

[REDACTED],
PARENT,
ON BEHALF OF [REDACTED],
STUDENT
v.
CALVERT COUNTY PUBLIC SCHOOLS

BEFORE ANN C. KEHINDE,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-CALV-OT-24-30036

DECISION

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STATEMENT OF THE CASE

On November 1, 2024,¹ the Parent filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) on the Student’s behalf, requesting a hearing to review the identification, evaluation, or placement of the Student by the Calvert County Public Schools (CCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);² 34 C.F.R. § 300.511(a) (2023);³ Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2024);⁴ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

¹ Although the Complaint was sent by facsimile on October 31, 2024, it was not sent until 7:05 p.m. and was therefore not considered filed until the next business day. Code of Maryland Regulations (COMAR) 28.02.01.02B(12); COMAR 28.02.01.04D(3).

² “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

³ “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2023 bound volume.

⁴ Unless otherwise noted, all citations herein to the Education Article are to the 2022 Volume of the Maryland Annotated Code.

On November 8, 2024, the CCPS responded to the Parent's Complaint and denied the allegation that it had deprived the Student of a free appropriate public education (FAPE).

I held a remote prehearing conference (Conference) on December 13, 2024. The Parent was not present and was represented by Frances Shefter, Esquire. Rochell Eisenberg, Esquire, represented the CCPS but noted that David Burkhouse, Esquire, Pessin Katz Law, P.A., would represent the CCPS at the hearing. I issued a Pre-Hearing Conference Report and Order (Conference Order) on December 23, 2024.

On January 27, 2025, Lateefah S. Williams, Esquire, Shefter Law, P.A., entered her appearance on behalf of the Parent.

I held the hearing on February 3, 5, 6, 13 and 14, 2025.⁵ Ms. Williams, Esquire, represented the Parent. Mr. Burkhouse and Meghan Sibiski, Esquire, represented the CCPS.

Under the applicable law, a decision in this case normally would be due by January 15, 2025, forty-five days after the end of the thirty-day resolution period.⁶ 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14).

As I was calculating the date, counsel for the Parent stated that in conferring with counsel for the CCPS prior to the Conference, they did not believe the hearing could be held prior to January 15, 2025, due to a CCPS employee's illness, the holiday school break, and hearings that

⁵ The hearing originally was scheduled to also be held on Wednesday, February 12, 2025; however, CCPS was closed on that day due to inclement weather and the hearing was postponed as CCPS' witnesses were unavailable. The parties agreed that it was unnecessary to add a makeup day for February 12, 2025.

⁶ The parties did not participate in a resolution session and agreed to a mediation through the Office of Administrative Hearings (OAH) instead. The mediation was scheduled for the same date as the Conference, December 13, 2024, but it was postponed due to the CCPS' designated representative's illness. Therefore, I told the parties that the end of the thirty-day resolution period was Sunday, December 1, 2024, and under the regulatory timeline, the decision in this case normally would be due on January 15, 2025.

both attorneys already had scheduled. For the reasons documented in Appendix A, the first date that the parties, counsel and I were available to hold the hearing was Monday, February 3, 2025.⁷

Counsel for the Parent requested an extension of time for the decision to be rendered. The regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c). I granted the request for an extension and by agreement of the parties, I noted I would issue the decision no later than thirty days after the last day of hearing.⁸

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. Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES⁹

The issues are:

1. Whether the CCPS' response, or alleged lack of response, to the Student's allegations of bullying during the 2023-24 school year denied the Student a FAPE; and, if so

⁷ Due to the CCPS' designated representative's illness and the conflicts with scheduling, the first date the parties were available to reschedule the mediation was January 21, 2025. Conflicts in scheduling the mediation are also noted in Appendix A.

⁸ The last day of hearing was Friday, February 14, 2025. Thirty days from Friday, February 14, 2025, is Sunday, March 16, 2025; however, the OAH's policy provides that if a special education decision is due on a day the office is closed, it must be issued on the last day the office was open (which in this case is Friday, March 14, 2025).

⁹ Prior to Opening Statements, counsel for the Parent asked whether she could present evidence that the Individualized Education Programs (IEPs) were inadequate in addressing the Student's academic needs in math, English Language Arts (ELA), science and social studies, as well as whether the CCPS adequately implemented the IEPs in effect during the 2023-24 school year. Counsel for the CCPS objected and noted that the issues were delineated during the Conference and that the Conference Order contained a provision notifying the parties that if they objected to the Conference Order, they had ten days to file a Motion to Correct. I ruled that the Parent was limited to raising the issues outlined in the Conference and memorialized in the Conference Order.

2. Whether the Parent is entitled to reimbursement for tuition and fees incurred by the unilateral placement of the Student at [REDACTED] for the 2024-25 school year.

SUMMARY OF THE EVIDENCE

Exhibits

A full list of exhibits admitted on behalf of the Parent is contained in Appendix B.

A full list of exhibits admitted on behalf of the CCPS is contained in Appendix C.

Testimony

The Parent testified and presented the following witnesses:

- [REDACTED] “[REDACTED]”, [REDACTED],¹⁰ [REDACTED], who was qualified as an expert in special education, [REDACTED] and [REDACTED] ([REDACTED]);¹¹ and
- [REDACTED], Senior Behavioral Consultant, [REDACTED], who was qualified as an expert in [REDACTED] and [REDACTED].¹²

The CCPS presented the following witnesses:

- [REDACTED], [REDACTED], Supervisor of Special Education, CCPS, who was qualified as an expert in special education;

¹⁰ [REDACTED].

¹¹ [REDACTED] was also initially offered as an expert in intellectual disabilities, but the Parent dropped this designation as expertise in intellectual disabilities was irrelevant to this case. [REDACTED] was also offered as an expert in IEP implementation and compliance, to which the CCPS objected. The parties agreed that it was understood that IEP implementation is part of being an expert in special education, but as [REDACTED] did not have any additional training, education, or experience in ensuring school systems comply with IEPs (e.g., she never held the position of a compliance officer with a school system) – apart from what any expert in special education would have – I declined to add that as an area of her expertise. COMAR 28.02.01.21D.

¹² [REDACTED] was also offered as an expert in special education to which the CCPS objected. As [REDACTED] had no specific education, training or experience as a special education teacher, I sustained that objection. *Id.*

- [REDACTED], Family Consumer Science teacher, [REDACTED], CCPS, who was qualified as an expert in special education;¹³
- [REDACTED], Dean of Students, [REDACTED], CCPS, who was qualified as an expert in middle school administration; and
- [REDACTED], Assistant Principal, [REDACTED], CCPS, who was qualified as an expert in middle school administration.

FINDINGS OF FACT

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

1. At the beginning of the 2023-24 school year, the Student was twelve years old and started his first year at [REDACTED], in the CCPS, as a sixth grader.
2. In the Spring of 2023, the IEP team held an annual review meeting of the Student's IEP to specifically plan for the additional goals, supports and services that the Student would need as he transitioned to middle school, due to the challenges he faced as a result of his [REDACTED] and [REDACTED].¹⁴

¹³ [REDACTED] is now an Inclusive Education Facilitator for the CCPS, but in the 2023-24 school year she taught the non-core, fourth quarter class, Family Consumer Science, to the Student. She was also an ELA teacher, school writing coach, and a member of the interdisciplinary leadership team. [REDACTED] was also the Student's homeroom teacher for part of the 2023-24 school year.

¹⁴ In the Spring of 2023, it was noted that the Student had goals and objectives in reading comprehension, speech and language: receptive language, speech and language: expressive language, and speech and language: pragmatics, and behavioral – self-management. (CCPS Ex. 4, p. 3). It was also noted that the Student required “multiple environmental, social/behavioral, and instructional supports to access [his] academic curriculum and develop social relationships, including but not limited [to] visual supports, repeated directions and prompts, preferential seating, home-communication system, and movement breaks.” (*Id.*, p. 28). A Behavioral - Self-Management goal was written by the IEP team as follows: “By March 7, 2024, when given a real world scenario (ex. making a mistake on [an] assignment or something in the classroom is not as he thinks it should be), [the Student] will determine ‘the size of the problem’ determine if his reaction is appropriate and demonstrate appropriate behavior for the size/type of problem, in 4 out of 5 scenarios measured by observation.” (*Id.*, p. 34).

3. The Student was placed with typically-developing peers in all of his classes for sixth grade. His math and English Language Arts (ELA) classes were co-taught by a general education teacher and a special education teacher.

4. The transition from elementary school to middle school can be a major adjustment for all students in the CCPS. Unlike elementary school, the Student had seven different teachers in seven different classrooms, and he had to transition through the hallways to the different classrooms in middle school.

5. [REDACTED] also has more students than the elementary school the Student attended; the Student's prior elementary school was just one of the four elementary schools that are "feeder schools" for [REDACTED]. The Student did not know the students that attended the other three elementary schools, and those students did not know the Student.

6. The CCPS has a policy against "bullying." For conduct to meet the definition of bullying, it must be intentional, repeated, and unwanted, and there must be a power imbalance (either real or perceived) between the bully and the target of the bullying.

7. If a student or parent fills out a complaint that a student has been bullied, the school staff investigate it. In addition to stating who the alleged bully was, what happened and where, the complaint provides spaces for information as to whether there were any witnesses and the impact of the bullying on the target.

8. If the bullying was a one-time occurrence, it is considered a "level one" behavior, and a student is not necessarily suspended for the bullying. If the bullying is a repeat offense, the consequences become more severe.

9. If an investigation shows that bullying occurred, supportive measures for the target can be taken by the school: for example, moving the bully out of the same class as the target or checking in with the target multiple times per day to make sure they are safe and comfortable.

10. In early October 2023, [REDACTED], Assistant Principal, and the Parent talked by telephone about the Parent's concerns that the Student was struggling with homework taking several hours to complete in the evenings and that the Parent was struggling with the [REDACTED] platform.¹⁵ The Parent did not tell [REDACTED] that the Student was being bullied. The Parent said she was available for a parent-teacher conference on Friday, October 6, 2023. [REDACTED], who is also the IEP Chair, told the Parent she would schedule an IEP team meeting.

11. On Thursday, October 5, 2023, [REDACTED], guidance counselor, spoke with the Parent by telephone about scheduling a parent-teacher conference, and, at 10:17 a.m., followed up with an email to the Parent. The guidance counselor told the Parent in the email that she had scheduled the meeting for 2:50 p.m. on Friday, October 6, 2023. (CCPS Ex. 5). The Parent did not attend the meeting on October 6, 2023, with the teachers.

12. On Wednesday, October 11, 2023, the Parent emailed the guidance counselor and told her that she just saw the email sent on October 5, 2023. The Parent told the guidance counselor that when she spoke with her on the phone on October 5, 2023, she was in the middle of a 24-hour on call shift as an [REDACTED] and was unable to check her emails during those busy shifts. (CCPS Ex. 6).

