

██████████,
STUDENT
v.
ANNE ARUNDEL COUNTY
PUBLIC SCHOOLS

BEFORE MICHELLE W. COLE,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-AARU-OT-23-10409

DECISION

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STATEMENT OF THE CASE

On April 17, 2023, ██████████ (Grandparent) on behalf of her grandson, ██████████ (Student), filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) requesting a hearing to review the identification, evaluation, or placement of the Student by Anne Arundel County Public Schools (AACPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2017);¹ 34 C.F.R. § 300.511(a) (2021);² Md. Code Ann., Educ. § 8-413(d)(1) (2022);³ Code of Maryland Regulations (COMAR) 13A.05.01.15C(1). The Complaint alleged that the AACPS denied the Student a free appropriate public education (FAPE) by failing to offer extended school year (ESY) services for the summer of 2023. The Grandparent requested that AACPS provide the Student with these services. On

¹ “U.S.C.A.” is an abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

² “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.

³ Unless otherwise noted, all citations herein to the Education Article are to the 2022 Replacement Volume of the Maryland Annotated Code.

May 11, 2023, the parties attended the required resolution session, and on May 17, 2023, the parties notified the OAH that they did not resolve their dispute. Under the applicable law, the decision in this case is due forty-five days after the conclusion of the thirty-day resolution period triggered by the filing of a due process complaint.⁴ 34 C.F.R. § 300.510(a), (b)(2). Md. Code Ann., Educ. § 8-413(h); COMAR 13A.05.01.15C(14).

On June 2, 2023, I conducted a telephone pre-hearing conference in the captioned matter. Manisha S. Kavadi, Esquire, participated on behalf of AACPS. The Grandparent and [REDACTED], the Student's non-custodial grandmother, participated on behalf of the Student.⁵ I held the hearing on June 13, 2023. The Grandparent presented the evidence on the Student's behalf. Ms. Kavadi represented the AACPS.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., 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.

ISSUE

Did AACPS deny the Student a FAPE by failing to offer ESY services for the summer of 2023?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Grandparent:

- GP Ex. A Letter from [REDACTED], CRNP, March 9, 2023
- GP Ex. B Letter from [REDACTED], M.D., March 27, 2023
- GP Ex. C Letter from the Grandparent, June 5, 2023

⁴ Forty-five days from May 17, 2023, is Saturday, July 1, 2023.

⁵ As the Student lives with the Grandparent, she is considered a parent under the IDEA. 34 C.F.R. § 300.30(a)(4).

GP Ex. D Visit Notes, [REDACTED], M.D., May 10, 2023

GP Ex. E Letter from [REDACTED], M.D., May 12, 2023

Unless otherwise noted, I admitted the following exhibits on behalf of AACPS:

- AACPS Ex. 1 Due Process Complaint, filed on April 17, 2023
- AACPS Ex. 2 Technical Assistance Bulletin, Extended School Year Services, April 2023
- AACPS Ex. 3 Notice of Individualized Education Program (IEP) Meeting, January 24, 2023; Attendance list, March 6, 2023
- AACPS Ex. 4 IEP, March 6, 2023
- AACPS Ex. 5 Quarterly Progress Report, November 4, 2022; IEP, December 13, 2021
- AACPS Ex. 6 Quarterly Progress Report, June 13, 2023; IEP, March 6, 2023
- AACPS Ex. 7 Charts: Quarter Daily Averages (Self Injury/Aggression/Physical Disruption), undated; Quarterly Averages (Self Injury), undated; Quarterly Averages (Physical Disruption), undated
- AACPS Ex. 8 Chart: Average of 5 Minute Daily Occurrences (Self Injury/Aggression/Physical Disruption), undated
- AACPS Ex. 9 Charts: Total Daily 5 Minute Occurrences (Self Injury/Aggression/Physical Disruption), undated; Total Daily 5 Minute Occurrences (Self Injury), undated
- AACPS Ex. 10 Not offered
- AACPS Ex. 11 Resume, [REDACTED], undated
- AACPS Ex. 12 Not offered
- AACPS Ex. 13 Not offered
- AACPS Ex. 14 Not offered

Testimony

The Grandparent testified on the Student's behalf and offered the testimony of Ms. [REDACTED], whom I accepted as an expert in special education, testified on behalf of AACPS.

