

██████████,
STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ALECIA FRISBY TROUT,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-19-31284

DECISION

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STATEMENT OF THE CASE

On October 7, 2019, ██████████ (Mother), on behalf of her minor child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the Student's placement by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415(f)(1)(A) (2017). 20 U.S.C.A. § 1415(f)(1)(A) (2017); 34 C.F.R. § 300.511(a)(2018); Md. Code Ann., Educ. § 8-413(d)(1)(2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). On October 17, 2019, the parties participated in mediation, but no agreement was reached; a separate resolution session was not held. On October 17, 2019, the parties agreed that there was no reasonable expectation of a settlement and that the thirty-day resolution period should end as of that date. Accordingly, the forty-five day timeframe for issuing a decision in this matter began to run on October 17, 2019.

I held a telephone prehearing conference in this matter on October 17, 2019. Emily Rachlin, Esquire, represented the MCPS. The Mother participated and represented the Student without the assistance of legal counsel. By agreement of the parties, the hearing was scheduled for November 12 and November 14, 2019.

Due to an agreement by the parties on the second day of hearing that an additional day was needed to present their cases, I held the hearing on November 12, 14 and 15, 2019. The Mother represented the Student. Ms. Rachlin, Esquire, represented the MCPS.

The federal regulations provide for a thirty-day period, commencing with a school system's receipt of a due process complaint, for the school system to resolve the due process complaint without a hearing. 34 C.F.R. § 300.510(b)(1). If a due process complaint is not resolved at the end of that thirty-day resolution period,¹ the due process hearing may commence and the forty-five day timeframe for issuing a decision begins to run. 34 C.F.R. §§ 300.510(b)(2) and 300.515(a) (2018). In this regard, the regulation provides as follows:

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

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

34 C.F.R. § 300.515.

In accordance with the applicable regulations, the decision is due on Wednesday, November 27, 2019, which is the last business day within the forty-five day timeframe provided for in the federal regulations. 34 C.F.R. § 300.515.

¹ The Code of Federal Regulations provides for certain adjustments to the thirty-day resolution period, 34 C.F.R. § 300.510(c), however, none of those adjustment provisions is applicable to this case.

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) (2018); Md. Code Ann., Educ. § 8-413(e)(1) (2018); 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 (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

The issues are:

- (1) Is the Individualized Education Program (IEP) developed by the MCPS, placing the Student in a segregated special education program (known as the [REDACTED] Program) at [REDACTED] Middle School, reasonably calculated to provide the Student with a free appropriate public education (FAPE) for the 2019-2020 school year, and if not,
- (2) Would the Parent's requested placement of the Student in the general education population at [REDACTED], with supports and accommodations, provide the Student with a FAPE?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Student, except where noted:

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|------------|--|
| App. Ex. 1 | Dr. [REDACTED], Ph.D., resume, undated (1 page), attached to the Mother's witness list, undated (1 page) |
| App. Ex. 2 | Three screenshots of photographs, undated (3 pages) |

- App. Ex. 3 (a): MCPS Notice and Consent for Assessment, Reevaluation, January 7, 2019 (2 pages)
 (b): MCPS Notice and Consent for Assessment, Initial Evaluation, January 7, 2019 (2 pages)
- App. Ex. 4 (c): MCPS Prior Written Notice, January 14, 2019 (2 pages)
 (a): ██████████ Department of Education, Specific Learning Disability Eligibility Form, April 9, 2018 (2 pages)
 (b): ██████████ School Department, Classroom Observation Form, April 9, 2018 (2 pages)
 (c): ██████████ Elementary and Middle School, Evaluation Report, April 4, 2018 (11 pages)
 (d): ██████████ Department of Education, Individualized Education Program, May 7, 2018 (11 pages)
 (e): Notes from phone call with ██████████, author unknown, April 9, 2018 (1 page)
- App. Ex. 5 (a): ██████████, report card, academic year 2017-2018, undated (1 page)
 (b): ██████████, report card, academic year 2016-2017, undated (1 page)
 (c): undated typed statements by ██████████ (2 pages)
- App. Ex. 6 (a): Letter from ██████████ to “Dear sir/madam,” February 12, 2016 (1 page)
 (b): Letter from ██████████ to ██████████ Director of Admissions, ██████████, February 17, 2016 (1 page)
- App. Ex. 7 ██████████ School report card, academic year 2015-2016 (1 page)
- App. Ex. 8 ██████████, psychological and educational services, undated letter (1 page) with attached Report of Admissions Testing, December 19, 2018 (2 pages)
- App. Ex. 9 MCPS Prior Written Notice, May 3, 2019 (2 pages)
- App. Ex. 10 MSDE IEP, parental input notes page, February 2019, May 3, 2019, June 3, 2019, August 1, 2019 (1 page)
- App. Ex. 11 (a): Letter to the Mother from ██████████ Assistant Principal, ██████████ Middle School, printed November 3, 2019 (1 page)
 (b): [Student] Communication Log Grade 7 ██████████ Middle School April 11, 2019 – June 4, 2019 (3 pages)
- App. Ex. 12 Initial Bullying Complaint from the Mother to ██████████, Principal, ██████████ Middle School, May 5, 2019 (5 page letter with 29 pages of attached screenshots of texts and emails—all redacted by the Mother)
- App. Ex. 13 MCPS Student Record Transmittal, June 7, 2019 (2 pages)
- App. Ex. 14 MCPS Notice of IEP Team Meeting, June 19, 2019 (2 pages)
- App. Ex. 15 *Inadvertent mis-numbering, no App. Ex. 15*
- App. Ex. 16 MCPS IEP meeting agenda, October 2, 2019 (1 page) and Prior Written Notice, October 2, 2019 (2 pages)
- App. Ex. 17 ██████████ Services pamphlet, undated (2 pages)

- App. Ex. 18 Second bullying complaint by the Mother to [REDACTED], October 27, 2019 (2 pages) with attached screenshots of texts and emails (7 pages) [NOT ADMITTED]
- App. Ex. 19 [REDACTED] Middle School, Progress Report for [Student], June 19, 2018 (4 pages) [NOT ADMITTED]

I admitted the following exhibits on behalf of the MCPS:

- MCPS Ex. 1 Letter from [REDACTED], M.D., "To Whom It May Concern," February 21, 2013 (1 page)
- MCPS Ex. 2 MCPS, Services for Students with Autism Spectrum Disorders, consultation report, March 21, 2013 (2 pages)²
- MCPS Ex. 3 [REDACTED] [REDACTED] ([REDACTED]) Cluster Progress Summary, April 5, 2013 (1 page)
- MCPS Ex. 4 MCPS Memo to Mr. [REDACTED], supervisor, Placement and Assessment Unit from [REDACTED], supervisor, April 15, 2013 (1 page)
- MCPS Ex. 5 [REDACTED] Comprehensive Psychological Evaluation, February 10, 2016 (46 pages)
- MCPS Ex. 6 [REDACTED] Elementary-Middle School, Student Period Attendance Detail, generated on February 26, 2019 (3 pages)
- MCPS Ex. 7 MCPS Prior Written Notice, January 14, 2019 (2 pages)
- MCPS Ex. 8 MCPS Report of School Psychologist, February 1, 2019 (12 pages)
- MCPS Ex. 9 MCPS IEP, draft, February 1, 2019 (38 pages)
- MCPS Ex. 10 MCPS Prior Written Notice, February 12, 2019 (2 pages)
- MCPS Ex. 11 MCPS IEP, February 8, 2019 (38 pages)
- MCPS Ex. 12 MCPS settlement agreement between MCPS and the Mother, April 2, 2019 (2 pages)
- MCPS Ex. 13 Email from the Mother to [REDACTED], April 10, 2019 (1 page)
- MCPS Ex. 14 [REDACTED] Middle, Student Detail Report, May 3, 2019 (1 page)
- MCPS Ex. 15 MCPS IEP, Amended May 3, 2019 (38 pages)
- MCPS Ex. 16 MCPS Prior Written Notice, May 3, 2019 (2 pages)
- MCPS Ex. 17 MCPS Bullying, Harassment, or Intimidation Incident School Investigation Form, May 13, 2019 (3 pages)
- MCPS Ex. 18 Email from [REDACTED] to the Mother, June 4, 2019 (1 page)
- MCPS Ex. 19 [Student] Communication Log, Grade 7, [REDACTED] Middle School, April 11, 2019 – June 4, 2019 (3 pages)
- MCPS Ex. 20 MCPS IEP, amended June 4, 2019 (42 pages)
- MCPS Ex. 21 Prior Written Notice, June 5, 2019 (1 page)
- MCPS Ex. 22 MCPS Student Record Transmittal, June 7, 2019 (2 pages)
- MCPS Ex. 23 MCPS IEP, Amended August 23, 2019 (42 pages)
- MCPS Ex. 24 MCPS Prior Written Notice, August 5, 2019 (1 page)
- MCPS Ex. 25 Email from the Mother to [REDACTED], August 5, 2019 (1 page)
- MCPS Ex. 26 Email from the Mother to [REDACTED], September 23, 2019 (1 page)
- MCPS Ex. 27 MCPS IEP, Amended October 2, 2019 (42 pages)

² Page 1 and 3 of the report were admitted, page 2 of the report was not provided

MCPS Ex. 28	MCPS Prior Written Notice, October 2, 2019 (2 pages)
MCPS Ex. 29	Resume, [REDACTED], undated (2 pages)
MCPS Ex. 30	Resume, [REDACTED], undated (3 pages)
MCPS Ex. 31	Resume, [REDACTED], undated (3 pages)
MCPS Ex. 32	Resume, [REDACTED], undated (2 pages)
MCPS Ex. 33	Resume, [REDACTED], undated (2 pages)
MCPS Ex. 34	[REDACTED] program description, undated (3 pages)
MCPS Ex. 35	Email chain between [REDACTED], [REDACTED] and the Mother, January 22, 2019 – February 1, 2019 (2 pages)

Testimony

The Mother testified, and presented the following witnesses:

- [REDACTED], behavior support teacher, [REDACTED] Services, MCPS;
- [REDACTED], Ph.D., psychologist, admitted as an expert in psychology;
- [REDACTED], Ph.D., seventh grade English teacher, [REDACTED] Middle School, MCPS; and
- [REDACTED], resource teacher, special education, [REDACTED] Middle School, MCPS.

The MCPS presented the following witnesses:

- [REDACTED], behavior support teacher, [REDACTED] Services, MCPS, admitted as an expert in special education with an emphasis on students with social and emotional needs;
- [REDACTED], Ed.S., NCSP,³ school psychologist, MCPS, admitted as an expert in school psychology;
- [REDACTED], resource teacher, special education, [REDACTED] Middle School, MCPS, admitted as an expert in special education;
- [REDACTED], resource teacher, special education, [REDACTED] Middle School, MCPS, admitted as an expert in special education;
- [REDACTED], supervisor, special education, Central Placement Unit, MCPS, admitted as an expert in special education; and

³ Nationally Certified School Psychologist

- [REDACTED], chief IEP Chair for MCPS' Central Placement Unit, admitted as an expert in special education.