¹⁵ [REDACTED] is the CCPS-wide online application that all students access to get their classwork and homework assignments, grades, study guides, and links to resources necessary for them to complete their assignments (e.g., videos). Each student's [REDACTED] account will have a tab for their current courses. Some teachers use [REDACTED] more than other teachers. Many teachers have students submit their assignments directly through [REDACTED] which helps prevent the work from being lost between the time the student completes it at home, and it is supposed to be turned in at school ("the dog ate my homework problem") as described by [REDACTED]. (T. 750:4-6)).

13. The Parent and guidance counselor also talked by telephone on October 11, 2023, about the Student. The Parent was concerned because the Student did not always write his assignments in his agenda book, and he did not know what he was supposed to do for homework or how to complete assignments. The Parent also told the guidance counselor that she did not understand how to navigate the [REDACTED] platform, and that it was a confusing and terrible system. The Parent also noted that the Student was working for hours on homework and make-up work after school and on weekends, and that it was causing a lot of frustration and chaos in the household.

14. [REDACTED] offered the Parent a parent-teacher conference to provide guidance on how to use [REDACTED].¹⁶

15. The guidance counselor wrote an email on October 12, 2023, reminding all the Student's teachers about the Student's IEP and asking if his assignments were being modified. She asked the Student's teachers to write the Student's assignments in his agenda book or make sure he had written them in his agenda book.

16. On October 27, 2023, an IEP meeting was held. The Parent attended the meeting with [REDACTED].

17. During the October 27, 2023 IEP meeting, the Parent and [REDACTED] expressed that it was difficult for the Parent to figure out what the Student was supposed to be working on each evening. The IEP team added a goal (and objectives) in the areas of behavioral – self-management on the Student's IEP with input from the Parent and [REDACTED]. Specifically in terms of a self-management goal, the IEP team added that by March 7, 2024, the Student “will write daily tasks/homework assignments and have his teacher sign the agenda book for each

¹⁶ It is unclear from the record as to whether a conference was actually scheduled and held with the Parent to review how [REDACTED] is navigated.

class period on 4 out of 5 random observations as measured by teacher observations and data collection.” (CCPS Ex. 9, p. 35).

18. The school-based members of the IEP team noted the Student had difficulty with remembering to raise his hand. The IEP team discussed adding a goal in the area of behavioral – social interaction skills for raising his hand and waiting to be called on. [REDACTED] suggested that the goal include properly interacting with peers, working with partners, etc. The IEP team added the following behavioral – social interaction goal: “By March 7, 2024, [the Student] will raise his hand to answer and wait to be called on by the teacher or participate in groups work/discussions when applicable in 4 out of 5 random observations as measured by teacher observation and data collection.” (CCPS Ex. 8; 9, p. 50)

19. Due to the Student’s difficulty with participation in on-topic conversations with peers, the Student also had a speech and language: pragmatics goal that he continued to work on in October 2023, that included maintaining a topic of conversation with peers and adults, and understanding perspectives of his communication partner. (CCPS Ex. 9, p. 16).

20. The IEP team also added visual supports for his math calculation goal and copies of teacher’s notes as an addition to his supplementary aids, services, program modifications and supports. (CCPS Ex. 9, p. 27).

21. During the IEP team meeting, the Parent raised concerns about the Student’s science class. She stated it was hard to know what the Student was expected to do in terms of making up classwork or homework assignments because everything was on the [REDACTED] platform for that class, and she had a hard time navigating [REDACTED].

22. [REDACTED] offered to move the Student laterally to another Science class. [REDACTED] stated that in the other Science class there was a special education instructional assistant

(IA) already assigned to assist students in that class. [REDACTED] offered to move the Student to that science class so that the IA could also assist the Student. The parent did not want to move the Student because he really liked his current Science teacher. The Student remained in his science class without the IA.

23. At the October 27, 2023 IEP meeting, neither the Parent nor [REDACTED] informed the IEP team that the Student was or had been bullied.

24. As the IEP Chair, [REDACTED] prepared the Prior Written Notice (PWN). The PWN summarized the IEP team decisions and also included any refusals by the IEP team to make a requested change. [REDACTED] sent the PWN to the Parent by email on November 6, 2023. The PWN did not state that the Student was bullied. Neither the Parent nor [REDACTED] responded or submitted corrections to the PWN in writing. The Parent did not orally tell [REDACTED] or anyone at the school that she disagreed with the PWN.

25. On January 11, 2024, the Parent wrote an email to [REDACTED], the Student's Special Education teacher and case manager.¹⁷ The Parent stated in her email that she was trying to figure out if the Student's failing grade in science was because the science teacher was always "massively behind with his grading," or if the grade was "real." (CCPS Ex. 10). She further stated that the Student was "otherwise doing fine in his other classes." (*Id.*).

26. On January 12, 2024, the Parent sent an email to the Student's case manager and special education teacher, [REDACTED]. The Parent told [REDACTED] that the teachers do not think that it is their responsibility to make sure that disabled students turn in their in-class assignments. She further stated that the Student's failing grade in science was not because he

¹⁷ [REDACTED] was present for both IEP meetings held during the 2023-24 school year. She was not present to testify during the hearing because, according to the Assistant Principal, she was due to have her baby on one of the days we were scheduled for the hearing. (T. p. 953: 12-8).

could not comprehend the subject matter but because he was incapable of assessing whether he had completed his assignment. The Parent asserted that the Student's inability to assess whether he had completed the assignment was directly the result of his executive functioning deficits. The Parent informed [REDACTED] that, as a busy, full-time [REDACTED], she did not have time to monitor whether the Student had completed in-class and homework assignments, or completed "menial tasks," such as helping the Student to complete his practice records for his band instrument, and that if the teachers were not going to help the Student then they needed to provide him with an aide "to help him with these tasks." (CCPS Ex. 10).

27. On January 16, 2024, [REDACTED] informed the Parent in an email that the Student could attend after-school tutoring on Thursdays, to help him with his homework as the Parent told [REDACTED] that the Student did not know what he was supposed to do, and she was unable to help him figure out what he was supposed to do.

28. On January 17, 2024, the Parent emailed [REDACTED] that she would have to think more about the tutoring because it would interfere with his ability to take the bus home and because on Tuesdays and Thursdays, he had [REDACTED] therapy, and she was not sure if she could get his [REDACTED] therapy schedule changed.

29. In the Parent's January 17, 2024 email, the Parent also requested a 1:1 aide because she stated that the Student's poor grades were because of work that he was supposed to do during class. The Parent wrote:

I can't glean from [the Student] why they aren't being done, but it's clear that [the science teacher] is not checking to see that [the Student] is on the same page as the class and able to do the assignment, which is why I am requesting an 1:1 aide for him. It also doesn't seem appropriate that the school suggests that instead of asking a teacher to oversee his students, additional hardship be placed on me and my family to find him reliable transportation on Thursdays, have him prioritize tutoring to simply do in-school work that he should be doing during regular

school hours over [REDACTED] which is essential to helping him to compensate for psychosocial deficits.

(CCPS Ex. 10).

30. The Student did not attend after-school tutoring on Thursdays.

31. The Student missed one week of school, from February 5 to February 9, 2024, to go to the [REDACTED] with his family on vacation.

32. On February 23, 2024, an IEP meeting was held. [REDACTED] was the IEP Chair, and she wrote the PWN. The Parent attended with [REDACTED]. The purpose of the IEP meeting was an annual review of the Student's entire IEP.

33. At the February 23, 2024 IEP meeting, [REDACTED] stated that the Parent had told his ELA teacher (who could not be present for the meeting), that the Student was struggling to understand abstract information in his literature book. [REDACTED] also asked the Parent how she believed the Student was doing and if she had any concerns. The Parent stated that she was very confused about [REDACTED]. Neither the Parent nor [REDACTED] stated that the Student was being bullied or had been bullied.

34. The IEP team reviewed all of the Student's goals and objectives on his IEP and agreed that the Student was making progress; the Parent and [REDACTED] (as part of the IEP team) did not disagree. With input from the Parent and [REDACTED], there was a change to a math problem solving goal (adding real world math problems) and a reading comprehension goal. The IEP team agreed that the Student was not using the word bank, so this was removed from his IEP. The IEP team discussed the fading of "positive reinforcement" and determined that "strategic reinforcement" was more appropriate (e.g., "this is what you're supposed to be

doing.”). Transition goals were added, and the IEP team agreed the Student did not qualify for Extended School Year (ESY) services.

35. On March 5, 2024, [REDACTED] sent the Parent a copy of the updated IEP and the PWN by email. The PWN did not state that the Student was bullied. Neither the Parent nor [REDACTED]. [REDACTED] responded or submitted corrections to the PWN in writing. The Parent did not orally tell [REDACTED] or anyone at the school that she disagreed with the PWN.

36. On March 14, 2024, the Parent again requested a 1:1 aide to make sure the Student completed his in-class assignments during the day and to make sure he understood what he was supposed to do in the evening for homework and that he understood how to do it. The Parent did not state that bullying, or the consequences or effects of bullying, were a reason why she was requesting a 1:1 aide.

37. On March 19, 2024, the Student’s physical education teacher sent an email to the Parent informing her that he noticed that the Student got close to other students when interacting with them and that they disliked it. The physical education teacher informed the Parent that he discussed this issue with the Student before, during, and after class, and that the Student told him other students “don’t like me.” (PA Ex. 19). The physical education teacher also noted that he is intentional about which group of students he places the Student with, and avoids putting the Student with other students who exhibit frustration in working with the Student, or the Student exhibits frustration in working with them.

38. As of late-March 2024, [REDACTED] did not receive any reports from the Parent, [REDACTED], staff at [REDACTED], or from the Student, that the Student was being bullied, harassed, teased, or mistreated by his peers.

39. All students at [REDACTED] have an “advisory” period for approximately thirty minutes at the end of the day on Tuesdays, Wednesdays and Thursdays.¹⁸ On these days, the students have advisory with one of their core subject teachers. The next day, they rotate to a different core subject teacher. The students spend their time in advisory working on assignments or asking questions of their teacher.

40. On or about April 2, 2024, because the Parent reported that the Student was still struggling with understanding what he was supposed to do with his assignments, the Student was assigned to an advisory with his special education teachers. [REDACTED] and [REDACTED] [REDACTED] were special education teachers who were co-teaching in the Student’s core subjects so they knew what had been assigned in those classes as they co-taught them.

41. Also, on or about April 2, 2024, [REDACTED] instructed the IA in the other science class to check in with the Student during the last fifteen minutes of the science class to make sure the Student knew what he was supposed to be doing in science. The IA was also instructed to make sure the Student had turned in any assignments because the Parent had informed [REDACTED] [REDACTED] that sometimes the Student completed an assignment but did not know how to turn it in through [REDACTED].