FINDINGS OF FACT

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

1. The Student is fourteen years old (born in [REDACTED] 2008). He lives with the Grandparent. On Thursdays, he visits with Ms. [REDACTED] and his grandfather at their home. He does not stay overnight because he does not do well overnight away from his own bed.
2. The Student can walk without assistance. However, he sometimes requires assistance during ambulation or uses a specialized wheelchair based on his instability and muscle weakness.
3. The Student communicates using mostly one word or two-word phrases generally related to basic needs such as eating and drinking.
4. The Student has a history of self-injurious behaviors including biting himself and banging his head. These behaviors occur more frequently during unstructured time.
5. The Student is familiar with the routine of the school day and looks forward to the structure of his school environment.
6. Over weekend breaks from school, the Student generally does well on Saturdays, but struggles at home with behavioral problems, such as self-injurious behaviors, on Sundays.
7. The Student is identified by AACPS as a student eligible for special education services under the IDEA. He has multiple disabilities, including intellectual disability and visual impairment. He has diagnoses of attention deficit/hyperactivity disorder, cerebral palsy, diabetes, seizure disorder, and autism.
8. The Student's disabilities impact his ability to communicate, comprehend reading materials, complete simple math problems, express himself in written form, ask or answer questions, make comments, and engage socially. (AACPS Ex. 4 at p. 7). His weaknesses

include following multi-step directions, asking for assistance, and completing tasks within a specific time frame. (*Id.*).

9. The Student requires adult support, modification of instruction, adaptations of tasks and materials, adapted equipment, accommodations for instructional tasks, and supervision for mobility and self-care. (AACPS Ex. 4 at p. 7).

10. Since 2018, the Student has attended [REDACTED] ([REDACTED]), a public school for students with moderate to severe intellectual disabilities. He is pursuing a Certificate of Program Completion at the end of the school year of his twenty-first birthday.

11. The Student has received special education instruction and related services at all times relevant to this matter, and, with the exception of Summer 2022 and Summer 2023, the Student's Individualized Education Program (IEP) team has found the Student eligible for ESY services.

12. For the summer of 2022, the IEP team initially determined that the Student was not eligible for ESY services. However, during mediation, AACPS agreed to provide ESY services for Summer 2022. At that time, a representative from AACPS told the Grandparent: "Don't expect it next year." (Testimony).

13. During the 2022-23 school year, the Student's self-injurious behaviors and physical disruption in the classroom decreased.⁶ (AACPS Ex. 8 at p. 1). There were no occurrences of aggression.

14. In the Prior Written Notice, AACPS explained the reason for its determination that the Student did not meet the criteria for ESY services as follows:

[The Student] is making overall progress towards Mastery on his Reading and Math goals. [The Student] is using single button communication devices to make selections to answer questions and participate. He is encouraged to utilize

⁶ This data was based on the documented observations of AACPS staff during five-minute intervals throughout the school day. The staff member would record the presence or absence of behaviors on the Student's data sheet, reported as a percentage of intervals in which the targeted behaviors occurred.

his voice, but he will say the last choice given sometimes. He is also utilizing high contrast picture symbols core words to help with communication and increasing his 1 word utterances to 2 word. He is decreasing his use of gestural prompts while using manipulatives with a visual model.

██████████ (Classroom Teacher) stated that [the Student] continues to make progress and does not demonstrate regression after breaks and his behaviors do not interfere with his instruction.

(AACPS Ex. 3 at p. 4).

