit. An IEP is essentially a “snapshot” in time and “cannot be judged exclusively in hindsight.” See *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). However, evidence of actual progress during the period of an IEP may also be a factor in determining whether a challenged IEP was reasonably calculated to confer educational benefit. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009); see also *M.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002).

Analysis

The Student is A Child With A Disability

The Student meets the definition of a child with a disability, who by virtue of his disability requires special education and related services. The Student is a twice exceptional student with high intelligence and diagnoses of Anxiety Disorder, Major Depressive Disorder (in partial remission), Frontal Lobe and Executive Function Deficit, Other Specified Phobia, and Trichotillomania. The Student’s experience with these disorders made it impossible for him to consistently attend middle school at ■■■MS, a general education setting. Since he was not emotionally able to attend sixth and seventh grade general education classes on a consistent basis, he was diagnosed with mental health conditions, and efforts to remedy his truancy failed, the Student required special education and related services to help him get back to a school environment so he could learn. See 20 U.S.C.A. § 1401(3)(A); see also 34 C.F.R. § 300.8; Md. Code Ann., Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78).

MCPS Took An Excessive Amount of Time To Complete the Student’s October 2020 IEP

June 6, 2019 IEP

Initially, MCPS addressed the school absences as a truancy issue. However, as the Parents and MCPS learned more about the Student’s mental health conditions, the Parent and

MCPS switched gears towards assessing the Student and implementing an IEP. In January 2018, the Student was diagnosed with Anxiety Disorder and ADHD (which was later ruled out). By the fall of 2018 and early winter of 2018-2019, ■■■ MS was convening meetings with the Parents to discuss the Student's truancy. ■■■ MS also sent a pupil personnel worker to the Parent's home to discuss the possibility of incarceration for the Parent if the Student did not resume attending ■■■ MS. Clearly, ■■■ MS understood the Student's truancy was a serious matter. Ultimately, ■■■ MS recommended the Student have a partial day of school and learn at home through the IIS program. The Parent agreed, and in fact, the Student completed two periods of IIS.

During this time, the Student was failing his classes and therefore, no longer making measurable academic progress. The Student's mental health condition worsened during this time period to the point where he would not leave the home, and he would sit alone in a dark room and pull out his hair. The Parent testified that she was forthcoming with MCPS about the Student's struggles.

MCPS could have acted more quickly (but this is not at issue in this matter). Ultimately, MCPS began the IEP process on March 12, 2019 when the Parent requested that the Student be evaluated for special education services. At the time of the Parent's request, the Student was not attending ■■■ MS, where he was enrolled and efforts to get him back into this general education learning environment had failed.

However, it should be noted that while substantial evidence was presented about this portion of the Student's academic history, the Student did not make a claim that MCPS failed to provide him with FAPE for this time period. Additionally, once MCPS began the IEP process in March 2019, the MCPS finalized this IEP a few months later in June 2019, a reasonable amount of time. The Parent's arguments and claims relate to the 2019-2020 and 2020-2021 academic years and center around the October 27, 2020 IEP.

October 27, 2020 IEP

The Parent argues that once the June 6, 2019 IEP (offering a resource class at ■ MS but leaving him enrolled in general education) was clearly not improving the Student's attendance, which both parties knew by late September 2019, the MCPS delayed completing a new IEP. Therefore, the Parent argues, MCPS failed to provide the Student with services under the IDEA. In the case of chronic absenteeism, a school system has a duty to respond proactively to a student's excessive absences by convening or reconvening an IEP meeting. *Springfield School Comm. v. Doe*, 623 F. Supp. 2d 150 (D. Mass 2009).

Initially, MCPS attempted to keep the Student enrolled at ■ MS, offering him a resource class at ■ MS and taking him out of his STEM classes. At the time the June 6, 2019 IEP was written, this approach seemed sensible because parents and MCPS were attempting to help the Student get back to his school. There was no way of knowing what the Student's reaction would be to a resource class because none had been offered to him in the past. However, the Student was emotionally unable to manage his placement in general education at ■ MS and rejected the notion of a resource class because he felt singled out. By late September 2019, the Student was not attending school, even with the supports of the June 2019 IEP in place. At this junction, the IEP in place required revision, including a placement where the Student would have the opportunity to learn. However, it was not until October 27, 2020 that MCPS finalized the new IEP and offered the Student a placement other than ■ MS.

