

[REDACTED]

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE TAMEIKA LUNN-EXINOR,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-21-15426

**REVISED DECISION<sup>1</sup>**

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

**STATEMENT OF THE CASE**

On July 9, 2021, [REDACTED] (Parents), on behalf of their child, [REDACTED] [REDACTED] (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);<sup>2</sup> 34 C.F.R. § 300.511(a) (2020);<sup>3</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

<sup>1</sup> This decision was revised on February 3, 2022 due to a typographical error on page 51. The change is in bold print.

<sup>2</sup> 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.

<sup>3</sup> 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 2020 volume.

I held a telephone prehearing conference on August 3, 2021. The Parents were present and represented by Michael Eig, Esquire and Paula Rosenstock, Esquire. Robin Silver, Esquire and Taylor McAuliffe, Esquire, represented the MCPS. I held the hearing on December 6 – 10, 2021, December 13, 2021 and December 21-22, 2021.

Under the applicable law, a decision in this case normally would be due by September 3, 2021<sup>4</sup>, forty-five days after the OAH received the notice that the resolution session was waived by the parties. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). However, the parties requested hearing dates outside the time frame and requested an extension of the timeframe. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). This matter was not able to be scheduled in August, September, or October 2021 due to counsels' hearing and trial conflicts in other matters with the OAH and courts in Virginia and the District of Columbia. The first scheduled dates for the hearing were November 15 -17, 22-23, 30, 2021 and December 1-2, 2021. On September 23, 2021, the parties requested that the hearing be rescheduled to begin after the Thanksgiving Holiday due to the unavailability of witnesses. On September 27, 2021, I issued a Revised Pre-Hearing Conference Report and Order rescheduling the hearing for November 30, 2021, December 1-3 and 6-10, 2021. On November 29, 2021, the Parents' requested a status conference due to counsel becoming ill and unable to begin the hearing on November 30, 2021. Due to Mr. Eig's illness, the parties agreed to the following final hearing dates: December 6 – 9, 15, 21-22, 2021.

For the reasons discussed above, the decision in this matter is due thirty days from the close of the record. The record closed on December 22, 2021. The decision is due on Friday, January 21, 2022.

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<sup>4</sup> The Notice of Resolution Meeting was received by the OAH on July 22, 2021. Forty-five days from July 22, 2021 is Sunday, September 5, 2021. Since a decision cannot be issued on a weekend, the due for this decision is Friday, September 3, 2021.

Procedure 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. § 8-413I(1) (2018); State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

### ISSUES

Did the actions by MCPS meet the requirements of the law? Specifically:

- (1) Did MCPS fail to offer FAPE to the Student when it did not timely provide an Individualized Education Program (IEP) prior to the start of the 2020-2021 school year?
- (2) Did MCPS develop an appropriate IEP and placement for the Student for the 2020-2021 school year that was reasonably calculated to meet his unique needs, in the least restrictive environment?
- (3) If MCPS did not offer FAPE and develop an appropriate placement for the 2020-2021 school year, was the Student's placement at the [REDACTED] School proper?
- (4) If the Student's placement at the [REDACTED] is proper, should MCPS pay for tuition and related costs associated with that placement from March 2, 2020 through June 5, 2021?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on behalf of the Parents:

- Parents' Ex. 1 - Request for Due Process, July 7, 2021<sup>5</sup>
- Parents' Ex. 2 - Not Admitted<sup>6</sup>
- Parents' Ex. 3 - Neuropsychological Evaluation by [REDACTED],  
December 22, 2010
- Parents' Ex. 4 - Neuropsychological Evaluation by Dr. [REDACTED], October 5, 2015
- Parents' Ex. 5 - Speech/Language Evaluation by [REDACTED], December 4, 2015
- Parents' Ex. 6 - Email to Parents from Dr. [REDACTED], April 21, 2016
- Parents' Ex. 7 - Psychoeducational Evaluation by Dr. [REDACTED], May 6, 2016
- Parents' Ex. 8 - [REDACTED] Learning Profile, 2017-18 school year
- Parents' Ex. 9 - Not Admitted<sup>7</sup>
- Parents' Ex. 10 - Secondary School Admission Test Score Report, January 14, 2017

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<sup>5</sup> The portions of this document that refer to the Student being bullied while in Middle School are not admissible due to relevancy.

<sup>6</sup> Not Relevant

<sup>7</sup> Not Relevant

- Parents' Ex. 11 - MCPS Attendance Record and Transcript as of December 12, 2017
- Parents' Ex. 12 - Letter of Acceptance to the [REDACTED], May 18, 2018
- Parents' Ex. 13 - [REDACTED] Transcript, June 2018
- Parents' Ex. 14 - [REDACTED] Progress Report, Fall 2018
- Parents' Ex. 15 - [REDACTED] Progress Report, January 2019
- Parents' Ex. 16 - PSAT Score Report, 2019
- Parents' Ex. 17 - [REDACTED] Progress Report, Spring 2019
- Parents' Ex. 18 - Neuropsychological Evaluation by Dr. [REDACTED], 2019<sup>8</sup>
- Parents' Ex. 19 - [REDACTED] Academic Intervention Support Plan, September 9, 2019
- Parents' Ex. 20 - [REDACTED] Progress Report, Fall 2019
- Parents' Ex. 21 - Practice ACT Score Report, December 1, 2019
- Parents' Ex. 22 - MCPS Child Find Referral and Documentation from Parents and [REDACTED], January 14, 2020 to February 28, 2020
- Parents' Ex. 23 - [REDACTED] Progress Report, Winter 2020
- Parents' Ex. 24 - [REDACTED] Progress Report, Spring 2020
- Parents' Ex. 25 - Emails between [REDACTED] and [REDACTED], August 8, 2020
- Parents' Ex. 26 - Letter to MCPS serving notice and MCPS response letter, August 17, 2020 and September 9, 2020
- Parents' Ex. 27 - Student Transcript, 2017-18, 2018-19, and 2019-20 school years
- Parents' Ex. 28 - Student Questionnaire completed for MCPS, September 2020
- Parents' Ex. 29 - MCPS IEP, September 17, 2020 (dated June 15, 2020)
- Parents' Ex. 30 - MCPS Prior Written Notices, Original and Revised, September 21, 2020
- Parents' Ex. 31 - [REDACTED] Progress Report, October 2020
- Parents' Ex. 32 - [REDACTED] Progress Report, December 2020
- Parents' Ex. 33 - Emails between Parents and MCPS, December 24, 2020
- Parents' Ex. 34 - Student Writing Samples
- Parents' Ex. 35 - Resume of Dr. [REDACTED]
- Parents' Ex. 36 - Resume of [REDACTED]
- Parents' Ex. 37 - [REDACTED] Nurses Notes, April 20, 2018
- Parents' Ex. 38 - [REDACTED] Discharge Summary, May 14, 2018
- Parents' Ex. 39 - [REDACTED] Winter Term Interim 2 Report Card, February 10, 2021
- Parents' Ex. 40 - Letter from [REDACTED] enclosing Winter Term Report Card, March 2021
- Parents' Ex. 41 - [REDACTED] Spring Term Interim 2 Report Card, May 18, 2021
- Parents' Ex. 42 - Letter from [REDACTED] enclosing School Spring Term Report Card, June 2021
- Parents' Ex. 43 - Student Transcript, 2017-2021

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 – IEP, May 31, 2017 (pp. 1-59)
- MCPS Ex. 2 - MCPS IEP, June 15, 2020 (pp. 60-90)

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<sup>8</sup> This report is not dated. The Student was evaluated on June 4, 6, 12, 19, 27 and August 14, 2019.

- MCPS Ex. 3 - MCPS IEP, September 17, 2020 (pp. 91-131)
- MCPS Ex. 4 - Prior Written Notice (PWN), May 31, 2017 (pp. 132-142)
- MCPS Ex. 5 - P/R<sup>9</sup> Referral Packet, completed March 2, 2021 (p. 143)
- MCPS Ex. 6 - PWN 2020, May 26, 2020 (pp. 144-145)
- MCPS Ex. 7 - PWN 2020, August 10, 2020 (p. 146)
- MCPS Ex. 8 - PWN 2020, August 11, 2020 (p. 147)
- MCPS Ex. 9 - PWN 2020, September 21, 2020 (pp. 148-149)
- MCPS Ex. 10 - Invitation Letter to IEP, April 19, 2017 (p. 150)
- MCPS Ex. 11 - Five-Day Document Verification Form, January 7, 2016 (pp. 151-153)
- MCPS Ex. 12 - Five-Day Document Verification Form, May 13, 2020 (p. 154)
- MCPS Ex. 13 - Five-Day Document Verification Form, September 10, 2020 (p. 155)
- MCPS Ex. 14 - Child Find Referral Form, May 21, 2020 (pp. 156-157)
- MCPS Ex. 15 - Notice of IEP Team Meeting, August 25, 2020 (pp. 158-159)
- MCPS Ex. 16 - Letter from Michael Eig to MCPS, August 17, 2020 (p. 160)
- MCPS Ex. 17 - MCPS Letter to Michael Eig, September 4, 2020 (p. 161)
- MCPS Ex. 18 - Due Process Complaint, August 24, 2020 (pp. 162-167)
- MCPS Ex. 19 - MCPS Response to Due Process Complaint, August 25, 2020 and Letters to Michael Eig, September 3, 2020 (pp. 168-171)
- MCPS Ex. 20 - Report of [REDACTED], Ph.D., undated (pp. 172-198)
- MCPS Ex. 21 - Transcript – [REDACTED], December 12, 2017 (pp. 199-200)
- MCPS Ex. 22 - Not Offered
- MCPS Ex. 23 - Transcript – [REDACTED] [REDACTED] June 15, 2018 (p. 202)
- MCPS Ex. 24 - Not Offered
- MCPS Ex. 25 - Not Offered
- MCPS Ex. 26 - [REDACTED] – Application for Admission, March 8, 2017 (pp. 210-214)
- MCPS Ex. 27 - [REDACTED] Accommodations, September 2017 (pp. 215-216)
- MCPS Ex. 28 - Not Offered
- MCPS Ex. 29 - Not Offered
- MCPS Ex. 30 - Not Offered
- MCPS Ex. 31 - Not Offered
- MCPS Ex. 32 - Not Offered
- MCPS Ex. 33 - Not Offered
- MCPS Ex. 34 - [REDACTED] - [REDACTED] Psychosocial Assessment, April 27, 2018 (pp. 230-239)
- MCPS Ex. 35 - [REDACTED] - Assessment Educational Services, April 30, 2018 (pp. 240-241)
- MCPS Ex. 36 - Not Offered
- MCPS Ex. 37 - Not Offered
- MCPS Ex. 38 - Not Offered
- MCPS Ex. 39 - [REDACTED] - Physician Progress Note, May 10, 2018 (p. 247)
- MCPS Ex. 40 - [REDACTED] - Social Services Notes, May 11, 2018 (pp. 248-254)
- MCPS Ex. 41 - Not Offered
- MCPS Ex. 42 - [REDACTED] - Education Service Final Report, May 14, 2018 (pp. 260-261)
- MCPS Ex. 43 - [REDACTED] – Interim Reports 2018-19 (pp. 262-280)

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<sup>9</sup> There is no definition of “P/R” in the record.

