

[REDACTED]

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

BEFORE MICHAEL R. OSBORN,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-PGEO-OT-21-00757

DECISION

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

STATEMENT OF THE CASE

On January 11, 2021, [REDACTED] (Parent), on behalf of her child, [REDACTED] (Student), filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Prince George's County Public Schools (PGCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2019);² Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

The Complaint alleges the PGCPS denied the Student a free appropriate public education (FAPE) for the 2018-2019, 2019-2020, and the 2020-2021 school years, including extended school year services, because the PGCPS failed to develop an appropriate Individualized

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

² C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all citations of 34 C.F.R. hereinafter refer to the 2020 volume.

Education Program (IEP) and failed to offer the Student a FAPE based on the Student's unique circumstances. The Parent also alleges that the PGCPs committed a procedural violation of the IDEA by changing the Student's placement from an in-school general education setting to a home-with-virtual-learning setting in March 2020 without convening an IEP team meeting to evaluate whether a home-with-virtual-learning setting was appropriate to meet the Student's unique educational needs.³ The Parent also alleges that the PGCPs violated the Parent's and the Student's rights under Section 504 of the Rehabilitation Act⁴ and Title II of the Americans with Disabilities Act.⁵

As relief for the alleged failure to provide a FAPE, the Parent requests compensatory education services for failure to provide supplementary aids and services, and requests related services including assistance with technology, speech language therapy, occupational therapy, and travel assistance, all to be provided by private service providers, and such other relief as the OAH deems just and proper.

The Parent also requests attorney's fees, monetary fees, and fees for expert witnesses pursuant to Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

I held a Telephone Prehearing Conference (TPHC) on February 24, 2021, from the OAH in Hunt Valley, Maryland. Keith Howard, Esq., of Cornelius, North Carolina, specially admitted, and Stephenson F. Harvey, Jr., Esq., of Dunkirk, Maryland, represented the Parent and

³ The Parent requested that the two-year statute of limitations for filing the Complaint commence when the Parent provided to her attorneys PGCPs records relating to the Student. The Parent alleged the PGCPs failed to provide information to the Parent relating to the Student's rights under the IDEA and that the Parent was unaware of such rights or how to exercise them until she consulted with counsel. On March 4, 2021, the Parent later withdrew this request.

⁴ See 29 U.S.C.A. § 794(a) (2015) (Congressional prohibition of discrimination by institutions that receive federal grants).

⁵ See 42 U.S.C.A. § 12101 (2008) (General purpose of the Americans with Disabilities Act).

Student. The Parent did not attend.⁶ Jeffrey A. Krew, Esq., of Ellicott City, Maryland, represented the PGCPS.

I clarified at the TPHC that the OAH has no authority to consider any issues raised under the Rehabilitation Act or the Americans with Disabilities Act unless the OAH is specifically delegated responsibility for addressing those issues by appropriate authority and that here no such delegation was made. The only relief available to the Parent and Student at the hearing is relief under the IDEA.

At the February 24, 2021 TPHC, the parties and I discussed the issues to be addressed and resolved by the hearing, without arriving at a consensus as to those issues. On February 25, 2021, I sent a letter to the parties directing them to submit written versions of the issues to be addressed at the hearing and established a timeline for those submissions.

At the February 24, 2021 TPHC, the parties and I also discussed that under 34 C.F.R. section 300.515(a)(1), a final decision addressing the matters raised in the Complaint would normally be due Friday, March 26, 2021, forty-four days after February 10, 2021, the date the parties agreed in writing that no resolution was possible.⁷ At the TPHC, the parties jointly requested an extension of the timeline for issuing a final decision under the IDEA and its implementing regulations based upon the availability of counsel for hearing days, availability of the parties' witnesses, and the PGCPS' upcoming transition from a remote-learning-only education format due to the COVID-19 pandemic to a hybrid live-remote learning format. I found good cause to extend the decision timeline and, in my TPHC report and order of March 15, 2021,

⁶ The Student did not attend any session of the hearing. The Parent did not attend the Prehearing Conference but attended the hearing. The Parent alleges the failure of the PGCPS to provide a FAPE to the Student, and she also alleges failure to provide services to her, personally. Unless otherwise described all references to the Parent are in her capacity both as a representative of the Student's interests and of her own interests.

⁷ Under the applicable regulation the final decision timeline is forty-five days, which would have been a Saturday, making the final decision due on Friday, the forty-fourth day.

advised the parties that I will issue a final decision within thirty days of the close of the record. 34 C.F.R. §§ 300.510(b)(2), 300.515(a) and (c).

I held the hearing by video conference on April 6, 7, 8, 9, 12, 14, 26, 27, 28 and 29, 2021, May 3, 4, 5, 11, 17, 21, and 27, 2021, June 3, 4, 15, 21, 22, and 23, 2021. By June 21, 2021, the Parent and Student had not yet completed their presentation of evidence and it was apparent the hearing would not be completed by June 23, 2021. As part of the June 21, 2021 hearing day I conducted a discussion with counsel as to their and their witnesses' availability on subsequent days. I also conducted a discussion on the record with a Parent's expert as to his future dates of availability. Following this discussion with counsel and the witness, counsel submitted documentary confirmation of the dates of various scheduling obstacles such as travel itineraries, hotel reservations, conference registrations, and court conflicts. After receiving documentary confirmations, and after considering comments of counsel and the Parent's expert, on June 23, 2021, I set July 15, 16, 26, 27, 28, 29 and 30, 2021, and August 9, 10, 11, 12, 13, 16 and 17, 2021 as dates for the hearing.

On August 11, 2021, I granted a motion made by the PGCPS, which was unopposed by the Parent, to issue an order directing the parties to engage in a settlement conference with another Administrative Law Judge of the OAH. The parties engaged in settlement discussions on August 13, 16 and 17, 2021, but were not successful. On August 27, 2021, I convened a scheduling conference with the parties. After considering the availability of counsel and witnesses, after considering documents submitted by counsel relating to court conflicts and dates of unavailability, and factoring in my attendance at a judicial conference, I set hearing dates on September 15, 17, 20, 21, 22, 23, 24, 28, 29, and 30, 2021, and October 1, 18, 20, 21, and 22, 2021.

During the hearing day on October 20, 2021, I discussed with the parties the need for additional hearing days and, after discussion with counsel and after consideration of court conflicts supported by orders to attend, and dates and times of counsel or witness unavailability, I set hearing dates on October 29, 2021, and November 1, 2, 3, 4, 8, 9, 10, 12, 15, 16, 17, 18 and 19, 2021. On November 3, 2021, I modified that schedule to accommodate a Circuit Court conflict. After a brief session with counsel as the hearing began on November 17, 2021, I cancelled the remainder of the hearing day due to a death in the family of one counsel.

On November 18, 2021, I discussed with the parties the need for additional days to complete the hearing. After discussion with counsel and consideration of scheduling conflicts submitted by the parties, on November 19, 2021, I set November 22, 23 and 24, 2021 as additional hearing days.

The hearing concluded on November 22, 2021, and I closed the record. Pursuant to my decision to grant the joint request of the parties to extend the decision deadline to 30 days from the close of the record, I advised the parties on November 22, 2021, that my decision would be issued on or before Wednesday, December 22, 2021. 34 C.F.R. §§ 300.510(b)(2), 300.515(a) and (c). Both parties submitted written citations of authority for my review in support of their respective positions, the PGCPS on November 22, 2021, and the Parent on November 23, 2021. These submissions did not further extend the decision deadline I stated on November 22, 2021, were not made exhibits, did not include argument, and were for my benefit as a research tool in reaching a decision.

I conducted the entire hearing by videoconference remotely from the OAH in Hunt Valley, Maryland. The Parent attended from her home in [REDACTED] Maryland. Messrs. Howard and Harvey were both present for all sessions. Mr. Harvey attended from his office in Dunkirk, Maryland and Mr. Howard attended from his office in Cornelius, North Carolina. Mr. Krew

represented the PGCPS from his office in Ellicott City, Maryland, with a representative from the PGCPS attending all sessions, unless I excused the PGCPS representative because only administrative matters were being addressed. Witnesses attended by videoconference from various locations.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2018); State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

- (1) Did the PGCPS deny the Student a FAPE when it changed his placement from an in-person general education setting to a virtual-learning-at-home education setting without considering his individual needs, and without first convening an IEP meeting to allow the Parent an opportunity to meaningfully participate in the placement decision, during the period March 2020 to the present;
- (2) Did the PGCPS deny the Student a FAPE and violate the Child Find provisions of the IDEA when it failed to consider the Student's need for special education and related services after receiving private occupational therapy, psychological and educational evaluations in August 2020;
- (3) Did the PGCPS deny the Student a FAPE by failing to fully implement his IEP for the period March 2020 to the present;
- (4) Did the PGCPS deny the Student a FAPE by failing to develop an appropriate IEP for the period January 11, 2019 through January 11, 2021;
- (5) Did the PGCPS deny the Student a FAPE by failing to address or provide supports relating to the Student's behavioral issues from January 11, 2019, through January 11, 2021;
- (6) Did the PGCPS deny the Student a FAPE when it failed to grant the Parent's request for an Independent Education Evaluation or file a due process complaint to defend its decision not to grant the request; and,
- (7) If the answer to any of (1) through (6) above is "yes," is compensatory education and related services provided by private providers an appropriate remedy?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits offered as evidence by the Parent and Student, unless otherwise noted:

- Parent Ex. 1 CV⁸ [REDACTED] Psy.D., undated (adm.) 5/5/2021)
- Parent Ex. 2 CV [REDACTED] Ph.D., undated (adm. 4/6/2021)
- Parent Ex. 3 PGCPS Confidential Psychological Evaluation Report, 10/8/2019 (adm. 5/3/2021)
- Parent Ex. 4 [REDACTED] 7/19/2020 (adm. 5/3/2021)
- Parent Ex. 5 PGCPS Assessment Report, Speech and Language, 10/18/2018 (adm. 5/5/2021)
- Parent Ex. 6 Speech and Language Evaluation, [REDACTED] 1/7/2020 (adm. 4/12/2021)⁹
- Parent Ex. 7 Occupational Therapy Evaluation, [REDACTED] [REDACTED] 1/10/2020 (adm. 4/7/2021)
- Parent Ex. 8 IEP, 11/13/2018 (adm. 4/6/2021)
- Parent Ex. 9 Prior Written Notice (PWN), 11/12/2019, with IEP, 11/12/2019 (adm. 4/6/2021)
- Parent Ex. 10 IEP, 10/29/2020 (adm. 4/6/2021)
- Parent Ex. 11 Progress Report, 11/13/2018 (adm. 5/5/2021)
- Parent Ex. 12 Progress Report, 4/25/2018 through 4/10/2019 (adm.5/5/2021) (w/drawn 6/21/2021)¹⁰
- Parent Ex. 13 Absent and tardy report, 9/13/2018 through 6/14/2019 (adm.4/13/2021)
- Parent Ex. 14 Absent and tardy report, 9/6/2019 through 3/10/2020 (adm.4/26/2021)
- Parent Ex. 15 Absent and tardy report, 9/2/2020 through 3/24/2021 (adm.5/5/2021) (withdrawn 6/21/2021)¹¹
- Parent Ex. 16 PGCPS grade scale, undated (adm.4/12/2021)
- Parent Ex. 17 Progress report, academic years 2016 through 2019 (adm.4/7/2021)
- Parent Ex. 18 Progress report, oral and written communication, academic year 2019 (adm.4/7/2021)
- Parent Ex. 19 Gradebook, academic year 2020 (adm.4/7/2021)
- Parent Ex. 20 Gradebook, academic year 2021 (adm.4/7/2021)

⁸ *Curriculum vitae*

⁹ This exhibit was admitted for the limited purpose of demonstrating that it was in the possession of PGCPS, and not for the validity of its contents. During the presentation of evidence, [REDACTED] testified about the report, its contents, and consideration of the exhibit by the October 29, 2020, IEP team.

¹⁰ Parent's Exhibit 12 as originally marked for identification and admitted pursuant to agreement of the parties on May 5, 2021, was a progress report for the Student's sibling. On June 21, 2021, the Parent withdrew the original exhibit and substituted the Student's progress report, which was marked as Parent's Exhibit 12 and was admitted June 21, 2021. I discarded the original Parent's Exhibit 12, the Student's sibling's progress report.

¹¹ This exhibit was admitted by agreement of the parties as to authenticity and admissibility on May 5, 2021, and the Parent later determined the exhibit was attendance information related to the Student's sibling, not the Student, and with this discovery withdrew the exhibit.

- Parent Ex. 21 Record request, 10/30/2019 (adm.4/12/2021)
- Parent Ex. 22 Email string, 8/18/2020 through 3/2/2021 (adm.4/12/2021)
- Parent Ex. 23 Email string, 8/13/2020 (adm.4/12/2021)
- Parent Ex. 24 [REDACTED] report, 12/13/2018 (adm.5/3/2021)
- Parent Ex. 25 [REDACTED] report, 1/7/2019 (adm.5/3/2021)
- Parent Ex. 26 [REDACTED] report, 2/4/2019 (adm.5/3/2021)
- Parent Ex. 27 Request for Independent Educational Evaluation (IEE), 8/1/2019 (adm.4/12/2021)
- Parent Ex. 28 Email string, 8/5/2019 through 8/6/2019 (adm.4/12/2021)
- Parent Ex. 29 [REDACTED] letters to Parent, 9/16/2019 (adm.4/12/2021)
- Parent Ex. 30 [REDACTED] letters to Parent, 9/16/2019 (adm.4/12/2021)
- Parent Ex. 31 Email, 9/26/2019 (adm.5/5/2021)
- Parent Ex. 32 PGCPS Student Rights and Responsibilities Handbook, 2020-2021 school year (adm.4/26/2021)
- Parent Ex. 33 COMAR 13A.05.01.01 through 13A.05.01.14 (Official Notice)
- Parent Ex. 34 U.S. Department of Education COVID-19 information release, 3/2020 (Official Notice)
- Parent Ex. 35 MSDE Technical Assistance Bulletin (TAB) 20-03, 5/2020 (adm.4/12/2021) (adm..again 5/5/2021)
- Parent Ex. 36 MSDE IEP Process Guide, 8/1/2019 (Official Notice)
- Parent Ex. 37 Assessment Report, Speech and Language, 10/29/2018 (adm.5/5/2021)
- Parent Ex. 38 Assessment Report, Special Education 10/8/2018 (adm.5/5/2021)
- Parent Ex. 39 [REDACTED] Elementary School ([REDACTED] letter to Parent, undated (adm.5/5/2021)
- Parent Ex. 40 [REDACTED] Confidential Psychological Evaluation, [REDACTED] Psy.D., 3/8/2021 (adm.6/15/2021)¹²
- Parent Ex. 41 National Association of School Psychologists, School Refusal: Information for Educators, undated (adm.5/5/2021)
- Parent Ex. 42 Email string between attorneys, 3/23/2021 through 3/24/2021 (adm. 5/5/2021)
- Parent Ex. 43 Behavior Assessment System for Children 3RD Edition (BASC-3), Generalized Anxiety Disorder (GAD), with attached GAD description from Diagnostic and Statistical Manual for Mental Disorders-5 (DSM-5), undated (adm.5/5/2021)
- Parent Ex. 44 IEP, 12/16/2015 (adm.5/5/2021)¹³
- Parent Ex. 45 PGCPS response to Administrative Law Judge instruction to provide certain records subject to Parent's subpoena to PGCPS (adm.5/5/2021)
- Parent Ex. 46 Grade Point Average (GPA), end-year report for School Year (SY) 2019-2020 6/23/2020 (adm.5/5/2021)
- Parent Ex. 47 Not offered
- Parent Ex. 48 Not offered
- Parent Ex. 49 Assessment Report, 10/29/2018 (adm.5/5/2021)

¹² Parent's Exhibit 40 was admitted for the limited purpose of its conclusory paragraph.

¹³ Admitted for historical context, only, and not as substantive evidence to support the Parent's request for relief.

- Parent Ex. 50 Consent to Release Information, 2/25/2019 (adm.5/5/2021)
- Parent Ex. 51 Not offered
- Parent Ex. 52 Not offered
- Parent Ex. 53 Not offered
- Parent Ex. 54 IEP, 12/14/2016 (adm.4/27/2021)
- Parent Ex. 55 IEP, 11/29/2017 (adm.4/27/2021)
- Parent Ex. 56 Student Learning Objectives (SLO), 9/2019 through 3/2020, State Test Results SY 16-17, SY 17-18, SY 18-19, Student Progress Reports, printed 4/11/21 and 4/12/21, ██████████ MAP (Measures of Academic Progress) results, SY 19-20, Individual Student Reports, 9/14/2020 through 2/2021, Assessment Reports, SY 16-17, SY 17-18 (adm. 4/27/2021)
- Parent Ex. 57 Not offered
- Parent Ex. 58 PGCPS Confidential Psychological Report, 10/19/2015 (adm.5/17/2021)
- Parent Ex. 59 Not offered
- Parent Ex. 60 ██████████ Neurodevelopmental Pediatrics Final Report, 2/23/2016; ██████████ Clinic record of visit and Assessment Plan, 4/22/2016; Student Health Assessment/Physical Examination standard form, 9/13/2019 (adm.6/2/2021)
- Parent Ex. 61 ██████████ Psy.D., notes, 4/15/2020, 5/14/2020, 6/8/2020, ██████████ Diagnostic Assessment, 2/18/2020, Testing Behavioral Observations, 4/15/2020, 5/14/2020, 6/8/2020; BASC-3 Parent Rating Scales, 6/8/2020; BASC-3 Teacher Rating Scales, 5/14/2020; BASC-3 Report, 5/14/2020; BASC-3 Interpretive Report, 6/8/2020 (adm.5/27/21)
- Parent Ex. 62 ██████████ Middle School teacher profiles, staff email roster, undated (adm.7/28/2021)¹⁵
- Parent Ex. 63 Not offered
- Parent Ex. 64 Student grades, academic year 2021 (adm.6/15/2021)
- Parent Ex. 65 Student's class schedule, SY 20-21, undated (adm.6/22/2021)
- Parent Ex. 66 Letter from ██████████ 8/24/2021 (9/23/2021, withdrawn by Parent, offered by PGCPS, excluded 9/23/2021)
- Parent Ex. 66a¹⁶ PGCPS Procedure re: Student Attendance, Absence and Truancy, 8/26/2019 Not offered by Parent, offered by PGCPS (excluded 9/23/2021)
- Parent Ex. 67 Not offered

¹⁴ ██████████ (formerly known as the ██████████) is a research-based not-for-profit organization that creates academic assessments for students pre-K-12. Its primary assessment product is the MAP Suite, a collection of formative and interim assessments that help teachers identify unique student learning needs, track skills mastery, and measure academic growth over time. MAP assessments attempt to track student growth over time in order to help educators plan instruction that meets student needs at their level and predicts performance and includes accountability measures. See <https://e█████████> ██████████ This reference is included because “█████████” and “MAP” are both copyright-protected terms.

¹⁵ Bates pages 1024-1029 admitted, only; relevance limited to name, email address and image of ██████████

¹⁶ Marked 66a because the original document marked for identification as Parent's Exhibit 66 was withdrawn but was retained for the record for judicial review as PGCPS offered the exhibit, but I excluded it.

I admitted the following exhibits offered as evidence by the PGcps, unless otherwise

noted:

- PGcps Ex. 1 Consent for Assessment, 9/12/2018 (adm.5/5/2021)
- PGcps Ex. 2 PWN, 9/14/2018 (adm.5/5/2021)
- PGcps Ex. 3 Assessment Report, 10/8/2018 (adm.5/5/2021)
- PGcps Ex. 4 Assessment Report, 10/29/2018 (adm.5/5/2021)
- PGcps Ex. 5 Assessment Report, 10/30/2018 (adm.5/5/2021)
- PGcps Ex. 6 IEP, 11/13/2018 (adm.5/4/2021)
- PGcps Ex. 7 PWN, 11/15/2018 (adm.5/4/2021)
- PGcps Ex. 8 Final Report Card, Grade 5, undated (adm.5/5/2021)
- PGcps Ex. 9 English Language/Literacy Assessment, SY 18-19 (adm.4/12/2021)¹⁷
- PGcps Ex. 10 Mathematics Science Assessment, SY 18-19 (adm. 4/12/2021)¹⁸
- PGcps Ex. 11 Science Assessment, SY 18-19 (adm.4/12/2021)¹⁹
- PGcps Ex. 12 SLO Pre and Post RELA (Reading/English/Language Arts) 5, Reading, SY 18-19; MAP-R results spring, winter and spring SY 17-18, SY 18-19, SY 19-20; Partnership for Assessment of Readiness for College and Careers (PARCC) and Maryland Comprehensive Assessment (MCAP) scores, SY 17-18, SY 18-19; SLO-Math Pre-test and Post-test, SY 29-20; SLO Pre-RELA and Post-RELA in Writing and Math, SY 19-20 (adm.4/6/2021)²⁰
- PGcps Ex. 13 Emails, 20 pages, 10/10/2018 through 1/13/2021 (p. 7, only, adm. 5/11/2021)²¹ (p.1, and pp. 3-5 adm.9/30/2021) (p. 11 adm.11/19/2021)
- PGcps Ex. 14 Absent/Tardy report, Academic Year 2019 (adm.5/5/2021)
- PGcps Ex. 15 [REDACTED] letter to Parent, 9/16/2019 (adm.5/5/2021)
- PGcps Ex. 16 [REDACTED] letter to Parent, with enclosure, 10/23/2019 (adm.4/12/2021)²²
- PGcps Ex. 17 IEP, 11/12/2019 (adm.5/5/2021)
- PGcps Ex. 18 PWN, 11/12/2019 (adm.5/5/2021)
- PGcps Ex. 19 Not offered
- PGcps Ex. 20 Continuity of Learning Services Log, 4/7/2020 through 6/3/2020 (adm.4/6/2021)²³
- PGcps Ex. 21 Individualized Continuity of Learning Plan (ICLP), 4/9/2020 (adm.4/6/2021)²⁴
- PGcps Ex. 22 Individual Student Report, 9/14/2020 (adm.5/5/2021)
- PGcps Ex. 23 6th Grade Report Card, undated (adm.5/5/2021)
- PGcps Ex. 24 SY 19-20 6th Grade Absent/Tardy totals, undated (adm.5/5/2021)
- PGcps Ex. 25 6th Grade Course Schedule, SY 19-20, Attendance printout 9/11/2019 through 3/10/2020, Grade Report by course, Quarter 1 and Quarter 2, SY 19-20, Local

¹⁷ Offered by Parent and admitted, 4/12/2021.

¹⁸ Offered by Parent and admitted, 4/12/2021.

¹⁹ Offered by Parent and admitted, 4/12/2021.

²⁰ Offered by Parent and admitted, 4/6/2021.

²¹ Page 7 of PGcps Exhibit 13 offered by Parent and admitted, 5/11/2021.

²² Offered by Parent and admitted, 4/12/2021.

²³ Offered by Parent and admitted 4/6/2021.

²⁴ Offered by Parent and admitted 4/6/2021.

- Test Results, 9/12/2019 through 3/3/2020, State Test Results, SY 16-17, SY 17-18, SY 18-19 (adm.5/5/2021)
- PGCPS Ex. 26 IEP 10/29/2020 (adm.5/5/2021)
- PGCPS Ex. 27 PWN, 10/29/2020 adm.5/5/2021
- PGCPS Ex. 28 School Attendance Information, grades 00K4 (2013) through 7 (2021), undated (adm.4/8/2021)²⁵
- PGCPS Ex. 29 Complaint, 1/11/2021 (adm.5/5/2021)
- PGCPS Ex. 30 [REDACTED] M.A., materials (adm.5/5/2021)²⁶
- PGCPS Ex. 31 [REDACTED] M.Ed., materials (adm.5/5/2021)²⁷ pp. 7, 8 and 9 admitted again admitted 4/12/2021 (Tr. 880), (p. 10 admitted again 6/22/2021)
- PGCPS Ex. 32 [REDACTED] M.Ed., materials (adm.4/12/2021)²⁸
- PGCPS Ex. 33 [REDACTED] materials (adm.5/5/2021)²⁹
- PGCPS Ex. 34 Email, 3/25/2021 (adm.5/5/2021)
- PGCPS Ex. 35 [REDACTED] M.S., materials, 9/16/2020 through 3/25/2021, 10/26/2021, pages 4-6 substituted (pp. 1, 2, 4-6, and 7-9 adm. 11/3/2021, pages 11-14 adm. 11/8/2021, pp. 15-24 excluded 11/8/2021)
- PGCPS Ex. 36 [REDACTED] M.Ed., materials, 11/6/2020 through 3/25/2021 (adm.5/5/2021)
- PGCPS Ex. 37 [REDACTED] B.S., materials, 9/23/2020 through 3/26/2021 (adm.5/5/2021)
- PGCPS Ex. 38 Absent/Tardy report, 8/31/2020 through 4/9/2021 (adm.4/26/2021)³⁰
- PGCPS Ex. 39 PGCPS “Engage PGCPS” family newsletter materials and other public-access documents consisting of the following 216 pages: (adm.5/5/2021)³¹
- A. Distance Learning Begins April 14, 4/3/2021 (pp. 1-11)
 - B. Schools Closed through March 27, 3/13/2020 (pp. 12-19)
 - C. 2019-20 Calendar Update, 6/1/2020 (pp. 20-21)
 - D. TAB 20-01, 3/2020 (pp. 22-39)
 - E. TAB 20-01 Supplement, 5/31/2020 (pp. 40-45)
 - F. TAB 20-02, 4/6/2020 (pp. 46-54)
 - G. TAB 20-04, 4/2020 (pp. 55-59)
 - H. TAB 20-05, 4/2020, revised 10/2020 (pp. 60-72)
 - I. TAB 20-06, 4/2020 (pp. 73-88)
 - J. TAB 20-07, 4/2020, revised 10/2020 (pp. 89-101)
 - K. TAB 20-08, 5/2020 (pp. 102-112)
 - L. TAB 20-09, 6/9/2020, revised 10/2020 (pp. 113-138)
 - M. School Discipline Basics & Integrating Supports: A Focus on Students with Disabilities, 11/2020 (pp. 139-180)
 - N. ESY During the COVID-19 Pandemic, 2020 (pp. 181-184)

²⁵ Offered by Parent and admitted 4/8/2021.

²⁶ Admitted 5/5/2021 through agreement of the parties with reservation of rights by PGCPS to elicit testimony from Ms. [REDACTED] as to the contents of the exhibit.

²⁷ Admitted 5/5/2021 through agreement of the parties with reservation of rights by PGCPS to elicit testimony from Ms. [REDACTED] as to the contents of the exhibit.

²⁸ Offered by Parent and admitted 4/12/2021.

²⁹ Admitted 5/5/2021 through agreement of the parties with reservation of rights by PGCPS to elicit testimony from Ms. [REDACTED] as to the contents of the exhibit.

³⁰ Offered by Parent and admitted 4/26/2021.

³¹ Some of the pages described as “A” and “B” were out of order, as submitted.

- O. Supporting Students with Disabilities During COVID-19 and Afterwards, undated (pp. 185-206)
- P. A Parent’s Guide: Navigating Special Education during the COVID-19 Pandemic, 4/2020 (pp. 207-216)
- PGCPS Ex. 40 Parental Rights, Maryland Procedural Safeguards Notice, revised 3/2019 (adm.5/5/2021)
- PGCPS Ex. 41 CVs of the following persons:³²
- ██████████ M.Ed., undated
 - ██████████ M.A., Psy.S., (adm. 10/29/2021)
 - ██████████ Ed.D. (fact witness only)
 - ██████████ M.Ed. (adm.11/19/2021)
 - ██████████ M.A.
 - ██████████ M.A. Not offered³³
 - ██████████ M.Ed. (adm.9/23/2021)
 - ██████████ Ph.D.
 - ██████████ M.A. (adm.11/1/2021)
 - ██████████ M.S.
 - ██████████ M.S. (adm.11/3/2021)
 - ██████████ B.A.
 - ██████████ M.Ed. (adm.11/16/2021)
- PGCPS Ex. 41S³⁴ CVs of the following persons:
- ██████████ Ed.S.
 - ██████████ M.Ed.
 - ██████████ M.Ed. (adm.11/9/2020)
 - ██████████ M.S.
 - ██████████ M.Ed. (adm.9/20/2021)
 - ██████████ Ed.D. (adm.9/23/2021)
 - ██████████ Ed.D. (adm.10/18/2021)
 - ██████████ B.S. (adm.11/12/2021)
 - ██████████ M.Ed. (not offered, fact witness only)
 - ██████████ R.N., M.S. (adm.9/23/2021)
 - ██████████ (adm.10/18/2021)
 - ██████████ M.S. (adm.11/4/2021)
- PGCPS Ex. 42 ██████████ Psy.D., report, 3/28/2021, with accompanying emails (adm.5/5/2021)
- PGCPS Ex. 43 Not offered
- PGCPS Ex. 44 Acknowledgment of Receipt of Parental Rights, document dated 9/12/18 excluded, documents dated 11/13/18 and 11/12/19, with attached Parents’ Rights and Responsibilities in the IEP Process, admitted (adm.5/5/2021)

³² All CVs in PGCPS Exhibit 41 submitted and marked for identification through 5/5/2021 were admitted on 5/5/2021. CVs of witnesses were admitted, again, on the dates they testified in support of the areas of expertise for which they were offered. The exception was ██████████ who was called as a fact witness, only, without a request that I accept her as an expert in any field.

³³ PGCPS Exhibit 41, pages 15 through 17, were referred to extensively by the Parent and PGCPS during qualification of Ms. ██████████ as an expert, but neither party offered PGCPS Exhibit 41, pages 15 through 17 for admission. I considered Ms. ██████████ CV in my decision because I accepted her as an expert in special education.

³⁴ “S” refers to the Supplement to an exhibit.

- PGCPS Ex. 45 Email 8/25/2020, with attached Consent Form, 7/23/2020 and Plan of Care 8/21/2020 (adm.11/4/2021)
- PGCPS Ex. 46 Not offered
- PGCPS Ex. 47 Transfer Evaluation Committee letter to Parent, 8/9/2016, (excluded 5/5/2021)
- PGCPS Ex. 48 Consulting Contract between counsel for Parent and Student and the [REDACTED] 3/22/2021 (adm.7/30/2021)
- PGCPS Ex. 48S [REDACTED] billing information, 5/24/2021 (adm.7/30/2021)
- PGCPS Ex. 49 [REDACTED] billing information, 4/1/2021 (adm.7/30/2021)
- PGCPS Ex. 50 Not offered
- PGCPS Ex. 51 Not offered
- PGCPS Ex. 52 Parent confirmation of receipt of information, 3/12/2019 (p. 1 of 52-page exhibit, excluded 5/21/2021, then p. 1 adm.9/30/2021). Parent Consent to Release of Information 2/25/2019, p. 2 of 52-page exhibit (adm.9/30/2021)
- PGCPS Ex. 53 Not offered
- PGCPS Ex. 54 Administrative Procedures, Student Transfers, 3/1/2028 (excluded 5/5/2021, then adm.9/24/2021)
- PGCPS Ex. 55 Not offered
- PGCPS Ex. 56 Withdrawn 11/3/2021
- PGCPS Ex. 57 Not offered
- PGCPS Ex. 58 [REDACTED] and [REDACTED] Nurse's Office records, 5/31/2012 through 3/13/2020 (adm.5/17/2021)
- PGCPS Ex. 58S [REDACTED] Nurse's Office records, 4/29/2016 through 2/5/2021 (adm.9/23/2021)
- PGCPS Ex. 59 Excerpt of Ethical Principles of Psychologists and Code of Conduct, American Psychological Association, printed 5/16/2021 (adm.7/30/2021)
- PGCPS Ex. 60 BASC-3 Administration by [REDACTED] Psy.D., Comparison of Parent and Teacher Rating Scales, undated (adm.7/30/2021)
- PGCPS Ex. 61 Sample BASC-3 score sheet, sample test example 4/28/2020 (adm.7/30/2021)
- PGCPS Ex. 62 [REDACTED] Psy.D., notes 4/15/2020, 5/14/2020, 6/8/2020; Diagnostic Assessment, 2/18/2020; Testing Behavioral Observations, 4/15/2020, 5/14/2020, 6/8/2020 (adm.7/30/2021)
- PGCPS Ex. 62A Not offered
- PGCPS Ex. 63 BASC-3, Parent Response Interpretation, 6/8/2020 (adm.7/30/2021)
- PGCPS Ex. 64 BASC-3, Parent Responses, 6/8/2020 (adm.7/30/2021)
- PGCPS Ex. 65 BASC-3 Teacher Rating Interpretation (adm.7/30/2021)
- PGCPS Ex. 66 BASC-3, Teacher Ratings, 5/14/2020 (adm.7/30/2021)
- PGCPS Ex. 67 Not offered
- PGCPS Ex. 68 Email string, [REDACTED] M.Ed., and Parent, 9/10/2015 through 6/15/2016 (adm. 9/20/2021)³⁵
- PGCPS Ex. 69 Email string, [REDACTED] M.Ed., to [REDACTED] M.Ed., (Principal, [REDACTED] and [REDACTED] (Secretary, [REDACTED] 3/8/2016, with response from Ms. [REDACTED] to [REDACTED] Ed.D., 3/9/2016; Referral Form, [REDACTED] Ed.D., to Prince George's County Department of Family Services, [REDACTED]

³⁵ Exhibit admitted for historical reference, only, to demonstrate parent/teacher communication method, and to address Parent's testimony that the Student was bullied at school, at page 3.

- Supervision Program, 4/29/2016; [REDACTED] Ed.D., home visit report, 5/4/2016 (adm.9/23/2021)
- PGCPS Ex. 70 Not offered
- PGCPS Ex. 71 Email 4/15/2020 [REDACTED] M.Ed., to Parent, 5/15/2020 (excluded 6/4/2021, adm. 9/23/2021, adm. again 11/9/2021)
- PGCPS Ex. 72 Google Maps printout, 6/3/2021 (adm.9/23/2021)
- PGCPS Ex. 73 Not offered
- PGCPS Ex. 74 Settlement offer, 4/25/2021 (adm., 6/22/2021, p. 1., paragraph 1, only, remainder excl.)
- PGCPS Ex. 75 Not offered
- PGCPS Ex. 76 [REDACTED] Ed.D., letter to Parent, 12/16/2019 (adm.9/30/2021)
- PGCPS Ex. 77 [REDACTED] referral, 6/8/2021 (adm.10/18/2021)³⁶
- PGCPS Ex. 78 Not offered
- PGCPS Ex. 79 Not offered
- PGCPS Ex. 80 Email from [REDACTED] Psy.D., with [REDACTED] [REDACTED] fee schedule, revised 12/2010 (adm.7/26/2021)
- PGCPS Ex. 81 Administrative Law Judge's Ruling on PGCPS Second Motion to Compel and to Shorten Time, 6/9/2021 (adm.7/26/2021)
- PGCPS Ex. 82 Not offered
- PGCPS Ex. 83 11/29/2017 IEP Goals and Objectives Progress Reports, various dates 1/23/2018 through 10/25/2018 (adm.11/9/2021)
- PGCPS Ex. 84 11/13/2018 IEP Goals and Objectives Progress Reports, various dates 1/18/2019 through 6/10/2019 (adm.9/30/2021)
- PGCPS Ex. 85 Not offered
- PGCPS Ex. 86 Quarterly progress reports, 11/12/2019 IEP (adm.9/30/2021)
- PGCPS Ex. 87 Quarterly progress reports, 10/29/2020 IEP (adm.11/18/2021)³⁷
- PGCPS Ex. 88 PWN, 12/16/2015 (adm.9/20/2021)³⁸
- PGCPS Ex. 89 Not offered
- PGCPS Ex. 90 Not offered
- PGCPS Ex. 91 Email string between Mr. Krew and [REDACTED] Psy.D., 7/27/2021-7/28/2021 (adm.7/29/2021)
- PGCPS Ex. 92 BASC 3 Parent Rating Scale and Teacher Rating Scale comparison, July 30, 2021 (adm.8/9/2021)
- PGCPS Ex. 93 [REDACTED] Invoice, 7/31/2021 (adm.9/15/2021)
- PGCPS Ex. 94 [REDACTED] Psy.D., report, (Student's sibling), 7/19/2020 (excluded 9/17/2021)
- PGCPS Ex. 95 Not offered
- PGCPS Ex. 96 PWN, 4/21/2021, pp. 1-2, and p. 3, IEP meeting sign-in sheet (adm.11/3/2021)³⁹
- PGCPS Ex. 97 Not offered

³⁶ Admitted for limited purpose of establishing that PGCPS sent referrals to [REDACTED] relating to the Parent on two occasions, April 2016 and June 2021.

³⁷ I considered performance data in entries 11/6/2020 and 2/5/2021 only.

³⁸ Admitted for historical reference, only, and to complement Parent's Exhibit 44.

³⁹ Admitted for limited purpose of whether the timing of consideration of Parent's Exhibit 7, Occupational Therapy report of Ms. [REDACTED] dated January 10, 2020, was appropriate under 34 C.F.C. Section 300.324(b)(ii)(C).

- PGCPS Ex. 98 [REDACTED] Psy.D., report, unnamed student, 9/2/2021 (excluded 9/17/2021)
- PGCPS Ex. 99 Not offered
- PGCPS Ex. 100 Not offered
- PGCPS Ex. 101 Sealed file
- PGCPS Ex. 102 [REDACTED] letter to Special Education Coordinator, 8/24/2021, with redactions (excl. 9/23/2021)
- PGCPS Ex. 103 [REDACTED] Ed.D., email to [REDACTED] dated 9/22/2021 (adm.10/18/2021)⁴⁰
- PGCPS Ex. 104 Not offered
- PGCPS Ex. 105 Not offered
- PGCPS Ex. 106 [REDACTED] News, 10/31/2019 (excl. 10/1/2021)
- PGCPS Ex. 107 [REDACTED] brochure, undated (adm.10/18/2021)
- PGCPS Ex. 108 IEP, 10/12/2021 (excl. 11/22/2021)
- PGCPS Ex. 109 Student's work samples from class of [REDACTED] M.Ed., class, undated (adm.11/9/2021)
- PGCPS Ex. 110 [REDACTED] M.Ed., email to Parent, 10/28/2021, with letter 10/5/2021, and PWN 10/12/2021 (excl. 11/22/2021)
- PGCPS Ex. 111 Not offered

Testimony

The Parent testified and presented the following witnesses:

- [REDACTED] Ph.D., accepted as an expert in Special Education and Special Education Law and Policy
- [REDACTED] M.A., accepted as an expert in Occupational Therapy
- [REDACTED] Psy.D., accepted as an expert in Psychology, Psychological Assessments, Behavior Assessments, Responses to Behaviors, Behavior Interventions, Therapeutic Response to Student Behavior, and Failure to Access Curriculum⁴²
- [REDACTED] [REDACTED] M.Ed., Special Education Coordinator, [REDACTED] Middle School, accepted as an expert in special education

The PGCPS presented the following witnesses:

- [REDACTED] the Student's maternal grandmother
- [REDACTED]
- [REDACTED] Psy.D.
- [REDACTED] M.Ed., accepted as an expert in Elementary Education and Reading

⁴⁰ I stated for the record that I would not consider the last phrase on page 1 of the exhibit, and that the exhibit was admitted for the limited purpose of establishing that the PGCPS referred the Parent to [REDACTED] for services on two occasions, in 2016 and in 2021.

