

██████████,
STUDENT

v.

MONTGOMERY COUNTY
PUBLIC SCHOOLS

BEFORE MARY PEZZULLA,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-19-35490

DECISION

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

STATEMENT OF THE CASE

On November 12, 2019, ██████████ (Parent), on behalf of her son, ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017); 34 C.F.R. § 300.511(a) (2018); Md. Code Ann., Educ. § 8-413(d)(1) (2018); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).¹

I held a telephone prehearing conference on December 2, 2019. The Parent represented herself. Emily Rachlin, Esquire, represented the MCPS.

¹ Unless otherwise noted: all citations herein to the U.S.C.A. are to the 2017 volume; all citations herein to the C.F.R. are to the 2018 volume; and all citations to the Education Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

I held the hearing on January 6, 2020.² The Parent was self-represented. Ms. Rachlin represented the MCPS.³

Under the applicable law, a decision normally would be due by January 16, 2020, forty-five days after the triggering date for the deadline of the unsuccessful mediation, which occurred on December 2, 2019. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Md. Code Ann., Educ. § 8-413(h); COMAR 13A.05.01.15C(14). Due to scheduling conflicts and the school system's winter break, the earliest dates of availability for both the parties and me to hold the hearing were January 6, 7, and 8, 2020. Based on my schedule and the parties' schedules, the parties requested that I extend the timeline an additional seven calendar days to allow the case to be heard on the selected dates of January 6-8, 2020, and to allow sufficient time for me to consider the evidence, evaluate legal arguments, and draft a decision. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1); State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2019); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

1. Does placement at the [REDACTED] School for the 2019-2020 school year provide the Student with a free appropriate public education (FAPE)?
2. Is the [REDACTED] School the least restrictive environment (LRE) in which the Student can receive a FAPE?

² The hearing was originally scheduled for three days, January 6, 7, 8, 2020, but concluded on January 6th.

³ At the conclusion of the Parent's case, the MCPS made a Motion for Judgment, which I did not grant. Following the close of the evidence, the MCPS did not renew the motion. COMAR 28.02.01.12E.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of MCPS:

MCPS-1	Initial Psychiatric Evaluation text, dated 7/24/2018
MCPS-2	Classroom Observation by [REDACTED], dated 10/19/2018
MCPS-3	Eligibility Screening Parent Interview/Questionnaire, dated 10/24/2018
MCPS-4	Educational History, dated 10/24/2018
MCPS-5	Teacher Referral, dated 10/25/2018
MCPS-6	Child Find Referral, dated 10/24/2018
MCPS-7	Functional Behavioral Assessment (FBA), dated 10/30/2018
MCPS-8	Behavioral Intervention Plan (BIP), dated 10/30/2018
MCPS-9	Educational Assessment Report by [REDACTED], dated 11/12/2018
MCPS-10	Report of School Psychologist by [REDACTED], dated 10/31/2018
MCPS-11	Evaluation Report and Determination of Initial Eligibility, dated 11/13/2018
MCPS-12	Individualized Education Program (IEP), dated 11/13/2018
MCPS-13	IEP Amendment Changes, dated 12/3/2018
MCPS-14	Request for Emotional Disabilities (ED) Consultative Support to Staff, dated 11/9/2018
MCPS-15	IEP Amendment Changes, dated 1/9/2019
MCPS-16	IEP, dated 2/7/2019
MCPS-17	Prior Written Notice, dated 2/7/2019
MCPS-18	FBA, dated 2/7/2019
MCPS-19	BIP, dated 2/7/2019
MCPS-20	Documentation of Physical Interventions or Seclusion, dated 4/8/2019

MCPS-21	Email to Parent from [REDACTED], dated 4/9/2019
MCPS-22	Letter to Parent from [REDACTED] re: restraint and seclusion, dated 4/12/2019
MCPS-23	Email to MCPS transportation team from [REDACTED], dated 4/16/2019
MCPS-24	Staffing and Critical Staffing Request, dated 4/17/2019
MCPS-25	IEP, Amended 5/3/2019
MCPS-26	Prior Written Notice, dated 5/3/2019
MCPS-27	Letter to Parent from [REDACTED] re: Crisis Prevention Interventions, dated 5/21/2019
MCPS-28	Letter to Parent from [REDACTED] re: restraint and seclusion, dated 5/22/2019
MCPS-29	Letter to Parent from [REDACTED] re: restraint and seclusion, dated 5/29/2019
MCPS-30	Letter to Parent from [REDACTED] re: Crisis Prevention Interventions, dated 6/11/2019
MCPS-31	IEP, amended 6/13/2019
MCPS-32	Prior Written Notice, dated 6/13/2019
MCPS-33	Student Record Transmittal, dated 6/13/2019
MCPS-34	Communication Log, 2018-2019 school year
MCPS-35	Work Samples, dated 6/10/2019
MCPS-36	Emails to/from [REDACTED] and [REDACTED], dated 6/27/2019
MCPS-37	Prior Written Notice, dated 7/22/2019
MCPS-38	Letter to Parent from [REDACTED], dated 7/24/2019
MCPS-39	Emails to/from [REDACTED] and [REDACTED] dated 9/4/2019
MCPS-40	Letter to Parent from [REDACTED], dated 10/3/2019
MCPS-41	IEP, dated 10/21/2019
MCPS-42	Prior Written Notice, dated 10/21/2019

MCPS-43	Resume of [REDACTED], Principal, [REDACTED] ES, MCPS
MCPS-44	Resume of [REDACTED], Special Education Teacher, [REDACTED] ES, MCPS
MCPS-45	Resume of [REDACTED], Coordinator, Central Placement Unit, MCPS
MCPS-46	Resume of [REDACTED], School Social Worker, [REDACTED] [REDACTED], MCPS
MCPS-47	Resume of [REDACTED], Behavior Support Teacher, [REDACTED], MCPS

The Parent did not offer any exhibits for admission into evidence.

Testimony

The Parent testified and presented the testimony of [REDACTED], Psychiatric Rehabilitation Program Counselor at [REDACTED]

The MCPS presented the following witnesses:

- [REDACTED], School Social Worker, [REDACTED] ([REDACTED] [REDACTED]), accepted as an expert in special education and social work, with an emphasis on crisis intervention, behavioral interventions, and students exhibiting severe behavioral needs.
- [REDACTED], Principal at [REDACTED] Elementary School ([REDACTED]), accepted as an expert in school administration and elementary education.
- [REDACTED], Special Education Teacher, accepted as an expert in special education with an emphasis on students with behavioral needs.
- [REDACTED], Behavior Support Teacher, accepted as an expert in special education with an emphasis on students with behavioral needs.
- [REDACTED], Central Placement Unit Coordinator, accepted as an expert in special education with an emphasis on placing students in fully self-contained special education settings.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:⁴