- MCPS Ex. 44 - ██████████ – Interim Reports 2019-20 (pp. 281-296)
- MCPS Ex. 45 - ██████████ – Interim Reports 2020-21 (pp. 297-301)
- MCPS Ex. 46 - ██████████ – Academic Intervention Support Plan, undated (pp. 302-304)
- MCPS Ex. 47 - Letter from ██████████ to Parents, December 2, 2020 (p. 305)
- MCPS Ex. 48 - ██████████ – Winter Term, 2020-2021 Interim 2 Report, February 10, 2021 (pp. 306-309)
- MCPS Ex. 49 - ██████████ – Spring Term Comments 2020-21 (pp. 310-312)
- MCPS Ex. 50 - Final Transcript – ██████████, June 4, 2021 (p. 313)
- MCPS Ex. 51 - Not Offered
- MCPS Ex. 52 - Not Offered
- MCPS Ex. 53 - Not Offered
- MCPS Ex. 54 - Not Offered
- MCPS Ex. 55 - Not Offered
- MCPS Ex. 56 - Not Offered
- MCPS Ex. 57 - MCPS Report of Speech-Language Re-Assessment, April 15, 2016 (pp. 321-326)
- MCPS Ex. 58 - Curriculum Vitae (CV) of ██████████ (pp. 327-330)
- MCPS Ex. 59 - CV of ██████████ (pp. 331-332)
- MCPS Ex. 60 - CV of ██████████ (pp. 333-335)
- MCPS Ex. 61 - CV of ██████████ (pp. 336-337)
- MCPS Ex. 62 - CV of ██████████ (pp. 338-339)
- MCPS Ex. 63 - CV of ██████████ (pp. 340-341)
- MCPS Ex. 64 - CV of ██████████ (pp. 342-343)
- MCPS Ex. 65 - CV of ██████████ (p. 344)
- MCPS Ex. 66 - CV of ██████████ (pp. 345-347)
- MCPS Ex. 67 - CV of ██████████ (pp. 348-350)
- MCPS Ex. 68 - CV of ██████████ (pp. 351-355)
- MCPS Ex. 69 - Not Offered
- MCPS Ex. 70 - Email between Parents and the ██████████, February 8, 2019 (p. 358)
- MCPS Ex. 71 - Emails between Parents and the ██████████, February 18, 2020 (p. 359)
- MCPS Ex. 72 - Emails between Parents and ██████████, May 11, 2020 (p. 360)
- MCPS Ex. 73 - Emails between Parents and ██████████, June 4, 2020 (p. 361)
- MCPS Ex. 74 - Emails between Parents and MCPS, June 15, 2020 and August 7, 2020 (pp. 362-363)
- MCPS Ex. 75 - Email between Parents and MCPS with Draft IEP attached, September 10, 2020 (pp. 364-404)
- MCPS Ex. 76 - Emails between Parents and ██████████, September 11, 2020 (pp.405-406)
- MCPS Ex. 77 - Email between Parents and MCPS with IEP attached, September 24, 2020 (pp. 407-451)
- MCPS Ex. 78 - Email between Parents and Dr. ██████████, September 29, 2020 (p. 452)

- MCPS Ex. 79 - Emails between Parents and [REDACTED], November 2, 2020 and November 6, 2020 (pp. 453-454)
- MCPS Ex. 80 - Email between Parents and [REDACTED] November 11, 2020 (p. 455)
- MCPS Ex. 81 - Emails between Parents and [REDACTED], December 15, 2020 (p. 456)
- MCPS Ex. 82 - Emails between Parents and [REDACTED], May 26, 2021 (pp.457-460)

### Testimony

The Parent, Mr [REDACTED], testified and presented the following witnesses:

- Dr. [REDACTED], admitted as an expert in Neuropsychology
- [REDACTED], admitted as an expert in Private and Residential School Programming and Administration

The MCPS presented the following witnesses:

- [REDACTED], admitted as an expert in School Psychology
- [REDACTED], admitted as an expert in Autism
- [REDACTED], Ph.D., admitted as an expert in School Administration
- [REDACTED], admitted as an expert in Special Education
- [REDACTED], admitted as an expert in Special Education and School Administration
- [REDACTED], admitted as an expert in School Psychology

### STIPULATIONS

1. The Parents agree that all of the goals in the in the September 17, 2020 IEP were appropriate.
2. The September 17, 2020 IEP included a daily fifty-minute Resource class.
3. [REDACTED], MCPS Speech/Language Pathologist, only attended the September 17, 2020 IEP Meeting.
4. All of the 2020 Prior Written Notice Forms have the same format.

## **FINDINGS OF FACT**

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

1. The Student is 19 years old and studying [REDACTED] at [REDACTED] in [REDACTED], [REDACTED]. He is a freshman. (Parents' Ex. 1, Tr. 266:12-16)
2. On June 5, 2021, the Student graduated from [REDACTED] ([REDACTED]), a private all-male boarding school located in [REDACTED], [REDACTED]. (MCPS Ex. 50, Parents' Exs. 12 and 14)
3. The Student attended [REDACTED] for 10<sup>th</sup> through 12<sup>th</sup> grades which was the 2018-2019 school year, the 2019-2020 school year and the 2020-2021 school year. (MCPS Ex. 50)
4. The Student attended [REDACTED] ([REDACTED]) for 9<sup>th</sup> grade which was the 2017-2018 school year. [REDACTED] is a private school located in [REDACTED], Maryland. (MCPS Ex. 23, Tr. 314:16-22)
5. Due to mental health concerns, on May 30, 2018, the Student was enrolled in [REDACTED] in [REDACTED] to complete his Biology coursework. (MCPS Ex. 42, Tr. 330:10-15, 395:4-12)
6. On June 15, 2018, the Student withdrew from [REDACTED]. (MCPS Ex. 23)
7. The Student attended [REDACTED] Middle School ([REDACTED]) for 6<sup>th</sup> through 8<sup>th</sup> grades, which was the 2014-2015 school year, the 2015-2016 school and the 2016-2017 school year. [REDACTED] is a MCPS. (MCPS Ex. 21)
8. The Student attended [REDACTED] Elementary School which is a MCPS. (Tr. 267:12-17)



9. The Student attended [REDACTED] in [REDACTED], Maryland for pre-kindergarten and kindergarten. (Parents' Ex. 7, pg. 1)

### **2010 Neuropsychological Evaluation**

10. In December 2010, the Student had a neuropsychological evaluation by [REDACTED], Psy.D.<sup>10</sup> of [REDACTED] to clarify diagnosis, evaluate strengths and weaknesses and inform interventions. (Parents' Ex. 3, pg. 1)

11. The Student was 8 years old and in the 2<sup>nd</sup> grade. He was diagnosed with Attention Deficit/Hyperactivity Disorder (AD/HD), a Disorder of Written Expression and a Developmental Motor Disorder. The Student did not meet the criteria for Autism Spectrum Disorder (ASD). (Parents' Ex. 3, pp. 1, 5 and 6)

12. Dr. [REDACTED]'s impressions of the Student were as follows:

- solid verbal thinking
- visual thinking skills likely solid but difficult to assess due to AD/HD
- executive functioning vulnerabilities in the areas of flexibility, organization/planning, working memory, attention and impulse control
- weaknesses in conversation skills relating to executive weaknesses
- a disorder of written expression relating to language organization issues
- a developmental coordination disorder
- social learning weaknesses
- emotional lability related to difficulties with emotional regulation, inflexibility, problems seeing the big picture and impulsivity

(Parents' Ex. 3, pg. 5)

13. Dr. [REDACTED] supported the IEP coding of Other Health Impairment due to the Student's neuropsychological profile which requires educators, therapists and special educators to target executive function, conversation skills, written expression and social skill development. (Parents' Ex. 3, pg. 6)

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<sup>10</sup> Doctor of Psychology (<https://psydprograms.org/what-is-a-psyd-degree/>, Last viewed: January 16, 2022)

14. Dr. [REDACTED] suggested that the Student have a special educator, occupational therapist, psychologist or school counselor and a speech and language therapist. (Parents' Ex. 3, pp. 6-7)

15. In the 2<sup>nd</sup> grade, the Student was taking [REDACTED] to help with his attention and impulse control issues. (Parents' Ex. 3, pg. 10)

### **2015 Neuropsychological Evaluation**

16. On October 5, 2015, the Student had a neuropsychological evaluation by [REDACTED], Psy.D. of [REDACTED] to review supports and interventions to prepare the Student for adulthood and independence. (Parents' Ex. 4, pg. 1)

17. The Student was 13 years old and in the 7th grade. He was diagnosed with AD/HD, Core and Higher Order Language Impairment, multi-factor learning challenges, Anxiety Disorder and a Developmental Motor Coordination Disorder. The Student did not meet the criteria for ASD. (Parents' Ex. 4, pg. 6)

18. The Student's psychological profile emphasized the following:

- solid verbal and visual thinking skills
- executive functioning weaknesses in the areas of organization/planning, flexibility, attention, working memory and impulse control
- core and higher order language weaknesses
- relative weakness for visual processing
- best learning for smaller units of information and less abstract information
- weak fine motor control/speed
- adaptive/independence skills falling far below general cognitive abilities
- gains in social motivation and basic read of social cues, difficulty integrating/interpreting more complex social situations
- vulnerability for anxiety and dysphoria related to emerging self-awareness, difficulty contextualizing situations, and problems getting stuck on negative feelings and overload

(Parents' Ex. 4, pg. 6)

19. Dr. [REDACTED] recommended that the Student continue to receive services through an IEP, with accommodations and goals in the areas of learning, written expression, math, executive function, language, emotional/coping and social functioning. (Parents' Ex. 4, pg. 7)

20. Teachers from [REDACTED] Middle School reported to Dr. [REDACTED] that the Student has been fairly successful in school with supports. The Student received mostly A's and B's in school with his most challenging course being Science where he received a C. (Parents' Ex. 4, pp. 2 and 7)

21. Dr. [REDACTED] was concerned about the Student's transition to high school and the increased demands for independent thinking, planning, task completion, greater demands for lecture style learning, written expression, group projects and socialization which could lead to the Student having difficulties accessing the learning curriculum. (Parents' Ex. 4, pg. 7)

22. Dr. [REDACTED] suggested that the Student have a special educator, occupational therapist, and a speech and language therapist. Dr. [REDACTED] recommended the Student receive a Speech and Language evaluation. (Parents' Ex. 4, pp.7 and 9)

### **2016 Speech and Language Evaluation**

23. On December 4, 2015, the Student was evaluated by [REDACTED] ([REDACTED]), a speech-language pathologist at [REDACTED]. The Student was 13 years old and in the 7<sup>th</sup> grade at the time of the evaluation. (Parents' Ex. 5, pg. 2)

24. The Student was taking [REDACTED] and [REDACTED] to address attention and behavioral regulation. (Parents' Ex. 5, pg. 2)

25. [REDACTED] agreed with the diagnoses of AD/HD, Anxiety Disorder, Developmental Motor Coordination Disorder and Core and Higher Language Deficits. [REDACTED] added the

following diagnoses: Social (Pragmatic) Communication Disorder and Speech Sound Disorder.  
(Parents' Ex. 5, pg. 7)

26. [REDACTED] opined that the Student's difficulties with social interaction and higher-order language skills will have a negative impact on academic and social functioning. [REDACTED] recommended the following for the Student:

- Student should receive school-based speech-language therapy services 1 to 2 times per week
- Student should receive private speech-language services 1 time per week
- Speech and language services should address: building organization of discourse, facilitating social communication by using social thinking, identifying expected and unexpected behaviors in difference situations, collaboration with teachers and family members is critical to identify difficult social situations
- Identify situations observed in the classroom and peer interactions to address in therapy
- Facilitate using language to reason and identify problems
- Address articulation errors to facilitate intelligibility

(Parents' Ex. 5, pg. 8)

### **2016 Psychoeducational Evaluation**

27. In March and May 2016, the Student had a psychoeducational evaluation with [REDACTED], Ph. D. The Student was evaluated as part of the admission process for private school. (Parents' Ex. 7, pg. 1)

28. The Student was in the 7<sup>th</sup> grade at [REDACTED] Middle School at the time of the evaluation. (Parents' Ex. 7, pg. 1)

29. Dr. [REDACTED] administered the Wechsler Intelligence Scale for Children – Fifth

Edition (WISC-V). The results were as follows:

Testing Category	Score	Percentile	
Verbal Comprehension Index	111	77 <sup>th</sup>	High Average Range
Visual Spatial Index	92	30 <sup>th</sup>	Average Range
Fluid Reasoning Index	97	42 <sup>nd</sup>	Average Range
Working Memory Index	100	50 <sup>th</sup>	Average Range
Processing Speed Index	83	13 <sup>th</sup>	Low Average Range
Full Scale IQ	101	53 <sup>rd</sup>	Average Range

(Parents' Ex. 7, pg. 3)

30. Dr. [REDACTED] administered the Woodcock Johnson IV Tests of Achievement to

evaluate the Student's skills in reading, writing and math. The Student received the following scores:

Test	Standard Score	Percentile
Broad Reading	116	85 <sup>th</sup>
Basic Reading Skills	123	94 <sup>th</sup>
Reading Fluency	119	89 <sup>th</sup>
Broad Mathematics	90	25 <sup>th</sup>
Math Calculation Skills	88	20 <sup>th</sup>
Broad Written Language	117	87 <sup>th</sup>
Basic Writing Skills	121	92 <sup>nd</sup>
Written Expression	109	73 <sup>rd</sup>
Academic Skills	111	78 <sup>th</sup>
Academic Fluency	102	55 <sup>th</sup>
Academic Applications	105	64 <sup>th</sup>

(Parents' Ex. 7, pg. 4)

31. Based on the WISC-V, the Student was functioning within average range of intelligence and at the 53<sup>rd</sup> percentile for children his age. His verbal expression and verbal reasoning is strong. His visual spatial skills are average. (Parents' Ex. 7, pg. 5)

32. On the Woodcock Johnson IV, the Student scored well above average in reading, reading comprehension, oral and silent reading, spelling, editing and expressive writing. Written

output speed was average. For math, the Student scored average for applied math reasoning but below average in tests of paper and pencil math calculation. (Parents' Ex. 7, pg. 5)

**Middle School Grades 2015 – 2017**

33. In 6<sup>th</sup> grade, the Student's final grades were as follows:

<b>Course</b>	<b>Grade</b>
Advanced English 6	B
Advanced World Studies 6	A
Art 6	B
Beginning Theater	A
Math 6	C
Health Education 6	B
Introduction to Computers	A
Science 6	B
Living in Technology	B
Physical Education 6	A
Resource	A

(Parents' Ex. 11, pg. 4)