15. Because the Grandparent was not seeing the same progress at home that was reported by the school, the Grandparent requested permission to observe the Student in the classroom. ██████████ administrators offered the Grandparent one 30-minute observation period per month, which the Grandparent did not believe was sufficient to provide relevant information regarding the Student's abilities.⁷

16. The Student's IEP team, including the Student's special education teacher, the occupational therapist, the language pathologist, the Grandparent, and Ms. ██████████, met on March 6, 2023.

17. During the March 6, 2023 meeting, the IEP team reviewed the Student's academic and behavioral data and discussed the Student's eligibility for ESY services.

18. The IEP team reviewed the questions relevant to a determination of whether the Student required ESY services at the completion of the 2022-23 school year and determined:

- The Student's IEP contains annual goals related to critical life skills in the areas of reading, writing, math, and communication.
- There is no likely chance of substantial regression of critical life skills caused by the normal school (summer) break or a failure to recover those skills in a reasonable time.
- The Student demonstrated a degree of progress toward mastery of the IEP goals and objectives related to critical life skills.
- The Student did not demonstrate any emerging skills or breakthrough opportunities.
- There were no significant interfering behaviors.

⁷ In May 2023, AACPS offered the Grandparent the opportunity to observe the Student in the classroom for thirty minutes each day on three consecutive days.

- The nature and severity of the Student's disability did not warrant ESY services.
- There were no special circumstances that require ESY services.
- The benefits that the Student receives from his educational program during the regular school year will not be significantly jeopardized if the Student is not provided ESY services.

(AACPS Ex. 4 at p. 43).

19. The IEP team concluded that the Student did not meet the criteria for ESY services for Summer 2023.

20. As of March 2023, the Student achieved his behavioral goal of demonstrating safe and independent behaviors by decreasing from the baseline for interval averages for self-injurious behaviors and physical disruption by 20%. (AACPS Ex. 6 at p. 3). The Student's averages for self-injurious behaviors decreased from baseline by 67% and for physical disruption decreased from baseline by 97%. (*Id.* at p. 4).

21. As of March 2023, the Student was making progress toward meeting his functional communication goal of using multi-modal communication (verbalizations and picture symbols) two times per targeted pragmatic function in two out of three targeted sessions. (AACPS Ex. 6 at p. 5). The Student was able to use two-word phrases to communicate his wants and needs an average of two times per thirty-minute session given an initial model, expectant wait time, and visual and gestural cues in two out of three targeted sessions. (*Id.* at p. 5-6). He used two-word phrases to engage socially two times per thirty-minute session given an initial model, expectant wait time, and visual and gestural cues in one out of three targeted sessions. He used two-word phrases to comment or provide information two times given an initial model, expectant wait time and verbal or gestural cues in two out of three targeted sessions. (*Id.* at p. 6).

22. As of March 2023, the Student was making sufficient progress toward meeting his reading comprehension goal of answering modified comprehension questions and identifying a story's main idea with 60% accuracy (3/5 sessions). (AACPS Ex. 6 at p. 7). The Student was

able to use total communication to select a picture response by choosing one of two buttons to answer comprehension questions with 52% accuracy and main idea questions with 56% accuracy. (*Id.*).

23. As of March 2023, the Student was making sufficient progress toward meeting his written expression goal of using multi-modal communication to select the correct word to complete a sentence about a topic, picture or event using common core and fringe vocabulary words with 60% accuracy (3/5 sessions). (AACPA Ex. 6 at p. 9). The Student was able to use total communication to select a picture response by choosing one of two buttons to answer sentence completion questions with 40% accuracy. (*Id.*). The Student's accuracy increased to 60% on two out of five sessions with three verbal prompts. (*Id.*).

