

XXXX XXXX

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

* BEFORE DOUGLAS E. KOTEEN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No. MSDE-MONT-OT-17-24247

* * * * *

DECISION

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STATEMENT OF THE CASE

On August 3, 2017, XXXX XXXX (Parent), on behalf of his child, XXXX XXXX (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 United States Code Annotated (U.S.C.A.) § 1415(f)(1)(A) (2017).

On August 16, 2017, the Parent and MCPS participated in a resolution meeting, but were unable to resolve their dispute. I held a telephone prehearing conference on August 25, 2017. The Parent represented the Student. Zvi Greismann, Associate General Counsel for MCPS, represented MCPS. By agreement of the parties, the hearing was scheduled for September 6 and 20, 2017.

I conducted the due process hearing on September 6, 2017 at MCPS headquarters in Rockville, Maryland. The Parent represented the Student. Mr. Greismann represented MCPS.

As the hearing concluded on September 6, 2017, the second day of hearing scheduled for September 20, 2017 was cancelled.¹

The hearing date requested by the parties fell within forty-five days of the triggering events described in the federal regulations (in this case, August 16, 2017, the day the resolution meeting was held and failed to resolve the dispute). Therefore, the decision is due on or before the forty-fifth day following the resolution meeting. As the forty-fifth day falls on a Saturday, the decision in this matter is due on or before Friday, September 29, 2017. 34 Code of Federal Regulations (C.F.R.) § 300.510(b) and (c); 34 C.F.R. § 300.515(a) (2016).

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2016); Md. Code Ann., Educ. § 8-413(e)(1) (Supp. 2016); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 13A.05.01.15C; COMAR 28.02.01.

¹ MCPS filed a Motion to Dismiss or, in the Alternative, Motion for Summary Decision (Motion), with four attached exhibits, on August 24, 2017. MCPS contended that the issues raised in the Parent's due process complaint were not justiciable under the IDEA. At the telephone prehearing conference on August 25, 2017, the parties agreed that a motions hearing would be held on September 6, 2017, prior to the hearing on the merits. On August 29, 2017, the Parent filed a written response to the Motion with MCPS in Rockville, Maryland. However, this response was not forwarded to counsel for MCPS or to the OAH until it was disseminated at the hearing on September 6, 2017. At the September 6, 2017 motions hearing, the parties presented their respective arguments concerning the issues raised in the Motion. After considering the arguments of the parties, I denied the Motion in an oral ruling, concluding that the issues raised by the Parent in his due process complaint involved the educational placement of the Student, an issue properly considered under the IDEA. 34 C.F.R. §§ 300.107, 300.114(a), 300.116, 300.507(a) (2016). I determined that an alternative basis for denial of the Motion was that it constituted a motion for summary decision and MCPS had failed to support it with an affidavit, as required by the OAH Rules of Procedure. COMAR 28.02.01.12D(1).

ISSUES

The issues are as follows:

1. Is the Individualized Education Program (IEP) developed by the IEP team at MCPS for the Student for the 2017-2018 school year (SY), which recommends the Student be placed in the XXXX Program at [School 1] ([SCHOOL 1]), reasonably calculated to provide the Student with a free appropriate public education (FAPE) in the least restrictive environment (LRE)?; and
2. Was the IEP team's determination that the Student not attend and receive his educational program for the 2017-2018 SY at [School 2] ([SCHOOL 2]), the Student's then-neighborhood school, an appropriate educational placement decision for the Student?
3. If there was a denial of FAPE, what is the appropriate remedy?

SUMMARY OF THE EVIDENCE

Exhibits

The Parent offered no exhibits for admission into evidence.

I admitted the following documents on behalf of MCPS:

- MCPS Ex. 1. Student's IEP for 2017-2018 SY, dated June 13, 2017;
- MCPS Ex. 2. IEP Invitation Letter from MCPS to Parents, dated June 12, 2017; with attached Parent Report form and IEP Team Meeting Response Form;
- MCPS Ex. 3. Continued Eligibility Data and IEP Meeting Notes, dated May 5, 2017;
- MCPS Ex. 4. Report of Psychological Assessment for Student by XXXX XXXX, Nationally Certified School Psychologist (NCSP), dated May 5, 2017;
- MCPS Ex. 5. Educational Assessment Report for Student, by XXXX XXXX, Special Education Master of Arts (M.A.), dated April 28, 2017;
- MCPS Ex. 6. Classroom Observation of Student, by XXXX XXXX, dated April 28, 2017; with attached Elementary Teacher Reports, by XXXX XXXX, dated April 28, 2017;
- MCPS Ex. 7. Academic Student Profile for Student, dated February 9, 2017, with attached Behavior Intervention Plan for Student, dated December 14, 2016 (with handwriting);
- MCPS Ex. 8. Behavior Intervention Plan for Student, dated December 14, 2016 (typewritten), with attached Data Point Summaries and Narrative Comments, dated October 17, 2016 through June 9, 2017;
- MCPS Ex. 9. IEP Goals, dated December 14, 2016, with Progress Reports, dated January 26, 2017; April 6, 2017; and June 16, 2017;
- MCPS Ex. 10. IEP Goals, dated December 14, 2016, with Progress Reports, dated January 26, 2017 and April 6, 2017;
- MCPS Ex. 11. Withdrawn as duplicative;

MCPS Ex. 12. Curriculum Vitae for XXXX XXXX , principal, [School 3], undated;
MCPS Ex. 13. Curriculum Vitae for XXXX XXXX, Resource Teacher Special
Education, XXXX Program, [SCHOOL 1], undated; and
MCPS Ex. 14. Not offered.

Testimony

The Parent testified on behalf of the Student.

MCPS presented the following witnesses:

1. XXXX XXXX , Principal, [School 3] (accepted as an expert in general education and special education); and
2. XXXX XXXX, Resource Teacher Special Education, XXXX Program, [SCHOOL 1] (accepted as an expert in special education).

FINDINGS OF FACT

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

Background

1. The Student was born on XXXX, 2006. He has an educational disability code of Other Health Impaired (OHI) and is eligible for special education and related services under the IDEA.
2. The Student has been diagnosed with attention deficit hyperactivity disorder (ADHD), a condition that affects his access to educational instruction based on inattention and distractibility. The Student also has difficulty with self-regulation, switching between tasks, and completing assignments and other tasks. This impacts the Student with regard to writing, organization, social/behavior adaptability, making adjustments, and interacting with teachers and peers. (MCPS Ex. 1, p. 14; MCPS Ex. 3).
3. Due to his ADHD, the Student has a difficult time staying focused and on task in large group settings. He is more relaxed and focused in smaller group settings with less noise and distraction. The Student requires frequent breaks and reduced distractions, such as small group testing, in order to effectively access materials. (MCPS Ex. 1, p. 57).

4. The Student began attending [School 3] ([SCHOOL 3]), an MCPS school, on or about August 29, 2011, for kindergarten. The Student completed the fifth grade at [SCHOOL 3] in June 2017. (TR 71-72).

5. The Student received special education and related services in the XXXX Center at [SCHOOL 3] during much of his time there. The XXXX Center is a self-contained program outside general education for grades kindergarten through fifth grade. The class size is about eight to twelve students. The program is primarily for students performing below grade level in comparison to their non-disabled peers. The students are mainstreamed with their general education peers for science, social studies, lunch, recess, art, music, physical education (PE), and the media center. They receive services in a self-contained classroom setting for math, reading, and writing. The classroom includes a special education teacher and para-educator. (TR 71-72).

6. The Student tends to shut down when things are difficult or when tasks require a prolonged effort. He has difficulty completing work, sometimes becomes very distracted, and has difficulty distinguishing between reality and fantasy. The Student's disabilities affect his writing, organization, social/emotional behaviors and self-regulation, social skills with peers and adults, and his ability to complete tasks independently.

Programming Changes and Behavior Intervention Plan

7. Toward the end of fourth grade, the Student was placed in the general education setting more than in the self-contained setting in the XXXX Center. At the beginning of fifth grade, the Student was entirely mainstreamed in the general education setting with larger classes. He received support in general education from a special education case manager and a para-educator with regard to homework, materials, and organization. Other strategies were employed, including office referrals, reminders, clipboards, and sentence frames. In fifth grade, there were about twenty-four students in the Student's general education class. (TR 73, 78, 81).

8. The strategies employed in the general education setting at [SCHOOL 3] were not

sufficient to ensure the Student was effectively accessing the general education curriculum. (TR 79). The Student experienced increasing behavior problems in the general education environment in the beginning of fifth grade. He frequently became stressed, overwhelmed, or frustrated, which led to him experiencing multiple instances of self-harm and elopement. (MCPS Ex. 1, p. 15). During the first marking period in fifth grade, the Student eloped without permission from the classroom and other school settings about two to five times per day. During this period, he also had instances of self-harm about one to three times per week. (MCPS Ex. 8).

