

██████████,
STUDENT
v.
QUEEN ANNE’S COUNTY
PUBLIC SCHOOLS

BEFORE SUSAN A. SINROD,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-QANN-OT-22-09246

DECISION

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STATEMENT OF THE CASE

On April 22, 2022, ██████████ (Parent),¹ by and through counsel, on behalf of ██████████ (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Queen Anne’s County Public Schools (QACPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);² 34 C.F.R. § 300.511(a) (2021);³ Md. Code Ann., Educ. § 8-413(d)(1) (2018);⁴ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1).

¹ The Student’s father, ██████████, did not join in the filing of the Due Process Complaint.

² “U.S.C.A.” is an abbreviation for the United States Code Annotated. All citations herein to the U.S.C.A. are to the 2017 bound volume.

³ “C.F.R.” is an abbreviation for the Code of Federal Regulations. All citations herein to the C.F.R. are to the 2021 bound volume.

⁴ All citations herein to the Education Article are to the 2018 Replacement Volume of the Maryland Annotated Code.

I conducted a video prehearing conference on June 9, 2022. Michael J. Eig, Esquire, represented the Parent and the Student. Manisha Kavadi, Esquire, represented QACPS.

I conducted the hearing on August 2, 3, 4, 9, 10 and 16, 2022, via the Webex video conferencing platform.⁵ COMAR 28.02.01.20B(1)(b).

Under the applicable law, a decision in this case normally would be due by July 7, 2022, forty-five days after May 23, 2022, the date the parties informed the OAH that no agreement was possible after participating in a resolution meeting. 34 C.F.R. §§ 300.510(b)(2), (c), 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, the parties requested an extension of time and hearing dates outside of that timeframe for the following reasons. 34 C.F.R. § 300.515(c); Educ. § 8-413(h). The parties agreed that they would not have been able to prepare for the hearing, request subpoenas or comply with the five-day disclosure rule if the hearing were held in June. The QACPS witnesses are mostly ten-month employees without availability during the summer months. The July 4, 2022 holiday fell on a Monday. Both Mr. Eig and Ms. Kavadi had a previously scheduled hearing on July 11, 12, 13, 14 and 15, 2022. I had previously scheduled leave on July 1, 5, 15, 22, and 29, 2022. Therefore, the earliest date that the parties would be able to have all witnesses available, keep the hearing dates reasonably close together, and comply with subpoena procedures and the discovery rule, were the dates set forth above. I found good cause to extend the timeline, schedule the hearing on the hearing dates selected by the parties, and I agreed to issue my decision within thirty days after the conclusion of the hearing. Educ. § 8-413(h).

⁵ By agreement of the parties, the hearing was originally scheduled to conclude on August 10, 2022. Subsequently, the parties requested that it continue to and conclude on August 16, 2022, for the presentation of rebuttal witnesses and for closing arguments.

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

ISSUES

1. Was the Individualized Education Program (IEP) and placement developed by QACPS for the 2021-2022 school year reasonably calculated to provide the Student with a Free Appropriate Public Education (FAPE)?

2. If there was a denial of a FAPE, is reimbursement of tuition and related costs for the [REDACTED] for the 2021-2022 school year appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

A full list of exhibits is attached to this decision as an appendix.

Testimony

The Parent testified and presented the following witnesses:

1. [REDACTED], [REDACTED], accepted as an expert witness in special education; and

2. [REDACTED], contract employee of [REDACTED], accepted as an expert witness in special education and Orton-Gillingham.

QACPS presented the testimony of the following witnesses:

1. [REDACTED], QACPS School Psychologist, accepted as an expert witness in school psychology;

2. [REDACTED], Supervisor of Special Education, QACPS, accepted as an expert witness in special education;

3. [REDACTED], Special Education Teacher Specialist, QACPS, accepted as an expert witness in special education; and

4. [REDACTED], Speech/Language Pathologist, QACPS, accepted as an expert witness in speech/language pathology.

FINDINGS OF FACT

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

BACKGROUND

1. The Student is thirteen years old and currently beginning her eighth-grade year at the [REDACTED] ([REDACTED]) in [REDACTED] Maryland.

2. The Student has been diagnosed with attention deficit hyperactivity disorder (ADHD), anxiety disorder, mood dysregulation, executive dysfunction and specific learning disabilities in reading, math and written expression.

3. The Student began elementary school in QACPS at [REDACTED] Elementary School. In second grade (2016-2017 school year), the Student began to experience symptoms of anxiety. She exhibited behavioral difficulties, including pulling her hair, screaming, hitting others, mood swings, and easy frustration. In school, she struggled with reading and math.

4. When the Student was in second grade, QACPS evaluated her and found her to have learning disabilities in reading, writing and math. QACPS found her to be eligible for special education services and developed an IEP.

5. The Student attended [REDACTED] Elementary School ([REDACTED]) in the third grade (2017-2018 school year), fourth grade (2018-2019 school year) and the beginning of fifth grade (2019-2020 school year).

6. The Student's learning disabilities cause her difficulty in reading decoding, phonics, fluency, comprehension and processing speed, as well as math calculation and problem solving. She also has weaknesses in executive functioning, and social emotional functioning.

7. In her third and fourth grade years, she continued to struggle academically.

8. At the end of her fourth-grade year and beginning of her fifth-grade year, the Student had made sufficient progress to meet the math problem solving goal in her IEP. She had achieved her reading phonics goal by April 10, 2019 and June 14, 2019 but was only making sufficient progress toward meeting that same goal in November 2019 and February 2020. She made sufficient progress to meet her goal in reading comprehension between April 2019 and February 2020, as well as in written language content. She achieved her goal in social emotional/behavioral as of April 2019, June 2019 and November 14, 2019 but was noted to only be making sufficient progress toward that goal in February 2020.

9. In January 2020, [REDACTED], QACPS School Psychologist, conducted a psychological assessment. She administered the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), which measures intellectual potential. This is an age-normed test, which compares the Student's performance to others in her age group nationally.

10. On the WISC-V, the Student performed in the average range on the verbal comprehension, vocabulary, similarities, and visual puzzles subtests. She performed in the low average range on the visual/spatial, block design, matrix reasoning, figure weights, working memory, digit span forward, and digit span sequencing subtests. She performed in the very low

range in subtests for fluid reasoning, digit span, digit span backwards, and symbol search. Her full-scale IQ was in the very low range. She performed in the extremely low range in processing speed and coding.

11. The Student's overall scores on the WISC-V revealed strengths in language skills, including verbal comprehension, and weaknesses in fluid reasoning, working memory and processing speed.

12. Ms. [REDACTED] also administered the Comprehensive Test of Phonological Processing, Second Edition (CTOPP-II) to measure phonological processing abilities. The Student scored in the low average range for blending words and memory for digits. She scored in the very low range in phonological awareness, elision,⁶ phoneme isolation, rapid digit naming, and rapid letter naming. She scored in the extremely low range in phonological memory, nonword repetition, and rapid symbolic naming.

13. Ms. [REDACTED] also administered the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-II), wherein the Student's parents and teacher rated the Student to measure executive functioning in the home and school environments. The Parent's and teacher's ratings scored in the clinically significant and at-risk range in virtually all aspects of executive functioning.

14. The Behavior Assessment System for Children, Third Edition (BASC-III), administered through teacher, parent and student ratings, evaluates social, emotional and behavioral functioning and measures adaptive and problem behaviors in the community and home settings.

⁶ "Ability to say a word and the say what is left after dropping out designated sounds." P. 6

15. The results on the BASC-III varied with the rater. The Parent's scores indicated that the Student was clinically significant or at-risk in most categories. The Student's father's ratings all fell in the average range. The Student's two teachers rated her in the average range for most categories, with clinically significant and at-risk scores in some areas including internalizing problems, school problems and adaptive skills. The Student rated herself as average in all categories.

16. From all of the information obtained and the testing administered, Ms. [REDACTED] concluded that the Student demonstrated low cognitive functioning and had significant needs in processing speed, phonological awareness, phonological memory and rapid symbolic naming. She also identified needs in executive functioning and emotional regulation.

17. Ms. [REDACTED] recommended a multitude of interventions to address the Student's learning deficits.

18. In late 2019/early 2020,⁷ QACPS conducted an educational assessment as part of the Student's triennial re-evaluation. [REDACTED], Special Education Teacher Specialist, conducted the Woodcock Johnson IV: Test of Achievements (WJ-IV). The Student performed in the low and very low range in all reading and math subtests. In written language, broad written language, written expression and phoneme-grapheme knowledge, she performed in the low to average range. She performed in the average range in writing samples and sentence writing fluency, in the low average range in calculation, the low range in letter-word identification, applied problems, word attack, spelling of sounds and reading recall. She performed in the very low range in spelling, passage comprehension, sentence reading fluency, math facts fluency and word reading fluency.

⁷ The date of this report is January 28, 2020, but it does not specifically state the date the assessment was administered.

19. Ms. [REDACTED] also administered the Gray Oral Reading Test-Fifth Edition, which measures oral reading rate, accuracy, fluency and comprehension. The Student scored in the very poor range in reading rate, below average in accuracy, the poor range in fluency, and in the below average range in comprehension.

20. As a result of the Student's educational test scores, Ms. [REDACTED] recommended accommodations and interventions to address her academic weaknesses.

21. In January and February 2020, the Student participated in a speech/language assessment. [REDACTED], Speech Language Pathologist, QACPS, conducted the assessment. In the Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-V), the Student achieved below average scores in the word classes, following directions, and sentence assembly subtests. She achieved average scores on the formulated sentences, recalling sentences, understanding spoken paragraphs, word definitions and semantic relationships subtests.

22. In the Social Language Development test, which assesses social language development, the Student scored in the superior range.

23. As a result of the scores the Student achieved on the QACPS speech/language assessment, Ms. [REDACTED] found that the Student had the following strengths:

- Highly intelligible speech and ability to produce all phonemes without error;
- Overall core language ability;
- Ability to formulate grammatically and semantically correct sentences containing nouns, pronouns, verbs, adverbs, adjectives and conjunctions;
- Ability to recall and repeat sentences with minimal to no errors;
- Ability to answer questions about orally presented paragraphs;
- Ability to define words;

- Ability to demonstrate understanding of semantic relationships;
- Superior social language development, especially in her ability to make social inferences, interpret social situations in multiple ways, and show empathy and support to peers;
- Willingness to use strategies such as asking for repetition and recognizing when she needs a break; and
- She is an engaging polite student.

P. 10-9.

24. Ms. [REDACTED] found that the Student had the following needs:

- Below average score in receptive language;
- Difficulty following directions of increasing length and complexity without repetition;
- Slight difficulty identifying words that are related as synonyms, words related by object function, and word opposites;
- Difficulty using words and phrases flexibly to create two different meaningful sentences; and
- Willingness to risk a guess or persevere when presented with a challenge.

P. 10-9, 10.

25. Ms. [REDACTED] recommended multiple interventions and accommodations to address the Student's speech language needs.

26. On February 5, 2020, the IEP team met, and the Parent rejected the IEP team's proposal of service hours. Frustrated that the Student was not achieving her IEP goals, the Parent looked for an alternative placement for the Student, and ultimately enrolled the Student at

██████████. The Parent notified QACPS of her intent to enroll the Student at ██████████ on February 25, 2020, citing the failure of QACPS to provide the Student with a FAPE.

27. ██████████ is a small private school in ██████████ County, Maryland. It is approximately forty minutes from the Student's home. There are approximately seventy-five students in the school, and there is a mixture of neurotypical students and students with learning disabilities in all classes. The class sizes at ██████████ are very small, with a student to teacher ratio of no more than approximately nine students to one or two teachers. Some classes like art or physical education may be larger.

28. On February 6 and 7, 2020, ██████████ conducted a screening assessment using a decoding measure called REED Decoding, which is a decoding measure from the Orton-Gillingham (OG) reading methodology. It is not a standardized or nationally age-normed test. The results of this assessment indicated that the Student was decoding at a kindergarten level.

29. The Student began attending ██████████ in February 2020, which was the spring semester of her fifth-grade year.

30. ██████████ utilizes the OG reading methodology, which is an evidence-based methodology that uses a multi-sensory approach to reading, including the use of large motor movements. OG is based on strict sequencing, with 106 levels. A student must accomplish ninety-percent mastery of a level before the student can move to the next level.

31. On August 21, 2020, the QACPS IEP team met to review existing data and develop an IEP. The IEP team proposed that the Student be placed at her home school, ██████████ Middle School, with specialized instruction and supports to address her needs.

32. The Parent rejected the proposed placement and IEP and requested placement at ██████████. QACPS rejected that request.

33. On September 3, 2020, the Parent filed a Due Process Complaint alleging a failure of QACPS to provide a FAPE to the Student for the 2019-2020 and 2020-2021 school years. The IEP in place at the time was the August 21, 2020 IEP.

34. The parties reached a settlement agreement, which resolved all claims by the Parent against QACPS regarding the Student through the end of the 2020-2021 school year. In the settlement agreement, the Parent agreed that if she intended to seek educational services from QACPS for the 2021-2022 school year, she would notify the QACPS by April 1, 2021.

35. The Parent notified QACPS on July 6, 2021 that she intended to seek services from QACPS for the 2021-2022 school year.

36. Due to the lateness of this request, there were delays in getting updated assessments and reports from [REDACTED], and testing.

37. After the Student submitted to updated assessments and evaluations, the IEP team met on December 7, 2021 to review all of the updated data on the Student.

38. The IEP team reconvened on January 25, 2022 to develop the IEP.

DATA POINTS CONSIDERED IN THE DEVELOPMENT OF THE JANUARY 2022 IEP

39. In June 2021, the end of the Student's sixth grade year at [REDACTED], she was learning at curriculum level, or just below, in art, Discovery science, Discovery social studies, and physical education. She was learning on a fifth-grade curriculum level in language arts and math, and a second to fourth grade curriculum level in reading.

40. On May 11, 2021 and August 10, 2021, [REDACTED], who oversees the implementation of OG at [REDACTED], administered the WJ-IV to the Student at [REDACTED]. The Student had been attending [REDACTED] for over one year at that point.

41. As compared to the 2020 WJ-IV, the 2021 WJ-IV scores showed improvement in letter-word identification, word attack, passage comprehension, applied problems, math facts fluency, sentence reading fluency, oral reading, math calculation, broad reading, and broad mathematics. Her scores declined in spelling, writing samples, sentence writing fluency and broad written language.

42. The scores indicated that the Student was in the average range in applied problems and writing sample, and the low average range in passage comprehension, word attack, writing fluency, calculation and oral reading fluency. She was in the low range for letter-word identification and in the very low range in reading fluency, math fluency, and spelling.

43. Ms. [REDACTED] also administered the Gray Oral Reading Test-Fifth Edition. In the areas of reading rate, the Student scored below average, at a just above a third-grade equivalent. In reading accuracy, she scored average, just above a fourth-grade equivalent. Her fluency score was below average at a fourth-grade equivalent, and she scored in the average range, at just above a fifth-grade reading equivalent in comprehension. All of these scores were an improvement from the Gray Oral Reading Test scores from 2020.