24. As of March 2023, the Student was making sufficient progress toward meeting his math problem solving goal of counting a set of objects, selecting the numbers to identify the equation, and matching the total amount related to real-world problems with 60% accuracy (3/5 sessions). (AACPA Ex. 6 at p. 11). The Student was able to use total communication to count a set of objects from one to ten in a real-world scenario using verbal prompts with 48% accuracy. (*Id.*). The Student's accuracy increased to 60% on 3/three out of five sessions with three verbal prompts. (*Id.*). The Student also was able to use total communication to identify numbers to match to a total amount with 50% accuracy. (*Id.*). His accuracy increased to 60% with three verbal prompts. (*Id.*).

25. As of March 2023, the Student was making sufficient progress toward meeting his vocational goal of initiating and completing an assigned task within a defined time frame with adult support and no more than three cues. (AACPA Ex. 6 at p. 13). The Student was able to initiate a given task independently with 60% accuracy on two out of five sessions with one

gestural prompt and complete a given task without engaging in physical disruptions with 60% accuracy on one out of five sessions with three verbal cues. (*Id.* at p. 13-14).

26. On March 9, 2023, in response to the Grandparent's request, [REDACTED], a certified nurse practitioner who has treated the Student, asked that the Student's eligibility for ESY services be reconsidered and stated:

[The Student] thrives on routine and schedule, especially in the school setting. When his schedule is disrupted and there is no structured routine for the day (i.e. no school in the summer) he has behavior change, lashes out, and refuses his therapy sessions. [The Student] even develops self-injurious behaviors during this time.

(GP Ex. A).

27. On March 27, 2023, in response to the Grandparent's request, [REDACTED], M.D., the Student's treating psychiatrist, offered the following opinion:

Given [the Student's] autism, he would benefit from a consistent, structured environment which has been his school. He struggled during the pandemic when he was out of school and there was both an increase of his behavioral problems and his insomnia.

He is a student who benefits from the extended school year due to the need for consistency of his behavioral and therapy interventions as well as the structure to his day. He could regress during the summer and lose academic and behavioral gains. If the school cannot provide for his needs, then they need to provide an alternative learning environment during the summer so that he doesn't lose the gains he has made during the school year.

(GP Ex. B).

28. On May 12, 2023, in response to the Grandparent's request, [REDACTED], M.D., the Student's new treating psychiatrist, offered the following opinion: "Due to his diagnoses and the needs for structured intervention, I can concur that [the Student] would benefit from summer school, and it is recommended he attends." (GP Ex. E).

29. As of the date of the hearing, the Grandparent had not yet had the opportunity to observe the Student in the educational setting.

30. As of the date of the hearing, the Student had achieved his behavioral, reading comprehension, written expression, and math problem-solving goals. He was making sufficient progress toward meeting his vocational goal.

DISCUSSION

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

A FAPE is, in part, furnished through the development and implementation of an IEP for each disabled child. *Andrew F. v. Douglas County School District*, 137 S. Ct. 988, 999 (2017); *Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181-82 (1982). COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The goals, objectives, activities, and materials must be adapted to the needs, interests, and abilities of each student. 20 U.S.C.A. § 1414(d).

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

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

The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* at 207, 102 S. Ct. 3034. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school

officials, but also by the input of the child's parents or guardians. *Id.* at 208-209, S. Ct. 3034. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.* at 206-207, 102 S. Ct. 3034.

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. See §§ 1414(d)(1)(A)(i)(I)-(IV). This reflects the broad purpose of the IDEA, an “ambitious” piece of legislation enacted in response to Congress’ perception that a majority of handicapped children in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to “drop out.”’ *Rowley*, 458 U.S., at 179, 102 S. Ct. 3034 (quoting H.R. Rep. No. 94-332, p. 2 (1975)). A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child's circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be “specially designed” to meet a child's “unique needs” through an “[i]ndividualized education program.” §§ 1401(29), (14) (emphasis added).

Andrew F., 137 S. Ct. at 998-99.

