

XXXX XXXX,¹

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

* BEFORE JENNIFER A. NAPPIER,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH NO.: MSDE-MONT-OT-17-16944

* * * * *

DECISION

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

STATEMENT OF THE CASE

On May 31, 2017, XXXX XXXX (Mother) and XXXX XXXX (Father), (collectively referred to as Parents), on behalf of their daughter, XXXX XXXX (Student), filed a Due Process Complaint (Complaint) with the Maryland Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by the Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).²

On June 14, 2017, the parties attended a resolution session, but were unable to resolve their dispute. On June 15, 2017, the parties notified the OAH in writing that they did not resolve their dispute and no agreement was possible.³

¹ I have used the Student’s initials to maintain confidentiality.

² U.S.C.A. is an abbreviation for United States Code Annotated.

³ Although the OAH received this written notification on June 15, 2017, the document was signed on June 14, 2017.

I held a telephone prehearing conference with the parties on June 23, 2017. Emily Rachlin, Esquire, represented the MCPS. Ms. XXXX represented the Student. During the telephone prehearing conference, I informed the parties that the June 14, 2017 notification that the dispute was not resolved during the resolution session and no agreement was possible established the beginning of the forty-five day timeline for conducting the due process hearing and issuing a decision. Further, I informed the parties that the due process hearing must be held and a decision issued by July 28, 2017, which is forty-five days from June 14, 2017, the triggering event for the timeframe for a due process decision.⁴ 34 C.F.R. § 300.510(c); 34 C.F.R. § 300.515(a) (2016).

I held a hearing on July 17, 2017 at the MCPS headquarters in Rockville, Maryland. Ms. Rachlin represented MCPS. John Kitlas, Esquire, represented the Parents and the Student.⁵

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2016); 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; 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.

⁴ The forty-fifth day is Saturday, July 29, 2017. Therefore, the decision must be issued on or before Friday, July 28, 2017 to be in compliance with the forty-five day timeline.

⁵ Mr. Kitlas entered his appearance in this matter on June 30, 2017.

ISSUES

1. Is the Individualized Education Program (IEP) and placement developed by the MCPS reasonably calculated to provide the Student with a free, appropriate public education (FAPE) for the 2017–2018 school year, and if not;
2. Are the Parents entitled to the relief sought in the Complaint or other appropriate relief?

SUMMARY OF THE EVIDENCE

Exhibits

The Parents offered the following exhibits, which I admitted into evidence, except where noted:

- | | |
|----------|---|
| PNT Ex 1 | Letter from XXXX XXXX addressed to “To Whom It May Concern,” June 19, 2017 |
| PNT Ex 2 | Letter from XXXX XXXX addressed to “To Whom It May Concern,” June 26, 2017 |
| PNT Ex 3 | Letter from XXXX XXXX, PhD., addressed to “To Whom It May Concern,” June 20, 2017 |
| PNT Ex 4 | Not admitted |
| PNT Ex 5 | Not admitted |
| PNT Ex 6 | Not admitted |

MCPS offered the following exhibits, which I admitted into evidence, except where noted:

- | | |
|-----------|---|
| MCPS Ex 1 | Functional Behavior Assessment and Behavior Intervention Plan, March 9, 2015 and October 27, 2015 |
| MCPS Ex 2 | IEP, March 19, 2015 |
| MCPS Ex 3 | IEP, December 7, 2015 |
| MCPS Ex 4 | Educational Assessment Report, December 7, 2015 |

- MCPS Ex 5 Report of School Psychologist, January 12, 2016
- MCPS Ex 6 Not offered
- MCPS Ex 7 IEP, March 17, 2016
- MCPS Ex 8 Behavior Intervention Plan, March 17, 2016
- MCPS Ex 9 IEP, February 28, 2017
- MCPS Ex 10 Functional Behavior Assessment, May 22, 2017; Behavior Intervention Plan, May 22, 2017
- MCPS Ex 11 IEP, May 23, 2017
- MCPS Ex 12 Percentage of Intervals in the Day Behavior Occurs chart, 2015–2016 and 2016–2017 school years
- MCPS Ex 13 Resume of XXXX XXXX
- MCPS Ex 14 Resume of XXXX XXXX⁶
- MCPS Ex 15 Resume of XXXX XXXX
- MCPS Ex 16 Resume of XXXX XXXX

Testimony

The Parents testified on behalf of the Student.

The following witnesses testified on behalf of the MCPS:

1. XXXX XXXX, MCPS XXXX Program Coordinator, accepted as an expert in special education, with an emphasis in autism and severe and profound handicapping conditions;
2. XXXX XXXX, MCPS XXXX Program Specialist, accepted as an expert in special education, with an emphasis in behavioral analysis and intervention;
3. XXXX XXXX, MCPS Special Education Teacher, XXXX Program, [School 1], accepted as an expert in special education; and,
4. XXXX XXXX, Behavioral Support Teacher, XXXX Program, accepted as an expert in special education, with an emphasis in behavioral analysis and intervention.

⁶ XXXX is XXXX XXXX' maiden name.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:⁷

Background

1. The Student is fifteen years old (born in XXXX 2001) and is currently enrolled in the XXXX Program at [School 1] ([School 1]), an MCPS school, where she receives special education services, as a student with autism.^{*8}

2. The Student's full scale intelligence quotient (IQ) is forty-two, which falls into the very low and moderately deficient range.

3. Prior to attending [School 1], the Student attended the XXXX Program at [School 2] ([School 2]).*

4. The Student began attending the XXXX Program at [School 1] in December 2015, and continued to attend [School 1] through June 2017. The Student received all of her educational services in a separate classroom.*

5. From December 2015, through June 2017, the Student's IEP was implemented in the XXXX Program at [School 1].*

6. The XXXX Program serves students of middle and high school age, who demonstrate significant cognitive disabilities, multiple disabilities, or autism. The students in the program receive systematic behavioral supports and services to reduce self-injurious, aggressive, and/or disruptive behaviors.*

⁷ The parties jointly submitted Stipulations of Fact prior to the hearing. In order to present more cohesive Findings of Fact, I have included the parties' ten stipulated facts within my own findings. An asterisk (*) denotes the parties' stipulations.

⁸ For confidentiality, I have redacted the Student's full name and exact date of birth from this stipulated fact.

7. The XXXX Program essentially offers the same behavioral supports and protocols as the non-public schools in the area; however, the non-public schools have a smaller student population.

8. The Parents have not observed the Student at school since she entered the XXXX Program.

9. The Student repeated the eighth grade at [School 1].*

10. The Student successfully completed eighth grade at [School 1] during the 2016–2017 school year.

11. An individual with the Student’s profile is not likely to become fully independent and will require assistance throughout his or her life.

12. The Student is on track to receive a Certificate of Program Completion at the end of the school year in which she turns twenty-one.

2014–2015 School Year at [School 2]

13. During the 2014–2015 school year, the Student was a seventh grader at [School 2].

14. The Student was one of five students with special needs in a self-contained classroom. She received group (5:1 and 2:1)⁹ and individualized instruction on a daily basis.

15. The Student required a consistent routine and did not do well when her routine was interrupted or changed.

16. The Student’s classroom was highly structured and followed predictable routines, which the Student was able to follow.

⁹ All ratios contained in this decision represent student-to-teacher ratios.

17. For an unspecified period of time, the staff at [School 2] did not take the Student into the community, due to concerns for the Student's safety and the safety of others, in light of the Student's aggressive behaviors.

18. In early 2015, a Functional Behavior Assessment (FBA) was conducted. The purpose of the FBA was to ascertain the underlying reasons for the Student's maladaptive behaviors.

19. After the FBA was conducted, [School 2] staff developed a Behavior Intervention Plan (BIP) to address the Student's maladaptive behaviors including:

- Aggression - characterized by hair pulling (particularly targeting small children in public settings)
- Food stealing – stealing/attempting to take any food or drink that was not hers
- Self-injurious behavior – biting her own hand

The BIP was based on information gathered through staff interviews, classroom/student observation, anecdotal records, data analysis and rating scales. Implementation of the BIP began on March 9, 2015.

20. The BIP provided that staff would use differentiated reinforcement of other behaviors (DRO)¹⁰ frequently during the school day to increase the Student's appropriate behaviors.

21. The BIP provided that during all transitions outside of the classroom, the Student would be escorted by two staff members who would walk on either side of her and maintain physical contact by holding onto the Student's XXXX. Whenever possible, staff would avoid taking the Student to areas of the building where children and babies were often present.

¹⁰ DRO involves providing the Student with positive reinforcement for not engaging in inappropriate behaviors for a certain period of time. The Student was given a "token" such as a puzzle piece for refraining from inappropriate behavior. If the Student began to engage in inappropriate behavior, she was reminded of the rules. If she continued engaging in the behavior, her tokens were taken away.

22. The BIP provided that during community-based instruction trips, the Student would wear a XXXX and two staff members would remain within arm's length of her at all times. The Student would also wear XXXX on her hands in the community to prevent her from grabbing other people's hair.

