

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE BRIAN PATRICK WEEKS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-20-15685

DECISION

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ORDER

STATEMENT OF THE CASE

On July 30, 2020, Michael Eig, Esquire, and Paula Rosenstock, Esquire, on behalf of ██████████ (Student) and ██████████ and ██████████, the Student's Parents (Parents), 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 Complaint alleged that MCPS violated the IDEA by denying the Student a free and appropriate public education (FAPE) when it failed to timely find the Student eligible for special

¹ U.S.C.A. is an abbreviation for United States Code Annotated. Unless otherwise noted, all citations of 20 U.S.C.A. 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. refer to the 2019 volume.

education services, resulting in a unilateral, private placement of the Student at [REDACTED] [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) from April 2019 to the present. The Complaint further alleged that MCPS failed to develop an appropriate Individualized Education Program (IEP) and placement for the 2020-2021 school year. The Student requested as a remedy that MCPS reimburse the Parents for tuition and related expenses because of the Parents' placement of the Student at the [REDACTED] and [REDACTED], which they maintain is proper. The Student also requested that the MCPS place the Student at [REDACTED] for the 2020-2021 school year.

On September 22, 2020, Administrative Law Judge (ALJ) Susan K. Sinrod conducted a telephone conference with the parties to discuss the timeline for issuance of a decision in this matter. As memorialized in a letter issued to the parties on September 23, 2020, ALJ Sinrod advised the parties of the forty-five-day timeline for issuing a decision:

The public agency must ensure that not later than 45 days after the expiration of the [30-day resolution] period under § 300.510(b), or the adjusted [resolution] time periods described in § 300.510(c)—

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.

34 C.F.R. § 300.515(a). Due to the continuing COVID-19 crisis, the OAH suspended all in-person hearings until July 2020, and there have been significant closings and delays within MCPS. At the telephone conference, considering the circumstances set forth above, the parties jointly requested that ALJ Sinrod extend the timelines for holding a mediation, conducting a due process hearing, and issuing a final decision. Finding good cause, ALJ Sinrod granted that request. 34 C.F.R. § 300.515(c). On August 13, 2020,

the parties attended the required resolution session, and on that same date, the MCPS notified the OAH that they did not resolve their dispute.

On October 27, 2020, I held a telephone prehearing conference (Conference).³ Robin Silver, Esquire, and Susan DuMont, Esquire, represented the MCPS. Michael J. Eig, Esquire, represented the Student. During the Conference, the attorneys reviewed their schedules week by week for October, November, and December 2020, and January and February 2021. The hearing was scheduled to commence on February 16, 2021, and to continue February 17, February 24-26, and March 1-2, 2021. The parties again requested that I extend the timelines to allow the case to be heard on the selected dates and to allow sufficient time for me to consider the evidence, evaluate legal arguments, and draft a decision. *See* 34 C.F.R. § 300.515(c). I found there was good cause to extend the timeframe as requested by the parties. *Id.* On October 30, 2020, I issued a Prehearing Conference Report and Order memorializing the discussion at the Conference.

On December 9, 2021, the Student filed an Amended Request for Due Process. On December 21, 2020, I held another telephone prehearing conference to discuss the request and granted the Student's request on the record. 20 U.S.C.A. § 1415(c)(2)(E)(i)(II); 34 C.F.R. § 300.508(d)(3)(ii); COMAR 13A.05.01.15C(7)(b). Therefore, the timeline for the resolution meeting and the timeline for the issuance of a decision restarted as of the date that I granted the request to file the amended due process complaint. 20 U.S.C.A. § 1415(c)(2)(E)(ii); 34 C.F.R. § 300.508(d)(4); COMAR 13A.05.01.15C(8). Accordingly, the timeline began December 21, 2020, the date of the telephone prehearing conference. This meant that, absent any adjustments to the resolution period, the resolution period would conclude on January 20, 2021, and I would have to

³ I convened, and then continued, a telephone prehearing conference on two earlier dates: September 29 and October 16, 2020.

issue a final decision by March 6, 2021. 20 U.S.C.A. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b); 34 C.F.R. § 300.515(a). Having been informed of the above timeline for issuance of my decision, the parties again requested that I extend the timeline for issuance of my written decision until thirty days after the close of the record, and I agreed. 34 C.F.R. § 300.515(c).

On January 22, 2021, I received a Consent Motion for Continuance (Motion) and convened a Conference on January 26, 2021, to rule on the Motion. As memorialized in correspondence dated February 4, 2021, I granted the Motion. COMAR 28.02.01.16. We selected the following dates for the hearing: March 1, 4, 5, 8, 9, 11 and 12, 2021.

On March 1, 2021, the first scheduled day of the hearing, Mr. Eig informed the parties that he had discovered a conflict of interest that in his opinion precluded him from continuing with his representation of the Student. Accordingly, I granted his request to continue the matter to allow new counsel, Matthew Bogin, to prepare for the hearing. We selected March 8, 9, 11, 16-19, and 22, 2021 as the new dates for the hearing.

On March 8, 2021, Mr. Bogin informed me that he, too, had discovered a conflict of interest that precluded his representation of the Student. Accordingly, I informed the parties that I would be cancelling all scheduled hearing dates and that we would reschedule the hearing once the Student had retained new counsel. On March 23, 2021, the parties, including Mr. Eig, who resolved his conflict of interest and resumed his representation of the Student, selected the following dates for the hearing: April 30, May 3, 4, 10, and June 1, 2, 3, 4, 10 and 11, 2021.

Accordingly, I held a due process hearing on the merits beginning on April 30, 2021, and continuing to May 3, 4, and 10, and June 1, 3, 4, 10 and 11, 2021 remotely via the WebEx video

conferencing platform.⁴ COMAR 28.02.01.20B(1)(b). Mr. Eig represented the Student. Ms. Silver and Ms. DuMont represented MCPS.

Under the applicable law, a decision in this case normally would have been due by March 6, 2021, forty-five days after the end of the resolution period that started December 21, 2020 – the day I granted the Student’s request to amend the due process complaint. 20 U.S.C.A. § 1415(c)(2)(E)(ii); 34 C.F.R. §§ 300.510(b)(2), (c), 300.508(d)(4), 300.515(a); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(8), C(14). However, as discussed above, the parties requested hearing dates outside that timeframe. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). On the final day of the hearing, I informed the parties that pursuant to their earlier request to extend timelines, my decision would be due on or before July 9, 2021.⁵ The parties reiterated their prior request that I issue my decision by July 9, 2021.

The legal authority for the due process hearing is governed by provisions set forth at 20 U.S.C.A. § 1415(f); 34 C.F.R. § 300.511(a); Md. Code Ann., Educ. § 8-413(e)(1); COMAR 13A.05.01.15C.

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. Whether MCPS violated the IDEA by failing to find the Student eligible for special education services prior to April 2019?

⁴ I cancelled the June 2, 2021, hearing date after Mr. Eig informed me of a scheduling conflict.

⁵ The thirtieth day falls on July 10, 2021, a Saturday, and it is the policy of the Office of Administrative Hearings to require the decision to be issued on the prior business day.

2. If so, whether private placement at [REDACTED] was proper under the IDEA?
3. Whether MCPS's proposed IEP and placement for the 2020-2021 School Year (SY) denied FAPE to the Student?
4. If so, whether private placement at [REDACTED] is proper under the IDEA?
5. Whether the Student's proposed remedy of reimbursement for tuition at [REDACTED] and [REDACTED] is appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parents:

- P- 1. Amended Request for Due Process, 12-8-20
- P- 2. MCPS Section 504 Plan, 7-27-17
- P- 3. Emails between [REDACTED] and Dr. [REDACTED], December 2017
- P- 4. Emails between [REDACTED] and Dr. [REDACTED], 2-8-18
- P- 5. Emails between [REDACTED] Dr. [REDACTED] Dr. [REDACTED] and parents, 3-1-18
- P- 6. MCPS Section 504 Plan Progress Reports, 5-1-18
- P- 7. MCPS Section 504 Plan Documentation, 5-11-18
- P- 8. Letter to [REDACTED] from Dr. [REDACTED], 5-16-18
- P- 9. MCPS Crisis Referral and Suicide Risk Reporting Form, 11-9-18
- P- 10. Emails between parents and [REDACTED], 11-27-18 to 12-11-18
- P- 11. MCPS Report Card and Secondary Teacher Reports, 1-23-19
- P- 12. Letter to parents from MCPS regarding bullying, 2-25-19
- P- 13. Email to Dr. [REDACTED] from parents, 2-28-19
- P- 14. Neuropsychological Evaluation by Dr. [REDACTED], 4-25-19
- P- 15. [REDACTED] Academic Reports, April 2019 to February 2020
- P- 16. Letter to Stacy Reid Swain, Esq. from Michael J. Eig, Esq., 1-13-20
- P- 17. MCPS Educational History with 2016-17 and 2017-18 report cards, 1-29-20
- P- 18. [REDACTED] Learning Center Information and Program Overview
- P- 19. [REDACTED] Learning Center Discharge Consideration, 3-31-20
- P- 20. [REDACTED] Progress Report, 4-27-20
- P- 21. MCPS Prior Written Notice and IEP Meeting Documentation, 5-12-20
- P- 22. Student's Personal Mission Statement, 5-19-21
- P- 23. [REDACTED] Progress Reports, 5-27-20 to 6-8-20
- P- 24. MCPS Prior Written Notice and Eligibility Documentation, 6-16-20
- P- 25. Letter filing Request for Due Process, 7-30-20
- P- 26. Email to MCPS from parents providing contact information for [REDACTED] [REDACTED] staff, 8-15-20
- P- 27. Letter to MCPS serving notice and MCPS response letter, 8-17-20 and 9-9-20
- P- 28. [REDACTED] Positive Development Treatment Plan, 9-4-20

- P- 29. Email from Michael J. Eig, Esq. to Stacy Reid Swain, Esq. enclosing [REDACTED] Treatment Plan, 10-21-20
- P- 30. MCPS Prior Written Notice, 10-21-20
- P- 31. MCPS Prior Written Notice, 11-24-20
- P- 32. Letter from MCPS enclosing Amended Draft IEP, 11-25-20
- P- 33. Letter to Stacy Reid Swain, Esq. from Michael J. Eig, Esq. rejecting IEP and placement, 12-4-20
- P- 34. [REDACTED] Progress, Report, 2-8-21
- P- 35. Resume of Dr. [REDACTED]
- P- 36. Resume of Dr. [REDACTED]
- P- 37. Resume of Dr. [REDACTED]
- P- 38. [REDACTED] Academic Records, June to September 2019 and January and February 2020
- P- 39. [REDACTED] Hospitalization Documentation, August 2017
- P- 40. [REDACTED] Individualized Learning Plan, 2-10-20
- P- 41. [REDACTED] Report Card and Progress Reports, 1-11-21
- P- 42. [REDACTED] Transcript, 2-15-21
- P- 43. Letter from [REDACTED] regarding Student's enrollment at [REDACTED], 2-15-21
- P- 44. Emails between parents and MCPS, May and June 2017
- P- 45. Emails between parents and MCPS, October to December 2017
- P- 46. Emails between parents and MCPS, January and February 2018
- P- 47. Emails and text messages regarding suicide threat, May and June 2018
- P- 48. Student Transcript and Grades at [REDACTED] High School, September and October 2018
- P- 49. Student Grades and Secondary Teacher Reports at [REDACTED] High School, January 2019
- P- 50. Emails between parents and [REDACTED], January 2019
- P- 51. Evaluation Records by Dr. [REDACTED], February 2021
- P- 52. [REDACTED] Progress Report, 3-5-21

I admitted the following exhibits, with Bates stamp numbering, on behalf of MCPS:

- MCPS-1. 000001-16 [REDACTED] Records
- MCPS-2. 000017 Summary of Parent Conference, 05-05-2017
- MCPS-3. 000018-38 Collection of Secondary Teacher Reports for 504, 06-2017
- MCPS-4. 000039-42 Section 504 Evaluation, 07-27-2017
- MCPS-5. 000043-46 Section 504 Plan, 07-27-2017
- MCPS-6. 000047 Collection of Emails Regarding 504 Accommodation, 07-28-2017
- MCPS-7. 000048 Authorization for Release – [REDACTED] 10-06-2017
- MCPS-8. 000049-56 Collection of Emails Regarding Teacher Feedback, 12-2017
- MCPS-9. 000057 Email from [REDACTED] to [REDACTED], 01-12-2018
- MCPS-10. 000058-60 Collections of Emails Regarding Teacher Feedback, 02-2018
- MCPS-11. 000061-65 Collections of Emails Regarding Teacher Feedback, 02-2018 – 03-2018
- MCPS-12. 000066-79 Collection of 504 Accommodation Review Worksheets, 05-2018
- MCPS-13. 000080-83 Section 504 Eligibility, 05-11-2018
- MCPS-14. 000084-88 Section 504 Plan, 05-11-2018

MCPS-15. 000089 ██████████ Letter for change of school assignment (COSA), 05-16-2018

MCPS-16. 000090 Parent Letter for COSA, 05-16-2018

MCPS-17. 000091-99 Collection of Emails Regarding Enrolling, 07-2017 – 08-2018

MCPS-18. 000100 MCPS Unofficial Transcript, 10-14-2018

MCPS-19. 000101 Authorization of Release – ██████████, 10-31-2018

MCPS-20. 000102 Crisis Center Referral Information, 11-09-2018

MCPS-21. 000103-104 Suicide Risk Reporting Form, 11-09-2018

MCPS-22. 000105 Email to ██████████ Regarding Crisis Referral, 11-09-2018

MCPS-23. 000106 Authorization of Release – ██████████

MCPS-24. 000107-108 Collection of Emails Regarding Absences, 11-19-2018

MCPS-25. 000109 Email from ██████████ Regarding Missed Work, 11-28-2018

MCPS-26. 000110-114 Collection of Emails Regarding Grades, 11-2018 – 12-2018

MCPS-27. 000115-116 Collection of Emails Regarding Counseling, 12-11-2018

MCPS-28. 000117 Invitation to Jan. 16, 2019, Educational Management Team (EMT) Meeting, 12-11-2018

MCPS-29. 000118-119 EMT Summary

MCPS-30. 000120 Email from ██████████ Regarding Absence, 2-24-2019

MCPS-31. 000121 Email from ██████████ Regarding Absence, 2-25-2019

MCPS-32. 000122 ██████████ Letter to Parents Regarding Cyber Bullying, 2-25-2019

MCPS-33. 000123 Email Regarding Absence & Intake Meeting, 2-27-2019

MCPS-34. 000124-125 Email to ██████████ Regarding Status, 2-28-2019

MCPS-35. 000126 Email to ██████████ Regarding School Letter, 2-28-2019

MCPS-36. 000127-129 Patient Education Background Form

MCPS-37. 000130 ██████████ Hospital Authorization, 03-06-2019

MCPS-38. 000131 Email to ██████████ Regarding Transfer from ██████████ 03-25-2019

MCPS-39. 000132-133 ██████████ Hospital Education Service Final Report, 04-02-2019

MCPS-40. 000134 Letter from Student's Counsel to MCPS, 01-13-2020

MCPS-41. 000135 Email Sharing 4-24-19 ██████████ Assessment, 01-15-2020

MCPS-42. 000136-137 Notice of IEP Team Meeting, 01-22-2020

MCPS-43. 000138-139 Child Find Referral, 1-29-2020

MCPS-44. 000140-208 Email Prior to IEP Meeting Enclosing Documents, 01-30-2020:

- ██████████ Documents (MCPS_000141-167)
- ██████████ Report (MCPS_000168-190)
- Prior Section 504 Documents (MCPS_000191-204)
- Educational History (MCPS_000205-208)

MCPS-45. 000209-217 Email after IEP Meeting Enclosing Documents, 02-12-2020:

- Notice of Documents (MCPS_000210)
- Notice of IEP Meeting (MCPS_000211-212)
- Meeting Sign-In Sheet (MCPS_000213)
- 02-05-2020 Prior Written Notice (MCPS_000214-15)
- Notice and Consent for Assessment (MCPS_000216-217)

MCPS-46. 000218-219 Authorization of Release – ██████████ & ██████████, 02-05-2020

MCPS-47. 000220-227 ██████████ Progress Report, 04-27-2020

MCPS-48. 000228-230 Collection of Emails Regarding IEP Meeting, 04-2020 – 05-2020

MCPS-49. 000231-236 Email After IEP Meeting Enclosing Documents, 05-12-2020:

- 05-12-2020 Prior Written Notice (MCPS_000232-233)
- Team Consideration of External Report (MCPS_000234)
- Emotional Disability Evaluation Form (MCPS_000235-236)

MCPS-50. 000237-269 Email Prior to IEP Meeting Enclosing Documents, 06-10-2020:

- Notice of Documents (MCPS_000238)
- Draft IEP – 06-09-2020 (MCPS_000239-267)
- Notice of IEP Meeting (MCPS_000268-269)

MCPS-51. 000270-271 Email Enclosing Executive Functioning Goal, 06-16-2020

MCPS-52. 000272-278 Email After IEP Meeting Enclosing Documents, 06-23-2020:

- Approved Eligibility 4 Status Report (MCPS_000273-276)
- 06-16-2020 Prior Written Notice (MCPS_000277-278)

MCPS-53. 000279-280 MCPS 10 Day Letter, 08-07-2020

MCPS-54. 000281-288 Collection of Emails Regarding IEP Meeting, 10-2020

MCPS-55. 000289-317 Email Prior to Central IEP C-IEP Meeting Enclosing Documents, 10-06-2020:

- Notice of Documents (MCPS_000290)
- Notice of IEP (MCPS_000291-292)
- Draft Amended IEP (25 pages) (MCPS_000293-317)

MCPS-56. 000318-322 Email Enclosing 9-4-2020 ██████████ to CIEP, 10-21-2020

MCPS-57. 000323-357 Email After October CIEP Enclosing Documents, 10-23-2020:

- Notice of Documents (MCPS_000324)
- Draft Amended IEP (31 pages) (MCPS_000325-355)
- 10-21-2020 Prior Written Notice (MCPS_000356-357)

MCPS-58. 000358-382 Email Enclosing Parents Revised ██████████ Report, 10-23-2020

MCPS-59. 000383-419 Email Prior to CIEP Meeting Enclosing Documents, 11-04-2020:

- Notice of IEP Meeting (MCPS_000384)
- Notice of Documents (MCPS_000385-386)
- Draft Amended IEP (33 pages) (MCPS_000387-419)

MCPS-60. 000420-459 Email Sent After CIEP Enclosing Documents, 11-25-2020:

- Prior Written Notice Letter (MCPS_000421)
- 11-24-2020 Prior Written Notice (MCPS_000422-423)
- Notice of Documents (MCPS_000424)
- Draft Amended 11-25-2020 IEP (MCPS_000425-459)

MCPS-61. 000460 Letter Rejecting IEP and Placement, 12-04-2020

MCPS-62. 000461-466 Email Enclosing Final Status Report, 12-10-2020

MCPS-63. 000467-468 ██████████ – Resume

MCPS-64. 000469-470 ██████████ – Resume

MCPS-65. 000471-472 ██████████ – Resume

MCPS-66. 000473-475 ██████████ – Resume

MCPS-67. 000476-477 [REDACTED] – Resume
 MCPS-68. 000478-479 [REDACTED] – Resume
 MCPS-69. 000480-532 All Documents Received from [REDACTED]
 MCPS-70. 000533-563 All Documents Received from [REDACTED]
 MCPS-71. 000564-613 Selection of Documents Received from [REDACTED] Hospital
 MCPS-72. 000614-625 Supplemental Documents Received from [REDACTED]
 MCPS-73. 000626-633 Collection of Emails Regarding School Work, 05-2017
 MCPS-74. 000634-639 Collection of Emails Regarding Spanish, 05-2017
 MCPS-75. 000640-642 Collection of Emails Regarding Attention Deficit Hyperactivity Disorder (ADHD) Diagnosis, 05-2017