44. The Student scored in the average range on the Test of Written Language-4, Spontaneous Writing Sample, which measured her ability to organize thoughts to write a thorough and complete story when given a picture prompt under timed conditions.

45. On August 27, 2021, the Student underwent cognitive testing with the [REDACTED]. [REDACTED] administered the WISC-V.

46. The WISC-V is broken down into subparts. The Verbal Comprehension Index measures acquired knowledge, verbal concept formation and verbal reasoning. The Student

scored on the upper end of average in verbal reasoning skills, and average on a test of word knowledge. This was an improved score from the Student's WISC-V testing in January 2020.

47. The Visual Spatial Index portion of the WISC-V measures visual spatial analytic and constructional abilities. The Student scored at the upper end of average on the visual perceptual task. However, she scored below average on the block design portion, which required her to copy an abstract design using multi-colored blocks quickly. Overall, on the Visual Spatial Index, she scored in the thirtieth percentile, in the average range, which was a slight improvement from January 2020.

48. The Fluid Reasoning Index of the WISC-V measures fluid and inductive reasoning and classification abilities by using visual information to identify a common theme or concept. The Student scored average, in the seventy-fifth percentile on sequential reasoning skills where she was asked to complete a series of matrices or patterns. She scored average, in the thirty-seventh percentile, on a spatial and quantitative reasoning task which required her to select the response option that would keep a pictured scale balanced within a specified time limit. Her Fluid Reasoning Index score fell in the fifty-eighth percentile, in the average range, which was an improvement from January 2020.

49. The Working Memory Index measures the ability to actively hold or manipulate auditory and visual information in working memory. The Student scored in the low average range on a picture memory task and demonstrated "modestly average abilities" when asked to repeat digits in different orders. P. 35-2. Her Working Memory Index score fell in the twenty-first percentile, in the average range, which was a decline from January 2020.

50. The Processing Speed Index measures the speed of visual information processing. The Student scored in the thirty-seventh percentile, in the average range, on a test of her ability

to quickly scan search groups and indicate whether target symbols were present. She exhibited solid graphomotor skills when asked to copy symbols that corresponded with numbers on a timed basis. This was an improvement from January 2020.

51. The Student's Full-Scale IQ was ninety-five, in the thirty-seventh percentile. This was an improvement from January 2020.

52. Overall, the [REDACTED] evaluators found that the Student possessed solid word knowledge, strong verbal abstract reasoning, age-appropriate quantitative reasoning and sequential reasoning ability. She displayed below average abilities in visual-constructive skills, but age-appropriate abilities in visual scanning and graphomotor speed, and "modestly" average visual and auditory working memory skills.

53. With the exception of below average "visual-constructive skills," the Student's scores were age appropriate, and her cognitive ability was in the average range for students her age.

54. On September 14, 2021, QACPS conducted a psycho-educational assessment. [REDACTED], Nationally Certified School Psychologist, conducted the assessment.

55. Ms. [REDACTED] administered the BASC-III to assess the Student's current behavioral and social emotional functioning.

56. Ms. [REDACTED], who was the Student's teacher at [REDACTED] the Parent, and the Student completed the rating scales for the BASC-III.

57. Ms. [REDACTED]'s ratings for the school setting fell within the average range in all areas, which included externalizing and internalizing problems, behavioral symptom index, school problems and adaptive skills. Ms. [REDACTED]'s responses indicated that the Student may need redirection to the task at hand on occasion; however, she is easily redirected.

58. The Parent's rating fell within the average range in most areas for the home setting, with an at-risk score for adaptability and activities of daily living.

59. The Student's rating scales for the BASC-III all fell within the average range.

60. The results of the September 2021 BASC-III indicated an improvement in internalizing problems (anxiety, depression and somatization), as well as her social emotional functioning, from the January 2020 BASC-III.

61. Ms. [REDACTED] also administered the BRIEF-II, to assess the Student's current level of executive functioning. Ms. [REDACTED]'s ratings for the Student all fell within the average, age-expected range. The Student's ratings were all average as well. The Parent's rating for the Student in the home setting all fell within the at-risk, clinically significant and mildly elevated range with the exception of the task-monitor index, where the Parent rated the Student as average.

62. In the home setting, the Parent reported that the Student had difficulty with cognitive regulation, which is the "ability to control and manage cognitive processes, problem solve and effectively manage classwork." QACPS 11-6. The Parent reported that the Student struggles to initiate tasks independently, plan out longer assignments and tasks, and retain information in working memory.

63. Even though Ms. [REDACTED] did not report these same struggles in the school setting, Ms. [REDACTED] recommended in both the home and school environments that the Student plan out assignments, and she recommended that large tasks be broken into smaller tasks for manageability. She also recommended allowance for breaks and organization with a to do list.

64. Ms. [REDACTED] recommended the following for the Student at school:

In the educational setting (to help with working memory):

- Restating and reviewing directions and information; rephrasing information in simple terms;
- Repeating directions in her own words;
- Supplementary visual aids; concrete examples; providing models;
- Utilization of a multisensory approach; supporting auditory presentations with visuals;
- Pre-teaching or previewing of new information; guiding the Student to listen for important points; and
- Relate new material to previously learned information to increase the Student's comprehension.

In the educational setting (to help with executive functioning):

- Writing assignments and long-term projects be broken down into smaller parts. Editing should also be broken down into small parts and each part should be reviewed by the teacher for understanding and effort;
- Explicit training on study skills and organizational strategies; use of checklists for tasks that she struggles to complete can provide a visual reminder of all the steps needed to complete the task at hand;
- Clear, concrete and consistent routines to manage the environment so that the Student knows what is expected of her at all times;
- Preferential seating closest to instruction; and
- Reduction of auditory stimulation and distraction.

65. In October and November 2021, [REDACTED] conducted a speech language re-evaluation. [REDACTED] conducted the evaluation using multiple assessment measures.

66. The results of the speech language evaluation indicated that the Student demonstrated age-appropriate language comprehension skills. Her auditory processing and memory ranged from low average to above average depending on the task. She demonstrated low-average ability to follow multi-step directions. She demonstrated average, age-appropriate ability in expressive language skills. Overall, Ms. [REDACTED] found the Student to have demonstrated “excellent progress” as compared to her speech language testing in 2020. Ms. [REDACTED] recommended that the Student’s speech language services be decreased.

67. [REDACTED] utilizes an executive function tool it developed to report on a student’s executive functioning ability. It has a rating scale from one to five. One means never, two means rarely, three means occasionally, four means often and five means almost always. The results of the tool are obtained through teacher input. Any score that is three or below prompts an accommodation in that area.

68. On October 1, 2021, under the Planning section of the [REDACTED] executive functioning tool, the Student’s rating was 3.0 in the section that states, “verbally restates directions, assignments or steps necessary to complete a task.” P. 38-1. This prompted an accommodation for the use of self-talk strategies (i.e., prompting the student to repeat processes out loud and eventually repeat in their head); use of teacher explanation/modeling; and use of a visual supporter-checklist or rubric).

69. Also in the Planning section, the Student’s rating was 3.0 in the area of prioritizing tasks in order of importance. This prompted accommodations to use visuals to help prioritize; use of checklists, highlighting, color-coding, graphic organizers (Thinking Maps), teacher prompts and reminders; use of questioning and discussion to identify order of

importance; use of task-analysis, including completion of homework based on hardest to easiest, and analysis of what are the important facts or concepts.

70. The results in the other areas of the Planning section, including staying within time limits and deadlines, following class agenda independently, and use of checklists, templates and/or models as guides to complete assignments, did not prompt any accommodations.

71. The Student's rating in the area of Organizing did not prompt any accommodations.

72. In the area of Monitoring, the Student's rating on the ability to sustain an expected level of focus and attention to the matter at hand was 2.5 and was a concern. This prompted an accommodation for the use of timers to encourage self-monitoring of attention and the use of an attention monitoring checklist.

73. In the other sections in the area of Monitoring, including understanding how another's behaviors affect the Student's thoughts and feelings, recognizing how her behavior affects another's thoughts and feelings, and monitoring thoughts and feelings in response to different situations, the Student's ratings did not prompt any accommodations.

74. The Student's ratings in the area of Shifting did not prompt any accommodations.

75. In the area of Initiating, the Student's rating in beginning work independently and in a timely fashion was a 3.0. It prompted an accommodation for the use of posted checklists, observing what peers are doing, and use of visual and auditory prompts. Also, the Student's rating for moving on from a negative situation was a 2.83 and prompted an accommodation for the use of an auditory prompt (bell, clicker, or unrelated universal key phrase); model awareness of need for help, and roleplay scenarios.

76. The other sections in the area of Initiating, including assuming leadership roles, asking for assistance when unsure of what to do, taking a break and coming back to it later and identifying alternative solutions to a problem, did not prompt any need for accommodations.

77. The section of the [REDACTED] executive functioning tool entitled “Hold” assesses “that activation of necessary cognitive processes required to maintain initially registered information and continue cueing these processes until the information is manipulated, stored, or act on as desired.” P. 38-2.

78. In the area of recalling written information in the Hold section, the Student’s rating was a 3.0, which prompted accommodations for the use of text mapping-highlight and underlining important information; use of Post-It notes to mark important information; use of color coding; use of colored diagrams, graphs, maps and pictures; use of Thinking Maps, graphic organizers, Learning Ally, text to speech programs; and having information read to the Student.

79. The other areas of Hold, including applying prior knowledge, completing classroom routines independently, recalling oral information and seeking clarification repetition of directions did not prompt any accommodations.

80. In the area of Perceiving, the Student’s ratings did not prompt any accommodations.

81. The IEP team also considered standardized testing that [REDACTED] administered called AimsWeb Plus. It is a nationally age-normed test; scoring is compared to same-age peers. These assessments test a student’s educational ability using grade level curriculum. In the fall of 2021, when the Student was in the seventh grade, she demonstrated above average ability in writing sequences, total words written and words spelled correctly, well-below average ability in math, and below average ability in reading.

82. Broken down, the reading scores indicated that the Student showed average ability in vocabulary and reading comprehension.⁸ She showed below average ability in silent reading fluency, and well-below average in oral reading fluency.

83. In December 2021, the Student was in seventh grade at [REDACTED]. Her progress report⁹ from that time indicated that she was learning above curriculum level (at an eighth-grade level) in Discovery science. She was learning at grade level curriculum or slightly above in Discovery social studies. She was learning at grade level curriculum in language arts and physical education, and below grade level in art, math and reading.

84. In developing the IEP, the IEP team, collaboratively, with the input of [REDACTED], the Parent's educational consultant, Ms. [REDACTED], the Parent and counsel for the Parent, determined the Student's present levels of performance, based on the most recent assessments, evaluations and progress reports.

85. At the time of the creation of the IEP, the IEP team agreed that the Student was learning at an instructional level of third or fourth grade for decoding, and a fifth to sixth-grade instructional level for reading phonics. Her reading fluency was on a fourth-grade instructional level. Reading comprehension was on a sixth to seventh-grade instructional level. Math calculation and math problem solving were on a fifth-grade instructional level. In written language mechanics, she was on a seventh-grade instructional level for composition, and a third to fourth-grade instructional level for spelling. In written language spelling, the Student was at an instructional grade level of third to fourth grade.

⁸ For this section, the AimsWeb report said that it should be interpreted with caution because the test was either interrupted or repeated.

⁹ The IEP refers to a January 2022 progress report. However, the only [REDACTED] progress report in that time frame that is in the record is dated December 2021, which I presume is the progress report to which the IEP intended to refer. P. 41.

86. Regarding speech language receptive language, the IEP team relied upon the [REDACTED] speech language re-evaluation from October and November 2021 in determining that the Student was in the superior range for social language, and within the average range for core, expressive and receptive language.

87. At the time of the development of the IEP, the Student was age appropriate in social emotional/behavioral functioning. In executive functioning, based on the BRIEF-II, the Student displayed no at-risk areas; however, informal tools showed areas of need.

THE IEP FOR THE 2021-2022 SCHOOL YEAR

88. On January 25, 2022, the IEP team convened to develop the Student's IEP for the 2021-2022 school year.

89. At the IEP meeting, the team agreed that the Student was on a diploma track.

90. The IEP team updated the present levels of performance on the IEP to include up-to-date standardized assessment results. The Parent agreed with the present levels of performance.

91. Ms. [REDACTED] requested an addition to the present levels of performance; however, the IEP team pointed out to her that the requested addition had already been captured in a goal. Mr. [REDACTED] requested some rearranging of the present levels of performance in the area of executive functioning, which the IEP team agreed to do.

92. The IEP team noted that the Student's strengths included "perseverance, which lead to her achieving goals she sets. She does well with short term rewards. She is a bright girl, caring, smart, kind and empathetic." P. 59-20.

93. Regarding how the Student's disability affects her involvement in the general education curriculum, the IEP team determined that:

[The Student] can be fully involved in the general education curriculum with support for academics, attention and anxiety. [The Student's] learning disability and other health impairment affects her ability to access general education curriculum with the supports of supplementary aids and services, accommodations, and in some cases modifications related to all content areas particularly in reading phonics, fluency, comprehension and math calculation and problem-solving. [The Student's] weaknesses in executive functioning impact her self-monitoring and initiating.

P. 59-20.

94. The Parent agreed with the Communication, Assistive Technology, and Instructional and Testing Accommodation sections of the IEP.

95. At the IEP meeting, the Parent agreed with the Supplementary Aids, Program Modifications and Supports portions of the IEP. The IEP team agreed to add a color-coded emotion measurement tool to aid the Student in her ability to self-monitor her emotions at Mr. [REDACTED]'s request.

96. The IEP team agreed to the Parent's request for the addition of a social emotional goal to the goals and objectives. The IEP team also agreed to rework the spelling goal to align with the phonics goal. The Parent agreed to all of the goals and objectives.

97. Regarding special education services, the IEP team initially proposed that the Student receive forty minutes daily of specially designed instruction outside of the general education setting to address phonics, encoding and decoding, and thirty minutes daily for reading comprehension. After input from counsel for the Parent, the IEP team agreed to increase the time for phonics, encoding and decoding to sixty minutes daily, with an additional thirty-minutes daily for reading comprehension, outside of the general education classroom.

98. The IEP team further proposed that the Student receive sixty minutes daily of specially designed instruction in math, fifteen minutes to address executive function goals and fifteen minutes to address social emotional goals, all outside of the general education setting.

99. After discussion, the IEP team, including the Parent, and those participating on the Parent's behalf, agreed to a total of fifteen hours per week of special education instruction, outside of the general education setting.

100. Mr. [REDACTED] requested that the Services section of the IEP include a statement that small group instruction will be provided when new concepts are presented at all instructional times. QACPS disagreed with that, because it precluded the Student from the ability to apply learned skills in a more generalized setting. The IEP team noted the disagreement.