23. The BIP provided that the Student would wear a necklace while at school, which she would be directed to bite, instead of her hand, when engaging in self-injurious behavior.

24. The BIP was to be reviewed annually to assess the effectiveness of the strategies, and if necessary, to implement changes.

The March 19, 2015 IEP

25. On March 19, 2015, the IEP team at [School 2], including the Parents, convened to review and revise the Student's IEP. The IEP team discussed concerns about the Student's escalating behaviors, especially pulling babies' hair, and the ability to support the Student in the XXXX Program at [School 2]. The team determined that the Student would continue her XXXX Program placement and the Parents were encouraged to consider and take a tour of the XXXX Program.

26. The March 19, 2015 IEP reflected that the Student was eligible for special education services with a primary disability of autism. The Student's autism impacted her functioning in reading, written language, mathematics, functional communication, adaptive behavior, community living skills, pre-vocational skills, and daily living.

27. Although the March 19, 2015 IEP required the Student to receive all instruction in a self-contained classroom, it also provided that the Student would attend lunch with her general education peers, with direct adult support.

28. The March 19, 2015 IEP contained numerous testing and instructional accommodations, use of assistive technology devices and supplementary aids and services to help her achieve the goals on the IEP.

Levels of Academic Achievement and Functional Performance

29. In March 2015, the Student participated in alternate assessments in the areas of reading, written language, oral language, math, pre-vocational skills, daily living skills, community living skills and behavior.

30. The Student performed at a kindergarten to first-grade level in reading, written language, and math.

31. In the area of reading, the Student was able to identify several sight words, match familiar words/items into correct categories; and answer basic WH questions¹¹ after reading a text with minimal support. She needed to learn to identify attributes of items/pictures and increase her functional sight word vocabulary.

32. In the area of written language, the Student was able to type and fill out forms with her personal information. She was working on writing and typing new information into forms. She was also able to copy words and sentence by writing and typing. The Student had made progress with holding a pencil properly, but need to work on the legibility of her handwriting. She also needed to work further on writing/typing her personal information and creating sentences about pictures/activities.

33. In the area of math, with prompts and cues, the Student was able to create whole dollar amounts up to twenty dollars when given mixed currency. With a visual and prompts, she

¹¹ WH questions are questions that begin with what, when, where, who, whom, which, whose, why and how.

was working the “dollar up”¹² strategy to pay/count money. The Student was able to locate and add prices on a menu to find a total with a calculator; discriminate between different sizes and attributes on a menu; and add and subtract using a calculator. However, she still needed to improve upon her functional money skills.

34. The Student performed below age level expectations in areas of oral language, pre-vocational skills, daily living skill, and community living skills.

35. In the area of oral language, the Student was able to produce full sentences to discuss recent events when provided with maximal prompts.¹³ On her own, she could produce two- to three-word phrases. She was able to make requests using full sentences with 80% accuracy when initially provided with maximal prompts, only requiring moderate cues towards the end of the session. The Student was also able to produce problem solving language when provided maximal cues/models. The Student benefited from visual prompts, sentence starts, topic boards and speech-language pathologist models.

36. In the area of pre-vocational skills, the Student completed in- and out-of-classroom school jobs with staff monitoring and prompts. With prompts, she did recycling around the building, but needed assistance with holding the bins and refraining from taking food from the garbage cans. The Student completed independent work schedules with mainly verbal/gestural cues. She needed to continue to participate in school jobs.

37. In the area of daily living skills, the Student completed known routines and activities with minimal assistance. She completed arrival and departure routines with staff monitoring; a laundry routine with prompts; and most self-care tasks independently with staff

¹² The dollar up strategy involves rounding up to the next dollar.

¹³ Different types of prompts are used to encourage the desired response from the child, including verbal, gestural, model and physical prompts.

monitoring. The Student needed assistance with managing her menstrual cycle needs. She also needed to improve her independence in domestic tasks, following directions and self-care.

38. In the area of community living skills, the student completed a purchasing routine in the community with staff assistance. She needed prompts to locate the correct bills from her wallet. She was able to locate items from a picture grocery list when directed to within ten feet of the item. She required constant supervision in the community to help manage her behavior. The Student needed to work on displaying appropriate behavior in community settings, staying with the group and her purchasing routine.

39. In the area of behavior, the Student's level of performance was described as atypical. She engaged in multiple behaviors that impacted her learning and the learning of others. Frequent behaviors of concern included aggression (hair pulling), self-injurious behavior (biting own hand), and food stealing/seeking (taking food that was not hers). Her less frequent behaviors of concern included elopement, tantrums (including crying and screaming), and invading others' personal space. Her behavior needed improvement across all settings.

Goals

40. The Student's speech and language goal was to increase functional communication skills by using social communication behaviors and sentences with a listener.

41. The Student's reading goal was to understand, acquire and use new vocabulary when given functional sight words, with or without picture supports.

42. The Student's written language goal was to use templates, a word processor and visual supports to compose written presentations that express personal ideas and information.

43. The Student's math goal was to recognize and use money when given manipulatives, a number line, visual supports and/or templates. She also had a second math goal

of analyzing number relations and computing when given manipulatives, a number line, visual supports, templates, or a calculator.

44. The Student's career/technical education/transition goal was to improve her independence in a variety of pre-vocational tasks when given fading teaching strategies¹⁴ and the necessary materials. Due to her behavioral needs, the Student had limited access to out-of-classroom jobs.

45. The Student's community based instruction goal was to safely and appropriately participate in community activities.

46. The Student's daily living goal was to increase independence with daily living skills when given the necessary materials and fading teaching strategies.

47. The Student's behavior goal was to decrease incidents of inappropriate behavior by 10%, when given the necessary materials, an individual reinforcement system and fading teaching strategies.

48. Each goal in the March 19, 2015 IEP included subject-specific objectives for the student. With the exception of her community based instruction goal, the Student was generally making slow progress towards each of her goals. However, she did master some aspects of her reading and math goals.

49. The Student made sufficient progress towards her community-based instruction goal during the third and fourth quarters of the 2014–2015 school year. However, during the first quarter of the 2015–2016 school year, the Student was not making sufficient progress towards her community-based instruction goal because her opportunities for community based trips were limited due to her aggression towards young children in the community

¹⁴ "Fading" refers to gradually decreasing the level of assistance needed to complete a task, skill, or activity.

Additional Out-of-School Services

50. In April 2015, the Parents took the Student to the XXXX Institute (XXXX) outpatient clinic for additional services.

51. XXXX formed a BIP to address the Student's maladaptive behaviors and trained the parents to implement the BIP.

52. The Parents saw improvement in the Student's behavior during the time that she worked with XXXX's outpatient clinic.¹⁵

October and December 2015 Re-evaluations of the Student

53. In late-2015, the Student's maladaptive and unsafe behaviors escalated in frequency and intensity.

54. On October 27, 2015, the IEP team held a re-evaluation planning meeting, due to the team's concerns regarding the Student's behavior. At that time, the Student's BIP was updated to address an additional maladaptive behavior—elopement (attempting to leave a designated area or community setting by running, walking or wandering away from staff).

55. As part of the re-evaluation of the Student, an educational assessment was performed. The special education teacher performing the assessment found the Student had shown the ability to acquire and maintain new academic and functional skills; she learned best in small, structured settings with a strong focus on behavior management and benefited from positive behavior supports. The teacher also determined the Student continued to demonstrate significant behavioral needs and recommended that the Student's programming focus on social emotional skills, behavior management, functional academics, communication, community living skills, and personal management. Due to the escalation in the frequency and intensity of

¹⁵ The record is unclear as to how long the Student received additional services from XXXX.

the Student's maladaptive behaviors, the special education teacher recommended that the IEP team consider an educational setting which could provide the Student additional, intensive behavior supports.

56. In December 2015, the school psychologist also re-evaluated the Student. As part of the re-evaluation and in order to obtain information regarding the level of support needed for the Student to function in her home and school environments, the psychologist administered the Gilliam Autism Rating Scale-3 (GARS-3) to the Mother and the Student's teacher. The ratings from both the Mother and teacher indicated the Student needs very substantial support in order to function. While the re-evaluation was in progress, the Student transferred to the [School 1] XXXX Program. Although the Student had already transferred by the time the re-evaluation was complete, the school psychologist agreed that the XXXX Program was an appropriate placement which could provide the Student increased support.

The December 7, 2015 IEP

57. On December 7, 2015, the IEP team at [School 2], including the Parent, convened to review and revise the Student's IEP. After reviewing the data and the Student's progress, the IEP team determined that the Student required more supports and services than could be offered at [School 2] and determined an appropriate placement to be the XXXX Program at [School 1].*

58. The Parent received notice regarding her Procedural Safeguards and Parental rights for the December 7, 2015 meeting.^{16*}

59. The Student's goals were not revised from the March 19, 2015 IEP.

60. By the third quarter of the 2015–2016 school year, the Student was making sufficient progress towards each her goals.

¹⁶ Both parents attended the December 7, 2015 IEP meeting.