1. The Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) on or about July 24, 2018.
2. The Student began attending [REDACTED] on March 3, 2019 as a kindergarten student.
3. The Student completed his kindergarten year at [REDACTED] during the 2018-2019 school year.
4. Before attending [REDACTED], the Student first attended [REDACTED] School, but then transferred to [REDACTED] Elementary School ([REDACTED]) on October 12, 2018, which is his home school.
5. The Student experienced behavioral problems at [REDACTED] including disruptive, unsafe, and impulsive behaviors such as running around the room, throwing objects around the room, throwing objects at staff and students, and touching or hitting students. On one occasion, he threw a toy at another student, hitting her in the face and causing her to bleed.
6. On October 25, 2018, the Student's homeroom teacher made a Teacher Referral regarding the Student. In the referral the teacher noted that she had implemented the following interventions:
 - 1:1 adult support;
 - a "First...Then" chart;
 - individualized instruction outside of the classroom;

⁴ At the pre-hearing conference, the parties stipulated to two facts: 1) the Student's current placement is at [REDACTED]; and 2) the school system's recommended placement for the remainder of the 2019-2020 school year is at the [REDACTED] School. Those facts are reflected in my Findings of Fact.

- positive reinforcements such as giving treats or toys; and
- providing movement breaks.

7. On October 30, 2018, MCPS completed a Functional Behavioral Assessment (FBA) of the Student, which identified three behaviors of concern that interfered with the Student's "learning, social relationships, and/or participation in school:"

- Physical aggression, such as throwing objects, hitting, kicking and pushing;
- Unsafe behaviors, including climbing and jumping on furniture; running away from adults; and touching or holding unsafe objects in a threatening manner, such as jabbing at others with scissors, pulling on wires and opening windows; and
- Elopement (*i.e.*, leaving an area without permission).

(MCPS Ex. 7, p. 1).

8. On October 30, 2018, MCPS created a Behavioral Intervention Plan (BIP), which developed prevention, teaching, and response strategies in order to address the behaviors identified in the FBA. Those strategies included having a 1:1 adult supervision ratio, or 2:1 supervision if safety is a concern, remaining in the school resource room rather than his classroom for his school day, using an if-then chart, being provided frequent movement breaks, and being given verbal praise or tangible rewards when he displays safe behaviors.

9. MCPS completed an initial psychological evaluation of the Student on October 31, 2018, which found that the Student's behavioral issues were due to his ADHD.

10. On November 9, 2018, [REDACTED] submitted a request to MCPS for Emotional Disabilities Consultative Support Staff in order to deal with the Student's aggressive behaviors, which required constant 1:1 adult supervision and support.

11. On November 12, 2018, MCPS completed an Educational Assessment Report of the Student. The report found that the Student demonstrated strengths in the area of gross motor skills, receptive and expressive language, and his ability to interact with staff. The Student demonstrated difficulty with reciting the alphabet, visual discrimination, phonological awareness, reading sight words, understanding math concepts, rote counting, matching quantities with numerals, reading numerals, solving word problems, knowing missing numbers in sequence, playing and interacting in a positive manner with peers, and with motivation, social skills, and behaviors. (MCPS Ex. 9, p. 6).

12. On November 13, 2018, MCPS determined the Student was eligible for special education services with the primary disability of “Other Health Impairment” due to his diagnosis of ADHD.

13. On November 13, 2018, the Individualized Education Program (IEP) team met and developed an IEP for the Student, which identified his disability as “Other Health Impairment” due to his diagnosis of ADHD. It also identified the following areas as being affected by the Student’s disability and assessed the levels of development in each area:

- Academic – Written Language Mechanics – below grade level expectancy;
- Academic – Early Literacy – below grade level expectancy;
- Academic – Early Math Literacy – below grade level expectancy; and
- Behavioral – Social Emotional/Behavioral – below grade level expectancy.

14. For each area affected by his disability, the IEP established one or two goals along with three to four objectives for each goal. In order to achieve these goals and objectives, the IEP provided the following services for the Student:

- Three hours daily of special education services in the general education classroom;

- One hour daily of special education services outside the general education classroom;
- Two fifteen-minute sessions weekly of counseling services with the guidance counselor to learn social skills; and
- After the first six weeks, one thirty-minute session monthly with the guidance counselor to learn social skills.

15. On December 3, 2018, the IEP was amended to include a seat restraint for the Student on the bus due to his behavior on the bus to and from school.

16. On January 9, 2019, the IEP was again amended, this time to increase his special education services in the general education classroom to four and a half hours per day and to increase his special education services outside the general education classroom to one and a half hours per day. The IEP as amended also established a prompt hierarchy for the Student in order to complete tasks, which was as follows: independent; not more than two gestural prompts; not more than two verbal prompts, no more than two model prompts, and physical prompt by way of hand over hand assistance. (MCPS Ex. 15).

17. Due to his behavioral issues, and despite the behavioral supports in place, the Student was unable to access learning at [REDACTED]. From December 2018 to February 2019 the Student exhibited aggressive behaviors such as hitting, pinching, biting, scratching and punching on average of eighteen times per day. Additionally, he engaged in unsafe behaviors such as throwing objects an average of four times per day.

18. On February 7, 2019, the IEP team met for the purpose of discussing a change in placement for the Student from [REDACTED] to [REDACTED] in order for the Student to participate in the [REDACTED] program at [REDACTED].

19. The [REDACTED] program is a comprehensive program within a general education elementary school. There are three special education classrooms with class sizes of no more than ten children. Students in the [REDACTED] program also have access to a social worker, a behavior support teacher, and a school psychologist whose position is solely for the [REDACTED] program. The [REDACTED] program also implements the Crisis Prevention Intervention model, which utilizes seclusion or restraint of a child only as a last resort.

20. At the IEP meeting on February 7, 2019, a new IEP was created for the Student to reflect his transfer to [REDACTED].

21. The February 2019 IEP identified the same areas as being affected by the Student's disability and grade level achievement with regard to each area as the November 2018 IEP. The February 2019 IEP established one goal for Academic – Early Math Literacy, one goal for Academic – Written Language Mechanics, one goal for Academic – Early Literacy, and four goals for Behavioral – Social Emotional/Behavioral.

22. In order to achieve the goals of the February 2019 IEP, the IEP provided the following services for the Student:

- Approximately twenty-two hours and five minutes of weekly special education services outside of the general education classroom;
- Approximately seven hours and thirty minutes of special education services in the general education setting with support to include lunch, recess, specials, science, and social studies;
- Fifteen minutes daily of counseling services with the school social worker outside of the general education classroom; and

- Transportation services to and from school to include a seat restraint and the support of a bus aide.

(MCPS Ex. 16, pp. 30-31).

23. On February 7, 2019, the Student's FBA was updated. The updated FBA identified the same three types of behaviors that the Student continued to exhibit, but noted an increase in his physical aggression. At the time the FBA was updated, the Student was exhibiting physically aggressive behavior an average of fifty-seven times per week with incidents that included two out of school suspensions for hitting a paraeducator, causing a concussion and for punching a paraeducator, resulting in a bloody nose.