42. Between the beginning of the school year and April 2024, the Parent sent numerous emails to the Student’s teachers and other staff at [REDACTED]. None of the emails referred to the Student being bullied.

43. When the Student becomes anxious or is under stress, he often “scripts” or giggles nervously. “Scripting” is when the Student repeats the script of a movie or book he has seen or read that may or may not be appropriate for the situation.

¹⁸ On Mondays and Fridays all [REDACTED] students participate in community building and social-emotional learning through a curriculum called [REDACTED].

44. On or about April 26, 2024, the Student said the “N-word” during his social studies class. A Black student heard the Student and reported it to the office by completing a written statement. Two other students in the class heard the Student.

45. The Student was called to the office and asked to write a statement. The Student wrote that he was “scripting out loud in front of other people” and he accidentally said the “N-word.”

46. After the Student wrote his statement, [REDACTED] met with the Student. Among other duties, [REDACTED] is responsible for discipline of students at [REDACTED].

47. [REDACTED] talked with the Student about his statement and tried to figure out what he meant by “scripting” in this situation, but the Student was having a lot of difficulty communicating. [REDACTED] called the Parent, and she came to the school and spoke with the Student and [REDACTED].

48. After speaking with the Student, the Parent stated that the Student said the word because he was scripting dialogue from the movie, “Up.” According to the Parent, a character in the movie says the names of some African countries, including Niger. The Student mispronounced Niger and instead said the “N-word.”

49. [REDACTED] explained to the Student why the “N-word” is offensive to Black people and told the Parent that the Student would not return to class for the rest of the school day. Instead, he would go to In School Intervention (ISI) and be given his classwork from his teachers to complete with the assistance of the paraprofessional. The Student would also work through a lesson from the Anti-Defamation League (ADL) with a paraprofessional or [REDACTED].

50. The Parent disagreed that the Student should go to ISI. She stated that the Student inadvertently said the “N-word” as a result of his disability. [REDACTED] agreed that the Student did not intentionally use the “N-word;” however, another student heard the Student use the “N-word” so she did not believe he should just go back to class.

51. Other [REDACTED] students that year who had intentionally used the “N-word” were placed in ISI for a full day and completed lessons created by the ADL.¹⁹

52. The Parent disagreed with [REDACTED]’s plan. She signed the Student out for the rest of the school day and took him home.

53. The Student was not suspended and there was no entry on the Student’s disciplinary record regarding the incident.

54. When the Student returned to school the next morning, he had written a letter of apology to the Black student and his family. Although [REDACTED] sometimes asks students to write a letter of apology as a restorative action,²⁰ she did not ask the Student to write the letter in this case.

55. On an occasion either before or after the April 26, 2024 incident, [REDACTED] observed the students at the Student’s cafeteria table trying to get the Student to repeat a curse word. [REDACTED] admonished the students for trying to get the Student to repeat curse words.

¹⁹ Intentionally using the “N-word” as far as [REDACTED] was able to determine resulted from lyrics in songs and students thinking that it was ok to use the word when talking with their friends, but the school took the position that it was improper to use the “N-word,” and the students were placed in ISI for the day and went through the ADL lessons. (T. p. 922-4).

²⁰ COMAR 13A.08.01.11B (8) “Restorative practices” means practices conducted in a whole-school ethos or culture that supports peacemaking and solves conflict by building a community and addressing harm in a school setting and that: (a) Are conducted by trained staff; (b) Focus on repairing the harm to the community through dialogue that emphasizes individual accountability; and (c) Help build a sense of belonging, safety, and social responsibility in the school community.

██████████ talked with the Student about what happened, and they role played what the Student could say if he was in that situation where another student was telling him to repeat a curse word.

56. On or about May 7, 2024, another student reported that the Student said during physical education class that “Black people are mean.” (CCPS Ex. 22). ██████████ called the Parent as she was bringing the Student into her office so that the Parent could be involved from the beginning of the conversation. The Student was visibly upset. ██████████ tried to help the Student calm down. The Student said he made the comment after other students told him to “shut up,” or to “shut the f--- up.” (T. p. 879: 11-13).

57. ██████████ and the Parent agreed that the Student seemed to have more difficulty in unstructured settings like the cafeteria or physical education class. ██████████ suggested that in the past some students have come to her office and been given alternative lessons as opposed to going to physical education class. No decision was made but on the next day that the Student had physical education class, he came to ██████████’s office instead of going to physical education class. From mid-May to the end of the year (approximately fourteen physical education classes) the Student came to ██████████’s office instead of going to physical education class. The Student’s physical education teacher would give him an assignment related to whatever they were doing in physical education class and the Student completed it with help as necessary from ██████████. If the Student completed the assignment before the end of class, he would work on assignments for other classes with ██████████’s assistance.

58. On May 15, 2024, the Parent sent an email to ██████████ that she was concerned about the Student’s mental health. She alleged he was receiving daily verbal assaults from “his cohorts that include recommendations for him to ‘kill himself for being the most annoying person ever.’” (PA Ex. 22).

59. On May 16, 2024, [REDACTED] called the Parent in response to the Parent's email to [REDACTED]. [REDACTED] took contemporaneous notes of her conversation with the Parent that covered many different topics. (CCPS Ex. 24). The Parent told [REDACTED] that she was concerned that the Student would be labeled as a racist or a bully because of the statement he made about Black people. [REDACTED] told the Parent that she did not know of anyone saying they thought the Student was a bully. The Parent told [REDACTED] that students told the Student to kill himself, but she does not know if that happened once, twice, or every day. The Parent said the Student did not have any friends and [REDACTED] told the Parent that was not true because the Student was friends with [REDACTED], another student in the sixth grade. [REDACTED] told the Parent that she put the Student in a group social skills class that met once a week with the guidance counselor. The Parent asked about other options for school placement, and they talked generally about school placement options that were available in the county. The Parent told [REDACTED] that she spent many hours every night working on the Student's homework with him. [REDACTED] told the Parent that approximately a month earlier she told the IA to go into the Student's science class during the last fifteen minutes to make sure he knew what he was supposed to do for homework and that he had turned in his assignments.

60. Neither the Parent nor the Student filled out a bullying complaint form and [REDACTED] did not conduct an investigation. [REDACTED] informally checked in with the Student every day. She told the Parent that if they knew who the alleged bully was, they could move the bully out of the Student's class or move the Student away from the bully.

61. In [REDACTED]'s check-ins with the Student, she tried to explain to the Student what he should focus on so that he could report who was bullying him: was it a boy or a girl? What color shirt did they have on?

62. The Student told [REDACTED] that everything was fine when she checked in with him at different times each day.

63. In June 2024, the Parent contacted [REDACTED] to express concerns about the Student's educational program and that he was being bullied. [REDACTED] advised the Parent to request another IEP meeting. The Parent told [REDACTED] that two IEP meetings were held that school year and that she did not want to request another IEP meeting because nothing was ever changed through an IEP team meeting.

64. The Parent did not request an IEP meeting in June 2024.

65. During the 2023-24 school year, the student had a receptive language goal in the area of speech-language which required the Student to identify multiple meaning words, synonyms, idioms, with verbal and visual cues. The Student met several of the objectives of this goal by October 27, 2023, and he achieved the goal by February 2024.

66. During the 2023-24 school year, the Student had a goal to write his daily tasks and homework assignments in his agenda book.

67. During the 2023-24 school year, the Student had a reading comprehension goal involving using texts to answer inference questions. Although the Student did not achieve this goal, he made progress towards achieving it.

68. The Student's grades for the 2023-24 school year were As, Bs, and Cs.

69. The CCPS administers an assessment, the Measure of Academic Progress (MAP), to all CCPS students three times per year. The MAP assessment measures a student's individual growth as well as a percentile score that can be compared to same-grade peers nationally.

70. The Student's reading score in the fall of 2023, was 189. In January 2024, the Student's score was 199. The Student's score of 199 placed him in the nineteenth percentile for achievement and in the seventy-ninth percentile for growth.

71. The Student's math score in the fall of 2023, was 188, in the third percentile. In January 2024, the Student's math score was 200, in the eighteenth percentile. The Student's growth between the fall and winter was in the thirty-seventh percentile.

72. The Student was administered two CCPS-wide math assessments in the 2023-24 school year. On the first assessment in the fall, the Student scored a thirty-one percent, and the district average was forty-seven percent. On the second assessment in the winter, the Student scored a fifty-four percent, and the district average was forty-nine percent.

73. On July 25, 2024, the Parent applied to [REDACTED] for the Student.

74. After the 2023-24 school year ended, the Student attended several summer camps, most of which he had attended in the past with no issues. The Student has always wanted to go to a sleep-away camp as his cousins did in the summer. The Student's Parent found a camp that was not too far away from their home and registered him for this camp. The camp was for typically developing children and it is unknown from the record how much, if any, information the Parent provided the camp about the Student's disability and/or the strategies that could be employed for him to successfully interact with the other campers.

75. About twenty-four hours after the Student began the sleep-away camp, the camp directors contacted the Parent and requested that she pick up the Student as he would not be permitted to continue at camp. The camp program informed the Parent that the Student was inappropriate in his interactions with some of the girls at the camp and, despite being instructed

not to enter the girls' personal space, the Student persisted. As a result, the camp directors made the decision that the Student should leave the camp early.

76. On July 31, 2024, shortly after the sleep-away camp experience, the Parent took the Student to see a licensed psychologist, [REDACTED], [REDACTED]. The Parent provided [REDACTED] with school records, past reports, and completed clinical rating scales for the Student. [REDACTED] interviewed the parents and also interviewed the Student separately. [REDACTED] diagnosed the Student with [REDACTED] ([REDACTED]), [REDACTED] [REDACTED] ([REDACTED]) and [REDACTED]. [REDACTED] also recommended that the Student not return to [REDACTED] in the fall but be placed on Home and Hospital Teaching (HHT). [REDACTED] filled out a HHT form. The Parent did not turn the HHT form into [REDACTED].

77. On August 12, 2024, the Parent provided the CCPS with a letter stating that they were unilaterally placing the Student at [REDACTED] and were seeking reimbursement of tuition from the CCPS.

78. On August 19, 2024, [REDACTED] sent the Parent an acceptance letter and a contract enrollment letter for the Student.

79. On August 21, 2024, the Parent signed a tuition schedule contract with [REDACTED] and paid a deposit for the Student.

