

██████████,

STUDENT

v.

FREDERICK COUNTY

PUBLIC SCHOOLS

BEFORE LEIGH WALDER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-FRED-OT-20-08811

DECISION

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STATEMENT OF THE CASE

On March 30, 2020, Ashley VanCleaf, Esquire, on behalf of ██████ and ██████ (Parents), and ██████ (Student), filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) and with the Frederick County Public Schools (FCPS). In the Complaint, the Student alleges that the FCPS violated the Individuals with Disabilities Education Act (IDEA) by failing to provide the Student a free appropriate public education (FAPE) during the 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, and for failing to provide the Student's parents with meaningful participation in the Individualized Education Program (IEP) process. *See* 20 U.S.C.A. § 1415(f)(1)(A) (2017).¹

The timeline contained within the Code of Federal Regulations (C.F.R.) afforded the FCPS up until April 29, 2020, which is thirty days from March 30, 2020, to try and resolve the

¹ U.S.C.A. is an abbreviation for United States Code Annotated. All subsequent references to the U.S.C.A. are to the 2017 volume.

issues contained in the Complaint. *See* 34 C.F.R. § 300.510(b)(1) (2019).² By April 29, 2020, the FCPS did not “resolve[] the due process complaint to the satisfaction of the parent” *Id.* Once this thirty-day resolution period expired, a due process hearing is to be held and a final decision issued within forty-five days. *Id.* § 300.515(a). Applied to this matter, forty-five days from April 29, 2020 is June 13, 2020 (which is a Saturday), so a hearing would have had to have been held, and a final decision issued, by June 12, 2020 (which is a Friday). *See id.*

On May 15, 2020, another Administrative Law Judge (ALJ) from the OAH, [REDACTED], conducted a telephone conference with the parties to discuss the timeline above. As memorialized in a letter issued to the parties on May 19, 2020, ALJ [REDACTED] documented the various events that transpired in Maryland as a result of COVID-19 that impacted the standard operating procedures of both the FCPS and of the OAH.³ As a result of the impact of COVID-19, the parties requested that ALJ [REDACTED] extend the timeline for holding a due process hearing and issuing a final decision. Finding good cause, ALJ [REDACTED] granted that request. *Id.* § 300.515(c). The parties also requested that a mediation in this matter be set for June 9, 2020, and, if no resolution could be reached at mediation, that a prehearing conference be held directly afterwards.

On June 9, 2020, the parties participated in mediation, but were unable to resolve the issues contained in the Complaint. Thereafter, I conducted a prehearing conference. Ms. VanCleaf and the Parents were present on behalf of the Student. Rochelle Eisenberg, Esquire, [REDACTED], Supervisor of Special Education for the FCPS, and [REDACTED], Instructional

² All subsequent references to the C.F.R. are to the 2019 volume.

³ ALJ [REDACTED] documented the following events: On March 12, 2020, Governor Lawrence J. Hogan, Jr., ordered Maryland Public Schools, which included the FCPS, to close from March 16 through March 27, 2020, to protect public health by limiting the spread of the COVID-19 virus. On March 25, 2020, Governor Hogan extended the school closure through April 24, 2020. The OAH suspended all non-emergency proceedings until May 5, 2020, to limit the spread of COVID-19. On March 30, 2020, Governor Hogan issued a Stay at Home Order only allowing travel within the State for essential purposes. Subsequently, Governor Hogan extended the school closure through the end of the 2019-20 school year, and the OAH suspended all in-person proceedings through June 5, 2020, holding emergency and special hearings remotely.

Coordinator for Elementary Special Education for the FCPS, were present on behalf of the FCPS. At the prehearing conference, among other matters, the parties discussed their availability for participating in the due process hearing. After reviewing their respective calendars, the first practical day for the due process hearing to commence was July 13, 2020. The dates leading up to this date were unavailable for the following reasons: Both sides needed sufficient time to file and respond to a motion (discussed below); both sides needed time to prepare for the hearing; I had specially assigned dockets on June 18, 2020, as well as July 1, 7, 8, and 9, 2020; one of the FCPS' witnesses was unavailable between July 6-10, 2020; and to account for medical leave for the FCPS' counsel. As a result, the parties agreed that a hearing could take place on July 13, 14, 15, 16, 21, 22, 2020, as well as on August 10, 11, and 13, 2020.⁴

At the prehearing conference, Ms. VanCleaf renewed the request to extend the timeline for holding a due process hearing and issuing a final decision. The FCPS had no objection to extending the timeline. Finding good cause based on the impact of COVID-19, the closure of the FCPS, and the partial suspension of proceedings at the OAH, as well as to accommodate the schedules of the parties, I found that there was good cause to extend the regulatory timeframe as requested by the parties. 34 C.F.R. § 300.515(c). The parties jointly requested that I issue a decision within thirty days after the conclusion of the hearing, and I agreed to do so.

On June 15, 2020, Leslie R. Stelman, Esquire, entered his appearance on behalf of the FCPS. On June 16, 2020, the FCPS filed a motion to postpone this matter or, in the alternative, to conduct this hearing remotely. Also, on June 16, 2020, the FCPS filed a motion to dismiss or, in the alternative, to strike evidence or demands for relief relating to events occurring prior to

⁴ The gap between the July and August hearing dates was attributed to a hearing Ms. VanCleaf had to attend in a different county starting on July 23, 2020, and continuing into the following week; I had specially assigned dockets on August 4 and 5, 2020, and had pre-scheduled leave on August 7, 2020; and one of the FCPS' witnesses was unavailable on August 3 and 6, 2020. Additionally, FCPS counsel was unavailable on August 12, 2020.

March 30, 2018 (Motion to Dismiss). On June 26, 2020, I denied the motion to postpone; however, due to COVID-19's inherent medical risks, along with the various orders and medical guidance limiting public gatherings and promoting social distancing, granted the request to conduct this hearing remotely. Code of Maryland Regulations (COMAR) 28.02.01.20B. On July 7, 2020, I issued a Ruling on the Motion to Dismiss, finding that the Student's claims preceding March 30, 2018, fell outside of the statute of limitations, and ordered that these claims be dismissed. 20 U.S.C.A. § 1415(f)(3)(C), (D); *see also* Md. Code Ann., Educ. § 8-413(d)(3) (2018);⁵ COMAR 28.02.01.12C. On July 8, 2020, the FCPS filed a Motion to Strike a portion of the Student's pre-filed exhibits. On July 9, 2020, I issued a Ruling denying the Motion to Strike.

The due process hearing commenced on July 13, 2020, and continued on July 14, 15, 16, 29, 30, 2020; August 10, 11, and 13, 2020; and on September 2, 2020.⁶ The entirety of the proceeding was conducted using Google Meet, an audio-visual platform. COMAR 28.02.01.20B. The hearing was initiated from the OAH in Hunt Valley, Maryland, and the parties participated from their respective locations. Ms. VanCleaf represented the Student. Mr. Stellman represented the FCPS.⁷

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

⁵ Unless otherwise noted, all references hereinafter to the Education Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

⁶ The July 21 and 22, 2020, hearing dates were postponed due to a medical emergency. COMAR 28.02.01.16C. The July 29, 30, and September 2, 2020 dates were added so that the parties had adequate time to present their cases.

⁷ Ms. [REDACTED] was present, on behalf of the FCPS, for all hearing dates. [REDACTED], Ms. VanCleaf's law clerk, was present for most of the hearing dates.

ISSUES

(1) Did the FCPS fail to provide the Student with a FAPE from March 30, 2018, through the 2019-2020 school year as follows:

- (a) Did the FCPS fail to implement the Student's IEPs?
- (b) Did the FCPS fail to identify and provide services in all of the Student's areas of need?
- (c) Did the FCPS fail to provide explicit, systematic, cumulative, and diagnostic instruction with frequent, ongoing, and consistent progress monitoring?
- (d) Did the FCPS fail to monitor the Student's progress and change intervention program/reading services when the Student was not making progress?
- (e) Did the FCPS fail to provide the appropriate amount of special education services to address the Student's academic weaknesses?
- (f) Did the FCPS fail to provide an appropriate IEP with educational placement reasonably calculated to provide educational benefit based upon the Student's unique circumstances?

(2) Did the FCPS fail to provide the Student's parents with meaningful participation in the IEP process as follows:

- (a) evaluating the Student without parent consent;
- (b) refusing to provide the results of the Qualitative Reading Inventory (QRI);
- (c) refusing to provide copies of data discussed in the Central IEP (CIEP) meeting; and
- (d) refusing to provide information on how the IEP would be implemented at [REDACTED] Middle School?

SUMMARY OF THE EVIDENCE

Exhibits

The list of exhibits offered into evidence is attached to this Decision as an Appendix.

Testimony

The following witnesses testified on behalf of the Student:

- (1) [REDACTED], the Student's mother.
- (2) [REDACTED], Speech Language Pathologist (SLP), who was accepted as an expert in: speech language impairments; language-based learning disabilities; and specialized reading interventions for students with dyslexia and other language-based learning disabilities.
- (3) [REDACTED], Special Educator at the [REDACTED] who was accepted as an expert in: elementary education, pre-kindergarten through sixth grade; and special education.
- (4) [REDACTED], Clinical Psychologist with a subspecialty in neuropsychology, who was accepted as an expert in: neuropsychology; neuropsychological assessments; dyslexia; and language-based learning disabilities.
- (5) [REDACTED], Educational Specialist and Diagnostician, who was accepted as an expert in: educational diagnostics; special education; reading interventions; dyslexia; and language-based learning disabilities.
- (6) [REDACTED], SLP and co-owner of [REDACTED], who was accepted as an expert in: speech language pathology; and language-based learning disabilities.
- (7) [REDACTED], Executive Director of the [REDACTED] [REDACTED] ([REDACTED]).

The following witnesses testified on behalf of the FCPS:

- (1) [REDACTED] Literacy Specialist at [REDACTED] Elementary School, who was accepted as an expert in: literacy; reading instruction; and reading interventions.
- (2) [REDACTED], SLP at the FCPS, who was accepted as an expert in: speech and language; and speech and language as it relates to literacy.
- (3) [REDACTED], Special Education Teacher at the FCPS, who was accepted as an expert in: special education; math instruction; development and implementation of IEPs; and as a special education case manager.
- (4) [REDACTED], Former Executive Director at the [REDACTED].
- (5) [REDACTED], Elementary Teacher at [REDACTED], who was accepted as an expert in general education.
- (6) [REDACTED], Instructional Coordinator for Elementary Special Education at the FCPS, who was accepted as an expert in: special education; IEP development and administration; and special education coordination and supervision.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

- (1) During the 2017-2018 and 2018-2019 school years, the Student attended [REDACTED] Elementary School ([REDACTED]), a school within the FCPS system.
- (2) The 2017-2018 school year was the Student's fourth grade school year.
- (3) The 2018-2019 school year was the Student's fifth grade school year.
- (4) The Student is on the diploma track, pursuing a Maryland High School Diploma upon graduation. (Joint Ex. 1D, at 6).
- (5) The Student was identified as having multiple disabilities, including a specific learning disability (SLD) and speech or language impairment. (Student Ex. 33, at 1).

(6) At a May 7, 2018 IEP meeting, these disabilities were found to have impacted the Student in the following areas: math calculation; math problem solving; reading comprehension; reading fluency; reading phonics; speech and language expression; speech and language reception; written language content and mechanics; socially and emotionally; and in his fine motor skills. (FCPS Ex. 1, at 1).

(7) The Student exhibited dyslexia, dyscalculia,⁸ and dysgraphia. (Student Ex. 33, at 4).

(8) For the 2018-2019 school year, the IEP team determined that the Student's IEP could be implemented at [REDACTED], with instruction both within and outside of the general education setting, as follows:

- a. Three hours and forty-five minutes of special education services weekly, outside of the general education classroom setting, to address his reading phonics and fluency needs;
- b. Twenty minutes daily instruction, within the general education classroom setting, to support the carryover of math concepts from small group intervention to application within the classroom;
- c. Thirty minutes, twice per week, within the general education setting, to address comprehension needs;
- d. Forty-five minutes per week, in individual or small group sessions, to address receptive and expressive language goals, with services occasionally provided in the classroom; and

⁸ Dyscalculia is a specified learning disability in the area of math that makes understanding numbers difficult. (Tr. 1330:1-3).

- e. Special education services addressing writing content and mechanics IEP goals were to be provided within the general education setting.

(*Id.* at 73-79).

Phonological awareness⁹ and phonics

(9) In December 2017, the Student was privately assessed by Dr. [REDACTED], who administered the Comprehensive Test of Phonological Processing - Second Edition (CTOPP-2), where the Student performed in the fifth percentile in the following subtests: elision, phoneme isolation, rapid letter naming, and scored in the second percentile in rapid digit naming. (Student Ex. 22, at 14).

(10) Also, on the CTOPP-2, the Student received a scaled score of seventy-five on the phonological awareness composite, placing the Student in the fifth percentile, and received a scaled score of sixty-seven on the rapid symbolic naming composite, placing the Student in the first percentile. (*Id.*).

(11) On February 24, 2018, the Student was privately assessed by Ms. [REDACTED], who administered the Clinical Evaluation of Language Fundamentals-5 (CELF-5), where the Student's core language, expressive language, and language memory fell in the low average range with a standard score of eighty-nine, and where the Student's receptive language and language content fell in the borderline range with standard scores of eighty-four and eighty-five. (Student Ex. 26, at 13).

(12) Ms. [REDACTED] gave the Student a decoding task of reading a series of word lists with real and nonsense words, where the Student could only read sixteen out of thirty-eight word

⁹ Phonological awareness is described as an individual's awareness of and access to the sound structure of oral language. It requires the ability to remove phonological segments from spoken words to form other words, synthesize sounds to form words, and isolate individual sounds within words. (FCPS Ex. 24, at 344).

lists before he fatigued, indicating that the Student could not accurately decode simple CVC,¹⁰ CVC+s, CCVCC, and silent e words. (*Id.*).

(13) Ms. [REDACTED] found that the Student's writing reflected a weakness in phonemic awareness and language processing, as the Student obtained a scaled score of two in the CELF-5 supplemental writing test, which Ms. [REDACTED] categorized as a very low score. (*Id.*).

(14) Ms. [REDACTED] determined that the Student's speech reflected his deficit in phonemic awareness, as the Student mispronounced some words. (*Id.*).

(15) In her report, Ms. [REDACTED] noted that the Student exhibited gaps in his phonemic awareness, decoding, and spelling, which need to be addressed in a systematic approach. (*Id.*).

(16) Ms. [REDACTED] made the following recommendations to be shared with the IEP team:

- a. The Student requires intense, interactive, one-on-one science based, systematic, multisensory approach to reading and writing including visual, auditory, kinesthetic, and tactile (VAKT) instruction in training phonemic awareness, sound-symbol training, decoding and encoding, and fluency;
- b. The Student requires practice in oral reading of controlled passages daily to increase accuracy and fluency;
- c. The Student requires phonemic training that must utilize multisensory cues as he is not processing all the sounds in a given word. Blending, segmenting, deletion, addition can be trained using VAKT methods;
- d. The Student requires VAKT tools to address sound errors in expressive language;

¹⁰ "C" stands for consonant, and "V" stands for vowel.

- e. The Student requires direct instruction of writing techniques providing models, visual maps, and multisensory cues (such as color-coded paragraphs);
- f. The Student requires direct language therapy, with hierarchy of language processing model in mind, to address time, sequence, temporal concepts, and circular vocabulary in comprehension and writing;
- g. The Student requires visual strategies to learn novel concepts;
- h. The Student requires scaffolding during classroom instruction (with consult of a SLP, as needed); and
- i. The Student requires instructions presented in shorter steps, limited to two steps at a time.

(Id. at 14).

(17) At the May 7, 2018, IEP team meeting, the Parents and Parents' counsel shared the Student's CTOPP-2 scores, and Ms. [REDACTED]'s evaluation, yet the IEP team determined that reading phonics was not an area of need for the Student. (Student Ex. 29, at 2).

(18) The IEP team's explanation for refusing to add a reading phonics goal to the Student's IEP centered around a Words Their Way assessment, which indicated that the Student was on grade level with his peers because the Student met grade level expectations in decoding skills on the San Diego Quick Word Assessment,¹¹ the Student's word attack subset score on the Woodcock-Johnson IV Tests of Achievement (WJ IV) was a 103, the Student read at an instructional level R¹² with ninety-seven percent accuracy, and the Student had a satisfactory comprehension benchmark assessment. (FCPS Ex. 33, at 404).

¹¹ The San Diego Quick Word Assessment is an informal data tool utilized by the FCPS. (FCPS Ex. 38, at 461).

¹² The reading levels can be broken down as follows: Q (start of fourth grade); R (middle of fourth grade); S (end of fourth grade); T (beginning of fifth grade); U (middle of fifth grade); and V (end of fifth grade).

(19) At the May 7, 2018, IEP team meeting, the FCPS agreed to reevaluate the student in, among other areas: reading, writing, speech, and language. (FCPS Ex. 1, at 2).

(20) On June 2, 2018, Ms. [REDACTED] reevaluated the Student's decoding performance by administering formal and informal assessments as follows:

- a. Informally: Ms. [REDACTED] had the Student read a two-page passage from a text, where the Student exhibited forty-one decoding errors during the four minutes and twenty seconds it took him to read the passage;
- b. Formally: Ms. [REDACTED] administered the Orton Gillingham Decoding Benchmark, where the Student was asked to read real and nonsense word lists, which indicated the following results:
 - i. List 1, which were CVC words - common core Kindergarten phonics, the Student got eight out of fifteen words correct (which was a decline from the February 24, 2018 administration of this same assessment, where the Student got thirteen out of fifteen words correct);
 - ii. List 2, which were regular CVC words containing diagraphs - common core first grade phonics, the Student got six out of ten correct (which was a decline from the February 24, 2018 administration of this same assessment, where the Student got seven out of ten words correct);
 - iii. List 3, which were regular one syllable floss words - common core first grade phonics, the Student got six out of ten correct (which was a decline from the February 24, 2018 administration of this same assessment, where the Student got nine out of ten words correct).

(Student Ex. 26, at 17).

(21) On June 12, 2018, Ms. [REDACTED] participated in the Student's IEP meeting, where Ms. [REDACTED] recommended that the Student would do well with a sequence program to practice phonological gaps, and counsel for the Student expressed that the Student required a structured, multisensory literacy program. (Student Ex. 32, at 2, 4-5).

(22) At the June 12, 2018 IEP team meeting, despite hesitations expressed by the FCPS-based participants, the IEP team agreed to add a phonics goal to the Student's IEP. (*Id.* at 5).

(23) At the June 12, 2018 IEP team meeting, counsel for the Student requested that the Student receive phonemic instruction through the Language Foundations program; the FCPS staff were apprehensive to place the Student in this program as it could mean that the Student spent additional time outside of the classroom where he would be working on grade level curriculum. (*Id.*).

(24) Language Foundations is a multi-sensory, structured, sequential literacy intervention program that is designed to remediate language-based differences. (Tr. 1055:12-14).

(25) The IEP team agreed that the Student would receive phonemic instruction through the Language Foundations program; further, a reading phonics goal related to decoding and encoding real and nonsense words would be added to the Student's IEP, as well as a goal related to decoding short vs. long vowels, -ve patterns, and diagrams. (Student Ex. 32, at 5).

(26) The Language Foundations program would be administered five days a week, in forty-five-minute sessions, outside of the general education classroom. (*Id.*).

(27) On June 18, 2018, the Student's IEP was amended to add reading phonics, with a goal that the Student will identify, segment, blend, delete, and manipulate spoken CVC, CCVC,

CCVCC, and two-syllable words with ninety percent accuracy in nine out of ten opportunities by May 7, 2019, with the following objectives:

- a. Objective 1: The Student will identify a new word by deleting a syllable given multisensory cues in 9 out of 10 opportunities;
- b. Objective 2: The Student will identify a CVC, CCVC, CCVCC word given one sound at a time with multisensory cues in 9 out of 10 opportunities;
- c. Objective 3: The Student will segment sounds in a CVC, CCVC, CCVCC word provided with multisensory cues in nine out of ten opportunities; and
- d. Objective 4: The Student will identify the initial, medial, and final sounds of a given word provided with multisensory cues in nine out of ten opportunities

(Student Ex. 33, at 57).

(28) Another reading phonics goal was added to the amended IEP that set out that the Student will decode and encode real and nonsense words, sight words, and controlled sentences containing previously learned linkages (CVC, CVC+s, CVe, VCe+s, CVe two syllable words, and vowel teams) with ninety-percent accuracy by May 7, 2019, with the following objectives:

- a. Objective 1: The Student will distinguish between short and long vowel patterns;
- b. Objective 2: The Student will decode CVe, CCVe, CVE+s, and two syllable CVe words and -Ve patterns;
- c. Objective 3: The Student will decode regular CVC words and controlled sentences containing digraphs sh, ch, gu, ph, kn, and wr; and
- d. Objective 4: The Student will decode and encode words and sentences containing diphthongs.

(*Id.* at 57-58).

(29) Initially, the Student took the Language Foundation program along with another classmate; however, the Student eventually took the Language Foundations program in a one-on-one setting with Ms. [REDACTED] so that the Student could learn the program at his own pace. (Tr. 1100-01:11-25, 1-18).

(30) In September 2018, the Student was administered a nonsense words test, where he scored an eighty percent on short vowels, an eighty percent in digraphs and blends, and a seventy percent (weakness) in long vowels, other vowels, and multisyllabic words. (FCPS Ex. 4, at 150).

(31) In November 2018, the Student took the Fountas and Pinnell (F&P) benchmark assessment where he was reading a level S text with ninety-nine percent accuracy; at this point in the school year, grade level expectations for students was to read a level T with ninety-five percent accuracy. (*Id.*).

