

XXXX XXXX,¹

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

* BEFORE MICHAEL R. OSBORN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MSDE-MONT-OT-17-05289

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DECISION

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STATEMENT OF THE CASE

On February 23, 2017, Mr. and Mrs. XXXX (Parents), on behalf of their son (XXXX., or Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, and 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) (2010).² On March 9, 2017, the Parents filed a Motion to Amend, which was not opposed. On March 10, 2017, the OAH granted the Motion to Amend. The parties attended a resolution session on March 20, 2017, and notified the OAH the same day that they did not resolve their dispute. The parties did not participate in mediation.

I held a telephone prehearing conference on March 21, 2017. The Parents were represented by Michael J. Eig, Esquire. Jeffrey A. Krew, Esquire, represented MCPS. During the prehearing conference, I advised the parties of the time requirements for issuing a decision in

¹ The Student's and other names have been masked in the Decision to protect the Student's privacy and facilitate eventual publication of the decision.

² Unless otherwise indicated, references to Title 20 of the U.S.C.A. hereinafter cite the 2017 volume.

this case under the IDEA. Pursuant to the governing regulations, a decision would normally be due forty-five days after certain triggering events, or by May 4, 2017. 34 Code of Federal Regulations (C.F.R.) § 300.510(b)(2), (c)(2) (2016).³ The parties and I engaged in a lengthy discussion in an attempt to schedule the necessary hearing dates in a manner that would enable issuance of a decision by that date. Based upon the complexity of the hearing and a detailed review of the attorneys' and my schedule, sufficient hearing dates could not be identified prior to May 22, 2017. Accordingly, the parties requested that the hearing be scheduled for May 22, 24, 25, 30, and 31, 2017. I held the hearing on those dates, and on June 17, 2017. Mr. Eig represented the Student and Parents, and Mr. Krew represented MCPS.

Because the hearing dates requested by the parties fell outside the forty-five-day regulatory timeframe, I granted the request of the parties and extended the time for issuance of the decision until July 17, 2017. 34 C.F.R. § 300.515(c); Md. Code Ann., Educ. § 8-413(h) (Supp. 2016). The conflicts which prevented the hearings from being held within the timeframe are documented in greater detail in the letters from counsel in the file, recited in the Prehearing Conference Report, and in the transcript of proceedings of May 30 and 31, 2017.

The legal authority for the hearing is codified in the IDEA and under Maryland law. 20 U.S.C.A. § 1415(f)(1)(A); 34 C.F.R. § 300.511(a) – (f); Md. Code Ann., Educ. § 8-413(e)(1) (Supp. 2016); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Maryland State Department of Education procedural regulations, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 13A.05.01.15C; COMAR 28.02.01.

³ Unless otherwise indicated, references to Title 34 of the C.F.R. hereinafter cite the 2016 volume.

ISSUES

The issues are as follows:

1. Does the Student's 2016-2017 individualized education program (IEP) fail to provide a free appropriate public education (FAPE);
2. If the 2016-2017 IEP failed to provide a FAPE, is [School 1] ([School 1]) an appropriate placement, including all related services?
3. If MCPS failed to provide a FAPE for the 2016-2017 school year, and if [School 1] is an appropriate placement, are the Parents entitled to reimbursement for the costs associated with the unilateral placement of the Student at [School 1]?

Because I find in favor of MCPS on the first issue, I need not address issues two and three.⁴

SUMMARY OF THE EVIDENCE

Exhibits

I have attached an Exhibit List as an Appendix to this Decision.

Testimony

The Parents testified and presented the following witnesses:

- XXXX XXXX, Educational Consultant, XXXX Group, accepted as an expert in Special Education, with emphasis on the education of high-functioning autistic children and twice-exceptional students; and,

⁴ See *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 129 (1998): "When the parents of a disabled child file suit under IDEA to challenge a state-proposed IEP and when the relief they seek includes reimbursement of expenses incurred at a private school, an award will be entered in their favor if it appears (1) that the proposed IEP was inadequate to afford the child an appropriate public education, and (2) that the private education services obtained by the parents were appropriate to the child's needs." See *School Comm. of Burlington v. Dept. of Educ.*, 471 U.S. 359, 370, 105 S.Ct. 1996, 2002-03, 85 L.Ed.2d 385 (1985); accord *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 12-14, 114 S.Ct. 361, 364-66, 126 L.Ed.2d 284 (1993) (where both prongs of *Burlington* test are satisfied, court may require state to reimburse parents for expenses incurred at a private school even though it is not on state-approved placement list); *Still v. DeBuono*, 101 F.3d 888, 891-92 (2nd Cir. 1996).

- XXXX XXXX, Program Coordinator, XXXX Program, [School 1], accepted as an expert in Special Education, with an emphasis on the supervision of educational programming of children with autism.⁵

MCPS presented the following witnesses:

- XXXX XXXX, Special Education teacher, [School 2] ([School 2]), accepted as an expert in Special Education;
- XXXX XXXX, MCPS Autism Program Specialist, accepted as an expert in Special Education, with specialization in the education of students with autism;
- XXXX XXXX, School Psychologist for Autism and Asperger’s Programs, MCPS, accepted as an expert in psychology with an emphasis on students with autism; and,
- XXXX XXXX, Resource Teacher, XXXX Program, [School 3], accepted as an expert in Special Education, with an emphasis on students with behavioral problems.

FINDINGS OF FACT

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

Stipulated Facts⁶

1. In accordance with the IDEA, the Student is eligible for special education and related services under the educational disability of Multiple Disabilities (Autism and Specific Learning Disability in written language).

⁵ Ms. XXXX testified about [School 1] and its XXXX Program. The Parents were required to present this evidence to satisfy the second prong of *Burlington* and *Carter*, that is, whether [School 1] is an appropriate placement and whether tuition reimbursement is warranted. However, as *Andrew F.* recognizes, crafting an appropriate program of education requires a prospective judgment by school officials. 137 S.Ct. at 992. *See also Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990) (“An IEP is a snapshot, not a retrospective. In striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated.”) She testified that [School 1] used the MCPS July 18, 2016 IEP when XXXX enrolled there, including its goals and objectives, until [School 1] adopted its own IEP about three months later. She did not criticize the MCPS IEP, nor was she called as a witness for that purpose.

⁶ The parties submitted Proposed Joint Stipulated Facts one through eight during the hearing.

2. During the 2015-2016 school year, the Student was in the sixth grade and attended the Asperger's Program at [School 2].

3. On May 28 and November 5, 2015, and on March 3 and July 18, 2016, MCPS convened IEP⁷ meetings. The Student's July 18, 2016 IEP provides for him to receive the following special education and related services in the XXXX Program at [School 3] during the 2016-2017 school year: 29 hours 20 minutes a week of special education classroom instruction, outside the general education setting, for seven class periods and lunch, with the option for the Student to self-select lunch in the general education setting if he so chooses; and, 3 hours a month (four 45-minute sessions) of counseling service, outside the general education setting.

4. On June 30, 2016, the Parents submitted an application to [School 1] for the Student's attendance in the XXXX Program during the 2016-2017 school year.

5. On August 3, 2016, [School 1] notified the Parents of the Student's acceptance for the 2016-2017 school year.

6. On August 10, 2016, the Parents' attorney wrote to the Principal of [School 2] confirming the Parents' rejection of placement at XXXX, advising that the Student would be attending [School 1] for the 2016-2017 school year, and requesting MCPS place and fund the Student at that placement.

7. The Student began attending the XXXX Program at [School 1] on August 24, 2016.

⁷ The IEP team is a "group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability." 34 C.F.R. § 300.23.

8. On August 25, 2016, MCPS' attorney wrote to the Parents' attorney advising MCPS was declining to place and fund the Student at [School 1] as he had been provided a FAPE in the least restrictive environment through the recommendations of the July 18, 2016 IEP team.

Background

9. XXXX is a thirteen-year-old boy (born XXXX 2003) with eligibility for special education services under the primary disability of Multiple Disabilities – Specific Learning Disability, Autism.

10. XXXX attended [School 4], his MCPS home school, from Kindergarten through part of 3rd grade.

11. Beginning in Kindergarten, XXXX participated in private occupational therapy, private individual counseling, and private social skills counseling.

12. XXXX had significant behavioral difficulties in Kindergarten and had seventeen office referrals due to inappropriate physical behaviors.

13. During first grade, XXXX was referred to the office twenty-five times for physical aggression and disrespect toward adults. He was also the subject of in-school intervention for class disruption, kicking a teacher, disrespectful behavior, and a physical attack on a student.

14. In November 2010 a Functional Behavioral Assessment (FBA) was conducted and a Behavioral Intervention Plan (BIP) was put in place. Triggers for unwanted behavior were identified as part of the FBA. They included being asked to perform non-preferred assignments, being addressed by adults for inappropriate behavior, and feeling wronged by staff or peers. The BIP included prompting to use calming strategies, and permission to leave the classroom to seek support from identified staff members.

15. In November 2010, a private psychological evaluation was conducted at XXXX Center (XXXC). A Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), was administered, which revealed average verbal cognitive skills, superior non-verbal cognitive skills, average auditory working memory, and low visual processing speed. The XXXC evaluation noted concerns about aggression, attention problems, oppositional and rule-breaking behaviors, and social difficulties. The XXXC evaluation also noted several pronounced weaknesses in executive functioning such as impulse control, self-monitoring, and organization. The XXXC evaluator diagnosed Attention Deficit Hyperactivity Disorder (ADHD)-Combined Type, and Oppositional Defiant Disorder (ODD).

16. In January 2011, a Section 504 Plan was put in place at [School 4] due to documented ADHD. The Section 504 Plan provided a variety of accommodations in the classroom. No IEP was yet in place.

17. From May 30, 2012 through July 27, 2012, XXXX participated in a diagnostic and treatment research protocol at the [Facility] ([FACILITY]). He attended the Children's School Program at the [FACILITY], an in-patient self-contained hospital classroom under the auspices of the MCPS Home and Hospital Teaching Department. The primary purpose of his attendance was medical research, which included instruction and close observation during both

medicated and unmedicated periods. The secondary purpose was to understand XXXX's educational needs.

18. During the approximately eight weeks at [FACILITY], XXXX participated in extensive evaluations to understand his disorders, his behavior, and his educational needs. Educational support was provided by qualified teachers in a classroom setting with no more than four students assigned to two teachers. XXXX also participated in recreation therapy daily.

19. On arrival at the [FACILITY] program, XXXX was immature, bright, pleasant, creative, and articulate. He also possessed a very good vocabulary, a good memory, and good comprehension. He demonstrated skills above grade level in all academic areas. XXXX was bored if information was presented in traditional classroom methods, and added information to whatever the class was studying.

20. During the [FACILITY] evaluation XXXX presented various educational challenges. He was restless, fidgety, easily distracted, and verbally and physically impulsive. XXXX was rigid, inflexible and concrete in his thinking. XXXX exhibited a writing disorder and a social disorder. XXXX was in near-constant motion, rocked, bounced, sat on his foot, cracked his knuckles and played with anything within reach. XXXX was easily distracted and often went off topic. XXXX thought faster than he could write, with the result that his translation of thought to paper was poor.

21. During the [FACILITY] evaluation, XXXX was highly anxious. He wanted his work to be perfect but his concrete thought processes interfered. XXXX got stuck and irritable when instructions were inconsistent with how he thought the material should be taught. When he was unable to get immediate attention from teachers, he became demanding and irritable and shut down. XXXX found it exceptionally difficult to wait his turn and walked out of class to his room, declaring that he was using his coping strategies to avoid getting angry.

22. At [FACILITY], XXXX found transitions from subject to subject difficult. Transitions had to be presented to XXXX well in advance for him to handle the transition.

23. At [FACILITY], XXXX had a difficult time with peer relationships. He wanted friends but did not have the skills to make and keep friends. XXXX was unable to read body language or nuances and misinterpreted what peers said or did, and took very personally the smallest of criticisms. When teachers used a gentle corrective approach, he responded angrily and accused the teachers of yelling at him. XXXX liked to be perfect, to be perceived as perfect, and to be in charge. He did not engage in give and take and did not know how to interact or carry on a conversation with others.

24. At the conclusion of the study, teachers at [FACILITY] provided a list of fourteen strategies to improve XXXX's learning, most of which address social relationships and rigidity. These recommendations included small classrooms and providing a supportive and flexible teacher's aide capable of addressing XXXX's needs in the moment. The recommendations included providing daily social skills training which the evaluation teachers described as "imperative" along with ensuring XXXX's day was highly structured and that he was aware in advance what would be expected of him, and when. The teachers at [FACILITY] suggested XXXX's needs would evolve and change and that his changing needs would require continuous monitoring.

25. XXXX returned to [School 4] following the [FACILITY] study. On March 24, 2011, XXXX was suspended from [School 4] for biting an adult.

26. In second grade, XXXX had seven office referrals and two suspensions, one for a physical attack on a staff member, and another for dangerous conduct toward an adult. On several occasions XXXX had to de-escalate and calm down in order to lower his frustration/anger level. School staff altered XXXX's schedule to minimize transitions. On

March 12, 2012, XXXX was involved in a physical altercation with another student and when prompted to use calming strategies he left school and walked home. This resulted in a two-hour suspension and in-school intervention for the rest of the week that involved XXXX's grandmother shadowing him.

27. On August 29, 2012, a special education screening meeting was held at [School 4]. The meeting was prompted, in part, by concerns about XXXX's aggressive behavior, completion of written tasks, social skills, difficulty managing transitions, and anxiety.

28. On September 6, 2012, XXXX was evaluated by XXXX XXXX, School Psychologist, [School 4]. XXXX was referred to Ms. XXXX for evaluation by XXXX's IEP team to evaluate his current cognitive function and to assess the impact of attention-related and social-emotional/behavioral difficulties on his school performance.

29. On a WISC-IV scale, XXXX scored high average in verbal comprehension (percentile rank 90), high average in perceptual reasoning (percentile rank 90), high average in working memory (percentile rank 81), average in processing speed (percentile rank 66), with a superior full scale intelligence quotient (FSIQ) of 120 (percentile rank 91).

30. Ms. XXXX administered a Conners Comprehensive Behavior Ratings Scale to XXXX's second grade teacher at [School 4], his two teachers at [FACILITY], and XXXX's parents. Scores were based on responses to questions posed. The information provided reflected high average, elevated, or very elevated scores in social anxiety, defiant/aggressive behaviors, potential for violence, separation fears, and perfectionist and compulsive behaviors. Teachers noted that XXXX was prone to explosive and unpredictable behaviors, often lost his temper, was easily annoyed, could be aggressive towards others, and often argued with adults. XXXX's parents' responses demonstrated very elevated levels of emotional distress, worrying, social

problems, hyperactivity, compulsive behaviors, and physical symptoms of poor appetite, difficulty falling asleep, and waking up too early.

31. Ms. XXXX's data, made part of her evaluation, also included a Conners 3 Self-Report Scale, with results based on XXXX's responses to questions posed, a Revised Children's Manifest Anxiety Scale – Second Edition, an interview with XXXX, her observations of XXXX, and a review of records provided to her. She concluded, based upon all data considered, that XXXX's symptoms were consistent with Generalized Anxiety Disorder (GAD), ADHD, and mood dysregulation.

32. On September 25, 2012, Ms. XXXX reported her results. She reported prior private diagnoses of GAD, ADHD-Combined Type, ODD, and Mood Disorder Not Otherwise Specified (severe mood dysregulation). In addition, she reported superior cognitive skills, paired with perfectionist and compulsive behaviors, defiant and aggressive behaviors, emotional distress, social difficulties, worrying, and hyperactivity. From the data presented, Ms. XXXX concluded that XXXX had an emotional condition that exhibited identified characteristics over a long period of time and to a marked degree, specifically: (1) inappropriate types of behavior or feelings under normal circumstances, and 2) a tendency to develop physical symptoms or fears associated with personal or school problems.⁸ Ms. XXXX recommended the IEP team consider whether her report qualified XXXX for identification as a student with a special education disability, and also recommended that it consider his current performance at [School 4] in making a placement decision.

⁸ Federal regulations, at 34 C.F.R. § 300.8, define “child with a disability” as, among other things, a child with a serious emotional disturbance. This section also includes autism, other health impairment, and specific learning disability as evaluation results that may qualify a student for special education services. Ms. XXXX's conclusions fit squarely within the definition of “emotional disturbance” under 34 C.F.R. § 300.8(c)(4)(i). 34 C.F.R. § 300.8(c)(1)(i) defines autism. Under 34 C.F.R. §300.8(c)(1)(ii), autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.

33. On September 7, 12 and 14, 2012, XXXX was assessed by XXXX XXXX, Resource Teacher, [School 4], who reported his results on September 24, 2012. Mr. XXXX administered a Woodcock-Johnson III Test of Achievement, which resulted in scores of very advanced in letter-word identification, passage comprehension, reading comprehension, and math reasoning, and average to high average scores in all other areas assessed. Mr. XXXX noted in his report that XXXX was initially very anxious, and needed to be in control. Mr. XXXX reported that he eased some of XXXX's anxiety by letting XXXX decide the order of testing. XXXX insisted on knowing how he was doing on every test, and even though he was performing exceptionally well, overall, he could not be persuaded to address any question to which he did not immediately know the answer. XXXX refused to perform any writing samples, and had markedly poor stamina when performing any test.