DISCUSSION

Burden of Proof

The standard of proof in this case is a preponderance of the evidence.²¹ To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so

²¹ COMAR 28.02.01.21K(1).

than not so” when all the evidence is considered.²² The burden of proof rests on the party seeking relief.²³ The Parent is seeking relief and bears the burden of proof to show that during the 2023-24 school year the Student was bullied and that the bullying resulted in him being denied a FAPE.²⁴

Legal Framework

The IDEA requires the states to provide a “free appropriate public education” (FAPE)²⁵ to all children who qualify for special education services.²⁶ To meet this obligation, local educational agencies (LEAs) must ensure that “FAPE emphasizes special education and related services designed to meet [the eligible child’s] unique needs and prepare them for further education, employment and independent living.”²⁷ In order to qualify to receive special

²² *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

²³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

²⁴ COMAR 28.02.01.21K(1).

²⁵ 34 C.F.R. § 300.17. (“*Free appropriate public education* or *FAPE* means special education and related services that—(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the [State Education Agency] SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.”). *See also* 20 U.S.C.A. § 1401(9).

²⁶ 20 U.S.C.A. § 1412.

²⁷ 20 U.S.C.A. § 1400(d)(1)(A); *see also* Educ. § 8-403.

education services, the child must be identified under one of the enumerated educational disabilities²⁸ and “by reason thereof, [need] special education and related services.”²⁹

LEAs meet the federal requirement to provide FAPE to eligible students through development and implementation of IEPs.³⁰ An IEP is a comprehensive program prepared by a child’s IEP Team, which includes mandatory members from the LEA as well as the child’s parents.³¹ An IEP must be drafted in compliance with a detailed set of procedures.³² It also must contain, among other things, “a statement of the child’s present levels of academic achievement,” “a statement of measurable annual goals,” and “a statement of the special education and related services to be provided to the child.”³³

In situations where a student’s behavior impedes their learning or that of others, the student’s IEP team must consider the use of positive behavioral interventions and supports, and other strategies, in the IEP, to address that behavior.³⁴ Such positive behavioral interventions and supports can be addressed in the IEP through specific social, emotional, or behavior goals; with supplementary aids and supports; through related services such as counseling, psychological or social work services; in a functional behavioral assessment (FBA) or behavior intervention plan

²⁸ There are thirteen designated educational disabilities under the IDEA. 34 C.F.R. § 300.8(a)(1). However, Maryland has fourteen educational disabilities including: Autism, Deaf-Blindness, Developmental Delay, Emotional Disability, Hearing Impairment including deafness, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech Language Impairment, Traumatic Brain Injury, and Visual Impairment. COMAR 13A.05.01.03B(78) (generally); *see also* COMAR 13A.05.01.03B(8), (17), (23), (29), (36), (44), (50), (51), (73), (74), (82) and (84); COMAR 13A.05.01.06B and 13A.13.01.03B(12) (regarding developmental delay).

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

³⁰ *See M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009) (“An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE.”); *see also* 20 U.S.C.A. § 1414(d); 34 C.F.R. §§ 300.320-300.324.

³¹ 20 U.S.C.A. § 1414(d)(1)(B)-(d)(1)(D); 34 C.F.R. § 300.321; COMAR 13A.05.01.07.

³² 20 U.S.C.A. § 1414(d)(1)(B).

³³ 20 U.S.C.A. § 1414(d)(1)(A)(i).

³⁴ 34 C.F.R. §§ 300.324(a)(2)(i), (b)(2), 300.320(a)(4); COMAR 13A.05.01.08(A)(4), 13A.05.01.09(c).

(BIP); or any combination thereof.³⁵

³⁵ 34 C.F.R. § 300.320(a)(2), (4); 34 C.F.R. § 300.34(c)(2), (10), (14); COMAR 13A.05.01.08(A)(4), 13A.05.01.03.(B)(14).

Further, a LEA can violate the IDEA by denying a parent's request to discuss allegations of bullying when the parent had a reasonable concern that bullying was interfering with the student's ability to receive a FAPE.³⁶

Parents who believe that an LEA is not providing or offering a FAPE to their child may unilaterally place them in a private/non-public school and thereafter seek reimbursement.³⁷ For parents to receive reimbursement for tuition resulting from the unilateral private school placement, an ALJ³⁸ must find that: (1) the school district has denied FAPE to the student or committed another substantive violation of IDEA, (2) that the parents' private school placement is proper, and (3) that the equitable factors in the particular case do not preclude the relief.³⁹

The Parties' Positions

The Parent maintains that the Student was the target of bullying that occurred daily from the beginning of the 2023-24 school year until the end of the school year. The Parent also contends that she verbally informed numerous teachers and administrators about the bullying, and that she and [REDACTED], the Student's [REDACTED] therapist, informed the IEP team at both the October 2023 and February 2024 IEP meetings. Despite this notice, the Parent contends that [REDACTED] did nothing to address the pervasive bullying. As a result of the bullying, the Parent argued that the Student was denied a FAPE because he was unable to access his education. The Parent argued that the Student was unable to access his education because he was unable to focus on learning when he felt "hunted" by his peers, and he was unable to ask for help from his teachers with academics when that resulted in ridicule and bullying from his peers.

³⁶ *T.K. v. N.Y.C. Dep't of Educ.*, 810 F.3d 869 (2d Cir. 2016).

³⁷ 20 U.S.C.A. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c).

³⁸ Administrative Law Judge.

³⁹ *Florence Cnty. Sch. Dist. #4 v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. Town of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985); *see also Forest Grove Sch. Dist. v. TA*, 557 U.S. 230, 246–47 (2009).

As a result of the deprivation of FAPE, the Parent argued that tuition and expenses for her unilateral placement of the Student at [REDACTED] for the 2024-25 school year should be reimbursed.

The CCPS argued that it was not notified of any allegations of bullying against the Student until April 2024 when there was the incident of the Student using the “N-word” in class. The CCPS argued that the Parent had numerous email exchanges with teachers and administrators from the beginning of the school year until April 2024, and there were no allegations of bullying in the emails. The CCPS further argued that although the Parent and [REDACTED] testified that they raised the issue of bullying at both the October 2023 and February 2024 IEP meetings, the IEP Chair, [REDACTED], denied that it was raised. Further, the CCPS argued, there was no mention of bullying in the PWNs (although other issues that were raised by the Parent were included) and neither the Parent nor [REDACTED] objected to its alleged omission. As for the incident in April 2024, the CCPS argued that the school had the obligation to deal with the use of a racial slur used by the Student as it did with any other student with or without disabilities. The CCPS argued that once it became obvious that the Student’s use of the racial slur was unintentional, [REDACTED] personnel did not discipline the Student. The CCPS also argued that any incidents it became aware of after April 2024, involving interactions between the Student and his peers that were problematic (even if they could not be investigated as bullying) were appropriately addressed and the Student was provided with a FAPE because he met or made progress on all of his IEP goals, his grades were As, Bs, and Cs, and he made progress on standardized testing during the 2023-24 school year. Finally, the CCPS argued that tuition reimbursement at [REDACTED] would not be appropriate because the Parent did not comply with the requirement to inform CCPS ten days prior to unilaterally placing the

Student at [REDACTED], and because educating the Student at [REDACTED] would not be in the least restrictive environment (LRE).

Analysis

What is Bullying

Although the issue of bullying was central to the Parent's allegations, the Parent did not present any testimonial or documentary evidence providing the legal definition of bullying or addressing the CCPS' definition of bullying. The Parent questioned [REDACTED] during direct examination about her definition of bullying:

Bullying can be defined a lot of different ways. Specific to [the Student's] situation, I would say when he felt unsafe, when he felt targeted, when he felt repeated experiences of people saying mean things about him or his life or his behavior or his choices.

(T. p. 831: 6-11).

Counsel for the CCPS followed up on cross-examination with [REDACTED]' definition of bullying:

Q.: Now you were talking about your operational definition of bullying and, correct me if I'm wrong, you said that someone was being bullied when they felt or perceived that someone was being unkind or mean to them, correct?

A.: Correct.

Q. Now in point of fact, isn't there an objective component to bullying? Doesn't the conduct toward the student have to be something that's objectively mean or unkind to the student?

A.: Not necessarily.

Q. Okay. So the April 26th incident, if hypothetically we agree that [the Student] was scripting and said the "N" word, and it was overheard by an African American student, and [the Student] was not pleased with the reception or attention he received from the administration for saying that word, that constitutes bullying?

A.: I had previously stated that [the Student] told me he felt bullied in that situation.

Q.: But do you think that's bullying?

A.: I do if my client tells me that they're having emotional issues in relation to something they've experienced.

(T. pp. 850-1).

Although there may be therapeutic reasons why a clinician would define an incident as bullying based on the subjective experience of their client, I reject the premise that the subjective perception of bullying is the definition the CCPS must consider in determining whether the Student was bullied. Instead, I will use the CCPS' definition of bullying as it is used in the CCPS policy on bullying. Although the policy was not introduced into evidence, a classroom teacher, [REDACTED], the Dean of Students at [REDACTED], [REDACTED], and the Assistant Principal, [REDACTED], all testified consistently as to what the CCPS considers bullying behavior.⁴⁰

[REDACTED] testified that bullying involved a "real or perceived inequity of power, and it would be a repeated offense." (T. 766: 5-6). [REDACTED] also testified that it involved the real or perceived imbalance of power and that it had to be repeated. She also testified that there was a third prong, but she could not recall what it was without referring to the policy or the bullying complaint form. (T. 921-2). Finally, [REDACTED] testified similarly that the CCPS policy on bullying included that the behavior had to be

⁴⁰ Although the Parent did not cite any caselaw, statutes, regulations or policy in her closing argument, she did submit annotated citations. As counsel for the CCPS pointed out, I instructed the parties to submit only the legal citations to authorities they cited during their closing arguments; however, as my instructions may not have been understood by counsel, I have nevertheless reviewed and considered the Parent's authorities. In a *Dear Colleague Letter*, OSERS, August 20, 2013, p. 2, the United States Department of Education, Office of Special Education Programs noted that "[b]ullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated over time." <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/bullyingdcl-8-20-13.pdf> (last visited March 12, 2025). This definition is closer to the definition used by the CCPS rather than the subjective one provided by the Parent through her witness, [REDACTED].

repeated and involve an imbalance of power (real or perceived) but she also clarified that the behavior had to be unwanted and intentional. (T. 957: 10-2).

Was the Student persistently bullied from the beginning of the school year until April 2024, and if so, were [REDACTED] personnel aware of the bullying?

The Parent maintains that the Student was consistently bullied from the beginning of the school year until the April 2024 incident involving the Student's use of the "N-word." The Parent testified that the Student came home saying the other students were mean to him or did not like him. [REDACTED] reported that she observed a change in the Student. Prior to the Student entering the sixth grade, [REDACTED] observed that the Student thought everyone was his friend. She noted that during the sixth grade year, he began to express uncertainty as to who his friends were and that he did not want to invite other students to his birthday party whereas in the past he had always invited everyone in his class as well as his teachers. (T. p. 540-1). As these vague examples by the Parent and [REDACTED] did not provide any context, I decline to consider them as examples of bullying. However, even if they were, the Parent failed to establish that she notified [REDACTED] of their occurrence. As the CCPS noted, the Parent regularly emailed concerns she had about the Student's educational program to various [REDACTED] personnel. After reviewing numerous emails in detail, the Parent conceded that as of April 2024, she never mentioned bullying in any of her emails to the school. (T. p. 260: 5-9).