(32) On a November 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet his reading phonics goal (identifying, segmenting, blending, deleting, and manipulating); the Student was able to delete a syllable in a multi-syllable word with eighty percent accuracy on a list of ten words; was able to blend CVC and CCVC words with one-hundred percent accuracy; was able to blend CV, CVC, and CCVCC words; and accurately segment CV, CVC, and CCVCC words. (FCPS Ex. 3, at 125).

(33) Also, on a November 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet his reading phonics goal (decoding and encoding), but it was noted that three out of the four objectives of this goal had not been addressed yet. (*Id.* at 126).

(34) On December 19, 2018, Ms. [REDACTED] observed the Student in his Language Foundations intervention, where Ms [REDACTED] found that the Student was responding well to his instructor's multisensory strategies, but that he looked tired at the end of the class and put his

head down a few times (but was easily redirected), and that the high use of metalinguistic terminology may be too much of a cognitive load on the Student when learning the tools to decode. (Student Ex. 37, at 1-2).

(35) On a January 25, 2019 IEP progress report, it was noted that the Student was making sufficient progress to meet his reading phonics goal (identifying, segmenting, blending, deleting, and manipulating); the Student was able to delete a syllable with eighty to ninety percent accuracy; was able to blend CVC and CCVC words with one-hundred percent accuracy; was able to segment CVC words with one-hundred percent accuracy; was able to segment CCVCC words with eighty to ninety percent accuracy; and was identifying initial, medial, and final sounds in words with CVC, CVCC, and CCVCC patterns. (FCPS Ex. 3, at 125).

(36) Also, on a January 25, 2019 IEP progress report, it was noted that the Student was making sufficient progress to meet his reading phonics goal (decoding and encoding); the Student was consistent in his ability to decode real and nonsense words that contained short vowels; was reading word lists with ninety to one-hundred percent accuracy; could decode words with diagraphs with eighty-three to one-hundred percent accuracy; and was working on reading diphthongs. (*Id.* at 126).

(37) In February 2019, the Student took the F&P benchmark assessment where he was reading a level T text with ninety-nine percent accuracy; at this point in the school year, grade level expectations for students was to read a level U with ninety-five percent accuracy. (FCPS Ex. 4, at 150).

(38) On February 1, 2019, Ms. [REDACTED] administered the Orton-Gillingham Decoding Baseline - Real and Nonsense words assessment, where the Student demonstrated improvement in decoding the first ten word lists, which are skills ranging from kindergarten to first grade

common core standards for phonics, but the Student still made some decoding errors. (Student Ex. 37, at 4-5).

(39) Ms. [REDACTED] noted that the Student's progress was slow, acknowledged that Language Foundations had been beneficial for the Student, but noted that the Student required a more intense intervention that is carried over and supported in all of his classes, throughout his day. (*Id.* at 6-7).

(40) On March 14, 2019, the student took the WJ IV test of achievement, where he scored an 88 (low average in broad reading), a ninety-four in basic reading (average), a ninety-two in letter word identification (average), and a ninety-six in word attack (average). (FCPS Ex. 4, at 150).

(41) In April 2019, Dr. [REDACTED], a certified school psychologist employed by the FCPS, administered the CTOPP-2, where the Student received a very poor score in phoneme isolation (a score of one), a poor score in elision (a score of five), below average scores in: nonword repetition (a score of six); rapid digit naming (a score of six); rapid letter naming (a score of seven); and blending nonwords (a score of seven), and average scores in: blending words (a score of eight); memory for digits (a score of eight); and segmenting nonwords (a score of nine). (FCPS Ex. 24, at 350).

(42) Also, on the CTOPP-2, the Student received a standard score of sixty-seven in phonological awareness, placing the student in the first percentile (very poor); a standard score of eighty-two in phonological memory, placing the student in the twelfth percentile (below average); a standard score of seventy-nine in rapid naming, placing the student in the eighth percentile (poor); and an eighty-eight in alternate phonological awareness, placing the student in the twenty-first percentile (below average). (*Id.*).

(43) Dr. [REDACTED] noted that the Student demonstrated the most difficulty on subtests that required him to isolate the individual sounds in words and remove phonological segments from spoken words to form other words. (*Id.* at 344).

(44) The FCPS reported to the MSDE that the Student did not make sufficient progress on the following IEP goals: (1) the Student will identify, segment, blend, delete, and manipulate spoken CVC, CCVC, CCVCC, and two-syllable words with ninety percent accuracy in nine out of ten opportunities; and (2) The Student will decode and encode real and nonsense words, sight words, and controlled sentences containing previously learned linkages (CVC, CVC+s, CVe, VCe+s, CVe two syllable words, and vowel teams) with ninety percent accuracy. (*Id.* at 371).

(45) The Language Foundations program is broken up into 125 separate lessons; by the time the Student finished the 2018-2019 school year, he had completed forty-five lessons, roughly one-third of the Language Foundations program. (Tr. 844:2-7; Tr. 1131:2-4; FCPS Ex. 38, at 460).

(46) Although the Student was able to show that he mastered a concept at the end of a Language Foundations lesson, if later asked to do the task, the Student could not show how to use the skills appropriately. (Tr. 804:9-14).

(47) In May 2019, the Student took the F&P benchmark assessment where he was reading a level U text with ninety-nine percent accuracy; at this point in the school year, grade level expectations for students was to read between a level V and a level W with ninety-five percent accuracy. (FCPS Ex. 4, at 150).

(48) On a May 2019 QRI word list, the Student received a score of ninety percent, which was deemed “independent” and instructional for sixth grade. (*Id.*; FCPS Ex. 27, at 363).

(49) On a May 2019 teacher administered nonsense word list, the student scored one hundred percent on CVC words, in vowels, and in one syllable words CVCe patterns; ninety-six

percent in one syllable words with short vowels; ninety-four percent in two syllable words with closed syllables; ninety-two percent in one syllable words with consonant digraphs, short and long vowels; ninety percent on CCVC/CVCC words and bossy R words; eight percent on closed syllables and vowel teams; seventy percent in CVCe words; and ten percent in open syllables. (FCPS Ex. 36, at 435).

(50) On June 12, 2019, [REDACTED] a Certified Academic Language Therapist for the FCPS, observed the Student in his Language Foundations intervention, and recommended that the Student continue in the Language Foundations program. (FCPS Ex. 25, at 355-58).

Reading fluency¹³

(51) In the lead up to the May 7, 2018 IEP team meeting, the Student's IEP did not have a reading fluency goal. (Student Ex. 20).

(52) In December 2017, the Student's reading fluency was evaluated by Dr. [REDACTED] who administered the Gray Oral Reading Test - Fifth Edition (GORT-5), where the Student received a scaled fluency score of six, which placed the Student in the ninth percentile. (Student Ex. 22, at 13).

(53) Dr. [REDACTED] also administered the WJ IV, which placed the Student's grade equivalent in reading fluency on a third-grade level (at the time of testing, the Student was in the fourth grade). (*Id.* at 12).

(54) On April 20, 2018, the Student's teacher shared at an IEP meeting that the student's reading fluency was 83 words correct per minute (wcpm), with ninety-eight percent accuracy, which was below grade level expectations of 123 wcpm. (FCPS Ex. 32, at 389-90).

¹³ Reading fluency was described as a combination of how quickly and accurately an individual can read, as well as reading with expression. (Tr. 1375:15-17).

(55) At the June 12, 2018 IEP meeting, Ms. [REDACTED] expressed that the Student needed help in reading fluency. (Student Ex. 32, at 5).

(56) On June 18, 2018, the Student's IEP was amended to add reading fluency with a goal that, when given a grade-level text, the Student will read 127 wcpm with ninety-five percent accuracy in three out of four opportunities by May 7, 2019, with the following objectives:

- a. Objective 1, 2, 3, and 4: Given a grade level text, the Student will read 97 wcpm, 107 wcpm, 117 wcpm, and 127 wcpm, with ninety-five percent accuracy in three out of four opportunities; and
- b. Given a grade level text, the Student will read in three-to-four word phrase groups, showing expressive intonation and appropriate phrasing guided by the author's meaning and punctuation.

(Student Ex. 33, at 58).

(57) When the Student's reading fluency was tested in January 2018, he got 83 wcpm; this number declined to 57 wcpm when the student was tested in September 2018. (Student Ex. 52, at 1-2).

(58) The FCPS reported to the MSDE that the Student did not make sufficient progress on the IEP goal that when given a grade level text, he will be able to read 127 wcpm, with ninety-five percent accuracy in three out of four opportunities. (FCPS Ex. 28, at 371).

(59) On a November 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet his fluency goal; the Student was reading a level T passage with 104 wcpm and one-hundred percent accuracy; it was also noted that the Student was inconsistent with his fluency. (FCPS Ex. 3, at 119).

(60) On a January 25, 2019 IEP progress report, it was noted that the Student was not making sufficient progress to meet his fluency goal; it was noted that the Student's wcpm was

increasing, but that he had not yet met the first objective of reading a grade level passage with 97 wcpm. (Student Ex. 54, at 78; *see also* FCPS Ex. 2, at 65).

(61) The fluency measure on the Student's F&P assessments were rated between zero to four, with zero being the lowest score and four being the highest score;¹⁴ the Student received the following scores:

- a. Level P, the Student received a fluency score of one;
- b. Level Q, the Student received a fluency score of two;
- c. Level R, the Student received a fluency score of one;
- d. Level S, the Student received a fluency score of two (on September 14, 2018) and a score of one (on November 12, 2018);
- e. Level T, the Student received a fluency score of two; and
- f. Level U, the Student received a fluency score of two.

(Student Exs. 61 & U).

(62) It was noted at the February 22, 2019 IEP meeting that the Student was showing an increase in fluency with wcpm since the beginning of the year but that the Student was not meeting grade level expectations. (FCPS Ex. 2, at 65).

(63) The Student's fluency had the following trajectory in the fifth grade: in the second quarter, the Student was averaging 77.6 wcpm with 97.8 percent accuracy; in the third quarter, the Student was averaging 102 wcpm on a cold read with 98.88 percent accuracy. (FCPS Ex. 4, at 167).

¹⁴ A score of one indicates that the reader reads primarily in two-word phrases with some three- and four-word groups and some word-by-word reading; almost no smooth, expressive interpretation or pausing guided by author's meaning and punctuation; almost no stress or inappropriate stress, with slow rate most of the time. A score of two indicates that the reader reads primarily in three- and four-word phrase groups; some smooth, expressive interpretation and pausing guided by author's meaning and punctuation; mostly appropriate stress and rate with some slowdown. (Student Ex. 61, at 5).

(64) Instructional grade level expectations for a fifth grader in reading fluency is 146 wcpm. (Student Ex. 45, at 21).

(65) It was determined at a May 16, 2019 IEP team meeting that the Student's fluency performance can range between the third and fifth grades. (FCPS Ex. 36, at 437).

Reading comprehension

(66) In December 2017, Dr. [REDACTED] administered the WJ IV, where the Student received a standard score of eighty-one in the passage comprehension subtest, which measured the Student's reading comprehension and lexical knowledge, placing the Student's grade equivalent level at a 2.3. (Student Ex. 22, at 12).

(67) On April 13, 2018, the Student took the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment, where the Student's scores on literacy text and informational text were both marked as "not met." (Student Ex. 52, at 8).

(68) At the May 7, 2018, IEP meeting, the Student's teacher reported that the Student remained reading at a level R for three months, which was behind the expected reading level performance of levels S and T for students at the end of fourth grade. (Student Ex. 29, at 2; Tr. 1557-58:18-23, 1-2; *but see* FCPS Ex. 32, at 389 ("[The Student's teacher] shared with the team that [the Student] is currently [April 20, 2018] reading . . . [a] level R . . . which matches the grade level expectation at this time of year.")).

(69) On June 2, 2018, the Student was evaluated by Ms. [REDACTED], who administered the CELF-5 reading comprehension supplementary test, which evaluated the Student's ability to read paragraphs and answer questions presented orally about main idea, memory for fact and details, recall for event sequences, and ability to make inferences and predictions; on the test, the Student displayed errors in detail, sequence, and making inferences, and received a scaled score of six, which placed the Student in the ninth percentile. (Student Ex. 26, at 18).

(70) As an informal assessment of the Student's reading comprehension, Ms. [REDACTED] instructed the Student to read a two-page passage from a text meant for a 2.6 grade level; while the Student was able to identify the main idea, he missed some detail and inference questions. (*Id.* at 16-17).

(71) On June 18, 2018, the Student's IEP was amended and included a goal that, when given a grade-level text (fiction or non-fiction), and a graphic organizer, the Student will quote accurately from a text when explaining what the text says explicitly and when drawing inferences from the text with eighty percent accuracy on three out of four opportunities by May 7, 2019, with the following objectives:

- a. Objective 1: The Student will apply appropriate strategies to monitor his understanding when reading by determining the main ideas of portions of the text either verbally or in writing in three out of four opportunities;
- b. Objective 2: The Student will apply appropriate strategies to monitor his understanding when reading by retelling or summarizing the information he has read either verbally or in writing in three out of four opportunities;
- c. Objective 3: The Student will demonstrate understanding of the text, either verbally or in writing, by explaining what is directly stated in the text by citing specific details and examples from the text in three out of four opportunities;
- d. Objective 4: The Student will demonstrate understanding of the text, either verbally or in writing, by explaining inferences, conclusions, and generalizations by citing appropriate details and examples from the text, synthesizing information and ideas in three out of four opportunities; and

- e. Objective 5: The Student will describe an oral or written paragraph utilizing imaging techniques and visualizing and verbalizing on at least three out of four opportunities.

(Student Ex. 33, at 60-61).

(72) In a fall 2018 reading comprehension assessment, the Student scored a thirty-three percent; the expectation was a seventy-five percent. (FCPS Ex. 4, at 152).

(73) On a November 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet his reading comprehension goal and was reading a level T (beginning of fifth grade equivalent) benchmark passage, with a score of 4/9 (limited), and had the ability to discuss the main idea, events in the text, and retell portions of the text; however, the Student needed assistance to include all key details. (FCPS Ex. 3, at 112).

(74) On January 23, 2019, the Student read a level T benchmark passage with ninety-nine percent accuracy, with a score of 4/9 in comprehension (limited), which was determined to be the Student's instructional level; the reading benchmark for students at this point in the school year would have been the next level, a level U. (Student Ex. 54, at 80; FCPS Ex. 2, at 65; FCPS Ex. 3, at 122).

(75) On March 14, 2019, Dr. [REDACTED] re-administered the WJ IV, where the Student received the same standard score of eighty-one (low average) in the passage comprehension subtest, which placed the Student's grade equivalent level at a 2.8, which was in the tenth percentile. (Student Ex. 40, at 2; FCPS Ex. 27, at 367).

(76) In a spring 2019 reading comprehension assessment, the Student scored a forty-eight percent; the expectation was a seventy-five percent. (FCPS Ex. 4, at 152).

(77) On April 4, 2019, the Student's teachers noted that the Student is able to answer questions related to events and details that are directly stated in a text, yet the Student needs

prompting to go back and pull out specific details from a text to support his answers. (Student Ex. 54, at 81).

(78) On April 12, 2019, the Student took the PARCC assessment, where the Student's scores on literacy text and informational text were both marked as "not met." (Student Ex. 52, at 8).

(79) On the FCPS Comprehensive Assessment, administered in the spring of 2019, the Student scored a zero percent and a fourteen percent on a reading comprehension standard that required him to quote accurately from a text when explaining what the text explicitly said and when drawing inferences from the text. (FCPS Ex. 4, at 152).

(80) The FCPS reported to the MSDE that the Student did not make sufficient progress on the IEP goal that when given a grade-level text (fiction or non-fiction) and a graphic organizer, the Student will quote accurately from a text when explaining what the text says explicitly and when drawing inferences from the text with eighty percent accuracy on three out of four opportunities. (FCPS Ex. 28, at 371).

Writing

(81) The Student's IEP for the 2017-2018 school year set out a writing goal that given a type of writing (informational, opinion, or narrative), the Student will select a topic/idea and compose a logically written response, containing a beginning, middle, and end with varying sentence structure creating a new idea for each sentence receiving a three out of four on writing craft rubric, with the following objectives:

- a. Objective 1: The Student will determine a topic or idea to write about;
- b. Objective 2: The Student will compose a logically written response, appropriately sequencing events and details; and

c. Objective 3: The Student will create a new idea for each sentence in his writing.
(Student Ex. 20, at 31-32).

(82) On February 24, 2018, Ms. [REDACTED] administered a structured writing test to evaluate the Student's ability to use situational information (i.e. story title, introductory sentence, and an incomplete sentence) to create a short narrative; on this test, the Student's writing sample contained errors in following direction, capitalization, grammar, and punctuation; the Student received a scaled score of two, which was significantly below an average score of seven.
(Student Ex. 26, at 10; Tr. 394:18).

(83) On April 13, 2018, the Student took the PARCC assessment, where the Student's scores on written expression and language convention were both marked as "not met." (Student Ex. 52, at 8).

(84) The Student's IEP for the 2018-2019 school year set out a writing goal that given a type of writing (informational, opinion, or narrative), the Student will introduce his topic clearly, provide a general observation and focus, and group related information logically to assist with the reader's comprehension, receiving a three out of four on writing craft rubric in three out of four opportunities, with the following objectives:

- a. Objective 1: The Student will apply the prewriting and planning stages of the writing process by paraphrasing when taking notes from sources to formulate a topic sentence or thesis for his writing in three out of four opportunities;
- b. Objective 2: The Student will draft an introduction to his writing that establishes the focus of each paragraph with a topic sentence in three out of four opportunities;

- c. Objective 3: The Student will use an organizer to establish a hierarchy of support organized by ideas and then supporting facts, details, or other information in three out of four opportunities;
- d. Objective 4: The Student will apply the revision and editing stages of the writing process to expand, combine, and reduce sentences for meaning, interest, and style using appropriate transition words in three out of four opportunities; and
- e. Objective 5: The Student will draft a conclusion to his writing that restates the focus of his topic sentence and summarizes the details of his writing in three out of four opportunities.

(Student Ex. 33, at 66-67).

(85) The Student's IEP for the 2018-2019 school year set out a written mechanics goal that given a grade level writing prompt and a writing mechanics checklist, the Student will edit his writing for correct capitalization, punctuation, and spelling and organization/alignment of words and letters, earning a three out of four on a mechanics rubric in three out of four opportunities by May 7, 2019. (*Id.* at 68).

(86) When the Student's writing was tested on October 30, 2018, he received scores of ones (did not yet meet expectations) and twos (partially met expectations). (Student Ex. 52, at 2).

(87) On March 14, 2019, Dr [REDACTED] administered the Wechsler Individual Achievement Test - Third Edition (WIAT III), where the Student's scores were generally in the low-average to average range for the subtests, but there were weaknesses in his ability to combine sentences (sixth percentile) and weaknesses in his ability to demonstrate a theme and an organization in his writing in his text (seventh percentile). (Student Ex. 40, at 5; Tr. 614:8-12; FCPS Ex. 27, at 367).

(88) When Dr. ██████ asked the Student to write an essay about his favorite game, the Student's work product did not include any transitions, elaborations, or a conclusion; the Student rarely used punctuation or capitalization; and there were frequent spelling errors. (Student Ex. 40, at 6).

(89) On a quarter three post on-demand sample for writing and mechanics, the Student's scores were within the "approaching" grade level standard for most of the categories assessed. (FCPS Ex. 27, at 363).

(90) On April 12, 2019, the Student took the PARCC assessment, where the Student's scores on written expression and language convention were both marked as "not met," and the Student's writing claim score dropped ten points from the 2018 PARCC administration from a score of twenty to a score of ten. (Student Ex. 52, at 8).

(91) The FCPS reported to the MSDE that the Student did not make sufficient progress on the IEP goal that when given a type of writing (informational, opinion, or narrative), the Student will introduce his topic clearly, provide a general observation and focus, and group related information logically to assist with the reader's comprehension, receiving a three out of four on writing craft rubric in three out of four opportunities. (FCPS Ex. 28, at 372).

(92) The FCPS reported to the MSDE that the Student did not make sufficient progress on the IEP goal that given a grade level writing prompt and a writing mechanics checklist, the Student will edit his writing for correct capitalization, punctuation, and spelling and organization/alignment of words and letters, earning a three out of four on a mechanics rubric in three out of four opportunities. (*Id.*).

(93) At the May 21, 2019 IEP team meeting, the IEP team determined that the Student qualified for extended school year (ESY) for ninety minutes per week for written language. (FCPS Ex. 37, at 452).

Math

(94) The Student's IEP for the 2017-2018 school year set out the following goals in math problem solving:

- a. Goal 1: Given manipulatives and an opportunity to discuss, the Student will accurately complete two-step word problems involving addition, subtraction, multiplication, and division with eighty percent accuracy; and
- b. Goal 2: Given a fraction, the Student will use manipulatives or draw a picture to find and represent an equivalent fraction in four out of five opportunities.

(Student Ex. 20, at 30-31).

(95) The Student's math teacher, Ms. [REDACTED], would provide the Student with additional instruction and assistance when the Student arrived early to her math class. (Tr. 1346-47:22-25, 1-4).

(96) On April 9, 2018, it was noted that the Student did not achieve his math problem solving goal; was not showing eighty percent accuracy with this skill; and continued to demonstrate inconsistencies from day to day. (Student Ex. 54, at 34).

(97) On April 14, 2018, the Student took the PARCC assessment, where the Student's scaled score in math was a 706 (partially met expectations), and where the Student's scores on mathematical reasoning and modeling and application were both marked as "approaching." (Student Ex. 52, at 9).

(98) During an IEP meeting on April 20, 2018, one of the Student's instructors, Ms. [REDACTED], noted that the Student was not confident with math fact fluency, but was most confident with addition. (FCPS Ex. 66, at 668).

