

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

BEFORE WILLIS GUNTHER BAKER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-21-14752

DECISION

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STATEMENT OF THE CASE

On June 25, 2021, ██████████ and ██████████ (Father and Mother, collectively Parents), on behalf of their child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2019);² Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

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

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

I held telephone prehearing conferences on July 20, 2021 and August 17, 2021. The Parents were present and represented by Paula Rosenstock, Esquire. William Fields, Esquire, represented the MCPS.

I held the hearing on September 17, 20, 23, 24, and 28, 2021. Paula Rosenstock, Esquire and Michael Eig, Esquire, represented the Parents, who were present throughout. William Fields, Esquire, represented the MCPS and the MCPS representative at the hearing was Jennifer Lee Griffin.

Under the applicable law, a decision in this case normally would be due by August 13, 2021, which is forty-five days after resolution was waived in writing by the parties.³ 34 C.F.R. §§ 300.510(b)(2), (c)(1), 300.515(a); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). However, the parties requested an extension of the hearing dates into September because both counsel already had due process hearings scheduled throughout the month of August that would prevent scheduling this hearing. Mr. Fields also indicated that he would be on vacation at the end of August. Ms. Rosenstock indicated that she had a multi-day hearing scheduled for the first two weeks of September. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). Additionally, the parties requested that the timeline for the issuance of the decision be extended to thirty days past the conclusion of the hearing.

For the reasons discussed above, I found good cause to extend the hearing and decision dates beyond the forty-five day timeframe.

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-

³ Forty-five days is August 15, 2021, a Sunday, so the decision would be due on August 13, 2021.

413(e)(1) (2018); State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C;
COMAR 28.02.01.

ISSUES

Did the MCPS fail to grant a FAPE⁴ to the Student by providing an IEP⁵ and placement for the 2020-2021 and 2021-2022 school years that were not designed to meet the Student's individualized needs;

And if so, what is the appropriate remedy?

SUMMARY OF THE EVIDENCE

Exhibits⁶

Except as otherwise noted, I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 1 - Request for Due Process, June 25, 2021 (same as MCPS Ex. 1)
- Parents Ex. 2 - Neuropsychological Evaluation by Dr. [REDACTED], December 2017
- Parents Ex. 3 - Not Offered
- Parents Ex. 4 - MCPS Secondary Teacher Reports and Student Work Samples, September 2018
- Parents Ex. 5 - MCPS IEP and Prior Written Notice, October 15, 2018
- Parents Ex. 6 - MCPS IEP Progress Report, November 7, 2018 to June 14, 2019
- Parents Ex. 7 - MCPS IEP and Prior Written Notice, October 11, 2019
- Parents Ex. 8 - Diagnostic Educational Evaluation by Dr. [REDACTED], December 30, 2019
- Parents Ex. 9 - MCPS Prior Written Notice, April 20, 2020
- Parents Ex. 10 - MCPS Amended IEP, June 17, 2020 (same as MCPS Ex. 2)
- Parents Ex. 11 - MCPS Student Transition Interview, August 26, 2020

⁴ Free Appropriate Public Education.

⁵ Individualized Education Program.

⁶ Many of the exhibits offered by the parties are duplicates. For simplicity, when I reference a duplicate exhibit, I am only using the Parents' Exhibit number.

- Parents Ex. 12 - MCPS Prior Written Notice, September 11, 2020 (same as MCPS Ex. 4)
- Parents Ex. 13 - MCPS Prior Written Notice, October 12, 2020 (same as MCPS Ex. 5)
- Parents Ex. 14 - Speech Language Evaluation Report by [REDACTED], November 12, 2020
- Parents Ex. 15 - Psychological Evaluation by Dr. [REDACTED], November 18, 2020 (same as MCPS Ex. 6)
- Parents Ex. 16 - MCPS Team Consideration of External Report, November 24, 2020
- Parents Ex. 17 - MCPS Prior Written Notice and Intellectual Disability Worksheets, December 18, 2020 (same as MCPS Exs. 9 and 10)
- Parents Ex. 18 - MCPS IEP January 8, 2021 and Prior Written Notices January 11, 2021 and January 15, 2021
- Parents Ex. 19 - [REDACTED] Letter regarding placement, January 12, 2021
- Parents Ex. 20 - MCPS Student Progress Report, January 27, 2021
- Parents Ex. 21 - Email from MCPS to Parents regarding the Student's schedule, January 27, 2021
- Parents Ex. 22 - Withdrawn
- Parents Ex. 23 - Withdrawn
- Parents Ex. 24 - MCPS Reading Grade Report, March 16, 2021
- Parents Ex. 25 - MCPS IEP Amendment Documentation and Signed Consent Form, March 22, 2021
- Parents Ex. 26 - MCPS Amended IEP and Prior Written Notice, March 22, 2021 (same as MCPS Exs. 16 and 18)
- Parents Ex. 27 - MCPS IEP Progress Report, January 29, 2021 and April 16, 2021
- Parents Ex. 28 - MCPS Reading Grade Report, April 26, 2021
- Parents Ex. 29 - Withdrawn
- Parents Ex. 30 - MCPS Amended IEP and Prior Written Notice, May 25, 2021 and May 28, 2021

Parents Ex. 31 - MCPS Transition Planning and Anticipated Services Guide, August 1999

Parents Ex. 32 - Emails between Parents and MCPS, September 3, 2021

Parents Ex. 33 - MCPS Student Schedule, 2021-2022 School Year

Parents Ex. 34 - Resume of Dr. [REDACTED]

Parents Ex. 35 - Resume of Dr. [REDACTED]

Parents Ex. 36 - Resume of [REDACTED]

Parents Ex. 37 - Student's [REDACTED] Assignment, September 2021

Parents Ex. 38 - Not Offered

Parents Ex. 39 - Not Offered

Parents Ex. 40 - Not Offered

I admitted the following exhibits on behalf of MCPS:

MCPS Ex. 1 - Request for Due Process, June 25, 2021 (same as Parents Ex. 1)

MCPS Ex. 2 - MCPS Amended October 11, 2019 IEP, June 17, 2020 (same as Parents Ex. 10)

MCPS Ex. 3 - Prior Written Notice, August 21, 2020

MCPS Ex. 4 - MCPS Prior Written Notice, September 11, 2020 (same as Parents Ex. 12)

MCPS Ex. 5 - MCPS Prior Written Notice, October 12, 2020 (same as Parents Ex. 13)

MCPS Ex. 6 - Psychological Evaluation by Dr. [REDACTED], November 18, 2020 (same as Parents Ex. 15)

MCPS Ex. 7 - Team Consideration of External Report of Dr. [REDACTED] November 18, 2020

MCPS Ex. 8 - Team Consideration of External Report of Ms. [REDACTED], November 24, 2020

MCPS Ex. 9 - MCPS Intellectual Disability Worksheets, December 18, 2020 (contained in Parents Ex. 17)

MCPS Ex. 10 - MCPS Prior Written Notice, December 18, 2020 (contained in Parents Ex. 17)

MCPS Ex. 11 - Approved IEP, January 8, 2021

- MCPS Ex. 12 - Prior Written Notice, January 11, 2021
- MCPS Ex. 13 - Prior Written Notice, January 15, 2021
- MCPS Ex. 14 - Model Parental Consent Form Observation, March 22, 2021
- MCPS Ex. 15 - IEP Team Meeting Sheet, March 22, 2021
- MCPS Ex. 16 - MCPS Amended IEP, March 22, 2021 (Contained in Parents Ex. 26)
- MCPS Ex. 17 - IEP Amendment Changes, April 1, 2021
- MCPS Ex. 18 - MCPS Prior Written Notice, March 22, 2021 (Contained in Parents Ex. 26)
- MCPS Ex. 19 - Amendment of January 8, 2021 IEP, May 25, 2021
- MCPS Ex. 20 - Resume of [REDACTED]
- MCPS Ex. 21 - Resume of [REDACTED]
- MCPS Ex. 22 - Resume of [REDACTED]
- MCPS Ex. 23 - Resume of [REDACTED]
- MCPS Ex. 24 - Resume of [REDACTED]
- MCPS Ex. 25 - State Department of Assessments and Taxation Forms Re: Dr. [REDACTED]

Testimony

The Parents presented the following witnesses:

- The Father
- Dr. [REDACTED], Educational Consultant, accepted as an expert in special education
- [REDACTED], Counselor, accepted as an expert in professional counseling
- Dr. [REDACTED], Psychologist, accepted as an expert in clinical and school psychology

The MCPS presented the following witnesses:

- [REDACTED], MCPS Math Teacher, admitted as an expert in mathematics (general education)
- [REDACTED], MCPS Special Education Teacher, accepted as an expert in special education
- [REDACTED], MCPS Special Education Resource Teacher, accepted as an expert in special education
- [REDACTED], MCPS Speech Language Pathologist, accepted as an expert in speech language pathology
- [REDACTED], MCPS [REDACTED] ([REDACTED]) Teacher, accepted as an expert in special education

FINDINGS OF FACT

The parties agreed to the following stipulations of fact in the captioned case that I find as facts by a preponderance of the evidence:⁷

1. The Student is a seventeen-year-old student.
2. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), a Generalized Anxiety Disorder, and a mild Intellectual Disability.
3. Dr [REDACTED] assessed the Student on December 30, 2019 and issued a report on March 2, 2020.
4. In March of 2020, the MCPS transitioned to virtual learning due to the COVID-19 pandemic.
5. On April 20, 2020, the IEP team convened a meeting to develop an Individualized Distance Learning Plan (IDL), for the Student for the remainder of the 2019-20 school year.

⁷ Some slight changes have been made to the stipulations such as removing the Student's name, adding school year clarifiers, and changing to chronological order.

6. In October and November 2020, Dr. [REDACTED] conducted a psychological evaluation of the Student.
7. On December 18, 2020, the MCPS found the Student eligible for special education services as a student with Multiple Disabilities, including an Intellectual Disability and an Other Health Impairment (OHI) under IDEA.
8. On January 8, 2021, the IEP team proposed an IEP for the Student with the following services: 3 daily sessions of 50 minutes each of classroom instruction in the self-contained setting and 2 daily sessions of 50 minutes each of classroom instruction in the general education setting. The MCPS proposed that the Student be moved to the [REDACTED] ([REDACTED]) program at [REDACTED] for English, Math, Social Studies, and Science, while attending two elective classes in the general education setting with support. The MCPS also proposed 30 minutes weekly of counseling and 3 hours monthly of Speech and Language.
9. On March 22, 2021, the Parents participated in an IEP meeting and signed the consent to move the Student to the [REDACTED] ([REDACTED]) certificate track. One of the programs that awards a certificate of completion in [REDACTED] is [REDACTED]. The Student would also take the ALT-MISA and the MSAA.⁸
10. On March 22, 2021, the MCPS proposed placement in the [REDACTED] program at [REDACTED].
11. On May 25, 2021, the Parents attended an additional IEP meeting to add Extended School Year (ESY), services to the Student's IEP.
12. The Student returned to in person learning for the 2021-2022 school year.

⁸ Alternative Maryland Integrated Science Assessment and Maryland School Alternative Assessment.

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

The 2019-2020 School Year

13. At the beginning of the 2019-20 school year, the Student entered high school at MCPS's ██████ High School (██████) as a 9th grader with an IEP in the general education curriculum with supports and an ██████ Math class.

14. The Student's October 11, 2019 IEP identified her primary disability as Intellectual Disability. The IEP identified the areas affected by her disability that impeded her ability to progress in the general curriculum as: Academic: Math Calculation, Math Problem Solving, Reading Comprehension, Reading Fluency, Speech and Language Expressive Language, Written Language Content, Written Language Mechanics.

Behavioral: Attention, Social Interaction Skills.

15. The Student's October 11, 2019 IEP indicated that the Student had been administered various assessments in December 2017 and January 2018 and scored predominantly in the low to very low range, performing significantly below grade level. The IEP team determined that those scores were still a valid indicator of the Student's abilities and deficits. It was determined that the Student would receive Special Education services in a self-contained classroom for Reading Intervention and ██████ Math. The Student was also to receive special education services through inclusion in co-taught, supported classes in English, Social Studies, Science, and Resource; and three forty-five minute sessions monthly of speech-language services outside the general education setting.