Nevertheless, the Parent testified that she verbally told staff at [REDACTED] that her son was being persistently bullied and that she and [REDACTED] talked about the Student being bullied at both the October 2023 and February 2024 IEP meetings.

The Parent testified that she brought up bullying in the October 2023 IEP meeting in the context that the Student felt scared and on the defensive during lunchtime and in the hallways

between classes because he was being bullied. She further testified that the teachers said they had not witnessed this but would “watch out for it.” (T. 130: 17-23).

With regard to the February 2024 IEP meeting, the Parent testified that she told staff that bullying was such a distracting part of his “every day” and “every class.” (T. p. 234: 4-9). In response, many of the staff reported that they did not see it. When asked if she recalled which staff stated that, the Parent responded that she could not recall. (T. p. 234:8-9).

I do not find the Parent’s testimony on this point credible. First, I find it inconceivable that if the Parent was concerned that her son was being bullied, she would not mention it even once in the frequent email correspondence she had with the school. Second, if the Parent and [REDACTED] raised bullying in the IEP meetings, I have no doubt that [REDACTED], the IEP chair at both meetings, would have mentioned it in the PWN.

[REDACTED] has been an educator and administrator since 1995. She explained why she took a special interest in this Student:

So[,] I met [the Student] probably on the first day of school. One of my friends from the elementary school loved [the Student], and I’ve been friends with her for years. And she told me that [the Student] was a little nervous about coming to middle school, so I made a point to meet him and introduce myself and tell him that I was friends with her and that I was here for him. And from that day on, he gave me high-fives in the hallway and we talked at lunch.

(T. 936-7).

Although the PWN is not a “verbatim transcript of the meeting” (as is stated on the PWN), I find it illogical that [REDACTED] would include (by the Parent’s and [REDACTED], accounts) every issue that was discussed at the IEP meetings but omit a discussion of bullying if it occurred. This is especially true given that [REDACTED] appeared to have had a special interest in the Student since he arrived at [REDACTED]

Finally, the Parent and [REDACTED] had an opportunity to respond to the PWN in writing if they believed a critical issue such as the Student being subjected to bullying was discussed during the IEP meetings but was omitted in the PWN.⁴¹ Neither the Parent nor [REDACTED] could offer any explanation as to why they did not object in writing to the PWN omitting a discussion of bullying if that in fact took place during the IEP meetings. Although the Parent did not submit any response to the PWN, it was clear from her testimony that she was disdainful of the IEP documents and the process:

But I am so used to these IEP documents being copy/pasted from previous. You can find all these IEPs have – I mean, that one of these IEP documents has documentation from the fourth grade. It is a hugely dysfunctional document. Over the years, I have learned it is not worth my time trying to scrutinize what's written because what's written is a very, very brief summary of what is really hours of discussion. So, no I am not in the habit of scrutinizing every word that's written.

(T. p. 183: 12-24)

Although not specifically addressed during the hearing, it appears the “documentation from the fourth grade” referred to by the Parent was the testing that is done every three years to determine the Student’s “present levels of achievement and functional performance” and is required by federal regulations.⁴² In turn, the present levels of performance, as well as the input and data from the IEP team, dictate how the Student’s strengths and weaknesses are determined and from that, goals and objectives are crafted in the IEP to address those weaknesses so the Student can access the grade-level curriculum. As formal testing is not done every year, the results of that are carried over into the “present levels of performance” so that members of the

⁴¹ “If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.” 34 C.F.R. §99.20(a); *see also* 34 C.F.R. §300.618.

⁴² 34 C.F.R. § 300.320(a)(1); *see also* 20 U.S.C.A. § 1414(d)(1)(A)(i).

IEP team have that information in front of them during the meeting. In the Student's case, he was last formally assessed in fourth grade.

Further, IEP objectives and goals are written with the expectation that they are capable of being achieved within one year but that one year does not necessarily align with the school year calendar. In the Student's case, his IEP is annually reviewed in February of each year, so the goals are expected to be mastered by February of the following year, and if not, evaluated and discussed by the IEP team. Therefore, clearly at the October 2023 meeting, there was a discussion as to how the Student was progressing on the goals established in February 2023, and in February 2024, there was a discussion on whether he achieved the goals set the prior year.

Finally, the Parent also testified that given the virtual format of the IEP meeting, she had no way of keeping up with who was talking, their jargon and their position. I find this allegation rather surprising given that the Parent is highly educated as a practicing

██████████ The names and titles of the IEP participants were listed on both the IEPs and the PWNs that were sent to the Parent after the IEP meetings. In addition, the Parent was accompanied by ██████████ who, according to her testimony, had attended approximately one thousand IEP meetings. (T. p. 477:15-19).

I also found that the Parent was not credible because she was factually incorrect about aspects of her son's program that she criticized. For example, there was extensive testimony concerning changes ██████████ made to try to accommodate the Parent's repeated concerns that the Student had to do so much classwork at home because teachers were not making sure that the Student was doing his classwork during school time or that he was doing it correctly. The Parent repeatedly raised this as the rationale for why she believed the Student was entitled to a 1:1 aide. ██████████ testified that all students had an advisory for the last thirty

minutes of the day on Tuesdays, Wednesdays and Thursdays. The students would rotate between their core classes so that students could get extra help directly from the teacher of that subject. Due to the Parent's complaints, [REDACTED] assigned the Student to a special advisory in which [REDACTED] and [REDACTED] would work with the Student in a smaller group of students. The Parent testified that:

Switching the plan from having his teachers teach him to having non-certified teachers be the ones to try to guide him and people who are -- do not have any, necessarily, qualifications or training in [REDACTED] education, it was, to me, a step down from what we had agreed upon doing in the IEP.

(T. p. 253: 10-15). However, [REDACTED] and [REDACTED] were the Student's special education teachers who co-taught the Student in math and ELA and were therefore in the best position to understand what was being taught in those subjects and to work with the Student to complete assignments and re-teach if needed. [REDACTED] was not, as the Parent had assumed, an instructional assistant. (T. p. 224-5).

[REDACTED] also opined that the Student was bullied regularly during the entire 2023-24 school year. [REDACTED] held this opinion despite the fact that she had almost no specific information from the Student regarding bullying. The Student told [REDACTED] that he was bullied at "[REDACTED]," but could not be specific about when it happened except to say "in sixth grade" and "all the time." (T. p. 437: 7-14). He was also not specific about who bullied him other than to call the bullies "villains," and this included teachers when they did not listen to him when he was trying to talk with them. (T. p. 435: 8-17).

I did not give [REDACTED]'s opinion very much weight. [REDACTED] was primarily brought into the case to express her opinion that the Student did not receive educational benefit at [REDACTED] due to the bullying, but that [REDACTED]

was appropriate for the Student's needs. [REDACTED] was brought into the case at the eleventh hour; she did not have a history of providing any services to the Student prior to the initiation of this litigation. She first observed the Student at [REDACTED] on January 27, 2025 for approximately ninety minutes. (T. p. 597: 14-21). Her first interview of the Student was on either the evening of January 29 or 30, 2025 (T. p. 594: 3-8) and was approximately forty-five to fifty-five minutes long. (T. p. 597: 17-19). Finally, [REDACTED] interviewed the Student on the evening of February 4, 2025, the evening before she testified, for approximately thirty minutes. (T. p. 594: 9-12; p. 207: 20-1).

Moreover, there was information concerning the Student that was not shared with [REDACTED]. [REDACTED] was not informed that the Student went to a summer sleep-away camp in July 2024, and was told to leave about twenty-four hours after he arrived. (T. p. 601: 2-14). The Parent did not share this information with [REDACTED] even though she characterized it as a traumatic event for the Student. (T. p. 352: 17-20). Therefore, it is impossible to know whether [REDACTED] opinion that [REDACTED] was appropriate for the Student's needs due to his experience at [REDACTED] would have been influenced by the information regarding his traumatic removal from summer camp.⁴³

April 26, 2024 Incident:

On April 26, 2024, the Student was brought to see [REDACTED]. By all accounts, the incident was very distressing to the Student, but it is not entirely clear how, from the Parent's perspective, this incident was an example of the Student being bullied.

As detailed in the Finding of Facts, on April 26, 2024, a student in class overheard the Student saying the "N-word" out loud and reported it to a "safety monitor" who took a written statement from the student. In his statement, the student listed other students who also heard the Student use the "N-word." The Student was asked to write a statement, and he admitted to using the "N-word" but said he used it accidentally when

⁴³ Although I considered [REDACTED]'s testimony, I have not discussed it at great length in this Decision because her opinions regarding [REDACTED] are irrelevant as I have ultimately determined that the allegations that the CCPS did not properly respond to allegations of bullying against the Student were unfounded and did not result in a denial of FAPE. The lack of an extensive discussion of [REDACTED]'s testimony should be viewed in the context of the limited relevance of her testimony. Further, there is case law in the Fourth Circuit that provides that an ALJ does not have to exhaustively explain her reasoning to credit one witness rather than another. *Bouabid v. Charlotte-Mecklenburg Schools*, 62 F. 4th 851, 859 (4th Cir. 2023) ("the ALJ in an IDEA case need not 'explain in detail its reasons for accepting the testimony of one witness over that of another.'" (citation omitted); see also *Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 442 (2002) (emphasizing that "[t]he Commission was free to accept or reject any witness's testimony" and "the mere failure of the Commission to mention a witness's testimony" does not mean that the Commission "did not consider that witness's testimony").

he was “scripting.” (CCPS Ex. 22).⁴⁴ As [REDACTED] could not figure out where the Student would have scripted the “N-word,” she called his Parent into the school. After some discussion, the Parent testified that the Student said he was scripting from the movie, “Up.” (T. 102: 8-9). When [REDACTED] said she had seen the movie “Up” many times and that word is not used in the movie, the Student said that in the newsreel section of the movie, they are fighting over the continent of Africa and “it became clear to me and the [REDACTED] at the same moment that he was reciting the countries of Africa and had mispronounced the word Niger.” (T. 102: 13-17).