101. Ms. [REDACTED] provided input at the December 7, 2021 IEP team meeting regarding her September and October 2021 psycho-educational assessment and recommendations. The IEP team incorporated her recommendations into the IEP, including accommodations for small group instruction, frequent breaks, reduction of distractions, pre-teaching, linking new information to information she already knows, repetition of directions, small group instruction for new concepts, breaking down assignments into smaller units, preferential seating, and visual/multisensory tasks.

102. The Special Accommodations section of the IEP included the use of spell check, writing tools and a graphic organizer, as well as small group instruction, frequent breaks and reduction of distractions per Ms. [REDACTED]'s recommendations.

103. As instructional accommodations, the IEP provided for the use of a calculation device and mathematics tool, as well as speech-to-text. The IEP also included an accommodation for additional time and frequent breaks.

104. In the Supplementary Aids and Services section, the IEP provided for the following daily instructional supports:

- Provide information, curricular vocabulary, and direct instruction while working on vocabulary relationships;
- Provide alternate ways to demonstrate learning;
- Encourage self-help/self-talk strategies;
- Provide concrete strategies when providing new information;
- Allow the Student to refer to written information/instructions during problem solving and assignments requiring multiple steps;
- Link new information to information she already knows;
- Wait time before having to provide a response or complete a task;
- Repetition of directions;
- Small group instruction when new concepts are presented;
- Use of speech-to-text and text-to-speech;
- Use of manipulatives;
- Use of a timer to show time remaining to complete an assignment or transition time;
- Grade level material read to the Student; and
- Use of word bank to reinforce vocabulary and/or when extended writing is required.

105. The Supplementary Aids and Services section in the IEP also provided for the following daily program modifications:

- Use of picture supports where possible for reading and math content; and
- Break down assignments into small units.

106. The Supplementary Aids and Services section in the IEP also provided for the following daily social/behavioral supports:

- Intervene in social situations to avert social difficulties and negative effects on the Student's self-esteem;
- Encourage/reinforce appropriate behavior in academic and non-academic settings;
- Allow to write or draw emotions;
- Praise for effort;
- Parent communication; and
- Provide choices.

107. The Supplementary Aids and Services section in the IEP provided for preferential seating as a physical/environmental support.

108. The Supplementary Aids and Services section of the IEP provided for a weekly speech/language pathologist consult, and as a school personnel/parental support, daily access to a school counselor.

109. The Supplementary Aids section of the IEP included as a social/behavioral support "access to additional adult support during co-taught [s]cience and [s]ocial [s]tudies classes when the special educator and/or general educator are not present and during [u]nified arts to assist with instructional and social support." P. 59-33.

110. The IEP placed the Student in the [REDACTED] ([REDACTED]) program at [REDACTED] Middle School ([REDACTED]) for the 2021-2022 school year, the Student's seventh grade year.

ERRORS IN THE IEP

111. The IEP contained typographical errors. The software QACPS uses to create an IEP automatically pulls information from one section to the other on the IEP. Regarding this

IEP, QACPS did not make certain changes to reflect what the IEP team discussed and agreed upon at the meeting. As a result, certain information did not transfer properly, resulting in errors.

112. In the Services section of the IEP, the originally proposed hours of special education services are set forth in the chart on that page; QACPS never changed those hours once the IEP team agreed to increase the proposed hours to sixty minutes for reading skills, which totaled one-hour and thirty minutes total for reading skills and reading comprehension. Therefore, the originally proposed service hours of one hour and ten minutes (forty minutes for reading skills, thirty minutes for reading comprehension) outside of the general education setting for reading remained in the chart.

113. The narrative located directly below the chart in the Services section, correctly set forth that the Student will participate in special education services outside of the general education classroom for sixty minutes per day for reading skills, thirty minutes per day for reading comprehension, and sixty minutes per day for math.

114. QACPS also failed to include on the IEP the fifteen minutes per day outside of the general education classroom for executive functioning, and fifteen minutes for social emotional functioning, all which the IEP team agreed to at the meeting.

115. The Supplementary Aids and Services section of the IEP is the only place that mentions that the Student's science and social studies classes were to be co-taught.

116. In the Least Restrictive Environment section of the IEP, the IEP incorrectly states that the Parent accepted "[i]n general education with special education supports provided outside the general education setting." P. 59-48.

117. Mr. [REDACTED] took notes at the IEP meeting. His notes accurately reflect the special education service hours the IEP team discussed and agreed to, that the science and social

studies classes were to be co-taught, and the thirty minutes per day (fifteen minutes each) for executive and social emotional functioning.

118. The Prior Written Notice dated January 25, 2022, also accurately reflects the special education services hours that the IEP team discussed and agreed upon.

119. No one on behalf of the Parent, nor anyone from QACPS, noticed these errors in the IEP until the parties were preparing for the hearing in this matter. When the Parent rejected the IEP due to the proposed placement in the [REDACTED] program, she rejected the IEP with the special education service hours the IEP team discussed and agreed to. She had no knowledge of the typographical errors in the IEP.

120. The Due Process Complaint did not mention or claim that the IEP contained errors.

[REDACTED] AT [REDACTED]

121. The [REDACTED] program at [REDACTED] provides a self-contained setting for students with learning disabilities, in the areas in which the student receives special education services, typically English/language arts and math. In other subjects, an [REDACTED] student will be in a general education classroom, co-taught with a special education teacher, with an average of seventeen to twenty students. The maximum number of students in the self-contained [REDACTED] classroom is nine, with a special education instructor and a school assistant.

122. For the 2021-2022 school year, the [REDACTED] program started with four students and ended up with seven students, which included sixth graders, another seventh-grade female student, and eighth graders.

123. The IEP called for the Student to receive fifteen hours per week of special education instruction in the self-contained classroom by a special education teacher and a

paraeducator. For science and social studies, the Student would be in the general education setting, co-taught by a special education teacher. For her unified arts classes, which constituted her electives such as art, physical education and music, the Student would be in the general education classroom with other adult support, such as a paraeducator.

124. In the [REDACTED] self-contained classroom, the students work in small groups depending on their grade and learning level.

125. In the [REDACTED] program, the special education teachers and the general education teachers collaborate and co-plan in order to meet the needs of the students in the program. The special educators make the general educators aware of a student's IEP so they can implement the supplementary aids and accommodations throughout the day. They monitor implementation and collect data to assess the students' progress throughout the year.

126. The [REDACTED] program utilizes Spire, a reading decoding intervention that utilizes techniques and sequencing that are different, but similar to that of OG. The special education teacher for the [REDACTED] program has also completed the introductory level training for OG. Spire and OG both employ the same five evidence-based instructional components, which are phonemic awareness, systematic phonics, reading fluency, vocabulary, and reading comprehension. Both OG and Spire are systematic, diagnostic, provide explicit instructions, and use multi-sensory tools.

127. Through the [REDACTED] program, the Student would continue to learn decoding skills with Spire in the small class setting, and then generalize those skills in the co-taught general education setting at grade-level curriculum.

128. In the [REDACTED] program, the Student would have access to Readtopia and Inspire Classics, which produce books used in school at tiered levels, to expose students with a reading disability to grade level content at his/her reading level.

129. The general education classes at [REDACTED], such as science and social studies, are frequently broken down into smaller groups depending on students' learning levels.

130. In the co-taught classes, the special education teacher mixes in with all of the students in the class discreetly so that a special education student is not singled out.

131. All students in QACPS are provided with a Chromebook. The students complete writing and other assignments on the Chromebook, which is also equipped with text-to-speech and speech-to-text capabilities as well as headphones.

132. The students frequently complete assignments independently using their Chromebooks. Therefore, no student knows if another is using a read aloud accommodation for directions or text to speech. Additionally, a student can complete an individually designed assignment without other students being aware that the student's assignment may be modified. The general educator and the special educator collaborate to create the specially designed instruction.

DISCUSSION

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; Md. Code Ann., Educ. §§ 8-401 through 8-417; 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 20 U.S.C.A. 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* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; 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 201, 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).

More recently, 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.*, 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.

COMAR 13A.05.01.09 defines an IEP and outlines the required content. It is 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. *Id.* § 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 and 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).

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 “*specifically* designed” to meet a child’s “*unique* needs” through an “[i]ndividualized education program.”

Endrew F., 137 S. Ct. at 998-99 (citations omitted; emphasis in original). 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 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 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. Moreover, the IEP must be reasonably calculated to allow a student 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 FAPE, 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. *Id.*

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 QACPS 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); COMAR 13A.05.01.03B(71). 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. 34 C.F.R. § 300.114(a)(2)(ii); 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.

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 FAPE; (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, 327 (4th Cir. 2009).

BURDEN OF PROOF

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parents are seeking relief and bear the burden of establishing that QACPS failed to provide an appropriate IEP and placement for the 2021-2022 school year, and if so, that placement at [REDACTED] was appropriate.

POSITIONS OF THE PARTIES

At the hearing, the Parent argued that the errors and inconsistencies in the IEP constituted a procedural violation that impeded the Parent’s opportunity to participate in the IEP process. Additionally, although the Parent agreed with most of the contents of the IEP, she disagreed with the placement in the [REDACTED] program at [REDACTED] because it provided for the Student to participate in the co-taught general education classes for science, social studies, and unified arts with adult support. Although the Parent questioned whether the IEP actually provided for the science and social studies classes to be co-taught, it was her position that, even if they are co-taught by a special educator, the class sizes are too large; the Student needs to continue to be in a very small class setting throughout the day, like she is at [REDACTED]. Further, the Parent is concerned that due to the Student’s anxiety, and her sensitivity about being singled out or being

different than her peers, she could not be successful in a large general education classroom, even with special education support. Given the Student's deficiencies in reading, the Parent argued that she needs OG, through which she has made significant progress at [REDACTED]. The Parent contends that the IEP and placement, therefore, failed to provide the Student with a FAPE, that [REDACTED] is appropriate for the Student, and she requests reimbursement for tuition and related expenses for the 2021-2022 school year.

It is the position of QACPS that the Student has made academic progress; she is of average cognitive functioning as compared with her like-aged peers. The tests and assessments demonstrate that the Student has progressed in executive functioning and social emotional functioning, and is able to be educated, with special education support, in a general education classroom. QACPS also argued that at [REDACTED], the Student is not being challenged to progress academically. She is supposedly on a diploma track, but she is in the eighth grade and is still being taught at below grade-level curriculum. QACPS maintained that the [REDACTED] program will provide the Student with the small class special education services that she needs in reading and math. She will develop skills in those areas through small, self-contained classroom instruction, and she will be able to apply those skills generally in the larger classroom setting, with non-disabled peers and co-taught by a special education instructor.

Regarding the errors in the IEP, QACPS argued that because everyone involved in the IEP process knew what was actually proposed for the Student, and because the Parent had already determined that the Student would attend [REDACTED] in the 2021-2022 school year, any procedural error regarding the IEP had no impact on the Student's right to a FAPE, nor did it deprive the Parent of the opportunity to participate in the IEP process.

ANALYSIS

Procedural Violation/Errors in the IEP

The Due Process Complaint did not raise any procedural violation, nor did it mention anything about errors in the IEP. In fact, counsel for the Parent stated affirmatively in his opening statement that this was not a case with “a lot of allegations of procedural violations...”

Tr. 9. Counsel did not mention errors in the IEP in his opening statement.

20 U.S.C.A. Section 1415(f)(3)(B) states:

(B) Subject matter of hearing

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7),¹⁰ unless the other party agrees otherwise.

See also 34 C.F.R. § 300.511(d) (“The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint...unless the other party agrees otherwise.”).

QACPS did not argue that the procedural matter was not properly before me, but it did argue the law regarding procedural violations. Therefore, I am proceeding as if QACPS tacitly agreed that the matter is before me, and I am going to address it.

Regarding procedural violations, 20 U.S.C.A. Section 1415(f)(3)(E)(ii) sets forth:

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies--

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

¹⁰ The Due Process Complaint.

In *MM ex rel. DM v. School District of Greenville County*, 303 F.3d 523 (4th Cir. 2002), the court explained:

When such a procedural defect exists, we are obliged to assess whether it resulted in the loss of an educational opportunity for the disabled child, or whether, on the other hand, it was a mere technical contravention of the IDEA. *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir.1997) (“[T]o the extent that the procedural violations did not actually interfere with the provision of a free appropriate public education, these violations are not sufficient to support a finding that an agency failed to provide a free appropriate public education.”). If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations.

Id. 303 F.3d at 533–34.

The purpose of the IEP is to create “a clear record of the educational placement and other services offered to the parents” and “assist[ing] parents in presenting complaints with respect to any matter relating to the educational placement of the child.” *A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 682 (4th Cir. 2007). Citing *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6th Cir. 2001), the *A.K.* court noted that “[e]xpanding the scope of a district’s offer to include a comment made during the IEP development process would undermine the important policies served by the requirement of a formal written offer....” *A.K.*, 484 F.3d at 682.

The Parent cited, and presented to me, *Letter to Akron*, United States Department of Education, Office of Special Education and Rehabilitative Services (OSEP), November 20, 1990, which answered the question of whether the IEP must specify the number of minutes and hours a specific service is to be given. OSEP answered the question in the affirmative, to ensure “that the level of the agency’s commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.”

██████████ is the Supervisor of Special Education for QACPS. I accepted her as an expert witness in special education. She participated in the IEP process for the Student. She also knows the Student from in and around the community.

Ms. ██████ explained that the errors resulted from the way in which the QACPS IEP software works. The software draws from each section of the IEP to populate other sections. QACPS did not change the hours of special education instruction in the chart on the Services page of the IEP to reflect what the parties actually agreed upon in the IEP meeting. P. 59-46. The special education instruction hours set forth in the chart were those the IEP team originally proposed. When the IEP team agreed to change the proposal to add additional time outside of the general education setting for reading, QACPS did not reflect that change in the chart. This caused a domino effect because then other parts of the IEP failed to populate properly. Ms.

██████████ explained that there is a function in the software that calculates hours based on the information in the IEP, and if there is an error from within, the calculation is going to be incorrect. Some of the data transferred properly, some did not. Her testimony was corroborated by the fact that the narrative just below the chart in the Services section accurately reflects the change in special education service hours outside of the general education setting, as the IEP team, including the Parent, agreed. Additionally, the chart should have reflected the fifteen minutes each per day for executive functioning and social emotional functioning, both of which the IEP team proposed, and everyone agreed upon. The Prior Written Notice reflects the correct, changed service hours for reading, math, executive functioning and social emotional functioning. P. 47A. So does Mr. ██████'s notes. P. 46.

Ms. ██████ also addressed the errors on the Least Restrictive Environment page of the IEP. P. 59-48. At the bottom of that page, the IEP incorrectly states that the Student's time

outside of general education was to be ten and one-half hours per week instead of fifteen hours. This was pulled from the error on the Services page. Ms. [REDACTED] agreed that at the top of the page, where it discusses the placement options the IEP team considered, the wording is confusing, and QACPS picked the wrong choice when it noted that the Parent rejected “In general education with special education supports in and outside the general education setting.” Ms. [REDACTED] explained that option was meant for a situation where a student was being pulled out of a general education class for special education services, which is not what the IEP proposed for the Student in the [REDACTED] program. She explained that the bottom statement, “In general education with special education supports provided outside the general education setting-accepted,” more directly relates to the [REDACTED] program, where the Student would receive separate special education instruction, outside of the general education setting. Regardless, she conceded that the wording was confusing, and should have been clarified to reflect what actually happened at the IEP team meeting.

