

████████████████████,  
STUDENT  
v.  
MONTGOMERY COUNTY  
PUBLIC SCHOOLS

BEFORE ROBERT F. BARRY,  
AN ADMINISTRATIVE LAW JUDGE  
OF THE MARYLAND OFFICE  
OF ADMINISTRATIVE HEARINGS  
OAH No.: MSDE-MONT-OT-24-21942

**DECISION**

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

**STATEMENT OF THE CASE**

On August 13, 2024, ██████████ (Parent) filed a due process complaint with the Office of Administrative Hearings (OAH) on behalf of her son, ██████████ (Student), under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2023);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2024);<sup>3</sup> Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). The Parent essentially asserted that the Montgomery County Public Schools (MCPS) denied the Student a free appropriate public education (FAPE) under the IDEA during the 2023-2024 school year: “[Student] has been completely neglected at ██████████ (██████████).”

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<sup>1</sup> All citations to the United States Code Annotated are to the 2017 bound volume.

<sup>2</sup> All citations to the Code of Federal Regulations are to the 2023 bound volume.

<sup>3</sup> Unless otherwise noted, citations to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

He did not meet his IEP goals and objectives. There has also been an evident regression in his behavioral and physical development.” As a proposed remedy, the Parent requested, apparently as compensatory education, the Student’s placement in a nonpublic school: “Please transfer him to a private school funded by the [S]tate of Maryland that advocates for his developmental needs.”

The parties participated in mediation on August 22, 2024, but they did not reach a settlement. That same day, I conducted a remote pre-hearing conference. [REDACTED] and her husband, [REDACTED], participated for the Student. Stacy Reid Swain, Legal Director, Office of the General Counsel, participated for the MCPS.

On August 29, 2024, I issued a Pre-Hearing Conference Report and Order, memorializing the parties’ agreement as to hearing dates and the MCPS’s request to extend the time requirement for issuing a decision. Under the regulatory timeline, the adjusted resolution period ended on August 22, 2024, when the parties informed me that they participated in mediation and did not reach an agreement. *See* 34 C.F.R. §§ 300.510(b)(2), 300.515(a). The decision in this case would be due on Friday, October 4, 2024, even though that was the forty-third day after the end of the adjusted resolution period. The forty-fifth day after the end of the adjusted resolution period was Sunday, October 6, 2024. Per State Department of Education policy, when the due date is on a weekend, the decision is due on the preceding non-holiday weekday. The regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c). The Parent indicated that she was unavailable from September 4, 2024, through September 29, 2024, because the family would be out of the country. The first mutually available dates to conduct a hearing were September 30, 2024, October 1, 2024, and October 2, 2024.

The MCPS requested an extension of time for a final decision. By agreement, my decision was to be due within twenty days of the completion of the hearing.

On September 30, 2024, I conducted a remote hearing from the OAH in Hunt Valley, Maryland. COMAR 28.02.01.20B. [REDACTED] represented the Student. The Student's father, [REDACTED], was present, but he did not participate in the hearing. Ms. Swain represented the MCPS.

At the conclusion of the hearing, which took one day rather than the scheduled three days, the parties agreed that my decision would be due on Monday, October 21, 2024, the twenty-first day after the conclusion of the hearing.

The contested-case provisions of the Administrative Procedure Act; the Education Article; the State Department of Education procedural regulations; and the Rules of Procedure of the OAH govern procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); Educ. § 8-413(e)(1) (Supp. 2024); COMAR 13A.05.01.15C; COMAR 28.02.01.

#### **ISSUES<sup>4</sup>**

1. Did the MCPS deny the Student a FAPE under the IDEA during the 2023-2024 school year?
2. If so, as compensatory education, should the Student's educational placement for the 2024-2025 school year be a non-public school funded by the MCPS?

#### **SUMMARY OF EVIDENCE**

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<sup>4</sup> In the Pre-Hearing Conference Report and Order. I indicated that a third issue was whether the Student's proposed educational placement in the [REDACTED] ([REDACTED]) at [REDACTED] ([REDACTED]) for the 2024-2025 school year was appropriate. During the hearing, however, the Parent indicated that the due process complaint was focused on the 2023-2024 school, not on the appropriateness of the Student's current educational placement.