FINDINGS OF FACT

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

Background

1. In October 2019, the Student turned fifteen years old. He lives with his mother in Montgomery County, Maryland. He visits his father in [REDACTED] in the summers, and has briefly lived there in the past.
2. The Student is a highly intelligent child who has current diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Major Depressive Disorder, and learning disabilities related to reading, math, and written expression -- dyslexia, dysgraphia, and dyscalculia.
3. The Student attended [REDACTED] Elementary School, a public school in Montgomery County, for kindergarten, first grade, and most of second grade.
4. The MCPS conducted a Functional Behavior Analysis and a diagnostic assessment for special education at the end of the Student's kindergarten year, but he was deemed ineligible for special education services. [REDACTED] implemented a 504 Plan and a Behavior Intervention Plan for the Student⁴ based on ADHD and anxiety. MCPS Ex. 5.
5. In kindergarten, the Student had difficulties with separation anxiety, attention, impulse control, and executive functioning. MCPS Ex. 5.
6. The problems continued and escalated in the Student's first grade year and the Mother began to keep him at home to avoid negative interactions with teachers and peers.

⁴ The record is unclear as to whether the 504 plan was implemented in kindergarten or 1st grade.

7. At the end of his first grade year, the MCPS reevaluated the Student, determined him to be eligible for special education services, and [REDACTED] and the Student's Mother⁵ initiated special education services. On his first IEP, the Student's primary disability was identified as: "Other Health Impaired to address his anxiety, attention, impulsivity, and mood dysregulation." MCPS Ex. 4. The Student transferred to the self-contained [REDACTED] [REDACTED] ([REDACTED]) cluster at [REDACTED] Elementary School, a public school in Montgomery County.

8. The Student had significant problems with attendance while at [REDACTED] despite the deployment of multiple strategies including involvement with a social worker. MCPS Ex. 4. The MCPS approved a Change of School Assignment (COSA) to move the Student's placement to the self-contained [REDACTED] cluster at [REDACTED] Elementary School during the second half of second grade. [REDACTED] is a public school in Montgomery County.

9. Between January 2013 and April 2013, the Student only attended one full day of school at [REDACTED]. MCPS Exs. 3 and 4.

10. The Mother disagreed with the placements at both [REDACTED] and [REDACTED] [REDACTED]

11. During the second grade year, the Student was highly anxious, exhibited separation anxiety and possibly generalized anxiety disorder; exhibited symptoms of ADHD; had problems with sensory integration and emotional self-regulation; had difficulty with frustration tolerance; and displayed whiny, impulsive, resistant, and intense behaviors. MSPC Ex. 2.

⁵ It is clear from the record that the Student's father participated in IEP meetings by phone, at times, but it is unclear if he signed to initiate special education services or not.

12. The MCPS' IEP Team referred the Student to the Central IEP⁶ Team for consideration of a more specialized placement. Between April 2013 and the end of the 2012-2013 school year, the Student received Home and Hospital Teaching.⁷

13. Following the Central IEP Team meeting, and for the third grade year, the Student was placed at [REDACTED] School, a non-public special education school in Montgomery County serving children with emotional and behavioral disabilities, and children with autism spectrum disorders.⁸ There are no non-disabled⁹ or typically developing students at [REDACTED] School. The MCPS funded the Student's placement at [REDACTED]. The Student continued to have problems with his attendance at [REDACTED].

14. The Mother disagreed with the Student's placement at [REDACTED].

15. At the end of the third grade year, the Student's private placement was changed to [REDACTED] School, a non-public special education school in [REDACTED]. There were no non-disabled students at [REDACTED].¹⁰ The Student attended [REDACTED] for his fourth and fifth grade years.

16. A [REDACTED], the Student continued to receive special education services through the MCPS as a student with Other Health Impairment due to ADHD. He received individual and group psychotherapy, speech/language therapy, occupational therapy, individual reading tutoring

⁶ The MCPS has a two-tier IEP system. A student who is referred for special education first attends a school-based IEP meeting but once the county public school options are exhausted, the Student is referred to the Central IEP Team for a meeting to consider more restrictive placements.

⁷ Home and Hospital Teaching is the provision of instructional services to public school students who are unable to participate in their school of enrollment due to a physical or emotional condition.

⁸ The Student initially had a diagnosis of Asperger's Disorder and/or autism spectrum disorder. MCPS Exs. 1 and 2. It is not clear when these diagnoses were removed, but it is apparent that he was no longer considered to have these diagnoses at the time of the 2016 psychological assessment.

⁹ "Nondisabled" was the term used by the parties throughout the hearing and, for consistency, I will use it in the decision.

¹⁰ [REDACTED] School has since closed.

using the Wilson Method, and a one-to-one aide. The Student's group therapy consisted of a group of two because of the level of the Student's dysregulation in group situations.

17. The Student's testing accommodations included: reader, scribe, use of graphic organizer, extended time, frequent breaks, testing over multiple days, small group testing, and preferential seating. MCPS Ex. 5.

18. The Student's classroom supports included: frequent feedback, repetition of directions, assistance with organization and monitoring of independent work, breaking down assignments into smaller units, planned breaks, morning and afternoon check-in, social skills training, and use of positive/concrete reinforcers. MCPS Ex. 5.

19. When the Student was in the fifth grade at [REDACTED] he was placed in a middle school classroom doing sixth grade curriculum. MCPS Ex. 5, Testimony, Mother.

20. In February 2016, while the Student was attending [REDACTED], [REDACTED], Ph.D., completed a Comprehensive Neuropsychological Evaluation of the Student. For the evaluation, Dr. [REDACTED] utilized the following sources of data: Beck Youth Inventories; Beery-Buktenica Developmental Test of Visual-Motor Integration—Sixth Edition (VMI); Behavior Assessment System for Children, Second Edition (BASC-2) – Parent and Teacher; Behavior Rating Inventory of Executive Function (BRIEF) – Parent Rating Scales; Child Interview; Classroom Observation; Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2); Conners' Teacher Rating Scale, Third Edition: Short Version; Gray Oral Reading Test, Fifth Edition (GORT-5); Kaufman Tests of Achievement, Second Edition, Listening Comprehension Test; [REDACTED] Questionnaire for Elementary School Students; Parent Interview; Reynolds Intellectual Abilities Scales (RIAS); Rorachach Examination; Social Responsiveness Scale (SRS) Parent and Teacher Forms; Teacher Interview; Test of Variables of Attention (TOVA);

Test of Word Reading Efficiency, Second Edition (TOWRE-2); Test of Written Language, Fourth Edition (TOWL-4); Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V); Woodcock Johnson Tests of Achievement, Fourth Edition (WJ-IV) Form A; and Woodcock Johnson Tests of Cognitive Ability, Fourth Edition; Woodcock Johnson Tests of Oral Language, Fourth Edition. MPCs Ex. 5.

21. The Assessment revealed that the Student continued to show gifted performance in many cognitive measures. He had average to high average and superior scores in general ability, verbal comprehension, fluid and visual spatial reasoning, and working memory. His learning disabilities in the areas of math, reading, and writing were evident in his performance on related cognitive tests. He performed at the second to third grade level in basic reading, and the fourth grade level in reading fluency. He performed at the kindergarten to first grade level in mathematics fact fluency and calculation, and the third grade level in applied math. He performed in the very low range for writing and sentence writing fluency, the low average range for writing samples and, in general, at the first to second grade level.

22. The Assessment further revealed that the Student's weak executive skills,¹¹ difficulties with frustration tolerance and persistence, and difficulty picking up on cues, related to his ADHD, likely impact his performance on structured cognitive tasks, and his ability to access curriculum. The Student exhibited provocative social behavior, was prone to misinterpret events and misperceive other's intentions, and generate anger or distress in his peers. MCPS Ex. 5.

¹¹ Executive functioning refers to skills needed to organize and plan complex cognitive tasks. These skills include the ability to think flexibly and engage in problem solving to accommodate the changing circumstances, as well as to monitor performance and shift attention.

23. The doctor recommended that the Student continue receiving full-time special education services with an IEP as a gifted student with both Specific Learning Disabilities and Other Health Impairment. It also recommended that the Student continue to receive occupational therapy, speech/language therapy, one-to-one behavioral support, a behavior plan, testing accommodations, classroom accommodations, and executive function support.

24. The Mother withdrew the Student from [REDACTED] prior to the conclusion of his fifth grade year and unilaterally placed him at [REDACTED], a private [REDACTED] school in Montgomery County. The Mother also unilaterally retained the Student by removing him from the end of his fifth grade year at [REDACTED] and placing him in fourth grade at [REDACTED]

25. The Student completed the fourth, fifth, and three quarters of sixth grade at [REDACTED], where he received special education services.¹²

26. In the fourth quarter of his sixth grade year, the Mother withdrew the Student from [REDACTED] and placed him at [REDACTED] Elementary-Middle School in [REDACTED], the Student's public home-school based on his father's residence. In [REDACTED] the Student's father revoked the [REDACTED] IEP Team's recommendation for special education services.

27. Between September and November 2018, the Student missed at least eighteen full days of school at [REDACTED]. In November, 2018, the Mother removed the Student from [REDACTED] and returned with him to Montgomery County, Maryland because she did not believe that [REDACTED] had the capacity to accommodate the Student's needs. Testimony, Mother.

28. In December 2018, the Mother contacted the MCPS to re-enroll the Student.

29. The MCPS had to initiate an initial evaluation to determine the Student's eligibility for special education services, despite the Student's history with the MCPS, due to his

¹² The extent and nature of the special education services the Student was receiving at [REDACTED] is not clear from the record.

father's revocation of special education services in [REDACTED]. The initial evaluation has faster time requirements than a reevaluation, meaning that the process of evaluating and placing the Student would necessarily be expedited. The Mother agreed with the expedited process because she was eager to get the Student re-enrolled in school.

30. The IEP Team held a planning meeting on January 7, 2019. The team determined that updated educational and psychological assessments were needed to determine the Student's eligibility for special education, and his present levels of functioning. In the meantime, the IEP Team informed the Mother that the Student could start school immediately at his home school, [REDACTED] Middle School, a public school in Montgomery County. At [REDACTED], the Student would be in a general education setting with supports. The IEP Team also provided the Mother with information regarding Interim Instructional Services (IIS) which could occur at the Student's home. The Mother did not take advantage of either of those options, but rather, kept the Student out of school.

31. After the IEP Team planning meeting, Ms. [REDACTED], the special education resource teacher at [REDACTED], received the results of a WJ-IV¹³ and a CTOPP-2¹⁴ that had been completed in April 2018 at [REDACTED] in [REDACTED]. Receipt of these results negated the need for the MCPS to conduct further updated educational assessments.

32. The educational assessments performed in [REDACTED] had outcomes similar to the previous cognitive testing performed in 2016. The Student performed in the gifted and talented range in verbal comprehension and five grade levels above grade placement expectations in academic knowledge. He scored average or above average in phonological awareness, rapid symbol naming, phonological memory, basic reading, reading comprehension, and writing

¹³ The WJ-IV is a test for cognitive ability and the fourth edition is the current edition.

¹⁴ The CTOPP-2 is a norm-referenced test that measures phonological processing abilities related to reading and writing development. The second edition is the current edition.

samples. He scored well below average or extremely low on processing speed in reading, reading rate, math calculation, math problem solving, math facts fluency, spelling, and written expression.

33. ██████ noted that his scores were “characteristic of the score profiles of students with attention disorders.” App. Ex. 4(c). The Student’s parents expressed a desire to the ██████ IEP team, as noted in the ██████ IEP, that the Student develop skills to overcome ADHD and reach his full academic potential. App. Ex. 4(d).

34. In January and February 2019, Ms. ██████ and Ms ██████, the school psychologist at ██████, contacted the Mother several times in an attempt to complete the desired psychological assessments. The Mother showed up to the first scheduled appointment without the Student and explained that the Student was refusing to participate in the assessment. Ms. ██████ and Ms ██████ attempted to accommodate the Student by offering to meet him at a location in the community rather than at a school, but the Student never met with Ms. ██████. Additionally, Ms. ██████ was unable to complete a classroom observation because the Student was not attending school.