MCPS argues that the Parent caused some of the delays leading up to the October 2020 IEP, and MCPS is correct. The Parent declined to attend IEP meetings in September and October 2019, because her father was terminally ill. The Parent was responsible for

approximately two months' worth of delay. If one subtracts two months from the timeline, MCPS still took nearly a year to develop an IEP with a placement other than ■■■ MS for the Student when it was clear the Student could not attend ■■■ MS even with the accommodations put in place by the June 2019 IEP.

There is significant case history supporting the contention that a delay of several months in developing and finalizing an IEP is excessive when placement is at issue. In *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1209 (4th Cir. 1990), the court held that a six-month delay in developing an IEP for a student with significant emotional issues was excessive. Similarly, in *Foster v. Dist. of Columbia Bd. Of Educ.*, 553 IDELR 520 (D.D.C. 1982), where there was delay of several months in finalizing the IEP and creating a placement recommendation for a middle-school-aged student with severe learning disabilities and emotional issues, the court stated,

Any agency whose appointed mission is to provide for the education and welfare of children fails that mission when it loses sight of the fact that, to a young, growing person, time is critical. While a few months in the life of an adult may be insignificant, at the rate at which a child develops and changes, especially one at the onset of biological adolescence with or without special needs like those of our plaintiff, a few months can make a world of difference...

Id. In the present matter, while MCPS failed to develop a new finalized IEP between September 2019 and October 2020, the Student was not attending school. Consistent with *Foster* and *Tice*, I find that this delay was excessive.

Through MCPS's delay in finalizing the revised IEP, the Student lost educational opportunities. In *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F. 3d 377 (2d Cir. 2003), the court held that a student must suffer a loss of an educational opportunity as a result of a school system's delay in developing an IEP in order for this delay to constitute a violation of the IDEA. In the present matter, the Student's grades were demonstrative of his loss of opportunity, because they had declined from an A average down to Fs. His parents had arranged for a math tutor, but aside from that instruction, the student's education was lacking. While he was enrolled in IIS,

his grades did not improve. His mother testified that the Student was not open to her instruction in the home setting. Furthermore, he lost out on the opportunity of classroom instruction, which is valuable in and of itself. MCPS's procedural error, its delay, resulted in the loss of an educational opportunity for the Student in that he was not consistently attending school and therefore was lacking instruction and losing ground academically. Therefore, I find MCPS's delay in finalizing a revised IEP amounts to a denial of FAPE to the Student. I find the Student suffered a detriment in the form of deprivation of educational opportunities while he was without a viable placement.

The Proposed Placement At [REDACTED] [REDACTED] Is Not Appropriate

The parties agree that, other than placement, the content of the October 27, 2020 IEP is appropriate as written. In fact, Dr. [REDACTED] had significant input in editing the various sections of the IEP for the Student. MCPS welcomed her participation this process and incorporated most of her edits into the finalized IEP. The parties are only in disagreement over the placement offered at the October 27, 2020 IEP meeting.

At the October 27, 2020 meeting, MCPS finally proposed a new placement for the Student – they recommended the [REDACTED] Enhanced [REDACTED] program,¹⁶ a fully separate special education placement for the Student. Once in-person learning resumes, he would take all of his classes in a suite, located on the first floor of [REDACTED] High School. There would be three other students in his classes to start with and the class size could grow (as the program developed) up to four to ten students per class. For reasons described herein, I find that placement is not appropriate.

Dr. [REDACTED], who evaluated the Student, testified that the Student currently

¹⁶ This program is available for high school students and it began in [REDACTED] 2020. Therefore, it was not a placement option in the 2019-2020 academic year.

requires a one-to-one classroom setting due to his major emotional challenges. A one-to-one setting removes the possibility that the Student can compare his academic performance to that of other students, which she opined, was what in part, caused him to “shut down” emotionally and stop attending school in the first place. She also opined that a one-to-one setting allows the teacher to respond immediately to the Student’s concerns and insecurities as they arise. The Student is apt to call himself “stupid” even though he is academically talented in Mathematics and has an IQ of 127. When the Student feels he has made a mistake, he needs immediate reassurance without social pressure. That can only happen in a one-to-one setting. Dr. [REDACTED] testified, “It’s hard to put into words how fragile and self-critical he is.” She further opined that it is “unlikely” that the Student is ready to transition back to public school because he is still rebuilding his self-esteem. Dr. [REDACTED] demonstrated a thorough understanding of the Student’s emotional issues and had personally assessed the Student’s social-emotional and attentional strengths and vulnerabilities in January of 2020. Based on this information, she produced a very thorough thirty-one-page report that included in-depth information about his developmental history and the test results yielded from his assessment. Based on the thoroughness of her assessment and her understanding the Student, as reflected in her testimony, I found her opinions credible.