 MCPS-76. 000643 Email Regarding Band, 09-26-2017
 MCPS-77. 000644-647 Collection of Emails Regarding Therapy, 09-2017
 MCPS-78. 000648-649 Emails Regarding Retake Test, 01-12-2018
 MCPS-79. 000650-656 Collection of Emails Regarding English, 01-2018
 MCPS-80. 000657-659 Collection of Emails Regarding Homework Club, 01-2018
 MCPS-81. 000660-661 Collection of Emails Regarding Feedback from Teachers, 03-2018
 MCPS-82. 000662-664 Collection of Emails Regarding Need for COSA, 05-2018
 MCPS-83. 000665 Collection of Emails Regarding Thank You Gift, 06-15-2018
 MCPS-84. 000666-667 Collection of Emails Regarding [REDACTED] Updates, 03-16-2019
 MCPS-85. 000668 Email Regarding Potential Psychological Assessment, 03-21-2019
 MCPS-86. 000669-672 Collection of Emails Regarding Programs, 03-2019
 MCPS-87. 000673-674 Email Update to Dr. [REDACTED], 03-26-2019
 MCPS-88. 000675 Email Regarding Refusing to Go to [REDACTED] 03-27-2019
 MCPS-89. 000676-678 Collection of Emails Regarding Withdrawing from MCPS, 04-03-2019

 MCPS-90. 000679-680 Collection of Emails Regarding Adjustment to [REDACTED], 04-09-2019
 MCPS-91. 000681-686 Collection of Emails Regarding Refusing to Go to [REDACTED], 04-10-2019
 MCPS-92. 000687-688 Email Update to Dr. [REDACTED], 04-15-2019
 MCPS-93. 000689-693 Collection of Emails Regarding Illness at [REDACTED], 04-17-2019
 MCPS-94. 000694 Collection of Emails Regarding Refusing to Go to [REDACTED], 04-18-2019

 MCPS-95. 000695-702 BRIEF 2 Assessments, 04-25-2019
 MCPS-96. 000703-704 Collection of Emails Regarding Attendance Resistance, 05-01-2019

 MCPS-97. 000705-706 Collection of Emails Regarding Refusing to Go to [REDACTED], 05-13-2019

 MCPS-98. 000707-708 Collection of Emails Regarding Illness at [REDACTED] 06-06-2019
 MCPS-99. 000709 Collection of Emails Regarding Refusing to Go to [REDACTED] 06-07-2019

 MCPS-100. 000710 Collection of Emails Regarding Refusing to Go to [REDACTED], 06-14-2019

MCPS-101. 000711-714 Collection of Emails Regarding Journal Entries, 07-04-2019
 MCPS-102. 000715-716 Collection of Emails Regarding Attendance & Medication, 07-2019
 MCPS-103. 000717-721 Collection of Emails Regarding Lying About Acting, 07-18 -2019
 MCPS-104. 000722 Email Regarding Transition to Private School, 08-2019
 MCPS-105. 000723-725 Collection of Emails Regarding Family Dynamics, 09-06-2019
 MCPS-106. 000726-727 Collection of Emails Regarding Family Dynamics, 09-10-2019
 MCPS-107. 000728-730 Collection of Emails Regarding Resistance to Residential, 09-2019
 MCPS-108. 000731-733 Collection of Emails Regarding Gift Cards, 09-2019
 MCPS-109. 000734-735 Emails of Questions Regarding ██████████ Residential, 09-2019
 MCPS-110. 000736-737 Collection of Emails Regarding Attendance Resistance, 10-2019
 MCPS-111. 000738 ██████████ Behavioral Expectations
 MCPS-112. 000739-851 ██████████ t “Discovering Your True Self” Workbook
 MCPS-113. 000852 Collection of Emails Regarding Medication, 10-01-2019
 MCPS-114. 000853-855 Collection of Emails Summarizing Arrival at Residential, 10-06-2019
 MCPS-115. 000856-857 Academic Progress Report, 10-14-2019
 MCPS-116. 000858-859 Collection of Emails Regarding Concerns About ██████████ 10-2019
 MCPS-117. 000860-861 Academic Progress Report, 10-22-2019
 MCPS-118. 000862-863 Academic Progress Report, 10-28-2019
 MCPS-119. 000864-865 Academic Progress Report, 11-04-2019
 MCPS-120. 000866-867 Academic Progress Report, 11-11-2019
 MCPS-121. 000868-869 Collection of Emails Regarding Family Day, 11-12-2019
 MCPS-122. 000870-871 Academic Progress Report, 11-18-2019
 MCPS-123. 000872-873 Academic Progress Report, 11-26-2019
 MCPS-124. 000874-875 Academic Progress Report, 12-09-2019
 MCPS-125. 000876-877 Academic Progress Report, 12-19-2019
 MCPS-126. 000878-880 Email Regarding Lack of Family Time on Christmas 12-23-2019
 MCPS-127. 000881-882 Academic Progress Report, 12-23-2019
 MCPS-128. 000883-884 Collection of Emails Regarding Boarding School, 12-27-2019
 MCPS-129. 000885 Email Regarding Releases to Boarding Schools, 01-03-2020
 MCPS-130. 000886-887 Academic Progress Report, 01-06-2020
 MCPS-131. 000888-889 Collection of Emails Regarding Boarding School, 01-10-2020
 MCPS-132. 000890-892 Collection of Emails Regarding Boarding School, 01-13-2020
 MCPS-133. 000893-894 Academic Progress Report, 01-13-2020
 MCPS-134. 000895-899 Collection of Emails Regarding Boarding School, 01-20-2020
 MCPS-135. 000900-901 Academic Progress Report, 01-20-2020
 MCPS-136. 000902-904 Collection of Emails Regarding Courses at ██████████ 02-11-2020
 MCPS-137. 000905-907 Collection of Emails Regarding Course Credit, 02-2020
 MCPS-138. 000908-909 Collection of Emails Regarding Welcome and Status, 02-2020
 MCPS-139. 000910-912 Collection of Emails Regarding Cooperation with MCPS, 04-2020
 MCPS-140. 000913-915 Collection of Emails Regarding Learning Center, 04-06-2020

MCPS-141.	000916-917	Collection of Emails Communicating with MCPS, 04-2020
MCPS-142.	000918-920	Collection of Emails Regarding Keeping Track of Classes, 05-2020
MCPS-143.	000921-922	Collection of Emails Regarding Online Learning, 05-2020
MCPS-144.	000923-925	Collection of Emails Regarding Concerns at [REDACTED], 06-2020
MCPS-145.	000926-927	Collection of Emails Regarding Concerns at [REDACTED], 06-2020
MCPS-146.	000928-929	Collection of Emails Regarding Needs. 06-18-2020
MCPS-147.	000930-931	Collection of Emails Regarding Catching Up, 06-22-2020
MCPS-148.	000932-933	Email of Weekly Academic Update, 07-20-2020
MCPS-149.	000934-937	Collection of Emails Regarding Academic Update, 07-2020
MCPS-150.	000938-941	Collection of Emails Regarding Academic Update, 08-2020
MCPS-151.	000942-943	Email Regarding Academic Update, 08-24-2020
MCPS-152.	000944-949	Collection of Emails Regarding Educational Support, 08 & 09-2020
MCPS-153.	000950-951	Collection of Emails Regarding Not Passing, 02-2021
MCPS-154.	000952-953	Collection of Emails Regarding Missing Work, 02-2021
MCPS-155.	000954	Email of Academic Update 02-22-2021
MCPS-156.	000955-956	Collection of Emails Regarding Update on Hearing, 03-2021
MCPS-157.	000957-959	Collection of Emails Regarding “Acceleration”, 03-2021
MCPS-158.	000960-962	Collection of Emails Regarding “Acceleration”, 03-2021
MCPS-159.	000963	Email Regarding Academic Update, 04-05-2021

Testimony

The Student presented the following witnesses:

- Dr. [REDACTED], Neuropsychologist, admitted as an expert in neuropsychology;
- Dr. [REDACTED], Clinical Psychologist; and
- Ms. [REDACTED].

MCPS presented the following witnesses:

- [REDACTED], Counselor, [REDACTED] Middle School, admitted as an expert in school counseling;
- [REDACTED], Counselor, [REDACTED] High School, admitted as an expert in school counseling;
- [REDACTED], Psychologist, [REDACTED] High School, admitted as an expert in school psychology;
- [REDACTED], Special Education Teacher, [REDACTED] High School, admitted as an expert in special education;

- [REDACTED], Social Worker, [REDACTED] ([REDACTED]) Program at [REDACTED] High School, admitted as an expert in clinical social work with an emphasis in special education; and
- [REDACTED], Coordinator, MCPS Central IEP (C-IEP) Unit, admitted as an expert in special education and placement of students in special education settings.

STIPULATIONS OF FACT

At the hearing, the parties agreed to the following factual stipulations, which I accept:

1. There are therapeutic residential schools located in the State of Maryland.
2. In January 2020, MCPS received Dr. [REDACTED]'s report.
3. In November 2020, the IEP team added one goal, a social emotional/behavioral goal, to the June 2020 IEP.
4. [REDACTED] stands for [REDACTED].
5. Ms. [REDACTED] works for [REDACTED]. [REDACTED] works for MCPS.

FINDINGS OF FACT

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

Background

1. The Student attended [REDACTED] for 4th through 6th grades (2013-2016). (MCPS 1). His grades in 2016 ranged from A to F. (MCPS 1, 001-002). The majority of the Student's grades, except Band and Physical Education (PE), were Bs and Cs. (*Id.*)
2. The Student attended [REDACTED] Middle School for 7th (2016-2017) and 8th (2017-2018) grades. (P-17-01).

██████████ ***Middle School: 7th Grade (2016-2017)***

3. In 7th grade, the Student received an A in PE, Bs in English, World Studies, Math, Band, Team, Spanish 1A, and Health, and a C in Spanish 1B. (P-17-3). His marking period average declined consistently from 3.14 in the second quarter to 2.85 in the third quarter to 2.71 in the fourth quarter. (*Id.*)

4. On May 5, 2017, Ms. ██████████ and Ms. ██████████ met to discuss the Student's problems with work completion. (MCPS 2). Ms. ██████████ agreed to have the Student evaluated for Attention Deficit Hyperactivity Disorder (ADHD). (*Id.*) Ms. ██████████ agreed to meet with the Student and email Ms. ██████████ every week. (*Id.*)

5. On or about May 18, 2017, the Student was diagnosed with ADHD and began taking medication. (MCPS 75, 0641). Ms. ██████████ informed MCPS of the diagnosis. (MCPS 75).

6. The Student's teachers from the 2016-2017 school year completed reports at the end of the school year. (MCPS 3). The teachers noted problems with organization, completion of assignments, and absences. (*Id.*)

Drafting of 504 Plan

7. On July 27, 2017, Ms ██████████ found the Student eligible for services under Section 504⁶ and completed an initial Section 504 Plan (504 Plan) for the Student. Ms. ██████████ identified ADHD as the Student's impairment. Ms. ██████████ determined that the Student required accommodations because he had executive functioning problems including trouble staying on task and organizing his thoughts. (P-02-1).

8. The 504 Plan contains the following accommodations to be provided by the teachers in all the Student's classes:

- clarify directions;

⁶ Section 504 of the Rehabilitation Act of 1973 is codified at 29 U.S.C. § 794 (2018).

- break down assignments with interim due dates;
- provide rubric and assistance with starting long writing assignments and projects;
- preferential seating where the Student learns best and away from distractions;
- check agenda book; and
- cue for attention.

(*Id.*)

██████████ ***Middle School: 8th Grade (2017-2018)***

9. On August 19, 2017, police officers transported the Student from his home to the Emergency Department at ██████████ Hospital. (P-39). The Student had threatened to ██████████ in a group chat with his friends and they called the police. (P-39-2). Medical staff diagnosed him with adjustment disorder of adolescence and acute depression. (P-39-6). Medical staff recommended that the Student did not need to begin therapy. (P-39-8).

10. In the 2017-2018 school year, Ms. ██████████ met with the Student every two weeks to review his grades and coordinate work completion. (P-03-06).

11. In or around September 2017, the Student began seeing ██████████ a licensed psychologist. (MCPS 77, 0646).

12. In or around September 2017, the Student began taking an antidepressant medication. (Ms ██████████ testimony, 5/4, T. 19-20).

13. On October 16, 2017, Ms. ██████████ executed an authorization to allow the sharing of confidential information between MCPS staff and Dr. ██████████. (MCPS 7).

14. In December 2017, Dr. [REDACTED] increased the dosage of the Student's ADHD medication. (P-03-07). She requested that Ms. [REDACTED] provide weekly updates as to the Student's homework completion. (*Id.*) Ms [REDACTED] created a data collection sheet for the Student to give to his teachers at the end of each school week. (P-03-02).

15. In January 2018, [REDACTED]'s staff emailed the Parents to suggest that the Student attend homework club as often as possible. (MCPS 80). The Student was not willing to attend because he did not want to be labeled a slow learner. (*Id.*, 0657).

16. In February 2018, Dr. [REDACTED] adjusted the Student's medications and requested feedback regarding concentration, work completion, and impulsivity. (P-04-02-03). The Spanish and English teachers reported that the Student had improved in the areas of attention and focus but the History teacher noted that attention was still a concern. (P-04-01). The Spanish and Science teachers reported that the Student can return to a task when prompted by the teacher. (*Id.*) A couple of weeks later, the English teacher reported that he was doing better with participation and paying attention and the Student's History teacher reported that his focus was good. (P-05-04).

17. Dr. [REDACTED] retired in March 2018. At that time, she stated to Ms. [REDACTED] that the ADHD medications were helping the Student but that he might need an increase in dosage or a supplemental dose for homework. (P-05-02). After Ms. [REDACTED] retired, the Student began seeing [REDACTED] for weekly psychotherapy sessions.

18. In or around March 2018, Dr. [REDACTED], the Student's primary care physician, wrote a prescription for [REDACTED], a short-acting ADHD medication, to help the Student focus and assist with completion of his homework. (P-05-01).

19. In or around late April 2018, the Student's teachers submitted a Section 504 Progress and Accommodation Review Worksheet. (P-06). The teachers reported that they were utilizing all the five accommodations on the Student's 504 Plan, with most being used "often" or "always." (*Id.*) The teachers reported that the Student was on or above grade level in each subject. (*Id.*) The Student was reading at the 11th grade level and was at the 9th grade level for math. (*Id.*) The Student's teachers in English and Spanish noted that the Student had made progress in work completion and self-advocacy. (*Id.*) The Algebra teacher reported a concern with the Student's make-up work. (P-06-09).

20. On May 8, 2018, MCPS convened a meeting to review the 504 Plan. In addition to Ms. [REDACTED] and Ms. [REDACTED], the 8th grade administrator at [REDACTED] Middle School and the Student's English teacher attended. MCPS decided that the Student remained eligible for accommodations and would continue on the existing 504 Plan for his freshman year of high school. The meeting summary indicates that the Student improved greatly over the course of the 2017-2018 school year in self-advocacy, quality of work, and participation. (P-07-02).

21. MCPS added the following accommodations to the existing classroom accommodations on the 504 Plan:

- copies of teacher notes – supplemental; and
- use of computer for written assignments.

(MCPS 14, 085).

22. MCPS added the following instructional and assessment accommodations to the 504 Plan:

- reduce distractions to self;
- notes and outlines;

- monitor test response; and
- 1.5x extended time.

(MCPS 14, 087).

23. On May 16, 2018, Dr. [REDACTED] sent a letter to the Principal of [REDACTED] High School in which he recommended that the Student be allowed to attend [REDACTED] High School ([REDACTED]) instead of [REDACTED]. Dr. [REDACTED] explained that the Student had become “increasingly depressed and anxious” in the prior few weeks regarding the transition to [REDACTED] because his peers would be attending [REDACTED]. Dr. [REDACTED] reported also that the Student had “expressed some suicidal ideation regarding his feelings of despair about the school change.” (P-08).

24. On May 16, 2018, Ms. [REDACTED] sent a letter to the Principal of [REDACTED] requesting that the Student be allowed to attend [REDACTED]. (MCPS 16). Ms. [REDACTED] explained that the Student had become increasingly depressed and anxious at the thought of separating from his friends. (*Id.*)

25. In 8th grade, the Student received As in PE and Spanish 2B, Bs in Spanish 2A, Algebra 1B, Advanced English, Advanced U.S. History, Investigation in Science, and Advanced Band, and a C in Algebra 1A. (P-17-4). The Student’s marking period average improved consistently from a 2.28 in the first quarter, to a 2.57 in the second quarter, a 3.00 in the third quarter, and a 3.14 in the fourth quarter. (*Id.*)

[REDACTED] High School – 9th Grade (2018-2019)

26. In summer 2018, the Student’s sister became ill which caused the Student and his family to remain in [REDACTED] about a month longer than anticipated. (MCPS 17, 097).

27. On October 31, 2018, Ms. [REDACTED] executed an authorization allowing for the exchange of confidential information between Ms. [REDACTED] and Dr. [REDACTED]. (MCPS 19).

28. On or about November 4, 2018, the Student intentionally cut his arm while at home. (P-09-01).

29. On November 9, 2018, Ms. [REDACTED] learned that the Student had cut his arm. She referred the Student to Dr. [REDACTED] who indicated that the Student was not currently at risk to self. The Student reported that he had thoughts of hanging himself in August or September. He reported feelings of excessive pressure to succeed and ongoing family conflict with his father. (P-09).

30. On November 19, 2018, Ms. [REDACTED] emailed Ms. [REDACTED] for assistance with ensuring the Student make up the work he had missed after the November 9, 2020 incident. (MCPS 24). Ms. [REDACTED] wrote that the Student was feeling very stressed and depressed and that she was trying to get him an appointment with Dr. [REDACTED] (*Id.*)

31. On November 27, 2018, Ms. [REDACTED] emailed Ms. [REDACTED] regarding the Student's grades. She reported improvement in the Student's depression and that he had been communicating with Dr. [REDACTED] (P-10-07).

32. As of December 3, 2018, the Student was not in danger of failing any of his classes. (MCPS 26, 0110).

33. On December 11, 2018, Ms. [REDACTED] reported to Ms. [REDACTED] that the Student had not gone to see her for a few days and had not been completing some classroom work despite being reminded to do so by his teachers. (P-10-02-03). Ms. [REDACTED] informed Ms. [REDACTED] that she would schedule an EMT meeting after winter break to discuss how to best support the Student.

(*Id.*) She sent a letter to the Parents informing them of the EMT meeting scheduled for January 16, 2018. (MCPS 28).

34. On January 8, 2019, Ms. [REDACTED] emailed Ms. [REDACTED] and wrote that Dr. [REDACTED] had recommended that the Student be screened for potential learning disabilities. (P-50-3). Ms. [REDACTED] wrote back that this could be part of the discussion at the EMT meeting if Dr. [REDACTED] wanted to participate. (P-50-2). Ms. [REDACTED] also wrote that Dr. [REDACTED] was planning on adjusting the Student's medication. (P-50-1).

35. The Student's teachers submitted Secondary Teacher Reports for the EMT meeting. (P-11-5-25). The Student's Biology, English, and U.S. History teachers reported concerns with the Student's organization and participation. Each teacher in the above subjects, and his Spanish teacher, reported that the Student had problems with completing assignments. The Student's Biology and U.S. History teachers reported that he had problems focusing, was distracted, and did not utilize his accommodations. None of the teachers reported any social/emotional concerns.

36. At the EMT meeting, the Student's History teacher reported that the Student had been more engaged socially and had shown improvement in his work. (MCPS 29). The EMT team discussed adding new strategies like having the Student make a schedule and establishing a bi-weekly meeting with Ms. [REDACTED]. (*Id.*) The EMT team also discussed allowing the Student to make annotations to his tests and keeping the same teachers for the Student. (*Id.*; Ms. [REDACTED] testimony, 6/2). The EMT team also encouraged the Student to access his accommodations. (Ms. [REDACTED] testimony, 6/2).

37. Ms. [REDACTED] attended the EMT meeting because of the Student's past suicidal ideation. (Ms. [REDACTED] testimony, 6/1).

38. On January 23, 2019, the Student's cumulative assignment scores for the second marking period were as follows:

- Honors Biology: E;
- Concert Band: A;
- Spanish 3A: C;
- Honors English: E;
- Geometry: D;
- Honors U.S. History: D; and
- PE – Soccer: A.

(P-11-01-04).

39. On February 22, 2019, Ms. [REDACTED] requested that Ms. [REDACTED] pick up the Student because he had been informed that he was being investigated by [REDACTED] for cyberbullying. (Ms. [REDACTED] testimony, 5/4, T. 39).

