

[REDACTED]

STUDENT

v.

ANNE ARUNDEL COUNTY

PUBLIC SCHOOLS

* BEFORE TRACEY JOHNS DELP,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No: MSDE-AARU-OT-19-15126

* * * * *

DECISION

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STATEMENT OF THE CASE

On May 13, 2019, Dr. [REDACTED] (Parent), on behalf of her child, [REDACTED] (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 Anne Arundel County Public Schools (AACPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017).¹

I conducted a telephone pre-hearing conference on June 20, 2019.² The following individuals participated: Manisha Kavadi, Esquire, of Carney, Kelehan, Bresler, Bennett & Scherr, LLP, on behalf of AACPS; and Mark Gabler, Esquire, of Rich and Henderson, P.C., on behalf of the Student and Parent.³ By agreement of the parties, the hearing was scheduled for July 31, 2019 and August 1-2, 2019. On July 31, 2019, the hearing for that date was cancelled

¹ U.S.C.A. is an abbreviation for United States Code Annotated. All references to the IDEA are to the 2017 volume.
² A second telephone pre-hearing conference was conducted on July 18, 2019.
³ The Parent also participated on her counsel's telephone line.

due to the emergency unavailability of Mr. Gabler. Code of Maryland Regulations (COMAR) 28.02.01.16D.

I held the hearing on August 1, 2, and 14, 2019.⁴ Ms. Kavadi represented AACPS. Mr. Gabler represented the Student and Parent.

The hearing dates requested by the parties fell more than forty-five days after the triggering events described in the federal regulations, which is the date my decision is due. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a), (c) (2018).⁵ The parties requested a specific extension of time and agreed that I issue a decision on or before thirty days from the conclusion of the hearing. § 300.515(c); Md. Code Ann., Educ. § 8-413(h) (2018). I found good cause to extend the timeframe for the hearing and the issuance of my decision based upon the detailed explanations of the parties' availability. Accordingly, in this case, the decision is due no later than Friday, September 13, 2019.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f); 34 C.F.R. § 300.511(a); Md. Code Ann., Educ. § 8-413(e)(1) (2018); and COMAR 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; 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. 2018); COMAR 13A.05.01.15C; COMAR 28.02.01.

⁴ The August 14, 2019 hearing date was added on August 2, 2019, and was the earliest date all parties were available to reconvene the hearing.

⁵ C.F.R. is an abbreviation for Code of Federal Regulations. Unless otherwise noted, all references are to the 2018 edition.

ISSUES

The issues are:

1. Whether AACPS violated the IDEA by failing to offer the Student a free appropriate public education (FAPE) during the 2017-2018 and 2018-2019 school years?
2. Whether the Parent is entitled to the relief sought in the Student's Complaint or other appropriate relief?

SUMMARY OF THE EVIDENCE

Exhibits

The Student presented one binder of exhibits marked 1 through 27. Of those exhibits, the following were admitted into evidence:

- Student Ex. 3: ██████████ LLC: Psychological Evaluation, date of evaluation October 23, 2010 (13 pages); ██████████ LLC (██████████ letter from ██████████ PhD to AACPS, December 29, 2010 (1 page)
- Student Ex. 4: Academic Assessment Report, evaluation meeting date May 2, 2013 (6 pages)
- Student Ex. 5: PARCC⁶ Grade 4 Assessment Report (2014-2015), undated (4 pages)
- Student Ex. 6: Parent Interview, November 10, 2015 (2 pages)
- Student Ex. 7: ██████████ (██████████ 2015-2016 Tuition Contract, November 29, 2015 (1 page); AACPS check to ██████████ February 22, 2016 (1 page); ██████████ 2016-2017 Tuition Contract, undated (1 page); ██████████ 2017-2018 Tuition Contract, May 16, 2017 (1 page); ██████████ 2018-2019 Tuition Contract, June 1, 2018 (1 page); ██████████ 2019-2020 Tuition Contract, May 13, 2019 (1 page)
- Student Ex. 8: PARCC Grade 6 Assessment Report (2016-2016), undated (2 pages)
- Student Ex. 9: IEP⁷ Team Meeting Report - Prior Written Notice, date of meeting September 24, 2015 (2 pages)
- Student Ex. 10: Progress Report, January 14, 2016 (2 pages)
- Student Ex. 11: Educational Evaluation, January 19, 2016 (12 pages)

⁶ Partnership for Assessment of Readiness for College and Careers

⁷ Individualized Education Program

- Student Ex. 13: Snapshot of IEP, April 27, 2016 (9 pages)
- Student Ex. 15A: Comprehensive Evaluation Review, evaluation meeting date April 4, 2016 (9 pages)⁸
- Student Ex. 15B: Academic Assessment Report, date of report March 1, 2016 (8 pages)
- Student Ex. 15C: Psychological Assessment Report, date of report March 18, 2016 (18 pages)
- Student Ex. 15D: Speech and Language Observation, January 22, 2016 (1 page)
- Student Ex. 16: Team Consideration of External Report, date of meeting April 25, 2016 (2 pages)
- Student Ex. 20: [REDACTED] Independent Educational Evaluation (IEE), date of report August 22, 2018 (13 pages)
- Student Ex. 21: Draft IEP, December 13, 2018 (30 pages)
- Student Ex. 22A: Letter from AACPS to Parent, December 10, 2018 (2 pages)
- Student Ex. 25: Portions of email threads between the Parent and AACPS, February 23, 2018 – March 21, 2019 (26 pages)
- Student Ex. 27: Letter from AACPS to Parent, January 26, 2016 (1 page)

AACPS presented one binder of exhibits marked 1 through 40. Of those exhibits, the following were admitted into evidence:

- AACPS Ex. 1: IEP Team Meeting Report- Prior Written Notice, date of meeting August 3, 2017 (6 pages)
- AACPS Ex. 2: IEP Team Meeting Report- Prior Written Notice, date of meeting September 29, 2017 (8 pages)
- AACPS Ex. 3: IEP Team Meeting Report- Prior Written Notice, date of meeting October 6, 2017 (9 pages)
- AACPS Ex. 4: Approved IEP, meeting date October 6, 2017 (19 pages)
- AACPS Ex. 5: Referral, October 17, 2017

⁸ The exhibit pages are numbered 1 and 3-10. Page 2 was removed from the exhibit prior to its admission into evidence.

- AACPS Ex. 6: IEP Team Meeting Report- Prior Written Notice, date of meeting November 3, 2017 (4 pages)
- AACPS Ex. 7: Psychological Assessment Report, date of report December 7, 2017 (8 pages)
- AACPS Ex. 8: Academic Assessment Report, date of report December 12, 2017 (6 pages)
- AACPS Ex. 9: IEP Team Meeting Report- Prior Written Notice, date of meeting December 21, 2017 (7 pages)
- AACPS Ex. 10: Date Consent Granted for Comprehensive Evaluation, November 3, 2017 (1 page); Comprehensive Evaluation Review, December 21, 2017 (4 pages)
- AACPS Ex. 11: IEP Team Meeting Report- Prior Written Notice, date of meeting February 9, 2018 (8 pages)
- AACPS Ex. 12: Approved IEP, meeting date February 9, 2018 (19 pages)
- AACPS Ex. 13: Records Release Authorization, August 24, 2018
- AACPS Ex. 14: IEP Team Meeting Attendees, September 13, 2018 (1 page); IEP Team Meeting Report Prior Written Notice, date of meeting September 13, 2018 (7 pages)
- AACPS Ex. 16: IEP Team Meeting Report- Prior Written Notice, date of meeting November 28, 2018 (7 pages)
- AACPS Ex. 17: Draft IEP, meeting date November 28, 2018 (30 pages)
- AACPS Ex. 18: Records Release Authorization, December 27, 2018 (1 page)
- AACPS Ex. 19: Email from AACPS to [REDACTED] at [REDACTED] ([REDACTED]), January 11, 2019 (1 page); Letter from [REDACTED] to AACPS, January 11, 2019 (1 page)
- AACPS Ex. 20: Psychosocial Report, November 30, 2018 (3 pages); Needs Analysis, December 12, 2018 (3 pages)
- AACPS Ex. 21: [REDACTED] IEP, July 20, 2018 (5 pages); Student's [REDACTED] course schedule, undated (1 page); Student's [REDACTED] attendance record, 2018-2019 (1 page); Record of Immunizations, May 24, 2017 (1 page)
- AACPS Ex. 23: Letter from [REDACTED] to Parent and Mr. [REDACTED] March 20, 2019 (2 pages)
- AACPS Ex. 24: Emails between AACPS and [REDACTED] March 20-22, 2019 (1 page)
- AACPS Ex. 25: Emails between [REDACTED] and the Parent, March 21, 2019-May 7, 2019 (2 pages)

- AACPS Ex. 27: Meeting Notes, June 26, 2019 (1 page)
- AACPS Ex. 28: [REDACTED] middle and high school descriptions, undated (2 pages)
- AACPS Ex. 29: AACPS emails, October 11, 2018 (2 pages)
- AACPS Ex. 30: Emails between the Parent and AACPS, June 9-22, 2017 (6 pages)
- AACPS Ex. 31: Emails between the Parent and AACPS, October 2, 2018 – March 28, 2019 (30 pages)
- AACPS Ex. 32: Emails among AACPS, [REDACTED] and the Parent (14 pages)
- AACPS Ex. 33: Letter from MSDE to Parent and [REDACTED] AACPS Director of Special Education, May 14, 2018 (9 pages)
- AACPS Ex. 34A⁹: Release and Settlement of Claims, June 1-3, 2016 (3 pages)
- AACPS Ex. 36: *Curriculum Vitae*, [REDACTED] (2 pages)
- AACPS Ex. 37: *Curriculum Vitae*, [REDACTED] (2 pages)

Testimony

The Parent testified.

AACPS presented the following witnesses:

- [REDACTED] IEP Facilitator at [REDACTED], admitted as an expert in special education, and
- [REDACTED] AACPS Coordinator of Interagency and Nonpublic Placements, admitted as an expert in special education and placement of students with disabilities.

⁹ AACPS Exhibit 34 was not admitted in evidence. AACPS Exhibit 34A is an entirely separate exhibit.

FINDINGS OF FACT

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

1. The Student is a fourteen-year-old girl with autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD), and depression.
2. The Student is on a high school diploma-bound educational track.
3. The Student's first IEP was initiated at [REDACTED], a facility of AACPS. (Testimony, Parent; Transcript, Vol. 1 – p. 35.)
4. IEPs are generally written for a school-year, with revisions within the year when appropriate. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 420.)
5. The Student attended [REDACTED] until November 13, 2015 when the Parent withdrew the Student from the fifth grade. (Student Ex. 15A, p. 3.)
6. On November 30, 2015, the Parent enrolled the Student at [REDACTED], a nonpublic special education school in [REDACTED] Maryland with a year-round school calendar (*i.e.* no extended summer break). (Student Ex. 10; Testimony, Parent and Ms. [REDACTED]; Transcript, Vol. 1 – p. 48, Vol. 2 – p. 405.)
7. At [REDACTED] the Student is in a small classroom setting, with no access to non-disabled peers. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 366.)
8. [REDACTED] is a Type I school. (Testimony, all witnesses.) Type I schools offer a secluded, fully special education program. (Testimony, Parent; Transcript, Vol. 1 – p. 120; Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 336.)
9. In January 2016, AACPS and the Parent agreed to a resolve concerns raised by the Parent regarding the 2015-2016 school year. Among other terms, AACPS agreed to provide [REDACTED] with a \$6,000.00 payment towards the Student's [REDACTED] 2015-2016 tuition and provide "on

and along” transportation to and from [REDACTED] for the remainder of the 2015-2016 school year through extended school year (ESY) services. (Student Exs. 7 and 27.)

10. In June 2016, AACPS and the Parent agreed to resolve concerns raised by the Parent regarding the 2016-2017 school year. Among other terms, AACPS agreed to provide “on and along” transportation to and from [REDACTED] for the 2016-2017 school year. (AACPS Ex. 34A.)

11. The Parent worked with [REDACTED] AACPS Compliance and Legal Issues Program Manager, to reach the January and June 2016 resolutions. (Testimony, Parent; Transcript, Vol. 3¹⁰.)

12. The Student had 37 reported absences during [REDACTED] 2016-2017 school year. (AACPS Ex. 4, p. 5.)

13. Absenteeism impacts a student’s ability to learn new material, having missed lessons which build upon one another. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 361-62.)

14. The effects of absenteeism are most readily observable in the area of Math. (*Id.*)

The 2017-2018 School Year

15. On June 9, 2017, [REDACTED] [REDACTED] IEP Facilitator, emailed the Parent to advise that the Student’s name appeared in an AACPS report identifying students who’s IEPs had not been updated in over one year. Ms. [REDACTED] invited the Parent to contact her, should the family wish to develop a services plan¹¹ for the Student. (AACPS Ex. 30.)

16. [REDACTED] is the Student’s AACPS home school. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 288.)

¹⁰ The Volume 3 transcript had not been received at OAH by the time this decision was issued, so I was unable to provide Volume 3 page cites.

¹¹ “Services plan means a written statement that describes the special education and related services the [local educational agency] will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary...” 34 C.F.R. § 300.37.

17. [REDACTED] and [REDACTED] are different facilities of AACPS. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 367.)

18. After email communication between the Parent and Ms. [REDACTED] a determination was made to schedule an IEP team meeting to update the Student's IEP for the 2017-2018 school year rather than develop a services plan. (AACPS Ex. 30.)

19. In a June 20, 2017 email to Ms. [REDACTED] the Parent requested AACPS provide tuition assistance for [REDACTED] (*Id.* at pp. 4-5.)

20. The first IEP team meeting for the 2017-2018 school year was held on August 3, 2017. The Parent shared her concerns regarding the Student's [REDACTED] oral fixation, hygiene, food selectivity, and coping skills. The IEP team reviewed some [REDACTED] records. The school team agreed to consult with [REDACTED] staff and observe the Student at [REDACTED] in order to develop an appropriate IEP. AACPS issued Prior Written Notice reflecting that parental rights information was provided to the Parent, and the Parent agreed with the decisions made at the meeting. (AACPS Ex. 1.)

21. On September 13, 2017, Ms. [REDACTED] and [REDACTED] AACPS psychologist, observed the Student at [REDACTED] and met with faculty and staff. The Student was observed working mostly independently from the class in her language arts class, and the content of the Student's work was excellent. The Student was performing at or above grade level in reading and writing, but performing below grade level in math. [REDACTED] had not noted any concerns with [REDACTED] by the Student. (Testimony, Ms. [REDACTED] Transcript Vol. 2 – p. 383.)

22. An IEP team meeting was held on September 29, 2017. The Parent voiced concerns with the Student's "[REDACTED] responses to certain situations," maintaining continuity of mental health supports for the Student, dissatisfaction with AACPS' responsiveness to her concerns while the Student attended [REDACTED] and the Student's ability to adjust to [REDACTED]

with her social deficits. (AACPS Ex. 2.) The team revised the Student's Present Levels of Performance on the IEP, noted the Student is accessing her grade level curriculum, and is able to successfully complete grade level tasks with appropriate supports. Assistive technology (AT) devices were discussed. AACPS issued Prior Written Notice reflecting the AACPS provided parental rights information to the Parent, and the Parent agreed with all decisions¹² made at the meeting. (*Id.*)

23. An IEP team meeting was held on October 6, 2017. Among other topics, the Parent discussed the Student's progress at [REDACTED] and how the Student "deteriorated when attending public school" in the past. (AACPS Ex. 3.) The Parent advised the IEP team that the Student has threatened self-harm if she were removed from [REDACTED]. The Parent requested an IEE and stated she intended to keep the Student at [REDACTED]. ESY services were discussed but deferred due to a lack of data regarding the Student's levels of regression and recoupment.