Dr. [REDACTED] also expressed her concern that transitioning the Student out of [REDACTED] and into a virtual learning setting at this point would create a significant risk of another pattern of school refusal once virtual learning is over for MCPS. She believed this risk was due, in large part, to the risk of the Student experiencing another severe depressive episode. She was concerned that it would, once again, be hard to get the Student back into the classroom. Dr. [REDACTED] derived her opinions from her assessment of the Student, which MCPS accepted as part of the IEE. Her opinions were consistent with those of Dr. [REDACTED], and surprisingly, to some

extent those of Dr. [REDACTED] a witness for MCPS.

Dr. [REDACTED], who is the Psychologist for the Central IEP Team for MCPS, agreed with Dr. [REDACTED] that transitioning the Student from [REDACTED] (where he is attending in person) to [REDACTED] where he could only attend virtually would be “counter-productive” due to his long history of school refusal. She did opine that the [REDACTED] [REDACTED] program is equipped to accommodate the Student once in-person learning resumes because the self-contained classroom is appropriate for the Student based on his anxiety disorder and his need for predictability. She further opined that he could receive the staff supports he needs in-person at [REDACTED] [REDACTED]. However, she had no information about when [REDACTED] [REDACTED] would resume in-person instruction.

Dr. [REDACTED] opined that a placement at [REDACTED] [REDACTED] neither offers the Student an appropriate education in person, nor in a virtual learning environment. Regarding the in-person option that the Student would eventually engage in, she testified, “[the Student’s] profile does not suggest the need for a fully contained special education program.” Rather, she opined he is appropriately served at [REDACTED] where he learns in a one-to-one environment where faculty can respond to his emotional needs in core instruction courses but he also has the opportunity to socialize and collaborate with non-disabled peers during music class, lunch, clubs, and Homework Café. Furthermore, she testified the Student had trouble attending [REDACTED]’s virtual program, not appearing for many sessions in the Spring of 2020.

MCPS argued that virtual learning, due to the COVID-19 pandemic, does not in and of itself constitute a substantial change in placement. MCPS is correct. *In re: Student with a Disability*, 77 IDELR 25 (SEA KS 2020), the court stated, “in an emergency situation, where all children are to be served virtually for a period of time, serving an exceptional child virtually for that same period of time is not a substantial change in placement.” *Id.* at 12. For this

reason, the fact that MCPS is operating on virtual learning, while [REDACTED] offers in-person instruction, does not justify a different academic placement for the Student. While transitions present a heightened challenge for the Student, the present matter does not turn on the difference between in-person and virtual learning.

Mr. [REDACTED] testified that [REDACTED] [REDACTED] would provide the Student with transition services and he could even meet directly with the Student to help integrate him into the [REDACTED] [REDACTED] program. The fact that [REDACTED] [REDACTED] has Mr. [REDACTED] as their on-site social worker bodes well for transition services. He would certainly be readily available to help the Student talk through his issues with the new format of [REDACTED] and ease the process of getting to know new faculty.

However, the circumstances are more complex for the Student due to his history of school refusal. Having a trained professional to talk to may not be enough to ensure the Student can attend [REDACTED]. The Student had access to therapists in the past but was still unable to attend class with his peers at [REDACTED] MS. Having the opportunity to discuss his feelings may not be enough to resolve the Student's challenges with peer pressure in the classroom setting. For the reasons that follow, I find that transitioning the Student out of [REDACTED] where he has broken a long pattern of school refusal into [REDACTED] [REDACTED], whether virtual or in-person, would not be appropriate at this time.

[REDACTED] [REDACTED] conducts group classes in an academic setting. Dr. [REDACTED] testified that enrollment is between four to ten students per class. Dr. [REDACTED] opined, and I found her credible on this point, that the Student compares himself to other students and shuts down emotionally. Her assessment report and that of Dr. [REDACTED] are replete with examples of just how hard on himself the Student is; it's overwhelming and sad to read. He is so bright but as

soon as someone else sees him makes a mistake, he shuts down. He currently cannot handle the pressure of having peers present in a learning environment. For this reason, Dr. [REDACTED] explained, the Student currently needs a one-to-one teaching environment while he rebuilds his self-esteem. The [REDACTED] [REDACTED] program cannot provide the Student with a one-to-one learning environment. As Dr. [REDACTED] testified, the classes in the [REDACTED] programs are designed for four to ten students. Dr. [REDACTED] opined, that's simply too much social pressure for this unique student to be sure he would be emotionally able to attend school at [REDACTED] [REDACTED]. If he were unable to attend the program, he would be unable to make academic progress.