16. The Student's October 11, 2019 IEP stated the following related to the basis for the decision of Least Restrictive Environment (LRE): "[The Student's] most recent psychological

and educational testing, along with the Fall 2019 SRI [Scholastic Reading Inventory] indicate that her reading and math skills are significantly below grade level. [The Student] requires self-contained classes for math and reading instruction in order to access information and demonstrate what she knows to the best of her ability....[The Student] benefits from self-contained classes with modified content in order to access academic skills. Currently, she is participating in the [REDACTED] [REDACTED] program; however, there are concerns that participating in the general education environment may impact her self-esteem and her ability to feel successful acquiring skills and learning content.” (Parents Ex. 7, p. 38.)

17. The Student attended [REDACTED] in-person from September 2019 until March of 2020 when school became virtual due to the COVID-19 pandemic.

18. Once the Student began virtually learning from March 2020 through June 2021, the Parents or the Student’s tutor were assisting the Student with her classes and assignments for hours every day.

Dr. [REDACTED] Testing of the Student

19. In November 2019, the Parents engaged Dr. [REDACTED] to assist as an educational consultant for the Student.

20. In December 2019, Dr. [REDACTED] conducted testing on the Student utilizing the following instruments and procedures: Test of Nonverbal Intelligence – Fourth Edition Form B (TONI-4); Peabody Picture Vocabulary Test – Fifth Edition Form B (PPVT-5); Woodcock-Johnson Tests of Achievement– Fourth Edition Form B (WJ-4) and Broad Achievement subtests’ record review, interview with Parents, interview with the Student.

21. The score on a targeted assessment demonstrating an intellectual disability is in the 69 to 70 range.

22. The TONI-4 is a measure of nonverbal cognitive ability using the solving of puzzles utilizing straight matching to reasoning skills. The Student was able to match the easiest puzzles but had difficulty with the reasoning puzzles. The Student scored in the Poor range, at the 6th percentile, with a standard score of 77.
23. The PPVT-5 is a measure of one-word receptive vocabulary. The Student scored at the bottom of the Below Expected range, at the 2nd percentile, with a standard score of 70.
24. On the Letter-Word Identification subtest, the Student was asked to read single real words. The Student scored in the Very Low range, at the 1st percentile, with a score of 64.
25. On the Passage Comprehension subtest, the Student was asked to read increasingly longer sentences and short paragraphs in which a word was missing and was asked to supply a meaningful word to complete the sentence. The Student scored in the Low range, at the 2nd percentile, with a score of 69.
26. On the Sentence Reading Fluency subtest, a timed measure of literal reading comprehension, the Student was given three minutes to read as many short sentences as she could, determine if they were true or false and indicate her choice. The Student scored in the Low range, at the 7th percentile, with a score of 78.
27. On the Math Calculation subtest, the Student was asked to solve pencil and paper math problems. The Student scored in the Very Low range, at the <0.1st percentile, with a score of <40.
28. On the Math Applied Problems subtest, the Student was read word problems to solve. The Student scored in the Very Low range, at the <0.1st percentile, with a score of 53.

29. On the Math Facts Fluency subtest, the Student was given three minutes to solve as many single digit addition, subtraction, and multiplication problems she could. The Student scored in the Very Low range, at the <0.1st percentile, with a score of 53.
30. On the Spelling subtest, the Student was asked to spell single words. The Student scored in the Low Average range, at the 17th percentile, with a score of 86.
31. On the Writing Samples subtest, the Student was asked to write good sentences that responded to visual and verbal prompts. The Student scored in the Low Average range, at the 12th percentile, with a score of 82.
32. On the Sentence Writing Fluency subtest, the Student was given five minutes to write as many short sentences as she could that each contained the three stimulus words and described the target picture. The Student scored in the Average range, at the 30th percentile, with a score of 92.
33. On March 2, 2020 Dr. [REDACTED] issued a report of her findings and provided a copy to the MCPS.
34. Dr. [REDACTED] noted that the Student was cooperative and attentive, suggesting that the test results were reliable.
35. Dr. [REDACTED] made particular note that the Student's greatest areas of need were math and reading, and that her area of personal relative strength was written language, albeit at the Student's current level. She recommended additional assessments in order to evaluate areas of IQ, memory and learning, adaptive functioning, attention, and executive functioning.
36. The Student requires direct daily, specialized instruction in order to improve her skills in reading utilizing a systematic, highly structured approach, including sight word lists, word banks, guided practice, immediate correction, support of word comprehension with visual and hands-on activities, teaching vocabulary for content, and comprehensive strategies.

37. The Student requires daily, intensive, evidence-based intervention in order to learn and retain functional math skills so she can build on them to improve her math functioning to the level her IQ suggests she can achieve.

38. The student requires daily, direct, intensive, evidence-based instruction to build on her strengths with written language and spelling to improve her skills to the level she is capable of achieving.

The June 17, 2020 IEP Meeting and the 2020-2021 IEP and School Year

39. On June 17, 2020, the IEP team reviewed and revised the October 19, 2019 IEP. (Parents Ex. 10.)

40. The Student's June 17, 2020 Amended IEP identified her primary disability as Intellectual Disability. The IEP identified the areas affected by her disability as: Academic: Math Calculation, Math Problem Solving, Reading Comprehension, Reading Fluency, Speech and Language Expressive Language, Written Language Content, Written Language Mechanics. Behavioral: Attention, Social Interaction Skills.

41. The June 17, 2020 Amended IEP is essentially the same document as the October 19, 2019 IEP, but has some updated information related to Progress Reports and adds distance learning due to the COVID-19 pandemic.

42. As an illustration of the overall IEP goals, the Student's Reading Comprehension Goal stated: "Given direct instruction of reading strategies, chunking of texts, check for understanding, scaffolding, human and/or text reader, multiple exposures to text and teacher prompts [the Student] will use strategies to make meaning from text by using evidence from the text to support her ideas, predictions and inferences" by October 10, 2020 with 80% accuracy. Four Objectives were listed related to that goal:

1. [The Student] will use two or more pieces of textual evidence to support inferences, conclusions or summaries of text.
2. [The Student] will summarize a text from beginning to end in a few sentences by identifying who, what, where, why and how.
3. [The Student] will identify details and example in a text that support a given topic.
4. [The Student] will use specific details from the text (words, interactions, thoughts, motivations) to support inferences or conclusions about characters including how they change during the course of the story.

43. Progress Report 1 dated November 8, 2019 indicated that the Student was not making sufficient progress to meet the annual goal and the IEP team needed to meet to address insufficient progress. The Student's SRI score of 364 was a 2nd grade reading comprehension level. The Student struggled to recall what she read and to comprehend written instructions. The work she completed was often not appropriate to the assignment. She had difficulty comprehending and identifying key terms in Biology.

44. Progress Report 2 dated January 4, 2020 indicated that the Student was not making sufficient progress to meet the annual goal and the IEP team needed to meet to address insufficient progress. In History the Student had difficulty understanding the text, responding only that it was bad/good. In Biology the Student would not take the time to read to comprehend but began writing without reading. In English the Student struggled to follow basic directions and her assignments did not meet the requirements of the prompt. The Student struggled to read fluently and respond appropriately. Much of what she wrote was copied and pasted from the internet. The Student earned a BR (Beginning Reader) on her November 2019 SRI which was kindergarten level.

45. Progress Report 3 dated April 17, 2020 also noted insufficient progress and the need for an IEP meeting. It noted declining scores on the SRI indicating a reading comprehension at the Pre-K level, stating that the Student could decode at much higher level, but had trouble retaining and comprehending what she has read. When things were read to the Student she still struggled

with recalling and remembering important facts. The Student was noted as a hard worker and a pleasure to have in class. In Resource the Student often did not understand the concept or vocabulary to complete assignments. For Social Studies it was noted that she cut and pasted from the book rather than use her own words, and even then it was often incorrect to the assignment.

46. Progress Report 4 dated June 15, 2020 noted that the goal was implemented during distance learning due to COVID-19 and the Student was making sufficient progress to meet her IEP goal. Due to this being the first quarter on distance learning, the Student was marked as making “sufficient progress in all areas, In Honors Biology, the Student was noted to have shown connections between what she read or viewed on videos and activity readings. She comprehended directions to be able to answer questions and gathered information from the readings in order to construct written responses. In Read 180 the Student was noted as working on this and completing reading journals. In Resource the Student was noted as having difficulty with grade level text in providing concrete evidence that aligned with goal and objectives.

47. Progress Report 5 dated November 9, 2020 again noted insufficient progress and the need for an IEP meeting and that the goal was being implemented during distance learning. The lack of progress on Objectives 3 and 4 were noted. The Student had difficulty identifying and understanding key terms and information; her responses to questions on readings were often unrelated to reading; she decoded well but did not remember what she had read; and her assignments that were read to and discussed with the class were not completed or submitted.

48. The Student’s goals and objectives in other subject areas were similar and related to identifying key words, applying them to a situation, and providing a meaningful result. It is

noted throughout progress reports that the Student needed significant supports and prompting, often was off topic, and produced assignments that failed to meet requirements.

49. The Student was not able to access grade level curriculum even with modifications and accommodations.

50. The Student was due to have an annual IEP review in October 2020, but the IEP team determined that additional evaluations of the Student were necessary, so the current IEP was extended.

51. The MCPS offered to have virtual assessments only. The Parents did not consent but pursued in-person evaluations to achieve more accurate results. The MCPS agreed to pay for the evaluations.

██████████ SLP Evaluation October 2020

52. The Student was evaluated by ██████████, Licensed Speech Language Pathologist, in October 2020. Ms. ██████████ administered the following assessments to the Student: Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5); Peabody Picture Vocabulary Test – Fifth Edition (PPVT-5); Expressive Vocabulary Test – Third Edition (EVT-3). The Student scores on the CELF-5 subtests included: 67 on Core Language, 55 on Receptive Language, 75 on Expressive Language, 55 on Language Content, and 72 on Language Memory. The Student scored 74 on the EVT-3 and 70 on the PPVT-5. A standard score of 100 is considered average on all three tests. The Student scored below average on all tests.

53. Ms. ██████████ compared the Student's results from 2015 to her current tests. She noted that the Student scored 67 in core language in both 2015 and 2020. The Student scored 60 and 67 on the receptive and expressive language tests in 2015, which indicated no statistically significant difference in those two areas of language. However, the Student's 2020 results were

55 in receptive and 75 in expressive language, indicating a deficit between her ability to understand and comprehend in comparison to her ability to express her current knowledge.

54. Ms. [REDACTED] concluded that the Student's current scores of 55 in language content and 72 in language memory were statistically significant and could indicate a lack of understanding of language based content.

55. Based on the results of SLP Assessments, the Student would benefit greatly from chunking of material (including homework assignments), elaboration, association, visual aids (i.e. graphic organizers, content relevant pictures, charts/graphs) with all novel information, in order to increase her comprehension as she seems to rely on visuals to gain further meaning and understanding of the provided text. The Student would benefit from repetition of directions, checks for understanding/clarification, and additional processing/"wait" time for responses. The Student would highly benefit from small group instruction for all content areas. The availability and opportunity for one-on-one support for the purposes of re-teaching is imperative, to ensure understanding and aid in concept mastery. Correlating concepts to her background or prior knowledge and incorporating memory aids (mnemonic devices, foldable, diagrams) would be extremely beneficial in retention, comprehension, and dissection of targeted material, across all curriculum and content areas.

[REDACTED] Psychological Evaluation October and November 2020

56. In October and November 2020, Dr. [REDACTED], Psychologist, conducted a comprehensive psychological evaluation of the Student.

57. Dr. [REDACTED] noted that the Student was diagnosed in 2011 with an interstitial duplication of [REDACTED] ([REDACTED]), which has been associated with delays in cognition, motor skills, and speech and language skill. A mutation of the [REDACTED] gene was also

revealed, which has been associated with a variety of health conditions. The Student takes [REDACTED] to address this condition. The Student also takes [REDACTED] for anxiety and [REDACTED] for mood changes.

58. Dr. [REDACTED] employed the following tests in evaluating the Student:

- Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V)
- Woodcock-Johnson IV Tests of Cognitive Abilities (WJ-IV)
- Wechsler Individual Achievement Test, Fourth Edition (WIAT-4)
- Integrated Visual and Auditory Continuous Performance Test, Second Edition (IVA-2)
- Adaptive Behavior Assessment System, Third Edition (ABAS-3) – Parent and Teacher Forms
- Conners 3 - Parent and Teacher Forms
- Behavior Rating Inventory of Executive Functioning, Second Edition (BRIEF-2) – Parent and Teacher Forms
- Behavior Assessment System for Children, Third Edition – Self-Report and Teacher Report

59. The WISC-V is a highly structured test that measures a series of different abilities that are highly associated with intellectual functioning. The primary subtest scores contribute to primary index scores, which represent intellectual functioning in five cognitive areas: Verbal Comprehension, Visual Spatial, Fluid Reasoning, Working Memory, and Processing Speed. This assessment ultimately produces a Full Scale IQ composite score (FSIQ) that represents general intellectual ability.