⁴¹ Witness [REDACTED] testified on October 18, 2021, that the [REDACTED] Program was renamed the [REDACTED] in 2020, without change to the program, to better reflect the program's purpose.

⁴² I rejected Dr. [REDACTED] as an expert in the broad field of "behavior."

- [REDACTED] R.N., accepted as an expert in School Nursing and Procedures
- [REDACTED] Ed.D., Pupil Personnel Worker, accepted as an expert in Pupil Personnel Work
- [REDACTED] M.Ed., [REDACTED] Principal, accepted as an expert in Elementary School and Elementary School Administration
- [REDACTED] Jr., accepted as an expert in the [REDACTED] Program
- [REDACTED] Ed.D., Pupil Personnel Worker, accepted as an expert in Pupil Personnel Work
- [REDACTED] M.Ed., [REDACTED] Assistant Principal, fact witness
- [REDACTED] Psy.S., accepted as an expert in School Psychology
- [REDACTED] M.A., accepted as an expert in school-based occupational therapy
- [REDACTED] M.S., accepted as an expert is Speech Language Pathology in a school setting
- [REDACTED] M.S., accepted as an expert in Care Coordination and Wrap-Around Services
- [REDACTED] M.Ed., accepted as an expert in Special Education
- [REDACTED] B.S., accepted as an expert in Teaching Science in Secondary School
- [REDACTED] M.Ed., accepted as an expert in Teaching Special Education
- [REDACTED] M.Ed., accepted as an expert in Special Education
- [REDACTED] Ed.D., fact witness
- [REDACTED] M.Ed., Special Education Coordinator, [REDACTED] Middle School⁴³

FINDINGS OF FACT

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

Background

1. The Student is presently thirteen years of age and was in fifth grade in school year (SY) 2018-2019, in sixth grade in SY 2019-2020, and in seventh grade in SY 2020-2021.

(PGCPS Ex. 28).

2. The Student has the specific learning disability (SLD) of dysgraphia. (P. Ex. 8).

⁴³ The Parent objected to all questions counsel for the PGCPS asked Ms. [REDACTED] I sustained each objection, so I did not discuss her testimony for the PGCPS in this decision.

3. The Student lives in Prince George's County with the Parent, two younger siblings, his maternal grandparents, and his maternal aunt. (Test. Parent).

4. From SY 2012-2013, Pre-Kindergarten, through SY 2019-2020, sixth grade, the Student attended [REDACTED] (Test. [REDACTED] Test. [REDACTED] PGCPS Ex. 28).

5. When the Student was in Kindergarten, school boundaries changed. [REDACTED] [REDACTED] Elementary School became the Student's new home school. The Parent applied in writing for the Student to remain at [REDACTED] Principal [REDACTED] approved the request. As a condition of approval of the request, the Parent was required to sign an acknowledgement that she, the Parent, was responsible for transporting the Student to and from [REDACTED] Principal [REDACTED] explained this requirement to the Parent as well. (Test. Principal [REDACTED] PGCPS Ex. 54). [REDACTED] [REDACTED] M.Ed., was the Student's second grade teacher at [REDACTED] When he enrolled in second grade, the Student had the reading skills of a first grader and the math skills of a kindergarten student. The Student had difficulty decoding words. (Test. [REDACTED]

6. Ms. [REDACTED] first-hour class was reading and writing, a 90-minute session that started at 7:45 a.m. The Student was frequently late for the first hour class, typically arriving between 8:45 a.m. and 9:00 a.m. (Test. [REDACTED]

7. When Ms. [REDACTED] inquired of the Student why he was late, he responded that the Parent could not get out of bed. (Test. [REDACTED]

8. Ms. [REDACTED] called the Parent several times in an effort to discuss the Student's tardiness and to encourage the Parent to get the Student to school on time, as he was missing important instruction. The Parent returned none of Ms. [REDACTED] calls. (Test. [REDACTED]

9. In an effort to improve the Student's performance in reading and math, Ms. [REDACTED] devoted one-on-one instructional time to the Student on days he was present for class. (Test. [REDACTED]

10. The Student, though on the quiet side when second grade began, engaged well with his fellow students. The Student did not have any unwanted or concerning behaviors in Ms. [REDACTED] class. (Test. [REDACTED])

11. At a December 16, 2015 IEP meeting, [REDACTED] crafted the Student's first IEP. The December 16, 2015 IEP included that the Student's learning disability was "Specific Learning Disability." The areas affected by the Student's learning disability were cognitive, academic, including math calculation, reading phonics, speech and language expressive language, speech and language receptive language, and written language expression. Among others, accommodations and modifications included: small group instruction; use of graphic organizers; use of on-line reading and writing programs; and use of shorter passages of text. (P. Exs. 44, 54).

12. The Parent attended the IEP meeting of December 16, 2015, where she expressed concern about the Student's academic skills. The Parent told the attendees that she worked with the Student on his homework regularly and encouraged him to read. The Parent also said the Student gets upset with himself when he cannot express himself adequately. The Parent said the Student had a lot of friends, enjoyed sports and video games. The Parent and teachers at the IEP meeting agreed that the Student was well-mannered, tries to keep up and wants to do well. (P. Ex. 44).

13. By March 2016, third quarter of SY 2015-2016, the Student had 59 episodes of tardiness (tardies). Ms. [REDACTED] discussed the Student's frequent tardiness with [REDACTED] Principal [REDACTED] (Test. [REDACTED] Test. [REDACTED])

14. In March 2016, Dr. [REDACTED] a Pupil Personnel Worker, attempted to call the Parent to discuss the Student's frequent tardiness, without success. (Test. [REDACTED])

15. On March 22, 2016, Dr. [REDACTED] paid a home visit to the Parent. As to why the Student was so frequently tardy, the Parent explained she had a lot of conflict in the family and

had her hands full caring for her youngest child. The Student never came up in the conversation again after Dr. [REDACTED] told her why she was there. The Parent was enthusiastic about family counseling and support services available through the Prince George's County [REDACTED] program and requested that Dr. [REDACTED] refer her to [REDACTED]. Dr. [REDACTED] did so. (Test. [REDACTED])

16. In April 2016 [REDACTED] a [REDACTED] case worker, contacted the Parent in an effort to explain the [REDACTED] program to her and to offer [REDACTED] program services to the Parent and the Student. [REDACTED] provides supports based on family needs. Assessment of needs includes creation of a Family Service Plan. If truancy or absenteeism is a problem, a case manager tries to determine the cause of the tardiness and absenteeism and develop a plan to address the issue. The objective is to get to the root of the issue. A Family Service Plan can include home visits and school visits, family counseling that includes both parent and child in a joint session, and individual meetings with the child. [REDACTED] also provides access to necessary therapies. The Parent did not respond to Mr. [REDACTED] contacts, and he closed the referral. (Test. [REDACTED])

17. In May 2016 Dr. [REDACTED] spoke to Principal [REDACTED] about the Student's attendance. Since Dr. [REDACTED] visit to the Parent's home in March 2016, the Student had no tardiness and had been absent twice. (Test. [REDACTED])

18. Prior to February 23, 2016, [REDACTED] M.D., the Student's pediatrician, referred the Student to [REDACTED] M.D., of [REDACTED] Medical Center, [REDACTED] [REDACTED] ([REDACTED]) for evaluation. The purpose of the visit was because the Student, although doing well and working hard in school, had language development issues, in general. (P. Ex. 60).

19. On March 4, 2016, Dr. [REDACTED] recommended to Dr. [REDACTED] that the Student participate in speech therapy weekly with speech therapist [REDACTED] at [REDACTED] Dr.

██████ also opined that the Student would benefit from school-based speech therapy at least twice weekly. (P. Ex. 60).

20. On March 4, 2016, Dr. ██████ recommended that the Student re-start behavioral therapy to help him work on behavioral outbursts so he can better cope when he is not understood. (P. Ex. 60).

21. On April 22, 2016, Dr. ██████ saw the Student again, and following this visit determined the Student did not meet the criteria for Attention Deficit Hyperactivity Disorder (ADHD) but did have some weaknesses in executive functioning and some symptoms of oppositional defiant disorder and anxiety, which should be addressed through behavioral therapy. (P. Ex. 60).

22. The Student's end-of-school-year grades as he advanced from SY 2016-2017, third grade, to SY 2017-2018, fourth grade, were an E in reading, a D in math, and a D in oral and written communication. (P. Ex. 17).

23. In SY 2017-2018, when the Student was in fourth grade, he participated in a PARCC assessment in English Language Arts/Literacy (ELA). The Student participated in the PARCC assessment with IEP supports and modifications. (P. Ex. 8).

24. The Student's score on the fourth grade PARCC ELA assessment was 666, a Level I assessment, which means he did not meet expectations for all students his age, both learning-disabled and non-learning-disabled. (P. Ex. 8).

25. In SY 2017-2018, the Student's score on the PARCC math assessment was 694, a Level I assessment, which means he did not meet expectations for all students his age, both learning disabled and non-learning-disabled. (P. Ex. 8).

26. PGCPS administers a MAP assessment to gauge student proficiency and progress in ELA. The MAP assessment is a tool to develop a curriculum suited to a student's ability and to identify areas of need. (Test. [REDACTED])

27. In fall 2017, during SY 2017-2018 as he started fourth grade, the Student took a MAP reading assessment (MAP-R), with a score of 166, which placed him in the second percentile overall. (PGCPS Ex. 12).

28. In spring 2018, while in fourth grade, the Student took a MAP-R with a score of 185, which placed him in the ninth percentile overall. (PGCPS Ex. 12). The Student's end-of-school-year grades for SY 2017-2018, as he advanced from fourth grade to fifth grade, were a C in reading, a D in math, and a B in oral and written communication. (P. Ex. 17).

Fifth and Sixth Grades at [REDACTED]

29. The State measures student progress toward achieving the State's core curricula requirements through SLOs at the beginning and at the end of each academic year.⁴⁴ Progress in accomplishing SLOs is measured by student scores on Reading/Language Arts assessments of reading and writing, which are scored on a range of 0 to 60, and scores on a math assessment, which are scored on a range from 0 to 35. (PGCPS Ex. 12).

30. In fall of SY 2018-2019, in fifth grade, the Student took a SLO assessment in reading on which he scored 21, which was below grade level. The Student had a difficult time identifying the main idea of a passage, identifying details, identifying vocabulary and context, and identifying main characters, settings, and events. (P. Ex. 8, PGCPS Ex. 12).

⁴⁴ See http://archives.marylandpublicschools.org/NR/rdonlyres/CFDE85C4-6B03-483D-8F79-043CD2418EB1/34522/Exec_Officers_010713.pdf

31. In fall of SY 2018-2019, in fifth grade, the Student took a SLO in writing on which he scored a 29. (PGCPS Ex. 12).

32. In fall 2018, SY 2018-2019, in fifth grade, the Student was unable to apply punctuation marks and follow capitalization rules. He had trouble applying grade-level decoding skills and was deficient in phonics. The Student had problems with organization and struggled to connect answers to questions and was unable to support answers with details. He struggled in the classroom to transfer spoken words to written form. His writing was simple, and below-grade level. The Student required frequent prompting and sentence starters to complete writing tasks. (P. Ex. 8).

33. In fall 2018, SY 2018-2019, in fifth grade, the Student took a SLO in math on which he scored 24, and a math Benchmark 1 assessment on which he scored 13. (PGCPS Ex. 12).

34. In fall of SY 18-19, in fifth grade, the Student took a MAP-R, with a score of 179. This placed the Student in the fourth percentile of students his age and was comparable to the reading level score of a typical third grade student proficient in reading. The score of 179 was below the typical reading level score for a fifth grade student, which was 206. (P. Ex. 8, PGCPS Ex. 12).

2018 Triennial Assessment

Academic Progress Assessment

35. On October 2, 2018, [REDACTED] M.Ed., a Special Educator, conducted an assessment in the areas of academics, cognitive, and social and emotional behaviors. As part of her evaluation Ms. [REDACTED] administered a Woodcock Johnson – 4th Edition (WJ-IV) Test of Achievement; reviewed the Student's first quarter progress report for SY 2018-2019; consulted with teachers, the Parent, and the Student; and observed the Student. (P. Ex. 38, PGCPS Ex. 3).

36. The WJ- IV Test of Achievement scores were:⁴⁵

Reading	85	Low Average
Mathematics	66	Low
Written Language.	83	Low Average

37. When tested by Ms. [REDACTED] the Student demonstrated conversational proficiency typical for his age. He was fidgety and restless, and often inattentive to the task at hand. He gave up easily on difficult tasks. With some exceptions, including reading proficiency, math fact fluency and sentence writing fluency, the Student was given an unlimited amount of time to complete tests. The Student had difficulty with questions that required written responses. (P. Ex. 38, PGCPS Ex. 3).

38. The Student had difficulty sounding out unfamiliar words and called out whatever word came to mind that started with the same letter sequence as the unfamiliar word. (P. Ex. 38, PGCPS Ex. 3).

39. During the WJ-IV the Student labored to spell words. (P. Ex. 38, PGCPS Ex. 3).

40. During the WJ-IV the Student had difficulty reading key words in a sentence, which made it challenging for him to predict the correct words to use to complete or comprehend a written passage. (P. Ex. 38, PGCPS Ex. 3).

41. When tasked with writing a sentence, the Student generally did not understand what he was being asked to do, and sentences were inadequate, including run-ons, incomplete sentences, awkward syntax or limited content. (P. Ex. 38, PGCPS Ex. 3).

42. The Student was unable to correctly read aloud. He mispronounced words, added words, substituted words, and hesitated. (P. Ex. 38, PGCPS Ex. 3).

43. The Student's math computation skills were poor. He demonstrated mastery of single-digit addition and subtraction, only. (P. Ex. 38, PGCPS Ex. 3).

⁴⁵ The November 13, 2018 IEP does not include the date of administration of the WJ-IV tests.

44. The Student had limited understanding of grade-appropriate or age-appropriate math skills. He was unable to analyze and solve math problems, unable to listen to a problem, did not recognize a mathematical procedure to solve the problem, and was unable to identify and to perform the correct mathematical procedure. (P. Ex. 38, PGCPS Ex. 3).

45. When compared to other students his age, the Student's overall academic achievement was in the low range. His math achievement was low, as was his written language and reading achievement. The Student's academic achievement was below grade level, and grade level math, writing and reading tasks were challenging. (P. Ex. 38, PGCPS Ex. 3).

46. Ms. [REDACTED] concluded the following instructional supports would be of benefit in the classroom:

- Chunk text
- Check for understanding, repetition and rephrasing
- Write mispronounced or difficult words on cards for instant recall
- Extend time for academic tasks
- Practice math facts with emphasis on addition, subtraction, multiplication and division
- Monitor independent work
- Practice spelling words regularly
- Review vocabulary frequently
- Modify grading
- Use picture/visual supports
- Use manipulatives when teaching new concepts to move from concrete to abstract

(P. Ex. 38, PGCPS Ex. 3).

Speech and Language Assessment

47. On October 15 and 16, 2018, [REDACTED] M.S., a speech and language Pathologist, conducted an assessment of the Student, and on October 29, 2018, she issued a report.⁴⁶ To evaluate the Student's receptive language, expressive language, articulation, oral structuring and functioning, fluency and voice abilities, Ms. [REDACTED] administered: a

⁴⁶ Ms. [REDACTED] noted in her report that the Student's SLD was dyslexia.

Comprehensive Assessment of Spoken Language – Second Edition (CASL-2), which included five sub-tests (receptive language, sentence expression, grammaticality judgment, nonliteral language, and double meaning); an Oral Passage Understanding Scale (OPUS); a Receptive One Word Picture Vocabulary Test - Fourth Edition (ROWPVT-4); and an Expressive One Word Picture Vocabulary Test - Fourth Edition (EOWPVT-4). Ms. [REDACTED] also observed the Student’s articulation, fluency, and voice. (P. Ex. 37, PGCPS Ex. 4).

48. Ms. [REDACTED] used the scores the Student achieved on the CALS-2 to arrive at a Core Composite, a global measure of language performance. The Core Composite score has a mean of 100 and a standard deviation of 15, so scores of 85 to 115 are considered within an average range for students of the Student’s age. The Student’s Core Composite on the CASL-2 was 80, which indicates his overall language skills are in the below-average range for same-age students. (P. Ex. 37, PGCPS Ex. 4).

49. On the CASL-2 subtests, the Student achieved the following scores:

Receptive Vocabulary	92 (average for understanding meaning of spoken word)
Sentence Expression	88 (average for expressing accurate syntax, sentence structure and word order)
Grammaticality Judgment	68 (below-average ability to make immediate judgments about grammatical correctness of a sentence and to correct errors)
Nonliteral Language	67 (below-average ability to comprehend and explain intended meaning such as sarcasm or figurative speech)
Double Meaning	101 (average ability to recognize words with more than one meaning)

(P. Ex. 37, PGCPS Ex. 4).

50. On the OPUS, the Student scored an 87, which means he had an average ability to listen to passages read aloud and recall information from the passage read to him. (P. Ex. 37, PGCPS Ex. 4).

51. On the EOWPVT-4, used to test ability to use single words to label objects, categories or concepts, the Student scored an 86, average for his age. He had strong labeling skills, was able to explain the functions of an object, and was able to label concrete and abstract objects. (P. Ex. 37, PGCPs Ex. 4).

52. The Student articulated words within normal limits, with normal oral motor structure and function. His fluency was within normal limits. His speech quality and intensity were normal for his age. (P. Ex. 37, PGCPs Ex. 4)

53. Ms. [REDACTED] recommended the following supports and accommodations for the Student's participation in the general curriculum:

- Continued use of graphic organizers to organize thoughts across all content area
- Continued opportunities to ask questions during class
- Continued pairing of visual supports with auditory information
- Continued use of repetition of directions and auditory information
- Continued modeling of correct grammatical structures
- Continued extra processing time and response time

(P. Ex. 37, PGCPs Ex. 4).

Psychological Assessment

54. On October 8, 2018, [REDACTED] Psy.S., conducted a psychological evaluation of the Student. Ms. [REDACTED] issued a Confidential Psychological Report following her assessment in which she reported a General Cognitive Ability (GCA) score of 84, which means the Student had a low average ability to perform complex mental processes that involve conceptualization and transformation of information. (PGCPs Ex. 5).

55. As part of her Assessment, Ms. [REDACTED] administered a Differential Ability Scale – Second Edition (DAS-II), which resulted in three composite scores to measure cognitive ability: verbal ability, nonverbal reasoning ability, and spatial ability. The three composite scores resulted in the GCA. (PGCPs Ex. 5).

56. The verbal ability tests measured complex, verbal mental processing and reasoning. The tests included a word definition test and a verbal similarities test. The Student had a combined score of 101 on the verbal ability test, (50 on word definitions, 51 on verbal similarities) which placed him at the 53rd percentile for students his age, an average score. (PGCPS Ex. 5).

57. The nonverbal reasoning tests measured fluid intelligence, or the mental operations when faced with relatively novel tasks that cannot be performed automatically. The nonverbal reasoning tests included matrices, in which the Student was required to select the missing piece from an incomplete matrix, and sequential quantitative reasoning, which required the Student to identify the next step in a sequence. The Student had a combined score of 80 in nonverbal reasoning, (39 on matrices, 37 on sequential reasoning) which placed him in the 9th percentile for students his age, a low average score. (PGCPS Ex. 5).

58. The spatial ability tests measured complex visual-spatial processing though tests that require perception and recall of special relationships and shapes. The Student had a combined score of 80 in spatial ability (40 in recall of designs, 37 in pattern construction) which placed him at the 9th percentile for students his age, a low average score. (PGCPS Ex. 5).

59. Ms. [REDACTED] administered two additional diagnostic tests from the DAS-II to evaluate the Student's capacity for learning: a working memory test designed to test capacity to mentally hold auditory information while performing an active transformation of the information; and a processing speed test to measure ability to think and process information, to make simple decisions, to remain attentive, and to concentrate. These tests and scores did not contribute to her conclusion as to the Student's general cognitive ability but were designed to allow a comparison of the Student's abilities to a mean score of 100. Each test – the working memory

test and the processing speed test – was comprised of two sub-tests, each subtest with a mean score of 50. (PGCPS Ex. 5).

60. On the working memory test, the Student scored an 88 (44 on recall of sequential order, 42 on recall of digits backwards),⁴⁷ which was in the 21st percentile for students his age, a low average score. (PGCPS Ex. 5).

61. On processing speed, the Student scored a 102 (48 on speed of processing information, 54 on rapid naming), which was in the 55th percentile, an average score. (PGCPS Ex. 5).

62. Ms. [REDACTED] considered what was discussed at a September 2018 IEP Team meeting as part of her assessment. Ms. [REDACTED] included in her Triennial Assessment report that at the September 2018 meeting, the Student’s reading teacher noted that the Student stays on task in class and does not require redirection, completes all of his classroom assignments and homework, and is overall compliant. At the same September 2018 meeting the Parent noted the Student had advanced socially. [REDACTED] the [REDACTED] Assistant Principal, noted the Student is quiet but has friends in school and sits with friends at lunch. (PGCPS Ex. 5).

63. Ms. [REDACTED] also noted as part of her evaluation that academic assessments revealed the Student had weaknesses in areas of letter-word identification; spelling; reading comprehension; writing samples; math calculation; and math problem solving. She also noted that visual processing difficulties can hinder a student’s ability to make sense of information they take in visually, and that reading, writing, and learning in general are likely to be impacted when a child has weak visual processing skills. (PGCPS Ex. 5).

⁴⁷ There appears to be a math error here in which Ms. [REDACTED] adds 44 plus 42 to get 88.

64. Ms. [REDACTED] reported that the Student had deficits in nonverbal reasoning, visual-spatial skills and working memory. She recommended that the following be incorporated into the Student's IEP:

- Chunk multi-step information and directions into single steps
- Allow breaks to prevent the Student from becoming overly fatigued
- Supplement visual information with clear and concise verbal directions
- Provide copies of notes or provide the Student with a sheet with most of the notes already written down and have him fill in the rest
- Provide visual cues/references to aid his working memory
- Organize larger assignments to be completed into smaller steps
- Allow extra time to process information
- Allow different ways to share knowledge, such as answering orally and having the teacher scribe for him
- Have the Student complete shorter assignments in the same time limit as other students have for longer assignments
- Take turns reading short passages from books that are of interest to the Student and have the Student reflect on what he has read
- Use books on tape
- Provide visual handouts that are simple and free of clutter

(PGCPS Ex. 5).

The November 13, 2018 IEP

65. On November 13, 2018, the IEP (November 13, 2018 IEP) team met to consider the Student's continuing eligibility for special education services as a result of a learning disability; the Student's present levels of educational performance; and modifications, additions, and related services needed to meet IEP goals and to support the Student's access to grade-level common core standards based on identified needs in phonics, written language and math. (P. Ex. 8, PGCPS Ex. 6).

66. The November 13, 2018 IEP team meeting was attended by the Parent, Ms. [REDACTED] Ms. [REDACTED] Assistant Principal [REDACTED] Ms. [REDACTED] (the Student's Special Education teacher), and Ms. [REDACTED] (P. Ex. 8, PGCPS Ex. 6).

67. The Student's November 13, 2018 IEP included the following:

SLD: Dysgraphia

Academic areas affected by the SLD: Math Calculation; Reading Comprehension; Speech and Language Expressive Language; Written Language Expression

Areas Identified for Reevaluation: Reading; Math; Written Language; Cognitive

(P. Ex. 8, PGCPS Ex. 6).

The Student's SLD and how the SLD affected the Student

68. At the November 13, 2018 IEP team meeting, the IEP team considered the Student's SLD, dysgraphia, and the areas affected by the dysgraphia, which were reading comprehension, math calculation, written language expression, and speech and language expression. The IEP team considered and reviewed the supports in place to access the curriculum and the success of those supports. The IEP team also considered: the assessments of Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] the Student's classroom performance; observations of general educators; the Student's proficiency in language and math; the Student's academic grades, and the Student's performance on State-wide assessments. (P. Ex. 8, PGCPS Ex. 6).

Present Levels of Academic Achievement and Functional Performance

69. In reading comprehension, the Student had difficulty finding main ideas and details, vocabulary and context, and difficulty describing characters, setting and events in a story. (P. Ex. 8, PGCPS Ex. 6).

70. In math the Student had difficulty in unlocking information to solve word problems, and had difficulty completing multi-step problems. (P. Ex. 8, PGCPS Ex. 6).

71. In written language expression, the Student was unable to properly apply punctuation and capitalization, had decoding difficulties due to phonics deficiencies, did not answer the question asked, was unable to use details to express ideas, was poor at translating

verbal words to written words, the complexity of sentences he wrote was well below grade level, and he needed sentence starters and frequent prompting to complete writing assignments. (P. Ex. 8, PGCPS Ex. 6).

72. In speech and language receptive language, the Student's overall language skills were below average when compared to students his age. The Student's skills were average when he was asked to recall information that was read to him, but it was difficult for the Student to reach inferences or make predictions. (P. Ex. 8, PGCPS Ex. 6).

73. In speech and language expressive language, the Student was below average for students his age. The Student was average in using simple and complex sentences and in verb tense. It was difficult for the Student to identify grammatical errors and it was difficult for the Student to understand materials above his grade level and to understand indirect language, figurative speech, or sarcasm. He was able to understand and explain words with more than one meaning. (P. Ex. 8, PGCPS Ex. 6).

74. The Parent provided input at the November 13, 2018 IEP team meeting. The Student was making progress and Parent said she would like to see more progress. (P. Ex. 8, PGCPS Ex. 6).

Instructional and Assessment Features, Accommodations, Supplementary Aids, Services, Program Modifications and Supports

Assistive Technology

75. At the time of the November 13, 2018 IEP team meeting, the Student required no assistive technology. (P. Ex. 8, PGCPS Ex. 6).

Instructional and Assessment Accessibility Features

76. Instructional and Assessment Accessibility features in the November 13, 2018 IEP

included:

- Graphic organizer for use in instruction, only
- Text to speech for English language arts and literacy, math, science, and all assessments
- Instruction time to teach/learn the use of speech to text technology
- Frequent breaks for daily instruction and all State-wide educational assessments
- Reduced distractions for daily instruction and all assessments

(P. Ex. 8, PGCPS Ex. 6).

Instructional and Assessment Accommodations

77. Instructional and Assessment Accommodations in the November 13, 2018 IEP

included:

- Text to speech for English language arts/literacy for daily instruction and the PARCC assessment and Maryland State Alternative Assessment
- Human reader for daily instruction and for the Maryland State Alternative Assessment, but not the PARCC Assessment
- Calculation device and mathematics tools (cubes, number lines, charts, blocks and graphic organizers) for daily instruction, the PARCC assessment and Maryland State Alternative Assessment
- Monitored test responses in daily instruction and all assessments
- Extended time in daily instruction and on all assessments, except the Maryland State Alternative Assessment

(P. Ex. 8, PGCPS Ex. 6).

Supplementary Aids, Services, Program Modifications, and Supports

78. Supplementary aids, services, program modifications, and supports in the

November 13, 2018 IEP included:

- Repetition of directions, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide
- Check for understanding, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide
- Allow use of manipulatives, such as sentence starters, paragraph frames, pre-headed papers, personal word boxes or dictionary, place value cards to aid math calculations, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide

- Repeat or paraphrase information, daily, as needed, by the Student's general education teacher, special education teacher, instructional aide and IEP team
- Frequent and/or immediate feedback, daily, as needed, by the Student's general education teacher, special education teacher, instructional aide or IEP team
- Altered/modified assignments, such as classwork, homework, assessments modified by reduced choices in selected response tests, oral assessment, assignments on the Student's instructional level, less complexity in visual formats in work and tests, daily, by the Student's general education teacher, special education teacher, instructional aide and IEP team

(P. Ex. 8, PGCPs Ex. 6).

Goals and Objectives through November 13, 2019

79. Goals and Objectives in the November 13, 2018 IEP, to be accomplished by November 2019, included:

- Reading Comprehension

Goal

The Student will demonstrate progress using text features including key words, sidebars, illustrations, maps and bold print to provide oral and written support for selected and extended responses three out of five times.

Objective 1

The Student will use information from text features including key words, sidebars, illustrations, maps and bold print to provide oral and written support for selected and extended responses three out of five times.

Objective 2

Given one-three print or electronic sources the Student will summarize, identify fact and opinion statements, cause and effect relationships, draw conclusions and make simple inferences both orally and in writing.

- Math Calculation

Goal

The Student will use the four operations with whole numbers to represent, solve and explain orally/in writing single and multi-step problems with 80% accuracy by classroom-based selected and extended response assessments.

Objective 1

The Student will apply problem-solving strategies in order to find the question and data, choose a strategy, and explain the solution orally/in writing.

Objective 2

The Student will define vocabulary and formulas used to describe math concepts or indicate problem-solving strategies in oral and written responses.

- Written Language Expression

Goal

The Student will use grammatically correct sentences to express his thoughts in a clear and effective manner, being able to do so independently, at least 3 out of 4 times he is assessed.

Objective 1

Given teacher modeling, small group setting, and skill-specific writing graphic organizers, the Student will produce grade-level sentences and paragraphs that are organized and follow a logical order.

Objective 2

Given teacher modeling, small group setting, writing rubric, and adjective chart, the Student will add details and expression to his written work.

- Speech and Language Expressive Language

Goal

The Student will state literal meaning of figurative statements with 80% accuracy, given at least two verbal prompts and visual supports.

Objective 1

The Student will translate figurative language including metaphors, idioms, and similes (but not limited to) into literal meaning with 80% accuracy, provided at least two verbal prompts and visual supports.

Objective 2

The Student will recognize errors in (a) verb tense, (b) noun forms, and (c) capitalization and make appropriate corrections within sentences to make sentences grammatically correct provided fading cues with 80% accuracy.

(P. Ex. 8, PG CPS Ex. 6).

Services and Related Services: What, Where, Duration, How Much, and by Whom

80. Services in the November 13, 2018 IEP included:

- Special education, in the general education classroom, one hour per day, five days per week, for 36 weeks, provided primarily by the Student's general education teacher, and by the Student's special education teacher, instructional assistant, and IEP team.
- Special education, outside the general education classroom, thirty minutes four days per week, for 36 weeks, provided primarily by the Student's special education teacher, and by the Student's general education teacher and instructional assistant.

(P. Ex. 8, PG CPS Ex. 6).

81. Related services in the November 13, 2018 IEP included:

- Speech/Language Therapy, outside the general education classroom, 30 minutes three times per month, for 36 weeks, provided primarily by a speech/language pathologist, and by the Student's general education teacher and instructional assistant.

(P. Ex. 8, PG CPS Ex. 6).

December 13, 2018 through February 4, 2019

82. On December 13, 2018, the Parent and Student went to [REDACTED] where they were interviewed by [REDACTED] LCSW-C. Some of the interview questions related to the Parent, and some questions related to the Student. (P. Ex. 24).

83. The purpose of the visit to [REDACTED] was to obtain mental health services for the Student, who the Parent reported was displaying problematic behavior and was very unmanageable, particularly at home. (P. Ex. 24).

84. The Parent described a wide array of oppositional and disrespectful behaviors the Student exhibited to adults in the home. The Parent said the Student did not display such behaviors at school. The Parent described anxious behaviors the Student displayed, which the Parent opined were caused by negative family elements. The Parent also expressed concern about the Student's academic performance. (P. Ex. 24).

85. Following her assessment, Ms. [REDACTED] concluded that the Student met the diagnostic criteria for Unspecified Disruptive, Impulse-Control, and Conduct Disorder based on his defiant, disruptive, and oppositional behavior in the home, and his refusal to respect the Parent's authority. She concluded that the Student's behavior at home negatively impacted his social-emotional functioning. (P. Ex. 24).

86. On January 7, 2019, the Student was evaluated at [REDACTED] by [REDACTED] M.D., a psychiatrist. The Student reported to Dr. [REDACTED] that he was easily angered and had been physically aggressive, mainly with peers and siblings. Dr. [REDACTED] found the Student's judgment to be impaired and his insight poor, and the Student had low self-esteem and was impulsive. As to the Student's mental status, Dr. [REDACTED] found the Student to be alert, cooperative, pleasant, relatable, friendly, responsive, articulate, and understandable. Dr. [REDACTED] further described the Student's mental health status as anxious, angry, and depressed. (P. Ex. 25).

87. Dr. [REDACTED] concluded the Student had an "other conduct disorder" based on the Student's temper tantrums, and his aggressive and out-of-control behaviors. He recommended weekly psychotherapeutic services and deferred a decision on whether to prescribe psychotropic medication to the Student pending further testing. (P. Ex. 25).

88. On February 4, 2019, the Student saw [REDACTED] B.A., Psych Assistant, at [REDACTED] to develop an Individual Treatment Plan. Part of the Individual Treatment Plan included acknowledgements by the Student that he would take his psychotropic medication daily, as prescribed by his psychiatrist, and that he would openly describe and discuss his mental health status and concerns with his psychiatrist at each monthly visit. (P. Ex. 26).

Maryland Comprehensive Assessment Program Tests, April 25, 2019

89. On April 25, 2019, the Student took the Maryland Comprehensive Assessment Program (MCAP) assessment, with accommodations. (PGCPS Ex. 9).

90. MCAPs are used to evaluate educational progress of all students in Maryland.⁴⁸

The assessments show whether a student meets grade-level expectations and is on track to advance to the next grade.

91. The MCAP has a scoring range of 650 to 850 and five Performance Levels.

Level I	Level II	Level III	Level IV	Level V
650-699	700-724	725-749	750-798	799-850
Did not yet meet expectations	Partially met expectations	Approached expectations	Met expectations	Exceeded expectations

(PGCPS Ex. 9).

92. The Student was, at the time of testing, in fifth grade and achieved a score of 681 on the MCAP ELA assessment, a Level I category score, which means he did not yet meet expectations. His score was better than 12% of students taking the assessment in previous years. (PGCPS Ex. 9).

93. Previously, on the fall 2018 MCAP, in the area of ELA/Literacy, the SES average score on the MCAP was 711, partially met expectations. The PGCPS average score for ELA was 730, approached expectations, and the State-wide average score on the ELA assessment was 742, approached expectations. (PGCPS Ex. 9).

⁴⁸ The MCAP assessments of Maryland College and Career Ready Standards (MCCRS) build pathways to college and career readiness by the end of high school, mark students' progress toward this goal from grade three through high school and provide teachers with timely information to inform instruction and provide student support. See <https://support.mdassessments.com/> This reference is included because MCAP is a copyrighted term. © Copyright 1998 - 2018 Pearson Education, Inc. or its affiliates.

94. Statewide, on the spring 2019 MCAP ELA assessment, 14% of students (among them the Student) were in the Level I category, 18% were in Level II category, 24% were in Level III category, 39% were in Level IV category, and 5% were in Level V category. (PGCPS Ex. 9).

95. The Reading component of the MCAP ELA assessment has a scoring range of 10 to 90. A score of 50 means a student met expectations for all students. (PGCPS Ex. 9).

96. The reading component of the MCAP ELA assessment tests a student's ability to read and analyze fiction, drama and poetry, nonfiction, history, science, and the arts, and tests a student's ability to use context to determine the meaning of words and phrases. On the April 25, 2019, reading component of the MCAP assessment, the Student scored 24. This score means the Student was among those who did not meet or who partially met expectations. (PGCPS Ex. 9).

97. The [REDACTED] average score on the reading Component of the MCAP ELA assessment was 36, the PGCPS average score was 42, and the Statewide average was 47. (PGCPS Ex. 9).

98. The Writing Component of the MCAP ELA assessment has a scoring range from 10 to 60. A score of 35 means a student met expectations for all students. (PGCPS Ex. 9).

99. The Writing Component of the MCAP ELA assessment tests a student's ability to compose well-developed writing using details from what they read, and tests whether a student can compose writing using rules of standard English. On this MCAP assessment, the Student scored a 10, which means the Student was among those who did not meet or only partially met expectations. (PGCPS Ex. 9).

100. The [REDACTED] average score on the writing Component of the MCAP ELA assessment was 20, the PGCPS average score was 29, and the Statewide average score was 31. (PGCPS Ex. 9).

101. The MCAP mathematics assessment is scored from 650 to 850. The mathematics assessment tests a student's ability to add, subtract, multiply and divide multi-digit numbers, use decimals and fractions, solve problems, convert measurements, graph points, identify geometric shapes, and use logical mathematical solutions. (PGCPS Ex. 10).

102. On the April 25, 2019, MCAP mathematics assessment the Student scored a 698, a Level I score, which means he did not yet meet expectations. (PGCPS Ex. 10).

103. On the spring 2019 MCAP mathematics assessment, the [REDACTED] average score was 708, the PGCPS average score was 722, and the Statewide average score was 738. (PGCPS Ex. 10).

104. On the April 25, 2019, MCAP mathematics assessment, the Student scored as well or better than 37% of students taking the test in previous years. (PGCPS Ex. 10).

105. On the spring 2019 MCAP mathematics assessment, Statewide, 13% of students scored in the Level I category, 25% of students score in the Level II category, 25% of students scored in the Level III category, 28% scored in the Level IV category, and 8% scored in the Level V category. (PGCPS Ex. 10).

Progress in Meeting Goals and Objectives of the November 13, 2018 IEP

Reading Comprehension

106. By January 18, 2019, the Student used information from text features such as key words, sidebars, illustrations, maps, and bold print to provide oral support to selected/extended responses to questions. He made progress in meeting Objective 1 of the Reading Comprehension Goal. (P. Ex. 11, PGCPS Ex. 84).

107. By March 29, 2019, the Student summarized facts and reached conclusions when presented with written, oral or electronic information. He made progress in meeting Objective 2 of the Reading Comprehension Goal. (P. Ex. 11, PGCPS Ex. 84.)

108. By May 25, 2019, the Student read text and was able to identify facts, identify opinions, and draw conclusions from the text. He made progress in meeting Objective 2 of the Reading Comprehension Goal. (PGCPS Ex. 84).

109. By June 6, 2019, the Student, after reading text, identified facts and statements and drew conclusions. He made progress in meeting Objective 2 of the Reading Comprehension Goal. (PGCPS Ex. 84).

Math Calculation

110. By January 18, 2019, when provided with questions and data, the Student chose a strategy to solve a math problem and explained the solution orally or in writing. He made progress in meeting Objective 1 of the Math Calculation Goal. (P. Ex. 11, PGCPS Ex. 84).

111. By March 29, 2019, the Student recalled and defined math vocabulary and applied what he learned to problem solving strategies, both oral and written. He made progress in meeting Objective 2 of the Math Calculation Goal. (P. Ex. 11, PGCPS Ex. 84).