24. On February 7, 2019, an updated BIP was developed in order to update the strategies for effectively addressing the Student's increasingly aggressive behavior. One goal was to reduce the Student's acts of aggressive behavior to seven per day after four to six weeks of implementing the updated BIP.

25. The Student transferred to [REDACTED] on or about March 3, 2019 and remained there through the end of the 2018-2019 school year, which ended in June 2019. The Student's classroom consisted of ten students, three teachers and two paraeducators. [REDACTED] is the Student's current placement.

26. From March 2019 through June 2019, the Student exhibited the following behaviors at [REDACTED]: kicking, hitting, punching, headbutting, spitting, climbing on furniture, jumping off furniture, throwing objects at peers and adults, cussing, making threats, and not toileting properly on purpose. There were instances when the Student purposefully [REDACTED] [REDACTED] [REDACTED], [REDACTED]. The Student also exhibited [REDACTED] such as [REDACTED],

██████████, and ██████████
██████████

27. At all times while attending ██████████, the Student had, at minimum, a 1:1 adult to student ratio, while at times, requiring 2:1 or 3:1 adult supervision.

28. While at ██████████ during the 2018-2019 school year, the Student required the use of seclusion and/or restraint, meaning physical intervention, on the following dates and times and for the following behavioral reasons:

- April 8, 2019, 11:40 a.m., physical intervention and twenty minutes of seclusion – the Student began hitting, kicking and punching staff when staff presented him with an assignment;
- April 8, 2019, 12:00 p.m., twenty minutes of seclusion – upon exiting the quiet room, the Student again began to kick and punch the staff;
- April 12, 2019, 10:00 a.m., physical intervention and five minutes of seclusion – the Student began kicking and punching staff when staff attempted to redirect the Student back to his assignment. The Student also attempted to elope;
- April 12, 2019, 12:55 p.m., physical intervention and ten minutes of seclusion – when prompted to stop running in the hallway, the Student entered a classroom without permission and began throwing objects at the staff member, punching, kicking, headbutting, choking and attempting to bite the staff member;
- May 21, 2019, 9:40 a.m., physical intervention and five minutes of seclusion – after being asked by staff to return to his seat to begin a task, the Student punched and kicked at the teacher, threw a chair and other objects at the social worker, and attempted to bite the paraeducator during transport to the quiet room;

- May 22, 2019, 11:55 a.m., physical intervention and twelve minutes of seclusion – when presented with an assignment, the Student began karate kicking and punching the staff, in between kicking and punching he did cartwheels around the room. Once in the quiet room, the Student requested the behavior support teacher remain with him, but then began kicking and punching her. The Principal then entered the quiet room and he began punching and kicking her;
- May 29, 2019, 9:40 a.m., physical intervention – the Student eloped from his room and ran around the school building. He returned to the entrance of his classroom and kicked and attempted to bite the paraeducator who was standing at the door;
- May 29, 2019, 1:40 p.m., physical intervention and twenty minutes of seclusion – when presented with an assignment, the Student jumped on a table and began kicking and punching staff. The Student then jumped off the table, threw chair cushions at staff, and then began to punch a staff member in the face, abdomen and groin. During the physical intervention and transport to the quiet room, the Student bit a staff member on the hand;
- June 11, 2019, 12:50 p.m., physical intervention and eighteen minutes of seclusion – when the student was told he could not have a second recess he stabbed the paraeducator in the back with a sharp object and eloped from the classroom. Once outside the classroom he began kicking and punching at staff;
- June 11, 2019, 1:10 p.m., physical intervention and ten minutes of seclusion – when asked to wash his hands and put on his shoes before exiting the bathroom, the Student ran out of the bathroom and began punching and kicking at staff.

29. In addition to the incidents for which the Student required seclusion and/or restraint, the Student had a behavioral incident on April 8, 2019 when he threw a hard object at a staff member, hitting them in the eye.

30. The Student also had a behavioral incident on April 9, 2019, when without provocation, he hit a peer in the face with a hard object, for which she required medical attention.

31. On May 3, 2019, the Student's February 2019 IEP was amended to add two additional social/behavioral supports that were requested by the Parent: 1) the Student was permitted to call his mother during a crisis or aggressive episode; and 2) point sheets were to be sent home on a daily basis in order to keep the Parent informed of the Student's day.

32. On May 9, 2019, the Student brought two sharp pieces of a broken mirror to school. While standing in the hallways, the Student held one of the shards in his hand and swung it around while doing karate chops and kicks.

33. On June 13, 2019, the IEP team met and amended the Student's February 2019 IEP. The amended IEP indicated that the Student was not making sufficient progress to meet any of his academic or behavioral goals.

34. To enable the Student to make progress on his IEP goals, the amended IEP provided the following services for the Student:

- Six hours and thirty minutes of daily special education services outside of the general education classroom;
- Fifteen minutes daily of counseling services with the school social worker outside of the general education classroom;
- Transportation services to and from school to include a seat restraint and the support of a bus aide; and

- Three hours daily of Extended School Year (ESY) services for the summer of 2019 with transportation services to and from the ESY services.

(MCPS Ex. 34, pp. 33-34).

35. The Student's behavioral issues created safety concerns for himself, peers, and staff at [REDACTED] and required that he be segregated from both the general education and special education school setting for most of his time at [REDACTED] from March through June 2019. This prevented the Student from accessing his learning and making progress on his IEP goals.

36. At all times while at [REDACTED], staff fully implemented the Student's IEP; however, none of the services, program modifications, or supports that were implemented helped the Student to improve his behavior or access his learning.

37. As a result of the June 13, 2019 IEP team meeting, the IEP team referred the Student to the Central IEP⁵ team for consideration of a more specialized placement that could address the Student's extreme social, emotional and academic needs.

38. The Central IEP team met on July 22, 2019 and made a determination that there were no additional public options available that could provide a FAPE to the Student. Because of this, the Central IEP team recommended referrals to three private self-contained special education schools, which were the [REDACTED] School ([REDACTED]), the [REDACTED] School, and the [REDACTED] School.

39. The Student's placement at [REDACTED] continued through the referral process.

40. Neither the [REDACTED] School nor the [REDACTED] School accepted the Student into their programs, leaving [REDACTED] as the only option for the Student.

⁵ The MCPS has a two-tier IEP system. A student who is referred for special education first attends a school-based IEP meeting, but once the county public school options are exhausted, the Student is referred to the Central IEP team for a meeting to consider more restrictive placements.

41. [REDACTED] is a private, self-contained, special education school located in [REDACTED] County. It serves grades K-12 and has a maximum capacity of 115 students. [REDACTED] focuses on education for students with primarily social emotional/behavioral issues.

42. The Student was to transfer to [REDACTED] on or about October 21, 2019.

43. The Student began the 2019-2020 school year at [REDACTED] in Grade 1.

44. The Parent withdrew the Student from [REDACTED] at some point prior to October 21, 2019.⁶ The Parent reenrolled the Student at [REDACTED] beginning on November 20, 2019. The Student missed approximately five weeks of school. During that time the Student did not attend [REDACTED].

