

██████████,

STUDENT

v.

CARROLL COUNTY PUBLIC

SCHOOLS

BEFORE SUN E. CHOI,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CRRL-OT-23-04644

DECISION

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STATEMENT OF THE CASE

On February 17, 2023, █████ and █████ (Parents), 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 Carroll County Public Schools (CCPS) 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).

I held a remote prehearing conference on March 17, 2023. The Parents were self-represented and appeared on behalf of the Student, who did not participate. █████, an Education Consultant, also participated on behalf of the Student. Rochelle Eisenberg, Esquire,

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.

represented CCPS. Wayne Whalen, Supervisor of Special Education Data and Compliance, CCPS and [REDACTED], an Independent Behavior Consultant, participated on behalf of the CCPS.

I held the hearing on May 22, 2023, May 23, 2023, and May 24, 2023. The Parents were self-represented. David Burkhouse, Esquire represented the CCPS. Brynn Falise, Supervisor of Special Education, CCPS, and Wayne Whalen participated on behalf of CCPS.

On March 17, 2023, the parties participated in a mediation in lieu of a resolution meeting. The parties did not reach an agreement at the conclusion of the mediation, and they did not agree in writing that no agreement is possible. As such, the resolution period expired on March 19, 2023. Under the applicable law, a decision in this case would be due by May 3, 2023, which is forty-five days after the expiration of the thirty-day resolution period on March 19, 2023. 34 C.F.R. § 300.515(a); Educ. § 8-413(h); COMAR 13A.05.01.15C(14). However, the parties jointly requested that I grant an extension of the timeframe for hearing dates outside of the timeframe. 34 C.F.R. § 300.515(c); Educ. § 8-413(h).

At the prehearing conference on March 17, 2023, the parties estimated seven days would be needed to present their case. After discussion concerning the time necessary to prepare and exchange documents in conformity with the five-business-day required disclosures, their personal and work schedules, their ability to take leave, and the timeframe for issuing my decision, we collectively started looking at scheduling this matter onwards from the week of May 22, 2023. Unavailability for the dates leading up to May 22, 2023, was as follows. March 31, 2023, through April 7, 2023, I was on scheduled leave, returning on April 10, 2023. From April 3, 2023, through April 11, 2023, it was CCPS' spring break, and no witnesses for the CCPS were available. Ms. [REDACTED] was unavailable for the remainder of April and early May, from April 12, 2023, through May 5, 2023, due to her work obligations, and she was unable to take

leave. The Parents requested time to retain counsel as well as two experts they indicated they needed after CCPS indicated it had four experts who would testify on its behalf. CCPS also requested time in April after its spring break to prepare its exhibits. From May 8, 2023, through May 10, 2023, and May 15, 2023, through May 19, 2023, CCPS conducted mandatory testing, causing its witnesses to be unavailable, with the exception of May 17, 2023.

After confirming that the Parents were not on a scheduled vacation and/or had medical reasons that prevented them from attending the hearing, the parties considered the week of May 22, 2023. Ms. [REDACTED] indicated that she could not take an entire week off beginning on May 22, 2023, due to her work obligations. The CCPS did not object and agreed. As such, the parties agreed for the hearing to start on May 22, 2023, and continue through May 25, 2023. The hearing would then resume from May 30, 2023, through June 2, 2023. May 29, 2023, was a holiday, and no one was available on that date.

For all the reasons discussed above, and at the request of both parties, I therefore granted an extension of time to hold the hearing as scheduled and to issue a decision within thirty days of the close of the record. The hearing concluded, and the record closed on May 24, 2023;⁴ therefore, my decision will be issued on or by Friday, June 23, 2023, thirty days from May 24, 2023.

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

⁴ The parties concluded their case, and the record closed by May 24, 2023, earlier than anticipated.

ISSUES

1. Did CCPS deny the Student a free appropriate public education (FAPE) by predetermining the placement of the Student at the [REDACTED]⁵ program at [REDACTED] Elementary School ([REDACTED]) before developing an individualized education program (IEP) on February 16, 2023, for the 2022-2023 school year?
2. If CCPS did not deny the Student a FAPE, was the [REDACTED] program at [REDACTED] the least restrictive environment (LRE) that would be reasonably calculated to provide the Student a FAPE?

SUMMARY OF THE EVIDENCE

Exhibits

A complete exhibit list is attached as an Appendix.

Testimony

The Student's mother, [REDACTED] was accepted as an expert in special education and testified. No other witnesses were presented on behalf of the Student.

CCPS presented the following witnesses:

- [REDACTED], principal of [REDACTED] Elementary School ([REDACTED]), was accepted as an expert in public school administration.
- [REDACTED], special educator at [REDACTED], was accepted as an expert in special education.
- [REDACTED], school psychologist, was accepted as an expert in school psychology.
- [REDACTED], MSW,⁶ LCSW-C,⁷ was accepted as an expert in social work and mental health counseling.

⁵ [REDACTED] stands for [REDACTED].

⁶ Master of Social Work.

⁷ Licensed Certified Social Worker-Clinical.

STIPULATION

The parties' only stipulation was that the Student is currently enrolled in the third grade at [REDACTED], in Carroll County, Maryland, for the 2022 through 2023 school year.

FINDINGS OF FACT

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

1. The Student is ten years old.
2. The Student remains at [REDACTED], his present educational placement, during the pendency of this matter pursuant to the "stay put."⁸
3. In April 2019, the Student was diagnosed with attention-deficit / hyperactivity disorder, combined type (ADHD) and anxiety.
4. On January 21, 2021, the Student was initially referred for special education evaluation. The [REDACTED] IEP team met to review the initial referral on February 3, 2021.
5. On April 7, 2021, an IEP meeting was held, and it was determined that the Student was eligible for special education services as a student with other health impairment (OHI) related to the Student's underlying clinical diagnosis of ADHD.
6. The Student's educational disabilities impacted the areas of math calculation, reading fluency, reading phonics, speech and language articulation, written language expression, behavioral self-management, behavioral social/emotional regulation, physical fine motor skills, and physical sensory processing strategies.
7. On May 5, 2021, an initial IEP was developed to address the areas of impact including speech articulation, reading phonics, math calculation, written language expression,

⁸ 20 U.S.C.A. § 1415(j); see 34 C.F.R. § 300.518(a); see also COMAR 13A.05.01.15C(19) (using the term "present educational placement"); COMAR 13A.05.01.15C(19).

behavioral social/emotional regulation, and psychological fine motor skills. The Parents consented to the initial IEP on May 20, 2021. The initial IEP provided for:

- Special education services, one hour and twenty minutes, within the general education environment (GEE).
- Occupational Therapy, thirty minutes per week, outside the GEE.
- Speech language services, thirty minutes per week, outside the GEE, and
- Counseling services, one hour per month, outside the GEE.

8. At the beginning of the Student's 2021-2022 school year, in the fall of 2021, the IEP team met to revise the Student's IEP. The IEP team focused on reducing the following:

- Occupational Therapy, fifteen minutes per week, inside the GEE and fifteen minutes per week, outside the GEE.
- Counseling services, thirty minutes per month, outside the GEE, which would be broken down into two sessions of fifteen minutes each to be administered as a cotreatment during Occupational Therapy.
- Speech services were broken down into two sessions of fifteen minutes per week.
- However, access to adult support was added based on the Student's behavioral needs.

9. On November 29, 2021, the Student's IEP was amended to include increased special education services in the areas of math and reading. Specifically, the service delivery on the Student's IEP was amended to include four sessions of thirty minutes each week as services for math and five sessions of thirty minutes each week for pull out English Language Arts (ELA) services.

10. On February 23, 2022, the IEP team met to conduct its annual review of the Student's IEP. The IEP team reviewed the Student's progress and agreed to add accommodations to the Student's IEP including: use of graph paper, provision of paper copies of county

assessments, provision of class notes, and reading aloud of assessments when a reader is not available. The IEP team agreed to add objectives for math fact fluency and for topic writing and concluding sentences. For services, the IEP team was determined to increase speech services to one session of thirty minutes weekly and one session of fifteen minutes weekly outside of the GEE.

11. On April 6, 2022, and April 13, 2022, IEP meetings were held to discuss concerns regarding the Student's progress and to amend the Student's IEP. The IEP team determined to increase the Student's special education service hours to seven hours and ten minutes outside of the GEE each week and for one hour of special education services each week within the GEE. The IEP team further recommended an increase in counseling services for the Student. Specifically, the recommendation was to increase counseling services to four sessions of fifteen minutes each per month. Finally, based on the Student's behavioral needs, the IEP team recommended the provision of close adult supervision, i.e., a one-on-one assistant.

12. On May 24, 2022, the IEP team reconvened due to the Student having been restrained at school on two occasions. The IEP team discussed the circumstances relating to the two incidents of restraint and reviewed the Student's behavioral intervention plan (BIP).

BIP

13. The original BIP was developed on February 27, 2020. The BIP was revised on November 15, 2020, March 31, 2021, May 5, 2021, November 2, 2021, February 23, 2022, April 6, 2022, May 31, 2022, November 28, 2022, December 28, 2022, and February 16, 2023. The targeted behaviors of the BIP were to address the Student's work refusal, noncompliance or refusal of adult demands, physical aggression, property disruption, and elopement.

14. The Student's February 2022 BIP targeted behaviors of non-compliance including: work refusal, scribbling on the work of classmates, roaming around the classroom,

refusal to stop activity, calling out, throwing materials, screaming and making loud noises, and pulling down classroom resources. The BIP further targeted unsafe behaviors including kicking, pushing, scratching, hitting, grabbing students, throwing materials at others, taking items from other students, and hitting students with materials. The IEP team considered adding the intervention of restraint to the Student's IEP and BIP but rejected the proposal because the Student had only been restrained two times at that point. The IEP team determined to add crisis counseling and visual aids to the Student's IEP. Further, the IEP team proposed conducting assessments in the areas of social emotional and behavioral skills because the IEP team suspected that the Student may have an emotional disability in addition to his current disability classification of OHI related to the ADHD. The Parents refused to give consent to the proposed assessments in the areas of social emotional and behavioral skills in a letter dated June 2, 2022.

Referrals

15. For the 2020-2021 school year, between October 30, 2020, through June 10, 2021, when the Student was in the first grade, CCPS sent twenty (20) Notifications to Parents Regarding Disciplinary Action of the Student (Referrals). (CCPS Ex. 45).

16. For the 2021-2022 school year, between September 14, 2021, through June 10, 2022, when the Student was in the second grade, the Student received thirty-one (31) Referrals. (CCPS Ex. 44).

17. For the 2022-2023 school year, while the Student was in the third grade, the Student received seventy-five (75) Referrals between September 13, 2022, through February 17, 2023.⁹ (CCPS Ex. 43).

18. The behaviors that were the basis for the seventy-five Referrals between September 13, 2022 through February 17, 2023, included but are not limited to: refusing work;

⁹ I sustained an objection raised by both parties requesting that I disregard incidents that took place after the Due Process Complaint which was filed on February 17, 2023. Referrals that occurred after February 17, 2023, were not considered.

lying under the table; refusing to leave the nurse's office; throwing chairs, a student desk, and other classroom items; walking out of the classroom without permission; refusing to go back into the classroom; throwing a magnet at a student; kicking a student in the groin; stating three times that he will kill a student and stab her in the guts; stating he wanted to bring a knife to stab a staff member in the stomach, rip her guts out, burn her, burn her house and grave, and send her to the devil to perish; grabbing a magnet off a door and throwing it at a student's face; kicking another student in the groin area; refusing to sit down; walking out of the room without indicating as required which of the three safety locations he was going to¹⁰; attempting to kick the acting assistant principal and after he missed, hitting her with his closed fist; eloping and touching his flash pass but not ending up at one of his designated safe spot locations; eloping from the gym; refusing to leave the resource room; throwing a basketball toy across the room and breaking it; going under the table and lying on the beanbag, and trying to rip the weighted dog stuffed animal; hitting another student on the head with his lunchbox; opening the door to the outside while he was in his safe space location; trying to elope; kicking, hitting, and biting the staff member who kept the door shut to prevent him from eloping; remaining escalated despite the coping strategies employed as outlined on his BIP; scratching and attempting to hit staff; kicking a student in the leg; eloping from the gym; kicking a student in the lower back area; using the swing in an unsafe manner; wrapping the rope of the swing around his neck; biting the rope; trying to pull his teeth out; eloping from math class into the hallway and sitting down; refusing to complete a test; throwing fidget spinners¹¹; pushing room items out the door; eloping from the calming room into the hallway; tearing pages out of a book that cost \$65.00; eloping from the assigned area; leaving the assigned area multiple times; being unsafe with furniture; getting down on the floor on his knees and putting his head to the floor and pushing himself down the

¹⁰ The Student has access to a flash pass which allows him to leave a classroom as needed to go to one of his three safe locations within the school.

¹¹ Fidgets or fidget spinners are small, ball-bearing toy or object that the Student can rotate between his fingers.

hall; climbing on furniture in the isolation room; refusing to work and unsafely climbing on the furniture; biting an aide on the arm and hitting her face with an open hand; breaking a fidget in music class and then eloping from the classroom, sitting in the hallway and refusing to go to his lunch intervention; smacking the spoon of medication (mixed with apple sauce) that the nurse was trying to give him, all of which landed on her clothes; cupping rice in his hands and throwing it around the speech therapy room after he promised not to do so; throwing school material, refusing to work; tearing up the cards of the game Clue because it was time to clean up; ripping up work that he previously completed; ripping items from lockers in the hallway; leaving the classroom without permission, stapling a book together so that it would not open, then ripping it; refusing to work, eloping from the room without an adult; refusing to get back into class; refusing to leave the sensory room when it was time to return to class; ripping items from lockers; refusing to stop touching the teacher's computer; hitting the teacher's computer; displaying unsafe behaviors; swinging his arms with closed fists and making physical contact with other students causing them to move away; refusing to sit down but walking around the exit doors of the classroom; eloping from his math class; leaving the classroom without permission and sitting in the hallway; ripping paper off the wall, then eloping to the hallway; eloping from the calming room; ripping items from lockers and running down the hall; throwing colored pencils and yelling that he is not going to class; throwing items that he was given to calm down, one of the items hitting an adult; ripping things from the walls; refusing to complete a task; drawing on a table; throwing a pencil; running around the room; running out of the classroom; going under the table; refusing to work; knocking things over; kicking over a stack of chairs; spinning in his chair on the ground; crumpling up his paper and throwing it at a peer; kicking a student multiple times; throwing school materials; kicking, biting, and hitting staff, and wiping his nasal secretions on that staff; refusing to do work and eloping from the classroom; walking

the hallway for twenty-five minutes; sitting in the hallway and stating he was not leaving; throwing his fidget/necklace while in a group instruction setting; ripping down artwork off the lockers and walls; refusing to complete work; speaking in French and refusing to complete any work while with his special educator; ripping up his paper; crawling under the desk and ripping the teacher's belongings from her desk; yelling "Shut up you idiot!"; eloping from the calming room; ripping down work in the hallway and lockers; throwing items; eloping and running down the hallway; throwing classroom materials and water bottles; kicking a student who was trying to get away from him and the students had to be cleared out of the classroom; kicking another student in the hallway while an assistant tried to block the children from getting kicked or injured; punching and throwing a red tower mat and other mats; hitting another student in the chest; ripping work off the walls and lockers; leaving the calming room without permission; throwing things; throwing objects while entering a classroom; bumping into other students while on the carpet; hitting other students repeatedly with his rolled up papers; kicking a student as he was walking down the hallway; refusing to work and crawling under the table; saying disrespectful things to the staff in the room; kicking the table and desk; crawling under the desk and pulling things down from a desk and the cart; attempting to wedge his head between the drawers of a desk; saying unkind things to a student that was standing in the hallway; eloping from physical education class after his team lost a bowling game; eloping and running into the hallway; throwing the point of a marker at a teacher's face; crawling under the table; kicking the teacher; attempting to flip the table over with his feet; attempting to hit his head on the ground but a pad was put in place to protect his head; hitting a staff member; spitting at other staff members; and targeting and kicking a student. (CCPS Ex. 43).