112. By June 6, 2019, the Student demonstrated progress in applying strategies he knew to math problem solving and was able to explain his answers. He made progress in meeting Objectives 1 and 2 of the Math Calculation Goal. (PGCPS Ex. 84).

Written Language Expression

113. By January 18, 2019, the Student, with difficulty, made slow progress toward meeting Objectives 1 and 2 of the Written Language Expression Goal. (P. Ex. 11).

114. By March 29, 2019, the Student expressed himself in writing when supported with teacher modeling, small group settings, writing rubrics provided to him, and when supported by an adjective chart. He made progress in meeting Objectives 1 and 2 of the Written Language Expression Goal. (P. Ex. 11).

115. By June 6, 2019, the Student, with support of a graphic organizer, wrote grade-level sentences and wrote paragraphs that followed a logical order. He made progress in meeting Objectives 1 and 2 of the Written Language Expression Goal. (PGCPS Ex. 84).

Speech and Language Expressive Language

116. By November 20, 2018, the Student recognized errors in verb tense, noun forms, capitalization and recognized grammatical errors when supported with a moderate number of verbal prompts and cues. The Student made necessary corrections within sentences, when prompted. He made progress in meeting Objectives 1 and 2 of the Speech and Language Expressive Language Goal of the November 13, 2018 IEP. (P. Ex. 11).

117. By February 6, 2019, the Student recognized errors in verb tense, noun forms, capitalization and recognized grammatical errors three out of five times. He recognized and translated figurative speech into literal meaning when provided with a multiple-choice format and verbal prompts. The Student made progress in meeting Objectives 1 and 2 of the Speech and Language Expressive Language Goal. (P. Ex. 11).

118. By April 11, 2019, the Student translated figurative speech with 80% accuracy when supported with at least two verbal prompts and visual supports. His skill in translating meaning from metaphors and similes was strong. The Student recognized incorrect grammar, verbs, nouns, and capitalization with 80% accuracy, when supported with verbal prompts. He made progress in meeting Objectives 1 and 2 of the Speech and Language Expressive Language Goal. (PGCPS Ex. 84).

119. By June 10, 2019, the Student translated figurative language into literal meaning with 80% accuracy, with at least two prompts and visual supports. He recognized errors in grammar, verbs, nouns, and capitalization, and made appropriate connections within sentences

with 80% accuracy. The Student made progress in meeting Objectives 1 and 2 of the Speech and Language Expressive Language Goal. (PGCPS Ex. 84).

MAP-R Results, Fall 2018, Winter 2019, Spring 2019, Fall 2019, Winter 2020

120. MAPs are administered three times a year by PGCPS and are recorded in a Winter-Spring-Fall sequence. The Student’s IEP team conducted regularly scheduled reviews in October or November of each year, making the MAP results from winter and spring of the prior school year, and fall of the current school year, available for review by the IEP teams. (P. Exs. 8, 9, and 56, PGCPS Exs. 6, 12, 17).

121. On the MAP-Rs conducted in SY 2018-2019 and SY 2019-2020, when the Student was in fifth and sixth grades, he achieved the following scores:

• Fall 2018	179	4 th percentile overall	3 rd grade reading level
• Winter 2019	179	2 nd percentile overall	3 rd grade reading level
• Spring 2019	179	1 st percentile overall	3 rd grade reading level
• Fall 2019	191	10 th percentile overall	3 rd grade reading level
• Winter 2020	194	9 th percentile overall	3 rd grade reading level

P. (Exs. 8, 9, 56, PGCPS Exs. 6, 12, 17).

122. During SY 2018-2019, fifth grade, the Student’s proficiency in reading, based on MAP-Rs in the fall, winter, and spring of SY 2018-2019, did not improve. The Student scored a 179 on each of the three MAP-Rs he took. The Student entered fifth grade with the reading proficiency of a typical reading-proficient non-learning-disabled third grader and his reading proficiency did not improve during the school year.

123. The Student’s reading proficiency improved in sixth grade based on an improved score of 191 on the fall 2019 MAP-R, although he continued to have scores that reflected the reading proficiency of a typical reading-proficient non-learning-disabled third grader. (P. Exs. 8, 9, 56, PGCPS Exs. 6, 12, 17).

SLO in Reading and Language Arts, and Math, Spring 2019

124. In spring 2019 as the Student neared the end of fifth grade, he took SLO assessments in ELA and math. (PGCPS Ex. 12).

125. The Student's score in reading on the spring 2019 SLO was 57 on a scale of 60, up from 21 on a scale of 60 at the beginning of fifth grade. This SLO score showed marked improvement by the Student in reading. (PGCPS Ex. 12).

126. On the spring 2019 SLO in writing, the Student scored a 29 on a scale of 35, the same as the fall 2018 score when the Student began fifth grade. (PGCPS Ex. 12).

127. On the spring 2019 SLO assessment in math, the Student's score was 29 on a scale of 35, up from 24 on a scale of 35 at the beginning of fifth grade. On the math Benchmark 2 he scored a 24 on a scale of 30, up from his score of 13 on a scale of 25 at the beginning of fifth grade. The Student, based on SLO scores, was improving in math. (PGCPS Ex. 12).

End of Year Grades, Fifth Grade

128. The Student's final grades at the end of SY 2018-2019, fifth grade, were:

- Reading: B, with a grade-weighted average of 79.69% over the course of all reading assessments (50%), classwork (35%), and homework (15%)
- Oral and Written Communication: C, with a grade-weighted average of 70.56% over the course of all oral and written communication assessments (50%), classwork (35%) and homework (15%)
- Math: C, with a grade-weighted average of 75.34% over the course of all math assessments (50%), classwork (35%), and homework (15%)

(P. Exs. 17, 18).

Request for Independent Education Evaluation

129. On August 1, 2019, between fifth and sixth grades, the Parent sent an email to ██████████ Principal ██████████ in which she expressed her disagreement with the Student's special education evaluations. The Parent expressed disagreement with the psychological, educational, speech

language, adaptive behavior, behavior, and occupational therapy evaluations for the Student and his younger sibling. (P. Ex. 27).

130. In her August 1, 2019, email the Parent did not identify whose evaluations she disagreed with, just that she disagreed. The Parent stated that she wanted an Independent Education Evaluation (IEE) and that she had identified the evaluators she would like to use. (P.Ex. 27).

131. On August 6, 2019, [REDACTED] [REDACTED]⁴⁹ Ed.D., Compliance Instructional Specialist for the PGCPs Department of Special Education, responded by email to the Parent's request for an IEE. (P. Ex. 28).

132. Dr. [REDACTED] requested that the Parent clarify her request for an IEE because different evaluations were done for the Student than were done for his sibling. (P. Ex. 28).

133. On August 6, 2019, the Parent responded to Dr. [REDACTED] "Thank you for your response. I disagree with the school evaluations and would like to receive independent evaluations for both of my children." (P. Ex. 28).

134. On September 16, 2019, [REDACTED] Director, Special Education, PGCPs, wrote a letter to the Parent in which she said the PGCPs would fund an IEE for the Student in three areas of academics (reading, mathematics, and written language). Ms. [REDACTED] included a provider list with her letter with advice that if the Parent selected a provider not on the list the Parent may have to contribute to the cost. Ms. [REDACTED] requested that the Parent advise Dr. [REDACTED] of the evaluator(s) the Parent selected to conduct the approved IEE. (P. Ex. 29, PGCPs Ex. 15).

135. On September 16, 2019, Ms. [REDACTED] wrote a second letter to the Parent that the PGCPs had decided to defend its evaluations in the areas of psychology, speech and language,

⁴⁹ At the time of the email, [REDACTED] held an M. Ed. He now holds an Ed.D. I refer to him by his current title.

and occupational therapy. She included a Parental Rights and Safeguards Notice and reminded the Parent that when the PGCPS receives a request for an IEE it may either fund the IEE or file a Due Process Complaint to defend a decision not to fund an IEE. (P. Ex. 29).

136. On September 26, 2019, Dr. [REDACTED] sent an email to the Parent referencing Ms. [REDACTED] letters of September 16, 2019. In his email Dr. [REDACTED] said he was reaching out to the Parent in an effort to forego a Due Process Hearing and to convene an IEP Team meeting, with the current related service providers present, to address the Parent's concerns. (P. Ex. 31).

137. On October 23, 2019, Ms. [REDACTED] wrote a third letter to the Parent in which she stated the PGCPS would fund an independent speech language assessment and would fund an independent psychological assessment for the Student. She also stated that the PGCPS would not fund independent occupational therapy, adaptive measures and social emotional testing because those were not areas assessed during the most recent reevaluation and were not recommended by school staff or the Parent. Ms. [REDACTED] included in her letter an IEE guidelines information sheet and a comprehensive list of providers from which the Parent could choose. (PGCPS Ex. 16).

138. In her October 23, 2019 letter approving independent psychological and independent speech language evaluations, Ms. [REDACTED] advised the Parent that the evaluations approved by PGCPS must be completed and provided to the Student's school within 90 days in order for the Parent to be reimbursed for the expense. (PGCPS Ex. 16).

139. In her October 23, 2019 letter, Ms. [REDACTED] told the Parent that she would be invited to an upcoming IEP Team meeting, and at that meeting the Parent could raise all areas of suspected disability and, if raised, appropriate assessments would be conducted. (PGCPS Ex. 16).

140. Although the PGCPS told the Parent it would fund IEEs in three areas of academics (reading, mathematics, and written language), a psychological assessment, and a speech therapy assessment, and that the Parent had 90 days to arrange the approved assessments and provide them to the Student's school, the Parent did not arrange any of the approved assessments or provide the results to [REDACTED] or PGCPS. (Test. [REDACTED])

Student Health Form SY 2019-2020

141. At the start of SY 2019-2020, sixth grade, on September 13, 2019, [REDACTED] M.D., filled out a Student Health Assessment/Physical Examination, a standard single-page form used by PGCPS to capture health information about students. She entered the Student in the "student name" field, along with the Student's date of birth, school, "[REDACTED]" and school year, "6th." (P. Ex. 60).

142. The "emergency action" section of the form is to inform school nurses what to do in a health emergency. In the "emergency action" field, Dr. [REDACTED] included that the Student had asthma, and included some foods to which the Student was allergic. She said the Student is prescribed Albuterol. (P. Ex. 60, Test. [REDACTED])

143. In the "concern" section of the standard health form Dr. [REDACTED] checked "development" and "adjustment." The "concern" section of the form includes a "remarks" field, with instructions to provide recommendations for referral and treatment for any areas of "concern." In the "remarks" field Dr. [REDACTED] wrote "learning disability – reading/writing and comprehension, anxiety" but included no instructions and no recommendations for treatment or referral. (P. Ex. 60).

144. Student Health Assessment/Physical Examination forms are stored in a digital archive. [REDACTED] R.N., is a nursing supervisor with access to digital records of all PGCPS schools. Dr. [REDACTED] September 19, 2019, Student Health Assessment/Physical Examination

form is not in the PGCPS nurse's office records for [REDACTED] or any other PGCPS school. (Test. [REDACTED])

145. Student Health Assessment/Physical Examination forms are for use by school nurses as a rapid-response reference for nurses when students present to a nurse's office for a health issue. They are not shared with IEP teams, and school nurses are not invited to IEP team meetings. (Test. [REDACTED])

SY 2019-2020, Fall 2019 MAP Reading Assessment

146. In fall 2019, SY 2019-2020, as the Student entered sixth grade, the Student took a MAP-R Fall with a score of 191. This placed the Student in the 10th percentile of students his age and was an improvement on the Student's MAP-R score of 179 in spring of SY 2018-2019, when the Student neared the end of fifth grade. (P. Ex. 9, PGCPS Ex. 12).

The November 12, 2019 IEP

147. On November 12, 2019, during SY 2019-2020, sixth grade, the [REDACTED] IEP Team met to consider the Student's progress since the November 13, 2018 IEP and whether there was a need to modify any of the accommodations, modifications, supports and related services in place since the November 13, 2018 IEP. The Student required accommodations, modifications, supports, and related services in reading comprehension, math calculation, speech and language expressive language, and written language expression. (P. Ex. 9, PGCPS Ex. 17).

148. The November 12, 2019 IEP team meeting was attended by the Parent; Ms. [REDACTED] Case Manager; Ms. [REDACTED] Special Education Teacher; Ms. [REDACTED] Speech and Language Pathologist; [REDACTED] General Education Teacher; [REDACTED] General Education Teacher; [REDACTED] Assistant Principal [REDACTED] and [REDACTED] Principal [REDACTED] (P. Ex. 9, PGCPS Ex. 17).

149. On November 12, 2019, the IEP team reviewed: the Student's standardized assessment scores from the 2018 Triennial Assessment; the Student's Specific Learning Disability – Dysgraphia; the Student's current class performance data; the Student's MCAP scores of April 25, 2019; the Student's MAP-R assessment results from fall 2019; the Student's SLO Assessment results from fall 2019; teacher input; and classroom observation. (P. Ex. 9, PGCPS Ex. 17).

Present Levels of Academic Achievement and Functional Performance

Reading Comprehension

150. On the fall 2019 SLO Assessment, the Student scored 13% in reading comprehension. He answered three of 24 questions on the Assessment. This result was below the class average of 30%. The Student was able to answer a few questions about the central theme of a short passage. He had difficulty demonstrating that he understood basic vocabulary, and difficulty determining the meaning of words or describing plot elements. (P. Ex. 9, PGCPS Exs. 12, 17).

151. On the fall 2019 MAP-R, the Student had difficulty expressing word meaning, demonstrating vocabulary skills, and understanding word relationships. He was unable to comprehend literature because he was unable to draw inferences, draw conclusions, identify key ideas, recognize themes, describe the author's purpose, or summarize. (P. Ex. 9, PGCPS Exs. 12, 17).

152. On the fall 2019 MAP-R, the Student scored 191, with scores on sub-tests of 193 in Vocabulary, 192 in Literature, and 187 in Informational Text. The score of 191 placed the Student in the 10th percentile of students his age. (P. Ex. 9, PGCPS Exs. 12, 17).

153. The MAP-R score in reading comprehension for a typical reading-proficient non-learning-disabled sixth grader in fall 2019 was 211. (P. Ex. 9, PGCPS Exs. 12, 17).

154. The fall 2019 MAP-R score of 191 was an improvement in reading proficiency when compared to the MAP-R reading proficiency score 179 on the spring 2019 MAP-R. (P. Ex. 9, PGCPs Exs. 12, 17).

155. On the fall 2019 MAP-R vocabulary test, the Student had difficulty with word meaning and vocabulary knowledge, and difficulty decoding words and understanding word relationships. His literature subtest score showed he had difficulty with comprehension, inferences, conclusions, identification of key ideas, analyzing themes and understanding an author's purpose. (P. Ex. 9, PGCPs Ex. 12).

156. In small groups the Student read aloud and answered short questions about what he read, although he frequently had to be referred to the text to locate details. He relied on teachers to tell him where to look. The Student made a good effort to read words he knew well and applied grade-level phonics skills to sound out unfamiliar words that were consistent with his instructional comprehension level. (P. Ex. 9, PGCPs Ex. 17).

Math Calculation

157. On the fall 2019 SLO Assessment, the Student answered 11 of 30 questions and his score was 37%, which was higher than the sixth-grade class average of 30%, the school average of 35%, and lower than the PGCPs average of 40%. (P. Ex. 9, PGCPs Exs. 12, 17).

158. The Student was able to locate key information in simple, single-step addition and subtraction word problems when the math operation to use was included in the problem. In math classes he required much redirection and was often inattentive and talkative. (P. Ex. 9, PGCPs Ex. 17).

159. The Student was able to perform math calculation successfully when supported with small groups, redirection, math steps broken down for him into smaller chunks, visual prompts, visual representations of problems, and extra time. (P. Ex. 9, PGCPs Ex. 17).

Written Language Expression

160. On the Fall 2019 SLO Assessment, the Student composed a paragraph from multiple sentences. When given a prompt to write, his response was impacted by poor organization. The Student had difficulty using details to support or clarify ideas. (P. Ex. 9, PGCPS Ex. 17).

161. In the classroom, the Student was very challenged to translate verbal ideas to written form. His sentence structure was simple and unclear. Use of a graphic organizer resulted in improvement. A model so that the Student could see what he was being asked to write about was beneficial, as was the use of a word bank, frequent reminders, sentence starters and repetition of directions. (P. Ex. 9, PGCPS Ex. 17).

Speech and Language Expressive Language

162. The Student received direct speech therapy services to address the Student's need to improve his use of verbs, nouns, and capitalization and to improve the Student's ability to recognize grammatical errors. This helped him make progress toward his goals and objectives on the November 13, 2018 IEP. (P. Ex. 9, PGCPS Ex. 17).

163. The Student translated figurative speech to literal meaning with greater than 80% accuracy, provided he received at least two verbal prompts, visual supports, and multiple-choice formats. (P. Ex. 9, PGCPS Ex. 17).

164. Accommodations that worked well for the Student included: verbal cues; repetition; chunking; visual supports; and extra response time. (P. Ex. 9, PGCPS Ex. 17).

165. At the November 12, 2019 IEP meeting, the Parent voiced concerns that the Student was not making sufficient progress over the past two years. She pointed to the Student's most recent MAP-R and PARCC results. The Parent voiced that the Student was having a hard time in school and did not want to attend. (P. Ex. 9, PGCPS Ex. 17).

166. All members of the IEP Team, including the Parent, agreed that the Student has a lot of friends at school, and enjoyed sports, music, and video games. All members commented that the Student is well-mannered, tries to keep up, and wants to do well. (P. Ex. 9, PGCPs Ex. 17).

167. The SLD, academic areas affected by the SLD, and the areas identified for reevaluation in the November 12, 2019 IEP were identical to the SLD, academic areas affected by the SLD, and the areas identified for reevaluation in the November 13, 2018 IEP. (P. Exs. 8, 9).

168. The Instructional and Assessment Accessibility Features of the November 12, 2019 IEP were the same as the Instructional and Assessment Accessibility features of the November 13, 2018 IEP, with the exception that a human reader was removed. The use of text to speech remained in the November 12, 2019 IEP. (P. Exs. 8, 9).

Instructional and Assessment Features, Accommodations, Supplementary Aids, Services, Program Modifications and Supports to be provided through November 11, 2020

Assistive Technology

169. The Student did not require assistive technology. This was the same as in the November 13, 2018 IEP. (P. Ex. 9, PGCPs Ex. 17).

Instructional and Assessment Accessibility Features

170. The Instructional and Assessment Accessibility Features of the November 19, 2019 IEP were identical to the Instructional and Assessment Features of the November 13, 2018 IEP. (P. Exs. 8, 9).

Instructional and Assessment Accommodations

171. The Instructional and Assessment Accommodations in the November 12, 2019 IEP were identical to the Instructional and Assessment Accommodations in the

November 13, 2018 IEP, with the exception that extended time was defined as 1.5x, while the November 13, 2018 IEP had no limit on extended time. (P. Exs. 8, 9, PGCPS Ex. 17).

Supplementary Aids, Services, Program Modifications and Supports in the November 12, 2019 IEP

Instructional Supports

172. Supplementary Aids, Services, Program Modifications and Supports in the November 12, 2019 IEP included:

- Scribe, provided weekly, primarily by the Student's general education teacher with support from the Student's special education teacher and instructional assistant, plus support from an adult copying assignments from the board for the Student. New in the November 12, 2019 IEP.
- Visual supports in all content areas, including reading passages, math problem solving, science and social studies tasks, provided weekly, primarily by the Student's general education teacher with support from the Student's special education teacher and instructional assistant.
- Use of graphic organizers and related organizational aids.⁵⁰
- Small group instruction in the general education setting to address deficits in reading, writing and math, to be provided daily, primarily by the Student's general education teacher with support from the Student's special education teacher and instructional assistant.
- Repetition of directions, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide.
- Check for understanding, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide.
- Allow use of manipulatives, daily, as needed, for reading, writing and math, such as sentence starters, paragraph frames, pre-headed papers, personal word boxes or dictionary, place value cards to aid math calculations, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide.
- Repeat or paraphrase information, daily, as needed, by the Student's general education teacher, special education teacher, instructional aide and IEP team.
- Frequent and/or immediate feedback, daily, as needed, by the Student's general education teacher, special education teacher, instructional aide or IEP team.

⁵⁰ Several Goals and Objectives in the November 13, 2019 IEP provide that the Student will accomplish various academic tasks with the use of visual supports. From this I conclude that the specific term "visual supports" was inadvertently omitted from the 11/13/2019 IEP "Supplementary Aids, Services, Program Modification and Supports" section, and that despite the omission visual supports were provided during instruction and classroom assessments.

- Altered/modified assignments, such as classwork, homework, assessments modified by reduced choices in selected response tests, oral assessment, assignments on the Student's instructional level, less complexity in visual formats in work and tests, daily, by the Student's general education teacher, special education teacher, instructional aide and IEP team.

(P. Ex. 9, PGCPs Ex. 17).

Goals and Objectives through November 20, 2020

173. Goals and Objectives in the November 12, 2019 IEP, to be accomplished by November 11, 2020, included:

- Reading Comprehension

Goal

Given an instructional-level text, use of posts-it notes or highlighters and teacher modeling, the Student will return to the text to cite evidence based on related questions with 80% accuracy in 3 out of 5 trials.

Objective 1

With teacher support, the Student will locate information from the text to identify the main idea and supporting details in both oral and written form with 80% accuracy in 3 out of 5 trials.

Objective 2

With teacher support the Student will demonstrate reading comprehension skills by explaining what the text says explicitly and when making inferences with 80% accuracy 3 out of 5 trials.

- Math Calculation

Goal

Given grade-level math problems, direct instruction, teacher modeling, and use of manipulatives, the Student will learn and apply strategies to compute the problems at his instructional level with 80% accuracy in 3 out of 5 trials.

Objective 1

The Student will be able to multiply whole numbers up to 3 digits by 2-digit whole numbers related to factors 9x9 (using strategies based on place value, properties of operations, explanation of the calculation using equations, rectangular arrays, area models, etc.) with 80% accuracy in 3 out of 5 trials.

Objective 2

Given instructional level math problems and a step-by-step visual model, the Student will be able to solve one and two-step word problems by using context clues to identify which operation to use to solve with 80% accuracy in 3 out of 5 trials.

Objective 3

Given instructional level multiplication and division problems and the use of manipulatives (i.e., multiplication chart, models, visual representation, counters, etc.) the Student will solve problems with at least 80% accuracy in 3 out of 5 trials.

- Written Language Expression

Goal

Given a written task response, the Student will use writing strategies to produce a product that will include thoughts and ideas on topic and in a cohesive manner with proper grammar and punctuation in 3 out of 5 trials.

Objective 1

When given a writing task, the Student will utilize a graphic organizer to support him with organizing ideas and producing sentences to create a final writing task in 3 out of 5 trials.

Objective 2

When given a writing task, the Student will establish a focus for writing that includes sentence starters, use a word bank, establishing topic sentences, and the use or transition words in 3 out of 5 trials.

- Speech and Language Expressive Language

Goal

The Student will identify and state meaning of figurative statements with 80% accuracy, given at least 2 verbal prompts and visual supports.

Objective 1

Given figurative statements (i.e., personification, hyperbole, onomatopoeia), the Student will identify the figurative device used in sentences with 80% accuracy, provided at least 2 verbal prompts and visual supports.

Objective 2

Given sentences with figurative statements (i.e., personification, hyperbole, onomatopoeia), the Student will interpret the meaning of figurative devices used in sentences with 80% accuracy, provided at least 2 verbal prompts and visual supports.

(P. Ex. 9, PGCPS Ex. 17).

Services and Related Services: What, Where, Duration, How Much, and by Whom

174. Services in the November 12, 2019 IEP included:

- Special education, in the general education classroom, one hour per day, five days per week, for 36 weeks, provided primarily by the Student's special education teacher, and by the Student's general education teacher and instructional assistant, to be provided November 12, 2019 through June 17, 2019.
- Special education, outside the general education classroom, thirty minutes four days per week, for 36 weeks, provided primarily by the Student's special education teacher, and by the Student's general education teacher and instructional assistant, to be provided November 12, 2019 through June 17, 2020.
- Special education, in the general education classroom, three hours and five minutes, daily, to be provided primarily by the Student's special education teacher, and by the Student's general education teacher and instructional assistant, to be provided September 4, 2020 through November 11, 2020.

(P. Ex. 9, PGCPS Ex. 17).

175. Related services in the November 12, 2019 IEP included

- Speech/Language Therapy, outside the general education classroom, 30 minutes three times per month, for 36 weeks, provided primarily by a speech/language pathologist, and by the Student's general education teacher.

(P. Ex. 9, PGCPS Ex 17).

176. The Student did not have any behaviors that interfered with accessing the curriculum and no ESY was included in the November 12, 2019 IEP. (P. Ex. 9, PGCPS Ex. 17.)

Response to Tardiness and Absence at [REDACTED]

177. While at [REDACTED] the Student was frequently tardy. In fifth grade the Student had 108 tardies for the school year, even though the Student lived within one mile of [REDACTED] (Test. [REDACTED])

178. In addition to the Student's frequent tardiness, the Parent was also often late retrieving the Student from school. Principal [REDACTED] explained to the Parent on at least two occasions that being late to retrieve the Student was unacceptable, and she asked the Parent what [REDACTED] was supposed to do if the Parent did not respond to phone calls from the Student or [REDACTED]. The Parent responded that they should keep calling her and gave Principal [REDACTED] no other option. Principal [REDACTED] conversations with the Parent did not change the Parent's pattern of being frequently late to retrieve the Student and his sibling. (Test. [REDACTED])

179. On December 16, 2019, [REDACTED] Ed.D., Pupil Personnel Worker, wrote the Parent. Dr. [REDACTED] reminded the Parent that it was her responsibility to ensure that the Student attended school every day that school was in session and that all absences must be explained, in writing, to [REDACTED] or the Student's absence would be considered unlawful. Dr. [REDACTED] letter advised the Parent that unlawful absences may be either full day or partial day. (PGCPS Ex. 76).

180. Dr. [REDACTED] advised the Parent that continued unlawful absences could result in referral to juvenile authorities or to the Circuit Court for Prince George's County. Dr. [REDACTED] invited the Parent to call him to discuss the reasons for the Student's absences. Dr. [REDACTED] letter included a phone number and an email address where he could be reached. (PGCPS Ex. 76).

181. The Parent did not contact Dr. [REDACTED] in response to his letter. (Test. [REDACTED])

Community Speech Language Evaluation January 7, 2020

182. On January 7, 2020, [REDACTED] M.A., a clinical fellow in speech language pathology at [REDACTED] conducted a medical speech language evaluation of the Student. (P. Ex. 6).

183. On January 7, 2020, Ms. [REDACTED] issued a report in which she described the Parent as concerned that the Student was reading at a third grade level. The Parent reported to Ms. [REDACTED] that the Student communicated clearly in full sentences, but had difficulty following commands, which she must give to him in a step-by-step way. Ms. [REDACTED] also noted that the Parent reported that the Student receives therapy for anger management and will receive occupational therapy at [REDACTED] (P. Ex. 6).

184. Ms. [REDACTED] administered a Clinical Evaluation of Language Fundamentals – Fifth edition (CELF-5), and reported the following scores:

Subtest	Scaled Score	Pct. Rank
Word Classes	6 Below average for same-aged peers	9
Formulated Sentences	6 Below Average for same-aged peers	9
Recalling Sentences	7 Average for same-aged peers	16
Semantic Relationships	7 Average for same-aged peers	16

185. Based on the Student’s word classes subtest results, Ms. [REDACTED] wrote that the Student’s deficits may impact his ability to express meaning when writing and to comprehend word relationships. She wrote that the Student’s formulated sentences subtest reflected a deficit that may impact his ability to produce semantically correct sentences that have increasing complexity. Ms. [REDACTED] reported that the Student’s recalling sentences subtest demonstrated strength in his ability to recall sentences, but that the Student often used the incorrect verb tense.

Ms. [REDACTED] reported that on the Student's semantic relationships subtest, the Student demonstrated strength in using comparatives, and weakness in using temporal concepts. (P. Ex. 6).

186. Ms. [REDACTED] reported that the Student was calm throughout her assessment, willingly completed the assessment, that his attention was sustained, that he did not require breaks, and that he conversed with her throughout the evaluation. (P. Ex. 6).

187. Ms. [REDACTED] reported that the Student had a mild expressive and receptive language disorder. She recommended speech therapy sessions of 30 minutes, once per week for an undetermined length of time. (P. Ex. 6).

188. At an unknown date the Parent provided Ms. [REDACTED] report to PGCPs.⁵¹

189. Ms. [REDACTED] did not review any of the Student's school work and did not speak to any of his general education or special education teachers or his speech language therapist, Ms. [REDACTED] [REDACTED] in conducting her evaluation or composing her report. (P. Ex. 6, Test. [REDACTED])

Occupational Therapist Report January 10, 2020

190. On January 10, 2020, the Parent had the Student evaluated by Occupational Therapist [REDACTED] M.A. As part of her evaluation Ms. [REDACTED] gathered information on the Student's social and medical history, primarily from the Parent; observed the Student; conducted audio and video screenings; conducted neuromotor status screenings; and conducted fine motor and visual-perceptual-motor screenings. Ms. [REDACTED] also conducted a cognition and social skills assessment and an activities of daily living assessment. (P. Ex. 7).

⁵¹ On April 12, 2021, I admitted Parent's Exhibit 6 based on representations by the Parent that the PGCPs produced the exhibit in response to a request for records, and if the school produced it, the school must have it. I cautioned the Parent when I admitted the exhibit that it was admitted only to demonstrate the school received it, and that the weight given to the content was yet to be decided. Ms. [REDACTED] the author of Parent's Exhibit 6, a speech and language evaluation, did not testify.

191. On January 10, 2020, Ms. [REDACTED] issued a report which included test results, a Summary and Recommendations. (P. Ex. 7).

192. Ms. [REDACTED] reported that the Student enjoys interacting with his friends and displays appropriate social skills, although he sometimes gets upset interacting with his siblings and cousins. Ms. [REDACTED] reported the Student enjoys playing several sports and enjoys video games. She reported that the Student had an IEP and displayed good behavior in school. She also reported that the Student was participating weekly therapy sessions to address anxiety. (P. Ex. 7).

193. Ms. [REDACTED] reported that the Student's fine motor skills were three years lower than his chronological age, and that he had difficulty in accurately folding paper, connecting dots, and drawing lines within boundaries of simple mazes. Ms. [REDACTED] found the Student demonstrated visual motor integration skills in the low range, with skills equivalent to a child of seven years, six months, and opined that his visual motor integration skills would impact the Student's ability to form letters and numbers. (P. Ex. 7).

194. Ms. [REDACTED] reported that the Student had below average fine motor skills and had difficulty with hand-eye coordination and functional tasks like handwriting, scissoring, and copying. (P. Ex. 7).

195. Ms. [REDACTED] recommended that occupational therapy services be provided once per week, in a school setting, to improve his fine motor precision and integration skills. (P. Ex. 7).

196. Ms. [REDACTED] also opined that the Student would benefit from one-to-one assistance for challenging academic tasks in an effort to decrease his school-based anxious behaviors and opined that in a classroom setting the Student may benefit from accommodations that include clear, concise task instructions, single commands, and participatory instructions using models

and hands-on activities. She also said that the Student would benefit from continued weekly therapeutic counseling to assist with managing his anxious behaviors. (P. Ex. 7).

197. As goals, Ms. [REDACTED] recommended that the Student, within three months, should demonstrate fine motor skills at 80% of his chronological age, and demonstrate visual perceptual motor skills at 80% of his chronological age. She further recommended that within one month, the Student will copy complex designs with 80% to 90% accuracy, will demonstrate 100% accuracy with complex mazes, and will string six small beads within two minutes, independently. (P. Ex. 7).

198. On an unknown date Ms. [REDACTED] provided her January 10, 2020, report to the Parent. On August 21, 2020, the Parent sent an email to [REDACTED] seventh grade guidance counselor at [REDACTED] Middle School ([REDACTED] was the school the Student was expected to enroll in for the fall of SY 2020-2021. The subject of the Parent's email to Ms. [REDACTED] was "Fwd: FW: (Student's) OT Evaluation." (P. Ex. 22).

199. On August 21, 2021, [REDACTED] Principal [REDACTED] responded to the Parent: "Got it."⁵² (P. Ex. 22).

200. Principal [REDACTED] did not forward Ms. [REDACTED] report to the [REDACTED] IEP team because the Student had graduated from [REDACTED] to [REDACTED] and Principal [REDACTED] expected the Parent would bring it to the attention of the [REDACTED] IEP team. (Test. [REDACTED])

⁵² There was no attachment to any email in the several emails that were sent, forwarded, and forwarded again in Parent's Exhibit 22.

The COVID-19 Pandemic

201. On March 12, 2020, Maryland Governor Lawrence Hogan ordered Maryland public schools, which includes PGCPs, to close from March 16, 2020, to March 27, 2020, to protect the public health by limiting the spread of the COVID-19 virus.⁵³

202. On March 20, 2020, the Secretary, United States Department of Education (USDOE), issued Key Policy Letters signed by the Education Secretary and Deputy Secretary to Chief State School Officers throughout the United States. Therein the Secretary acknowledged the impact of the COVID-19 pandemic on schools and the uncertainty schools faced about how to continue learning during the national emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.⁵⁴

203. Due to the COVID-19 pandemic, all PGCPs schools were closed March 16, 2020, through March 27, 2020. PGCPs instituted a “Coronavirus Information Portal” to respond to parents’ and students’ questions relating to coursework, assignments, and availability of teachers to answer questions related to assignments. PGCPs communicated with parents and students through its website, by email, by text messaging, and through social media. (PGCPs Ex. 39).

204. In March 2020, the USDOE, citing guidance from the Centers for Disease Control and Prevention (CDC) issued “Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak” (March 2020 USDOE COVID-19 Guidance). Under the March 2020 USDOE COVID-19 Guidance, public schools were not required to provide services to learning-disabled students during closures when schools were not providing services to any students. When school resumed, local schools were required to make every effort to provide special education and related services in accordance with a child’s IEP.

⁵³ <https://www.usnews.com/news/education-news/articles/2020-03-12/maryland-gov-larry-hogan-closes-all-k-12-schools>

⁵⁴ See 42 U.S.C.A. § 5121 *et seq.* See also <https://www2.ed.gov/policy/gen/guide/secletter/200320.html>

The March 2020 USDOE COVID-19 Guidance provided that exceptional circumstances may exist that affect how a particular service is provided. (P. Ex. 34).

205. Under the March 2020 USDOE COVID-19 Guidance, local schools were required to ensure that, to the greatest extent possible, each student with a disability be provided special education and related services identified under the child’s IEP. Local schools were required to make an individualized determination whether compensatory services were needed under applicable standards. (P. Ex. 34).

206. Under the March 2020 USDOE COVID-19 Guidance, the USDOE restated its position that if a learning-disabled student at high risk of medical complications is excluded from school due to an outbreak of COVID-19 and the school remains open, the exclusion is not a change in placement under 34 C.F.R. Sections 300.115 and 300.116, and under 34 C.F.R. Sections 104.35 and 104.36 if the exclusion lasts less than 10 consecutive days. If the exclusion due to COVID-19 is less than 10 consecutive days, provision of online instruction, instructional telephone calls, and other curriculum-based instructional activities, to the extent possible, is not considered a change in placement. The March 2020 USDOE COVID-19 Guidance provided that if a change in placement is made, IDEA procedural provisions relating to placement decisions apply. (P. Ex. 34).

207. Under the March 2020 USDOE COVID-19 Guidance, if a learning-disabled child does not receive services for an extended period of time, a school must make an individualized determination whether and to what extent compensatory services may be needed, including to make up for any skills that may have been lost. (P. Ex. 34).

208. In March 2020, the MSDE issued Technical Assistance Bulletin #20-01 (TAB 20-01), amended in October 2020, “Serving Children with Disabilities Under the IDEA During School Closures Due to the COVID-19 Pandemic” (MSDE COVID-19 Policy).

Incorporating numerous USDOE guidance and policy documents,⁵⁵ the MSDE advised parents of learning-disabled students that the local public schools must consider how to deliver supports and modifications normally provided in a physical classroom (extra time, redirection, small-group, etc.) to learning-disabled students in a virtual-learning setting. TAB 20-01 summarized:

These federal guidance are clear that the national health crisis does not abridge the rights of students with disabilities to a Free Appropriate Public Education (FAPE) and equal opportunity to educational services as their non-disabled peers, as required by the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act (ADA).

(PGCPS Ex. 39).

209. To clarify issues raised by special education stakeholders, TAB 20-01 provided a fact sheet on current federal guidance as of March 30, 2020. The following question and answer were presented in the fact sheet:

Q: Are the requirements for the provision of a FAPE to students with disabilities waived in times of emergencies such as the COVID-19 pandemic?

A: No. As the guidance from the DOE indicates, the IDEA does not provide the DOE with authority to waive the requirement to provide a FAPE, including meeting timelines for mandated actions under the statute, under any circumstances. This includes the COVID-19 pandemic.

The MSDE recognizes that during these exceptional times, a FAPE must be provided consistent with the need to protect the health and safety of students with disabilities and those providing education services to these students. However, many disability-related modifications and services may be effectively provided through alternative delivery options, such as distance technology, which comply with the directives of health and governmental officials related to the steps necessary to keep students and school staff healthy.

(PGCPS Ex. 39). (P. Ex. 22.)

⁵⁵ See “Resources,” Part B, PGCPS Ex. 39, p. 32 as hand-written on lower right of document, p. 11 on top right of document.

210. TAB 20-01 provides that if a school district provides education to the non-learning-disabled population through distance learning, it must provide equitable access to comparable opportunities to students with disabilities, tailored to their individual needs, to the maximum extent possible. Under TAB 20-01, learning-disabled students remained eligible for related services. Local schools were directed to consider how such related services, such as speech language therapy, may be provided through virtual learning. (PGCPS Ex. 39).

211. TAB 20-01 provides that local public schools are not required to hold an IEP Team meeting for every student to determine how a FAPE will be provided during the closure of public schools, and that an agreement as to how services will be provided can be made outside the IEP process. TAB 20-01 makes clear that agreement is not the same as “consent” which is an agreement in writing that the parent was fully informed of all information relevant to the matter. (PGCPS Ex. 39).

212. TAB 20-01 addresses instruction for a learning-disabled student when provided through an alternative delivery method (i.e., virtual learning) and not in the manner provided by the IEP. It provides that when schools reopen, the IEP team for each student must determine whether, and to what extent, compensatory services are needed. Public schools must evaluate whether there has been a decline in the student’s skills, or lack of progress in the general education curriculum, or on the IEP goals, and revise IEPs when closures end, as necessary. (PGCPS Ex. 39).

