

██████████,

PARENT,

ON BEHALF OF ██████████

STUDENT,

v.

MONTGOMERY COUNTY PUBLIC

SCHOOLS

\* BEFORE STEPHEN W. THIBODEAU,

\* AN ADMINISTRATIVE LAW JUDGE

\* OF THE MARYLAND OFFICE

\* OF ADMINISTRATIVE HEARINGS

\* OAH No.: MSDE-MONT-OT-24-28229

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### **DECISION**

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

### **STATEMENT OF THE CASE**

On October 15, 2024, ██████████ (Parent), on behalf of ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);<sup>1</sup> 34 C.F.R. § 300.511(a) (2023);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (Supp. 2024);<sup>3</sup> Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

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<sup>1</sup> “U.S.C.A.” is an abbreviation for the United States Code Annotated. All citations herein to the U.S.C.A. are to the 2017 bound volume.

<sup>2</sup> “C.F.R.” is an abbreviation for the Code of Federal Regulations. All citations herein to the C.F.R. are to the 2023 bound volume.

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

I held a remote prehearing conference on December 13, 2024. The Parent was self-represented. Stacy Reid Swain, Esquire, represented the MCPS.

I held the hearing on Wednesday, January 22, 2025, and Friday, January 24, 2025.<sup>4</sup> The Parent was self-represented. Ms. Reid Swain represented the MCPS.

Under the regulatory timeline, the decision in this case normally would be due on December 19, 2024, which is forty-five days after the parties agreed in writing to waive the resolution meeting on November 4, 2024. 34 C.F.R. §§ 300.510(b)(2), (c)(1), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14)(a). However, the MCPS requested hearing dates outside that timeframe. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

In particular, I discussed with the parties the timeline for issuing a decision within the forty-five day timeline. The prehearing conference was held on Friday, December 13, 2024, and the forty-five day timeline required a decision one week later on Thursday, December 19, 2024. The Parent indicated that she needed at least one day to present her case, and the MCPS stated it needed two days, reserving an additional day for closing arguments.

In order to comply with the forty-five day timeline, the earliest that the anticipated four-day hearing could have been held was from Monday, December 16, 2024 through Thursday, December 19, 2024. Thus, the hearing would have ended the day the decision would have been due. Moreover, starting on Monday, December 16, 2024, would have made it impossible for the parties to comply with the five-day disclosure rule. When the MCPS requested to extend the timeline, the Parent opposed the request, citing the delay up until the prehearing conference and the desire to resolve this matter through a decision. I again stated that the impracticality of starting the hearing the Monday immediately after the Friday prehearing conference, noting there would be no time for the parties to comply with the five-day disclosure rule to exchange

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<sup>4</sup> As noted below, the parties initially indicated that they would need four days to complete the hearing. However, the parties were able to present their evidence and complete the hearing two days early on Friday, January 24, 2025.

discovery, or to schedule witnesses, and I granted the MCPS' request to extend the forty-five day timeline. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

After granting the timeline extension request at the prehearing conference, I worked with the parties to look for dates to hold the first day of the four-day hearing and to provide five business days to comply with the five-day disclosure rule. Because the MCPS was closed for winter break from December 23, 2024 to January 1, 2025, we began by looking at Thursday, January 2, 2025 to begin the hearing.

The parties then agreed, based on my and the parties' availability,<sup>5</sup> to begin the hearing on Wednesday, January 22, 2025, continue on Friday, January 24, 2025 and Monday, January 27, 2025 and end on Wednesday, January 29, 2025. The MCPS requested that I issue my decision no later than thirty days from the close of the record.

For the reasons discussed above, I granted the MCPS' request to extend the timeline and issue my decision no later than thirty days from the close of the record. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). Because the hearing ended earlier than anticipated, I am issuing my decision no later than Friday, February 21, 2025, within thirty days of the close of the record on Friday, January 24, 2025.<sup>6</sup>

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

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<sup>5</sup> Ms. Reid Swain was unavailable for the following dates in January 2025, due to previously scheduled meetings and prehearing conferences: January 2, 6, 8, 10, 13, and 17, 2025. The Parent was unavailable on January 16, 2025, due to work constraints. I had specially set dockets on January 3, 7, 14, and 15, 2025, as well as prescheduled leave on January 21, 2025. January 20, 2025 was unavailable due to the Martin Luther King, Jr. holiday. Therefore, the earliest date to begin the hearing based on my and the parties' availability was Wednesday, January 22, 2025.

<sup>6</sup> The 30<sup>th</sup> day would have occurred on Sunday, February 23, 2025. In accordance with OAH policy, I am required to adjust the decision deadline to ensure the parties receive the decision within 30 days.

