

██████████,

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE ABENA Y. WILLIAMS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-22-21250

DECISION

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STATEMENT OF THE CASE

On September 1, 2022, ██████████ and ██████████ (Parents), on behalf of their child, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by the Baltimore County Public Schools (BCPS) 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) (2021);² Md. Code Ann., Educ. § 8-413(d)(1) (2022);³ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

I held a remote prehearing conference on September 16, 2022, utilizing the Webex videoconferencing platform. I held a second remote hearing conference on October 17, 2022,

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 2021 volume.

³ All citations to the Education Article are to the 2022 bound volume and referred to as "Educ."

utilizing the Webex videoconferencing platform to address concerns regarding witness participation. Pamela Foresman, Esquire, participated on behalf of the BCPS. Holly L. Parker, Esquire, and the Parents participated on behalf of the Student.

On September 16, 2022, the parties informed me that they agreed to waive resolution. 34 C.F.R. § 300.510. On September 26, 2022, the parties were ordered to submit a copy of a Resolution Tracking Form or appropriate writing indicating that the resolution meeting was waived, and no agreement was reached as of September 16, 2022. *Id.* § 300.510(c)(1). The parties failed to do so. The regulations require a written agreement for such alterations to the thirty-day resolution period to be effective. *Id.* Because there was no written agreement provided, the ordinary timeframe applied. Under the applicable law, a decision in this case normally would be due by November 15, 2022, forty-five days after the due process complaint was filed. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Md. Code Ann., Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, as set out below, the parties requested hearing dates that did not allow sufficient time for consideration of the evidence and the issuance of a decision. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

The parties requested that I consider the five-day disclosure period and requested adequate time to file requests for production of documents, which are to be filed no later than thirty days before the start of a hearing; accordingly, we considered dates from October 19, 2022 onward.⁴ After reviewing my availability, I was unavailable to conduct the hearing on October 19, 2022 or October 20, 2022. I was available on October 21, 2022, October 24, 2022, and October 25, 2022. Counsel for the parties reviewed their calendars and noted multiple conflicts,

⁴ At the Conference, I erroneously informed the parties that thirty days from the day after September 16, 2022, is October 19, 2022. Thirty days from September 16, 2022, however, is Sunday, October 16, 2022. Thirty days, therefore, is the next business day prior to the weekend day, on October 14, 2022. *See* COMAR 28.02.01.13A. Despite the miscalculation, the timelines as noted were not adjusted.

notably Ms. Foresman’s unavailability as a result of hearings before OAH and the Maryland Civil Rights Commission on October 19, 20, 21, 24, and 25 of 2022.

The parties jointly requested that the timeline for issuing the decision be extended, noting the request for adequate time to request the production of documents, five-day disclosure, conflicts in scheduling, as well as the preference of having consecutive hearing days. For those reasons, I found good cause to extend the regulatory timeframe as requested. 34 C.F.R. § 300.515(c). The parties agreed that the decision would be issued within thirty days from the last day of hearings.⁵ The decision is therefore due on November 30, 2022.⁶

I held the due process hearing in person at the Hunt Valley location of the OAH on October 26, 27, 28, 31, 2022. Holly L. Parker, Esquire, represented the Parents. Pamela Foresman, Esquire, represented the BCPS.

Procedure 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) (2022); State Gov’t §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

1. Whether the Individualized Education Program (IEP) developed by the BCPS for the Student for the 2022-2023 school year was developed with consideration of

⁵ At the initial prehearing conference held on September 16, 2022, the parties agreed that the decision would be due thirty days after the hearing. The Parents expressed that the child would not be prejudiced by any timeline extension as the child is currently attending their non-public placement of preference. At the close of the hearing, Counsel Parker requested time to submit written closing arguments due to the length of the hearing and number of witnesses. Counsel Parker also asked to submit written closing arguments and a table of authorities after she had an opportunity to review the hearing transcript. After consulting with the OAH Information Technology unit, I advised the parties that the transcript would take around ten business days to be made available and I could not hold the record open that long. At that time, the parties agreed to provide short oral closing arguments (around ten minutes each) and requested four days or until the end of the week to submit written closing arguments and their table of authorities to supplement their oral closing. Finding good cause, I held the record open until November 4, 2022.

⁶ Thirty days after the last hearing day is Wednesday, November 30, 2022.

the information provided by the Parents and in accordance with the procedural requirements of the IDEA.

2. Whether the BCPS evaluated the Student in all areas of suspected disabilities during the 2021-2022 school year.
3. Whether the IEP developed by the BCPS for the Student for the 2022-2023 school year was reasonably calculated to provide the Student a free appropriate public education (FAPE).
4. If the BCPS failed to offer the Student a FAPE, does the [REDACTED] ([REDACTED]) provide the Student an appropriate educational program?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Parents:⁷

Parents Ex. A - [REDACTED], Ph.D., Curriculum Vitae, undated

Parents Ex. B - [REDACTED], Ph.D., Resume, undated

Parents Exs. 1 to 17 - NOT OFFERED

I admitted the following exhibits on behalf of the BCPS:

BCPS Ex. 1 - Psychological Evaluation, dated February 25, 2021

BCPS Ex. 2 - Speech Language Assessment, dated April 20, 2021

BCPS Ex. 3 - Letter of Agreement, dated July 21, 2021

BCPS Ex. 4 - NOT OFFERED

BCPS Ex. 5 - IEP Team Summary, dated January 18, 2022

BCPS Ex. 6 - [REDACTED] Attendance Report 2021-2022 school year and Second Trimester Report, dated December 21, 2021

⁷ At the request of the parties, I held the record open until November 4, 2022, to allow the parties to submit written closing arguments to supplement their oral closing arguments.

- BCPS Ex. 7 - Parent Notification of IEP Team Meeting, dated January 21, 2022
- BCPS Ex. 8 - Email from [REDACTED], dated February 3, 2022, and [REDACTED] Progress Report
- BCPS Ex. 9 - IEP Team Summary, dated February 8, 2022
- BCPS Ex. 10 - NOT OFFERED
- BCPS Ex. 11 - [REDACTED] School Tutoring Report, dated January 2022
- BCPS Ex. 12 - NOT OFFERED
- BCPS Ex. 13 - Educational Assessment, dated March 15, 2022
- BCPS Ex. 14 - Observation, performed by Ms. [REDACTED], Assistant Lower School Head, [REDACTED]
- BCPS Ex. 15 - NOT OFFERED
- BCPS Ex. 16 - NOT OFFERED
- BCPS Ex. 17 - IEP Team Summary, dated March 23, 2022
- BCPS Ex. 18 - Specific Learning Disability Team Report, dated March 23, 2022
- BCPS Ex. 19 - Psychoeducational Report, dated March 25, 2022
- BCPS Ex. 20 - NOT OFFERED
- BCPS Ex. 21 - NOT OFFERED
- BCPS Ex. 22 - NOT OFFERED
- BCPS Ex. 23 - Parent Notification of IEP Team Meeting, dated April 22, 2022
- BCPS Ex. 24 - NOT OFFERED
- BCPS Ex. 25 - IEP Team Summary, dated April 22, 2022
- BCPS Ex. 26 - IEP Team Summary, dated April 26, 2022
- BCPS Ex. 27 - Specific Learning Disability Team Report with signatures, dated April, 2022
- BCPS Ex. 28 - IEP, dated April 26, 2022
- BCPS Ex. 29 - Reading Assessment, dated July 11, 2022

- BCPS Ex. 30 - ██████████ Informal Tutoring Assessments, 2021-2022
- BCPS Ex. 31 - NOT OFFERED
- BCPS Ex. 32 - ██████████ Tutoring Report, dated May 2022
- BCPS Ex. 33 - IEP Team Summary, dated August 12, 2022
- BCPS Ex. 34 - IEP, dated August 12, 2022
- BCPS Ex. 35 - Email Correspondence between the Parents and ██████████, pp. 2, 6-24, 28, 45-47, dated January 17, 2022, January 21, 2022, February 3, 2022, February 8, 2022, March 2, 2022, March 16, 2022, March 18, 2022, March 22, 2022, March 25, 2022, March 28, 2022, March 31, 2022, April 30, 2022, May 1, 2022, October 5, 2022
- BCPS Ex. 36 - Email Correspondence from ██████████ to the Parents and ██████████, pp. 2, 4-13, dated March 1, 2022, March 11, 2022, March 16, 2022, March 22, 2022, March 24, 2022
- BCPS Ex. 37a - ██████████, Resume
- BCPS Ex. 37b - ██████████, Resume
- BCPS Ex. 37c - ██████████, Psy.D., Resume
- BCPS Ex. 37d - ██████████, Resume
- BCPS Ex. 37e - ██████████, Resume

Testimony

The Parents testified and presented the following witnesses:⁸

- ██████████, Ph.D., admitted as an expert in Clinical Psychology and School Psychology; and,
- ██████████, Ph.D., admitted as an expert in Neurolinguistics.⁹

⁸ The Parents subpoenaed the BCPS' witnesses and called the following witnesses during their case-in chief: ██████████, ██████████, ██████████, and ██████████ (see below).

⁹ The study of the relationship between brain development and language. (Dr. ██████████, Testimony).

The BCPS presented the following witnesses:

- [REDACTED], admitted as an expert in School Administration and K through 5 Education;
- [REDACTED], admitted as an expert in Early Childhood Education, Special Education, and the Orton Gillingham Method;
- [REDACTED], Psy.D., admitted as an expert in School Psychology;
- [REDACTED], admitted as an expert in General Education; and
- [REDACTED], School Psychologist at [REDACTED].¹⁰

STIPULATIONS

1. The BCPS provided the Parents with prior written notice (PWN) including copies of all IEPs for every team meeting regarding the 2022-2023 school year.
2. The BCPS provided the Parents with notices of the *Procedural Safeguards and Habilitative Services* pursuant to the IDEA.

FINDINGS OF FACT

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

1. The Student attended his neighborhood school, [REDACTED] ([REDACTED]), a school within the BCPS system, from kindergarten to second grade.
2. The 2019-2020 school year was the Student's first grade school year and the year in which his initial IEP was developed.
3. The Student received weekly tutoring outside of general education beginning September 2019 through March 2020.
4. The 2020-2021 school year was the Student's second grade school year.

¹⁰ Ms. [REDACTED] was not admitted as an expert because the BCPS did not offer her as an expert.

5. Due to the COVID-19 pandemic (pandemic), throughout the end of his first grade and second grade year, the student participated in virtual learning two days out of the week starting on March 15, 2020 and then four days out of the week, beginning May 10, 2020.

6. The 2021-2022 school year was the Student's third grade school year.

7. The 2022-2023 school year is the Student's fourth grade school year.

8. The Student is on the diploma track, pursuing a Maryland High School Diploma upon graduation.

Initial Psychoeducational Assessment – February 23, 2021

9. On February 23, 2021, while attending [REDACTED], [REDACTED], Ph.D., conducted a psychoeducational evaluation of the Student, during which she administered multiple tests, including the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV); Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V); Beery-Visual Motor Integration Test – Sixth Edition (VMI); Test of Non-Verbal Intelligence, Fourth Edition; General Ability Index (GAI); Verbal Comprehension Index (VCI); Visual Spatial Index (VSI); Fluid Reasoning Index (FRI); Working Memory Index (WMI); Kaufman Test of Educational Achievement, Third Edition (KTEA-3); Comprehensive Test of Phonological Processing, Second Edition; and had the Parents complete the Behavioral Assessment System for Children, Third Edition (BASC-3).

10. The Student easily separated from his Parent and remained a willing participant throughout the nearly three hour session. The Student is aware of his difficulties with reading and is insecure about his performance. He compares himself with his sister and makes disparaging remarks about his own abilities. He told Dr. [REDACTED], "I get really mad at my sister, she's a really good reader and I suck." The Student prefers in-person school, rather than online learning. (BCPS Ex. 1).