60. The Student's FSIQ score fell in the Extremely Low range when compared to other children her age (FSIQ = 54, 0.1 percentile).

61. The Verbal Comprehension Index (VCI) measured the Student's ability to access and apply acquired word knowledge. Overall, the Student's performance on the VCI fell in the Very Low range (VCI = 70, PR = 2), suggesting limited word knowledge, difficulty retrieving acquired information, problems with verbal expression, and difficulties with reasoning and problem solving. Verbal comprehension is a relative strength for the Student. The Student's

abstract reasoning skills were considerably stronger than her word knowledge (SI = 6; VC = 3). The Student's performance on Similarities was slightly below that of other children her age, but it was one of her highest scores, suggesting that her verbal concept formation and verbal abstract reasoning skills are areas of strength when compared to her overall level of ability.

62. The Visual Spatial Index (VSI) measured the Student's ability to evaluate visual details and understand visual spatial relationships in order to construct geometric designs from a model. The Student performed in the Very Low range (VSI = 61, 0.5 percentile).

63. The Fluid Reasoning Index (FRI) measured the Student's ability to detect the underlying conceptual relationship among visual objects and ability to use reasoning to identify and apply rules. The Student's performance fell in the Extremely Low range (FRI = 61, 0.5 percentile).

64. The Working Memory Index (WMI) measured the Student's ability to register, maintain, and manipulate visual and auditory information in conscious awareness, which requires attention and concentration as well as visual and auditory discrimination. The Student's performance on the WMI fell in the Extremely Low range (WMI = 62, 1st percentile).

65. The Processing Speed Index (PSI) measured the Student's speed and accuracy of visual identification, decision making, and decision implementation. The Student's overall processing speed fell in the Extremely Low range (PSI = 66, 1st percentile).

66. The General Ability Index (GAI) is an ancillary index score that provides an estimate of general intelligence that is less impacted by working memory and processing speed relative to the FSIQ. The Student's GAI score fell in the Extremely Low range (GAI = 61, 0.5 percentile), but her GAI score was significantly higher than her FSIQ score, indicating that the effects of cognitive proficiency, as measured by working memory and processing speed, may have led to a lower overall FSIQ score.

67. The Student was also administered subtests that contribute to the Cognitive Proficiency Index (CPI). These four subtests are drawn from the working memory and processing speed domains. The Student's score fell in the Extremely Low range (CPI = 56, 0.2 percentile). Low CPI scores can occur for many reasons, including visual or auditory processing deficits, inattention, distractibility, visuomotor difficulties or limited working memory storage or mental manipulation capacity.

68. The Student was further assessed using the Woodcock-Johnson IV Tests of Cognitive Abilities, another highly structured test that assesses an individual's abilities in domains associated with general intellectual functioning. The following seven subtests were designed to measure one broad ability (i.e., Comprehension-Knowledge; Fluid Reasoning, Short-Term Working Memory, Cognitive Processing Speed, Auditory Processing, Visual Processing, and Long-Term Retrieval) and contribute to an estimate of General Intellectual Ability (GIA).

69. Oral Vocabulary is a measure of the Student's lexical knowledge and language development. The Student's oral vocabulary fell in the Very Low range (SS = 50).

70. Number Series is a test of quantitative, deductive, and inductive reasoning that measures the ability to identify and apply a rule to complete a numerical sequence. The Student performed in the Very Low range (SS = 54), indicating a significant weakness in her ability to reason with number patterns.

71. Verbal Attention is a test of short-term working memory that measures temporary storage of verbal information and the cue-dependent search function in primary memory. The Student's ability to retain language-based information in working memory and answer questions based on that information fell in the Exceptionally Low range (SS = 48).

72. Letter-Pattern Matching is a test of cognitive processing speed that measures orthographic visual perceptual discrimination ability under timed conditions. The Student's speed of orthographic processing fell in the Exceptionally Low range (SS = 45).
73. Phonological Processing is primarily a test of auditory processing but it is a complex test that is related to language development and it measures word activation, fluency of word access, as well as word manipulation and phonetic coding. The Student's ability to access words based on phonological cues fell in the Very Low range (SS = 59).
74. Story Recall is a test of long-term retrieval that primarily measures measured the Student's listening ability, memory consolidation, and ability to reconstruct details from those memories. The Student was required to recall details of increasingly complex stories. The Student performed in the Very Low range (SS = 51).
75. Visualization is a test of visual processing that measures size and shape perception, part-to-whole analysis, and the ability to mentally transform two and three-dimensional images. The Student's ability to visualize and employ visual-spatial manipulation in working memory fell in the Very Low range (SS = 56), suggesting that she will find it extremely difficult to process the mental imagery involved in upper-level math and science curricula, such as geometry, calculus, and physics.
76. Visual-Auditory Learning is a measure of long-term retrieval and measures the ability to learn, store, and retrieve a series of visual-auditory associations. The Student's visual auditory learning and retrieval ability fell in the Exceptionally Low range (SS = <40).
77. Based on the results of the subtests, the Student's general intellectual ability fell in the Exceptionally Low range (GAI = <40).

78. To assess the role of memory in the Student's learning, her memory functions were assessed using the WRAML2, a nationally standardized instrument designed to assess a wide range of issues related to learning and memory.

79. The Verbal Memory Index is an estimate of how well an individual can learn and recall both meaningful verbal information and discrete rote verbal information and it is derived from the sum of the Story Memory subtest and the Verbal Learning subtest. The Student's verbal memory abilities fell in the Borderline range (SS = 77, 6th percentile).

80. The Verbal Learning subtest evaluates how well an individual actively learns and can recall unrelated verbal information with practice opportunities. The Student performed comparably in the Borderline range (SS = 6), but her recall improved with each trial – from four objects on the first trial to eight objects by the fourth trial, indicating repetition clearly improves the Student's recall.

81. The Visual Memory Index is an estimate of how well an individual can learn and recall both meaningful (i.e., pictorial) and minimally related visual information (i.e., abstract designs) and it is derived from the sum of the Picture Memory subtest and the Design Memory subtest. The Student performed at the upper limit of the Impaired range (SS = 67, 1st percentile), indicating that she is likely to remember visual information at levels significantly below those of same-age peers, which will be noticeable on everyday tasks that involve visual memory.

82. The Design Memory subtest provides a measure of memory for unrelated visual material, which comes into play when copying information from a chalkboard or remembering the locations of newly learned countries. The Student performed in the Borderline range (SS = 4).

83. The Verbal Recognition Index is an estimate of how well an individual can recognize verbal information that was presented previously during the testing session. The Student's

overall performance fell in the Impaired range (SS = 68, 2nd percentile), which indicates that the Student needs more than simple prompts to ignite her memory for previously learned language-based material.

84. The Visual Recognition Index is an estimate of how well an individual can recognize nonverbal or visual information that was presented previously in the session. The Student's overall performance fell in the Borderline range (SS = 71, 3rd percentile), but she had slightly stronger recognition memory for nonverbal information.

85. To assess the Student's adaptive skills, the Adaptive Behavior Assessment System, Third Edition (ABAS-3) was administered to the Student's parents and two of her teachers, Ms. [REDACTED] and Mrs. [REDACTED]. The ABAS-3 assesses an individual's skill level in ten areas that are critical to successful functioning in daily life. These areas are subsumed under one of the following three categories: Conceptual, Social, and Practical.

86. The Conceptual domain is comprised of three skill areas (Communication, Functional Academics, and Self-Direction) and the Mother's overall score fell in the Extremely Low range (SS = 62, 1st percentile). Ms. [REDACTED]'s score for the Conceptual domain fell in the Low range (SS = 70, 2nd percentile). Mrs. [REDACTED]'s score for the Conceptual domain fell in the Extremely Low range (SS = 61, 0.5 percentile).

87. The Social domain is comprised of two skill areas (Leisure and Social) and the Mother's overall score fell in the Extremely Low range (SS = 66, 1st percentile). Ms. [REDACTED]'s score for the Social domain fell in the Extremely Low range (SS = 66, 1st percentile). Mrs. [REDACTED]'s score for the Social domain fell in the Extremely Low range (SS = 68, 2nd percentile).

88. The Practical domain is comprised of four skill areas Community Use (skills needed for adequate functioning in the community), Health and Safety, School Living, and Self-Care. The

Mother's overall score fell in the Extremely Low range (SS = 67, 1st percentile). Ms. [REDACTED]'s score for the Practical domain fell in the Extremely Low range (SS = 64, 1st percentile). Mrs. [REDACTED]'s score for the Practical domain fell in the Extremely Low range (SS = 55, 0.1 percentile).

89. Based on their scores in the three major domains, score for the General Adaptive Composite (GAC) fell in the Extremely Low range: the Mother's score, SS = 63, was 1st percentile; Ms. [REDACTED]'s score, SS = 64, was 1st percentile, and Mrs. [REDACTED]'s score SS = 57, was 0.2 percentile.

90. The Student's academic achievement was assessed using the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4). The WIAT-4 is an individually administered, highly structured instrument designed to measure the academic achievement of examinees ages 4-50, and students in Pre-Kindergarten through Grade 12 and beyond in a variety of content areas.

91. Oral Language assessment is comprised of subtests. The Listening Comprehension subtest is designed to measure listening comprehension at the word, sentence and passage level. The Student's Receptive Vocabulary score of 59 fell in the Low range and her score of 72 on the Oral Discourse Comprehension subtest fell in the Below Average range.

92. The Oral Expression subtest is designed to measure oral expression at the word and sentence level. The Student's overall performance fell in the Below Average range (SS = 71).

93. Overall Reading is comprised of subtests. The Phonemic Proficiency subtest measures the development of phonological/phonemic skills. The Student performed in the Below Average range (SS = 70). She could identify words with deleted beginning and ending sounds but she

struggled to identify words with deleted and substituted sounds in the middle of words. She also struggled to identify words with substituted sounds at the end of words.

94. The Word Reading subtest is designed to measure letter and letter-sound knowledge and single word reading. The Student performed in the Below Average range (SS = 75).

95. The Orthographic Choice subtest is designed to measure orthographic knowledge or the quality of an examinee's stored orthographic representations. The Student performed in the Low range (SS = 63).

96. The Reading Comprehension subtest measures reading comprehension skills at the word, sentence, and passage level. The Student performed in the Very Low range (SS = 50). The Student struggled to answer questions that required inferencing and making predictions, and those that could have been answered with a brief re-reading of the text. Although she was reminded that she did not need to rely on her recollection of the text from memory, her reluctance to scan the text for the information seemed to reflect her being overwhelmed by the amount of visual information on the page. She answered some questions impulsively and she sometimes provided a response that made sense but was not included in the text.

97. Reading Fluency is comprised of subtests. The Pseudoword Decoding subtest is designed to measure phonic decoding skills and required the Student to read aloud a list of pseudowords. The Student performed in the Average range (SS = 89). The Decoding Fluency subtest is designed to measure phonic decoding fluency. The Student performed in the Average range (SS = 89). The Orthographic Fluency subtest is designed to measure an individual's orthographic lexicon or sight vocabulary. The Student performed toward the upper limit of the Below Average range (SS = 81). For the Oral Reading Fluency subtest, the Student read two

passages aloud, with her score representing the average number of words read correctly. The Student performed in the Below Average range (SS = 74).

98. Written Expression is comprised of subtests. The Spelling subtest measures written spelling from dictation. The Student performed in the Below Average range (SS = 74). She correctly spelled words such as, doubt, guitar, budget, happily, and inactive. She struggled with many words due to her overreliance on phonics [e.g., known (knone), width (with), suppose (soppose), and resign (resine) but there were some responses that defied the rules of phonics (e.g., photography (phorete), factual (phcal), stationary (statiary), and resistance (restiant).

99. The Sentence Writing Fluency subtest is designed to measure sentence composition fluency. The Student performed in the Below Average range (SS = 78).

100. The Sentence Composition subtest is designed to measure sentence formulation skills, with scores based on semantics, grammar, capitalization, and the use of internal and ending punctuation. The Student's overall score fell in the Below Average range (SS = 73). Her Sentence Building score of 84 fell at the upper limit of the Below Average range and her Sentence Combining score of 68 fell toward the upper limit of the Low range.

