

████████████████████

STUDENT

v.

BALTIMORE CITY

PUBLIC SCHOOLS

BEFORE SUSAN H. ANDERSON,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CITY-OT-22-18973

**DECISION**

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

**STATEMENT OF THE CASE**

On August 9, 2022, ██████ and ██████ (Parents),<sup>1</sup> on behalf of their child, ██████ (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 the Baltimore City Public Schools (BCPS or City) under the Individuals with Disabilities Education Act (IDEA).<sup>2</sup>

The Complaint requested a due process hearing only; it did not request a mediation. The parties participated in a resolution meeting on August 24, 2022 but did not resolve the dispute.

---

<sup>1</sup> For ease of redaction purposes and to protect confidentiality, I will refer to them individually throughout this decision as “the Student’s mother” and “the Student’s father.”

<sup>2</sup> 20 U.S.C. § 1415(f)(1)(A) (2017); 34 C.F.R. § 300.511(a) (2021);<sup>2</sup> Md. Code Ann., Educ. § 8-413(d)(1) (2022); Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). “U.S.C.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C. are to the 2017 bound volume. “C.F.R.” is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2021 bound volume. Unless otherwise noted, all citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

On the Notice of Outcome of Resolution Meeting, dated August 24, 2022, the parties indicated that the dispute was not resolved at the Resolution Meeting, but that they agreed to try to resolve the dispute through mediation. Thereafter, the Parents, in communications with the OAH, indicated that they did not want to delay the hearing further and wanted to proceed without mediation.<sup>3</sup> After discussion at the pre-hearing conference on September 19, 2022,<sup>4</sup> the parties requested a continuance of the pre-hearing conference so they could participate in mediation. The parties participated in a mediation on October 3, 2022, but they did not reach an agreement. On October 3, 2022, immediately following the mediation, I reconvened the pre-hearing conference via the Webex videoconferencing platform.<sup>5</sup> The Parents were present and represented the Student. Patrice A. Wedderburn, Esquire, represented the BCPS.

Under the applicable law, a decision is due within forty-five days of the end of the resolution period, on or before Friday, October 21, 2022.<sup>6</sup> I note that none of the actions by the parties in postponing the pre-hearing conference to participate in mediation acted to trigger any adjustment to the thirty-day resolution period.<sup>7</sup> The regulations authorize me, however, to grant a specific extension of time at the request of either party.<sup>8</sup> In this case, the parties requested an extension of time and hearing dates outside of that timeframe for several reasons.<sup>9</sup> Given the five-day disclosure rule, the earliest date on which to set the hearing would be October 11,

---

<sup>3</sup> There is no indication in the record as to how or when this communication was made.

<sup>4</sup> A prior pre-hearing conference was scheduled for September 16, 2022 but was postponed due to a documented medical appointment of the Student's mother. The pre-hearing conference was rescheduled to September 19, 2022.

<sup>5</sup> COMAR 28.02.01.20B.

<sup>6</sup> *Id.* § 300.510(b)(2). The resolution period ended on September 8, 2022, thirty days after the Complaint was filed on August 9, 2022. The forty-fifth day falls on Sunday, October 23, 2022. The decision would therefore be due on the preceding business day, Friday, October 21, 2022.

<sup>7</sup> 34 C.F.R. § 300.510(c).

<sup>8</sup> *Id.* § 300.515(c).

<sup>9</sup> *Id.*; Educ. § 8-413(h).

2022.<sup>10</sup> However, the Parents observe Jewish holidays and requested that the hearing and the five-day disclosure period not begin to run until after October 18, 2022, the last of the holidays in October 2022. I suggested that the hearing start on Monday, October 31, 2022, which would give the Parents a chance to prepare for the hearing after the holidays and be able to meet the five-day disclosure rule; however, due to their work obligations, the Parents requested an extension to allow the hearing to begin on Monday, November 14, 2022. The BCPS agreed.

Accordingly, the parties jointly asked for an extension of the timelines. The earliest dates that the parties would be available, keep the hearing dates reasonably close together, and comply with subpoena procedures and the discovery rule, were during the week beginning November 14, 2022. I found good cause to extend the timeline and I conducted the hearing on November 14, 15, 16, 17, 18, and 21, 2022 at the OAH in Hunt Valley, Maryland, as requested.<sup>11</sup> The parties requested that I issue my decision within thirty days after the conclusion of the hearing, on or before December 21, 2022.<sup>12</sup>

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.<sup>13</sup>

---

<sup>10</sup> Five business days after October 3, 2022 is October 10, 2022; however, October 10, 2022 was a State holiday so the earliest date on which the hearing could commence was October 11, 2022.

<sup>11</sup> After the pre-hearing conference, the Parents requested that the hearing times be adjusted from 9:00 a.m. to 4:00 p.m. to 10:00 a.m. to 3:00 p.m. to accommodate the Student's mother's fatigue due to some ongoing health issues. The BCPS did not object and I granted the postponement, and, in an abundance of caution added November 22, 2022 as a hearing date, if necessary. The hearing concluded on November 21, 2022 so the extra day was not needed.

<sup>12</sup> Educ. § 8-413(h).

<sup>13</sup> 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<sup>14</sup>

1. Did the BCPS' violation of its Child Find violation with regard to the Student result in a denial of a Free Appropriate Public Education (FAPE) for the Student?
2. If there was a denial of a FAPE, is the Parents' requested remedy of the Student's private placement at the [REDACTED] at public expense from November 28, 2022 through the end of the 2022-2023 school year appropriate?

## SUMMARY OF THE EVIDENCE

### Exhibits

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 1 [REDACTED] Hospital Psychological Evaluation, August 30, 2022, pp. 2-13<sup>15</sup>
- Parents Ex. 2 [REDACTED] Student Profile test results, November 4, 8, 9, 2021, pp. 14-20
- Parents Ex. 3 Email from [REDACTED] [REDACTED] to the Student's mother, May 24, 2022, p. 21
- Parents Ex. 4 BCPS Online Registration Summary, June 13, 2022, pp. 22-23
- Parents Ex. 5 Emails between the Student's mother and [REDACTED] re: scheduling an initial IEP meeting, various dates October 11, 2022 through November 4, 2022, pp. 24-30

---

<sup>14</sup> Originally, three issues were identified at the pre-hearing conference, including whether the BCPS violated its Child Find obligation with regard to the Student. However, the Parents filed a Motion for Summary Decision (Motion) and on November 1, 2022, I granted the Motion in part, finding that there were no material facts in dispute regarding whether the BCPS violated its Child Find obligation with regard to the Student and the Parents were entitled to a decision as a matter of law on that issue. I determined that there were two issues remaining to be decided after a hearing: 1) whether the BCPS' violation of its Child Find obligation resulted in a denial of a FAPE for the Student; this issue encompassed the sub-issue of whether the Student is a student with a disability who is also eligible for special education services; and if so, 2) whether the Parents' requested remedy of private placement of the Student at public expense is a proper remedy for the BCPS' denial of a FAPE for the time period in question (part of the Spring semester 2022 and the Fall semester of the 2022-2023 school year). However, at the hearing, the BCPS stipulated that the Student is a student with a disability who is eligible for special education services, and that he would have been so determined had the BCPS timely evaluated him after the February 14, 2022 Child Find referral. That left only the two main issues to be determined.

<sup>15</sup> Page 1 in the Parents' binder is the Exhibit List.

- Parents Ex. 6 Affidavit Letter from [REDACTED] Head of School at [REDACTED] November 3, 2022, p. 31
- Parents Ex. 7 [REDACTED] Hospital Psychological Evaluation, January 15, 2019, pp. 32-43
- Parents Ex. 8 [REDACTED] AimsWeb test results for 2018-2020 school years; [REDACTED] Personalized Learning Plans, Effective Dates January 2019, September 2020; [REDACTED] report cards for 2018-2019; [REDACTED] Personalized Learning Plan, Effective Date September 2019; [REDACTED] Kindergarten Report Card, 2017-2018, pp. 44-80
- Parents Ex. 9 Emails between the Student's mother and [REDACTED] IEP Chair for [REDACTED] Elementary School, various dates between May 25, 2022 and June 13, 2022, pp. 81-82
- Parents Ex. 10 Affidavit from Ann [REDACTED] Student's reading/math tutor at [REDACTED] [REDACTED] November 6, 2022, pp. 83-85
- Parents Ex. 11 Progress Reports from [REDACTED] Summer 2021, pp. 86-88
- Parents Ex. 12 Affidavit from [REDACTED] social worker for the Student, November 6, 2022, p. 89
- Parents Ex. 13 PAARC test results from 2019, measuring English Language Arts proficiency of all students in BCPS, [REDACTED] pp. 90-91
- Parents Ex. 14 PAARC test results from 2019, measuring English Language Arts proficiency of students with disabilities in BCPS, [REDACTED] pp. 92-93
- Parents Ex. 15 PAARC test results from 2019, measuring English Language Arts proficiency of students with 504 plans in BCPS, [REDACTED] pp. 94-95
- Parents Ex. 16 MCAP test results from 2020, measuring English Language Arts proficiency of all students in BCPS, [REDACTED] pp. 96-97
- Parents Ex. 17 MSDE Technical Assistance Bulletin #16-03, Specific Learning Disability (SLD) & Supplement, November 2016; article from [REDACTED] [REDACTED] by [REDACTED] M.D., updated March 31, 2022; article from [REDACTED]

the [REDACTED] [REDACTED]  
[REDACTED] by [REDACTED] undated, pp. 98-119<sup>16</sup>

I admitted the following exhibits on behalf of the BCPS<sup>17</sup>:

- BCPS Ex. 1            October 31, 2022 Meeting Invitation for November 10, 2022 IEP meeting
- BCPS Ex. 2            October 11, 2022 Meeting Invitation for October 20, 2022 IEP meeting
- BCPS Ex. 3            Evaluation Report and Determination of Initial Eligibility, October 20, 2022
- BCPS Ex. 4            Signed Notice and Consent for Assessments, dated August 24, 2022, signed September 6, 2022
- BCPS Ex. 5            August 16, 2022 Meeting Invitation for August 24, 2022 IEP meeting
- BCPS Ex. 6            May 26, 2022 Meeting Invitation for June 9, 2022 IEP meeting
- BCPS Ex. 7            Prior Written Notice, October 20, 2022
- BCPS Ex. 8            Prior Written Notice, August 24, 2022
- BCPS Ex. 9            Draft IEP, November 2, 2022
- BCPS Ex. 10           Psychological Assessment Report, written October 13, 2022
- BCPS Ex. 11           Student Observation Report, October 3, 2022
- BCPS Ex. 12           BCPS Educational Assessment Report, September 23, 2022
- BCPS Ex. 13           [REDACTED] Hospital Psychological Evaluation, August 30, 2022
- BCPS Ex. 14           [REDACTED] Hospital Psychological Evaluation, January 15, 2019
- BCPS Ex. 15           [REDACTED] of Baltimore Report Card, 2020-2021
- BCPS Ex. 16           [REDACTED] of Baltimore Report Card, 2019-2020
- BCPS Ex. 17           [REDACTED] of Baltimore Report Card, 2018-2019
- BCPS Ex. 18           [REDACTED] of Baltimore Report Card, 2017-2018

---

<sup>16</sup> Also included in the Parents' binder was their Witness List and the witness' curriculum vitae, pp. 120-132.

<sup>17</sup> I note that many of the BCPS exhibits are duplicates of the ones submitted by the Parents.

- BCPS Ex. 19 [REDACTED] of Baltimore Personalized Learning Plan, September 2020
- BCPS Ex. 20 [REDACTED] of Baltimore Personalized Learning Plan, September 2019
- BCPS Ex. 21 [REDACTED] of Baltimore Personalized Learning Plan, January 2019
- BCPS Ex. 22 NWEA Language Usage Data, November 9, 2021
- BCPS Ex. 23 NWEA Reading Data, November 8, 2021
- BCPS Ex. 24 NWEA Mathematics Data, November 4, 2021
- BCPS Ex. 25 AimsWeb Plus Data, Fall 2019 – Winter 2020
- BCPS Ex. 26 [REDACTED] Admissions Denial, May 24, 2022
- BCPS Ex. 27 Parent Contact Log, May 25, 2022 through November 4, 2022
- BCPS Ex. 28 Resume, [REDACTED] Ph.D.
- BCPS Ex. 29 Resume, [REDACTED]
- BCPS Ex. 30 Resume, [REDACTED]

Testimony

The Parents presented the following witnesses:

- [REDACTED] PsyD., admitted as an expert in clinical psychology diagnosis and evaluation.
- [REDACTED] supervisor of special education services at the [REDACTED]
- [REDACTED] Learning Specialist, Executive Function Coach and Educational Consultant with [REDACTED] [REDACTED] admitted as an expert in special education.

The BCPS presented the following witnesses:

- [REDACTED] Educational Associate, BCPS, admitted as an expert in special and general education.

- [REDACTED] Special Education Liaison, BCPS, admitted as an expert in special and general education.
- [REDACTED] Ph.D., School Psychologist, Assessment Team for the BCPS, admitted as an expert in the areas of educational psychology, psychological assessment, educational assessment, special education, and related learning disabilities.

### **FINDINGS OF FACT<sup>18</sup>**

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

#### ***General Facts***

1. The Student's date of birth is [REDACTED] 2012.<sup>19</sup>
2. The Student has never attended a school within the BCPS.<sup>20</sup>

#### ***The Student's Time at the [REDACTED] 2017-March 2021, and the 2019 [REDACTED] Neuropsychological Testing***

3. The Student attended the [REDACTED] from 2017 through March 2021.
4. The Student first struggled with reading and recognizing numbers when he was in kindergarten during the 2017-2018 school year. The [REDACTED] provided the Student with small group instruction with a reading specialist thirty minutes per day, four days per week.<sup>21</sup>
5. The Student was resistant to receiving individual help outside the classroom from the beginning of the year and teachers noted that he "consistently put forth less effort" as his skills lagged further behind those of his peers. In addition, towards the end of the year, he began "verbally choos[ing] to abstain from small group work."<sup>22</sup>

---

<sup>18</sup> The parties submitted three Joint Stipulations of Fact. I note them as "Jt. Stip." In addition, when I granted the Parent's Motion for Summary Decision in part, I found ten undisputed facts. I note them as "Undisputed."

<sup>19</sup> Jt. Stip. #1.

<sup>20</sup> Jt. Stip. #2.

<sup>21</sup> Test. [REDACTED] Tr., p. 135. NOTE: Tr. is the abbreviation for Transcript that is used throughout this decision.

<sup>22</sup> Parents' Ex. 8; BCPS Ex. 18.



6. As he began first grade, the Student continued to receive small group instruction with a reading specialist thirty minutes per day, four days per week.<sup>23</sup> Teachers noted that he struggled with the first grade curriculum, even with assistance. However, teachers also noted that he had a “wonderful enthusiasm” for learning but required frequent cues to stay on task, and his “struggles to focus impact[ed] his decoding and comprehension abilities.”<sup>24</sup>

7. In January 2019, mid-way through his first grade year, ██████████ M.A., Pre-Doctoral Psychology Intern at ██████████ Hospital (██████████) overseen by ██████████ Psy.D., Licensed Psychologist, administered neuropsychological testing to the Student, including the Weschler Intelligence Scale for Children, Fifth Edition (WISC-5), which tested his overall intellectual ability; the Kaufman Test of Educational Achievement, Third Edition (KTEA-3), which tested his academic achievement; the Beery-Buktenica Development Test of Visual and Motor Integration (VMI), which measured his visual motor integration; and the Child and Adolescent Memory Profile (ChAMP), which tested his memory.<sup>25</sup>

8. On the WISC-5, the Student scored as follows<sup>26</sup>:

Index/Subtest	Scaled/Standard Score	Percentile	Classification
<b>Verbal Comprehension</b>	<b>108</b>	<b>70</b>	<b>Average</b>
Similarities	11	63	Average
Vocabulary	12	75	High Average
<b>Visual Spatial</b>	<b>92</b>	<b>30</b>	<b>Average</b>
Block Design	9	37	Average
Visual Puzzles	8	25	Average
<b>Fluid Reasoning</b>	<b>94</b>	<b>34</b>	<b>Average</b>
Matrix Reasoning	8	25	Average
Figure Weights	10	50	Average

<sup>23</sup> Test. ██████████ Tr., p. 135.

<sup>24</sup> Parents’ Ex. 8; BCPS Ex. 17.

<sup>25</sup> Parent’s Ex. 7; BCPS Ex. 14.

<sup>26</sup> Parents’ Ex. 7; BCPS Ex. 14.

<b>Working Memory</b>	<b>110</b>	<b>75</b>	<b>High Average</b>
Digit Span	11	63	Average
Picture Span	12	75	High Average
<b>Processing Speed</b>	<b>95</b>	<b>37</b>	<b>Average</b>
Coding	10	50	Average
Symbol Search	8	25	Average
<b>Full Scale IQ</b>	<b>101</b>	<b>53</b>	<b>Average</b>

9. On the KTEA-3, the Student’s math scores ranged from “below average” to “average” with “notable difficulty on math word problems”. His reading scores ranged from “below average” to “average” with average scores in nonsense word decoding and letter and word recognition with reading comprehension and written language skills falling in the “below average” range. His grade equivalency scores<sup>27</sup> ranged from K.5 to 1.0<sup>28</sup>:

<b>Composite/Subtest</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>Grade Equivalent</b>	<b>Classification</b>
<b>Math Composite</b>	<b>85</b>	<b>16</b>	-	<b>Below Average</b>
Math Concepts and Applications	84	14	K.5	Below Average
Math Computation	91	27	1.0	Average
<b>Reading Composite</b>	<b>83</b>	<b>13</b>	-	<b>Below Average</b>
Letter and Word Recognition	90	25	K.8	Average
Reading Comprehension	80	9	K.3	Below Average
<b>Nonsense Word Decoding</b>	<b>91</b>	<b>27</b>	<b>&lt;1.0</b>	<b>Average</b>
<b>Written Language Composite</b>	<b>86</b>	<b>18</b>	-	<b>Below Average</b>
Written Expression	88	21	K.10	Below Average
Spelling	87	19	K.9	Below Average
<b>Academic Skills Battery Composite</b>	<b>82</b>	<b>12</b>	-	<b>Below Average</b>

<sup>27</sup> Grade equivalency scores are expressed as a “grade” followed by the number of months into the school year. For example, K.5 is read as “kindergarten, fifth month.” NOTE: “Grade equivalent scores reflect the examinee’s performance in terms of the grade level in the norming sample at which the average score is the same as the examinee’s score. These scores are not grade levels but equivalents; the scores do not identify if the student is achieving all required skills at a specific grade level.” (BCPS Ex. 12).

<sup>28</sup> Parents’ Ex. 7; BCPS Ex. 14.

10. The assessor noted that as the reading comprehension tasks got more difficult and required “more sustained attention,” the Student would immediately respond that he did not know or just give a guess without attempting to sound out each word in the sentence. The assessor noted that it is possible that the Student’s lower score on reading comprehension was due to his “lack of sustained mental effort during the task.” The assessor also noted that the Student’s math skills, reading comprehension, and writing skills were “slightly below” what would be expected given his intellectual function skills as measured by the WISC-5 and indicated that she believed the Student was at risk of developing learning disabilities in these areas.<sup>29</sup>

11. The Student scored in the “average” range on the VMI.<sup>30</sup>

12. The Student scored in the “average” range on the eight subtests from the ChAMP: Lists, Instructions, Objects, Places, Lists Delayed, Objects Delayed, Instructions Delayed, and Places Delayed. His total memory index was also in the “average” range.<sup>31</sup>

13. The Student’s mother had completed four rating scales, the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF2), the Behavior Assessment System for Children, Third Edition (BASC-3), the Pediatric Behavior Rating Scale (PBRS) and the Adaptive Behavior Assessment System, Third Edition (ABAS-3). The ratings showed that on the BRIEF2, the Student’s mother endorsed concerns across several areas of his executive functioning, specifically his ability to initiate problem solving, plan and organize tasks and assignments, monitor his own work, and his ability to hold information in his working memory. The assessor noted that executive function deficits “often cause children to have difficulty to ‘see

---

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

the big picture,’ as well as sustain focus for adequate amounts of time.” In addition, on the PBRS, the Student’s mother indicated significant concerns regarding inattention. Finally, on the ABAS-3, the Student’s mother expressed concern about his practical skills as he had trouble with general tasks at home.<sup>32</sup>

14. The assessor concluded that the Student met the criteria for Attention Deficit Hyperactivity Disorder, Combined Presentation (ADHD). The assessor based this conclusion on several factors. First, the Student’s mother’s rating scales were consistent with the information she had presented at the initial consultation. At the initial consultation, the Student’s mother recounted that the Student needed multiple prompts at home to complete tasks, exhibited a high activity level, seemed to have a slow processing speed, and struggled at school with timed tasks. In addition, during testing the Student was “inattentive to details, required repetition of directions and was careless at times. [The Student] also exhibited a high energy level across tasks and was occasionally impulsive in responding.” Moreover, as items on the test got harder, the Student exhibited slow processing of questions and got some answers correct after the time had expired, which suggested a need for additional time. The assessor concluded that “[o]verall, [the Student] appears to demonstrate inattention, distractibility, forgetfulness, hyperactivity, and impulsivity across settings.”<sup>33</sup>

15. The Parents shared the resulting report (2019 ██████████ Report) with the ██████████ which created a Personalized Learning Plan (PLP) for the Student in January 2019. The PLP provided the Student with accommodations in the following areas: extra time on in-class reading assignments and tests; provision of clear and concise instructions; cues to stay on task; strategies to minimize distractions; provide a variety of presentations/multi-sensory

---

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

instruction; reduce length of regular assignments; break large assignments into smaller ones; reduce writing and copying requirements; take tests in the Learning Center (LC); breaks as needed; and frequent communication between school and home.<sup>34</sup>

16. The [REDACTED] administered AIMSweb norms to the Student, an informal assessment used to determine a student's benchmarks and monitor progress. On these assessments, the Student scored in the "average" range in phoneme segmentation, and in the "below average" range in nonsense word fluency, phoneme-grapheme skills, and reading fluency. Given these ratings, the [REDACTED] began providing the Student with one-on-one instruction utilizing the Wilson Reading System to help him improve his decoding skills and sight words recognition, three times per week, forty minutes per session.<sup>35</sup>

17. By the end of the first grade, the Student had "mastered all pre-primer sight words" as well as short vowel sounds containing consonant diagraph and words ending in double letters, while he had begun to read words containing the suffix "s." He needed "significant review to keep up his accuracy with short vowels" and his teacher strongly recommended professional tutoring over the summer.<sup>36</sup>

18. While the Student made progress under his PLP, he did not generalize what he had learned to the larger classroom setting. By the end of first grade, he had not mastered first grade skills and "struggled to read the leveled curriculum which is six months below grade level."<sup>37</sup>

19. As a result of these ongoing challenges, at the beginning of the second grade, the [REDACTED] placed the Student full-time in a self-contained classroom with a small

---

<sup>34</sup> Parents' Ex. 8; BCPS Ex. 21.

<sup>35</sup> Test. [REDACTED] Tr., p. 137.

<sup>36</sup> Parents' Ex. 8; BCPS Ex. 21.

<sup>37</sup> Parents' Ex. 8; BCPS Ex. 17.

student-to-teacher ratio for his academic courses,<sup>38</sup> although he still participated in [REDACTED] studies in the larger classroom setting.<sup>39</sup> He continued to receive one-on-one services.

20. The Student's PLP for his second grade year, 2020-2021, provided the same accommodations as the January 2019 PLP. On the AIMSweb assessment conducted at the beginning of that school year, the Student was assessed on second grade measures and scored in the "average" range in Vocabulary; "below average" in Composite (reflecting his overall reading level); and "well below average" in Oral Reading Fluency and Reading Comprehension. He scored in the "average" range for Oral Reading Fluency based on first grade measures. With regard to his math skills, the Student scored in the "well below average" range in Number Sense Fluency and Mental Computation Fluency; and in the "below average" range in Number Comparison Fluency and Concepts and Applications for a Composite Score in the "below average" range.<sup>40</sup>

21. During the first two terms of the Student's second grade year, the school psychologist implemented and oversaw a formal behavior plan to hold the Student accountable for work that included specific expectations and a rating system, with small daily rewards at home and an accumulation of points toward a bigger prize. The behavior plan was "critical" in encouraging the Student to work and stay on task because he struggled with the idea of working hard, leaving the larger classroom to go to the self-contained classroom for his academic subjects, and meeting up with his peers who all knew he was receiving instruction in the self-contained classroom. While he was in the first grade, his teachers had implemented an

---

<sup>38</sup> Test., [REDACTED] Tr., p. 140.

<sup>39</sup> *Id.*, Tr., p. 161.

<sup>40</sup> Parents' Ex. 8; BCPS Ex. 20.

informal behavior plan to try and motivate the Student to do work but this plan was not effective.<sup>41</sup>

22. The Student made progress during the first term of the 2019-2020 school year. He mastered reading and spelling words with consonant digraphs and words ending in f, l, s, or z, and increased his pre-primer sight word knowledge. He also responded positively to an incentive chart by putting in effort and persevering, although he still needed frequent redirection.<sup>42</sup> However, although he made progress, he also started displaying resistance to “beginning or sustaining effort on academic tasks” by making negative remarks (e.g., “this is stupid”) and by exhibiting avoidance behaviors such as leaving the room without permission or asking for frequent bathroom breaks.<sup>43</sup>

23. During the second term of his second grade year, the Student made “tremendous progress” and mastered all of his reading objectives related to decoding so that new objectives had to be added to his PLP; mastered several objectives relating to recognition of sight words; and “made nice progress” in math, although he still needed frequent redirection and encouragement to stay on task.<sup>44</sup> In addition, the Student “learned new concepts very quickly when he [was] on task”<sup>45</sup> and was able to learn grade-appropriate material when he focused.<sup>46</sup>

24. In March 2020, due to the COVID-19 pandemic, all schooling went virtual. From March 2020 through the end of the 2019-2020 school year, the Student was increasingly inconsistent with his attendance, which adversely impacted his progress.<sup>47</sup> When he was present,

---

<sup>41</sup> Test., [REDACTED] Tr., pp. 140-141; 200-201.

<sup>42</sup> Parents’ Ex. 8; BCPS Ex. 20.

<sup>43</sup> Parents’ Ex. 8; BCPS Exs. 16, 20.

<sup>44</sup> Parents’ Ex. 8; BCPS Ex. 20.

<sup>45</sup> Parents’ Ex. 8; BCPS Ex. 16.

<sup>46</sup> Test., [REDACTED] Tr., pp. 158-159.

<sup>47</sup> Parents’ Ex. 8; BCPS Exs. 16, 20; Test., [REDACTED] Tr., p. 186.