11. The Student's overall cognitive ability was similar to children his age.

12. Typically developing children learn to read between ages five and a half and eight and a half, when most children are most neurologically ready to learn to read.

13. The Student's performance on measures of reading and spelling fell well below average, with behaviors that were consistent with Dyslexia. The impact of the disruption in school due to the pandemic at a critical time in learning to read, and the underlying reading disability has had a significant negative impact on the Student. The Student needs intensive systematic instruction in order to close his education gap.

14. The Student's behaviors, as assessed by the BASC-3 are "consistent with typically developing children." (BCPS Ex. 1.). The student does not have "hyperactivity, aggressive behavior or conduct issues." (*Id.*). The Student has appropriately developed social skills, leadership qualities, adaptive skills, and good functional communication. The Parents, however, are concerned about the Student's "lack of confidence, and questioned both listening and attention issues that they believed may have impacted the Student's school performance." (*Id.*)

15. On February 25, 2021, Dr. [REDACTED] administered the WISC-V, which was used to assess the Student's performance across five areas of cognitive ability. The assessment revealed that the Student scored in the average range of the General Ability Index (GAI = 101), which provides an estimate of general intellectual ability that is less reliant on working memory and processing speed.

16. The Student scored above average on the Verbal Comprehension Index (VCI = 113) which was higher when compared to his performance on the Visual Spatial Index (VSI = 86), Fluid Reasoning Index (FRI = 94), and Working Memory Index (WMI = 82) tasks. Overall, the Student worked slowly on the processing speed index tasks (PSI = 72), one of his weakest performance areas during the assessment.

17. The Student's FRI skills were similar to children his age and were a relative strength compared to his performance on working memory tasks.

18. As of the date of the initial evaluation, the Student's core composite reading standard score (SS) of 69 fell two standard deviations below the mean. On the KTEA-3, the Student received a SS of 69 in letter word recognition, which placed him in the very low range, with a grade equivalent (GE) of kindergarten and six months.

19. The Student scored a SS of 77 for reading comprehension, with a GE of first grade and five months.

20. The Student received a SS of 74 for nonsense word decoding, in the low average range, with a GE of less than first grade. The Student also scored a SS of 87 for math computation, in the more than average range, with a GE of second grade and five months. The Student also received a SS of 77 and 85, in spelling and listening comprehension, respectively with a GE of first grade and five months.

21. Dr. [REDACTED]'s evaluation outlined academic recommendations, recommendations for learning opportunities at home, and progress monitoring recommendations.

22. The Student was identified as having a specific learning disability (SLD), namely Dyslexia.

23. Dr. [REDACTED] made the following recommendations:

- The Student's parents were encouraged to investigate schools such as [REDACTED] that are designed to provide the intensity of instruction across curriculum that youngsters who struggle with reading and are dyslexic require in order to be habilitated
- It is critical that the Student for the remainder of the school year receive systematic, phonic instruction using an Orton Gillingham (OG)¹¹ methodology on a daily basis

¹¹ OG is a method of instruction that is multisensory and systematic, developed in the 1940s by Samuel Orton to address children who have Dyslexia. The method builds on itself and is explicit as it teaches in a systematic way. When teachers employ this method, the progression of the Student can be tracked. (Testimony, Dr. [REDACTED]).

- The Student’s parents need to continue to read to him to develop his language and vocabulary and they should routinely incorporate books.
- The Student should engage in shared reading with his parents working below his instructional level at an early kindergarten level which would include some rhyming books such as “Hop on Pop” and phonic readers such as “Bob’s” books.
- The Student’s parents should use a program like “Handwriting Without Tears” or any standard writing program...with daily opportunity for the student to practice making his letters tracing and using directional arrows to ensure that he is writing from the top down.
- The Student might benefit from some speech therapy directed at improving a persistent lateral lisp and suddenly addressing a very mild stuttering pattern. 30 minutes once a week should be sufficient.
- Math should be incorporated into daily routines to continue to develop the Student’s relative strengths in number sense. . .
- The Student’s progress needs to be closely monitored and formal reading levels formally assessed and quantified to evaluate the benefit that he has had from instruction

(BCPS Ex. 1, pp. 9, 10).

Student Transfer to [REDACTED] and the [REDACTED] Program

24. During the Student’s second grade year at [REDACTED], an IEP team was convened and by virtue of a settlement agreement between the BCPS and the Parents, the Student was placed at [REDACTED] for the 2021-2022 school year, or his third-grade year, on or around September of 2021.

25. The Student currently attends [REDACTED] and is in the fourth grade. All Students at [REDACTED] have a learning disability and attend in-person classes in a small group setting.

26. [REDACTED] is a school without grade levels; instead, students are grouped into classes by skill level, and loosely around their chronological age. (BCPS Ex. 6, p. 7).

27. At [REDACTED], the Student receives fifty minutes of daily instruction in reading in a one-to-one or two-to-one setting, in a special education environment.

28. [REDACTED] has a team of eight speech-language pathologists that serve numerous roles including teaching, co-teaching, mentoring in the classroom, tutoring, providing direct speech and language therapy services, and constant collaboration amongst staff.

29. [REDACTED] provides support to Students across all disciplines including routine repetition of directions, pairing auditory information and directions with visual input and supports; providing a visual representation of the desired end product; frequent checks for understanding; asking students to restate or paraphrase the directions and/or content information; consistent use of homework planners and color coded folders for each subject; modification and differentiation of homework, classwork, and assessments, including extra space and fewer items on a page; extended time allowing students to work their way through academic tasks at their own pace.

30. A tier I intervention refers to the instruction a student receives in the classroom. A tier II intervention refers to additional supports that a Student may receive in a classroom outside of the general instruction. A tier III intervention refers to more intensive, explicit, systematic, and research-based instructional supports using a variety of strategies.

31. At [REDACTED], the Student receives a tier III reading intervention which includes instruction on phonemic awareness, sight words, and phonics skills, using the OG method, a method in which all teachers at [REDACTED] are trained. As such, the Student receives phonological instruction throughout the day in addition to specialized instruction.

32. At [REDACTED], the Student also receives explicit, intensive evidence-based instruction in decoding and encoding skills using the Phono-Graphix method. The Phono-Graphix method is a speech to print teaching method that involves getting children to build their own filing system to encourage learning rather than memorization.

33. The Student also receives phonographic instruction in his language arts class in a fifty minute session and receives tutoring for an additional fifty minutes.

34. Additionally, [REDACTED] provides consistent instruction in reading and writing using the Empower program, which involves mind-mapping and includes graphic organizers.

35. The class sizes at [REDACTED] are seven to eight students to one teacher and the Student only receives small group instruction with other students who have similar learning disabilities.

36. During his second trimester, the Student made steady progress at [REDACTED]. His written work improved, he volunteers to read aloud in class, and is an active participant in all classroom activities. At times he writes run on sentences, and teachers continued to focus on this with the Student throughout the year. (BCPS Ex. 6, p. 4).

37. In his math class, the Student advocates for himself; he has requested more time to complete a problem and to go over the directions again.

38. In his social studies class, the Student was quick to participate and answer questions and worked well both independently, and in a group setting.

39. In his science class, at times, the Student required some additional support with understanding the concepts that were covered, however he puts forth persistent effort to learn.

2022-2023 IEP

40. On January 18, 2022, four months into the Student's first year at [REDACTED], an IEP team meeting was convened by the BCPS by video conference to review the Student's progress at his nonpublic placement and to consider the documents provided by the Parents, which included the Psychoeducational Assessment conducted by Doctors [REDACTED] and [REDACTED], dated February 25, 2021; [REDACTED] Attendance Report, dated January 14, 2022; [REDACTED] Ungraded

Program Justification; [REDACTED] School Second Trimester Report, undated; and [REDACTED] Program Description, undated; and an [REDACTED] Tutoring Report, dated January 2022.

41. The Parents, [REDACTED] - Assistant Principal at [REDACTED], [REDACTED] - General Educator, [REDACTED] - Special Educator, and Holly Parker - the Parents' attorney, attended the January 18, 2022 IEP team meeting and participated in the discussions.

42. At the January 18, 2022 meeting the IEP team agreed that there was adequate information to determine eligibility for special education supports and services. The IEP team determined that the Student was eligible as a Student with a SLD and that no further data or assessments were needed.

43. On February 3, 2022, the Parents forwarded a questionnaire filled out by the staff at [REDACTED] to [REDACTED], Administrative Assistant for [REDACTED] of [REDACTED].

44. The Student is able to retell, paraphrase, and explain information provided by a speaker with eighty-five to ninety percent accuracy. (BCPS Ex. 8, p. 4).

45. The Student understood the concept of addition or subtraction problems with regrouping; however he did not consistently add and subtract within one hundred, use strategies based on place value, properties of operations, and/or the relationship between addition and subtraction. (BCPS Ex. 8, p. 5).

46. When two-step word problems are read to the Student, he is able to set up the problem to solve it "about fifty percent of the time, depending on the operation." (*Id.*).

47. The Student has strengths in his reading, particularly in applying decoding strategies to segment and blend sounds in single syllable words, phoneme manipulation (beginning and ending sounds), reading comprehension (accurate predictions, inferences, story elements, sequencing events, etc.). (*Id.*).

48. The Student exhibited strengths in his writing, particularly mapping (say and write) of single syllable words with four to six sounds more accurately in isolation than in the context of a sentence or paragraph. (*Id.*).

49. The Student's needs are in reading, particularly code knowledge, exposure to and practice with the advanced code (long vowel and less common spelling patterns) both in isolation and in context, phoneme manipulation, and oral reading fluency. (*Id.*).

50. Depending on the length and complexity of the directions, the Student has a ninety percent accuracy level with literal comprehension. His accuracy decreases with more lengthy and complex directions. (*Id.*).

51. In January 2022 the Student demonstrated growth in his phonological awareness skills, as he was able segment and blend sounds both orally and in the context of his reading. "He was also able to identify the number of syllables in a given word and had a good understanding of the difference between them. With practice and the support of letter tiles, the Student is also becoming more adept at manipulating sounds and words." (BCPS Ex. 11).

52. The Student demonstrated growth in his ability to use known sound pictures when writing sentences. The Student also recognized more words automatically which has led to more fluent reading.

53. On February 8, 2022, after the BCPS-based team members determined they did not have sufficient information to develop the Student's Present Levels of Academic Achievement and Functional Performance (PLAAFP), the IEP team, convened to discuss the need to request additional assessments for the re-evaluation process. The BCPS-based members of the IEP team determined that further assessments needed to be completed because the current assessments were from one year ago. The IEP team requested educational assessments, a classroom observation, and informal assessments "to obtain baseline levels and data to write

student specific goals, services, and aids that reflect present academic performance, skills, and areas of need.” (BCPS Ex. 13, p. 2).

54. On February 8, 2022, the IEP team did not agree to test the Student for executive functioning but instead agreed to assess the Student for social-emotional concerns using a rating scale. The Student was referred for a psychological assessment due to the Parents’ concerns about the Student’s lack of confidence and prior disparaging remarks about himself, and the potential for the transition from the non-public placement to the public placement to have a detrimental impact on the Student. The Parents agreed. (BCPS Exs. 9, 10).

The BCPS Educational Assessment for 2022-2023 IEP

55. On February 18, 2022, [REDACTED] of BCPS, administered testing using the Woodcock-Johnson IV Test of Achievement (WCJ-IV) as part of an independent educational assessment of the Student to determine his current levels of performance in reading, mathematics, and spelling or written language. At the time of testing, the Student was in the third grade, and was nine years, 8 months old.

56. On the WCJ-IV, the Student received a Standard Score (SS) of 68 in letter word identification, which placed him in the very low range.

57. In sentence reading fluency, the Student received a SS of 68, which placed him in the very low range. In passage comprehension, the Student received a SS of 66, which placed him in the low performance range.