19. During the incidents and episodes that resulted in the seventy-five (75) Referrals during the 2022-2023 school year, the staff employed various techniques and coping strategies as

outlined in the Student's BIP to redirect and/or de-escalate the Student, which included but are not limited to: offering to rest for fifteen minutes, offering the calming room, allowing him to go to the nurse's office, talking to him to come back to where he is supposed to be, receiving counseling by the school counselor and school psychologist if available, escorting him to the support room, taking a break, offering headphones, offering him a smaller basketball, asking him to return to class, directing him to the calming room, providing him an alternative location when he refused to leave the resource room, reminding him of what he privileges and benefits he was working toward, offering a sensory break, calling the Parents if needed, reminding him of his earning choices, allowing him the breaks he requested, offering to help him when he appeared frustrated, offering him a break to redirect him, giving him a choice of locations to work, redirecting him, attempting to assist him, discussing with him about completing his work so he can go to lunch with his friends, asking him to agree to not throw rice inside of a bin kept in the sensory room, offering a break and a sensory break, allowing him to go for a walk, conferencing with him to explain that materials he ripped up was for all of the students to use, directing him to the calming room, reminding him to ask for breaks and being told he can always have them, offering to fix items he destroyed, asking him to join the class group activity, reminding him and giving him a warning that if he eloped it would result in a referral, thanking him for working with other students, giving him several options when he refused to go back into a classroom, giving him time to regulate, allowing him to read a book, allowing him to use his fidget, offering him to go to the resource room, removing students away from him when he swung his arms making contact with other students, asking students to move away from him, blocking the students from kicking attempts, greeting him, prompting him with language agreed in the BIP, offering a walk, providing encouragement to complete work, being reminded that he could have lunch detention if his work was not completed, placing a mat on the ground to prevent injury

when he banged his head, offering him a snack, offering him a different seat, offering a walk, prompting him to return to class, giving him options for completing tasks, offering breaks, offering to write and different work options, and complimenting him. (CCPS Ex. 43).

Attacks on Staff Members

20. For the 2022-2023 school year, there were a total of twenty-eight “Staff Injury Report Related to Aggressive Behavior” (staff injury reports) (CCPS Ex. 40). Of the twenty-eight staff injury reports, eighteen occurred between November 9, 2022, through February 17, 2023.

21. The staff members who were injured by the Student between November 9, 2022, through February 17, 2023, included [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. On the following dates, the Student was involved in more than one incident, resulting in a staff member injury: November 14, 2022 (four incidents), November 22, 2022 (two incidents), February 1, 2023 (three incidents), February 2, 2023 (two incidents), February 8, 2022 (two incidents). (CCPS Ex. 40).

22. The injuries caused by the Student to the staff members included but are not limited to digging, scratching, breaking the skin, causing bleeding, throwing a magnet at a face and hitting the temple, grabbing arms, grabbing ankles, scratching ankles, using his head to ram a body repeatedly, scratching the lower backside of a calf, slamming a chair onto a hand, kicking in the groin area, biting an arm, smacking a face, hitting, kicking, attempting to rip clothing, scratching hands, shoving his head into ankles, kicking a stomach, biting hands, pulling on clothes, smacking a chest, hitting a face three times with a pillow, and hitting with his hand the nose and cheek. (CCPS Ex. 40).

23. On September 28, 2022, the IEP team reconvened to discuss the Student's escalating and interfering behaviors and determined to conduct an updated Functional Behavioral Assessment (FBA). The Parents consented to the FBA on October 6, 2022.

Neuropsychological Evaluation

24. On October 25, 2022, November 11, 2022, and November 21, 2022, the Parents had the Student assessed at [REDACTED]. (CCPS Ex. 23). A Neuropsychological evaluation was completed (Evaluation). The Student was diagnosed with the following:

- generalized anxiety disorder with obsessive compulsive features,
- persistent depressive disorder (Dysthymia), early onset,
- ADHD – combined presentation with weaknesses in executive function and oppositional features,
- specific learning disorder with impairment in reading-dyslexia and reading fluency,
- specific learning disorder with impairment in written expression,
- developmental coordination disorder with dysgraphia, and
- sleep disorder, unspecified. *Id.*

25. At the assessment, the Student completed the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V) that measured the Student's intellectual functions in five

categories. The Student's scores were included in the Evaluation. The Student earned the following scores:¹²

Index Standard Scores:	SS	Percentile	Qualitative Description
Verbal Comprehension	100	50	Average
Visual Spatial	94	34	Average
Fluid Reasoning	88	21	Low Average
Working Memory	88	21	Low Average
Processing Speed	95	37	Average
Full Scale IQ	94	34	Average

26. At the assessment, the Student completed the Wechsler Individual Achievement Test – Fourth Edition (WIAT-4) that measured the Student's academic abilities. The Student's scores were included in the Evaluation. The Student earned the following scores:¹³

Composite Scores:	SS	Percentile	Qualitative Description
Total Achievement	73	4	Very Low
Reading	75	5	Very Low
Written Expression	69	2	Extremely Low
Mathematics	84	14	Low Average
Basic Reading	82	14	Low Average
Decoding	79	8	Very Low
Reading Fluency	80	9	Low Average
Math Fluency	80	9	Low Average
Phonological Processing	89	23	Low Average
Orthographic Processing	76	5	Very Low
Dyslexia Index	78	7	Very Low

27. The Evaluation included the following recommendations for the Student:

- The Student requires access to breaks and fidgets.
- The Student requires access to audiobooks.
- The Student requires extended time on texts and quizzes (fifty percent).
- The Student requires keyboard training and transition to an iPad, notebook, or laptop for all written work.
- The Student requires an absence of penalty for spelling errors.

¹² (CCPS Ex. 23).

¹³ *Id.*

- The Student requires pre-reading and pre-writing rubrics.
- The Student requires sentence starters, word banks and graphic organizers.
- The Student requires breakdown of longer projects into smaller segments with more frequent feedback.
- The Student requires frequent checks to ensure that he comprehends oral and written instructions.
- The Student requires seating near the point of instruction.
- The Student requires access to a flash pass.
- The Student requires psychological or behavioral health services.
- The Student requires crises intervention services.
- The Student requires reduced writing demands.
- The Student requires continued occupational therapy to address sensory processing and fine motor weaknesses that impact educational performance.
- The Student requires positive behavioral interventions and supports.
- The Student requires a reliable home school communication plan. *Id.*

28. On November 28, 2022, Ms. [REDACTED], M.A., BCBA, LBA,¹⁴ of [REDACTED]

[REDACTED] Educational and Behavioral Consultants, observed the Student at

[REDACTED]. Ms. [REDACTED] accompanied Ms. [REDACTED].

29. Observations of the Student on November 28, 2022, included but are not limited to: dumping his belonging from his bookbag when he was instructed to unpack, crumbling up paper, refusing to work, leaving the classroom, walking around the building three times, playing he saw his special educator and slumping down in his seat, shutting his eyes, purposely

¹⁴ M.A. stands for Master of Arts. BCBA stands for board certified behavior analyst. LBA stands for licensed behavior analyst.

providing the wrong answer such as negative one and negative two in response to what comes after one, poke his material with a pencil, attempt to pull down or destroy student papers and drawings that hung on walls, telling adults to stop following him, sitting on the ground in the hallway, stating “beep” “beep”, “beep” as he walked in the hallway, and stating he did not want another student in his speech session. Based on the observations, Ms. [REDACTED] made several recommendations, including identification of precursor behavior to avoid high magnitude behavior and provide teaching opportunities for replacement behavior and coping strategies. (Parents Ex. 23).

December 7, 2022 FBA

30. Results from the FBA dated December 7, 2022, indicated that the Student’s most problematic target behaviors that interfere with his ability to access his education include work avoidance, noncompliance, physical aggression, and elopement. (Parents Ex. 11). As of December 7, 2022, the Student received Referrals for disciplinary action for offenses that included: destruction of property, disruption, leaving school without authorization, out of assigned area, physical contact, unsafe behavior, attack on student, and others. The Student has hit, kicked, spit on, bit, and thrown objects at staff members and students in the school building. The Student eloped from his class, out of the school building, and attempted to go off school property towards the road. The Student has damaged school property and thrown materials around the classroom. The Student has also used verbal threats in pair with his escalation. The Student has pulled the fire alarm, resulting in a three-day suspension. The Student has served lunch detention three times and in-school intervention two times.

- Work avoidance: when presented with a work task, the Student is likely to refuse the assignment in order to escape the non-preferred task. The Student has a baseline work avoidance for seventy-seven (77) percent of his school days during a thirty-day period.

The average duration was seventy (70) minutes, ranging from fifteen to one hundred eighty minutes.

- Noncompliance: when presented with an adult demand, the Student is likely to refuse the task in order to escape the non-preferred task and gain access to a preferred task or activity. The Student has a baseline of noncompliance for ninety-two (92) percent of his school days during a thirty-day period. The average duration was seventy-one (71) minutes, ranging from five minutes to one-hundred eighty minutes.
- Physical aggression: when the Student is presented with a task or asked to move onto a non-preferred task or asked to move onto a non-preferred activity, the Student is likely to become physically aggressive in order to escape the non-preferred task and adult attention. The Student has a baseline of aggression for ninety-two (92) percent of his school days during a thirty-day period. The average duration was forty-two (42) minutes, ranging from fifteen to ninety-five minutes.
- Elopement: when the Student is presented with a non-preferred task, activity, or work location, the Student is likely to become physically aggressive in order to escape the non-preferred task and adult attention. The Student has a baseline of elopement for eighty-five (85) percent of his school days during a thirty-day period. The average duration was forty-three minutes, ranging from fifteen to ninety-five minutes. (Parents Ex. 11).

31. On December 22, 2022, the IEP team met to review the updated FBA results and to amend the Student's BIP and IEP. The IEP team determined to make changes in the preventative strategies on the Student's BIP including use of a visual timer out of sight of the Student, informing the Student that when other adults enter the learning space they are not there for him, use of a task list that builds in options for the Student in determining the order to complete tasks, frequent reinforcement in all content areas, provision of snacks in the morning

and the afternoon, use of the nurse's bathroom as an option when needed. The IEP team also determined to increase the number of special education services provided outside the GEE in the area of math in an attempt to close the gap in the Student's skills.

32. On January 5, 2023, the Student's IEP was amended by agreement without a meeting to include the addition of a human reader for materials above the Student's instructional reading level.

33. On January 11, 2023, the IEP was amended without a meeting by agreement to increase special education hours by one hour per day outside the GEE to work on the Student's needs in the area of math and writing instruction and to provide additional behavioral supports because the Student was not accessing the curriculum in the GEE.

34. On January 12, 2023, the IEP team convened a meeting to review the circumstances surrounding an incident where the Student was restrained.

35. On January 26, 2023, and February 16, 2023, IEP meetings were held to conduct an annual review of the Student's IEP. The January 26, 2023 IEP meeting lasted three hours. The February 16, 2023 IEP meeting lasted five hours.

36. The IEP team determined to add additional diagnostic findings from the Evaluation provided by the Parents under eligibility in the Student's IEP. The IEP team proposed separating data collection between disruption and aggression in relation to the Student's behavior. The IEP team proposed adding a consultation with a speech language pathologist in an effort to monitor the Student's pragmatic language skills. The IEP team reviewed and proposed an updated BIP. The IEP team reviewed the testing and instructional accommodations, supplementary aids, and services, and proposed extended school year services for the Student's IEP. For services the IEP team proposed thirty minutes weekly outside of the GEE for speech and language therapy, thirty minutes weekly inside of the GEE for Occupational Therapy, one

hour weekly outside of the GEE, and fifteen minutes weekly within the GEE for counseling services, forty-five minutes five times per week for math outside the GEE, one hour and fifteen minutes per session five times weekly for reading and writing outside the GEE.

37. The Student's services had been increased in April of 2022 and January of 2023. Despite those increases, the Student was not making sufficient progress. The IEP team further noted that the Student's significant interfering behaviors resulted in the loss of classroom instruction time, which resulted in a lack of academic progress. The Student's skill gap in reading, math, written language, and social emotional skills had widened.

Attendance and Academic Progress

38. For the 2022-2023 school year, the Student was absent thirty-seven point five (37.5) days and was tardy eleven (11) times. For the 2021-2022 school year, the Student was absent thirteen point five (13.5) days and was tardy seven (7) times. For the 2020-2021 school year, the Student was absent four point five (4.5) days and was tardy one (1) time.

39. As of February 16, 2023, the Student was not making academic progress. For the 2022-2023 school year, the Student was failing Math and barely passing ELA. For Math, in the first marking period (MP#1), the Student earned a C. In MP#2, he earned an F. For ELA, in MP#1, the Student earned a B. In MP#2, he earned a D. (Parents Ex. 39).

40. In all of the IEP meetings during the 2022-2023 school year, the Parents were prepared with the draft IEPs with an extensive list of concerns that the IEP team addressed one by one in each meeting. That also occurred at the February 16, 2023 IEP meeting.

February 16, 2023 IEP Meeting

41. The IEP team members considered input from the Parents and their advocate. The Parents challenged the IEP team members regarding issues they raised. The Parents had a long list of items and each of the items and issues were discussed.

42. The IEP team and the Parents addressed the Student's BIP, reviewing the Student's supports and aid, analyzing data, and going through them with great detail.

43. The IEP team recognized the Student's essential need for a small student to teacher ratio setting that was not available at [REDACTED]

44. [REDACTED] does not have a full-time counselor/social worker and school psychologist, who can provide at the moment crisis intervention that the Student needs to help him calm down, de-escalate, and return to the classroom and receive instruction. [REDACTED] has a part-time social worker and a part-time school psychologist.

45. At the meeting, Ms. [REDACTED] indicated that she fought for the Student to stay at [REDACTED], but she could not provide him all of the services he needed.

46. The Parents spoke throughout the IEP meeting and were able to provide input at the end of the meeting.

47. Toward the end of the IEP meeting, it became very contentious. The Parents accused the IEP team of giving up on the Student and not wanting to meet the Student's needs at [REDACTED]. The IEP team welcomed the Parents to include any and all comments that they wanted to include in the Student's file.

48. On February 16, 2023, after the development of the IEP and revision of the BIP, the IEP team discussed placement for the Student. The IEP team determined that [REDACTED] was able to provide the number of service hours allotted for the Student in his IEP, however, [REDACTED] was not able to provide the small, structured class setting and behavioral supports that the Student needed during episodes of work avoidance and emotional dysregulation.

The [REDACTED] Program

49. [REDACTED], the Principal at [REDACTED] was present at the February 16, 2023 IEP meeting and provided information concerning the [REDACTED] regional program at [REDACTED].

50. The [REDACTED] program provides a comprehensive small class environment of less than six students, which is what the Student needs and is recommended in the Evaluation.

51. The [REDACTED] program can provide wrap around services¹⁵ with its two full-time mental health therapists, trained in de-escalation strategies, via individual and/or group counseling, and provide the Student with crisis intervention during his episodes of emotional dysregulation. The Student will receive help with his anxiety and learn coping skills.

52. The current placement at [REDACTED] is not meeting the Student's extensive needs. The [REDACTED] program has the resources to meet all of the Student's needs.

53. The Student's IEP from February 16, 2023, can be successfully implemented at the [REDACTED] Program.

54. The February 16, 2023 IEP is reasonably calculated to provide the Student a FAPE, and the LRE is the [REDACTED] program at [REDACTED].

DISCUSSION

Burden of Proof

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The Parents are seeking relief and bear the burden of proof to establish that: (1) CCPS predetermined placement prior to the February 16, 2023 IEP for the 2022-2023 school year, which denied the Student a FAPE, and (2) the [REDACTED] program at [REDACTED] is not the LRE that would be reasonably calculated to provide the Student a FAPE. Based on the evidence and the reasons that

¹⁵ Wrap around services include but are not limited to therapy and counseling and crisis management.

follow, I find that the Parents have failed to meet their burden of proof. I find in favor of the CCPS.

Motion for Judgment

At the conclusion of the Parents' case on May 22, 2023, CCPS moved for a Motion for Judgment (Motion) arguing that the Parents have failed to meet their burden of proof. COMAR 28.02.01.12E. I reserved ruling on the issue. COMAR 28.02.01.12B(6), E(2)(b). CCPS presented its case. COMAR 28.02.01.12E(3). I am denying CCPS' Motion, although I found in favor of CCPS, as discussed more fully below. COMAR 28.02.01.12E(2)(b).

FAPE

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; and COMAR 13A.05.01. The IDEA requires "that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C.A. § 1400(d)(1)(A); *see also* Md. Code Ann., Educ. § 8-403.