213. On March 21, 2020, the USDOE, Office for Civil Rights, Office of Special Education and Rehabilitative Services, issued “Supplemental Fact Sheet, Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools while Serving Children with Disabilities” (USDOE COVID-19 Supplement March 21, 2020). Under the USDOE COVID-19 Supplement March 21, 2020, the USDOE made clear that schools must provide access to

distance learning to learning-disabled students, and that schools may need to supplement special education and related services with learning by telephone. The USDOE COVID-19 Supplement March 21, 2020 recognized that during the COVID-19 pandemic, schools may not be able to provide all services in the way they are customarily provided, and that many disability-related services may have to be provided online and through videoconferencing. USDOE COVID-19 Supplement March 21, 2020 provided that “[w]here, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services – IEP teams, (as noted in the March 12, 2020, guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.” (PGCPS Ex. 39).⁵⁶

214. In May 2020, the MSDE, Division of Early Intervention and Special Education Services (DEI/SES) issued Technical Assistance Bulletin 20-03 (TAB 20-03), “Providing Continuity of Learning to Students with Disabilities during COVID-19,” a supplement to TAB 20-01. TAB 20-03 addressed development of changes to IEPs if needed, remote implementation of IEPs, and evaluation of progress during remote learning. (P. Ex 35).

215. TAB 20-03 provided that each local school district was to develop a system-wide Continuity of Learning Plan that included addressing the educational needs of students with disabilities. TAB 20-03 recognized that during extended school closures due to COVID-19, the education of learning-disabled students would be through virtual instruction. Under TAB-20-03, schools were authorized to: 1) implement the IEP as written through virtual instruction; 2) amend the IEP with parent agreement outside an IEP meeting; or 3) revise the IEP if the parent is not in agreement through the IEP team meeting process. TAB 20-03 provided that

⁵⁶ See also <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

regardless of the method of instruction used, the health and safety of students and educators was the key to decision making, and that schools may not be able to provide all services to learning-disabled students in the same manner as typically provided. (P. Ex. 35).

216. TAB 20-03 directed local schools, as part of the Continuity of Learning Plan, to provide: an overall description of how learning would be delivered; the platform to be used; the technology to be used; a description of the roles of teachers, administrators, staff, students and parents; plans for accountability, monitoring and grading; plans to meet the needs of students with special education needs; a sample teacher and student day; professional development plans for staff; and resources for students, parents and staff. TAB 20-03 included a flow chart for developing plans for delivery of special education services to the greatest extent possible. (P. Ex. 35).

217. TAB 20-03 made clear that provision of services to learning-disabled students was best accomplished through collaboration with parents to develop ways for students to make progress and to prevent regression. TAB 20-03 further provided that if an IEP is temporarily amended, and the parent agrees, the amendments must be sent to the family and all service providers. If a parent does not agree with proposed amendments or cannot participate in a meeting, then an IEP team must implement those services in the IEP that can reasonably be implemented in a remote environment in a manner that does not change the student's program or placement. (P. Ex. 35).

218. TAB 20-03 provided that if a school cannot obtain information from a parent to clarify the impact of a disability on the student's education, it may be necessary to rely on previously collected data such as recently completed assessments or data in Functional Behavior Assessments. (P. Ex. 35).

219. TAB 20-03 provided that during an extended school closure, a school should implement an IEP to the greatest extent possible. TAB 20-03 recognized that the co-teaching and direct instruction practices may need to be altered as between general educators and special educators to lead instruction and to provide modifications and accommodations. (P. Ex. 35).

The Individual Continuity of Learning Plan

220. On April 9, 2020, Ms. [REDACTED] the Student's Special Education teacher and Special Education Coordinator at [REDACTED] sent an ICLP for the Student to the Parent by email and via Class Dojo, the online PGCPs parent-teacher communication system.

Ms. [REDACTED] advised the Parent that the ICLP would be in effect for the duration that schools were closed due to COVID-19 and were based on the Student's current IEP. Ms.

[REDACTED] advised the Parent that once the school was able to resume normal programming, the services in the Student's IEP would be implemented in their entirety, and that when schools reopened, the IEP Team would reconvene to review the Student's performance or needs and make appropriate revisions to the IEP. (PGCPs Ex. 21, Test. [REDACTED])

221. Ms. [REDACTED] told the Parent in her email and in the ICLP that starting the following week, students would start a new schedule, in a distance-learning format. Under this schedule, the Student's classroom teacher and Ms. [REDACTED] would work with the Student on his assignments, and that Ms. [REDACTED] would work with the Student later in the day, from 12:00 p.m. to 1:00 p.m. for twenty minutes each session to work on the Student's IEP goals in reading comprehension and math. Ms. [REDACTED] also included in the ICLP that she would support the Student two days per week in a live Zoom chat, and that a Zoom access number would be provided. (PGCPs Ex. 21, Test. [REDACTED])

222. Under the ICLP, Ms. [REDACTED] included two goals, one language goal and one math goal, each with one objective:

- Goal #1: Given an instructional level text, use of post-it notes or highlighters and teacher modeling, the Student will return to the text to cite evidence based on related questions with 80% accuracy in 3 out of 5 trials.
- Objective: With teacher support, the Student will locate information from the text to identify the main idea and supporting details in both oral and written form with 80% accuracy in 3 out of 5 trials.
- Goal #2: Given grade level math problems, direct instruction, teacher modeling, and use of manipulatives the Student will learn and apply strategies to compute the problems at his instructional level with 80% accuracy in 3 out of 5 trials.
- Objective: Given instructional level multiplication and division problems and the use of manipulatives (i.e., multiplication chart, models, visual representations, counters, etc.) the Student will solve problems with at least 80% accuracy in 3 out of 5 trials.

(PGCPS Ex. 21).

223. The ICLP included as accommodations and supplementary aids:

- Check for understanding
- Use of manipulatives
- Visuals
- Chunking of texts

(PGCPS Ex. 21).

224. The ICLP included as the method of delivery “Online services with special education supports.” The duration and frequency of delivery of services was “30 to 45 minutes per week.” Related services included speech-language, with consultation as a support service with parent/teacher/student and/or other service providers. The ICLP included speech language consultation services for 15 minutes, twice per month. (PGCPS Ex. 21).

225. In the ICLP, Ms. [REDACTED] told the Parent that data would be collected during distance learning to monitor progress on the Student’s IEP goals and objectives, and that the data would be used to assist in assessing the Student’s present levels of performance when

school reopened. The ICLP noted that a tracking log would be used to monitor progress. (PGCPS Ex. 21).

226. As part of the ICLP process Ms. [REDACTED] called the Parent at the number SES had on file to tell the Parent she wanted to discuss the ICLP and asked the Parent to return her call. Ms. [REDACTED] posted the Student's ICLP on Class Dojo and invited comment from the Parent. The Parent did not respond to any of Ms. [REDACTED] efforts to reach her. (Test. [REDACTED])

227. On April 15, 2020, Ms. [REDACTED] sent the ICLP as an attachment to an email message to the Parent. Ms. [REDACTED] advised the Parent of the purpose of the ICLP and advised the Parent that Ms. [REDACTED] would be providing instruction to the Student on Wednesday and Thursday, from 12:00 to 12:30, with log-in information on Class Dojo. Ms. [REDACTED] invited the Parent to respond if the Parent had questions. The Parent did not respond. (PGCPS Ex. 71, Test. [REDACTED])

228. On April 20, 2020, Ms. [REDACTED] discussed the ICLP with the Parent in a phone call. The Parent had no objections to the ICLP, nor did she request any changes. The Parent did not tell Ms. [REDACTED] that the Student had any issues with accessing the virtual learning platform or needed help with technology. On occasions when the Student dropped from the screen when attending class, he returned immediately. (Test. [REDACTED])

229. The Student frequently attended virtual learning with Ms. [REDACTED] from the period of March 2020 through June 2020. The Student attended Tuesdays and Wednesdays, with Thursdays as make-up days for missed sessions. The Student attended every scheduled session from March 2020 through June 2020, except one in June 2020. (PGCPS Ex. 20, Test. [REDACTED])

230. During virtual instruction with Ms. [REDACTED] the Student received specialized instruction in reading and math, received special education supports, and made progress toward his IEP goals and objectives. (PGCPS Ex. 86, Test. [REDACTED])

231. At the conclusion of SY 2019-2020, Ms. [REDACTED] transferred from [REDACTED] to [REDACTED] where she was assigned as the Student's special education instructor in math. (Test. [REDACTED])

Progress in Meeting Goals and Objectives of the November 12, 2019 IEP

Reading Comprehension

232. By November 18, 2019, the Student's progress could not be measured due to the recent implementation of the IEP. With teacher support, the Student was able to read aloud, and answer questions related to key ideas from short passages. He continued to require small groups, repetition of directions, prompting, and cues to read fluently and to comprehend the text. (PGCPS Ex. 86).

233. By February 7, 2020, the Student attended small groups working on reading grade-level text and answering questions related to the author's purpose, main idea, and citing evidence in support. The Student utilized underlining and highlighting as supports. The Student tried to do well, was confident, and learned from his mistakes. He worked toward reading and understanding what he reads without supports. He continued to need feedback, redirection, and extra time. The Student made academic progress on the reading comprehension goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

234. By March 3, 2020, the Student was making better progress, and was reading passages five to six paragraphs long, with teacher demonstrations on how to locate key words, highlighting and underlining before reading, and modeling. This was followed by independent reading and checks for understanding, on which the Student did well. Through this method, the

Student learned to enjoy reading independently and demonstrated through underlining and highlighting that he could identify key words and concepts. The Student responded with 75% accuracy when tasked with responding to a series of “who, what, when, where, why” multiple-choice questions and did well on short writing tasks. The Student made academic progress on the reading comprehension goal and Objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

235. By June 11, 2020, the Student, in a virtual environment and through implementation of his ICLP, responded to teachers with 80% accuracy about the content and meaning of passages read aloud by the teacher. The Student was able to view words on a computer screen and explain their meaning. He was 80% accurate when instructed to read text to himself, followed by a series of questions about what he had read. The Student made continued academic progress on the reading comprehension goal and objectives of the November 12, 2019 IEP and on the Language Goal and Objective of the ICLP. (PGCPS Ex. 86).

236. On August 31, 2020, the Student enrolled at [REDACTED] (Test. Parent, Test. [REDACTED] Test. [REDACTED] P. Ex. 20).

237. By October 30, 2020, the Student was able to locate information from texts to identify the main idea and identify supporting details in both written and oral form in four out of five trials. The Student made academic progress on the reading comprehension goal and objectives of the November 12, 2019 IEP and on the language goal and objective of the ICLP. (PGCPS Ex. 86).

Math Calculation

238. By November 18, 2019, the Student’s progress on the November 12, 2019 IEP was not measurable due to the recency of implementation of the IEP. (PGCPS Ex. 86).

239. By February 7, 2020, the Student was able to rationalize and process the steps in order to solve a single step math problem but remained confused by multi-step math problems. He learned multiplication facts and successfully completed multiplication and division problems using numbers one through six by utilizing computer activities, math drills, and flash cards. With graphic organizers, vocabulary terms, manipulatives, modeled examples, a calculator, daily guided practice, encouragement, feedback, prompting cues, tables and charts, the Student used math facts to solve multiplication and division problems. The Student made academic progress on the math calculation goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

240. By March 13, 2020, with graphic organizers, interactive notebooks, charts, videos and models, the Student was able to create fractions, locate negative numbers on a plane, and exhibit and explain his responses. He was able to compose notes and, if he reviewed and followed those notes, complete multiplication problems. In small groups he solved single step multiplication and division problems with 70% accuracy when the problem was broken down. The Student demonstrated 100% math fluency using numbers 2, 3, 5 and 10, and for numbers other than these, used flash cards, puzzles, and computer games to progress toward mastery. Two-digit multiplication and long division were introduced. The Student made academic progress on the math calculation goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

241. By June 11, 2020, the Student, during virtual learning, completed several math problems that required multiplication, division, fractions, and solving word problems. On these assignments the Student scored with 50% to 70% accuracy. He advanced to working on math facts for the digits 7, 8 and 9. With teacher prompting to identify the first, second, and third steps in solving a math problem, and with teacher prompting to identify the correct math calculation, the Student made progress in math, although he continued to occasionally guess.

The Student made academic progress on the math calculation goal and objectives of the November 12, 2019 IEP and the math calculation goal and objective of the ICLP. (PGCPS Ex. 86).

242. By October 30, 2020, while a new middle school student in a virtual learning environment at [REDACTED] the Student was able to solve instructional-level multiplication and division with 60% accuracy each time he tried. The Student made academic progress on the math calculation goal and objectives of the November 12, 2019 IEP and the math calculation goal and objective of the ICLP. (PGCPS Ex. 86).

Written Language Expression

243. By November 18, 2019, the Student's progress could not be measured due to the recent implementation of the IEP. At the time the Student was able to write complete sentences when given an assignment in class. He continued to need small groups, prompting, cues, modeled examples, and directions repeated, and was working on using appropriate grammar and punctuation in written responses. (PGCPS Ex. 86).

244. By February 7, 2020, the Student attempted to write several sentences about a topic and was able to do so with repeated review of the text. Independent thought and understanding were challenging. He could write two paragraphs when provided with repetition of the text. The Student required a graphic organizer, a model or example, a word bank, and topic sentences to begin a writing assignment. The Student made limited academic progress on the written language expression goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

245. By March 13, 2020, the Student was able to complete a writing assignment when provided with a lot of support, a graphic organizer, examples, a word bank, a list of several sentence starters, pre-typed models, a visual theme, and reminders to return to the writing task

and key word reminders. The Student made limited academic progress on the written language expression goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

246. By June 11, 2020, (now in virtual learning), the Student accomplished writing accuracy grades of 50% to 100% when performing “quick writes” through Google Classroom. The Student made academic progress on the written language expression goal and objectives of the November 12, 2019 IEP and the language goal and objective of the ICLP. (PGCPS Ex. 86).

247. By October 30, 2020, while still in virtual learning at [REDACTED] when provided with sentence starters, a word bank, and transition words, the Student was able to verbally state the focus of a writing assignment. The Student made academic progress on the written language expression goal and objectives of the November 12, 2019 IEP, and on the language goal and objective of the ICLP. (PGCPS Ex. 86).

Speech and Language Expressive Language

248. By November 18, 2019, the Student’s progress could not be measured due to recent implementation of the IEP. The Student was able to interpret figurative statements when provided extra time and a multiple-choice format. The Student made academic progress on the speech and language expressive language goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

249. By February 6, 2020, the Student was able to identify the figurative device in a sentence with 40% to 50% accuracy and identify the meaning of the figurative device with 80% accuracy with a multiple-choice format. The Student made academic progress on the speech and language expressive language goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

250. By March 16, 2020, the Student was able to identify and state the meaning of figurative statements when provided visual clues, repetition, and extra time. The Student made

academic progress on the speech and language expressive language goal and objectives of the November 12, 2019 IEP. (PGCPS Ex. 86).

251. By June 11, 2020, the Student, during virtual learning, with teacher support and speech language pathologist consultation, was able to answer choices, and with verbal cueing and extra response time, the Student was able to provide accurate responses with 80% to 100% accuracy in Zoom call sessions. The Student made academic progress on the speech and language expressive language goal and objectives of the November 12, 2019 IEP, and on the language goal and objective of the ICLP. (PGCPS Ex. 86).

252. By November 5, 2020, while still in virtual learning at [REDACTED] in a pre-test that required the Student to identify figurate speech, the Student scored the following: similes – 100%; idioms – 0%; hyperbole – 50%; personification – 100%; and onomatopoeia – 100%. He was able to identify the meaning of common idioms used in sentences six of six times, and eight of ten times when given multiple choices. The Student understood figurative speech without any specialized services. The Student achieved the speech and language expressive language goal and objectives of the November 12, 2019 IEP and made progress on the language goal of the ICLP. (PGCPS Ex. 86).

Dr. [REDACTED] Report of July 19, 2020

253. On or about February 18, 2020, the Parent had the Student evaluated by [REDACTED] [REDACTED] Psy.D., of [REDACTED] [REDACTED] for an assessment of the Student's intellectual functioning. The Parent reported to Dr. [REDACTED] that the Student had mood problems, depression, anxiety, and panic attacks, and that the panic attacks had occurred several times at school. The Parent told Dr. [REDACTED] that the Student was overwhelmed by, among other things, school, academics, and social stress. (P. Ex. 4, PGCPS Ex. 62).

254. Dr. [REDACTED] evaluation was therapeutic, primarily to inform therapeutic clinicians. (Test. [REDACTED])

255. Dr. [REDACTED] conducted his evaluation over the course of four sessions, on February 18, 2020, April 15, 2020, May 14, 2020, and June 5, 2020. His evaluation included interviews with the Parent and the Student, administration of several tests, and observations. (P. Ex. 4, PGCPS Ex. 62).

256. Dr. [REDACTED] administered: a Wechsler Intelligence Scales for Children, 5th Edition (WISC-V); a Weschler Individual Achievement Test, 3rd Edition, (WIAT-III), and a Gray Oral Reading Test, 5th Edition (GORT-5). Dr. [REDACTED] considered a Behavior Assessment System for Children, 3rd Edition, Parent Rating Scales (BASC-3 Parent) and a BASC-3, Teacher Rating Scales (BASC-3 Teacher). Dr. [REDACTED] also conducted a mental status evaluation, a clinical interview, and a diagnostic assessment. (P. Ex. 4.)

257. On July 19, 2020, Dr. [REDACTED] completed a Confidential Psychological Evaluation of the Student. (P. Ex. 4).

258. Dr. [REDACTED] concluded that the Student's Full Scale Intelligence Quotient (FSIQ) was 65, the Extremely Low range when compared to same-age children. The FSIQ was based on five areas of cognitive ability measured on the WISC-V: verbal comprehension, visual spatial, fluid reasoning, working memory and processing speed. (P. Ex. 4).

259. Dr. [REDACTED] used data from the WIAT-III and its subtests, and the GORT-5 to evaluate the Student's academic achievement. (P. Ex. 4).

260. On the WIAT-III, the Student's subtest scores were as follows:

- | | |
|-------------------------|-----------------------|
| • Receptive Language | Average |
| • Reading Comprehension | Low Average |
| • Numerical Operations | Low Average |
| • Math Fluency | Low Average |
| • Sentence Combining | Low Average |
| • Sentence Building | Extremely Low Average |

- Oral Word Fluency Within Expected Limits
- Expressive Vocabulary Within Expected Limits
- Spelling Very Low

(P. Ex. 4).

261. On the GORT-5, the Student struggled to read aloud, and he performed in the extremely low range. (P. Ex. 4).

262. On the BASC-3 Parent, the Parent reported the Student had symptoms of depression and anxiety. She ascribed expectations at school as the source of the Student’s anxiety. The Student’s special education teacher, Ms. [REDACTED] on the other hand, on the BACS-3 Teacher, reported nothing remarkable about any classroom internalizing behaviors by the Student. (P. Ex. 4).

263. On the BASC-3 Parent, the Parent reported the Student was aggressive, manipulative and bullying, destructive when angry, that he lied, was disobedient, failed to follow home rules, and used foul language. (P. Ex. 4).

264. On the BASC-3 Parent, the Parent reported some problems with functioning in the home and adherence to daily routines. On the BASC-3 Teacher, Ms. [REDACTED] reported no concerns about the Student’s behavior at school. Collectively, Dr. [REDACTED] found these Parent and teacher observations to be insignificant. (P. Ex. 4).

265. Dr. [REDACTED] in a Social/Emotional/Behavior Screening comment, wrote that the Student “presents with some symptoms of depression and anxiety, and some conduct problems that appear to be more prevalent at home than at school.” (P. Ex. 4).

266. Dr. [REDACTED] concluded the Student met the diagnostic criteria for generalized anxiety disorder, and specific learning disorder with impairments in reading, written expression, and math. (P. Ex. 4).

267. Dr. █████ concluded the Student’s overall level of cognitive ability was greater than 1% of children his age and that, as a result, the Student may experience substantial difficulty in many functional areas. He recommended that a multi-disciplinary team evaluate the Student’s strengths and weaknesses to identify his instructional needs, and that the instruction include ways to help the Student feel a sense of accomplishment throughout the day such as a reward and reinforcement system. Dr. █████ recommended specialized training in self-care, community interaction, and household chores. He also recommended that adults engage the Student in enjoyable hobbies. (P. Ex. 4).

268. To address academic areas, Dr. █████ recommended the following strategies:

To build reasoning, knowledge, and comprehension skills	Adults ask the Student specific questions about the reading material, expose the Student to novel situations or materials, maintains lists of terms and concepts to refer to, encourage the Student to elaborate on thoughts, provide interventions on listening, verbal reasoning, and oral communication
To improve visual spatial skills	Models, dioramas, maps, 3D puzzles, draw a shape from different perspectives, discuss what to expect in new situations
To improve fluid reasoning	Ask the Student to identify patterns and series and identify what comes next. Group objects and explain the grouping. Help the Student form and test a hypothesis.
To improve working memory	Employ digital interventions to build capacity to exert mental control and to ignore distractions. Chunk information to link it to what the Student already knows. Identify the main idea in a story. Reinforce progress. Use small, measurable goals, and increase complexity over time.
To improve processing speed	Provide ample time to respond. Match adult response to the

	Student's needs. Focus interventions on increasing speed. Develop automaticity through devices such as flash cards to free up cognitive resources for complex tasks. Reward speed and accuracy. Make relevant information available when solving tasks. Verify the Student understands the instructions before beginning a task.
To improve reading	Develop an IEP with strategies to improve reading, such as adaptive technology such as on-line resources that allow the Student to work at his own pace, used in tandem with individual and small-group instruction
To improve reading	Scaffolding, that is, use instructional techniques to promote better understanding and remove them over time when no longer needed to develop independent reading
To improve reading	Build on prior learning, progress from simple to complex, introduce new skills
To improve reading	Find the Student's learning strengths and use them to introduce new information. Allow the Student to experience the concept introduced. Incorporate multiple senses
To improve reading	Use positive reinforcement

(P. Ex. 4).

269. On August 13, 2020, Dr. [REDACTED] sent a copy of his July 19, 2020, report to the Parent as an email attachment. On August 21, 2020, the Parent forwarded that report to Ms. [REDACTED] a seventh grade guidance counselor at [REDACTED]. In her email to Ms. [REDACTED] the Parent did not ask Ms. [REDACTED] to forward the report to a special educator or an IEP team, nor did she otherwise comment on the report. (P. Ex. 23).

270. In a conversation with the Parent, Dr. [REDACTED] recommended that the Parent seek help from community therapists to address the Student's anxiety. (Test. [REDACTED])

271. Dr. [REDACTED] did not provide his report to any school, nor was he asked by the Parent to attend any IEP team meetings. No one from [REDACTED] or [REDACTED] called him to inquire about his report or to invite him to an IEP team meeting. (Test. [REDACTED])

[REDACTED]

272. [REDACTED] provides evidence-based wrap-around services to children and families and orchestrates community support programs. Families are supported by Care Coordinators. Care Coordinators hold at least a bachelor's degree in a human-services-related field. Care Coordinators receive training in special education, understanding IEPs and 504 plans, and advocating for the interests of students at IEP meetings. Training touches on student behaviors like school avoidance. (PGCPS Ex. 45, Test. [REDACTED])

273. [REDACTED] M.S., is a [REDACTED] supervisor. (Test. [REDACTED])

274. [REDACTED] has been a service provider in Prince George's County since March 2020. (Test. [REDACTED])

275. Referrals to [REDACTED] come from several sources. Following evaluation of the level of need identified in the referral, a Care Coordinator meets with the child, the parent, and a therapist or others, as needed. If therapeutic services such as those provided by a psychiatrist or psychologist are needed, or if psychological rehabilitation is needed, the Care Coordinator ensures those services are put in place if the child is not already receiving such services. (Test. [REDACTED])

276. The focus of the Care Coordinator is to develop a Plan of Care and to accomplish goals in the Plan of Care, which is updated annually. The Plan of Care includes action steps and strategies tailored to a student's needs. The Plan of Care is a collaborative effort, constructed by

the Care Coordinator using information from the student, the parent, and the student's therapist. (PGCPS Ex. 45, Test. [REDACTED])

277. [REDACTED] provides three levels of care, depending on need: Level I being the least need, Level III being the most. Need must be supported by medical certification. As all levels are funded by Medicaid, there is a medical need component to all levels. (PGCPS Ex. 45, Test. [REDACTED])

278. [REDACTED] began supporting the Parent and Student in July 2020. The referral was from [REDACTED]. The referral from [REDACTED] said the Student was diagnosed with an Other Conduct Disorder. No anxiety diagnosis accompanied the referral, but the narrative included symptoms of anxiety such as panic attacks and anxiety-related symptoms. (Test. [REDACTED])

279. [REDACTED] was assigned as the Student's Care Coordinator. The Student was identified as a Level II need. (Test. [REDACTED])

280. On August 21, 2020, Ms. [REDACTED] completed a Plan of Care for the Student and the Parent. The Plan of Care included for the Student: a diagnosis of Other Conduct Disorder; a brief history; triggers; potential crises; action steps at home, school, and in the community; a needs statement; an outcome; and strategies. The Plan of Care for the Parent included: a needs statement and an outcome. (PGCPS Ex. 45).

281. The August 21, 2020, Plan of Care was primarily designed to develop skills and utilize resources to support positive changes in family life, and to improve communications. The Plan of Care had a target date for achieving the goals in the Plan of Care of August 21, 2021. (PGCPS Ex. 45).

282. The Plan of Care included Action Steps to address anxiety at school and at home, as follows:

- Stop and breathe
- Request a time out
- Go to a quiet room
- Adults will allow the Student to cool down
- Adults will discuss the problem with the Student and form a concrete plan
- If the Student does not calm down, call 911 or go to the emergency room to avoid self-harm or suicide

(PGCPS Ex. 45).

283. The Plan of Care Strategies included weekly sessions with the Student's Care Coordinator, and the following goals:

- The Student will make safe decisions when triggered or angry
- The Student will follow home rules
- The Student will communicate his needs
- The Student will engage his siblings to develop positive social skills
- The Care Coordinator will support the Student's transition to middle school
- The Care Coordinator will work with the Student on mood regulation
- The Care Coordinator will support the Parent with the school and advocate for the Student
- The Therapist will work with the Student to develop coping skills, identify triggers, and to develop effective communication skills

(PGCPS Ex. 45).

284. The Student received 7.5 hours per month of [REDACTED] services and received services continuously since July 2020, at first through telehealth visits and since July 2021 through in-home visits. Much of the coordination of individual services to the Student are coordinated through the Parent. The Parent has participated in [REDACTED] services continuously since July 2020. Services include online meetings during the COVID-19 pandemic and in-home visits. The Student is receiving therapeutic services in the community to meet therapeutic goals. (Test. [REDACTED])

285. On August 21, 2021, [REDACTED] developed strategies for the Parent who reported she needed to feel supported. Strategies to assist the Parent included:

- The Parent will practice self-care at least once a week
- The Parent will advise the Care Coordinator about the Student's middle school transition and keep her updated on IEP meetings
- The Parent and Student will participate in a mother/son activity at least once weekly
- The Therapist will engage the Parent and Student in family therapy
- The Care Coordinator will engage in face-to-face sessions when they can resume
- The Care Coordinator will refer the Parent and Student to the Maryland Coalition for Families for additional support
- The Maryland Coalition for Families will connect the Parent to a peer support specialist
- The Care Coordinator will help the Parent maintain organization for appointments, documents and meetings
- The Care Coordinator will ensure success of strategies and communicate with the team

(PGCPS Ex. 45).

286. [REDACTED] referred the Parent to the Maryland Coalition for Families, where she works with Ms. [REDACTED] a Care Support Specialist of the [REDACTED] Program. The Maryland Coalition for Families is a peer support organization, and peer support persons must have themselves been supported by the Maryland Coalition for Families to be a peer supporter. Ms. [REDACTED] serves as a sounding board and helps the Parent navigate assistance programs and talks through issues. The Parent is the Maryland Coalition for Families' client. The Parent is an active participant in the Maryland Coalition for Families program and consistently uses Maryland Coalition for Families services. (Test. [REDACTED])

287. Ms. [REDACTED] worked with the Parent and Student to develop strategies to ensure consistent school attendance, such as development of daily routines that included bath times, bedtimes, and quiet times. Ms. [REDACTED] frequently checked in with the Student and Parent to inquire whether strategies developed were successful. (Test. [REDACTED])

288. The Student actively engaged in [REDACTED] services through the Plan of Care and has benefitted from those services. The Parent is benefitting from both the plan developed for her by the Maryland Coalition for Families and from Maryland Coalition for Families services. (Test. [REDACTED])

289. Among the skills the Student developed through his involvement with [REDACTED] [REDACTED] were coping skills. The Student learned to stop and breathe, to think about what he was about to say, to find a quiet place to decompress and cool down and to distance himself from sources of overstimulation like noise, light and people. He was open to new approaches and strategies. (Test. [REDACTED])

290. On August 25, 2020, Ms. [REDACTED] sent an email to [REDACTED] a seventh-grade counselor at [REDACTED] and others, introducing herself. Ms. [REDACTED] explained that [REDACTED] [REDACTED] provides services to families as a wrap-around service and that [REDACTED] should expect to hear from [REDACTED] in a collaborative effort to support the Student and his needs. Ms. [REDACTED] explained that [REDACTED] primarily assists families in dealing with problems in the home, and that services would be provided in the home, although those services had been provided by telehealth in Prince George's County since March 2020. Ms. [REDACTED] included with her email a [REDACTED] brochure. (PGCPS Ex. 45).

291. In her August 25, 2020, email, Ms. [REDACTED] explained to Ms. [REDACTED] that she would be working with the Parent to learn how to coordinate services for the Student when [REDACTED] [REDACTED] services ends. Ms. [REDACTED] explained that [REDACTED] had thus far been successful with the Student and his family to keep the family engaged. She asked [REDACTED] to provide any updates of the Student's IEP and requested information on how the IEP was being implemented during remote instruction. (PGCPS Ex. 45).

292. Prior to an IEP meeting on October 29, 2020, [REDACTED] the Student's special education case manager at [REDACTED] and Ms. [REDACTED] established a good relationship. Ms. [REDACTED] understood from Ms. [REDACTED] that [REDACTED] provided and coordinated social, emotional, and mental health resources in the community. She reviewed the Student's Plan of Care composed by [REDACTED] and through conversations with Ms. [REDACTED] learned about the support services [REDACTED] was providing to the Student. (Test. [REDACTED])

293. The Parent never responded to any of Ms. [REDACTED] communication attempts, and she relied on Ms. [REDACTED] to assist in communicating with the Parent. Ms. [REDACTED] and Ms. [REDACTED] maintained active contact relating to the Student's needs through emails and phone calls. (Test. [REDACTED])

294. Ms. [REDACTED] attended the October 29, 2020 IEP team meeting and advocated for the Student. She said the Student had anxieties that affect the Student's performance and that teachers should be aware that the Student is affected by teacher "tone." (PGCPS Ex. 26).

Seventh Grade and Virtual Learning Platform Skills

295. [REDACTED] was not conducting classes in the school building when the Student enrolled on August 31, 2020. Classes were on a remote instruction platform, on a computer provided to the Student by the PGCPS in April 2020 as virtual learning commenced in Prince George's County. Computer sign-on procedures for students were the same as when students signed onto computers when attending classes at [REDACTED] and [REDACTED] before virtual instruction, which the Student was able to do. (Test. [REDACTED] Test. [REDACTED] Test. [REDACTED])

296. [REDACTED] B.S., was the Student's seventh grade science teacher at [REDACTED] [REDACTED] Prior to the start of the school year, Ms. [REDACTED] and [REDACTED] a seasoned special educator who co-taught science with Ms. [REDACTED] reviewed the Student's November 12, 2019

IEP from [REDACTED] at the beginning of SY 2020-2021 to familiarize themselves with the Student's levels of performance, and the supports and accommodations in the Student's IEP. (Test. [REDACTED])

297. Ms. [REDACTED] created a lesson plan with strategies to accomplish the November 12, 2019 IEP goals and objectives. She incorporated extra time, modified assignments, and other features of the IEP in the Student's science lesson plan. Her focus was the classroom, and Ms. [REDACTED] was responsible for inviting the Student to breakout rooms. (Test. [REDACTED])

298. Ms. [REDACTED] was the Student's seventh grade home room teacher, responsible for greeting him and other students, setting a relaxed tone for the day, getting to know the students in a setting without instruction or testing, and finding out about where students were having challenges. (Test. [REDACTED])

299. From August 31, 2020 to January 11, 2021, Ms. [REDACTED] implemented the modifications and accommodations in the Student's November 12, 2019 IEP, which included providing frequent breaks, reducing distractions, providing extended time, using a graphic organizer, and allowing the Student to use text to speech. (Test. [REDACTED])

300. In virtual science class, all documents were read aloud to all students attending virtual science class. (Test. [REDACTED])

300. The Student was not always present in virtual science class. When the Student was present in science class, Ms. [REDACTED] made sure the Student understood the material, understood questions asked, and knew to ask questions or ask for clarification. If the Student was present, he was available for learning and did learn. His absences affected how much he could learn as lessons built on previous lessons. The principal reason the Student was not doing well in science was poor attendance, not because he did not comprehend the material. (Test. [REDACTED])

301. Ms. [REDACTED] often modeled a lesson by providing both the question and the answer to the Student, then asking the Student to complete assignments in similar fashion. She read instructions aloud and asked the Student if he understood or needed further explanation. The Student, at first, read instructions back; in later months, he did not. (Test. [REDACTED])

302. The text-to-speech accommodations in the Student's IEP were accomplished by reading all documents aloud to all students in the classroom in the virtual learning environment. All documents were read aloud whether or not the Student was present. In the Google platform a text-to-speech feature called Discovery Education was available through a screen icon which Ms. [REDACTED] personally ensured the Student knew how to use. (Test. [REDACTED])

303. At the start of SY 2020-2021, the Student was visible on screen in homeroom, but his visible presence decreased as the school year proceeded. In science class, the Student's name was often displayed on screen, but his image was not. As the school year proceeded the Student became less responsive to questions Ms. [REDACTED] posed and was less responsive to invitations to go to breakout rooms. (Test. [REDACTED])

304. Throughout this period, the Student was skilled in using the computer to access virtual learning and was skilled at responding to questions, asking questions, and going to breakout rooms. (Test. [REDACTED])

305. The Student never expressed any anxieties about attending school to Ms. [REDACTED] nor did he say he did not want to attend school. (Test. [REDACTED])

306. All students in Ms. [REDACTED] science class had an additional 30 days to complete assignments, and class time was often used to catch up. Homework and class assignments were available continuously online. Class notes from all classes were also available online. Ms. [REDACTED] modeled how to use graphic organizers. She made sure the Student knew she was

available for questions. She personally taught the Student how to use the link to join a small group. (Test. [REDACTED])

Direct Speech Language Therapy by Ms. [REDACTED]

307. Ms. [REDACTED] provided direct speech language therapy to the Student following his enrollment at [REDACTED]. She provided speech language therapy for 30 minutes, three times per month pursuant to the November 12, 2019 IEP. (Test. [REDACTED] PGCPS Ex. 35).

308. Ms. [REDACTED] provided all speech therapy services to the Student in a virtual learning environment. She sent emails to the Student and the Parent one day prior to each scheduled session and sent invitations to attend on the same day of each session. (Test. [REDACTED] PGCPS Ex. 35).

309. The Student attended and participated in 30-minute speech language therapy sessions with Ms. [REDACTED] on September 16, 2020, September 23, 2020, September 30, 2020, and October 13, 2020. The Student was able to access the virtual learning sessions without complications. He did not attend his final two speech language sessions with Ms. [REDACTED] (Test. [REDACTED] PGCPS Ex. 35).

310. The focus of Ms. [REDACTED] speech therapy was figurative speech, because in her conversations with Ms. [REDACTED] the Student's speech language therapist at [REDACTED] Ms. [REDACTED] learned the Student had done well in meeting his speech therapy grammar goal and grammar speech therapy was no longer required. (Test. [REDACTED])

311. Ms. [REDACTED] reviewed several types of figurative speech with the Student, following which the Student read sentences and was able to match idioms with meanings correctly eight out of ten times, and explain the meaning of idiomatic expressions correctly in seven out of ten tries. (Test. [REDACTED] PGCPS Ex. 35).

312. On December 22, 2020, Ms. [REDACTED] emailed the Student's science teacher, Ms. [REDACTED]. She told Ms. [REDACTED] that she had checked attendance records and saw that the Student rarely attended class, and that he seemed to have an anxiety problem. Ms. [REDACTED] replied that the Student rarely attended class, and rarely submitted assignments. Ms. [REDACTED] commented that if anxiety was a problem, it should be brought to the attention of the IEP team. Ms. [REDACTED] replied that at the most recent IEP team meeting, which the Parent attended, the Student's IEP was updated to address anxiety. (PGCPS Ex. 35).

313. On December 22, 2020, Ms. [REDACTED] sent an email to the Parent in which she explained she had consulted with the Student's science and reading-language arts teachers about any speech language concerns. Both teachers expressed concern over the Student's attendance and assignment completion in virtual learning. Ms. [REDACTED] urged the Parent to encourage the Student to attend and highlighted the days on which small group sessions would be held. Ms. [REDACTED] also explained that the Student could ask for help at any time, including requests for individual time with teachers. Ms. [REDACTED] explained that there was enough time remaining in the quarter for the Student to make up missed work and be credited for it. (PGCPS Ex. 35).

The October 29, 2020 IEP

314. On October 29, 2020, during SY 2020-2021, when the Student was in seventh grade, the [REDACTED] IEP team met to consider the Student's progress since the implementation of the November 12, 2019 IEP. (P. Ex. 10, PGCPS Ex. 26).

315. On October 29, 2020, the [REDACTED] IEP team reviewed: the Student's new assessment results, available classroom data, observations of general educators, and observations of special educators. The October 29, 2020 IEP team also considered the ongoing concerns about the Student's performance in reading, math, and written language. The IEP team also considered: the Student's MAP-R assessment results from fall 2019; his MCAP scores from

April 29, 2019, and the results of the WJ-IV administered as part of the Triennial Assessment in fall 2018. (P. Ex. 1, PGCPS Ex. 26).

316. The October 29, 2020 IEP team meeting was attended by: the Parent; Ms. [REDACTED] IEP Case Manager; Ms. [REDACTED] Special Education Coordinator; Ms. [REDACTED] Speech Language Pathologist; Ms. [REDACTED] Boehmer-Heafey, Special Education Coordinator; and Ms. [REDACTED] the Student's Care Coordinator at [REDACTED] (P. Ex. 10, PGCPS Ex. 26).

Present Levels of Academic Achievement and Functional Performance

Reading Comprehension

317. The Student was not present for an assessment of his readiness for seventh grade ELA. The Student told his ELA teacher at [REDACTED] that ELA was easy for him, even in a remote learning environment. (P. Ex. 10, PGCPS Ex. 26).