40. On February 24, 2019, Ms. [REDACTED] emailed Ms. [REDACTED] to inform her that the Student had seen Dr. [REDACTED] and was not acutely suicidal but was depressed and withdrawn. (MCPS 30). She also informed Ms. [REDACTED] that the Student had an appointment with Dr. [REDACTED] on February 27, 2019, and that the Student's medication could be adjusted at that time. (*Id.*) She requested that Ms. [REDACTED] inform the Student's teachers that he may not complete all his assignments on time or at all. (*Id.*)

41. On February 25, 2019, [REDACTED], Principal at [REDACTED], sent the Parents a letter informing them that the school had investigated and determined that the Student had been cyberbullying, harassing, and intimidating female students from November 18, 2018, until

February 19, 2019. (P-12). Ms. [REDACTED] directed the Student to have no contact with the students that he had cyberbullied. (*Id.*)

42. The Student created two fake social media accounts to communicate with a girl. (MCPS 36). The Student used one of the accounts to impersonate a male classmate with whom the girl was close to end the relationship between the girl and the male classmate. When the targeted student discovered that the accounts had been created by the Student, the Student threatened to [REDACTED] himself if she ended their relationship. (*Id.*)

43. On February 25, 2019, Ms. [REDACTED] informed the Student's teachers by email that the Student had been depressed for a few days and that he should be excused from smaller assignments and given extensions for completion of assignments, and that he would have a flash pass to counseling when he returned. (MCPS 31).

44. After February 25, 2019, the Student refused to go to school and stayed in his bedroom for most of the day. (Ms. [REDACTED] testimony, 5/4, T. 43).

45. On February 27, 2019, Ms. [REDACTED] emailed Dr. [REDACTED] to inquire if the Student would be hospitalized and to ask for updates as to the Student's situation and if there were any added supports that MCPS could provide at school. (MCPS 33).

[REDACTED] ***Hospital – March to April 2019***

46. On March 6, 2019, the Student was admitted to [REDACTED] Hospital [REDACTED] in [REDACTED], [REDACTED]. (P-14-02). He remained at the hospital until March 25, 2019. (*Id.*) He attended the hospital's partial hospitalization program (PHP) until April 1, 2019. (*Id.*, MCPS 39).

47. On or about March 21, 2019, Dr. [REDACTED] of [REDACTED] recommended to Ms. [REDACTED] that the Student undergo a psychological assessment. (MCPS 85). Ms. [REDACTED] did not share this recommendation with MCPS.

48. The Parents' insurance coverage for the Student's stay at [REDACTED] ended on March 26, 2020, which caused them to move the Student to the PHP program. (MCPS 86, 0670).

49. On April 2, 2019, a nurse from [REDACTED] completed a report regarding the Student's educational services while he was at [REDACTED]. (MCPS 39, 0132). The report recommended two out of a total of twenty-five listed educational recommendations:

- Follow up with Student after transitioning back to school (few day/weeks); and
- Assign makeup work to prove competency.

(*Id.*) Ms. [REDACTED], the Student's case manager at [REDACTED] commented that the Student completed school assignments at [REDACTED] and did not demonstrate any significant behaviors of concern.

(*Id.*, 0133). She did not make a referral for special education services. (*Id.*)

[REDACTED] Program – April to October 2019

50. On April 2, 2019, the Student began attending [REDACTED]'s PHP program in [REDACTED], Maryland. (*Id.*) He stopped attending [REDACTED]'s PHP program on or around June 17, 2019. (P-15-11).

51. On or about April 3, 2019, Ms. [REDACTED] informed Ms. [REDACTED] that if the Student did not enroll at [REDACTED]'s educational program, then he would be able to stay enrolled at MCPS and work with Interim Instructional Services (IIS), or if he enrolled at [REDACTED]'s educational program then he would have to withdraw from MCPS. (MCPS 89, 0677). Ms. [REDACTED] sent an

email to [REDACTED] of [REDACTED] who advised her to withdraw from MCPS, and Ms. [REDACTED] confirmed that she would do so. (*Id.*, 0676). The Student withdrew from MCPS before an intake meeting could be held to discuss his return to MCPS including any recommendations from the Hospital program. (Ms. [REDACTED] testimony, 6/1).

52. [REDACTED] PHP was a day program which included online classes and therapy. The Student often refused to attend the [REDACTED] PHP program and would show up late as a result. (MCPS 96-101). The Student also fabricated illnesses as a means of avoiding attending the program. (*Id.*)

53. Staff from the [REDACTED] PHP program reported that the Student often struggled with focus and work completion. (P-15-2-11).

54. On April 24 and 25, 2019, Dr. [REDACTED] conducted a neuropsychological evaluation of the Student at the request of Dr. [REDACTED]. (P-14; Dr. [REDACTED] testimony, 5/3, T. 16). Dr. [REDACTED] diagnosed the Student with:

- Major Depressive Disorder;
- Unspecified Anxiety Disorder;
- ADHD, Combined Presentation (with accompanying weakness in executive functioning); and
- Dysgraphia.

(P-14-15).

55. The Student scored above average in all the subtests of the WISC-V intelligence test. (P-14-5). His full-scale score, which averages his ability across the various subtests, was in the 94th percentile. (*Id.*)

56. In academic achievement testing, the Student performed on or above grade level in the WJ-IV Reading, Written Language, and Mathematics testing. (P-14-9-10). On the Nelson-Denny, an intensive reading measure with long passages followed by comprehension questions, the Student completed twenty-eight out of the thirty-eight questions within the allotted time and scored at the 61st percentile. (P-14-11). Dr. [REDACTED] gave him additional time, and he completed all questions and scored at the 83rd percentile. (*Id.*)

57. Testing of the Student's attention and executive functioning revealed average to above average functioning. (P-14-9). The Student was taking medication for ADHD at the time that Dr. [REDACTED] tested him. (*Id.*)

58. The Student performed poorly (33rd percentile) on the WJ-IV Understanding Directions subtest, which requires following multiple-step directions and provides visual cues and therefore places strong demands on working memory and attention. (P-14-7).

59. The Student performed poorly (16th percentile) on the WRAML-2 Sentence Memory, which demands verbatim sentence repetition. (P-14-8).

60. The Student took the MMPI-A, a self-report of adolescent psychopathology that requires completion of 478 yes or no questions. (P-14-12). The Student's answers revealed:

- severe adjustment difficulties including impulse-control problems;
- low frustration tolerance;
- need for constant stimulation;
- problem behaviors including authority conflicts, school maladjustment, and family difficulties; and
- prominent symptoms of depression.

(P-14-12-13; Dr. [REDACTED] testimony, 5/3, T. 29-30).

61. Dr. [REDACTED] concluded that the Student required special education services because of his emotional and attention disorders. (P-14-16). She recommended:

- frequent teacher interaction to help with organization and ensure that the Student understands directions regarding homework and projects;
- one on one or small group teaching;
- access to written directions with clearly defined dates for completion;
- breaking down long term projects or assignments into smaller components; and
- help choosing an academic planner to ensure the Student meets deadlines.

(P-14-16).

62. Dr. [REDACTED] recommended that the Student receive accommodations that are typically needed by children with attention and learning challenges, including:

- additional time to complete work and permission to do some but not all an assignment;
- 50% additional time on classroom tests and standardized tests;
- access to teacher's notes;
- use of a computer for taking notes;
- access to a step-by-step written guide to homework or long-term assignments;
- a written schedule of upcoming due dates and test dates; and
- access to counselor or resource room when feeling overwhelmed.

(P-14-18).

63. In July 2019, Ms. [REDACTED] emailed a teacher at [REDACTED] and wrote that the Student would never be able to return to [REDACTED] because of the loss of his friends and his reputation there. (MCPS 101, 0712-0714).

64. In August 2019, Ms. [REDACTED] emailed a teacher at [REDACTED] to try to set up a time to discuss private school options after the Student exited [REDACTED]'s PHP program. (MCPS 104). She wrote that the Student would need to go to a different school than [REDACTED]. (*Id.*)

65. In August 2019, Ms. [REDACTED] expressed that the need for the Student to transfer to [REDACTED]'s residential program so that the Student could work through anger management issues and improve his behavior. (MCPS 107-108).

66. A residential treatment program is typically designed to treat children with severe mental health, behavioral health, or emotional disorders, or substance abuse issues. (Dr. [REDACTED] testimony, 4/30, T. 194).

[REDACTED] Residential – October 2019 to February 2020

67. On October 4, 2019, the Student was discharged from the [REDACTED] PHP program and began attending [REDACTED]'s residential program in [REDACTED]. (P-15-1).

68. In an email to [REDACTED] staff regarding the rationale for the move to [REDACTED]'s residential program written shortly after the Student's arrival in [REDACTED], Mr. [REDACTED] wrote that one factor was that the Student was "increasingly abusive verbally at home and also started to become physical." (MCPS 116, 0858). He also identified as another factor the Student's lack of remorse and refusal to take responsibility for his actions. (*Id.*)

69. At the [REDACTED] Academy's residential program, the Student took the following courses:

- Honors Geometry;
- Honors English;
- Honors U.S. History;
- Honors Biology; and
- Health.

(P-15).

70. In more than half of the weekly academic notes completed by [REDACTED] staff from the residential program, the staff reported that the Student was making "little", "fair", or "marginal" academic progress. (P-15-13-25). In those weeks where the Student made little academic progress, the staff described him as not motivated and refusing to engage academically. (*Id.*)

71. The Student's academic program at the [REDACTED] residential program was delivered through the [REDACTED] online platform. (P-15-26).

72. The Student received a total of 2.5 credits from the [REDACTED], as follows:

- Health: A (0.5 credit);
- Honors Biology Semester 2: B+ (0.5 credit);
- Honors English 9 Semester 2: B (0.5 credit);
- Honors Geometry Semester 2: A- (0.5 credit); and
- Honors US History Semester 2: A- (0.5 credit).

(P-15-27).

73. In or around December 2019, the Parents had a disagreement about where the Student should go to school. (MCPS 128). Mr. [REDACTED] wanted the Student to attend school in [REDACTED] and felt that he had not heard compelling enough reasons as to why the Student needed a therapeutic boarding school. (MCPS 128, 0883).

74. The Parents' insurance covered the cost of the residential program at [REDACTED] (MCPS 129).

75. On or before January 3, 2020, Ms. [REDACTED] began working with an education consultant who had been recommended by [REDACTED] to help Ms. [REDACTED] locate a therapeutic boarding school for the Student. (Ms. [REDACTED] testimony, 5/4, T. 72-73).

76. On January 10, 2020, a [REDACTED] staff member emailed the Parents to inform them that the discharge planner would make sure that the Student had a placement that was out of home "even if it ends up being more of a long-term residential vs long term boarding school." (MCPS 131, 0889). Mr. [REDACTED] wrote back that he still did not understand why a therapeutic boarding school was the recommendation for the Student. (*Id.*, 0888).

77. On January 13, 2020, Mr. Eig sent a letter to Stacy Reid Swain, Legal Director, Special Education at MCPS Office of the General Counsel, requesting that MCPS begin the special education eligibility process for the Student. (P-16).

78. On January 15, 2020, Ms. [REDACTED] sent Dr. [REDACTED]'s report to MCPS. (MCPS 41).

79. On February 5, 2020, MCPS convened a meeting to evaluate the Student's eligibility for special education services. (MCPS 42). The IEP team considered the following documents:

- academic notes and transcript from [REDACTED]
- Dr. [REDACTED]'s report;

- 504 Plan; and
- MCPS educational history.

(MCPS 44). The IEP team decided that additional data would be required to determine the Student's eligibility for special education services and Ms. [REDACTED] agreed to provide that information from [REDACTED] and [REDACTED] (MCPS 45, 0214; MCPS 46). The IEP team recommended an additional assessment of the Student's emotional/social/behavior development and Ms. [REDACTED] consented. (MCPS 45, 0216-217).

80. MCPS provided the Parents with a parent questionnaire prior to the February 5, 2020, meeting, but the Parents did not fill it out or bring it to the meeting. (Ms. [REDACTED] testimony, 6/3). The questionnaire is the parents' opportunity to provide input on the Student's strengths and weaknesses and what the parents want. (*Id.*)

[REDACTED] – February 2020 to Present

81. [REDACTED] is a small, co-ed, year-round, boarding school located in [REDACTED] [REDACTED] that has therapy integrated into the program. (MCPS 70, 0534).

82. On February 11, 2020, the Student began classes at [REDACTED]. (MCPS 136, 0903).

83. The tuition at [REDACTED] is around \$11,000.00 a month. (Ms. [REDACTED] testimony, 5/10, T. 37).

84. [REDACTED] is the Student's academic advisor at [REDACTED] and helps with any minor executive functioning issues. (*Id.*) She sees the Student every morning at homeroom and during three academic advising periods throughout the week. (*Id.*)

85. The Student attends individual, group, and family therapy at [REDACTED]. (Ms. [REDACTED] testimony, 5/4, T. 97). The family therapy is done by video. (*Id.*)

86. [REDACTED] offers five academic terms in a calendar year. (P-40-1). Students are enrolled in five classes per term. (*Id.*) The average class size is between three to seven students. (P-40-1).

87. [REDACTED] has a [REDACTED] (Learning Center) that supports every student in the development of their executive functioning skills. (P-18-2). The curriculum at the Learning Center provides instruction in the following areas of executive functioning:

- goal setting;
- cognitive flexibility;
- organizing and prioritizing;
- accessing working memory; and
- self-monitoring and checking.

(P-18-3). [REDACTED] tuition includes the opportunity for students to utilize the executive functioning workshop on an as-needed basis. (P-18-4).

88. [REDACTED]'s executive functioning curriculum is intended to assist with ongoing academic work. (P-18-7).

89. [REDACTED] has an academic advising course that meets for twenty-five minutes three times a week. (P-20-1). Students are expected to make a goal for the term and for each week in the term. (*Id.*)

90. Beginning in March 2020, [REDACTED] shifted to an online curriculum because of the COVID-19 pandemic and the Student returned to his home in Maryland. (P-20-01).

91. During online learning, the academic advising course changed to a daily fifteen-minute check-in where the students update the teacher as to the work they will be completing and progress from the night prior. (P-20-01).

92. On March 12, 2020, ██████████ completed an individualized learning plan for the Student. The plan identified three goals for the Student:

- build positive decision-making skills;
- create personal goals and identify the resource and strategies to achieve them; and
- develop resiliency and self-efficacy.

(P-40-3-9).

93. On March 31, 2020, Ms. ██████ emailed Ms. ██████ and Ms. ██████ and wrote that she had “been working with an education lawyer for the past few months to try to get some financial assistance through our county school system[.]” (MCPS 139, 0911).

94. On April 6, 2020, ██████████, head of The Learning Center at ██████████, emailed the Parents to inform them that the four-week, free, orientation period had concluded and that he recommended that the Student receive support services for a period of three times per week commencing immediately at a cost of \$750.00 per month. (MCPS 140, 0915).

95. The Parents paid extra tuition of \$750.00 a month to ██████████ so that the Student could have a weekly executive functioning workshop, one-on-one check-ins, and study skills training. (P-18-04, 11).

96. On April 14, 2020, Ms. ██████ sent an email update to Ms. ██████ regarding the Student’s academic and emotional needs. (MCPS 141). Ms. ██████ reported that the Student had been more engaged with academics in remote learning than he had been in the six weeks when

he was physically at [REDACTED]. (*Id.*, 0916). Ms. [REDACTED] also wrote that the Student did not show up multiple times for a specially scheduled meeting to allow him to take a test, lied about losing assignments to avoid completing them, and skipped a major math test. (*Id.*, 0916-0917). Ms. [REDACTED] wrote that the Student would often make jokes when called on in class or during class discussions to avoid answering the question. (*Id.*, 0917).

97. On April 27, 2020, the Student's teachers provided a progress report. (P-20). In Algebra II and English, his teachers noted that he was struggling with turning in assignments on time. (P-20-03-04). His Physics and World History teachers reported that he was doing a good job turning in assignments timely. (P-20-06, 08).

98. On May 1, 2020, Ms. [REDACTED] emailed the Student to provide a progress report and wrote "you have increased your attendance and overall engagement online." (MCPS 143, 0922). She also wrote that "I have seen that you are missing a lot of work overall in multiple classes, but mainly in Science and Math." (*Id.*)

99. On May 12, 2020, MCPS convened an IEP team meeting for the purpose of determining the Student's eligibility for special education services. (P-21). The IEP team decided that the existing data, including the Student's educational history, Dr. [REDACTED]'s evaluation, and [REDACTED] data, was sufficient to establish the Student's eligibility as a student with a disability under the category of Other Health Impaired (OHI). (*Id.*)

100. At the May 12, 2020, IEP team meeting, the IEP team also concluded that the Student met the criteria for emotional disability. (MCPS 49, 0236). The IEP team concluded that the Student had exhibited a general pervasive mood of unhappiness or depression over a long period of time and to a marked degree. (P-21-04). The IEP team further concluded that the Student's depression had caused adverse educational impact, relying in part upon the Student's

historical data related to school refusal, self-harm, and observational data from the Student's therapist. (P-21-05).

101. The delay between the February 2020 and May 2020 IEP team meetings was a result of the COVID-19 pandemic. (Ms. ██████ testimony, 6/3).

102. On or about June 1, 2020, the Student returned to ██████ for in-person learning. (Ms. ██████ testimony, 5/10, T. 54).

103. On or before June 8, 2020, the Student's teachers at ██████ submitted a progress report. (P-23). The Student's Algebra 2, Physics, and English 10 teachers all reported problems with the Student's completion of assignments. (P-23-03, 08, 20). The Student's Physics and English 10 teachers also reported problems with attendance. (P-23-03, 20).

104. On June 16, 2020, the IEP team met to develop an initial IEP for the Student. (P-24). The proposed IEP had fifteen minutes of counseling per week as a related service. (P-24-1).

105. The June 2020 IEP had the following instructional and assessment accessibility features:

- assistive technology – use of a word processor to support organization challenges when producing longer written responses;
- general administration directions clarified;
- spell check or external spell check device;
- small group;
- frequent breaks;
- reduce distractions to self;
- reduce distractions to others;

- access to notes and outlines; and
- extended time (1.5x).

(MCPS 50, 0250-253).

106. The June 2020 IEP had the following instructional supports:

- pair verbal with visual instruction (daily);
- provide rubrics, exemplars, and checklists for written assignments (periodically);
- repetition of directions (daily);
- provide Student with copy of student/teacher notes (daily); and
- provide assistance with organization (daily).

(*Id.*, 0254-0255). The June 2020 IEP also provided a program modification to break down assignments into smaller units. (*Id.*, 0255).

107. The June 2020 IEP had the following social/behavioral supports:

- use of positive/concrete reinforcers (daily);
- support with accessing problem-solving strategies (daily);
- social skills instruction (periodically);
- bank of strategies to manage stress (periodically); and
- strategies to initiate and sustain attention (daily).

(*Id.*, 0255-0256).

108. The June 2020 IEP had the following goals and objectives:

- Self-advocacy
 - The Student will select an accommodation for his own use in a specific situation

- The Student will ask for help when confused, frustrated, upset, angry, etc.
- The Student will ask for allowable accommodations adults need to provide.
- Executive functioning
 - The Student will realert to task after becoming distracted given a nonverbal cue to do so;
 - The Student will return homework and classwork within agreed-upon time frame;
 - The Student will record all assignments and teacher-assigned requests in a planner of his choosing;
 - The Student will complete all parts of multi-part assignments;
 - The Student will set priorities for completion of multiple assignments based on variables such as due dates, length, complexity;
 - The Student will use a checklist to monitor task completion.
- Social and behavioral regulation
 - The Student will identify triggers and feelings for anxiety, worry, distress, frustration, anger, upset, etc.;
 - The Student will discuss problems and possible solutions/strategies with a self-chosen adult before becoming anxious, worried;

- The Student will use a strategy to return to a state of calm after becoming upset, angry, frustrated, etc.;
- The Student will debrief with self-chosen adult after becoming anxious, worried, distressed, upset, angry, frustrated, etc.
- Executive functioning
 - The Student will create and maintain a personal mission statement in which he will envision a short-term view of personal success;
 - The Student will author and review a personal weekly goal that is designed to advance the development and utilization of a skill or strategy to support his overall organizational growth;
 - The Student will identify, select, and explore academic and organizational tools and strategies from which he will then work to develop and maintain those that best serve his needs.

(*Id.*, 0261-0264). The IEP team used language provided by the staff at [REDACTED] for the executive functioning goal. (MCPS 51).

109. The IEP team proposed that the Student participate in the [REDACTED] [REDACTED] [REDACTED]) program at [REDACTED]. (P-24-1). The program would consist of four general education classes: English, Math, Science, and Social Studies. (*Id.*) The general education classes would be taught by a general education teacher and supported by one paraeducator. (Ms. [REDACTED] testimony, 6/3). The program would also have a self-contained special education Resource class with a maximum of fifteen students staffed by a special education teacher and

paraeducator. The Student would work on his IEP goals in this class. (P-24-1; Ms. [REDACTED] testimony, 6/3).

