

██████████,
STUDENT

v.

MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE GERALDINE A. KLAUBER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MCPS-OT-20-14883

DECISION

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

STATEMENT OF THE CASE

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

The timeline contained within the Code of Federal Regulations (C.F.R.) afforded the MCPS up until August 12, 2020, which is thirty days from July 13, 2020, to try and resolve the issues contained in the Complaint. *See* 34 C.F.R. § 300.510(b)(1) (2019). The parties

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.

² 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.

participated in a resolution meeting. On August 11, 2020, which was before the end of the thirty-day period, the parties signed a written acknowledgment that an agreement could not be reached. The parties did not wish to participate in mediation. Ordinarily, the decision would have been due forty-five days from the date the parties agreed in writing that an agreement could not be reached. 34 C.F.R. § 300.515(a)(2); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). Forty-five days from August 11, 2020 is September 25, 2020. On September 9, 2020, Administrative Law Judge (ALJ) Jerome Woods, II conducted a telephone conference with the parties to discuss the timeline above. As memorialized in a letter issued to the parties on September 10, 2020, ALJ Woods documented that the COVID-19 crisis impacted the availability of MCPS' witnesses and OAH's suspension of in-person hearings until the latter part of July 2020. As a result of the impact of COVID-19, the parties requested that ALJ Woods extend the timeline for holding a due process hearing and issuing a final decision. Finding good cause, ALJ Woods granted that request. *Id.* § 300.515(c).

I held a video/audio prehearing conference using the Google Meet platform on September 17, 2020. The Parents were represented by Michael Eig, Esquire. Leslie Stellman, Esquire, and William Fields, Esquire, represented the MCPS. During that prehearing conference, the parties acknowledged their prior request to ALJ Woods to extend the applicable timeline and renewed the request. Finding good cause based on the impact of COVID-19, the closure of the MCPS, and the partial suspension of proceedings at the OAH, as well as to accommodate the schedule of Mr. Eig, I found that there was good cause to extend the regulatory timeframe as requested by the parties. 34 C.F.R. § 300.515(c).

The parties jointly requested that I issue a decision within thirty days after the conclusion of the hearing, and I agreed to do so. Thirty days from December 4, 2020 is Sunday, January 3,

2021, and the preceding Friday is January 1, 2021, a State holiday. Due to the intervening weekend and holiday the decision due date falls on December 31, 2020.

I held the hearing on November 30 through December 4, 2020, using the WebEx Platform. Michael Eig, Esquire, represented the Parents. Leslie Stellman and William Fields, Esquires, represented the MCPS.

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

1. Did MCPS deny the Student a free appropriate public education (FAPE) by failing to provide him with an appropriate individualized education program (IEP) and placement for the 2019-20 and 2020-21 school years?
2. If so, should MCPS place the Student at the expense of the MCPS at the [REDACTED] ([REDACTED]), where he is currently enrolled, for the 2020-21 school year?
3. If so, should the MCPS reimburse the Parents for the costs incurred for tuition and related services at [REDACTED] for the 2019-20 school year?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parents:

P Ex. 1 - Parents' Request for Due Process, July 13, 2020

P Ex. 2 - Developmental and Behavioral Evaluation by the [REDACTED], [REDACTED], March 26, 2015

- P Ex. 3 - Speech-Language Evaluation by the [REDACTED],
March 26, 2015
- P Ex. 4 - Autism Evaluation by [REDACTED], May 27, 2015
- P Ex. 5 - Speech-Language Evaluation by [REDACTED], May 27, 2015
- P Ex. 6 - [REDACTED] Diagnostic Prescriptive Goals (DPG), November 10, 2017
- P Ex. 7 - MCPS Individualized Education Program (IEP), May 22, 2018
- P Ex. 8 - [REDACTED] DPG Progress Report, January to June 2018
- P Ex. 9 - Letter to MCPS serving notice, August 21, 2018; and MCPS response letter,
September 6, 2018
- P Ex. 10 - Observation Report of Student at [REDACTED] by [REDACTED], September 20 and
October 2, 2018
- P Ex. 10A - MCPS IEP Meeting Notes by [REDACTED], November 5, 2018
- P Ex. 11 - Neuropsychological Evaluation by Dr. [REDACTED], November 2018
- P Ex. 12 - Neuropsychological Evaluation by Dr [REDACTED] March 2019
- P Ex. 13 - [REDACTED] Testing Report October 2018 and May 2019
- P Ex. 14 - [REDACTED] Report Card, June 2019
- P Ex. 15 - Letter to MCPS enclosing documentation for IEP meeting, July 26, 2019
- P Ex. 16 - Letter to MCP serving notice, August 7, 2019; response from MCPS, August
22, 2019
- P Ex. 16A - MCPS IEP meeting notes by [REDACTED], August 30, 2019
- P Ex. 17 - MCPS Prior Written Notice, September 10, 2019
- P Ex. 18 - Letter to Michael J. Eig, Esq., from Emily Rachlin, Esq., September 13, 2019
- P Ex. 19 - MCPS Classroom Observations, September 26, 2019
- P Ex. 20 - MCPS Speech-Language Re-Assessment, October 15, 2019
- P Ex. 21 - Observation Report of Student at [REDACTED] by [REDACTED], October 22, 2019

- P Ex. 22 - Not offered
- P Ex. 23 - █████ DPG Progress Report, January to October 2019
- P Ex. 24 - █████ DPG Meeting Notes by █████, November 5, 2019
- P Ex. 25 - █████ Quarter 1 Report Card, Fall 2019
- P Ex. 26 - Feedback to Draft MCPS IEP by █████, November 13, 2019
- P Ex. 27 - MCPS IEP Meeting Notes by █████, November 27, 2019
- P Ex. 28 - █████ DPG Progress Report, October 2019 to January 2020
- P Ex. 29 - Feedback to Draft MCPS IEP by █████, January 20, 2020
- P Ex. 30 - MCPS IEP, January 29, 2020
- P Ex. 31 - Observation Report of █████ Elementary School Learning Center (█████ LC) by Parent, February 4, 2020
- P Ex. 32 - MCPS Prior Written Notice, February 5, 2020
- P Ex. 33 - Observation Report of █████ LC by █████, February 4, 2020 and February 13, 2020
- P Ex. 34 - Letter to MCPS serving notice, August 17, 2020; MCPS response, September 6, 2020
- P Ex. 35 - █████ DPG Meeting Notes by █████, October 28, 2020
- P Ex. 36 - Resume of █████
- P Ex. 37 - Resume of Dr. █████
- P Ex. 38 - Resume of Dr. █████
- P Ex. 39 - Resume of █████
- P Ex. 40 - █████ DPG End of Year Progress Reports, June 2020
- P Ex. 41 - █████ Final Report Card, June 2020
- P Ex. 42 - █████ End of Year Testing Report, June 2020

P Ex. 43 - ██████████ DPG, October 22, 2020

P Ex. 44 - Observation Report of Student at ██████████ by ██████████, November 18, 2020

I admitted the following exhibits on behalf of MCPS:³

MCPS Ex. 4 - IEP, January 29, 2020

MCPS Ex. 5 - Speech-Language Assessment by ██████████, October 15, 2019

MCPS Ex. 6 - Letter from Emily Rachlin to Mr. Eig and Parents, September 13, 2019

MCPS Ex. 8 - Observation Report of Student at ██████████ by ██████████, September 26, 2019

MCPS Ex. 9 - Observation Report of Student at ██████████ by ██████████, September 26, 2019

MCPS Ex. 10 - Observation Report of Student at ██████████ by Dr. ██████████, September 26, 2019

MCPS Ex. 11 - Draft IEP, November 4, 2109

MCPS Ex. 12 - Draft IEP and accompanying email from ██████████ December 4, 2019

MCPS Ex. 14 - Prior Written Notice of August 30, 2019 IEP, September 10, 2019

MCPS Ex. 15 - Prior Written Notice of November 14, 2019 IEP, November 15, 2019

MCPS Ex. 16 - Prior Written Notice of January 29, 2020 IEP meeting, February 5, 2020

MCPS Ex. 17 - Letter from Ms. Rachlin to Mr. Eig and Parents, August 22, 2019

MCPS Ex. 18 - Letter from Ms. Rachlin to Mr. Eig and Parents, July 23, 2020

MCPS Ex. 21 - Draft IEP Feedback prepared by ██████████, November 13, 2019

MCPS Ex. 22 - Draft IEP Feedback prepared by ██████████, January 20, 2020

MCPS Ex. 23 - Resume of ██████████

MCPS Ex. 24 - Resume of ██████████

MCPS Ex. 25 - Resume of Dr. ██████████

MCPS Ex. 27 - Resume of ██████████

³ MCPS pre-marked the exhibits. Not all the exhibits were offered into evidence, which accounts for the gaps in the numbering.

