

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ANN C. KEHINDE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

CASE No.: MSDE-MONT-OT-21-11482

**DECISION**

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

**SUMMARY**

The Parents proved Montgomery County Public Schools (MCPS) failed to provide their son with a Free, Appropriate Public Education (FAPE) for multiple school years and, as a result, MCPS shall reimburse the Parents for the tuition and other expenses they paid for their son to attend the ██████████, a nonpublic special education school for the 2020-21 school year, and it shall place and pay for the Student to attend the same nonpublic school for the 2021-22 school year.

**STATEMENT OF THE CASE**

On May 19, 2021, Mark Martin, Esquire, on behalf of ██████████ and ██████████ (Parents), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) on behalf of ██████████ (Student). The Parents also requested mediation. On June 8, 2021, the MCPS) informed the OAH that it declined to participate in mediation in this case. On June 9, 2021, the parties advised the OAH that they agreed to waive holding a resolution session.

On June 11, 2021, I convened a telephone pre-hearing conference (TPHC) in the above-captioned matter. Mr. Martin represented the Parents. William Fields, Esquire, represented the MCPS. On June 21, 2021, I issued a Pre-Hearing Report and Scheduling Order. The Parents framed the issues for the hearing as: MCPS failed to provide their son with a free appropriate public education (FAPE for the 2018-19, 2019-20,<sup>1</sup> and 2020-21 school years.<sup>2</sup> As a result of MCPS' failure to provide FAPE, the Parents requested the following relief: Place the Student at the [REDACTED] ([REDACTED]) for the 2020-21 school year; reimburse the Parents for tuition and related costs incurred for that placement; and, provide compensatory education services including but not limited to placement at the [REDACTED] for the 2021-22 school year.

As part of the TPHC, MCPS noted that it intended to file a Motion to Dismiss on any claims that occurred prior to May 19, 2019, and it further intended to request to strike the Parents' claim for reimbursement for the upcoming 2021-22 school year. Counsel for MCPS timely filed a Motion of the Montgomery County Public Schools to Dismiss or, in the Alternative, to Strike Evidence or Demands for Relief Relating to Events Occurring Prior to May 18, 2019, as well as Reimbursement of the 2021-22 School Year (Motion) on behalf of the MCPS. Counsel for the Parents timely filed an Opposition to MCPS Motion to Dismiss (Opposition).

On July 23, 2021, I issued a Ruling on the Motion holding that the Student may not present evidence preceding May 18, 2019, for proving a denial of FAPE. 20 U.S.C.A.

§ 1415(f)(3)(C), (D) (2017); *see also* Md. Code Ann., Educ. § 8-413(d)(3) (2018); COMAR

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<sup>1</sup> Parents' Counsel acknowledged the two-year statute of limitations but noted that some flexibility should be afforded in presenting the necessary background of the Student's educational history in the MCPS.

<sup>2</sup> Specifically, the Parents alleged that the MCPS refused to conduct an assistive technology assessment of the Student, refused to increase speech and language services, inappropriately increased his time within a general education classroom despite his lack of progress on goals, did not provide measurable data to support reports of progress, did not conduct a functional behavioral assessment (FBA) or develop a behavior intervention plan (BIP), refused to collect data as to how much the Student ate at lunch, refused to have the Student's one to one aide fill out the communication log, and provided an inadequate and inappropriate distance learning plan due to the COVID-19 pandemic.

28.02.01.12C. I further ruled that if a denial of FAPE is shown, the parties may present evidence they deem necessary that goes to the equitable considerations in making the Student “whole.”

*G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 625 (3d Cir. 2015).

Unless an extension is requested by the parties, the due process hearing must be held and a decision issued within forty-five days of June 9, 2021, the triggering event for the timeframe for a due process decision, which is July 24, 2021. 34 Code of Federal Regulations (C.F.R.) § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2014). The parties explained that, due to hearings that the attorneys already have scheduled, they were unable to schedule the hearing before the following dates: July 30, and August 3, 4, 5, 6 and 18, 19, 2021. Therefore, the parties requested an extension of the timeframe for holding a hearing and issuing the decision, which I granted. The parties subsequently requested additional time as they did not believe we would finish within the days initially scheduled. The parties agreed to hold the hearing on the afternoons of September 1 and 3, 2021. We concluded the hearing on the afternoon of September 1, 2021, and therefore the parties agreed that the decision in this matter was due thirty days from the close of the record: October 1, 2021.

### **ISSUES**

1. Did MCPS fail to provide the Student with a FAPE during the 2019-20 and 2020-21 school years by:
  - a. Failing to provide measurable data to support reports of progress;
  - b. Failing to conduct a Functional Behavioral Assessment (FBA) or develop a Behavior Intervention Plan (BIP);
  - c. Inappropriately increasing the Student’s time within the third-grade general education classroom despite his lack of progress on goals in his IEP;
  - d. Refusing to collect data as to how much the Student ate at lunchtime;

- e. Refusing to have the paraeducator<sup>3</sup> fill out the communication log; and,
  - f. Providing an inadequate and inappropriate distance learning plan due to the COVID-19 pandemic.
2. If so, what relief should be granted to the Student?

### **SUMMARY OF THE EVIDENCE**

The Parents identified 70 documents as possible exhibits; 51 were admitted into evidence. A list of the Parents' exhibits is attached to this Decision.

The MCPS identified 35 documents as possible exhibits; 30 were admitted into evidence. A list of the MCPS' exhibits is attached to this Decision.

The following witnesses testified on behalf of the Parents:

1. [REDACTED], M.Ed., BCBA, LBA,<sup>4</sup> who was accepted as an expert in the areas of Autism, Special Education and as an Applied Behavioral Analyst (ABA).<sup>5</sup>
2. [REDACTED], M.Ed., Ph.D., who was accepted as an expert in the areas of Psychology, Psychological Evaluation and Special Education; further, in each of the three areas, it was stipulated that Dr. [REDACTED]' focus was on complex students with learning challenges and autism.
3. [REDACTED], Parent.
4. [REDACTED], Md. Ed., BCBA, LBA, who was accepted as an expert in Special Education and ABA.
5. [REDACTED], M.Ed., who was accepted as an expert in Special Education.

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<sup>3</sup> Although the Parent referred to the paraeducator as a "one-to-one aide," the MCPS title for this person is a paraeducator and as this is the title used by the witnesses, I will refer to this person as the paraeducator as well.

<sup>4</sup> Licensed Behavioral Analyst by the Maryland Department of Health (formerly the Department of Health and Mental Hygiene).

<sup>5</sup> Ms. [REDACTED] was recalled by the Parents as their only witness on rebuttal.

The following witnesses testified on behalf of the MCPS:

1. [REDACTED], M.S., OTR/L, who was accepted as an expert in Occupational Therapy (OT).
2. [REDACTED], M.S., who was accepted as an expert in Special Education.
3. [REDACTED], M.S., [REDACTED] Coordinator, [REDACTED], MCPS, who was accepted as an expert in Special Education.
4. [REDACTED], M.S., who was accepted as an expert in Special Education.
5. [REDACTED], M.A., CCC-SLP, who was accepted as an expert in Speech-Language Pathology.

### **FINDINGS OF FACT**

I find the following by a preponderance of the evidence:

#### **Student's Background:**

1. At the time of the hearing, the Student was ten years old and had just completed the fourth grade.
2. The Student was first diagnosed by the [REDACTED] ([REDACTED]) Preschool Development Clinic with Autism Spectrum Disorder and Encephalopathy when he was almost three years of age.
3. The Student began receiving services from MCPS in the Montgomery County Infants and Toddlers Program in [REDACTED] 2013. In February of 2014, the Student transitioned from services delivered in his home to a site-based setting. The Student initially attended a Preschool Education Program (PEP) but was transitioned to a Comprehensive Autism Preschool Program (CAPP) to receive more intensive services due to his lack of attention and distractibility. The CAPP included one-to-one Applied Behavioral Analysis (ABA)

services. The Student met all of his pre-academic skill milestones within or ahead of age expectations.

4. In the 2016-17 school year, the Student attended kindergarten at his home school (i.e. the school he would attend if not disabled) in Montgomery County: [REDACTED] Elementary ([REDACTED]). He received speech and language services, occupational therapy (OT) and was assigned a paraeducator to assist him with transitions. The Student received Extended School Year (ESY) the summer after kindergarten.
5. For the 2017-18 school year, the Student attended first grade at [REDACTED]. At [REDACTED], the Student was in general education classrooms with two hours per day of special education services. He also received speech and language as well as OT services two to three times per week.
6. At [REDACTED] the Student's aberrant behavior in the form of tantrums escalated both at home and in school. He would scream, cry, kick, push people away from him, and take off his shoes and clothes. The IEP team agreed that the Student needed more intensive support.
7. During the summer after first grade, the Student's tantrums escalated to throwing himself on the ground and running away.
8. For the 2018-19 school year, the Student attended second grade at [REDACTED] Elementary School ([REDACTED]). The Student was placed in the [REDACTED] which is a self-contained program taught by an experienced special education teacher, Ms. [REDACTED]. Ms. [REDACTED] was assisted by a paraeducator who has worked with her for approximately twenty years. The twelve students in the class had a variety of disabilities including autism, learning disabilities, other health impairments, speech and language impairments, and intellectual disabilities. The Student attended all of his classes in the

self-contained classroom except for lunch and recess. The Student was assigned a 1:1 paraeducator, Ms. [REDACTED], who had been his paraeducator at [REDACTED]

9. For the 2019-20 school year, the Student was in the third grade at [REDACTED] in the [REDACTED]. His special education teacher was also an experienced teacher, Ms. [REDACTED]. There were twelve students in the class and one paraeducator. In addition, the Student's IEP provided for a 1:1 paraeducator to be with the Student for four hours per day. The Student attended general education classes in music, art, and physical education (commonly referred to by the witnesses as "specials"). He also went to lunch and recess with general education students.
10. The [REDACTED] staff formally meet on a monthly basis but informally talk more frequently.
11. In mid-March 2020, in-person instruction stopped in MCPS due to the COVID-19 pandemic. In April 2020, MCPS developed an individualized distance learning special education plan in collaboration with the Student's Parents.<sup>6</sup>
12. On May 5, 2020, the Parents provided MCPS with notice that they were placing the Student in the [REDACTED] ([REDACTED]).
13. For the 2020-21 school year, the Student was in the fourth grade at the [REDACTED]. From September 2021 to February 2021, the Student remotely attended [REDACTED] and after February 1, 2021, the Student began attending [REDACTED] one day per week in-person. The Student's attendance increased until in May 2020, he was attending in-person four days per week.

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<sup>6</sup> Specifically, on April 7, 2020, the Parent and Speech-Language Pathologist met remotely and agreed that the Student would have two sessions with the Speech-Language Pathologist per week to target expressive and pragmatic language skills. On April 8, 2020, [REDACTED] proposed that the Student would have access to three math sessions per week and two reading sessions per week as well as a weekly online classroom meeting. The Student would also have access to online teacher office hours.

Services provided by the Student's family:

14. Starting when the Student was in kindergarten, the Parents supplemented services as recommended by [REDACTED] or their pediatrician. In March 2016, the Student began attending private speech therapy and OT services (one hour each per week).
15. In May of 2018, towards the end of the Student's first grade year, he was evaluated by [REDACTED], BCBA<sup>7</sup>, LBA, Clinical Director, [REDACTED]. The Student began ABA sessions at [REDACTED] but it was challenging to get the Student into the clinic. With the exception of therapy appointments, the Student's Parents rarely took him out of the house because his tantrums were so extreme. The Student's tantrums included loud, sustained, ear-piercing screams, and sometimes he would drop to the ground or kick off his shoes and remove his clothing.
16. In the summer or fall of 2018, Ms. [REDACTED] began working with the Student in his home an average of three times per week, from four to five hours per week. When Ms. [REDACTED] switched to working with the Student virtually during the pandemic, she was working with him six to seven days per week for much shorter sessions. During the 2020-21 school year, Ms. [REDACTED] worked with the Student three to four days per week and during the summer of 2021, Ms. [REDACTED] worked with the Student three days per week.
17. In addition to the initial evaluation by [REDACTED], on October 18, 2019, the Student received neuropsychological testing and re-evaluation at [REDACTED]
18. In September 2019, October 30, 2019, and January 22, 2020, the Student was evaluated by a neurologist, [REDACTED], M.D. The Student's overnight electroencephalogram (EEG) conducted at [REDACTED] was abnormal.

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<sup>7</sup> Board Certified Behavioral Analyst (BCBA).



19. In the fall of 2019, [REDACTED], M.Ed, began working with the family. She reviewed records, observed the Student in his school setting, and attended IEP meetings.
20. Between November 2019 and February of 2020, [REDACTED], Ph.D., observed the Student at home playing with his sister, eating dinner with his family, receiving ABA sessions with Ms. [REDACTED] and in his third-grade class at [REDACTED]. She conducted psychological testing of the Student.

Autism: Impairments in Functional Communication and Social Interactions:

21. A diagnosis of autism is based on impairments in functional communication and social interactions.
22. An improvement in functional communication skills is a prerequisite to an improvement in reducing negative behaviors.
23. In the spring/summer of 2018, the Student had very significant functional communication delays. He often used one-word utterances that were not typical of what one would expect of a six-year-old child. The words the Student did use were advanced for a six-year-old child. For example, he knew the color, “cyan,” and would ask for that color crayon if it was withheld from him.
24. In February 2020, the Student’s deficits in communication were severely discrepant from his cognitive ability. In other words, despite the Student having average cognitive abilities, his communication skills were more like those of a student with an intellectual disability.
25. Manding is the task of requesting items or one’s basic wants and needs. Although manding was a relative strength for the Student, when the Student was in first grade, this aspect of his functional communication was the equivalent of an eighteen-month to thirty-month-old child.