“there was a lot of arguing and whining and not a lot of learning.”<sup>48</sup> In addition, the formal behavior plan could not be implemented in the same way because the Student could simply walk away from his computer and refuse to engage.<sup>49</sup>

25. When the Student returned in person to the [REDACTED] in September 2020 for his third grade year, he continued in his placement in the self-contained classroom. Both the accommodations and almost all of the Student’s objectives from his 2019-2020 PLP remained the same because he “had lost all the skills that he had gained over the course of second grade” due to the gap in learning between March 2020 and September 2020.<sup>50</sup>

26. From the start of his third grade year, the Student was very resistant to returning to the self-contained classroom. He advised that going there made him feel “like he was dumb, like he was stupid” and would verbally indicate that he would do whatever he could in order not to go to that classroom. The Student began physically resisting going to school, sometimes having to be “dragged,” and his behaviors escalated to making threats toward teachers when he was forced to attend.<sup>51</sup>

27. In November 2020, the Parents and the [REDACTED] staff concluded that it was not appropriate for the Student to continue in the self-contained classroom, nor could he be placed in the larger classroom because he would not be able to access the curriculum. Therefore, as an interim measure, the Student remained at the [REDACTED] where he attended his [REDACTED] studies in the general classroom, as he had been doing, and then received one-on-one instruction in reading for forty minutes per day, either four or five times per week. The [REDACTED] did not have the personnel to offer any additional individual

---

<sup>48</sup> Test., [REDACTED] Tr., p. 186.

<sup>49</sup> *Id.*, Tr., pp. 141-142.

<sup>50</sup> Parent’s Ex. 8; BCPS Exs. 19, 20; Test., [REDACTED] Tr., p. 186.

<sup>51</sup> Test., [REDACTED] Tr., pp. 142, 145.



instruction and so these sessions focused on reading, an area where staff felt he truly needed specialized instruction.<sup>52</sup>

28. In or around March 2021, the administrators at the [REDACTED] advised the Parents that they could not meet the Student's needs and they felt strongly that "it would be therapeutic" for the Student to be in an environment with other students who had similar challenges and strengths.<sup>53</sup>

***The Student's Time at [REDACTED] March 2021-November 2022***

29. In March 2021, the Parents transferred the Student to [REDACTED] a private [REDACTED] school with no special education program. The Parents selected [REDACTED] because the Student was asked to leave the [REDACTED] as the interim measures were not workable long-term and [REDACTED] agreed to allow him to enroll until his Parents could "figure out a better situation." The Student essentially "audited" the classes and the teachers expected little, if anything, from him in terms of participation in class. The school agreed that the Student could call home and leave early if he wanted and the Student often did so.<sup>54</sup>

30. During the last few months of the 2020-2021 school year and from the fall of 2021 through the spring of 2022, the Student received one to three weekly tutoring sessions from [REDACTED] a remedial tutor. During their sessions, they "attempted to cover both math and language." The Student made some gains but they were not significant.<sup>55</sup>

31. The Student was resistant to Ms. [REDACTED] pulling him out of class for the tutoring sessions; he walked very slowly out of class or complained and then, once at the tutoring table, he was occasionally disrespectful and would turn his back on her. The Student's classmates

---

<sup>52</sup> *Id.*, Tr., pp. 145-148. ("...we chose reading because we felt...when we provided him with math instruction and he was focused...then he was able to pick it up pretty quickly." p. 147).

<sup>53</sup> *Id.*, Tr., p. 163.

<sup>54</sup> Test., Student's father, Tr., pp. 1159-1160.

<sup>55</sup> Parents' Ex. 10.

ridiculed him for needing a tutor, which embarrassed him and he would make comments like, “Nobody else has a tutor.”<sup>56</sup>

32. The Student was easily distracted during the tutoring sessions. For a while he and Ms. [REDACTED] did not have an assigned space to use, and they frequently had to move from place to place throughout a session. Eventually, their assigned spot was an open area at the bottom of a stairway, which was “disruptive and noisy” and sometimes when other students followed the Student down the stairs past this “open” tutoring area, the Student was resistant and non-cooperative due to his embarrassment. The Student was also distracted by the noisy surroundings.<sup>57</sup>

33. During his time at [REDACTED] there were no accommodations or supports in place for the Student, other than the tutoring with Ms. [REDACTED] that his Parents had arranged.<sup>58</sup>

34. Over the summer of 2021, the Student attended [REDACTED] a summer program that focuses on “maintaining skills and minimizing summer learning loss”<sup>59</sup> from June 28, 2021 through July 29, 2021. During that time, he worked with a language tutor and learned open and closed syllables, r-controlled vowels, -cle as a syllable type and dividing pattern, and VCCV, VCCCV, and VCV<sup>60</sup> dividing patterns; learned to read and spell sight words; and practiced his fluency by reading sentences and controlled passages. The Student was resistant when learning the language rules and doing the accompanying activities but once he was willing to learn a new rule or play a new game, he was willing to do it again for practice and review. To improve his cooperation, the language tutor would allow him to take a break in the middle of a lesson to work on a preferred personal project.<sup>61</sup>

---

<sup>56</sup> Parents’ Ex. 9.

<sup>57</sup> *Id.*

<sup>58</sup> Test., Student’s father, Tr., p. 1159.

<sup>59</sup> [REDACTED] (last viewed December 14, 2022).

<sup>60</sup> None of these acronyms are explained in the record.

<sup>61</sup> Parents’ Ex. 11.

35. In November 2021, the Student took the Northwest Evaluation Association Measure of Academic Progress (NWEA MAP) test for fourth graders. He scored in the third percentile in the Mathematics section, where he took tests on Numbers and Operations, Geometry, Measurement and Data, and Operations and Algebraic Thinking. He scored in the twenty-fourth percentile in the Reading section, which tested him on Informational Text, Literary Text, and Vocabulary. Vocabulary was a relative strength for the Student. Finally, he scored in the tenth percentile in the Language Usage section, which tested him on Writing: Plan, Organize, Develop, Revise, Research; Language: Understand, Edit Mechanics; and Language: Understand, Edit for Grammar, Usage. The Language: Understand, Edit for Grammar, Usage area was a relative strength for the Student, while the Writing: Plan, Organize, Develop, Revise, Research area was a suggested area of focus for the Student.<sup>62</sup>

### *The Child Find Referral*

36. In February 2022, the Parents actively looked for appropriate educational placements for the Student. The Student applied to [REDACTED] ([REDACTED] and the [REDACTED] ([REDACTED])<sup>63</sup>

37. Neither [REDACTED] nor [REDACTED] accepted the Student because they determined the Student's educational and social-emotional needs to be too great for them to address.<sup>64</sup>

38. On February 14, 2022, the Student's mother contacted the BCPS' Child Find Office and reported that she believed her son was a student with a disability who needed to be evaluated. She requested a meeting so that the BCPS could determine whether the Student was eligible for special education services.<sup>65</sup>

---

<sup>62</sup> Parents' Ex. 3; BCPS Exs. 22-24.

<sup>63</sup> Parents' Exs. 3, 6.

<sup>64</sup> *Id.*

<sup>65</sup> Undisputed #1.

39. On May 26, 2022, in response to the Student's mother's February referral, the BCPS sent a Notice of IEP Team Meeting to the Parents setting a meeting for June 9, 2022 at 1:45 p.m.<sup>66</sup>

40. For unknown reasons and with no notice to the Parents, the BCPS canceled the June 9, 2022 meeting. The Parents found out that the meeting was cancelled when the Student's mother called the BCPS on the morning of June 9, 2022 to confirm the meeting.<sup>67</sup>

41. On June 13, 2022, the Student's mother contacted the BCPS' Child Find Office again and reiterated her request for a meeting so that the BCPS could determine whether the Student was eligible for special education services.<sup>68</sup>

42. On that same day, the Parents enrolled the Student in [REDACTED] Elementary School, his zoned school in the BCPS.<sup>69</sup>

43. A few days later, on a date not specified in the record, someone from the BCPS called the Student's mother and told her that an IEP meeting would be set up within fifteen days from the date of the June 13<sup>th</sup> call.<sup>70</sup>

44. On August 9, 2022, the Parents filed the Due Process Complaint.<sup>71</sup>

45. No one from the BCPS contacted the Parents about the Child Find referral until August 16, 2022, at which time the BCPS issued a Notice of IEP Team Meeting for August 24, 2022.<sup>72</sup>

---

<sup>66</sup> BCPS Ex. 6.

<sup>67</sup> Undisputed #4.

<sup>68</sup> Undisputed #5.

<sup>69</sup> Parents' Ex. 4.

<sup>70</sup> Undisputed #6.

<sup>71</sup> Undisputed #8.

<sup>72</sup> Undisputed #9.

### *The August 24, 2022 Initial IEP Meeting*

46. At the August 24, 2022 meeting, the Parents provided to the BCPS the 2019 [REDACTED] Report and the NWEA-MAP test results from November 2021. The team reviewed those documents, along with a copy of the August 9, 2022 Due Process Complaint.<sup>73</sup>

47. The Parents advised the team that the Student had a history of academic concerns and recounted the interventions that the [REDACTED] had provided to him and indicated that while reading was their main concern, they also had some concerns with math.<sup>74</sup> The Parents also mentioned that the Student excels in art and robotics. In addition, the Parents expressed their concern that due to what they believed to be his significant deficits, the BCPS could not provide a FAPE for the Student and requested that the BCPS provide a non-public placement.<sup>75</sup>

48. The IEP Team suspected that the Student had a disability of Other Health Impairment (OHI) due to the Student's medical ADHD diagnosis, as well as educational data and Parents' reports indicating that he may be performing below grade level due to the symptoms of his ADHD.<sup>76</sup>

49. The team determined they did not have sufficient information in order to make a determination as to services or placement. Therefore, they agreed to order an educational assessment, cognitive assessment, social-emotional-behavioral assessment, and classroom observation in order to gather more information to determine whether the Student had an educational disability and to determine the Student's current level of academic functioning.<sup>77</sup>

---

<sup>73</sup> BCPS Ex. 8.

<sup>74</sup> Test., [REDACTED] Tr., p. 349.

<sup>75</sup> BCPS Ex. 8.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

50. The team determined there were no concerns with the Student's communication or fine motor skills. It also determined that the Student might be eligible for a 504 plan due to his medical diagnosis of ADHD and recommended that the Student be referred to the 504 team to determine initial eligibility, with an initial meeting to be held no later than September 9, 2022.<sup>78</sup>

51. The team learned that the Student was undergoing a neuropsychological assessment at [REDACTED] on August 30, 2022 and the team agreed to review the assessment results "in an expeditious manner once they are made available to the team."<sup>79</sup>

52. The team agreed that if the Student were found eligible for an IEP, the team would be obligated to consider "any potential harmful impact of the delay of development and implementation of the IEP."<sup>80</sup>

53. At the August 24, 2022 IEP meeting, the team gave the Parents the Notice and Consent for an Assessment form (Consent) to sign. The Consent detailed the assessments that would be performed, and noted the Parents needed to sign it to show they consented to the assessments. The Student's mother returned the signed form on September 6, 2022.

#### *The 2022 [REDACTED] Assessments*

54. On August 30, 2022, [REDACTED] Psy.D., a Post-Doctoral Fellow at [REDACTED] [REDACTED] overseen by [REDACTED] Psy.D., Licensed Psychologist, administered neuropsychological testing to the Student, including the WISC-5; the Weschler Individual Achievement Test, Fourth Edition (WIAT4), which tested his academic achievement; the Gray Oral Reading Test, Fifth Edition, Form A (GORT-5), which assessed the Student's

---

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

comprehension, fluency, accuracy, and reading rate; the VMI; and two subtests of the ChAMP, Lists and Objects.<sup>81</sup>

55. On the WISC-5, the Student scored in the “average” range in Verbal Comprehension, and Visual Spatial. He scored in the “low average” range in Fluid Reasoning, Processing Speed, Full Scale IQ, and General Ability Index (GAI). He scored in the “very low” range for Working Memory. The Student’s Cognitive Proficiency Index (CPI), which is comprised of his scores on working memory and processing speed tasks, and evaluates the proficiency with which he processes certain types of cognitive information, was in the “very low” range and significantly lower than his FSQ and GAI<sup>82</sup>:

Index/Subtest	Scaled/Standard Score	Percentile	Classification
<b>Verbal Comprehension</b>	<b>92</b>	<b>30</b>	<b>Average</b>
Similarities	8	25	Average
Vocabulary	9	37	Average
<b>Visual Spatial</b>	<b>102</b>	<b>55</b>	<b>Average</b>
Block Design	10	50	Average
Visual Puzzles	11	63	Average
<b>Fluid Reasoning</b>	<b>82</b>	<b>12</b>	<b>Low Average</b>
Matrix Reasoning	5	5	Very Low
Figure Weights	9	37	Average
<b>Working Memory</b>	<b>76</b>	<b>5</b>	<b>Very Low</b>
Digit Span	6	9	Low Average
Picture Span	6	9	Low Average
<b>Processing Speed</b>	<b>80</b>	<b>9</b>	<b>Low Average</b>
Coding	7	16	Low Average
Symbol Search	6	9	Low Average
<b>Full Scale IQ</b>	<b>83</b>	<b>13</b>	<b>Low Average</b>
<b>Cognitive Proficiency Index</b>	<b>75</b>	<b>5</b>	<b>Very Low</b>
<b>General Ability Index</b>	<b>87</b>	<b>19</b>	<b>Low Average</b>

56. On the WIAT4, the Student scored in the “low average” range for Reading, Decoding, Dyslexia Index, and Mathematics, and all the subtests, except for the Phonemic

<sup>81</sup> Parents’ Ex. 1; BCPS Ex. 13.

<sup>82</sup> *Id.*

Proficiency subtest under the Dyslexia section where he scored in the “average” range and the Spelling section where he scored in the “very low” range. His grade equivalency scores ranged from a low of 2.1 in Spelling to a high of 5.6 in Phonemic Proficiency<sup>83</sup>:

<b>Composite/Subtest</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>Grade Equivalent</b>	<b>Classification</b>
<b>Reading</b>	<b>83</b>	<b>13</b>	-	<b>Low Average</b>
Word Reading	87	19	3.0	Low Average
Reading Comprehension	83	13	2.7	Low Average
<b>Decoding</b>	<b>86</b>	<b>18</b>	-	<b>Low Average</b>
Pseudoword Decoding	89	23	2.7	Low Average
Word Reading	87	19	3.0	Low Average
<b>Dyslexia Index</b>				
Word Reading	87	19	3.0	Low Average
Phonemic Proficiency	105	63	5.6	Average
<b>Spelling</b>	<b>77</b>	<b>6</b>	<b>2.1</b>	<b>Very Low</b>
<b>Mathematics</b>	<b>83</b>	<b>13</b>	-	<b>Low Average</b>
Numerical Operations	87	19	3.1	Low Average
Math Problem Solving	83	13	2.7	Low Average

57. On the GORT-5, the Student’s overall Oral Reading Composite was in the “poor” range. On the subtests, he scored in the “below average” range for rate and comprehension and in the “poor” range in accuracy and fluency. The Student’s grade equivalency scores were 1.7 in accuracy, 2.0 in fluency, 2.2 in comprehension, and 2.4 in rate<sup>84</sup>:

<b>Subtest</b>	<b>Scaled/Standard Score</b>	<b>Percentile</b>	<b>Grade Equivalent</b>	<b>Classification</b>
<b>Oral Reading Composite</b>	<b>Unknown<sup>85</sup></b>	<b>5</b>	-	<b>Poor</b>
Rate	6	26	2.4	Below Average
Accuracy	5	5	1.7	Poor
Fluency	5	5	2.0	Poor
Comprehension	6	9	2.2	Below Average

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> The test administrator recorded this score as “11.” Dr. ██████ testified that this number cannot be the standard score because the oral reading composite should have a score with a mean of one hundred and a standard deviation of ten to fifteen, depending on the assessment. She believes this is either a raw score or a score that was calculated from adding the two subtest scaled scores, but it is not a possible standard score for this test. (Test., ██████ Tr., pp. 875-876).



58. On the VMI, the Student scored in the “average” range.<sup>86</sup>

59. On the ChAMP, he scored in the “low average” range on the Lists subtest and in the “average” range on the Objects subtest.<sup>87</sup>

60. During testing, the Student was “very distracted and impulsive,” frequently “zoned out” and required prompts to reengage with tasks, needed directions repeated, and answered questions very quickly which led to careless errors. When faced with academic tasks, the Student became very “frustrated and anxious” and would put his head on the table or refuse to complete tasks. On reading and writing tasks, he cried and said that “learning is hard for [me].”<sup>88</sup> The “very low” score in working memory is not a true measure of the Student’s ability; it resulted from his inattention during testing.<sup>89</sup>

61. Based on the results, the Student’s testing behaviors, parent and teacher reports, the assessor provided medical diagnoses of Specific Learning Disorder (SLD) with impairment in reading (accuracy, fluency, rate, and comprehension) and SLD with impairment in writing. The assessor determined that the Student met the DSM-5<sup>90</sup> criteria for SLDs in reading and writing because the Student’s skills in these areas “are below what would be expected considering the person’s age, intelligence and education.”<sup>91</sup>

62. The Student’s mother also filled out four rating scales: the BRIEF2, the BASC-3, the PBRS, and the ABAS3. The results were very similar to the results from the rating scales she had filled out in 2019. On the BASC-3, the Student’s mother indicated that the Student “often”

---

<sup>86</sup> Parents’ Ex. 1; BCPS Ex. 13.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Test., [REDACTED] Tr, p. 1057.

<sup>90</sup> DSM-5 stands for Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.

<sup>91</sup> Parents’ Ex. 1; BCPS Ex. 13.

has a short attention span and is easily distracted, “sometimes” acts without thinking, interrupts others when they are speaking, has poor self-control, and is unable to slow down.<sup>92</sup>

63. In addition, the Student’s fourth grade teacher filled out a rating scale for the BASC-3. He reported concerns similar to those of the Student’s mother, including that the Student “never” pays attention or listens to directions, “almost always” is easily distracted, has a short attention span, and makes careless mistakes.<sup>93</sup>

64. Based on this information, the assessor concluded that the Student continued to meet the criteria for a diagnosis of ADHD, Combined Presentation.<sup>94</sup>

65. On the BASC-3, the Student’s teacher also reported that the Student is “often” fearful, worries, is easily stressed and nervous, “almost always” makes comments about being nervous during academic tests, and “sometimes” appears tense.<sup>95</sup>

66. The assessor considered this information, along with the Parents’ advisements during the initial consultation that the Student had been a victim of bullying, and the fact that the Student appeared anxious during testing. The assessor concluded that given the “frequency, amount of anxiety symptoms, and level of distress” the Student experiences while performing academically and socially, the Student met the criteria for a diagnosis of Unspecified Anxiety Disorder.<sup>96</sup>

67. The resulting report (2022 [REDACTED] Report) included many recommendations, including:

- allowing extra time on in-class reading assignments and tests
- frequent monitoring of the Student to ensure he understands the assignment and stays on task

---

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

- taking exams in a private location to minimize distractions
- use of preferential seating
- use of frequent breaks
- shorten certain assignments
- access to a reader for tests
- building sight word vocabulary through repeated exposure and frequent reading
- flashcards for common words
- use of pre-reading strategies and review of discussion questions before reading a passage
- identify and discuss difficult words and concepts when reading aloud
- establish the “who, what, where, when and why” from the beginning when reading
- teach the Student to “chunk” his work into smaller components that can be finished within a specific time frame
- make assignments clear and provide written instructions as well as oral instructions
- use books on tape so he can follow along and build his reading skills
- use reading software and technology to help with reading accuracy and fluency
- allow access to a scribe and assistive technology devices for all assignments and tests
- keep a log of commonly misspelled words
- grade on content separately from spelling, punctuation, and grammar
- shorten written assignments
- review errors in writing assignments with the Student so he can learn from his mistakes
- allow the Student to use a calculator for math calculations
- present material in small group or direct instruction as much as possible and in both visual and auditory modalities
- create flipcharts for multi-step math problems
- encourage his strengths and abilities
- provide therapy to enhance his coping skills, reduce his emotional/attentional challenges, and improve his frustration tolerance and executive functioning skills.<sup>97</sup>

***The BCPS Educational Assessment***

68. On September 23, 2022, at [REDACTED] [REDACTED] [REDACTED] administered an educational assessment to the Student, the Woodcock Johnson IV Tests of Academic Achievement Form A (WJIV).<sup>98</sup>

---

<sup>97</sup> *Id.*

<sup>98</sup> BCPS Ex. 12.

69. The Student's results are as follows<sup>99</sup>:

<b>Standard Battery Tests</b>	<b>Standard Score</b>	<b>WJ-IV Classification</b>	<b>Relative Proficiency Score</b>	<b>Instructional Implications</b>	<b>Grade Equivalent</b>
<b>Broad Reading (Test 1, 4, 9)</b>	68	Very Low	5/90	Extremely Difficult	2.0
<b>Basic Reading (Test 1, 7)</b>	78	Low	29/90	Very Difficult	2.3
<b>Reading Fluency (Test 8, 9)</b>	73	Low	6/90	Extremely Difficult	2.0
Test 1: Letter-Word Identification	75	Low	12/90	Extremely Difficult	2.3
Test 4: Passage Comprehension	74	Low	30/90	Very Difficult	2.1
Test 7: Word Attack	83	Low Average	54/90	Very Difficult	2.3
Test 8: Oral Reading	87	Low Average	63/90	Very Difficult	2.9
Test 9: Sentence Reading Fluency	69	Very Low	0/90	Nearly Impossible	1.8
<b>Broad Written Language (test 3, 6, 11)</b>	60	Very Low	10/90	Extremely Difficult	1.5
<b>Written Expression (Test 6, 11)</b>	63	Very Low	19/90	Extremely Difficult	1.6
Test 3: Spelling	63	Very Low	3/90	Extremely Difficult	1.4
Test 6: Writing Samples	70	Low	15/90	Extremely Difficult	1.6
Test 11: Sentence Writing Fluency	64	Very Low	23/90	Extremely Difficult	1.6
<b>Broad Math (Test 2, 5, 10)</b>	75	Low	28/90	Very Difficult	2.8
<b>Math Calculation Skills (Test 5, 10)</b>	73	Low	14/90	Extremely Difficult	2.5
Test 2: Applied Problems	89	Low Average	68/90	Difficult	3.6
Test 5: Calculation	76	Low	23/90	Extremely Difficult	2.7
Test 10: Math Facts Fluency	75	Low	9/90	Extremely Difficult	2.3

---

<sup>99</sup> *Id.*

70. During testing, the Student was cooperative and careful when he was doing reading and math tasks but less cooperative with writing tasks, often refusing to complete tasks within the writing samples test, even with prompting and encouragement. He also gave up easily on items where he did not immediately know the answer.<sup>100</sup>

71. On the Sentence Reading Fluency test, a timed three minute test, the Student was asked to read simple questions, silently and quickly, decide if the statement is true or false and then circle “Yes” or “No.” The Student read through the sentences out loud and slowly and often talked through the answer before circling his final response. He also offered commentary on the items. For example, for a sentence such as “The milk is always blue,” the Student would comment, saying things like “This is a silly question,” and “Who made this test?” This negatively impacted his overall fluency because he ultimately did not answer a very high number of sentences correctly because he was so conversational. Of the twenty-six items he attempted, he correctly answered twenty-four.<sup>101</sup>

72. Based on these results, Ms. [REDACTED] recommended the following:

- that the Student keep a list of commonly misspelled words at his desk as a reference when he is writing
- keep a personal word list of subject specific words or “high frequency grade appropriate words” to reference while writing
- get opportunities to practice reading the words in isolation and within text
- be allowed to use a sentence starter when responding to writing prompts
- be allowed to use a word processor with spell-checking software to allow him to focus on content instead of spelling
- be taught how to self-identify unfamiliar words and make those words part of a list of words to be learned with chances to practice the words

---

<sup>100</sup> *Id.*

<sup>101</sup> BCPS Ex. 12; Test, [REDACTED] Tr., pp. 692-693.

- be provided with a graphic organizer when reading grade level text to help him answer “who, what, where, when, how, and why” questions about the passage
- have teachers chunk reading passages into smaller parts and check for understanding after each part, including asking the Student to paraphrase what he has read to check for comprehension, and
- be allowed to use a calculator for math so he can focus on processes rather than calculation.<sup>102</sup>

***The BCPS Psychological Assessment***

73. On September 23, and October 6, 2022, Dr. [REDACTED] observed the Student at [REDACTED] in his [REDACTED] studies and English Language Arts classes for approximately thirty minutes each, along with a brief period at recess, and then administered additional tests to help determine the Student’s eligibility for special education services.<sup>103</sup>

74. In his [REDACTED] studies class, the Student sat in the back, ate a snack rather than following the [REDACTED] instructions to get a book and a highlighter, doodled on his worksheet when the [REDACTED] discussed the three parts of [REDACTED] had to be individually directed by the [REDACTED] to start an assigned task, had to have the directions for the task repeated, and highlighted only one word out of the twenty-six that were in the text that contained a particular [REDACTED] word part and that was only with assistance from the [REDACTED]<sup>104</sup>

75. During recess, the Student pitched during a kickball game. During the game, he played well with his peers, showed good sportsmanship, and enjoyed the game.<sup>105</sup>

76. During his English Language Arts class, the class worked on answering question prompts in complete sentences and then using those sentences to construct a paragraph, after watching a brief video about making a glass window. During the video, the Student worked on a

---

<sup>102</sup> BCPS Ex. 12.