34. In 7<sup>th</sup> grade, the Student's final grades were:

<b>Course</b>	<b>Grade</b>
Advanced English 7	B
Advanced World Studies 7	B
Health Education 7	B
Science 7	B
Math 7	B
Physical Education	A
Resource	A
TV Studio	A

(Parents' Ex. 11, pg. 4)

35. In 8<sup>th</sup> grade, the Student's final grades were:

<b>Course</b>	<b>Grade</b>
Advanced English 8	B
Advanced US History 8	A
Computer Applications	C
Health Education 8	D
Science 8	B
Math 8	C
Physical Education	A
Resource	B
TV Studio	A

(Parents' Ex. 11, pg. 4)

36. Throughout middle school at [REDACTED], the Student had an IEP that included goals in social skills, speech and language and flexible problem solving. The Student had a combination of special education teachers, general education teachers as well as a resource class to assist him with executive functioning. (Parents' Ex. 1, p. 5)

37. The Student had social difficulties in middle school that led his parents to seek alternatives to the MCPS. (Parents' Ex. 1, p. 6, Tr. 321: 5-17)

38. On March 8, 2017, the Student applied to attend 9<sup>th</sup> grade at [REDACTED] and was admitted. (MCPS Ex. 26, Tr. 322:1-15)

**May 31, 2017 MCPS IEP**

39. On May 31, 2017, an IEP was completed by MCPS. The IEP listed the Student's primary disability as "multiple disabilities" that affects his relationships with peers, ability to participate in academic activities, his work production, and his speech/language. (MCPS Ex. 1, p. 1)

40. The Student's present levels of academic achievement during the 4<sup>th</sup> marking period of the 8<sup>th</sup> grade were as follows:

<b>Academic</b>	<b>Level of Performance</b>	<b>Grade – Marking Period 4</b>	<b>Does the area impact the student's academic achievement and/or functional performance?</b>
Math	8 <sup>th</sup> Grade with support	90%	Yes
Reading	8 <sup>th</sup> Grade	90%	No
Oral Language	Slightly below age expectations		Yes
Written Language	Below grade level	24.7%	Yes
Attention	Below grade level expectations		Yes
Peer Interactions	Below age level expectations		Yes
Work Completion	Below grade level expectations		Yes

(MCPS Ex. 1, pp. 7-13)

41. The May 31, 2017 IEP has the following special considerations and accommodations for the Student:

- Communication – requires speech-language services to address oral expressive and pragmatic language needs
- Assistive Technology – requires the use of a word processor and calculator
- Instruction and Testing Accommodations – Presentation accommodations: as a result of AD/HD affecting consistent focus, the Student needs to be given copies of teacher notes and outlines; Response Accommodations: requires response accommodations as a result of his needs in written expression, fluency and work production; the Student will use a calculator to solve problems during math lessons and will reduce the amount of clutter in a page by having more white space; Timing and Scheduling Accommodations: requires 50% extended time for frequent check-ins during classroom assignments and assessments to ensure accuracy and completion, no more than one exam per day; Setting Accommodations: should be seated near the point of instruction, option to be tested in an alternative location and/or in a small group setting with minimal distractions
- Supplemental Aids, Services, Program Modifications and Supports: instructional supports, program modifications, and social/behavioral supports required for the Student to access the general education curriculum
- Extended School Year (ESY): There will be no regression and the Student's education will not be substantially impacted if he does not attend ESY



- Transition: the student was interested in a career in [REDACTED] and was placed on the Maryland High School Diploma Program track.

(MCPS Ex. 1, pp. 16-31)

42. The May 31, 2017, IEP has goals in the areas of: Behavior-Flexible Problem Solving, Math, Speech and Language, Social Skills, Appropriate Classroom Behavior and Written Language. (MCPS Ex. 1, pp. 32-37)

43. The May 31, 2017 IEP has the following school year services: inclusion class for US History, Biology, Algebra and English, self-contained Resource class and three 30-minute speech therapy sessions per month. (MCPS Ex. 1, pg. 38)

44. The Least Restrictive Environment (LRE) decision for the May 31, 2017 IEP was that the Student's needs could be met in the general education setting with support. The Student required a Resource class, which is smaller and taught by a Special Education teacher to work on his IEP goals. (MCPS Ex. 1, pg. 39)

45. The placement decision for the May 31, 2017 IEP was [REDACTED] High School for the 9<sup>th</sup> grade. (MCPS Ex. 1, pg. 40)

46. The Parents' disagreed with [REDACTED] as the high school placement for the Student. They believed that the school was too large and academically rigorous and the Student would not do well socially. There were safety concerns for the Student in the [REDACTED] environment. (Tr. 318:2-23, 364:8-15)

**[REDACTED] – 9<sup>th</sup> Grade**

47. The Student did not attend [REDACTED] High School in the Fall of 2017. The Student was withdrawn from MCPS and transferred to a local non-public school: [REDACTED]. (Parents' Ex. 11, pg. 1)

48. The Student did not have an IEP at [REDACTED]. [REDACTED] created a Learning Profile for the Student utilizing input from the Parents about the Student's deficiencies and strategies utilized to help the Student access academics. (Tr. 323:8-25, 324:1)

49. In September 2017, [REDACTED] created an Upper School Learning Profile for the Student. The accommodations included the following:

- 50% extended time
- Extra breaks
- Computer use
- Use of a calculator
- Testing over multiple days
- No more than one test in a day
- Preferential seating – front of room/near point of instruction
- Small group setting
- Needs plenty of white space on a page – diagrams and maps need to be clear and not too busy or visually overwhelming

(Parents' Ex. 8, pg. 1)

50. The Student struggled academically, socially and emotionally at [REDACTED].  
(MCPS Ex. 35)

51. On April 17, 2018, the Student was hospitalized at [REDACTED]'s psychiatric department due to a mental health breakdown in school at [REDACTED]. The Student was engaged in a series of negative social interactions in school. The Student was suffering from depression and made suicidal ideations. (Tr. 328:10-25, 329:1-14)

52. The Student's final grades at [REDACTED] were as follows:

- English 9 – C+
- World History I – C
- Bridge to Algebra – C
- Biology – C+<sup>11</sup>
- Spanish Foundations – D+
- Fit for Life – P

(MCPS Ex. 23)

53. The Student's parents decided to find a school for the Student where he could be fully immersed to help with his social deficits. They started looking at options for the Student to board. (Tr. 330:1-9, Tr. 331:1-14)

[REDACTED]

54. The Student applied to and visited the [REDACTED] in May 2018. The Student interviewed with [REDACTED] and was accepted on the same day. (Tr. 540:23-25, 541:1-4)

55. On May 18, 2018, the Student chose to attend the [REDACTED] for his 10<sup>th</sup> grade year, the 2018-2019 school year. (Parents' Ex. 12)

56. [REDACTED] has between 42 and 44 male students boarding. (Tr. 539:2-10)

57. The Student did not have an IEP at [REDACTED]. (Tr. 527:23-25, 528:1-6)

58. [REDACTED] created an Academic Intervention Support Plan for the Student. The support plan included short-term goals, long term goals, assistive technology, advisor interventions and faculty interventions. (Parents' Ex. 19)

59. [REDACTED] has a communications group that focuses on building relationships and being socially and emotionally literate human beings. The group meets once or twice per week

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<sup>11</sup> The Student attended [REDACTED] online to complete his Biology credit during his 9<sup>th</sup> grade school year. (MCPS Ex. 22)

in small groups of six to eight students with two or three teachers and they practice listening and learning how to understand someone's feelings in different situations. The core values of the program are integrity, compassion and respect. (Tr. 544:1-16)

60. [REDACTED] has a Committee for Accountability which is a forum that involves the entire school and peers working through conflicts and being heard. It is a way to bring about change in peer relationships. (Tr. 544:22-25, 545:1-4, 547:1-10)

61. [REDACTED] also has advisory groups that meet once per week where the Student works on his individual goals. (Tr. 545:18-20)

### **[REDACTED] – 10<sup>th</sup> Grade**

62. At the end of 10<sup>th</sup> grade, the Student had the following grades:

- English 10 – C+
- Algebra I – B
- Environmental Science – A-
- Modern World History – C+
- Spanish I – C+

(MCPS Ex. 50)

63. In the Spring of his 10<sup>th</sup> grade year, the Student struggled with focusing in Algebra class and was allowed to use a fidget cube. He was receptive to efforts and strategies used to improve his math performance. The Student asked for extra help when needed and received an A on the final exam. The Student received the [REDACTED] Award. In History, the Student routinely handed in scattered and incomplete homework which improved with more structured planning for study halls. The Student was disconnected during class so the teacher asked him direct questions to improve his involvement. The Student received a B on his final History exam. In Spanish, the Student used a fidget to help with focus. The final exam was difficult for the Student and he received a D. In Science, the Student was very motivated to

complete assignments and received A's on all quizzes in the Spring semester. The Student asked for extra help and was able to obtain an A on the final exam. In English, the Student read thoroughly and discovered that turning in his laptop prior to study hall allowed him to focus on reading. The Student struggled with class participation. He received a B+ on the final exam. (MCPS Ex. 43)

64. During his 10<sup>th</sup> grade Spring Term, the Student played [REDACTED] and his skills and engagement in team sports improved. The Student struggled with leaving class or sports without permission but his social and emotional stamina improved throughout the Spring. In Communications Group, the Student was an active participant. He struggled with a tendency to give advice and to fill silences with idle talk and humor. In the Dorms, the Student had problems waking up on time for breakfast but continued to build relationships on the dorms. He made progress avoiding confrontations in the Spring. He still became tense in conflicts and would posture physically. The Student's advisor commented the Student's focus and grades improved in the Spring semester. (MCPS Ex. 43)

### **2019 Neuropsychological Evaluation**

65. During the summer of 2019, the Student met with Dr. [REDACTED] during 6 sessions for diagnostic clarification and to assist with current and future education and treatment planning. (Parents' Ex. 18, pg. 1)

66. The Student was 17 years old at the time of the evaluation and a rising 11<sup>th</sup> grader at [REDACTED]. (Parents' Ex. 18, pg. 1)

67. The Student was evaluated and Dr. [REDACTED] made the following diagnoses:
- ASD
  - Attention-Deficit Hyperactivity Disorder (AD/HD), Inattentive Type
  - Developmental Disorder of Scholastic Skills – Nonverbal Learning Disability

- Executive dysfunction affecting working memory, organization, planning/organization, task and self-monitoring, and task initiation
- Expressive Language Disorder
- Specific Learning Disability in Written Composition, Impacting organization of written output, grammar, and sentence structure
- Specific Learning Disability in Mathematics, Impacting math reasoning, mastery of math facts and computational skills
- Developmental Coordination Disorder
- Anxiety Disorder, Not Otherwise Specified
- Slow Processing Speed

(Parents' Ex. 18, pg. 16)

68. The summer of 2019 was the first time the Student was diagnosed with ASD. (Tr. 67:22-25, 68:1)

69. Dr. [REDACTED] diagnosed the Student with ASD because there was evidence of social deficits and unusual, restrictive and repetitive behaviors. (Tr. 68: 20-71:2)

70. Dr. [REDACTED] made the following recommendation for the Student based on his evaluation:

- Continue all of the accommodations and services in the [REDACTED] Academic Intervention Support Plan
- Mathematics Intervention
- Writing Intervention
- Improving Verbal Memory
- Academic Accommodations and Supports: Multi-sensory learning, Checking for understanding of instructions and material, Support Verbal Retrieval Weaknesses, standard classroom accommodations for ADHD (executive functioning support), Breaks, Supports for Math Fluency Deficits, Supports for Fine Motor/Graphomotor Weaknesses, Note-Taking and Visual Spatial Weaknesses
- 100% extended time on standardized testing and class assessments
- Organizational and Learning Support for the Individualized Teaching of Executive Functioning
- Building Social Competence
- Psychiatric Support
- Practical Living Skills
- Vocational Assessment
- Disability Support Services

(Parents' Ex. 18, pp. 16-21)

71. The Student was assessed using the Wechsler Adult Intelligence Scale IV (WAIS-IV) and received the following results:

<b>Index</b>	<b>Standard Score</b>	<b>Percentile Rank</b>
Verbal Comprehension	112	79
Perceptual Reasoning	82	12
Working Memory	97	42
Processing Speed	68	2

(Parents' Ex. 18, pg. 23)

72. Dr. [REDACTED] did not recommend a specific educational placement for the Student in his report. Dr. [REDACTED] wrote his report with an understanding that the Student was staying at [REDACTED] which he opined was a good fit for the Student. (Tr. 148:5-21)

**[REDACTED] – 11<sup>th</sup> Grade**

73. At the end of 11<sup>th</sup> grade, the Student had the following grades:

- English 11 – B-
- Geometry – B+
- Chemistry – B-
- US History – B-
- Spanish II – C+

(MCPS Ex. 44)

74. At the end of the 11<sup>th</sup> grade, the Student was in school virtually where he struggled and reverted back to bad habits. He required nudging to complete his assignments. The Student would get distracted being home in his own work space. Despite distance learning, the Student had a productive 11<sup>th</sup> grade year.