101. The Essay Composition subtest is designed to measure spontaneous writing fluency at the discourse level. She could verbally discuss her ideas but could not elaborate upon or transfer these ideas to paper in a way that revealed sophistication of thought or the use of grade level vocabulary. As a result, no score could be calculated.

102. Mathematics assessment is comprised of subtests. The Numerical Operations subtest measures math calculation skills. The Student performed in the Low range (SS = 61). The Student successfully solved all of the single digit addition and subtraction problems presented.

She struggled with two and three-digit subtraction problems that required regrouping and she displayed no knowledge of basic multiplication facts.

103. The Math Problem Solving subtest measures a range of math problem-solving skill domains including basic concepts, everyday applications, geometry, and algebra. The Student performed in the Low range (SS = 60). She successfully completed word problems that involved the addition and subtraction of single digits, skip counting, and interpreting a basic bar graph. She struggled to correctly answer questions that involved identifying place values, telling time on an analog clock, fractions, and estimating probability.

104. The Math Fluency–Addition subtest is designed to measure addition fact fluency. The Student completed as many written addition problems as possible within 60 seconds. While the Student correctly answered 18 of 18 attempted problems, she should have been able to solve more in the timeframe, earning a score in the Below Average range (SS = 70). The Math Fluency–Subtraction subtest is designed to measure subtraction fact fluency. The Student correctly solved 13 of 24 problems in written subtraction and scored in the Low range (SS = 68). The Math Fluency–Multiplication subtest is designed to measure multiplication fact fluency. The Student only correctly solved two of 25 attempted problems (3 x 0 and 1 x 8) performing in the Low range (SS = 55).

105. With the Student's existing diagnosis of ADHD, Dr. [REDACTED] determined it was important to get updated information on the Student's attentional and executive functioning, meaning the collection of inter-related functions that are responsible for purposeful, goal-directed, problem-solving behavior and that are typically compromised in children with ADHD. Continuous Performance Tests (CPTs) are computerized tests that provide a swift assessment of an individual's abilities for sustained attention. Omission errors, which represent failures to

respond to target stimuli, reflect inattention. Commission errors, which represent responses to non-target stimuli, are thought to reflect impulsive tendencies. These omission and commission variables have consistently been found to accurately discriminate between individuals with ADHD and those who do not have the disorder. The Integrated Visual and Auditory Continuous Performance Test, Second Edition (IVA-2) is a CPT that measures visual and auditory attention and impulse control. In addition to the typical demands of clicking the mouse in response to a designated target, the IVA-2 requires the individual to “shift sets” and to make discriminatory responses when presented with mixed auditory and visual stimuli.

106. The IVA-2 was administered on two separate occasions. The Student revealed a pattern of erratic responding that indicated that the Student was confused or did not understand the demands of the task, resulting in the inability to compute valid scores.

107. To assess how the Student’s parents and teachers perceive her attention and executive functions, the Father and the Mother and one of the Student’s teachers, Ms. [REDACTED] independently completed the Conners 3rd Edition, a comprehensive instrument that measures behavior consistent with ADHD along with other comorbid conditions such as Oppositional Defiant Disorder and Conduct Disorder.

108. For the Father, there were elevated scores indicating more concerns than are typically reported among children the Student’s age. His responses suggest that the Student demonstrates: difficulty with concentration/attention and may be easily distracted; that she tends to have high activity levels and be easily excited; that she has difficulties with academics and learning new concepts; that she may have difficulty starting or completing projects and assignments; demonstrates poor planning or organizational skills; and struggles with social relationships. The Father indicated that the Student’s behavior “very frequently” impacts her schoolwork and

grades, functioning at home, friendships, and social relationships. His responses also revealed concerns about anxiety and depression.

109. The Mother provided very elevated scores for Inattention, Hyperactivity/ Impulsivity, Learning Problems, Executive Functioning, and Peer Relations. She indicated that the Student's behavior "often" impacts her schoolwork and grades, friendships and social relationships, and "occasionally" impacts her in the home setting. Her responses also revealed concerns about anxiety and depression.

110. Ms. [REDACTED] noted very elevated scores for Inattention, Hyperactivity/Impulsivity, Learning Problems/Executive Functioning, and Learning Problems. She indicated that the Student's behavior "very frequently" impacts her schoolwork and grades and "often" impacts her friendships and social relationships. Her responses also revealed concerns about anxiety.

111. To further assess the Student's attention and executive functions, the Mother and two of the Student's teachers, Ms. [REDACTED] and Mrs. [REDACTED] completed the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2). The BRIEF-2 is a questionnaire measure designed to assess the executive functions of children and adolescents - the collection of inter-related functions that are responsible for purposeful, goal directed, problem-solving behavior and that are typically compromised in children with ADHD. T-scores at or above 65 are considered to have potential clinical significance. The responses of the Mother, Ms. [REDACTED], and Mrs. [REDACTED] resulted in significant elevations on many of the nine scales assessed, revealing weaknesses in multiple domains of executive functioning. Their scores suggest that the Students has notable difficulty with monitoring in social settings; marked difficulties adjusting to changes in environment, plans, place, or demands; considerable difficulty with task monitoring; moderate to substantial difficulty resisting impulses and considering

consequences before acting; marked difficulty starting or “getting going” on tasks, activities, and problem-solving approaches appropriately; considerable difficulty holding an appropriate amount of information in mind or in “active memory” for further processing, encoding, and/or mental manipulation; all of which result in increased anxiety.

112. The Student’s Social-Emotional Functioning skills assessed by Dr. [REDACTED], were ascertained based on conversations with the Student, her parents, and the forms completed by her teachers. The Student has anxiety around attending school due to her own recognition that she is not able to understand assignments and perform at a higher level. The Student is described as friendly and pleasant, but does not have friends and is often awkward around same-age peers, either not speaking at all or offering inappropriate commentary unrelated to the topic.

113. Dr. [REDACTED] diagnosed the Student with: Intellectual Disability, Mild (319; F70); Attention Deficit Hyperactivity Disorder, Predominantly Combined Presentation (314.01; F90.2); and Anxiety Disorder Due to Another Medical Condition (293.84).

114. The Student performed in the Very Low range on the WISC-V VSI assessment (0.5 percentile) demonstrating that the Student has challenges that can manifest in difficulty paying attention to visual tasks, being easily distracted by too much visual stimuli, issues with number and symbol discrimination, and difficulty aligning numbers for math computation.

115. The Student’s weak performance on the WISC-V FRI assessment indicates that she may experience some difficulty solving complex problems that require her to identify and apply rules, solve math problems, and complete tasks that require inductive reasoning or making broad generalizations/conclusions from specific observations.

116. The Student’s WISC-V LMI assessment showed significant difficulty recalling and sequencing a series of pictures and lists of numbers, which could result in difficulty performing

mental arithmetic, following multi-step verbal instructions, and remembering directions. Her visual working memory was a bit stronger than her auditory working memory. The Student will do better when required to recall meaningful visual information than discrete auditory information that is of trivial value.

117. The Student's low scores on the WISC-V PSI assessment can occur for many reasons including visual discrimination problems, distractibility, slowed decision making, motor difficulties, or generally slow cognitive speed. It is hard for the Student to digest information coming in quickly enough to follow directions, make decisions, and do what was asked. It can also impact her ability to make connections and pick up on social cues.

118. While the Student's GAI score fell in the Extremely Low range (GAI = 61, 0.5 percentile), her GAI score was significantly higher than her FSIQ score, indicating that the effects of cognitive proficiency, as measured by working memory and processing speed, may have led to a lower overall FSIQ score. The Student's overall IQ score was likely lowered by the inclusion of working memory and processing speed subtests. The Student's working memory and processing speed skills are areas of specific weakness.

119. The Student's GAI and CPI scores were relatively similar, suggesting that her general intellectual ability is commensurate with her cognitive proficiency. However, weaknesses in mental control and speed of visual scanning can create challenges as the Student engages in more complex cognitive processes, such as learning new material or applying logical thinking skills.

120. The Student's oral vocabulary fell in the Very Low range (SS = 50). The Student's weak score suggests overall expressive and receptive language deficits as well as executive functioning difficulties. The deficits can result in difficulty acquiring crystallized knowledge (i.e., information acquired from prior learning and past experiences).

121. The Student's performance on the Number Series test may have been impacted by weak executive functioning as it required cognitive flexibility and working memory.

122. For the Student, the Verbal Attention test scores of Exceptionally Low result from short-term memory challenges that will likely cause problems in the transfer of information to long-term memory without the use of strategies such as rehearsal, elaboration (e.g., connecting new information with prior learning) or organizational schemas (e.g., semantic maps) to consolidate learning.

123. With Letter-Pattern Matching, the Student's speed of orthographic processing fell in the Exceptionally Low range (SS = 45) and this limitation in processing or perceptual speed is likely to impact her fluency with academic tasks, especially her reading speed and fluency with math facts.

124. The Student performed Story recall in the Very Low range (SS = 51). Since this test taps the updating component of auditory working memory, the Student will find it extremely difficult to recall details of lessons that she hears in the classroom without intensive support.

125. More specifically, the Story Memory subtest provides a measure of memory for contextualized or meaningful verbal information, and it required the Student to recall the details of two stories that were read aloud. The Student's performance on the Story Memory subtest fell in the Below Average range (SS = 6), suggesting that she will struggle to recall the usual amount of meaningful verbal information that is expected for a teen her age.

126. The Student's attention to visual information suggests that she is likely to benefit when instruction is supplemented by meaningful pictures or videos.

127. The Student performed better on the Passage Comprehension subtest of the WJ-4 during Dr. [REDACTED]'s testing when pictures were involved and the passages remained available for the Student to reference.

128. In most cases, IQ scores do not change dramatically unless there has been an unusual event (e.g., injury, trauma, etc.). Over the last four years, the Student's scores have dropped from the Low Average to Extremely Low range, a drop of more than 20 points.

129. The Student's testing by Dr. [REDACTED] revealed clear struggles with nonverbal reasoning, but the Student's verbal reasoning abilities are somewhat higher than current testing suggests, at least toward the upper limit of the Very Low range or in the Low Average range. Past and present testing reveal verbal reasoning as an area of personal strength. The Student's verbal reasoning skills are commensurate with her age and grade level peers, but expressive language delays likely compromise her ability to fully share her thinking, and weak receptive language may not allow her to completely understand questions that are being asked of her, especially in a classroom setting.

130. The Student's overall constellation of abilities fall within the range of Mild Intellectual Disability and global delays in adaptive behavior reported by the Mother and multiple teachers supports this disability classification.

131. Although the Student's functional communication skills, self-care skills and ability to navigate independently in the classroom and at home were found to be areas of relative strength, her conceptual understanding, functional academics, level of responsibility, and social skills were deemed significantly weaker than those of same-age peers.

132. The Student has fleeting levels of attention wherein she cannot take in information that she learns in large chunks and her weak working memory does not allow her to hold or

manipulate this information for further processing unless she has full mastery of the subject as she has been able to accomplish with addition and subtraction facts.

133. The Student is unable to manipulate the numbers when regrouping is required in more complex math equations. She either loses her understanding of the process or she struggles to retrieve the information on how to regroup.

134. Inattention and memory challenges are collectively working against the Student. She either forgets the demands of the task as she moves along or she get sidetracked by internal or external stimuli and cannot remember the demands of the task or what she was doing. Retrieval of known information may also become disrupted, which may block the Student from consistently demonstrating her knowledge in the classroom and on traditional tests of intellectual functioning.

135. Despite adequate levels of motivation, the constant academic challenges that the Student faces each day overwhelms and drains her cognitive resources, leaving her drained of stamina resulting in impulsive responding.

136. The Student possesses an incredibly complex neurodevelopmental profile and clearly presents with multiple disabilities that involve weak intellectual functioning and adaptive behavior, behavior consistent with ADHD, memory challenges, language and fine motor skill difficulties, along with some atypical behavior and issues with social interaction. There is evidence that most of these difficulties are tied to her [REDACTED].

137. An appropriate educational setting for the Student will allow for year-round special education support with integrated speech and language therapy, and occupational therapy and

training to improve the Student's adaptive behavior and will include the following components:

- a low student/teacher ratio; a high degree of structure;
- emphasize the Student's acquisition of functional academic skills in a classroom with peers of similar abilities and profiles;
- allows for the use of behavioral supports to expand the Student's social and adaptive capabilities;
- provide the Student with opportunities to best prepare for independent living and vocational contexts;
- a setting where the Student can be presented with modified academic material at a slower pace;
- where she can receive continuous feedback and encouragement to support her efforts and prevent her from being overwhelmed;
- would provide the Student with comprehensive transition planning that consists of working with a counselor who can help her to identify potential career paths that includes opportunities to practice and learn requisite vocational skills;
- where behavior support services can be provided to improve her coping skills and allow her to gain skills in managing her executive challenges; and
- has behavioral support to address executive functioning and social skills.