(99) At the April 20, 2018 IEP team meeting, Ms. [REDACTED] reported that the Student began to retrieve the materials he needs to problem solve independently; once the Student begins

a math task, he becomes more confident; the Student has shown growth in problem solving, in breaking things down more independently, and in discussing what the problem is asking, but that he is not independent at problem solving; the Student started to use standard algorithms to solve addition and subtraction problems; and that the Student can talk through the problem when it is broken down into smaller units. (FCPS Ex. 32, at 390).

(100) At an IEP meeting on May 7, 2018, Ms. [REDACTED] shared that the Student has shown growth in math problem-solving but needed to continue working on this skill because he had not fully mastered a part of that goal. (Student Ex. 29, at 3; Tr. 1558:17-24; FCPS Ex. 32, at 390).

(101) A summary of assessment findings on the Student's May 7, 2018 IEP notes that the Student's academic profile on the WJ IV revealed that the Student's disability in math is characterized by extremely low calculations, applied math problem solving/reasoning, and math facts fluency skills, which consistently fall below the first percentile and a first grade equivalency and that the Student's math skills reflect an age-adjusted decline since his 2015 WJ IV assessment. (FCPS Ex. 1, at 15).

(102) On June 6, 2018, Ms. [REDACTED] administered a math inventory assessment, where the Student, utilizing a calculator, scored a 515, which placed the Student's math skill on the third-grade level; without the use of a calculator, the Student scored a 5. (FCPS Ex. 70, at 720; FCPS Ex. 66, at 663).

(103) Ms. [REDACTED] only noted the score of 515 on the math inventory assessment. (*Compare* FCPS Ex. 70, at 720, *with* FCPS Ex. 66, at 663).

(104) On June 15, 2018, the FCPS determined that the Student should receive four sessions, thirty minutes each, of ESY services where the Student would work on three math goals. (FCPS Ex. 7, at 228; FCPS Ex. 33, at 401; FCPS Ex. 39, at 468).

(105) The Student's IEP for the 2018-2019 school year set out the following goals in math:

- a. Math calculation goal 1: Given an expression or equation, the Student will apply a strategy to add or subtract multi-digit numbers with decimals to the hundredths place based on place value, with eighty percent accuracy on three out of four opportunities;
- b. Math calculation goal 2: Given an equation or expression, the Student will multiply and divide multi-digit numbers with decimals up to the hundredths place based on place value, with seventy percent accuracy on three out of four opportunities;
- c. Math problem solving goal 1: Given manipulatives and a problem-solving organizer, the Student will accurately break down, interpret, and solve real-world math problems with one or more steps, involving adding and subtracting fractions with unlike denominators, on three out of four opportunities; and
- d. Math problem solving goal 2: Given manipulatives and a problem solving organizer, the Student will accurately break down and interpret real-world math problems that contain multiple steps, involving whole numbers, using all four basic operations in order to solve, on three out of four opportunities.

(Student Ex. 33, at 61-66).

(106) On an August 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet math calculation goal 1 (add or subtract multi-digit numbers with decimals), where it was reported that during ESY the Student demonstrated strengths with solving basic addition and subtraction facts but continued to utilize his fingers for support.

(FCPS Ex. 3, at 131).

(107) On an August 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet math problem solving goal 2 (real-world problems that involve multiple steps, involving whole numbers), where it was reported that during ESY the Student was able to determine the correct operation to solve multi-digit addition problems with one-hundred percent accuracy; determine the correct operation to solve multi-step subtraction problems with forty-percent accuracy; and demonstrated strengths for solving multi-digit addition problems with regrouping with close to one-hundred percent accuracy. (*Id.* at 135).

(108) On September 20, 2018, the Student took a Performance Series Assessment in math and received a scaled score of 2117, which was below average. (Student Ex. 52, at 10).

(109) On October 11, 2018, Ms. [REDACTED] administered a math inventory assessment, where the Student scored in the below basic range, indicating that the Student was working on skills for the third and fourth grade level. (FCPS Ex. 71, at 722).

(110) On an November 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet math calculation goal 1 (add or subtract multi-digit numbers with decimals), where it was reported that the Student uses place value charts to set up addition problems with decimals and can add decimals independently on three out of six times; that the Student lines up numbers correctly for subtraction, but cannot independently subtract with regrouping; and the Student was showing increasing success with addition and subtraction facts with accuracy between eighty-seven percent to one-hundred percent. (FCPS Ex. 3, at 131).

(111) On an August 2, 2018 IEP progress report, it was noted that the Student was making sufficient progress to meet math problem solving goal 2 (real-world problems that involve multiple steps, involving whole numbers), where it was reported that on a pre-assessment the Student scored a forty-four percent in solving word problems accurately; further, it was noted that

the Student could use his math tools to independently solve a division and multiplication word problem. (*Id.* at 135).

(112) Ms. ██████ noticed during the Student's instruction in math that the Student utilized his fingers to count when solving math problems. (Tr. 1558:8-16).

(113) Some of the Student's instruction in math for fifth grade included solving single digit addition and subtraction problems. (Tr. 1528:6-11).

(114) On December 19, 2018, the Student took a Performance Series Assessment in math and received a scaled score of 2130, which was below average. (Student Ex. 52, at 10).

(115) On a January 25, 2019 IEP progress report, it was noted that the Student was making sufficient progress to meet math calculation goal 1 (add or subtract multi-digit numbers with decimals), where it was reported that the Student adds decimals using a standard algorithm with 87.5 percent accuracy, can appropriately line up decimals, can subtract decimals independently on three out of five attempts, and was improving in addition and subtraction facts. (FCPS Ex. 3, at 131).

(116) On a January 25, 2019 IEP progress report, it was noted that the Student was making sufficient progress to meet math calculation goal 2 (multiply and divide multi-digit numbers with decimals):

- a. As to multiplication, the Student had used grids to multiply decimals correctly one-hundred percent of the time; the Student received an accuracy score of sixty-nine percent on a multiplication fact fluency assessment; and during his math intervention was getting answers to questions correct with 87.5 percent and 95 percent accuracy;
- b. As to division, it was noted that the Student continued to need instruction in how to divide decimals as he was still practicing dividing whole numbers; the Student

received an accuracy score of thirty percent on a division fact fluency assessment; and during his math intervention was getting answers to questions correct with forty percent and seventy-one percent accuracy.

(*Id.* at 113).

(117) On a January 25, 2019 IEP progress report, it was noted that the Student was making sufficient progress to meet math problem solving goal 2 (real-world problems that involve multiple steps, involving whole numbers), where it was reported that the Student was able to use a problem solving mat to determine what a word problem was asking. (*Id.* at 135).

(118) At an IEP meeting in February 2019, the IEP team agreed to change the Student's math intervention from Math Navigator to an Individual Intervention Plan, which will use components of Math Navigator. (FCPS Ex. 36, at 439).

(119) On March 14, 2019, Dr. [REDACTED] administered the WJ IV Test of Achievement, where the Student scored a standard score of sixty eight in mathematics, placing the student in the second percentile, with a grade equivalent of 2.5; a standard score of sixty-six in broad mathematics, placing the student in the first percentile, with a grade equivalent of 2.5; and a standard score of sixty-nine in math calculation skills, placing the student in the second percentile, with a grade equivalent of 2.5. (Student Ex. 40, at 2).

(120) On the WJ IV, the student received a score of sixty-six in broad mathematics (very low), a score of sixty-nine in math calculation skills (very low), a score of sixty-nine in math facts fluency (very low), and a score of seventy-one on calculations (low). (FCPS Ex. 4, at 154).

(121) There was no reported progress on the Student's math problem solving goal 1 (real-world problems that involve adding and subtracting fractions with unlike denominators);

the last progress note from January 25, 2019 explained that, to date, fractions had not been a focus of the intervention. (FCPS Ex. 3, at 134).

(122) The FCPS reported to the MSDE that the Student did not make sufficient progress on the IEP goal that when given an expression or equation, the Student will apply a strategy to add or subtract multi-digit numbers with decimals to the hundredths place based on place value, with eighty percent accuracy on three out of four opportunities. (FCPS Ex. 28, at 371).

(123) On April 2, 2019, after an investigation by the MSDE, it was determined that the IEP team had not addressed the Student's lack of progress on his math problem solving goal. (FCPS Ex. 11, at 271).

(124) On April 12, 2019, the Student took the PARCC assessment, where the Student's scaled score in math was a 702 (partially met expectations), and where the Student's scores on mathematical reasoning and modeling and application were both marked as "not met." (Student Ex. 52, at 11).

(125) At the end of the 2018-2019 school year, the IEP team noted that the Student's disability severely limits or prevents him from performing basic math calculations, and he is unable to perform calculations without the use of calculation devices and math tools even after he has been provided ongoing intensive instruction and interventions. (FCPS Ex. 4, at 168).

(126) The IEP team determined that the Student made insufficient progress in math, whereby his skills were significantly below grade level, and that ESY services were warranted. (FCPS Ex. 3, at 114).

(127) ESY services were to be provided over a four-week period, in which the Student was to receive instruction in math calculation and problem solving for four sessions per week, for thirty minutes per session. (Student Ex. 33, at 75).

Emotional disability

(128) In December 2017, Dr. [REDACTED] performed a neuropsychological evaluation on the Student and diagnosed the Student with having adjustment disorder with mixed anxiety and depressed mood; the IEP team recommended completing psychological assessments to look at the Student's emotional component and its impact on the Student's access to education. (Student Ex. 22, at 2).

(129) At a February 22, 2019 IEP meeting, the team noted that there have been concerns about the Student's anxiety since the year before. (FCPS Ex. 2, at 64).

(130) In April 2019, the Student was assessed by Dr. [REDACTED], who concluded that the Student was internalizing problems both at home and at school and exhibited challenges related to withdrawn/depressed and anxious/depressed symptoms; additionally, Dr. [REDACTED] found that the results of the tests she administered were consistent with the presence of an emotional condition in the area of anxiety and/or depression and that cognitive processing and learning challenges likely contribute to these problems. (FCPS Ex. 24, at 346).

(131) Dr. [REDACTED]'s report to the IEP team included Achenbach scores, which included findings that noted the Student's teachers and the Parents reporting depression and anxiety; some of these scores fell within the clinical range. (FCPS Ex. 4, at 162-64; FCPS Ex. 24, at 344-45, 351-54).

(132) Teachers at [REDACTED] observed that the Student became increasingly frustrated at school, shut down at times, and shared an increasing dislike of school. (FCPS Ex. 2, at 64; FCPS Ex. 24, at 339).

(133) At the May 16, 2019, IEP team meeting, a psychotherapist intern shared that the Student displayed anxious behavior when discussing or thinking about school and made recommendations as to how to support the Student. (FCPS Ex. 36, at 431).

(134) At the May 16, 2019 IEP team meeting, the team determined that the Student meets eligibility criteria for an emotional disability but did not see this as his primary disability and decided to maintain his current coding of multiple disabilities (SLD and speech language impairment). (*Id.* at 433).

(135) At a May 21, 2019 IEP team meeting, the team determined that the Student's IEP should include a supplementary aid allowing the Student to visit with a counselor or trusted adult, that the FCPS have ongoing communications with the Student's outside providers, and that recess should be considered "protected time" for the Student. (FCPS Ex. 37, at 451).

(136) At the July 10, 2019 CIEP meeting, the Student's teacher shared that the Student did not like to be out of the general education classroom because he worried about what he might be missing. (FCPS Ex. 38, at 459).

Parental input

(137) On February 24, 2019, the Parents revoked consent for the FCPS to perform educational assessments in reading, writing, and math. (Student Ex. 38, at 9).

(138) On June 18, 2019, Ms. [REDACTED] administered a Sounds in Syllables Assessment Level I to the Student;¹⁵ the Parents had not consented to Ms. [REDACTED] administering this assessment. (Student Ex. 48, at 5-7; Tr. 157:1-6).

(139) The purpose of administering the Sounds in Syllables Assessment to the Student was to assess the Student's foundational sound/symbol relationship, phonics skills, and ability to apply decoding knowledge to sequential reading and spelling. (FCPS Ex. 26, at 359).

¹⁵ The Sounds in Syllables Assessment was described as an informal assessment. (FCPS Ex. 38, at 461).

(140) The Student received a sound/symbol total score of ninety-four percent, a total reading score of ninety-seven percent, and a total spelling score of seventy-five percent. (*Id.* at 359-60).

(141) After administering the Sounds in Syllables Assessment to the Student, Ms. [REDACTED] recommended that the Student continue receiving instruction in Language Foundations. (*Id.* at 361).

(142) The Parents only learned about Ms. [REDACTED]'s administration of the Sounds in Syllables assessment at the July 10, 2019 CIEP meeting. (Tr. 157:1-20).

(143) At the July 10, 2019 CIEP meeting, the FCPS shared that the Sounds in Syllables assessment was not given for the purpose of determining the Student's eligibility and thus permission was not required for tracking the Student's progress. (FCPS Ex. 38, at 461).

(144) During the 2018-2019 school year, the Student's teachers, Ms. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] all administered the F&P assessments. (Student Ex. 61, at 3-28; Tr. 1086:5-11; Tr. 1397:1-4; Tr. 1791:1-12).

(145) At the May 16 and May 21, 2019 IEP meetings, the FCPS staff agreed to complete a QRI word list to gather additional data about the Student's reading comprehension. (Student Ex. 42, at 7; Student Ex. 45, at 5; FCPS Ex. 36, at 439).

(146) The Parents received a CIEP referral and presentation packet that included a passing mention that the QRI had been completed; the Parents had not been provided with the results of this QRI prior to the July 10, 2019 CIEP meeting. (Student Ex. 47, at 2; Tr. 181:9-16).

(147) The Parents were provided with the results of the QRI after they submitted a Maryland Public Information Act (MPIA) request. (Tr. 181:18-20; Student Ex. 60, at 7).

MSDE Complaint

(148) On January 20, 2019, counsel for the Parents filed a Special Education State complaint against the FCPS, alleging that the FCPS denied the Student a FAPE and denied the Parents from meaningfully participating in the IEP process. (FCPS Ex. 9, at 242-51).

(149) The MSDE investigated the State complaint and determined that the IEP team addressed the Student's lack of progress on his reading fluency goal, the IEP team had not addressed the Student's lack of progress on his math problem solving goal, and there was data to support that the Student made progress on his IEP goals. (FCPS Ex. 11, at 263-72).

(150) As to the IEP team failing to address the Student's lack of progress on his math problem solving goal, the MSDE found as follows:

- a. The IEP also included two goals to solve math problems when given a fraction and representing an equivalent fraction in four out of five opportunities given, and when completing two step word problems including addition, subtraction, multiplication, and division, with eighty percent accuracy.
- b. In April 2018, after two quarters of working on the math problem solving goal, and after the goal was to be achieved, the FCPS staff documented that the Student was not making sufficient progress to achieve the IEP goal, which was revised on May 7, 2018.
- c. On a math inventory assessment, the Student demonstrated needs related to the third-grade curriculum. The Student's math fact fluency, and addition and subtraction with decimals were identified as areas of need for the Student in math.
- d. The IEP team added objectives to both math goals. The Parents requested that the time for math special education be increased to five forty-five-minute sessions outside of the general education classroom in order for the Student to make

progress. The IEP team recommended that the Student be provided with time to generalize the math skills back to the general education classroom by increasing the math time from five 15 minute sessions to five 20 minute sessions inside the general education classroom and five 30 minute sessions inside the special education classroom.

- e. At the February 22, 2019 IEP team meeting the FCPS staff reported that they aligned the introduction of the fraction math skills in the general education classroom with the math intervention sequence of skills to avoid confusion to provide more consistency for the Student to be able to master grade-level curriculum because the Student had difficulty bridging skills from the math intervention class to the general education class.
- f. At the February 22, 2019 IEP team meeting, the IEP team reviewed the Student's second math problem solving progress report related to fractions, dated January 2019. The math teacher reported that the Student does well with teacher support, prompting and provision of a model of the assignment, but that the teacher would like the Student to become more of an independent learner. The IEP team did not revise the IEP to address the teacher's concern and there is no indication that the goal will be achieved by May 2019.
- g. At the February 22, 2019 IEP team meeting, the Parents expressed concern that the math goal was newly introduced after three quarters of the IEP being implemented. The special education teacher explained that the fraction curriculum had not been introduced in the general education classroom; therefore, school staff determined not to expose the Student to fractions within the special education intervention math class. The Parents expressed concern about whether

the math intervention was appropriate to meet the Student's math needs. (FCPS Ex. 11, at 264-71).

(151) The MSDE informed the Parents that they maintained a right to file a due process complaint in the event they disagreed with the issues subject to the State complaint. (*Id.* at 272; FCPS Ex. 12, at 274).

(152) The FCPS offered to provide the Student thirty hours of compensatory education in mathematics as a result of the MSDE determination; however, the Parents declined the FCPS's offer and withdrew the Student from the FCPS. (FCPS Ex. 13, at 279; FCPS Ex. 37, at 451; FCPS Ex. 38, at 464).

2019-2020 IEP

(153) The Student's 2019-2020 IEP contained the following goals:

- a. Speech and expressive language – given a pictured scenario, text, or question prompt, the Student will verbally paraphrase, predict, retell an event, or describe in detail to relate information in three to five spoken sentences;
- b. Math calculation goal 1 – given math tools/organizers, the Student will fluently multiply decimals to the hundredths place, up to a number value of one-million, using the standard algorithm, with eighty percent accuracy on three out of four opportunities;
- c. Math calculation goal 2 – given math tools/organizers, the Student will fluently divide decimals to the hundredths place, up to a number value of one-million, using the standard algorithm, with seventy percent accuracy on three out of four opportunities;
- d. Math problem solving goal 1 – given manipulatives and a problem solving organizer, the Student will accurately break down, interpret, and solve real-world

- math problems with one or more steps, involving adding, subtracting, multiplying, or dividing fractions with unlike denominators, on three out of four opportunities;
- e. Math problem solving goal 2 – given manipulatives and a problem solving organizer, the Student will accurately break down and interpret real-world problems that contain multiple steps by writing and solving equations of the form $x + p = q$ for cases in which p , q , and x are all non-negative rational numbers (including numbers related to time, measurement, and money), on three out of four opportunities;
- f. Reading phonemic awareness – given multisensory, systematic, sequential, evidence based reading intervention, the Student will use initials, medial, and final sounds to identify new words by deleting, substituting, and/or inserting sounds in all positions of spoken CVC, CCVC, or CCVCC words, with ninety percent accuracy in nine out of ten opportunities;
- g. Reading fluency – Given a grade level cold text and a research based and/or evidence-based reading intervention program, the Student will read 139 wcpm with ninety-five percent accuracy, with appropriate phrasing and intonation in three out of four consecutive opportunities;
- h. Written language mechanics goal 1 – given a grade level writing prompt and an editing checklist for mechanics, the Student will edit his own writing for sentence structure, correct capitalization, punctuation, and spelling, with no more than four errors per writing in four out of five trials;
- i. Written language mechanics goal 2 – Given multisensory, systematic, sequential, evidence-based instruction, the Student will encode sight words and controlled

sentences containing diphthongs and digraphs, with ninety percent accuracy on nine out of ten opportunities;

- j. Reading comprehension – given a grade level text (fiction or non-fiction) and a graphic organizer, the Student will determine a theme or central idea within a text and use details from the text to explain how this theme is conveyed, with eighty percent accuracy on three out of four opportunities;
- k. Written language content – given an organizer and access to technology, the Student will produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience by introducing his topic clearly, providing related information and details to logically assist with the reader’s comprehension, and including a conclusion for his writing, with a score of three out of four on writing craft rubrics in three out of four opportunities;
- l. Speech and language receptive language – given spoken and/or written paragraphs, the Student will identify twenty multiple meaning words with specific applications to concepts of time, measurement, spatial concepts and comparisons/relationships; identify their definitions; and use the vocabulary in at least two different applications given no more than two multi-sensory cues as needed; and
- m. Reading phonics – Given multisensory, systematic, sequential, evidence-based reading instruction, the Student will decode real and nonsense words, sight words, and controlled sentences containing diphthongs and digraphs, with ninety percent accuracy in nine out of ten opportunities.

(FCPS Ex. 4, at 185-97).

(154) At the May 21, 2019 IEP team meeting, the IEP team agreed that the Student's service hours remain the same, but with restructuring; as such, the Student would receive instruction in reading and writing, daily, for forty-five minutes outside of the general education classroom; instruction in math, daily, for thirty minutes outside of the general education classroom and twenty minutes within the general education classroom; instruction in reading fluency and comprehension, daily, for fifteen minutes outside of the general education classroom; instruction in writing one hour and thirty minutes per week inside of the general education classroom; and instruction in speech forty-five minutes per week outside of the general education classroom. (FCPS Ex. 37, at 451).

(155) At the July 10, 2019 CIEP team meeting, the FCPS based members recommended, over the Parents', Parents' attorney's, and Parents' advocate's objections, that the Student's phonological needs continue to be addressed utilizing the Language Foundations reading intervention. (Student Ex. 47, at 19).

(156) At the July 10, 2019 CIEP meeting, the Parents were informed that the Student's services during the 2019-2020 school would be provided in a similar manner to how they were provided in the previous school year. (*Id.*).

(157) The Parents expressed concern that the Student's intervention schedule would prohibit him from accessing electives; the FCPS informed the Parents that they could opt to not have the Student in an intervention so that he could attend an elective and that other built-in elective options were available for all students, regardless of interventions. (*Id.*; FCPS Ex. 37, at 451).

(158) At the conclusion of the July 10, 2019 CIEP meeting, the CIEP team determined that the Student's needs could be met at [REDACTED] Middle School. (FCPS Ex. 38, at 463).

(159) The Parents rejected the 2019-2020 IEP and informed the CIEP team that the Student would be parentally placed at the [REDACTED] and would seek reimbursement for his education. (*Id.* at 464).

[REDACTED]

(160) The Student attended the [REDACTED] during the 2019-2020 school year.

(161) The [REDACTED] is a school for students from kindergarten through twelfth grade, with a total of thirty-six students, where class size is based on a child's needs. (Tr. 1690-91).