75. [REDACTED] was virtual due to the COVID-19 pandemic from March 2020 through the Winter Semester of 2021 which was the Student's 12<sup>th</sup> grade year. (Tr. 356:11-23)

**2020 MCPS IEP**

76. In January and February 2020, the Parents completed the Private/Parochial School Student Referral for Special Education Services seeking to access special education services from MCPS. (Parents' Ex. 22)

77. On March 2, 2020, the Parents' completed the Referral documents and submitted them to the MCPS. (MCPS Ex. 5)

78. On March 13, 2020, MCPS closed due to the COVID-19 pandemic. (Tr. 939:2)



79. On May 21, 2020, MCPS held an IEP meeting where the team found the Student eligible for Special Education Services under the category of Multiple Disabilities. The Parents agreed with the Student's disability category. MCPS determined that no additional assessments were necessary because the evaluation performed by Dr. [REDACTED] in August of 2019 was current and sufficient. (MCPS Ex. 6)

80. On June 17, 2020, MCPS held an IEP development meeting. A draft IEP was sent to the Parents prior to the meeting. The meeting was continued due to the absence of counsel for MCPS. The Parents' lawyer was also not present. (MCPS Ex. 7)

81. On August 7, 2020, MCPS held an IEP development meeting. The Parents and the school team agreed to reschedule the meeting for MCPS to review updated school information from [REDACTED] and add to the IEP's present levels. (MCPS Ex. 8)

82. MCPS contacted [REDACTED] for a meeting on August 7, 2020. (Parents' Ex. 25)

83. On August 17, 2020, the Parents' informed MCPS that the Student would be returning to [REDACTED] for the 2020-2021 school year and they requested MCPS place and fund the Student at [REDACTED]. (Parents' Ex. 26)

84. On September 9, 2020, MCPS informed the Parents' that they decline to place and fund the Student at [REDACTED] for the 2020-2021 school year. (Parents' Ex. 26)

85. The IEP team reviewed the Student's progress reports from [REDACTED], Dr. [REDACTED]'s 2019 neuropsychological assessment, present levels of academic and functional performance, development of goals, and accommodations and supplementary supports. (MCPS Ex. 9)

86. On September 17, 2020, MCPS held an IEP meeting to complete the Student's IEP. The IEP proposed goals in the areas of: Speech and Language, Math, Written Expression,

Executive Functioning and Social Emotional. The IEP proposes accommodations and supplementary supports, co-taught classes for English and Math with a self-contained Resource class. The IEP proposes counseling and speech and language therapy. The least restrictive environment and placement proposal was the [REDACTED] ([REDACTED]) program at [REDACTED] for the 2020-2021 school year. (MCPS Ex. 9)

87. The Parents agreed with the goals, accommodations, supplemental aids and supports in the September 17, 2020 IEP. The Parents did not agree with placement in the [REDACTED] Program at [REDACTED]. (MCPS Ex. 9)

**[REDACTED] – 12<sup>th</sup> Grade**

88. At the end of 12<sup>th</sup> grade, the Student had the following grades:

- Terrorism and Extremism – B-
- Art History and Studio - B
- English 12 - C
- Algebra II - C
- Public Health – B-

(MCPS Ex. 49)

89. In the Spring, the Student received an A on his final exam for Terrorism and Extremism. The Student synthesized information broadly and meticulously applied college level standards of grammar and syntax. The Student expressed frustration at times but was able to rebound quickly. (MCPS Ex.49, pg. 1)

90. The Student received a B+ on his final English exam. The teacher indicated that he had an uneven, though ultimately promising spring term. The Student completed half of his assignments and was unprepared for discussions. Eventually, he set a schedule and received extra help which helped the Student with distractions and a lack of academic drive. (MCPS Ex. 49, pg. 2)

91. The Student received an F on his final Math exam. The Student did not work through the materials. He would not answer direct questions in class and was often late to class or had to be brought to class by an administrator. The Student's confidence waned and he was unable to complete assignments. (MCPS Ex. 49, pg. 2)

92. In Public Health class, the Student received an A on his final exam. He maintained satisfactory levels of engagement in class and performance on home assignments. (MCPS Ex. 49, pp. 2-3)

93. During his Senior Year, the Student continued to improve in his academic efforts. He was more engaged in class and attempted to complete all homework assignments. The Student struggled in sports and interpersonal reactions to "good-natured ribbing" by his teammates. The Student would try to participate in the ribbing but had problems keeping it good-natured. He continued to work on his peer relationships although he preferred to talk with adults. The Student was encouraged to hang out with his fellow seniors but would isolate himself on his cell phone. There remains room for growth, especially in his interpersonal relationships. (MCPS Ex. 49, pg. 3)

## **DISCUSSION**

### ***I. Burden of Proof***

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). 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). 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. For the reasons set forth below, I find the Parents have failed to meet their burden.

## **II. Applicable Law**

### **A. The IDEA's Requirement for a FAPE**

A school system's obligation under the IDEA is to provide all children with disabilities a FAPE. 20 U.S.C.A. § 1400(d)(1)(A); 34 C.F.R. § 300.101(a).

A FAPE is defined in the IDEA as special education and related services that—

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

20 U.S.C.A § 1401(9); accord 34 C.F.R. § 300.17.<sup>12</sup>

In *Rowley*, the Supreme Court described a FAPE as follows:

Implicit in the congressional purpose of providing access to a [FAPE] is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. . . . We therefore conclude that the “basic floor of opportunity” provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

458 U.S. at 200-01. The Court held that a FAPE “consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.” *Id.* at 188-89. However,

[a]s noted by the Third Circuit, “*Rowley* was an avowedly narrow opinion that

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<sup>12</sup> A FAPE is defined in COMAR 13A.05.01.03B(27) as “special education and related services” that:

- (a) Are provided at public expense, under public supervision and direction;
- (b) Meet the standards of the Department, including the requirements of 34 CFR §§ 300.8, 300.101, 300.102, and 300.530(d) and this chapter;
- (c) Include preschool, elementary, or secondary education; and
- (d) Are provided in conformity with an IEP that meets the requirements of 20 U.S.C. § 1414, and this chapter.

relied significantly on the fact that Amy Rowley progressed successfully from grade to grade in a ‘mainstreamed’ classroom.” Since Amy Rowley was receiving passing grades and otherwise succeeding in school, the only question before the Court was whether the school was required to give Amy sufficient assistance to allow her to receive the same educational benefit as her non-disabled peers. The *Rowley* Court did not have occasion to consider the question of what level of educational benefit the school district would have been required to provide Amy Rowley had she not been progressing successfully through school in a regular education classroom.

*Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 863 (6th Cir. 2004) (citation omitted).<sup>13</sup>

After *Rowley*, a split in the circuits of the United States Courts of Appeal developed over precisely what “some educational benefit” meant. Some circuits, notably the Fourth and Tenth, understood it to mean “some” benefit more than a “*de minimis*,” “minimal,” or “trivial” benefit; while others, such as the First, Third, and Ninth Circuits interpreted the standard to mean a “meaningful” benefit. Compare *O.S. v. Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015), and *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338-41 (10th Cir. 2015), with *D.B. v. Esposito*, 675 F.3d 26, 34-35 (1st Cir. 2012), and *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1212-13 (9th Cir. 2008), and *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 180 (3d Cir. 1988).

The Supreme Court resolved the split in the circuits by granting *certiorari* to review the Tenth Circuit’s opinion in *Andrew F.* The Supreme Court held a FAPE must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”

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<sup>13</sup> The *Rowley* Court expressly acknowledges this in its opinion, observing:

It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between. One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills. We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system, we confine our analysis to that situation.

*Rowley*, 458 U.S. at 202.

and finding that “[t]he IDEA demands more” than “an educational program providing merely more than *de minimis* progress from year to year.” *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 1001 (2017) (internal quotation marks omitted).<sup>14</sup>

**B. *Child with a Disability***

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

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

20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8; Md. Code Ann., Educ. § 8-401(a)(2); and

COMAR 13A.05.01.03B(78). “Serious emotional disturbance” is defined as:

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

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

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

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

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<sup>14</sup> The Fourth Circuit has acknowledged that “[o]ur prior FAPE standard is similar to that of the Tenth Circuit, which was overturned by *Endrew F.*” *M.L. ex rel. Leiman v. Smith*, 867 F.3d 487, 496 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 752 (2018). For these reasons, any opinions of the Fourth Circuit or any circuit that adopted a no more than “*de minimis*” standard and any district court within those circuits that are cited or discussed below are not relied upon for their definition of a FAPE, but for other legal principles for which they remain the state of the law in this circuit and controlling precedent or persuasive authority.

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child's educational performance.

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

### **C. *Child Find***

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

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

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

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

In conducting the evaluation, the LEA shall:

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

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

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

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

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

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

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

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

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

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

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized



education program of the child and to participate, as appropriate, in the general education curriculum.

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

An LEA shall reevaluate each child with a disability:

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

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

Failure to meet the child find obligation may constitute a procedural violation of the IDEA. *T.B., v. Prince George's County Bd. of Educ.*, 897 F.3d 566, 572 (4th Cir. 2018) (citation omitted). But such a procedural violation “will be ‘actionable’ only ‘if [it] affected the student’s substantive rights.’”

#### ***D. The IEP***

To provide a FAPE, the educational program offered to a student must be tailored to the particular needs of the disabled child by the development and implementation of an IEP, taking 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); *see also Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471

U.S. 359, 368 (1985) (“The *modus operandi* of the Act is the already mentioned individualized educational program.” (internal quotation marks omitted)).

The IEP depicts the student’s current educational performance, 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, 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); *accord* 34 C.F.R. § 300.22; Md. Code Ann., Educ. § 8-405(a)(4).

As the “centerpiece” of the IDEA’s “education delivery system” for disabled students, an IEP is a “comprehensive plan” for the “academic and functional advancement” for the student. *Endrew F.*, 137 S. Ct. at 994, 999. It must be tailored to the student’s “unique needs” with “careful consideration” of the student’s present levels of achievement, disability, and potential for growth. *Id.*; *see also* 20 U.S.C.A. § 1401(29). The IEP must be “appropriately ambitious,” *Endrew F.*, 137 S. Ct. at 1000, and it must provide for “specially designed instruction” that is “reasonably calculated to enable the child to receive educational benefits” and to “make progress appropriate in light of the student’s circumstances.” *Id.* at 996, 999 (quoting *Rowley*, 458 U.S. at 207). The amount of progress anticipated for the student should be “markedly more demanding than the merely more than *de minimis* test” applied in the past by many lower courts. *Id.* at 1000 (internal quotation marks omitted).

The test for whether an IEP is “appropriately ambitious,” *id.*, and “reasonably calculated to enable the student to receive educational benefits,” *id.* at 996, is different for each student; there is no bright-line rule or formula to determine whether an IEP provides a FAPE.<sup>15</sup> *Id.* at 1000-01. For a student who is fully integrated in the regular classroom, a FAPE would generally

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<sup>15</sup> In *Rowley*, the Supreme Court also held that a FAPE may be found to have been denied a student when a school fails to comply with the procedures set forth in the IDEA. 458 U.S. at 206; *see also Bd. of Educ. v. I.S. ex rel. Summers*, 325 F. Supp. 2d 565, 580 (D. Md. 2004).

require an IEP to be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 996, 999 (citing *Rowley*, 458 U.S. at 203-04). However, for a student who is not fully integrated and/or cannot be reasonably expected to achieve grade-level advancement, the “educational program must be appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* at 1000. Regardless, “every child should have the chance to meet challenging objectives.” *Id.*

When assessing whether a student was offered, given, or denied a FAPE, a judge must “afford great deference to the judgment of education professionals . . . .” *O.S.*, 804 F.3d at 360 (quoting *E.L. v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014)). A judge should not substitute his or her own “notions of sound educational policy for those of the school authorities which they review.” *Andrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S. at 206). Additionally, a judge “should be reluctant . . . to second-guess the judgment of education professionals.” *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). A judge should be mindful that local educators deserve latitude in determining the IEP most appropriate for a disabled child, and that the IDEA does not deprive these educators of the right to apply their professional judgment. *See Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997). Additionally, a judge must be careful to avoid imposing his or her view of preferable educational methods upon a school district. *Rowley*, 458 U.S. at 207; *A.B.*, 354 F.3d at 325.

This respect and deference, while unquestionably a well-settled principle of review under the Act, both within and without this circuit, is not limitless, however. *See Cty. Sch. Bd. of Henrico Cty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the

opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”).

“[T]he fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.*; see *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993) (“Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.”).

“To give deference only to the decision of the School Board would render meaningless the entire process of administrative review.” *Sch. Bd. of Prince William Cty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted). A reviewing judge may fairly expect the school system’s professionals “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 or her] circumstances.” *Andrew F.*, 137 S. Ct. at 1002.