34. On September 24, 2012, XXXX XXXX, M.D., Chief, Child and Adolescent Psychiatry, Emotion and Development Branch, [FACILITY], [FACILITY], authored a letter to the Parents. Therein, Dr. XXXX followed up on the [FACILITY] study of May 30, 2012 through July 27, 2012. Dr. XXXX highlighted XXXX's strengths – excellent verbal skills, highly logical reasoning, strong affiliative desires, exuberance, and eagerness to engage adults. Dr. XXXX also highlighted XXXX's weaknesses – marked irritability, extreme restlessness, disorganization, distractibility, impulsivity, intense inflexibility, limited social understanding, desperate anxiety, limited capacity to understand his emotions, limited capacity to tolerate mistakes, and proneness to becoming undone when criticized. Dr. XXXX expressed the opinion that the current diagnoses did not fully capture XXXX's difficulties, and that Social Learning Disorder, not currently in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV), but proposed for the DSM-V, more closely fit XXXX than his current diagnosis. He further opined that Pervasive Developmental Disorder, which he stated is now termed Autism

Spectrum Disorder (ASD), should be considered as an appropriate diagnosis, but qualified his opinion by stating that XXXX's ASD was mild compared to many children with ASD, and opined that the DSM-IV could be stretched to conclude that XXXX has Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS), a diagnosis with uncertain boundaries, course, and vague features. Dr. XXXX concluded by saying that it is unclear how much Social Learning Disorder and PDD-NOS overlap, or whether the conditions are related to one another. He also stated that not enough is known about what interventions are most helpful to children like XXXX. He noted that XXXX's social and pragmatic impairments are thwarting XXXX's capacity to learn and that an educational setting with experts in responding to XXXX's rigidity, anxiety, social learning disorder and conceptual gaps should be an imperative and central feature of an IEP.

35. On October 3, 2012, XXXX XXXX, Educational Consultant, XXXX Group, prepared a Present Levels of Performance regarding XXXX, a page-long point paper summarizing the [FACILITY] report of July 27, 2012.

36. Armed with the July 27, 2012 [FACILITY] report, Ms. XXXX's report of September 25, 2012, Mr. XXXX's Educational Assessment of September 24, 2012, Dr. XXXX's letter of September 24, 2012, Mr. XXXX's October 3, 2012 point paper, and XXXX's educational records, the [School 4] IEP team met. The result was placement in a Social and Emotional Support Unit at [School 5] ([School 5]), a MCPS school.⁹

37. XXXX attended [School 5] for the remainder of the 2012-2013 school year, and all of the 2013-2014 and 2014-2015 school years, (grades 3 through 5), where he was a participant in the Social and Emotional Support Unit. At [School 5], he received services and

⁹ The [School 4] IEP that resulted in alternate placement of XXXX at a location other than his home school was not offered as evidence. I do not, therefore, know the date of that IEP. Testimony during the hearing was that the IEP did not have a learning disability code of Emotional Disability, and that participation in the Social and Emotional Support Unit at [School 5] did not require such a code.

supports for the learning disabled under the primary disability of Other Health Impairment (OHI).¹⁰ XXXX had an IEP for all years at [School 5]. His September 23, 2014 IEP reflected that his difficulties affected areas of social interaction, response to frustration, distractibility, acceptance of responsibility for behaviors, managing anxiety, and demonstrating understanding and mastery of written language. His September 23, 2014 IEP included, among other things, both general education with para-educator support classes and self-contained classes, and fifteen minutes, twice a month, of counseling, which XXXX received from XXXX XXXX, a Licensed Clinical Social Worker.

38. At [School 5] XXXX demonstrated strong academic abilities. His IEP provided supports to address problems with anxiety, frustration tolerance, and distractibility. In written language XXXX demonstrated a high degree of creativity, and could write for long periods of time if the topic interested him. He enjoyed collaborating with other students, if he picked the other students. He struggled to elaborate on his ideas, and disliked feedback suggesting that his ideas were less than fully-formed or that his work contained organizational or grammatical errors. In XXXX's view, when he was done with a writing assignment there was no need to revise or edit the draft. XXXX demonstrated a high mastery of math but struggled to explain the steps used to arrive at the solution to a math problem. Failure to arrive quickly at a solution to a complex, multi-step math problem usually resulted in intense frustration.

39. At [School 5], in areas of social-emotional goals, XXXX made gains but by fifth grade continued to require adult support to solve almost all social problems. He was creative and

¹⁰ The IDEA regulations define "other health impairment" as follows:

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

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

34 C.F.R. § 300.8(c)(9).

clever, socialized successfully with chosen peers, and performed well as a student patrol. However, XXXX continued to demonstrate very low frustration tolerance, especially in written expression, was unable to elaborate on responses, would not accept responsibility for unwanted behaviors, and disliked being asked to consider approaches and ideas of others. XXXX continued to have a poor ability to read social cues, leading to inappropriate language and moving to alternative locations to cool down. These behaviors continued to interfere with XXXX's academic achievement and functional performance.

40. On September 24, 25, and 29, 2014, XXXX was evaluated by XXXX XXXX, Ed.D., Psychologist, MCPS. The purpose of the evaluation was to examine progress in XXXX's IEP goals and objectives, to identify specific services and needed interventions, and to make future program recommendations. On October 28, 2014, Dr. XXXX issued a report that included his findings and recommendations. He found that XXXX had ADHD and mood disorder, but also opined that XXXX presented with mild ASD and learning difficulties, both equally impactful. His recommendations were that, in addition to what was already included in XXXX's IEP, FBA and BIP, the IEP team may wish to consider the following recommendations:

- Consult with an Occupational Specialist to outline a plan of support
- Incorporate XXXX's hobbies and goals into his schoolwork to increase interest and motivation
- (Teachers should) help XXXX reduce impulsive behaviors through problem-solving techniques
- Incorporate a Goal-Plan-Do-Review System to promote systematic goal defining, planning, action, self-monitoring and evaluation
- Incorporate flexible strategic adjustment with specific executive function intervention strategies
- (Teachers should) aid XXXX in sustaining attention to tasks
- Assign seating in front to aid in monitoring and reduce distractions
- Break activities into small goals
- Actively involve XXXX in the lesson
- Provide a definite purpose for unstructured activities
- Use reminder cues, and
- Use a timer for self-monitoring.

41. As part of his October 28, 2014 report, Dr. XXXX also opined that XXXX may benefit from:

- Frequent breaks
- Verbal reminders to use calming strategies
- Help with identify coping strategies to effectively deal with frustrations
- Additional time to complete tasks
- Shortening in-class assignments
- Continued work on social-skill development – consider incorporating comics
- Breaking tasks into smaller units to avoid being overwhelmed
- Help increasing XXXX's awareness of his difficulty initiating tasks
- Creation of a do list, with steps to be done on each activity
- Increased hands-on laboratory-type activities and reduced desk work
- Use of visual organizers and pictures to aid in transitions, and to visualize the day
- Teaching XXXX how to increase organization
- Encouraging quality over quantity
- Setting a routine with written instructions, and
- Careful monitoring of progress in academic, social, emotional and behavioral goals, with close contact between teacher and parents.

42. As part of his October 28, 2014 report, Dr. XXXX also opined that XXXX may benefit from the following accommodations:

- Place XXXX with students who take class work seriously
- If XXXX makes disrespectful remarks, explain later in a quiet and nonjudgmental way why the remark was inappropriate
- Do not convey information non-verbally
- Watch for signs XXXX is overwhelmed. Teach XXXX to recognize them and address the signs with a teacher
- Use a two-minute warning for transitions
- Use an instructional method that focuses on the big picture, and which specifically relates the instruction to prior instruction
- Allow short periods of physical activity between subjects
- Use a word processor and split grading to accommodate writing weaknesses
- Minimize XXXX's opportunity to compare his work to his classmates' work
- Capture XXXX's motivation by adapting the lesson to incorporate his interests
- Recognize good work, build self-esteem by creating situations that facilitate success.

43. On October 10, 2014, XXXX XXXX, Behavioral Support Teacher, [School 5], conducted an educational assessment, the purpose of which was to reevaluate and reassess learning behaviors suspected to negatively impact XXXX's learning. As part of her assessment, Ms. XXXX administered a Woodcock-Johnson III Test of Achievement. On December 2, 2014,

Ms. XXXX issued an Educational Assessment Report. Her report reflected that XXXX performed from Average to Superior in all academic areas. She reported all areas of strength and weakness. Based on XXXX's test performance, Ms. XXXX recommended the IEP team consider the following:

- Provide graphic organizers to help XXXX add detail to his writing
- Allow extra time to complete assignments
- Allow access to a word processor for longer writing assignments
- Provide frequent breaks
- Provide preferential seating to ensure attention to task and understanding of concepts, and
- Provide strategies to strengthen problem-solving.

Transition to Middle School

44. On May 28, 2015, the [School 5] IEP team met, with the Parents in attendance. The meeting was called, in part, to address XXXX's transition to Middle School. The meeting included the Parents, XXXX's special education teacher, his case manager, a general education teacher, Dr. XXXX, Mr. XXXX, and XXXX XXXX, Program Specialist, Autism Unit, MCPS. The May 28, 2015 IEP reflected XXXX was eligible for special education services with a primary disability of Multiple Disabilities, with specific learning disability of ASD and a specific disability in the area of written language. The IEP recognized XXXX's difficulties in managing frustration, effectively planning and organizing, and high resistance to accepting feedback relating to the quality of his work or the need to revise it. While highly skilled at math, any requirement that XXXX explain his answers or consider alternative methods to approach a math problem resulted in high frustration and absence from the classroom. XXXX's challenges in managing his frustrations using independent coping strategies, increased rigidity and inflexibility in social situations, difficulty accepting responsibility for his behaviors, elaborating and explaining his thought process - especially in written language, demonstrating higher order

thinking, and showing safe behaviors when agitation and anxiety increased deprived him of learning opportunities.

45. The May 28, 2015 IEP included three Behavior Goals. The first Behavior Goal provided that XXXX would, given social skills instruction, opportunities for practice and reflection, and role modeling, be able to demonstrate age-appropriate peer interaction. The first Behavior Goal included four objectives: 1) XXXX will demonstrate appropriate behaviors for entering and maintaining on-topic, age-appropriate conversations; 2) XXXX will demonstrate appropriate behaviors for maintaining friendships with a variety of classmates; 3) XXXX will demonstrate appropriate behaviors for engaging in collaborative discourse and problem solving with classroom peers; and, 4) XXXX will demonstrate appropriate behaviors for taking and understanding multiple perspectives.

46. The second Behavior Goal of the May 28, 2015 IEP provided that, given fading adult support, opportunities to practice coping strategies, and access to an alternative location, XXXX would utilize appropriate problem solving techniques to return to learning. The second Behavior Goal included four objectives: 1) XXXX will speak about a situation that has made him frustrated or angry using appropriate language and tone of voice; 2) XXXX will use a coping strategy such as speaking to available staff or asking to move to a quiet location; 3) XXXX will demonstrate an understanding of an alternative perspective when problem solving; and, 4) XXXX will return to learning within fifteen minutes of an incident.

47. The third Behavior Goal of the May 28, 2015 IEP was that, given adult modeling, access to an alternative location to problem solve, and opportunities for practice and reflection, XXXX will accept responsibility for his behaviors. The third Behavior Goal included three objectives: 1) XXXX will identify his role in an incident; 2) XXXX will be able to take the

perspective of the other person involved in the incident; and 3) XXXX will demonstrate an understanding of how his actions affect others.

48. The May 28, 2015 IEP also included goals in organization, math, oral expression and written expression, with objectives principally related to ensuring his classroom materials remained organized and available, that he arrives for class prepared and not have to return to home room to retrieve materials, maintaining focus, explaining his responses, and increasing his abstract reasoning.

49. Under the May 28, 2015 IEP, XXXX was placed at [School 2], not his home school, and assigned to the XXXX Program. Under the May 28, 2015 IEP, XXXX would attend four general education co-taught classes a day. Those classes included math, science, social studies and physical education (physical education or gym class). Under the IEP, XXXX would attend three self-contained classes per day. Those classes included English, resource, and social skills.

50. On May 26, 2015, a FBA was updated and completed at [School 5], although a current BIP was not developed. This FBA, along with the May 28, 2015 IEP, was provided to [School 2].

51. XXXX attended sixth grade at [School 2] for the 2015-2016 school year. Special educator XXXX XXXX was assigned as XXXX's case manager. XXXX XXXX was assigned as a special educator. XXXX also had para-educator support.

52. From the outset at [School 2], Ms. XXXX principally, in concert with Ms. XXXX and others, worked to develop an effective system to reward XXXX for positive behaviors, and to develop effective strategies for implementing de-escalation techniques when XXXX lost control. These measures included a behavior contract, physical education incentives for a good week that did not include any aggression or inappropriate language, and informal staff problem-

solving and safety intervention when needed. These measures also included the use of a room where XXXX could go to de-escalate, the “Chillax Room” (Chillax Room or break room). XXXX demonstrated characteristic behaviors over the course of the first three months at [School 2]. He engaged in verbal fights with other students, used vulgar language toward others when he felt wronged, threw a badminton racquet at a teacher, tried to call 911 to get higher authorities to intervene in a dispute, went through Ms. XXXX’s desk, took a hockey puck and searched for another student to throw the puck at, refused to listen to teachers or yelled profanities at them when unhappy with them, threatened or made aggressive gestures toward peers or staff on numerous occasions, and refused to get on the bus. XXXX always felt anxiety over meeting with school administrators.

53. Within a month of the start of the 2015-2016 school year Ms. XXXX expressed concern to her supervisors that the [School 2] XXXX Program was not an appropriate placement for XXXX due to significant behavior problems.

The November 5, 2015 FBA

54. On November 5, 2015, the Parents and [School 2] staff met to discuss the components of an updated FBA based on data gathered and observations of XXXX since enrollment at [School 2]. Data to construct the FBA was collected from teacher interviews, an antecedent behavior consequence (ABC) chart, anecdotal records, Parent interviews, and reported success or failure of behavior management tools already in place. The FBA noted that although XXXX is bright, his rigidity and inflexibility often got in the way of access to the general education curriculum, and access to all general education subjects required a significant amount of one-on-one support. The FBA noted that since enrollment, XXXX had been sent to after-school detention once and had been involved in five critical incidents. The FBA noted that XXXX often concluded he was being targeted or victimized, with vulgar language the result. It

also noted that on three occasions XXXX had kept bent paper clips or pencils sharpened on both ends as tools he used or intended to use to intimidate other students. He did not associate teasing other students as improper even though he disliked being teased. He often blamed staff for his problems. In September 2015 he missed 247 minutes of classroom instruction, and in October 2015 missed 258 minutes due to removal to the Chillax Room. At times, although he was permitted to go to the Chillax Room, or referred himself to the Chillax Room, he instead went to the school hallway.

55. The November 5, 2015 FBA identified events or circumstances that triggered unwanted behaviors. These included: unstructured time; large group instruction; when told “no” or when denied access to a preferred activity; participation in physical education or collaborative work groups; working independently; or, when given a directive. Consequences of unwanted behavior included teacher attention, verbal warnings and removal from class. The FBA noted that when XXXX was faced with a non-preferred activity or a situation that may cause him embarrassment he engaged in unsafe behavior and verbal threats - behaviors motivated to gain access to preferred activities or to save face from embarrassment. The FBA also noted that XXXX was not always able to manage his behavior, and at times was unwilling to accept staff support.

56. The November 5, 2015 FBA included replacement behaviors and behaviors to be learned, which included: letting a teacher know he was going to the Chillax Room; taking ten minutes to practice de-escalation strategies such as deep breathing, punching a pillow, and listening to music; processing the problem with two adult staff members; and, returning to class within ten to fifteen minutes. Strategies to avoid the triggering events included: use of a flash pass to go to the Chillax Room; use of a behavior motivation system; providing advanced warning of changes in routine; reminders to stay calm and use coping strategies; and, use of

clear, concise language to discuss expectations. Strategies to increase the wanted replacement behaviors included: adult modeling of problem solving; direct instruction in identifying and using calming strategies; use of correct tone when addressing a frustrating situation; and applying social skills instruction into strategies during real life events to help XXXX understand the difference between significant and insignificant events, to help him understand how to choose alternatives, and to address his rigidity and inflexibility. One objective of the FBA was to encourage XXXX to remain in class, rather than leaving class, to avoid unintentionally reinforcing unwanted behavior by allowing him to leave class. Another objective was to eliminate verbal and physical threats to others. The FBA provided access to a counselor, school psychologist, or other trusted adult to assist with problem solving.

The November 5, 2015 Amended IEP

57. On November 5, 2015, the [School 2] IEP team met to review XXXX's progress and to address modifications to his IEP. The team reviewed his behavior goals, and noted that XXXX improved at removing himself from situations, but did not consistently follow through with his plan of remaining in an assigned location when upset and that he was unable to consider situations from any perspective but his own. The team also noted that when discussing incidents, XXXX continued to threaten students and staff, and continued to throw materials in physical education class when frustrated, even though instructed not to do so. The team noted that due to XXXX's rigidity, his unwillingness to listen or to understand the incident from another perspective, and his tendency to vent frustrations at the staff member trying to intervene in the situation, problem solving techniques simply failed for most incidents.

58. The November 5, 2015 IEP team adopted an amended IEP. In the area of written language, the IEP noted significant struggles with planning, organizing, and getting words organized into paragraphs, and that XXXX often rushed through assignments but was unwilling

to make any revisions. His attention was often poor, and he needed the presence of an adult to sustain the endurance needed to complete a writing assignment. XXXX produced quality work when an adult was at his side.

59. In the area of math, the November 5, 2015 IEP noted that XXXX showed advanced skills in the area of measurement, data, geometry and algebra, but XXXX was unable to explain how he arrived at an answer or consider alternative ways to reach the same result. His unwillingness to explain how he arrived at an answer resulted in frustration and anger, followed by absence from the classroom, with reduced access to additional instruction. When asked to account for his behavior, XXXX said the math was too easy for him, that he was bored, and that he already knows how to do everything.