I admitted the following exhibits into evidence for the Student:<sup>5</sup>

- STUDENT #1 - Letter from [REDACTED] Child and Adolescent Psychiatry Fellow, [REDACTED], September 4, 2024
- STUDENT #2 - Behavioral Health Services Progress Report, [REDACTED], [REDACTED], Behavior Analyst, [REDACTED], April 16, 2024
- STUDENT #3 - Letter from [REDACTED], Behavior Analyst, [REDACTED], undated
- STUDENT #4 - Letter from [REDACTED], Physical Therapist, [REDACTED], September 3, 2024
- STUDENT #5 - Text [REDACTED] Farquhar Middle School, December 13, 2023, February 2 and 3, 2024, and April 12, 2024; Bus Detail Report
- STUDENT #6 - Text message from [REDACTED] Program, [REDACTED], October 24, 2023
- STUDENT #7 - Text Messages, with a photograph of the Student at a Five Below store, undated
- STUDENT #8 - Estimate, [REDACTED], June 21, 2024

I admitted the following exhibits into evidence for MCPS:<sup>6</sup>

- MCPS #2 - Functional Behavioral Assessment Summary Report, completed June 13, 2023
- MCPS #3 - Behavioral Intervention Plan (BIP), completed August 28, 2023
- MCPS #5 - Prior Written Notice, August 27, 2024
- MCPS #13 - Individualized Education Program (IEP), IEP Team Meeting February 8, 2024, with Progress Reports
- MCPS #19 - Résumé of [REDACTED], [REDACTED].

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<sup>5</sup> The Parent submitted additional documents before the pre-hearing conference, two of which she did not disclose to the MCPS for the hearing or move into evidence. Those two documents are in an envelope in the case file as part of the record.

<sup>6</sup> The MCPS submitted twenty-three proposed exhibits, but only moved eight exhibits into evidence. The remaining fifteen exhibits are in an accordion file in the case file as part of the record.

MCPS #20 - Résumé of [REDACTED]

MCPS #22 - Résumé of [REDACTED]

MCPS #23 - Résumé of [REDACTED]

Testimony

The Parent testified.

The following witnesses testified for the MCPS:

1. [REDACTED] Special Education Teacher, [REDACTED], who testified as an expert in special education
2. [REDACTED], Itinerant Physical Therapist, MCPS, who testified as an expert in physical therapy
3. [REDACTED] Acting Resource Teacher, [REDACTED], who testified as an expert in special education and reading
4. [REDACTED], Signature Program Coordinator, [REDACTED], who testified as an expert in general education

**FINDINGS OF FACT**

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

1. The Student, age fourteen, is currently enrolled in the [REDACTED] at [REDACTED] [REDACTED] for the 2024-2025 school year.
2. Students in an [REDACTED] have significant disabilities, including cognitive disabilities. These students participate in an adapted or modified curriculum, with community activities to practice social and life skills.
3. During the 2023-2024 school year, the Student was enrolled in the [REDACTED] at [REDACTED].
4. The Student's current diagnoses include [REDACTED], [REDACTED]

[REDACTED], and [REDACTED].

5. The Student needs special education and related services due to multiple disabilities, including intellectual disability and other health impairment.

6. The Student is projected to exit from the MCPS with a Maryland high school certificate of program completion at the end of the school year in which he turns twenty-one.

7. The academic areas affected by the Student's disabilities include communication, math calculation, physical education, reading comprehension, expressive language, and receptive language.

8. The behavioral areas affected by the Student's disabilities include [REDACTED] [REDACTED] and [REDACTED].

9. The physical areas affected by the Student's disabilities include fine [REDACTED] and [REDACTED].

10. During the 2023-2024, the Student used his own stroller for mobility at Farquhar Middle School. He also used a wheelchair and gait trainer provided by the school.

11. The Student has minimal oral speech; he uses pictures or graphic symbols (individual or on a communication display) and an assistive speech device to communicate.

12. On August 28, 2023, the MCPS completed a BIP for the Student to address target behaviors: aggression, throwing items, pushing, kicking, grabbing, pinching, hitting, biting, and scratching; and non-compliance: crying, protesting, body dropping, swiping, moving away, and refusals that last less than thirty seconds.