The [School 1] XXXX Program

61. The Student transferred to the [School 1] XXXX Program on December 16, 2015.

62. Prior to entering the [School 1] XXXX Program, the Student displayed high rates of self-injury, aggressive behavior, food stealing, and elopement. She was working one-on-one at all times in the classroom, was seated separately from her peers and not attending elective classes due to her aggressive behavior towards peers. When in the community, the Student wore a XXXX at all times, with two staff members walking on either side of her, maintaining physical control of the Student by holding onto the XXXX.

63. When the Student entered the XXXX Program, she was not available for learning¹⁷ and needed a high level of supports and prompts to complete tasks.

64. Since entering the XXXX Program, she has become increasingly available for learning.

March 17, 2016 BIP

65. When developing the March 17, 2016 BIP, the IEP team reviewed the Student's old BIPs, including the BIP developed by XXXX in 2015.

66. The March 17, 2016 BIP addressed the following maladaptive behaviors including:

- Aggression – including hair pulling, hitting, grabbing, pushing or pulling on others
- Self-injurious behavior – biting her own hand
- Elopement – leaving or attempting to leave a confined area or community setting by running, walking or wandering away from staff

¹⁷ “Not available for learning” means the Student was exhibiting behaviors which interfered with her ability to learn.

67. Self-injurious behavior was included on the BIP, even though the Student had not engaged in self-injurious behavior since enrolling in the XXXX Program.

68. The BIP provided that staff would use DRO frequently during the school day to increase the Student's appropriate behaviors.

69. The BIP provided that during all transitions outside of the classroom, the Student would be escorted by two staff members who would walk on either side of her and maintain physical contact by holding onto the Student's XXXX. Whenever possible, staff would avoid taking the Student to areas of the building where children and babies were often present.

70. The BIP provided that during community-based instruction trips, the Student would wear a XXXX at all times and two staff members would remain within arm's length of her at all times. The Student would also wear XXXX on her hands in the community to prevent her from grabbing other people's hair.

71. The BIP provided that the Student would wear a necklace while at school, which she would be directed to bite, instead of her hand, when engaging in self-injurious behavior.

72. Implementation of the BIP began on March 17, 2016.

The March 17, 2016 IEP

73. On March 17, 2016, the IEP team at [School 1], including the Parents, convened to review and revise the Student's IEP.

74. The March 17, 2016 IEP reflected that the Student's autism impacted her cognition, communication, behavior, ability to participate in community and career instruction, personal safety and social/emotional growth.

75. Although the March 17, 2016 IEP required the Student to receive all instruction in a self-contained classroom, it also provided that the Student would participate in non-academic and/or extra-curricular activities with non-disabled peers.

76. The March 17, 2016 IEP contained numerous testing and instructional accommodations, use of assistive technology devices and supplementary aids and services to help her achieve the goals on the IEP.

Levels of Academic Achievement and Functional Performance

77. In March 2016, the Student participated in alternate assessments in the areas of oral language, reading, written language, math, career/technical education/transition, personal management, community, and behavior.

78. The Student performed at a kindergarten to first-grade level in reading, written language and math.

79. In the area of reading, the Student was able to answer WH questions with up to two verbal prompts during reading. She was able to identify some sight words throughout an adapted grade level text and could follow along with the adapted grade level text, but sometimes got distracted and required redirection. The Student was able to retell the events of a story with minimal prompting. She needed to continue working on identifying basic sight words throughout a grade level adapted text.

80. In the area of written language, the Student was able to type her personal information with a model prompt and could write her personal information into different forms and applications independently the majority of the time. She needed to continue to work on the legibility of her writing. She filled graphic organizers during reading and was able to write sentences pertaining to what she read with verbal prompts.

81. In the area of math, the student was using visual prompts and a calculator when adding together money. She was working on geometric shapes and was able to locate faces, sides and corners, with mostly verbal prompts. She also could identify two- and three-dimensional shapes, sometimes independently, but mostly with verbal prompts. The Student needed to continue to work on length, width and height.

82. The Student performed below age level expectations in areas of oral language, career/technical education/transition, personal management, and community living skills.

83. In the area of oral language, the Student was working on functional communication skills both in the classroom and community settings. She had made progress on her speech language goal—she participated in greetings, responding well to “hi” and “bye,” but at times, needing prompts to be oriented towards the speaker and to state the person’s name. She benefitted from guided peer interactions and demonstrated the ability to request specific items related to a task or activity and complete problem solving comments with models and/or prompts. She also demonstrated the ability to answer various question types given multiple choice formats, models, verbal prompts, or gestural prompts. When directed to answer in a complete sentence, she required scaffolding for volume and grammar. She benefitted from fill-in-the-blank responses, sentence starters, sentence structure and phonemic cues for complete sentences.

84. In the area of pre-vocational skills, the Student did well with pre-vocational tasks. She completed different tasks in the classroom such as filing, sorting and matching. She also participated in a school job of making and delivering cookies. She needed assistance from adults to prevent her from eating the cookies while making them and required adult supervision to deliver the cookies to staff in the school.

85. In the area of personal management, with verbal prompts, the Student was able to clean up after herself after eating and once she started cleaning, she did so independently. She completed morning and departure routines with staff assistance. The Student needed to continue working on asking to use the bathroom at appropriate times, managing her menstrual cycle and following directions.

86. In the area of community, with adult assistance, the student was able to identify the locations of items in the store and look for prices of different products. She could compare prices of different products while in the store and with verbal prompts, was able to identify which costs more money. The Student required 2:1 staffing in the community due to eloping and other inappropriate behaviors. She needed to continue to work on her behavior and staying with the group while out in the community.

87. Across settings in the behavioral area, the student engaged in aggressive and elopement behaviors. She had not engaged in self-injurious behaviors since enrolling in the XXXX Program. She engaged in hair pulling, on average, 1% of the day at school for 95% of the days present and elopement, on average, 3% of the day at school.¹⁸ The Student continued to benefit from the structure of the BIP.

Goals

88. The Student's speech and language goal was to demonstrate expressive, receptive, and functional language skills during structured and unstructured activities, when given faded models, verbal cues and visual cues.

¹⁸ The frequency and interval data was collected using fifteen minute intervals over twenty-nine intervals throughout the school day. The frequency data was totaled and the interval data was converted to percentage of occurrence across all intervals.

89. The Student's reading goal was to develop auditory comprehension skills by responding to adapted grade level texts, when given systematic instruction, small group or individual group instruction, a prompt hierarchy, manipulatives, pictures/picture graphics, fading prompts¹⁹ and strategies listed in the BIP.

90. The Student's written language goal was to develop written language skills by responding to or participating in writing activities, when given systematic instruction, small group or individual group instruction, a prompt hierarchy, manipulatives, pictures/picture graphics, fading prompts and strategies listed in the BIP.

91. The Student's math goal was to solve math problems related to the real world, when given systematic instruction, small group or individual group instruction, a prompt hierarchy, manipulatives, pictures/picture graphics, fading prompts and strategies listed in the BIP.

92. The Student's career/technical education/transition goal was to demonstrate an understanding for a variety of school/classroom/activities and vocational experiences, when given systematic instruction, small group or individual group instruction, a prompt hierarchy, manipulatives, pictures/picture graphics, fading prompts and strategies listed in the BIP.

93. The Student's personal management goal was to increase her independence in managing her personal needs at school, pre-vocational activities and community.

94. The Student's community goal was to increase participation in community instruction, when given systematic instruction, small group or individual group instruction, a

¹⁹ Different types of prompts offer varying levels of support to the student. The hierarchy of prompts, from least to most support is as follows: (1) verbal prompts, (2) gestural, (3) model prompts, and (4) physical prompts. Prompts are faded by slowly transitioning to prompts that offer lower levels of support.

prompt hierarchy, manipulatives, pictures/picture graphics, fading prompts and strategies listed in the BIP.

95. The Student' behavior goal was to demonstrate safe, appropriate behaviors across settings with fading prompts, when given preventative, teach/reinforcement, and responsive strategies outlined in the BIP.

96. Each goal in the IEP included subject-specific objectives for the student. During each academic quarter, the Student consistently made sufficient progress towards each of her goals.

The February 28, 2017 IEP

97. On February 28, 2017, the IEP team at [School 1], including the Parent, convened to review and revise the Student's IEP.^{20*}

98. The February 28, 2017 IEP meeting is the most recent annual review of the Student's IEP.

99. During the February 28, 2017 IEP meeting, the Mother reported that at home, the Student's aggressive behavior, self-injury, frequent bathroom requests, and elopement had not changed and that the Student had been replacing one behavior with another. She stated that the Parents would like to see the Student in a program that can address her emotional and social needs, which were impacting her learning skills.

Present Levels of Academic Achievement and Functional Performance

100. In February 2017, the Student participated in alternate assessments in the areas of oral language, reading, written language, math, career/technical education/transition, personal management, community, and behavior.

²⁰ Only the Mother attended the February 28, 2017 IEP meeting.