58. The Student received a SS of 75 on word attack, scoring in the low range. He also scored in the low range in oral reading. While he was able to read simple sentences containing three to five words with decodable and high frequency sight words with minimal error, as the sentences grew in length and contained words that were more advanced, the Student struggled with decoding multiple words in a sentence.

59. The Student scored in the low average range for reading, with a SS of 64.¹²

60. In mathematical calculation, the Student received a SS of 93, scoring in the average range for applied problems. He struggled when he was given math equations involving fractions and decimals.

61. The Student scored in the average range for math fluency. Out of the fifty problems that the Student completed in the three-minute limit, the Student correctly answered forty-eight problems. His errors were due to misreading the sign, such as reading an addition equation as a subtraction equation. The Student's applied problems score was in the average range.

62. The Student scored in the very low range in spelling and sentence writing fluency.

63. The Student's academic skills are developing in the low range, and academic application skills are developing in the average range and according to age level expectations. (BCPS Ex. 17, p. 1).

64. The Student has several strengths including "his ability to perform mathematic operations, involving addition and subtraction with and without regrouping, determining a single operation to solve a story problem, and solving basic multiplication and division equations." (*Id.*).

65. The Student has several weaknesses in his ability "to decode, pronounce, and spell phonetically and orthographically regular and nonsense words." (*Id.*).

66. Ms. [REDACTED] suggested the following recommendations to improve the Student's reading:

- Small group instruction to build phonics skills, sight words, oral reading/fluency, and comprehension
- Explicit instruction on the connection between letters and sounds

¹² Ms. [REDACTED] testified there was an error on her evaluation report that indicated the Student scored a raw score of 54 in reading, rather than 64. Despite the error, she testified credibly that 64, is still within the low range.

- Provide multiple reading opportunities to read same text
- Chunking of text
- Listening to text
- Provide additional time for reading
- Pictures to support text
- Modified or altered assignments
- Multisensory approach to phonics or reading to help connect language with letters and words

67. Ms. [REDACTED] made the following recommendations for the Student's writing:

- Writing checklists, success criteria, rubrics
- Allow the use of spelling aids, such as "Quick Words" book or "Word Wall"
- Sentence starters
- Word banks
- Graphic organizers
- Checklists, success criteria, rubrics
- Use of technology to give verbal responses
- Provide additional time for writing
- Dictating responses, copying responses after dictating
- Modified or altered assignments

[REDACTED] In-Class Observation

68. On a date uncertain, the Student was observed by Ms. [REDACTED], the Assistant Lower School Head at the [REDACTED]. Ms. [REDACTED] memorialized her observations in writing, which were read to the IEP team.

69. The Student was observed in his social studies class and sat at his assigned table which was occupied by one other student who sat next to him. The students had a group discussion about current events which led to a discussion about what is happening in Ukraine.

70. At the beginning of the lecture, the teacher, Ms. [REDACTED], showed the class a map of Russia and Europe and pointed them out on the map. The Student called out and asked where Ukraine was located and Ms. [REDACTED] pointed it out. Ms. [REDACTED] then reminded the students to raise their hand before speaking. The Student was focused and participated throughout the class discussion while remaining on topic.

71. Ms. [REDACTED] did not have an opportunity to observe the Student's "basic reading skills, written expression, math calculation, math reasoning, visual and auditory discrimination, organization work habits, and task completion" in his social studies class. (BCPS Ex. 14).

72. The Student has some problems with listening comprehension and speech, as he called out often and stuttered. The Student did not have any problems with "oral expression, attention, social interaction, motivation and participation." (*Id.*).

March 23, 2022 IEP Team Meeting

73. On March 23, 2022, the team met virtually and determined that the Student's reading comprehension, basic reading skills, reading fluency skills, and written expression are in the low range. The team also noted that the statistically significant difference between the Student's math and reading skills, is consistent with a diagnosis of Dyslexia.

School Psychologist Assessment of Student for 2022-2023 IEP

74. Based on concerns raised by Dr. [REDACTED] and the Parents, the IEP team decided to assess for social, emotional, and behavioral concerns using the BASC-3 rating scale. On March 25, 2022, [REDACTED], School Psychologist assessed the Student and had the Parents and two of the Student's teachers at [REDACTED] fill out a BASC-3. Based on the Parents' responses, the T-scores of all composites fell within the average range and did not reflect any areas of concern. Based on the teachers' responses, there were no elevations in either the at-risk or clinically significant range. The results of the assessment were shared with the IEP team.

75. The BCPS provided the Parents with a draft of the proposed IEP prior to the IEP meeting, which was scheduled for April 22, 2022. Portions of the document were pre-filled to enable the printing and saving of the document.

76. On April 22, 2022, the team met virtually to discuss the results of the Student's psychological assessment. There, the team agreed that the Student was properly identified

pursuant to the IDEA as having a Specific Learning Disability (SLD) and required special education related services. The team also determined that the Student would work towards a diploma. Due to the fact that the proposed IEP was not sent to the family within a five-day period, the team agreed to reschedule the meeting for April 26, 2022.

April 26, 2022 IEP Team Meeting

77. On April 26, 2022, the IEP team reconvened. The IEP team cited the Student's first grade reading level which was significantly below his third grade level. Ms. Parker expressed the belief that the IEP should be utilized to close the gap, and the school team explained that there is no data to support that the Student would make the expected progress in one year.

78. The team also determined that the nature and severity of the Student's disability warranted an extended school year (ESY).

79. The Parents expressed their disagreements which were memorialized in the Disagreement Form attached to the IEP. The Parents disagreed with the following recommendations of the IEP team: (1) the consideration and determination for LRE placement to be within the BCPS at [REDACTED] and (2) proposed serves on the Students proposed IEP dated April 26, 2022.

80. The IEP team added small group as a testing accommodation to the Student's IEP.

81. The IEP team identified the areas affected by the Student's disability as follows:

- Academic – Reading; and
- Academic – Written Language Expression.

82. All members of the IEP team agreed with the proposed IEP's statement of the Student's PLAAFP.

83. In the PLAAFP portion of the Student's IEP, it is noted that the Student's performance on single word reading is at a GE to the middle of Kindergarten and his nonsense word decoding is below grade level, pursuant to the KTEA-3.

84. In the area of reading, the Student's instructional grade level performance in listening comprehension is grade one and a half. Based on results from the Fountas and Pinnell Benchmark Assessment (F&P), the Student's independent comprehension is a level D which is a grade level equivalent to the beginning of the first grade.

85. The Student scored in the very low range for Passage Comprehension, pursuant to the WCJ-IV.

86. In written language expression the Student is in the early stages of learning to map sound to print and an instructional grade level equivalent of one and a half pursuant to the KTEA-3.

87. The IEP team considered the recommendations made in Dr. [REDACTED]'s February 25, 2021 Psychoeducational Assessment and incorporated them in the IEP.

88. The IEP team determined that the Student's SLD in reading affects his involvement in the general education curriculum in the areas of reading, decoding, reading fluency, encoding, and writing. Based on informal and formal assessments along with school-based reports, the Student's reading skills are similar to that of a first grade student, which significantly impacts his ability to read grade-level texts, and leads to difficulty comprehending material across all content areas. This, in turn, affects the Student's ability to access grade-level content.

89. The IEP team considered the Student's need for specialized instruction along with the use of a human scribe to assist with writing assignments and prompts. The IEP team determined the Student does not require assistive technology devices or services.

90. The IEP team determined that the Student required supplementary aids, services, program modifications, supports, and instructional accommodations.

91. With regard to instructional accommodations, the Student requires:

- participation in a tier III reading intervention, which includes instruction in phonemic awareness, sight words, and phonics skills;
- small group environment during assessments due to his Dyslexia;
- text to speech for mathematics, science, and government assessments;
- text to speech for English Language Arts (ELA), including items response options, and passages;
- Mathematics, science, government response human scribe;
- English, Language, Arts (ELA) and literacy human scribe; and
- Extended time to complete assessments and to be able to answer questions completely.

92. While the April 26, 2022 proposed IEP provided for a tier III reading intervention, it did not specifically denote a program.

93. The April 26, 2022 proposed IEP provided for multiple instructional supports including: weekly use of word bank to reinforce vocabulary and/or when extended writing is required; daily repeating and/or paraphrasing of information daily; daily use of organizational aids (charts, visuals, models); daily use of multisensory strategies (kinesthetics, visual, and auditory); daily provision of a grammar and proofreading checklist, so the Student is able to review and revise written or scribed responses.

94. The April 26, 2022 proposed IEP provided for program modifications including daily chunking of texts to assist with the Student's weakness in the area of reading, daily use of pictures to support reading passages whenever possible, and daily strategies to support math comprehension.

95. The daily chunking of texts allows the Student to process and absorb new information more effectively. The use of pictures supports his reading because his reading is significantly below grade level.

96. With regard to mathematics, which are a strength for the Student, the April 26, 2022 proposed IEP provided for story problems or math equations that require written problems to be read to the Student so that he can fully comprehend and solve the problem.

97. The team determined that the Student required annual goals and objectives to address the Student's cognitive and academic deficits in math calculation, math problem solving, reading comprehension, speech and language expressive language, speech and language receptive language, speech and language pragmatics, written language expression, written language mechanics, and executive functioning.

98. On April 26, 2022, the team determined that the following annual goals:

- Reading (Sight Word Fluency): By April 2023, [the Student] will recognize and apply grade-level phonics and word analysis skills in decoding the Dolch third grade high frequency sign words with 90% accuracy. At the time of the IEP, his baseline was 51% accuracy.
- Reading (Fluency and Comprehension): By April 2023, [the Student] will read and demonstrate proficient comprehension with a Level J (a beginning of second grade level text with 90% accuracy). At the time of the IEP, his baseline was Level E with 94% accuracy.
- Reading (Phonics): By April 2023, when given a list of ten one-syllable real and nonsense words that contain vowel-consonant-e, common long vowel patterns (ee, ea, ai, ay, igh, ue, oa, oe), and r-controlled vowel (ar, er, ir, or, ur), the Student will read aloud each word correctly producing cognizable words for six out of ten words containing these letter patterns. At the time of the IEP, his baseline was 0%.
- Reading (Phonics): By April 2023, when given a list of ten one-syllable real words that contain short vowels, consonants "b" and "d," digraphs and consent blends, [the Student] will read aloud each word correctly producing recognizable words for nine out of ten words containing these letter patterns.
- Mathematics (Vocabulary): By April 2023, after being presented with grade-level mathematics content, [the Student] will demonstrate understanding of content-

specific vocabulary with 80% accuracy in two out of three trials as evidenced by student work samples, class discussions, and/or teacher recorded data.

- Writing (Encoding): by April 2023, when given a verbal list of 10 one-syllable real words that contain vowel-consonant-e, common long vowel patterns (ee, ea, ai, igh, ue, oa, oe), and r-controlled vowels (ar, er, ir, or, ur), the student will correctly spell eight out of ten words correctly. At the time of the IEP, his baseline was 0%.
- Writing (Mechanics): by April 2023, [the Student] will use a grammar and editing checklist to review and revise a response that was scribed to respond to a grade-level prompt with 90% accuracy.

(BCPS Ex. 28).

99. At the April 26, 2022 IEP team meeting, the Parents agreed with five of the seven annual goals developed to address the Student's deficits. The Parents disagreement were in regard to the following:

- The IEP team identified a reading comprehension goal of J, which equates to the end of first grade. The parents disagreed and believed the annual assessment should not be the only way the Student's progress was measured, and highlighted the need to review the Student's standard scores and informal assessments.
- The Parents also noted that as it relates to the Student's math vocabulary goal, their goal is to not have the teacher read math problems to the Student so that he can work towards reading on his own.