13. The Student's BIP includes prevention strategies (scheduled breaks, choice of

non-preferred task, task modification); teaching strategies (using replacement behaviors or the targeted behaviors), and response strategies (de-escalation and safety strategies).

14. The Student's BIP includes data collection and implementation requirements for recording the frequency and intervals of the Student's targeted behaviors, with data to be collected weekly.

15. During the 2023-2024 school year, the Student often exhibited behaviors such as hitting, spitting, yelling, dropping to the floor, or crawling when he was presented with a non-preferred task or when he was feeling overwhelmed or frustrated.

16. During the 2023-2024 school year, the Student often had difficulty expressing his needs and understanding appropriate social interactions. During elective classes, he became disruptive (making loud sounds and dropping objects on the floor) unless he had access to an iPad. When requesting an item or activity, the Student would hit the adult to gain their attention and gesture to his desired item or activity.

17. The Student's current IEP, developed during an IEP team meeting on February 8, 2024, includes special education and related services, including eighty minutes per day in a general education class (6 hours 40 minutes per week) and thirty-two hours per week outside a general education class, including 3 hours and 20 minutes per week of adaptive physical education.

18. The Student's IEP provides for thirty minutes per month of occupational therapy, thirty minutes per month of physical therapy, and three hours monthly of speech/language therapy.

19. The Student participates with non-disabled peers at lunch; during music, media,

or art class; and during assemblies and special activities.

20. The Student's IEP requires special considerations and accommodations, including modified content and assignments, simplified directions, use of manipulatives, and use of pictures to support reading passages.

21. During the 2023-2024 school year and the extended school year, the Student had difficulty with [REDACTED]; he [REDACTED] on occasion. The Student sometimes wore a [REDACTED] during the school day.

22. The Student made some progress towards his goals for self-management and social/emotional behavior during the 2023-2024 school year. The Student, four times out of five, was able to stay on task for two minutes of a non-preferred task. The Student, three times out of five, was able to replace a targeted behavior with an appropriate behavior. He also was able to independently advocate for his own physical and sensory needs in the classroom using his preferred communication method.

23. The Student made limited but sufficient progress towards his goals for physical education, fine motor control, math calculation, communication, and reading comprehension.

24. The Student did not make sufficient progress towards his goals for expressive language, a non-preferred activity for the Student. He was very resistant to speech services, physically resisting attempts at engagement and even hitting the therapist.

25. Since November 16, 2023, the Student has received eighteen hours per week of direct ABA therapy services at home through [REDACTED], working on approximately thirty behaviors concerning aggression, spitting, communication, socialization, and adaptive behaviors, including activities of daily living.

26. On a standardized measure of adaptive behavior, the Vineland Adaptive Behavior



Scales, Third Edition (Vineland III), administered by [REDACTED], the Student's scores for communication, daily living skills, and socialization were in the less than one percentile rank.

27. The Student's ABA therapy services initially included a [REDACTED] goal for the Student to use [REDACTED] upon his request, but this goal was discontinued as of April 2024. At home, the Student is [REDACTED] – he can request to [REDACTED], but he needs adult support to transition to the [REDACTED].

28. The Student has shown various progress in reducing physical aggression during his in-home therapy sessions. He still engages in pinching, hitting with an open palm, and pushing. The Student has successfully replaced spitting with sensory chews.

29. During weekly private physical therapy sessions, the Student has been compliant with his therapist's directions.

30. The Student's IEP team at [REDACTED] met on August 27, 2024, and made no changes to the Student's IEP.

31. As of the hearing date, the Student had attended only seven days of school at [REDACTED] due to the family's trip to [REDACTED].

### **DISCUSSION**

A primary purpose of the IDEA is to ensure “that all children with disabilities have available to them a free appropriate public education 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); Educ. § 8-403 (the State and each local school system shall make a free appropriate public education available to each child with a disability).

The primary disputed issue in this due process hearing is whether the MCPS denied the Student a FAPE under the IDEA during the 2023-2024 school year. FAPE means special education and related services that: have been provided at public expense, under public supervision, and without charge; meet the standards of the State educational agency; include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the IEP required under section 1414(d) of the IDEA. 20 U.S.C.A. § 1401(9). In *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017), the United States Supreme Court analyzed the meaning of FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. The court emphasized in *Andrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001.