One can surely hope that the Student will advance to a point where he could learn with peers present, but as history has taught in this case, putting the Student in an educational environment like this results in him not attending and losing a year or more of education. Paramount to the Student's opportunity for him to make measurable educational progress is his opportunity to regularly attend school, whether that be virtual or in-person. He is not yet ready to attend academic core classes along with other students. The risk of him not participating in school for a year or more is great at this point because he is in high school. He must satisfy graduation requirements to obtain a high school diploma. If the student failed to participate in another year's worth (or more) of classes, he would risk not graduating high school.

The Placement at [REDACTED] is Appropriate

Special Education and Related Services Can be Provided in a Myriad of Settings

MCPS argues that the Student's placement at [REDACTED] is not appropriate, because [REDACTED] is not a special education school and does not, itself, implement IEPs. This raises the question – can an appropriate placement for a student with a previous IEP only be in a setting that formally implements an IEP? The statutory definition of “special education”, found at 20 U.S.C.A. § 1401 (2017) is informative and is as follows:

(29) Special education

The term “special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

MCPS’s definition of special education is “too narrow.” Special education can occur in a myriad of settings, certainly including [REDACTED].

Of course, MCPS must still manage the Student’s IEP if he were placed at [REDACTED] since [REDACTED] does not formally implement IEPs. Ms. [REDACTED] testified that accommodations are built into [REDACTED]’s one-on-one model and in that setting, the Student does not require an IEP to succeed. [REDACTED], head of school at [REDACTED] echoed Ms [REDACTED]’s assertions and spoke of the ability of faculty to adjust to and accommodate student needs, including honoring the accommodations in place under the October 2020 IEP. In fact, the Student, is a highly intelligent young man with an IQ of 127. However, his ability to succeed at [REDACTED] does not fully address the concern of MCPS. Ms. [REDACTED], whom I found knowledgeable about the implementation of IEPs within MCPS in non-public settings, acknowledged that MCPS does have at least one other student funded at [REDACTED], and MCPS holds annual IEP meetings at their central office to monitor student progress. In so doing, MCPS can update the goals and objectives and ensure the accommodations needed are being provided in the non-public setting. MCPS could do the same for this Student, if needed.

A Private Placement Must be Appropriate for Parents to Receive Reimbursement

When, as I have found, the school system fails to provide a student with a FAPE, the parent(s) of the Student can only receive reimbursement for a private school placement if that placement is found to be appropriate. A parental placement may be found to be appropriate by a hearing officer even if it does not meet the State standards that apply to education provided by state educational agencies and local educational agencies. 34 CFR § 300.148(c) (2019).

It is Unclear that [REDACTED] is the Least Restrictive Environment

MCPS is required to ensure that, to the maximum extent possible, each student with a disability is educated with non-disabled peers and that removing children with disabilities from the regular educational environment only occurs if the nature and severity of the disability is such that education in regular classes with the use of supplemental aids and services cannot be achieved satisfactorily. 34 CFR §300.115 – 300.120 (2019). MCPS argues that the [REDACTED] program is the least restrictive environment for the Student because it is based in a public high school and would give him access to general education classes when he is ready to integrate himself.

The Student argues that [REDACTED] is the least restrictive environment because [REDACTED] is home to non-disabled students, unlike the [REDACTED] [REDACTED] program, and the Student has an opportunity to socialize, take music class and participate in clubs with non-disabled peers, making it less restrictive than the [REDACTED] setting where the Student would spend his entire day in a suite with a few other emotionally disabled students.

Both settings have more restrictions than general education at a mainstream public school. However, MCPS is only right that the Student would have access to non-disabled peers if he were able to integrate himself into general education courses. Otherwise, this setting is more restrictive than [REDACTED] where he is already integrated with non-disabled peers for music class, Homework Café, and club participation. Additionally, there is part of the analysis that presents an unknown factor – whether the Student would be emotionally capable of attending the [REDACTED] [REDACTED] program. His pattern of school refusal was severe and has finally been broken at [REDACTED]. It is Ms. [REDACTED]'s professional opinion that he might enter another pattern of school refusal if transitioned to a different educational setting at this time. The Parent testified that the Student feels bitter towards public school and she is unsure if he would attend if placed at

██████████. If indeed the Student were placed at ██████████ ██████████ and stopped attending school again, then this placement would be more restrictive than ██████████ because the Student would be forced to resume the IIS program where he was alone at home. For these reasons, I cannot conclude that the ██████████ ██████████ program presents the least restrictive environment for the Student's education.