24. AACPS issued Prior Written Notice reflecting that the Parent agreed with the decisions¹³ made at the October 6, 2017 meeting, except for revisions to the Student's current needs in Math, Learning Behaviors, and her Social/Emotional needs. In addition, the Parent did not agree that [REDACTED] was able to meet the social and academic needs of the Student in the Least Restrictive Environment (LRE). The Prior Written Notice reflects that parental rights information was provided to the Parent. (*Id.*)

25. The IEP team approved the Student's October 6, 2017 IEP. (AACPS Ex. 4, p. 1.)

26. The October 6, 2017 IEP identified the Student's primary disability as "Multiple Disabilities: Autism, Other Health Impairment." (*Id.*)

¹² The decisions included a discussion regarding teacher observations, revisions to Present Levels of Performance, the Student taking PARCC assessments and pursuing a high school diploma, the need for an AT referral, and the need for a calculator, word processor, extended time, breaks, and reduced distractions.

¹³ The decisions included revisions to Supplementary Aids and Services, a deferral on the issue of ESY, and Goals/Objectives were revised to reflect the Student's current needs.

27. "Multiple Disabilities," "Autism," and "Other Health Impairment" are codes. School systems are required to determine the disability code most impactful to a student's educational performance. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 290, 364-365.)

28. At the time of the IEP's creation, AACPS used two subcodes. The Student's primary disability was "Multiple Disabilities." The Student's two subcodes were "Autism" and "Other Health Impairment." "Other Health Impairment" represented the Student's ADHD. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 290.)

29. Disability codes do not determine placement. Each student is individually assessed to determine appropriate services and placements. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 446.)

30. The October 6, 2017 IEP called for the Student to receive the following classroom instruction hours outside the general education classroom: four hours of special education service weekly in a co-taught Math class, two hours of special education service weekly in a co-taught Language Arts class, two hours of special education service weekly in a co-taught Science class, and two hours of special education service weekly in a co-taught Social Studies class. (AACPS Ex. 4, p. 17.)

31. Co-taught classes incorporate instruction from a general education instructor for content specialty, a special education instructor for expertise in special education, and an instructional assistant. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 296-97, 324-25.)

32. Less than fifty percent of students in a co-taught class have an IEP, allowing for interaction with non-disabled peers. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 413.)

33. The October 6, 2017 IEP called for the Student to receive one thirty-minute session of counseling services weekly outside the general education classroom with the school psychologist. (AACPS Ex. 4, p. 17.)

34. The October 6, 2017 IEP deferred any decision regarding ESY services due to the insufficiency of data. Should the Student attend [REDACTED] the school team would reconvene for a decision on that issue. (AACPS Ex. 4, p. 14.)

35. In the Present Level of Academic Achievement and Functional Performance section, the October 6, 2017 IEP identified the areas of Social/Emotional, Math, Learning Behaviors, and Cognitive/Intellectual as impacting the Student's academic achievement and/or functional performance; the area of Written Expression did not. (AACPS Ex. 4, pp. 5-7.)

36. The October 6, 2017 IEP provided the Student the following AT devices: a calculator for assignments and assessments and a computer for written assignments. (AACPS Ex. 4, p. 9.)

37. The October 6, 2017 IEP called for extended time and multiple or frequent breaks as instructional and testing accommodations, as well as setting accommodations to reduce distractions to the Student. (AACPS Ex. 4, p. 10.)

38. The October 6, 2017 IEP assigned the Student four quarterly goals, each with multiple objectives. The goals covered the following instructional areas: Operations and Algebraic Thinking, Learning Behaviors, and Social Emotional. The Operations and Algebraic Thinking goal sought an 80% accuracy on 4/5 targeted trials based upon grade-level content. The evaluation method was classroom assessment work samples. The Learning Behaviors goal sought Student completion of non-preferred tasks within a given time-frame using verbal prompts. Data sheets were the method of evaluation. Finally, the Student's Social Emotional goals included using learned coping strategies to manage negative emotions and feelings of anxiety, and demonstrate appropriate social skills when interacting with peers and adults. Observation records would be the method of evaluation. (AACPS Ex. 4, pp. 15-16.)

39. The October 6, 2017 IEP stated that with support, the Student is able to participate with her non-disabled peers in academic, non-academic, and extracurricular activities, at [REDACTED] except when receiving direct counseling services outside of the general education setting. (AACPS Ex. 4, p. 18.)

40. The Parent continued to seek placement at [REDACTED] she disagreed with the October 6, 2017 IEP determination of services and placement. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 287.)

41. The Parent's October 6, 2017 request for an IEE first required that AACPS obtain current assessments of the Student, which could then be compared with an IEE.

42. On October 19, 2017, [REDACTED] completed a referral for reevaluation of the following areas: Behavior; Cognitive/Intellectual; Attention/Executive Functioning; Social/Emotional; and Academic Performance in Reading, Math, and Written Expression. (AACPS Ex. 5.)

43. During an IEP team meeting on November 3, 2017, the reevaluation referral was discussed as well as a possible change to the Student's disability coding. (AACPS Ex. 6.)

44. Ms. [REDACTED] completed the Student's psychological assessment report on December 21, 2017. Assessments were noted as having taken place on November 17, 2017 and December 1, 5, and 6, 2017. Ms. [REDACTED] administered the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V) and the Behavior Assessment System for Children, Third Edition Self-Report Ages 6:0 to College age, Teacher Rating Scales 2:0-21:11, and Parent Rating Scales 2:0-2:11 (BASC-3). (AACPS Ex. 7.)

45. The Student met with Ms. [REDACTED] at [REDACTED] for her psychological assessment. While at [REDACTED] the Student saw former [REDACTED] peers in the hallway and greeted them, and introduced herself to the principal. The Student did not express any discomfort to Ms. [REDACTED] during her visit. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 313-315.)

46. “The WISC-V is used to assess current cognitive functioning and can be predictive of school achievement.” (AACPS Ex. 7, p. 2.)

47. The Student’s results on the WISC-V revealed a cognitive functioning range from very high to very low compared to other children her age. The Student’s verbal comprehension fell within the ninety-sixth percentile and her fluid reasoning in the ninety-seventh percentile – both solidly above-average. The Student’s visual spatial scale was in the seventieth percentile and her processing speed was in the forty-fifth percentile – both within the average range. The Student’s working memory index was below average in the eighth percentile. (AACPS Ex. 7, pp. 3-4.)

48. The Student, the Parent, and two teachers from ██████████ completed the BASC-3. (AACPS Ex. 7, pp. 3-6.)

49. The Student’s responses to the BASC-3 indicate she was experiencing social, emotional, and behavioral difficulty. (AACPS Ex. 7, pp. 4-5.)

50. The Student’s teacher’s responses to the BASC-3 are inconsistent with one another regarding whether the Student was experiencing significant emotional difficulties at ██████████ (AACPS Ex. 7, pp. 5-7.)

51. The Parent reported significant concerns in almost all areas of the Student’s social, emotional, and behavioral functioning. (*Id.*)

52. Ms. ██████████ completed the Student’s academic assessment report on December 14, 2017. Ms. ██████████ administered the Wechsler Individual Achievement Test – Third Addition (WISC-III). (AACPS Ex. 8.)

53. On November 29, 2017, the Student met with Ms. ██████████ at ██████████ for her academic assessment. The Student was pleasant in her interactions with Ms. ██████████ appropriately engaged Ms. ██████████ in conversation, worked diligently during the assessment,

and advocated for herself when she needed a break. The Student did not express a desire to go home or to leave [REDACTED] (AACPS Ex. 8, p. 5; Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 309-310, 314-15.)

54. In the assessment by Ms. [REDACTED] the Student demonstrated above average skills in the areas of basic reading and reading comprehension/fluency. The Student demonstrated average written language and math fluency skills. The Student's mathematics skills were noted as below average. (AACPS Ex. 8, p. 5.)

55. As a result of her assessment, Ms. [REDACTED] recommended two accommodations, the Student be permitted use of a calculator and be given a clear structure for writing assignments. (AACPS Ex. 8, p. 6.)

56. The IEP team met on December 21, 2017 and reviewed the psychological and academic assessments. It was determined that the Student met the coding eligibility criteria for "Multiple Disabilities: Autism, Emotional Disability." The Prior Written Notice reflects that parental rights information was provided to the Parent, and the Parent agreed with the decisions made at the meeting. (AACPS Ex. 9; Testimony Ms. [REDACTED] Transcript, Vol. 2 – p. 316.)

57. The primary disability remained "Multiple Disabilities" – only the subcoding was amended. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 316.)

58. The IEP team met on February 9, 2018 to update the IEP. The Student's February 9, 2018 IEP is an approved IEP. (AACPS Ex. 12, p. 1.)

59. The Parent advised the team that the Student had been ill and expressed ideas of self-harm at the thought of returning to public school. The Parent believed a transition period from [REDACTED] to public school would best serve the needs of the Student. The Parent continued to advocate for ESY services. (AACPS Ex. 11, p. 2.)

60. The February 9, 2018 IEP identified the Student's primary disability as "Multiple Disabilities: Autism, Emotional Disability." (AACPS Ex. 12, p. 2.)

61. The Student's Present Levels of Performance in the areas of Reading, Mathematics, Written Expression, Learning Behaviors, Social/Emotional, and Cognitive/Intellectual were determined. AACPS issued Prior Written Notice reflecting the Parent agreed with the determinations. (AACPS Ex.11, p. 3.)

62. The February 9, 2018 IEP Present Level of Academic Achievement and Functional Performance section identifies that the areas of Social/Emotional, Math, Learning Behaviors, and Cognitive/Intellectual impacted the Student's academic achievement and/or functional performance; the areas of Written Expression and Reading did not. (AACPS Ex. 12, pp. 5-7.)

63. The February 9, 2018 IEP provided the Student the following AT devices: a calculator for assignments and assessments and a computer for written assignments. (AACPS Ex. 12, p. 9.) AACPS issued Prior Written Notice reflecting that the Parent was in agreement with these testing and instructional accommodations, supplementary aids, and services. (AACPS Ex.11, p. 3.)

64. The February 9, 2018 IEP called for extended time, the use of a calculator, and multiple or frequent breaks as instructional and testing accommodations, as well as setting accommodations to reduce distractions to the Student. (AACPS Ex. 12, p. 10.)

65. The school team determined the Student did not meet the criteria for ESY services, but noted that should data be collected which suggests otherwise the team will reconvene to review its determination. (AACPS Ex. 11, p. 4; AACPS Ex. 12, p. 14.) The Parent disagreed with this decision.

66. The February 9, 2018 IEP assigned the Student four quarterly goals, each with two or more objectives. The goals covered the following instructional areas: Operations and Algebraic Thinking, Learning Behaviors, and Social Emotional. The Operations and Algebraic Thinking goal sought an 80% accuracy on 4/5 targeted trials based upon grade-level content. The evaluation method was classroom assessment work samples. The Learning Behaviors goal sought Student completion of non-preferred tasks within a given time-frame using verbal prompts. Data sheets were the method of evaluation. Finally, the Student's Social Emotional goals included using learned coping strategies to manage negative emotions and feelings of anxiety, and demonstrate appropriate social skills when interacting with peers and adults. Observation records would be the method of evaluation. (AACPS Ex. 12, pp. 15-16.)

67. The February 9, 2018 IEP set forth that the Student receive the following classroom instruction hours outside the general education classroom: four hours of special education service weekly in a co-taught Math class, two hours of special education service weekly in a co-taught Language Arts class, two hours of special education service weekly in a co-taught Science class, and two hours of special education service weekly in a co-taught Social Studies class. In addition, the school team continued to recommend the Student receive one thirty-minute session of counseling services weekly outside the general education classroom with the school psychologist. (AACPS Ex. 11, pp. 4-5; AACPS Ex. 12, p.17.) The Parent disagreed with these recommendations and disagreed with the appropriateness of the IEP.

68. The February 9, 2018 IEP stated that with support, the Student is able to participate with her non-disabled peers in academic, non-academic, and extracurricular activities, at [REDACTED] except when receiving direct counseling services outside of the general education setting. (AACPS Ex. 12, p. 18.)

69. The Parent disagreed with the efficacy of the AACPS February 9, 2017 IEP in addressing the Student's deficits and she requested an IEE. (AACPS Ex. 11, p. 2.)

70. The Parent filed a complaint with the MSDE, Division of Special Education/Early Intervention Services alleging AACPS has not offered the Student a FAPE since June 1, 2017. (AACPS Ex. 33, p. 1)

71. On May 14, 2018, the MSDE issued a letter to the Parent and AACPS's Director of Special Education concluding "that a FAPE has been offered through the development on an IEP that addresses the needs identified in the data...." (AACPS Ex. 33, p. 8)

The 2018-2019 School Year

72. On August 6 and 8, 2018, [REDACTED] Psy.D., [REDACTED] conducted an IEE which included psychological testing of the Student. (Student Ex. 20.)

73. Dr. [REDACTED] administered the following testing instruments:

- WISC-V
- Woodcock Johnson Tests of Achievement – Fourth Edition (WJ-IV)
- Vineland Adaptive Behavior Scales – Second Edition (Vineland-II)
- Achenbach System of Empirically Based Assessments (ASEBA)
 - Child Behavior Checklists (CBCL)
 - Youth Self-Report (YSR)
- Children's Depression Inventory – Second Edition (CDI-2)
- Revised Children's Manifest Anxiety Scales – Second Edition (RCMAS-2)
- Behavior Rating Inventory of Executive Function – Second Edition (BRIEF-2)
- Conners Behavior Rating Scales – Third Edition (Conners-3)
- Connor Continuous Performance Task – Third Edition (CPT-3)

(Student Ex. 20, pp. 3-6.)

74. The Student's results on the WISC-V revealed a cognitive functioning range from very high to very low compared to other children her age. The Student's verbal comprehension was in the eighty-sixth percentile – within the high average range. The Student's visual spatial scale was in the fifty-fifth percentile, her fluid reasoning was in the fifty-eighth percentile, and

her processing speed was in the thirty-seventh percentile – within the average range. The Student’s working memory index was below average in the fifth percentile. Dr. [REDACTED]’s evaluation revealed that the Student’s full scale IQ was in the average range. (Student Ex. 20, pp. 3 and 10.)