The *Andrew F.* Court confirmed that a FAPE does not promise an “ideal” education. *Id.* at 999. Nor does it promise that a student with a disability will be provided with “opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.” *Id.* at 1001. A reviewing court must determine whether the IEP is “reasonable.” *Id.* at 999. It is also important to remember that the IDEA does not require “the best possible education that a school could provide if given access to unlimited funds.” *Barnett v. Fairfax Cty. Sch. Bd.*, 927 F.2d 146, 154 (4th Cir. 1991). Nor does it require the “furnishing of every special service necessary to maximize each handicapped child’s potential.” *Hartmann*, 118 F.3d at 1001.

The development of an IEP is a prospective process. *Andrew F.*, 137 S. Ct. at 998-99. Other circuits and district courts have held the test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018); *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved. While outcomes may shed some light on appropriateness, the proper question is whether the IEP was objectively reasonable at the time it was drafted.” (citation omitted)). Thus, a judge in a due process hearing must look to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive educational benefit and make appropriate progress. An IEP is essentially a “snapshot” in time and “cannot be judged exclusively in hindsight.” See *Z.B.*, 888 F.3d at 524; *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990).

Fourth Circuit case law, however, eschews such a bright line rule as its sister circuits and has “concluded that, in some situations, evidence of *actual progress* may be relevant to a determination of whether a challenged IEP was reasonably calculated to confer some educational benefit.” *M.S. ex rel. Simchick v. Fairfax County Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009) (emphasis in original) (citing *M.M. ex rel. D.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002)). Actual progress is not dispositive, however, although important, it is but one factor used to determine the appropriateness of the IEP at issue. *M.S.*, 535 F.3d at 327.

The Supreme Court in *Rowley* similarly observed that a student’s achievement of passing marks and advancement from grade to grade is an important factor in determining if a student

received educational benefit. *Rowley*, 458 U.S. at 207 n.28.

Addressing the appropriate weight to be given to evidence of a student's progress taken by the district court after the close of the administrative record, the Fourth Circuit cautioned of the danger and lack of fairness to the school system inherent in giving significant weight to such evidence and courts engaging in a hindsight review. *Schaffer ex rel. Schaffer v. Weast*, 554 F.3d 470, 477 (4th Cir. 2009). Explaining that evidence of educational progress must be treated cautiously, the *Schaffer* Court concluded that "[j]udicial review of IEPs under the IDEA is meant to be largely prospective and to focus on a child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was reasonably calculated to enable the child to receive educational benefits." *Id.* (citations and quotation omitted).

***E. Least Restrictive Environment***

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

An agency is required to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115(a). The continuum is required to include alternative placements such as instruction in

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

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

#### ***F. Unilateral Private Placement***

Parents may be entitled to retroactive reimbursement from a state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985). The issue of reimbursement for unilateral placement was expanded upon in *Florence County*

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

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

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

**G.           *The COVID-19 Pandemic and the IDEA***

On March 12, 2020, Governor Lawrence Hogan ordered Maryland Public Schools, which includes MCPS, to close from March 16 through March 27, 2020, to protect public health by limiting the spread of COVID-19. On March 30, 2020, Governor Hogan issued a Stay at Home Order allowing travel within the State only for essential purposes. After that, Governor Hogan



and the Maryland State Department of Education (MSDE) extended the school closure through the end of the 2019-2020 school year, and the OAH suspended all in-person proceedings through July 6, 2020, holding emergency and special proceedings remotely.

In March 2020, the MSDE Division of Early Intervention and Special Education Services issued Technical Assistance Bulletin 20-01<sup>16</sup> to provide some guidance to schools serving children during the pandemic. Incorporating by reference multiple documents<sup>17</sup> from the United States Department of Education (DOE), the Technical Assistance Bulletin summarized:

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

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

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

**A:** No. As the guidance from the DOE indicates, the IDEA does not provide the DOE with authority to waive the requirement to provide

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16 Maryland State Department of Education, Division of Early Intervention and Special Education Services, Technical Assistance Bulletin #20-1, Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic (March 2020). The document was subsequently revised in October 2020.

<http://marylandpublicschools.org/programs/Documents/Special-Ed/TAB/20-01-ServingchildrenunderCOVID-19Pandemic.pdf> (last visited January 20, 2022).

17 United States Department of Education, Office of Special Education and Rehabilitative Services, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 12, 2020). <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf> (last visited January 20, 2022); Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities (March 21, 2020)

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (last visited January 20, 2022).

a FAPE, including meeting timelines for mandated actions under the statute, under any circumstances. This includes during the COVID-19 pandemic.

Technical Assistance Bulletin 20-01, at 2.

In addition to the DOE documents referenced in Technical Assistance Bulletin 20-01, on March 16, 2020, the DOE Office of Civil Rights issued a Fact Sheet<sup>18</sup> addressing COVID-19 and discrimination, including discrimination against students with disabilities. The Fact Sheet “provides information representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented here and is not legally binding.”<sup>19</sup> In discussing students with disabilities at elementary and secondary schools, the Office of Civil Rights Fact Sheet stated:

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

*Supra.*

On March 21, 2020, the Office of Civil Rights and the Office of Special Education and Rehabilitation Services jointly issued a Supplemental Fact Sheet<sup>20</sup> providing additional non-regulatory guidance from the DOE. In addition to reiterating that the requirements of a FAPE be provided during the COVID-19 public health emergency the Supplemental Fact Sheet further states:

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

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf> (last visited January 20, 2022).

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

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

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (last visited January 20, 2022).

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

Supplemental Fact Sheet, at 2.

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

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

*Supra.*

### ***III. Position of the Parties***

The Parents contend MCPS failed to provide FAPE for the Student when MCPS delayed the IEP development process and failed to have an IEP in place by the start of the 2020-2021 school year. They contend that the COVID-19 pandemic cannot be used for MCPS’ failure to timely evaluate and propose an IEP. The Parents argue that MCPS has a responsibility to evaluate and observe the Student and identify his needs. However, MCPS relied on the Neuropsychological evaluation prepared by Dr. [REDACTED] in 2019 and MCPS cannot now argue that Dr. [REDACTED]’s evaluation is unreliable. The Parents contend that they have every right to advocate

for the Student and cannot be deprived their right to reimbursement. They assert that the MCPS witnesses are not entitled to deference because none of them know the Student and MCPS failed to assess the Student during the 2020 IEP development process. The Parents contend that FAPE requires that the unique needs of each Student be considered by offering an IEP that allows the student to make progress that is appropriate in light of the student's circumstances. For these reasons, and as a remedy for its failure to provide him a FAPE, the Student seeks reimbursement for his private placement at [REDACTED] from March 2, 2020 through June 5, 2021.

MCPS contends that the 2020 IEP was reasonably calculated to enable the Student to make progress appropriate in light of his circumstances and therefore would have provided him FAPE. MCPs asserts that the IEP must be implemented in the LRE and any more restrictive placement would have been improper. MCPS contends that its education professionals are entitled to deference. MCPS asserts that in order to be eligible for reimbursement: any procedural error by MCPS must have resulted in loss of educational opportunity; the private placement must be appropriate; and a residential placement cannot be primarily for a purpose other than education. As for the COVID-19 pandemic, MCPS contends that remote learning is not a change in placement or material change in services under the IDEA. For this reason, MCPS maintains that the 2020 IEP developed by MCPS provided FAPE for the Student and therefore the Parents are not entitled to reimbursement of tuition and costs for [REDACTED] from March 2, 2020 through June 5, 2021.

#### *IV. Analysis*

#### **MCPS did not fail to provide FAPE although the 2020 IEP was not completed prior to the 2020-2021 School Year**

Despite the fact that there was a national emergency underway during the development period of the 2020 IEP, I do find that there was a delay in the IEP development process but the

delay did not amount to a procedural error because the Student did not suffer a loss of educational opportunity.

The Parents argue that there was unnecessary delay in developing the 2020 IEP for the Student. The timeline is clear and undisputed in this case. The Parents submitted the completed evaluation packet for the Student to the MCPS on March 2, 2020. (MCPS Ex. 5) The MCPS closed due to the COVID-19 pandemic in the middle of March 2020 and all educational services became virtual. As previously stated, it is undisputed that the COVID-19 pandemic was an unprecedented national emergency. The identification and eligibility meeting was held on May 21, 2020 and the Student was found eligible for special education services. (MCPS Ex. 6) The first IEP development meeting was held on June 17, 2020 and a draft IEP was sent the Parents before the meeting. However, the meeting was postponed because counsel for MCPS and Parents' counsel were unavailable.

The second IEP development meeting was on August 7, 2020 and both parties agreed to reschedule the meeting for MCPS to obtain and review updated information from [REDACTED] and to add to the Student's present levels. The Parents and MCPS agreed to meet on August 21, 2020 but the Parents were not available. (MCPS Ex. 8) In between the second and third IEP meetings, on August 17, 2020, the Parents sent a letter to MCPS informing them that the Student would be attending [REDACTED] for the 2020-2021 school year in order for the Student to receive FAPE. MCPS responded on September 4, 2020. (Parents' Ex. 26) The third and final IEP development meeting occurred on September 17, 2020. On that date, the IEP was finalized for the Student. (MCPS Ex. 9) At the time the IEP was finalized, the Student was enrolled in his 12<sup>th</sup> grade year at [REDACTED].

The evidence is clear that one meeting was postponed because counsel for MCPS and the Parents were not available, one meeting was rescheduled because the Parents were not available and another meeting was postponed to make present level changes to the IEP that were requested by the Parents. The IEP in this case was finalized on September 17, 2020 which was after the start of the 2020-2021 school year. However, both parties agreed to the two postponements so there is no fault that can be placed on MCPS for the 2020 IEP process being delayed. *Kitchelt ex. Rel. Kitchelt v. Weast*, 341 F. Supp, 557 n.1 (D. Md. 2004)(the delay in developing the IEP was found to be wholly the fault of MCPS). Also, the Student did not suffer a loss of educational opportunity due to the IEP being completed on September 17, 2020 because on August 17, 2020, the Parents informed MCPS that the Student was returning to [REDACTED]. *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 382 (2d Cir. 2003)(there is no prejudice, where the student remained in the private placement for all the years at issue, and there is no suggestion in the record that the parents would have altered their placement decision had their challenges to the IEP been resolved in a more timely fashion).

Based on the discussion above, I find that there was a delay in the 2020 IEP process for the Student but no procedural error since there was no loss of educational opportunity to the Student.

**MCPS developed an appropriate IEP and placement for the Student for the 2020-2021 school year that was reasonably calculated to meet his unique needs, in the least restrictive environment**

#### Parents' Evidence

The Parents' witnesses argued that MCPS failed to offer the Student FAPE because of his social deficits and the 2020 IEP's inability to provide the Student with appropriate goals and supports in "Building Social Competence". (Tr. 213:4, 230:18-25) Dr. [REDACTED] a

neuropsychologist, recommended that the Student continue to receive explicit instruction about how to make a positive impression on others, build friendships, and improve his ability to read social cues. Dr. [REDACTED] described [REDACTED] as a safe place for the Student. Dr. [REDACTED] also recommended participation in a social skills training program for students with social learning issues. This training would explicitly teach the Student social skills and social cognition and should be provided in real-life situations as much as possible. Dr. [REDACTED] also recommends that the Student's parents and school providers facilitate development of his social cognitive skills by looking for "teachable moments" in his daily routines and interactions. (Parents' Ex. 18, pg. 20) Dr. [REDACTED] testified that due to the Student's "unique combination of diagnoses" he requires an extremely high level of structure and an even higher level of structure to complete assignments outside of his instructional periods. (Tr. 90: 13-25, 91:1-23)

It is also significant that Dr. [REDACTED] is the first neuropsychologist to diagnose the Student with ASD. He testified that there are similarities between the Student's prior diagnosis of social pragmatic communication disorder and ASD but the reason he believes the Student was not diagnosed with ASD sooner is due to a lack of documentation of the presence of unusual interests and behaviors. Dr. [REDACTED] explained that in order to diagnose autism you need: 1) social deficits such as difficulty with nonverbal communication, social reciprocity, communication skills and peer relationships; and 2) at least two unusual restrictive and repetitive behaviors. Dr. [REDACTED] testified that the prior examiners did not document any unusual restrictive and competitive behaviors but he assessed that they indeed existed. Dr. [REDACTED] stated that the Student had an overfocused interest in [REDACTED] where the Student will immerse himself in it and never get bored. The Student also would hand flap when he was younger which can occur in the presence of strong emotions – negative or positive. (Tr. 68: 20-72:11)

Dr. [REDACTED] testified that while he was conducting his evaluation of the Student, he was under the impression that the Student was returning to [REDACTED], therefore he did not make a placement recommendation in his report. (Tr. 126: 1-25, 127: 1-8) His stated that his report does not mention that the Student needed small class sizes and that he was aware that the MCPS IEP team reviewed his report in order to develop the Student's 2020 IEP. (Tr. 125:7-11). What is most telling in Dr. [REDACTED]'s testimony is that he admits that all of his recommendations could be implemented in an MCPS setting except for "Building Social Competence". Dr. [REDACTED], on cross-examination, admits that a residential placement is not required for his recommendation other than the goals for "Building Social Competence". (Tr. 207:6 – 213:3) Dr. [REDACTED] was not aware of social building programs at MCPS such as Restorative Justice, which is a program that helps all MCPS student talk about and work through social issues that arise. (Tr. 111:1-22) The record reflects that Dr. [REDACTED]'s knowledge of social development and any progress for the Student in that area came from his interview with the Student. (Tr. 215:20 – 216:15) The Student's knowledge of social development programming at MCPS is nonexistent since he left the MCPS after his 8<sup>th</sup> grade year. Dr. [REDACTED] was also not aware that [REDACTED] had no special educators on staff. (Tr. 111:23 – 112:1)