26. Tacting is the ability to label things. When the Student was six years old, he was able to draw maps of the continents and all of the animals that lived on those continents in detail and clarity. However, if the Student was asked to say the name of an animal that lives in Egypt, he would answer, "Africa."
27. The Student needed to be given a visual stimulus in order to respond to a verbal stimulus. If an adult pointed to Egypt on the map the Student had just drawn (a visual stimulus) and ask him, "what animal lives there?" (a verbal stimulus) the Student was able to answer.
28. If the Student was asked to write his name and a pen is visible, he was able to say, "I want a pen, please." If the pen was not visible, he had great difficulty asking for a pen.
29. "Echolalia" is when a student repeats what is said to them.
30. The Student exhibited echolalia and also "delayed echolalia" because he would sometimes wait three or four seconds and then repeat back what was said to him. Sometimes, the Student would repeat back what was said to him later in the conversation.
31. Echolalia is sometimes also referred to as "scripting." It is using a formulaic response, but it is not spontaneous language. For example, learning to say the formula, "I want \_\_\_\_\_, please," is a scripting response to make a request.
32. Verbal prompts can be direct or indirect. An example of a direct prompt is telling a student to put his shoes, backpack, and coat away when he comes home. An indirect prompt is asking a child, "what do we do when we get home?"
33. The Student mostly responded to direct, but not indirect, prompts.
34. Prompt dependence is when a student is given a direction, but does not respond, and is given a direction again. The student in that situation learns that he does not have to attend to everything that is said to him because it will be repeated or more specific directions will be given.

35. Interfering behaviors occur for four reasons: escape; attention; to obtain something tangible; and sensory (e.g., rocking, wiggling fingers, the stereotypical behaviors often associated with autism).
36. Anything that happens before a behavior is an “antecedent.” Visual cues, schedules, verbal directions, and the language that is used before a behavior are all examples of “antecedents.”
37. Anything that happens after a behavior is a “consequence.” When behaviors are reinforced, completely ignored, punished, or reduced<sup>8</sup>, those are all examples of “consequences.”
38. Collecting ABC data means collecting data on what happened prior to the interfering behavior (the **a**ntecedent), the **b**ehavior itself, and the **c**onsequences of the behavior.
39. It is important to determine the intensity, the duration, and the frequency of a particular undesirable behavior.
40. Intensity of a behavior such as screaming can be difficult to quantify. Providers must agree on an operational definition that includes a good description of what the screaming is, as well as what the screaming is not, so that all providers will be quantifying the screaming in the same way as much as possible.
41. Duration of a behavior must be measured. If a behavior is dangerous (such as a self-injurious behavior) it should be measure very closely with a stopwatch. If the behavior is not dangerous (such as tantruming), looking at a clock and noting the start and stop times is sufficient.
42. If the intensity of an undesired behavior, such as screaming, is reduced, there is a tendency for providers to underestimate its frequency and duration.

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<sup>8</sup> Punishment in this context does not necessarily mean that it is aversive or punitive. If a behavior is reduced, it can be assumed that punishment existed and resulted in the behavior being reduced.

The Student's Second Grade Year (2018-19) at [REDACTED]

43. At the end of first grade, the Student was evaluated by Ms. [REDACTED] a licensed Behavioral Analyst. During a sixty-minute ABC observation period, in which the Student was observed during play and performing tabletop tasks, the Student had seven instances of tantrums with a duration between thirty seconds and two minutes. The purpose of the ABC observation was to determine the definition of target behaviors, setting events, antecedents, and consequences of the Student's behavior. An analysis of the data revealed the Student cried or tantrummed in order to request a desired item, request to stop an activity, or to request attention.
44. During the summer between first and second grade, the Student attended Extended School Year (ESY) through MCPS at [REDACTED]. The Student's ESY class was a large, self-contained special education class with fifteen to sixteen students. The Student exhibited the same interfering behaviors at [REDACTED] that he exhibited at home: screaming, dropping to the ground and difficulty with transitions.
45. Ms. [REDACTED] observed the Student in ESY at [REDACTED] and at home and collected ABC data. The Student did not verbally communicate during Ms. [REDACTED]'s observation. The Student did not look at his peers unless he was specifically directed to look at a peer. Ms. [REDACTED] analyzed the Student's data for the antecedent behavior as well as the consequences of his behavior. The Student's behaviors of dropping to the yelling, screaming and dropping to the ground were related to his wish to escape a demand.
46. When the Student entered the second grade at [REDACTED], Ms. [REDACTED], his classroom teacher, implemented the IEP that was written at [REDACTED]. Ms. [REDACTED] continued to

work on the goals from the Student's first-grade IEP because the Student had not mastered any of those goals.

47. When the Student entered the second-grade class at [REDACTED], the Student had frequent "meltdowns," described by his teacher as screaming "wah, wah, ah," grabbing on to nearby adults, and kicking off his shoes.
48. In second grade, Ms. [REDACTED] used a black marbled composition book which she sent home with the Student to communicate with the Parents. The Parents were initially interested in four areas, including how the Student was eating. Ms. [REDACTED] made a short checklist chart that she pasted into the back of the composition book to communicate to the Parents how the Student did in those four areas.<sup>9</sup> Ms. [REDACTED] also made a laminated page that she placed in the Student's homework folder. Ms. [REDACTED] used a dry erase marker and checked the box each day as to whether the Student had a "great day," "okay day," or a "try again day."
49. Ms. [REDACTED] also used a data notebook for each student which contained a section for reading, writing and math. The math section had a copy of the weekly quizzes. In the reading section, there was mClass<sup>10</sup> data, work samples, and questions for comprehension that they were working on. In the writing section, there were writing samples and the weekly spelling quizzes.
50. In the fall of 2018, the classroom teacher began using a process to characterize the Student's day. The Student was characterized as having a "great day," which was defined as "less than two minutes of crying during each occurrence and that the Student was able to get back on task." An "okay day," was defined as "having difficulty for part

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<sup>9</sup> Ms. [REDACTED] was unable to recall the other three areas that the Parents were interested in receiving information, but one may have been whether the Student initiated any interactions with peers. MCPS did not offer the communication journal, the homework folder, or data notebook into evidence.

<sup>10</sup> mClass was the standardized achievement tests used in MCPS during the Student's second grade year.

of the day.” A “try again tomorrow days” was defined as “having meltdowns throughout the day.”

51. Between October 8, 2018 and November 12, 2018, the Student had twelve “great days,” eight “okay days,” and four “try again tomorrow days.”
52. The information reported by the staff regarding “great days,” “okay days,” and “try again tomorrow days,” does not give any information as to trends. It did not report if the Student was experiencing an upward, or positive trend (e.g. all of the “great days” were at the end of the time period) or if the Student was experiencing a downward, negative trend (e.g. all four of the “try again tomorrow days occurred at the end of the reporting period).
53. On November 20, 2018, an IEP team meeting was held. The classroom teacher proposed re-writing and adding some goals.
54. The second goal was “[g]iven a sensory diet, token economy, direct adult support, and social stories, [the Student] will increase self-control for participation in a group.”
55. There were four objectives listed for this goal: (1) [The Student will attempt tasks without resisting by yelling. (2) [The Student] will ask for help without touching others. (3) [The Student] will comply with adult requests. (4) [The Student] will participate in cooperative group activities by taking turns with minimal prompting.” (Parents’ Ex. 16). The goal noted that it would be evaluated by observation and recorded. The goal would be achieved if the Student was able to demonstrate it for twelve consecutive school days.
  - a. The goal does not provide any information as to what the Student’s level of self-control for participation was at the beginning of the goal.
  - b. The goal does not provide any objective measure of group participation (e.g., initiate a task within two minutes, have three turn-taking exchanges, etc.).
  - c. By June 14, 2019, Ms. [REDACTED] reported the goal was achieved. No data was reported in the IEP to support the narrative statement.

56. A Functional Behavioral Analysis (FBA) is conducted for the purpose of determining why a student is engaging in a particular behavior or behaviors that are interfering with his ability to access education. The process of conducting an FBA involves collecting data, and measuring and analyzing what is already occurring with the student in his environment. It is not manipulating anything in the environment; it is not an intervention.
57. On November 20, 2018, an IEP team meeting was held. The IEP team agreed the Student was properly coded as having Autism. The Student's autism affects his ability in the areas of communication, self-help, sensory, social interactions, listening and reading comprehension, problem solving and written language.
58. The Parents requested that MCPS conduct an FBA for the Student. Ms. [REDACTED] stated that the Student was not a danger to himself or others and therefore an FBA was not warranted. After further discussion, the [REDACTED] Coordinator prepared an Authorization for Assessment for an FBA, which the Parent signed on November 20, 2018.<sup>11</sup>
59. MCPS noted that between November 5, 2018 and December 11, 2018, the Student had eleven "great days," seven "okay days," and one "try again tomorrow days." No analysis of the data was done or reported and there is no information as to whether the Student was experiencing a positive or negative trend. The reporting period during which staff noted the "great days," "okay days," and "try again tomorrow days" overlapped with the time period in which data was also collected on some of these days. There were more than 19 school days between November 5, 2018 and December 11, 2018, but there was no accounting by MCPS as to what happened on the dates that were not reported.

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<sup>11</sup> The form entitled, "Authorization for Assessment" does not contain the Student's name at the top but rather that of the [REDACTED] Coordinator, Ms. [REDACTED]. However, this is clearly a clerical error, and the form was for the Student as it contains the names of his Parents, his address and his second grade teacher. Furthermore, the form notes that the "type of assessment being authorized" is an FBA and will be used to "develop instructional/program recommendations." (MCPS Ex. 3).

60. The Student began second grade with a relative strength in phonics and decoding but comprehension was extremely challenging for the Student.
61. In the November 20, 2018 IEP meeting, the classroom teacher wrote a goal regarding reading fluency: “Given a model response, immediate feedback, direct support, and a repeated reading, [the Student] will read with sufficient accuracy and fluency to support comprehension.”
62. There were three objectives listed to support this goal: (1) Read on-level sight words/high frequency words in isolation and in context with automaticity. (2) Use punctuation as cues to appropriate expression. (3) Listen to Interactive Read Alouds of steadily increasing complexity (informational and literary, across all structures and genres of text, representing a wide variety of cultures) in order to observe models of fluent reading and apply skills to their [sic] reading.” (MCPS Ex. 9). The goal noted that it would be evaluated by observation and recorded in four out of five trials.
- a. The goal does not provide any measurement as to what was the Student’s reading rate at the beginning of this goal (e.g., words per minute he was reading).
  - b. Ms. ██████ testified that the purpose of the goal was to measure how many words the Student was omitting when he read (because he read too fast) and whether he was reading with expression. The goal and objectives do not mention omission of words and do not explain that prosody was being measured or how it would be measured.
  - c. The third objective in not stated in a measurable way.
  - d. In the progress reported on this goal for the three quarters of second grade, there is no report that states whether the Student was able to achieve the three objectives in four out of five trials or how close he was to achieving the objective (e.g., he was able to complete two out of five trials or three out of five trials).
  - e. On June 14, 2019, the progress report was marked as “making sufficient progress to meet this goal” but does not provide any objective measurements.
63. In second grade, the Student had ninety minutes of reading every day. The reading block was broken down into three parts: Ms. ██████ taught the comprehension subpart; Ms.



██████████ (paraeducator) taught the phonics subpart; and, for the third part, the students were expected to work independently at their desks.

64. On February 25, 2019, an IEP team meeting was held. Ms. ██████████ told the Parents and the Parents' team that they were not going to collect data on the Student's behaviors because they believed the Student's behaviors had reduced and that they were not an ABA program. Ms. ██████████ asked how the ██████████ staff knew the behaviors had reduced and Ms. ██████████ answered that "Ms. ██████████ can see it." MCPS refused to conduct an FBA. The school team stated that it refused to conduct the FBA "based on current data from service providers." No data was presented from service providers. No data on "good days," "okay days," or "try again tomorrow days" was reported from December 12, 2018 to February 25, 2019.
65. Prior to February 25, 2019, no one from MCPS told the Parents or private service providers that the IEP team had decided not to conduct an FBA.
66. The Parents did not see a reduction in interfering behaviors at home between the November 2019 and the February 2019 IEP meetings but they deferred to the school personnel.
67. During the February 25, 2019 IEP meeting, MCPS reported that the Student continued to have difficulty with changes to the Student's schedule or routine.
68. On June 14, 2019, the Speech Language Pathologist, Ms. ██████████, noted that during the fourth quarter the Student "was regressed to crying, yelling, shouting when engaged in transitions from classroom to speech therapy." (Parents' Ex. 16). Ms. ██████████ and the Speech Language Pathologist figured out that the Student wanted to finish his math warm-up<sup>12</sup> before leaving for speech and language therapy. After they allowed the

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<sup>12</sup> The math warm-up was a 100s or 120s chart in which the students wrote their numbers to 120, and used it to count by twos, fives, tens, etc.

Student to finish his chart before leaving for speech and language therapy, the crying, yelling, and shouting behavior decreased.

69. By June 2019, the Student did not make any meaningful progress in his functional communication skills.

70. By June 2019, the Student was not making meaningful progress in increasing his independence and decreasing the amount of prompting needed.

71. Prior to June of 2019, the Student was able to initiate routine tasks at home; e.g., brushing his teeth, getting up and getting dressed in the morning. In June of 2019, the Student was not initiating tasks at home that he previously did. At times, he would stand in the hallway at home and stop moving until someone gave him a direction to continue.

The Student's Third Grade Year (2019-20) at [REDACTED]:

72. During the summer of 2019, the Student lost weight; his pediatrician advised his Parents to have him drink whole milk and Pediasure. During the fall of 2019, the Parents noted that the Student's lunch came back full or almost completely full every day. The Parents enquired whether MCPS could try requiring the Student to take two or five bites of something or a sip before he could move on to the next activity in the classroom. Ms. [REDACTED] told the Parents they would need medical documentation for this and there was no educational impact to the Student if he did not get enough calories.

73. In September of 2019, the Student was still having tantrums but neither Ms. [REDACTED] nor Ms. [REDACTED] gave the Parents or private providers any information as to the duration or intensity of the tantrums. The Parents were given some information as to the frequency because Ms. [REDACTED] used the same system as the previous year (the "great days," "okay days," and the "try again tomorrow days").

74. MCPS did not conduct any analysis of the data provided by the "great days," etc., system.

75. On October 16, 2019, an IEP meeting was held to revise the Student's IEP. The proposed IEP for the period of October 19, 2019 through October 13, 2020, provided that the Student would be in the general education environment for twenty-seven percent of the day, or eight hours and forty-five minutes per week.
76. All of the students in the [REDACTED] at [REDACTED] go to "specials" with general education students when they are in the third grade.
77. The IEP provided for the Student to receive 45 minutes of speech and language therapy per week. The IEP provided for the Student to receive 30 minutes of OT per week.
78. The speech and language therapy and OT therapy were provided to the Student in a pull-out model, meaning that the services were provided outside of the classroom. [REDACTED] has a policy that students are not removed from "specials" for therapy, which means that the Student was taken out of core academic classes in order to receive speech and language therapy and OT therapy.
79. During the October 16, 2019 IEP meeting, the Parents requested more speech and language therapy per week because by the end of the Student's second grade year he had not made sufficient progress to achieve his speech and language goals. The IEP team denied the request because the Speech Language Pathologist did not want the Student to miss more of his core academic classes.
80. The Parents were concerned that the Student was becoming more prompt dependent and asked that more visual cues to support self-regulation and a timer be added, which the IEP team agreed to do.
81. In October 2019, MCPS noted that the Student had replaced some of his tantruming with saying, "no thank you." MCPS did not provide any data of their anecdotal observations.