110. The Parents did not agree to the June 2020 IEP. (MCPS 52, 0277). They stated that they did not believe the Student could be successful in a comprehensive high school setting, and that he needed to be in a residential program. (*Id.*) They did not disagree with anything other than the placement recommendation. (Ms. [REDACTED] testimony, 6/3).

111. On June 18, 2020, Ms. [REDACTED] emailed Ms. [REDACTED] and reported that the Student had increased his work completion after a staff member began to sit with him during the academic day. (MCPS 146, 0928).

112. On June 22, 2020, Ms. [REDACTED] emailed the Student to inform him that he was behind on a “large chunk of work.” (MCPS 147, 0931). The Student had not completed any assignments the entire term in History, was one week behind in Art, and was missing a few assignments in Math. (*Id.*)

113. On July 20, 2020, the Student was eight assignments behind in Math, was doing the “bare minimum” in digital photo editing per his teacher and was working to catch up on missing assignments in his other two classes. (MCPS 148, 0932).

114. The Student did not complete all his Math work by the end of the term that ended in July 2020 and was given a grade of Incomplete. (MCPS 150, 0939). The Student had ten missing assignments in History at the end of the term that ended July 2020 and misrepresented to Ms. [REDACTED] the amount of work that he had completed – he received a grade of Incomplete. (*Id.*, 0938).

115. On August 17, 2020, the Parents requested that MCPS place the Student at [REDACTED]. (P-27-1).

116. On August 21, 2020, Mr. [REDACTED] sent an email to [REDACTED] staff and wrote “we have some sense that each teacher in [REDACTED] is working independently rather than as part of a team (with the therapist included).” (MCPS 152, 0948). In response to Mr. [REDACTED]’s concerns regarding the Student’s workload, [REDACTED], Academic Director at [REDACTED], wrote that “even if a student is struggling, they are still expected to go to class, and to get some academic work done . . . he will still be getting assignments even if he is still struggling – he has the resources here to help him succeed. A big part of [the Student’s] work is learning to accept that help.” (*Id.*, 0947). Mr. [REDACTED] responded by email to clarify that “[the Student] did well with online learning when he was home during the spring.” (*Id.*, 0945).

117. On August 24, 2020, the Student had not completed any work for the term in World History and Algebra 2. (MCPS 151, 0942). [REDACTED] staff observed him playing video games during Algebra 2 for most of the class period. (*Id.*)

118. On September 9, 2020, MCPS informed the Parents that it would not place the Student at [REDACTED] (P-27-2).

119. The Student has a Positive Development Treatment Plan at [REDACTED] that contains the following goals:

- build positive decision-making goals;
- establish and maintain trusting relationships;
- establish a more positive role in the family;
- develop resiliency and self-sufficiency; and
- embrace and implement healthy lifestyle changes.

(P-28). The plan does not identify a way to track progress towards the goals. (*Id.*) The plan includes individual therapy (1x week for 30-60 minutes and as needed), family therapy (1x week for 30-60 minutes and as needed), and group therapy (2x week for 85 minutes).

120. On October 9, 2020, the Student completed his Physics course at [REDACTED] and received a grade of C+.

121. On October 21, 2020, the C-IEP team met to discuss the Student's placement for the 2020-2021 school year. (P-30). MCPS proposed updating the present levels of performance on the Student's IEP but needed additional documents and quantitative data from [REDACTED] and [REDACTED] (P-30-1). The Student's academic advisor ([REDACTED]) and counselor [REDACTED] from [REDACTED] attended the meeting and gave feedback on the Student's progress. (P-30-02). Ms. [REDACTED] told MCPS that the Student has an individualized learning plan. (*Id.*) Ms. [REDACTED] described how the Student's emotions, especially anger, cause him to refuse to engage academically. (*Id.*) She also described problems with peer relationships and the Student's dishonesty as a cause of those problems. (*Id.*) Mr. [REDACTED] requested that goals for emotional regulation and appropriate risk taking be added to the IEP. (*Id.*)

122. After the IEP team meeting on October 21, 2020, the Student provided MCPS with a copy of the Student's Positive Development Treatment Plan dated September 4, 2020. (P-28). The plan does not contain any data but has a summary that highlighted that the Student continues to struggle when emotionally overwhelmed and sometimes avoid responsibilities when he is unable to self-soothe. (P-28-1).

123. Based on the Positive Development Treatment Plan, the C-IEP team updated the Student's present levels of performance and added a social emotional/behavioral goal to the IEP. (P-31-1).

124. On November 24, 2020, the C-IEP team met again to discuss placement for the Student. (P-31). The C-IEP team proposed placement at the [REDACTED] program at [REDACTED] High School. (P-31-1). The C-IEP team ruled out the [REDACTED] program because it determined the Student needed more social-emotional supports than [REDACTED] could offer. (*Id.*) The C-IEP team proposed the [REDACTED] program because it has on site mental health supports and smaller self-contained classes. Ms. [REDACTED] stated that online schooling does not work for the Student. (P-31-2).

125. The November 2020 IEP had the same instructional and assessment accessibility features, instructional supports, program modification, and social/behavioral supports as the June 2020 IEP. (P-32-15-22).

126. The November 2020 IEP had the same goals and objectives as the June 2020 IEP and one additional goal:

- Social emotional/behavioral
 - The Student will participate cooperatively with a small group of students;
 - The Student will accept responsibility for his actions and effect on others;
 - The Student will perceive and respond to social situations/interactions during group activities based on the expected norms of the group as established by the teacher;
 - The Student will communicate effectively by providing on-topic ideas/suggestions/comments with his peers in order to

make decisions and complete small group assignments in cooperative learning environments;

- The Student will make remarks to others that are courteous and constructive and avoid peer conflict;
- The Student will initiate/engage in age-appropriate social interactions with peers.

(P-32-27-30).

127. The November 2020 IEP provided that the Student would receive thirty minutes of counseling each week to address his IEP goals. (P-32-31). Every student in the [REDACTED] program has the same amount of counseling outlined in their IEP. It functions as a baseline and consists of group and individual counseling. (Ms. [REDACTED] testimony, 6/4, T. 14-15, 18-19, 76).

128. The November 2020 IEP provided that the Student would be removed from the general education environment for 100% special education services and would not participate with non-disabled peers in any academic, non-academic, and extracurricular activities. (P-32-33-34). The [REDACTED] program has a separate entrance for students, dismisses earlier than [REDACTED] High School, and the students eat separately from general education students. (Ms. [REDACTED] testimony, 6/4, T. 22).

129. Each student in the [REDACTED] program has a case manager to assist with academics. (*Id.*, T. 21-22).

130. Each Friday, students in the [REDACTED] program attend an environmental center for hands-on learning. (*Id.*) The morning session is focused on academics, while the afternoon session is focused on social skills. (*Id.*)

131. The [REDACTED] program has a mindfulness room to help students self-soothe. (*Id.*, T. 22).

132. The [REDACTED] program was conducted remotely from March 2020 until March 15, 2021. (*Id.*, T. 23). MCPS conducted individual counseling by Zoom but no group counseling occurred because of confidentiality concerns. (*Id.*, T. 23-24). MCPS staff made outdoor home visits for students that struggled to engage in online learning. (*Id.*)

133. Most students in the [REDACTED] program have emotional disability as their primary diagnosis on their IEP. (*Id.*, T. 56). Approximately 20% of students in the [REDACTED] program have an OHI diagnosis. (*Id.*, T. 74).

134. Class sizes in the [REDACTED] program are between three and twelve students. (*Id.*, T. 34). Most students are average or above average academically. (*Id.*, T. 35).

135. The Parents did not follow up with anyone at MCPS regarding the [REDACTED] program after the C-IEP meeting in November 2020. (*Id.*, T. 38).

136. On December 18, 2020, the Student completed the following courses at [REDACTED]

- Algebra 2 (Grade: C-);
- World History (Grade: C);
- Studio Arts (Grade: B-); and
- English 10 (Grade: B).

(P-41-1). The Student's Studio Arts teacher reported that he became less engaged in art and gave him a grade of 18/100 for effort/behavior with poor ratings in work habits and work ethic.

(P-41-2-3). The Student's World History teacher reported that he struggled to complete assignments for most of the term. (P-41-8).

137. In February 2021, the Student's teachers at ██████████ drafted a progress report for the Student. (P-34). The Student's academic advising teacher reported that he had begun to turn in weekly goal sheets after being reminded that it is a graded course. (P-34-2). The Student's Advanced Algebra teacher reported that he was missing a few assignments but otherwise doing well. (P-34-4). The Student's Chemistry teacher reported that the Student had fallen behind but then caught up. (P-34-6). The Student's English teacher reported that the Student was falling quite behind and not passing because of missing homework assignments and an essay. (P-34-8). The Physical Education teacher reported that the Student had needed redirection from staff on multiple occasions to complete his daily requirements. (P-34-9).

138. In February 2021, the Student's Government teacher noted that the Student was having trouble fully engaging and was sometimes reluctant to come to class. (MCPS 155).

139. On or around February 9, 2021, Dr. ██████████ interviewed the Student and gave certain checklists to the Student, his teachers, and Ms. ██████████ (P-51). The Student did not endorse significant anxiety or depression symptoms in the checklists. (P-51-10). Ms. ██████████ reported a very elevated total score on the Multidimensional Anxiety Scale for Children (MASC-2). (P-51-16). On the Adaptive Behavior Assessment System, Ms. ██████████ rated the Student as below average. (P-51-17). On the Achenbach Child Behavior Checklists, Teacher 1 reported a clinically significant level of Anxiousness/Depression, and Attention Deficit/Hyperactivity problems. (*Id.*) Teacher 2 reported a borderline score in the Anxious/Depressed category. (*Id.*) On the Comprehensive Executive Function Inventory (CEFI), Teacher 1 reported a Low Average overall score for the Student, with Below Average scores in the subcategories of attention, organization, and working memory. (P-51-18). Teacher 2 reported an Average overall score for the Student with a Low Average score in the subcategory of organization. (*Id.*)

140. On an unspecified date, the Student forged a letter saying bad things about him and signed it in the name of a female classmate. (P-51-11). When confronted about this incident, he denied responsibility. (*Id.*)

141. In March 2021, the Student's teachers at [REDACTED] drafted a progress report for the Student. (MCPS 75). The Student's U.S. Government teacher noted that the Student often seemed distracted by the emotional and social aspects of his life. (*Id.*, 0616). The Student's Advanced Algebra teacher noted that the Student struggled to finish his assignments on time. (*Id.*, 0618). The Student received a failing grade in English 11 and the teacher noted that he continued a pattern of falling behind on classwork and homework assignments and larger essays and projects. (*Id.*, 0620). The Student's Chemistry teacher noted that he was missing eight assignments and that he tended to procrastinate until grades close. (*Id.*, 0624).

142. On or about April 5, 2021, the Student's teachers submitted an update on the Student's academic progress to Ms. [REDACTED]. The teachers reported problems with coming to class on time, skipping classes, and missing work. (MCPS 159).

DISCUSSION

The Student is a sixteen-year-old with a diagnosis of ADHD, depression, and anxiety. MCPS provided the Student with accommodations for his ADHD during his 8th grade year. The accommodations were successful. In 9th grade, the Student started off well. However, in November, he engaged in cutting, and began to create fake social media profiles in a complicated and ultimately unsuccessful scheme to woo a female classmate. Beginning around this time, his grades started to slip. After MCPS discovered the Student's social media conduct in February and confronted the Student, he became depressed and refused to leave his room. Ultimately, he was hospitalized and then attended private residential schools in [REDACTED] and [REDACTED].

never returning to MCPS. In January of his 10th grade year, the Parents approached MCPS to request, for the first time, that the Student be evaluated for special education services. MCPS found the Student eligible for special education services and drafted two IEPs, both of which were rejected by the Parents. They argue that MCPS violated the IDEA by failing to evaluate the Student for special education services in 9th grade and proposing an IEP that did not provide FAPE. I conclude that MCPS did not violate the IDEA.

Burden and Standard of Proof

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case, the Parents are seeking relief and bear the burden of proof to show that the challenged actions by the MCPS did not meet the requirements of the law.

Applicable Law

I. General IDEA Framework and the FAPE Requirement

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 free appropriate public education [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* Md. Code Ann., Educ. § 8-403 (2018).

The IDEA defines a FAPE as special education and related services that:

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

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

The United States Supreme Court was first called upon to interpret what Congress meant by a FAPE in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Court held that if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a “free appropriate public education[.]” *Id.* at 189. The Court explicitly rejected the petitioner’s argument that the IDEA requires the provision of services sufficient to maximize each child’s potential commensurate with the opportunity provided other children. *Id.* at 198. Instead, the Court concluded that the basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the child. *Id.* at 201. The Court did not seek to define educational benefit but held that an IEP should be reasonably calculated to enable the child to receive passing marks and advance from grade to grade. *Id.* at 203-204. The Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07.

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, the agency must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001.⁷

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the Court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Id.* (quoting *Rowley*, 458 U.S. at 206). At the same time, the Court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Id.* at 1002.

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

⁷ The United States Court of Appeals for the Fourth Circuit reexamined its precedent to bring it in line with the standard announced by the U.S. Supreme Court in *Endrew F.* See *R.F. by and through E.F. v. Cecil County Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019).

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

II. Child with a Disability

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 defines “child with a disability” as 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* 34 C.F.R. § 300.8; Md. Code Ann., Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78). “Serious emotional disturbance” is defined as:

a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8(c)(4); COMAR 13A.05.01.03B(23). “Other health impairment” is defined as:

having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child’s educational performance.

34 C.F.R. § 300.8(c)(9); COMAR 13A.05.01.03B(51).

III. Child Find

The IDEA imposes an affirmative obligation known as “child find” on states, as follows:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C.A. § 1412(a)(3). The “child find” provision applies to, among others, “children who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade.” 34 C.F.R. § 300.111(c)(1).

To implement its child find obligations, local educational agencies (LEAs) are further required to evaluate children to determine whether they meet the definition of “child with a disability.” 20 U.S.C.A. § 1414(a); 34 C.F.R. § 300.122. LEAs are required to conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability. 20 U.S.C.A. § 1414(a)(1)(A); 34 C.F.R. § 300.301(a). The purpose of the initial evaluation is “(I) to determine whether a child is a child with a disability . . . and (II) to determine the educational needs of such child.” 20 U.S.C.A § 1414(a)(1)(C)(i); 34 C.F.R. § 300.301(c)(2). Either a parent of a child or an LEA “may initiate a request for an initial evaluation to determine if the child is a child with a disability.” 20 U.S.C.A § 1414(a)(1)(B); 34 C.F.R. § 300.301(b).

In conducting the evaluation, the LEA shall:

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

- (i) whether the child is a child with a disability; and
- (ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the

general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C.A § 1414(b)(2); 34 C.F.R. § 300.304(b). The LEA must also ensure that the assessment includes all areas related to the suspected disability. 20 U.S.C.A § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).

After the LEA conducts its evaluation, the IEP team, including the parents, must meet to determine whether the child is a “child with a disability” and the educational needs of the child.

20 U.S.C.A § 1414(b)(4)(A); 34 C.F.R. § 300.306(a)(1). The IEP team is required to review existing evaluation data on the child, including evaluations and information provided by the parents of the child. 20 U.S.C.A § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1). Based on the IEP team’s review of existing evaluation data, and input from the child's parents, the team must identify what additional data, if any, is needed to determine:

(i) whether the child is a child with a disability . . . and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

20 U.S.C.A § 1414(c)(1)(B); 34 C.F.R. § 300.305(a)(2). The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the additional data identified by the IEP Team. 20 U.S.C.A § 1414(c)(2); 34 C.F.R. § 300.305(c).

An LEA shall reevaluate each child with a disability:

- (i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (ii) if the child's parents or teacher requests a reevaluation.

20 U.S.C.A § 1414(a)(2)(A); 34 C.F.R. § 300.303(a). An LEA must reevaluate each child with a disability no more than once a year but at least once every three years, absent an agreement to alter this frequency. 20 U.S.C.A § 1414(a)(2)(B); 34 C.F.R. § 300.303(b).

Failure to meet the child find obligation may constitute a procedural violation of the IDEA. *T.B., v. Prince George's County Bd. of Educ.*, 897 F.3d 566, 572 (4th Cir. 2018) (citation omitted). But such a procedural violation “will be ‘actionable’ only ‘if [it] affected the student’s substantive rights.’” *Leggett v. D.C.*, 793 F.3d 59, 67 (D.C. Cir. 2015) (quoting *Lesesne ex rel. B.F. v. D.C.*, 447 F.3d 828, 832, 834 (D.C. Cir. 2006)).

IV. The IEP

The IEP is the “primary vehicle” through which a public agency provides a student with a FAPE. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017); *see also M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009). 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).

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).

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

At the beginning of each school year, each local educational agency is required to have in effect an IEP for each child with a disability in the agency's jurisdiction. 20 U.S.C.A. § 1414(d)(2)(A). At least annually, the IEP team is required to review a child's IEP to determine whether the goals are being met. 20 U.S.C.A. § 1414(d)(4)(A)(i).

V. Least Restrictive Environment

In addition to the IDEA's requirement that disabled children receive a FAPE, the law requires that, to the maximum extent appropriate, children with disabilities be educated with their non-disabled peers. 20 U.S.C.A. § 1412(a)(5). This requirement is referred to as "least restrictive environment." The IDEA mandates that removal of children with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A). Accordingly, in such a case a FAPE might require placement of a student in a private school setting that would be fully funded by the student's public school district. 34 C.F.R. § 300.115; COMAR 13A.05.01.10B.

An agency is required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R.

§ 300.115(a). The continuum is required to include alternative placements such as instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 C.F.R. § 300.115(b)(1). The continuum must also allow for supplementary services to be provided in conjunction with regular class placement. 34 C.F.R. § 300.115(b)(2).

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. 34 C.F.R. § 300.104. The determination as to whether a student needs services beyond the regular school day to receive any educational benefit is dependent on the particular facts of a case. *Burke County Board of Educ. v. Denton*, 895 F.2d 973 (4th Cir. 1990). Generally, if services provided in a residential facility are necessary for a student to make educational progress, then residential placement is required to provide the student with a FAPE; however, residential placement is not warranted when the residential placement merely “enhances an *otherwise sufficient* day program.” *Burke*, 895 F.2d at 895, *quoting Abrahamson v. Hershman*, 701 F.2d 223, 227 (3rd Cir. 1983) (emphasis in the original). Even though mental health issues can interfere with academic progress, the IDEA does not make public school systems responsible for residential placements that primarily address mental health issues. *A.H. v. Arlington Sch. Bd.*, 2021 WL 1269896 (E.D.Va. 2021) (citations omitted).

VI. Unilateral Private Placement

Parents may be entitled to retroactive reimbursement from a 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 upon in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child’s needs; and (3) overall, equity favors reimbursement. *See Id.* at 12-13.

Like an IEP, a parental placement is appropriate if it is “reasonably calculated to enable the child to receive educational benefits.” *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009). Evidence of actual progress is important but not dispositive in determining the appropriateness of the placement. *Id.* at 326-327. The private education services need not be provided in the least restrictive environment, but the tribunal may consider the restrictive nature of a placement in determining whether the placement was appropriate. *Id.* at 319, 327.

Equitable considerations are relevant in fashioning relief, and the tribunal enjoys broad discretion in fashioning such relief. *Burlington*, 471 U.S. 359 at 374, 369. Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. *Carter*, 510 U.S. at 16. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable. *Id.*

VII. The COVID-19 Pandemic and the IDEA

On March 12, 2020, Governor Lawrence Hogan ordered Maryland Public Schools, which includes MCPS, to close from March 16 through March 27, 2020, to protect public health by limiting the spread of COVID-19. On March 30, 2020, Governor Hogan issued a Stay at Home

Order allowing travel within the State only for essential purposes. After that, Governor Hogan and the Maryland State Department of Education (MSDE) extended the school closure through the end of the 2019-2020 school year, and the OAH suspended all in-person proceedings through July 6, 2020, holding emergency and special proceedings remotely.

In March 2020, the MSDE Division of Early Intervention and Special Education Services issued Technical Assistance Bulletin 20-01⁸ to provide some guidance to schools serving children during the pandemic. Incorporating by reference multiple documents⁹ from the United States Department of Education (DOE), the Technical Assistance Bulletin summarized:

These federal guidance are clear that the national health crisis does not abridge the rights of students with disabilities to a Free Appropriate Public Education (FAPE) and equal opportunity to educational services as their non-disabled peers, as required under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act (ADA).