138. [REDACTED], an nonpublic special education school in Maryland, provides year-round special education instruction, low student-teacher ratios, integrated speech and language and occupational therapy, extensive vocational training in the community, and individualized academic and behavioral supports for its students.

139. The Student would receive academic benefit from: multi-modal instructional methods, supplementing verbal material with visual supports to facilitate learning communicated in language that is simple and concrete to ensure understanding; connecting her interests to the curriculum to maximize her level of attention and comprehension; the use of procedural prompts, which are visual, verbal, or auditory, to help the Student organize and remember new information; clearly defined rules and expectations for academic assignments; providing a model or exemplar for problems to ensure expectations by breaking tasks into small steps, demonstrating the steps, and having the Student perform the steps, one at a time and providing assistance, as necessary; providing visual cues, such as color coding, icons, or numbering of each

step of directions; and repeating and clarifying important information through paraphrasing and summarizing at the conclusion of the presentation or discussion to facilitate the Student's recall and understanding.

Fall Semester 2020

140. The Student received virtual instruction for the 2020-21 school year.

141. The Student regularly attended all of her virtual classes and participated with the camera on. She frequently attended the extra sessions for additional help.

142. The Student's virtual General Education Algebra I class had the main teacher, Ms. [REDACTED] teaching the class, with the co-teacher Ms [REDACTED], monitoring the students and the chat. There were twenty-eight students in the class. Ms [REDACTED] would assist students in a break-out room when needed.

143. Ms. [REDACTED] was not aware that the Student was also enrolled in an [REDACTED] Math during the first semester.

144. The Student regularly attended Algebra I and tried to participate, but struggled with the work and did not appear to understand how to respond to questions.

145. Had instruction been in person, Algebra I would have met every day, five times a week. Algebra I was only taught two times a week virtually. Ms. [REDACTED] believed that the Student would have had a better opportunity to learn and retain information from day to day had the class been in person, so that concepts could have been drilled and practiced with the Student.

146. There are other MCPS high schools that offer Algebra I as a self-contained, special education class with fewer students, but not at [REDACTED].

147. The Student attended a virtual co-taught English 10 class of 20-25 students with Ms. [REDACTED] as the special education teacher responsible for teaching the students with accommodations.

148. The Student attended her two classes a week regularly and also frequently participated in the extra help offered on Wednesday check-in. The Student was able to complete assignments initially but as materials became more complex she had difficulty.

149. Had instruction been in person, English 10 would have met every day, five times a week. English 10 was only taught two times a week virtually.

150. There are other MCPS high schools that offer English 10 as a self-contained, special education class with fewer students, but not at [REDACTED]

151. The Student continued to be unable to access grade level curriculum even with modifications and accommodations.

The January 8, 2021 IEP and Remainder of the 2020-2021 School Year

152. On January 8, 2021, the IEP team met virtually to consider the updated assessments and develop a plan.

153. The January 8, 2021 IEP contained Teacher Reports and Progress notes from the 2019-20 and 2020-21 school years that identified how the Student was able to read/decode at her adjusted level, but had difficulty understanding or retaining information; had difficulty following directions even when broken down and read to her; was unable to identify and understand key terms and information; would rush to provide an answer without considering the text or the problem being considered; and failed to turn in complete assignments.

154. The MCPS team advised that the Student was not making adequate progress in her current program and recommended that the Student be placed in the [REDACTED] curriculum in [REDACTED]'s [REDACTED] program.

155. The [REDACTED] program is an alternate to general education that works with students in a more restrictive setting and a lower student/teacher ratio. It allows students to be educated with peers who are at a similar level. It has core classes and job-based vocational instruction to teach students how to navigate their community. There are ten or fewer students and two adults, a lead teacher and a para-educator, in the [REDACTED] classes. Para-educators are not special education teachers and may only have a high school diploma. There could be additional adults if any of the students in the class have a one-to-one aide or if related services providers “push in” to provide services to an individual student in the classroom.

156. Students in [REDACTED] may take electives as general education classes in order to be with same age peers in the least restrictive environment, but the classes are audited and are not graded.

157. The [REDACTED] program also has a vocational element where students work at stores or nursing homes in the community to gain work skills for independence after high school. Due to the COVID-19 pandemic, the [REDACTED] students have not been able to work off campus and [REDACTED] has adjusted the vocational training to include videos on workplace safety and on-campus activities such as laundry and mail delivery.

158. The Parents requested that based on the recent testing, the Student’s Primary Disability be changed from Intellectual Disability to Multiple Disability (Intellectual Disability and Other Health Impaired) and the school-based members of the IEP team agreed.

159. The Parent’s, their Advocate Dr. [REDACTED] and the MCPS team all agreed that the Student was not making appropriate progress on the Goals and Objective of the October 19, 2019

IEP and the June 17, 2020 Amended IEP that were currently in place and that the Student needed more support than what could be provided in the general education setting.

160. The MCPS recommended the [REDACTED] Program, which would move the Student from the diploma track to the certificate track. [REDACTED] was the only educational option the MCPS presented and offered to the Student.

161. The MCPS did not contact Dr. [REDACTED] to consult with or discuss her extensive testing of the Student in it's development of the draft IEP.

162. The Student's January 8, 2021 IEP was written primarily by [REDACTED], an [REDACTED] teacher, who taught the Student in her [REDACTED] math classes for the 2019-20 and 2020-21 school years.

163. The MCPS planned for the Student to attend all core classes in [REDACTED], but attend her electives in the general education classes with the support of a paraeducator in the classroom.

164. The MCPS never requested the Parents' consent to move the Student to the [REDACTED] Curriculum in the [REDACTED] program at the January 8, 2021 meeting.

165. The Parents disagreed with the move to the [REDACTED] program as not meeting the Student's unique needs and requested that the Student's case be referred to the Central IEP panel for consideration of the options recommended by Dr. [REDACTED] and Dr. [REDACTED]

166. The MCPS denied the referral to the Central IEP.

167. The MCSP moved the Student to the [REDACTED] program without parental consent at the start of the January 2021 semester.

168. On March 22, 2021 the Parents signed the Model Parental Consent Form providing consent for the Student to receive alternate education not working toward a diploma.

169. On March 22, 2021, the IEP was amended to reflect parental consent of the [REDACTED] program.

170. The Student's Progress Notes from April 16, 2021 indicated that many of the goals were new and just being introduced or that the Student was making gradual progress toward her goals, but that she still needed significant supports.

171. The Student's Progress Notes from June 16, 2021 generally indicate that the Student was present and participating in her classes and making gradual progress in her modified [REDACTED] classes.

172. On June 25, 2021, the Parents filed their Due Process Complaint.

173. The Student did not attend ESY following the 2020-21 school year.

The 2021-22 School Year

174. The Student returned to in-person learning at [REDACTED] for the 2021-22 school year in the [REDACTED] program for core classes and attends general education classes for electives, including theater class and College and Career Readiness class.

175. The Student participates in vocational classes. Due to the restriction from the COVID-19 pandemic, the students are unable to go into the community to do vocational work. [REDACTED] had developed a vocational program of hands-on activities on campus such as laundry, folding towels and aprons, mail delivery, ladder safety, and stacking shelves. Video training is also provided on such topics as boat safety and workplace safety. All [REDACTED] students in the Student's class receive the same vocational instruction, it is not individualized to the Student's strengths or interests.

176. The Student articulated a vocational interest in furniture design and it is included in her IEP.

177. The Student attends a general education [REDACTED] class as an elective. The class has 25 to 30 students. The Student was provided directions of an assignment to [REDACTED] an activity and

was assisted by a general education student in deciding her activity. The Student was given two pages of direction to complete this activity that were not modified for the Student's ability.

178. The Student continues to struggle with reading comprehension and with her SRI score in the pre-kindergarten range, the Student is currently being taught at the modified instructional level of the [REDACTED] program with word banks and matching pictures to vocabulary, a significant simplification from her previous IEP goals.

179. The Student continues to participate in [REDACTED] Math, her third year in [REDACTED] Math at [REDACTED] and fourth year in [REDACTED] Math with the MCPS. She has been listed as being in the second grade level of math on her IEPs from 2018 to present and has consistently tested at second grade level math skills or lower while a [REDACTED].

DISCUSSION

Burden of Proof

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 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. COMAR 28.02.01.21K(1), (2)(a).

Legal Framework

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

§§ 8-401 through 8-417; and COMAR 13A.05.01. The IDEA requires “that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) of the U.S.C.A. and the applicable federal regulations. There is no dispute in this case that the Student is a child with a disability.

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Id.* at 201 (footnote omitted). The Court set out a two-part inquiry to analyze whether a local education agency satisfied its obligation to provide FAPE: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07.

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

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

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

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

20 U.S.C.A. § 1414(d)(3)(A).

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

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

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

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

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

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

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

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

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

Endrew F., 137 S. Ct. at 998-99 (citations omitted; emphasis in original). The Court expressly rejected the Tenth Circuit’s interpretation of what constitutes “some benefit”:

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

Id. at 1001 (citation omitted).

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the

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

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

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

educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1); COMAR 13A.05.01.03B(71). Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2). In such a case, a free appropriate public education might require placement of a child in a private school setting that would be fully funded by the child's public school district.

Analysis

The Contentions of the Parties

The Parents' attorney filed a comprehensive complaint on behalf of the Student and the Parents outlining the Student's history and development. The Parents argued that MCPS did not develop an appropriate IEP and placement for the Student for 2020-2021 and 2021-2022 school years. As a result, the Parents maintain that MCPS has failed to provide a placement and an educational program that meets the Student's needs. The Parents contend that the MCPS has not offered and does not have a program available to provide the Student with an appropriate

program designed to meet her unique needs and are requesting placement at the nonpublic

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MCPS contends that everyone agreed that the Student was not making satisfactory progress while in general education classes with supports so they offered the alternative of the ██████ curriculum in the ██████ program at ██████ where the Student would have smaller class sizes, be educated in a special education setting, and attend elective classes in the general education setting in order to achieve LRE. (Trans. Vol. 4, p. 443-444.)

After reviewing all of the evidence in this case, I must conclude that MCPS did not develop an IEP that was reasonably calculated to meet the unique needs of the Student for both the 2020-2021 and 2021-2022 school years and the MCPS committed a procedural and substantive due process violation related to removing the Student from the pursuit of a diploma without parental consent. I have assessed the witnesses and explain below why I have determined the IEP team failed to develop IEPs to meet the Student's individual needs in order to achieve academic progress for both school years.

The October 19, 2019 IEP in place for the Fall 2020-21 School Year

The Student's annual review was normally scheduled during the month of October. For the 2019-2020 school year the Student had an IEP created and accepted dated October 19, 2019. That IEP was amended on June 17, 2020, but was essentially the same as the original IEP, but added issues related to the COVID-19 pandemic and distance learning. The Progress notes from the June 17, 2020 IEP indicated that the Student was failing to meet her goals in all her general education classes and that an IEP meeting was necessary,

The Progress notes began in November 2019 and the Student was noted to have an SRI score that placed her at the second-grade level for reading comprehension. It noted that the

Student struggled to recall what she read or comprehend in written instructions and important terms, and was unable to complete tasks appropriate to the assignment. (Parents Ex. 10, p. 33.) By January 2020, the Student's SRI score had fallen to kindergarten level and the progress notes continued to include concerns about reading comprehension and fluency, and inability to produce work that was on topic or to even answer the questions at all. (Parents Ex. 10, p. 34, 42.) The COVID-19 pandemic then caused the closure of in-person schooling. While the progress notes show that the Student was present and participating in virtual learning, goals continued to not be met for the remainder of the school year.

The MCPS presented the testimony of Ms. [REDACTED] and Ms. [REDACTED], who taught the Student virtually during the Fall semester of 2020 in general education Algebra I and English 10, respectively. Both noted the Student's excellent attendance and participation in extra help sessions. Both also noted the Student's struggles with comprehension and ability to participate appropriately, and the negative impact of virtual learning on the Student's ability to understand and retain information. Both classes are required to earn a Maryland high school diploma.

For the 2020-2021 school year, the October 19, 2019 IEP as amended on June 17, 2020 continued and the Student remained in general education classes with supports and had an additional Math class through the [REDACTED] program. The Student remained on virtual learning for this entire school year.