An IEP is a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must consider:

- (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.

34 C.F.R. § 300.314(a)(1). An IEP depicts a student’s current educational performance, explains how the student’s disability affects the student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the

student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

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

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

The Parent, seeking relief on the Student's behalf, bears the burden of persuasion in this hearing to establish by a preponderance of the evidence (more likely so than not so) that the MCPS denied the Student a FAPE under the IDEA during the 2023-2024 school year. The Parent also bears the burden of persuasion by the same standard to establish that, as compensation for the denial of FAPE, the Student should be placed in a non-public special education school at

MCPS's expense for the 2024-2025 school year. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); State Gov't § 10-217 (2021). On the record created in this case, I find that the Parent has not met her burden of persuasion on either issue.

The Parent presented her own very brief testimony. She did not present testimony from anyone who taught or supported the Student at [REDACTED]. The Parent submitted into evidence eight exhibits, which did not include an IEP or any comprehensive information concerning the Student's experience in the [REDACTED] at [REDACTED] during the 2023-2024 school year. The Parent presented evidence from the Student's private providers: a letter from [REDACTED], a child and adolescent psychiatry at [REDACTED]; a report and letter from [REDACTED], a behavior analyst with [REDACTED]; and a letter from [REDACTED], a physical therapist with [REDACTED]. Finally, the Parent presented text messages concerning the use of the Student's personal stroller at [REDACTED], reports from a paraeducator about the Student's behavior (including an incident at a Five Below store), and a text message from [REDACTED], who taught the Student in elementary school, about the Student's [REDACTED].

The gist of the Parent's argument was that staff at [REDACTED] during the 2023-2024 school year were negligent and incapable of managing the Student's behaviors and needs. She contrasted the Student's behaviors in school with his reported ability to comply with direction during his private ABA therapy and physical therapy sessions. The Parent's argument, which included no citations to any special education law or the Student's IEP, and which relied largely upon her own impressions and anecdotal evidence of some of the Student's behaviors during the school year, fell far short of establishing a denial of FAPE. It is difficult on this record to state with any certainty what occurred during the Student's 2023-2024 school year. The Parent

presented evidence concerning some of the Student's problematic behaviors and her own frustrations with staff at [REDACTED]. But she ultimately failed to establish that the Student's IEP was not reasonably calculated to provide FAPE, that the Student failed to make some progress towards the goals in his IEP, or that the MCPS implemented the Student's IEP so inadequately as to deny the Student a FAPE.

The Parent divided her argument into six points, some of which overlap. She asserted that MCPS: 1. failed to provide any equipment for the Student's mobility in the school setting; 2. failed to address the Student's behavioral issues – hitting, spitting, and not following directions; 3. caused the Student to regress; 4. could not manage the Student's [REDACTED] needs; 5. neglected the Student in school and on community trips; and 6. caused the parent financial strain (related to the school's use of the Student's stroller). I address each argument in turn, sometimes, if necessary, with the MCPS's response. No argument individually proves a denial of FAPE, nor do the arguments cumulatively prove a denial of FAPE.

**1. MCPS failed to provide any equipment for the Student's mobility in the school setting.**

The Parent, citing an unspecified MCPS booklet concerning the school disciplinary process, argued that, upon request, a school is required to provide durable medical equipment, such as a stroller, gait trainer (or rollator), or wheelchair, for a Student with a physical disability. The Parent indicated that the Student, who has a diagnosis of hereditary [REDACTED], which causes [REDACTED], needs equipment to get on and off the school bus, to get in and out of the school building, and for mobility in the school building and during community activities. The Parent submitted an email and a text, both dated April 12, 2024, in which she asked [REDACTED], a physical therapist; [REDACTED], a special education resource teacher; [REDACTED], a special education teacher; and [REDACTED], a special education teacher, to

provide a stroller for the Student to use for school, rather than to continue to use the Student's stroller. The Parent indicated that it was inconvenient for the family not to have the Student's stroller at home during the school week. [REDACTED] asked [REDACTED] whether the school could provide the Student a stroller like it had in the past. According to the Parent, the school did not respond further to her request and did not provide a stroller for the balance of the 2023-2024 school year, nor during the Student's extended school year.