100. The IEP team agreed to the following supplementary aids and services:

- [The Student] requires one one-hour session per day outside of the general education classroom to address his needs in phonics and encoding. The student will participate in Tier III phonics and phonemic awareness program that focuses on a direct, explicit, multisensory, structured, sequential, diagnostic, and a prescriptive approach. The students phonics/decoding and encoding goals will be addressed during this service.
- [The Student] requires one thirty-minute session per day outside of the general education classroom to participate in an intervention that focuses on reading fluency, comprehension, and writing.
- [The Student] will receive one hour of special education services in the general education classroom each day. This will consist of thirty minutes of special education inside the classroom to directly support his reading goal and his

progress in the classroom and thirty minutes of special education services inside the classroom to directly address his writing progress and goals.

- During the Extended School Year (ESY), [the Student] will receive one one-hour session per day outside of the general education classroom to address his needs in phonics and decoding in an intervention that engages in systematic multisensory phonics instruction to address his decoding and fluency goals. He will also receive one thirty-minute session per day to participate in an intervention that focuses on reading fluency, comprehension, and writing. During any remaining time in the Student's summer day, the student will work on supplementary activities focused on academic skills.

101. The Parents urged that the Student required research-based written language remediation alongside his general education work. In response, the BCPS-based team members explained he is eligible for tier III interventions and noted the BCPS has the means to support the student's writing deficits. The Parents emphasized the need to have teachers who are trained in the OG method or other tier III interventions.

102. The BCPS-based members of the IEP team determined the Student would receive specialized instruction in the general education inclusion setting, in which the Student would be in the general education environment at least forty percent to eighty percent of the school day.

103. The Parents disagreed and emphasized the need for the Student to remain at [REDACTED] where he is receiving specialized education throughout the day.

July 11, 2022 Psychoeducational Assessment #2

104. On July 11, 2022, the Student was evaluated a second time by Dr. [REDACTED] specifically to quantify his academic progress in reading and spelling during the 2021 to 2022 academic year.

105. Dr. [REDACTED] readministered the KTEA-3 using the reading and spelling subtests. She did not assess the Student's math progress. Additionally, the Decoding Skills test, Basal Vocabulary, and Phonic Patterns tests were administered. At the time of the assessment, the Student was a rising fourth grader and had attended [REDACTED] for one school year.

106. The Student's standard scores on measures of letter word recognition, or single word reading, and reading comprehension were unchanged from the February 2021 assessment and the results from the BCPS' administration of the WCJ-IV were similar.

107. The raw scores on the KTEA-3, however reflected "notable gains." The letter-word recognition subtest raw score of twenty-eight increased to a raw score of thirty-six. The grade equivalent improved from a kindergarten, sixth month to a first grade, second month. (BCPS Ex. 29, p. 2).

108. The Student made statistically significant gains on measures of nonsense word decoding, with nearly a twenty point standard score gain with performance now falling within the average range as reflected by his SS of 93. (*Id.*).

109. Throughout the various assessments that have been administered, the Student has not exhibited any adaptability or socialization issues.

August 12, 2022 IEP Team Meeting

110. On August 12, 2022, the IEP team reconvened to review assessment data, a May 2022 tutoring report from ██████████, and the Student's overall progress. The team reviewed Dr. ██████████'s report in which she determined that the Student's raw scores and grade equivalence "clearly indicates that he has had benefit and made progress from the systemic, explicit instruction he has received at ██████████. Though...he is still well below where he should be as a rising fourth grader..." (BCPS Ex. 33).

111. The team reviewed Dr. ██████████'s recommendation that the Student remain at ██████████ in a program that would provide "not only systematic and explicit phonic instruction, but delivered with intensity, particularly ten to fifteen hours per week of direct instruction." (BCPS Ex. 34).

112. The Student has progressed with math since attending ██████████. (BCPS Ex. 32).

113. On August 12, 2022, Ms. Parker referenced the May 2022 [REDACTED] tutoring report. Other IEP team members noted they were unaware of the report. During the meeting, Ms. Parker emailed the May 2022 tutoring report to IEP team members who took time to review and understand the report. (*Id.*).

114. The August 12, 2022 IEP provides that the Student will receive special education inclusion support in math. The IEP also includes the following supports for the Student at [REDACTED]: push-in service in a one-to-one or two-to-one setting, and pull-out services in a one-to-one session.

115. The August 12, 2022 IEP provides for one hour of intensive phonics instruction and additional services to address reading fluency and comprehension. The BCPS-based team members purposely did not identify the specific tier III intervention program so as to provide some flexibility in the administration of the program. The BCPS, however, utilizes a number of tier three programs for Students, including the OG method.

116. The August 12, 2022 IEP includes organizational aids, graphic organizers, word banks to extend vocabulary when writing is required, proof reading checklists, pictures to support passages, strategies to support comprehension, editing checklists, and verbal support.

117. The August 12, 2022 IEP provides for the Student to be supported in all content areas by the special educator and general educator.

118. The Student does not have speech needs and does not need speech services.

119. The August 12, 2022 IEP provides an additional thirty minutes to work on comprehension, fluency, and writing to support what he is working on in phonics. The IEP team agreed to increase the thirty minutes to forty-five minutes.

120. The August 12, 2022 IEP included the following revisions to the April 26, 2022 proposed IEP:¹³

- Fifteen minutes added to comprehension, writing, reading fluency (increase from thirty minutes to forty-five minutes);
- Clarifying language added to Reading (Phonics) Goal;
- Addition to Supplementary Aids to include check-ins with the student to address; any concerns regarding his transition from [REDACTED];¹⁴
- Math supports to include a preview of vocabulary words which would be added to the Student's push-in general education portion, which is one and a half hours each day;¹⁵
- Vocabulary preview was added to Supplementary Aids; and
- Addition of reading and spelling of sight words and high frequency words and the inclusion of encoding writing and writing mechanics goals.

DISCUSSION

Burden of Proof

The Parents assert that the Student was denied a FAPE based on procedural violations of IDEA, and BCPS' failure to develop an IEP that was reasonably calculated to provide the Student a FAPE. The Supreme Court has placed the burden of proof in an administrative hearing under the IDEA upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v.*

Anne Arundel Cnty. Police Dep't, 369 Md. 108, 125 n.16 (2002).

¹³ (BCPS Ex. 34).

¹⁴ At the team meeting, Dr. [REDACTED] noted this would not be necessary if the Student remained at [REDACTED]. (BCPS Ex. 33).

¹⁵ Dr. [REDACTED] noted the Student would struggle with reading in all of his classes. (BCPS Ex. 33).

In this case, the Parents are seeking relief and bear the burden of proof to show that the BCPS failed to develop an IEP for the 2022-23 school year in accordance with the procedural requirements of the IDEA, failed to evaluate the Student in all areas of suspected disabilities during the 2021-2022 school year, failed to develop an IEP reasonably calculated to provide the Student with a FAPE for the 2022-2023 school year, and that placement is proper at [REDACTED]. COMAR 28.02.01.21K(1), (2)(a).

Legal Framework

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

FAPE is, in part, furnished through the development and implementation of an IEP for each disabled child. *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 999 (2017); *Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181-82 (1982). COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The goals, objectives, activities, and materials must be adapted to the needs, interests, and abilities of each student. 20 U.S.C.A. § 1414(d).

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

While *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: To meet its substantive obligation

under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* at 207, 102 S. Ct. 3034. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. *Id.* at 208-209, S. Ct. 3034. Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.* at 206-207, 102 S. Ct. 3034.

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. *See* §§ 1414(d)(1)(A)(i)(I)-(IV). This reflects the broad purpose of the IDEA, an "ambitious" piece of legislation enacted in response to Congress' perception that a majority of handicapped children in the United States 'were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to "drop out."' *Rowley*, 458 U.S., at 179, 102 S. Ct. 3034 (*quoting* H.R. Rep. No. 94-332, p. 2 (1975)). 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.*" §§ 1401(29), (14) (emphasis added).

Andrew F., 137 S. Ct. at 998-99.

Notwithstanding the above language in *Andrew F.*, providing a student with access to specialized instruction and related services does not mean that a student is entitled to "[t]he best education, public or non-public, that money can buy" or all the services necessary to maximize educational benefits. *Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (*citing Rowley*, 458 U.S. at 176). It does, however, require the State to provide personalized instruction with sufficient support services to permit the student to benefit educationally, in light of his circumstances.

In order to assist IEP teams with the evaluation of students, the MSDE issued a Technical Assistance Bulletin to provide a brief overview of the relevant evaluation procedures. In accordance with 34 C.F.R. § 300.304 and COMAR 13A.05.01.05B(3), it noted:

The IEP team must determine what special education and related services, supplementary aids and services, modifications, and accommodations are appropriate based on the individual student's needs. A SLD, regardless of the underlying condition (e.g. perceptual disability, brain injury, minimal brain dysfunction, dyslexia, or developmental aphasia), may manifest itself in a number of ways, with varying degrees of severity. Therefore, the IEP team must rely upon multiple sources of information and data, and plan for specially designed instruction that targets the identified needs of the student. A determination that a student fits into a particular disability category – SLD or otherwise – does not dictate a particular placement, nor does it guarantee a particular set of services. No single measure or assessment can be used as the sole criterion for determining an appropriate educational program for a student.

In addition to the IDEA's requirement that a disabled child receive appropriate educational benefit, the child must be placed in the LRE to achieve FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i) and 300.117. Yet, placement in the general education environment may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. 34 C.F.R. § 300.114(a)(2)(ii). In such a case, a FAPE might require placement of a child in a nonpublic school setting that would be fully funded by the child's public school district.

Finally, when making decisions regarding the appropriate placement, the issue is not whether another school is better or even as appropriate as the school offered by the school district, but whether the school district has offered a FAPE. The Court has upheld the right of the parents to unilaterally place a learning-disabled child in a private school and to recover reimbursement from the local educational agency only when the educational program offered by

school authorities is not reasonably calculated to provide a FAPE. *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359 (1985).

The Contentions of the Parties

The Parents' attorney filed a comprehensive complaint on behalf of the Student and the Parents. The Parents complained and subsequently argued that the BCPS did not develop an appropriate IEP and placement for the Student for the 2022 to 2023 school year. The Parents referenced a previous settlement agreement that provided for the Student's placement at [REDACTED] and reimbursement of tuition for the 2021-2022 school year. The Parents want the Student to remain at [REDACTED], as previously authorized by the BCPS, on the theory that the BCPS proposed IEP was not developed to provide a FAPE, that the program at [REDACTED] meets the Student's needs, and placement at [REDACTED] would be detrimental to the Student.

The Parents further argue that the BCPS failed to evaluate the Student in all areas of suspected disability during the 2021-2022 school year.

The BCPS argues that it considered all the information provided by the Parents in its determination of the Student's placement, evaluated the Student in all areas of suspected disabilities, the proposed IEP and educational placement provide the Student with a FAPE for the 2022-2023 school year, and placement and funding at [REDACTED] is inappropriate.

After reviewing all of the testimony and evidence presented in this case, I must conclude that the BCPS evaluated the student in all suspected areas of disability, developed an IEP that was reasonably calculated to meet the unique needs of the Student for the 2022-2023 school year, and determined an appropriate placement. I explain below why I have determined that the school-based IEP team was correct in developing the Student's program and placement for the 2022-2023 school year.

- 1. The BCPS evaluated the Student in all suspected areas of disability and proposed an IEP for the 2022-2023 school year that was developed with consideration of the**

information provided by the Parents and in accordance with the procedural requirements of the IDEA.

Consideration of Parental Information

The IEP team is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, including information provided by the parent that may assist in determining the student's PLAAFP, the content of the student's IEP, or information related to enabling the child to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304(b). The IEP team should not use any single measure or assessment for determining an appropriate educational program for the child and must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to behavioral and developmental factors. (*Id.*). Furthermore, evaluations are required to be administered in accordance with any instructions provided by the producer of the assessments, conducted by trained personnel, and tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. 34 C.F.R. § 300.304(c)(1)(iv, v), (c)(7).