The IEP team did not meet in October 2020 for the annual review. Instead, the team agreed that the Student needed further assessments to determine the appropriate course of action and did not discuss any potential revisions to the Student's plan, despite the consensus that the

Student was not making progress towards achieving the annual goals. (Testimony of [REDACTED] Trans. 4, p 447.)⁹

The IEP that was in place at the start of the 2020-2021 school year was insufficient and inappropriate to meet the unique needs of the Student. The Student was in the general education curriculum with supports and was not only failing to make progress, but was actually losing skills as demonstrated by the Student's 2019-2020 IEP Progress notes, her declining SRI scores, and the testing results reported by Dr. [REDACTED] to the MCPS in March 2020. (Parents Ex. 8.) There seems to be little disagreement from the parties that the Student's educational program was not addressing the Student's needs or providing educational benefit in the Fall semester of 2020, and was therefore inappropriate.

The January 8, 2021 IEP for Spring 2020-2021 and 2021-2022 School Years

As a result of the untenable continuation of the October 2019 IEP, the MCPS ordered additional assessments of the Child. In November 2020 the Student had a Speech Language Evaluation with [REDACTED] and a Comprehensive Psychological Evaluation with Dr. [REDACTED]. (Parents Exs. 14, 15.) The MCPS team met and considered all three reports.

While the Student was initially identified with an Intellectual Disability, the most recent testing revealed inconsistencies with that diagnosis as described in detail by Dr. [REDACTED]. She explored for the first time the role the Student's [REDACTED] health issue has played into the Student's development and ability to learn and retain information.

On January 8, 2021, the IEP team met. The parties agreed to the revision of the Student's disability coding from Intellectual Impairment to Multiple Disabilities, primarily due to the acknowledgement of the Student's ADHD and Dr. [REDACTED]'s finding that the Student's

⁹ "Trans." Refers to the transcripts prepared of this hearing. There are five volumes, one for each day of hearing.

██████████ likely has impacted the Student’s cognition, motor skills, and speech and language skills.

The three independent experts who evaluated the Student all shared similar recommendations of a path forward on how best to assist the Student in tapping into her unique needs to build her skills and achieve academic progress by providing a year-long academic program, low student/teacher ratio, small class sizes, slower pace, and modifying how instruction is provided to the Student so that she is able to acquire foundational skills to build on.

The Parents and the MCPS were in complete agreement that the current educational program was not appropriate to meet the needs of the Student as she had plateaued and even regressed in her skill attainment. However, the MCPS offered only one solution, the ██████ curriculum to be carried out in the ██████ program at ██████, with electives in general education with supports.

The Parents and Dr. ██████ expressed to the IEP team their grave concern that the Student would no longer be pursuing a diploma if placed in the ██████ program. They queried about other programs available through the MCPS, but were told that ██████ was the only option. The Parent’s requested a referral to the Central IEP team which was denied by the MCPS team.

The school-based members of the IEP team presented only one option to the Parents, the ██████ program. Indeed, ██████, an ██████ teacher at ██████ who has taught the Student in ██████ Math since the Student arrived at ██████, testified that she was invited to the January 2021 IEP meeting because the school-based members of the IEP team had decided to recommend the ██████ program for the Student. (Trans.Vol. 5, p. 527.) Because the Student was experiencing difficulty in her classes and anxiety, the MCPS felt that ██████ I would “take the pressure off ...for the diploma track” and best meet the Student’s needs. (Trans.Vol. 5, p. 529.)

However, none of the MCPS witnesses articulated how the [REDACTED] program would meet the Student's academic needs other than noting the failures of the general education curriculum.

The MCPS presented the testimony of [REDACTED], a resource teacher in special education at [REDACTED], who functions as part of the leadership team, the liaison to the Central Office, oversees the special education department, and serves as the chair of IEP meetings. Ms. [REDACTED] described the structure of the [REDACTED] program within the [REDACTED] curriculum as a more restrictive environment with smaller student to teacher ratios (one teacher, one paraeducator, ten students) where students work in core academics at their skill level with peers of similar ability, rather than a modified general education age-appropriate curriculum. [REDACTED] also provides for the students to take two elective courses either in [REDACTED] or in general education with [REDACTED] supports and participate in job skills and community-based instruction to work on vocational skills and navigating the community safely.

Ms. [REDACTED] oversaw the January 8, 2021 IEP meeting and the brief follow-up meeting on January 15, 2021 to complete the IEP. She admitted that she did not request consent nor present the Parental consent form to the Parents to allow the Student to be removed from the diploma track. She acknowledged that the Parents did not consent to the Student being moved to [REDACTED], but that MCPS moved the Student to [REDACTED] anyway in January 2021. (Trans. 4, p 471-74.) Ms.

[REDACTED] has never met or taught the Student, but only knows her "on paper."

The Parents and Dr. [REDACTED] testified that the MCPS provided a binary choice of 1) regular education with supports (that all parties agreed was not appropriate for the Student); or 2) the [REDACTED] program. Dr. [REDACTED] testified that the Student is not in need of the [REDACTED] curriculum as it was designed for students with significant cognitive impairment, meaning students testing in the intellectual disabilities level with functional adaptive behaviors in the same range. (Trans. Vol. I, p.

62-63.) She stated that the Student is motivated and a hard worker but is unable to master skills because of her underlying language disorder that prevents her from understanding and performing to her capability. Dr. [REDACTED] testified that in her opinion, the Student has a “mild” intellectual disability and “great capacity to learn if the information is presented in the way that [the Student] can access it.” (Trans. Vol. I, p. 71.) She expressed frustration that the Student was moved from the diploma track without giving the Student the opportunity to improve utilizing adaptations tailored to the Student’s abilities as recommended by her and Dr. [REDACTED]’s updated evaluations. Dr. [REDACTED] opined that the [REDACTED] program did not meet the components of the programming recommended by Dr. [REDACTED] as it did not have: year-round special education support; low student ratio for all the Student’s classes; evidence-based programs to reduce the Student’s anxiety; allow the Student appropriate and effective access to instruction; or have a high degree of structure. (Trans. Vol. I, p. 90-93, 95.)

Dr. [REDACTED] agreed that the January 8, 2021 IEP contained many goals and objectives that she assisted in creating, but she did not agree with the service delivery set forth. Dr. [REDACTED] expressed the need for full time special education for the Student without classes in general education because the content needed to be adapted to meet the Student’s functional needs by presenting information to her in a way likely to yield success, which was not happening in the Student’s general education elective or vocational courses since she entered the [REDACTED] program.

Dr. [REDACTED] expressed that the Student would not receive academic benefit from the [REDACTED] program but would have her needs met in private placement. She suggested that the [REDACTED] [REDACTED] would meet the Student’s individual needs as demonstrated in the testing, assessments, and recommendations of herself and Dr. [REDACTED]. Dr. [REDACTED] testified that [REDACTED] is a full-time, year-round, special education nonpublic school with pre-vocational and vocational instruction

built around the individual student's skills. Further, it provides for internships in the community for the students to practice lessons and skills for independent living. [REDACTED] adapts grade-level curriculum incorporating visuals and structure in a way that would make it accessible for the Student. [REDACTED] integrates related services, such as speech language or occupational therapy, into the classroom program. The class sizes are very small and there is the opportunity for very small instruction groupings of one-on-one, one-on-two, or one-on-three, and the ability to repeat lessons for skill development until the Student masters the skill. [REDACTED] presents a much more integrated program in a smaller footprint that is not as overwhelming to the Student as [REDACTED] testified she had already discussed the Student with the admissions personnel at [REDACTED] and it was determined that the Student would be appropriate for their [REDACTED], which would also include the opportunity for the Student to continue to pursue a high school diploma.

Dr. [REDACTED] reviewed the Student's extensive history, including testing from the prior nine years. Dr. [REDACTED] described the inconsistencies in the Student's scores over time, noting that they were indicative of a mild intellectual disability but that there seemed to be more things going on, stating, "So, there's some confluence of all of these various, all of these different variables in terms of the cognitive, the memory, the working memory, the executive functioning, all of those things coming in and really complicating [the Student's] ability to perform." (Trans. Vol. 3, p. 309.) Dr. [REDACTED] testified that while the Student "superficially" appeared as having an Intellectual Disability, she has also tested outside of that range, and a far better explanation for her issues relate to her [REDACTED] health issue causing the cognitive and behavioral delays. (Trans. Vol. 3, p. 327-28.) Dr. [REDACTED] recommended year-round schooling because of the Student's issues with memory. She testified

that despite the availability of ESY, the summer break did not provide the consistent support the Student would need to not only continue gaining skills, but to not lose skills, and be able to retain them. (Trans. Vol. 3, p. 330-31.)

Dr. [REDACTED] expressed how crucial it is to have the Student's "expressive communication challenges remediated" in order for her to be able to share what she knows and communicate with others in the community at an age appropriate level, which involves an OT component for written communication. (Trans. Vol. 3, p. 332.) Dr. [REDACTED] recommended that the Student be taught in a classroom with no more than ten students with multiple adults available to individually support her and provide services in class in order to immediately address when she does not understand and to reinforce skills with repetition. She indicated that the Student can be distracted by other students in a larger class setting and also be anxious about having to participate in front of them, as she is very self-aware that she is "different," which exacerbates her feeling of inadequacy and escalates anxiety. She testified that the Student's abilities have not been adequately explored with fidelity and that the door should be not closed as to whether she is capable of achieving a diploma. (Trans. Vol. 3, p. 338.)

Dr. [REDACTED] noted that in order for the Student to function in a classroom setting and keep track of her assignments, she would need steps broken down, reminders of due dates of each step of the process rather than a final due date of an assignment, a regular schedule for bathroom breaks, organization of papers and assignments in a way that were accessible to her, comprehension checks, and constant reinforcement. Dr. [REDACTED] stated that the Student's teachers had observed a disconnect between the Student's in-class assignments and her home assignments completed with her tutor. This reinforced Dr. [REDACTED]'s perception that the Student performs better when working one-on-one, having items broken down into segments for

better results. On cross-examination Dr. [REDACTED] stated that the Student's classroom supports may not be able to be provided sufficiently by a para-educator who does not have the appropriate training and skills to implement the specialized services required.

The Student's evaluations over the years have consistently demonstrated serious deficits in math. [REDACTED], [REDACTED] Teacher at [REDACTED], has been the Student's [REDACTED] Math teacher during the Student's three years at [REDACTED]. Ms. [REDACTED] was asked to attend the Student's January 8, 2021 IEP because the MCPS was recommending the [REDACTED] program for the Student. She testified that the Student does well in her class, is focused on the material, seems to understand, asks appropriate questions, and seeks help when she does something wrong. Despite this observation, the Student's assessment scores continue to indicate that her math skills fall in the range of second grade, and have been consistently at that level the entire time at [REDACTED] while in the [REDACTED] math program, having been unable to progress beyond addition and subtraction for over two years. Indeed, the Student's IEPs from 2018 to present indicate that the Student has been in [REDACTED] Math at the second grade level the entire time. (Parents Exs. 7 and 30.)

The MCPS only partially accepted the recommendations of Ms. [REDACTED] Dr. [REDACTED] and Dr. [REDACTED] when placing the Student in the [REDACTED] program for the Spring semester of the 2020-2021 school year and failed to accept the intensity of the services that would be required to challenge the Student to advance in her education. I find that this determination was inappropriate and failed to provide the Student with an IEP reasonably calculated to provide educational benefit in light of the Student's individual needs.

Procedural Violations

The MCPS admitted that the Parents were never asked to provide consent to move the Student to the [REDACTED] curriculum/[REDACTED] certificate track at the January 8, 2021 IEP Meeting.

(Testimony of ██████, Trans. Vol. 4, pp. 468-474.) The Parents were clear at the meeting that they did not agree with the change. Nonetheless, the MCPS made the unilateral decision to move the Student to the LFI program and did so in January 2021 following the IEP Meeting. This was a procedural due process violation and resulted in a substantial violation as it was ultimately a denial of FAPE. *Rowley*, 458 U.S. at 206 (two-part inquiry as to whether FAPE provided, the first being compliance with IDEA procedures).

Pursuant to Education Article 8-405(g) of the Maryland Annotated Code, the school system must acquire parental consent when moving a student from the diploma track, and if the parent refuses consent, the school system must seek a due process hearing before implementing the program:

(g) (1) Except as provided in paragraph (2) of this subsection, an individualized education program team shall obtain written consent from a parent if the team proposes to:

(i) Enroll the child in an alternative education program that does not issue or provide credits toward a Maryland high school diploma;

(ii) Identify the child for the alternative education assessment aligned with the State's alternative curriculum; or

(iii) Include restraint or seclusion in the individualized education program to address the child's behavior as described in COMAR 13A.08.04.05.