Technical Assistance Bulletin 20-01, at 1. To clarify issues raised by special education stakeholders, Technical Assistance Bulletin 20-01 provided a fact sheet based on current federal guidance as of March 30, 2020. The following question and answer were presented in the fact sheet:

Q: Are the requirements for the provision of a FAPE to students with disabilities waived in times of emergencies such as the COVID-19 pandemic?

⁸ Maryland State Department of Education, Division of Early Intervention and Special Education Services, Technical Assistance Bulletin #20-1, Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic (March 2020). The document was subsequently revised in October 2020. <http://marylandpublicschools.org/programs/Documents/Special-Ed/TAB/20-01-ServingchildrenunderCOVID-19Pandemic.pdf> (last visited July 3, 2021).

⁹ United States Department of Education, Office of Special Education and Rehabilitative Services, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 12, 2020). <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf> (last visited July 3, 2021); Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities (March 21, 2020) <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (last visited July 3, 2021).

A: No. As the guidance from the DOE indicates, the IDEA does not provide the DOE with authority to waive the requirement to provide a FAPE, including meeting timelines for mandated actions under the statute, under any circumstances. This includes during the COVID-19 pandemic.

Technical Assistance Bulletin 20-01, at 2.

In addition to the DOE documents reference in Technical Assistance Bulletin 20-01, on March 16, 2020, the DOE Office of Civil Rights issued a Fact Sheet¹⁰ addressing COVID-19 and discrimination, including discrimination against students with disabilities. The Fact Sheet “provides information representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and is not legally binding.”¹¹ In discussing students with disabilities at elementary and secondary schools, the Office of Civil Rights Fact Sheet stated:

If a student who has an individualized education program (IEP) through the Individuals with Disabilities Education Act, or is receiving services under Section 504, is required or advised to stay home by public health authorities or school officials for an extended period of time because of COVID-19, provision should be made to maintain education services.

Supra.

On March 21, 2020, the Office of Civil Rights and the Office of Special Education and Rehabilitation Services jointly issued a Supplemental Fact Sheet¹² providing additional non-regulatory guidance from the DOE. In addition to reiterating that the requirements of a FAPE

¹⁰ United States Department of Education, Office of Civil Rights, Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020).

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf> (last visited July 3, 2021).

¹¹ Office of Civil Rights, Fact Sheet, *supra*, at 1.

¹² United States Department of Education, Office of Civil Rights and Office of Special Education and Rehabilitative Services, Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020).

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (last visited July 3, 2021).

still be provided during the COVID-19 public health emergency the Supplemental Fact Sheet further states:

Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.

Supplemental Fact Sheet, at 2.

The Supplemental Fact Sheet also addresses technology and a FAPE during the COVID-19 public health emergency. In discussing a flexible approach to providing educational and related supports and services, the DOE states “school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.” The Supplemental Fact Sheet continues:

although federal law requires distance instruction to be accessible to students with disabilities, it does not mandate specific methodologies. Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students.

Supra.

Analysis

- I. Whether MCPS violated the IDEA by failing to find the Student eligible for special education services prior to April 2019?

The Student argued that the MCPS violated the IDEA by failing to find the Student eligible for special education services before he withdrew from MCPS in April 2019. The Student argues that certain facts from his 9th grade year triggered the child

find requirement for MCPS and that, if MCPS had done an evaluation, it would have found him eligible for special education services under the IDEA. Therefore, MCPS's failure to evaluate him means that MCPS denied the Student a FAPE.

MCPS argued that there was no indication that the Student needed an IEP prior to the middle of 9th grade. MCPS argued that the Student experienced difficulties with work completion during the second marking period of 9th grade, but the 504 Plan was in place to address these issues and MCPS was working to adjust the strategies in that plan. MCPS argued that the Student's social/emotional problems did not impede his academic progress before February 2020. MCPS argued that it was ready to transition the Student back to [REDACTED] after his partial hospitalization, but Ms. [REDACTED] decided to withdraw the Student and enroll him at [REDACTED].

Either a parent of a child or an LEA "may initiate a request for an initial evaluation to determine if the child is a child with a disability." 20 U.S.C.A § 1414(a)(1)(B); 34 C.F.R. § 300.301(b). It is undisputed that the Parents did not initiate a request for an initial evaluation. Therefore, the question before me is whether MCPS should have initiated a request for an initial evaluation.

Evaluation should take place within a "reasonable time" after school officials are put on notice that behavior is likely to indicate a disability. *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 942 (E.D. Va. 2010) (citations omitted). Thus, the "child find" obligation is triggered where the LEA has reason to suspect that the child may have a disability and that special education services may be necessary to address that disability. *Id.* (citation omitted).

MCPS knew of the Student's ADHD diagnosis as of May 2017, the end of the Student's 7th grade year. Therefore, the question before me is whether, in ninth grade, MCPS had reason

to suspect that special education services may have been necessary to address the Student's ADHD, or whether there was reason to suspect that the Student may have had some other undiagnosed disability that required the provision of special education services.

I conclude that MCPS did not have reason to suspect in ninth grade that the Student's ADHD required special education services. I further conclude that there was no reason to suspect in ninth grade that the Student had some other undiagnosed disability that required the provision of special education services. Before turning to the Student's 9th grade year, it is necessary to discuss the Student's schooling prior to that year.

A. Background and 504 Plan

Until 4th grade, the Student attended MCPS schools. In 2013, he moved to [REDACTED] and attended [REDACTED] for 4th through 6th grades (2013-2016). He received mostly Bs and Cs during his final year of schooling in [REDACTED]. In 2016, the Student returned to the U.S. and attended [REDACTED] Middle School for 7th (2016-2017) and 8th (2017-2018) grades.

In 7th grade, the Student had a hard time transitioning from [REDACTED] to [REDACTED]. The Student's marking period average declined consistently from 3.14 in the second quarter to 2.85 in the third quarter to 2.71 in the fourth quarter. The Student's final grades improved slightly compared to his grades during 6th grade in [REDACTED].

The Student's teachers reported problems with organization, completion of assignments, and absences during the 2016-2017 school year. In May 2017, Ms. [REDACTED], the Student's counselor, set up a meeting to discuss the Student's problems with work completion and later that month, the Student was diagnosed with ADHD.

In July 2017, Ms. [REDACTED] found the Student eligible for services under Section 504 based on his ADHD diagnosis and completed a 504 plan for the Student. Ms. [REDACTED] determined that the Student required accommodations in all classes because he had executive functioning problems including trouble staying on task and organizing his thoughts. The 504 Plan addressed the Student's executive functioning problems through classroom accommodations such as furnishing clear directions to the Student, breaking assignments into smaller parts, eliminating distractions, and cueing for attention.

Around September 2017, the Student began seeing Dr. [REDACTED] for therapy, and began taking an antidepressant medication. The Student's diagnosis of depression was not shared with MCPS until January 2020 when MCPS received Dr. [REDACTED]'s report. Throughout the course of the year, Dr. [REDACTED] and Ms. [REDACTED] communicated regarding the Student, and Ms. [REDACTED] monitored and reported to Dr. [REDACTED] regarding the Student's work completion to gauge the effectiveness of adjustments to the Student's ADHD medication. When Dr. [REDACTED] retired in March 2018, she stated to Ms [REDACTED] that the ADHD medications were helping the Student but that he might need an increase in dosage. In or around March 2018, Dr. [REDACTED], the Student's primary care physician, wrote a prescription for [REDACTED], a short-acting ADHD medication, to help the Student focus and assist with completion of his homework.

Throughout the course of the 2017-2018 school year, MCPS implemented the Student's 504 Plan. In May 2018, at the annual review of the 504 Plan, the meeting summary indicates that the Student improved greatly over the course of the 2017-2018 school year in self-advocacy, quality of work, and participation. The Student's progress in 8th grade is corroborated by his final grades - the Student received As in PE and Spanish 2B, Bs in Spanish 2A, Algebra 1B, Advanced English, Advanced U.S. History, Investigation in Science, and Advanced Band, and a

C in Algebra 1A. Further, the Student's marking period average improved consistently from a 2.28 in the first quarter, to a 2.57 in the second quarter, a 3.00 in the third quarter, and a 3.14 in the fourth quarter. MCPS decided that the Student remained eligible for accommodations and would continue with the existing 504 Plan for his freshman year of high school. At the meeting, MCPS made minor adjustments to the 504 Plan such as the provision of teacher notes, approving the use of a computer for written assignments, and extended time for tests.

Also in May 2018, Ms. [REDACTED] and Dr. [REDACTED] sent nearly identical letters to the Principal of [REDACTED] requesting that the Student be allowed to attend [REDACTED] rather than his assigned school. Ms. [REDACTED] and Dr. [REDACTED] explained that the Student had become increasingly depressed and anxious at the thought of separating from his friends. Dr. [REDACTED] also noted that the Student had expressed some suicidal ideation regarding the situation. Neither letter requested an evaluation or suggested that the Student's anxiety or depression were impacting his ability to access the curriculum. MCPS ultimately approved the change of school assignment for the Student.

In summary, at the end of 8th grade the Student had a 504 plan in place to accommodate his disability of ADHD. The 504 Plan had produced positive results as demonstrated by teacher reports and his grades. The Student had also responded well to therapy and ADHD medication. MCPS had collaborated with the Student's psychologists to monitor his response to ADHD medication. The Student still experienced some executive functioning challenges that required the continuation of his 504 Plan. The Student also was taking medication to treat depression, but MCPS was unaware of this and there is no indication his depression impacted his academics at [REDACTED]. Finally, the impending transition to high school had produced anxiety, depression, and suicidal ideation in the Student, prompting the request for a change of school assignment to

ease the transition. Again, there is no indication in the record that the Student's anxiety or depression came to the attention of MCPS before Dr. [REDACTED] and Ms. [REDACTED] sent their letters to MCPS regarding the change in school assignment. Nor is there any indication that the Student's concerns impacted his academics during his final marking period as evidenced by the fact that he attained his highest grade-point average during that marking period.

B. Ninth Grade

The beginning of the Student's 2017-2018 school year at [REDACTED] was unremarkable. According to Ms. [REDACTED], the year started off well, in part because the Student had a group of friends that were good students. Ms. [REDACTED] was the Student's counselor at [REDACTED]. She recalled that the Student seemed to be doing well during the first month and a half of school.¹³ Ms. [REDACTED] received no communication from anyone expressing concern with the 504 Plan or the Student's accommodations. On October 31, 2018, Ms. [REDACTED] executed an authorization allowing for the exchange of confidential information between Ms. [REDACTED] and Dr. [REDACTED].¹⁴

In November 2018, the Student began to have difficulties at school. On November 4, 2018, the Student cut his arm while at home. Ms. [REDACTED] was not aware of the cutting until Ms. [REDACTED] called her on November 9, 2018. A friend of the Student told Ms. [REDACTED] that the Student had cut himself, and Ms. [REDACTED] spoke with the Student. The Student reported to Ms. [REDACTED] that he felt excessive pressure to succeed and had ongoing family conflict with his father. Per MCPS protocol, Ms. [REDACTED] called Ms. [REDACTED] and instructed her to make an appointment with Dr. [REDACTED]. Dr. [REDACTED] saw the Student that day and concluded that the

¹³ After the admission of 211 exhibits in this case and eight days of witness testimony, it is not apparent from the record what the Student's grades were during the first quarter of 9th grade.

¹⁴ It is not clear from the record as to why the release was signed on this date – but it corroborates the fact that there were no issues between the start of school and November 2018.

Student was not currently at risk to self or others but that he would follow the Student carefully in his therapy sessions.

After November 9, 2018, Ms. [REDACTED] started communicating with Dr. [REDACTED]. The Student did not miss a significant amount of class time because of the cutting incident. On November 19, 2018, Ms. [REDACTED] emailed Ms. [REDACTED] for assistance with ensuring the Student completed the work he had missed after the November 9, 2020 incident. Ms. [REDACTED] wrote that the Student was feeling very stressed and depressed and that she was trying to get him an appointment with Dr. [REDACTED]. On November 27, 2018, Ms. [REDACTED] emailed Ms. [REDACTED] regarding the Student's grades and reported improvement in the Student's depression and that he had been communicating with Dr. [REDACTED]. As of December 3, 2018, Ms. [REDACTED] reported that the Student was not in danger of failing any of his classes.

On December 11, 2018, Ms. [REDACTED] reported to Ms. [REDACTED] that the Student had not been going to see her for the few days prior and had not been completing some classroom work despite being reminded to do so by his teachers. Ms. [REDACTED] informed Ms. [REDACTED] that she would schedule an EMT meeting after winter break to discuss how to best support the Student.

Prior to that meeting, on January 8, 2019, Ms. [REDACTED] emailed Ms. [REDACTED] and wrote that Dr. [REDACTED] had recommended that the Student be screened for potential learning disabilities. Ms. [REDACTED] said that this could be part of the discussion at the EMT meeting if Dr. [REDACTED] wanted to participate.

The Student's teachers submitted Secondary Teacher Reports for the EMT meeting. The Student's Biology, English, and U.S. History teachers reported concerns with the Student's organization and participation. Each teacher in the above subjects, and his Spanish teacher, reported that the Student had problems with completing assignments. The Student's Biology and

U.S. History teachers reported that he had problems focusing, was distracted, and did not utilize his accommodations. None of the teachers reported any social/emotional concerns.

The EMT team, consisting in of Ms. [REDACTED] Ms. [REDACTED], the Student's History teacher, and Ms [REDACTED] met on January 16, 2018. Dr. [REDACTED] did not attend. The Student's History teacher reported improvements in the Student's engagement in class, comfort level in class, and schoolwork. The EMT team discussed adding new strategies like making a schedule, and a bi-weekly meeting with Ms. [REDACTED] and discussed allowing the Student to make annotations to his tests and keeping the same teachers for the Student. The EMT team also encouraged the Student to access his existing accommodations.

Ms. [REDACTED] testified that, after the EMT meeting, she spoke to Ms [REDACTED] who told her that if she wanted an evaluation of the Student done that the Parents would have to pay for it themselves. (Ms [REDACTED] testimony, 5/4, p. 38). Ms. [REDACTED] denied that this conversation took place. (Ms. [REDACTED] testimony, 6/1). Because of these conflicting accounts, I must make a credibility determination. I conclude that the Student has not proven that this conversation took place.

To begin, I note that there is no corroboration of the conversation in the record. This is striking considering the earlier email by Ms. [REDACTED] regarding Dr. [REDACTED]'s recommendation for an evaluation and the copious emails from Ms. [REDACTED] in the record. Dr. [REDACTED] did not testify to corroborate Ms. [REDACTED]'s account of the conversation.¹⁵ Further, the testimony of Ms. [REDACTED] was not credible. Mr. Eig first asked if, "subsequent to the [January 17th] meeting . . . did anyone from [MCPS] ever talk to you about evaluating [the Student]?" (Ms. [REDACTED] testimony,

¹⁵ Even though Dr [REDACTED] was not present at the Educational Management Team (EMT) meeting, it stands to reason that, had this conversation taken place, Ms. [REDACTED] would have discussed it with Dr [REDACTED], because he had already broached the idea of screening the Student for disabilities.

5/4, p. 38). Ms. [REDACTED] responded no. Mr. Eig then asked, “did you talk to Ms. [REDACTED] about evaluation at all after that meeting?” Ms. [REDACTED] responded in the affirmative, stating:

After that meeting I remember talking to Ms. [REDACTED] outside of her office and since Dr. [REDACTED] had recommended that an evaluation be done for any learning disabilities I asked her at that time if anything could be done or if she could get [the Student] evaluated through the school and she had told me then that a neuro psych evaluation needed to be done on my own because [MCPS] does not pay for that. She just said that if parents want it done then they pay for it themselves.

Q And you said that did she say specifically a neuro psych?

A Yes.

Ms. [REDACTED]’s answers are inconsistent. It is not possible that no one from MCPS talked to her regarding an evaluation, and at the same time Ms. [REDACTED] spoke with her regarding an evaluation. Further, it is also striking that Ms. [REDACTED] used the term “neuro psych evaluation” in her testimony. The earlier email to Ms. [REDACTED] does not use this term; instead, Ms. [REDACTED] wrote that Dr. [REDACTED] recommended that the Student be screened for potential learning disabilities. On March 21, 2019, Ms. [REDACTED] emailed Dr. [REDACTED] regarding the fact that Dr. [REDACTED] of [REDACTED] had recommended that the Student undergo a psychological assessment. (MCPS 85). In the email, Ms. [REDACTED] wrote: “I’m not sure what type of assessment she was specifically referring to . . . I’m just trying to figure out if this is something I need to schedule.” (*Id.*) Clearly, on March 21, 2019, two months after the alleged conversation with Ms. [REDACTED] took place, Ms. [REDACTED] did not know what a psychological assessment entailed. This email further discredits her testimony because Ms. [REDACTED] specifically used the term neuropsych(ological) evaluation in her testimony, and then confirmed that she discussed this type of evaluation with Ms. [REDACTED] in response to a follow-up question from Mr. Eig. Finally, on cross-examination Ms. [REDACTED] admitted that she had not requested any additional testing or services after the EMT meeting. (Ms. [REDACTED] testimony, 5/4, T. 151-152). She also admitted that the first time that a psychological evaluation was brought up was when the Student was at [REDACTED] (*Id.*, T. 157).

For all these reasons, I conclude that the Student has not proven that Ms. [REDACTED] had a conversation with Ms. [REDACTED] regarding an evaluation for the Student.

The Student also pointed repeatedly to the poor grades from the second quarter of ninth grade in support of his claim that MCPS violated the child find requirements of the IDEA. I admitted into evidence a document from [REDACTED] that is labelled Student Assignment Scores. (P-11-1-4). This document is dated January 23, 2019 and appears to list the Student's assignments and grades from the second marking period. No one testified as to who prepared this document, how it was prepared, or whether these grades changed after this point in time. As such, this document represents, at best, a snapshot of the Student's grades towards the end of the second marking period. As noted above, I do not know how these grades compare to the first marking period. Generally, they are much lower than the Student's grades from the end of the marking period in 7th and 8th grade. The Student had two failing grades, in Honors English and Honors Biology, and two Ds, in Geometry and Honors U.S. History.

It is not self-evident from the document that these grades represent the Student's overall grades or the cumulative grades for his student assignments only. Additionally, it is notable that the Student's grades show a preponderance of As and Es for individual assignments, leading to the inference, corroborated by the testimony of Ms. [REDACTED] and Ms. [REDACTED], that the Student was struggling to turn work in. After considering the Student's consistent struggles with work completion in 7th and 8th grade and the fact that he was still able to obtain above-average grades and make consistent progress during those years, I conclude that this document does not prove that the Student needed special education services at this point in time.

On February 22, 2019, Ms. [REDACTED] requested that Ms. [REDACTED] pick up the Student because he was being investigated for cyberbullying. This incident ultimately led to the Student's

withdrawal from MCPS in April 2019. [REDACTED] officials determined that the Student had created two fake profiles on social media. The Student used one of the accounts to impersonate a male classmate to try to end the relationship between a female and the male classmate. When the targeted students discovered that the accounts had been created by the Student, the Student threatened to [REDACTED] himself if the female ended their relationship. The school determined that the conduct had been occurring from November 18, 2018, until February 19, 2019 – which corresponds almost exactly to the period in which the Student’s assignment grades were poor. In the letter sent to the Parents, [REDACTED]’s Principal explained that the Student was to have no further contact with the other involved students.

On February 25, 2019, the Student arrived at [REDACTED] and was summoned to the counseling office and informed that the investigation had determined that he was responsible for the cyberbullying described above. Ms. [REDACTED] picked him up and brought him to Dr. [REDACTED] who determined that the Student was depressed but not suicidal. The Student never returned to [REDACTED] after February 25, 2019. That day, Ms. [REDACTED] wrote to the Student’s teachers asking them to excuse him from smaller assignments so that the Student could focus on major assignments after he returned to school and informed them that he would have a flash pass to counseling when he returned. On February 27, 2019, Ms. [REDACTED] emailed Dr. [REDACTED] to inquire if the Student would be hospitalized and to ask for updates as to the Student’s situation and if there were any added supports that MCPS could provide at school.

On March 6, 2019, the Student was admitted to [REDACTED], and he remained at the hospital until March 25, 2019. He then attended the hospital’s PHP until April 1, 2019.