MCPS Ex. 29 - [REDACTED] Intake Questionnaire, July 27, 2018

MCPS Ex. 30 - Resume of [REDACTED] and Maryland Educator Advanced Professional Certificate

Testimony

[REDACTED], the Student's father, testified and presented the following witnesses:

- [REDACTED], Ph.D., Pediatric Neuropsychologist, admitted as an expert in pediatric neuropsychology;
- [REDACTED], Educational Consultant, admitted as an expert in special education;
- [REDACTED], Ph.D., Director of [REDACTED] Lower and Middle School Programs, admitted as an expert in special education with an emphasis on autism spectrum disorder; and
- [REDACTED], M.A., CCC-SLP, Senior Speech-Language Pathologist at [REDACTED], admitted as an expert in speech-language pathology with an emphasis on speech-language needs of children in pre-school through second grade.

The MCPS presented the following witnesses:

- [REDACTED], M.S. Ed., Principal of [REDACTED] Elementary School, admitted as an expert in elementary education;
- [REDACTED], Special Education Resource Teacher at [REDACTED] Elementary School, admitted as an expert in early childhood and elementary education and special education Kindergarten through twelfth grade;
- [REDACTED], M.A., MCPS Speech-Language Pathologist, admitted as an expert in speech-language;
- Dr. [REDACTED], Ph.D., MCPS School Psychologist, admitted as an expert in school psychology; and

- [REDACTED], M.S. Ed., MCPS Autism Program Specialist, admitted as an expert in special education with an emphasis on autism.

FINDINGS OF FACT

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

1. The Student is an eight-year old boy, who at the age of two and one-half was seen at the [REDACTED] ([REDACTED]) for a developmental and behavioral evaluation. As a result of the March 26, 2015 evaluation, the Student was diagnosed with Autism Spectrum Disorder (ASD), Mixed Receptive-Expressive Language Disorder, and delayed milestones.
2. The Student is a generally happy child who loves to be with other children.
3. The Student is becoming more interested in people than objects and has made progress in seeking out others. He is highly motivated to engage with peers.
4. The Student has difficulty initiating and maintaining interactions and is largely unable engage in reciprocal interactions. The Student will occasionally freeze during social interactions with peers.
5. The Student typically attempts to get peers to engage in physical play and enjoys playing run and chase games with his cousins, classmates and sometimes children in the neighborhood.
6. The Student often does not note other children's reactions to him.
7. The Student struggles with behavioral regulation and social functioning. He has difficulty remaining in a designated area, working in a group and maintaining attention and engagement.

8. The Student cannot self-advocate and requires an adult to anticipate his needs.
9. The Student has sensory sensitivities, such as not liking very loud sounds and discomfort with certain clothing. The Student covers his ears if sounds are too loud.
10. The Student engages in repetitive behaviors, such as flapping objects or his arms.
11. The Student tends to imitate his brother's actions.
12. The Student frequently perseverates on topics and engages in repetitive behaviors.

The Student has an overly focused interest in numbers and letters. He is also very interested in calendars and dates and Google maps.

13. The Student's sustained attention is limited and exacerbated by his preoccupation with areas of interest, such as dates and numbers.
14. The Student has difficulty with flexibility, working memory and self-monitoring.
15. The Student is very skilled in technology and can independently use an iPad.
16. The Student has an excellent memory.

Assessments

17. The Speech and Language Assessment performed at [REDACTED] in March 2015 concluded that the Student's receptive and expressive language impairment was severe. The Student's pragmatic language or use of language for social purposes was atypical and he presented with limited functional communication and difficulty following directions beyond basic daily routines.

18. [REDACTED] recommended the initiation of early intervention services with speech therapy, occupational therapy and special instruction.

19. ██████ recommended opportunities for inclusion with typical peers with the support of TSS⁴ or itinerant teacher to facilitate peer interactions as tolerated.

20. In October 2018 and November 2018, the Student was seen by Psychologist ██████ of the ██████ for a neuropsychological evaluation. Dr. ██████ assessed the Student's cognitive strengths and weaknesses to clarify the Student's diagnosis and to assist with treatment planning.

21. Dr. ██████ administered a standardized test which measures general intellectual functioning (DAS-II). The test results reflected that the Student has stronger visual than verbal reasoning abilities.

22. Dr. ██████ found the Student possessed many important strengths. The Student has relative strengths in nonverbal and spatial abilities and his scores were within normal limits on the measures of nonverbal abstract reasoning and copying pictures.

23. The Student's scores were in the lower end of the average range on a task of visual spatial construction.

24. The Student has a weakness in language comprehension (limited understanding of what he has read or has been read to him).

25. The Student has some weaknesses in attention and executive functioning skills.

26. Standardized tests demonstrate the Student's academic achievement is at or above age expectations. Due to the Student's language comprehension weaknesses, the Student's academic achievement is at risk as the demands increase.

27. Dr. ██████ made the following recommendations for school placement:

- Empirically supported treatments/educational methods for students with Autism Spectrum Disorders, such as Applied Behavioral Analysis (ABA), should be utilized in the classroom setting. This would include a hearty

⁴ There was no reference in the report as to the meaning of this acronym.

focus on one-to-one instruction, breaking skills down into the smallest units, immediate rewards for success in developing skills, fading support as skill is mastered, linking series of smaller skills into more complex skills over time and in a highly organized fashion;

- Generalization to multiple environments (e.g., home, community, etc.);
- A program that provides the Student with appropriate opportunities for language stimulation, opportunities for individualized and small group instruction, supervised peer interactions and visual supports to help him learn and understand verbal material; and
- Exposure to teachers and school personnel specially trained to work with children with ASD.

28. Dr. [REDACTED] recommended the Student receive the following services at school:

- School based speech-language services for sixty to ninety minutes per week. A combination of pull-out and push-in services to address core language and higher-order language weaknesses;
- Occupational therapy;
- An integrated social skills training program as part of the Student's educational goals;
- Adaptive skills taught through applied behavioral analysis (ABA) methods;
- Increase monitoring of the Student's performance; and
- Daily homework.

29. In February 2019, the Parents hired pediatric neuropsychologist Dr. [REDACTED] to conduct a neuropsychological evaluation to supplement Dr. [REDACTED]'s assessment. Dr. [REDACTED] confirmed the diagnosis of ASD and Language Disorder.

30. Dr. [REDACTED]'s evaluation included reviewing Dr. [REDACTED]'s report, a comprehensive interview of the Parents, and direct assessment of the Student as well as the administration of standardized tests.

31. Dr. [REDACTED] administered the BASC 3, which is used to measure a child's emotional and social functioning; the Student scored very low, which is indicative of low anxiety.

32. Based on his assessment, Dr. [REDACTED] recommended that the Student receive his education in a special education setting with an integrated service model consisting of the following team members:

- A special educator;
- Speech and language therapist who targets core expressive, receptive, and pragmatic language abilities as well as closely monitoring and supporting receptive capacities in the classroom;
- Occupational therapy;
- Psychological support to focus on the development of the Student's social cognition and skills, integrated into the academic curriculum and throughout the school day; and
- Behavioral support, including the use of a positive behavioral management plan to support his time on task and availability for learning.

33. Dr. [REDACTED] specifically recommended the Student's classroom include the following features and supports:

- Highly structured classroom instruction delivered in very small groups (e.g. 2-3 students) for all academic subjects and academic programming;
- Positive behavior management system;
- Language based instruction presented in format and level accessible to the Student;
- Multi-sensory learning;
- A classroom environment that supports sustained attention, reduces distractions and provides appropriate organizational routines;
- A highly predictable classroom environment to support the Student's inflexibility; and

- Support peer interaction to encourage development of language and social skills (the opportunity to interact with peers whose language and social skills are generally on par with the Student's).

34. On October 4, 7, and 11, 2019, MCPS Speech-Language Pathologist [REDACTED] performed a speech-language evaluation to determine the Student's current levels of expressive, receptive and pragmatic language and the impact on his educational performance.

35. Ms. [REDACTED] administered the Clinical Evaluation of Language Fundamentals - 5th Edition to assess the Student's receptive and expressive language skills. On the subtests administered, the mean was ten and the standard deviation was three. The Students had the following test results:

- Sentence Comprehension - a scaled score of 5, below the average range;
- Word Structure - a scaled score of 8, within the average range;
- Formulating sentences - a scaled score of 3, below the average range;
- Recalling sentences - a scaled score of 5, below the average range;
- Linguistic Concepts - a scaled of 3, below the average range;
- Following Directions - a scaled score of 7, within the low average range; and
- Pragmatic Profile - a scaled score of 4, below the average range.