The Parent argued that the Student was unfairly disciplined as a result of his disability. She argued that his saying the “N-word” was the result of his scripting, a behavior caused by his autism when he is anxious. The CCPS argued that the Student was not disciplined, and the evidence is uncontradicted that there was no disciplinary record created as a result of the incident on April 26, 2024.⁴⁵

Clearly, the Parent disagreed with [REDACTED]’s decision that the Student should not be permitted to return to class, but [REDACTED] explained the rationale for why they wanted the Student to remain in ISI for the rest of school day: because other students heard the Student use

⁴⁴ The Parent contends that the Student did not even know the “N-word” or understand what [REDACTED] was trying to explain to him because until that point, he did not understand or “see” racial differences and therefore could not understand the points [REDACTED] was trying to make to the Student about the hurtful historical background of the word. (T. 103: 10-17). I am not totally convinced because if the Student did not know that the “N-word” should not be used, there would have been no reason for him, before being interviewed, to write a statement that he “accidentally” used the N-word.” (CCPS Ex. 22). If the Student did not know it was a word he should not use, he would have had no reason to write that he accidentally said it.

⁴⁵ “‘In-school suspension’ means the removal within the school building of a student from the student’s current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school principal.” COMAR 13A.08.01.11B (4). Further, an “in-school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to: (i) Appropriately progress in the general curriculum;(ii) Receive the special education and related services specified on the student’s IEP, if the student is a student with a disability in accordance with COMAR 13A.05.01;(iii) Receive instruction commensurate with the program afforded to the student in the regular classroom; and (iv) Participate with peers as they would in their current education program to the extent appropriate.” COMAR 13A. 08.01.11C(2)(a).

the “N-word,” they could not have him return to class when other students who had not maliciously used the word that year were placed in ISI for an entire day.⁴⁶ [REDACTED] did take into consideration the Student’s disability which is why she did not put the Student in ISI for the next school day.

Further, [REDACTED] did not tell the Parent that she had to take the Student home as a result of the incident on April 26, 2024. The Parent testified that she understood that if she did not take the Student home, he would have been locked in a room by himself for the rest of the day. [REDACTED] testified that the CCPS policy states that no student may be left alone at any time during the school day so she would not have told the Parent that this is what she was planning to do. Further, when the Student returned to school, [REDACTED] testified that she modified the ADL lessons to “role play” with the Student. She testified that the Student was in a better state of mind when he returned to school and was receptive to the “role playing” as he did that in other areas of his educational program.

I do not conclude that the way [REDACTED] handled the investigation and results of the incident on April 26, 2024 constituted bullying. In addition, although the school could have placed the Student in ISI to the same extent that removal is applied to students without disabilities, [REDACTED] was clear that the Student was not placed in ISI.⁴⁷

Moreover, the way [REDACTED] handled the incident was consistent with the benefits of education in the least restrictive environment described by [REDACTED] as follows:

⁴⁶ [REDACTED] explained that many students that year thought they had a “pass” to use the word as they were repeating lyrics from songs, etc., but the school consistently enforced its prohibition of the use of the “N-word” and had the students go to ISI and complete ADL lessons. (T. p. 875: 17-23).

⁴⁷“A student with a disability may be removed from the student’s current placement for not more than 10 consecutive school days for any violation of school rules to the same extent that removal is applied to students without disabilities.” COMAR 13A.08.03.03A.

We know that we don't have self-contained or segregated grocery stores or community environments so providing instruction in that general education

setting allows them to learn the skills that they will need to learn as adults to interact with all members of the community.

(T. 685:19-24).

It is true that once the Student leaves school and lives in an unsegregated community environment, if he has not learned that certain words cannot be said out loud, the real world consequences would most likely be more severe than sitting in a room with [REDACTED] and learning the history of those words, or having adapted lessons prepared by the ADL.

I infer that the Parent also believed the Student was bullied after the incident on April 26, 2024, because other students may have talked about it among themselves. First, counsel for the Parent repeatedly referred to students spreading *rumors* about the Student using the “N-word” but, as the Student actually did use the “N-word,” it was not a rumor. Counsel may have meant “students gossiping” about the incident. After the following cross-examination with [REDACTED], [REDACTED], counsel for the Parent indicated she was raising the topic because she questioned “the school’s sincerity of this being -- remaining a private incident.” (T. 932: 22-4).

Q. Okay. Well, isn’t it true that the school didn’t do anything to prevent this from happening?

A. I’m sorry. To prevent what from happening?

Q. To prevent kids from spreading that [the Student] was saying the N word?

A. Again, I can’t control what comes out of the students’ mouths. If I could, we would have a lot less problems on our hands.

(T. p. 912-3).

Counsel for the Parent then asked [REDACTED] if the school was responsible for trying to suppress “rumors” and [REDACTED] explained that they always tell students not to discuss what they told her with other students, but invariably students go out and start talking with other

students about it. However, if the school has proof that students are spreading rumors or gossiping about another student (e.g., they have a text message or a social media post), they will call the student's parent as they have found that is the only effective way to deal with it. (T. p. 915-6). As the school did not have proof that students were gossiping about the Student (they did not hear any students talking about it and they did not have texts or social media posts) and neither the Student nor his Parent could provide them with any names of students who were talking about the Student using the "N-word," there was no action the school could take with regards to this specific incident.

May 7, 2024 Incident and Physical Education Class:

On May 7, 2024, a student in the Student's physical education class came to the safety monitor and reported that the Student was saying that "Black people are mean." (CCPS Ex. 22). This was not the same student who reported the Student using the "N-word." [REDACTED] again brought the Student to her office, but this time she called the Parent as she was bringing him to her office so that the Parent could be involved from the beginning.

[REDACTED] testified that her biggest concern that day was trying to calm the Student down as he was visibly upset when he entered her office. (T. 870: 7-16). [REDACTED] further testified that as she and the Parent were talking on the phone, she observed that this was the second complaint about the Student from a peer in physical education class, and she noted that physical education class can be a more unstructured time than other classroom settings. [REDACTED]

[REDACTED] testified that in brainstorming with the Parent, she mentioned that other students had sometimes come to her office to do alternative assignments rather than participate in physical education. She testified that she did not remove the Student from physical education, but she assumed that the Parent and Student decided he would come to her office for alternative

assignments rather than go to physical education class because when she came into her office on the next day the Student had physical education, he was waiting for her. (T. 880: 10-19).

Although the Parent argued through counsel that [REDACTED] restricted the Student from accessing physical education class, [REDACTED] testified the school would never take a student out of class without parental approval (T. 884: 4-7) and an email from the Parent corroborates the school's position that it was a joint decision. (PA Ex. 22)(T. 884: 1-2).⁴⁸

The Parent also pointed to an email from the physical education teacher prior to the May 7, 2024, as evidence that the school knew the Student was being bullied in physical education class. On March 19, 2024, the physical education teacher wrote, in pertinent part:

I have been noticing social issues for [the Student] in PE. He tends to get very close to other students, and sometimes has trouble interacting with them. I have tried to put him with certain students, as I notice, he (and the other students) get frustrated. He also tells me that "no one likes him." I have talked with him during/after class about this.

(CCPS Ex. 27).

I do not interpret this email to be evidence of bullying. Generalized statements that "no one likes me" lacks the context to demonstrate that they were negative, repeated instances, and the result of a real or perceived power imbalance. Instead, the physical education teacher was noting concerns that he had about the Student not recognizing the need others have for their personal space. The physical education teacher addressed the issues by being intentional about which students he placed the Student with in order to

⁴⁸ In coming to the conclusion that it was a joint decision to have the Student go to an alternative assignment for physical education for the rest of the school year, I am not overlooking the Parent's testimony that her use of the word "we" was a collaborative technique she uses with her [REDACTED] and was not meant to signify that she had "any power to remove him from P.E." (T. p. 262:1-7). I am unpersuaded by the Parent's explanation given the numerous emails in which the Parent stated teachers were not doing their jobs. (Cf. CCPS Ex. 10, 17, and 18; PA Ex. 21,).

minimize the Student and other students' frustrations. The physical education teacher also noted that he spoke with the Student during and after class about his concerns.

These actions were appropriate and reasonable.

Other Concerns Raised After May 7, 2024:

The Parent also alleged that the Student was repeatedly bullied in the cafeteria.

██████████ testified that there was one incident in the cafeteria that she personally witnessed. She could not remember if it occurred before or after the April 27, 2024 incident but students at the Student's table were trying to get him to repeat curse words.

██████████ testified that it was very obvious what was happening although the Student did not really understand what was happening (he thought he was a part of the group as opposed to the group having a laugh at his expense). ██████████ reprimanded the other students, and she talked with the Student about what he should say if other students tried to get him to say curse words. ██████████ also testified that to her knowledge this had

not happened before or after she intervened on that occasion. (T. 885-6). School staff became aware that the Student had become good friends with another student named

██████████.⁴⁹ ██████████ testified that in the cafeteria, students may only sit at the table with their class but in the Student's case, they allowed the Student and ██████████ to "sit together because they just liked each other so much. So[,] they would just sit and have amazing conversations. They'd be laughing and just enjoying being together. So[,] he was the same. He was the same kid he was on the first day of school. He was still effervescent." (T. p. 964: 17-24).

To the extent that ██████████ staff were aware of bullying, or incidents that had the potential of becoming bullying in the cafeteria, I found ██████████'s testimony

⁴⁹ It is noteworthy that school staff knew that the Student had formed a close friendship with ██████████, but the Parent did not know about her existence until she was informed by ██████████. (T. p. 271). The Parent attributed this, in part, to the Student's inability to express himself and stated this was also the reason he was unable to describe who was bullying him. The Parent testified that it was hard to describe the Student's way of talking and she wished I could witness his speech and the Parent's experts would explain the Student's inability to express himself better than she could. However, the Parent's experts did not clearly explain why the Student was unable to describe bullies although he was able to describe that it was repeated, occurred multiple times over different days, etc.

persuasive that they addressed it by telling the other students not to encourage the Student to repeat curse words. In addition, [REDACTED] spoke with the Student and they role played various scenarios and tried out different things the Student could say if students tried to get him to say bad words.

Finally, [REDACTED] testified that in early May 2024, as a result of the two incidents related to physical education class, she placed the Student in a weekly social skills class run by the guidance counselor with a small group of students. Many of the students in the group had autism and [REDACTED] was also in the group. (T. p. 967: 10-15).

[REDACTED] was also called to testify by the school concerning the Student's social skills and any incidents of bullying. During the 2023-24 school year, [REDACTED]'s position was a general education teacher, but she has a [REDACTED] in [REDACTED], and she is certified to teach special education from grades one through age twenty-one. (T. p.761: 16-21).

[REDACTED] began her teaching in 2004, in a separate public day school for students with severe disabilities and then she moved to a public separate behavior program. [REDACTED] also co-taught in K-5 classrooms before she switched to being a general education teacher. (T. p. 775: 11-24).

[REDACTED] taught the Student during the last quarter of the 2023-24 school year, in a non-core class (Family Consumer Science), but she also saw the Student throughout the year because he was in her homeroom. [REDACTED] testified:

I don't believe that [the Student] really was good at interpreting social cues, like when you're getting really close to someone and they kind of back up[,] he would kind of push forward a little bit more. When I was instructing whole class[,] there were times when instead of raising his hand so that everybody could have a chance to answer the question, he might shout out an answer.