The Parents argued that the BCPS failed to consider all of the information that they provided, which the BCPS denied. Based on the evidence of record, the Parents provided various documents throughout the process of the development of the Student's IEP including: a 2021-2022 Attendance Report; a Second Trimester Report dated December 21, 2021; a February 25, 2021 Psychoeducational Report authored by Dr. [REDACTED] and Dr. [REDACTED]; a Speech and Language Assessment; February 2022 [REDACTED] Teacher Questionnaire; July 11, 2022 Reading Assessment authored by Dr. [REDACTED]; a 2021-2023 [REDACTED] Informal Tutoring Assessment; May 2022 [REDACTED] Tutoring Report authored by [REDACTED]; and January 2022 [REDACTED] Tutoring Report authored by [REDACTED]. (BCPS Exs. 1, 2, 5, 6, 8, 9, 11, 13, 14, 17, 30, 32).

Additionally, the Parents, Dr. [REDACTED], and Dr. [REDACTED] raised multiple concerns throughout the annual IEP process that were either added to the Student's IEP or discussed and considered during IEP team meetings. Furthermore, elements of [REDACTED]'s program were added to the Student's IEP. For example, at the August 12, 2022 team meeting, the IEP team discussed the inclusion of the elements of the Empower program, a method that [REDACTED] employs and that provides systematic, explicit and consistent instruction, involves mind-mapping, and sequential graphic organizers. The BCPS-based members of the team noted that the Student's IEP includes what the Empower program provides but does not name the program in the IEP. The BCPS-based members of the IEP team stated that the use of organizational aids, graphic organizers, word banks to extend vocabulary when writing is required, proof-reading checklists, pictures to support passages, strategies to support comprehension, and verbal support, would be part of the Student's IEP but were not labeled as the Empower program. (BCPS Ex. 33).

The team also discussed the Phono-Graphix method, a method used by [REDACTED] that is a speech to print model organized by sound. It is a phonetic-linguistic approach to teaching reading. The BCPS-based team members noted the IEP included such an accommodation, though it was not labeled as Phono-Graphix. Specifically, the IEP "has the Student repeat and/or paraphrase information," and notes:

When faced with instructional and grade-level writing and texts, the student requires multisensory strategies (kinesthetics, visual, and auditory)...he will also be provided with a grammar and editing checklist, so that he is able to review and revised written or scribed responses.

(BCPS Ex. 34, p. 20). The IEP further references "text to speech" for mathematics, science, and government assessments, along with ELA or literacy assessments, including response options, and passages. (*Id.*).

On August 12, 2022, Dr. [REDACTED] raised concerns about the Student's transition from [REDACTED] to [REDACTED]. The Parents added that the Student was not previously successful at

██████████, cried before going to the school, and stated that he hated his sister because she could read and he could not. In response, the IEP team included check-ins with the Student to “address any concerns regarding transitions...and any social/emotional needs that may arise as needed.” (BCPS Ex. 33).

██████████, Assistant School Principal and IEP chair, admitted as an expert in general education and early childhood education, testified that during the IEP process, when new information is provided, the IEP team meets to discuss the results. She noted that all assessments and reports were discussed and considered by the IEP team. I found her testimony to be credible as it is supported by the evidence of record. (BCPS Exs. 5, 9, 17, 25, 26, 33).

Based on the evidence of record, the IEP team considered all of the information that was provided by the Parents. Not only did the IEP team review and consider Dr. ██████████ and Dr. ██████████’s assessments, but they also reviewed the reports provided by ██████████. While the Parents provided all the evaluative data that they had from ██████████, much of the information provided by ██████████, included qualitative rather than quantitative data. While qualitative data is informative and useful, the IEP team is required to consider a variety of tools to assess or measure the Student’s abilities and progress. Except for the Student’s tutoring reports and one informal tutoring assessment where the Parents provided some quantitative data, there was little explanation of its significance or meaning as it related to the Student’s PLAAFP. (BCPS Exs. 6, 8, 30). Furthermore, the Parents did not present any testimony from ██████████ staff or teachers regarding the significance or interpretation of the reports as it relates to the Student’s progress.

The BCPS-based team member, ██████████, admitted as an expert in early childhood education, special education, and the OG method, testified that she attempted to obtain more quantitative data from the Parents and ██████████, but was unsuccessful. She testified credibly that when a student is placed in a school, it is important to know the student’s levels of

progress and achievement so that their progress can be tracked. She explained that the BCPS contacted the Parents to obtain academic and behavioral data from the Student's current school year at [REDACTED], as reflected in an email from [REDACTED], Office Secretary at [REDACTED], on January 13, 2022. (BCPS Ex. 35, p. 3). Ms. [REDACTED] explained that she was expecting to see quantifiable data from [REDACTED] along with a significant amount of progress in his reading ability.

She stated that she is certified in the OG method and explained that students do not move on in the program until they have mastered a particular skill. She explained that it is expected that a student will be on a particular skill for a long period of time. The method itself has a progress monitoring component and requires the constant collection of data.

She noted she did not obtain quantifiable data for the Student's reading comprehension and expected [REDACTED] teachers to keep data especially with a program that centers on phonemics, because that is how progress is monitored. She further explained that she expected to see specific information about each form of measurement, including the Student's decoding and encoding and data probes which track particular skill sets. She explained that at [REDACTED], teachers are trained to test for student progress on specific goals at least three times, send reports of the student's progress to parents, and if the student is not making progress, a meeting is held.

Ms. [REDACTED] averred that she included the assessment data from both Dr. [REDACTED] and Dr. [REDACTED] in the Student's IEP. (BCPS Ex. 34). Ms. [REDACTED] also explained that she attempted to obtain additional information because, at that time, Dr. [REDACTED]'s assessment was over one year old and the reports from [REDACTED] did not include enough data on his PLAAFP.

Ms. [REDACTED] assessed the Student using a number of evaluation tools including the WCJ-IV, the Qualitative Ready Inventory, OG Sight Words, Dolch Third Grade Sight Words, F&P

Benchmark Assessment System, and the Phonological Awareness Test.¹⁶ The Parents' expert, Dr. [REDACTED] acknowledged that the data from these assessments were consistent with her own findings and emphasized the need for quantifiable data for purposes of measuring the Student's progress towards closing his learning gap. (BCPS Ex. 29).

Ms. [REDACTED] explained that OG does not always work for students and its effectiveness depends on the child's individualized needs. She testified that this was the reason the IEP does not include the name of the specific tier III intervention, as it provides flexibility so that changes to the program can be made or if the child moves to another state that is unable to provide a particular program. I found Ms. [REDACTED]'s testimony to be credible as it was supported by the proposed IEP, IEP Team Meeting Summaries, and correspondence between the parties. (BCPS Exs. 33, 34, 35).

Considering the fact that the Student's reading ability had not substantially progressed as of the time of the August 12, 2022 annual IEP team meeting, it has not been established by the Parents that the Student's reading can only progress if he is taught using the OG method. Thus, in accordance with the evidence of record and Ms. [REDACTED]'s credible testimony, I find the specific tier III intervention does not need to be specified as long as an evidence-based reading program is utilized. This, in turn, provides some flexibility for the Student's teachers to be able to adjust the intervention, as needed, to ensure that the Student is able to make progress.

With the addition of the BCPS-based data, the IEP team created the PLAAFP, and developed reasonable and ambitious goals, identified accommodations, supplementary aids, program modifications and supports, and focused services geared to enable the Student to make appropriate progress in light of his circumstances.

¹⁶ Ms. [REDACTED] acknowledged there was an error on her evaluation report that indicated the Student scored a raw score of 54 in reading, rather than 64. Despite the error, she testified credibly that 64, is still within the low range.

Evaluation of the Student in all Areas of Suspected Disabilities

The IEP team is mandated to ensure that 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. 34 C.F.R. § 300.304(c)(7).

While the Parents initially noted that the Student had a speech and language deficit, the Parents acknowledged that the Student's speech and language were not a concern for the IEP team. (BCPS Ex. 33, p. 7). While, the Student made progress in encoding and decoding, no connection was made regarding the speech pathology instruction that was being provided throughout the day. Excluding speech and language, there was no disagreement by the Parents at the IEP team meetings as to the Student's identified disability. While further assessments were requested by the BCPS-based team members, the evaluations centered on the Student's weaknesses related to his reading and writing ability. (BCPS Exs. 1, 5, 9, 17, 19, 25, 26).

Dr. [REDACTED] conducted two formal assessments to determine the Student's academic skill level, language, memory skills, and cognitive abilities, in February 2021 and July 2022. Dr. [REDACTED] noted that based on her evaluations, she determined that the Student presented as a student with Dyslexia, a neurobiological learning disorder that impacts one's ability to decode and encode and consists of a constellation of features that impact the Student's reading and writing. Dr. [REDACTED] explained that children with Dyslexia tend to have difficulty developing phonological awareness. She noted that she evaluated the Student's ability to decode and encode, read words in isolation or recognize words, and to decode nonsense words. She also evaluated the Student to determine the development level of his phonological skills, present levels of academic achievement including but not limited to his visual motor integration, memory, social behavioral

assessments using the BASC-3, reading subtests, reading comprehension, and math concepts, applications, and computations.

Dr. [REDACTED] testified that the Student's reading is below first grade level, however he is learning the fundamentals. She noted that the Student's evaluative scores were consistent with those observed on the assessments completed by the BCPS. She explained that while the Student would not be able to close his gap within a year, with intense instruction the Student will be able to read. She testified that it helps that the Student has above-average verbal comprehension, verbal ability, and adequate verbal expression. She explained that the Student performs well in math, and has adequate social, behavioral, or adaptive skills.

On February 25, 2021, Dr. [REDACTED] evaluated the Student's overall cognitive ability using the WISC-V. Dr. [REDACTED] testified that the WISC-V is widely administered when a child is suspected to have a disability. Dr. [REDACTED] noted that the Student is a student of high average ability and scored a high verbal comprehension score while scoring in a low average range on the visual spatial index, working memory, and processing speed. He noted the Student is knowledgeable but "had not cracked the code of reading, due to a confluence of factors." (Testimony, Dr. [REDACTED]).

Further, Ms. [REDACTED] also evaluated the Student to determine his present levels using a variety of measures. (*See supra*, pp. 36-37).

Based on the evidence of record, I find the IEP team evaluated the Student in all areas of suspected disability.

Prior Written Notice

Under 34 C.F.R. § 300.503(a), written notice that meets the requirements of 34 C.F.R. § 300.503(b) must be given to the parents of a child with a disability a reasonable time before the public agency: (1) proposes to initiate or change the identification, evaluation, or educational

placement of the child, or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This notice must be provided in either of these circumstances, irrespective of whether or not the proposal or refusal is made during the course of an IEP Team meeting, pursuant to 34 C.F.R. Sections 300.320-300.324. Further, under 34 C.F.R. § 300.503(b)(1) and (b)(2), the PWN must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. The PWN must also include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of the other options that the IEP team considered; the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. *See* 34 C.F.R. § 300.503(b)(3), (6), and (7).

Ms. [REDACTED] was the Chairperson for the IEP team that drafted the Student's IEP for the 2021-2022 school year. Ms. [REDACTED] wrote the PWN for the IEP team meeting and she was instrumental in developing the Student's IEP and program. The PWN and written IEP, state the Student's present levels of performance from the then most recent evaluative data, including the BCPS' evaluations, and Dr. [REDACTED]'s July 2022 psychoeducational assessment. All of the evaluative data including the information regarding the Student's performance as shared through the formal assessments, grades, parent and teacher information, indicate the academic, and social/emotional areas affected by the Student's Dyslexia which include reading (sight word fluency, fluency and comprehension, phonics, vocabulary, encoding), mathematics vocabulary, and writing (encoding and mechanics). As a result, the IEP and placement can only be reasonably calculated to meet the unique needs of the Student if it addresses these deficits. It is overwhelmingly clear that it does.