<sup>103</sup> BCPS Ex. 10.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

drawing of Spiderman rather than watching the video. When Dr. █████ prompted the Student to answer two of the questions from the video, he did so but did not use complete sentences and then refused to write anymore.<sup>106</sup>

77. Dr. █████ administered supplementary cognitive tests from the WISC-5: Picture Concepts, Naming Speed Literacy, Naming Speed Quantity, Immediate Symbol Translation, and Delayed Symbol Translation; supplementary tests from the WIAT-4: Orthographic Fluency, Orthographic Choice, and Listening Comprehension; and ten subtests from the Feifer Assessment of Reading (FAR) in order to assess the Student's phonological development, orthographical processing, decoding skills, reading fluency, and comprehension.<sup>107</sup>

78. The Student scored in the "low average" to "average" range on the WISC-V subtests; his inattention and lack of motivation negatively impacted his scores in this area.<sup>108</sup>

79. On the Picture Concepts subtest, the Student had to select pictures of objects from two or three different rows that shared a common characteristic; his scores showed an ability to see patterns.<sup>109</sup>

80. On the Naming Speed Literacy and Naming Speed Quantity subtests, which measure processing speed which usually relates to fluency, the Student was required to name pictures, or name letters and numbers or name the number of like boxes within a square, all as quickly as he could. The Student performed in the "average" range on these oral tests.<sup>110</sup>

81. Dr. █████ administered the Immediate Symbol Translation and Delayed Symbol Translation subtests to measure the Student's visual-verbal associative memory which combines

---

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

“multiple areas of memory, working memory, and also long-term” and delayed memory.<sup>111</sup> The Student scored in the “average” range on these additional memory tasks, consistent with how he performed on the 2019 [REDACTED] assessment.<sup>112</sup>

82. The Student’s scores on the FAR are as follows<sup>113</sup>:

Subtest/Index	Standard Score	Qualitative Description
<b>Phonological Index</b>		
Phonemic Awareness	118	Above Average
Nonsense Word Decoding	84	Below Average
Isolated Word Reading Fluency	61	Extremely Low
Oral Reading Fluency	74	Low
<b>Fluency Index</b>	<b>83</b>	<b>Below Average</b>
Rapid Automatic Naming	93	Average
Irregular Word Reading Fluency	71	Low
Orthographical Processing	82	Below Average
<b>Comprehension Index</b>		
Semantic Concepts	105	Average
Silent Reading: Comprehension	92	Average
Silent Reading Fluency-Rate	90	Average

83. The Student’s scores on the WIAT-4 are as follows<sup>114</sup>:

WIAT-4 Subtest	Standard Score	Classification
Orthographical Fluency	79	Low
Orthographic Choice	71	Low
Listening Comprehension	97	Average

84. During testing, the Student was more engaged with cognitive tasks while his attention and motivation waned “dramatically” during tests that obviously involved reading.<sup>115</sup>

<sup>111</sup> Test., [REDACTED] Tr. p. 925.

<sup>112</sup> BCPS Ex. 10; Test., [REDACTED] Tr., p. 924.

<sup>113</sup> BCPS Ex. 10.

<sup>114</sup> *Id.*

<sup>115</sup> BCPS Ex. 10; Test., [REDACTED] Tr., p. 1108.



He also gave up easily when he believed he could not do certain tasks, although he was able to do some of the tasks he thought he could not do, albeit more slowly and with more mistakes than his peers.<sup>116</sup>

85. Based on these results, Dr. ██████ recommended that the Student receive structured literacy interventions that targeted sight word/irregular word recognition skills to increase his automaticity in word reading and fluency; the use of strategies to motivate and engage him; and seating that limits distractions and increases access to instructional materials and proximity to teachers for assistance and redirection.<sup>117</sup>

### ***The BCPS Observation***

86. Ms. ██████ observed the Student at ██████ on October 3, 2022. She planned to observe the Student in his math class from 2:00 p.m. to 3:00 p.m. and then in his English Language Arts class from 3:00 p.m. to 4:00 p.m. However, the Student called home to be picked up early at 3:00 p.m., as he frequently did, so she was only able to observe the Student in his math class.<sup>118</sup>

87. The Student joined the math class at 2:24 p.m., approximately ten minutes after the rest of the student had come into the class, and went directly to his seat at the back of the room. The students were given a sheet with two-digit by two-digit multiplication problems on it and were given ten minutes to solve as many of the problems as they could. The Student attempted to solve the first problem, but quickly gave up and worked on a drawing for the rest of the ten minutes instead. The teacher did not redirect the Student at any time during the ten minutes.<sup>119</sup>

---

<sup>116</sup> Test., ██████ Tr., p. 1109.

<sup>117</sup> BCPS Ex. 10.

<sup>118</sup> BCPS Ex. 11.

<sup>119</sup> *Id.*

88. The class then moved on to working in a workbook. The teacher modeled an example on the board of how  $15 = 3 \times 5$  is the same as  $15/3 = 5$ . The Student paid attention for approximately two minutes, began to copy the problem in his workbook for about three minutes, and was then distracted by a classroom disruption, at which time he went back to drawing.<sup>120</sup>

89. As the teacher continued to model problems on the board, the Student paid attention to the instruction but did not copy the problems in his workbook, although he did orally answer a skip counting question correctly. Ms. [REDACTED] prompted the Student twice to copy the problems in his workbook but he politely refused both times.<sup>121</sup>

90. The classroom was chaotic, with several students engaging in off-task behaviors, such as laying on the floor, standing on their desks, and hopping on one foot. The Student did not engage in any disruptive behaviors.<sup>122</sup>

91. At no point during the class did the teacher redirect the Student to either start or stay on task.<sup>123</sup>

92. As a result of her observations, Ms. [REDACTED] recommended that the Student:

- be given preferential seating at the front of the class to reduce distractions
- be provided with modeling, checks for understanding and frequent/immediate feedback before independent work to ensure he understands the key concepts/knowledge necessary to engage on the task
- be provided with strategies to initiate and sustain attention and verbal/non-verbal praise or earned rewards for prolonged task engagement
- be provided with visual reminders, manipulatives, and/or process charts of key content for reference during independent work, and

---

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

- be given clear task expectations and accountability measures to maximize engagement and work production.<sup>124</sup>

### ***The October 20, 2022 Eligibility Meeting***

93. The IEP team met on October 20, 2022 to review all of the assessments and other information and to determine whether the Student was eligible as a student with a disability under the IDEA for special education services.

94. BCPS counsel reached out to the Student's mother on October 10, 2022 via email to set a meeting to "review the ordered assessments" and offered October 19<sup>th</sup> or October 21<sup>st</sup> as possible dates for the virtual meeting. The email also referenced the need to return the Consent that the team needed to obtain records from the [REDACTED] and [REDACTED] and finalize their reports.<sup>125</sup>

95. The Student's mother responded and indicated the only days the Parents were not available for a meeting were from October 17<sup>th</sup> through the 19<sup>th</sup> due to the Jewish holidays. She also indicated that October 21<sup>st</sup> should work for the assessments.<sup>126</sup>

96. On October 11, 2022, BCPS counsel emailed to ask whether a time on the 20<sup>th</sup> or 21<sup>st</sup> was preferred, to which the Student's mother responded, "...after 10 AM works best."<sup>127</sup>

97. In a telephone conversation on October 12, 2022, the Student's mother indicated the October 20, 2022 would work for the meeting.<sup>128</sup>

---

<sup>124</sup> *Id.*

<sup>125</sup> BCPS Ex. 27.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

98. On October 13, 2022, the Student's mother emailed BCPS counsel and indicated that neither of the BCPS' proposed dates would work for the meeting and indicated the Parents were available on November 8, 9, or 10, 2022 instead.<sup>129</sup>

99. On Saturday, October 15, 2022, BCPS counsel sent an email to the Student's mother with a Notice of Invitation for a virtual IEP meeting to take place on October 20, 2022 at 9:00 a.m.; counsel also attached the documents the team planned to review at the meeting.<sup>130</sup>

100. From sunset on October 16, 2022 through the evening of Tuesday, October 18, 2022 were the Jewish holidays of Shemini Atzeret and Simchat Torah. The Parents, who are observant Jews, are prohibited from working during this time and do not check email. As a result, the Student's mother did not see the email until October 19, 2022 when she and her family were traveling home from where they spent the holiday. The Student's mother emailed counsel at 10:30 a.m. on October 19, 2022 and indicated the Parents were not available for the meeting on the following day because her husband would be in New Jersey for work. She requested that the meeting be postponed.<sup>131</sup>

101. At 9:35 p.m. on October 19, 2022, the Student's mother, who has ongoing health problems of which the BCPS is aware, emailed counsel again stating that she was experiencing a medical emergency, needed to see the doctor first thing the following morning and asking again that the meeting be postponed.<sup>132</sup>

102. The BCPS did not postpone the meeting and the Parents did not attend.

103. At the meeting, the IEP team considered all of the available data and information, including the 2019 and 2022 [REDACTED] Reports, the report cards and PLPs from the

---

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*, see also BCPS Ex. 2.

<sup>131</sup> BCPS Ex. 27.

<sup>132</sup> *Id.*

██████████ the standardized testing results from ██████████ in November 2021, information provided by the Parents at various meetings and in the Due Process Complaint, Ms. ██████████ academic assessment, Ms. ██████████ classroom observations, and Dr. ██████████ test results and observations.<sup>133</sup>

104. The team discussed Dr. ██████████ test results showing the Student’s cognitive processes were in the “average” range, which were consistent with the results from the 2019 ██████████ Report. The team also discussed the unusual discrepancies between the 2019 and 2022 ██████████ cognitive results. It is “extremely rare” for tests to show such a “significant drop in performance on working memory skills and a moderate drop in processing speed.” The team considered Dr. ██████████ opinion that the extensive drop in scores between the two were likely not a true measure of his ability but rather a result of inattention stemming from his ADHD.<sup>134</sup>

105. The team also informally discussed the factors on the SLD eligibility worksheet and determined that an educational SLD could be ruled out because test results showed that he did not have a processing deficit in cognition,<sup>135</sup> one of the requirements for a Student to be classified as having a SLD under the IDEA in Maryland.<sup>136</sup>

106. The team did not complete the report required when a student is suspected of having a SLD.

107. The team also concluded, based upon all of the available data, that the Student had deficiencies in reading fluency but not specifically in reading comprehension. The team determined that his low reading comprehension scores resulted from his difficulties with

---

<sup>133</sup> See, e.g., Test., ██████████ Tr., p. 375.

<sup>134</sup> BCPS Ex. 10; see also Test. ██████████ Tr., p. 1055-1057.

<sup>135</sup> Test., ██████████ Tr., pp. 944-945.

<sup>136</sup> See COMAR 13A05.01.03B(73).

decoding, accuracy, and rate. Fluency is how quickly a student can decode words and if a student's accuracy rate with decoding falls below ninety percent, his comprehension will be adversely impacted because he has not correctly read all of the words.<sup>137</sup> In addition, the team noted that low scores on Passage Comprehension on the WJIV were due to the fact that the Student would not put forth effort on a task if he believed the task was something he could not do.<sup>138</sup>

108. At the end of the meeting, the BCPS found the Student eligible as a student with a disability under the IDEA under the disability category of Other Health Impairment.<sup>139</sup>

109. On November 2, 2022, the team created a draft IEP.<sup>140</sup>

110. The team first determined the Student's Present Levels of Ability. They reviewed the Student's performance on each of the many assessments they possessed and determined his areas of strength and need from these assessments.<sup>141</sup> The Present Levels of Ability included an estimate of the Student's current instructional grade level performance; however, the team did not have curriculum-based data and so incorporated the grade equivalency information from the various assessments, despite the fact that it did not reflect that the Student has skills are commensurate with his current grade level.<sup>142</sup>

111. The team then used the Present Levels of Ability data to determine which specific areas were adversely impacted by the Student's disability and whether supports were needed in those areas.<sup>143</sup>

---

<sup>137</sup> Test., ██████ Tr., p. 956; *see also* Test. ██████ Tr., p. 763; Test. ██████ Tr., pp. 604-605.

<sup>138</sup> Test. ██████ Tr., p. 813; BCPS Ex. 12.

<sup>139</sup> Jt. Stip. #3.

<sup>140</sup> BCPS Ex. 9.

<sup>141</sup> Test. ██████ Tr., p. 829.

<sup>142</sup> Test., ██████ Tr. p. 953.

<sup>143</sup> Test. ██████ Tr., p. 472.

112. The team next identified the supports and accommodations the Student required in his IEP, which they concluded would need to be available to him across the entire curriculum. In doing so, they considered the supports he had received at the [REDACTED]. The supports in the draft IEP included:

- monitoring independent work throughout settings
- preferential seating to maximize exposure to the teacher and minimize distractions
- writing supports such as allowing the Student to use a word processor with spell checking software so he can focus on content instead of spelling
- allowing him to use a graphic organizer with sentence starters when responding to writing prompts
- making a list of words the Student commonly misspells that he can keep at his desk as reference when writing
- chunking reading passages into smaller parts with frequent discreet checks for understanding after completion of each part
- providing visual organizers and process charts in the class which outline the explicit steps or process being used when learning a particular skill
- extended time on assignments
- tests with directions read aloud and repeated as needed
- frequent reminders to stay on task and remain focused, including on formal tests and assessments
- small group instruction and small group testing to allow the Student to receive more individualized attention during assessments , and
- frequent structured breaks within the classroom.<sup>144</sup>

---

<sup>144</sup> BCPS Ex. 9.

113. From there, the team next drafted goals in five areas in which the Student exhibited deficits in his performance: Math Calculation, Reading Phonics, Written Language Expression, Reading Fluency, and Written Language Mechanics.<sup>145</sup>

114. Finally, the team developed objectives that can be specifically measured for each goal.<sup>146</sup> These objectives are “scaffolded” to work on one prerequisite skill at a time that the student needs to achieve the overall goal.<sup>147</sup>

***The November 10, 2022 IEP Meeting***

115. The IEP team met on November 10, 2022 to review, revise, and finalize the draft IEP created on November 2, 2022.

116. On October 27, 2022, counsel for the BCPS emailed the Student’s mother to advise that the team had met on October 20, 2022 and Counsel attached documents from the meeting and suggested meeting on either November 9<sup>th</sup> or 10<sup>th</sup> to “review and discuss the development of an IEP for [the Student].”<sup>148</sup>

117. On October 31, 2022, the Student’s mother emailed that the Parents were no longer available for the early November dates because they were “juggling ongoing health issues (*omitted for reasons of confidentiality*)” while preparing for the due process hearing. She suggested scheduling the IEP meeting after November 22, 2022, when the hearing was expected to conclude.<sup>149</sup>

118. On November 4, 2022, counsel for the BCPS responded that the meeting would go forward on November 10, 2022 and the team hoped that the Student’s father would be able to

---

<sup>145</sup> *Id.*

<sup>146</sup> Test., ██████ Tr., p. 955.

<sup>147</sup> Test., ██████ Tr., pp. 832-833.

<sup>148</sup> BCPS Ex. 27.

<sup>149</sup> *Id.*



attend. Counsel attached a copy of the draft IEP and “other related materials” for review at the meeting, along with the login information for the virtual meeting.<sup>150</sup>

119. The Parents did not attend the meeting.

120. At the November 10, 2022 IEP meeting, the team had additional discussions about the proposed supports and accommodations, goals, and objectives. As a result of these discussions, the team added additional supports such as allowing the Student to read smaller parts of longer passages with explicit check-in from his teachers. The team also outlined specific strategies to be used to get the Student to initiate work production and prolong engagement and encourage focus and attention. It added social-emotional supports such as specifying that the check-ins from his teachers must be discreet so that the Student’s classmates do not see that it is happening, and having both a special educator and a general educator in the room while the Student was receiving services but without them being identified as such.<sup>151</sup>

121. The team then added service hours to the IEP. Specifically, the team proposed that the Student receive pull-out services with a special educator for thirty minute sessions, five days per week, and push-in services with a general educator and a special educator for thirty minute sessions, three days per week to target the Student’s areas of reading deficit and writing-based skills. To target the Student’s math calculations skills, the team proposed push-in services with a special educator and general educator for thirty minute sessions, five days per week.<sup>152</sup>

122. The team also proposed thirty minutes per week of pull-out direct psychological services provided by the school psychologist. The sessions would allow the Student to work on developing some executive functioning strategies, and work on developing social, emotional, and

---

<sup>150</sup> *Id.*

<sup>151</sup> Test., ██████ Tr., pp. 494-495; 562-563; 635-637; 334.

<sup>152</sup> *Id.*, Tr., pp. 485-486.

behavioral strategies so that he could learn to engage in positive self-talk so he learns how to positively respond to bullying and then reengage in his work.<sup>153</sup>

123. In addition, the team added thirty minutes per month of classroom instruction consult provided by the Student's special educator to his general education teachers to review the Student's progress and offer specific guidance to the Student's general educators about implementing the Student's required supports.<sup>154</sup>

124. The team also included thirty minutes per month of psychological consult services provided by the school psychologist to all of the individuals working with the Student in general, such as the Student's special educator, general educators, Parents, and others who would be interacting with the Student. The purpose of the consultation sessions is to discuss whether or not the skills the Student is working on with the school psychologist are being applied in different settings and situations.<sup>155</sup>

125. The team determined that the IEP could be implemented with the Student participating in a general education classroom for at least eighty percent of the school day. The IEP team concluded that the Student did not require a self-contained special education classroom, a separate public special education school, or a nonpublic special education placement.

126. Finally, the team deferred a decision as to whether the Student would require Extended School Year (ESY) services for the summer of 2023 because they did not have sufficient data to know whether ESY services are necessary for a provision of a FAPE for the Student.<sup>156</sup>

---

<sup>153</sup> Test., [REDACTED] Tr., pp. 964-965; 934; 862-863; Test. [REDACTED] Tr., pp. 423-424.

<sup>154</sup> Test., [REDACTED] Tr., p. 486

<sup>155</sup> Test., [REDACTED] Tr., pp. 964-965.

<sup>156</sup> Test., [REDACTED] pp. 724-725.

127. The Parents enrolled the Student in the [REDACTED] His first day of school was November 28, 2022.

## DISCUSSION

### **AN OVERVIEW OF THE APPLICABLE LAW**

The identification, evaluation, and placement of students in special education are governed by the IDEA.<sup>157</sup> 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.”<sup>158</sup>

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) of the U.S.C. 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.<sup>[159]</sup>

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*,<sup>160</sup> holding that FAPE is satisfied if a school district provides “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.”<sup>161</sup> The Court set out a two-part inquiry to

---

<sup>157</sup> 20 U.S.C. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-417; and COMAR 13A.05.01.

<sup>158</sup> 20 U.S.C. § 1400(d)(1)(A); *see also* Educ. § 8-403.

<sup>159</sup> 20 U.S.C. § 1401(3)(A); *see also* Educ. § 8-401(a)(2); 34 C.F.R. § 300.8; and COMAR 13A.05.01.03B(78).

<sup>160</sup> 458 U.S. 176 (1982).

<sup>161</sup> *Rowley*, 458 U.S. at 201 (footnote omitted).

analyze whether a local education agency satisfied its obligation to provide FAPE: 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.<sup>162</sup>

The *Rowley* Court found, because special education and related services must meet the state's educational standards, that 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.<sup>163</sup>

The Supreme Court recently 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.<sup>164</sup> Consideration of the student's particular circumstances is key to this analysis; the Court emphasized in *Andrew F.* that the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."<sup>165</sup>

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of a 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.<sup>166</sup>

---

<sup>162</sup> *Id.* at 206-07.

<sup>163</sup> *Rowley*, 458 U.S. at 204; 20 U.S.C. § 1401(9).

<sup>164</sup> *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988 (2017).

<sup>165</sup> *Id.* at 1001.

<sup>166</sup> 20 U.S.C. § 1414(d)(3)(A).

Among other things, the IEP depicts a student's current educational performance, explains how the student's disability affects a 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.<sup>167</sup>

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) . . ." <sup>168</sup> If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies and supports to address that behavior.<sup>169</sup> 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.<sup>170</sup> However, a "school district is only required to continue developing IEPs for a disabled child no longer attending its schools when a prior year's IEP for the child is under administrative or judicial review."<sup>171</sup>

---

<sup>167</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

<sup>168</sup> 34 C.F.R. § 300.320(a)(1)(i).

<sup>169</sup> *Id.* § 300.324(a)(2)(i).

<sup>170</sup> *Id.* § 300.324(b)(1).

<sup>171</sup> *M.M. v. Sch. Dist. of Greenville Cty.* 303 F.3d 523, 536 (4th Cir. 2002).

To comply with the IDEA, an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child’s disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations.<sup>172</sup>

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 “some educational benefit,” which construed the level of benefit as “merely . . . ‘more than *de minimis*.’”<sup>173</sup>

The Supreme Court set forth a “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.<sup>174</sup>

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The IDEA contemplates that this fact-intensive exercise will be involve consideration not only of the expertise of school officials, but also by the input of the child’s parents or guardians. Any review of an IEP must include the recognition that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.<sup>175</sup>

---

<sup>172</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(II), (IV), (VI).

<sup>173</sup> *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10<sup>th</sup> Cir. 2015).

<sup>174</sup> *Andrew F.*, 137 S.Ct. at 998-999.

<sup>175</sup> *Id.*

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 disabled 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.”<sup>176</sup>

A focus on the particular student is at the core of the IDEA and so it is unsurprising that the Court concluded that the progress contemplated by the IEP must be appropriate in light of the particular student’s circumstances. The instruction offered must be “*specially designed*” to meet a child’s “*unique needs*” through an “[*i*]ndividualized education program.”<sup>177</sup> 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.<sup>178</sup>

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 *Andrew F.* court instructs that the “absence of a bright-line rule . . . should not be mistaken for

---

<sup>176</sup> *Id.*, at 999 (quoting *Rowley*, 458 U.S. at 179).

<sup>177</sup> *Id.*, at 998-99 (citations omitted; emphasis in original).

<sup>178</sup> *Id.* at 1001 (citation omitted).

‘an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.’”<sup>179</sup> At the same time, the *Andrew F.* court wrote that in determining the extent to which deference should be accorded to educational programming decisions made by public school authorities, “[a] reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.”<sup>180</sup>

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.”<sup>181</sup> Moreover, the IEP must be reasonably calculated to allow him to advance from grade to grade, if that is a “reasonable prospect.”<sup>182</sup>

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.<sup>183</sup> Indeed, mainstreaming children with disabilities with non-disabled peers is generally preferred, if the disabled student can achieve educational benefit in the mainstreamed program.<sup>184</sup> At a minimum, the statute calls for school systems to place children in the “least restrictive environment” consistent with their educational needs.<sup>185</sup> Placing disabled children into regular school programs may not be appropriate for every disabled child, and removal of a

---

<sup>179</sup> *Id.* (quoting *Rowley*, 458 U.S. at 206).

<sup>180</sup> *Id.* at 1002.

<sup>181</sup> *Id.* at 1000.

<sup>182</sup> *Id.*

<sup>183</sup> 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117.

<sup>184</sup> *DeVries v. Fairfax Cty. Sch. Bd.*, 882 F.2d 876, 878-79 (4th Cir. 1989).

<sup>185</sup> 20 U.S.C. § 1412(a)(5)(A).



child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved.

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like the BCPS to offer a continuum of alternative placements that meet the needs of children with disabilities.<sup>186</sup> 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.<sup>187</sup>

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.<sup>188</sup> In such a case, a FAPE might require placement of a child in a nonpublic 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.<sup>189</sup> The issue of reimbursement for unilateral placement was expanded in *Florence County School District Four v. Carter*,<sup>190</sup> where the Court held that placement in a private school not approved by the state is not a bar under the IDEA. 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

---

<sup>186</sup> 34 C.F.R. § 300.115.

<sup>187</sup> *Id.* § 300.115(b); COMAR 13A.05.01.10B(1).

<sup>188</sup> COMAR 13A.05.01.10A(2).

<sup>189</sup> *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985).

<sup>190</sup> 510 U.S. 7 (1993).

(3) overall, equity favors reimbursement.<sup>191</sup> The nonpublic education services need not be provided in the least restrictive environment.<sup>192</sup>

## **BURDEN OF PROOF**

The standard of proof in this case is a preponderance of the evidence.<sup>193</sup> 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.<sup>194</sup> The burden of proof rests on the party seeking relief.<sup>195</sup> The Parents are seeking relief and bear the burden of proof to show that the BCPS’s violation of its Child Find obligation with regard to the Student denied the Student a FAPE for the period beginning March 14, 2022, and ongoing to the present time, and that the Parents’ proposed remedy of private placement of the Student at public expense is the appropriate remedy for this denial.

## **ANALYSIS**

### **I. THE CHILD FIND VIOLATION RESULTED IN A DENIAL OF A FAPE THAT BEGAN ON AUGUST 29, 2022**

#### ***A. The Child Find Violation Resulted in a Denial of a FAPE for the Student***

Prior to the hearing, pursuant to a Motion for Summary Decision, I granted, in part, the Parents’ Motion for Summary Decision determining that the BCPS violated its Child Find obligation with regard to the Student. However, as I noted in my ruling, that does not end the inquiry. It is well settled that if a procedural violation<sup>196</sup> does not interfere with the provision of a FAPE, the violation does not support a finding that a school district failed to provide a

---

<sup>191</sup> See *Id.* at 12-13.

<sup>192</sup> *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F.3d 315, 319 (4th Cir. 2009).

<sup>193</sup> COMAR 28.02.01.21K(1).

<sup>194</sup> *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

<sup>195</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005).

<sup>196</sup> See *T.B., v. Prince George’s County Bd. of Educ.*, 897 F.3d 566, 572 (4th Cir. 2018); see also *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012).

FAPE.<sup>197</sup> Therefore, the Parents must prove that the BCPS' procedural violation resulted in a loss of a FAPE to the Student. A school provides a FAPE by developing an IEP for each eligible child,"<sup>198</sup> as an IEP is the centerpiece of the school's special education and related services delivery system.<sup>199</sup>

The BCPS argued in its closing that it did not deny a FAPE to the Student. The BCPS offered three arguments to support this contention. First, it cited to the case of *T.B. v Prince George's County Board of Education*,<sup>200</sup> where a school district had failed to timely respond to parents' repeated requests for evaluation, resulting in a procedural violation of the IDEA. In that case, a student was belatedly found eligible for special education services under the category of emotional disability due to anxiety and was offered placement in a specialized program. The student never attended the recommended program. The Administrative Law Judge (ALJ) determined that the parents failed to provide any evidence to support a finding that an unaddressed educational disability led to the student's educational difficulties and the courts affirmed. The student in *T.B.* had a history of poor attendance and failure to complete assignments. Both the District Court and the Fourth Circuit affirmed an ALJ's finding that even if the district had promptly provided testing, the student would not have regularly attended school so no "type or amount of special education services would have helped [the student] achieve a FAPE."<sup>201</sup>

The BCPS contended that in this case, as in *T.B.*, it would not have mattered when the BCPS evaluated the Student and provided an appropriate IEP because the Parents never intended

---

<sup>197</sup> See *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir.1990) (no reimbursement for private placement where violation of IDEA notice requirement did not affect development of child's IEP or provision of free appropriate public education).

<sup>198</sup> *J.P. ex rel. Peterson v. Cty. Sch. Bd. of Hanover Cty., Va.*, 516 F.3d 254, 257 (4th Cir. 2008).

<sup>199</sup> *Honig v. Doe*, 484 U.S. 305 (1988).

<sup>200</sup> 897 F.3d 566 (4<sup>th</sup> Cir. 2018).

<sup>201</sup> *Id.*, at 575.

for the Student to attend public schools. In support, the BCPS pointed to the fact that the Parents applied to ██████ and ██████ on the Student's behalf sometime in the winter of 2022. This, it maintained, shows that even if the BCPS had an IEP in place by the start of the 2022-2023 school year, the Parents would have rejected it in favor of private placement.