60. In the area of task completion, the November 5, 2015 IEP noted that XXXX had to be consistently prompted by staff to complete work, and to revisit incomplete work, leading to frustration. If staff backed off and let him work independently, staff then noticed little work was done.

61. In the area of organization, the November 5, 2015 IEP noted that XXXX had difficulty getting organized for class, that he often had to return to homeroom to retrieve books or work, and that his locker was stuffed with papers. Although he could often find what he needed, it was seldom where it belonged.

62. In the area of safety, the November 5, 2015 IEP noted that when XXXX became frustrated he verbally threatened students and staff. The IEP noted that XXXX had used a bent paper clip or pencil sharpened on both ends on three occasions to intimidate other students. XXXX was physically aggressive to a staff member. XXXX frequently refused to go to the Chillax Room and instead insisted on remaining in the hallway.

63. In the area of social skills, the November 5, 2015 IEP noted that XXXX enjoys socializing and initiates conversations with other students. His performance in work groups was mixed. In self-contained classes XXXX did well in group work. In general education classes XXXX did poorly in work groups, and was often frustrated by individual students in work groups who XXXX felt were not sharing information, resulting in a conclusion by XXXX that he was being targeted or attacked. In physical education, XXXX was accidentally struck with a ball, which XXXX refused to accept was accidental, and which resulted in verbal threats and aggression.

64. In the area of behavior, the November 5, 2015 IEP noted XXXX's rigidity, inflexibility, and inability to hear critical feedback, all of which affected his learning opportunities. During problem solving XXXX had difficulty connecting his role or actions to a situation. When staff tried to use techniques learned in social skills class to address a situation or de-escalate a situation, XXXX became frustrated and discontinued problem solving. When overwhelmed, XXXX used inappropriate language.

65. In the area of present levels of performance and achievement, the November 5, 2015 IEP reflected the Parents' effort to help XXXX complete assignments, and encouraged him to develop relationships with staff. This IEP section noted that XXXX's access to education in the general education curriculum was limited by XXXX's frustrations in using independent coping strategies, his increased rigidity in social situations, his difficulties accepting responsibility – especially when asked to view a situation from another person's perspective, his difficulty explaining or expanding on written responses, his general inability to demonstrate higher order thinking in reading, and his unsafe behaviors when anxious.

66. As accommodations to access the general education curriculum, the November 5, 2015 IEP provided an alternative location outside the classroom for XXXX to problem solve,

and notes and outlines. Accommodations also included a word processor (for help with written expression), graphic organizers, test booklets, extended time to complete tests and assignments, multiple or frequent breaks, and changes of schedule within the day, if necessary, and preferential seating,

67. As supplementary aids, services, modifications and supports, the November 5, 2015 IEP provided checks for understanding, frequent feedback, independent work monitoring, provision of alternate ways XXXX could demonstrate learning, breaking down work into smaller units, and providing XXXX with a copy of student/teacher notes, all supports and services to be provided by XXXX's special education classroom teacher as primary provider. These supports were for all academic areas. Supplementary aids also included providing printed copies of work for revision, periodically.

68. As behavioral supports, the November 5, 2015 IEP provided checks for understanding, frequent reminders of rules and social skills training, all to be provided by XXXX's special education classroom teacher as primary provider. As additional support, the IEP also provided weekly practice in problem solving and weekly practice learning to see situations from others' perspectives.

69. For math, the November 5, 2015 IEP provided as a goal that XXXX would, given small group instruction, teacher modeling, frequent feedback, and opportunities to collaborate with peers, make sense of math problems and persevere in solving them on four out of five trials. Math objectives included that XXXX would reason abstractly and quantitatively, construct viable arguments and critique the reasoning of others, use appropriate manipulatives and tools, and maintain focus and attend to precision. The IEP noted that XXXX made sufficient progress toward the goals in a structured environment that required him to maintain focus.

70. For behavioral safety, the November 5, 2015 IEP provided that the goal for XXXX was, given fading adult support, XXXX would comply with school rules and classroom procedures eight out of ten trials. This goal had four objectives, which included: 1) XXXX will remove himself from a situation without engaging in aggressive behaviors toward staff; 2) XXXX will discuss incidents without verbal threats toward staff or students; 3) XXXX will remain in the assigned location or choose an allowed alternative when frustrated; and, 4) XXXX will use materials and tools safely. The IEP noted that XXXX had gotten better at removing himself from frustrations, but that he did not consistently follow his plan of remaining in an assigned location when upset. He used threatening language toward students and staff when upset. He consistently threw materials when frustrated.

71. For social skills, the November 5, 2015 IEP provided as a goal that XXXX would, with social skills instruction, and opportunities for practice, demonstrate age-appropriate peer interactions on four out of five trials. Social skills objectives included: XXXX will demonstrate age-appropriate behaviors for entering and maintaining age-appropriate and on-topic conversations; XXXX will demonstrate appropriate behaviors for maintaining friendships with a variety of classmates; XXXX will demonstrate appropriate behaviors for engaging in collaborative discourse and problem solving within classroom groups; and, XXXX will demonstrate appropriate behaviors for understanding multiple perspectives. The IEP noted that when XXXX is feeling positive, he has great relationships. However, general education groups often had to be modified for XXXX to complete classroom work. XXXX had difficulty taking another student's perspective into consideration.

72. For behavior, the November 5, 2015 IEP provided that as a goal XXXX would, given access to adult modeling, access to an alternative location, and practice, accept responsibility for his behaviors 80% of the time. As objectives, the IEP included: XXXX will

identify his role in an incident; XXXX will be able to take the perspective of the other person involved; and, XXXX will demonstrate an understanding of how his actions affect the other person involved. The IEP noted that XXXX has a difficult time reflecting on an incident, and that following an incident problem-solving usually proved impossible due to XXXX's anxiety and rigidity over what just occurred. XXXX simply got frustrated with the staff member trying to intervene or help, and little was accomplished in helping XXXX understand his role in the event.

73. The November 5, 2015 IEP continued to provide for placement at [School 2], with four classes daily in the general education setting and three classes a day in a self-contained setting.

September through December 2015 - Unwanted Behaviors, Interventions and Missed Instruction

74. From September through December 2015, XXXX behaved in ways that required intervention and resulted in absence from classes, both general education and self-contained. At times he was distracted by events outside school which resulted in unwillingness to work at all. XXXX was prone to telling teachers to shut up; to leave him alone; that they were annoying him; and, that if they did not leave him alone they would be sorry. Efforts by teachers to redirect XXXX or to direct him to go to his break room resulted in XXXX shoving the teacher aside and running down the school hallway. At times, school security guards had to be summoned to escort XXXX to the break room. Teachers who then went to the break room to determine what had triggered XXXX's behavior and to talk with him about calming strategies were met with threats. XXXX seldom understood that adults were trying to help him, and often did not want to talk about an incident that just happened. At times, leaving XXXX to sit in a corner of the break room to de-escalate on his own was a successful strategy, although at times when seated in a

quiet corner XXXX threw school supplies. Sitting in a quiet corner worked at times, and other times did not work.

75. From September through December 2015, XXXX was prone to threatening physical violence to anyone who he thought had slighted him. When XXXX threatened another student in gym class by putting a bent paper clip to the other student's head, the other student grabbed XXXX's wrist, prompting XXXX to yell profanities and insist he was victimized. When another student accidentally hit XXXX with a ball in gym class, XXXX quickly decided that the other student hit him intentionally and yelled profanities and stormed off. In math class, during an exercise using building blocks, XXXX threatened another student with a pencil sharpened on both ends with immediate injury if the other student touched XXXX's blocks. XXXX threatened to bite teachers who intervened in several situations. On one occasion in math class, XXXX stabbed another student with a sharpened pencil.

76. From September through December 2015, XXXX resisted efforts to incorporate lessons learned in social skills class to incidents with other students and teachers. Suggestions that XXXX do anything other than what XXXX wanted to do resulted in threats, or profanity, or storming away. When XXXX's behavior escalated teachers frequently recommended XXXX take a break, and the teacher or, at times, school security personnel, escorted XXXX to the break room. These instances at times led to entire classroom instruction periods being missed.

77. In order to minimize lost class time, a comfy corner was incorporated in general education classes to provide a retreat for XXXX other than the break room. This worked, on occasion, and did not work on other occasions. At times, when assigned to perform a task he did not like or was assigned to a team in gym class that he did not like, he retreated to a comfy corner.

78. Gym class was exceptionally challenging, generally, for XXXX in part because XXXX could not control the outcome of many gym activities. He became extremely frustrated at any skill that he could not immediately master, even if it was a skill for which he had no prior experience. He disliked playing any one-on-one sport at which there was any risk another student might be better at the sport than he was. He often refused to sit with other students while the rules of a new sport were explained, preferring instead to ignore the instruction and try some new piece of equipment before the other students could try it. Due to XXXX's penchant for threatening others students for perceived slights in gym class – such as other students hitting him with a ball, or refusal to throw him a ball, or not including XXXX in an activity – XXXX was always closely observed by an adult during gym class activities, and was attended by an adult in the locker room. If XXXX chose to remove himself from gym class, or chose not to change into gym clothes, or chose not to attend gym at all, no one argued with him and let him have his way as this was a more successful strategy for gym class than teacher intervention or insistence that XXXX participate.

79. For gym class, XXXX earned Pokemon cards for two good days in gym class – defined by changing clothes, participating in warm-up, and positively participating 80% of the time. XXXX became frustrated and upset if his version of having earned a Pokemon card differed from the opinion of the gym class teacher. At times, his frustration over not getting a Pokemon card resulted in missing the entirety of the following period of classroom instruction.

80. By November 2015, Ms. XXXX questioned the use of a physical reward system as a motivational aid because if XXXX did not get any award he considered due, he became highly frustrated. XXXX's behaviors when he did not get an award he considered due included running down hallways screaming, and refusing to get on the bus until he got the reward.

81. From September through December 2015, XXXX responded with anger to any effort by any other student in a work group to which XXXX had been assigned to redirect him to whatever a teacher had instructed the group to do. If another student tried to redirect XXXX, XXXX stormed out of class.

82. From September through December 2015, XXXX sometimes removed himself from class, though not physically, by pulling his sweatshirt over his head and just sitting at desk, not participating. When teachers assigned work that XXXX did not want to do, XXXX threatened them at times or, at times, made comments to others that if the offending teacher tried to assign such work again he would kill the teacher.

83. From September through December 2015, it was very common for XXXX to miss all or parts of periods of instruction. On some days XXXX missed over three hours of class. XXXX retreated to the break room or, at times, the hallway, always supervised by an adult. Cooling down from a frustrating event often took so long that no work whatsoever was done following the event. At times, following removal from class to the break room, XXXX was able to resume work within ten minutes, or was able to return to class. At times, XXXX was so agitated, and so frustrated, that no amount of calming strategies, including efforts by XXXX's guidance counselor, were adequate to the task of de-escalating him. On these occasions, [School 2] contacted the Parents, who retrieved XXXX from [School 2].

January 5, 2016 Meeting

84. On January 5, 2016, a meeting at [School 2] was conducted with XXXX's mother, XXXX's case manager XXXX XXXX, Ms. XXXX, Ms. XXXX, and two general education teachers. The meeting was held because XXXX's mother had come to [School 2] because XXXX was in crisis, and she was there to help resolve it. XXXX's mother and Ms. XXXX conferred about what next steps may be appropriate for XXXX Ms. XXXX

recommended advancing XXXX's periodic IEP review to convert it to an annual review in order to give the IEP team an opportunity to evaluate all placement options. Ms. XXXX recommended XXXX's mother visit the XXXX Program at [School 3].

January through March 2016

85. From approximately October 2015 to January 2016, XXXX was prescribed a medication that had an adverse effect on XXXX's unwanted behaviors and, instead, exacerbated those behaviors. XXXX's mother made the [School 2] staff aware of this medication, its effects, and that the medication was discontinued.

86. From early January through early March 2016, XXXX's behaviors changed little. He frequently removed himself from class and at times hid in storage areas or hid in out-of-the-way places to avoid non-preferred activities. When staff tried to discuss with XXXX what had caused him to hide or remove himself from class, XXXX often rejected efforts to discuss the subject.

87. At times, XXXX showed signs of meaningful introspection. On one occasion XXXX expressed openly that no one understood him, that others struggled to be with him, and that he wanted to curl up in a ball and disappear, or die. XXXX expressed that he wished he had never been born. When staff tried to discuss these feelings with him, his sadness or frustration quickly and unexpectedly turned to anger. Additional staff arriving to help ensure XXXX's safety caused XXXX to run from the school building. XXXX yelled profanities at those who followed, and threatened harm. Counselors were called, as was XXXX's mother, among others, to resolve the event. XXXX missed the remainder of the school day.

88. From January through March 2016, XXXX often used a computer in the Resource room as an alternative to attending class. At times he started class, then left to go use the computer, and on other occasions chose not to go to class at all. Sometimes he used the

computer to work on homework, and sometimes he did not do any work but instead played computer games. Even when prompted by teaches to use his time productively to revise class work or catch up on missed classes, XXXX chose to play instead.

89. From January through March 2016, when XXXX was unable to get a teacher's attention, or if the teacher was unwilling to accept XXXX's recommendation as to how the class should be taught, XXXX placed his head on his desk and did no further work until the bell rang to end class.

90. At times, XXXX was preoccupied with the death of his grandfather, who died in 2010. This resulted in entire classroom instruction days being missed. Instead of attending classes, XXXX played computer games or read books.

91. At times, XXXX got up and left class to go to the break room or to work in the hallway for no apparent purpose. If he could be convinced to return to class, he often read a book at his desk instead of participating in the instruction.

The March 3, 2016 IEP

Review and Updates

92. On March 3, 2016, the [School 2] IEP team met for an annual review and update of XXXX's IEP, and met at the same time to review and revise XXXX's FBA and BIP. The purpose of the meeting was to evaluate XXXXs current academic performance, to evaluate and record the extent to which goals and objectives of the November 5, 2015 IEP were being met, and to evaluate whether the November 5, 2015 IEP needed change based on the information considered. The purpose of the meeting was also to update the FBA and BIP, if necessary. A draft IEP was crafted for consideration by the team.

93. The team included the Parents, who attended, as well as Ms. XXXX as meeting chair, Mr. XXXX (gym class), Ms. XXXX, XXXX XXXX (guidance counselor), and XXXX

XXXX (school psychologist). Others in attendance were XXXX XXXX (Resource teacher, XXXX Program), and XXXX XXXX (Autism Unit, MCPS). The updated draft IEP reflected that XXXX was eligible for special education services under Multiple Disabilities, with a specific learning disability of Autism. The areas affected by the disabilities included: peer interactions; collaboration; problem solving; behavioral safety; organization skills; ability to accept responsibility; and the use of higher order thinking in written response in all academic areas. These affected areas impacted XXXX's written language skills, peer relationships, and problem solving skills. The IEP recognized that XXXX's disabilities affected achievement of both academic and non-academic goals.

Present Levels of Performance

94. The March 3, 2016 IEP included an assessment of XXXX's present levels of performance. In written language, XXXX struggled to organize a paragraph. Even with organizers and a computer, he continued to write the bare minimum to complete an assignment, and his sentences were simple. Written feedback from teachers was more successful than verbal feedback, which almost always resulted in frustration. XXXX required significant staff support to initiate and sustain attention to a written task. Quality work was accomplished if an adult was at XXXXs' side. XXXX's disabilities impacted written language.

95. In reading, XXXX was advanced, capable of reading independently, and fluent in describing what he read. He was poor, however, at translating to written form what he had learned from what he read. If asked to express his thoughts in writing XXXX became very frustrated. XXXX's disabilities did not affect reading comprehension, though he was challenged to translate what he read to writing.

96. XXXX's disabilities did not affect his oral language or math. He was very advanced in all aspects of math, and was able to learn math at or above grade level. However, he

was challenged by any effort to explain verbally how he arrived at a solution to a math problem. He demonstrated a strong preference for working independently in math, and not in groups. While XXXX's disabilities did not affect his math achievement, his disabilities did affect his ability to explain his answers.

97. XXXX's disabilities affected task completion. He required constant staff prompting to maintain attention to a task. He hurried through tasks to get to a preferred activity, and refused to revise work he considered complete.

98. XXXXs' disabilities affected organizing materials for class. XXXX failed to keep his work where it belonged, resulting in time wasted searching for completed work. XXXX sometimes did not get credit for work performed because he could not find it to turn it in. Frustration flowed from requests by teachers to get properly organized.

99. XXXX's disabilities affected his social skills and peer interactions. Although XXXX enjoyed socializing, and could be helpful to other students, his efforts to participate in conversations were often unsuccessful. He repeated what he heard, or tried to redirect a conversation he entered after it was already under way. XXXX was prone to perceiving actions or comments as a direct attack on him.

100. XXXX's disabilities affected safety. [School 2] staff collaborated with XXXX to make a plan for when XXXX felt overwhelmed, anxious or frustrated. One component was a signal to staff that XXXX needed to go to the Resource room. XXXX applied the plan inconsistently, and would at times remove himself without signaling a staff member or, when he removed himself, went someplace other than the Resource room and could not be found. XXXX removed himself to the locker room, the hallway, or outside. Efforts by adults to intervene made the situation worse, and at times resulted in XXXX throwing school supplies, rackets, desks and

chairs. The unsafe behaviors interfered with XXXX's opportunities to participate in classroom work.

