

[REDACTED],

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE TRACEY JOHNS DELP,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH NO.: MSDE-MONT-OT-21-04430

**DECISION**

SUMMARY

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**SUMMARY**

[REDACTED] (Student) did not prove that Montgomery County Public Schools (MCPS) failed to provide him a Free, Appropriate Public Education (FAPE) for multiple school years. Accordingly, his request that MCPS reimburse [REDACTED] (Mother) and [REDACTED] (Father) (collectively, Parents) for the tuition and other expenses they paid for him to attend the [REDACTED] ([REDACTED]) is denied.

**STATEMENT OF THE CASE**

On February 25, 2021, the Parents, on behalf of their child, the Student, filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA).

20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2019);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held a telephone pre-hearing conference on April 8, 2021. Diana M. Savit, Esquire, participated on behalf of the Student and Parents. Stacy Reid Swain, Esquire, participated on behalf of MCPS. Under the applicable law, a decision in this case normally would be due by Friday, May 7, 2021, forty-five days after March 26, 2021<sup>3</sup> (the day after the parties agreed in writing that no agreement was possible).<sup>4</sup> 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Md. Code Ann., Educ. § 8-413(h) (2018); COMAR 13A.05.01.15C(14). However, the Parent requested and MCPS agreed to hearing dates outside that timeframe. 34 C.F.R. § 300.515(c); Educ. § 8-413(h) (2018).

After considering a Parent's planning of and traveling for an out-of-state funeral (which was complicated by the COVID-19 pandemic),<sup>5</sup> the unavailability of Ms. Savit due to her documented trial schedule,<sup>6</sup> my pre-approved leave,<sup>7</sup> and MCPS teacher witness availability,<sup>8</sup> it was not possible to hold a hearing and issue a decision before the forty-five-day timeline expired. Thus, I deemed good cause to schedule hearing dates of June 15 - 23, 2021, which were agreed upon by the parties.

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<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated. Unless otherwise noted, all citations of 20 U.S.C.A. hereinafter refer to the 2017 bound volume.

<sup>2</sup> C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations of 34 C.F.R. hereinafter refer to the 2019 volume.

<sup>3</sup> The resolution meeting acknowledgement of impasse was digitally signed by a MCPS representative on March 22, 2021, and was digitally signed by the Mother on March 25, 2021.

<sup>4</sup> The forty-fifth day is Sunday, May 9, 2021; therefore, the date was advanced to Friday, May 7, 2021.

<sup>5</sup> Ms. Savit shared that the Student's maternal grandmother had just passed away, and that it would not be feasible for the Mother to prepare for and participate in a six-day hearing in April given this fact. Ms. Savit explained that the Mother would be extensively engaged in funeral planning and would need to be out-of-state for the funeral during the first two weeks of May.

<sup>6</sup> Ms. Savit stated that she was scheduled in an OAH special education hearing during the final two weeks of May.

<sup>7</sup> June 7 - 11, 2021.

<sup>8</sup> Ms. Swain represented that given MCPS teachers' end of school year obligations, the earliest teacher witnesses would be available after my pre-approved leave was June 15, 2021.

The parties did not request a particular decision timeframe, instead agreeing that I should have sufficient time to write a thorough and well-reasoned decision. After consideration of the parties' position, I agreed to issue a decision not later than thirty days after the hearing ends.<sup>9</sup>

On May 5, 2021, the Student filed a Consent Motion to Continue Hearing. I held a status conference to discuss the matter on May 10, 2021. Ms. Savit participated on behalf of the Student and his Parents. Emily B. Rachlin, Esquire, participated on behalf of MCPS.<sup>10</sup> In the Consent Motion, Ms. Savit reported that the Mother “encountered more difficulties in making [funeral] arrangements than were contemplated at the time of the [scheduling] conference, and has been available to work with counsel to prepare the case on only a limited basis.” Further, Ms. Savit explained that her own family member was experiencing a health crisis requiring immediate attention which consumed much of her time. She reported that “[c]ombining the [Parent’s] limited availability with counsel’s diversion to personal matters has made it impossible to be ready for the hearing on June 15, 2021, as currently scheduled.” I confirmed that MCPS did not oppose the Student’s postponement request. Respecting Ms. Savit’s request to keep her family member’s health crisis private and off the record, and with the agreement of Ms. Rachlin, I went off-record to hear the details of the situation. I accepted Ms. Savit’s representations and found that her out-of-state family member’s health crisis was fluid, urgent, complicated, and consuming of both time and emotion. I found Ms. Savit’s expectation that the crisis can be safely and appropriately managed by the end of June, such that she can be prepared to commence this hearing in late July or early August, to be a reasonable timeframe given what was described. Accordingly, I found good cause and granted the Consent Motion on the record. COMAR 28.02.01.16C.

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<sup>9</sup> The hearing concluded on November 5, 2021. The thirtieth day thereafter is Sunday, December 5, 2021, so the decision is due no later than Friday, December 3, 2021.

<sup>10</sup> MCPS co-counsel, Ms. Swain, checked-in momentarily, then excused herself to attend a conflicting teleconference on her calendar.

Rescheduling this matter was complicated by the summer vacation months. In preparation for the Status Conference, Ms. Rachlin had conferred with MCPS witnesses and reported witness and counsel unavailability due to vacations during the weeks of July 26, August 8, 9, and 16, 2021.<sup>11</sup> Ms. Rachlin further explained that the week of August 23, 2021, was a pre-service week for MCPS staff during which time required trainings are completed and final preparations are made for school reopening. Finally, MCPS witnesses were unavailable the week of August 30, 2021, because it was the first week of school and their attention was needed there. For those reasons and in consideration of observed Jewish holidays in the month of September, by agreement of the parties, the remote hearing was rescheduled for September 9, 10, 14, 20, 23 and 24, 2021. The hearing progressed more slowly than anticipated by Student's counsel, therefore, additional hearing dates were added.

I held the hearing on September 9,<sup>12</sup> 10, 14, 20, 23, 24, October 14, 29, November 1, 4 and 5, 2021. Ms. Savit represented the Student. Ms. Swain and Ms. Rachlin represented MCPS.

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. Md. Code Ann., Educ. § 8-413(e)(1) (2018); State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

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<sup>11</sup> I was on pre-approved vacation with out-of-state travel plans during the week of July 19, 2021.

<sup>12</sup> On September 9, 2021, at approximately 1:50 p.m., and during voir dire examination of MCPS witnesses, counsel for MCPS inquired regarding the absence of a court reporter; their presence had been overlooked until that time. This Administrative Law Judge was recording the entire proceeding on Webex and CourtSmart recording platforms. The parties consented to continuing voir dire examinations with continued use of the Webex and CourtSmart recording platforms and adjourning for the day thereafter. A court reporter was present for the remaining hearing days.

Preliminarily, the Student requested a witness sequestration order, which I granted, and objected to the presence of witnesses proffered as MCPS experts observing the hearing. As a result, a voir dire examination of the following witnesses ensued:

- ██████████, M.A., Ed.S.,<sup>13</sup> NCSP<sup>14</sup> was examined and accepted as an expert in the field of school psychology;
- ██████████<sup>15</sup> was examined and accepted as an expert in the fields of special education and school administration;
- ██████████, LCSW-C,<sup>16</sup> was examined and accepted as an expert in the field of social work with an emphasis on social work in schools;
- ██████████ was examined and accepted as an expert in the field of school counseling;
- ██████████ was examined and accepted as an expert in the field of special education with an emphasis in emotional disabilities;
- ██████████ was examined and accepted as an expert in the field of special education;
- ██████████ was examined and was not accepted as an expert in the field of special education;
- ██████████ was examined and accepted as an expert in the field of general education and school administration; and
- ██████████ was examined and accepted as an expert in the field of special education with an emphasis on students with emotional disabilities.

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<sup>13</sup> Education Specialist.

<sup>14</sup> Nationally Certified School Psychologist.

<sup>15</sup> Ms. ██████████ stated that she preferred to be identified as “Ms. ██████████” and will therefore, be identified in this abbreviated form for the remainder of this decision.

<sup>16</sup> Licensed Certified Social Worker – Clinical.

Accordingly, the Student's objection was sustained as to Ms. [REDACTED] and overruled as to Ms.

[REDACTED] Ms. [REDACTED] Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED] Mr. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED]

On September 23, 2021, [REDACTED], M.S., a proffered expert witness for the Student, appeared to observe the hearing. MCPS objected to her presence; therefore, a voir dire examination ensued. I accepted Ms. [REDACTED] as an expert in the field of special education with expertise in programming for students with an emotional disability and in special education administration.

On October 29, 2021, a discovery issue was raised by the Student due to the belated disclosure of Ms. [REDACTED]'s handwritten notes.<sup>17</sup> Directing my attention to MCPS's letter dated October 22, 2021 (in which MCPS counsel wrote that the belated disclosure was an honest oversight and staff do not typically keep personal handwritten notes year-to-year), the Student cited *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583 (4<sup>th</sup> Cir. 2001), and asked that I make a finding that the spoliation of evidence occurred and that I permit an adverse inference that [REDACTED] Middle School ([REDACTED] MS) staff were aware of the issues *sub judice* and a need for an alternative placement earlier. I declined to do so because I found the record was insufficient for a determination that spoliation had occurred. I accepted MCPS's representation that the omission was unintentional and, to cure any harm to the Student, I received Ms. [REDACTED]'s notes into evidence and permitted the Student to recall Ms. [REDACTED] to the witness stand.

On November 1, 2021, at the close of the Student's case, MCPS moved for judgement. I declined to render judgment until the close of all the evidence. COMAR 28.02.01.12E(2)(b). At the close of the case in its entirety, MCPS renewed its motion.

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<sup>17</sup> On November 1, 2021, MCPS noted the record regarding the Student's recent and belated disclosure of discovery materials. MCPS did not request that I take any action because of the untimeliness.

## ISSUES

The issues are:

1. Whether MCPS denied the Student a FAPE for the 2018-19 school year (second semester only), the 2019-20 school year, and the 2020-21 school year by failing to recognize the Student's difficulties with attendance as manifestations of his disabilities, failing to increase special educational services in his individualized education program (IEP), and failing to identify an appropriate school placement.
2. Whether the Parents are entitled to the relief sought in the Complaint or other appropriate relief.<sup>18</sup>

## SUMMARY OF THE EVIDENCE

### Exhibits

I attached an Exhibit List to this Decision.<sup>19</sup>

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<sup>18</sup> The Complaint set forth the following proposed resolution:

- Find that MCPS has denied [the Student] a FAPE, beginning no later than the development of the inappropriate IEP on June 17, 2019 and the failure to respond promptly when it proved insufficient in implementation when the 2019-20 school year commenced.
- Find that MCPS's denial of a FAPE to [the Student] has continued since June 17, 2019 and through the present, through MCPS's failure to develop IEPs that were reasonably calculated to enable him to make appropriate progress in light of his unique circumstances.
- Find that, in addition to constituting a procedural violation, MCPS's failure to complete an IEP that recommended his placement in a more restrictive environment than [REDACTED Middle School] until the 2019-20 school year was nearly concluded violated [the Student's] substantive special education rights.
- Find that the IEP developed on May 28, 2020 does not offer [the Student] a FAPE.
- Find that referring [the Parents] for truancy prosecution on October 24, 2019, despite full knowledge that [the Student's] attendance problems were attributable to his disabling conditions and not the result of any neglect or lack of effort on [the Parent's] part to have him attend school, violated IDEA and retaliated against [the Parents] for pursuing [the Student's] IDEA rights.
- Find that [the Student's] placement at [REDACTED] has provided educational benefit for him, and order MCPS to reimburse the costs [the Parents'] have incurred in connection with that placement and otherwise on account of MCPS's FAPE denials and retaliation against [the Parents].
- Order MCPS to maintain [the Student's] placement at [REDACTED] unless and until the educational placement is changed in compliance with IDEA requirements and procedures, or by agreement with [the Parents].
- Award [the Parents] legal fees and other expenses. . . incurred due to MCPS's failure to offer [the Student] a FAPE.

<sup>19</sup> There is duplication in the Parents' and MCPS's exhibits. Reference to one of the duplicate exhibits rather than the other has no significance.

## Testimony

The Student presented the following witnesses:

- Mother;
- [REDACTED], Psy.D., accepted as an expert in child and adolescent psychology, to include evaluation, diagnosis, as well as the development of behavioral, social, and emotional school-based IEPs;
- [REDACTED] Ed.D.;
- [REDACTED];
- [REDACTED];
- [REDACTED], accepted as an expert in education and school administration;
- [REDACTED];
- [REDACTED];
- [REDACTED],<sup>20</sup>
- [REDACTED];
- Father;<sup>21</sup> and
- [REDACTED], M.S., area of expertise noted *supra*.

The MCPS presented the following witnesses:

- [REDACTED], area of expertise noted *supra*;
- [REDACTED], M.A., Ed.S., NCSP, area of expertise noted *supra*;
- [REDACTED], LCSW-C, area of expertise noted *supra*;
- [REDACTED], area of expertise noted *supra*; and
- [REDACTED], area of expertise noted *supra*.

## FINDINGS OF FACT

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

### ***Background, generally:***

1. At the time of the hearing, the Student was sixteen years old and attending tenth grade at [REDACTED]

2. The Student resides with his adopted Parents in Montgomery County, Maryland.

The Student's birth mother is deceased; his birth father is unknown.

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<sup>20</sup> After the Father's testimony, Ms. [REDACTED] was recalled to the witness stand.

<sup>21</sup> The Father was recalled as the Student's sole rebuttal witness.



3. At age two, the Student was diagnosed with a receptive and expressive speech language delay and thereafter began speech-language therapy.

4. The Student attended [REDACTED] I ([REDACTED]), a private, Catholic, general education school, from kindergarten through sixth grade. [REDACTED] offered informal accommodations and supports; however, as a private Catholic school, the Student was not afforded an IEP.

5. The Student received summer and before-school speech-language therapy at [REDACTED] ([REDACTED]).

6. During his sixth-grade year at [REDACTED], the Student was absent 9.5 days and tardy 17 days. (Student Ex. 9.)

7. The Parents applied for enrollment of the Student at the [REDACTED]; however, the application was denied. (Testimony, Mother.)

8. The Parents enrolled the Student at MCPS. His home school was [REDACTED] Middle School ([REDACTED]MS).

9. A neuropsychological evaluation report was prepared by [REDACTED], Ph.D., of the [REDACTED], on or about March 19, 2014, when the Student was in second grade at [REDACTED]. The evaluation noted the following diagnostic impressions:

- Ongoing Mixed Expressive/Receptive Language Disorder;<sup>22</sup>
- Developmental Dyslexia (Learning Disorder in Reading) and other specific learning disability in Written Expression with weakness also apparent in Math;
- Attention Deficit Hyperactivity Disorder, Combined Type (ADHD-CT); and
- Sensitive Temperament with Vulnerability for Developing an Anxiety Disorder.

(Student Ex. 2.) The report made nine highly specific recommendations to implement as appropriate.

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<sup>22</sup> Dr. [REDACTED] noted that the Student had received this diagnosis previously.

10. The Parents did not provide a copy of Dr. ██████'s report to MCPS. (Testimony, Mother.)

11. On or about February 21, 2017, the Student began a medication management course of treatment with ██████, M.D. (Student Ex. 92; MCPS Ex. 42.)

12. A Confidential Psychoeducational Re-Evaluation of the Student was conducted by ██████, Psy.D. on or about March 19 and 22, 2018. The Student was twelve years old and attending the sixth grade at ██████. Dr. ██████'s report referenced Dr. ██████'s March 19, 2014 diagnostic impressions, listed the Student's medication regimen, and acknowledged that the Student was under the care of Dr. ██████. He conducted interviews and a record review. He utilized the following assessment tools: ADHD Symptom Checklist – School Version; Behavior Assessment System for Children-2/BASC-3 Teacher Report; Behavior Rating Inventory of Executive Function/BRIEF; Children's Memory Scale/CMS; Delis-Kaplan Executive Function System/D-KEFS (selected subtests), Developmental Neuropsychological Assessment/NEPSY-II (selected subtests), Grooved Pegboard, IVA Continuous Performance Test/IVA, Oral and Written Language Scales-2<sup>nd</sup> ed./OWLS-II, Ray Complex Figure Test/RCFT, Test of Word Reading Efficiency-2<sup>nd</sup> ed./TOWRE-2, Wechsler Intelligence Scale for Children-5<sup>th</sup> Edition/WISC-V, and the Woodcock-Johnson IV Tests of Achievement/W-J-IV (selected subtests). (Student Ex. 6; MCPS Ex. 5.)

13. Dr. ██████ noted that at ██████, different teachers were doing different things to support the Student, but nothing was formalized in writing. The Student did not receive "any accommodations in math, while more help and modifications were reported in classes that required more reading comprehension (*e.g.*, English, history/science)." (*Id.*)

14. Dr. ██████ concluded his report with the following diagnostic impressions:

- ADHD-CT;
- Specific Learning Disability with Impairment in Written Expression;
- Language Disorder (by history);
- Rule-out Unspecified Anxiety Disorder; and
- Rule-out Unspecified Depressive Disorder.

*(Id.)*

15. Dr. ██████'s report made twelve recommendations. Recommendations for school included test-taking and academic activity accommodations, methods to improve attention, methods to improve reading comprehension, and incentives or behavioral contracts. Recommendations for the Student and family included tutoring, group therapy, continuation with Dr. ██████ contracts and behavioral reflection, daily reading and recorded books, steps to improve math ability at home, specific writing interventions to self-edit work without prompting from teachers or recourse support, multi-sensory supports, a list of strategies to improve executive functioning weaknesses, engagement in extracurricular activities. *(Id.)*

16. Dr. ██████'s report included the following reference to contracts: "While [the Student] responds to contracts, there has been a lack of generalization of behavior once the reward has been earned. Therefore, while the utilization of contracts still may be an effective strategy, it may be just as important to include a reflection as part of the contract demands." *(Id.)*

17. The Parents provided a copy of Dr. ██████'s report to MCPS.

***Background, Seventh Grade First Semester (2018) - ██████ MS***

18. In June 2018, prior to the Student's arrival at ██████ MS, the Parents requested MCPS determine the Student's IEP eligibility. (Student Ex. 11, 12, 13, 18.) Thereafter, the Student participated in informal assessments (Student Ex. 15), an evaluation by ██████ MS psychologist

██████████ (Student Ex. 16), and an evaluation by ██████ MS speech-language pathologist ██████████, MA, CCC-SLP<sup>23</sup> (Student Ex. 17).

19. On August 7, 2018, the Student participated in MCPS informal mathematics, reading, and writing assessments. The Student was believed to be reading on grade level but areas for improvement were noted in writing. His calculation skills reflected a set of grade appropriate skills with a need to improve division skills. (MCPS Ex. 3.)

20. On August 6, 2018, the Student met with Ms. ██████ for MCPS psychoeducational testing. The following test results were reported:

Gray Oral Reading Test – 5<sup>th</sup> Edition (GORT-5):  
Standard score of 89 (below average), which falls just outside of the average range

Comprehensive Test of Phonological Processing, 2<sup>nd</sup> Edition (CTOPP-2):  
Average (Phonological Awareness Index)  
Poor (Phonological Memory Index)  
Average (Rapid Symbolic Naming)

Ms. ██████ reported that the Student generally demonstrated reading skills that fall within the range expected for students his age. (MCPS Ex. 4.)

21. The Student's off-topic questions and inattention interfered with his phonological testing. (Testimony, Ms. ██████.)

22. On August 7, 2018, the Student met with Ms. ██████ for a MCPS speech-language assessment. The following test results were reported:

Comprehensive Assessment of Spoken Language – Second Edition (CASL-2):

- Receptive Vocabulary – 93 – Average
- Sentence Expression – 89 – Average
- Grammatical Judgment – 118 – Above Average
- Nonliteral Language – 102 – Average
- Meaning from Context – 88 – Average
- Inference – 82 – Slightly Below Average
- General Language Ability Index – 94 – Average

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<sup>23</sup> Certificate of Clinical Competence in Speech Language Pathology.

- Speech Language Sample/Interpretation – Average
- Other Data: Age-appropriate fluency, Voice within normal functioning limits

Ms. [REDACTED] found typical development and average skills in receptive and expressive language and concluded that the Student’s overall speech-language skills were within normal limits. She indicated that the speech and language data did not support the presence of oral communication needs requiring special education services. (Student Ex. 17.)

23. On August 30, 2018, the [REDACTED] MS IEP team met and concluded that the Student was not eligible as a student with a disability for special education and related services because specially designed instruction did not appear required for the Student to make progress in school. (Student Ex. 19.) [REDACTED] MS cited an insufficiency of data demonstrating an educational impact.<sup>24</sup> (Student Ex. 20; MCPS Ex. 12.) The Student began the school year without an IEP in place and the team agreed to revisit eligibility when classroom data was available at the end of the first quarter. (MCPS Ex. 12.)

24. On October 15, 2018, Dr. [REDACTED] shared her opinion with the [REDACTED] MS team that the Student would benefit from academic accommodations. (Student Ex. 21.)

25. In short order, with observation and additional information (MCPS Ex. 13), the IEP team concluded that the Student’s diagnosis of ADHD impacted his grades and classroom progress. The Student required specialized instruction to make progress in school (Student Ex. 23) and an IEP was finalized on November 2, 2018. (Student Ex. 24; MCPS Ex. 6.)

26. The Student is a “child with a disability” as set forth in section 1401(3) of the U.S.C.A. and the applicable federal regulations.

27. The November 2, 2018 IEP identified the Student’s primary disability as Other Health Impairment (OHI), due to ADHD, unspecified anxiety disorder, and unspecified

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<sup>24</sup> In his testimony, Dr. [REDACTED] stated that upon his review of the records, it was unclear what accommodations [REDACTED] was providing the Student.

depressive disorder, and noted that the Student's deficits in attention and executive functioning were impacting his ability to access the general education curriculum. The areas affected by his disability were identified as: Academic - Math problem-solving skills, Academic - written language expression, and Behavioral - self-management.

28. The November 2, 2018 IEP identified a word processor and calculation device as required assistive technology. Other accessibility features included clarification of directions, redirection of the Student, use of a graphic organizer, small groups, frequent breaks, reduction of distractions, use of paper-based editions, notes and outlines, use of calculation devices and speech-to-text, answers recorded in test book, and extended time.

29. The November 2, 2018 IEP provided for the following supplementary aids, services, and modifications: use of a homework folder, use of rubrics, exemplars, and/or checklists, use of sentence starters and paragraph frames, lists of transition words, proofreading checklists, assistance with organization, monitoring of independent work, use of highlighters, provide a menu of math terms, pairing of verbal and written directions, repetition of directions, check-ins for understanding, break-down of assignments into smaller units, assignment turn-in prompts, use of manipulative and/or sensory activities to promote listening and focusing skills, frequent eye contact and proximity control, leadership opportunities, monitoring use of agenda book or progress report, access to sensory room, and preferential seating.

30. The Goals contained in the November 2018 IEP were:

Academic – Written Language Expression:

Given graphic organizers, speech to text, a word processor, rubrics, exemplars and/or checklists, sentence starters and paragraph frames, a list of transition words, a proofreading checklist, the Student will write arguments to support claims with clear reasons and relevant evidence.

This was to happen with three out of four trials.

Objective 1: Introduce claim(s), acknowledge alternate or opposing claims, and organize the reasons and evidence logically.

Objective 2: Support claim(s) with logical reasoning and relevant evidence, using accurate, credible sources and demonstrating an understanding of the topic or text.  
Objective 3: Use words, phrases, and clauses to create cohesion and clarify the relationships among claim(s), reasons, and evidence.  
Objective 4: Provide a concluding statement or section that follows from and supports the argument presented.

Academic – Math Problem Solving:

Given a calculator, graphic organizers, use of a highlighter, sentence starters, and a menu of math terms, the Student will solve real world problems.  
This was to happen with four out of five trials.

Objective 1: The Student will identify key words that help determine which operation to use.

Objective 2: The Student will identify possible strategies which can solve the problem.

Objective 3: The Student will solve the problem using one of the identified strategies.

Objective 4: The Student will explain how he determined his answer.

Behavioral – Self-management:

Given assistance with organization, breaks as needed, prompts to turn in assignments, extended time, monitoring of independent work, monitoring of agenda book, visual and/or verbal cues, manipulatives, frequent eye contact/proximity control, a homework folder, and preferential seating, the Student will manage and maintain his needs for the classroom.  
This was to happen with three out of five trials.

Objective 1: The Student will record his assignments in his agenda book.

Objective 2: The Student will place papers in the appropriate sections of his binder.

Objective 3: The Student will demonstrate he is attending to instruction by showing he is using active listening skills, such as, tracking with the speaker, raising his hand, writing notes, etc.

Objective 4: The Student will turn in assignments by the due date, but no later than the deadline.

31. The November 2018 IEP directed that the Student required specialized instruction in his English and Science classes, but no removal from the general education setting. Math with a special education co-teacher was considered but rejected by the team due to the Student's positive relationship with his assigned Math teacher and concerns that changing teachers may be detrimental. The team concluded that he could receive the specialized instruction he required in

his current Math class and an additional math support class was added to his schedule. (MCPS Ex. 14.) The school placement remained ■■■MS.

32. The November 2018 IEP addressed Dr. ■■■■■'s school recommendations for test-taking situations and other academic activities.

33. The November 2018 IEP addressed Dr. ■■■■■'s school recommendations for uneven attention and processing of oral directions/language.

34. The November 2018 IEP addressed Dr. ■■■■■'s school recommendations regarding reading comprehension.

35. Implementation of the November 2, 2018 IEP required the Student's schedule to change, which resulted in an increase in the Student's negative behaviors. (Student Ex. 62, p. ■■■304; MCPS Ex. 7, p. 92.)

36. By December 4, 2018, ■■■MS identified that the Student appeared to be engaging in school refusal behaviors. (Student Ex. 29.) Additionally, there were problems with timely homework submission and peer socialization in the classroom.

37. The Student received a one-day, in-school suspension on December 12, 2018, for sexually harassing another student. (Student Ex. 30.)

38. On December 13, 2018, after a session with the Student, Dr. ■■■■■ reported the following to the Parents:

- The Student acknowledged that he plays on screens (*e.g.*, Fortnite) excessively and needs more structure. The Student told Dr. ■■■■■ that he would not change how much he plays despite negative consequences because it would mean that he could not do his favorite activity and he would lose access to "best friends" he met through gaming.
- The Student acknowledged that he was not doing much work and is more focused on Fortnite and socializing.

(Student Ex. 31.)