75. The Student’s results on the WJ-IV revealed that “the Student’s overall academic performance is at a level consistent with that of most other same-age peers, with the exception of her reading performance, which exceeds that of other students her age.” (Student Ex. 20, p. 4.) The WJ-IV found the Student’s main academic weaknesses are in Math. (*Id.*)

76. From Dr. [REDACTED]’s use of the WJ-IV, he concluded that the Student’s achievement scores were in expected ranges and the Student did not appear “to present with any learning disorders.” (*Id.*)

77. The Vineland-3 is an interview-based assessment. (*Id.*)

78. The Parent and the Student’s father participated in Dr. [REDACTED]’s administration of the Vineland-3. (*Id.*)

79. The results of the Vineland-3 revealed the Student’s overall adaptive behavior functioning is within the moderately low range. (*Id.*)

80. The Student completed the YSR, and the Parent and the Student’s father completed the CBCL. (Student Ex. 20, p. 5.) A [REDACTED] teacher was asked to complete and return a teacher report form but failed to do so as of the report completion date. (*Id.*)

81. The YSR and CBCL revealed the Student shows difficulty in internalizing (including anxiety and depression) and externalizing (including rule-breaking and aggressive behavior) problems, as well as social, attention problems, and unusual thoughts. (*Id.*)

82. Results from the RCMAS-2 suggest the Student experiences mild symptoms of anxiety. (*Id.*)

83. The Student's score on the CDI-2 revealed significant concerns with depressive symptoms. (*Id.*)

84. The Student, the Parent, and the Student's father completed the BRIEF-2. (Student Ex. 20, p. 6.) A [REDACTED] teacher was asked to complete and return a teacher report form but failed to do so as of the report completion date. (*Id.*)

85. From Dr. [REDACTED]'s use of the BRIEF-2, he concluded the Student has many difficulties which interfere with her executive functioning, to include behavioral, emotional, and cognitive difficulties. (*Id.*)

86. The Student, the Parent, and the Student's father also completed a Conners Behavior Rating Scales – Third Edition (Conners-3). A [REDACTED] teacher was asked to complete and return a teacher report form but failed to do so as of the report completion date. (*Id.*)

87. With a caveat noting inconsistencies between the parents and overly negative responses by the Student, Dr. [REDACTED] concluded the Conners-3 showed the Student's difficulty sustaining her attention as well as hyperactive and impulsive behaviors. The difficulties impact the Student's capability towards executive function and peer relationships. (*Id.*)

88. Dr. [REDACTED]'s diagnostic impression of the Student was as follows:

- Autism Spectrum Disorder
- Attention-Deficit/Hyperactivity Disorder, Combined Type
- Adjustment Disorder with Depressed Mood
- Parental discord
- Recent loss of grandmother

(Student Ex. 20, p. 8.)

89. Dr. [REDACTED] reported that the Student would benefit from therapeutic (which may or may not include psychotropic medication) and educational interventions, to include a clinical therapist and enrollment in a social skills group. Family therapy was also recommended. (*Id.*)

90. Dr. [REDACTED] concluded that the Student is eligible for an IEP, and her behavioral and emotional difficulties significantly interfere with her ability to learn in a general education environment. Dr. [REDACTED] found the Student requires a specialized educational environment and recommended an IEP with the following provisions:

- A student-to-teacher ratio of no more than 10:1
- Preferential seating and opportunities to check in with school staff on a one-to-one basis to ensure comprehension and maintain focus
- Structured activities to encourage and practice prosocial skills
- Regular time with a tutor or staff member to organize material and group information
- Larger projects must be broken into smaller steps with the aid of visual checklists
- Regular scheduled time with a school-based therapist
- Use of a variety of modalities to present material to the Student
- An aid to help the Student practice life skills

(*Id.*)

91. The IEP team met on September 13, 2018 to review Dr. [REDACTED]'s evaluation as well as other materials, including a letter from [REDACTED] (AACPS Ex. 14.)

92. The Parent advised the school team the Student is on "suicide watch" and claimed there is enough evidence before the IEP team for it to conclude the Student cannot attend [REDACTED] and AACPS should allow her to continue at [REDACTED] (*Id.*)

93. The IEP team accepted that the Student has a clinical diagnosis of depression.

(*Id.*)

94. The IEP team accepted the data reported in Dr. [REDACTED]'s evaluation and acknowledged his recommendations would be considered when updating the Student's IEP. (*Id.*)

95. In September 2018, Ms. [REDACTED] and [REDACTED] [REDACTED] Special Education Department Chair, observed the Student at [REDACTED] (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 389; AACPS Ex. 31 p. 2.)

96. During the September 2018 observations, Ms. [REDACTED] and Ms. [REDACTED] observed the Student during her Math class (8th grade Math) and Language Arts class (a high school level course). The Student exhibited slightly higher inattentive behaviors in Math, but “she was the star” of her Language Arts course, constantly raising her hand and offering correct answers. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 389-90.)

97. The Parent expressed her concern with the IEP process and her reservations about [REDACTED] placement to Ms. [REDACTED]. Ms. [REDACTED] offered for a non-[REDACTED] AACPS employee to observe the Student at [REDACTED]. This “fresh set of eyes”¹⁴ was [REDACTED] a Specialist in the Out of Home-School Placement Office. (Testimony, all witnesses; AACPS Ex. 31, pp. 1-5.)

98. Ms. [REDACTED] is a case manager whose cases involve students placed at [REDACTED]. Ms. [REDACTED] has familiarity with [REDACTED] and visits frequently. (Testimony, Ms. [REDACTED]; Transcript, Vol. 3.)

99. Ms. [REDACTED] is a certified special educator. (Testimony, Ms. [REDACTED]; Transcript, Vol. 3.)

100. Ms. [REDACTED] observed the Student at [REDACTED] on October 4 and 11, 2018. (AACPS Ex. 29.)

101. On October 4, 2018, Ms. [REDACTED] observed the Student, now an eighth grader, in a ninth grade English class. The teacher: student ratio was 7:2. The Student was an active participant who also praised classmates for their participation and answers. She spoke appropriately to her peers. (*Id.*)

102. The Student’s English teacher reported to Ms. [REDACTED] that the Student is at the top of the class academically and socially. (*Id.*)

¹⁴ The term “fresh set of eyes” was apparently first used by Ms. [REDACTED] in her communication with the Parent. Throughout the hearing, witnesses continued use of this phrase.

103. On October 11, 2018, Ms. [REDACTED] observed the Student in an eighth grade Math class. The teacher to student ratio was 7:2. The Student actively participated in discussion, but was distracted and chatted with peers. (*Id.*)

104. The Student's Math teacher reported to Ms. [REDACTED] that the Student is in the middle of the class academically and socially. (*Id.*)

105. Ms. [REDACTED] concluded [REDACTED] is too restrictive for the Student, and the Student could benefit from a Type II placement in order to assist in transitioning her back to a "large comprehensive school." (*Id.*)

106. Type II schools provide instruction "by a nonpublic school and public school either on the grounds of the nonpublic school and the grounds of the public school, or solely on the grounds of the public school, with the primary goal of integrating students into the public school instructional program to the greatest extent appropriate." COMAR 13A.09.10.19A.

107. On October 11, 2018, the Parent emailed Ms. [REDACTED] and asked "[w]hat is in between [REDACTED] and public school?" The Parent also asked whether AACPS would be willing to contribute a portion of the Student's [REDACTED] tuition. "No retro, no due process, just a stipend for a year or 2?" (AACPS Ex. 31 p. 5.)

108. The IEP team met on November 28, 2018 for an annual review the IEP, but did not complete an approved IEP.¹⁵ Ms. [REDACTED] and Ms. [REDACTED] were in attendance. At that time, the Parent reported the Student continues to express statements of self-harm should she have to return to public school. The Parent advised removing the Student from [REDACTED] is not appropriate and her belief that the Student should continue at [REDACTED] with the idea that she will transition to a less restrictive environment. (AACPS Ex. 16.)

¹⁵ See AACPS Exhibit 17. The IEP is embossed with the word "Draft" across each page of the document.

109. The IEP team agreed the Student is on a high school diploma track and, as such, will participate in District and Statewide assessments. The school team determined the Student's Present Levels of Performance. The Prior Written Notice reflects the Parent agreed with these decisions. (*Id.*)

110. The school team recommended the Student receive services outside of the general education setting for Math, Science, and Social Studies in a self-contained setting. Language Arts was recommended to be conducted in a co-taught, general education setting. The school team recommended learning behaviors and social skill support be embedded throughout the school day and psychological services were recommended for one thirty minute session weekly. (*Id.*)

111. The November 28, 2018 Draft IEP assigned the Student four quarterly goals, each with three objectives. The goals covered the following instructional areas: Mathematics, Learning Behaviors, and Social Emotional. The Mathematics goal sought an 80% accuracy on 4/5 targeted trials. The evaluation method was classroom assessment work samples. The Learning Behaviors goal sought Student completion of non-preferred tasks within a given time-frame using verbal prompts. Data sheets were the method of evaluation. Finally, the Student's Social Emotional goals included using learned coping strategies to manage negative emotions and feelings of anxiety, and demonstrate appropriate social skills when interacting with peers and adults. Observation records would be the method of evaluation. (AACPS Ex. 17, pp. 24-25.)

112. The IEP was revised to incorporate the following recommended services:

- 4.5 hours/week of special education service outside of the general education setting for Math
- 4.5 hours/week of special education service outside of the general education setting for Science
- 4.5 hours/week of special education service outside of the general education setting for Social Studies

- Services in the area of learning behaviors will be provided in Language Arts, and Encores¹⁶ in the general education setting (2 hours)
- Psychological services in one thirty minute session per week
- Recommended services are unable to be implemented at [REDACTED]
- Transportation is required to and from school

(AACPS Ex. 17.)

113. [REDACTED] did not offer regular services outside of the general education setting for Science and Social Studies because [REDACTED] did not have self-contained Science and Social Studies classes. (Testimony, Ms. [REDACTED] Transcript Vol. 2 – p. 339.)

114. The school team stated the recommended services were unable to be implemented at [REDACTED] so the case would be referred to the Central IEP Team for placement. (AACPS Exs. 16-17.)

115. While the Student's case was sent to the Central IEP Team for placement, the Student would be placed at [REDACTED] [REDACTED] would allocate faculty to fulfill the November 28, 2018 IEP in the interim. (E.g. Faculty would be temporarily assigned to create a self-contained Science and Social Studies environment for the Student.) In the alternative, the Student could remain at [REDACTED] at the Parent's expense. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 337-40)

116. On November 30, 2018, Ms. [REDACTED] completed a Psychosocial Report of the Student which was required for referral to the Central IEP Team. (AACPS Ex. 20; Testimony, Ms. [REDACTED] Transcript, Vol. 3.)

117. An AACPS letter to the Parent dated December 10, 2018 explained if the Student was accepted and enrolled in [REDACTED]¹⁷, the IEP team at [REDACTED] would finalize the IEP, and if the Student was not accepted, the [REDACTED] team would reconvene. (Student Ex. 22A.)

¹⁶ "Encores" are electives such as Art and Physical Education. (Testimony, Ms. [REDACTED])

¹⁷ [REDACTED]

118. On December 12, 2018, Ms. [REDACTED] and Ms. [REDACTED] completed a Needs Analysis of the Student which was required for referral to the Central IEP Team. (AACPS Ex. 20; Testimony, Ms. [REDACTED] Transcript, Vol. 3.)

119. On December 13, 2018, Ms. [REDACTED] requested [REDACTED] provide required documents for an AACPS Central IEP Packet. (AACPS Ex. 32.)

120. The Parent objected to [REDACTED] releasing the Student's immunization records and other documents to AACPS and delayed the process of compiling the Packet. (*Id.*)

121. Among other responsibilities, Ms. [REDACTED] supervises the Central IEP Team. She facilitates placements and monitors student progress with the effort to return students to the LRE. (Testimony, Ms. [REDACTED] Transcript, Vol. 3.)

122. [REDACTED] is a Type II school at [REDACTED] "developed to assist students with [ASD], emotional disabilities, or other appropriate disabilities, transition to a less restrictive setting." (AACPS Ex. 28.)

123. [REDACTED] also offers a high school program at [REDACTED] (AACPS Ex. 28.)

124. The only other Type II middle school option for the Student was [REDACTED] [REDACTED] which would not be appropriate because it accepts students certificate-bound (not on a high school diploma track such as the Student) with severe cognitive delays. (Testimony, Ms. [REDACTED] Transcript, Vol. 3.)

125. Immediately upon receipt of all required documentation, on January 11, 2019, AACPS Central IEP sent the Student's application Packet to [REDACTED] and requested an expedited decision. (AACPS Ex. 19; Testimony Ms. [REDACTED])

126. [REDACTED] requires shadow days during the student application process. (Testimony, Ms. [REDACTED] Transcript, Vol. 3.)

127. [REDACTED] middle school shadow days scheduled for January 24, 2019 and February 4, 2019 were cancelled and rescheduled by the Parent. [REDACTED] shadow days scheduled for February 19, 2019 and March 4, 2019 were also rescheduled.¹⁸ (Testimony, Ms. [REDACTED]; AACPS Ex. 27.)

128. The Parent is responsible for some delay in the shadowing process.

129. On January 29, 2019, the Parent emailed Ms. [REDACTED] to advise that she was impressed with [REDACTED] at [REDACTED] but concerned about the timing of placement. Given the Student is in the eighth grade, not much time remained in the 2018-2019 school year. The Parent remained concerned with ESY, and the Student experiencing another new school before high school. The Parent proposed alternatives wherein the Student would remain at [REDACTED] at AACPS expense for a period of time, then transition to either [REDACTED] middle school or high school. (AACPS Ex. 31.)

130. On March 6, 2019, the Student shadowed at [REDACTED] middle school. (Testimony, Ms. [REDACTED]; AACPS Ex. 27.)

131. To make the Parent “more comfortable,” the Student completed a second shadow day at [REDACTED] middle school on March 18, 2019. (Testimony, Ms. [REDACTED]; AACPS Ex. 27.)

132. On March 20, 2019, [REDACTED] at [REDACTED] accepted the Student. (AACPS Ex. 23.)

133. [REDACTED] at [REDACTED] mailed its acceptance letter to the Parent at an incorrect address. (AACPS Exs. 19, p. 2 and 23.)

134. On March 21, 2019, [REDACTED] emailed the Parent to advise of the Student’s acceptance. [REDACTED] also indicated a willingness to consider the Student for the [REDACTED] high school program at [REDACTED]. [REDACTED] invited the Parent to schedule to Student for shadow days at the [REDACTED].

¹⁸ The reason for rescheduling the February 19, 2019 and March 4, 2019 shadow days was not made part of the record.

high school and indicated it would be able to provide a decision shortly thereafter. (AACPS Ex. 31, p. 30.)

135. The Parent did not take the Student for shadow days at [REDACTED] at [REDACTED]

[REDACTED] (Testimony, Ms. [REDACTED] AACPS Ex. 27.)

136. The Parent did not enroll the Student at [REDACTED] at [REDACTED]

137. On May 13, 2019, the Parent filed a Due Process Complaint on behalf of the Student.

138. In June 2019, AACPS communicated with [REDACTED] to discuss the possibility of [REDACTED] refunding the Parent's tuition deposit for the 2019-2020 school year. (AACPS Ex. 26.)

DISCUSSION

Statute of Limitations

The time period in which to request a Due Process hearing with the OAH is controlled by the limitations period under Maryland law enacted to comply with the IDEA. *See* 20 U.S.C.A. § 1415(f)(3)(C). The applicable statute of limitations provides that the Due Process complaint must be filed within two years of the date the parents knew or should have known of the action that formed the basis for the complaint. Md. Code Ann., Educ. § 8-413(d)(3) (2018); *see also* COMAR 13A.05.01.15C(1); 34 C.F.R. §§ 300.507(a)(2), 300.511(e). The IDEA requires that the school district inform parents of the two-year limitations period applicable to the request for a Due Process hearing. 20 U.S.C.A. § 1415(d)(2)(E)(i).

The Parent filed the complaint in this case on May 13, 2019, seeking [REDACTED] tuition reimbursement between the years of 2015 – 2019. AACPS raised the issue of the statute of limitations during the June 20, 2019 and July 31, 2019 telephone pre-hearing conferences. After considerable discussion, the Parent clarified her position, stating the Parent is seeking tuition reimbursement for the 2017-2018 and 2018-2019 school years only and acknowledged the issues

identified in this hearing as set forth in my second telephone pre-hearing conference report and order, issued July 31, 2019.¹⁹

As the hearing progressed, the Parent referred to a few exhibits dated prior to the 2017-2018 and 2018-2019 school years for historical information about the Student. I consider them solely for that purpose. Therefore, I do not consider the 2015-2016 and 2016-2017 school years to be at issue and shall not address them in this decision.