Notwithstanding the above language in *Andrew F.*, providing a student with access to specialized instruction and related services does not mean that a student is entitled to “[t]he best education, public or non-public, that money can buy” or all the services necessary to maximize educational benefits. *Hessler v. State Bd. of Educ. of Md.*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. at 176). Moreover, “once a FAPE is offered, the school district need not offer additional educational services.” *MM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 537-38 (4th Cir. 2002).

The Grandparent asserts that the Student was denied a FAPE based on AACPS’ failure to offer ESY services to the Student for the summer of 2023. The Supreme Court has placed the burden of proof in an administrative hearing under the IDEA upon the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim

by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002). Accordingly, as the Grandparent is seeking relief on behalf of the Student, she bears the burden to prove by a preponderance of the evidence that AACPS’ determination regarding the Student’s eligibility for ESY services was incorrect or inconsistent with the law. For the reasons that follow, I conclude that she has failed to meet that burden.

ESY Services

Section 300.106(b) of the Code of Federal Regulations defines ESY services as special education and related services that:

- (1) Are provided to a child with a disability—
 - (i) Beyond the normal school year of the public agency;
 - (ii) In accordance with the child’s IEP; and
 - (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the SEA.

Subsection (a) further requires that “[e]ach public agency must ensure that extended school year services are available as necessary to provide FAPE[.]” 34 C.F.R. § 300.106(a)(1).

The Fourth Circuit has “articulated . . . a formal standard for determining when ESY services are appropriate under the IDEA: ‘ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.’” *Dibuo v. Bd. of Educ. of Worcester Cnty.*, 309 F.3d 184, 189-90 (4th Cir. 2002) (citing *MM*, 303 F.3d at 537-38).

“[U]nder this standard, ‘the mere fact of likely regression is not a sufficient basis, because all students, disabled or not, may regress to some extent during lengthy breaks from school.’”

Dibuo, 309 F.3d at 190. “ESY Services are required under the IDEA only when such regression will substantially thwart the goal of ‘meaningful progress.’” *MM*, 303 F.3d at 538.

COMAR 13A.05.01.08B sets forth the process for such determinations:

(2) Extended School Year Services.

(a) At least annually, the IEP team shall determine whether the student requires the provision of extended school year services in accordance with Education Article, §8-405, Annotated Code of Maryland.

(b) The IEP team shall consider:

(i) Whether the student's IEP includes annual goals related to critical life skills;

(ii) Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break in the regular school year and a failure to recover those lost skills in a reasonable time;

(iii) The student's degree of progress toward mastery of IEP goals related to critical life skills;

(iv) The presence of emerging skills or breakthrough opportunities;

(v) Interfering behaviors;

(vi) The nature and severity of the disability; and

(vii) Special circumstances.

(c) Following the consideration of factors described in §B(2)(b) of this regulation, the IEP team shall determine whether the benefits the student with a disability gains during the regular school year will be significantly jeopardized if that student is not provided with an educational program during a normal break in the regular school year.

Analysis

The Grandparent testified and presented evidence in support of her contention that the AACPS incorrectly denied ESY services for the summer of 2023. She relied on the Student's history of requiring ESY services in previous years and her interactions with AACPS staff. She and Ms. [REDACTED] reported that their observations of the Student while at home and in the community are inconsistent with the school's reports of the Student's ability. Citing an AACPS employee's statement that the Grandparent should not expect ESY services after the summer of 2022, the Grandparent maintained that AACPS made its decision based on "personal reasons." She further explained that she did not trust the representations of AACPS staff regarding the Student's progress because [REDACTED] would not allow her to observe the Student for any significant period of time in the educational setting. The Grandparent presented letters from the Student's treating healthcare providers, which offered support for her request for ESY services based on

the Student's need for structure and the concern that the Student would regress without these services.