39. The Student's IEP was amended on December 14, 2018. The Student's primary disability code, OHI, remained the same. (Student Ex. 32; MCPS Ex. 7.)

40. The IEP Amended December 2018 noted the following in teacher reports:

- In Math, the Student demonstrates a strong knowledge of basic operations but is inconsistent in his ability to apply his knowledge to rational numbers and integers. His progress is negatively impacted by peer interactions.
- In English, the Student is demonstrating satisfactory skills but is impacted by his ability to focus and not engage in socialization with peers. The Student does not pay close attention to instructions/expectations, rushed through work, and does not advocate for support.
- The Student's ability to develop and maintain appropriate peer relationships has been difficult for him.
- The Student engages in inappropriate peer conversations and verbal altercations, causing staff to intervene to deescalate the situation.
- Several of the Student's peers reported sexualized and violent comments by the Student.

41. The IEP Amended December 2018 identified another area affected by the Student's disability: Behavioral - social interaction skills.

42. The IEP Amended December 2018 identified the same assistive technology as the Student's prior IEP. Likewise, instructional and assessment accessibility features remained the same.

43. In addition to the supplementary aids, services, and modifications identified in this November 2018 IEP, the IEP Amended December 2018 provided for the following: opportunities to discuss written responses prior to turn-in and use of a behavior monitoring tool. The behavior self-monitoring tool required the Student to keep track of the number of prompts given to stop talking to peers.

44. The IEP Amended December 2018 added the following Goal (all other Goals remained the same):

**Behavioral – Social Interaction Skills:**

Given faded adult support, frequent check-ins, a flash pass, verbal/visual prompts, praise for positive peer interactions, opportunities for peer interactions (in class and unstructured times, i.e., PE and Cafeteria), the Student will maintain appropriate conversations and/or collaborative assignment completion with peers. This was to happen with three out of four trials.

Objective 1: The Student will speak with peers using respectful, courteous, and constructive language.

Objective 2: The Student will follow requests to stop speaking to a peer with no more than three prompts.

Objective 3: The Student will follow requests to stop speaking to a peer with no more than two prompts.

Objective 4: The Student will follow requests to stop speaking to a peer with no more than one prompt.

45. The IEP Amended December 2018 directed that the Student required specialized instruction in his English and Science classes, but no removal from the general education setting. The school placement remained ■■■MS.

***Seventh Grade Second Semester (2019) - ■■■MS***

46. On January 9, 2019, the Student refused use of accommodations (speech to text graphic organizer) during testing, acknowledging that he was refusing “even though it may help.” (Student Ex. 34.)

47. On January 15-23, 2019, teachers completed quarterly progress reports. (Student Ex. 36.)

- The Student’s Art teacher reported insufficient progress to meet peer interactions and self-management behavior goals and corresponding objectives, noting his use of foul, disrespectful, demeaning, and sarcastic language with peers and failure to turn in assignments. The teacher added that the Student has put his head down and told her that he does not want to work on his assignments because he is tired.

- The Student's English teacher noted progress in his peer interactions behavior goal, behavior self-management goal, and writing content goal, and reported that progress towards the related objectives had been met, adding that the Student cursed only once in class, had a recent ■■■<sup>25</sup> paragraph score of B+, and turned in assignments on time.
- The Student's Physical Education (P.E.) teacher reported that the Student's peer interactions and self-management behavior goals were achieved and noted that the Student had not required instruction to stop speaking with peers. When the Student spoke, he used respectful and courteous language, and was doing very well in class.
- The Student's Science teacher reported sufficient progress towards the Student's self-management and peer interaction behavior goals, noting he had met objectives but most often required three reminders to stop speaking with peers. The teacher reported that the Student consistently used his agenda book and turned in assignments by deadlines. Regarding his writing content goal, the teacher reported sufficient progress and objectives had been met, adding that with support the Student has progressed. His last lab report grade was a B.
- The Student's Math teacher reported that the Student was making progress towards his peer interactions and self-management behavior goals, but not making sufficient progress towards his math problem solving goal. His teacher noted that the Student did not read the problems completely.

48. In addition to continued school refusal, the Student had instances of tardiness to classes. (Student Ex. 37.)

49. The Student was permitted use of a flash pass and use of a relaxation room at ■■■MS if he felt overwhelmed during the school day to assist with his energy level and impulsivity. (Student Ex. 37, 40.)

50. On March 4, 2019, the Parent submitted a Parent Report wherein she requested that the Student receive regular check-ins from a supportive adult regarding his work completion in English, Science and Art. (MCPS Ex. 33.)

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<sup>25</sup> This acronym was not defined.

51. On March 28, 2019 - April 2, 2019, teachers completed quarterly progress reports.

(Student Ex. 39.)

- The Student's Digital Literacy teacher reported that his writing goal had not been introduced; however, he was making sufficient progress towards a peer interaction goal, adding that with redirection the Student stayed on task and respectful towards others. Likewise, the Student was making sufficient progress towards a self-management behavior goal and had met its objectives.
- The Student's Science teacher reported sufficient progress towards a writing content goal, noting that the Student often required a quiet, distraction-free place for writing.
- The Student's P.E. teacher reported sufficient progress and that a peer interaction goal had been achieved, noting that the Student did very well in class. He followed directions and interacted well with peers. His teacher also reported sufficient progress towards a self-management goal.
- The Student's Art teacher noted continued difficulty with behavior self-management but added that he had made progress towards a peer-interaction goal, reporting his appropriate language use had improved. The teacher wrote that on one occasion, the Student refused to participate in a group assignment until he was moved to work with a group of people he liked. The teacher reported a D in the class and failure to turn in assignments.
- The Student's Science teacher reported sufficient progress towards self-management and peer interaction goals, with objectives having been met. The teacher noted that the Student's organization improved, but when absent he did not complete the makeup work. The teacher also shared that the Student had many friends in Science class and was often very social with them. He refused to relocate himself in the classroom upon direction.
- The Student's Math teacher reported sufficient progress towards a self-management goal, with objectives having been met. The teacher noted the value of preferential seating.
- The Student's English teacher reported sufficient progress towards writing content, self-management and peer interaction goals, with objectives having been met. The teacher added that the Student struggled with organization and required frequent check-ins and support. The teacher noted the value of preferential seating.

52. The Student received an after-school suspension on April 3, 2019 for use of inappropriate language, sounds and gestures in class. (Student Ex. 40.)

53. By April 26, 2019, the Student was assigned a ■■■MS faculty mentor, his Math teacher with whom he had developed a good rapport. (Testimony, Ms. ■■■■■; Student Ex. 186.)

54. By April 30, 2019, the Student's counselor, Ms. [REDACTED], noted that the Student was engaging in "some school refusal" and she had given him a pass to meet with her on Tuesday and Thursday mornings to make up work as needed. (Student Ex. 45.)

55. On May 6, 2019, the Parent reported the Student's absence from school and informed Ms. [REDACTED] that Dr. [REDACTED] increased the Student's medication to address depression and stressed the importance of therapy, which the Student was not engaged in because he wanted "a break." Ms. [REDACTED] offered a home visit should the Student fail to attend school the following day. (Student Ex. 46.)

56. The Student attended school the following day, negating the need for a home visit.

57. On May 7, 2019, the Student met with Ms. [REDACTED] and was given a "return to school make-up work chart." He was instructed to bring the chart to his teachers to fill in what work needs to be done. Ms. [REDACTED] shared with the Student's teachers that they should be presented with the chart by the Student. (Student Ex. 47.)

58. On May 10, 2019, Ms. [REDACTED] emailed the Parents to express that she was "really worried" about the Student's school refusal; she offered to speak with Dr. [REDACTED] if the Parents would like her to do so. (Student Ex. 49.) The Parents signed a consent form to authorize Dr. [REDACTED] to speak with Ms. [REDACTED], and a conversation took place. (Student Ex. 50, 51.)

59. On May 15, 2019, Ms. [REDACTED] spoke with Dr. [REDACTED]. [REDACTED] was a party to the telephone conversation. During the conversation, Dr. [REDACTED] expressed her opinion that the Student was manipulative, not depressed and treated his parents horribly, engaging in verbal abuse and physical threats. Dr. [REDACTED] suspected the Student was on video

games all day at home. (Student Ex. 186.) Ms. ██████ recalled Dr. ██████ opining that oppositionality was involved in the Student's behaviors. (Testimony, Ms. ██████.)

60. On May 17, 2019, the Parent reported the Student's absence from school and his statement that he did not want to attend school that day "because he was basically caught up." In response, Ms. ██████ advised the Parents that the Student needs to be in school, that a home visit will be scheduled, and that the Student must understand what consequences exist if he chooses not to attend school, *e.g.*, the Truancy Review Board (TRB). (Student Ex. 52.)

61. On May 22, 2019, the Student drew penises on cabinets, a lab sink, and a counter in Science class. He also threatened to spray paint penises on the school building. (Student Ex. 53.)

62. In June 2019, and at the Parents request, the Parents and ██████ MS staff discussed what would be the best academic plan for the Student's eighth grade year. (Student Ex. 58, 60, 61.)

63. On June 14, 2019, the Parents were sent the Student's quarterly progress report. With regard to social interaction, he made sufficient progress but used inappropriate language with peers and he discussed inappropriate topics. The Student required three prompts from his teachers to be redirected. Regarding self-management, he made sufficient progress but did not meet his goal. The Student required high support; he organized his materials and used an agenda book but overall, frequently did not turn in assignments by deadlines. Regarding his Math problem solving goal, with high support, he made sufficient progress. Likewise, with support, he was progressing on his written language expression goal. (Student Ex. 59.)

64. The Student's IEP was amended on June 17, 2019. (Student Ex. 62; MCPS Ex. 8.) The Student's primary disability, OHI, remained the same as did the academic and behavioral areas affected by his disability. The team determined that the Student required

increased special education support in order to successfully access the general education curriculum and agreed a period of resource was necessary to address deficits in task completion and executive functioning. (MCPS Ex. 16.)

65. The June 2019 IEP continued providing access to a word processor and a calculation device as assistive technology. Other accessibility features included clarification of directions, redirection of the Student, use of a graphic organizer, small groups, frequent breaks, reduction of distractions, use of notes and outlines, use of speech-to-text, answers recorded in test book, and extended time.

66. The June 2019 IEP provided for the following supplementary aids, services, and modifications: opportunities to discuss written responses prior to turning in assignments, use of a homework folder, use of rubrics, exemplars, and/or checklists, use of sentence starters and paragraph frames, lists of transition words, proofreading checklists, assistance with organization, monitoring of independent work, use of highlighters, provide a menu of math terms, pairing of verbal and written directions, repetition of directions, check-ins for understanding, break-down of assignments into smaller units, use of a behavior monitoring tool, assignment turn-in prompts, use of manipulative and/or sensory activities to promote listening and focusing skills, frequent eye contact and proximity control, leadership opportunities, monitoring use of agenda book or progress report, access to sensory room, and preferential seating.

67. The Goals and Objectives were repeated in the June 2019 IEP.

68. The June 2019 IEP team determined the Student was ineligible for Extended School Year (ESY) because he was not working on critical life skills, and there was no presence of emerging skills or interfering behaviors.

69. The June 2019 IEP directed that the Student required specialized instruction in his English and Science classes. The Student would take co-taught English, co-taught Math,

supported Science, and supported U.S. History classes and the Student would have one period of Resource. Resource was required to address deficits related to executive functioning, including task completion and organization. The IEP noted that the Student’s homework completion across all content areas was 63%, so he would benefit from having an opportunity to complete homework assignments, as well as long-term assignments. School placement remained ■ MS.

70. In the seventh grade, the Student had 24.5 excused absences, 4 unexcused absences, and 1 out-of-school suspension for sexual harassment. (Student Ex. 114.)

71. The Student’s seventh grade absences, while on the cusp, did not cause him to appear on Ms. ■■■■■’s Pupil Personnel Worker (PPW) report. The report tracked students with high absences (whether excused or unexcused). (Testimony, Ms. ■■■■■.)

72. During his time at ■ MS, the Student took the NWEA Measures of Academic Progress (MAP) to measure his Reading and Math skills. In Math, he increased his score to the 45<sup>th</sup> percentile in spring 2019 (RIT<sup>26</sup>=227)<sup>27</sup> (The Student’s fall 2018 score was in the 21<sup>st</sup> percentile (RIT=209)<sup>28</sup>). In Reading, he increased his score to the 52<sup>nd</sup> percentile in fall 2019 (RIT=218) (fall of 2018 score was in the 50<sup>th</sup> percentile (RIT=214)).<sup>29, 30</sup> (Student Ex. 114, MCPS Ex. 10.)

73. The Student received the following grades in his classes during the 2018-2019 school year:

Subject	First Semester		Second Semester		Final
Phys Ed Gr7	B				B
Phys Ed Gr7		A			A
Phys Ed Gr7			A		A
Health Ed Gr7				A	A
■■■ Studio Art 2	D	C			C

<sup>26</sup> RIT was not defined.

<sup>27</sup> The benchmark (*i.e.*, Norm grade level mean) for the spring of 7<sup>th</sup> grade is 229. (Student Ex. 130; MCPS Ex. 10.)

<sup>28</sup> The benchmark for the fall of 7<sup>th</sup> grade is 223. (Student Ex. 130; MCPS Ex. 10.)

<sup>29</sup> The benchmark for the fall of 7<sup>th</sup> grade is 214. (Student Ex. 116.)

<sup>30</sup> The benchmark for the fall of 8<sup>th</sup> grade is 217. (Student Ex. 116.)



■■■ Dig Art Pho 2			D	E	E
Relatd Actv Math		A	C	A	
Adv English 7	D	D	D	D	D
■■■ Digital Lit 2	B	B	C	D	C
Adv World Stds 7	D				
Math Investigations	D	D	D	D	D
Investigation Sci 7	C	C	D	D	C

(Student Ex. 65.)

***Eighth Grade (2019-2020) – ■■■MS and ■■■■■***

74. The Student began his ■■■MS eighth grade school year with a significant number of absences.

75. On September 6, 2019, the Student was involved in the bullying and sexual harassment of another Student while riding the school bus. He drew penises on the bus and showed peers inappropriate sexual images on his phone. As a result, he was suspended from riding the school bus for five days and upon return, was assigned a seat next to the driver.

(Student Ex. 66; Testimony, Mother.)

76. The suspension was chosen by school administration as a bus suspension, not a school suspension, specifically because ■■■MS was encouraging school attendance. (Testimony, Ms. ■■■■■.)

77. After serving the bus suspension, the Student did not ride the school bus again. (Testimony, Father.)

78. As of September 18, 2019, the Student had the following grades:

- Science – A
- English – E (missing 1 assignment)
- History – A (missing 1 assignment)
- P.E. – A
- Math 8 – B
- Digital Literacy – E (missing 1 assignment)
- Resource – A

His IEP case manager, Ms. [REDACTED], expressed concern to the Parents via email regarding the Student's absences (and the necessary make-up work) and suggested that in addition to Resource, she meet with the Student upon his return to develop a plan which would be shared with the Parents. (Student Ex. 69.)

79. On September 24, 2019, the Student told Dr. [REDACTED] that he was not planning to return to [REDACTED] MS. (MCPS Ex. 42.)

80. Ms. [REDACTED] and Ms. [REDACTED] conducted a home visit on September 25, 2019. Initially, they spoke with the Parents privately, who advised them that the Student was in the basement playing video games. The Student subsequently joined the conversation. The Student attended school the following day. (Student Ex. 73, 76; Testimony, Ms. [REDACTED].)

81. An expedited IEP team meeting was held on September 26, 2019. It was scheduled on short notice by [REDACTED] MS, and the Parents agreed to waive the ten-day notice requirement to meet. (Student Ex. 72.) The team wanted to discuss whether OHI was the most appropriate code for the Student. (Student Ex. 85.) The Parents were presented with a Student Administrative Contract (attendance contract) (Student Ex. 75) which they refused to sign and refused to present to the Student.

82. On September 27, 2019, the Parents wrote to Ms. [REDACTED] and consented to additional testing and assessments of the Student, to a flash pass being identified as a supplemental aid in his IEP, to the Student being invited to formal lunch groups with peers, and to forty minutes of Student counseling services per month. The Parents iterated their refusal of the attendance contract and refusal to extend the deadline to update the Student's IEP until December 2019 or January 2020 for the assessment results. They wrote that they were driving the Student to school every day, but "[i]t may be necessary for us to review with the team MCPS's provision for his afternoon transportation home near the end of October." The Parents

concluded by thanking the ■■■MS team for its efforts, adding “[w]e are very impressed with the ■■■MS school and its staff and hope that [the Student] can complete 8<sup>th</sup> grade at the school.” (Student Ex. 79; MCPS Ex. 34.)

83. On October 4, 2019, Ms. ■■■■■ called the Student and left a voice message encouraging him to attend school. (Student Ex. 99.)

84. On October 4, 2019, the Student’s Math teacher emailed his Parents to advise that his grade had fallen below a 70% (C). The teacher provided a suggested list of interventions, stressed the need for the Student’s attendance, and offered to assist in any additional ways to support his learning. (Student Ex. 84.)

85. On October 10, 2019, Ms. ■■■■■ called the Student and left a voice message encouraging him to attend school. (Student Ex. 99.)

86. On October 15, 2019, the Parents wrote a letter to MCPS stating that they will be withdrawing the Student from ■■■MS, advising that the Student “has an IEP but it is not designed to address his current needs”, and requesting that MCPS fund the Student’s tuition at ■■■■■. The letter indicated that the Student continued under the care of Dr. ■■■■■, but not a psychotherapist. (Student Ex. 91.) MCPS issued a response denying the tuition reimbursement request on November 8, 2019.<sup>31</sup> (MCPS Ex. 50.)

87. On October 16, 2019, Dr. ■■■■■ prepared a letter at the Parents’ request for ■■■MS staff and provided it to the Parents. (Student Ex. 92; MCPS Ex. 34.) After working with the Student since February 2017, Dr ■■■■■ concluded that while the Student has ADHD and a history of anxiety and mild depression, oppositional defiant disorder (ODD) was the condition most seriously impacting his life at that time. Specifically, she opined that anxiety and depression were not barriers to the Student’s school attendance. In her letter, she said, “[The

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<sup>31</sup> The MCPS letter cited 34 C.F.R. § 300.148(d).

Student's] parents have described his verbally abusive and physically threatening behaviors at home. I have witnessed extremely disrespectful behavior towards his parents in my office. His parents have described a longstanding pattern of verbal abuse and property damage in their home." *Id.* Dr. ██████ believed the Student has the intellectual capacity to be academically successful and recommended a structured educational setting to hold him accountable for doing his work. Dr. ██████ suggested 1:1 instruction at ██████, or enrollment in a wilderness program or other residential, structured, therapeutic support program. She also recommended projective testing to understand the Student's capacity for empathy and understanding others' perspectives.

88. The Parents discontinued the Student's treatment by Dr. ██████. (Testimony, Mother.)

89. The Parents did not share Dr. ██████'s October 16, 2019 letter with ██████MS until ██████MS was made aware of the letter by Dr. ██████ and requested a copy, which the Parents ultimately provided in February 2020.

90. On October 17, 2019, ██████MS issued a letter to the Parents reporting the Student's nonattendance (twelve days missed in September for an absentee rate of 63.1%). (Student Ex. 93.)

91. In advance of the October 25, 2019 IEP team meeting, teachers prepared reports. (Student Ex. 90.) The Student's Math teacher noted that the Student demonstrated mastery of taught concepts on two lesson assessments but has not attended class regularly and has not completed any assignments since September 11, 2019. The Student's Math teacher also characterized him as easily distracted and indicated that he interrupts conversations and makes uninvited, critical comments about his peers. The Student's P.E., English, and Advanced US History 8 teachers did not complete reports due to insufficient information and Student

nonattendance. His Science teacher reported that the Student will not participate in collaborative work, instead putting his head down. His Science teacher observed him drawing or on his phone. His Resource teacher reported that the few days the Student attended, he was quiet, kept to himself and stayed on task.

92. On October 24, 2019, ■■■MS issued a School Truancy Referral for the Student. The referral was signed by Ms. ■■■■■. The Student's nonattendance rate was recorded as 78.6%. (Student Ex. 99; MCPS Ex. 38.)

93. On October 25, 2019, the IEP team convened an annual meeting which was recorded. (Student Ex. 173.) At no time was the Student's status as an adopted child mentioned during the meeting. The team discussed the lack of teacher data due to Student nonattendance. The team discussed the Parents' concern about the Student's language deficiencies and how MCPS testing was inconsistent with the Parent's observations. In response, school members asked whether the Parents were, therefore, seeking a reassessment. The Parents stated that they would not make a "spot decision" and would need to consider it. The Parents stated that the June 17, 2019 IEP was a "good plan" but that ■■■MS, a comprehensive school setting, was not working for the Student. The Parents stated that they are seeking ■■■■■ reimbursement and a Central Office IEP. The Parents did not provide a Student withdrawal date to the IEP team. School team members explained that assessments are necessary before the ■■■MS can determine whether programming at ■■■MS or other MCPS locations is appropriate, and if not, make a referral to the Central Office – and explained that the Parents can always address their concerns with this process through the MCPS Compliance Office. The Parents complained that the data is always behind, and the Student needs an accelerated process. When consent to speak with the Student's therapist or psychiatrists was discussed (to learn strategies that work or do not work for the Student), the Parents articulated their reservations, stated several times their request to know

exactly what these professionals have said in the past to MCPS employees, and requested to “think it over” whether they would approve of continued conversation. The IEP team discussed the Student’s attendance in co-taught English and Math classes, supported Science and History classes, a resource class and counseling service. The Parents objected to this IEP and its Least Restrictive Environment (LRE) placement at ■■■MS.

94. At the time of the IEP meeting on October 25, 2019, the Parents had not yet received the School Truancy Referral. No one from ■■■MS mentioned the referral during the meeting. (Student Ex. 173; Testimony, Ms. Mother.)

95. The Student received a new, approved IEP on October 25, 2019. OHI remained the coded primary disability. Teachers reported lack of attendance and missed assignments (due to the fact that the Student attended only six school days) as reasons they lacked data to contribute. Four behavioral goals and two academic goals, with four objectives each, were identified. The IEP also provided for monthly, forty-minute counseling sessions and a resource period. The IEP records the Parents as having remarked, “[He] received his IEP too late last year. . . and ended up having a difficult year.... The parents have no reason to believe that [the Student] can function yet alone finish the school year in a general education setting. They are unsure if they will ever be able to get [the Student] back to school.” (Student Ex. 101; MCPS Ex. 9.)

96. The October 2019 IEP provided access to a word processor as assistive technology. Other accessibility features included clarification of directions, redirection of the Student, use of a graphic organizer, small groups, frequent breaks, reduction of distractions, use of notes and outlines, use of a calculation device and mathematics tools, use of speech-to-text, answers recorded in test book, and extended time.

97. The October 2019 IEP provided for the following supplementary aids, services, and modifications: frequent and/or immediate feedback, opportunities to discuss written responses prior to turn in, use of a homework folder, use of rubrics, exemplars, and/or checklists, use of sentence starters and paragraph frames, lists of transition words, proofreading checklists, assistance with organization, monitoring of independent work, use of highlighters, provide a menu of math terms, pairing of verbal and written directions, repetition of directions, check-ins for understanding, break-down of assignments into smaller units, coping strategies, reinforcement of positive behavior, use of a home-school communication system, use of a flash pass, assignment turn-in prompts, use of manipulative and/or sensory activities to promote listening and focusing skills, frequent eye contact and proximity control, leadership opportunities, monitoring use of agenda book or progress report, access to sensory room, and preferential seating.

98. The Goals contained in the October 2019 IEP were:

Behavioral – Social Emotional/Behavioral:

Given frequent and/or immediate feedback, the opportunity to respond and reflect, review of school rules and expectations, and positive reinforcement, the Student will meet school expectations throughout the school day.

This was to happen with three out of five trials.

Objective 1: The Student will carry all of his materials (binder, agenda book, pencils) with him from one class to another.

Objective 2: The Student will make it to class on time (by the bell).

Objective 3: The Student will follow the class expectations (rules and procedures) during all classroom periods.

Objective 4: The Student will follow rules and procedures during lunch.

Behavioral – Transition:

Given wait time, frequent and/or immediate feedback, positive reinforcement, coping strategies, and a flash pass, the Student will engage in problem solving process with staff and peers.

This was to happen with two out of five trials.

Objective 1: The Student will accurately describe a problem or issue.

Objective 2: The Student will acknowledge his role/reaction in/to the problem or issue.

Objective 3: The Student will acknowledge different or opposing perspectives while problem solving, understanding how his actions affect others.

Objective 4: The Student will reflect on the problem-solving process.

**Behavioral – Social Interaction Skills:**

Given faded adult support, frequent check-ins, a flash pass, verbal/visual prompts, praise for positive peer interactions, opportunities for peer interactions (in class and unstructured times, i.e., PE and Cafeteria), the Student will maintain appropriate conversations and/or collaborative assignment completion with peers. This was to happen with three out of four trials.

Objective 1: The Student will speak with peers using respectful, courteous, and constructive language.

Objective 2: The Student will follow requests to stop speaking to a peer with no more than three prompts.

Objective 3: The Student will follow requests to stop speaking to a peer with no more than two prompts.

Objective 4: The Student will follow requests to stop speaking to a peer with no more than one prompt.

**Behavioral – Self-management:**

Given assistance with organization, breaks as needed, prompts to turn in assignments, extended time, monitoring of independent work, monitoring of agenda book, visual and/or verbal cues, manipulatives, frequent eye contact/proximity control, a homework folder, and preferential seating, the Student will manage and maintain his needs for the classroom.

This was to happen with three out of five trials.

Objective 1: The Student will record his assignments in his agenda book.

Objective 2: The Student will place papers in the appropriate sections of his binder.

Objective 3: The Student will demonstrate he is attending to instruction by showing he is using active listening skills, such as, tracking with the speaker, raising his hand, writing notes, etc.

Objective 4: The Student will turn in assignments by the due date, but no later than the deadline.

**Academic – Math Problem Solving:**

Given a calculator, graphic organizers, use of a highlighter, sentence starters, and a menu of math terms, the Student will solve real world problems.

This was to happen with four out of five trials.

Objective 1: The Student will identify key words that help determine which operation to use.

Objective 2: The Student will identify possible strategies which can solve the problem.





105. ██████ campuses are accredited nationally (██████) and regionally (██████ Association of Colleges and Schools). (Student Ex. 166.) ██████ provides individualized academic instruction using a 1:1 student teacher ratio. The instruction is intentionally flexible, allowing teachers to adjust to students' needs and interests. Peer socialization may occur during required periods entitled "homework café" (essentially, a study hall with teacher support), as well as during lunchtime and clubs.