35. Ms. ██████ was able to complete a Behavior Assessment System for Children – Third Edition (BASC-3)¹⁵ for the Student. The Mother and Ms. ██████ one of the Student’s teachers at ██████ in the spring of 2018, completed the assessments which Ms. ██████ then analyzed and included in her report.

¹⁵ The BASC-3 is a norm-referenced rating scale designed to help identify a variety of emotional and behavioral disorders of children. The third edition is the most current edition.

36. In place of the testing that could not be completed, Ms. [REDACTED] was able to review the Comprehensive Neuropsychological Evaluation that was completed for the Student in February 2016, exactly three years prior.¹⁶ Ms. [REDACTED] drafted a Report of School Psychologist, Initial Assessment on February 1, 2019 based on her review of the Student's records including: the February 2016 Comprehensive Neuropsychological Evaluation; the cognitive tests and classroom observations completed a [REDACTED]; conversations with the Mother and the MCPS IEP Team; and her analysis of the 2019 BASC-3 assessments. The report indicates, similar to the 2016 psychological report, that the Student's education performance is significantly impacted by his emotional, social and behavior development, and impairment. MCPS Ex. 8.

37. The report revealed that the Student's Mother and his teacher reported consistent significant concerns within the areas of executive functioning, school problems, and adaptive skills. More specifically, the Student's teacher reported that his conduct within the classroom may adversely affect other children. She reported that he lies, breaks the rules, has difficulty maintaining self-control, and has problems with: maintaining good grades, keeping up with lessons, completing assignments, reading, paying attention, listening well, staying focused and organized, and missing deadlines. MCPS Ex. 8.

38. Based on her analysis, Ms. [REDACTED] recommended the following to be implemented in the classroom and at home: intensive social-emotional and behavioral interventions, social skills training, modified task presentation, counseling, frequent breaks for calming and movement, a menu of coping strategies, larger tasks broken down into smaller more manageable

¹⁶ The MCPS has a policy of discussing whether or not new psychological testing is needed every three years. A test done within the previous three years is considered valid and may be considered valid for longer if the team so concludes. (Testimony [REDACTED]).

parts, self-management tools (e.g., checklists), opportunities for choice and to demonstrate knowledge in alternative ways, audiobooks, additional prompting, nonverbal and verbal cues to focus, frequent check-ins, self-regulation tools, reduced workload, extended time, increased wait times both before and after responses are given, problem solving skills training, small group, directions repeated/clarified, encouragement, positive feedback/praise, modelling of appropriate behaviors, and redirection. MCPS Ex. 8.

39. The requisite testing having been completed to the best of the MCPS' ability, the MCPS IEP Team held an IEP meeting on February 8, 2019. The team proposed to identify Other Health Impairment¹⁷ as the Student's primary disability, similar to past IEPs, and concluded that his needs could best be met at a non-public special education day school.

40. The Mother disagreed with the conclusions of the IEP Team and did not consent to initiate special education services.

41. On April 2, 2019, the Mother and the MCPS reached a settlement agreement that stated, in part, that the Mother would consent to initiate special education services by signing the IEP developed at the February 8, 2019 meeting, if the Student's placement was changed to ██████ Middle School, a comprehensive public school in Montgomery County. The Student would attend a mix of special education and general education classes with supports. The parties to the agreement also agreed to meet within thirty days of the Student's enrollment at ██████ to review and revise the IEP as necessary.

42. The Student was enrolled at ██████, but resisted attending. Ms. ██████, resource teacher for special education at ██████ encouraged the Student to come and take a tour of the school, and then offered a partial-day schedule to ease the Student into attending. The Student

¹⁷ This would make the Student's social and emotional disabilities related to ADHD the primary disability.

participated in the tour, and attended [REDACTED] for approximately four days¹⁸ after which he refused to return to school at [REDACTED]

43. From the time the Student left [REDACTED] in November 2018 until he attended several days at [REDACTED] in April 2019, the Student did not attend school or receive academic instruction.

44. The IEP Team met on May 3, 2019 and devised a plan aimed at encouraging the Student to return to school.

45. At the May 3, 2019 meeting, one of the Student's teachers, Dr. [REDACTED], who had observed the Student for approximately two class periods over the four days he attended [REDACTED] mentioned that he believed the Student was getting an abundance of attention from other students because he was a new student. The comment prompted the Mother to further investigate the Student's phone and social media accounts where she discovered that since he started at [REDACTED], the Student had been receiving countless taunting, threatening and malicious texts, photographs, and social media posts largely from students at [REDACTED]. App. Exs. 2 and 12. In response, the Mother filed a bullying complaint with [REDACTED] and the Student did not return to school there.

46. The IEP Team met on June 4, 2019. At the June meeting, the Mother informed the team about the extent of the bullying treatment the Student had experienced, and advised the team that the Student could not return to [REDACTED] due to the irreparable nature of the social situation there. The Team referred the Student's case to the Central IEP Team and approved the Student for Extended School Year (ESY) services.

47. The Student did not participate in ESY services. The Student spent the summer in [REDACTED] working.

¹⁸ It is unclear how many hours each day the Student attended, but he did not attend four complete school days. He did, however, arrive at school for at least a partial day on approximately four days.

Current IEP and Placement

48. The Central IEP Team met on August 1, 2019. In attendance at the meeting were:

██████████, IEP Case Manager; ██████████, psychologist ██████████, IEP Chair;

██████████, special education coordinator; ██████████, special education teacher;

██████████, Counselor; and the Mother.

49. As reflected in the August 2019 IEP, the MCPS Central IEP Team found that “[the Student’s] Other Health Impairment due to his ADHD impacts attention, executive functioning skills, and social emotional behavioral skills which affect his involvement in all structured and unstructured activities. Additionally, his Specific Learning Disability impacts his reading decoding and encoding, reading fluency, reading comprehension, written expression, written language content, math problem solving, and math calculation skills.” MCPS Ex. 23.

50. The IEP provides a placement for the Student at the ██████████ Program (██████████) within ██████████ Middle School, a public school in Montgomery County.

51. The ██████████ is a special education program located in several middle schools and high schools in Montgomery County. The program recommended for the Student is housed in a wing at ██████████ a general education school. ██████████ provides rigorous and challenging curriculum, conflict resolution through problem solving, counseling, and crisis intervention and inclusive opportunities. ██████████ teachers focus on teaching and strengthening students’ problem solving and flexible thinking. The academic classes generally present curriculum that is on or above grade level as the students in ██████████ tend to be gifted. The program allows for slow or timed integration into the general education environment a ██████████ as the individual student gains the skills for success in a comprehensive environment. MCPS Ex. 34, Testimony, ██████████,

██████████

52. There are approximately twenty-two students enrolled in [REDACTED] at [REDACTED] and approximately eight of those students are eighth graders. The [REDACTED] classes are generally comprised of five to ten students with two to three adults – one special education teacher and one to two assistants. Testimony, [REDACTED]

53. [REDACTED] can provide the Student with specialized instruction throughout the school day, counseling services to address his being identified as a highly vulnerable student, and interaction with non-disabled peers with supports during his school day. Testimony, [REDACTED]

54. The IEP provides for the use of assistive technology, including spell check or external spell check device; graphic organizer; audio materials; text to speech; human reader; and calculation device and mathematics tools. MCPS Ex. 23.

55. The IEP provides for accommodations including small group; frequent breaks; reduced distractions to self and others; notes and outlines; 50% extended test time; frequent or immediate feedback; repetition of directions; assistance with organization; reduced workload; breakdown of unit into smaller sections; home-school communication system; manipulative or sensory activities; frequent eye contact/proximity control; social skills training; daily check-ins; frequent rule reminders; reinforcement of appropriate behavior; advanced preparation for schedule changes; transition before or after the bell; and preferential seating. MCPS Ex. 23.

56. The IEP provides for two forty-five minute sessions of pullout counseling services per month and twice monthly group counseling with the [REDACTED] worker and/or psychologist. MCPS Ex. 23.

57. The IEP has the following goals:

- Given direct strategy instruction, fading adult support, and/or verbal, visual or gestural cues, the Student will demonstrate sustained attention to instruction and participation in class, and focus on assigned tasks across the school day in structured and unstructured settings.

- Given direct instruction, fading adult support, and menu of coping strategies, the Student will select a coping strategy and implement the strategy when feeling stressed, anxious, or frustrated across the school day in structured and unstructured settings.

- Given a graphic organizer, proofreading checklist, specific feedback for revisions, and word processor, the Student will revise and edit texts using a variety of writing techniques.

- Given a specialized reading instruction, the Student will apply phonics and word analysis skills in decoding and encoding words.

- Given an informational text, the Student will determine an author's point of view or purpose and analyze how the author distinguishes his or her position from that of others.

- Given modeling and manipulatives, the Student will solve real-life and mathematical problems involving angle measures, area, surface area, and volume.

- Given direct strategy instruction and extended opportunities for guided practice, the Student will solve multistep problems, presented in writing, posed with integers or rational numbers, including problems in which remainders must be interpreted.

- Given a grade-level text, the Student will read with sufficient accuracy and fluency to support comprehension.

· Given organizational strategies, visual cues, and fading verbal cues, the Student will demonstrate the executive functioning skills required to manage his workload and meet assignment requirements and deadlines.

· Given adult support, access to a word processor, and a graphic organizer, the Student will write narratives to develop real or imagined experiences or event using effective technique, descriptive details, and clear event sequences.

MCPS Ex. 23.

58. The Mother agreed with the August 2019 IEP.

59. Following the August 2019 IEP Team meeting, the Mother moved with the Student to [REDACTED], and re-enrolled the Student at [REDACTED] for the 2018-2019 school year.

60. After approximately one month in [REDACTED] the Mother decided that living in [REDACTED] was not feasible for her and she and the Student returned to Maryland. On September 23, 2019, the Mother contacted Mr. [REDACTED] and informed him that she wished to re-enroll the Student with MCPS. She expressed her disagreement with the Student's placement in [REDACTED] at [REDACTED]. She requested an IEP Team meeting to discuss the Student's participation in both general education and special education classes rather than beginning solely in [REDACTED]. MCPS Ex. 26.

61. An IEP Team meeting was held on or about October 2, 2019. In attendance were: [REDACTED], IEP Case Manager; [REDACTED], Pupil Personnel Worker; the Mother; [REDACTED] psychologist; [REDACTED], social worker; [REDACTED], behavior specialist; and [REDACTED], Principal. MCPS Ex. 27.

62. At the meeting, the Mother expressed her belief that the Student requires general education with supported math classes rather than the special education offered by [REDACTED]. The IEP Team rejected a change to the placement reflected in the August 2019 IEP because there is

no school-based data to support the requested placement. At the end of the meeting, the Mother agreed to work with [REDACTED] and the Pupil Personnel Worker to create a re-entry plan in hopes of having the Student returning to school. MCPS Ex. 28.

63. Following the IEP Team meeting, the Student and the Mother toured the [REDACTED] suite at [REDACTED]. Based on the tour, the Student and the Mother continued to express a strong aversion to [REDACTED] and a belief that the Student was much higher functioning than the students they observed in [REDACTED].

64. As of the date of the hearing, the Student had not attended any school since returning from [REDACTED] in September 2019.

65. The goals in the current IEP have remained the same since the February 2019 IEP but progress has not been measurable because the Student has not had sufficient school attendance to obtain measurable data.