The IDEA defines a FAPE as special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9); *see also* Md. Code Ann., Educ. § 8-401(a)(3).

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 Title 20 of the U.S.C.A and the applicable federal regulations. The statute provides as follows:

(A) In General

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

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8; Md Code Ann., Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78). In this matter, it is undisputed that the Student qualifies as a child with a disability who needs special education services. 20 U.S.C.A. § 1401(3)(A); *see also* 34 C.F.R. § 300.8; Md. Code Ann., Educ. § 8-401(a)(2); and COMAR 13A.05.01.03B(78).

The Supreme Court addressed the FAPE requirement in *Board of Education of the Hendrick Hudson Central School District v. Rowley*,¹⁶ 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.” *Rowley*, 458 U.S. at 201 (footnote omitted). The Court identified a two-part inquiry to 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. *Id.* at 206-07. 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

¹⁶ 458 U.S. 176 (1982).

an IEP reasonably calculated to permit the student to meet the state’s educational standards; that is, generally, to pass from grade to grade, on grade level. *Rowley*, 458 U.S. at 204; 20 U.S.C. § 1401(9).

In 2017, the Supreme Court revisited the meaning of a FAPE, holding that for an educational agency to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student’s circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017). Consideration of the student’s particular circumstances is key to this analysis; the Court emphasized in *Endrew F.* that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Endrew F.*, 136 S. Ct. at 1001. 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. *Endrew F.*, 137 S.Ct. at 998-999.

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 involve consideration not only of the expertise of school officials, but also 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. *Id.*, at 999. The Supreme Court stated:

[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. This reflects the broad purpose of the IDEA, an ‘ambitious’ piece of legislation enacted ‘in response to Congress’ perception that a majority of handicapped children in the United States

‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’” A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

Id., at 999 (quoting *Rowley*, 458 U.S. at 179).

Predetermination

The IDEA affords parents equally important procedural and substantive rights in ensuring that their child receives a FAPE under the statute as required. Emphasizing the importance of the procedural safeguards embodied in title 20, section 1415 of the U.S.C.A., the Supreme Court, in *Rowley*, explained:

When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act,^[17] we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that 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. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP . . . demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

458 U.S. at 205–06 (citation omitted). As this passage explains, the essence of the procedural safeguards afforded under the IDEA is to ensure full and meaningful participation of “concerned parties,” including the parents of a child, throughout the IEP development process.

¹⁷ The Supreme Court in *Rowley* interpreted what was titled the Education for All Handicapped Children Act (EHA), the predecessor to the IDEA.

With *Rowley*'s emphasis on procedural compliance, therefore, it is unsurprising that the IDEA was amended in 2004 to provide that certain procedural violations may result in a finding that a child was denied a FAPE. In relevant part, the IDEA states the following:

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

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 U.S.C.A. § 1415(f)(3)(E)(ii) (emphasis added); *see also* 34 C.F.R. § 300.513(a)(2).

Predetermination is a type of procedural violation that, under the IDEA, consists of deciding a student's placement before developing an IEP. *See* 34 C.F.R. § 300.116(b)(2) ("In determining the educational placement of a child with a disability . . . each public agency must ensure that . . . [t]he child's placement . . . [i]s based on the child's IEP . . ."). "A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement." *K.D. ex rel. C.L. v. Dep't of Educ.*, 665 F.3d 1110, 1123 (9th Cir. 2011). "Predetermination violates the IDEA because the [IDEA] requires that the placement be based on the IEP, and not vice versa." *Id.* (citing *Spielberg ex rel. Spielberg v. Henrico Cnty. Pub. Schs.*, 853 F.2d 256, 259 (4th Cir. 1988)).

In *Spielberg*, the school system decided to change the student's placement from a residential facility to a local public school before developing a new IEP to support the change. More specifically, the school system had written a series of letters regarding the change of the student's placement prior to the scheduled IEP meeting. The Fourth Circuit held that the decision to place the student before developing an IEP violated the EHA's implementing regulation and "violat[e]d the spirit and intent of the EHA, which emphasizes parental involvement. After the fact involvement is not enough." *Spielberg*, 853 F.2d at 259.

In *Deal ex rel. Deal v. Hamilton County Board of Education*, based on an unofficial policy, school system representatives “pre-decided not to offer [the student] intensive [applied behavioral analysis] services regardless of any evidence concerning [the student’s] individual needs and the effectiveness of his private program.” 392 F.3d 840, 857 (6th Cir. 2004). The school system representatives “did not have open minds and were not willing to consider the provision of such a program.” *Id.* at 858. The Administrative Law Judge found that the parents were not even permitted to ask questions during an IEP meeting. *Id.* at 855. The Sixth Circuit held that “[t]his predetermination amounted to a procedural violation of the IDEA,” and “[b]ecause it effectively deprived [the student’s] parents of meaningful participation in the IEP process, the predetermination caused substantive harm and therefore deprived [the student] of a FAPE.” *Id.* at 857.

As both *Spielberg* and *Deal* demonstrate, the IDEA’s emphasis on meaningful parental participation and involvement is a core tenet of the statute. The IDEA requires that parents have the opportunity “to participate in meetings with respect to the identification, evaluation, and educational placement of the child” 20 U.S.C.A. § 1415(b)(1); *see also id.* § 1414(e) (“Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.”); *see also* 34 C.F.R. § 300.501(c)(1). Therefore, the procedural offense of predetermination stems from the mandate under the IDEA that the parents be entitled to the opportunity to meaningfully participate and engage in the development of an IEP for their child. *See* 34 C.F.R. § 300.322 (providing public agency’s responsibility to afford opportunity for parental participation); *see also* 20 U.S.C.A. § 1414(d)(1)(B)(i). If a school system has decided a student’s placement before developing an IEP, a process in which the IDEA mandates that

parents be entitled to meaningfully participate and engage, by definition the school system has denied the parents their right to meaningful participation.

Equally important to the parents' ability to provide input is the receptiveness of school staff to consider that parental feedback, without which parental participation would not be considered meaningful and would simply fall on deaf ears. Thus, "[a] school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003), *superseded by statute on other grounds*, 20 U.S.C.A. § 1414(d)(1)(B), *as recognized in G.M. ex rel. Marchese v. Dry Creek Joint Elementary Sch. Dist.*, 595 F. App'x 698, 699 (9th Cir. 2014).

Courts have declined to find predetermination even where school staff come to IEP meetings with a proposal in mind, as long as they remain open to input from the parents and their experts. Discussing *Spielberg*, the United States District Court for the District of Maryland explained that "while a school system must not finalize its placement decision before an IEP meeting, it can and should have given some thought to that placement." *Hanson ex rel. Hanson v. Smith*, 212 F. Supp. 2d 474, 486 (D. Md. 2002). The court also discussed *Doyle v. Arlington County School Board*, 806 F. Supp. 1253, 1262 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994), and stated "if the school system has already *fully* made up its mind before the parents ever get involved, it has denied them the opportunity for any meaningful input." *Hanson*, 212 F. Supp. 2d at 486 (emphasis added). Citing *Doyle's* discussion of *Spielberg*, the court continued, "*Spielberg* required the school board to come to the table with an 'open mind,' but did not require them to come to the IEP table with a 'blank mind.'" *Id.* (quoting *Doyle*, 806 F. Supp. at 1262). The court in *Hanson* ultimately held that the student's placement was not predetermined

because the school staff came to the IEP meetings with an open mind and discussed and considered several options before the final recommendation was made. *Id.*

As the Sixth Circuit succinctly offered, “predetermination is not synonymous with preparation.” *Nack ex rel. Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006). “[S]chool evaluators may prepare reports and come with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.” *Id.* (quoting *N.L. ex rel. Ms. C. v. Knox Cnty. Schs.*, 315 F.3d 688, 694 (6th Cir. 2003)); *see also G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 947–48 (1st Cir. 1991) (finding no predetermination when school district came to team meeting with draft IEP and approved at subsequent meeting); *K.D.*, 665 F.3d at 1123 (finding no predetermination where district had a placement in mind before meeting but considered other options and reasonably rejected them).

Meaningful parental participation has not been interpreted by courts to mean that school staff cannot disagree with parental input. “To avoid a finding of predetermination, there must be evidence the state has an open mind and might possibly be swayed by the parents’ opinions and support for the IEP provisions they believe are necessary for their child.” *R.L. ex rel. O.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). “A state can make this showing by, for example, evidence that it ‘was receptive and responsive at all stages’ to the parents’ position, even if it was ultimately rejected.” *Id.* (quoting *Doyle*, 806 F. Supp. at 1262).

In *Nack*, three separate IEP meetings were held concerning the student’s IEP where the parent, who “was always able to be a significant part of the discussions,” actively participated in each of these meetings. 454 F.3d at 610. Prior to and during these meetings, the parent “repeatedly made school officials aware” of her disapproval of her son’s participation in a special education classroom and her desire for him to remain in the general regular education

setting. *Id.* “While there clearly had been ongoing discussions concerning [the student] and certain portions of the IEP had been drafted in advance,” the court explained in finding no predetermination, “[the parent] was given many opportunities to comment on the IEP and, by every indication, [the school system] took her suggestions seriously.” *Id.* at 611.

Ultimately, in light of such disagreement between school staff and parents, the United States Department of Education’s Office of Special Education and Rehabilitative Services has provided guidance stating, “If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency’s proposals or refusals, or both, regarding the child’s educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.” Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 Fed. Reg. 12406, 12473–74 (Mar. 12, 1999) (providing answer to question number nine in section II of the Appendix); *see* 34 C.F.R. § 300.148(b) (“Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures . . .”).

For the reasons discussed below, I find that the Parents failed to meet their burden of proof that CCPS predetermined placement prior to the development of the February 16, 2023 IEP. The Parents were not deprived of meaningful participation in the development of the February 16, 2023 IEP as well as the IEP process for the 2022-2023 school year. The Student’s substantive right to a FAPE was not denied as there was no procedural error established.

CCPS Did Not Predetermine the Student’s Placement

The Parents argued that CCPS abused the IEP process in contravention of the IDEA. They alleged that CCPS predetermined the Student’s placement prior to the development of the

February 16, 2023 IEP, which denied them their right to meaningful participation in an open-minded IEP meeting. The Parents argued that based on this procedural error, the Student's substantive right to a FAPE was denied. *See* 20 U.S.C.A. § 1415(f)(3)(E)(ii)(II); 34 C.F.R. § 300.513(a)(2)(ii). To support the Parents' assertion that placement was predetermined prior to the February 16, 2023 IEP meeting, the Parents advanced four arguments: (1) Mr. [REDACTED] was included in the IEP meetings on January 26, 2023, and February 16, 2023, (2) the February 16, 2023 IEP meeting was not set up as a collaborative meeting, (3) the academic service hours were unnecessarily increased to meet the requirements for the [REDACTED] program, and 4) Ms. [REDACTED], not the IEP team, decided that the [REDACTED] program would be the Student's placement and allotted only thirty minutes for discussion, which prevented the Parents the opportunity to participate meaningfully. I will address each of the arguments in turn.

(1) [REDACTED] was included in the IEP meetings on January 26, 2023, and February 16, 2023

Ms. [REDACTED] has been a special education teacher for twenty-six years. Twenty-two of those years have been in CCPS. She received a Master of Science in Special Education from [REDACTED] and is a nationally board-certified teacher. Ms. [REDACTED] testified that [REDACTED] attended the IEP meetings on January 26, 2023, and February 16, 2023. [REDACTED] is the principal of [REDACTED] where the [REDACTED] program is offered. The Parents postulated that his name which was included in the prior written notices (PWNs) for the January 26, 2023, and February 16, 2023 IEP meetings established that CCPS predetermined the Student's placement at the [REDACTED] program before the development of the IEP on February 16, 2023. The Parents urged me to find that the inclusion of Mr. [REDACTED] on the PWNs was indicative of predetermination and no other reason.

Ms. [REDACTED] testified that CCPS failed to provide the Parents a courtesy telephone call announcing Mr. [REDACTED]' attendance at the IEP meetings. Ms. [REDACTED] purported that a telephone

call was an informal requirement, which was based on her experience as a teacher at CCPS but was not based on any legal authority. The Parents seem to argue that a courtesy telephone call was not provided because the IEP team did not want to give the Parents advance notice about Mr. [REDACTED] and the [REDACTED] program. Ms. [REDACTED] refused to concede the possibility that the inclusion of Mr. [REDACTED] in the PWNs was the notice that satisfied the IDEA requirements that the Parents be notified concerning who will attend the IEP meetings. In addition, Ms. [REDACTED] would not concede that Mr. [REDACTED] was invited to attend the IEP meetings to provide information about the [REDACTED] program.

Despite the Parent's position that they had no advance notice of Mr. [REDACTED] and the [REDACTED] program, a PWN dated April 13, 2022, indicated that IEP meetings were held on April 6, 2022, and April 13, 2022. (Parents Ex. 1). In it, it states that Ms. [REDACTED] asked the IEP team in April 2022 if the team was considering an alternative placement such as the [REDACTED] Program. The team replied, "not at this time, we are recommending to increase his services to provide him with what he needs given the data." *Id.* Ms. [REDACTED]'s question to the team clearly demonstrated that the [REDACTED] program was a possible option for the Parents as early as April 2022. Ms. [REDACTED] also testified that in the January 26, 2023 IEP meeting, she asked about the "elephant in the room" and asked the IEP team if they were considering the [REDACTED] program, when Mr. [REDACTED] was introduced at that time. (Ms. [REDACTED]'s testimony). On both occasions, the IEP team had not made a determination of placement. But the evidence indicated that the Parents feared that the team may decide at some point that placement would be appropriate at the [REDACTED] program.

Ms. [REDACTED] is the Student's special educator at [REDACTED]. She is also the Student's case manager and prepares the PWNs. Ms. [REDACTED] testified that as the Student's case manager, she must check and confirm who will attend the IEP meetings. She explained that she had discussions with the administration and CCPS' consultant regarding who to include in the IEP

meetings. Ms. [REDACTED] conceded that no notice or a courtesy telephone call was provided to the Parents before the PWNs were sent out because none are required. However, when asked if case managers generally call parents if additional members are invited to the IEP meetings, Ms. [REDACTED] responded, “sometimes yes and sometimes no.” (Ms. [REDACTED]’s testimony).

Ms. [REDACTED] has been the Principal of [REDACTED] since August 2022. Prior to her current position, she was the Assistant Principal at [REDACTED] from 2020 through August 2022. Her professional background includes teaching STEM¹⁸ to third, fourth, and fifth grade students at [REDACTED]. She has also worked as a licensed clinical counselor and mental health counselor in private practice. Ms. [REDACTED] received her Administrator I and II Certificates from the MSDE. (CCPS Ex. 47).

Ms. [REDACTED] testified that Mr. [REDACTED] was introduced at the January 26, 2023 IEP meeting and was present at the February 16, 2023 IEP meeting to share ideas, strategies, and options concerning the Student’s possible placement. The [REDACTED] program is a [REDACTED] special education program just as [REDACTED] has a [REDACTED] program for students with autism. Ms. [REDACTED] elaborated that as the Principal of [REDACTED]’s regional program, she frequently attends IEP meetings to provide IEP teams with information concerning [REDACTED]’s program for autistic children. It is common for principals of regional programs to share ideas, to learn about strategies, and consider possible options. Ms. [REDACTED] affirmed that Mr. [REDACTED] was invited to attend the January 26, 2023 IEP meeting when he was introduced to the Parents and the IEP team, and to the February 16, 2023 IEP meeting to share ideas, strategies, and possible placement options for the Student.

CCPS argued that the required notice to the Parents is the PWN. Mr. [REDACTED] was present at the IEP meetings after proper notices were provided to the Parents. There is no authority for the

¹⁸ STEM means science, technology, engineering, and mathematics.

Parents' assertion that a telephone call was required prior to the PWNs. I agree with CCPS. The Parents provided no legal authority that required CCPS to contact the Parents by telephone or any other form of communication prior to the PWNs. CCPS provided notice consistent with the requirements of the IDEA. A separate courtesy pre-PWN telephone call was not required. Based on the record before me, I find that Mr. [REDACTED]' presence is not an indication that CCPS predetermined the Student's placement at [REDACTED].