## **ISSUES**

1. Did the MCPS deny the Student a free appropriate public education (FAPE) for the 2024-2025 school year by failing to provide the Student with transportation, as a related service?
2. If it is determined that the MCPS failed to provide the Student a FAPE, what relief and remedies are appropriate?

## **SUMMARY OF THE EVIDENCE**

### **Exhibits**

I admitted the following exhibits on behalf of the Parent:

- Parents Ex. 1 – Text messages between the Parent, [REDACTED] (the Parent's mother) and [REDACTED] (the Parent's sister), August 22, 2024
- Parent Ex. 2 - Emails between the Parent and [REDACTED], Supervisor, MCPS Resolution and Compliance Unit, September 19 and 20, 2024
- Parent Ex. 3 - Emails between the Parent and [REDACTED], Acting Director, MCPS Division of Special Education Prekindergarten, Programs and Services, July 16 2024 through August 16, 2024
- Parent Ex. 4 - Email from the Parent to [REDACTED], MCPS [REDACTED] ([REDACTED]) Coordinator, August 23, 2024
- Parent Ex. 5 - Emails between the Parent and [REDACTED], MCPS Transportation Specialist, September 12, 2024 through September 18, 2024
- Parent Ex. 6 - Emails between the Parent and [REDACTED], MCPS [REDACTED] Parent Educator, August 28 and 29, 2024
- Parent Ex. 7 - Emails between the Parent and [REDACTED], September 19 through September 24, 2024

I admitted the following exhibits on behalf of the MCPS:

- MCPS Ex. 1 - Evaluation Report and Determination of Initial Eligibility for the Student, December 9, 2022 (pp. 1-7)
- MCPS Ex. 2- Notice of No Assessment Needed – Reevaluation, November 19, 2024 (pg. 8)
- MCPS Ex. 3 - Prior Written Notice (PWN) for the Student, September 5, 2024 (pg. 9)

- MCPS Ex. 4 - PWN for the Student, November 19, 2024 (pp. 10-11)
- MCPS Ex. 5 - PWN for the Student, November 29, 2023 (pp. 12-13)
- MCPS Ex. 6 - PWN for the Student, December 9, 2022 (pp. 14-15)
- MCPS Ex. 7 - Individualized Education Program (IEP) for the Student, November 19, 2024 (pp. 16-50)
- MCPS Ex. 8 - IEP for the Student, November 29, 2023, amended on September 5, 2024 (pp. 51-96)
- MCPS Ex. 9 - IEP For the Student, November 29, 2023 (pp. 97-142)
- MCPS Ex. 10 - IEP for the Student, December 9, 2022 (pp. 143-179)
- MCPS Ex. 11 - Resume for [REDACTED], MCPS Special Education Teacher (pp. 180-182)
- MCPS Ex. 12 - Resume for [REDACTED], MCPS [REDACTED] Parent Educator (pp. 183-185)
- MCPS Ex. 13 - Resume for [REDACTED], MCPS Transportation Specialist, Special Education Routing and Scheduling Unit (pp. 186-189)
- MCPS Ex. 14 - Resume for [REDACTED], MCPS [REDACTED] Coordinator (pg. 190)
- MCPS Ex. 15 - Resume for [REDACTED], MCPS Special Education Teacher (pp. 191-193)
- MCPS Ex. 16 - Resume for [REDACTED], MCPS [REDACTED] Parent Educator (pp. 194-196)

### Testimony

The Parent testified and presented the following witnesses:

- [REDACTED], MCPS [REDACTED] Coordinator;
- [REDACTED], Supervisor, MCPS Resolution and Compliance Unit;
- [REDACTED], the Parent's sister and a High School Teacher with the [REDACTED] [REDACTED] Public Schools, who I accepted as an expert in general education;
- [REDACTED], MCPS Transportation Specialist, Special Education Routing and Scheduling Unit, who I accepted as an expert in transportation and bus routing;

- [REDACTED], the Student's current teacher at [REDACTED]  
[REDACTED]
- [REDACTED], the Student's great-aunt; and
- [REDACTED], MCPS [REDACTED] Parent Educator.

The MCPS presented the following witnesses:

- [REDACTED], MCPS Special Education Teacher, who I accepted as an expert in special education;
- [REDACTED], MCPS [REDACTED] Parent Educator, who I accepted as an expert in special education;
- [REDACTED], MCPS Transportation Specialist, Special Education Routing and Scheduling Unit, who I accepted as an expert in transportation and bus routing; and
- [REDACTED], MCPS [REDACTED] Coordinator, who I accepted as an expert in special education.