36. The Student's areas of strength include the Student's academic achievement skills.

37. The Student's receptive and expressive language abilities are well below age expectations and impact him both socially and academically.

38. The Student speaks in mostly scripted and repetitive speech.

39. The Student is literal in his comprehension and has a very limited capacity to understand nuanced or abstract concepts.

40. The Student's receptive language weaknesses require instructions on most tasks to be repeated, clarified or modified.

41. The Student responds better to picture cues rather than verbal prompts. When questions are language based, visuals improve the Student's accuracy.

42. The Student's decoding skills are strong but reading comprehension is weak. For reading comprehension the Student relies more on rote memory than problem solving ([REDACTED] testimony) and he requires support when answering "wh" questions, "why" questions are the most challenging.

43. MCPS's school psychologist did not perform his own assessment of the Student. Dr. [REDACTED] reviewed the assessments completed by Dr. [REDACTED] and Dr. [REDACTED] and he did not question or challenge any findings.

44. MCPS's Occupational Therapist performed an evaluation of the Student.

MCPS/IEP history

45. The Student entered MCPS in January 2016 at the [REDACTED] program ([REDACTED]) at [REDACTED] Elementary School. The Student attended [REDACTED] for three hours per day while concurrently attending Interaction Group Therapy sessions a [REDACTED] two days per week for 2.5 hours per day.

46. During the 2016-2017 and 2017-2018 school year, the Student continued attending [REDACTED] for the morning program while attending [REDACTED] in the afternoon at the Parent's expense.

47. On May 22, 2018, an IEP meeting was held to develop an IEP for the Student's Kindergarten year. MCPS proposed placing the Student at [REDACTED] Elementary School

where the Student would be placed in a general education setting for twenty-five hours per week with a one-to-one dedicated aide.

48. At the end of the 2017-2018 school year, [REDACTED] recommended that the Student attend the Kindergarten-1st grade class at [REDACTED], which consisted of six students with work in small groups of two to three students.

49. On August 21, 2018, the Parents served notice on MCPS that they intended to maintain the Student's enrollment at [REDACTED] for the 2018-2019 school year. The Parents requested MCPS fund the Student's placement at [REDACTED], which MCPS declined. MCPS informed the Parents if they had new information regarding the Student's educational needs that they wished an IEP team to consider, the parents should inform MCPS and a meeting would be scheduled.

50. The Parents enrolled the Student in the [REDACTED] Kindergarten-1st grade class in August 2018.

51. At the beginning of the 2018-2019 school year, the Parents hired [REDACTED], an educational consultant, to assist the Parents in understanding the Student's profile and help them make decisions regarding his educational placement and program.

52. Ms. [REDACTED] observed the Student at [REDACTED] on September 20, 2018 and October 2, 2018 in order to provide feedback for the development of the Student's IEP. Ms. [REDACTED] took contemporaneous notes of her observations.

53. Ms. [REDACTED] observed the Student for approximately thirty minutes on September 20, 2018 and approximately fifty-five minutes on October 2, 2018. At [REDACTED] there were five students in the Student's class with one teacher and one teaching assistant. She observed the Student work in a small group with the teacher.

54. On July 26, 2019, the Parents forwarded Dr. [REDACTED]'s and Dr. [REDACTED]'s evaluations and Ms. [REDACTED]'s observation report to MCPS for consideration. The Parents also requested that an IEP meeting be scheduled as soon as possible.

55. On August 7, 2019, the Parents notified MCPS in writing that the Student would attend [REDACTED] for the 2019-2020 school year and requested that MCPS place and fund the Student at [REDACTED].

56. On August 22, 2019, MCPS responded to the Parents' August 7, 2019 request and notified the Parents that the request for funding was premature because MCPS had not yet proposed an IEP for the 2019-2020 school year. An IEP team meeting had already been scheduled for August 30, 2019.

57. On August 30, 2019, MCPS convened an IEP meeting with the Parents. The Student's eligibility for special education was continued and his primary disability was changed from developmental delay to autism. At the request of the Parents, MCPS agreed to observe the Student at [REDACTED] and conduct a speech-language assessment prior to developing an IEP. The Parents waived the requirement that MCPS have an IEP in place prior to the first day of the school year.

58. On September 26, 2019, MCPS [REDACTED], MCPS Speech-Language Pathologist, [REDACTED], MCPS Lead Special Education Resource Teacher, Dr. [REDACTED], MCPS School Psychologist and [REDACTED], MCPS Autism Program Specialist, observed the Student at [REDACTED].

59. The Student's classroom had four students, including the Student. There were two Kindergarten students and two first grade students. The classroom had one lead teacher and one teaching assistant.

60. Ms. [REDACTED] observed the Student for approximately sixty minutes. Ms. [REDACTED] completed an observation report. On the observation report rating checklist, Ms. [REDACTED] indicated the Student had significant problem with attention, work habits and task completion. She noted the Student had some problem with listening comprehension, oral expression, basic reading skills, memory (visual/auditory), visual motor coordination, activity level, social interaction and motivation. She noted no problem with intelligible speech. On the observation form checklist, Ms. [REDACTED] noted no strengths.⁵

61. Ms. [REDACTED] observed the Student for sixty minutes. Ms. [REDACTED] completed an observation report. On the observation report rating checklist, Ms. [REDACTED] indicated the Student had significant problem with attention, social interaction and task completion. She noted the Student had some problem with listening comprehension, oral expression, reading comprehension, organization, activity level and work habits. She noted no problem with intelligible speech. Ms. [REDACTED] noted no strengths.⁶

62. Dr. [REDACTED] observed the Student a [REDACTED] for fifty minutes. Dr. [REDACTED] observed the Student engage in repetitive behaviors and exhibit a hyper-focus on numbers. He observed the Student had difficulty maintaining his attention during a brief reading session and required prompts from the teacher.

63. On November 14, 2019, MCPS convened an IEP meeting. Ms. [REDACTED] provided feedback and suggestions regarding several goals and present levels. The MCPS staff shared the results of the evaluations and observations. The IEP team agreed to update the draft IEP with

⁵ Ms. [REDACTED] noted on the report that she did not observe reading comprehension, written expression, math calculation, math reasoning, discrimination (visual/auditory), organization and speech.

⁶ Ms. [REDACTED] noted on the report that she did not observe basic reading skills, written expression, math calculation, math reasoning, discrimination (visual/auditory), memory (visual/auditory), visual motor coordination, motivation

information provided by [REDACTED] and Ms [REDACTED] and to schedule another meeting to discuss service hours and placement.

64. The second draft of the IEP was produced on December 4, 2019. Ms. [REDACTED] provided additional feedback to MCPS, which suggested several additions to the IEP. The IEP team agreed to incorporate into the IEP most of Ms. [REDACTED]'s suggestions.

65. An IEP meeting was held on January 29, 2020. The IEP team proposed the Student be placed at the [REDACTED] Learning Center ([REDACTED] LC). The IEP called for twenty-five hours per week of special education, outside of the general education setting and five hours per week in the general education setting, for lunch and recess. The IEP included thirty minutes per week of occupational therapy, counseling services and sixty minutes per week of speech-language therapy thirty minutes per week of speech-language therapy.

66. At the IEP meeting, the Parents disagreed with the IEP. The Parents felt that the speech-language services offered MCPS at [REDACTED] LC were insufficient and they wanted speech-language integrated into one hundred percent of the Student's program. The Parents also expressed disagreement that the Student would be in the general education setting for lunch and recess. The Parents were concerned that the Student would not have typical role model peers.

[REDACTED] Learning Center

67. [REDACTED] LC is a self-contained special education program housed within the [REDACTED] Elementary School. The school was specifically designed to educate diploma-track students diagnosed with ASD, who have delays in expressive and receptive language skills and deficits in pragmatic language.

68. ■ LC has a separate entrance from the general education student population. ■ LC provides students with opportunity to be mainstreamed in their areas of strength. ■ LC students who are mainstreamed in any area are provided with support.

69. ■ LC currently has thirty-five students, the majority of whom are self-contained except for lunch and recess.

70. ■ LC strives to mainstream disabled Students into the lunch setting, but the integration of the Student into the cafeteria setting is a gradual process. ■ LC addresses the needs of Students who have issues with the size and noise of lunch at weekly meetings where specific plans are developed on how to assist with integrating each student into that environment.

71. Accommodations could be made for noise sensitivities, such as noise cancelling headphones.

72. The ■ Elementary School playground is large with a gated area available for the youngest students off to one side. The ■ LC students are always supported on the playground by paraeducators. As many as five paraeducators can be on the playground providing necessary support.