(2) The February 16, 2023 IEP meeting was not set up as a collaborative meeting

The Parents argued that CCPS was required to set up the February 16, 2023 IEP meeting as a collaborative meeting because "the whole setting of the Student's placement was changing." (Ms. [REDACTED]'s testimony). Although it was not clear to me how this argument was indicative of predetermination, it appeared that the Parents were arguing that if CCPS violated this protocol then, as a consequence, the Parents and the Student are entitled to some relief.

Ms. [REDACTED] explained that when a student is being transferred to another school setting, the IEP meeting is set up as a collaborative meeting and affirmed the Parents' understanding. However, Ms. [REDACTED] explained that the February 16, 2023 IEP meeting was not set up as a collaborative meeting because a decision regarding placement was not made prior to the meeting but made after the IEP team developed the IEP for the Student. In fact, all of CCPS' witnesses, including Ms. [REDACTED], Ms. [REDACTED], and Ms. [REDACTED] testified that placement was not determined prior to the meeting but after the development of the IEP on February 16, 2023.

If CCPS set up the February 16, 2023 IEP meeting as a collaborative one, it would have established that the IEP team had decided on changing the Student's whole setting prior to the development of the IEP, hence, predetermination. However, the evidence supports a finding that

the IEP meeting on February 16, 2023 was not set up as a collaborative meeting because placement was not determined until end of the meeting.

(3) The academic service hours were unnecessarily increased to meet the requirements for the [REDACTED] program

The Parents argued that the IEP team proposed an increase in academic service hours to meet the requirements for the [REDACTED] program and that the proposal supports their position that the [REDACTED] program was predetermined. The Parents contend they never agreed to the proposal to increase the Student's academic service hours an additional one hour per day. (Parents Ex. 35). However, on a PWN, dated January 11, 2023, it indicated that the Parents agreed to the increase which was not true. The Parents hypothesized that the increase was to meet the [REDACTED] program requirements and not because the Student needed them.

Ms. [REDACTED] testified that she prepared the PWN dated January 11, 2023. She explained that she called the Parents regarding the proposed increase. She then had a draft of the PWN prepared, in which she indicated that the Parents agreed but needed to confirm and sent an email on January 12, 2023, to the Parents, which stated, "Yesterday we proposed increasing [the Student's] services by an additional hour a day. I just wanted to follow up to see if you have made a decision." (Parents Ex. 35). Ms. [REDACTED] continued that when she did not receive a decision from the Parents, the draft PWN dated January 11, 2023, was never finalized or sent home with the Student. As a result, nothing changed based on that draft.

Although the Parents argued that CCPS increased the academic service hours from eleven to twenty-one to meet the [REDACTED] program requirements, the Parents did not present any evidence regarding what the [REDACTED] program requirements are, and if it is twenty-one academic service hours. In addition, CCPS established that by January 11, 2023, the Student was failing math and ELA, which could explain Ms. [REDACTED]'s request to the Parents if they agreed to additional academic service hours.

Mr. [REDACTED] spoke during the February 16, 2023 IEP meeting. He indicated that the [REDACTED] program can meet the Student's needs, and all of the academic hours are recorded as special education. CCPS explained that all the academic service hours at the [REDACTED] program would be in a special education setting and not in a GEE. However, the Parents were not able to establish if twenty-one academic service hours are what the [REDACTED] program actually required which then prompted Ms. [REDACTED] to ask if they agreed to an increase in academic service hours. There was no opinion offered and/or exhibits to support the Parents' position. Without more, I cannot find that the request to increase the Student's academic service hours was solely meant to meet the [REDACTED] program requirements, as I do not know what those requirements are. The request could have been a reflection of the Student's needs as he was failing both math and ELA.

(4) Ms. [REDACTED], not the IEP team, decided that the [REDACTED] program would be the Student's placement and allotted only thirty minutes for discussion, which prevented the Parents an opportunity to participate fully and meaningfully

The Parents argued that Ms. [REDACTED] announced that the [REDACTED] program would be the placement for the Student, and her failure to ask each individual IEP team member if they agreed with her decision was indicative of predetermination. The Parents also argued that the placement discussion was left for the last thirty minutes of the IEP meeting on February 16, 2023, and the time allotted was not enough to discuss changing the whole environment of the Student, especially when they did not have an opportunity to visit the [REDACTED] program prior to the decision.

I reviewed the recording of the February 16, 2023 IEP meeting that lasted approximately five hours. (CCPS Ex. 62).¹⁹ Before I address my review of the recorded meeting, I want to acknowledge and comment on the unwavering love and support that the Parents have consistently shown towards the Student. Their dedication to advocating for the Student's

¹⁹ This exhibit contains two audio recordings labeled as First Half and Second Half of the February 16, 2023.

inclusion in the GEE, alongside his peers at his home school, is truly admirable. I fully understand and appreciate the Parents' perspective as they strongly urge me to maintain the Student's placement at [REDACTED]. However, it is essential for me to prioritize the vast body of evidence available in order to address the two issues raised in this matter. In light of the Parents' deep love and concern for the Student, I interpreted the following statements, comments, and accusations against the IEP team and/or staff as arising from the Parents' genuine desire to support the Student.

Based on what I reviewed, the Parents participated in every aspect of the development of the IEP. (Findings of Fact (FOF) Nos. 41, 42, and 43). At the beginning of the second half of the IEP meeting, a time limit was set for 2:00 p.m., and no one objected. After the development of the IEP, in addressing whether [REDACTED] was able to implement the IEP, Ms. [REDACTED] phrased her answer carefully. Ms. [REDACTED] stated that based on what she observed, what she heard from the staff who worked with the Student on a consistent and ongoing basis, his need for a very small setting, his need for a therapeutic environment, with onsite full-time counseling and support, and full-time staff for crisis intervention, [REDACTED] cannot meet the Student's needs. (See FOF Nos. 43-45, and 48).

Ms. [REDACTED] was heard accusing the IEP team of not apologizing for treating the Student so differently than the other students. Ms. [REDACTED] complained that every time the Parents raised a concern, the response was it will be investigated, then the conclusion is that the staff members are truthful, and the Student's claims are disregarded. Ms. [REDACTED] then admonishes the IEP team stating, "It's at the point where it is a really bad pattern and bad cycle that some people are comfortable being in. It's a control issue. You're going to do it my way or the highway...that's not what special education is about." (CCPS Ex. 62, First Half, at 1:13:04). When a team member tried to address the allegations, I heard the Parents snap, "please stop!" The Parents cut

off a team member and accused the team of collaborating with each other but not with the Parents. (CCPS Ex. 62, Second Half, at 1:54:33).

When Ms. [REDACTED] stated that she cared about the Student, Mr. [REDACTED] cuts her off and yelled, “you don’t get the right to say that!” (CCPS Ex. 62, Second Half, at 2:13:01). Ms. [REDACTED] then stated that in looking at the whole child, [REDACTED]’s larger group setting is not meeting the Student’s needs. Ms. [REDACTED] then cuts off Ms. [REDACTED] and states, “that’s not true. He is doing fine at recess and at lunch. If it is an academic issue, let’s see if he can receive more intense academic pull out services. The BIP has a lot of good things in it. Let’s see if it works.” (CCPS Ex. 62, Second Half, at 2:14:23).

When addressing the Student’s need for wrap around services because of the Student’s attacks on other students during episodes of emotional dysregulation, Mr. [REDACTED] cuts off Ms. [REDACTED] and asks, “why not make [the Student] wear a helmet to protect him from you staff?” The Parents would not allow Ms. [REDACTED] to continue speaking. When the issue of the Student’s considerable amount of time missed in class instruction was raised,²⁰ there was cross talk, and the Parents talked over the IEP member who raised the issue. Then, the Parents are heard accusing the IEP team of not wanting to meet the Student’s needs. Ms. [REDACTED] was very upset and requested a stay put immediately, stating that they cannot agree to the placement without even having a chance to visit the [REDACTED] program. (CCPS Ex. 62, Second Half, at 2:16:21). Ms. [REDACTED] is heard stating, “We want a stay put until we go. That’s the bottom line.” (CCPS Ex. 62, Second Half, at 2:16:38).

When Mr. [REDACTED] tried to explain attributes of the [REDACTED] Program as an option to meet the Student’s needs, Ms. [REDACTED] cut him off and stated, “I know what the program is.” Then an IEP team member is heard stating that the IEP needs to be finished today, and if the Parents did not

²⁰ (FOF No. 38).

agree, that is what the mediation process is for. When Mr. [REDACTED] was asked to continue, Ms. [REDACTED] cuts him off again and stated, “we already know. We are not doing that now.” But the IEP team is heard insisting that Mr. [REDACTED] provide the information they need. Mr. [REDACTED] explained that the [REDACTED] program has wrap around services that will provide students with a mental health therapist. Ms. [REDACTED] then cuts him off again and states that the [REDACTED] program has students with severe behavioral issues which the Student is not labeled with since he is coded with OHI.

Ms. [REDACTED] is then heard accusing the IEP team of wanting to remove the Student who does not fit the mold and stated that there is a horrible pattern of wanting a student out because the staff spends too much time on the Student. Ms. [REDACTED] accuses Ms. [REDACTED] and the IEP team of giving up on the Student, wanting to uproot him from everything he knows and all of his friends to make it easier for the staff members instead of thinking outside the box and coming up with a plan that might work. (CCPS Ex. 62, Second Half, at 2:15:13).

Mr. [REDACTED] then stated there was a meeting at the end of the second grade where Ms. [REDACTED]²¹ indicated that the Student’s coding would be changed to an emotional disability, and the Parents were threatened with due process. (CCPS Ex. 62, Second Half, at 2:19:53). Although Mr. [REDACTED] is heard stating this was on tape from last year, there was nothing presented by the Parents to support this contention at this hearing. If the Parents had produced the recording of Ms. [REDACTED], whoever that may be and the role she had, stating that the Student’s coding was going to be changed, I would have considered that evidence. However, it was not offered at this hearing. The Parents are then heard asking why they spent nine hours on the IEP, and Mr. [REDACTED] is heard yelling, “This is bullshit!” (CCPS Ex. 62, Second Half, at 2:20:10).

Ms. [REDACTED] then suggested that the Student begin in the GEE at the [REDACTED] program and then pulled out for special education services as needed. Mr. [REDACTED] responded that the students

²¹ Her first name and role were not indicated.

start in the [REDACTED] program from the beginning, and the special educators are the content providers. However, the students can work their way into the GEE, specifically if there is a preferred subject. Ms. [REDACTED] stated she is not taking any more time here. The IEP team was heard continuing and trying to have a discussion but continued to be cut off by outbursts by the Parents.

During these outbursts and accusations, Mr. [REDACTED] was heard stating that the [REDACTED] Program can meet the Student's needs. The Parents are cutting him off and very upset, asking the IEP team if they heard of stay put. Ms. [REDACTED] then announces, "We are putting a stay put until we visit the [REDACTED] program, and we determine if it's the appropriate placement. That's the way it works." (CCPS Ex. 62, Second Half, at 2:20:56). It was clear from the recording that the Parents were not amenable to a discussion. Ms. [REDACTED] is heard stating that she was done. The Parents are then accusing the IEP team of stabbing them in the back and giving up on the Student. The Parents then state they are not taking any more time here.

At the hearing, Ms. [REDACTED] testified that the placement discussion always takes place at the end of the IEP meeting, which is what happened in this case. Ms. [REDACTED] recalled the discussion concerning the [REDACTED] Program. The Parents and their advocate took part in that discussion. Ms. [REDACTED] explained that prior to this meeting, no one indicated to her that the decision regarding the Student's placement was already made or predetermined. Ms. [REDACTED] also testified that the Parents spoke throughout the meeting and were able to provide input at the end of the meeting. It was at that time that the Parents wanted a "stay put" in place. Ms. [REDACTED] testified that during the February 16, 2023 IEP meeting, she recalled the discussions and went through the Student's BIP, reviewing the Student's supports and aid, analyzing data, and going through them with great detail. The Parents had a long list of items, raised issues, and each of the items and issues were discussed. Ms. [REDACTED] also testified that in all the IEP meetings during the

2022-2023 school year, she recalled that the Parents always came prepared with the draft IEPs with an extensive list of concerns that the team addressed one by one in each meeting. That also occurred at the February 16, 2023 IEP meeting.

Ms. [REDACTED] testified that prior to the February 16, 2023 IEP meeting, there was no decision made regarding placement. In fact, all of CCPS witnesses who attended the February 16, 2023 IEP meeting confirmed that no decision was made prior to the development of the IEP and when they finished the IEP, the [REDACTED] program was determined to be the LRE for the Student where he can receive a FAPE because [REDACTED] could not meet the Student's needs of a small class setting with the full-time wrap around services that the Student needed. As it was, [REDACTED] was only able to provide services that were fragmented. *See* (FOF No. 44).

At the hearing, Ms. [REDACTED] testified that as the Principal of the Student's home school, she is the one tasked with the final decision regarding placement. She reiterated the basis of her decision that was consistent with what she stated at the February 16, 2023 IEP meeting. Ms. [REDACTED] testified that the decision was based on her carefully considering all the information that she was provided as of February 16, 2023. The information consisted of the IEPs, the BIPs, the Parents' input, the assessments, reports, evaluation, attendance history, all the exhibits the CCPS provided, and her observation²² of the Student when she accompanied Ms. [REDACTED]. She testified that she had written notes concerning what the Student's needs are, what [REDACTED] can and cannot address, and the consensus that the Student needs a small group setting with full-time wrap around services to achieve academic progress.²³ Hence, the [REDACTED] program was the IEP team's decision, and as the principal, ultimately, the decision she supported.

Consistent with Ms. [REDACTED]'s testimony, the February 16, 2023 IEP indicated, "The IEP Team accepted the proposal of the least restrictive environment as the [REDACTED] program, located at

²² (FOF Nos. 28-29).

²³ (FOF Nos. 50-51).

██████████ Elementary School.” (CCPS Ex. 36). The IEP team agreed on the recording that this is the collective decision of the IEP team based on the Student’s progress, assessments and reports shared by the Parents, behavior data, and supplementary aids listed. (FOF Nos. 17-22, 24-27, 29-30, and 38-39).

Based on the record before me, I do not find that Ms. ██████ announced the placement decision solely on her own without the IEP team’s input. I also find that the Parents were afforded the opportunity to meaningfully participate in the placement issue as well as the development of the IEP, that the IEP team had an open-mind to the Parents’ concerns, and it was the Parents who impeded the discussion of placement when they would not allow the IEP team members and Mr. ██████ to have a discussion.

It is important to note that there is a distinction to be made between the Parents disagreeing with or disliking the IEP team’s recommendation and the Parents being denied the opportunity to meaningfully participate in the development of the Student’s IEP. To suggest otherwise would ignore the reality that parents and IEP team members are permitted to (and do, as they did in this case) disagree under the IDEA. *See* 34 C.F.R. § 300.148(b); 64 Fed. Reg. at 12473–74. But absent a showing that the IEP team members denied the Parents their right to an opportunity to participate in the development of the IEP meaningfully and fully, that disagreement does not equate to predetermination in violation of the statute. *See Nack*, 454 F.3d at 610. “The right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such.” *White ex rel. White v. Ascension Par. Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003).

All of the evidence considered, it is clear that this was not a situation where the IEP team members independently developed the IEP and then simply presented it to the Parents for ratification. *See Vashon Island Sch. Dist.*, 337 F.3d at 1131. The evidence established that with

Ms. [REDACTED]'s background as a special educator, the IEPs demonstrate an extremely high level of collaboration, incorporating significant input from the Parents. (FOF No. 40). This was also evident in the recording of the February 16, 2023 IEP meeting. (CCPS Ex. 62). At the IEP team meeting on February 16, 2023, I heard the IEP team members consider input from the Parents and their advocate. (FOF Nos. 41-42, and 46). As the court did in *Nack*, 454 F.3d at 610, where it considered three separate IEP meetings to develop a student's IEP for the same school year, here, I find it is appropriate to consider the IEP meetings that took place throughout the entire 2022-2023 school as well as the January 26, 2023 meeting which took three hours and the February 16, 2023 meeting which took five hours, given those meetings were convened to review and revise the same IEP. And as in *Nack*, here, the Parents were given every opportunity to comment on and contribute to the IEP personally and through their advocate, Ms. [REDACTED]. At the end of the February 16, 2023 IEP meeting, Ms. [REDACTED] stated, "he is not making academic progress. He is failing. They put together this plan." Ms. [REDACTED] is heard cutting her off and snapping, "let's talk about nonpublic placement then." (CCPS Ex. 62). The evidence clearly established that the Parents did not want to discuss the plan, if at all. To now argue that CCPS did not want to discuss placement when the recording of the IEP meeting clearly indicated that the Parents did not want to discuss it, is disingenuous.