318. On a baseline data assessment,⁵⁷ the Student answered four of nine assessment questions correctly. He was able to record his thoughts and provide contextual evidence to support the thoughts. He struggled with summarization and with filling in the blanks of a story summary. He also struggled to match themes with text. (P. Ex. 10, PGCPS Ex. 26).

319. The Student continued to need small group instruction, redirection, tasks broken down into smaller chunks, visual prompts, graphic organizers, prompts, cues, encouragement, and extra time. (P. Ex. 10, PGCPS Ex. 26).

Math Calculation

320. The Student was not present for an assessment of his readiness for seventh grade math. His instructional grade level was third grade. (P. Ex. 10, PGCPS Ex. 26).

⁵⁷ No evidence was presented as to the date of this assessment.

321. On a test of the Student's ability to perform four basic math functions – addition, subtraction, multiplication, and division – the Student was strong in multiplying single digit numbers by single digit numbers, scoring 100% on five problems. He needed to improve in addition, in which he correctly added numbers in two of five tries, in subtraction, in which he correctly subtracted numbers zero out of five tries, and in division, in which he correctly divided numbers one out of five tries. (P. Ex. 10, PGCPs Ex. 26).

322. On October 29, 2020, the Student's math grade was 83%, with sporadic attendance. His work completion, lack of participation, and absences were causing his math skills to stagnate. The Student's performance improved with small group instruction, redirection, math steps broken into smaller chunks, visual prompts, and extra time. (P. Ex. 10, PGCPs Ex. 26).

323. The Student told his math teacher that he wanted to do well in math, but sometimes missed classes and was sometimes distracted. (P. Ex. 10, PGCPs Ex. 26).

Written Language Expression

324. The Student scored a 100% on a baseline data assessment of written language expression, on which he was able to record (rather than write) his responses and identify what was needed to complete an argument. The Student was able to verbally describe information rather than write it and had difficulty organizing his thoughts in writing. (P. Ex. 10, PGCPs Ex. 26).

325. The Student benefited from using a graphic organizer and models as needed to see what he was being asked to write. He also benefitted from reminders, sentence starters, examples, and repetition of instructions. (P. Ex. 10, PGCPs Ex. 26).

Speech and Language Expressive Language

326. The Student was meeting age-level expectations in use of expressive language in October 2020. (P. Ex. 10, PGCPs Ex. 26).

327. The Student, when evaluated, identified: similes with 100% accuracy; metaphors with 100% accuracy; idioms with 0% accuracy; hyperbole with 50% accuracy; personification with 100% accuracy; and onomatopoeia with 100% accuracy. When presented with definitions and examples of idiomatic expressions and choices, his accuracy performance on idioms increased significantly, and the Student was able to complete idiomatic expressions five out of ten tries. (P. Ex. 10, PGCPS Ex. 26).

328. During speech therapy, the Student showed he met his November 12, 2019 IEP objectives of recognizing errors in verb tense, noun forms, and capitalization and made proper corrections to make sentences grammatically correct, provided fading cues, 80% of the time. The Student could translate figurative speech to literal meaning, with verbal prompts, visual supports, and multiple-choice formats 80% of the time. (P. Ex. 10, PGCPS Ex. 26).

329. The Student made significant progress in speech and language expressive language since implementation of the November 19, 2019 IEP. (P. Ex. 10, PGCPS Ex. 26).

330. The Student no longer needed speech and language pathology services to be part of the October 29, 2020 IEP, based on his progress since implementation of the November 12, 2019 IEP. (P. Ex. 10, PGCPS Ex. 26, Test. [REDACTED])

331. At the October 29, 2020 IEP team meeting, the Parent expressed that the Student is a peaceful, mellow child but sometimes anxious, particularly when yelled at. She suggested gentle redirection. The Parent also stated that the Student had documented anxiety attacks before leaving for school that affected his attendance, and that she was developing response strategies for panic attacks or frustration. (P. Ex. 10, PGCPS Ex. 26).

332. The Parent was interested in obtaining tutoring for the Student, and the IEP team discussed and recommended participation in a PGCPS tutoring program at the October 29, 2020 IEP team meeting. (P. Ex. 10, PGCPS Ex. 26).

333. Ms. [REDACTED] the Student's Care Coordinator at [REDACTED] said at the IEP team meeting that, in her view, the Student's anxiety affects his performance and she encouraged teachers to be aware of how the Student perceives teacher tone when redirecting the Student. (P. Ex. 10, PGCPS Ex. 26).

Instructional and Assessment Features, Accommodations, Supplementary Aids, Services, Program Modifications and Supports to be provided through the October 29, 2021 IEP

Assistive Technology

334. The Student did not require any assistive technology. (P. Ex. 10, PGCPS Ex. 26).

Instructional and Assessment Accessibility Features

335. Instructional and Assessment Accessibility Features in the October 29, 2020 IEP included:

- Graphic organizer for use in instruction only
- General directions read aloud, clarified, and repeated for instruction and all assessments
- Small group for all instruction and assessments
- Frequent breaks for daily instruction and all assessments
- Reduced distractions for daily instruction and all assessments

(P. Ex. 10, PGCPS Ex. 26).

Instructional and Assessment Accommodations

336. Instructional and Assessment Accommodations in the October 29, 2020 IEP included:

- Calculation device and mathematics tools (cubes, number lines, charts, blocks, and graphic organizers) for daily instruction, the MCAP, and the Maryland State Alternative Assessment.
- Monitored test responses in daily instruction and all assessments including the MCAP, the High School Assessment (HSA) in Government, the HSA Maryland Integrated Science Assessment (HSA-MISA) and the Alternate MISA, and the National Assessment of Educational Progress (NAEP).
- Extended time, 1.5x, in daily instruction and on all assessments, except the Maryland State Alternative Assessment.

(P. Ex. 10, PGCPS Ex. 26).

Supplementary Aids, Services, Program Modifications and Supports in the October 29, 2020 IEP to be provided through October 29, 2021

Instructional Supports

337. Instructional Supports in the October 29, 2020 IEP included:

- Visual supports in all content areas, including reading passages, math problem solving, science and social studies tasks, provided weekly, primarily by the Student's general education teacher with support from the Student's special education teacher and instructional assistant.
- Word bank to reinforce vocabulary, including math words, transition words, and a vocabulary list, provided weekly, primarily by the Student's general education teacher with support from the Student's special education teacher and instructional assistant. This was new in the October 29, 2020 IEP.
- Repetition of directions, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aid – with detailed instructions to teachers that the Student responds best to calm tone and body language due to the Student's anxiety.
- Check for understanding, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide.
- Allow use of manipulatives, daily, as needed, for reading, writing and math, such as sentence starters, paragraph frames, pre-headed papers, personal word boxes or dictionary, place value cards to aid math calculations, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide.
- Have the Student repeat or paraphrase information, daily, as needed, to the Student's general education teacher, special education teacher, instructional aide and IEP Team.
- Frequent and/or immediate feedback, daily, as needed, by the Student's general education teacher, special education teacher, and instructional aide.
- Monitor independent work, daily, by the Student's general education teacher, with support from the Student's special education teacher and instructional aide, to support access to grade-level curriculum and reduce the impact of the Student's disability, as appropriate to the daily demand.
- Chunking of text, weekly across all content areas to break written passages into smaller, more understandable parts for help in paraphrasing, organizing, and identifying key words and understand the instruction. To be provided by the Student's general education teacher, special education teacher and instructional aide.
- Frequent breaks, as needed.

(P. Ex. 10, PGCPs Ex. 26).

338. The text-to-speech accommodation and a human reader accommodation were eliminated from the October 29, 2020 IEP. Changes to the October 29, 2020 IEP supplementary

aids, services, program modifications and supports included: elimination of a scribe; elimination of graphic organizers; elimination of small group instruction in the general education classroom; and elimination of altered/modified assignments. (P. Ex. 10, PGCPS Ex. 26).

339. The October 29, 2020 IEP added a word bank, monitoring of independent work, and chunking of text across all content areas. It also changed the dynamic for repetition and paraphrasing to the teacher asking the Student repeat and rephrase rather than the teacher performing the repetition and rephrasing. (P. Ex. 10, PGCPS Ex. 26).

340. The October 29, 2020 IEP does not include graphic organizers in the supplementary aids, services, program modifications and supports. Graphic organizers were, however, included throughout the IEP.⁵⁸ (P. Ex. 10, PGCPS Ex. 26).

341. After review of the Student's progress in grammar and figurative language, and after consideration of Ms. [REDACTED] January 7, 2020, Speech and Language Evaluation, and Ms. [REDACTED] input, the October 29, 2020 IEP team eliminated direct speech and language therapy and substituted a speech and language pathology consult. (Test. [REDACTED] P. Ex. 10, PGCPS Ex. 26).

342. The October 29, 2020 IEP specifically noted:

The Student experiences anxiety attacks which may result from feelings of frustration or challenging interactions with teachers. When redirected during a task, the Student is very sensitive to the teacher's tone and body language and may require frequent breaks within the general education environment, across content areas. At times the Student may indicate that he is feeling anxious and possibly need to listen to music, take a break, etc., in order to allow him to calm himself. When he needs a break, he will message or signal a teacher to let them know without drawing attention to himself.

(P. Ex. 10, PGCPS Ex. 26).

⁵⁸ This conclusion is based on the number of references to use of a graphic organizer in the Goals and Objectives of the October 29, 2020 IEP.

Goals and Objectives through November 20, 2021

343. Goals and Objectives in the October 29, 2020 IEP, to be accomplished by October 2021, included:

- Reading Comprehension

Goal

By October 2021, after reading a grade-level text and given a prompt with a claim verbally or in writing, the Student will cite 3 pieces of textual evidence and explain how it supports the claim with at least 1 piece of teacher support such as graphic organizer, sentence starters, or guiding questions, scoring 75% or higher as measured by a teacher-created rubric in 4 out of 5 trials.

Objective 1

By January 2021, after reading an informational, instructional-level text and given a prompt with a claim and teacher modeling of how to find and explain evidence from the text, the Student will identify 2 pieces of textual evidence and explain how it supports the claim using a graphic organizer, scoring 75% or higher as measured by a teacher-created rubric in 3 out of 5 trials.

Objective 2

By June 2021, after reading an informational, instructional-level text and given a prompt with a claim, the Student will identify 2 pieces of textual evidence and explain how it support the claim using a graphic organizer, scoring 75% or higher using a teacher-created rubric in 4 of 5 trials.

- Math Calculation

Goal

Given grade-level math problems, direct instruction, teacher modeling, and use of manipulatives, the Student will learn and apply strategies to compute the problems at his instructional level with 80% accuracy in 3 out of 5 trials.

Objective 1

The Student will be able to multiply whole numbers up to 3 digits by 2-digit whole numbers related to factors 9x9 (using strategies based on place value, properties of operations, explanation of the calculation using equations, rectangular arrays, area models, etc.) with 80% accuracy in 3 out of 5 trials.

Objective 2

Given instructional level math problems and a step-by-step visual model, the Student will be able to solve one and two-step word problems by using context clues to identify which operation to use to solve with 80% accuracy in 3 out of 5 trials.

Objective 3

Given instructional level multiplication and division problems and the use of manipulatives (i.e., multiplication chart, models, visual representation, counters, etc.) the Student will solve problems with at least 80% accuracy in 3 out of 5 trials.

- Written Language Expression

Goal

Goal: By October 2021, given information from a passage, video, etc., with differing opinions on a topic and an argument writing prompt, the Student will write a 2-3 paragraph essay expressing their opinion on the subject that contains at least 1 claim and 2 pieces of text-based evidence in 2 out of 3 writing prompts.

Objective 1

By January 2021, given an argument writing prompt, a passage or video posing differing opinions on the topic, and a graphic organizer with sentence starters, the Student will state 1 claim and select 2 pieces of supporting evidence to finish sentences in a graphic organizer in 2 out of 3 writing prompts.

Objective 2

By June 2021, given an argument writing prompt, an article posing different opinions on a topic, and a graphic organizer, the Student will state 1 claim and cite 2 pieces of evidence to compose sentences supporting a claim in a graphic organizer in 2 out of 3 writing prompts.

344. There were no Goals or Objectives in the area of Speech and Language Expressive Language in the October 29, 2020 IEP. (P. Ex. 10, PGCPs Ex. 26).

Services and Related Services: What, Where, Duration, How Much, and by Whom

345. Services in the October 29, 2020 IEP included:

- Special education, in the general education classroom, 17 hours, 55 minute per week, for 36 weeks, in reading, math, and science, provided primarily by the Student's special education teacher, and by the Student's general education teacher

- Special education, in the general education classroom, 11 hours, 40 minutes per month, for 36 weeks, in social studies, provided primarily by the Student's special education teacher, and by the Student's general education teacher

(P. Ex. 10, PGCPs Ex. 26).

346. All special education services in the October 29, 2020 IEP were to be provided in the general education classroom except for the delivery of consult services and supports. (P. Ex. 10, PGCPs Ex. 26).

347. The Student did not have any behaviors that interfered with accessing the curriculum. The Student was not approved for ESY in the October 29 2020 IEP. (P. Ex. 10, PGCPs Ex. 26).

348. Prior to the October 29, 2020 IEP team meeting, the IEP team at [REDACTED] had not seen either Dr. [REDACTED] July 19, 2020, psychological report nor Ms. [REDACTED] occupational therapy report. Neither Ms. [REDACTED] nor Ms. [REDACTED] were aware of the reports until they were offered into evidence at the due process hearing. (Test. [REDACTED] Test. [REDACTED])

349. Both Dr. [REDACTED] and Ms. [REDACTED] reports were later discussed and considered at an IEP team meeting on April 21, 2021. (Test. [REDACTED] PGCPs Ex. 96).

Progress in Meeting Goals and Objectives of the October 29, 2020 IEP

Reading Comprehension

350. By November 6, 2020, after reading instructional-level text, with a teacher prompt and a teacher modeling regarding how to find and explain evidence in the text, the Student was able to identify two pieces of text that supported a claim, with a teacher-provided rubric with 70% accuracy two out of two times. As the Student's confidence grew, less teacher support was required. The Student made academic progress on the reading comprehension goal and objectives of the October 29, 2020 IEP and on the language goal and objective of the ICLP. (PGCPs Ex. 87).

351. By March 5, 2021, after reading an instructional-level text, with teacher modeling how to find textual support, the Student was able to locate two pieces of textual support and explain how it supported a claim with 60% accuracy or higher in four out of five trials, using a teacher-created rubric as a measurement. The Student made academic progress on the reading comprehension goal and objectives of the October 29, 2020 IEP and on the language goal and objective of the ICLP. (PGCPS Ex. 87).

Written Language Expression

352. By November 6, 2020, no progress in Written Language Expression was measured due to the recency of the last IEP meeting. (PGCPS Ex. 87).

353. By February 5, 2021, the Student was able to state one claim and cite two supporting pieces of evidence from text in two out of three writing prompts, if provided with a graphic organizer and sentence starters. The Student made academic progress on the written language expression goal and objectives of the October 29, 2020 IEP and the language goal and objective of the ICLP. (PGCPS Ex. 87).

Math Calculation

354. By November 6, 2020, no progress in math calculation was measured due to the recency of the October 29, 2020 IEP. (PGCPS Ex. 87).

355. By February 5, 2021, when assigned three two-step word problems with whole numbers, and two pieces of key information identified and labeled, and a partially completed graphic organizer to identify the remaining key information, the Student was able to select the correct equation and/or solution from a set of three choices, with 60% accuracy in three out of four problems in two out of three sets of problems. The Student made some academic progress on the math calculation goal and objectives of the October 29, 2020 IEP and the math calculation goal and objective of the ICLP. (PGCPS Ex. 87).

SY 2020-2021 Quarterly Grades, Seventh grade

356. The Student's quarterly grades for seventh grade were:

Subject	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Final
Math	C	C	D	No data	No data
Reading/ELA	C	D	E		

(P. Ex. 64).

Dr. [REDACTED] Supplemental Report

357. On March 28, 2021, Dr. [REDACTED] issued a Confidential Psychological Evaluation in which he opined that the Student did not meet the diagnostic criteria for Intellectual Disability. He stated that he saw no reason to alter any opinion expressed in his report of July 19, 2020. (P. Ex. 40).

School Tardiness and Absences

358. The Student attended [REDACTED] from Pre-Kindergarten through sixth grade. The fourth quarter of sixth grade included virtual learning due to the COVID-19 pandemic. The Student enrolled at [REDACTED] for SY 2020-2021, seventh grade. All of SY 2020-2021 was conducted in a virtual learning format due to the pandemic.

359. The Student's attendance history at [REDACTED] and [REDACTED] was as follows:

Grade	Days Present	Days Absent ⁵⁹
SY 12-13 Pre-Kindergarten	158	21
SY 13-14 Kindergarten	161	17
SY 14-15 1 st Grade	160	18

⁵⁹ PGPCS Ex. 28 does not include information whether the absences were excused or unexcused, or information about the reasons for the absences. It also does not include information on dates when the Student attended but was tardy.

SY 15-16 2 nd Grade	172	6
SY 16-17 3 rd Grade	161	19
SY 17-18 4 th Grade	170	10
SY 18-19 5 th Grade	145	36
SY 19-20 6 th Grade	146	29
SY 20-21 7 th Grade	48	45

(PGCPS Ex. 28).

360. In SY 2019-2020, sixth grade, the Student was absent or was tardy in school quarters one through four, as follows:

Quarter 1	Quarter 2	Quarter 3	Quarter 4
9/3/19-11/5/19	11/6/19-1/24/20	1/28/18-3/30/20	4/14/20-6/15/20
Instruction Days 44	Instruction Days 45	Instruction Days 35	Instruction Days 44
Attended 32 days	Attended 33 days	Attended 30 days	Attended 44 days
Absent 12 days (5 excused for illness)	Absent 12 days (3 excused for illness)	Absent 5 days (5 excused for illness)	Absent 0 days
Tardy 23 days	Tardy 23 days	Tardy 11 days	Tardy 0 days

(P. Ex. 14, PGCPS Ex. 24).

361. In SY 2020-2021, seventh grade, during an all-virtual school year, the Student was absent for his first virtual appearance of the school day – Homeroom – in school quarters one through four, as follows:

Quarter 1	Quarter 2	Quarter 3	Quarter 4
8/31/20-11/5/20	11/6/20-1/27/21	1/28/21-4/9/21	4/10/21-
Absent 13 days	Absent 27.5 days	Not relevant	No data
Attended 30 days	Attended 19.5 days	Not relevant	No data

(PGCPS Ex. 38.)

362. In addition to being absent from Homeroom each day with increasing frequency viewed quarter-to-quarter, the Student was absent from virtual math class 27 of 47 days of second quarter of SY 2020-2021. (PGCPS Ex. 87).

363. In addition to being absent from Homeroom each day with increasing frequency viewed quarter-to-quarter, the Student was absent from virtual written language expression class 27 of 47 days of second quarter SY 2020-2021. (PGCPS Ex. 87).

364. The Student was excited to be in school at [REDACTED]. He had a good relationship with Principal [REDACTED]. He never expressed anxiety about attending school, never expressed any concerns, and did not shut down. (Test [REDACTED]).

365. Ms. [REDACTED] was the [REDACTED] Assistant Principal during all years the Student was enrolled at [REDACTED]. She and Principal [REDACTED] were responsible for supervising [REDACTED] students whose parents or guardians had not picked them up from [REDACTED] at the end of the school day. (Test. [REDACTED]).

366. The Student was frequently at school after dismissal because the Parent did not pick the Student and his younger sibling up on time. [REDACTED] is dismissed at 1:45 p.m., and the buses clear by 2:15. Parent pick-up lasts until 2:15. The Parent generally picked up the Student and his sibling between 2:45 and 3:00 p.m., sometimes as late as 3:30 p.m. When the Parent was late, the Student and his younger sibling waited outside the Principal's Office, during which time Ms. [REDACTED] conversed with the Student to ensure he was all right. Ms. [REDACTED] asked the Student about his day. At times the Student paced and shook his head, and Ms. [REDACTED] reassured him the Parent was on her way. (Test. [REDACTED]).

367. On one occasion when the Student was in sixth grade and the Parent was late retrieving the Student, Ms. [REDACTED] asked the Parent why she was late, to which the Parent responded that she overslept. The Parent never placed blame on anyone but herself regarding her lateness. (Test. [REDACTED]).

368. Ms. [REDACTED] was also the late arrival monitor, and the Parent routinely brought the Student to school between 8:05 and 8:30 a.m., when students were supposed to be in their seats by 7:50 a.m. When Ms. [REDACTED] asked the Student why he was late, the Student usually explained that the Parent overslept. The Student never said he was late because he refused to come to school, or because he was concerned about school, or that he had a panic attack. The Student never said he was anxious or did not want to get out of the car. His only reason for being late was “mom.” (Test. [REDACTED])

369. Principal [REDACTED] is trained to recognize signs of student anxiety. Principal [REDACTED] did not observe signs of anxiety in the Student. He was always happy to arrive at school and was eager to get to class. The Student was in good spirits and engaged with his fellow students appropriately. (Test. [REDACTED])

370. None of the Student’s teachers at [REDACTED] reported that the Student had any anxiety. The Student had never visited the nurse’s office due to anxiety. The Student took no excessive bathroom breaks, did not request to be excused from class, or request to go home due to anxiety or anxiety-related symptoms. The Student did not cry in class. (Test. [REDACTED])

371. The Student was well-behaved in classes at [REDACTED] and had no behaviors that interfered with his learning or the learning of others at any time in SY 2018 -2019 or SY 2019 - to 2020. Historically at [REDACTED] the Student did not exhibit such behaviors since the Student enrolled there in SY 2012-2013. (Test. [REDACTED])

372. The Parent never told Principal [REDACTED] or [REDACTED] educators that the Student was affected by the Parent’s own difficulties with reading and math, by her handwriting, by her depression, by her suicidal ideations, by her PTSD, by her difficulties supervising distance learning, by her problems using computers, by her arthritis, or by other personal issues. The Parent never told anyone she had trouble getting the Student out of the car at school, or that the

Student was having problems at school. The Parent did not tell Principal [REDACTED] the Student had any anxieties, or that he had problems sleeping. The Parent did tell [REDACTED] that her older sister had a bout with cancer. (Test. [REDACTED])

373. Neither Ms. [REDACTED] in her January 7, 2020 speech language evaluation, nor Ms. [REDACTED] in her January 10, 2020 occupational therapy evaluation, nor Dr. [REDACTED] in his July 19, 2020 educational and psychological evaluation, comment that the results of their evaluations were in any way affected by assessment or test anxiety. All evaluators described the Student during assessment as alert, pleasant, with appropriate tone and speech rate for his age ([REDACTED] calm throughout the assessment, willingly completed the assessment, with sustained appropriate attention and without breaks ([REDACTED] and appropriate and well-mannered. ([REDACTED] None of the evaluators cautioned that the results of the evaluation may be unreliable due to test anxiety during assessment. (P. Exs. 4, 6, 7).

DISCUSSION

A. Positions of the Parties⁶⁰

The Parent argued that the Student has significant anxiety issues related to school, was bullied, and was mistreated by his teachers. She argued that the Student is performing academically on a third grade level in reading, writing and math, and that he regressed cognitively between 2018 and 2020. The Parent argued the PGCPs was aware that the Parent has disabilities that prevented her from helping the Student because she was a learning-disabled student herself and attended PGCPs. She argued that the PGCPs failed to develop an appropriate IEP for SY 2019-2020 and SY 2020-2021 when it was aware the Student had anxieties and poor attendance but failed to address either in the Student's IEPs. She argued that

⁶⁰ At the conclusion of the Parent's and Student's case the PGCPs made an oral Motion for Judgment in its favor. I entertained arguments from both parties and declined to render judgment in favor of the PGCPs until the conclusion of all evidence. COMAR 28.02.01.12E. My decision in favor of PGCPs on the merits after hearing all of the evidence renders the PGCPs Motion for Judgment moot.

the PGCPS failed to investigate whether the Student's anxieties were related to his absenteeism and, using the results of that investigation, to implement strategies to address the absenteeism. The Parent argued that the PGCPS failed to conduct requested IEEs and failed to include the Parent in the decision not to conduct requested IEEs by filing a due process complaint, and that it failed to consider community occupational therapy, speech therapy and psychological evaluations and to implement the recommendations in those evaluations. She argued the PGCPS violated the procedural safeguards of the IDEA when it changed the Student from brick-and-mortar learning to virtual learning without an IEP meeting. The Parent argued that the PGCPS failed to evaluate the Student in all areas of suspected disability when it was aware the Student had anxieties. She argued the PGCPS failed to implement the Student's IEPs as written when it converted to virtual learning.

As relief, the Parent requested an order requiring the PGCPS to fund a private reading evaluation to determine the extent of the Student's reading deficits, followed by private instruction by educators trained in Orton-Gillingham and/or Lindamood-Bell. She argued that the PGCPS should fund a private speech language evaluation by a speech language pathologist of the Parent's choosing, a private psychological evaluation by a psychologist of the Parent's choosing, a private occupational therapy evaluation by an occupational therapist of the Parent's choosing, and should fund technology training for the Parent and the Student by trainers of the Parent's choosing. The Parent also argued that the PGCPS should conduct an FBA conducted by a Board-Certified Behavioral Analyst to determine the extent to which anxiety causes the Student's absenteeism and should provide training and counselling for the Parent so she can deal with the Student's anxieties. The Parent argued the PGCPS should provide 200 hours of tutoring in each of the areas of reading, writing, and math by private tutors of the Parent's choosing, and should provide training for the Parent so she can help the Student with his reading and writing.

The Parent requested an order directing an IEP team to develop a BIP consistent with the results of the FBA, and an order directing PGCPs to implement staff development methods to ensure teachers and school administrators and staff know how to better support students with absenteeism issues.

In the alternative, the Parent requested the PGCPs fund private placement for the Student at a school specially designed to support students with social/emotional needs.

The PGCPs argued that the Parent wants unspecified relief for reasons that do not exist in law and that she seeks relief for reasons not included in her Complaint. It argued that the Parent blames the PGCPs for every failure on her part to ensure the Student gets to school on time and is available for instruction. The PGCPs argued that the Parent did not act in good faith when she failed to mention any report by Dr. [REDACTED] or Ms. [REDACTED] at the November 12 2019 IEP meeting and, and after being asked to provide reports when they were available, failed to do so. It argued the Parent failed to act in good faith when she did not object to the November 18, 2019 IEP or PWN, the November 12, 2019 IEP or PWN, the October 29, 2020 IEP or PWN, or the ICLP, but now sues the PGCPs. The PGCPs argued that the procedural violations alleged by the Parent, if they exist, did not result in any substantive deprivation of a FAPE. It argued that schools were directed to provide special education and related services during the COVID-19 pandemic taking into consideration as a first priority the health and safety of students, teachers, and related services providers, and to modify delivery of special education and related services, as needed, consistent with health and safety.

The PGCPs argued that there is only one known incident in which the Parent reported the Student was bullied, which the PGCPs promptly addressed. The PGCPs argued that the Student has never had any behavioral issues at school, either at [REDACTED] or [REDACTED] and never displayed any anxieties. Thus, there was no basis for any social emotional testing or basis for an

FBA as there were no behaviors at school that interfered with the Student's learning. It argued that all evidence reflects that the Student behaves very differently at home than he does at school, and even the Parent herself described the difference in home versus school behaviors when she told providers at [REDACTED] that the Student has no problem behaviors at school.

The PGCPS argued that the Student made progress on the goals and objectives in his November 13, 2018 IEP, his November 12, 2019 IEP, his October 29, 2020 IEP, and the April 2, 2020 ICLP. It argued the Student had no difficulties accessing virtual instruction and was skilled in computer use. The PGCPS argued that the PGCPS agreed to fund an IEE in the academic areas of reading, written language, and math, and agreed to fund a psychological IEE. The PGCPS informed the Parent that as the 2018 triennial evaluation did not include occupational therapy, she should renew her request for an IEE in occupational therapy at the upcoming IEP team meeting and the members would discuss whether to grant her request. Thus, no procedural violation was committed.

The PGCPS argued that "the Parent is learning disabled" is a convenient excuse unsupported by any evidence that the Parent is learning disabled or that she received any services from the PGCPS years ago. It argued that the Parent never asked the PGCPS for help with technology, for help getting the Student to school, never told the PGCPS, its teachers, or administrators of her own variety of personal problems, nor did she request help addressing them. The Parent did not tell any teacher or any member of any IEP team that the Student was exhibiting behaviors at home and that she wanted PGCPS to help address them – the only mention she made was that the Student was anxious and did not want to go to school. The PGCPS cannot address, through wrap-around services or through an IEP, what it does not know about. It argued that the Parent never mentioned to Pupil Personnel Workers who made home

visits in 2016 and 2019 that the Student was tardy and absent because the Student was anxious and did not want to go to school. When Pupil Personnel Workers offered advice, assistance, and support, the Parent ignored them. The PGCPS argued that The Parent testified several times that she “did not get that,” “never saw that,” or “was not aware of that.” This demonstrates the Parent’s unwillingness over time to engage with the PGCPS or to respond to its efforts to help her and the Student, and her unwillingness to use community resources made available to her through Pupil Personnel Workers and the Family Support Center of the PGCPS;

The PGCPS argued that it considered the January 10, 2020, occupational therapy report of Ms. [REDACTED] and Dr. [REDACTED] July 29, 2020, psychological assessment at the April 21, 2021, IEP meeting. Until the Parent filed the Complaint on January 11, 2021, the [REDACTED] IEP team had no knowledge that Ms. [REDACTED] or Dr. [REDACTED] reports existed.

The PGCPS argued that Dr. [REDACTED] lacks credibility. The PGCPS argued that the Parent’s evidence at the hearing varies greatly from what she alleged in the Complaint, and that no relief is warranted for any alleged violation not articulated in the Complaint. It argued that the Complaint does not allege, and no proof was presented, that the Student’s absences were due to anxiety, that the anxiety was related to school, or that the Student’s anxiety or his absences were related to his learning disability of dysgraphia. The PGCPS argued that much of the relief the Parent requests is not available under the IDEA. It argued that attendance is not a behavioral issue, and in any event, much of what the Parent requests is already being provided to her by [REDACTED] [REDACTED] and there is no reason for the PGCPS to duplicate what is already being provided. It argued that the evidence demonstrates that the Student likes school and is excited to be there. He has no behavioral issues at school.

The PGCPS argued that the relief sought by the Parent – 200 hours of tutoring in each of the subjects of reading, writing, and math – are made up numbers without evidentiary support,

and that private placement has not been an issue in this case and was not requested in the Complaint. Private placement should not, therefore, be considered.

In response the Parent argued that her experts are better than the PGCCPS' experts. She argued that there is no requirement that she express disagreement with an IEP as a condition-precedent to filing a due process complaint. The Parent argued that the Student's care coordinator, Ms. [REDACTED] told the October 29, 2020 IEP team that the Student had anxieties but the school did nothing, and that the Student's reluctance to appear on screen during virtual instruction supports the inference the Student had anxiety about attending school. She argued that as the Student advanced in grade level the academic material became more difficult, which increased the Student's anxiety, which increased his absenteeism. Even without expert opinion, the Parent argued, the evidence demonstrates [REDACTED] and [REDACTED] failed in their duty to investigate why the Student was absent and tardy so much, or to call IEP meetings to address absenteeism.

B. The Legal Framework

IEP and FAPE

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md Code Ann., Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01. The IDEA requires "that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C.A. § 1400(d)(1)(A); *see also* Md. Code Ann., 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 20 U.S.C.A. section 1401(3) and the applicable federal regulations. The statute provides as follows:

(A) In General

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

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

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

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

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

The *Rowley* Court found, because special education and related services must meet the state’s educational standards, 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 the academic, developmental, and functional needs of the child.

Accord 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. A 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 Supreme Court revised 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 IDEA, *Andrew F.* 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. 137 S.Ct. at 998-99.

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The IDEA 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 a court regards it as ideal. *Id.* at 999.

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.'" *Andrew 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 "*pecially designed*" to meet a child's "*unique needs*" through an "*[i]ndividualized education program.*" *Andrew F.*, 137 S. Ct. at 998-99 (citations omitted). The *Andrew F.* 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. The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Id.* at 1001 (citation omitted).

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

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

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 Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). In this case, the Parents are seeking relief, and bear the burden of proof.

C. Issue 1, Change of Placement without an IEP meeting

Did the PGCPS deny the Student a FAPE when it changed his placement from an in-person general education setting to a virtual-learning-at-home education setting without considering his individual needs, and without first convening an IEP meeting to allow the Parent an opportunity to meaningfully participate in the virtual-learning-at-home placement decision, during the period March 2020 to January 11, 2021?⁶¹

Law Applicable to Change of Placement

The IDEA, at 20 U.S.C.A. § 1415 provides that a school must provide prior written notice to a parent if the school proposes to change the educational placement of a learning-disabled child and must provide written procedural safeguards when a change in placement is made.

⁶¹ The issue as stated in the Prehearing Conference Report and Order was “from March 2019 to present,” clarified during the hearing as March 2020 to January 11, 2021, the date the Complaint was filed.

Under 34 C.F.R. Section 300.121 (procedural safeguards) and 34 C.F.R. Section 300.500 (responsibilities of schools and other public agencies) states must have procedural safeguards in place which establish, maintain, and implement the procedural safeguards of 34 C.F.R Sections 300.500 through 300.536. Not all of 34 C.F.R. Sections 300-501 through 300.536 are relevant here.

Under 34 C.F.R. Section 300.501 (parent participation) parents must have an opportunity to examine records and participate in meetings and participate in decisions relating to the identification, evaluation and educational placement of students. Under 34 C.F.R. § 300.501(c)(3) if the parent cannot participate in a meeting in which a decision will be made relating to educational placement, the school must use other means to ensure participation, including individual or conference calls, or videoconferencing. Under 34 C.F.R. Section 300.501(c)(4) a placement decision may be made by a group without the involvement of a parent if the school is unable to obtain the parent's participation, in which case the school must record its efforts.

Under 34 C.F.R. Section 300.503 schools must provide written notice before a school may change the placement of a child or the provision of a FAPE. 34 C.F.R. Section 300.504 sets forth the procedural safeguards notice requirements.

In addition, 34 C.F.R. Section 300.321 defines an IEP team and its members, and 34 C.F.R Section 300.322 describes the rights of parents to participate in IEP meetings.

As 20 U.S.C.A. Section 1415(f)(3)(E)(ii) makes clear, in matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits.

The IDEA and its implementing regulations described above create a procedural framework designed to guide schools and parents through a complex process tailored to meet the needs of each learning-disabled student. Under this framework schools must address the educational needs of students with wide-ranging disabilities, wide-ranging achievement, and wide-ranging potential for growth. The remedy for a procedural violation is generally to require that the procedure be followed. *J.N., next friend of M.N. v. Jefferson Cnty. Board of Educ.*, 12 F.4th 1355, 1366 (11th Cir. 2021). Where the IDEA’s educational guarantee itself is violated, remedies like compensatory education may be available. *Id*; *See also Fry v. Napoleon Cmty. Schs.*, 137 S.Ct. 743, 754 n. 6 (2017) (Without finding the denial of a FAPE, a hearing officer may do nothing more than order a school district to comply with the Act’s various procedural requirements, see § 1415(f)(3)(E)(iii)—for example, by allowing parents to “examine all records” relating to their child, § 1415(b)(1)).

To succeed in her claim under Issue 1, the Parent must prove, first, that a procedural violation occurred and, second, that the Student’s education would have been different but for the procedural violation. That is, the procedural violation must have caused harm. *See L.M.P. ex rel. E.P. v. School Board of Broward Cnty.*, 879 F.3d 1274, 1278 (11th Cir. 2018) (In evaluating whether a procedural defect has deprived a student of a FAPE, the court must consider the impact of the procedural defect and not the defect *per se*). *See also R.F. v. Cecil Cnty. Bd. of Educ.*, 919 F.3d. 237 (4th Cir. 2019) (School increased student’s hours away from general education classroom by increasing hours in a specialized setting, without notice to parent and opportunity for input. Student got more special education as a result, not less. Procedural violations occurred, but they did not deprive the Student of a FAPE).

My Findings of Fact lay out the guidance and policies issued by federal, State and the PGCPS authorities in response to the COVID 19 pandemic. The USDOE Guidance included that

provision of FAPE may include, where appropriate, special education and related services through virtual instruction and telephone instruction. The USDOE Guidance provided:

To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance learning.

(Emphasis in original).

In *J.T., et, al v. DeBlasio, et.al*, 500 F. Supp. 3d 137 (2020), parents of students with disabilities sued public officials and school districts alleging that requiring students with disabilities to convert to a remote learning environment due to COVID-19 impermissibly altered the placement of every affected student by unilaterally stopping the provision of special education. The plaintiffs also argued that because the affected students had filed the lawsuit the defendants violated the IDEA’s stay put provisions while the suit was pending by converting instruction to home learning.

District Court Judge McMahon, Chief Judge of the Federal District Court of the Southern District of New York, citing *Concerned Parents & Citizens for the Continuing Education at Malcolm X (PS 79) v. New York City Bd. of Educ.*, 629 F.2d 751 (2nd Cir. 1980), observed that “educational placement” refers only to the general education program in which a handicapped child is placed and not all the various adjustments to the program that an educational agency may determine are appropriate. The Chief Judge observed that “general education program” means the same general level and type of services that the disabled child was receiving. *J.T. v. deBlasio* at 185-86. The Court recognized that placement is not the brick and mortar of the particular school; it is the classes, individualized instruction, and services a child will receive. *Id.* at 186.

The *J.T. v. deBlasio* Court also recognized that while the USDOE had not waived schools’ obligation to follow the IDEA, it issued guidance to schools about how they could comply with the IDEA during the unprecedented COVID-19 pandemic. The Court recognized

that in its guidance, the USDOE specifically endorsed remote learning virtually, online, and telephonically as alternate means of instructional delivery. *Id.* at 187. The Court concluded: “It is impossible to square the USDOE’s contemporaneous guidance with the Plaintiff’s assertion that the City’s switch to remote learning in light of the pandemic constituted a change of placement. This Court will not second guess the USDOE.” *Id.* at 187-88. The Court found that the switch to remote learning did not require any change of the students’ IEPs before the conversion, and that the location, though remote, was in the general education classroom, and related services were being provided in breakout rooms. *Id.* at 184.⁶²

I find, based on the authorities cited above and the federal, State and PGCPs guidance provided to schools in response to the pandemic, that converting the Student from brick and mortar learning to virtual instruction at home was not a change in placement. The Student, although at home, continued to receive the benefits of his IEP, as written, including education in the general education classroom, small group instruction, and individual instruction, to the maximum extent possible under the conditions caused by the COVID-19 pandemic.

Because conversion to home instruction was not a change in placement, the procedural safeguards of the IDEA that require an IEP team to meet, invite the Parents to attend and to provide input, and provide the Parent with procedural safeguards prior to a change in placement do not apply. There was no procedural violation.