### **FINDINGS OF FACT<sup>7</sup>**

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

1. The Student was born in [REDACTED] 2019, and is currently five years old.
2. The Student lives with the Parent on [REDACTED] in [REDACTED], Maryland.

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<sup>7</sup> My findings, analysis, and legal conclusions are based upon consideration of all of the parties' arguments and the credible evidence of record. All testimonial and documentary evidence was considered and given the weight it was due, regardless of whether it has been recited, cited, referenced, or expressly set forth in the Decision. *See, e.g., Walker v. Sec'y of Health & Human Servs.*, 884 F.2d 241, 245 (6th Cir. 1989) (an administrative law judge need not address every piece of evidence in the record); *Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Comm'n*, 143 Md. App. 419, 442 (2002) (emphasizing that "[t]he Commission was free to accept or reject any witness's testimony" and "the mere failure of the Commission to mention a witness's testimony" does not mean that the Commission "did not consider that witness's testimony"); *see also Kornecky v. Comm'r of Soc. Sec.*, 167 Fed. App'x 496, 508 (6th Cir. 2006) ("[A]n ALJ can consider all the evidence without directly addressing in his written decision every piece of evidence submitted by a party. Nor must an ALJ make explicit credibility findings as to each bit of conflicting testimony, so long as his factual findings as a whole show that he implicitly resolved such conflicts.") (internal citations omitted).

3. The Student is eligible for preschool special education and related services under the IDEA under the disability category of [REDACTED]

4. The Student has at least a twenty-five percent delay in [REDACTED] [REDACTED] skills, [REDACTED], and [REDACTED].

5. The MCPS is the public agency responsible for ensuring the Student is provided with a FAPE.

6. On November 29, 2023, the IEP team met and developed the Student's IEP for the 2023-2024 school year, which provided special education in language and literacy, mathematics, and behavioral skills, with detailed goals and objectives.

7. The November 29, 2023 IEP included two-and-a-half hours of special education instruction daily, five days a week, with a special education classroom teacher and an instructional assistant, outside of the general education setting. Furthermore, the IEP provided the Student with related services including occupational therapy (one thirty minute session per week outside the general education setting), speech and language therapy (two thirty minute sessions per week outside the general education setting), and transportation to and from school for the half-day program.<sup>8</sup>

8. Per the Student's IEP for the 2023-2024 school year, the Student required bus transportation with a child safety restraint on the bus due to the Student's age and communication needs. Furthermore, due to the Student's age and communication needs, the Student required adult support on the bus through a bus attendant.

9. For the 2023-2024 school year, the Student's IEP was fully implemented at [REDACTED] in [REDACTED], Maryland ([REDACTED]), including bus transportation.

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<sup>8</sup> The MCPS half-day [REDACTED] program is two and a half hours long, and the MCPS full-day [REDACTED] program follows the normal school day schedule for all MCPS elementary schools.

10. The IEP team indicated that for the 2024-2025 school year, the Student would be placed in an inclusive [REDACTED] collaboration class, which included instruction from both a special educator and a general educator, with a future location to be determined.

11. In June 2024, the MCPS placed the Student at [REDACTED] in [REDACTED], Maryland ([REDACTED]), for the 2024-2025 school year in a full-day program to implement his IEP.

12. In June 2024, due to MCPS' budget cuts, the [REDACTED] [REDACTED] collaboration program was no longer available for the Student.

13. In August 2024, [REDACTED], the MCPS [REDACTED] Coordinator, contacted the Parent and offered her two possible placements for the implementation of the Student's IEP:

[REDACTED] in [REDACTED], Maryland ([REDACTED]) or [REDACTED] in [REDACTED], Maryland ([REDACTED]).

14. [REDACTED] informed the Parent that at [REDACTED], the Student's IEP would be implemented in a full-day program with the same teacher, and instructional specialist each day. The Student would be pulled out of class for his occupational therapy and speech therapy related services. [REDACTED] also informed the Parent that transportation could not be provided to and from school as [REDACTED] was not in the Student's local school area, and the Parent would need to drive the Student to and from school daily.

15. [REDACTED] further informed the Parent that at [REDACTED], the Student's IEP would be implemented in a half-day program, but the Student's teachers would change from week to week. With placement at [REDACTED], MCPS would provide the Student with transportation to and from school.

16. On August 23, 2024, the Parent informed [REDACTED] by email that she selected the [REDACTED] option for the Student.



17. Since August 26, 2024, the Parent has driven the Student to and from school daily.

18. On August 28, 2024, [REDACTED], the [REDACTED] Parent Educator for [REDACTED], emailed the Parent to ask if she would like [REDACTED] to request transportation for the Student, because [REDACTED] was aware of other students in the Student's area that were getting transportation to [REDACTED]. On the same day, the Parent replied via email that she would like to try to get transportation for the Student, and [REDACTED] submitted a request on the Student's behalf.