106. ██████ is not a ██████ accredited special education school.

107. Students who graduate from ██████ receive high school diplomas.

108. The Student enrolled in four ██████ courses: English 8, Modern US History, Pre-Algebra, and Physical Science. Although there were enrichment opportunities on Fridays, the Student attended ██████ classes Monday through Thursday. He did not attend ██████ on Fridays.

109. Upon enrollment, standardized testing is conducted at ██████ however, the Student would not participate in standardized testing upon enrollment and has never participated in standardized testing despite ██████'s continuing efforts to the date of hearing. (Testimony, Ms. ██████.)

110. As a result of his enrollment at ██████, MCPS withdrew the School Truancy Referral and cancelled an impending meeting. (Student Ex. 112.)

111. ██████ provides daily progress reports to students' parents or guardians.

112. The Student's ██████ daily reports from November through December 2019 noted the Student's progress, when he was absent, when he missed assignments and failed to complete homework, and when he was distracted in class. On occasion the reports noted his consumption of coffee or an energy drink and indicated that the Student reported being tired. The Student fell asleep in the homework café on November 21, 2019. (Student Ex. 149, pp. ██████754-█████943.)

113. On November 22, 2019, Ms. ██████ completed a Report of School Psychologist Re-Evaluation. (Student Ex. 114; MCPS Ex. 2.) The referral was due to concerns with the Student's social-emotional functioning and school refusal. The Conners Comprehensive Behavior Rating Scale was administered, as well as the following testing:

- Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V): The Student's overall cognitive ability fell within the average range.
- Children's Depression Inventory – 2<sup>nd</sup> Edition (CDI-2) and Multidimensional Anxiety Scale for Children – 2<sup>nd</sup> Edition (MASC-2): The Student displayed an average range rating for depression and anxiety, except for an elevated rating for physical symptoms.
- School Refusal Assessment Scale – Revised (SRAS-R): The scores indicated that the functions of the Student's school refusal were to gain positive tangible reinforcement (seeking rewarding experiences outside of school) and avoidance of negative affectivity-provoking situations related to the school setting. The Student's responses also indicated that he maintained positive relationships with peers outside of school.
- Jesness Inventory – Revised (JI-R): The Student was noted to have a pragmatist personality type.

114. The Student discussed with Ms. ██████ socializing with friends, getting manicures, going to stores, and playing video games. He informed her that during the day he slept and played video games. (Testimony, Ms. ██████.)

115. Ms. ██████ concluded that the Student presented with a complicated social-emotional profile that impacted his functioning across settings and that he did present with an emotional condition. (Student Ex. 114; MCPS Ex. 2.)

116. Ms. ██████ noted that permission to complete a Functional Behavior Assessment (FBA) was obtained but, due to the Student's absences and withdrawal from ██████ MS, data could not be collected to complete an FBA. (*Id.*)

117. Ms. ██████ attempted to complete an educational assessment on several occasions, but the Mother cancelled the appointments. After discussion with the Parent about the



ear piercing as well as his manicured nails with black polish. He informed her that during the day he slept and played video games. (Testimony, Ms. ██████.)

120. A December 12, 2019 IEP team meeting was rescheduled to January 8, 2020 after the Parents notified the ██████MS team that their attorney planned to attend the December 12, 2019 meeting but MCPS attorneys were unavailable. (Student Ex. 124.)

121. The January 8, 2020 IEP team meeting was rescheduled to January 24, 2020 due to inclement weather. (Student Ex. 127.)

122. On January 22, 2020, the Student's US History teacher reported that the Student told her he had been "up all night giving himself a stick and poke tattoo on his leg," which he showed her. (Student Ex. 149, p. ██████790.) He called her a "bad teacher" and said he felt like he wanted to "cut his skin off." (*Id.*) The class was so unproductive that the teacher counted the class as an absence.

123. On January 23, 2020, the Student's homework café director followed up with the Parents regarding the Student's alarming remarks on January 22, 2020. The director explained that when he confronted the Student and explained that the Parents would be notified, the Student told the director that he would kill him, stabbing him in the head and the groin. (Student Ex. 150, p. ██████972.)

124. On January 24, 2020, the IEP team convened an annual review meeting which was recorded. (Student Ex. 174.) Counsel attended with their respective parties. At no time was the Student's status as an adopted child mentioned. A ██████ representative attended a portion of the meeting. The team discussed assessments which had been completed and the Student's defiance to adults was discussed. The ██████ representative shared that the Student consistently attends school on four, half days per week, designed as ██████'s best approach to return him to regular school attendance. The representative shared the Student's grades and

explained ██████'s 1:1 tutoring approach and the Student's peer socialization opportunities in the homework café. Time did not allow for the opportunity to fully review the IEP. The Parents signed an authorization to permit continued conversation between MCPS and ██████ staff. MCPS explored the possibility of a modified schedule for the Student, which was identified as a transitional schedule. Parents' counsel proposed that parent counseling be added to the IEP to discuss the development of successful strategies for school attendance; however, the Parents declined to offer MCPS consent to speak with the Student's current psychiatrist to coordinate with outside providers. The scheduled meeting time ended and, after reviewing schedules, the team selected February 24, 2020 as a continuation date.

125. At the time of the January 24, 2020 meeting, the ██████MS team believed that the Parents were working with a parenting coach.

126. On January 24, 2020, the IEP team completed an Emotional Disability Multidisciplinary Evaluation Form determining that the Student met the criteria for Emotional Disability (ED). (Student Ex. 129.)

127. On February 18, 2020, the Student's ██████ Physical Science teacher reported that the Student was found asleep in the homework café. (Student Ex. 149, p. J1051.)

128. On February 24, 2020, the IEP team continued its annual meeting, which was recorded and included the participation of counsel on behalf of the parties. (Student Ex. 175.) At no time was the Student's status as an adopted child mentioned. A ██████ representative attended a portion of the meeting. The conversation was, at times, tense and argumentative. The Parents declined to authorize MCPS to speak with Dr. ██████, declined to authorize MCPS to speak directly with the Student's new psychiatrist, and offered the possibility that the new psychiatrist could join an IEP team meeting once "more familiar" with the Student's case. MCPS reminded the Parents that Dr. ██████'s treatment was relevant to the timeframe under

review, and the Parents made clear that access to Dr. ██████ was not authorized. A discussion took place regarding whether school attendance should be an identified goal – ██████’s approach has been to develop strong relationships between the Student and his teachers and allow him to co-create lesson plans. MCPS questioned how much the Student was learning coping mechanisms at ██████ if he everything was entirely tailored to him. The Parents discussed the Student’s anxiety about attending the “big setting” of ██████MS. The ██████ representative was asked to critique the IEP’s supplementary aids or accommodations, and she had no suggestions. A transitional day was discussed with the idea of attendance for blocks of time within a range of weeks to build attendance. After a break, the Parents specifically requested an agreed upon amount of time in attendance for the remainder of the school year, and MCPS was not willing to do so, whereupon transitional schedule language was removed from the draft IEP. The Parents shared the Student’s preference for a different schedule every other day (*i.e.*, certain subjects on Mondays and Wednesdays, other subject on Tuesdays and Thursdays). MCPS agreed that a transitional timeframe would likely be required but stated its belief that it was not appropriate to incorporate it as an aid and service within the IEP because it was unclear what would be needed and what it would look like. The scheduled meeting time ended and, after reviewing schedules, the team selected two possible continuation dates in the hopes that the ██████ representative would be available.

129. The Student resumed therapy sessions with a psychotherapist in March 2020. (MCPS Ex. 35.)

130. On March 3, 2020, after a period of nonattendance, the Parent wrote ██████ to advise, “[w]e are continuing to work with [the Student] to get him back to attending school. However, we have not found a workable solution yet.” (Student Ex. 150, p. ██████945.)

131. On a date uncertain from the record, MCPS requested the ability to observe the Student at [REDACTED]. The Parents responded by email on March 11, 2020, that they would consider the request. (Student Ex. 139.) On May 18, 2020, the Parents offered the opportunity for MCPS to view a [REDACTED] virtual (due to the COVID-19 pandemic) lesson and speak with the teacher at an arranged time. (Student Ex. 142.)

132. On March 11, 2020, the Student's US History teacher reported that the Student told her he did not enjoy her class and she should work on making it more fun. (Student Ex. 149, p. 1099.)

133. On April 13, 2020, the Student's psychotherapist, Dr. [REDACTED], emailed the Parents and shared that he and the Student discussed the Student's need to get off his computer and phone with enough time to wind down before bed. Dr. [REDACTED] also characterized the Student's school refusal as a "muscle memory" type of behavior. (MCPS Ex. 49, p. 668.)

134. On April 23, 2020, the Parents signed the Student's [REDACTED] enrollment contract for the 2020-2021 school year. (Student Ex. 141.)

135. For reasons not entirely clear from the record,<sup>32</sup> neither potential continuation date was used<sup>33</sup> and the annual IEP team meeting was rescheduled to continue May 7, 2020 (Student Ex. 140), and ultimately resumed on May 28, 2020.

136. The Parents submitted a report for the May 28, 2020 IEP meeting. (MCPS Ex. 35.) They reported good progress at [REDACTED] and the development of friendships. The Parents reported that in [REDACTED]'s 1:1 tutoring model, the Student continues to experience anxiety about school. They reported that the COVID-19 pandemic has increased the Student's anxiety and disturbed his sleep.

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<sup>32</sup> In an email dated May 18, 2020, the Mother referenced the COVID-19 pandemic as an explanation for postponement of a team meeting scheduled in March 2020.

<sup>33</sup> An email dated March 2, 2020, indicated that MCPS could not meet on March 16 or 17, but proposed March 24 or 31. (Student Ex. 137.)



137. On May 28, 2020, the IEP team annual meeting continued, was recorded, and included the participation of counsel on behalf of the parties. (Student Ex. 176.) At no time was the Student's status as an adopted child mentioned. A [REDACTED] representative was present who shared an update on the Student's attendance and performance. She shared that he likes praise and teacher proximity, and shared teacher reports which revealed that the Student appeared tired to one teacher, works well one on one, but has difficulty with independent work and homework. The representative has implemented a bedroom time check-in discussion to reinforce going to bed at a proper time. [REDACTED] and the Parents shared that virtual learning has been difficult for the Student. Classes were discussed as well as the addition of a resource room and additional counseling time of thirty minutes per week.<sup>34</sup> The local feeder school, [REDACTED] High School, was determined not appropriate because it did not have the level of self-contained classes the Student requires. Regarding electives, MCPS proposed that the Student could fully participate in the general education setting (*e.g.*, P.E.) – the Mother agreed. The [REDACTED] High School ([REDACTED]) [REDACTED]<sup>35</sup> program was reviewed and considered. The program was explained, including how the program would develop a gradual return to full-day attendance coordinated through the Compliance Office. The Parents were encouraged to reach out to the Compliance Office as soon as they would like. At the conclusion of the meeting, counsel for the Parents characterized the behavioral goals as “really vague” and suggested the team might have to “go back to square one” although during the prior meetings, the behavioral goals were discussed in detail and Parents' counsel's suggestions were incorporated into the document (*e.g.*, changing how the goals were measured from “random trials” to observation record). The meeting concluded with Ms. [REDACTED] explaining that a 5-day notice would be issued, and the IEP would be “closed” or “locked” with the understanding that the Parents may submit additional

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<sup>34</sup> The Mother noted and expressed appreciation that the allotted counseling time was increased.

<sup>35</sup> [REDACTED].

information thereafter. Counsel for the Parents was present on the call during Ms. [REDACTED]'s statements.

138. The Student's 2020 IEP (dated January 24, 2020 but finalized May 28, 2020) identified ED as his primary disability. The IEP team noted that limited data was made available from [REDACTED]. Placement was not identified as the Student's home school, but instead, [REDACTED]. The Parents reported that at [REDACTED]MS, the Student made no progress because he was unable to attend due to his anxiety and depression which was not properly addressed by [REDACTED]MS. The Parents further reported that the Student is able to do his schoolwork at [REDACTED], his mood is improved, and he enjoys sports outside of school and positive peer interactions. The Parents characterized [REDACTED]MS's approach to the Student's attendance issues as counterproductive, ineffective and retaliatory. MCPS noted that on February 24, 2020, the Parents were asked for authorization of a draft FBA and they did not consent. (MCPS Ex. 10.)

139. The 2020 IEP noted that the Student was identified with an ED, impacting his ability to access the general education curriculum in the areas of Behavioral - social interaction skills, Behavioral - social-emotional behavior, Behavioral - self-management, Behavioral – transition, Academic - written language expression, and Academic - math problem-solving. The Student was also identified with a Specific Learning Disability (SLD), impacting his written language and math problem-solving, and OHI due to his ADHD and unspecified anxiety disorder. (Student Ex. 130; MCPS Ex. 10.)

140. The 2020 IEP provided access to a word processor and a calculator as assistive technology. Other accessibility features included clarification of directions, redirection of the Student, use of a graphic organizer, small groups, frequent breaks, reduction of distractions, use of notes and outlines, use of a calculation device and mathematics tools, and extended time.

141. The 2020 IEP provided for the following supplementary aids, services, and modifications: modeled use of a graphic organizer, wait time, frequent and/or immediate feedback, opportunities to discuss written responses prior to turn in, use of a homework folder, use of rubrics, exemplars, and/or checklists, use of sentence starters and paragraph frames, lists of transition words, proofreading checklists, assistance with organization, monitoring of independent work, use of highlighters, provide a menu of math terms, pairing of verbal and written directions, repetition of directions, check-ins for understanding, alternate ways to demonstrate learning, access to a trusted adult, coping strategies, reinforcement of positive behavior, home-school communication system, regulated flash pass, prompts to turn in assignments, use of manipulative and/or sensory activities to promote listening and focusing skills, frequent eye contact and proximity control, leadership opportunities, monitoring use of agenda book or progress report, and preferential seating.

142. The 2020 IEP indicated that the Student was not eligible for ESY because his goals are not related to critical life skills,<sup>36</sup> there was no risk of substantial regression of critical life skills, and the Student's disability does not warrant ESY to demonstrate progress toward mastery of a goal or to support accessing the general education curriculum.

143. The Goals contained in the 2020 IEP were:

Behavioral – Social Interaction Skills:

By January 2021, given opportunities for peer interactions (in class and unstructured times, i.e., PE and Cafeteria), the Student will maintain appropriate conversations and/or collaborative assignment completion with peers.

This was to happen with three out of four trials.

Objective 1: By the end of quarter 1, given praise for positive peer interactions, verbal/visual prompts, and faded adult support, the Student will speak with peers using respectful, courteous, and constructive language.

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<sup>36</sup> “‘Critical life skill’ means a skill determined by the IEP team to be critical to the student's overall educational progress.” COMAR 13A.05.01.03B(15).

Objective 2: By the end of quarter 2, given frequent check-ins, a flash pass, verbal/visual prompts, and faded adult support, the Student will follow requests to stop speaking to a peer with no more than three prompts.

Objective 3: By the end of quarter 3, given frequent check-ins, a flash pass, and verbal/visual prompts, the Student will follow requests to stop speaking to a peer with no more than two prompts.

Objective 4: By the end of quarter 4, given frequent check-ins and verbal/visual prompts, the Student will follow requests to stop speaking to a peer with no more than one prompt.

Behavioral – Social Emotional/Behavioral:

By January 2021, given school routines and procedures, the Student will meet school expectations throughout the school day.

This was to happen with three out of five trials.

Objective 1: By the end of quarter 1, given review of school rules and expectations, and positive reinforcement, the Student will carry all of his materials (binder, agenda book, pencils) with him from one class to another.

Objective 2: By the end of quarter 2, given the opportunity to respond and reflect, review of school rules and expectations, and positive reinforcement, the Student will make it to class on time (by the bell).

Objective 3: By the end of quarter 3, given frequent and/or immediate feedback, review of school rules and expectations, and positive reinforcement, the Student will follow the class expectations (rules and procedures) during all classroom periods.

Objective 4: By the end of quarter 4, given the opportunity to respond and reflect, given review of school rules and expectations, and positive reinforcement, The Student will follow rules and procedures during lunch.

Behavioral – Transition:

By January 2021, the Student will engage in problem solving process with staff and peers.

This was to happen with two out of five trials.

Objective 1: By the end of quarter 1, given a flash pass, wait time, and frequent and/or immediate feedback, the Student will accurately describe a problem or issue.

Objective 2: By the end of quarter 2, given positive reinforcement and wait time, the Student will acknowledge his role/reaction in/to the problem or issue.

Objective 3: By the end of quarter 3, given wait time, frequent and/or immediate feedback, and positive reinforcement, the Student will acknowledge different or opposing perspectives while problem solving, understanding how his actions affect others.

Objective 4: By the end of quarter 4, given coping strategies and frequent and/or immediate feedback, the Student will reflect on the problem-solving process.

Behavioral – Self-management:

By January 2021, given visual and verbal cues, the Student will attend to instruction/assignment.

This was to happen with three out of five trials.

Objective 1: By the end of quarter 1, given frequent and/or immediate feedback, reinforce positive behavior through non-verbal/verbal communication and frequent eye contact/proximity control, the Student will demonstrate he is attending to instruction by showing he is using active listening skills such as tracking the speaker.

Objective 2: By the end of quarter 2, given repetition of directions, preferential seating, and checks for understanding, the Student will raise his hand when he has a comment or question pertaining to the direct instruction during class.

Objective 3: By the end of quarter 3, given coping strategies, reinforce positive behavior through non-verbal/verbal communication, and frequent eye contact/proximity control, the Student will ignore distractions while completing independent work.

Behavioral – Self-management:

By January 2021, given an agenda book and assistance with organization, the Student will maintain organizational structure.

This was to happen with three out of five trials.

Objective 1: By the end of quarter 1, given monitoring of agenda book, the Student will record his assignments in his agenda book.

Objective 2: By the end of quarter 2, given a homework folder, and reinforce positive behavior through non-verbal/verbal communication the Student will place papers in the appropriate sections of his binder.

Objective 3: By the end of quarter 3, given a homework folder, prompts to turn in assignments, extended time, and frequent eye contact/proximity control, the Student will turn in assignments by the due date, but no later than the deadline.

Behavioral – Self-management:

Frustration Tolerance - By January 2021, given a non-preferred situation or task, the Student will demonstrate targeted problem-solving skills when feeling anxious, frustrated, or stressed during the school day.

This was to happen with three out of five trials.

Objective 1: By the end of quarter 1, given regulated flash pass, preferential seating, and access to a trusted adult, the Student will identify situations and/or interactions that provoke anxious, frustrated, and/or stressed feelings.

Objective 2: By the end of quarter 2, given coping strategies, and wait time, the Student will identify coping mechanisms to use when anxious and/or frustrated (*i.e.*, deep breathing, speaking to a trusted adult, use of a structured break.)

Objective 3: By the end of quarter 3, given checks for understanding, and access to a trusted adult, the Student will implement a selected coping strategy to work through anxious/frustrated feelings.

Objective 4: By the end of quarter 4, given leadership opportunities, access to a trusted adult, and copies strategies, the Student will participate in problem solving discussions aimed at working through anxious/frustrated feelings.

Academic – Math Problem Solving:

By January 2021, given grade level math problems, the Student will solve real world problem scoring at least 80% on teacher made assessments.<sup>37</sup>

Objective 1: By the end of quarter 1, given a menu of math terms and the use of a highlighter, the Student will identify key words that help determine which operation to use.

Objective 2: By the end of quarter 2, given graphic organizers, checks for understanding, and frequent and/or immediate feedback, the Student will identify possible strategies which can solve the problem.

Objective 3: By the end of quarter 3, given a calculator and graphic organizer, the Student will solve the problem using one of the identified strategies.

Objective 4: By the end of quarter 4, given sentence starters and exemplars, the Student will explain how he determined his answer.

Academic – Written Language Expression:

Given graphic organizers, speech to text, a word processor, rubrics, exemplars and/or checklists, sentence starters and paragraph frames, a list of transition words, a proofreading checklist, and opportunities to discuss his written responses, the Student will write arguments to support claims with clear reasons and relevant evidence.

This was to happen with three out of four trials.

Objective 1: Introduce claim(s), acknowledge alternate or opposing claims, and organize the reasons and evidence logically.

Objective 2: Support claim(s) with logical reasoning and relevant evidence, using accurate, credible sources and demonstrating an understanding of the topic or text.

Objective 3: Use words, phrases, and clauses to create cohesion and clarify the relationships among claim(s), reasons, and evidence.

Objective 4: Provide a concluding statement or section that follows from and supports the argument presented.

144. The 2020 IEP directed that the Student receive forty minutes of counseling monthly.<sup>38</sup>

145. The 2020 IEP states that the Student requires direct, small group, specialized instruction to address his deficits. The Student requires self-contained English, Science, History,

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<sup>37</sup> [REDACTED] considers 70% subject “mastery.” (Testimony, Ms. [REDACTED].)

<sup>38</sup> The IEP is in error and does not reflect the consensus from the May 28, 2020 meeting that thirty minutes per week was appropriate. MCPS was not aware of the discrepancy until after the Complaint was filed and offered testimony that the IEP should reflect the May 28, 2020 recording and any errors would be corrected.

and Resource classes and specialized instruction in his Math class. Also, the Student requires daily transportation for school because his placement is ██████████ ██████████, not his local high school.

146. At the time of the Student's 2020 IEP, the Student was attending four classes at ██████████ (English 8, A; Pre-Algebra, A; Physical Science, A; and Modern U.S. History, A). He attended 1:1 instruction twice weekly per course and four days of school, from 7:30 to 12:30, and participated in a homework café with approximately twenty to fifty students. "When a student enrolls at ██████████ who has school avoidance, they normally start the student out with only the core classes. ██████████ has recommended a full day of courses (5 classes) for [the Student] starting in March for the third term." (*Id.*, p. 203)

147. At ██████████, from November 2019 through May 25, 2020, the Student had thirty-two absences. (*Id.*, p. 205; *see also* Student Ex. 130; MCPS Ex. 10.)

148. The Student's ██████████ daily reports from January through July 2020 noted the Student's progress, tardiness, when he was absent, when he missed assignments or failed to complete homework, when he reported feeling tired, and when he was distracted in class. The reports noted the Student drinking coffee and on two occasions, noted that the Student said he stayed up all night. Teachers permitted the Student to complete homework during class. The need for mastery due to missed classes was reported, as well as missed mastery sessions. (Student Ex. 149, pp. ██████████943█████████1316.)

149. On June 4, 2020, the Student's US History teacher reported that the Student told her "he wants to prove he can stay at ██████████." (Student Ex. 149, p. ██████████865.)

150. On June 4, 2020, Parents' counsel shared a report from the Student's ██████████ English teacher as an email attachment. The report identified the Student's strengths and noted that the Student's "greatest struggle is consistency.... This is most notable with his attendance

and homework completion. [The Student] regularly misses class, and usually requires a large number of mastery sessions in order to earn credit for his courses. Similarly, it is rare for [the Student] to arrive to class with his homework completed.” (Student Ex. 145, p. █715.)

151. On June 8, 2020, the Student’s Physical Science teacher reported that the Student told her he was not enjoying the class and would like more choice. His teacher stated that she would work with him to develop “some great options” for him. (Student Ex. 149, p. █1234.)

152. On June 9, 2020, the Student’s Pre-Algebra teacher reported that the Student had made concerning outbursts, struggled to concentrate, and struggled with basic math concepts, *e.g.*, “spent at least 5 minutes talking about how to do  $-9+6$  and in the end he just did it on a calculator.” (Student Ex. 149, p. █1301.)

153. The Student received the following grades in his █ classes during 2019-2020 school year:

Subject	Grade
English 8 A	B
English 8 B	A-
Modern US History A	A
Physical Science A	A
Physical Science B	A
Pre-Algebra A	A
Pre-Algebra B	A-

(Student Ex. 151.) The Student’s Modern US History B class was paused.<sup>39</sup>

***Ninth Grade (and continuation of Eighth Grade coursework) (2020-2021) – █***

154. At █, from August 2020 through June 2021, the Student missed over 100 classes. (Student Ex. 162.)

155. The Student’s █ daily reports from August 2020 through December 2020 noted the Student’s progress, tardiness, when he was absent, when he missed assignments or failed to complete homework, when he reported feeling tired, and when he was distracted in

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<sup>39</sup> Ms. █ testified that this paused course was never resumed for full credit and completion.



class. A report noted that the Student did not want to read a novel, so short story selections were made instead. Two reports noted the Student said he stayed up all night. Teachers permitted the Student to complete homework during class. The need for mastery due to missed classes was reported, as well as missed mastery sessions. (Student Ex. 156, pp. █1055-█1119.)

156. The Student's █ daily reports from January 2021 through June 2021 noted the Student's progress, tardiness, when he was absent, when he missed assignments or failed to complete homework, when he reported feeling tired, and when he was distracted in class. One report noted that the Student was distracted in his virtual class and when confronted told his Algebra 1 teacher that looking at his stocks was more important than school; he also abruptly hung up from this teacher as she was discussing his homework assignment. Another report noted the Student advised that he was tired and did not want to learn anything. Teachers permitted the Student to complete homework during class. The need for mastery due to missed classes was reported. (Student Ex. 156, pp. █1120-█1213.)

157. On February 1, 2021, the Student's English 9 teacher reported that the Student mentioned his frustration with █ and desire to change schools. (Student Ex. 156, p. █1133; MCPS Ex. 49, p. 572.)

158. On February 25, 2021, a peer reported the Student to █ staff for texting her that he could bring knives to school if he wanted. Administration spoke with the Student. (Student Ex. 157, p. █1309; MCPS Ex. 49, p. 567.)

159. On June 9, 2021, the Student's Algebra teacher reported that the Student worked through a quiz "mostly on his own" and required "only a few hints along the way." (Student Ex. 156, p. █1208.)

160. The Student received the following grades in his [REDACTED] classes during 2020-2021 school year:

Subject	Grade
Algebra 1 A	B-
Algebra 1 B	B
Biology A	A+
English 9 A	A-
Personal Fitness 1 A	A-
Personal Fitness 1 B	A-
Personal Fitness 2 A	A
Recording Arts A	A
Recording Arts B	A-

(Student Ex. 165.)

161. The Parents have incurred \$93,600 in tuition expenses thus far for the Student's time at [REDACTED]. (Testimony, Mother.)

162. The Student continues to attend [REDACTED] for his tenth grade, 2021-2022 school year. He is employed part-time at a [REDACTED] and either bikes to work or is driven by his Parents. (Testimony, Father.)