Ms. [REDACTED] explained further that the Services page only sets forth special education services that are directly geared to address a particular goal and objective. Any consult or indirect service is contained in the Supplemental Aids and Services section. The co-taught classes are only mentioned in Supplementary Aids and Services, because the co-taught classes were designed to address the student to teacher ratio in the larger classes, and did not directly address a goal or objective.

This situation is unusual. The Due Process Complaint was never about errors in the IEP. There is no mention of errors, or any procedural violation in the Due Process Complaint, because when the Parent filed it, no one involved on either side of this case knew about the errors. Neither Mr. [REDACTED] nor anyone on behalf of the Parent, questioned the IEP team about any

errors at the time they received the final IEP, because they did not read it. Everyone involved assumed the IEP contained the proposal that the IEP team discussed and agreed to at the meeting. Mr. [REDACTED]'s contemporaneous notes from the IEP meeting, reflect everything the IEP team discussed and agreed upon, including the special education service hours, and the co-taught science and social studies classes. P. 46.

The IEP is the document that maps how a school system is going to educate a student with a learning disability under the IDEA. In this case, no one scrutinized or even read the final IEP after they received it. No one discovered the errors until the parties began preparing for this hearing. No one relied on the errors in the IEP for anything. The Parent did not file the Due Process Complaint because of errors in the IEP. Mr. [REDACTED] was not aware of the errors in the IEP until recently, but agreed that his notes, the Prior Written Notice and the narrative portion of the Services section reflect the IEP team's discussions and agreement. When the Parent left the January 25, 2022 IEP meeting, she knew that she intended to reject the proposal discussed at the meeting. She presumed the IEP contained what was discussed at the meeting. She had no reason to read the final IEP.

These errors would have been caught easily if someone from QACPS had proofread the IEP before providing it to all persons involved. Similarly, had the Parent, or counsel for the Parent actually read it, they would likely have discovered the errors. Interestingly, on July 25, 2022, shortly before the first day of this hearing, Ms. [REDACTED] sent the Parent and counsel for both parties an amended IEP after she corrected a clerical error regarding the start and end dates for the goals and objectives and supplementary aids and services. P. 59. Not even at that point, did Ms. [REDACTED], the Parent or anyone else, pick up on the errors in the Services and Least Restrictive Environment sections of the IEP. Had they done so, the errors could have been similarly

corrected to reflect what everyone at the IEP team meeting agreed was the proposal that the Parent rejected.

Based on the circumstances of this case, the errors in the IEP did not deprive the Student of a FAPE, nor did it deprive the Parent of the opportunity to participate in the IEP process. Everyone, including the Parent, Mr. [REDACTED], QACPS staff and counsel for both parties was aware that what the Parent rejected was an IEP that contained the special education service hours and the co-taught classes that the IEP team discussed at the January 25, 2022 meeting. P. 46; P. 47A. Additionally, although the Prior Written Notice did not set forth anything about co-taught classes, it did list the correct hours that the IEP team discussed for reading, math, social emotional and executive functioning, and specified that those subjects would be “outside the general education setting.” P. 47A.

I recognize that an argument could be made that the errors in the IEP were substantive and not procedural. Under many factual scenarios that might be the case. However, in this case, I am convinced that no one from QACPS, nor the Parent or anyone on her behalf, discovered the errors in the IEP until they were preparing for this hearing. The errors were typographical in nature, caused by ineffective use of the software used to draft the IEP, and all parties proceeded forward as if the errors did not exist. Mr. [REDACTED] went to observe the [REDACTED] program in March 2022. He observed a co-taught class because he knew that was part of the [REDACTED] program. The Parent filed the Due Process Complaint on April 22, 2022, and on July 14, 2022, notified QACPS that the Student would attend [REDACTED] for the 2022-2023 school year.

The Parent fully participated in the IEP process from beginning to end. Mr. [REDACTED]'s testimony was credible that the entire process was collaborative, and the IEP team considered all of his input, as well as that of Ms. [REDACTED] and the Parent. All of Ms. [REDACTED],

recommendations are embedded in the IEP. The Parent never relied upon the errors in the IEP; she rejected the proposed placement with the special education instruction hours that everyone thought the IEP contained. Thus, the errors in the IEP did not impede the Parent's participation in the IEP process, did not result in the denial of a FAPE to the Student, and did not deprive the Student of any educational benefit.

Background

Mr. [REDACTED] is an educational consultant with the [REDACTED]. The Parent retained him to assist with the IEP process. At the hearing, I accepted him as an expert witness in special education. He explained that his role as an educational consultant is to form an expert opinion regarding a student's educational programming; if the student's parents agree with his opinion, they often hire him as an advocate.

Mr. [REDACTED] became involved with the Student in the fall of 2019 when she was in the fifth grade. Throughout his involvement with the Student, he observed her in the classroom twice when she was at [REDACTED] and once when she was at [REDACTED]. He first observed her at [REDACTED] on October 2, 2019 and saw her struggling in reading and math. She often put her head down, refusing to participate in the class instruction. Her special education teacher told Mr. [REDACTED] that the Student had weaknesses in reading decoding, fluency, encoding and spelling as well as with math, and she did not like to work in groups of more than five students. P. 5. In March 2020, Mr. [REDACTED] observed the Student in her fifth-grade math intervention at [REDACTED] and spoke to her math instructor, who said that the Student was on a fourth-grade level in math, and that she worked better in small groups. P. 13.

Mr. [REDACTED] recommended [REDACTED] to the Parent. The Parent began to explore [REDACTED] in the middle of the Student's fifth-grade year because she felt that QACPS was not

meeting the Student's needs; the Student had not been progressing. According to the Parent, the Student struggled with basic reading, written language and math. She did not take pride in her work.

In recommending [REDACTED], Mr. [REDACTED] relied partially on the Student's fourth and fifth-grade IEP progress report, which showed that as of the first and second quarters of fifth-grade, she was only making sufficient progress, but not achieving, her math problem solving goal, her reading comprehension goal, or her written language content goal. P. 9. She regressed from the fourth grade in her reading phonics goal, which she had previously achieved, but was only making sufficient progress to meet the goal in the first and second quarters of fifth grade. P. 9-2, 3. Similarly, she had achieved her social emotional goal in fourth grade and the first quarter of fifth grade but regressed to only making sufficient progress to meet that same goal in the second quarter of fifth grade. P. 9-5, 6. Mr. [REDACTED] opined that the Student's failure to achieve most of her IEP goals demonstrated that she was not making educational progress at [REDACTED]

The testing and evaluations administered to the Student prior to when she left [REDACTED] in February 2020, when she was in the fifth grade, are relevant to the extent that they provide a baseline of the Student's educational and psychological profile at the time she left QACPS. The parties settled any and all disputes they had regarding the Student up to the end of the 2020-2021 school year.

The WISC-V that Ms. [REDACTED] administered in January 2020 demonstrated the strengths and weaknesses in the Student's intellectual potential. P. 6-7. It is an age-normed test, which compares the Student's scores to same-age peers on a national level. Verbal comprehension has always been a strength for the Student, and she scored average in that area. She scored lower in

the areas where she historically has struggled, including visual spatial, fluid reasoning, processing speed, coding and working memory among others. Her full-scale IQ was very low. The CTOPP-II revealed weaknesses in all aspects of phonological processing. P. 6-8. The BRIEF-II, for which Ms. [REDACTED] gathered data from the Parent, the Student's father and teachers, revealed that the Student was clinically significant or at-risk for most aspects of executive functioning. P. 6-9. The Student's own ratings fell into the average range, but I placed more weight upon the responses from those who observed her daily.

The BASC-III, also administered by gathering data from parents and teachers, revealed mixed results; in most areas her scores were clinically significant or at-risk in the home setting; her scores in the school setting were much more average, with some clinically significant and at-risk components. P. 6-11. Although I acknowledge that the BRIEF-II and BASC-III are very subjective tools, I found them to provide an informative picture of what the raters observed to be going on with the Student at that time.

Similarly, her cognitive profile around that time was in the very low range based on the WISC-V Ms. [REDACTED] administered in January 2020. P-6-7. Although she demonstrated her strength in verbal comprehension, she demonstrated weaknesses in fluid reasoning, working memory, and processing speed. Understanding that the result of the WISC-V can be influenced by outside factors that the report could not capture, I found it to be informative regarding the Student's cognitive strengths and weaknesses.

The results of the WJ-IV that Ms. [REDACTED] administered in late 2019/early 2020 demonstrated the Student's known strengths in written language, written expression, sentence writing fluency and writing samples, and her known weaknesses in reading, spelling, comprehension, reading and math fluency. P-7. The WJ-IV is designed to assess "academic,

application and fluency skills in the areas of reading, written language and mathematics.” P. 7-4. The WJ-IV is also a standardized, age-normed test. The Student scored in the very low range in reading and broad reading, in the low range for basic reading skills, math, broad math, and phoneme-grapheme knowledge. She scored in the low average range for written language and broad written language, and in the average range for written expression. She had weaknesses in spelling, passage comprehension, sentence reading fluency and word reading fluency. She demonstrated strengths in writing. In the Gray Oral Reading Test-Fifth Edition, which measures reading rate, accuracy, fluency and comprehension, she scored very low in all areas. P. 7-11.

The QACPS speech and language assessment in January and February 2020 revealed the Student’s many strengths in speech, social language, and comprehension of oral information. QACPS 10. It revealed needs in receptive language, following complex directions, identifying related words, and using words and phrases flexibly. QACPS 13.

██████████ (██████████) ██████████ is one of the founding teachers of ██████████ and is now a contract employee overseeing the implementation of OG within ██████████. She has her own educational support consulting business as well. I accepted her as an expert witness in special education and OG. ██████████ is not certified as a special education school in Maryland, but it is a certified private school. There are approximately seventy-five students, and the school is comprised of both learning disabled and non-learning-disabled students in all classes. Ms. ██████████ participated in the IEP process for the Student.

In February 2020, when the Student applied for admission to ██████████, Ms. ██████████ did a screening assessment using a decoding measure called REED Decoding, which is a decoding measure from OG. P. 8. It is not a standardized or nationally age-normed test. The

Student was in fifth grade at [REDACTED]. According to Ms. [REDACTED], the results of the assessment established that the Student was decoding at a kindergarten level.

Based on the 2020 testing and the IEP progress reports which showed that the Student only achieved one of her IEP goals, an achievement that subsequently regressed, the Parent was frustrated with the Student's lack of progress. She notified QACPS, withdrew the Student from [REDACTED] and enrolled her at [REDACTED]. This occurred in February 2020. The parties resolved all disputes arising out of the 2020-2021 school year. In July 2021, the Parent notified QACPS that she intended to seek services for the Student for the 2021-2022 school year. The IEP team agreed upon new testing and assessments and began to accumulate data from the Student's last year at [REDACTED].

Observations of the Student at [REDACTED]

Mr. [REDACTED] observed the Student at [REDACTED] on January 14, 2022, during the IEP process. P. 42. He observed an English language arts class with seven students and two teachers, a social studies class with nine students and one teacher, and a math class with five students and one teacher. Mr. [REDACTED] found the Student to be engaged, motivated and social with other students. Her teachers informed Mr. [REDACTED] that her incidents of shutting down when frustrated have lessened over the last year. She was reading better but not fluently. Her spelling was better. She was doing better in math. On the day Mr. [REDACTED] observed the Student, she had a moment during lunch when she was crying, but she spoke to a staff member and rebounded when she went back to class. Her teachers reported that she had shut down a few times in social studies, but it seemed related to something that was happening at home. P. 42-3. As strengths, Mr. [REDACTED] also noted the Student's progression in decoding, math, understanding parts of speech, and expressing ideas in writing, and she was connected to her

teachers. She still had challenges in reading fluency, math calculations, she still needs repetition of directions, and she still sometimes shuts down. P. 42-5.

Based on his observation of the Student at [REDACTED], and his review of the most recent testing and assessments, Mr. [REDACTED] formulated the opinion that the Student needed small group instruction throughout the day. He opined that that the Student has emotional challenges and is easily embarrassed, and she is very concerned about being singled out or set apart from other students, which would make larger co-taught classes ineffective for her.

[REDACTED], Special Education Teacher Specialist, QACPS, observed the Student at [REDACTED] on January 21, 2022. QACPS 26. I accepted Ms. [REDACTED] as an expert witness in special education. Ms. [REDACTED] observed the Student work independently. She was engaged in her work. She did not use any graphic organizer when completing a writing assignment. During the Discovery classes (science and social studies), the Student expressed that an assignment was hard and that she was nervous about speaking in front of others, which she was going to have to do for that assignment. However, she then sought assistance from a peer and Ms. [REDACTED] noted that any frustration did not impede the Student's ability to get the work done. She worked that day with minimal support. She did not receive any one-to-one instruction.

The January 25, 2022 IEP Meeting

Ms. [REDACTED], the Student's father, the Parent, Ms. [REDACTED], [REDACTED], QACPS speech/language pathologist, Mr. [REDACTED], counsel for QACPS, counsel for the Parent, and Ms. [REDACTED] all participated in the January 25, 2022 IEP meeting, among others. The purpose of the meeting was to develop the IEP for the 2021-2022 school year.

Mr. [REDACTED] and Ms. [REDACTED] provided input regarding the contents of the draft IEP, and the IEP team considered their input. P. 45. Mr. [REDACTED] agreed that the development of the IEP was a collaborative process between QACPS, the Parent and Ms. [REDACTED], and that the IEP team adopted most of their suggestions. The Parent and Mr. [REDACTED] agreed with the majority of the IEP, including the Present Levels of Performance, Goals and Objectives, and Instructional Supports and Accommodations. As an addition to the Supplementary Aids section of the IEP, Mr. [REDACTED] requested a color-coded system for monitoring anxiety, and he wanted the section about preferential seating to be further defined, but otherwise agreed with the Supplementary Aids section of the IEP. [REDACTED], QACPS Speech Pathologist, recommended that a speech/language consultative service be included in the Student's IEP because she still had areas of need when it came to complex directions. Ms. [REDACTED]' intent was to carry out this consultative service collaboratively with the general and special education teachers. The IEP team accepted all of Ms. [REDACTED]' recommendations stemming from her psycho-educational assessment, with which Mr. [REDACTED] agreed, and incorporated those recommendations into the IEP.

The IEP team originally proposed that the Student receive forty minutes per day outside of the general education classroom for reading skills, thirty minutes per day for reading comprehension, sixty minutes for math and fifteen minutes each for executive and social emotional functioning. After further discussion, the team changed the proposal to sixty minutes for reading skills. The reading comprehension, math, social emotional and executive functioning hours stayed the same. The Student was to receive special education instruction, as set forth above, for a total of fifteen hours per week, outside of the general education classroom.