In addition, the PGCPs tried to contact the Parent to discuss the change to remote instruction and to discuss the content of the April 2, 2020 ICLP. Ms. [REDACTED] called the Parent, emailed the Parent attaching to her email a copy of the ICLP, and tried to communicate with the Parent through Class Dojo, attaching a copy of the ICLP to that

⁶² Ultimately, as to the IDEA “stay put” claims of some 43 plaintiffs, the *J.T. v. deBlasio* Court held that the “stay put” component of the class action filed by the plaintiffs was inappropriate because the plaintiffs did not exhaust their rights to administrative hearings, one plaintiff at a time, on that issue. *J.T. v. deBlasio*, 500 F.Supp.3d at 185.

communication. The Parent did not respond to any of these efforts. On or about April 10, 2020, Ms. [REDACTED] spoke to the Parent and discussed the ICLP. The Parent lodged no objection to converting the Student to remote learning. The PGCPS complied with the USDOE guidance and the MSDE bulletins on the subject of converting to remote learning.

Finally, even if a procedural violation occurred, the Parent has not proven any harm as a result of a procedural violation. The Parent has not identified any educational deficit which resulted specifically and only because of the conversion to virtual instruction.

Every witness with personal knowledge who testified on the issue of denial of access to the services in the November 12, 2019 IEP and denial of access to services under the April 2, 2020 ICLP during virtual learning said that when the Student attended virtual instruction he learned and made progress toward the goals and objectives in the IEP and in the ICLP. All school witnesses testified that the Student knew how to use and did use the computer provided to him by the PGCPS. Although the Parent testified that the Student had challenges accessing virtual learning, I find the testimony of the PGCPS witnesses, many of whom testified that the Student had no challenges accessing the virtual learning platform and when present actively participated, to be more persuasive.

Thus, I will find in favor of PGCPS on Issue 1.

D. Issue 2, Denial of FAPE and Child Find

Did the PGCPS deny the Student a FAPE and violate the Child Find provisions of the IDEA when it failed to consider the Student's need for special education and related services after receiving private occupational therapy, psychological and educational evaluations in August 2020?

The Student has had an IEP since SY 2015-2016, second grade. All IEPs at issue include a statement that demonstrates the Student has been identified as eligible for special education and related services as a child with the SLD of dysgraphia. In other words, the PGCPS has already found the Student and determined he is eligible.

The psychological and educational evaluation referred to in Issue Two is the July 19, 2020, evaluation by Dr. [REDACTED] which concludes the Student has a FSIQ of 65 which may significantly impair many areas of functioning. Dr. [REDACTED] report is quoted extensively in the Complaint.

20 U.S.C.A. Section 1414(b)(3)(B) requires the PGCPs to ensure that the Student is “assessed in all areas of suspected disability.”

Under 20 U.S.C.A. Section 1412,

Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed under section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.

20 U.S.C.A. § 1412(a)(3)(B).

34 C.F.R. Section 300.8 “Child with a disability” provides:

(a) General—

(1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

...

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

...

(6) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s

educational performance. The term “intellectual disability” was formerly termed “mental retardation.”

34 C.F.R. Section 300.111, “Child Find” provides:

(a) General.

(1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; . . .

(c) Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade.

34 C.F.R. Section 300.304, “Evaluation Procedures” provides, in relevant part:

(b) In conducting the evaluation, the public agency must –

(1) Use a variety of assessment tools and strategies to gather relevant . . . that may assist in determining –

- (i) Whether the child is a child with a disability under § 300.8; and
- (ii) The content of the child’s IEP

. . .

(c) Each public agency must ensure that -

. . .

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

The Student has already been determined eligible for special education and related services under the SLD of dysgraphia. The PGCPs, under Section 300.304, has a continuing responsibility to evaluate the Student and to provide for his special education and related services needs, even if those needs are unrelated to dysgraphia.

The IDEA and its implementing regulations resulted in a body of “Child Find” case law. *See W.A. v. Hendrick Hudson Central School District*, 927 F.3d 126, 133 (2d Cir. 2019) (2010) (The IDEA enforces a “Child Find” obligation which “requires each State to have policies and procedures to ensure that all children with disabilities are identified and evaluated for special education and related services.” *See also Mr. P. v. W. Hartford Bd. of Educ.*, 885 F.3d 735, 749 (2d Cir. 2017), *cert. denied*, 139 S. Ct. 322 (2018). A school district must conduct an evaluation of a child suspected of suffering a disability “within a reasonable time” after it receives “notice of a likely disability.” *Id.* at 750.)

The Complaint at paragraph 5 alleges the Student has an overall IQ of 65 but has never been considered under the special education category of Intellectual Disability. At paragraph 11, the Parent states that the Student’s cognitive ability is “low average” and she restates this describing the Student’s cognitive ability as a low IQ of 65. At paragraph 20, the Parent cites Dr. [REDACTED] conclusion (from a July 19, 2020 report) that, based on WISC-III results, the Student’s FSIQ of 65 falls into the Extremely Low range. At paragraph 23, she cites Dr. [REDACTED] report that the Student’s FSIQ was greater than 1% of children his age, and his conclusion that children with FSIQ’s in this range may experience difficulty in many different functional areas.

In the “Requested Relief” section of the Complaint, the Parent does not request that the Student’s IEP be revised to include Intellectual Disability, or that special education and related services be provided to address Intellectual Disability. Nor does the Complaint request that I order an evaluation of the Student’s eligibility for special education and related services under Intellectual Disability.

I admitted Parent’s Exhibit 40, a March 8, 2021, Confidential Psychological Evaluation authored by Dr. [REDACTED] in which he opined that the Student does not meet the diagnostic criteria for Intellectual Disability. I admitted this exhibit for the limited purpose of this conclusion. This

report, composed two months after the Parent filed her Complaint, is strikingly inconsistent with the Complaint and with Dr. [REDACTED] July 19, 2020 report, and disproves the Parent's Child Find violation allegation.

Dr. [REDACTED] July 19, 2020, report includes descriptions of the Student's behaviors, primarily at home, as provided in large part by the Parent. Dr. [REDACTED] also describes his review of BASC III responses from the Parent and from a teacher, which he describes as inconclusive. In his report, he concludes the Student meets the diagnostic criteria under the DSM-V for GAD. He makes no recommendations in his report regarding what an appropriate response to this GAD may be and does not suggest that the Parent request an IEP meeting or that the IEP team take any steps to address the GAD diagnosis. Dr. [REDACTED] had one of the Student's IEPs for review during his evaluation and did not suggest in his July 19, 2020 report that the Student be evaluated for special education eligibility and related services in any other category than the SLD of dysgraphia. Dr. [REDACTED] made no recommendation that the Student's IEP should be amended to include accommodations or related services for anxiety. Dr. [REDACTED] did not attend the October 29, 2020 IEP meeting or speak to any educators at [REDACTED] or [REDACTED].

On August 13, 2020, Dr. [REDACTED] sent a copy of his July 19, 2020, report to the Parent as an email attachment. On August 13, 2020, the Parent forwarded that report to Ms. [REDACTED] the seventh grade guidance counselor at [REDACTED]. In her email to Ms. [REDACTED] the Parent did not ask Ms. [REDACTED] to forward the report to a special educator or an IEP team, nor did she otherwise comment on the report. Ms. [REDACTED] did not forward Dr. [REDACTED] report to anyone on the [REDACTED] IEP team prior to the October 29, 2020 IEP team meeting.⁶³ Neither the Parent nor Ms. [REDACTED] mentioned Dr. [REDACTED] report at that meeting. The Parent told the IEP team that she was having some evaluations done and would provide them to Ms. [REDACTED] when

⁶³ On April 21, 2021, a [REDACTED] IEP team met and considered Dr. [REDACTED] July 19, 2020, report.

they were completed. The Parent also told the October 29, 2020 IEP team that the Student had some anxieties caused by “teacher tone.”

On January 10, 2020, Ms. [REDACTED] conducted an occupational therapy evaluation and issued a report the same day. At some unknown time, Ms. [REDACTED] provided a copy of her report to the Parent. On August 21, 2020, the Parent sent Ms. [REDACTED] report to Ms. [REDACTED] Ms. [REDACTED] did not provide Ms. [REDACTED] report to the [REDACTED] IEP team, and Ms. [REDACTED] report was not considered by the October 29, 2020 IEP team.⁶⁴

The Parent presented no evidence that the failure to consider Ms. [REDACTED] report at the October 29, 2020, IEP team meeting resulted in any educational deficit or impeded the Student’s learning. There is no evidence that the Student’s education would have been different but for the failure to consider Ms. [REDACTED] report. That is, if there was a procedural error, it caused no harm. *L.M.P.*, 879 F.3d at 1278.

Finally, the Parent may have tried to abandon the Child Find issue altogether, arguing that it is similar to other issues upon which she would present evidence. *See* Tr. 58-66. Whether the Parent abandoned the Child Find issue based on those comments is, however, unclear, because at no point did the Parent directly withdraw the Child Find violation allegation.

Under *Mr. P.*, the PGCPS was require to conduct an evaluation “within a reasonable time” after it received “notice of a likely disability.” Here, there is insufficient evidence for me to conclude that the October 29, 2020 IEP team was on notice of a likely disability, even if it had Dr. [REDACTED] July 19, 2020, report at the October 29, 2020 IEP team meeting.

Similarly, there is no evidence of denial of a FAPE based on the failure of the PGCPS to consider either Dr. [REDACTED] or Ms. [REDACTED] report.

⁶⁴ On April 21, 2021, a [REDACTED] IEP team considered Ms. [REDACTED] January 10, 2020, report.

For of the reasons noted above, I find there is no denial of FAPE and no Child Find violation, and I will find in favor of the PGCPS on Issue Two.

E. Issue 3, Failure to Fully Implement IEPs

Did the PGCPS deny the Student a FAPE by failing to fully implement the IEP for the period March 2020 to present?⁶⁵

The Parent argued the modifications, supports, aids and related services in the Student's November 12, 2019 IEP did not carry over to the April 2, 2020 ICLP. The Parent called Dr. [REDACTED] to testify that the Student did not receive all of the services and accommodations in the November 12, 2019 IEP when PGCPS implemented virtual learning in response to the COVID 19 pandemic. The November 12, 2019 IEP, for instance, included a human reader and, in Dr. [REDACTED] view, the Student needed assistive technology to replace the human reader, and assistive technology support to understand how to use the assistive technology. Thus, he opined, the November 12, 2019 IEP was not fully implemented.

Dr. [REDACTED] did not speak to any of the Student's general educators, special educators, or administrators to discuss how modifications, supports and services, or their substitutes, were being implemented in a virtual learning environment. He did not observe the Student in a brick and mortar classroom or in a virtual classroom.

The Parent testified that all of the supports and modifications in the November 12, 2019 IEP were not being made available to the Student. The Parent checked on the Student by calling down the hallway to inquire what class he was in, and if he was doing his assignments, and accepting whatever the Student told her. The Parent testified that she thought that the November 12, 2019 IEP would remain the same in both the nature of services provided and the

⁶⁵ Clarified at the hearing to January 11, 2019, to January 11, 2021.

method of delivery, even during the pandemic. This was the principal basis of her allegation that the November 12, 2019 IEP was not fully implemented.

The Parent called Ms. [REDACTED] who testified that no child's IEP written before March 2020 had any provisions for how the IEP would be implemented in the event of a global pandemic. The Parent referred Ms. [REDACTED] to the November 12, 2019 IEP and asked her to explain, one by one, each modification, accommodation, service, and related service in the IEP. Then the Parent directed Ms. [REDACTED] attention to the ICLP and asked her to compare the number of modifications, accommodations, services, and related services in the IEP to the number of modifications, accommodations, services, and related services in the ICLP. The Parent also asked Ms. [REDACTED] to compare the number of goals and objectives in the November 12, 2019 IEP and compare them to the goals and objectives in the ICLP. Based on these responses – that is, that the November 12, 2019 IEP had a greater number of modifications, accommodations, services, and related services than those in the ICLP, and that the November 12, 2019 IEP had more goals and objectives than the April 2, 2020 ICLP – the Parent argued that the IEP was not fully implemented.

Ms. [REDACTED] testified that she was the Student's special education case manager and special education teacher at [REDACTED]. She crafted the ICLP pursuant to guidance from the PGCPSS, which was, according to Ms. [REDACTED] based on numerous conferences with MSDE about how to provide education to learning-disabled students during the pandemic. Ms.

[REDACTED] testified that based on a recognition that delivery of services to the learning-disabled students of PGCPSS would be different during the pandemic, she crafted the ICLP to focus on the Student's areas of greatest need in reading and math. The ICLP provided one-on-one instruction through an on-line conference session twice weekly in those areas of greatest need.

The November 12, 2019 IEP included 30 minutes per day of special education instruction, four times per week, provided by a special educator, general educator, or instructional assistant. The April 2, 2020 ICLP included two 30-minute minimum sessions per week of special education instruction, provided only by a special educator. The Student attended every session from March through June 2020, except one session in June 2020. The ICLP complemented the November 12, 2019 IEP by focusing on the Student's areas of greatest need, and by providing one-on-one instruction with Ms. [REDACTED] only.

Ms. [REDACTED] the Student's seventh grade science teacher, testified that she and Ms. [REDACTED] an experienced special educator, went through the November 12, 2019 IEP together. Following this review Ms. [REDACTED] crafted a lesson plan which incorporated the modifications and accommodations in the IEP, and which focused on the goals and objectives in the IEP. Her lesson plan included frequent breaks, reduced distractions, extended time, a graphic organizer, and allowing the Student to use the computer's text to speech feature. To provide a human reader Ms. [REDACTED] read every document aloud to her class. Ms. [REDACTED] devoted individual attention to the Student, ensuring that he understood the material and ensuring that she answered any of the Student's questions. Ms. [REDACTED] made all notes available online and provided models and examples of questions and responses. Ms. [REDACTED] personally ensured that the Student understood how to use the computer's text to speech feature, and she taught him how to use a link to join a small group. Ms. [REDACTED] chunked text to make it more accessible to the Student and used chunking of text to focus discussion on smaller sections of the text.

Ms. [REDACTED] was responsible for implementation of the November 12, 2019 IEP at [REDACTED] [REDACTED] When Ms. [REDACTED] invited the Student to a small group with five students with the Student's abilities, he attended. The Student could choose whether to attend an 8:00 a.m. or a 9:00 a.m. session and usually attended the 8:00 a.m. session. From October 2020 to January

2021, the Student attended small group five times. The Student knew when and how to attend, and how to accept Ms. [REDACTED] invitation to attend.

The November 12, 2019 IEP, in the area of Written Language Expression, included two goals, one relating to proper organization of thoughts and proper punctuation and grammar, and one relating to recognition and use of figurative speech. The Services section of the November 12, 2019 IEP included, as a Related Service, direct speech language therapy for 30 minutes three times a month.

Ms. [REDACTED] testified that she provided direct speech language therapy to the Student in September and October 2020, in a virtual environment. The frequency and duration of the direct speech language therapy sessions were drawn directly from the Related Services section of the November 12, 2019 IEP, with focus on accomplishing the speech language goals of the November 12, 2019 IEP. Ms. [REDACTED] focused on figurate speech as Ms. [REDACTED] had already helped the Student to accomplish the grammar goal of the speech language goal in the November 12, 2019 IEP. The Student made sufficient progress in figurative speech during these virtual sessions, such that Ms. [REDACTED] recommended to the October 29, 2020 IEP team that direct speech language services be changed to a speech language consult.

The Student, both at [REDACTED] and at [REDACTED] knew how to use the computer issued by PGCPs to access virtual learning. He knew how to attend homeroom and classroom sessions, knew how to log on, knew how to accept invitations to small groups, and knew how to ask questions and respond to them. The Student knew how to use the text to speech feature, and how to access online classwork, and knew how to access online class notes.

The Parent must prove that PGCPs failed to implement the November 12, 2019 IEP. This requires more than counting the number of modifications, accommodations, services and related services in the IEP and comparing them to the number of modifications,

accommodations, services and related services in the ICLP. The burden of proof also requires more than Dr. [REDACTED] unsupported opinion that the Student did not receive all of the services in the November 12, 2019 IEP. Dr. [REDACTED] opinions fails to include a discussion with any educator, an observation of the Student in class in a brick and mortar setting, or an observation of the Student in a virtual learning classroom.

The COVID-19 pandemic required the United States, the State, and the PGCPS to respond to challenges these institutions could never have anticipated, and to do so in creative ways that did not contribute to the spread of the COVID-19 virus. As discussed, and described under Issue 1, under the USDOE Guidance issued as the nation addressed the pandemic, “schools may not be able to provide all special education and related services in the same manner as typically provided,” especially in-person services such as hands-on therapies.” The USDOE Guidance recognized that many services, such as speech and language services provided by Ms. [REDACTED] could be provided through video conferencing.

The IDEA leaves to the states the primary responsibility for developing and executing educational programs for handicapped children. *Bd. of Educ. Of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 183, (1982). *Rowley* recognized that courts lack the “specialized knowledge and experience” necessary to resolve “persistent and difficult questions of educational policy,” and that the IDEA was not designed to displace States in the field of education. *Id.* at 208. More recently, in *Andrew F.*, the Supreme Court recognized that crafting an appropriate program of education requires prospective judgment by school officials, informed by their own expertise and the views of parents. *Andrew F.* at 999. Deference to educators is based upon long-standing recognition that courts should not view the IDEA as “an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.” *Id.* at 1000.

The MSDE, the PGCPS, [REDACTED] and [REDACTED] through virtual instruction, implemented as fully as possible the November 12, 2019 and the October 29, 2020 IEPs. The April 2, 2020 ICLP, attacked by the Parent as a poor substitute for the November 12, 2019 IEP, in operation complemented, and did not replace, the November 12, 2019 IEP. As several educators testified, the components of the November 12, 2019 IEP, the April 2, 2020 ICLP, and later the October 29, 2020 IEP, were implemented to the maximum extent possible given the restraints of the COVID 19 pandemic. The Student's educators exercised their judgment as to how the Student's IEPs would be implemented, with guidance from the USDOE, the MSDE and the PGCPS. The implementation of the IEPs was consistent with the goals and objectives contained therein

Thus, I will find in favor of the PGCPS as to Issue 3.

F. Issue 4, Failure to Develop Appropriate IEPs

Did the PGCPS deny the Student a FAPE by failing to develop an appropriate IEP for the period January 11, 2019, through January 11, 2021?

IEPs are constructed only after careful consideration of a student's present levels of academic achievement, disability, and potential for growth. 20 U.S.C.A.

§§ 1414(d)(1)(A)(i)(I) –(IV), (d)(3)(A)(i)-(iv). States must educate a wide spectrum of students with disabilities, with benefits obtainable by children at one end of the spectrum differing dramatically from those at the other. *Rowley*, 458 U.S. at 202. Education of disabled students must be in the general education classroom “whenever possible.” *Id.* at 203.

Every IEP begins with a description of the student's present levels of academic achievement, including an explanation of how the student's disability affects the student's involvement and progress in a general education curriculum. 42 U.S.C.A.

§ 1414(d)(1)(A)(i)(I) (aa). An IEP then sets out measurable goals, typically an annual goal, designed to enable the student to be involved in and make progress in the general education

curriculum, along with a description of the specialized instruction, accommodations, modifications, and services that the student will receive to help make progress. 42 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV). The instruction and services must be provided with an eye toward progress in the general education curriculum, and the IEP must include how progress will be measured. 42 U.S.C.A. § 1414(d)(1)(A)(i)(I), (IV)(bb).

Collectively and substantively, these provisions require instruction reasonably calculated to permit advancement through the general curriculum. *Andrew F.*, 137 S.Ct. at 1001. The standard is not whether a school provides equal educational opportunities to disabled students as it does to non-disabled students, an “unworkable standard requiring impossible measurements and comparisons.” *Rowley*, 458 U.S. at 198. The standard is access to a “[FAPE]” a term more complex than equal. *Rowley*, 458 U.S. at 199.

The IDEA’s goal is met by an IEP that provides individualized instruction with sufficient support services to permit the child to benefit educationally from that instruction. The instruction must meet the State’s educational standards, must approximate the grade levels used in the State’s regular education, and must comport with the student’s IEP. If the student is educated in regular-education classrooms, the IEP should be reasonably calculated to achieve passing marks. *Id.* at 203-04.

An IEP must be tailored to the unique needs of each disabled student. *Andrew F.*, 137 S.Ct. at 1000. However, as long as the IEP provides the basic floor of opportunity for a special needs child, courts should not involve themselves in methodologies. *See Rowley*, 458 U.S. at 198-99.

Educators are entitled to great deference in implementing an IEP. *E.L. ex rel. Lorsson v. Chapel Hill-Carboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014); *M.M. v. School Dist. of*

Greenville County, 303 F.3d 523, 533 (4th Cir. 2002). Progress in accomplishing IEP goals is measured by objective factors such as actual educational progress. *Id.* at 532.

Ms. [REDACTED] testified that information regarding the extent to which students meets goals and objectives is used to craft future IEPs. She testified that teachers monitor the effectiveness of accommodations and modifications, and this is a topic of discussion at IEP meetings. Ms. [REDACTED] also testified that students have a role, too, and can elect to use an accommodation or not use it, and that teachers monitor that use. In the Student's case, most input at the October 29, 2020 IEP meeting was that the Student performed better in a small group.

Ms. [REDACTED] testified that IEPs are constructed based on a student's instructional grade level, which does not mean a student is performing at his chronological grade level. An IEP, she said, is designed to address task completion using the supports contained in the IEP. Ms. [REDACTED] testified that the objective is to create goals and objectives in the IEP designed to access grade level curriculum by creating goals and objectives unique to the individual student.

Dr. [REDACTED] was critical of the IEPs in issue, based on his review of the Student's MCAP scores and PARCC scores. He opined that the Student's progress in reading was stagnant and because the Student was performing math in sixth grade at a third grade level, the IEP should be modified. He also saw no progress in written language expression. Dr. [REDACTED] also opined that the Student would benefit, generally, from more one-on-one time and more small group pull out time. He also testified that the Student would benefit from ESY to prevent erosion of academic skills.

Dr. [REDACTED] concluded in his July 19, 2020, report that the Student met the diagnostic criteria for a SLD with impairments in reading, written expression, and math. This is no different than what the PGCPS IEP teams concluded.

At the October 29, 2020 IEP meeting, the Parent told the IEP team that the Student got anxious, especially when he was yelled at. She suggested that gentle redirection be used. The Parent also told the IEP team that the Student sometimes had test anxiety, and while at [REDACTED] had documented anxiety attacks before leaving for school that impacted his attendance. The Parent told the IEP team she was working with the Student to use strategies for when he is anxious or frustrated. Ms. [REDACTED] the Student's Care Coordinator at [REDACTED] attended the October 29, 2020 IEP meeting and told the IEP team that teachers should be aware how teacher tone affected the Student, and that it helped to be gentle with him.

The Parent argued that the IEP team failed to consider Dr. [REDACTED] July 19, 2020, report in constructing the October 29, 2020 IEP, and that because the Student's seventh grade guidance counselor had Dr. [REDACTED] report, the IEP team should have had it and should have considered it.

I conclude that I need not decide whether the October 29, 2020 IEP team should have had Dr. [REDACTED] report. Dr. [REDACTED] report does not make any recommendation regarding academic modifications, supports, and services that is significantly different than the modifications, supports, and services included in the October 29, 2020 IEP composed by the educators who actually teach the Student. Nearly all of Dr. [REDACTED] recommendations are included in the October 29, 2020 IEP, with some differences in phrasing. In addition, the Parent did not establish that failure to consider and incorporate Dr. [REDACTED] academic recommendations into the October 29, 2020 IEP resulted in any educational deficit between October 29, 2020, the date of the IEP meeting, and the date of the filing of the Complaint, January 11, 2021. Dr. [REDACTED] report makes no recommendation whatsoever what the school should consider to address the Student's anxiety.

In the construction of the November 13, 2018 IEP, a triennial review, the IEP team considered the educational evaluation of Ms. [REDACTED] including her scores from administration of

tests that included a WJ-IV, the psychological evaluation of Dr. [REDACTED] and the Speech and Language Assessment of Ms. [REDACTED]. The tests conducted for the triennial review provided input for November 13, 2018 IEP, the November 12, 2019 IEP, and the October 29, 2020 IEP. Ms. [REDACTED] reported that the WJ-IV results demonstrated that the Student was performing in the low average range in reading, the low range in math, and the low average range in written language. The IEP team used this report, along with other information, to formulate the IEPs.

Comparison of the goals and objectives in the challenged [REDACTED] and [REDACTED] IEPs, with corresponding review of the progress the Student made in achieving the goals and objectives in the Student's areas of educational needs – reading, writing, and math - demonstrates that the PGCPS fulfilled its responsibilities under 20 U.S.C.A. Section 1412. The PGCPS developed appropriate IEPs based upon evaluation of the Student's present levels of performance, set annual goals with services and supports to reach those goals, included appropriate accommodations, modifications, and related services, and included methods to measure progress. The IEPs were designed to provide access to State grade level curriculum in a general education setting through supports, modifications and services put in place to aid the Student in achieving that access. The IEPs took into consideration the Student's unique circumstances.

Consistent with the comments of the Parent and Ms. [REDACTED] as to anxiety, the October 29, 2020 IEP team added measures to the IEP for use by teachers that included teacher tone and an opportunity for the Student to signal a teacher privately if the Student needed a break because he was anxious.

As seen below, the Student's IEPs focused on the Student's greatest needs and, as he advanced, provided greater challenges. The Student made steady, consistent progress. The modifications, supports, services and related services in the IEP were used extensively, including

extra time, teacher modeling, prompts, reminders, highlighting, sentence starters, graphic organizers, and direct speech language therapy.

In reading comprehension, the Student required less teacher support over time, and became more independent as his confidence grew. He continued to benefit from extra time, which was included in successive IEPs. In sixth grade he was able to read text to himself and answer questions about what he read with 80% accuracy. This was an improvement from having a teacher read text to the Student with highlighting, followed by questions, and over time the Student progressed to reading five-to-six-paragraph texts to himself.

In written language expression, not the Student's strong suit, by January 18, 2019, the Student had difficulty meeting the November 13, 2018 IEP goals. By June 6, 2019, the Student was able to write a complete sentence and was able to construct a paragraph in a small group using correct grammar and punctuation. By March 13, 2020, he was able to complete a writing assignment when provided with a lot of support, a graphic organizer, examples, a word bank, a list of several sentence starters, pre-typed models, a visual theme, and reminders to return to the writing task and key word reminders. By February 5, 2021, the Student continued to need significant teacher support, including sentence starters.

In speech and language expressive language, by February 6, 2019, the Student recognized errors in verb tense, noun forms, capitalization and recognized grammatical errors. He recognized and translated figurative speech into literal meaning when provided with a multiple-choice format and verbal prompts. By June 10, 2019, the Student translated figurative language into literal meaning with 80% accuracy, with at least two prompts and visual supports. He recognized errors in grammar, verbs, nouns, and capitalization, and made appropriate connections within sentences with 80% accuracy. By November 5, 2020, the Student was able to identify the meaning of common idioms used in sentences six of six times, and eight of ten times

when given multiple choices. The Student understood figurative speech without any specialized services.

In math calculation, also not a particularly strong suit for the Student, by March 29, 2019, the Student recalled and defined math vocabulary and applied what he learned to problem solving strategies, both oral and written. By March 2, 2020, the Student was able to solve single-step word problems, although multi-step problems remained challenging. He was able to perform multiplication and division with reminders. The Student successfully completed multiplication and division problems using numbers 1 through 6 using computer activities, math drills, and flash cards. With graphic organizers, vocabulary terms, manipulatives, modeled examples, a calculator, daily guided practice, encouragement, feedback, prompting cues, tables and charts, the Student used math facts to solve multiplication and division problems. By February 5, 2021, when assigned three two-step word problems with whole numbers, and two pieces of key information identified and labeled, and a partially completed graphic organizer to identify the remaining key information, the Student was able to select the correct equation and/or solution from a set of three choices, with 60% accuracy in three out of four problems in two out of three sets of problems.

The chart below reflects changes over time to the Student’s IEPs as the [REDACTED] and [REDACTED] [REDACTED] IEP teams considered the Students individual needs from school year to school year and the progress the Student made in achieving the goals and objectives of the IEPs.

Comparison of the Goals and Objectives in the Challenged IEPs and in the ICLP, and Progress Meeting Goals and Objectives
Reading Comprehension Goals

11/13/2018 IEP ([REDACTED] 5 th grade)	11/12/2019 IEP ([REDACTED] 6 th grade)	10/29/2020 IEP ([REDACTED] 7 th grade)	4/2/2020 ICLP
Goal: The Student will demonstrate progress using text features including key words,	Goal: Given an instructional-level text, use of posts-it notes or highlighters and	Goal: By October 2021, after reading a grade-level text and given a prompt with a	Language Goal: Given an instructional level text, use of

<p>sidebars, illustrations, maps, and bold print to provide oral and written support for selected and extended responses 3 out of 5 times.</p>	<p>teacher modeling, the Student will return to the text to cite evidence based on related questions with 80% accuracy in 3 out of 5 trials.</p>	<p>claim verbally or in writing, the Student will cite 3 pieces of textual evidence and explain how it supports the claim with at least 1 piece of teacher support such as graphic organizer, sentence starters, or guiding questions, scoring 75% or higher as measured by a teacher-created rubric in 4 out of 5 trials.</p>	<p>post-it notes or highlighters and teacher modeling, (the Student) will return to the text to cite evidence based on related questions with 80% accuracy in 3 out of 4 trials.</p>
<p>Objective 1: The Student will use information from text features including key words, sidebars, illustrations, maps, and bold print to provide oral and written support for selected and extended responses 3 out of 5 times.</p>	<p>Objective 1: With teacher support, the Student will locate information from the text to identify the main idea and supporting details in both oral and written form with 80% accuracy in 3 out of 5 trials.</p>	<p>Objective 1: By January 2021, after reading an informational, instructional-level text and given a prompt with claim and teacher modeling of how to find and explain evidence from the text, the Student will identify 2 pieces of textual evidence and explain how it supports the claim using a graphic organizer, scoring 75% or higher as measured by a teacher-created rubric in 3 out of 5 trials.</p>	<p>Language Objective: With teacher support (the Student) will locate information from text to identify the main idea and supporting details both in oral and written form with 80% accuracy in 3 out of 5 trials</p>
<p>Objective 2: Given one-three print or electronic sources the Student will summarize, identify fact and opinion statements, cause and effect relationships, draw conclusions and make simple inferences both orally and in writing.</p>	<p>Objective 2: With teacher support the Student will demonstrate reading comprehension skills by explaining what the text says explicitly and when making inferences with 80% accuracy 3 out of 5 trials.</p>	<p>Objective 2: By June 2021, after reading an informational, instructional-level text and given a prompt with a claim, the Student will identify 2 pieces of textual evidence and explain how it supports the claim using a graphic organizer, scoring 75% or higher using a</p>	

		teacher-created rubric in 4 of 5 trials,	
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Progress in Meeting IEP Goals and Objectives in Reading Comprehension and Language Objective of the ICLP

By 1/18/2019, the Student used information from text features such as key words, sidebars, and illustrations, to provide oral support to selected/extended responses to questions.	By 11/18/2019, with teacher support, the Student was able to read aloud, and answer questions related to key ideas from short passages. He continued to require small groups, repetition of directions, prompting and cues to read fluently and to comprehend the text.	By 11/6/2020, after reading instructional-level text, and with a teacher prompt and teacher modeling how to find and explain evidence in the text, the Student was able to identify two pieces of text that supported a claim, with a teacher-provided rubric with 70% accuracy two out of two times. As the Student's confidence grew less teacher support was required.	
By 3/29/2019, the Student summarized facts and made inferences when presented with written, oral or electronic information.	By 2/7/2020, the Student had been working in small groups working on being able to read a grade-level text and answer questions related to the author's purpose, main idea, and cite evidence in support. The Student was supported by underlining and highlighting. The Student tried to do well, was confident, and learned from his mistakes. He worked toward reading and understanding what he read without supports. He continued to need	By 2/5/2021, after reading an instructional-level text, and with teacher modeling how to find textual support, the Student was able to locate two pieces of textual support and explain how it supported a claim with 60% accuracy or higher in four out of five trials, using a teacher-created rubric as a measurement.	

	feedback, redirection, and extra time.		
By 5/22/2019, the Student read text and was able to identify facts, identify opinions, and draw conclusions from the text.	By 3/3/2020, the Student was making better progress, and was reading passages five to six paragraphs long, with teacher demonstrations how to locate key words, highlighting and underlining before reading, and modeling. This was followed by independent reading and checks for understanding, on which the Student did well. Through this method the Student learned to enjoy reading independently and demonstrated through underlining and highlighting that he could identify key words and concepts. The Student responded with 75% accuracy when tasked with responding to a series of “who, what, when, where, why” multiple-choice questions, and did well on short writing tasks.	By 4/2/2021 – not relevant as this data is three months after the date the Complaint was filed	
By 6/6/2019, the Student, after reading text, identified facts and statements and drew conclusions.	By 6/11/2020, the Student, in a virtual environment and through implementation of his ICLP, responded to teachers with 80% accuracy about the content and meaning of passages read aloud by the teacher. The Student was able to	By 6/14/2021 – not relevant as this data is five months after the Complaint was filed	

	view words on a computer screen and explain their meaning. He was 80% accurate when instructed to read text to himself, followed by a series of questions about what he had read.		
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Written Language Expression

11/13/2018 IEP (█████ 5 th grade)	11/12/2019 IEP (█████ 6 th grade)	10/29/2020 IEP (█████ 7 th grade) (virtual learning)	
Goal: The Student will use grammatically correct sentences to express his thoughts in a clear and effective manner, being able to do so independently, at least 3 out of 4 times he is assessed.	Goal: Given a written task response, the Student will use writing strategies to produce a product that will include thoughts and ideas on topic and in a cohesive manner with proper grammar and punctuation in 3 out of 5 trials.	Goal: By October 2021, given information from a passage, video, etc., with differing opinions on a topic and an argument writing prompt, the Student will write a 2-3 paragraph essay expressing their opinion on the subject that contains at least 1 claim and 2 pieces of text-based evidence in 2 out of 3 writing prompts.	
Objective 1: Given teacher modeling, small group setting, and skill-specific writing graphic organizers, the Student will produce grade-level sentences and paragraphs that are organized and follow a logical order.	Objective 1: When given a writing task, the Student will utilize a graphic organizer to support him with organizing ideas and producing sentences to create a final writing task in 3 out of 5 trials.	Objective 1: By January 2021, given an argument writing prompt, a passage or video posing differing opinions on the topic, and a graphic organizer with sentence starters, the Student will state 1 claim and select 2 pieces of supporting evidence to finish sentences in a graphic organizer in 2 out of 3 writing prompts.	

Objective 2: Given teacher modeling, small group setting, writing rubric, and adjective chart, the Student will add details and expression to his written work.	Objective 2: When given a writing task, the Student will establish a focus for writing that includes sentence starters, use a word bank, establishing topic sentences, and the use or transition words in 3 out of 5 trials.	Objective 2: By June 2021, given an argument writing prompt, an article posing different opinions on a topic, and a graphic organizer, the Student will state 1 claim and cite 2 pieces of evidence to compose sentences supporting a claim in a graphic organizer in 2 out of 3 writing prompts.	
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Progress in Meeting IEP Goals and Objectives in Written Language Expression

By 1/18/2019, the Student, with difficulty, made slow progress toward meeting Objectives 1 and 2 of the Written Language Expression Goal	By 11/18/2019, the Student was able to write complete sentence when given an assignment in class. He continued to need small groups, prompting, cues, modeled examples, and direction repeated, and was working on using appropriate grammar and punctuation in written responses.	By 11/6/2020, no progress in Written Language Expression was recorded due to the recency of the 10/29/2020 IEP meeting.
By 3/29/2019, the Student expressed himself in writing when supported with teacher modeling, small group settings, writing rubrics provided to him, and when supported by an adjective chart.	By 11/18/2019, the Student was able to write complete sentences when given an assignment in class. He continued to need small groups, prompting, cues, modeled examples, and direction repeated, and was working on using appropriate grammar and punctuation in written responses.	By 2/5/2021, the Student was able to state one claim and cite two supporting pieces of evidence from text in two out of three writing prompts, if provided with a graphic organizer and sentence starters.
By 6/6/2019, the Student, with support of a graphic organizer, wrote grade-level sentences, and wrote paragraphs that followed a logical order.	By 3/13/2020, the Student was able to complete a writing assignment when provided with a lot of support, a graphic organizer, examples, a word bank, a list of several sentence starters,	By 4/22/2021 – not relevant as this data is three months after the Complaint was filed

	pre-typed models, a visual theme, and reminders to return to the writing task and key word reminders.	
	By 6/11/2020, (now in virtual learning), the Student accomplished writing accuracy grades of 50% to 100% when performing “quick writes” through Google Classroom.	By 6/14/2021 – not relevant as this data is five months after the Complaint was filed
	By 10/30/2020, when provided sentence starters, a word bank, and transition words, the Student was able to verbally state the focus of a writing assignment.	