Even if the IEP team had come to the February 16, 2023 meeting with a proposal in mind, they were not prohibited under the IDEA from doing so. *See Hanson*, 212 F. Supp. 2d at 486; *Nack*, 454 F.3d at 610. In this case, the IEP team members remained open to input from the Parents and Ms. [REDACTED]. The evidence established that the IEP team members came to the IEP table with an open mind and were "*willing to listen* to the parents." *Nack*, 454 F.3d at 610 (emphasis added) (quoting *Knox Cnty. Schs.*, 315 F.3d at 694). The IEP team invited the Parents to submit all comments and objections concerning the placement.

The evidence and the recording clearly established that the Parents were afforded and took advantage of the opportunity to meaningfully and fully participate in the process to develop the Student's February 16, 2023 IEP. The evidence is also clear that CCPS did not decide the Student's placement before developing the fifty-page IEP, maintained an open mind, and permitted the Parents a full opportunity for meaningful participation. The recording established that it was the Parents who did not want to discuss the ██████ program and why that was or was not the LRE for the Student to provide him a FAPE. The record before me does not support a finding of predetermination for the reasons stated above. As such, I conclude that the Parents have failed to meet their burden on this issue.

LRE

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

Because including children with disabilities in regular school programs may not be appropriate for every child with a disability, the IDEA requires public agencies like CCPS to

offer a continuum of alternative placements that meet the needs of children with disabilities. 34 C.F.R. § 300.115. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services to be provided in conjunction with regular class placement. *Id.* § 300.115(b); COMAR 13A.05.01.10B(1). Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. COMAR 13A.05.01.10A(2).

The Parties' Positions

The Parents purport that if staff properly implemented the Student's IEP and BIP with fidelity, then the Student would receive a FAPE at the LRE, which they stress is [REDACTED]. The Parents rebuke the staff for their failure to properly implement the IEP and BIP because it prevents the Student from accessing his instruction, resulting in low academic progress. The Student then becomes frustrated because he wants to learn and cannot, which causes him to act out of fear of being in trouble or failing and not because he is malicious. The Parents implored that the Student should remain at [REDACTED] because removal away from his peers and the GEE will be devastating to him. Moreover, the Parents are overwrought that the [REDACTED] program students who suffer from severe emotional disabilities and display serious behavioral issues will negatively influence the Student's behaviors.

CCPS argued that [REDACTED] staff properly implemented the Student's IEP and BIP for several years with fidelity and constantly amended them to account for the Student's escalating and interfering behaviors, which prevented him from accessing instruction in the classroom, which resulted in his poor academic progress. (FOF Nos. 17-22, and 39). Although the parties agree that the February 16, 2023 IEP and BIP were developed to provide the Student a FAPE, CCPS contends that [REDACTED] is only able to deliver some of the services and not all of the

services that the Student needs. CCPS described the delivery of services as fragmented because [REDACTED] simply does not have the small classroom setting and full-time wrap around services that the Student needs. The Student's cognitive and academic abilities as demonstrated in the Evaluation do not align with this current academic performance as he is failing math and ELA. (FOF Nos. 25-26). The Student's escalating and interfering behaviors are getting worse,²⁴ and [REDACTED] lacks the staff resources who can help the Student calm down and de-escalate in his moments of crisis and emotional dysregulation so that he can return to the classroom, learn, achieve his IEP goals, and make academic progress.

As such, CCPS argued that the [REDACTED] program at [REDACTED] is the LRE for the Student because the Student's needs can be met as outlined in the February 16, 2023 IEP, his BIP, and the recommendations included in the Evaluation.

Emotional Disturbance/Disability

The IDEA defines emotional disturbance as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) Inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. § 300.8(c)(4).

CCPS' Request for Assessment to Explore Suspected Emotional Disability

The Parents stand firm that the Student does not have an emotional disability. The Parents alleged that CCPS requested a social and emotional and behavioral skills assessment (assessment) because they wanted to change the Student's coding from OHI with ADHD to an

²⁴ (FOF Nos. 17-22).

emotional disability so that they can remove the Student from [REDACTED]. The Parents also alleged that the staff is biased against the Student. The Parents wrote on June 2, 2022:

It is disheartening that the school would threaten and try to intimidate us into getting information that would not have any bearing on how to educate our son... We are able to read in between the lines that you are trying to get our son out of his home school which would not be in his best interest and devastating to him.

(CCPS Ex. 19).

Ms. [REDACTED] testified that she was the Assistant Principal of [REDACTED] when the IEP team requested consent for an assessment of the Student during the May 24, 2022 IEP meeting. In referencing the Parent's response contained in CCPS Ex. 19, Ms. [REDACTED] denied the allegations of threats, intimidation, and bias. Ms. [REDACTED] made clear that the IEP team advised the Parents of [REDACTED]'s legal rights concerning the Parents' refusal to provide consent for an assessment. This was neither a threat nor intimidation. In addition, Ms. [REDACTED] testified that she knew of no behaviors from anyone at [REDACTED] that sought to intimidate the Parents. Nor did Ms. [REDACTED] know of any staff member or members who were acting on some undisclosed bias against the Student.

Ms. [REDACTED] explained that the IEP team suspected that the Student was suffering from an emotional disability because the Student demonstrated emotional dysregulation which was worsening over time. (FOF Nos. 15-18). Ms. [REDACTED] disagreed with the Parents that an assessment would not have a bearing on how to educate the Student. Ms. [REDACTED] explained that the IEP team is required to explore all areas of suspected disabilities, including emotional disabilities. With an assessment, the IEP team could have identified the Student's needs further to revise the IEP and BIP.

Ms. [REDACTED] is the Student's school psychologist. In 2018, she received her Bachelor of Science in Psychology from [REDACTED]. She then received her Master's in School Psychology from [REDACTED] in 2020. Ms. [REDACTED] has received training and

certifications in the areas of Restorative Approaches and Nonviolent Crisis Prevention and Intervention Training (CPI) (CCPS Ex. 49). Currently, she works part-time at [REDACTED], approximately two to two and a half days per week and provides sessions to the Student. Ms. [REDACTED] indicated that she was the one who requested the assessment on May 24, 2022. She explained that the IEP team is required to investigate and must consider six types of disabilities before establishing eligibility for special education. Those disabilities include intellectual disability, hearing impairments, speech or language impairments such as limited English, visual impairments, orthopedic impairments, and serious emotional disturbance. Ms. [REDACTED] testified that she could not rule out all six because she could not rule out emotional disability for the Student based on his past and current behaviors in conjunction with his poor academic performance.

Interfering Behaviors and Emotional Dysregulation

The evidence established that for the 2020-2021 school year, between October 30, 2020, through June 10, 2021, when the Student was in the first grade, the Student received twenty (20) Referrals. (CCPS Ex. 45). For the 2021-2022 school year, between September 14, 2022, through June 10, 2022, when the Student was in the second grade, the Student received thirty-one (31) Referrals. (CCPS Ex. 44). For the 2022-2023 school year, with the Student in the third grade, the Student received seventy-five (75) Referrals between September 13, 2022, through February 17, 2023. (CCPS Ex. 43). This is a very dramatic increase from the Student's second grade to the third grade that only covered a little over half of the school year.

CCPS established that staff members have been injured by the Student's attacks on them. (CCPS Ex. 40). There were twenty-eight staff injury reports. I considered eighteen of them, which occurred between November 9, 2022, through February 14, 2023. The staff members who were injured by the Student during this time frame included Ms. [REDACTED], Ms. [REDACTED], [REDACTED]

██████████, and ██████████. On the following dates, the Student was involved in more than one incident that caused injury: November 14, 2022 (four incidents), November 22, 2022 (two incidents), February 1, 2023 (three incidents), February 2, 2023 (two incidents), February 8, 2022 (two incidents). (FOF Nos. 20-22).

Ms. ██████████ testified that she is the Student's special educator. She provides services on the Student's IEP consisting of reading, math, and behavioral components. She has been a teacher for twenty-one years. Ms. ██████████'s specialized skills include training in CPI. (CCPS Ex. 52). Ms. ██████████ testified that the Student refuses work and actively avoids it. He has hit and scratched her, resulting in broken skin, that bled. She testified that she personally witnessed other staff members injured by the Student. There was an incident when the Student repeatedly hit her on the left hip with his head. On her wrist, she wore a watch or bracelet which the Student may have hit repeatedly as she held down her shirt. In response, the Parents accused Ms. ██████████ of applying pressure on the Student's head with her hand, causing him injury manifesting as his eyes rolling back. Ms. ██████████ testified that she investigated the allegation against Ms. ██████████ and found the Parents' claim was unfounded. The Parents took the Student to a doctor, who wrote that the Student, "was seen in the office today and had a normal neurologic exam." (Parents Ex. 21). This doctor's note aligned with Ms. ██████████'s conclusion.

Ms. ██████████ testified that the Student's interfering behaviors vary day to day. He would refuse work, throw things, tear up materials, hide under furniture, knock over items, and become physically aggressive with staff in class. (See FOF Nos. 17-22). All this behavior resulted in his loss of instructional time for math and ELA. (CCPS Ex. 34). Ms. ██████████ testified that the Student's interfering behaviors have escalated. There has been no improvement to the Student's escalating and interfering behaviors despite her and the staff efforts.

Ms. [REDACTED] opined that the February 16, 2023 IEP which was developed for the Student is reasonably calculated to provide the Student a FAPE at the [REDACTED] program, which she stated is the LRE. The basis for her opinion is her personal experience with the Student over the years, his need for a small-teacher ratio, and access to wrap around services, such as crisis counseling, behavior support, and mental health support.

Ms. [REDACTED] testified that she has noticed that the Student's interfering behaviors have escalated, although she is only at [REDACTED] part-time. Ms. [REDACTED] revealed that she has been injured by the Student. He has caused her injury by hitting, biting, and kicking her. She has scars from him scratching her. On one occasion, the Student climbed onto a desk and jumped on Ms. [REDACTED], while kicking her in the stomach. In the hallway, the Student would randomly punch Ms. [REDACTED] in back. Ms. [REDACTED] explained that the Student appears to be calculating his move to find an opportunity when there is less or no adults around so that he can hit the students that he has targeted. Ms. [REDACTED] described the Student focusing on the targeted student and attacking that student when he believes "he's in the clear." (Ms. [REDACTED]'s testimony). She testified that the Student's attacks on the other students are negatively impacting the students in the [REDACTED] autism program. Additionally, [REDACTED] created a "Procedure for Hard Head Banging" as a result of the Student's severe head banging. (CCPS Ex. 60). Ms. [REDACTED] concluded that the Student is a danger to himself, to staff, and other students at [REDACTED].

Ms. [REDACTED] testified that she received numerous calls, emails, and communications from parents of other students. These communications consisted of the parents of students who alleged that the Student had targeted their child, attacked their child, and/or requested that their child be placed in a different homeroom class, away from the Student. Ms. [REDACTED] explained that the Parents have also contacted her about other students targeting the Student. Ms. [REDACTED] testified that she investigated all the concerns raised by all the parents. She interviewed the students allegedly

involved as well as interviewed staff members who may have witnessed the incidents. Ms. [REDACTED] explained that all of the Parents' concerns about the Student being targeted and attacked were unfounded.

As Ms. [REDACTED] indicated at the hearing, the Student's behaviors were worsening. CCPS provided four photographs of the Student's math classroom, taken on November 3, 2022. (CCPS Ex. 46). The photographs show a classroom destroyed. Desks and chairs are flipped over. There is torn paper and markings all over the floor. There is a flipped over mesh basket, a notebook on the floor, and trash strewn on the floor. The Parents did not dispute the evidence and did not provide any testimony concerning the destruction of the Student's math classroom. Ms. [REDACTED] testified that on this occasion she appeared at the end of the Student's episode. By the time she arrived, the other students were removed from the classroom. The Student turned over desks, chairs, and learning materials were strewn all over the classroom. Ms. [REDACTED] testified that these photographs were indicative of the Student's property destruction, which consisted of the Student ripping things off the walls, tearing materials, ripping textbooks, knocking over items, and interfering with other students' materials by throwing them off their desks and counters.

Ms. [REDACTED] testified that the Student pulled the fire alarm in the Student's effort to elope from the school. Not only did this interrupt his class, but the entire school was evacuated because the fire department was called. She testified that no other student at [REDACTED] ever pulled a fire alarm. Ms. [REDACTED] reported that the Student has stopped eloping because more staff was called to prevent the Student's efforts to leave the building.

Neuropsychological Evaluation October and November 2022

Although the IEP team requested an assessment on May 24, 2022, the Parents did not have the Student assessed until October and November 2022. Ms. [REDACTED] testified that she took the Student to a neutral, unbiased doctor outside of the CCPS system because the Parents did not

trust CCPS. The Student was evaluated by [REDACTED] on October 25, 2022, November 11, 2022, and November 21, 2022 Evaluation²⁵ The Student was diagnosed with numerous conditions. (FOF No. 24); (CCPS Ex. 23).

The Evaluation indicated that the Student struggled with self-regulation since he was three years old. Although the Student's developmental milestones for motor and language functions were within normal limits, he "struggled with self-regulation since preschool marked by kicking, hitting, and biting behaviors, distractibility, impulsivity, hyperactivity, and low frustration tolerance." (CCPS Ex. 23). The behavior concerns continued in prekindergarten. The Student's teachers had difficulty managing him in the classroom. He was diagnosed with ADHD and minor neuromotor abnormalities after he began psychiatric consultation and treatment with Dr. [REDACTED]. The Student's behavioral challenges persisted through the Student's kindergarten year at [REDACTED]. He qualified for a Section 504 plan due to his diagnosis of ADHD. An FBA was completed in February 2020 to mitigate noncompliance, temper, outbursts, and aggression toward peers through a BIP. *Id.* Since the first grade, "his teachers have expressed significant concern regarding the impact his emotional dysregulation has upon his ability to learn." *Id.* The Evaluation indicated that the Student is much more capable and able to show his academic skills at home, where the Parents can provide one-on-one assistance and facilitate his executive functioning. *Id.*

The Evaluation also included Ms. [REDACTED]'s concern that "[the Student] struggles to establish and maintain friendships." (CCPS Ex. 23). Analysis of Ms. [REDACTED]'s Child Behavior Checklist, "revealed borderline clinical elevations on scales reflecting withdrawn/depressed behaviors, somatic complaints, social problems, and aggressive behavior." *Id.* "His scales

²⁵ The assessment was completed, and the Evaluation was signed by [REDACTED], Ph.D. Certified School Psychologist, Psychology Associate, [REDACTED], Ph.D., ABN, Licensed Psychologist, Diplomate – American Board of Professional Neuropsychology, Fellow – American College of Professional Neuropsychology, and [REDACTED], M.S., Psychology Associate.

reflecting depressive problems, anxiety problems, and ADHD programs were in the clinical range.” *Id.* The Student completed the Sentence Completion Test, a self-report projective measure. The Student’s responses “reflect difficulties with peer relationships, emotional reactivity/difficulty regulating emotions and reactions, and dislike of school.” *Id.* The Student stated that, “the other kids don’t even care I’m gone” when he is not around. *Id.*

The Student’s math teacher, Ms. [REDACTED], with input from his ELA teacher, completed the Teacher’s Report Form. “Her biggest concerns include his defiant behavior and avoidance of work.” *Id.* “His teachers have also expressed significant concern regarding the impact his emotional dysregulation has upon his availability for learning.” *Id.* The Evaluation also stated,

[The Student’s] diagnostic presentation is complex and varied. His emotional and behavioral dysregulations are consistent with Generalized Anxiety Disorder with Obsessive Compulsive Features and Persistent Depressive Disorder marked by underlying symptoms of irritability, restlessness, ease of agitation, tension, worry, dysphoria, insomnia, feelings of worthlessness, perfectionism, select fears, nervousness, and low self-esteem. Obsessions and compulsions include excessive checking, thought intrusion, fear of contamination, and repetitive or ritualistic actions. *Id.*

The Student completed the WISC-V that measured his intellectual functions. Based on the scores he earned (FOF No. 25), the scores indicated that the Student’s verbal comprehension index score of 100 fell solidly in the average range, reflecting average performance on measures of verbal reasoning and word knowledge. (CCPS Ex. 23). The Student’s visual spatial index score of ninety-four (94) fell at the thirty-fourth (34th) percentile in the average range reflecting average performance on measures of spatial organization and visual program solving. The Student’s fluid reasoning index score of eighty-eight (88) fell in the low average range at the twenty-first (21st) percentile. The Student’s nonverbal abstract reasoning skills were in the low average range and his qualitative and analogical reasoning was average. He also earned a working memory index score of eighty-eight (88) which fell at the twenty-first (21st) percentile in the low average range. His short-term auditory memory was average, while his short-term

visual memory was low average. The Student's processing speed as evidenced by his index score of ninety-four (94) fell at the thirty-fourth (34th) percentile in the average range, reflecting average scores for both coding and symbol search. Finally, the Student's Full Scale IQ²⁶ score and General Ability Index score fell within the average range. *Id.*

Based on the extensive data collected, the [REDACTED] made numerous and specialized recommendations. (FOF No. 27). Most significantly, the Student required a low teacher-to-student ratio, the continuation of the FBA and BIP, psychological or behavioral health services, and crises intervention services. *Id.*

Ms. [REDACTED] testified that the diagnoses from the Evaluation concerning: (1) generalized anxiety disorder with obsessive compulsive features, (2) persistent depressive disorder (Dysthymia), early onset, and (3) ADHD – combined presentation with weaknesses in executive function and oppositional features, all support her and the IEP team's suspicion that the Student suffers from an emotional disability. Ms. [REDACTED] explained further that an emotional disability has a long history requirement, which means a duration of six months or longer. As the Evaluation indicated, the Student's demonstrated history meets the criteria of a long history because the Student "struggled with behaviors through preschool." (CCPS Ex. 23).