The BCPS-based members of the IEP team considered all of the concerns of the Parents and their advocate and memorialized in the PWN the reasons for accepting or rejecting the Parents' proposals. It is clear that that with regard to the 2022-2023 school year, the parties disagree with regard to the hours of special education instruction the Student should receive along with his placement.

2. The IEP developed by the BCPS is reasonably calculated to provide the Student with a FAPE for the 2022-2023 school year

To provide a FAPE, the educational program offered to a student must be tailored to the particular needs of the disabled child by the development and implementation of an IEP, taking into account:

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

20 U.S.C.A. § 1414(d)(3)(A); *see also Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 368 (1985) ("The *modus operandi* of the Act is the already mentioned individualized educational program." (internal quotation marks omitted)).

The IEP depicts the student's current educational performance, 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, 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); *accord* 34 C.F.R. § 300.22; Educ. § 8-405(a)(4).

As the "centerpiece" of the IDEA's "education delivery system" for disabled students, an IEP is a "comprehensive plan" for the "academic and functional advancement" for the student. *Andrew F.*, 137 S. Ct. at 994, 999. It must be tailored to the student's "unique needs" with "careful consideration" of the student's present levels of achievement, disability, and potential for growth.

Id.; see also 20 U.S.C.A. § 1401(29). The IEP must be “appropriately ambitious,” *Andrew F.*, 137 S. Ct. at 1000, and it must provide for “specially designed instruction” that is “reasonably calculated to enable the child to receive educational benefits” and to “make progress appropriate in light of the student’s circumstances.” *Id.* at 996, 999 (quoting *Rowley*, 458 U.S. at 207). The amount of progress anticipated for the student should be “markedly more demanding than the merely more than *de minimis* test” applied in the past by many lower courts. *Id.* at 1000 (internal quotation marks omitted).

The test for whether an IEP is “appropriately ambitious,” *Id.*, and “reasonably calculated to enable the student to receive educational benefits,” *Id.* at 996, is different for each student; there is no bright-line rule or formula to determine whether an IEP provides a FAPE.¹⁷ *Id.* at 1000-01. For a student who is fully integrated in the regular classroom, a FAPE would generally require an IEP to be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Id.* at 996, 999 (citing *Rowley*, 458 U.S. at 203-04). However, for a student who is not fully integrated and/or cannot be reasonably expected to achieve grade-level advancement, the “educational program must be appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* at 1000. Regardless, “every child should have the chance to meet challenging objectives.” *Id.*

When assessing whether a student was offered, given, or denied a FAPE, a judge must “afford great deference to the judgment of education professionals” *O.S.*, 804 F.3d at 360 (quoting *E.L. v. Chapel Hill-Carrboro Bd. of Educ.*, 773 F.3d 509, 517 (4th Cir. 2014)). A judge should not substitute his or her own “notions of sound educational policy for those of the school authorities which they review.” *Andrew F.*, 137 S. Ct. at 1001 (quoting *Rowley*, 458 U.S. at

¹⁷ In *Rowley*, the Supreme Court also held that a FAPE may be found to have been denied a student when a school fails to comply with the procedures set forth in the IDEA. 458 U.S. at 206; see also *Bd. of Educ. v. I.S. ex rel. Summers*, 325 F. Supp. 2d 565, 580 (D. Md. 2004).

206). Additionally, a judge “should be reluctant . . . to second-guess the judgment of education professionals.” *Tice v. Botetourt Cnty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). A judge should be mindful that local educators deserve latitude in determining the IEP most appropriate for a disabled child, and that the IDEA does not deprive these educators of the right to apply their professional judgment. *See Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997). Additionally, a judge must be careful to avoid imposing his or her view of preferable educational methods upon a school district. *Rowley*, 458 U.S. at 207; *A.B.*, 354 F.3d at 325.

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

“[T]he fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.*; *see Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1476 (9th Cir. 1993) (“Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.”).

“To give deference only to the decision of the School Board would render meaningless the entire process of administrative review.” *Sch. Bd. of Prince William Cnty., Va. v. Malone*, 762 F.2d 1210, 1217 (4th Cir. 1985) (citation omitted). A reviewing judge may fairly expect the school system’s professionals “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 or her] circumstances.” *Andrew F.*, 137 S. Ct. at 1002.

The *Andrew F.* Court confirmed that a FAPE does not promise an “ideal” education. *Id.* at 999. Nor does it promise that a student with a disability will be provided with “opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.” *Id.* at 1001. A reviewing court must determine whether the IEP is “reasonable.” *Id.* at 999. It is also important to remember that the IDEA does not require “the best possible education that a school could provide if given access to unlimited funds.” *Barnett v. Fairfax Cnty. Sch. Bd.*, 927 F.2d 146, 154 (4th Cir. 1991). Nor does it require the “furnishing of every special service necessary to maximize each handicapped child’s potential.” *Hartmann*, 118 F.3d at 1001.

The development of an IEP is a prospective process. *Andrew F.*, 137 S. Ct. at 998-99. Other circuits and district courts have held the test of the appropriateness of the IEP is *ex ante* and not *post hoc*. *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 524 (D.C. Cir. 2018); *Adams v. State*, 195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993); *J.P. ex rel. Popson v. W. Clark Cmty. Sch.*, 230 F. Supp. 2d 910, 919 (S.D. Ind. 2002) (“[T]he measure of appropriateness for an IEP does not lie in the outcomes achieved.”)

The Student’s IEP contained numerous testing and instructional accommodations, and the use of supplementary aids and services to help him achieve the annual goals on the IEP. (BCPS Ex. 34). The goals and objectives on the IEP were developed in accordance with the applicable law and regulations. (*Id.*) The Parents only disputed two out of seven goals when the IEP was drafted on April 26, 2022. First, the Parents disagreed with placing the student’s reading comprehension goal at J, which equates to the end of first grade, based on the Student’s chronological age, and second, as it relates to the Student’s math vocabulary goal, the Parents wanted the Student to be able to read math problems on his own without having his teacher read

problems to him. This is very important because the annual goals are what determine the Student's program and placement.

The BCPS-based team members explained there is no data to support that the Student would make enough progress in one year to be offered a more advanced reading level. Also, while the ultimate goal is to have the Student read on his own, he still needs to access grade level math curriculum while he is gaining fundamental reading skills. 34 C.F.R. § 300.320(a)(1)(i). Having the teacher read to him would allow him to gain access to grade level content while he continues to work on his reading.¹⁸ (*Id.*).

An IEP can only be appropriate if it accurately identifies the student's present levels of performance to include academic, emotional, behavioral, social, and physical deficits which impede the Student's ability to progress in the general curriculum. Secondly, the present levels of performance should address not only weaknesses, but also strengths of the child, so that those strengths can be used to develop strategies to address areas of weakness. Additionally, the goals on the IEP must identify a specific, measurable result for the child to achieve at the end of the IEP period and the specially designed instruction must be designed to allow the child to make meaningful educational progress in the least restrictive environment, i.e., a placement involving the maximum level of integration with non-disabled students in which the child can receive appropriate instruction. Lastly, the related service intervention must be necessary to allow the student to make meaningful educational progress. The BCPS IEP meets all of the criterion.

The Parents' main point of contention is the Student's placement and some of the instructional accommodations and services provided for the Student at [REDACTED]. At the April 26, 2022 IEP team meeting, the Parents argued that the supplementary aids were prefilled and therefore predetermined by the BCPS-based team members. Ms. [REDACTED] testified that if any

¹⁸ See discussion, *infra*, p. 55.

item was pre-filled, it was only to facilitate the process. Prefilled items were also subject to change based on team discussion. I did not find the Parents' argument to be persuasive based on Ms. [REDACTED]'s testimony that a proposed IEP can be prefilled for the convenience of the individual who created it, however, it can always be updated or edited based on the discussion and agreement of the members of the IEP team.

The Parents and Dr. [REDACTED] also indicated that they disagreed with the use of F&P, an instructional reading method. Dr. [REDACTED], admitted as an expert in Clinical Psychology, testified that F&P encourages students to guess rather than actually learn and identify words. The Parents also urged that the Student required research-based written language remediation alongside his general education work. In response, the BCPS-based team members explained he is eligible for OG, however, there are other tier III interventions¹⁹ that can be employed and the BCPS has the means to support the student's reading and writing deficits. The August 12, 2022 IEP includes a "tier III phonics and phonemic awareness program that focuses on a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive approach." (BCPS Ex. 34, p. 37). The Parents emphasized the need to have teachers who are trained in the OG method or other tier III interventions.

[REDACTED], Principal at [REDACTED], testified that [REDACTED] serves around 600 students. She noted that the school currently has two and a half special education teachers, and that four teachers at [REDACTED] are trained in the OG method.

Ms. [REDACTED] a fifth-grade teacher at [REDACTED], admitted as an expert in general education, explained that while the BCPS has not made OG training a requirement for teachers, they are free to take classes on various teaching methods.

¹⁹ A tier I intervention refers to what a student receives in the classroom. A tier II intervention refers to additional supports that a Student may receive in a classroom. A tier III intervention refers to more intensive research-based supports using a variety of strategies, the pace of the program, the amount of students in the program, etc. (Testimony, Ms. [REDACTED]) (See Finding of Fact No. 30).

The areas of disagreement regarding the IEP are few. The Parents argue that the IEP does not provide for the level of intensity that the Student needs to overcome his reading gap. They further maintain that the Student should be in an all-day special education program, like [REDACTED]. However, the IEP provides numerous supplementary aids, services, program modifications, supports, instructional and testing accommodations to enable the Student to access the general education curriculum across all of his classes.

The Student's Parents are very knowledgeable about all aspects of the Student's education and overall development. Additionally, it is overwhelmingly clear from the evidence that the Parents love their son and want him to be able to be successful and maximize his potential. The Parents were very clear in their testimonies regarding the Student's deficits and how they impact his ability to progress in the general curriculum. Despite their appropriate passion and understandable enthusiasm to want the Student to receive special education services at [REDACTED], the Student does not require his program to be implemented in one of the most restrictive placements in order to make progress given that the BCPS has developed an appropriate IEP for the 2022-2023 school year. Moreover, the BCPS included all appropriate supplementary aids and services to assist the Student with receiving a FAPE in the LRE, at [REDACTED].

The Parents presented the testimony of several expert witnesses, Dr. [REDACTED], Dr. [REDACTED], [REDACTED], and [REDACTED]. Drs. [REDACTED] and Dr. [REDACTED] were of the opinion that the Student required small class sizes, systematic, intensive phonemic instruction, and full-day special education instruction. They opined that the August 12, 2022 IEP, as written, would not provide the Student a FAPE based on his placement in the general education classroom setting, with educational supports including push-in and pull-out services.

On the other hand, Ms. [REDACTED] testified that students at [REDACTED] with reading-based disabilities are assisted in general education with specially designed services with instruction. She testified that the students engage in choral reading in which the students read aloud at the same time. She explained that teachers have the ability to individualize the instruction for students who are not able to read with other students. In those cases, she explained, the special educator or general education teacher would engage in one-to-one instruction, or text speech with headphones (so that the audio is going directly into the Student's ears while he is reading along and listening). Ms. [REDACTED] asserted that the special educator at [REDACTED] engages in pre-teaching which entails teaching the vocabulary, breaking down what the word sounds like and its meaning. She acknowledged that she has never taught the Student but was familiar with his IEP and she is certified in third, fourth, and fifth grade instruction.

Ms. [REDACTED] noted the Student would work with the special educator to engage in reteaching so that the Student is ready to learn new subject matter. Ms. [REDACTED] testified that the classroom is inclusive in that there are students of all different abilities. She explained that one third of her class has an IEP or 504 Plan. She noted that she provides her students with learning materials so they can access the curriculum in a way that is appropriate for them. Students collaborate with one another, discuss topics that are introduced by the general educator, act in skits, make posters, engage in project-based learning, and infographics.

