

██████████ AND ██████████
PARENTS,
ON BEHALF OF ██████████,
STUDENT,
V.
BALTIMORE CITY PUBLIC SCHOOL
SYSTEM

BEFORE SUSAN A. SINROD,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-CITY-OT-24-19290

DECISION

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

STATEMENT OF THE CASE

The Baltimore City Public School System (BCPSS) previously identified ██████████
██████████ (Student), as a child with a disability under the Individuals with Disabilities Education
Act (IDEA), who needs specially designed instruction through an Individualized Education
Program (IEP). On August 11, 2021, ██████████ and ██████████ (Parents) provided a ten-day
advanced written notice that they were rejecting the placement proposed by the IEP team in
order to enroll the Student in a private school at public expense.

On July 16, 2024, the Parents 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 BCPSS under the IDEA. 20
U.S.C.A. §§ 1400-1419 (2017).¹ The Complaint alleges that the BCPSS violated the IDEA,

¹ "U.S.C.A." is an abbreviation for the United States Code Annotated.

denying the Student a free appropriate public education (FAPE) by proposing an IEP that failed to consider the unique needs of the Student. 20 U.S.C.A. § 1415(f)(1)(A) (2017).

On August 27, 2024, I conducted a remote pre-hearing conference (Conference) in the captioned matter. Manisha Kavadi, Esquire, participated on behalf of the BCPSS. Alexandra Rosenblatt, Esquire, participated on behalf of the Parents and the Student. At the Conference, the parties and I discussed the timeframe for issuing this decision.

I advised the parties of the federal forty-five-day timeline for issuing a decision:

The public agency must ensure that not later than 45 days after the expiration of the [30-day resolution] period under § 300.510(b), or the adjusted [resolution] time periods described in § 300.510(c)—

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.

34 C.F.R. § 300.515(a). As indicated, the forty-five-day timeline ordinarily begins to run at the end of a thirty-day resolution period triggered by the filing of a due process complaint. *Id.* § 300.510(b)(2).

At the time of the Conference, the thirty-day resolution period had already expired on August 15, 2024. Under the regulatory timeline, the decision in this case normally would be due on September 27, 2024, which was the last business day prior to the expiration of the forty-five days period which fell on Sunday, September 29, 2024.

However, the regulations authorize me to grant a specific extension of time at the request of either party. *Id.* § 300.515(c). The parties anticipated that the hearing would take eight days. At the Conference, we began looking at the calendar day by day, starting after October 15, 2024, to allow for a motion briefing schedule. After considering the parties' and their witnesses' availability as well as my availability, the first available dates for the hearing were November 14,

18, 19, 20, 21, 22, 25, and December 2, 2024.² These dates fell outside of the regulatory timeline. The parties jointly requested that I extend the timeline to accommodate their schedules and allow the hearing to begin on November 14, 2024, and then for thirty days after the conclusion of the hearing to allow time for me to consider and weigh all of the evidence and issue a decision. Based on scheduling restraints, I found good cause to extend the timelines.

I conducted the hearing on November 14, 18, 19, 20, 21, 22, 25 and December 2 and 10,³ 2024, via Webex. Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). Mark Martin, Esquire and Ms. Rosenblatt represented the Parents and the Student. Ms. Kavadi represented the BCPSS.

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

ISSUES

- 1) Did the BCPSS fail to offer the Student a FAPE for the 2023-2024 school year by proposing an IEP that:
 - a) Offered twenty-nine hours per week of instruction in the general education classroom; two hours and forty minutes per week of specialized instruction provided by a general educator for writing and math; fifty minutes per day outside of general education with a special educator only for writing; two, thirty-minute sessions per week of psychological services; and two, thirty-minute sessions per week for speech/language;
 - b) Failed to provide any specialized instruction during the twenty-nine hours per week that the Student would be in the general education classroom;

² From October 16 to October 31, 2024, both Ms. Rosenblatt and Ms. Kavadi were in hearings. From November 1 to November 13, 2024, Ms. Kavadi was on leave, and November 5 and 11, 2024 were State holidays. Ms. Kavadi was in a hearing on November 12 and 13, 2024. The first day of the hearing was November 14, 2024.

³ During the hearing, it became apparent that the parties needed an extra day to finish the hearing. By agreement of the parties, we added December 10, 2024 as an additional day. The hearing concluded on December 10, 2024. Therefore, my decision is being issued by January 9, 2025, which is thirty-days after the conclusion of the hearing.

- c) Failed to address the Student's social, emotional, behavioral, and pragmatic language needs;
 - d) Failed to find the Student eligible for occupational therapy and failed to include any goals and objectives related thereto?
 - e) Failed to provide goals in all areas of academic and functional need?
- 2) Did the BCPSS fail to provide the Student with a FAPE in the 2023-2024 school year by developing an insufficient Functional Behavioral Assessment resulting in an inappropriate Behavioral Intervention Plan?
 - 3) Are the Parents entitled to reimbursement for tuition and related expenses for their unilateral placement of the Student at The [REDACTED] ([REDACTED]) for the 2023-2024 school year?
 - 4) If the BCPSS failed to provide the Student with a FAPE, are the Parents entitled to compensatory education services?^{4,5}

SUMMARY OF THE EVIDENCE

I have attached a complete Exhibit List as an Appendix.⁶

Testimony

The Parents presented the following witnesses:

- 1. [REDACTED], Educational Consultant, [REDACTED];
- 2. [REDACTED], Licensed Clinical Psychologist and Neuropsychologist, Neurobehavioral Associates. Accepted as an expert witness in neuropsychology and school psychology;
- 3. [REDACTED], Speech/Language Pathologist, [REDACTED]. Accepted as an expert witness in speech/language pathology;

⁴ In the Due Process Complaint, the Parents set forth another issue, regarding whether they were entitled to reimbursement for tuition at [REDACTED] for the 2024-2025 school year. That issue was eliminated by virtue of my ruling on the BCPSS' Motion to Dismiss, issued October 2, 2024.

⁵ The Parent did not pursue their claim for compensatory education services at the hearing.

⁶ I have noted on the exhibit list where there are duplicate exhibits. In this decision, when citing to an exhibit that is a duplicate, I only used one, not both of the exhibit designations.

4. [REDACTED], Lead Clinician, [REDACTED]. Accepted as an expert witness in counseling.
5. [REDACTED], Behavior Service Manager, [REDACTED]. Accepted as an expert witness in behavior;
6. [REDACTED], Principal, Kindergarten through eighth grade, [REDACTED]. Accepted as an expert witness in special education and special education school administration;
7. [REDACTED], the Student's mother.

The BCPSS presented the following witnesses:

1. [REDACTED], Occupational Therapist, BCPSS. Accepted as an expert witness in occupational therapy;
2. [REDACTED], School Psychologist, BCPSS. Accepted as an expert witness in school psychology and behavior analysis;
3. [REDACTED], IEP Process and Compliance Coordinator, BCPSS. Accepted as an expert witness in special education;
4. [REDACTED], Speech and Language Pathologist, BCPSS. Accepted as an expert witness in speech/language pathology.

FINDINGS OF FACT

The parties stipulated to the following facts:⁷

1. The Student was born on [REDACTED].
2. [REDACTED] is the Student's father. [REDACTED] is the

Student's mother.

⁷ I have changed the wording, but not the substance, of the stipulations slightly to provide consistency in the format of the Findings of Fact.

3. The Student lives with the Parents at their residence located at [REDACTED] t
[REDACTED].

4. The Student is eligible for special education services as a student with an educational determination of [REDACTED].

5. The Student attended the following schools:

- a. [REDACTED] for part of his kindergarten year, the 2019-2020 school year;
- b. [REDACTED] for part of his kindergarten year, the 2019-2020 school year;
- c. [REDACTED] ([REDACTED]) for his first-grade year, the 2020-2021 school year;
- d. [REDACTED] ([REDACTED]) for his second-grade year, the 2021-2022 school year;
- e. [REDACTED] for his third-grade year, the 2022-2023 school year until December 12, 2022;
- f. [REDACTED] for the remainder of his third-grade year, the 2022-2023 school year;
- g. [REDACTED] for his fourth-grade year, the 2023-2024 school year.
- h. [REDACTED] for the 2024-2025 school year, his fifth-grade year.

6. On June 2, 2021, the BCPSS IEP team convened to review the results of the BCPSS' Functional Behavior Assessment Summary Report. The meeting continued until June 14, 2021.

7. On August 11, 2021, the Parents provided written notice to the BCPSS of their decision to unilaterally place the Student at [REDACTED].

8. [REDACTED] is a MSDE, non-public, special education school which provides year-round special education services to students with [REDACTED], [REDACTED], and [REDACTED].

9. Pursuant to a settlement agreement dated October 19, 2022, the BCPSS reimbursed the Parents for the Student's unilateral placement at [REDACTED] for the 2021-2022 school year.

10. Pursuant to the settlement agreement, the BCPSS funded the Student's placement at [REDACTED] and [REDACTED] for the 2022-2023 school year.

11. On December 12, 2022, [REDACTED] from [REDACTED] sent written notification of the Student's dismissal from [REDACTED] to the Parents.

13. On January 17, 2023, the Student began attending [REDACTED], formerly known as the [REDACTED].

14. [REDACTED] is a MSDE non-public, special education school which provides year-round special education and therapeutic services to students with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], other health impairment, specific learning disability, and speech or language impairment.

15. On March 22, 2023, the IEP team convened to develop the Student's IEP for the 2023-2024 school year. As part of IEP development, the IEP team ordered assessments in the areas of academic performance, communication, motor skills, observation, and a functional behavior assessment.

16. On June 15, 2023, the IEP team reconvened to review the ordered assessments and determined that the Student was eligible for special education and related services as a student with [REDACTED].

17. On August 7, 2023, the IEP team met and developed the Student's IEP for the 2023-2024 school year.

18. The August 7, 2023 IEP determined that the Student required goals and objectives in the areas of social emotional/behavioral, written language content, written language mechanics, math problem solving, speech and language pragmatics, and social interaction skills.

19. On or about July 16, 2024, the Parents filed for due process.

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

The Student

20. The Student is very high-functioning and has age-appropriate cognitive ability.

21. In addition to autism, the Student is diagnosed with [REDACTED] [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]).

22. The Student has significant difficulty with [REDACTED], [REDACTED] and [REDACTED] [REDACTED]. He has a low [REDACTED]. His thinking is [REDACTED]; he has [REDACTED] [REDACTED]. He has difficulty [REDACTED].

23. The Student experiences [REDACTED] and is therefore [REDACTED] [REDACTED], [REDACTED] and [REDACTED].

24. When the Student started [REDACTED] and through the winter, spring and summer of 2023, the Student frequently and easily became frustrated by peers at school and would often shut down. When frustrated, he tended to use inappropriate language including profanity and threats to [REDACTED]. He would often leave the teaching area of the classroom and retreat to a tent in the classroom when he refused to complete a task or when he was frustrated.

25. At that time, while at [REDACTED], the Student often required staff intervention to escort him from the classroom when he needed to regulate or calm down.

26. At [REDACTED], the Student receives counseling services from [REDACTED], the lead clinician at [REDACTED]. [REDACTED] often came to the Student's classroom if the Student needed assistance regulating his [REDACTED], and she would often either escort him outside of the classroom to regulate or he would go to her office.

27. During anxious times, the Student has been known to be [REDACTED], noncompliant with direction and instruction, and has engaged in [REDACTED] and [REDACTED].

[REDACTED]

28. While at [REDACTED] in the fall of 2022, the Student engaged in [REDACTED]. On September 15, 2022, a child pushed the Student, and the Student [REDACTED]. On September 27, 2022, the Student was playing with friends when another child threw leaves on him. He became [REDACTED]. On October 3, 2022, the Student was chasing a ball in the classroom when another child went after the ball. The Student got [REDACTED]. On November 1, 2022, the Student called [REDACTED]. Also on November 1, 2022, the Student [REDACTED]. After other students yelled for him to stop, he stopped and walked away with the support of a classroom aide. On November 11, 2022, a child was running in the classroom and bumped into the Student. The Student tried to [REDACTED]. He also [REDACTED], but staff intervened to prevent that from happening. On November 17, 2022, the Student became aggravated and [REDACTED]. An adult stepped between them and the Student [REDACTED].

- ██████████
34. The Student enrolled at ██████████ on January 17, 2023.
35. ██████████ does not typically take private pay students. Ordinarily, school systems place and fund students' tuition at ██████████.
36. When the Student first came to ██████████, ██████████ administrators instructed teachers and staff to wait until the BCPSS IEP process, initiated by the Child Find Referral, was complete prior to conducting assessments and working on IEP goals and objectives.
37. The Student's class at ██████████ in the 2022-2023 school year from January 17, 2023 through August 2023 consisted of five students and two teachers. The Student's special education teacher was ██████████.
38. ██████████ provides an integrated teaching model. A multidisciplinary team of the Student's teachers, administrators, aides, related service providers, his counselor, and the ██████████ ██████████ department conduct weekly meetings to discuss the Student's status and programming, to share experiences and make any modifications necessary to maximize the support to assist the Student.
39. ██████████ has been working with the Student since his enrollment in January 2023. She is his primary therapist and provides individual and group counseling as well as interventions when needed. If the Student is feeling dysregulated or ██████████ during the school day, she is available to meet with him, either inside the classroom or outside in an unscheduled session.
40. During the relevant period of time between January and June 2023, ██████████ met with the Student at least once per day. It ranged anywhere from ten minutes to an hour

depending on his level of dysregulation or struggle. He had difficulty regulating his emotions when he was frustrated with a non-preferred task.

41. During that time, there were times when the Student could regulate himself with direct interventions within about fifteen minutes, but sometimes he would shut down for several hours. He would put his head down and would not participate in class instruction. Sometimes he would need to leave the classroom with staff or [REDACTED] to regulate his emotions.

42. During that time, the Student was making progress in utilizing breaks to regulate. However, he required continued support to learn and utilize coping strategies.

43. The Student had significant difficulty working in groups. When other students had suggestions or provided feedback, he readily disagreed, which was an emotional trigger for him. He also struggled dealing [REDACTED], which could overwhelm him. This caused him to [REDACTED]. Sometimes his reactions were physical, to the point where he would [REDACTED].

44. On May 23, 2023, the Student twice threatened to [REDACTED]. This prompted a [REDACTED] and a daily search of the Student's book bag before entering the school building.

Assessments and Evaluations

Psychological Testing

45. [REDACTED] Licensed Psychologist with [REDACTED], conducted a psychological evaluation of the Student on September 29, October 13, and October 20, 2022. Parent Ex. #19. At the time, the Student attended [REDACTED].

46. Despite some initial [REDACTED] on the first day of testing, the Student was cooperative and engaged in the tasks that [REDACTED] presented to him. He eagerly engaged in

conversation about subjects of interest to him. He only made fleeting eye contact with [REDACTED].

47. At times during the testing, the Student became agitated and got out of his seat and paced back and forth across the room.

48. [REDACTED] administered the [REDACTED] Diagnostic Observation Schedule, Second Edition ([REDACTED] DOS-2), which is a semi-structured, standardized assessment of “communication, social interaction, and imaginative use of materials that allows for the observation of social communication tendencies and specific behaviors that are typically seen in children with [REDACTED].”⁸ Parent Ex. #19, p. 1165.

49. During the [REDACTED] DOS-2, the Student engaged in creative active play. He conversed only about his own interests. He did not maintain eye contact. He was overly active and at times agitated. He got out of his seat and paced back and forth when [REDACTED] asked him questions about himself, his emotions and his relationships. He offered little insight into his own emotions and showed little understanding of the emotions of others.

50. [REDACTED] determined that the Student met the criteria for [REDACTED].

51. Part of [REDACTED] assessment addressed executive functioning, reading and writing.

52. In a test for executive functioning, the Student performed at an “expected” level of sustained auditory attention and vigilance. However, he had more difficulty if the task required working memory, cognitive flexibility, and inhibitory control.

53. On the Verbal Fluency Test, the Student performed on the average and high average level when compared to same-aged peers. For that test, he was to rapidly name words

⁸ This definition and the quotations to follow regarding [REDACTED] psychological evaluation are direct quotes from [REDACTED] Psychological Report.

starting with a specific letter or in a specific category, and recall words based upon its beginning level or category.

54. The Feifer Assessment of Reading (FAR) is designed to test “cognitive and linguistic processes that support proficient reading skills.” Parent Ex. #19, p. 1166. The Student scored in the average range in phonemic awareness and an isolated word reading fluency subtest. He fell in the low average range in oral reading fluency and decoding regular words, and in the low range when attempting to decode nonsense words.

55. The Feifer Assessment of Writing (FAW) is “an individually administered measure of writing ability normed for examinees in prekindergarten through college.” Parent Ex. #19, p. 1167. The FAW tests writing skills in the areas of graphomotor index, [REDACTED] index, executive index, and a FAW total index.

56. The subtests of the graphomotor index seek to assess “the ability to plan, sequence, and execute the physical stroke of the writing process during timed conditions.” Parent Ex. #19, p. 1167. The Student scored in the average range on a copying speed subtest and in the low average range in a test that required him to trace letters. He scored in the low range in tests for motor sequencing. In the motor planning subtest that required the Student to copy words and sentences and keep them all within a box, [REDACTED] administered the test for kindergarten to first graders instead of his age range of second and third graders, given the difficulty the Student was having on these tests. Even then, the Student scored in the extremely low level.

57. The [REDACTED] index is designed to assess spelling. The Student scored in the low average range in two spelling subtests.

58. The executive index is designed to assess “retrieval fluency, sequencing, working memory, saliency determination, and planning and organization of one’s thoughts and ideas.”

Parent Ex. #19, p. 1167. In the subtests that did not require the Student to write, he scored in the average level. Those tests required him to arrange cards that related to a part of a story in a sensical order and arrange parts of a story in a correct order. He scored below average in subtests that required writing. He scored extremely low on a subtest where, after being read four words, the words were taken away and he was asked to write a sentence using two of the four words in sixty seconds. [REDACTED] let him finish the test, on which he would have scored well had it not been a timed test.

59. From the results of the FAR and the FAW, [REDACTED] determined that the Student does not have the decoding and encoding skills to function at grade level in reading and writing without being in a highly structured supportive special education environment.

60. [REDACTED] concluded that the Student is able to think at a much higher level than his ability to put thoughts onto paper.

61. As part of a test entitled NEPSY II,⁹ [REDACTED] conducted a subtest called Theory of Mind and determined that the Student had an understanding of other's emotions, perspectives and beliefs.

62. [REDACTED] also conducted the [REDACTED] Rating Scales wherein parents and teachers completed rating forms to quantify observations of the Student. The Parents and the Student's teacher at [REDACTED] noted concerns about [REDACTED], [REDACTED] and [REDACTED]. The Parents noted concerns about [REDACTED], [REDACTED], and [REDACTED].

63. In the area of social/emotional/behavioral skills, [REDACTED] administered the Conners Fourth Edition (Conners Fourth) which assesses teacher and parent observations of

⁹ [REDACTED] report does not define the acronym NEPSY, nor did the testimony of any witnesses.

behavior, and the Connors Comprehensive Behavior Rating Scales (Connors Comprehensive) which the Parents completed.