101. XXXX's behavior impacted his academic achievement. XXXX frequently refused to engage in problem solving with a staff member following a challenging situation. His rigidity, inflexibility, and inability or unwillingness to respond to or hear constructive feedback impacted all areas of academic function. XXXX is unable to perceive a situation correctly or understand his role in that situation. Even when staff let XXXX decide when it is time to discuss a situation, when the discussion begins XXXX gets frustrated and refuses to discuss it further. When staff try to encourage XXXX to apply skills learned in Social Skills class to a challenging situation, XXXX gets even more frustrated, which results in loud and inappropriate language directed at the person trying to intervene and instruct.

102. XXXX's group participation skills affected his academic achievement. He demonstrated a strong preference to work independently instead of in groups, and he frequently got frustrated by the conduct of other group members. In gym class, in one-on-one sports like ping-pong or badminton, XXXX preferred to play against a teacher rather than against another student. In group sports he often yelled at his teammates. XXXX's preference for individual work or pairing with a teacher instead of other students was also present in several of his academic classes.

103. XXXX was greatly improved in several areas. He had been more positive, more trusting of staff, he was making friends – including non-learning-disabled friends, and he demonstrated far less resistance, generally. XXXX could be kind and empathetic and a great helper, and liked group activities in self-contained Social Skills class. XXXX's disabilities affected his participation in the general education curriculum because of his inability to manage frustrating situations using coping strategies, his increased inflexibility and rigidity in social

situations, his difficulty accepting responsibility for his behaviors and inability to consider the perspectives of others, his difficulty elaborating on or explaining his answers, and his inability to express thoughts in writing. He also demonstrated poor ability to demonstrate higher-order thinking in reading, and had difficulty behaving safely when frustrated, agitated or anxious.

Goals and Objectives

104. The March 3, 2016 IEP included goals in five areas impacted by XXXX's learning disabilities. They included: 1) behavior, with three sub-categories, which were behavior – generally, behavior – safety, and behavior – social emotional problem solving; 2) social skills, with two sub-categories which were social skills – peer interaction and social skills – group participation; 3) task completion; 4) written language, and 5) organization.

Success or Failure Achieving Goals and Objectives

1) Behavior

105. For behavior - generally, the goal was that XXXX would, given direct instruction, demonstrate appropriate regulation of his behavior on four out of five trials. There were four objectives: 1) XXXX will identify his signs of escalating frustration; 2) XXXX will use a coping strategy when frustrated (e.g. following his plan, taking deep breaths, positive self-talk, get water); 3) XXXX will comply with staff directions with no more than two prompts; and 4) XXXX will refrain from touching students and/or staff.

106. XXXX had made little progress in achieving this goal and its objectives. He was poor at recognizing an escalating situation as it happened, and could engage in coping strategies only with tremendous staff support. XXXX required long periods of time to return to class after an incident. He was still touching other students inappropriately, but touching staff had decreased.

107. For behavior – safety, the goal was “given a developed plan to follow and fading adult support, XXXX will comply with school rules and classroom procedures,” with a target achievement of six out of ten trials. The safety goal included four objectives: 1) XXXX will use signal and/or communicate with staff that he is leaving a location; 2) XXXX will remove himself from a situation without engaging in aggressive behaviors toward staff or students; 3) XXXX will remain in his assigned location or choose an allowed alternative location when frustrated until he is calm and ready to return to class; and, 4) XXXX will use classroom materials and tools safely.

108. XXXX was not making progress toward this goal or its objectives, which had been in place in close to this form since November 2015. He did not consistently follow his plan of remaining in an assigned location or signaling his intention to leave, so adults had to follow him out of the room, often without warning. XXXX did not consistently follow the plan of retreating to a safe place when he left the classroom, adding to reasons why adult staff had to follow him out of the classroom. He continued to demonstrate aggressiveness toward other students. XXXX continued to use classroom materials in an unsafe manner by throwing them.

109. For behavior – social emotional problem solving, the goal was that XXXX would, given adult support and an alternative location, proactively problem solve after a challenging and/or frustrating situation on two out of four trials. There were three objectives: 1) XXXX will identify his role in an incident; 2) XXXX will identify the impact his actions have on others; and, 3) XXXX will discuss incidents with appropriate volume, tone and/or language, and will refrain from verbal threats toward staff and/or students.

110. XXXX did not make sufficient progress toward this goal or its objectives. He was doing a better job of remaining calm, but was not able to identify his role in an incident, and was not able to reflect on an incident without getting very upset, even with tremendous staff

support. He was unable to take responsibility for his actions, and although threats to staff decreased, threats to students did not.

2) Social Skills

111. For social skills – group participation, the IEP goal was that given adult support and direct social skills instruction, XXXX would proactively participate in group work activities and/or assignments on two out of four trials. This goal had four objectives: 1) XXXX will follow stated work group criteria in order to meet the demands of the assignment; 2) XXXX will follow established directions when working with a peer group; 3) XXXX will share his ideas appropriately and effectively; and, 4) XXXX will give appropriate feedback and/or responses when he does not agree with a group member.

112. XXXX did not make sufficient progress in meeting this goal or its objectives. He did better when no competition was involved. He had difficulty working in groups, and got frustrated easily. He was unable to share ideas appropriately and became upset if a group member disagreed with him.

113. For social skills – peer interaction, the IEP goal was that given direct social skills instruction and opportunities for practice and reflection, and role modeling, XXXX would demonstrate improved peer interactions on four out of five trials. This goal included two objectives: 1) XXXX will demonstrate appropriate behaviors for entering and maintaining on-topic, age-appropriate conversation; and 2) XXXX will refrain from repeating the same word or phrase.

114. XXXX did not make sufficient progress meeting this goal. He repeated words and phrases to the point of annoying others and did not stop when asked. XXXX got frustrated by these interactions and either put his head down on his desk or yelled at the other students.

3) Task Completion

115. For task completion, the goal was that, with fading adult support and feedback, XXXX would engage in classroom assignments/expectations as directed by staff 70% of the time. This goal had three objectives: 1) XXXX will begin an assignment or task with no more than one prompt; 2) XXXX will work at an appropriate pace to complete his work accurately; and, 3) XXXX will revise his work to expand on his ideas and/or correct errors.

116. XXXX did not make sufficient progress to meet this goal or its objectives. In a self-contained setting he was able to initiate work, but required several prompts to start work in a general education setting. He rushed through work to get to a preferred activity. He required constant prompting to maintain attention to task or to revise. He usually quit working in response to feedback.

4) Written Language

117. The goal for written language was that with teacher modeling, small group instruction, multiple opportunities for revision, and access to graphic organizers and a computer, XXXX will produce clear and coherent writing, 80% of the time, in which the development, evidence, and organization are appropriate to task, purpose and audience. This goal had three objectives: 1) XXXX will craft sentences that provide detail and/or specific evidence; 2) XXXX will draw evidence from literary or informational texts to support analysis, reflection, and research; and, 3) XXXX will write opinion pieces on topics or texts, supporting a point of view with reasons and information.

118. XXXX did not make sufficient progress toward this goal or its objectives. His sentences did not provide detail. He wrote simple sentences that were not consistent with the writing task assigned. At times he wrote jokes or inappropriate answers to questions posed.

5) Organization

119. The goal for organization was that given specific time during the day, and with fading adult support and access to organizational tools, XXXX would maintain an organized binder and desk 80% of the time. This goal had three objectives: 1) XXXX will only bring the necessary materials to class; 2) XXXX will keep class work in labeled folders and/or sections of his binder; and, 3) XXXX will record his homework assignments in his agenda book.

120. XXXX made sufficient progress toward the organization goal and objectives in the IEP.

Supports and Accommodations

121. The March 3, 2016 IEP provided the following supports and accommodations to achieve goals other than behavioral goals: assistive technology for writing and revising; notes and outlines of missed instruction; graphic organizers, recording devices, test booklets and monitored testing for organization, task completion, and transfer of thoughts to written form; extended time to complete tasks; multiple and frequent breaks; changes of schedule or order of activities within the day; preferential seating in front to increase attention and reduce distractions; frequent and immediate feedback, and, breaking down instruction into smaller units. The IEP also included monitoring of independent work, checks for understanding, and providing alternate ways for XXXX to demonstrate learning, all to be provided by his special education teacher as primary provider.

122. The March 3, 2016 IEP provided the following supplementary aids, services, program modifications and supports, primarily to achieve behavioral and social skills goals: adult support for problem solving; advance preparation for schedule changes; encouraging XXXX to ask for assistance; and, allowing time for XXXX to calm down before attempting to

problem solve. These supports were to be provided by XXXXs' special education teacher as primary provider.

123. Supports to achieve behavioral and social skills goals also included encouraging XXXX to practice problem solving; allowing time to calm before returning to the classroom; adult support for problem solving, in the form of allowing access to an adult when frustrating situations arose. These supports were to be provided by XXXX's special education teacher as primary provider.

Related Services

124. The March 3, 2016 IEP provided the following related services: transportation to and from school, and counseling. The counseling was not for any specific length of time per day or week.

General Education Classes, Self-Contained Classes and Placement

125. The March 3, 2016 updated IEP provided for four classes daily in a supported general education setting (math, science, social studies, physical education/health), and three classes daily in a self-contained setting (English, social skills, and resources).

126. The IEP team considered XXXX's continuing challenges in doing work in groups and in his performance in general education classes despite the addition of supplementary aids and supports over time. The IEP team also considered the significant lack of progress meeting behavior goals and objectives, and the success and failure of various forms of interventions and coping mechanisms. Ms. XXXX, MCPS Autism Unit, suggested the XXXX Program at [School 3] was a more appropriate placement than the XXXX Program at [School 2]. The IEP discussed whether to transfer XXXX to the XXXX Program after spring break 2016. XXXX's parents wanted to visit the XXXX Program to be better informed about the proposed placement. Some

members of the IEP team opined that XXXX should remain at [School 2] for the remainder of the 2015-2016 school year due to his difficulty handling transitions.

127. The IEP team meeting was attended by Ms. XXXX, Resource teacher at the XXXX Program. Ms. XXXX provided input regarding the XXXX Program, and its capacity to accept XXXX as a student.

The March 3, 2016 BIP

128. The IEP team updated XXXX's BIP on March 3, 2016. The team reviewed information from November 5, 2015 through February 25, 2016. The updated BIP included XXXX's behavior problems, desired replacement behaviors, strategies to prevent problems, and strategies to increase the replacement behaviors. The BIP included methods of data collection, and a crisis intervention plan that included access to a counselor, school psychologist, or other trusted adult for problem solving. The goal was for XXXX to independently initiate the break room plan, and to refrain from verbal threats and aggression toward staff. The conclusion by the team was that this goal was not being met and that the November 5, 2015 BIP required modification. The March 3, 2016 BIP modifications included:

- Review and re-teaching of XXXX's plan, as needed
- Teacher flexibility in workload and classroom expectations in order to avoid potential stressors
- Keep behavior contract for team data, but develop a non-tangible motivation system for XXXX (break time as a possible reward)
- Each teacher/support staff member needs to come up with a signal or system for XXXX signaling that he is leaving for a break
- Visual menu of coping strategies to choose from
- One-on-one adult support and play during P.E.
- When XXXX is not changing for P.E., have him wait with teachers (do not go to locker room) until class starts
- Make a daily plan with XXXX regarding P.E., expectations, the activity, playing time, break options, etc.
- Preferential seating (toward the front/easy access to door and small table size)
- Give XXXX concrete options (1-2) for when he is finished with his work
- Frequent (every 5 minutes) check-ins when in the general education setting
- Refrain from "pushing" XXXX to make choices and/or complete work if he is not emotionally available

- Option to work individually when group work assignments are presented
- Modified work group expectations when in general education
- Extended break time when necessary.

Remainder of 2015-2016 School Year at [School 2]

129. XXXX remained at [School 2] for the remainder of the 2015-2016 school year, with a decreased emphasis on staff intervention in crises. Staff intervention tended to increase, not decrease, XXXX's level of frustration. For the remainder of the school year, [School 2] staff continued to gather data and record observations with a view toward implementing an IEP for the 2016-2017 school year.

130. From March through June 2016, XXXX was at times happy, but he was also aggressive, moody, unpredictable, and lacked self-control. In classes he was fidgety, distractible, easily frustrated, and completed many tasks only with significant adult guidance. He got along moderately well with others but was not accepted as a member of any groups. XXXX was poor at accepting blame, lacked a sense of fair play, and did not respect rules or regulations. He was excitable and impulsive. XXXX threatened other students, threw objects, and frequently used foul language. Contracts for reinforcing wanted behaviors and eliminating unwanted behaviors were ineffective. Using a flowchart of the daily routine to show XXXX what lay ahead for the day was ineffective. Reflection with staff when peer problems arose was also ineffective. XXXX had a severe problem with response to criticism or direction, talked back to adults, and threatened other students. In classrooms he was extremely disruptive, expected his demands to be met immediately, and was often excited. XXXX needed constant reassurance that he was doing well. XXXX often rushed through assignments so that he could participate in a preferred activity, usually using his electronic tablet, which had internet access. XXXX referred to teachers in disparaging ways, such as calling them "drunks" and "fucking liars." When assigned a non-preferred activity XXXX hid in corners, wandered about the classroom, or requested

teachers allow him to take a nap to avoid the assignment. At times XXXX assaulted other students by shoving them from behind. XXXX found the other student's objections funny.

131. On June 14, 2016, XXXX made an unprovoked attack on another student, which was broken up by an 8th grader. XXXX fled and began another attack on another student, which was stopped by four staff members. At the school office XXXX tried to call 911 for help, and was screaming, cursing, and threatening others. [School 2] suspended XXXX for four days for the incident.

132. In April 2016, XXXX missed 18% of general education classroom time and when in class was unengaged 40% of the time, for a total of 51% missed general education. In May 2016, XXXX missed 40% of general education classroom time and when in class was unengaged 54% of the time, for a total of 72% missed general education. In June 2016, XXXX missed 52% of general education classroom time and when in class was unengaged 34% of the time, for a total of 85% missed general education.

133. In April 2016, XXXX missed 4% of self-contained classroom time and when in class was unengaged 22% of the time, for a total of 26% missed self-contained class. In May 2016, XXXX missed 5% of self-contained classroom time and when in class was unengaged 23% of the time, for a total of 28% missed self-contained class. In June 2016, XXXX missed 19% of self-contained classroom time and when in class was unengaged 32% of the time, for a total of 51% of missed self-contained class.

134. On June 21, 2016, the [School 2] IEP team met to update XXXX's FBA and BIP. The meeting was attended by XXXX's parents, XXXX XXXX (school counselor), Ms. XXXX, Ms. XXXX, Ms. XXXX, Ms. XXXX, and Ms. XXXX. XXXX's current grades on the meeting date were: Social Skills – B; Math – B; World Studies – B; English – C; Science – B; Health – A; and, Resource – C. The FBA noted that at [School 2] XXXX had two after-school detentions

and one suspension. XXXX was involved in twenty-one critical incidents that involved unsafe or uncontrolled behavior and individually directed verbal threats or inappropriate language.

135. XXXX's March 3, 2016 BIP was modified on June 21, 2016 to include the following:

- Small group instruction/small group setting whenever possible
- Team of staff to support XXXX during critical incidents
- Access to staff with expertise in supporting social-emotional problem solving.

The July 18, 2016 IEP – the Subject of the Parents' Due Process Complaint

136. On July 18, 2016, the [School 2] IEP team met. The meeting was chaired by Ms. XXXX, and was attended by team members that included XXXX's parents, Ms. XXXX, XXXX XXXX ([School 2] Principal), Mr. XXXX, and Ms. XXXX. The meeting was also attended by Michael J. Eig, Esq. (Student's and Parents' attorney), XXXX XXXX (Parents' education consultant), and Emily Rachlin, Esq., MCPS attorney. The IEP reflected XXXX XXXX (XXXX Program) as case manager, although the July 18, 2016 IEP team participants list does not include Ms. XXXX.^{11, 12}

Present Levels of Performance

137. The IEP team reviewed XXXX's present levels of performance in math, with observations that differ only slightly from the observations of the March 3, 2016 IEP. As with the March 3, 2016 IEP, the July 18, 2016 IEP reflects that XXXX's disabilities did not affect math, and that he was performing at sixth-grade level.

138. The IEP team reviewed XXXX's present levels of performance in oral language, with observations identical to the March 3, 2016 IEP. As with the March 3, 2016 IEP, the July

¹¹ MCPS Ex. 27, p.2 of 72; P. Ex. 37, p. 15.

¹² References to exhibits and the transcripts are for the convenience of the reader. They do not represent the sole basis for any finding of fact. The findings of fact are based on all of the evidence in the record.

18, 2016 IEP reflects that XXXX's disabilities did not affect oral language, and that he was performing at sixth-grade level.

139. The IEP team reviewed XXXX's present levels of performance in reading, with observations identical to the March 3, 2016 IEP. As with the March 3, 2016 IEP, the July 18, 2016 IEP reflects that XXXX's disabilities did not affect reading, and that he was performing at sixth-grade level.

140. The IEP team reviewed XXXX's present levels of performance in written language, with one minor change in observations. The March 3, 2016 IEP observed that "[w]hen an adult is sitting with him, XXXX produces quality written work." The July 18, 2016 IEP reflects that "[e]ven when an adult is sitting with him, XXXX's work is inconsistent." XXXX was performing at fifth-grade level.