Ms. [REDACTED] stated that the school psychologist often collaborates with the special educator ahead of time to determine the needs of the Student. Ms. [REDACTED] emphasized that in the general education environment, students have an opportunity to learn from their peers and obtain generalizing skills so that they can apply what they learn outside of the classroom.

Ms. [REDACTED] testified that she prepares for a student with a learning disability before the school year by reviewing the IEP to ensure that supports are being provided. She also collaborates with

the special educator and two reading specialists two times out of the week.

Ms. [REDACTED] also testified that the BCPS incorporates small group instruction for every class. She explained that students are pulled repeatedly into small groups to work on particular skills and it is very rare that she is instructing the larger group the whole day. The IEP does not provide for small group or pull-out services in science and social studies; however the special educator would come into the classroom and support the Student as a scribe. Ms. [REDACTED] testified that fifteen minutes were added to the Student's reading comprehension to address his reading comprehension and fluency. (BCPS Ex. 34).

Ms. [REDACTED], Assistant School Principal, who was admitted as an expert in education administration and K through five education, confirmed that [REDACTED] incorporates small group instruction into their program. She testified that it is part of her job to ensure that small groups occur and to work with service providers to make sure that instruction is occurring appropriately. She testified that she herself has supported [REDACTED]'s teachers with running small groups. She asserted that at [REDACTED], teachers utilize flexible small grouping for ELA. Students do not remain in the same group, and they are always monitored for their ability to understand advanced content. She concluded that the composition of the members of small groups change approximately every two weeks.

While I considered the concerns expressed by the Parents' experts, I nevertheless find that the BCPS prepared an appropriate program for the Student for the 2022-2023 school year. Neither Dr. [REDACTED] nor Dr. [REDACTED] observed the Student in a classroom; instead, their evaluations took place one-on-one, in an office setting. Additionally, a review of the record indicates that Dr. [REDACTED], Dr. [REDACTED], and Ms. [REDACTED] made extensive recommendations regarding the type of educational program, accommodations, and supports the Student should receive. A review of the

IEP that the BCPS developed, reveals that the vast majority of Dr. [REDACTED], Dr. [REDACTED], and Ms. [REDACTED]'s recommendations were included in the August 12, 2022 IEP. (BCPS Ex. 34).

The Parents contend that the Student needs small group instruction, and at [REDACTED], the Student would be in a classroom with twenty to thirty students.

Ms. [REDACTED] testified that she has observed classes at [REDACTED], as the Student's older siblings went to [REDACTED]. She explained that the class sizes that she observed consisted of twenty to thirty students. She also noted that she often volunteered in the classroom and overall, has no issue with the instruction at [REDACTED]. She explained, however, that [REDACTED] was not a good placement for the Student, because it does not provide the academic supports and services that he needs.

Ms. [REDACTED] testified that [REDACTED] is not an appropriate placement because [REDACTED] staff only identified the Student as a student with a learning disability in his second grade year and failed to inform her that the Student was having trouble in class. I must note that the BCPS and the Parents entered into a settlement agreement regarding this issue and it is ultimately what led the Student to being funded for placement at [REDACTED]. The Parents also waived any and all claims in exchange for reimbursement of the tuition costs for the Student to attend [REDACTED] during the 2021-2022 school year. (BCPS Ex. 3).

Although I understand the Parents' concern about the Student's prior experience at [REDACTED], I disagree that because of those experiences [REDACTED] is incapable of implementing his IEP for the 2022-23 school year. Testing and the development of the IEP has led to a much better understanding of the Student's needs and the pandemic is no longer restricting [REDACTED]'s ability to fully implement the IEP. Based on the evidence of record and testimony of all witnesses, I find the BCPS staff testimony that they would collect data, monitor the

Student's progress, and revise the Student's IEP as necessary if he is not making progress, to be credible.

As reported by Ms. [REDACTED], at [REDACTED] the Students work in small groups using a fluid model of instruction and transition where Students engage in mostly small group instruction within the classroom. Dr. [REDACTED] and Dr. [REDACTED] concluded that a FAPE for the Student requires small group instruction without transitions throughout the day. Other than noting that the student was previously unsuccessful at [REDACTED] without any specific detail, the Parents failed to provide any foundation or basis to support their conclusion that the Student would be unable to adapt to [REDACTED]'s fluid small group instruction model. Their assertion also assumes the Student is functioning with the same skills as when he left [REDACTED] and that he would not be able to generalize any of the skills he has gained while at [REDACTED]. It also does not take into account the many accommodations and services that have been written into the Student's IEP to help with his transition and placement at [REDACTED]. Moreover, the Student's evaluations reveal that he has above average listening comprehension, strong leadership and adaptive skills, works well independently and in group settings, is able to focus without being distracted, asks for help when he needs it, and engages appropriately, both socially and behaviorally. (BCPS Exs. 1, 5, 6, 9, 11, 19, 25, 26, 29, 30, 33). Further, the Parent's experts have not provided any evidence that the Student is unable to function in a larger classroom as long as he has frequent opportunities for small group instruction in addition to his special education instruction that is delivered in a pull-out or push-in model. Ms. [REDACTED] and Ms. [REDACTED] testified that teachers at [REDACTED] use a variety of teaching methods, and that the Student would have access to a variety of resources to aid in his learning.

With regard to the Student's special education services, the IEP provides a daily one hour session outside of the general education setting to address his needs in phonics and encoding.

During this service, the Student will participate in a tier III phonics and phonemic awareness program.

The IEP also provides a daily forty-five-minute session, outside of the general education setting to participate in an intervention that focuses on reading fluency, comprehension, and writing.

The IEP also provides a one hour and thirty-minute daily push-in service that consists of thirty minutes to directly support the Student's reading goal, along with his progress in the classroom, and thirty minutes to address his writing progress and math vocabulary goals.

The IEP also provides for an ESY that includes a daily one hour and thirty-minute session, to address his needs in phonics and decoding in an intervention that engages in systematic and multisensory phonics instruction, to address his decoding and fluency goals. He will also receive one thirty-minute session per day to participate in an intervention that focuses on reading fluency, comprehension, and writing. During the remaining time in the Student's summer day, the student will work on supplementary activities focused on academic skills. (BCPS Ex. 38.).

According to Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED], a special educator would come into the classroom for a push-in or push-out service. All indicated that, at times, the teacher might conduct the pull-in and can also receive support from Ms. [REDACTED]

The Parents' expert, Dr. [REDACTED], opined that students with Dyslexia can become sustainable readers with ten to fifteen hours of intensive instruction on a weekly basis. In support of her assertion, Dr. [REDACTED] cited a ten-year-old comprehensive study that looked at reading sustainability in students who are dyslexic. Dr. [REDACTED] noted that the "Arizona study" is one of the very few studies that has been conducted on a large population of dyslexic individuals. While I found Dr. [REDACTED]'s testimony to be credible, the Parents did not offer the

study to be admitted into evidence and it is a decade old. As a result, I did not weigh this testimony heavily.

Ms. [REDACTED] opined that the amount of services a Student receives is driven by the nature and severity of the Student's needs. Ms. [REDACTED] explained that after considering all of the evaluative data, the BCPS-based members of the IEP team agreed the Student would be adequately supported with eight hours and fifty five minutes of special education services per week and twenty three hours and forty five minutes per week in general education. She testified credibly that although the IEP does not specifically list a particular tier III program, a tier III program is an intensive intervention program that supports learning and the OG method qualifies as one. Further, Ms. [REDACTED] testified that four teachers at [REDACTED] are trained in the OG methodology.

Ms. [REDACTED] explained the OG method is used throughout [REDACTED]'s curriculum and focuses on a direct, explicit, multi-sensory structured sequential and diagnostic approach, which is where the Student's decoding and encoding goals would be addressed. Ms. [REDACTED] explained that tier III is multi-modal and students engage in hands on activities, text to speech, watch videos, and conduct experiments, all of which, students have access to at [REDACTED].

It is overwhelmingly clear from a review of the Student's present levels of performance and annual goals, that the Student's needs would be addressed by the IEP which provides eight hours and fifty five minutes of special education services per week and twenty three hours and forty five minutes per week in general education. (BCPS Ex. 34). This amount of direct service would provide supports and services that allow the Student to work on his reading and writing but not exclude him from benefiting from the general education curriculum.

Lastly, every area in which the Student has a deficit in skills that impact his ability to make progress in the general curriculum is fully addressed in the IEP either with a related

service, accommodation, modification, supplementary aid, or annual goal/objective. When I reviewed the Student's identified deficits, I was able to find where those deficits are addressed in the IEP (*see* Findings of Fact Nos. 13, 16 through 23, 57 through 66, 113, and 120-126) in order to assist the Student to make progress in the general curriculum.

In sum, I conclude that the IEP offered for the 2022-2023 school year is reasonably calculated to enable the Student to make academic progress appropriate in light of his cognitive abilities, and that the BCPS provided rational and responsive explanations for its decisions. (BCPS Exs. 5, 9, 17, 25, 26, 33).

3. The BCPS proposed an appropriate IEP for the 2022-23 school year that would be implemented in the least restrictive environment

Under the IDEA, in order to make FAPE available to each eligible child with a disability, the child's IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C. § 1414(d)(1)(A). While the term "general education curriculum" is not specifically defined in the IDEA, it has been interpreted to mean "the same curriculum as for nondisabled children" or based on a State's academic content standards for the grade in which a child is enrolled. 34 C.F.R. § 300.320(a)(1)(i).

To the maximum extent appropriate, children with disabilities are educated with children who are not disabled to ensure that, regardless of the nature or severity of the disability, the child has access to the general education curriculum based on the State's academic content standards for the grade in which the child is enrolled and includes instruction and supports that will prepare the child for educational advancement. Special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aid and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); 34

C.F.R. § 300.114(a)(2). This “mainstreaming” requirement is “not an inflexible federal mandate.” *Hartmann v. Loudoun Cnty. Bd. of Educ.*, 118 F. 3d 996, 1001 (4th Cir. 1997).

Consideration must be given to the entirety of a child’s needs, including any potential harmful effects of a particular placement. In determining LRE, then, the IEP must ensure that placement will not result in harm to the child nor a lessening in the quality of services the child receives. However, as is also clear, the need to modify the general education curriculum for a child is not, on its own, a sufficient or acceptable reason to remove that child from being educated in age-appropriate regular classrooms.

To ensure that the Student can access his grade level content at [REDACTED], the IEP includes various supports and modifications including: having the Student repeat or paraphrase information to make sure that he has heard and processed information; word bank to reinforce the Student’s vocabulary and spelling; the use of multisensory strategies; the use of pictures to support reading passages when possible; the presentation of information in chunks to help with his reading; a human scribe to address his writing deficits, and listening and following along with text through audiobooks. (BCPS Ex. 34, pp. 16, 27). Additionally, any story problems or math equations that require reading, will be read to him, so that he can fully comprehend and solve them. (BCPS Ex. 39). Also, as discussed above, the IEP provides over eight hours of special education services geared towards the Student’s learning gap in reading and writing. (*Id.*).

With this specialized instruction and these support services, the IEP is designed to enable the child to be involved and make progress in the general education curriculum based on the State’s grade content standards, while still addressing the child’s needs based on the child’s present levels of performance.

The crux of the Parents’ complaint involves the IEP team’s decision to place the Student at [REDACTED] instead of the Parents’ preferred placement at [REDACTED]. The Parents believe the

Student should continue to receive full-time special education services at [REDACTED] because he will struggle in a general education environment. In support of their argument, the Parents presented the testimony of Drs. [REDACTED] and [REDACTED], who testified that the Student requires small group instruction, a highly structured learning environment with a low student-to-teacher ratio, and increased hours of special education services to close his learning gap. The BCPS, on the other hand, urged that the Student's IEP provides a FAPE that can be sufficiently provided at [REDACTED].