101. The Student still performed at a kindergarten to first-grade level in reading, written language and math.

102. In the area of reading, the Student was able to answer general comprehension questions during the reading of an adapted grade level text four out of five times, with verbal prompting; answer WH questions pertaining to the adapted grade level text three out of five times, with verbal prompting and two out of five times independently when provided with choices; make predictions about text prior to reading three out of five times with verbal prompting; and retell three to four events of a story when it is modeled for her four to five times. The Student needed to continue to increase her reading comprehension skills on adapted grade level texts.

103. In the area of written language, the Student was able to contribute to a shared writing experience two out of five times independently, but required modeling most of the time; select the correct word, phrase or sentence from a field of two or three choices to identify the requested item two out of five times independently, but required gestural prompting to complete the task; and complete a graphic organizer to discuss the main idea five out of five times, with verbal prompting. The Student was continuing to develop her written language skills.

104. In the area of math, the Student was able to identify and/or analyze attributes of objects such as size, shape, and/or color three out of five times independently and two out of five times with verbal prompting. She was able to answer questions to analyze information that was organized in a table or graph four out of five times with verbal prompting, but also requires modeling. The Student was able to answer questions related to money five out of five times with verbal prompting and can answer addition and subtraction problems related to money three out

of five times, with verbal prompting. The Student had difficulty understanding math when it was an abstract idea and she performed much better when provided concrete examples.

105. The Student's performance in the oral language, career/technical education/transition, personal management, community and behavioral areas were still below age level expectations.

106. In the area of oral language, the Student had demonstrated some progress during speech-language therapy sessions and was able to use complete sentences to make requests. She continued to require support to vary the structure of her utterances to match the question. She benefited from the use of sentence starters when responding to a variety of question types to ensure an independent response. While she was able to demonstrate the appropriate use of greetings and basic social questions, she continued to require support to expand social questions and responses, as well as to turn to towards her conversational partner. The Student utilized a communication book, with support, to express thoughts and feelings. Continued speech-language therapy was recommended to address functional receptive, expressive and pragmatic language skills.

107. In the area of career/technical education/transition, the Student was able to independently select vocational activities and works well with them. She often needed verbal prompting to continue working. She also had an in-school recycling job, which she enjoyed and did well with.

108. In the area of personal management, the student was able to clean up her personal area with many verbal prompts; unpack and pack up her personal belongings at the beginning and end of the day, mostly independently, but she sometimes required verbal prompting. She needed a one-on-one in the hallway to keep her safe and in the correct area of the building.

109. In the area of community, the Student still required full physical prompts for staying with the class. She had been successful with one, instead of two, adults. She was able to recall information about the community trips with verbal prompting and could locate items and compare prices with modeling.

110. Across settings in the behavioral area, the Student still displayed no self-injurious behaviors and continued to have low rates of aggression and elopement. She continued to need 1:1 support during transitions and in the community to prevent elopement and aggression towards others in the form of hair pulling. She still targeted young children and babies when engaging in hair pulling behavior. During the school year, her vocalizations increased and occurred, on average, 17% of the school day on 100% of the days that she was present. The Student continued to need a structured environment in which includes the implementation of a BIP.

Current Goals

111. The Student's speech and language goal is to demonstrate comprehension and use of language concepts through her responses to questions/directions and participation in conversations/social exchanges given verbal and/or visual cues during structured and unstructured tasks.

112. The Student's reading goal is to develop comprehension skills by answering questions based on adapted grade level texts with systematic individual or small group instructions, graphic organizers, multiple opportunities to practice, fading prompts and positive reinforcement.

113. The Student's written language goal is to develop written language skills by participating in writing tasks, when given a systematic individual or small group instructions,

pictures/graphic symbols paired with words, phrase and sentence strips, multiple opportunities to practice, fading prompts and a token reinforcement system.

114. The Student's math goal is to understand and solve math problems related to real world situations when give adapted grade level math curriculum with pictures/graphic organizers, manipulatives, a systematic individual or small group instructions, multiple opportunities to practice, fading prompts and positive reinforcement.

115. The Student's career/technical education/transition goal is to demonstrate an understanding for a variety of school/classroom activities and vocational experiences, when given systematic instruction, small group or individual instructions, a prompt hierarchy, manipulatives, pictures/picture graphs, fading prompts and strategies listed in the BIP.

116. The Student's personal management goal is to demonstrate personal management skills when given daily opportunities to practice, fading prompts, and a token reinforcement system.

117. The Student's community goal is to increase participation in the community when given systematic instructions, small group or individual instruction, a prompt hierarchy, manipulatives, pictures/picture graphics, fading prompts and with implementation of the BIP.

118. The Student's behavior goal is to maintain safe and appropriate behavior across settings with fading supports and implementation of the BIP.

119. As of April 19, 2017, the Student was making sufficient progress towards each of her goals.

120. The goals contained in the February 28, 2017 IEP are appropriately ambitious in light of the Student's circumstances.

February 2017 BIP²¹

121. The team agreed to conduct a new FBA and revise the existing BIP in order to target the student’s loud vocalizations,²² which had begun to increase in frequency.

Vocalizations had not been included in the student’s most recent FBA or BIP.

122. During the February 28, 2017 IEP meeting, the team only reviewed the new FBA and BIP briefly because the Mother refused to review the BIP at length. However, the Mother was given a copy of the BIP.

123. Implementation of the February 2017 BIP began on March 2, 2017.

124. The Student’s vocalizations fluctuated from day to day. On some days the Student did not engage in vocalizations at all and on others, she had varying rates of vocalizations.

125. The following chart shows the Student’s average rates of vocalization during the 2016–2017 school year:

Month	Average percentage of intervals in the day vocalizations occurred ²³
September 2016 ²⁴	10%
October 2016	19%
November 2016	16%
December 2016	23%
January 2017	17%
February 2017	25%

²¹ This is the BIP dated May 22, 2017. (MCPS Ex. 10.) Ms. XXXX testified that this BIP was drafted in February 2017.

²² Vocalizations are loud noises/yelling.

²³ See footnote 18.

²⁴ This data includes the last three days of August 2016.

March 2017	16%
April 2017	14%
May 2017	21%

126. The Student only attended school during the first two days of June 2017. During those two days, the Student’s average percentage of intervals in the day vocalizations occurred was 33%.

127. The increase in vocalizations could have been due to a number of factors, including that the Student may have been experiencing a physical ailment, upset from something that occurred at home in the morning, and/or a change in the environment at school.

128. When implementing a BIP, it is not unusual to see the occurrence of a behavior fluctuate before the behavior is extinguished.

129. The Student’s rate of progress is higher than normal and she is progressing at a much faster rate than her peers in the XXXX Program. Typically, for students in the XXXX Program, behaviors occur at close to the same rate for months or years before seeing any decrease in behaviors.

The May 23, 2017 IEP

130. On May 23, 2017, at the end of the Student’s second eight[h] grade year, the IEP team at [School 1], including the [Mother], convened to review and revise the Student’s IEP. After reviewing the data and the Student’s progress, the IEP team determined that the XXXX Program remained an appropriate placement, and recommended that the Student continue to attend the XXXX Program for high school.*

131. The Student's goals and objectives have not changed since the February 28, 2017 IEP.

Present Level of Academic Achievement and Functional Performance

132. The May 23, 2017 IEP only updated the Student's behavioral performance.

133. The update of the Student's behavioral performance was based on March 2017 teacher and staff interviews, March 2017 interval and frequency of behavior data, March 2, 2017 motivational assessment scales and a May 10, 2017 classroom observation.

134. The Student still exhibited no self-injurious behavior during the 2016–2017 school year. She had two instances of aggression and one instance of elopement during the 2016–2017 school year.

135. The Student continues to engage in disruptive vocalizations in the form of screaming and yelling. On average, she engaged in disruptive vocalizations during 18% of the fifteen minute intervals.

136. The March 2, 2017 BIP was effective for reducing the overall frequency of vocalizations, as well as the duration of vocalizations related to the Student's desire to avoid performing a task; however, the BIP was ineffective in reducing the duration and frequency of vocalizations for which the staff were unable to identify an external cause.

137. The Student continues to benefit from a structured environment with the enhanced supports and implementation of the BIP.

138. Although the educational testing indicates that the Student still performs on a kindergarten to first-grade level in all academic subjects, the Student is also capable of many

higher level “splintered skills”.²⁵ For example, she is now capable of mathematic skills such as balancing equations and ratios, which are skills that are far above a first-grade level.

139. Each goal in the IEP includes subject-specific objectives for the student.

140. The Student has mastered sight reading up through a second-grade level.

June 16, 2017 Progress Reports

141. The May 23, 2017 IEP was updated to include June 16, 2017 progress reports.

142. In the area of reading, the Student is making sufficient progress towards her reading goal of developing comprehension skills by answering questions based on adapted grade level texts. The following objectives are the topics the Student has been working on: answering WH questions, sequencing three to five events from a text, identifying the main idea of a text, and making predictions about a text.