45. On October 21, 2019, the [REDACTED] IEP team met to establish a new IEP for the Student to reflect his transfer to [REDACTED].

46. The October 2019 IEP identified the same areas as being affected by the Student's disability and grade level achievement with regard to each area as the prior IEP. The October 2019 IEP established one goal for Academic – Early Math Literacy, one goal for Academic – Written Language Mechanics, one goal for Academic – Early Literacy, and five goals for Behavioral – Social Emotional/Behavioral.

47. As the October 2019 IEP was intended to be implemented at [REDACTED], all of the Student's classroom instruction under the IEP is to be in a special education classroom. Additionally, the Student is to receive four hours per month of counseling services, as well as transportation services and ESY services for the summer of 2020.

⁶ The record is unclear as to the exact date on which the Parent withdrew the Student.

DISCUSSION

Burden of Proof

The burden of proof in an administrative hearing under the IDEA is placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Accordingly, the Parent has the burden of proving that MCPS failed to provide the Student with FAPE for the 2019-2020 school year in the least restrictive environment. I find that the Parent has failed to meet her burden.

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:

(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* 34 C.F.R. § 300.8; Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78).

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. *Id.* at 204; 20 U.S.C.A. § 1401(9).

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017).

Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001. Ultimately, a disabled student’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.

An IEP is the “primary vehicle” through which a public agency provides a student with a FAPE. *M.S. ex rel Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

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).

To comply with the IDEA, an IEP must, among other things, allow a student with a disability to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI).

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 MCPS 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 FAPE might require placement of a child in a private school setting that would be fully funded by the child's public school district.

Analysis

There is no dispute that the Student, who is now six years old, experiences severe behavioral issues both at home and at school. These behaviors make it impossible for the Student to access virtually any learning while at school. His behaviors have been so extreme as to require that he have at least a 1:1 adult supervision to student ratio and sometimes even a 2:1 or 3:1 ratio. His behaviors are disruptive, violent, and dangerous to himself, his peers, and school staff. Due to his outbursts, the Student has spent the majority of his time not only outside of the general education classroom, but also outside of the special education classroom. The only disagreement between the Parent and MCPS is the appropriateness of the Student's placement at [REDACTED] a self-contained special education school, for the 2019-2020 school year.

The Parent vacillated in her testimony regarding the appropriateness of the Student's placement. Although she was clear that she does not want the Student to attend [REDACTED] she also stated that she was unhappy with how she and the Student had been treated by [REDACTED]. She listed multiple problems she experienced at [REDACTED], including a lack of communication between the staff and herself and the belief that [REDACTED]'s efforts to address the Student's behavioral issues, such as keeping the Student out of the class room for 1:1 or sometimes even

2:1 or 3:1 instruction, was making the Student feel different and embarrassed. She next stated, though, that she wants to keep the Student at [REDACTED] and move past what she described as a “bump” in his educational path. Finally, she testified that she does not have a problem if MCPS needs the Student to go to a different school, just not [REDACTED]. Her testimony did not provide any specifics as to why she believes that placement at [REDACTED] for the remainder of the 2019-2020 school year would not provide the Student with a FAPE, or why placement at [REDACTED] is superior to a placement at [REDACTED].

She testified that the Student is happy at [REDACTED] and loves his school. She also testified, though, that the Student feels singled out and different from his peers because of the way in which [REDACTED] handles his behavioral issues. She did not contest any portion of the Student’s current IEP other than his placement at [REDACTED]. The Parent testified that she believes [REDACTED] will only focus on the Student’s behavioral issues and not on his education, but gave no basis or any evidence for this belief. She testified that she believes the Student has been diagnosed with ADHD, Autism spectrum disorder, and oppositional defiant disorder. She did not present any evidence regarding these diagnoses, nor did she testify as to how they affect the Student’s IEP or placement. She stated that he currently takes two medications, but sometimes the prescriptions run out. She did not testify as to what these medications are, how long he’s been taking them or what they have been prescribed to treat. The Parent agreed that the Student has special needs that need to be addressed, but stated that she does not know how a self-contained special education school will help him to get back on track.

She testified that he is smart and energetic and a “special kind of boy.” She voiced concerns about making sure he has the best possible education and worries if he will be able to make it to college. She expressed frustration that the Student was transferred from [REDACTED] to [REDACTED] specifically for the [REDACTED] program at [REDACTED] and now MCPS wants to transfer

him again. She stated that before his transfer to [REDACTED] she inquired if [REDACTED] was equipped to handle him and they assured her they were. She expressed doubt that yet another transfer would create any benefit for the Student. When the Parent was asked specifically why she did not want her son to attend [REDACTED] she stated that she did not like the school based on a personal experience she had with the school that she would not disclose.

It is clear that the Parent loves her son and wants what is best for him in both the short and long term. Her disapproval of [REDACTED] was apparent, but the Parent provided no basis for her disapproval of the Student's placement at [REDACTED] for the 2019-2020 school year when her testimony also made it clear that she understood that the Student was not academically or behaviorally progressing at [REDACTED]

The Parent presented the testimony of [REDACTED] Ms. [REDACTED] is a Psychiatric Rehabilitation Program Counselor at [REDACTED] and works with the Parent in this capacity. Ms. [REDACTED] testified that she has been working with the Parent since July 2019. She stated that she has seen an improvement in the Student's attentiveness and eagerness to learn since he began medication in August 2019. She testified that she has observed the Parent's frustration with [REDACTED] over poor communication between the school and the Parent, specifically when the Parent requested records, but the school did not provide them. On cross examination, Ms. [REDACTED] testified that she has never observed the Student at [REDACTED], but she did attend one IEP meeting where she spoke about restorative justice between the school staff and the Student since the Student feels antagonized and ostracized at [REDACTED]

I found Ms. [REDACTED]'s testimony unhelpful and at times evasive. Ms. [REDACTED] specifically testified regarding the fact that the Student was hospitalized on August 1, 2019, that she spent approximately six hours at the hospital with the Parent, and that the Student began taking medication as of that date. However, when asked why the Student was hospitalized, she stated

that she could not remember the details because it was so long ago and she has dealt with other clients who have had hospitalizations since then, but she thought it had to do with the Student bringing an object to school. It seems questionable that Ms. [REDACTED] could remember that she spent six hours at the hospital on August 1, 2019, but not remember any of the details as to why she was there. Additionally, Ms. [REDACTED] testified that she had not interacted with any staff at [REDACTED] (although she stated she attended an IEP meeting) and was “not entirely” familiar with [REDACTED]. Because of this, I give Ms. [REDACTED]’s testimony little weight in this matter.