73. The paraeducators are available to assist students with implementing the games during recess that they learned during physical education, with the paraeducators fading out as the students become more skilled. The paraeducators also assist the students with social interaction as needed.

74. ■ LC has a full-time speech-language pathologist on staff and an occupational therapist approximately thirty-two hours per week.

75. The ■ LC speech-language pathologist provides plug-in services during a reading or writing block to work closely with the teachers and paraeducators. The speech-language

pathologist provides guidance to the teachers during the class and can provide even more feedback during weekly meetings. Pull-out services are also integrated so that the speech-language pathologist may work with a student on specific isolated skills.

76. █ LC has daily social skills instruction.

77. If the Student attended █ LC for the 2019-2020 school year, he would have been in a class with nine other students, a teacher, two paraeducators and a floater paraeducator who moves in and out of the classrooms as needed.

78. █ LC's integration of speech-language services includes frequent consultation between the speech-language pathologist and students' teachers, which ensures that the students receive the needed services even if the speech-language pathologist is not in the classroom.

79. █ LC offers the Student appropriate peer language models in the classroom.

80. █ LC uses a behavioral reinforcement specific to each student through the use of reinforcement inventory completed by the family. The inventory identifies reinforcers specific to a student's need. █ LC also has a behavior intervention system know as Class █, which allows students to earn █ for following targeted behavior and cash in for rewards.

81. █ LC offers gross sensory motor breaks thorough the use of sensory circuit outside of the classroom as well as an occupational therapy room.

82. █ LC teaches the students social skills throughout the day through contacts and through the interactive Teach Town program. █ LC's speech pathologist also works with the students on targeted skills such as greeting peers, social interactions and coping skills.

█

83. █ is a nonpublic, full time, separate day school for children with disabilities.

█ student body includes children with language and learning disabilities, autism, intellectual

disabilities and other health impairments. [REDACTED] uses a multidisciplinary team approach and all [REDACTED] teachers are certified in special education [REDACTED] holds a certificate of approval from the Maryland Stated Department of Education.

84. All students placed at [REDACTED] by their school district have IEPs and all privately placed students have a DPG, which is [REDACTED]'s version of an IEP. Like IEPs, DPGs are reviewed at least annually.

85. The [REDACTED] lower/middle school has sixty-three students. Approximately sixty-eight percent of [REDACTED] students have been diagnosed with ASD or present as such.

86. [REDACTED] integrates services to the students through pull-out and push-in delivery with related clinicians or service providers, such as speech-language, occupational therapy, physical therapy and social work.

DISCUSSION

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.

In 1982, the Supreme Court issued the decision of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). The Court described FAPE as follows:

Implicit in the congressional purpose of providing access to [FAPE] is the requirement that the education to which access is provided be sufficient to confer

some educational benefit upon the handicapped child. . . . We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Id. at 200-01. *See also In re Conklin*, 946 F.2d 306, 313 (4th Cir. 1991).

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

(A) In General

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

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

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

The IEP is the mechanism by which FAPE is achieved. After a local educational agency has evaluated a child and determined that the child has a disability and is eligible for services under the IDEA, the local educational agency is required to have in place an IEP.

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 consider:

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

20 U.S.C.A. § 1414(d)(3)(A). Among other things, the IEP depicts a student’s current educational performance, explains how the student’s disability affects the student’s involvement

and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A. IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present levels of academic achievement and functional performance, including . . . [h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children)” 34 C.F.R. § 300.320(a)(1)(i). If a child’s behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies, and supports to address that behavior. *Id.* § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. *Id.* § 300.324(b)(1).

The *Rowley* 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.)

In 2017, the U.S. 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. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017). The Court in *Andrew F.* clarified that although there is no bright-line rule or formula to determine whether an IEP provides a FAPE, a school must offer an IEP that is reasonably calculated to enable a child to make progress in light of the child's circumstances. *Andrew F.*, 137 S. Ct. at 1001. The *Andrew F.* Court emphatically noted that the standard is a "markedly more demanding than the 'merely more than *de minimus* test' applied by the Tenth Circuit." *Id.* at 1000. In *Andrew F.*, the Court emphasized that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1001. The Court further noted 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). The Court instructed 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.

In addition to the IDEA's requirement that a disabled child receive educational benefit, the child must be placed in the "least restrictive environment" to achieve a free appropriate public education, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular school programs may not be appropriate for every disabled child and removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1). Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2). In such a case, a free appropriate public education might require placement of a child in a private school setting that would be fully funded by the child’s public school district.

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. Under *Burlington*, parents may recover the cost of private education only if (1) the school system failed to provide a free appropriate public education; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

The 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 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 [REDACTED]. COMAR 28.02.01.21K(1), (2)(b).

2018 IEP as it applies to the 2019-2020 school year

The time period in which to request a Due Process hearing in Maryland is governed by a statute enacted to comply with the IDEA. See 20 U.S.C.A. § 1415(f)(3)(C); 34 C.F.R. §§ 300.507(a)(2), 300.511(e); Md. Code Ann., Educ. § 8-413(d)(3) (2018). Under that law, a complaint must be filed “within [two] years of the date the party knew or should have known about the action that forms the basis of the due process complaint.” Educ. § 8-413(d)(3).⁷ The

⁷ But see COMAR 13A.05.01.15C(10) (providing certain exceptions [not relevant here]).

IDEA requires the schools to inform parents of the two-year limitations period for requesting a hearing. 20 U.S.C.A. § 1415(d)(2)(E)(i); 34 C.F.R. § 300.504(c)(5)(i).

In this case, the Parents filed a due process complaint on July 14, 2020, asserting that for the 2018-2019, 2019-2020 and current school years the MCPS failed to provide the services and accommodations the Student needed to receive a free, appropriate public education (FAPE) under the IDEA. The Parents sought placement and funding of the Student for the private placement at the [REDACTED] for those two school years and continued placement and funding for the 2020-2021 school year. On September 24, 2020, MCPS filed a Motion to Dismiss (Motion) the Parents' claims that fall outside of the two-years statute of limitation and to also preclude the introduction of evidence prior to July 14, 2018. By Order dated November 2, 2020, I granted MCPS' Motion regarding the claim for reimbursement for the 2018-2019 school year but denied the MCPS request to preclude the introduction of evidence that preceded that date. The Student's medical history and educational background before the limitation period is relevant and admissible for the sole purpose of understanding the student's disability. *See E.C v. U.S.D. 385 Andover*, 76 IDELR 212 (United States District Court, Kansas (2020)).

In accordance with my November 2, 2020 Order, the May 22, 2018 IEP is not relevant as it pertains to the 2018-2019 school year. The Parents contend, however that the May 22, 2018 IEP comes into play for the 2019-2020 school year because it was the only IEP in operation when the 2019-2020 school year began. The Parents contend that the Student was denied FAPE under that IEP from the beginning of the school year until the most recent IEP was drafted in January 2020. The May 22, 2018 IEP proposed a placement at [REDACTED] Elementary School, a placement that during the IEP process that began in January 2020, MCPS ultimately found not appropriate for the Student. The Parents argue that, by MCPS's own admission and

rejection of the May 2018 IEP proposed placement, they are at least entitled to a finding that MCPS failed to offer the Student FAPE from the beginning of the 2019-2020 school year until January 2020. The Parents argue that MCPS was derelict in its duty to have an IEP in place for the beginning of the 2019-2020 school year, and its delay in formulating an IEP until January 2020 deprived the Student of FAPE.

The Parents argument is not persuasive. The Student first entered MCPS in January 2016 when the Parents enrolled him in the [REDACTED] program at [REDACTED] Elementary School. The Student attended [REDACTED] for three hours per day while concurrently attending Interaction Group Therapy sessions at [REDACTED] for two days per week for two-and-one-half hours per day. The Student continued with the [REDACTED] morning program during the 2016-2017 and 2017-2018 school years while attending [REDACTED] in the afternoon. In May 2018, the IEP for the 2018-2019 school year was offered to the Parents with a proposed a placement for the Student at [REDACTED] Elementary School. At the end of the 2017-2018 school year, [REDACTED] recommended that the Student attend its Kindergarten-1st grade class. By letter dated August 21, 2018, the Parents notified MCPS that the Student would attend [REDACTED] for the 2018-2019 school year and requested that MCPS place and fund the Student at [REDACTED]. On September 6, 2018, MCPS denied the Parents' request, standing by the May 22, 2018 IEP, but informed the Parents that they should submit any new information regarding the Student's educational needs they wished an IEP team to consider. The Parents did not submit any new information, did not request any additional evaluations, and did not request a due process hearing to address or contest this IEP until the July 2020 request for a due process hearing.