Speech and Language Expressive Language

11/13/2018 IEP ([REDACTED] 5 th grade)	11/12/2019 IEP ([REDACTED] 6 th grade)	10/29/2020 IEP ([REDACTED] 7 th grade)	
Goal: The Student will state literal meaning of figurative statements with 80% accuracy, given at least two verbal prompts and visual supports.	Goal: The Student will identify and state meaning of figurative statements with 80% accuracy, given at least 2 verbal prompts and visual supports.	Goal: None in this IEP	
Objective 1: The Student will translate figurative language including metaphors, idioms, and similes (but not limited to) into literal meaning with 80% accuracy, provided at least two verbal prompts and visual supports.	Objective 1: Given figurative statements (i.e., personification, hyperbole, onomatopoeia), the Student will identify the figurative device used in sentences with 80% accuracy, provided at least 2 verbal prompts and visual supports.		
Objective 2: The Student will recognize errors in (a) verb tenses, (b) noun forms, and (c) capitalization and make appropriate	Objective 2: Given sentences with figurative statements (i.e., personification, hyperbole, onomatopoeia), the		

corrections within sentences to make sentences grammatically correct provided fading cues with 80% accuracy.	Student will interpret the meaning of figurative devices used in sentences with 80% accuracy, provided at least 2 verbal prompts and visual supports.		
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Progress in Meeting IEP Goals and Objectives in Speech and Language Expressive Language

By 11/20/2018, the Student recognized errors in verb tense, noun forms, capitalization and recognized grammatical errors when supported with a moderate number of verbal prompts and cues. The Student made necessary corrections within sentences, when prompted.	By 11/18/2019, the Student was able to interpret figurative statements when provided extra time and a multiple-choice format.	
By 2/6/2019, the Student recognized errors in verb tense, noun forms, capitalization and recognized grammatical errors three out of five times. He recognized and translated figurative speech into literal meaning when provided with a multiple-choice format and verbal prompts.	By 2/6/2020, the Student was able to identify the figurative device in a sentence with 40% to 50% accuracy, and able to identify the meaning of the figurative device with 80% accuracy with a multiple-choice format.	
By 4/11/2019, the Student translated figurative speech with 80% accuracy when supported with at least two verbal prompts and visual supports. His skill in translating meaning from metaphors and similes was strong. The Student recognized incorrect grammar, verbs, nouns, and capitalization with 80% accuracy, when supported with verbal prompts	By 3/16/2020, the Student was able to identify and state the meaning of figurative statements when provided visual clues, repetition, and extra time.	
By 6/10/2019, the Student translated figurative language into literal meaning with 80%	By 6/11/2020, the Student, (during virtual learning), (direct speech and language	

<p>accuracy, with at least two prompts and visual supports. He recognized errors in grammar, verbs, nouns, and capitalization, and made appropriate connections within sentences with 80% accuracy.</p>	<p>services, with teacher support, answer choices, verbal cueing, and extra response time, the Student was able to provide accurate responses with 80% to 100% accuracy in Zoom call sessions.</p>	
	<p>By 11/5/2020, (now in virtual learning at ██████████ in a pre-test that required the Student to identify figurative speech, the Student scored the following: similes – 100%; idioms – 0%; hyperbole – 50%; personification – 100%; and onomatopoeia – 100%. He was able to identify the meaning of common idioms used in sentences 6 of 6 times, and 8 of 10 times when given multiple choices. The Student understood figurative speech without any specialized services.</p>	

Math Calculation

<p>11/13/2018 IEP (██████ 5th grade)</p>	<p>11/12/2019 IEP (██████ 6th grade)</p>	<p>10/29/2020 IEP (██████ 7th grade)</p>	<p>4/2/2020 ICLP</p>
<p>Goal: The Student will use the four operations with whole numbers to represent, solve and explain orally/in writing single and multi-step problems with 80% accuracy by classroom-based selected and extended response assessments.</p>	<p>Goal: Given grade-level math problems, direct instruction, teacher modeling, and use of manipulatives, the Student will learn and apply strategies to compute the problems at his instructional level with 80% accuracy in 3 out of 5 trials.</p>	<p>Goal: By October 2021, given 3 two-step word problems, the Student will identify key information from the problem, then write and solve an algebraic equation with 75% accuracy in 3 out of 4 problems correct for 2 out of 3 sets of problems as measured by classroom-based assessment.</p>	

<p>Objective 1: The Student will apply problem-solving strategies in order to find the question and data, choose a strategy, and explain solution orally/in writing.</p>	<p>Objective 1: The Student will be able to multiply whole numbers up to 3 digits by 2-digit whole numbers related to factors 9x9 (using strategies based on place value, properties of operations, explanation of the calculation using equations, rectangular arrays, area models, etc.) with 80% accuracy in 3 out of 5 trials.</p>	<p>Objective 1: By January 2021, after reading an informational, instruction-level text and given a prompt with a claim and teacher modeling of how to find and explain evidence from the text, the Student will identify 2 pieces of textual evidence and explain how it supports the claim using a graphic organizer, scoring 75% or higher as measured by teacher-created rubric in 3 of 5 trials</p>	
<p>Objective 2: The Student will define vocabulary and formulas used to describe math concepts or indicate problem-solving strategies in oral and written responses.</p>	<p>Objective 2: Given instructional level math problems and a step-by-step visual model, the Student will be able to solve one and two-step word problems by using context clues to identify which operation to use to solve with 80% accuracy in 3 out of 5 trials</p>	<p>Objective 2: By May 2021, given 3 two-step word problems with integers and key information pre-highlighted, the Student will use key information from the problem to set up the equation using a graphic organizer and then solve the equation with 75% accuracy for 2 out of 3 sets of problems.</p>	
	<p>Objective 3: Given instructional level multiplication and division problems and the use of manipulatives (i.e., multiplication chart, models, visual representation, counters, etc.) the Student will solve problems with at least</p>	<p>Objective 3: By September 2021, given 3 two-step word problems with rational numbers, the Student will use key information from the problem to set up the equation using a graphic organizer and then solve the equation with 75% accuracy in 3 out of 4 problems</p>	

	80% accuracy in 3 out of 5 trials.	correct for 2 out of 3 sets of problems.	
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Progress in Meeting IEP Goals and Objectives in Math Calculation

By 1/18/2019, when provided with questions and data, the Student chose a strategy to solve a math problem and explained the solution orally or in writing.	By 11/18/2019, the Student worked to add and subtract two-digit and three-digit number in small groups. He was able to demonstrate master of addition and subtraction with 70% accuracy and was working toward understanding of multiplication and division.	By 11/6/2020, no progress in math calculation was measured due to the recency of the 10/29/2020 IEP.
By 3/29/2019, the Student recalled and defined math vocabulary and applied what he learned to problem solving strategies, both oral and written.	By 2/7/2020, the Student was able to solve single-step word problems, although multi-step problems remained challenging. He was able to perform multiplication and division with reminders. The Student successfully completed multiplication and division problems using numbers 1 through 6 using computer activities, math drills, and flash cards. With graphic organizers, vocabulary terms, manipulatives, modeled examples, a calculator, daily guided practice, encouragement, feedback, prompting cues, tables and charts, the Student used math facts to solve multiplication and division problems.	By 2/5/2021, when assigned three two-step word problems with whole numbers, and two pieces of key information identified and labeled, and a partially completed graphic organizer to identify the remaining key information, the Student was able to select the correct equation and/or solution from a set of three choices, with 60% accuracy in three out of four problems in two out of three sets of problems.
By 6/6/2019, the Student demonstrated progress in applying strategies he knew to math problem solving and was able to explain his answers.	By 3/13/2020, with graphic organizers, interactive notebooks, charts, videos and models, the Student was able to create fractions, locate negative numbers on a plane, and exhibit and explain his responses. He was able to compose notes and, if he	By 4/22/2021 – not relevant as this data is three months after the Complaint was filed

	<p>reviewed and followed those notes, complete multiplication problems. In small groups he solved single step multiplication and division problems with 70% accuracy when the problem was broken down. The Student demonstrated 100% math fluency using numbers 2, 3, 5 and 10, and for numbers other than these used flash cards, puzzles, and computer games to progress toward mastery. Two-digit multiplication and long division were introduced.</p>	
	<p>By 6/11/2020, during virtual learning, the Student completed several math problems that required multiplication, division, fractions and solving word problems. On these assignments the Student scored 5% to 70% accuracy. He advanced to working on math facts for the digits 7, 8 and 9. With teacher prompting to identify the first, second and third steps in solving a math problem, and with teacher prompting to identify the correct math calculation, the Student made progress in math, although he continued to occasionally guess.</p>	<p>By 6/14/2021 -not relevant as this data is five months after the Complaint was filed</p>
	<p>By 6/11/2020, during virtual learning, the Student completed several math problems that required multiplication, division, fractions and solving word problems. On these assignments the Student scored 5% to 70% accuracy.</p>	

	<p>He advanced to working on math facts for the digits 7, 8 and 9. With teacher prompting to identify the first, second and third steps in solving a math problem, and with teacher prompting to identify the correct math calculation, the Student made progress in math, although he continued to occasionally guess.</p>	
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Evaluation of Student Learning Objectives

The Student’s progress in meeting SLOs was considered by each IEP team in its review of the Student’s current levels of academic achievement. The SLOs demonstrated significant progress in reading over time, limited progress in writing, and significant progress in math from one school year to the next.

SY 2018-2019, Fifth Grade

In fall 2018, the Student scored a 21 on a scale of 60 in reading. In spring 2019, he scored a 57 on a scale of 60. The Student made significant progress in meeting his fifth grade Reading SLO.

In fall 2018, the Student scored a 29 on a scale of 35 in writing. In spring 2019, he scored a 29 on a scale of 35 in writing. He made no progress in meeting his fifth grade Writing SLO.

In fall 2018, the Student scored a 24 on a scale of 35 in math. In spring 2019, he scored a 29 on a scale of 35 in math, which demonstrated progress in meeting his fifth grade Math SLO.

In fall 2018, the Student also took math Benchmark assessments scoring a 13 on a scale of 30 on a Benchmark 1 assessment, and in spring 2019 scored a 24 on a scale of 30 on a

Benchmark 2 assessment, demonstrating progress in math in fifth grade, based on these Benchmarks.

SY 2019-2020, Sixth Grade

In fall 2019, the Student scored a 13 on a scale of 100 in reading, and in spring 2020 scored a 79 on a scale of 100 in reading, a significant improvement in Reading in the sixth grade. The Student's spring 2020 reading score was higher than the class average, the school average, and the PGCPs average.

In fall 2019, the Student scored a 0 on a scale of 100 in writing, and in spring 2020, scored a 36 on a scale of 100 in writing, a significant improvement in writing in the sixth grade, based on the SLO results. However, scoring better than a 0 from one test to the next may not demonstrate actual progress. The Student's spring 2020 writing score was lower than the class average, the school average, and the PGCPs average.

In fall 2019, the Student scored 37 on a scale of 100 on his sixth grade math SLO, answering 11 out of 30 problems correctly. His score was better than the class average, the school average, and the PGCPs average. In spring 2020, the Student scored 43 on a scale of 100, answering 13 out of 30 problems correctly. His score was better than the class average and was within one percentage point of the PGCPs average. He made progress in math based on the sixth grade SLO results.

No evidence was presented as to the Student's SLO scores in seventh grade.

PARCC and MCAP Results

The November 13, 2018 IEP team considered the Student's performance on PARCC assessments, which the Student took while in fourth grade. The Student scored a 666 on the PARCC language arts assessment, a Level I score, which means the Student did not yet meet expectations for fourth grade.

April 25, 2019, while in fifth grade the Student took MCAPs, which were considered by the Student's November 12, 2019 IEP team. The Student's MCAP score in ELA was 651 on a scale of 850, a Level I score, which means the Student did not yet meet expectations for fifth grade. In math, the Student's MCAP score was 698 on a scale of 850, a Level I score, which means he did not yet meet expectations for fifth grade.

The PARCC and MCAP scores demonstrate the Student was not meeting expectations in language arts or math, as set by State standards, and that the Student had much room for improvement.

MAP-R Performance

The Student's performance on MAP-Rs was also considered by the November 13, 2018 IEP team, by the November 12, 2019 IEP team, and by the October 29, 2020 IEP team.

On MAP-Rs conducted in SY 2017-2018, SY 2018-2019 and SY 2019-2020, when the Student was in fourth, fifth and sixth grades, he achieved the following scores:

• Fall 2018	179	4 th percentile overall	3 rd grade reading level
• Winter 2019	179	2 nd percentile overall	3 rd grade reading level
• Spring 2019	179	1 st percentile overall	3 rd grade reading level
• Fall 2019	191	10 th percentile overall	3 rd grade reading level
• Winter 2020	194	9 th percentile overall	3 rd grade reading level

The MAP-R results apparently form much of the basis for the IEP teams determination that the Student was “performing at a 3rd grade level” reflected in IEPs. PGCPS. Ex. 6. The Student's November 13, 2018 IEP, at page five, says: “(The Student) was given the [MAP-R] reading assessment at the beginning of the school year. He scored 179, which is about a third grade level. At this time of the year, he is expected to score a 206 to be on grade level.” Dr. [REDACTED] testified that the Student's IEPs reflected that the Student was reading at a third-grade level and, therefore, the IEPs should have been substantially changed.

The MAP-R results, in part, prompted the IEP teams to modify the Student’s instruction and to include accommodations and supports in the IEP to access the fifth, sixth, and seventh grade curricula to give the Student access to this material when he was reading at or around a third grade level. The IEP teams crafted IEPs suited to his ability.

End-of-Year Grades

The IEP teams considered the Student’s classwork grades, and his end-of-year grades, in their development of each challenged IEPs. The Student’s end-of-year grades were as follows:

	SY 2017-2018 4 th Grade	SY 2018-2019 5 th Grade	SY 2019-2020 6 th Grade	SY 2020-2021 7 th Grade
Reading	C	B	C (combined Reading and ELA grade)	No final grades yet
Oral and Written Communication	B	C		
Math	D	C	D	

These were passing marks which led to promotion to the next grade.

Extended School Year (ESY)

The Parent, through her testimony and that of Dr. [REDACTED] challenged the IEPs for failure to include ESY. The Parent viewed ESY as in the nature of a summer tutoring program. Dr. [REDACTED] opined the IEPs should have included ESY to avoid regression, although he was not specific as to what instruction should have been provided.

In *Reusch v. Fountain*, 872 F. Supp. 1421 (D.Md. 1994), several disabled children filed suit against Montgomery County Public Schools alleging that the school systematically failed to provide ESY. The court recognized that neither the IDEA nor Maryland law requires ESY for a learning-disabled student but is required if ESY is necessary to provide a FAPE. *Id.* at 1427 *Reusch* held that for there to be an obligation to provide ESY, it must appear that ESY is

necessary to permit a child to benefit from his instruction, a standard fulfilled when a student demonstrates that he or she will suffer some significant regression in skills or knowledge without a summer program, followed by an insufficient recoupment of the same during the next school year. *Id.* at 1434.

The *Reusch* court continued by examining the MSDE's regulation and policy relating to ESY and included an analysis.

The current MSDE regulation relating to ESY is COMAR 13A.05.01.08B(2), which provides:

(2) Extended School Year Services.

(a) At least annually, the IEP team shall determine whether the student requires the provision of extended school year services in accordance with Education Article, §8-405, Annotated Code of Maryland.

(b) The IEP team shall consider:

(i) Whether the student's IEP includes annual goals related to critical life skills;

(ii) Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break in the regular school year and a failure to recover those lost skills in a reasonable time;

(iii) The student's degree of progress toward mastery of IEP goals related to critical life skills;

(iv) The presence of emerging skills or breakthrough opportunities;

(v) Interfering behaviors;

(vi) The nature and severity of the disability; and

(vii) Special circumstances.

(c) Following the consideration of factors described in §B(2)(b) of this regulation, the IEP team shall determine whether the benefits the student with a disability gains during the regular school year will be significantly jeopardized if that student is not provided with an educational program during a normal break in the regular school year.

Critical life skills are not defined in the regulation. *Reusch* observed that schools must have flexibility in defining the term and commented that the MSDE itself used an expansive definition in its guidance to local schools by describing critical life skills as “any skill critical to the student’s overall educational progress.” *Reusch*, 872 F.Supp. at 1436.

In *DiBuo v. Board of Education of Worcester County*, 309 F.3d 184 (4th Cir. 2002), the court addressed the issue of whether a challenged IEP was appropriate even though it included no ESY. The *DiBuo* court pointed to its recent decision in *M.M.*, 303 F.3d 523, which laid out the Fourth Circuit standard for determining when ESY is appropriate under the IDEA. “ESY services are only necessary to a FAPE when the benefits a disabled child gains under a regular school year will be significantly jeopardized if he is not provided with an education program during the summer months.” *M.M.*, 309 F.3d at 538. *M.M.* made clear that “the mere fact of likely regression is not a sufficient basis, because all students, disabled or not, may regress to some extent during lengthy breaks from school. ESY Services are required under the IDEA only when such regression will substantially thwart the goal of “meaningful progress.” *Id.*

Here, the Parent presented no evidence that the Student’s gains during the regular school year would be significantly jeopardized because PGCPs did not provide ESY. The Parent presented no evidence that, following summer breaks in 2019 and 2020, the Student would not be able to recoup education lost over the summer. The Parent did not present any evidence that ESY was essential to prevent regression of a critical life skill. Because the Parent presented no evidence on this issue, the Parent’s argument regarding ESY fails.

Overall Assessment

When the Parent testified, she at times responded to questions of counsel with her own rhetorical question: “then why is my son performing at a third-grade level when he is in seventh grade?” The answer to that rhetorical question is that the Student is learning disabled, and it is the responsibility of the PGCPs to develop an education program suited to his individualized needs, consistent with providing access to grade-level curricula, consistent with providing benefit from that instruction, and consistent with advancement grade to grade. *Rowley*, 458 U.S. at 203-204, and *Andrew F.*, 137 S.Ct. at 1000. The Student’s current ability and present levels of

performance are parts of the equation because they inform educators what the Student is capable of achieving, and they assist the IEP team in making informed decisions regarding what modifications of learning materials are appropriate for the Student.

The record clearly suggests the Student has some academic struggles and has difficulty mastering some areas. But the IDEA does not require a learning-disabled student achieve the same level of mastery as non-disabled same-aged peers. The Student cannot be deprived of access to education simply because he is not able to achieve the same academic results as his same-age non-disabled contemporaries.

We recognize that some handicapped children may not be able to master as much of the regular education curriculum as their nonhandicapped classmates. This does not mean, however, that those handicapped children are not receiving any benefit from regular education. Nor does it mean that they are not receiving all of the benefit that their handicapping condition will permit. If the child's individual needs make mainstreaming appropriate, we cannot deny the child access to regular education simply because his educational achievement lags behind that of his classmates.

Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1047 (5th Cir. 1989).

The Parent's rhetorical question also illustrates the inherent flaw in examining any single piece of information – an IEP goal not achieved or only partially achieved, a MAP-R score from which a conclusion is drawn that the Student is performing at a third grade level, an end-of-year grade, an MCAP score, a WJ-IV result or WISC-V result, a SLO assessment, a psychological assessment, a teacher observation or isolated teacher comment, a single-quarter progress report, an attendance record, or an expert opinion on a narrow question. It is not appropriate to give that single piece of information too much weight when all relevant information, both positive and negative, must be considered.

Dr. [REDACTED] was critical of the Student's academic progress based on a document review. He did not speak to any of the Student's educators about the extent to which the Student participated and understood the material presented in class. The Student's education program is

not inappropriate because the Student did not achieve all the goals and objectives in the IEPs. *O.S. v. Fairfax Cnty. Sch. Bd.*, 804 F.3d 354, 360-61 (4th Cir. 2009). Progress, or lack of progress, while important, is not dispositive. *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315 (4th Cir. 2009).

The Parent challenged the November 13, 2018, the November 12, 2019, and the October 29, 2020 IEPs as inappropriate. The Parent's evidence did not establish that any of the three challenged IEPs were inappropriate. Based upon the evidence, I find each IEP was reasonably calculated to provide educational benefit and calculated to make appropriate progress based upon the Student's unique circumstances. I find the Student did make educational progress under these IEPs.

Therefore, for the reasons stated above, I will find in favor of the PGCPS on Issue 4.

G. Issue 5, Failure to Provide Supports for Behavioral Issues

Did the PGCPS deny the Student a FAPE by failing to address or provide supports relating to the Student's behavioral issues from January 11, 2019, through January 11, 2021?

Under 34 C.F.R. Section 300.324(a)(2), in the development of an IEP a school must consider special factors. Specifically:

(2)(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address that behavior.

When the Parent testified, she described her own challenges with reading and writing, and said she had episodes of depression and did not want to get out of bed. The Parent testified she has anxiety and panic attacks, and that the Student feels her emotions and worries about her. She has arthritis, asthma, fatigue, spinal pain, vitamin D deficiency, insomnia and seasonal health problems. She cannot get out of bed due to foot pain from fluid retention. The Parent testified that she needs help getting the Student to school, and that [REDACTED] never offered

transportation to the Student or told her the Student was entitled to transportation as a related service. She testified that the subject of transportation never came up at an IEP meeting. She thought she could better deal with the Student's siblings and their situations and their behaviors if the Student was in school.

The Parent testified that the Student has headaches at night and has night sweats, which affect his ability to get out of bed and be ready for school. He is moody and does not want to go to school. She discussed the Student's anxiety and what she described as panic attacks and said the Student picks fights with family members. She testified that she told unspecified IEP team members that the Student had anxieties and, after prompting from counsel, testified that she did so during IEP meetings in fifth, sixth and seventh grades. The Parent testified that the IEP teams did not offer psychological counseling. The Parent complained that [REDACTED] did not provide services to address the Student's absenteeism and attributed the absenteeism to anxiety and panic attacks. She referred to Parent's Exhibit 32, a Parent Handbook, and testified that the school did not put the Student on probation, send him to detention, remove him from school, require that he attend Saturdays, require him to remain after school, or send him before an absenteeism committee, although she was not familiar with an absenteeism committee or its function. The Parent offered her view that [REDACTED] should have investigated why the Student was absent so much and could have provided counseling and offered him ESY. She complained that [REDACTED] never talked with her about what could be done to address anxiety, nor did [REDACTED] offer her any parent training. The school's response to the Student's absenteeism was to remind her that it was her responsibility to make sure the Student attended school.

The Parent testified that the Student's anxiety was also present during virtual learning, that the Student:

“doesn't want to be in class, he's walking out of his class, I mean walking out of his room. He's coming to pick on his younger brothers talking about why you not doing this.

Trying to redirect him, please go back into your class. He like , I'm on break. I would ask him are you completing your assignments, are you working on your next class? He would say yes, I'm – I did my work already, turned everything in. He will listen to his music. He will blast his music and I'd be like, what are you doing? He'd be like I'm not in class anymore, class is over with. I'm on lunch break. So he still had his anxiety when it came to virtual reality.” Tr. 819.

The Parent explained her own disabilities prevented her from understanding the Student's school work. She felt less a mother because she could not help the Student, and this resulted in her not wanting to get out of bed and made her feel like she did not want to be here anymore. She felt the school should have taken into consideration that the Student is affected by her own depression and struggles.

The Parent testified that the Student picks fights with his siblings, walks out of class during virtual learning, does not respond to teachers, complains that his head hurts, and uses many excuses why he should not go to school. The Parent wants the PGCPS to provide the Student with transportation to school because it would help her to deal with the Student's sibling's health problems in the morning because she can't be in two places at once. She also wanted the school to provide someone she could talk to if the Student was anxious. According to the Parent, the Student becomes anxious because when the Parent is dealing with the Student's sibling. In addition, she wants to be able to call and alert the school when the Student misses his bus as a result of the Parent being occupied tending to the Student's sibling's medical needs. The Parent thought that the PGCPS could send someone to the home to address the Student's anxiety and convince the Student to go to school. *See generally*, TR. 2258-2266.

The PGCPS' evidence, through the testimony of [REDACTED] Principal [REDACTED] [REDACTED] Assistant Principal [REDACTED] and Ms. [REDACTED] was that the Student demonstrated no anxious behaviors at school. Ms. [REDACTED] the Student's seventh grade science teacher, testified that the Student never told her that he was anxious about attending school or classwork. Ms. [REDACTED] encouraged the Student to talk to her if he had any problems or concerns.

Ms. [REDACTED] testified:

So I can attest that again, as I stated earlier, (the Student) did not exhibit those behaviors in school. He didn't exhibit those behaviors in school, not in small group, not in class, and each team member, I recall, went around and gave their own observations of (the Student) as well as we all did to let Mom know that those were not behaviors that we saw in school.

Tr. 8820-21.

Ms. [REDACTED] testified that in her three years with the Student, two as his special education teacher, she saw no anxious behaviors and saw a happy student, excited to be at school, with good social skills and a group of friends.

Q: What was your impression with regard to whether (the Student) wanted to be in school?

A: As I stated before, when (the Student) was in school he presented as a kid who, again, was happy, he was excited, he had friends, he made friends. You know, he was a shy kid, he was one of those kids that didn't like to be put on the spot, he didn't want to stand up in front of class and do presentations or things like that. But he didn't present as a child that had a headache every day or a child that said my stomach hurts every day. He presented, as I stated, as a student who knew how to raise his hand and ask a question if he needed help. He knew how to get up out of his seat and ask the teacher for help with a particular assignment or task. Again, like I said, he had friends. So he was able to communicate effectively with his friends, play games, share activities and be social.

Q: Other than (the Parent) was there any member of the IEP team who endorsed the idea that (the Student) did not want to be in school?

A: No.

Q: Did you see any signs of anxiety in (the Student) during his 6th grade year?

A: No.

Tr. 8821-23.

The PGCPs evidence, through Ms. [REDACTED] and Ms. [REDACTED] was that the Parent never mentioned to any member of the IEP team that she had any health condition, personal problem, family problem or other obstacle that affected her ability to get the Student to school on time, or that any of these problems affected the Student and caused him not to want to

go to school. The PGCPS witnesses universally testified that they were unaware of the long list of issues the Parent described in her testimony.

Ms. [REDACTED] testified that at the IEP meeting on October 29, 2020, the Parent said the Student gets anxious and that he had concerns about the way people spoke to him. She testified that no one on the [REDACTED] IEP team saw the Student exhibit any anxious behaviors; the teachers would address anxious behaviors in the classroom if that happened. Ms. [REDACTED] testified that the Parent did not say that anxiety played any role in the Student's absences.

The Parent obtained evaluations from Ms. [REDACTED] (speech therapy), Ms. [REDACTED] (occupational therapy), and Dr. [REDACTED] (academic and psychological). None of the evaluators suggest the Student had any anxiety during assessment and testing. None of the evaluators suggested that the results of their evaluations may be unreliable because the Student was so anxious during testing. Dr. [REDACTED] testified that the Student was curious during evaluation how he was doing. The PGCPS would have no reason to conclude that the Student had test anxiety, and educators saw no test anxiety.

The Student's grandmother testified that the Student behaves differently at home than he does at school. This, she said, is because the Student had been taught to respect adult authority so he does not misbehave at school. She testified that the Student is not violent, rude or disrespectful outside the home.

Ms. [REDACTED] testified about the community supports that [REDACTED] had provided to the Student and the Parent continuously from July 2020. She testified about the supports provided in the Plan of Care that Ms. [REDACTED] developed. Ms. [REDACTED] testified about the weekly direct consultation with the Student and the Parent during remote sessions and later, live sessions at the Student's home.

I found the Parent lacked credibility. She had few reference points for when she provided documents to the school, or to whom she spoke, but was always sure she had provided documents in issue to the school. On the other hand, she said she did not receive or never saw, or if she received did not read or did not understand, almost every document the school provided to her. She recalled providing documents that benefitted her case and did not recall receiving documents that did not benefit her case. The Parent disclaimed seeing documents sent to her by the school to her email account, which she agreed was her email address. She claimed she sent documents to the school, such as Dr. [REDACTED] report and Ms. [REDACTED] report, then did not mention them three months later at the October 29, 2020 IEP team meeting. When Ms. [REDACTED] discussed Ms. [REDACTED] speech therapy evaluation at the October 29, 2020 IEP meeting, the Parent did not ask about Dr. [REDACTED] report or Ms. [REDACTED] report, even though the Parent made four visits to Dr. [REDACTED] office for the Student's evaluation. The Parent did not question the IEP team as to whether the recommendations or diagnoses in these reports that she claims she provided were considered or were going to be discussed, or if the IEP team had the reports at all. The Parent agreed to provide evaluations and reports to the IEP team at the October 29, 2020 IEP meeting but did not follow through.

The Parent claimed to have observed the Student in class when she dropped both the Student and his younger sibling off late. She testified that the Student walks out of class, and does not respond to teachers, but she did not observe either behavior and teachers never complained about such behaviors. The Parent testified that she sent the Student off to class by himself, walked the Student's sibling to his class, then returned to the Student's class to observe him through the door. She said she saw the teacher trying to get control of the classroom, telling the kids to sit down. But the Parent did not know how long she stayed outside the door watching the Student's class. "I can't give you an approximate time because I wasn't timing it." Tr. 3638.

The Parent testified that the Student displayed anxious behaviors at school, but other than peering through a closed door, she never observed him in the classroom during instruction and no teacher told her the Student was anxious. Thus, I find the Parent's testimony that the Student had anxiety in school to lack credibility. Her testimony was based on speculation, not observation.

The Parent withheld critical information from Dr. [REDACTED]. The sequence of events was as follows:

January 11, 2021 - The Parent filed her Complaint. A significant amount of her Complaint alleges what she describes as behavioral concerns, most of which are drawn directly from Dr. [REDACTED] July 29, 2020, report. The bulk of the behaviors Dr. [REDACTED] reports were provided to Dr. [REDACTED] directly by the Parent. Dr. [REDACTED] report includes his test data, which supports the Parent's allegation that the PGCPs violated its child find responsibilities by failing to determine whether the Student was eligible for special education and related services in the Intellectual Disability category;

February 2, 2021 - The Parent, for reasons never explained, went to Dr. [REDACTED] and asked for another evaluation to address (or perhaps rule out) whether the Student had an intellectual disability;

February 24, 2021 - Prehearing Conference;

March 2, 2021 - The Parent retains Dr. [REDACTED] to testify;

March 5, 2021 - Prehearing Report and Order, setting April 6, 2021, as the first hearing day; and,

March 28, 2021 - Dr. [REDACTED] issues a second report in which he opined the Student did not meet the diagnostic criteria for Intellectual Disability, a conclusion inconsistent with his report of July 29, 2020, and inconsistent with the Parent's Child Find allegation.

When the Parent went to Dr. [REDACTED] in February 2021, she did not tell him that she was represented by counsel, that she had filed the Complaint, that a hearing was scheduled, or that his report would be used for litigation. Dr. [REDACTED] testified this is information he would like to have known. Withholding this critical information from Dr. [REDACTED] leads me to conclude that the Parent is willing to withhold important information if it suits her needs.

Finally, the Parent tended to adopt what her counsel said as her own testimony. The Parent initially testified that she was not aware the Student had any anxiety issues until 2018, a version supported by the documentary evidence. Mr. Howard, during a debate about the admissibility of PGCPs Exhibit 28, which reflects the Student was absent 21 days of SY 2012-2013, Pre-Kindergarten, expressed his view that the exhibit demonstrates that the Student has been anxious about school since Kindergarten. After testifying that she was not aware of the Student's anxiety until 2018, she later changed her view and testified that the Student has been anxious about school since Kindergarten.

On April 26, 2021, when the Parent testified that she wanted the PGCPs to provide a computer to her that reads documents so she could help the Student with his schoolwork, and a tutor for the Student at home, the PGCPs objected that such services were impossible during the pandemic.

I asked: "Ms. (Parent), a computer to – you said computer – a document reader computer would have helped. . . . How would you expect this training to be provided to you?"

A: By Mr. Harvey - Well, again, Your Honor, the training can be provided remotely.

I asked: No. Ms. (Parent) – my question is to Ms. (Parent), Mr. Harvey, not you. Ms. (Parent), how would you have expected the school to train you on how to use a computer during the pandemic?

A: (Parent) I would expect the school to do it virtual.

Tr. 1248-1250.

I found the testimony of Principal [REDACTED] Assistant Principal [REDACTED] Ms. [REDACTED] Ms., [REDACTED] and Ms. [REDACTED] to be credible and more persuasive than the Parent on issues relating to classroom behavior and school anxiety.

The Parent's position on the issue of failure to provide behavioral supports is that the PGCPs was aware the Student demonstrated unwanted behaviors. The unwanted behaviors might be related to anxiety. The anxiety might be related to school. The anxiety that might be related to school might be related to tardiness and attendance. So the PGCPs, the argument goes, aware that the Student had anxieties, and aware he was tardy and absent, should have conducted an FBA, which might have confirmed the Parent's suspicion that the unwanted behaviors are linked to anxiety, that the anxiety is linked to tardiness and absenteeism, and that all are linked to a learning disability. Then, the argument proceeds, the PGCPs may have seen the need to modify the Student's IEP to add a BIP to address the root causes of the absenteeism.

The Complaint alleges that the Student has already been determined eligible special education in reading, writing, and math. The Complaint alleges that the Student "has an overall IQ of 65 but has never been considered under the special education category of Intellectual Disability." If there is a category of learning disability under which the Student qualifies for special education and related services that the Parent believes the PGCPs failed to consider, the Parent certainly knows how to allege such a failure.

The Complaint references Dr. [REDACTED] diagnosis of Generalized Anxiety Disorder and makes reference to [REDACTED] "possible signs of depression that do not meet diagnostic criteria for depression." The Complaint alleges the school did not address the Student's behavioral needs. It alleges that the Student is entitled to counseling and psychological services.

The only mention of absenteeism in the Complaint is that the PGCPs failed to address absenteeism by failing to provide transportation, and there is a mention that the Student was

denied a FAPE and that Section 504 of the ADA was violated when the school noticed a change in behavior, grades, and attendance.

At no point does the Complaint allege the school failed to evaluate the Student in the special education eligibility category of Emotional Disturbance when it was made aware the Student had anxiety, and at no point does the Complaint allege the school failed to make the logical leap that behaviors were anxiety-based and caused the absenteeism, and that because the Student was anxious the school should have found him eligible under the Emotional Disturbance category. The Complaint makes no reference to any failure to include a BIP in the Student's IEPs to address absenteeism.

The Parent asked the [REDACTED] Special Education Coordinator, Ms. [REDACTED] if she agreed that Emotional Disturbance is a special education qualifying category, and of course she agreed. Dr. [REDACTED] testified that he understood the school was unfamiliar with the Student's behavior issues and thought his report would inform the school of those issues, and that the IEP team could consider his social emotional needs if they were consistent with the IDEA.

In closing argument, the Parent argued that the PGCPSS failed to evaluate the Student in all areas of suspected disability when it was aware the Student had anxieties. But the Parent did not argue what that area of suspected disability was. The Parent argued that PGCPSS should fund a private placement at a school that addresses social/emotional needs.⁶⁶

In *School Board of the City of Suffolk v. Rose*, 133 F.Supp.3d 803 (E.D.Va. 2015), (cited by the Parent among the cases for me to consider), the court addressed the issue of a student the school determined was emotionally disturbed but the parents thought was autistic. Several experts testified and the *Rose* court commented that this sort of case is precisely the type that requires expert opinion to resolve. Similarly, in *Springer v. Fairfax County School Board*, 134

⁶⁶ The Parent presented no evidence what specific private placement may be appropriate.

F.3d 659 (4th Cir. 1998), a school determined the student was not suffering from a serious emotional disturbance and was not eligible for special education. The parent enrolled the student in private school and sought reimbursement. The hearing officer and District Court found the student was a juvenile delinquent but that he did not have a serious emotional disturbance. In affirming the decision of the hearing officer and lower court the Fourth Circuit noted that a number of expert witnesses testified. 134 F.3d, at 662-663, 665. The court further noted:

There is one final flaw in the Springers' case for tuition reimbursement. Even if they had been able to demonstrate that Edward exhibited one or more of the five qualifying characteristics for a long period of time and to a marked degree, the Springers still have failed to establish the critical causal connection between this condition and the educational difficulties Edward experienced, the final step in proving a serious emotional disturbance.

Id. at 666.

The Parent Student did not allege in the Complaint that the PGCPs failed to find the Student eligible for special education and related services under the Emotional Disturbance disability category and did not present any evidence the Student qualifies for special education and related services in this category. Counsel did no more than suggest that the PGCPs, aware of the Student's anxiety, should have investigated why the Student was tardy and absent so much. But the Parent presented no evidence where that investigation may lead. Whether a school failed to properly evaluate a student and failed to qualify a student for special education and related services under all disability categories for which a student may be eligible are matters of proof, not conjecture, and are the subject of expert opinion. And most importantly, the Parent must prove the anxiety, if it qualifies as an emotional disturbance, was related to a learning disability. *See Springer* and *Rose*, above.

The Parent has the burden of proof and presented no evidence that anxiety led to absences and was linked to the Student's learning disability. These are matters that call for expert testimony. "The school should have investigated" is not proof.

Regarding an FBA, COMAR 13A.08.04.02B(5) provides:

(5) Functional Behavior Assessment.

(a) "Functional behavior assessment" means the systematic process of gathering information to guide the development of an effective and efficient behavior intervention plan for the problem behavior.

(b) "Functional behavior assessment" includes the:

(i) Identification of the functions of the problem behavior for the student;

(ii) Description of the problem behavior exhibited in the educational setting;
and

(iii) Identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time.

Emphasis added.

COMAR 13A.08.04.02B(2) defines a BIP.

B. Terms Defined.

(1) "Behavior intervention plan" means a proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student's challenging behaviors and to support the development of appropriate behaviors and responses.

The proper inquiry in determining the necessity of an FBA is whether the behavior impedes learning. *P.K. ex rel. S.K. v. New York City Dept. of Educ.*, 819 F.Supp. 2d. 90, 107 (E.D.N.Y. 2011). Neither [REDACTED] nor [REDACTED] had any information about the Student's unwanted behaviors at home. The Student had no unwanted behaviors at school.

In every case I have reviewed in which the necessity of an FBA was an issue, the behavior which impeded the student's learning or the learning of others was classroom behavior, or classroom behavior in conjunction with other behaviors outside the classroom of which the school was aware.

As an example, in *S.S. v. Board of Education of Harford County*, 498 F.Supp.3d 761

(D.Md. 2020), an IEP team met to discuss the Student's progress.

At this point, it appeared that S.S. was demonstrating behavior that was interfering with her ability to achieve satisfactory growth on her IEP goals and objectives. The problematic behaviors included chronic noncompliance with throwing objects in the classroom. M.S. also reported at this meeting that S.S. had engaged in self-hitting at home. Given this information, the IEP team agreed that conducting a Functional Behavior Assessment (FBA) would be appropriate to create and implement a Behavioral Intervention Plan (BIP). A BIP is a "proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student's challenging behaviors and to support the development of appropriate behaviors and responses.

Id. at 771.

The Maryland regulation applicable here provides that an FBA is appropriate when problem behavior occurs in an educational setting. As *S.S.* and COMAR 13A.08.04.02B(2) instruct, the purpose of a BIP is to assist teachers to reduce or eliminate challenging behaviors. In this case, there were no challenging classroom behaviors to address.

I have found no case in the Fourth Circuit, either at the District Court level or Circuit Court level, and no U.S. Supreme Court case, which held that absenteeism is an interfering behavior that requires intervention through an FBA and a BIP or otherwise under the IDEA in the absence of interfering classroom behaviors and in the absence of a causal link between the absenteeism and the learning disability.

Critically, there is no evidence the absenteeism here is related to the Student's learning disability. There is no evidence the Student's anxiety is related to his learning disability. There is no evidence the anxiety is related to the absenteeism, other than the Parent's views, which are unsupported by any training or education that qualifies her to offer such an opinion. The Parent's expert, Dr. [REDACTED] testified that he would need to conduct several therapeutic sessions

with the Student before concluding the Student's anxiety and the Student's absenteeism are linked.

In *Lamoine School Committee v. Ms. Z, on behalf of N.S.*, 353 F.Supp.2d 18 (D.Me. 2005), the court addressed whether a student's absenteeism and tardiness were appropriately addressed by the school. The student's school received a psychiatric report and a request for boarding school placement from the student's parent, and the student's teachers observed that the student shut down when he did not understand and had a difficult time with his learning disabilities and self-esteem. Later, the parent requested in-home tutoring, accompanying her request with a report from a psychiatrist which said the student suffered from depression, which impaired the student's ability to function and destroyed the student's ability to attend school. *Id.* at 21. The court held:

N.S.'s tardiness and attendance failures are clearly not the sole responsibility of Lamoine. The PET cannot rouse N.S. out of bed or escort him to school on time. But, this Court is not called upon to decide the fruitless and unanswerable question of fault. In this case, N.S.'s absence was linked to his disability, and it is unarguable if N.S. was not in school, he could not be said to be receiving "a free and appropriate public education."