MCPS relied heavily on the testimony of [REDACTED], School Social Worker, who I accepted as an expert in special education and social work, with an emphasis on crisis intervention, behavioral interventions, and students exhibiting severe behavioral needs. Ms. [REDACTED] is a Licensed Certified Social Worker – Clinical and was the social worker for the [REDACTED] program at [REDACTED] for the 2018-2019 school year. In her capacity as the [REDACTED] social worker, Ms. [REDACTED] helped to transition the Student from [REDACTED] to [REDACTED] and interacted with him on a daily basis from his arrival on March 3, 2019 until June 14, 2019. Ms. [REDACTED] provided direct services and counseling to the Student. Ms. [REDACTED] was exceedingly knowledgeable about the Student and his educational history. Her testimony was thorough and compelling. Her twenty-four years of experience working with children with special needs and her familiarity with this specific student, his educational history, and social/emotional/behavioral issues added weight and credibility to her testimony. Ms. [REDACTED]’s care and concern for the Student was palpable throughout her testimony.

Ms. [REDACTED]’s testimony began with the Student’s initial diagnosis of ADHD from [REDACTED] ([REDACTED]’s) in July 2018. She explained that the Student was screened for special education services at [REDACTED] based on the psychiatric evaluation from [REDACTED]’s, reports from the Parent and grandmother of the Student of the Student’s disruptive

and disrespectful behavior at home, and a classroom observation. The classroom observation revealed that the Student was unable to join in any classroom activities due to his inability to remain on a task or even stay seated for more than two minutes. She further explained that this ultimately led to the Student's October 30, 2018 FBA and BIP. She testified that the FBA identified three behaviors of concern: physical aggression, such as throwing objects, kicking, hitting and pushing; unsafe behaviors, such as climbing on and jumping across furniture, running away from adults, and touching unsafe objects or holding objects in a threatening manner; and elopement from designated areas. The BIP developed prevention, teaching, and response strategies in order to address the behaviors identified in the FBA. Those strategies included having a 1:1 adult supervision ratio, or 2:1 supervision if safety was a concern; remaining in the school resource room for his school day, instead of the classroom; using an if-then chart; being provided frequent movement breaks; and being given verbal praise or tangible rewards when he displayed safe behaviors. As of October 2018, the Student was exhibiting aggressive or unsafe behaviors approximately ten times per day while at [REDACTED]. Ms. [REDACTED] explained that in order to implement the BIP, the Student needed adult supervision at all times, and when he displayed physically aggressive or unsafe behaviors, he required at least two staff members to supervise him.

Ms. [REDACTED] next testified that MCPS then completed an educational assessment report regarding the Student, as well as a psychological evaluation of the Student. The psychological evaluation found that the Student's behavioral, social and emotional difficulties were due to his ADHD. In response to these evaluations, it was determined that the Student was eligible for special education services with the primary disability of "Other Health Impairment" and the IEP team met on November 13, 2018 to create his IEP. The November 13, 2018 IEP identified that the academic areas of written language mechanics, early literacy, and early math literacy, as well

as the behavioral area of social/emotional development, were being adversely impacted by the Student's disability. Pursuant to the November IEP, the Student began receiving three hours a day of special education services in the general education classroom and one hour a day of special education services outside of the classroom. He also began receiving two fifteen-minute sessions per week with the guidance counselor. On January 9, 2019, the IEP was amended to increase the number of hours of special education services in the general education classroom to four and a half hours per day and to increase the number of hours of special education services outside the general education classroom to one and a half hours per day.

While continuing to walk through the timeline of the Student's education, Ms. [REDACTED] testified that on February 9, 2019, the IEP team met again to discuss the Student's transfer from [REDACTED] to the [REDACTED] program at [REDACTED]. Also at this time, the Student's FBA and BIP were updated. Despite the implementation of the October BIP and the November IEP the Student's behaviors were getting worse, not better. Ms. [REDACTED] noted that the February 9, 2019 FBA indicated that the Student was exhibiting aggressive behaviors approximately fifty-seven times per week, unsafe behaviors approximately fourteen times per week, and was eloping approximately three times per week. Ms. [REDACTED] also explained that the Student had two out-of-school suspensions for violent behavior, one time hitting a paraeducator and causing a concussion and another time punching a paraeducator, causing a bloody nose. Additionally, the Student threw a wooden puzzle piece at a peer, which hit her in the eye. In addition to recommending a transfer to [REDACTED], the February 2019 IEP provided the Student with twenty-two hours and five minutes of weekly special education services outside of the general education classroom; seven hours and thirty minutes of special education services in the general education setting with support to include lunch, recess, specials, science, and social studies; and

fifteen minutes daily of counseling services with the school social worker outside of the general education classroom.

Ms. [REDACTED] next described the [REDACTED] program. She explained that the [REDACTED] program at [REDACTED] is a comprehensive program within a general education elementary school. There are three special education class rooms with class sizes of no more than ten children. The Student's classroom at [REDACTED] consisted of ten students, three teachers, and two paraeducators. Students in the [REDACTED] program at [REDACTED] also have access to a social worker, a behavior support teacher, and a school psychologist whose position is solely for the [REDACTED] program. The [REDACTED] program also implements the Crisis Prevention Intervention model, which utilizes seclusion or restraint of a child only as a last resort.

Ms. [REDACTED] testified that from March 2019 through June 2019, the period of time during which she worked with the Student, the Student made no progress toward his academic or behavioral goals. She testified that the Student was still performing below his grade level in that he was not able to consistently write letters, he could identify only four kindergarten sight words, he could only consistently write the numerals 1, 7, 10 and 11, he could only count by rote to eleven. She explained that because of his behavior, he could not access any learning in either the special education classroom or the general education classroom. She described that on occasions the student would come off of the school bus already so dysregulated that he would not be able to even initially join the classroom. She explained that because his behavior was so uncontrollable, he was constantly segregated from his [REDACTED] peers, which then prevented him from being able to work on the basic, pragmatic skills of interacting with others.

She stated that he displayed aggressive and unsafe behavior every day, multiple times per day. She testified that the Student exhibited the following behaviors at [REDACTED]: kicking, hitting, punching, headbutting, spitting, climbing on furniture, jumping off furniture, throwing

objects at peers and adults, cussing, making threats, and not toileting properly on purpose. There were instances when the student purposefully urinated on himself, urinated outside of the bathroom, defecated in his pants, and smeared feces on the bathroom walls. Ms. [REDACTED] testified that the Student would intentionally soil himself if he did not get what he wanted, usually to continue a preferred activity. Of even more concern to Ms. [REDACTED] was that the Student also exhibited [REDACTED] such as [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

She described the Student as having clear strengths such as in his gross motor skills and his verbal communication, but also severe weaknesses. Ms. [REDACTED] testified that the Student is not able to emotionally regulate himself. The initiation of an academic task sends him into dysregulation that is severely violent and aggressive. Ms. [REDACTED] testified that in her twenty-four years of experience she has never seen anything so severe in terms of physical responses. She explained that under the Crisis Prevention Intervention model used in the [REDACTED] program, seclusion or restraint of a child is used only as a last resort. Ms. [REDACTED] outlined ten times from April 2019 through June 2019 when the Student's behavior was so aggressive and violent that the Staff needed to use restraints or seclusion. She described this as an "alarming" number of times and opined that it was absolutely atypical for a child of the Student's age. She stated that the extremity of the Student's behavior and the repeated use of seclusion or restraint due to the Student's behavior was part of the impetus for reviewing the Student's IEP to determine whether his placement at [REDACTED] was appropriate.