141. The IEP team reviewed XXXX's present levels of performance in organization, with observations that he had improved in this area since March 3, 2016 in that he was bringing fewer unnecessary items to class, and was writing assignments in his agenda book when prompted by teachers instead of waiting until Resource class to write into his agenda all the assignments from all his classes. Little other progress since March 3, 2016 was observed. XXXX was performing below grade-level expectations in organization.

142. The IEP team reviewed XXXX's present levels of performance in task completion. The team observed that XXXX's task completion had deteriorated since March 3, 2016. In March 2016, XXXX was able to begin an assignment with little prompting from staff, though he required significant staff prompting to stay on task. By July, XXXX required significant prompting from a staff member to begin and sustain attention to an assignment. The two IEPs were similar, though not identical, in their observations that XXXX did not like to revise his work, rushed through work to get to a preferred activity, and did not use time in

Resource class to revisit, revise and improve on work submitted. This failure to use Resource class time productively resulted in a lowered grade in Resource. XXXX was performing at below grade-level expectations in task completion.

143. The IEP team reviewed XXXX's present levels of performance in social skills – group participation, observing that XXXX was typically able to participate in group work in self-contained classes but not in general education classes. Especially in general education classes, XXXX's contributions to the task were often off topic or irrelevant to the task. When group members tried to instruct XXXX, he got angry, crumpled or tore the assignment, and left the room. In gym class, if the sport involved one-on-one play, XXXX preferred to play against a staff member, not another student. XXXX was performing below grade-level expectations in social skills-group participation.

144. The IEP team reviewed XXXX's present levels of performance in social skills – peer interaction. The July 18, 2016 IEP observations were the same as the March 3, 2016 observations, with the addition of observations that XXXX made demands that others students be harshly disciplined or expelled for various slights and infractions, or just because he found another student to be annoying. XXXX was performing below grade-level expectations in social skills-peer interaction.

145. The IEP team reviewed XXXX's present levels of performance in social emotional problem solving. The July 18, 2018 observations are identical to the March 3, 2016 observations, except that the July 18, 2016 IEP adds an additional observation that while problem solving at school is difficult, XXXX can problem solve at home with his parents. XXXX was performing below grade-level expectations in social emotional problem solving

146. The IEP team reviewed XXXX's present levels of performance in behavior – generally. The IEP team's observations on July 18, 2016 were somewhat changed

from the March 3, 2016 IEP, although both IEP's addressed XXXX's difficulty addressing frustrating situations with staff. The July 18, 2016 IEP team observed that XXXX's first response when presented with a frustrating situation is to leave. He is unable to recognize his escalating signs of behavior. During problem solving, XXXX often wants to keep revisiting whatever made him upset rather than coming up with a plan to return to class. With tremendous staff support XXXX will sometimes engage in coping strategies but it takes him long periods of time before he is able to return to class after a situation. He still touches other students inappropriately, but touching of staff has decreased. XXXX was performing below grade-level expectations in behavior - generally.

147. The IEP team reviewed XXXX's present levels of performance in behavior – safety. The July 18, 2016 IEP team observations were essentially the same as the March 3, 2016 IEP team observations, with minor differences in phrasing. An additional observation of the July 18, 2016 IEP team since the March IEP was that during the final quarter of the school year, XXXX displayed aggressive behaviors – threats, cursing, shoving, hitting – toward other students. XXXX was performing below grade-level expectations in behavior – safety.

Small Changes in the March 3, 2016 and July 18, 2016 IEPs

148. The March 3, 2016 and the July 18, 2016 IEP differed in some small ways.

Goals and Objectives

Behavior

149. For behavior - generally, the goal of the July 18, 2016 IEP is, when given direct instruction, with fading adult support, and reminders of rules, XXXX will demonstrate appropriate regulation of his behavior at four out of five trials. As objectives: 1) XXXX will identify signs of an escalating situation and use a coping strategy when frustrated (follow his plan, take deep breaths, positive self-talk, or get water); 2) XXXX will refrain from using

profanity to peers and staff; 3) XXXX will comply with staff instructions with no more than two prompts; and, 4) XXXX will decrease over baseline touching of students or staff.

150. For behavior - safety, the goal and objectives of the March 3, 2016 IEP are identical to the July 18, 2016 IEP.

151. For behavior - social and emotional problem solving, the goal and objectives of the March 3, 2016 IEP and the July 18, 2016 IEP are nearly identical. The goal of the March 3, 2016 IEP was that “XXXX will proactively problem solve after a challenging and/or frustrating situation.” The July 18, 2016 IEP drops the word “proactively” from the goal. The March 3, 2016, objective 3 reads “XXXX will discuss incidents with appropriate volume, tone and/or language, and will refrain from verbal threats toward staff and/or students.” For the July 18, 2016 IEP, objective 3 added “or profanity” to the phrase “verbal threats towards staff and/or students.” The July 18, 2016 IEP also added a fourth objective – that XXXX will work with staff to make a plan to return to class safely.

Social Skills

152. For social skills – peer interaction, the goal of the March 3, 2016 IEP and the July 18, 2016 IEP are identical. The objectives were changed slightly. Objective one was unchanged. Objective two was revised from “XXXX will demonstrate appropriate behaviors for entering and maintaining on-topic, age-appropriate conversations” to “within one class period, XXXX will refrain from repeating the same word or phrase in an attempt to engage peers.” A third objective was added: XXXX will respond to cues from peers in order to adjust his behavior.

153. For social skills - group participation, the July 18, 2016 IEP dropped the word “proactively” from the March 3, 2016 goal that “given adult support and direct social skills instruction, XXXX will proactively participate in group work activities and/or assignments.”

The four objectives for this goal are identical on the March 3, 2016 IEP and the July 18, 2016 IEP.

Task Completion

154. For task completion the goal and objectives of the March 3, 2016 IEP and the July 18, 2016 IEP are identical, except that the words “without rushing” were dropped from objective two.

Written language

155. For written language, the goal and objectives of the March 3, 2016 IEP are identical to the July 18, 2016 IEP.

Organization

156. For organization, the goal and objectives of the March 3, 2016 IEP are identical to the July 18, 2016 IEP.

Instructional and Testing Accommodations, Supplementary Aids, Services, Program Modifications and Supports

157. The instructional and testing accommodations on the March 3, 2016 IEP, and the reasons for them, are identical to the instructional and testing accommodations and reasons for them on the July 18, 2016 IEP. The supplementary aids, services, program modifications and supports, the reasons for them, and who would be the primary provider of these services and supports are identical to the July 18, 2016 IEP.

Significant Differences between the March 3, 2016 IEP and the July 18, 2016 IEP

158. The July 18, 2016 IEP team considered the requirement that XXXX be placed in the least restrictive environment, and whether the least restrictive environment met XXXX’s individual needs. It considered the services and supports at XXXX’s home school, (XXXX Middle School), the services and supports at the [School 2] XXXX Program, and the services and supports available for XXXX at the XXXX Program. The IEP teams also considered the

challenges XXXX continued to face in succeeding in a general education population, and his progress toward IEP goals and objectives in a self-contained environment.

All Self-Contained Classes

159. The July 18, 2016 IEP provided for XXXX to attend a self-contained setting for all seven daily periods of classroom instruction, with a special education classroom teacher as his primary provider. The July 18, 2016 IEP provided that XXXX would participate with non-disabled peers during transition, during locker room with adult support, and that XXXX had the option of participating with non-disabled peers during lunch.

Addition of Related Services

160. In addition to transportation to and from school with adult support, which was also in the March 3, 2016 IEP, the July 18, 2016 IEP provided that XXXX would receive forty-five minutes a week of counseling, with the school social worker as primary provider.

161. The July 18, 2016 IEP provided that placement would be at the XXXX Program.

162. The July 18, 2016 IEP was in conjunction with the revised BIP of June 21, 2016, which provided for the addition of a team of staff to support XXXX during critical incidents, and access to staff with expertise in supporting social-emotional problem solving.

163. At the July 18, 2016 IEP meeting, the Parents did not object to the goals, objectives, supports and accommodations, or supplementary aids in the IEP. The Parents voiced that they did not consider the XXXX Program a good fit for XXXX.

The XXXX Program

164. The focus of the XXXX Program (program) is to work with students to make changes in behavior to act more appropriately in the classroom.

165. Program students have a wide range of needs. Some students are OHI, some are emotionally disabled (ED), and some are autistic. Most have an inability to understand social

cues and need support navigating social situations. All students at a particular grade level are educated together. Autistic students are not segregated from the others. No non-disabled students attend the program.

166. Some program students are aggressive and make threats. The program uses Crisis Prevention Institute (CPI) methods to address difficult situations and to de-escalate them, and staff are trained to use these methods.

167. The program has sensory support rooms. There is a quiet room with beanbag chairs and large stuffed animals. Students can remove themselves to the quiet room, and teachers may remove a student to the room to deal with students who are irritable, anxious, or depressed. There is also room with support equipment, treadmills and exercise balls, for students with the need to work through problems differently by movement or physical release.

168. The program (at the time of the hearing) has twenty-four or twenty-five students attending three grades. A third of those students are Asperger's students. Many face challenges like XXXX, and are ritualistic and rigid. Most program students need predictability of routine, have difficulty with group participation, and an emotional response to stress.

169. The program is designed to immediately address a student's problem, with the goal of working through the problem and returning to class as soon as possible. The program has been successful at extinguishing destructive behaviors.

170. The program uses a behavior contract, with points earned for accomplishing goals, some from the IEP, and others not. Points can be earned for class engagement or for completing work. A points total is maintained daily so a student is aware on a day-by-day basis how many points have been earned. Students have the opportunity to use points toward awards on Friday. Students, not teachers, decide from among choices what award is the goal for the week.

171. The program has embedded supports. All classes have a special education teacher and one para-educator, and some classes have a teacher and two para-educators.

172. The program goal is to identify what a specific student needs and to understand the student's overload points. Students use flash passes when they need a break. Students also have access to the program office, the program psychologist, and the program social worker.

173. The program only has self-contained classes, including physical education if an IEP calls for self-contained physical education. Para-educators always attend physical education class, and there is adult support in the locker room. Program students can elect to change for gym class in the Health room, if they prefer.

174. The program is on the first floor of [School 3], down a separate corridor, in a quieter area. Hallway transitions are supervised with adult escorts during transition if necessary. Non-disabled general education population students do not transition through program hallways. Program students who attend general education classes transition to and from the general education hallways. Program class transition times are scheduled to be staggered with general population class transition times to minimize the extent to which program students are in the same hallways at the same times as general education students.

175. The program has three classes, each organized by grade. The current population (as of the date of the hearing) is nine sixth graders, eight full-time and one part-time seventh grader, and seven eighth-graders. Students attend class only with others in the same grade.

176. The program has two Asperger's students in the sixth grade. Had XXXX attended the program there would have been three. In the current sixth grade class, none are below grade level in math, some are at grade level, and some are above grade level. All sixth graders in the program are attending social skills class.

177. Class size varies slightly, as some students attend part of the day in a general education setting. Two sixth-graders attend general education classes 50% of the day. All but one seventh-grader and all eighth-graders attend at least some general education classes.

178. Students attend discreet subject matter classes. Students attend Science with a teacher and a para-educator and, when the bell rings, transition to math, with a different teacher and different para-educator.

179. Almost every student who attends the program arrives with an IEP that calls for 100% self-contained classes. The goal is to increase participation in general education classes and work toward graduation with a diploma. The program addresses the academic need of advanced students and has students who are performing academically at and above grade level.

180. The program has mental health professional supports in the form of a psychologist and a social worker. The psychologist is present two days a week, for full days. The social worker is present four days a week, for half days. Both have responsibilities at other MCPS schools. Mr. XXXX, who was XXXX's social worker at [School 5], is the program social worker. He also has responsibilities at [School 7] XXXX Program. The psychologist also has responsibilities at [School 8]. [School 9] is five minutes away, with a psychologist available to fill in at the program if necessary to resolve a crisis.

181. The counseling aspect of the program includes group counseling, and individual counseling. Counseling is done by both the psychologist and the social worker, and typically a student is provided counseling services by both of them. Group counseling is typically scheduled once a week. The program also includes social skills classes. These classes are not taught by a mental health professional.

182. Sensitivity to loud noise, and sensitivity to crowds and chaos are common with students in the program. Some program students also have sensitivity or aversion to some

aromas, or tactile sensitivities and do not like the feel of certain surfaces or fabrics. The program offers an election to students to eat lunch with the general education population or to eat lunch in a separate closed room behind the cafeteria, or eat lunch in the teachers' lounge. All locations have para-educator support. Students in the program attend school assemblies with general education non-disabled students, supported by para-educators. Program students can opt out of assemblies if they prefer not to attend.

183. Program students are transported to and from school on a special needs bus. The bus has adult supervision other than the driver. Students on the bus are met by staff who escort program students to their program home room. Students can walk to program classes without an escort, if they elect to do so.

184. The program addresses the needs of students based on the needs presented, not the student's disability or special education disability code. Each student is educated according to his or her specific needs.

185. [School 3] has some IEP students who are not in the program.

186. The program is not subject to peer review.

187. Ms. XXXX is present at the program all day, five days a week. She meets with teachers and mental health staff members several times weekly, and at times participates in direct intervention with a student. If she and staff see a behavior change or problem, they address it immediately and do not wait until a student's BIP is updated to incorporate a change. The program is designed to eliminate the need for a FBA or BIP.

DISCUSSION

Legal Principles

Recently the Supreme Court issued a decision explaining the legal principles controlling my analysis. *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S. Ct. 988

(2017) (*Endrew F.*). Explaining the statutory and regulatory framework of the IDEA, the Court noted that in exchange for federal funds a State must, among other things, provide a FAPE to all eligible children. 20 U.S.C.A. § 1412(a)(1). The Supreme Court set forth the parameters of the IDEA, which guide the decision in this case:

A FAPE, as the [IDEA] defines it, includes both “special education” and “related services.” §1401(9). “Special education” is “specially designed instruction ... to meet the unique needs of a child with a disability”; “related services” are the support services “required to assist a child ... to benefit from” that instruction. §§ 1401(26), (29). A State covered by the IDEA must provide a disabled child with such special education and related services “in conformity with the [child’s] individualized education program,” or IEP. § 1401(9)(D).¹³

The IEP is “the centerpiece of the statute’s education delivery system for disabled children.” *Honig v. Doe*, 484 U.S. 305, 311 (1988). A comprehensive plan prepared by a child’s “IEP Team” (which includes teachers, school officials, and the child’s parents), an IEP must be drafted in compliance with a detailed set of procedures. § 1414(d)(1)(B) (internal quotations marks omitted). These procedures emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances. § 1414. The IEP is the means by which special education and related services are “tailored to the unique needs” of a particular child. [*Board of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)].

The IDEA requires that every IEP include “a statement of the child’s present levels of academic achievement and functional performance,” describe “how the child’s disability affects the child’s involvement and progress in the general education curriculum,” and set out “measurable annual goals, including academic and functional goals,” along with a “description of how the child’s progress toward meeting” those goals will be gauged. §§ 1414(d)(1)(A)(i)(I)-(III). The IEP must also describe the “special education and related services ... that will be provided” so that the child may “advance appropriately toward attaining the annual goals” and, when possible, “be involved in and make progress in the general education curriculum.” § 1414(d)(1)(A)(i)(IV).

Endrew F., 137 S. Ct. at 994 (parallel citations omitted).

The *Endrew F.* Court was asked to expand upon its decision in *Rowley*, a seminal IDEA decision. *Rowley* held that the IDEA establishes a substantive right to a FAPE for certain children with disabilities. The Court acknowledged that *Rowley* did not endorse a single

¹³ Maryland has adopted regulations in accordance with the IDEA. COMAR Tit. 13A.

standard for determining “when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the [IDEA],” leading the federal circuits to apply different standards for the attainment of educational benefit under the IDEA. 137 S. Ct. at 993 (citing *Rowley*, 458 U.S. at 202). Instead, *Rowley* held that the IDEA standard is satisfied, and a child has received a FAPE, “if the child’s IEP sets out an educational program that is ‘reasonably calculated to enable the child to receive educational benefits.’” *Id.* at 995-96 (citing *Rowley*, 458 U.S. at 207). *Rowley* recognized that the law requires the States to educate all children with disabilities and that “the benefits attainable by children at one end of the [disability] spectrum will differ dramatically from those obtainable by children at the other end,” but “declined ‘to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the [IDEA].’” *Id.* at 996 (quoting *Rowley*, 458 U.S. at 202).

The parties in *Andrew F.* asked the Court to go further and set forth a binding test for measuring whether a disabled student attained sufficient educational benefit. The framework for the decision was the Tenth Circuit’s interpretation of *Rowley*’s “some educational benefit” language, (citing *Rowley*, 458 U.S. at 200), as an “educational benefit [that is] merely ... ‘more than *de minimis*.’” *Andrew F. ex rel. Joseph F. v. Douglas Cty. School Dist. RE-1*, 798 F.3d 1329, 1338 (10th Cir. 2015).¹⁴

The Supreme Court set forth the following “general approach” to determining whether a school has met its obligation under the IDEA: “a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*,

¹⁴ The *de minimis* standard was adopted by the Tenth Circuit and several others. The Fourth Circuit formulated the test as whether the school system adopted an IEP calculated to confer some educational benefit on the student, not to maximize each disabled child’s potential. See *O.S. ex rel. Michael S. v. Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015) (“In this circuit, the standard remains the same as it has been for decades: a school provides a FAPE so long as a child receives some educational benefit, meaning a benefit that is more than minimal or trivial, from special instruction and services.”) The Fourth Circuit cases recognize that what constitutes educational benefit is different for every child and may change for a child over time. See *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315 (4th Cir. 2009); *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004); *Hall by Hall v. Vance Cty. Bd. of Educ.*, 774 F.2d 629 (4th Cir. 1985).