This is simply not supported by the evidence. The Parents did apply to both ██████ and ██████ at various points between February and May 2022.<sup>202</sup> However, they were simultaneously pursuing an evaluation from the BCPS. Moreover, the Parents knew by May 24, 2022 that neither ██████ nor ██████ could meet the Student's academic needs and were not options for him.<sup>203</sup> They continued to pursue an evaluation from the BCPS, enrolling the Student at ██████ Elementary (██████████ his home school within the BCPS, on June 13, 2022.<sup>204</sup> The Parents then made a second Child Find request after the BCPS inexplicably cancelled an initial IEP meeting scheduled for June 9, 2022. Nothing in the Parents' actions up to this point demonstrate an unwillingness to accept an appropriate IEP and for the Student to attend a public school. In fact, on June 13, 2022, immediately after registering the Student online, the Parents emailed ████████████████████ the IEP Chair at ████████████████████ requesting an IEP team meeting for the Student as soon as possible.<sup>205</sup>

The BCPS also argued that even if the Parents would have accepted an IEP implemented in a public school as opposed to public funding of a nonpublic placement, they have not met their burden of showing that there was an actual loss of educational opportunity as a result. First, the BCPS asserted that the Parents were not concerned about the loss of educational opportunity as they placed the Student at ████████████████████ in March 2021 and kept him there

---

<sup>202</sup> See Parents' Exs. 3 and 6.

<sup>203</sup> *Id.*

<sup>204</sup> Parents' Ex. 4.

<sup>205</sup> *Id.*; Parents' Ex. 9.

through mid-November 2022, despite the fact that ██████████ offered no instructional supports. I find this argument unpersuasive.

Regardless of where the Parents placed the Student prior to requesting an evaluation from the BCPS, the BCPS still had an obligation to timely evaluate the Student and offer him an appropriate IEP.<sup>206</sup> Moreover, the Parents would have had no reason to move the Student from ██████████ before the end of the 2021-2022 school year because the BCPS made no effort to evaluate the Student or offer any viable alternatives. Further, the BCPS still had not evaluated the Student or determined him eligible for an IEP by the beginning of the 2022-2023 school year. The Parents options at that time were to keep him at ██████████ without supports or place him at ██████████ without a guarantee of supports, a true Hobson's choice. While it appears from the BCPS' August 24, 2022 Prior Written Notice that the BCPS offered to refer the Student to the 504 team to see if he were eligible for supports for his ADHD diagnosis, that was not a guarantee that the Student would have supports in place at any definite moment in time. Indeed, the evidence shows that no referral was ever made. In addition, at this point, the Parents understandably had no faith that the BCPS would act expeditiously, as they had made two Child Find referrals earlier in 2022 and the BCPS had taken no action on either until the Parents filed a Due Process Complaint.

Next, the BCPS maintained that the Parents failed to demonstrate an actual loss of educational opportunity because there is no proof of what the Student had been receiving in the way of education from September through mid-November 2022. This is a puzzling argument, especially in light of the fact that the BCPS' own experts testified that there was a definite loss of an educational opportunity in this case. ██████████ an Educational Associate with the BCPS

---

<sup>206</sup> See *Krawietz by Parker v. Galveston Independent School District*, 900 F.3d 673, 677 (5<sup>th</sup> Cir. 2018) (Court rejected school district's argument that parents of student "failed to act with urgency" in pursuing an evaluation and reiterated that the IDEA imposes a Child Find obligation on school districts, not on parents).

Central IEP Team, was accepted as an expert in special and general education, and ██████████ ██████████ a Special Education Liaison with the BCPS, was accepted as an expert in special and general education. Each testified that had the BCPS timely evaluated the Student when the Child Find referral was made in February 2022, he would have been identified as a student with a disability in need of special education and related services and would have started the 2022-2023 school year with an IEP in place.<sup>207</sup> All of the experts agreed that the Student would have been unable to access education in a general education classroom without proper supports and interventions, including specialized instruction. All of the BCPS' experts also agreed that ██████████ provided no supports, interventions, or specialized instruction and that it was clear from observations that the Student was reaping no educational benefit from attending ██████████. The evidence unequivocally shows that had the BCPS timely evaluated the Student, he would have had an IEP in place at the beginning of the 2022-2023 school year at the latest, which would have enabled him to make progress in light of his unique circumstances. In failing to do so, the BCPS denied the Student a FAPE.

***B. There Was No Denial of a FAPE Before June 2022***

The Parents argue that the denial of FAPE began March 14, 2022, thirty days after the Parents' request for an evaluation, and they contend, the deadline for sending out the first Prior Written Notice. This argument is apparently predicated on Ms. ██████████ testimony that the BCPS considers it a best practice to hold an initial meeting within thirty days of a parent's Child Find Referral.<sup>208</sup> I note that this "best practice" is not formalized in either statute or regulations. Applicable regulations provide that, following a referral, the initial evaluation must be conducted

---

<sup>207</sup> Test., ██████████ Tr., pp. 589; Test. ██████████ Tr., 675-676.

<sup>208</sup> Test., ██████████ Tr., p. 595.

within sixty days of receiving parental consent for the evaluation *and* within ninety days of the school system receiving a written referral.<sup>209</sup>

To qualify for special education services a student must both: (1) have a qualifying disability and (2) “by reason thereof, need [ ] special education and related services.”<sup>210</sup> The fact that a student has a disability does not automatically qualify the student for special education services. At the time of the initial referral in February 2022, the Parents provided the BCPS with the neuropsychological testing report from 2019, which diagnosed the Student with ADHD and labeled him “at risk” for developing a SLD. The ADHD diagnosis may have qualified the Student as a student with a disability under the category of OHI.<sup>211</sup> However, in order for the student to be eligible on the basis of an OHI, the condition must result in a need for special education and related services.<sup>212</sup> Dr. [REDACTED] a school psychologist with the BCPS, was accepted as an expert in the areas of educational psychology, psychological assessment, educational assessment, special education, and reading-related learning disabilities. Dr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] offered testimony, which was unchallenged by the Parents, that additional assessments were needed to determine whether the Student was a student with a disability who required special education and related services.<sup>213</sup> The witnesses explained that they reached this conclusion based on the fact that the neuropsychological assessment and diagnosis of ADHD was from three years prior and there was a lack of other assessments or

---

<sup>209</sup> 34 C.F.R. § 300.301(c)(1) (2021); COMAR 13A.05.01.06.

<sup>210</sup> 20 U.S.C. § 1401(3)(A).

<sup>211</sup> 34 C.F.R. 300.8(c); COMAR 13A.05.01.03B(51)(b), (78)(a)(viii)

<sup>212</sup> 34 C.F.R. § 300.8 (c)(9). *See, e.g., G.M. v. Martirano*, 78 IDELR 68 (D. Md. 2021) (finding that because a 9-year-old with dyslexia and ADHD made appropriate progress in general education with redirection, prompting, and repetition, he did not require special education under the IDEA); and *Durbrow v. Cobb County Sch. Dist.*, 72 IDELR 1 (11th Cir. 2018) (noting that because a high schooler's ADHD did not impede his academic performance during his first three years in a magnet program for high-achieving students, his poor performance in 12th grade did not demonstrate a need for special education); *Lisa M. v. Leander Indep. Sch. Dist.*, 74 IDELR 124 (5th Cir. 2019) (concluding that a student needed special education because of his dysgraphia and ADHD); and *Alvin Indep. Sch. Dist. v. A.D.*, 48 IDELR 240 (5th Cir. 2007) (highlighting that a student's passing grades and teachers' testimony established that he didn't need special education despite an ADHD diagnosis).

<sup>213</sup> Test., [REDACTED] Tr., pp. 867-868; Test., [REDACTED] Tr., p. 352; Test., [REDACTED] Tr., p. 673.

information. Therefore, this is not an instance where the BCPS had sufficient information at the initial meeting to make an eligibility determination.

As additional assessments were needed, a review of the process and timelines set forth in the IDEA is instructive. An evaluation is the initial step in the provision of special education and related services to a student with a disability. The IDEA sets forth several procedures that school districts must adhere to ensure a legally compliant evaluation process.<sup>214</sup> A full and individual initial evaluation, in accordance with 34 C.F.R. sections 300.305 and 306, is required before the initial provision of special education and related services to a student with a disability.<sup>215</sup> The purpose of the evaluation is to detect the existence of the student's disability (or disabilities) and the nature and extent of the special education and related services that the student needs.<sup>216</sup> COMAR sets forth deadlines by which an IEP team must complete the initial evaluation of a student suspected to be a student with a disability: within sixty days of receiving parental consent for assessments and within ninety days of receiving a written referral.<sup>217</sup>

Pursuant to these timelines, the BCPS should have completed an initial evaluation of the Student no later than May 14, 2022 at the latest, ninety days after the Parents first requested that he be evaluated. The BCPS would have had thirty days from the completion of the evaluation to convene a meeting of the IEP team to develop an initial IEP.<sup>218</sup> It then would have been obligated to make special education and related services available to the Student in accordance with his IEP as soon as possible following the development of the IEP.<sup>219</sup> Thus, the earliest the BCPS would have had an IEP development meeting was June 14, 2022. This is the earliest date

---

<sup>214</sup> See 34 C.F.R. §§ 300.304 – 300.311.

<sup>215</sup> 34 C.F.R. § 300.301(a).

<sup>216</sup> 34 C.F.R. § 330.15.

<sup>217</sup> COMAR 13A.05.01.06A.

<sup>218</sup> 34 C.F.R. § 300.323(c)(1).

<sup>219</sup> *Id.*, (c)(2).



on which a FAPE could have been denied in the instant case. I therefore find that any denial of a FAPE could not have begun before June 14, 2022.

***C. There Was No Denial of a FAPE for the Summer 2022 Because the Student Was Not Eligible for ESY Services***

The next inquiry, given the fact that the BCPS 2021-2022 school year ended on June 15, 2022, is whether there was a denial of a FAPE before the first day of school for the 2022-2023 school year, August 29, 2022. The Parents contended that there was, as the Student received no BCPS-provided services at all over the summer. The BCPS maintained that there was not, because the IEP team would not have had sufficient data to determine whether the Student was eligible for, and required, ESY services in order to receive a FAPE.

ESY services are defined as:

[T]he individualized extension of specific special education and related services that:

- a) Are provided to a student with a disability beyond the normal school year of the public agency or nonpublic school the student attends, in accordance with the student's IEP;
- b) Are provided at no cost to the parents of the student; and
- c) Meet the standards of the Department.<sup>220</sup>

ESY services are not automatically provided to every student with an IEP, only when they are necessary to the provision of a FAPE. The Fourth Circuit has adopted the “significantly jeopardized” standard for determining when ESY services are necessary to a FAPE.<sup>221</sup> This standard requires an IEP team to determine whether ESY services are needed to prevent the gains made by the student during the school year from being “significantly jeopardized,” which the Court defined as a showing that the alleged “regression will substantially thwart the goal of ‘meaningful progress.’”<sup>222</sup> The Court determined that this means that ESY services would

---

<sup>220</sup> COMAR 13A.05.01.03B(26); *see also* 34 C.F.R. § 300.106(b).

<sup>221</sup> *MM v. School Dist. of Greenville County*, 303 F.3d 523 (4<sup>th</sup> Cir. 2002).

<sup>222</sup> *Id.* at 538.

prevent either significant regression of skills or that lack of ESY services would have a detrimental effect on a student's progress toward a goal. The Court explained that the mere fact of possible or even likely regression is not sufficient to warrant ESY services, because all students "may regress to some extent during lengthy breaks from school."<sup>223</sup> As the Court had explained in an earlier decision, "the determination whether services beyond the regular school day are essential for the child to receive any educational benefit is necessarily fact and case specific."<sup>224</sup> Finally, Courts have held that specific types of data are not required before an IEP team can determine whether ESY services are necessary to a FAPE.<sup>225</sup> However, it is clear that the decision must be based on *some* data.

In this case, the Parents contended that the Student clearly needed ESY services, and pointed to the complete loss of progress between March 2020 when he started only intermittently attending virtual learning and September 2020 when he returned to in-person learning for third grade.<sup>226</sup> In support of their position, the Parents presented testimony from two experts, [REDACTED] Psy. D., Training Director of the Psychology Internship Program at [REDACTED] Hospital, accepted as an expert in clinical psychology, and [REDACTED] Learning Specialist, Executive Function Coach, and Educational Consultant with [REDACTED] and a fact witness, [REDACTED] the supervisor of special education services at the [REDACTED]

Neither of the Parents' experts nor Mrs. [REDACTED] directly addressed whether the Student met the criteria to receive ESY services. Dr. [REDACTED] testified that the Student would have

---

<sup>223</sup> *Id.*, (internal citation omitted).

<sup>224</sup> *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 980 (4th Cir. 1990).

<sup>225</sup> See, e.g., *T.T. v. Jefferson County Board of Education*, 77 IDLER 243 (N.D. Ala. 2020) (finding that an IEP team's reliance on a teacher's observations of a student's functioning after spring break to determine whether the student needed ESY services did not procedurally violate the IDEA or deny the student a FAPE).

<sup>226</sup> Test., [REDACTED] Tr., p. 186.

“benefitted” from services over the summer of 2022 and later clarified that he did not state that the Student “required” services over the summer, only that he would have benefitted from them.<sup>227</sup> He did not specifically address the Student’s history with regression and recoupment. Dr. [REDACTED] seemingly based his opinion on whether summer services would have helped the Student catch up and make progress. However, the fact that ESY services would have allowed the Student to progress with his reading and writing over the summer, is not sufficient to show that ESY services were required for him to receive a FAPE.

[REDACTED] who provided one-on-one tutoring to the Student over the summer of 2022, testified that the Student “needed” one-on-one, research-based intensive support in reading and writing over the summer of 2022.<sup>228</sup> However, I note that Ms. [REDACTED] made her statement in response to a question from the Parents who asked, “Do you agree with Baltimore City that [the Student] did not need any help over the summer to catch up in reading and writing?”<sup>229</sup> Ms. [REDACTED] never explained what data she used to determine that the Student “needed” this support over the summer. She offered no testimony or any data to quantify how much learning loss the Student experienced during regular school breaks, crucial information needed to determine his history of regression and recoupment, the main factor for considering whether ESY services are required in order for him to receive a FAPE. Most importantly, she conceded that she had not done any formal assessments of the Student.<sup>230</sup> And, again, the standard for determining ESY eligibility is not whether services over the summer would have allowed him to make progress. For these reasons, I gave her testimony on this point very little weight.

---

<sup>227</sup> Test., [REDACTED] Tr., p. 81; *see also* Tr., p. 117 (clarifying that he did not testify that the Student required summer learning, only that he would benefit from it.)

<sup>228</sup> Test., [REDACTED] Tr., p. 1128

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*, p. 260.

Finally, Mrs. [REDACTED] indicated that she believed the Student was someone who “needed tutoring over the summer to retain skills.”<sup>231</sup> However, Mrs. [REDACTED] never offered specific testimony to support her statement that the Student “needed” this tutoring. Other than the gap between March 2020 and September 2020 where Mrs. [REDACTED] testified that the Student lost all of the gains he made in second grade,<sup>232</sup> she offered no testimony quantifying the Student’s learning loss during any regular school breaks. In light of the lack of data regarding learning loss during the Student’s time at the [REDACTED] I give Mrs. [REDACTED] testimony on this point no weight.

The BCPS countered that there was insufficient data about the Student’s history of learning loss and recoupment for the IEP team to conclude that the Student required ESY services in order to receive a FAPE. In support of their position, the BCPS presented primarily the testimony of Ms. [REDACTED]. She gave a comprehensive explanation of how IEP teams make the decision as to whether ESY services are needed:

Q: And what is extended school year?

A: So, extended school year is an extension of the regular school year that is provided to students, again, who meet the criteria that's designed to maintain critical, maintain skills. It's given to students to ensure that the benefits they receive from their regular school year aren't significantly jeopardized, that they don't receive those services. So, typically, we look at the first kind of criteria we look at is whether the student has critical life skills identified on their IEP.

Q: What's an example of a critical life skill?

A: So, it's, again, really student dependent. So, typically, when you think of, you know, you might think of, like, a self-help skill. So, some of our students with significant cognitive deficits, but a critical life skill can be reading or math depending on the level the student's performing at. So, that's, again, it's a really individualized determination made by an IEP team.

---

<sup>231</sup> Test., [REDACTED] Tr., p. 205.

<sup>232</sup> *Id.*, Tr. p. 186.

So, if you do determine that a student has a critical life skill, you then have to look at whether or not the student exhibits regression of that skill without recoupment over a normal school break. So, in other words, over a break like winter break or spring break, you do pre and post testing to see where the student was before the break and then where they were after the break. So, if we see a significant drop in those scores that they then don't get back in a reasonable time, then that would suggest that a student may qualify. We also look to see if a student has significant interfering behaviors, if the nature and severity of the student's disability would warrant ESY, and whether or not there were special considerations that would require ESY. So, the team can either make a decision if the student is eligible for ESY, is not eligible for ESY, or in some cases the team may say there's not enough data to make that determination and the team is going to defer that decision until there is available data.<sup>233</sup>

Ms. [REDACTED] spoke specifically to the data available at the November 10, 2022 IEP meeting. But she explained that she believed the team would have made the same decision in June 2022 had the BCPS timely evaluated and developed an IEP for the Student.<sup>234</sup> Ms.

[REDACTED] explained that at the November 10, 2022 meeting, the team opted to defer a decision on ESY services for the summer of 2023 because,

[W]e felt that we didn't have enough specific data around like the, the issues regarding regression and recoupment. We hadn't had time to actually implement the student's IEP to see what his progress was like, so we wanted time to implement the IEP and collect the data so that we could come back and make a database decision regarding extended school year.<sup>235</sup>

Ms. [REDACTED] stated that the team considered the data and documentation from the [REDACTED] and [REDACTED] but there was no data showing pre- and post-test data surrounding a school break, nor would there have been any data regarding his response to the implementation of the IEP.<sup>236</sup> Therefore, that information was of no use to the team in making a determination about ESY services.

---

<sup>233</sup> Test., [REDACTED] Tr., pp. 724-725.

<sup>234</sup> *Id.*, Tr., p. 726 (“Q: And in your professional opinion, do you believe the team would have been in the same position in June of 2022 had an IEP been available then around an ESY decision? A: “I do. Even noting all the data available now, I believe that would have been the same decision.”).

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*, Tr., p. 801.

Ms. [REDACTED] also explained why the Student's loss of learning between second and third grade was not sufficient to demonstrate a need for ESY services. She explained that there were more factors involved than a simple break from school:

[T]here was the issue of the attendance around the COVID year, and then there was the issue of him being removed from the general education studies in the third-grade year. And then the issue of him just basically sitting and auditing classes in the fourth and fifth-grade years. So we didn't feel like we had specific academic data about the loss of educational benefit from implementation of the IEP, which is really the standard with ESY.<sup>237</sup>

As she further explained,

ESY is simply for maintenance of skills. It's not designed to increase skills at all. That is not the point of ESY. It's just for students who lose the skills that they had already gained during the regular school year, and that need that specific support on just their IEP goals to maintain those skills so that they don't come back in the fall, like, way behind, and now it takes them all year to catch back up.<sup>238</sup>

I gave Ms. [REDACTED] testimony on this point considerable weight. She has seventeen years' experience as a special educator with the BCPS and was accepted as an expert in both special and general education.<sup>239</sup> At the present time, she works as a special education liaison where she works with schools to ensure compliance with the IDEA, provides professional development to teachers, conducts classroom observations, and provides support and recommendations to school principals on the best ways to use available resources to support students with disabilities.<sup>240</sup> Her testimony about the standards the BCPS applied to determine whether the Student needed ESY services is in conformity with the applicable case law. She cogently and thoroughly explained what ESY services are, what data is needed for the IEP team to make a determination about whether ESY services are necessary to the provision of a FAPE, and exactly why the BCPS determined that the available data about the Student's regression and

---

<sup>237</sup> *Id.*, Tr., p. 802.

<sup>238</sup> *Id.*, Tr., p. 803.

<sup>239</sup> BCPS Ex. 30.

<sup>240</sup> Test., [REDACTED] Tr., pp. 670-671.

recoupment was insufficient to make the determination as of yet. Finally, Ms. [REDACTED] answered all questions in a straightforward and measured way and came across as extremely competent. For those reasons, I found her testimony more persuasive than that of the Parents' witnesses on this point.

The evidence the Parents presented simply failed to show by a preponderance of the evidence that ESY services were required in the summer of 2022 to prevent significant regression.<sup>241</sup> Accordingly, they have not shown that there was a denial of a FAPE during the summer of 2022. For all of these reasons, I find that the denial of a FAPE began on August 29, 2022, the start of the 2022-2023 school year.

## **II. THE APPROPRIATENESS OF THE NOVEMBER 10, 2022 IEP**

The Parents asserted that the denial of a FAPE continues and is ongoing. They base this assertion on the argument that the IEP proposed by the BCPS in November 2022 is not adequate to offer the Student a FAPE. The Parents advanced several arguments in support of their position. First, they indicated that the IEP is procedurally deficient because it denied them an opportunity to “participate in the meetings with respect to the identification, evaluation, and educational placement”<sup>242</sup> of the Student which resulted in the denial of a FAPE. Next, they asserted that the IEP is substantively deficient because the BCPS team did not follow proper procedure when determining whether the Student had a SLD, there are no goals in the IEP relating to reading comprehension, and there are not enough service hours given the Student's extensive needs. Finally, the Parents maintained that the Student requires placement in a nonpublic, special education school given his failure to succeed in a special education classroom

---

<sup>241</sup> *MM v. School Dist. of Greenville County*, 303 F.3d 523 (4<sup>th</sup> Cir. 2002).

<sup>242</sup> 20 U.S.C. § 1415(b); *see also* 34 C.F.R. § 300.322 (setting out parent participation regulations for IEP development).

in a general education school in the second and third grades when he was at the [REDACTED]

[REDACTED] I find each of these arguments unavailing and will address them in turn.

***A. The BCPS' Failure to Reschedule the Eligibility and IEP Meetings Constituted a Procedural Violation of the IDEA***

Under the IDEA, parents are mandatory members of the IEP team.<sup>243</sup> This means that districts must take steps to ensure that one or both parents of a student with a disability are present at each IEP meeting or are afforded the opportunity to participate in the meeting.<sup>244</sup> This includes being notified early enough to ensure that parents have the opportunity to attend.<sup>245</sup>

The Supreme Court has emphasized that the IDEA's structure relies upon parent participation in developing successful IEPs.<sup>246</sup> Nevertheless, a school district may conduct an IEP meeting without a parent in attendance if “the public agency is unable to convince the parents that they should attend.”<sup>247</sup>

In this case, the Parents asserted that they were denied the opportunity to participate in both the eligibility meeting and the meeting to develop an IEP for the Student. In support of their position, the Parents presented testimony from the Student’s father, who indicated that they did not agree to an expedited meeting with less than ten days’ notice for the October 20, 2022 meeting,<sup>248</sup> nor did they understand that the meeting was to discuss eligibility under the IDEA.<sup>249</sup> In addition, he testified that the Parents were not available for the November 10, 2022 IEP

---

<sup>243</sup> 34 C.F.R. § 300.321 (a)(1).

<sup>244</sup> 34 C.F.R. § 300.322 (a).

<sup>245</sup> *Id.*

<sup>246</sup> *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 205 (1982): (“Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, as it did upon the measurement of the resulting IEP against a substantive standard.”).

<sup>247</sup> 34 C.F.R. § 300.322 (d).

<sup>248</sup> Test., Student’s father, Tr., p. 1140.

<sup>249</sup> *Id.*, Tr., pp. 1153-1154.



meeting but that the BCPS went ahead with the meeting anyway.<sup>250</sup> The Parents argued that the BCPS acted in bad faith when it scheduled these meetings and then refused to reschedule them when the Parents were not available.

A close review of the communications between the BCPS and the Student's mother is useful for my analysis. The emails between the BCPS and the Student's mother, memorialized in the Parent Contact Log in BCPS Ex. 27, reveal that there was apparently miscommunication between the parties. Moreover, the emails show that these disconnects were compounded by the fact that the Parents believed that the BCPS was not acting in good faith. Implicit in the BCPS' actions is the apparent belief that the Parents were trying to delay the IEP process until after the due process hearing had concluded. The BCPS viewed the Parents' agreement to meet on a certain date, and then request rescheduling of the meeting as proof that the Parents were not acting in good faith.

### **1. The Meetings**

#### ***The Eligibility Meeting on October 20, 2022***

On October 10, 2022, counsel for the BCPS emailed the Student's mother stating, ". . . I wanted you to know about some proposed upcoming dates that City Schools' staff would like to review the ordered assessments. The school team is available on Wednesday, October 19<sup>th</sup> or Friday, October 21<sup>st</sup>. . . Would you let me know which date and time might work best for you?"<sup>251</sup> While this email did not explicitly state that this meeting was the eligibility meeting, it clearly stated that the meeting was to review the "ordered assessments." The email also asked whether the Student's mother had signed the Consent for the BCPS to communicate with [REDACTED] [REDACTED] this was a follow-up to an email sent on October 4, 2022 by Ms. [REDACTED] to the

---

<sup>250</sup> *Id.*, Tr., p. 1158.

<sup>251</sup> BCPS Ex. 27.

Student's mother forwarding the Consent to "allow [the BCPS] to obtain records from [REDACTED] and [REDACTED]. This information is needed to finalize our reports."<sup>252</sup>

The Student's mother responded the following day stating, "The only days we cannot meet are October 17 through 19. Regarding assessments, [the Student's] school will be off for a holiday (travel day) on October 19<sup>th</sup>, but they resume on October 20, so the 21<sup>st</sup> should work."<sup>253</sup> There were additional emails between counsel for the BCPS and the Student's mother on October 11<sup>th</sup>. The first from counsel for the BCPS stated, in part, "Additionally regarding the meeting to review assessments, is there a time on the 20<sup>th</sup> or 21<sup>st</sup> that is preferred? I've cc'd Ms. [REDACTED] so she can coordinate with the rest of the District staff around your preferred availability."<sup>254</sup> Approximately thirty-five minutes later, the Student's mother responded, "Regarding assessments, after 10 AM works best."<sup>255</sup>

There was also a note that the original date had been October 19, 2022 but that it was changed to the 20<sup>th</sup> due to the unavailability of the Parents.<sup>256</sup> On October 13, 2022, the Student's mother responded that, "We are not available on those dates you proposed. However, we are available to meet on November 8, 9, or 10. Please let me know if any of those dates work."<sup>257</sup>

It seems from the emails that counsel for the BCPS and the Student's mother spoke on the telephone at one point on or about October 12, 2022 at which time the Student's mother seemingly indicated that October 20<sup>th</sup> was a date that would work for the meeting.<sup>258</sup> However,

---

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> BCPS Ex. 2.