In October 2018, the Parents hired educational consultant [REDACTED]. In November 2018, the Parents obtained a neuropsychological evaluation from Dr. [REDACTED], and a second

neuropsychological evaluation from Dr. [REDACTED] in March 2019. The Parents did not contact MCPS or share any their newly gathered information until July 26, 2019, approximately one month before the beginning of the 2019-2020 school year. By correspondence dated July 26, 2019, the Parents announced to MCPS that the Students IEP has “expired” and they wanted a meeting as soon as possible. Along with this correspondence, the Parents provided MCPS with evaluations of Dr. [REDACTED], Dr. [REDACTED] and Ms. [REDACTED]’s observation report.

Contrary to the Parents’ assertion, MCPS was not obligated to have prepared an IEP for the Student prior to the Parents’ July 26, 2019 request. Previous rulings addressing the issue of a school district’s requirement to prepare and update IEPs for parentally placed private school children have found that a school district is only required to continue developing IEPs for a disabled child no longer attending its schools but attending a private placement, when a prior year’s IEP is under administrative or judicial review. *Drake P. v. Council Rock School District*, 56 IDELR 250 (E.D. Pa. 2011), *aff’d*, 58 IDELR 243 (3d Cir. 2013, *unpublished*). In *Capistrano Unified School District v. S. W.*, 2020 WL 5540186 (C.D. Cal. Aug. 19, 2020) the parents never consented to the IEP proposed at the beginning of the school year, withdrew the student in February and enrolled her in a private school because of the IEP impasse. The parents informed the school that the child would attend the private school the following two school years but planned to return the third or fourth year. The Court held that the local education agency had no obligation to provide the student with a FAPE the year following the private placement. The informal guidance *Letter to Wayne*, 73 IDELR 263 (OSEP January 29, 2019) advises that a school district is not required to develop an IEP for a student unilaterally placed in private school unless an IEP is under administrative or judicial review, but the school district’s duty to develop

and IEP and FAPE for a student would kick in once the parent decides to return the child to public school.

As noted, the Parents did not seek a due process hearing to contest the May 2018 IEP and unilaterally placed the Student at [REDACTED]. Additionally, MCPS had no knowledge that the Parents intended to return the Student to MCPS. MCPS specifically instructed the Parents in the September 6, 2018 correspondence that they should provide MCPS with any additional information that they wished the IEP team to consider.⁸ Despite having in hand an observation report from an educational consultant completed in October 2018, and two neuropsychological assessments that had been completed by March 2019, the Parents inexplicably did not contact MCPS until the end of July 2019. Less than two weeks later, on August 7, 2019, the Parents notified MCPS that because the Student's IEP for the 2019-2020 school year was not appropriate, the Student would be attending [REDACTED] for the 2019-2020 school year. If the Parents had truly intended to collaborate with MCPS to develop an IEP in time for first day of the 2019-2020 school year, they would have shared the evaluations sooner than the end of July, which was just a little over two weeks before they enrolled the Student at [REDACTED]. Had the Parents had contacted MCPS prior to July 26, 2019 or had notified MCPS that it was obtaining additional evaluations, MCPS would have been on notice and would have been obligated to formulate a new IEP. Prior to July 2019, however, MCPS had no reason to believe that the Student would be returning to MCPS and had no obligation to have a new IEP in place as of May 2019.

⁸ The IDEA does require a school system to gather information and appropriately evaluate children before offering children services in order to ensure that the school system provides children with qualifying disabilities and education tailored to the child's distinctive needs. The Parents could have challenged the adequacy of the May 2018 IEP on these grounds but did not do so in a timely fashion.

The Parents' assertion that because there was no proposed placement as of the beginning of the school year, the May 2018 IEP applied to the 2019-2020 school year, is an attempt to sidestep the statute of limitations and litigate the appropriateness of that 2018 IEP. As I previously ruled, the issue of the appropriateness of the 2018 IEP is barred by the statute of limitations.

Once MCPS received the evaluations and the Parents' request for the development of an IEP, MCPS took appropriate steps. An IEP meeting was held on August 30, 2019 to discuss updates to the IEP. Ms. [REDACTED] the current principal of [REDACTED] Elementary, chaired the August IEP meeting and testified that the required participants attended the meeting and an IEP could potentially have been crafted on that date. The meeting, however, never reached that point because the Parents' team requested that MCPS perform a speech-language assessment and observe the Student at [REDACTED], which MCPS agreed to do. Ms. [REDACTED] noted that because the meeting ended without an IEP so that more information could be gathered, the Parents agreed to waive the requirement that MCPS have an IEP in place the first day of school.

In November 2019, an IEP meeting was held to discuss a November 4, 2019 IEP draft. The Parents' educational consultant provided written feedback to the draft IEP and the team did not have the time to incorporate the changes into the draft. The team discussed the feedback and the Student's DPG at the meeting and agreed to incorporate Ms. [REDACTED]'s recommendations into another draft IEP. A December 4, 2019 draft IEP was forwarded to the Parents, and MCPS agreed to receive any additional feedback from the Parents by December 6, 2019 so that an IEP meeting could be held on December 11, 2019. The meeting was not held until January 29, 2020 in order to accommodate the Parents, who wanted to share more information.

The record does not support a finding that MCPS was derelict in its duty to provide a timely IEP for the 2019-2020 school year. The 2018 IEP had clearly been abandoned and a collaborative effort was under way for the development of a new IEP. The Parents cannot complain that the Student was deprived of educational opportunity due to the delay in drafting the IEP, as they had placed the Student in the private placement before the commencement of the school year.

January 2020 IEP

The final IEP was drafted on January 29, 2020 for the Student, who at the time was an eight-year old boy diagnosed with ASD as well as Mixed Receptive-Expressive Language Disorder, and delayed milestones. As testified to by Dr. [REDACTED], the Student has a classic presentation of ASD that reflects deficits in social communication, the presence of unusual interests, inflexibility, sensory sensitivities and repetitive behaviors.

The Student's ASD diagnosis and its manifestations, however, do not fully define him. It is the unanimous opinion of the professionals retained by the Parents that the Student possesses notable strengths. Specifically, the Student is described as sweet, intelligent and happy. He possesses strong academic skills, has a strong memory and is capable of learning and growing. On the academic testing done by the Parents' neuropsychologist, Dr. [REDACTED], the Student exhibited age-appropriate academic skill in many areas. He is particularly skilled in technology and can operate an iPad independently. Perhaps the Student's most significant strength is that, despite his deficits in social interactions, he genuinely enjoys being around children and exhibits motivation for social engagement.

Counterbalancing these strengths is the Student's severe language disorder. It is undisputed that the Student has significant language weaknesses in his pragmatic language,

expressive language and receptive language. His strengths in this area are quite limited. Ms. [REDACTED], the MCPS speech-language pathologist, listed the Student's strengths as one-word vocabulary, word structure (at the sentence level given models), following one step directions and answering *who*, *what* and *where* questions given picture support. Like the other professionals, Ms. [REDACTED] agreed that the noted weaknesses "negatively impact educational performance in the Student's ability to follow orally presented multi-step directions, answer comprehension questions, re-tell stories and participate in collaborative activities with peers in his classroom setting." (MCPS Ex. 5, p.13)

Toward developing in IEP for the 2019-2020 school year that addressed the Student's unique needs, MCPS engaged in a lengthy, collaborative and fact intensive analysis of the Student. The analysis included consideration of the Parents' private evaluations and feedback from the Parents' educational consultant. The team reviewed and considered the Student's updated relative strengths and needs as reported by [REDACTED], and MCPS agreed to have MCPS staff, including an autism specialist, observe the Student at [REDACTED].

The IEPs goals, objectives, accommodations were tailored in accordance with the extensive input of the Parents' educational consultant to address the Student's unique needs. Ms. [REDACTED], who chaired the IEP process, testified the team went through all the placement options, starting with the Student's home school model, and ultimately chose [REDACTED] LC as the Student's placement. [REDACTED] LC is housed within the [REDACTED] Elementary School. The school was specifically designed to educate diploma-track students diagnosed with ASD, who have delays in expressive and receptive language skills and deficits in pragmatic language. Students are taught in self-contained mixed grade K-5 classrooms, with opportunities for inclusion. The

team concluded that [REDACTED] LC could provide the Student with an intensive language program, social skills instruction and the opportunity for interaction with nondisabled peers.

The IEP proposed twenty-five hours per week of special education provided outside of the general education classroom, and five hours per week in the general education setting, with support (for lunch and recess), thirty minutes per week of occupational therapy, fifteen minutes per month of counseling services and one hour per week of speech-language therapy.