137 S. Ct. at 999. “[T]he degree of progress contemplated by the IEP must be appropriate in light of the child’s circumstances....” *Id.* at 992. Further, the Court instructed that “[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.*

The *Endrew F.* Court explained that a challenged IEP must be examined to determine if it describes the child’s present level of performance, including explaining “how the child’s disability affects the child’s involvement and progress in the general education curriculum.” *Id.* at 994 (citing 20 U.S.C.A. § 1414(d)(1)(A)(i)(1)(aa)). The IEP also must “set out ‘measurable annual goals, including academic and functional goals,’ along with a ‘description of how the child’s progress toward meeting’ those goals will be gauged,” *id.* (citing § 1414(d)(1)(A)(i)(I)-(III)), and “describe the ‘special education and related services ... that will be provided’ so that the child may ‘advance appropriately toward attaining the annual goals’ and, when possible, ‘be involved in and make progress in the general education curriculum.’” *Id.* (citing § 1414(d)(1)(A)(i)(IV)).

The *Endrew F.* Court made it clear that, for a student who is fully integrated into the regular classroom, the IEP should provide a level of instruction reasonably calculated to meet the unique needs of a student that result from the disability and to permit a student to advance through the general curriculum. However, when a student is not fully integrated into the regular classroom and is not able to achieve on grade level, the “educational program must be appropriately ambitious in light of [the student’s] circumstances....” 137 S. Ct. at 1000.¹⁵ “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* Summarizing its holding, the Court said: “[The IDEA] requires an educational program

¹⁵ The student in *Endrew F.* was diagnosed with autism and was exhibiting behaviors that interfered with his educational progress.

reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 1001.

Andrew F. explained that this decision is fact-specific: appropriate progress is different in every case, depending on the student's unique circumstances. The Court explained its reasoning as follows:

We will not attempt to elaborate on what "appropriate" progress will look like from case to case. It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Rowley*, 458 U.S. at 206.

At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The Act vests these officials with responsibility for decisions of critical importance to the life of a disabled child. The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue. By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable a child to make progress appropriate in light of [the child's] circumstances.

137 S. Ct. at 1001-02 (some citations and parallel citations omitted).

Burden of Proof

The Parents filed a comprehensive Complaint on behalf of the Student and themselves. At the hearing, the issues were as stated above. Any other contentions were implicitly waived for failure to advance them at the hearing since the Parents have the burden of proof. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 57-58, 62 (2005).

However, the *Andrew F.* Court, following its discussion of the deference due educational decision makers, concluded its opinion by saying that:

[b]y the time any dispute reaches court, school authorities will have had the opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make educational progress appropriate in light of his circumstances.

137 S. Ct. at 1001-02.

I do not read this final comment as altering the Court's decision in *Weast* regarding the burden of proof. I do, however, read the Court's comment as requiring MCPS to provide a cogent and responsive explanation as to why it concluded XXXX's placement at the XXXX Program with the goals, objectives, supports, aids, related services and measures of progress in the July 18, 2016 IEP were reasonably calculated to enable XXXX to make educational progress, both academic and appropriate to his circumstances.

With the language of the IDEA, the Maryland regulations, and the decision in *Andrew F.* as guides, I reviewed the evidence in this case and the position of the parties.

The Contentions of the Parties

In the Complaint, the Parents contend that MCPS denied the Student a FAPE by placing him at the XXXX Program for the 2016-2017 school year. They assert that XXXX's intellectual abilities provide an advanced self-awareness of his behavioral shortcomings, but that he lacks the control to match those insights. The Parents argue that the IEP and BIP do not provide the direct intensive social instruction and behavioral management needed, and that the XXXX Program does not have staff specifically trained in the social skills, behavioral management, and cognitive therapy approaches XXXX needs to fully access the academic curriculum. The Parents also assert that XXXX will do poorly in anything but a very restrictive environment and that placing him in general education lunch, allowing him to transition with general education students, and including him in school assemblies with the non-disabled general education population will trigger anxiety and cause missed instruction because XXXX reacts negatively to sensory

overload. The Parents assert that MCPS is returning XXXX to a program for emotionally disabled students, not a program for students with high-functioning ASD. The Parents seek an order that concludes that the July 18, 2016 IEP is not designed to address, nor does it address, XXXX's unique needs, that concludes that [School 1] is an appropriate placement, and that concludes that MCPS must reimburse the Parents for the cost of [School 1] for the 2016-2017 school year, including the cost of tuition and all related services.

MCPS asserts that XXXX has had several diagnoses over time, including ADHD-combined type, ODD, GAD, and severe mood dysregulation, and that his diagnoses of ASD is "mild." It asserts that reports submitted by both parties support the conclusion that all of XXXX's disabilities - ADHD, ODD, GAD, severe mood dysregulation and ASD, contribute to XXXX's learning challenges, and that the Parents have seized on "high-functioning autism" as the only diagnosis that matters and in the process have ignored XXXX's other diagnoses. MCPS asserts that the IEP, FBA and BIP were properly composed after significant data collection and observation, and that the IEP and BIP take into consideration all of XXXX's unique needs and provide the necessary supports to address those needs. MCPS points to the significant success XXXX enjoyed at [School 5] in the Emotional Disability group, and that the XXXX Program provides the direct in-the-moment supports XXXX requires. MCPS seeks an order denying all relief the Parents request.

I considered documents and testimony as early as 2012. I am mindful that "[t]he due process complaint must allege a violation that occurred not more than two years before the date the parent ... should have known about the alleged action that forms the basis of the due process complaint...." 34 C.F.R. § 300.507(a)(2). I interpret the information provided at the hearing regarding the pre-March 7, 2015 time as background information, placing the later events in historical context.

Credibility of the Witnesses

Mrs. XXXX. (XXXX's mother)

Mrs. XXXX was a strong and credible witness for XXXX. It is easy to see that the Parents care deeply for XXXX and want to maximize XXXX's potential. The Parents have enormous responsibilities for their son and diligently attend to them. They knew even before XXXX attended elementary school that challenges lay ahead.

Mrs. XXXX. is very knowledgeable about all aspects of her son's health and education. In addition, she has been very involved with MCPS while XXXX has been enrolled, attending every IEP team meeting and visiting the classroom. Mrs. XXXX. kept in touch with Ms. XXXX on an almost-every-day basis while XXXX was at [School 2].

Mrs. XXXX. testified openly and honestly, answering every question to the best of her ability. She knows XXXX better than anyone, as I would expect, and has been dedicated to his best interests for many years. She described XXXX as bright, inquisitive, articulate, and sweet when he is happy, but he displays aggressive behaviors when he is frustrated, including kicking, biting, and throwing tantrums. XXXX participated in a study at [FACILITY] for children with mood dysregulation problems, which she and her husband approved so that clinical data could be gathered. XXXX does very poorly in situations involving sensory overload with noise or chaos – in such situations XXXX gets hyperactive and very anxious. XXXX has attention issues all the time, but they are more pronounced when he is anxious. XXXX also has some sensitivities that are not related to his academic skills, but can be distracting to him. One example is that his shoes cannot be laced too tightly but have to be just as he likes them.

Mrs. XXXX. wanted to see the XXXX Program before agreeing to it as a placement for XXXX. She learned through a teacher and a police officer that [School 3] has a poor reputation in the community but, despite that reputation, she was willing to consider it. She visited the

XXXX Program and observed a math class, which she thought taught well below XXXX's ability level in math and that the math class she observed would not challenge XXXX. She met with Ms. XXXX at the XXXX Program, who said the XXXX Program was not equipped to handle explosive students, that it has students with ASD and OHI codes, and that the XXXX Program was not a program "just for students with emotional disabilities."

Mrs. XXXX. conferred with Mr. XXXX after his observation of the XXXX Program. Mr. XXXX opined that "XXXX might work." She was aware from the March 3, 2016 IEP meeting that [School 2] would not be closely enforcing the BIP for the remainder of the school year. From what she heard at the March 3, 2016 IEP meeting she did not think the psychological supports at the XXXX Program were adequate to meet XXXX's needs.

XXXX did well in the Emotional Disabilities group at [School 5] for two-and-a-half years. She was not aware that the conclusions in Ms. XXXX's evaluation in 2012 fit precisely the definition of emotional disturbance in the federal regulations, and that no one ever told her that XXXX met any definition of emotionally disturbed. The IEP team in 2012 coded XXXX as OHI for his IEP, not emotionally disturbed. At [School 5] XXXX worked closely with social worker XXXX XXXX who, as she recalled, may be the person at [School 5] who told her that the XXXX Program would not be a good fit for XXXX as he transitioned to middle school.

As the [School 2] school year wound down, she became convinced by what was happening at [School 2] that the XXXX Program was not a proper fit for XXXX. She opined that the [School 2] IEP team had not been candid with her and her husband about the team's plan to place XXXX at the XXXX Program. The team did not address the subject of transferring XXXX to the XXXX Program until late in the March 3, 2016 IEP meeting, just as she and her husband were coming up on the time they had to leave. She felt ambushed by the [School 2] IEP team and its invitation to Ms. XXXX from the XXXX Program to attend the March 3, 2016 IEP

meeting without explaining to her or her husband who Ms. XXXX was and why she was there until Mrs. XXXX asked.

XXXX XXXX

Mr. XXXX was accepted as an expert in Special Education with an emphasis on the education of high-functioning autistic and twice-exceptional students. He retired from MCPS in 2004 after thirty years as a teacher. For fifteen of those years he taught emotionally disabled students. For six years he was coordinator of the twice-exceptional program for MCPS students. Twice-exceptional students are those with exceptional academic potential, paired with learning disabilities such as ADHD, anxiety, reactivity, and high arousal. Among other publications he co-authored the book “XXXX” with XXXX XXXX, a career MCPS psychologist now in private practice and Dr. XXXX XXXX, Director, Center for Autism, XXXX Center.

Mr. XXXX testified that he is not a psychologist. He was familiar, however, with the DSM-IV, and that high-functioning autism was a specific diagnosis in the DSM-IV. Under the DSM-V, high-functioning autism is part of ASD. High functioning autism and Asperger’s Syndrome are the same. Neither MCPS nor [School 1] has changed the name of its Asperger’s Program to reflect the DSM-V change.

XXXX is exceptional from the standpoint that he has tested in the very superior range for verbal IQ, in the 98th percentile nationally. Despite clear academic potential, he struggles with written language and other issues related to social and behavioral areas. This fits the twice-exceptional profile, and is consistent with many students with high-functioning autism.

Mr. XXXX reviewed psychologists’ reports and the 2012 [FACILITY] study reports. He observed XXXX at [School 2], and gathered from [School 2] staff that placement at the XXXX Program was planned under the most recent IEP because XXXX needed more mental health support than was available at [School 2]. In April 2016, in an effort to better advise the Parents,

he also observed the XXXX Program, which he knew from his career with MCPS was designed for students with emotional problems, but he had not visited the XXXX Program for several years.

When he visited the XXXX Program, he spoke to Ms. XXXX, who told him no placement decision for XXXX had been made yet. Ms. XXXX told him during this visit that “[w]e don’t serve aggressive or acting-out students”¹⁶ and that the XXXX Program students were mostly depressed, inward, and would be an easy target for an aggressive and acting-out student.¹⁷ Initially Mr. XXXX concluded that the XXXX Program appeared to be a well-designed and well-functioning program, and he was generally impressed by the supports it provided to its students. He reported to the Parents that while the XXXX Program might not be ideal, it may be able to meet XXXX’s needs.

Mr. XXXX testified that he attended the July 18, 2016 IEP meeting, and that XXXX Program Resource teacher XXXX XXXX said that the XXXX Program cannot implement a fully self-contained IEP and that the XXXX Program was not a therapeutic program. He said that at this point, [School 2] school psychologist XXXX XXXX said “[w]ell, we have to give it a try.”¹⁸ After some discussion XXXX XXXX agreed that XXXX Program could accept XXXX.

Mr. XXXX said his opinion regarding the capacity for the XXXX Program to meet XXXX’s needs changed when he recently saw data from [School 2] relating to the number of classroom instruction hours XXXX missed at [School 2] from April through June 2016. The high rate of unavailability for instruction in general education classes for a student with an IEP that included significant supports and accommodations was simply unacceptable and signaled that a change was necessary.

¹⁶ Tr. May 22, 2017, pp. 85, 88.

¹⁷ Tr. May 22, 2017, p. 88.

¹⁸ Tr. May 22, 2017, p. 85.

Mr. XXXX criticized the July 18, 2016 IEP. The “behavior-safety” goal that XXXX would comply with school rules and classroom procedures six out of ten times was too low a target. The “behavior-safety” goal, objective three, that XXXX would “remain in his assigned location or choose an allowed alternative location when frustrated sixty percent of the time” was too low a target. The problem solving success and social skills success targets were too low. Permitting XXXX to self-select general education lunch because XXXX was known to elope and the general education lunch provided too little adult supervision. It is possible that, at times, others in XXXX’s peer group would be out of class for electives leaving XXXX as a class of one student. Students from other age groups may end up in XXXX’s class, with the result that XXXX may lose opportunities to build social skills. Transitioning with the general education population, unattended, may also present problems.

Mr. XXXX agreed that because the XXXX Program is within [School 3], it will provide opportunities for XXXX to join general education classes as his social skills improve and he gains insight into his behavior. The goal for XXXX is to eventually be fully integrated into a general education population.

Mr. XXXX addressed the ten features commonly present in students with high-functioning autism, as found in the book he co-authored. XXXX has all ten features, some more prominent than others. These include problems with social interactions, flexibility, organization, attention, and areas of executive functioning. XXXX demonstrates rigid behavior characterized by an unwillingness to see another point of view and sticking with his own point of view. The need for predictability is the most prominent feature of autism. Hypersensitivity is also a major issue for the autistic student. XXXX, he said, is strong when it comes to rote memorization but poor at analogies and inferences.

When called as witness in rebuttal to MCPS evidence, Mr. XXXX testified that the high number of missed hours of instruction demonstrate that XXXX “was in crisis” and faces severe mental health challenges that the XXXX Program is not equipped to address. He said that based on his familiarity with MCPS schools, psychologists have duties that may require they attend to a student’s problems that would make them unavailable to address XXXX’s at the same time.

I give Mr. XXXX’s opinion regarding the inappropriateness of the XXXX Program limited weight. He rendered few objections to the XXXX Program when it was proposed by the IEP team, and after observation in April 2016 opined to the Parents that the XXXX Program may work for XXXX. He attributed his change of opinion to data that showed the high number of hours of instruction XXXX missed at [School 2] from April through June 2016, especially general education class hours, which had nothing to do with his initial view. He testified that the missed hours demonstrate that change is needed – an opinion with which no one disagrees. He conceded that XXXX did poorly in the [School 2] XXXX’s program, crafted using methods advocated by the Academic Director at [School 1], yet stood solidly by his opinion that [School 1]’s XXXX Program was the appropriate setting for XXXX.

In his testimony on rebuttal, he offered as evidence of the inappropriateness of the XXXX Program the potential that a school psychologist may be tied up and thus unavailable to help XXXX. He based this view on his familiarity with MCPS generally, and its use of psychologists, generally, when he has not worked for MCPS for thirteen years. In short, his opinion that the XXXX Program is inappropriate was, in large part, based on achieving the Parents’ goal of convincing me that the XXXX Program would not provide FAPE. His opinion was based on what amount to minor criticisms of the July 18, 2016 IEP and the XXXX Program placement decision. His view that trained support staff at the XXXX Program may be unavailable to XXXX because they are working with a different student is conjecture. He did

not articulate other than in the most general terms why the XXXX Program would be unable to achieve the goals and objectives of the July 18, 2016 IEP, or describe why the supports, aids, and related services and measures of progress would not serve to accomplish those goals.

Mr. XXXX (XXXX's father)

Mr. XXXX testified that he attended the March 3, 2016 IEP meeting and that, toward the end of the meeting, the subject of transferring XXXX to the XXXX Program arose. He and Mrs. XXXX were surprised by this as they were of the impression that XXXX was doing better at school and at home than in prior months. The Parents did not know the IEP meeting would include any discussion of a plan to place XXXX at the XXXX Program. It seemed predetermined. There was no general discussion about the XXXX Program, no discussion about whether it was appropriate to meet XXXX's needs, no discussion about whether the XXXX Program was the right place. The discussion was more about when – after spring break 2016 or wait until the start of the 2016-2017 school year – to make the change.

Mr. XXXX testified that he and Mrs. XXXX visited the XXXX Program and met with Ms. XXXX, who told them the XXXX Program could not accommodate explosive students, and that the program had no unscheduled psychological therapy supports. The Parents did not ask Ms. XXXX how fast a trained mental health professional could get to the XXXX Program if no trained mental health professional was on site. Mr. XXXX considered the XXXX Program inappropriate because XXXX had scheduled counseling at [School 5] and it didn't resolve anything. What XXXX needs is psychological support as part of the day-to-day education. He needs constant availability of psychological supports to make progress.

Mr. XXXX testified that XXXX wants to fit in with other students but other students avoid him, so he will select general education lunch then get over stimulated when lunch does

not go as he planned. Further, Mr. XXXX testified that XXXX does not want to be seen as different but with a para-educator at his side he stands out, so he acts out.

I consider Mr. XXXX's testimony to be credible. He knows XXXX as well as anyone (with the possible exception of Mrs. XXXX), and knows what triggers XXXX's unwanted behaviors. He is not, however, a psychologist or special educator with the training and experience to opine what level of psychological support XXXX needs to succeed in school, both academically and functionally.