<sup>257</sup> BCPS Ex. 27.

<sup>258</sup> *Id.*

on October 13, 2022, the Student's mother emailed counsel advising that "[w]e are not available on either of those dates you proposed" and instead suggested November 8, 9, or 10<sup>th</sup>.<sup>259</sup> On Saturday, October 15<sup>th</sup> at 12:45 p.m., counsel for the BCPS responded that as the Parents had indicated that October 20<sup>th</sup> would work for them, the meeting would go ahead on that date. Counsel attached the official Notice of Invitation along with the documents the team planned to review. The Notice was dated October 11, 2022, and it indicated that the meeting was scheduled for 9:00 a.m. on October 20, 2022.<sup>260</sup>

From sunset on October 16<sup>th</sup> through the evening of Tuesday, October 18<sup>th</sup> were the holidays of Shemini Atzeret and Simchat Torah, holidays where observant Jews like the Parents are prohibited from working and do not even check email. Therefore, the Student's mother did not see the October 15<sup>th</sup> email until October 19, 2022, when she and her family were traveling home from where they spent the holiday. On that date, she emailed counsel for the BCPS and indicated that the Parents could not attend the meeting on the 20<sup>th</sup> because her husband had work in New Jersey and would be unable to participate. She also stated, ". . .since we are the parents who initiated this process, you would still be in compliance with the IDEA if you meet when we can attend. There should be no issue with meeting when we proposed, unless you specifically want to meet without us in attendance."<sup>261</sup>

Later, at 9:25 p.m., the Student's mother emailed counsel for the BCPS and stated that she was having a medical emergency that evening and was going to see a doctor first thing the next morning. The email stated,

Although it appears you would rather meet when we are not available, in case there is any good faith, you should know that I'm having a medical emergency tonight. I will be seeing a doctor first thing in the am, as soon as they'll see me.

---

<sup>259</sup> *Id.*

<sup>260</sup> BCPS Ex. 2.

<sup>261</sup> BCPS Ex. 27.

So, if you insist on meeting when we are not available, even though we have been only cooperative and have offered dates that work, please let the judge know that you insisted on excluding fully cooperative parents from their child's IEP process.<sup>262</sup>

It is unclear whether the BCPS responded to this email; however, the IEP team met as scheduled on October 20, 2022 and neither of the Parents participated.

***The November 10, 2022 Draft IEP Meeting***

On October 27, 2022, counsel for the BCPS emailed the Student's mother and advised that the IEP team had met on October 20<sup>th</sup> and determined that the Student was eligible as a student with a disability under the IDEA. She further advised that the team had limited availability on either November 9<sup>th</sup> or 10<sup>th</sup> to meet to discuss the development of an IEP for the Student and requested that the Student's mother advise of any time restrictions on those dates.<sup>263</sup>

On October 31, 2022, the Student's mother responded and indicated that the Parents were no longer available to meet on November 9<sup>th</sup> or 10<sup>th</sup>. As a reason, she stated, "...we are juggling health issues . . . all amidst preparing for the due process hearing. We can try to schedule the IEP meeting for after the hearing, after November 22<sup>nd</sup>."<sup>264</sup>

On November 4, 2022, counsel for the BCPS responded that she was sorry to hear of the Student's mother's health issues but that the meeting would take place on November 10, 2022 as the Parents had previously indicated that it was a date that worked for them and she was hopeful that the Student's father could still attend. She attached a copy of the draft IEP and related materials to be reviewed at the meeting.<sup>265</sup>

The IEP team met on November 10<sup>th</sup> as scheduled and created an IEP for the Student, and neither of the Parents participated.

---

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

## **2. The Reasonableness of the BCPS' Refusal to Reschedule the Meetings**

Late on the evening of October 19, 2022 the Student's mother emailed counsel for the BCPS indicating that she had experienced a medical emergency that evening and needed to see a doctor the following day which would preclude her attendance at the IEP meeting. While the tone of this email was adversarial (“[P]lease let the judge know that you insisted on excluding fully cooperative parents from their child’s IEP process.”), the BCPS was aware that the Student’s mother was experiencing ongoing health issues. Regardless of whatever communications the parties had prior to this regarding the October 20, 2022 meeting, given its obligation to ensure that the Parents had “a large measure of participation at every step of the administrative process”<sup>266</sup> the BCPS acted unreasonably when it failed to reschedule this meeting to accommodate the Student’s mother’s health emergency.

Whether the BCPS unreasonably refused to reschedule the November 10, 2022 IEP meeting is less clear cut. The Student’s mother’s email of October 13, 2022 listed three dates the Parents were available to meet. The BCPS selected one of those dates and then was advised by the Student’s mother on Monday, October 31, 2022 that the Parents were no longer available on those dates the following week. The Student's mother said she was unavailable for the IEP meeting on November 10, 2022 due to her ongoing health issues from the week before along with her need to prepare for the hearing.

However, she never specifically stated why the Parents would not be available for a virtual meeting for a few hours on one of the dates she had previously provided.<sup>267</sup> In his testimony, the Student’s father indicated that the Parents were not available but did not provide a specific reason why. He attributed their unavailability to “medical emergencies.” When asked

---

<sup>266</sup> *Rowley*, at 205.

<sup>267</sup> BCPS Ex. 27.

to clarify whether the medical emergency occurred that particular day, he responded, “Or surrounding that time. That day, even prior, yeah.”<sup>268</sup>

The Parents’ actions in this instance could reasonably be interpreted as tantamount to a refusal to attend the meeting and evidence of a motive to delay the meeting until after the completion of the due process hearing, as without a final IEP, the Parents could theoretically prove that the denial of FAPE was ongoing. The fact that the Parents provided no specific conflicts with dates they had previously offered as options, along with the fact that the meeting was held virtually, could have reasonably led the BCPS to conclude the Parents’ actions were a delaying strategy designed to put them in a stronger position for the due process hearing.

However, even if the BCPS believed the Parents were employing delaying tactics, it still should have tried to work with the Parents to reschedule the meeting at an agreed-upon date and time. I note that the BCPS had its own incentive to refuse to reschedule the meeting – at the hearing, slated to begin on November 14, 2022, the BCPS contended that any denial of a FAPE ended on November 10, 2022 when the BCPS developed an IEP that met IDEA requirements.<sup>269</sup> Pushing the meeting until after the due process hearing would weaken the BCPS’ position on this point.

Nevertheless, despite either party’s motivations, by refusing to reschedule the IEP meeting on November 10, 2022 (or even reaching out to the discuss the matter with the Parents) the BCPS procedurally violated the IDEA as the Parents were denied the opportunity to be present at both of the IEP meetings.<sup>270</sup>

---

<sup>268</sup> Test., Student’s father, Tr., p. 1158.

<sup>269</sup> See *Sch. Comm. Burlington Sch. Comm. v. Dep’t of Educ.* 471 U.S. 359, 368 (1985) (“The IEP is in brief a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs. § 1401(19)).

<sup>270</sup> 20 U.S.C. § 1415(b); see also 34 C.F.R. § 300.322.

**B. The Procedural Violation Did Not Lead to a Substantive Violation of the IDEA**

Once a procedural violation has occurred, the next step is to determine whether it led to a substantive violation of the IDEA. The Fourth Circuit has set forth a three-part test to determine whether a procedural violation of the parental rights provisions of the IDEA constitutes a violation of the IDEA: “(1) whether the plaintiffs ‘alleg[ed] a procedural violation,’ (2) whether that violation ‘significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a [FAPE] to the parents’ child,’ and (3) whether the child ‘did not receive a [FAPE] as a result.’”<sup>271</sup>

Courts have found that meaningful participation includes considering parents' suggestions and, to the extent appropriate, incorporating them into the IEP,<sup>272</sup> as well as considering any independent educational evaluation, discussing placement options, and answering parents' questions.<sup>273</sup>

In support of their claim that the BCPS' procedural violation of the parental participation provisions of the IDEA denied the Student a FAPE, the Parents cite to the case of *Doug C. v. Hawaii*,<sup>274</sup> among others.<sup>275</sup> In that case, the Hawaii Department of Education (Department) held a student's annual IEP meeting without parental participation, even though the parent, Doug C., “actively sought to reschedule the meeting in order to participate.”<sup>276</sup> Specifically, the student in question was eighteen years old and since the fifth grade had been placed at a nonpublic special

---

<sup>271</sup> *R.F. v. Cecil County Public Schools*, 919 F.3d 237, 248, citing 20 U.S.C. § 1415(f)(3)(E).

<sup>272</sup> *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004), cert. denied, 546 U.S. 936 (2005), on remand, 259 F. Supp. 2d 687 (E.D. Tenn. 2006), aff'd, 258 F.App'x 863 (6th Cir. 2008).

<sup>273</sup> *Board of Educ. of Waterford-Halfmoon Union Free Sch. Dist.*, 20 IDELR 1092 (SEA NY 1994).

<sup>274</sup> 720 F.3d 1038 (9th Cir., 2013).

<sup>275</sup> In *Babb v. Knox County School System*, 965 F.2d 104 (6th Cir. 1992), the Court, as in the *Doug C.* case, found that a procedural violation of the IDEA's parent participation requirement deprived the student of a FAPE. In *Metro Board of Public Education v. Guest*, 193 F.3d 457 (6th Cir. 1999), the Court remanded the case for a finding as to whether a procedural violation of the IDEA had resulted in the loss of a FAPE for the student in question. The facts in those cases are different from those in the case at bar; the *Doug C.* case has the most similar set of facts as this case.

<sup>276</sup> *Doug C.*, at 1040.

education school at public expense. When the parent could not attend the first date suggested by the Department, they mutually agreed on another date; however, on the morning of the mutually agreed upon date, the parent emailed the Department stating he was ill and unable to attend the meeting. The parent suggested rescheduling a date that would have been after the IEP was due for an annual re-evaluation. For that reason, the Department suggested an earlier date. When the parent only tentatively agreed, the Department went ahead with the IEP meeting as scheduled that day without the parent in attendance. The Department's error was compounded because the only teacher from the Student's nonpublic school was also absent from the IEP meeting.

The Department explained that by the time it had selected the November 9<sup>th</sup> date, it had already asked the several IEP team members at least three times to change their schedules and cancel other commitments. Therefore, it refused to reschedule again without a firm commitment from the parent.

At the meeting, the team changed the student's placement from the nonpublic placement to the student's local public high school. The Ninth Circuit, in determining that the procedural violation resulted in a loss of a FAPE for the student, found that there was a "strong likelihood that the benefits of placement at [the nonpublic placement] would have been more thoroughly considered if [the parent] had been present" and that it was "particularly likely that the merits of continuing [the student's] placement at [the nonpublic placement] were not adequately considered in light of the fact that the IEP team member from [the nonpublic placement] was also absent."<sup>277</sup>

The facts of the instant case are significantly different from the facts in the *Doug C.* case. In this case, the BCPS witnesses testified that they fully considered all of the evaluations and reports provided by the Parents, as well as their belief that the Student required nonpublic

---

<sup>277</sup> *Id.* at 1047



placement due to his educational needs, when drafting the IEP. A review of the evidence supports the BCPS' contention. For the reasons that follow, I find that the IEP team fully considered the Parents' concerns, suggestions, and preference for placement, well as both independent educational evaluations and other Parents-provided information and data; therefore, the Parents were not deprived of a chance to meaningfully participate in the decision-making process. I further find that the IEP team thoroughly assessed the Student and fully considered all placement options and the resulting November 10, 2022 IEP offered him a FAPE.

**1. The Student Does Not Have a SLD Based on the Educational Definition**

One of the Parents' central arguments is that the IEP was deficient because the BCPS did not follow proper procedures when considering whether the Student had a SLD. This, they contend, led to the BCPS improperly failing to categorize the Student as having SLDs with impairment in reading and writing, which the Parents' assert is the correct categorization for him based upon Dr. [REDACTED] diagnosis.

I first address the allegation that the BCPS did not follow proper procedures when considering whether the Student had a SLD. The Parents asserted that the IEP team did not prepare the written report that is required by 34 C.F.R. 300.311 and COMAR 13A.05.01.06D(5) and (6), when a student is suspected of having a SLD.<sup>278</sup>

A SLD is one of the thirteen categories of disability recognized by the IDEA.<sup>279</sup> SLD is the only disability category for which the IDEA establishes special evaluation procedures in addition to the general evaluation procedures that are used for all students with disabilities.

In order to assist IEP teams with evaluation of students, the Maryland State Department of Education issued a Technical Assistance Bulletin to provide a brief overview of the relevant

---

<sup>278</sup> Parents' Ex. 17, p. 101.

<sup>279</sup> 20 U.S.C. § 1401(3)(A)(i) and (30); 34 C.F.R. pt. 300.

evaluation procedures, as well as illustrative examples of academic difficulties that may form the basis of a SLD determination if a student meets all other criteria under the IDEA and requires the provision of specially designed instruction.<sup>280</sup> The following are the relevant excerpts from the Technical Assistance Bulletin issued November 7, 2016:

By definition, specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, consistent with Maryland State Department of Education (MSDE) criteria. A full explanation of the criteria to be used for a SLD determination is contained in *A Tiered Instructional Approach to Support Achievement for All Students: Maryland's Response to Intervention Framework* (June 2008).

SLD includes, but is not limited to, conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Given that this is not an exhaustive list, other conditions may also form the basis for a SLD determination if all other criteria under the IDEA are met and the student requires the provision of specially designed instruction. With regard to one item that is on the list, brain injury, please note that “traumatic brain injury” is a distinct disability category under the IDEA. Lastly, the definition of SLD does not include learning problems, which are primarily the result of visual, hearing, or motor impairments, intellectual disability, emotional disability, or environmental, cultural, or economic disadvantage.

*Authority:* 34 § 300.8; COMAR 13A.05.01.03B(73).

The IEP team determines whether a student has a SLD by *completing the evaluation process and carefully considering the eligibility criteria under the IDEA, with input from all members of the team.* As is the case with any other disability determination, the IEP team consists of various school personnel, the student’s parent or guardian, and, as appropriate, the student. When compiling the members of the IEP team, it is important to consider the areas of suspected disability so the team is knowledgeable about the student’s needs. Certain qualified professionals are expressly required in order for the IEP team to make a SLD determination. For the purposes of a SLD determination, the IEP team must include:

- 1) the student’s general education teacher;
- 2) if the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of that age; or
- 3) for a child of less than school age, an individual qualified by the MSDE to teach a child of that age. In addition, the IEP team must include at least one person qualified to conduct individual diagnostic examinations of students, such

---

<sup>280</sup> Parents’ Ex. 17.

as a school psychologist, speech-language pathologist, or reading teacher. The same person may conduct multiple diagnostics, provided he or she is qualified to conduct each. *Authority:* 34 § 300.308; COMAR 13A.05.01.06D(7).

The IEP team may determine that a student has a SLD if the student does not achieve adequately for the student's age or meet State-approved grade level standards when provided with learning experiences appropriate for the student's age and ability levels in one or more of the following areas:

- 1) oral expression;
- 2) listening comprehension;
- 3) basic reading skills;
- 4) reading fluency skills;
- 5) reading comprehension;
- 6) written expression;
- 7) mathematics calculation; or
- 8) mathematics problem solving.

In short, the IEP team is looking for inadequate achievement, despite appropriate instruction, in listening, speaking, reading, writing, and math.

*Authority:* 34 § 300.309; COMAR 13A.05.01.06D(2)(a).

Maryland has adopted two processes through which an IEP team can determine that a student's achievement is inadequate and forms the basis for a SLD. The IEP team may consider evaluative data and appropriate assessments to determine whether the student:

- 1) does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the 8 academic areas when using a process based on the student's response to evidence-based intervention; or
- 2) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

The IDEA allows for alternative research-based procedures to identify a SLD, but the MSDE has not identified any such alternatives at this time. Thus, response to intervention (RTI) or a pattern of strengths and weaknesses are the two options that are available in Maryland.

...

*The IEP team is required to consider both:*

- 1) *data demonstrating that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and*
- 2) *data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, that was provided to the student's parent. In other words, the IEP*

*team must review the student's general education record with regard to both instruction and assessment in the areas of reading, math, and written expression.*

...

*The IEP team must ensure that the student has been observed in the student's learning environment (including the general education classroom setting) to document academic performance and behavior in the areas of difficulty. The IEP team may:*

- 1) use information from an observation before the student was referred for an evaluation; or*
- 2) have at least one member of the IEP team, other than the student's general education teacher, conduct an observation after the referral was made.*

...

*When a student is suspected of having a SLD, the IEP team must prepare a written report that includes:*

- 1) A statement of whether the student has a SLD;*
- 2) The basis for making the determination;*
- 3) The relevant behaviors, if any, noted during the observation of the student;*
- 4) The relationship of the behaviors to the student's academic functioning;*
- 5) The educationally relevant medical findings, if any;*
- 6) The determination of the IEP team concerning the effects of visual, hearing, or motor disability, intellectual disability, emotional disability, cultural factors, environmental or economic disadvantage, or limited English proficiency on the student's achievement level; and*
- 7) The written certification of each IEP team member as to whether the written report reflects the member's conclusion. If the written report does not reflect an IEP team member's conclusion, the team member must submit a separate statement presenting the team member's conclusions. If the student participated in a process to assess the student's response to evidence-based intervention, the written report must also include:*
  - 1) The instructional strategies used and the student-centered data collected;*
  - 2) Documentation that the student's parents were notified of the MSDE's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;*
  - 3) Strategies for increasing the student's rate of learning; and*
  - 4) The parents' right to request an evaluation. Authority: 34 § 300.311; COMAR 13A.05.01.06D(5) & (6).*

*The IEP team must determine what special education and related services, supplementary aids and services, modifications, and accommodations are appropriate based on the individual student's needs. A SLD, regardless of the underlying condition (e.g. perceptual disability, brain injury, minimal brain dysfunction, dyslexia, or developmental aphasia), may manifest itself in a number of ways, with varying degrees of severity. Therefore, the IEP team must rely upon*

*multiple sources of information and data, and plan for specially designed instruction that targets the identified needs of the student.* A determination that a student fits into a particular disability category – SLD or otherwise – does not dictate a particular placement, nor does it guarantee a particular set of services. No single measure or assessment can be used as the sole criterion for determining an appropriate educational program for a student. *Authority:* 34 § 300.304; COMAR 13A.05.01.05B(3).<sup>281</sup>

Dr. ██████ explained that the team did not complete the report required by the regulations because none of the school-based members of the IEP team suspected that the Student had a SLD. She acknowledged that the Parents had concerns about the Student’s reading but testified that reading “can be impacted by other disabilities than specific learning disability. The term specific learning disability was never brought up at the August meeting, at least not based on the data.”<sup>282</sup> This testimony is substantiated by the contents of the Prior Written Notice (PWN) issued on August 24, 2022 after the meeting, which does not mention any concerns that the Student has a SLD.<sup>283</sup> Instead, the PWN recounted that, based upon information gathered at that meeting, the team suspected that the Student had an OHI due to his ADHD that impacted his academic performance.<sup>284</sup>

Dr. ██████ further explained that she considered whether the Student had a SLD after reading the 2022 ██████ Report which prompted her to look “at concerns from every angle.” Finally, Dr. ██████ testified that after testing she ruled out SLD.<sup>285</sup> Dr. ██████ October 13, 2022 Psychological Assessment Report details the specific test scores she considered when determining whether the Student had an SLD. As she explained at the hearing, she closely scrutinized his scores on tests that measured his cognitive ability because the existence of a

---

<sup>281</sup> *Id.*, (emphasis added).

<sup>282</sup> Test., ██████ Tr., pp. 1091-1092.

<sup>283</sup> BCPS Ex. 8.

<sup>284</sup> *Id.*

<sup>285</sup> Test., ██████ Tr., p. 1088.

processing deficit in cognition is required in order for a student to be categorized as having a SLD under Maryland educational law.<sup>286</sup>

In contrast to Maryland law, the four criteria that must be met for a person to be *medically* diagnosed with a SLD under the DSM-5 do **not** require a processing deficit in cognition. Under the DSM-5, the four criteria are as follows:

1. Persistent difficulties in reading, writing, arithmetic, or mathematical reasoning skills during formal years of schooling. Symptoms may include inaccurate or slow and effortful reading, poor written expression that lacks clarity, difficulties remembering number facts, or inaccurate mathematical reasoning.
2. Current academic skills must be well below the average range of scores in culturally and linguistically appropriate tests of reading, writing, or mathematics. Accordingly, a person who is dyslexic must read with great effort and not in the same manner as those who are typical readers.
3. Learning difficulties begin during the school-age years.
4. The individual's difficulties must not be better explained by developmental, neurological, sensory (vision or hearing), or motor disorders and must significantly interfere with academic achievement, occupational performance, or activities of daily living.<sup>287</sup>

At this point, a review of the assessments of the Student from ██████████ in 2019 and 2022 and the assessment conducted by Dr. ██████████ is useful.

**Dr. ██████████ Assessment and Diagnosis of SLDs**

In his report, Dr. ██████████ explained that he diagnosed the Student with the two SLDs based on the fact that the Student's reading and writing skills were "below what would be expected considering the person's age, intelligence, and education."<sup>288</sup> He also explained that his

---

<sup>286</sup> COMAR 13A.05.03.03B(73): (a) "SLD" means a *disorder in one or more of the basic psychological processes involved in understanding or in using language*, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, consistent with Department criteria. (b) "SLD" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (c) "SLD" does not include students who have learning problems which are primarily the result of visual, hearing, or motor impairments, intellectual disability, emotional disability, or environmental, cultural, or economic disadvantage. (emphasis added).

<sup>287</sup> Diagnostic and Statistical Manual of Mental Disorders: DSM-5. 5th ed., American Psychiatric Association, 2013.

<sup>288</sup> Parents' Ex. 1, p. 8; BCPS Ex. 13.

diagnoses were based on observations of the Student in the testing room, data, and input from the Parents during the consultation and the teacher scores,<sup>289</sup> although he did not directly interview any of the Student’s teachers.<sup>290</sup> As Dr. ██████████ further explained, a diagnosis of a SLD under the DSM-5 requires “quantitative” data rather than qualitative data<sup>291</sup> and he relied on the fact that the Student’s grade equivalence was sufficiently below his current grade placement in making the diagnosis of SLD with impairment in reading and in writing.<sup>292</sup> He explained that the Student’s classifications and grade equivalence on the GORT-5 in particular, which measures the Student’s core academic skills in comprehension, fluency, accuracy, and reading rate, contributed “highly” to the diagnosis of a SLD in reading.<sup>293</sup>

Dr. ██████████ oversaw the August 2022 evaluation where the Student was assessed for intellectual functioning (WISC-V), academic achievement (WIAT4), reading (GORT-5), visual perception and motor coordination, and memory (ChAMP), as well as various ratings supplied by the Student’s mother.<sup>294</sup> He explained that he administered the GORT-5 to further assess the Student’s reading skills after the Student’s WIAT4 scores showed his skills to mostly be in the “low average” range. On the GORT-5, the Student’s reading rate and comprehension fell in the “below average” range while his accuracy and fluency fell in the “poor” range.

Dr. ██████████ explained that the diagnosis of a SLD with an impairment in writing was “more based on the spelling” as the Student scored in the sixth percentile and it was the only

---

<sup>289</sup> *Id.*

<sup>290</sup> Test., ██████████ Tr., pp. 101-102.

<sup>291</sup> *Id.*, Tr., pp. 110-111, 115.

<sup>292</sup> *Id.*, Tr., pp. 49, 60.

<sup>293</sup> *Id.*, Tr., pp. 60-61.

<sup>294</sup> Parents’ Ex. 1; BCPS Ex. 13.

category where he fell into the “very low” range.<sup>295</sup> This is in contrast to the 2019 assessment where he fell into the “below average” range in the nineteenth percentile.<sup>296</sup>

Dr. [REDACTED] also considered the BASC-3 rating scales completed by the Student’s teacher from the fourth grade where the teacher “endorsed clinically significant concerns” with the Student’s learning and study skills, more particularly, his executive functioning.<sup>297</sup> He opined that it was possible that “several of [the Student’s] academic challenges are exacerbated by his executive functioning challenges.”<sup>298</sup>

Dr. [REDACTED] also noted that during testing, the Student was distracted, impulsive, frequently “zoned out” and required directions to be repeated because his inattention “interfered with task comprehension.”<sup>299</sup> His report reflected that the Student appeared frustrated and anxious, engaged in “refusal behaviors” (such as putting his head on the table or refusing to complete tasks) and cried during reading and writing tasks saying that “learning is hard for him.”<sup>300</sup>

**Dr. [REDACTED] Assessment and Determination that the Student Did Not Have a SLD**

Dr. [REDACTED] report, supplemented by her testimony, gave a comprehensive explanation for her conclusion that the information from all the test results, observations, and ratings supported a finding that the Student’s inattention, combined with his anxiety and low self-esteem, are responsible for his academic difficulties as opposed to a SLD.<sup>301</sup>

Dr. [REDACTED] received the 2022 assessment before she saw the 2019 report and her first reaction was that his working memory score was very low. However, she also noted that Dr.

---

<sup>295</sup> Test., [REDACTED] Tr., pp. 49-50.

<sup>296</sup> *Id.*, Tr., p. 55.

<sup>297</sup> Parents’ Ex. 1; BCPS Ex. 13.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> BCPS Ex. 10.



██████████ reported that during the subtests for working memory, the Student was having difficulty paying attention. As she noted, the working memory score is highly impacted by attention.<sup>302</sup> Dr. ██████████ saw that Dr. ██████████ had conducted additional tests in memory (the ChAMP) which showed that his actual memories were in the “low average” and “average range.”<sup>303</sup>

Dr. ██████████ then received the 2019 report. She looked at the Student’s cognitive ability as measured by the 2019 assessment. He was assessed as being in the “average” range across areas with strengths in working memory and verbal comprehension, although his academic achievement scores were between the “low average” to “average range.”<sup>304</sup> The evaluator at the time indicated that the Student’s academic achievement scores demonstrated that his math skills, reading comprehension, and writing skills were “slightly below what would be expected given his intellectual functioning as measured by the WISC-4 as well as his placement in first grade.”<sup>305</sup> The evaluator opined that, based on the academic achievement scores, she believed the Student was “at-risk” for developing learning disorders in those areas.<sup>306</sup>

Dr. ██████████ next looked at the Student’s cognitive ability as measured by the 2022 assessment. On the 2022 assessment, the Student scored in the “low average” range with a “significant drop in performance on working memory tasks and a moderate drop in processing speed.”<sup>307</sup> In 2019, the Student’s scaled scores (out of 100) were 110 (“high average”) in Working Memory and 95 (“average”) in Processing Speed.<sup>308</sup> In 2022, the Student’s scaled

---

<sup>302</sup> Test., ██████████ Tr., pp. 1055-1056.