19. On August 29, 2024, [REDACTED] emailed the Parent that the request was "approved" and was being processed, and [REDACTED] would let the Parent know when the bus route numbers, and bus routes would be available for the Student.

20. On September 5, 2024, the Student's IEP was amended to reflect his placement at [REDACTED].<sup>9</sup>

21. Between August 29 and September 20, 2024, the Student did not receive transportation from the MCPS to and from [REDACTED].

22. On September 20, 2024, [REDACTED], Supervisor for the MCPS Resolution and Compliance Unit, emailed the Parent and informed her that no bus route was available to transport the Student to and from [REDACTED].

23. On September 24, 2024, [REDACTED] emailed the Parent again and reminded the Parent that the MCPS offered her a half-day program with transportation that would fully implement the Student's IEP.

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<sup>9</sup> It is unclear from the record whether this amendment was made at an IEP team meeting. See 34 C.F.R. § 300.324(a)(4)(i) ("In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.").

24. The MCPS considers requests for transportation from parents for out-of-area students on a case-by-case basis to determine whether a stop can be added to existing bus routes. In examining those routes, the MCPS factors the morning and afternoon pick up and drop off times in relation to the time it takes for each bus driver to complete their route.

25. At the time of the Parent's August 28, 2024 request, there was a bus route for [REDACTED] that picked up students on [REDACTED] in [REDACTED], Maryland at 7:17 a.m., to drop students off at [REDACTED] for an 8:55 a.m. start time.

26. The [REDACTED] bus stop in [REDACTED], Maryland, is twenty minutes away from the Student's address in [REDACTED], Maryland. As of September 2024, because of the distance between the Student's address and the [REDACTED] stop, it was not possible to add a stop at the Student's address that would otherwise ensure the bus would arrive at [REDACTED] on time.

27. Beginning in November 2024, the [REDACTED] bus began picking up a [REDACTED] student<sup>10</sup> a few blocks from the Student's current address.

28. Due to this change, a morning bus stop could be added at the Student's current address for the Student to take the bus to [REDACTED] in the morning.

29. In order to request a transportation change for the Student, the Parent would need to submit a written request, and a Student Transportation Assignment Request (STAR) Form would be reviewed by MCPS' Transportation Department.

30. To date, the Parent has not submitted a written request.

31. On November 19, 2024, the IEP team met to develop the Student's current IEP for the remainder of the 2024-2025 school year. The current IEP includes five hours of special education classroom instruction per week outside the general education classroom. It also

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<sup>10</sup> "[REDACTED]" refers to the [REDACTED], a federal law mandating local school districts to provide education, including bus transportation, to students who are experiencing [REDACTED].

provides related services of occupational therapy (a half-hour per week outside the general education setting), speech therapy (a half-hour per week in the general education setting and a half-hour per week outside of the general education setting), and transportation.

32. The November 2024 IEP notes that the Student requires “special education transportation in order to access his instruction program due to his age and disability.” MCPS Ex. 7. It further notes that the benefits received from participation in a specialized preschool program outweigh the time and distance involved in travel, and the Student would require a child safety restraint and bus attendant on the bus.

33. The Student’s current IEP is being implemented at [REDACTED], except for transportation, because the Parent voluntarily elected to transport the Student to and from [REDACTED] since the beginning of the school year.

34. Per the Student’s most recent IEP, the Student continues to make sufficient progress on his IEP goals and objectives. *See id.*; *see also* MCPS Ex. 4.

35. Currently, the MCPS can fully implement the Student’s IEP, with transportation and at a half-day program, at [REDACTED] in [REDACTED], Maryland ([REDACTED]), a school within the Student’s local area.<sup>11</sup>

## **DISCUSSION**

### **Burden of Proof**

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The

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<sup>11</sup> This option came to light during the hearing through [REDACTED]’s testimony in the MCPS’ case in chief.

Parent is seeking relief and bears the burden of proof to show that the challenged action by the MCPS did not meet the requirements of the law.