XXXX XXXX

Ms. XXXX was accepted as an expert in special education, although as she is a 2014 college graduate her experience is limited to three years. She was XXXX's case manager for the 2015-2016 school year at [School 2], and his primary teacher for the year. She testified that XXXX is cute, friendly and talkative, smart and helpful if he is calm, and red-faced and given to running, yelling and threatening if he is stressed. XXXX benefits from structure and should not be overwhelmed. Both she and special education teacher Ms. XXXX were with XXXX during gym class every day, as gym class was where XXXX was most prone to explosive behavior.

Ms. XXXX assembled data for updating XXXX's FBA and BIP. Though she has no formal training in applied behavior analysis (ABA) method (antecedent –behavior- consequence) data collection, she understands its principles, and gathered information based on those principles. Using the data collected, both formal and informal, the IEP team updated the FBA and BIP to identify unwanted behaviors and to identify strategies to substitute wanted behaviors for the unwanted. Ms. XXXX testified that XXXX's unwanted behaviors persisted despite efforts to alter them. Safety goals, in particular, were not being met. On March 3, 2016, the IEP team met to consider modifications to XXXX's IEP, and his BIP. She thought alternatives to [School 2] had to be considered. Ms. XXXX, MCPS autism program director, suggested that the

XXXX Program would be appropriate. Ms. XXXX from the XXXX Program was present at the IEP meeting and answered questions about the XXXX Program. Some team members proposed transferring XXXX to the XXXX Program after spring break 2016, which Ms. XXXX opposed.

Ms. XXXX testified that XXXX missed a lot of classroom instruction, especially general education class time, due to physically leaving the classroom or shutting down at his desk. She described record entries of “unavailable” as meaning that XXXX was either physically absent from class or was not doing any work even though he was in class.

Ms. XXXX knew little about the XXXX Program, but based on how Ms. XXXX described it, XXXX offered a program of all self-contained classes. She opined that that self-contained classes were the least restrictive environment to meet XXXX’s needs.

When questioned about XXXX’s conduct in the general education lunch room at [School 2], Ms. XXXX said that while there were no special educators present, there were security personnel and aids present, as well as parent volunteers. XXXX often ate lunch in the general education population. That was his choice. Sometimes he ate in a hurry then went to the media room, and was also allowed to eat lunch in his self-contained classroom. There were only two or three instances all year in which there had been any problem relating to XXXX attending the general education lunch room.

After the March 3, 2016 IEP meeting, and the decision that XXXX would remain at [School 2] through the end of the school year, staff scaled back on interventions and efforts to enforce and implement various behavior elements of the BIP and IEP. This resulted in XXXX having more discretion and more missed classroom time.

There were two other Asperger’s students in the [School 2] XXXX’s Program, and neither of them demonstrated the aggression and threatening behavior that XXXX demonstrated. XXXX was, she said, a real drain on teacher resources. With XXXX, [School 2] staff had to use

a very casual approach and be discreet when addressing his behaviors or his work. Calling attention to him or trying to directly intervene caused a very unwanted reaction. The most effective method of dealing with XXXX was to immediately address whatever was the issue and listen to XXXX, without calling attention to him.

XXXX's continuing problem is his inability to accept his role in any incident and accept responsibility. It was always the other person's fault. Or he would just forget the incident happened.

Ms. XXXX testified that in her view the biggest missing element at [School 2] was skilled psychological counseling services, and staff with training and skills in social emotional problem solving. She opined that the July 18, 2016 IEP addresses both these needs.

I found Ms. XXXX to be credible in all of her testimony. Her responses were consistent with her journals and logs, and consistent with the numerous emails she exchanged with Mrs. XXXX., with whom she communicated regarding XXXX's experiences, both good and bad.

Ms. XXXX is not a psychologist, and has never observed the XXXX Program. Her opinion that the XXXX Program can address XXXX's needs are based, almost entirely, on what she heard about the program from others. Thus, I give limited weight to her opinion that skilled psychological counseling services and staff with training and skills in social emotional problem solving will be adequate to address XXXX's needs, or that those skilled services are available at the XXXX Program.

I interpret her testimony on those points to be simply that XXXX's behavioral and social issues are not the same as those presented by other Asperger's students she teaches, and that XXXX requires staff more skilled in addressing these issues than is available at [School 2].

XXXX XXXX

Ms. XXXX was accepted as an expert in special education, with a specialization in the education of students with autism. She has been the MCPS Autism Program Specialist since 1999. The autism program is designed to address the needs of high-functioning autism, or Asperger's, students. The classic Asperger's presentation is a student with significant cognitive disabilities, mostly in receptive and expressive language. XXXX, she testified, is at or above grade level in verbal language, but has significant problems with social interaction, written language, executive functioning, and problem solving. This is consistent with most Asperger's students. Asperger's students are usually socially motivated, want to talk about their own interests, have trouble with group work because they over contribute or under contribute, or try to take over the group. XXXX demonstrates some of these tendencies.

Ms. XXXX testified that Asperger's is typically not accompanied by physically aggressive behavior. While social skills are a problem, short periods of support, such as a two to three minutes step out, address the issue. Some Asperger's students have ADHD, some have mood disorders. ODD is rare. Explosive behavior is very unusual, and threats of violence are rare. XXXX is the only Asperger's student she is aware of who fashioned weapons or used them against other students.

XXXX, she said, is socially superior to many Asperger's students when he is calm. She observed XXXX in the Emotional Disabilities group at [School 5], and attended a May 28, 2015 IEP meeting at [School 5] where she represented [School 2]. Before attending she read XXXX's psychological assessments. Mr. XXXX lists XXXX's diagnoses as ADHD and mood disorder, and it was also his impression that XXXX also had mild autism and learning difficulties. This led to the team moving toward an Asperger's curriculum, available at [School 2]. The discussion also led to more social skills training in the 2015 IEP. We talked about the XXXX Program, and

that it may be appropriate if XXXX was not successful at [School 2]. Counselors at each grade level are available at [School 2], but it does not have mental health support available on an ongoing basis.

Ms. XXXX testified that every time she visited [School 2], the subject of XXXX came up and a lot of time was spent discussing XXXX, far more time than any other student. It was clear by the end of the first quarter at [School 2] that XXXX was not making any progress on behavioral goals and objectives. Ms. XXXX conducted periodic reviews. XXXX's parents were always responsive and offered ideas and views. Ms. XXXX encouraged XXXX's parents to contact XXXX XXXX at the XXXX Program.

XXXX was able to advance academically despite his behavior problems, but his participation differed from class to class. All of the [School 2] staff focused on making sure XXXX was not the subject of unnecessary attention. At times staff waited for hours to address a problem or incident. Written feedback seemed to work better than verbal feedback.

Ms. XXXX testified that the XXXX Program is capable of implementing a 100% self-contained schedule, and that XXXX does better in a self-contained setting than in the general education setting. XXXX is less overwhelmed in a smaller class. The XXXX Program has mental health counseling, with a social worker as the primary provider, and the July 18, 2016 IEP includes forty-five minutes a week of counseling. The XXXX Program also has specially-trained staff to attend to XXXX's needs in the moment. The XXXX Program has access to the general education curriculum, with accelerated instruction for areas in which XXXX excels. XXXX needs a self-contained learning environment, but not an environment that completely deprives him of access to the general education population. The July 18, 2016 IEP, Ms. XXXX testified, is designed for XXXX to make meaningful progress and is reasonably calculated to

meet his academic and functional instructional needs, and the XXXX Program can implement the IEP.

Ms. XXXX testified that the [School 2] XXXX Program is modeled after the XXXX program, co-authored by XXXX XXXX, academic director at [School 1]. I found Ms. XXXX credible and give her testimony significant weight. She is a career educator with almost two decades of experience in the instruction of students with autism. She demonstrated a comprehensive familiarity with programs available in the MCPS, and is familiar with XXXX. Her insights and opinions directly addressed XXXX, and were not generalizations. She responded directly to questions posed, and demonstrated in-depth knowledge and insight.

XXXX XXXX

Ms. XXXX was accepted as an expert in school psychology with an emphasis on students with autism. She has been the MCPS school psychologist for autism and Asperger's programs since 2002. MCPS created the Asperger's program sixteen years ago due to the number of students with high academic achievement accompanied by behavioral problems, writing, organization, and/or comprehension challenges. The Asperger's program includes daily social skills instruction. The Asperger's program is not designed to address aggressive or violent students, or to provide direct support to aggressive students.

Ms. XXXX is present at [School 2] one full day per week. She does psychological testing, and does not provide direct psychological support services to students.

Ms. XXXX does not work in the XXXX Program but has worked in a program just down the hall and has participated in many XXXX Program intake meetings when student placement was discussed. She is familiar with the XXXX Program and its goals and methods.

Ms. XXXX is familiar with many of the psychological assessments in XXXX's history, and found Dr. XXXX's 2012 assessment to be a very good description of XXXX. She, like Dr.

XXXX, is of the opinion that XXXX has a lot going on psychologically and that no single label or diagnosis explains all of his behaviors. Many autistic students present with ADHD, rigidity, and transition challenges, but XXXX has some symptoms not normally present in autistic students. He has depressive ruminations and fixations about his grandfather's death several years ago, has problems constantly viewing himself as a victim and as not responsible for any incident in which he is involved, has severe anxiety, and mood dysregulation. These are red flags that suggest more trained mental health professional counseling is needed.

Mrs. XXXX said that XXXX was successful at [School 5]'s emotional disability group in part because of the counseling he received from Mr. XXXX, now a counselor at the XXXX Program. Counseling should have been made part of the [School 2] IEP as XXXX transitioned to middle school.

XXXX's FBA and BIP have been the subject of frequent modifications. The Parents have been active and cooperative in that effort. XXXX's current BIP is appropriate to his circumstances. XXXX requires substantial support – sometimes two adults – to regain control after an incident. The July 18, 2016 IEP, with all self-contained classes, is necessary for XXXX to make measurable progress meeting his behavior goals.

Ms. XXXX has seen students with much more significant psychological problems than XXXX, such as bipolar disorder. XXXX's psychological issues are not as severe as that. She has seen students far more explosive in their conduct than XXXX. Ms. XXXX testified that the XXXX Program is a good fit for XXXX and can address his unique circumstances.

I found Ms. XXXX to be credible and give significant weight to her testimony. She has several years of experience with autistic students, and has personal knowledge of the components of the XXXX Program. She has been a part of many meetings in which placement at the XXXX Program was discussed, so she knows what students are good candidates for the program and

which are not. She was candid in her concession that MCPS should have included a counseling component to XXXX's IEP as he transitioned to middle school.

XXXX XXXX

Ms. XXXX is a Resource teacher at the XXXX Program, known informally as the XXXX. She has been a special education teacher since 2000, and has been with the XXXX Program seven years. She was accepted as an expert in special education with an emphasis on students with behavioral problems. Ms. XXXX is not a mental health professional.

The XXXX Program is capable of accommodating students who are aggressive and act out. She does not know how either Mr. XXXX or Mrs. XXXX were left with the impression the XXXX Program could not accept XXXX as a student because he was aggressive. Events like the fight in the hallway at [School 2] that resulted in XXXX's four-day suspension occur at the XXXX Program, but not frequently.

Ms. XXXX attended IEP meetings relating to XXXX, and has talked to teachers and staff at [School 2]. She is familiar with the content of the July 18, 2016 IEP, and believes the XXXX Program can implement all aspects of the IEP. XXXX's IEP is not uncommon for students entering the program. All of the students in the XXXX Program have social interaction problems, all have problems with ritual and rigidity, and most of them need predictability of routine to do well. Most XXXX Program students have problems with emotional response to stress, or are aggressive, or have wide mood swings, or engage in attention-seeking behaviors. The XXXX Program works daily with students who place blame on others.

The XXXX Program, Ms. XXXX testified, addresses behaviors, regardless of whether the student is described as multiple disabilities, OHI, ED or some other description. The XXXX Program is not a catch-bin for problem students. It is a program for student with similar social and emotional problems and goals with staff specifically trained to address those goals. The staff

is also specially trained in crisis intervention methods designed to address a crisis situation and make it better, not worse.

Ms. XXXX participated in the development of XXXX's IEP and is familiar with its goals, objectives, supports, aids, and related services, and its measures of progress. In her view it is designed to provide both academic and a functional education to XXXX, based on his specific and unique needs.

High-functioning autism is not on the Venn diagram from the MCPS website that describes the XXXX Program. Ms. XXXX did not have any data or studies of the effectiveness of the methods used at the XXXX Program that demonstrate the success of the program or the approaches used. She had no data to demonstrate the number of XXXX Program students who later graduated from high school.

I found Ms. XXXX to be a very credible witness, with a significant depth of experience and insight. I give great weight to her testimony. She was straightforward in her description of the XXXX Program components, and conceded points made by the Parents without qualifying her responses.

Letters from XXXX's Consulting Psychiatrist

Exhibit P. 31 is a June 2, 2016 letter from XXXX's consulting psychiatrist, XXXX XXXX, M.D. XXXX's treating psychiatrist and the Parents requested Dr. XXXX conduct an evaluation. In that letter, Dr. XXXX opined, at Recommendation 3., that "XXXX requires a school placement that has the intensive social training and extensive behavioral expertise to address his ASD-related "mind blindness" juxtaposed onto his intense vigilance regarding how others may be thinking about him (but always in a distorted/negative way given his primary ASD issues)." Among his impressions was that MCPS' plan for XXXX lacked a comprehensive BIP and that MCPS wished to return XXXX to an ED program.

Exhibit P. 57 is a May 10, 2017 letter from Dr. XXXX attesting to XXXX's progress since enrolling at [School 1], and opines that XXXX should have been placed at [School 1] in the first place.

Dr. XXXX did not testify. The admission of these letters as evidence was contentious, and the parties both argued with vigor as to the weight I should give them. The Parents urged that I give them the weight of expert opinion. Mr. XXXX testified about Dr. XXXX's reputation in the psychiatric community. The Parents provided Dr. XXXX's *curriculum vitae*, at my request.

Dr. XXXX is not an educator, and did not observe XXXX at [School 2] or any other school from what I can discern from the exhibits. He did not visit the XXXX Program or meet with Ms. XXXX to discuss with her the components of the program. XXXX's school and psychiatric records, his evaluation of XXXX, and discussions with the Parents formed the basis of his views. I consider his views to be much less than well-informed on the subject of the appropriateness of the XXXX Program. His May 10, 2017 letter was provided five days prior to the document exchange by the parties, suggesting it was prepared specifically for the purpose of this litigation.

Dr. XXXX's opinions were not supported by any explanation of whether they were rendered within the scope of his expertise. As he did not testify, and did not submit to cross-examination, I was unable to gauge the weight to be given these hearsay opinions. I have no doubt that the opinions were rendered, but I am unable to give them any weight for these reasons.

Analysis

Was XXXX's IEP Reasonably Calculated to enable him to Make Progress Appropriate in Light of his Circumstances?

Andrew F. held that “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 999. Autism is “a developmental disability significantly affecting verbal and nonverbal communication and social interaction . . . that adversely affects a child’s educational performance.” 34 C.F.R. § 300.8(c)(1)(i). Characteristics often associated with autism include “engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.” *Id.*¹⁹

I am mindful that the *Andrew F.* Court reiterated the meaning of the *Rowley* “reasonably calculated” requirement:

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

137 S. Ct. at 999 (citations omitted).

Several matters influenced my decision in this case. I found the various psychological assessments to paint a picture of a very complex student. Dr. XXXX’s 2012 letter to the Parents demonstrates the challenges of evaluating XXXX. Dr. XXXX opines that XXXX presents differently depending on when and how XXXX is evaluated. He also expresses his view that not enough is known about what interventions are most helpful.

I also considered that the past informs the future. I reviewed the past IEPs, FBA, BIPs, and results of IEP progress meeting notes from December 16, 2014 forward to examine how MCPS addressed XXXX’s academic progress and functional progress, the measures used, the measures that worked and the measures that failed. I conducted a line-by-line comparison of the

¹⁹ A child with autism qualifies as a “[c]hild with a disability” under IDEA. 20 U.S.C.A. § 1401(3)(A)(i).

March 3, 2016 IEP and the challenged July 18, 2016 IEP to evaluate academic and functional progress, the changes from one IEP to the next, and why the changes were implemented.

The significant changes are, of course, that the July 18, 2016 IEP provides for all self-contained instruction at the XXXX Program, with forty-five minutes a week of mental health professional counseling added to the IEP that was not present in prior iterations.

As I explained above, I did not find Mr. XXXX to be a particularly helpful witness. His opinion was that some of the target success rates for some of the goals and objectives in the IEP were too low. He suggested that if a trained mental health professional was busy, he or she might not be available to assist XXXX. The IEP did not, in his view, provide for the type of counseling XXXX needs or enough of it. Mr. XXXX is not a psychologist. His views fell short of addressing the fundamental issues, which are whether the July 18, 2016 IEP addressed XXXX's present levels of performance, whether it set out measurable annual goals for academic and functional progress, whether the supports and related services were appropriate to advance those goals and objectives, and whether, overall, the July 18, 2016 IEP was reasonable for XXXX in light of his circumstances.

I found Mrs. XXXX.'s testimony helpful because she explained, in detail, the sorts of daily challenges XXXX faces. Her testimony helped me to understand his uniqueness and how he presents challenges that are common to parents of children with autism and how he presents some challenges other parents of autistic students do not face. She was a constant presence at IEP meetings, FBA and BIP update meetings, and maintained a near-constant dialogue with XXXX's special educator at [School 2], although she never observed XXXX in Ms. XXXX's classes at [School 2]. It is clear she knows XXXX better than anyone. She knows XXXX much better than XXXX knows XXXX. That XXXX does not know XXXX sufficiently is part of the problem.