(162) The [REDACTED] serves children with specific learning disabilities in reading, writing, math, and language-based learning needs. (Tr. 1696:10-15).

(163) For some classes, the fifth and sixth graders are taught together. (Tr. 1691:17-23).

(164) When the Student first started attending the [REDACTED], he exhibited a weary disposition; this disposition improved as the school year progressed. (Tr. 708-09:24-25, 1-12; Tr. 970:1-11; Tr. 972:1-16).

(165) While at the [REDACTED], the Student has made friends, is considered a leader in his class, and participates. (Tr. 709:19-22).

(166) The [REDACTED] implemented all the Student's instructional and accessibility features that were originally proposed in the May 2019 IEP, as follows: (*See generally* Student Ex. 47, at 51-60):

- a. The [REDACTED] ensures that the Student's seating is away from students who may distract him. (Tr. 675:5-13).
- b. The Student's teachers work with the Student's occupational therapist to ensure that the Student has quick movement breaks either inside or outside the classroom. (Tr. 676:4-16).

- c. The Student's math teacher provides the Student with a calculator, while teaching the Student not to become dependent on the calculator. (Tr. 676-77:24-25, 1-13).
- d. The Student was taught using a writing intervention, Framing Your Thoughts, where the Student has learned to write more complex sentences without run-ons or fragments. (Tr. 705:15-20).
- e. The Student's teachers integrated aspects of Story Grammar Marker and Training Your Thoughts, both programs that were utilized by the Student's SLP, into their classrooms. (Tr. 680:11-15).
- f. The Student's math teacher utilized Touch Math, a multisensory resource, during math instruction. (Tr. 678:10-20).
- g. The Student's teachers utilized the Orton Gillingham Plus teaching approach to address reading fluency. (Tr. 1699-1700).
- h. The Student's teachers utilized the Visualizing and Verbalizing program to address reading comprehension and written language skills. (Tr. 974:16-22).
- i. The Student was provided with speech-to-text software; however, the Student only occasionally utilized this software to help with spelling, otherwise, the Student typically typed or wrote what he needed to on his own. (Tr. 680-81:20-25, 1-3).
- j. The Student's teachers would use organizational aids, such as "CUPS and ARMS,"¹⁶ to help the Student organize his writing. (Tr. 682:7-25).
- k. The Student's teachers worked along with the Student's SLP to front-load vocabulary before they started a new unit in class and would use pictures to go

¹⁶ This is an acronym for capitalization, usage, punctuation, spelling, add, remove, move, and substitute.

along with this new vocabulary to assist with visual learning. (Tr. 683:6-7; Tr. 684:14-18).

- l. For concept development and organization, the Student's teachers provide the reasoning behind why the Student needs to learn something and will provide real life examples as to how the Student can apply his knowledge. (Tr. 684-86).
- m. The Student is instructed on grade-level standards, but his instruction is scaffolded back to the Student's level of understanding. (Tr. 686-16-25).
- n. The Student's teachers check in on him on a daily basis to see how he is feeling and to gauge if anything is bothering him and will ask the Student if he needs to go over any part of the instruction. (Tr. 688:2-14).
- o. As a best practice, the Student's teachers observed the Student's academic needs to ensure the Student maintains the confidence and motivation to learn. (Tr. 691-92:23-25, 1-6).
- p. The Student's teachers worked with the Student's occupational therapist to come up with strategies to integrate into the classroom setting. (Tr. 692:16-21).
- q. The Student's teachers worked with the Student's SLP to come up with strategies to integrate into the classroom setting. (Tr. 692-93:22-25, 1-13).

(167) On July 1, 2020, Ms. [REDACTED] observed the Student attend his Visualizing and Verbalizing class at the [REDACTED] (conducted over Google Meet due to the COVID-19 pandemic) and observed marked progress. (Student Ex. 76, at 1-3; Tr. 431:9-13).

(168) Ms. [REDACTED] observed the Student attend his math class, where the Student was learning math through a small multi-sensory language-based approach. (Student Ex. 76, at 2-3).

(169) Ms. [REDACTED] also observed the Student attend his Orton Gillingham class, where the Student was being taught decoding through a systematic, multisensory approach; Ms. [REDACTED] noted that the Student appeared more confident. (*Id.* at 4-5).

(170) At the [REDACTED], the Student mastered long division with whole numbers and was working towards dividing numbers with decimals; the Student became confident with multiplication facts and could skip count fluently from two through nine. (Tr. 694-95:20-25, 1-11).

(171) While at the [REDACTED], the Student mastered (when given manipulatives and a problem-solving organizer) breaking down, interpreting, and solving real-world math problems involving adding, subtracting, multiplying, or dividing fractions with unlike denominators. (Tr. 695:15-22; Student Ex. 47, at 67-68).

(172) While at the [REDACTED], the Student mastered (when given manipulatives and a problem-solving organizer) breaking down and interpreting real-world math problems that contain multiple steps by writing and solving equations of the form $x + p = q$ and $px = q$ for cases in which p , q , and x are all non-negative rational numbers. (Tr. 695-96:15-22, 1-6; Student Ex. 47, at 68-69).

(173) While at the [REDACTED], the Student has integrated the skills he has learned in Orton Gillingham into his reading. (Tr. 698:19-23).

(174) While at the [REDACTED], the Student mastered the skill of when given a grade level writing prompt and an editing checklist for mechanics, to be able to edit his own writing for sentence structure, correct capitalization, punctuation, and spelling. (Tr. 701:1-18; Student Ex. 47, at 71-72).

(175) At the end of the school year at [REDACTED], the Student was able to read 998 sight words out of 1,000. (Tr. 702:22-25; Student Ex. 47, at 72).

(176) At the [REDACTED], the Student received speech/language therapy twice a week, thirty-minutes per session. (Tr. 951:18-20; Tr. 958:20-23).

(177) By February 2020, the Student's teachers at [REDACTED] decided to reduce the intensity of the Student's speech/language services based on his successes. (Tr. 959:1-2).

(178) Throughout the school year, the Student's teachers used a graphic organizer to help the Student with his editing skills and noticed that the Student was making progress in this area. (Tr. 960:20-25).

(179) The Student enjoys attending classes at the [REDACTED], feels more confident with learning, and feels supported. (Tr. 188-89:17-25, 1-14).

Other facts

(180) Except for the goals set out in expressive and receptive language, the Student did not achieve his goals in any academic area contained within the 2018-2019 IEP. (FCPS Ex. 27, at 364).

DISCUSSION

MSDE STATE COMPLAINT

Before discussing the issues raised in the due process complaint, a quick analysis of the FCPS's argument regarding the preclusive nature of an MSDE State complaint is warranted. The FCPS argues that the Student is raising the same concerns in the Complaint filed on March 30, 2020 as those raised in a MSDE State complaint filed on January 20, 2019. (FCPS Ex. 9, at 252). The FCPS argues that once the State complaint was filed, a thorough examination was conducted by MSDE investigators, who determined on April 5, 2019 that the Student's IEP team addressed any lack of expected progress on the Student's reading fluency goal, and the data supports the reports that the Student was making progress towards achieving his IEP goals. (FCPS Ex. 11, at 271). The only deficiency found by the MSDE was that the IEP team had not

addressed the Student's lack of expected progress on a math solving goal. (*Id.*). As a remedy, the FCPS offered the Student thirty compensatory service hours in math instruction, which would take place during ESY. (FCPS Ex. 37, at 452). However, the Parents rejected this offer and unilaterally placed the Student at the [REDACTED]. (FCPS Ex. 13, at 279). The MSDE denied the Parents' "appeal," which included an allegation that the Student was demonstrating significant regression in reading based on F&P assessments. (FCPS Ex. 12, at 276). In denying the "appeal," the MSDE stated that there was documentation that the IEP team considered the required data and made decisions based on the information that was provided by the FCPS-based members of the IEP team. (*Id.* at 274).

As such, the FCPS argues that because the MSDE found that the Student's IEP was appropriate, this is dispositive that the Student achieved success in reading in the eyes of the State. On the other hand, the FCPS argues, even though the MSDE found an issue with the Student meeting his math problem solving goal, this, into itself, does not demonstrate a denial of a FAPE. Additionally, the FCPS argues that the MSDE's determination became final and binding or otherwise dispositive when the Parents did not pursue an appeal before the United States Department of Education. As support, the FCPS cites to *Hoelt v. Tucson Unified School District*, 967 F.2d 1298, 1300 (9th Cir. 1992), which held that State complaints should go through a review process set out in 34 C.F.R. § 76.781.

The Student counters that the issues investigated in the State complaint do not mirror the issues contained in the March 30, 2020 Complaint. (FCPS Ex. 9, at 250; FCPS Ex. 11, at 263-64). The Student argues that the MSDE State complaint notes that there was conflicting data regarding reading skills. Further, the MSDE investigation did not consider expert testimony and only reviewed records produced by the FCPS. (Tr. 1910-11:16-25, 1-4). Next, the Student argues that

State complaint findings are not binding, as either a parent or public agency may file a due process complaint.

After reviewing the arguments raised by the FCPS, I am not persuaded that the Parents should have appealed the State complaint to the United States Department of Education. The review process alluded to in *Hoelt*, i.e. 34 C.F.R. § 76.781, can no longer be found and is marked in the C.F.R. as “reserved.” Also, importantly, the MSDE’s letter containing the report of the final results of the investigation contains no review right to the United States Department of Education; instead, the MSDE sets out that the parties maintain the right to file a due process complaint if they disagree with the provision of a FAPE, “including issues subject to this State complaint investigation, consistent with the IDEA.” (FCPS Ex. 11, at 272). Further, the MSDE recommends that the letter containing its findings be included with any due process complaint. (*Id.*). Similarly, in another letter explaining its procedures, the MSDE directs a party that disagrees with its conclusions to file a due process complaint with the OAH, and “[t]he OAH can address matters that have been the subject of a State complaint investigation, and can consider data for a longer period of time” (FCPS Ex. 12, at 274). As such, the FCPS’s argument that the MSDE’s determination became final and binding or otherwise dispositive when the Parents did not pursue an appeal before the United States Department of Education lacks merit.

Similarly, I do not find that the MSDE’s conclusions are dispositive that the Student achieved are lacked success at [REDACTED]. As set out in the two letters cited above, the MSDE affords parties that disagree with its findings the right to file a due process complaint if there is a disagreement regarding the provision of a FAPE. The nature and evidence derived from the due process hearing held in this matter is markedly different than the evidence that was produced and considered under the MSDE’s investigation, which consisted of a record review. Hence, I do not

find that the MSDE's conclusions are dispositive. With that, I will now address the evidence presented at the due process hearing in the instant due process complaint.

DUE PROCESS COMPLAINT

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

At the crux of this matter is the Student's contention that the FCPS failed to provide him with a FAPE from March 30, 2018 through the 2019-2020 school year and denied the Parents from meaningfully participating in the IEP process. As a result, the Parents unilaterally placed the Student at the [REDACTED] and are seeking tuition reimbursement for the 2019-2020 school year, as well as an Order that the Student be placed at the [REDACTED]. 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). As such, the Parents have the burden of proving that the FCPS failed to provide the Student with a FAPE and denied them the ability to meaningfully participate in the IEP process. The Parents also have the burden to prove that they are entitled to reimbursement for the unilateral placement of the Student at the [REDACTED].

Under the IDEA, a local educational agency (LEA), such as the FCPS, need only reimburse the costs of tuition and related services at a private school if it is determined that the LEA "had not made a [FAPE] available to the child in a timely manner prior to that enrollment." 20 U.S.C.A. § 1412(a)(10)(C)(ii); *see also* 34 C.F.R. § 300.148(c). If the LEA fails to provide a

FAPE, private placement is appropriate “if the placement is reasonably calculated to accord the child educational benefits.” *M.M. ex rel. J.M. v. Foose*, 165 F. Supp. 3d 365, 370 (D. Md. 2015); *see also Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 359 (1985)

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

While *Rowley*¹⁷ 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 “*pecially designed*” to meet a child’s “*unique needs*” through an “[i]ndividualized education program.”

Andrew F., 137 S. Ct. at 998-99 (citations omitted; emphasis in original).

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

¹⁷ *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176 (1982).

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 *Endrew 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 a child to advance from grade to grade, if that is a “reasonable prospect.” *Id.*

At the beginning of each school year, each LEA is required to have in effect an IEP for each child with a disability in the LEA’s jurisdiction. 20 U.S.C.A. § 1414(d)(2)(A). At least annually, the IEP team is required to review a child’s IEP to determine whether the goals are being met. *Id.* § 1414(d)(4)(A)(i); 34 C.F.R. § 300.324(b)(1).

The development of an IEP is a prospective process. *See Endrew F.*, 137 S. Ct. at 999. The test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir.1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved. While outcomes may shed some light on appropriateness, the proper question is whether the IEP was objectively reasonable at the time it was drafted.” (Citation omitted). Thus, a judge in a due

process hearing must look to what the IEP team knew when it developed the IEP, and whether that IEP, as designed, was reasonably calculated to enable the child to receive educational benefit. An IEP is essentially a “snapshot” in time and “cannot be judged exclusively in hindsight.” *See K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 818 (8th Cir. 2011); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). However, evidence of actual progress during the period of an IEP may also be a factor in determining whether a challenged IEP was reasonably calculated to confer educational benefit. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009); *see also M.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002).

The FCPS argues that the Student’s IEPs were calculated to provide him with a FAPE. In doing so, the FCPS, citing *Andrew F.*, highlights that school officials should be afforded deference based on their expertise and that the IDEA “vests these officials with responsibility for decisions of critical importance to the life of a disabled child.” 137 S. Ct. at 1001. *See also Lessard v. Wilton-Lyndeborough Coop. Sch. Dist. (Lessard II)*, 592 F.3d 267, 270 (1st Cir. 2010) (“The standard of review is thus deferential to the educational authorities, who have ‘primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs.’” (quoting *Rowley, supra*)).

This respect and deference, while unquestionably a well-settled principle of review under the Act, both within and without this circuit, is not limitless, however. *See Cty. Sch. Bd. of Henrico Cty. v. Z.P.*, 399 F.3d 298, 307 (4th Cir. 2005) (“Nor does the required deference to the opinions of the professional educators somehow relieve the [judge] of the obligation to determine as a factual matter whether a given IEP is appropriate.”).

“[T]he fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.*; see *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993) (“Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.”). “To give deference only to the decision of the School Board would render meaningless the entire process of administrative review.” *Sch. Bd. of Prince William Cty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted).

The Student argues that the FCPS denied him a FAPE, and that placement at the [REDACTED] is appropriate. To support his position, the Student alludes to the following language articulated by the Supreme Court of the United States: “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.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). To determine if an IEP is reasonably calculated to enable a child to make progress, the Student cites to a United States Department of Education publication, “Questions and Answers (Q&A) on U.S. Supreme Court Case Decision *Andrew F. v. Douglas County School District Re-1*,” which sets out that an “IEP Team should consider the child’s previous rate of academic growth, whether the child is on track to achieve or exceed grade-level proficiency, any behaviors interfering with the child’s progress, and additional information and input provided by the child’s parents.” 71 IDELR 68 (EDU 2017). It is the Student’s position that the FCPS did not meet the standards outlined above, and, thus, the FCPS failed to provide the Student with an education that was reasonably calculated to provide the Student with a FAPE.

I. The IEP team’s consideration of the Student’s previous rate of academic growth and whether the Student was on track to achieve or exceed grade-level proficiency

Following this analytical framework, the Student argues that the IEPs in both his fourth and fifth grade school years were deficient; namely, that his special education services for reading, writing, and math were not effective. As support, the Student argues that he did not meet any of the IEP goals, nor did his special education services provide for academic growth to allow him to achieve grade level skills.

Phonological awareness and phonics

When focusing on reading, the Student cites to the holding in *Andrew F.* to aver that the special education services offered by the FCPS in reading did not allow him to make progress in light of his complex disability, which amounted to a denial of a FAPE. In doing so, the Student argues that he did not make progress in: (1) phonological awareness and phonics; (2) reading fluency; and (3) reading comprehension. For the reasons that follow, I agree with the Student.

As to phonological awareness and phonics, I agree with the Student’s contentions that the FCPS failed to acknowledge his deficits in these areas, as the Student’s reading instruction focused on comprehension instead of the Student’s underlying skill deficits. As support, the Student points to the FCPS utilizing F&P assessments to gauge the Student’s comprehension levels, as well as the fact that the FCPS did not recognize the need to gather any data on the Student’s foundational reading skills. This was discussed by Dr. [REDACTED], who testified that focusing on comprehension led to underestimating the severity of any other issues. (Tr. 612:12-22). The Student contends that in order to determine what the Student’s underlying skill deficits were in reading, the Student had to be privately evaluated by Dr. [REDACTED]. In doing so, the Student scored in the fifth percentile in phonological awareness on the CTOPP-2, which Dr. [REDACTED] categorized as being in the

borderline range. Additionally, the Student was evaluated by Ms. [REDACTED] on two separate occasions in 2018, who administered formal and informal assessments in the area of phonological awareness and phonics. These assessments showed that the Student had foundational gaps in his decoding skills. (Student Ex. 26, at 18). Next, Ms. [REDACTED] found that the Student's decoding abilities declined. The Student argues that it was not until Ms. [REDACTED] met with the Student's IEP team on June 12, 2018 that the IEP team decided to add a phonics goal to the Student's IEP, and the team chose the Language Foundations program as the available intervention to allow the Student to meet his phonics goal. (Student Ex. 32, at 5).

The FCPS counters that the IEP team determined, on May 7, 2018, that reading phonics was not an area of need for the Student because the Words Their Way assessment indicated that the Student was on grade level with his peers, the Student met grade level expectations in decoding skills on the San Diego Quick Word Assessment, the Student's word attack subset score on the WJ IV was a 103, the Student read at an instructional level R with ninety-seven percent accuracy, and the Student had a satisfactory comprehension benchmark assessment. (FCPS Ex. 33, at 404). Nevertheless, on June 12, 2018, after reviewing additional data provided by Ms. [REDACTED], the IEP team agreed to offer the Student a reading intervention in order to improve his phonemic awareness. (Student Ex. 32, at 5).

After reviewing all the arguments, exhibits, and testimony related to the Student's abilities and progress in phonological awareness and phonics, I agree with the Student that progress was not made on his reading phonics goal after he began receiving instruction through the Language Foundations program. The Student presented substantial evidence to demonstrate that this goal was not met. Such evidence follows.

At the very forefront, and given great weight, is an April 2019 administration of the CTOPP-2 by Dr. [REDACTED] that tested the Student's phonological processing. (FCPS Ex. 24, at

350). On the CTOPP-2, the Student's composite scores ranged between "poor" and "below average," and his subtest scores ranged between "very poor" and "average." I have given great weight to the CTOPP-2, as it was administered towards the end of the Student's 2018-2019 school year, after which time the Student would have received almost an entire year of being in the Language Foundations program, whereby its results would reflect how much information and/or skills the Student retained from his intervention. Next, I found the April 2019 CTOPP-2 to be a helpful way to assess how much progress the Student ultimately made utilizing the Language Foundations Program, as there was a prior CTOPP-2 administration in December 2017 by Dr [REDACTED], which was given prior to the Student receiving instruction through Language Foundations. (Student Ex. 22, at 14). As such, I found that comparing the scores between both the 2017 and 2019 administrations provided an important insight as to whether the Language Foundations program assisted the Student in his phonological awareness and in phonics. Notably, comparing the two CTOPP-2 assessments, there was very little positive movement in the Student's scores. Namely, the Student continued to receive a "poor" score in elision and blending words, there was slight improvement in phoneme isolation, which increased four points from a score of "very poor" to a score of "poor," nonword repetition went up three points to a score of nine ("average"), rapid digit naming and letter naming each went from "poor" to "below average," phonological awareness dropped eight points (going from "poor" to "very poor"), and phonological memory dropped ten points (going from "average" to "below average"). (*Compare* FCPS Ex. 24, at 350, *with* Student Ex. 22, at 14).

Both Ms [REDACTED] and Ms. [REDACTED] who were accepted as experts in, among other areas, language-based learning disabilities and reading interventions, compared the Student's CTOPP-2 scores. I gave considerable weight to both Ms. [REDACTED] and Ms. [REDACTED]'s testimony, and I found both of them to be extremely credible, and helpful, witnesses. Ms. [REDACTED] had

experience testing and observing the Student, throughout the years, at both [REDACTED] and at the [REDACTED]. Ms. [REDACTED] had assessed the Student's phonemic awareness in the past when she administered the CELF-5 in February 2018, as well as when she administered formal and informal assessments in June 2018, which I find provided Ms. [REDACTED] a good firsthand understanding of the Student's capabilities prior to him receiving instruction through the Language Foundations program. (Student Ex. 26, at 13). It was from her experience with the Student that Ms. [REDACTED] drew up recommendations for the Student's IEP team to institute to ensure the Student's academic success. (*Id.* at 14). Ms. [REDACTED] has been providing the Student support for many years, even attending his IEP team meeting in June 2018. Additionally, Ms. [REDACTED]'s testimony came across as very sincere, and she had no hesitations answering questions posed toward her on either direct or cross examination.

Similarly, Ms. [REDACTED] came across as incredibly knowledgeable in her field, and her testimony was clear, as she utilized many examples to ensure further understanding. Ms. [REDACTED] also was very familiar with the Student, as she had seen him "on and off throughout events [and] social situations" and had "over the years . . . looked at some of his evaluations, offered support, consultation, [and] advice" to the Parents. (Tr. 797:7-11). As such, I found that Ms. [REDACTED]'s familiarity with the Student over the years added additional weight to her testimony.