9. When the Student became frustrated, he exhibited repeated instances of self-harm, which included hitting his chin or head on a desk, or hitting himself with his own hands. He also experienced multiple elopements, either running out of the classroom or other school settings, or attempting to hide in a cubby. The Student also exhibited loud vocalizations or used inappropriate language. The principal at [SCHOOL 3], XXXX XXXX (XXXX), was frequently called to the Student's class to address his disruptive behavior, either by trying to locate him or by assisting in de-escalating his self-injurious behavior. (TR 77-78, 81-83).

10. On or about November 9, 2016, the IEP team conducted a periodic review of the Student's educational program in light of his behavioral issues. The IEP team determined that it was necessary to make changes to the Student's instructional setting to address his behavioral issues and assist him in completing tasks. The changes provided for the Student to receive whole group instruction in a larger group setting in general education for about ten hours per week, and receive small group instruction outside general education in a smaller class for an additional ten hours per week. (TR 81). As a result, the Student moved to a smaller and quieter classroom setting outside general education in the XXXX Center at [SCHOOL 3] with a reduced teacher-student ratio of about 2:6, and fewer distractions. The smaller classroom had about eight to twelve students and afforded the Student better access to instruction and improved his ability to complete assignments. (MCPS Ex. 1, p. 13); (TR 81-82). The general education teacher, XXXX

XXXX , provided the Student with whole group instruction in the larger setting, and Ms. XXXX,² the XXXX Center teacher, provided the Student with instruction in the smaller self-contained classes. (TR 109-110).

11. Beginning on or about November 9, 2016, and continuing through the end of the school year, the Student received instruction in small group classes in the areas of math, reading, and writing. The Student received instruction in science and social studies in a larger class with general education students, but also received special education support in those subjects. (TR 91-93). The XXXX Center at [SCHOOL 3] monitored the Student's completion of tasks. (TR 82-83).

12. The Parent participated in the Student's periodic assessment in November 2016 and agreed with the recommendation of the IEP team to move the Student into smaller self-contained classes. (TR 101-102).

13. The Student made progress in the smaller classes together with implementation of a Behavior Intervention Plan (BIP). As the Student's behavior improved, XXXX did not have to intervene as frequently as before. The special education teacher and para-educator were able to monitor the Student more effectively in the smaller classes with behavioral supports, which led to improvements in his behavior, more effective completion of assignments and other tasks, and the Student had a more positive outlook. (TR 82-83, 95-96); (MCPS Ex. 4).

14. The IEP team prepared progress notes for the Student in January, April, and June 2017, which demonstrated that the Student was making progress on his goals and objectives. The IEP team provided the Parent with a copy of the progress notes. (TR 83-84); (MCPS Ex. 9). The Student was able to make progress in his goals and objectives with moderate adult support in managing materials, receiving consistent reminders, receiving extended time, and maintaining assignments. The para-educator worked with the Student in the small class setting to assist him

² Ms. XXXX's first name is not identified in this record.

with problem-solving. There were some inconsistencies in the Student's performance in both large and small class settings. (TR 90-91).

15. During the November 2016 periodic review, the Student's IEP team authorized the school to conduct a Functional Behavior Assessment (FBA) and develop a BIP to address the Student's behavioral problems. The Parent provided consent for the FBA and BIP to effectively manage the Student's behaviors and promote his safety. (TR 76, 79); (MCPS Exs. 1, 8).

16. In November 2016, the IEP team performed an FBA and developed a BIP for the Student with positive behavioral supports. The Parent attended the periodic review meeting in November 2016 and participated in completing the FBA. The BIP was implemented in November or December 2016. (MCPS Exs. 3, 7, 8); (TR 74).

17. The BIP was developed to address the Student's problems with self-regulation, improve coping skills, and promote better communication with teachers and peers, and address his stress and feelings of being overwhelmed. The BIP focused on the Student's elopement and self-harming behaviors. The BIP established a goal of zero instances of elopement or self-harm in one marking period. The BIP called for other staff, including case managers, para-educators, and classroom teachers to provide the Student with one-to-one support and frequent breaks, for problem-solving and regulation. (MCPS Exs. 7, 8); (TR 77).

18. As part of the BIP, the staff maintained data to monitor the Student's behavior and performance, observe patterns, and determine whether the Student was successful or required additional interventions. (TR 80-81); (MCPS Exs. 7, 8).

19. After implementation of the BIP during the second marking period of fifth grade, the Student showed improvement, exhibiting one instance of elopement and one instance of self-harm. During the third marking period, the Student exhibited one instance of elopement and zero instances of self-harm. During the fourth marking period, the Student exhibited one instance of elopement and one instance of self-harm. (MCPS Exs. 7, 8). The Student's instances of self-

harm, elopement, and loud vocabulary were significantly reduced under the BIP, but not eliminated. The BIP called for the continued monitoring of the Student's behavior with supports to assist him in problem-solving. (MCPS Ex. 8).

20. With the introduction of the social and emotional supports in the BIP, the Student was better able to access the curriculum and became more available for instruction and more consistent with tasks. He required removal to the principal's office less often and less frequent treatment in the crisis center. The placement decisions of the IEP team, together with implementation of the BIP, provided for the Student to receive instruction in an alternative setting throughout the school day, with reduced stimuli and reduced distractions.

21. The BIP provided coping strategies for the Student to problem-solve when he felt overwhelmed and was unable to access the curriculum and instruction. The Student was encouraged to verbalize his feelings and teachers were to provide the Student with choices for coping with discomfort. The BIP also provided the Student with options for varied instructional settings to reduce distractions, limit external stimuli, and maintain fewer people in the classroom. To reduce stress and instances of elopement, the Student was required to check-in on a regular basis, including at the start and end of each day, with his special education case manager, XXXX XXXX (XXXX), Special Education M.A. The BIP also called for positive response and encouragement, use of a highly structured behavior contract, positive reinforcement, and effective coping strategies through models and language. The Student was closely monitored with structured supports to reduce unsafe behaviors, with crisis response as a last resort. (MCPS Exs. 7, 8); (TR 93-94).

22. The Student demonstrated some instances of elopement, self-harm, difficulty staying on task, difficulty interacting with peers, and challenges with problem-solving during fifth grade, even after implementation of the BIP. (MCPS Ex. 8).

Educational and Psychological Assessments

23. The IEP team at [SCHOOL 3] held a re-evaluation planning meeting for the Student on February 15, 2017. At this meeting, the IEP team considered whether the Student continued to be eligible for special education services with an IEP and, if so, under what qualifying disability code. The IEP team recommended that the Student undergo new testing with formal educational and psychological assessments to address these issues. The Parent was present at this meeting and provided consent for MCPS to perform the evaluations. (TR 102-103).

24. In response to this decision, XXXX performed an educational assessment of the Student. On April 28, 2017, XXXX prepared an Educational Assessment Report, as part of the three-year evaluation process, to determine the specific recommendations for the Student's programming and the appropriate amount of specialized instruction. (MCPS Ex. 5); (TR 103-104).

25. Using the Woodcock-Johnson test, XXXX determined that the Student was performing primarily in the average range in reading, math, and written expression. He showed some distractibility and lack of focus when required to stay on task for long periods or in timed tests, and when he felt stressed or overwhelmed. He was easily distracted by external stimuli and by his own thoughts. XXXX determined that the Student's lack of attention and motivation affected his performance on some subtests, particularly those measuring pace and sustained effort. He performed better with supportive technology than paper and pencil. (MCPS Exs. 3, 5).

26. As a result of the Educational Assessment, XXXX made several recommendations for the Student in her report. The recommendations included the use of positive reinforcement and structured behavioral supports, reduced distractions in the learning environment, teaching math in small groups, encouraging his participation, and providing opportunities for the Student to collaborate in small groups within the general education classroom. She also recommended extended time and support to ensure he paid attention when

directions were given, and close monitoring of his use of technology for reading and writing. She also recommended supports for organizing materials and completing assignments. (MCPS Ex. 5); (TR 111).

27. XXXX also recommended teaching strategies to help the Student accept change, coping strategies for when he feels overwhelmed, and skills and strategies to promote appropriate social interactions with teachers and peers. She further recommended the use of problem-solving tools to address focus and attentional issues in school. (MCPS Ex. 5); (TR 111).

28. As part of the assessment, XXXX conducted a classroom observation on April 28, 2017. The Student exhibited some distractibility, lack of organization, and inattention in large and small classroom settings when working on math, and he was unable to complete assigned tasks by the end of class. Teachers and para-educators helped to redirect the Student and get him back on task when he was distracted. XXXX also assisted teachers in completing their class reports. (MCPS Ex. 6); (TR 106-109).

29. On May 5, 2017, XXXX XXXX (XXXX), a nationally certified school psychologist (NCSP), prepared a Report of Psychological Assessment for the Student, as part of a three-year re-evaluation to assist in developing IEP recommendations for the Student's instruction, making appropriate placement decisions for his transition to middle school, and determining the Student's proper educational disability code. The teacher ratings on this assessment identified the Student's issues of emotional distress, defiant behaviors, hyperactivity, inattention, social problems, compulsive behaviors, and anxiety. (MCPS Ex. 4); (TR 113-114).