AACPS argued that it considered the Student's unique needs, his academic and behavioral progress, and his lack of regression over routine school breaks during the regular school year when it determined that the Student was not eligible for ESY services for Summer 2023. Ms. [REDACTED], the Student's special education teacher for the 2021-22 and 2022-23 school years, testified and reviewed the Student's IEP and progress reports. Ms. [REDACTED] described the Student as a funny, personable student, who was able to get to work when needed and acts appropriately in social situations. She described her interactions with the Student and his history in her classroom and at the school. She reported that the Student made progress toward meeting his IEP goals over the 2022-23 school year, achieved many of his IEP goals by the third progress report, and did not regress after the school breaks for Thanksgiving, Winter, and Spring Break. She described his achievement of his behavioral goals as "amazing," noting that he far exceeded the 20% decrease from the baseline for interval averages for problem behaviors.

I found all of the witnesses who testified at the hearing to be credible, sincere witnesses. Each individual who testified appeared to know the Student and understand his unique needs. However, because the issue before me involves questions regarding the Student's eligibility for ESY services, I found certain testimony more helpful to a determination of the case. Clearly, the Grandparent and Ms. [REDACTED] know the Student well, having assumed all responsibility for his care and educational needs when the Student's parents were unable to provide this for the Student. The Grandparent and Ms. [REDACTED] have been ardent advocates for obtaining services that they believe the Student requires in order to further his education and development.

Even though I find the Grandparent and Ms. [REDACTED] to be most knowledgeable about the Student and his needs, they are not educators and are not familiar with the AACPS' programs

and processes. Likewise, the professionals who have treated the Student and provided written recommendations do not possess any expertise in special education, IEPs, or AACPS' processes and have not observed the Student in an educational setting. Moreover, these individuals are not informed of the process for determining eligibility for ESY services. While the visit notes and opinions offered by Dr. [REDACTED], Dr. [REDACTED], and Nurse [REDACTED] are relevant to understanding the Student's needs and unique circumstances, I do not place significant weight on the professionals' opinions regarding the determination of the Student's eligibility for ESY services.

I compare this evidence to the testimony of Ms. [REDACTED], which I found to be very persuasive. Ms. [REDACTED] is a special education teacher at [REDACTED] with fifteen years of experience educating students with needs similar to those of the Student. She has worked directly with the Student over the last two years, participated in the development of the Student's IEP, and is familiar with the AACPS' programs and processes, including those relevant to a determination regarding eligibility for ESY services. Ms. [REDACTED] reviewed the Student's IEP and explained the basis for the IEP team's decision that the Student was not eligible for ESY services for the summer of 2023, addressing each qualifying factor. To the extent that Ms. [REDACTED] has direct knowledge of the Student, his achievements and behavior, and the processes followed by AACPS, I give more weight to her testimony than to the opinions of the medical professionals who have less exposure to the Student in an educational setting and are less familiar with the Student's IEP and the eligibility requirements for ESY services.

In this regard, while I considered Dr. [REDACTED]'s opinion that without ESY services, the Student "could" regress and lose the gains he received during the regular school year, I found more persuasive Ms. [REDACTED]'s detailed explanation as to why she believed that the Student would not regress. Ms. [REDACTED] reviewed the data compiled by school staff, which indicated that the Student continued to make progress throughout the school year, even with routine school breaks

for Thanksgiving, Winter Break and Spring Break. She further reported, pointing to the Student's data charts for behaviors, that the routine breaks did not impact the Student's progress on his behavioral goals. While she agreed that there was a small uptick in self-injurious behaviors after Spring Break, the average of occurrences for the period remained less than one per the interval before and after Spring Break.

I understand the Grandparent's concerns that the Student will be impacted by an extended break from the structure of a school setting, particularly when the grandparents seem to notice differences in the Student's behaviors in the home during the weekend break of the regular school year. I also understand her suspicion that AACPS' determination was based on "personal reasons." This is based largely on the comments made by an AACPS employee during mediation and the response by AACPS to the Grandparent's request to observe the Student in the classroom. However, the evidence is clear that the determination was based on the Student's unique circumstances and needs after the IEP team considered each of the relevant qualifying factors. It is also clear that the Student has made great progress since the previous school year. As such, the fact that the Student received ESY services in previous years does not support a conclusion that he requires ESY services for the summer of 2023. The Grandparent has not presented any evidence to challenge the AACPS' evidence or to show that the Student's progress would be impacted should he not receive ESY services for the summer of 2023.