DISCUSSION

The Legal Framework

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md. Code Ann., Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01. The IDEA requires “that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.” 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” which means a child –

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

20 U.S.C.A. § 1401(3)(A); *see also* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; and COMAR 13A.05.01.03B(78).

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

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

The Supreme Court revisited the meaning of a FAPE in a recent case, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s

circumstances. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017). Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Andrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001.

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

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

20 U.S.C.A. § 1414(d)(3)(A). Among other things, the IEP depicts a student’s current educational performance, explains how the student’s disability affects the student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A. IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present levels of academic achievement and functional performance, including . . . [h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children)” 34 C.F.R. § 300.320(a)(1)(i). If a

child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies, and supports to address that behavior. *Id.* § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. *Id.* § 300.324(b)(1).

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

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

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

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

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

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

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

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

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

Id. at 1001 (citation omitted).

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Endrew F.* court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Id.* (quoting *Rowley*, 458 U.S. at 206). At the

same time, the *Andrew F.* court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Id.* at 1002.

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

Least Restrictive Environment

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

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

Bullying

The Supreme Court and Maryland courts have not yet defined “bullying” in the context of the IDEA. I find helpful the definition provided by the United States (U.S.) Department of Education in a 2013 Dear Colleague Letter providing guidance to schools relating to the bullying of students with disabilities:

Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (*e.g.*, excluding someone from social activities, making threats, withdrawing attention, destroying someone’s reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (*e.g.*, cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

U.S. Dep't of Educ., Office of Special Educ. & Rehabilitative Servs., *Dear Colleague: Bullying of Students with Disabilities 2* (Aug. 20, 2013), available at

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf>¹⁹

The Office of Special Education and Rehabilitative Services (OSERS) and Office of Special Education Programs (OSEP) in the U.S. Department of Education have taken the position that “bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of [FAPE] under the IDEA that must be remedied.” *Id.* at 2-3.

Maryland has not yet addressed bullying under the IDEA. The Second Circuit recently addressed that issue in *T.K. ex rel. L.K. v. New York City Department of Education*, 810 F.3d 869 (2d Cir. 2016). In that case, the Parents of an autistic child specifically requested that the IEP team address bullying of their child on two occasions, but the school declined to do so. Frustrated by the school’s refusal to address the alleged bullying in the context of the IEP, the parents unilaterally placed their child in a private school and sought reimbursement, alleging that the school’s failure to prevent bullying deprived the child of a FAPE. The Second Circuit concluded as follows:

The Department’s persistent refusal to discuss L.K.’s bullying at important junctures in the development of her IEP “significantly impede[d]” [the parents’] right to participate in the development of L.K.’s IEP. This constituted a procedural denial of FAPE

Id. at 877 (emphasis added) (citation omitted).

¹⁹ Last viewed on November 26, 2019.

Because the court was holding that the school denied FAPE as the result of procedural violations, the court expressly noted:

[W]e also need not and do not reach the question whether the bullying at issue here was so severe that the failure to address it . . . resulted in a substantive denial of FAPE. For the same reason, we express no opinion as to whether the District Court’s four-part test for determining when bullying results in the substantive denial of a FAPE correctly states the law.

Id. at 876 n.3.

The District Court had held:

[U]nder IDEA the question to be asked is whether school personnel was deliberately indifferent to, or failed to take reasonable steps to prevent bullying that substantially restricted a child with learning disabilities in her educational opportunities.

. . . .

Conduct need not be outrageous to fit within the category of harassment that rises to a level of deprivation of rights of a disabled student. The conduct must, however, be sufficiently severe, persistent, or pervasive that it creates a hostile environment. . . .

The rule to be applied is as follows: When responding to bullying incidents, which may affect the opportunities of a special education student to obtain an appropriate education, a school must take prompt and appropriate action. It must investigate if the harassment is reported to have occurred. If harassment is found to have occurred, the school must take appropriate steps to prevent it in the future.

. . .

It is not necessary to show that the bullying prevented all opportunity for an appropriate education, but only that it is likely to affect the opportunity of the student for an appropriate education. The bullying need not be a reaction to or related to a particular disability.

T.K. ex rel. L.K. v. N.Y. City Dep’t of Educ., 779 F. Supp. 2d 289, 316-17 (E.D.N.Y. 2011).

That court further stated: “Where bullying reaches a level where a student is substantially restricted in learning opportunities she has been deprived [of] a FAPE. Whether bullying rose to this level is a question for the fact finder.” *Id.* at 318.

The Eastern District of Pennsylvania has also addressed the issue of bullying as it relates to the IDEA. *N.M. ex rel. W.M. v. Cent. Bucks Sch. Dist.*, 992 F. Supp. 2d 452 (E.D. Pa. 2014). In *N.M.*, the Court affirmed a Hearing Officer’s decision that a student with Post Traumatic Stress Syndrome (PTSD) was not denied FAPE based in part on bullying. The assistant principal had raised the issue of programs to address bullying and “collaborated with teachers to develop a plan to ‘quickly’ address ‘any issues that came up.’” *N.M.*, 992 F. Supp. 2d at 459. The school also placed the student’s locker “in a highly visible area,” arranged a place for him to go if a situation arose, and disciplined students identified as being involved in incidents that did occur. *Id.* Finally, the IEP team drafted an IEP that “contained significant changes to address the social/emotional needs of the student” and “a Behavioral Intervention Plan providing for coping skills, social skills, and self-regulating breaks.” *Id.* at 461. The Court also noted that the Hearing Officer found that the school’s proactive response included not just disciplining perpetrators, but also the administrator collaborating with the student’s teachers about observation and being proactive if they noticed any bullying. *Id.* at 470-71.

On the issue of bullying, the Hearing Officer found as follows:

[T]here is compelling evidence that the District did not deny the student FAPE in its handling of the student’s social/emotional needs. First, the District was proactive in every regard in its response to those needs when such needs were brought to its attention. Second, each District witness testified quite credibly that they saw no school-based difficulties with the student in terms of bullying or peer relations. Indeed, the District was never dismissive of any parent or student inquiry or request in [this] regard; but the District witnesses were all quite credible when they testified that such reports surprised them because they observed no incidents as suggested in the reports and the student’s general affect was engaged, pleasant, and seemingly not affected by the reported incidents.

Id. at 462 (citations to evidence omitted).

In *S.S. ex rel. Street v. District of Columbia*, 68 F. Supp. 3d 1 (D.D.C. 2014), the parent sought injunctive and declaratory relief against the District of Columbia under the IDEA,²⁰ alleging among other things that the District of Columbia Public Schools (DCPS) violated the IDEA by failing to provide S.S. a FAPE due to disability harassment; failing to implement the IEP; failing to protect S.S. from bullying; and failing to provide home instruction. The court rejected the parent's argument that the Hearing Officer erred in finding that parent failed to prove S.S. was denied a FAPE due to disability harassment and bullying.

In *S.S.*, the Hearing Officer had found that the student missed 103 days of school in one school year due to hospitalization, and his absence—rather than bullying—resulted in failure to make academic progress during that year. *Id.* at 15. The Hearing Officer further found that the parent failed to show that S.S.'s fear and avoidance of school during another school year was due to bullying. *Id.*

In *M.L. v. Federal Way School District*, 394 F.3d 634, 650 (9th Cir.2005), the Ninth Circuit recognized that unremediated teasing by classmates can deny a FAPE. In that case, the court considered whether a teacher was deliberately indifferent to bullying and the abuse so severe that a child can derive *no* educational benefit.

The position that, under some circumstances, bullying can result in the denial of a FAPE is consistent with the case law and with the position taken by the U.S. Department of Education in its 2013 Dear Colleague Letter:

Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his or her IEP. The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then

²⁰ The parent also alleged violations of Section 504 of the Rehabilitation Act.

determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly. Additionally, parents have the right to request an IEP Team meeting at any time, and public agencies generally must grant a parental request for an IEP Team meeting where a student's needs may have changed as a result of bullying.

Bullying of Students with Disabilities, supra, at 3.

The U.S. Department of Education elaborated in 2014 as follows:

[F]or the student with a disability who is receiving IDEA FAPE services . . . a school's investigation should include determining whether that student's receipt of appropriate services may have been affected by the bullying. If the school's investigation reveals that the bullying created a hostile environment and there is reason to believe that the student's IDEA FAPE services . . . may have been affected by the bullying, the school has an obligation to remedy the effects on the student's receipt of FAPE. Even if the school finds that the bullying did not create a hostile environment, the school would still have an obligation to address any FAPE-related concerns, if, for example, the school's initial investigation revealed that the bullying may have had some impact on the student's receipt of FAPE services.

. . . .

Ultimately, unless it is clear from the school's investigation into the bullying conduct that there was no effect on the student with a disability's receipt of FAPE, the school should, as a best practice promptly convene the IEP team . . . to determine whether, and to what extent: 1) the student's educational needs have changed; 2) the bullying impacted the student's receipt of IDEA FAPE services . . . ; and 3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly.

U.S. Dep't of Educ., Office of Special Educ. & Rehabilitative Servs., *Dear Colleague* 4-5, 7

(Oct. 21, 2014) (footnotes omitted),

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.²¹

The 2014 Dear Colleague Letter further indicates that changes that might trigger the obligation to convene the team and amend the student's IEP might include a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral outbursts, or a rise in missed classes.

²¹ Last viewed on November 26, 2019.

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, in this matter, the Student has the burden of first proving that the MCPS failed to provide him with FAPE for the 2019 – 2020 school year, because the IEP placing the Student in [REDACTED] at [REDACTED] is not reasonably calculated to provide the Student with a FAPE. The Student then must proving that the Student’s placement at [REDACTED] in general education classes with supports and accommodations would provide the Student with a FAPE.

I find that the Student has not met this burden and, therefore, conclude that the IEP developed by the MCPS in August 2019, and amended in October 2019, was reasonably calculated to provide the Student a FAPE for the 2019 – 2020 school year.

Scope of the Decision

A preliminary word about the scope of this hearing is in order. Throughout the presentation of her case, the Mother argued that the Student was the victim of bullying at [REDACTED], that [REDACTED] mishandled the Mother’s bullying complaint, and that, as a result, the Student stopped attending school. She further alleged that the IEP Team’s recommendation to change to the Student’s placement from [REDACTED] to [REDACTED] at [REDACTED] was an improper reaction to the bullying that the Student experienced at [REDACTED], and acted to punish the Student rather than the student-bullies.

The MCPS argued that the bullying and the school’s response to the bullying at [REDACTED] is not relevant to the issue raised in the Mother’s due process complaint regarding whether or not the Student’s placement in [REDACTED] a [REDACTED], pursuant to the IEP developed in August 2019 and amended in October 2019, is reasonably crafted to provide the Student with a FAPE. I agree.

The Complaint did not expressly set forth any concerns about whether the IEP as revised in April 2019 to place the Student at [REDACTED] was carried out appropriately so as to afford the Student a FAPE while at [REDACTED]. Likewise, the Complaint did not mention, or even allude to the bullying at all. Both the IDEA and the controlling provisions of the federal regulations prohibit a party from raising issues at the hearing not raised in the Complaint. 20 U.S.C.A § 1415(f)(3)(B); 34 C.F.R. § 300.511(d). I understand this to be a requirement grounded in principles of fairness and notice so the school system is able to be on notice of the issues, to allow for resolution of the issues through a non-adversarial dispute resolute mechanism if the parties are mutually agreeable, and for it to reasonably defend itself against a due process complaint. *C.F. v. N.Y. City Dep't of Educ.*, 746 F.3d 68, 78 (2d Cir. 2014) (“The key to the due process procedures is fair notice and preventing parents from ‘sandbag[ging] the school district’ by raising claims after the expiration of the resolution period.” (brackets in original)).