(2) If the parent does not provide written consent to an action proposed in paragraph (1) of this subsection at the individualized education program team meeting, the individualized education program team shall send the parent written notice no later than 5 business days after the individualized education program team meeting that informs the parent that:

(i) The parent has the right to either consent to or refuse to consent to an action proposed under paragraph (1) of this subsection; and

(ii) If the parent does not provide written consent or a written refusal to consent to an action proposed under paragraph (1) of this subsection within 15 business days of the individualized education program team meeting, the individualized education program team may implement the proposed action.

(3) If the parent refuses to consent to the action proposed, the individualized education program team may use the dispute resolution options listed in § 8-413 of this subtitle to resolve the matter.

Md. Code Ann., Educ. § 8-405(g) (2018).¹⁰ *See also* 20 USCA §1414(a)(1)(D)(i)(II) and (ii)(II)(Parental informed consent required before school system provides services, parents have the right to reject services).

The Parents signed the consent for the [REDACTED] curriculum removing the Student from the pursuit of a diploma to [REDACTED] on March 22, 2021. The MCPS argued that the issue is no longer relevant. The Father testified that the Student had already been unilaterally moved and that it would be too disruptive to move her back to the general education curriculum that had already proven unsuitable. Further, both parties had already agreed that the general education curriculum was an inappropriate placement and since the only alternative to that offered by the MCPS was the [REDACTED] program, the Parents had no other option within the MCPS.

The failure of the MCPS to acquire parental consent before moving the Student to the [REDACTED] program was a violation of Education section 8-405(g). In addition, it violated the essence of 20 USCA §1414(a)(1)(D)(i)(II) and (ii)(II) by removing the Parents from a momentous decision impacting their child. The Education Article provides an avenue for the school system to pursue when consent is not acquired, but the MCPS failed to follow that route. Instead, the MCPS unilaterally imposed the change, leaving the Parents with no other way to keep the Student in a MCPS program other than signing the form. The Parents' and Student's procedural rights were violated.

This action taken by the MCPS demonstrates that the MCPS had no other alternative plan

¹⁰ A statutory change that took place in 2021 added an additional section, not relevant here, and caused a renumbering that changed this section from its original designation in the Education Article 2018 Replacement Volume of section (f) to its current designation of (g).

for the Student and it was going to place her there no matter what occurred at the IEP meeting. And this action was in spite of the fact that MCPS had other alternatives available within its school system for a continuum of options beyond the binary choice of general education or [REDACTED] at [REDACTED]. Both Ms. [REDACTED] and Ms. [REDACTED] testified that MCPS has smaller, self-contained classes for special education services with a general education curriculum at other school locations, but not at [REDACTED].

The Parents argued that the MCPS had “predetermined” the Student’s placement in the [REDACTED] program and did not offer or consider other options in violation of the IDEA as noted in *Spielberg v. Henrico Cty. Public Schools*, 853 F.2d 256, 257-59 (4th Cir. 1988). I find that the MCPS did receive direct input from Dr. [REDACTED] and considered the Student’s assessments when developing the January 8, 2021 IEP, and do not find a FAPE violation of predetermination.

Denial of FAPE for the 2020-2021 School Year

The IDEA requires public agencies like MCPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1); COMAR 13A.05.01.03B(71). The MCPS failed to review the continuum in assessing the appropriate placement for the Student but placed her in the program that was available in her current school.

The Parents presented the reports of three experts, two of whom were witnesses who provided extensive testimony and fully supported expert opinions as to why the January 8, 2021 IEP placing the Student in the [REDACTED] [REDACTED] Program with its commensurate elective classes in

the general education curriculum was not reasonably calculated to enable the Student to make progress appropriate in light of the Student's individual circumstances. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017). Although the MCPS presented five expert witnesses, not a single one was asked to offer an expert opinion regarding the appropriateness of the [REDACTED] program for the Student. Three of the five witnesses have not taught the Student in the [REDACTED] program and provided no opinion as to its propriety. Indeed, the only testimony that brushed up against being an expert opinion was the explanation of LRE given by Ms. [REDACTED] essentially articulating that because the [REDACTED] program would allow elective classes with regular education students, it is less restrictive than a nonpublic placement and therefore the appropriate placement.¹¹ This analysis puts the cart before the horse. The education plan must first be shown to be appropriate to the student's needs before LRE is considered. The MCPS failed to do this.

The IDEA requires great deference to the views of the school system. *T.B., Jr. by & through T.B., Sr. v. Prince George's Cty. Bd. of Educ.*, 897 F.3d 566, 573 (4th Cir. 2018). However, the hearing officer as the fact-finder is not required to determine that an IEP is appropriate simply because the teacher or other educational professional testify that the plan is appropriate. *Cnty. Sch. Bd. Of Henrico Cnty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005). The Hearing Officer is required to determine as a factual matter whether the IEP is appropriate. *Id.*

There was no discernable testimony from any MCPS witness to explain how or why the January 8, 2021 IEP was designed to provide for the needs of the Student. There was no

¹¹ The MCPS cited *R.F. v. Cecil Co. Public Schools*, 919 F.3d 237 (4th Cir. 2019) to support this contention. Their reliance is misplaced. In *R.F.* the school system provided the student with significantly specialized programming to meet his needs that was an appropriate placement, despite it not being the nonpublic placement the parents sought.

testimony from any special educator at MCPS who seemed to understand the Student or offer a solution to reach her complicated convergence of strengths and weaknesses to produce better outcomes. In short, MCPS offered no evidence to support why the path that was created by the IEP was the right one and could provide the Student FAPE, and why they did not accept the expert recommendations.

While it was clear that everyone agreed that the general education curriculum was inappropriate for the Student, the MCPS made a quantum leap that therefore the [REDACTED] program must be appropriate, since that was the only other option offered. But as the testimony of their own witnesses demonstrated, there were other options along the continuum that the MCPS did not consider, as previously discussed. The MCPS team determined that since the [REDACTED] program fit into some of the recommendations by Dr. [REDACTED] and Dr. [REDACTED] such as a lower student/teacher ratio, a classroom with peers of similar abilities, and preparation for vocational training and independent living, they had developed an appropriate IEP.

The extensive testimony of the Parents' experts and their reports dispelled this assumption. While the [REDACTED] program provides a lower student/teacher ratio than general education, it mainly consists of 10 students with 1 teacher and one paraeducator, still a 5/1 ratio, although there could be additional service providers in and out of the room briefly throughout the day working with other students. As there was no testimony from the MCPS about the ability levels of the other students in [REDACTED] there was no basis to compare abilities with the Student. And as will be discussed later, the vocational and transitions services actually provided were not designed to provide useful and impactful skills for the Student's future.

The [REDACTED] does not provide to the Student continuous feedback and encouragement, visual and auditory prompts, and modeling by someone trained to address the Student's unique

executive functioning delays resulting from her [REDACTED]. As Dr. [REDACTED] pointed out, which was also corroborated by Ms. [REDACTED], paraeducators are not required to have special education training and while they might have a college degree, they could also only have a high school diploma. Dr. [REDACTED] noted that the [REDACTED] program could provide frequent and ongoing one-to-one supports to meet the Student's academic and vocational needs.

Dr. [REDACTED] and Dr. [REDACTED] also recommended year-round special education classes so that the Student would not lose ground during the summer recess. Dr. [REDACTED] testified about the Student's memory challenges and skill deficits that require repetition and continuous support in order to retain information, which were also echoed by Ms. [REDACTED] and Dr. [REDACTED]. Dr. [REDACTED] explained that the ESY offered by the MCPS cannot equate to year-round schooling as it is a few hours a day for a few weeks of the summer, is not intensive enough to meet the Student's needs, and would likely be provided by staff unfamiliar with the Student. None of the MCPS witnesses even addressed the ESY component or the concern of loss of skills during the summer gap, despite loss of skill attainment being echoed throughout all the Student's assessments and progress reports.

Dr. [REDACTED] recommended integrated speech language and occupational therapies to improve the Student's adaptive behavior. The January 8, 2021 IEP contained only 3 hours of Speech Language therapy a month according to the testimony of Ms. [REDACTED]. Where Dr. [REDACTED] recommended learning at a slower pace, the MCPS offered learning at an elementary level.

The recommendations of Dr. [REDACTED] and Dr. [REDACTED] were deliberate, concrete, and based on extensive data to unlock the Student's individualized learning needs that the MCPS had failed to recognize. The independent experts' education plan for the Student considered the

Student's particular circumstances while the MCPS's IEP was a generalized step-down for students with an Intellectual Disability who were unable to succeed in the general education curriculum with supports. The MCPS IEP failed to adequately address the unique circumstances of the Student. Consideration of the student's particular circumstances is key to the FAPE analysis. The Court emphasized in *Andrew F.* that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Andrew F.*, 137 S. Ct. at 1001.

The testimony of Dr. [REDACTED] and her written report were compelling. There is no question that she is an expert in the field and ironically is a School Psychologist for the [REDACTED], [REDACTED] Public Schools who normally finds herself on the other side of the table in these type of hearings. Despite spending a limited amount of time with the Student, her perception and understanding of the Student's strengths and needs far outweighed those of the MCPS witnesses. Dr. [REDACTED] was professional and reasoned, backing her professional opinions with hard data.

Dr. [REDACTED] described her encounters with the Student and her family and the results of her assessments, explaining the complexity of the Student and the somewhat inconsistent test results that warranted further investigation in order to properly evaluate the Student. I found Dr. [REDACTED] articulate, knowledgeable, and thorough in her testimony and even though she was hired as an advocate for the Student, I found her assessment to be fair and well-reasoned. Although the MCPS sought to discredit Dr. [REDACTED] by providing evidence of her failure to file required corporate documents, I do not find that particularly germane to her credibility as a special education expert.

Although I find the MCPS witnesses credible, I do not find that they supported their IEP determinations with any evidence individualized to the Student other than what was developed by Dr. [REDACTED] in conjunction with the MCPS team. The consensus was that the Student was friendly

and tried to participate, but had trouble understanding, without detailing the particular needs of the Student and how to remedy the deficits to achieve academic progress. Dr. [REDACTED] showed an understanding of the Student as someone who could continue along one page solving increasingly complex problems, then turn the page and forget everything that went before. Dr. [REDACTED] developed a plan to address this. The MCPS IEP did not have a plan to account for the Student's unique deficits or how to build on her unique strengths.

While deference may be due to a local school system in developing an IEP, there are limitations. 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.” *Andrew F.* 137 S. Ct. at 1002. The MCPS failed to offer any justifiable explanation for the appropriateness of the [REDACTED] determination.

The MCPS only argued that the [REDACTED] plan was appropriate because it is the least restrictive environment as compared to a nonpublic year-round special education school. Pursuant to federal statute, disabled and nondisabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5). Yet, placing disabled children into regular school programs may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. *Id.* and 34 C.F.R. § 300.114(a)(2). At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). As discussed fully above, the [REDACTED] program fails to provide for the Student's educational needs,

so the lesser restrictive environment cannot supersede the mandate to provide the Student an appropriate education.

Therefore, I find that the 2020-2021 IEPs were not developed to capitalize on the strengths of the Student, and did not address the academic, developmental or functional needs of the Student as demonstrated by her recent evaluations, in violation of 20 U.S.C.A. § 1414(d)(3)(A) and COMAR 13A.05.01.09. I find that the MCPS failed to provide an educational program reasonably designed to provide academic progress while considering the Student's individual circumstances in contravention of *Andrew F.* and thus has denied the Student a FAPE for the 2020-2021 school year.

The 2021-2022 IEP does not provide FAPE

The January 8, 2021 IEP carried over to the current school year and thus I find that it is inappropriate for all the reasons previously stated. However, the current school year illuminates the application of the IEP in action, and is thus instructive to its lack of appropriateness currently.

██████████, Speech Language Pathologist at ██████████ has worked with the Student 3 or 4 times a month for forty-five minute “plug-in” sessions during class since the Student began at ██████████. Ms. ██████████ testified that in her first two years at ██████████, the Student had difficulty understanding inferences, could not interpret and provide accurate responses in class, and was sometimes inappropriate with peers by being off-topic in attempted conversation, leading to anxiety and avoidance. The Student particularly struggled with following virtual learning. Since the Student began in the ██████████ Program, Ms. ██████████ has observed her in English and Resource class and found that she is more confident, engaged, and asks relevant questions. The Parents countered that the Student is more relaxed because she does not find the

classes difficult and is not being challenged. The MCPS argued that the Student has friends now, but the Father testified that the Student has one friend at [REDACTED], who was a friend since middle school.