There is no dispute in this case that the Parents' agreed with the goals, objectives, services and accommodations developed in the 2020 IEP but disagreed with placement in the [REDACTED] Program at [REDACTED]. (Tr. 363:17-20). The Parent testified that the size, pace and academic rigor at [REDACTED] would be daunting for the Student who has problem with executive functioning and slow processing speeds. He testified that his daughter who attended [REDACTED] said she was glad she attended the school because it made moving on to [REDACTED] easier. The Parent also stated that the Student would be unmatched socially due to the size



of the school. (Tr.318:2-23) At the end of middle school, the Parent testified that they wanted to look into alternative placements for the Student due to his academic and social needs. (Tr. 387:14-388:2) The Parents asked Dr. [REDACTED] to perform a psychoeducational evaluation of the Student in preparation to apply for private schools in 2016. The Parent testified that the only school that accepted the Student for the 2017-2018 school (9<sup>th</sup> grade) was [REDACTED] as the Student did not present well at other schools. The Parent described the Student as messy, awkward and inappropriate at times. (Tr. 322:14-23)

MCPS and the IEP team developed an IEP for the Student in 2017 in which the placement was [REDACTED]. The Parents sent the Student to [REDACTED]. (Tr. 322:1-2) The Parent testified that [REDACTED] created an Upper School Learning Profile for the Student taking into consideration the Student's deficiencies, [REDACTED] developed strategies to assist the Student. (Tr. 323:10- 324:1) The Parent testified that the Student did not have a good school year and in April of 2018, the Student began to spiral in school and outside of school. The Student was having negative interactions with peers, he had no friends and he felt excluded in the [REDACTED] environment. The Student was depressed and was having suicidal ideations which led to him being admitted at [REDACTED] for mental health treatment. The Parent testified that the psychiatrist recommended a more structured environment for the Student, not a public-school setting. (Tr. 324:17-21, 328:15-25, 329:1-22) The Parent stated that the Student completed his 9<sup>th</sup> grade year at [REDACTED] virtually and received additional assistance from [REDACTED] in Biology. (Tr. 330:1-19)

The Parent testified that they began to look at boarding schools for the Student because he needed to be in a school that matched his maturity level. (Tr. 330:23 – 331:17) The Student chose [REDACTED] and stayed there for 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> grades. (Tr. 333:5-12) The Parent

testified that [REDACTED] created an Academic Intervention Support Plan and that the plan may not specifically indicate social development as a goal for the Student but that goal was unwritten and embedded in the culture of [REDACTED]. (Tr. 335:11-25, 336:1-24) The Parent testified that he and his wife could no longer provide what the Student needed to be successful – they had two other children and the Student needed an immersive environment. (Tr. 338:9-25, 339:1) The Parents stated that after the first year at [REDACTED], the Student did not change overnight but he had a point of reference for his behaviors and his father would ask him “Would you do that at [REDACTED]” to help him refocus. The Student spent a lot of time unfocused on the sofa that first summer after [REDACTED]. (Tr. 341:20 – 342:11)

During the summer of 2019, the Parent testified that he and his wife needed big picture help with the Student so they hired Dr. [REDACTED] for an updated Neuropsychological Evaluation of the Student. As the Student progressed at [REDACTED], his Parent stated that he was happier and building relationships, a support network. The Student was still immature and had social problems during his 11<sup>th</sup> grade year at [REDACTED]. (Tr. 345:1-17) The Student’s grades at [REDACTED] were lower than they were in the MCPS system and the Parent explained that academic grades were not the measure of success. The Parent believed that the Student was in a better place. (Tr. 346:21-22)

In March 2020, the Student’s 11<sup>th</sup> grade year at [REDACTED], the Parents started the process for special education services at MCPS. The Parents submitted all required information to MCPS on March 2, 2020. The IEP team met multiple times with delays due to attorney absences and the need for additional information from [REDACTED] but eventually developed an IEP that was partially acceptable to the Parents on September 17, 2020. The Parent testified that he disagreed with the placement in [REDACTED] at [REDACTED] because the Student will not receive the same

outcome he was receiving at [REDACTED] and the Parents was worried about the Student's safety at [REDACTED]. (Tr. 364:8-15, 368:2-18) The Parent was also concerned that no one at the IEP meeting had ever met or evaluated the Student. (Tr. 365:17-20)

[REDACTED] testified that he is the head of the [REDACTED] school which was founded by his parents in 1983. He described the school as a "specialized boarding school that takes an individualized and relationship-based approach to boys who display a paradoxical learning style that has hindered their success and progress not only in school environments but in relationships with peers, teachers and family members". (Tr. 506:7-13) He testified that the school has forty-two students and sixteen adult mentors. (Tr. 506:18-21) [REDACTED] is not a certified special education school. (Tr. 508:9-10) [REDACTED] testified that the MCPS Central IEP team has placed one student at [REDACTED] and funded that student for three years. (Tr. 515: 20-24, 516:7-12) He stated that he has participated in numerous IEP meetings for students enrolled at [REDACTED]. (Tr. 516:18-21, 527:17-22) [REDACTED] explained that [REDACTED] does **not** implement IEP's but they do have individualized educational, social and emotional goals for each student. (Tr. 527: 23 – 528:1-6, 529:2-6)

[REDACTED] testified that [REDACTED] conducts qualitative and quantitative assessments and that if there is a request for information for an IEP team meeting, staff will prepare a written report for the IEP team's review. He explained that [REDACTED] is able to assess whether a specific goal is being met by the student. (Tr. 530:2-18) He stated that [REDACTED] does not have service such as counseling or speech and language services as they are not a therapeutic school. (Tr. 535:7-19) [REDACTED] stated that he saw the Student on a daily basis unless his school duties brought him off campus. He explained that if the Student had an issue or a concern, he would interact directly with him. They also worked together directly in

communications program once or twice per week. [REDACTED] also facilitated the Committee for Accountability. (Tr. 539:15-25, 540:1-14)

[REDACTED] described the Student as a student with a complex learning profile with lots of things getting in the way of his learning such as previous school placements and family dynamic. (Tr. 541: 12 – 542:6) He explained that the Student came to [REDACTED] pretty wounded and guarded. (Tr. 548:6-7) [REDACTED] stated that he knows that the Student felt heard by the adults at [REDACTED] and felt safe. (Tr. 549:1-20) [REDACTED] testified that the Student's grades were better his 11<sup>th</sup> grade year than his 1<sup>st</sup> year so the interventions at [REDACTED] were working. (Tr. 559:5-10) COVID 19 caused the Student to regress (Tr. 559: 15-18, Tr. 559:25 – 560:16) He noticed the regression in the Student's physical appearance and noticed that he had returned to posturing and confabulating which were areas that the Student improved in while at [REDACTED]. The Student would talk at you rather than talk with you. (Tr. 561: 1-8) [REDACTED] testified that by the end of his senior year, the Student was in a strong place. ( Tr. 562: 4-17) He stated that [REDACTED] provided the Student with a lot of support in areas of attention, organization, activity level, social interaction, work habits and task completion. (Tr. 564: 25 – 565:5)

When asked whether he had any concerns about the Student being in a class with 30 students, he responded that the Student would have significant struggles with attention and executive functioning. (Tr. 570: 3-25) On cross-examination, [REDACTED] stated that he would be concerned about the Student transitioning during his 12<sup>th</sup> grade year to a different environment. He stated that the Student struggled at [REDACTED] so he could not imagine what would've happened to the Student in a new environment. [REDACTED] testified that he could not say that there was no other school that could provide the necessary supports for the

Student to succeed in high school. (Tr. 625:21 – 626:17) ██████████ stated that despite his struggles at ██████████ the Student progressed and ██████████ was good fit. (Tr. 642:6-18)

#### Analysis of Parents' Evidence

Dr. ██████████ is extremely knowledgeable and respected in the field of Neuropsychology. I found his testimony to be extremely helpful as to why he diagnosed the Student with ASD. The other diagnoses for the Student were repetitive of what the Student was diagnosed with in 2010 and 2015 when the Student was in Elementary School and Middle School. The services and accommodations needed for the Student to access his education were also similar in Elementary and Middle School. One persistent issue throughout this case for the Student and the only recommendation that Dr. ██████████ feels could not be implemented at MCPS is social confidence. The record is clear that the Student has struggled with social interactions and peer relationships throughout his schooling. However, Dr. ██████████ lacks knowledge of what social development programming is available at MCPS, specifically the ██████████ Program at ██████████, and only knows about the social programming at ██████████ based on his conversations with the Student. This lack of knowledge from the Parents' expert and his agreement that all of his other recommendations for the Student could be implemented at MCPS, a non-residential placement, shows me that MCPS could implement Dr. ██████████'s recommendations at the ██████████ Program at ██████████

I also find the testimony of the Parent to be credible. As the Parent of the Student, he knows the Student better than any teacher or medical professional, however, the Parent is not a special educator or medical professional. It is true that the Student has complex diagnoses but as I previously stated, there are consistent and ongoing problem areas for the Student whether he is in MCPS public school, private school or boarding school: focus issues, executive functioning

concerns and social development. These concerns persist through middle and high school for the Student. The Student is obviously working towards having the ability to navigate his academic and social deficiencies. The evidence shows that the Student had better grades academically when he was in public school with MCPS and there is no evidence to show that the Student's social deficiencies were managed better while at [REDACTED]. The Student never attended a MCPS school for high school so neither the Parent nor the Student have any information regarding the social development options at [REDACTED]. The Parent had a daughter graduate from [REDACTED] but she was not on an IEP. The Parents provided no evidence to show that placement in the [REDACTED] Program at [REDACTED] was inappropriate.

[REDACTED] was a credible witness for the Parents. [REDACTED] provides an alternative educational setting for boys with complex academic needs such as the Student. However, there was no testimony by [REDACTED] that the 2020 IEP developed by MCPS was inappropriate and could not provide FAPE for the Student. In considering academic progress for the Student, his grades decreased between middle school and high school, however, he progressed from grade to grade. As for emotional and social development, the record shows that the Student's experience at [REDACTED] was not a good one as it led to hospitalization at [REDACTED]. The Student's experience emotionally and socially at [REDACTED] was better than [REDACTED] but [REDACTED] agrees that the Student still struggled all three years at [REDACTED] with executive functioning and social development.

#### MCPS' Evidence

MCPS' witnesses are all special educators, counselors or therapists. They all argue that the 2020 IEP was appropriate and that the placement for the Student for the 2020-2021 school year was reasonably calculated to meet his unique needs including his social competence.