143. The Student is able to answer WH questions four out of five times with verbal prompting and three out of five times independently. The Student is able to sequence three to five events in reading class with modeling 100% of the time and in work groups using a folder activity or a sequencing task box independently two out of five times and with verbal prompting five out of five times. The Student is able to identify the main idea of a text with verbal prompting four out of five times and independently one out of five times when given three options to choose from. When given two options to choose from, the Student is able to identify the main idea with verbal prompting five out of five times. She is also able to make a prediction about a text with modeling three out of five times and independently two out of five times.

144. In the area of written language, the Student is making sufficient progress towards her written language goal of developing language skills by participating in writing tasks. The

²⁵ Splintered skills are skills that exceed the Student’s general abilities

student is working on various written language objectives, including typing personal information, using a graphic organizer to discuss events of a story, using a variety of punctuation marks to end sentences, and using capital letters appropriately.

145. The Student is able to type her personal information independently when given a model of what to type; fill out a graphic organizer to discuss events of a story with verbal prompting three out of five times, and independently two out of five times; use a variety of punctuation marks when given a worksheet to correct or a task bin with verbal prompting 100% of the time; and use capital letters appropriately when given a worksheet to correct with gestures two out of five times, with verbal prompting four out of five times and independently one out of five times.

146. In the area of math, the Student is making sufficient progress towards her math goal of understanding and solving math problems related to real world situations. She has been working on solving addition and subtraction problems, understanding the concept of ratios, analyzing information that is organized in a table or graph, and answering questions related to money.

147. The Student is able to solve addition problems independently using manipulatives and different methods independently five out of five times. She is able to solve subtraction problems using manipulatives and different methods with modeling four out of five times and with gestures, four out of five times. The Student understands the concept of ratios independently five out of five times and with verbal prompting, four out of five times. She is able to analyze information that is organized in a table or graph independently four out of five times, with verbal prompting, three out of five times, and with gestures, two out of five times. This has greatly improved from only gestures and modeling at the beginning of the IEP. The Student is able to answer questions related to money with verbal prompting four out of five times, independently five out of five times, and with modeling one out of five times.

148. In the area of career/technical education/transition the Student is making sufficient progress towards her career/technical education/transition goal of demonstrating an understanding for a variety of school/classroom/activities and vocational experiences. The following objectives are the topics the Student has been working on: increasing her independence in participating in chosen/identified pre-vocational activities, increasing her independence in participating in provided in-school jobs, sorting items into at least five different categories using up to five different variables, and sorting pictures, words, or letters in alphabetical order.

149. The Student is able to independently participate in vocational activities when given verbal prompting to stay on task. She is able to complete her in-school job with verbal prompting to continue working. She is able to sort items and able to sort by alphabetical order independently 100% of the time.

150. In the area of personal management, the Student is making sufficient progress towards her community goal of increasing her participation in community trips. The following objectives are topics the Student has been working on: increasing independence in putting her belongings away at the beginning of the day, increasing her independence in packing up her belongings at the end of the day and increasing her independence in cleaning up her personal area after lunch or an activity.

151. The Student is able to put her belongings away with verbal prompting two out of five times and independently three out of five times. She is able to pack up at the end of the day with verbal prompting five out of five times. The Student is able to clean up her personal area with verbal prompting three out of five times, and independently, two out of five times.

152. In the area of community, the Student is making sufficient progress towards her community goal of increasing her participation in community trips. The following objectives are

topics she has been working on: identifying herself to appropriate adults within the community, recalling events from the community, locating items when shown the correct aisle, and determining if she has enough money to purchase a specific item.

153. Staff recently gave the Student an identification card for her to wear when she is in the community; she was able to wear it without any issues. Staff will continue to work with the Student on using the card for the correct purpose. She is able to recall events from community trips with verbal prompting 100% of the time. The Student is able to find an item on the shelf with gestures 100% of the time.

154. In the area of behavior, the Student was making progress towards behavior objectives. She did not bite herself or elope. She continues to engage in loud, disruptive vocalizations throughout the school day.

155. The MCPS members of the IEP team determined that the Student was making sufficient academic and behavioral progress in the [School 1] XXXX Program and that the XXXX Program continues to be the most appropriate placement for the Student at this time.

The XXXX Program at [School 3]

156. [School 3] ([School 3]) is a public school which offers the XXXX Program.

157. The XXXX Program high school curriculum focuses heavily on vocational tasks.

158. During her ninth grade year, the Student would focus on performing vocational tasks within the school.

159. Towards the end of her ninth grade year, the Student would be integrated into jobs in the community.

160. During her tenth grade year, the Student would hold one, possibly two jobs in the community. She would work three times per week.

161. At [School 3], the Student would have an opportunity to join sports activities and clubs for special needs students.

162. At [School 3], the Student would have exposure to typical peers, which will give the Student opportunities to interact socially and model appropriate behavior.

163. A self-contained classroom in a public high school is the least restrictive environment in which the Student's IEP can be implemented.

164. [School 3] is the location where the Student's IEP can be implemented and her educational and behavioral needs can be met.

The Student's Behavior at Home

165. From September 2016 to January 2017, the Parents had an applied behavior analyst (ABA) technician named XXXX XXXX work with the Student at home and/or out in the community, three times per week.

166. The Mother obtained schoolwork from the Student's teacher in the XXXX Program, so that Ms. XXXX could work on academic subjects with the Student.

167. While Ms. XXXX was working with the Student, she observed the Student engage in hair pulling and vocalizations, both at home and in the community.

168. The Student does not perform as well academically when completing schoolwork at home, as she does when she is at school in the XXXX Program.

169. The Mother has a bachelor's degree in education and has worked as a XXXX for MCPS since 2016.

170. While at home, the Parents try to implement the February 2017 BIP used by the XXXX Program.

DISCUSSION

Burden of Proof

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parents have the burden of proving that the Student's IEP was not reasonably calculated to provide her with educational benefit. The Parents must also show that the relief they seek is appropriate. The burden of proof on these issues is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014).

The Parties' Positions

The Parents contend that the Student's IEP for the 2017–2018 school year is not reasonably calculated to provide the Student with a FAPE. They assert that they have known the Student much longer than anyone at MCPS, and therefore, they are able to ascertain the Student's needs better than anyone else. Based largely upon the Parents' experience with the Student at home, they argue that the Student has not made sufficient progress towards achieving the academic and behavioral goals set forth in her IEPs and the goals are not appropriately ambitious. The Parents contend that an appropriately ambitious goal is for the Student to become a completely independent individual.

The Student's parents state that the Student's problem behaviors have affected their home life and they assert that MCPS cannot make an accurate assessment of the Student's academic and functional abilities without taking into account her behavior at home.

The Parents have not requested any specific relief. Instead, they have only vaguely stated that they are seeking "more intensive services" than those currently offered through the XXXX Program and, if necessary, a different placement, to provide those services. The Parents

generally stated that they would like to see the Student in a closely coordinated clinical program with more activities and interaction with the community, and which would include in-home observations of the Student. The Parents believe that though the services provided by the XXXX Program are consistent with some non-public schools, there are some institutions, such as XXXX High School, that provide “more comprehensive services”. However, the Parents gave no indication as to what those services might be.

MCPS asserts the Student’s IEP for the 2017–2018 school year is reasonably calculated to provide the Student with a FAPE. MCPS states that both its staff and the Parents recognize the Student has significant needs. Although based on her profile, the Student may not be able to become completely independent, MCPS’ goal is to help the Student to become as independent as realistically possible. The Student’s progress toward maximum independence is evident in the fact that MCPS was able to begin fading supports almost immediately upon the Student’s entry to the XXXX Program. MCPS is continuing to fade supports in order to provide the Student with a greater level of independence. Going forward, in high school the XXXX Program will provide much of what the Parents are requesting—the Student will be exposed to an increased number of community outings and vocational tasks.

MCPS emphasizes the XXXX Program is MCPS’ most intensive program, and it is not any less intensive than any non-public programs. In fact, the BIPs implemented in the XXXX Program are virtually the same as the BIPs implemented in a non-public program. MCPS contends that the only difference between the XXXX Program and available non-public programs is that, in a public program, the Student would have the benefit of attending a school where she has access to typical peers. MCPS asserts that not only is the XXXX Program an appropriate placement for the Student, but she is exceeding expectations for a Student with her

disabilities.

The IEP is Reasonably Calculated to Provide the Student with a FAPE

The identification, assessment and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482 (2010); 34 C.F.R. pt. 300 (2016); Md. Code Ann., Educ. §§ 8-401 through 8-417 (2014 & Supp. 2016); and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE which “emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]” 20 U.S.C.A. § 1400(d)(1)(A) (2017). The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

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

Rowley, 458 U.S. at 200-201 (footnote omitted). In *Rowley*, the Supreme Court set out a two-part inquiry to determine if a local education agency satisfied its obligation to provide FAPE to a student with disabilities. First, a determination must be made whether there has been compliance with the procedures set forth in the IDEA, and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-207. *See also A.B. ex rel. D.B. v. Lawson*, 354 F. 3d 315, 319 (4th Cir. 2004).