82. MCPS agreed to collect data for a few weeks although they did not believe it was necessary.
83. MCPS reported the Student had twenty-eight tantrums and four occasions of saying “no thank you,” between October 21 to November 13, 2019. On November 13, 2019, the Student had twenty-two tantrums in three different settings or situations: drinking a juice box; computer class; and, in reading.
84. On October 18, 2019, the Student was re-evaluated at [REDACTED] by [REDACTED] Ph.D., Clinical Neuropsychologist. As part of her re-evaluation, Dr. [REDACTED] received rating scales from Ms. [REDACTED] the Student’s Special Education Teacher, and [REDACTED], the Student’s 1:1 paraeducator.
- a. Ms. [REDACTED] rated the Student’s social skills in the classroom as “very problematic,” and Ms. [REDACTED] expressed “extreme problems” with the Student’s relationships with other children and his relationships with teachers.
  - b. Ms. [REDACTED] rated the Student’s single word reading and reading fluency skills to be average and his reading comprehension, math calculation, and written expression skills to be very problematic.
  - c. Ms. [REDACTED] noted that the Student “requires significant prompts to engage/participate in class discussions, activities and to attend to the speaker/materials during instruction.”
  - d. Ms. [REDACTED] noted that the Student “tantrums, cries or protests when given a rule or request that he does not want to comply with” and that “he is easily frustrated as noted by yelling, tantruming or crying when he needs to transition from task to task, or has to engage in a non-preferred activity.” (Parents’ Ex. 21).
85. Dr. [REDACTED] recommended that an FBA be conducted for the Student. Dr. [REDACTED] also recommended that the behavior plan be consistent across home and school settings so that expectations and consequences are similar.
86. Dr. [REDACTED] recommended that it was critical to promote the Student’s independence by having the paraeducator focus on helping the Student to self-initiate and utilize skills and that the way to do this was to use an empirical approach. An empirical approach would

involve training the paraeducator to collect data to assess the effectiveness of different intervention strategies.

87. On November 13, 2019, the Student's physical education teacher noted that the Student had difficulty focusing on the activity and staying on task. He further noted that with one-on-one instruction, the Student tended to stay on task if he enjoyed the activity. He further noted that it was "satisfactory" that the Student refrained from socializing.

88. From November 2019 through February 2020, Dr. [REDACTED] evaluated the Student. Dr. [REDACTED] observed the Student in school for approximately one and one-half hours. Dr. [REDACTED] also observed the Student in his home and during therapy sessions with Ms. [REDACTED] that took place in the Student's home. Dr. [REDACTED] reviewed prior testing and the Student's records, spoke with his teachers, and spent approximately ten hours administering psychological testing and working with the Student.<sup>13</sup>

89. In addition to autism, Dr. [REDACTED] diagnosed the Student as having Dyspraxia.

Dyspraxia is the inability to input and process information and then output a response to the information in an efficient, organized manner with ease and automaticity. Dyspraxia impacts the Student's communication but also his ability to initiate and sequence many fine and gross motor skills as well as his self-help skills for classroom functioning.

Examples of the Student's dyspraxia include:

- a. Speech and articulation retrieval – The Student can get stuck and repeat the same word in a phrase until he can say the entire phrase. He will say the last consonant sound in a word before he recalls the word he wants to say; for example, saying "rrrr" and then the word, "marker."
- b. Verbal expression – The Student wants to say something but cannot get the words out. For example, the Student turned in a worksheet and stood there. The teacher

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<sup>13</sup> Dr. [REDACTED] administered the following tests: Feiffer Assessment of Reading, Peabody Picture Vocabulary Test-IV; Pervasive Developmental Behavior Inventory 2; Reynolds Intellectual Assessment Scales – 2; Rowland's Communication Matrix; Vineland Adaptive Behavior Scales; Wechsler Intelligence Tests for Children – V; Wechsler Intelligence Test for Children – V Integrated; Wechsler Individual Achievement Tests – III (WIAT-III); and, Woodcock Johnson Tests of Achievement – IV form B (WJ-IV).

- knew the Student wanted his white board to draw on and told him, “you earned your white board!” The student stood silently looking at her for almost 30 seconds and she asked the Student what he wanted. He looked at the whiteboard but did not take it or say anything until he finally said, “timer” and went to get it.
- c. Ideation and Sequencing – The Student can follow steps that are written down and he can monitor his own performance; but, if he does not have steps that are written down, he randomly misses steps that need to be done.
  - d. Following Multi-step Directions – The Student was told to go get his notebook and a pencil and then meet the teacher at a table for a small group writing activity. The Student turned and waked to his desk but just stood at his desk and stared. Another student was sent to help the Student; the student put the Student’s hand into his desk to pick up his notebook. Once the Student picked up his notebook with the other student’s help, the Student was able to pick up his book, his pencil, put away another book, and then walk to the small group writing table.
  - e. Inability to visually search for a missing item – The Student was unable to efficiently search for his missing iPad somewhere on the ground even with modeling and visual prompts.

90. The Student also has deficits in working memory, which is the ability to “hold” what he has heard mentally and solve a problem with it at the same time.

91. Rowland’s Communication Matrix is a standardized test to determine functional communication. All communication has four basic functions: (1) Refuse something you do not want; (2) Obtain what you do want; (3) Engage, maintain and sustain social interactions;<sup>14</sup> and (4) Provide or seek information. The third and fourth functions are most important for school.

92. In January 2020, Dr. [REDACTED] used the Rowland Communication Matrix to interview Ms. [REDACTED], Ms. [REDACTED] and the Student’s Parents. The Matrix involves showing the raters video examples of seven levels of communication (from pre-intentional behavior to language) and asking the rater if the Student’s skill in those areas showed “mastery,” or was “emerging,” or was “not present.”

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<sup>14</sup> An example of using communication to “engage, maintain and sustain social interactions” is when a child says the word “snow,” and drags an adult by the hand to show the adult snow. It is not the word “snow,” that matters but that the child is engaging the listener in a social interaction.

93. The Student's results on the Rowland Communication Matrix were low across all settings (school, 1:1 ABA therapy, and at home) but his overall inability to functionally communicate was the most severely deficit in school, the setting that requires the most competency. Ms. [REDACTED]' overall rating of the Student's functional communication was 29%, his Parents' was 39% and Ms. [REDACTED]'s was 41%.
94. The Student's most functional communication was demonstrated in 1:1 ABA therapy because Ms. [REDACTED] was challenging the Student's frustration tolerance. In order to learn, a student must be able to tolerate not knowing something and at the same time be motivated by that frustration to learn it. In the ABA sessions, there were constant inputs and constant expectations that he would respond. The IEP that was developed for the Student's second and third grade years in MCPS did not require the Student to respond to a frustration level.
95. Functional communication is the prerequisite for learning because without functional communication, it is impossible for the Student to communicate what he knows and what he does not know. If the Student is prompted because he made a mistake, and the Student does not have functional communication, there is no way to know if the Student understands that he was giving an incorrect response.
96. On the WJ-IV, the Student scored average on calculation, number matrices, and math facts fluency. All of these subtests are nonverbal. On applied problems, which require some verbal comprehension, the Student's scores dropped by 30 standard score points to the very low range.
97. The Student's reading skills were measure using both the WIAT-III and the WJ-IV. The Student's letter-word identification and decoding skills were solidly average but he does not understand the meaning of the words he can read. The Student's standard score on

the WIAT-III Reading Comprehension was 53 which placed him in the percentile rank of 0.1 or a grade equivalency of less than first grade.<sup>15</sup> After reading a three-sentence story about a red frog with black spots that jumped over a rock, the Student was asked, “what color were the frog’s spots?” The Student responded, “The frog is green. It runs.”

98. On November 25 and 26, 2019, and on December 2, 2019, Ms. [REDACTED] conducted an Educational Assessment of the Student.

a. As part of the Educational Assessment, Ms. [REDACTED] tested the Student’s reading comprehension and meaningful memory. The Student read each short story aloud and giggled continuously. He was unable to recall any of the stories and scored in the very low range of achievement as compared to age peers.

b. As part of the Educational Assessment, Ms. [REDACTED] tested the Student’s ability to analyze and solve math problems. He scored in the very low average range of achievement as compared to age peers and was extremely distracted. Ms. [REDACTED] asked him with a verbal prompt three times to focus.

99. On November 26, 2019, [REDACTED], M.Ed., observed the Student in his special education, self-contained classroom at [REDACTED] for one hour and fifteen minutes. The observation occurred during the morning meeting, an art activity, whole group to prepare for reading groups and part of his small reading group with a paraeducator.

a. The Student did not independently greet peers and needed verbal cues.

b. The Student did not answer the “question of the day” without choices provided and without cues from the teacher.

c. The Student did not initiate any verbalization except a protest (“no!”) and one question that was not directed to any particular individual.

d. The Student did not follow group directions, faced the back of the room or the windows, and required repeated prompts and cues to engage.

e. No visuals were used to assist with reading comprehension.

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<sup>15</sup> Even though the WIAT-III Reading Comprehension is just one subtest, it is more similar to the reading tasks required in the school classroom.



100. On December 6 and 9, 2019, [REDACTED], MA CCC-SLP, MCPS Speech-Language Pathologist, conducted a Speech-Language Assessment on the Student. Ms. [REDACTED] administered the Comprehensive Assessment of Spoken Language (Second Edition)(CASL-2). The CASL-2 is comprised of fourteen subtests. The Student scored average in one subtest: Antonyms. The Student scored below average in two subtests: Sentence Expression and Sentence Comprehension. The Student scored low in three subtests: Receptive Vocabulary, Expressive Vocabulary, and Grammatical Morphemes. The Student did not respond, or did not participate in five subtests: Grammaticality Judgment, Nonliteral Language, Meaning from Context, Inference, and, Pragmatic Language.

101. On December 19, 2019, Ms. [REDACTED] observed the Student during a science class. The Student tracked the teacher for approximately half of the lesson and looked around the classroom from his seated position for the other half. During the observation, the Student sat at his desk quietly and did not attempt to speak or engage with classmates.

102. Between December 10, 2019, and January 21, 2020, MCPS collected data on one of the Student's IEP goals: "Given minimal support, visual cues, no more than 2 verbal prompts and social stories, [the Student] will participate in non-preferred activities." (Parents' Ex. 27).

a. The data collected only shows that the Student started the non-preferred activity; it does not provide any information as to the duration of his participation or how he was participating.

b. The data does not distinguish as to whether a direct verbal prompt or an indirect verbal prompt was given.

c. MCPS did not analyze the data. Ms. [REDACTED] analyzed the data.

d. The data demonstrated that the Student started non-preferred activities within one minute fewer and fewer times each day. The Student was receiving an increasing number of verbal prompts each day to attempt to help him start a non-preferred activity.

103. Between December 10, 2019, and January 21, 2020, MCPS collected data on one of the Student's IEP goals: "Transition from a task with no more than two prompts." (Parents' Ex. 27). MCPS did not conduct any analysis of this data.
104. Initiating and responding to greetings has been one of the Student's speech and language goals since first grade in MCPS. As of January 24, 2020, even with prompts, the Student was responding to greetings only fifty percent of the time.
105. At the end of the first quarter of third grade, the Student was assessed as being on the second-grade instructional level in two areas of math: number and operations in base ten and operations and Algebraic thinking. At the end of the second quarter of third grade, the Student was assessed as being on the second-grade instructional level in operations and Algebraic thinking.<sup>16</sup>
106. At the end of the first quarter of third grade, the Student was assessed to be at the first-grade instructional level on all areas of writing: Information/Explanatory, Narrative, Opinion, and Use of Language. At the end of the second quarter of third grade, the Student was assessed as being at the same level (first grade) in all of the areas of writing measured in the first quarter, as well as in Process, Production and Research.
107. At the end of the first quarter of third grade, the Student was assessed to be at the first grade instructional level on the following areas of reading: Foundational Skills, Language Vocabulary Acquisition and Use, Informational Text, and Literature. At the end of the second quarter of the third grade, the Student was assessed as being at the same level (first grade) in all of the areas of reading measured in the first quarter.
108. On January 22, 2020, [REDACTED], M.S., OTR/L, MCPS Occupational Therapist, conducted an Occupational Therapy Re-evaluation. An OT needs to support the

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<sup>16</sup> Number and operations in Base Ten was not assessed during the second quarter. The Student was noted to be on grade level for Number and Operations- Fractions.

Student's social emotional/behavioral goals to access and participate in his educational program.

109. On February 3, 2020, the Ms. [REDACTED] conducted an in-class observation of the Student during a writing activity at his desk and working on a Chromebook. The Student was passive: when his timer fell out of his desk, he watched while another student picked up the timer and replaced the battery; another peer went to cubbies to bring earphones back for the Student to use; and, another peer entered the password into the Student's computer. Although the Student said he needed help, which then apparently prompted the other student to enter the password, the other student went to get earphones for the student without being requested. The second activity in the Chromebook was to work on typing skills. The teacher asked the Student if he was finished with his writing activity and he replied, "yes," but did not move onto the next activity. The Student was prompted twice to get his Chromebook before doing so. When the Student returned to his seat, he had two vocalizations and then whined. The Student played a letter matching game on ABCya instead of the typing club exercise. The Student did not respond to the teacher's first prompt to put his Chromebook away and find a seat on the carpet.

110. On February 11, 2020, Ms. [REDACTED] and the Speech Language Pathologist filled out a Preview Request for Assistive Technology Consultation by [REDACTED]. They noted that the Student's vocalizations/words were one-to-two-word phrases often modeled or prompted. They described behavioral concerns as "scream/yell when there is a change in his routine, when ending a preferred task, when transitioning from a task that is unfinished and when moving to a non-preferred task." (MCPS Ex. 20).

111. On February 11, 2020, Ms. [REDACTED], observed the Student in a general education music class at [REDACTED] for forty-eight minutes. The Student entered the room without a paraeducator, who arrived five minutes later. Half-way through the class a different paraeducator came into the class.