I am mindful of the characterization that “the waiver rule is not to be mechanically applied” nor does it demand blind obedience any and all other considerations notwithstanding. *Id.* “[T]he IDEA itself contemplates some flexibility. The statute does not require that alleged deficiencies be detailed in any formulaic manner” *Id.* While noting that trial courts in the Second Circuit have held that an issue that is not raised in a due process complaint is foreclosed from judicial review, the Court declined to prohibit review of the contested issue in *C.F.*, and considered several factors in its analysis. *Id.* Chiefly, and in no particular order, the Court found of significance that the issue was reached on the merits by the administrative adjudicator at the due process hearing and accordingly there was a developed record for judicial review, the issue

went to the heart of the dispute, and the complaint contained a general allegation of the larger issue that was sufficient to provide “fair notice” to the school system of the contested narrower issue. *Id.*

Applying the *C.F.* Court’s holding in *J.W. v. New York City Department of Education*, 95 F. Supp. 3d 592, 603 (S.D.N.Y. 2015), the U.S. District Court for the Southern District of New York found the *C.F.* factors met and held the contested issue was properly before it for review. In its analysis, the *J.W.* Court gave significant weight in its analysis to the record development before the administrative adjudicator noting that “because the Department cross-examined the Parents’ witnesses extensively on the issue of methodology, it cannot genuinely claim that it was prejudiced by the [administrative adjudicator’s] consideration of such evidence.” *Id.* at 603 (internal quotation marks omitted). See *Adam D. v. Beechwood Indep. Sch. Dist.*, 482 F. App’x 52, 57-58 (6th Cir. 2012) (finding that even if the school system lacked pre-hearing notice the issue was raised at the hearing and the school system had “ample opportunity to present a defense on that matter during the four-day hearing”); *Dist. of Columbia v. Pearson*, 923 F. Supp. 2d 82, 87-88 (D.D.C. 2013) (finding that where an issue was not raised in the due process complaint nor was there any evidence adduced at the hearing in support or opposition, it was error for the administrative adjudicator to raise and decide the issue as a matter of first instance in his opinion); *Brown v. Dist. of Columbia*, 568 F. Supp. 2d 44, 51 (D.D.C. 2008) (finding an issue not expressly set forth in a due process complaint was properly before the administrative adjudicator and, considering the conduct of the parties at the hearing, observing that “no one argued that this issue was not properly raised [i]n fact, all parties appeared to agree to the contrary”); see also *M.H. v. N.Y. City Dep’t of Educ.*, 685 F.3d 217, 250 (2d Cir. 2012) (“[I]t does not follow from the fact that the [school system] bears the burden of demonstrating that the

IEP provides a FAPE that it should be permitted to argue issues outside the scope of the due process complaint without opening the door for the plaintiffs.” (internal quotation marks omitted)); *Morgan v. Greenbrier Cty. W. Va. Bd. of Educ.*, 83 F. App’x 566, 570 (4th Cir. 2003) (observing that Court did not “have before us the issue of the appropriateness of any IEP that was developed or any actions taken after the due process hearing”).

Although not specific to the IDEA and the law of special education, I have also considered general principles of administrative law that even when notice is not provided prior to an administrative hearing, “due process is not offended if an agency decides an issue the parties fairly and fully litigated at a hearing.” *Yellow Freight Sys., Inc. v. Martin*, 954 F.2d 353, 358 (6th Cir. 1992) (“[T]he test is one of fairness under the circumstances of each case—whether the [defendant] knew what conduct was in issue and had an opportunity to present his defense.” (quoting *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1074 (1st Cir.1981))).

I find these authorities persuasive and they guide my analysis here. Applying the *C.F.* factors and the holdings of the cases set forth above to the facts of the case at bar, and considering the general principles of fairness, I conclude the issue of the bullying was properly raised at the hearing in terms of a factor to consider when analyzing the Student’s refusal to attend school at [REDACTED] and the history that led to the decision to place the Student in [REDACTED]. I conclude that the bullying as it impacts the question of whether or not the Student received a FAPE while at [REDACTED] was not properly raised in the Complaint or at the hearing, and therefore is not before me. Unlike *Yellow Freight Sys.*, above, the Mother did not explicitly raise any question as to the Student’s placement at [REDACTED]. In fact, she repeatedly stated that it was a “perfect placement.” Testimony, Mother. While the Mother, during the hearing, tied the bullying to the Student’s refusal to attend school at [REDACTED] she never raised a question about

whether the bullying impacted his receipt of FAPE at [REDACTED]. To the contrary, she specifically focused her argument on how the bullying impacted the current placement pursuant to the IEP created in August 2019 and amended in October 2019, and as a result, the MCPS limited their case in regards to bullying, on that issue. Unlike in *Brown*, above, the Mother's presentation of evidence in regards to the bullying was not unopposed by the MCPS. The MCPS objected to the issue as early as the first pre-hearing conference on October 17, 2019 where the MCPS argued that [REDACTED]'s handling of bullying was not relevant to the issue posed in the Complaint regarding the August and October 2019 IEPs and the Student's placement in [REDACTED] at [REDACTED].

A review of the Complaint makes clear the Student was robustly contesting the adequacy of the IEP as revised in August and October 2019 and their provision of a FAPE, focused on the issue of placement. The February 2019 IEP, and April, May and June 2019 revised IEPs and their provision of a FAPE was, without question, not included. The issue of bullying as it relates to the August and October 2019 placement at [REDACTED] is subsumed and encompassed in the broader issues set forth in the Complaint and, in that sense, was properly before me at the hearing. At least some notice of the issue, defined in that way, was provided to the MCPS. But I was not tasked with deciding, and the MCPS was not tasked with defending, the issue of the bullying as it relates to whether or not the Student received a FAPE prior to his re-enrollment in the MCPS upon returning from [REDACTED] in October 2019. In June 2019, the Mother told the IEP Team that the social situation at [REDACTED] was irreparable and, as a result, the Student would not return to [REDACTED] MCPS Ex. 21. In response, the IEP Team referred the Student's case to the Central IEP Team for consideration of a new placement. MCPS Ex. 22. It is that placement decision, and whether that placement was reasonably calculated to afford the Student a FAPE, that is before me.

**The IEP as developed on August 23, 2019 and amended on October 2, 2019
was reasonably calculated to provide the Student with FAPE**

An IEP is the “primary vehicle” through which a school provides a student with FAPE. *M.S. ex rel Simchick v. Fairfax Cty. Sch. 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. Sch. Dist. of Greenville County*, 303 F.3d at 527; *see* 20 U.S.C.A. § 1414(d)(1)(A). 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. When developing the Student’s program as amended in August and October 2019, the team considered all of the assessments, progress reports, history and information provided by the parents, the staff at the Student’s out-of-county placements, and the MCPS staff.

Certainly, the critical underpinning of the IDEA, is that students with disabilities must be provided with an individualized program of education commensurate with their abilities to allow them to make reasonable academic progress. *Rowley*, 458 U.S. at 203. Therefore, “educational benefit” requires that “the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.” *Rowley*, 458 U.S. at 200; *see also MM ex rel. DM v. Sch. Dist. of Greenville Cty.*, 303 F. 3d 523, 526 (4th Cir. 2002) (*citing Rowley*, 458 U.S. at 207); *A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004); *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989).

The disputed placement was reached in accordance with the applicable law and regulations.

The Mother's Position

The Mother primarily contends that the Student has had success in general education classes with supports and is more advanced than the students enrolled in [REDACTED] at [REDACTED]. She asserts that the Student has experienced bullying and negative treatment when he has been in school-placements where his peers easily label him as a special education student, and because, she contends, [REDACTED] is such a program, the Student will refuse to attend school and will therefore not receive a FAPE. The Mother does not challenge the IEP goals and objectives or the services and accommodations provided in the IEP. Rather, the crux of the Mother's position is that the Student will be unable to access educational content in [REDACTED] because he will refuse to attend a self-contained special education program. The Mother's position is that the Student will refuse to attend a self-contained special education program where he is away from his non-disabled peers for the entire school day.

The Mother agrees that [REDACTED] is well-equipped and well-staffed to meet the Student's related service needs, but that because the Student has had success in general education classes in the past, the least restrictive environment would be placement in general education classes at [REDACTED] with access to [REDACTED]. The Mother asserts that the Student was bullied at school because he is labelled as a special education student. She made this argument in reference to bullying he received at [REDACTED] in kindergarten and first grade; at [REDACTED] community in relation to being held back in fifth grade; and at [REDACTED]. She also argued that he has been a victim of unruly and disorderly conduct common of the special education students he has been placed with in specialized, segregated special education placements. She made this argument in reference to the unruly and violent behavior she related as the Student experienced on the bus that took the Student to and from [REDACTED]; from the students in the [REDACTED] cluster program at

██████████, and ██████████ and she cited observing similar “chaotic” behavior characteristic of “special education students” when she and the Student toured ██████████ at ██████████. All of this behavior that the Student has witnessed and been victim to, the Mother argued, has resulted in his refusal to attend school, and post-traumatic stress disorder. The Mother argued that the only remedy would be to place the Student with non-disabled peers and afford him supports and services brought into a general education setting, such that he not be labelled as, or feel as though he is, a “special education student.”

The Mother argued that the Student has shown progress and success in general education classes over the past two years. She stated that he was enrolled in general education classes while at ██████████ in ██████████ during his repeated fifth grade year and a portion of his sixth grade year, and while at ██████████ during the remainder of his sixth grade year and a quarter of his seventh grade year. She presented character letters that she argued speak positively about the Student’s progress while in these general classes, and while participating in extra-curricular activities in the community with non-disabled peers. App. Exs. 4(b), 5(c), 6(a) and (b). She also elicited testimony from Dr. ██████████ that on the one or two days he observed the Student behaved appropriately in his class at ██████████. Testimony, ██████████. Accordingly, the Mother asserts that the MCPS has failed to prove that the Student needs small self-contained special education classes to derive meaningful academic benefit.

The Mother maintains that the psychological and behavioral services proposed by the MCPS in the revised August and October 2019 IEP are required for the Student to make meaningful educational progress and can be successfully administered to the Student outside of the self-contained environment of ██████████. In support of her contention, the Mother presented the testimony of the Student’s psychologist, Dr. ██████████ who, at the time of the hearing, had been

treating the Student for six weeks. Dr. [REDACTED] testified that she strongly disagreed with the MCPS's placement of the Student in [REDACTED]. Dr. [REDACTED] explained that the Student is very smart and requires intellectual stimulation. She feared that he would not receive the appropriate academic rigor from [REDACTED] because "students in special education usually have lower IQs," although she was, admittedly, not particularly familiar with [REDACTED] at [REDACTED]. Dr. [REDACTED] agreed with the MCPS that the Student requires therapy and behavioral supports. She stated that the Student "has huge strengths and huge weaknesses" and "cannot contain his emotions." In reference to the bullying at [REDACTED] which she opined was the worst she's ever seen, she stated that the Student's behavior likely provoked the bullying and she's "not letting him off the hook." She believes the Student "needs help learning how not to provoke bullying" and that he will best obtain those skills by being "with normal kids who treat him normally" so that he can learn to get along with them. She does not believe the students in [REDACTED] are "normal" and, therefore, disagrees that the Student should be placed in the program.