██████████ testified that she was not a member of the Student's IEP team middle school or the 2020 IEP team however, she reviewed the documents utilized by the 2020 IEP team to prepare her testimony in this case. (Tr. 668: 2-15) She testified that ██████████ has no trained special educators. (Tr. 668:20-22) Ms. ██████████ testified that the Upper School Learning Profile prepared by ██████████ was a list of accommodation and had no help to remediate or improve the Student's skill sets in his areas of need. (Tr. 670: 7-10) She stated that ██████████ also does not have any trained special educators. (Tr. 673:17-19) Ms. ██████████ testified that the Academic Intervention Support Plan created by ██████████ does not address the Student's needs as outlined in the 2017 IEP because it focused on accommodation (external supports) rather than interventions (direct instruction to complete a task) and there are no specific goals and services provided for the Student. (Tr. 674:11-19, 675:2-15) Ms. ██████████ testified that she was not surprised that the Student continued to have social and struggles while at ██████████ because there was a lack of interventions in place. (Tr. 675: 24-676:17)

Ms. ██████████ testified that the Student's cognitive profile over time appears to have remained relatively stable upon her review of Dr. ██████████ and Dr. ██████████'s evaluations of the Student. (Tr. 692:14-15) As for the Student being in a smaller setting and his social and emotional gains, Ms. ██████████ testified that smaller environments mask larger social difficulties because the social milieu is often a lot more uniform and people are willing to overlook a lot more when they're familiar with one another than they are when they are in a larger environment where there are far more ideas, differing opinions and more distractors. (Tr. 696:17-25, 697:1) She noted that the teachers at ██████████ continued to have concerns about the Student's social areas. (Tr. 697:20-25)

Ms. [REDACTED] testified that the Parents accepted the actual content of the 2020 IEP but disagreed with the placement at [REDACTED] Program. The Parents were concerned about the environment. (Tr. 715:10-21) Ms. [REDACTED] stated that in the [REDACTED] Program, all of the Student's core classes were supported and he had a self-contained resource class. The Student would be assisted throughout his day by special education teachers, teachers and paraeducators. (Tr. 717: 4-17) She opined that it is important for students that are struggling with developing social skills to remain in general education for some classes as it gives the student an opportunity to practice and staff and opportunity to coach the student – consistent with the LRE. (Tr. 717:18-718:5) Ms. [REDACTED] stated that students with ASD struggle to generalize skills they learn in isolation, so when we place too much emphasis on teaching skills in smaller environments – the skills do not travel well with the student. It is important to provide the student with continuous opportunities to practice those skills so that they can grow into productive and happy adults. (Tr. 718:6-17)

Ms. [REDACTED] testified that in the MCPS, the Student would have a team that would consist of special education teachers, general education teachers, paraeducators, counselor, psychologist and a speech and language therapist – and all these providers can work on academic as well as social and emotional goals for the Student. (Tr. 726:6-16) Ms. [REDACTED] stated that all of the recommendations enumerated in Dr. [REDACTED]'s report are in the 2020 IEP developed by MCPS, including building social competence which was the one area Dr. [REDACTED] believed could not be implemented by MCPS. She testified that the Student social competence is a multi-pronged approach that includes pragmatical speech and language, counseling services, and resource class – all used to generalize social skills. (Tr. 749:1-15) She stated that any of Dr. [REDACTED]'s recommendations that involve explicit instruction in key areas could not be provided by



██████████ because they do not have special education teachers or speech and language services at the school. (Tr. 751: 16-25) On cross-examination, Ms. ██████████ testified that MCPS accepted Dr. ██████████'s neuropsychological evaluation and that there was no need for MCPS to repeat testing because they had current data from 2019. (Tr. 794:12-23)

Ms. ██████████ testified that she was invited to the September 17, 2020 IEP development meeting to discuss autism services with the team. (Tr. 840:13-16) She stated that at the meeting, the team discussed the Student's current present levels of performance at ██████████ and there was discussion about behavioral progress, academic progress and services. She represented the autism unit as well as the Asperger services unit. (Tr 843:7-20) Ms. ██████████ explained that the Student was not a good fit for the Autism Resource Services because the students function two to four years below grade level and the Student was on grade level or just below grade level. The Student was also not a fit for the Asperger's services because they are on grade level but do not have deficits in oral language. The Student was below grade level in math. (Tr. 844: 1-25)

Ms. ██████████ testified that in MCPS, students with ASD can be placed in one of several programs: ██████████, Autism Resource Services or the Asperger Program. (Tr. 845:7-10) She opined that the ██████████ Program at ██████████ was the LRE for the Student based on his IEP. She stated that in order for the IEP team to recommend a non-public residential setting or referral for the Central IEP, it would have to rule out everything that was less restrictive. (Tr. 854:16-25) On cross-examination, Ms. ██████████ testified that with Dr. ██████████'s evaluation from 2019, the IEP had enough data to move forward with developing the Student 2020 IEP. (Tr. 861:9-17) She also stated that the ██████████ was discussed and ruled out as it is a self-contained program with some opportunity for general education but the biggest piece is the mental health aspect which was not necessary for the Student. (Tr. 863:12-25)

Mr. [REDACTED] is the current principal at [REDACTED]. He testified that he never met the Parents or the Student before chairing the 2020 IEP meetings because the Student was never enrolled at [REDACTED]. (Tr. 887:1-7) He testified that the [REDACTED] Program at [REDACTED] is often the LRE for many students as it allows them to access the general education curriculum with supports from special educators. (Tr. 886:17-25) Mr. [REDACTED] stated that [REDACTED] could have accommodated the Student's needs in its [REDACTED] Program. They even had provisions in place for special needs student's during virtual learning. He opined that [REDACTED] would have been appropriate for the Student. (Tr/ 892: 9-17) Mr. [REDACTED] stated that at the final IEP development meeting the Parents were satisfied with the goals and objective developed by MCPS but disagreed with placement in the [REDACTED] Program at [REDACTED]. (Tr. 893:9-14, 900:1-3) Mr. [REDACTED] testified that the Parents has concerns that [REDACTED] would not be able to provide the Student social emotional support and he told them that the support would be provided by the Student's counselor, the school psychologist and his case manager to ensure a smooth transition. (Tr. 900:7-15)

Mr. [REDACTED] opined that the 2020 IEP was appropriate to serve the Student's needs. He stated that the team spent a significant amount of time developing the IEP with input from all parties. (Tr. 902:17-23) He also opined that the [REDACTED] [REDACTED] Program was an appropriate placement for the Student, the LRE and could provide FAPE. (Tr. 903:1-12)

[REDACTED] is a behavior support teacher with social emotional, special education services for MCPS. She supports the [REDACTED]. (Tr. 950:1-3) Ms. [REDACTED] testified that there are [REDACTED] [REDACTED] in MCPS and when students are being considered for a more restrictive setting, she works with the schools to determine if [REDACTED] is the proper setting for the student. (Tr. 953:4-13) She also attends IEP meetings for students currently receiving [REDACTED]

services. (Tr. 953:14-15) She stated that students receiving [REDACTED] services are accessing on or above grade level instruction and they have specific deficits in executive functioning, perspective taking, flexible thinking. They are socially vulnerable and socially immature. [REDACTED] students are all diploma bound. (Tr. 954:4-25)

Ms. [REDACTED] testified that she was present for two of the 2020 IEP meetings for the Student and she agreed with the placement in the [REDACTED] Program at [REDACTED]. Ms. [REDACTED] opined that the Student could be served in a less restrictive setting. (Tr. 961:1-4) She stated that the Parents felt that the Student needed more social emotional supports and a very restrictive setting. The Parents wanted a self-contained special education setting. (Tr. 961:14-19) Ms. Strauss opined that [REDACTED] was not the LRE for the Student. She believed the Student could be educated within a general education setting and that he did not need a high level of restriction. She stated that the Student was removed from his community, his parents and non-disabled peers. (Tr. 964:14-25, 965:1-2) As for the 2020 IEP, Ms. [REDACTED] testified that she believed the IEP was appropriate. (Tr. 965:24 – 966:2)

[REDACTED] is a MCPS Special Education Supervisor and she attended the final IEP meeting on September 17, 2020. (Tr. 984:15-16) She stated that the only document she reviewed prior to the IEP meeting was the IEP. (Tr. 985:15-18) Ms. [REDACTED] testified that her role in the IEP meeting was to help facilitate the discussion about services and placement and make a recommendation to the IEP team. (Tr. 986:14-19) In the [REDACTED] Program, the Student would have three inclusion cotaught classes: English, Math, Science and a self-contained resource class. He would also receive counseling and speech and language therapy. (Tr. 986:24-25, 987:3) Ms. [REDACTED] testified that the Parents disagreed with the [REDACTED] placement due to the Students social emotional needs. (Tr. 988:4-6)

Ms. [REDACTED] is a MCPS Psychologist and she participated in the 2020 IEP team beginning in Student in May 2020. (Tr. 1034:1-2) She testified that in March 2020, MCPS received the referral packet from the Parents and forwarded it directly to her for her review. (Tr. 1035:2-4) She stated that she never met the Student which is not unusual since he was in school out of state. (Tr. 1035:7-11) Ms. [REDACTED] testified that the first meeting is an eligibility meeting and MCPS found the Student eligible for special education services. There was no need for additional data or testing because the team had all they needed. (Tr. 1036:10-18, 25, 1037:1-4, 1040:3-19) She explained that the neuropsychological evaluation by Dr. [REDACTED] was recent and accepted by the team. His report has a cognitive assessment, social emotional function and academic components. (Tr. 1042:15-22, 1130:1-13)

Ms. [REDACTED] testified that during the development of the 2020 IEP, the Students present levels were considered. (Tr. 1058:9-12) The team utilized Dr. [REDACTED]'s report, other information from the screening packet and the 2017 IEP to develop present levels for the Student. (Tr. 1071:10-18) She testified that the team also obtained updated reports from [REDACTED] to include in the final 2020 IEP. (Tr. 1079:10-19) She testified that at the August 21, 2020 IEP meeting, the team was prepared to make a placement recommendation when Parents requested more changes to the goals. (Tr. 1081:1-3) Ms. [REDACTED] testified that there was an IEP meeting scheduled for September 3, 2020 but the Parents were not available so the meeting was rescheduled for September 17, 2020. (Tr. 1082:2-14) She stated that the IEP recommended placement at [REDACTED] [REDACTED] Program and did not consider [REDACTED] because it was not the LRE and it was not appropriate given the Student's needs. (Tr. 1088:3-15)

Ms. [REDACTED] opined that the [REDACTED] Program at [REDACTED] was the appropriate placement for the Student and [REDACTED] could implement the 2020 IEP for the Student. (Tr. 1090:8-

14) She also stated that [REDACTED] was too restrictive and that Dr. [REDACTED] did not recommend a placement in his 2019 report. (Tr. 1092:2-17) She also opined that the [REDACTED] Program at [REDACTED] could provide the Student FAPE and was the LRE. (Tr. 1093:1-6) She testified that the IEP was in agreement with the Parents about the Student's needs, they only disagreed on placement. (Tr. 1130:10-24)

#### Analysis of MCPS' Evidence

All of the MCPS witnesses testified credibly that: 1) [REDACTED] was not the LRE for the Student, 2) the [REDACTED] Program at [REDACTED] was an appropriate placement for the Student, 3) [REDACTED] could provide FAPE for the Student and 4) the goals, objectives, services and accommodations recommended by Dr. [REDACTED] could be implemented in the [REDACTED] Program at [REDACTED]

Ms. [REDACTED] was available for the testimony of Dr. [REDACTED] and was able to explain very clearly why a general education setting is more beneficial to the Student's overall development than a smaller setting such as [REDACTED]. She was also able to credibly breakdown Dr. [REDACTED]'s recommendations listed in his evaluations and show where these recommendations can be found in the 2020 IEP for the Student. Ms. [REDACTED]'s testimony delved into the ASD programs available in MCPS for the Student and their differences.

It is clear from the evidence presented by MCPS that the IEP team worked diligently during the pandemic to gather as much information from all parties and develop an appropriate IEP for the student. All of the MCPS witnesses who were present for the September 17, 2020 IEP meeting, stated that the Parents agreed with the 2020 IEP's goals, objectives, services, supports and accommodations. The Parents only concern was the placement recommendation in the [REDACTED] Program at [REDACTED] because of the Student's social development deficits.

The IDEA requires that the IEP be reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. The question is whether the 2020 IEP is reasonable. See *Andrew F. v. Douglas County Sch. Dist.*, 137 S. Ct. 988, 999-1001 (2017). The IDEA does not require the best possible education that a school can provide. *Barnett ex rel. Barnett v. Fairfax Cty. Sch. Bd.*, 927 F.2d 146, 154 (4<sup>th</sup> Cir. 1991).

#### COVID-19 Pandemic and Virtual Learning

The Parent testified that the Student was in virtual schooling from March 2020 through the Winter Semester of 2021 while at [REDACTED] and struggled with virtual education. (Tr. 356:14-23, 357:9-20, 358:3-13) That time period was the Spring of the Student's 11<sup>th</sup> grade year through the Winter of his 12<sup>th</sup> grade year. The Parent testified that when the Student was remote, his inattentiveness was a problem and the Parents had conferences with faculty to discuss the issue. (Tr. 359:8-13, 360:4-12). The Parent was concerned that had the Student attended [REDACTED] remotely, the experience would've been worse than it was at [REDACTED] but that is pure speculation as the Parent had no information about the virtual program at [REDACTED] during the pandemic.

Mr. [REDACTED], the principal at [REDACTED], testified that by August 2020, [REDACTED] built a virtual schedule with visions to entirely support the kids with special needs. There were resource periods twice per week and Wednesday was a day for case managers to check in with the students. (Tr. 901: 5-19) Ms. [REDACTED], MCPS Special Education Supervisor, testified that all of the supplementary aids and services in the 2020 IEP could be implemented remotely. (Tr. 991:15-17) She stated that assistive technology was provided to students based on their needs and goals were assessed by utilizing breakout rooms, submissions and small groups. (Tr. 992:20-25, 994:10-17)

There is guidance from the IDEA for public schools to provide FAPE during the pandemic knowing that the manner of providing services will be different. There is acknowledgment that the COVID-19 pandemic is an unprecedented national emergency so schools must try to the greatest extent possible to provide special education services identified in a child's IEP. *Questions and Answers on Providing Servs. To Children With Disabilities During the Coronavirus Disease 2019 Outbreak*, 76 IDELR 77 (EDU 2020), at 2.

### Summary

Having considered and weighed the totality of the evidence, I conclude that the Parents have not met their burden of proving that the 2020 IEP proposed by MCPS failed to offer the Student a FAPE. I find that MCPS developed an appropriate IEP and placement for the Student for the 2020-2021 school that was reasonably calculated to meet his unique needs in the LRE.