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “the best education, public or non-public, that money can buy”

or “all the services necessary” to maximize educational benefits. *Hessler v. State Bd. of Educ.*, 700 F. 2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. at 176. Instead, a FAPE entitles a student to an IEP that is reasonably calculated to enable that student to receive some educational benefit. The United States Court of Appeals for the Fourth Circuit declined to interpret IDEA to require “meaningful” benefit, rather than “some” benefit, reiterating that “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.” *O.S. v. Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 360 (4th Cir. 2015).

Nevertheless, the benefit conferred by an IEP and placement must be “meaningful” and not merely “trivial” or “*de minimis*.” *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). To provide a FAPE, the educational program offered to a student must be tailored to the particular needs of the disabled child by the development and implementation of an IEP, taking into account:

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

20 U.S.C.A. § 1414(d)(3) (Supp. 2016). The IEP depicts a student’s current educational performance, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i) (2017). IEP teams must consider students’ evolving needs when developing their educational programs. *Schaffer v. Weast*, 554 F.3d 470 (4th Cir. 2009).

The Supreme Court has recently refined what constitutes a FAPE and the requirements of an IEP in *Endrew F. ex rel. Joseph F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017), holding as follows:

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly ... awaiting the time when they were old enough to ‘drop out.’ ” *Rowley*, 458 U.S., at 179, 102 S.Ct. 3034 (some internal quotation marks omitted). The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

Id. at 1001. The Supreme Court rejected the argument that a disabled child must be given educational opportunities that are “substantially equal” to those of children without disabilities.

Id.

The Supreme Court made 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. *Id.* at 1000. 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 1000.²⁶ “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* Summarizing its holding, the Court stated: “[The IDEA] requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* at 1001.

²⁶ The student in *Endrew F.* was diagnosed with autism and was exhibiting behaviors that interfered with his educational progress.

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 reasoned 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.

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

The IEP was developed in compliance with the procedures set forth in the IDEA

In this case, the Student is identified as a student with autism under the IDEA. The IEP developed for the 2017–2018 school year requires that the Student receive special education services under the IDEA. The IEP team conducted an annual review and revised the Student’s IEP on February 28, 2017. The IEP team then conducted an additional review of the IEP on May 23, 2017. At the February 28, 2017 IEP team meeting, the team determined that the student continued to require specialized instruction and related services to address her reading, writing, mathematics, oral language, career/technical education/transition, personal management, community, and behavioral skills deficits. The Student’s IEP incorporated a BIP, numerous testing and instructional accommodations, assistive technology service with supplementary aids,

services, and program modifications and supports to help her achieve the goals set forth on the IEP.

An IEP is the “primary vehicle” through which a school provides a student with a FAPE. *M.S. ex rel Simchick v. Fairfax County School Bd.*, 553 F. 3d 315, 319 (4th Cir. 2009). The IEP “must contain statements concerning a disabled child’s level of functioning, set forth measurable annual achievement goals, describe the services to be provided, and establish objective criteria for evaluating the child’s progress.” *M.M. v. School District of Greenville County*, 303 F. 3d 523, 527 (4th Cir. 2002); *see* 20 U.S.C.A. § 1414(d)(1)(A) (2017). The IEP should be the result of a collaborative process, usually one or more meetings, in which the parents and their representatives discuss the child’s abilities and needs with school staff.

At the IEP team meeting on February 28, 2017,²⁷ the team developed an IEP that included goals and objectives to address the Student’s deficits. The goals and objectives of the IEP were developed in accordance with the applicable law and regulations. Both the February 28 and May 23, 2017 IEPs reflect that the IEP team considered (1) the Student’s strengths, (2) her academic, developmental, and functional needs, (3) the results of the most recent evaluations of the Student, and (4) the concerns of the parents. *See* 20 U.S.C.A. 20 U.S.C.A. § 1414(d)(3) (2017). (MCPS Exs. 9 and 11).

The Parents complained that only minor changes were made to the IEP based on their input. However, the Parents failed to identify any specific request that was made, but not incorporated into the IEP. While the IDEA requires that the development and implementation of an IEP take into account the concerns of the parents, it does not require that the parents agree to every aspect of the IEP. *See* 20 U.S.C.A. § 1414(d)(3) (2017). The Supreme Court has

²⁷ The goals developed for the February 28, 2017 IEP remained unchanged in the May 23, 2017 IEP.

acknowledged that although under the IDEA, the IEP is to be developed jointly by an IEP team that includes both school officials and the parents, “this cooperative approach [will] not always produce a consensus between school officials and the parents ...” *Town of Burlington v. Department of Education for the Commonwealth of Massachusetts*, 471 U.S. 359, 368 (2002).²⁸

MCPS XXXX Program Specialist, XXXX XXXX, testified that she was on the February 28 and May 23, 2017 IEP teams and the Parents’ input was considered in the development of the IEP. The Parents’ input was based largely upon their observations of the Student at home and when they take her out into the community, which admittedly varied greatly from the Student’s documented behavior and performance at school.

Though it is understandable that the Parents want the Student to show the same growth at home as she does when she is in school, the IDEA does not require the school system to consider or evaluate the Student’s home performance. *See* 20 U.S.C.A. §§ 1400-1482 (2017). A school system can only reasonably address behaviors and issues that are observed within the school setting. The overwhelming evidence indicates that the MCPS members of the IEP team took every appropriate measure to address any maladaptive behaviors that were observed in the school setting and interfered with the Student’s availability for learning. The IEP team has ensured that the BIPs have been implemented, reviewed regularly, and revised as needed to reduce the Student’s maladaptive behaviors.

Indeed, MCPS has been successful in reducing the Student’s maladaptive behavior. Ms. XXXX testified that while at school, whether in the classroom or on community trips, the Student has not displayed any self-injurious behavior since entering the XXXX Program, and she has displayed almost no aggressive behavior or attempts at elopement, even under conditions that

²⁸ At the time of the underlying events in *Burlington*, the IDEA was known as the Education for All Handicapped Children Act.

have been known to trigger such behavior. Although the Student did begin to exhibit an increase in loud vocalizations during the 2016–2017 school year, the IEP team responded appropriately by conducting a new FBA and revising the BIP to target the loud vocalizations. Immediately after the new BIP was implemented on March 2, 2017, the frequency of the Student’s loud vocalizations decreased on average—in March 2017 the frequency of the vocalizations decreased by 9% from the previous month and in April 2017 the frequency decreased by an additional 2%. Although there was a spike in the frequency of the Student’s vocalizations in May 2017, the average frequency was still 4% less than it had been in February 2017.²⁹ MCPS Behavioral Support Teacher, XXXX XXXX, explained that the increase in vocalizations may have been due to any number of factors, including that the Student may have been experiencing a physical ailment; upset from something that occurred at home before school; or reacting to the increasing difficulty level of her academic goals and/or a change in the environment at school. She further explained that when implementing a BIP, it is not at all unusual to see a spike in behavior at some point before the behavior is extinguished. Ms. XXXX testified that the Student’s rate of progress is higher than what she normally sees from Students in the XXXX Program and that typically for Students in the XXXX Program, the target behavior occurs for months, or even years, before seeing any decrease in frequency.

Although a student’s behavior and performance at home is not relevant to whether an IEP is reasonably calculated to provide the student with FAPE, I note that Ms. XXXX offered an explanation as to why the Student’s behavior and performance might be different between the

²⁹ I have not discussed the Student’s rate of vocalization for June 2017 because there is only data in evidence for the first two days of June in evidence. I find that this is an insufficient amount of data to provide a meaningful monthly average for comparison.

home and school environments. She explained that even with a typical child, it is not at all unusual to see a difference in the performance/behavior at home versus performance/behavior at school. There are many situational factors that can lead to this type of difference. One particular factor is that school and home are structured very differently; the XXXX Program offers a high level of support with professionals who possess the capability to appropriately address problem behaviors. Ms. XXXX further testified that parents often do not have an understanding of the behavioral plans. Even if the Parents followed the same BIP, there are still other factors that could cause the Student's behavior to be different at home, such as the individual implementing the BIP. Naturally, a professional who routinely implements BIPs would be more adept. In this case, I note that the Mother was given a copy of the most recent BIP, but she never allowed the IEP team an opportunity to thoroughly review the BIP with her or to provide her training.

The MCPS members of the IEP team have substantial training, expertise and experience in special education and various specialties within the field. (See MCPS Exs. 13-16). The judgment of educational professionals is ordinarily entitled to deference. *Andrew F.* 137 S. Ct. at 1001-02; *G. v. Ft. Bragg Dependent Schools*, 343 F.3d 295, 307 (4th Cir. 2003); *M.M. v. School District of Greenville County*, 303 F.3d 523, 532 (4th Cir. 2002). Where appropriate, I have given deference to MCPS staff, where the assertions are supported by concrete evaluative data regarding the Student's needs, including observations and the Student's performance.

The IEP is reasonably calculated to enable the Student to receive more than a de minimis educational benefit

Having determined that the IEP was developed in compliance with the procedures set forth in the IDEA, I will now examine whether the IEP is reasonably calculated to enable the Student to receive more than a *de minimis* educational benefit.