#### Overview of Relevant Law

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

Title 20, Section 1401(9) of the U.S.C.A. defines FAPE as:

(9) Free appropriate public education -- The term “free appropriate public education” means special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

Similarly, the United States Department of Education’s regulation, 34 C.F.R. § 300.17, defines FAPE as:

[S]pecial education and related services that —

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the [State Education Agency], including requirements of this part;

- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

A local educational agency (LEA), such as the MCPS, meets the federal requirement to provide a FAPE to eligible students through the development and implementation of IEPs. *See* 20 U.S.C.A. § 1414(d); 34 C.F.R. §§ 300.320-300.324.<sup>12</sup> An IEP is a comprehensive program prepared by a child's IEP Team, which must include certain members from the LEA and the child's parent(s). 20 U.S.C.A. § 1414(d)(1)(B)-(d)(1)(D); 34 C.F.R. §§ 300.321, 300.322; 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)-(4). It also must contain, among other things, "a statement of the child's present levels of academic achievement and functional performance," "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 requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit a child to benefit educationally from that instruction. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

Implicit in the congressional purpose of providing access to a "free appropriate public education" is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child....We therefore conclude that the basic "floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to give educational benefit to the handicapped child.

*Rowley*, 458 U.S. at 200, 201.

The Supreme Court of the United States established a two-part test for determining if a school district provided a FAPE to a student with a disability. The first part of that test is whether the school district complied with the procedural safeguards set out in the IDEA.

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<sup>12</sup> *See also 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.").

*Rowley*, 458 U.S. at 206–07. The second part of that test is whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive a meaningful educational benefit in light of the child’s unique individual circumstances. *Id.*; *Endrew F. v. Douglas Cnty Sch. Dist.*, 580 U.S. 386, 399 (2017). Further, “meaningful benefit” cannot be de minimis or slight. *Endrew F.*, 580 U.S. at 402. Rather, a student’s progress, must be “appropriately ambitious in light of [the child’s] circumstances.” *Id.*

To provide a FAPE, a school system must provide sufficient “related services” to allow a student to obtain meaningful educational benefit from the IEP. 20 U.S.C.A.

§ 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.34(a); *see also* Md. Code Ann., Educ. § 8-401 (a)(4)(i) (“‘Related services’ means transportation and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education.”). Transportation is a “related service.” 34 C.F.R. § 300.34(a). It includes:

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 C.F.R. § 300.34(c)(16).

Additionally, “Congress enacted the IDEA in part to ensure that disabled students previously excluded from the public school system and stranded at home could instead attend school. In particular, the IDEA ‘makes specific provision for services, like transportation,’ to ‘enable a child to be physically present in class.’” *Pierre-Noel on behalf of K.N. v. Bridges Pub. Charter Sch.*, 113 F.4th 970, 982 (D.C. Cir. 2024) (internal citations omitted).

When challenging an IEP, a parent may file a due process complaint to contest not only the appropriateness of the IEP, but also the school’s implementation of the IEP. More specifically,

To provide a FAPE to a student with disabilities, the school district must not only *develop* the IEP, but it also must *implement* the IEP in accordance with its requirements. *See* 20 U.S.C. § 1401(9)(D) (A FAPE includes special education and related services that are “in conformity with” the IEP); 34 C.F.R. § 300.323(c)(2) (“As soon as possible” following development of an IEP, special education and related services must be made available to a student in accordance with that IEP.)

*Doe ex rel. Doe v. Hampden-Wilbraham Reg'l Sch. Dist.*, 715 F. Supp. 2d 185, 195 (D. Mass. 2010) (emphasis in original). Furthermore, “[a] failure to deliver instructional or related services required by students’ Individual Education Programs (“IEPs”) results in the denial of students’ rights under IDEA to a [FAPE]. *See* 20 U.S.C. § 1412(a)(1)(A).” *Vaughn G. v. Mayor*, No. MJG-84-1911, 2005 WL 1949688, at \*3 (D. Md. Aug. 12, 2005).

When a school system has failed its FAPE obligation to a student under the IDEA, that student is entitled to be made whole with nothing less than a “complete” remedy including compensatory services. *G.I. v. Ligonier Valley Sch. Distr. Auth.*, 802 F.3d 601, 625 (3d Cir. 2015) (citing *Forest Grove Schl. Dist. v. T.A.*, 557 U.S. 230, 244 (2009)). Further “[w]hen a FAPE is not provided to a disabled student, the student’s parents may seek an award of compensatory education. These educational services are ordered by the court to be provided prospectively to compensate for a past deficient program, i.e., the school system’s failure to provide the student with a FAPE.” *Y.B. v. Bd. of Educ. of Prince George’s Cnty.*, 895 F. Supp. 2d 689, 693-94 (D. Md. 2012) (internal citation and quotation marks omitted).