The Parents agree that the IEP incorporated their expert's input and even attribute Ms. [REDACTED] as the primary author of the IEP. The Parents also agree that the IEP's goals, objectives and most of the accommodations and supports, were appropriate for the Student. Despite MCPS's incorporation of most of the Parents' input, the Parents rejected the January 2020 IEP. In the due process complaint, the Parents specifically allege that [REDACTED] LC was inappropriate given the Student's need for positive language models and integrated speech/language services. The Parents also contend that [REDACTED] LC could not meet fine motor, social and behavioral needs. One of the main sticking points for the Parents is the proposed five hours per week in the general education setting for lunch and recess. The Parents assert that the Student requires a specialized instruction for all classes, including lunch and recess.

In support of its assertion that the Student could not be mainstreamed for lunch and recess, the Parents rely heavily on the report and expert testimony of Dr. [REDACTED]. Dr. [REDACTED]'s knowledge of the Student is based on a two-hour autistic diagnostic interview with the Parents, assessment meetings with the Student in February and March 2019, and a ninety-minute observation of the Student at [REDACTED].

Dr. [REDACTED]'s written report does not address in any detail his purported concern about the Student's interaction with non-disabled peers at school during specials such as lunch and recess.

His report suggested that although the Student is socially driven and highly motivated to engage with peers, he does not possess the language structure that enables him to do so. The closest his report comes to addressing the issue of mainstreaming during lunch and recess is his statement that “having the opportunity to interact with peers whose language and social skills are generally on par with [the Student’s] is important, as he will have trouble keeping up with peers who are significantly more advanced and he will benefit less from interacting with peers who have fewer skills in these areas.” (P Ex. 12, p. 9)

During his testimony on this issues, Dr. [REDACTED] expounded on this view and went so far as to state that the because the Student’s receptive and expressive language abilities are well below age expectations, and his need for support is so great, peer models would not only be ineffective, but potentially harmful. Dr. [REDACTED] testified that immersing the Student in a setting with typical peers could be a source of frustration and stress, which in turn could lead to disengagement and maladaptive behavior. He even speculated that the interactions may be so disruptive to the Student that he would be unable to recompose himself to participate in the remaining portion of the school day. According to Dr [REDACTED], from a sensory and social standpoint, the cafeteria and recess would be more than the Student could handle.

Ms. [REDACTED] also testified that she did not believe that it was appropriate for the Student to attend lunch and recess in a general education setting, with support. According to Ms. [REDACTED] the Student did not have the pragmatic language or social skills needed to function in that setting. She expressed specific concerns about the Student invading another student’s personal space, reacting inappropriately to another student’s emotions, and being able to remain in an assigned space.

██████████, the Speech-Language Pathologist at ██████████, who has worked with the Student during his tenure at ██████████ and has insight into the Student's language skills was specifically asked what she thought about the idea of mainstreaming the Student for lunch and recess. Ms. ██████████ responded that because the Student's ability to interact and engage with others in a less structured format is one of his areas of greatest weakness, it would be "challenging" for him. Dr. ██████████, the Director of ██████████ lower and middle school, reiterated Ms. ██████████'s opinion that mainstreaming the Student for lunch and recess would be "challenging" for the Student and he would require support for social interactions. Ms. ██████████, who briefly observed the ██████████ LC playground and cafeteria during a visit, stated that she had concerns that the Student would not be able to handle those settings, but she did not expound on those concerns.

In response to the Parents' rejection of mainstreaming during lunch and recess, MCPS did not dispute that the Student's language disorder is significant and affects his ability to communicate, his ability to understand what people say, and his ability to get his needs met in social settings. MCPS agrees that the Student needs to learn to interact with others in a reciprocal fashion but disagrees that the Student is not an appropriate candidate for inclusion during lunch and recess.

In support of this position, MCPS offered the testimony of ██████████. Ms. ██████████ is an expert in special education and autism, who has a great deal of knowledge about ASD and teaching students with the disorder. She has extensive experience teaching autistic students and has intimate knowledge of ██████████ LC. Ms. ██████████ testified that the majority of ██████████ LC students have been diagnosed with ASD and within the program are children with profiles similar to the Student's. She testified that she has observed ██████████ LC students benefit from the opportunity for inclusion during lunch and recess. Ms. ██████████ testified that ██████████ LC currently has thirty-five

students, the majority of whom are self-contained except for lunch and recess. Although she did not have any statistical data to back the assertion, she testified that █ LC students have benefitted from inclusion by being able to see and hear students with stronger language skills and the appropriate use of language. She described it as part of beneficial language immersion. She pointed out that some students have similar issues as the Student with the size and noise of the cafeteria, but that █ LC addresses these concerns at weekly meetings and develops specific plans on how to assist with integrating each student into that environment.

Ms. █ described the dynamics of recess for █ LC students. The playground is large with a gated area available for the youngest students off to one side. The students are always supported by paraeducators with as many as five paraeducators providing the needed support. The paraeducators are available to assist students with implementing the games that they learned during physical education during recess, with the paraeducators fading out as the students become more skilled. The paraeducators also assist the students with social interaction as needed. She testified that there are more opportunities for inclusion for children who have attended the program for a longer time. Those students may engage in games such as chase and tag with general education students.

Ms. █ MCPS special educator at █ as well as a casework for some special education students, offered additional insight into the cafeteria dynamics for █ LC students. She explained that the inclusion of disabled students into the lunch setting with general education population is always the goal, but the integration of the students into the cafeteria setting is a gradual process. The Student would not be forced to go into the cafeteria, but when he did attend it would be with the support of a paraeducator or teacher to assist the Student with interactions. Accommodations could be made for noise sensitivities, such as noise cancelling

headphones, which block out loud background noise but still allow for communication with those in proximity. She noted that if the Student appeared overwhelmed, arrangements can be made for the Student to eat in small group or outside of the cafeteria; the same would hold true for recess.

After carefully considering the parties' positions and the support of the opposing positions contained in the expert reports, the observation notes and the testimony of the witnesses, I have concluded that the Student's inclusion in the general education setting for lunch and recess is appropriate. In reaching this conclusion, I have afforded more weight to the MCPS educators on this issue than the Parents' witnesses. The Parents contend that because MCPS relied upon the Parents' experts' evaluations, the opinions of those experts must be given deference. I disagree with this assertion. In formulating the IEP in question, MCPS relied upon the evaluations of Dr. [REDACTED] and Dr. [REDACTED] because, as MCPS school psychologist Dr. [REDACTED] explained, MCPS did not disagree with the thoroughness of the Parents' recent private neuropsychological evaluations. He noted that he did not believe that a third evaluation would have provided any new insight of the Student. Although MCPS accepted Dr. [REDACTED]'s assessment, and relied upon it in drafting the IEP, the acceptance of the assessment does not obligate MCPS to blindly adopt his conclusions or recommendations regarding the Student's educational needs. As with any expert witness testimony, the weight it is due depends upon the data, academic studies, observations or anecdotal evidence that supports that testimony.

Dr. [REDACTED]'s assertions that the Student's participation in lunch or recess in a general education setting would be at best ineffective and at worst harmful was speculative and not supported by the preponderance of the evidence. Dr. [REDACTED] did not observe the [REDACTED] LC program, had no familiarity with that program and did not observe the Student interact with nondisabled

peers. Furthermore, the additional assessments introduced by the Parents contradict Dr. [REDACTED]'s opinion. The earliest evaluation from [REDACTED], when the Student was initially diagnosed, specifically recommends "opportunities for inclusion with typical peers with support of TSS or itinerant teacher to facilitate peer interactions is encouraged as tolerated." (P Ex. 2, p. 2) Dr. [REDACTED]'s 2018 assessment, with which Dr. [REDACTED] agreed, included in her recommendations for school "[the Student] would benefit from individual social skills training as well as adult-provided direct support during naturalistic opportunities for socialization (e.g., recess, lunch)." (P Ex. 11, p.12).

Dr. [REDACTED] testified that the lunchroom, specifically, would be too busy and loud for the Student and he would struggle to keep composed and self-regulate and would experience stress and anxiety; however, there was no evidence offered that establishes the Student struggles with stress or anxiety other than what is typical for ASD students. Dr. [REDACTED]'s report documents that the Parents reported the Student recently developed a fear and anxiety associated with elevators and that he sometimes exhibits frustration and acts out with changes in routine. There are no reports in the record of anxieties associated with social interactions. In fact, on the BASC 3, which is used to measure a child's emotional and social functioning, the Student scored very low for anxiety.

While there are few, if any, references in the record to the Student's social anxiety, there are many references to the Student's strong social motivation and even his ability to socialize. The Parent testified that the Student looks forward to seeing his friends every day and during the age of virtual learning, he often wants to log on early to see his friends. Dr. [REDACTED]'s report documents that the Parents reported the Student is sensitized to experiences easily and idiosyncratically. He enjoys playing chase with children in the neighborhood. There is also

evidence that he is capable of modeling behaviors observed as the Parents also told Dr. [REDACTED] that the Student tends to imitate his brother's actions.