Motion in Limine

On July 23, 2019, the Student filed a Motion in Limine for Assessment of Records (Motion) seeking introduction of multiple exhibits to provide an historic background of the Student. AACPS did not file a written response, but objected to the admissibility of the exhibits when the Motion was addressed at the start of the hearing. I deferred ruling on the admissibility of the exhibits identified in the Motion and advised the parties that I would rule on each exhibit individually when offered for admission into evidence during the hearing.

The General Legal Framework

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

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) and the applicable federal regulations. The statute provides as follows:

¹⁹ The issues identified in this decision are identical to the issues as set forth in my July 31, 2019 second telephone pre-hearing conference report and order.

(A) In General

The term “child with a disability” means a child –

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

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

The IEP is the mechanism by which FAPE is achieved. After a local educational agency has evaluated a child and determined that the child has a disability and is eligible for services under the IDEA, the local educational agency is required to have in place an IEP.

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3)(A). Among other things, the IEP depicts a student’s current educational performance, explains how the student’s disability affects the student’s involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A. IEP teams must consider the student’s evolving needs when developing their educational programs. The student’s IEP must include “[a] statement of the child’s present

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

Throughout the process of identifying a student as a child with a disability and establishing the appropriate individualized educational content for the student, parents are entitled to certain mandatory procedural protections related to the identification of the student as a child with a disability, the establishment of the individualized educational content reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances, and notice of the parents' right to appeal any determination of the IEP team with which they disagree. 20 U.S.C.A. § 1415. Additionally, every time the student's IEP team meets, the local education agency is required to provide the parents with “prior written notice,” which essentially means the local education agency must provide in writing what was discussed during the IEP team meeting and any conclusions made and proposed actions with regard to the student's educational program. *Id.*

The Supreme Court addressed the requirement of a FAPE in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), holding that the requirement is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” *Id.* at 201 (footnote omitted). The court set out a two-part inquiry to analyze whether a local education

agency satisfied its obligation: first, whether there has been compliance with the procedures set forth in the IDEA; and second, whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive some educational benefit. *Id.* at 206-07.

The *Rowley* Court found, because special education and related services must meet the state's educational standards, the scope of the benefit required by the IDEA is an IEP reasonably calculated to permit the student to meet the state's educational standards; that is, generally, to pass from grade-to-grade on grade level. *Rowley*, 458 U.S. at 204; 20 U.S.C.A. § 1401(9).

Thirty-five years after *Rowley*, the parties in *Andrew F.* asked the Supreme Court to go further than it did in *Rowley* and set forth a test for measuring whether a disabled student had attained sufficient educational benefit. The framework for the decision was the Tenth Circuit's interpretation of the meaning of *Rowley's* "some educational benefit," which construed the level of benefit as "merely . . . 'more than *de minimis*.'" *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10th Cir. 2015).

The Supreme Court set forth the following "general approach" to determining whether a school has met its obligation under the IDEA:

While *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an "ambitious" piece of legislation enacted in response to Congress' perception that a majority of handicapped children in the United States 'were either totally excluded from schools or [were] sitting idly in regular

classrooms awaiting the time when they were old enough to “drop out.” A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child’s circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be “*specially* designed” to meet a child’s “*unique* needs” through an “[i]ndividualized education program.”

Endrew F., 137 S. Ct. at 998-99 (citations omitted). The court expressly rejected the Tenth Circuit’s interpretation of what constitutes “some benefit”:

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.

Id. at 1001 (citation omitted).

Directly adopting language from *Rowley*, and expressly stating that it was not making any “attempt to elaborate on what ‘appropriate’ progress will look like from case to case,” the *Endrew F.* court instructs 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.’” *Id.* (quoting *Rowley*, 458 U.S. at 206). At the same time, the *Endrew F.* court wrote that in determining the extent to 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.” *Id.* at 1002.

Ultimately, a student with a disability’s “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child

should have the chance to meet challenging objectives.” *Id.* at 1000. Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.” *Id.*

In addition to the IDEA’s requirement that a disabled child receive educational benefit, the child must be placed in the “least restrictive environment” to achieve a free appropriate public education, meaning that, ordinarily, disabled and non-disabled students should, when feasible, be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117. Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program. *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989). At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5)(A). Placing disabled children into regular school programs may not be appropriate for every disabled child and 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 cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like AACPS to offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1). Consequently, 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 cannot be achieved. COMAR 13A.05.01.10A(2). In such a case, a free appropriate public education might require placement of a child in a private school setting that would be fully funded by the child's public school district.

Parents may be entitled to retroactive reimbursement from the state for tuition and expenses for a child unilaterally placed in a private school if it is later determined that the school system failed to comply with its statutory duties and that the unilateral private placement provided an appropriate education. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. Under *Burlington*, parents may recover the cost of private education only if (1) the school system failed to provide a free appropriate public education; (2) the private education services obtained by the parent were appropriate to the child's needs; and (3) overall, equity favors reimbursement. The private education services need not be provided in the least restrictive environment. *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

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). In this matter the Parent and Student have the burden of proving that AACPS failed to provide the Student with a free appropriate public education for the 2017-2018 and 2018-2019 school years, and that they are entitled to reimbursement for their unilateral placement of the Student at [REDACTED]

Contentions of the Parties

The Parent's attorney filed a comprehensive, multi-page complaint on behalf of the Student, arguing both substantive and procedural denials of FAPE. The Parent contended the AACPS 2017-2018 and 2018-2019 IEPs failed to provide sufficient special education related

services; supplementary aids; and program modifications, supports, and accommodations to allow the Student to make reasonable advancements. The Parent argued the areas of academic impact identified in the IEPs had no associated goals or goals too vague for any measure of efficacy, particularly in the area of the Student's Math deficiencies. Furthermore, despite a clinical diagnosis of depression and a disability coding change to include emotional disabilities, the Parent questioned why the Student's service hours decreased. In addition, the Parent questioned why the Student's case received observation informally by a "fresh set of eyes" and argued the Student's case was irregularly routed to Central IEP, which denied her parental participation rights. The Parent posited [REDACTED] was predetermined by AACPS, without any explanation why other placements may or may not have been appropriate, and the predetermination denied her meaningful participation in the decision-making process. The Parent believes there was an insufficient discussion of the LRE and the type of placement needed along the placement continuum. Moreover, the Parent argued the lack of an identified placement constituted a deficient IEP and a denial of FAPE. The Parent requested [REDACTED] tuition reimbursement for the 2017-2018 and 2018-2019 school years.

AACPS argued the Parent unilaterally placed the Student at [REDACTED] a school too restrictive for her needs, and although the IEP team created appropriate IEPs for the 2017-2018 and 2018-2019 school years, the Parent refused to allow AACPS to implement them. AACPS contended it continuously addressed Parental concerns and incorporated additional information in the decision-making process as it became available, revising the IEP when necessary. AACPS stated the Parent received all required parental rights information and no procedural irregularity exists. AACPS claimed the Parent disingenuously participated in the IEP process, never intending the Student to withdraw from [REDACTED] but instead hoping AACPS would contribute to or pay [REDACTED] tuition in full. AACPS argued the Parent failed to meet the burden of proof.

The Parent's Testimony

The Parent testified she holds a B.A. in English and Philosophy, a M.S. in Occupational and Technical Education with Business Administrative Training, and a Ph.D. in Management Information Systems, and is employed by the [REDACTED] as a [REDACTED] [REDACTED] for micro-learning strategies and performance optimization. She possesses specialized training in, among other topics, cognitive learning theories, has numerous certifications, and has twenty-five years of experience in this field. (Transcript, Vol. 1 – p. 19.) The Parent has some classroom teaching experience, having taught in [REDACTED] many years ago on a consultant basis for less than one year in the fields of Language Arts and College Prep. (Transcript, Vol. 1 – pp. 21-22, 134.) The Parent was not certified by the State of [REDACTED] in either general or special education, but testified she drew from her experiences in [REDACTED] when discussing the Student with AACPS.

The Parent testified the Student attended private nursery schools and pre-kindergarten programs, including [REDACTED] school. The Parent reported that in pre-kindergarten, the Student was well ahead of her peers, with uniquely high verbalization skills. When a [REDACTED] school advised the Parent that it could not accommodate the Student's needs, the Parent obtained a psychological evaluation of the Student by [REDACTED] Ph.D. of [REDACTED] [REDACTED] LLC. (Student Ex. 3.) Dr. [REDACTED]'s diagnoses included Attention-Deficit/Hyperactivity Disorder, Combined Type. (*Id.* at p. 11.)

The Parent testified the Student increasingly withdrew socially at [REDACTED] By fourth grade, the Student developed an aversion to attending school and would engage in tantrums so severe she would vomit. An IEP was put in place during the Student's fourth grade year to address issues impacting the Student's performance. The Parent stated after some initial improvement, the Student began to regress and her absenteeism grew. The Parent also expressed

dissatisfaction that the Student was receiving additional services which were not accurately recorded in her IEP and her academic performance was poor. In addition, the Parent explained the Student dealt with bullying at [REDACTED]. In the fifth grade, a peer slammed the Student's head against a bathroom stall door necessitating emergency department treatment. The peer's parents advised that their daughter was responding defensively to the Student due to the Student's alleged inappropriate sexual behavior that occurred at a birthday party off school grounds both children had attended. The Parent was dissatisfied because [REDACTED] neglected to take disciplinary action against the peer. The Parent testified that thereafter she no longer felt the Student was safe at [REDACTED] and she began researching alternative educational options. The Parent turned to the Maryland Association of Nonpublic Education Facilities (MANSEF), and explained that in Anne Arundel County MANSEF identified [REDACTED] a Type I school, as the only self-pay option. The Parent testified she did not believe [REDACTED] was the LRE, but [REDACTED] offered: 1) small class sizes to address the Student's ASD, and ADD/ADHD; 2) a safe environment for the Student; and 3) a self-payment option. (Transcript, Vol. 1 – p. 43.) As a result, in November 2015, the Parent withdrew the Student from [REDACTED] and enrolled the Student at [REDACTED]. She stated the Student's PARCC scores reflect how poorly [REDACTED] educated the Student. She stated the Student has done well at [REDACTED] and it has been a joy seeing the Student smile again.

The Parent explained that thereafter she did not expect to hear from AACPS. The Parent expressed surprise to have received Ms. [REDACTED]'s June 9, 2017 email offering a services plan. Ms. [REDACTED] had not been involved with the Student's prior IEPs. The Parent agreed to commence IEP team meetings in the summer of 2017.

The Parent testified that the Student came to [REDACTED] with significant Math deficiencies from her time at [REDACTED] such that she required regular Math instruction and a remedial course. The Parent stated that the Student continues to have difficulties in Math, so the AACPS October 6,

2017 IEP proposal of four hours per week of special education service in a co-taught Math class was woefully inadequate. The Parent believed thirty or more students are placed in co-taught classrooms, and the class size is too large. The Parent explained she requested AACPS assessments and an IEE.²⁰ When the Student's disability code changed after Ms. [REDACTED]'s assessment, the Parent asked for clarification and complained to the MSDE.²¹

The Parent claimed the AACPS staff disparaged Dr. [REDACTED]'s IEE during a subsequent IEP team meeting, which made her feel ostracized. The Parent testified she contacted Ms. [REDACTED] and the school superintendent to complain. Ms. [REDACTED] offered "a fresh set of eyes" – someone who was not assigned to [REDACTED] who would review the Student's case and observe her at THS. The Parent stated that she did not understand how this additional observation complied with the IDEA and she believed it was only offered because she had been vocal in her complaints. (Transcript, Vol. 1 – p. 97.)

The next IEP team meeting was conducted on November 28, 2018, and the Parent stated she believed [REDACTED] had been predetermined by the school team. And when she inquired about interim placement, despite [REDACTED] stating it could not meet the Student's needs, the Parent was told the Student could attend [REDACTED] or continue at [REDACTED] at the Parent's expense. The Parent explained that she was angry these were her only two options, and other Type II schools were not discussed. However, when presented with Ms. [REDACTED]'s letter of agreement dated December 10, 2018, the Parent testified she signed the letter in order to begin the [REDACTED] application process. (Student Ex. 22A; Transcript, Vol. 1 – p. 114.) The Parent faulted AACPS for not updating the IEP to reflect the Student's acceptance to [REDACTED] and discussing transportation services with the Parent. (Transcript, Vol. 1 – pp. 121-22.) Additionally, the Parent expressed reservation with the Student attending [REDACTED] for the remaining few weeks of the school year without any certainty

²⁰ The Parent testified AACPS went "above and beyond" to facilitate the IEE. (Transcript, Vol. 1 – p. 90)

²¹ The Parent referred to the disability coding as a diagnosis. (Transcript, Vol. 1 – p. 87.)

where the Student would be placed for the following school year. The Parent stated there were no guarantees about the possibility of the Student attending [REDACTED]'s high school program the following year. (Transcript, Vol. 1 – pp. 122-23.) In addition, [REDACTED] required a deposit, and the Student would risk losing her spot at [REDACTED] if the Parent did not pay the deposit.

On cross-examination, the Parent testified while the Student attended [REDACTED] she also attended private counseling (for social skills, dealing with authority, and ASD) twice a week but now she attends similar counseling at [REDACTED] (Transcript, Vol. 1 – p. 144.) The Parent conceded the Student has maintained high absenteeism, first at [REDACTED] then at [REDACTED]. In addition, the Parent acknowledged since November 2015 she has not allowed AACPS to implement any IEP. (Transcript, Vol. 1 – p. 141.) However, the Parent maintained that the Student's aversion to public school classrooms and her depression prevent her from being successful at [REDACTED]. The Parent stated her complaint has not been about trying to get AACPS to pay for [REDACTED] she did not delay the [REDACTED] middle school shadow day process, and [REDACTED] high school shadow days never took place due to scheduling conflicts. The Parent also acknowledged the IEE found evidence of the Student possessing an Emotional Disability. (Student Ex. 20, p. 8; Transcript, Vol. 1 – pp. 172-73.) The Parent stated during the November 2018 IEP team meeting, [REDACTED] was discussed as the only option for the Student. (Transcript, Vol. 1 – p. 189.)

On redirect, the Parent stated that had AACPS presented an IEP that met the Student's needs, the Parent would have given it consideration. (Transcript, Vol. 1 – p. 248.)

Testimony Presented by AACPS

[REDACTED] IEP Facilitator
[REDACTED] IEP Facilitator, testified on behalf of AACPS as an expert in special education. Ms. [REDACTED] holds a B.S. in Elementary Education from [REDACTED]²²,

²² The university was previously known as [REDACTED]

a M.A. in Liberal Arts from [REDACTED] and is currently pursuing an additional Master's degree in Administration. Ms. [REDACTED] holds a special education certificate. She has taught and evaluated students with disabilities, including students with ASD, as well as attention and emotional needs. Ms. [REDACTED] participates in IEPs and performs student diagnostic assessments, and she had held her IEP Facilitator position at [REDACTED] for approximately eight years. She explained as the IEP Facilitator, she is responsible for legal compliance, assessments, and data collection for development of IEPs.

Ms. [REDACTED] has been familiar with the Student's case since 2017 when her name appeared on a report of students who's IEPs had not been updated in over one year. (Transcript, Vol. 2 – pp. 271-72.) She has observed the Student twice at [REDACTED] assessed her, interacted with her, as well as reviewed her AACPS and [REDACTED] records. Ms. [REDACTED] also spoke to [REDACTED] staff who work with the Student and met with the Parent during many IEP meetings.