The Parent, Mr. [REDACTED] and Ms. [REDACTED]'s only disagreement with the IEP was placement at the [REDACTED] Program at [REDACTED]. Their biggest concern was the co-taught general education science and social studies classes. Mr. [REDACTED] disagreed with the proposed services and placement because in his opinion, as well as that of Ms. [REDACTED] the Student needed a small class setting with specially designed instruction throughout the day.

QACPS argued that the [REDACTED] program was the least restrictive environment, because it was closest to the Student's home, and it allowed the Student to be educated with non-disabled peers in her own community. After the IEP team meeting on January 25, 2022, Mr. [REDACTED] arranged to observe the [REDACTED] program at [REDACTED].

The [REDACTED] Program at [REDACTED].

The [REDACTED] program is a regional program offered by QACPS which focuses on providing intensive specially designed instruction in a small group setting while still allowing students to access grade level standards. It is a classroom within the community school. Students are not pulled out of a class to receive special education services; as the students rotate through their daily classes, the [REDACTED] class is just one of the classes the Student attends. The [REDACTED] program is designed to address Maryland State educational standards, so that a student can move from grade to grade on a diploma track. Ms. [REDACTED] explained that while in the [REDACTED] program, the goal is to meet the students where they are academically, while still maintaining the core standards they will need, especially when moving forward to high school.

The [REDACTED] program focuses on teaching the skills that need specially designed instruction in the small [REDACTED] classroom, while also teaching a student to use those skills in a generalized manner, in the general classroom setting. According to Ms. [REDACTED], by way of example, if a student is learning coping strategies, or overcoming obstacles as part of his or her social

emotional goal, it is difficult for that student to actually test and use those strategies if the student is in such a small class the entire school day. The [REDACTED] program gives the student the exposure and the ability to utilize those skills under the naturally occurring, real life circumstances that arise in the general education atmosphere with exposure to more students and non-disabled peers. In the [REDACTED] program, those skills would be reinforced during the co-taught classes, unified arts and lunch. This will help prepare a student for high school and the future.

The [REDACTED] teachers collaborate regularly with the general education teachers; they have regular collaborative planning time. That way, content covered in the general education classes can be incorporated into the [REDACTED] class, and the Student can utilize the strategies and concepts being taught in the [REDACTED] classroom in the general education classes. A special education teacher co-teaches with the general education teacher to assist with that utilization. The IEP is implemented across both settings. The teachers constantly analyze data, and the special education teacher and general education teacher will work together if they feel a student has hit a plateau, to address and adjust the instructional program as necessary. Ms. [REDACTED] described the [REDACTED] program as systematic in its approach. In reading and math, the [REDACTED] program provides instruction related to the necessary State educational standards, while implementing the intervention necessary to address the Student's needs.

Ms. [REDACTED], as the Special Education Teacher Specialist, oversees the [REDACTED] program and monitors to ensure that all supplementary aids are being implemented. Additionally, an IEP chair is at the school every day and oversees the special education program within the school.

Ms. [REDACTED] explained the co-taught classes. The general education teacher is the content specialist who creates the daily lesson in science and social studies. The general education

teacher and the special education teacher collaborate to embed the specially designed instruction into the daily lesson. They collaborate on delivery models. With two teachers in the room, the class is often divided into two groups, with one teacher teaching each, but they also vary the delivery models so that sometimes they do rotations or set up different stations. Regardless of the delivery model, when there are two teachers in the classroom, it provides a smaller student to teacher ratio. If there are seventeen students in the class, the student to teacher ratio is eight or nine to one, which Ms. [REDACTED] equated to some of the classes the Student attends now at [REDACTED]. The [REDACTED] classes for reading and math will never have more than nine students, with a special educator and paraeducator. Sometimes the unified arts classes are larger, but the Student would still have adult support in the room to address any social, emotional or other needs.

Mr. [REDACTED] testified regarding his observation of the [REDACTED] program at [REDACTED] on March 21, 2022. He found the classroom to be a small interior classroom with no windows, and it contained students in the sixth and eighth grades. It did not have any seventh graders like the Student and no other girls. The [REDACTED] program used Spire, instead of OG. They were utilizing the same book for both the sixth and eighth graders; the books were adapted for different reading levels. When he spoke to Ms. [REDACTED], she told him that they cannot always find adapted versions of the grade level curriculum books. Mr. [REDACTED] found the reading comprehension questions being discussed in the [REDACTED] class to be below grade level and too basic for the Student. He observed that two of the sixth-grade boys had sweatshirt hoods over their heads and did not make eye contact with the teacher. He also noted that two boys left the room for breaks without asking permission, and one was gone for ten minutes and the other twenty. He took issue with the fact that the teacher did not say anything to those boys about how long

they were gone or ask where they were. Mr. [REDACTED] did not find the [REDACTED] classroom to be a positive or uplifting environment. He felt that with multiple grades being taught in the [REDACTED] classroom, the Student, who has an attention deficit, would be very distracted to have one group being instructed by one teacher, and another group, five feet away, to be instructed by another.

Mr. [REDACTED] then observed the general education co-taught science class that the Student would attend. One of the boys from the [REDACTED] class was in the general education class. Mr. [REDACTED] noted that the students were reading grade level content that the Student would not have been able to read. There were no students in the general education classroom that needed directions read to them. The [REDACTED] program student asked a teacher for help, and the teacher told him to “just write something,” and did not read to him or help him. Tr. 130. Mr. [REDACTED] estimated that there were approximately twenty students in the class, which, in his opinion, would be overwhelming and distracting for the Student. He opined that even though the Student is bright enough for grade level content, she cannot read on grade level, which would make the curriculum inaccessible to her. Mr. [REDACTED] also testified that, although he could not determine the specific disability coding of the students in the [REDACTED] class, he could tell that their cognitive level was low. On rebuttal, Mr. [REDACTED] clarified that he determined that the [REDACTED] students were of low cognitive ability because they were having a difficult time answering basic comprehension questions, coupled with the fact that the sixth and eighth graders were working on the same novel which would have been below the Student’s grade level content. He also noted that there was no multi-sensory presentation in the general education class; it was all about reading and writing answers. His overall opinion was that the general education classes in which the Student would participate as part of the [REDACTED] program were inappropriate because of the size, reading level, writing demands, distraction, and the lack of multisensory approach. In the [REDACTED]

classroom, Mr. [REDACTED] opined that it would be too distracting for the Student because there were three grade levels being taught at the same time in a very small room.

Ms. [REDACTED] explained that on the day Mr. [REDACTED] observed the [REDACTED] program at [REDACTED], the one other girl in the [REDACTED] class, who was in seventh grade as the Student would have been, was absent. She said the reason that there were not a lot of items on the walls was because it was in the middle of the COVID pandemic, and the walls were being cleaned with a disinfecting spray daily that was ruining posters and other material that had been hanging on the walls.

Ms. [REDACTED] explained further that on that day, the [REDACTED] special education instructor was using Inspire Classics and Readtopia. They were reading a book at the students' instructional levels, but they were learning grade level content. Ms. [REDACTED] explained that even though there are multiple grade levels in the [REDACTED] classroom, the students work separately at their own grade level. Regarding the boys wearing hoods, Ms. [REDACTED] responded that the [REDACTED] program provides accommodations for students' emotional needs; the boys were likely wearing the hoods over their head with the agreement of the teacher. Regarding the boys that left the room for a period of time, Mr. [REDACTED] responded that the [REDACTED] teacher allows students to take breaks at agreed upon times or at other times if necessary, utilizing signals and other discreet tools for a student to alert the teacher to his/her need for a break. The teacher approved those breaks. Regarding Mr. [REDACTED]'s testimony that the content was at a lower cognitive level than the Student's, Mr. [REDACTED] noted that all students in the [REDACTED] program are of average cognitive ability. Ms. [REDACTED] was involved in developing the IEPs for all of the [REDACTED] students.

Ms. [REDACTED] does not think that the co-taught classes in the [REDACTED] program would be appropriate for the Student because there is “too much going on and she’s very sensitive to other kids.” Tr. 438. Nor would she be able to access the grade level materials. She agrees that moving the Student to a larger classroom setting down the road is the intent; however, she is not ready yet. Ms. [REDACTED] had previously observed the [REDACTED] program at [REDACTED] for another student virtually and found the classroom to be stark and sterile with no appeal. She observed one boy with an assistant and one boy with a teacher and found there to be “no engagement” and “no life.” Tr. 441-442. In her opinion, the Student could not acclimate to that program.

The Parent could not attend with Mr. [REDACTED] on the day that he observed the [REDACTED] program. However, from the information Mr. [REDACTED] relayed to her regarding his observation, the Parent does not feel the [REDACTED] program would be a “supportive, encouraging environment,” and she was concerned with the large general education classes. Tr. 645. The Parent explained that with the Student’s anxiety, she would be overwhelmed, and she would not be able to keep up with the grade level coursework and curriculum. She needs small class sizes. The Parent is also concerned that if the Student needed individual support in the general education classroom, she would feel singled out. Further, the Parent maintained that the Student has been reading well, and if she stopped working the OG sequencing, she would regress.

Ms. [REDACTED] is familiar with the [REDACTED] program. She provides speech language services to several students in the [REDACTED] program. She provides weekly therapy sessions and also goes into the classroom. Ms. [REDACTED] responded to Mr. [REDACTED]’s concern that the [REDACTED] program would not be nurturing enough; she testified that nurturing is exactly the word to describe the

█████ program. The teachers are caring, compassionate, and concerned, and they are skilled at building rapport, and being flexible to meeting a student's needs.

Ms. █████ was a collaborator for the █████ program. I accepted her as an expert witness in school psychology. She is familiar with its implementation. It is her opinion that with the small group instruction for reading and math, and the opportunity to learn with non-disabled peers in the co-taught science and social studies classes and electives, the █████ program is appropriate for the Student, and it will enable her to access the curriculum. With regard to the Student's learning disability, ADHD and anxiety, Ms. █████ noted that she had made strides as she has matured. She has average cognitive ability, she is willing to share and communicate, and she is able to utilize the techniques and strategies to manage emotional and social situations. Ms. █████ is confident that with the appropriate supports, the Student will be able to perform in the classroom. She can be educated with non-disabled peers. Regarding the Parent's concern that the Student needs a small classroom setting, Ms. █████ explained that the general education classroom is no longer a situation where students are sitting row by row watching the teacher; there is a lot of small group instruction, small group projects and independent work. That way, students of like needs participate in small groups together. Ms. █████ went through each of her recommendations and noted where they were contained in the IEP. Ms. █████ has been a middle school psychologist in Queen Anne's County and has worked with other middle school psychologists and counselors in the county, and she has no concerns about the ability of █████ to implement her recommendations in a discreet manner that is appropriate for the Student. Even in the general education setting, there is small group instruction within the classroom, and her recommendations can be "smoothly implemented without much notice." Tr.

710-711. Additionally, the school psychologists, counselors and teachers all collaborate regularly to ensure that they are providing the appropriate support for students.

OG versus Spire

Ms. [REDACTED] opined that the Student needs OG for a minimum of forty-five minutes per day. Because she is reading between a third and fifth¹¹ grade level, she needs “more work with explicit skills and learning how to read.” Tr. 439. There are 106 lessons in OG and the Student is at lesson seventy-six. Ms. [REDACTED] explained that OG is a systematic approach, and each skill must be mastered with at least ninety percent accuracy before a student can move to the next level. It is her opinion that they cannot “jam” the Student into a reading level that she does not have the skills to master. Ms. [REDACTED] is familiar with Spire, which [REDACTED] uses as a supplement to OG. However, according to Ms. [REDACTED], Spire does not have the “true-blue elements” of OG. Tr. 442. OG uses large motor movements “in order to get the sounds of the letters into your head.” Tr. 444. Ms. [REDACTED] opined that this is a critical part of OG. Spire does not use that method. For the Student, without OG she will just memorize words rather than learn to read them. She will guess or give up out of frustration. Ms. [REDACTED] believes that OG is the only effective way to teach reading decoding to students with learning disabilities in that area. The Student also needs the intensity of OG, which she would miss if she switched to Spire. Ms. [REDACTED] has never observed Spire being implemented at [REDACTED].

Regarding OG, Mr. [REDACTED] opined that, while there may be some other evidenced-based intervention that could be effective for the Student to learn reading, her current OG intervention should not be changed since it has already been successful.

¹¹ She later clarified that it was more like third to fourth grade reading level.

Ms. [REDACTED] explained Spire. It is a reading intervention developed by an OG fellow. It is multisensory and follows a structured and systematic approach to phonics instruction. It follows a similar but different systematic sequencing than OG, as do other methodologies like Wilson. QACPS has chosen Spire because it affords the instructor the opportunity to infuse other multisensory modalities into the reading program without altering the fidelity of the program itself. It allows for flexibility so they can meet the students at their instructional needs.

Spire is research based, but Ms. [REDACTED] maintained that it is also evidence based in Maryland, because several counties in addition to QACPS utilize it and have collected data that establishes its success. It is also used in other parts of the country. Ms. [REDACTED] opined that there are many methodologies other than OG that teach decoding. Ms. [REDACTED] did not dispute the value of OG as a very good methodology; the multisensory strategies are beneficial across settings and content areas. But it was her opinion that if only OG is utilized, the Student would miss out on other aspects of reading that need to be addressed at the middle school level, including comprehension, analysis and the like. These areas are necessary to success moving forward.

Ms. [REDACTED] strongly believes that with Spire, and a special education instructor who has been through the basic, introductory OG training and can utilize OG strategies, QACPS can provide the Student with the appropriate specialized instruction in reading.

Ms. [REDACTED] completed the thirty-hour introductory course in OG. She explained that OG, Spire, and several other reading programs follow the same methodologies. They focus on the same five instructional components, which are phonemic awareness, systematic phonics, reading fluency, vocabulary and comprehension, and they utilize the same strategies, which are systematic, explicit, multi-sensory and diagnostic. Ms. [REDACTED] disagreed with Ms. [REDACTED] that Spire is simply a supplement to OG. QACPS has been using Spire for

approximately four years, and they have seen a significant amount of success with their students. She explained that both OG and Spire use a similar multi-sensory approach that utilizes graphomotor movements. Despite the fact that the training for OG is much more extensive than that of Spire, they utilize the same evidence-based practices.

Ms. [REDACTED] was trained in OG when she was at [REDACTED]. She is not trained to implement Spire, but she is familiar with it and has observed its implementation in QACPS. She compared OG with Spire. They are similar. The systematic approach is evident in both. They are both multi-sensory. Ms. [REDACTED] has observed students using Spire and making progress in their reading ability. Regarding Ms. [REDACTED]'s opinion that one cannot learn decoding without OG, Ms. [REDACTED] disagreed that OG is the only methodology that can teach reading decoding. Like Ms. [REDACTED], she also agrees that it should not be the only methodology used. Regarding Ms. [REDACTED]'s comment that a school cannot “jam” curriculum into the Student until she masters the required decoding skills for that curriculum, Ms. [REDACTED] also referred to the use of adapted texts and other strategies to allow a student to work on grade level material, even if reading at a lower instructional level. Ms. [REDACTED] noted that regarding curriculum, each year builds upon the last. For that reason, a student needs access and exposure to grade level curriculum, especially if the student is on a diploma track.