Finally, Dr. [REDACTED] and the Mother presented their belief that the MCPS utilized improper data when reaching their placement decision on the revised August and October 2019 IEP. Specifically, they disagree with the validity of [REDACTED]'s Report of School Psychologist, Initial Assessment that was completed in February 2019. MCPS Ex. 8. Dr. [REDACTED] testified that the report is "fraudulent" because Ms. [REDACTED] completed it without having met the Student or observing him in school. Dr. [REDACTED] also contested Ms. [REDACTED]'s use of the psychological testing reflected in the 2016 Neuropsychological Report completed by [REDACTED], Ph.D., on February 10, 2016 (MCPS Ex. 5), because that testing was "more than three years old." Dr. [REDACTED] stated that the MCPS is required to do new psychological testing every three years and opined that Ms. [REDACTED] created the report with the old information in an effort to pass it off as new information that

she had personally obtained. The Mother and Dr. [REDACTED] also contested Ms. [REDACTED]'s use of a BASC-3 assessment that had been completed by one of the Student's sixth grade teachers when the Student was currently in the seventh grade. The Mother argued that the MCPS should be required to do new testing, consider all of the testing that was completed by [REDACTED] complete a classroom observation, and meet with the Student in order to come up with a valid placement for the Student.

The MCPS's Position

The MCPS contends that the IEP team correctly determined that the IEP amended in August and October 2019 was absolutely designed to provide the Student with FAPE in the least restrictive environment in [REDACTED] at [REDACTED] for the 2019-2020 school year. That program would have provided the Student a FAPE in a self-contained special education small resource classes while still being exposed to non-disabled peers in extra-curricular activities, and at lunch, with the goal of integrating general education classes as his social and emotional skills improve. It contends that the IEP was reasonably calculated for the Student to achieve meaningful educational benefit.

Pointing to the fact that the Student is socially vulnerable and provocative and has problems attending to classroom content, even in small contained classrooms in which he has participated in the past, the MCPS asserts that the Student could not possibly make meaningful educational progress in a large school such as [REDACTED], in general education classes with significantly greater distractions. Citing that the Student was unable to successfully attend [REDACTED] a large MCPS school, in a comprehensive classroom environment, the MCPS contends that because the IEP placement requested by the Mother mirrors the IEP the Student had while at [REDACTED], he is destined to fail and, at worst, continue to be victimized by bullying.

Underpinning the MCPS's contention that the Student's placement at [REDACTED] is appropriate is that the Student has a proven history of social difficulty and that he would not make progress toward achieving his annual goals, nor benefit from his program in general education classes and in a setting with a building population as large as [REDACTED], and similar to [REDACTED]. The MCPS argues that the Student's placement is focused on his social and emotional needs because that is what has historically stood in the way of his being able to access the curriculum, and played a part in the failure at [REDACTED]. The Student has not made significant progress in executive functioning and social skills and the MCPS contends that [REDACTED] is specifically designed to teach a robust curriculum while focusing on problem solving and flexible thinking as it applies to social and behavioral concerns.

The MCPS and the Mother agree that the bullying at [REDACTED] was extreme, unacceptable, and unfortunate. The Mother believes that the most important step in the Student's education is allowing him to participate in classes within the general, non-disabled population such that he is not labeled as a "special education" student and therefore prone to bullying. The MCPS disagrees and believes that the Student's behavior, and not his label, is a triggering factor making him vulnerable and the victim of bullying, and he will remain so until his behavior improves. To address that, the MCPS believes the most important step in the Student's education is to teach him social and coping skills in a setting where he is protected from the inevitable difficult social interactions of a large, general school population such that he can re-enter the general population with appropriate skills to prevent another situation such as what happened at [REDACTED] or any of his previous placements. The MCPS sees [REDACTED] as the appropriate setting to address the social and

behavioral issues while providing a continuum of services as the Student transitions from a schedule that is exclusively within [REDACTED] and into a hybrid schedule of general education classes with [REDACTED] services.

The MCPS maintains that [REDACTED] is well-equipped and well-staffed to meet the Student's educational and related service needs in the least restrictive environment. To that end, the MCPS does not acknowledge that the Student has exhibited success in general education in the past. The Student has a history of school refusal and has missed school over long periods of time including, most recently, having only attended a few sporadic weeks of school since December 2018. The MCPS asserts that the Mother has failed to prove that the Student has performed well in general education classes such that he has derived meaningful academic benefit.

Finally, the MCPS believes they followed appropriate protocol when creating the amended August and October 2019 IEPs. The MCPS presented testimony that on January 14, 2019, the IEP Team met to review the Student's case. At that meeting, the MCPS determined that they required additional educational and psychological testing in order to create a new IEP because the Student had been out of MCPS schools for two years. MCPS Ex. 7. After that meeting, the MCPS received the results of educational testing that had been completed by [REDACTED] in [REDACTED] and concluded that they did not require additional educational testing. The MCPS relied, in part, on those educational testing results in making their IEP decisions following the August and October 2019 team meetings. Ms. [REDACTED] and Ms. [REDACTED] testified that between the January 14, 2019 meeting and the following February 1, 2019 IEP Team meeting, they attempted to schedule a time to meet with the Student and conduct psychological testing, but the Student did not participate. Ms. [REDACTED] testified that while it is not ideal to complete a psychological evaluation without having met with the Student or conducted new testing, given

extenuating circumstances such as here, where the Student is not currently in school and refuses to participate in the testing, it is sound to rely on the previous testing, especially when that testing has been done within the past three years as was the case with the neuropsychological report completed on February 10, 2016. Further, Ms. [REDACTED] testified that the results of the previous testing mirrored the results of her testing utilizing the BASC-3 and, therefore, she was satisfied that the 2016 report was still reliable. Additionally, Ms. [REDACTED] testified that the BASC-3 assessment was completed in a sound manner. In order to get a teacher-report, Ms. [REDACTED] reached out to a number of the Student's teachers from [REDACTED] as that was his most recent placement, and while the teachers in [REDACTED] are not required to respond, one teacher did respond with a completed BASC-3 assessment. Ms. [REDACTED] testified that it was not relevant what subject the responding teacher taught or whether the Student had special education accommodations or not during the teacher's observations because it is a wholly subjective report.

The MCPS argues that under the applicable law, the analysis ends on the first of the two-prong analysis of *Burlington* and *Carter* because the IEP was calculated to provide FAPE and because [REDACTED] at [REDACTED] was an appropriate placement.

In the event that I find that the IEP placement, as amended on August 23, 2019 and October 2, 2019, was inappropriate for the Student, the MCPS also contends that the Mother has not proven that [REDACTED] would provide services and accommodations that give the Student any greater opportunity for meaningful educational benefit than the Student's home school of [REDACTED], and therefore, [REDACTED] would be an inappropriate alternative placement for the Student.

Analysis

Other than the Mother's testimony, her primary witness regarding her position that the Student does not require small self-contained classrooms to access educational content was Dr. [REDACTED]. The Mother did not present any educational expert to testify that the Student does not need a small, self-contained classroom to access learning and make educational progress. The Mother, I believe, thinks that I should reach the conclusion that the Student needs general education classes with non-disabled peers based on the chaos and misery of his time at [REDACTED] together with what she defines as success at [REDACTED] and [REDACTED].

Dr. [REDACTED] was accepted as an expert in psychology. She has thirty-two years of experience in psychology but does not have a background or any experience in school psychology. She likewise is not familiar with [REDACTED]. She testified that she has treated two patients who were in the [REDACTED] program, but her stated understanding that [REDACTED] was meant for students with lower IQs who presented as "not normal" was in direct conflict to the explanation of [REDACTED] by the three MCPS experts who testified about it. Dr. [REDACTED] has never visited the [REDACTED] program or talked to any MCPS employee about it.

At the time of the hearing, Dr. [REDACTED] had been treating the Student for approximately six weeks. Dr. [REDACTED] expressed her opinion that the Student is very bright and requires intellectual stimulation. She also expressed her opinion that he requires therapy and that his social and emotional interactions are inappropriate and can provoke bullying such as what the Student experienced at [REDACTED]. Dr. [REDACTED] referenced a movie she had seen titled "Eighth Grade" as a source where she has gathered information about how eighth graders interact and the importance of socialization at that age. Based on those observations, Dr. [REDACTED] testified that the Student

would best be served in a general education setting where he would be intellectually challenged while also learning how to be with “normal kids who treat him normally.”

I do not have a high degree of confidence in Dr. [REDACTED]’s ability to determine the Student’s educational needs. She is not an educator, and has no demonstrated expertise in special education or reasonable understanding of [REDACTED]. Although I have no reason to doubt her good intentions for the Student, she did not seem particularly familiar with the Student’s record from the MCPS or previous schools. Dr. [REDACTED] testified that the Student should be given the opportunity to start at the least restrictive placement which would be in general education classes, without giving any credence to his history of school refusal and failure in even more restrictive placements. It may seem logical and reasonable to testify that the Student’s failures were all caused by the bullying he was victim to at [REDACTED], but even Dr. [REDACTED] testified that the Student was not “innocent” in those attacks and requires assistance in learning “how not to provoke bullying.” Dr. [REDACTED] did not give any reasoning or specific facts to support her testimony that the bullying at [REDACTED] occurred in isolation and should not be considered as a symptom of the Student’s disabilities when making future placement decisions. I give her opinion, to the extent that it was expressed, that [REDACTED] is not an appropriate placement for the Student to make educational progress, little weight.

The Mother also relied on hers and Dr. [REDACTED]’s conclusion that the psychological assessment completed in 2019 and relied on, in part, for the Student’s placement at [REDACTED], was “fraudulent.” Testimony, Dr. [REDACTED]. Dr. [REDACTED] opined that Ms. [REDACTED] was attempting to pass off the testing results completed in preparation for the 2016 neuropsychological report (MCPS Ex. 5) as her own. She also stated that the MCPS is required to complete new psychological testing every three years making the 2016 report invalid. Dr. [REDACTED] questioned how Ms. [REDACTED]

could draw any conclusions without having met the Student, developed rapport, and had a number of interactions with him. Dr. [REDACTED] also testified that when she first met the Student, it was for the sole purpose of signing an MCPS form indicating that he required Interim Instructional Services (IIS). For IIS related to a qualified mental health condition, the form requires a licensed psychologist, licensed psychiatrist or certified school psychologist to certify that a student requires IIS due to a mental health diagnosis that would be exacerbated if the Student were to be required to attend school. Dr. [REDACTED] stated that she did not expect to treat the Student, just meet with him and sign the form. She said that at that first meeting, they did not talk, but just went through the form. The juxtaposition between Dr. [REDACTED]'s characterizations that a psychological report requires rigorous in-person consultation with a Student, and her horror at one being prepared without taking those steps paired against her willingness to sign off on a Student's need for IIS without having treated him, or even talked with him, leads me to conclude that the former characterization is possibly self-serving for the purposes of presenting her position during the hearing.

Ms. [REDACTED] testified that she agreed it was best practice to meet a student, conduct a new set of psychological tests, and perform a classroom observation, but when that was not possible, as here, it is appropriate to rely on a record review. Ms. [REDACTED] attempted to gather new information, but the Student was not willing to participate. In fact, the Mother opined in January 2019, when the testing was first suggested, that the Student would resist participating. Testimony, [REDACTED]; [REDACTED]; Mother. Ms. [REDACTED] explained that while it is the MCPS' practice to discuss whether or not to do updated testing every three year, there is not a mandate that requires that new testing be done. Additionally, the 2016 testing, having been completed on February 10, 2016, fell just within the three year time period when Ms. [REDACTED] reviewed it in late January 2019.