The Student's IEP includes a discussion of the Student's functional mobility needs, noting that the Student requires staff support "to access the school environment, including assistance with appropriate modifications to the environment and adapted equipment, as well as support for mobility and positioning." (MCPS #13, Bates No. 49). The IEP indicates that the Student requires [REDACTED] due to decreased stability, attention, and mobility." (Id., Bates No. 50). The Student's IEP also indicates that he needs assistance to transfer from a wheelchair to a classroom chair.

It is unclear on this record exactly how staff at [REDACTED] used the Student's stroller. The Student's IEP and evidence presented by the Parent and the MCPS indicate that the MCPS provided the Student a wheelchair and a gait trainer. There is nothing in the IEP that would make the MCPS responsible for providing a stroller for the Student to disembark from the school bus and to provide mobility during the school day. [REDACTED], the itinerant physical therapist currently assigned to the Student at [REDACTED], testified that a school is responsible for providing mobility equipment for the Student in school, but not on a school bus or to get on and off a school bus. The [REDACTED] includes activities in the community, which apparently required the use of the Student's stroller during the 2023-2024 school year.

The Parent did not cite any legal authority nor any part of the Student's IEP that would require the MCPS to provide mobility equipment for the Student on a school bus or to get on and off a school bus. The use of the Student's stroller was inconvenient for the Student's family, but there is no indication that the use of the Student's stroller affected the Student's access to school or community activities. Even if the MCPS somehow had a duty to provide a stroller for the Student, there is no evidence that any such theoretical failure denied the Student a FAPE.

**2. MCPS failed to address the Student's behavioral issues - hitting, spitting, and not following directions.**

The Parent alleged that the MCPS was negligent in addressing the Student's behavioral issues, which included hitting, spitting, taking off his shirt, and not following directions. The Parent cited text messages concerning the Student's behavior from a paraeducator named [REDACTED]. On December 13, 2023, [REDACTED] indicated that the Student's behavior had been escalating and that the Student bit a different paraeducator in the leg. On February 2, 2024, [REDACTED] reported that the Student had a rough day, hitting other students, running over a paraeducator with his wheelchair, and breaking a sensory toy. [REDACTED] also wrote: "This is (at least for me) a first experience." (STUDENT #5) The Parent also submitted an undated text from [REDACTED] with a photograph of the Student sitting on the floor of a Five Below store. The Parent included that incident as a separate point of her argument, which is addressed below.

The Parent testified that during discussions in March 2023 about a prior due process complaint, the MCPS agreed to provide a one-to-one paraeducator for the Student. The Parent did not present any written agreement between her and the MCPS. The Student's IEP does not provide for a one-to-one paraeducator for the Student.

The Student has a history of repeated and frequent challenging behaviors that significantly affect his learning. According to an assessment completed by the MCPS on June 13,

2023, the Student displayed aggression: throwing items, pushing kicking, grabbing, pinching, hitting, biting, and scratching; and non-compliance: crying, protesting, body dropping, swiping, moving away, and refusals lasting less than thirty seconds. On August 28, 2023, the MCPS completed a BIP for the Student to address target behaviors of aggression and non-compliance. The Student's BIP includes prevention strategies, teaching strategies, and response strategies. The Student's BIP includes data collection and implementation requirements.

During the 2023-2024 school year, the Student often exhibited behaviors such as hitting, spitting, yelling, dropping to the floor, or crawling when he was presented with a non-preferred task or when he was feeling overwhelmed or frustrated. During the 2023-2024 school year, the Student often had difficulty expressing his needs and understanding appropriate social interactions. During elective classes, he became disruptive unless he had access to an iPad. When requesting an item or activity, the Student would hit the adult to gain their attention and gesture to his desired item or activity.