The Father described how the Student struggled through the general education curriculum for her first two years at [REDACTED] and even after the January 8, 2021 IEP, she was unable to perform appropriately in her general education electives as they were not modified to meet her needs or interests. When he recently asked the Student what she did in school that day, the Student replied she was “folding aprons for the regular kids.” The Father stated that school is for academics not folding aprons, and while vocational and life skills should be a component, the January 8, 2021 IEP did not even have any vocational goals when it was brought to the meeting.

Dr. [REDACTED] addressed the Student’s theater class elective for the current Fall semester wherein the Student was in a class of 25-30 students in the general education curriculum. The assignment, which was the same for all the students in the class, was to construct a scene to pantomime. While the MCPS asserted that the Student was included in regular education electives in order to address LRE, Dr. [REDACTED] and Dr. [REDACTED] noted that the LRE mandate was to be applied in conjunction with a determination of appropriateness and that the theater class was completely inappropriate because the expectations of the class were much too difficult for the Student, adding to her anxiety and frustration.

And while Dr. [REDACTED] recommended that the Student receive preparation for independent living and vocational training, the [REDACTED] vocational lessons, such as ladder safety and how to be a lifeguard, were completely outside the interest and abilities of the Student. Other vocational lessons, such as folding laundry, were far too basic and are skills the Student has demonstrated for many years at home. Dr. [REDACTED] identified the MSDE’s Transition Guide

(Parents Ex. 31) that speaks to developing a coordinated set of activities that will help each student reach their identified outcomes, but noted that this individualization has not been provided to the Student at [REDACTED]. Ms. [REDACTED] the Student's Case Manager, testified that she was unaware that the Student's IEP provided that the Student's vocational goal was to attend college and pursue furniture design. (Trans. Vol. 5, p. 543-44.) Ms [REDACTED] stated that all the [REDACTED] students receive the same vocational training across the board and that it is not tailored to students' strengths or interests.

[REDACTED], the Student's private counselor since May of 2017, helps the Student with coping skills for anxiety, developing self-advocacy skills, working on her self-esteem and confidence, addressing her irritability and avoidance behaviors, addressing difficulty with concentration, and working on independence building.

Ms. [REDACTED] testified that the Student has expressed that she does not feel she is learning anything important or helpful in the [REDACTED] program and that she is bored. The Student does not believe she is learning any new skills in the vocational program. The Student expressed that she does not like her theater class and does not want to be there. The Student relayed to Ms.

[REDACTED] that since being placed in the [REDACTED] program she feels she is now "different" from the general education students, but that she also feels different from the students in [REDACTED] who were "born a certain way and that's the way they act," and has no social connection to them. Ms.

[REDACTED] expressed in her professional opinion that the [REDACTED] program did not fulfill her recommendation (Parents Ex. 19) that the Student be placed in an alternative program because the [REDACTED] program has not taught the Student new skills and has increased her social anxiety and made her feel even more of an outsider. (Trans. Vo. 2, p. 90-91.)

These practical examples of the implementation of the IEP in action demonstrate that educational program is not “appropriately ambitious in light of [the Student’s] circumstance.” The Student has gone from a modified general education 10th grade curriculum, to an elementary level curriculum in ■■■. And while she may be demonstrating “progress” in her current program, it is because it is at or below her abilities. She is in a program with students who likely have more severe intellectual disabilities and who are all being taught the same thing. The Student is not receiving an individualized program that is sufficiently ambitious or challenging.

The IDEA requires “that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403. The MCPS has given up on the Student’s potential academic achievement by placing the emphasis of the ■■■ program on vocational skills and community engagement for employment after high school at a nursing home or grocery store. The Student’s assessments show promise, if her educational instruction could be adapted to provide her access.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. An IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child’s disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI). This reflects the broad purpose of the IDEA, an “ambitious” piece of legislation enacted to

prevent exclusion of disabled students from making individual progress. *Andrew F.*, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 179). I find that the January 8, 2021 IEP offered for the 2021-2022 school year is not reasonable, nor appropriate for the Student.

Remedy

An administrative adjudicator “has broad discretion to fashion a remedy where he finds that a school district has denied a child a FAPE. Sitting in equity, [an administrative adjudicator’s] authority is flexible and case-specific.” *Lopez–Young v. Dist. of Columbia*, 211 F. Supp. 3d 42, 57 (D.D.C. 2016) (citations omitted). Since the MCPS has not offered the Student an educational program that is designed to meet the Student’s needs and enable her to make progress appropriate to her circumstances, the MCPS has denied FAPE to the Student for the 2020-2021 and 2021-2022 school years. The Parents have demonstrated that the Student’s needs can be met at the [REDACTED], an approved non-public school serving children with learning disabilities, and I find that it is an appropriate placement for the Student. When a school system has failed its obligation to a student under the IDEA, that student is entitled to be made whole with nothing less than a “complete” remedy including compensatory services. *G.I. v. Ligonier Valley School District Authority*, 802 F.3d 601, 625 (3d Cir. 2015); citing *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 244 (2009); *See also, Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cty. School District Four v. Carter*, 510 U.S. 7, 12-13 (1993)(Equity favors reimbursement when school system denies FAPE and private placement provides for the student’s needs.) I find that the Student should be placed at public expense at [REDACTED] for the remainder of the 2021-22 school year.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

1. The MCPS failed to provide a free appropriate public education to the Student during the 2020-21 and 2021-2022 school years, by not providing an IEP that was “reasonably calculated to enable [the Student] to make progress appropriate in light of her circumstances.” *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 1002 (2017).
2. The MCPS denied the Student FAPE by unilaterally removing her from the diploma track without the Parents consent. Md. Code Ann., Educ. 8-405(g); *See also*, 20 USCA §1414(a)(1)(D)(i)(II) and (ii)(II).
3. The Parents are entitled as a matter of compensatory relief to have the Student placed at [REDACTED] for the 2021-2022 school year and the MCPS shall pay the associated expenses for the Student’s attendance at [REDACTED]. *G.I. v. Ligonier Valley School District Authority*, 802 F.3d 601 (3d Cir. 2015).

ORDER

I **ORDER** that the Parent’s Due Process Complaint is **GRANTED** and **AFFIRMED**.

October 19, 2021
Date Decision Issued

Willis Gunther Baker
Administrative Law Judge

WGB/cj
#194407

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence. A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],
STUDENT
v.
MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE WILLIS GUNTHER BAKER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-21-14752

FILE EXHIBIT LIST

Except as otherwise noted, I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 1 - Request for Due Process, June 25, 2021 (same as MCPS Ex. 1)
- Parents Ex. 2 - Neuropsychological Evaluation by Dr. [REDACTED] December 2017
- Parents Ex. 3 - Not Offered
- Parents Ex. 4 - MCPS Secondary Teacher Reports and Student Work Samples, September 2018
- Parents Ex. 5 - MCPS IEP and Prior Written Notice, October 15, 2018
- Parents Ex. 6 - MCPS IEP Progress Report, November 7, 2018 to June 14, 2019
- Parents Ex. 7 - MCPS IEP and Prior Written Notice, October 11, 2019
- Parents Ex. 8 - Diagnostic Educational Evaluation by Dr. [REDACTED], December 30, 2019
- Parents Ex. 9 - MCPS Prior Written Notice, April 20, 2020
- Parents Ex. 10 - MCPS Amended IEP, June 17, 2020 (same as MCPS Ex. 2)
- Parents Ex. 11 - MCPS Student Transition Interview, August 26, 2020
- Parents Ex. 12 - MCPS Prior Written Notice, September 11, 2020 (same as MCPS Ex. 4)
- Parents Ex. 13 - MCPS Prior Written Notice, October 12, 2020 (same as MCPS Ex. 5)
- Parents Ex. 14 - Speech Language Evaluation Report by [REDACTED], November 12, 2020

- Parents Ex. 15 - Psychological Evaluation by Dr. [REDACTED], November 18, 2020 (same as MCPS Ex. 6)
- Parents Ex. 16 - MCPS Team Consideration of External Report, November 24, 2020
- Parents Ex. 17 - MCPS Prior Written Notice and Intellectual Disability Worksheets, December 18, 2020 (same as MCPS Exs. 9 and 10)
- Parents Ex. 18 - MCPS IEP January 8, 2021 and Prior Written Notices January 11, 2021 and January 15, 2021
- Parents Ex. 19 - [REDACTED] Letter regarding placement, January 12, 2021
- Parents Ex. 20 - MCPS Student Progress Report, January 27, 2021
- Parents Ex. 21 - Email from MCPS to Parents regarding the Student's schedule, January 27, 2021
- Parents Ex. 22 - Withdrawn
- Parents Ex. 23 - Withdrawn
- Parents Ex. 24 - MCPS Reading Grade Report, March 16, 2021
- Parents Ex. 25 - MCPS IEP Amendment Documentation and Signed Consent Form, March 22, 2021
- Parents Ex. 26 - MCPS Amended IEP and Prior Written Notice, March 22, 2021 (same as MCPS Exs. 16 and 18)
- Parents Ex. 27 - MCPS IEP Progress Report, January 29, 2021 and April 16, 2021
- Parents Ex. 28 - MCPS Reading Grade Report, April 26, 2021
- Parents Ex. 29 - Withdrawn
- Parents Ex. 30 - MCPS Amended IEP and Prior Written Notice, May 25, 2021 and May 28, 2021
- Parents Ex. 31 - MCPS Transition Planning and Anticipated Services Guide, August 1999
- Parents Ex. 32 - Emails between Parents and MCPS, September 3, 2021
- Parents Ex. 33 - MCPS Student Schedule, 2021-2022 School Year
- Parents Ex. 34 - Resume of Dr. [REDACTED]

- Parents Ex. 35 - Resume of Dr. [REDACTED]
- Parents Ex. 36 - Resume of [REDACTED]
- Parents Ex. 37 - Student's [REDACTED] Assignment, September 2021
- Parents Ex. 38 - Not Offered
- Parents Ex. 39 - Not Offered
- Parents Ex. 40 - Not Offered

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 - Request for Due Process, June 25, 2021 (same as Parents Ex. 1)
- MCPS Ex. 2 - MCPS Amended October 11, 2019 IEP, June 17, 2020 (same as Parents Ex. 10)
- MCPS Ex. 3 - Prior Written Notice, August 21, 2020
- MCPS Ex. 4 - MCPS Prior Written Notice, September 11, 2020 (same as Parents Ex. 12)
- MCPS Ex. 5 - MCPS Prior Written Notice, October 12, 2020 (same as Parents Ex. 13)
- MCPS Ex. 6 - Psychological Evaluation by Dr. [REDACTED], November 18, 2020 (same as Parents Ex. 15)
- MCPS Ex. 7 - Team Consideration of External Report of Dr. [REDACTED] November 18, 2020
- MCPS Ex. 8 - Team Consideration of External Report of Ms. [REDACTED], November 24, 2020
- MCPS Ex. 9 - MCPS Intellectual Disability Worksheets, December 18, 2020 (contained in Parents Ex. 17)
- MCPS Ex. 10 - MCPS Prior Written Notice, December 18, 2020 (contained in Parents Ex. 17)
- MCPS Ex. 11 - Approved IEP, January 8, 2021
- MCPS Ex. 12 - Prior Written Notice, January 11, 2021
- MCPS Ex. 13 - Prior Written Notice, January 15, 2021
- MCPS Ex. 14 - Model Parental Consent Form Observation, March 22, 2021
- MCPS Ex. 15 - IEP Team Meeting Sheet, March 22, 2021

- MCPS Ex. 16 - MCPS Amended IEP, March 22, 2021 (Contained in Parents Ex. 26)
- MCPS Ex. 17 - IEP Amendment Changes, April 1, 2021
- MCPS Ex. 18 - MCPS Prior Written Notice, March 22, 2021 (Contained in Parents Ex. 26)
- MCPS Ex. 19 - Amendment of January 8, 2021 IEP, May 25, 2021
- MCPS Ex. 20 - Resume of [REDACTED]
- MCPS Ex. 21 - Resume of [REDACTED]
- MCPS Ex. 22 - Resume of [REDACTED]
- MCPS Ex. 23 - Resume of [REDACTED]
- MCPS Ex. 24 - Resume of [REDACTED]
- MCPS Ex. 25 - State Department of Assessments and Taxation Forms Re: Dr. [REDACTED]