Ms. [REDACTED] testified that in the Evaluation, it indicated clearly that the Student has cognitive capability to progress academically. She explained that WISC-V measures cognitive performance across different processing areas. The score is up to 100, and the median is fifty. The standard deviation on this test is fifteen points. When looking for a significant deviation, it would be thirty points from the mean and thirty points from the school scale IQ based on same aged peers. The Student's cognitive profile of ninety-four (94) is average. Verbal comprehension is average. Visual spatial is average. Fluid reasoning and working memory are low average.

²⁶ Intelligence quotient.

Processing speed is average. Ms. [REDACTED] explained that this is called a “flat profile.” (Ms. [REDACTED]’s testimony). It is a flat profile because the scores are within two standard deviations. An average flat profile is not consistent with specific learning disabilities. As such, patterns and weaknesses are sought out. Ms. [REDACTED] testified there are no such patterns and weaknesses for the Student like other students with learning disabilities.

Ms. [REDACTED] continued that with regard to the Student’s academic abilities, the WIAT-4 measures age level academic achievements. Again, an average score is 100. From these scores, the Student is performing lower than his cognitive ability. He should be achieving a higher level. (FOF No. 26). Because he is not, this indicates a discrepancy that is significant because his abilities should allow him to achieve higher academic performance. Ms. [REDACTED] explained that if the recommendations do not state that the Student has an emotional disability, the scores support that conclusion. And what is clear is that the Student’s academic performance are not commensurate with his cognitive abilities. The evidence established that for the 2022-2023 school year, the Student is failing Math and ELA. (FOF No. 39). He is clearly not making academic progress despite his cognitive abilities. Ms. [REDACTED] believes it is due to his escalating and interfering behaviors. (FOF Nos. 17-22).

According to Ms. [REDACTED], the bottom line is that the Student is more capable than he is demonstrating academically. Ms. [REDACTED] opined that the February 16, 2023 IEP is reasonably calculated to provide the Student a FAPE if it is implemented at the [REDACTED] Program because it has the support services that the Student can benefit from and that which he cannot receive at [REDACTED] due to inadequate staffing. The support services will allow the Student to access instruction and make academic progress according to his abilities.

Finally, the Evaluation recommends that the Student demonstrates better academic performance when he receives small group or one-on-one learning. When asked if the Parents

agreed with the results and recommendations, Ms. [REDACTED] responded that the Parents agreed with most of them. When asked if CCPS offered all the Evaluation's recommendations, Ms. [REDACTED] took a very long time to answer the question. She then responded that CCPS did not provide reliable communications with the Parents, despite the evidence that established a tremendous number of emails and communications between the Parents and the CCPS. The Parents argued that the communications were mostly from the Parents to CCPS and not vice versa. I disagree based on the evidence presented.

Implement with Fidelity

The Parents alleged that the IEP team and staff failed to implement the BIP with fidelity. At the outset, it should be noted that reference to allegations that the February 16, 2023 BIP was not implemented with fidelity are not addressed because it is beyond the scope of the Due Process Complaint when a stay put was placed on February 17, 2023.

The Parents contend that the staff improperly implemented the BIP and the most recent BIP has not been implemented at all. If the staff properly implemented the most recent BIP, then the LRE is [REDACTED] according to the Parents. The Parents argued that the majority of the February 16, 2023 BIP was completed during the January 26, 2023 IEP meeting. And the BIP was revised on February 16, 2023, for minor clerical errors. The Parents did not highlight the minor clerical errors at the hearing.

At the February 16, 2023 IEP meeting, after the Parents alleged that the BIP was not implemented with fidelity, the IEP team members each responded, "The plan has been implemented to the best of our knowledge and ability, yes, yes." (CCPS Ex. 62, First Half, at 1:16:30). The evidence established that the February 16, 2023 BIP had multiple revisions that occurred on: December 22, 2022, November 28, 2022, May 31, 2022, April 6, 2022, February 23, 2022, November 2, 2021, May 5, 2021, March 31, 2021, November 5, 2020, and the date of

the original plan was February 27, 2020. January 26, 2023, was not included in the revision dates.

Ms. [REDACTED] testified that the BIP prior to February 16, 2023 was implemented to the best of their ability. However, the February 16, 2023 BIP could not be implemented due to the stay put. She explained that the Student's BIP was revised nine times over the years and every time, it was unsuccessful. Ms. [REDACTED] denied that most of the February 16, 2023 BIP was completed on January 26, 2023. When asked if the February 16, 2023 BIP would fail without even trying, Ms. [REDACTED] was firm in her response, given the Student's history for the last three years, the February 16, 2023 BIP will not work at [REDACTED] due to the lack of staffing and resources. Ms. [REDACTED] opined that the Student's poor academic progress is not due to the staff's failure to implement the IEP and BIP with fidelity, but a lack of resources allocated to support the Student's extensive needs. The Student needs more than [REDACTED] can provide in order to access his instruction.

Ms. [REDACTED] testified that she received numerous emails from the Parents regarding concerns they had about the BIP. Ms. [REDACTED] explained that every concern raised by the Parents was carefully considered and investigated to ensure that the BIP and the IEP were being implemented with fidelity. Ms. [REDACTED] interviewed witnesses and teachers. Her investigations led to the conclusion that the Parents' concerns were unfounded, that her staff was conducting themselves professionally, and the staff was implementing the BIP and IEP properly, consistently, and with fidelity.

I reviewed the seventy-five Referrals between September 13, 2022, through February 17, 2023. (CCPS Ex. 43). During the incidents and episodes that resulted in the Referrals during this time frame, the staff employed the various techniques as outlined in the Student's BIP to redirect and/or de-escalate the Student. (See FOF No. 19). Based on the evidence before me, the Parents have failed to establish that the CCPS improperly implemented the Student's BIP with fidelity.

I cannot ignore the overwhelming evidence of the staff members' efforts to implement the BIP properly during the Student's episodes of work refusal, non-compliance, property destruction, elopement, assaults on staff members, and assaults on other students, as well as his episodes of emotional dysregulation. After carefully reviewing the descriptions in the Referrals, it is apparent that the Student is refusing school work and actively avoiding it. While the Parents may sincerely believe that CCPS is to blame for the Student's lack of progress, it is important to focus on the overwhelming evidence that suggests that the Student's inability to self-regulate and de-escalate could be significant factors influencing his academic performance.

Dr. [REDACTED]

To further support the Parents' contention that the staff did not implement the BIP with fidelity, they provided a letter, dated February 3, 2023, from Dr. [REDACTED], a Developmental Behavioral Pediatrician at the Center for Development and Learning at the [REDACTED]. Dr. [REDACTED]'s letter states that the Student's learning disabilities and the school's failure "to address and support his learning disabilities . . . are contributing to the Student's anxiety over his below level reading and writing." *Id.* The basis for the statement is not included when the evidence is overwhelming to the contrary.

The letter specifically addressed the issue of placement of the Student. Dr. [REDACTED] indicated that the Student has been in her care since April 2019 and had been diagnosed with ADHD, combined type and anxiety, as well as specific learning disabilities in reading (dyslexia and reading fluency) and written expression, and dysgraphia. (Parents Ex. 30). Dr. [REDACTED] explained that the Student's anxiety is manifested by a significant fight/flight response, anger, and irritability when he feels he is unable to complete a task or when he thinks he is in trouble. Despite treatment and medication, the Student's anxiety has heightened considerably during the 2022-2023 school year. Dr. [REDACTED]'s letter further indicates that the Student's behavior comes

from a place of fear and not from maliciousness, and the school response to his behaviors has a large impact on the circumstances of that particular moment as well as the Student's mental health and his feelings about school.

Dr. [REDACTED]'s conclusion of this magnitude squarely places the blame of the Student's behaviors and poor academic performance on the [REDACTED] staff members without any credible or reliable basis in her letter. What is troubling about this letter is that it was not provided to [REDACTED] or CCPS but produced in anticipation of litigation. CCPS was not able to cross examine Dr. [REDACTED] and determine the basis for her conclusion. The Parents conceded that Dr. [REDACTED] has not observed the Student while at school, and she did not conduct her own formal assessment. There is also no indication that Dr. [REDACTED] spoke to any of the school-based IEP members and/or the staff members who she accused of failing to address and support the Student's learning disabilities, when there is overwhelming evidence to the contrary. Finally, by Dr. [REDACTED]'s own admission, she has medicated the Student with little success as his anxiety has heightened considerably. Those medications have been adjusted according to the Parents. Yet, Dr. [REDACTED] declares without any independent basis that the reason for the Student's anxiety can only be the staff's failure to address and support the Student's learning disabilities. I disagree because it could also be the medication that have been adjusted. Yet, that is not included in the possible reasons for the Student's heightened anxiety. Although I understand the Parents' fierce advocacy for the Student and their loving efforts to keep him close to his peers and the GEE at his home school, based on the above stated reasons, I place little weight on the contents of Dr. [REDACTED]'s letter.

Attendance History

CCPS provided the Student's attendance history from 2018 through 2023. (CCPS Ex. 39); (see FOF No. 38). The Parents contend that the Student missed a lot of school due to his

chronic illnesses, such as ear infections and breathing difficulties. They did not, however, dispute the accuracy of the attendance record. The Student's absences and tardies have increased dramatically this past school year. The Student's Third Grade Team wrote to the Parents concerning the Student's attendance,

After meeting last evening, we wanted to make sure we painted a realistic picture of the of time that [the Student] is not in our rooms and how the amount of time he is missing is impacting his grades . . . Only including the days he was present for Q2: Math: [the Student] has missed 58% of instruction. He was also not in math today (January 12, 2023) to make up the unit assessment, so he will have one last opportunity to make it up tomorrow. ELA: [the Student] has missed 55% of instruction in ELA. Content: Since the week of Nov. 28th, [the Student] has missed 62% of instruction.

(Parents Ex. 36).

Ms. [REDACTED] testified that for the 2022-2023 school year, for the first marking period, the Student was in school seventy-seven point forty-seven percent (74.47%). *Id.* For the second marking period, the Student was in school sixty-five point ninety-one percent (65.91%). Ms. [REDACTED] explained that the Student's absences are negatively impacting his access to instruction because he is not in the classroom to learn. Ms. [REDACTED] opined that to a reasonable degree of certainty the Student is not making adequate academic progress because of the loss of classroom instruction time due to his interfering behaviors. The basis for the opinion is Ms. [REDACTED]'s personal interactions with the Student as well as observing other staff members injured by the Student, the Student's efforts to refuse work, destroy property, and elope, which is the basis for the Referrals.

Other Examples of Failure to Implement with Fidelity

The Parents raised several other examples of how the staff failed to implement the BIP with fidelity. The Parents alleged that: (1) the staff only send one or two emails regarding the Student's positive behaviors, which is not enough and the staff consistently sends emails concerning the Student's negative behaviors, (2) the support room is a source or trigger for the

Student because he associates the support room with being in trouble, which will result in him losing something, (3) there are no sensory breaks, (4) the Student did not receive teacher notes, concepts, or additional space, (5) his desk was not turned sideways when he wanted to face the board in his classroom, he did not want to sit off to the side, (6) the Student's fidget was taken away, (7) the Student's break pass was taken away or not used, (8) the Student was not required to use the nurse's suite bathroom, (9) the walkie talkies are a trigger for the Student, and (10) there are six to eight adults following the Student.

The Parents did not state which BIP was applicable to the allegations. They broadly made allegations one through six without providing any testimony and/or exhibits to support their allegations. Ms. [REDACTED] did, however, provide testimony concerning allegations seven through ten, which I will address.

Ms. [REDACTED] testified concerning the break pass. The Parents argued that the Student was allowed to use a break pass when he felt frustrated and needed to step away from the classroom to a safe spot. (Parents Ex. 16). However, unbeknownst to the Parents, they alleged that the Student's break pass was taken away or not used during the early part of the 2022-2023 school year, which further frustrated the Student. The Parents argued that this was an example of the staff not implementing the Student's IEP and BIP properly, which then led to the Student's emotional dysregulation and triggered interfering behaviors.

Ms. [REDACTED] testified concerning the break pass and how it was utilized. In the second grade, the Student had pictures of Star Wars characters. When he needed a break to leave the classroom, he would place one of the character pictures on his desk. In the beginning of third grade, the Student no longer wanted to use the Star Wars characters. Ms. [REDACTED] testified that although a break pass was provided to the Student, he was not utilizing it. The Student would go to a safe place as well as spaces that were not safe. When this behavior continued, the break pass

was adjusted to three pictures of safe spaces. The purpose of this was to stop the Referrals of disciplinary action when the Student would leave the classroom without permission and be at a location he was not supposed to be. These pictures were the three safe places that the Student selected. When the Student needed to leave the classroom, he would touch one of the location pictures. The evidence demonstrated to me that CCPS is modifying their response to the Student's unpredictable use of strategies that are in place for him to succeed in school. There is no persuasive evidence that the break pass was somehow taken away and nothing else replaced it.

Ms. [REDACTED] testified that the Student was allowed to use the nurse's suite bathroom as an option versus a requirement. Previously, the Student was required to only use the nurse's suite bathroom, but that was changed in December 2022. This change is not reflected in the January 4, 2023 BIP. Ms. [REDACTED] countered that it remained a requirement because the Student was hiding in the general bathroom to avoid instruction. Because the Student needed to be supervised, the nurse's bathroom was ultimately added as an option in the December 22, 2022 BIP.

Ms. [REDACTED] explained that the walkie talkie is a trigger for the Student. And when staff use it, the Student reacts negatively. In reviewing the January 4, 2023 BIP, there is no indication concerning the walkie talkie issue. The Parents did not highlight where the staff was asked to refrain from using the walkie talkie in the BIP. Further, the Parents did not propose how to address the use of the walkie talkie in light of their position that it triggers the Student. Nor did the Parents provide examples of other schools that do not use this method of communication. CCPS countered that most schools utilize the walkie talkie including [REDACTED]. The staff uses the walkie talkie to communicate. Unfortunately, although the Student may get triggered, it is reasonable to assume that walkie talkies are utilized in a lot of schools because it is a cost

effective way to communicate between the staff and administration. If this issue was not included in the BIP, the staff was not required to use an alternate form of communication.