Both Ms. [REDACTED] and Ms. [REDACTED] testified that the Student's CTOPP-2 scores indicate a lack of progress and a regression in the Student's skill level. (*Compare* FCPS Ex. 24, at 350, *with* Student Ex. 22, at 14; Tr. 816:6-7; Tr. 2068-69:1-25, 1-8). Ms. [REDACTED] put it succinctly when she testified "[n]ot only was there not progress in those skills, there were several drops in the skill level" (Tr. 816:6-7). Ms. [REDACTED], who had observed the Student both before and after he received instruction through the Language Foundations program, took the opportunity to observe the Student in his Language Foundations class and found that the Student

“was still making errors in short and long vowel sounds, despite where he was in the Language Foundations [program].” (Student Ex. 37; Tr. 421:9-11). Ms. [REDACTED] additionally remarked that the Student’s teacher, during her instruction, was using language that was potentially too much of a cognitive load on the Student. (Student Ex. 37, at 1-2). Ms. [REDACTED] derived this from the Student’s behavior where he put his head down on his desk a few times. (*Id.*).

To further evidence the Student’s lack of progress on his phonological awareness and phonics goal, the Student introduced an exhibit where the FCPS informed the MSDE that the Student did not meet his goal in these areas. (FCPS Ex. 28). Next, there is a remark on the CIEP Referral and Presentation packet that “[the Student] did not achieve his goals in any academic areas [on his 2018-2019 IEP].” (FCPS Ex. 27, at 364). Additionally, evidencing a lack of progress, is Ms. [REDACTED]’s testimony that the Student had phonological gaps in areas that are supposed to be mastered in kindergarten or first grade, as well as Ms. [REDACTED]’s testimony that the Student’s phonics skill deficits involve skills that should have been mastered by the end of second grade. (Tr. 1146-47:20-25, 1-10; Tr. 1554:11-20; Tr. 1555:8-14). Additional evidence of a lack of progress came from Dr. [REDACTED] who interpreted the Student’s CTOPP-2 scores from May 2019 and testified that the scores do not indicate “the level of remediation we hope for. Phonemes in isolation still are at a scale score of one in the very, very low range; elison in the low range at the fifth percentile - at a scale score of five, which happens to be at the fifth percentile.” (Tr. 636:10-15).

While the FCPS challenged Dr. [REDACTED]’s credibility—based on Dr. [REDACTED]’s experience with this matter—I found Dr. [REDACTED] to be credible in all testimony he gave regarding his interpretation of data from the exams he reviewed in this area. The FCPS’s challenge is based on Dr. [REDACTED] not being the neuropsychologist who administered the exams in which he opined. I did not find this to be an issue, as Dr. [REDACTED] was testifying about these exams from the

perspective of an expert, and not from the perspective of a fact witness. Dr. [REDACTED], who had great familiarity with the exams in which he opined, based on his past experiences, was able to provide a deeper understanding behind the numbers derived from each exam. (Student Ex. 79).

Finally, the Student relies on Ms. [REDACTED]'s testimony that the Language Foundations program presented "cognitive overload" whereby the program focused too much on memorizing the rules, as opposed to focusing on applying the rules, which resulted in the Student becoming overwhelmed. (Tr. 413-14:13-25, 1-16; Tr. 440:15-19). I found this testimony very interesting and gave it considerable weight, as Ms. [REDACTED] does not routinely work within the Language Foundations program and, as an outside observer, could assess whether this type of program would benefit a learner like the Student. Further, Ms. [REDACTED]'s observation that the Student put his head down on his desk aligned with many observations by other witnesses who also noticed this type of behavior when the Student appeared overwhelmed.

Other evidence that the Student was not making progress in the Language Foundations program can be found in a September 2018 nonsense words test where the Student demonstrated weakness in long vowels, other vowels, and multisyllabic words; F&P benchmark assessments where he was reading a text that was below grade-level expectations; results from an Orton Gillingham real and nonsense words assessment where the Student made some decoding errors; and a WJ IV test where the Student received a low average score in broad reading. (FCPS Ex. 4, at 150; Student Ex. 37, at 4-5).

The FCPS disagrees with the Student's position, arguing that it was the Student's counsel who insisted that the Student be placed in the Language Foundations program at the June 12, 2018 IEP meeting and Ms. [REDACTED] was present at that IEP meeting and did not dispute its appropriateness for the Student at that time. (FCPS Ex. 35). Next, the FCPS cites to Ms.

██████████, who instructed the Student in the Language Foundations program, and who found that the program was appropriate and the Student made progress through this intervention.

(Tr. 1129-30). Ms. ██████████ testified that the Student was consistently decoding passages at ninety-five percent or above; he was able to apply the skills he learned; and he received passing scores on all components within mastery assessments. (Tr. 1089:1-8). Similarly, the FCPS cites to Ms. ██████████'s testimony that the Student "continued to meet the mastery assessments as part of the Language Foundations program, which showed that he was mastering and retaining the skills and concepts that were taught as part of the sequential program." (Tr. 1921:2-5).

Moreover, the FCPS argues that the Student's scores on the F&P benchmark assessment, as well as a comprehension assessment, demonstrated steady improvement from the start of the 2018-2019 school year to the end of the school year. (FCPS Ex. 4, at 152). As support, the FCPS cites to the Student's reading ability advancing from a level S in November 2018 to a level U in May 2019, with ninety-nine percent accuracy, which fell within the fifth-grade standards. As such, the FCPS avers that the Student was not demonstrably behind his peers in phonological awareness and phonics. Relatedly, the FCPS cites to Ms. ██████████'s testimony that there was no decline between the Student's F&P scores, whereby Ms. ██████████ testified "the level of questioning changes and depending on who is giving the assessment, their expectations or response might be a little bit more rigorous so they might . . . score a student harder, so it's hard to gauge just based on that assessment. But his regression wasn't significant, and when we assessed him again to get a better level, he was back to where he was supposed to be." (Tr. 1400-01:16-25, 1-3). The FCPS argues that the IEP team, including Ms. ██████████, Ms. ██████████ and Ms. ██████████, examined all data, including the Student's CTOPP results, and concluded that the Student was making adequate progress in this area as to successfully move into middle school language arts classes.

The FCPS also argues that Dr. ██████ conceded the testing completed by Dr. ██████ in March 2019 showed “some remediation of [the Student’s] underlying decoding.” (Student Ex. 40; Tr. 616:16-17). The FCPS also relies on a remark made by Dr. ██████ at the July 10, 2019 CIEP meeting that the Student’s “verbal score went up from past years from a standard score of 68 to a standard score of 92 which is noteworthy CTOPP scores did not show a regression overall. There were subtest scores that went up.” (FCPS Ex. 38, at 462). Finally, the FCPS relies on the May 16, 2019 IEP team’s examination of results from the QRI, which reflected an “instructional” level of achievement, scores from ninety to one-hundred percent on nonsense word lists, and the Student’s ability to read a F&P level U. (FCPS Ex. 36, at 435, 437). Additionally, at that meeting, Ms. ██████ shared her belief that the Student was demonstrating understanding of the skills taught in Language Foundations, and Ms. ██████ shared that the Student is reading grade level text fluently. (*Id.*; Student Ex. 42, at 6).

The fact that counsel for the Student was the individual who suggested that the Student be placed in the Language Foundations program, and that Ms. ██████ did not say otherwise, has no bearing on my decision, as the IEP team should have refused this request if they were not in agreement. Additionally, I afforded Ms. ██████s and Ms. ██████’s testimonies little weight, as they rely on assessments and measures that I find are outweighed by the evidence summarized above. While there certainly are blips of evidence in this record that show that the Student had some phonological awareness, including IEP progress reports, a QRI word list, a May 2019 teacher administered nonsense word list, a F&P assessment, a comprehension assessment, and a June 2019 observation by Ms. ██████ such evidence is not as persuasive when weighed against the evidence presented by the Student.

Next, I find that Ms. ██████’s reliance on Language Foundation mastery assessments to gauge the Student’s progress was not an appropriate measure of the Student’s capabilities. I am

unpersuaded by this evidence, as Ms. [REDACTED] testified that phonological awareness skills being assessed in the Language Foundations mastery assessments were not the more advanced skills needed to help the Student grow. (Tr. 808:14-19). Further, Ms. [REDACTED] testified that the Student “was able to show mastery at the end of certain assessments only during that assessment . . . but when later asked to do the task in what we would say - his generalization skills, which is use that task then outside of that environment, he was not able to show that he could use those skills appropriately.” (Tr. 804:9-14). I found this testimony compelling.

I further disagree with the FCPS’s position, as the Student’s reading ability, while advancing, was not commensurate with immediate grade level standards. As an example, although the Student was reading at a level S in November 2018, at this point in the school year the Student should have been reading at a level T. (FCPS Ex. 4, at 150). Similar reasoning applies for the Student being able to read a level U text in May 2019. (*Id.*). Next, Ms. [REDACTED]’s own testimony that “it’s hard to gauge just based on [the F&P scores’] assessment” casts doubts on the scores’ reliability in this instance. (Tr. 1400-01:16-25, 1-3).

Finally, while Dr. [REDACTED] testified that there was “some remediation of [the Student’s] underlying decoding,” when placing this opinion into perspective with the totality of Dr. [REDACTED]’s testimony, this statement cannot be read to indicate that the Student made appropriate progress in his phonemic awareness. Additionally, Dr. [REDACTED]’s comment at the CIEP team meeting that there was no regression overall may have been a reasonable statement based on certain assessments, but the totality of the evidence showed regression in the particular area.

In sum, despite the arguments advanced by the FCPS, the Student presented credible evidence that he did not make appropriate progress on his reading phonics goal after he began receiving instruction through the Language Foundations program.

Reading Fluency

After reviewing all of the arguments, exhibits, and testimony related to the Student's abilities and progress in reading fluency, I agree with the Student that progress was not made on his reading fluency goals, and he did not meet grade level expectations. The Student presented substantial evidence to support this conclusion, as follows. As a baseline from December 2017, the Student submitted the GORT-5 test administered by Dr. [REDACTED] where the Student received a scaled fluency score of six, which placed the Student in the ninth percentile. (Student Ex. 22, at 13). The Student also presented Dr. [REDACTED]'s December 2017 WJ IV assessment, which demonstrated that the Student had the reading fluency of a third grader (when at the time, the Student was in the middle of fourth grade). (*Id.* at 12). Also, as of April 20, 2018, the Student's reading fluency was 83 wcpm, with ninety-eight percent accuracy, which was below grade level expectations of 123 wcpm. (FCPS Ex. 32, at 389-90). Once presented with this information, the Student's IEP team determined that the Student needed help in reading fluency. (Student Ex. 32, at 5). Hence, a reading fluency goal was created that when given a grade-level text, the Student would read 127 wcpm with ninety-five percent accuracy. (Student Ex. 33, at 58). From this point forward, the Student never achieved a single fluency score that placed him in line with his grade level expectations, nor with what was set out on his IEP goal.

This conclusion is supported by Ms [REDACTED]'s testimony that the Student's data indicated that the Student "was not meeting the fluency expectations" in the fourth grade; in the fifth grade, the Student struggled with fluency and "progress was not being met," which remained the case even after the Student's services were changed to provide instruction outside of the general education classroom. (Tr. 1375:5-6; Tr. 1435:14-16; Tr. 1573:1-9; Tr. 1603:2-5). Also significant is the FCPS's own report to the MSDE that the Student did not meet his fifth-grade fluency goal. (FCPS Ex. 28). Moreover, the Student's fluency goal on a January 2019 IEP

progress report is marked as not making sufficient progress; it was noted that the Student's wcpm was increasing but that he had not yet met the first objective of reading a grade level passage with 97 wcpm. (Student Ex. 54, at 78; *see also* FCPS Ex. 2, at 65). Similar remarks were made at a February 22, 2019 IEP meeting, where the Student was still not meeting grade level expectations in fluency. (FCPS Ex. 2, at 65).

Standardized assessments also evidence that the Student was not making progress on his fluency goal. These assessments included various F&P assessments, where the Student scored ones and twos. (Student Exs. 61, U). When tested in September 2018, the Student got 57 wcpm. (Student Ex. 52, at 1-2). However, this number increased two months later, in November 2018, when the Student got 104 wcpm with one-hundred percent accuracy; however, an IEP progress report noted that the Student was inconsistent with his fluency. (FCPS Ex. 3, at 119). However, the most compelling evidence in this category is the fact that the Student never met his fluency goal of reading 127 wcpm; the closest he got was 102 wcpm. (FCPS Ex. 4, at 167). Even the Student's goal, which was never achieved, was below the expectation of a graduating fifth grader, which was 146 wcpm. (Student Ex. 45, at 21).

The FCPS disagrees with the Student's position and argues that the Student was offered significant interventions during his fourth and fifth grade school years, resulting in steady improvement in reading and success in meeting his IEP goals in fluency. As support, the FCPS argues that Dr. ██████ conceded that the Student made "some modest gains in his fluency" and that "reading skills between the 2018 and [2019] evaluations remained relatively consistent." (Tr. 613-14:22-25, 1). Also, the FCPS relies on the testimony of Ms. ██████, Ms. ██████, and Ms. ██████ who worked closely with the Student practicing reading. Ms. ██████ noted that the Student "was making some good progress," and Ms. ██████ noted that the Student's "ability to read and comprehend [a] passage had shown significant growth within his reading." (Tr.

1279; Tr. 1376:5-6; Tr. 1773:5-6). Next, Ms. [REDACTED] testified that the Student “wasn’t scoring significantly below his expected level He was able to read what was presented to him in class.” (Tr. 1400:1-2, 6-7). The FCPS also notes that Ms. [REDACTED] remarked at a May 16, 2019 IEP team meeting that the Student “is reading grade-level text fluently when in reading group” and is “reading fluently enough to have access to the text to demonstrate comprehension.” (Student Ex. 42, at 6). Additionally, the FCPS avers that the Student’s teachers, who had an opportunity to closely observe the Student, concluded that the Student made a significant amount of progress and was ready to enter middle school and succeed with appropriate interventions.

The FCPS also cited to the assistance provided by Ms. [REDACTED]. Ms. [REDACTED] worked along with Ms. [REDACTED] to enable the Student to generalize the skills he was working on in his interventions to allow him to utilize idioms in real-world situations. (Tr. 1248:5-15). Ms. [REDACTED] also helped to reinforce other skills such as the use of multi-meaning words, similes, and metaphors. (Tr. 1250-51:24-25, 1-11). She consulted with Ms. [REDACTED] as well as Ms. [REDACTED], who in turn would consult with Ms. [REDACTED] to share data and discuss the way to meet the Student’s IEP goals. (Tr. 1249:2-14; Tr. 1419:6-14). The Parents were appreciative of the work that Ms. [REDACTED] put in to assist the Student and found it helpful. (Tr. 1423:15-20; FCPS Ex. 58, at 558). Moreover, Ms. [REDACTED] followed recommendations that were made to help the Student. (Tr. 1284-85:18-25, 1-10). Ultimately, Ms. [REDACTED] testified that the Student benefited from speech and language interventions and made progress. (Tr. 1279:3-7).

The FCPS’s arguments lack merit. Dr. [REDACTED]’s testimony that the Student made “some modest gains” and that the Student’s reading skills “remained relatively consistent” do not demonstrate that progress was made. (Tr. 613-14:22-25, 1). In fact, such language denotes *de minimis* progress or, perhaps even worse, stagnancy, which is not an appropriate amount of progress in light of the Student’s unique circumstances. Further, I am unpersuaded by the cited

testimonies of Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED]. While I recognize that these three individuals worked closely with the Student and observed him practice his reading fluency, and the Student may have shown movement towards meeting his IEP goal, at the end of the school year, the Student's progress still missed the mark. Also, their testimonies are directly contradicted by an IEP progress report that demonstrated that the Student was not making sufficient progress. Their testimony was further contradicted by the documented remarks at the Student's IEP meeting that the Student was not meeting grade-level expectation in fluency. (Student Ex. 54, at 78; *see also* FCPS Ex. 2, at 65). Additionally, despite the assistance provided by Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED], the Student still did not reach his goal; this is even true considering that the Student's services were changed to provide instruction outside of the general education classroom. Next, the F&P assessments showed no marked growth; the Student vacillated between scoring ones and twos, which is well below the high score of four. (Student Exs. 61 & U). Finally, while the Student may have been able to read in class, his goal was to read at an expected level of 127 wcpm, and the Student never attained that level.

In sum, despite the arguments advanced by the FCPS, the Student presented credible evidence that he did not make progress on his reading fluency goal, nor was he meeting grade level expectations.

Reading comprehension

After reviewing all the arguments, exhibits, and testimony related to the Student's abilities and progress in reading comprehension, I agree with the Student that progress was not made on his reading comprehension goal, and he did not meet grade level expectations. The Student presented substantial evidence to support this conclusion, as follows.

Tellingly, and importantly, the various assessments demonstrated a lack of progress in reading comprehension. To get a good idea of the Student's baseline, Dr [REDACTED]

administered the WJ IV to the Student during the middle of the Student's fourth-grade year, where the Student scored a standard score of eighty-one in passage comprehension, placing the Student's grade level equivalent at a 2.3. (Student Ex. 22, at 12). As such, it is clear from the start that the Student had deficits in reading comprehension. As more assessments were administered, it became apparent that the Student had significant gaps and was not on grade level. For example, on an April 2018 PARCC assessment, the Student's score for both "literacy text" and "informational text" were both marked as "not met." (Student Ex. 52, at 8).

Continuing, when the Student retook the PARCC assessment in April 2019, his scores did not improve at all, whereby his score for both "literacy text" and "informational text" remained "not met." (*Id.*). Similarly, there was little (if any) improvement shown between the Student's fall 2018 and spring 2019 reading comprehension assessments, where the Student scored a thirty-three percent and a forty-eight percent on them, respectively. (FCPS Ex. 4, at 152). For both assessments, the expectation was for the Student to score a seventy-five percent or above. (*Id.*). The Student was far below that mark. Further, the Student received a zero and fourteen percent on the spring 2019 comprehension assessment, where what was being tested on these comprehension tests aligned with two of his goals and objectives in reading comprehension. (*Id.* at 152; Tr. 1835:7-20). Also, significantly, on March 14, 2019, Dr. [REDACTED] re-administered the WJ IV, where the student received the same score of eighty-one (low average) in passage comprehension. (Student Ex. 40, at 2; FCPS Ex. 27, at 367). This was the same score the Student received in the December 2017 administration and demonstrated that his reading comprehension skills were equivalent to grade 2.8, which placed the Student in the tenth percentile. (Student Ex. 40, at 2; FCPS Ex. 27, at 367).

Additional lack of progress can be derived from the CELF-5 reading comprehension supplementary test, administered by Ms. [REDACTED] in June 2018, where the Student displayed

errors in detail, sequence, and making inferences. (Student Ex. 26, at 18). The Student received a scaled score of six, which placed him in the ninth percentile. (*Id.*). Around the same time that the Student took the CELF-5, Ms [REDACTED] administered an informal assessment where the Student read a passage from a text meant for 2.6 grade, and the Student missed some detail and inference questions. (*Id.* at 16-17).

I afforded great weight to the scores the Student received on these assessments, especially the PARCC assessments, the fall 2018 and spring 2019 reading comprehension assessments, and the WJ IV assessments. These assessment types serve as excellent indicators as to whether progress had been made, as past scores could easily be compared to more updated scores with similar grading rubrics. These assessment types significantly demonstrated that progress was not made; the Student continued to not achieve satisfactory scores on the PARRC assessment, where the Student's reading comprehension score never moved past "not met." The Student's slight progress on the spring 2019 reading comprehension assessment was only slightly above an already abysmal score of thirty-three percent, and even the improved score of forty-eight was twenty-seven points below expectation. The Student's scores did not change on the WJ IV exam, where his reading comprehension level remained stationary and demonstrated his comprehension abilities to be analogous to that of a second grader (when the Student was in the fourth and fifth grades).

The Student also offered substantial evidence to support the assertion that his reading comprehension was below grade expectations. As support, additional assessments to determine the Student's comprehension levels were routinely performed, where the Student never read at his expected grade level. For example, in May 2018, the Student was reading at level R, when expected reading level for students at the end of fourth grade was between a level S or a level T. (Student Ex. 29, at 2; Tr. 1557-58:18-23, 1-2). In November 2018, the Student was reading at

level T with a score of 4/9 (limited), and he needed assistance including all key details when he recalled main ideas, events, and when retelling a portion of the text. (FCPS Ex. 3, at 112). Still, towards the end of January 2019, the Student continued to read at level T and continued to retain a score of 4/9 in comprehension (limited), when the expected reading level for students at this point in the school year was at level U. (Student Ex. 54, at 80; FCPS Ex. 2, at 65; FCPS Ex. 3, at 122).

Also serving as persuasive evidence, Dr. [REDACTED] testified that the Student's reading comprehension skill was "lagging at the tenth percentile" and that the Student's "comprehension skills have not improved, nor are they consistent with now his decoding skills." (Tr. 604:21; Tr. 616:12-13). Further evidencing the Student's lack of progress is Ms. [REDACTED]'s testimony that the Student's reading comprehension was not on grade level at the end of fifth grade. (Tr. 1558:3-7). Similarly, Ms. [REDACTED] testified that the Student was not comprehending grade level text when reading one of his benchmark passages, and the Student required prompting to give specific details from the text. (Tr. 1574:1-10, 18-23; Student Ex. 54, at 80). And, notably, the FCPS indicated to the MSDE that the Student did not meet his goal in reading comprehension. (FCPS Ex. 28). Moreover, there is no indication that the Student's comprehension goal on his IEP progress report was ever achieved. (Student Ex. 54, at 80-81). Finally, as the Student failed to make progress on his reading comprehension goal, I also agree with the Student's assertion that the FCPS should have recommended ESY services to the Student in this subject to ensure continuity of instruction over the summer.