30. XXXX made several recommendations in her report. These included providing the Student with challenging work to keep him on task, increase motivation, and reduce anxiety. She recommended the Parent follow-up with the Student's pediatrician to address difficulties with attention, self-regulation, and anxiety. She recommended a highly structured classroom

routine, administering simple directions, maintaining eye contact, and providing auditory and visual prompts to increase understanding. (MCPS Ex. 4).

31. XXXX also recommended that his teachers provide the Student with frequent feedback, encourage class participation to increase confidence, and provide him with academic and behavioral goals and models of proper work. She also recommended assigning a peer to work with the Student to assist him in organizing materials, understanding class assignments, and promoting positive peer attention. She also recommended regular and frequent breaks and brief physical exercise. She further recommended the teaching of rules of social interaction and appropriate conversation techniques, and encouraging participation and social skills through structured group activities. (MCPS Ex. 4).

32. During testing, the Student acknowledged to XXXX his need for a quiet environment, smaller class sizes, and a behavior contract to help him be successful in school. He also expressed his understanding of the need to stay focused and be safe in school. (MCPS Ex. 4).

May 5, 2017 IEP Meeting

33. An IEP meeting was held on May 5, 2017, where the IEP team considered the Student's educational and psychological assessments, his behavioral rating scales, and autism rating scales. XXXX was present and discussed her Educational Assessment, classroom observations, and teacher reports. XXXX was also present and discussed her Psychological Assessment. XXXX also attended the February 15, 2017 meeting where the IEP team recommended that the assessments be performed. (TR 112). The Parent attended and participated in the May 5, 2017 IEP meeting and all other IEP meetings. XXXX was also present at the May 5, 2017 and subsequent June 13, 2017 IEP meetings, but did not attend the February 2017 IEP meeting. (MCPS Exs. 3-6); (TR 51-52, 104-110).

34. Based on the assessments, the IEP team determined that the Student's educational disability code should remain as OHI due to his issues with attention and distractibility, arising

from his ADHD diagnosis. The team determined that it did not have enough information to support a finding of autism spectrum disorder as the Student's primary disability. Although the Student exhibited some behavioral characteristics consistent with autism, the team could not identify autism as the Student's primary disability code because XXXX received only limited input from the Parent. The Student's classroom teachers completed the autism rating scales and Conners scales, but the Parent did not provide that requested information to XXXX. The IEP team concluded there was insufficient information to change the Student's disability code to autism, and determined it should remain as OHI based on his issues related to ADHD. (MCPS Exs. 1, 3, 4); (TR 113-120).

35. During the May 5, 2017 meeting, the IEP team discussed the Student's present levels of performance and his progress in reducing, but not eliminating, behaviors of self-harm and elopement after his learning environment was changed in November 2016. The IEP team determined that the Student should continue with whole group instruction in a larger classroom at the beginning of the day and transition to the smaller classroom setting for the remainder of the school day to reduce distraction and promote the task completion. (MCPS Ex. 3); (TR 119-120).

36. The IEP team also discussed the Student's continued attentional issues in the classroom, difficulties with transitions and problem-solving, and his tendency to shut down when he is unregulated in the classroom. The team noted his ability to problem-solve through writing, the use of comic strips, and adult support. The Student identified himself as being creative and described art as one of his favorite subjects. (MCPS Ex. 3).

37. The IEP team also addressed the Student's need for additional support during less structured times, such as lunch and recess, to help him problem solve and navigate social interactions. [SCHOOL 3] provided the Student with increased staffing for support in less structured settings. The IEP team also discussed programming to address behavioral needs,

options for individual counseling, and the need for assistance from his pediatrician to address distractibility issues. (MCPS Ex. 3).

38. At the May 5, 2017 meeting, the IEP team also discussed whether the Student's needs could be met at [SCHOOL 2], his neighborhood school. The IEP team recommended that the Parent visit [SCHOOL 2] and also visit another middle school with an appropriate program with adequate structure and problem-solving strategies to address the Student's needs. (MCPS Ex. 3).

June 13, 2017 IEP Meeting and Development of IEP

39. The IEP team held another meeting on June 13, 2017, where it developed an IEP for the Student for the 2017-2018 SY. The Parent attended all of the Student's IEP meetings in 2017, including the June 13, 2017 meeting, and participated in the development of his 2017-2018 IEP. (TR 51-52). The Student is on a diploma track. (MCPS Ex. 1, p. 5); (TR 72).

40. XXXX XXXX, Special Education Resource Teacher, and coordinator of the XXXX Program at [SCHOOL 1], attended the June 13, 2017 IEP meeting. She described the services available in the XXXX Program at [SCHOOL 1]. XXXX XXXX, the principal at [SCHOOL 2], was also present at the June 13, 2017 IEP meeting, where he described the services available at [SCHOOL 2] and discussed whether these services would be appropriate for the Student's needs.

41. XXXX was also present at the June 13, 2017 IEP meeting. As the Student's special education case manager, XXXX was responsible for ensuring that the IEP was properly implemented and that the recommendations in the educational and psychological assessments were incorporated into the Student's 2017-2018 IEP. XXXX provided the Student with problem-solving supports by having him check in with her regularly to reduce stress in accordance with the BIP. (TR 111-112).

42. The Parent and Student, together with XXXX, visited the XXXX Program at [SCHOOL 1], and also visited [SCHOOL 2]. XXXX XXXX, who runs the XXXX Program, showed them around during their visit to [SCHOOL 1]. (TR 146-147). The IEP team discussed these two middle school visits and the observations regarding the programs at both schools. The IEP team also discussed the Student's behavior over the course of the school year and the services and supports that would be available in both programs to address the Student's behavior and his continued needs. (TR 123-124).

43. The Student's goals and objectives and supplementary aids and services were developed by XXXX, XXXX, the Student's general education teacher, and XXXX, the Student's special education teacher in the XXXX Center.

44. The IEP team recommended that the Student attend the XXXX Program at [SCHOOL 1] for the 2017-2018 SY with twenty-seven hours outside of general education to address his goals and objectives in the areas of social interactions, self-regulation, written language, organization, and behavior related to academic task completion. The IEP calls for the Student to receive special education services in the XXXX Program for all of his academic classes, as well as physical education, reading, and resources, to be provided by a special education classroom teacher and para-educator. The IEP also provides for three hours per week of services in general education, where he will be able to participate with non-disabled peers with supplementary aids and services. The IEP team also recommended that the Student receive three hours per month of counseling services provided by a school psychologist and/or social worker. (MCPS Ex. 1). (MCPS Ex. 1, pp. 40-42, 54); (TR 125-130).

45. The Student is age appropriate for oral language and usage. The Student is on grade level for Math, but has difficulty completing tasks. The Student's performance on standardized tests in math was generally in the average range, with the exception of the math facts fluency subtest, which was in the very low range. The Student is calmer and his access to instruction

improves when he is in a small class setting with a reduced student/teacher ratio conducive to his emotional and behavioral needs. (MCPS Ex. 1, p. 8).

46. The IEP reflects that with regard to written language, the Student has needs concerning task completion and writing development. His scores on standardized tests were in the average range for spelling, writing samples, and sentence writing fluency. The Student requires a smaller group setting with less distraction to focus on the demands of writing. (MCPS Ex. 1, p. 9).

47. The Student is on grade level in reading with regard to task completion. His performance on standardized reading tests was in the average range, with the exception of reading recall and word reading fluency, which were in the low range. The Student requires a smaller group setting with reduced distraction to focus on reading demands and reading for longer periods. (MCPS Ex. 1, p. 10).

48. The Student requires assistance with organizing materials, completing assignments on time, and transporting materials home on a daily basis. The Student requires prompts and continued supports regarding organization and the completion of assignments. (MCPS Ex. 1, p. 11).

49. With regard to social problem-solving behavior, the Student has exhibited inappropriate interactions with peers and teachers when he is stressed or frustrated. When confronted with problems, he sometimes fails to respond to his teachers. On occasion, he demonstrates overly aggressive verbal responses, the use of inappropriate gestures and language, and physical responses or threats toward peers. Efforts to help the Student self-regulate include individual problem-solving with teachers, and the use of drawings to express thoughts about problems. (MCPS Ex. 1, p. 12).

50. With regard to compliance with classroom rules, the Student has shown understanding and a positive response to BIP interventions, including structured positive reinforcement on a daily and weekly basis. (MCPS Ex. 1, p. 13).

51. The Parent believes the Student is very bright, but that he needs to manage his behaviors more effectively. He seeks to identify programming that will best meet the Student's needs for middle school. (MCPS Ex. 1, p. 14).

52. The Student requires assistive technology tools to support writing development and organization. These include use of an electronic word processor, access to a desktop computer, and graphic organizers for instructional support. (MCPS Ex. 1, pp. 16, 20).

53. The Student requires accommodations to keep him focused on tasks. These include organizational aids, monitoring independent work, providing assistance with organization, and repetition of directions. The Student also needs assignments to be broken down into smaller units and the chunking of texts. (MCPS Ex. 1, pp. 23-25).