- a. The general education music teacher did not give any prompts to the Student and did not talk directly to the Student.
- b. The Student did not interact with any peers during the music class except when the paraeducators asked a peer to tell the Student what he thought. The Student did not respond to the peer or engage with the peer.
- c. The paraeducator gave many verbal and non-verbal directions to the Student throughout the class but the Student did not understand or engage in the activities.

112. Ms. [REDACTED] was familiar with the Student's homework and work samples completed during his third-grade year. Sometimes she worked with the Student on his homework as part of his ABA therapy sessions. If she set his homework and a pencil on the table, the Student would not begin without prompting. One of the in-class assignments that the Student had on Mondays was to write what he had done on the weekend. Ms. [REDACTED] noticed that the Student sometimes wrote the same sentence each week. The Student's classroom teacher sent the sheet home to his Parents and complimented the Student on the nice sentence he had written. The Student's Parents sent the work back to his teacher with the three prior weeks in which the Student had written the exact same sentence.

113. The IEP team met on February 10 and 28, 2020. "The school team reviewed the history of [the Student's] behaviors 2 years ago when he came to this program and feel that he is recently available for learning." (Parents' Ex. 40).

114. The team reviewed Ms. [REDACTED]' Educational Assessment and Dr. [REDACTED]' report. The Parents requested an autism consult. Ms. [REDACTED] stated that an autism consult is

requested if the school has a need or concern but the school felt the Student is doing well and there was neither the need nor a concern that would justify having an autism consult.

115. The Parents told the IEP team that there were several occasions when the Student got off the school bus crying (the Student got on the bus crying or he started crying while on the school bus). The Student was unable to communicate why he was crying. The Parents asked the IEP team to fill out a short (one-third page) communication checklist prepared by Ms. [REDACTED]. The school staff on the IEP team refused.
116. The Parents asked MCPS to conduct a FBA. Ms. [REDACTED] shared that this “may not be the best time to take data. The IEP team does not feel comfortable without medication stabilized and would like to re-visit at the next meeting.” (Parents’ Ex. 40). Ms. [REDACTED] stated that because the Student was on a new medication for a [REDACTED] disorder they would not do a FBA. There is no valid reason not to collect data for a FBA because a Student is on a new medication.<sup>17</sup>
117. The Student’s [REDACTED] disorder manifested itself as the Student looking off to the left and staring into space. During that time, he will not respond to very simple known directions (e.g., clap three times, touch your nose, etc.).
118. On February 28, 2020, the IEP team agreed to reconvene at the end of March 2020, in order to complete the re-evaluation process and revise the IEP. The school staff agreed to obtain reports from the general education teachers of the specials (art, music, physical education, etc.).
119. On March 3, 2020, the Student’s general education music teacher noted that the Student will verbally answer questions if prompted and given example answers or a choice

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<sup>17</sup> MCPS also implied that the Parents did not give MCPS requested information from the Student’s neurologist concerning the [REDACTED] disorder. However, on or about February 17, 2020, [REDACTED] provided a statement to MCPS that the Student was seen in its neurology clinic and had an overnight EEG in October 2019.

between two things. “There is not much that he will do on his own without prompting through, and he typically requires very frequent reminders to continue to participate in any form.” (Parents’ Ex. 41).

120. Prior to MCPS closing down for in-person learning, Ms. [REDACTED] observed the Student on two occasions at [REDACTED] during his third-grade year. The Student did not engage in much, if any, spontaneous communication with adults and almost none with his peers. The Student did not model the appropriate behavior of other students such as reaching for a pencil and paper when they did.
121. The Student frequently put his hands over his ears while he was in the lunchroom at [REDACTED] during the school year 2019-20.
122. On May 4, 2020, the IEP team met by using a video-conferencing platform. The IEP team modified the Student’s disability to “multiple disabilities” based on Dr. [REDACTED]’ report, the school OT’s report, and educational testing. The multiple disabilities coding reflects that the Student has a seizure disorder and dyspraxia in addition to autism.
123. The Parents requested that co-treatment and integration of speech and language services and occupational therapy be in the classroom daily to support the Student’s communication needs, support his fine motor needs, and reduce the interfering behaviors and increase the desired behaviors. The IEP team rejected the Parents’ request for the “co-treatment” model but did agree to integration of speech and language services and occupational therapy daily.
124. Prior to and during the May 2020 IEP team meeting, the Parents proposed additional goals and objectives with the reduction of prompts in the following areas: math problem solving, social and emotional, reading fluency, reading comprehension, social interactions, self-management, participation and written language.

125. The Parents requested that the Student receive three, 45 minutes of speech-language therapy per week. The school team agreed to provide the Student with three, 30-minute sessions per week.
126. The Parents requested that the Student receive three, 30 minutes of OT therapy per week. The school team agreed to provide the Student with one, 30-minute session of OT per week.
127. During the May 2020 IEP team meeting, the Parents requested an FBA and MCPS rejected their request.
128. On July 9, 2020, the IEP team met and proposed ESY virtual distance learning for the Student. The ESY consisted of fifteen hours per week in the areas of reading, language arts, and math.

Appropriate Educational Programming for the Student:

129. The Student has a very large difference, 21 to 28 standard score points, between his average/below average verbal abilities and his average/high average nonverbal, visual spatial intelligence.
130. Teaching the Student, who has high nonverbal, visual spatial intelligence, is not just a matter of using pictures. It is looking at patterns and changes in nonverbal relationships.
131. The Student needs specific programming for instruction and specific programming for generalization in order to make progress and receive educational benefit.
132. Programming for the Student's instruction involves fading visual prompts and not using as many verbal prompts for him. It involves finding ways to move him from scripting or formulaic responses to more spontaneous responses. If he gives a one-word brief

response, it involves withholding the things he wants. It involves reinforcing the times when he gives a more novel response.

133. Programming for the Student's generalization involves examining the Student's ability to do the same task at home and at school. It involves being able to transition to a new environment and perform the same task in the new environment.

134. [REDACTED] ([REDACTED]) is a nonpublic special education school.

135. [REDACTED] is able to provide the Student with constant and consistent support for his communication needs and for consistent, systematic intervention for the interfering behaviors that are preventing him from accessing his academic program.

136. During the 2020-21 school year, there were seven students, one special educator and two paraeducators in the Student's class at [REDACTED]. The Student is in the [REDACTED] program which has the smallest staff-to-student ratio (2:1) available at [REDACTED]. The program uses a multidisciplinary approach; Speech and Language Pathologists, as well as OTs, work on skills with the teachers in the classrooms. In addition, there is a counselor and a behavioral specialist as members of the interdisciplinary team who work in the classroom. Skills are explicitly taught by the multidisciplinary team to the Student in a one-to-one setting, and then they see if the Student can consistently demonstrate the skill in dyads and triads before seeing if the Student can demonstrate the skill consistently in a larger group. The largest group in the Stride program would be six or seven students. The same skill is targeted throughout the day: in all of the academic and "specials" as well as during lunch and recess.

137. From the Fall of 2020, when the Student started fourth grade at [REDACTED], until February 2021, classes were held virtually. Initially, the Student had the same problems focusing on the virtual classes as he did at [REDACTED]. The Student was quiet, he did not try to



initiate conversations with the teachers or his peers. He did not advocate for what he wanted or needed and did not share anything spontaneously. With prompting, he would occasionally share his drawings on the screen. The Student's teachers and service providers worked extensively with his mother to find out what were the Student's preferred characters so they could use them on the screen to get his attention.

138. The [REDACTED] staff developed a checklist that they would show the Student at the beginning of the class and they would follow the checklist throughout the class so he knew what he was working towards to get through the activity.

139. The [REDACTED] staff developed a protocol that was used by all of the staff as an attention-gaining procedure. After making sure that they had his attention, they would give the direction, make sure they gave enough "wait time," before prompting. They tried to discern when it was an attention issue as opposed to a "not knowing" the content issue.

140. The Zones of Regulation is a behavioral system used at the [REDACTED]. Each of the Student's behaviors are classified into a color zone. The green zone includes behaviors such as being happy, on task, and sitting in your seat. The red zone includes behaviors such as yelling, falling out of the chair, screaming in frustration, are behaviors in the red zone. The yellow zone is for behavior that is in-between the green and red zone. The blue zone is sad and crying. The Zones of Regulation provides strategies to help the Student get back to the green zone.

- a. If the Student is in the red zone (screaming), the staff at [REDACTED] will say to him, "You need to be in the green zone. Pick a strategy." The Student will pick a strategy. Sometimes he will list all of the strategies which helps him to calm down.
- b. The Zones of Regulation has been very successful for the Student. He spontaneously talked with Ms. [REDACTED] about the Zones of Regulation. On his own, the Student would make up various scenarios using the Zones of Regulations in his drawings. The Student illustrated a story about ducks (which he has always liked to draw) with the Zones of Regulations.

- c. The Student has also been able to generalize the use of the Zones of Regulation outside of the school setting and to other people. For example, when his younger sister (who is a toddler) was crying, he identified that she was in the “red zone,” and needs to “breathe like a fish,” which is a strategy for calming and moving out of the red zone.

141. In February 2021, the Student started attending ██████ in person one day per week, and then two days per week until by the end of the school year he was attending in-person four days per week.

142. Dr. ██████ used the Communication Matrix to assess the Student’s functional communication (which includes communication of all types, not just verbal communication). Dr. ██████ compared reports from the Student’s teacher and Speech-Language Pathologist at the ██████ (January 2021), with Ms. ██████’ reports from January 29, 2020. The Communication Matrix rates 161 items across seven levels of communication as showing “mastery,” “emerging,” or “not present.” The overall score as rated by the Student’s third grade ██████ teacher was 29% compared to 42% by the Student’s teacher at the ██████ and 36% by the Student’s speech and language therapist at the ██████.

a. In 2020, MCPS did not see any emerging skills in the area of the Student obtaining what he wants using conventional communication.<sup>18</sup> In 2021, both the ██████ teaching staff and speech and language pathologist saw emerging skills in this area. This is important for the Student because it means that other people are now able to recognize and read his communication as having meaning.

b. In 2021, the staff from ██████ rated the Student has having more mastery using single words for obtaining what he wants than was noted in 2020.

c. In 2021, the staff from ██████ rated the Student as having more mastery and emerging skills in the functions of obtaining what he wants, ways to gain social interaction, and providing or seeking information, using spontaneous novel utterances. A spontaneous novel utterance is the grammatical combining of two- or three-symbol combinations, such as “want juice.”

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<sup>18</sup> Conventional communication uses pre-symbolic behaviors but with intentional use of socially acceptable gestures/vocalizations. It involves looking at someone and/or pointing simultaneously to the object and person without prompting.

143. On or about December 22, 2020, the [REDACTED] developed a Student Support Plan (Plan) for the Student. The Plan provided an operational definition for the primary behavior of concern: rigidity/non-compliance, and for the secondary behavior of concern: inattention. ABC data was collected for rigidity/crying and for inattention. The staff at [REDACTED] hypothesized that the rigidity/non-compliance behavior was to escape aversive environmental situation and/or gain access to a solution through adult support. The staff hypothesized that inattention provided its own automatic reinforcement.

- a. The Plan identified proactive strategies and informed the multidisciplinary team what signs to expect and how to respond to initial signs of escalation, escalating behavior and full escalation.
- b. The Plan provided for which providers were responsible for which parts of the Plan. For example, the social worker and speech language pathologist were responsible for explicitly teaching the Student the following: “size of the problem,” “flexible thinking,” and “assisted problem solving.” The social worker and speech language pathologist created and rehearsed social stories in order to accomplish the teaching of these concepts.
- c. The social worker and behavior specialist were responsible for collecting and analyzing the data in the Plan.
- d. On February 1, 2021, the Plan was updated due to the observations of the behavior specialist and social worker. An additional primary behavior of concern, vocal outbursts, was identified and addressed.
- e. On May 27, 2021, the Plan was updated again to reduce verbal prompting and use “if/then” language with increased visual or written prompts. An example of a visual If/Then flip card is the word “IF” at the top of the card, a picture of a finger in front of lips, and the words, “I use a calm and quiet voice.” On the opposite side of the card the word “THEN” is at the top of the card, a picture of children sitting together, and the words, “I can work with my friends in class!”

144. After the Student began attending [REDACTED] in-person, Dr. [REDACTED] observed him for two hours during a time when he was participating in recess and a physical education activity that also involved reading. A speech and language therapist or OT take turns being available during recess to work on skills with the Student. The Student was drawing on his whiteboard when Dr. [REDACTED] began her observation. The other students were playing a

modified soccer game. The Student looked up, made eye contact with the Speech and Language Therapist, and spontaneously said, “Go play ball now.” The Student ran towards the child with the ball but “overshot” and ran to the left. The Student stopped, stood still, and then sat on the ground. One of the paraeducators said the Student’s name and pointed to where the other child was with the ball. The Speech and Language Therapist looked at the Student and touched her own mouth. The Student then said, “me, me” and the other child threw him the ball.

145. The next activity Dr. [REDACTED] observed was a physical education activity that involved reading comprehension around the topic of the Olympics. There were charts on the walls for different competitions. The Student was pointing to the word that said “relay” and saying it for the other children. The teacher gave the students directions for the first activity and asked the Student to repeat the first direction, which he did, and then he sat down. The Student appeared frustrated and made a sound. He then stopped, looked up, and said, “Please say it, please say it,” and the teacher repeated the second direction to him. As the Student participated in the physical activity, he spontaneously said “number one!” to communicate winning and he spontaneously said, “good job” to the other students.

146. Dr. [REDACTED] also observed the Student playing on the jungle gym while some other students were banging on the table. The Student came over and said, “stop banging.” The teacher said the Student’s name and told him to say “please.” The Student yelled, sat down on the ground, then stood up and said, “Please stop banging now.” The other students stopped banging.

147. During the summer of 2021, the Student was taking a virtual art class through “Outschool.” Without prompting, he handed Ms. [REDACTED] a marker and said

“Outschool expectations.” The Student was demonstrating that he had generalized the concept that [REDACTED] had expectations for his behavior to understand that another, virtual, school program also had expectations for his behavior.

148. When Dr. [REDACTED] came to the Student’s home during the late summer of 2021, the Student greeted her spontaneously by looking at her directly and saying, “Hi Dr. [REDACTED] One.”<sup>19</sup>

149. When the Student was taking a car trip with his family during the summer of 2021, the Student spontaneously said, “Mommy, I’m feeling tired. I’m going to hibernate.” (August 4, 2021 T. p. 565).