The Student's Success at ██████████ is an Indicator of His Academic Progress & ██████████'s

Appropriateness

Absent a school placement the Student could attend, the Parents were left with no choice but to find a school for him to attend. In October 2019, the Parents enrolled the Student at ██████████, and he immediately began to succeed. He traveled to school independently, attended school consistently, completed assignments, formed good relationships with most of his teachers, and earned excellent grades consistent with a child with a high IQ. He has been making academic progress consistent with his ability. Additionally, his mood improved, and he became more functional in the home setting. When he had to switch to virtual learning for a few months, he already knew his teachers, and while his participation diminished, ██████████ was able to bring him back to school in person starting in the Fall of 2020 and the Student is once again participating in school consistently. In summary, he made progress appropriate in light of his unique circumstances, an indicator that ██████████ is an appropriate placement for this Student.

In her testimony, ██████████ shed light on how this progress happens for the Student at ██████████. She testified that she and other staff meet with teachers and mental health providers regarding students, on an as-needed basis. Ms. ██████████ is aware that the Student is under mental health care and is in touch with his provider. Furthermore, she testified students have input in their education, such as the ability to select books of interest in English class; she believes this helps maintain student engagement. Ms. ██████████ acknowledged that teachers have adjusted their

approach, as needed with the Student, and one teacher was replaced when the Student had a disagreement with that faculty member. MCPS took issue with this replacement; however, I do not. If reassigning the Student to a different teacher is feasible for their staffing and it keeps the Student attending school and engaged in his learning, I do not find this approach inappropriate for the Student's education. The most essential thing for this Student is to be enrolled in a school where he is emotionally able to attend and make academic progress. [REDACTED] is that place for him. For these reasons, I find [REDACTED] is an appropriate placement for the Student.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that MCPS failed to provide the Student with a FAPE for the 2019-2020 and 2020-2021 academic years by:

- (a) Failing to develop a finalized IEP in a reasonably prompt manner; and
- (b) Failing to provide an appropriate IEP with educational placement reasonably calculated to provide educational benefit based on the Student's unique circumstances.

20 U.S.C. § 1401 (2019); 34 CFR § 300.148(c)(2019); *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1209 (4th Cir. 1990); *Foster v. Dist. of Columbia Bd. Of Educ.*, 553 IDELR 520 (D.D.C. 1982); *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F. 3d 377 (2d Cir. 2003).

ORDER

I **ORDER** that:

1. Montgomery County Public Schools shall **REIMBURSE** the Parent for her costs associated with placement of the Student at [REDACTED] for the 2019-2020 academic year;

2. Montgomery County Public Schools shall **REIMBURSE** the Parent for her costs associated with placement of the Student at [REDACTED] for the 2020-2021 academic year, to the extent that she has made payment.
3. Montgomery County Public Schools shall **FUND** placement of the Student at [REDACTED] for the remainder of the 2020-2021 academic year.
4. The Montgomery County Public Schools shall, within thirty [30] days of the date of this decision, provide proof of compliance with this Order to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, Maryland State Department of Education.

December 18, 2020
Date Decision Mailed

Rachael Barnett
Administrative Law Judge

RAB/da
#189248

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]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE RACHAEL BARNETT,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-20-14814

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parent:

- Parent Ex. 1 – Amended Request for Due Process, August 31, 2020
- Parent Ex. 2 – MCPS Educational Management Team Summary, December 7-17, 2017
- Parent Ex. 3 – Letter from ██████████, M.D., January 25, 2018
- Parent Ex. 4 – Secondary Teacher Report, March 22, 2018
- Parent Ex. 5 – MCPS Section 504 Plan, May 3, 2018
- Parent Ex. 6 – MCPS Final Report Card, June 2018
- Parent Ex. 7 – MCPS Summaries of Parent Teacher Conferences, January 16, 2018, March 22, 2018, October 23, 2018, and December 12, 2018
- Parent Ex. 8 – MCPS Application for Home and Hospital Teaching, January 4, 2019
- Parent Ex. 9 – Letter from MCPS Regarding Absences and Student Grades and Attendance Record, January 25, 2019
- Parent Ex. 10 – MCPS Educational History, March 10, 2019
- Parent Ex. 11 – MCPS Child Find Referral and Teacher Referrals, March 12, 2019
- Parent Ex. 12 – MCPS Initial Evaluation, March 21, 2019
- Parent Ex. 13 – MCPS Prior Written Notice, March 28, 2019
- Parent Ex. 14 – MCPS Educational Evaluation, May 9, 2019
- Parent Ex. 15 – MCPS Psychological Evaluation, May 9, 2019
- Parent Ex. 16 – MCPS Evaluation Report, Emotional Disability Form, and Prior Written Notice, June 6, 2019 and June 11, 2019
- Parent Ex. 17 – MCPS IEP and Prior Written Notice, June 18, 2019 and June 25, 2019
- Parent Ex. 18 – MCPS Final Report Card, June 19, 2018
- Parent Ex. 19 – MCPS Student Transition Interview, undated
- Parent Ex. 20 – Parent Request for Twice Exceptional Support, September 4, 2019
- Parent Ex. 21 – Letter to Stacy Reid Swain, Esq. Regarding Representation and Meeting, October 4, 2019
- Parent Ex. 22 – Letter to MCPS. Serving Notice, October 7, 2019
- Parent Ex. 23 – ██████████ Daily Progress Reports, October 22, 2019 to November 11, 2019
- Parent Ex. 24 – MCPS Prior Written Notice, November 11, 2019
- Parent Ex. 25 – Letter to MCPS Requesting Independent Educational Evaluation and MCPS Response Letter, December 10, 2019 and December 19, 2019
- Parent Ex. 26 – Diagnostic Educational Evaluation by Dr. ██████████ January 19, 2020

- Parent Ex. 27 – Psychological Evaluation by Dr. [REDACTED], January 21, 2020
- Parent Ex. 28 – [REDACTED] Therapist Call Log, March 26, 2020
- Parent Ex. 29 – MCPS Draft IEP Feedback by Dr. [REDACTED], May 26, 2020
- Parent Ex. 30 – [REDACTED] Feedback on MCPS Draft IEP, May 27, 2020
- Parent Ex. 31 – [REDACTED] Student Transcript, June 2020
- Parent Ex. 32 – Letter to MCPS Serving Notice and MCPS Response Letter, August 18, 2020 and October 13, 2020
- Parent Ex. 33 – [REDACTED] Summary Report, August 18, 2020
- Parent Ex. 34 – Emails between Parent and MCPS, September 2, 2020
- Parent Ex. 35 – [REDACTED] 2020-21 Student Schedule
- Parent Ex. 36 – [REDACTED] Monthly Progress Report, September 2020
- Parent Ex. 37 – MCPS draft IEP, October 8, 2020
- Parent Ex. 38 – [REDACTED] Attendance Record, October 2019 – October 2020
- Parent Ex. 39 – [REDACTED] Daily Summaries, November 16, 2019 to October 21, 2020
- Parent Ex. 40 – [REDACTED] Monthly Progress Report, October 2020
- Parent Ex. 41 – [REDACTED] Student Snapshot, Fall 2019
- Parent Ex. 42 – [REDACTED] Student Transcript, 2020-21 School Year
- Parent Ex. 43 – Resume of Dr. [REDACTED], undated
- Parent Ex. 44 – Resume of Dr. [REDACTED], undated
- Parent Ex. 45 – Resume [REDACTED], undated
- Parent Ex. 46 – MCPS IEP and Prior Written Notice, October 27, 2020 and October 29, 2020
- Parent Ex. 47 – [REDACTED] Progress Report, November 2, 2020.
- Parent Ex. 48 – Letter by Dr. [REDACTED], November 2, 2020

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 – Secondary Teacher Report (PE), December 7, 2017
- MCPS Ex. 2 – Secondary Teacher Report (Theater), December 7, 2017
- MCPS Ex. 3 – Secondary Teacher Report (World Studies), December 7, 2017
- MCPS Ex. 4 – Secondary Teacher Report (no subject listed), March 22, 2018
- MCPS Ex. 5 – Secondary Teacher Report (Computer Science), March 22, 2018
- MCPS Ex. 6 – Secondary Teacher Report (English), March 22, 2018
- MCPS Ex. 7 – Secondary Teacher Report (Math), March 22, 2018
- MCPS Ex. 8 – Secondary Teacher Report (Science), March 22, 2018
- MCPS Ex. 9 – Secondary Teacher Report (Spanish 1AB), March 22, 2018
- MCPS Ex. 10 – [REDACTED] MS Progress Report, June 19, 2018
- MCPS Ex. 11 – [REDACTED] MS Student Detail Report, January 25, 2019
- MCPS Ex. 12 – Grade Report for Secondary School Students Receiving Interim Instructional Services (World Studies), March 26, 2019
- MCPS Ex. 13 – MCPS Educational Assessment Report, May 09, 2019
- MCPS Ex. 14 – MCPS Psychological Report, May 9, 2019
- MCPS Ex. 15 – MCPS Emotional Disability Form, June 6, 2019
- MCPS Ex. 16 – Grade Report for Secondary School Students Receiving Interim Instructional Services (Investigations in Science 7), May 2, 2019 – June 7, 2019
- MCPS Ex. 17 – MCPS Approval of an Independent Educational Evaluation, December 19, 2019
- MCPS Ex. 18 – Psychological Evaluation Report [REDACTED], January 21, 2020