<sup>303</sup> Parent’s Ex. 1; BCPS Ex. 13; Test., ██████████ Tr., pp. 1055-1056.

<sup>304</sup> See Parents’ Ex. 7; BCPS Ex. 14.

<sup>305</sup> Parents’ Ex. 7; BCPS Ex. 14.

<sup>306</sup> *Id.*

<sup>307</sup> BCPS Ex. 10.

<sup>308</sup> Parents’ Ex. 7; BCPS Ex. 14.

scores declined to 76 (“very low”) in Working Memory and 80 (“low average”) in Processing Speed.<sup>309</sup> Dr. █████ explained the significance of the decrease in the scores on these skills:

[B]ased on [the 2022] report I noticed that there were differences from this report and this previous report. So, this report shows that -- if I just had this report, this is his cognitive functioning is in the low average range. A lot of the academic scores are like pretty commensurate with that like below average range. This isn't a profile that surprises me, I see some like low scores on here, but when I compare it to his previous assessment, so I noticed here working memory was a 76 and on his previous assessment three years ago it was 110. That is a 36-point difference, 34-point difference, and that is extremely rare to see that kind of a decrease in skills, so I would be like what is going on here? When I write reports and when I look at reports, I always look at behavioral observations during testing because oftentimes behavior and especially attention and motivation really impact how you're going to perform, because this is just a snapshot of like how you're doing on this day. And similar to the other report, this report also talks about behaviors that impacted his performance, some inattention, some impulsivity, some being upset and giving up kind of easily more on academic tasks, but I did see that they looked at that, like, lower working memory score, and they gave him additional assessment in memory, they didn't do a full memory battery like they did before, we saw before his memory was completely average, they gave him like a very brief version of a memory assessment and he was in the low average to average range. So not low like what we're seeing. I don't believe they did any additional processing speed tasks which is, what I chose to do some of my assessments is based on some of the discrepancies and some of the information in this report and wanting to dig more into, is this an area of weakness, was it where something on that day, he was having difficulty because of XYZ, and really like teasing out is this a cognitive processing deficit, is this just a snapshot in time where he had a bad day of testing because of behaviors, what is it, what's going on here?<sup>310</sup>

Based on these discrepancies, she focused her testing to further assess the Student's cognitive abilities in the areas that, based on the 2022 report, could suggest a processing deficit.<sup>311</sup> Dr. █████ specifically looked at memory tasks to “tease out” whether his working memory was actually low because in 2019, his working memory was an area of strength.<sup>312</sup> Dr. █████ administered additional subtests from the WISC-V, the Immediate Symbol Translation

---

<sup>309</sup> Parents' Ex. 1; BCPS Ex. 13.

<sup>310</sup> Test, █████ Tr., pp. 868-870.

<sup>311</sup> BCPS Ex. 10; Test, █████ Tr., p. 924.

<sup>312</sup> Test, █████ Tr., p. 924.

and Delayed Symbol Translation subtests, to measure the Student's visual-verbal associative memory which combine "multiple areas of memory, working memory, and also long-term" and delayed memory.<sup>313</sup> Dr. ██████ noted that the Student's scores on these additional memory tasks were in the "average range" which is consistent with how he performed on the 2019 assessment.<sup>314</sup>

Dr. ██████ explained that working memory is impacted by ADHD because, if a child is not "attending to the information [he won't] be able to process it;" but, that does not mean that the child is "not able to manipulate the information in their heads."<sup>315</sup> She testified that when the Student was paying attention during the test, he "had no trouble" manipulating information in his head.<sup>316</sup>

She also administered an oral naming speed test (Naming Speed Index test, comprised of the Naming Speed Literacy and Naming Speed Quantity subtests) which measures processing speed which usually relates to fluency. The Student was required to name pictures, or name letters and numbers or name the number of like boxes within a square, all as quickly as he could. The Student performed in the "average" range on these oral tests, which Dr. ██████ noted was much higher than he scored on similar tasks when he had to use a pen and paper.<sup>317</sup> She observed that the Student found the cognitive tasks "more engaging"<sup>318</sup> as opposed to tests that obviously involved reading where his attention and motivation more obviously waned.<sup>319</sup>

Dr. ██████ stated that she also assessed the Student's phonemic awareness where the Student had to listen and manipulate auditory information and it was in the "above average"

---

<sup>313</sup> BCPS Ex. 10; Test, ██████ Tr., p. 924.

<sup>314</sup> Test., ██████ Tr., p. 924; Parents' Ex. 7; BCPS Ex. 14. Specifically, the Student scored in the "average" range on the digital span subtest and in the "high average" range on the picture span subtest.

<sup>315</sup> Test., ██████ Tr., p. 1018.

<sup>316</sup> *Id.*, p. 1083.

<sup>317</sup> *Id.*, pp. 924-925.

<sup>318</sup> *Id.*, p. 1108.

<sup>319</sup> *Id.*, p. 1106.

range.<sup>320</sup> She indicated that phonemic awareness encompasses a great deal of working memory.<sup>321</sup> Dr. ██████ testified that, based on these results and the results of the 2019 assessments, she determined the “very low” working memory score on the 2022 ██████ ██████ assessment was not a true measure of his ability, as it was likely the result of inattention.<sup>322</sup>

In her report, Dr. ██████ explained that working memory and processing speed are both “highly reliant on attention and executive function.”<sup>323</sup> In her testimony, she opined that she believed a “big factor” that impacts the Student’s ability to learn is his disengagement and lack of motivation. Dr. ██████ further specified that the Student’s General Ability Index (GAI), which was in the “low average” range on the 2022 ██████ report, would be considered a good “representation of [the Student’s] general level of intellectual functioning as it [is] not impacted by his performance on measuring of memory and processing speed. . .”<sup>324</sup> The Student’s GAI is in contrast to his Cognitive Proficiency Index (CPI), which was “very low;” however, she noted that the CPI is “comprised of his scores on working memory and processing speed tasks.”<sup>325</sup>

Dr. ██████ also explained that the behaviors the Student exhibited when doing academic tasks – such as being less engaged and less motivated – may lead to an underestimation of his true ability. She noted that during testing when he was doing tasks not obviously related to academics he was engaged and motivated and was willing to take on more challenging tasks.<sup>326</sup> She stated that from the observations in the classroom and reports from teachers, she believes

---

<sup>320</sup> BCPS Ex. 10; Test., ██████ Tr. pp. 1056-1057.

<sup>321</sup> Test., ██████ Tr., pp. 1056-1057.

<sup>322</sup> *Id.*, Tr., p. 1057.

<sup>323</sup> BCPS Ex. 10.

<sup>324</sup> Test., ██████ Tr., pp. 1060-1061.

<sup>325</sup> *Id.*, Tr., p. 1061.

<sup>326</sup> *Id.*, Tr., p. 874.

this is how he behaves in class as well.<sup>327</sup> During her classroom observations, she noted that the Student sat in the back of the room, doodled, leaned his head against the wall, laid his head in his hands on his desk, worked on an elaborate drawing rather than watching a short video with the rest of his class, and only with a lot of prompting did he answer two questions about the video before refusing to do more.<sup>328</sup> This is consistent with his Parents' description that he only "audited" the classes at ██████████ rather than actively participated. Dr. ██████████ noted that during testing the Student gave up easily when he believed that he could not do certain tasks, consistent with what she observed in the classroom. However, she also stated that he was actually able to do some of the tasks he believed he could not do, although more slowly and with more mistakes than his peers.<sup>329</sup>

In sum, Dr. ██████████ concluded that the Student's pattern of behaviors were consistent with his diagnosis of ADHD.<sup>330</sup> She also concluded that the discrepancies between the Student's various scores on the 2019, 2022, and her assessments were not attributable to a processing disorder, but rather due to inattention.<sup>331</sup>

Dr. ██████████ also explained when the IEP team met on October 20, 2022, she presented her findings that the Student's cognitive processes were in the "average" range and the team discussed the previous assessments, test behaviors, and then informally discussed the factors on the SLD eligibility worksheet and determined that the team could not conclude that the Student had a processing disorder.<sup>332</sup>

---

<sup>327</sup> *Id.*, Tr., p. 1109.

<sup>328</sup> BCPS Ex. 10.

<sup>329</sup> Test., ██████████ Tr., p. 1109.

<sup>330</sup> BCPS Ex. 10.

<sup>331</sup> Test., ██████████ Tr., p. 1057.

<sup>332</sup> *Id.*, Tr., pp. 944-945.

Dr. ██████ conceded that the IEP team did not complete the report required when a child is suspected of having a SLD. That is a procedural violation. As previously discussed, if a procedural violation<sup>333</sup> does not interfere with the provision of a FAPE, the violation does not support a finding that a school district failed to provide a FAPE.<sup>334</sup> In other words, if, despite the failure to complete the report, the BCPS still complied with the evaluation procedures, there is no denial of a FAPE for this reason.

In this case, the Parents have not pointed to any specific ways the BCPS did not comply with the evaluation procedures required when assessing whether a student is a student with a SLD. Dr. ██████ explained that she evaluated the Student specifically to see if any of his academic difficulties could be attributable to a SLD, and testified that the IEP team “informally” reviewed the SLD eligibility worksheet with a focus on “rule-out criteria” at the October 20, 2022 IEP meeting, before concluding that a SLD was ruled out.<sup>335</sup>

Further, the evidence shows that Dr. ██████ considered all available data, including the two assessments from ██████ the 2021 test results from ██████ the report cards and Personal Learning Plans from the ██████ information provided by the Parents, and conducted an observation of the Student at ██████ In addition, her testimony established that she conducted the appropriate assessments to determine the Student’s strengths and weaknesses as they relate to his ability to learn; discussed the data she gathered with the IEP team; and that together, the IEP team determined that a SLD could be ruled out. In addition to her comprehensive report, Dr. ██████ gave detailed and persuasive testimony explaining what she did; why she performed the assessments she performed; what, in her

---

<sup>333</sup> See *T.B.*, 897 F.3d at 572; see also *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012).

<sup>334</sup> See *Tice v. Botetourt County Sch. Bd.*, 908 F.2d 1200, 1207 (4th Cir.1990) (no reimbursement for private placement where violation of IDEA notice requirement did not affect development of child’s IEP or provision of free appropriate public education).

<sup>335</sup> Test., ██████ Tr., pp. 944-945.

professional opinion, the results of the assessments showed when compared to the assessments provided by the Parents; and how she and the team discussed her data and came to the conclusion that an educational SLD could be ruled out in this case. The Parents presented no expert testimony that contradicted Dr. [REDACTED] report and testimony that she performed the correct assessments on the Student, or that her assessment was flawed in any way.

I gave Dr. [REDACTED] report and testimony a great deal of weight. At the same time, I fully credit Dr. [REDACTED] conclusion that the Student meets the diagnosis criteria for a medical diagnosis of SLD under the DSM-5. Dr. [REDACTED] is an accomplished practitioner who offered his testimony in a forthright manner, always trying to be as clear as possible for the benefit of the lay people present. He has extensive training and experience and was qualified as an expert in clinical psychology which includes the diagnosis and evaluation of “children and adolescents with both acute and chronic medical and neurodevelopmental conditions.”<sup>336</sup>

Nevertheless, Dr. [REDACTED] is not a reading specialist, does not work in the education field, and did not address whether the Student would meet the educational criteria for a SLD. He makes medical diagnoses. He did not speak to which, if any, of the tests he administered would have shown a possible processing deficit in cognition. Nor did he directly address or explain the discrepancies between the 2019 and 2022 results. In addition, he did not observe the Student in a school setting, while Dr. [REDACTED] did. For those reasons, I gave greater weight to Dr. [REDACTED] testimony that the Student does not have a processing deficit in cognition which would qualify him as having a SLD in Maryland under the IDEA. There is simply no evidence that Dr. [REDACTED] evaluation of the Student was deficient.

---

<sup>336</sup> Dr. [REDACTED] CV, Parents’ Binder, pp. 121-128.

## **2. The IEP Did Not Need to Include a Reading Comprehension Goal**

Another reason the Parents assert that the IEP is not appropriate is that it does not contain a reading comprehension goal. The Parents focused on the fact that the Student scored in the “below average” range in the reading comprehension category on the KTEA-3 assessment in 2019, in the “low average” range on the WIAT-4 assessment in 2022, in the tenth percentile on the 2021 NWEA-MAP assessment, the fact that the report cards and Personalized Learning Plans from the ██████████ consistently listed reading comprehension as among his “needs,”<sup>337</sup> and that the Woodcock Johnson subtest that placed his passage comprehension skills in the “low” range. The Student’s mother questioned why Dr. ██████ relied on her test results to the exclusion of the others to conclude that reading comprehension was not an area that did not need to be addressed in the IEP.<sup>338</sup>

Dr. ██████ Ms. ██████ and Ms. ██████ all explained that the IEP goals specifically addressed reading fluency, which is comprised of reading rate and accuracy, which directly impacts reading comprehension. Dr. ██████ explained that she administered ten selected subtests from the FAR in order to assess the Student’s phonological development, orthographical processing, decoding skills, reading fluency, and comprehension.<sup>339</sup> She noted that the Student scored in the “average” range on the two subtests in the Comprehension Index, Semantic Concepts and Silent Reading: Comprehension, as well as in the WIAT-4 Listening Comprehension subtest. As was explained, “[s]emantic concepts assess his understanding of word readings and silent reading comprehension, assesses his ability to answer questions from

---

<sup>337</sup> See Parents’ Ex. 8; BCPS Exs. 19 - 21.

<sup>338</sup> Test., ██████ Tr., p. 997, “Was there any concern about, let’s say, choosing your test results and excluding the four plus others that had consistently lower findings in reading comprehension?”

<sup>339</sup> BCPS Ex. 10.



two, fourth to fifth grade passages after reading them to himself,”<sup>340</sup> and the Listening Comprehension assessed his actual comprehension skills.<sup>341</sup>

Dr. ██████ testified that the testing showed that the Student did not have a comprehension problem *per se*, but rather the low comprehension scores resulted from the Student’s difficulties with decoding and word reading skills.<sup>342</sup> As Dr. ██████ noted, fluency is how quickly the Student is able to decode words<sup>343</sup> and if a student’s accuracy rate falls below ninety percent, his comprehension will be impacted because he will not have correctly decoded all the words.<sup>344</sup> She attributed his lower scores on the comprehension subtests to the fact that he was not reading accurately. Dr. ██████ analogized the Student’s situation to someone trying to read something in a language in which they are not completely fluent; if the person does not know all of the words, the reading comprehension on that passage is going to be negatively impacted.<sup>345</sup>

For her part, Ms. ██████ testified that the IEP team concluded that the Student had deficits in reading fluency and phonics. She explained that “when students cannot access content, when they cannot access individual words or read at a rate. . .cannot read at a rate to access text, then, then the barrier really is the decoding of words and the fluency of words.”<sup>346</sup> She also explained that the team had included supports such as extended time and other supplementary aids, such as visual organizers and process charts among others, to be in place across academic settings which would aid the Student’s comprehension.<sup>347</sup>

Ms. ██████ explained that when the IEP team looked at all of the data for reading comprehension, it noted that the “biggest impact on overall comprehension” was the lack of

---

<sup>340</sup> Test., ██████ Tr., p. 477.

<sup>341</sup> Test., ██████ Tr., p. 998.

<sup>342</sup> BCPS Ex. 10.

<sup>343</sup> Test., ██████ Tr., p. 1012.

<sup>344</sup> *Id.*, Tr., p. 956.

<sup>345</sup> *Id.*, Tr., p. 998.

<sup>346</sup> Test., ██████ Tr., pp. 604-605.

<sup>347</sup> *Id.*, Tr., pp. 612-613. *See also* BCPS Ex. 9 for a listing of all proposed supplemental aids and services.

automaticity,<sup>348</sup> reading rate and accuracy.<sup>349</sup> Ms. [REDACTED] explained that in her testing, the Student scored lower in passage comprehension than he did on the 2022 [REDACTED] assessment. She attributed this to the fact that the Student simply would not put forth effort if asked to do a task that he could not easily do.<sup>350</sup>

One of the subtests that Ms. [REDACTED] administered, sentence reading fluency, measured the Student's reading rate. The three minute time-limited test involved reading simple sentences silently and quickly, deciding if the sentence was true or false, and then circling "yes" or "no." The Student scored in the "very low" range on this test but Ms. [REDACTED] noted that he read the sentences out loud and slowly, would talk through the answer and make comments on the subject before circling "yes" or "no," which impacted his overall fluency. However, she also noted that of the twenty-six items he attempted, he got twenty-four correct.<sup>351</sup>

Ms. [REDACTED] also explained that the curriculum defines reading comprehension as the ability to identify the theme of a story, character and settings when asked who, what, when, and where questions.<sup>352</sup> She further explained that the Student could answer these questions given a written text but that his slower reading rate and automaticity of reading words negatively affected him in this area.<sup>353</sup>

To address this, the IEP team created goals that focused on accuracy, fluency, and phonics while at the same time offering support to allow him "access to grade-level text through supplementary aids and services"<sup>354</sup> as this will ultimately improve his overall comprehension. I note that the Parents' experts did not contradict the explanations provided by Dr. [REDACTED] Ms.

---

<sup>348</sup> The ability to read a word without having to sound it out. Test., [REDACTED] Tr., p. 714.

<sup>349</sup> *Id.*, Tr., p. 763.

<sup>350</sup> *Id.*, Tr., p. 813; BCPS Ex. 12.

<sup>351</sup> BCPS Ex. 12.

<sup>352</sup> Test., [REDACTED] Tr., p. 763.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

██████████ and Ms. ██████████ Dr. ██████████ explained that there is a difference between conceptualization and diagnosis in the realm of psychological assessments. As he emphasized, his job is to review data to identify a deficit, not to identify what specifically caused that deficit. Therefore, he conceded that reading rate and accuracy could impact reading comprehension, as could ADHD, anxiety, or a SLD, or a variety of other factors; however, the ultimate outcome is that reading comprehension is low and that is what he looks at.<sup>355</sup> Ms. ██████████ also acknowledged that the Student has gaps with decoding and he has very low fluency. She stated that, “[c]omprehension kind of suffered as a result of that.”<sup>356</sup>

Ultimately, the evidence fails to show that a reading comprehension goal on the Student’s IEP was necessary to the provision of a FAPE. The persuasive testimony established that the IEP team created a plan to address the deficits that impact Student’s comprehension, which will lead to an improvement in his reading comprehension.

**3. The Number of Proposed Service Hours Were Appropriate; The Student Does Not Require a Full-time Special Education Program to Receive a FAPE**

Finally, the Parents’ contended that the number of service hours in the IEP are insufficient to meet the Students’ needs because he can only succeed in a self-contained full-time special education program such as the ██████████ where he would be in a class with a very small student-to-teacher ratio. They asserted that the BCPS cannot offer sufficient services to enable the Student to receive a FAPE, because even specialized schools such as ██████████ and ██████████ have indicated his needs are too great for their programs. Moreover, the Parents contended that the Student failed to make progress even in a small special education classroom at the ██████████ and could not, therefore, make progress in a general education setting. In addition, they pointed to the standardized testing results of students in the BCPS in 2019 (the

---

<sup>355</sup> Test., ██████████ Tr., pp 62-63; 65.

<sup>356</sup> Test., ██████████ Tr., p. 263.

PAARC) that measured English Language Arts proficiency in all students, in students with disabilities, and in students with 504 plans, as well as the 2020 (the MCAP) testing that measured English Language Arts proficiency in all students. They argued that the results of these tests showing that the majority of students fell in the “did not yet meet expectations” category, are proof that the BCPS does not successfully educate students with disabilities.<sup>357</sup>

In support, the Parents presented the testimony of Mrs. [REDACTED] who, as supervisor of special education services, supervised the Student’s special education teachers during his time at the [REDACTED]. Mrs. [REDACTED] recounted the Student’s struggles to succeed, from kindergarten when he received small group instruction with a reading specialist, through the first half of first grade, after which the services expanded to include receipt of one-on-one instruction in the Learning Center, a resource room where special educators and reading specialists provide direct services to students with disabilities.<sup>358</sup>

Mrs. [REDACTED] explained that even with these additional services, the Student could not keep up in the general education classroom.<sup>359</sup> She described how he shut down when offered assistance in the general education classroom and generally appeared inattentive, with a glazed-over look in his eyes.<sup>360</sup>

Mrs. [REDACTED] testified that the Student was making progress in the Learning Center but was having trouble generalizing his skills to the larger classroom setting, which is why the [REDACTED] placed him in the self-contained special education classroom full-time for his secular, academic classes when he entered second grade.<sup>361</sup> She explained that they also put a behavioral plan into place to encourage him to work hard and stay on task; this plan was

---

<sup>357</sup> Parents’ Exs. 13 – 16.

<sup>358</sup> Test., [REDACTED] Tr., pp. 134-136.

<sup>359</sup> *Id.*, Tr., p. 138.

<sup>360</sup> *Id.*, Tr., p. 139.

<sup>361</sup> *Id.*, Tr., p. 140.

successful but the Student still greatly struggled with leaving the self-contained classroom and then going to the general education class to be with his peers for the [REDACTED] studies portion of his day.<sup>362</sup>

Despite these struggles, Mrs. [REDACTED] categorized the Student's time from September 2019, the start of his second grade year, until March 2020 when instruction went virtual as "fantastic."<sup>363</sup> The [REDACTED] set Personalized Learning Plans for the Student, which Mrs. [REDACTED] described as similar to an IEP and the Student "exceeded [their] expectations, mastering all" of the objectives set out for him.<sup>364</sup> Notwithstanding his "fabulous progress," in the winter of 2020 when the Student took the AIMSweb testing, which is a curriculum-based measure, he had progressed but not to grade level and his learning gap widened.<sup>365</sup>

Mrs. [REDACTED] explained that the Student then disengaged once instruction went virtual and received only "very limited instruction" through the rest of that school year because he was very inconsistent in attendance.<sup>366</sup> As a result, by the time the Student returned to in-person learning for third grade in the fall of 2020, he had lost "all the skills that he gained by the end of the second grade" which Mrs. [REDACTED] attributed to the gap in learning between March and September.<sup>367</sup>

Additionally, when the Student returned to in-person learning at the start of third grade, he exhibited a strong resistance to being in the self-contained classroom and by November 2020, his behaviors escalated to the point where the [REDACTED] offered him the interim

---

<sup>362</sup> *Id.*, Tr., pp. 140-141.

<sup>363</sup> *Id.*, Tr., p. 141.

<sup>364</sup> *Id.*, Tr., p. 150.

<sup>365</sup> *Id.*, Tr., p. 156.

<sup>366</sup> *Id.*, Tr., p. 186 ("So he was just inconsistent in his attendance. And even when he was in attendance, there was a lot of arguing and whining and not a lot of learning.").

<sup>367</sup> *Id.*

solution of a shortened day while his Parents sought a more appropriate educational placement for him.<sup>368</sup>

Based on these experiences, Mrs. [REDACTED] does not believe “that it would be possible to make modifications to the materials and accommodations to the teaching” that would allow the Student to meaningfully learn in a general education classroom.<sup>369</sup> She bases this opinion on how much effort went into getting meaningful learning to happen even in a small group setting where the student-teacher ratio was three to one.<sup>370</sup> She described the Student as just one of two or three students in the [REDACTED] thirteen years of running the Learning Center for whom the intensive level of support was not sufficient to allow him to make progress.<sup>371</sup>

Mrs. [REDACTED] explained that she had recommended that the Parents look into the [REDACTED] [REDACTED] in March 2021 when it became apparent he could no longer stay at the [REDACTED] [REDACTED].<sup>372</sup> She believed that the Student needed “his educational program to be set in a place where other students were getting their educational needs met and they had similar needs to him. So instead of accentuating his areas of need, it would just normalize the way he learned.”<sup>373</sup>

Mrs. [REDACTED] reviewed the psychological recommendations from Dr. [REDACTED] report and the instructional recommendations from Ms. [REDACTED] report and testified that she believed most were “on point” and appropriate but she simply did not believe that “they would be sufficient for a general education classroom for [the Student] to be successful.”<sup>374</sup> She explained that she believed the Student would respond to pull out services but she questioned how he

---

<sup>368</sup> *Id.*, Tr., p. 148.

<sup>369</sup> *Id.*, Tr., p. 175.

<sup>370</sup> *Id.*, Tr., p. 159.

<sup>371</sup> *Id.*, Tr., p. 160.

<sup>372</sup> *Id.*, Tr., p. 164.

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*, Tr., p. 174.

would do the rest of the time when he was in a general education fifth grade classroom.<sup>375</sup> Mrs. [REDACTED] detailed her concerns about the Student's well-being in such a setting because she "just can't imagine him being successful and improving his academics in an environment where students are so much more advanced than he is."<sup>376</sup>

Mrs. [REDACTED] has experience in the field of special education and I credit her testimony that the Student became so resistant to attending school in the self-contained classroom that ultimately, he needed to change schools because the [REDACTED] could no longer meet his needs. However, it was also apparent from her testimony that all of his classmates knew the Student was going to this separate classroom for his secular academic studies and then going back to the general education classroom for his [REDACTED] studies. All of the evidence shows that this resulted in teasing and bullying which led to the Student's increased resistance to attending classes in the self-contained classroom. Mrs. [REDACTED] did not speak to what she believed the Student's response would be to the BCPS plan to address this particular concern. For these reasons, I did not give much weight to her testimony about the Student's need to be in a nonpublic special education placement.

Ms. [REDACTED] who spent three years teaching at the [REDACTED] opined that she did not believe there are enough supports that could be offered in a general education classroom that would allow the Student to learn and make progress.<sup>377</sup> She explained that the [REDACTED] would be a good fit for the Student, given that it has an arts-integrated and multi-sensory curriculum and any related services he needed would be integrated throughout the whole school day.<sup>378</sup> Ms. [REDACTED] further testified that the Student did not do well in the self-contained classroom at the

---

<sup>375</sup> *Id.*, Tr., p. 175.

<sup>376</sup> *Id.*, Tr., p. 176.

<sup>377</sup> Test., [REDACTED] Tr., p. 267.

<sup>378</sup> *Id.*, Tr., p. 270.