## 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). 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); COMAR 28.02.01.21K(1), (2)(b). In this case, the Parents are seeking relief and bear the burden of proof to show that MCPS failed to offer the Student a FAPE for the two years prior to the filings of their Due Process Complaint and that they are entitled to be reimbursed for their unilateral placement of the Student at the [REDACTED] during the 2020-21 school year.

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<sup>19</sup> Dr. [REDACTED] is “Dr [REDACTED] One,” and Ms. [REDACTED] is “Dr [REDACTED] Two.” The Student has never been able to consistently greet adults or peers even with direct verbal prompts. On this occasion, the Student had not seen Dr [REDACTED] for a long time but spontaneously (without prompting) greeted her.

## Legal Framework

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

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) of the U.S.C.A. and the applicable federal regulations. There is no dispute in this case that the Student is a child with a disability.

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

The *Rowley* Court found, because special education and related services must meet the state’s educational standards, that the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is,

generally, to pass from grade-to-grade on grade level. *Rowley*, 458 U.S. at 204; 20 U.S.C.A. § 1401(9).

The Supreme Court recently 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.*, 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.

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 a student and the special education and related services to be provided to meet those needs. The IEP must take into account:

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

20 U.S.C.A. § 1414(d)(3)(A).

Among other things, the IEP depicts a student's current educational performance, explains how the student's disability affects a student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the

annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children) . . ." 34 C.F.R. § 300.320(a)(1)(i). If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies and supports to address that behavior. *Id.* § 300.324(a)(2)(i). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. *Id.* § 300.324(b)(1).

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

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



The Supreme Court set forth a “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 influenced 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 disabled 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.’” *Endrew F.*, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 179). A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child’s circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be “*specially designed*” to meet a child’s “*unique needs*” through an “[i]ndividualized education program.” *Endrew F.*, 137 S. Ct. at 998-99 (citations

omitted). The Court expressly rejected the Tenth Circuit’s interpretation of what constitutes “some benefit”: When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Id.* at 1001 (citation omitted).

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Andrew F.* court instructs that the “absence of a bright-line rule . . . should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Id.* (quoting *Rowley*, 458 U.S. at 206). At the same time, the *Andrew F.* court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” 137 S. Ct. at 1002.

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

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

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

Parents may be entitled to retroactive reimbursement from the 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 that the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cty. School District Four v. Carter*, 510 U.S. 7 (1993). Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. *See id.* at 12-13. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

MCPS Failed to Provide Measurable Data to Support Reports of Progress Towards Achieving the Annual Goals:

The Parents argued that MCPS failed to provide the Student with a FAPE during the 2019-20 school year, and it failed to propose an IEP that would have provided FAPE for the 2020-21 school year, for several reasons. First, they argued that MCPS did not provide goals and objectives that were clear and measurable, and it also failed to provide measurable data to support anecdotal reports of the Student's progress toward achieving the annual goals in his program. The Parents provided overwhelming evidence to support this claim.

MCPS argued that any evidence prior to May of 2019, or two years prior to the filing of the Due Process Complaint, should be rejected because it is outside the two-year period of statute of limitations. I generally agree with MCPS' argument; however, to analyze MCPS' claim that the Student achieved a goal in June 2019 (which is within the two-year statute of limitations) one must examine the goal itself, as well as the subsequent work on the goal, even though that period of November 2018 and May 2019 was outside the two-year window.

On November 20, 2018, an IEP team meeting was held to review the IEP that transitioned with the Student from [REDACTED]. Ms. [REDACTED] proposed re-writing and adding some goals. The Parents agreed that the first goal was met.<sup>20</sup>

The second goal was “[g]iven a sensory diet, token economy, direct adult support, and social stories, [the Student] will increase self-control for participation in a group.” (Parents’ Ex. 16).<sup>21</sup> Four objectives were listed for this goal that are not clearly related to the goal.<sup>22</sup> The goal does not provide any information as to what the Student’s level of self-control for participation was at the beginning of the goal. The goal does not provide any objective measure of group participation (e.g., initiate a task within two minutes, have three turn-taking exchanges, etc.). By June 14, 2019, Ms. [REDACTED] reported the goal was achieved. No data was reported in the IEP to support the narrative statement.

The Courts have admonished factfinders not to “substitute their own notions of sound educational policy for those of the school authorities which they review,” but, at the same time, the Supreme Court has held that the deference that should be accorded to educators is not endless. In *Andrew F.* the Court wrote that in determining the extent to which deference should be given 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. In this case, [REDACTED] staff did not state a baseline for the Student’s self-control or group participation. Additionally, the objectives were not clear as to how they related to or supported the goal, and both the goal

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<sup>20</sup> The first goal was for the Student to anchor his letters on the bottom line when writing.

<sup>21</sup> The goal noted that it would be evaluated by observation and recorded. The goal would be achieved if the Student was able to demonstrate it for twelve consecutive school days.

<sup>22</sup> (1) [The Student will attempt tasks without resisting by yelling. (2) [The Student] will ask for help without touching others. (3) [The Student] will comply with adult requests. (4) [The Student] will participate in cooperative group activities by taking turns with minimal prompting.”

and objectives were not written in a way that clearly defined how they would be objectively measured. Therefore, the deference that can be afforded to Ms. [REDACTED]'s opinion that the goal was achieved is extremely limited.

Ms. [REDACTED] testified that when she wrote the assessment of the Student's progress or lack thereof on the online State IEP program, there was a place to report data on the objectives and she did take and report that data quarterly. However, when specifically asked to look at the progress reports, Ms. [REDACTED] agreed that the comments were narratives only and did not report any objective data (e.g., ten out of twelve days, etc.). Ms. [REDACTED] testified that she never noticed prior to the hearing that the information was not included on the progress reports she printed and sent home to the Parents quarterly. I could reasonably understand how, for perhaps one quarter, there might be a problem with the online program printing out the data which was then overlooked by Ms. [REDACTED], but it is incredulous that this would occur for all four quarters.

Ms. [REDACTED] also testified that she reported data directly to the Parents in the form of a communication journal and in a data book. However, the "data" she was reporting was essentially a note she made with a dry erase mark on a laminated page in the Student's homework folder as to how his overall day went (i.e., did he have a "good day," "okay day," or a "try again tomorrow day"). Ms. [REDACTED] did not include objective data on the specific objectives to support the Student's goals in the homework folder nor would I expect to see this on a daily or even weekly basis. Further, Ms. [REDACTED] also testified that a "data book" was prepared for each student at [REDACTED] and contained work samples, quizzes, and the results of standardized testing; however, the "data book" did not include data on the Student's individualized goals and objectives. Instead, the data on the quarterly progress was supposed to be recorded on the IEP quarterly progress reports and this data was not present for the 2018-19 school year.

The parties were in agreement that the Student's ability to decode words was a strength but he did not demonstrate that he comprehended what he read. Ms. [REDACTED] testified that reading fluency is necessary to support comprehension and that in November 2018 IEP meeting, she created a goal regarding reading fluency: "Given a model response, immediate feedback, direct support, and a repeated reading, [the Student] will read with sufficient accuracy and fluency to support comprehension."<sup>23</sup> There were three objectives listed to support this goal: (1) Read on-level sight words/high frequency words in isolation and in context with automaticity. (2) Use punctuation as cues to appropriate expression. (3) Listen to Interactive Read Alouds of steadily increasing complexity (informational and literary, across all structures and genres of text, representing a wide variety of cultures) in order to observe models of fluent reading and apply skills to their [sic] reading."<sup>24</sup> (MCPS Ex. 9).

Similar to the goal regarding group participation, the reading goal does not provide any measurement as to what the Student's reading rate was at the beginning of this goal (e.g., words per minute he was reading).

Of even greater concern is that Ms. [REDACTED] testified that the purpose of the reading goal was because the Student read too fast and therefore the goal was to measure how many words the Student was omitting when he read and whether he was reading with expression. The goal and objectives do not mention omission of words and do not explain that prosody was being measured or how it would be measured.

In each of the three quarters of second grade that focused on this goal, the Student was marked as "making sufficient progress to meet this goal" but does not provide any identifiable objective measurements. On June 14, 2019, the goal was not reported as mastered, but again was

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<sup>23</sup> The goal stated that it would be evaluated by observation and recorded in four out of five trials.

<sup>24</sup> It is unclear to me how the third stated objective is an objective as opposed to a method of teaching or what and how it would be measured. Would the Student's listening be measured? How would one measure if the Student is applying fluent reading models to his own reading?

described as “making sufficient progress to meet this goal.” It does not objectively provide information as to *how* the Student was making sufficient progress. For example, was the Student achieving one out of five trials in the first progress report, two out of five trials in the second progress reporting period and three out of five trials in the third progress report?<sup>25</sup>

During the third grade, Ms. [REDACTED] continued to work on the goals and objectives that the Student did not achieve during his second-grade year. As in second grade, attempts to collect data to document progress were ineffective because the terms used in the goals and objectives were not stated in a way that they could be objectively measured. For example, one of Student’s IEP goals was: “Given minimal support, visual cues, no more than 2 verbal prompts and social stories, [the Student] will participate in non-preferred activities.” (Parents’ Ex. 27). However, because “participate” was not defined, Ms. [REDACTED] only collected data which showed that the Student started the non-preferred activity -- it does not provide any information as to the duration of his participation or how he was participating. Further, the data does not distinguish as to whether a direct verbal prompt or an indirect verbal prompt was given because “verbal prompts” were not defined.

Perhaps even more concerning is that MCPS did not analyze the data and so they did not realize what the data was showing.<sup>26</sup> Ms. [REDACTED] analyzed the data and persuasively testified that based on the data that was collected, the Student started non-preferred activities within one minute fewer and fewer times each day. At the same time, the Student was receiving an increasing number of verbal prompts each day to attempt to help him start a non-preferred activity. In other words, the Student was receiving more verbal prompts each day to begin a

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<sup>25</sup> I did not necessarily expect that the Student achieved his goals in order for progress to be shown. First, the Student’s IEPs were written to cover the time period of approximately November of one school year to November of the following school year. Secondly, there is no guarantee that a Student will achieve the goals and objectives on his IEP and that fact alone is not dispositive as to whether he achieved educational benefit.

<sup>26</sup> Similarly, Ms. [REDACTED] did not analyze the data collected on another one of the Student’s IEP goals during the third grade: “Transition from a task with no more than two prompts.” (Parents’ Ex. 27).



non-preferred activity but it was having the opposite effect of what the goal was trying to achieve: instead of having the Student engage in the non-preferred activity within one minute, the Student was not engaging in the non-preferred activity within one minute. Ms. [REDACTED]'s explanation of why this can occur was reasonable and based on her expertise and experience: students can learn that if they do not comply with directions, the directions will be repeated until they understand or comply and therefore there is no need to comply the first time.

I gave great weight to Ms. [REDACTED] and Dr. [REDACTED]' opinions regarding the Student's lack of progress in his second and third grade years at [REDACTED]. I found Ms. [REDACTED] to be an extremely persuasive witness. She has both a bachelor's and master's degree in Special Education and extensive experience as a Special Education teacher. From 2004 to 2012, Ms. [REDACTED] taught in a variety of settings within MCPS: in the autism program, she taught grades first through fifth to students with autism spectrum disorder; in the pre-school education program, she was a classroom teacher and a paraeducator for students aged three to kindergarten;<sup>27</sup> and, she piloted the [REDACTED] Program as a classroom teacher. Ms. [REDACTED] taught and trained student-teachers for one year at the [REDACTED], where she also taught a bi-monthly seminar on developing IEP goals, objectives, collecting data, measuring behaviors in the classroom, and measuring student progress towards goals and objectives. After earning her Behavioral Analyst certification, she became a licensed Applied Behavior Analyst in Maryland. Ms. [REDACTED] began her private practice as an ABA but testified that it is important to work collaboratively with the classroom teachers in order to have consistent strategies and programs in place for students.

In addition to her extensive education and experience, Ms. [REDACTED] has had very significant experience working directly with the Student. Ms. [REDACTED] began working with the

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<sup>27</sup> Ms. [REDACTED] testified without contradiction that students at that age will not be formally diagnosed as autistic but will be coded as developmentally delayed.

Student in May of 2018, at the end of the Student's first grade year. From that point until the beginning of the COVID-19 pandemic, Ms. [REDACTED] worked with the Student an average of three times per week, from four to five hours per week. When Ms. [REDACTED] switched to working with the Student virtually during the pandemic, she was working with him six to seven days per week for much shorter sessions. The reason Ms. [REDACTED] worked with the Student for shorter sessions virtually was so that he could finish a session when he was being successful and not escape the demands of a therapy session when he was having interfering behaviors. During the 2020-21 school year, Ms. [REDACTED] worked with the Student three to four days per week and during the summer of 2021, Ms. [REDACTED] worked with the Student three days per week.

I also found Dr. [REDACTED] to be a persuasive witness. She has special education teaching experience including teaching in MCPS. After she earned her Ph.D. in School Psychology, she practiced in MCPS for nineteen years before starting her private practice as a psychologist. Furthermore, Dr. [REDACTED] observed the Student across multiple settings and activities including school, daily activities in his home, in tutoring and play with Ms. [REDACTED], as well as in her home office. She spent over ten hours testing and working with him directly. (Parents' Ex. 36).<sup>28</sup>

The opinion of the Parents' witnesses regarding the lack of objective, measurable progress on IEP goals and objectives was also corroborated by MCPS' own evidence. For example, initiating and responding to greetings has been one of the Student's speech and language goals since first grade. As of January 24, 2020, even with prompts, the Student was responding to greetings only fifty percent of the time.

In math, reading and writing, the Student made very little progress, if any, before school closed for in-person instruction due to the COVID-19 Pandemic. At the end of the first quarter

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<sup>28</sup> Although I did not give as much weight to Ms. [REDACTED] opinions, partly due to her self-described role as an advocate for the family, I nevertheless found her testimony credible and persuasive. In addition to her education and experience, she observed the Student in his classroom setting at [REDACTED]. (Parents' Ex. 25).

of third grade, the Student was assessed as being on the second-grade instructional level in two areas of math: number and operations in base ten and operations and Algebraic thinking. At the end of the second quarter of third grade, the Student was assessed as being on the second-grade instructional level in operations and Algebraic thinking.<sup>29</sup>

At the end of the first quarter of third grade, the Student was assessed to be at the first-grade instructional level on all areas of writing: Information/Explanatory, Narrative, Opinion, and Use of Language. At the end of the second quarter of third grade, the Student was assessed as being at the same level (first grade) in all of the areas of writing measured in the first quarter, as well as in Process, Production and Research.