MCPS Ex. 19 – Diagnostic Educational Evaluation [REDACTED], February 16, 2020
 MCPS Ex. 20 – [REDACTED] Therapist Call Log, March 26, 2020
 MCPS Ex. 21 – [REDACTED] MS Grade History, various years
 MCPS Ex. 22 – Section 504 Eligibility, May 3, 2018
 MCPS Ex. 23 – Section 504 Plan, May 3, 2018
 MCPS Ex. 24 – MCPS Approved IEP, June 18, 2019
 MCPS Ex. 25 – MCPS Amended IEP, November 7, 2019
 MCPS Ex. 26 – MCPS Draft IEP, May 22, 2020
 MCPS Ex. 27 – MCPS Draft IEP With Dr. [REDACTED]'s comments, May 26, 2020
 MCPS Ex. 28 – MCPS Draft IEP, May 26, 2020
 MCPS Ex. 29 – MCPS Draft IEP, May 27, 2020
 MCPS Ex. 30 – MCPS Draft IEP with Dr. [REDACTED]'s comments, June 26, 2020
 MCPS Ex. 31 – MCPS Draft IEP, October 27, 2020
 MCPS Ex. 32 – Educational Management Team Summary, December 7, 2017
 MCPS Ex. 33 – Classroom Observation, March 6, 2019
 MCPS Ex. 34 – Educational History, March 10, 2019
 MCPS Ex. 35 – Child Find Referral, March 12, 2019
 MCPS Ex. 36 – Eligibility Screening Parent Interview Questionnaire, March 19, 2019
 MCPS Ex. 37 – Notice and Consent for Assessment, March 21, 2019
 MCPS Ex. 38 – IEP Team Meeting Sign-In Sheet, March 21, 2019
 MCPS Ex. 39 – Prior Written Notice, March 28, 2019
 MCPS Ex. 40 – IEP Team Meeting Sign-In Sheet, June 6, 2019
 MCPS Ex. 41 – Evaluation Report and Determination of Initial Eligibility, June 6, 2019
 MCPS Ex. 42 – Request to Delay Evaluation, June 6, 2019
 MCPS Ex. 43 – Prior Written Notice, June 11, 2019
 MCPS Ex. 44 – IEP Team Sign-In Sheet, June 18, 2019
 MCPS Ex. 45 – Prior Written Notice, June 25, 2019
 MCPS Ex. 46 – Request for Twice Exceptional Support, September 4, 2019
 MCPS Ex. 47 – Notice of IEP Team Meeting, September 10, 2019
 MCPS Ex. 48 – Notice of IEP Team Meeting, October 1, 2019
 MCPS Ex. 49 – Prior Written Notice, November 11, 2019
 MCPS Ex. 50 – Five-Day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting, April 20, 2020
 MCPS Ex. 51 – Prior Written Notice, May 4, 2020
 MCPS Ex. 52 – Five-Day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting, May 22, 2020
 MCPS Ex. 53 – Prior Written Notice, June 3, 2020
 MCPS Ex. 54 – Prior Written Notice, July 6, 2020
 MCPS Ex. 55 – Notice of IEP Team Meeting Scheduling Central IEP Meeting, October 8, 2020
 MCPS Ex. 56 – Prior Written Notice, October 27, 2020
 MCPS Ex. 57 – Feedback from Homework Café, June 03, 2020
 MCPS Ex. 58 – [REDACTED] for Student, August 18, 2020
 MCPS Ex. 59 – Fall Schedule, 2020
 MCPS Ex. 60 – Winter Schedule, 2020
 MCPS Ex. 61 – Attendance Records ([REDACTED]), October 2019 – October 2020
 MCPS Ex. 62 – Official Progress Report, Fall 2020
 MCPS Ex. 63 – Student Schedule 2020- 2021