In evaluating the appropriateness of the Student's IEP at the IEP team annual review meeting on February 28, 2017, the team determined that the Student continues to require a highly structured environment with a very low staff-to-student ratio and daily behavioral interventions. Essentially all of the witnesses agree that the Student requires a program that offers a significant amount of support as a result of her behavioral, academic and social/emotional skills needs. However, the Parents do not agree that the XXXX Program is the appropriate program to address the Student's needs.

The XXXX Program serves students of middle and high school age who demonstrate significant cognitive disabilities, multiple disabilities, and/or autism. The program provides students with systematic behavioral supports and services to reduce self-injurious, aggressive, and/or disruptive behaviors. These are the types of behaviors which have historically interfered with the Student's availability for learning. MCPS XXXX Program Coordinator, XXXX XXXX testified that the XXXX Program is the most intensive program offered by MCPS and that it is designed to parallel the services that are found in a non-public school, with the exception of the XXXX Program being located in a comprehensive public school with a larger overall student population.

MCPS presented four expert witnesses, each of whom have had an opportunity to work with and/or observe the Student and participate in her IEP team meetings. Each witness testified as to the substantial behavioral and academic progress the Student has made since entering the XXXX Program, especially in light of her autism, cognitive disabilities and behavioral issues. Their testimony is corroborated by substantial documentation, including the FBAs, BIPs, IEPs, psychologist's report, educational assessment report, and behavioral data which was entered into evidence and demonstrates the Student's steady progression in the XXXX Program. (*See* MCPS

Exs. 1-5 and 7-12). The MCPS witnesses consistently testified that since entering the XXXX Program, the Student's maladaptive behaviors have dramatically decreased and she is now outperforming other Students who have a similar profile.

Ms. XXXX, who was accepted as an expert in special education, with an emphasis in behavioral analysis and intervention, noted that when the Student arrived at the XXXX Program, she was "unavailable for learning" due to her interfering behaviors—she had high rates of self-injury, aggression, food stealing and elopement. As a result, the Student required a high level of supports and prompts to complete tasks. However, as previously mentioned, since entering the XXXX Program, the Student has not engaged in self-injurious behavior or food stealing, and her rates of elopement and aggression while at school (including community trips) are nearly zero. In fact, the Percentage of Intervals in the Day Behavior Occurs chart offered as evidence by MCPS shows that the Student has not engaged in aggressive behavior since January 2016 or elopement since July 2016. (MCPS Ex. 12).

Ms. XXXX further testified that the Student now requires fewer supports. When the Student arrived at the XXXX Program, she was working one-on-one with a teacher at all times, but she now is able to work with a teacher and one other student, as well as independently at times. Prior to the XXXX Program, the Student required 2:1 support with adults maintaining physical contact with her at all times when out of the classroom or in the community. The Student now only requires 1:1 support with an adult in close proximity and without physical contact. Ms. XXXX explained that she observed the Student in the community during the past school year. She described an occasion where during a community trip to Target, she observed the Student in several situations that previously would have triggered her aggressive hair pulling behavior, but the Student refrained from that behavior.

Ms. XXXX explained that since most of the Student's interfering behaviors have either ceased or dramatically decreased, XXXX Program staff has been able to push the Student academically to make progress with higher level academic skills. The Student now is able to work independently for up to twenty minutes, all of her reading and math targets have improved, and she is capable of higher level academic skills. Ms. XXXX explained that the results of educational testing are not necessarily indicative of every skill that a student displays in the classroom, and this is true of the Student in this case. The Student performs on a "splintered" skill scale, which means that although the Student may generally perform at kindergarten to first-grade level according to formal testing of a subject, she also demonstrates a capability to master some higher level skills. For example, the Student tests at a kindergarten to first-grade level in math, but she is able to balance equations and ratios, which is skill typical of a much higher grade level. The Student also tests at a kindergarten to first-grade level in reading, but has mastered sight reading on a second grade level. Ms. XXXX concluded that the Student is exceeding expectations and has acquired skills across all academic subjects that are considered advanced for a Student with her profile and an IQ of 42.

The Parents' position is solely based upon their observations of the Student at home and when they take her out into the community on their own. The Father does not believe the Student's behavior has improved since entering the XXXX Program. He testified that when the Student is away from the XXXX Program, it is difficult to deal with her due to her disruptive vocalizations and she attempts elopement on nearly a weekly basis. He further testified that when the family goes to community events, the Student engages in hair pulling whenever she gets the opportunity. He does not feel her academic situation has improved and he believes that her behavioral issues must first be addressed, to allow her to allow her to advance academically. The

Father acknowledged that in an environment, such as that provided for by the IEP and XXXX Program, the Student will behave obediently. However, he testified that from the Parents' perspective, they have not observed any change and have even observed an increase in some of the Student's problematic behaviors.

The Father further testified that the Parents sought services from XXXX when the Student was at [School 2]. When XXXX implemented a behavioral plan, the Parents could see tremendous improvements in the Student's self-injurious and aggressive behavior. However, the Parents did not offer a copy of the BIP prepared by XXXX or discuss the contents of the BIP. I find it odd that the Parents believe the XXXX BIP was so successful but they did not continue implementing it at home. Furthermore, the documentary evidence reflects that [School 1] staff initially implemented the XXXX BIP when the Student entered the XXXX Program in December 2015, but eventually developed its own BIP in March 2016. The Parents did not refute the evidence provided by MCPS that [School 1] staff reviewed the XXXX BIP in preparation for the March 2016 BIP.

The Mother testified that she is a XXXX for MCPS and works with mainstreamed students who have special needs, including autism. Although she is not an expert in special education, the Mother feels that she has practical experience due to her background in education, prior experience as an activity aide for MCPS and a support person for the XXXX Program. The Mother's testimony echoed that of the Father. She testified that she believes the XXXX Program is not challenging enough to address the Student's behavioral and academic needs. She asserts that the Student needs a program that will address her functional needs and which is also age appropriate. She believes the XXXX Program staff is willing to help the Student, but that there is no way that they can resolve the Student's issues.

The Mother further testified that the Student's vocalizations have become worse, which delays her in taking the Student to school. She testified that she knows each child on the autism spectrum is different and that the social aspect of development is most important for children with autism. She believes the XXXX Program has tried everything that they can, but she feels the IEP team simply will not admit that they cannot address the Student's needs. In her opinion, nothing has improved the Student's behavior since entering the XXXX Program. Although the Mother admitted that neither she, nor the Father have observed the Student at school over the last two years, she believes that the Student's behavior in the community is reflective of her behavior at school.

In support of their position, the Parents offered as evidence letters from three individuals in their community who have become familiar with the Student. (PNT Exs. 1, 2, and 3). The first letter was from XXXX XXXX, the Director of Operations for XXXX, which is a program that provides sports activities for individuals with special needs. (PNT Ex. 1). Ms. XXXX met the Student when she participated in activities with XXXX. Ms. XXXX attended the June 14, 2017 resolution meeting, however, she has never observed the Student in the XXXX Program and there is no evidence that she is otherwise familiar with the Program. Ms. XXXX's June 19, 2017 letter states that, XXXX staff recently saw that in order for the Student to come to the pool and participate, the parents have had to firmly hold both of her hands and walk her in to prevent her from running off in the pool area. Ms. XXXX further stated that the Student's negative behaviors seem to have been on the rise, as she screams and has become very unpredictable. Ms. XXXX also described an occasion, on an unknown date, where the Student grabbed a young child by her hair while participating in a track and field program. As a result, XXXX determined that the Student was not ready to participate in the track and field program because it was unsafe

to have her around other children. Ms. XXXX suggested that the Student should be considered for much more intensive services so that she can continue to progress in her life.

The second letter is from XXXX XXXX, an ABA who has worked with the Student from September 2016 to January 2017, providing services three times per week. (PNT Ex. 2). Ms. XXXX's educational and professional background is unknown. There is no evidence that Ms. XXXX has any first-hand knowledge or observation of the XXXX Program. The Mother testified that Ms. XXXX has never observed the Student while at school and that she never consulted with XXXX Program staff. Although Ms. XXXX reviewed the Student's educational file, she did not participate in any of the IEP meetings. Instead, the Parent obtained information regarding the Student's workload, along with some schoolwork, from the Student's teacher and passed it on to Ms. XXXX. Ms. XXXX's June 26, 2017 letter states that while providing the Student services, she has witnessed and dealt with the Student's hair pulling and screaming, and that it is extremely difficult to stop these behaviors. Ms. XXXX also described the Student engaging in the behaviors at XXXX which Ms. XXXX reported. Ms. XXXX states that the Student's behavior has had a negative impact on her academic performance and the Student had trouble understanding some of the school materials they worked on together. Ms. XXXX also contends that she and the Mother tried to replicate the BIP used by the school and that she did not find the behavior interventions helpful or effective. Ms. XXXX is of the opinion that the Student has the potential to learn well and grow further academically, but her behavior is uncontrollable and inhibits her learning.