It is unclear on this record how staff at [REDACTED] implemented the Student's BIP. The Parent testified that she requested data concerning the Student's BIP and received a blank reporting form. (The blank form is one of the exhibits that the Parent did not move into evidence.) The Parent asserted that this proved that staff at [REDACTED] failed to report data throughout the school year. I am not convinced that this is so. It seems more likely that the Parent received a sample of a data collection report. According to the Student's IEP, he made some progress towards his goals for self-management and social/emotional behavior during the 2023-2024 school year. The Student, four times out of five, was able to stay on task for two minutes of a non-preferred task. The Student, three times out of five, was able to replace a targeted behavior with an appropriate behavior. He also was able to independently



advocate for his own physical and sensory needs in the classroom using his preferred communication method. These descriptions indicate that staff at [REDACTED] were addressing the Student's social emotional/behavior and self-management issues, likely daily.

The Parent cited reports from [REDACTED], the board-certified behavior analyst providing in-home ABA services to the Student, and [REDACTED], the physical therapist who has worked with the Student every Wednesday for a few months, to contrast the Student's behaviors at home with his more extreme behaviors at school. The Parent cited [REDACTED] report and letter as evidence of purported superior progress that the Student has made at home with ABA therapy. Since November 16, 2023, the Student has received eighteen hours per week of direct ABA therapy services at home through [REDACTED], working on approximately thirty behaviors concerning aggression, spitting, communication, socialization, and adaptive behaviors, including activities of daily living. On a standardized measure of adaptive behavior, the Vineland Adaptive Behavior Scales, Third Edition (Vineland III), administered by [REDACTED], the Student's scores for communication, daily living skills, and socialization were in the less than one percentile rank. The behaviors described in [REDACTED] report and the Student's significant deficits in adaptive behavior, communication, and socialization are consistent with the description of the Student in his IEP. According to Ms. [REDACTED] letter, written in early September 20124, the Student has shown various progress in reducing physical aggression during his in-home therapy sessions. The Student still engages in pinching, hitting with an open palm, and pushing, but he has successfully replaced spitting with sensory chews.

[REDACTED] wrote:

Our sessions are 45 minutes in length and include beneficial activities such as walking with his walker, stair climbing, and using fine and gross motor usage of his

hands during throwing activities. These neurologically based techniques have been very helpful for [Student] not only with his physical needs but also his non-verbal and cooperative needs. [Student] has been compliant with these activities and is able to follow my directions well. At first, he required phone and iPad incentives but is now cooperating even more with less frequent cu[e]ing. He comes into sessions very happy and works through the entire time. Due to his compliance and how much we have progressed this summer, I am hoping that he can continue to participate in skilled physical therapy at least once a week during school hours. [Student] will further benefit from neurologically based stretching techniques and activities that will reduce his [REDACTED] due to [REDACTED]. Working with him has been a joy, and he has come to trust and comply with demands of the session which is normally more difficult for him.

(STUDENT #4)

The Parent implicitly argued that the contrast between the Student's behaviors at home and his more extreme behaviors at school indicates that staff at [REDACTED] did not know how to manage the Student's behavior. That, however, is not necessarily so. As a matter of common-sense there is a difference between a home environment and a school environment, where the Student is required to engage daily in non-preferred activities such as speech language therapy. [REDACTED] forty-five-minute weekly interaction with the Student does not prove much about his daily performance in school. [REDACTED] works more extensively with the Student, but even her report and letter indicate that the Student still exhibits problematic behavior at home. Without some expert testimony concerning the relationship between behaviors at home and in the school, the Parent only established that the Student behaves better at home or in a short physical therapy session than in school, which does not prove that staff at [REDACTED] [REDACTED] deprived the Student a FAPE.

### **3. MCPS caused the Student to regress.**

The Parent cited the Student's behavior and [REDACTED], discussed below, as evidence of the Student's regression. It is not clear on this record, which does not include much evidence about the Student's behavior at the beginning of the 2023-2024 school year, that the Student regressed. Moreover, the Parent did not present expert testimony, which I deem necessary, to explain how the MCPS caused the Student to regress. The Student has significant, complex, life-long disabilities, which would require an expert's opinion as to causation. *See Giant Food, Inc. v. Booker*, 152 Md. App. 166 (2003) (discussing the need for expert testimony on a complicated issue of medical causation).