## **DISCUSSION**

### ***Burden of Proof***

The standard of proof in this case is a preponderance of the evidence. *See* 20 U.S.C.A. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case, the Student is seeking relief and bears the burden of proof to show that the challenged actions by the MCPS did not meet the requirements of the law.

## ***Legal Framework***

The identification, evaluation, and placement of students in special education is governed by the IDEA. 20 U.S.C.A. §§ 1400-1482 (2017); 34 C.F.R. pt. 300 (2019); Educ.

§§ 8-401 through 8-417 (2018 and Supp. 2021);<sup>40</sup> 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* Md. Code Ann., Educ. § 8-403. The IDEA defines a FAPE as special education and related services that:

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9); *see also* Md. Code Ann., Educ. § 8-401(a)(3).

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

(A) In General

The term “child with a disability” means a child –

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

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<sup>40</sup> All citations to the Education Article are to the 2018 Replacement Volume and 2021 Supplement.

(ii) who, by reason thereof, needs special education and related services.

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

§ 8-401(a)(2); and COMAR 13A.05.01.03B(78).

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

The *Rowley* Court held, because special education and related services must meet the state’s educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade, on grade level. *Id.* at 204. Further the Court found “if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a ‘free appropriate public education’ as defined by the [IDEA].” *Id.* at 189. The Court explicitly rejected the petitioner’s argument that the IDEA requires the provision of services “sufficient to maximize each child’s potential commensurate with the opportunity provided other children.” *Id.* at 198 (internal quotation marks omitted). Instead, the Court concluded that the “‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the . . . child.” *Id.* at

201 (footnote omitted). The Court did not seek to define educational benefit but held that an IEP “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 203-04 (footnote omitted).

Additionally, to the maximum extent possible, the IDEA seeks to mainstream, or include the child into regular public schools; at a minimum, the statute calls for school systems to place children in the “least restrictive environment” (LRE) consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). The nature of the LRE necessarily differs for each child but could range from a regular public school to a residential school where twenty-four-hour supervision is provided. COMAR 13A.05.01.10B. The IDEA requires specialized and individualized instruction for a learning or educationally disabled child. Nonetheless, “[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities,” must be “educated with children who are not disabled . . .” 20 U.S.C.A. § 1412(a)(5)(A). It follows that the State and federal regulations that have been promulgated to implement the requirements of the IDEA also require such inclusion. 34 C.F.R. §§ 300.114 through 300.120; COMAR 13A.05.01.10A(1).

The IDEA mandates that the school system segregate disabled children from their non-disabled peers only when the nature and severity of their disability is such that education in general classrooms cannot be achieved satisfactorily. 20 U.S.C.A. § 1412(a)(5)(A); *Rowley*, 458 U.S. at 181 n.4; *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997).

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew*

*F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001.

An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE. *M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

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

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

20 U.S.C.A. § 1414(d)(3)(A).

IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present levels of academic achievement and functional performance, including . . . [h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children)[.]” 34 C.F.R. § 300.320(a)(1)(i).

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

Thirty-five years after *Rowley*, the parties in *Andrew F.* asked the Supreme Court to go further than it did in *Rowley* and set forth a test for measuring whether a disabled student had attained sufficient educational benefit. The framework for the decision was the Tenth Circuit’s interpretation of the meaning of *Rowley*’s “some educational benefit,” which construed the level

of benefit as “merely . . . ‘more than *de minimis*.’” *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10th Cir. 2015). The Supreme Court set forth the following “general approach” to determining whether a school has met its obligation under the IDEA:

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

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

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

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

*Endrew 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 *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.* at 1001 (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 local education agency is required to have in effect an IEP for each child with a disability in the agency’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 Andrew F.*, 137 S. Ct. at 999. The test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Adams v. Oregon*, 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 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).<sup>41</sup>

### ***The Student's Witnesses***

#### *Mother*

The Student's Mother testified. She described the Student as a kind-hearted, empathetic, bright, and inquisitive young man with great mechanical skills. She explained that she and his father adopted the Student when he was two-and-a-half months old. She said that his birth mother used tobacco and ██████████, developed ██████████ cancer, and began chemotherapy while pregnant with the Student. The Student was born ██████████ weeks early, by planned cesarian section, for her to engage in more aggressive chemotherapy. Before the Student's first birthday, his birth mother died. The Mother testified that the Student knows that he was adopted and that his birth mother is dead.

She said the Student's early developmental years were typical as to motor development, but slower regarding language. At his two-year check-up, his pediatrician recommended an evaluation. The Mother explained that a 2007 evaluation diagnosed the Student with a receptive and expressive speech language delay, and thereafter, he began speech therapy. The Student spent pre-school years at ██████████ Preschool. The Student attended ██████████ for kindergarten through sixth grade. Throughout his preschool years and time at ██████████, the Student continued speech therapy. The Mother explained that after some concerns arose in second grade, the Student was evaluated again and diagnosed with

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<sup>41</sup> Parents may be entitled to retroactive reimbursement from a state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). I shall not discuss reimbursement further as MCPS provided the Student with a FAPE.

ADHD, receptive and expressive speech language delay, and dyslexia. She said that although [REDACTED], as a private school, did not offer an IEP, the environment was small and caring, the teachers were qualified, and some modifications were made to the Student's day to accommodate his needs.<sup>42</sup> She said the Student continued to attend speech and language therapy twice a week before school at the [REDACTED] and he participated in [REDACTED] summer programming. By 2017, the Student received a diagnosis of depression and anxiety, and he began cognitive behavioral therapy. The Mother testified that throughout this time, the Parents attended parent consultant meetings and the Student was under the care of a psychiatrist and psychologist.

When discussing parent consultants, the Mother testified that the Parents changed consultants to find someone certified in a particular method: collaborative and proactive solutions. The Mother explained her belief that this method best fits the Student's needs because it begins with the belief that children do well if they can – if children are not doing well, it is because something is getting in the way, not that they are trying to be difficult.

In the Student's sixth grade year at [REDACTED], the Mother said that the Student's grades were slipping, and Parents believed the school could no longer meet the Student's need for academic supports.<sup>43</sup> The Mother testified that the Student's sixth grade year was also challenging because he was bullied. There was a behavioral episode which resulted in an in-school suspension.<sup>44</sup> The Mother said the Student's sixth grade attendance was "generally fine" and he never refused to go to school.

The Parents enrolled the Student in MCPS for his seventh-grade year (2018-2019); his home school was [REDACTED] MS. The Mother testified that she brought all required documentation as

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<sup>42</sup> The Mother said in lieu of a Spanish class in his schedule, the Student was tutored during that time period instead. In Dr. [REDACTED]'s testimony, he said that upon his review of the [REDACTED] record it was unclear what accommodations were made, as different teachers may have been doing things differently. (*See also* MCPS Ex. 4, p. 24.)

<sup>43</sup> The Student told Ms. [REDACTED] that he was "kicked out" of [REDACTED] due to his behaviors. (Student Ex. 186.)

<sup>44</sup> The Mother said the Student shared inappropriate images on his cell phone with peers.

well as additional information to ■■■MS and requested that the Student receive an IEP. ■■■MS personnel advised that they would need to perform their own evaluations to determine IEP eligibility<sup>45</sup> and the Student began the school year without an IEP. The Mother testified that early in September 2018, the Student began to experience difficulties. Teachers were emailing<sup>46</sup> the Parents regarding incomplete assignments and behavioral problems. By October an IEP team began discussing implementation of an IEP, which was finalized on November 2, 2018. As a result, the Student's schedule changed, which the Mother said caused him embarrassment as being perceived as "dumb" by his peers. She said the Student began to withdraw from afterschool activities and he became depressed. She said the Student also experienced trouble at school; he was disrespectful,<sup>47</sup> he was suspended for misconduct, and he had an afterschool detention. The Student failed to complete assignments and began refusing to attend school. Despite involvement of ■■■MS staff and modifications, the Student's performance and attendance continued to decline. The Mother testified that the Parents continued to communicate with the school, continued with the support of a parent consultant, and continued the Student's appointments with mental health professionals. However, the Student's school refusal grew worse, which the Mother characterized as his "inability" to attend.<sup>48</sup>

The Mother testified that the Student had an enjoyable summer. He went on a family vacation and participated in basketball and sailing camps. The Mother said that the Student especially enjoyed sleepaway camp.

The Mother testified that the Student's eighth grade (2019-2020) at ■■■MS was worse. He received a five-day bus suspension after he displayed sexual images and drew a penis on a

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<sup>45</sup> ■■■MS concluded that there was not enough data to show an educational impact at that time. (MCPS Ex. 12.)

<sup>46</sup> The Parents used one family email address by which both would send and respond to emails.

<sup>47</sup> The Mother described an incident when the Student told his art teacher that he was proud of failing her class.

<sup>48</sup> The Mother testified that when the Student refused to attend school, he often slept during the day. She said the Parents blocked or removed the router from the home to prevent Wi-fi access for daytime X-Box gaming. Also, she would often telework to remain in the home with the Student.

school bus on September 6, 2019. ■■■MS characterized the incident as “the bullying and sexual harassment of another student.” (Student Ex. 66.) In total, for the fall semester, the Student attended only six-and-a-half days. In October 2019, a truancy referral was made by ■■■MS, which upset the Parents greatly. Around that timeframe, the Parents enrolled the Student at ■■■■.

The Mother testified that the Student began attending ■■■■ in November 2019 where he remains. The Mother averred that his attendance and grades have improved, and that the school’s 1:1 ratio works for him. She said ■■■■ has not solved all of the Student’s difficulties, but it has allowed him to access education. The Mother believes that the 2020 IEP intended for the Student’s ninth grade year did not meet his needs. Although the placement was a small ■■■■ program within ■■■■, the Mother expressed concerns with his planned attendance in some general education courses,<sup>49</sup> the size of the school, and the lack of a planned gradual re-entry to a full-day course schedule. The Mother testified that the Parents were not permitted meaningful participation in the development of the IEP, with fellow team members simply stating that they would note parental objections. The Mother testified that MCPS did not prepare an IEP or a proposal for the Student’s tenth grade school year. She testified that the Parents have incurred \$93,600 in tuition expenses for the Student’s time at ■■■■.

On cross-examination, the Mother acknowledged that the Student was argumentative with the Parents but refused to characterize the Student as verbally abusive.<sup>50</sup> In spring 2017, the Mother stated that the Student was using medication for anxiety and depression, his sleep was disturbed, and he had strong reactions to changes in his routine. As an example, even a change

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<sup>49</sup> However, the Mother agreed with the MCPS team on May 28, 2020 that the Student was capable of attending electives such as P.E. in the general education setting at ■■■■. (Student Ex. 176.)

<sup>50</sup> However, after considering the Parents description of the Student’s behaviors, Dr. ■■■■ wrote: “[The Student’s Parents] have described his verbally abusive and physically threatening behaviors at home. I have witnessed extremely disrespectful behaviors towards his [P]arents in my office. His [P]arents have described a longstanding pattern of verbal abuse and property damage in their home.” (Student Ex. 92; MCPS Ex. 42.)

in dinner plans could result in a strong reaction from the Student. The Mother insisted that the Student was not physically aggressive at home and only destroyed property on one occasion (breaking a glass vase). When upset, she said the Student yelled, cursed, walked about like he did not know what to do, and used an excited manner of speech. When the Student was upset, the Mother said she employed parent coach tools or strategies to try and de-escalate the situation and keep everyone safe. These included responding calmly, acknowledging the Student's concerns, keeping a safe distance to avoid his personal space. When asked about the Student's verbalizing and threats of physical aggression, the Mother stated that in summer 2021, the Parents called 911 then mobile crisis after the Student verbalized not wanting "to be here" anymore (*i.e.*, suicide). She said that a mobile crisis social worker was helpful, and the Parents followed up with the Student's psychiatrist on the next business day who adjusted his medication.<sup>51</sup> She testified that MCPS knew the Parents were working with a parent coach (Ms. ██████, then Ms. ██████). The Mother acknowledged that she did not share details of the Student's behavior at home with MCPS. The Mother iterated that despite agreeing with Dr. ██████'s recommendations for a parent coach and consideration of ██████ she adamantly disagrees with Dr. ██████'s ODD diagnosis. She conceded that she holds no professional degrees in psychiatry. She also advised that she would never consider Dr. ██████'s recommendation of a wilderness program or residential therapeutic setting for the Student. The Mother advised that because the Student was adopted, it is important to her that he remain in their home. The Mother acknowledged that the Parents did not provide Dr. ██████'s letter dated October 16, 2019, to MCPS until February 2020 because they disagreed with some of its content.

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<sup>51</sup> The Mother testified that she did not share any information about this incident with ██████.

The Mother testified that upon completion of sixth grade, the Parents applied to enroll the Student at the [REDACTED] and provided the school with Dr. [REDACTED]'s report. Despite being a regular summer program attendee for several years, the Mother said the [REDACTED] did not accept the Student as a full-time seventh grader. She said the reason provided by the [REDACTED] was that it could not meet his behavioral needs. However, she also said that the Student had not received any behavioral problem reports from the [REDACTED] during his periods of attendance.

The Mother was asked about the MCPS attendance contract on cross-examination. She testified that she could not recall whether anyone from MCPS explained why it was being proposed for the Student. She acknowledged that perhaps the contract contained strategies to support school attendance for certain kinds of students, but she does not believe it would have supported the Student's needs because she knew the Student could not fulfill the agreement. She said she always advised MCPS when the Student was absent. She acknowledged that after the MCPS home visit on September 25, 2019, the Student attended school the following day and agreed that the home visit was a helpful strategy.

The Mother was asked about an incident at [REDACTED] when the Student threatened to bring knives to school. [REDACTED] alerted the Parents to this alarming communication. The Mother was asked whether she followed-up with the Student, and she responded, "I think I did." The Mother added that "of course" the Student would not do something like that, and he did not mean it – someone was just "getting on his nerves."

The Mother was asked about Student attendance at [REDACTED]. There were dates when she could not recall why the Student was not in attendance or preferred to attend virtually rather than in-person. She said that during the pandemic, the Student had difficulty with insomnia and was given a prescription by Dr. [REDACTED]<sup>52</sup> in early 2020, but the medication did not agree with him and so

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<sup>52</sup> The Mother testified that Dr. [REDACTED] began treating the Student in December 2019.

it was discontinued.<sup>53</sup> The Mother said [REDACTED] never conducted a home visit because of school absences; however, [REDACTED] was flexible, sent emails encouraging attendance and offered (mostly) Zoom meetings. The Mother characterized these strategies as overall successful. She also mentioned that while the Student was attending [REDACTED], his maternal grandmother was residing with them for a period of time, until she passed away. The grandmother's presence and illness were difficult on the Student; she said that the grandmother kept the Student up at night with her movements.

The Mother was asked about a [REDACTED] teacher report describing the Student's self-report of staying up all night giving himself a "stick and poke tattoo" and wanting to "cut his skin off." (MCPS Ex. 49, p. 695.) The teacher further reported that the Student called her a bad teacher several times and showed her his tattoo. The Mother testified that she never followed up with this teacher, disbelieves that the Student showed her a tattoo, and that she has never observed any tattoos on the Student.

The Mother said that the Student began treatment with Dr. [REDACTED] in March 2020 to address his depression, anxiety, and insomnia. Dr. [REDACTED] recommended that the Student improve his sleep schedule, diet, and hygiene. Dr. [REDACTED] also recommended that the Student wind down for sleep by getting off the computer and his phone. She said Dr. [REDACTED] opined that the Student's school refusal was a type of "muscle memory" issue but she could not recall whether Dr. [REDACTED] offered any strategies. She said that at the time of her testimony, the Student had not missed any school days this school year (2021-2022) and his relationship with his Parents has improved.

I found the Mother wedded to her perception of the Student's functioning and rejected reports and diagnoses with which she did not agree. I conclude that if the Parents did not like an opinion, they discounted it. Indeed, the Parents did not share Dr. [REDACTED]'s October 16, 2019

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<sup>53</sup> When asked whether the Student continues to suffer from insomnia, she did not know. The Mother added that it has improved and is better now.

letter with MCPS until MCPS became aware of it and asked to see it. They changed parent coaches to one certified in a different methodology while the Student's nonattendance and missed assignments increased. They characterized teachers as "in [the Student's] corner." (Student Ex. 31.) The Mother was quick to minimize and find excuses for the Student's poor behavior, rather than hold him accountable. As an example, the Student's communication about bringing knives to school was dismissed by his Parents as someone was "getting on his nerves." As another example, although the Mother testified that the Parents would take the Wi-fi router to prevent the Student from online video gaming while absent from school, I give less weight to her testimony regarding disconnecting the Wi-Fi router because it was refuted by ■■■ MS staff who were told that the Student was gaming in the basement when they arrived for their home visit. Further, Dr. ■■■■ suspected that he gamed all day. Finally, despite the fact that the Mother never spoke with the teacher who reported the Student's alarming statements, she denied that the incident even took place.

I also find the fact that the Mother used strategies such as staying out of the Student's personal space when he became angry to indicate that the Student was more verbally abusive and volatile at home than she was willing to acknowledge. The Student's abusive and volatile nature was corroborated by Dr. ■■■■'s letter which indicated that the Student was verbally abusive and physically threatening to his parents. When asked during cross-examination specifically about physical aggression by the Student, the Mother did not respond to the question; instead, she described an incident of in which the Student contemplated harming himself. I do not conclude that the Mother was intentionally misleading in her testimony; rather, I conclude that she is so protective of the Student that her perception of his behavior is biased.



Dr. [REDACTED]

[REDACTED], Psy.D., was admitted as an expert in child and adolescent psychology, to include evaluation, diagnosis, as well as the development of behavioral, social, and emotional school-based IEPs. Dr. [REDACTED] was retained after the Student filed his Consent Motion to Continue Hearing on May 5, 2021. He did not formally evaluate the Student or author a written evaluation but developed his opinions after interviewing the Student, his Parents and Dr. [REDACTED], and reviewing documents he cited in his testimony, to include private evaluations, MCPS assessments and evaluations, the Student's IEPs and recordings of IEP team meetings, emails between the Parents and MCPS staff, and [REDACTED] documents. On cross-examination, he also acknowledged speaking with Ms. [REDACTED]. He said that in forming his opinions, he did not take into consideration anything that was not available to MCPS. He did not request interviews with MCPS or [REDACTED] staff. He did not speak with Drs. [REDACTED] or [REDACTED]. He described the Student as pleasant and cooperative during his one-hour interview and believes the Parents and their attorney prepped the Student for the interview but did not know specifically how the Student was prepped.

Dr. [REDACTED] said that, although not an expert on children who have been adopted, he knows that adoptees often experience a higher incidence of ADHD, emotional disability and learning disabilities than their nonadopted peers and often have issues with trust, attachment, self-esteem, and abandonment.<sup>54</sup> He testified that when the Student's November 2, 2018 IEP was implemented, and his academic schedule changed, his behavior at school and home deteriorated. He said that the Student was emotionally and socially vulnerable and believes the Student displayed increased depressive symptoms and stopped doing things he enjoyed such as

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<sup>54</sup> However, the record is devoid of any evidence that anyone brought to the IEP team's attention for consideration the fact that the Student may have trust or abandonment issues related to his adoption. I consider the discussion *post hoc* analysis.

sports and social activities. Dr. [REDACTED] said attendance issues began to emerge in November 2018 and were attributable to increased school and social anxiety. Dr. [REDACTED] testified that the Student's expressive/receptive language disorder affects his inferential thinking and interpersonal connection, which led to peer issues and anxiety.<sup>55</sup> The following school year (2019-2020), he said that the Student entered a vicious cycle of continued attendance problems and feeling overwhelmed with make-up work. Dr. [REDACTED] said the Student's presentation did not change initially upon his enrollment at [REDACTED], however, he believes that [REDACTED] has allowed the Student to make academic progress.

Dr. [REDACTED] disagreed with Dr. [REDACTED]'s October 16, 2019 ODD diagnosis, calling it a catchall or "throwaway" diagnosis.<sup>56</sup> He opined that the Student was not a behavioral problem; instead, the Student had emotional and impulse control problems. Dr. [REDACTED] mentioned that playing video games instead of sleeping was a way for the Student to deal with his anxiety. Dr. [REDACTED] testified repeatedly that the Student, as an adoptee with trust and abandonment issues, did not like to be singled out, especially as it related to his academic performance in comparison to others. He said the Student's feeling of being singled out exacerbated his social anxiety which led to avoidance of school and homework. He characterized the Student's actions such as showing classmates inappropriate sexual images, drawing penises on a school bus and classroom equipment, threatening to spray paint penises on the school, and using inappropriate language, sounds and gestures in class, not as behavioral problems but as the Student's misguided efforts to appear "cool." I note that Dr. [REDACTED]'s opinion that the Student did not like to feel singled out

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<sup>55</sup> On cross-examination, Dr. [REDACTED] acknowledged that he is not a speech-language pathologist. He also acknowledged that a MCPS speech-language pathologist performed a speech-language assessment of the Student and concluded that his speech-language skills were within normal limits. (*See* Student Ex. 17.)

<sup>56</sup> I placed greater weight on Dr. [REDACTED]'s letter and ODD diagnosis than Dr. [REDACTED]'s opinion of it. (*See* MCPS Ex. 42.) Dr. [REDACTED] conducted a record review and met with the Student for only one hour in what was described as a pleasant interaction (for which the Student was prepped by counsel and his Parents). In contrast, Dr. [REDACTED] developed her professional opinion after approximately two-and-a-half years of working with the Student, speaking with the Parents, and observing interactions among them. For these reasons, I concluded that Dr. [REDACTED] had a greater knowledge of the situation and ability to form reliable diagnostic impressions.

regarding his academics is contradicted by the Student's own actions in Art class in June 2019 when the Student repeatedly announced to the entire class that he was failing the course and did not care. (Student Ex. 58, p. 288.) Also, in Art class, he was assigned to a group project but because he did not like the peers in his group, he refused to participate. Once his teacher moved him to another group, he agreed to participate. (MCPS Ex. 41, p. 361.)

Dr. █████ opined that in Spring 2019, given the increasing problems displayed, MCPS should have increased the frequency of counselor and teacher contact; however, MCPS increased the frequency of counsel and teacher contact to the Parents detailing meetings with and strategies for the Student. He said MCPS also should have increased contact with the Student's outside providers and given his school refusal, created a formal plan for school re-entry. Dr. █████ also opined that a "lunch bunch" or social skills group would have been beneficial to the student as well.<sup>57</sup> Specifically, he opined that the June 17, 2019 IEP was not calculated to allow the Student to make educational progress "because it could not address the school avoidance."<sup>58</sup> (Transcript V3, September 20, 2021, p. 454.) Dr. █████ added that the Student should have been afforded a separate room for testing, free from distractions, and a behavior monitoring tool that did not rely on the Student to keep track of his own behavior with the tool's focus on the negative, rather than positive behavior.

Dr. █████ stressed how important it was for the Student to begin his eighth-grade year (2019-2020) successfully but remarked that his IEP remained largely the same. Regarding the October 25, 2019 IEP, which still identified OHI as the primary disability code, he opined that the IEP was only "partially" reasonably calculated to allow the Student to make educational progress and that more goals should have been added for improved social interaction.

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<sup>57</sup> When asked on cross-examination whether he was aware that teacher/counselor check-ins and "lunch bunch" were strategies utilized by MCPS, Dr. █████ said he recalled reading "talk" about those strategies, but he did not see them listed in the IEP.

<sup>58</sup> However, the Student's absenteeism rate did not cause him to appear on Ms. █████'s PPW report at that time.

Dr. ██████ said that the October IEP better addressed the Student's written expression difficulties but did not address sufficiently his anxiety and emotional issues which he believed contributed to school avoidance. There should have been a plan for completing make-up work so that the Student did not feel overwhelmed, and an attendance plan geared towards gradual, systematic de-sensitivity to school should have been created. Dr. ██████ explained that an attendance program could have included partial, gradual school day programming with the goal of full-time attendance. On cross-examination Dr. ██████ acknowledged that IEP primary disability codes do not drive the services. He also acknowledged that at the time of the October IEP, the Student was still diagnosed with ADHD and MCPS was investigating the appropriateness of a disability code change.

Regarding attendance contracts, Dr. ██████ said research shows that these contracts can be a part of holding students accountable, but stated that the Student's refusal was borne out of an emotional disability so he does not believe that it was an appropriate tool to use in the Student's case.<sup>59</sup> He shared his conclusion that the Student's home environment was conducive to school attendance and that the Parents were making daily communication efforts to relay to MCPS their struggles as further evidence that use of an attendance contract was not appropriate. Regarding the possibility of a truancy referral, Dr. ██████ again testified that research says such conversations can be part of a school attendance plan, however, he does not see how a threat can be received in a collaborative or effective way. Because the Student has an emotional disorder diagnosis, Dr. ██████ opined that truancy discussions would not be an effective method to improve attendance.

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<sup>59</sup> *But see*, Dr. ██████'s report which noted that the utilization of contracts may still be an effective strategy when paired with behavioral reflection. (MCPS Ex. 5.)

Regarding the 2020-2021 school year, Dr. ██████ claimed that although the IEP identifies emotional disability as the primary disability code, MCPS rejected the Parents' request for a gradual re-entry plan. On cross-examination, he acknowledged that there was IEP team discussion about why MCPS could not write partial day programming into the IEP. He added that given the Student's "negative feelings towards MCPS" it would be very difficult for him to be successful at a ██████ placement within a large, comprehensive school. He opined that no class exceeding ten to twelve students is an appropriate placement for the Student, regardless of the subject matter, because of the Student's social issues, poor impulse control, and attention issues. However, contrary to his position, I note that while attending ██████MS, the Student received As in health education and P.E., which were general education electives, and a large number of students participate in ██████'s homework café. (See Student Ex. 65.)

Dr. ██████ opined that ██████ has been able to meet the Student's psychological needs only in part. He said that ██████ is not the best and most appropriate program for the Student. He explained that ██████'s 1:1 ratio tutorial model of education has allowed the Student to make progress at his own pace and away from many emotional triggers the MCPS environment presented. He compared the Student's GPA and grades at ██████MS to that at ██████ and concluded that there was educational success at ██████; however, he acknowledged that he does not know how the grading compares and whether the Student is at grade-level. He explained that ██████ offers no therapeutic component to address the Student's emotional issues, therefore, Dr. ██████ testified that ██████ is not teaching him how to deal with these triggers. Dr. ██████ remarked that the Student's attendance has improved at ██████ and become more consistent.