[REDACTED], the speech-language pathologist at [REDACTED], described the Student as "having a growing awareness of others and wants to interact." Ms. [REDACTED], who interacted with the Student to conduct an assessment noted that one day as he was leaving her office, there were many students occupying the hallway at the same time as the Student. She noted that the Student did not appear to be uncomfortable in that setting; to the contrary, he appeared very happy and even approached a girl and smiled.

None of the Parents' other witnesses were convincing in their assessment that the mainstreaming for lunch and recess was inappropriate. Ms. [REDACTED]'s general concerns about invading others' personal space, not remaining in a designated area, and inappropriate social responses by the Student were concerns that could potentially be addressed by the attending adult support. Dr. [REDACTED]'s and Ms. [REDACTED]'s characterization of mainstreaming as "challenging" for the Student does not equate to nonbeneficial, inappropriate or detrimental.

In response to the noted concerns about mainstreaming, MCPS provided a cogent explanation for including the Student in the general education setting during these limited times. Mainstreaming in these nonacademic settings provides a socially motivated student the opportunity to learn from typical peers through modeling. Everyone agrees that total mainstreaming of the Student is the eventual goal and doing so in these environments in a gradual and supported way is appropriate.

The Parents even object to the MCPS allowing the Student to periodically participate in lunch and/or recess in a non-mainstreamed setting. The Parents argue that MCPS is precluded from modifying the provision for mainstreaming in this way because the IEP must be

implemented as written. I don't believe that the Parents' interpretation of this provision of the IEP as an all nothing scenario is consistent with the spirit or intent of the IDEA and the preference for educating children in the least restrictive environment. While MCPS believes that the Student can benefit from inclusion during lunch and recess, it also recognizes that the Student's ASD and speech-language disorder diagnoses present some real challenges in this area. MCPS's option to periodically pull the Student from the cafeteria to allow him to attend in the classroom would be a decision made by the educators based on their knowledge of the Student and would be a reasonably calculated accommodation designed to enable the Student to make progress in light of his circumstances.

In addition to the Parents' objections to the Student's mainstreaming for lunch and recess, they contend that the speech-language services offered in the IEP to be implemented at [REDACTED] LC do not meet the Student's needs. The Parents' expert in speech pathology, [REDACTED], described the Student as one who relies upon scripted and memorized language. She further stated that the Student relies heavily on what he sees and knows. She defined his pragmatic deficits as the Student's significant area of need. Ms. [REDACTED] testified that the Student requires the integration or "infusion" of language throughout his academic day. She opined that language needs to be imbedded in the Student's programs so that his communication skills are worked on not only by a speech pathologist, but by everyone in his classroom.

Dr. [REDACTED]'s opinion was consistent with Ms. [REDACTED]'s viewpoint. He stated that the Student's speech-language goals need to be pursued in the classroom throughout the entire day

and the service providers need to work collectively to integrate the Student's services into his program.

On February 4 and 13, 2020, Ms. [REDACTED] observed the class that the Student would have attended at [REDACTED] LC. On February 4, 2020, during the scheduled visit time, the students were not scheduled to receive academic instruction or occupational therapy, so Ms. [REDACTED] conducted a second visit on February 13, 2020. Ms. [REDACTED] prepared a report of her observations. According to her report and testimony regarding her observations of [REDACTED] LC, she concluded it was not an appropriate placement for the Student due to the lack of positive language models and the lack of integrated speech-language services.

MCPS does not dispute that the Student has significant language deficits and that speech-language services be integrated into his entire school day. MCPS Speech-Language Pathologist Jena Filler performed a re-assessment of the Student in October 2019. Her findings were consistent with the March 2015 evaluation done by [REDACTED] and the verbal reports of the [REDACTED] speech-language pathologist and confirmed that the Student has significant expressive, receptive and pragmatic language deficits.⁹ She testified that based on her assessment, the input from [REDACTED], including progress reports and the Student's DPG, she helped the team draft the IEP's speech-language provisions. She further noted that all of Ms. [REDACTED]'s feedback and recommendations regarding the Student's speech-language goals were incorporated into the IEP. Ms. [REDACTED] explained why she felt the speech-language services provided for in the IEP were appropriate. The IEP offers the Student sixty minutes of speech-language services, which is consistent with the hours recommended by Dr. [REDACTED]. Ms. [REDACTED] testified that the [REDACTED] LC programs addresses the Parents' concern that the Student requires a speech "infused" or speech

⁹ These deficits are reflected in the results of the standardized testing stated in Finding of Fact number thirty-five.

integrated program. Ms. [REDACTED] testified that the integration services means the implementation of strategies used by the speech-language therapist used in therapy are also used throughout the day in the classroom. With the integration of speech-language into the classroom a student uses consistent strategies throughout the day that work for that student. The integration of services also consists of frequent consultation between the speech-language pathologist and a student's teachers which ensures that the students receive the needed services even if the speech-language pathologist is not in the classroom. Although Ms. [REDACTED] had not personally observed the [REDACTED] LC program, she explained that she worked closely with Ms. [REDACTED] and the [REDACTED] LC speech-language pathologist to gain an understanding of the program and how it could work for the Student. She opined that based on her assessment and observation of the Student, [REDACTED] LC could provide the amount of speech-language services needed by the Student and a sufficient amount of speech-language services would be integrated into his everyday activities.

Ms. [REDACTED] supplemented Ms. [REDACTED]'s testimony regarding integration of services. She testified that a lot of planning occurred among the professionals that is very specific to instruction and delivery of services. The [REDACTED] LC speech-language pathologist provides plug-in services during a reading or writing block to work closely with the teachers and paraeducators. The speech-language pathologist provides guidance to the teachers during the class and can provide even more feedback during weekly meetings. Pull-out services are also integrated so that the speech-pathologist may work with a student on specific isolated skills.

Based on the MCPS professionals' testimony of how speech-language services were integrated into the [REDACTED] LC program, I determine those services are appropriate for the Student and would enable the Student to access the curriculum and make progress toward achieving the goals on his IEP. I attribute less weight to Ms. [REDACTED]'s conclusions regarding [REDACTED] LC's integration of

speech-language services because her testimony was based on one day of observation and she offered no explanation of how she was able to determine from that brief snapshot that speech-language services were not being integrated.

The class size at ■■■ LC was an additional feature of ■■■ LC program that the Parents rejected. MCPS considered placing the Student in one of two classes at ■■■ LC, the K-1 and a class of older students. Ms. ■■■ testified that if the Student had attended ■■■ LC for the 2019-2020 school year, he would have been in the older class with nine other students. The class would have been taught by one special educator, along with two paraprofessionals and one floater paraprofessional, who come in and out of the class as needed. According to the Parents, the number of student's in the ■■■ LC program would impede the Student's learning.

In support of this assertion, the Parents rely primarily on the written report and testimony of Dr. ■■■. In May 2019, Dr. ■■■ observed the Student for ninety minutes at ■■■. Dr. ■■■ testified that his observation confirmed that the Student requires a very small class with two to three students. He believes that a classroom of even four students would be problematic for the Student. He noted that the Student has a very short attention span and does better in a small setting with a lot of routine. Ms. ■■■ echoed Dr. ■■■'s sentiment that because of his distractibility and inflexibility, the Student would get lost without the level of support offered in the small restrictive setting such as ■■■. Ms. ■■■ did not specifically address the number of students or student-to-teacher ratio that would prevent the Student from participating in a meaningful way.

MCPS agrees that the Student requires a smaller classroom setting than that of nondisabled peers. ■■■ LC offers the Student a setting of a teacher and two paraeducators and a

floater, which offers a teacher to student ratio that could address the Student's issues of distractibility and wandering.

There is no evidence in the record to support Dr. [REDACTED]'s assertion that the Student can only benefit from a classroom of three students maximum. Dr. [REDACTED] found [REDACTED] an appropriate placement for the Student even though in his report he notes the Student's classroom at [REDACTED] consisted of five to six students. Dr. [REDACTED]'s report, which Dr. [REDACTED] fully endorsed, does not mention a specific class size. Dr. [REDACTED] recommended the Student's program offer the Student opportunities for individualized and small group instruction. The small class size and teacher-to-student ratio offered by the [REDACTED] LC provides such opportunities for the Student.

Dr. [REDACTED]'s report stated the need for a behavior intervention system. The testimony offered by Ms. [REDACTED] established that [REDACTED] LC uses a system that allows students to earn a specific reward for following targeted behavior.