Ms. [REDACTED] has no concerns that the [REDACTED] program at [REDACTED] can meet the Student's needs, especially given her strengths. Although not identical, Ms. [REDACTED] believes that Spire will not look that much different from what the Student is accustomed to with OG. Ms. [REDACTED] opined that the Student could basically pick up with Spire at a place where she left off with OG. She does not consider Spire to be a supplement to OG. She disagreed with Ms.

██████████'s opinion that a student cannot move into a literature-based program or grade level curriculum without finishing the OG sequencing.

Present Levels of Performance

At the hearing, Ms. ██████████ discussed her psycho-educational assessment of the Student on September 14, 2021, which she conducted for the purpose of obtaining a present level of performance of the Student's executive and social emotional functioning skills. QACPS 11-6. The Student had been at ██████████ at that point for more than one year.

The BASC-III is scored based on rating scales, and scores on each rated element fall within a low, average, at risk, or clinically significant range. QACPS 11. The results of the BASC-III reflect a snapshot of a student at the time of testing and can be affected by outside factors unknown to the test administrator, including matters happening at home. For that reason, Ms. ██████████ noted that during a psychological assessment, she looks at multiple data points, including historical data. From the results of the BASC-III, given the mostly average ratings by Ms. ██████████, the Parent and the Student, Ms. ██████████ opined that the Student was "overall typically developing in both home, school, and by her own self report." Tr. 684. The only at-risk categories came from the Parent in the areas of adaptability and activities of daily living.

In her report, for social emotional functioning, Ms. ██████████ stated:

Overall, ██████████ completed in both school and home noted age expected social-emotional functioning. [The Student] is seen as a leader in school and her own self-esteem and self-reliance are noted in her own self report. Teachers noted, and was observed throughout this evaluation, that [the Student] may occasionally need to be redirected to task. However, she is easily redirected and is engaged in academic work. Additionally, [the Student] is able to regulate her own emotional responses, work well with others and advocate for her own personal needs with the academic setting. The home setting endorsed similar social emotional functioning. [The Parent] noted that the areas of slight elevation were withing her adaptive skills which include her ability to adapt to changes easily as well as perform activities of daily living. These slightly underdeveloped skills are not

uncommon to be seen at home and not at school as the home settings tend to have different expectations than found within the school setting.

QACPS 11-10.

Ms. [REDACTED] also administered the BRIEF-II, to assess executive functioning. QACPS 11-8. Similar to the BASC-III, the BRIEF-II is scored by collecting information from home (the Parent), school (teachers), and the Student herself. This is also a nationally age-normed standardized test. Ms. [REDACTED]'s responses scored in the average range in all areas of executive functioning as did the Student's self-report. QACPS 11-8. At home, the Parent's responses scored in the clinically significant or at-risk range in all areas except for the self-monitor category under the Behavior Regulation Index, which the Parent scored to be mildly elevated, and the task-monitor category under the Cognitive Regulation Index, which she scored as average. According to Ms [REDACTED] it is not unusual to see different scores at home than at school. Ms. [REDACTED] explained that sometimes the structure of a school setting makes it "easier to demonstrate your executive function skills, whereas at home, when we're less structured, or different expectations are there, it is sometimes a little bit harder to demonstrate, it's also a little bit harder for the adults around to see our executive function skills..." Tr. 687. Ms. [REDACTED] summarized:

Similar to social emotional functioning, school and self-reports did not endorse any areas of need within her profile. [The Student] is noted to be able to manage her tasks and assignments, plan and organize and retain information as expected... However, the home setting noted that the metacognitive skills of executive functioning were still an area of need within her profile. The difference in rating may be a result of the difference [sic] environments and expectations. Clear, concrete and consistent expectations that often accompany a school setting often provide the level of [support] needed to demonstrate metacognitive skills and may be benefiting [the Student] in school. At home, the change in environment and expectation may create a situation when those executive skills do not appear as fully developed, which may be impacted by motivation, interest in tasks and adolescent development.

QACPS 11-10. Ms. [REDACTED] explained that brain development and maturation affect executive functioning skills, and those skills continue to develop until an individual is twenty-five years old.

Mr. [REDACTED] reviewed the recommendations set forth in the psychological assessment Ms. [REDACTED] conducted in September 2021. QACPS 11. He agreed with her recommendations and concluded that [REDACTED] was implementing all of them; however, he believed that the [REDACTED] program could not do so, because of the Student's academic needs and anxiety disorder. He agreed with the strategies, but not to the implementation of those strategies in front of twenty to thirty middle school peers, due to the Student's anxiety and fear of appearing to be different than others. Mr. [REDACTED] felt strongly that the Student would not make academic progress in those co-taught classes even with the supplementary aids and instructional supports.

In her report, Ms. [REDACTED] commented that in the areas of emotional regulation and behavior control, the Student's scores previously demonstrated weakness. QACPS 11-9. In Ms. [REDACTED]' assessment in 2021, the Student demonstrated that she has "age-appropriate abilities to manage her own emotions, inhibit herself (with only sight prompting occasionally) and shift between tasks and/or problems at age expected levels." QACPS 11-9. Ms. [REDACTED] commented further that "[c]hanges in emotional stressors may also impact a student's ability to manage emotions as well as learning appropriate strategies to support big emotions." P. 40-10. Mr. [REDACTED] opined that the change in the Student's environmental stressors was her move "out of a very stressful environment in her [QACPS] program to a much, much lower stress environment at [REDACTED]." Tr. 93.

Ms. [REDACTED] reviewed and discussed the cognitive testing administered by the [REDACTED] [REDACTED] on August 27, 2021. QACPS 12-1. The WISC-V gives a general idea of a student's

cognitive profile. The subtests are broken up in ways that demonstrate how a student can learn. Tr. 690. Also, an age-normed standardized test, the WISC-V compares a student to same-age peers nationally. According to Ms. [REDACTED], the Student demonstrated “solidly average” overall cognitive ability and full scale-IQ in comparison with her same age peers. Tr. 691. In the area of visual-spatial, her visual motor skills on the block-design subcategory were below average as demonstrated by the block design subtest. This test required her to copy abstract designs using multi-colored blocks as quickly as possible. This, according to Ms. [REDACTED], may indicate that in school, she might need more visual supports in her educational programming to help her understand concepts. QACPS 12-2. Ms. [REDACTED] opined that given the Student’s full-scale IQ and general ability index, the Student should have the fundamental skills to participate at grade level curriculum.

Ms. [REDACTED] discussed the results of the WJ-IV she administered on May 11 and August 10, 2021, when the Student was in sixth grade. P. 34. The Student demonstrated progress in most areas, with the exception of spelling, writing samples, sentence writing fluency and broad written language. She showed improvement in math calculation. She was still below grade level in all areas, but she showed significant improvement. In the Gray Oral Reading Test-Fifth Edition, the Student was in the average range in reading accuracy and comprehension, and just below average in reading rate and fluency, all which were improvements from 2020. She was solidly average on the Test of Written Language-4, which measures the ability to organize thought to write a story from a picture prompt under timed conditions.

Ms. [REDACTED] provided some explanation of the scoring of the WJ-IV, given that it is an age-normed assessment. By way of example, if a student scores 100 on a subtest, and then two years later also scores 100 on the same subtest, it equates to some progress. Similarly, if the

score is within a few points of the prior score, that also indicates progress. Ms. [REDACTED] agreed that the WJ-IV indicated that the Student made progress since her prior WJ-IV in 2020 but opined that she was not “closing the gap,” or keeping up with students her age. Tr. 416. The Student is making progress, but not as quickly as they would hope. Ms. [REDACTED] attributed the Student’s progress in reading to OG.

Ms. [REDACTED] owns [REDACTED] and has a contract with QACPS. She works primarily at [REDACTED] and [REDACTED] High School. She previously worked at [REDACTED]. She has been part of the Student’s IEP team since 2020 and participated in the January 25, 2022 IEP meeting to develop the IEP.

Ms. [REDACTED] discussed the Student’s present levels of performance as set forth in the IEP. She reviewed the [REDACTED] Speech and Language Re-evaluation of October and November 2021. QACPS 13. The Student’s scores on the CELF-V were all in the average range for age expectations. Her scores revealed several strengths and some continuing needs. At the time the IEP was developed, the Student’s receptive and expressive language were average, and her core language was in the solid average range. QACPS 13. The Student’s average expressive language meant she had good vocabulary knowledge, could form cohesive sentences, could respond to questions and ask questions. Receptive language refers to listening comprehension, and the ability to understand content. Core language is a compilation of receptive and expressive language.

The Student’s December 2021 Progress Report for reading, which the IEP team considered in drafting the IEP, is somewhat broad. It sets forth that the Student still struggles; she was reading between a second and sixth grade curriculum level. However, the details

contained therein established that she made progress even from her fall 2021 progress report in reading. P. 41.

The IEP team developed the present levels of performance from the aforementioned data points from late 2021/early 2022, the observations of the Student at [REDACTED], the AimsWeb testing and [REDACTED] progress reports from June and December 2021. The parties agreed to the appropriateness of the present levels of performance in the IEP.

The Weight of the Evidence

The Parent feels strongly that [REDACTED] is appropriate for the Student, because [REDACTED] teaches students at their level; [REDACTED] will not simply move the Student along to keep her on grade level when she is not yet ready. The Parent noted that by the end of the spring semester of the 2020-2021 school year, which was the Student's fifth-grade year and her first semester at [REDACTED], she was doing much better. She put forth more effort in her academics. She was happier. She was doing well and showing leadership, control and skill.

Ms. [REDACTED] opined that the Student still needs one-on-one instruction throughout the day. Since at [REDACTED], she has gone from being tearful and reluctant to take any chances on difficult tasks, to being more comfortable, showing leadership, and making connections with her peers and teachers. In reviewing the IEP at issue, Ms. [REDACTED] found that there were many items missing, including the nature of special education services, the number of students in the class, and the difference of the abilities of the students in the [REDACTED] program. According to Ms. [REDACTED], the Student still needs a small academic classroom setting with specialized instruction due to her difficulty with attention, her anxiety, and her tendency to shut down. In a larger setting, she would "go backwards." Tr. 437. She would not be comfortable in a large class being singled out by a special educator or other adult support. Ms. [REDACTED] noted

that in the large co-taught class, even if divided into small groups, the Student is going to worry about what other people think about her having to get extra help.

The testing, assessments, evaluations and observations of the Student when she was in the fifth grade at ██████ demonstrated that, albeit very bright, she struggled in many areas, most significantly, reading decoding, fluency, comprehension, processing and math. She had difficulty with executive functioning, and her social emotional difficulties were apparent at school. She would shut down out of frustration from her inability to do the work. She had significant strengths in verbal comprehension and vocabulary, but had very low processing speed, and a low full-scale IQ. P.6; P. 7. Her WJ-IV scores in late 2019 revealed low or very low scores in reading, broad reading, basic reading skills and reading fluency. P. 7.

At the hearing, the parties disagreed regarding whether, when the Student started at ██████ in February 2020, she was decoding at a kindergarten level as Ms. ██████ maintained based on her REED Decoding tool, or whether she was decoding on a third-grade level as her QACPS IEP progress reports indicated for February 2020. P. 9. Under either scenario, she was struggling in reading decoding.

The Student has done well at ██████. As of the date of this hearing, she had been attending ██████ for almost two and one-half years. She is very social; she is a leader. The most recent testing and assessment data that the IEP team considered in formulating the proposed IEP, as set forth above, shows significant improvement in most areas. Both Mr. ██████'s and Ms. ██████'s observation of the Student at ██████ found her to be engaged, diligent about her work, and able to advocate for herself when she needed help. She worked through some frustration and difficulty with a task by asking another peer for help. She volunteered. When experiencing a moment of sadness, she rebounded and returned to work without issue.

Her teachers reported improvements in most academic areas, and that the Student has significantly less incidents of shutting down and frustration. When Ms. [REDACTED] observed her, she worked independently without any one-to-one support.

Ms. [REDACTED]'s administration of the WJ-IV in May and August 2021 revealed significantly improved scores as compared to that which Ms. [REDACTED] administered in 2020. She scored in the very low range in reading fluency and math fluency, but her scores largely improved from 2020. QACPS 14; P. 7. She still has difficulty with spelling. She made significant strides in applied problems as compared to 2019. The applied problems test measures the ability to “analyze and solve math problems when read to the student.” QACPS 14-2. She went from the very low range to the low average range in passage comprehension. Word attack, measures the “ability to apply phonic and structural analysis skills in pronouncing a nonsense word.” QACPS 14-2. She improved from the low, to the low average range. P. 7; QACPS 14-3.

Comparing the Gray Oral Reading Test-Fifth Edition that Ms. [REDACTED] administered in early 2020 to that which Ms. [REDACTED] administered in the summer of 2021, the Student's scores improved in every area, including rate, accuracy, fluency and comprehension. P. 7; QACPS 14-4. She is still below grade equivalent in those areas but is clearly developing the skills she needs to move forward in reading.

The cognitive testing that the [REDACTED] conducted on August 27, 2021, demonstrated that the Student possesses average cognitive ability. QACPS 12. She still had some weaknesses in the area of visual-spatial, but she scored average in every other area including verbal skills and fluid reasoning, as well as those areas she historically struggled with,

processing speed and working memory. QACPS 12. The [REDACTED] provided an overall summary:

[T]esting of cognitive ability indicated that [the Student] is a student with numerous well developed intellectual abilities. In the verbal cognitive realm, she possesses solid word-knowledge and strong verbal abstract reasoning, as measured by her ability to define words and to understand abstract relationships. [The Student] demonstrated age-appropriate quantitative reasoning and strong sequential reasoning ability. In the nonverbal domain, her visual-spatial skills when completing a mental puzzle assembly task were strong; however, she displayed below-average visual-constructive skills when copying designs using multi-colored blocks. Her visual scanning speed and graphomotor speed were age appropriate. Finally, her visual and auditory working memory skills were modestly average.

QACPS 12-3.

The BASC-III and BRIEF-II that Ms. [REDACTED] conducted in the fall of 2021 established that at school, the Student demonstrated average social-emotional and executive functioning. QACPS 11. This is a significant improvement from Ms. [REDACTED]'s administration of the BASC-III and BRIEF-II in January 2020. These are two areas in which the Student had significant weaknesses in the eyes of the Parent and her teachers. While the Parent still reported mostly clinically significant and at-risk behaviors at home, in the school setting, Ms. [REDACTED]'s rating established that the Student's executive functioning skills were at age-level expectations. QACPS 11-8, 9. Regarding the executive functioning difficulties that the Parent reported in the home setting, which included initiating tasks independently, managing classwork, planning out longer assignments and tasks, and retaining information in working memory, Ms. [REDACTED] recommended that large tasks be broken up into smaller ones, prioritizing tasks, and allowing for breaks and training in time management skills. All of Ms. [REDACTED]' recommendations are embedded in the IEP supplementary aids, as well as the social-emotional goal. P. 59.