On cross-examination, Dr. ██████ acknowledged that all adoptees do not present the same way. He explained that he performed rating scale testing of the Student to get a sense of his present emotional functioning and concluded that the Student presents with significant

anxiety, some ADHD, and some milder symptoms of depression. His July 12, 2021 rating scale results<sup>60</sup> contain the data without any analysis because he was not requested to perform an evaluation of the Student; however, he opined that at the time of his testing, the Student was “better off emotionally” than in the past despite being aware that in Summer 2021 the Student’s suicidal ideation prompted the Parents to call 911 and mobile crisis. Although he testified that the Parents were making daily communication efforts to relay to MCPS their struggles with the Student’s depression and anxiety preventing his school attendance, Dr. [REDACTED] conceded that many emails from the Parents to MCPS failed to provide an explanation for the Student’s failure to attend school and/or failed to cite the Student’s anxiety and depression as a reason for school refusal. Dr. [REDACTED] acknowledged that he is not an expert in school refusal – he added that there are clinicians who specialize in school refusal. Dr. [REDACTED] stated that an unstructured home environment can lead to school avoidance.

While clearly an expert, I did not find Dr. [REDACTED]’s testimony to be persuasive. It appeared that he accepted the Parents’ and the Student’s representations without further inquiry, *e.g.*, Dr. [REDACTED] testified that unstructured home environments can lead to school avoidance and he said that the Student’s home was structured, without any caveat that this conclusion was based purely on self-reported information. Further, the significance of the Student’s adoptee status is a *post hoc* argument. As Dr. [REDACTED] agreed on cross-examination, not all adoptees behave the same way. Further, the record during the time of IEP development is devoid of any mention of the significance of the Student’s adoption status and any emotional impact on him.

Dr. [REDACTED] acknowledged that research shows attendance contracts and truancy discussions/referrals are tools which may be utilized to hold students accountable and improve attendance. He simply disagreed with the appropriateness of those tools in the Student’s case.

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<sup>60</sup> Student Ex. 167 is Dr. [REDACTED]’s Rating Scale Results for [Student]. The document was provided to MCPS in discovery but was not provided to the IEP team.

Finally, Dr. [REDACTED] is not qualified to compare the Student's academic performance at [REDACTED] MS, and [REDACTED] and he has no understanding whether the Student is currently performing at grade-level. In fact, he does not believe that [REDACTED] is the best and most appropriate program for the Student. He testified that he would not recommend [REDACTED] as the ultimate program for the Student because "[i]t does not meet all of his emotional needs." (Transcript V3, September 20, 2021, p. 514.)

Dr. [REDACTED]

[REDACTED], Ed.D., testified briefly. She is an employee of the [REDACTED] County, [REDACTED] public school system. She was previously employed by MCPS for thirty-one years in the roles of teacher, assistant principal, and principal; her last assignment with MCPS was as the [REDACTED] MS Principal. She was the [REDACTED] MS principal during the Student's enrollment. Her *curriculum vitae* was not provided, and it is unknown how many of Dr. [REDACTED]'s years of service with MCPS were in administration.

Dr. [REDACTED] was asked to review the [REDACTED] MS truancy referral she signed. (Student Ex. 99.) She acknowledged signing the document but had no recollection whether she received or reviewed any information from [REDACTED] MS staff regarding the Student's IEPs or mental health diagnoses or the Parents communications to [REDACTED] MS staff regarding his absences. On cross-examination, Dr. [REDACTED] stated that as [REDACTED] MS principal, her function was in administration, and she relied upon an attendance secretary and the pupil personnel workers to track student attendance and follow-up with students. Notably, Dr. [REDACTED] stated that during her time spent in MCPS administration, she recalled signing only "maybe one or two other[]" truancy referrals. (Testimony, Dr. [REDACTED].)

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Ms. ██████████, an expert witness for MCPS, was called as a fact witness by the Student. During the time at issue in the case, she was a ████████MS Assistant Principal. She is presently the MCPS Acting Special Education Supervisor for Area ████████ (approximately seventy-five schools). She has been employed by MCPS for over twenty years. She never taught the Student. She was a member of the Student's IEP team.

Ms. ██████████ was asked to explain the purpose of an IEP and the IEP team process. She said that the Parents neither asked to observe a ████████MS classroom nor requested that a private specialist or therapist do so. She was asked about strategies to address school refusal and discussed a continuum of interventions, which may include home visits, Attendance Matters,<sup>61</sup> and the TRB. She was not sure whether Attendance Matters was utilized in the Student's case.

Audio clips from the IEP team meeting were referenced in direct examination without context. On cross-examination by MCPS, Ms. ██████████ was provided with the context for her statements. For both direct and cross-examination, I was directed by counsel to specific times during the recordings. Having listened to the entire CD, I conclude that the direct examination was misleading and mischaracterized Ms. ██████████'s communication. For example, on direct she was asked whether she told the Parents they were doing everything they can as parents; however, as was pointed out in cross-examination, the context of that communication was regarding IEP team meetings and efforts to make the Student available for testing and assessment of his present levels for the IEP team to develop the proper programming. It was not, as the direct examination question suggested, in the context of school refusal. (*See* Student Ex. 173, 1:05 – 1:09.) As another example, the witness was asked whether she stated that doing the same thing over and over again “is not going to get you where you need to be.” Indeed Ms. ██████████ made this

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<sup>61</sup> Ms. ██████████ explained that Attendance Matters is a problem-solving group of personnel convened in specific, referred truancy cases.



statement, but it was in the context of understanding ██████'s intervention approach of only recommending a partial day schedule for the Student.<sup>62</sup> (See Student Ex. 174, 10:40 – 40:51.) As another example, Ms. ██████ was asked about the May 28, 2020 IEP team meeting and her statements that took place after the Parents had left the call; however, Parents' counsel was present on the call during the timeframe in question as her voice could be heard thereafter stating at what time the meeting concluded.

Ms. ██████ was asked to explain her unwillingness to consider a partial day schedule for the Student, as the Parents requested, as a means to gradually return the Student to ██████MS. Ms. ██████ explained that the ██████MS schedule is a full academic day. She said that by creating a partial day schedule for the Student in the school database, the Student would be denied a FAPE because he would be denied all the services to which he is entitled. In the alternative, Ms. ██████ said that the school IEP team members were amenable to a transitional schedule, whereby the Student remained a full-time Student, as he is required to be, but a transition schedule (*i.e.*, scheduled times during which the Student would attempt to attend school) would be crafted with the understanding that if the Student could tolerate more school attendance, then he would remain on campus longer. A partial schedule is locked programming, but a transitional schedule is fluid within the scheduled full day. Ms. ██████ testified that despite this explanation, the Parents never acknowledged understanding the distinction and insisted that the Student be provided a partial day schedule.

Ms. ██████ also explained that ██████MS did not refer the Student to Central IEP (as requested by the Parents), wherein the full gamut of MCPS services is explored for a student (not just the services available at a particular school) because additional assessments were still needed. Ms. ██████ said that Central IEP would require full and complete assessments to

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<sup>62</sup> At the time of the January 24, 2020 IEP team meeting, the Student was only enrolled in four courses at ██████. (Student Ex. 174.)

recommend a different placement, if appropriate. And she averred that if an outside placement was recommended by Central IEP, the outside placement would require full and complete assessments to consider student enrollment. I found Ms. [REDACTED] to be a knowledgeable and detail-oriented witness who asked clarifying questions to be certain she provided accurate and complete responses.

[REDACTED]

Ms. [REDACTED], an expert witness for MCPS, was called as a fact witness by the Student. During the Student's time at [REDACTED]MS, she was an Assistant Principal. She was asked about the MCPS tiered approach to chronic student absenteeism. When asked about the Student's chronic absenteeism, Ms. [REDACTED] said the Student shared with [REDACTED]MS staff that he used his computer to game late at night and surf the "dark web." He also shared that he is tech savvy and was able to work around parental controls. Ms. [REDACTED] testified that [REDACTED]MS recommended removing all electronics from the home, and she was not aware whether the Parents did so. She further testified that family counseling was not suggested by [REDACTED]MS because the school knew that the Student and Parents were already participated in counseling. About incentivizing school attendance, Ms. [REDACTED] explained that the attendance contract (which the Parents refused) would have incorporated rewards for Student attendance based upon what the Student would like, and that she has found success using this strategy with other students. She clarified that she did not sign the truancy referral, the form simply lists her name as a contact. Around that timeframe, she knew the referral was being considered but did not know the specific date it would be issued. She explained that the occupations of parents are not a factor in the truancy referral process because the student's needs come first.

██████████, M.A.

Ms. ██████████ was admitted as an expert in education and school administration. Due to significant administrative turnover at ██████████, she rose through the ranks quickly from educator to administrator and, at the time of the hearing, held the position of Campus Director. She served previously as ██████████'s director of student development and was responsible for enrollment and course selections for students. Prior to that, she was a teacher, but never directly taught the Student. Although a pleasant witness, I found that the subject of this hearing was beyond her depth of understanding. For example, although she approximated that seventy percent of ██████████ students have either public-school prepared IEPs or 504 plans, she was unable to articulate the difference between them.

Ms. ██████████ testified that ██████████'s ██████████ location has approximately seventy students who are not in attendance at the same time. The scheduling is flexible with school hours from 7:30 a.m. to 6:30 p.m. She explained ██████████'s 1:1 learning model and its philosophy to love, motivate, teach. Teachers are required to have a bachelor's degree in their subject area but are not required to be certified. Ms. ██████████ stated that ██████████ is an accredited private education school authorized to award diplomas – it is not accredited for special education. ██████████ has no therapeutic component, and no therapists are employed as staff. ██████████ may speak with a student's private providers in situations where there are concerns regarding harm to self or others. Courses are customized for each student and, utilizing "teacher matches" students can identify teachers with whom they would like to work. To attain "mastery" (which was described as seventy percent proficiency), students must sit for a set amount of class time and meet learning abilities measures. Should a student miss too many classes, "Friday school" "mastery classes" at an additional cost must be added. A "pause" is also permitted in academic programming due to absenteeism. Ms. ██████████ testified that a pause, mastery classes and tutoring

packages were all utilized in the Student's case at additional cost to the Parents due to his absenteeism. She said that the Student struggled with attendance initially but improved over time, and lack of attendance resulted in the Parents buying more classes. She also said that some of the [REDACTED] attendance records in evidence are a bit "misleading" because they do not account for homework café attendance and even if a student only attends one class (say, for example, during a three-class day), he or she is marked as "present."

Regarding the Student's coping mechanisms, Ms. [REDACTED] identified talking with trusted adults as a strategy. Talking was also identified as a strategy used to encourage the Student's school attendance. She said that [REDACTED] does not perform home visits. She explained that during the pandemic the Student failed to appear for virtual classes sometimes due to having had a "late night" or not sleeping well. When asked why [REDACTED] was seeing marked improvement in the Student's attendance this year, Ms. [REDACTED] said [REDACTED] had done nothing different... perhaps the Student was more comfortable on campus "for whatever reason."

Ms. [REDACTED]'s testimony was confusing at times. She testified that [REDACTED] incorporated parts of a draft version of an IEP into the Student's programming, but then could not fully describe how the parts were incorporated into the Student's lesson plans. Over objection, I allowed the witness to answer the question whether the IEP that [REDACTED] had on file was appropriate – Ms. [REDACTED] testified that the IEP was appropriate. However, after consideration of all of Ms. [REDACTED]'s testimony, I gave no weight to her opinion as to IEP appropriateness, finding her unqualified to answer the question.

Most concerning, Ms. [REDACTED] explained that "unfortunately" standardized MAP testing should have been completed upon the Student's admission – it was not completed, and the Student has never completed MAP testing while attending [REDACTED]. [REDACTED]'s efforts to get the Student to sit for standardized testing thus far during his three academic years have been

unsuccessful. In fact, since school began this academic year on August 23, 2021, [REDACTED] scheduled the standardized testing four times and the Student offered excuses why he could not do it each time and on at least one occasion, an “emotional situation... was derailing him a little bit.” (Transcript V5, September 24, 2021, p. 892.)<sup>63</sup> When asked what consequence the Student received for his test refusal, Ms. [REDACTED] said that “we don’t ever like to use that word ‘consequences’ because of the negative connotation[.]” (Transcript V5, September 24, 2021, p. 905.) She believes that the Student is on grade level because he is passing courses (by alphabetical grade with no numerical equivalent), although there was testimony that he has never finished a middle school history course that he struggled with and was paused.

Ms. [REDACTED]’s testimony supported Dr. [REDACTED]’s conclusion that [REDACTED] does not meet all of the Student’s emotional needs. Furthermore, with no standardized MAP testing, and [REDACTED] teachers reporting that the Student could not solve the problem (-9+6) and that the Student worked through a quiz “mostly on his own” and required “only a few hints along the way” (Student Ex. 156, p. [REDACTED]1208), the record does not support a conclusion that [REDACTED] is appropriate or a conclusion that the Student has made academic progress.

[REDACTED]

Ms. [REDACTED] an expert witness for MCPS, was called as a fact witness by the Student. She is an instructional specialist with [REDACTED] and bridge programming. Although at the time of the hearing, Ms. [REDACTED] said that her office is within the MCPS central offices, she worked at [REDACTED] [REDACTED] for many years. She explained that MCPS [REDACTED] programs employ certified, licensed special education teachers; paraeducators; licensed clinical social workers; psychologists; resource teachers and program specialists. The program offers counseling services, but not clinical therapy services, for immediate assistance as well as appointments. She

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<sup>63</sup> Ms. [REDACTED] described an emotional situation wherein he felt ignored by a girl and spent course instruction time ruminating on the issue.

described an impressive support system for the small number (no more than forty) of [REDACTED] program participants. When [REDACTED] students attend general education courses, depending on the Student, supports may be provided such as a paraeducator or co-teacher. In [REDACTED] classes, a typical class would contain three to five students.

Ms. [REDACTED] was asked how the [REDACTED] program handles school refusal and she explained that its approach depends on the reasons for refusal. She said the program has had many students with this difficulty and has had success overcoming it. For students with anxiety and depression, the program may conduct home visits, staff may meet the student in the school parking lot and build up tolerance. She relayed one instance of sitting with a student inside their car for twenty to thirty minutes before the student felt as though they could enter the building. Students may only attend school for as long as they can tolerate. She explained that often as tolerance is developed, anxiety levels rise before they decrease, so staff try to meet children where they are to find success. She stressed collaboration and relationship building as being important to the program so that students find trust. She also stressed the program's flexibility and professional team allow it to "shift and move" to find the right match for individual students. She stated that complete school refusal would result in working with parents and outside agencies for assistance. Ms. [REDACTED] also advised that all partial attendance is approved through the Compliance Office to protect the student's access to education. She was asked to explain interim instructional services (IIS).<sup>64</sup>

Ms. [REDACTED] testified that during the 2020-2021 school year, while general education students remained virtual, the [REDACTED] [REDACTED] program returned in-person sometime in March. Until then, [REDACTED] students participated in online courses to include [REDACTED] individual sessions with counselors. The program worked with the anxiety the students were experiencing and tried

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<sup>64</sup> IIS meets the instructional needs of students who are unable to participate in their MCPS school of enrollment due to a qualified physical or mental health condition. (MCPS Regulation IOE-RB.)

to find what worked best for them. Ms. [REDACTED] explained that even during the pandemic, the program was calling students' homes when they didn't log in at the designated time, met at locations such as parks, and even conducted socially distant home visits. She explained that continual contacts were made to get the students to appear for class. Ms. [REDACTED] stated that if an IEP called for self-contained classes in core courses, the program could accommodate the requirement.

Ms. [REDACTED] explained that in general, while in counseling, [REDACTED] students work on their depression and anxiety, issues with personality or attachment disorder, life skills, getting along with others, disagreeing without being disagreeable, self-advocacy, self-determination and goal setting, and accountability. Counseling may also be restorative and work through conflicts. She described the [REDACTED]'s insight-based problem-solving model and stressed that the program is about relationships and metacognition. Students are encouraged to make connections. Students are taught coping skills, which are frequently retaught for efficacy, with the goal of greater independence.

Ms. [REDACTED] explained that addressing a student's emotional needs is not a linear path. Students are taught that they cannot control every environment in the world and must allow themselves flexibility, because not every strategy works every time. She said [REDACTED] staff work with outside providers if a family has outside providers. The [REDACTED] program also hosts parent coffee meetings with guest speakers so parents can meet one another and guest speakers and learn about outside providers and resources.

I found Ms. [REDACTED] to be a highly knowledgeable and impressive witness. Her testimony was particularly helpful to my decision. Her passion and enthusiasm for her work was evident and I placed great weight on her testimony. Her comprehensive understanding of the [REDACTED]

██████████ program was largely unimpeached, and she coupled her knowledge with tremendous empathy for students and their families.

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Ms. ██████████, an expert witness for MCPS, was called briefly as a fact witness by the Student. She was asked about her 2018 educational history and psychological evaluation reports and explained that she relied upon documentation provided to her and did not call providers or prior schools for additional information. She explained the emotional condition criteria and described how data is gathered for analysis of the criteria.

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Ms. ██████████ an expert witness for MCPS, was called briefly as a fact witness by the Student. She attended the Student's IEP meetings as the ██████████ MS special education resource teacher. She was asked questions about meetings and could not recall specifics. She explained that she requested that her supervisor, ██████████, attend an IEP meeting for assistance with placement discussions. She was asked about MCPS converting to virtual school days because of the pandemic and explained that at that time, she was a classroom teacher. Ms. ██████████ said her classroom students were absent on occasion, but if there were problems with attendance, she would notify the counseling department and administration.

On cross-examination, Ms. ██████████ testified that outside diagnoses do not always impact school performance. Students can have diagnoses which do not necessitate an IEP. All children with depression or anxiety do not require a special school placement, and ED coding does not necessarily require special school placement. Ms. ██████████ testified that the IEP team did not recommend a middle school ██████████ program for the Student because the data did not support such a placement. ██████████ programs are more restrictive, so such a placement recommendation would only be made after trying and assessing strategies, additional testing, and evaluating the



appropriateness of goals. She explained that an FBA was not conducted in spring 2019 because it was not deemed necessary as his behaviors were not impacting his education. She also explained that an IEP team would not recommend a new placement while evaluations were in progress, and the IEP January 2020 team meeting (by which time new evaluations were complete) ran out of time requiring continuation meetings.

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Ms. ██████████, an expert witness for MCPS, was called as a fact witness by the Student. As a school counselor, she had face to face interaction with the Student and quantified the interaction as greater than for the average student. She said her contact with the Student was inconsistent, sometimes once per week and sometimes three times per week. She offered the Student lunch bunch opportunities as well as time in the ████████MS “calm down, sensory, relaxation room.” She also addressed the Student’s behavioral issues. When asked about his behavioral issues, she described the bus incident, inappropriate drawings, a “violent” English paper he wrote regarding guns and the military, displaying pornographic material, and an incident after a school anti-hate program wherein a holocaust video was played, and teachers were concerned with the Student’s lack of emotion.

Ms. ██████████ said that she attempted to reach out for input from Dr. ██████████, but at that time, the Student was no longer under his care. She testified that she believed the Student was consciously choosing not to attend school. She testified regarding her home visit with Ms. ██████████ and how upon arrival, the Parents reported that the Student was in the basement playing video games. She testified that she offered strategies to the Parents including locking all gaming equipment in a trunk, but the Parents nodded and said that nothing works. She said the Parents never told her how long they tried these strategies before they concluded that the strategies did not work. Ms. ██████████ explained that strategies must be applied consistently and

assessed for efficacy. While using a strategy, it is not uncommon for a situation to worsen before it improves.

Ms. [REDACTED] testified that children with ADHD “need” and “crave” “boundaries and structure” and situations worsen without it. She testified that more than once she called the Student to offer a pep talk about school attendance. Ms. [REDACTED] said that while the Student was refusing to attend school, [REDACTED] MS would have loved to see him for anytime period that he could have come to school. She had no recollection of ever telling the Parents that [REDACTED] MS did not meet the Student’s needs and recommending [REDACTED] to them.<sup>65</sup>

As discussed *supra*, Ms. [REDACTED] was recalled to the witness stand after the Father testified to remedy a discovery issue. She was asked about her handwritten notes. She could not recall whether she communicated with the IEP team after her call to Dr. [REDACTED] on May 15, 2019 to relay Dr. [REDACTED]’s opinion that the Student was manipulating and not depressed. In that conversation, Ms. [REDACTED] noted that Dr. [REDACTED] reported horrific verbal abuse and physically threatening behaviors. “She also said she’s sure he’s on video games all day at home.” (Student Ex. 186.) Ms. [REDACTED] testified that she did not tell the Parents the details of her conversation. She testified that she typically does not tell parents what practitioners tell her because practitioners should be communicating the same information directly to the parents. There was a note regarding a September 10, 2019 call to Dr. [REDACTED] – their discussion included a knife; the Student refusing medication, dropping a glass candlestick on the floor and throwing things at his Father; that he used hemp with his Aunt; and that there was apparently “no ability to employ consequences and structure.” (*Id.*) There was an undated note that the Student told her he was kicked out of [REDACTED] for behavioral issues. She attempted to decipher a note she made about the Student talking about concerning

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<sup>65</sup> I am not persuaded that Ms. [REDACTED] mentioned the [REDACTED] to the Parents because she believed MCPS could not meet the Student’s needs.



by this phrase, she was referencing his academic classes, as opposed to electives and lunch, and that she did not intend the phrase as a placement recommendation. She said the Student's anxiety and depression diagnoses did not preclude a TRB referral because children with anxiety and depression can make choices. She was asked about her supervisor [REDACTED]'s email which stated that if the Parents enrolled the Student elsewhere, the Student's "expulsion" would be cancelled. Ms. [REDACTED] said that upon receipt of the email, she knew immediately that the word expulsion was a typographical error and that her supervisor meant that the truancy review board meeting would be cancelled. Ms. [REDACTED] said that expulsion was never considered. She explained that at the time of the referral, the school team was unaware of what else to do to support the Student. The TRB could problem solve and offer ways to support the Student.

Ms. [REDACTED] recalled the school team's conversation with the Parents about the attendance contract not getting very far. She explained that it is important for teens to know the outcomes for their choices. She said the contract was just the "base" because one size does not fit all. The contract would lead to development of goals, for example: attending school by sitting in the counselor's office, then attending ten minutes of each class, etc., but the conversation never got that far because the Parents saw the contract as punitive and refused the strategy.

I found Ms. [REDACTED] to be a knowledgeable witness and I credited her testimony regarding IIS and TRBs.

#### *Father*

The Student's Father spoke with tremendous pride, describing his son as kind and generous young man who has worked hard to overcome his challenges. He explained that he and the Mother did not change their parenting techniques during the timeframe that the Student attended [REDACTED] MS and now attends [REDACTED]. He believes that [REDACTED] has been an immediate and continuing benefit for the Student. Contrasting the Mother's lack of specific recollection, the

Father offered explanations for the Student's attendance absences at [REDACTED], including (1) a severe case of the flu, (2) his grandmother's stay at their residence and her eventual passing, (3) another significant flu-like illness, and (4) difficulty with the virtual platform being used during the COVID pandemic. He characterized the Student's overall school attendance as very good. He described the Student's mood improvement while attending [REDACTED], adding that the Student is happy not to be under a peer microscope. The Father testified that the value of education has been impressed on the Student, who is keenly aware of its importance and hopes to attend his older brother's college alma mater. He described their efforts to improve the Student's nighttime routine, including melatonin, meditation, breathing exercises, soothing music, scented candles and early lights off. The Father explained that some techniques worked for a while, but he believes that the Student's deep levels of anxiety and depression made getting to sleep a challenge.

The Father testified that after the Student's MCPS bus suspension, he never rode the bus again and MCPS never addressed their request for specialized transportation.<sup>67</sup> He said MCPS staff never informed them that IIS existed. He testified that on April 29, 2019, Ms. [REDACTED] told him and the Student's Mother that they should consider the [REDACTED] for the Student. He explained that when considering the [REDACTED] [REDACTED] placement, they opted to keep the Student at [REDACTED] because [REDACTED] is a large and highly competitive school, the IEP process is slow, [REDACTED] has been working for the Student, and the Student's mental health has improved. The Father added that the IEP team was unwilling to include a partial day schedule in the

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<sup>67</sup> However, the Parents letter of September 27, 2019 never asked for transportation services, instead indicating that "[i]t may be necessary for us to review with the team MCPS's provision for his afternoon transportation home near the end of October." (Student Ex. 79; MCPS Ex. 34.)

Student's IEP<sup>68</sup> and they were afforded only a short amount of time to make a decision. He said that the Student could not attend █████ MS because he was depressed. The Parents were concerned that a failure at █████ █████ could result in a crisis and spiral of depression (and risk of suicide). They seek all requested relief in their Complaint and hope any remedy is beneficial not only to the Student, but to other MCPS students in similar circumstances.

The Father further testified that whenever the Student was absent from school, he or the Student's Mother were home with him and he was not gaming; however, he was doing just that when Ms. █████ and Ms. █████ conducted their home visit. He also explained that █████ did not require pediatrician sick slips for proof of excused absences. The Father explained that Dr. █████ authored a letter to support █████ permitting him to return more in-person when most students were taking their coursework remotely, but the Student had a peer issue which caused him to choose to return to online coursework. In rebuttal he spoke about the Student's new part-time job at a sweets shop he began in mid to late September 2021. He applied on his own, interviewed and got the job. Many of his co-workers are in his peer group. He has increased his hours and enjoys working there.

The Father was a sincere and earnest witness. Similar to my assessment of the Mother's testimony, I found the Father to be a loving and supportive parent. However, it is noteworthy that his testimony about nighttime sleep strategies included everything except locking up gaming and electronic devices. Despite Dr. █████ mentioning the Student gaming late at night as a

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<sup>68</sup> However, the February 24, 2020 IEP team meeting recording reflects that the Parents specifically requested an agreed upon amount of time in attendance for the remainder of the school year, and MCPS was not willing to do so, whereupon transitional schedule language was removed from the draft IEP. Thus, I do not find that MCPS was unwilling to commit to a transition schedule – MCPS was reasonably unwilling to consider a permanent partial program for the duration of the school year when it was unknown what the Student would need. The Student may have been capable of tolerating more than what would have been scheduled, which would have deprived him of access to his education.

problem, as did █ MS and █ staff and Dr █, the Parents did not take the one step that would have eliminated the Student's access to games and electronic devices.

The Father expressed concern about suicide when contemplating a move to █, but the record is devoid of any medical evidence that the Student experienced severe depression and suicidal ideation while attending █ MS. Further, it was unexplained why MCPS should be responsible for alternative transportation for the Student when he rode the bus during his seventh-grade year without incident. The record is devoid of any medical evidence as to why the Student could not return to bus riding after the September suspension and the Parents' September 27, 2019 letter did not request transportation services. Further, the Father's testimony that a decision regarding █ was required in a short period of time is inconsistent with MCPS testimony that █ remains available for the Student.