██████████ because he was isolated in a general education setting, whereas in a setting like the ██████████ he would be with his peers through the entire school day.<sup>379</sup> She expressed that he would likely feel “safe” in a setting such as the ██████████ where everyone had challenges and this would lessen his resistance to learning.<sup>380</sup> She opined that in a self-contained classroom in a larger general education setting, the Student would not be able to “receive the instruction” because he “already feels isolated. He feels like he’s different in a wide setting.”<sup>381</sup>

Ms. ██████████ is very clearly passionate about her work and what students need in order to be successful. She teared up on the stand when she spoke about how she had seen students who went to the ██████████ feeling “broken” from their lack of success in other schools, feeling as though they are incapable of learning.<sup>382</sup> Ms. ██████████ described the transformation these students underwent when they are with “kids who are like them” throughout the school day into students who grew, learned to self-advocate, and to ask for help.<sup>383</sup> She emphasized that in her opinion the Student needs to be in place like the ██████████ because he would feel “safe,” and could get “social emotional support in addition to the learning piece.”<sup>384</sup> Ms. ██████████ however, never specifically addressed the suitability of the BCPS supports designed to specifically address this area, other than to generally say that she did not believe any number of supports would enable the Student to learn and make progress in a general education classroom.<sup>385</sup> She seemingly based this opinion mainly on his reading levels being so low that, in her opinion, he would not be able to access any of the curriculum.<sup>386</sup> While I accepted her as an expert in special education, I

---

<sup>379</sup> *Id.*, Tr., p. 271.

<sup>380</sup> *Id.*, Tr., p. 272.

<sup>381</sup> *Id.*, Tr., pp. 276-277.

<sup>382</sup> *Id.*, Tr., p. 271.

<sup>383</sup> *Id.*, Tr., p. 271.

<sup>384</sup> *Id.*, Tr., p. 272.

<sup>385</sup> *Id.*, Tr., p. 267.

<sup>386</sup> *Id.*, Tr., p. 268 (“And that’s based on his reading levels. He wouldn’t be able to access any of the curriculum because of that.”).



note that she has less experience than the BCPS experts, has never taught in a public school setting, has never observed the Student in a classroom setting, and performed no formal assessments on the Student. For these reasons, I gave less weight to her testimony about the appropriate placement for the Student than I did that of the BCPS' experts.

In further support of their position, the Parents also provided letters from [REDACTED] the remedial tutor who worked with the Student from the Spring of 2021 through the Spring of 2022,<sup>387</sup> and [REDACTED] LMSW, the therapist who currently works with the Student.<sup>388</sup> Ms. [REDACTED] explained that she tutored the Student between one and three times per week at [REDACTED]. She described the difficulties they had in finding a consistent, quiet place in which to work until finally being assigned to an "open area at the bottom of a stairway."<sup>389</sup> Ms. [REDACTED] also described the Student's resistance to working with her, exhibited by his refusal to cooperate with her, sometimes becoming disrespectful and turning his back on her.<sup>390</sup> She attributed the Student's resistance to the fact that he was embarrassed when she would pull him out of class for tutoring, and his comments to her that he "did not feel smart," and that "nobody else had a tutor."<sup>391</sup> Further, Ms. [REDACTED] noted that even when the Student was cooperative and tried to work, there were "too many distractions that kept him from receiving the full benefits of tutoring." Finally, Ms. [REDACTED] indicated that she did not believe the Student could make progress in a general education classroom even with support and accommodations because "he is so deficient in all areas of language. . . A school that deals with children who have learning disabilities would give [the Student] the best chance for meeting his educational goals."<sup>392</sup>

---

<sup>387</sup> Parents' Ex. 9.

<sup>388</sup> Parents' Ex. 12.

<sup>389</sup> Parents' Ex. 9.

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> *Id.*

I gave no weight to Ms. [REDACTED] opinion as to an appropriate placement for the Student. First, she did not testify at the hearing, nor was she offered as an expert. Moreover, she offered no rationale for her conclusion that the Student could only succeed in a nonpublic special education placement. Ms. [REDACTED] only experience with the Student was in a setting where they never had a closed, distraction-free area in which to work and his peers unmistakably knew he was being pulled out of class to receive tutoring.<sup>393</sup>

Mr. [REDACTED] described the toll on the Student's self-esteem from being in schools "that cannot provide [the Student] with the help he needs."<sup>394</sup> He noted that he sees how the Student is struggling "in the regular classroom without additional resources and aid." Mr. [REDACTED] did not offer an opinion as to what he believed the best placement for the Student should be.<sup>395</sup>

On the other hand, the BCPS experts detailed why they believed the proposed IEP was sufficient to allow the Student to achieve a FAPE. All three witnesses described the extensive discussions that took place at both the October 20<sup>th</sup> and November 10<sup>th</sup> meetings regarding the Student's academic deficits, as well as all areas where he requires supports to access the general education curriculum due to his inattention, and due to his needs in the social-emotional learning and social-emotional behavioral areas.<sup>396</sup>

Ms. [REDACTED] who was present at the August 24, 2022 meeting, recounted that the Parents were present and "provided very valuable information" including the 2019 [REDACTED]

---

<sup>393</sup> *Id.* ("One on one tutoring would help close the gap if the tutoring area was closed and there were no distractions or bullying.").

<sup>394</sup> Parents' Ex. 12.

<sup>395</sup> *Id.*

<sup>396</sup> *See, e.g.,* Test., [REDACTED] Tr., p. 444.

report, the November 2021 test scores from [REDACTED] as well as a lot of information about their concerns and a list of the Student's strengths. Specifically, Ms. [REDACTED] testified that

We learned a lot about [REDACTED] during that meeting. Like, we learned that primarily he had had a history of academic concerns. . . And we also learned about his educational history at that meeting. That he had previously attended [REDACTED] That he, what interventions he was being provided at [REDACTED] At that point, we did not have the personalized learning plans, but verbally, obviously, they're very knowledgeable about the supports that he was provided during that. They were able to verbally explain to us those supports and services. . . It was very clear that they had academic concerns, that the student also had areas that he excelled in, both in leisure activities. They were able to speak to reading being more of a concern than math, but that he does exhibit some concerns in mathematics.<sup>397</sup>

With regard to the October 20, 2022 meeting, Ms. [REDACTED] explained that the team reviewed all of the evaluations and assessment data it had collected, including Ms. [REDACTED] and Dr. [REDACTED] report on their classroom observations of the Student at [REDACTED] The team also considered new information provided by the Parents, including the 2022 [REDACTED] report, [REDACTED] report cards and personal learning plans, and considered prior parental input.<sup>398</sup>

Ms. [REDACTED] testified that after the October 20, 2022 meeting, the team developed a draft IEP which was sent to the Parents on November 2, 2022, along with all relevant documents that were to be discussed at the November 10, 2022 meeting, including the BCPS evaluation reports. Ms. [REDACTED] explained that when creating the draft IEP, the team started with the Student's present levels of ability by outlining the Student's performance on multiple assessments to determine the Student's strengths and areas of need.<sup>399</sup> That data was then used to determine which specific areas are adversely impacted by the Student's disability and whether supports are

---

<sup>397</sup> *Id.*, Tr. pp. 349-350.

<sup>398</sup> *Id.*, Tr. p. 375.

<sup>399</sup> *Id.*, Tr. p. 471.

required in those areas.<sup>400</sup> The team identified things that the Student requires as part of his IEP, such as monitoring independent work throughout settings, preferential seating to maximize exposure to the teacher and minimize distractions, writing supports such as allowing the Student to use a word processor with spell checking software so he can focus on content instead of spelling, allowing him to use a graphic organizer with sentence starters when responding to writing prompts, making a list of words the Student commonly misspells that he can keep at his desk as reference when writing, chunking reading passages into smaller parts with frequent discreet checks for understanding after completion of each part, and providing visual organizers and process charts in the class which outline the explicit steps or process being used when learning a particular skill.<sup>401</sup> The team then drafted goals in the areas of deficit and identified objectives as skills that are benchmarks to be monitored to ensure the Student was making progress.<sup>402</sup>

The team drafted goals in five areas: Math Calculation, Reading Phonics, Written Language Expression, Reading Fluency, and Written Language Mechanics.<sup>403</sup> The team then developed objectives that can be specifically measured for each goal.<sup>404</sup> These objectives are “scaffolded” to work on one prerequisite skill at a time that the student needs to achieve the overall goal.<sup>405</sup> Ms. ██████████ testified that “scaffolding” is a systemic, incremental, explicit, and evidence-based practice and a way for the school to “effectively provide that specially designed instruction to make sure we’re building on the skills. . .”<sup>406</sup> For example, for writing paragraphs, the first skill to focus on would be the introductory sentence; the next step would be

---

<sup>400</sup> *Id.*, Tr., p. 472.

<sup>401</sup> BCPS Ex. 9.

<sup>402</sup> Test., ██████████ Tr., p. 442.

<sup>403</sup> BCPS Ex. 9.

<sup>404</sup> Test., ██████████ Tr., p. 955.

<sup>405</sup> Test., ██████████ Tr., p. 832.

<sup>406</sup> *Id.*, Tr., p. 833.

to work on using at least two facts to compose two sentences related to the topic; the next step would be composing a concluding sentence; and then progressing to where the Student would be able to write a five sentence paragraph and be able to revise his work.<sup>407</sup> The team considered these appropriate objectives because goals are aligned with the skills within the grade level and these skills related to paragraph writing come directly from the fifth grade curriculum.<sup>408</sup>

During all of this time and across the curriculum, the Student would have the use of a graphic organizer with sentence starters and then a proofreading checklist to assist him. All three of the BCPS experts emphasized that the supplementary aids and supports would be provided all across the entire curriculum. As Ms. ██████████ explained, this allows the Student to “do this grade level expectation with supports appropriate to his disability and his unique needs and strengths.”<sup>409</sup>

At the November 10, 2022 meeting, the IEP team met and drafted the final IEP. Ms.

██████████ explained the process the team follows for determining what should be in the final IEP:

Service hours are not included in a draft IEP, because the team does not want to make a predetermination of services. So that is a collaborative conversation as part of the IEP team meeting. Once we go through all the data, once we determine what the supports and services that are going to be in place, then we at the end of the meeting, we do have a discussion about what appropriate service hours are in different areas with classroom instruction and related services as well as what the student’s Least Restrictive Environment would be.<sup>410</sup>

Therefore, at the November 10, 2022 meeting, the team added more supports, service hours to the proposed IEP, and modified some of the objectives to make them more specific and measurable.<sup>411</sup> Ms. ██████████ recalled that the team believed, based on the data and the discussions, that the Student would have difficulty sustaining attention when reading a longer

---

<sup>407</sup> BCPS Ex. 9.

<sup>408</sup> Test., ██████████ Tr., p. 773.

<sup>409</sup> *Id.*, Tr., p. 774.

<sup>410</sup> Test., ██████████ Tr., p. 481.

<sup>411</sup> Test., ██████████ Tr., pp. 955-956.

passage. Because of this, the supports were changed to reflect that the Student would read smaller parts with explicit check-ins from his teachers. In addition, she testified that the team added several additional social emotional behavioral supports.<sup>412</sup>

Service hours “refers to the hours of specially designed instruction with can be implemented by a special educator, general educator, or both.”<sup>413</sup> Ms. ██████ explained that the team identified areas where the Student requires “a research based explicit and direct reading intervention program”<sup>414</sup> and proposed that the Student receive pull out sessions with a special educator five sessions per week of thirty minutes each<sup>415</sup> and push in services with the general educator and special educator three sessions per week of thirty minutes each to specifically target those areas.<sup>416</sup> In addition, the team added push-in services with a special educator and general educator five sessions per week of thirty minutes each on math calculation skills, another area of need for the Student.<sup>417</sup>

The team also added pull out sessions with the school psychologist for thirty minutes weekly of direct psychological services to address the Student’s anxiety and low self-confidence, which play a part in the Student’s lack of engagement and attention.<sup>418</sup> Dr. ██████ described what she saw as the Student’s “fixed mindset” where he has it fixed in his mind that there are things he simply cannot do because of his disability. She explained that psychological counseling could encourage him to develop a “growth mindset” instead by developing skills to allow him to focus instead on his strengths and resources and emphasize to him that he is a

---

<sup>412</sup> Test., ██████ Tr., p. 810.

<sup>413</sup> *Id.*, Tr., p. 820.

<sup>414</sup> Test., ██████ Tr., p. 490.

<sup>415</sup> *Id.*, Tr., p. 490.

<sup>416</sup> *Id.*, Tr., p. 482.

<sup>417</sup> *Id.*, Tr., p. 485.

<sup>418</sup> Test., ██████ Tr., p. 935.

capable student by focusing on things that he is good at.<sup>419</sup> In addition, the counseling could work with him to develop some executive functioning strategies to help him with initiating work, completing work, remaining on task, and planning and organizing.<sup>420</sup> Given the Student's history of being bullied, the psychological services could identify what his response to the bullying is, and teach him social, emotional, and behavioral strategies so he engages in positive self-talk and develops the ability to "engage properly with his peers, but also reengage in his work appropriately."<sup>421</sup>

Finally, because the team noted that the Student had a history of a lack of transfer of skills within the general education classroom, the team added thirty minutes monthly of classroom instruction consult provided by the special educator to the Student's general education teachers. The purpose of these consults is to review the Student's progress, and to offer more specific guidance to general educators about implementing the supports the Student requires.<sup>422</sup>

Ms. █████ described the process for this implementation:

[W]e want to standardize these supports and services across multiple classroom classes. So the special educator typically takes lead and then develops what those supports would look like, and then distributes that information to all the teachers and classroom instruction consult is included on his finalized draft IEP for that for that person to be a point person and also be checking in to monitor how the implementation of those supports is governed.<sup>423</sup>

In addition, Dr. █████ added thirty minutes monthly of psychological consult provided by the school psychologist to school personnel who will be interacting with the Student,

---

<sup>419</sup> *Id.*, Tr., pp. 964-965.

<sup>420</sup> *Id.*, Tr., pp. 934; 862-863

<sup>421</sup> Test., █████ Tr., pp. 423-424.

<sup>422</sup> *Id.*, Tr., p. 486.

<sup>423</sup> *Id.*, Tr., p. 637.

including general education teachers, special education teachers and others.<sup>424</sup> Dr. ██████

explained that this type of consult is important because,

[I]t's not just about working directly with a student, and it's not just about special educators or general educators working with a student, but it's about collaborative problem solving and seeing what works best for a student, and I often find in those types of meetings, ways that I can help teachers and parents send the message of this like growth mindset and working at home, working at school to develop self-confidence, to develop skills that allow a child to really see what strengths and resources they have to be successful.<sup>425</sup>

Ms. ██████ testified that the IEP team added to the Student's accommodations and supplemental aids and services on the final draft to include for preferential seating, and strategies to deal with his inattention.<sup>426</sup> In addition, the team had extensive discussions on the Student's aversion to academic tasks expressed as shutting down when offered help in the classroom and how to perform the checks for understanding to avoid the Student feeling like he was specifically being pointed out.<sup>427</sup>

Ms. ██████ explained that there are different ways to discreetly check with a student without everyone else in the class knowing that it is happening. For instance, a student may put different colored cards on the desk to indicate his level of understanding – “green” to represent no assistance needed, “yellow” to signal that the student needs a little bit of help, and “red” to indicate that the student is completely lost.<sup>428</sup> Ms. ██████ recounted a strategy she used with a student who felt even the color-coded cards drew too much attention to her. That student would take out her eyeglasses case and position it on her desk as a signal that she needed help.<sup>429</sup> She

---

<sup>424</sup> Test., ██████ Tr., p. 964.

<sup>425</sup> *Id.*, Tr., pp. 964-965.

<sup>426</sup> Test., ██████ Tr., pp. 494-495 (“There was also additions made at the IEP team meeting that we held for IEP development. For example, we added strategies to initiate -- initiate attention and work production or work engagement. So that was -- and we outlined what that description would be specifically for [the Student], because we saw that as an area of a deficit.”).

<sup>427</sup> *Id.*, Tr., pp. 562-563.

<sup>428</sup> *Id.*, Tr., p. 635.

<sup>429</sup> *Id.*, Tr., p. 636.



indicated that the team would work with the Student in this case to figure out a strategy that he would be comfortable with.<sup>430</sup>

In addition, there would be a special educator and a general educator in the Student's classroom when the Student is receiving services. However, the teachers are not identified as "special education" or "general education" teachers and instead there would be supports provided so that the two teachers are seen as equals within the classroom. Moreover, small group instruction regularly occurs in the general education classroom, along with one-on-one instruction as this provides more targeted support to all students.<sup>431</sup>

Finally, the team looked at the appropriate placement based on the number of service hours and whether the supplementary aids and services and other supports could be implemented in comprehensive school setting.<sup>432</sup> Ms. [REDACTED] explained that the IDEA requires that a student be placed in the least restrictive environment so it is only if, based on the entirety of the IEP, the team determines that a student cannot be educated in a general education even with the provision of supplementary aids and services, that the team would recommend a more restrictive placement such as a self-contained special education school.<sup>433</sup> She further explained that the IDEA "requires that a team consider the continuum of services starting with the least restrictive environment."<sup>434</sup> Accordingly, because the team in this case determined the services the Student requires based on his strengths and needs could be met with the Student participating inside the general education classroom for at least eighty percent of his day, the least restrictive environment is a traditional public school and there was no need to consider more restrictive

---

<sup>430</sup> *Id.*, Tr., p. 637.

<sup>431</sup> *Id.*, Tr., p. 334.

<sup>432</sup> Test., [REDACTED] Tr., p. 828.

<sup>433</sup> *Id.*, Tr., pp. 828-829.

<sup>434</sup> *Id.*, Tr., p. 828.

placement, such as a self-contained special education classroom, a separate public special education school, or a nonpublic special education placement.<sup>435</sup>

Ms. ██████ testified that the team considered the Parents' concerns that the Student required a more restrictive placement due to his extensive needs.<sup>436</sup> However, she explained that the Student, who is very talented in art and is athletic, does not need to be pulled out during art class or physical education classes and there is no indication from any of his records that he requires being with special education peers one hundred percent of the time.<sup>437</sup> Ms. ██████ also emphasized that the Student would not be in general education classroom without support for more than eighty percent of his day. Whenever he was in a general education classroom, he would still receive all of the supports in his IEP, the supplementary aids, and the accommodations.<sup>438</sup> Taking this all into consideration, the team determined that an appropriate placement for the Student was his zoned school, ██████<sup>439</sup>

The BCPS experts also addressed the Parents' concerns that the Student had struggled even in a self-contained classroom with a very small student-to-teacher ratio. I first note that Mrs. ██████ testimony about the "fantastic" progress the Student made while in the self-contained classroom at the ██████ is in direct contrast to the Parents' assertions that the Student had failed to make any progress during that time.<sup>440</sup> Ms. ██████ explained that it appeared a lot of the problem was that the Student resisted learning even in that setting because he endured teasing from general education students about being "dumb" and "stupid." She opined that a setting such as ██████ would give the Student the chance to

---

<sup>435</sup> *Id.*, Tr., p. 829.

<sup>436</sup> Test., ██████ Tr., p. 496.

<sup>437</sup> *Id.*, Tr., p. 488.

<sup>438</sup> *Id.*, Tr., pp. 496-497.

<sup>439</sup> *Id.*, Tr., p. 496.

<sup>440</sup> Test., ██████ Tr., p. 141.

be “around a group of learners who have, who are very diverse in their current learning profile who would be receiving services outside for various reasons” and he “wouldn’t feel like he stood out.”<sup>441</sup> Similarly, Ms. ██████ testified that the team considered the fact that the Student had been averse to the small classroom setting when determining that his most appropriate setting would be inside a general education classroom with the special education supports that are identified in his IEP.<sup>442</sup>

The BCPS experts also discussed the benefits to students with disabilities who are educated with their non-disabled peers. Dr. ██████ expressed that she believed it was especially important for the Student to be in a class with non-disabled peers because he is a “very smart and capable boy”<sup>443</sup> with a number of strengths, particularly in art, athletics, mechanics, and engineering.<sup>444</sup> She testified that she believes that overestimating the amount of restriction he needs could further damage his self-esteem and reinforce the idea that he is only capable of learning in a very restricted placement when that is not the case.<sup>445</sup> She opined that while he is behind and needs to catch up, she believes there is a “misunderstanding about the level of impairment he has.”<sup>446</sup> And she also advised that in giving him appropriate supports and resources that allow him to make progress in the general education setting, the message they would be sending is that he is capable and able to access his grade level curriculum, because she “absolutely” believes he can do it.<sup>447</sup> Dr. ██████ observed that in not making the Student try to do difficult things such as reading and writing, the teachers at ██████ merely reinforced

---

<sup>441</sup> Test., ██████ Tr., p. 745.

<sup>442</sup> Test., ██████ Tr., p. 570.

<sup>443</sup> Test., ██████ Tr., p. 1116.

<sup>444</sup> BCPS Ex. 10, (“At one point, [the Student] described how to engineer a mask that could be flipped up with a button via circuits and electromagnets.”). *See also*, Test., ██████ Tr., p. 918 (“I do believe that it was noted on like the parent questionnaire, the teacher questionnaire that he clearly enjoys robotics and engineering tasks.”).

<sup>445</sup> Test., ██████ Tr., p. 960.

<sup>446</sup> *Id.*, Tr., p. 1116.

<sup>447</sup> *Id.*, Tr., pp. 1116, 960.

his negative feelings about his abilities. She opined that in not being challenged to even try, he is allowed to escape the things that make him anxious and thereby does not have the chance to build self-confidence in his academic skills.<sup>448</sup>

I gave this testimony great weight given Dr. ██████ extensive education, training, and experience providing direct psychological services to students with social-emotional needs.<sup>449</sup> I found persuasive her explanation that the way to improve the Student's self-confidence and reduce his anxiety is to give him sufficient supports and resources to allow him to succeed in a general education setting, rather than to further reinforce the message that he is so disabled he can only succeed in a very restricted placement.

Ms. ██████ explained that the law and the research "are very clear that students are to be educated with their non-disabled peers to the greatest extent possible."<sup>450</sup> She stated that the research shows that "students who are educated to the greatest extent possible alongside their non-disabled peers, they have better outcomes, and in many cases the chance to observe and learn from positive peer models both academically and behaviorally."<sup>451</sup> She further explained that even students with significant cognitive disabilities may be able to participate in classes such as art, music, and gym, especially because some of those students are "brilliant" in those areas and "it gives them the opportunity to participate in those areas meaningfully."<sup>452</sup> I also gave this testimony great weight as it parallels the opinion of Dr. ██████ that a key to addressing the Student's anxiety is to allow him to succeed in front of his typically developing peers so that his self-esteem improves. In this case, the Student evidently possesses tremendous skills in both art

---

<sup>448</sup> BCPS Ex. 10.

<sup>449</sup> BCPS Ex. 28.

<sup>450</sup> Test., ██████ Tr., p. 830.

<sup>451</sup> *Id.*, Tr., pp. 745-746.

<sup>452</sup> *Id.*, Tr., p. 830.

and engineering. The recognition of these talents by his typically developing peers would definitely bolster his self-esteem.

In addition, Ms. ██████ described the services available to all students in the BCPS. Multi-tiered systems of support is one of the interventions provided to all general education students. For example, the BCPS started using the i-Ready program for progress monitoring. i-Ready is an online program that teaches foundational skills in reading and math and provides assessments so that teachers can track the progress of students to ensure that all students are making adequate progress.<sup>453</sup>

The BCPS experts also emphasized that the IEP is a “living document” and can and should be amended if it is not effective. As Dr. ██████ explained,

So if a student -- let's say we found that you know he's -- the amount of services or we found the supports or we needed more behavioral supports surrounding the implementation, we could call a meeting. We could -- we would have -- we would problem solve and figure out what we need to do. If we need to adjust the goals because they're not making progress in the goals or if they're making progress so quickly that we need to like up the -- up the level. We do that at any time. So, it's not a stationary document. It's a living, breathing document that changes.<sup>454</sup>

Ms. ██████ stated that progress monitoring is a crucial part of the implementation of an IEP.<sup>455</sup> As she testified, progress monitoring is an evidence-based method to get students to achieve goals. The IEP team is required to provide progress monitoring to the parents of a student with an IEP on a quarterly basis, which acts as a “failsafe” measure to ensure the Student continues to progress.<sup>456</sup> It also a way to keep parents informed about their child's progress so they can be a part of the student's education, and, “[I]f what we're doing isn't working then we need to be able to adjust what we're doing and progress monitoring is the only way we can get

---

<sup>453</sup> Test., ██████ Tr., p. 312.

<sup>454</sup> Test., ██████ Tr., pp. 1119-1120.

<sup>455</sup> Test., ██████ Tr., p. 834.

<sup>456</sup> *Id.*, Tr., pp. 834-835 (“[W]e have specific periods of times where we need to ensure that the student is making progress.”).

that data.”<sup>457</sup> Moreover, parents can request an IEP meeting at any time if they have concerns that the student is not making sufficient progress.<sup>458</sup>

The evidence shows that the BCPS team considered all of the data as well as the Parents’ concerns when deciding the best placement for the Student, including whether the Student had a SLD and whether the Student needed a goal on his IEP for reading comprehension. I note that even if I did conclude that Dr. ██████ was in error when she determined that the Student did not have a SLD, it does not automatically mean that the resulting IEP was inappropriate. As the BCPS experts explained that, regardless of disability category, the team goes through the same process of assessment to determine the Student’s strengths and areas of need as those are what drive the development of the IEP, not the disability category itself.<sup>459</sup> Courts have consistently found that the services included in a student’s IEP are more important than either the categorization of the Student’s disability or the label given to the services.<sup>460</sup>

In addition, Dr. ██████ explained that the team considered all of the supports the Student received when he was in first grade at the ████████████████████ and incorporated most, if not all of them, into the IEP.<sup>461</sup> Dr. ██████ further stated that she “took parental input in the form of all of the documents that I received from [the Parents] and all of the meetings that [the Parents] had

---

<sup>457</sup> *Id.*, Tr., p. 835.

<sup>458</sup> *Id.*, Tr., p. 836.

<sup>459</sup> Test., ██████ Tr., pp. 541, 614, 620.

<sup>460</sup> *See Crofts v. Issaquah School District No. 411*, 22 F.4th 1048, 1056 (9<sup>th</sup> Cir. 2022) (Categorizing the student as having a “SLD” rather than “dyslexia” is not enough to show IEP deficient where the school district evaluated the student’s impairments in reading and writing); *see also Leander Independent School District*, 79 IDELR 145 (Texas State Educational Agency 2021); *Heather S. v. Wisconsin*, 125 F.3d 1045, (7<sup>th</sup> Cir. 1997) (noting “whether Heather was described as cognitively disabled, other health impaired, or learning disabled is all beside the point. The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education.”); 20 U.S.C. § 1412(a)(3)(B) (“Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.”).