The FCPS counters by citing to the assistance provided by Ms. [REDACTED], who testified that she worked with the Student to assist "building his understanding of language and language concepts." (Tr. 1245-46:21-25, 1). Additionally, Ms. [REDACTED] assisted to ensure that the Student

could keep up with his reading group. The FCPS cites to Ms. [REDACTED]'s testimony regarding reading comprehension, where Ms. [REDACTED] relayed, "I worked with [the Student] on different types of questioning, understanding how to refer back to a text to answer questions . . . we focused on strategies for becoming more aware of how to comprehend a text" (Tr. 1376-77:9-25, 1-10). Next, the FCPS explained that Ms. [REDACTED] worked one-on-one with the Student to practice reading controlled oral passages, which continued to improve the Student's reading comprehension. (Tr. 1253:7-9). Moreover, the FCPS cites to Ms. [REDACTED]'s efforts to spend time with the Student before class to provide him with supplemental instruction and assist him with reading, as well as Ms. [REDACTED]'s observed progress as reflected by the Student's "willing" participation in group instruction. (Tr. 1763-74:24-25, 1-7; Tr. 1773:17-21).

The FCPS also cited to Ms. [REDACTED]'s testimony that she observed "great progress in the [Student's] ability to determine the main idea and to summarize" on a reading comprehension assessment and that this assessment demonstrated "significant growth" in the Student's ability to read and comprehend. (Tr. 1772-73:24-25, 1-6). Additionally, Ms. [REDACTED] shared with the May 16, 2019 IEP team that the Student was reading fluently enough to have access to text to demonstrate comprehension. (FCPS Ex. 36, at 437). The FCPS also relies on Ms. [REDACTED]'s testimony that that there was focus on the Student's comprehension during her instruction, and although the Student's "comprehension was a little weaker . . . I wouldn't think he would have an issue reading anything that was presented to him because he was always able to read what was presented to him in my class." (Tr. 1400:1-15).

The FCPS's arguments lack merit. Indeed, the evidence supports that Ms. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] worked closely to provide instruction to the Student. Frankly, these instructors seemed very professional and dedicated, which must be noted on this record; nevertheless, their testimonies were unable to demonstrate that the Student made progress in

reading comprehension. I am unable to afford any weight to Ms. [REDACTED]'s testimony that a reading comprehension assessment demonstrated "significant growth," as the assessment she referenced was one on which the Student scored a forty-eight percent, when the expectation was a seventy-five percent. (FCPS Ex. 4, at 152). It is baffling that such an assessment would lead Ms. [REDACTED] to believe that progress was made. Additionally, Ms. [REDACTED]'s testimony on this issue was unpersuasive, as she also categorized the Student's progress as "showing a little bit more comprehension," which does not denote progress. (Tr. 1608:11-12).

In sum, despite the arguments advanced by the FCPS, the Student presented credible evidence that he did not make progress on his reading comprehension goal, nor was he meeting grade level expectations.

Writing

After reviewing all the arguments, exhibits, and testimony related to the Student's abilities and progress in writing, I agree with the Student that progress was not made on his writing goal, and he was not on track to receive grade level skills or curriculum. The Student presented substantial evidence to support this conclusion, as follows.

Noteworthy evidence to support the Student's assertion begins with a February 2018 structured writing test where the Student exhibited errors following directions, capitalization, grammar, and punctuation; the Student received a scaled score of two, which was significantly below an average score of seven. (Student Ex. 26, at 10; Tr. 394:18).¹⁸ In regards to this test, Ms. [REDACTED] testified that the Student's score was "a huge area of deficit and concern." (Tr. 394:19-20).

¹⁸ Although this assessment was administered prior to March 30, 2018, it is being considered for historical purposes to assist in determining how much progress was made from March 30, 2018 onwards.

The Student's issues with writing can also be inferred from an April 2018 PARCC assessment on which the Student's scores on written expression and language conversion were marked as "not met." (Student Ex. 52, at 8). Continued difficulty in writing can be derived from a writing test administered in October 2018, where the Student received scores of ones (did not yet meet expectations) and twos (partially met expectations); both scores were below the score of three that would be required to meet his IEP written language goal. (*Id.* at 2; Student Ex. 20, at 31). Weak writing skills were noted by Dr. [REDACTED] on the Student's March 2019 WIAT III assessment where, despite generally low-average to average scores in multiple areas, the Student exhibited weakness in his ability to combine sentences (sixth percentile) and to demonstrate a theme and an organization in his writing (seventh percentile). (Student Ex. 40, at 5; Tr. 614:8-12; FCPS Ex. 27, at 367). Dr. [REDACTED]'s testimony was helpful in this regard, as Dr. [REDACTED] compared the Student's scores on the March 2019 WIAT III assessment against other writing scores to come to his conclusion. (Tr. 614:8-12). Also, during testing in March 2019, Dr. [REDACTED] tasked the Student with writing an essay about his favorite game, where the Student's work product failed to include any transitions, elaborations, or a conclusion, as well as rarely used punctuation or capitalization, with frequent spelling errors. (Student Ex. 40, at 6). Adding context, Dr. [REDACTED] was helpful in addressing Dr. [REDACTED]'s findings. (Tr. 618:1-4; Tr. 656:21-25).

A lack of progress in writing can be seen on a third quarter writing sample, where the Student's scores were marked as "approaching" grade level standard for most categories assessed. (FCPS Ex. 27, at 363). Also, an updated April 2019 PARCC assessment was provided to indicate that the Student's scores on written expression and language conversation were "not met" and the Student's writing claim score dropped in half from a twenty to a ten. (Student Ex. 52, at 8). Additionally, and clearly, a lack of progress can be derived from the FCPS's report to

the MSDE that the Student did not make sufficient progress on his 2018-2019 IEP writing goals. (FCPS Ex. 28, at 372).

While all of the assessments summarized above contribute to a conclusion that the Student had serious difficulties in writing, the student's achievement on the 2018 and 2019 PARRC assessment is perhaps the most telling, as this assessment clearly establishes a lack of progress from one year to the next. Namely, the Student's scores on written expression and language conversation remained marked as "not met," and there was noted regression in the Student's writing claim score, which dropped ten points. (Student Ex. 52, at 8). Further, the FCPS's report to the MSDE highlights that the Student did not make sufficient progress on his IEP writing goals. (FCPS Ex. 28, at 372).

This credible evidence demonstrates that the Student did not make progress on his writing goal, nor was he meeting grade level expectations.

Math

After reviewing all the arguments, exhibits, and testimony related to the Student's abilities and progress in math, I agree with the Student that progress was not made on his math goals, and he was not on track to receive grade level skills in this area. The Student presented substantial evidence to support this conclusion, as follows.

In April 2018 the following events transpired that demonstrated that the Student was not making appropriate progress in math instruction right from the beginning. First, it was noted that the Student did not achieve his math problem solving goal, as the Student did not demonstrate eighty percent accuracy on his assignments and demonstrated inconsistencies from day to day. (Student Ex. 54, at 34). Second, the results of an April 2018 PARCC assessment indicated that the Student only partially met expectations in math, and his scores in mathematical reasoning and modeling and applications were only in the "approaching" category. (Student Ex. 52, at 9).

Third, an IEP report from April 20, 2018 noted that the Student was not confident with math fact fluency. (FCPS Ex. 66, at 668). Fourth, at this same IEP meeting, Ms. ██████ reported that the Student was not independently solving problems. (FCPS Ex. 32, at 390). Ms. ██████ made a similar comment at a May 2018 IEP meeting that the Student's math problem-solving skill had not been mastered. (Student Ex. 29, at 3; Tr. 1558:17-24; FCPS Ex. 32, at 390). Taken as a whole, these instances demonstrate that the Student struggled with making progress in math.

Also, compelling evidence was presented by Dr. ██████ who, after reviewing various math assessments, opined that "most children with solely dyslexia don't evidence the severity of deficits in math evident in [the Student]." (Tr. 604:22-25). After analyzing the data and relying on the results from a WJ IV assessment, Dr. ██████ described the Student's math skills across the board as "weak." (Tr. 603-04:23-25, 1-3). Explaining the significance of the Student's scores, Dr. ██████ testified that the Student's score in applied problems was in the third percentile, with a first-grade skill set; his score in calculation was early first grade level; and his math fluency scores placed him in the same position as a first grader. (Tr. 603-04:23-25, 1-3). After comparing Dr. ██████'s 2017 WJ IV assessment with her March 2019 assessment, Dr. ██████ remarked that the Student "still struggles . . . with rapid math fact fluency . . . calculation skills and applied problem-solving skills," which indicated that the Student was functioning below grade level. (Tr. 614:1-5). I gave Dr. ██████'s testimony and opinions significant weight as Dr. ██████'s opinions were supported by the data points he discussed.

The following assessments are also incredibly relevant and demonstrative of a lack of progress in math. First, on the Performance Series Assessments conducted in September and December 2018, the Student received scores that were in the below average range and showed regression, as the scores dropped from a 2130 to a 2117. (Student Ex. 52, at 10). And, second, the Student's PARCC math scores declined between the fourth and fifth grade administrations

from a 706 to a 702. (*Id.* at 9, 11). Notably on the PARCC assessment, the student's score in mathematical reasoning and modeling application declined between the fourth and fifth grades, going from "approaching" to "not met." (*Id.*). I found this evidence very compelling, as it clearly showed that the Student's skills were regressing, as opposed to progressing.

Further evidencing the Student's lack of progress, Ms. [REDACTED] testified that while the Student was in fifth grade, he was still working on addition and subtraction skills. (Tr. 1503-04:24-25, 1-3; Tr. 1528:6-11). The fact that the Student was still working on these basic skills demonstrates that the Student really struggled. Next, Ms. [REDACTED] observed the Student relying on his fingers to count. (Tr. 1558-12-16). Once again, I find that such a tendency demonstrates that the Student struggled with even basic math. Ms. [REDACTED] also testified about a Math Inventory Assessment that was administered during the end of the Student's fourth-grade year. Regarding this inventory, Ms. [REDACTED] testified that the Student's score placed the Student in the third or fourth grade range. (Tr. 1468:23-24). When Ms. [REDACTED] administered this assessment again in October 2018, it continued to show that the Student's scoring was "below basic and [the Student] needed focused skills for third and fourth grade." (Tr. 1471:21-24). Once again, this testimony conveys that the Student was behind in math and, thus, was not progressing forward on his elaborated math goals meant for a fifth grader.

Finally, the Student also relies on the FCPS's report to the MSDE that the Student did not make sufficient progress on two of his IEP math goals. (FCPS Ex. 28, at 372). Similarly, the Student relies on the MSDE finding after an investigation that the "IEP team ha[d] not addressed the lack of expected progress on the math problem solving goal" (FCPS Ex. 11, at 271). This evidence is compelling and is certainly supported by the evidence presented in this matter. Clearly, the Student did not make appropriate progress on his IEP math goals.

The FCPS counters by citing to the assistance provided by Ms. [REDACTED] who holds a master's degree in elementary math education. (Tr. 1311:11-12). The FCPS highlighted Ms. [REDACTED]'s testimony that she worked with the Student (eventually one-on-one) on improving his math skills. In doing so, Ms. [REDACTED] utilized manipulatives¹⁹ and other visual means of imparting math concepts to the Student. (Tr. 1331:6-21). Moreover, Ms. [REDACTED] testified that Ms. [REDACTED] would provide the Student with additional instruction and assistance when the Student arrived early to her math class. (Tr. 1346-47:22-25, 1-4). When discussing the Student's progress, Ms. [REDACTED] testified that she "could see that he was applying concepts that he had learned in class with me more regularly. And some of his initial apprehension in math, we were seeing more - like more confidence less kind of frustration." (Tr. 1346:21-25). Regarding her observations, Ms. [REDACTED] testified that the Student "worked really hard and I saw a lot of progress and I shared that progress in IEP meetings. We implemented a lot of strategies for problem solving and how to understand and break down problems." (Tr. 1333:15-21; FCPS Ex. 33, at 398-99). Such strategies included the use of organizers to visually break down problems so that the Student could explain and interpret them, calculators to check work, and other calculation tools. (Tr. 1333-34:21-23, 16-21; FCPS Ex. 31).

The FCPS also cites to Ms. [REDACTED]'s observation that the Student showed marked improvement demonstrating the ability to complete problems presented on a math inventory test, outside of the testing session, and that she teaches the Student math facts on a daily basis. (FCPS Ex. 35, at 415). Whereby, Ms. [REDACTED] assisted the Student in counting accurately and breaking down math problems to solve them. (Tr. 1353-54:3-25, 1-25). Additionally, the FCPS offered ESY services to the Student so that the Student could work on three math goals and services. (FCPS Ex. 33, at 403; FCPS Ex. 39, at 468). Ultimately, Ms. [REDACTED] testified that she believed

¹⁹ A manipulative is a way to visually represent a number. (Tr. 1331:16-17).

the Student was prepared to advance into the fifth grade with continued math interventions. (Tr. 1363-64:25, 1-7). As support, Ms. [REDACTED] testified that in the fifth grade, the Student seemed to understand the concepts and no longer seemed confused. (Tr. 1366:1-12).

The FCPS cites to examples of the Student's work in his math class, where he was able to solve problems independently by late 2018 and could break math problems down into their component parts to solve them. (FCPS Ex. 74). Additionally, the FCPS alludes to the IEP team agreeing to change the Student's math intervention, Math Navigator, to an IIP that utilized applicable components of Math Navigator and contained a higher degree of intensity. (FCPS Ex. 36, at 439).

Finally, the FCPS argues that the Student's problem-solving goal and math calculation goal discussed at the May 21, 2019 IEP meeting were agreed upon as written. (FCPS Ex. 37, at 450). And, it was also agreed that the Student would receive math instruction both inside and outside of the general education classroom. (*Id.* at 451). Moreover, the IEP team decided to offer the Student ESY services "related to the lack of expected progress on the math problem solving goal." (*Id.*). And, the IEP team offered the Student thirty hours of compensatory services towards meeting his math goal as a result of the MSDE State complaint. (*Id.*).

I do not find that the FCPS's arguments have merit. Again, while Ms. [REDACTED] and Ms. [REDACTED] undoubtedly provided assistance to the Student, the Student's evidence demonstrates that such assistance did not yield progress. Unlike Ms. [REDACTED] Ms. [REDACTED] was not called to testify in this matter. Reviewing Ms. [REDACTED]'s testimony, including the testimony highlighted by the FCPS, above, I cannot derive that the Student made appropriate progress in math. Similarly, while the IEP team agreed to implement a lot of strategies to assist the Student in math, and also agreed to change the Student's math intervention, such new strategies and interventions still did not stimulate appropriate progress. As demonstrated by the substantial and credible evidence

presented by the Student, not only did the Student fail to make progress, his skill set in math regressed in a few areas. Finally, while the FCPS may have offered ESY services as a result of any lack of progress, there is no adequate evidence to conclude that such a provision would have remediated the issues the Student was experiencing in math.

FAPE offered by the 2018-2019 IEP

After reviewing all of the evidence discussed above, I agree with the Student's assertion that he did not make appropriate progress in phonics, reading fluency, reading comprehension, writing, and math. Even further, not only was the Student not making progress, he was significantly behind his peers. And, even worse, in some academic areas the Student was regressing. What is concerning is that the Student's academic struggles should have been evident to the Student's teachers and other staff members at [REDACTED]. The record in this matter contains a large array of assessments, both formal and informal, that should have resulted in action by the FCPS to ensure that the Student did not fall further and further behind. Yet, although in possession of these assessments, as these assessments were either administered by school staff or provided to the FCPS, action was not taken to amend the Student's IEP to ensure that the Student would make appropriate progress. As such, the FCPS denied the Student a FAPE by not offering the Student an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances. *Andrew F.*, 137 S. Ct. at 999.

Additionally, it is also worth noting the following issues regarding the Student's 2018-2019 IEP. On May 7, 2018, the IEP team convened to discuss the Student's IEP for the 2018-2019 school year. The IEP team discussed what contents should be included in the IEP, including supplementary aids, goals, objectives, services hours, and ESY. (FCPS Ex. 33). The IEP team determined that the Student did not need assistance with reading phonics. (*Id.*). On June 12, 2018, the IEP team reconvened once again to discuss the draft IEP. (Student Ex. 32). The team agreed to

add a phonics goal as data provided from Ms. ██████ made clear that this was an area of need. Ms. ██████ made clear what type of intervention the Student required to succeed. (Student Ex. 26, at 14). As such, the IEP Team chose the Language Foundations intervention. I agree with Ms. ██████'s testimony, that this was an improper program for the Student, as it lacked the necessary components to close the Student's gaps in phonemic awareness. (Tr. 421:14-23; Tr. 2068-69). Additionally, an appropriate degree of deference has been afforded to the FCPS's educators, to offer a cogent and responsive explanation for their decisions to show that the Student's IEP was reasonably calculated to enable the Student to make progress. *See Andrew F.*, 137 S. Ct. at 1002. I do not find that the FCPS's witnesses offered a cogent explanation as to why this specific intervention was chosen, other than to appease the Parents and the Student's counsel.²⁰ In fact, as Ms. ██████ testified, the IEP team had concerns about placing the Student in a structured literacy-based intervention program. (Tr. 1896:12-15). Specifically, Ms. ██████ testified: "putting [the Student] in a very intensive program such as [the Language Foundations Program] would not serve to accelerate progress, especially when the school-based team's concerns were largely in the area of comprehension." (Tr. 1896:21-24). Nevertheless, the IEP team agreed to place the Student in the Language Foundations program and, indeed, as discussed at length above, the Student did not make progress. As such, I conclude that the Student's IEP was not tailored to the Student's specific needs in phonics.

As to math, although I agree with the FCPS's position that the MSDE's conclusions after the State complaint investigation in no way takes precedence, after reviewing the sufficient evidence presented in this matter by the Student, I entirely agree with its conclusion that the IEP team failed to address the Student's lack of progress in math. As such, I have incorporated the

²⁰ As stated previously in this decision, the fact that counsel for the Student was the individual who suggested that the Student be placed in the Language Foundations program, and that Ms. ██████ did not say otherwise, has no bearing on my decision as the IEP team should have refused this request if they were not in agreement.

MSDE's findings of fact, in full (as the evidence presented in this matter supports the same findings). Based on these findings,²¹ I conclude that the FCPS did not develop an IEP that addressed the student's identified math needs.

II. The IEP team's consideration of any behaviors interfering with the Student's progress

The Student argues that another factor that is considered in determining whether an IEP is reasonably calculated to offer a FAPE are behaviors that a child exhibits that may interfere with their progress. Thus, the Student argues that the FCPS caused him to develop an emotional disability, which interfered with his ability to make progress and, hence, the FCPS failed to provide him with a FAPE. After reviewing all the arguments, exhibits, and related testimony, I find that while there is evidence to support that the Student was anxious at school and because of school, there is a lack of evidence to find that the Student's emotions interfered with his ability to make progress. As such, I cannot find that the FCPS failed to provide him with a FAPE for that reason.

As stated, there is substantial evidence to conclude that the Student exhibited anxiety at school and because of school. The Student's main expert witness in this respect was Dr. [REDACTED] who testified that the Student was anxious and that the "anticipation of not performing well when asked to do . . . tests creates anxiety. The cumulative impact of coming to school and not being able to engage and succeed in the task that you're asked to do creates anxiety. And that's the basis for the adjustment disorder diagnosis" (Tr. 609:7-19). Dr. [REDACTED] also opined that the Student's emotional disability was "a preventable emotional disorder" and that there was "no reason that [the Student] should have developed a clinical anxiety and depressive disorder had he

²¹ These findings are replicated in the Findings of Fact section of this Decision.

received . . . the appropriate intensity and nature of services to mitigate his learning disabilities and to give him the opportunity to make appropriate progress.” (Tr. 626:16-22). Dr. [REDACTED] went on to testify that he disagreed with Dr. [REDACTED]’s conclusion to code the Student as emotionally disabled, and that he would have recommended remediating the learning and cognitive weakness with the appropriate setting, structure, and environment, including altering the intensity of the Student’s intervention plan, setting, classroom size, and reading intervention. (Tr. 638-39:23-25, 16-20). Likewise, Dr. [REDACTED] opined that the emotional disability was secondary and occurred as a result of an absence of intervention. (Tr. 639:1-2).

I afforded only a little weight to Dr. [REDACTED]’s opinions set out above. I am unable to completely accept Dr. [REDACTED]’s opinion, as Dr. [REDACTED] had never personally examined the Student during the years that the Student was at [REDACTED]. Thus, I find that Dr. [REDACTED] is unable to apply this logic to the Student. As such, Dr. [REDACTED]’s opinion, in this regard, is based on a generalization as opposed to firsthand knowledge of this matter and is, thus, not accepted.

Still, I do not entirely discount that the Student suffered from anxiety. Substantial evidence of this can be found in the Achenbach scales compiled by Dr. [REDACTED], whereby Dr. [REDACTED] found that the Student was reported to experience depression and anxiety. (Tr. 1589:3-24; Tr. 1816-17:24-25, 1-6; FCPS Ex. 4, at 162-64; FCPS Ex. 24, at 344-45, 351-54). Despite the FCPS’s argument to the contrary, addressed below, I find that this rating scale was an appropriate marker to demonstrate the Student’s mental state and constitutes sufficient evidence to establish that the Student was anxious at school and because of school.

The FCPS counters that there is limited evidence that the Student truly suffered from depression or anxiety. As support, the FCPS remarks that Dr. [REDACTED]’s Achenbach scores derived from a child behavior checklist that was filled-out by the Student’s teachers and the Parents; whereby, the Parents provided input that led to a more dramatic finding of the Student

being in the clinical range than what the Student's teachers observed. (FCPS Ex. 24, at 351-52). As such, the FCPS argues that Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] all observed the Student as generally happy and eager to please, despite occasional frustrations with the difficulty faced in completing some schoolwork. Ms. [REDACTED]'s only concern was that the Student did not like leaving her general education classroom to attend intervention sessions. (Tr. 1815:4-13). And, Ms. [REDACTED] only saw the Student cry when he was confused about something and thought he was in trouble. (Tr. 1401:13-17). Ms. [REDACTED] testified similarly in that the Student was generally happy and was only rarely discouraged or unhappy. (Tr. 1764-65:8-25, 1-12). The FCPS remarked that the Student's teachers' testimonies contrasted with the observations noted by the Parents, suggesting that the Parents' observations were either exaggerated, incorrect, or influenced by family-related factors outside of the school.