(T. p. 763: 6-12).

██████████ was asked if she ever witnessed any notable peer interactions, and she relayed the following incident:

The [Student] “would frequently say things, either to me or classmates, and it was almost like seeking an affirmation like, “well you like me, right?” Or he would say a phrase like that quite often, and there was a student that said something to the class, I don’t remember what he said, but it was part of the lesson, and [the Student] shouted out from in the back, and he likes me. There were some snickers in the background. I did not think [the Student] was aware of how that could have been taken, but I just nipped it in the – I just, now guys, he didn’t – it was something to the effect of knock it off he didn’t mean it like that and it was done.(T. 763-4). ██████████ further testified that she reached out to the Parent after this incident in case it was misconstrued as an “LGTBQ⁵⁰ related issue. I don’t feel that is in my purview to discuss with a child. I would rather tha[t] instruction come from the family, so I reached out to her about that.” (T. p. 766:18-21).

██████████ was specifically asked if she witnessed any incidents of the Student being bullied during the 2023-24 school year and she replied “no.” (T. p. 766: 7-9). She also testified that the culture at ██████████ does not tolerate bullying of any kind. Finally, ██████████ volunteered that her daughter attends ██████████, and she has been teased on occasion, but the guidance counselor or other teachers have handled it directly. (T. p. 770).

I found ██████████ to be a very perceptive and credible witness. She clearly liked working with the Student and had a good understanding, as well as many years of experience, in working with Middle School students. She impressed me as someone who is observant for indicators of bullying and would not hesitate to “nip it in the bud” as she phrased it. (T. p. 770:14-17).

Allegation that the Student was told to Kill Himself by Peers:

One of the most disturbing allegations by the Parent was that the Student was told to kill himself by his peers. The Parent testified that it happened at the beginning of the school year,

⁵⁰ Lesbian, Gay, Bisexual, Transgender, Questioning (the “Q” is also sometimes used to refer to the word “Queer.”).

she brought it up at the October 2023 IEP meeting, and that it happened multiple times throughout the year.

As discussed earlier, I do not find it credible that the Parent raised such a serious allegation and the IEP Chair did not incorporate it in the PWN from the October 2023 IEP meeting, or that the Parent would not have included it in her numerous emails to the school. Moreover, when the Parent did raise it in a telephone conversation with [REDACTED] on May 16, 2024, the Parent said that “she doesn’t know if it happened once, twice, or everyday.” (PA Ex. 23) (T. p. 267: 18-23).

Therefore, although another student (or possibly students) told the Student he should kill himself, the preponderance of the evidence is that this happened towards the end of the school year and most likely was in connection with the physical education incidents.

In addition to the fact that it was unclear whether it was one student or multiple students who told the Student to kill himself, the Parent was unable to provide any information about the identity of the student(s), describe the student(s) or give information as to where or when it happened or if there were any witnesses.

[REDACTED], on the other hand, testified that she would tell the Student not to tell her the names of the students who had bullied him because of the Health Insurance Portability and Accountability Act (HIPAA).⁵¹ Instead, [REDACTED] testified that she told the Student to tell his Parent the other students’ names and it was her understanding that the Student did so and then the Parent reported the names to the school. (T. p. 542: 10-24).

⁵¹ [REDACTED] never explained how it would be a violation of HIPAA for her client to tell her names of other students (unless she was concerned that those other students might also be clients, but she did not testify to that concern, which would more likely be a conflict of interest not a HIPAA violation).

I found [REDACTED] an unpersuasive witness for several reasons. First, [REDACTED] testified that she knew the Parent had emailed the school about bullying allegations when the Parent conceded she had not. Second, [REDACTED] testified that she knew the Parent had given the school specific names of students who bullied the Student when the Parent testified the Student was unable to give her any names of students. Third, [REDACTED] did not start working directly with the Student until September 19, 2024.⁵² Finally, [REDACTED] used a subjective definition of bullying (as discussed above) instead of the school system's definition of bullying used in its anti-bullying policy.

As the Student was unable to identify the student(s) who told him to kill himself, or to describe them or say where or when it happened, the staff at [REDACTED] were unable to conduct a bullying investigation. This did not mean that the staff did nothing. [REDACTED]. [REDACTED] testified that she asked teachers to be observant for any bullying of the Student or signs that the Student was withdrawn or not being engaged in class. [REDACTED] testified that she saw the Student on a daily basis, and he appeared happy and engaged until the last day of class. (T. 979-980). [REDACTED] testified that she would check in with the Student multiple times per day and he always told her he was fine. She further testified that she would talk with the Student about what he should look for in order to describe a bully (male or female, what they were wearing, etc.) (T. 901: 7-12).

Did the Alleged Bullying Interfere with the Student's Receipt of FAPE during the 2023-24 School Year?

⁵² A Registered Behavior Technician (RBT) worked with the Student and was supervised by [REDACTED] until she began working with him full-time in the fall of 2024. (T. p. 476: 5-12). Prior to September 19, 2024, [REDACTED] supervised the RBT in the home twice per month and then she also provided parent training one time per month. (T. p. 477:11-14; T. p. 527: 15-17).

As discussed, I do not find that the Student was bullied from the beginning of the 2023-24 school year until the April 27, 2024 incident. For the reasons stated above, I also do not find that the April 27 or May 7, 2024 incidents, or how they were handled, constituted bullying.

The Parent reported in a May 15, 2024 email that the Student told her that another student(s) said he should kill himself. [REDACTED] discussed the email with the Parent on May 16, 2024, and information necessary for a bullying investigation was not provided because it was unknown to the Parent (when it happened, which student(s) said it to the Student, where it happened, etc.). Although there was insufficient information for a bullying investigation, one could argue that the school should have convened an IEP meeting to address whether any goals and objectives needed to be revised, or whether any supplementary aids, services, program modifications and supports needed to be revised to address the Student's social-behavioral needs.

However, the fact that another IEP meeting was not held did not result in a deprivation of FAPE because the Student was able to access his education and make progress contrary to the Parent's assertions that he did not.⁵³ First, the Student made progress on his IEP goals during the 2023-24 school year. [REDACTED] testified in detail how the student met some of his goals and made progress on others during the 2023-24 school year. The Parent unsuccessfully attempted to impeach her testimony:

Q: Isn't it true that the IEPs were drafted as a series of checkboxes for [the Student] rather than focusing on true progress?

⁵³ 20 U.S.C. § 1415(f)(3)(E)(ii) provides that: "In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies-- (I) Impeded the child's right to a FAPE; (II) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (III) Caused a deprivation of educational benefit." As noted above, the Parent also participated in two IEP team meetings during the 2023-24 school year and was offered a third one in June 2024. Therefore, I also do not find her opportunity to participate in the IEP decision-making process was impeded in any way.

A: I would say that that is not true. During both meetings, there were changes to both the October and February meeting[;] there were changes that were made specifically because of how [the Student] was presenting. For example, in the visual supports, they added a specific statement because he needed additional visuals, and I don't have it in front of me. So, I can't remember exactly how it's worded, but something to the effect that he needed visuals for math calculations. I believe they also added that he needed specific copies of the teacher's notes. They've made changes to the goals and objectives based on how he was presenting. So[,] I would not say that it's a series of checkboxes.

(T. p. 736: 6-23).

Further the evidence was uncontroverted that the Student received As, Bs, and Cs in his subjects (PA Ex. 24) and he made progress on the MAP achievement tests. [REDACTED] conceded that the Student made progress on IEP goals or objectives, but "he was not generalizing those goals to other situations." (T. p. 832: 23-25). Her concerns related to goals relating to how he interacted with his peers and the fact that he may have demonstrated a particular skill in a certain number of trials, but he was still having difficulty in his interactions with peers. [REDACTED]' criticism is misplaced. "The IDEA cannot and does not promise 'any particular [educational] outcome.'"⁵⁴ and it does not mean the Student no longer has the challenges presented by his disability of [REDACTED]. Although of course all educators want to see a child generalize a skill beyond a particular goal on an IEP, the IEP is not a static document. Once the student achieves a particular goal, if there is a concern that the Student cannot generalize the skill to other settings, the IEP team can create new goals to address those concerns (much like a math goal was added to include "real world math problems" after the Student was able to demonstrate mastery of lower-level skills). When [REDACTED] suggested to the Parent in June of 2024, that she ask for an IEP meeting to express her concerns, the Parent told [REDACTED]

⁵⁴ *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-I*, 580 U.S. 386, 398 (2017).

██████████ that two IEP meetings had already been held that year and she did not think another one would help.

Finally, the Parent did not demonstrate that the Student was exhibiting any behaviors at the end of the school year that would have demonstrated that, although he was achieving his goals on his IEPs, earning As, Bs and Cs on his report cards and showing progress on his MAP scores, he was nonetheless being denied a FAPE based on psychosocial criteria. The Student was not refusing to go to school or coming in late to school. ██████████ testified that from her own observations, as well as the reports from the Student's teachers, the Student appeared happy and engaged in school until the last day. Although ██████████ noted on July 31, 2024, that the Student was severely worried, tearful, ruminating about school because of negative experiences the year before, and highly dysregulated, ██████████ was not informed that the Student had just been sent home early from a sleep-away camp for inappropriate contact with female campers. (CCPS Ex. 26). Moreover, if the Student was in the state ██████████ observed on July 31, 2024 right after school ended, it is highly unlikely that the Parent would have considered sending him to an overnight camp he had never attended for neurotypical campers.

In sum, I conclude that the CCPS' alleged failure to respond to allegations of bullying of the Student during the 2023-24 school year did not deny the Student a FAPE. The Parent did not communicate any allegations of bullying to the CCPS until late April or early May of 2024. The allegations of bullying that were relayed to the CCPS in the late Spring were not capable of being investigated as they contained no information as to the alleged bully (or a description of the bully) or where or when it happened or if there were any witnesses. The preponderance of the evidence is that CCPS staff did not observe any bullying of the Student as defined in CCPS policy nor did they observe any change in the Student's behavior (e.g. being withdrawn) that

would have reasonably alerted them to the possibility that the Student was being bullied.

Unlike in *T.K. v. N.Y.C. Dep't of Educ.*, 810 F. 3d 869 (2d Cir. 2016) the Parent did not raise the allegations of bullying at either the October 2023 or February 2024 IEP meetings. Further, as the alleged bullying did not prevent the Student from accessing a FAPE, the Parent is not entitled to reimbursement for tuition at [REDACTED]. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the CCPS' response, or alleged lack of response, to the Student's allegations of bullying during the 2023-24 school year did not deny the Student a Free Appropriate Public Education. 20 U.S.C. § 1415(f)(3)(E)(ii); *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 398 (2017); *T.K. v. N.Y.C. Dep't of Educ.*, 810 F. 3d 869 (2d Cir. 2016); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

ORDER

I **ORDER** that the Parent's request for reimbursement of tuition and other fees at [REDACTED] is **DENIED**.