█, M.S.

The Student's final witness was █, received as an expert in the field of special education with expertise in programming for students with an emotional disability and in special education administration. She reviewed her report and appendices, opining that the Student's weaknesses were not addressed in his IEPs and placements. She based her opinions on interviews and her review of documents and recordings provided by the Student. She opined that a Behavior Intervention Plan (BIP) should have been developed during the 2018-2019 school year. She further opined that IEP appropriateness improved over time, but MCPS was slow to react. Ms. █ testified that the Student was in a mental health crisis by the end of his seventh grade (which continued into his eighth-grade year); however, there is no medical documentation in the record to support her conclusion. Ms. █'s expertise is in special education; she has no medical degree. Further, I am not persuaded by the Parents statements alone because MCPS staff were not making similar observations and, even though the Student was under the care of a

pediatrician, psychologist and psychiatrist, there is no corroboration in the record from those medical professionals. Further, although Ms. █████ opined that the truancy referral was inappropriate and harmful, for reasons discussed *supra* and *infra*, I credit MCPS's explanation for its application in this case.

Ms. █████ testified that by March 2019, the Student's IEP should have included self-advocacy, coping/frustration tolerance, and literacy and reading goals (and more assistive technology). According to her, the peer interaction goal should have been geared towards real engagement and group problem-solving activities, not simply stopping classroom chatter. Ms. █████ said the Student's seventh grade absences were almost all in the second semester and an FBA should have been conducted at that time. She characterized the lack of an FBA as a missed opportunity and believes that an FBA would have prevented a truancy referral. However, it is unclear from her testimony how an FBA would have discovered the Student's alarming behaviors at home which the Parents never revealed. She disagreed with MCPS that there was progress on the Student's IEP goals and questioned why a resource class was not added until June 2019 and why there were no ESY services.

Ms. █████ supports her opinions by referencing the Student's reading, writing and math scores; however, as Ms. █████ noted, the Student was consistently inconsistent which led some MCPS staff to question whether he was even trying on some testing. The record supports the conclusion that MCPS was attempting to use multiple data points in the IEP development process, including teacher observations. See *Morrison v. Perry Sch. Dep't*, 2019 WL 3035283, at \*6-7 (D. Me. July 11, 2019) (stating that an absence of "demonstrable improvement in academic test scores" is not, in itself, an indication of denial of FAPE because "FAPE assessment is based on the entire academic record").



Ms. [REDACTED] opined that in late winter/early spring 2019, MCPS should have realized that the Student required more structure in all courses, to include electives. Ms. [REDACTED] made this assertion despite the Student's excellent grades in his Health and P.E. electives. She opined that his interfering behaviors warranted an FBA and BIP, and an FBA would have prevented the truancy referral. She would have liked to have seen increased special education instruction, counseling services, parent counseling, social skills instruction, a different reading program, and a Social Studies class and a Resource period sooner. Without these services, she testified that the Student was in crisis and started to quit. Ms. [REDACTED] said part of the reason the Student plays video games is to feel a sense of belonging. Ms. [REDACTED] opined that self-advocacy and coping goals should have been included in his IEP and further opined that a behavior monitoring tool was the wrong intervention.

In the 2019-2020 school year, Ms. [REDACTED] characterized the bus suspension as the straw that broke the camel's back. She believes MCPS's response was only partially sufficient, some assessments were more useful than others, but the Student should have had door-to-door transportation services and a partial day schedule. Given the lack of evidence of a mental health crisis, I am not persuaded that MCPS improperly denied transportation services after one documented incident on the bus which resulted in a short bus-riding suspension. As Ms. [REDACTED] testified, transportation services are more restricting; the service is small and for use with Students who require it, and the Parents never requested the service.

Ms. [REDACTED] opined that IIS should have been considered and information regarding IIS should have been shared with the Parents because the Student was in crisis.<sup>69</sup> His time without instruction, she characterized as a missed opportunity. She opined that the Student's ED

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<sup>69</sup> Again, there is no medical evidence to support this conclusion. Further, I credited Ms. [REDACTED] and Ms. [REDACTED]'s testimony that the Student came to his assessments while absent from school with a pleasant disposition, discussing having lunch with friends, ear-piercing, manicures and playing video games.

determination took too much time, and an assessment “summary” in lieu of a full report could have been created to move the process along.<sup>70</sup> While assessments were pending, Ms. █████ opined that the school team could have informed the Parents about IIS, revised the length of the Student’s school day, offered transportation services, counseling and an █████ consult. She described the Student’s October 25, 2019 IEP as a “placeholder,” repeating a program which was not working for the Student.

She described the TRB as a pipeline to juvenile services, which leads to students dropping out of school. Ms. █████ did not acknowledge the obvious relationship between truancy and dropping out of school. She opined that the referral was harmful and demonstrated a misunderstanding of the nature and degree of the Student’s disability. She believes interventions afford by a TRB referral, such as teen court, would have been harmful to the Student because of his sensitivity. Ms. █████ explained that the attendance contract was ineffective because he could not perform its requirements. She said the use of an attendance contract demonstrated that the team did not know how to program for his disabilities – Attendance Matters<sup>71</sup> or an attendance intervention plan could have been utilized instead.

Ms. █████ opined that the 2020 IEP allowed too much time in general education. █████ is a large school and Ms. █████ had concerns with the Student’s ability to adjust, insufficiency of supports, the program not being a therapy-integrated program, and whether there are appropriate peers. Ms. █████ testified that the 2020 IEP should have included a partial day. As an example, Ms. █████ shared that she has a client in the █████ █████ and discussion about partial day schedule was easily and appropriately offered via an email with the █████ program director. She said partial day schedules should be written into the IEP, not be side agreements through the Compliance Unit.

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<sup>70</sup> Ms. █████ testified that reports are peer-reviewed, and a “summary” would not have been deemed appropriate.

<sup>71</sup> Attendance Matters was described as a problem-solving team meeting.

Ultimately, Ms. [REDACTED] opined that it would be harmful to uproot the Student from [REDACTED] and the Parents' decision to enroll him in November 2019 was appropriate and necessary because of the TRB and the lack of any option for education until at least January. Ms. [REDACTED] testified that there was no prospect of getting the Student back in [REDACTED] MS, and the Parents were stuck. She said [REDACTED] has benefited the Student. He "started off great," improved in self-advocacy, got back into therapy, and when he was not in attendance it was because he was really sick.<sup>72</sup> Ms. [REDACTED] opined that [REDACTED] "has been able to respond to [the Student's] attendance difficulties by helping him keep up with this classwork." (Student Ex. 172.) However, the record is unclear how this was accomplished other than by pausing the lessons because the Student was absent and charging the Parents more money when the Student failed to meet the seat time requirement per course. She also stated that [REDACTED] is teaching him resiliency, yet he has never participated in standardized MAP testing while at [REDACTED], chose to attend remotely when faced with peer challenges, and told [REDACTED] staff they needed to make classes more interesting – the opposite of resiliency.

On cross-examination, it was revealed that Ms. [REDACTED] worked with the Parents and Student in 2011 and at that time discussed the Student's need for special instruction, but the Parents chose to enroll the Student at [REDACTED]. The Parents never contacted her while the Student was enrolled at [REDACTED] MS, first reaching out after the Complaint was filed. She could not recall when she formally committed to being a witness for the Student. She has never met the Student in person – their two meetings, one of which included the presence of the Father, occurred virtually. She has never visited the [REDACTED] [REDACTED] location, where the Student attends; she visited the [REDACTED] location and observed classes there approximately four or five years ago. She agreed that the Student's inability to take the MAP test was "somewhat"

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<sup>72</sup> No doctor excusal notes exist for the Student's absences. Ms. [REDACTED]'s statement that the Student was absent because he was "really sick" demonstrates her lack of objectivity.

concerning but remarked that the testing is not a graduation requirement and expressed confidence that [REDACTED] will be able to get him to take the test.<sup>73</sup> She said that the Student's [REDACTED] grades show that he is making progress. She testified that [REDACTED] is meeting the Student's social and emotional needs and expressed surprise when asked if she was aware that Dr. [REDACTED] did not have the same opinion.

MCPS's characterization of Ms. [REDACTED] as a "hired gun" in closing argument could not be more apropos. For reasons discussed *supra*, although she has expertise in her field, I did not credit Ms. [REDACTED]'s opinion because I found that it was not objective, lacked supporting medical documentation, expressed programming concerns (Reading) from the Student's second grade which were not observed in sixth grade and [REDACTED] MS assessments, and (despite her testimony to the contrary) relied upon hindsight.

#### *MCPS's Witnesses*

[REDACTED]

Ms. [REDACTED], accepted as an expert in the fields of special education and school administration, testified that she was familiar with the Student from her role of [REDACTED] MS Assistant Principal at the time, frequently seeing him when she monitored lunch. She described a discussion about a supported Math class in the Student's November 2018 IEP team meeting, but the team rejected the idea because the Student had established a positive relationship with his Math teacher. The team recognized the importance of positive relationships for him and kept the Student with this Math teacher and added a Math support class.<sup>74</sup> She explained that in December 2018, the Student's behavioral concerns were discussed and, in her expert opinion, the December 2018 IEP (in effect at the time the Complaint was filed) was appropriate because it

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<sup>73</sup> It is unknown where her confidence comes from, given the fact that he did not take the standardized test in seventh, eighth or ninth grade at [REDACTED] and has not yet done so in his tenth-grade year.

<sup>74</sup> The Student was also assigned a mentor and had a good relationship with his counselor, Ms. [REDACTED].

incorporated that discussion and included the need for a social interaction skills behavioral goal. She explained that the supplementary aids and services were crafted for the Student to include important features such as check-ins, a flash pass, prompting and praise.

Ms. [REDACTED] was asked why there was no FBA in the Student's seventh grade and she testified that although there were behavioral incidents, there was not a visual pattern or frequency. The Student responded to redirection, Ms. [REDACTED] was working with the Student and the Parents, and the Student was responding to surface level strategies. For this reason, she opined that the situation did not warrant application of an FBA. She explained that an FBA would be considered when surface strategies fail, and a student requires additional support to access instruction.

Ms. [REDACTED] agreed that the Student's seventh grade GPA was not ideal; however, she said that the GPA is not indicative of a lack of progress and does not always give a complete picture of what is happening. She said the Student's GPA reflected his inconsistency. Despite Ms. [REDACTED]'s support, and teacher availability during lunch and after school, the Student was not completing his assignments, including homework. Ms. [REDACTED] disagreed with Ms. [REDACTED]'s opinion that [REDACTED]MS failed to address the Student's dyslexia and reading needs. She explained that Dr. [REDACTED]'s diagnostic impressions did not include a finding of dyslexia,<sup>75</sup> the Student's fall MAP reading score was on grade level, and teacher progress reports did not express concern. (MSPC Ex. 36.) Regarding MAP testing, Ms. [REDACTED] explained that the Student's Math MAP testing demonstrated his continuous progress. (*Id.*) She stressed the importance of only utilizing necessary interventions for a Student. More interventions do not necessarily make for a better IEP. If a Student does not require an intervention, its application can have an opposite effect.

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<sup>75</sup> The [REDACTED] report prepared when the Student was in second grade included this diagnostic impression. Dr. [REDACTED]'s report prepared when the Student was in sixth grade did not. Specifically, Dr. [REDACTED] wrote, "[his reading rate was consistently average, and he did not make many reading mistakes that are more synonymous with symptoms of dyslexia[.]" (MCPS Ex. 5.)

Ms. ██████ testified that the Student's attendance issues were noticed in his seventh-grade quarter three, and actively addressed in quarter four.<sup>76</sup> She said that an FBA would not be appropriate to address attendance because the function would not be discovered. FBAs involve "ABC" data collection: antecedent, behavior, and consequence. The Student would not be in the building for observation of the concerning behavior so that the FBA team could collect data and then hypothesize what is the function of the behavior. She explained that ██████ MS staff were not observing signs of anxiety or depression in school, and whether tardy or not, the Student was always welcome at ██████ MS whenever he attended.

Ms. ██████ opined that the Student's June 2019 IEP was appropriate. The program added a Resource class, recognized the need to support him in managing and completing assignments, and recognized the need for co-taught Math and a supported History class. She disagreed with Ms. ██████'s opinion that an ██████ program should have been considered for the Student during his seventh-grade year, explaining that ██████ MS was providing him the supports he required, and added a Resource class to support work completion – more restrictive services were not what was needed. Ms. ██████ testified that the Student did not qualify for ESY because he was not working on critical life skills and there were no extenuating circumstances to warrant ESY. While she agreed that the Student did engage in behaviors that caused disciplinary action, Ms. ██████ said he was not a "frequent flyer" to the administrative office for code of conduct violations. She explained that in middle school years, children are discovering their impact on others. They are body conscious. They make, keep and lose friends. The Student's penis graffiti and display of images of penises to others was not behavior so unusual for his age

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<sup>76</sup> The Parents received emails regarding how attendance and non-completed homework were impacting the Student's grades, how make-up work was available, and how teachers were available after class for assistance. Ms. ██████ and Ms. ██████ met with the Student in April and May 2019 to discuss strategies to make improvements. In April, the Student agreed to try the strategies. In May, the Student was informed of attendance laws. A home visit was scheduled but cancelled because the Student attended school on the scheduled date. (MCPS Ex. 47, pp. 474-478.)

group because in seventh grade the students take a Health class and there is an uptick in sex talk among students.

Ms. [REDACTED] testified that in the Student's eighth grade, his bus incident was not so atypical but well within the range of disciplined behaviors she has seen. She said the behavior did not warrant more services, explaining that the school was paying attention and monitoring the situation. A bus suspension, not school suspension, was selected as the disciplinary response to keep him attending school. Ms. [REDACTED] explained that transportation services would not have been appropriate because the services are more restrictive. The Student's single incident did not demonstrate that he could not handle bus riding. Transportation services are more isolating, and he would no longer have the ability to interact with his peers on his designated bus route.

Ms. [REDACTED] said the October 2019 IEP team meeting was an annual review and the team wanted to update assessments. The team recognized that this time was challenging for the Parents. The Student's attendance had decreased significantly, and it stood to reason that assessments were needed to determine his needs and appropriately address them. Ms. [REDACTED] explained that the school team recognized the significant change in the Student but did not know why there was such a change, so it was unknown what would have been appropriate supports. It would not have been appropriate to change an IEP with incomplete information. She explained that the additional information would lead to a comprehensive IEP. She recalled that during the January 2020 meeting, the team reviewed quite a bit of information, including the assessments and the criteria for an ED determination. The Parents did not authorize the [REDACTED] MS team to speak with the Student's new psychiatrist. Eventually, the team received Dr. [REDACTED]'s October 2019 letter. During the February 2020 meeting, Ms. [REDACTED] recalled an "animated" discussion about partial day schedules and the Parents insisting that the IEP contain partial day programming for the duration of the school year, which was legally and educationally inappropriate. Legally

inappropriate because it would mean that ■■■ MS would not be providing him with full access to the curriculum and specialized instruction that he had a right to receive and educationally inappropriate because even ■■■ was recommending his schedule of courses increase. She explained that a transition schedule could have been created incorporating the best time of day for the Student and his favorite classes. Had the Student attended ■■■ ■■■, the program could have offered home-visits, curb-side encouragement, and more intimate interactions. The Parents were referred to the Compliance Unit for transition and any agreement would have been implemented, regardless of whether it was in the Student's IEP.

The May 2020 meeting concluded with a revised IEP. She said the assessments were critical in determining how the Student's emotional functioning was impacting his performance. She described the Student as "consistently inconsistent" and opined that the 2020 IEP offered a FAPE in the LRE. ■■■ ■■■ would provide direct, real-time support, academic skills taught in small class instruction, and access to typically developing peers in the general education setting. Ms. ■■■ opined that ■■■ is not appropriate for the Student because he makes all the decisions and does what he wants to do, not what he needs. The Student has no access to a psychologist, social worker, or counselor, and no one is trained in special education. She explained that ■■■'s 1:1 ratio is not supporting the Student's need to interact; instead, he avoids challenging situations. Ms. ■■■ explained that the Student has had no formal assessments, so it is unclear what he is completing independently.

On cross examination, Ms. ■■■ was asked to recall her daily interaction with the Student, including how many students ate lunch in the cafeteria. She was asked to explain her opinions regarding the IEPs and iterated that the single bus incident did not necessitate specialized transportation services. Ms. ■■■ said that the Parents' September 2019 letter never asked for alternative transportation services. Further, to make more changes to the



Student's IEP in fall 2019, more assessments were necessary. Ms. [REDACTED] was asked why the Parents were not provided with the attendance contract prior to the IEP team meeting,<sup>77</sup> she was asked to verify that the IEP team meetings were scheduled in two-hour increments<sup>78</sup> and asked about her understanding of transition scheduling. She was asked about approved part-time secondary schedules. She expressed concern that there was minimal peer interaction at [REDACTED].

[REDACTED], *M.A., Ed.S., NCSP*

Ms. [REDACTED], an expert in the field of school psychology, reviewed her initial 2018 evaluation. She remembered the Student's ADHD was evident with inattentiveness and off-topic questions. She conducted a classroom observation and noticed issues with attention and executive function. She opined that the December 2018 IEP was appropriate because it addressed the Student's behavioral needs that presented at the time. She was not directly involved with the Student in the seventh grade but opined that an FBA was not warranted in the absence of a need to understand the antecedents of regularly occurring and challenging behaviors. If informal interventions to improve challenging behaviors are insufficient, then it may be appropriate for an IEP team to consider a higher level of response, such as an FBA. Ms. [REDACTED] explained that in middle school, children's development proceeds at varying rates, all of which can be considered within the range of normal. Their brains are developing, and they are learning to navigate more complex social relationships.

Ms. [REDACTED] acknowledged that in the seventh grade, the Student displayed some inappropriate behaviors; however, she explained that while the Student's sexually graphic behavior was inappropriate, it was not far outside the norm of expected behaviors for adolescent

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<sup>77</sup> MCPS objected because the Student did not allege that the lack of the attendance contract prior to the team meeting was a procedural IDEA violation. Indeed, the allegation is not contained in the Complaint. Accordingly, without MCPS consent, the issue is not before me, and I shall only consider the testimony as it relates to the Parents' response to having been provided the attendance contract on the meeting date. 34 C.F.R. § 300.508(d)(3).

<sup>78</sup> The Parents and their counsel never requested a longer time period.

males. She did not believe that, based on the available information, the Student's educational disability coding should have been modified to emotionally disturbed (ED). She further opined that the June 2019 IEP was appropriate because it increased services to address the Student's demonstrated needs, regardless of his disability coding.

Ms. [REDACTED] became involved with the Student again in his eighth-grade year. His name was brought up in weekly staff meetings because of his frequent absences, and she was made aware of the bus incident. She completed assessments and a re-evaluation report, remembering that the Student presented at [REDACTED]MS for the assessments with a friendly and pleasant disposition. She saw no outwardly observable anxiety. She noted a contrast between what was observed at school and what the parents were reporting. She explained that she has experience with school refusal cases and common symptoms of anxiety and depression include inability to leave the counselor's office, crying, poor hygiene, and visible trepidation. In contrast, the Student was highly functional in the community.

Ms. [REDACTED] also discussed the finding of "pragmatic personality" which stems from an individual's pursuit of control. She opined that the Student may have been attempting to control school attendance with limited insight into how decreased attendance negatively impacted him. She was asked about Dr. [REDACTED]'s letter and stated that the Student's home behaviors were not present at [REDACTED]MS and not disclosed by the Parents. She said the rating scales Dr. [REDACTED] conducted indicated that the Student endorsed a higher presence of anxiety – the Student may have been more anxious, or he may have possessed greater personal insight. Ms. J. [REDACTED] said in her testing, the Student mentioned bullying at [REDACTED]MS, but offered no examples, only generalizing that "everyone's getting bullied here." She opined that the behavior monitoring tool was appropriate for the Student because it helped him to monitor his impact on others, which is an important behavioral skill.

Ms. [REDACTED] testified that IEP adjustments were necessary in response to data and the 2020 IEP team used the appropriate guidance and data to determine the LRE. She has attended truancy trainings and knows that reinforcement of the behavior is to be avoided, *e.g.*, children should not be sleeping while not in school because they would not be sleeping if they were in school. Children should return to school with an eased-in approach if that is what the situation requires. She explained that meaningful behavior modification takes time. Although the interim is difficult (situations may get worse before they get better and it is hard for parents to see their children distressed), with perseverance and persistence, improvement can be seen in six to eight weeks.

Ms. [REDACTED] testified that she has a lot of concerns about the choice of [REDACTED] for the Student. She explained that the Student seeks control, and he avoids – [REDACTED] is maintaining these behaviors and not helping him learn to tolerate discomfort. His first response to negative peer interaction is to withdraw and [REDACTED] permits him to do so. Ms. [REDACTED] questioned how the Student can function outside of the setting [REDACTED] has created for him. In rebuttal, the Father described the Student's enjoyment of his part-time job in which he interacts with peers. However, the Student only began this employment in mid to late September, so I find that there is insufficient time in this new experience to form a fair conclusion.

On cross-examination, Ms. [REDACTED] was asked how often she interacted with the Student and his Parents. She was asked about the Student's IEPs and whether she was informed of information from [REDACTED] MS staff. Ms. [REDACTED] said that information suggested that there may have been external causes for the Student's school refusal and the home was contributing to school avoidance.

██████████, LCSW-C

Ms. ██████████, admitted as an expert in the field of social work with an emphasis on social work in schools, testified that she started to work with the Student in late spring 2019. She met with him at least once during his seventh-grade year to express concern with his attendance and discuss strategies to get him back on track. She described the fall 2019 attendance contract as a starting point which could have been amended and further tailored to the Student. She completed the documentation for the TRB referral and testified that she never observed the Student display typical signs of depression at school. Ms. ██████████ explained that the TRB was utilized (not Attendance Matters or an attendance intervention plan) because he was no longer attending school. TRB offered a problem-solving team which could offer wrap-around supports and resources. She testified that the goal of TRB is attendance, not a court referral.

Ms. ██████████ stressed the importance of boundaries. Parents of school refusing children should be making the home as uncomfortable as possible, but she never got the sense that the Parents were doing this. She also explained that behaviors get worse (known as an “extinction burst”) before things improve. Any strategies suggested to the Parents were quickly dismissed as ineffective. She explained that behavior monitoring tools help children identify their own behaviors and learn from them.

Ms. ██████████ was asked her opinion regarding Ms. ██████████’s testimony that the Student was “in crisis.” She explained that the term is broad and includes presenting someone as a danger to oneself or others and requiring an increased level of mental health care. In her professional experience, Ms. ██████████ testified that she would use the term, “in crisis,” for children experiencing panic attacks, hysteria, difficulty breathing, catatonia, destroying property, actively attempting self-harm, being out of control or responding to internal stimuli. ██████████MS staff

did not observe the Student exhibit these behaviors. If the Student had exhibited these behaviors, there are trained, crisis prevention staff in the building to assist students in crisis.

Ms. [REDACTED] expressed concern that [REDACTED] allows the Student to avoid his issues. She explained that “real learning” happens with exposure to situations. She opined that the Student’s 2020 IEP was appropriate and identified a multitude of services and supports the [REDACTED] program would afford him.

On cross-examination, Ms. [REDACTED] was asked how often she interacted with the Student and his Parents. Ms. [REDACTED] was asked whether she knew how much electronic equipment was in the home, and whether the Parents could fit the items in their vehicle, given that one suggested strategy was that the Parents’s put the Student’s devices in the trunk of their car.<sup>79</sup> She was also asked when the Student began treatment with his new psychiatrist, whether attorneys attend TRBs, and what she knew about [REDACTED]’s certifications.

[REDACTED]

Ms. [REDACTED], admitted as an expert in the field of special education with an emphasis on students with emotional disabilities, said that [REDACTED] has approximately 2,000 students, but the small [REDACTED] program is appropriate for the Student because it would support him in navigating the school by hand-creating his schedule, considering his fit with teachers, encouraging relationship-building, and any issues with transition can be built into the schedule. If students have difficulty with lunch, they can eat in the [REDACTED] area or plan to join a “buddy.” She explained the program’s flexibility to support students in meeting the demands of their academic schedule. She reviewed the 2020 IEP and opined that it was appropriate and could have been implemented at [REDACTED] [REDACTED].

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<sup>79</sup> The questioning was ineffective because the point of the strategy was obviously to remove access. An electronic device such as a desktop computer, Xbox gaming console, television, laptop computer or cellphone, are all useless without a powering cord, HDMI cable, or other connection/charging device if the Parents did not have the space in their vehicle to physically store these items. The strategy obviously need not be so literal as Student’s counsel was implying if the Parents did not have storage space.

On cross-examination, Ms. [REDACTED] acknowledged that she has never met the Student. She spoke with the Parents by telephone about [REDACTED] [REDACTED]. She was asked how additional services the Student may need are guaranteed if they are not written into an IEP. She was asked whether she has any knowledge of a client of Ms. [REDACTED]'s who presently attends [REDACTED] [REDACTED] and allegedly disappeared for a period of time during the school day; she did not.

[REDACTED]

Ms. [REDACTED], admitted as an expert in the field of special education with an emphasis in emotional disabilities, discussed her transition interview with the Student and the fact that neither he nor his Parent told her that his November 2018 IEP schedule change upset him. She opined that his December 2018 IEP was appropriate because it addressed the areas of concern with the data available at the time. She reviewed the June 2019 IEP and opined that it was an appropriate program which added a Resource class because more difficulties with executive function and task completion were observed.

Ms. [REDACTED] conducted fall 2019 assessments and testified that after Parent cancellations (the Mother cancelled his first appointment because the Student was asleep and his second appointment because she said the Student did not want to come to [REDACTED] MS), the evaluation took place at the [REDACTED]. Upon arrival, he was in a "very good mood" and discussed meeting his friends for lunch, his manicure, and sleeping and playing video games during the day. Although he appeared to give true effort, she said he did not use paper and pencil (doing calculations in his head) and his scoring fluctuated. She recalled that he did not like timed portions of the test.

Ms. [REDACTED] opined that the October 2019 IEP was appropriate based on information available at the time. She attended meetings which led to the development of the 2020 IEP and has familiarity with [REDACTED] programming. She opined that the 2020 IEP was appropriate

because the program addressed available information and she knows the ██████ program would be the best fit for the Student because it would be able to adapt and address any issues he would be experiencing as they arise.

On cross-examination, Ms. ██████ was asked how often she interacted with the Student and his Parents. She explained that she told the Parents she was always an available resource for them. She did not know whether persistent tardiness resulted in any school consequences.