At the end of the first quarter of third grade, the Student was assessed to be at the first-grade instructional level on the following areas of reading: Foundational Skills, Language Vocabulary Acquisition and Use, Informational Text, and Literature. At the end of the second quarter of the third grade, the Student was assessed as being at the same level (first grade) in all of the areas of reading measured in the first quarter.

MCPS failed to conduct an FBA:

The Parents and their experts requested an FBA on multiple occasions. The parties agreed that when the Student entered ██████████ for his second-grade year, his tantrums were extreme. Ms. ██████████, the Coordinator of the ██████████, not only knew the Student was having significant tantrums at ██████████ but she observed the tantrums during the summer before the Student entered ██████████, because she had taught at ██████████, the Student's ESY placement. Once the Student entered Ms. ██████████'s second grade classroom in the fall of 2018, Ms. ██████████ testified that her office was close by and that the Student's tantrums impacted the entire school building.

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<sup>29</sup> Number and operations in Base Ten was not assessed during the second quarter. The Student was noted to be on grade level for Number and Operations- Fractions.

The first IEP meeting held for the Student at [REDACTED] was on November 21, 2019. Ms. [REDACTED] testified that during the meeting the team discussed the Student's interfering behaviors, especially his screaming, that were disruptive to the Student and to the learning environment for the other students. During the discussion, the school team expressed that the behaviors had reduced but Ms. [REDACTED] insisted that an FBA should be conducted because the team did not know the function that the behaviors served, or the duration, frequency or the intensity of the behaviors. Ms. [REDACTED] testified that ultimately the IEP team agreed to conduct an FBA. Ms. [REDACTED] also testified that the IEP team agreed to conduct an FBA. Finally, the Parent signed the Authorization for the FBA to be conducted.<sup>30</sup>

Despite the IEP's team agreement to conduct the FBA, when the IEP team next met on February 25, 2019, Ms. [REDACTED] announced that an FBA would not be conducted. The Parent and Ms. [REDACTED] testified that they were not advised at any time between November 2018 and the IEP meeting on February 25, 2019, that [REDACTED] was not going to conduct the FBA.

The IEP team summaries, which are referred to as "Prior Written Notice (PWN)," stated the following about the school staff's unilateral decision not to conduct an FBA:

IEP team met to discuss the follow up from the FBA/FIP. At this time, based on current data, [the Student] does not require an FBA/FIP but supports are listed under the supplementary aides and services and should be delivered with fidelity. [The Student] continues to have difficulty with big changes that are not always apparent to the staff but are supported with accommodations and aides.

(Parents' Ex. 13).

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<sup>30</sup> Ms. [REDACTED] testified that the IEP team only agreed to collect data for the purpose of determining whether an FBA would be conducted; she testified that the IEP team did not agree to conduct an FBA. I find Ms. [REDACTED]'s testimony on this issue not to be credible. Ms. [REDACTED] testified that during the first IEP team meeting of the 2018-19 school year, the IEP team agreed to conduct an FBA. Ms. [REDACTED], testified that the IEP team initially did not want to conduct an FBA but they eventually agreed. Further, Ms. [REDACTED] taught for many years in MCPS. She persuasively testified that there was no need to obtain a consent to collect data to determine if an FBA should be conducted, as data is routinely collected. In fact, data was collected, albeit limited, during the next school year and Ms. [REDACTED] did not obtain a consent from the Parent to do so.

First, there was no “current data” provided at the IEP meeting to support the decision by MCPS not to conduct an FBA. No data was listed on the PWN, and neither Ms. [REDACTED] nor Ms. [REDACTED] could provide any convincing testimony that there was “current data.”

The data that was discussed during the February 25, 2019 meeting, was the daily summaries of “good days,” “okay days,” and “try again tomorrow days;” however, this data was all collected prior to December 11, 2018, and was not current data for a discussion about the Student’s behavior almost three months later.

Secondly, the fact that staff were unsure of what or why big changes were difficult for the Student “but not always apparent to the staff,” is precisely why a FBA should have been conducted.

Finally, Ms. [REDACTED]’s claims that the Student’s tantrums were not really a concern after the first few weeks of the 2018-19 school year was contradicted by MCPS’ own evidence. On June 14, 2019, Ms. [REDACTED], an MCPS Speech Language Pathologist, noted that during the fourth quarter the Student was “crying, yelling, shouting when engaged in transitions from classroom to speech therapy.” (Parents’ Ex. 16).

The Student’s extreme behaviors certainly existed longer than just the fall of 2018, because one year later, the Parents and their providers were told that academics were not the focus of the Student’s second grade year because it took the entire year for the Student to unlearn undesirable behavior from [REDACTED] and get his behavior under control.<sup>31</sup>

In October 2019, Dr. [REDACTED] re-evaluated the Student at [REDACTED]. Part of her evaluation involved reviewing rating scales from the classroom teacher, Ms. [REDACTED], as well as the rating scales and observations of both Ms. [REDACTED] and the Student’s paraeducator. Ms. [REDACTED], in particular, noted that the Student “tantrums, cries or protests when given a rule or request that he

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<sup>31</sup> August 19, 2021 T. pp. 1279-80.

does not want to comply with” and that “he is easily frustrated as noted by yelling, tantruming or crying when he needs to transition from task to task, or has to engage in a non-preferred activity.” (Parents’ Ex. 21). Not only then did the interfering behaviors continue throughout the second-grade year, but according to Ms. [REDACTED]’ rating scales and observations during the fall of the Student’s third grade year, they continued to be a major concern.

Based on her evaluation, Dr. [REDACTED] recommended that an FBA be conducted for the Student. She also recommended that the behavior plan be consistent across home and school settings so that expectations and consequences are similar.

Finally, in February 2020, *one year after Ms. [REDACTED] told the Parents the FBA was unnecessary*, it was reported to the Parents that “only recently” had the Student become available for learning.

The failure of MCPS to conduct an FBA after it agreed to do so was not only a procedural violation, it resulted in a substantive violation as it denied the Student a FAPE because his behavioral needs were interfering with his educational performance and were not being properly addressed. The IEP team erroneously made the assumption, without the data, that because there was a reduction in yelling, screaming, taking off his clothes, etc., the Student was therefore available for learning and was learning. Dr. [REDACTED] explained that teachers and service providers logically know that if a student is screaming, the student cannot be simultaneously processing information, because those actions are mutually exclusive. However, the opposite is not inherently true: just because a student is no longer having as many interfering behaviors such as screaming, does not mean that the student is actually learning.<sup>32</sup>

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<sup>32</sup> “So when I have a kid that’s engaging in some behavior that overtly lets teachers and staff know he’s not processing the information because it’s pretty clear if someone’s screaming they’re not processing, it’s easier to catch those kinds of kids than it is to catch a kid like this.” (T. 8/3/21 p. 344.)

As an expert in autism, Ms. [REDACTED] testified that you never want to decrease a behavior without increasing a student's communication. Ms. [REDACTED] explained that behavior is a form of communication and that interfering behaviors occur for four reasons: to escape a demand; to gain attention; to access materials or other tangible items; and for sensory input. Although the [REDACTED] staff did not collect data to analyze why the Student was having interfering behaviors at school, Ms. [REDACTED] analyzed the Student's interfering behaviors at home and realized what the Student was trying to communicate: "the dropping, yelling, screaming were all very clearly related to escaping demands." Once they were able to figure out that the Student was trying to communicate by his behavior, they could work on the way he could "communicate the need for a break or to escape or to prevent a demand from occurring that wasn't screaming or dropping to the ground or yelling." (July 30, 2021 T. p. 48).

Without collecting data to figure out why a student is demonstrating a behavior, Ms. [REDACTED] testified that "you sort of get into a kitchen-sink approach. Let's try a sensory diet, let's try a break card, let's try a token economy, because these are things that are good to recommend. But we don't necessarily know if that is what the student needs, because we don't yet know if that's what they're trying to communicate." (July 30, 2021 T., p. 89).

Of even greater concern, is Ms. [REDACTED]'s testimony that sometimes the reason an interfering behavior has decreased is because the demands have decreased.<sup>33</sup> The parties were in agreement that functional communication was an extremely significant deficit for the Student. In January 2020, Dr. [REDACTED] evaluated the Student's functional communication using the Rowland Communication Matrix. The Student's functional communication skills were low across all settings (school, 1:1 ABA therapy, and at home) but his overall inability to functionally communicate was the most severely deficit in school, the setting that requires the most

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<sup>33</sup> So sometimes a targeted behavior will reduce, but it is because of artificially contrived environments or because of those antecedents not existing in the environment. [The Student] yelling in an environment where demands are low isn't something that he needs to engage in." (July 30, 2021 T. p. 78).

competency. Ms. [REDACTED]' overall rating of the Student's functional communication was 29%, his Parents' was 39% and Ms [REDACTED] was 41%. These scores were consistent with Ms. [REDACTED], Ms. [REDACTED] and Dr. [REDACTED] observations that the Student rarely communicated at school, even when prompted. Increasing the Student's functional communication was the prerequisite to everything else:

For the Student], increasing his communication is really at the absolute crux of everything that he needs. Improving his functional communication means that there is less opportunity for interfering behaviors to occur. There is more opportunities for him to access his educational program. There is more opportunity for him to engage socially and independently with his environment.

(July 30, 2021 T. p. 183.)

Without an FBA to determine the communicative function of his behavior, MCPS staff took a "kitchen sink" approach to writing the Student's IEP goals and objectives. This approach ignored the Student's need for a *systematic* approach to improving his functional communication skills. It was the opposite approach of writing appropriately ambitious goals and objectives in light of his circumstances, which, in the Student's case is his critical need for functional communication.

Inappropriate inclusion of the Student in third grade general education classrooms:

I also agree with the Parents' contention that including the Student in the third-grade general education classroom despite his lack of progress on goals on his IEP deprived the Student of FAPE. The staff at [REDACTED] agreed that, with the exception of an OT goal to anchor his writing on the bottom line, the Student did not master any of his goals from second grade. Despite this fact, at the first IEP team meeting in third grade, the school team proposed increasing the Student's participation in the general education environment.<sup>34</sup>

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<sup>34</sup> In closing, MCPS argued that the Student's involvement in the general education environment was increased for third grade because of the progress he made. But, as noted, the Student only achieved one goal in the second grade which was an OT goal.



In second grade, the Student participated in recess and lunch with typically developing peers. In third grade, the Student was included with typically developing peers for lunch, recess, music, art and physical education. In third grade, the Student participated in the general education environment for twenty-five per cent of his school week.

It was clear that the Student's inclusion in general education classes during his third-grade year was not based on any individualized assessment of the Student's needs but was rather based on the fact that all students in the third grade [REDACTED] were included in general education classrooms for "specials." Indeed, the testimony was that if the Student was not included in the general education classrooms for his specials, he would have been in a class by himself.<sup>35</sup>

Ms. [REDACTED] testified that there is a benefit for Student to be included with typically developing peers because it gave him an opportunity to model the language, behavior, etc., of his typically developing peers. However, although Ms. [REDACTED] could testify as to what the general intention is by including students with disabilities in general education classrooms, she had no basis to testify as to what, if any, advantage there was to the Student of being included in the general education classroom because she never observed the Student in any of those classrooms. In fact, Ms. [REDACTED] never testified that she observed the Student in any classroom at [REDACTED] [REDACTED].<sup>36</sup>

Although both of the Student's second and third grade Special Education teachers testified, they were not asked about the Student's participation in specials because they never

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<sup>35</sup>Ms. [REDACTED] testified that if the Student did not participate in the general education classes for "specials," "he would have been by himself in a self-contained class for some of those specials: art, music and PE." (August 19 T., p. 1284).

<sup>36</sup>Ms. [REDACTED]'s testimony that the Student wanted to be included with his classmates in the general education classrooms further detracts from her credibility. All of the evidence of record is that the Student rarely communicated with his classmates, even when prompted. When the Student did communicate it was very short utterances. Ms. [REDACTED] supervised the [REDACTED]'s teachers and staff and coordinated services for approximately 100 students. She never observed the Student in any special education or general education class, in recess or at lunchtime. She had absolutely no basis to opine that the Student wanted to be with his peers.

observed the Student in those classes. Although they received information from the paraeducators about any concerns that may have arisen during lunch or recess, I do not give any weight to this anecdotal information as the testimony was that the paraeducators alternated their attendance at lunch and recess and there was no systematic protocol for sharing this information.

In contrast, Ms. [REDACTED] observed the Student in a general education music classroom. She noted in her observation that the Student did not follow the routine of the classroom or the directions of the music activity, even with significant prompting from his paraeducator, and did not interact with the general education teacher or peers. Contrary to Ms. [REDACTED]'s speculation that inclusion in general education classes could give the Student an opportunity to model language and appropriate behavior from typically developing peers, Ms. [REDACTED] hypothesized that due to the additional size of the general education class, the need for "wait time" for the Student is "dead time" for the Student because he may not be learning at all. "He doesn't conventionally communicate that he is processing information." (August 3, 2021 T., p. 387-8). Certainly, the Student did not demonstrate that he understood two of the activities that took place during the observation. When the class arrived, all of the other students stood in a line and performed a unique handshake with the teacher; the Student did not shake the teacher's hand and instead walked around the classroom. When the students were told to walk in a circle and freeze when the drumming stopped, the Student continued walking.

Additionally, Ms. [REDACTED] and Dr. [REDACTED] observed the Student in special education classes as did Ms. [REDACTED] and Ms. [REDACTED]. Even in special education classes, the observers uniformly noted very little interaction between the Student and the other children. If the Student had almost no spontaneous communications with the other children in his class, despite goals and objectives on these subjects and adults who were trained to facilitate these interactions, it is

hard to envision that the Student would have had meaningful interactions with approximately 100 students in the cafeteria, or 30 plus students in a physical education or art class.

Added to the fact that the Student received no educational or social skills benefits from being included in the general education specials, was the fact that [REDACTED] has a policy that students will not be pulled from specials to receive speech and language therapy or OT. Instead, the Student missed core academic subjects that he needed (e.g., reading comprehension, applied math problems, etc.) in order to receive these related services.

Refusing to collect data about the Student's lunch:

Ms. [REDACTED] testified that one of her first interactions with Ms. [REDACTED] was to communicate the Parents' concern that the Student was not eating anything during the school day. Ms. [REDACTED]'s testimony was uncontroverted that Ms. [REDACTED] did not see this as an issue that school staff should have to address unless there was medical documentation. Ms. [REDACTED] testified that they offered to send all of the Student's lunch back home so that his Parents would know how much he ate. She told Ms. [REDACTED] that they were not going to get into a "battle" about eating with the Student, and Ms. [REDACTED] assured Ms. [REDACTED] that they did not want school staff to become engaged in a conflict with the Student about eating. Instead, she explained that because the Student was incapable of communicating information about eating lunch, they would appreciate information about what and how much he ate to try and expand his narrow choice of foods.