64. In the Connors Fourth, the Student's teacher at [REDACTED] and [REDACTED] rated the Student in different areas to assess the problems the Student may be encountering due to his [REDACTED]. [REDACTED] rated the Student as having difficulties with [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] thoughts. The teacher indicated problems with [REDACTED], [REDACTED] and [REDACTED] with [REDACTED]. [REDACTED] noted that overall, [REDACTED] ratings viewed the Student's behavior as more problematic than his teacher. [REDACTED] felt that might be because in school he is in a structured, small classroom.

65. Similarly, in the Connors Comprehensive, the Parents rated the Student as having significant behavioral concerns.

66. From his psychological evaluation, [REDACTED] recommended that the Student be educated with non-disabled peers to the extent that it does not overwhelm him or cause him [REDACTED] and [REDACTED].

67. Because of the Student's tendency to become easily overwhelmed and then [REDACTED], even in a small classroom in a school that specializes in educating children with [REDACTED], [REDACTED] found it unlikely that the Student would be successful in a general education setting.

68. In the school setting, [REDACTED] recommended: 1) that the Student be able to choose his seat; 2) that teachers call on him only when he raises his hand; 3) that the Student have a private space for lunch if he wants it; 4) that the Student be provide extra support such as allowing him to go to the counseling office if there is a substitute teacher; 5) that the Student be allowed to complete projects alone rather than in a group if he prefers; 6) that he be provided

support on a field trip or that he be allowed to opt out; 7) that he received an “embedded evidence based social skills program to facilitate [REDACTED], [REDACTED] and [REDACTED]”; and 8) speech language services to develop pragmatic language skills.

69. Regarding the Student’s specific learning disabilities in written expression and reading decoding, [REDACTED] recommended: 1) giving the Student extra time when reading; 2) that directions and long passages be read to him; 3) that he be allowed to dictate responses on long written assignments; and 4) that he be evaluated for occupational therapy to identify fine motor needs.

70. The Parents provided this report to the IEP team on March 22, 2023 and the team relied upon it when it determined that the Student was eligible for special education services and met the criteria for specific learning disability in reading and written language.

Educational Assessment

71. On May 16, 2023, [REDACTED], IEP Process and Compliance Coordinator, BCPSS, conducted an Educational Assessment. BCPSS Ex. #8.

72. [REDACTED] administered the Woodcock-Johnson IV test of Achievement (Woodcock-Johnson). This is a comprehensive set of tests to measure academic achievement.

73. The Student was cooperative and attentive during the testing. Nearby, a group of students were participating in a music activity which the Student could see but not hear; the Student did not get distracted. He took several breaks.

74. The Student scored average or low average in most areas, including broad achievement, academic skills, academic fluency, academic applications, broad reading, letter-word identification, sentence reading fluency, passage comprehension, word attack, oral reading, broad mathematics, applied problems, math calculation, math facts fluency, sentence writing fluency and writing samples. He scored low in broad written language and spelling.

75. The Student showed strengths in reading, including letter-word identification, and passage comprehension, but had difficulty with the word attack subtest which measures the ability to apply phonic and structural analysis skills to the pronunciation of nonsense words. The Student scored in the low average range; he identified initial items rapidly and accurately but struggled to apply phoneme-grapheme relationships to latter items. He also scored low average for oral reading subtest, due to mispronunciations, insertions, repetitions and ignoring punctuation.

76. In broad written language, although he was not penalized for poor handwriting, spelling or mechanics, the Student's handwriting and spelling impacted a reader's ability to read the text. His handwriting legibility was below expectation for his age and grade. His use of capitalization and punctuation were not consistent. His performance showed spelling to be a weakness. The writing samples subtest measured skill in writing responses to a variety of demands. The Student produced inadequate sentences with limited content.

77. [REDACTED] recommended specially designed instruction to address the Student's written language mechanics and content.

78. In broad math, the applied problems subtest required the Student to analyze and solve math problems. He solved the initial problems with no difficulty but had difficulty with the latter problems. His score was average.

79. In the calculation subtest, the Student scored low average, appearing to rely on strategies insufficient for his grade level. He scored low average.

80. [REDACTED] also observed the Student at [REDACTED]. She observed him beginning at 1:00 p.m. for approximately one hour. He displayed advanced vocabulary for his grade. He engaged with the teacher. He did not interact with other students.

81. [REDACTED] recommended the following for the Student in the school setting: systematic and explicit writing instruction; use of graphic organizers; outlines to support notetaking to encourage attention and focus; alternative ways to demonstrate learning since writing tasks are difficult. This could include the option to verbalize rather than write, use of a human scribe, or speech to text software. [REDACTED] also recommended providing the Student with a choice and/or preferred topic for writing to promote engagement, increase production and minimize frustration. Further, she recommended the use of keyboarding; breaking down assignments into smaller units, and extended time for instructional activities and assessments.

Functional Behavioral Assessment (FBA)

82. [REDACTED], School Psychologist, BCPSS, conducted an FBA on June 3, 2023. BCPSS Ex. #9.

83. As part of the FBA, [REDACTED] interviewed [REDACTED], [REDACTED], and [REDACTED], Behavior Services Manager, [REDACTED]. She also observed the Student in a structured and unstructured environment. She did a complete record review and considered the data collected by [REDACTED].

84. [REDACTED] used the Functional Assessment Checklist for Teachers (FACTS) to interview [REDACTED]. From the FACTS checklist, [REDACTED] was able to see from [REDACTED]' perspective the expected behavioral problems at different times of the day. Those behaviors mostly included noncompliance or refusal to do work, inappropriate vocalizations to students including threats and yelling, and leaving the location such as walking to the other side of the gym where adults cannot see him. Interventions included verbal corrections, or removal of the student to the hallway to talk about his behavior. In a summary, [REDACTED] stated that the Student:

Works better in isolation independent of students. He enjoys the adult attention. Can make impulsive mistakes. Suggesting that he needs to take space. Never injured himself, never hurt another student, has tried to [REDACTED]. Has [REDACTED] staff. Has [REDACTED] staff with his thermos bottles or punch with fists. Probably been [REDACTED] months since he physically contacted an adult. [REDACTED] weeks ago he ha[d] an incident with another student and he reflected on his [REDACTED].

BCPSS Ex. #30.

85. [REDACTED] interviewed [REDACTED], who noted that the frequency of behaviors at school is lower than at home. [REDACTED] told [REDACTED] of the behaviors at school that [REDACTED] described, and [REDACTED] agreed with the frequency and severity of what [REDACTED] had recorded. She agreed with the patterns of behavior as observed by [REDACTED] and agreed that a Behavioral Intervention Plan (BIP) should include prompting appropriate behavior, giving choices, and giving space and time if the Student needed it.

86. Since the Student's enrollment, [REDACTED] had been tracking and collecting data on seven of the Student's most recurring behaviors in school: 1) noncompliance; 2) out of class; 3) inappropriate vocalizations; 4) leaving location; 5) [REDACTED]; 6) elopement; and 7) [REDACTED].

87. [REDACTED] analyzed three of the seven behaviors for which [REDACTED] had been collecting data, and created the following operational definitions: 1) inappropriate vocalizations- shouting at peers or adults, cursing or [REDACTED]; 2) out of location- any time the Student is outside the defined instructional area, such as being out of his seat when expected to be working at his desk, walking to an unused area of a large classroom, or leaving the supervised area beyond the sightlines of the relevant adult; and 3) [REDACTED]- any time the Student uses his body or an object to strike at or near another person with enough force to produce a sound, cause tissue damage or pain expression, or physically displace them.

88. ██████ observed the Student on May 25, 2023 in music and an afternoon academic class designed to work on IEP goals. In that class the Student was working on an English language arts type of activity. ██████ did not observe any problem behaviors.

89. The Student “paced, and walked at an unusual gait, made repetitive nonfunctional finger movements, and repetitive non word nonvoiced sounds with his mouth.” BCPSS Ex. #9.4. However, he stayed within the instructional area and responded to adults and peers.

90. The music class ██████ observed was very loud; the Student played a ██████. At one point he got up and walked to self-regulate, but he stayed in class. The Student called out answers on a few occasions, but he did not show frustration when his comments were not addressed or if he was not called upon.

91. In the academic class the Student worked steadily and interacted with adults appropriately. He finished his work before the rest of the class and had to wait for eight minutes. He participated in the discussion and when the teacher called on another student when the Student had his hand up, he handled it well.

92. ██████ observed the Student from 12:11 p.m. to 12:49 p.m. in music and from 12:49 p.m. to 1:11 p.m. in the academic class.

93. ██████ used the data that ██████ collected on these behaviors to arrive at daily frequencies of the targeted behaviors.

94. ██████ recommended a BIP. The BIP sets forth prevention strategies, teaching strategies and response strategies for the targeted behaviors.

95. For inappropriate vocalizations, the BIP suggested prevention strategies including, reducing the triggers by planning ahead about how the Student will act; practicing a self-talk rule, such as “think it don’t say it;” reminders of who will respond if peers do

unexpected things; placing a text prompt of self-talk phrases on his desk or other accessible areas; and making sure that he has access to a journal at all times to write down thoughts.

96. For [REDACTED], the BIP suggested prevention strategies including avoiding pairing the Student with peers he has had a recent conflict with, and reminders daily about where he can go in each setting to take space and who he can talk to if he needs to talk. The BIP suggested that there be a clearly marked area of the classroom, like a green or red chair, that is always open to the Student.

97. The BIP also listed teaching strategies specific to the replacement behaviors. For inappropriate vocalizations, the BIP suggested that the Student write or draw an inappropriate statement in a journal instead of saying it, and adult positive feedback for journaling. For [REDACTED], the BIP suggested that the Student utilizes the replacement behavior of walking to an identified space or asking to speak to someone. There should be several people identified that the Student should talk to, a clearly marked area where he can go if he needs space, like a red or a green chair; calm down items in that space such as fidgets; and arrangement for the person to whom the Student wants to talk to come to the classroom.

98. As response strategies, for inappropriate vocalizations, when the Student is having a conflict with a peer, the BIP suggests reminding the Student to write in the journal; validation of his feelings as long as they do not contain a threat; prompting him to take a break; and a check in with the Student before he returns to class if he leaves to take space. For [REDACTED], the BIP suggests coaching the Student to walk away on his own, praise if he does so, redirection, and implementation of emergency intervention if needed.

Occupational Therapy Assessment

99. On May 9, 2023, [REDACTED], BCPSS Occupational Therapist, conducted an occupational therapy assessment to determine if there was a need for school-based occupational

therapy based on the Student's present level of performance in the area of fine motor and visual perception skills. She conducted standardized testing and completed a clinical observation.

BCPSS Ex. #7.

100. ██████ utilized the Wide Range Assessment of Visual Motor Abilities (WRAVMA) to assess the Student's fine motor, visual motor, and visual spatial skills. This test has three subtests, a drawing test for visual motor skills, a matching test for visual spatial skills, and a pegboard test for fine motor skills.

101. In the visual motor and visual spatial tests, the Student was above average. On the pegboard fine motor test, a timed test where the Student was asked to put as many pegs in a pegboard within ninety seconds as he could, he fell into the average range. However, he did not follow the instructions regarding how he was supposed to place the pegs (left to right; top to bottom), so he was less than efficient, resulting in a lower score but still in the average range.

██████ found this to be a behavioral issue, not a fine motor issue.

102. As part of the WRAVMA, the Student completed a brief sentence copying activity. ██████ provided the Student with the sentence: "The quick brown fox jumped over the lazy dogs." The Student copied it legibly on narrow college-ruled paper, with the exception of the letter "w" in brown and "u" in jumped. His letters were appropriately spaced and stayed within the line. His punctuation and upper-case usage were appropriate.

103. ██████ also spoke with ██████, who said she had no concerns about the Student's functional performance in the classroom setting, including scissor skills.

104. The Student behaved appropriately during the assessment. He worked diligently on the tasks.

105. ██████ conducted a clinical observation of the Student while he was working and found that in the area of neuromuscular, his joint mobility, tone of voice, strength/endurance/coordination of body movements, and reflexes were functional and normal.

106. The Student's "righting reactions" or the ability to return upright, appeared to be functional but ██████ did not formally test that area. His posture was appropriate. His fine motor skills were normal, including eye movements, grasping and releasing objects, hand-to-hand manipulation of objects, and bilateral integration such as crossing midline to stabilize his paper or reaching across to retrieve an item. His sensorimotor skills were all functional, despite that he was talkative, in a louder volume than necessary, and he was fidgety in his chair. These had no impact on the testing.

107. ██████ noted that strategies being applied at that time to support the Student's sensory sensitivities should be continued; but she determined that the Student did not need direct occupational therapy services.

108. The IEP provided for an occupational therapist consult monthly. This involves an occupational therapist meeting with school-based staff and the therapeutic aide that works with the Student every day to support his needs in the classroom, and provides instruction on how to implement strategies, the sensory diet,¹⁰ and train the aid to support the Student.

Speech/Language Assessment

109. ██████, BCPSS Speech/Language Pathologist, conducted a speech/language assessment on May 30, 2023. BCPSS Ex. #6.

110. ██████ administered the Comprehensive Assessment of Spoken Language 2nd Edition (CASL-2). This test is given directly to the Student.

¹⁰ The sensory diet is basically a toolbox of items or interventions to assist the Student with sensory sensitivity. It is listed as an accommodation in the Student's IEP.

111. The Student scored in the average range for expressive language, and in the average to above average range in receptive language. He scored below average for his age in nonliteral language, which evaluates “understanding the meaning of spoken sentences, independent of the literal interpretation of the surface structure.” BCPSS Ex. #6.5. He also scored in the below average range for pragmatic language, which evaluates the ability to “apply pragmatic language rules that are recognized by society to be appropriate for a given context.” BCPSS Ex. #6.5. The results indicated that he could greet, compliment, seek information, ask for help and express gratitude, but he struggled to “express regret, politely refuse, request clarification, and seek secondary information.” His pragmatic language skills “suggest that he does not have adequate knowledge of social norms/expected responses for a variety of social situations.” BPCSS Ex. #6.5

112. The Comprehensive Evaluation of Language Fundamentals, 5th Edition (CELF-V) is a rating scale that [REDACTED] completed. It is designed to identify verbal and nonverbal pragmatic deficits that may negatively influence the Student’s social and academic communication.

113. As part of her input on the CELF-V, [REDACTED] shared that “in class [the Student] often ignores others, isolates, or responds in ways that are highly inappropriate such as cursing or [REDACTED].” BCPSS Ex. # 6.6.

114. [REDACTED] also reported that the following behaviors “never or almost never” occur: making/responding to greetings to/from others; beginning/ending conversations; observing turn-taking rules in the classroom or in social interactions; maintaining eye contact/gaze; maintaining topics using typical responses (e.g. nods, responds with hmmm); avoiding use of repetitive/redundant information; participating/interacting in unstructured group activities; responding to introductions and introducing others; giving/asking for directions;

asking for help from others; offering to help others; giving/responding to advice or suggestions; reminding others/responding to reminders; apologizing/accepting apologies; responding when asked to change his actions (by accepting/rejecting); responding to teasing, anger, failure, disappointment; knowing how someone is feeling based on nonverbal cues; reading the social situation correctly and behaving/responding to it; making/responding to farewells to/from others; beginning/ending conversations.

115. When [REDACTED] met the Student, the Student greeted her and engaged in conversation with her.

116. [REDACTED] also interviewed [REDACTED], who told her that the Student has good handwriting and can produce work when he is motivated. She also noted that he aggravates peers with his comments; he is attention seeking; he kicks the desk or bangs on the desk and drums and when asked to stop, he refuses [REDACTED].

117. [REDACTED] report noted strengths in and above average ability with antonyms, sentence comprehension and grammatical judgment. He is average in receptive and expressive vocabulary, sentence expression, grammatical morphemes, meaning from context and inferences.

118. The Student was below average in pragmatics compared to same-aged peers. He missed nuanced language, struggled to deal with situations that involved heightened emotions such as expressing regret or politely refusing, and he struggled to problem solve to gather needed information. These delays impacted his ability to interact with peers and adults in the classroom.

119. [REDACTED] recommended the following for the Student: 1) proactive verbal social coaching from classroom teachers to promote appropriate interactions and problem solving across settings; 2) use of positive comments, praise, and encouragement with the Student's successful social interactions; 3) debrief with a school staff member after a negative

interaction or social breakdown to reflect, promote perspective taking, and evaluate options and feelings; 4) participation in a comedy/improvisation or drama group at school or in the community; 5) participation with the [REDACTED] chapter in [REDACTED] to find students who share his interests; 6) encourage independent reading to expose the Student to figurative expressions, syntax, and social scenarios.

Progress Reports

120. [REDACTED], Speech/Language Pathologist, [REDACTED], has provided speech/language services to the Student since he has been at [REDACTED]. She provided push-in group sessions to aid in the generalization of his speech/language skills.

121. On June 14, 2023, [REDACTED] speech/language progress report noted that the Student was making progress in his speech and language skills based on her informal observations. Parent Ex. #39. He had deficits in semantic relationships, word finding skills and development of narrative structures. As his frustration tolerance increased, he was more willing to accept corrective feedback which improved his performance. At that time, he still had difficulty with conversational skills, understanding or utilizing nonverbal and paraverbal communication to make social inferences and engage in perspective taking. He dominated the conversation on preferred topics but had difficulty maintaining interactions on nonpreferred topics.

122. [REDACTED] June 16, 2023, Counseling Progress Report noted that the Student had shown improvement in tolerating less preferred activities during group therapy sessions. However, he still had difficulty regulating his emotional state when frustrated. Parent Ex. #44. He showed some improvement in allowing adults to clarify prior to engaging in argumentative behavior. His degree of emotional arousal could be out of proportion to the situation. He needed

prompting and additional support when dysregulated so that he could stay on task and follow directions. He required continued support to learn coping strategies.

123. At that time, the Student has made some progress toward seeking out positive interactions with peers and adults, as well as with sportsmanship. He still required support regarding tolerating others' thoughts and opinions; he felt like he was being attacked when someone disagreed with him. This often resulted in [REDACTED]. He needed continued support to control his behavioral response to negative interactions.

The August 7, 2023 IEP Process

124. In order to begin the IEP process with the BCPSS, the Parents submitted a Child Find Referral on February 13, 2023, which detailed the Student's diagnoses, his recent educational history at both [REDACTED] and [REDACTED], and his hospitalization at [REDACTED]. The Child Find Referral was submitted to the IEP team for consideration.

125. The Child Find Referral noted that at [REDACTED], the Student could stay on an academic task for approximately fifteen minutes. His behavioral incidents increased during tasks of longer duration.

126. At the March 22, 2023, IEP team meeting, the Parents presented the IEP team with the following: 1) [REDACTED] Psychological Report; 2) [REDACTED] Educational Plan, dated August 2022; 3) [REDACTED] Quarter 1 Progress Report, dated August 24, 2022; 4) the [REDACTED] dismissal letter; 5) [REDACTED] Quarter 2 Progress Report, dated December 19, 2022; 6) [REDACTED] Progress Report for mathematics, reading, science and English language arts, dated February 27, 2023; 7) [REDACTED] Discharge Summary, dated January 5, 2023.