<sup>461</sup> Test., ██████ Tr. p. 1071.

attended and documented [the Parents'] concerns. Additionally, the questionnaire that I had [the Parents] fill out.<sup>462</sup>

In furtherance of their argument that the proposed placement is inappropriate, the Parents focused heavily on the “grade equivalent” ratings the Student received on many assessments showing that he tested generally in or around the second grade level for reading and writing. The Parents seem to believe that this means that the Student is only reading at a second grade level, a time when students are still learning to read. They asserted that by fifth grade, students are using reading as a tool to learn all other subjects, and it would be “inhumane” to place a child like the Student in a class where he is so far behind his general education peers.<sup>463</sup> This is a fundamental misunderstanding of what the term “grade equivalent” means.

Dr. [REDACTED] explained that having a reading comprehension level, for example, of 2.1 does not mean that the Student can only read and comprehend at the same level as a second grader in his first month of school. As she explained,

For . . . reading comprehension, it could be that they are reading up to 5th and even beyond passages and getting some of those correct. But the number of items they got correct, so let's say they got 27 points, is the same as a 2nd grader in the 50 percentile, they got also 27 when they did the norming sample. So the 2nd grader might have only gotten the first 27 correct. Whereas may a student like [the Student] got up to 60, you know.<sup>464</sup>

Dr. [REDACTED] further explained that some tests require a student to get a certain number of incorrect answers in a row before the test stops. For example, he may have gotten two wrong here, three wrong here, but is still able to answer questions accurately in between. Dr. [REDACTED] stated that a student with a 2.1 rating in math calculations might be able to do math problems all the way up through multiplication, division, fractions, and decimals but he missed problems

---

<sup>462</sup> *Id.*, Tr., p. 1095.

<sup>463</sup> Parents' closing, Tr., p. 1185.

<sup>464</sup> Test, [REDACTED] Tr., p. 1121.

along the way. As a result, the raw number of answers he answered correctly was more similar to the raw number of correct answers given by a child in the first month of the second grade.<sup>465</sup>

Dr. [REDACTED] further explained that while grade equivalency numbers are often misinterpreted, they are a data source. She testified that the BCPS has to “overly rely” on standardized measures that give grade level equivalents in cases like the Student’s where there is no curriculum-based data for the team to review, nor was she able to ask his teachers about curriculum-based data and what kind of problems the student was able to solve.<sup>466</sup> She noted that in the case of her testing, the Student was able to decode ninety-three percent of fourth and fifth grade level words accurately but his score was adversely impacted by his slow reading rate.<sup>467</sup> She also emphasized that she believes it is only with supports and resources that the Student in this case would be able to access the fifth grade curriculum.<sup>468</sup> For these reasons, I find no merit to the Parents’ argument that the Student’s grade equivalent scores show that the proposed placement would be inappropriate.

The fact that the IEP team concluded that the Student did not need require a nonpublic fulltime special education placement does not mean that it did not consider the Parents’ input. In contrast to the situation in the *Doug C.* case, *supra*, the record makes clear that in this case, the IEP team carefully and thoroughly considered all of the Parents’ input along with a variety of other data, when arriving at their proposed placement and that their decision would not have been different had the Parents been at the meetings. Indeed, all three of the BCPS witnesses detailed the discussions at the meetings and provided “a cogent and responsive explanation for

---

<sup>465</sup> *Id.*

<sup>466</sup> *Id.*, Tr., p. 1123.

<sup>467</sup> *Id.*, Tr., p. 1082.

<sup>468</sup> *Id.*, Tr., p. 1125.



their decisions.”<sup>469</sup> I note that the IDEA does not require a school district “simply to accede to parents’ demand without considering any suitable alternatives.”<sup>470</sup>

For these reasons, I ultimately found that the BCPS experts, who have extensive experience, have observed the Student in a classroom setting, are very familiar with the public school setting, and who were able to offer specific reasons for each of their recommendations, were more persuasive than the Parents’ witnesses.

As *Andrew F.* makes clear, the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”<sup>471</sup> After review, I conclude that with the BCPS met its obligation to provide a FAPE when it created the November 10, 2022 IEP. The record makes clear that the IEP team thoroughly considered the Student’s strengths and weaknesses, the Parents’ concerns, recent evaluations and assessments, and the academic, developmental, and functional needs of the Student. The testimony of the BCPS experts shows that the IEP is comprehensive, reasonable, is “appropriately ambitious in light of his circumstances,” and afford him “the chance to meet challenging objectives.”<sup>472</sup> It affords the Student integrated special education supports in the general education classroom. Additionally, the proposed educational program described by the BCPS’ experts meets the IDEA’s least restrictive environment requirement to educate the Student in the general education setting “[t]o the maximum extent appropriate.”<sup>473</sup>

Finally, as previously noted, the accepted standard is that an IEP should be judged on its appropriateness at the time it is written, which requires a prospective judgment by school officials, informed by the expertise of school officials and the input of the child’s parents. The

---

<sup>469</sup> *Andrew F.*, 137 S.Ct. at 1001.

<sup>470</sup> *Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999).

<sup>471</sup> *Andrew F.*, 137 S.Ct. at 1001.

<sup>472</sup> *Id.*, at 1000.

<sup>473</sup> 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i).

question to be answered is whether the IEP is *reasonable*, not whether it is ideal.<sup>474</sup> In applying this standard, I find that the November 10, 2022 is reasonable and appropriate.<sup>475</sup>

For the reasons above, I find the Parents’ have failed to meet their burden of showing that the IEP denies the Student a FAPE and that the denial of a FAPE from the child find violation is ongoing. I further find that the procedural violation of holding the October 20, 2022 and November 10, 2022 meetings without the Parents did not significantly impede the Parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE, and did not result in a substantive denial of a FAPE as the IEP that was developed was appropriate.<sup>476</sup> Accordingly, I further find that the denial of a FAPE stemming from the BCPS’ child find violation ended on November 10, 2022.

### **III. THE REMEDY**

#### ***A. The Legal Standard***

The IDEA’s procedural safeguards direct district courts to “grant such relief as the court determines is appropriate.”<sup>477</sup> Where a school district has failed to provide a FAPE, “a court will evaluate the specific type of relief that is appropriate to ensure that a student is fully compensated for a school district’s past violations of his or her rights under the IDEA and develop an appropriate equitable award.”<sup>478</sup> The equitable relief authorized by 20 U.S.C. § 1415(i)(2)(C)(iii) most commonly results in reimbursement for private placement when the

---

<sup>474</sup> *Andrew F.*, at 999, *citing Rowley*, at 207-209.

<sup>475</sup> I note that the Parents’ presented no evidence to support their claim that the IEP goals are not reasonable as they are unrealistic, “performative,” and meant to serve a due process case rather than “an actual, real-life child.” (Parents’ closing, Tr., p. 1180).

<sup>476</sup> *R.F.*, 919 F.3d., 237.

<sup>477</sup> 20 U.S.C. § 1415(i)(2)(C)(iii).

<sup>478</sup> *D.F. v. Collingswood Borough Bd. of Educ.*, 694 F.3d 488, 498–99 (3d Cir. 2012) (quoting *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 720 (3d Cir. 2010)).

child was denied a FAPE, or prospective compensatory education.<sup>479</sup> Compensatory education involves discretionary, prospective, injunctive relief crafted by a court to account for the period of time that a student was deprived of his right to a FAPE.<sup>480</sup> Courts have held that to accomplish the IDEA's purposes, a compensatory education award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.”<sup>481</sup>

Jurisdictions differ on how to calculate a compensatory education award. Some circuits accept a calculation based a day-for-day method where the time of the compensatory education award equals the length of the inappropriate placement or denial of services. This can be measured in weeks, month, or even years.<sup>482</sup>

Other jurisdictions have rejected this approach. For example, in the *Reid* case, the D.C. Circuit Court concluded that compensatory education relief is not a contractual remedy, but an equitable one, and that the “one-hour-of-compensatory-education-for-each-hour-of-FAPE-denied” award as sought by the *Reid* parents sounded like contractual damages and was, thus, inappropriate.<sup>483</sup> Rather, *Reid* held that the essence of equity jurisdiction is to do equity and mould each decree to the necessities of the particular case with case-specific flexibility. *Reid*

---

<sup>479</sup> *G. ex rel R.G. v. Fort Bragg Dependent Schools*, 343 F.3d 295, 308 (4<sup>th</sup> Cir. 2003). See also *Ridgewood Board of Ed. v. N.E.*, 172 F. 3d 238, 249 (3d Cir. 1999) (compensatory education may be appropriate beyond age 21); and *Board. of Educ. of Oak Park and River Forest High School Dist. 200 v. Illinois State Board of Educ.*, 79 F.3d 654, 656 (7<sup>th</sup> Cir. 1996) (IDEA’s authorization for courts to award “appropriate” relief “encompasses the full range of equitable remedies and therefore empowers a court to award adult compensatory education if necessary to cure a violation).

<sup>480</sup> *G. v. Fort Bragg*, 343 F.3d. at 309, citing *Parents of Student W. v. Puyallup School District*, 31 F.3d 1489 (9<sup>th</sup> Cir. 1994).

<sup>481</sup> *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005).

<sup>482</sup> See, e.g., *Manchester School Dist. v. Christopher B.*, 807 F.Supp. 860, 872 (1992) (“...the length of the inappropriate placement in this case is equal to the period of the inappropriate 1990-91 IEP, plus the subsequent period, prior to the instant order, during which the School District has failed to provide Christopher with an appropriate (private) placement.”). See also, *M.C. ex rel. J.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 396-97 (3d Cir. 1996); *Peter v. Jax*, 187 F.3d 829, 839 (8th Cir. 1999) (citation omitted); *Burr v. Ambach*, 863 F.2d 1071, 1078-79 (2d Cir. 1988), vacated on other grounds, 492 U.S. 902, (1989).

<sup>483</sup> *Reid*, at 524.

agreed with the Ninth Circuit that “there is no obligation to provide day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.”<sup>484</sup> As the court stated:

Accordingly, just as IEPs focus on disabled students’ individualized needs, so must awards of compensating past violations rely on individualized assessments. . . . Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.<sup>485</sup>

The court went on to explain that the inquiry in every case must be fact-specific and the ultimate award “must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. . . . [d]esigning (a remedy) will require a fact-specific exercise of discretion by either the district court or a hearing officer.”<sup>486</sup>

A parent is entitled to relief in the form of private placement only if the parent meets the burden of demonstrating that private placement was appropriate.<sup>487</sup> Compensatory education requires a *Burlington*-esque analysis as an award of compensatory education is rooted in *Burlington*.

### ***B. The Positions of the Parties***

The Parents are requesting reimbursement for expenses they have incurred in placing the Student at the [REDACTED] along with tuition for the remainder of the 2022-2023 school year, “or in the alternative, keeping him at [REDACTED] until he catches up to grade level in reading and

---

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> *Id.*

<sup>487</sup> *Gagliardo v. Arlington Central School Dist.*, 489 F.3d 105, 112 (2d Cir. 2005); and *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 370 (1985).

<sup>488</sup> The Parents enrolled the Student at the [REDACTED] in November 2022, once he was accepted. His first day was November 28, 2022.

writing.”<sup>489</sup> The Parents asserted that the denial of a FAPE covered an eight month period from March 14, 2022 through November 11, 2022 and they contended that this eight month period correlates to the remaining months of the 2022-2023 school year at the [REDACTED]. Further, the Parents argued that the monetary cost to the BCPS to educate him at [REDACTED] offer the services outlined in the IEP, and provide forty hours of compensatory education for this school year, is approximately \$25,000.00, about the same as the pro-rated cost for tuition at the [REDACTED] [REDACTED] for the remainder of the 2022-2023 school year.<sup>490</sup>

The BCPS contended that if I found that there was a denial of a FAPE, the appropriate remedy is approximately forty hours of compensatory education. The BCPS maintained that the denial of a FAPE started on August 29, 2022, the first day of school, and continued until November 11, 2022, when an appropriate IEP was developed that offered the Student a FAPE. Counsel argued that, at most, a compensatory education award should be predicated on the seven hours of instruction and related services offered in the current IEP for the ten<sup>491</sup> week period between August and November.<sup>492</sup> During testimony, Ms. [REDACTED] opined that she believed the denial of a FAPE for this approximate ten week period could be remedied by forty hours of compensatory education: twenty hours for reading and written language and twenty hours for math. She explained that these services are typically provided as one-on-one tutoring to the

---

<sup>489</sup> Parents’ Closing, Tr., p. 1184.

<sup>490</sup> Parents’ closing, Tr., p. 1186. The Parents explained that they derived this figure from adding the cost per capita for a general education student at [REDACTED] (\$14,000.00), to the cost for the proposed service hours in the IEP and the cost for forty hours of compensatory education at \$50.00 per hour. The Parents did not provide a breakdown of the actual numbers, nor did they indicate whether the \$50.00 per hour is for the compensatory education hours and the service hours in the IEP or just for the compensatory education hours.

<sup>491</sup> My calculations showed the period during which a FAPE was denied was eleven weeks, not ten weeks as asserted by the BCPS.

<sup>492</sup> BCPS closing, Tr., p. 1219.

student at the district's expense and are designed to remediate for the loss of progress that might have occurred in that time.<sup>493</sup>

***C. The Calculation of the Award***

Given the various courts' guidance to apply a fact-specific analysis when determining an appropriate award of compensatory education, it is helpful to review the hearing record for evidence of what type and amount of special education services would make up for the district's failure to timely determine the Student was eligible for special education services. As previously discussed, the denial of a FAPE occurred between August 29, 2022 and November 10, 2022, a period of eleven weeks.

I decline to award the Parents their requested remedy of ordering the BCPS to pay for the Student to go to the [REDACTED] from November 28, 2022 through the end of the 2022-2023 school year or until he reaches grade-level competency in reading and writing. First, as discussed, the FAPE denial was eleven weeks, not eight months. Second, while the Student has some extensive gaps and deficits, it is not the BCPS' responsibility to remedy all of those deficits. The Parents cannot link all of the Student's current struggles to the eleven week denial of a FAPE when the Student's struggles began years earlier.

I similarly decline to follow Ms. [REDACTED] recommendation that forty hours of one-on-one compensatory education would ensure that the Student was put back into the position he would have been had an IEP been in place on August 29, 2022. Ms. [REDACTED] suggested those hours based on the number of hours of services per week the IEP called for. However, she

---

<sup>493</sup> Test., [REDACTED] Tr., pp. 675-676.

also testified that compensatory education hours should “remediate that progress that might have occurred in that time.”<sup>494</sup>

This is not a case where the BCPS provided some of the services a student requires in order to receive a FAPE, but a FAPE was denied because the services were somehow insufficient. In this case, as discussed, the BCPS provided no services at all for a period of eleven weeks. Moreover, the BCPS experts testified at length as to the numerous supports and accommodations the IEP provides to the Student, in addition to the services. Each explained in detail how these supports and accommodations would allow the Student to access the entire fifth grade curriculum while he was receiving services to raise his reading and writing skills to grade level. The Student received none of those supports during the eleven weeks a FAPE was denied.

Thus, this is not a case where the Student can receive the instructional services he missed and be back in the place he would have been if the IEP had been in place on August 29, 2022. The Student also was unable to access any learning during this time.<sup>495</sup>

I find that the loss of all of the supports, accommodations, and services permeated the Student’s whole day. In such situation, courts have found that “parsing out the exact amount of hours [a student] was not benefitted by [a] FAPE would place an arduous and near impossible task on administrative bodies.”<sup>496</sup> An equitable remedy that would place the Student in the position he would have been in had the IEP been in place on August 29, 2022 is one that makes up for the entire eleven weeks of missed instruction.

---

<sup>494</sup> *Id.*, Tr., p. 676.

<sup>495</sup> As discussed earlier, the Parents’ decision to keep the Student at ██████████ for the beginning of the 2022-2023 school year was reasonable. Therefore, I do not attribute the fact that the Student did not receive some of the supports and accommodations which he theoretically could have received under a 504 plan, if one were even developed, to be the fault of the Parents.

<sup>496</sup> *Montgomery County Intermediate Unit No. 23 v. C.M., et al*, 71 IDELR 11 (E.D. Pa., 2017), *citing Jana K. ex rel. Tim K. v. Annville-Cleona School Dist.*, 39 F.Supp. 3d 584 at 609-610 (M.D. Pa., 2014), *citing Keystone Cent. School Dist. v. E.E. ex rel. H.E.*, 438 F.Supp. 2d 519, 526 (M.D. Pa, 2006).

The Supreme Court has held that when a public school fails to provide a FAPE, regardless of whether the child has previously received special education and related services from the district in question, an appropriate remedy may be reimbursement to the Parents for the cost of private education when the private-school placement is appropriate.<sup>497</sup> In this case, the Parents presented expert testimony regarding the appropriateness of a placement at the [REDACTED]. As Ms. [REDACTED] explained, it offers small student to teacher ratios, it offers an arts-integrated and multi-sensory curriculum, and any related services are offered throughout the school day.<sup>498</sup> Ms. [REDACTED] taught there for three years and has knowledge of the programs the school offers as well as the types of disabilities of its students. I found her testimony persuasive that the Student would find peers there with a similar profile and would be able to receive instruction in an environment where everyone has challenges.<sup>499</sup>

I considered the fact that the [REDACTED] is not the Student's least restrictive environment and the concerns expressed by the BCPS' experts that such a setting would only serve to further undermine the Student's self-esteem. However, in the Fourth Circuit, a parental placement is not inappropriate simply because it does not meet the least-restrictive environment criteria. There is no burden on the Parents to make a showing that the placement meets the least-restrictive environment criteria.<sup>500</sup> Rather, it is a factor to be considered when determining the appropriateness of the placement.<sup>501</sup>

Moreover, the BCPS did not offer testimony or evidence to show that the Student could not make educational progress at the [REDACTED]. In addition, no one disputes that the Student

---

<sup>497</sup> *Forest Grove School Dist. v. T.A.*, 559 U.S. 230 (2009).

<sup>498</sup> Test. [REDACTED] Tr., p.270.

<sup>499</sup> *Id.*, Tr., p. 272.

<sup>500</sup> See *Carter v. Florence County Sch. Dist. Four*, 950 F.2d 156 (4<sup>th</sup> Cir., 1991) (holding that a parental placement is appropriate if it is 'reasonably calculated to enable the child to receive educational benefits.')(citation omitted), *aff'd by Florence County School Dist. Four v. Carter by and Through Carter*, 510 U.S. 7 (1993).

<sup>501</sup> *Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. TH*, 642 F.3d 478, 488 (4<sup>th</sup> Cir. 2011).



has significant educational needs at this time that were not addressed for the eleven week period when a FAPE was denied. In addition, while I understand the BCPS' expert's concerns about the restricted setting, they offered no concrete evidence that being in such a setting would present obstacles to his educational progress. For all of those reasons, I find it appropriate to award the Parents' payment of eleven weeks' worth of tuition at the [REDACTED] as compensatory education for the BCPS' denial of a FAPE between August 29, 2022 and November 10, 2022.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the BCPS did fail to timely respond to a Child Find Referral for the Student in February 2022, and as a result failed to provide the Student a FAPE based on his unique circumstances from August 29, 2022 through November 10, 2022. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 798 F.3d 1329 (10<sup>th</sup> Cir. 2015).

I further conclude that the BCPS did not commit a procedural violation that resulted in a denial of a FAPE, or deprived the Student of educational benefit, when it did not reschedule the October 20, 2022 and November 10, 2022 IEP meetings due to the Parents' inability to attend. 20 U.S.C.A § 1415(f)(3)(E)(ii). *R.F. v. Cecil County Public Schools*, 919 F.3d 237 (4<sup>th</sup> Cir. 2019); *T.B. v. Prince George's County Board of Education*, 897 F.3d 566, 573 (4<sup>th</sup> Cir. 2018), cert. denied, 139 S.Ct. 1307 (2019).

I further conclude that the BCPS made a FAPE available to the Student and provided him with an appropriate individualized education program and placement effective November 10,

2022. See 20 U.S.C. §§ 1412(a)(5)(A), 1414 (2017); 34 C.F.R. § 300.148 (2021); *Andrew F. v. Douglas Cnty. School Dist. RE-1*, 137 S. Ct. 988 (2017); *Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 11 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

I further conclude that the Parents are entitled to placement of the Student at the [REDACTED] for eleven weeks during the 2022-2023 school year, as compensatory education for the BCPS' failure to timely evaluate the Student and develop and implement an IEP before the start of the 2022-2023 school year; the BCPS shall pay for or reimburse all tuition and related costs for those weeks; relief is denied for the remainder of the 2022-2023 school year. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); *Florence County School District Four v. Carter*, 510 U.S. 7 (1993); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009).

### **ORDER**

I **ORDER** that:

1. The Parents' request for placement at and reimbursement for tuition, costs, and expenses at the [REDACTED] is **GRANTED** for eleven weeks of the 2022-2023 school year upon presentation of a legitimate billing, and is **DENIED** for the rest of the weeks of the 2022-2023 school year.

2. The Baltimore City Public Schools shall, within thirty days of the date of this decision, provide proof of compliance with this Order to the Chief of the Complaint

Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, the Maryland State Department of Education.

December 20, 2022  
Date Decision Issued

Susan H. Anderson  
Administrative Law Judge

SHA/dlm  
#201919

**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) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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

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

**Copies Mailed and Emailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

████████████████████

STUDENT

v.

BALTIMORE CITY

PUBLIC SCHOOLS

BEFORE SUSAN H. ANDERSON,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CITY-OT-22-18973

**FILE EXHIBIT LIST**

I admitted the following exhibits on behalf of the Parents:

- Parents Ex. 1      ██████████ Hospital Psychological Evaluation, August 30, 2022, pp. 2-13
- Parents Ex. 2      ██████████ Student Profile test results, November 4, 8, 9, 2021, pp. 14-20
- Parents Ex. 3      Email from ██████████ ██████████ to the Student's mother, May 24, 2022, p. 21
- Parents Ex. 4      BCPS Online Registration Summary, June 13, 2022, pp. 22-23
- Parents Ex. 5      Emails between the Student's mother and ██████████ re: scheduling an initial IEP meeting, various dates October 11, 2022 through November 4, 2022, pp. 24-30
- Parents Ex. 6      Affidavit Letter from ██████████ Head of School at ██████████ November 3, 2022, p. 31
- Parents Ex. 7      ██████████ Hospital Psychological Evaluation, January 15, 2019, pp. 32-43
- Parents Ex. 8      ██████████ AimsWeb test results for 2018-2020 school years; ██████████ Personalized Learning Plans, Effective Dates January 2019, September 2020; ██████████ report cards for 2018-2019; ██████████ Personalized Learning Plan, Effective Date September 2019; ██████████ Kindergarten Report Card, 2017-2018, pp. 44-80
- Parents Ex. 9      Emails between the Student's mother and ██████████ IEP Chair for ██████████ Elementary School, various dates between May 25, 2022 and June 13, 2022, pp. 81-82

- Parents Ex. 10 Affidavit from Ann [REDACTED] Student's reading/math tutor at [REDACTED] [REDACTED] November 6, 2022, pp. 83-85
- Parents Ex. 11 Progress Reports from [REDACTED] Summer 2021, pp. 86-88
- Parents Ex. 12 Affidavit from [REDACTED] social worker for the Student, November 6, 2022, p. 89
- Parents Ex. 13 PAARC test results from 2019, measuring English Language Arts proficiency of all students in BCPS, [REDACTED] pp. 90-91
- Parents Ex. 14 PAARC test results from 2019, measuring English Language Arts proficiency of students with disabilities in BCPS, [REDACTED] pp. 92-93
- Parents Ex. 15 PAARC test results from 2019, measuring English Language Arts proficiency of students with 504 plans in BCPS, [REDACTED] pp. 94-95
- Parents Ex. 16 MCAP test results from 2020, measuring English Language Arts proficiency of all students in BCPS, [REDACTED] pp. 96-97
- Parents Ex. 17 MSDE Technical Assistance Bulletin #16-03, Specific Learning Disability (SLD) & Supplement, November 2016; article from [REDACTED] [REDACTED] by [REDACTED] M.D., updated March 31, 2022; article from the [REDACTED] [REDACTED] by [REDACTED] undated, pp. 98-119

I admitted the following exhibits on behalf of the BCPS:

- BCPS Ex. 1 October 31, 2022 Meeting Invitation for November 10, 2022 IEP meeting
- BCPS Ex. 2 October 11, 2022 Meeting Invitation for October 20, 2022 IEP meeting
- BCPS Ex. 3 Evaluation Report and Determination of Initial Eligibility, October 20, 2022
- BCPS Ex. 4 Signed Notice and Consent for Assessments, dated August 24, 2022, signed September 6, 2022
- BCPS Ex. 5 August 16, 2022 Meeting Invitation for August 24, 2022 IEP meeting
- BCPS Ex. 6 May 26, 2022 Meeting Invitation for June 9, 2022 IEP meeting
- BCPS Ex. 7 Prior Written Notice, October 20, 2022

- BCPS Ex. 8 Prior Written Notice, August 24, 2022
- BCPS Ex. 9 Draft IEP, November 2, 2022
- BCPS Ex. 10 Psychological Assessment Report, written October 13, 2022
- BCPS Ex. 11 Student Observation Report, October 3, 2022
- BCPS Ex. 12 BCPS Educational Assessment Report, September 23, 2022
- BCPS Ex. 13 [REDACTED] Hospital Psychological Evaluation, August 30, 2022
- BCPS Ex. 14 [REDACTED] Hospital Psychological Evaluation, January 15, 2019
- BCPS Ex. 15 [REDACTED] of Baltimore Report Card, 2020-2021
- BCPS Ex. 16 [REDACTED] of Baltimore Report Card, 2019-2020
- BCPS Ex. 17 [REDACTED] of Baltimore Report Card, 2018-2019
- BCPS Ex. 18 [REDACTED] of Baltimore Report Card, 2017-2018
- BCPS Ex. 19 [REDACTED] of Baltimore Personalized Learning Plan, September 2020
- BCPS Ex. 20 [REDACTED] of Baltimore Personalized Learning Plan, September 2019
- BCPS Ex. 21 [REDACTED] of Baltimore Personalized Learning Plan, January 2019
- BCPS Ex. 22 NWEA Language Usage Data, November 9, 2021
- BCPS Ex. 23 NWEA Reading Data, November 8, 2021
- BCPS Ex. 24 NWEA Mathematics Data, November 4, 2021
- BCPS Ex. 25 AimsWeb Plus Data, Fall 2019 – Winter 2020
- BCPS Ex. 26 [REDACTED] Admissions Denial, May 24, 2022
- BCPS Ex. 27 Parent Contact Log, May 25, 2022 through November 4, 2022
- BCPS Ex. 28 Resume, [REDACTED] Ph.D.
- BCPS Ex. 29 Resume, [REDACTED]

BCPS Ex. 30

Resume, [REDACTED]