54. The Student also requires instructional and testing accommodations, including 50% extended time, frequent breaks, and changing schedules. The Student requires an instructional setting with reduced distractions to himself and others to improve his performance. (MCPS Ex. 1, pp. 21-22, 57, 60).

55. The Student's 2017-2018 IEP also addresses the Student's behavioral issues as they impact educational opportunities. The Student requires, and the IEP and/or BIP provide for, daily social and behavioral supports, which include adult support to maintain safety with peers, coordination of support services, crisis prevention, crisis intervention as needed, encouraging the Student to request assistance, encouraging and reinforcing appropriate behavior, implementing a behavior contract, social skills training, and the use of positive reinforcement. The Student also requires preferential seating. (MCPS Ex. 1, pp. 26-29).

56. The IEP includes goals and objectives for behavior, involving social interactions, self-regulation, and academic task completion. The IEP also includes goals and objectives for written language and organization. (MCPS Ex. 1, pp. 35-39).

57. The IEP team determined that the XXXX Program will provide the Student with the LRE to address his behavioral needs with appropriate supports. The IEP team determined that the services provided through the XXXX Program are necessary to enable the Student to access the general education grade level curriculum and opportunities for instruction. The team also determined that the XXXX Program would meet the Student's needs for an educational setting with reduced distractions, a reduced number of students in class, reduced noise, and more adult support. The IEP also provides for the Student to receive special education supports in a general education setting, as well as access to a small self-contained setting across areas of reading, writing, and math. (MCPS Ex. 1, pp. 40, 54).

58. The IEP team also determined that the services the Student needs are not available in his home school because he requires services in a setting conducive to his learning needs, behavioral supports to facilitate access to instruction, and coping skills. The XXXX Program at [SCHOOL 1] is the placement closest to the Student's home that will provide the special education services and supports that the Student needs. The IEP also provides for the Student to receive transportation as a related service so he can attend the XXXX Program at [SCHOOL 1]. (MCPS Ex. 1, pp. 41, 54).

59. The Student's academic needs for self-regulation and behavior warrant appropriate supports and small self-contained classes that are not available at [SCHOOL 2], the Student's neighborhood school in [City 1] before he moves, or at [School 4] ([SCHOOL 4]), the Student's neighborhood school after his family moves to [City 2]. (MCPS Ex. 1, p. 56).

XXXX Center at [SCHOOL 3]

60. XXXX has been the principal at [SCHOOL 3] since 2015. She received a B.A. degree in special education and elementary education at XXXX University in 2002, and a master's degree in educational leadership and administration at XXXX College in 2008. She has worked as a general education and special education teacher, assistant principal, and principal in MCPS. (MCPS Ex. 12); (TR 68-71).

61. The Student was placed in the school-based XXXX Center at [SCHOOL 3] for most of his time at [SCHOOL 3]. (TR 54-55). The XXXX Center at [SCHOOL 3] is a self-contained program outside general education, with about eight to twelve students in a class. Some of the students in the XXXX Center performed at one to two grade levels below their peers. (TR 72).

62. The students in the XXXX Center at [SCHOOL 3] were mainstreamed in general education with non-disabled peers for science, social studies, art, music, PE, media center, lunch, and recess. In math, language, and reading, the Student attended smaller self-contained classes with a special education teacher and para-educator. For science and social studies, the Student received instruction in a large general education setting with disabled and non-disabled peers, and with additional support from a special education teacher and para-educator. (TR 90-93).

63. The Student performed above the benchmark in reading, but was performing below the benchmark in math. Therefore, he required more support in math than in reading. (TR 96-97); (MCPS Ex. 7). The Student made significant progress in reading in third, fourth, and fifth grades. Math is an area of need for the Student that continues to be addressed through the Student's IEP. (TR 98-100).

The XXXX Program at [SCHOOL 1]

64. XXXX XXXX (XXXX) has been the Special Education Resource Teacher for the XXXX Program at [SCHOOL 1] since 2010. She received a bachelor of science degree in elementary education from the University of XXXX in 1991, a master's degree in

special education from XXXX University (XXU) in 2002, and a certificate in administration and supervision from XXU in 2007. She is certified in elementary education for Grades 1-8 and certified in special education from birth to adult. She has worked as a general education teacher and special education teacher in Washington, D.C. and in MCPS. (MCPS Ex. 13); (TR 142-143).

65. XXXX is responsible for the daily operations of the XXXX Program at [SCHOOL 1]. She handles scheduling and staffing, performs assessments, chairs IEP meetings, holds other meetings, works with students, and contacts parents when necessary. (TR 143-144).

66. The XXXX Program is available at three different middle schools in MCPS, [SCHOOL 1], [School 5] in XXXX, and [School 6] in XXXX. Among the schools that offer the XXXX Program, [SCHOOL 1] is the school that is closest to the Student's home in either [City 1] or [City 2]. (TR 148).

67. XXXX attended the June 13, 2017 IEP meeting. She listened to the IEP team discuss the Student's strengths and weaknesses and she described the XXXX Program. XXXX left the meeting early, but was also present when XXXX XXXX, the principal at [SCHOOL 2], discussed the services available at his school. XXXX also reviewed the Student's assessments and his IEP prior to the meeting. XXXX was present at the meeting when the IEP team recommended the Student for the XXXX Program at [SCHOOL 1]. Based on her knowledge of the Student's needs and the services available in the XXXX Program, XXXX agreed with the recommendation of the IEP team that the Student be placed in the XXXX Program at [SCHOOL 1]. (TR 153-160).

68. Students in the XXXX Program at [SCHOOL 1] are taught in small classrooms for the entire school day. There are twenty-nine students in the XXXX Program at [SCHOOL 1] and there are seven students in the sixth grade. The Student has from three to seven students in his classes in the XXXX Program at [SCHOOL 1]. Students in the XXXX Program also take physical education in classes with thirteen to sixteen students. (TR 47, 145).

69. The XXXX Program provides special education teachers for English, math, science, social studies, and PE. The Program also provides the students with para-educators in the classroom. (TR 145).

70. The XXXX Program at [SCHOOL 1] is an appropriate educational placement for the Student because it will provide the Student with small self-contained classes with less distractions, and the structure and academic and behavioral supports that he needs, consistent with his IEP and BIP. Similar to the XXXX Center at [SCHOOL 3], the XXXX Program at [SCHOOL 1] will provide the Student with adult support from special education teachers, para-educators, and school psychologists to address his IEP goals and objectives. (TR 125-130, 154-155).

71. [SCHOOL 2] and [SCHOOL 4] cannot provide the small self-contained classes with less distraction, or the behavioral supports that the Student needs. Neither [SCHOOL 2] nor [SCHOOL 4] offer a program that provides students with services from a school psychologist and para-educator, small self-contained classes, and other behavioral supports, like the services that are available at the XXXX Program at [SCHOOL 1]. The Student needs these services to address his continuing issues with distractibility, difficulty in completing tasks, frustration, self-harm, and elopement. (TR 125-129, 154-155, 159-160).

72. In the general education environment at [SCHOOL 2] or [SCHOOL 4], the Student would not have the support of a school psychologist and para-educator to de-escalate the Student's behavior if he became frustrated and engaged in self-harming behavior or eloped from his classroom. With the limited services available at [SCHOOL 2] or [SCHOOL 4], the Student would have inadequate support in the general education environment. In this setting at [SCHOOL 3] without appropriate supports, the Student required referral to the office when he became disruptive, the Parent had to be called, and the crisis center had to be contacted. These methods

were inadequate at [SCHOOL 3] to address the Student's individual's needs and ensure that he could access the general education curriculum and receive appropriate instruction. (TR 126-130).

73. The XXXX Program provides the students with academic, behavioral, and social-emotional support. The Program also provides the students with counseling services with a school psychologist or social worker. Students have access to group counseling and to crisis intervention if a student exhibits behaviors harmful to themselves or others. The psychologist or social worker may also work with the family to provide a student with access to other services as needed. (TR 145-146).

74. There are extracurricular activities available at [SCHOOL 1], including a drama club, track club, and STEM (science, technology, engineering, and math) club. If a teacher is interested in sponsoring a homework club, that could be established at [SCHOOL 1]. Because clubs are generally based on teacher interest, the clubs that are available at the schools within MCPS vary from school to school. (TR 152-153).

75. If a student participates in an after-school activity on a regular basis, the school will provide the student with transportation. (TR 152).

76. The Parent has not inquired about the after-school activities that are available at [SCHOOL 1], or whether tutoring services are available in the schools. (TR 59-63).

Miscellaneous

77. The Student made sufficient progress to meet his goals during most of his fifth grade marking periods with regard to organization, behavior, and written language goals. During the marking period ending on or about January 26, 2017, the Student did not make sufficient progress toward meeting his behavior goals for self-regulation and social interactions due to inconsistencies in his efforts at self-regulation and his ability to receive instruction. The Student exhibited frustration that was manifested through verbal or physical interactions with peers. (MCPS Ex. 9).

78. The Student lived in [City 1], Maryland at the time of the due process hearing on September 6, 2017. The Parent intends to move his family to XXXX Drive in [City 2], Maryland in September 2017. (TR 62-63).