127. The IEP team also reviewed: 1) the BCPSS Psychological Report, dated October 27, 2021; 2) the BCPSS FBA, dated June 2, 2021; 3) BCPSS Educational Assessment Report, dated September 27, 2021; 4) BCPSS Student Observation Report, dated October 25, 2021; 5)

BCPSS Speech/Language Assessment Report, dated October 26, 2021; 6) BCPSS Occupational Therapy Report, dated October 10, 2021; and 7) BCPSS Grade Report and Attendance Report for the 2020-2021 school year.

128. The IEP team determined that additional assessments were necessary. The Parents consented to academic assessments in reading, math, and written language; as well as assessments in the areas of expressive/receptive language and pragmatics; and functional adaptive performance in the area of fine motor skills. The Parents also consented to classroom observations and an FBA.

129. On June 15, 2023, the IEP team met and determined that the Student was eligible for special education services. The IEP team concluded that the Student's primary disability was autism, and he had a specific learning disability in the areas of reading and writing. The team also recommended implementing the BIP developed by [REDACTED] based on the FBA.

130. The Parents vocalized their disagreement with [REDACTED] FBA, specifically, her determination not to target the other four behaviors for which [REDACTED] had been collecting data: [REDACTED], noncompliance, leaving the location, and elopement. The Parents were concerned that there was a lack of data collected regarding antecedents and consequences of the Student's behaviors.

131. On July 18, 2023, [REDACTED] wrote a recommendation to the IEP team that the IEP include a social interaction goal and four objectives. Despite recent progress in social behaviors, the Student continued to have difficulty with feedback from peers and adults, during which times he became argumentative and required coaching or modeling to demonstrate desired behaviors. When frustrated, he would [REDACTED]. He had difficulty accepting adult support and redirection to refrain from these peer interactions. He also

had difficulty “managing his behavioral response when provoked by peers.” Parent Ex. #46, p. 1312.

132. The IEP team considered [REDACTED] recommendation and added it to the Present Levels of Academic Performance section of the IEP. The social interaction goal was added to the IEP.

133. The IEP team met again on August 7, 2023. At that IEP meeting, the Parents disagreed with the IEP team’s determinations regarding fine motor skills and social/emotional/behavioral skills. They also disagreed with the data in the FBA and the BIP.

134. The IEP team determined that the Student should be placed at [REDACTED]. [REDACTED] is a general education elementary school with class sizes averaging up to twenty-three or twenty-four students. The team rejected the Parent’s request that he be placed at a small special education school with small class sizes and small student-to-teacher ratio.

135. The IEP provides for five, twenty-minute sessions of specially designed instruction outside of the general education classroom, per week, to address written language mechanics goal and objectives, and three, thirty-minute sessions per week outside of the general education classroom, to address his written language content goal and objectives. It also provided for two, thirty minutes sessions of psychological services weekly, outside of the general education classroom, and two, thirty-minute sessions weekly for speech/language services, outside of the general education classroom. For approximately twenty-nine hours of the thirty-four hour school week, the Student would be in the general education classroom receiving both general and special education instruction.

136. For instructional accommodations, the IEP provided that the Student have available to him all of the accessibility features set forth in the standard IEP form, including: blank scratch paper; answer masking strategy to minimize the amount of choices in a multiple

choice exercise; general administration directions clarified; general administration directions read aloud and repeated as needed; a highlighter to maintain focus on specific sections of an assignment; line reader mask tool; notepad/virtual scratch paper to make notes or record responses; pop-up glossary; redirection to remind him to stay on task and remain focused; spell check; writing tools for written responses; and a graphic organizer.

137. For accessibility features, the IEP provided that the Student will use answer masking; text-to-speech; a human reader; small groups; frequent breaks; reduce distractions to self and others by completing assignments or assessments in a location other than the classroom.

138. The IEP also provided that the Student could use a math calculation device for instruction, to complete activities, assignments and tests.

139. As Supplemental Aids and Services, the IEP provided for a visual schedule; a word bank to target the Student's difficulty with spelling; alternative ways of learning, such as verbalizing rather than writing, or keyboarding; preferred topics for writing tasks and assignments; chunking of texts; breaking down assignments into smaller units; a crisis plan; a [REDACTED] aide [REDACTED] for the entire school day; advance preparation for schedule changes; daily check-ins before and after breaks; a journal to document feelings and situations; social skills training/coaching to promote appropriate interactions; a previously identified calm down space to lessen the likelihood that the Student will leave the assigned area; a sensory diet; use of adapted paper to increase handwriting legibility; reduction of paper/pencil tasks; a psychologist consult; classroom instruction consult; and an occupational therapist consult.

140. The IEP contained goals and objectives for written language content, written language mechanics, math problem solving, speech/language pragmatics, social interaction and social/emotional/behavioral.

141. The Parents disagreed with the IEP because they felt that the Student needed a full day of special education services. They disagreed with the placement at [REDACTED], in the general education environment, for twenty-nine hours per day.

142. The Parents disagreed with the occupational therapy consult; they did not think it was sufficient to meet the Student's needs. The Parents felt the Student needed direct occupational therapy services.

143. The Parents disagreed with the IEP in that it provided that the Student will receive psychological and speech/language services only outside of the general education classroom. The Parents maintained that he needed those services throughout the day in all settings.

144. In English language arts, math, science and social studies, the teachers would work together to plan the Student's instruction and address concerns the Student may have in the larger group environment.

145. At [REDACTED], the Student would have an average of twenty-three to twenty-four student in his class and would have three teachers for the general education content areas and one special educator. He would have different teachers for specials. In the lunchroom, the Student would likely be with his entire grade, which could be approximately seventy students. Those seventy students would also go out together for recess. In specials such as physical education, art and music, the Student would be with the general education teacher and his therapeutic aide. He would also have home room, lunch and recess.

146. [REDACTED] is now located in a brand-new building that has open spaces for students that need assistance with sensory sensitivity, and wholeness rooms staffed with wholeness specialists.¹¹ There are places the Student can go for lunch other than the lunchroom.

¹¹At the time the IEP was drafted, the new building where [REDACTED] is now located was not yet finished and the school was located in an older building.

The open spaces are located on each floor outside of the classrooms; they are about the size of a classroom with tables and chairs.

147. At [REDACTED], all of the staff would work together to collaborate and plan for the Student.

148. At [REDACTED], much of the teaching in the general education classroom would be in small groups, utilizing different models of small group teaching.

149. At [REDACTED], the teaching staff would collaborate with the related service providers. All staff working with the Student would know how to implement his visible schedule and other supports.

DISCUSSION

LEGAL FRAMEWORK

The IDEA requires the states to provide a FAPE to all children who qualify for special education services. 20 U.S.C.A. § 1412; 34 C.F.R. § 300.17.¹² To meet this obligation, local educational agencies (LEAs) must ensure that a “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.” 20 U.S.C.A. §§ 1400(d)(1)(A); *see also* Educ. § 8-403.

¹² “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 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 [IEP] that meets the requirements of §§ 300.320 through 300.324.” *See also* 20 U.S.C.A. § 1401(9).

In order to qualify to receive special education services, the child must be identified under one of the enumerated educational disabilities¹³ and “by reason thereof, [need] special education and related services.” 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).

LEAs meet the federal requirement to provide FAPE to eligible students through development and implementation of IEPs. *See M.S. ex rel Simchick v. Fairfax Cnty. 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.

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

An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C.A. § 1414(d)(1)(B). 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.” 20 U.S.C.A. § 1414(d)(1)(A)(i). “The IDEA cannot and does not promise ‘any particular [educational] outcome.’” *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 398 (2017).

¹³ 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).

However, to ensure that an eligible child receives a FAPE, an IEP must be reasonably calculated to yield meaningful educational benefit to the student. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 187-204 (1982).

The United States Supreme Court has developed a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be: 1) a determination as to whether a school district has complied with the procedural safeguards as set forth in IDEA,¹⁴ and 2) an analysis of whether the IEP is reasonably calculated to enable the child to make meaningful educational benefit in light of the child's unique individual circumstances. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.* at 399. A "reasonably calculated" IEP involves a "fact-intensive exercise" derived from "the prospective judgment by school officials" and "input of the child's parents or guardians" "after careful consideration of the child's present levels of achievement, disability, and potential for growth. 20 U.S.C.A. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv)." *Endrew F.* at 399, 400 (2017) (citations in original).

Further, "meaningful benefit" cannot be de minimis or slight. *Id.* at 402. Rather, a student's progress must be "appropriately ambitious in light of [the child's] circumstances." *Id.* Grade-to-grade advancement may be "appropriately ambitious" for students capable of grade-level work who are fully integrated in a regular classroom, but that is not the case for all students. *Id.*

¹⁴ "Therefore, a court's inquiry in suits brought under § 1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the [IEP] developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." *Rowley*, 458 U.S. at 206-07; *see also Endrew F.*, 580 U.S. at 402 ("But the procedures are there for a reason, and their focus provides insight into what it means, for purposes of the FAPE definition, to 'meet the unique needs' of a child with a disability. §§ 1401(9), (29)."). The Parents did not claim that the BCPSS failed to comply with any procedural safeguard.

When grade-to-grade advancement is not reasonable for the student in light of a student's unique circumstances, the student should be afforded the opportunity to meet other challenging objectives. *Id.*

In situations where a student's behavior impedes their learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies in the IEP, to address that behavior. 34 C.F.R. §§ 300.324(a)(2)(i) and (b)(2); and 300.320(a)(4). Such positive behavioral interventions and supports can be addressed in the IEP through specific social, emotional or behavior goals;¹⁵ supports and services;¹⁶ through related services such as counseling,¹⁷ psychological¹⁸ or social work services;¹⁹ in a FBA or BIP; or any combination thereof.

An FBA “means the systematic process of gathering information to guide the development of an effective and efficient behavior intervention plan for the problem behavior” and includes “(i) Identification of the functions of the problem behavior for the student; (ii) Description of the problem behavior exhibited in the educational setting; and (iii) Identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, and maintenance of the behavior over time.” COMAR 13A.08.04.02B(7). A BIP “means a proactive, data-based, structured plan that is developed as a result of a functional behavioral assessment which is consistently applied by trained staff to reduce or eliminate a student's challenging behaviors and to support the development of appropriate behaviors and responses.” COMAR 13A.08.04.02B(1).

¹⁵ See 34 C.F.R. § 300.320(a)(2).

¹⁶ See 34 C.F.R. § 300.320(a)(4).

¹⁷ See 34 C.F.R. § 300.34(c)(2).

¹⁸ See 34 C.F.R. § 300.34(c)(10).

¹⁹ See 34 C.F.R. § 300.34(c)(14).

A component of determining whether a LEA has complied with its FAPE obligations is whether the special education and related services in the Student's IEP are provided in the least restrictive environment (LRE) to meet the Student's unique educational needs. LRE refers to the Student's placement. The IEP team must consider the continuum of alternative placements, which span from the least restrictive setting, such as a general education classroom, to more restrictive settings like self-contained special education classes, placements outside of the school district, home and hospital instruction, and even residential care or treatment facilities. 34 C.F.R. § 300.115. The IDEA requires that the LEA ensure that:

...to the maximum extent appropriate, children with disabilities... are educated with children who are nondisabled and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.

34 C.F.R. § 300.114(a)(2).

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. 20 U.S.C.A. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c). To receive reimbursement for tuition resulting from the unilateral private school placement, an Administrative Law Judge must find that: 1) that the school district has denied a FAPE to the student or committed another substantive violation of the IDEA; 2) that the parents' private school placement is appropriate; and 3) that the equitable factors in the particular case do not preclude the relief. *Sch. Comm. Town of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. #4 v. Carter*, 510 U.S. 7 (1993); *see also Forest Grove Sch. Dist. v. TA*, 557 U.S. 230, 246–47 (2009) ("Parents 'are entitled to reimbursement *only* if a federal court concludes both that the public placement violated the IDEA and the private school placement was proper under the Act.'")

And even then courts retain discretion to reduce the amount of a reimbursement award if the equities so warrant—for instance, if the parents failed to give the school district adequate notice of their intent to enroll the child in private school. In considering the equities, courts should generally presume that public-school officials are properly performing their obligations under IDEA.”) (internal citations omitted). A private placement also need not satisfy all of the procedural and substantive requirements of the IDEA. *See Carter*, at 14; *See also M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 327 (4th Cir. 2009) (The unilateral placement need not be provided in the LRE, but the restrictive nature of placement may be considered in determining whether the placement was appropriate.). The standard is whether the parental placement was reasonably calculated to provide the child with educational benefit. *Carter*, at 11. However, if the LEA made a FAPE available to the Student through its IEP, the LEA is not required to reimburse the Parents for the cost of the unilateral placement. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State Education Agency and LEAs. 34 C.F.R. § 300.148(c).

School officials should be afforded deference based on their expertise, and the IDEA “vests these officials with responsibility for decisions of critical importance to the life of a disabled child.” *Endrew F.* at 404; *See also, Hartmann v. Loudoun Cnty. Bd. Of Educ.*, 118 F. 3d. 996, 1000-1001 (4th Circ. 1997) (“Local educators deserve latitude in determining the [IEP] most appropriate for a disabled child.”). Although the BCPSS does not bear the burden of proof in this case, those same officials “may fairly [be] expect[ed]...to be able to offer a cogent and responsive explanation for their decisions.” *Endrew F.* at 404. The deference afforded to school officials is not limitless. *Cnty. Sch. Bd. of Henrico Cnty., Virginia v. Z.P. ex. rel. R.P.*, 399 F. 3d. 298, 307 (“Nor does the required deference to the opinions of the professional educators

somehow relieve the hearing office or the district court of the obligation to determine as a factual matter whether a given IEP is appropriate.”). Thus, “the fact-finder is not required to conclude that an IEP is appropriate simply because a teacher or other professional testifies that the IEP is appropriate.” *Id.* “Indeed, if the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary” and “would render meaningless the entire process of administrative review.” *Ojai Unified Sch. Dist. v. Jackson*, 4 F. 3d. 1467, 1476 (9th Cir. 1993).

BURDEN OF PROOF

The Parents bear the burden of establishing that the BCPSS denied the Student a FAPE, that the Student’s unilateral placement at a non-public school is appropriate, and that they are entitled to tuition reimbursement and any other relief sought under the IDEA. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); 34 C.F.R. § 300.502(b)(2)(i). The standard of proof in this case is a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217; COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

ANALYSIS

Academics

For the reasons that follow, I conclude that the goals and objectives for academics in the August 7, 2023 IEP were appropriate. The parties agree that the Student is bright and of average cognitive ability. In academics, he struggles with writing, spelling, math calculation and pragmatic language. As a result of her educational assessment, [REDACTED] felt that the Student was being helped too much at [REDACTED] and needed the opportunity to solve problems

independently. In [REDACTED] opinion, if he continued to lean too heavily on adults, it could stifle his progress. He needed a supportive environment that would foster his ability to work independently. He also needed to engage in conversations with same-aged peers and learn with peers of a similar cognitive profile to enable him to thrive. She opined that the August 7, 2023 IEP was appropriate. The instructional accommodations in the IEP will provide the Student with the supports he needs.

[REDACTED] drafted the academic present levels of performance in the IEP for reading phonics, fluency, vocabulary, comprehension, math calculation, math problem solving, written language content, and written language mechanics, which she pulled from the Student's results on the Woodcock-Johnson. She believes that for academics, the IEP could have been fully implemented at [REDACTED]

[REDACTED] referred to the Student's programming at [REDACTED], as a "co-taught" model, because the Student's IEP would be implemented by both the general education and special education teachers. All of the staff would work together to collaborate and plan for the Student. At [REDACTED], they utilize several models of co-teaching within the general education classroom, such as rotating stations where some students work with the general education teacher and some work with the special education teacher, and other small group models within the general education classroom. The teaching staff would collaborate with the related service providers, who assist the special and general education teachers in their content area regarding what supports are required. All staff working with the Student would know how to implement his visible schedule and other supports. For his areas of weakness such as written language content and mechanics, the IEP team agreed that the Student needed additional support and would be pulled out of the general education classroom for that specialized instruction.

When [REDACTED] observed the Student in the classroom at [REDACTED], he did not interact with the other students. She believes the placement at [REDACTED] would help him interact with other students while still in a supportive, structured environment. This will help him generalize the skills he is being taught, share ideas and thoughts in classroom discussion, and problem solve in groups. [REDACTED] acknowledged the Parents' concern about the large class size but said that in the co-teaching environment at [REDACTED], the professionals will collaborate to ensure that the Student receives small group instruction, one on one instruction if needed, and accommodate his needs and implement the IEP. The BIP will be in place to address any situation where the Student may become overwhelmed by the general education environment. The supplementary aids and services will be implemented consistently because all of the service providers and educators will work together. The Student will have a therapeutic aide in the event he needs to leave the classroom to deregulate. [REDACTED] believed [REDACTED] has the resources to implement the Student's IEP.

[REDACTED] conceded that there was nothing in the IEP about a co-taught instructional environment. [REDACTED], the Parents' Educational Consultant, disputed [REDACTED] assertion that that Student's general education classroom would be "co-taught" by both the general educator and the special educator in the room together. I agree with [REDACTED]; there was nothing in the IEP service delivery section or elsewhere that indicated the Student would be in a co-taught classroom. Nor was that information in the prior written notice for the July 17, 2023 and August 7, 2023 IEP meetings. BCPSS Ex. #16. The service delivery section of the IEP sets forth that portions of the Student's education would be provided by the special education teacher and portions provided by the general education teacher, but there is no indication that it would have been a co-taught teaching model wherein a general educator and special educator run

the classroom together. The Student's IEP does not reflect that he would be in a co-taught classroom.

██████████ also conceded that the IEP did not provide that the special education teacher would provide any specialized instruction toward the Student's social/emotional/behavioral goals. However, she opined that the instructional supports and accommodations, as well as the supplementary aids and services in the IEP, adequately address the Student's social/emotional/behavioral goals. Other than her testimony regarding the co-taught classroom, I found ██████████ to be a credible witness, and her educational assessment was consistent with all of the evidence before me regarding the Student's cognitive and academic ability. BCPSS Ex. #8.

I accepted ██████████ as an expert witness in special education and as a behavior specialist analyzing and implementing behavior programs. She co-owns ██████████ ██████████, which assists families with negotiating the IEP process. The Parents contacted her in September 2020 when the Student was just starting at ██████████. She attended IEP meetings and assisted in the development of the IEP for the 2020-2021 school year.

██████████ is familiar with the Student's profile and has observed him in the classroom at both ██████████ and ██████████ on multiple occasions.²⁰ In both schools, there was a very low student-to-teacher ratio. At ██████████, he was engaged, but if he became distracted, he would go under the table or out the door. She did not observe any aggressive behavior or ██████████ ██████████. At ██████████, she observed that he was very engaged in a book discussion, answered questions, read out loud and took turns appropriately. ██████████ attended three out of the four IEP meetings in 2023 when the IEP was being developed.

²⁰ The record does not contain the dates of these observations.