I found Ms. [REDACTED]'s testimony about the procedures regarding the MCPS' psychological testing to be more persuasive than that of Dr. [REDACTED]. Ms. [REDACTED] was qualified to testify as an expert in the field of school psychology and practices in that field within the MCPS. She testified credibly about the best practices related to psychological testing and the pitfalls she encountered in this specific case when the Student refused to participate. She was able to show, through the responses she received on the BASC-3 and the records she reviewed from the Student's file, that the results of her psychological report were supported by the Student's history. Her testimony was also corroborated by Ms. [REDACTED] who was accepted to testify as an expert in special education and was also involved in the attempts to reevaluate the Student's needs and performance in early 2019. I give little weight to Dr. [REDACTED]'s opinion, to the extent that it was expressed, that MCPS relied on invalid reports in making its decision to place the Student at [REDACTED]

The Mother also relied on her presentation of character letters and observations. The first was a classroom observation completed while the Student was a sixth grader at [REDACTED]. App. Ex. 4(b). In the observation, the writer stated that "[The Student's] oral reading skills are excellent, appropriate and on par with other members of his class." No one from [REDACTED] was present to testify at the hearing.

The second were two notes by [REDACTED] about the Student's performance at [REDACTED] in or about April 2016. App. Ex. 5(c). It was unclear from the record what the original purpose of these notes was, but within the notes, Ms. [REDACTED] stated, "[the Student] is a very kind, helpful student who socially acclimated very well....I am so proud of how well you transitioned into [REDACTED] [REDACTED] I know how hard it can be transferring into a new school so far into the school year, but

you managed to do it!” App. Ex. 5(c). Ms. [REDACTED] nor anyone from [REDACTED] was present to testify at the hearing.

The third was a February 12, 2016 letter drafted by the Student’s Cub Scout den leader, [REDACTED]. App. Ex. 6(a). The letter was written as a character reference for the Student’s application to [REDACTED] in [REDACTED]. In the letter, Mr [REDACTED] stated, “[the Student] is in our Cub Scout Pack [REDACTED] and as a second year Webelos he is on track to earn the Arrow of Light, the highest award available for Cub Scouts.” App. Ex. 6(a). Mr. [REDACTED] was not present to testify at the hearing and there was no testimony as to whether or not the Student obtained the Arrow of Light.

The fourth was a February 17, 2016 letter drafted by the Student’s [REDACTED] [REDACTED] [REDACTED]) teacher, [REDACTED]. App. Ex. 6(b). The letter was written as a character reference for the Student’s application to the [REDACTED]. In the letter, Ms. [REDACTED] stated, “[the Student] started class as shy and reserved, but as he built confidence he has thrived. He enjoys the abstract questions that the faith brings and has made many social connections with new friends...Given strategies and alternate ways to express himself, [the Student] is engaged in the class and gaining a greater understanding of himself and his faith.” App. Ex. 6(b). Ms. [REDACTED] was not present to testify at the hearing.

Because each of the letters came from experiences the Student had in controlled, small group settings, they actually support the MCPS’ opinion that [REDACTED] is appropriate. The Mother testified that [REDACTED] and [REDACTED] are both rather small schools. The Cub Scout troop the Student participated in was with a group of students who were younger than him. In the 2016 Neuropsychological Report (MCPS Ex. 5), [REDACTED], Ph.D., concluded that the Student showed success in this group because in groups of peers his age, “[the Student] struggles to manage his

anxiety and feels a need to control the interactions. His age peers are more aware of his deficits and less tolerant of his need for control. He has been bullied in some of these situations but has been more successful with structure.” MCPS Ex. 5, pg. 15. The [REDACTED] class that the Student participated in was a class specifically designed for special education students. The observation note from [REDACTED] stated that the Student had excellent oral reading skills, but that was in direct contrast to the Mother’s testimony that he struggles with oral reading. Regardless, the MCPS is not contesting that the Student requires robust, advanced curriculum which is specifically why the IEP team ruled out several of the non-public special education placements that could not provide academic rigor. Testimony, [REDACTED]. The MCPS is, rather, concerned with the Student’s ability to be successful in an environment where he is surrounded by a large population of non-disabled peers. The [REDACTED] school observation also mentions that the Student was absent the previous day, unable to stay on task, and easily distracted. In sum, the character letters and observation notes support the notion that the Student best performs in controlled, small-group settings with like-students, as is available in [REDACTED]

Finally, the Mother provided several of the Student’s report cards as proof that he performs well in a general education setting. The earliest report card is from the Student’s 2015-2016 school year at [REDACTED] when he was in the fifth grade. The report card reflects, over the course of three quarters, a general mix of As, Bs and Cs with one D in math and one D in reading. The second and third report cards are from [REDACTED]. The first reflects grades from the student’s 2016-2017 school year when the Student repeated the fifth grade. The report card is similar to the one from [REDACTED] with a general mix of As, Bs, and Cs but only reflects one D in his fourth quarter of math. The second reflects the following school year when the Student attended [REDACTED] for three quarters of sixth grade. This report card reflects mostly As and Bs

with one C in Social Studies; however, no grades are reported in Math, and several letter grades are substituted for a notation of “improvement needed.”

I am impressed that even with his many challenges, the Student does well in his academics. I don’t find, however, that these report cards prove the Student would best perform in general education classes at a large MCPS public middle school as the Mother asserts.

██████████ is a special education school where the student received a one-to-one aid and was not integrated into any classes with nondisabled peers. ██████████ is likewise a small school. I do not have any information to characterize or even conclude that the Student was in general education classes while at ██████████ or what, if any, special education services he received there. It is impossible to conclude that these report cards show the Student’s performance was anything but consistent between fifth and sixth grade. Additionally, if the Mother contends the Student was in general education classes at ██████████, and that the report card demonstrates that is the environment where he excels, I do not find that the report card from the Student’s first year at ██████████ where he repeated the fifth grade curriculum, shows that. I would expect that if the Student were in the optimal environment, and repeating a grade level curriculum, his report card would reflect a vast improvement over the previous year, and it does not.

The MCPS, in contrast, presented six expert witnesses, four in special education, one in special education with an emphasis on students with social and emotional needs, and one in school psychology. ██████████, school psychologist, reviewed the neuropsychological report prepared by ██████████ in 2016 and completed her own, updated, psychological report. Ms. ██████████ concluded that the data in the two reports and the Student’s records support the conclusion that the Student requires extensive social and emotional interventions. Testimony, ██████████; MCPS Ex. 8.

The five MCPS special education experts all opined that the Student's IEP as amended in August and October 2019 reflects the appropriate placement for the Student and that there is no less restrictive environment that would be reasonably calculated to provide the Student with a FAPE. [REDACTED], with fifty years of experience in special education and vast expertise in the private placement of children, testified that while he initially thought that [REDACTED] (The [REDACTED] [REDACTED]) was the appropriate placement, after the August 1, 2019 IEP Team meeting he became certain that [REDACTED] was the best placement for the Student. Mr. [REDACTED] has a long history of exposure to the Student and believes that the Student is extremely bright and capable, but requires assistance in the area of his social and emotional needs in order to best access his academic potential. He stated that the Student is doing well academically, despite his struggle with learning disabilities, but really requires assistance with his social and emotional needs. He testified that [REDACTED] provides services primarily for students, like the Student, who are intellectually gifted but require assistance with executive functioning, problem solving and social skills. Because of the Student's need for academic rigor, Mr. [REDACTED] ruled out some of the private special education placements and determined that [REDACTED], a program that can offer both academic rigor and behavioral supports that the Student needs while also providing a continuum of services that would allow the Student to transition into classes with non-disabled peers, would provide the Student with a FAPE in the least restrictive environment.

[REDACTED], Behavior Support Teacher for [REDACTED] Services in MCPS, provided expert testimony about [REDACTED]. Ms. [REDACTED] spoke to the unique nature of [REDACTED] to provide special education services to students with social and emotional needs who do not necessarily have similar intellectual deficits, and to provide a safe space within a comprehensive school such

that students may transition from [REDACTED] services into general classrooms as they gain skills that will allow them to thrive outside of [REDACTED]

I found Mr. [REDACTED]'s and Ms. [REDACTED]' testimony to be compelling and credible. Both of these special education experts spoke from years of specified knowledge and experience. Neither witness spoke out of an emotional response, even when undergoing an emotionally charged, and at times quite accusatory and inflammatory cross examination. Mr. [REDACTED] and Ms. [REDACTED] were consistent in their descriptions of [REDACTED] and their reasoning as to why it would be a good fit for the Student. The Mother and Dr. [REDACTED] testified to their perception that [REDACTED] was meant for special education students with significant intellectual and physical deficits. The Mother recounted her tour of [REDACTED] and demonstrated a student she saw who she concluded was “stimming” by flapping his hands at his sides. The Mother also defined the classes as chaotic and unsupervised. While I do not doubt her perception about what she saw, I do not find her conclusions, based on one brief tour of the program, more credible than the descriptions laid out by Mr. [REDACTED] and Ms. [REDACTED]. I find the Mother's characterizations of the program to be impossible to reconcile with Mr. [REDACTED]'s and Ms. [REDACTED]' descriptions. Ms. [REDACTED] testified that, on average, there are two to three teachers in a classroom, there are no students in [REDACTED] at [REDACTED] with physical disabilities, and no current students who stim by flapping their hands as demonstrated by the Mother. She also testified that, on average, the students in [REDACTED] are exposed to an above grade level curriculum. She opined that perhaps some of what the Mother concluded was “chaotic” could have been due to the alternative seating allowed in the classes that includes things like bean bag chairs and standing desks as options to regular desks. Both Mr. [REDACTED] and Ms. [REDACTED] stated unequivocally that [REDACTED] at [REDACTED] was the least restrictive placement that could implement the Student's IEP as amended in August and October 2019.

██████████ and ██████████, both resource teachers at MCPS middle schools, qualified to testify as experts in the field of special education. Both testified primarily about their brief respective experience with the Student and the process to create the IEP that was eventually amended in August and October 2019. ██████████, supervisor from the MCPS Central Placement Unit, qualified to testify as an expert in the field of special education. Ms. ██████████ spoke with a unique perspective because she has known the Student for most of his school career and observed him as early as his initial years at ██████████. Ms. ██████████ likewise testified about her experience with the Student and the process to create the current IEP. She stated unequivocally that ██████████ at ██████████ was the least restrictive placement that could implement the Student's IEP as amended in August and October 2019.

Applying the evidence produced in this case to the law as set forth in the decisions discussed above, I find that the Mother has not proven that the Student's placement in ██████████ at ██████████ is not reasonably calculated to provide the Student with a FAPE for the 2019-2020 school year. In other words, the evidence does not support the argument that the Student's mental and emotional issues are so isolated from his education that he would be able to learn without plan to directly address them.

The Student has obviously made educational progress in the past. While he struggles in math, he receives mostly As and Bs in all of his other subjects. Certainly, his ADHD, and depressive disorder interfere with his learning. They cause the Student to become frustrated and angry, and to lash out in very antisocial ways. These behaviors have led to him becoming a target for malicious bullying and therefore make him a vulnerable student when left in an

unmitigated environment with his nondisabled peers. Both the Mother and the MCPS agree that the Student displays some social anxiety and has had considerable difficulty making friends and socializing with his peers.

The issue here is not in relation to the goals and objectives laid out in the IEP, but specifically the placement alone. As I have already stated, under the IDEA, in addition to crafting an IEP that is calculated to provide the child with educational benefit, the MCPS must focus on placing the child in the least restrictive environment. That is, it must, to the extent appropriate, place the child in an educational setting with non-disabled peers.