Ms. [REDACTED] testified that the Student becomes overwhelmed when he is followed by four to six adults at a time. Later in the hearing, the Parents alleged that there were six to eight adults following the Student at a time. Ms. [REDACTED] testified that the Student's aggressive behaviors have escalated, and CPI protocols were followed. Ms. [REDACTED] conceded that six to eight staff members surrounded the Student multiple times. This occurred because the staff involved called for support. When support arrives, the staff member who was targeted by the Student, "taps out" and moves physically away from the Student. (Ms. [REDACTED]'s testimony). When calls are made, there have been six to eight staff members who responded when the Student eloped from the school building. Ms. [REDACTED] clarified that they are not shadowing the Student. They are responding to his crisis when he is experiencing emotional dysregulation. Ms. [REDACTED] confirmed that in most circumstances, there are two adults close to the Student at a time, and there are others who are not close by him but are present to provide support for the Student in crisis. Based on the evidence presented and the record before me, I do not find that the staff failed to implement the BIP with fidelity.

The February 16, 2023 IEP and The [REDACTED] Program

The February 16, 2023 IEP meeting which lasted five hours was an annual review and continuation from the January 26, 2023 IEP meeting which lasted three hours. (CCPS Ex. 62, at 0:14). Throughout the meeting, I heard the Parents participate meaningfully, asking questions, challenging the team members regarding issues they raised, and asking their own questions and points of clarification. (FOF No. 41-42, and 46). Four and a half of those hours were devoted to the development of the Student's IEP and addressing the BIP. Only after developing the IEP and BIP, did it become clear to the IEP team that [REDACTED] was not able to meet the Student's

extensive needs, such as wrap around services to address his escalating, aggressive, and interfering behaviors that resulted in disciplinary actions and loss of class instruction time, which resulted in his inability to access instruction, resulting in poor academic progress. Because ██████ did not have a full-time counselor/social worker and school psychologist, it could not provide the at the moment crisis intervention that the Student needed to help him calm down, de-escalate, and return to the classroom and receive instruction. As such, the Student was not able to access the coping skills he learned through counseling because he had not internalized them. As such, those wrap around services at the time of the Student's emotional dysregulation were not available at ██████ when Ms. ██████ and Ms. ██████ were not present. They are, however, available at the ██████ program because of their full-time therapist and school psychologist, who are dedicated to the Students enrolled in the ██████ program. Finally, the IEP team recognized the Student's essential need for a small student to teacher ratio setting that was not available at ██████ but was available at the ██████ program. (FOF No. 50).

At the IEP meeting, the Parents addressed the academic component but refused to accept the overwhelming evidence that to get the Student to accept instruction, it takes the staff members an enormous amount of time to have him de-escalate and/or calm down enough to be in a state of receiving instruction. Rather, the Parents were heard accusing the IEP team of giving up on the Student, wanting to uproot him from everything he knows and all of his friends to make it easier for the staff members. (CCPS Ex. 62, Second Half, at 2:15:13).

At the hearing, Ms. ██████ opined that the ██████ program is akin to a jail. The basis of her opinion seemed to be from her visit to the ██████ program. Ms. ██████ testified that the Student would not be with children in his age group. There is no designated sensory room. There are four adults in the support room. The Student would not be allowed to do anything alone. The Student would have to eat lunch with special education peers, and the Student would have to

earn the privilege to eat with general education peers. The location of the program segregates the Student from all of his peers, away from the general education activity, separated by double doors that are shut. The Student will be secluded and not included. (Parents Ex. 12).

In addition, the Parents questioned whether anyone at the [REDACTED] Program is trained in the Orton-Gillingham method of instruction for reading in reference to the recommendation contained in the Evaluation. Ms. [REDACTED] testified that the Student is not currently receiving the Orton-Gillingham method of instruction for reading at [REDACTED], which the Parents conceded. Ms. [REDACTED] testified that she received her Wilson Level One Certificate in July 2008. The Wilson Reading System (WRS) is based on the Orton-Gillingham approach to reading instruction. The WRS requires forty-five to an hour and a half of lessons. Early in the 2022-2023 school year, Ms. [REDACTED] and the Parents recognized that given the Student's interfering behaviors, he could not complete a full lesson in one sitting. As such, Ms. [REDACTED] had to use a modified version of the WRS. At the February 16, 2023 IEP meeting, Mr. [REDACTED] indicated that the [REDACTED] Program offered the Wilson method of instruction.

The Parents then argued that at the [REDACTED] program, the Student did not have a way to get to general education. However, that was not true. Mr. [REDACTED] was heard in the recording of the February 16, 2023 IEP meeting that in the beginning the Student would start at the [REDACTED] program since the special educators provide content. If the Student demonstrates appropriate behavior, the Student can attend general education classes, outside of the [REDACTED] program. Ms. [REDACTED] testified that at the February 16, 2023 IEP meeting, "All services in general education" was rejected by the IEP team. (Ms. [REDACTED]'s testimony) (Parents Ex. 9, p. 47). In addition, the IEP rejected a combination of services in GEE and outside GEE at the home school. But it does state in the Student's IEP that the team accepted a combination of services in GEE and outside of the GEE at the [REDACTED] program. (CCPS Ex. 36).

The Parents argued that there are closer schools other than the [REDACTED] program. However, the Parents did not present the testimony of any witness or offered any exhibits that supported their position. The Parents failed to provide the other schools' names, distances, programs, and/or availability of wrap around services that can meet the needs of the Student. Rather, they opted to argue for the Student to remain at [REDACTED]. They also argued that it is not the Student's fault that [REDACTED] does not have the resources to provide full-time wrap around services for the Student.

CCPS established that as of February 16, 2023, there were no other closer schools to the Student that employed full-time therapists and psychologists who can provide the at the moment crisis counseling that the Student needs. The [REDACTED] program at [REDACTED] was the only school to have this resource and also established that the school psychologist is not only full-time but also assigned specially to the students enrolled in the [REDACTED] program.

Finally, the Parents are concerned that the Student will learn bad behaviors from the students at the [REDACTED] program. However, the Parents did not provide examples of what bad behaviors they may have witnessed during their visit at the [REDACTED] program which would influence the Student. The bad behaviors that the Student has exhibited are quite serious such as pulling down a fire alarm to avoid work, scratching, hitting, kicking, biting, throwing objects, ripping instruction materials and supplies, destroying a classroom, targeting a student to attack that student, and making statements that he wants to bring a knife to stab a staff and a student. (See FOF Nos. 18-22). So, unless the Parents are speaking of more severe behaviors than the Student's, they did not provide any evidence of what they were referring to.

[REDACTED], *Social Worker*

The Parents argued that [REDACTED] is the LRE if Ms. [REDACTED] continues to provide counseling services to the Student with the implementation of the new BIP. Ms. [REDACTED] has been

providing the Student with counseling services when counseling services were added to this IEP. The Parents praised Ms. [REDACTED]'s very good relationship with the Student. The Parents argued that it is best for the Student to remain at [REDACTED] rather than begin a new relationship with a therapist at the [REDACTED] Program.

Ms. [REDACTED] received her Bachelor of Arts in June 1990 from the [REDACTED], with a double major in psychology and social work. She then received her Master of Social Work in May 1991 from the [REDACTED]'s School of Social Work with a concentration in clinical social work. Since 1993, Ms. [REDACTED] has been a LCSW-C. In May 2022, Ms. [REDACTED] received her Advanced Child and Adolescent Therapy certificate from the [REDACTED], School of Social Work. From 2012 through the present, Ms. [REDACTED] has been certified as a School Social Worker from the MSDE. (CCPS Ex. 53).

From 2004 through 2005, Ms. [REDACTED] was a school-based therapist with the [REDACTED] program at [REDACTED]. Her duties involved consulting with its school psychologist and other special education staff to develop appropriate social/emotional goals for elementary aged students. She provided therapy involving intervention strategies and treatment in alignment with IEP goals and students' needs, in addition to weekly counseling services to students with specific social/emotional goals, while monitoring progress and integration of skills outside of the counseling setting. She also provided psychoeducation and resources to families and staff to better understand mental health disorders, developmental and academic disabilities, and appropriate expectations based on a students' development. From 2005 through 2015, Ms. [REDACTED] was a Crisis Intervention Specialist. She provided crisis intervention and counseling services to students in the [REDACTED] program as well as mainstream students. She helped students de-escalate and cope as well as connect them to available resources. From 2018 through the

present, Ms. [REDACTED] has been a Mental Health Therapist. In her current position, she provides counseling services to five different schools. She is not employed full-time at any of the schools, including [REDACTED].

Ms. [REDACTED] testified that two years ago, she was asked to provide counseling services to the Student when those services were added to his IEP. She did not provide counseling services to any other students at [REDACTED]. Initially, she provided counseling to the Student, every other week. However, because of his needs, the frequency increased to every week. Ms. [REDACTED] explained that her counseling services were and are provided with the goals and objectives identified in the Student's IEP. She has worked with the Student concerning his anxiety, self-regulation, and coping strategies. Ms. [REDACTED] explained that during the past two years, she and the Student developed a good relationship and reported that the Student enjoys counseling, does a good job learning coping strategies, practicing those strategies, has been cooperative, and willing to engage with her.

Although Ms. [REDACTED] has not personally witnessed the Student's escalating and interfering behaviors, she was nonetheless familiar with the Student's incidents involving elopement, property destruction, assaults on staff members, and assaults on other students. In therapy, Ms. [REDACTED] explained that the Student has been successful at analyzing his feelings and learning to access coping strategies. However, in a GEE, when the Student becomes emotionally dysregulated, at that moment of crisis, he cannot access and apply the coping strategies he has learned and cannot access his learning because he is disciplined and/or it takes the Student significant time to de-escalate and calm down from these episodes.

Ms. [REDACTED] testified that she attended the February 16, 2023 IEP meeting and has attended all of them in the past two years. Ms. [REDACTED] explained that the IEP team reached the conclusion that the LRE is the [REDACTED] program, where the Student would be successful in

accessing his learning, providing him with a FAPE. Ms. [REDACTED] explained that she is familiar with the [REDACTED] program because she worked there, and she also supervised intern therapists at the [REDACTED] program.

Ms. [REDACTED] testified that the [REDACTED] program provides a comprehensive small class environment of less than six students, which is what the Student needs and is recommended in the Evaluation. The [REDACTED] program can provide wrap around services with its two full-time mental health therapists, via individual and/or group counseling, and provide the Student with crisis intervention during his episodes of emotional dysregulation. At the [REDACTED] program the Student will receive help with his anxiety, coping skills, and dysregulation. Specifically, the Student will have access to immediate, at-the-moment crisis intervention with a therapist, who will be familiar with the issues that the Student has as well as similar issues for students currently enrolled at the [REDACTED] program. Ms. [REDACTED] explained that therapists will look for the origins of the behaviors and provide interventions which will be successful because of the relationship that the therapists build with the students as well as the therapists' experiences and skills. Ms. [REDACTED] conceded that while it will be challenging for the Student to start with a new therapist, in the long run, it would be better for the Student because "the current placement is causing too much damage for him now." (Ms. [REDACTED]'s testimony). Ms. [REDACTED] also explained that she would help build the relationship with the new therapist for as long as it takes so that the transition provides the continuity that the Student needs.

Ms. [REDACTED] testified unequivocally that the Student is currently experiencing more anxiety which is negatively impacting his academic performance. She testified that there was no evidence to support the Parents' assertion that the staff at [REDACTED] have failed to implement the coping strategies that Ms. [REDACTED] and the Student have put in place for him that the staff needed to implement.

Ms. [REDACTED] addressed the Parents' concern regarding the Student being exposed to other students at the [REDACTED] program who have been diagnosed with severe emotional disabilities. The Parents were concerned that the Student will learn, mimic, or mirror other students' bad behaviors. Ms. [REDACTED] explained that the students at the [REDACTED] program have similar behaviors as the Student. They are all at the [REDACTED] program to learn and access instruction. She reiterated that it is more harmful for the Student to remain in [REDACTED] versus trying the [REDACTED] program. Ms. [REDACTED] also added that if the Student does well at the [REDACTED] program, there is no reason to not re-evaluate placement and move him back to his home school if that will be the LRE. Finally, if it becomes apparent that the Student does not need the [REDACTED] program, then his IEP team would be obligated to move the Student to a LRE to provide a FAPE.

Ms. [REDACTED] summarized that: the Student is not progressing, he is not reaching his IEP goals, his interfering behaviors have escalated, causing him to miss significant amount of classroom instruction, which results in him failing. To ensure the Student's academic progress, the Student needs the wrap around services full-time that the [REDACTED] program can provide, and [REDACTED] cannot provide.

Ms. [REDACTED] opined to a reasonable degree of certainty that the February 16, 2023 IEP is reasonably calculated to provide the Student with a FAPE, and the LRE is the [REDACTED] program at [REDACTED]. The basis for her opinion is from two years of working with the Student first hand, attending the IEP meetings, reviewing all of the IEPs, PWNs, BIPs, and exhibits from the Parents and the CCPS provided for this hearing as well as having worked with [REDACTED] students at [REDACTED].

I gave Ms. [REDACTED]'s testimony considerable weight. She has testified truthfully regarding the Student's challenges that he will face if transferred to the [REDACTED] program. She has successfully established the kind of relationship with the Student where she can assess what is truly in his best interest, where he will be successful, and where all of his needs will be met. She has not personally witnessed the Student's attacks on staff, so she is distanced enough to be more objective than those who are involved. Ms. [REDACTED] is also not as close to the Student as the Parents, who are very passionate about the Student's needs based on what they believe is in his best interest to remain in the GEE at his home-school. She provided the pros and cons of the [REDACTED] program and offered her opinion based on her personal observations, the Student's needs, [REDACTED]'s resources, and the [REDACTED] program's resources. I heard no other expert opinion that was contrary to Ms. [REDACTED]'s that the February 16, 2023 IEP is reasonably calculated to provide the Student a FAPE at the [REDACTED] program, which is the LRE for the Student.

Based on the evidence before me, I conclude that CCPS properly considered the Student's extensive needs for wrap around services to address his escalating and interfering behaviors when it determined that the Student would be placed in the [REDACTED] program at [REDACTED], which I find is an appropriate placement in the LRE. Thus, the CCPS has met its substantive obligation under the IDEA by offering the Student an IEP and placement reasonably calculated to enable the Student to make progress appropriate in light of his circumstances in the LRE.

Based on the evidence before me, the Parents failed to establish their burden of proof that the [REDACTED] program at [REDACTED] is not the LRE that would be reasonably calculated to provide the Student a FAPE. The evidence clearly established that the February 16, 2023 IEP is reasonably calculated to provide the Student a FAPE at the [REDACTED] program, which the evidence established was the LRE and the proper placement for the Student.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that:

1. The CCPS did not predetermine the Student's placement before developing an IEP on February 16, 2023, for the 2022-2023 school year, and the CCPS provided the Parents the opportunity for meaningful and full participation as required under the IDEA. *See Spielberg ex rel. Spielberg v. Henrico Cnty. Pub. Schs.*, 853 F.2d 256, 259 (4th Cir. 1988); *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 857 (6th Cir. 2004); *Doyle v. Arlington Cnty. Sch. Bd.*, 806 F. Supp. 1253, 1262 (E.D. Va. 1992), *aff'd*, 39 F.3d 1176 (4th Cir. 1994). As no procedural violation occurred, the Parents were not impeded from the opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student. Therefore, the Student was not denied a FAPE for the 2022-2023 school year. *See* 20 U.S.C.A. § 1415(f)(3)(E)(ii) (2017); 34 C.F.R. § 300.513(a)(2) (2021).
2. I further conclude as a matter of law that the IEP and placement proposed by the CCPS at the [REDACTED] program at the [REDACTED] Elementary School for the 2022-2023 school year was reasonably calculated to offer the Student a FAPE in the least restrictive environment. 20 U.S.C.A. § 1412(a)(5) (2017); 34 C.F.R. §§ 300.114(a)(2)(i), 300.117 (2021); *Andrew F. ex rel. Joseph F. v. Douglas County School Dist.*, 137 S. Ct. 988 (2017).

ORDER

I **ORDER** that the February 17, 2023 Due Process Complaint filed by the Parents on behalf of the Student is hereby **DISMISSED**.

June 16, 2023
Date Decision Issued

Sun E. Choi
Administrative Law Judge

SEC/ds
#205249

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]

[REDACTED]

██████████,

STUDENT

v.