In Ms. [REDACTED]'s opinion, the Student cannot currently access any learning due to his behaviors. She explained that [REDACTED] has exhausted its resources in trying to address the Student's needs. She testified that despite implementing the Student's BIP and IEP, which

included providing the Student with at least 1:1 supervision, using “first/then” language, providing him with choices for preferred activities, giving him frequent movement breaks, and providing him with a dedicated resource room, he was still not able to regulate himself enough in order to access any learning. She concluded that the Student requires a more restrictive school setting in order to develop the skills necessary to regulate himself, properly interact with peers, and access his learning. She explained that in a self-contained setting, such as at [REDACTED] the staff can focus on the small, even minute, moments when he is not dysregulated and help him to sustain these periods. In her opinion, [REDACTED] has the resources to help the Student slow his interactions and “think outside the box” in order for him to access educational learning. Despite [REDACTED]’s best efforts, including the implementation of the BIP and IEP, that has not occurred at [REDACTED]. She explained that by continuing a [REDACTED], the Student is missing crucial opportunities to develop important social, emotional and behavioral skills.

MCPS next presented the testimony of [REDACTED], the principal of [REDACTED], who I accepted as an expert in school administration and elementary education. Ms. [REDACTED] has been employed by MCPS since 1999 and has been the principal at [REDACTED] since 2017. Ms. [REDACTED] was familiar with the Student and the services provided to him at [REDACTED]. She described the Student as adorable and engaging with a good personality; however, she explained that he also has a propensity for emotional dysregulation.

Ms. [REDACTED] testified that when the Student began attending [REDACTED] in March 2019, he had a 1:1 aide who came with him from [REDACTED] to [REDACTED] for four hours per day. However, it quickly became apparent that the Student required end-to-end services for the school day, which she sought from the County and which were approved. Ms. [REDACTED] noted in a staffing request she submitted to MCPS on April 17, 2019 requesting a paraeducator to supervise the Student for the entirety of the school day that the Student’s “dysregulation is to the extent that he

is unavailable for critical social-emotional learning (*e.g.* the development of a ‘tool box’ of strategies for emotional management)” and that it “significantly impedes his ability to access standard K curriculum and impacts his social relationships with adults and peers.” (MCPS Ex. 24, p. 2). She explained that even with a paraeducator dedicated to him, 1:1 support was often not enough and paraeducators would be pulled from other classrooms in order to aid the Student, especially when he was dysregulated.

Ms. [REDACTED] testified that she observed many impulsive, dangerous, and unsafe behaviors from the Student, including jumping on a second floor railing, bringing shards of a mirror into the school and brandishing them about, and being generally aggressive to staff. She stated that from March to the end of the school year there were five workers compensation claims filed at the school that were directly related to the Student’s behaviors.

Despite the fact that his IEP was fully implemented while he was at [REDACTED] Ms. [REDACTED] testified that the Student still performed academically below grade level. She explained that there was no cognitive reason for this, but instead opined that his behaviors were interfering with his ability to learn. She described the strategies implemented from the Student’s BIP in order for him to access his education, including allowing the Student frequent breaks, the provision of rewards, and instructional strategies. None of the strategies were successful in helping the Student to access learning or lessen his dysregulation. She described that in some ways the Student presented as his age, including his ability to carry on an adult conversation, but he presented as younger than his age in the way he interacted with his peers and adults. She also pointed to the fact that he would often sleep in the afternoon as evidence of his acting more like a preschooler. Ms. [REDACTED] also categorized his sexualized behaviors as inappropriate for a kindergartener.

Ms. [REDACTED] was clear in her testimony that [REDACTED] has exhausted its resources in trying to address the Student's behavioral and educational needs. She opined that the current IEP that recommends a fully self-contained setting is appropriate for the Student. She elaborated that a self-contained setting will allow the Student to have greater consistency and fewer transitions. Ms. [REDACTED] also explained that a lower staff to student ratio can help to target some of the Student's behaviors that are impeding his ability to access the curriculum. Ms. [REDACTED]'s testimony was clear that if the Student were able to develop the basic skills necessary to regulate his behaviors, he would be able to progress with his academic learning. Her testimony was also clear that [REDACTED] does not have the necessary resources to assist the Student in developing those skills to the level he requires.

MCPS also presented the testimony of [REDACTED], who I accepted as an expert in special education with an emphasis on students with behavioral needs. Ms. [REDACTED] was the Student's teacher from when he transferred to [REDACTED] in March 2019 until the end of the school year in June 2019. She testified that when the Student joined her classroom there were a total of ten students and four adults; an additional paraeducator joined with the Student, increasing the number of adults in the classroom to five. She testified that the Student was not ever able to remain in the classroom for instruction. She explained that when he did join the classroom, he would do cartwheels and would attack students – hitting, kicking and biting them. She described interacting with the Student and explained that, although the goal was for him to remain on a task for five minutes, he was only able to remain on a task for approximately a minute and a half. She described one occasion during which the Student did not want to transition to a nonpreferred activity and he told her that if she made him do it he would go to the bathroom in his pants, which he then did.

Ms. [REDACTED] described that the Student was able to produce only extremely limited work in the classroom because he turned every object into a weapon. As a result, the Student was only permitted to use paper. Even with supervision he would turn pencils into weapons and would break or throw crayons. Ms. [REDACTED] explained that the Student's behavior prevented him from making academic progress. He could only stay on task for a little over a minute, despite the implementation of teaching and behavioral strategies such as reducing his work, providing a checklist and incentives, and the use of a timer. She testified that even at times when he had three staff members working with him, his behaviors still made it impossible for him to make progress.

She described his academic levels as being Pre-K in that he could identify letters and four sight words, but he could only write his name and otherwise would need to trace letters in order to write them. He could also only consistently count to eleven. The baseline for counting in kindergarten is to one hundred. Ms. [REDACTED] opined that his lack of academic progress was due to his behavior, which prevented him from staying in the classroom and making any progress. She also opined that [REDACTED] had exhausted its resources in addressing the Student's needs and he would not be able to make any academic or behavioral progress if he remained there. Ms. [REDACTED] shared the opinion that the Student's current IEP, which recommends a fully self-contained setting for the Student, is appropriate and is the LRE in which the Student can be provided a FAPE.