On or about March 21, 2019, Dr. [REDACTED] of [REDACTED] recommended to Ms. [REDACTED] that the Student undergo a psychological assessment, but Ms. [REDACTED] did not share Dr. [REDACTED]’s

recommendation with MCPS. On April 2, 2019, Ms. [REDACTED], a nurse and case manager from [REDACTED] completed a report regarding the Student's educational services while he was at [REDACTED]. The report contained two out of a total of twenty-five listed educational recommendations:

- Follow up with Student after transitioning back to school (few day/weeks); and
- Assign makeup work to prove competency.

Ms. [REDACTED] commented that the Student completed school assignments at [REDACTED] and did not demonstrate any significant behaviors of concern. She did not refer the Student for special education services.

On or about April 3, 2019, Ms. [REDACTED] informed Ms. [REDACTED] that if the Student did not enroll at [REDACTED]'s educational program, then he would be able to stay enrolled at MCPS and work with Interim Instructional Services (IIS), or if he enrolled at [REDACTED]'s educational program then he would have to withdraw from MCPS. The Student withdrew from MCPS before an intake meeting could be held to discuss his return to MCPS including the recommendations from the [REDACTED] program. From April 2, 2019, until June 17, 2019, the Student attended [REDACTED]'s PHP program in [REDACTED], Maryland. After Ms. [REDACTED] withdrew the Student from MCPS, no further communication took place between anyone from MCPS and the Parents until January 2020.

Ms. [REDACTED] testified that typically she would communicate with a student's psychologist and have a better sense of the student's progress and what was needed in terms of support upon the student's return to school, but that did not occur in the Student's case. For this reason, she characterized the Student's withdrawal from MCPS as atypical and abrupt. She testified that the

Student could have returned to [REDACTED] and she was surprised he did not. She also explained that if the Student had expressed concern regarding a return to [REDACTED] another change of school assignment could have been made.

C. Analysis

I conclude that MCPS did not have reason to suspect that special education services may have been necessary to address the Student's ADHD in 9th grade. There is no evidence of any executive functioning issues during the first two months of the Student's 9th grade year. The Student's grades in the second marking period, at least until January 23, 2019, were poor. It would be appropriate to draw an inference from the EMT teacher reports that his poor grades at that point were, at least in part, traceable to his executive functioning issues.¹⁶ However, this does not mean that special education services were necessary to address the Student's executive functioning issues, which had not prevented academic progress in the past two school years. Indeed, it is entirely possible that the Student, as he had done at [REDACTED], could have completed or redone missing or incomplete assignments to bring his final grades up. In short, the Student's poor grades at a singular point in time during the second quarter, a quarter in which he was still transitioning to high school expectations and experiencing significant difficulties with peer interactions, are not a sufficient reason to suspect that special education services were necessary to address his ADHD.

I further conclude that the MCPS did not have reason to suspect that the Student may have had some other undiagnosed disability that required the provision of special education services. With respect to the Student's depression, there is no evidence from the Student's classroom teachers or Ms. [REDACTED] that any symptoms of this disability were evident prior to the

¹⁶ It is not clear what time period these reports cover, as they are undated. However, they were prepared in advance of the EMT meeting in January 2019.

cutting incident. Similarly, there is no indication that any symptoms of anxiety were evident prior to the cutting incident. In fact, the Student's Honors Biology teacher noted in her report for the EMT meeting that the Student "is frequently socializing with student(s) next to him during classroom tasks", which is not indicative of depression or anxiety. Following the cutting incident, Ms. [REDACTED] did note the Student's depression in emails to Ms. [REDACTED] and alluded to the fact that he was taking antidepressant medication. She also noted improvement in an email from the end of November. However, there is no record of any communication to MCPS from Ms. [REDACTED] or the Student's psychologists identifying a formal diagnosis of depression or stating that the Student's depression was interfering with his academic progress. As soon as the Student started to display school avoidance tactics in early December 2018 when he failed to report to his classroom for make-up assignments as directed by his teachers, Ms. [REDACTED] scheduled the EMT meeting. At this point, it would have been premature to suspect that the Student required the provision of special education services due to his depression since he had not demonstrated any school avoidance prior to the cutting incident, had not missed a significant amount of class time due to the cutting incident and subsequent depression, and had only just started to demonstrate school avoidance. Then, at the EMT meeting, the discussion revolved entirely around work completion and there is no record of any discussion of depression or anxiety. After the cyberbullying incident came to light, Ms. [REDACTED] again reported to Ms. [REDACTED] that the Student was depressed and withdrawn, and he subsequently refused to return to [REDACTED] Ms. [REDACTED] reached out to Dr [REDACTED] shortly thereafter to see if the Student would be hospitalized and if there was anything the school could do to support him when he returned to school. At this point, the Student's mental health was in an acute state, and he was hospitalized. MCPS was ready and

willing to discuss the Student's needs related to depression at an intake meeting after the hospitalization, but the Parents chose to withdraw him.

My conclusion that the Student has not proven that MCPS should have evaluated the Student for special education services during 9th grade is not altered by the testimony of the Student's witnesses.

Dr. [REDACTED] opined that the Student required services in the fall of his 8th grade year because of "the hospitalization, diagnosis of depression, diagnosis of anxiety, pharmacotherapy." (Dr. [REDACTED] testimony, 4/30, T. 73-74). However, except for the fact that the Student was taking ADHD medication, none of the above were known by MCPS in 8th grade. Ms. [REDACTED]'s testimony on the July 2017 hospitalization was inconsistent – on direct examination she testified she had told Ms. [REDACTED] about the hospitalization but then stated she could not remember if she had told her on cross-examination. Likewise, there is no credible evidence in the record that MCPS knew of the Student's depression diagnosis during 8th grade as Ms. [REDACTED]'s email to school staff only informed them of the ADHD diagnosis. The anxiety diagnosis came from Dr. [REDACTED]'s report which post-dates the Student's withdrawal from MCPS. For all these reasons, I do not give any weight to Dr. [REDACTED]'s opinion that the Student required special education services in 8th grade.

Dr. [REDACTED] also opined that the Student should have been evaluated for special education services after the cutting incident at [REDACTED], stating that the Student was the "embodiment" of an emotional disorder in February 2019. He explained that this opinion was based in part on the fact that Dr. [REDACTED] had wrote in his letter requesting a COSA that the Student had depression, anxiety, and suicidal ideation about the transition to high school. Again, while MCPS, and specifically the Principal of [REDACTED], would have been aware of these statements by Dr.

██████████, no one at ██████████ including Ms. ██████████, saw this letter. Indeed, Ms. ██████████ did not even execute a release allowing Dr. ██████████ to communicate with Ms. ██████████ until the cutting incident. It is also significant that Dr. ██████████ letter did not include any recommendations for further evaluation of the Student, highlight any needs of the Student in the classroom setting, or recommend that the Student should be screened for special education services.

Dr. ██████████ also focused on the cyberbullying incident and offered his opinion that the Student's behavior was part of his need for attention and use of maladaptive social media to obtain that attention, and that it stemmed from the Student's emotional disorder. However, there is no evidence of maladaptive social media use prior to the cyberbullying incident that the school was or should have been aware of.¹⁷ And the record does not reflect any such issues after the cyberbullying incident. There is no evidence that the Student's depression or anxiety caused him to proactively set up social media accounts for the purpose of discrediting a peer and winning the attention of a female student, nor was there any explanation from Dr. ██████████ to exactly how the Student's emotional disability caused this behavior. For all these reasons, I did not give Dr. ██████████'s opinion regarding the need for evaluation after the cutting incident any weight.

The case law offered by the Student in support of the argument that MCPS violated the child find requirements of the IDEA is similarly unpersuasive because the cases are factually distinguishable. All the cases involve conduct that persisted for a much longer period than the Student's conduct and was much more severe. The factual record in the cited cases also demonstrated a clear causal nexus between the students' conduct and poor academic performance. That causal nexus is lacking in this case – the conduct leading to the Student's

¹⁷ MCPS was not informed of the Student's prior hospitalization on an emergency petition in the summer before 8th grade. Even if MCPS had been aware of this incident, there is insufficient detail regarding the incident to support Dr. ██████████'s opinion that this was part of the Student's maladaptive, attention-seeking social media use.

school refusal did not take place in the classroom but rather online, and there is no evidence of the Student's depression or anxiety manifesting in the classroom setting.

The one Maryland case cited by the Student is *Bd. of Educ. of Montgomery County, Md. v. S.G.*, 230 Fed.Appx. 330 (4th Cir. 2007) (unpublished). In that case, the student's behavior began to change during her 5th grade year, when she stole money, wrote disturbing, suicidal ideas, and had difficulties staying organized and completing assignments at school. *Id.* at 331. The following year, the student's behavior worsened - she began to wet her pants and had to wear diapers, made violent and hyper-sexual writings, told her mother that she was hearing voices instructing her to harm herself, and struggled with memory and motivation. *Id.* After the student cut her legs and put pins in her ears - and told her mother she had heard voices instructing herself to stab herself - she was hospitalized at five different institutions over a period of almost two months. *Id.* at 331-332. The student missed twenty-two days of school in January and February 2004 during these hospitalizations. *Id.* at 332.

The student returned to school with a plan in place - she would have her assignment notebook monitored, be given class notes, increased time for homework and tests, an adjusted workload, and a "flash pass" so that she could leave class whenever she heard voices and wanted to go to the health room. *Id.* The student used the flash pass to leave school on eight days before she was hospitalized again between May 12 and June 14. *Id.* After the May hospitalization, the student's parents requested that the school complete a special education screening. *Id.* The school determined that the student had a disability of emotional disturbance, she had been agnosed with schizophrenia, but that she did not suffer an adverse educational impact because of the disability. *Id.* at 332-333.

The ALJ concluded that the school system had committed a substantive violation of the IDEA by failing to identify the student as eligible for special education services during her sixth-grade year and ordered the school system to fund the student's attendance at a therapeutic school. *Id.* at 333. The 4th Circuit affirmed the ALJ's decision, rejecting the school system's contention that the student's absence from school was a result of a medical condition and could not be addressed by special education, stating that the "evidence demonstrates that the public middle school environment aggravated S.G.'s symptoms and contributed to her hearing voices, zoning out, wanting to hurt herself, leaving class by using the flash pass, and being absent from school." *Id.* at 334-335.

This case is distinguishable because in *S.G.* (1) the student's disability was more severe and debilitating, (2) the disability began to impact the student's academic performance in the school year prior to the year in which the ALJ determined that the school system should have evaluated her, and (3) the student returned to school after her first hospitalization but had frequent absences and then another hospitalization. Further, the evidence established a clear causal nexus between the classroom setting and the exacerbation of the symptoms of the student's schizophrenia. The same circumstances are not present in this case.

The other cases that the Student relies upon are similarly factually distinguishable. In *Sch. Bd. of The City of Norfolk v. Brown*, 769 F.Supp.2d 928 (E.D. Va. 2010), the school district knew for at least two years that the student's psychiatric issues could be the basis for his behavioral issues. Here, there was no indication that the Student's behavioral issues stemmed from any disability. In *Brown*, the student's behavior included making threats against, becoming physical with, and harassing other classmates. *Id.* at 944. The student was also suspended on three other occasions prior to the disciplinary incident, including a long-term suspension that

gave rise to the due process hearing. *Id.* In a separate incident, the student was removed from school and referred to a behavioral program, based on his making verbal threats to other students. *Id.* Thus, the student's disciplinary history in *Brown* was longer and more serious than that of the Student. The District Court upheld the hearing officer's conclusion that the above behavior impeded the student's learning and that he should have been evaluated for special education services to address his behavior. *Id.*

In *Dep't of Educ., State of Haw. v. Cari Rae S.*, 158 F.Supp.2d 1190 (D.Haw. 2001), the Court upheld the hearing officer's conclusion that the state had failed to evaluate the student for a suspected disability and thereby violated the child find provisions of the IDEA. The student was ranked near the bottom of her class. *Id.* at 1192. The Student was absent from school many times (e.g., 159 absences in her sophomore year). *Id.* According to her counselor, she was suffering from stress and had numerous "behavioral referrals" from teachers. *Id.* She developed other disciplinary problems by her eleventh-grade year. *Id.* She also exhibited signs of drug usage and behavioral problems related to her relationship with her mother. *Id.* The student was then hospitalized after locking herself in her bathroom and threatening to ■■■ her mother. *Id.* This student's poor academic performance, the number of absences from school, and behavioral problems all differ greatly in degree from the Student's situation.

In *N.G. v. D.C.*, 556 F.Supp. 2d 11 (D.D.C. 2008), the student began to exhibit some emotional and behavioral problems in eighth grade. Due to a behavioral incident, N.G. had to spend the last month of eighth grade at a different school. *Id.* at 18. In ninth grade, the student began exhibiting low self-esteem, telling her parents that "everyone hated her" including the principal and her teachers. *Id.* She was reluctant to go to school and appeared sad. *Id.* In the spring of that year, N.G. attempted suicide by ingesting a bottle of aspirin. *Id.* She had to have

her stomach pumped and was hospitalized in the pediatric mental health unit for five days where she was formally diagnosed with clinical depression. *Id.* N.G. missed approximately two weeks of school due to this incident and her parents notified the school of the reason for her absence.

Id.

The student entered a different school in tenth grade and after the school issued her first report card, her parents discovered that her grades were extremely low and that her attendance had been erratic. *Id.* The student's mother immediately asked the student's teachers for help. *Id.* In January 2003, the school warned her parents that she was at risk for removal from the international studies program in which she was enrolled unless she improved her grades. *Id.* At that time, her grade point average was 1.4, the equivalent of a D+. *Id.* at 18-19. After the parents had the student evaluated, they gave the resulting report to several of the student's teachers, the school counselor, the principal, and the vice principal. *Id.* at 19. In April of that year, the student was again hospitalized because of her severe depression and suicidal intent. *Id.* The student was hospitalized for eleven days and the psychiatrists at the hospital instructed her to "work with the school" to set up a "disability program" and support system for student because she would need a lot of support. *Id.* In addition to medication and therapy, they also told her that N.G. needed "lots of teacher attention, lots of one-on-one, lots of focused work, [and] small classes." *Id.*

The student's mother informed the school of the hospitalization and the student's father requested that the school develop a 504 plan for the student. *Id.* at 19-20. In May, the student's physician wrote to the principal informing him of the student's diagnoses of ADHD and major depression. *Id.* at 20. She provided the student's treatment history and the various ways in which the student's conditions affected her, including "inattention, distractibility, impulsivity, disorganization, inefficiency, poor time management, inconsistent follow-through,

procrastination, poor working memory, low frustration tolerance, and low self-esteem.” *Id.* The student’s physician wrote a second letter in June that reiterated her diagnosis and informed the school that the student was not able to take her ADHD medication because of the interaction with other medications she was taking. *Id.* at 20-21. No one responded to any of the letters. *Id.* at 21.

The school met with the parents regarding the request for accommodations, but the accommodations suggested by the physician were not discussed at all and instead the focus was on ensuring that the student passed tenth grade. *Id.* The student failed four of her classes but was promoted to eleventh grade anyway. *Id.* Prior to the beginning of the next school year, the student’s mother spoke with the school counselor regarding the student’s need for one-on-one attention, but the counselor indicated she would not be able to meet with the mother until the third week of school at the earliest. *Id.* In response, the mother withdrew the student and placed the student at a private school. *Id.* at 21-22.

After the student had enrolled at a private school, the mother went to the public school to inquire about special education services and was first told that the school did not have the requisite forms and then that the parent could not request special education services because a teacher had to make the request. *Id.* at 23. The mother attempted to follow up with the special education coordinator, but he never called her back. *Id.* Ultimately, the parents obtained counsel and the school determined that the student was ineligible for special education services. *Id.* at 24.

The District Court concluded that the school district had violated the child find provisions of the IDEA by failing to evaluate the student in 2003, the spring of her tenth-grade year.

Id. at 26. The Court based its decision on the fact that the school knew of the student's suicide attempt and five-day psychiatric hospitalization in ninth grade, and her eleven-day hospitalization the following school year for severe suicidal ideation. *Id.* at 27. The Court also found it significant that the school also knew that beginning in 2002, the student's academic performance began to deteriorate severely, such that in 2003, she failed four of her seven classes when she had previously been an A and B student. *Id.* Finally, the Court relied upon the fact that the school received the parent's letter in which they expressed their belief that there was a correlation between the student's untreated depression and ADHD and poor grades in 2003, as well as the letter sent by the student's physician indicating his diagnosis of major clinical depression. *Id.* The facts in *N.G.* are distinguishable because MCPS did not know about the Student's earlier hospitalization, the Student did not attempt suicide, no one informed the school of the Student's diagnosis of depression, and there is no apparent causal relationship between the Student's depression and his poor academic performance.

In *New Paltz Cent. Sch. Dist. v. M.S.*, 307 F.Supp.2d 394 (N.D.N.Y. 2004), the student was excelling academically until 9th grade. That year, the student's academic performance began declining substantially. *Id.* at 395. The school psychologist observed that the student was either sad or angry and that he rarely smiled or made eye contact with adults. *Id.* Although the student saw several psychologists, he showed no signs of improvement. *Id.* The next year, the student's academic performance was substandard, his school attendance record was poor and his behavior at home worsened. *Id.* at 395-396. The school psychologist referred the student to a private residential boarding school and ultimately recommended placement there. *Id.* at 396. The school psychologist and principal sent a letter to the school district recommending placement at the private residential boarding school, but the school district refused to pay for the

student's tuition. *Id.* About a year and a half later, the school district placed the student at a separate residential school. *Id.* The hearing officer determined that the school district should have evaluated the Student for special education services when the counselor and principal wrote the letter recommending a residential placement, and the District Court agreed and affirmed the hearing officer's decision. *Id.* at 400-401. The main difference between *New Paltz* and this case is that no one from MCPS suggested that the Student required special education services, let alone a residential placement.

Thus, the contrast between the facts in the above cases and the facts in this case is clear. The most striking difference is in the length of time that the school systems in the cited cases were aware of the behavior tied to the students' disability, and the very clear manifestation of that behavior in the classroom setting. Both of those are lacking in this case, and the cited cases do not support the Student's position.

The Student also argued that MCPS was obligated to inform the Parents of their right to seek special education once it became clear that the 504 Plan was not meeting his needs. The Student's citation to 34 C.F.R. § 104.32 in support of this argument is misplaced. The citation is from Chapter 1 of Subtitle B of 34 Code of Federal Regulations. Part 104 of Subtitle B is dedicated to Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance and is intended to effectuate Section 504 of the Rehabilitation Act of 1973. 34 C.F.R. § 104.1. The Student did not raise any claims regarding Section 504 in the pre-hearing conference. Therefore, I will not consider the Student's claim that MCPS violated the implementing regulations for Section 504 by failing to give notice to the Parents pursuant to 34 C.F.R. § 104.32. The Student has not provided any other citation to the IDEA or its implementing regulations that supports the contention that MCPS should have informed the

Parents of their right to seek special education services for the Student even though MCPS had not identified him as a “child with a disability.”

In conclusion, the “child find” obligation was not triggered because MCPS did not have reason to believe during ninth grade that special education services were necessary for the Student. Then, the Parents withdrew the Student from MCPS before MCPS could assess his needs after his hospitalization. The Parents had the Student evaluated but did not share that evaluation with MCPS until January 2020. Therefore, between April 2019 and January 2020, there was no denial of a FAPE because MCPS did not receive any new or additional information to trigger its “child find” obligation.

II. Whether MCPS’s proposed IEP and placement for the 2020-2021 SY denied a FAPE to the Student?

The Student argues that MCPS’s proposed IEPs and placements for the 2020-2021 SY denied a FAPE to the Student. The Student argued that MCPS did not evaluate the Student and therefore I should not defer to their judgment regarding the appropriateness of either IEP. The Student argued that the [REDACTED] program was inappropriate, and everyone now agrees it is inappropriate. The Student argued that the [REDACTED] program was inappropriate because it came too late, and because it is missing some necessary services such as group counseling and family counseling.

MCPS argued that the June IEP and proposed placement in the [REDACTED] program were based on the information it had at the time, and that there was no information at that time to support the Parents’ request for a residential placement. MCPS argued that the November IEP and proposed placement in the [REDACTED] program was based on the additional information received from [REDACTED]

The Student does not assert that MCPS committed any procedural violations of the IDEA when developing the June and November IEPs. Therefore, my analysis focuses on whether the IEPs were reasonably calculated to enable a student to make progress appropriate in light of the Student's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *see also R.F. by and through E.F. v. Cecil County Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019).