- MCPS Ex. 64 – Progress Chart, various dates
- MCPS Ex. 65 – Unofficial High School Transcript, 2020 (in progress)
- MCPS Ex. 66 – Unofficial Middle School Transcript, 2019 – 2020
- MCPS Ex. 67 – ██████████¹⁷ Goals, various dates
- MCPS Ex. 68 – ██████████ – Resume, undated
- MCPS Ex. 69 – ██████████ – Resume, undated
- MCPS Ex. 70 – ██████████ – Resume, undated
- MCPS Ex. 71 – ██████████ – Resume, undated
- MCPS Ex. 72 – ██████████ – Resume, undated
- MCPS Ex. 73 – ██████████ – Resume, undated
- MCPS Ex. 74 – ██████████ – Resume, undated
- MCPS Ex. 75 – ██████████ – Resume, undated
- MCPS Ex. 76 – Emails Regarding ██████████'s Absence from Math Class, November 2017
- MCPS Ex. 77 – Email Regarding Math Class Instructions, January 11, 2018
- MCPS Ex. 78 – Email Regarding Concerns About Attendance, March 1, 2018
- MCPS Ex. 79 – Email Regarding Concerns About Attendance, April 25, 2018
- MCPS Ex. 80 – Email Regarding Missed Unit Test, April 30, 2018
- MCPS Ex. 81 – Email Excusing the Student's Absence, October 16, 2018
- MCPS Ex. 82 – Email Regarding Recommendation to Student Support Center Due to Low Grades, November 1, 2018
- MCPS Ex. 83 – Email Regarding Fourth Week of Absence, December 4, 2018
- MCPS Ex. 84 – Email Regarding the Student's Special Education Services, February 2019
- MCPS Ex. 85 – Email Regarding Automatic Excused Absence, February 5, 2019
- MCPS Ex. 86 – Email Regarding Math Accommodations, June 7, 2019
- MCPS Ex. 87 – Email Regarding Request to Discuss the Student's Schedule and Supports, September 6, 2019
- MCPS Ex. 88 – Email Regarding ██████████'s Comments on the Student's IEP, September 4, 2019
- MCPS Ex. 89 – Email Regarding Attendance, September 17, 2019
- MCPS Ex. 90 – Email Regarding the Student's Transition Interview, May 18, 2020
- MCPS Ex. 91 – Emails Regarding Scheduling the Student's IEP Meeting with ██████████ Representatives, June 2020
- MCPS Ex. 92 – Email Regarding ██████████'s Comments on the Draft IEP, June 26, 2020
- MCPS Ex. 93 – Email Regarding June 26, 2020 Prior Written Notice and Revised IEP, July 6, 2020
- MCPS Ex. 94 – Enrollment Details (Absences), various dates
- MCPS Ex. 95 – Summary of Parent Conferences, various dates
- MCPS Ex. 96 – Letter from ██████████, M.D. January 25, 2018
- MCPS Ex. 97 – Application for Home and Hospital Teaching, January 9, 2019
- MCPS Ex. 98 – Letter to Parent Regarding Approval for Home and Hospital Teaching, January 23, 2019
- MCPS Ex. 99 – Interim Instructional Services Return to School Plan, January 25, 2019
- MCPS Ex. 100 – Letter from ██████████ MS to Parents Regarding Absences, January 25, 2019
- MCPS Ex. 101 – Teacher Referrals, various dates

¹⁷ This exhibit does not explain the abbreviation, ██████████.

- MCPS Ex. 102 – Application for Interim Instructional Services, With Qualified Mental Health Condition ONLY, April 30, 2019
- MCPS Ex. 103 – Letter to Parent Regarding Approval of Interim Instructional Services, May 2, 2019
- MCPS Ex. 104 – Parent Conference Notes, September 4, 2019
- MCPS Ex. 105 – 2019 [REDACTED] Daily Summary Reports, various dates
- MCPS Ex. 106 – [REDACTED] Record Request Correspondence, various dates in October 2020
- MCPS Ex. 107 – Secondary Transition Middle School Interview, August 2016
- MCPS Ex. 108 – [REDACTED] MS Communication Log, various dates
- MCPS Ex. 109 – IEP Meeting Sign-In Sheet, April 27, 2020
- MCPS Ex. 110 – IEP Meeting Sign-In Sheet, May 27, 2020
- MCPS Ex. 111 – Prior Written Notice, September 4, 2020