The final letter is from family friend, XXXX XXXX, PhD. (PNT Ex. 3). According the Mother, Dr. XXXX is an independent consultant in business administration. Dr. XXXX was also formally a professor at XXXX University, teaching business administration. The Mother testified

that Dr. XXXX has never participated in the Student's IEP meetings, observed the Student in the XXXX Program, or otherwise communicated with staff from the XXXX Program. The Mother further testified that she has allowed Dr. XXXX to review the Student's IEPs over the last two years and she has been "closely following" the Student. The Mother believes that Dr. XXXX is qualified to give an opinion as to the Student's placement because Dr. XXXX has observed the Student in the community, is very active in the Parent-Teacher Association and that she has dealt with MCPS IEP teams for her own child.

In her June 20, 2017 letter, Dr. XXXX stated that over the last two years, she has observed the deterioration of the Student's behavior and its effect on the family's ability to engage with the community. Dr. XXXX described an incident where the Student pulled another child's hair a year ago, causing the family to leave a community dinner. Dr. XXXX stated that due to the Student's unpredictable behavior, the Parents no longer bring her to community events, making it necessary for someone to stay at home with the Student and miss out on the event. Dr. XXXX expressed her concern for the Student's future and opined that the school reports indicate the Student is not making progress and may be regressing. Dr. XXXX believes that the Student needs are not being met in her current placement and that other placements must be considered.

In evaluating the appropriateness of the IEP and whether the IEP is reasonably calculated to enable the Student to receive more than a *de minimis* educational benefit, I must give greater weight to the testimony of MCPS' expert witnesses, than the testimony of the Parents and the three written statements presented by the Parents. The MCPS witness testimony to the Student's capabilities and performance at school is simply more reliable than the testimony of the Parents and the hearsay statements of Ms. XXXX, Ms. XXXX, and Dr. XXXX. Mr. XXXX, Ms. XXXX

and Ms. XXXX each have extensive backgrounds and substantial experience in the field of special education. (See MCPS Exs. 12-15). Although Ms. XXXX entered the field in 2016, she graduated at the top of her college class with a bachelor's degree in early childhood and special education and was qualified as an expert in the field of special education, with no objection from the Parents. (See MCPS Ex. 5). On the other hand, the Parents, Ms. XXXX, and Dr. XXXX, each have no formal training in special education, and Ms. XXXX's³⁰ educational background is unknown.³¹ In addition, all four MCPS witnesses have personally observed the Student in the XXXX Program, where the Parents and their supporters have not. Undoubtedly, the expertise and personal observations of the MCPS witnesses places them in a far better position to assess the Student's progress and ongoing needs in the classroom environment. Although the Mother testified that she collaborates closely with the IEP team, she did not offer any data to bolster her belief that the Student does not behave or academically perform at the level observed and documented by the MCPS staff. The Parents simply have not provided any credible evidence to support their unsubstantiated belief that the Student has gained insufficient educational benefit from the IEP. Furthermore, there is no evidence to suggest that the MCPS witnesses were in any way untruthful or exaggerated in giving their testimony. Their opinions were explained clearly and supported by a plethora of documentation that was recorded contemporaneously with the Student's performance.

A determination as to whether a student has received sufficient educational benefit is not solely dependent on a finding that a student has advanced from grade to grade or received passing marks, since it is quite possible that a student can advance in grade from year to year, yet

³⁰ Ms. XXXX is an ABA technician. Mr. XXXX testified that an ABA technician must work under a board certified behavioral analyst.

³¹ I note that I also find Ms. XXXX's, Ms. XXXX's and Dr. XXXX's testimony less reliable in light of the fact that none of these individuals were available for cross-examination.

not gain educational benefit. *See In Re Conklin*, 946 F.2d 306, 316 (4th Cir. 1991) (finding that a student's passing grades and advancement does not resolve the inquiry as to whether a FAPE has been afforded to the student). Similarly, a finding that a student is performing below grade level does not alone determine whether the student has failed to gain some educational benefit. As discussed in *Rowley*, educational benefits that can be obtained by one student may differ dramatically from those obtained by another student, depending on the needs that are present in each student. 458 U.S. at 202. Here, the Student clearly has received more than a *de minimus* educational benefit resulting from the February 28, 2017 and May 23, 2017 IEPs, as the persuasive evidence establishes that she is exceeding reasonable expectations and performing exceptionally well for an autistic individual with her cognitive, behavioral, and emotional challenges.

The goals contained in the IEP are appropriately ambitious in light of the Student's circumstances

In this case, the evidence supports the fact that all of the annual goals address the Student's deficits and the IEP is reasonably calculated to meet the individualized needs of the Student. The goals directly address the Student's areas of deficits, numerous supplementary aids and supports have been integrated into the program, and the IEP indicates how progress on the goals will be measured. However, the Parents do not believe that the goals contained in the IEP are appropriately ambitious in light of the Student's circumstances. Although the Parents offered no specific testimony as to what they believe appropriately ambitious goals would consist of, it is clear that they desire age appropriate goals and an ultimate goal of complete independence. It is overwhelmingly clear from the record and testimony that the Parents consistently work to address the Student's academic, behavioral and emotional needs to the full extent possible.

While I sympathize with the Parents' desire to see the Student thrive and become completely independent, the preponderance of the credible evidence indicates that due to the Student's cognitive and functional impairments, complete independence is not a realistic goal.

Mr. XXXX, was accepted as an expert in special education with an emphasis in autism and severe and profound handicapping conditions. Mr. XXXX testified that a child with the Student's profile and severe cognitive disabilities will indeed make gradual academic progress. He further testified that for an individual with her profile, the Student has shown incredible growth in both her behavioral and academic skills. Based on his personal knowledge of the Student and the history of Students with similar profiles, it is Mr. XXXX's opinion that the Student will never be able to function independently in the community and will require assistance throughout her life.

The MCPS expert witnesses testified credibly with regard to their understanding of the Student's deficits and how they impact her ability to progress in the general curriculum. All four expert witnesses opined that given all of the evaluative data and in light of the Student's profile, the goals and objectives contained in the May 23, 2017 IEP are appropriately ambitious in light of the Student's circumstances. Given the abundance of evaluative data in the record supporting their opinion, and the lack of credible evidence to the contrary, I find that the goals and objectives contained in the May 23, 2017 IEP are appropriately ambitious in light of the Student's circumstances.

The XXXX Program is in the Least Restrictive Environment

In addition to the IDEA's requirement that a disabled student receive some educational benefit, the Student must also be placed in the "least restrictive environment" to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same

classroom. 20 U.S.C.A. § 1412(a)(5) (2017); 34 C.F.R. 300.114(a)(2)(i) (2016). However, inclusion of disabled children into regular school programs may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. *Id*

In selecting the least restrictive environment, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. 34 C.F.R. §300.116. This is exactly what the IEP team did. At the February 28, 2017 and May 23, 2017 IEP meetings, when developing the Student's IEP for the 2017–2018 school year, the IEP team discussed various placements along the continuum of placements. The IEP team determined that the Student could not receive the necessary services in the general education environment because due to her communication deficits, inappropriate behaviors and kindergarten to second grade performance levels, she requires modified programming in order to access the general curriculum. The IEP team further determined that the Student still benefits from a small, structured classroom setting with a low student-to-teacher ratio, which provides individualized instruction with behavioral and communication supports. The IEP team decided that although such a setting is a very restrictive environment, the benefits of such a setting continue to outweigh any benefits of placing the Student in the general education environment. Since the Student was making sufficient progress in the XXXX Program, the IEP team concluded that the XXXX Program, in a self-contained classroom within a public comprehensive high school, remained the appropriate placement for the Student. Although the IEP team determined the Student would not attend academic classes with typical peers, they decided that with adult support, she would benefit from participating in non-academic and/or extra-curricular

activities with her typical peers. These non-academic and/or extra-curricular activities are available at the proposed placement. Moreover, the XXXX Program at [School 3] is the closest appropriate placement to the Student's home.

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 v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990). Therefore, absent any credible evidence to persuasively dispute the well-reasoned judgment of the MCPS witnesses, I agree with MCPS that the IEP and placement is appropriate and reasonably calculated to meet the individualized needs of the Student.

The evidence supports MCPS' conclusion that the Student requires a self-contained classroom setting that incorporates a high level of structure with individualized and small group instruction, while allowing her access to her typical peers during non-academic activities—exactly what the XXXX Program at [School 3] will offer the Student.

In conclusion, after carefully reviewing all of the evidence presented by the Parents and MCPS, I find that MCPS developed an appropriate IEP and placement for the 2017–2018 school year.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, the IEP and placement offered by the Montgomery County Public Schools for the 2017–2018 school year is reasonably calculated to offer the Student educational benefit. 20 U.S.C.A. §§ 1400 - 1487 (2017).

I further conclude that the IEP and placement proposed by Montgomery County Public Schools for the 2017-2018 school year is reasonably calculated to offer the Student a FAPE.

Andrew F. ex rel. Joseph F. v. Douglas County School District RE-1, 137 S.Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

ORDER

I **ORDER** that the Parents' May 31, 2017 Due Process Complaint is **DENIED**.

July 28, 2017

Date Decision Mailed

JAN/sw

Jennifer A. Nappier

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.