I conclude that both the June and November IEPs were reasonably calculated to enable the Student to make appropriate progress in light of his circumstances. I conclude that both were appropriate based largely on the fact that the record demonstrates that the Student's executive functioning deficits were the primary focus of both MCPS and ██████████ prior to the June meeting, and that it only became apparent to MCPS in October that the Student required additional supports to address his emotional disability. This information deficit is not attributable to MCPS, which was entitled to rely on Dr. ██████████'s report in drafting the June IEP.

A. June 2020 IEP

i. Content of the IEP

The first IEP team meeting took place on February 5, 2020. The team reviewed academic notes and the transcript from ██████████, Dr. ██████████'s report, the 504 Plan, and MCPS's educational history for the Student, and determined that an additional assessment of the Student's emotional/social/behavior development was necessary. An assessment never took place. The team reconvened in May and determined that the existing data was sufficient to establish the Student's eligibility as a student with a disability under the category of OHI. Ms. ██████████ also concluded that the Student met the criteria for emotional disability, that the Student's depression had caused adverse educational impact and relied in part upon the Student's historical data related to school refusal, self-harm, and observational data from the Student's therapist.

The team reconvened in May 2020 to draft the IEP. The IEP had accessibility features such as the use of a computer for written assignments, small group, frequent breaks, reduce distractions to self and others, access to notes and outlines, and extended time (1.5x) for tests. The IEP contained instructional supports to be provided daily such as pairing verbal with visual instruction, repetition of directions, access to student/teacher notes, and assistance with organization. The IEP also contained additional support for writing assignments and a program modification to break down assignments into smaller units. The IEP had social/behavioral supports to be provided daily such as positive reinforcement, support with accessing problem-solving strategies, and strategies to sustain attention; and other supports to be provided periodically such as social skill instruction and strategies to manage stress. The IEP had fifteen minutes of counseling per week as a related service.

The IEP had four total goals: self-advocacy, emotional and behavioral regulation, and executive functioning goals (x2). The self-advocacy goal focuses on the Student's use of accommodations and request for help. The emotional and behavioral regulation goal focuses on identifying and proactively addressing emotional triggers and returning to calm after an emotional reaction. The first executive functioning goal is focused on work completion, staying on task in class, and organization. The second executive functioning goal, drafted in conjunction with Mr. [REDACTED] of [REDACTED], focuses on a mission statement, goal setting, and organizational tools selected by the Student.

The IEP team proposed that the Student participate in the [REDACTED] program at [REDACTED]. The program would consist of four general education classes: English, Math, Science, and Social Studies. The general education classes would be taught by a general education teacher and supported by one paraeducator. The program would also have a self-contained special education

Resource class with a maximum of fifteen students with a special education teacher and paraeducator and the Student would work on his IEP goals in this class.

ii. Analysis

Looking at the June IEP as compared to Dr. [REDACTED]'s report, the IEP contains all the recommended services and accommodations from the report including frequent teacher interaction, help with directions, help breaking down assignments into smaller components, and the use of an academic planner. These are all intended to address the Student's executive functioning deficits that result from his ADHD.

Dr. [REDACTED] wrote in her report that one-on-one or small group teaching would be "best" for the Student. Although the IEP does not contain one-on-one teaching for the Student, it does include small group as an accessibility feature. I do not find the absence of one-on-one teaching in the IEP to be significant. The recommendation does not speak to this Student's individual needs because it is obvious that every student with attention challenges will work "best" with one-on-one teaching and the IDEA does not require the best possible education. *Rowley*, 458 U.S. at 200.

Dr. [REDACTED] explained that this recommendation stemmed from the Student's distractibility and difficulty following through, but there are plenty of other places where these issues are addressed in the IEP such as: the accessibility features of small group, frequent breaks, and reduced distractions to self and others; the instructional supports of pairing verbal with visual instruction, repetition of directions, access to student/teacher notes, and assistance with organization; and the social/behavioral supports including strategies to sustain attention. And the success of the above interventions would be tracked in the IEP goals, primarily the executive

functioning goals but also the emotional and behavioral regulation goal. This represents an improvement from the approach at [REDACTED] which does not appear data driven.

Dr. [REDACTED] also recommended that the Student continue regular psychotherapy meetings, including work related to learning how to take responsibility, family work, and work on how to build friendships. In her testimony, she explained why this was important:

he was at risk. He had just gotten out of the hospital. He was transitioning to a new school. He had a lot of resentment towards his family, his family situation with his dad living in a different country. He was -- he had a lot of conflict about that, and his mom was by herself basically. Physically by herself trying to manage him. So that I felt like that was really important to make sure that he was going to be okay. He was going to be taken care of.

(Dr. [REDACTED] testimony, 5/3, T. 39-40). Dr. [REDACTED] did not specify in her report what she meant by “regular” or if there was a recommended frequency for the psychotherapy meetings.

MCPS was aware of the Student’s participation in therapy at [REDACTED] and the family dynamics. When Ms. [REDACTED] spoke with Ms. [REDACTED] and Ms. [REDACTED] in preparation for the June IEP team meeting, the discussion centered on the Student’s executive functioning difficulties, but there was discussion of the Student’s problems with Mr. [REDACTED]. Ms. [REDACTED] also informed Ms. [REDACTED] prior to the drafting of the June IEP, of the supports in place for the Student at [REDACTED] including family therapy. The Student’s Positive Development Treatment Plan from [REDACTED] has as one of the four goals “[e]stablish a more positive role in the family” and the summary from September 4, 2020 notes that:

[the Student] continues to improve on his family relationships and is an active participant in all family calls/sessions. [The Student] continues to learn to be more open about his problems, and is able to resolve conflict productively. [The Student] can still be dishonest with his parents about where he is academically.

(P-26). The document also shows the amount of therapy that the Student receives at [REDACTED]. The Student provided the treatment plan to MCPS in October 2020 in preparation for the

November IEP meeting. It is not clear why the Parents or ██████ did not share this document earlier.

The Student may have established that family therapy is a part of ██████'s treatment approach, but they have not proven that family therapy is necessary for the Student to benefit from the IEPs. *See* 20 U.S.C. § 1401(26)(A) (“‘related services’ means . . . services . . . as may be required to assist a child with a disability to benefit from special education[.]”) There is no indication that family therapy or the frequency of counseling was discussed during the IEP team meetings, even though the Student’s counselor, Ms. ██████ participated throughout the process. The IEP does not contain any strategies specifically related to the Student’s relationship with his family. But the IEP does contain strategies to enhance the Student’s ability to take responsibility for his actions, and social skills training, which could help address building healthy friendships and improving interactions with the Student’s family. Further, Dr. ██████’s report does not recommend that therapy must take place at a residential placement or during the normal school day – in other words, she did not write that the Student needed therapy as a related service to allow the Student to make educational progress. *See Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 894 (1984) (“only those services necessary to aid a handicapped child to benefit from special education must be provided . . . if a particular medication or treatment may appropriately be administered to a handicapped child other than during the school day, a school is not required to provide . . . services to administer it.”); *see also Burke County Board of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990). And she specifically declined to make any placement recommendations during her testimony. Ms. ██████ also did not testify specifically regarding the importance of family therapy to the Student’s progress. She explained that the family therapy was one time a week for one hour. (Ms. ██████ testimony, 5/4, T. 97).

Importantly, neither the Parents nor anyone that appeared on their behalf at the IEP team meetings requested that family therapy be included in the IEPs.

I also do not find the testimony of the Student's witnesses as to the appropriateness of the June IEP to be persuasive.

Dr. [REDACTED] testified that he believed the primary disability for the Student should have been emotional disability because of the cyberbullying incident and subsequent hospitalization. He also offered his opinion that the June IEP was not appropriate and explained:

It's not a therapeutic program to manage the complications of emotional and behavioral disorders that impact the kid's engagement in a classroom and availability for learning and capacity to develop relationships with peers and teachers that facilitate his learning. [REDACTED] is not a therapeutic program to manage the complications of emotional and behavioral disorders that impact the Student's engagement and capacity to build relationships.

(Dr [REDACTED] testimony, 4/30, T. 88). However, he also admitted that each of the accessibility features and supports in the IEP were appropriate for the Student. He did not identify, with specificity, what was missing from the June IEP. And on cross-examination, Dr. [REDACTED] admitted that he has never been qualified as an expert to testify about school placement.¹⁸

Ms. [REDACTED]'s testimony was similarly unpersuasive. She testified that the November 2020 IEP was not appropriate because the large classroom setting was too distracting for him. However, she did not speak at all to the content of the IEP and the various supports and goals related to managing classroom distractions. She also stated that the Student needed counseling support but did not acknowledge that the IEP included counseling.

I conclude that the Student has not proven that the June 2020 IEP denied him a FAPE because the IEP contains almost all the recommendations from Dr. [REDACTED]'s report and is

¹⁸ Dr. [REDACTED] also admitted that she was not offering any opinion regarding either of the Student's IEPs.

therefore individualized, and because the Student has not proven that the inclusion of one-one-one teaching and family therapy in the IEP is necessary to enable the Student to make progress.

Additionally, I decline to draw the inference that the June IEP was not appropriate from the fact that the November IEP has more supports, particularly counseling supports. MCPS witnesses were very clear in their testimony that there was little to no discussion of the Student's emotional disability with [REDACTED] staff prior to the June IEP meeting. The Parents did not complete the parental questionnaire, which was an opportunity to bring the Student's needs, especially counseling or other needs related to his emotional disability, to the attention of MCPS staff. There is no indication that counseling needs were discussed at the May or June IEP meetings and the Parents did not share the Student's Positive Development Treatment Plan, which outlines his therapy regimen, before the June IEP meeting.¹⁹

This is not a situation, such as [REDACTED] v. D.C., 888 F.3d 515 (D.C. Cir. 2018), where MCPS was reactionary and failed to obtain information needed to provide the Student with an adequate and tailored IEP. In [REDACTED] the student's first and second grade experiences were marked by bullying and other interpersonal conflicts between the student and other students. *Id.* at 519. Concerned about her behavior and academic performance, the student's parents took her in the spring of her second-grade year for a private psychological evaluation at their own expense. *Id.* In spring of the student's second grade year, a doctor diagnosed the student with ADHD and recommended that the student receive a functional behavioral assessment (FBA). *Id.* at 519-520. After more struggles at school, the school system scheduled an IEP meeting at the end of the student's third grade year, and quickly put an IEP plan in place for the student. *Id.* at 520. The

¹⁹ Indeed, it is unclear if this document existed at the time of the June IEP meeting, as it is dated September 4, 2020. Another plausible inference from this fact and the fact that all the discussion between MCPS and [REDACTED] before the June IEP meeting pertained to executive functioning issues is that [REDACTED] was not aware of the extent of the Student's needs related to his emotional disability at this time.

school did not conduct an FBA until the school year after the student's IEP was in place. *Id.* at 521. The Court remanded the matter to the district court for a determination of the sufficiency of the student's IEP, and particularly whether the school system had adequately evaluated the Student before offering the IEP.

In contrast to [REDACTED] Dr. [REDACTED]'s report provided the IEP team with a reasonable picture of the Student's skills and needs. By all accounts, it was comprehensive. Further, it was less than a year old at the time of the first IEP team meeting. With respect to classroom data, MCPS was at the mercy of [REDACTED] and [REDACTED]. Ms. [REDACTED] contacted [REDACTED], but no one returned her call. [REDACTED] provided some data regarding academics in the form of progress reports, but important components, like the Positive Development Treatment Plan, were not shared in a timely manner. [REDACTED] provided no data on the Student's emotional disability, or any goals related thereto. Further, the Parents did not complete the parent questionnaire and did not request any additional testing. These facts differ from the facts in [REDACTED] where the school system ignored a recommendation from the student's doctor to conduct a functional behavioral assessment. *Id.* at 519-520. No such recommendation for a specific type of assessment exists in this case.

B. November 2020 IEP

i. Content of the IEP

On October 21, 2020, the C-IEP team met to discuss the Student's placement for the 2020-2021 school year. MCPS proposed updating the present levels of performance on the Student's IEP but needed additional documents and quantitative data from [REDACTED] and [REDACTED]. Ms. [REDACTED] described how the Student's emotions, especially anger, cause him to refuse to engage academically. She also described problems with peer relationships and the

Student's dishonesty as a cause of those problems. Mr. Eig requested that goals for emotional regulation and appropriate risk taking be added to the IEP.

After the IEP team meeting on October 21, 2020, the Student provided MCPS with a copy of the Student's Positive Development Treatment Plan which has a summary that highlighted that the Student continues to struggle when emotionally overwhelmed and sometimes avoid responsibilities when he is unable to self-soothe. Based on Ms. [REDACTED]'s comments and the Positive Development Treatment Plan, the C-IEP team updated the Student's present levels of performance and added a social emotional/behavioral goal to the IEP.

On November 24, 2020, the C-IEP team met again to discuss placement for the Student and proposed placement at the [REDACTED] program at [REDACTED] High School. The C-IEP team ruled out the [REDACTED] program because it determined the Student needed more social-emotional supports than [REDACTED] could offer. The C-IEP team proposed the [REDACTED] program because it has on-site mental health supports and smaller self-contained classes.

The November 2020 IEP had the same instructional and assessment accessibility features, instructional supports, program modification, and social/behavioral supports as the June 2020 IEP. The November 2020 IEP had the same goals and objectives as the June 2020 IEP and one additional goal related to social emotional/behavioral considerations. The new goal focused on the Student's participation and cooperation with peers, his communication with peers, and accepting responsibility. The November 2020 IEP provided that the Student would receive thirty minutes of counseling each week to address his IEP goals. The November 2020 IEP provided that the Student would be removed from the general education environment for 100% special education services and would not participate with non-disabled peers in all academic, non-academic, and extracurricular activities.

Ms. [REDACTED] provided further background details on the [REDACTED] program. Class sizes in the [REDACTED] program are between three and twelve students and most students are on or above average academically. The [REDACTED] program has a separate entrance for students, dismisses earlier than [REDACTED] High School, and the students eat separately from general education students. Every student in the [REDACTED] program has the same amount of counseling outlined in their IEP and it functions as a baseline and consists of group and individual counseling. Each student in the [REDACTED] program has a case manager to assist with academics. Each Friday, students in the [REDACTED] program attend an environmental center for hands-on learning. The morning session is focused on academics, while the afternoon session is focused on social skills. The [REDACTED] program has a mindfulness room to help students self-soothe. The [REDACTED] program was conducted remotely from March 2020 until March 15, 2021. MCPS conducted individual counseling by Zoom but no group counseling occurred because of confidentiality concerns.

At the C-IEP meeting in November, Ms [REDACTED] stated that online schooling does not work for the Student. The Parents did not follow up with anyone at MCPS regarding the [REDACTED] program after the November C-IEP meeting.

ii. Analysis

The [REDACTED] program is very similar to the approach at [REDACTED]. Both have small class sizes. Both have counseling integrated into the program. Both provide a case manager to help the Student with academics and allocate a dedicated time to work on executive functioning goals. Nevertheless, the Student asserted that [REDACTED] would not have provided a FAPE because (1) the Student needs a residential placement; and (2) the Student does not do well with online learning.

I conclude that the Student has not proven the need for a residential placement and has not proven that the Student's unique needs require in-person, rather than online, learning.

I find Dr. [REDACTED]'s testimony unpersuasive regarding the appropriateness of the November IEP and the need for residential placement for the Student. Dr. [REDACTED] opined that the [REDACTED]S program was not appropriate for the Student – calling it “underdosing.” (Dr. [REDACTED] testimony, 4/30, T. 90). Like his critique of the June IEP, he did not identify specifically what is missing in the November IEP or which of the Student's needs were not being met by the November IEP. He stated that relationships with peers through the lens of social media was much of the problem at [REDACTED] but that is not supported by the record; instead, the focus of discussions between the IEP team and [REDACTED] staff was on the Student's executive functioning issues. Further, concerns regarding the Student's use of social media do not appear anywhere in the record besides the cyberbullying incident. He stated that the Student needs “a structure, an environment, that is fully integrated and allows generalization from the classroom to peer relationships to the therapy setting” but did not indicate why that could not be done at the [REDACTED] program, which is self-contained. He stated that the new goal focused on peer relationships from the November 2020 IEP had good objectives but that “the severity of the difficulties in this particular area . . . are such that he needs a continuous 24/7 structure with generalization and not this we will work on it one third of his day and hope it gets done.” (Dr. [REDACTED] testimony, 4/2, T. 181). However, he acknowledged that he did not know if [REDACTED] worked on these issues 24/7. He also justified his conclusion that a residential placement is necessary for the Student based on the severity of his disorders, but then admitted that everything in the IEP can be delivered in a non-residential setting. He stated that interaction with non-

disabled peers is the “crux of the issue” but did not acknowledge that there would be no interaction with non-disabled peers at the [REDACTED] program per the IEP.

Further, Ms. [REDACTED]’s testimony on the question of residential placement is lacking in specifics and is not sufficient to establish the Student’s need for a residential placement. Ms. [REDACTED] testified that the Student needed a residential placement because he would get distracted by what was going on socially and that would impact his academics. She also stated that there were sometimes that the Student needed to process anxiety and that did not occur during the school day.

On the placement continuum, a residential setting is more restrictive than most other placements and MCPS is required to consider less restrictive settings to help effectuate the IDEA’s least restrictive environment requirement. *See* 34 C.F.R. § 300.115(b)(1); 20 U.S.C.A. § 1412(a)(5). Thus, the standard for a residential placement is exacting. In *Burke County Board of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990), the Court explained that “[i]f the educational benefits which can be provided through residential care are essential for the child to make any educational progress at all, then residential care is required under the EHA [the precursor to the IDEA].” Moreover, a school system must ensure that the student’s placement is “as close as possible to the child’s home.” 34 C.F.R. § 300.552(b)(3).

Certainly, in this case, the Student has not shown that a residential placement is necessary for the Student to make progress appropriate in light of his unique circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). I reach this conclusion because I found MCPS’s witnesses more credible as to their rationale for recommending the [REDACTED] program, rather than a residential placement. MCPS’s witnesses provided more details to support their conclusion and those details are supported by the record.

Ms. [REDACTED] testified that a residential placement was not appropriate because the [REDACTED] program is a less restrictive setting than [REDACTED] and the Student's needs can be met by the program. She also testified that she relied on the fact that neither Dr. [REDACTED] nor anyone from [REDACTED] recommended that a residential placement was necessary for the Student. She stated that a residential placement is more proper in situations where a student's emotional disability is so severe that it significantly impacts their ability to access the academic curriculum. She gave the example of a student that has schizophrenia. She stated that there were no concerns expressed to her by [REDACTED] staff about the Student's emotional disorder impacting his ability to access the curriculum. [REDACTED] did inform her regarding the Student's maladaptive coping skills, manipulative behavior, and difficulties with his father, but she reasoned that none of these require a residential placement. Ms. [REDACTED] testified that there was not enough data in the present levels of performance to justify a residential placement. Mr. [REDACTED] testified that the C-IEP team recommended [REDACTED] because the Student's issues - namely task avoidance, low self-esteem, problems with peer interactions - fit the profile of the typical student in the program. Mr. [REDACTED] testified that the Student's social, emotional, and behavioral needs do not require a separate day program or a residential placement such as [REDACTED].

The Student also argued that the [REDACTED] program was not appropriate because it would have been online instruction. In evaluating the Student's argument regarding online learning, I found it significant that this issue was not raised at all by the Parents before the November 2020 meeting, even though MCPS transitioned to virtual learning even before MCPS confirmed the Student's eligibility for special education services.

The testimony of the Student's witnesses regarding online learning is again not persuasive because the record does not support their contentions. Dr. [REDACTED] opined that online

learning was a problem because: (1) online learning is especially difficult for students with ADHD; and (2) “the virtual environment . . . opens up a social media where [the Student] has played out these threats, harassment, self-destructive talk[.]” (Dr. ██████ testimony, 4/30, T. 92). The first rationale is not specific to the Student. The second rationale, also echoed by Ms. ██████ in her testimony, is not supported by the record. In fact, the Student participated in an online curriculum at ██████ and ██████. No concerns are evident in the record regarding any problems with peers caused by online learning. At ██████ certain progress reports note that he was doing better with online learning than in-person learning. (MCPS 143, 0921; MCPS 141, 0916).

Further, as the guidance from the MSDE and DOE demonstrate, the COVID-19 pandemic did not absolve MCPS or any other school district of its responsibility for providing a FAPE. What the guidance demonstrates is that some flexibility in the delivery of special education services was necessary in light of the COVID-19 pandemic and resulting school closures. In this case, the only service that the ██████ program would normally deliver that is precluded by online learning is group therapy. As with family therapy, there is no testimony that establishes that group therapy is necessary for the Student to benefit academically. And the IEP does not prescribe the specific type of counseling to be provided. Therefore, MCPS’s inability to conduct group therapy because of the COVID-19 pandemic does not mean that the IEP would not have provided a FAPE to the Student.