At the hearing, [REDACTED] described the Student's low [REDACTED], [REDACTED], [REDACTED]. The Student becomes upset over things that would not upset other students. His problem with [REDACTED] impacts him in the classroom. His behaviors result in disengagement from learning. He has difficulty with transitions. He has difficulty relating to peers and taking turns. He is [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. He gets [REDACTED] [REDACTED],²¹ and [REDACTED]. According to [REDACTED], these behaviors are symptoms of his [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] agreed with [REDACTED] psychological evaluation and recommendation that the Student needs a highly therapeutic, specialized school.

Overall, [REDACTED] found [REDACTED] May 16, 2023 educational assessment to be consistent with the Student's overall academic presentation. BCPSS Ex. #8. Based on the Woodcock-Johnson IV, the Student scored solidly average in broad reading, although lower than average in oral reading word attack, which tests how a student attacks words from a phonics standpoint. He also scored average in broad math, but low average in math calculation. His biggest area of deficit was in writing. [REDACTED] noted that the Student's level of independence in school depended on the task. He was not independent in writing; in fact, he refused to write. Recently, he has been more willing to take turns and dictate his thoughts. He needed assistance with word attack and decoding in reading; he was more independent in math. His level of independence also corresponded to his level of frustration.

However, based on the Student's present levels of functioning, [REDACTED] opined that placement of the Student in a general education setting for twenty-nine hours of the thirty-four

²¹ [REDACTED] used the term [REDACTED]. However, the evidence established that the Student would partake in [REDACTED], e.g. [REDACTED], but not [REDACTED].

hour school week was inappropriate. [REDACTED] maintained that at the time of the August 7, 2023 IEP, the Student needed a highly structured environment, very small class size, and integrated services throughout his day in order to access his academic curriculum. The Student was not yet ready to be educated with nondisabled peers because peers were a trigger for his disruptive behavior. Despite his average cognitive intelligence, his social/emotional/behavioral/deficits, and dysregulation associated with his [REDACTED] impacted his education in the classroom. [REDACTED] also found the IEP to be deficient because it failed to provide for direct speech/language services to the Student within the general education classroom.

Regarding the LRE, [REDACTED] acknowledged the benefit and the requirement that a learning-disabled student be educated with non-disabled peers, to the extent possible given a student's presentation. However, at that time, the Student was still highly [REDACTED], still making [REDACTED], and still required a small class size in a therapeutic environment with specially designed instruction and supports throughout his entire day. [REDACTED] has never seen the Student in a larger classroom setting.

The only dispute regarding the Student's academics lies in the placement at [REDACTED] and the service delivery hours in the general education setting; the parties did not dispute the present levels, goals and objectives, or accommodations that the IEP provided in the areas of reading phonics, reading fluency, reading vocabulary, reading comprehension, math calculation, math problem solving, written language content, written language mechanics, and written language expression. Parent Ex. #48. At the August 7, 2023 IEP meeting, the Parents proposed adding a summary referencing the current classroom settings and the supports the Student was receiving at [REDACTED] to the present levels of performance. The BCPSS

agreed. The Parents requested some additional accommodations and the addition to the present levels of performance and the IEP was adjusted accordingly.

The Parents proposed that the Student be educated in small group instruction throughout the day with small student to teacher ratio. The BCPSS rejected this proposal. It maintained that small group instruction will be an instructional accommodation, but it is not required throughout the school day. The Parents continued to maintain that the Student needed a full day of special education services, delivered by a special educator not a general educator.

The Student's deficits in writing required specially designed instruction in written language content inside and outside of the general education environment, outside the general education classroom for written language mechanics, and outside of the general education classroom for math problem solving, the areas in which he struggles most. The IEP team took into account the updated evaluations and assessments, the input of the Parents and the educators, and appropriately crafted the academic goals and objectives in a manner that will allow the Student to make appropriate progress in light of his unique circumstances. *Andrew F.* at 404. I will discuss the Student's placement below, because it is primarily the Student's social/emotional/behavioral deficits that dictate his placement.

Social/Emotional/Behavioral

There are two components to the analysis of whether the IEP appropriately addresses the Student's social/emotional/behavioral needs. First, is whether the FBA and BIP were appropriate. The second is whether the social/emotional goals and objectives in the IEP appropriately addressed the Student's deficits.

For the reasons that follow, I conclude that the IEP failed to properly address the Student's social/emotional/behavioral profile, and as a result, his placement at [REDACTED] was not appropriate as the LRE.

The FBA and BIP

██████████ is a licensed speech language pathologist. She described the Student as bright and fun, with a big imagination, a strong sense of justice, and strict laws about how things should be done regardless of his knowledge or expertise. He is a ██████████ thinker, has difficulty taking the perspective of others, and cannot understand that his reality might not actually be reality. These symptoms of his ██████████ impact his entire life.

██████████ provided examples. If the Student heard something, even on television, that was in line with the way he thinks, he was passionate and considered whatever was said to be true. If what he heard was not in accordance with the way he thinks, then that person is the “stupidest thing in the world and should not be alive and should die, which is often ██████████.” Testimony, ██████████.

According to ██████████, the Student did well at ██████████ at first, with a lot of support and small class size. He responded well to ██████████ structured behavior program. However, in the 2022-2023 school year, he began to have more ██████████ and ██████████ than ██████████ had the resources to handle. In November and December 2022, his ██████████ were happening multiple times per day. His dismissal from ██████████ was very difficult, because the Parents thought that he was learning and making progress.

At home in November and December 2022, the Parents were seeing the same behaviors, and they thought that the Student might not have been properly medicated. He had been making statements about ██████████, asking for ██████████. He would talk ██████████. The Parents were not satisfied with the treatment from the Student’s psychiatrist at the time, who could not offer any suggestions and who would not change his ██████████. It was at that point that the Parents

admitted the Student to [REDACTED] to assess his [REDACTED] regimen. Before they did so, they weaned him off of his [REDACTED] with the guidance of the psychiatrist. In [REDACTED] words, at that point, “he went crazy.” Testimony, [REDACTED]. He would scream, [REDACTED], and would not calm down.

The Student likes [REDACTED], and during this time, the Parents were forced to move [REDACTED]. He had previously taken a [REDACTED] out to take it to school, but the Parents had always been able to stop him from doing so. The closest he came was when [REDACTED] found a [REDACTED] in his lunchbox. She now searches his backpack and lunchbox frequently. [REDACTED] would not allow the Student to bring his [REDACTED] to school, because it had been a “choice of weapon for him often.” Testimony, Ms. Abramson.

The Student experiences [REDACTED]. The Parents are careful about what foods they prepare. He hates the smell of pizza. He has a [REDACTED]. He will only wear very soft clothing, because he is sensitive to touch.

[REDACTED] conducted the FBA on June 6, 2023. BCPSS Ex. #9. At the hearing, she summarized her findings. She interviewed [REDACTED], [REDACTED] and [REDACTED]. She was aware that [REDACTED] had been collecting data on seven target behaviors: noncompliance (refusal to work or follow staff direction); inappropriate vocalizations, [REDACTED] ([REDACTED], etc.), leaving location (leaving his designated area by less than ten feet), out of class (refusal to return to class or outside the class without permission); elopement (leaving classroom or assigned area by more than ten feet); and [REDACTED]. She explained how she chose to target only three: [REDACTED], out of location, and [REDACTED]. [REDACTED] grouped out of class, leaving location and elopement together, because through her analysis she determined that these behaviors were happening at the same time and stemmed from the same triggers. She chose these three behaviors because, based on the data

collected, they were most significant in terms of risk to the Student and others, and because they were the behaviors that interfered with his education most. She maintained that other behaviors are addressed through the accommodations in the IEP. However, for the FBA, behaviors need to be prioritized “where you’re going to get the biggest bang for your buck. These are the behaviors that lead to deterioration.” Testimony, [REDACTED].

[REDACTED] created the operational definitions of each target behavior: Improper vocalizations included “shouting at peers or adults, cursing, or [REDACTED];” Out of location included “any time [the Student] is outside the defined instructional area, such as being out of his seat when expected to be working at his desk, walking to an unused area of a large classroom, or leaving the supervised area (beyond the light lines of the relevant adult);” BCPSS Ex. #9.2. She defined [REDACTED] as “any time [the Student] uses his body or an object to strike at or near another person with enough force to produce a sound, cause tissue damage or pain expression, or physically displace them.” *Id.* The definition of [REDACTED] also included attempts at [REDACTED].

[REDACTED] found noncompliance to be one of the least interfering behaviors, because [REDACTED] reported that when that occurs, the Student was often able to be redirected to complete his work. This was a behavior [REDACTED] found not to be occurring to a significant degree that it was impacting the Student’s education. She noted that from the data, the most common value of the duration of noncompliance was that it was happening on zero days. *See* Parent Ex. #71(E), p. 1392. She drew from the data that the Student displayed typical age level noncompliance which required support but was not significant enough to be targeted in the FBA. Similarly, [REDACTED] was happening at a low level from the graph [REDACTED] provided. *See* Parent Ex. #71(F), p. 1394. Neither [REDACTED], [REDACTED] or [REDACTED] addressed [REDACTED] when [REDACTED] interviewed them.

■■■■■ assessment revealed that the Student's inappropriate vocalizations were largely triggered by peers. He often responded to redirection by an adult, or adult assistance to help him take space. He also began utilizing the "think it don't say it" self-talk practice, ninety percent of the time. Sometimes he did not respond to redirection and continued to say inappropriate things. The second behavior, out of location, was triggered by down time or wait time; it was less likely to happen if the Student had an assigned task. Adults tended not to intervene if the Student was pacing, making noises to himself, or engaging in finger movements unless it was time for academics or a transition, and he responded well to those redirections. ■■■■ ■■■■ determined from ■■■■■ data collection that the out of location behavior was occurring on an average of .1 time per hour, .7 times per day; however, for twenty seven percent of days there was no out of location behavior. BCPSS Ex. #9.5. ■■■■ explained that this could be because when the out of location instances occur, they may be happening in a burst, or a higher level.

Regarding the third behavior, ■■■■■, ■■■■■ determined from the data that for eighty percent of days, the Student had no instances of ■■■■■. Even on the days where there was some ■■■■■, the data did not distinguish between threats or actual ■■■■■. ■■■■■ most likely occurred when the inappropriate vocalizations went back and forth to a point when an adult needed to intervene. BCPSS Ex. #39.9. It took adult intervention to separate him from a peer, and he usually then needed space to himself.

Following her classroom observation of the Student, ■■■■■ determined that the Student's reactions to the things that frustrated him were milder than described by the Parents and ■■■■■. She acknowledged the Student's challenges, but felt the behaviors were being characterized as more severe than they were. She did not find him to be ■■■■■ all day or in crisis all the time. He displayed good responses to intervention. He responded to coping

strategies and redirection. ██████ opined that the Student's challenges were not at a level that would prohibit him from being successful in the educational environment that the IEP proposed.

██████ recommended a BIP. Much of the information contained in the BIP came directly from the FBA. BCPSS Ex. #10. The BIP did not include behavior #2, out of location, because the Student had been using it functionally, to regulate himself and take a break from a situation. ██████ agreed that this was a strength, not an interfering behavior. The FBA recommended that the Student be provided areas defined inside the classroom where he can pace, and both inside and outside of the classroom where he can go if he needs space from peers or adults. BCPSS Ex. #9.11. This was not addressed in the BIP, but it is addressed in the accommodations in the IEP. Parent Ex. #89, p. 1495.

The Parents disagreed with ██████ determination not to target all seven behaviors for which ██████ had been collecting data which also included noncompliance, and ██████. ██████ criticized her determination, because the FBA should target currently occurring behaviors. The seven behaviors that ██████ was tracking impacted his learning and needed to be targeted.

Further, ██████ pointed out that all seven behaviors were occurring with frequency within a class of only five peers. His behaviors were largely triggered by peers. ██████ opined that these escalations would have been worse in a general education classroom with many other students. His behaviors would spike. He required a small, self-contained program, not a general education classroom with much more noise, transitions from class to class, faster paced instruction, all things that contributed to the Student's ██████. Further, ██████ noted that there was no data that she saw that would indicate that the Student could be successful in a general education classroom for twenty-nine hours per week.

██████ disagreed with the prevention strategies set forth in the BIP. BCPSS Ex. #10. The first prevention strategy for inappropriate vocalizations included planning ahead with the Student about how he will act if a peer does something unexpected or frustrating; a self-talk rule such as “think it don’t say it,” and journaling. The Student hated writing; it was extremely difficult for him. Writing triggered some of his behaviors; thus, ██████ believed that journaling was not a good option. Self-talk was a good strategy with only four other students in the classroom. However, in a classroom with up to thirty students, ██████ pointed out that frustrating and unexpected things occur with that many students in a class that cannot be controlled; thus, self-talk in that scenario would not be effective.

I found ██████ testimony persuasive and I agree that at the time of the development of the IEP, the Student’s unique circumstances included the lack of skills necessary to be able to cope with those unexpected situations. Similarly, the prevention strategy in the FBA for ██████ was to avoid pairing the Student with peers he had conflict with recently, and daily reminders of where he could go to take space if he needed it or if he needed to talk. Again, ██████ noted that in a class of five those strategies could be workable but not in a class of up to thirty students. Plus, ██████ noted that the data the IEP team reviewed discussed the Student’s ██████ with all peers, not just those he had recent conflict with. ██████ opinion that this strategy would be ineffective was supported by the assessments and data from ██████.

██████ disagreed with the teaching strategy in the BIP for the Student to have a clearly marked green chair or red chair in the classroom to go to if he needs space; she felt he would be singled out and he would not access it. I disagree; the data from ██████ did not support this opinion. At ██████, the Student regularly utilized retreating to the tent in the classroom if he needed space, and he also frequently paced around the classroom. This is not

fundamentally different from the strategy set forth in the BIP. [REDACTED] also felt the overall long-term goal for [REDACTED], for the Student to take space from his peers at least once monthly or ask to speak to someone at least once monthly, was deficient. The [REDACTED] were happening on twenty percent of days, so identifying people he could speak to only monthly was not enough. [REDACTED] did not feel the BIP was appropriate. I agree with [REDACTED].

On this issue, I found the testimony of [REDACTED], as well as that of [REDACTED] ([REDACTED]) [REDACTED], owner of [REDACTED], to be most convincing. [REDACTED] is a clinical psychologist. I accepted her as an expert witness in behavior. She attends IEP meetings for the students at [REDACTED] in her role of behavior programming. At the time of the hearing, she was primarily in a supervisory role; however, since they were short-staffed, she also served as the lead behavior specialist overseeing students' cases. She supervised the behavior specialist, [REDACTED], who worked directly with the Student. [REDACTED] was familiar with the Student's behavior profile through personal observation, discussions with [REDACTED], and the data [REDACTED] was collecting. [REDACTED] attended the spring 2023 IEP meetings during the development of the IEP, with the exception of one. She was at the IEP meeting where the FBA and BIP were presented.

At the hearing, [REDACTED] explained, consistent with the regulations, that the purpose of the FBA is to identify the functions of behavior. The FBA is geared to discover the antecedents to behavior, the observable behavior itself, and the consequences of the behavior (ABCs). It

assesses why the behaviors are occurring. The target behaviors listed in a BIP are behaviors occurring at a high frequency or intensity.²²

In a behavior report dated March 20, 2024, [REDACTED] listed the seven target behaviors that [REDACTED] staff had seen in the school environment that were interfering with the Student's instruction. Parent Ex. #57. According to [REDACTED] when the Student started at [REDACTED], he had significant rates of inappropriate vocalizations, [REDACTED] upation ([REDACTED]), leaving location, and elopement behaviors. [REDACTED] found it to be important that the behavior of leaving the designated area by ten feet or more, and that of elopement from the classroom, remain as two separate targeted behaviors. The antecedents for those behaviors could have been the same or they could have been different, which is why they should have been differentiated.

In the BCPSS FBA, the quantitative data analysis reflected data of behaviors collected at [REDACTED] between January 2023 and May 2023. BCPSS Ex. #9. [REDACTED] found the FBA to be deficient because it did not address any antecedent or consequence data. The antecedent and consequence data help more effectively define the function of the behavior which will result in a more effective BIP. [REDACTED] staff had been instructed that BCPSS was doing an FBA; therefore, [REDACTED] did not collect ABC data when it monitored the seven target behaviors.

Most significantly, [REDACTED] stressed the importance of direct observation as part of the FBA. She criticized [REDACTED] observation of the Student for only one hour. [REDACTED] never

²² The IDEA does not require an FBA under these circumstances, nor does the IDEA provide any standards or requirements for conducting an FBA. However, the IEP team is required to "consider the use of positive behavioral interventions and supports, and other strategies," to address behaviors that impede a student's learning. 20 U.S.C.A. § 1414(d)(3)(B)(i); 34 C.F.R. 300.324(a)(2)(i); *see also, Cobb Cnty. Sch. Dist. v. D.B.*, 66 IDELR 134 (N. D. Ga. 2015) ("Because FBAs have no explicit requirements, analysts may exercise substantial discretion in tailoring their data collection to the particular student. But analysts must ensure the accuracy of the data by, e.g., including explanations and demonstrations of data collection, asking data takers to define variables to ensure understanding across all data takers, observing data collection, or providing feedback during the collection.").

had any experience with the Student. And, while that alone is not dispositive, ██████ explained that as part of an FBA, it is typical to complete three to four formal observations. It is important to see the Student interacting within the classroom environment, and in different classroom environments.

██████ described the BIP as “a plan that identifies and targets the behaviors that were identified in the [FBA].” Testimony, ██████. It offers “preventative strategies as well as reinforcement protocols as well as replacement behaviors, teaching strategies. These are all components of [BIPs].” The goal of the BIP is to decrease challenging behaviors. If the FBA does not have ABC quantified data, the BIP will not be appropriate.

According to ██████ it is rare for a school system to conduct the FBA, as it did in this case. Typically, ██████ conducts the FBA when the school system places a Student with behavioral deficits there. ██████ did not implement the BCPSS BIP. The Parents did not support the FBA, and there was no IEP team at that point to discuss its implementation. However, ██████ provided significant behavioral supports, intervention, and instruction to the Student all day; he was learning replacement behaviors for all seven behaviors that ██████ had been tracking. As a multidisciplinary team, ██████ was teaching the Student coping strategies, and the Student was making progress; the rates of behavior have decreased.

██████ compiled a chart of frequency data collected for the seven behaviors since the Student’s admission on January 17, 2023. Parent Ex. #71. The chart shows that with the supports ██████ had been utilizing for all seven identified challenges, his behaviors decreased, other than times when there was a disruption in his routine such as a change in classroom or staff.

██████████ is an educational consultant and owns ██████████. She has a ██████████ degree in special education, and she is an educational consultant. I accepted her as an expert witness in special education and behavioral analysis and developing and implementing learning programs for children with ██████████. The Parents contacted her recently in connection with this case. She never met, observed, or evaluated the Student. She was asked simply to review documents and render an opinion. She did a complete record review of the Student's educational history. I found ██████████ testimony and her explanation of the standards for conducting an FBA and a BIP to be logical, thorough, and convincing.