Under the IDEA, an administrative law judge (ALJ) may find that a student with a disability did not receive a FAPE based on a procedural violation only if the procedural inadequacies: (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefit. 20 U.S.C.A § 1415(f)(3)(E)(ii). If there is an ongoing procedural inadequacy, an ALJ may order the LEA to comply with the procedural requirements under the IDEA. 20 U.S.C.A. § 1415(f)(3)(E)(iii).

## Analysis

The Parent alleges that the Student is not being provided a FAPE because his current IEP provides for the “related service” of transportation to and from school. Furthermore, the Parent alleges that the Student is not being provided with transportation to [REDACTED], the Parent’s chosen placement for the Student which is outside of the Student’s school area. The MCPS counters that the Parent voluntarily elected to send the Student to [REDACTED] by agreeing to transport the Student to and from the school herself, thus waiving the related service of transportation in Student’s IEP. Moreover, the MCPS argues that the Student’s IEP could be fully implemented at another school where transportation could be provided, albeit at a half-day program. It contends that the half-day program would still be reasonably calculated to provide the Student a FAPE given that the Student is currently in preschool when no full-day school is required. For the reasons that follow, I find the Parent has not met her burden of proof to demonstrate that the Student is being denied a FAPE through the lack of transportation to [REDACTED].

Preliminarily, I note there is no allegation that the Student’s IEP is not reasonably calculated to provide the Student a FAPE. The only allegation is that one related service in the Student’s IEP – transportation – is not being implemented. However, as was made clear through the evidence presented at the hearing, this is due to the Parent’s election to send the Student to a full-day program at [REDACTED]. Indeed, when the Parent was given two options at the beginning of the 2024-2025 school year, she chose a full-day program that she knew would not provide transportation to the Student because the Student lived outside the [REDACTED] feeder area. While the Parent attempted to request transportation for the Student following his enrollment, ultimately the MCPS could not provide a bus stop for the Student. I recognize this was a frustrating process for the Parent, particularly during the few times the MCPS gave her



conflicting information. But ultimately, at the time she made the decision, the Parent knew that no transportation was available for the Student to get to and from [REDACTED].

Moreover, there is no evidence that the Student needs to attend a full-day program to receive a FAPE. Again, the Student is in preschool, where no full-day program is mandated.<sup>13</sup> Moreover, the Student's IEP was fully implemented through a half-day program at [REDACTED] for the 2023-2024 school year. The Student's IEP goals and objectives did not substantially change for the 2024-2025 school year, and the required five hours of special education instruction, thirty minutes of occupational therapy and one hour of speech therapy related services per week could be accomplished in a half-day program.<sup>14</sup>

Indeed, the Parent noted she relied on the advice of [REDACTED], her sister who teaches in the [REDACTED] public school system, who believed that the Student would benefit more from the full-day program. In addition, the Parent presented the testimony of [REDACTED], the Student's current teacher, who stated that the Student currently benefits from a full-day program and is making good progress on his IEP goals. However, [REDACTED] also conceded that the Student's IEP could be fully implemented at a half-day program as well.

Furthermore, there was no evidence presented demonstrating that the Student is currently being denied a FAPE due to a lack of bus service. To the contrary, as was noted by [REDACTED], the Student is progressing well with his IEP goals and objectives at [REDACTED]. [REDACTED] The Parent continues to drive the Student to and from school each day, and the Parent ensures the Student is present and on time each day. There was no evidence presented that the Student has missed any instructional time since attending [REDACTED]. The lack of transportation is immaterial to the Student's progress at this time.

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<sup>13</sup> "A local school system shall operate the prekindergarten educational program 5 days per week for a minimum of 2.5 hours per day consistent with the school calendar approved by the local board." COMAR 13A.06.02.05A(3).

<sup>14</sup> There is a total of twelve and a half weekly hours for the half-day [REDACTED] program (2.5 hours in a day x 5 days in a week = 12.5 total hours in a week).

Finally, the MCPS stands ready to fully implement the Student's IEP through a half-day program, complete with transportation. Initially, in August 2024, the MCPS offered a half-day program at [REDACTED] with transportation, which the Parent declined in favor of [REDACTED]. Currently, the Student's IEP can be fully implemented at [REDACTED] with transportation. The Parent provided no evidence that the Student's IEP cannot be implemented at [REDACTED].

As the Parent noted throughout the hearing, there is no dispute that the Student's IEP provides for transportation as a related service. This has not changed since the Student's first IEP, it did not change when the Student's IEP was amended in September 2024 to reflect his attendance at [REDACTED]. Moreover, his current IEP, developed in November 2024, still provides for transportation as a related service despite the fact the MCPS has not provided the Student with transportation. So, in a technical sense, one could find a procedural violation of the Student's FAPE because the MCPS is not fully implementing the Student's IEP by failing to provide him with transportation as required.