The dispute in this case is whether QACPS has proposed an appropriate education for the Student, reasonably calculated to enable her to make progress in light of her particular circumstances. *Andrew F.*, 137 S. Ct. at 988. Simply put, the question is whether the proposed placement in the [REDACTED] program at [REDACTED] would provide a FAPE to the Student.

The Parent's biggest concern is the large class sizes. Ms. [REDACTED] insists that the Student still needs to be in small classes throughout the day. Equally concerning to the Parent is the use of Spire, not OG, with which the Student has been successful.

I found Ms. [REDACTED], Ms. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] to be extremely credible, caring and informative witnesses. Although the [REDACTED] program is in its first year at [REDACTED], I am convinced from the QACPS witnesses that it is a well-planned strategic program designed to provide individualized focus on areas of educational need, while assisting the students in negotiating the bigger classroom to prepare them for the transition to high school and thereafter. The fact that the student is on a diploma track also plays into the equation.

Ms. [REDACTED] has extensive experience with multiple special education programs in both the private and the public-school settings. She completed forty-hours of OG training. She has implemented Spire. She supervises the special education division of QACPS. Ms. [REDACTED] gave a comprehensive description of the [REDACTED] program and how it would be geared toward the Student's unique circumstances. She explained in detail the purpose of the [REDACTED] program, which is to focus on skills with specially designed instruction in a student's areas of need, and to utilize and practice those skills in the general education classroom, with special education support. Ms. [REDACTED] is familiar with Spire, and I found her testimony convincing regarding how Spire works, its similarities with OG, and how it is used as a reading methodology unto itself as opposed to a supplement to OG.

Based on the Student's cognitive ability and her present levels of performance at the time the IEP was developed, Ms. [REDACTED] observed that she is not a student with severe needs; she should be able to move forward with the appropriate interventions. With progress monitoring, those interventions and supplementary aids can be adjusted as necessary. Regarding the Student's executive functioning and social emotional functioning, Ms. [REDACTED] referred to Ms. [REDACTED]'s psycho-educational assessment and noted, as Ms. [REDACTED] did, that the Student did not have severe needs. The needs she does have in those areas are addressed by the extensive supplemental aids and services and the social emotional goal in the IEP. In the [REDACTED] program, the supplemental aids and services are administered throughout the day, whether the Student is in an [REDACTED] class or a co-taught class.

Ms. [REDACTED] opined that the [REDACTED] program is appropriate for the Student. She is very social, enjoys being with her peers; she engages in social activities outside of school. She is of average cognitive ability; she can advocate for herself and has inherent leadership ability. Ms. [REDACTED] strongly maintained that the Student's strengths now need to be fostered in an environment that mirrors what she will experience from now into the future. She needs the opportunity to apply her skills. In the [REDACTED] program, she will develop the skills necessary to take it to the next level, through exposure and practice. She will practice those skills in the co-taught classes, while still receiving assistance from the special education instructor. She will have access to grade level curriculum. Ms. [REDACTED] noted the Student's strong listening comprehension skills, which will help her access grade level curriculum even though she still has difficulty decoding. She is a student that can interact with peers.

Ms. [REDACTED] emphasized the importance of teaching grade level curriculum verses instructional level, especially with a student that is on a diploma track. If a student's

instructional level in reading is below grade level, in order to expose a student to grade level curriculum, QACPS addresses that by using Readtopia and Inspire Classics to provide tiered texts that are adapted so that a student is being exposed to grade level content, presented through the instructional reading level of the student. Ms. [REDACTED] explained that curriculum builds on itself from grade to grade. She opined that if a student is not participating in the rigor of grade level curriculum, it will be very difficult for that student to succeed in high school and thereafter. Ms. [REDACTED] opined that curriculum can be taught, while working on remediating the learning deficits.

As applied to this case, Ms. [REDACTED] explained that the Student has average cognitive ability, processing speed, and listening comprehension. She has the ability to work on grade level content. She still needs work on decoding and math, but in the [REDACTED] program, that can happen while being given access to grade level standards. Ms. [REDACTED] disagreed with Ms. [REDACTED]'s comment that they cannot jam, or force, grade level curriculum upon the Student and that she needs more time to master basic skills. It is Ms. [REDACTED]'s opinion that not exposing the Student to grade level curriculum is detrimental to her educational progress.

Ms. [REDACTED] addressed the Parent's concern that because the Student's IEP provides that directions and other material be read to the Student, she would feel self-conscious and singled out. Ms. [REDACTED] noted that many students have that accommodation on their IEP. That is the benefit of having two teachers in the co-taught class, so that students that need individual attention, including directions and other material to be read aloud, can be grouped together. Ms. [REDACTED] maintained that most often, students do not even realize they are receiving a special accommodation.

Ms. [REDACTED] does not agree that the Student would be unable to keep up in the co-taught classes, given her strengths and abilities. She opined that with the supports, goals, supplemental aids and accommodations contained in her IEP, the Student will have sufficient support to manage the curriculum in the co-taught environment. In Ms. [REDACTED]'s opinion, the Student does not present as a student that needs to be educated in a non-public placement. She is a diploma bound student with achievable goals. Her current needs are not so severe that she needs a non-public placement.

Ms. [REDACTED] is certified by the MSDE as a special education instructor. She completed the thirty-hour basic OG training, and she has worked with Spire. She has significant experience working with students with learning disabilities in a self-contained classroom and has completed training in early reading intervention. As the Special Education Teacher Specialist, she provides support to the [REDACTED] program's teachers and oversees implementation of the [REDACTED] program. She provided a comprehensive and informative description of the [REDACTED] program, and how it would be effective for the Student. I found her testimony to be extremely credible and convincing.

Ms. [REDACTED] also explained that the [REDACTED] program is designed to focus on specially designed instruction, while at the same time, working on core academic standards at grade level to assist the student in moving forward toward a diploma. Ms. [REDACTED] opined that the [REDACTED] program is appropriate for the Student. It offers her the ability to be in co-taught classrooms where she can interact with peers her age but still work on her decoding and math, which skills she will carry back to the co-taught class. From her observation of the Student at [REDACTED], she believes the Student would do well in the co-taught classes. She would have access to any support she needs, but the program also provides the flexibility to work

independently. Ms. [REDACTED] stated that [REDACTED] is a very nurturing, collaborative program, and the educators take pride in creating relationships with the students. The Student would have peer groups and peer supports. She would be able to take the skills she learns in reading decoding and math and apply those skills in the general education classroom with the support of a special educator. Ms. [REDACTED] explained that the Student has strengths that will allow her to access grade level curriculum, especially because she is of average cognitive ability. The [REDACTED] program will target her reading and math difficulties, while also allowing the Student to learn on grade level, and work toward a diploma.

Ms. [REDACTED] had an interesting perspective of the Student, having previously contracted with and worked at [REDACTED] for many years. She received training in OG while she was at [REDACTED]. She currently divides her time between [REDACTED] and [REDACTED] High School. She has a classroom at [REDACTED] and provides speech/language therapy therein; her students include students in the [REDACTED] program. For her [REDACTED] students, she collaborates and plans with the special education instructor to provide the appropriate speech/language services based on the needs of each student. She has seen progress using Spire at [REDACTED]. I found her testimony that the [REDACTED] program is an appropriate educational program for the Student to be convincing, based on her review of the IEP, her involvement in the IEP process for the Student, her experience with the [REDACTED] program, and her observation of the implementation of Spire in the [REDACTED] program.

Mr. [REDACTED] was certainly a credible witness; however, I did not place a lot of weight on his conclusions regarding his observation of the [REDACTED] program in March 2022. His comments truly made it seem like he was determined to dislike the program from the beginning. [REDACTED] is a small, private school in [REDACTED], and it would not be surprising if it presents as a more

pleasing physical atmosphere than a large public school. His comment about the [REDACTED] classroom being sterile and without a window, did not influence my decision regarding the appropriateness of the program. The question is not whether the Student will be more comfortable; the question is, can the [REDACTED] program provide the Student with a FAPE.

Mr. [REDACTED] commented on the clothing of the two boys with hoods without having any information regarding those students' particular disabilities or circumstances. He commented on their low cognitive ability and the low cognitive level of teaching in the [REDACTED] program without knowing anything about the particular students' IEPs, disability coding or any of their accommodations. Through his observation, he made judgments regarding how the [REDACTED] program would look for the Student, without having information regarding how her particular IEP would be implemented there. He spoke to Ms. [REDACTED] that day but did not endeavor to find out more about what the [REDACTED] program would look like for the Student. He did not seek more information about what he observed, to enable him to have enough information to render an opinion about the appropriateness of the [REDACTED] program for the Student.

Ms. [REDACTED] is passionate about OG. Although she does not oversee the special education program at [REDACTED] as Mr. [REDACTED] testified, she does oversee the implementation of OG. She is familiar with the Student, but she only spends fifteen hours per week at [REDACTED]. As such, she is not in the classroom with her on an every day, every class basis. Regardless, she testified as an expert in special education and OG, and she reviewed the Student's records and participated in the IEP process.

Ms. [REDACTED] attributes the Student's progress entirely to OG. She considers Spire to be a supplement to OG. I placed more weight upon the school-based expert witnesses' testimony that Spire is a reading methodology based on OG. It is made up of the same

components and strategies, is systematic and relies on sequencing as does OG. Although Ms. [REDACTED] uses Spire in conjunction with OG and several other reading methodologies, she has not implemented Spire as the main methodology for decoding as she has OG. Ms. [REDACTED] explained that Spire does not utilize the most important strategy of OG, the use of large motor movements. She did not explain precisely why the large motor movements were so significant to OG. Regardless, I did not doubt her testimony. However, like OG, Spire utilizes a multi-sensory approach. It is Ms. [REDACTED]'s opinion that the Student cannot learn reading without continuing through all of the OG sequencing.

The Parent argued that Spire cannot be as comprehensive as OG, because the training for Spire can be completed in a few days, whereas OG training is extensive and includes a practical aspect as well. I am aware that OG is a long-standing successful methodology for teaching reading decoding. However, I do not have enough evidence before me to make any inferences or comparisons based on each program's training.

QACPS has seen progress in students using Spire since they brought it on four years ago. I am not convinced that OG is the only way to learn reading decoding. Although I certainly considered Ms. [REDACTED]'s testimony regarding the benefits of OG and how it has helped the Student, the Parents did not present evidence that convinced me that OG is the only way to learn decoding, nor the only way for the Student to learn decoding. Even Mr. [REDACTED] testified that it is likely that there are other methodologies that can teach reading decoding to the Student, although he did not advise removing her from OG where she has been successful.

Generally, the applicable law is structured so that educational programming, and the methodologies used, are left in the discretion of the State and the special educators' expertise. *Rowley*, 458 U.S. at 207-208. QACPS has seen success educating students with Spire. I found it

to be a positive factor that the [REDACTED] program special education instructor completed the basic introductory OG training, and utilizes the strategies acquired from that training to assist with the implementation of Spire, which has significant similarities to OG. There is no evidence in the record that Spire deserves any negative treatment. As stated, I placed weight upon the school-based witnesses' testimony that Spire is not a supplement to OG, it is a reading methodology in and of itself, with significant similarities to OG. Although I am not convinced that Spire is exactly the same as OG, the QACPS witnesses persuaded me that it is an appropriate methodology based on OG to continue to teach the Student decoding.

I found Ms. [REDACTED] to be a credible witness, but I placed less weight upon her testimony than that of the QACPS witnesses regarding the appropriateness of the [REDACTED] program and the need for OG. Ms. [REDACTED] is a passionate educator who genuinely cares for the Students at [REDACTED]. While I understood Ms. [REDACTED]'s concern about stopping OG in the middle of working through the sequencing, I am confident based on the record before me, that Spire is an appropriate alternative.

Further, Ms. [REDACTED] did not have a great deal of familiarity with the [REDACTED] program. She believed that the Student could not progress in the co-taught education classes, but actually has no knowledge of that, especially since the Student has matured, her academics have improved significantly, and she has demonstrated that in the school setting, her social emotional and executive functioning has improved to age-level expectations. I gave credit to the fact that Ms. [REDACTED] sees the Student relatively regularly. However, her testimony did not take into account the skills the Student has learned that would now enable her to negotiate those larger classes, with special education support.

The Student has changed in many ways since she has been at [REDACTED]. It appears [REDACTED] has helped her grow academically, socially and emotionally and has been a good experience for her. The evidence before me indicates that [REDACTED] has helped provide the Student the skills she needs to move forward. The missing piece in the entire equation is that no one has observed the Student in anything but very small classes since she has acquired so many new skills. She was clearly struggling at the time she left [REDACTED].

There is no question that the Student has made progress during her two years at [REDACTED]. However, the issue before me is not whether [REDACTED] is better than the [REDACTED] program at [REDACTED]. My inquiry is not which program better serves the Student. *See Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (*citing Rowley*, 458 U.S. at 176) (“First, we do not think that because a given school is allegedly more appropriate than another school, the less appropriate school becomes inappropriate. Second, the unexpressed premise of the allegations is that there is a constitutional and statutory obligation to provide the infant plaintiff the best education, public or nonpublic, that money can buy. Such a premise is in conflict with [*Rowley*].”). My inquiry is whether QACPS’ placement in the [REDACTED] Program provides the Student with a FAPE in the least restrictive environment. On this issue, I am persuaded that the [REDACTED] Program is an appropriate placement and constitutes the least restrictive environment based on the Student’s IEP and her unique needs and circumstances.

The Student was a very different student in the seventh grade than she was when she left [REDACTED] in the middle of the fifth grade. I agree with Ms. [REDACTED] that the Student’s needs at this time are not so severe that she cannot be challenged to assimilate into the general education setting with appropriate supports. The [REDACTED] program, with its small classroom to focus pointedly on the areas of the Student’s needs, are similar to her class sizes at [REDACTED]. In my analysis of

the concern regarding the size of the co-taught classes and the Student's sensitivity to being singled out, I placed considerable weight upon Ms. [REDACTED]' testimony and her psycho-educational assessment. QACPS 11. In the home and school settings, the Student's social emotional functioning has improved significantly. She can advocate for herself, she is social, she is a leader, she has learned strategies to cope with her emotions. She has matured. She sometimes needs redirection, but she is easily redirected. She has developed skills to enable her to move forward to an educational setting that will require her to maintain State core educational standards and hopefully obtain a diploma. In the school setting, her executive functioning has improved such that she can now manage tasks and assignments, and "plan, organize and retain information as expected." P. 11-10.