CARROLL COUNTY PUBLIC

SCHOOLS

BEFORE SUN E. CHOI,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-CRRL-OT-23-04644

APPENDIX

I admitted the following exhibits on behalf of the Parents:

Parents Ex. 1 - Prior Written Notice, April 13, 2022

Parents Ex. 2 - Prior Written Notice, May 24, 2022

Parents Ex. 3 - Parents' Response to Prior Written Notice, June 2, 2022

Parents Ex. 4 - Prior Written Notice, December 5, 2022

Parents Ex. 5 - Prior Written Notice, December 5, 2022

Parents Ex. 6 - Prior Written Notice, December 21, 2022

Parents Ex. 7 - Prior Written Notice, February 16, 2023

Parents Ex. 8 - Parents' Response to Prior Written Notice, undated

Parents Ex. 9 - IEP, February 16, 2023

Parents Ex. 10 - BIP, February 16, 2023

Parents Ex. 11 - Emails between Parents and ██████████, February 27, 2023

Parents Ex. 12 - Parents' Notes regarding ██████████ program at ██████████, undated

Parents Ex. 13 - Emails between Parents and ██████████, March 7 through March 8, 2023

Parents Ex. 14 - Parents' notes, undated

Parents Ex. 15 - IEP Amendment Changes, May 5, 2021

Parents Ex. 16 - Prior Written Notice, August 30, 2021

- Parents Ex. 17 - Parent's Email to [REDACTED], November 7, 2022¹
- Parents Ex. 18 - Parent's Email to [REDACTED], November 14, 2022
- Parents Ex. 19 - Emails between Parents and [REDACTED], November 7 through November 14, 2022
- Parents Ex. 20 - Emails between Parents and [REDACTED], November 23, 2022
- Parents Ex. 21 - [REDACTED], M.D., P.A. Office Visit Note, November 22, 2022
- Parents Ex. 22 - Daily Health Room Visit Report, November 22, 2022
- Parents Ex. 23 - [REDACTED], Observation Notes Report, November 28, 2022
- Parents Ex. 24 - Emails between Parents and [REDACTED], January 25, 2023
- Parents Ex. 25 - Email from [REDACTED] to Mother, February 1, 2023
- Parents Ex. 26 - BIP, January 4, 2023
- Parents Ex. 27 - Email from Parents to [REDACTED], February 9, 2023
- Parents Ex. 28 - [REDACTED] ([REDACTED]) Patient Clinical Summary, May 3, 2023
- Parents Ex. 29 - [REDACTED] School Note, May 3, 2023
- Parents Ex. 30 - [REDACTED], [REDACTED], MD Letter, February 3, 2023
- Parents Ex. 31 - Emails between Parents and Ms. [REDACTED] July 5 through July 6, 2022
- Parents Ex. 32 - IEP Amendment Changes, February 23, 2022
- Parents Ex. 33 - Emails between Parents and [REDACTED], November 10 through November 11, 2022
- Parents Ex. 34 - Emails between Parents and [REDACTED], December 13 through December 14, 2022
- Parents Ex. 35 - Emails between Parents and [REDACTED], January 12, 2023
- Parents Ex. 36 - Emails between Parents and [REDACTED], January 12 through January 19, 2022

¹ Recipients who are courtesy copied are not included in the title of the exhibit, only those who respond.

- Parents Ex. 37 - Not admitted.²
- Parents Ex. 38 - Emails between Parents and [REDACTED], March 26 through March 28, 2023
- Parents Ex. 39 - Report Card 2022-2023 [REDACTED] Elementary School, report period January 27, 2023, through April 5, 2023
- Parents Ex. 40 - Progress Report for Marking Period Three of 2022-2023, undated
- Parents Ex. 41 - Positive Behavior Interventions and Supports (PBIS) School Wide Color System Program, February 1, 2023, through May 12, 2023
- Parents Ex. 42 - Emails between Parents and [REDACTED], with Student Work Completion Tracker, February 17 through February 23, 2023
- Parents Ex. 43 - Student Work Completion Tracker, January 25, 2023
- Parents Ex. 44 - Behavior Chart, undated
- Parents Ex. 45 - Emails between Parents and [REDACTED], with forwarded emails between Parents and [REDACTED], April 12 through April 17, 2023
- Parents Ex. 46 - Emails between Parents and [REDACTED], November 21, 2022
- Parents Ex. 47 - Emails between Parents and [REDACTED], March 19 through March 20, 2023
- Parents Ex. 48 - [REDACTED] Elementary School Invoices to Parents, February 22, 2023, March 13, 2023, March 28, 2023, April 19, 2023
- Parents Ex. 49 - Email from [REDACTED] to Parents, April 4, 2023

I admitted the following exhibits on behalf of CCPS:

- CCPS Ex. 1 - [REDACTED] Confidential Neuropsychological Evaluation Report, December 20, 2020
- CCPS Ex. 2 - Prior Written Notice, February 3, 2021
- CCPS Ex. 3 - School-Based Occupational Therapy Evaluation, February 25, 2021
- CCPS Ex. 4 - Confidential Amended Psychological Report, March 3, 2021
- CCPS Ex. 5 - Confidential Educational Assessment Report, March 15, 2021
- CCPS Ex. 6 - Prior Written Notice, April 7, 2021

² A portion of CCPS Ex. 23 was provided by the Parents. CCPS Ex. 23 provides the complete exhibit.

- CCPS Ex. 7 - IEP, May 5, 2021
- CCPS Ex. 8 - Prior Written Notice, June 2, 2021
- CCPS Ex. 9 - Prior Written Notice, August 30, 2021
- CCPS Ex. 10 - Prior Written Notice, September 13, 2021
- CCPS Ex. 11 - Prior Written Notice, November 29, 2021
- CCPS Ex. 12 - Amended IEP, May 5, 2021
- CCPS Ex. 13 - Prior Written Notice, December 3, 2021
- CCPS Ex. 14 - FBA, December 7, 2022
- CCPS Ex. 15 - Prior Written Notice, February 23, 2022
- CCPS Ex. 16 - Prior Written Notice, April 13, 2022
- CCPS Ex. 17 - Prior Written Notice, May 23, 2022
- CCPS Ex. 18 - Notice and Consent for Assessment, May 24, 2022
- CCPS Ex. 19 - Parents' Response to the Notice and Consent for Assessment, June 2, 2022, received June 3, 2022
- CCPS Ex. 20 - Prior Written Notice, August 29, 2022
- CCPS Ex. 21 - Prior Written Notice, September 28, 2022
- CCPS Ex. 22 - Report Card 2022-2023, [REDACTED] Elementary School, report period September 5, 2022, through November 11, 2022
- CCPS Ex. 23 - [REDACTED] Confidential Neuropsychological Evaluation, October 25, November 11, and November 21, 2022
- CCPS Ex. 24 - Consent to Release Personal Information, November 29, 2022
- CCPS Ex. 25 - [REDACTED]. Observation Notes, November 28, 2022
- CCPS Ex. 26 - Intervention Probe, received, December 19, 2022
- CCPS Ex. 27 - Prior Written Notice, December 22, 2022
- CCPS Ex. 28 - BIP, January 4, 2023
- CCPS Ex. 29 - Prior Written Notice, January 5, 2023

- CCPS Ex. 30 - Prior Written Notice, January 11, 2023
- CCPS Ex. 31 - Prior Written Notice, January 12, 2023
- CCPS Ex. 32 - IEP, February 23, 2022
- CCPS Ex. 33 - Amended IEP, January 23, 2023
- CCPS Ex. 34 - Emails between Parents and [REDACTED], January 12 through January 13, 2022
- CCPS Ex. 35 - Prior Written Notice, February 16, 2023
- CCPS Ex. 36 - IEP, February 16, 2023
- CCPS Ex. 37 - BIP, February 16, 2023
- CCPS Ex. 38 - Emails between Parents and [REDACTED], February 27, 2023
- CCPS Ex. 39 - Attendance History for 2018 through 2023, undated
- CCPS Ex. 40 - Twenty-Eight Staff Injury Reports Related to Aggressive Behavior:
- Staff: [REDACTED], 4:10 p.m., November 9, 2022
 - Staff: [REDACTED], 12:41 p.m., November 14, 2022
 - Staff: [REDACTED], 9:30 a.m., November 14, 2022
 - Staff: [REDACTED], 2:00 p.m., November 14, 2022
 - Staff: [REDACTED], 2:00 p.m., November 14, 2022
 - Staff: [REDACTED], 2:10 p.m., November 22, 2022
 - Staff: [REDACTED], 2:45 p.m., November 22, 2022
 - Staff: [REDACTED], 1:55 p.m., December 20, 2022
 - Staff: [REDACTED], 10:00 a.m., January 10, 2023
 - Staff: [REDACTED], 10:00 a.m., January 24, 2023
 - Staff: [REDACTED], 10:15 a.m., February 1, 2023
 - Staff: [REDACTED], 10:15 a.m., February 1, 2023

- Staff: [REDACTED], 10:21 a.m., February 1, 2023
- Staff: [REDACTED], 3:30 p.m., February 2, 2023
- Staff: [REDACTED], 3:30 p.m., February 2, 2023
- Staff: [REDACTED], 12:30 p.m., February 8, 2023
- Staff: [REDACTED], 11:44 a.m., February 8, 2023
- Staff: [REDACTED], 12:30 p.m., February 14, 2023
- Staff: [REDACTED], 12:15 p.m., March 22, 2023
- Staff: [REDACTED], 11:40 a.m., March 22, 2023
- Staff: [REDACTED], 12:15 p.m., March 22, 2023
- Staff: [REDACTED], 3:00 p.m., April 24, 2023
- Staff: [REDACTED], 3:00 p.m., April 24, 2023
- Staff: [REDACTED], 3:00 p.m., April 24, 2023
- Staff: [REDACTED], 3:08 p.m., April 24, 2023
- [REDACTED] Visit Summary for Employer: Patient [REDACTED], April 24, 2023
- Staff: [REDACTED], 3:30 p.m., April 24, 2023
- Staff: [REDACTED], 2:15 p.m., May 3, 2023
- Staff: [REDACTED], 2:50 p.m., May 8, 2023

CCPS Ex. 41 - [REDACTED] Visit Summary for Employer Patient Redacted, May 3, 2023

CCPS Ex. 42 - Referral and Suspension Summary, 2022-2023, through May 9, 2023

CCPS Ex. 43 - 2022-2023 [REDACTED] Elementary School ([REDACTED]) Notification to Parents regarding disciplinary action, with various incident dates.³

- [REDACTED] Notification to Parents regarding disciplinary action May 9, 2023, with attachments:

³ Times of the incidents were included for dates with more than one disciplinary action.

- Daily Health Room Visit Report, May 9, 2023
- [REDACTED], RN, hand-written note, May 9,
- [REDACTED] notes, May 9, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 8, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 3, 2023
- [REDACTED] Visit Summary for Employer, Patient [REDACTED] May 3, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 24, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 15, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 14, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 12, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 5, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 22, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 21, 2023, 3:50 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 21, 2023, 2:25 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 20, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 16, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 15, 2023

- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 14, 2023, 2:43 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 14, 2023, 1:30 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 24, 2023, 3:37 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 24, 2023, 2:15 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 24, 2023, 10:45 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 14, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 8, 2023, 11:44 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 8, 2023, 10:49 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 7, 2023, 1:20 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 7, 2023, 12:10 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 7, 2023, 11:30 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 7, 2023, 10:30 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date February 2, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 31, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 26, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 25, 2023, 11:05 a.m.

- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 25, 2023, 10:50 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 25, 2023, 9:38 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 24, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 23, 2023, 12:05 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 23, 2023, 10:45 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 23, 2023, 9:45 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 19, 2023, 1:13 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 19, 2023, 9:30 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 18, 2023, 2:44 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 18, 2023, 10:01 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 17, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 12, 2023, 10:40 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 12, 2023, 9:30 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 11, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 10, 2023
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 9, 2023, 11:55 a.m.

- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 9, 2023, 2:20 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 9, 2023, 1:57 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 6, 2023, 3:30 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 6, 2023, 1:30 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 6, 2023, 11:00 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 4, 2023, 2:00 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 4, 2023, 11:30 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 3, 2023, 2:00 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date January 3, 2023, 9:50 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 21, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 20, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 19, 2022, 2:53 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 19, 2022, 9:55 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 16, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 14, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 13, 2022, 3:00 p.m.

- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 13, 2022, 12:45 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 2, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 30, 2022, 11:00 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 30, 2022, 10:01 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 29, 2022, 11:11 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 29, 2022, 2:05 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 14, 2022, 12:40 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 14, 2022, 11:35 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 14, 2022, 9:55 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 14, 2022, 9:10 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 10, 2022, 11:00 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 10, 2022, 9:12 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 9, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 3, 2022, 12:10 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 3, 2022, 9:30 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date November 1, 2022

- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 28, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 27, 2022, 3:40 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 27, 2022, 10:45 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 20, 2022, 11:25 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 20, 2022, 10:20 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 20, 2022, 9:17 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 14, 2022, 3:30 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 14, 2022, 9:30 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 4, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 3, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 30, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 26, 2022, 11:15 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 26, 2022, 10:04 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 23, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 13, 2022, 2:15 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 13, 2022, 9:17 a.m.

CCPS Ex. 44 - 2021-2022 [REDACTED] Notification to Parents regarding disciplinary action, with various incident dates:⁴

- [REDACTED] 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date June 3, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 17, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 16, 2022, 2:05 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 16, 2022, 9:50 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 13, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 12, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 9, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 4, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 28, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 19, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 5, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 28, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 22, 2022

⁴ Times of the incidents were included for dates with more than one disciplinary action.

- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 18, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 7, 2022, 1:00 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 7, 2022, 9:50 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 3, 2022, 3:45 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 3, 2022, 10:05 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 1, 2022
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 22, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 17, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 13, 2021, 1:15 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 13, 2021, 10:20 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 9, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 2, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date December 1, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 30, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 27, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 16, 2021

- [REDACTED] Notification to Parents regarding disciplinary action, incident date September 14, 2021

CCPS Ex. 45 - 2020-2021 [REDACTED] Notification to Parents regarding disciplinary action, with various incident dates:⁵

- [REDACTED] Notification to Parents regarding disciplinary action, incident date June 10, 2021, 1:15 p.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date June 10, 2021, 11:10 a.m.
- [REDACTED] Notification to Parents regarding disciplinary action, incident date June 3, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 28, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 27, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 18, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 17, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date May 14, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 27, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 20, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 19, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 15, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date April 6, 2021

⁵ Times of the incidents were included for dates with more than one disciplinary action.

- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 30, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 29, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 26, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 23, 2021
- [REDACTED] 8, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date March 4, 2021
- [REDACTED] Notification to Parents regarding disciplinary action, incident date October 30, 2020

CCPS Ex. 46 - Four Photographs of Classroom destroyed, consisting of chairs and desks flipped over, marker or crayon marks and scribbles all over the floor, flipped over mess basket, notebook on the floor, and trash and papers on the floor, November 3, 2022

CCPS Ex. 47 - [REDACTED], Principal of [REDACTED] Elementary School, Curriculum Vitae, undated

CCPS Ex. 48 - Dr. [REDACTED], Curriculum Vitae, undated

CCPS Ex. 49 - [REDACTED], Curriculum Vitae, undated

CCPS Ex. 50 - [REDACTED] Curriculum Vitae, undated

CCPS Ex. 51 - [REDACTED], Curriculum Vitae, undated

CCPS Ex. 52 - [REDACTED], Special Educator, Curriculum Vitae, undated

CCPS Ex. 53 - [REDACTED], MSW, LCSW-C, undated

CCPS Ex. 54 - [REDACTED] Curriculum Vitae, undated

CCPS Ex. 55 - 2022-2023 Q1 Data Tracker Data, various dates

CCPS Ex. 56 - 2022-2023 Q2 Data Tracker Data, various dates

CCPS Ex. 57 - 2022-2023 Q3 Data Tracker Data, various dates

- CCPS Ex. 58 - 2022-2023 Time Out of Class Data, various dates
- CCPS Ex. 59 - 2022-2023 ELA Assessments – Information to Support Instruction, August 30, 2022
- CCPS Ex. 60 - Procedure for Hard Head Banging, revised January 5, 2023
- CCPS Ex. 61 - Academic Scores, Grade Three, various dates
- CCPS Ex. 62 - Flash drive of IEP Meeting Recording, February 16, 2023