On June 9, 2017, she emailed the Parent and inquired whether the family was interested in a services plan or was declining AACPS services. After communication between the Parent and Ms. [REDACTED] Ms. [REDACTED] was asked to schedule an IEP meeting. Ms. [REDACTED] scheduled and participated in the first 2017-2018 IEP team meeting on August 3, 2017, and all meetings thereafter. Ms. [REDACTED] testified the team reviewed [REDACTED] documents (progress reports, IEP, work samples) and determined the school team needed to observe the Student and speak with staff at [REDACTED] Ms. [REDACTED] stated the Parent advised the team the Student is victim of sexual abuse and the Parent had concerns regarding her [REDACTED] (Transcript, Vol. 2 – p. 277) The school team agreed to inquire about the subject at [REDACTED]

Thereafter, Ms. [REDACTED] advised she and Ms. [REDACTED] observed the Student at [REDACTED] and met with staff. Their findings were discussed in detail during the next IEP team meeting on September 29, 2017. (Transcript, Vol. 2 – p. 290) The Student was observed in a Language Arts

class working mostly independently, and [REDACTED] staff reported the content of her work was excellent, and she exceeds expectations. However [REDACTED] staff advised the Student was working below expectations in Math and described her social interactions as average. [REDACTED] s school psychologist²³ had not noted concerns with [REDACTED] (Transcript, Vol. 2 -- pp. 281-82) In the IEP meeting, the team also considered parental input and reviewed the Student's Present Levels of Performance, AT needs, and testing accommodations. Ms. [REDACTED] testified the Parent was in agreement with all proposed actions.

The IEP team met again on October 6, 2017 in order to finalize the IEP. The primary disability was coded "Multiple Disabilities: Autism, Other Health Impairment." The issue of ESY was deferred. Ms. [REDACTED] testified that IEPs are driven by data points. [REDACTED] is a year-round school, and from what information the school team received from [REDACTED], the school team found insufficient information regarding regression and recoupment to support ESY services at that time. Ms. [REDACTED] explained had the Student attended [REDACTED] her regression and recoupment would have been monitored and her IEP revised, if necessary, to include ESY services. An occupational therapist consult was included because the Student was receiving similar service at [REDACTED]. Ms. [REDACTED] reviewed the entire October 6, 2017 IEP during her testimony. She explained the school team proposed four hours of special education service weekly in a co-taught Math class, two hours of special education service weekly in a co-taught Language Arts class, two hours of special education service weekly in a co-taught Science class, and two hours of special education service weekly in a co-taught Social Studies class. Ms. [REDACTED] explained co-taught classes incorporate instruction from a general education instructor for content specialty, a special education instructor for expertise in special education, and an instructional assistant in a class size of 25-30 students. The teachers collaborate to create the lesson plan and modify

²³ [REDACTED] s school psychologist was identified throughout the hearing as "Dr. [REDACTED]"; no one provided a full name.

assignments as needed. Less than fifty percent of students in a co-taught class have an IEP, allowing for interaction with non-disabled peers which Ms. [REDACTED] explained is important for exposure to typical social behaviors. Ms. [REDACTED] stated that the October 6, 2017 IEP also called for the Student to receive one thirty-minute session of counseling services weekly outside the general education classroom with the school psychologist, but the Parent did not find this to be sufficient. Ms. [REDACTED] opined [REDACTED] the Student's home school, could meet the Student's needs in the LRE, where the Student could have access to her non-disabled peers to the greatest extent possible. Ms. [REDACTED] testified the Parent voiced her disagreement with the level of services and the placement conclusion, and advised the school team that she will keep the Student at [REDACTED]. In addition, the Parent expressed an interest in an IEE. Because there were no current assessments, Ms. [REDACTED] explained there was nothing for comparison, so on October 19, 2017 an assessment referral was made. The referral was for evaluation of the Student's behavior, cognitive/intellectual, attention/executive functioning, social/emotional, and academic performance in the areas of Reading, Math, and Written Expression.

Ms. [REDACTED] explained during a November 3, 2017 IEP team meeting, the team discussed the assessment referral and the possibility of a change in the Student's disability coding.

Ms. [REDACTED] testified she conducted the Student's academic assessments at [REDACTED]. It was the first time the Student met Ms. [REDACTED] and the first time the Student visited [REDACTED]. Ms. [REDACTED] described the Student as a hard worker and a pleasant, sweet girl. She stated the Student advocated for herself when she needed breaks in the testing, and told Ms. [REDACTED] she wasn't good in Math. Ms. [REDACTED] advised the Student was wonderful to work with and expressed no discomfort by being at [REDACTED]. Ms. [REDACTED] reviewed her assessments and testified the Student performed in the average and above average ranges in all areas except Sentence Building and Numerical Operations. Ms. [REDACTED] stated Numerical Operations are calculations.

As a result, she recommended the Student have use of a calculator and be given clear structure for writing tasks.

Ms. [REDACTED] testified Ms. [REDACTED] conducted the Student's psychological assessment, and recalled Ms. [REDACTED] reporting the Student liked to talk. During her time at [REDACTED] with Ms. [REDACTED] the Student introduced herself to the principal and greeted former [REDACTED] peers in the hallway. Ms. [REDACTED] advised the Student did not express any discomfort to Ms. [REDACTED] while attending the assessments at [REDACTED]

Ms. [REDACTED] explained another IEP team meeting was held on December 21, 2017 to review the academic and psychological assessments. The team agreed the Student meets the eligibility criteria for "Multiple Disabilities: Autism" and "Emotional Disability" and requires specialized instruction in Math, Social/Emotional, and Learning Behaviors.

Another IEP team meeting was held on February 9, 2018, and Ms. [REDACTED] explained the Student's IEP was updated based upon the new assessments. At that time, the school team concluded the Student did not meet the criteria for ESY services. Ms. [REDACTED] testified the ESY decision was based upon the school team's review of [REDACTED] records, which did not reveal evidence of regression. (Transcript, Vol. 2 – pp. 319-320.)

Ms. [REDACTED] described the Student as bright, and testified the Student has the ability to access the curriculum in a general education setting, and [REDACTED] is the LRE. The Student's abilities in Reading and Writing were never in question. Ms. [REDACTED] explained the Student is easily directable, which supports the conclusion a co-taught, not self-contained, classroom is her appropriate academic environment. The Student can advocate for herself, so she can ask for help, and with adult supports, the Student can her manage peer interaction and attention difficulties. She testified to her opinion that co-taught classroom hours offer the Student social

and emotional support. Ms. [REDACTED] opined [REDACTED] has the resources to have implemented the 2017-2018 IEP and [REDACTED] is the LRE. (Transcript, Vol. 2 – pp. 322-23.)

For the 2018-2019 school year, Ms. [REDACTED] testified the school team contacted [REDACTED] in order to speak with the Student's teachers and receive current progress reports, work samples, and data sheets. An IEP team meeting was conducted on September 13, 2018. Ms. [REDACTED] testified at that time, the team reviewed a letter the Parent provided from the Student's pediatrician and accepted the pediatrician's clinical diagnosis of depression. The team also reviewed Dr. [REDACTED]'s August 22, 2018 IEE and accepted his findings.

Ms. [REDACTED] testified the IEP team met on November 28, 2018 for an annual IEP review. Ms. [REDACTED] recalled the Parent continued to seek placement of the Student at [REDACTED] [REDACTED]. [REDACTED] was a team member at the meeting and she relayed her observations of the Student at [REDACTED]. Ms. [REDACTED] explained the Parent continued to express concerns with the Student returning to public school. Given the length of time the Student had been at [REDACTED] in a self-contained setting, Ms. [REDACTED]'s observations, and in an effort to work collaboratively with the Parent, Ms. [REDACTED] testified the school team agreed a Type II school would assist in the Student's transition back to a comprehensive, general education setting. Therefore, the school team recommended the Student receive services outside of the general education setting for Math, Science, and Social Studies. Language Arts was recommended to be in a general education setting. The school team recommended learning behaviors and social skill support be embedded throughout the school day and psychological services were recommended for one thirty minute session weekly. Ms. [REDACTED] testified [REDACTED] has a self-contained Math program, but no self-contained Science and Social Studies programs. [REDACTED] could make arrangements to offer the Student this level of instruction temporarily, but could not do so for an entire year. Because IEPs are created for the duration of one year, Ms. [REDACTED] explained the

Student's IEP was amended to state that [REDACTED] could not implement the recommended services. For this reason, the Student's case was forwarded to Central IEP/non-public office for placement. Although there had been discussion about [REDACTED] Ms. [REDACTED] explained [REDACTED] does not appear on the November 28, 2018 IEP because the Student had to apply for acceptance to [REDACTED]

Ms. [REDACTED] testified that the Central IEP/non-public office requires a "packet" of information. On December 13, 2018, Ms. [REDACTED] began reaching out to [REDACTED] for documentation needed for the packet. [REDACTED] stated the Parent would not give permission for the release of documents and asked AACPS to contact her. Despite AACPS contacts with the Parent, all documentation was not received for a complete packet until January 10, 2019.

Ms. [REDACTED] testified AACPS will no longer be using PARCC testing as of the 2019-2020 year. She explained PARCC measures a student's ability to demonstrate aptitude on common core material without aids, just accommodations. Alternatively, Ms. [REDACTED] explained standard assessments are norm-based assessments on particular skills verses peers and measure how a student accesses the curriculum. She testified the AACPS assessments and the IEE assessments were used to determine the Student's levels of ability which are reflected in her IEP. She also testified that AACPS does not report on grade level equivalency.

Ms. [REDACTED] testified that absenteeism adversely affects a student's performance, most greatly – in her experience – in the area of Math because Math skills build upon one another. Ms. [REDACTED] testified the Student's number of absences at [REDACTED] and [REDACTED] are problematic for this reason.

Finally, Ms. [REDACTED] opined that a Type I school is too restrictive for the Student. Ms. [REDACTED] acknowledged the Parent relayed her frustration with [REDACTED] repeatedly to the [REDACTED] IEP team, but Mr. [REDACTED] explained she cannot speak to decisions made by [REDACTED]. [REDACTED] is an entirely different school and IEP team. Ms. [REDACTED] testified the Parent praised the [REDACTED] and

IEP school team multiple times, and commented [REDACTED] appeared to have more supports than [REDACTED]. Ms. [REDACTED] stated the Parent acknowledged [REDACTED] was not necessarily the best placement for the Student, but it was safe and the Student absolutely did not want to attend public school. However, the Student never shared this sentiment with Ms. [REDACTED] or Ms. [REDACTED]. Ms. [REDACTED] testified [REDACTED] works with comparable student profiles as the Student's and the students receive education benefit. Ms. [REDACTED] opined the Student's 2017-2018 IEP was appropriate and [REDACTED] could offer interim placement for the Student's 2018-2019 IEP.

On cross-examination, Ms. [REDACTED] explained that there is no "boss" in an IEP team. Her role is to facilitate the meetings and try to work through disagreements to build consensus. She stated that she met the Student three times: two observations (one each school year) and one assessment. Ms. [REDACTED] estimated her first observation was approximately one hour in duration, and she spent approximately two and a half hours with the Student during her academic assessments. During the second [REDACTED] observation, which she approximated to be two hours, she and [REDACTED] [REDACTED] Special Education Chairperson, saw the Student in an eighth grade Math class and a high school level Language Arts class. Ms. [REDACTED] stated the Student exhibited slightly higher inattentive behaviors in the Math class, but in the Language Arts class "she was the star," raising her hand repeatedly to offer correct answers. She explained that she would have conducted further Student observation if she felt it had been necessary, but that observations are just one data point. Ms. [REDACTED] explained in coming to her conclusions she also relied on Student work samples, conversations with [REDACTED] staff, and [REDACTED] records.

Ms. [REDACTED] explained that disability codes are not diagnoses; the codes are used to identify the most impactful disability, and the code "Other Health Impairment" was used to encompass the Student's ADHD. "Emotional Disability" was not a code applied to the Student initially.

Ms. [REDACTED] explained that ESY services were ultimately not determined appropriate for the Student based upon THS progress reports and conversations with [REDACTED] teachers. She stated AACPS ESY services are offered for four weeks every July. Ms. [REDACTED] testified that [REDACTED] had been removing the Student from instances where the Student conflicted with a peer, but the [REDACTED] team believed the better approach was to teach skills and allow the Student to work through any peer conflict in the classroom. Ms. [REDACTED] explained appropriate peer models and the use of tools provided in the IEP would be of assistance to the Student.

Ms. [REDACTED] stated IEPs are intended to be implemented for one year and a typical Central IEP referral takes less than two months for placement. She explained the Student was participating and performing well above her peers at [REDACTED] and, therefore, the Student could be successful in a less restrictive environment.

On redirect, Ms. [REDACTED] explained that disability coding does not determine a student's placement. A student's individual needs determine the IEP. She testified the goal of special education is to not need special education, *i.e.*, for a student to take the skills learned and apply them to other situations.

[REDACTED] Coordinator of Interagency and Nonpublic Placements
[REDACTED] Coordinator of Interagency and Nonpublic Placements, testified on behalf of AACPS as an expert in special education and the placement of students with disabilities. She holds a BS in Psychology, a MA in Special Education, as well as additional education and special education credit hours. Ms. [REDACTED] has forty years of experience in special education. She oversees the coordination and monitoring of student nonpublic placements with an effort to return students to the LRE. Ms. [REDACTED] is a certified special education teacher for grades K-12 and holds special education supervisor and principal

certifications. She has testified on prior occasions as an expert in special education and the placement of students with disabilities.

Ms. [REDACTED] explained that the nonpublic placement office deals with students who possess the most severe and impactful disabilities. She personally became involved with the Student's case in approximately October 2018 when she was asked to select a Case Manager to observe the Student at [REDACTED]. Ms. [REDACTED] has reviewed the Student's records and met with the Parent on one occasion. Ms. [REDACTED] testified she selected Ms. [REDACTED] to observe the Student because Ms. [REDACTED] is familiar with [REDACTED] and manages cases where students are attending [REDACTED]. Ms. [REDACTED] is familiar with Ms. [REDACTED]'s conclusion that given the length of time the Student has been at [REDACTED] a Type II school would assist the Student in transitioning back to a public school which would be the LRE. Having personally reviewed the Student's profile and testing, Ms. [REDACTED] advised that cognitively, the Student demonstrated significant strengths in terms of learning at or above her grade level. The Student's psychological weakness is her working memory, which consistently displays itself in her academically assessed weak area of Math computation. Ms. [REDACTED] testified the nature and severity of the Student's disability is less than what is frequently observed in the nonpublic office. However, Ms. [REDACTED] agreed with Ms. [REDACTED]'s conclusions.

Ms. [REDACTED] explained a Central IEP packet consists of an assortment of documents (such as recent assessments, the current or draft IEP, immunization records, birth certificate, a psychosocial assessment and, if needed, proof of residency) which is sent to the prospective school. The prospective school reviews the materials, interviews the parents and students, and may schedule shadow days. Thereafter, the prospective school notifies Central IEP of its determination to accept or decline the student. Ms. [REDACTED] testified in December 2018 she began to contact Ms. [REDACTED] because she was expecting a packet for submission to [REDACTED]. Ms.

██████████ stated that as soon as a complete packet was received, it was submitted to ██████████ for its consideration and requested a decision as soon as possible.