I have considered and rejected the Mother's contention that the Student will not be able to derive educational benefit from instruction provided in a schedule that is exclusively within [REDACTED] at [REDACTED] to start, with the goal of moving to a hybrid schedule that includes general education classes. The placement accomplishes a paramount goal of the IDEA – to provide appropriate special education services for the child while exposing him to his non-disabled peers because, while his classes will initially be contained within [REDACTED], he will be attending a comprehensive middle school and exposed to non-disabled peers at lunch and extra-curricular activities. There is a likelihood, even a probability, that he will transition to general education classes while still having access to [REDACTED] services making the program ideal for maintaining a continuum of services as the Student's skills improve. I do not find, as the Mother argues, that the Student will be unable to make meaningful academic and social progress in [REDACTED], as the evidence presented does not support such a conclusion. The evidence supports that the Student excels when placed in small-group settings with like-peers and extensive supports, as in [REDACTED]. The evidence supports that when placed in a large-group setting with his peers, he is often the target of bullying which causes him to lash out and eventually withdraw completely.

Accordingly, in terms of the continuum of placements under IDEA, I find that the Student does require placement in an environment that is more restrictive than what he experienced at [REDACTED]. He requires a placement that is less restrictive than private special education placements he has had in the past, such as those recommended in the February IEP. The IEP's proposed placement as amended in August and October 2019, satisfied the Student's need for this middle ground, and therefore constituted placement in the least restrictive environment.

It is clear to me that the Mother has worked diligently over the years to find the best opportunities to address the Student's educational and emotional needs. To be sure, however, it is also clear that the Mother has rarely given one placement the opportunity to succeed before uprooting the Student and moving on to another option. The Mother has expressed displeasure with the vast majority of the placements suggested by the MCPS over the years, but she also removed the Student during the school year from [REDACTED] [REDACTED] and twice from [REDACTED] – all programs she believed were successful. Indeed, according to the Mother, she transferred the Student so often for various reasons, but often because she believed the behavior of the other students in the programs to be harmful to the Student. It does not appear that she has ever considered that the Student is met with adversity in each placement because of his own social and emotional behaviors that, as Dr. [REDACTED] testified, require adjusting so that he does not provoke bullying.

It is clear that the Mother is interested in finding the best solution for her son, but it is not clear that she is allowing the experts to make that determination outside of the emotional response she has to the Student and his history of school failure. It is also clear that, due to the Student's long history of school refusal, the Mother wants to craft a plan to entice the Student to attend school, whether or not it is reasonably crafted to provide him with a FAPE. The MCPS is not tasked with crafting an IEP around the Student's preferences such that he will agree to attend school, but must craft an IEP that is reasonably calculated to provide the Student with a FAPE if he participates accordingly.

For all the above reasons, I find that the IEP developed on August 23, 2019 and amended on October 2, 2019, placing the Student in [REDACTED] at [REDACTED] did not deny the Student a FAPE.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law the August 23, 2019 and October 2, 2019 amended IEPs were appropriate and were reasonably calculated to meet the Student's unique needs and to enable the Student to receive educational benefit in the least restrictive environment. *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*; *Endrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017); 458 U.S. 176 (1982); 20 U.S.C.A. § 1400(d)(1)(1); 20 U.S.C.A. § 1412(a)(5)(A); 34 C.F.R. § 300.115; COMAR 13A.05.01.10A(2). I further find that the Student's IEP Team fully considered the harmful effects of the educational placement recommendation in its determination that the [REDACTED] Program at [REDACTED] Middle School constituted the least restrictive environment and an appropriate placement for the Student. 34 C.F.R. § 300.116.

Because I find that the August 23, 2019 and October 2, 2019 IEPs, as amended to place the Student in the [REDACTED] Program at [REDACTED] Middle School provides the Student with a FAPE in the least restrictive environment, I will not address the issue of whether or not the Mother's suggested placement of general education at [REDACTED] Middle School with special education supports would be appropriate.

ORDER

I **ORDER** that the Due Process Complaint filed by the Mother on October 7, 2019 is **DISMISSED**.

November 26, 2019
Date Decision Mailed

Alecia Frisby Trout
Administrative Law Judge

AFT/sw
#183260

REVIEW RIGHTS

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

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

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

Copies Mailed To:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

██████████,
STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ALECIA FRISBY TROUT,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-19-31284

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Student, except where noted:

- App. Ex. 1 Dr. ██████████ Ph.D., resume, undated (1 page), attached to the Mother's witness list, undated (1 page)
- App. Ex. 2 Three screenshots of photographs, undated (3 pages)
- App. Ex. 3 (a): MCPS Notice and Consent for Assessment, Reevaluation, January 7, 2019 (2 pages)
(b): MCPS Notice and Consent for Assessment, Initial Evaluation, January 7, 2019 (2 pages)
(c): MCPS Prior Written Notice, January 14, 2019 (2 pages)
- App. Ex. 4 (a): ██████████ Department of Education, Specific Learning Disability Eligibility Form, April 9, 2018 (2 pages)
(b): ██████████ School Department, Classroom Observation Form, April 9, 2018 (2 pages)
(c): ██████████ Elementary and Middle School, Evaluation Report, April 4, 2018 (11 pages)
(d): ██████████ Department of Education, Individualized Education Program, May 7, 2018 (11 pages)
(e): Notes from phone call with ██████████, author unknown, April 9, 2018 (1 page)
- App. Ex. 5 (a): ██████████, report card, academic year 2017-2018, undated (1 page)
(b): ██████████, report card, academic year 2016-2017, undated (1 page)
(c): undated typed statements by ██████████ (2 pages)
- App. Ex. 6 (a): Letter from ██████████ to "Dear sir/madam," February 12, 2016 (1 page)
(b): Letter from ██████████ to ██████████, Director of Admissions, ██████████, February 17, 2016 (1 page)
- App. Ex. 7 ██████████ School report card, academic year 2015-2016 (1 page)
- App. Ex. 8 ██████████, psychological and educational services, undated letter (1 page) with attached Report of Admissions Testing, December 19, 2018 (2 pages)
- App. Ex. 9 MCPS Prior Written Notice, May 3, 2019 (2 pages)

- App. Ex. 10 MSDE IEP, parental input notes page, February 2019, May 3, 2019, June 3, 2019, August 1, 2019 (1 page)
- App. Ex. 11 (a): Letter to the Mother from ██████████, Assistant Principal, ██████████ Middle School, printed November 3, 2019 (1 page)
 (b): [Student] Communication Log Grade 7 ██████████ Middle School April 11, 2019 – June 4, 2019 (3 pages)
- App. Ex. 12 Initial Bullying Complaint from the Mother to ██████████, Principal, ██████████ Middle School, May 5, 2019 (5 page letter with 29 pages of attached screenshots of texts and emails—all redacted by the Mother)
- App. Ex. 13 MCPS Student Record Transmittal, June 7, 2019 (2 pages)
- App. Ex. 14 MCPS Notice of IEP Team Meeting, June 19, 2019 (2 pages)
- App. Ex. 15 *Inadvertent mis-numbering, no App. Ex. 15*
- App. Ex. 16 MCPS IEP meeting agenda, October 2, 2019 (1 page) and Prior Written Notice, October 2, 2019 (2 pages)
- App. Ex. 17 ██████████ Services pamphlet, undated (2 pages)
- App. Ex. 18 Second bullying complaint by the Mother to ██████████, October 27, 2019 (2 pages) with attached screenshots of texts and emails (7 pages)
 [NOT ADMITTED]
- App. Ex. 19 ██████████ Middle School, Progress Report for [Student], June 19, 2018 (4 pages) [NOT ADMITTED]

I admitted the following exhibits on behalf of the MCPS:

- MCPS Ex. 1 Letter from ██████████, M.D., “To Whom It May Concern,” February 21, 2013 (1 page)
- MCPS Ex. 2 MCPS, Services for Students with Autism Spectrum Disorders, consultation report, March 21, 2013 (2 pages)²²
- MCPS Ex. 3 ██████████ ██████████ (██████████) Cluster Progress Summary, April 5, 2013 (1 page)
- MCPS Ex. 4 MCPS Memo to Mr. ██████████, supervisor, Placement and Assessment Unit from ██████████, supervisor, April 15, 2013 (1 page)
- MCPS Ex. 5 ██████████ Comprehensive Psychological Evaluation, February 10, 2016 (46 pages)
- MCPS Ex. 6 ██████████ Elementary-Middle School, Student Period Attendance Detail, generated on February 26, 2019 (3 pages)
- MCPS Ex. 7 MCPS Prior Written Notice, January 14, 2019 (2 pages)
- MCPS Ex. 8 MCPS Report of School Psychologist, February 1, 2019 (12 pages)
- MCPS Ex. 9 MCPS IEP, draft, February 1, 2019 (38 pages)
- MCPS Ex. 10 MCPS Prior Written Notice, February 12, 2019 (2 pages)
- MCPS Ex. 11 MCPS IEP, February 8, 2019 (38 pages)
- MCPS Ex. 12 MCPS settlement agreement between MCPS and the Mother, April 2, 2019 (2 pages)
- MCPS Ex. 13 Email from the Mother to ██████████, April 10, 2019 (1 page)
- MCPS Ex. 14 ██████████ Middle, Student Detail Report, May 3, 2019 (1 page)
- MCPS Ex. 15 MCPS IEP, Amended May 3, 2019 (38 pages)

²² Page 1 and 3 of the report were admitted, page 2 of the report was not provided

MCPS Ex. 16 MCPS Prior Written Notice, May 3, 2019 (2 pages)

MCPS Ex. 17 MCPS Bullying, Harassment, or Intimidation Incident School Investigation Form, May 13, 2019 (3 pages)

MCPS Ex. 18 Email from [REDACTED] to the Mother, June 4, 2019 (1 page)

MCPS Ex. 19 [Student] Communication Log, Grade 7 [REDACTED] Middle School, April 11, 2019 – June 4, 2019 (3 pages)

MCPS Ex. 20 MCPS IEP, amended June 4, 2019 (42 pages)

MCPS Ex. 21 Prior Written Notice, June 5, 2019 (1 page)

MCPS Ex. 22 MCPS Student Record Transmittal, June 7, 2019 (2 pages)

MCPS Ex. 23 MCPS IEP, Amended August 23, 2019 (42 pages)

MCPS Ex. 24 MCPS Prior Written Notice, August 5, 2019 (1 page)

MCPS Ex. 25 Email from the Mother to [REDACTED], August 5, 2019 (1 page)

MCPS Ex. 26 Email from the Mother to [REDACTED] September 23, 2019 (1 page)

MCPS Ex. 27 MCPS IEP, Amended October 2, 2019 (42 pages)

MCPS Ex. 28 MCPS Prior Written Notice, October 2, 2019 (2 pages)

MCPS Ex. 29 Resume, [REDACTED], undated (2 pages)

MCPS Ex. 30 Resume, [REDACTED], undated (3 pages)

MCPS Ex. 31 Resume, [REDACTED], undated (3 pages)

MCPS Ex. 32 Resume, [REDACTED], undated (2 pages)

MCPS Ex. 33 Resume, [REDACTED], undated (2 pages)

MCPS Ex. 34 [REDACTED] program description, undated (3 pages)

MCPS Ex. 35 Email chain between [REDACTED], [REDACTED] and the Mother, January 22, 2019 – February 1, 2019 (2 pages)