[REDACTED], who I accepted as an expert in special education with an emphasis on students with behavioral needs, also testified on behalf of the MCPS. Ms. [REDACTED] holds a Master's degree in special education with a specialty in severe disabilities and early childhood education. Ms. [REDACTED] is the current behavioral support teacher in the [REDACTED] program at [REDACTED] and also chairs the IEP meetings. Ms. [REDACTED] began working with the Student in

September at the beginning the 2019-2020 school year. Ms. [REDACTED] testified that the Student began the 2019-2020 school year in September at [REDACTED], but then was withdrawn in October. The Student then returned to [REDACTED] on November 20, 2019. She explained that the Student was out of the school for approximately five weeks and during that time he did not attend either [REDACTED] or [REDACTED].

Ms. [REDACTED] described that the Student was doing “ok” in September, but as it got closer to his start date at [REDACTED], October 21st, he needed more supports. Ms. [REDACTED] did not clarify what she meant by “ok”, but she elaborated that the Student was exhibiting the same behaviors as in the previous school year, including hitting, kicking, biting, being generally aggressive towards staff and students and using classroom materials to threaten staff. She also stated that she has witnessed an increase in the Student’s sexualized behaviors, mostly in the form of highly sexualized and inappropriate language. She explained that, although this was not a new behavior for the Student, the frequency with which the Student was using sexualized language had increased. Ms. [REDACTED] stated that she had not seen an improvement in the Student’s behavior since last school year.

Ms. [REDACTED] testified that she chairs the IEP team meetings at [REDACTED], and although the Student was to transfer to [REDACTED], it was still the responsibility of [REDACTED] to update his IEP for the 2019-2020 school year. She explained that although the IEP was created and approved by the [REDACTED] IEP team on October 21, 2019, it was meant to be implemented at [REDACTED]. Ms. [REDACTED] testified regarding the Student’s academic levels of development in written language mechanics, early literacy, and early math literacy. With regards to written language mechanics, Ms. [REDACTED] testified that the Student is not able to consistently write letters and can only consistently write the numbers 1, 4, 8, 10 and 11. With regards to early literacy, she explained that the Student can identify all upper and lower case letters, but not on a

consistent basis, and has difficulties identifying letter sounds, particularly letter blends. With regards to early math literacy, she stated that the Student can identify numbers up to fourteen and can one-to-one and rote count up to thirteen.

Ms. [REDACTED] testified that the October 2019 IEP also reviewed the Student's social/emotional/behavioral level. She noted that the Student required interventions of restraint and/or seclusion on six separate school days since the start of the 2019-2020 school year. Although particulars were not provided regarding each of these six incidents, the IEP notes, "[t]hese incidents have included throwing objects at staff, punching staff, kicking staff, biting staff and verbally threatening staff." (MCPS Ex. 41, p. 8). Ms. [REDACTED] opined that [REDACTED] has no additional resources to utilize in order to provide the Student with a FAPE. She further opined that a self-contained, private placement, special education setting is the LRE that will ensure safety for the Student and for others. She explained that the Student needs a smaller and more structured setting than what is available at [REDACTED] in order to access his education. She further added that at [REDACTED], the Student is not able to access his peers even at recess because he requires additional support and staff at recess in order to ensure his safety. Ms. [REDACTED] concluded that the Student needs more support in order to make any progress on his academic or behavioral goals than [REDACTED] can provide.

Finally, MCPS presented the testimony of [REDACTED], the Central Placement Unit Coordinator, who I accepted as an expert in special education with an emphasis on placing students in fully self-contained special education settings. Mr. [REDACTED] obtained his Master's degree in special education from [REDACTED] College and has fifty years of service with MCPS. Mr. [REDACTED]'s testimony was thoughtful and well-reasoned. His vast experience within MCPS and his familiarity with the Student's situation was obvious and made his testimony

compelling and credible. It was clear that his testimony and opinions came from years of experience and knowledge.

Mr. [REDACTED] explained that he coordinates the Central IEP team, which is utilized when a school-based IEP team believes they have exhausted all of their available resources and are still not able to provide a student with a FAPE. Mr. [REDACTED] testified that the Student's file was sent to the Central Placement Unit in July 2019 and he reviewed the Student's file for the July 22, 2019 Central IEP meeting. Mr. [REDACTED] testified that the Student exhibited the most disturbing behaviors he had seen in a six-year old and he agreed that there were no additional public options available that could provide the Student with a FAPE. Mr. [REDACTED] explained that since there were not enough services and supports in any public placements, the Central IEP team recommended three schools for private placements that are equipped to handle the Student's behaviors: the [REDACTED] School, the [REDACTED] School, and [REDACTED]. Mr. [REDACTED] further explained that under some circumstances, a parent has a choice of which of the recommended private placement schools in which to enroll the student, but each school has an interview process and has to accept the student. Both the [REDACTED] School and the [REDACTED] School rejected the Student, leaving [REDACTED] as the Student's only placement option.

Mr. [REDACTED] was familiar with [REDACTED] and opined that [REDACTED] is better equipped to address the Student's specific needs and would be more successful in addressing his behaviors than [REDACTED]. He explained that [REDACTED] has two schools in Maryland, one in [REDACTED] County and one in [REDACTED] County, which is the school the Central IEP team recommended. The [REDACTED] County school has classrooms for grades K-12 and a maximum capacity of one hundred and fifteen students. Currently, [REDACTED] has eighteen students in grades 1-5 and fifty-eight students in grades 6-12. Mr. [REDACTED] explained that in

addition to having small class sizes, [REDACTED] has mental health professionals on staff in order to help the Student with his social/emotional/behavioral issues in ways [REDACTED] is not able.

Mr. [REDACTED] opined that the Student has not been able to access his education at [REDACTED] because of his behaviors. He testified that the Student is a bright child, but he has been experiencing his behavioral issues since he was three or four years old. He explained that the Student knows he is behind the other students in his class at [REDACTED] and this adds to and exacerbates his acting out. At [REDACTED], however, the Student will be with children who have similar issues and he will therefore be able to interact with his peers in ways he cannot at [REDACTED]. Mr. [REDACTED]'s testimony was clear, though, that [REDACTED] does not solely focus on a student's behavior, but also their education. Mr. [REDACTED] clarified that [REDACTED] will spend time on the Student's behavior in order to bring it under control so that the Student can access his academic education, which he is not currently able to do. He explained that all the students at [REDACTED] are working towards their diplomas. Mr. [REDACTED] concluded that the Student's current IEP recommendation for placement at [REDACTED] is appropriate.

The evidence clearly shows that the Student has severe social/emotional/behavioral issues, which are currently attributable to his ADHD diagnosis. The testimony and evidence presented shows that at his current placement at [REDACTED] he has daily occurrences of biting, hitting, kicking, punching, and threatening staff and students. These behaviors prevent him from accessing any learning in either a general education or special education classroom. The student currently spends the majority of his school day away from his general education and special education peers. He spends his day in the resource room, accompanied by one, sometimes two or three adults. The testimony and opinion of the five MCPS experts all concurred that the Student's IEP as amended in July and October 2019 reflects the appropriate placement for the

Student at Foundation and that there is no LRE that would be reasonably calculated to provide the Student with a FAPE.