### ***Analysis***

The Student fell short of his burden of proof. The record reveals that MCPS willingly reassessed his needs and implemented IEPs reasonably calculated to provide meaningful progress based on the information available to MCPS at the time. The IDEA does not deprive educators of the right to apply their professional judgment (*see Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d at 1001), and I am more persuaded by the MCPS educators.

The parties agree that the Student has a disability and is entitled to special education and related services under the IDEA. Critical to this case: the Student's profile is complicated. New, maladaptive behaviors were emerging, which were not seen to the same extent at school as at home. However, as their significance became apparent to the school, the behaviors were addressed by MCPS first applying surface-level strategies, then amending his IEP. I find it appropriate that before determining that only a special education solution could address a weakness, MCPS attempted other methods. Further, I am more persuaded by Dr. ██████'s conclusion regarding the cause of the Student's nonattendance, borne from simultaneous treatment and analysis, than the Parents' testimony and their professionals selected for purposes of litigation. Dr. ██████'s conclusion is also supported by Ms. ██████'s November 2019 re-evaluation, wherein she reported pragmatism and increased ratings for ODD. Thus, I do not find that MCPS failed to address his anxiety or depression. Typical outward manifestations of

anxiety or depression were not seen by any MCPS staff. Instead, I find that the Parents were not forthcoming to MCPS about the Student's extreme behaviors at home. I empathize with the Parents and do not make this finding to assess blame. It is understandable as loving parents who wanted to protect him why they did not share with MCPS the Student's level of disrespect, defiance and intimidation at home. The Student complained that certain goals should have been included, or included sooner, within his IEPs; however, "an IEP is not required to contain every [conceivable] goal from which a student might benefit." *R.F. v. Cecil Cnty. Pub. Schs.*, 919 F.3d 237, 251 (4<sup>th</sup> Cir. 2019). The Student's IEPs taken as a whole, with data known at the time, offered the Student a FAPE in the LRE.

In her re-evaluation Ms. ██████ opined that the Student's SRAS-R scores "indicate that the functions of his school refusal are to gain positive tangible reinforcement (seeking rewarding experiences outside of school) and avoidance of negative affectivity-provoking situations related to the school setting." (MCPS Ex. 2.) And as Dr. ██████ reported in his December 13, 2018, email to the Parents, the Student acknowledged that he plays on screens (*e.g.*, Fortnite) excessively and needs more structure. The Student told Dr. ██████ that he would not change how much he plays despite negative consequences because it would mean that he could not do his favorite activity and he would lose access to "best friends" he met through gaming. The Student also acknowledged that he was not doing much work and was more focused on Fortnite and socializing. Consistent with the Student's remarks, teachers at ██████ MS and ██████ consistently reported a lack of completed homework assignments and make-up work. Whereas at ██████, the Student's course did not progress if he did not attend, MCPS courses continued; therefore, a lack of completed homework assignments and make-up work impacted the grades the Student received at ██████ MS. For this reason, I do not view MCPS grades and ██████ grades



similarly. Further, regarding the Student's time at ██████, I am guided by *D.F. v. Smith*, 2019 WL 1427800 (D. Md. March 29, 2019), wherein the Court explained:

While *Andrew F.* notes that the student in that case made “a degree of academic progress that had eluded him in public school” after enrolling in a private school, 137 S. Ct. at 996, it does not prescribe a new rule requiring reviewing courts to consider evidence of post-IEP private school performance to determine whether the IEP provides a FAPE. Instead, *Andrew F.* refines a standard first elucidated in *Rowley*, to the effect that an IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances” in order for a school to “meet its substantive obligation under the IDEA.” *Id.* at 999. The Supreme Court expressly refused to establish a “bright-line rule” as to what would constitute “‘appropriate’ progress,” deferring instead to “the application of expertise and the exercise of judgment by school authorities” that were 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 1001–02. Thus, *Andrew F.* establishes a broad standard for determining whether an IEP provides a FAPE, reasserting the significant deference due to school officials' expertise. It does not require that school officials, let alone a reviewing administrative hearing officer, consider a student's subsequent performance in a private school when forming an IEP. In situations where a student and his or her parents have rejected a proposed IEP, subsequent evidence of that student's performance in private school should not necessarily “retroactively reflect on the propriety of that IEP.” *Foose*, 165 F. Supp. 3d at 380 (citing *Schaffer v. Weast*, 554 F.3d 470, 476 (4th Cir. 2009)).

The Student's school refusal was rewarded by an ability to sleep during school hours and access to preferred items at home, such Xbox and video games. Indeed, the Student was playing video games on a day he was truant and ██████ MS staff made a visit to his home. Similarly, in Dr. ██████'s April 13, 2020 email to the Parents, as nonattendance persisted at ██████, he shared that he and the Student discussed the Student's need to get off his computer and phone with enough time to wind down before bed. Dr. ██████ also characterized the Student's school refusal as a “muscle memory” type of behavior.

I do not accept the Parents testimony that they tried all the ██████ MS suggested strategies and that the strategies did not work. The strategies take time and consistency. Ms. ██████ testified that she suggested that the Parents take the Student's gaming equipment away. Neither Parent testified that they tried this specific strategy, or if they did try, exactly how long they tried

and why it was not successful. In fact, despite hearing Ms. [REDACTED] testify to this strategy, the Father never addressed the strategy in his testimony – instead, he discussed trying melatonin, meditation, breathing exercises, soothing music, scented candles and early lights off. The silence about the simple and straightforward strategy of removing the gaming devices spoke volumes. I find that the Student required increased structure at home.

Although the Student argued that MCPS ignored the significance of his status as an adopted child, his own witness, Dr. [REDACTED] conceded that all adoptees do not behave alike. No evidence demonstrated that the Student vocalized any emotional or social struggles because he was adopted to anyone during the timeframe at issue, nor did I find evidence in the record that adoption was raised as a cause for concern or attention for the IEP team by the Parents, their parent coaches, the Student’s pediatrician, psychologist or psychiatrist, or MCPS staff during the timeframe at issue. Nonetheless, Dr. [REDACTED] stressed the importance that adopted children have trusted adults and support, which I find that MCPS offered the Student. The Student frequently checked in with his counselor, Ms. [REDACTED], and had the benefit of an assigned mentor (his Math teacher with whom he developed a good rapport). The [REDACTED] high school IEP placement recommendation similarly afforded the Student access to trusted adults, to include a licensed clinical social worker and a psychologist. As Ms. [REDACTED] testified, the [REDACTED] program encourages students to make connections with staff.

The Student has not established that he was bullied at [REDACTED] MS. Parent emails to [REDACTED] MS during the timeframe at issue make no mention of the Student being bullied. Aside from one notation about the Student and another child name-calling one another (Student Ex. 186, p. [REDACTED] 1576) and another about girls knocking on his home door and running away, [REDACTED] MS had no record that the Student was a victim of bullying. Instead, teacher reports reference the Student’s

socialization and friends, and school records document instances when the Student harassed others.

I am persuaded by MCPS's explanation of why it did not propose IIS. IIS was not appropriate for the Student because the service is counterproductive to the goal of school attendance. As Dr. █████ noted, the Student's school refusal was a "muscle memory" type of behavior. The Parents testified to their belief that the Student suffered "crippling" anxiety and depression at the time, but they are not medical professionals and did not present evidence from the Student's treating psychiatrist, psychologists, or pediatrician to support their assertions. █████MS staff did not make similar observations. The Student complains that █████MS staff did not advise the Parents that they could have sought IIS or part-time status, but without a documented medical basis or consistent observations at █████MS, the Student cited no authority that required MCPS to do so. MCPS witnesses testified that the Student was welcome in school at whatever time he arrived, and the Parents withdrew the Student from MCPS before the TRB meeting, where his nonattendance would have been explored further by a multidisciplinary, problem-solving team.

As Maryland law requires school attendance, and as MCPS staff had exhausted their ideas to encourage the Student's worsening attendance rate, MCPS staff referred the Student to the TRB as they were obligated to do. The TRB referral was not retaliatory. I am persuaded that MCPS staff were exhausting their ideas in the face of total nonattendance. The Student argued that lower levels of intervention should have been employed first, but I find that MCPS acted with an appropriate sense of urgency by seeking the TRB's multi-agency assistance and intervention to support the Student when his attendance stopped entirely. The Parents incorrectly

equated a referral with automatic prosecution.<sup>80</sup> Instead, the evidence established that ■■■MS was looking for additional support in getting the Student to attend school. The evidence established that ■■■MS staff did not believe the Parents were employing their suggested strategies, the Parents expressly refused an attendance contract strategy, and intervention was required. As ■■■MS staff testified, a truancy referral created the opportunity for the Student's nonattendance to be discussed by not only MCPS staff, but among other agencies which could brainstorm and offer other strategies and ideas. Although the Parents had concerns about the impact of a referral on their professional licensures, I find that MCPS appropriately put the Student's needs before the Parents' personal concerns, did not violate the IDEA, and did not retaliate against the Parents for pursuing the Student's IDEA rights.

Upon consideration of the record, I find that MCPS witnesses offered a cogent and responsive explanation for their decisions which showed that the Student's IEPs were reasonably calculated to enable the Student to make progress appropriate in light of his circumstances.<sup>81</sup> Further, I find that the IEPs at issue complied with the IDEA,<sup>82</sup> *i.e.*, the IEPs contained assessment of the Student's present levels of academic achievement and functional performance, measurable annual goals, and a statement of how goals will be measured, a description of the special education and related services and supplementary aids and services provided, and an explanation of the extent the Student will participate with nondisabled children. *See* 20 U.S.C.A.

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<sup>80</sup> Their expert, Ms. ■■■■■, mischaracterized the evidence and claimed in her report that truancy "charges" were dropped after the Parents retained counsel and provided proof of enrollment at ■■■■■. (Student Ex. 172.) The record is devoid of any evidence that a truancy prosecution was ever initiated.

<sup>81</sup> The Student asked that I consider a recent OAH decision, MSDE-MONT-OT-■■■■■. I have done so and find the case distinctly different from the case *sub judice*. While the child in MSDE-MONT-OT-■■■■■ had a disability, *i.e.*, anxiety, his other diagnoses differed from the Student's, and the effects of the child's disabling conditions were supported by significant evidence. The student suffered a prolonged period of nonattendance despite implementation of many strategies. Here, for reasons discussed *supra* and *infra*, the Student's evidence was less persuasive.

<sup>82</sup> During the hearing, it was belatedly argued by the Student that the Spring 2019 IEP meeting was not duly constituted. MCPS objected. The argument is not contained within the Complaint, and without the consent of MCPS, the issue is not before me. 34 C.F.R. § 300.508(d)(3).

§ 1414(d)(1)(A)(i). I find the LREs selected were appropriate for the Student's education. *See Devries*, 882 F.2d at 880. MCPS experts based their testimony on their interaction and observation of the Student, review of evaluation data and information provided by the Student's teachers and his Parents. In contrast, the Student's experts differed from each other, and their testimony, based upon record reviews and interviews, was not as persuasive. Overall, the Student made incremental progress on some, but not all, of his goals, and this was appropriate for him given his unique circumstances, particularly the fact that new behaviors were emerging during this timeframe.

“In the case of a child whose behavior impedes the child's learning or that of others, [the IEP team must] consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior[.]” 34 C.F.R. § 300.324. Thus, if a student is consistently absent and the truancy is impacting his ability to receive the services specified in his IEP, the school district must take steps to address the issue. I find that MCPS did so, and as more data was received, increased steps appropriately.

As background, MCPS recognized the beginning of school refusal behavior in December 2018. To support the Student, his IEP (amended December 2018) noted his struggles with appropriate peer interaction and added a social interaction skills goal. The goal of appropriate conversations and/or collaborative assignment completion with peers was supported by faded adult support, frequent check-ins, a flash pass, verbal/visual prompts, praise for positive peer interactions, and opportunities for peer interactions. The IEP also afforded the Student opportunities to discuss written responses prior to turning them in, as well as use of a behavior monitoring tool. The behavior self-monitoring tool required the Student to keep track of the number of prompts given to stop talking to peers. Although Dr. [REDACTED] questioned the appropriateness of a self-monitoring tool, Dr. [REDACTED]'s evaluation, provided to MCPS by the

Parents, noted the value of behavioral reflection. (MCPS Ex. 5.) Further, I credited the explanations provided by MCPS witnesses for the value of the tool. With this context, the Student began his seventh grade second semester.

Ms. [REDACTED] summed up the Student's profile succinctly when she testified that the Student was "consistently inconsistent."<sup>83</sup> Clearly, the Student was capable of comprehending subject area content and achieving good grades. However, he was inconsistent with his homework and make-up work. He would behave well in some classes, but not others. On March 4, 2019, the Mother submitted a Parent Report wherein she requested that the Student receive regular check-ins from a supportive adult regarding his work completion in English, Science and Art. Similarly, Dr. [REDACTED] opined that in Spring 2019, given the increasing problems displayed, MCPS should have increased the frequency of counselor and teacher contact. In April 2019, the Student's counselor, Ms. [REDACTED], had given the Student a pass to meet with her on Tuesday and Thursday mornings to make up work as needed. It is evident from the record that Ms. [REDACTED] was the Student's supportive adult contact who checked-in and made herself available to him. Ms. [REDACTED] also provided the Student with a "return to school make up work chart" on May 7, 2019. He was instructed to bring the chart to his teachers to fill in what work needs to be done and Ms. [REDACTED] let the Student's teachers know to expect the chart. Around this timeframe, the Parents reported to Ms. [REDACTED] that the Student was no longer attending therapy because he wanted "a break." Ms. [REDACTED] offered to speak with Dr. [REDACTED] if the Parents would like her to do so. The Parents signed a consent form to authorize Dr. [REDACTED] to speak with Ms. [REDACTED], and a conversation took place. Ms. [REDACTED] was privy to the telephone conversation and recalled Dr. [REDACTED] expressing her opinion that oppositionality was involved in the Student's behaviors. Ms. [REDACTED]'s notes reflect this as

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<sup>83</sup> Indeed, the Father advised Dr. [REDACTED] that the Student's inconsistency has no discernable pattern. (Student Ex. 6; MCPS Ex. 5.)

well. In her notes, Ms. [REDACTED] wrote that Dr. [REDACTED] expressed her opinion that the Student was manipulative, not depressed and treated his parents horribly, engaging in verbal abuse and physical threats. Dr. [REDACTED] suspected the Student was on video games all day at home.<sup>84</sup> (Student Ex. 186.)

After nonattendance continued, and around May 17, 2019, Ms. [REDACTED] advised the Parents that the Student needed to be in school, that a home visit will be scheduled, and that the Student must understand what consequences exist if he chooses not to attend school, *e.g.*, the truancy board. Thereafter, the Student attended school. Dr. [REDACTED] opined that MCPS should have increased contact with the Student's outside providers and given his school refusal, created a formal plan for school re-entry, but the Student's counselor did speak with his outside provider and the Student was responding to MCPS interventions such as cautioning that a home visit would be conducted should the Student fail to attend school. [REDACTED] MS records from mid-May 2019 suggest concerns with the Student's social emotional functioning; however, even if I find that the Student may have benefited from an FBA at that time, only weeks remained in the school year and an FBA was sought in September of the following school year. (MCPS Ex 47.) Any delay was brief (excluding summer break) and did not deny the Student a FAPE.<sup>85</sup>

The Student's seventh-grade absences, while on the cusp, did not cause him to appear on Ms. [REDACTED]'s PPW report. The report tracked students with high absences (whether excused or unexcused). And I find that with data available at the time, his counselor, Ms. [REDACTED] was

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<sup>84</sup> The fact that [REDACTED] MS staff did not share the content of their communication with the Parents did not violate the IDEA. Dr. [REDACTED] was just as accessible to the Parents and there is no reason to believe that Dr. [REDACTED] was telling the Parents one thing and [REDACTED] MS another.

<sup>85</sup> Cases cited by the Student included *N.G. v. Dist. of Columbia*, 556 F.Supp.2d 11 (D.D.C. 2008), which dealt with a clinically depressed, suicidal child who cut school and required hospitalizations. Unlike the school in *N.G.* which did not timely evaluate the Student, MCPS did not have the benefit of voluminous medical documentation and, once a pattern of behaviors emerged, appropriately suspected and evaluated the Student for an emotional disability. Further, as MCPS staff testified, disability codes do not drive IEP services. The record reflects that the Student's counselor, Ms. [REDACTED] was offering significant support and behavioral goals were added to his IEP upon receipt and consideration of data.

adequately communicating and strategizing with the Parents to address nonattendance. Notably, during this timeframe, MCPS staff was not observing typical signs of anxiety or depression when the Student attended school. In contrast, when the Student attended, although he may have been late for a class throughout the day, he tolerated the environment and engaged with his peers.

The Student's IEP, amended June 17, 2019, indicated that the Student required specialized instruction in his English and Science classes. The Student would take co-taught English, co-taught Math, supported Science, and supported U.S. History classes and the Student would have one period of Resource. Resource was required to address deficits related to executive functioning, including task completion and organization. The IEP noted that the Student's homework completion across all content areas was 63%, so he would benefit from having an opportunity to complete homework assignments, as well as long-term assignments in a Resource period. School placement remained ■■■MS. Although Dr. ■■■■■ opined that the June 17, 2019 IEP did not contain sufficient supports and accommodations to address attendance and school behaviors, the record reveals that the Student's nonattendance did not rise to the level that it would appear on Ms. ■■■■■'s PPW report. And I find that with data available at the time, his counselor, Ms. ■■■■■ was adequately communicating and strategizing with the Parents to address nonattendance and create a manageable plan for missed assignments and make-up work. Despite the Student's argument that ■■■MS was not an appropriate placement for him, it is clear from the evidence, including the prior written notice for the June IEP team meeting, that none of the IEP team members believed that the Student required his program to be implemented in a different placement.

Despite an enjoyable summer, with a vacation and camps (including a sleepaway camp), the Student's eighth grade at ■■■MS began miserably. Simply put, he refused to attend. He told Dr. ■■■■■ that he was not planning to return to ■■■MS. By the time he was withdrawn from



MCPS and began at ██████ in November 2019, the Student had attended only 6.5 days at ██████MS. ██████MS responded swiftly to address the alarming numbers. ██████MS sent attendance letters to the Parents, Ms. ██████ telephoned the Student to encourage his attendance, and a teacher emailed the Parents to advise of the Student's grade and to offer a suggested list of interventions and availability for further support, if needed. The Student's IEP case manager, Ms. ██████, was in email communication with the Parents. In September, Ms. ██████ reported to them the Student's grades, the number of missing assignments, and expressed concern regarding his absences (and the necessary make-up work). Ms. ██████ suggested that in addition to Resource, she meet with the Student upon his return to develop a plan which would be shared with the Parents.

Ms. ██████ and Ms. ██████ conducted a home visit on September 25, 2019, and learned that the Student was in the basement playing video games. He attended school the following day. An expedited IEP team meeting was held on September 26, 2019. It was scheduled on short notice and the Parents agreed to waive the ten-day notice requirement in order to meet. The team wanted to discuss whether OHI remained the most appropriate code for the Student. The Parents were presented with an attendance contract which they refused to sign and refused to present to the Student. On September 27, 2019, the Parents wrote to Ms. ██████ and consented to additional testing, to a flash pass being identified as a supplemental aid in his IEP, to the Student being invited to formal lunch groups with peers, and to forty minutes of Student counseling services per month. The Parents refused to extend the deadline to update the Student's IEP until December 2019 or January 2020 to have updated testing results available for consideration.

Although the Parents immediately viewed the attendance contract as a punitive tool, the evidence persuades me that it was a worthwhile strategy to attempt, as other strategies were not proving successful. MCPS staff testified regarding instances of success in other cases and how

the contract would have been built upon and tailored, to include personalized rewards for the Student. The Parents were convinced that the Student could not meet the contract terms and refused the strategy; however, for reasons discussed *supra*, I am not persuaded that the Student's disabilities prevented him from participating in the strategy. Also, around this timeframe, the Parents were in possession of Dr. ██████'s letter, which they chose not to share with the IEP team, in which she opined that neither anxiety nor depression were barriers to school attendance. Dr. ██████ opined that the Student's ODD required a more structured educational setting.

The Parents recording of the October 25, 2019, IEP team meeting revealed that the team discussed the lack of teacher data due to Student nonattendance. The team discussed the Parents' concern about the Student's language deficiencies and how MCPS testing was inconsistent with their observations. In response, school members asked whether the Parents were, therefore, seeking a reassessment. The Parents stated that they would not make a "spot decision" and would need to consider it. The Parents stated that the June 2019 IEP was a "good plan," but that ██████MS was not working for the Student. The Parents stated that they were seeking ██████ reimbursement and a Central Office IEP. School team members explained that assessments are necessary before the ██████MS can determine whether programming at ██████MS or other MCPS locations is appropriate, and if not, make a referral to the Central Office – and explained that the Parents can always address their concerns with this process through the MCPS Compliance Office. Ultimately, the Parents objected to this IEP and its LRE placement at ██████MS. However, I conclude that the Student's October 25, 2019 IEP reflected team discussion. OHI remained the coded primary disability. Four behavioral goals (with the addition of social/emotional and transition goals) and two academic goals were identified. The IEP also provided for monthly, forty-minute counseling sessions and a resource period. School placement remained ██████MS because from the available data, ██████MS could meet the Student's needs.

The Student complains that development of the 2020 IEP took too long; however, some delay was understandably attributed to a snow day, the initial closing of schools due to the COVID-19 pandemic, and the juggling of the schedules of MCPS staff, a [REDACTED] representative, the Parents, and counsel. The Student complains that the meetings were scheduled in only two-hour increments, but his counsel never suggested that longer blocks of time were necessary. I have listened to the recordings; the conversations were robust – some suggestions made by the Parents and their counsel were incorporated into development of the IEP, just not all of them. Further, the Student’s complaint of unreasonable delay is belied by his counsel’s statement at the conclusion of the May 28, 2020 IEP team meeting characterizing the his behavioral goals as “really vague” and suggesting the team might have to “go back to square one” although during the prior meetings, the behavioral goals were discussed in detail and Parents’ counsel’s suggestions were incorporated into the document (*e.g.*, changing how the goals were measured from “random trials” to observation record). (Student Ex. 176.)

The Student complained that the 2020 IEP lacked a formalized partial day or transition schedule. However, it is unclear what level of transition was necessary because the Parents and [REDACTED] staff represented that the Student’s attendance had improved. I credit Ms [REDACTED]’s testimony that MCPS was willing to create a schedule but did not want to deny the Student a FAPE by limiting his access to education. I do not find that a Compliance Unit referral violated the IDEA. Similarly, in *R.E.B. v. State of Hawaii, Dept. of Educ.*, 770 Fed. Appx. 796, 798 (United States Court of Appeals, 9<sup>th</sup> Circuit (2019)), the Court found that the Hawaii education department holding a “transfer plan meeting” and developing a plan that would help the student adjust to his new school which was not contained within the IEP did not violate the IDEA.

The Student argued that his IEPs were flawed due to a lack of ESY services, but I credited Ms. [REDACTED]’s testimony that adding unnecessary services can have an opposite effect

on a student. “There is no requirement that ESY be made a part of every disabled child’s IEP even if there would be some educational benefit.” *Reusch v. Fountain*, 872 F. Supp. 1421, 1424 (D. Md. 1994). Further, “the mere fact of likely regression is not a sufficient basis, because all students, disabled or not, may regress to some extent during breaks from school.” *M.M. v. School District of Greenville Cnty.*, 303 F.3d 523, 538 (10<sup>th</sup> Cir. 2002). The IEPs reveal that the team considered and fairly evaluated the appropriateness of ESY services. Further, the Student did not demonstrate any procedural or substantive violation of the IDEA as a result of the lack of ESY.

I have considered whether the 2020 IEP was reasonably calculated to enable the Student to receive educational benefit “in light of the [the Student’s] circumstances.” *Andrew F. v. Douglas County Sch. Dist.*, 137 S. Ct. 988, 999 (2017). The IEP was the result of extensive study and input from many data sources. The Parents and their advocate were involved throughout the process. Professional reports and observations were included and considered. I credited Ms. ██████’s testimony that the small, specialized ██████ ██████ program could meet the Student’s needs in the LRE. MCPS offered a cogent and responsive explanation for their decisions.<sup>86</sup> *Id.* at 1002.

The Student argued that more restrictive placements have been found appropriate by the courts in cases involving truancy. *See Indep. Sch. Dist. v. A.C.*, 258 F.3d 769 (8<sup>th</sup> Cir. 2001); *Lexington Cnty. Sch. Dist. One v. Frazier*, 2011 WL 4435690 (D. S.C., Columbia Division 2011). A.C. was a runaway who engaged in drugs, alcohol, promiscuous sex, and alleged crimes. She was hospitalized several times for attempted suicide and suicidal ideation. Frazier’s son “shut down” at school and then refused to attend school at all. Both school systems, to some

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<sup>86</sup> The Student made a belated argument, not contained in his Complaint, that ██████ ██████ implemented an asynchronous virtual learning model during the COVID-19 pandemic which did not meet the Student’s needs. Although the issue is not properly before me, I credit Ms. ██████’s testimony regarding the nature and extent of ██████ ██████ staff efforts to engage its students (*e.g.*, socially distant home visits and meeting in parks) during the pandemic and find that the Student’s argument is not persuasive.

extent, denied responsibility to address some of the student's needs. This is not the case in the matter *sub judice*. Here, MCPS never asserted a lack of responsibility to address the Student's attendance problem.

For the reasons discussed *supra*, I do not find that MCPS denied the Student a FAPE. MCPS developed successive IEPs that responded to the Student's special needs, increasing services as the extent of those needs became clearer. I find no procedural violation and no violation of the Student's substantive special education rights. Under *County School District Four v. Carter*, 510 U.S. 7 (1993), and *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985), whether a parent's requested private placement is proper is analyzed only if the IEP proposed by the local education agency results in the denial of a FAPE. I have concluded in this case for the reasons set forth above that the IEP and placement offered by the MCPS provide the Student a FAPE. Therefore, under *Carter* and *Burlington* the issue of whether the Student's placement at the [REDACTED] is proper is not required to be addressed further in this decision. As MCPS made a FAPE available to the Student, the Parents' claim for placement at [REDACTED] at public expense is denied.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that MCPS did not deny the Student a free appropriate public education by failing to provide him with an appropriate individualized education program and placement for the 2018-19 school year (second semester only), the 2019-20 school year, and the 2020-21 school year. I further conclude as a matter of law that the Parents failed to prove that they are entitled to reimbursement for tuition and expenses at [REDACTED] for the 2019-2020, 2020-2021, or 2021-2022 school years. 20 U.S.C.A. § 1414 (2017); 34 C.F.R. §§ 300.148; *Andrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson*

*Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cty. Sch. District Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

### **ORDER**

I **ORDER** that the Parents' request for placement at and reimbursement for tuition, costs and expenses at [REDACTED] for the 2019-2020, 2020-2021, and/or 2021-2022 school years is **DENIED**.