I found Ms. XXXX to be an exceptionally helpful witness. I was able, through her testimony, to understand what a typical day for XXXX in the XXXX Program would entail. She walked me down the hallways. This testimony was very persuasive on the issues of whether the IEP was specifically tailored to meet XXXX's needs and how the July 18, 2016 IEP would be implemented.

I also found Ms. XXXX testimony to be very helpful, as she helped me to understand the extent to which XXXX's behaviors differ from the behaviors of many children with Asperger's. She helped me to understand XXXX's unique presentation. I found Ms. XXXX to be very helpful for the same reasons.

The Creation of the July 18, 2016 IEP

The greatest challenge in deciding this case is the fact that XXXX never attended the XXXX Program and I must determine whether the July 18, 2016 IEP was appropriate when it was never implemented. However, as *Andrew F.* recognizes, crafting an appropriate program of education requires a prospective judgment by school officials. 137 S. Ct. at 992. I must play the hand that is dealt and determine if that prospective judgment was appropriate. Many courts have emphasized that the IEP is a forward looking document, a plan for the student's future. The IEP team gathers all relevant information available and documents a student's present levels of academic achievement and functional performance, and then proceeds to define a program to meet the student's need *in the coming school year*. Among other professional assessments, the IEP team had the benefit of the psychological assessments conducted by Dr. XXXX and his staff at [FACILITY], the assessments and recommendations of Ms. XXXX, Mr. XXXX and Mr. XXXX, and the point paper of Mr. XXXX.

In order to evaluate the Parents' claims, it is necessary to begin with the May 28, 2015 IEP, which was created based on the Student's performance at [School 5], the information and

psychological assessments available to the IEP team and the Parents' input. The decision was to enroll XXXX in the [School 2] XXXX Program, with four general education classes and three self-contained classes. The instruction included social skills classes. Although MCPS was aware XXXX had been diagnosed with ADHD, GAD, mood dysregulation, and mild ASD, it considered the XXXX program appropriate.²⁰

There was no psychological counseling component to the May 28, 2015 IEP. The psychological counseling, to the extent it existed, was provided primarily by Ms. XXXX and Ms. XXXX, with help from a guidance counselor in times of crisis. Within a month of enrollment at [School 2], Ms. XXXX expressed her reservations about the appropriateness of XXXX's placement there. My Findings of Fact detail the extent to which XXXX's problem behaviors persisted at [School 2], and the extent to which [School 2] staff used techniques to alter the unwanted behaviors. [School 2] continued to gather data, continued to record observations, and updated XXXX's FBA and BIP to modify approaches to addressing XXXX's unwanted behaviors and his lack of progress toward behavior goals in his IEP.

What emerged from the July 18, 2016 IEP meeting was a seventy-two page IEP.

Components of the IEP

The IDEA requires that every IEP include "a statement of the child's present levels of academic achievement and functional performance," describe "how the child's disability affects the child's involvement and progress in the general education curriculum," and set out "measurable annual goals, including academic and functional goals," along with a "description

²⁰ Given the significant amount of information available to the IEP team relating to XXXX's behavioral issues, and the extent to which he continued to demonstrate unwanted behaviors, it is unclear to me why XXXX was not enrolled in the XXXX Program as he left [School 5]. XXXX's counselor at [School 5], Mr. XXXX, the MCPS autism unit program specialist, Ms. XXXX, and school psychologist Mr. XXXX all attended the May 28, 2015 IEP team meeting, and I simply assume that the meeting went as such meetings go, with input from around the table aimed at making the best forward-looking decision under the circumstances. Mrs. XXXX testified that if she recalled correctly, Mr. XXXX was of the view that the XXXX Program was not a good fit for XXXX. In any event, XXXX enrolled at [School 2].

of how the child’s progress toward meeting” those goals will be gauged. 20 U.S.C.A. §§ 1414(d)(1)(A)(i)(I)-(III); *Endrew F.*, 137 S. Ct. at 994. There was little dispute over whether these components were present in the IEP. As set out in the Findings of Fact, I find that the July 18, 2016 IEP met all these requirements.

The IEP must also describe the “special education and related services . . . that will be provided” so that the child may “advance appropriately toward attaining the annual goals” and, when possible, “be involved in and make progress in the general education curriculum.” 20 U.S.C.A. § 1414(d)(1)(A)(i)(IV);²¹ *Endrew F.*, 137 S. Ct. at 994. “Related services” means transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education and includes . . . psychological services and . . . counseling services. 34 C.F.R § 300.34(A). Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. 34 C.F.R § 300.34(c)(2). On this issue, I find in favor of MCPS. The special education and related services are fully described in the IEP, with goals and objectives that include clear descriptions of how the services will be utilized and how progress will be measured. As described above, there was no disagreement that XXXX is not expected under this IEP to “make progress in the general education classroom.”

The July 18, 2016 IEP was Tailored to Meet XXXX’s Unique Needs

XXXX’s July 18, 2016 IEP was “specially designed” to meet his “unique needs” through an IEP. 20 U.S.C.A. § 1401(14), (29). By the time this IEP was adopted it was clear the [School

²¹ The IEP must address a student’s unique needs and must contain:
a statement of measurable annual goals, including academic and functional goals, designed to –
(aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
(bb) meet each of the child’s other educational needs that result from the child’s disability. . . .
20 U.S.C.A. § 1414(d)(1)(A)(II).

2] XXXX Program placement was inappropriate. The multiple behavior goals of the May 28, 2015 IEP, and the behavior goals of the updated BIP of November 2015 were not being met.

Teachers, administrators, special educators, psychologists, autism program specialists, and the XXXX weighed in. The decision was made that XXXX would only be able to access the educational curriculum in a fully self-contained program. He simply did not do well in a general education setting. When staff scaled back their efforts to assist XXXX with his frustrations and social emotional issues, the result was almost no participation in the general education curriculum. He was achieving grade-level or better performance in math, oral language and reading, but was below grade level elsewhere. There was no argument – XXXX needed small classes with nearly constant prompting to keep him on task. A fully self-contained curriculum was specially designed to meet XXXX’s unique academic needs.

In addition, XXXX needed psychological support well beyond what was available at [School 2]. He also needed staff specially trained in techniques to de-escalate situations instead of make them worse. The Findings of Fact detail the components of the XXXX Program and how it is designed and equipped to address XXXX’s unique social, emotional and behavioral needs. I will not repeat the Findings of Fact here. The classroom curriculum, the accommodations, aids and supports, in conjunction with the related services in the IEP, are designed specifically to address XXXX’s challenges with academic areas and to address behavior, peer interaction, social situations and to decrease unwanted and unsafe behaviors.

I find that the July 18, 2016 IEP was adopted “only after careful consideration of the [Student’s] present levels of achievement, disability, and potential for growth.” *Andrew F.*, 137 S. Ct. at 999 (citing 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv)).

Placement was a main focus of the hearing, and XXXX’s behavior goals and objectives were discussed at length. However, there was little disagreement about the nature and extent of

unwanted behaviors or the goal and objectives of extinguishing behaviors and replacing them with appropriate substitutes. There was no disagreement over the content of the March 3, 2016 BIP as updated by the July 18, 2016 BIP.²² The issue was not whether the goals and objectives were appropriate – the issue was “where they could be met,” – i.e., placement.

Deference is due to the choices the qualified professionals at MCPS made about educational policy, including placement. *Rowley*, 458 U.S. at 206; *Endrew F.*, 137 S. Ct. at 1001. In addition, a reviewing court may fairly expect that MCPS authorities will offer a cogent and responsive explanation for their decisions that shows the IEP was reasonably calculated to enable XXXX to make progress in light of his circumstances. *Id.* at 1002. MCPS has done so here. The IEP and its components were sufficiently explained by Ms. XXXX, Ms. XXXX and Ms. XXXX.²³

The IEP must be reasonably calculated to enable the student to make progress in light of his circumstances. It is not required to be perfect. *Endrew F.*, 137 S. Ct. at 1002. An IEP must also be appropriately ambitious in light of the child’s circumstances, even if the child is not enrolled in a general education curriculum. *Id.* at 1000. I find that the July 18, 2016 IEP had several specific goals, both academic and functional, that it contained methods to measure XXXX’s progress in achieving those goals, and that the goals were entirely appropriate under his unique circumstances.

Where academic achievement is below grade level – written language, organization, and task completion – the IEP provides a detailed evaluation of XXXX’s level of performance and

²² MCPS satisfied the IDEA requirement that the IEP be in place before the start of the 2016/2017 school year. 20 U.S.C.A. § 1414(d)(2)(A). MCPS met the requirement of the IDEA that in developing an IEP for “a child whose behavior impedes the child’s learning or that of others,” the IEP team must “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior” *Id.* § 1414(d)(3)(B)(i).

²³ In *Roland M. v. Concord School Committee*, 910 F. 2d 983 (1st Cir. 1990), the Court, citing *Rowley*, observed that due to the unique nature of educational expertise, courts have exhibited an understandable reluctance to overturn a state education agency’s judgment calls in delicate areas – at least where it can be shown that the IEP proposed by the school district is based upon accepted, proven methodology. *Id.* at 992.

how his disabilities affect achievement, and a detailed set of goals and objectives to improve these academic areas. The IEP provides a comprehensive set of supports, aids and program modifications to reach these goals, and it provides standards for how progress will be measured. These goals are ambitious and tailored to XXXX.

Where behavioral progress is needed in areas of safety, peer relationships, social skills, and emotional problem solving, the IEP provides a detailed evaluation of XXXX's level of performance and how his disabilities affect achievement, and a detailed set of goals and objectives to improve these academic areas. The IEP provides a comprehensive set of supports, aids and program modifications to reach these goals, and it provides standards for how progress will be measured. The IEP also adds related services that were not present in prior IEPs. The IEP also provides a placement designed to address the behavioral, social and emotional issues XXXX presents. These goals are ambitious and tailored to XXXX.

It is clear that the XXXX Program will use a concert of professionals, with Ms. XXXX at the baton, to address XXXX's educational and behavioral needs. Special educators and para-educators will address the academic areas. XXXX's day-to-day, moment-to-moment needs will be addressed by staff trained in crisis intervention techniques who know how to de-escalate a situation instead of making it worse. XXXX will be counseled weekly, at a minimum, by a trained social worker and a school psychologist. Ms. XXXX will receive constant updates as to XXXX's progress and participate in intervention.

Taking the IEP as a whole, I conclude that XXXX was not denied a FAPE by the July 18, 2016 IEP.

Contact with Nondisabled Peers

The Parents argue that XXXX should never be in the general education setting, not at lunch, not in the hallways, not at assemblies, and not arriving or leaving the school grounds. My

Findings of Fact address the methods in place at the XXXX Program to address these concerns. The objective of the IDEA is that educational benefit must be provided in the least restrictive environment appropriate to the child's needs, with the disabled child participating to the “maximum extent appropriate” in the same activities as his or her non-disabled peers. 20 U.S.C.A. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2). All activities involving non-disabled peers are with adult supervision, and XXXX can opt not to participate in any activity that includes non-disabled peers. I find that the IEP, as approved, meets both the least restrictive environment goal of the IDEA and at the same time is tailored specifically to XXXX.

I conclude that, given all of the preparation for the IEP, the accommodations, services and supports provided, and the related services provided, the IEP was reasonably calculated to provide XXXX with educational benefit in both academic and functional areas. The law recognizes that “once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.” *Tice ex rel. Tice v. Botetourt Cty. Sch. Bd.*, 908 F. 2d 1200, 1207 (4th Cir. 1990). Therefore, absent any evidence to persuasively dispute the well-reasoned judgment of MCPS witnesses, I agree with MCPS that the IEP and placement developed by the school system is appropriate and reasonably calculated to meet the individual needs of the Student. *Andrew F.*, 137 S. Ct. at 1002.

MCPS fulfilled its obligation to XXXX to offer him a FAPE. As I conclude that the Parents did not prove a denial of FAPE, it is unnecessary for me to reach the issue of whether [School 1] is an appropriate private placement for XXXX. *See generally Burlington*, 471 U.S. 359.

Additional Issue

Although not identified in the prehearing conference as an issue, and not identified in my Prehearing Conference Report and Order as an issue to be resolved at the hearing, the Parents

raised the issue at the hearing whether the decision to place XXXX at the XXXX Program was predetermined.²⁴ The Parents highlighted the testimony of Ms. XXXX in support of their position, and Mr. XXXX testified on June 17, 2017 that he thought members of the IEP team at the March 3, 2016 IEP team meeting approached the issue of placement of XXXX at the XXXX Program as a matter of “when?” and not a matter of “whether?” Mrs. XXXX testified that she felt “ambushed” by the IEP team when the subject of the XXXX Program arose. Mr. XXXX testified similarly. Mr. XXXX also testified that during an IEP meeting at [School 5], both the [School 2] XXXX Program and the XXXX Program were discussed as possible placements. Mrs. XXXX testified that someone, perhaps Mr. XXXX, opined that the XXXX Program was not an appropriate placement.

MCPS, for its part, felt ambushed at the hearing by the Parents when this issue was raised in rebuttal testimony and in arguments on the final day of the hearing.

The Parents did not request any particular form of relief for what they alleged was a procedural violation of the IDEA in the construction of the IEP. The Parents argued MCPS made up its mind as to placement without them.

Rowley recognized that Congress viewed the procedural safeguards of the Education for All Handicapped Children Act (predecessor to the IDEA) to be just as important as the substantive components of the IEP, which supports the view that a procedural violation may be sufficiently great to warrant a conclusion a child was denied FAPE. *Rowley*, 458 U.S. at 205. Procedural flaws, however, do not automatically render an IEP defective. *Roland M. v. Concord School Committee*, 910 F. 2d 983, 994 (1st Cir. 1990); *see also Hall by Hall v. Vance County Board of Education*, 774 F. 2d 629, 635 (4th Cir. 1985) (in which the court found that the North Carolina school system’s numerous procedural violations, consistent failure to inform the parents

²⁴ The Parents’ due process complaint includes a reference to Mr. XXXX’s surprise that the March 3, 2016 IEP meeting included a discussion that XXXX’s placement be changed from [School 2] to the XXXX Program. This, the Parents argued, means the issue of predetermination was raised in the due process complaint.

of their procedural rights and safeguards, and consistent failure to ignore fundamental procedures of the Education for All Handicapped Children Act were adequate grounds, in and of themselves, to hold that the school failed to provide the student FAPE).

On January 5, 2016, Mrs. XXXX participated in a parent conference attended by Ms. XXXX, Ms. XXXX, Ms. XXXX, and Mr. XXXX, XXXX's guidance counselor. Ms. XXXX recommended moving XXXX's annual review forward to discuss progress and challenges. She described the XXXX Program and suggested a visit, prompting Ms. XXXX to respond that XXXX's prior IEP team did not consider the XXXX Program appropriate.

At the March 3, 2016 IEP meeting, the Parents asked for an opportunity to visit the XXXX Program to consider it as a possible placement before a final decision was made. The Parents also cited XXXX's difficulty handling transitions as a reason to delay any change of placement. The IEP team agreed to this plan, even though some members of the IEP team thought XXXX should be transferred to the XXXX Program after spring break 2016. XXXX remained at [School 2] for the remainder of the 2015-2016 school year.

In *Doyle v. Arlington County School Board*, 806 F. Supp. 1253 (E.D. Va. 1992),²⁵ the Court, citing *Spielberg v. Henrico County Public Schools*, 853 F.2d 256 (4th Cir. 1988), recognized that the Education of the Handicapped Act's procedural rules are designed to insure parents participate meaningfully in the decision-making process. Thus if the school system had already made up its mind before the parents ever got involved, it has denied the parents an opportunity for meaningful input. 806 F. Supp. at 1262. The *Doyle* court also recognized that while school officials must come to the table with an open mind, it does not mean they should come to the table with a blank mind. School officials must come to the IEP table with a person "qualified to provide education in the type of program in which the child may be placed," and

²⁵ Mr. Eig was counsel for the student and parents.

must offer placement “as close as possible to the child’s home.” The school must also come to the meeting with a draft IEP for discussion. The school system can, and should, give some thought to placement before the IEP meeting. *Id.*

That is exactly what the MCPS IEP team did here. It invited Ms. XXXX to attend the March 3, 2016 IEP meeting to provide information about the XXXX Program. The March 3, 2016 draft IEP did not include the XXXX Program as a placement, and the March 3, 2016 IEP only comments that a placement other than [School 2] was discussed. Ms. XXXX suggested the Parents visit the XXXX Program in January 2016. The MCPS IEP team members agreed to give the Parents time to visit the XXXX Program. Thus it is clear no decision about placement had yet been made, much less finalized, by the MCPS members of the IEP team. There was no procedural violation as there was no predetermination.

CONCLUSION OF LAW

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

The July 18, 2016 IEP and placement created for the Student by the Montgomery County Public Schools for the 2016-2017 school year was reasonably calculated to offer the Student a free appropriate public education appropriate to his circumstances. 20 U.S.C.A. §§ 1400 - 1487 (2017); *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S. Ct. 988 (2017).

ORDER

I **ORDER** that the Parents’ request for reimbursement of the cost of tuition and related services at the [School 1] for the 2016-2017 school year is **DENIED**.

July 12, 2017
Date Decision Mailed

Michael R. Osborn
Administrative Law Judge

REVIEW RIGHTS

Any party aggrieved by this Final Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (Supp. 2016). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

Should a party file an appeal of the hearing decision, that party 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 court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

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