██████████ was surprised that noncompliance was not one of the target behaviors ██████████ chose for the FBA given the significant level and duration of those occurrences during the assessment period. Looking at the frequency and duration graph of data that ██████████ collected on instances of noncompliance between January 2023 through June 2023,²³ there were some days with no instances of noncompliance. However, noncompliance occurred frequently, and the duration was anywhere from fifty to 300 minutes per day. Parent Ex. #71. ██████████ opined that it should have been included in the FBA. During those instances, he was not accessing and complying with the educational environment.

██████████ explained that if an interfering behavior is left out of the FBA, the BIP will not be appropriate. It was difficult for ██████████ to tell from the frequency and duration graphs for the seven behaviors ██████████ targeted, how staff responded to the incidents or the exact nature of the incidents. Regardless, even if he were redirected at times, the incidents of noncompliance were frequent, persistent, and not insignificant.

²³ The graph extends to February 2024; however, the period that I am considering is from the Student's January 17, 2023 enrollment at ██████████ until June 2023 when the FBA was created.

Like [REDACTED], [REDACTED] also stressed the importance of classroom observations for an FBA and found [REDACTED] one hour observation to be deficient. I agree with their opinions. [REDACTED] observed the Student for one hour on May 25, 2023. She had never met the Student before. She saw him in a loud music class and determined that his [REDACTED] was not as bad as reported because he dealt with the loudness of the class with no problem. In that short window, she did not observe any frustration when the teacher did not acknowledge his raised hand or a called-out answer. In the academic class, he worked steadily and actively and interacted appropriately.

If the target behavior is not observed, the assessor needs to go back and find the right day and time to observe the behaviors before concluding that the target behavior is not present. According to [REDACTED], this typically requires five to ten observations. The assessor can then observe the behaviors and discover which interfere with the student's access to learning, what causes those behaviors, the Student's response to redirection, and the interventions necessary to prevent the behaviors.

[REDACTED] relied more on interviews, which [REDACTED] stressed were important, but not as reliable as direct observations. In order for the crucial ABC data to be collected, the targeted behaviors need to be observed. Interviewees tend to miss details and forget to include important information. Interviews can be highly subjective. They are an important part of the FBA process, but the direct observation of the target behaviors is critical. Without seeing the behavior, the assessor cannot determine the accuracy of the interviews.

A review of the data collection graph [REDACTED] created for inappropriate vocalizations established that from the period of January 17, 2023 through June 2023, there were indeed days that the behavior did not occur. BCPSS Ex. #9.4; Parent Ex. #71, p. 1388. However, overall, the behavior was frequent. On the days where inappropriate vocalizations

occurred, their duration was anywhere from five minutes to forty minutes. As her antecedent analysis, the “A” of the ABCs, ██████ utilized the information she received from ██████, that peers trigger this behavior, that it is frequent, and it is his most problematic behavior that can lead to an increasingly dangerous situation. BCPSS Ex. #9.9. ██████ detailed that when the Student started threatening to ██████ someone that he had a conflict with at school, those vocalizations could sometimes last until the next day.

The interviewees provided some useful information, but that information alone was not sufficient to determine behavioral planning for the Student without a more robust observation. Without observation of the targeted behavior or the Student’s response to redirection, there was no basis for ██████ to have determined what strategies would have any preventative effect on that behavior.

I found ██████ and ██████ to be credible witnesses who provided a clear picture of the purpose and function of the FBA and BIP. I was convinced by their explanations that the FBA was insufficient, and as a result, the BIP was not comprehensive enough to provide the level of support and reinforcement or precision that the Student needed. As set forth above, a BIP is designed to address problem behavior exhibited by the Student in the educational setting. COMAR 13A.08.04.02B(1). Since the FBA did not target all of the interfering behaviors, and because ██████ did not observe any of the behaviors that were known to be interfering behaviors for the Student, it logically followed, therefore, that the BIP did not adequately address the Student’s unique behavioral circumstances. It is difficult to comprehend how ██████ could come to any conclusion about the ABCs or conclude that her one-hour observation was sufficient when she saw none of the behaviors that she knew had been occurring.

Yet, I agree with ██████ determination not to include leaving location in the BIP, because the parties agreed that ordinarily when he did so, whether it was leaving location within

the classroom or outside of the classroom, it was a coping technique and an attempt to regulate on the part of the Student, not an inappropriate behavior. This coping strategy certainly impacted the Student's access to learning as it happened frequently, and he was often outside of the sight and sound of the learning environment. There are accommodations related to that behavior in the IEP. However, I agree that it was not necessary for the BIP.

██████████, which included ██████████ or ██████████, was happening rather frequently when the Student first arrived at ██████████. Parent Ex #71, p. 1394. However, that behavior waned significantly by April 2024. I agree with ██████████ determination not to include this behavior in the FBA.

I conclude that the FBA did not target all of the Student's currently occurring behaviors that impacted his access to education. The BIP drew from the FBA, and therefore did not provide an appropriate plan to target the behaviors not included. The one-hour observation that ██████████ conducted at ██████████ was insufficient to inform her judgment regarding the behaviors to be targeted, the antecedents to the behavior and the consequences thereof. Since ██████████ surmised that the behaviors were being characterized as more serious than they were, her prevention and teaching strategies in the BIP were likely not to be effective. I agree that the prevention strategies like the self-talk strategy would not likely be effective in a larger classroom. The Student was not likely to participate in journaling at that time. There did not seem to be a useful reason to focus on separating the Student from a peer he previously had a conflict with to prevent ██████████, because his ██████████ was geared toward any student that disagreed with him throughout the day or said something he found to be wrong or offensive. Some of the strategies in the BIP made sense, such as identifying people the Student can talk to, a space to take a break, and feedback from adults; these are all strategies that the Student utilized, or which could be helpful. However, based on this analysis, ██████████ minimal

observation, the elimination of noncompliance as a targeted behavior, as well as the ineffective prevention strategies, rendered the FBA and BIP to be inadequate. In this case, without a sufficient BIP, the Student would not appropriately access his educational curriculum.

The insufficiency of the BIP contributed to the overall failure of the IEP team to create an IEP “specially designed to meet [the Student’s] unique needs.” *Endrew F.* at 400; 20 U.S.C.A. § 140(29).

Social/Emotional/Behavioral Goals, Objectives, Accommodations, and Supports in the IEP

I was most persuaded by [REDACTED] testimony regarding the Student’s status at the time the IEP was being developed. I accepted her as an expert witness in counseling. She provides direct individual and group counseling services at [REDACTED]. She also works with the interdisciplinary team to identify the strengths and needs of students and develop IEPs. She provides crisis intervention support and safety assessments.

[REDACTED] described the Student as bright, with age-appropriate interests. When he is regulated, he enjoys being with people. His [REDACTED], [REDACTED], and [REDACTED] contribute to his deficits in social interaction and his rigid thinking. He has difficulty establishing and maintaining relationships with peers, paying attention, and staying on task. He has difficulty tolerating unexpected and expected changes. In the classroom setting, he requires intervention if he is frustrated with a task. It often requires a teacher to provide separate instruction, or a different presentation. At the time of the development of the August 7, 2023 IEP, [REDACTED] often provided in the moment support and intervention for the Student when he was anxious and [REDACTED], either inside or outside of the classroom, until he was ready to return and learn. [REDACTED] did that at least once a day during that time.

The Student lacked coping skills when he first came to [REDACTED]. He benefitted from distraction techniques such as changing the subject, and sensory strategies such as movement, using a fidget, and throwing a ball.

While [REDACTED] due to work refusal or a negative interaction with a peer, he became unavailable to take on the directions or information from classroom staff. He needed a trusted adult, not involved in the classroom situation. He needed de-escalation techniques and someone to give him instruction regarding social and emotional regulation strategies.

The IEP team considered [REDACTED] June 16, 2023 Counseling Progress Report which detailed the Student's continuing behaviors while also noting that the Student had been making progress. Parent Ex. #44. The IEP team did not include this information in the Present Levels of Performance for social/emotional/behavioral on the IEP. *See*, Parent Ex. #89 pp. 1480-1481. The present levels of performance in the IEP determine the goals and objectives. I agree with [REDACTED] that information from this progress report should have been reflected in the present levels because it provided information about the Student's current social/emotional/behavioral functioning and would have assisted in the formulation of appropriate goals and objectives in that area.

I also relied on [REDACTED] psychological assessment. It occurred over a period of three days, September 19, October 13, and October 20, 2022, while the Student was still at [REDACTED], at a time when he was displaying increased behaviors. It was comprehensive and informative. The IEP team considered it when drafting the August 7, 2023 IEP. Neither party questioned its accuracy or credibility.

In the August 2022 document entitled *Present Levels of Academic Achievement and Functional Performance*, [REDACTED] reported that in structured settings, the Student had made progress on the goals of the education plan that [REDACTED] had been working on. Parent Ex. #18,

p. 1153. He identified appropriate and inappropriate pragmatic language skills like eye contact, facial expressions, and nonverbal body language, but needed adult verbal and visual prompting.

He appropriately participated in conversations by staying on topic and made appropriate topic transitions with peers and adults in semi-structured activities. His accuracy increased with a preferred topic. He showed significant progress and enjoyed participating in conversations with peers. He was able to take turns in conversations and answered questions with peers and adults in semi-structured activities; that accuracy increased with preferred topics. He achieved a goal on the use of self-regulation strategies in order to refrain from engaging in unexpected behaviors. He used coping strategies such as taking breaks, deep breathing, talking about situations, and thinking about preferred activities he wanted to earn. He was often able, with minimal prompting, to show self-control of his body and voice. He needed reminders to lower his voice or remain in his assigned area.

At that time, he still had difficulty engaging in flexible thinking strategies in nonpreferred topics, classifying problems into their appropriate size, and identifying appropriate reactions based on the size of the problem. Parent Ex. #18, p. 1155.

The [REDACTED] Quarter 2 progress report that the IEP team reviewed revealed that the Student was making significant progress on [REDACTED] social interaction and counseling goals. Parent Ex. #21. It covered the period between October 3, 2022 and December 19, 2022. He was able to identify expected and unexpected behaviors related to his own school experiences, reflect on a situation, and generate a replacement behavior with adult prompting.

Neither of those reports provided a complete picture of the Student's profile at that time. Shortly thereafter, during the fall of 2022, the Student engaged in increasing significant aggressive behaviors involving peers and adults in the classroom. Parent Ex. #22(a)-(h). As set forth in Finding of Fact 28, the behavioral incident reports from [REDACTED] from September 7,

2022 to November 17, 2022 documented eight serious situations where the Student was [REDACTED] toward another student or adult. Thus, despite the positive information contained in these [REDACTED] progress reports, the Student's serious behaviors were increasing.

There was no dispute among the IEP team about how the Student's social/emotional and behavioral issues impacted his access to education. Nor was there any dispute as to his present levels of performance regarding social/emotional/behavioral functioning. The Specific Learning Disability Team Report, dated June 15, 2023, sets forth data from staff at [REDACTED] regarding the Student's increased behavioral issues in the fall of 2022 until December 2022 when he was dismissed. Parent Ex. #42, p. 1302. It also described the Student's continued behaviors at [REDACTED]. This was happening at both schools, in a very small classroom environment. The Student was still significantly struggling at that time. Parent Ex. #42.

On May 23, 2023 when the Student threatened to bring a [REDACTED] [REDACTED], it prompted backpack searches upon the Student's entry into the school. This was not the first time that he [REDACTED], and not the first time [REDACTED] was required to address his threats in the moment and pull the Student out of class for an unscheduled therapy session. At that time, he threatened to [REDACTED] someone multiple times weekly, to varying degrees. He has [REDACTED]. He has never hurt anyone badly. However, in those moments, [REDACTED] and other staff have intervened, and [REDACTED] and trained staff have provided him with specialized instruction in the form of de-escalation techniques. As a clinician, [REDACTED] had the most experience on the Student's multidisciplinary team to support his emotional regulation skills and assess his mental state at that time.

On July 18, 2023, [REDACTED] proposed counseling recommendations for social interaction skills because the proposed IEP did not include any, and he showed significant deficits in that area that needed to be addressed. Parent Ex. #46. In the recommendations she noted;

[The Student] has difficulty accepting adult support or redirection to refrain from engaging in peer conflict. When a peer disagrees with [the Student], he perceives the peer does not like him and he feels attacked. Also, [the Student] has difficulty ignoring negative peer behaviors and managing his behavioral response when provoked by peers. Following conflict with peer, disagreement, or misunderstanding, [the Student] has difficulty working adults on finding solutions to share the learning space with the peer. He may perseverate on past negative interactions with the peer, attempt to avoid the peer, or provoke the peer through name-calling or talking about peers' behaviors. [The Student] requires direct instruction on conflict resolution skills in order to respond to peer behaviors appropriately and repair relationships.

Parent Ex. #46.

She explained that during that time, the Student often engaged in [REDACTED], mainly [REDACTED], sometimes [REDACTED]. He has expressed that [REDACTED]. At that time, [REDACTED] approximated that he was [REDACTED]s on average three to four times per day. He could sometimes be redirected, but sometimes he needed time out of class to regulate and safely return to the classroom. He had difficulty during unstructured times such as transitions to his classes for specials, to lunch, or anything outside the classroom. He made negative comments to peers during those times, would refuse to transition, or eat lunch in the classroom. At times when the Student was noncompliant and refused to transition to a class, [REDACTED] intervened to help him regulate. She sat with him in class, or walked him to a class, until he settled down enough to receive additional support from staff in the classroom. He occasionally had lunch in her office.

██████████ noted that even as recently as July and August 2024, the Student experienced a change in teacher. Parent Ex. #71, p. 1383. His noncompliance and out-of-class time increased significantly during that time. The Student had a difficult time even if his teacher left early and a substitute took over. While this was not a factor the IEP team considered, it is noteworthy because he still struggles with transitions and change.

██████████ participated in the IEP process and drafted the social/emotional/behavioral present levels and goals and objectives. She did not attend the IEP meetings in July or August 2023, but collaborated with a colleague, ██████████, who attended. The present levels of performance in the IEP in the area of social/emotional/behavioral, reflected the information from the FBA and the BIP, with a little more detail about ██████████ psychological report and the Student's hospitalization at ██████████. Parent Ex. #89, p. 1481.

The first social/emotional/behavioral goal in the IEP sets forth that the Student "will improve his ability to engage safely in his education and with his peers by demonstrating an increase in his ability to manage ██████████ frustrations, etc. within the classroom and during less structured times (transitions between classes, gym class) in 8 out of 10 instances as measured by his designated documentation system..." given direct psychological services, verbal prompting, self-talk practices and a journal. Parent Ex. #89, p. 1500. The objectives to that goal require him to use self-talk strategies and journaling. ██████████ opined that the Student had a long way to go before he could use the self-talk strategy. For the same reasons as ██████████, ██████████ originally disagreed with the objectives for the use of self-talk and journaling, because those objectives would not likely have been effective in a large general education setting. However, ██████████ started to utilize the self-talk strategy with the Student with some success later in the year, although he was not yet able to generalize that strategy into the classroom.

Regarding journaling, █████ agreed that with the Student's aversion to writing, journaling may not be effective, but it was still an available tool. She appeared not to have known about the Student's writing deficits and the effect that writing had on the Student's █████ at the time. I agree with both █████ and █████ that the use of a journal would not have been useful for the Student, especially back in 2023 when writing was a cause of his dysregulation. The self-talk objective was appropriate. The journaling objective was not.

Both █████ and █████ disagreed with the second social/emotional behavioral goal and found it to be unattainable at that time. It required that the Student acquire coping strategies, which was certainly appropriate, but the goal required 100 percent accuracy across one quarter. I agree that given the data of behaviors and the testimony of those that worked with the Student daily at that time, the Student would not be able to apply coping skills with 100 percent accuracy. He was slowly improving, but he still needed daily counseling, prompting, and specialized instruction to instill within him the coping strategies he was learning at █████. The IEP contains reminders to stay on task and redirection as accommodations, but not the daily counseling, and specialized instruction in the area of social/emotional/behavioral, which has been so crucial to the Student's ability to access the educational curriculum at █████. Parent Ex. #89, pp. 1487-1488.

I also agree that Objectives #1, #2, and #3 of the second social/emotional/behavioral goal were superfluous. At that time, the Student was already utilizing the strategies contained in those objectives as coping skills. He would go to the tent in the classroom or pace when he needed space. He was also already able to identify adults he could go to when needed as set forth in Objective #2. He already used coping strategies and replacement behaviors to demonstrate the ability to take space from peers once monthly, as set forth in Objective 3.

Further, despite the fact that both social/emotional/behavioral goals were geared toward managing the Student's [REDACTED] and frustrations inside the classroom; it only provided for two, thirty-minute psychological therapy sessions per week, outside of the general education classroom, and did not include any direct support or intervention inside the general education classroom. Parent 89, pp. 1501, 1509. In [REDACTED] opinion, the social/emotional/behavioral goals needed to be implemented both inside and outside of the classroom to help him generalize his skills in a real setting. Even though he had shown progress, he still required continued instruction in the moment to increase awareness of what he needed and the skills he had learned.

The Parents strongly disagreed with the IEP team's recommendation that the Student be in a general education classroom for twenty-nine hours per week, and questioned how, with all of the data, the IEP team could make that determination. The Parents argued that there was no data to support the IEP team's determination that the Student could be successful in that environment. The Student's [REDACTED], [REDACTED], and [REDACTED] caused the Student's social/emotional/behavioral functioning and affected his academic performance. The IEP team was aware of the Student's threatening behaviors toward his peers, based on all of the documentation it considered and input from [REDACTED] staff. The Parents argued that at the time of the development of the IEP, the Student continued to need a therapeutic special education setting, with small class sizes, and content individualized to the Student's needs. A setting where his multidisciplinary team of speech/language pathologists, occupational therapists, behavior analysts, special educators and others work together to assist the Student all day every day. They maintained that the LRE for the Student was not a large general education classroom, because he had not yet achieved the ability to display appropriate language and behaviors to be able to socially interact with typical peers.

The large classroom environment would trigger his [REDACTED] his low frustration tolerance, and cause him to be overwhelmed and [REDACTED]. He would not be able to handle transitions. He would not be able to access his education.

The BCPSS argued that other areas of the IEP addressed the Student's social/emotional/behavioral needs. As instructional accommodations, the IEP provided for many tools that could be used for instruction, including blank scratch paper, eliminating answer choice, graphic organizers, and others. Parent Ex. #89, p. 1487. For accessibility features, it included text to speech, a human reader, small groups, frequent breaks, reduced distractions to self and others. Parent Ex. #89, p. 1488. For assessment accommodations, the IEP allowed the Student to use notes and outlines, since he had trouble organizing his thoughts. It also provided for use of a calculation device and extended time for instruction and assessments, all to help him incorporate self-regulatory and replacement behavior response. Parent Ex. #89, 1490. As supplemental aids and services, the visual schedule would help with consistency, which was important to the Student. Parent Ex. #89, p. 1492. It also included a word bank, to reinforce vocabulary and for when extended writing was required. The IEP provided for alternative ways for the Student to demonstrate learning, since writing tasks were difficult for him. Parent Ex. #89, p.1492. He would have the ability to verbalize or use speech to texts. This would remove unnecessary triggers and allow him to make progress. The supplementary aids and services included preferred tasks for writing assignments, chunking of texts, breaking down assignments, and opportunities for breaks. Parent Ex. #89, p. 1493. The supplementary aids and services also included the crisis plan to prevent, respond and deescalate aggressive behaviors. Parent Ex. #89, p. 1494. That way, everyone would be knowledgeable about what to do and how to implement the crisis plan.