Based on the sum of evidence, I conclude that AACPS properly determined that the Student was not eligible for ESY services for the summer of 2023. The IEP team discussed the Student's eligibility for ESY services at the March 6, 2023 IEP team meeting. It considered each qualifying factor before concluding that the Student was not eligible for ESY services.

Throughout the 2022-23 school year, the Student continued to make progress toward meeting his IEP goals in all areas affected by his disabilities. Upon his return from Thanksgiving break,

Winter Break, and Spring Break, the Student maintained his progress, moving toward achievement of his IEP goals in several areas by the third quarter progress report. The occurrences of self-injurious behaviors and physical disruption decreased and did not impact the Student's ability to learn and to make progress. While the evidence supports the Grandparent's contention that the Student does well in the structure of the educational setting, the evidence does not show that without ESY services, the benefits received by the Student during the regular school year will be significantly jeopardized.

CONCLUSION OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that Anne Arundel County Public Schools properly determined that the Student was not eligible for Extended School Year services for the summer of 2023. 34 C.F.R. § 300.106(a), (b) (2021); COMAR 13A.05.01.08B; *Dibuo v. Bd. of Educ. of Worcester Cnty.*, 309 F.3d 184, 189-90 (4th Cir. 2002).

ORDER

I **ORDER** that the Grandparent's request to provide the Student with Extended School Year services for the summer of 2023 is **DENIED**.

June 22, 2023
Date Decision Issued

Michelle W. Cole
Administrative Law Judge

MWC/dlm
#205788

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 To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],
STUDENT
v.
ANNE ARUNDEL COUNTY
PUBLIC SCHOOLS

BEFORE MICHELLE W. COLE,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-AARU-OT-23-10409

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Grandparent:

- GP Ex. A Letter from [REDACTED], CRNP, March 9, 2023
- GP Ex. B Letter from [REDACTED], M.D., March 27, 2023
- GP Ex. C Letter from the Grandparent, June 5, 2023
- GP Ex. D Visit Notes, [REDACTED], M.D., May 10, 2023
- GP Ex. E Letter from [REDACTED], M.D., May 12, 2023

Unless otherwise noted, I admitted the following exhibits on behalf of AACPS:

- AACPS Ex. 1 Due Process Complaint, filed on April 17, 2023
- AACPS Ex. 2 Technical Assistance Bulletin, Extended School Year Services, April 2023
- AACPS Ex. 3 Notice of Individualized Education Program (IEP) Meeting, January 24, 2023; Attendance list, March 6, 2023
- AACPS Ex. 4 IEP, March 6, 2023
- AACPS Ex. 5 Quarterly Progress Report, November 4, 2022; IEP, December 13, 2021
- AACPS Ex. 6 Quarterly Progress Report, June 13, 2023; IEP, March 6, 2023
- AACPS Ex. 7 Charts: Quarter Daily Averages (Self Injury/Aggression/Physical Disruption), undated; Quarterly Averages (Self Injury), undated; Quarterly Averages (Physical Disruption), undated
- AACPS Ex. 8 Chart: Average of 5 Minute Daily Occurrences (Self Injury/Aggression/Physical Disruption), undated

AACPS Ex. 9 Charts: Total Daily 5 Minute Occurrences (Self Injury/Aggression/
Physical Disruption), undated; Total Daily 5 Minute Occurrences (Self
Injury), undated

AACPS Ex. 10 Not offered

AACPS Ex. 11 Resume, [REDACTED], undated

AACPS Ex. 12 Not offered

AACPS Ex. 13 Not offered

AACPS Ex. 14 Not offered