#### **4. MCPS could not manage the Student's bathroom needs.**

The Parent submitted a text, dated October 24, 2023, from [REDACTED] [REDACTED], [REDACTED]. [REDACTED] wrote that the Student did not wear a [REDACTED] in elementary school, except maybe in the morning on the school bus. [REDACTED] noted that the Student had a [REDACTED] in case of [REDACTED], and she described how the Student would signal his need to go [REDACTED]. [REDACTED] indicated that the Student also had a [REDACTED]. The Parent asked [REDACTED] to write the text because the Student was having [REDACTED] at [REDACTED]. The Parent testified that although the Student is [REDACTED] and does not use a [REDACTED], he used a [REDACTED] the 2023-2024 school year.

In a report dated April 16, 2024, [REDACTED], the behavioral analyst providing ABA services to the Student at home since January 2024, indicated that the Student uses [REDACTED] as needed and is able to request (mand) for the [REDACTED]. In a progress report issued on or about September 3, 2024, [REDACTED] wrote: "[Student] can independently use the [REDACTED] but needs support from his mother to transition to [REDACTED] due to mobility. He

does not [REDACTED] in session, nor does he [REDACTED] during session. He can independently request [REDACTED] when he needs it.” (STUDENT #3)

The Student’s IEP does not include a [REDACTED] goal. The IEP indicates that the Student is learning to complete self-care tasks and to communicate independently using an assistive technology communication device. The IEP also indicates that the Student requires adult support for all transitions, including [REDACTED]. It is not clear on this record how staff at [REDACTED] managed the Student’s [REDACTED]. The Parent exchanged text messages with [REDACTED], a special education teacher, on October 16-17, 2023, concerning a [REDACTED] schedule for the Student. [REDACTED] indicated: “We will work on trying to keep this as consistent as possible here.” (STUDENT #5) [REDACTED] testified that the Student came to school in [REDACTED] during the 2024 ESY session and a progress report, dated August 1, 2024, in the Student’s IEP indicates that the Student tore [REDACTED] when he was upset.

Again, it is not clear what happened at [REDACTED], why the Student had [REDACTED] issues at school, why he was wearing a [REDACTED] when he arrived at school, or why [REDACTED] was not addressed more specifically in the Student’s IEP. [REDACTED] testified that, if necessary, [REDACTED] is something that can be addressed by the IEP team. The Parent has failed to prove that the Student’s [REDACTED] issues at [REDACTED] rose to the level of a denial of FAPE.

**5. The MCPS neglected the Student in school and on community trips.**

This argument incorporates the Parent’s second, third, and fourth arguments, but adds an incident that occurred during a community activity. The Parent submitted an undated text from [REDACTED], the paraeducator, with a photograph of the Student sitting on his knees leaning back on his heels on the floor of a Five Below store. [REDACTED] reported that the Student was “having a

hard time and doesn't want to get on his chair.” (STUDENT #7) The Parent, who was shopping nearby, went to the Five Below and was able to get the Student to sit in the wheelchair. The school apparently provided a wheelchair for the Student on this day. This incident does not prove any neglect by MCPS staff. The Student exhibited a characteristic noncompliant behavior and the paraeducator, who could not have known that the Parent was nearby, informed the Parent of the situation. The Parent was able to redirect the Student, but that is not to say that MCPS staff would not have been able to resolve the situation without her assistance.

The Parent sincerely believes that MCPS staff neglected the Student during the Five Below incident and at other times, but her belief is not proof. Nor does her belief establish a violation of special education law. The Student's IEP addresses his behavioral issues, but common sense indicates that the Student's noncompliant behaviors will not just go away. The Student will continue to display noncompliant behaviors and MCPS will address those behaviors through strategies included in the Student's IEP.

**6. The MCPS caused the Parent financial strain related to the school's use of the Student's stroller.**

The Parent testified that on June 21, 2024, she received an estimate of \$ [REDACTED] from [REDACTED] for replacement parts (a positioning belt with an adjustable crotch strap and brake assemblies) for the Student's stroller. The Parent testified that these parts were broken or damaged by MCPS staff. The Parent cited no legal authority that would make MCPS responsible under special education law to reimburse the Parent for replacement parts for the Student's stroller.

In summary, the Parent failed to prove that the MCPS denied the Student a FAPE during the 2023-2024 school year.