I decline to do so here, however.<sup>15</sup> The MCPS' has offered the Student an IEP with a half-day program placement at [REDACTED] at the start of the 2024-2025 school year and at [REDACTED], for the remainder of the 2024-2025 school year, where his IEP can be fully implemented with the specialized transportation he requires for a FAPE. The lack of transportation by MCPS is due to the Parent's choice to send the Student to the full-day program at [REDACTED]. In other words, the Parent's choice of the Student's placement was based on a desire to provide the Student with full-day instruction versus a half-day. But under all school options offered by the MCPS, the services under the Student's IEP remain the same.

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<sup>15</sup> Under the IDEA, an ALJ may find that a student with a disability did not receive a FAPE based on a procedural violation only if the procedural inadequacies: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefit. 20 U.S.C.A § 1415(f)(3)(E)(ii).

“The term ‘educational placement’ is not the location to which the student is assigned but rather the environment in which the educational services are provided.” *AW ex. Rel. Wilson v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004). As a result, a change in placement only occurs when the change results “in a dilution of the quality of [the] student’s education or a departure from the student’s [least restrictive environment]-complaint setting.” *Id.*

Here, there would be no dilution of the Student’s education if he were placed in a half-day program where his IEP could be *fully* implemented with transportation. His instructional hours, occupational, and speech therapy can be accomplished in a half-day program. Moreover, the inclusive educational environment does not change on the basis of the length of the school day or potential teacher changes that may occur in a half-day setting. The Parent’s belief that the full-day program is better or necessary for the Student is not persuasive. The Student is only entitled to the services outlined on his IEP.<sup>16</sup> And the MCPS has been willing to collaborate with the Parent to provide an alternative to the Student’s current school where it can provide the related service of transportation through a half-day program in an effort to fully implement the Student’s IEP. *See A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 681, n. 10 (4th Cir. 2007) (involving a lack of a specific placement when the parent disagreed with the educational environment not just location) (“the District should not be penalized because they were attempting to honor the requirements of I.D.E.A. which encourage parental participation in the education of their children.”); *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 535 (4th Cir. 2002) (holding that the offers by the LEA to the Parent of two different schools with the same IEP services provided FAPE) (“We emphasize that the IEP-development process is a cooperative one. Thus, if the school district identifies several schools during that process

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<sup>16</sup> *See* 20 U.S.C.A § 1401(9)(D) (A FAPE includes special education and related services that are “in conformity with” the IEP); *see also* 34 C.F.R. § 300.323(c)(2) (“As soon as possible” following development of an IEP, special education and related services must be made available to a student in accordance with that IEP.)

that it believes would serve the needs of the child, parents will have the opportunity to voice their preference before the IEP is finalized.”).

In summary, I conclude that the Parent has not demonstrated a denial of FAPE. The Student is currently making educational progress; therefore, the failure to provide transportation has not caused a deprivation of any educational benefit. 20 U.S.C.A § 1415(f)(3)(E)(ii)(3). Moreover, the Student’s IEP is reasonably calculated to provide the Student a FAPE, including the related service of transportation, through a half-day program that is available to the Student if the Parent so chooses. Thus, the Student’s right to a FAPE has not been impeded by the MCPS. 20 U.S.C.A § 1415(f)(3)(E)(ii)(1). Lastly, there was no evidence that the lack of transportation to [REDACTED] in the 2024-2025 school year significantly impeded the Parent’s opportunity to participate in the decision making process regarding the provision of a FAPE to the Student, as the Parent participated in the November 29, 2023 and November 19, 2024 IEP team meetings and actively choose the Student’s current school placement after being fully informed of the differences between the school options. 20 U.S.C.A § 1415(f)(3)(E)(ii)(2).

Having concluded that the Parent has not met her burden to show a denial of FAPE, I need not address the appropriateness of any potential remedy. Indeed, the Parent noted in her due process complaint that the only remedy she would accept is the Student “attending [REDACTED] in [REDACTED]’s class full-day and receiving transportation to and from school.” (Due Process Complaint, pg. 3). While that may be the Parent’s ideal solution, as noted above, providing a FAPE does not require a preferred education.

While my discretion to craft an equitable remedy is broad if a violation of FAPE is found, I would not craft a remedy ordering a change in bus routes to accommodate the Student. Indeed, even if a violation of FAPE was present for failure to fully implement the Student’s IEP, I am persuaded by the Eighth Circuit’s reasoning that such a remedy is not required in an instance where the Parent unilaterally decided to place the Student at [REDACTED] and at least two

other options ( [REDACTED] and [REDACTED] ) can provide the Student a FAPE and fully implement the Student's IEP with transportation. *See Timothy H. v. Cedar Rapids Community School Dist.*, 178 F. 3d 968, 973 (8th Cir.) (“[E]stablishment of a special bus route for a single student who admittedly receives a free appropriate public education at her neighborhood school, but who wants to go to another school for reasons of parental preference, is an undue burden on the school district.”).