Contrary to the testimony of Mr. [REDACTED] and Ms. [REDACTED], the [REDACTED] program targets the very concerns the Parent has about the Student attending that program. She would still learn in a small class setting, similar to [REDACTED] for reading skills, reading comprehension, math, social emotional and executive functioning. The size of the co-taught classes is larger, but the Student is not completely unfamiliar with a larger class size; at [REDACTED] her art and physical education classes had twelve students to one teacher. P. 41. The academic co-taught classes of approximately seventeen students are often broken down into groups, resulting in a much smaller student to teacher ratio. With the special education instructor discreetly on hand at all times during the co-taught classes, the Student will have additional support in the areas where she may be struggling. With regard to the Parent's concern that the Student will feel singled out, or different, the general and special education instructors, as well as the paraeducators who assist in the [REDACTED] program, are conscientious about that concern, and work to minimize any attention being placed upon the students that need assistance. Both teachers work with all of the students

in the co-taught classes, further reducing the need for that concern. The use of the Chromebook for individual assignments allows for modifications to assignments without the knowledge of any other student.

As of December 2021, the [REDACTED] Progress Report indicated that the Student was learning eighth-grade curriculum in science when she was in the seventh grade, and a seventh/eighth grade curriculum in social studies. P. 41. If, as Ms. [REDACTED] indicated, [REDACTED] gears its curriculum toward State standards, then the Student should be able to maintain at grade level curriculum in the co-taught classes at [REDACTED] with the support she needs with reading. If she struggles with the curriculum level material in those classes at [REDACTED] she will have the special education support she needs to address those difficulties. The parties agreed to the appropriateness of the extensive supplementary aids and instructional modifications in the IEP, which will be implemented throughout every day in the [REDACTED] program and general education settings.

Each of the QACPS expert witnesses, familiar with the [REDACTED] program, described the collaborative aspect of the program. I found this to be a crucial part of the [REDACTED] program. The regular collaboration between the special education instructor for the [REDACTED] program and the general education content teachers involved with the [REDACTED] program students, provides for constant and consistent comingling between the focus on areas of difficulty and grade level curriculum. Every educator, para-educator or consultative staff such as the speech/language therapist or school counselor, would be familiar with the Student's IEP, supplementary aids, and her progress in the classroom. This bolsters the appropriateness of the program.

Based on the record before me, the assessments, evaluations and observations conducted leading up to the development of the January 2022 IEP for the 2021-2022 school year, as well as

all the testimony of the expert witnesses for both parties, I conclude that the Student has made significant progress in all educational areas, executive and social emotional functioning, and socially in general since she has been at [REDACTED]. At the time of the development of the IEP, she did not display needs so severe that the “nature or severity of a child’s disability is such that education in a regular classroom cannot be achieved.” 20 U.S.C.A. § 1412(a)(5)(A). While she still struggles with reading decoding, comprehension and fluency, as well as math, the evidence is convincing that with the intensive supports the Student will receive under her IEP in the [REDACTED] program, she can be appropriately educated in light of her particular circumstances. The Parent agreed to the goals and objectives, the present levels of performance, and the supplementary aids and services, which would be implemented throughout the day in all of the Student’s classes, in the IEP. The co-taught general education science and social studies classes will expose the Student to non-disabled peers, grade-level curriculum so she can proceed through her diploma track, and specialized, discreet support to address her areas of continued disability.

The Parent argued that [REDACTED] not the [REDACTED] program at [REDACTED], is the least restrictive environment for the Student, because there are non-disabled peers in all classes, as opposed to the [REDACTED] program where the Student would only participate in three classes and lunch per day with non-disabled peers. I disagree. Applicable law requires that a student’s placement be as close as possible to the student’s home. 34 C.F.R. § 116(b)(2). [REDACTED] is approximately forty minutes from the Student’s home and in another county. [REDACTED] is near the Student’s home, and she will participate in classes with students from her community, where she is also involved in extra-curricular activities. Further, although general education students attend [REDACTED], the class sizes are so small that, while they have been beneficial for the Student up until this point, the small class sizes do not give her the opportunity to participate in a larger

class atmosphere, similar to what she might experience in high school and beyond. Her current levels of academic performance establish that her educational needs are not now so severe that she needs to be educated in a non-public setting. She has matured. She has progressed educationally, and she has acquired noteworthy social and leadership skills. She advocates for herself and asks for help when she needs it. With the supports contained in the IEP, the evidence is convincing that the Student can be successful in the [REDACTED] program, and for the reasons stated herein, the [REDACTED] program is the least restrictive environment.

Summary

Based on my analysis herein, considering the Student's present levels of performance and the appropriateness of the [REDACTED] program, I conclude that the Parent did not establish that the QACPS IEP, with the proposed special education service hours that all parties agreed to, and with the Student's placement at the [REDACTED] program, failed to provide the Student with a FAPE.

I further conclude that the QACPS witnesses provided a "cogent and responsive explanation for their decisions that [show] the IEP is reasonably calculated to enable the child to make progress appropriate" in light of her unique circumstances. *Endrew F.*, 137 S. Ct. at 1002. The IEP is designed for the Student to make progress based on her unique circumstances, while providing the supports and accommodations that all parties determined were appropriate.

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 IEP and placement offered by the QACPS for the 2021- 2022 school year provides the Student with 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 IEP and placement proposed by QACPS for the 2021-2022 school year was reasonably calculated to offer the Student a FAPE in the least restrictive environment. 20 U.S.C.A. § 1415(f)(3)(E)(ii) (2017); 34 C.F.R. § 300.148 (2021). *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005). *Andrew 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); *MM ex rel. DM v. School District of Greenville County*, 303 F.3d. 523 (4th Cir. 2002).

I further conclude as a matter of law that the Parents failed to establish that they are entitled to reimbursement for tuition and expenses at [REDACTED]. *Florence Cty. Sch. District Four v. Carter*, 510 U.S. 7 (1993).

ORDER

I **ORDER** that the Parent’s request for placement and reimbursement for tuition and expenses at [REDACTED] for the 2021– 2022 school year is **DENIED**.

September 12, 2022
Date Decision Issued

Susan A. Sinrod
Administrative Law Judge

SAS/cj
#199904

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.

Copies Emailed and Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STUDENT

v.

QUEEN ANNE'S COUNTY

PUBLIC SCHOOLS

BEFORE SUSAN A. SINROD,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-QANN-OT-22-09246

APPENDIX-FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Parent, unless otherwise noted:

- P. 1- Due Process Complaint, received April 22, 2022
- P. 2- QACPS English Language Arts/Literacy Assessment Report, Spring 2018;
QACPS Mathematics Assessment Report, Spring 2018
- P. 3- QACPS English Language Arts/ Literacy/Assessment Report, Spring 2019;
Mathematics Assessment Report, Spring 2019
- P. 4- [REDACTED] Assessment Profile, dated September 11, 2019
- P. 5- [REDACTED] report of observation at [REDACTED] Elementary, dated
October 2, 2019
- P. 6- QACPS Psychological Report, dates of evaluation January 17 and January 22,
2020
- P. 7- QACPS Educational Assessment, dated January 28, 2020 (same as QACPS 13)
- P. 8- [REDACTED] Admissions Inventories/Screenings, dated February 7,
2020
- P. 9- QACPS IEP Progress Report, dated February 7, 2020
- P. 10- QACPS Speech/Language Assessment Report, dated February 25, 2020
- P. 11- QACPS Functional Behavioral Assessment, dated March 19, 2020
- P. 12- [REDACTED] Interim Progress Report for March 2020
- P. 13- [REDACTED] report of observation at [REDACTED] Elementary, undated

- P. 14- QACPS IEP Team Summary and Prior Written Notice, dated May 11, 2020
- P. 15- ██████████ Progress Report for June 2020
- P. 16- ██████████ Reading Evaluation, dated June 30, 2020
- P. 17- ██████████ Academic Learning Skills and Accommodations, dated July 15, 2020
- P. 18- QACPS Psychological Re-assessment, dated August 10, 2020
- P. 19- Letter from Paula Rosenstock, Esquire to Manisha Kavadi, Esquire, dated August 17, 2020
- P. 20- IEP, dated August 21, 2020 (same as QACPS 2)
- P. 21- QACPS IEP Team Summary and Prior Written Notice, dated August 21, 2020
- P. 22- ██████████ Yearly Objectives, September 2020
- P. 23- ██████████ Academic Learning Skills and Accommodations, dated August 1, 2020
- P. 24- ██████████ AimsWeb Plus Scores, dated October 27, 2020
- P. 25- ██████████ Progress Report, December 2020
- P. 26- ██████████ Mid-Year Objectives, January 2021
- P. 27- ██████████ Mid-Year Interim Progress Report, March 2021
- P. 28- ██████████ AimsWeb Plus Scores, dated May 26, 2021
- P. 29- ██████████ Score Report, dated May 11, 2021 (same as QACPS 14)
- P. 30- ██████████ AimsWeb Plus Scores, dated June 16, 2021
- P. 31- ██████████ Progress Report, June 2021 (same as QACPS 15)
- P. 32- Correspondence between the Parents and QACPS, dated July 13, 2021
- P. 33- Letter from Michael J. Eig, Esquire, to Manisha Kavadi, Esquire, dated August 9, 2021
- P. 34- ██████████ Educational Evaluation, dated August 10, 2021
- P. 35- Cognitive Testing, ██████████, dated August 27, 2021 (same as QACPS 35)

- P. 36- QACPS Notice and Consent for Assessment, dated July 27, 2021
- P. 37- ██████████ Yearly Objectives, September 2021
- P. 38- ██████████ Academic Learning Skills and Accommodations, dated October 1, 2021 (same as QACPS 16)
- P. 39- ██████████ AimsWeb Plus Scores, dated October 19, 2021 (same as QACPS 28)
- P. 40- QACPS Psycho-educational Assessment Report, dated November 29, 2021 (same as QACPS 11)
- P. 41- ██████████ Progress Report, December 2021
- P. 42- ██████████ observation of the Student at the ██████████, dated January 14, 2022 (same as QACPS 25)
- P. 43- QACPS Observation Report of the Student at the ██████████, dated January 21, 2022 (same as QACPS 26)
- P. 44- ██████████ Mid-Year Objectives, January 2022
- P. 45- QACPS Draft IEP input by ██████████ and ██████████, dated January 25, 2022
- P. 46- QACPS IEP Meeting notes by ██████████, dated January 28, 2022
- P. 47- QACPS final IEP, dated February 4, 2022 (same as P. 29)
- P. 47A- QACPS Prior Written Notice, dated January 25, 2022 (same as QACPS 23)
- P. 48- ██████████ Mid-Year Interim Progress Report, March 2022
- P. 49- ██████████ AimsWeb Plus scores, printed March 25, 2022
- P. 50- Not offered
- P. 51- ██████████ AimsWeb Plus Scores, printed June 13, 2022
- P. 52- Not offered
- P. 53- ██████████ Progress Report, for June 2022
- P. 54- Resume of ██████████, undated

- P. 55- Resume of [REDACTED], undated
- P. 56- Letter from Paula A. Rosenstock, Esquire, to Manisha Kavadi, Esquire, dated July 14, 2022
- P. 57- [REDACTED] reading assessment data for 2020-2022
- P. 58- Not admitted
- P. 59- Email from [REDACTED], QACPS, to the Parents and others, with corrected IEP attached, dated July 25, 2022 (same as QACPS 31)
- P. 60- Not offered
- P. 61- Not offered

I admitted the following exhibits offered by QACPS, unless otherwise noted:

- QACPS 1- Release and Settlement of Claims, dated January 29, 2021
- QACPS 2- IEP, dated August 21, 2020 (same as P. 20)
- QACPS 3- Not offered
- QACPS 4- Emails between QACPS, counsel for both parties and the Parent, from July 6, 2021 to September 3, 2021
- QACPS 5- Emails between QACPS, counsel for the Parent, the Parent, and [REDACTED], from August 30, 2021 to October 20, 2021
- QACPS 6- QACPS Notice and Consent for Assessment, dated July 27, 2021
- QACPS 7- Emails between QACPS, the Parents and [REDACTED], [REDACTED], from November 18, 2021 to November 30, 2021
- QACPS 8- Emails between QACPS, [REDACTED] and [REDACTED], dated December 6 and December 7, 2021
- QACPS 9- Notice of IEP Team Meeting, dated November 18, 2021
- QACPS 10- Prior Written Notice, dated December 7, 2021
- QACPS 11- QACPS Psycho-Educational Assessment Report, dated November 29, 2021 (same as P. 40)
- QACPS 12- [REDACTED] Cognitive Testing report, dated August 27, 2021 (same as P. 35)

- QACPS 13- [REDACTED] Speech and Language Re-Evaluation, conducted October 25, 26, November 2, 3 and 8, 2021
- QACPS 14- [REDACTED] Score Report, dated May 11, 2021 (same as P. 29)
- QACPS 15- [REDACTED] Progress Report for June 2021 (same as P. 31)
- QACPS 16- [REDACTED] Academic Learning Skills document, dated October 1, 2021 (same as P. 38)
- QACPS 17- Emails between QACPS, [REDACTED], the Parent, [REDACTED] and counsel for the Parents, from November 30, 2021 to December 1, 2021
- QACPS 18- Emails between QACPS, [REDACTED], the Parent, and [REDACTED] from December 7, 2021 to December 14, 2021
- QACPS 19- Emails between [REDACTED], QACPS, [REDACTED], and the Parents, from December 28, 2021 to January 20, 2022
- QACPS 20- Emails between QACPS and the Parents, dated January 4, 2022 and January 5, 2022
- QACPS 21- Emails between [REDACTED], QACPS, counsel for the Parents, the Parent, Ms. [REDACTED], and [REDACTED] from January 7, 2022 to January 11, 2022
- QACPS 22- Notice of IEP Team Meeting, dated December 7, 2021
- QACPS 23- Prior Written Notice, dated January 25, 2022 (same as P. 47A)
- QACPS 24- Excusal from IEP Team Meeting, dated January 25, 2022
- QACPS 25- [REDACTED] Observation by [REDACTED] dated January 14, 2022 (same as P. 42)
- QACPS 26- QACPS Class Observation Form, dated January 21, 2022 (same as P. 43)
- QACPS 27- AimsWeb Student Profile, printed December 7, 2021
- QACPS 28- AimsWeb Individual Benchmark, printed October 19, 2021 (same as P. 39)
- QACPS 29- IEP, dated January 25, 2022 (same as P. 47)

- QACPS 30- Email from QACPS to the Parents, counsel for the Parents and Counsel for QACPS, dated July 25, 2022
- QACPS 31- Corrected IEP, dated July 25, 2022 (same as P. 59)
- QACPS 32- Email from QACPS to the Parents, counsel for the Parents and counsel for QACPS, dated July 25, 2022; QACPS letter responding to notice of unilateral placement, dated July 25, 2022
- QACPS 33- QACPS Assessment Report, dated January 28, 2020 (same as P. 7)
- QACPS 34- Resume of [REDACTED], ED.S, undated
- QACPS 35- Resume of [REDACTED], undated
- QACPS 36- Resume of [REDACTED], NCSP, undated
- QACPS 37- Resume of [REDACTED], undated