Ms. ██████████ testified ██████████ is a Type II school developed specifically to assist students with ASD, emotional disabilities, and other disabilities transition to a less restrictive setting. ██████████ was the only appropriate Type II middle school for the Student's level of course work. It is housed in a public school and works to integrate students where possible. ██████████ students are given appropriate placements and participate in the public school's encore classes and extracurricular activities. Ms. ██████████ testified the only other Type II middle school possible was the ██████████ ██████████ which would not be appropriate for the Student because it accepts students certificate-bound (not on a high school diploma track such as the Student) with severe cognitive delays. She stated ██████████ requires shadow days. Ms. ██████████ met with ██████████'s Education Director ██████████ ██████████ PhD on June 26, 2019. At that time, Dr. ██████████ informed Ms. ██████████ shadow days had been repeatedly rescheduled. At least two requests to reschedule were by the Parent. Although the first scheduled shadow day for the Student was January 24, 2019, Dr. ██████████ advised the Student did not complete a ██████████ shadow day until March 6, 2019. Thereafter, Dr. ██████████ informed Ms. ██████████ the Parent requested a second shadow day which was conducted on March 18, 2019. On March 20, 2019, ██████████ accepted the Student and proposed a start date of April 2, 2019. Ms. ██████████ testified Dr. ██████████ also offered the Parent the opportunity for the Student to shadow at the ██████████ high school program and for the high school program to advise her of its 2019-2020 placement recommendation shortly thereafter. High school shadow days were scheduled, and then cancelled by the Parent. Ms. ██████████ testified she is familiar with ██████████ and has worked with ██████████ for the last thirty years – ██████████ could have fulfilled the November 28, 2018 proposed IEP. Ms. ██████████ testified while a nonpublic placement is pending, the student's placement is

the last approved placement designated by the IEP. In the Student's case, the interim placement is [REDACTED]

Ms. [REDACTED] testified there was no Central IEP team meeting for the Student because Central IEP staff, specifically Ms. [REDACTED] already participated as member of the November 28, 2018 IEP team. She explained the Central IEP Office monitors such a high volume of nonpublic placements that to have scheduled an additional Central IEP meeting would have delayed the Student's application. Ms. [REDACTED] stated that as an eighth grader, AACPS wanted to give the Student the most amount of time in middle school in a less restrictive environment.

Ms. [REDACTED] testified the Parent expressed concern because [REDACTED] required a 2019-2020 financial deposit. In an effort to help the family, Ms. [REDACTED] contacted [REDACTED] and discussed whether a refund was possible. Ms. [REDACTED] advised [REDACTED] was willing to offer the Parent a refund, and asked that the Parent contact [REDACTED] directly.

Ms. [REDACTED] opined the Student does not require a Type I school setting. Additionally, Ms. [REDACTED] opined [REDACTED] was able to implement the proposed IEP and the Student would receive educational benefit.

During cross-examination, Ms. [REDACTED] testified the continuum of alternative placements is an availability of programming from the least restrictive to the most restrictive environment. She explained a student's present levels of performance and goals are established, services are delineated, then a LRE is established. Ms. [REDACTED] explained there are adverse consequences when a student is not placed in the LRE. A student will not receive the appropriate amount of academic rigor and learn by association with a broader population of peers. When asked why [REDACTED] was too restrictive, Ms. [REDACTED] explained the Student's participation level is advanced; the Student is verbally redirectable, which is often not the case

for Type I school students; and, the Student possesses a high level of understanding in English Language Arts, and while Math is not as strong, the Student was still academically participating.

Ms. [REDACTED] was asked to explain how [REDACTED] would assist with the Student's emotional disability, and she explained [REDACTED] would address the Student's symptoms of depression and anxiety. Ms. [REDACTED] also stated [REDACTED] advised her many times it could implement the draft November 28, 2018 IEP in the short term.

Ms. [REDACTED] acknowledged the Student's case was not the typical referral to Central IEP. When asked how the Parent would know what to expect, Ms. [REDACTED] replied that the Parent would know the progress through her communication with Ms. [REDACTED]

During re-direct examination, Ms. [REDACTED] explained students are placed in settings that are as fully integrated as possible for appropriate peer models in academic and social interactions. Ms. [REDACTED] has known the Director of [REDACTED] for over thirty years and is very familiar with [REDACTED]'s profile. AACPS places students at [REDACTED]. She testified [REDACTED] is an overly restrictive placement for the Student.

I asked Ms. [REDACTED] whether the November 28, 2018 proposed IEP's language that [REDACTED] was unable to implement the proposed services was out-of-the-ordinary. Ms. [REDACTED] explained that all IEPs referred to the Central IEP Office have identical language; if the present school could implement the IEP, then there would be no need for a referral. (Transcript, Vol. 3.)

Analysis

The Parent is very knowledgeable about all aspects of the Student's health and education. It is overwhelmingly clear that the Parent loves the Student very much and wants to maximize the Student's potential in a safe environment. It is also clear that the Parent is tremendously dissatisfied with the Student's experience at [REDACTED] and it has adversely impacted her perception of AACPS overall. However, the Student's time at [REDACTED] is not before me. Despite the

Parent's understandable zeal, for the reasons set forth below, I find the IEPs and placements offered by AACPS for the 2017-2018 and 2018-2019 school years provided the Student a FAPE.

The 2017-2018 School Year IEPs (Approved October 6, 2017 and February 9, 2018) were Reasonably Calculated to Enable the Student to Make Progress Appropriate for Her Circumstances in the LRE

The October 6, 2017 IEP

The Parent argued both substantive and procedural denials of FAPE for the 2017-2018 school year. The Parent contended the AACPS 2017-2018 IEP failed to provide sufficient special education related services; supplementary aids; and program modifications, supports, and accommodations to allow the Student to make reasonable advancements. The Parent argued the areas of academic impact identified in the IEPs had no associated goals or goals too vague for any measure of efficacy, particularly in the area of the Student's Math deficiencies.

I have carefully reviewed the AACPS IEP team meeting Prior Written Notices from August 3, 2017; September 29, 2017; and October 6, 2017. At each meeting, the exhibits reflect the Parent was in attendance, was provided a copy of the Procedural Safeguards Parental Rights document, was provided a verbal and written explanation of the parent's rights and responsibilities in the IEP team process, and was provided verbal and written information about access to habilitative services, including a copy of the Maryland Insurance Administrations' Parents' Guide to Habilitative Services. (AACPS Exs. 1, 2, 3, and 4.) Within AACPS Exhibits 1, 2, 3, and 4, the [REDACTED] IEP school team clearly documented and incorporated the Parent's input. For example, when the Parent expressed concern the Student may be showing [REDACTED] behavior, members of the school team inquired with [REDACTED] staff whether the staff noticed the Student exhibit such behavior. [REDACTED] staff responded they had not. (AACPS Ex. 2, p. 2; Testimony, Ms. [REDACTED] Transcript, Vol. 2 – p. 383.) I find no issue with regard to the

procedural soundness of the AACPS October 6, 2017 IEP. The Prior Written Notices, the IEP, and the testimony of the Parent and Ms. [REDACTED] reveal its development was a collaborative process that substantially incorporated the contributions of the Parent.

The Student's October 6, 2017 IEP is a nineteen page document which codes her primary disability as "Multiple Disabilities: Autism and Other Health Impairment." (AACPS Ex. 4.) The IEP states the Student is pursuing a Maryland high school diploma and will participate in Maryland School Assessments and PARCC Assessments.

- The Student's Social/Emotional Present Level of Academic Achievement and Performance was based upon classroom observation, consultation with [REDACTED] staff, a record review of both [REDACTED] and [REDACTED] information, a Behavior Assessment System for Children – Self-Report Form (BASC-2), Student interview, BASC-2 parent and teacher report forms, and a Parent interview. The team concluded the Social/Emotional area impacts the Student's academic achievement and/or functional performance.
- The Student's Math Present Level of Academic Achievement and Performance was based upon information from the Student's April 2016 AACPS IEP, a WIAT-III assessment in February 2016, information from her [REDACTED] classroom teacher, results from a Key Math 3 assessment, as well as information from [REDACTED] including Student work samples. The Student's strengths and weaknesses were identified, and team concluded the Math area impacts the Student's academic achievement and/or functional performance.
- The Student's Learning Behaviors Present Level of Academic Achievement and Performance was based upon information from her April 2016 AACPS IEP, [REDACTED] progress notes, and classroom observation. The team concluded the Learning Behaviors area impacts the Student's academic achievement and/or functional performance.
- The Student's Cognitive/Intellectual Present Level of Academic Achievement and Performance was based upon information from classroom observations, consultation with [REDACTED] staff, a Wechsler Intelligence Scale for Children – Fifth Edition: Behavior Rating Inventory of Executive Function (WISC-V), teacher reports, record review, consultation with [REDACTED] staff, a Parent interview, a Student interview, and a review of the Student's developmental history. The Student's strengths and weaknesses are clearly identified. The team concluded the Cognitive/Intellectual area impacts the Student's academic achievement and/or functional performance.
- The Student's Written Expression Present Level of Academic Achievement and Performance was based upon information from the February 2016 WIAT III assessment, progress notes and work samples from [REDACTED] the April 2016 AACPS IEP, a January 2016 Kaufman Test of Educational Achievement. After identifying the Student's strengths and weaknesses, the team concluded the Written Expression area does not impact the

Student's academic achievement and/or functional performance.

The team concluded Instructional and Testing Accommodations would include the use of extended time and multiple or frequent breaks. Additionally, setting accommodations would be in place to reduce distractions to the Student. With regard to Supplementary Aids, Services, Program Modifications, and Supports, Instructional Supports included use of organizational aids, a proofreading checklist, having the Student repeat or paraphrase information, alternate ways for the Student to demonstrate learning, frequent and/or immediate feedback, use of highlighters, opportunities for repeated practice and real life Math skill situations, access to a computer during written language assignments and access to a calculator during problem solving assignments, as well as teacher-selected groups for collaborative learning. Program Modifications included that material would be broken down into smaller units, and extraneous information would be deleted on assignments and assessments when possible. Regarding Social/Behavior Supports, frequent changes in activity or opportunity for movement would be provided, the Student would be encouraged to ask for assistance, appropriate behaviors would be encouraged, frequent reminder of rules would be given, a behavior contract would be implemented, manipulatives and/or sensory activities would be provided to promote focus and listen skills, positive/concrete reinforcers would be used, behavioral supports, verbal reminders for redirection, additional adult support (for transitions, arrival, dismissal, and encores), support for classroom social interactions, and the Student would receive a pass periodically for her to visit the school psychologist or school counselor. With regard to Physical/Environmental Supports, the Student would receive preferential seating. With regard to Personnel/Parental Supports, the Student would receive an occupational therapist consult for support regard her sensory needs or writing accommodations. (See AACPS Ex. 4.) ESY services were deferred due to a lack of data for a determination and the subject would be revisited should the Student attend [REDACTED] (*Id.*)

The Student was given four quarterly goals, each with multiple objectives, on the AACPS October 6, 2017 IEP. The goals covered the following instructional areas: Operations and Algebraic Thinking, Learning Behaviors, and Social Emotional. The Operations and Algebraic Thinking goal sought an 80% accuracy on 4/5 targeted trials based upon grade-level content. The evaluation method was classroom assessment work samples. The Learning Behaviors goal sought Student completion of non-preferred tasks within a given time-frame using verbal prompts. Data sheets were the method of evaluation. Finally, the Student's Social Emotional goals included using learned coping strategies to manage negative emotions and feelings of anxiety, and demonstrate appropriate social skills when interacting with peers and adults. Observation records would be the method of evaluation. (*Id.*)

The AACPS October 6, 2017 IEP called for the Student to receive the following Special Education and Related Services at [REDACTED] four hours of special education service weekly in a co-taught Math class, two hours of special education service weekly in a co-taught Language Arts class, two hours of special education service weekly in a co-taught Science class, and two hours of special education service weekly in a co-taught Social Studies class, and one thirty-minute weekly counseling service session with the school psychologist. (*Id.* at p. 17.) The AACPS October 6, 2017 IEP concluded co-taught classes were appropriate because the Student requires direct instruction in coping strategies and social skills prior to generalizing her in the general education curriculum. (*Id.* at p. 18.)

Ultimately, what the Parent actually found objectionable about the AACPS October 6, 2017 IEP was the special education services, related services, and placement. (*See* AACPS Ex. 3, p. 5.) However, I note that before the IEP development process had even begun, in June 2017, the Parent was emailing Ms. [REDACTED] to advise that the Student was "thriving" at [REDACTED] and to request AACPS "tuition subsidies" for the Student to remain at [REDACTED] (AACPS Ex. 30, pp. 4-5.)

Given the Parent's high regard for [REDACTED] it is not surprising the Parent rejected the IEP and stated she intended to keep the Student at [REDACTED] (AACPS Ex. 3, p. 2.)

Andrew F. makes clear, the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Andrew F.* at 1001. In that regard, Ms. [REDACTED] provided a "cogent and responsive explanation" for the creation of every aspect of the AACPS October 6, 2017 IEP. *See Andrew F.* at 1002. I found Ms. [REDACTED]'s expert opinion far more persuasive than the Parent's testimony. Ms. [REDACTED] holds a special education certificate, has taught and evaluated students with disabilities, and regularly participates in IEPs and performs student diagnostic assessments. The Parent is not a psychologist or special educator with the training and experience to opine what level of support the Student needs to succeed in school, and her brief teaching experience in [REDACTED] occurred decades ago. Although the Parent had concerns with the number of students in co-taught classes, Ms. [REDACTED] testified that less than fifty percent of the students in the co-taught classes have IEPs, and the classes contain 25 – 30 students with a general education teacher, a special education teacher, and an instructional aid. Likewise, the Parent complained thirty-minute weekly counseling sessions with the school psychologist is insufficient, but the IEP also allowed for the Student to have a pass to visit the school psychologist or school counselor. Furthermore, school district decisions made in a procedurally sound manner are entitled to great deference. *Tice v. Botetourt Cty. Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir. 1990). The Parent focused on her belief that the Student performed poorly at [REDACTED] and would do the same at [REDACTED] as well as the fact that Student has adjusted well to [REDACTED] despite acknowledging [REDACTED] is not the LRE) – but [REDACTED] is not the same facility as [REDACTED]. And Ms. [REDACTED] explained the [REDACTED] school IEP team based its conclusions on data points which had been collected and analyzed, including reports from [REDACTED] observation, and communication with staff.

I find it noteworthy that despite the Parent's allegation that the AACPS October 6, 2017 IEP lacks services; supplementary aids; and program modifications, supports, and accommodations to allow the Student to make reasonable advancements, the IEP incorporates many if not all of [REDACTED]'s January 19, 2016 Educational Evaluation Recommendations, including the use of checklists, a computer for written assignments, a calculator, and organizational aids, as well as extended time limits and the application of real-life math skill situations. (See Student Ex. 11, p. 12; AACPS Ex. 4.)

The Parent also argued the areas of academic impact identified in the IEP had no associated goals or goals too vague for any measure of efficacy, particularly in the area of the Student's Math deficiencies. Here again; I do not reach a similar conclusion. Social/Emotional, Math, and Learning Behaviors are areas identified as impacting the Student's achievement and/or functional performance. These three areas are incorporated into four goals, each containing multiple objectives. I find 80% accuracy on grade-level Math content through the assessment of classroom work samples is a reasonable measure of efficacy. With regard to the Student's Learning Behaviors and Social/Emotional goals, I find data sheets and observation records are also reasonable methods to evaluate performance.

Finally, with regard to placement, AACPS is required to ensure that "to the maximum extent appropriate, children with disabilities... are educated with children who are non-disabled," and

special classes, separate schooling, or 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.

The AACPS October 6, 2017 IEP provided a reasonable explanation for its recommendation that the Student receive ten hours per week of special education services in co-

taught classes at [REDACTED]. The Student can advocate for herself, she can be redirected, and with adult support, she can navigate peer interactions. The Parent presented speculation but no data which would persuade me the proposed placement improper. After review, I conclude AACPS met its obligation to provide FAPE. The Student's AACPS October 6, 2017 IEP was comprehensive, reasonable, and satisfies the requirements of 20 U.S.C.A. § 1414(d)(1)(A)(i). *See also Andrew F.* at 994. The IEP was reasonably calculated to enable the Student to make progress appropriate in light of her circumstances. *Id.* at 1002.