### **Claim for Reimbursement of Tuition, Costs, and Expenses Associated With Placement**

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

Parents who unilaterally change their child's placement do so at their own financial risk. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 373-374 (1985); *see also Florence*

*County School District Four v. Carter*, 510 U.S. 7, 15 (1993). To obtain reimbursement, they must prove that the proposed public placement violates the IDEA. *Carter*, 510 U.S. at 15. The Parents have not proven that MCPS failed to evaluate the Student for special education services, nor have they proven that the proposed IEP was not reasonably calculated to enable the Student to make progress appropriate in light of the student's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). Therefore, the Parents are not entitled to reimbursement.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law, that the Parents have not proven that Montgomery County Public Schools violated the Individuals with Disabilities Education Act by failing to provide the Student with a free appropriate public education, by failing to provide him with an appropriate individualized education program and placement for the 2020-2021 school year. I further conclude as a matter of law that the Parents failed to prove that they are entitled to reimbursement for tuition and expenses at the [REDACTED] [REDACTED] from March 2, 2020 through June 5, 2021. 20 U.S.C.A. § 1400(d)(1)(A) (2017); 34 C.F.R. § 300.148 (2019); *Andrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cty. Sch. District Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005).



**ORDER**

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

February 4, 2022  
Date Decision Mailed

Tameika Lunn-Exinor  
Administrative Law Judge

TLE/ja  
#196614

**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]

[REDACTED]

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

BEFORE TAMEIKA LUNN-EXINOR,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-21-15426

**FILE EXHIBIT LIST**

Exhibits

I admitted the following exhibits on behalf of the Parents:

- Parents' Ex. 1 - Request for Due Process, July 7, 2021<sup>1</sup>
- Parents' Ex. 2 - Not Admitted<sup>2</sup>
- Parents' Ex. 3 - Neuropsychological Evaluation by ██████████, December 22, 2010
- Parents' Ex. 4 - Neuropsychological Evaluation by Dr. ██████████, October 5, 2015
- Parents' Ex. 5 - Speech/Language Evaluation by ██████████, December 4, 2015
- Parents' Ex. 6 - Email to Parents from Dr. ██████████, April 21, 2016
- Parents' Ex. 7 - Psychoeducational Evaluation by Dr. ██████████, May 6, 2016
- Parents' Ex. 8 - ██████████ Learning Profile, 2017-18 school year
- Parents' Ex. 9 - Not Admitted<sup>3</sup>
- Parents' Ex. 10 - Secondary School Admission Test Score Report, January 14, 2017
- Parents' Ex. 11 - MCPS Attendance Record and Transcript as of December 12, 2017
- Parents' Ex. 12 - Letter of Acceptance to the ██████████, May 18, 2018
- Parents' Ex. 13 - ██████████ Transcript, June 2018
- Parents' Ex. 14 - ██████████ Progress Report, Fall 2018
- Parents' Ex. 15 - ██████████ Progress Report, January 2019
- Parents' Ex. 16 - PSAT Score Report, 2019
- Parents' Ex. 17 - ██████████ Progress Report, Spring 2019
- Parents' Ex. 18 - Neuropsychological Evaluation by Dr. ██████████, 2019<sup>4</sup>
- Parents' Ex. 19 - ██████████ Academic Intervention Support Plan, September 9, 2019

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1 The portions of this document that refer to the Student being bullied while in Middle School are not admissible due to relevancy.

2 Not Relevant

3 Not Relevant

4 This report is not dated. The Student was evaluated on June 4, 6, 12, 19, 27 and August 14, 2019.

- Parents' Ex. 20 - ██████████ Progress Report, Fall 2019
- Parents' Ex. 21 - Practice ACT Score Report, December 1, 2019
- Parents' Ex. 22 - MCPS Child Find Referral and Documentation from Parents and ██████████, January 14, 2020 to February 28, 2020
- Parents' Ex. 23 - ██████████ Progress Report, Winter 2020
- Parents' Ex. 24 - ██████████ Progress Report, Spring 2020
- Parents' Ex. 25 - Emails between ██████████ and ██████████, August 8, 2020
- Parents' Ex. 26 - Letter to MCPS serving notice and MCPS response letter, August 17, 2020 and September 9, 2020
- Parents' Ex. 27 - Student Transcript, 2017-18, 2018-19, and 2019-20 school years
- Parents' Ex. 28 - Student Questionnaire completed for MCPS, September 2020
- Parents' Ex. 29 - MCPS IEP, September 17, 2020 (dated June 15, 2020)
- Parents' Ex. 30 - MCPS Prior Written Notices, Original and Revised, September 21, 2020
- Parents' Ex. 31 - ██████████ Progress Report, October 2020
- Parents' Ex. 32 - ██████████ Progress Report, December 2020
- Parents' Ex. 33 - Emails between Parents and MCPS, December 24, 2020
- Parents' Ex. 34 - Student Writing Samples
- Parents' Ex. 35 - Resume of Dr. ██████████
- Parents' Ex. 36 - Resume of ██████████
- Parents' Ex. 37 - ██████████ Nurses Notes, April 20, 2018
- Parents' Ex. 38 - ██████████ Discharge Summary, May 14, 2018
- Parents' Ex. 39 - ██████████ Winter Term Interim 2 Report Card, February 10, 2021
- Parents' Ex. 40 - Letter from ██████████ enclosing Winter Term Report Card, March 2021
- Parents' Ex. 41 - ██████████ Spring Term Interim 2 Report Card, May 18, 2021
- Parents' Ex. 42 - Letter from ██████████ enclosing School Spring Term Report Card, June 2021
- Parents' Ex. 43 - Student Transcript, 2017-2021

I admitted the following exhibits on behalf of MCPS:

- MCPS Ex. 1 – IEP, May 31, 2017 (pp. 1-59)
- MCPS Ex. 2 - MCPS IEP, June 15, 2020 (pp. 60-90)
- MCPS Ex. 3 - MCPS IEP, September 17, 2020 (pp. 91-131)
- MCPS Ex. 4 - Prior Written Notice (PWN), May 31, 2017 (pp. 132-142)
- MCPS Ex. 5 - P/R<sup>5</sup> Referral Packet, completed March 2, 2021 (p. 143)
- MCPS Ex. 6 - PWN 2020, May 26, 2020 (pp. 144-145)
- MCPS Ex. 7 - PWN 2020, August 10, 2020 (p. 146)
- MCPS Ex. 8 - PWN 2020, August 11, 2020 (p. 147)
- MCPS Ex. 9 - PWN 2020, September 21, 2020 (pp. 148-149)
- MCPS Ex. 10 - Invitation Letter to IEP, April 19, 2017 (p. 150)
- MCPS Ex. 11 - Five-Day Document Verification Form, January 7, 2016 (pp. 151-153)
- MCPS Ex. 12 - Five-Day Document Verification Form, May 13, 2020 (p. 154)

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<sup>5</sup> There is no definition of "P/R" in the record.

- MCPS Ex. 13 - Five-Day Document Verification Form, September 10, 2020 (p. 155)
- MCPS Ex. 14 - Child Find Referral Form, May 21, 2020 (pp. 156-157)
- MCPS Ex. 15 - Notice of IEP Team Meeting, August 25, 2020 (pp. 158-159)
- MCPS Ex. 16 - Letter from Michael Eig to MCPS, August 17, 2020 (p. 160)
- MCPS Ex. 17 - MCPS Letter to Michael Eig, September 4, 2020 (p. 161)
- MCPS Ex. 18 - Due Process Complaint, August 24, 2020 (pp. 162-167)
- MCPS Ex. 19 - MCPS Response to Due Process Complaint, August 25, 2020 and Letters to Michael Eig, September 3, 2020 (pp. 168-171)
- MCPS Ex. 20 - Report of [REDACTED], Ph.D., undated (pp. 172-198)
- MCPS Ex. 21 - Transcript – [REDACTED], December 12, 2017 (pp. 199-200)
- MCPS Ex. 22 - Not Offered
- MCPS Ex. 23 - Transcript – [REDACTED] ([REDACTED]), June 15, 2018 (p. 202)
- MCPS Ex. 24 - Not Offered
- MCPS Ex. 25 - Not Offered
- MCPS Ex. 26 - [REDACTED] – Application for Admission, March 8, 2017 (pp. 210-214)
- MCPS Ex. 27 - [REDACTED] Accommodations, September 2017 (pp. 215-216)
- MCPS Ex. 28 - Not Offered
- MCPS Ex. 29 - Not Offered
- MCPS Ex. 30 - Not Offered
- MCPS Ex. 31 - Not Offered
- MCPS Ex. 32 - Not Offered
- MCPS Ex. 33 - Not Offered
- MCPS Ex. 34 - [REDACTED] - [REDACTED] Psychosocial Assessment, April 27, 2018 (pp. 230-239)
- MCPS Ex. 35 - [REDACTED] - Assessment Educational Services, April 30, 2018 (pp. 240-241)
- MCPS Ex. 36 - Not Offered
- MCPS Ex. 37 - Not Offered
- MCPS Ex. 38 - Not Offered
- MCPS Ex. 39 - [REDACTED] - Physician Progress Note, May 10, 2018 (p. 247)
- MCPS Ex. 40 - [REDACTED] - Social Services Notes, May 11, 2018 (pp. 248-254)
- MCPS Ex. 41 - Not Offered
- MCPS Ex. 42 - [REDACTED] - Education Service Final Report, May 14, 2018 (pp. 260-261)
- MCPS Ex. 43 - [REDACTED] – Interim Reports 2018-19 (pp. 262-280)
- MCPS Ex. 44 - [REDACTED] – Interim Reports 2019-20 (pp. 281-296)
- MCPS Ex. 45 - [REDACTED] – Interim Reports 2020-21 (pp. 297-301)
- MCPS Ex. 46 - [REDACTED] – Academic Intervention Support Plan, undated (pp. 302-304)
- MCPS Ex. 47 - Letter from [REDACTED] to Parents, December 2, 2020 (p. 305)
- MCPS Ex. 48 - [REDACTED] – Winter Term, 2020-2021 Interim 2 Report, February 10, 2021 (pp. 306-309)
- MCPS Ex. 49 - [REDACTED] – Spring Term Comments 2020-21 (pp. 310-312)
- MCPS Ex. 50 - Final Transcript – [REDACTED], June 4, 2021 (p. 313)
- MCPS Ex. 51 - Not Offered
- MCPS Ex. 52 - Not Offered

- MCPS Ex. 53 - Not Offered
- MCPS Ex. 54 - Not Offered
- MCPS Ex. 55 - Not Offered
- MCPS Ex. 56 - Not Offered
- MCPS Ex. 57 - MCPS Report of Speech-Language Re-Assessment, April 15, 2016 (pp. 321-326)
- MCPS Ex. 58 - Curriculum Vitae (CV) of [REDACTED] (pp. 327-330)
- MCPS Ex. 59 - CV of [REDACTED] (pp. 331-332)
- MCPS Ex. 60 - CV of [REDACTED] (pp. 333-335)
- MCPS Ex. 61 - CV of [REDACTED] (pp. 336-337)
- MCPS Ex. 62 - CV of [REDACTED] (pp. 338-339)
- MCPS Ex. 63 - CV of [REDACTED] (pp. 340-341)
- MCPS Ex. 64 - CV of [REDACTED] (pp. 342-343)
- MCPS Ex. 65 - CV of [REDACTED] (p. 344)
- MCPS Ex. 66 - CV of [REDACTED] (pp. 345-347)
- MCPS Ex. 67 - CV of [REDACTED] (pp. 348-350)
- MCPS Ex. 68 - CV of [REDACTED] (pp. 351-355)
- MCPS Ex. 69 - Not Offered
- MCPS Ex. 70 - Email between Parents and the [REDACTED], February 8, 2019 (p. 358)
- MCPS Ex. 71 - Emails between Parents and the [REDACTED], February 18, 2020 (p. 359)
- MCPS Ex. 72 - Emails between Parents and [REDACTED], May 11, 2020 (p. 360)
- MCPS Ex. 73 - Emails between Parents and [REDACTED], June 4, 2020 (p. 361)
- MCPS Ex. 74 - Emails between Parents and MCPS, June 15, 2020 and August 7, 2020 (pp. 362-363)
- MCPS Ex. 75 - Email between Parents and MCPS with Draft IEP attached, September 10, 2020 (pp. 364-404)
- MCPS Ex. 76 - Emails between Parents and [REDACTED], September 11, 2020 (pp.405-406)
- MCPS Ex. 77 - Email between Parents and MCPS with IEP attached, September 24, 2020 (pp. 407-451)
- MCPS Ex. 78 - Email between Parents and Dr. [REDACTED], September 29, 2020 (p. 452)
- MCPS Ex. 79 - Emails between Parents and [REDACTED], November 2, 2020 and November 6, 2020 (pp. 453-454)
- MCPS Ex. 80 - Email between Parents and [REDACTED], November 11, 2020 (p. 455)
- MCPS Ex. 81 - Emails between Parents and [REDACTED], December 15, 2020 (p. 456)
- MCPS Ex. 82 - Emails between Parents and [REDACTED], May 26, 2021 (pp.457-460)