March 14, 2025
Date Decision Issued

Ann C. Kehinde
Administrative Law Judge

ACK/emh
#216663

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) (Supp. 2024). 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.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,
PARENT,
ON BEHALF OF ██████████,
STUDENT

v.

BEFORE ANN C. KEHINDE,
AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CALV-OT-24-30036

CALVERT COUNTY PUBLIC SCHOOLS

Appendix A

Mon. 12.23.24	Tues. 12.24.24	Wed. 12.25.24	Th. 12.26.24	Fri. 12.27.24
ALJ Kehinde on preapproved leave; Ms. Shefter's office and the CCPS closed for winter break	ALJ Kehinde on preapproved leave; Ms. Shefter's office and the CCPS closed for winter break	State Holiday	ALJ Kehinde on preapproved leave; Ms. Shefter's office and the CCPS closed for winter break	ALJ Kehinde on preapproved leave; Ms. Shefter's office and the CCPS closed for winter break
Mon. 12.30.24	Tues. 12.31.24	Wed. 1.1.25	Th. 1.2.25	Fri. 1.3.25
ALJ Kehinde on preapproved leave; Ms. Shefter's office and the CCPS closed for winter break	ALJ Kehinde on preapproved leave; Ms. Shefter's office and the CCPS closed for winter break	State Holiday	ALJ Kehinde on preapproved leave; Ms. Shefter's office and the CCPS closed for winter break	ALJ Kehinde on preapproved leave; Ms. Shefter's office closed

Mon. 1.6.25	Tues. 1.7.25	Wed. 1.8.25	Th. 1.9.25	Fri. 1.10.25
Ms. Eisenberg requested the hearing not be scheduled due to sick witness just returning and her need to prepare	Ms. Shefter unavailable from 11:45 a.m. to 1:15 p.m. (live stream program)	Ms. Eisenberg requested the hearing not be scheduled due to witnesses just returning and her need to prepare	Ms. Eisenberg requested the hearing not be scheduled due to witnesses just returning and her need to prepare	Ms. Eisenberg requested the hearing not be scheduled due to witnesses just returning and her need to prepare
Mon. 1.13.25	Tues. 1.14.25	Wed. 1.15.25	Th. 1.16.25	Fri. 1.17.25
Ms. Eisenberg unavailable to do mediation	Ms. Shefter unavailable from 11:45 a.m. to 1:15 p.m. (live stream program)	Ms. Eisenberg unavailable to do mediation	Ms. Eisenberg unavailable to do mediation	The CCPS closes two hours early
Mon. 1.20.25	Tues. 1.21.25	Wed. 1.22.25	Th. 1.23.25	Fri. 1.24.25
State Holiday	Ms. Shefter unavailable from 11:45 a.m. to 1:15 p.m. (live stream program); ALJ Kehinde on pre-approved leave in the PM; Parties unable to do mediation until 1.21.25 at 1:30 pm.	Ms. Shefter has an adoption hearing	Parties need time if the mediation does not resolve to prepare for the hearing	Parties need time if the mediation does not resolve to prepare for the hearing

Mon. 1.27.25	Tues. 1.28.25	Wed. 1.29.25	Th. 1.30.25	Fri. 1.31.25
Ms. Shefter has IEP meetings scheduled	Ms. Shefter giving a presentation in the morning and unavailable from 11:45 a.m. to 1:15 p.m. (live stream program)	Originally parties agreed to this date as first day of hearing but given when mediation is scheduled, they needed to change it in order to accommodate 5-day rule	Originally parties agreed to this date as second day of hearing but given when mediation is scheduled, they need to change it in order to accommodate 5-day rule	The CCPS closed for a professional day
Mon. 2.3.25	Tues. 2.4.25	Wed. 2.5.25	Th. 2.6.25	Fri. 2.7.25
Day 1 of Hearing	Ms. Shefter unavailable from 11:45 to 1:15 (live stream program); Ms. Shefter has meeting in the PM	Day 2 of Hearing	Day 3 of Hearing	Mr. Burkhouse unavailable
Mon. 2.10.25	Tues. 2.11.25	Wed. 2.12.25	Th. 2.13.25	Fri. 2.14.25
ALJ Kehinde has a specially assigned hearing.	ALJ Kehinde has a specially assigned hearing; Ms. Shefter unavailable from 11:45 a.m. to 1:15 p.m. (live stream program)	Day 4 of Hearing	Day 5 of Hearing	Day 6 of Hearing

[REDACTED],
PARENT,
ON BEHALF OF [REDACTED]
STUDENT
v.
CALVERT COUNTY PUBLIC SCHOOLS

BEFORE ANN C. KEHINDE,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-CALV-OT-24-30036

Appendix B: Parent's Exhibits⁵⁵

PA Ex. 2: Psychological Evaluation, Jan. 18, 2022

PA Ex. 3: Speech and Language Evaluation, Jan. 30, 2022

PA Ex. 4: Email to [REDACTED] and [REDACTED], Oct. 11, 2023

PA Ex. 6: Email with [REDACTED] RE: Practice Records, Dec. 8, 2023

PA Ex. 8: Email from [REDACTED] Feb. 12, 2024

PA Ex. 9: Emails with ELA Teacher, Feb. 20, 2024

PA Ex. 10: IEP, Feb. 23, 2024

PA Ex. 11: Prior Written Notice (PWN), Feb. 23, 2024

PA Ex. 12: Emails with Math Teacher, Feb. 24, 2024

PA Ex. 13: Emails with Math Teacher, Feb. 26, 2024

PA Ex. 14: Email from Science Teacher, March 8, 2024

PA Ex. 15: Email from P.E. Teacher, March 9, 2024

PA Ex. 16: Email to ELA Teacher, March 14, 2024

⁵⁵ All of the Parent's exhibits were pre-marked. To the extent that they are not listed in this Exhibit List, they were either not offered into evidence, or they were offered, and I sustained an objection to their admission. All of the pre-marked exchanged exhibits are maintained in the record. COMAR 28.02.01.22C.

- PA Ex. 17: Email to [REDACTED], March 14, 2024
- PA Ex. 18: Email with [REDACTED], March 15, 2024
- PA Ex. 19: Email from P.E. Teacher, March 19, 2024
- PA Ex. 20: Email from [REDACTED], April 2, 2024
- PA Ex. 21: Email to [REDACTED], April 2, 2024
- PA Ex. 22: Email to [REDACTED] May 15, 2024
- PA Ex. 23: Parent's request for Other Placement Options (CCPS FERPA Response), May 16, 2024
- PA Ex. 25: Home and Hospital form, [REDACTED], July 31, 2024
- PA Ex. 26: Letter from counsel re: unilateral placement, Aug. 12, 2024
- PA Ex. 28: Amended IEP, Sept. 9, 2024
- PA Ex. 29: Prior Written Notice (PWN), Sept. 9, 2024
- PA Ex. 33: [REDACTED] Daily Goals, Sept. 2024-Jan. 2025
- PA Ex. 35: [REDACTED] "[REDACTED]" [REDACTED], *Curriculum Vitae*
- PA Ex. 36: [REDACTED], *Curriculum Vitae*

██████████,
PARENT,
ON BEHALF OF ██████████,
STUDENT

v.

BEFORE ANN C. KEHINDE,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CALV-OT-24-30036

**CALVERT COUNTY PUBLIC
SCHOOLS**

Appendix C: Calvert County Public Schools' Exhibits⁵⁶

CCPS Ex. 4: IEP, March 8, 2023

CCPS Ex. 8: Prior Written Notice (PWN), October 27, 2023

CCPS Ex. 9: IEP, October 27, 2023

CCPS Ex. 11: Email, February 8, 2024

CCPS Ex. 12: Work samples, undated

CCPS Ex. 13: IEP, February 23, 2024

CCPS Ex. 15: Email, March 6, 2024

CCPS Ex. 16: Email, March 8, 2024

CCPS Ex. 22: Statements and notes, April 26, 2024

CCPS Ex. 23: Email, May 9, 2024

CCPS Ex. 24: Notes, May 16, 2024

CCPS Ex. 25: Email, July 29, 2024

CCPS Ex. 27: Email, August 15, 2024

⁵⁶ All of the CCPS' exhibits were pre-marked. To the extent that they are not listed in this Exhibit List, they were either not offered into evidence, or they were offered, and I sustained an objection to their admission. All of the pre-marked exchanged exhibits are maintained in the record. COMAR 28.02.01.22C.

CCPS Ex. 30: IEP Meeting Notice, August 15, 2024

CCPS Ex. 31: IEP Meeting Notice, August 15, 2024

CCPS Ex. 33: Email, August 16, 2024

CCPS Ex. 37: IEP Meeting Notice, August 30, 2024

CCPS Ex. 39: PWN, September 9, 2024

CCPS Ex. 40: Answer to Complaint, November 7, 2024

CCPS Ex. 42: Subpoena to [REDACTED], January 13, 2025

CCPS Ex. 43: 2023-24 School Year Attendance data for Student

CCPS Ex. 44: 2023-24 School Year grades for Student

CCPS Ex. 45: [REDACTED], *Curriculum Vitae*

CCPS Ex. 46: [REDACTED], *Curriculum Vitae*

CCPS Ex. 49: [REDACTED], *Curriculum Vitae*

CCPS Ex. 50: [REDACTED], *Curriculum Vitae*

CCPS Ex. 52: Student's application to [REDACTED]

CCPS Ex. 53: Email, July 29, 2024

CCPS Ex. 54: Email, August 6, 2024

CCPS Ex. 55: Email, August 21, 2024

CCPS Ex. 56:

CCPS Ex. 57: Progress Report, September 27, 2024

CCPS Ex. 58: Email to Parent, November 15, 2024

CCPS Ex. 59: Email from Parent, November 16, 2024

CCPS Ex. 60: Email, November 18, 2024

CCPS Ex. 61: Email, November 23, 2024

CCPS Ex. 62: Email, December 2, 2024

CCPS Ex. 63: Email, December 17, 2024

CCPS Ex. 64: Progress Report, December 18, 2024

CCPS Ex. 65: Email, January 21, 2025

CCPS Ex. 66: Email, January 21, 2025 with observation policy

CCPS Ex. 67: Email, January 22, 2025

CCPS Ex. 68: Email, January 22, 2025 (part of chain)

CCPS Ex. 69: Email, January 22, 2025 (part of chain)

CCPS Ex. 70: Tuition Schedule Contract and deposit check, August 21, 2024

CCPS Ex. 71: Adding and Subtracting works samples