The IEP supplemental aids and services provided for the therapeutic aide to implement the strategies and interventions in the BIP and the accommodations and supplementary aids in the IEP. Parent Ex. #89, p. 1494. The supplementary aids also included the journal, daily check-ins, to help him move on from frustrating situations, and advance preparation for schedule changes to address his [REDACTED]. It provided for social skills training which would include “verbal social coaching from his classroom teachers to promote appropriate interactions and problem solving across settings.” Parent Ex. #89, p. 1495. It also provided for a calm down space to give the Student a place to regulate safely.

The BCPSS maintained further that the [REDACTED] aide will be trained specifically in the strategies for the Student. If the Student wanted to go speak to someone or take space, the aide would be there and would help him. All of the Student’s providers would collaborate with the aide. The aide would attend related services sessions. The aide would provide support in terms of interactions with peers. The aide can provide consistency of support and help suggest appropriate ways to interact. [REDACTED] opined that the IEP was sufficient to support the Student’s social/emotional/ behavioral needs. It addressed the Student’s different aspects of [REDACTED], [REDACTED] and [REDACTED]. She opined that the general education environment was appropriate for the Student because at [REDACTED], he was in a small environment with peers who also have interfering behaviors and unexpected responses. The Student needed access to peers on a cognitive and social par who he can find things in common with who do not engage in severe and unusual behaviors. He needed to build on his successes. With the supports in the IEP, he would have assistance. As he builds positive experiences, his [REDACTED] should wane. According to [REDACTED], this is the LRE where the Student can take advantage of social modeling and interaction with peers. His peer groups would have well developed social skills and language.

Academically, the Student needed rich and rigorous exchanges of ideas. He needed to be exposed to these opportunities so he could learn to converse with peers and function independently in more challenging settings.

██████████ also noted that the Student would not be working with a full class of students often. There would be a lot of small group work. His therapeutic aide would be with him all the time and could help if the teacher walked away, and the Student needed clarification. ██████████ would provide an integrated model like ██████████. ██████████ also pointed out that BCPSS had a strong procedure for threat assessment; they take threats seriously. All threats are reported so that the threat assessment team can determine if the threat is serious or transient which is common for students with ██████████.

Despite more recent progress, ██████████ opined that the Student needed to continue at ██████████ during the 2023-2024 school year. His deficits in social interaction and emotional regulation required a high level of instruction. He had not yet mastered the coping skills she had been teaching him. He was able to demonstrate them in a controlled setting, in her office, in the small classroom with several teachers and other staff. He still needed that structure. He also needed access to clinical interventions and support in more than just an out of class session. He was still working on generalizing his skills. Currently, he still makes ██████████ ██████████, he still falls into high level ██████████, albeit less frequently. These aspects would be difficult to manage without the specialized supports, small classroom, and low student to teacher ratio.

██████████ stressed the importance of the weekly interdisciplinary team meetings. Teachers, aides, related service providers, administrators, and the behavior department collaborate to share observations, learn strategies to assist the Student. In those meetings, ██████████ ██████████ shares her expertise regarding the implementation of emotional regulation and social

interaction strategies when she is not present in the classroom. The Student still required an integrated model, which includes the utilization of multiple disciplines and providing instruction in multiple settings throughout the school day. [REDACTED] opined that the IEP did not provide the Student with a FAPE. She does not think the Student would have made progress in a general education environment for twenty-nine hours per week. His deficits were still significant enough that he needed more work on his foundational skills so that he could implement his coping strategies independently.

I acknowledge both the value and the requirement of progress monitoring and data collection, and I understand that these data points play a large role in determining educational programming for a student. This is a bit of a unique situation, because the Student has a volatile educational history, which, for the most part, BCPSS was not involved with because the Student was at [REDACTED] and [REDACTED]. The data tells us frequency and duration; however, it does not give a real life, practical picture of what was going on in the classroom. This is the reason that multiple data sources are used to determine a student's educational programming. The testimony of [REDACTED] and [REDACTED] helped fill in the blanks that the data did not address.

The difficult LRE analysis in this case is perpetuated by the fact that no one really knows how the Student will handle a general education classroom for twenty-nine hours per week, given his social/emotional/behavioral profile. He has been in such a heavily structured environment for several years and there is no question that he has made progress in his behavior. As set forth above, the mandate in the IDEA and as explained in *Endrew F.* is that the school system must consider the unique circumstances of a student in creating an IEP. *Endrew F.* at 399-400; 20 U.S.C.A. § 1414(d)(1)(A).

The fact that the Student has been in such a small, structured environment is a component of the Student's unique circumstances. The BCPSS has failed to justify or provide a cogent

explanation for why it believed the Student, who, at that time, had a behavior profile that was interfering with his education in that small environment, could be successful in this less restrictive setting.

At the time of the first IEP meeting in March 2023, it had only been three to five months since he had been exhibiting increasing behaviors that caused his dismissal from [REDACTED], and three months since his hospitalization at [REDACTED]. The IEP team considered and relied upon [REDACTED] report and incorporated his findings into the present levels portion of the IEP. However, the IEP team ignored [REDACTED] recommendations. [REDACTED] found that the Student should be educated with non-disabled peers “to the degree that it does not overwhelm him causing anxiety and [REDACTED] behaviors.” Parent Ex. #19, p. 1171. At the time much of [REDACTED] assessment, he noted:

At present, he is easily overwhelmed and quickly becomes [REDACTED] even in a small classroom in a school that specializes in educating children with [REDACTED]. It is unlikely that he would be successful in a general education setting.

Id.

[REDACTED] opinion regarding the Student’s inability to be successful in a general education classroom, at that time, was bolstered by the testimony of [REDACTED] and [REDACTED], both who observed the Student on a daily basis at the time of the development of the IEP. At the time the Student came to [REDACTED] in January 2023 until August 2023, the Student lacked coping skills to regulate himself emotionally, and it interfered significantly with his classroom instruction.

At that time, the Student’s frustration level and [REDACTED] not only led to frequently missed classroom time, but also resulted in [REDACTED] and [REDACTED]. I found [REDACTED] testimony to be extremely credible that the Student required someone of her expertise and experience to help the Student regulate on a daily basis. I acknowledge that the Student would

have had a [REDACTED] aide with him during the school day at [REDACTED]. The aide could certainly assist the Student in a multitude of ways, but at that time, he needed a qualified clinician on a daily basis to intervene in the moment to keep the Student, and other students safe. The IEP provided for direct psychological services twice per week, and a psychologist consult who would meet staff working with the Student to discuss the Student's status, as well as training and advice for the staff as to how to implement strategies. The IEP did not provide for a clinician to be available for direct, in the moment psychological instruction within the classroom throughout the day, which at the time of the development of the IEP, the Student still needed.

In considering the appropriateness of the IEP, I must also analyze whether the placement of the Student at [REDACTED] satisfies the mandate that a student be placed in the LRE that would meet the needs of the Student. 34 C.F.R. § 300.114(a)(2). Courts have acknowledged that the “mainstreaming requirement of the IDEA can at times be in tension with the other requirements in the IDEA that schools provide programming designed individually to meet the specific needs of each child.” *Los Angeles Unified Sch. Dist. v. A.O.*, 92 F. 4th 1159, 175 (9th Cir. 2024).

The Student's progress has been due, in large part, to the availability of [REDACTED] to counsel and instruct the Student in the moment regarding coping skills and strategies for regulation. She has been available to intervene and redirect the Student, who, as set forth in the third prong above, has been disruptive in the classroom setting.

The IEP did not provide for this type of immediate intervention, and the evidence established that the Student would not have been able to make meaningful educational progress at that time without that support. The [REDACTED] counseling reports depicted the Student's improvements in the utilization of coping skills and managing his behaviors. However, the most reliable evidence convinced me that at the time of the August 7, 2023 IEP, the Student could not

have been successful in the placement at [REDACTED] in the general education environment for twenty-nine hours per week, even with the [REDACTED] aide, and two sessions per week of direct psychological services.

In *Hartmann*, the Fourth Circuit has suggested a three-part test to inform the LRE analysis. “[M]ainstreaming” is not required where “(1) the disabled child would not receive an educational benefit from mainstreaming into a regular class; (2) any marginal benefit from mainstreaming would be significantly outweighed by benefits which could feasibly be obtained only in a separate instructional setting; or (3) the disabled child is a disruptive force in a regular classroom setting.” *Hartman*, 118 F.3d at 1001.

Indeed, I am certain that to a degree, a comprehensive school like [REDACTED] sees similar behaviors regularly and has systems in place to handle that profile. However, for the Student, these behaviors continued to occur in a highly structured environment with an intensity of support that would not be available in the general education scenario. I acknowledge that [REDACTED] has an integrated model where the staff, including teachers, aides and related service providers collaborate for student programming.

However, at the time of the development of the IEP, the LRE for the Student was still a small class environment and small student-to-teacher ratio throughout his day to further target and refine his deficits so that he could continue to develop the coping skills and strategies he will need to make the transition to a less structured general education environment. I reach this conclusion despite the imperative that a disabled child be educated in the LRE to the “maximum extent appropriate.” 34 C.F.R. § 300.114(a)(2).

The Student’s presentation at the time of the August 7, 2023 IEP fit within the confines of all three prongs set forth in *Hartmann*. The Student could not have received educational benefit at [REDACTED] due to the intensity of interventions that he required to that point. The benefit

the Student would have received by being educated with non-disabled peers would have been outweighed by the benefit he was receiving at [REDACTED] at that time, due to his difficult behavioral profile. Further, the Student was a disruptive force in the classroom, and, based on this analysis, would not have had the support necessary to deal with those behaviors at that time. The Student was simply not yet ready for the general education environment.

I conclude that the BCPSS failed to provide the Student with a FAPE with regard to his social/emotional/behavioral needs. It failed to include information from [REDACTED] June 16, 2023 Counseling Progress Report in the present levels of performance in the IEP. It ignored [REDACTED] recommendation, as well as the input of those working with the Student daily, that the Student would not likely be successful in a general education setting. It failed to consider the unique circumstances of the Student, who has been in a small-structured environment for several years. The FBA, from which the BIP was created, was deficient due to its failure to target all behaviors that were impeding the Student's access to education. While I am certain that it is everyone's objective that the Student ultimately be educated with non-disabled peers in a larger setting, the evidence was convincing that at the time of the development of the IEP, he was not ready for that placement.

It is for these reasons that I must conclude that the goals, objectives, accommodations and supports in the IEP, coupled with the deficient BIP, failed to properly address the Student's unique social/emotional/behavioral circumstances, and therefore, failed to provide him with a

FAPE in the LRE.²⁴ The nature and severity of his disability, at that time, rendered education in the general education class at [REDACTED] to be unsatisfactory, even with the supplementary aides and services in the IEP. 34 C.F.R. § 300.114(a)(2)(ii).

Speech/Language Pathology

For the reasons that follow, I conclude that the Parents failed to meet their burden of establishing that the IEP was not reasonably calculated to allow the Student to make meaningful progress in the area of speech and language. [REDACTED], Speech/Language Pathologist with [REDACTED], has been working with the Student since he began at [REDACTED] on January 17, 2023. She provides speech/language services to the Student in the classroom one time per week, consults with his teachers, counselor, and the behavior department, and trains staff members on pragmatic language and communication strategies for the Student.

The Student's deficits are in pragmatic language; [REDACTED] works with him on perspective taking, identifying non-verbal communication, analysis of expected and unexpected communication behaviors and the concept of fact versus opinion.

At the time of the development of the August 7, 2023 IEP, the Student had difficulty initiating interactions and engaging with peers. He would engage in group conversations about topics he was interested in but would quickly seek to change a non-preferred topic. He had

²⁴ As a noteworthy point, [REDACTED], Licensed Clinical Psychologist and Neuropsychologist with [REDACTED], conducted a neuropsychological evaluation in September and October 2024. Parent Ex. #67, p. 1355. This occurred after the completion of the August 7, 2023 IEP. The information contained therein was not before the IEP team at the time the IEP was developed. However, I found her to be a credible witness who conducted a comprehensive assessment, and it provided a picture of the Student's status at the time that the August 7, 2023 IEP would have just expired. The Student's different diagnoses still made learning difficult for him. His socially inappropriate behavior, inability to take another's perspective, and interpreting social cues, his [REDACTED], [REDACTED], and deficient adaptive functioning skills still affected his ability to "effectively communicate; to perform basic academic skills; to make independent choices and exhibit self-control; to engage in play and recreational activities; to interact socially," among other things, in the home, community and school settings. *Id.* [REDACTED] found that the Student still required small class sizes with a low student to teacher ratio in order to reduce distractions and sensory overload; teachers and related service providers that are trained in teaching and supporting students with [REDACTED], and a [REDACTED] setting with staff trained in social skills and emotional regulation. Parent Ex. #67, pp. 2476- 1377. I mention this assessment only because the results were strikingly similar to those of [REDACTED] in the fall of 2022, two years prior. Parent Ex. #19. I found it useful to present a picture of the Student's profile two years after [REDACTED] assessment, and a year and a half after the development of the IEP.

difficulty waiting his turn, and he would interrupt in order to gain attention. During classroom instruction, the Student frequently interrupted and interjected his opinion, and got frustrated if someone disagreed with him, which often resulted in the Student leaving the room to regulate. This continues to be a problem. He has more recently made progress with peer interactions but still needs some adult support. [REDACTED] also worked with the Student regarding the interpretation of nonverbal communication, because he had a difficult time interpreting facial expressions or body language. He also had difficulty with paraverbal language, including interpretation of tone of voice, or understanding concepts like the use of sarcasm. [REDACTED] explained that those non-verbal and paraverbal skills are crucial in an educational environment, to interpret how other peers are feeling to be able to engage with same age peers. These deficits lead to miscommunications. When the Student first came to [REDACTED], he was unable to accept corrective feedback, which would lead to frustration, the use of expletives and inappropriate gestures to the person offering the feedback.

[REDACTED] provides her weekly speech/language therapy session for the Student together with the four other students in his class. She does so because he needs to be surrounded by peers to have opportunities for real life practice with different communications partners. Working with the Student directly in the classroom also helps his teachers understand the skills the Student is learning, and the different prompts being provided to assist him. That way, his teachers are able to support the Student in pragmatic language throughout the day. On an informal assessment she conducted on June 14, 2023, [REDACTED] noted that his frustration tolerance had increased, but he still had difficulty in conversational skills, including initiating with peers, staying on topic, gaining attention in an appropriate manner, taking turns, and “utilizing nonverbal and paraverbal communication skills to make social inferences and engage in perspective taking.” Parent Ex. #39, p. 1275. The Student’s tolerance for accepting corrective feedback had increased as well.

On that note, [REDACTED] testified that this was still an area of [REDACTED] and frustration for the Student. As of the June 14, 2023 report, there were still instances where he would still yell or refuse to work on a task. It was during those instances where he often engaged in inappropriate gestures and explicit language. He has improved in a very highly structured environment. In the spring of 2023, especially in less structured environments, the Student would dominate conversations, disregard peer perspectives and opinions, and [REDACTED] and shut down. According to [REDACTED], these deficits impacted his ability to engage in conversations and discussions about the material he was learning, which resulted in the Student not being present for learning. When he was [REDACTED] and shut down, he was not participating in academics.

In [REDACTED] speech/language assessment, the Student scored average and above average in most areas of language, with the exception of pragmatic language where he was below average and demonstrated an area of need. Parent Ex. #36. At that time, and as part of the assessment, [REDACTED], reported that “he often ignores others, isolates, or responds in ways that are highly inappropriate such as cursing, or [REDACTED].” Parent Ex. #36, p. 1255. [REDACTED] agreed that this was the Student’s presentation at that time, [REDACTED] also agreed that the list of skills that [REDACTED] reported to never, or almost never to occur was accurate in the Student’s presentation at that time in the school setting. He often engaged in attention seeking behaviors such as kicking and banging on a desk and drumming, and when asked to stop he would refuse and [REDACTED]. Often his behavior resulted in peers attacking the Student or leaving the room to avoid him. These miscommunications with peers resulted in [REDACTED], aggravation and frustration, and are the result of his deficits in pragmatic language.

In reviewing the IEP, [REDACTED] noted that the present levels of performance did not include the information [REDACTED] provided during the speech/language assessment. Parent Ex.

#89, p. 1489. She felt the information was important to capture the teacher's report, since it was [REDACTED] that engaged with the Student most of the day. [REDACTED] agreed that the speech/language pragmatic goal and objectives in the IEP were appropriate; her only objection was that there should have been an additional objective geared toward differentiating between fact and opinion. The Student had difficulty with understanding language when others express opinions, and he assumed his opinions are fact which often resulted in miscommunication and frustration with peers.

[REDACTED] provided an example. The Student likes animals. It is one of his preferred topics. If a peer had an opinion that they do not like a certain animal, the Student would quickly react and call the other peer an idiot or stupid. Or if he made a statement about the virtue of some animal, he would consider that to be fact and expect everyone else to feel the same. This impacted his ability to learn and understand that certain concepts are fact, and some are opinion. It impacted his ability to engage with others. That is why this information, according to [REDACTED] [REDACTED], should have been part of the objectives in the IEP.

After the development of the August 7, 2023 IEP, [REDACTED] began working with the Student on the speech/language goal and objectives contained therein. She provided explicit instruction targeting additional skills such as differentiating between fact and opinion as well. He is making progress on these goals and objectives.

On October 25, 2023, [REDACTED] noted in her first progress report after the development of the August 7, 2023 IEP, that the Student was making sufficient progress toward the pragmatic language goal and objectives, enjoyed his speech/language therapy sessions and participated enthusiastically. Parent Ex. #50. However, [REDACTED] opined that the Student would not have made this progress if the skills were not implemented by the special education teacher through the school day.

In [REDACTED] Speech and Language Progress Reports in the winter and spring of 2024, she indicated that the Student was making sufficient progress toward his pragmatic language goal and attended speech/language sessions enthusiastically and with minimal frustration. Parent Exs. #55 and #60.²⁵ She found his [REDACTED] and [REDACTED] still to be an area of concern. He was still not yet ready to generalize the skills [REDACTED] was teaching him in a general education environment in a classroom of only five; therefore, she opined that it would be difficult for him to do so in a large general education class. He still needed adult support to engage in appropriate social interactions. Although these progress reports are dated after the development of the August 7, 2023 IEP, they are helpful in obtaining an adequate picture of the Student's status immediately after the IEP was developed, and during the period that the IEP would have been effective. [REDACTED] explained that the push-in delivery model that she is utilizing at [REDACTED] is most appropriate for the Student.

As the 2023-2024 school year went on, the Student began to comment that he no longer needed speech/language therapy. As of [REDACTED] Speech and Language Progress Report of June 13, 2024, the Student had missed some sessions with [REDACTED] due to absences. Parent Ex. #63. He became disengaged, and his progress toward his speech and language goals decreased.