The FCPS also hypothesized that perhaps the Student's anxiety and depression stemmed from daily reminders at home that he was not as fortunate as his twin [REDACTED] who was "relatively normal cognitively." (Tr. 634:22). The FCPS cites to Dr. [REDACTED]'s recommendations on how to help the Student cope with and manage feelings of anxiety and depression. (FCPS Ex. 24, at 346-48). The FCPS questioned if these recommendations were utilized in the Student's own home. The FCPS also questioned why Dr. [REDACTED] was not available to testify in accord with her findings, leaving the record devoid of evidence causally connecting any purported emotional problems to the Student's learning disabilities. Nevertheless, the FCPS cites to the May 16, 2019 IEP team's agreement that the Student met the criteria for an emotional disability, but that this was not his primary disability. (Student Ex. 42, at 8). In doing so, the FCPS noted that some of the recommendations made by Dr. [REDACTED] were those that were already implemented by the FCPS staff. (*Id.* at 3).

In response to the FCPS's arguments calling into doubt the veracity and/or the source of the Student's anxiety and depression, the FCPS's own school psychologist, Dr. [REDACTED] was the individual who confirmed "the presence of internalizing problems at home and school at this time," noting "[c]hallenges related to withdrawn/depressed and anxious/depressed symptoms appear increasingly evident" where the psychologist states "[t]est results are consistent with the presence of emotional condition in the area of anxiety and/or depression." (FCPS Ex. 24, at 346). Next, on the Achenbach scales, Ms. [REDACTED]'s ratings placed the Student in the clinical range for academic performance, borderline clinical range for anxious/depressed, clinical for internalizing, and borderline clinical for total. (*Id.* at 352). Similarly, Ms. [REDACTED]'s ratings on the Achenbach scales placed the Student in the clinical range for academic performance, borderline clinical range for academic performance total, clinical range for anxious/depressed, clinical range for internalizing, clinical range for obsessive-compulsive problems and stress problems, and borderline clinical for total. (*Id.*) Also, Dr. [REDACTED] completed a clinical interview with the Student, where the Student relayed that it was hard to be behind in math and that he had fantasies about not going to school and his feeling of sadness arose most often at school. (*Id.* at 340-41). As such, again, I find that evidence has been produced to establish that the Student was anxious and depressed.

Nevertheless, I am unable to conclude that the Student's school-related anxiety or depression interfered with his progress to a point to deny him a FAPE. At the center of the Student's argument is Dr. [REDACTED]'s opinion that "anxious and depressed kids lack availability for learning" and that "[a]nxiety, as a disorder, impacts the brain's capacity for learning and reduces access to executive functioning." (Tr. 630-31:24-25, 3-5). I find there is a lack of evidence to support finding that the Student's anxiety inhibited "his availability for learning." Dr. [REDACTED] was in no position to opine as to whether the Student's anxiety interfered with the Student's

ability to make progress. Dr. [REDACTED] never examined the Student while the Student was enrolled at [REDACTED], and his opinions, in this regard, were entirely secondhand. On the other hand, there is substantial evidence in this record to support the notion that the Student was easily redirected by his teachers whenever they observed him becoming upset. For example, many of the Student's teacher's testified that the Student would put his head on his desk when he seemed overwhelmed; however, these teachers were always able to get the Student to refocus as soon as they observed this type of behavior. Additionally, while the Student's teacher's observed various instances of the student being upset, anxious, or depressed, this was not the overarching description that any teacher affixed to the Student. Finally, these observations of the Student's negative demeanor in the classroom were few and far-between; all of the Student's teachers described the Student as a student who was emotionally available and ready to learn. As such, I am unable to conclude that the Student's school-related anxiety or depression interfered with his progress to a point to deny him a FAPE.

III. The IEP team's consideration of additional information and input provided by the Student's parents

The Student, citing *Andrew F.*, argues that the Parents were not provided meaningful opportunities to participate in the IEP process and, thus, the Student's IEP was not reasonably calculated to provide a FAPE, as parents are key members of the IEP team. 34 C.F.R. § 300.321(a)(1). The Student avers that the FCPS was not receptive or responsive to the Parents' input about the Student's educational needs, increased anxiety and depression, and skewed data. First, the Student argues that the FCPS failed to honor their revocation of consent for conducting educational assessments. (Student Ex. 38, at 9; Tr. 116:13-17). As support, the Student cites to a Sounds in Syllables assessment completed by Ms [REDACTED] without the Parents' consent, and which was not provided prior to a CIEP meeting. (Student Ex. 48, at 5-7; Tr. 157:1-9). This

assessment was not part of the Student's Language Foundations intervention and was not administered to a group, grade, or class. (Tr. 1174:18-23; Tr. 2025:4-12). The Student argues that administering the Sounds in Syllables assessment, without parental consent, violated 34 C.F.R. § 300.300. Moreover, the Student argues that the FCPS collected this assessment to determine the nature and extent of the special education and related services that the Student needed, which is prohibited without parental consent. (Tr. 2020:7-16; *Letter to Gallo*, 61 IDELR 173 (OSEP 2013)). The Student argues that this procedural violation resulted in harm as the FCPS continued to recommend that the Student remain in Language Foundations based on this assessment.

Second, the Student argued that Ms. [REDACTED] skewed data when she administered a math inventory assessment on June 6, 2018, where the Student, utilizing a calculator, scored a 515, which placed the Student's math skill on the third-grade level; without the use of a calculator, the Student scored a 5. (FCPS Ex. 70, at 720; FCPS Ex. 66, at 663). However, Ms. [REDACTED] only noted the score of 515 on the math inventory assessment and not the score of 5. (*Compare* FCPS Ex. 70, at 720, *with* FCPS Ex. 66, at 663). The Student argues that Ms. [REDACTED] by skewing these results, failed to provide the Parents with data, which barred them from meaningfully participating in the IEP progress.

Third, the Student argues that during the 2018-2019 school year, Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] all administered the F&P Assessments. (Student Ex. 61, at 3-28; Tr. 1086:5-11; Tr. 1397:1-4; Tr. 1791:1-12). In doing so, the Student avers that data was skewed as there was no way to determine how many times these assessments were repeated, or read to the Student before, or practiced, or prompted. The Student argues that these F&P assessments were used by Ms. [REDACTED] and Ms. [REDACTED] in their recommendation to the IEP team that the Student continue in the same interventions in middle school.

Finally, the Student argues that the Parents were not provided with the results of a QRI prior to the July 10, 2020 CIEP meeting and that the results were only provided after the Parents filed an MPIA request. (Student Ex. 47, at 2; Tr. 181:9-20; Student Ex. 60, at 7).

As to the Sounds in Syllables assessment, the FCPS argues that conducting a single assessment without prior consent does not constitute a denial of FAPE. As support, the FCPS explains that the Student was subjected to multiple tests and assessments that were intended to inform the IEP team regarding his level of progress. Next, the Sounds in Syllables test was conducted after the Parents attended the May 16, 2019 IEP team meeting, where the majority of his goals and objectives for the 2019-2020 school year were largely crafted. As support, the FCPS cites to Ms [REDACTED]'s testimony that this was an "informal assessment that we give to many students across the county without parent consent" and "that this assessment does not relate to eligibility or codings." (Tr. 1929-30:11-12, 1-2). Rather, this assessment was used to "look at a student's data and determine appropriate instructional strategies to support that student." (Tr. 1930:8-10). As such, the FCPS argues that this assessment did not change the Student's placement or alter the Student's programs and related services, as were discussed at IEP meetings that were attended by the Parents. Additionally, the IEP team continued to look at more significant markers to determine what progress the Student was making in decoding. Finally, the FCPS alludes to the fact that the results of the Sounds in Syllables assessment were discussed at the CIEP meeting, and the Parents and their counsel had an opportunity to address its significance.

As to the results of a QRI not being provided to the Parents prior to the July 10, 2020 CIEP meeting, the FCPS argues that this was the result of a slight delay in the FCPS's delivery of this assessment; the Parents ultimately received the test results in full. The FCPS argues that

there was no malice behind its action and that the FCPS staff continuously delivered data to the Parents regarding the Student's progress. (FCPS Ex. 62, at 607-47).

Although the FCPS did not specifically address the Student's assertions that the FCPS staff skewed data in reporting F&P scores and a math inventory score, the FCPS's response can be drawn from its invocation of Justice John Paul Stevens' concurring opinion in *Schaffer* that "I believe that we should presume that public school officials are properly performing their difficult responsibilities under [the IDEA]." *Schaffer*, 546 U.S. at 62-63. As such, the FCPS goes on to state there is a lack of evidence to support claims of what amount to bad faith by the FCPS educators.

After reviewing all the arguments, exhibits, and testimony related to the allegations set out above, I agree with the FCPS that the Parents were not denied the ability to meaningfully participate in the IEP process as key members of the IEP team. This conclusion is drawn from a lack of credible evidence that any resulting harm from these allegations kept the parents from being meaningful participants in the IEP decision making process.

As to the Sounds in Syllables assessment, I agree that this assessment was completed without the Parents' consent, and this assessment was used as one of the determining factors as to the nature and extent of the special education and related services that the Student would receive. However, I am unpersuaded that this single assessment had any major impact on the IEP team's decision to continue the Student in the Language Foundations program. As proof, at the IEP team meeting where this assessment was discussed, all participants (including the Parents and counsel for the Student) had opportunities to weigh-in on their thoughts about the nature and extent of special education services the student would receive in phonemic awareness and phonics. Although Ms. [REDACTED] recommended that the Student continue in Language Foundations, there is no evidence in the record that the Sounds in Syllables assessment, nor Ms.

██████' recommendation, played any greater role in the decision making process than any other assessments or team member's recommendation. Also, significantly, although the Parents did not consent to the administration of this assessment, there is no evidence that the Parents were not afforded the ability to review this assessment at the CIEP meeting and/or object to its usage.

As to the QRI, I agree that this assessment was not provided to the Parents prior to the CIEP meeting. However, for similar reasons stated above, I cannot find that the failure to provide this assessment meaningfully altered the Parents' ability to participate in the IEP process. The record is devoid of any indication that this QRI was a driving factor in any decision made by the IEP team, and there is no evidence that the Parents were precluded from reviewing this QRI at the IEP meeting and/or objecting to its use.²²

I am entirely unpersuaded that any of the FCPS teachers skewed any assessment results produced to the Parents. As to the allegation that Ms. ██████ skewed data when she reported the results of the math inventory assessment as a 515 as opposed to a 5, I have reviewed the applicable testimony and conclude that such an error amounted to an error in judgment and not a volitional act to skew the data of this assessment. In fact, during the testimony pertaining to this result on cross, Ms. ██████'s demeanor was one of confusion when questioned about this incident. Assessing her demeanor led me to conclude that there was no bad faith in such an omission. Additionally, there is no evidence to support that this one math inventory assessment was the driving force behind any IEP team decision.

Finally, as to the F&P assessments, I am also entirely unpersuaded that the FCPS teachers administered these multiple assessments to skew the data to keep the Parents from meaningfully participating in the IEP process. There is absolutely no evidence in this record to come to such a

²² Although in no way determinative, it should be noted that the Parents were represented at all of these IEP meetings by legal counsel. As such, the Parents could have requested that counsel review these assessments and provide insight as to their meaning.

conclusion and, as such, this allegation is entirely baseless. Justice Stevens' concurring statement in *Schaffer* applies to this instance. *Schaffer*, 546 U.S. at 62-63. Moreover, there is no evidence to support that these F&P assessments played a driving force behind any IEP team decision.

One of the issues noted in the due process complaint was whether the FCPS failed to provide the Student's parents with meaningful participation in the IEP process by refusing to provide information on how the IEP would be implemented at ██████████ Middle School. No argument was made at the hearing regarding this allegation. Nevertheless, reviewing Ms. ██████████'s testimony in this regard, it appears Ms. ██████████ was dissatisfied with the CIEP team's inability to provide her with a day-to-day schedule of the Student's classes at ██████████ (Tr. 266-67:17-25, 1-16). Ms. ██████████ categorized the CIEP team's responses as "very vague." However, Ms. ██████████ conceded that she was not expecting them to give her a full schedule. (Tr. 267:5-9). Reviewing this testimony, I cannot conclude that the FCPS denied Ms. ██████████ from meaningfully participating in the IEP process in this regard. Additionally, Ms. ██████████'s testimony is based on her assumption that the FCPS had a schedule in place. Such a fact had not been established at the hearing. There is no evidence that the FCPS withheld any information from Ms. ██████████ and although Ms. ██████████ may have considered the CIEP's responses "vague," there is no evidence in the record to lead to a conclusion that Ms. ██████████ was prevented from getting answers to any questions she had. For all of the reasons stated above, I cannot find that the Parents were impeded from *meaningfully* participating in the IEP process. 34 C.F.R. § 300.321(a)(1).

IV. Appropriateness of the 2019-2020 IEP

For the reasons that follow, I agree with the Student's position that the 2019-2020 IEP would not have been appropriate for the Student and would have denied him a FAPE. In the

sections above, I have already provided an analysis regarding whether progress was made from March 30, 2018 up until the Student was unilaterally placed at the [REDACTED]. That analysis is incorporated, by reference, herein. Under the Student's prior IEPs, the evidence demonstrated that the Student did not make progress in the areas of reading, writing, and math. After reviewing the 2019-2020 IEP, associated team meeting notes, and relevant testimony, I agree with the Student's assertion that the 2019-2020 IEP, as recommended, did nothing to significantly change how the Student would be instructed in those areas or address his deficits. (FCPS Exs. 4, 37-39). In fact, the IEP contained the same level of services and maintained the Student on a similar schedule. (Student Ex. 47, at 19-20).

The FCPS counters that the Student was referred to a CIEP team meeting, where the team considered the Student's strengths and weaknesses in reading and math and reviewed the notes regarding his progress in the interventions offered during the 2018-2019 school year. (FCPS Ex. 27, at 362-70). During this CIEP team meeting, the Student's teachers discussed the Student's progress, and the Parents, the Student's counsel, and their experts all had a chance to weigh in. The FCPS argues that it was reported that the Student was making progress and any assertions that the Student's scores dropped or stayed the same were disputed. (*Id.* at 459). The CIEP team determined that the Student had made progress in the Language Foundations program, displayed increased phonemic awareness, and gained knowledge of spelling rules; as such, the IEP team recommended that the Student continue to receive instruction in Language Foundations. (*Id.* at 460-61).

The FCPS also relies on Ms. [REDACTED]'s statement at the CIEP meeting that "teachers and administrators . . . worked very hard to support [the Student.]" (*Id.* at 462). Also, although the Student's counsel and Ms. [REDACTED] disagreed over the progress the Student made, Ms. [REDACTED] relayed that "standardized assessments are not typically used to measure meaningful gains and

progress.” (*Id.*). Finally, the FCPS cites the various supports that would be provided by the FCPS on the IEP that would meet the Student’s needs. (*Id.* at 463). Additionally, the services that would be provided would include grade level content and intervention to support gaps in learning. (*Id.*). In sum, the FCPS argues that the Student’s concerns that were shared at the CIEP team meeting were not supported by any data, and the Student’s needs could have been met at ██████████ Middle School. (*Id.* at 463-64).

Briefly, in response, the Student argues that there was no evidence that the Student made progress in the Language Foundations program, displayed increased phonemic awareness, and gained knowledge, as argued by the FCPS. The Student also takes issue with the FCPS citing Ms. ██████████’s statement that standardized assessments should not be used to measure meaningful gains and progress, as Ms. ██████████ is not a psychologist or an expert in dyslexia, educational assessments, diagnostics, or reading interventions. Additionally, the Student argues that Ms. ██████████ was incorrect in her presentation to the CIEP team that the Student scored average on a grade level assessment, Ms. ██████████ did not have consent to conduct the assessment she presented on, and Ms. ██████████ and Ms. ██████████’s assertions that the Student was making progress was incorrect, as he did not meet any goals or objectives. Further, the Student argues that the CIEP team failed to consider the impact the IEP had on the Student’s emotional state and continued to recommend a similar program for middle school.

I disagree with the FCPS’s position. The Parents, counsel, and their experts attended the many IEP meetings leading up to the creation of the 2019-2020 IEP. At the meetings, the Parents and their representatives raised many of the same issues with the FCPS’s programming and the Student’s progress derived from this programming as have been contested in this case. (FCPS Exs. 36-38). As discussed above, I have found that the Student did not make appropriate progress in his reading, writing, and math goals from his 2018-2019 IEP, and my reasoning relies

on many of the issues that the Parents and the Student’s counsel raised at these IEP meetings. (*Id.*). The school-based members of the FCPS IEP team dismissed many of the concerns raised by the Parents and the Student’s counsel and continued to recommend similar programming as found in the 2018-2019 IEP.

Significantly, under the 2019-2020 IEP, the Student’s phonemic skills would continue to be addressed through the Language Foundations program. The Student has produced significant evidence that he was not successful in that program and, thus, would not have made progress under the 2019-2020 IEP had he remained in the program. As support for this finding is Ms. ██████’s expert testimony that she “strongly disagree[d] with the recommendation for [the Student] to continue in with the Language Foundations, especially in middle school” because the Student was not progressing with this intervention. (Tr. 843-44:24-25, 1-2; Tr. 803:21-25). Ms. ██████, as an expert, also testified in a similar manner. (Tr. 403-04; Tr. 414:10).²³

The FCPS argues that the Student’s challenge of the Language Foundations Program is an impermissible attack on methodology, which school officials were entitled to select. In support, the FCPS avers that the Student seeks to be instructed through the Orton Gillingham Plus approach. As such, the FCPS invokes the following language articulated by the Supreme Court of the United States: “[C]ourts must be careful to avoid imposing their view of preferable educational methods upon the States.” *Rowley*, 458 U.S. at 207. The FCPS goes on to argue that the Student made clear progress in reading through the Language Foundations program, so it

²³ The Student also cited to an email from Ms. ██████ regarding the appropriateness of the Language Foundations program for students with dyslexia. (Student Ex. 50, at 1). The Student argued that this email demonstrates that the Language Foundations program was an inappropriate intervention for a student with his capabilities. I find there is no need to address Ms. ██████’s email as she credibly testified that what was written was a misstatement and provided that “[s]tudents with dyslexia benefit from effective tier one delivered with fidelity, effective tier two, and effective tier three. The tiers, again are somewhat academic because there is no specific guideline for tiers.” (Tr. 1661:1-5).

would be inappropriate to find that the Student should receive a different methodology of instruction.

I disagree with the FCPS. I do not find that the Student is impermissibly attacking a methodology. Distinctively, the Student challenges the effectiveness of an intervention program *that he has already spent one school year going through* and whether that program afforded him the ability to make progress on his goals and objectives. To conclude otherwise would leave any student struggling to make progress in an intervention trapped in that intervention, which clearly was not the intent of the Supreme Court in *Rowley*.

In sum, the 2019-2020 IEP developed for the Student was not significantly different than what he had during the 2018-2019 school year. The Student failed to make appropriate progress during that school year. As such, implementing the 2019-2020 IEP at the [REDACTED] Middle School would not have enabled the Student to make progress in light of his circumstances, as contemplated in *Andrew F.*

V. Appropriateness of the [REDACTED]

Under *Burlington*, the Supreme Court established that parents may recover the cost of private education only if: (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the State is not a bar under the IDEA. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

I have found that the FCPS failed to provide the Student with a FAPE, and I agree with the Student that the [REDACTED] is an appropriate placement, as evidence has been

produced to demonstrate that its programming is tailored to his needs in dyslexia, dyscalculia, and dysgraphia. (Tr. 1696:11-13). Further, the Student produced reliable evidence that the [REDACTED] would provide him with an education that includes specialized instruction in all areas of intervention and would allow him to make academic progress. (Tr. 1690-91). To support this finding, Ms. [REDACTED] testified that the [REDACTED] provides Orton Gillingham Plus and Visualizing and Verbalizing interventions. (Tr. 1699-1700:9-12, 2-11). These types of interventions align with Ms. [REDACTED]'s recommendations that the Student would make progress through programming that offers an intense, interactive, one-on-one science based, systematic, multisensory approach. (Student Ex. 26, at 14).

As further support, Ms. [REDACTED] testified that she provides intensive multi-sensory, evidence-based interventions in her classroom as well as in the common core curriculum; whereby, the Student receives instruction through Orton Gillingham Plus, Visualizing and Verbalizing, Story Grammar Marker, Framing Your Thoughts, and Touch Math. (Tr. 678-80). Corroborating Ms. [REDACTED]'s testimony, Ms. [REDACTED] testified that she observed the Student in Ms. [REDACTED]'s Visualizing and Verbalizing program, and the Student had made "tremendous growth" in his writing. (Tr. 431:13). To further evidence that the [REDACTED] is an appropriate placement, Ms. [REDACTED] went on to testify that the Student receives the necessary interventions in writing and math. (Tr. 678-79:21-22, 1-11; Tr. 696:10-11, Tr. 705:5-25; Tr. 706:6-12). And, the Student was making academic growth in the following areas: long division, multiplication facts, math problem solving, real-world math problems, integrating skills from Orton Gillingham Plus into reading, writing mechanics, reading sight words, and writing. (Tr. 694-705). Ms. [REDACTED] also confirmed that the [REDACTED] implements all necessary instructional and accessibility features that were proposed on the Student's May 2019 IEP. (Tr. 675:9-13; Tr. 676:4-11, 24-25;

Tr. 677:1-9; Tr. 680:20-25; Tr. 682:7-25; Tr. 683:6-7; Tr. 684:14-18; Tr. 685:16-25; Tr. 690:1-15; Tr. 692:13-6, 16-21; Tr. 693:5-13).