The Parent testified that if he has to skip lunch, it is hard for him to focus on his work in the afternoon and he would assume the same was true for his son. He could not understand Ms. [REDACTED]'s comment that insufficient consumption of food did not have an educational impact.

Although it is true that was not an area addressed on the Student's IEP, I found the Parents' concerns reasonable. One only needs to look at the movement across the country for

free breakfast and lunch programs to realize that educators must realize there is a negative relationship between hunger and academic progress.

During closing arguments, MCPS questioned the collaborative nature of the Parents' work with MCPS. The evidence did not support this assertion.<sup>37</sup> The evidence was clear that every time the school requested information, the Parents supplied it in a timely manner. The Parents were extremely deferential to school personnel until they began to see that progress being reported at school was not being reported in a measurable way and was not being replicated outside of school. The Student's IEP provided for a paraeducator to individually work with the Student and accompany him to lunch and specials. The paraeducator performed some tasks for the Student that he was not capable of doing such as opening a juice container. It was not unreasonable to request the paraeducator to observe and briefly comment (by way of a checklist or some other brief report) on whether the Student drank any of the juice, for example, after the paraeducator opened the container for the Student, or to even encourage the Student to take a few sips.

MCPS refused to have the paraeducator complete the communication log:

Although Ms. [REDACTED] described a communication journal that was used in second grade, there was not as much testimony as to how communication was accomplished in third grade between Ms. [REDACTED] and the Parents. There was an online communication tool ([REDACTED]) that Ms. [REDACTED] used with all of the families in her third-grade class. Although the Parents included as an issue in their complaint that the [REDACTED] team refused to have the paraeducator fill out the communication log, no specific testimony or documentary evidence was elicited on this issue and therefore it will not be addressed further.

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<sup>37</sup> In March 2020, the Parents started visiting several private as well as public programs that might have been alternatives to [REDACTED] for the Student, but they did not make a decision for the Student to attend [REDACTED] until the summer of 2020. In fact, the Student attended ESY in MCPS during the summer of 2020.

Inadequate and Inappropriate Distance Learning Plan during the COVID-19 Pandemic:

Again, although this was alleged in the Parents' Due Process Complaint, and although several witnesses agreed that MCPS did not work on all of the Student's IEP goals and objectives or deliver his related services to the extent they would have been delivered in-person, there was not a significant amount of testimony or documents to address this topic. The Parents recognized that it was extremely difficult to engage the Student and maintain his attention during remote instruction.

The one area that was completely inappropriate, however, was MCPS' insistence on implementing a new curriculum during the already less-than-ideal circumstances of distance learning. Ms. [REDACTED] and Ms. [REDACTED] explained that the change in curriculum required enormous amounts of time spent during and outside of work hours to modify the new curriculum for the Student (and presumably other special education students as well). There was no evidence that this new curriculum contributed in any way to aiding the Student in making progress on his individualized goals and objectives and the opposite was likely true as valuable time was expended in modifying the new curriculum.

MCPS' arguments that the Student became more independent:

MCPS argued in closing that during the second grade, the Student's tantruming behaviors decreased, he was able to rely less on the supplemental aids and services, he was able to access the curriculum and started showing signs of independence. MCPS argued that the best examples of this was when he was able to tell his paraeducator he did not want her and he entered the cafeteria easily and played chase with a peer at recess.

The evidence contradicts MCPS' argument. First, although MCPS asserted this occurred during the Student's second-grade year, the attempt to substitute "no thank you," instead of tantruming did not take place until the third-grade year. MCPS reported that between October

21, 2019 and November 13, 2019, the Student said “no thank you,” four times instead of tantruming and had twenty-eight tantrums during this same time period. (Parents’ Ex. 23.)

On November 13, 2019, the Student had twenty-two tantrums in three different settings or situations: drinking a juice box; computer class; and, in reading. Interesting, after a day in which the Student had twenty-two tantrums in one day in three different settings or situations, no further data was reported by ██████████ regarding the Student’s substitution of “no thank you” for tantrums.

Although MCPS argued that it was progress and independence for the Student to tell the paraeducator he did not want her, the evidence on this was so vague that it is unconvincing. At a time when the Student was almost never spontaneously expressing himself verbally -- and then when he did it was only with one or two-word utterances -- it is impossible to infer that the Student saying “no thank you” to the paraeducator was that he was independently capable of accessing the curriculum as opposed to some other reason. This is especially so because Ms. ██████████ convincingly testified that the Student’s interfering behaviors would naturally decrease if the demands on him decreased. In other words, if the Student learned that telling the paraeducator “no thank you,” could result in him being left alone to do what he wanted, there was no reason for him to yell and scream.

In fact, there is some evidence that supports the hypothesis that the Student’s interfering behaviors were reduced because staff was not having the Student complete a task. For example, for the fourth quarter of the Student’s second grade year, he would tantrum when the Speech and Language Pathologist came into the classroom to take him to therapy. After determining that the Student did not want to leave until he finished his math warm-up routine, they allowed him to continue a preferred activity instead of transitioning to a non-preferred activity when it was time. In the general education music class Ms. ██████████ observed, the paraeducator was attempting to

engage the Student in the lesson by moving him to where the teacher and his peers were on the carpet. The Student, however, perseverated on remaining at a particular square on the carpet and the paraeducator allowed him to do so. In the classroom activity that Ms. [REDACTED] observed, the students were supposed to be using their Chromebooks to practice their typing but the Student chose another activity to do instead and was allowed to do so. It is unclear from Ms. [REDACTED] observation if the paraeducator who was leading the learning activities was even aware that the Student was not engaged in the typing class because he was not being disruptive.

Although MCPS identified recess and lunch as places the Student was successfully able to access, no one from MCPS testified that they observed the Student in those settings or gave any specific information as to how he did. Instead, Ms. [REDACTED] testified that staff reported to her that the Student frequently sat with his hands over his ears during lunch.

It cannot be overstated that the reason MCPS was unable to demonstrate that the Student was engaged in active learning is because it refused to collect objective, measurable data.<sup>38</sup> Dr. [REDACTED]’ point that “following the routine is different than learning” was unchallenged by MCPS. (August 3, 2021 T. p. 401). Although the Student became better at following the routine that does not mean he was independently learning.

#### Reimbursement for the [REDACTED]

As noted above, Parents may recover the cost of private education if the school system failed to provide a FAPE, the private education services obtained by the parent were appropriate to the child’s needs, and the overall equity of the case favors reimbursement. *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cty. School District Four v.*

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<sup>38</sup> Dr. [REDACTED] from [REDACTED] also stressed in her psychological report that educational decisions for the Student needed to be based on “an empirical approach.” An empirical approach would involve training the paraeducator to collect data to assess the effectiveness of different intervention strategies: “Decisions regarding when to reduce or eliminate the services of a one-to-one assistant should be made based upon how well [the Student] has learned to independently utilize specific behavioral skills/techniques rather than how well his behavior is managed when one-to-one assistant is present.” (Parents’ Ex. 21).

*Carter*, 510 U.S. 7 (1993). *See id.* at 12-13. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

In this case, MCPS argued that for the [REDACTED] to be appropriate for the Student “it must meet much of the same criteria that the school’s IEP meets.” (September 1, 2021 T. p. 1440). MCPS then argued that the Student’s program at [REDACTED] is comprised of the same hours of services as the program proposed by MCPS, and that he did not make progress on his goals during fourth grade.

MCPS’ arguments mischaracterized the evidence. First, although the individual Speech and Language Services and OT services are expressed on the Student’s Diagnostic Prescriptive Goals (DPG)<sup>39</sup> in terms of discreet times, Ms. [REDACTED]’s testimony was uncontroverted that Speech and Language as well as OT services are embedded throughout the instruction at the [REDACTED] and those service providers are actively co-teaching the Student throughout the day.

In stressing the need for the Student to build his functional communication skills, Dr. [REDACTED] described how that would look in an educational program for the Student:

How he communicates has to be front and center, even above the curriculum, so that communication has to be embedded instructionally, across those kinds of settings.” First he shows it in one-to-one instruction. Interwoven intermittently throughout the day, through all subject areas, through music, through art, through recess, what has to happen, he’s going to start getting all these building blocks for functional communication, which will then allow him to access even higher levels of academic instruction, which certainly we have some indication he’s capable of.” But we can’t do that without getting that under control first.

(August 3, 2021 T. p. 392-3).

When Ms. [REDACTED] testified about the Student’s fourth grade year at [REDACTED], she described exactly the type of embedded services Dr. [REDACTED] described. Furthermore, when Dr. [REDACTED] observed the Student at [REDACTED], he was receiving instruction from both a Speech and Language

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<sup>39</sup> Ms. [REDACTED] testified that when a student is not placed by a public school system, the student is not on an IEP but [REDACTED] develops a DPG for the student’s goals and objectives.



Pathologist as well as a teacher during a combined physical education/reading comprehension activity and recess.

Secondly, MCPS argued that █████ did not do an FBA and did not develop a Behavioral Interventions Plan (BIP). Although Ms. █████ testified that the █████ does not call their Student Intervention Plan a BIP, her testimony was uncontroverted that it is the equivalent of an BIP and was based on ABC data collected for an FBA. In fact, Ms █████ testified that she has written many BIPs and that the Student’s plan was revised, based on ABC data collected, three times during the 2020-21 school year.<sup>40</sup>

Further, although MCPS argued that the Student did not make any progress on his social emotional goals, the evidence disputes this assertion. One of the first behaviors █████ analyzed was the function of the Student’s interfering behaviors. Recognizing that the Student used his interfering behaviors to communicate how he was feeling, █████ began using the Zones of Regulation with the Student very successfully. The Student is now not only able to understand what the various zones are but to also demonstrate strategies to help himself to move from one zone to the other. He was able to generalize his understanding to recognize what zone his little sister was in and to suggest strategies for her to move to a calmer zone. No one from MCPS testified that the Student was able to have this kind of interaction or generalized learning with any of his peers at █████.

Further, Ms. █████ also noted that saying “no” or “no thank you” to something you do not want to do is not very realistic: “And everybody in the world has to do things they don’t feel

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<sup>40</sup> August 4, 2021 T., p. 640.

like doing or they don't want to do. And so that does feel like a very important skill to make sure to teach everybody. ... So if you need a break, it's totally fine to me to break. Saying no is not the way we get that." (August 4, 2021 T. pp 638-9). The [REDACTED] team did not stop the analysis after it recognized that the Student's "no" was due to an attempt to avoid the work:

[S]o if [the Student] doesn't want to do his work, instead of saying no or ripping up his paper, he can say, "I need a break." And then he's still getting to escape the work, he's still achieving the same function, but he is doing it in a way that's more appropriate and more, ultimately functional. And so determining the function so that we can help adjust the contingencies in the environment or provide those kind of proactive supports if we know that math is always a hard time, adjust the way that we present math so that's a shorter chunk or it starts with a more preferred activity or it's kind of help us identify what changes we can make to support him and also be prepared to teach him a better way to do what he's trying to do."

The Parents argued that the Student's progress must also be seen in the context that most of his fourth-grade year was provide by [REDACTED] virtually. Despite instruction being delivered virtually, [REDACTED] was able to establish rapport with the Student and assist him in improving his functional communication and decreasing his interfering behaviors. In contrast, the Student's entire second grade year, which occurred in person, was devoted to trying to decrease the Student's interfering behaviors. As noted above, there is strong evidence that this was not accomplished during the Student's second grade year and these goals and objectives, as well as the ongoing interfering behaviors, continued into the Student's third grade year. In contrast, [REDACTED] staff had to meet, build rapport, collect and analyze data, all virtually in order to identify

and work on the Student's functional communication which was the key to decreasing his interfering behaviors.<sup>41</sup>

I found the Parent's testimony regarding the progress the Student made at [REDACTED] credible and convincing. As noted earlier, the Parents were very deferential to school personnel. When asked why he did not initially object to MCPS' refusal to conduct an FBA, even though they were not seeing a decrease in interfering behaviors at home, the Parent testified: "So for us, it's more like we defer to the professionals. And so if the team felt like he had made enough progress, then to be quite frank, who are we to question that?" (August 4, 2021 T. p. 499).<sup>42</sup>

Additionally, the Parents did not overstate or exaggerate their observations of progress at KTS:

Granted, I'm not saying it's perfect. There are still challenges up to today, but the progress we've seen in the past 12 months has just been – it's been pretty amazing. I mean, he's literally coming up to us, asking full questions and sentences and telling us his needs, right? Like, he'll come to us now. "I need to

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<sup>41</sup>MCPS offered a report from the [REDACTED] on the Student's performance on the Measure of Academic Progress (MAP) in math and reading. (MCPS Ex. 33). The Parents objected as it was not disclosed in accordance with the five-day rule. I provisionally admitted the document and permitted the parties to question Ms. [REDACTED] about the document. Counsel for MCPS cited an unreported case (*E.P. v. Howard Cnty. Pub. Sch. Sys.*, Civil Action No. ELH-15-3725 (D. Md. Aug. 21, 2017)) which held that an ALJ was within his discretion to permit the school system to admit a document which was not previously disclosed in accordance with the five-day rule. However, in addition to noting the IDEA gives the ALJ discretion, the Court noted that the document at issue was being offered for purposes of impeachment. MCPS was not offering the [REDACTED] document for purposes of impeaching the testimony of Ms. [REDACTED]. Counsel also cited *Cooper v. Dist. of Columbia*, 77 F. Supp. 3d 32 (D.D.C. 2014), for the proposition that the parents were not "blindsided" when the hearing officer permitted a school system witness to testify because that witness had participated in IEP meetings, etc. However, in this case, MCPS offered the document through Ms. [REDACTED] without disclosing it to the Parent (even though it was received by MCPS counsel on the last day it could have been disclosed) and after the Parent had called their [REDACTED] witness who could have addressed the document. As the document could have been disclosed and was not (and was not a document being used for impeachment), I exercise my discretion in sustaining the Parent's objection to the admissibility of what was identified and provisionally admitted during the hearing as MCPS Ex. 33.

Even if I had admitted the document, I would have given it very little weight if any. The document states on its face that it might not be indicative of the Student's academic abilities. Ms. [REDACTED] admitted that she had not spoken with anyone at [REDACTED] about the testing and had no idea if it was administered in person or virtually and when it was administered (e.g., after a significant break from school). More importantly, she agreed that the Student's performance on the MAP tests varied greatly. (August 19, 2021 T. p. 1321).