[REDACTED] opined that the Student needs two thirty-minute sessions outside of the general education classroom for speech/language, not just the one per week that she was providing. It was her understanding that because this service was separately billed, the Parents declined to pay the charge for a second session. [REDACTED] believed he would make more progress with the additional session.

²⁵Parent's Ex. #60 is entitled "Speech and Language Progress Report- JANUARY." It is dated April 5, 2024. [REDACTED] explained that the "January" was a typographical error, and the date of the report is the proper date.

Reviewing the August 7, 2023 IEP, it was [REDACTED] opinion that the Student also required specialized instruction in pragmatic language within the classroom environment, as well as for the two pullout speech/language therapy sessions per week. Parent Ex. #89, pp. 1508, 1509. Where the IEP provided that the LRE was twenty-nine hours in the general education classroom per week, [REDACTED] opined that the Student required significant support and specific instruction throughout the day to enable him to “engage in social communication and pragmatic language interactions that impact his ability to access education.” Testimony, [REDACTED]. Without the required support, he would struggle, have negative peer interactions that would impact his ability to stay in the classroom and participate in learning. According to [REDACTED], there was nothing to suggest that this would improve in a general education environment for 29 hours per week. He was not ready for that environment.

[REDACTED] also disagreed with the lack of speech/language consultative services in the IEP, which are required to provide training and teaching opportunities for staff to support the Student.

[REDACTED] agreed that the Student’s scores on the CASL-2 as part of the BCPSS Speech/Language Assessment that [REDACTED] conducted in April 2023, showed that he was average or above average in all areas of language tested with the exception of nonliteral language. Parent Ex. 36, pp. 1251-1251. He was utilizing age-appropriate skills.

I accepted [REDACTED] as an expert witness in speech/language pathology. She discussed the results of her April 16, 2023 speech/language assessment.

During her testing there was a fire drill. There was an alarm going off and flashing lights. [REDACTED] saw the Student socialize with other students. He experienced no sensory overload during the fire drill. In class, [REDACTED] felt that the Student and [REDACTED] had a

combative relationship. After the fire drill, ██████ asked the Student if he wanted to finish his work, he said no; he put his head down and was playing with things at his desk.

█████ noted a negative tone in ██████' voice during their discussion about the Student. She spoke about him with frustration, and at first said he had no strengths at all. ██████ impression of the Student was very different from what ██████ described. When ██████ spoke to the Student, she found there was a warmth to his communication; he had a lot to say and responded to her questions.

█████ testing revealed his strengths in content knowledge, vocabulary, grammar skills, formulating sentences, putting thoughts together, and understanding fact-based content. He has trouble with nuanced language and reading situations.

The IEP reflected the finding of ██████ assessment and included additional information from ██████. Parent Ex. #89, p. 1479. The entire IEP team agreed about the present levels for receptive and pragmatic language, but the IEP team disagreed with ██████ and the Parents' suggestion that there should be a goal for word finding and expressive language. ██████ explained that the Student's ██████ and behavior problems might cause difficulty finding the right vocabulary in the moment, but ██████ testing showed that he was average and above average in that area and word finding was not a pervasive issue.

█████ found that the supplemental aids and services mentioned throughout this decision support pragmatics in the classroom. Parent Ex. #89, p. 1492. The use of the word bank will address any word finding issue. The social skills training, which involves social coaching from classroom teachers and the use of positive comments, praise and encouragement upon successful social interaction, will reinforce the Student' ability to deal with things in the moment. It will reinforce the use of social strategies in the classroom. ██████ acknowledged that this will not always be perfect. But if he has a breakdown, this kind of social

mapping should be applied in an attempt to avoid the same in the future. He also has a crisis plan in the event of escalating behaviors. The daily check-ins will also assist in instilling confidence for the day, and assessing whether something is bothering him on a particular day.

██████████ noted that ██████████ agreed with the IEP team's recommendation of direct speech/language services for thirty minutes, twice per week.

There was no disagreement regarding the pragmatic language goal in the IEP. The Student's speech/language services would be provided outside of the general education classroom in a small group of peers who have similar difficulty with pragmatic language. ██████████ did not agree that providing those services within the general education classroom would be beneficial for the Student. The classroom staff, including the therapeutic aide, would be trained on how to help the Student transfer his skills into the classroom. There would be team meetings with the social worker to make sure their strategies compliment each other. The ██████████ aide will be part of those meetings and will attend the speech/language therapy sessions. According to ██████████, the strategies are easily implemented by teachers and staff. The teachers will inform the speech/language pathologist if there is a topic where the Student has "dug his heels in with his opinion," and it would be addressed in therapy and hopefully he would return to class with a more flexible outlook. ██████████ pointed out that the speech/language services that she has proposed and that are in the IEP are more intensive than that which he is receiving now from ██████████.

██████████ opined that interaction with non-disabled peers is vital for the Student. He is college bound. He has average to above average language skills with the exception of pragmatic language which has improved. He needs to be supported so that he can grow those skills and continue his social development. He needs the opportunity to practice these skills with non-disabled peers.

██████████ believes that the speech/language pragmatics and social interaction goals on the IEP would assist the Student in various ways. They would help him identify various nonverbal cues, and to be able to directly analyze what a person is feeling in the moment so that he could sense frustration or recognize that he is not being well received by someone. That way he would learn to shift his behavior and de-escalate the social situation. It would help him build capacity for understanding how what he does affects others. He needed to have better recognition to avoid the emotional escalation that happens with a social breakdown.

██████████ found that the Student wanted to have friends. At the fire drill, he sought out the older students. He needed more peers with which he could develop friendships; there are very few opportunities at ██████████. The ██████████ students have severe and significant differences. The Student needed more children and non-disabled peers to interact with. He needed the challenge of a less restrictive environment to keep building his linguistic and academic skills. Regarding the transition, ██████████ pointed out that staff members would assist in the transition. Also, the Student's IEP was robust with a lot of supports built in, including crisis intervention in the event he has trouble with the transition. ██████████ opined that the IEP addressed the Student's speech/language needs, and she had no concerns about the ability of ██████████ to implement it.

██████████ explanation of the importance of widening the Student's opportunities for social interaction was convincing. Especially more recently as his skills have greatly improved. It stands to reason that the Student needed more opportunities day to day to meet people and apply his skills. The issue regarding speech/language is whether the IEP failed to provide the Student with a FAPE by only providing for two-thirty-minute sessions of speech/language therapy per week outside of the general education classroom, with no specialized instruction throughout the day.

I found [REDACTED] testimony to be convincing regarding the intensity of services the Student required at the time of the development of the IEP. I also found [REDACTED] testimony regarding the services that would have been provided to the Student at [REDACTED] to be helpful. The program at [REDACTED] is also an integrated model, wherein the special educators, general educators, related service providers and aides meet and collaborate about the Student's programming. The speech/language pathologist will work with all providers and the [REDACTED] aide regarding the skills being taught, the Student's progress, and address any problems or need for modifications. It is similar to the integrated model at [REDACTED]; the difference being the class size, and the Student to teacher ratio. It would provide the Student with language and social interaction opportunities he does not have at [REDACTED], together with plenty of specialized support. With this level of collaboration, I am convinced that the general educator, the special educator, and the therapeutic aide would have been informed and instructed as to how to assist with and implement the speech/language skills the Student was learning. Further, with one additional thirty-minute session per week of speech/language services outside of the general education classroom, the Student would have that additional support and specialized instruction. Based on this analysis, I conclude that the IEP was appropriate with regard to the hours and method of delivery of speech/language services for the Student in the 2023-2024 school year.

Occupational Therapy

For the following reasons, I conclude that the Parent failed to establish that the BCPSS denied the Student a FAPE by failing to include occupational therapy goals and objectives on the Student's IEP. The IEP team considered the occupational therapy progress reports from [REDACTED]. As of June 17, 2022, the Student had achieved the occupational therapy goal and objectives by the fourth quarter of the 2022-2023 school year at [REDACTED]. Parent Ex. #17. He

demonstrated willingness to write between two and three sentences per session and completed classroom cutting activities with no problem. He could write his first and last name by memory, although he occasionally misspelled his last name. He no longer needed a copy for most letters and could form them from memory. Sometimes he used unconventional formation of letters, or he would reverse letters, but would most often self-correct the mistake by re-writing the letter correctly. When given formal cues regarding letter formation, he would form letters more conventionally. He demonstrated legibility in his handwriting, with good functional spacing. The IEP team considered the [REDACTED] progress reports in its determination that the Student was not eligible for direct occupational therapy services.

As of August 2022, the Student demonstrated appropriate cutting skills. He could complete a twelve-to-fifteen-piece puzzle within three to four minutes. He demonstrated strong organizational skills while doing a puzzle. He could write his first and last name from memory and he could self-correct any mistakes. He could write on preferred subject matter with functional spacing. He still had difficulty with sizing letters and forming tall letters. He achieved his objective of “fair,” which meant that typically twenty-five to fifty percent of letters were legible. He still had some difficulty with legibility which impacted his ability to read back a story or for an unfamiliar reader to read it. He wrote some letters differently every time. He continued to benefit from verbal cues and visual modeling. At that time [REDACTED] had no concerns about his lunchtime routine. He sometimes required [REDACTED]. He needed increased time to complete typing tasks. [REDACTED] proposed a goal which stated that by August 2023, “given a preferred topic and unrestricted access to adaptations, [the Student] will participate in functional written communication via writing, typing or speech to text communications in eighty percent of opportunities.” Parent Ex. #18, p. 1157. The two proposed objectives to that goal related to writing legibly, and typing sentences with readability.

By October 2022, the Student was motivated to type to write a story of his choosing. Parent Ex. #21. His writing was eighty-nine percent legible given visual modeling for some letters and verbal cues for starting tall letters at the top line of the paper.

He maintained his attention to writing tasks with frequent reminders that he was writing a motivating story. He was able to type two handed, which increased his writing speed. He started to use some speech-to-text software, but he preferred to type. He had achieved both occupational therapy objectives.

The [REDACTED] fourth quarter progress report in June 2023 noted that the Student was making sufficient progress in the area of visual motor skills. BCPSS Ex. #19.4. He actively engaged in occupational therapy sessions but required verbal encouragement to engage in writing and cutting tasks. He could formulate twenty out of twenty-six letters. By July 2023, his typing speed was slow. He continued to work on handwriting by copying and tracing. BCPSS Ex. #20.3.

By November 2023, the Student began to engage in occupational therapy groups with peers. He continued to benefit from breaking down activities. His letter formation accuracy increased; he demonstrated accuracy in twenty-five out of twenty-six letters. His consistency of letter formation, size, and spacing, also increased. Parent Ex. #52.

I accepted [REDACTED] as an expert witness in occupational therapy. She discussed the results of her occupational therapy assessment of the Student on May 9, 2023. BCPSS Ex. #7. She conducted the assessment to determine if there was a need for school-based occupational therapy based on his present level of performance with fine motor and visual perception skills. [REDACTED] conducted standardized testing and clinical observation.

██████ noted that strategies being applied at that time to support the Student's sensory sensitivities should be continued; but there was no need for direct service occupational therapy.

██████ did not attend the August 7, 2023 IEP meeting but ██████, another BCPSS occupational therapist attended in her place. I found no merit in the Parents' argument that ██████ barely participated in the IEP process. She shared with ██████ what had happened during the other IEP meetings. The IEP provided for an occupational therapist consult monthly. Parent Ex. #89, p. 1498. The occupational therapy consult would involve everyone that worked with the Student throughout the day. The occupational therapist would also work with the therapeutic aide on how to implement strategies, the sensory diet would provide training to the aide to support the Student.

██████ reviewed the supplemental aids and services in the IEP and discussed which of those in the IEP would help the Student from an occupational therapy perspective. As discussed by the other BCPSS witnesses, she pointed out that the visual schedule, the alternative ways to demonstrate learning, writing about preferred topics, chunking of texts and breaking down assignments will assist the Student throughout his day. Parent Ex. #89, pp. 1492-1494. The provision of alternative ways for him to demonstrate his learning would help with barriers caused by his resistance to writing. It would allow him to keyboard as an alternative to writing. He would be allowed different ways to express understanding of things that he learned. Similarly, advanced preparation for schedule changes will help him predict what is happening during the day and help him with transitions, as well as the daily check-ins and calm down space which would allow him to take a break and calm down if he is feeling frustrated. Parent Ex. #89, pp. 1494, 1495.

██████████ addressed the sensory diet. Parent Ex. #89, p. 1496. It is a schedule of different inputs that the Student can access throughout the school day to help maintain regulation and focus in the classroom. It could be anything that the Student's team identified as being helpful for him, whether it be a weighted blanket, or a need to carry something heavy, noise reducing headphones, and the like.

The reduction of paper and pencil tasks, also in this IEP section, will help the Student with a task where he is not required to write. Parent Ex. #89, p. 1496.

██████████ opined that the IEP covered everything the Student needed at the time of the development of the IEP in the area of occupational therapy, and that ██████████ was an appropriate placement to implement occupational therapy supports and strategies for the Student. She also opined that direct occupational therapy services, and goals and objectives for occupational therapy, were not warranted, because the Student had demonstrated the ability to copy legibly, and his barriers with written expression would be lessened by allowing the Student alternative ways to demonstrate his learning. ██████████ spoke to the occupational therapist at ██████████, who would be the consult for the Student. There are sensory and wellness rooms in the building. ██████████ had no concerns that a comprehensive school like ██████████ could implement the occupational therapy elements of the Student's IEP. Tr. 1110.

I reviewed a writing sample that was apparently from the 2023-2024 school year, but it was undated, and no one knew exactly when it was from. Parent Ex. #74. The Student used a graphic organizer. Some of the words were legible, some were not. The handwriting size was inconsistent. ██████████, Principal of ██████████, testified that it was fourth grade text. Parent Ex. #74.

I accepted [REDACTED] as an expert in special education and special education school administration. She opined that in fourth grade, the Student should have been able to write much more, such as multiple paragraphs and essays. He could only focus on a task for about fifteen to twenty minutes, and he needed breaks. Sometimes writing a paragraph took him several days. He starts brainstorming with a graphic organizer, then he would write the paragraph. Then the next day he may edit the paragraph.

The assignments needed to be broken down into smaller chunks for the Student. He needed a slower pace of instruction. His [REDACTED] causes him to be easily distracted, and he struggled more with whole group instruction which at [REDACTED] is only with five or six other students.

The writing sample from [REDACTED] assessment was legible; and part of it was on thin college ruled paper. BCPSS Ex. #34. The Student's handwriting was improving during that period of time.

The issue before me regarding occupational therapy is whether the IEP should have included occupational therapy goals and objectives, as well as direct occupational therapy services. I found [REDACTED] testimony to be convincing, together with her assessment, that the accommodations in the IEP addressed the Student's visual motor concerns. Parent Ex. #34. The Parents did not present any testimony regarding the occupational therapy issue. The IEP occupational therapy consult and extended time to complete writing tasks, alternative ways to demonstrate learning, and writing about preferred topics, have shown to benefit the Student. Parent Ex. #89, p. 1493. The IEP provided for chunking of texts and breaking down assignments into smaller units. He would have the therapeutic aide who will be instructed per the occupational therapy consult in how to assist the Student with writing tasks.

I conclude that the IEP, with respect to occupational therapy, considered the Student's unique circumstances, and was appropriately crafted to enable the Student to make meaningful progress in the area of speech/language, and did not deny the Student a FAPE.²⁶

Appropriateness of [REDACTED]

I conclude that the Parents established that [REDACTED] was an appropriate unilateral placement for the Student. [REDACTED] explained the training that takes place for staff when they start at [REDACTED]. The training focuses on recognizing behaviors and symptoms, crisis prevention, and de-escalation techniques. They focus on professional development. They have half days twice monthly to work on planning for students and collaboration. Baltimore City often places students at [REDACTED].

[REDACTED] explained how the English language arts class works for the Student at [REDACTED]. Even with the small class size, they break into smaller groups, and they rotate. For fifteen or twenty minutes the students receive direct instruction; then the Student's might rotate to the computer using IReady, which is a program geared toward the Student's particular needs through diagnostic assessment. The program also assists teachers with suggested activities, lessons, goals and objectives for a particular student. Then the students would typically rotate to seat work, or progress monitoring time, when they complete activities related to the skills they are working on. At any point if the Student is not working directly with the teacher, an educational assistant provides support.

For example, for writing, an area with which the Student struggles, they use a whiteboard. The Student will tell the assistant what to write on the whiteboard, and the Student

²⁶ On January 9, 2024, [REDACTED] from [REDACTED] conducted an occupational therapy evaluation. Parent Ex. #54. This evaluation was not relevant to the IEP or placement as it occurred after the development of the IEP. The Student demonstrated delays in fine motor, visual motor, gross motor, and sensory processing/emotional regulation skills. [REDACTED] did not testify, and it was not part of the IEP team's determination. My decision is based upon the Student's presentation prior to August 7, 2023. I did not consider that evaluation.

will copy it down. He has trouble organizing his thoughts and needs to talk them through before writing.

██████████ described the Student's presentation in a very similar manner to the other witnesses who work with him daily. During the 2023-2024 school year, the Student's fourth grade year, ██████████ received twenty-five to thirty emails and telephone calls from parents concerned about their child being in class with the Student. ██████████ opined that the IEP did not provide sufficient services for the Student because he needed specially designed instruction throughout the entire school day and in all settings. He needed the collaboration of a multidisciplinary team to work with him inside the classroom to help him access instruction and make gains on his counseling goals. In the general education environment for twenty-nine hours per week, ██████████ was concerned about his ability to keep up with academics, and about regression in his ability to regulate to be available for classroom instruction. He has made progress while at ██████████. In the beginning it was a struggle just keeping him in class. And he had attendance issues. Now he comes to school and enjoys it. This year he was excited to participate in their field day. In the past, he was not able to do so due to the unstructured and unexpected aspects of the day. He is having fewer negative interactions with peers. He does not make threatening remarks as much as before. ██████████ believes that the Student needs to continue at ██████████, because they have only just begun to help him with his underlying issues related to ██████████. She agreed that the goal is always a less restrictive environment, and education with non-disabled peers, but the Student still needs more time in a therapeutic setting.

In ██████████ opinion, ██████████ is providing the Student the education that meets his needs.

██████████ agreed that the Student has progressed and grown while at ██████████. His ██████████ levels have calmed. He still suffers from ██████████, but he is not as ██████████ about daily

occurrences at school. His connection with [REDACTED] has been beneficial. There were days where the Student would not get out of bed and [REDACTED] emailed [REDACTED], who would talk to the Student on the phone. [REDACTED] is almost always available to the Student if he is upset or is having an incident. He has connected with other staff there as well. During the last field day, [REDACTED] had never seen the Student so comfortable, and excited to participate. Academically, he can read independently, which to [REDACTED] was significant given that he did not start learning to read until second grade.