Further evidencing the appropriateness of the [REDACTED], Ms. [REDACTED] another one of the Student's teachers, testified that the [REDACTED] provides specialized instruction in a small class, with collaboration among providers. (Tr. 974-75:10-25, 1-17). Further, Ms [REDACTED] offered that she has observed the Student make "strong gains" and progress while attending the [REDACTED]. (Tr. 951:18-20, Tr. 959:3; Tr. 960:20-25; Tr. 970:23-25).

I afforded great weight to both Ms. [REDACTED]'s and Ms. [REDACTED]'s testimonies, as both had a very close working relationship with the Student during the 2019-2020 school year as his teachers. Serving in this capacity, both Ms. [REDACTED] and Ms [REDACTED] were in unique positions to assess, first-hand, if the instruction offered to the Student, on a day-to-day basis, was appropriate. Both Ms. [REDACTED] and Ms. [REDACTED] provided convincing evidence that the [REDACTED] [REDACTED] was an appropriate placement for the Student. Thus, I find that the Student has met his burden to establish that the [REDACTED] provides instruction that is specially designed to meet the Student's unique academic needs in reading, math, writing, and speech-language through a multi-sensory, evidence-based approach, which is carried out and reinforced throughout all of the Student's class periods, enabling the Student to make significant educational progress.

In arguing against the appropriateness of the [REDACTED], the FCPS relies heavily on the testimony of Ms [REDACTED], who testified that the [REDACTED] does not have a guidance counselor or any sort of mental health professional on site that could assist the Student with any emotional issues, (Tr. 1695:11-15), lacks on-site, permanent, service providers such as SLPs, physical therapists, or occupational therapists, (Tr. 1706:9-25), and lacks electives

like instrumental music or a choir. (Tr. 1692:23-25). The FCPS further complains that the [REDACTED]'s ex-headmistress, Ms. [REDACTED], is not college-educated, (Tr.v1689:5-8), the [REDACTED] is not approved by MSDE to offer special education and related services; or in compliance with certain requirements under COMAR 13A.09.10.12A or .18A, employs only a small faculty, (Tr. 1690:7-11), and is small, (Tr. 1690:12-18). Finally, the FCPS points out that the [REDACTED] does not offer on-site physical education, (Tr. 1694-95:16-25, 1-3), offers no sports teams or musical ensembles, (Tr. 1692-93:23-25, 1-2), and offers electives in writing, comprehension, and executive functioning which, the FCPS comments, cannot compare to electives such as science, chess, or language club. (Tr. 1701:3-12). As such, the FCPS argues that the [REDACTED] is far from the least restrictive environment in which the Student can be educated, and that the Student will miss out on the full experience of middle school with its many in-school and after-school activities (or a full high-school experience with prom, a senior trip, or a traditional graduation ceremony).

The FCPS also argues that the [REDACTED] implemented services that are analogous to those found in the Student's IEP; services that are being challenged in this instant proceeding. (Tr. 561; Tr. 720; Tr.736). Next, the FCPS cites to Ms. [REDACTED]'s testimony regarding the Student's goal from his 2019-2020 IEP, which she believed to be appropriate. (Tr. 701-02). Similarly, the FCPS argues that the [REDACTED] attempted to implement each service from the Student's 2019-2020 IEP, even replicating the number of hours per week he would receive services in literacy and math. (Tr. 706, 708). Further, the FCPS argues that the Student was not making progress at the [REDACTED]. As support, the FCPS cites to Ms. [REDACTED]'s testimony that by the middle of his sixth grade year, the Student "wasn't able to retell a story or generate a story in line with what same-aged peers would be doing" and the Student was placed in the "poor" range for this skill. (Tr. 963:18-25). Also, Ms. [REDACTED] testified that

towards the end of the Student's sixth grade year, she had not yet begun working on his skill of "oral language narrative." (Tr. 966:4-14). In sum, the FCPS argues that for the first half of the 2019-2020 school year, the evidence demonstrates that the Student did not necessarily make any greater progress at the [REDACTED] than he would have made under his IEP had he attended the [REDACTED] Middle School. As for the second half of the year, the COVID-19 pandemic has led to a total absence of progress reports or meaningful grading to evidence progress.

Briefly, in response, the Student argues that Ms. [REDACTED] testified that the Student was doing "tremendous" and has "confidence and the motivation to love learning again." (Tr. 692:3-6). Additionally, the Student is not interested in the programming FCPS points out is not available at the [REDACTED]; and that the [REDACTED] offers electives in technology, art, physical education, and music. (Tr. 1692:12). Regarding Ms. [REDACTED]'s educational background, Ms. [REDACTED] testified that she brought in an educational director and that Ms. [REDACTED] is no longer employed at the [REDACTED] (Tr. 1688:2-4, 22-25). Additionally, the FCPS's assertion regarding the status of the [REDACTED], under the MSDE or COMAR, need not be analyzed as such statuses are meaningless in the context of a unilateral placement. *Carter*, 114 S. Ct. 361. Finally, the Student argues that it is evident that the Student made progress at the [REDACTED], and cites to the following examples: Ms. [REDACTED]'s testimony regarding a Words Their Way assessment where Ms. [REDACTED] testified that this demonstrates that the Student made progress at the [REDACTED] (Tr. 828-31); that the Student's emotional status at the [REDACTED] has improved (Student Exhibit 63); and, the Student's mastery of goals and objectives. (Student Ex. 66; Tr. 695-96; Tr. 698:20-23).

I find that the FCPS's arguments are without merit. First, I agree with the Student that *Carter* affords the Parents the ability to seek reimbursement for a unilateral placement that does

not meet MSDE or COMAR education standards. *See Carter*, 510 U.S. at 14 (“Nor do we believe that reimbursement is necessarily barred by a private school's failure to meet state education standards.”). The language cited above entirely supports the Student’s position.

Second, much of the FCPS’s arguments revolve around the notion that the [REDACTED] [REDACTED] is woefully inadequate in its offerings, and that the Student will miss out on being educated in a setting with a greater assortment of programming, extracurricular classes, and school cultural events. While the [REDACTED] is certainly a smaller school, both in physical size and in population, it is nevertheless a functioning school that is appropriate for the Student’s educational needs. Moreover, while the [REDACTED] may not have as many extracurricular offerings as a school within the FCPS, is not devoid of extracurriculars. (Tr. 1692:12). Additionally, while the [REDACTED] does not have SLPs or occupational therapists on its payroll, such positions are contracted out and provide onsite services. (Tr. 1706:9-23).

Third, it is entirely unnecessary to consider the academic history of Ms. [REDACTED], the [REDACTED] ex-headmistress, in determining if the [REDACTED] is an appropriate placement for the Student. While Ms. [REDACTED] may not be a college graduate, Ms. [REDACTED] did not serve as the educational director of the school and, while she was employed at [REDACTED], her job duties seemed to be more in line with day-to-day administrative work. (Tr. 1688:2-4, 22-25). Importantly, Ms. [REDACTED] has never been linked as an individual who provides educational instruction to the Student; hence, her academic credentials are entirely meaningless to my analysis.

Fourth, I will address the FCPS’s assertions that the [REDACTED] implemented and replicated services that were analogous to those found on the Student’s 2019-2020 IEP, and the assertion that Ms. [REDACTED] found one of the Student’s goals appropriate. Although there is

evidence that the [REDACTED] implemented various aspects of what was contained within the 2019-2020 IEP, this does not, in and of itself, demonstrate that the entirety of the 2019-2020 IEP was appropriate. The same goes for Ms [REDACTED]'s understanding regarding an individual goal on the 2019-2020 IEP. To rule otherwise would have a potential chilling effect, precluding schools where students are unilaterally placed from providing certain services anywhere reminiscent of what was contained in a prior IEP from a public school.

Finally, as to the impact of COVID-19, while COVID-19 has impacted the daily lives and learning processes of almost all students, world over, there is no evidence to suggest that the Student was not making progress or that at the [REDACTED] was not an inappropriate placement during these unprecedented times. In fact, Ms. [REDACTED] credibly testified that she observed the Student attend his Visualizing and Verbalizing class at the [REDACTED] (conducted over Google Meet due to the COVID-19 pandemic) and observed that the Student had made “tremendous growth.” (Student Ex. 76, at 1-3; Tr. 431:9-13).

For all of these reasons, I find that the [REDACTED] is an appropriate placement for the Student. *Burlington*, 471 U.S. 359 (1985).

REMEDY

A remedy for a violation of the IDEA is discretionary, sounds in equity, and is governed by statutory and regulatory requirements. 20 U.S.C.A. § 1412(a)(10)(C)(ii)-(iii); *Carter*, 510 U.S. at 15-16; *Burlington*, 471 U.S. at 367, 369, 374; 34 C.F.R. § 300.148(c)-(d).

Having found violations of the IDEA, I now turn to the Student's request for the FCPS to provide tuition reimbursement to the Parents for the tuition and related expenses of the [REDACTED] placement to date and for the FCPS to designate [REDACTED] as the Student's placement for the 2020-2021 school year.

As I found that the 2019-2020 IEP would not have provided the Student with a FAPE and that the [REDACTED] is an appropriate placement for the Student, equity favors reimbursement of tuition and related expenses of the [REDACTED] for the Student's 2019-2020 school year. Also, as discussed at length, the Student failed to make appropriate progress during the 2018-2019 school year in multiple academic areas, specifically: phonics, reading fluency, reading comprehension, writing, and math. His scoring on multiple assessments demonstrated that his academic abilities were below average expectations. In fact, on many instances, the results of these assessments placed the Student at least one grade level behind. As such, it is only equitable to remedy these academic shortcomings by affording the Student the ability to remediate progress lost. As such, I also conclude that equity favors the Student's request to have the FCPS designate [REDACTED] as the Student's placement for the 2020-2021 school year.

CONCLUSIONS OF LAW

(1) The FCPS failed to provide the Student with a FAPE from March 30, 2018 through the 2019-2020 school year as follows:

- (a) By failing to implement the Student's IEPs;
- (b) By failing to identify and provide services in all of the Student's areas of need;
- (c) By failing to provide explicit, systematic, cumulative, and diagnostic instruction with frequent, ongoing, and consistent progress monitoring;
- (d) By failing to monitor the Student's progress and change intervention program/reading services when the Student was not making progress;
- (e) By failing to provide the appropriate amount of special education services to address the Student's academic weaknesses; and

(f) By failing to provide an appropriate IEP with educational placement reasonably calculated to provide educational benefit based upon the Student's unique circumstances. 20 U.S.C.A. §§ 1400-1482 (2017); 34 C.F.R. pt. 300 (2019); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017); Md. Code Ann., Educ. §§ 8-401 through 8-417 (2018); and COMAR 13A.05.01.

(2) The FCPS did not fail to provide the Student's parents with meaningful participation in the IEP process by:

- (a) evaluating the Student without parent consent;
- (b) refusing to provide the results of the Qualitative Reading Inventory;
- (c) refusing to provide copies of data discussed in the Central Individualized Educational Program meeting; or
- (d) refusing to provide information on how the IEP would be implemented at [REDACTED] Middle School.

34 C.F.R. § 300.321(a)(1) (2019).

ORDER

I **ORDER** that:

The Frederick County Public Schools shall **REIMBURSE** the Parents for their costs associated with the placement of the Student at the [REDACTED] for the 2019-2020 school year;

The Frederick County Public Schools shall **FUND** placement of the Student at the [REDACTED] for the 2020-2021 school year;

Count 2 of the due process complaint, alleging that the Frederick County Public Schools denied the Parents with meaningful participation in the Individualized Educational Program process, is **DENIED** and **DISMISSED**; and

The Frederick County Public Schools shall, within thirty days of the date of this decision, provide proof of compliance to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

October 2, 2020
Date Decision Mailed

Leigh Walder
Administrative Law Judge

LW/dlm
#187781

REVIEW RIGHTS

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

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

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

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

FREDERICK COUNTY

PUBLIC SCHOOLS

BEFORE LEIGH WALDER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-FRED-OT-20-08811

APPENDIX: FILE EXHIBIT LIST

The Student offered the following exhibits, which I admitted into evidence¹:

Student Ex. 2 – Reports and Correspondence - 1st Grade

Student Ex. 3 – Initial Screening Meeting - 3/13/15

Student Ex. 5 – Educational Assessment - 2015

Student Ex. 6 – Not admitted

Student Ex. 11 – Not admitted

Student Ex. 20 – Prior Written Notice and IEP - 3/10/17

Student Ex. 21 – Prior Written Notice, Consent, Amendment - 12/15/2017

Student Ex. 22 – Neuropsychological - 12/17

Student Ex. 23 – Amendment - 1/31/18

Student Ex. 24 – Observation - 2/12/18

Student Ex. 25 – Not admitted

Student Ex. 26 – Speech-Language Assessment ██████████ - 2/2018

Student Ex. 28 – Prior Written Notice, Eligibility Worksheets - 4/20/18

Student Ex. 29 – Prior Written Notice, Parent’s Response - 5/7/18

¹ The wording and format of these exhibits comes directly from the exhibit list offered by the Student. Exhibit numbers that are omitted correspond to exhibits that were not offered.

Student Ex. 30 – IEP Speech Service Logs - 5/7/18

Student Ex. 31 – EBIP and Data - 6/5/18

Student Ex. 32 – Prior Written Notice, Amendment - 6/12/18

Student Ex. 33 – IEP, Parent Input, Amendment Request - 6/18/18

Student Ex. 34 – ESY Information and Appeal Results - 6/2018

Student Ex. 35 – Amendment IEP with Parental Input - 7/2018

Student Ex. 36 – IIP Emails and Plans - 9/2018

Student Ex. 37 – ██████████ Observation - 12/19/18, ██████████ Reading Evaluation - 2/1/19

Student Ex. 38 – Prior Written Notice, Revocation Letter, Amendment - 2/22/2019

Student Ex. 39 – ██████████ Observation - 3/11/2019

Student Ex. 40 – Neurobehavioral Consultation - 3/14/2019

Student Ex. 42 – Prior Written Notice, Parent Input, Disability Worksheet - 5/16/2019

Student Ex. 43 – Counselor Summary of Treatment - 5/16/19

Student Ex. 44 – Observations - 5/2019

Student Ex. 45 – Prior Written Notice, IEP - 5/21/2019

Student Ex. 46 – ██████████ Observation - 6/4/19

Student Ex. 47 – CIEP Referral, Prior Written Notice, IEP, Parent Input - 7/10/2019

Student Ex. 48 – Observation - 6/12/2019, Sounds In Syllables Assessment - 6/18/2019

Student Ex. 50 – ██████████ Email 2/15/2018, ASDEC RFP, Language Foundations Information

Student Ex. 51 – Language Foundations Letter, Lessons 1-47 - 9/6/18

Student Ex. 52 – Student Profiles, PARCC Reports, Grades, ELA Report - 11/7/17

Student Ex. 53 – Work Samples with Teacher Comments

Student Ex. 54 – IEP Progress Reports (pages 31-100 only)

Student Ex. 55 – Math Data (pages 5-54 only)

Student Ex. 56 – Words Their Way Data (pages 4-25 only)

Student Ex. 57 – Quarterly Writing Assessments (pages 3-8 only)

Student Ex. 58 – Works Samples

Student Ex. 59 – FCPS Nonsense Words Assessments (pages 2-6 only)

Student Ex. 60 – Reading Inventories (QRI, Teacher’s College)

Student Ex. 61 – Fountas and Pinnell Inventories

Student Ex. 63 – Counselor Summary of Treatment - 10/1/2019

Student Ex. 64 – OT Reports - 2019-2020

Student Ex. 65 – Speech Reports - 2019-2020

Student Ex. 66 – [REDACTED] Reports - 2019-2020

Student Ex. 67 – [REDACTED] Receipts

Student Ex. 68 – Not admitted

Student Ex. 69 – Correspondence

Student Ex. 71 – Common Core Standards

Student Ex. 73 – FCPS Reading Levels

Student Ex. 76 – [REDACTED] Observations

Student Ex. 77 – CV [REDACTED]

Student Ex. 78 – CV [REDACTED]

Student Ex. 79 – CV Dr. [REDACTED]

Student Ex. 80 – CV [REDACTED]

Student Ex. 81 – CV [REDACTED]

Student Ex. U – Fountas & Pinnell Benchmark Assessment Level U

Student Ex. S1 – Not admitted

Student Ex. S2 – Not admitted

Student Ex. S3 – Not admitted

Student Ex. S4 – Not admitted

Student Ex. S5 – Decoding Dyslexia Powerpoint, April 9, 2018

Student Ex. S10 – Final Report of the Task Force to Student the Implementation of a Dyslexia Education Program, December 31, 2016

The FCPS offered the following exhibits, which I admitted into evidence²:

IEP's

FCPS Ex. 1 – IEP	5/7/18	000001-62
FCPS Ex. 2 – IEP	2/22/19	000063-68
FCPS Ex. 3 – IEP, <i>as amended</i>	3/5/19	000069-143
FCPS Ex. 4 – IEP, <i>as amended</i>	7/17/19	000144-203

Miscellaneous Pleadings and Materials

FCPS Ex. 7 – Letter to Ashley VanCleaf	6/15/18	000228-228
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MSDE Complaint and Dismissal

FCPS Ex. 9 – MSDE Complaint Form		000242-251
FCPS Ex. 10 – MSDE Correspondence to Ashley VanCleaf	2/5/19	000252-256 000259-262
FCPS Ex. 11 – MSDE Findings	4/2/19	000263-272
FCPS Ex. 12 – MSDE response to request for Reconsideration	4/29/19	000273-278
FCPS Ex. 13 – Email from MSDE to FCPS's [REDACTED]	7/17/19	000279-280

Resumes

FCPS Ex. 15 – Resumes for [REDACTED], [REDACTED], [REDACTED]		000281-286
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² The wording and format of these exhibits comes directly from the exhibit list offered by the FCPS. Exhibit numbers as well as page numbers that are omitted correspond to exhibits that were not offered.

FCPS Ex. 17 – Resume for [REDACTED]		000290-292
FCPS Ex. 18 – Resume for [REDACTED]		000293-294

Assessments

FCPS Ex. 22 – Speech/Language Assessment	2/18	000316-327
FCPS Ex. 24 – Psychological Evaluation	4/19	000337-354
FCPS Ex. 25 – Observation report (literacy)	6/12/19	000355-358
FCPS Ex. 26 – Sounds & Syllables Assessment	6/18/19	000359-361

Other Miscellaneous Materials

FCPS Ex. 27 – CIEP Referral and Presentation		000362-370
FCPS Ex. 28 – Monitoring report summary	5/21/19	000371-373

Team Meeting Notes

FCPS Ex. 30 – [Intentionally left blank]	12/15/17	000378-387
FCPS Ex. 31 – Amendment to notes	1/31/18	000388-388
FCPS Ex. 32 – [Intentionally left blank]	4/20/18	000389-396
FCPS Ex. 33 – [Intentionally left blank]	5/7/18	000397-406
FCPS Ex. 36 – [Intentionally left blank]	5/16/19	000429-446
FCPS Ex. 37 – [Intentionally left blank]	5/21/19	000447-457
FCPS Ex. 38 – [Intentionally left blank]	7/10/19	000458-467
FCPS Ex. 39 – ESY service letter	6/11/18	000468-468
FCPS Ex. 40 – IEP Team Eligibility Report for SLD	4/20/18	000469-472
FCPS Ex. 41 – Revised team meeting notes	10/15/18	000473-477

Quarterly Goals/Progress Reports

FCPS Ex. 44 – [Intentionally left blank]	6/15/18	000492-497
FCPS Ex. 45 – ESY Progress Report	8/2/18	000498-505

FCPS Ex. 46 – IEP Snapshot	8/28/18	000506-523
FCPS Ex. 47 – Individualized Intervention Plans	9/21/18	000524-535
FCPS Ex. 48 – Quarterly IEP Goal Report	11/15/18	000536-544

Email Correspondence from Educators

FCPS Ex. 54 – [REDACTED] email to Mrs. [REDACTED]	4/23/18	000558-558
FCPS Ex. 57 – [REDACTED] email to Mrs. [REDACTED]	9/20/18	000573-578
FCPS Ex. 58 – [REDACTED] email to Mrs [REDACTED]	9/21/18	000579-580
FCPS Ex. 59 – [REDACTED] email to [REDACTED]	10/10/18	000581-582
FCPS Ex. 61 – [REDACTED] email to [REDACTED], [REDACTED]	10/10/18	000585-598
FCPS Ex. 62 – Mrs. [REDACTED] emails to [REDACTED]	10/25/18	000599-648

Work Samples

FCPS Ex. 65 – IDA B - book report		000654-659
FCPS Ex. 66 – [REDACTED] worksheets	10/16/18 - 6/3/19	000660-686
FCPS Ex. 68 – [REDACTED] worksheets	6/13/18	000690-695 000698-703 000707-707

Other Miscellaneous Documentation

FCPS Ex. 70 – Data Chart	6/6/18	000720-720
FCPS Ex. 71 – Data Chart	10/11/18	000721-722
FCPS Ex. 72 – HP for Quarter 1, with goals and objectives		000723-724
FCPS Ex. 73 – Correspondence to [REDACTED] regarding Math Navigator		000725-728
FCPS Ex. 74 – Example of math performance		000729-732
FCPS Ex. 75 – Not admitted		

I admitted the following joint exhibits into evidence:

Joint Ex. 1A – Letter from Ms. VanCleaf to [REDACTED], dated October 1, 2018

Joint Ex. 1B – IEP Team Meeting Notes, dated June 12, 2018

Joint Ex. 1C – Letter from [REDACTED] to Ms. VanCleaf, dated October 15, 2018

Joint Ex. 1D – IEP, amended October 11, 2018

Joint Ex. 1E – IEP Team Meeting Notes, dated June 12, 2018

Joint Ex. 1F – Amendment/Modification to Current IEP without an IEP Meeting, dated October 15, 2018