The issue here is not in relation to the goals and objectives laid out in the IEP, but specifically the placement alone. The evidence is compelling that the Student has struggled both academically and behaviorally at [REDACTED] and then at [REDACTED]. As discussed above, the MCPS is required to provide a continuum of alternative placements to meet the needs of children with disabilities. 34 C.F.R. § 300.115. Private placement at a self-contained special education school is obviously more restrictive than the Student's previous placement, but is what the Student currently requires in order to address his behavioral issues and access his education. The Student was not successful in the LRE offered at [REDACTED], or even in the [REDACTED] program at [REDACTED]. Even with the supports in place in the [REDACTED] program at [REDACTED], the Student's behavior is so severe that he is spending most of his time in the resource room, segregated from all of his peer. Under these circumstances, MCPS has reasonably concluded that placement at [REDACTED], a private, self-contained special education school is the LRE in which to meet the Student's needs and provide him with a FAPE.

It is well-established that, in enacting the IDEA, and its predecessor, the Education of the Handicapped Act, Congress deliberately left the selection of education policy and methods to state and local officials. *Bd. of Educ. of Hendrick Hudson Cent. Dist. v. Rowley*, 458 U.S. at 207–08 (1982), *Barnett v. Fairfax County*, 927 F.2d 146, 152 (4th Cir. 1991), *cert. denied*, 502 U.S. 859 (1991). The IDEA is not intended to deprive educators of the right to apply their “professional judgment.” *Hartmann v. Loudoun Cty. Bd. of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997). I find the record amply demonstrates that the Student's 2019-2020 IEP, including placement at [REDACTED], is reasonably calculated to provide the Student a FAPE.

The Parent has not met her burden to show that the Student could remain at [REDACTED], even within the [REDACTED] program with all the support services presently being provided and available in that placement and receive a FAPE, as opposed to being placed at [REDACTED] where the Student would have greater and more appropriate social/emotional/behavioral support that would allow him to access his education. The evidence is overwhelming that the Student has made no progress on his academic or social/emotional/behavioral goals while at [REDACTED] and that, despite their best efforts, the [REDACTED] program at [REDACTED] cannot meet the Student's needs. The evidence is clear that a private placement in a special education facility is the appropriate way to implement the Student's IEP in the LRE, which is consistent with his needs. As referrals were made to three such schools, but only [REDACTED] accepted the Student, [REDACTED] is the appropriate placement for the Student.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Student's IEP for the 2019-2020 school year is reasonably calculated to provide the Student a free, appropriate public education in the least restrictive environment, which is the [REDACTED] School. 20 U.S.C.A. §§ 1400(d)(1)(A), 1412(a)(5); 34 C.F.R. §§ 300.114, 300.116; *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas Cty. School Dist. RE-1*, 137 S. Ct. 988 (2017).

ORDER

I **ORDER** that the due process request filed by the Parent on November 12, 2019 is **DENIED** and **DISMISSED**.

January 22, 2020
Date Decision Mailed

Mary Pezulla
Administrative Law Judge

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

MP/da
#183885

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE MARY PEZZULLA,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-19-35490

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of MCPS:

MCPS-1	Initial Psychiatric Evaluation text, dated 7/24/2018
MCPS-2	Classroom Observation by ██████████, dated 10/19/2018
MCPS-3	Eligibility Screening Parent Interview/Questionnaire, dated 10/24/2018
MCPS-4	Educational History, dated 10/24/2018
MCPS-5	Teacher Referral, dated 10/25/2018
MCPS-6	Child Find Referral, dated 10/24/2018
MCPS-7	Functional Behavioral Assessment (FBA), dated 10/30/2018
MCPS-8	Behavioral Intervention Plan (BIP), dated 10/30/2018
MCPS-9	Educational Assessment Report by ██████████, dated 11/12/2018
MCPS-10	Report of School Psychologist by ██████████, dated 10/31/2018
MCPS-11	Evaluation Report and Determination of Initial Eligibility, dated 11/13/2018
MCPS-12	Individualized Education Program (IEP), dated 11/13/2018
MCPS-13	IEP Amendment Changes, dated 12/3/2018
MCPS-14	Request for Emotional Disabilities (ED) Consultative Support to Staff, dated 11/9/2018
MCPS-15	IEP Amendment Changes, dated 1/9/2019
MCPS-16	IEP, dated 2/7/2019

MCPS-17	Prior Written Notice, dated 2/7/2019
MCPS-18	FBA, dated 2/7/2019
MCPS-19	BIP, dated 2/7/2019
MCPS-20	Documentation of Physical Interventions or Seclusion, dated 4/8/2019
MCPS-21	Email to Parent from ██████████, dated 4/9/2019
MCPS-22	Letter to Parent from ██████████ re: restraint and seclusion, dated 4/12/2019
MCPS-23	Email to MCPS transportation team from ██████████, dated 4/16/2019
MCPS-24	Staffing and Critical Staffing Request, dated 4/17/2019
MCPS-25	IEP, Amended 5/3/2019
MCPS-26	Prior Written Notice, dated 5/3/2019
MCPS-27	Letter to Parent from ██████████ re: Crisis Prevention Interventions, dated 5/21/2019
MCPS-28	Letter to Parent from ██████████ re: restraint and seclusion, dated 5/22/2019
MCPS-29	Letter to Parent from ██████████ re: restraint and seclusion, dated 5/29/2019
MCPS-30	Letter to Parent from ██████████ re: Crisis Prevention Interventions, dated 6/11/2019
MCPS-31	IEP, amended 6/13/2019
MCPS-32	Prior Written Notice, dated 6/13/2019
MCPS-33	Student Record Transmittal, dated 6/13/2019
MCPS-34	Communication Log, 2018-2019 school year
MCPS-35	Work Samples, dated 6/10/2019
MCPS-36	Emails to/from ██████████ and ██████████, dated 6/27/2019
MCPS-37	Prior Written Notice, dated 7/22/2019
MCPS-38	Letter to Parent from ██████████, dated 7/24/2019
MCPS-39	Emails to/from ██████████ and ██████████, dated 9/4/2019
MCPS-40	Letter to Parent from ██████████, dated 10/3/2019

MCPS-41	IEP, dated 10/21/2019
MCPS-42	Prior Written Notice, dated 10/21/2019
MCPS-43	Resume of [REDACTED], Principal, [REDACTED] ES, MCPS
MCPS-44	Resume of [REDACTED], Special Education Teacher, [REDACTED] ES, MCPS
MCPS-45	Resume of [REDACTED], Coordinator, Central Placement Unit, MCPS
MCPS-46	Resume of [REDACTED], School Social Worker, [REDACTED] [REDACTED], MCPS
MCPS-47	Resume of [REDACTED], Behavior Support Teacher, [REDACTED] MCPS

The Parent did not offer any exhibits for admission into evidence.