As noted above, the Parent asked that the Student, as compensatory education for the alleged denial of a FAPE, be placed in a non-public school funded by the MCPS for the 2024-2025 school year. The Parent did not name a specific school. Prospective placement is a compensatory education remedy. Courts have held that to accomplish the IDEA's purposes, a compensatory education award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student. *See G. ex rel R.G.*, 343 F.3d. 295, 309 (2003). The Parent failed to prove that the MCPS denied the Student a FAPE during the 2023-2024 school year; consequently, the Student is not entitled to placement in a non-public school funded by the MCPS.

### **CONCLUSIONS OF LAW**

Based on the Findings of Fact and Discussion, I conclude that:

1. The MCPS did not deny the Student a FAPE under the IDEA during the 2023-2024 school year. 20 U.S.C.A. § 1401(9), *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017).
2. The Student is not entitled to compensatory education in the form of placement in a non-public school funded by the MCPS for the 2024-2025 school year. *See G. ex rel R.G.*, 343 F.3d. 295, 309 (2003).

## **ORDER**

I **ORDER** that the Montgomery County Public Schools did not deny the Student a free appropriate public education under the Individuals with Disabilities Education Act during the 2023-2024 school year.

I further **ORDER** that the Student is not entitled to compensatory education in the form of placement in a non-public school funded by the MCPS for the 2024-2025 school year.

October 21, 2024  
Date Decision Issued

Robert F. Barry  
Administrative Law Judge

RFB/sh  
#214441

## **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]

Stacy Swain, Esquire  
Montgomery County Public Schools

[Redacted]

[Redacted]

Niya Brown (Maddox)

[Redacted]

[Redacted]



**[REDACTED],**  
**STUDENT**  
**v.**  
**MONTGOMERY COUNTY**  
**PUBLIC SCHOOLS**

**BEFORE ROBERT F. BARRY,**  
**AN ADMINISTRATIVE LAW JUDGE**  
**OF THE MARYLAND OFFICE**  
**OF ADMINISTRATIVE HEARINGS**  
**OAH No.: MSDE-MONT-OT-24-21942**

**FILE EXHIBIT LIST**

I admitted the following exhibits into evidence for the Student:<sup>1</sup>

- STUDENT #1 - Letter from [REDACTED] Child and Adolescent Psychiatry Fellow, [REDACTED], September 4, 2024
- STUDENT #2 - Behavioral Health Services Progress Report, [REDACTED], Behavior Analyst, [REDACTED]s, April 16, 2024
- STUDENT #3 - Letter from [REDACTED], Behavior Analyst, [REDACTED], undated
- STUDENT #4 - Letter from [REDACTED], Physical Therapist, [REDACTED], September 3, 2024
- STUDENT #5 - Text messages and an email between the Parent and staff at [REDACTED], December 13, 2023, February 2 and 3, 2024, and April 12, 2024; Bus Detail Report
- STUDENT #6 - Text message from [REDACTED], [REDACTED], October 24, 2023
- STUDENT #7 - Text Messages, with a photograph of the Student at a Five Below store, undated
- STUDENT #8 - Estimate, [REDACTED], June 21, 2024

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<sup>1</sup> The Parent submitted additional documents before the pre-hearing conference, two of which she did not disclose to the MCPS for the hearing or move into evidence. Those two documents are in an envelope in the case file as part of the record.

I admitted the following exhibits into evidence for MCPS:<sup>2</sup>

MCPS #2 - Functional Behavioral Assessment Summary Report, completed June 13, 2023

MCPS #3 - Behavioral Intervention Plan (BIP), completed August 28, 2023

MCPS #5 - Prior Written Notice, August 27, 2024

MCPS #13 - Individualized Education Program, IEP Team Meeting February 8, 2024, with Progress Reports

MCPS #19 - Résumé of [REDACTED]

MCPS #20 - Résumé of [REDACTED].

MCPS #22 - Résumé of [REDACTED]

MCPS #23 - Résumé of [REDACTED]

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<sup>2</sup> The MCPS submitted twenty-three proposed exhibits, but only moved eight exhibits into evidence. The remaining fifteen exhibits are in an accordion file in the case file as part of the record.