[REDACTED] identified the invoices from [REDACTED] from January to June 2023. Parent Ex. #75. For that time period, the Parents were charged \$[REDACTED] for tuition, speech service hours and occupational therapy service hours. BCPSS paid \$[REDACTED] tuition due to the Settlement Agreement at that time. From July 2023 until July 2024, the tuition and related services at [REDACTED] was \$[REDACTED]. Of that, BCPSS paid \$1[REDACTED]; \$1[REDACTED] remains due and owing. Parent Ex. #75, p. 1411. The Parents owe \$[REDACTED] for July 2024; \$7[REDACTED] for August 2024; \$[REDACTED] for September 2024; \$[REDACTED] for October 2024; \$[REDACTED] for November 2024; and \$8,433.30 for December 2024. Parent Ex. #88.

I conclude that [REDACTED] was an appropriate placement for the Student. Like an IEP, a parental placement is appropriate if it is “reasonably calculated to enable the child to receive educational benefits.” *M.S. ex rel. Simchick*, 553 F.3d at 319.

While progress in a particular academic setting is not dispositive of the question of appropriateness, the Fourth Circuit has concluded that, in some situations, evidence of actual progress may be relevant when determining the appropriateness of the placement. *Cf. M.S. ex rel. Simchick*, 553 F.3d at 327, *citing, M.M. ex rel. D.M. v. Sch. Dist. of Greenville Cty.*, 303 F.3d 523, 532 (4th Cir. 2002) (actual progress is one factor relevant to a determination of whether an

IEP is appropriate). The Student has made progress in the integrated, collaborative model with small class sizes and low student-to-teacher ratio.

The BCPSS regularly places students with the Student's cognitive and behavioral profile at [REDACTED]. I placed no weight upon the BCPSS argument that sought to discredit [REDACTED] for not using an IEP or conducting any assessments when the Student first arrived there. Similarly, I did not place weight upon the BCPSS argument that [REDACTED] was only conditionally certified as a special educator, and therefore, [REDACTED] was not appropriate. The Student presented an unusual circumstance to [REDACTED] in that he was a private pay student. Administrators instructed staff to wait for the BCPSS IEP process to occur before proceeding with assessments. [REDACTED] typically relies upon the school system's IEP. Regardless, the supports and interventions that [REDACTED] has provided the Student has enabled him to make significant progress in all areas including academics, social/emotional/behavioral, speech/language, and occupational therapy, even considering that there were no formal written goals and objectives at that time. [REDACTED] used IReady7 as a guide for his educational programming.

I conclude that the Parent established that [REDACTED] was an appropriate placement for the Student for the 2023-2024 school year, and they are entitled to tuition reimbursement for that year.^{27, 28}

²⁷ As stated above, the Parents did not pursue their claim for compensatory education services at the hearing. For completeness, I will note that the Student has been at [REDACTED] and has not been deprived of any educational opportunity. Reimbursement of tuition for the 2023-2024 school year is the appropriate and the most equitable remedy given the facts of this case.

²⁸ As set forth in *Burlington* and *Carter*, reimbursement of tuition for a unilateral private placement can be denied if equitable factors preclude relief. *Burlington*, 471 U.S. 359; *Florence Cnty. Sch. Dist. #4 v. Carter*, 510 U.S. 7; *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 247 (2009). The BCPSS did not raise this as an issue, and there is no evidence in the record of any equitable factor that would require denial of reimbursement.

SUMMARY

In summary, I have concluded that the August 7, 2023 IEP failed to provide the Student with a FAPE regarding his social/emotional/behavioral deficits because at that time, the Student continued to need small class instruction, small student-to-teacher ratio, and specialized instruction inside and outside of the classroom throughout the day. The social/emotional/behavior goals and objectives, the FBA and the BIP, and the other supports and accommodations in the IEP were not designed to allow the Student to make meaningful progress in light of his unique circumstances. Together, these deficiencies failed to provide the Student with a FAPE. Last, I conclude that the IEP was appropriate in the areas of academic goals and objectives, speech/language and occupational therapy. The Parents are entitled to reimbursement for tuition for the 2023-2024 school year at [REDACTED].

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that: (1) the academic goals and objectives in the August 7, 2023 IEP were appropriate; (2) the Parent failed to establish that the BCPSS denied the Student a FAPE in the area of speech/language; (3) the Parent failed to establish that the BCPSS denied the student a FAPE by failing to include occupational therapy goals and objectives in the August 7, 2023 IEP; (4) the Parents established that the August 7, 2023 IEP did not provide the Student with a FAPE in the LRE because the Student required small group, specialized instruction throughout his day due to his social/emotional/behavioral deficits; *Endrew F. ex. rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017); *Bd. Of Education of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Hartmann v. Loudoun Cnty. Bd. Of Educ.*, 118 F. 3d. 996, 1000-1001 (4th Circ. 1997); (4) the IEP failed to adequately address the Student's social/emotional/behavioral needs because the June 6, 2023 FBA and BIP were deficient, and the social/emotional/behavioral

goal, objectives, and supports in the IEP resulted in an IEP that failed to provide the Student with the ability to make meaningful progress in light of his unique circumstances. *Endrew F. ex. rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017); COMAR 13A.08.04.02B(1) and (7); and (5) the Parent's unilateral placement of the Student at [REDACTED] for the 2023-2024 school year was appropriate. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *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); and (6) the Parent is entitled to reimbursement for 2023-2024 school year at [REDACTED]. *Id.*

ORDER

I **ORDER** that:

1. The Baltimore City Public School System shall reimburse the Parent for the costs associated with their placement of the Student at [REDACTED] during the 2023-2024 school year;
2. The Baltimore City Public School System must provide proof of compliance with this Order to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, Maryland State Department of Education, within thirty days of the date of this decision.

January 8, 2025
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/sh
#215037

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

Copies Mailed and Emailed To:

[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

██████████ AND ██████████
PARENTS,
ON BEHALF OF ██████████,
STUDENT,
V.
BALTIMORE CITY PUBLIC SCHOOL
SYSTEM

BEFORE SUSAN A. SINROD,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-CITY-OT-24-19290

EXHIBIT APPENDIX

The Parents/Student submitted the following exhibits, which were admitted into evidence unless otherwise noted:

Parent Ex. #1-	Not offered
Parent Ex. #2-	Educational Assessment, conducted by ██████████, BCPSS, dated December 17, 2019 (pp.1006-1011)
Parent Ex. #3-	Not offered
Parent Ex. #4-	Psychological Assessment by ██████████, BCPSS, dated January 9, 2020 (pp. 1014-1020)
Parent Ex. #5-	Not offered
Parent Ex. #6-	Progress Report, by ██████████, BCPS, dated January 5, 2021 (p. 1054)
Parent Ex. #7-	Progress Report, Social Work, dated January 6, 2021 (pp. 1055-1057)
Parent Ex. #8-	Not offered
Parent Ex. #9-	Individualized Education Program, dated June 14, 2021 (pp. 1061-1100)
Parent Ex. #10-	Individualized Education Program Progress Report, dated June 14, 2021 (pp. 1101-1109)
Parent Ex. #11-	Prior Written Notice, dated June 14, 2021 (p. 1110)
Parent Ex. #12-	Parent Notice of Unilateral Placement, dated August 11, 2021 (p. 1111)
Parent Ex. #13-	Not offered

Parent Ex. #14-	Not offered
Parent Ex. #15-	Not offered
Parent Ex. #16-	Psychological Assessment, by [REDACTED], BCPSS, dated October 27, 2021 (pp. 1134-1144) (same as BCPS Ex. #14)
Parent Ex. #17-	Progress Report for June 2022 (pp. 1145-1148)
Parent Ex. #18-	Present Levels of Academic Achievement & Functional Performance, dated August 2022 (pp. 1149-1159)
Parent Ex. #19-	Psychological Assessment, by [REDACTED], [REDACTED], dated October 20, 2022 (pp. 1160-1178)
Parent Ex. #20-	[REDACTED] Dismissal Letter, dated December 12, 2022 (p. 1179)
Parent Ex. #21-	Progress Report, dated December 19, 2022 (pp. 1180-1183)
Parent Ex. #22-	2022 Behavior Incident Reports: <ul style="list-style-type: none"> a) Incident Report, dated September 7, 2022 (pp. 1184-1186) b) Incident Report, dated September 15, 2022 (pp. 1187-1189) c) Incident Report, dated October 3, 2022 (pp. 1190-1192) d) Incident Report, dated November 1, 2022 (1) (pp. 1193-1196) e) Incident Report, dated November 1, 2022 (2) (pp. 1197-1200) f) Incident Report, dated November 10, 2022 (pp. 1201-1204) g) Incident Report, dated November 17, 2022 (am) (pp. 1205-1208) h) Incident Report, dated November 17, 2022 (pm) (pp. 1209-1212)
Parent Ex. #23-	Not offered
Parent Ex. #24-	Psychiatric Discharge Summary, dated January 5, 2023 (pp. 1215-1222)
Parent Ex. #25-	Speech-Language Assessment, by [REDACTED], [REDACTED], undated (pp. 1223-1224)
Parent Ex. #26-	Child Find Referral, dated February 13, 2023 (pp. 1225-1227) (same as BCPSS Ex. #2)
Parent Ex. #27-	Not offered

Parent Ex. #28-	Not offered
Parent Ex. #29-	Not offered
Parent Ex. #30-	Not offered
Parent Ex. #31-	Consent for Assessment, dated March 22, 2023 (pp. 1238-1240) (same as BCPSS Ex. #5)
Parent Ex. #32-	Not offered
Parent Ex. #33-	Prior Written Notice, dated March 22, 2023 (pp. 1242-1243) (same as BCPSS Ex. #4)
Parent Ex. #34-	Occupational Therapy Assessment, by [REDACTED], assessment date May 9, 2023 (pp. 1244-1248) (Same as BCPSS Ex. #7)
Parent Ex. #35-	Email from [REDACTED] to the Parents, dated May 23, 2023 (pp. 1249)
Parent Ex. #36-	Speech-Language Assessment, by [REDACTED], BCPSS, dated May 30, 2023 (pp. 1250-1257) (same as BCPSS Ex. #6)
Parent Ex. #37-	Behavioral Intervention Plan, dated June 6, 2023, (pp. 1258-1264) (same as BCPSS Ex. #10)
Parent Ex. #38-	Functional Behavioral Assessment Summary Report, dated June 6, 2023 (pp. 1265-1275) (same as BCPSS Ex. #9)
Parent Ex. #39-	Speech-Language Progress Report, by [REDACTED], Sheppard Pratt, dated June 14, 2023 (p. 1276)
Parent Ex. #40-	Determination of Eligibility, dated June 15, 2023 (pp. 1277-1286) (same as BCPSS Ex. #12)
Parent Ex. #41-	Amended Educational Assessment, by [REDACTED], BCPSS, dated June 15, 2023 (pp. 1287-1296) (same as BCPSS Ex. #8)
Parent Ex. #42-	Specific Learning Disability Report, dated June 15, 2023 (pp. 1297-1305) (same as BCPSS Ex. #13)
Parent Ex. #43-	Prior Written Notice, dated June 15, 2023 (pp. 1306-1308) (same as BCPSS Ex. #11)
Parent Ex. #44-	Counseling Progress Report, by [REDACTED], BCPSS, dated June 16, 2023 (p. 1309) (same as BCPSS Ex. #19)

Parent Ex. #45- Occupational Progress Report by [REDACTED], [REDACTED], dated June 16, 2023 (pp. 1310-1311)

Parent Ex. #46- Counseling Recommendations by [REDACTED], [REDACTED], dated July 19, 2023 (pp. 1312-1313) (same as BCPSS Ex. #20)

Parent Ex. #47- Occupational Progress Report by [REDACTED], [REDACTED], dated August 4, 2023 (pp. 1314-1315) (also part of BCPSS Ex. #20)

Parent Ex. #48- Prior Written Notice, dated August 7, 2023 (pp. 1316-1319) (same as BCPSS Ex. #16)

Parent Ex. #49- Not offered

Parent Ex. #50- Speech-Language Progress Report by [REDACTED], [REDACTED], dated October 25, 2023 (p. 1321)

Parent Ex. #51- Counseling Progress Report, by [REDACTED], [REDACTED], dated November 3, 2023 (pp. 1322-1323)

Parent Ex. #52- Not offered

Parent Ex. #53- 2022-2023 School Year Report Card - 3rd grade (pp. 1325-1327)

Parent Ex. #54- Occupational Therapy Evaluation by [REDACTED], [REDACTED], dated January 9, 2024 (pp. 1328-1339)

Parent Ex. #55- Speech-Language Progress Report by [REDACTED], [REDACTED], dated January 26, 2024 (p. 1340)

Parent Ex. #56- Not offered

Parent Ex. #57- Behavior Report by [REDACTED], [REDACTED], dated March 20, 2024 (p. 1342)

Parent Ex. #58- Occupational Therapy Progress Report by [REDACTED], [REDACTED], dated March 22, 2024 (p. 1343)

Parent Ex. #59- Counseling Progress Report by [REDACTED], [REDACTED], dated April 5, 2024 (pp. 1344-1345)

Parent Ex. #60- Speech-Language Progress Report by [REDACTED], [REDACTED], dated April 5, 2024, (p. 1346)

Parent Ex. #61- Not offered

Parent Ex. #62- Counseling Progress Report by [REDACTED], [REDACTED], dated June 13, 2024 (pp. 1348-1349)

Parent Ex. #63-	Speech-Language Progress Report by [REDACTED], [REDACTED], dated June 13, 2024 (p. 1350)
Parent Ex. #64-	Not offered
Parent Ex. #65-	Not offered
Parent Ex. #66-	Not offered
Parent Ex. #67-	Neuropsychological Evaluation by [REDACTED], Neurobehavioral Associates, dated October 14, 2024 (pp. 1355-1379)
Parent Ex. #68-	Not offered
Parent Ex. #69-	Speech-Language Progress Report by [REDACTED], [REDACTED], dated November 1, 2024 (p. 1381)
Parent Ex. #70-	Not admitted
Parent Ex. #71-	2023-2024 Behavior Data Summary (p. 1383): <ul style="list-style-type: none"> a) Behavior Graph - Aggression (pp. 1384-1385) b) Behavior Graph - Elopement (pp. 1386-1387) c) Behavior Graph - Inappropriate Vocalizations (pp. 1388-1389) d) Behavior Graph - Leaving Location (pp. 1390-1391) e) Behavior Graph - Non-Compliance (pp. 1392-1393) f) Behavior Graph - Property Disruption (pp. 1394-1395) g) Behavior Graph - Time Out of Class (pp. 1396-1397)
Parent Ex. #72-	2023-2024 School Year Safety/Crisis Plan (pp. 1398-1401) (same as BCPSS Ex. #17)
Parent Ex. #73-	2023-2024 School Year Report Card - 4th grade (pp. 1402-1408)
Parent Ex. #74-	2023-2024 School Year Work Sample (p. 1409)
Parent Ex. #75-	2023-2024 School Year Tuition Invoices (pp. 1410-1420)
Parent Ex. #76-	Not offered
Parent Ex. #77-	<i>Curriculum Vitae</i> of [REDACTED] (pp. 1423-1426)

Parent Ex. #78-	<i>Curriculum Vitae</i> of [REDACTED] (pp. 1427-1433)
Parent Ex. #79-	<i>Curriculum Vitae</i> of [REDACTED] (pp. 1434-1437)
Parent Ex. #80-	Not offered
Parent Ex. #81-	<i>Curriculum Vitae</i> of [REDACTED] (p. 1440)
Parent Ex. #82-	Not offered
Parent Ex. #83-	Not offered
Parent Ex. #84-	<i>Curriculum Vitae</i> of [REDACTED] (p. 1445)
Parent Ex. #85-	Not offered
Parent Ex. #86-	<i>Curriculum Vitae</i> of [REDACTED] (p. 1450)
Parent Ex. #87-	<i>Curriculum Vitae</i> of [REDACTED] (pp. 1451-1457)
Parent Ex. #88-	2023-2024 School Year Tuition Invoices (pp. 1458-1463)
Parent Ex. #89-	IEP (draft), dated August 7, 2023
Parent Ex. #90-	Emails between [REDACTED], [REDACTED], and [REDACTED], various dates
Parent Ex. #91-	Emails between [REDACTED], [REDACTED], and [REDACTED], various dates
Parent Ex. #92-	Emails between [REDACTED], [REDACTED] and [REDACTED], dated June 21, 2023
Parent Ex. #93-	Email from [REDACTED] to multiple recipients, dated April 18, 2023
Parent Ex. #94-	Emails between [REDACTED], [REDACTED], and [REDACTED], dated June 5, 6, and 7, 2023
Parent Ex. #95-	Emails between [REDACTED], [REDACTED], and [REDACTED], dated June 6 and 7, 2023

BCPS submitted the following exhibits, which were admitted into evidence unless otherwise noted:

BCPSS Ex. #1-	Release and Settlement of Claims, dated October 19, 2022
BCPSS Ex. #2-	Child Find Referral, dated February 13, 2023
BCPSS Ex. #3-	Consent for Release of Information, dated February 28, 2023

BCPSS Ex. #4-	Prior Written Notice, dated March 22, 2023
BCPSS Ex. #5-	Notice and Consent for Assessment, dated March 22, 2023
BCPSS Ex. #6-	Speech/Language Assessment Report, dated April 28, 2023
BCPSS Ex. #7-	BCPSS Occupational Therapy Assessment, dated June 6, 2023
BCPSS Ex. #8-	Not offered
BCPSS Ex. #9-	BCPSS Functional Behavioral Assessment Summary Report, dated June 6, 2023
BCPSS Ex. #10-	BCPSS Behavioral Intervention Plan, dated June 6, 2023
BCPSS Ex. #11-	Prior Written Notice, dated June 15, 2023
BCPSS Ex. #12-	Not offered
BCPSS Ex. #13-	Not offered
BCPSS Ex. #14-	BCPSS Psychological Report, dated October 27, 2021
BCPSS Ex. #15-	██████████ Report Card, for the 2022-2023 school year
BCPSS Ex. #16-	Prior Written Notice, dated August 7, 2023
BCPSS Ex. #17-	BCPSS Student Safety/Crisis Plan, undated
BCPSS Ex. #18-	IEP, dated August 7, 2023
BCPSS Ex. #19-	██████████ Counseling Progress Report, dated June 16, 2023
BCPSS Ex. #20-	██████████ Counseling Recommendations for Social Interaction Skills, dated July 18, 2023; Occupational Therapy Summer Term Progress Report, dated August 4, 2023
BCPSS Ex. #21-	Not offered
BCPSS Ex. #22-	Behavior Graphs, from various dates and times
BCPSS Ex. #23-	<i>Curriculum Vitae</i> of ██████████
BCPSS Ex. #24-	<i>Curriculum Vitae</i> of ██████████
BCPSS Ex. #25-	<i>Curriculum Vitae</i> of ██████████
BCPSS Ex. #26-	<i>Curriculum Vitae</i> of ██████████

BCPSS Ex. #27-	Not offered
BCPSS Ex. #28-	Not offered
BCPSS Ex. #29-	Writing sample, undated
BCPSS Ex. #30-	Functional Assessment Checklist for Teachers and Staff, dated May 24, 2023
BCPSS Ex. #31-	Notes of interview with [REDACTED] by [REDACTED], dated June 1, 2023
BCPSS Ex. #32-	Notes of classroom observation by [REDACTED], dated May 25, 2023