Id. at 33-34.

Lamoine illustrates the requirement that the party with the burden of proof, the Parent, present persuasive evidence that the Student's anxiety, his absenteeism, and his learning disability are linked. The Parent presented no such proof.

There is a notice element as well. In *R.F. v. Cecil County Public Schools*, 919 F.3d 237 (4th Cir. 2019), the court addressed the position taken by the parent that the student's IEP should have addressed interfering behaviors other than biting:

Appellants contend that the December 2016 IEP was inadequate because it incorporated the BIP without revising it to include interventions for R.F.'s other interfering behaviors. However, Appellants present no evidence that by the time the IEP team met to revise R.F.'s IEP in December, CCPS was aware that biting was not R.F.'s only interfering behavior. While it is true that Mr. K. testified in

March 2017 that if he were to develop a new BIP for R.F., it would include biting, hair pulling, grabbing, hitting, kicking, and scratching, this says nothing about what CCPS knew in December 2016. Without other evidence indicating that CCPS knew in December 2016 that R.F. needed interventions for behaviors other than biting, we cannot say that CCPS procedurally violated the IDEA by failing to account for those behaviors in her IEP. . . . Regardless, any error in failing to update the BIP did not deny R.F. a FAPE because CCPS took steps that were “reasonably calculated” to address R.F.’s behavioral needs “in light of [her] circumstances.”

Id. at 250-51. Thus, the inquiry includes an evaluation of what PGCPs knew about any need for interventions.

In *Armstrong v. Alicante School*, 44 F.Supp.2d 1087 (E.D. Ca. 1999), parents brought an action against a school for tolerating the Student’s illegal drug use, arguing the drug use impeded the student’s progress and that the student was entitled to supportive services in the form of drug intervention and counseling under the IDEA.

Armstrong observed:

It is obvious that drug use may impede any student's ability to take advantage of the educational opportunities. Such a determination, however, does not end the court's inquiry. The question remains whether drug prevention is the type of “supportive service” contemplated under the IDEA. The court finds it is not. There are a myriad of conditions caused by action or inaction within the school environment which may impede an individual's ability to take advantage of the educational opportunities, from poor ventilation to poor diet to poor sanitation. Indeed, such conduct may be actionable. However, the court finds that, in enacting the IDEA, Congress did not intend to create a federal claim for every activity or type of conduct which may impede an individual's ability to take advantage of the educational opportunities. . . . [T]he prevention of drug use is not inextricably intertwined with the provision of an appropriate public education as required under the IDEA. Indeed, discipline is ongoing and integral part of every educational process; drug prevention is not. Understandably, drug prevention is being deployed as an everyday strategy in many educational settings. The IDEA, however, compels no response to the problem of drug use in schools. Therefore, the failure to implement such a strategy does not give rise to a claim under the IDEA. . . . Because drug prevention and/or intervention are not the type of “services” Congress sought to require or regulate under the IDEA, summary adjudication of this claim is appropriate.

Id. at 1089.

In *Ashland School District v. Parents of Student R.J.*, 585 F. Supp. 2d 1208 (D. Or. 2008), a learning-disabled high school girl became preoccupied with boys. The parent sought residential placement without access to the internet and without access to boys and behavior modification therapy. The parent claimed her daughter's behavior was a function of her learning disability, thus making the school responsible for providing the requested services.

Ashland held:

That students are engaging in sexual conduct outside school or are less interested in school because they are distracted by intimate relationships, is largely beyond the scope of this statute. The IDEA does not require schools to remove every impediment to learning of any kind and from any cause. If a student is stealing cars, the IDEA would not require the District to post bail and hire a lawyer to represent him, even if a prison term would interfere with his education and stealing cars allegedly is a symptom of his disability. “[I]n enacting the IDEA, Congress did not intend to create a federal claim for every activity or type of conduct which may impede an individual's ability to take advantage of the educational opportunities.” *Armstrong ex rel. Steffensen v. Alicante School*, 44 F.Supp.2d 1087, 1089 (E.D.Cal.1999). Mother argues, and the ALJ accepted, that acting without fully considering the consequences, and engaging in risky behavior even after being told of the consequences, is part of R.J.'s “disability” and that this makes the school responsible. Using that criteria, a substantial part of the teenage population of America suffers from the same “disability.” Mother essentially wanted R.J. confined to a facility far from home, cut off from contact with these boys and under constant supervision so R.J. did not have sex or access the internet. Mother also wanted R.J. to receive behavior modification therapy. Mother also perceived R.J. as “defiant,” believed that she lied, and Mother did not approve of R.J.'s friends. This may all properly be of great concern to a parent, but it is not a disability for purposes of the IDEA.

Id. at 1231.

Here, the Parent has a lot of responsibility for the care of the Student and of the Student's two younger siblings. She testified, among other things, that the PGCPs should provide transportation to the Student so he would get to school on time, freeing her up to attend to the needs of those siblings.

As *Armstrong* and *Ashland* illustrate, Congress did not intend for the IDEA to provide supports for every type of situation which might interfere with education. Here, the Parent's personal circumstances often result in the Student's tardiness and absence, and it is not the type of situation the IDEA is intended to address.

The PGCPS opened the door of opportunity and offered the Student an appropriate IEP. It had no basis for conducting an FBA or modifying the Student's IEP to include a BIP because the Student demonstrated no interfering behaviors in the classroom. The purpose of the IDEA is to open the door of opportunity to learning-disabled students. *Rowley*, 458 U.S. at 192. The PGCPS's substantive obligations under the IDEA are met when a school offers an IEP reasonably calculated to enable the Student to make progress appropriate in light his circumstances. *Andrew F.*, 137 S.Ct. 991. The PGCPS must open the door and must offer an appropriate IEP to the Student. The PGCPS did so here.

Finally, there is significant evidence in the record that the Student and Parent are already receiving services from [REDACTED] to address the very types of support services they seek from the PGCPS. There is evidence that the PGCPS repeatedly provided information regarding how to obtain community services and directed the Parent to the PGCPS Family Support Center. Under section 9.9-101 of the Education Article, "wraparound services" include providing family and community engagement and supports, including informing parents of academic course offerings, language classes, workforce development training, opportunities for children, and available social services as well as educating families on how to monitor a child's learning. Wraparound services also include services to improve student attendance. Md. Code Ann., Educ. § 9.1-101(e)(8) and (12). Ms. [REDACTED] testified about the good relationship she developed with Ms. [REDACTED] at [REDACTED] and how she and Ms. [REDACTED] worked collaboratively to advance the interests of the Student.

In *R.F.*, the court noted that the CCPS took steps that were “reasonably calculated” to address R.F.’s behavioral needs “in light of [her] circumstances.” 919 F.3d at 251. Here, based on what the PGCPs knew, and based on its collaboration with [REDACTED] the PGCPs took steps to address the Student’s anxiety and attendance. There is no reason for me to order the PGCPs to duplicate services already in place.

Therefore, for the reasons stated above, I will find in favor of the PGCPs on Issue 5.

H. Issue 6, Denial of FAPE by Failing to Grant Parent’s Request for IEE or File a Due Process Complaint

Did the PGCPs deny the Student a FAPE when it failed to grant the Parent’s request for an Independent Education Evaluation or file a due process complaint to defend its decision not to grant the request?

34 C.F.R Section 300.502, Independent Education Evaluation, provides in relevant part:

(a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

...

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

...

(e) Agency criteria.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

For the Student's 2018 Triennial Evaluation, the PGCPs conducted three evaluations: a psychological evaluation; a speech language evaluation; and an academics, cognitive, and social and emotional behaviors evaluation.

On August 1, 2019, the Parent requested an IEE. On September 16, 2019, the PGCPs agreed to fund an IEE in academics, including reading, mathematics, and written language. The PGCPs declined the Parent's request for psychology, speech and language, and occupational therapy and informed the Parent it would defend its decision by filing a due process complaint.

On October 23, 2019, the PGCPs agreed to fund an independent speech language assessment and an independent psychological assessment for the Student. The PGCPs again declined to fund an independent occupational therapy assessment. The PGCPs told the Parent that she would be invited to an upcoming IEP team meeting, and at that meeting the Parent could raise all areas of suspected disability and, if raised, appropriate assessments would be conducted.

Although the PGCPs told the Parent it would fund IEEs in these assessments, and that the Parent had 90 days to arrange the approved assessments and provide them to the Student's school, the Parent did not arrange any of the approved assessments or provide the results to Dr.

██████████ or ██████████

The PGCPs did not file a due process complaint to defend its decision not to fund an independent occupational therapy evaluation. The Parent did not bring up the subject of occupational therapy or request the November 12, 2019 IEP team conduct an occupational therapy assessment at the meeting.

On January 10, 2020, Ms. ██████████ conducted an occupational therapy evaluation of the Student that was not paid for by the PGCPs. Ms. ██████████ composed a report the same day and provided her report to the Parent on an unknown date. On August 21, 2020, the Parent sent Ms. ██████████ report as an email attachment to Ms. ██████████ a seventh-grade guidance counselor at ██████████ without comment and without request that Ms. ██████████ forward Ms. ██████████ report to anyone at ██████████ Ms. ██████████ did not forward Ms. ██████████ report to the Student's ██████████ IEP team. The Parent did not bring up the subject of Ms. ██████████ report at the October 29, 2020 IEP team meeting or request that the team conduct an occupational therapy assessment.

Ms. ██████████ January 10, 2020, occupational therapy report was considered by a ██████████ IEP team at an IEP team meeting on April 21, 2021. At that meeting, the IEP team reviewed the report, discussed observations of educators as to the Student's need for occupational therapy, and concluded no further occupational therapy assessments were warranted.

In *T.B. v. Prince George's County Board of Education*, 897 F.3d 566 (4th Cir. 2018), the court described that the failure to conduct a requested evaluation is a procedural violation of the

IDEA, and thus is tested for whether it denied the Student a FAPE. *Id.* at 571-72. Here, I find there was a procedural violation when the PGCPSS failed to approve the Parent’s request for an independent occupational therapy evaluation or to file a due process complaint to defend its decision. However, the Parent presented no proof that the failure to approve the request resulted in any educational deficit, resulted in the failure to make academic progress, or contributed to the failure of the Student to reach any goal or objective in his November 12, 2019 IEP, his April 2, 2020 ICLP, or his October 29, 2020 IEP. Thus, there is no proof the procedural violation deprived the Student of a FAPE.

Therefore, for the reasons stated above, I will find in favor of the PGCPSS on Issue 6.

CONCLUSIONS OF LAW

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

1) The PGCPSS did not commit any procedural violation of the IDEA or deprive the Student of a FAPE by converting his instruction from in person to virtual learning at home without first convening an IEP team meeting from March 2020 to January 11, 2021. *Concerned Parents & Citizens for the Continuing Education at Malcolm X (PS 79) v. New York City Bd. of Educ.*, 629 F.2d 751 (2nd Cir. 1980); *J.T., et, al v. deBlasio, et.al*, 500 F. Supp. 3d 137 (2020); USDOE, Office of Civil Rights, Office of Special Education and Rehabilitative Services, “Supplemental Fact Sheet – Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities,” March 21, 2020;

2) The PGCPSS did not deny the Student a FAPE or violate the Child Find provisions of the IDEA by failing to consider the Student’s need for special education and related services after receiving private occupational and psychological and educational evaluations in August

2020. *Mr. P. v. W. Hartford Bd. of Educ.*, 885 F.3d 735, 749 (2d Cir. 2017), *cert. denied*, 139 S. Ct. 322 (2018); 34 C.F.R. §§ 300.111 and 300.304;

3) The PGCPS fully implemented the Student's IEPs from the period March 2020 through January 11, 2021. *Bd. of Educ. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176 (1982);

4) The PGCPS did not fail to develop an appropriate IEP for the period January 11, 2019, through January 11, 2021. 20 U.S.C.A. §§ 1414(d)(1)(A)(i)(I) -(IV), (d)(3)(A)(i)-(iv); *Bd. of Educ. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017); *E.L. ex rel. Lorsson v. Chapel Hill-Carboro Bd. of Educ.*, 773 F.3d 509 (4th Cir. 2014); *M.M. v. School Dist. of Greenville County*, 303 F.3d 523 (4th Cir. 2002); *DiBuo v. Board of Education of Worcester County*, 309 F.3d 184 (4th Cir. 2002); *Reusch v. Fountain*, 872 F.Supp. 1421 (D.Md. 1994); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989); *O.S. v. Fairfax Cnty. Sch. Bd.*, 804 F.3d 354 (4th Cir. 2009); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F. 3d 315 (4th Cir. 2009);

5) The PGCPS did not deny the Student a FAPE by failing to provide supports relating to behavioral issues from January 11, 2019, through January 11, 2021. 34 C.F.R. § 300.324(a)(2); *P.K. ex rel. S.K. v. New York City Dept. of Educ.*, 819 F.Supp.2d 90 (E.D.N.Y. 2011); *S.S. v. Board of Education of Harford County*, 498 F.Supp.3d 761 (D.Md. 2020); *Lamoine School Committee v. Ms. Z, on behalf of N.S.*, 353 F.Supp.2d 18 (D.Me. 2005); *R.F. v. Cecil County Public Schools*, 919 F.3d 237 (4th Cir. 2019); Md. Code Ann., Educ. § 9.9-101 (2018); COMAR 13A.08.04.02B(1) and (5); and,

6) The PGCPS did not deprive the Student of a FAPE when it failed to grant the Parent's request for an IEE or to defend its position by filing a due process complaint. 34 C.F.R. § 300.502; *T.B. v. Prince George's County Board of Education*, 897 F.3d 566 (4th Cir. 2018).

I further conclude as a matter of law that the Student is not entitled to any compensatory education or related services because I find in favor of the PGCPS on Issues 1 through 6.

ORDER

I **ORDER** that the January 11, 2021, Due Process Complaint filed by the Parent on behalf of the Student and on her own behalf is hereby **DISMISSED**;
and I further

I **ORDER** that the Parent's request for compensatory education and related services provided by private providers based on denial of a free appropriate public education for the period January 11, 2019, through January 11, 2021, is **DENIED**.

December 20, 2021
Date Decision Mailed

Michael R. Osborn
Administrative Law Judge

MR0/at
#195657

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]

[REDACTED]

[REDACTED]

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

BEFORE MICHAEL R. OSBORN,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-PGEO-OT-21-00757

FILE EXHIBIT LIST

Exhibits

I admitted the following exhibits offered as evidence by the Parent and Student, unless otherwise noted:

- Parent Ex. 1 CV [REDACTED] Psy.D., undated (adm.) 5/5/2021)
- Parent Ex. 2 CV [REDACTED] Ph.D., undated (adm. 4/6/2021)
- Parent Ex. 3 PGCPS Confidential Psychological Evaluation Report, 10/8/2019 (adm. 5/3/2021)
- Parent Ex. 4 [REDACTED] 7/19/2020 (adm. 5/3/2021)
- Parent Ex. 5 PGCPS Assessment Report, Speech and Language, 10/18/2018 (adm. 5/5/2021)
- Parent Ex. 6 Speech and Language Evaluation, [REDACTED] 1/7/2020 (adm. 4/12/2021)
- Parent Ex. 7 Occupational Therapy Evaluation, [REDACTED] [REDACTED] 1/10/2020 (adm. 4/7/2021)
- Parent Ex. 8 IEP, 11/13/2018 (adm. 4/6/2021)
- Parent Ex. 9 Prior Written Notice (PWN), 11/12/2019, with IEP, 11/12/2019 (adm. 4/6/2021)
- Parent Ex. 10 IEP, 10/29/2020 (adm. 4/6/2021)
- Parent Ex. 11 Progress Report, 11/13/2018 (adm. 5/5/2021)
- Parent Ex. 12 Progress Report, 4/25/2018 through 4/10/2019 (adm.5/5/2021) (w/drawn 6/1/2021)
- Parent Ex. 13 Absent and tardy report, 9/13/2018 through 6/14/2019 (adm.4/13/2021)
- Parent Ex. 14 Absent and tardy report, 9/6/2019 through 3/10/2020 (adm.4/26/2021)
- Parent Ex. 15 Absent and tardy report, 9/2/2020 through 3/24/2021 (adm.5/5/2021) (withdrawn 6/21/2021)
- Parent Ex. 16 PGCPS grade scale, undated (adm.4/12/2021)
- Parent Ex. 17 Progress report, academic years 2016 through 2019 (adm.4/7/2021)
- Parent Ex. 18 Progress report, oral and written communication, academic year 2019 (adm.4/7/2021)
- Parent Ex. 19 Gradebook, academic year 2020 (adm.4/7/2021)
- Parent Ex. 20 Gradebook, academic year 2021 (adm.4/7/2021)

Parent Ex. 21 Record request, 10/30/2019 (adm.4/12/2021)
 Parent Ex. 22 Email string, 8/18/2020 through 3/2/2021 (adm.4/12/2021)
 Parent Ex. 23 Email string, 8/13/2020 (adm.4/12/2021)
 Parent Ex. 24 [REDACTED] report, 12/13/2018 (adm.5/3/2021)
 Parent Ex. 25 [REDACTED] report, 1/7/2019 (adm.5/3/2021)
 Parent Ex. 26 [REDACTED] report, 2/4/2019 (adm.5/3/2021)
 Parent Ex. 27 Request for Independent Educational Evaluation (IEE), 8/1/2019 (adm.4/12/2021)
 Parent Ex. 28 Email string, 8/5/2019 through 8/6/2019 (adm.4/12/2021)
 Parent Ex. 29 [REDACTED] letters to Parent, 9/16/2019 (adm.4/12/2021)
 Parent Ex. 30 [REDACTED] letters to Parent, 9/16/2019 (adm.4/12/2021)
 Parent Ex. 31 Email, 9/26/2019 (adm.5/5/2021)
 Parent Ex. 32 PGCPS Student Rights and Responsibilities Handbook, 2020-2021 school year (adm.4/26/2021)
 Parent Ex. 33 COMAR 13A.05.01.01 through 13A.05.01.14 (Official Notice)
 Parent Ex. 34 U.S. Department of Education COVID-19 information release, 3/2020 (Official Notice)
 Parent Ex. 35 MSDE Technical Assistance Bulletin (TAB) 20-03, 5/2020 (adm.4/12/2021) (adm..again 5/5/2021)
 Parent Ex. 36 MSDE IEP Process Guide, 8/1/2019 (Official Notice)
 Parent Ex. 37 Assessment Report, Speech and Language, 10/29/2018 (adm.5/5/2021)
 Parent Ex. 38 Assessment Report, Special Education 10/8/2018 (adm.5/5/2021)
 Parent Ex. 39 [REDACTED] Elementary School ([REDACTED] letter to Parent, undated (adm.5/5/2021)
 Parent Ex. 40 [REDACTED] Confidential Psychological Evaluation, [REDACTED] Psy.D., 3/8/2021 (adm.6/15/2021)
 Parent Ex. 41 National Association of School Psychologists, School Refusal: Information for Educators, undated (adm.5/5/2021)
 Parent Ex. 42 Email string between attorneys, 3/23/2021 through 3/24/2021 (adm. 5/5/2021)
 Parent Ex. 43 Behavior Assessment System for Children 3RD Edition (BASC-3), Generalized Anxiety Disorder (GAD), with attached GAD description from Diagnostic and Statistical Manual for Mental Disorders-5 (DSM-5), undated (Adm.5/5/2021)
 Parent Ex. 44 IEP, 12/16/2015 (adm.5/5/2021)
 Parent Ex. 45 PGCPS response to Administrative Law Judge instruction to provide certain records subject to Parent's subpoena to PGCPS (adm.5/5/2021)
 Parent Ex. 46 Grade Point Average (GPA), end-year report for School Year (SY) 2019-2020 6/23/2020 (adm.5/5/2021)
 Parent Ex. 47 Not offered
 Parent Ex. 48 Not offered
 Parent Ex. 49 Assessment Report, 10/29/2018 (adm.5/5/2021)
 Parent Ex. 50 Consent to Release Information, 2/25/2019 (adm.5/5/2021)
 Parent Ex. 51 Not offered
 Parent Ex. 52 Not offered
 Parent Ex. 53 Not offered
 Parent Ex. 54 IEP, 12/14/2016 (adm.4/27/2021)
 Parent Ex. 55 IEP, 11/29/2017 (adm.4/27/2021)
 Parent Ex. 56 Student Learning Objectives (SLO), 9/2019 through 3/2020, State Test Results SY 16-17, SY 17-18, SY 18-19, Student Progress Reports, printed 4/11/21 and 4/12/21, [REDACTED] MAP (Measures of Academic Progress) results, SY 19-20,

- Individual Student Reports, 9/14/2020 through 2/2021, Assessment Reports, SY 16-17, SY 17-18 (adm. 4/27/2021)
- Parent Ex. 57 Not offered
- Parent Ex. 58 PGCPS Confidential Psychological Report, 10/19/2015 (adm.5/17/2021)
- Parent Ex. 59 Not offered
- Parent Ex. 60 [REDACTED] Neurodevelopmental Pediatrics Final Report, 2/23/2016; [REDACTED] Clinic record of visit and Assessment Plan, 4/22/2016; Student Health Assessment/Physical Examination standard form, 9/13/2019 (adm.6/2/2021)
- Parent Ex. 61 [REDACTED] Psy.D., notes, 4/15/2020, 5/14/2020, 6/8/2020, [REDACTED] Diagnostic Assessment, 2/18/2020, Testing Behavioral Observations, 4/15/2020, 5/14/2020, 6/8/2020; BASC-3 Parent Rating Scales, 6/8/2020; BASC-3 Teacher Rating Scales, 5/14/2020; BASC-3 Report, 5/14/2020; BASC-3 Interpretive Report, 6/8/2020 (adm.5/27/21)
- Parent Ex. 62 [REDACTED] Middle School teacher profiles, staff email roster, undated (adm.7/28/2021)
- Parent Ex. 63 Not offered
- Parent Ex. 64 Student grades, academic year 2021 (adm.6/15/2021)
- Parent Ex. 65 Student's class schedule, SY 20-21, undated (adm.6/22/2021)
- Parent Ex. 66 Letter from [REDACTED] 8/24/2021 (9/23/2021, withdrawn by Parent, offered by PGCPS, excluded 9/23/2021)
- Parent Ex. 66a PGCPS Procedure re: Student Attendance, Absence and Truancy, 8/26/2019 Not offered by Parent, offered by PGCPS (excluded 9/23/2021)
- Parent Ex. 67 Not offered

I admitted the following exhibits offered as evidence by the PGCPS, unless otherwise

noted:

- PGCPS Ex. 1 Consent for Assessment, 9/12/2018 (adm.5/5/2021)
- PGCPS Ex. 2 PWN, 9/14/2018 (adm.5/5/2021)
- PGCPS Ex. 3 Assessment Report, 10/8/2018 (adm.5/5/2021)
- PGCPS Ex. 4 Assessment Report, 10/29/2018 (adm.5/5/2021)
- PGCPS Ex. 5 Assessment Report, 10/30/2018 (adm.5/5/2021)
- PGCPS Ex. 6 IEP, 11/13/2018 (adm.5/4/2021)
- PGCPS Ex. 7 PWN, 11/15/2018 (adm.5/4/2021)
- PGCPS Ex. 8 Final Report Card, Grade 5, undated (adm.5/5/2021)
- PGCPS Ex. 9 English Language/Literacy Assessment, SY 18-19 (adm.4/12/2021)
- PGCPS Ex. 10 Mathematics Science Assessment, SY 18-19 (adm. 4/12/2021)
- PGCPS Ex. 11 Science Assessment, SY 18-19 (adm.4/12/2021)
- PGCPS Ex. 12 SLO Pre and Post RELA (Reading/English/Language Arts) 5, Reading, SY 18-19; MAP-R results spring, winter and spring SY 17-18, SY 18-19, SY 19-20; Partnership for Assessment of Readiness for College and Careers (PARCC) and Maryland Comprehensive Assessment (MCAP) scores, SY 17-18, SY 18-19; SLO-Math Pre-test and Post-test, SY 29-20; SLO Pre-RELA and Post-RELA in Writing and Math, SY 19-20 (adm.4/6/2021)
- PGCPS Ex. 13 Emails, 20 pages, 10/10/2018 through 1/13/2021 (p. 7, only, adm. 5/11/2021) (p.1, and pp. 3-5 adm.9/30/2021) (p. 11 adm.11/19/2021)

- PGCPS Ex. 14 Absent/Tardy report, Academic Year 2019 (adm.5/5/2021)
- PGCPS Ex. 15 [REDACTED] letter to Parent, 9/16/2019 (adm.5/5/2021)
- PGCPS Ex. 16 [REDACTED] letter to Parent, with enclosure, 10/23/2019 (adm.4/12/2021)
- PGCPS Ex. 17 IEP, 11/12/2019 (adm.5/5/2021)
- PGCPS Ex. 18 PWN, 11/12/2019 (adm.5/5/2021)
- PGCPS Ex. 19 Not offered
- PGCPS Ex. 20 Continuity of Learning Services Log, 4/7/2020 through 6/3/2020 (adm.4/6/2021)
- PGCPS Ex. 21 Individualized Continuity of Learning Plan (ICLP), 4/9/2020 (adm.4/6/2021)
- PGCPS Ex. 22 Individual Student Report, 9/14/2020 (adm.5/5/2021)
- PGCPS Ex. 23 6th Grade Report Card, undated (adm.5/5/2021)
- PGCPS Ex. 24 SY 19-20 6th Grade Absent/Tardy totals, undated (adm.5/5/2021)
- PGCPS Ex. 25 6th Grade Course Schedule, SY 19-20, Attendance printout 9/11/2019 through 3/10/2020, Grade Report by course, Quarter 1 and Quarter 2, SY 19-20, Local Test Results, 9/12/2019 through 3/3/2020, State Test Results, SY 16-17, SY 17-18, SY 18-19 (adm.5/5/2021)
- PGCPS Ex. 26 IEP 10/29/2020 (adm.5/5/2021)
- PGCPS Ex. 27 PWN, 10/29/2020 adm.5/5/2021
- PGCPS Ex. 28 School Attendance Information, grades 00K4 (2013) through 7 (2021), undated (adm.4/8/2021)
- PGCPS Ex. 29 Complaint, 1/11/2021 (adm.5/5/2021)
- PGCPS Ex. 30 [REDACTED] M.A., materials (adm.5/5/2021)
- PGCPS Ex. 31 [REDACTED] M.Ed., materials (adm.5/5/2021) pp. 7, 8 and 9 admitted again admitted 4/12/2021 (Tr. 880), (p. 10 admitted again 6/22/2021)
- PGCPS Ex. 32 [REDACTED] M.Ed., materials (adm.4/12/2021)
- PGCPS Ex. 33 [REDACTED] materials (adm.5/5/2021)
- PGCPS Ex. 34 Email, 3/25/2021 (adm.5/5/2021)
- PGCPS Ex. 35 [REDACTED] M.S., materials, 9/16/2020 through 3/25/2021, 10/26/2021, pages 4-6 substituted (pp. 1, 2, 4-6, and 7-9 adm. 11/3/2021, pages 11-14 adm. 11/8/2021, pp. 15-24 excluded 11/8/2021)
- PGCPS Ex. 36 [REDACTED] M.Ed., materials, 11/6/2020 through 3/25/2021 (adm.5/5/2021)
- PGCPS Ex. 37 [REDACTED] B.S., materials, 9/23/2020 through 3/26/2021 (adm.5/5/2021)
- PGCPS Ex. 38 Absent/Tardy report, 8/31/2020 through 4/9/2021 (adm.4/26/2021)
- PGCPS Ex. 39 PGCPS "Engage PGCPS" family newsletter materials and other public-access documents consisting of the following 216 pages: (adm.5/5/2021)
- A. Distance Learning Begins April 14, 4/3/2021 (pp. 1-11)
 - B. Schools Closed through March 27, 3/13/2020 (pp. 12-19)
 - C. 2019-20 Calendar Update, 6/1/2020 (pp. 20-21)
 - D. TAB 20-01, 3/2020 (pp. 22-39)
 - E. TAB 20-01 Supplement, 5/31/2020 (pp. 40-45)
 - F. TAB 20-02, 4/6/2020 (pp. 46-54)
 - G. TAB 20-04, 4/2020 (pp. 55-59)
 - H. TAB 20-05, 4/2020, revised 10/2020 (pp. 60-72)
 - I. TAB 20-06, 4/2020 (pp. 73-88)

- J. TAB 20-07, 4/2020, revised 10/2020 (pp. 89-101)
 - K. TAB 20-08, 5/2020 (pp. 102-112)
 - L. TAB 20-09, 6/9/2020, revised 10/2020 (pp. 113-138)
 - M. School Discipline Basics & Integrating Supports: A Focus on Students with Disabilities, 11/2020 (pp. 139-180)
 - N. ESY During the COVID-19 Pandemic, 2020 (pp. 181-184)
 - O. Supporting Students with Disabilities During COVID-19 and Afterwards, undated (pp. 185-206)
 - P. A Parent's Guide: Navigating Special Education during the COVID-19 Pandemic, 4/2020 (pp. 207-216)
- PGCPS Ex. 40 Parental Rights, Maryland Procedural Safeguards Notice, revised 3/2019 (adm.5/5/2021)
- PGCPS Ex. 41 CVs of the following persons:
- [REDACTED] M.Ed., undated
 - [REDACTED] M.A., Psy.S., (adm. 10/29/2021)
 - [REDACTED] Ed.D. (fact witness only)
 - [REDACTED] M.Ed. (adm.11/19/2021)
 - [REDACTED] M.A.
 - [REDACTED] M.A. Not offered
 - [REDACTED] M.Ed. (adm.9/23/2021)
 - [REDACTED] Ph.D.
 - [REDACTED] M.A. (adm.11/1/2021)
 - [REDACTED] M.S.
 - [REDACTED] M.S. (adm.11/3/2021)
 - [REDACTED] B.A.
 - [REDACTED] M.Ed. (adm.11/16/2021)
- PGCPS Ex. 41S CVs of the following persons:
- [REDACTED] Ed.S.
 - [REDACTED] M.Ed.
 - [REDACTED] M.Ed. (adm.11/9/2020)
 - [REDACTED] M.S.
 - [REDACTED] M.Ed. (adm.9/20/2021)
 - [REDACTED] Ed.D. (adm.9/23/2021)
 - [REDACTED] Ed.D. (adm.10/18/2021)
 - [REDACTED] B.S. (adm.11/12/2021)
 - [REDACTED] M.Ed. (not offered, fact witness only)
 - [REDACTED] R.N., M.S. (adm.9/23/2021)
 - [REDACTED] Jr. (adm.10/18/2021)
 - [REDACTED] M.S. (adm.11/4/2021)
- PGCPS Ex. 42 [REDACTED] Psy.D., report, 3/28/2021, with accompanying emails (adm.5/5/2021)
- PGCPS Ex. 43 Not offered
- PGCPS Ex. 44 Acknowledgment of Receipt of Parental Rights, document dated 9/12/18 excluded, documents dated 11/13/18 and 11/12/19, with attached Parents' Rights and Responsibilities in the IEP Process, admitted (adm.5/5/2021)
- PGCPS Ex. 45 Email 8/25/2020, with attached Consent Form, 7/23/2020 and Plan of Care 8/21/2020 (adm.11/4/2021)
- PGCPS Ex. 46 Not offered

- PGCPS Ex. 47 Transfer Evaluation Committee letter to Parent, 8/9/2016, (excluded 5/5/2021)
- PGCPS Ex. 48 Consulting Contract between counsel for Parent and Student and the [REDACTED] 3/22/2021 (adm.7/30/2021)
- PGCPS Ex. 48S [REDACTED] billing information, 5/24/2021 (adm.7/30/2021)
- PGCPS Ex. 49 [REDACTED] billing information, 4/1/2021 (adm.7/30/2021)
- PGCPS Ex. 50 Not offered
- PGCPS Ex. 51 Not offered
- PGCPS Ex. 52 Parent confirmation of receipt of information, 3/12/2019 (p. 1 of 52-page exhibit, excluded 5/21/2021, then p. 1 adm.9/30/2021). Parent Consent to Release of Information 2/25/2019, p. 2 of 52-page exhibit (adm.9/30/2021)
- PGCPS Ex. 53 Not offered
- PGCPS Ex. 54 Administrative Procedures, Student Transfers, 3/1/2028 (excluded 5/5/2021, then adm.9/24/2021)
- PGCPS Ex. 55 Not offered
- PGCPS Ex. 56 Withdrawn 11/3/2021
- PGCPS Ex. 57 Not offered
- PGCPS Ex. 58 [REDACTED] and [REDACTED] Nurse's Office records, 5/31/2012 through 3/13/2020 (adm.5/17/2021)
- PGCPS Ex. 58S [REDACTED] Nurse's Office records, 4/29/2016 through 2/5/2021 (adm.9/23/2021)
- PGCPS Ex. 59 Excerpt of Ethical Principles of Psychologists and Code of Conduct, American Psychological Association, printed 5/16/2021 (adm.7/30/2021)
- PGCPS Ex. 60 BASC-3 Administration by [REDACTED] Psy.D., Comparison of Parent and Teacher Rating Scales, undated (adm.7/30/2021)
- PGCPS Ex. 61 Sample BASC-3 score sheet, sample test example 4/28/2020 (adm.7/30/2021)
- PGCPS Ex. 62 [REDACTED] Psy.D., notes 4/15/2020, 5/14/2020, 6/8/2020; Diagnostic Assessment, 2/18/2020; Testing Behavioral Observations, 4/15/2020, 5/14/2020, 6/8/2020 (adm.7/30/2021)
- PGCPS Ex. 62A Not offered
- PGCPS Ex. 63 BASC-3, Parent Response Interpretation, 6/8/2020 (adm.7/30/2021)
- PGCPS Ex. 64 BASC-3, Parent Responses, 6/8/2020 (adm.7/30/2021)
- PGCPS Ex. 65 BASC-3 Teacher Rating Interpretation (adm.7/30/2021)
- PGCPS Ex. 66 BASC-3, Teacher Ratings, 5/14/2020 (adm.7/30/2021)
- PGCPS Ex. 67 Not offered
- PGCPS Ex. 68 Email string, [REDACTED] M.Ed., and Parent, 9/10/2015 through 6/15/2016 (adm. 9/20/2021)
- PGCPS Ex. 69 Email string, [REDACTED] M.Ed., to [REDACTED] M.Ed., (Principal, [REDACTED] and [REDACTED] (Secretary, [REDACTED] 3/8/2016, with response from Ms. [REDACTED] to [REDACTED] Ed.D., 3/9/2016; Referral Form, [REDACTED] Ed.D., to Prince George's County Department of Family Services, [REDACTED] [REDACTED] 4/29/2016; [REDACTED] Ed.D., home visit report, 5/4/2016 (adm.9/23/2021)
- PGCPS Ex. 70 Not offered
- PGCPS Ex. 71 Email 4/15/2020 [REDACTED] M.Ed., to Parent, 5/15/2020 (excluded 6/4/2021, adm. 9/23/2021, adm. again 11/9/2021)
- PGCPS Ex. 72 Google Maps printout, 6/3/2021 (adm.9/23/2021)

PGCPS Ex. 73 Not offered

PGCPS Ex. 74 Settlement offer, 4/25/2021 (adm., 6/22/2021, p. 1., paragraph 1, only, remainder excl.)

PGCPS Ex. 75 Not offered

PGCPS Ex. 76 [REDACTED] Ed.D., letter to Parent, 12/16/2019 (adm.9/30/2021)

PGCPS Ex. 77 [REDACTED] referral, 6/8/2021 (adm.10/18/2021)

PGCPS Ex. 78 Not offered

PGCPS Ex. 79 Not offered

PGCPS Ex. 80 Email from [REDACTED] Psy.D., with [REDACTED] [REDACTED] fee schedule, revised 12/2010 (adm.7/26/2021)

PGCPS Ex. 81 Administrative Law Judge's Ruling on PGCPS Second Motion to Compel and to Shorten Time, 6/9/2021 (adm.7/26/2021)

PGCPS Ex. 82 Not offered

PGCPS Ex. 83 11/29/2017 IEP Goals and Objectives Progress Reports, various dates 1/23/2018 through 10/25/2018 (adm.11/9/2021)

PGCPS Ex. 84 11/13/2018 IEP Goals and Objectives Progress Reports, various dates 1/18/2019 through 6/10/2019 (adm.9/30/2021)

PGCPS Ex. 85 Not offered

PGCPS Ex. 86 Quarterly progress reports, 11/12/2019 IEP (adm.9/30/2021)

PGCPS Ex. 87 Quarterly progress reports, 10/29/2020 IEP (adm.11/18/2021)

PGCPS Ex. 88 PWN, 12/16/2015 (adm.9/20/2021)

PGCPS Ex. 89 Not offered

PGCPS Ex. 90 Not offered

PGCPS Ex. 91 Email string between Mr. Krew and [REDACTED] Psy.D., 7/27/2021-7/28/2021 (adm.7/29/2021)

PGCPS Ex. 92 BASC 3 Parent Rating Scale and Teacher Rating Scale comparison, July 30, 2021 (adm.8/9/2021)

PGCPS Ex. 93 [REDACTED] Invoice, 7/31/2021 (adm.9/15/2021)

PGCPS Ex. 94 [REDACTED] Psy.D., report, (Student's sibling), 7/19/2020 (excluded 9/17/2021)

PGCPS Ex. 95 Not offered

PGCPS Ex. 96 PWN, 4/21/2021, pp. 1-2, and p. 3, IEP meeting sign-in sheet (adm.11/3/2021)

PGCPS Ex. 97 Not offered

PGCPS Ex. 98 [REDACTED] Psy.D., report, unnamed student, 9/2/2021 (excluded 9/17/2021)

PGCPS Ex. 99 Not offered

PGCPS Ex. 100 Not offered

PGCPS Ex. 101 Sealed file

PGCPS Ex. 102 [REDACTED] letter to Special Education Coordinator, 8/24/2021, with redactions (excl. 9/23/2021)

PGCPS Ex. 103 [REDACTED] Ed.D., email to [REDACTED] dated 9/22/2021 (adm.10/18/2021)

PGCPS Ex. 104 Not offered

PGCPS Ex. 105 Not offered

PGCPS Ex. 106 [REDACTED] News, 10/31/2019 (excl. 10/1/2021)

PGCPS Ex. 107 [REDACTED] brochure, undated (adm.10/18/2021)

PGCPS Ex. 108 IEP, 10/12/2021 (excl. 11/22/2021)

- PGCPS Ex. 109 Student's work samples from class of [REDACTED] M.Ed., class, undated (adm.11/9/2021)
- PGCPS Ex. 110 [REDACTED] M.Ed., email to Parent, 10/28/2021, with letter 10/5/2021, and PWN 10/12/2021 (excl. 11/22/2021)
- PGCPS Ex. 111 Not offered

Under the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.02C, "All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall be retained for purposes of judicial review." Exhibits marked for admission but not offered as evidence are retained for purposes of judicial review in a separate binder.