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parent has not met her burden to show that the MCPS denied the Student a FAPE for the 2024-2025 school year by failing to provide the Student with transportation, as a related service. 20 U.S.C.A. §§ 1414(d)(1)(A)(i)(IV), 1415(f)(3)(E)(ii)(1)-(3); 34 C.F.R. § 300.34(a), (c); Md. Code Ann., Educ. § 8-401 (a)(4)(i); *Schaffer v. Weast*, 546 U.S. 49 (2005); *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Endrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017).

### **ORDER**

I **ORDER** that the Parent's complaint be, and is hereby, **DISMISSED**.

February 20, 2025  
Date Decision Mailed

\_\_\_\_\_  
Stephen W. Thibodeau  
Administrative Law Judge

SWT/kh  
#216476

## **REVIEW RIGHTS**

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (Supp. 2024). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

### **Copies Mailed To:**

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

Stacy Swain, Esquire  
Montgomery County Public Schools

[REDACTED]  
[REDACTED]  
[REDACTED]

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██████████,  
PARENT,  
ON BEHALF OF ██████████,  
STUDENT,  
v.  
MONTGOMERY COUNTY PUBLIC  
SCHOOLS

\* BEFORE STEPHEN W. THIBODEAU,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-MONT-OT-24-28229  
\*

\* \* \* \* \*

### FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parent:

- Parents Ex. 1 – Text messages between the Parent, ██████████ (the Parent’s mother) and ██████████ (the Parent’s sister), August 22, 2024
- Parent Ex. 2 - Emails between the Parent and ██████████, Supervisor, MCPS Resolution and Compliance Unit, September 19 and 20, 2024
- Parent Ex. 3 - Emails between the Parent and ██████████, Acting Director, MCPS Division of Special Education Prekindergarten, Programs and Services, July 16 2024 through August 16, 2024
- Parent Ex. 4 - Email from the Parent to ██████████, MCPS ██████████ (██████) Coordinator, August 23, 2024
- Parent Ex. 5 - Emails between the Parent and ██████████, MCPS Transportation Specialist, September 12, 2024 through September 18, 2024
- Parent Ex. 6 - Emails between the Parent and ██████████, MCPS ████████ Parent Educator, August 28 and 29, 2024
- Parent Ex. 7 - Emails between the Parent and ██████████, September 19 through September 24, 2024

I admitted the following exhibits on behalf of the MCPS:

- MCPS Ex. 1 - Evaluation Report and Determination of Initial Eligibility for the Student, December 9, 2022 (pp. 1-7)
- MCPS Ex. 2- Notice of No Assessment Needed – Reevaluation, November 19, 2024 (pg. 8)

- MCPS Ex. 3 - Prior Written Notice (PWN) for the Student, September 5, 2024 (pg. 9)
- MCPS Ex. 4 - PWN for the Student, November 19, 2024 (pp. 10-11)
- MCPS Ex. 5 - PWN for the Student, November 29, 2023 (pp. 12-13)
- MCPS Ex. 6 - PWN for the Student, December 9, 2022 (pp. 14-15)
- MCPS Ex. 7 - Individualized Education Program (IEP) for the Student, November 19, 2024 (pp. 16-50)
- MCPS Ex. 8 - IEP for the Student, November 29, 2023, amended on September 5, 2024 (pp. 51-96)
- MCPS Ex. 9 - IEP For the Student, November 29, 2023 (pp. 97-142)
- MCPS Ex. 10 - IEP for the Student, December 9, 2022 (pp. 143-179)
- MCPS Ex. 11 - Resume for [REDACTED], MCPS Special Education Teacher (pp. 180-182)
- MCPS Ex. 12 - Resume for [REDACTED], MCPS [REDACTED] Parent Educator (pp. 183-185)
- MCPS Ex. 13 - Resume for [REDACTED], MCPS Transportation Specialist, Special Education Routing and Scheduling Unit (pp. 186-189)
- MCPS Ex. 14 - Resume for [REDACTED], MCPS [REDACTED] Coordinator (pg. 190)
- MCPS Ex. 15 - Resume for [REDACTED], MCPS Special Education Teacher (pp. 191-193)
- MCPS Ex. 16 - Resume for [REDACTED], MCPS [REDACTED] Parent Educator (pp. 194-196)