November 18, 2021  
Date Decision Mailed

Tracey Johns Delp  
Administrative Law Judge

TJD/at  
#194149

### **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]  
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**██████████████████████,**  
**STUDENT**  
  
**v.**  
**MONTGOMERY COUNTY**  
**PUBLIC SCHOOLS**

**BEFORE TRACEY JOHNS DELP,**  
**AN ADMINISTRATIVE LAW JUDGE**  
**OF THE MARYLAND OFFICE**  
**OF ADMINISTRATIVE HEARINGS**  
**OAH NO.: MSDE-MONT-OT-21-04430**

**FILE EXHIBIT LIST**

Unless noted otherwise, I admitted<sup>1</sup> the following exhibits on behalf of the Student:

<b>Exhibit No.</b>	<b>Bates No.</b>	<b>Description</b>	<b>Status</b>
Student 1	█1	Student, photograph undated	Admitted
Student 2	█2	Neuropsychological evaluation report (██████████), 3/19/14	Admitted
Student 3	█24	██████████ email/Student progress, 6/1/17	Admitted
Student 4	█27	██████████ report, Summer 2017	Admitted
Student 5	█32	██████████ report, January - March 2018	Admitted
Student 6	█34	Confidential neuropsychological evaluation (██████████, Psy.D.), 3/22/18	Admissibility Stipulated
Student 7	█57	██████████ report, July 2018	Admitted
Student 8	█60	Scantron/parent extended report/██████████, 5/18/18	Admitted
Student 9	█62	██████████ report card, 2017-18	Admitted
Student 10	█64	New 7th grade student at ██████████ MS, 6/8/18	Admitted
Student 11	█65	Email re: New 7th grade student at ██████████ MS, 6/12/18	Admitted
Student 12	█66	Email re: New 7th grade student at ██████████ MS, 6/14/18	Admitted
Student 13	█67	Email re: New 7th grade student at ██████████ MS, 6/15/18	Admitted
Student 14	█68	Educational History/Eligibility Screening Parent Interview Questionnaire, 7/9 - 10/18	Admitted
Student 15	█72	Student/subjects reviewed, 8/7/18	Admissibility Stipulated
Student 16	█74	Report of school psychologist, 8/7/18	Admissibility Stipulated
Student 17	█79	Report of speech-language assessment, 8/15/18	Admitted

<sup>1</sup> The parties stipulated to the admissibility of several exhibits. The stipulations are noted.



Student 18	█85	Email re: Finishing MAP testing, 8/6 - 15/18	Admitted
Student 19	█87	Evaluation report and determination of initial eligibility, 8/31/18	Admitted
Student 20	█93	Prior written notice, 9/3/18	Admissibility Stipulated
Student 21	█94	Letter from ██████████, M.D., 10/15/18	Admitted
Student 22	█95	Classroom observation, 10/8/18	Admitted
Student 23	█97	Evaluation report and determination of initial eligibility, 10/18/18	Admitted
Student 24	█102	Individualized education program (IEP), 11/2/18	Admissibility Stipulated
Student 25	█134	Prior written notice, 11/8/18	Admissibility Stipulated
Student 26	█135	Re: Introduction email, 11/2 - 8/18	Admitted
Student 27	█138	Email with attached teacher reports, 11/28/18	Admissibility Stipulated
Student 28	█157	Email re: English class, 11/30/18 - 12/2/18	Admissibility Stipulated
Student 29	█158	Email re: Student, 12/4/18	Admissibility Stipulated
Student 30	█159	Letter from ██████████ Middle School assistant principal & principal to parents, 12/12/18	Admitted
Student 31	█160	Email re: Update, 12/13/18	Admitted
Student 32	█162	Amended IEP, 12/14/18	Admissibility Stipulated
Student 33		Omitted	N/A
Student 34	█198	Appendix 1: Student Accommodation, 1/9/19	Admitted
Student 35	█199	Email re: Student MAP celebration, 1/17/19	Admissibility Stipulated
Student 36	█200	Teacher reports for quarterly progress, 1/19	Admissibility Stipulated
Student 37	█226	Email re: Student tardy, 2/22 - 27/19	Admissibility Stipulated
Student 38	█228	Parent report, 3/4/19	Admissibility Stipulated
Student 39	█229	Teacher reports for quarterly progress, 3/19	Admissibility Stipulated
Student 40	█261	Email re: student breaks, 4/3/19	Admitted
Student 41	█262	Email re: today – voicemail, 4/3 - 4/19	Admissibility Stipulated
Student 42	█265	Email re: today – voicemail, 4/4/19	Admissibility Stipulated
Student 43	█267	Email re: yay!, 4/5/19	Admissibility Stipulated
Student 44	█268	Email re: yay!, 4/5/19	Admissibility Stipulated
Student 45	█269	Email re: Student updates – FYI, 4/30/19	Admitted

Student 46	■270	Email re: Student, 5/6/19	Admissibility Stipulated
Student 47	■271	Email re: Student - school refusal and make up work, 5/7/19	Admitted
Student 48	■272	Email re: Absent today?, 5/9 - 10/19	Admissibility Stipulated
Student 49	■274	Email re: Absent today?, 5/9 - 10/19	Admissibility Stipulated
Student 50	■276	Email re: Student today, 5/13/19	Admissibility Stipulated
Student 51	■277	Email re: today, 5/14/19	Admissibility Stipulated
Student 52	■278	Email re: Student on 5/17, 5/17/19	Admissibility Stipulated
Student 53	■279	Email re: today, 5/22 - 23/19	Admitted
Student 54	■280	Email re: Student, 6/3/19	Admitted
Student 55	■281	Email re: ?, 6/5 - 6/19	Admitted
Student 56	■283	Email re: Summer work for Student, 6/12 - 14/19	Admitted
Student 57	■285	Email re: Summer work for Student, 6/14/19	Admitted
Student 58	■286	Email re: Student in Art, 6/12 - 14/19	Admitted
Student 59	■289	Quarterly report, 6/14/19	Admissibility Stipulated
Student 60	■293	IEP team meeting sign-in sheet, 6/17/19	Admissibility Stipulated
Student 61	■294	Five-day verification notice of documents provided after an IEP meeting, 6/17/19	Admissibility Stipulated
Student 62	■295	Amended IEP, 6/17/19	Admissibility Stipulated
Student 63	■332	Prior written notice, 6/17/19	Admissibility Stipulated
Student 64		Omitted	N/A
Student 65	■333	MCPS report card, 2018-2019	Admitted
Student 66	■335	Letter from principal & assistant principal to Parents, 9/12/19	Admitted
Student 67	■336	Email re: student absences, 9/17/19	Admitted
Student 68	■337	Email re: Student IEP, 9/18/19	Admitted
Student 69	■338	Email re: Student's grades, 9/18/19	Admissibility Stipulated
Student 70	■340	Email re: Student, 9/20/19	Admitted
Student 71	■342	Email re: Support for Student, 9/20/19	Admissibility Stipulated
Student 72	■343	Email re: Follow up, 9/20 - 23/19	Admissibility Stipulated
Student 73	■346	Email re: home visit, 9/23/19	Admissibility Stipulated

Student 74	347	Notice of IEP meeting, 9/24/19	Admitted
Student 75	349	██████████ Middle School Student Administrative Contract (unsigned), undated	Admissibility Stipulated
Student 76	350	Email re: confirming, 9/25/19	Admissibility Stipulated
Student 77	351	Email re: home visit, 9/25/19	Admitted
Student 78	353	Email re: home visit, 9/25/19	Admitted
Student 79	355	Email & attached letter from Parents, 9/27/19	Admissibility Stipulated
Student 80	358	Email re: Student, 10/2/19	Admitted
Student 81	360	Email re: Student, 10/2/19	Admissibility Stipulated
Student 82	361	Prior written notice, 10/3/19	Admissibility Stipulated
Student 83	363	Email re: Draft of data sheet for Student, 10/4/19	Not offered
Student 84	365	Email re: Student's math grade, 10/4/19	Not offered
Student 85	366	Notice and consent for assessment, 9/26/19 (signed 10/4/19)	Admitted
Student 86	368	Email re: Student's absences, 10/6/19	Admissibility Stipulated
Student 87	369	Email re: ?, 10/10/19	Admitted
Student 88	371	Email re: checking in, 10/10/19	Admissibility Stipulated
Student 89	372	Email re: checking in, 10/10 - 11/19	Admissibility Stipulated
Student 90	373	Five-day disclosure of documents provided to parent/guardian for review at an IEP meeting & accompanying teacher reports, 10/14/19	Admissibility Stipulated
Student 91	392	Letter from Parents to ██████████ Middle School (unilateral placement notice), 10/15/19	Admitted
Student 92	394	Letter from ██████████, M.D., 10/16/19	Admissibility Stipulated
Student 93	396	Letter from principal to Parent of Student, 10/17/19	Admitted
Student 94	397	Email re: testing, 10/17/19	Admitted
Student 95	399	Email & teacher reports, 10/21/19	Admissibility Stipulated
Student 96	421	Email re: Testing at ██████ MS today, 10/21/19	Admitted
Student 97	423	Email re: Next book in English 8, 10/21/19	Admitted
Student 98	424	Email re: testing, 10/22/19	Admitted
Student 99	426	School truancy referral, 10/24/19	Admissibility Stipulated
Student 100	471	Email re: new, 10/25/19	Admitted
Student 101	472	IEP, 10/25/19	Admissibility Stipulated
Student 102	512	Email re: testing, 10/29/19	Admitted
Student 103	514	Prior written notice, 10/30/19	Admissibility Stipulated

Student 104	■515	██████ enrollment contract, 10/31/19	Admitted
Student 105	■527	Letter from ██████████ 11/8/19	Admitted
Student 106	■528	Email re: response to reimbursement request, 11/11/19	Admitted
Student 107	■529	Letter from Resolution and Compliance Unit to Parents, 11/8/19	Admissibility Stipulated
Student 108	■531	Letter from principal to Parents, 11/11/19	Admitted
Student 109	■532	Letter from Parents to Resolution and Compliance Unit, 11/14/19	Admitted
Student 110	■535	Note & quarterly reports, 11/14/19	Admissibility Stipulated
Student 111	■538	Email re: follow up, 11/15/19	Admitted
Student 112	■540	Email re: Student truancy matter, 11/19/19	Admitted
Student 113	■545	Notice of IEP meeting, 11/20/19	Admitted
Student 114	■547	Report of school psychologist, 11/22/19	Admissibility Stipulated
Student 115	■558	Email re: response to letter of 11/8/19, 11/24/19	Admitted
Student 116	■559	Educational assessment report, 11/29/19	Admissibility Stipulated
Student 117	■568	Email re: Student, 12/9/19	Admitted
Student 118	■570	Email re: Student, 12/9/19	Admitted
Student 119	■573	Email re: Student, 12/9/19	Admitted
Student 120	■576	Email re: Student, 12/9/19	Admitted
Student 121	■580	School attendance information, 12/9/19	Admitted
Student 122	■581	Report card/school year 2019, 12/9/19	Not offered
Student 123	■582	Annual school performance data summary, 12/9/19	Admitted
Student 124	■583	Email re: IEP meeting, 12/3 - 13/19	Admissibility Stipulated
Student 125	■590	Parent report, 1/4/20	Admitted
Student 126	■591	Email re: parent report for January 8 meeting, 1/4 - 7/20	Admitted
Student 127	■594	Email re: Just in case with attached notice of IEP team meeting, 1/7 - 8/20	Admissibility Stipulated
Student 128	■598	Email re: confirmation, 1/21 - 22/20	Admissibility Stipulated
Student 129	■599	Emotional disability/Specific learning disability evaluation forms, 1/24/20	Admitted
Student 130	■603	IEP, 1/24/20	Admissibility Stipulated
Student 131	■645	Email re: Date for completion of IEP meeting, 1/29 - 30/20	Admissibility Stipulated
Student 132	■647	Prior written notice, 1/30/20	Admissibility Stipulated
Student 133	■650	Continuation of next IEP, 2/24/20	Not Admitted

Student 134	█652	Prior written notice, 1/30/20	Admitted
Student 135	█654	Email re: Invitation 2.24.2020.pdf with attached Notice of IEP team meeting, 1/29/20 - 2/3/20	Admissibility Stipulated
Student 136	█657	School level IEP meeting, undated/reflects meetings on 1/24/20 & 2/24/20	Not offered
Student 137	█662	Email re: IEP meeting, 3/2/20	Admissibility Stipulated
Student 138	█663	Email re: IEP documents, 3/2/20	Admissibility Stipulated
Student 139	█664	Email re: IEP meeting, 3/2 - 11/20	Admissibility Stipulated
Student 140	█667	Email re: invitation & attached invitation letter, 4/20/20	Admissibility Stipulated
Student 141	█670	█ enrollment contract, 4/23/20	Admitted
Student 142	█683	Email re: invitation, 5/18 - 25/20	Admissibility Stipulated
Student 143	█685	Parent report, 5/28/20	Admissibility Stipulated
Student 144	█688	Continuation meeting/Email re: post meeting documents/Five-day verification notice of documents provided after an IEP meeting/Prior written notice/5/28/20 "finalized" IEP, 5/28/20 - 6/3/20 (prior written notice is dated 1/30/20; IEP is dated 1/24/20) – Redacted	Admitted, with the exception of Bates pages 668, 669, and 670
Student 145	█738	Email re: Additional documents, 6/4/20	Admitted
Student 146	█747	Email re: Additional documents (second), 6/4/20	Admitted
Student 147	█749	Email re: IEP documents, 6/4 - 11/20	Admitted
Student 148	█752	Email re: IEP documents, 6/4 - 15/20	Admitted
Student 149	█755	█ daily summaries, School year 2019-20	Admitted
Student 150	█878	Emails between █ & Parents, School year 2019-20	Admitted
Student 151	█1071	Unofficial middle school transcript, Academic year 2019-20	Admitted
Student 152	█1018	Email re: IEP documents, 6/4/20 - 7/17/20	Admitted
Student 153	█1021	Letter to Stacy Reid Swain, Esq., 8/14/20	Admitted
Student 154	█1023	MCPS secondary teacher reports, undated/for 7th grade	Admissibility Stipulated
Student 155	█1038	Teacher reports for quarterly progress, undated	Admissibility Stipulated
Student 156	█1055	█ daily summaries, School year 2020-21	Admitted
Student 157	█1214	Emails between █ & Parents, School year 2020-21	Admitted
Student 158	█1347	█ enrollment contract supplement, 12/18/20	Admitted

Student 159	█1350	█ enrollment contract supplement, 1/12/21	Admitted
Student 160	█1353	█ enrollment contract supplement, 3/25/21	Admitted
Student 161	█1356	Student weekly █ schedules, 2019-20 & 2020-21 school years	Admitted
Student 162	█1359	█ attendance document (Student), 6/28/21	Admissibility Stipulated
Student 163	█1377	█ attendance calendar (Student), 6/28/21	Admissibility Stipulated
Student 164	█1377	█ payment record, 10/1/19 - 6/11/21	Admitted
Student 165	█1383	█ unofficial high school transcript, Academic year 2020-21	Admitted
Student 166	█1384	█ accreditation information & program description, undated	Admitted
Student 167	█1457	█/Rating scale results for Student, 7/12/21	Admitted
Student 168	█1460	█ M.S. resumé, undated	Admitted
Student 169	█1463	█ M.A., resumé, undated	Admitted
Student 170	█1467	█, M.A., services description and training & experience, undated	Not offered
Student 171	█1473	█, Psy.D., curriculum vitae, undated	Admitted
Student 172	█1477	Report, █, undated	Admitted
Student 173	Disc	Audio recording/October 25, 2019 IEP meeting	Admitted
Student 174	Disc	Audio recording/January 24, 2020 IEP meeting	Admitted
Student 175	Disc	Audio recording/February 24, 2020 IEP meeting (2 files)	Admitted
Student 176	Disc	Audio recording/May 28, 2020 IEP meeting	Admitted
Student 177	█1502	Email re: IEP Meeting on October 25, 10/23/19 – Redacted	Admitted
Student 178	█1503	█ payment acknowledgments, 6/17/21 & 6/24/21	Not Admitted
Student 179	█1505	Draft IEP & email forwarding draft, 12/5/19 (IEP) & 1/31/20 (email) – Redacted	Not Admitted
Student 180	█1543	█, M.A. resume, undated	Not offered
Student 181	█1544	Letter from █ MS to Parent of Student & postmarked envelope, 10/17/19	Not Admitted
Student 182	█1546	Letter from Maryland Department of Juvenile Services & postmarked envelope, 11/1/19	Not offered
Student 183	█1548	Memorandum from █, Superintendent of Schools, to Members of the Board of Education, 7/3/19	Admitted
Student 184	█1556	Email & attached letter to MCPS counsel, 10/18/21	Admitted
Student 185	█1559	Email & attached letter from MCPS counsel, 10/22/21	Admitted
Student 186	█1562	█, handwritten notes, various dates	Admitted

Unless noted otherwise, I admitted<sup>2</sup> the following exhibits on behalf of MCPS:

<b>Exhibit No.</b>	<b>Bates No.</b>	<b>Description</b>	<b>Status</b>
		<b>Assessments, Evaluations, and Reports</b>	
MCPS- 1	00001-00009	Educational Assessment Report, ██████████ Examiner, dated 11/29/19	Admissibility Stipulated
MCPS- 2	00010-00020	Psychological Re-Evaluation Report, ██████████, Ed.S., NCSP, dated 11/22/19	Admitted
MCPS- 3	00021-00022	Educational Assessment Report, ██████████, Test Administer, dated 8/7/18	Admissibility Stipulated
MCPS- 4	00023-00027	Psychoeducational Re-Evaluation Report, ██████████ ██████████, Ed.S., NCSP, dated 8/7/18	Admissibility Stipulated
MCPS- 5	00028-00050	Psychoeducational Re-Evaluation Report ██████████ ██████████, Psy.D. 3/19/18 and 3/22/18	Admissibility Stipulated
		<b>IEPs Prepared for Student</b>	
MCPS- 6	00051-00082	IEP, dated 11/02/18	Admitted
MCPS- 7	00083-00118	IEP Amended, dated 12/14/18	Admissibility Stipulated
MCPS- 8	00119-00155	IEP Amended, dated 6/17/19	Admissibility Stipulated
MCPS- 9	00156-00195	IEP, dated 10/25/19	Admissibility Stipulated
MCPS- 10	00196-00237	IEP, dated 1/24/20	Admissibility Stipulated
		<b>Prior Written Notices and Meeting Information Prepared for Student</b>	
MCPS- 11	00238	Prior Written Notice, dated 7/13/18	Admitted
MCPS- 12	00239	Prior Written Notice, dated 9/3/18	Admissibility Stipulated
MCPS- 13	00240	Prior Written Notice, dated 10/24/18	Admitted
MCPS- 14	00241	Prior Written Notice, dated 11/8/18	Admissibility Stipulated
MCPS- 15	00242	Prior Written Notice, dated 12/20/18	Admitted

<sup>2</sup> The parties stipulated to the admissibility of several exhibits. The stipulations are noted.

MCPS-16	00243	Prior Written Notice, dated 6/17/19	Admissibility Stipulated
MCPS-17	00244-00245	Prior Written Notice, dated 10/3/2019	Admissibility Stipulated
MCPS-18	00246-00247	Prior Written Notice, dated 10/30/2019	Admissibility Stipulated
MCPS-19	00248-00250	Prior Written Notice, dated 1/30/20	Admissibility Stipulated
		<b>Five-Day Verification Notice of Documents Provided After IEP Meeting</b>	
MCPS-20	00251	Five-Day Verification Notice, dated 10/26/18	Not offered
MCPS-21	00252	Five-Day Verification Notice, dated 11/8/18	Not offered
MCPS-22	00253	Five-Day Verification Notice, dated 12/7/18	Not offered
MCPS-23	00254	Five-Day Verification Notice, dated 6/17/19	Admissibility Stipulated
MCPS-24	00255	Five-Day Verification Notice, dated 10/14/19	Admissibility Stipulated
MCPS-25	00256	Five-Day Verification Notice, dated 11/1/19	Not offered
		<b>IEP Team Meeting Sign-In Sheet</b>	
MCPS-26	00257	IEP Team Meeting Sign-In Sheet, dated 8/30/18	Admitted
MCPS-27	00258	IEP Team Meeting Sign-In Sheet, dated 11/2/18	Admissibility Stipulated
MCPS-28	00259	IEP Team Meeting Sign-In Sheet, dated 12/14/18	Admitted
MCPS-29	00260	IEP Team Meeting Sign-In Sheet, dated 6/17/19	Admissibility Stipulated
MCPS-30	00261	IEP Team Meeting Sign-In Sheet, dated 9/26/19	Admitted
MCPS-31	00262	IEP Team Meeting Sign-In Sheet, dated 10/25/19	Admitted
		<b>IEP Notes</b>	
MCPS-32	00263-00264	IEP Notes, dated 12/12/19	Not offered
	00265-00271	IEP Notes, dated 1/24/20, continued 2/24/20	



	00272-00273	IEP Notes, dated 5/28/20	
		<b>Parent Reports and Letters</b>	
MCPS-33	00274	Parent Report, dated 3/4/19	Admissibility Stipulated
MCPS-34	00275-00276	Parent Letter, dated 9/27/19	Admissibility Stipulated
MCPS-35	00277-00279	Parent Report, dated 5/28/20	Admissibility Stipulated
		<b>MAP Scores</b>	
MCPS-36	00280	MAP Scores, Fall 2019-2020	Admitted
		<b>Attendance Contract</b>	
MCPS-37	00281	Attendance Contract - ██████████ Middle School	Admissibility Stipulated
		<b>School Truancy</b>	
MCPS-38	00282-00284	School Truancy Referral, dated 10/24/19	Admissibility Stipulated
		<b>Transition Interview</b>	
MCPS-39	00285-00287	Transition Interview, dated 10/26/18	Admitted
		<b>Progress Reports</b>	
MCPS-40	00288-00308	Progress Report on IEP Goals, dated 6/14/19	Admissibility Stipulated
	00309-00311	Progress Report on IEP Goals, dated 4/16/19	
		<b>Teacher Reports</b>	
MCPS-41	00312-00315	Teacher Report for Quarterly Progress, dated 1/15/19	Admissibility Stipulated
	00316-00325	Teacher Report for Quarterly Progress, dated 1/18/19	
	00326-00331	Teacher Report for Quarterly Progress, dated 1/23/19	
	00332-00337	Teacher Report for Quarterly Progress, dated 3/28/19	
	00338-00351	Teacher Report for Quarterly Progress, dated 3/29/19	
	00352-00353	Teacher Report for Quarterly Progress, dated 4/1/19	
	00354-00359	Teacher Report for Quarterly Progress, dated 4/2/19	

	00360-00361	Teacher Report for Quarterly Progress, Art	
	00362-00367	Teacher Report for Quarterly Progress, IM/Related Math	
	00368-00370	Secondary Teacher Report, 7th Grade, Digital Literacy 2	
	00371-00373	Secondary Teacher Report, 7th Grade, IM/Related Math	
	00374-00379	Secondary Teacher Report, 7th Grade, Science	
	00380-00385	Secondary Teacher Report, 7th Grade, Advanced English	
	00386-00388	Secondary Teacher Report, 7th Grade, Studio Art 2	
	00389-00391	Secondary Teacher Report, 7th Grade, PE	
	00392-00394	Secondary Teacher Report, 7th Grade, Advanced World Studies	
	00395-00397	Secondary Teacher Report, 7th Grade, Investigations into Mathematics	
	00398-00400	Secondary Teacher Report, 7th Grade, Digital Literacy	
	00401-00403	Secondary Teacher Report, 8th Grade, Math	
	00404-00406	Secondary Teacher Report, 8th Grade, Advanced English	
	00407-00409	Secondary Teacher Report, 8th Grade, Advanced US History	
	00410-00412	Secondary Teacher Report, 8th Grade, Investigations in Science	
	00413-00415	Secondary Teacher Report, 8th Grade, Resource	
	00416-00418	Secondary Teacher Report, 8th Grade, PE	
	00419-00421	Secondary Teacher Report, 8th Grade, Digital Literacy 3	
		<b>Private Physician</b>	
MCPS-42	00422-00425	██████████, MD, LLC	Admissibility Stipulated

		<b>████████ Attendance</b>	
MCPS-43	00426-00429	Attendance Calendar	Admissibility Stipulated
MCPS-44	00430-00447	Attendance Document	Admissibility Stipulated
MCPS-45	00448-00449	Weekly Schedule	Not offered
		<b>MCPS Policy</b>	
MCPS-46	00450-00457	Regulation JEA-RA, Student Attendance	Admitted
		<b>MCPS Communication Log</b>	
MCPS-47	00458-00499	9/4/18 - 8/16/21	Admitted
		<b>MCPS Emails</b>	
MCPS-48	00500-00554	2/2/20 - 1/17/19	Admitted
		<b>████████ Emails</b>	
MCPS-49	00555-00702	5/25/21 - 11/25/19	Admitted
		<b>████████ Correspondence</b>	
MCPS-50	00703-00704	████████ Letter, dated 11/8/19	Admissibility Stipulated
		<b>MCPS Expert Witnesses' Resumes</b>	
MCPS-51	00705-00706	████████, M.A., Ed.S., NCSP, School Psychologist, MCPS	Admitted
MCPS-52	00707-00708	████████, Special Education Teacher, ██████ ████████ Middle School, MCPS	Admitted
MCPS-53	00709-00710	████████, Assistant Principal, ██████ ████████ Middle School, MCPS	Admitted
MCPS-54	00711-00713	████████, Assistant Principal, ██████ Middle School, MCPS	Admitted
MCPS-55	00714-00715	████████, School Counselor, ██████ Middle School, MCPS	Admitted
MCPS-56	00716-00718	████████, Reading Teacher, ██████ Middle School, MCPS	Admitted
MCPS-57	00719-00721	████████, LCSW-C, Pupil Personnel Worker, Office of Student and Family Support and Engagement, MCPS	Admitted

MCPS-58	00722	██████████, Itinerant Resource Teacher, Office of Teaching, Learning and Schools, MCPS	Admitted
MCPS-59	00723-00724	██████████, Instructional Specialist, ██████████ ██████████, Montgomery County Public Schools	Admitted