The Parents have not provided any credible evidence to support their claim that the size or structure of [REDACTED]'s program, with the modifications and supports proposed in the IEP, prevents the Student from accessing the general education curriculum or making progress.

The BCPS was obligated to provide the Student with a placement that affords him an opportunity to interact with nondisabled peers unless it can be demonstrated that his needs will not permit him to receive educational benefit in such a placement. That is precisely the case in this matter. No persuasive evidence has demonstrated that the Student is incapable of receiving educational benefit in an environment with nondisabled peers. The Parents cited the Student's prior vocalizations regarding his frustration with not being able to read and being envious of his sister, who can read, however, both the BCPS and Dr. [REDACTED]'s assessments of the Student reveal the Student has appropriate cognitive ability, higher than average listening comprehension skills, adapts well, works well independently and in group settings, and has no social, behavioral, or emotional issues. Further, all expert witnesses acknowledged the Student has good functional communication, and asks for help when he needs it. Moreover, in consideration of the Parents' concerns, the IEP includes daily "check-ins" with the Student to monitor and assist him with his transition and to address any social or emotional needs that may arise. (BCPS Ex. 34).

While Dr. [REDACTED] and Dr. [REDACTED] opined that the Student would not receive an adequate amount of intensive instruction to close his reading gap, that the small group setting is essential for the Student's learning, and that he should be around his disabled peers rather than the general education population, they provided no substantive evidence to support their opinions. Neither Dr. [REDACTED] nor Dr. [REDACTED] have observed the Student in any classroom setting. Further, Dr. [REDACTED] opined that a placement at [REDACTED] would be detrimental to the Student. Dr. [REDACTED] and Dr. [REDACTED] have not taught the Student nor have they observed any classes at [REDACTED] or [REDACTED]. Dr. [REDACTED] and Dr. [REDACTED] have no personal knowledge regarding [REDACTED] nor [REDACTED]'s academic instruction and teaching methods. Yet, they opined the Student requires exactly what [REDACTED] provided for the past school year.

The Parents urge that the Student has experienced some progress towards his reading and writing goals and a move from [REDACTED] to [REDACTED] would be detrimental. The Parents further contend that the Student should not be moved from an environment where his needs are being met to [REDACTED], where he would receive less special educational instruction and supports.

The standard outlined by the IDEA, however, is whether the Student would receive educational benefit at [REDACTED] not whether [REDACTED]'s program can offer exactly what [REDACTED] provides. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i) and 300.117.

The school-based IEP team members testified that teachers differentiate instruction throughout the day and small group instruction is offered in the general education classroom based on the specific needs of students. Dr. [REDACTED] admitted as an expert in school psychology, offered extensive testimony regarding how the Student would be supported during a transition back to [REDACTED]. She explained that his IEP includes social and emotional supports such as "check-ins" and the primary provider would be the school psychologist. She noted the general education and special education teacher would conduct "check-ins" with the Student. She

explained that “check-ins” help students who have transitioned from other schools. She stated that she would introduce herself to the child, let the student know where she is located in the school, tell the Student that she is there to support, and meet with the Student to glean how he is feeling. Dr. [REDACTED] noted that most children adapt and she expects the same for the Student, as his ability to adapt was a strength as demonstrated by his performance on the BASC-3 assessment.

Dr. [REDACTED] opined that the Student’s IEP enables him to make appropriate success but added that if the Student was not making progress, the IEP team would meet and discuss additional supports. She emphasized that the team does not wait an entire school year to determine whether the Student is making progress. Dr. [REDACTED] opined that a transition from [REDACTED] to [REDACTED] would be beneficial to the Student because it would help him grow in social and emotional areas as he would be around peers who are diverse in their abilities. Dr. [REDACTED] acknowledged, however, that she has neither met nor observed the Student in class.

Dr. [REDACTED] testified that the Student’s needs can be met in a larger class setting because teachers use a variety of methods to support students, such as audiobooks, small/flexible groupings of students at all times, and intelligent implementation of supportive aids.

The BCPS-based members of the IEP team were clear that if the Student required additional services or a modification of his IEP, any member of the IEP team could request a meeting to reconvene to discuss modification of the IEP. This was also confirmed by Ms. [REDACTED] during her testimony.

Alternatively, the Parents aver that for the 2021-2022 school, by virtue of a settlement agreement, the BCPS authorized full tuition reimbursement for the Student to attend [REDACTED] and are now claiming that [REDACTED] is no longer appropriate placement. The Parents also asserted that the Student’s learning gap developed while he was at [REDACTED].

The prior acknowledgement by the BCPS that they could not provide the Student with a FAPE during the pandemic, by reimbursing the Student's full tuition cost has no bearing on whether [REDACTED] is an appropriate placement for the 2022-2023 school year, when many of the complications related to the pandemic have been resolved. The ultimate determination of the Student's placement is based on the Student's PLAAFP, goals, supports, and modifications. Further, all claims by the Parents regarding the 2021-2022 school year were waived in exchange for the BCPS to fund the Student's placement at [REDACTED]. (BCPS Ex. 3).

As determined above, the Student's proposed IEP provides adequate supports to enable the Student to make appropriate progress in light of his unique needs as a student who has Dyslexia. I agree with Ms. [REDACTED] and Ms. [REDACTED] that placement in the general education environment would provide opportunities for the Student to interact with his non-disabled peers. Additionally, the Parents have failed to provide sufficient evidence that the nature or severity of the Student's disability is such that his education cannot be achieved at [REDACTED] with the supports that are outlined in his IEP. 34 C.F.R. § 300.114(a)(2)(ii).

Based on the evidence of record, it is clear that the IEP and placement provide a sufficient educational benefit to the Student that enables him to make progress towards his educational goals, in light of his circumstances. While the Student is performing in the low range for reading and writing and has been diagnosed with Dyslexia, significant supports and accommodations were added to the Student's IEP to help him manage his deficits.

After carefully reviewing all of the evidence presented by the Parents and the BCPS, I find that the BCPS developed an appropriate IEP and placement for the 2022-2023 school year.

Appropriateness of [REDACTED]

Under *County School District Four v. Carter*, 510 U.S. 7 (1993), and *School Committee of Burlington v. Department of Education* 471 U.S. 359, 370 (1985), whether a parent's private

placement choice is appropriate is analyzed only if the IEP proposed by the local education agency results in the denial of a FAPE. The issue of reimbursement for unilateral placement was expanded upon in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Parents may recover the cost of private education only if (1) the school system failed to provide a FAPE; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. *See id.* at 12-13.

I have concluded in this case for the reasons set forth above that the IEP and placement offered by the BCPS provide the Student a FAPE. Therefore, under *Carter* and *Burlington* the issue of whether the Student's placement at [REDACTED] is proper is not required to be addressed further in this decision. As the BCPS did not deny the Student a FAPE for the 2022-2023 school year, the Parents' request for funding for tuition, costs, and expenses for [REDACTED], is respectfully denied.

CONCLUSIONS OF LAW

Based upon the foregoing Stipulations, Findings of Fact and Discussion, I conclude as a matter of law that the Baltimore County Public Schools made a free appropriate public education available to the Student and provided him with an appropriate individualized education program and placement for the 2022-2023 school year. I further conclude as a matter of law that the Parents failed to prove that they are entitled to public funding of tuition and expenses at [REDACTED] [REDACTED] for the 2022-2023 school year. 20 U.S.C.A. § 1400(d)(1)(A) (2017); 34 C.F.R. §§ 300.148 (2019); *Andrew F. v. Douglas Cnty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005).

ORDER

I **ORDER** that the Parents' request for placement at and public funding for payment of tuition, costs and expenses at [REDACTED] for the 2022-2023 school year is **DENIED**.

November 23, 2022

Abena Y. Williams
Administrative Law Judge

Date Decision Issued

AYW/ja
#201962

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) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

BEFORE ABENA Y. WILLIAMS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-22-21250

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parents:¹

Parents Ex. A - ██████████ Ph.D., Curriculum Vitae, undated

Parents Ex. B - ██████████, Ph.D., Resume, undated

Parents Exs. 1 to 17 - NOT OFFERED

I admitted the following exhibits on behalf of the BCPS:

BCPS Ex. 1 - Psychological Evaluation, dated February 25, 2021

BCPS Ex. 2 - Speech Language Assessment, dated April 20, 2021

BCPS Ex. 3 - Letter of Agreement, dated July 21, 2021

BCPS Ex. 4 - NOT OFFERED

BCPS Ex. 5 - IEP Team Summary, dated January 18, 2022

BCPS Ex. 6 - ██████████ Attendance Report 2021-2022 school year and Second Trimester Report, dated December 21, 2021

BCPS Ex. 7 - Parent Notification of IEP Team Meeting, dated January 21, 2022

BCPS Ex. 8 - Email from ██████████, dated February 3, 2022, and ██████████ Progress Report

BCPS Ex. 9 - IEP Team Summary, dated February 8, 2022

BCPS Ex. 10 - NOT OFFERED

¹At the request of the parties, I held the record open until November 4, 2022, to allow the parties to submit written closing arguments to supplement their oral closing arguments.

- BCPS Ex. 11 - [REDACTED] Tutoring Report, dated January 2022
- BCPS Ex. 12 - NOT OFFERED
- BCPS Ex. 13 - Educational Assessment, dated March 15, 2022
- BCPS Ex. 14 - Observation, performed by Ms [REDACTED], Assistant Lower School Head,
[REDACTED]
- BCPS Ex. 15 - NOT OFFERED
- BCPS Ex. 16 - NOT OFFERED
- BCPS Ex. 17 - IEP Team Summary, dated March 23, 2022
- BCPS Ex. 18 - Specific Learning Disability Team Report, dated March 23, 2022
- BCPS Ex. 19 - Psychoeducational Report, dated March 25, 2022
- BCPS Ex. 20 - NOT OFFERED
- BCPS Ex. 21 - NOT OFFERED
- BCPS Ex. 22 - NOT OFFERED
- BCPS Ex. 23 - Parent Notification of IEP Team Meeting, dated April 22, 2022
- BCPS Ex. 24 - NOT OFFERED
- BCPS Ex. 25 - IEP Team Summary, dated April 22, 2022
- BCPS Ex. 26 - IEP Team Summary, dated April 26, 2022
- BCPS Ex. 27 - Specific Learning Disability Team Report with signatures, dated April, 2022
- BCPS Ex. 28 - IEP, dated April 26, 2022
- BCPS Ex. 29 - Reading Assessment, dated July 11, 2022
- BCPS Ex. 30 - [REDACTED] Informal Tutoring Assessments, 2021-2022
- BCPS Ex. 31 - NOT OFFERED
- BCPS Ex. 32 - [REDACTED] Tutoring Report, dated May 2022
- BCPS Ex. 33 - IEP Team Summary, dated August 12, 2022
- BCPS Ex. 34 - IEP, dated August 12, 2022

- BCPS Ex. 35 - Email Correspondence between the Parents and [REDACTED], pp. 2, 6-24, 28, 45-47, dated January 17, 2022, January 21, 2022, February 3, 2022, February 8, 2022, March 2, 2022, March 16, 2022, March 18, 2022, March 22, 2022, March 25, 2022, March 28, 2022, March 31, 2022, April 30, 2022, May 1, 2022, October 5, 2022
- BCPS Ex. 36 - Email Correspondence from [REDACTED] to the Parents and [REDACTED], pp. 2, 4-13, dated March 1, 2022, March 11, 2022, March 16, 2022, March 22, 2022, March 24, 2022
- BCPS Ex. 37a - [REDACTED], Resume
- BCPS Ex. 37b - [REDACTED], Resume
- BCPS Ex. 37c - [REDACTED], Psy.D., Resume
- BCPS Ex. 37d - [REDACTED], Resume
- BCPS Ex. 37e - [REDACTED], Resume