The Parents' due process complaint and the Parents' observation report stated the OT services offered at [REDACTED] LC could not meet the Student's needs because of such things as the available tools and equipment, and the small size of the room. The Parents offered no report or testimony that supported their contention. Ms. [REDACTED] testified that [REDACTED] LC students were provided sensory breaks throughout the day as necessary.

In addition to the Parents' objections previously addressed, the Parents provided a detailed, seven-page observation report that describes every perceived negative of the [REDACTED] LC program. I have given very little weight to the Parent's testimony and report regarding the appropriateness of [REDACTED] LC. The Parents agreed to observe [REDACTED] LC and the Parent testified that they had an open mind about the Student attending MCPS. The Parents only agreed to visit [REDACTED] LC after they had clearly expressed to the IEP team that they did not agree with the placement and

the Student would not be attending █ LC. It is very clear from reading the observation report that the goal of that report was to paint █ LC in the most negative light possible.¹⁰

I conclude that that the MCPS January 29, 2020 IEP offered to the Student for the 2019-2020 and 2020-2021 school years was reasonably calculated to enable the Student in the █ LC program to make progress appropriate in light of his development, and that MCPS provided rational and responsive explanations for its decisions regarding the placement of the Student.

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 MCPS provides the Student a FAPE. Therefore, under *Carter* and *Burlington* the issue of whether the Student's placement at █ is proper is not required to be addressed further in this decision. As MCPS did not deny the Student a FAPE, the Parents' claim for reimbursement of the █ tuition, is respectfully denied.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that MCPS did not deny the Student a free appropriate public education by failing to provide him with an appropriate individualized education program and placement for the 2019-2020 and 2020-2021 school years.

¹⁰ The Parent viewed every aspect of the program as a negative. A purported lack of care and empathy by the teacher in the K-1 classroom, paraeducators' hands-off approach, the lost opportunity that was recess, an unstable trampoline in the sensory room, a classroom dispersing into utter chaos, the lack of empathy shown to a student in distress, a classroom had no spirit, a paraeducator used a flimsy cardboard folder to provide a modicum of privacy are just a few of the Parent's objections.

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] for either the 2019-2020 or 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 or the 2020-2021 school years is **DENIED**.

December 30, 2020
Date Decision Mailed

Geraldine A. Klauber
Administrative Law Judge

GAK/da
#189396

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]

██████████,
STUDENT

v.

MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE GERALDINE A. KLAUBER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MCPS-OT-20-14883

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parents:

- P Ex. 1 - Parents' Request for Due Process, July 13, 2020
- P Ex. 2 - Developmental and Behavioral Evaluation by the ██████████
██████████ March 26, 2015
- P Ex. 3 - Speech-Language Evaluation by the ██████████,
March 26, 2015
- P Ex. 4 - Autism Evaluation by ██████████, May 27, 2015
- P Ex. 5 - Speech-Language Evaluation by ██████████, May 27, 2015
- P Ex. 6 - ████████ Diagnostic Prescriptive Goals (DPG), November 10, 2017
- P Ex. 7 - MCPS Individualized Education Program (IEP), May 22, 2018
- P Ex. 8 - ████████ DPG Progress Report, January to June 2018
- P Ex. 9 - Letter to MCPS serving notice, August 21, 2018; and MCPS response letter,
September 6, 2018
- P Ex. 10 - Observation Report of Student at ████████ by ██████████, September 20 and
October 2, 2018
- P Ex. 10A - MCPS IEP Meeting Notes by ██████████, November 5, 2018
- P Ex. 11 - Neuropsychological Evaluation by Dr. ██████████, November 2018
- P Ex. 12 - Neuropsychological Evaluation by Dr. ██████████, March 2019

- P Ex. 13 - [REDACTED] Testing Report October 2018 and May 2019
- P Ex. 14 - [REDACTED] Report Card, June 2019
- P Ex. 15 - Letter to MCPS enclosing documentation for IEP meeting, July 26, 2019
- P Ex. 16 - Letter to MCP serving notice, August 7, 2019; response from MCPS, August 22, 2019
- P Ex. 16A - MCPS IEP meeting notes by [REDACTED], August 30, 2019
- P Ex. 17 - MCPS Prior Written Notice, September 10, 2019
- P Ex. 18 - Letter to Michael J. Eig, Esq., from Emily Rachlin, Esq., September 13, 2019
- P Ex. 19 - MCPS Classroom Observations, September 26, 2019
- P Ex. 20 - MCPS Speech-Language Re-Assessment, October 15, 2019
- P Ex. 21 - Observation Report of Student at [REDACTED] by [REDACTED], October 22, 2019
- P Ex. 22 - Not offered
- P Ex. 23 - [REDACTED] DPG Progress Report, January to October 2019
- P Ex. 24 - [REDACTED] DPG Meeting Notes by [REDACTED], November 5, 2019
- P Ex. 25 - [REDACTED] Quarter 1 Report Card, Fall 2019
- P Ex. 26 - Feedback to Draft MCPS IEP by [REDACTED], November 13, 2019
- P Ex. 27 - MCPS IEP Meeting Notes by [REDACTED], November 27, 2019
- P Ex. 28 - [REDACTED] DPG Progress Report, October 2019 to January 2020
- P Ex. 29 - Feedback to Draft MCPS IEP by [REDACTED], January 20, 2020
- P Ex. 30 - MCPS IEP, January 29, 2020
- P Ex. 31 - Observation Report of [REDACTED] Elementary School Learning Center ([REDACTED] LC) by Parent, February 4, 2020
- P Ex. 32 - MCPS Prior Written Notice, February 5, 2020
- P Ex. 33 - Observation Report of [REDACTED] LC by [REDACTED], February 4, 2020 and February 13, 2020

- P Ex. 34 - Letter to MCPS serving notice, August 17, 2020; MCPS response, September 6, 2020
- P Ex. 35 - [REDACTED] DPG Meeting Notes by [REDACTED], October 28, 2020
- P Ex. 36 - Resume of [REDACTED]
- P Ex. 37 - Resume of Dr. [REDACTED]
- P Ex. 38 - Resume of Dr. [REDACTED]
- P Ex. 39 - Resume of [REDACTED]
- P Ex. 40 - [REDACTED] DPG End of Year Progress Reports, June 2020
- P Ex. 41 - [REDACTED] Final Report Card, June 2020
- P Ex. 42 - [REDACTED] End of Year Testing Report, June 2020
- P Ex. 43 - [REDACTED] DPG, October 22, 2020
- P Ex. 44 - Observation Report of Student at [REDACTED] by [REDACTED], November 18, 2020

I admitted the following exhibits on behalf of MCPS:¹¹

- MCPS Ex. 4 - IEP, January 29, 2020
- MCPS Ex. 5 - Speech-Language Assessment by [REDACTED], October 15, 2019
- MCPS Ex. 6 - Letter from Emily Rachlin to Mr. Eig and Parents, September 13, 2019
- MCPS Ex. 8 - Observation Report of Student at [REDACTED] by [REDACTED], September 26, 2019
- MCPS Ex. 9 - Observation Report of Student at [REDACTED] by [REDACTED], September 26, 2019
- MCPS Ex. 10 - Observation Report of Student at [REDACTED] by Dr. [REDACTED], September 26, 2019
- MCPS Ex. 11 - Draft IEP, November 4, 2109
- MCPS Ex. 12 - Draft IEP and accompanying email from [REDACTED], December 4, 2019
- MCPS Ex. 14 - Prior Written Notice of August 30, 2019 IEP, September 10, 2019

¹¹ MCPS pre-marked the exhibits. Not all the exhibits were offered into evidence, which accounts for the gaps in the numbering.

- MCPS Ex. 15 - Prior Written Notice of November 14, 2019 IEP, November 15, 2019
- MCPS Ex. 16 - Prior Written Notice of January 29, 2020 IEP meeting, February 5, 2020
- MCPS Ex. 17 - Letter from Ms. Rachlin to Mr. Eig and Parents, August 22, 2019
- MCPS Ex. 18 - Letter from Ms. Rachlin to Mr. Eig and Parents, July 23, 2020
- MCPS Ex. 21 - Draft IEP Feedback prepared by [REDACTED], November 13, 2019
- MCPS Ex. 22 - Draft IEP Feedback prepared by [REDACTED], January 20, 2020
- MCPS Ex. 23 - Resume of [REDACTED]
- MCPS Ex. 24 - Resume of [REDACTED]
- MCPS Ex. 25 - Resume of Dr. [REDACTED]
- MCPS Ex. 27 - Resume of [REDACTED]
- MCPS Ex. 29 - [REDACTED] Intake Questionnaire, July 27, 2018
- MCPS Ex. 30 - Resume of [REDACTED] and Maryland Educator Advanced Professional Certificate