The February 9, 2018 IEP

The Student's next approved AACPS IEP was finalized on February 9, 2018. During the October 6, 2017 IEP team meeting, the Parent indicated she would request an IEE. (AACPS Ex. 3, p. 2.) Ms. [REDACTED] testified that an IEE is without purpose if there are not present school-based assessments for comparison; therefore, current AACPS assessments were necessary. *See D.S. v. Trumbull Bd. of Ed.*, 357 F.Supp.3d 166, 176 (D. Conn. 2019) (“[T]here must necessarily be a connection between the evaluation with which the parents disagree and the independent evaluation which they demand be funded at taxpayer expense.”) Thus, in October 2017, a referral was made for AACPS psychological and academic assessments. (AACPS Ex. 5.)

An IEP team meeting was held on November 3, 2017, in order to discuss the Student evaluation plan. (AACPS Ex. 6.) Thereafter, [REDACTED] School Psychologist, completed the Student's psychological assessment. (AACPS Ex. 7.) Her assessments were noted as having taken place on November 17, 2017 and December 1, 5, and 6, 2017 at [REDACTED]. I find it compelling that while at [REDACTED] Ms. [REDACTED] advised the IEP team the Student saw former [REDACTED] peers in the hallway and greeted them, and introduced herself to the principal. These social and outgoing behaviors corroborate Ms. [REDACTED]'s statement to the IEP team that the Student did not express any discomfort during her [REDACTED] visit. Ms. [REDACTED] completed the

Student's academic assessment on November 29, 2017 at [REDACTED] (AACPS Ex. 8.) Likewise, the Student was pleasant in her interactions and did not express any discomfort during her [REDACTED] visit. Ms. [REDACTED] noted the Student engaged in conversation with her and advocated for herself when she needed a break.

The psychological assessment revealed above average verbal comprehension and fluid reasoning, average visual spatial scale and processing speed, and a below average working memory index. The Student's responses to the BASC-3 indicated she was experiencing social, emotional, and behavioral difficulty. The Student's teacher's responses to the BASC-3 were inconsistent with one another. The Parent reported significant concerns in almost all areas of the Student's social, emotional, and behavioral functioning. Ms. [REDACTED] concluded the Student has "difficulty managing internalizing behaviors and effectively managing social and emotional stress in school without support. Concerns are significantly more pronounced at home than in the school setting." (AACPS Ex. 7, p. 7.)

In the academic assessment by Ms. [REDACTED] the Student demonstrated above average skills in the areas of basic reading and reading comprehension/fluency, average written language and math fluency skills, and below average mathematics skills. (AACPS Ex. 8, p. 5.) The findings are consistent with [REDACTED]'s progress reports which stated the Student reads at or above grade level, exhibits average grade level written expression, and has difficulty in Math skills. (AACPS Ex. 10, p. 3.)

The assessments were discussed during an IEP meeting on December 21, 2017, in which the Parent participated by telephone. (AACPS Ex. 9.) At that time, the Parent shared a physician's report indicating the Student is at risk for depressive disorder. Upon evaluation of the assessments, physician's report, and the Parent's considerable input regarding the Student's behaviors (as set forth the Prior Written Notice), the entire team agreed the Student meets the

eligibility criteria for the following disability codes: “Multiple Disabilities: Autism and Emotional Disability.” (AACPS Ex. 9, p. 4.) During the hearing, the Parent complained Ms. [REDACTED] had unilaterally changed the Student’s “diagnosis.” However, Ms. [REDACTED] testified after a discussion, the entire IEP team agreed to the amendment. (Transcript Vol. 2 – p. 316.) I find Ms. [REDACTED]’s testimony more credible. As an IEP Facilitator, Ms. [REDACTED] conducts IEP meetings regularly, and I do not find she would permit one member of an IEP to unilaterally change anything – Ms. [REDACTED] testified the team arrived at a consensus with regard to the disability coding. Further, Ms. [REDACTED] explained that disability codes are not diagnoses; they are categories with criteria for purposes of an IEP. (Transcript Vol. 2 – pp. 364-65.)

Thereafter, the team met on February 9, 2018 to further revise the Student’s IEP.²⁴ The IEP is a nineteen-page document which codes her primary disability as “Multiple Disabilities: Autism, Emotional Disability.” (AACPS Ex. 12.) The February 9, 2018 IEP referenced the Student’s most recent assessments and is nearly identical to the Student’s October 6, 2017 IEP. Again, the team concluded that the Student’s Present Levels of Academic Achievement and Performance are impacted in the areas of Social/Emotional, Math, Learning Behaviors, and Cognitive/Intellectual. With regard to Special Considerations and Accommodations, the Student would continue to have extended time, multiple or frequent breaks, setting accommodations, as well as access to a calculator for assignments and assessment, and a computer for written assignments. The Student’s Supplementary Aids, Services, Program Modifications, and Supports, Instructional Supports remained the same, including an occupational therapist consult, with an addition that the Student would be encouraged to work through peer interactions within the classroom setting. This was based upon the team learning that at [REDACTED] the Student is often removed from a negative peer interaction. The team concluded the Student would benefit from

²⁴ The Parent participated by telephone.

learning to remain within the situation and work through the conflict. (Testimony, Ms. [REDACTED] Transcript Vol. 2 – pp. 408, 450.) The Student was determined not eligible for ESY services, but during discussions the team noted that should data be collected which suggests otherwise the team will reconvene to review its determination. (AACPS Ex. 11, p. 4.) The four quarterly goals, each with multiple objectives, set forth in the AACPS October 6, 2017 IEP remained the same. (See AACPS Ex. 12.)

The AACPS February 9, 2018 IEP called for the Student to receive the following Special Education and Related Services at [REDACTED] four hours of special education service weekly in a co-taught Math class, two hours of special education service weekly in a co-taught Language Arts class, two hours of special education service weekly in a co-taught Science class, and two hours of special education service weekly in a co-taught Social Studies class, and one thirty-minute weekly counseling service session with the school psychologist. (*Id.* at p. 17.) The AACPS February 9, 2018 IEP concluded co-taught classes were appropriate because the Student requires direct instruction in coping strategies and social skills prior to generalizing her in the general education curriculum. (*Id.* at p. 18.)

During the February 9, 2018 IEP meeting, the Parent stated the Student had been physically ill at the thought of returning to public school and expressed thoughts of self-harm. The Parent inquired about whether some sort of transition was possible. The Parent disagreed with the school team's ESY determination, as well as the efficacy of the entire IEP in addressing the Student's deficits. The Parent disagreed with the Student having only thirty counseling minutes weekly, and disagreed with the determination of services and LRE. The Parent requested an IEE and continued the Student at [REDACTED]

Despite parental disagreement, I find no issue with regard to the procedural soundness of the AACPS February 9 2018 IEP. The Prior Written Notices, the IEP, and the testimony of the

Parent and Ms. [REDACTED] reveal its development was a collaborative process that incorporated the contributions of the Parent.

Having reviewed the psychological and academic assessments performed by Ms. [REDACTED] and Ms. [REDACTED] I find them to be consistent with the recommendations set for in the prior IEP. Each assessment supports the conclusion that the Student's academic achievement and functional performance is impacted in the areas of Social/Emotional, Math, Learning Behaviors, and Cognitive/Intellectual. The Student is a strong student in the area of English Language Arts, but her poor working memory is consistent with her poor Math skills.

The team identified the disability subcode "Emotional Disability" as it discovered more information about the Student's "difficulty managing internalizing behaviors and effectively managing social and emotional stress in school without support." (AACPS Ex. 7, p. 7.) I find it noteworthy that with use of the BASC-3, Ms. [REDACTED] concluded the Student's difficulty managing behaviors and stress are significantly more pronounced at home than in the school setting. Similarly, Ms. [REDACTED] and Ms. [REDACTED] noted the Student did not appear in any distress while completing assessments on multiple days at [REDACTED] yet the Parent informed the IEP school team the Student was becoming physically ill and expressing thoughts of self-harm at the thought of attending public school. I do not draw any conclusion that the Parent is exaggerating her concerns. However, I find Ms. [REDACTED] and Ms. [REDACTED]'s observations of the Student's behaviors (social, outgoing, hard-working, an advocate for herself) to be more reliable because they were observed at [REDACTED] where either through conversation and/or behavior, the Student had the ability to express discomfort with [REDACTED] but did not do so. And although the Parent complained thirty-minute weekly counseling sessions with the school psychologist is insufficient, the IEP again also allows the Student to have a pass for her to visit the school psychologist or school counselor periodically if necessary.

Within this section, I incorporate my analysis of the October 6, 2017 IEP. Again, I found Ms. [REDACTED]'s expert opinion far more persuasive than the Parent's testimony. Ms. [REDACTED] provided a "cogent and responsive explanation" for the creation of every aspect of the AACPS February 9, 2018 IEP. *See Andrew F.* at 1002. The Parent presented speculation but no data which would persuade me the proposed placement at [REDACTED] is improper. Given the Student's demeanor while at [REDACTED] the academic and psychological assessments, the IEP team's responsiveness regarding the developing concerns over the Student's emotional deficits, and the IEP team's addition of another Social/Behavior Support to better equip the Student in social settings, strong persuasive evidence allows me to conclude that Student's AACPS February 9, 2018 IEP was comprehensive, reasonable, and satisfies the requirements of 20 U.S.C.A. § 1414(d)(1)(A)(i). *See also Andrew F.* at 994. The IEP was reasonably calculated to enable the Student to make progress appropriate in light of her circumstances. *Id.* at 1002.²⁵

The 2018-2019 School Year IEP (Draft November 28, 2018) was Reasonably Calculated to Enable the Student to Make Progress Appropriate for Her Circumstances in the LRE

The Parent argued both substantive and procedural denials of FAPE for the 2018-2019 school year. The Parent contended the AACPS 2018-2019 IEPs failed to provide sufficient special education related services; supplementary aids; and program modifications, supports, and accommodations to allow the Student to make reasonable advancements. The Parent argued the areas of academic impact identified in the IEPs had no associated goals or goals too vague for any measure of efficacy, particularly in the area of the Student's Math deficiencies. Furthermore, despite a clinical diagnosis of depression and a disability coding change to include emotional disabilities, the Parent questioned why the Student's service hours decreased. In addition, the Parent questioned why the Student's case received observation informally by a

²⁵ Thereafter, the Parent filed a complaint with MSDE alleging denial of FAPE since June 1, 2017. I am not bound by its decision, but note that on May 14, 2018, the MSDE concluded there had been no denial of FAPE. *See AACPS Ex. 33.*

“fresh set of eyes” and argued the Student’s case was irregularly routed to Central IEP, which she asserts denied her parental participation rights. The Parent posited [REDACTED] was predetermined by AACPS, without any explanation why other placements may or may not have been appropriate, and the predetermination denied her meaningful participation in the decision-making process. The Parent believes there was an insufficient discussion of the LRE and the type of placement needed along the placement continuum. Moreover, the Parent argued the lack of an identified placement constituted a deficient IEP and a denial of FAPE.

The record established that after AACPS assessments were conducted during the 2017-2018 school year, the Parent renewed her request for an IEE. The Parent testified AACPS went “above and beyond” to facilitate the IEE. (Transcript, Vol. 1 – p. 90; *See also* Student Ex. 25, p. 1.) On August 22, 2018, [REDACTED] Psy.D. of [REDACTED] completed his assessment which involved use of a multitude of testing instruments. Dr. [REDACTED] found the Student possessed high average verbal comprehension skills; average skills in the areas of visual spatial scale, fluid reasoning, and processing speed; and the Student’s working memory index was below average. Dr. [REDACTED] concluded the Student’s full scale IQ is in the average range. Further, Dr. [REDACTED] found “the Student’s overall academic performance is at a level consistent with that of most other same-age peers, with the exception of her reading performance, which exceeds that of other students her age,” but her main academic weakness is in Math. (Student Ex. 20, p. 4.) Dr. [REDACTED] also concluded the Student’s achievement scores were in expected ranges and the Student did not appear “to present with any learning disorders.” (*Id.*) Dr. [REDACTED]’s diagnostic impression of the Student was as follows: Autism Spectrum Disorder; Attention-Deficit/Hyperactivity Disorder, Combined Type; Adjustment Disorder with Depressed Mood; parental discord; and recent loss of grandmother. (Student Ex. 20, p. 8.)

Dr. [REDACTED] reported the Student would benefit from therapeutic (which may or may not include psychotropic medication) and educational interventions, to include a clinical therapist and enrollment in a social skills group, and family therapy was recommended. Dr. [REDACTED] concluded the Student is eligible for an IEP, and her behavioral and emotional difficulties significantly interfere with her ability to learn in a general education environment. Dr. [REDACTED] found the Student requires a specialized educational environment and recommended an IEP with the following provisions:

- A student-to-teacher ratio of no more than 10:1
- Preferential seating and opportunities to check in with school staff on a one-to-one basis to ensure comprehension and maintain focus
- Structured activities to encourage and practice prosocial skills
- Regular time with a tutor or staff member to organize material and group information
- Larger projects must be broken into smaller steps with the aid of visual checklists
- Regular scheduled time with a school-based therapist
- Use of a variety of modalities to present material to the Student
- An aid to help the Student practice life skills

(*Id.*)

The Parent complained Ms. [REDACTED] insulted Dr. [REDACTED]'s findings, and Ms. [REDACTED]'s conduct alienated the Parent from the IEP team. However, when the IEP team met on September 13, 2018, the team accepted the data reported in Dr. [REDACTED]'s assessment. (AACPS Ex. 14, p. 4.) Furthermore, during the meeting, the Parent presented the team with a letter from [REDACTED] [REDACTED] indicating the Student has a clinical diagnosis of depression. The team accepted the diagnosis. (*Id.*) After review of the testimony and Prior Written Notice, I find the school IEP team was receptive to the IEE and information obtained from the Parent during the September meeting. Therefore, I find no evidence to corroborate the Parent's claim that she was alienated and her procedural rights violated by AACPS during the September 13, 2018 IEP meeting. I also note that while the Parent complained Ms. [REDACTED] changed the Student's "diagnosis" to

Emotional Disability during the previous school year, Dr. ██████ concluded the Student experiences mild symptoms of anxiety, and he had significant concerns with depressive symptoms.

The hearing testimony established that in preparation for updating the Student's IEP, Ms. ██████ and ██████ ██████ Special Education Department Chair, observed the Student at ██████ in September of 2018. (Testimony, Ms. ██████ Transcript, Vol. 2 – p. 389; AACPS Ex. 31 p. 2.) The Student was observed in a grade-level Math class and a high school level Language Arts class. Ms. ██████ stated the Student exhibited slightly higher inattentive behaviors in Math, but “she was the star” of her Language Arts course, constantly raising her hand and offering correct answers. (Transcript, Vol. 2 – p. 390.) AACPS also requested updated records and information from ██████ (AACPS Ex. 31, p. 2; Student Ex. 25, p. 26.)