<sup>42</sup> The Parent also gave a second reason why they deferred to the professionals and that was because they wanted to believe their son had made the reported progress. This reaction from parents of a Student with very complex disabilities is very credible. The Parent's straight-forward demeanor and lack of defensiveness made his testimony credible and persuasive.

use the bathroom.” “I’m hungry.” “I’m full.” Things that honestly a year ago we never imagined he would ever say.

(August 4, 2021 T. p. 558).

In sum, based on the testimony of the Student’s teacher at [REDACTED] the results of Rowland’s Communication Matrix that showed the Student’s functional communication increased between January of 2020 when he was in MCPS and January of 2021 when he was at [REDACTED] virtually, as well as the observations by Dr. [REDACTED], Ms. [REDACTED], and the Student’s Parents, [REDACTED] is an appropriate placement for the Student and the Parents are entitled to reimbursement for the expenses associated with his attendance for the 2020-21 school year.

2021-22 School Year:

As discussed above, MCPS filed a Motion to prohibit the Parents from seeking payment from MCPS for the Student’s placement at the [REDACTED] for the 2021-22 school year. In ruling on MCPS’ Motion, I concluded that if the Parents prevailed in showing a denial of FAPE during the two years covered by the statute of limitations, then they may show that the denial of FAPE resulted in a claim for relief that may be broader than the two years prior to the filing of the complaint.<sup>43</sup> I further ruled that MCPS may present any evidence it deemed appropriate to suggest that equitable considerations should bar an award of anything other than compensation for the 2020-21 school year.<sup>44</sup>

After carefully considering the evidence in this case, I conclude that all equitable considerations are in favor of awarding the Parents compensation for both the 2020-21 and current 2021-22 school year. This is so because of [REDACTED] repeated denials of the Parents’

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<sup>43</sup> “The legislative history is thus crystal clear that Congress intended to impose a single statute of limitations, but otherwise not to limit a court’s power to remedy the deprivation of a free appropriate education.” *G.L.*, 802 F.3d at 624.

<sup>44</sup> Although MCPS also argued in its Motion that the Parents were barred in seeking reimbursement by the doctrine of laches, MCPS did not present any evidence during the hearing to prove that the Parents’ delayed seeking reimbursement for a private placement or that MCPS suffered prejudice as a result.

request to conduct an FBA and collect objective measurable data on his present levels of performance and his goals and objectives. MCPS failed to appreciate the critical need for the Student to increase his functional communication in order to decrease his interfering behaviors; instead, MCPS was satisfied that the Student was no longer impacting the entire building with his tantrums despite the evidence that the Student was not making any progress in increasing his functional communication in order to make progress on his academic and social emotional goals and objectives.

MCPS argued that the [REDACTED] at [REDACTED] is a different educational model than [REDACTED] and that the Parents were acting in bad faith in trying to change [REDACTED] into the [REDACTED] instead of just stating that they wanted to unilaterally place the Student at [REDACTED]. I disagree. The Parents worked with MCPS since the Student was in pre-school. They agreed with MCPS' recommendation to place the Student in [REDACTED] for two years -- which everyone now recognizes was not an appropriate placement for the Student. The Parents have demonstrated that the Student did not receive a FAPE at [REDACTED] for two years and he is now very behind academically. He started third grade on a first-grade level in reading, math and writing, and he ended third grade on a first-grade level in reading, math and writing at [REDACTED]. In his fourth-grade year at [REDACTED], a year in which he began a new school, with new teachers, service providers and peers, and did so in a virtual format for most of the year -- it is not totally unexpected that his reading comprehension did not increase a [REDACTED]. But what did increase were the Student's functional communication abilities, his abilities to communicate spontaneously and not just in response to prompts, and at the same time, his interfering behaviors were specifically targeted and decreased. Now that the Student has improved in his functional communication, now that the Student is engaged in his education, he can start to make progress in his academics.

MCPS has argued that the [REDACTED] at [REDACTED] cannot be changed into something that it is not. This is true. It is also true that Ms. [REDACTED], Ms. [REDACTED] and Dr. [REDACTED] have consistently recommended what the Student needed in order to receive an appropriate education. He needed to have a clearly defined level of performance that was objectively measured. He needed to be taught in a very small group because, due to his extremely limited functional communication skills, it is difficult to know what the Student is learning in a whole group. Dr. [REDACTED] testified that the way to make sure that the Student is learning and not just following a routine, or always repeating the last of four multiple choice answers, is to teach the Student in a very small group and make sure the Student is able to generalize the skill in different settings and then demonstrate the skill with minimal prompts in settings with more students. Dr. [REDACTED] also recognized that it is not just the small class size but “it has to actually be the instructional methodology with the skills targeted very specifically.” (August 3, 2021 T. p. 417.) As that instruction cannot be delivered appropriately by MCPS, but can be at [REDACTED] the Student should be placed at public expense at [REDACTED] for the 2021-22 school year.

### **CONCLUSIONS OF LAW**

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

1. MCPS failed to provide a free appropriate public education to the Student during the 2020-21 school year, by not providing an IEP that was “reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 1002 (2017).
2. The Parents are entitled to tuition reimbursement and associated expenses they paid for the 2020-21 school year that the Student attended fourth grade at the

██████████. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

3. The Parents are entitled as a matter of compensatory relief to have the Student placed at the ██████████ for the 2021-22 school year and the MCPS shall pay the associated expenses for the Student's fifth grade year at the ██████████ *G.I. v. Ligonier Valley School District Authority*, 802 F.3d 601 (3d Cir. 2015).

### **ORDER**

I **ORDER** that the Parent's Due Process Complaint is **GRANTED** and **AFFIRMED**.

October 1, 2021  
Date Decision Issued

Ann C. Kehinde  
Administrative Law Judge

ACK/emh  
#194186

### **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]

[REDACTED]



██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE ANN C. KEHINDE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

CASE No.: MSDE-MONT-OT-21-11482

**EXHIBIT LIST**

The Parents identified 70 exhibits; 51 exhibits were admitted into evidence:

Parents Ex. 1: Not admitted

Parents Ex. 2: Not admitted

Parents Ex. 3: Not admitted

Parents Ex. 4: Not admitted

Parents Ex. 5: Not admitted

Parents Ex. 6: Not admitted

Parents Ex. 7: Not admitted

Parents Ex. 8: ██████████ – Language Assessment, dated May 31, 2018

Parents Ex. 9: Not admitted

Parents Ex. 10: Assessment Report and Treatment Plan, ██████████, M.Ed., October 3, 2018

Parents Ex. 11: Progress Report on IEP goals, dated November 7, 2018

Parents Ex. 12: PWN, dated February 21, 2019

Parents Ex. 13: PWN, dated February 25, 2019

Parents Ex. 14: Not offered

Parents Ex. 15: Not offered

Parents Ex. 16: Progress Report on IEP goals, dated June 12, 2019

Parents Ex. 17: Telephone conference call, dated September 19, 2019

Parents Ex. 18: IEP, Meeting date October 14, 2019

Parents Ex. 19: Not offered

Parents Ex. 20: PWN, dated October 16, 2019

Parents Ex. 21: Neuropsychological Evaluation, [REDACTED], Ph.D., dated October 18, 2019

Parents Ex. 22: Neurology Office Visit Summary, dated October 30, 2019

Parents Ex. 23: Data sheets on starting activity and number of prompts, December 10, 2019 until January 21, 2020

Parents Ex. 24: MCPS Physical Education Teacher's report, dated November 13, 2019

Parents Ex. 25: Observation Report, [REDACTED], M.Ed., dated November 26, 2019

Parents Ex. 26: ABA Comprehensive Treatment Plan, Ms. [REDACTED], December 12, 2019

Parents Ex. 27: Data sheets on no thank you versus tantrum, October 21, 2019 until November 13, 2019

Parents Ex. 27A: Graph describing data in Parents Ex. 27

Parents Ex. 28: MCPS Report Card Addendum, 2018-19 school year

Parents Ex. 29: Work Samples, Second Quarter 2019-20 school year

Parents Ex. 30: Educational Assessment Report, dated January 21, 2020, Ms. [REDACTED]

Parents Ex. 31: Occupational Therapy Re-evaluation, dated January 22, 2020

Parents Ex. 32: Not offered<sup>45</sup>

Parents Ex. 33: Report of Speech and Language, dated February 7, 2020, Maya Ekus

Parents Ex. 34: PWN, dated February 10, 2020

Parents Ex. 35: Observation Report, Ms. [REDACTED], dated February 11, 2020

Parents Ex. 36: Psychological Evaluation, undated, Dr. [REDACTED]

Parents Ex. 37: Not offered

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<sup>45</sup> Parents Ex. 32 was referred to during cross-examination by MCPS but was not introduced or admitted.

Parents Ex. 38: Letter from [REDACTED], M.D., dated February 17, 2020

Parents Ex. 39: Letter from [REDACTED], CRNP, dated February 17, 2020

Parents Ex. 40: PWN, dated February 28, 2020

Parents Ex. 41: MCPS Music Teacher's report, dated March 3, 2020

Parents Ex. 42: PWN, dated April 8, 2020

Parents Ex. 43: IEP, Meeting date October 14, 2019

Parents Ex. 44: PWN, dated May 5, 2020

Parents Ex. 45: Progress Report on IEP Goals, dated June 15, 2020

Parents Ex. 46: PWN, dated July 9, 2020

Parents Ex. 47: Not offered

Parents Ex. 48: MCPS Report Card Addendum, 2019-20 school year

Parents Ex. 49: [REDACTED] Diagnostic Prescriptive Goals, dated October 21, 2020

Parents Ex. 50: Student Support Plan, dated December 22, 2020

Parents Ex. 51: Student Support Plan, dated February 1, 2021

Parents Ex. 52: Comprehensive Treatment Plan, Ms. [REDACTED] M.Ed.

Parents Ex. 53: Psychological Report, [REDACTED], Ph.D., dated March 1, 2021

Parents Ex. 54: [REDACTED] Student Support Plan, 2020-21 school year

Parents Ex. 55: Not offered

Parents Ex. 56: [REDACTED] Diagnostic Prescriptive Goals Present Levels of Performance, 2020-21 school year

Parents Ex. 57: [REDACTED] Diagnostic Prescriptive Goals and Annotations, 2020-21 school year

Parents Ex. 58: [REDACTED] Report Card, 2020-21 school year

Parents Ex. 59: Not offered

Parents Ex. 60: Zones of Regulation slides and story, 2020-21 school year

Parents Ex. 61: [REDACTED] Invoice, 2020-21 school year

Parents Ex. 62: CV [REDACTED], M.Ed.

Parents Ex. 63: Not offered

Parents Ex. 64: CV [REDACTED], M.Ed.

Parents Ex. 65: CV [REDACTED], Ph.D.

Parents Ex. 66: Not offered

Parents Ex. 67: CV [REDACTED], M.Ed.

Parents Ex. 68: Not offered

Parents Ex. 69: Not offered

Parents Ex. 70: Email from Parent to Ms. [REDACTED], dated November 12, 2019

MCPS identified 35 offered exhibits, 30 were admitted into evidence:

MCPS Ex. 1: Not offered

MCPS Ex. 2: Not offered

MCPS Ex. 3: Authorization for Consent for Functional Behavioral Assessment (FBA), dated November 20, 2018

MCPS Ex. 4: Not <sup>46</sup>offered

MCPS Ex. 5: PWN, dated November 21, 2018

MCPS Ex. 6: PWN, dated February 21, 2019 (Parents Ex. 12 – formatting is different)

MCPS Ex. 7: PWN, dated February 25, 2019 (Parents Ex. 13)

MCPS Ex. 8: IEP, Meeting date November 20, 2018; Amended date May 1, 2019

MCPS Ex. 9: IEP, Meeting date November 20, 2018

MCPS Ex. 10: IEP, Meeting date October 14, 2019 (Parents Ex. 18)

MCPS Ex. 11: PWN, dated October 16, 2019 (Parents Ex. 20)

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<sup>46</sup>MCPS Ex. 4 was reviewed with Ms. [REDACTED] but not offered as an exhibit by MCPS.

- MCPS Ex. 12: Data sheets on starting activity and number of prompts, December 10, 2019 until January 21, 2020; Data sheets on no thank you versus tantrum, October 21, 2019 until November 13, 2019 (Parents Ex. 23 and 27)
- MCPS Ex. 13: Educational Assessment Report, dated January 21, 2020, Ms. [REDACTED] (Parents Ex. 30)
- MCPS Ex. 14: MCPS Classroom Observation, dated February 3, 2020, Ms. [REDACTED]
- MCPS Ex. 15: Occupational Therapy Re-evaluation, dated January 22, 2020, Ms [REDACTED] (Parents Ex. 31)
- MCPS Ex. 16: MCPS Team Consideration of External Report, date of meeting: February 7, 2020
- MCPS Ex. 17: Psychological Evaluation, undated, Dr. [REDACTED] (Parents Ex. 36)
- MCPS Ex. 18: Report of Speech and Language, dated February 7, 2020, [REDACTED] (Parents Ex. 33)
- MCPS Ex. 19: PWN, dated February 10, 2020
- MCPS Ex. 20: Preview Request for Assistive Technology Consultation by [REDACTED], dated February 11, 2020
- MCPS Ex. 21: Assistive Technology Consideration: Student, Environment, Tasks & Tools (SETT), February 20, 2020
- MCPS Ex. 22: PWN, dated February 28, 2020 (Parents Ex. 40)
- MCPS Ex. 23: PWN, dated February 28, 2020
- MCPS Ex. 24: uPAR Administration Results, dated March 9, 2020
- MCPS Ex. 25: PWN, dated April 8, 2020 (Parents Ex. 42)
- MCPS Ex. 26: IEP, Meeting date October 14, 2019 (Parents Ex. 43)
- MCPS Ex. 27: PWN, dated May 5, 2020 (Parents Ex. 44)
- MCPS Ex. 28: PWN, dated July 9, 2020 (Parents Ex. 46)
- MCPS Ex. 29: CV [REDACTED], M.D.
- MCPS Ex. 30: Not offered
- MCPS Ex. 31: CV [REDACTED], M.A.

MCPS Ex. 32: CV [REDACTED], M.Ed.

MCPS Ex. 33: Not admitted

MCPS Ex. 34: CV [REDACTED] M.S.

MCPS Ex. 35: CV [REDACTED], M.Ed.