79. When the Student was living in [City 1], his home school was [SCHOOL 2]. After the family moves to [City 2], the Student's home school will be [SCHOOL 4]. (TR 60). The XXXX Program at [SCHOOL 1] is the closest program to both [City 1] and [City 2] that provides the appropriate services to meet the Student's individual educational needs. (TR 148-149).

80. While the Student was attending [SCHOOL 3], he obtained private tutoring services from XXXX in [City 1], Maryland after school. XXXX is a national company that has numerous locations throughout Montgomery County, including in [City 1] and [City 2]. The Parent is responsible for transporting the Student to XXXX to obtain private tutoring. (TR 49-51, 61-62).

81. MCPS provides transportation as a related service so the Student can attend the XXXX Program at [SCHOOL 1]. The Student will be transported to [SCHOOL 1] on a special education bus with a bus driver and bus attendant. (TR 149). A special education bus picks students up at their door or by the curb. In contrast, a general education bus picks students up at a general local bus stop. (TR 150).

82. The bus ride to transport the Student from [SCHOOL 1] to his home in [City 1], Maryland on the special education bus takes about one hour or more. School ends at 3:00 p.m. and the bus is scheduled to leave at about 3:10 p.m. On September 5, 2017, the first day of school for MCPS for the 2017-2018 SY, the Student arrived home from school after being transported on the special education bus at about 4:22 p.m. However, the buses left later than usual that day because it was the first day of school and students were late in getting on the bus. (TR 28, 50, 151-152).

83. Although the ride on the special education bus is longer, it takes only about

fifteen to twenty minutes to drive directly from [City 2] to [SCHOOL 1] in XXXX. (TR 151, 162).

DISCUSSION

Legal Principles

The identification, evaluation, and educational placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1487 (2017), 34 C.F.R. Part 300 (2016), Md. Code Ann., Educ. §§ 8-401 through 8-417 (2014 and Supp. 2016), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412(a)(1) (2017).

FAPE is statutorily defined as “special education and related services” that are provided “in conformity with the individualized education program required under section 1414(d)” of the IDEA. 20 U.S.C.A. § 1401(9). In 2017, the United States Supreme Court ruled that FAPE “requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017). Rejecting the “merely more than *de minimis*” test applied by the Tenth Circuit, *see id.* at 1000, the Court reiterated and clarified principles originally set forth in the *Rowley* decision. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).³

Directly adopting language from *Rowley*, and expressly stating that it is not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Endrew F.* Court instructed that the “absence of a bright-line rule ... should not be mistaken for ‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’” *Endrew F.*, 137 S.Ct. at 1001 (citing *Rowley*, 458 U.S. at 206). At the same time, the *Endrew F.* Court wrote that in determining the extent to

³ In *Endrew F.*, the Court observed that it remains “[m]indful that Congress [despite several intervening amendments to the IDEA] has not materially changed the statutory definition of a FAPE since *Rowley* was decided.” *Id.* (comparing 20 U.S.C.A. § 1401(18) (1976 ed.) with 20 U.S.C.A. § 1401(9) (2012 ed.)).

which deference should be accorded to educational programming decisions made by public school authorities, “a reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Endrew F.*, 137 S. Ct. at 1002.

An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE. *M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F. 3d 315, 319 (4th Cir. 2009). To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child’s disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI) (2017).

An IEP shall include “[a] statement of the child's present levels of academic achievement and functional performance, including” and, specifically, “[h]ow the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children).” 34 C.F.R. § 300.320(a)(1)(i) (2016). If a child’s behavior impedes his or her learning or that of others, the IEP team, in developing the child’s IEP, must consider, if appropriate, development of strategies, including positive behavioral interventions, strategies and supports to address that behavior, consistent with 34 C.F.R. § 300.324(a)(2)(i) (2016). A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision. 34 C.F.R. § 300.324(b).

The Code of Federal Regulations provides, in pertinent part, the following language relevant to the issues in this case:

The State must ensure the following:

- (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

34 C.F.R. § 300.107 (2016).

(a) General.

- (1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies meet the LRE requirements of this section and §§ 300.115 through 300.120.
- (2) Each public agency must ensure that—
 - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

...

34 C.F.R. § 300.114 (2016).

(a) The placement decision-

- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement-

- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

34 C.F.R. § 300.116 (2016).

Burden of Proof

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent has the burden of proving that the Student's IEP was not reasonably calculated to provide him with a FAPE and educational benefit in the LRE, and that the IEP team's decision to place the Student in an educational program that is not at his neighborhood school was inappropriate.

Arguments of the Parties

The Parent contends that MCPS has pushed the Student into the XXXX Program at [SCHOOL 1], and this Program is not appropriate for the Student. The Parent denies that the Student has behavioral issues and argues that he should be able to attend his neighborhood school with his friends. At his previous address in [City 1], the Student's neighborhood middle school was [SCHOOL 2]. Following the family's move to [City 2], the Student's neighborhood middle school will become [SCHOOL 4]. The Parent contends that [SCHOOL 1] is too far from their home, the Student is forced to ride on the bus to [SCHOOL 1] for more than one hour, and this transportation arrangement is not safe. He also contends that the Student will not have time to participate in extracurricular activities at school or in the community due to the long bus ride. He contends that the long bus ride to [SCHOOL 1] will prevent the Student from being able to obtain private tutoring services at XXXX as he did when he attended [SCHOOL 3]. Therefore, the Parent contends that the Student's placement in the XXXX Program at [SCHOOL 1] is inappropriate.

MCPS contends that the XXXX Program is the appropriate educational placement for the

Student and that [SCHOOL 1] provides the closest location for the XXXX Program to the Student's home in either [City 1] or [City 2]. MCPS contends that the XXXX Program is appropriate because it is consistent with the Student's goals and objectives on his IEP and will provide the Student with the educational and behavioral supports that he needs, which include small self-contained classes and counseling services that he requires to be successful in accessing instruction in the general curriculum. MCPS further contends that the neither of the Student's neighborhood schools ([SCHOOL 2] and [SCHOOL 4]) can provide the Student with the services and supports he needs in small self-contained classes with extensive behavioral supports, which are only available through the XXXX Program. Contrary to the Parent's claim, MCPS asserts that the Student has a history of behavioral problems and that the Student's IEP and his placement in the XXXX Program is reasonably calculated to address the Student's continuing academic and behavioral issues and provide the Student with a FAPE in the LRE.

Analysis

At the June 13, 2017 IEP meeting, the IEP team recommended that the Student attend the XXXX Program at [SCHOOL 1] with small self-contained classes and extensive behavioral supports. This recommendation was based on the IEP team's familiarity with the Student and his individual academic and behavioral needs, the nature of the XXXX Program at [SCHOOL 1], and the absence of appropriate academic and behavioral services and supports at [SCHOOL 2], the Student's neighborhood school.⁴ The Parent participated in all of the Student's IEP meetings at issue here, which include the meetings conducted on November 9, 2016, and February 15, May 5, and June 13, 2017.

The Parent did not identify any specific disagreement with the goals and objectives,

⁴ At the June 13, 2017 IEP meeting, the IEP team focused on whether the Student's then-neighborhood middle school, [SCHOOL 2] in [City 1], could address his educational and behavioral needs or whether the XXXX Program at [SCHOOL 1] in XXXX was an appropriate placement. At the hearing, after the Parent addressed the Student's pending move to [City 2] within the [SCHOOL 4] boundary, MCPS contended that neither [SCHOOL 2] nor [SCHOOL 4] could provide the appropriate services and supports to address the Student's needs.

accommodations, services, and supports included in the Student's IEP. He did claim, however, at the due process hearing that the Student does not have behavioral problems and that his BIP is not appropriate. As addressed more fully below, the evidence presented by MCPS clearly contradicts the Parent's testimony in this regard, and the Parent's own testimony is inconsistent with his position. The Parent attended each of the relevant IEP meetings and agreed with the decisions made by the IEP team at those meetings, aside from the decision recommending placement of the Student in the XXXX Program at [SCHOOL 1]. The Parent attended the November 9, 2016 IEP meeting, agreed with the recommendations of the IEP team, and gave consent for the [SCHOOL 3] staff to conduct an FBA and develop a BIP to address the Student's significant behavioral issues, including numerous instances of self-harm and elopement, as well as instances of loud vocalizations and inappropriate language. The Parent also participated in completion of the FBA. The Parent also agreed with the recommendation of the IEP team in November 2016 to modify the Student's placement that had been entirely within the general education setting, and to provide instead for about ten hours per week of services and supports in the XXXX Center at [SCHOOL 3], to include smaller classes, fewer distractions, and less noise, as well as additional supports to address his disruptive behavior and difficulties with problem-solving, self-regulation, and completion of assignments.

The decision of the IEP team to modify the Student's educational placement in November 2016 demonstrates that the IEP team's earlier decision to place the Student entirely within the general education environment for fifth grade was not successful and that it had become necessary for him to return to the XXXX Center where he was previously placed to provide him with smaller classes, fewer distractions, and additional education and behavioral services and supports to address his individual needs.