Conclusion

Parents who unilaterally change their child’s placement do so at their own financial risk. *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 373-374 (1985); *see also Florence County School District Four v. Carter*, 510 U.S. 7, 15 (1993). To obtain reimbursement, they

must prove that the proposed public placement violates the IDEA. *Carter*, 510 U.S. at 15. The Parents have not proven that MCPS failed to evaluate the Student for special education services, nor have they proven that the proposed IEPs were not reasonably calculated to enable the Student to make progress appropriate in light of the student's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). Therefore, they are not entitled to reimbursement for tuition at [REDACTED] and [REDACTED] nor are they entitled to placement at [REDACTED].

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that MCPS did not violate the IDEA by failing to find the Student eligible for special education services prior to April 2019. 20 U.S.C.A. § 1412(a)(3); 20 U.S.C.A. § 1414(a); 34 C.F.R. § 300.111; 34 C.F.R. § 300.122; 34 C.F.R. § 300.301.

I further conclude as a matter of law that MCPS's proposed IEP and placement for the 2020-2021 SY did not deny a FAPE to the Student. 20 U.S.C.A. § 1400(d)(1)(A); 20 U.S.C.A. § 1401(9); *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *R.F. by and through E.F. v. Cecil County Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019).

ORDER

I **ORDER** that the Parents' request for reimbursement of tuition expenses from [REDACTED] and for reimbursement of tuition expenses and placement at [REDACTED] is **DENIED**.

July 7, 2021
Date Decision Mailed

Brian Patrick Weeks
Administrative Law Judge

REVIEW RIGHTS

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

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

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

BPW/da
V2#192674

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE BRIAN PATRICK WEEKS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-20-15685

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parents:

- P- 1. Amended Request for Due Process, 12-8-20
- P- 2. MCPS Section 504 Plan, 7-27-17
- P- 3. Emails between ██████████ and Dr. ██████████, December 2017
- P- 4. Emails between ██████████ and Dr. ██████████, 2-8-18
- P- 5. Emails between ██████████, Dr. ██████████, Dr. ██████████ and parents, 3-1-18
- P- 6. MCPS Section 504 Plan Progress Reports, 5-1-18
- P- 7. MCPS Section 504 Plan Documentation, 5-11-18
- P- 8. Letter to ██████████ from Dr. ██████████, 5-16-18
- P- 9. MCPS Crisis Referral and Suicide Risk Reporting Form, 11-9-18
- P-10. Emails between parents and ██████████, 11-27-18 to 12-11-18
- P-11. MCPS Report Card and Secondary Teacher Reports, 1-23-19
- P-12. Letter to parents from MCPS regarding bullying, 2-25-19
- P-13. Email to Dr. ██████████ from parents, 2-28-19
- P-14. Neuropsychological Evaluation by Dr. ██████████, 4-25-19
- P-15. ██████████ Academic Reports, April 2019 to February 2020
- P-16. Letter to Stacy Reid Swain, Esq. from Michael J. Eig, Esq., 1-13-20
- P-17. MCPS Educational History with 2016-17 and 2017-18 report cards, 1-29-20
- P-18. ██████████ Learning Center Information and Program Overview
- P-19. ██████████ Learning Center Discharge Consideration, 3-31-20
- P-20. ██████████ Progress Report, 4-27-20
- P-21. MCPS Prior Written Notice and IEP Meeting Documentation, 5-12-20
- P-22. Student's Personal Mission Statement, 5-19-21
- P-23. ██████████ Academy Progress Reports, 5-27-20 to 6-8-20
- P-24. MCPS Prior Written Notice and Eligibility Documentation, 6-16-20
- P-25. Letter filing Request for Due Process, 7-30-20
- P-26. Email to MCPS from parents providing contact information for ██████████ staff, 8-15-20
- P-27. Letter to MCPS serving notice and MCPS response letter, 8-17-20 and 9-9-20
- P-28. Shortridge Academy Positive Development Treatment Plan, 9-4-20
- P-29. Email from Michael J. Eig, Esq. to Stacy Reid Swain, Esq. enclosing ██████████ Treatment Plan, 10-21-20

- P-30. MCPS Prior Written Notice, 10-21-20
- P-31. MCPS Prior Written Notice, 11-24-20
- P-32. Letter from MCPS enclosing Amended Draft IEP, 11-25-20
- P-33. Letter to Stacy Reid Swain, Esq. from Michael J. Eig, Esq. rejecting IEP and placement, 12-4-20
- P-34. ██████████ Progress, Report, 2-8-21
- P-35. Resume of Dr. ██████████
- P-36. Resume of Dr. ██████████
- P-37. Resume of Dr. ██████████
- P-38. ██████████ Academic Records, June to September 2019 and January and February 2020
- P-39. ██████████ Hospitalization Documentation, August 2017
- P-40. ██████████ Individualized Learning Plan, 2-10-20
- P-41. ██████████ Report Card and Progress Reports, 1-11-21
- P-42. ██████████ Transcript, 2-15-21
- P-43. Letter from ██████████ regarding Student's enrollment at ██████████ 2-15-21
- P-44. Emails between parents and MCPS, May and June 2017
- P-45. Emails between parents and MCPS, October to December 2017
- P-46. Emails between parents and MCPS, January and February 2018
- P-47. Emails and text messages regarding suicide threat, May and June 2018
- P-48. Student Transcript and Grades at ██████████ High School, September and October 2018
- P-49. Student Grades and Secondary Teacher Reports at ██████████ High School, January 2019
- P-50. Emails between parents and ██████████, January 2019
- P-51. Evaluation Records by Dr. ██████████, February 2021
- P-52. ██████████ Academy Progress Report, 3-5-21

I admitted the following exhibits, with Bates stamp numbering, on behalf of MCPS:

- MCPS-1. 000001-16 ██████████ Records
- MCPS-2. 000017 Summary of Parent Conference, 05-05-2017
- MCPS-3. 000018-38 Collection of Secondary Teacher Reports for 504, 06-2017
- MCPS-4. 000039-42 Section 504 Evaluation, 07-27-2017
- MCPS-5. 000043-46 Section 504 Plan, 07-27-2017
- MCPS-6. 000047 Collection of Emails Regarding 504 Accommodation, 07-28-2017
- MCPS-7. 000048 Authorization for Release – ██████████, 10-06-2017
- MCPS-8. 000049-56 Collection of Emails Regarding Teacher Feedback, 12-2017
- MCPS-9. 000057 Email from ██████████ to ██████████, 01-12-2018
- MCPS-10. 000058-60 Collections of Emails Regarding Teacher Feedback, 02-2018
- MCPS-11. 000061-65 Collections of Emails Regarding Teacher Feedback, 02-2018 – 03-2018
- MCPS-12. 000066-79 Collection of 504 Accommodation Review Worksheets, 05-2018
- MCPS-13. 000080-83 Section 504 Eligibility, 05-11-2018
- MCPS-14. 000084-88 Section 504 Plan, 05-11-2018
- MCPS-15. 000089 ██████████ Letter for change of school assignment (COSA), 05-16-2018

MCPS-16. 000090 Parent Letter for COSA, 05-16-2018

MCPS-17. 000091-99 Collection of Emails Regarding Enrolling, 07-2017 – 08-2018

MCPS-18. 000100 MCPS Unofficial Transcript, 10-14-2018

MCPS-19. 000101 Authorization of Release – [REDACTED] 10-31-2018

MCPS-20. 000102 Crisis Center Referral Information, 11-09-2018

MCPS-21. 000103-104 Suicide Risk Reporting Form, 11-09-2018

MCPS-22. 000105 Email to [REDACTED] Regarding Crisis Referral, 11-09-2018

MCPS-23. 000106 Authorization of Release – [REDACTED]

MCPS-24. 000107-108 Collection of Emails Regarding Absences, 11-19-2018

MCPS-25. 000109 Email from [REDACTED] Regarding Missed Work, 11-28-2018

MCPS-26. 000110-114 Collection of Emails Regarding Grades, 11-2018 – 12-2018

MCPS-27. 000115-116 Collection of Emails Regarding Counseling, 12-11-2018

MCPS-28. 000117 Invitation to Jan. 16, 2019, Educational Management Team (EMT) Meeting, 12-11-2018

MCPS-29. 000118-119 EMT Summary

MCPS-30. 000120 Email from [REDACTED] Regarding Absence, 2-24-2019

MCPS-31. 000121 Email from [REDACTED] Regarding Absence, 2-25-2019

MCPS-32. 000122 [REDACTED] Letter to Parents Regarding Cyber Bullying, 2-25-2019

MCPS-33. 000123 Email Regarding Absence & Intake Meeting, 2-27-2019

MCPS-34. 000124-125 Email to [REDACTED] Regarding Status, 2-28-2019

MCPS-35. 000126 Email to [REDACTED] Regarding School Letter, 2-28-2019

MCPS-36. 000127-129 Patient Education Background Form

MCPS-37. 000130 [REDACTED] Hospital Authorization, 03-06-2019

MCPS-38. 000131 Email to [REDACTED] Regarding Transfer from [REDACTED], 03-25-2019

MCPS-39. 000132-133 [REDACTED] Hospital Education Service Final Report, 04-02-2019

MCPS-40. 000134 Letter from Student’s Counsel to MCPS, 01-13-2020

MCPS-41. 000135 Email Sharing 4-24-19 [REDACTED] Assessment, 01-15-2020

MCPS-42. 000136-137 Notice of IEP Team Meeting, 01-22-2020

MCPS-43. 000138-139 Child Find Referral, 1-29-2020

MCPS-44. 000140-208 Email Prior to IEP Meeting Enclosing Documents, 01-30-2020:

- [REDACTED] Documents (MCPS_000141-167)
- [REDACTED] Report (MCPS_000168-190)
- Prior Section 504 Documents (MCPS_000191-204)
- Educational History (MCPS_000205-208)

MCPS-45. 000209-217 Email after IEP Meeting Enclosing Documents, 02-12-2020:

- Notice of Documents (MCPS_000210)
- Notice of IEP Meeting (MCPS_000211-212)
- Meeting Sign-In Sheet (MCPS_000213)
- 02-05-2020 Prior Written Notice (MCPS_000214-15)
- Notice and Consent for Assessment (MCPS_000216-217)

MCPS-46. 000218-219 Authorization of Release – [REDACTED] & [REDACTED], 02-05-2020

MCPS-47. 000220-227 [REDACTED] Progress Report, 04-27-2020

MCPS-48. 000228-230 Collection of Emails Regarding IEP Meeting, 04-2020 – 05-2020

MCPS-49. 000231-236 Email After IEP Meeting Enclosing Documents, 05-12-2020:

- 05-12-2020 Prior Written Notice (MCPS_000232-233)
- Team Consideration of External Report (MCPS_000234)
- Emotional Disability Evaluation Form (MCPS_000235-236)

MCPS-50. 000237-269 Email Prior to IEP Meeting Enclosing Documents, 06-10-2020:

- Notice of Documents (MCPS_000238)
- Draft IEP – 06-09-2020 (MCPS_000239-267)
- Notice of IEP Meeting (MCPS_000268-269)

MCPS-51. 000270-271 Email Enclosing Executive Functioning Goal, 06-16-2020

MCPS-52. 000272-278 Email After IEP Meeting Enclosing Documents, 06-23-2020:

- Approved Eligibility 4 Status Report (MCPS_000273-276)
- 06-16-2020 Prior Written Notice (MCPS_000277-278)

MCPS-53. 000279-280 MCPS 10 Day Letter, 08-07-2020

MCPS-54. 000281-288 Collection of Emails Regarding IEP Meeting, 10-2020

MCPS-55. 000289-317 Email Prior to Central IEP C-IEP Meeting Enclosing Documents, 10-06-2020:

- Notice of Documents (MCPS_000290)
- Notice of IEP (MCPS_000291-292)
- Draft Amended IEP (25 pages) (MCPS_000293-317)

MCPS-56. 000318-322 Email Enclosing 9-4-2020 [REDACTED] Plan to CIEP, 10-21-2020

MCPS-57. 000323-357 Email After October CIEP Enclosing Documents, 10-23-2020:

- Notice of Documents (MCPS_000324)
- Draft Amended IEP (31 pages) (MCPS_000325-355)
- 10-21-2020 Prior Written Notice (MCPS_000356-357)

MCPS-58. 000358-382 Email Enclosing Parents Revised [REDACTED] Report, 10-23-2020

MCPS-59. 000383-419 Email Prior to CIEP Meeting Enclosing Documents, 11-04-2020:

- Notice of IEP Meeting (MCPS_000384)
- Notice of Documents (MCPS_000385-386)
- Draft Amended IEP (33 pages) (MCPS_000387-419)

MCPS-60. 000420-459 Email Sent After CIEP Enclosing Documents, 11-25-2020:

- Prior Written Notice Letter (MCPS_000421)
- 11-24-2020 Prior Written Notice (MCPS_000422-423)
- Notice of Documents (MCPS_000424)
- Draft Amended 11-25-2020 IEP (MCPS_000425-459)

MCPS-61. 000460 Letter Rejecting IEP and Placement, 12-04-2020

MCPS-62. 000461-466 Email Enclosing Final Status Report, 12-10-2020

MCPS-63. 000467-468 [REDACTED] – Resume

MCPS-64. 000469-470 [REDACTED] Resume

MCPS-65. 000471-472 [REDACTED] – Resume

MCPS-66. 000473-475 [REDACTED] – Resume

MCPS-67. 000476-477 [REDACTED] – Resume

MCPS-68. 000478-479 [REDACTED] – Resume

MCPS-69.	000480-532	All Documents Received from [REDACTED]
MCPS-70.	000533-563	All Documents Received from [REDACTED]
MCPS-71.	000564-613	Selection of Documents Received from [REDACTED] Hospital
MCPS-72.	000614-625	Supplemental Documents Received from [REDACTED]
MCPS-73.	000626-633	Collection of Emails Regarding School Work, 05-2017
MCPS-74.	000634-639	Collection of Emails Regarding Spanish, 05-2017
MCPS-75.	000640-642	Collection of Emails Regarding Attention Deficit Hyperactivity Disorder (ADHD) Diagnosis, 05-2017
MCPS-76.	000643	Email Regarding Band, 09-26-2017
MCPS-77.	000644-647	Collection of Emails Regarding Therapy, 09-2017
MCPS-78.	000648-649	Emails Regarding Retake Test, 01-12-2018
MCPS-79.	000650-656	Collection of Emails Regarding English, 01-2018
MCPS-80.	000657-659	Collection of Emails Regarding Homework Club, 01-2018
MCPS-81.	000660-661	Collection of Emails Regarding Feedback from Teachers, 03-2018
MCPS-82.	000662-664	Collection of Emails Regarding Need for COSA, 05-2018
MCPS-83.	000665	Collection of Emails Regarding Thank You Gift, 06-15-2018
MCPS-84.	000666-667	Collection of Emails Regarding [REDACTED] Updates, 03-16-2019
MCPS-85.	000668	Email Regarding Potential Psychological Assessment, 03-21-2019
MCPS-86.	000669-672	Collection of Emails Regarding Programs, 03-2019
MCPS-87.	000673-674	Email Update to Dr. [REDACTED], 03-26-2019
MCPS-88.	000675	Email Regarding Refusing to Go to [REDACTED] 03-27-2019
MCPS-89.	000676-678	Collection of Emails Regarding Withdrawing from MCPS, 04-03-2019
MCPS-90.	000679-680	Collection of Emails Regarding Adjustment to [REDACTED], 04-09-2019
MCPS-91.	000681-686	Collection of Emails Regarding Refusing to Go to [REDACTED], 04-10-2019
MCPS-92.	000687-688	Email Update to Dr. [REDACTED], 04-15-2019
MCPS-93.	000689-693	Collection of Emails Regarding Illness at [REDACTED] 04-17-2019
MCPS-94.	000694	Collection of Emails Regarding Refusing to Go to [REDACTED] 04-18-2019
MCPS-95.	000695-702	BRIEF 2 Assessments, 04-25-2019
MCPS-96.	000703-704	Collection of Emails Regarding Attendance Resistance, 05-01-2019
MCPS-97.	000705-706	Collection of Emails Regarding Refusing to Go to [REDACTED] 05-13-2019
MCPS-98.	000707-708	Collection of Emails Regarding Illness at [REDACTED], 06-06-2019
MCPS-99.	000709	Collection of Emails Regarding Refusing to Go to [REDACTED], 06-07-2019
MCPS-100.	000710	Collection of Emails Regarding Refusing to Go to [REDACTED] 06-14-2019
MCPS-101.	000711-714	Collection of Emails Regarding Journal Entries, 07-04-2019

MCPS-102. 000715-716 Collection of Emails Regarding Attendance & Medication, 07-2019

MCPS-103. 000717-721 Collection of Emails Regarding Lying About Acting, 07-18 -2019

MCPS-104. 000722 Email Regarding Transition to Private School, 08-2019

MCPS-105. 000723-725 Collection of Emails Regarding Family Dynamics, 09-06-2019

MCPS-106. 000726-727 Collection of Emails Regarding Family Dynamics, 09-10-2019

MCPS-107. 000728-730 Collection of Emails Regarding Resistance to Residential, 09-2019

MCPS-108. 000731-733 Collection of Emails Regarding Gift Cards, 09-2019

MCPS-109. 000734-735 Emails of Questions Regarding ██████████ Residential, 09-2019

MCPS-110. 000736-737 Collection of Emails Regarding Attendance Resistance, 10-2019

MCPS-111. 000738 ██████████ Behavioral Expectations

MCPS-112. 000739-851 ██████████ “Discovering Your True Self” Workbook

MCPS-113. 000852 Collection of Emails Regarding Medication, 10-01-2019

MCPS-114. 000853-855 Collection of Emails Summarizing Arrival at Residential, 10-06-2019

MCPS-115. 000856-857 Academic Progress Report, 10-14-2019

MCPS-116. 000858-859 Collection of Emails Regarding Concerns About ██████████ 10-2019

MCPS-117. 000860-861 Academic Progress Report, 10-22-2019

MCPS-118. 000862-863 Academic Progress Report, 10-28-2019

MCPS-119. 000864-865 Academic Progress Report, 11-04-2019

MCPS-120. 000866-867 Academic Progress Report, 11-11-2019

MCPS-121. 000868-869 Collection of Emails Regarding Family Day, 11-12-2019

MCPS-122. 000870-871 Academic Progress Report, 11-18-2019

MCPS-123. 000872-873 Academic Progress Report, 11-26-2019

MCPS-124. 000874-875 Academic Progress Report, 12-09-2019

MCPS-125. 000876-877 Academic Progress Report, 12-19-2019

MCPS-126. 000878-880 Email Regarding Lack of Family Time on Christmas 12-23-2019

MCPS-127. 000881-882 Academic Progress Report, 12-23-2019

MCPS-128. 000883-884 Collection of Emails Regarding Boarding School, 12-27-2019

MCPS-129. 000885 Email Regarding Releases to Boarding Schools, 01-03-2020

MCPS-130. 000886-887 Academic Progress Report, 01-06-2020

MCPS-131. 000888-889 Collection of Emails Regarding Boarding School, 01-10-2020

MCPS-132. 000890-892 Collection of Emails Regarding Boarding School, 01-13-2020

MCPS-133. 000893-894 Academic Progress Report, 01-13-2020

MCPS-134. 000895-899 Collection of Emails Regarding Boarding School, 01-20-2020

MCPS-135. 000900-901 Academic Progress Report, 01-20-2020

MCPS-136. 000902-904 Collection of Emails Regarding Courses at ██████████, 02-11-2020

MCPS-137. 000905-907 Collection of Emails Regarding Course Credit, 02-2020

MCPS-138. 000908-909 Collection of Emails Regarding Welcome and Status, 02-2020

MCPS-139. 000910-912 Collection of Emails Regarding Cooperation with MCPS, 04-2020

MCPS-140. 000913-915 Collection of Emails Regarding Learning Center, 04-06-2020

MCPS-141. 000916-917 Collection of Emails Communicating with MCPS, 04-2020

MCPS-142.	000918-920	Collection of Emails Regarding Keeping Track of Classes, 05-2020
MCPS-143.	000921-922	Collection of Emails Regarding Online Learning, 05-2020
MCPS-144.	000923-925	Collection of Emails Regarding Concerns at [REDACTED] 06-2020
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MCPS-146.	000928-929	Collection of Emails Regarding Needs. 06-18-2020
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