In addition to the above ██████ IEP preparations, the Parent was in regular telephone and email contact with Ms. ██████ expressing her reservations about the Student returning to a public school setting. (AACPS Ex. 31; Student Ex. 25.) During these communications, Ms. ██████ offered a “fresh set of eyes” from Central IEP to observe the Student and review her case. Although the Parent maintained this offer was made defensively, because the Parent had been complaining to MSDE and AACPS management, I do not reach this conclusion. The email chains comprised of AACPS Exhibit 31 and Student Exhibit 25 reflect Ms. ██████'s consistent and genuine concern in working collaboratively with the Parent. Given the Parent's dissatisfaction with AACPS's 2017-2018 IEPs, newly articulated displeasure with Ms. ██████ of ██████ and further data supporting the Emotional Disability coding on the Student's IEP, this “fresh set of eyes” was a reasonable and prudent approach. Although the addition of this new IEP team member caused a delay of a few weeks in scheduling the team's annual IEP review (in

order to allow her time to observe the Student and review her file), the short delay permitted more helpful and relevant information to be analyzed at the next IEP team meeting.

Accordingly, [REDACTED] a Specialist in the Out of Home-School Placement Office, observed the Student at [REDACTED] on October 4 and 11, 2018. [REDACTED] the AACPS Coordinator of Interagency and Nonpublic Placements, testified she selected Ms. [REDACTED] because her cases involve students placed at [REDACTED] and she visits [REDACTED] frequently. Ms. [REDACTED] concluded [REDACTED] is too restrictive for the Student, and the Student could benefit from a Type II placement in order to assist in transitioning her back to a “large comprehensive school.” (AACPS Ex. 29.) During the hearing, Ms. [REDACTED] explained that there are adverse consequences when a student is not placed in the LRE. A student will not receive the appropriate amount of academic rigor and learn by association with a broader population of peers. (Testimony, Ms. [REDACTED] Transcript, Vol. 3.) Ms. [REDACTED] opined [REDACTED] is too restrictive because the Student’s participation level is advanced; the Student is verbally redirectable, which is often not the case for Type I school students; and, the Student possesses a high level of understanding in English Language Arts, and while Math is not as strong, the she is still academically participating. (Transcript, Vol. 3.)

On October 11, 2018, as Ms. [REDACTED] was observing the Student at [REDACTED] the Parent was emailing Ms. [REDACTED] about an interim placement of the Student – “[w]hat is in between [REDACTED] and public school?” – and the Parent asked Ms. [REDACTED] whether AACPS would “just do another settlement where [AACPS picks] up a portion of the tuition? No retro, no due process, just a stipend for a year or 2?” (AACPS Ex. 31 p. 5.) The Parent added the family is two months behind in mortgage payments due to the cost of [REDACTED]. Although the Parent argued these emails were simply her effort to negotiate a settlement, I find the Parent’s emails during the

2017-2018²⁶ and 2018-2019 school years evidence the Parent's desire for the Student to remain at [REDACTED] with AACPS financial assistance, regardless of AACPS's efforts. On October 11, 2018, the Parent had not even met Ms. [REDACTED] and learned her full analysis, before asking AACPS for financial assistance for [REDACTED]. Then on November 1, 2018, the Parent wrote, "Why not do a settlement agreement without the hassle of due process?" (*Id.* at p. 8.) The Parent's emails and her testimony indicate she is very pleased with [REDACTED] and her continued efforts to obtain tuition assistance while the AACPS school team is attempting to work collaboratively with her negatively affected my credibility assessment of her.

When the IEP team met on November 28, 2018 for its annual review the IEP, Ms. [REDACTED] was in attendance as well as Ms. [REDACTED] and the Parent reported the Student continues to express statements of self-harm should she have to return to public school. The Parent advised removing the Student from [REDACTED] is not appropriate and her belief that the Student should continue at [REDACTED] with the idea that she will transition to a less restrictive environment. (AACPS Ex. 16.) The IEP team agreed the Student is on a high school diploma track and, as such, will participate in District and Statewide assessments. The school team determined the Student's Present Levels of Performance. The Prior Written Notice reflects the Parent agreed with these decisions. (*Id.*)

The school team recommended the Student receive services outside of the general education setting for Math, Science, and Social Studies in a self-contained setting. Language Arts was recommended to be conducted in a co-taught, general education setting. The school team recommended learning behaviors and social skill support be embedded throughout the school day and psychological services were recommended for one thirty minute session weekly.

These recommended revisions appear in the November 28, 2018 Draft IEP as follows:

²⁶ Before the IEP development process had even begun, in June 2017, the Parent emailed Ms. [REDACTED] to advise that the Student was "thriving" at [REDACTED] and to request AACPS "tuition subsidies" for the Student to remain at [REDACTED] (AACPS Ex. 30, pp. 4-5.)

- 4.5 hours/week of special education service outside of the general education setting for Math
- 4.5 hours/week of special education service outside of the general education setting for Science.
- 4.5 hours/week of special education service outside of the general education setting for Social Studies
- Services in the area of learning behaviors will be provided in Language Arts, and Encores²⁷ in the general education setting (2 hours).
- Psychological services in one thirty minute session per week.
- Recommended services are unable to be implemented at [REDACTED]
- Transportation is required to and from school.

(AACPS Ex. 17.)

Again, the team found the areas of Math, Cognitive/Intellectual, Social/Emotional, and Learning Behaviors impact the Student's academic achievement and/or functional performance. The extensive list of Special Considerations and Accommodations mirrors the last approved IEP, as do the four Goals (each with three objectives).

Ms. [REDACTED] explained that because the Student had been at [REDACTED] in such a small, restrictive setting for another school year (2017-2018 and had begun 2018-2019) and the school team had received even more information about her Emotional Disability, the school team believed the best approach in transitioning the Student back to a comprehensive school setting was through a Type II school. [REDACTED] did not offer self-contained Science and Social Studies classes. (Testimony, Ms. [REDACTED] Transcript Vol. 2 – p. 339.) Therefore, the Student's case was referred to the Central IEP Team for a Type II placement. The November 28, 2018 Draft IEP did not contain a placement, because placement is determined through the Central IEP Nonpublic Placement Office. While the Student's case was sent to the Nonpublic Placement Office for placement, the Student would be placed at [REDACTED] because it was the last approved IEP placement for the Student. [REDACTED] would allocate faculty to fulfill the November 28, 2018 IEP in the interim. (E.g. Faculty would be temporarily assigned to create a self-contained Science and

²⁷ "Encores" are electives such as Art and Physical Education. (Testimony, Ms. [REDACTED])

Social Studies environment for the Student.) In the alternative, the Student could remain at [REDACTED] at the Parent's expense.

Although the Parent expressed dissatisfaction with these alternatives, the Parent was told the placement timeframe would be brief, and the Parent offered no legal authority in support of her claim that AACPS should pay for [REDACTED] pending placement in a Type II school. The Parent argued strenuously that because the November 28, 2018 Draft IEP stated that the recommended services were unable to be implemented at [REDACTED] AACPS was obligated to pay for the Student to remain at [REDACTED]. However, Ms. [REDACTED] testified every IEP referred to Central IEP states that the student's home school cannot implement recommended services. (Transcript, Vol. 3.) If services could be implemented in a home school, there would be no need for a Central IEP referral. Furthermore, pending Central IEP placements, Ms. [REDACTED] and Ms. [REDACTED] explained students remain in their last approved IEP placement.

The Parent argued if [REDACTED] could temporarily provide services to the Student, then the November 28, 2018 Draft IEP is flawed in stating the recommended services were unable to be implemented at [REDACTED]. However, Ms. [REDACTED] credibly explained IEPs are written for a school-year and, therefore, the November 28, 2018 Draft IEP is correct in its statement that the recommended services were unable to be implemented at [REDACTED] because (although they could be managed in the short term) they could not be implemented for an entire year. (Testimony, Ms. [REDACTED] Transcript, Vol. 2 – pp. 419-20.) Furthermore, despite the Parent's claim that she did not understand [REDACTED] would temporarily create self-contained Science and Social Studies settings for the Student ([REDACTED] already offered a self-contained Math setting), I have found the Parent not as credible a witness as Ms. [REDACTED] and Ms. [REDACTED].

The record established AACPS promptly began to request records from [REDACTED] to complete the AACPS Central IEP Packet for [REDACTED] (AACPS Ex. 32.) However, the Parent objected to the

release of some records and delayed the process of completing the Packet. Eventually, the Packet was sent to [REDACTED] on January 11, 2019. However, Student shadowing did not take place at [REDACTED] until March, due at least in part, by dates being rescheduled by the Parent. At the Parent's request, a second shadow day was completed, and two days thereafter (on March 20, 2019), [REDACTED] middle school accepted the Student.

I accepted Ms. [REDACTED] as an expert in the field of special education and the placement of students with disabilities. I found Ms. [REDACTED] to be a highly qualified and credible witness, with forty years of experience in special education. She oversees the coordination and monitoring of student nonpublic placements with an effort to return students to the LRE and has long-standing professional relationships with the administrators of both [REDACTED] and [REDACTED] Ms.

[REDACTED] explained [REDACTED] at [REDACTED] is a Type II school designed to assist students "with [ASD], emotional disabilities, or other appropriate disabilities, transition to a less restrictive setting." (AACPS Ex. 28.) Although the Parent argued [REDACTED] was a pre-determined placement by AACPS, Ms. [REDACTED] testified there was no other option. The only other available Type II school was [REDACTED] which would not be appropriate because it accepts students certificate-bound (not on a high school diploma track such as the Student) with severe cognitive delays. (Testimony, Ms. [REDACTED], Transcript, Vol. 3.) Furthermore, in December 2018, the Parent discussed [REDACTED] with AACPS, and in January 2019 stated, "I am impressed with the program at [REDACTED]" (AACPS 31, p. 22.) The Parent conceded in her testimony that [REDACTED] is not the LRE, emailed Ms. [REDACTED] inquiring what is in between [REDACTED] and [REDACTED] emailed Ms. [REDACTED] that she is impressed with [REDACTED] and Ms. [REDACTED] testified [REDACTED] was the only Type II school appropriate for the Student because she is diploma bound and does not suffer from any severe cognitive delays. Thus, even if I were to conclude the Parent was not afforded the opportunity to meaningfully participate in discussion regarding the Student's

placement at [REDACTED] the Parent has failed to prove how the alleged violation interfered with the provision of FAPE. *See Cavanagh v. Grasmick*, 75 F.Supp.2d 446, 473 (D.Md. 1999).

It is evident AACPS went above-and-beyond in its efforts to collaborate with the Parent. The Parent was concerned there were no guarantees upon placing the Student at [REDACTED] middle school for the remainder of the 2018-2019 school year, that the Student would be accepted into [REDACTED] high school program. To alleviate this concern, [REDACTED] agreed to permit the Student to shadow at [REDACTED] high school and provide the Parent a decision with regard to the high school shortly thereafter. (AACPS Ex. 25, p. 2.) However, the Parent never scheduled the Student to shadow at [REDACTED] high school. In addition, the Parent conveyed numerous times in emails the tuition expense of [REDACTED] and how tuition deposits are non-refundable. To alleviate this financial concern, Ms. [REDACTED] reached out to [REDACTED] and inquired whether, given these circumstances, [REDACTED] would be willing to issue a refund. (AACPS Ex. 26.) [REDACTED] was amenable to discuss the subject with the Parent, but the Parent continued placement of the Student at [REDACTED]

Despite the Parent's contentions, I find no substantive or procedural denials of FAPE for the 2018-2019 school year. The Parent presented speculation but no data which would persuade me the proposed placement is improper, and AACPS presented expert testimony to explain its rationale. The November 18, 2018 Draft IEP provides detailed support for its recommendations. Moreover, Ms. [REDACTED] provided a "cogent and responsive explanation" during her testimony, for the creation of every aspect of the Draft IEP. *See Andrew F.* at 1002.

With regard to the Parent's complaint that the Student's service hours decreased, I fail to comprehend the argument. The Student's approved February 9, 2019 AACPS IEP recommended 10 hours of special education service in a co-taught setting, and one weekly thirty-minute counseling session. (AACPS Ex. 12, p. 17.) The November 28, 2018 AACPS Draft IEP recommended 13.5 hours of special education service outside the general education setting, 2

hours within the general education setting, and 1 weekly thirty-minute counseling session.

(AACPS Ex. 17, p. 26.)

Finally, the Parent argued the lack of an identified placement constituted a deficient IEP and a denial of FAPE. *See Brown v. Dist. Of Columbia*, 197 F.Supp.3d 15, 26 (D.C. 2016) (“[A]n IEP is inadequate if it does not include a description of the student's least restrictive environment and discussion of his appropriate placement along the continuum.”)²⁸ However, the November 28, 2018 document is a Draft IEP. The Draft IEP explains “[redacted] is unable to implement the services recommended by the IEP team. This case is being referred to central IEP for consideration of a more restrictive placement.” (AACPS Ex. 17, p. 28.) As Ms. [redacted] and Ms. [redacted] testified, the document does not identify a placement because placement was contingent upon application and acceptance. Ms. [redacted]'s letter of December 10, 2018 to the Parent explained that if the Student is accepted and enrolled in [redacted] the IEP team at [redacted] (with parental participation) would finalize the IEP, and if the Student is not accepted, the [redacted] team would reconvene. (Student Ex. 22A.) After delay attributable to the Parent in the creation of an application Packet and in scheduling shadow days, [redacted] accepted the Student and emailed notice of acceptance to the Parent on March 21, 2019. The Parent did not enroll the Student at [redacted] middle school. As late as April and May 2019, [redacted] continued to email the Parent to inquire whether she would like to schedule the Student for [redacted] high school shadow days, with no response from the Parent. (AACPS Ex. 25.) Thereafter, on May 13, 2019, the Parent filed a Due Process Complaint on behalf of the Student. The November 28, 2018 AACPS Draft IEP is not deficient and a denial of FAPE – it is incomplete as a result of the Parent’s decision to halt its development and exercise her right to file a Due Process Complaint on behalf of the Student.

²⁸ The Parent also mentioned a case from California involving the Modesto City Schools District, but did not provide a case citation. Despite my best search efforts, I was unable to locate the case.

Concluding Summary

The Parent alleged the Student's IEPs were not reasonably calculated to provide her with educational benefit consistent with *Endrew F.* In analyzing whether AACPS failed to provide the Student a FAPE for the 2017-2018 and 2018-2019 school years, I have considered the IEP team's decisions; whether the present levels, goals, objectives, and services were appropriate such that the Student could be expected to make progress; whether [REDACTED] lacked the ability to implement the IEP while awaiting Student acceptance at [REDACTED] and the appropriateness of the application to [REDACTED]. I conclude that the Parent has not met her burden to show that AACPS failed to offer the Student FAPE for the 2017-2018 and 2018-2019 school years.

Pursuant to *Carter*, a parent's private placement choice is analyzed only if the IEP proposed by the local education agency results in a denial of a FAPE. 510 U.S. 7; *Burlington*, 471 U.S. 359. In this matter, I have concluded that the IEPs and placement offered by AACPS for the 2017-2018 and 2018-2019 school years provides the Student a FAPE. Further analysis pursuant to *Burlington* and *Carter* is inapplicable and the issue of whether [REDACTED] is proper does not need to be addressed in this decision.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Parent did not prove that the Anne Arundel County Public Schools failed to offer the Student a free appropriate public education for the 2017-2018 and 2018-2019 school years.

I further conclude as a matter of law that the Parent failed to prove that she is entitled to reimbursement for tuition and expenses at [REDACTED] 20 U.S.C.A. § 1414; 34 C.F.R. §§ 300.148; *Endrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Florence Cty. Sch. District Four v. Carter*, 510 U.S. 7 (1993).

ORDER

I **ORDER** that the Parent's request for reimbursement for tuition and expenses at [REDACTED]

[REDACTED] is **DENIED**.

September 9, 2019
Date Decision Issued

Signature Appears on Original [REDACTED]

Tracey Johns Delp
Administrative Law Judge

TJD/emh
#181429.v3

REVIEW RIGHTS

Any party aggrieved by this Final 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) (2018). 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.