The Parent also attended the IEP meeting on February 15, 2017 and gave consent to the recommendations of the IEP team to conduct formal educational and psychological assessments

to determine the Student's proper educational disability code and his appropriate educational placement as he transitioned to middle school. The Parent was also present and participated in the May 5, 2017 IEP meeting when the results of the educational and psychological assessments were presented and the evaluators of those assessments made several recommendations regarding the Student's need for various services and supports. The IEP team also determined at the May 5, 2017 meeting that the Student's disability code should remain as OHI based on his distractibility and attentional issues arising from his ADHD diagnosis. The IEP team considered changing the Student's primary disability to autism spectrum disorder based on certain results obtained in the assessments, but was unable to do so because the Parent did not provide sufficient input regarding the autism rating scales to permit that change to be made.

The Parent was also in attendance at the June 13, 2017 IEP meeting where presentations were made regarding the services and supports available through the XXXX Program at [SCHOOL 1], and the services that were available at [SCHOOL 2]. The IEP team developed the Student's IEP for the 2017-2018 SY, including goals and objectives regarding behavior (social interactions, self-regulation, and academic task completion), written language, and organization, and recommended that the Student be placed in the XXXX Program at [SCHOOL 1] where his needs could be met.

At the due process hearing, MCPS's witnesses, XXXX XXXX, the principal at [SCHOOL 3], and XXXX XXXX, special education resource teacher, who runs the XXXX Program at [SCHOOL 1] on a daily basis, explained the nature of the XXXX Program, why they believed it was the appropriate placement for the Student to address his academic and behavioral needs, and why they believed that [SCHOOL 2] and [SCHOOL 4] could not provide the Student with the services and supports that he needs. XXXX was accepted as an expert in both general education and special education at the due process hearing. XXXX was accepted as an expert in special education.

At the due process hearing, the Parent denied that the Student has behavioral problems and claimed that his BIP is inappropriate. MCPS strongly refuted this claim through the evidence it presented at the hearing. This dispute regarding the Student's behavioral problems is critical to the matters at issue in this proceeding. That is because the primary motivation for the IEP team's recommendation that the Student be placed in the XXXX Program at [SCHOOL 1] is based on the Student's behavioral problems and the impact they have on his ability to access educational instruction, whether the XXXX Program is appropriate to meet his needs, and whether the Student's neighborhood schools ([SCHOOL 2] or [SCHOOL 4]) are able to provide the Student with the services and supports that he needs.

The testimony and documents that MCPS presented at the hearing demonstrate that during the first marking period in fifth grade, the Student experienced serious and frequent behavioral problems in the general education environment. He often became stressed, overwhelmed, or frustrated in class, which led to multiple instances of elopement and self-harm. During the first marking period, the Student eloped without permission from the classroom and other school settings two to five times per day. During this period, he also engaged in instances of self-harm one to three times per week. The Student's issues with elopement and self-harm were clearly documented in the Student's IEP and BIP. (MCPS Ex. 1, pp. 15, 45; MCPS Ex. 8).

XXXX testified regarding the nature of the Student's problematic behaviors and her involvement in responding to these behaviors. She explained that the Student frequently ran out of the classroom or hid in cubbies. He also frequently banged his head or chin against his desk, or hit himself with his own hands. On occasion, the Student also exhibited loud vocalizations or used inappropriate language. XXXX testified that the Student had to be referred to the office to meet with her or with his case manager in response to these behaviors. XXXX explained that she was frequently called to the Student's classroom to address his disruptive behavior, either by trying to locate him when he eloped or helping to de-escalate his self-injurious behavior and

prevent him from further harm. (TR 77-83). XXXX also noted that when the Student was referred to the office, the school would then contact the Parent and would sometimes refer the Student to the crisis center. (TR 95-96). These procedures were less efficient in handling the Student's behavioral issues and resulted in his removal from classroom instruction.

The Student's behavioral problems during the early part of fifth grade were the catalyst for the school staff to perform an FBA and develop a BIP, and change the Student's instructional setting. They modified his educational placement by transitioning him to smaller classes in the XXXX Center for small group instruction, after initially providing him with whole group instruction in a larger class in the general education setting. XXXX explained that the Student's behavior improved when the BIP was implemented and when the Student was placed in the smaller classes and received small group instruction. She also stated there was less need for her to go to his class to intervene after the Student was placed in the XXXX Center. XXXX testified that the Student himself articulated that he felt more comfortable in the small group setting. Furthermore, in the smaller setting, the Student received additional support from a para-educator in the smaller classes and received other adult support to help him problem-solve, monitor the completion of tasks, manage materials, and maintain assignments. He also received consistent reminders and extended time. Check-in times were also scheduled with the Student's special education case manager to help him deal with stressful situations. (TR 81-94). XXXX explained further that the Student's progress notes showed that he was making sufficient progress to meet his goals in most areas in the second, third, and fourth marking periods after implementation of the BIP and his transition to smaller classes. The progress notes were provided to the Parent along with the Student's report cards. (TR 81-84).

XXXX stated unequivocally that she disagreed with the Parent's testimony that the Student did not have behavior problems. She believed, however, that implementation of the BIP and his transition to the smaller classes in the XXXX Center with additional supports helped to

improve the Student's behavior, helped him deal with stress and frustration, learn strategies for problem-solving, provided him with greater access to instruction, and helped him make sufficient progress to meet his IEP goals. (TR 89-96). Additionally, she explained that these changes to his educational program enabled the special education staff to manage the Student inside the classroom, with appropriate supports, rather than having to remove him from class and send him to the office, as occurred previously. She also explained the importance of controlling the Student's behavior, organization, and processing because they all affect his academic progress. (TR 94-96).

The Student's BIP, IEP, and progress notes, also confirm that the frequency of the Student's elopements and self-injurious behaviors were reduced significantly after the IEP team implemented the BIP and changed the Student's educational placement to include the smaller classes with extensive supports. The Student had experienced two to five elopements per day and one to three instances of self-harm per week during the first marking period in fifth grade. During the second, third, and fourth marking periods in fifth grade, these behaviors were reduced substantially, but not eliminated, with the Student averaging about one instance of elopement and one instance of self-harm during each of the marking periods. (MCPS Ex. 1, pp. 15, 45; MCPS Ex. 8).

The Data Point Summaries and Narrative Comments attached to the BIP demonstrate other instances of the Student's frustration, stress, distractions, lack of focus, difficulties in completing tasks and assignments, and conflicts with teachers and peers. These documents also demonstrate that strategies and supports were provided by teachers, school psychologists, and other adults to address these behaviors, including problem-solving, taking breaks, transitioning to small groups, reinforcement and earning points and prizes, reminders, rehearsing social skills, and contracting to follow rules. (MCPS Ex. 8).

Although the Parent generally denied at the hearing that the Student had behavioral problems, his testimony was somewhat inconsistent and contradictory. He testified that the

Student did not have behavioral problems and he claimed the BIP developed by the IEP team was not appropriate for the Student. However, the BIP was developed with the Parent's consent. (TR 53, 55-56, 58-59). The Parent also acknowledged that the Student had issues with problem-solving and compliance with classroom rules. He further acknowledged that crisis intervention was available to address the Student's behavioral issues. (TR 53, 57). Furthermore, the Parent acknowledged that when the Student asked for certain things and his teacher did not give him what he wanted, such as taking a break, he would become frustrated and would make a big deal about it. (TR 57-58). Moreover, the IEP reflects that the Parent participated in completing the FBA and that the Parent admitted during IEP meetings that the Student was very bright, but that he needed to manage his behaviors more effectively. (MCPS Ex. 1, p. 14). This evidence demonstrates that the Parent repeatedly acknowledged the Student's behavioral issues.

Contrary to the Parent's claim, the testimony and documents clearly support that the Student was experiencing behavioral problems during fifth grade, and that addressing these behavioral issues was the primary motivation for a number of IEP team decisions made during this period. This discussion of the Student's behavioral issues and his improvement after the IEP team implemented a BIP and transitioned the Student from the general education setting to small self-contained classes with appropriate supports in the XXXX Center at [SCHOOL 3] in November 2016, is particularly relevant to the ultimate placement issues in this proceeding.

The IEP team has recommended that the Student be placed in the XXXX Program at [SCHOOL 1] for the 2017-2018 SY, and MCPS contends this placement is reasonably calculated to provide the Student with a FAPE in the LRE. MCPS further contends that placement of the Student at [SCHOOL 2] or [SCHOOL 4] would not be appropriate for the Student's educational and behavioral needs. The testimony presented by MCPS's expert witnesses and the accompanying documents demonstrate that the XXXX Program at [SCHOOL 1] will provide the Student with similar services and supports as those provided to the Student in the XXXX Center

at [SCHOOL 3]. When the BIP was implemented and the Student was placed in the XXXX Center at [SCHOOL 3], the Student exhibited marked improvement in his behavioral issues and his ability to access instruction. For similar reasons, the Student's placement in the XXXX Program at [SCHOOL 1] is the appropriate placement for the Student to address his behavioral issues and his problems with distractibility and attention, and to enable him to access educational instruction in a small class setting. Similar to the XXXX Center at [SCHOOL 3], the XXXX Program at [SCHOOL 1] will provide the Student with small self-contained classes with substantial academic and behavioral support to enable the Student to be successful academically, behaviorally and socially.

XXXX, who was accepted as an expert in special education, is in charge of the XXXX Program at [SCHOOL 1]. She attended the June 13, 2017 IEP meeting, described the services available in the XXXX Program, and was present when the IEP team discussed the Student's strengths and needs and recommended his placement in the XXXX Program at [SCHOOL 1]. She also stated that she was present when XXXX XXXX, the [SCHOOL 2] principal, described the services that [SCHOOL 2] could and could not provide for the Student. XXXX testified that in preparation for her participation at the Student's IEP meeting on June 13, 2017, she observed the Student at [SCHOOL 3] in both a large general education class and in the small class setting in the XXXX Center. She also reviewed the Student's IEP and his assessments. In addition, XXXX stated that she showed the Parent and the Student several classes in the XXXX Program at [SCHOOL 1] when they visited the school during the 2016-2017 SY. (TR 146-147, 153-160).

XXXX also explained the services and providers that are available in the XXXX Program at [SCHOOL 1]. She testified that there are twenty-nine students in the XXXX Program at [SCHOOL 1] this school year and seven in sixth grade. She stated that the XXXX Program will provide the Student with small self-contained classes of about five to seven students in sixth grade for English, math, science, and social studies. The XXXX Program also provides students

with both a teacher and a para-educator in a small class setting so the Student will receive appropriate support academically, behaviorally, and socially-emotionally. XXXX explained that smaller classes are also available for PE, with class sizes of between thirteen and sixteen students. In addition, XXXX stated that the XXXX Program also provides students with counseling through a psychologist and social worker. She stated that students receive group counseling and that crisis intervention is also available if a student exhibits behaviors harmful to themselves or others. She explained that the psychologist or social worker may work with a student on site at school, or may contact the family to arrange for other services if necessary. (TR 145-146).

Based on her knowledge of the Student, her class observations, her review of relevant documents, and her participation in the June 13, 2017 IEP meeting, XXXX agreed with the recommendation of the IEP team that the Student be placed in the XXXX Program at [SCHOOL 1]. She opined that the XXXX Program is an appropriate educational placement for the Student because it can provide the small self-contained classes the Student needs, and the appropriate amount of structure, support, and reinforcement that will provide him with FAPE consistent with his IEP and BIP. XXXX testified further that she does not believe [SCHOOL 2] or [SCHOOL 4] can provide the services the Student needs because those middle schools cannot provide the small self-contained classes with appropriate supports the Student needs to be successful. (TR 153-160).

XXXX explained that three middle schools in MCPS offer the XXXX Program. She explained, however, that [SCHOOL 1] is the closest middle school that serves the area of [SCHOOL 2] in [City 1] where the Student was living, as well as the area of [SCHOOL 4] in [City 2] where the Student's family intends to move. (TR 148-149).

XXXX explained further that MCPS provides students with bus transportation to [SCHOOL 1] to attend the XXXX Program. The students are transported on a special education

bus that includes both a bus driver and bus attendant. The students are picked up at their door rather than at a general local bus stop. XXXX stated that the transportation department tries to keep the bus ride on the special education bus to about one hour. XXXX acknowledged that the Student's bus ride home exceeded one hour on September 5, 2017, which was the first day of school for the 2017-2018 SY, and that the Student did not arrive at home until after 4:15 p.m. The Parent claimed that the Student arrived home at 4:22 p.m. on the first day of school. XXXX explained that some of the buses left late after school on the first day of school because they were waiting for students to get on their bus. She also explained that it is not unusual for transportation glitches to arise on the first day of school. (TR 149-152, 167).

XXXX also testified concerning the extracurricular activities that are available at [SCHOOL 1]. She explained that the school provides students with the opportunity to participate in a number of clubs according to teacher interest. She noted that [SCHOOL 1] offered several clubs during the last school year, such as a drama club, track club, and STEM club. She stated that if there is teacher interest in providing a homework club, that can also be provided. She noted that last year one [SCHOOL 1] teacher offered assistance to students who were having problems with their work. She pointed out that under MCPS policy, sixth-graders are not eligible to participate in athletic teams. She explained that after-school activities vary from school to school across the County because they are based on teacher interest. She confirmed that students who participate in after-school activities on a regular basis are provided with transportation. (TR 152-153, 162-163).

XXXX XXXX testified in detail regarding the Student's history and educational program at [SCHOOL 3], his strengths and weaknesses, and his educational and behavioral needs so he can be successful, access the general education curriculum, and receive a FAPE. XXXX concluded that the goals and objectives set forth in the Student's IEP for the 2017-2018 SY were appropriate to meet his educational and social-emotional needs, and she agreed with the

recommendation of the IEP team that the Student be placed in the XXXX Program at [SCHOOL 1]. She opined that the XXXX Program at [SCHOOL 1] was appropriate and would enable the Student to receive a FAPE in the LRE and explained her opinion. XXXX testified that the Student's IEP includes goals and objectives in the areas of behavior (social interactions, self-regulation, and academic task completion), written language, and organization, and the IEP team recommended the Student receive twenty-six hours and fifteen minutes of services outside the general education setting. XXXX explained that this recommendation was for a self-contained special education setting with small classes, with supports from special education teachers, para-educators, and school psychologists to help the Student process the stressors that arise. She noted that the XXXX Program is also able to provide the Student with three hours monthly of counseling services with a social worker or school psychologist as the IEP requires. She indicated that the XXXX Program provides a self-contained setting with small classes consistent with the Student's IEP, which provides for the Student to be placed in an educational setting with reduced distractions, fewer numbers of people, reduced noise, and adult supports that help him regulate his behavior. XXXX explained that the XXXX Program at [SCHOOL 1] provides similar services and supports to the XXXX Center at [SCHOOL 3], which was able to meet the Student's needs. (TR 125-129); (MCPS Ex. 1).

XXXX explained further that neither [SCHOOL 2] nor [SCHOOL 4] would be appropriate to meet the Student's needs. She stated that these middle schools can only offer the Student a general education setting that would not provide an adequate program with support from a para-educator and school psychologist to help the Student de-escalate and receive one-on-one support inside or outside the classroom, as would be available in the XXXX Program. She explained further that if the Student were to attend either [SCHOOL 2] or [SCHOOL 4], he would be limited to a general education setting like the one the Student was placed in at the beginning of fifth grade at [SCHOOL 3] where he did not receive adequate support to address his

behavioral needs. She opined that if the Student was placed in a general education setting at [SCHOOL 2] or [SCHOOL 4] without appropriate supports, he would be at risk for the type of frustration and decompensation that led to the substantial increase in elopement and self-injurious behaviors he experienced in the general education setting at [SCHOOL 3] at the start of fifth grade. Under these circumstances, XXXX believes the Student would not be able to access the curriculum because he would spend too much time trying to process these problematic behaviors. (TR 126-129).

For the foregoing reasons, XXXX concluded that the XXXX Program at [SCHOOL 1] is reasonably calculated to provide the Student with a FAPE in the LRE. She also concluded that neither [SCHOOL 2] nor [SCHOOL 4] could provide the Student with a FAPE.

I found the testimony of both expert witnesses presented by MCPS to be clear, detailed, logical, and persuasive. XXXX was accepted as an expert in special education based on her education and more than twenty years of experience as a teacher, and more than fifteen years as a special education teacher following her receipt of a master's degree in special education from XXU. She also demonstrated considerable knowledge of the XXXX Program after seven years of running its daily operations at [SCHOOL 1]. I found her conclusions to be sound and supported by other evidence in the record. (MCPS Ex. 13).

XXXX was accepted as an expert in both general education and special education based on her education and extensive experience as a special education teacher and administrator. XXXX received a bachelor's degree in both elementary education and special education from XXXX University in 2002, and a master's degree in educational leadership and administration from XXXX College in 2008. She has been employed as a special education teacher for fifteen years, has worked in educational administration for seven years, and has been the principal at [SCHOOL 3] for more than two years. (MCPS Ex. 12). XXXX demonstrated substantial

knowledge of the Student's history and educational programming at [SCHOOL 3] in her position as principal, and based on her continuous involvement with the Student's behavioral issues.

I accept as credible and convincing the testimony and opinions of both XXXX and XXXX regarding the Student's behavioral and academic issues and his educational needs. Therefore, I conclude that the XXXX Program at [SCHOOL 1] is reasonably calculated to provide the Student with a FAPE in the LRE. Moreover, neither of the Student's neighborhood schools, [SCHOOL 2] or [SCHOOL 4], are able to provide the Student with a FAPE because neither school offers the small self-contained program with appropriate supports that the Student needs to address his significant academic and behavioral issues.

The Parent's general claims that the Student does not have behavioral problems and that his BIP is not appropriate were clearly refuted for the reasons addressed above. The Parent has not challenged any specific provisions in the Student's IEP or any particular aspects of the services and supports provided in the XXXX Program. With the Student's behavioral issues that were clearly established in this record, it is evident that the educational placement decisions made by the Student's IEP team were thoughtful, reasonable, clearly appropriate, and necessary to address the critical interaction between the Student's academic needs and the challenges created by his substantial behavioral issues. The BIP has also been shown to be essential to address the Student's behavioral issues. The Parent's primary concern in this proceeding is limited to his desire to have his son attend his neighborhood school. The Parent contends that [SCHOOL 1] is too far from his home, the bus ride is long and unsafe, and he is not able to attend school with his friends from [SCHOOL 3]. He also claims that because the Student will arrive home late from school after the long bus ride, he will not have time to participate in after school activities, particularly private tutoring services at XXXX, other extracurricular activities, or to socialize with friends.

It is evident that when a student is placed in a program that is not available at his neighborhood school, it raises certain logistical and social issues. As a result, the IDEA and accompanying regulations provide that a student shall be educated “as close as possible to the child’s home.” 34 C.F.R. § 300.116(b)(3) (2016). The federal regulations also require that “[u]nless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any harmful effect on the child or on the quality of services that he or she needs[.]” 34 C.F.R. § 300.116(c), (d) (2016). However, removal of a child from a regular educational environment may be necessary when the nature or severity of a child’s disability is such that education in a regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2)(ii) (2016).

In addition to mandating a FAPE, the IDEA directs that children be placed in the LRE to achieve a FAPE, meaning that children with disabilities must be educated with children without disabilities in the regular education environment to the maximum extent appropriate; separate schooling or other removal from the regular educational environment should occur only when the nature or severity of the child’s disability prevents satisfactory education in regular classes with the use of supplementary aids and services. 20 U.S.C.A. § 1412(a)(5)(A) (2017); 34 C.F.R. §§ 300.114(a)(2)(i) and 300.117 (2016). It is thus clear that MCPS is obligated to provide the Student with a placement that affords him at least an opportunity to interact with nondisabled peers, if he will receive educational benefit in that placement. As indicated above, in determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team in conformity with the LRE provisions. 34 C.F.R. § 300.116 (2016).

Although the term “placement” is often used informally to refer to the school which a student will attend, “placement” and “location” are not synonymous. A student’s placement is

the totality of the services, accommodations, and so on, specified in the student's IEP; it is not the geographical location where those services are provided. Educational placement, as used in the IDEA, means educational program—not the particular institution where the program is implemented. In *A.W. v. Fairfax Cty. Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004).

I conclude that the evidence in this record clearly demonstrates that the Student “requires some other arrangement” other than placement in the child's neighborhood school. 34 C.F.R. § 300.116(c) (2016). The evidence demonstrates that the XXXX Program at [SCHOOL 1] provides the services and supports the Student requires to carefully balance the fragile interaction between the Student's academic and behavioral needs. Moreover, the Student's neighborhood schools do not offer an appropriate program with sufficient academic and behavioral supports to address the Student's needs.

In this case, this conclusion is not mere speculation. The Student's experience at [SCHOOL 3] during his fifth grade year provides a revealing laboratory of experience regarding how the Student struggled in the general education environment and then improved substantially after he was placed in the small self-contained classes with appropriate supports in the XXXX Center. XXXX explained how the general education environment at [SCHOOL 3] is substantially similar to the program that is available at both of the Student's neighborhood schools, either [SCHOOL 2] or [SCHOOL 4]. Furthermore, XXXX and XXXX explained how the XXXX Program at [SCHOOL 1] is similar to the XXXX Center at [SCHOOL 3]. The Student's experience during fifth grade at [SCHOOL 3] demonstrates that he was not successful when he was mainstreamed in general education during the latter part of fourth grade and the first marking period in fifth grade. After the BIP was implemented and the Student was moved to smaller classes with extensive supports in the XXXX Center at [SCHOOL 3], however, there was substantial improvement in his behavioral issues which improved his access to educational instruction. Moreover, XXXX explained the risk of harm to the Student and the possible

decompensation of his problematic behaviors if he were placed in the general education setting at either of the two neighborhood middle schools. Therefore, I conclude that the XXXX Program would provide the Student with a FAPE, and is the LRE because of the harm that could arise if the Student were placed in either neighborhood middle school. 34 C.F.R. § 300.116(b)(3), (c), (d) (2016).

The Student's IEP also provides for three hours per week of services in general education with special education supports. MCPS did not identify the precise settings in which the Student will be educated with nondisabled peers at [SCHOOL 1]. It appears from a review of the record that the Student will interact with nondisabled peers at [SCHOOL 1] in the larger PE class and at lunch, as he did in the XXXX Center at [SCHOOL 3]. According to XXXX, the Student can be placed in small self-contained classes for English, math, science, and social studies in the XXXX Program. However, depending upon the Student's needs, there is flexibility for him to be educated with nondisabled peers in areas such as science and social studies, as occurred at [SCHOOL 3]. In any event, the Student's need to be placed in small self-contained classes with other special education students due to his recurring behavioral and distractibility issues has been clearly established on this record. For the foregoing reasons, I conclude that placement in the XXXX Program will provide the Student with a FAPE in the LRE.

While it is understandable that the Parent seeks to have his son attend his neighborhood school for a variety of logistical and social reasons, the Parent has failed to prove that the placement in the XXXX Program is inappropriate based on the Student's individual circumstances. The Student's longer bus ride is unfortunate but appropriate under the circumstances. There is reason to believe that the Student will arrive home earlier after the problems that arose on the first day of school are worked out. The Parent argued that it is unsafe for the Student to ride on a special education bus for one hour or more. However, he provided no evidence to support this claim. The undisputed evidence establishes that the Student receives

appropriate services on the special education bus that includes a bus driver and bus attendant and provides the Student with door-to-door service.

The Parent also argued that the Student would be unable to attend private tutoring services at XXXX if he were required to attend [SCHOOL 1]. He failed to establish a direct connection between the Student's educational placement at [SCHOOL 1] and his ability to voluntarily seek private tutoring after school. The Parent has elected to send his child to a private tutoring service and he is solely responsible for transporting the Student to a XXXX facility. The Parent is free to do so regardless of where the Student attends school. The Parent acknowledged that XXXX is a national company with numerous locations in Montgomery County, including in [City 1] where the Student lived when he attended [SCHOOL 3], and in [City 2] where the Parent intends to move his family. Moreover, it is clear that [SCHOOL 1] and all other MCPS schools offer a variety of clubs and other extracurricular activities that the Student is free to pursue. XXXX explained that if the Student were to attend after school activities on a regular basis that MCPS would provide him with transportation. There is no requirement that any MCPS school provide a particular activity, and because clubs are based on teacher interest, the availability of clubs and other extracurricular activities will reasonably vary from school to school throughout the County. The Parent admitted that he never inquired as to which after school activities are available at [SCHOOL 1]. XXXX explained that she lives near [SCHOOL 4] in [City 2] and knows that the driving time directly from that area in [City 2] to [SCHOOL 1] is only about fifteen to twenty minutes. Moreover, the Parent failed to establish that even if the Student were to arrive home from [SCHOOL 1] close to 4:30 p.m., that he would be unable to engage in other after-school activities, attend XXXX, or socialize with friends.

The law recognizes that "once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals." *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). Therefore, absent any evidence

in this record to persuasively dispute the well-reasoned judgment of the MCPS witnesses, I agree with MCPS that the IEP and placement developed by the Student's IEP team is appropriate and reasonably calculated to meet the individualized needs of the Student. In conclusion, after carefully reviewing all of the evidence presented by the Parent and MCPS, I find that MCPS developed an appropriate IEP and placement for the Student for the 2017-2018 SY.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the IEP and placement developed for the Student by the Montgomery County Public Schools for the 2017-2018 school year is reasonably calculated to offer the Student a free appropriate public education in the least restrictive environment in light of the Student's circumstances. Furthermore, MCPS did not deny the Student a free appropriate public education when it determined that he not attend his neighborhood school for the 2017-2018 school year. 20 U.S.C.A. §§ 1400 - 1487 (2017); 34 C.F.R. §§ 300.107, 300.114, 300.116 (2016); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *A.W. v. Fairfax Cty. Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004).

ORDER

I **ORDER** that the due process request filed by the Parent is hereby **DENIED** and **DISMISSED**.

September 28, 2017
Date Decision Mailed

Douglas E. Koteen
Administrative Law Judge

DEK/da

REVIEW RIGHTS

Any party aggrieved by this Decision may file an appeal with the Circuit Court for Baltimore City, if the Student resides in Baltimore City, or with the circuit court for the county where the Student resides, or with the Federal District Court of Maryland, within 120 days of the issuance of this decision. Md. Code Ann., Educ. § 8-413(j) (Supp. 2016). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence. Should a party file an appeal of the hearing decision, that party 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 court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number. The Office of Administrative Hearings is not a party to any review process.